CHAPTER III
THE GOLDEN RULE OF INTERPRETATION

SYNOPSIS

1. *Golden Rule : Warburton's case; Becke v. Smith :* ---- 97
   —*Another version of Golden Rule* ---- 98
   —*Lord Wensleydale's Golden Rule* ---- 98
   —*Heydon's Rule or mischief rule* ---- 98
   —*Literal golden mischief* ---- 100
   —*Latter part of the rule* ---- 101
2. *Supreme Court* ---- 103
3. *Privy Council* ---- 105
4. *United States Supreme Court* ---- 106
5. *Allahabad* ---- 106
   —*Oudh* ---- 110
6. *Andhra* ---- 110
7. *Bombay* ---- 110
8. *Calcutta* ---- 112
9. *Karnataka* ---- 115
10. *Kerala* ---- 115
11. *Madhya Pradesh* ---- 115
12. *Madras* ---- 116
13. *Nagpur* ---- 117
14. *Orissa* ---- 119
15. *Patna* ---- 119
16. *Pepsu and Punjab* ---- 119
    —*Punjab* ---- 120

1. Golden Rule : *Warburton's* case; *Becke* v. *Smith.*—Burton, J., in *Warburton* v. *Loveland*,[1] observed : "I apprehend it is a rule in the construction of statutes, that, in the first instance, the

1. (1928)1 *Hudson and B. Irish* cases, 623, 648. "Grammar may, no doubt, sometimes render assistance to law by helping to the construction, and thereby to the meaning of a sentence; but grammar, with reference to a living, and, therefore, a variable language, is perhaps more difficult to deal with than law, and the rules of legal construction are more certain than the rules of grammatical construction." *Eastern Counties & London & Blackwell Ry.* v. *Marriage*, 9 HLC 32, 62. "I prefer to guide my judgment by the rule of construction laid down in *Warburton* v. *Loveland*," said Lord Fitzgerald in *Bradlaugh* v. *Clark*, (1883)8 AC 435, 484; *see*, however, *Regional Provident Fund Commissioners, Bombay* v. *Shree Krishna Metal Mfg. Co.*, AIR 1962 SC 1536, 1540 (not an invariable rule). *The Commissioner of Wealth Tax* v. *Smt. Hashmatunnissa Begum*, AIR 1989 SC 1024 : 1989 Tax LR 393 : (1989)1 JT 92 : (1989)40 ELT 239 : (1989)176 ITR 98 : (1989)42 Taxman 133 : (1989)75 CTR 194 : (1989)93 (2) Taxation 1; *Steel Authority of India Ltd.* v. *Bihar Agricultural Products Market Board & others*, AIR 1990, Pat 146 (FB); *Mithelesh Kumari* v. *Prem Bihari Khare*, AIR 1989 SC 1247 : (1989)1 JT 275 : (1989)1 Ker LJ 424 : 1989 MPLJ 156 : (1989)2 MLJ 1 (SC) : (1989)1 APLJ (SC) 31 : (1989) BBCJ (SC) 54 : (1989)76 CTR 27 : (1989)40 ELT 267 : (1989) 177 ITR 97 : (1988)2 Cur CC 33 : (1989)2 SCC 95 : (1989) ILS (SC)14 : (1989) Mah LJ 210 : (1989) 92 (2) Taxation 23 : (1989)1 Civ LJ 635 : (1989)2 Land LR 97 : (1989) TLNJ 1 : (1989) 103 Mad LW 430; *Jibeswar Chakravorty* v. *(Smt) Kusheswan Borah and Durga Borah*, (1991)1 Gau LR 167.

grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with any expressed intention, or declared purpose of the statute, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged so far as to avoid such inconvenience, but no further." The elementary rule is that words used in a section must be given their plain grammatical meaning.[1]

Parke, B., in *Becke* v. *Smith*,[2] formulated the following well-known rule for the interpretation of statutes :

Another version of Golden Rule.—"It is a very useful rule in the construction of a statute 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 the language may be varied or modified so as to avoid such inconvenience, but no further."

Lord Wensleydale's Golden Rule.—Lord Wensleydale called it the 'golden rule' and adopted it in *Grey* v. *Pearson*,[3] and thereafter it is usually known as Lord Wensleydale's Golden Rule. His Lordship expressed himself thus: "I have been long and deeply impressed with the wisdom of the rule, now I believe universally adopted at least in the courts of law in Westminster Hall that in construing wills, and indeed statutes and all written instruments, the *grammatical and ordinary* sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further".

Jervis, C.J., also described it as the 'golden rule' in *Matteson* v. *Hart*,[4] "We must, therefore, in this case have recourse to what is called the golden rule of construction, as applied to Acts of Parliament, *viz.*, to give to the words used by the Legislature their plain and natural meaning, unless it is manifest, from the general scope and intention of the statute, injustice and absurdity would result from so construing them."

Heydon's Rule or mischief rule.—Mr. Justice Blackburn in the House of Lords in *Eastern Counties and London and Blackwell Ry.* v *Marriage*,[5] observed : "We are bound to look at the language used in the Act, construing it with reference to the object with respect to which the Legislature has used that language, but construing it in its *ordinary grammatical sense*, unless there is something in the subject-matter or the context to show that it is to be understood in some other sense, and doing all this we are to say what is the intention of the Legislature expressed

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1. *Madan Lal* v. *Changdeo Sugar Mills*, AIR 1962 SC 1543; *see* also *Workmen of Bombay Port Trust* v. *Trustees*, AIR 1962 SC 481, 484; *(M/s.) D.B. Gattani* v. *State of Rajasthan*, (1995)2 WLC 155 (Raj); *(M/s.) Northern Coal Fields Ltd.* v. *Industrial Tribunal*, 1996(1) LBESR 521 (All); *Panduman Singh* v. *Kartar Singh*, (1996)1 Punj LR 772.
2. (1836)2 M & W 191, 195 : 6 LJ Ex 54 : 150 ER 724; *see* Allen : *Law in the Making*, 4th Ed. at pp. 402-403. In *Abbey* v. *Dale, Jervis*, C.J. observed : "If the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it does lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure, but we assume the function of legislators when we depart from the ordinary meaning of the precise words used merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" : (1851)20 LJCP 233, 235; *Kerala State* v. *West Coast Planters*, AIR 1958 Ker 41, 43; *Sirsilk, Ltd.* v. *Govt. of A.P.*, AIR 1960 AP 373, 375.
3. (1857)6 HL Cas 61, 106 : 26 LJ (Ch) 473, 481; *see* also *Abbot* v. *Middleton*, (1858)11 ER 28 : 7 HLC 114, 115, *per* Lord Wensleydale.
4. (1854)23 LJCP 108, 144; *see* also *Perry* v. *Skinner*, (1837)2 M & W 471, 476.
5. 31 LJ Ex 73 : 11 ER 639, 641 : 9 HLC 32; *see* also *Balaji* v. *Gopalrao*, 33 JC 489, 490 (Nag); Keeton : *Jurisprudence*, 1949 Ed. at pp. 92-93. Odgers : *Construction of Deeds and Statutes*, 2nd Ed. at pp. 289-290; *Kerala State* v. *West Coast Planters*, AIR 1958 Ker 41, 43.

by that language." And later in the same case the learned Judge said : "I dread very much the consequences, if once the Judicature begins to trespass on the province of the Legislature, and to pronounce not what the enactment is, but what it ought to be. If we do, I do not know where we are to stop. I think it must be better, in construing an Act, to follow what has been called the golden rule and to declare that to be the intention of the Legislature which appears to be expressed by the words used, understood in their ordinary sense, though with reference to the subject-matter and context, unless that is manifestly absurd or unjust....." In *River Wear Commissioners* v. *Adamson*,[1] Lord Blackburn quoted the observations of Lord Coke in *Heydon's* case,[2] *viz.* : "That for the sure and true interpretation of all statutes in general (by the penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered : 1st, What was the Common Law before the Act? 2nd, What was the mischief and effect for which the Common Law did not provide? 3rd, What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? And 4th, The true reason of the remedy and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy. and to suppress subtle inventions and evasions for the continuance of the mischief and *'pro privato commodo'*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *'pro bono publico'*." His Lordship thereupon opined : "But it is to be borne in mind that the office of the Judges is not to legislate, but to disclose the express intention of the Legislature, even if that intention appears to the Court injudicious; and I believe that it is not disputed that what Lord Wensleydale used to call the Golden Rule is right, *viz.*, that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, and to justify the Court in putting on them some other significa-tion, which though less proper, is one which the Court thinks the words will bear." In order to get its true import, it is necessary to view the enactment in retrospect, the reasons for enacting it, the evils it was to end and the objects it was to subserve. The Act has, therefore, to be viewed as a whole, and its intention determined by construing all the constituent parts of the Act together and not by taking detached sections as to take one word here and another there. Exposition *'ex visceribus actus'* is applicable.[3]

A statute should be so construed as will suppress the mischief and advance remedy and avoid evasions for the continuance of the mischief.[4]

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1. (1877)2 AC 743, 764; *see* also *Ex parte* Walter, (1881)17 Ch D 746, 751, *per* Jessel MR; *Victoria City* v. *Bishop of Vancouver Island*, (1921)2 AC 384, 387, 388 *per* Lord Atkinson.
2. 9 Ex 709. Followed in *Bengal Immunity Co.* v. *State of Bihar*, AIR 1955 SC 661; *Sodradevi N. Daga* v. *I. T. Commr.*, ILR 1955 Nag 249 : AIR 1955 Nag 180. The necessity of modifying language so as to avoid injustice of absurdity is admitted by Cresswell, J. (*Wansey* v. *Perkins*, 7 M & G at 142) by Jervis, C.J. (*Mattison* v. *Hart*, 14 CB at 385); By Lord Campbell, C.J. (*R.* v. *Met. Commissioners of Sewers*, 1 E & B at p. 701); by Alderson, B (*A. G.* v. *Lockwood*, (1942)9 M & W 398: by Martin, B (*A. G.* v. *Hallet*, 3 H & N at 374), and other Judges; *see* Wilberforce : *Statute Law*, at pp. 113, 114 : "The rule as to grammatical construction", says Pollock, B., "is subject to this condition, that, however, plain the apparent grammatical construction of a sentence may be, if it be perfectly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which upon the whole is the true meaning shall prevail in spite of the grammatical construction of or particular part of it"; *Wough* v. *Middleton*, 8 Ex at p. 357; *see* also *Kesvananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 477, para 694 (*per* Hegde, J.); *Jamna Bai* v. *Union of India*, AIR 1965 Punj 395, 398 (FB) (Khanna, J.). *Dr. Baliram Waham Hiray.* v. *Justice B. Lentin and others*, (1988)4 SCC 410 : (1989)176 JTR 1.
3. *Newspapers, Ltd.* v. *State Industrial Tribunal*, AIR 1957 SC 532, 536 (U.P. Industrial Disputes Act.).
4. *Devji Keshavji* v. *Dahibai Bhailal Shah*, AIR 1971 Bom 285, 287 (Patel, J.) : a construction which facilitates evasion on the ground of inconvenience is to be avoided; *Krishnan* v. *Vijayaraghavan*, 1977 Ker LT 1013; *(Sh)* S.C. *Garg* v. *DESU*, AIR 1995 Del 62 (DB).

The Golden Rule has been settled in *Grey* v. *Pearson*,[1] and the *Sussex Peerage* case[2] in well-known passages which are quoted by Lord Macnaghten in *Vacher's* case.[3] Lord Haldane, L.C., in the same case, after stating that speculation on the motives of the Legislature was a topic which Judges cannot profitably or properly enter upon, said[4] : "Their province is the very different one of construing the language in which the Legislature has finally expressed its conclusions, and if they undertake the other province which belongs to those who, in making the laws, have to endeavour to interpret the desire of the country, they are in danger of going astray in a labyrinth to the character of which they have no sufficient guide. In endeavouring to place the proper interpretation on the sections of the statute before this House, sitting in its judicial capacity, I propose, therefore, to exclude consideration of everything excepting the state of the law as it was when the statute was passed, and the light to be got by reading it as a whole, before attempting to construe any particular section, subject to this consideration, I think that the only safe course is to read the language of the statute in what seems to be its natural sense." In the case of *Inland Revenue Commissioners* v. *Herbert*,[5] Lord Haldane reaffirms this principle with special reference to legislation of a novel kind.

Where the words of general understanding are used the common under-standing of men is 'one main clue to the meaning of the Legislature'.[6]

Lord Wensleydale's Golden Rule, according to Bonnerjee in his *'Inter-pretation of Deeds, Wills and Statutes in British India,'* has been universally accepted as a correct enunciation of the law. He proceeds to say : "In laying down that the ordinary and grammatical sense of the words must be adhered to in the first instance, what is meant is this : Most words have a primary meaning, that is, a meaning in which they are generally used, and a secondary meaning, that is, a particular meaning in which they are used in a particular context."

Literal golden mischief.—Lord Ellenborough described it : "As a rule of commonsense as strong as can be."[8] Lord Granworth L.C. described it as a 'cardinal rule'.[9] G. W. Paton in his *Text Book of Jurisprudence*[10] writes : "There are three fundamental rules suggested in the English cases : firstly, the literal rule that, if the meaning of a section is plain, it is to be applied whatever the result; the 'golden rule' that the words should be given their ordinary sense

1. (1857)6 HLC 61, 106.
2. 11 Cl & Fin 85, 143.
3. (1913) AC at pp. 117-118.
4. (1913) AC at p. 113; quoted with approval in *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.*, 28 CLR 129, 148-49.
5. (1913) AC 326 at p. 332.
6. *Bank of Toronto* v. *Lambe*, 12 AC 575; *see* also *Commercial Banking Co. of Sydney and Bank of New South Wales* v. *Federal Commissoner of Taxation*, 23 CLR 102, 111, word 'dividend' interpreted according to common understanding.
7. *Tagore Law Lectures*, Lecture 1 at page 21.
8. *Doe* v. *Jessop*, 12 East 293; *see* also *Fowell* v. *Tranter*, 3 H & C 458, 461, quoted by Broom : *Legal Maxims*, 10th Ed. at p. 362.
9. *Gindry* v. *Pinninger*, 21 LJ Ch 405, 406 : "The view which I take of the case is this : that whatever difficulty there may be in reconciling the cases on questions of this sort, or cases on analogous subjects, the great cardinal rule is that which is pointed out by Mr. Justice Boston, *viz.*, to adhere as closely as possible to the literal meaning of the words. Then once you depart from that canon of construction, you are launched into a sea of difficulties which it is difficult to fathom." Alderson, B., earlier had observed in *A.G.* v. *Lockwood*, (1842)9 MW 378, 398 : "The rule of law, I take it, upon the construction of all statutes is whether they be penal or remedial to construe them according to the plain, literal and grammatical meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the Act, or to some palpable and evident absurdity."
10. 1946 at p. 188.

unless that would lead to some absurdity or inconsistency with the rest of the instrument; and the 'mischief rule' which emphasizes the general policy of the statute and the evil at which it was directed." "The Golden Rule permits the plain meaning to be departed fromif a strict adherence to it would result in an absurdity", says Odgers in his *Construction of Deeds and Statutes*.[1] The latter part of this 'golden rule' must, however, be applied with much *caution*.[2] Willes, J., subscribed to every word of this 'golden rule' in *Christopher* v. *Lotinga*,[3] assuming the word 'absurdity' to mean no more than 'repugnance'. Earlier, Crompton, J., had also expressed his doubts in *Woodward* v. *Watts*[4] thus : "I do not understand it to go so far as to authorise us, where the Legislature have enacted something which leads to an absurdity, to repeal that enactment and make another for them if there are no words to express that intention". Lord Bramwell made further reference in *Hill* v. *East and West India Dock Co.*,[5] to the opinion of Crompton, J., in respect of the above rule in the following terms : "I have often heard Lord Wensleydale lay that rule, which he quoted from a judgment of Burton, J., in Ireland, and I am now content to take it as a golden rule, though I heard Crompton, J., say in reference to it, that he did not set any value upon any golden rule, that they were all calculated to mislead people; and I am not sure that this will not result from what is put at the end of what I have just read, namely, that you are to abide by the grammatical and ordinary sense of the words unless that would lead to some absurdity. That last sentence opens a very wide door. I would like to have a good definition of what is such an absurdity that you are to disregard the plain words of an Act of Parliament. It is to be remembered that what seems absurd to one man does not seem absurd to another." Lord Blackburn himself while accepting the rule of construction adopted by Lord Wensleydale, expressed his misgivings in *Caledonian Rail Co.* v. *North British Rail Co.*[6] thus : "I agree in that completely but unfortunately in the cases in which there is real difficulty, it does not help us much, because the cases in which there is real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the words, used with reference to the subject-matter, is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the one idea and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it may appear that the meaning of the words is perfectly clear, that they can bear no other meaning at all, and that to substitute any other meaning would be, not to interpret the words used, but to make an instrument for the parties, and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing which, perhaps, it would have been wiser to have avoided, but which we have no power to deal with."

Latter Part of the rule.

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1. 2nd Ed. (1946) at p. 294.
2. Broom's *Legal Maxims*, 10th Ed. at p. 385.
3. (1864)33 LJC at pp. 121, 123 : "with that modification, it seems to me that the rule thus laid down is perfectly consistent with good sense and law."
4. (1853) 118 ER 836.
5. (1884)9 AC at pp. 448, 464, 465, Lord Macnaghten in *Vacher* v. *London Society of Compositors*, 1913 AC at pp. 107, 118, observed : "In the absence of a Preamble there can, I think, be only two cases in which it is permissible to depart from the ordinary and natural sense of the words of an enactment. It must be shown either that the words taken in their natural sense lead to some absurdity or that there is some other clause in the body of the Act inconsistent with or repugnant to the enactment in question construed in the ordinary sense of the language in which it is expressed."
6. (1881)6 AC at pp. 114, 131.

Maxwell in *Interpretation of Statutes*,[1] quotes the following passage from *Nokes* v. *Doncaster Amalgamated Collieries* :[2]

"The golden rule is that words of a statute must *prima facie* be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law; for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

Crawford in his *Statutory Construction* has discussed the various ways by which the meaning of statutes is to be ascertained. At page 274, he writes : "The first source from which the legislative intent is to be sought is the *words* of the statute. Then an examination should be made of the *context*, and the *subject-matter* and *purpose* of the enactment. After the exhaustion of all *intrinsic aids*, if the legislative intent is still obscure, it is proper for the Court to consult the several *extrinsic* matters for further assistance. And during the consideration of the various sources of assistance, further help may, of course, be found on the use of the numerous *rules of construction*. Austin divided the interpretative process into three sub-processes : (1) finding the rule; (2) finding the intention of the Legislature; and (3) extending or restricting the statute so discovered to cover cases which should be covered. DeSloovere recommended the following steps : (1) finding or choosing the proper statutory provisions; (2) interpreting the statute law in its technical sense; and (3) applying the meaning so found, to the case in hand.

According to Odgers[3] there are three methods of judicial approach to the construction of a statute, *viz.*, *(i)* the *Literal; (ii)* by employing the Golden Rule; *(iii)* by considering the *mischief* that the statute was designed to obviate or prevent. *Vacher* v. *London Society of Compositors*,[4] is an example of the employment of all three methods approached. The question there was whether under Section 4(1) of the Trade Disputes Act, 1906, any tortuous act by trade unions was protected or only such tortuous acts as were committed in contemplation or furtherance of a trade dispute. The House of Lords took the former view and, in delivering their opinions, Lord Macnaghten adopted the Golden Rule from *Grey* v. *Pearson*[5] : Lord Atkinson followed the literal approach and the case of *Cooke* v. *Charles A Vageler*;[6] while Lord Moulton discussed the history of the statute and applied the mischief method.

It is one of the well-established rules of construction that "if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the

1. At p. 7. 10th Ed.; *Satyanarain* v. *Bishwanath*, AIR 1957 Pat 550, 554.
2. (1940) AC at pp. 1014, 1022.
3. *Construction of Deeds and Statutes*, 2nd Ed. at pp. 289-290.
4. 1913 AC at pp. 107, 117 (Lord Macnaghten), 121 (Lord Atkinson), 130 (Lord Moulton).
5. (1857)6 HL Cas 61 : 26 LT Ch 473.
6. 1901 AC at pp. 102, 107.

Legislature." It is equally well settled principle of construction that "where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, fiction or confusion into the working of the system.[1]

2. Supreme Court.—In *New Piece Goods Bazar Co., Ltd.* v. *Commissioner of Income-tax, Bombay,*[2] the Supreme Court held that "it is an elementary duty of a Court to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention."

Again, in *Rananjaya Singh* v. *Baijnath Singh,*[3] Das, J., delivering the judgment on behalf of the Court, observed : "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the section of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage, the appeal must be to Parliament and not to this Court." It was held that Rules 117 and 118 follow the language of Section 123(7) of the Representation of the People Act, 1951, in that they prohibit the employment of persons other than and in addition to those specified in Schedule VI and the incurring or authorising of expenditure in excess of the amount specified in Schedule V and in both cases by a candidate or his agent. In the case under consideration the employees of the father had assisted the son in his election, but *'qua'* the appellant these persons were neither employed nor paid by him. So far as the appellant was concerned they were mere volunteers, and the employment of volunteers does not bring the candidate within the mischief of the definition of corrupt practice in Section 123(7).

In *Navin Chandra* v. *Commissioner of Income-tax,*[4] S.R. Das, J., observed : "The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

Jugal Kishore v. *Raw Cotton Co., Ltd.*[5] the same principle was reiterated. His Lordship, S. R. Das, J., delivering the judgment on behalf of the Court observed : "The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the Legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the

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1. *Collector of Customs, Baroda* v. *Digvijayasinhji, etc. Mills,* AIR 1961 SC 1549, 1551; *Shri Ram* v. *State of Maharashtra,* AIR 1961 SC 674, 678. Quoted and relied on *Markandey Singh, I.P.S.* v. *M.L. Bhanot, I.P.S.,* (1988)3 SCC 539.
2. AIR 1950 SC 165, 168; *Madan Lal* v. *Changdeo Sugar Mills,* AIR 1958 Bom 491, 495.
3. AIR 1954 SC 749. *The Commissioner of Wealth Tax* v. *(Smt.) Hashmalunnisa Begum,* AIR 1989 SC 1024 : 1989 Tax LR 393 : (1989)1 JT 92 : (1989)40 ELT 239 : (1989)176 ITR 98 : (1989)42 Taxman 133 : (1989)75 CTR 194 : (1989)93 (2) Taxation 1.
4. (1955)1 SCR 829, 836-7. *Raghunandan Saran Ashok Saran & others* v. *M/s. Pearey Lal Workshop (P) Ltd.,* AIR 1986 SC 1682 : (1986)3 SCC 38 : (1986)30 PLT 77 : 1986 SC FBRC 300 : 1986 MPRCJ 172 : 1986 JT (SC) 415 : (1986)2 SCJ 413 : 1986 Rajdhani LR 492 : (1986)30 DLT 228 : (1986)3 Supreme 359 : (1986)2 Ren CR 381 : (1986)2 Ren CJ 558 : (1986)2 Rent LR 176 : (1986)2 UJ (SC) 334.
5. AIR 1955 SC 376, 381 : (1955)1 SCR 1369; *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh* v. *Presiding Officer, Labour Court, Chandigarh,* (1990)3 SCC 682 (5J); *Ramachandra Badri Prasad Gour* v. *Associated Cement Co. Ltd.,* 1989 MPLJ 265.

same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation." It was held that Order XXI, Rule 16, C. P.C., clearly contemplates the assignment in writing of a decree executed after the decree was passed and could not cover the case of an assignment made before the passing of the decree.

And in *Amar Singhji* v. *State of Rajasthan*,[1] their Lordships of the Supreme Court again observed that recourse to rules of construction would be necessary only when a statute is capable of two interpretations. Where the language is clear and the meaning plain, effect must be given to it. It was contended in the said case that Section 171 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, classifies Jagirs as listed Jagirs and scheduled Jagirs, that there is an enumeration thereof in Schedules I and II of the Act, and that no estate held on Bhumichara tenure was mentioned therein, and that was an indication that it was not included in Section 169 of the Act. The contention was, however, not accepted. It was pointed out : "Section 171 does not exhaust all the Jagirs or similar proprietary interest falling within Section 169. The scheme of the Act is that for purposes of succession and partition, Jagirs are divided into three groups, scheduled Jagirs, listed Jagirs and other Jagirs.....As the Bhumichara tenure descends like personal property and is divisible among the heirs, it will be governed by Section 172, and cannot find a place in the Schedule of listed or scheduled Jagirs." It was further observed that the word 'deemed' in Section 169 imports that in fact there was no grant, and therefore interests which were held otherwise than under a grant were obviously intended to be included.

The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct.[2]

This golden rule of grammatical construction was adopted by the Supreme Court in resolving the divergent views on the interpretation of the words 'when the goods ought to have been delivered' occurring in Article 31 of the Limitation Act, 1908 (now Article 11 of the 1963 Act). The view taken by some of the High Courts that time begins to run from the date on which the railway finally refused to deliver the goods has now been overruled.[3] We share the view that where the words are plain and unambiguous effect must be given to them.[4]

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1. AIR 1955 SC 504.
2. *Shivraj Jat* v. *(Smt.) Asha Lata Yadav*, 1989 JLJ 336; *Commissioner of Income-tax* v. *Gautam Sarabhai Trust*, (1988)173 ITR 216 (Guj); *Kanai Lal* v. *Parannidhi*, 1958 SCR 360, 367 : AIR 1957 SC 907, 910-911; *see* also *Municipal Board, Rajasthan* v. *S. T. A., Rajasthan*, AIR 1955 SC 458, 464; *Bootamal* v. *Union of India*, AIR 1962 SC 1716, 1718, 1719; *Sirajul Haq* v. *S.C. Board*, AIR 1959 SC 198, 205.
3. *Bootamal* v. *Union of India*, AIR 1962 SC 1716.
4. See *Bharat Singh* v. *Management of New Delhi Tuberculosis Centre, New Delhi*, AIR 1986 SC 842 : 1986 Lab IC 850 : (1986)2 SCC 614 : (1986)52 Fac LR 621 : (1986)1 Cur LR 414 : 1986 SCC (Lab) 335 : (1986)2 Serv LJ 63 : (1986)2 SC WR 6 : (1986)2 Lab LN 4 : (1986)2 SCJ 129 : (1986)2 UJ (SC) 339 : (1986)69 FJR 129.

3. Privy Council.—In *Corporation of the City of Victoria* v. *Bishop of Vancouver Island*,[1] a case arising from British Columbia, their Lordships of the Privy Council, speaking through Lord Atkinson observed : "In the construction of statutes, their words must be interpreted in their *ordinary grammatical sense*, unless there be something in their context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. Exigencies of business, for instance, cannot deflect the Court from adopting the only interpretation which the language of the enactment bears." In *Imperial Bank* v. *U. Rai Gyaw Thu & Co., Ltd.*,[2] the Court was called upon to decide the question of priority between the bank, who held the title deeds of the debtor and the respondent who held a mortgage by registered deed from the same debtor, which depended upon the correct interpretation of Sections 58, 59, 78, 79 and 80 of the Transfer of Property Act. The consideration on which the bank laid most stress was that it was evident that the Legislature wished to preserve the system of mortgaging by deposit of title deeds in the towns mentioned in Section 59, Transfer of Property Act. Such mortgages, it was pleaded, were only really useful for the exigencies of business, especially the timber and rice trades (case being from Burma), where balances fluctuated from day to day. It would be impossible at each subsequent advance that there should be a search of registers, because the registers searched would not only be the registers in the town itself but all those where the security lands mentioned in the deposited title deeds might be situated, and the exigencies of business required immediate advances without a delay which might be of many days. Therefore, it was pressed on their Lordships that they should give such an interpretation to the Act as would not defeat one of its avowed objects. But their Lordships repelled this contention and Lord Dunedin observed : "Such consideration while founded on views as to business which are obviously of the greatest practical importance would, in their Lordships' opinion, be rather arguments for the invocation of the Legislature than an incentive to the putting of a forced construction on sections of an Act which in themselves where, in their Lordships' judgment, capable of only one interpretation." It has often been pointed out by their Lordships of the Privy Council that where there is a positive enactment of the Indian Legislature, the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration such as for instance derived from the previous state of the law—or even of the English law upon which it may be founded.[3] Thus, the ordinary and natural meaning of the words used must be taken as the proper construction.[4] Lord Atkin in *Narayana Swami* v. *Emperor*,[5] before quoting the same passage from *Grey* v. *Pearson*,[6] pointedly observed : "But in truth when the meaning of words is plain it is not the duty of the courts to busy themselves with supposed intentions." He proceeded to quote the following observations of Lord Halsbury in *Income-tax Commissioner* v. *Pemsel*[7]: "My Lords, to quote from

1. AIR 1921 PC at p. 240-242; Lord Wensleydale's observations in *Grey* v. *Pearson*, (1857)6 HLC 61 : 26 LJ Ch 473, were reiterated and it was stated that Lord Blackburn quoted this passage with apporval in *Caledonian Ry. Co.* v. *North British Ry. Co.*, (1881)6 AC 114, as did also Jessel, M.R, in Walton *Ex Parte* Levy, *In re*, 50 LJ Ch at p 659 : 17 Ch D at p. 290.
2. AIR 1923 PC 211.
3. *See* in this connection *Mst. Ramanandi Kuer* v. *Mst. Kalawati Kuer*, AIR 1928 PC 2, 5; *Madanlal* v. *Changdeo Sugar Mills*, AIR 1958 B 491, 494.
4. *Commissioner of Income-tax, Madras* v. *Buckingham and Carnatic Company, Ltd., Madras*, AIR 1936 PC 5, 8.
5. AIR 1939 PC 47, 51.
6. (1857)6 HLC 61 : 26 LJ Ch 473.
7. (1891) AC 513, 542.

the language of Tindal, C.J., when delivering the opinion of the judges in *Sussex Peerage* case,[1] : "The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act". If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the law giver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the Preamble which according to Dyer, C.J., in *Stowel* v. *Lord Zouch*,[2] is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress." Following this rule of construction, their Lordships of the Privy Council were of opinion that the language of Section 162 of Criminal Procedure Code itself declared the intention of the Legislature. It therefore appeared inadmissible to their Lordships to consider the advantages or disadvantages of applying the plain meaning whether in the interest of the prosecution or of accused.

"The strict grammatical meaning of the words is" said Sir Dinshaw Mulla in *Nagendra Nath* v. *Suresh*,[3] "the only safe guide."

4. United States Supreme Court.—The decisions of this Court have repeatedly warned against the danger of an approach to statutory construction which confines itself to the bare words of a statute.[4]

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the Legislature undertook to give expression to its wishes. Often these words are sufficient in themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this court has looked beyond the words to the purpose of the Act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the Legislature as a whole,' this court has followed that purpose, rather than the literal words.[5]

5. Allahabad.—"The Courts have to interpret the language used by Legislature in its *plain, grammatical sense,*" observed Malik, C.J., in *Mahmud Hasan Khan* v. *Narain*.[6] In *Jadu Rai* v. *Kanizak Husain*,[7] the trial of a suit before a Subordinate Judge was completed except for argument and judgment and a date was fixed for hearing argument. At this point a new Subordinate Judge was appointed, and he passed an order directing a further adjournment and fixing a particular date for disposal of the case. After some further adjournments, the Subordinate Judge delivered judgment, having heard argument on both sides upon the evidence

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1. (1844)11 Cl & F 85, 133 : 65 RR 11. *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 620.
2. (1562)1 Plowed, 353, 369 : 75 ER 536.
3. AIR 1932 PC 165, 167 : 59 IA 283 : ILR 60 Cal 1.
4. *Lynch* v. *Overholser*, 8 L Ed 2d 211, 215 : 369 US 705 (Harlan, J.). Quotes, *Church of Holy Trust* v. *United States*, 36 L Ed 226, 228-9 : 143 US 457, 459-462; *Markham* v. *Cabell*, 90 L Ed 165, 168 : 326 US 404, 409; *Utah Junk Co.* v. *Porter*, 90 L Ed 1071, 1074 : 328 US 39, 44; but see *Banks* v. *Chicago Grain etc. Association*, 20 L Ed 2d 30, 36 : 390 US 459 (Stewart, J.); In the absence of pursuasive reasons to the contrary, we attribute to the words of a statute their ordinary meaning; *Flora* v. *United States*, 2 L Ed 2d 1165, 1167 (Warrence, C.J.) : to give effect to intent of Congress, first reference is to the literal meaning.
5. *Perry* v. *Commerce Loan Co.*, 15 L Ed 2d 827 : 383 US 392 (Clark, J.); *Commissioner of Internal Revenue* v. *Sternberger*, 99 L Ed 246 : 348 US 187.
6. AIR 1949 All 210, 211.
7. ILR 3 All 576 at 600 (FB).

taken by his predecessor. The District Judge having on appeal upheld the Subordinate Judge's decision, a second appeal was preferred to the High Court, and an objection was raised on the appellant's behalf that the proceedings taken before the Subordinate Judge were void, and he could not be said to have tried the case, inasmuch as no evidence was taken before him, and his judgment was based solely on evidence recorded by his predecessor. Their Lordships of the Allahabad High Court were called upon to interpret Section 191 of the Code of Civil Procedure of 1882 which laid down that "where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum *as if he himself had taken it down or caused it to be made.* Mr. Justice Mahmud called in aid the well-known dictum of Parke, B., in *Becke* v. *Smith*,[1] : "It is a very useful rule in the construction of a statute 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 the language may be varied or modified, so as to avoid such inconvenience, but no further."[2] His Lordship further proceeded to observe : "This, indeed, is one of the principles of what has been called the 'golden rule' for the construction of statutes. It is as old as the time of Lord Coke; and Mr. Wilberforce in his useful work on *Statute Law,* (pp. 112-15) has cited numerous cases to support the rule laid down by Parke, B. And applying that rule to the interpretation of Section 191 of the Civil Procedure Code it may well be asked why the words which I have emphasized in quoting the section are not to be understood in the sense which they naturally convey. That those words clearly mean that the Judge pronouncing the judgment need not be the same as the Judge recording or taking the evidence, seems to me, so far as I can understand the English language, wholly beyond doubt. For if, in the two abovementioned cases which I had before me at Rae Bareli, I could deal with the evidence taken and recorded by my predecessor, as if I myself had taken down or recorded such evidence, I fail to see why the trial, so far as it had gone before my predecessor, should have been treated by me a 'nullity'. It must be remembered that to put any interpretation other than the natural one upon Section 191 of the Code, it must be shown that such interpretation leads to a 'manifest absurdity or repugnance to be collected from the statute itself.' Parke, B., has said so in the case to which I have just referred, and his ruling being supported by numerous other authorities, I have looked in vain for any provision in the Civil Procedure Code which would show that the natural meaning of Section 191 is not to be adopted. Indeed, the 'manifest absurdity or repugnance' seems to me to lie in interpreting that section in any sense other than that conveyed by the simple English words which, I have emphasized in quoting that section."

In *Kayastha Co., Ltd.* v. *Sita Ram*,[3] the question for determination was : "If a decree-holder makes any application or takes any step mentioned in column 3, Article 182, Limitation Act, will such step be ineffectual to keep his decree alive and to save limitation, unless he can satisfy the Court that he took such step or instituted such proceedings with a genuine intention of obtaining execution of his decree, if reasonably possible, and that he did not abandon such proceedings, except upon a genuine belief that it would not be reasonably possible to obtain execution ?" King, J. opined : "I am unable to read the words 'for execution of the decree' as

1. 2 M and W 195.
2. *Mahmud Hasan Khan* v. *Narain*, AIR 1949 All 210, 211.
3. AIR 1929 All 625 (FB); *Aziz Ahmad Khan* v. *Chhote Lal*, ILR 50 All 509 : AIR 1928 All 241, 246. "The safest course is to hold fast to the exact language in its ordinary interpretation, if it is capable of bearing it"; *Mehi Lal* v. *Ramji Dass*, ILR 47 All 13 : AIR 1924 All 792, 793; *Baijnath* v. *Sital Singh*, ILR 13 All 224, 243, *per* Mahmood, J. (Minority judgment).

meaning more than 'purporting to be for the purpose of obtaining execution of the decree.' I see no justification for reading into the words any requirements of good faith or 'genuine intention' on the part of the applicant. That would be putting a very strained interpretation upon simple words." Sen, J. said : "Article 182 prescribes a period of three years with reference to certain decrees and is not confined to decrees for money which carry interest. There is absolutely no ambiguity in the text. As was held in *Income-tax Commissioner* v. *Pemsel*,[1] 'If the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound these words in their *natural and ordinary sense*, the words themselves in such case best declaring the intention of the Legislature.' It is not permissible to read into the context words which are not to be found there.

In *Ranbir Prasad* v. *Sheobaran Singh*,[2] their Lordships of the Allahabad High Court quoted Turner, C.J., in *Hawkins* v. *Gathercole*,[3] citing *Stralling* v. *Morgan*,[4] saying : "The dominant purpose in construing a statute is to ascertain the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject." Iqbal Ahmad, C.J., delivering the opinion of the Full Bench in *Girjesh* v. *Bhagwati Prasad*,[5] considered that the rule of interpretation quoted by Collister and Bajpai, JJ., was subject to the cardinal rule of interpretation that "the meaning and intention of a statute must be collected from the *plain and unambiguous expression* used therein rather than from any notions which may be entertained by the Court as to what is just or expedient. If the words go beyond what was probably the intention, effect must nevertheless be given to them. They cannot be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced. However unjust, arbitrary or inconvenient the meaning may be, it must receive its full effect. When once the meaning is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words." It is the duty of the Court to interpret a section as it exists without adding to it and without subtracting from it. It is only when a Court can be certain that the language employed by Legislature does not represent its avowed intention, if interpreted literally and grammatically, that it can be justified in adding words to or taking out words from the language of the statute interpreting it.[6]

In *Ishwari Prasad* v. *Registrar, Allahabad University*,[7] Mootham, J., observed : "It is a well known rule of construction that if there is nothing to modify or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words". It was held that the decision of the Chancellor of the Allahabad University that the petitioner was not entitled to be a member of the Executive Council on the ground that the status of his membership of the Court underwent a radical alteration was erroneous on the face of it inasmuch as in the case of a member who comes under Head *(i)* of the First Statute relating to the Executive Council, the proviso specifically lays down that he shall hold office as a member of the Executive Council for so long only within the period of three years as he continues to be a

1. 1891 AC 534, 543.
2. AIR 1939 All 619, (Bajpai and Collister, JJ.).
3. (1855) De G M & G 1, 22 : 24 LJ Ch 332.
4. (1560)1 Plow 199, 204 : 75 ER 305.
5. AIR 1942 All 153, 155, ILR 1942 All 174; *Chaturbhuj* v. *Mauji Ram*, ILR 1938 All 702 : AIR 1938 All 456, 460 (FB).
6. *Tafazzul* v. *Shah Mohammad*, AIR 1949 All 261; *Mst. Mewa Kunwari* v. *Bourcy*, AIR 1934 All 388, 389 : ILR 56 All 781.
7. AIR 1955 All 131.

member of the Court. The words "continues to be a member of that body," were held to mean no more than what they say and do not refer to the capacity in which the person concerned is a member.

A certain provision of an Act is primarily to be interpreted according to the language used in that provision and help from other provisions of the Act in interpreting it ought to be taken only when the provisions are capable of more than one meaning.[1]

In *Omprakash* v. *The State*,[2] the question was whether the rule about sanction for prosecution as laid down in Section 6, Prevention of Corruption Act, is applicable to prosecution of a public servant under Section 409, I.P.C. An offence under Section 5(1)*(c)* Prevention of Corruption Act is almost identical with an offence under Section 409, I.P.C., with this difference that for a prosecution under Section 5(1)*(c)* sanction is necessary by virtue of the provisions of Section 6. The Legislature did not choose to include Section 409, I.P.C., within the ambit of Section 6 and the Court was held not competent to extend its meaning so as to include Section 409, I.P.C., which is not there. It was observed : "It is a well recognised principle that a statute should be interpreted according to the plain meaning of the words and should not be given a wider meaning that what the words would actually denote."

The starting point of limitation under Article 178 of the Limitation Act as amended in 1940 is the date of the service of notice and not the date of the award, or the knowledge of the award. If a party does not receive a notice of the award as prescribed by Section 14(2) of the Arbitration Act, he would evidently be within his rights to wait for the receipt of such notice. If he finds some time later that no notice has been received by him, it would be open to him to make an application for the filing of the award even if no notice has been received, but in all such cases the application would not become barred by time unless it is presented more than 90 days after the receipt of a written notice of the award.[3] In view of the clear provisions of the enactment there is no necessity to probe into the intention of the Legislature. In construing the provisions of the Limitation Act, the golden rule is that it should not be so construed that it would result in time commencing to run against a party even before the right to sue accrued in his favour because it results in obvious injustice and absurdity.[4]

In the case of *Bansraj* v. *State*,[5] Upadhya and Desai, JJ., on reference held that Section 123 of the Motor Vehicles Act punishes the doing of only that act which is prohibited from being done by Section 42(1) and it does not punish any act prohibited by some other provision. If a driver takes out a motor vehicle in a public place without a permit and without consent of the owner, the owner cannot be said to permit him to use the vehicle and would not be guilty under Section 123. Upadhya, J., dealing with the said sections observed : "Courts have to interpret the statutes primarily according to their plain meaning and I am unable to find any authority for the view that the meaning of the words used has to be strained so as to make it conform to some assumed intention of the Legislature." And Desai, J., observed : "The Legislature's intention is relevant only when the language used by it is ambiguous, capable of two interpretations, and the Court is required to adopt that interpretation which is in accordance

1. *Sukhnandan Lal* v. *Mst. Raj Kali*, AIR 1954 All 462 : 1954 All LJ 213 (FB). [Sub-clauses *(c)* and *(d)* are introduced in Section 9(5) of the Encumbered Estates Act by the Amending Act XI of 1939. No amendment is made in Section 13 by that Act. Therefore the interpretation of Section 13 should not be dependent on the effect of the provisions of Section 9(5)*(c)* and *(d)*]
2. AIR 1955 All 275 (FB) (Mulla, J., dissenting).
3. *Misrilal* v. *Bhagwati Prasad*, AIR 1955 All 574.
4. *Ramakkal* v. *Chennappa Gounder*, (1965)2 MLJ 292 : 78 MLW 529.
5. AIR 1956 All 27.

with the Legislature's intention. If the language is simple and plain, capable of only one interpretation, the Court's duty is to adopt that interpretation and it would not be justified in embarking upon any inquiry into the Legislature's intention. Moreover, even when a Court has to ascertain the Legislature's intention, it has to do so from the words used by itself; it cannot speculate about the Legislature's intention or assume it without any data."

With reference to the provisions of Limitation Act it has been observed that each Article of the Limitation Act has its own language and it is that language which is to be interpreted in each case. Explanation which is peculiar to Article 182 only and which does not find a place in Article 183 lays down that where two persons are jointly liable under a decree, an application made against any one of them will keep the limitation alive against the other. Since these provisions do not find place in Article 183, the conclusions that follow from them cannot be applied to a case governed by Article 183.[1]

Oudh.—When the terms of a statute are clear it is contrary to all principles of interpretation to first presume the intention of the Legislature in enacting a statute and then to construe it in accordance with that intention. In the case of *Leader* v. *Duffer*,[2] Lord Halsbury observed as follows : "What meaning of the words and sentences therein contained.....The function of the Court is only to interpret the language of the section as it stands.[3] It is one of the cardinal principles of the interpretation of statutes that, where the language is plain and unambiguous and admits of but one meaning, the Courts must give effect to it according to its plain meaning and they are not justified in departing from it even though serious anomalies result or what the Court conceives to have been the intention of the Legislature is not carried out."[4]

6. Andhra.—Where the statute uses different words with definite connotation, it is not open to the Court to probe into the legislative intention and give the same meaning to the different words, when there is no ambiguity. In the absence of any ambiguity, courts are bound to give full meaning to the words used by the Legislature. The main distinction between Order VII, Rule 11 and Order XXXIII, Rule 11, C.P.C., is apparent. In the case of an order under Order VII, Rule 11 there is no provision for collecting the court-fee due to the Government for the simple reason that the plaint would be treated as if it were not filed at all, whereas in the case of dispaupering, an express provision is made enabling the Court to make an order for payment of court fee. For that very reason the authors of the rule designedly used the words "dismissal" in contradistinction be the word "rejection".[5]

7. Bombay.—Westropp, C.J., adopted the most natural construction in *In re Ratansi* v. *Kalyanji*,[6] in interpreting Section 342 of the Code of Civil Procedure, 1872, which was thus held not to be retrospective in its effect. What Lord Wensleydale called the "grammatical and ordinary sense" in *Grey* v. *Pearson*,[7] has been called "the ordinary idiomatic sense" in another

1. *Ramkrishna* v. *Ratan Chand*, AIR 1956 All 32, 35.
2. (1883)13 AC 294, quoted in *Sadiq Husain* v. *Mohammad Karim*, AIR 1922 Oudh 289, 291; *Nageshar Sahai* v. *Mata Prasad*, AIR 1922 Oudh 236, 246; *Gaya Prasad* v. *Faiyaz Hussain*, AIR 1930 Oudh 274 : 5 Luck 12 (FB).
3. *Ram Sahai* v. *Kunwar Sah*, AIR 1932 Oudh 314 , 316 : 7 Luck 26.
4. *Gur Charan Lal* v. *Shiva Narain*, AIR 1948 Oudh 162 (FB).
5. *In re* Subramanyam, AIR 1955 Andhra 74, 77; *Budhulal* v. *Deccan Banking Co.*, AIR 1959 Hyd 69 (FB).
6. ILR 2 Bom 148, 161 (FB). "We cannot take the occasional inconvenience as a ground for rejecting the plain construction which aims at general benefit," said West, J., in *Haji Abdul Rahman* v. *Khoja Khaki Aruth*, ILR 11 Bom 6, 18; *Tukojirao Holkar* v. *Sowkabai*, ILR 53 Bom 251 : AIR 1929 Bom 100, 102.
7. (1857)6 HLC 61 at p. 106.

case.[1] Section 499 of the Indian Penal Code provides : "Whoever by words either spoken or intended to be read, or by sings or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said, except in the cases hereinafter excepted, to defame that person." The complainant had filed a suit in a Civil Court against the accused. In that suit the accused in the course of his examination as a witness for the plaintiff made the following statement : "The plaintiff has brought this false suit against me. He has undergone imprisonment in the Thana Jail, and he is a man of damaged character." After the decision of the civil suit, the complainant prosecuted the accused on a charge of defamation under Section 500 of the Indian Penal Code. The trying Magistrate found the accused guilty of the offence charged. The Sessions Judge, being of opinion that the conviction was illegal, referred the case to the High Court under Section 438 of the Code of Criminal Procedure. It was urged in the High Court[2] that although the language of Section 500 of the Indian Penal Code was comprehensive enough to include words wherever spoken, it ought not to be applied to words spoken in evidence, as they were not within the contemplation of the Legislature. Thereupon Fulton, J., observed in his judgment : "It, therefore, becomes necessary for us to determine what was the intention meant to be expressed, for as pointed out in Maxwell on *Interpretation of Statutes* (page 24) it is an elementary rule of construction that a thing which is within the letter of a statute, is not within the statute, unless it be also within the meaning of the Legislature. To ascertain such meaning is sometimes a task of much difficulty. The primary canon of construction is, that the Legislature must be intended to mean what it has plainly expressed, and that when the words admit of but one meaning, a Court is not at liberty to speculate on the intention or to construe an Act according to its own notions of what ought to have been enacted. In *Moonshee Buzloor Ruheem* v. *Shumsoonnisa Begum*,[3] the Judicial Committee of the Privy Council remarked that, if the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is applied, nor limited by what the Judges who apply it may suppose to have been the reasons for enacting it. But many cases may be quoted in which in order to avoid injustice or absurdity, words of general import have been restricted to particular meanings." Eventually his Lordship held that a witness could not be prosecuted for defamation on account of statements made when giving evidence in the witness-box.

Crump, J. called in aid the observation of Lord Halsbury, made in *The Vestry of the Parish of St. John, Hampsted* v. *Henry Horace Powell Cotton*,[4] when he was called upon to find out the meaning of the word 'resides' in Section 2 of the Divorce Act.[5]

> "Courts are bound to construe a section of an Act according to the plain meaning of the language unless either in the section itself, or in any part of the Act anything is found to modify, qualify or alter the statutory language even if absurdity or anomaly be the result of such interpretation."

In interpreting the provisions of a statute, we need not speculate upon the reasons which influenced the Legislature, but must take the provisions as they are and construe them according

1. *See* observation of Telang. J., in *Sorabji Edulji Warden* v. *Govind Ramji*, ILR 16 B 91, 100.
2. *Queen-Empress* v. *Balkrishna Vithal*, ILR 17 Bom 573, 577-578 [cf *Satish Chandra Chakravarti* v. *Ram Dayal De*, ILR 48 Cal 388 (SB)].
3. 11 Moo Ind App 551 at p. 604.
4. (1886) LR 12 AC 1; See *Lee* v. *Lee*, ILR 5 Lah 147, 180 (FB).
5. *Wilkinson* v. *Wilkinson*, ILR 47 Bom 843 : AIR 1923 Bom 321, 351.

to their plain meaning.[1] If the words of an Act of Parliament are capable grammatically of two meanings, the Court must look at the whole of the Act in order to determine which meaning best gives effect to the intention of the Legislature.[2]

8. Calcutta.—In *Jogodishury Debea* v. *Kailash Chandra Lahiry*,[3] the question referred for the decision of the Full Bench was whether having regard to the provisions of Section 265 of the Code of Civil Procedure, 1882, the Civil Court could make a partition of land of a revenue-paying estate when no separate allotment of the Government revenue was asked for. "In construing this section." observed Mr. Justice Banerjee, bearing in mind the observations of their Lordships of the Privy Council in *Narendra Nath Sircar* v. *Kamal Basini Dasi*,[4] "we must in the first instance examine the language of the enactment". "We are bound to adhere to the grammatical and ordinary sense of the words," as Lord Wensleydale observed in *Grey* v. *Pearson*,[5] "unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the statute, 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 : *Vacher & Sons* v. *London Society of Compositors*,[6] and *Inland Revenue Commissioners* v. *Herbert*,[7] observed Mookerjee, J., in *Kalimuddin Mollah* v. *Sahibuddin Mollah*.[8] In this case a document was in the first instance presented for registration to the Sub-Registrar of Sealdah who refused to register it on the ground of denial of execution. An application was thereupon made under Section 73, Sub-section (1) to the Registrar at Alipore. This was dismissed on 26th January, 1914. On 2nd February, 1914, the plaintiff lodged a plaint in the Court of Munsif at Alipore under Section 77, Sub-section (1) of the Registration Act. The Munsif had no jurisdiction to entertain the suit, which should have been instituted in the Civil Court within the local limits of whose original jurisdiction was situated the office in which the document was sought to be registered. This was plainly the Court of the Munsif at Sealdah and not the Court of the Munsif at Alipore within the local limits of whose original jurisdiction was situated, not the office in which the document was sought to be registered, but the office of the Registrar who had exercised jurisdiction under Section 78, Sub-section (1) of the Registration Act. The Munsif accordingly returned the plaint for presentation to the proper Court. This order was made on the 19th June, 1914 and on the same day the plaint was lodged in the Court of the Munsif at Sealdah. In these circumstances, the defendant contended that the suit was barred by limitation, inasmuch as it had been instituted in a Court of competent jurisdiction beyond the expiry of the period of thirty days prescribed by Section 77, Sub-section (1). The plaintiff urged that he was entitled to the benefit of Section 14 of the Indian Limitation Act, 1908, which runs as under : In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of Appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of

1. *Komal Singh* v. *Krishenbai*, AIR 1946 Bom 304, 309.
2. *Emperor* v. *Munshi*, AIR 1932 Bom 427, 428 : ILR 56 Bom 264; *Yeshbai* v. *Ganpat*, AIR 1975 Bom 20.
3. ILR 24 Cal 725, 741 (FB).
4. ILR 23 Cal 563 : 23 IA 18. "The duty of the court is to construe the law as it stands, and not to make a new, though it may be a better law. It is quite true that in interpreting a statute to meet the obvious intention of the Legislature, 'a construction' may be put upon it which modifies the meaning of the words and even the structure of the sentence"; *Rai Charan Ghose* v. *Kumud Mohan Dutt*, ILR 16 Cal 571, 578; *Ranjan Sarkar* v. *R.N. Mullick*, 63 Cal WN 6.
5. (1857)6 HLC 61, 106; *Amin Shoriff* v. *Emperor*, AIR 1934 Cal 580, 597 (FB).
6. 1913 AC 107, 117.
7. 1915 AC 326, 332.
8. ILR 47 Cal 300, 317; *Smt. Kishori Bala Mandal* v. *Tribhuwan Mandal*, (1980)2 CHN 278.

jurisdiction, or other cause of like nature, is unable to entertain it. "The defendant relied on Section 29 of the Indian Limitation Act, 1908, which provides that "nothing in the Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India." It was not disputed that the Indian Registration Act is special law and that Section 77 contained therein, which creates the right to bring a suit to compel registration of a document, also specially prescribes a period of thirty days as the period of limitation for the institution of such a suit. The question thus arose, whether the rule contained in Section 14 of the Indian Limitation Act would, if applied to a suit under Section 77 of the Indian Registration Act, affect or alter the period of limitation prescribed thereby. Applying the rule in *Grey* v. *Pearson, Mookerjee, J.,* was of the opinion that on a plain reading of Section 29 of the Indian Registration Act, the cases of the description, such as under Section 77 of the Act where neither the commencement of the period of limitation was postponed nor length of the period modified, but a portion of the time which had elapsed was eliminated, might well be deemed to furnish instances where the period of limitation had been 'affected or altered'. Accordingly the Full Bench held that the provisions of Section 14 of the Indian Limitation Act could not be applied in computing the period prescribed under Section 77 of the Indian Registration Act.

The proper course is, in the first instance, to examine the language of the statute, to interpret it, to ask what is its *natural meaning* uninfluenced by any considerations derived from the previous state of the law; to begin with an examination of the previous state of the law on the point, is to attack the problem on the wrong end; and it is a grave error to force upon the plain language of the section an interpretation which the words will not bear, on the assumption of a supposed policy on the part of the Legislature not to depart from the rules of the English law on the subject.[1] The question for decision in *Nilmani Car* v. *Sati Prosad Garga*,[2] was whether the expression "at the time of the measurement on which the claim is based was made" in Section 52(6) of Bengal Tenancy Act referred to the measurement upon which the excess area was found out before the institution of the suit or did it refer to the measurement made at the time of the original settlement. "The true rule of interpretation of all statutes," declared Mukerjee, A.C.J., is that stated by Burton, J., in *Warburton* v. *Loveland*,[3] and adopted by Lord Wensleydale in *Grey* v. *Pearson*,[4] namely, that *grammatical and ordinary sense* of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency. Once we depart from this canon of construction, which has been repeatedly affirmed, for instance, by Lord Wensleydale himself in *Thellusson* v. *Rendlesham*,[5] by Lord Selborne and Lord Blackburn in *Caledonian Railway Company* v. *North British Railway Co.*,[6] by Lord Fitzgerald in *Bradlaugh* v. *Clarke*,[7] and by Lord Bramwell in *Hill* v. *East and West India Dock Co.*,[8] we are launched, as Lord Cranworth said in *Gundry* v. *Pinniger*,[9] into a sea of difficulties which it is difficult to fathom.

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1. *Satish Chandra Chakraverti* v. *Ram Dayal De*, ILR 48 Cal 388, 405-406, (SB).
2. ILR 48 Cal 556 at 565 (FB).
3. (1828)1 Hud & B 623, 648.
4. (1857)6 HLC 61, 106 : 108 ER 19, 42.
5. (1859)7 HLC 429, 519 : 115 RR 249, 251.
6. (1881)6 AC 114, 121, 131.
7. (1883)8 AC 354, 384.
8. (1884)9 AC 448, 464.
9. (1852)1 De G M & G 502, 505 : 42 ER 647, 648.

In *Gopal Chandra* v. *Guru Charan*,[1] the question turned on the construction to be put on Section 105, Sub-section (3) of Bengal Tenancy Act, and on the notification of Government made under this section, No. 6954; dated 21st July, 1923, published in the *Calcutta Gazette* which provided : "That an application made under Section 105, Sub-section (3) of the said Act, for a settlement of rent during the preparation of a Record of Rights under Chapter 10 of the Act, should bear *(a)* a stamp of 12 annas for each tenant making or joining or joined in an application, and *(b)* if at any time, during the hearing of the application, an issue was raised by the applicant under Section 105-A of the said Act, in addition a stamp to the amount of an *ad valorem* fee chargeable under Article 1, Schedule 1, Court Fees Act, 1870, as amended by the Bengal Court Fees (Amendment) Act, 1922, subject to a maximum of Rs. 20. It was argued for the petitioners that it could not have been the intention of the Legislature that an application under Section 105-A would bear a higher court-fee than a plaint in a suit for same relief in the Civil Court, Mitter, J., thereupon observed : "But the intention of the Legislature can only be gathered from the plain words of the notification under Section 105(3) and it is not permissible to a Court while construing the plain words of a statute or a statutory rule to speculate whether the intention of the Legislature was to impose a higher court fee than that provided for by the Court Fees Act in suits where similar reliefs are asked for in the Civil Courts. In this connection the following remarks of Maxwell in his book on *Interpretation of Statutes* seem very apposite.[2] 'In a word then it is to be taken as a fundamental principle, standing as it were on the threshold of the whole subject of interpretation, that the plain intention of the Legislature, as expressed by the language employed, is invariably to be accepted and carried into effect, whatever may be the opinion of the judicial interpreter of its wisdom or justice. If the language admits of no doubt or secondary meaning it is to be obeyed'." As the notification was clear, the Court held that the court-fee payable was the *ad valorem* fee on the subject-matter of dispute. A statute must be taken to mean what it says, and it must be remembered that, if the words of a statute be plain and clear, it is not for the Court to raise any doubt as to what they mean.[3] The first canon of construction of a statute is that you must take the language as it stands and if it is clear give effect to it.[4] It must be remembered that the duty of the Court is not to put a construction which seems to the Court to be best in the sense that it will work out with the most justice or with the least inconvenience but to put a construction which seems to the Court to be the best in the sense that it is nearest to the language of the Legislature.[5]

Where the Court confers the general right of appeal and then imposes certain limitations on that right, the limitations have got to be strictly interpreted. Where however it is not so, the only question is whether on the terms of the section which creates the right of appeal, interpreted in its strict grammatical sense, there is a right of appeal.[6]

In the case of *Superintendent and Remembrancer of Legal Affairs, West Bengal* v.

1. AIR 1929 Cal 141 (the general principle of interpretation of statutes is that the ordinary meaning of the language employed is to be looked at and it ought never to be necessary to introduce words of limitation or words of qualification to explain the intention of the drafters of the Act.). *Mrinalini* v. *Harlal Roy*, AIR 1936 Cal 339.
2. *See* p. 94, Sixth Edition (1920).
3. *Padam Prashad* v. *Emperor*, AIR 1929 Cal 617, 630 (SB), *per* Jack, J.
4. *Meher Sardar* v. *Emperor*, AIR 1930 Cal 577 (2), 578.
5. *Mukerjea* v. *Karnani Industrial Bank, Ltd.*, AIR 1930 Cal 770, 773 (Rankin, C.J.). "It may sometimes be difficult to ascertain what the Legislature exactly meant, but we must determine what its language means"; Guha, J. in *Bejoy Kumar* v. *Corporation of Calcutta*, AIR 1933 Cal 322, 324.
6. *Mohd. Safi* v. *State*, 54 CWN 189 : AIR 1954 Cal 301 holding that Sction 411, Cr. P. C. conferred only a conditional right of appeal.

Nandaram Agarwala,[1] their Lordships Guha Ray and Sen, JJ., held that reading Section 6(9)*(ii)* of the Taxation on Income (Investigation Commission) Act, 1947, along with Rule 8*(i)* thereof, it was fairly obvious that it was open to the Commission to issue a search warrant even without specifying the buildings or places and leaving the discretion as to which buildings and places should be searched entirely to the authorised official. His Lordship Guha Ray, J., delivering the judgment on behalf of the Court, observed : "As regards the reasonableness of this construction of Section 6(9)*(ii)* and Rule 8*(i)*, all we need say is first that the construction we have put on them appears to us to be the plain literal meaning of the terms and where such is the case, it is not open to the Court to go behind the words and speculate on this expediency or reasonableness; and secondly, that the exigencies of a particular case amongst those for which special provision is made in this Act, just as the exigencies of a particular case amongst those which may call for the issue of a search warrant under the Cr. P.C. may require a general search to be made without the place or places being mentioned in the warrant and when such particular cases are provided for in the law, along with other cases where a warrant with the places to be searched being mentioned is likely to suffice, that particular provision of law need not necessarily be dubbed unreasonable."

In *Promode Ranjan* v. *Mullick*,[2] K.C. Das Gupta, J., observed : "The golden rule of interpretation is that we must first try to ascertain the intention of the Legislature from the words used, by attaching the ordinary meaning of the word on the grammatical construction adding nothing and omitting nothing; and to give effect to the intention thus ascertained, if the language is unambiguous, and no absurdity results. If the language is not free from ambiguity, it becomes necessary and proper to take into consideration the background of the legislation and other circumstances which may help the ascertainment of the intention. If, even though free from ambiguity, the ordinary meaning of the words used gives rise to an absurdity, we have to endeavour to avoid the absurdity, by adding, if possible, some words and omitting some words, to ascertain the Legislature's intention."

9. Karnataka.—The first and foremost rule of interpretation is the rule of grammatical interpretation. The Legislature must be deemed to have intended what it has said. It is no part of the duty of the Court to presume that the Legislature meant something other than what it said. If the words of the section are plain and unambiguous then there is no question of interpretation or construction. Then duty of the Court is to implement those provisions with no hesitation. The question of interpretation or construction arises only if the words used are not plain or they are ambiguous. It is only then the courts are required to call into aid the several rules of interpretation.[3] Incongruities have to be removed by Parliament by appropriate legislative process. It is not for the Courts to do anything about it.[4]

10. Kerala.—See *Lord Krishna Bank* v. *Inspector General of Registration*.[5]

11. Madhya Pradesh.—As a general rule the grammatical and ordinary sense of the words is to be adhered to, but if that were to lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency.[6]

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1. AIR 1954 Cal 134.
2. AIR 1959 Cal 318, 319; *Jessop's Co-operative Society* v. *Registrar Co-operative Societies*, AIR 1976 Cal 309.
3. *Madanvali* v. *Balu Padmanna*, AIR 1960 Mys 299, 301.
4. *Biligeri Rangamma* v. *Anna Puranamma*, AIR 1963 Mys 168, 170 (Somnath Jha, J.).
5. AIR 1976 Ker 151 : 1976 Ker LT 374.
6. *Golabchand* v. *Kudilal*, AIR 1951 MB 11 (FB), per Shinde, J.; *Nathu Pd.* v. *S. Kapur Chand*, AIR 1976 MP 136 : 1976 MPLJ 306 : 1976 Jab LJ 340 (FB); *See* also *Ram Chandar Singh* v. *State*, 1987 PLJR 47 (FB).

12. Madras.—The first rule of construction of statute is to give the words their ordinary and natural meaning.[1] And if the construction of a provision in the statute is clear, the Court cannot seek to get behind the rule by any enquiry into the reason of the rule[2]. "In construing the section of an Act it would be our duty to adhere to the *grammatical and ordinary* sense of the words used therein and if the meaning of the words is found by us to be plain and unambiguous we would have to give effect to them regardless of any other consideration and would not be justified in ignoring any part of the language of the section."[3]

In *Mercantile Bank of India, Ltd.* v. *Official Assignee, Madras*,[4] the dispute was in respect of title on certain goods, the railway receipt in respect whereof had been endorsed to the bank by the person who subsequently was adjudicated an insolvent. It was necessary to determine the import of the word 'person' in Section 178 of the Indian Contract Act read with the proviso in that section, in quoting which Mr. Justice Stone italicized the expression *'have not been obtained from their lawful owner"*. His Lordship proceeded to remark : "Now what is meant by 'person'? This term can hardly be restricted to 'mercantile agent'. Can it in view of the words italicized in the proviso be restricted to mean 'a person other than the owner'? In construing this difficult Act I think it is well to bear in mind the so-called golden rule for the interpretation of statutes. It is thus stated in *Maxwell*[5] : 'In construing statutes the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to absurdity or some repugnancy or inconsistency with the rest of the (statute).' Thus Lord Wensleydale in *Grey* v. *Pearson*,[6] and Lord Ellenborough in *Doe* v. *Jessep*,[7] described it as 'a rule of commonsense as strongly as can be'. Lord Cranworth in *Gundry* v. *Penniger*,[8] called it the cardinal rule and Jervis, C.J., in *Maddison* v. *Hart*,[9] described it as the golden rule. Applying that rule to Section 178 one asks first : "Does the phrase 'person not in possession of goods' include (giving the words their ordinary meaning) the owner of the goods not in possession of goods?" The answer is : "It does". Next, does that result in repugnancy or inconsistency with the rest of the instrument? Looking at Section 103 where the owner is expressly mentioned as a person having power to pledge (*i. e.* make a bailment of goods) by pledging documents of title the answer is that it does not. Looking at Section 108 one sees a difference, but neither a repugnancy nor an inconsistency. On the contrary the Legislature when enacting the provisions of Section 108 expressly excludes the owner from rights X (relating to sale); when enacting Section 178 includes the owner in the class having rights Y (relating to pledge). That is not inconsistent or repugnant. The argument founded on a supposed carelessness must be rejected ; as must that be founded on the supposition that India must necessarily follow, at a respectful distance, England in its legislative advances. Even if the result of the construction were absurd, that is no reason to depart from clear and

1. *Gadigi Mareppa* v. *Firm of Marwadi Vaunajee, Vajanjee*, 38 IC 823, 826, *per* Krishnan, J., "What has greatest weight with me is that I am of opinion that in ordinary plain English, unless there is anything indicating the contrary intention in the context 'from a named date' means 'on and after that date'." : remarked Coutts Trotter, J. in *In re* Court Fees, ILR 46 Mad 685 : AIR 1924 Mad 257 (SB); *Dasu Reddiar* v. *Inspector of Panchayats*, AIR 1966 Mad 147 : (1966)1 MLJ 35 (FB).
2. *Arunachala* v. *Balakrishna*, AIR 1925 Mad 449, 451 : ILR 48 Mad 359.
3. *Venkatalingama* v. *Parthasarathy*, AIR 1942 Mad 558, 561.
4. AIR 1938 Mad 207, 210 : ILR 56 Mad 127.
5. Maxwell, Ed. 5 at p. 4 (new Ed. 10, p. 229).
6. (1857)6 HLC 61 : 26 LJ Ch 478.
7. 12 East 293.
8. (1852)1 De G M and G 502 : 21 LJ Ch 405.
9. (1854)14 CB 357 : 23 LJ CP 108.

unequivocal language capable of only one meaning.[1] The words in the proviso assist neither construction. They are neutral. Whether 'person' includes owner or not, it clearly includes persons who are not owners and accordingly provision has to be made for them, and some classes of such persons have to be excluded. The proviso describes such excluded classes. The proviso relates, it should be observed, to pledge of goods as well as to pledge of documents. The duty of a court is not to draft laws so that they may be just or reasonable or consonant to accepted principles. Its duty is to expound the laws as they stand giving to all words used the meaning they have either according to common usage or, if defined, according to the meaning given therein in the Act in question or in the Interpretation Act. It is of course in the last degree unfortunate that an Act should be drafted and then that definition should be added which results in most curious results, but, however curious the results, a Judge must give effect to them. The Legislature must use the pruning knife if it is to be used at all." In *Secretary of State* v. *Arunachalam*,[2] the case turned on the interpretation of the expression 'for the purpose of making any improvement' used in Section 4 of Land Improvement Loans Act, 19 of 1883. Mr. Justice Abdur Rahman in delivering the judgment of the court quoted the oft-repeated canon of construction adopted by Lord Wensleydale (as the golden rule) and observed : "The business of an interpreter is not to improve upon the words of an enactment but to expound them. As observed by Cockburn, C.J., in *Palmer* v. *Thacker*,[3] the question for him is not what the Legislature meant, but what its language means, *i.e.*, what the Act has said that it meant. We have, therefore, to proceed on the principle enunciated by these noble Law Lords and interpret the language of Section 4, Land Improvement Loans Act. To our minds, the words in the section are unambiguous, and can only be held to apply to improvements which have not been effected at the time when the loan was granted and cannot be held to apply to improvements which had already been carried out at the time when the grant was made."

13. Nagpur.—What has been called the 'golden rule' for construing an Act was stated in the following terms by Mr. Justice Blackburn in the House of Lords in *Eastern Counties and London and Blackwell Railway Companies* v. *Marriage*,[4] "We are bound to look at the language used in the Act, construing it with reference to the object with respect to which the Legislature has used that language, but construing it in its ordinary grammatical sense, unless there is something in the subject-matter or the context to show that it is to be understood in some other sense, and doing all this we are to say what is the intention of the Legislature expressed by that language." And later in the same case the learned Judge added : "I dread very much the consequence, if once the Judicature begins to trespass on the province of the Legislature, and to pronounce not what the enactment is, but what it ought to be. If we do, I do not know where we are to stop. I think it much better, in construing an Act, to follow what has been called the golden rule, and to declare that to be the intention of the Legislature which appears to be expressed by the words used, understood in their *ordinary sense*, though with reference to the subject-matter and context, unless that is manifestly absurd or unjust....."[5]

Where the rule is expressed in unambiguous language it must be applied in every case where the facts to which it is intended to apply exist.[6] However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect. It is not the function of the Court to make the law reasonable, but to expound it as it stands according to the sense of the

1. See Maxwell : *Interpretation of Statutes*, at p. 229, *op. cit.*
2. ILR 1939 Mad 1017 : AIR 1939 Mad 711, 714.
3. (1878)3 QBD 346 : 47 LJMC 54 : 37 LT 784.
4. 9 HLC 32 : 11 ER 639 at p. 641 : 31 LJ Ex 73.
5. See *Balaji* v. *Gopalrao*, 33 IC 489 at p. 490 (Nagpur).
6. *Naraindas* v. *Kunjilal*, AIR 1924 Nag 162 (2).

words.[1] The first rule of construing any enactment is to give the words their *natural meaning* and it is only if no reasonable result can be arrived at by giving their natural meaning that some other interpretation is permissible.[2]

In *Secretary of State* v. *Geeta*,[3] the Railway Company contended that the expression 'permanently employed' in Section 2(1)*(n)(i)* of Workmen's Compensation Act meant a railway servant who was 'permanently engaged' as opposed to one who was 'temporarily engaged'. The claimants on the other hand contended that it meant one 'who habitually and continuously works' in office. Mr. Justice Neogy stated : "I confess the construction of that expression is by no means easy. The language appears to be clear but involves difficulty in its application. The well-known rule is to construe the language of a statute in its ordinary grammatical sense unless it leads some incongruity or manifest absurdity. I have therefore to see which of the two interpretations proposed stands this test. The two interpretations proposed by the parties differ in this that while the Railway Company lays emphasis on the duration of the employment, the claimants stress the nature and venue of the employment. If duration of the employment is to be the test, it will logically follow that a railway servant who is not permanently employed, that is to say, a person who is temporarily employed will fall under the definition of 'workman'. The result will be that a privilege which is given to a temporary servant is denied to a permanent servant. To put it more concretely, a person working as a substitute for six months in place of a permanent incumbent in the District Office will be entitled to be regarded as a workman while the permanent servant for whom he acts as a substitute will not be a workman.....It is obviously illogical for the Railway Company to say 'we will compensate for the loss of the life of a substitute because he was not a permanent servant, but we are not bound to compensate his principal because he was a permanent servant'. Such a situation is untenable and could not have been intended by the Legislature.... The word 'employment' has a twofold meaning. It may mean (1) engagement. that is contract of service, or (2) work in the course of employment. It is in the latter sense that the word appears to have been used in the list of persons described in Schedule 2 of the Workmen's Compensation Act. The expression 'not permanently employed in any office of a railway' contemplates such servants as are not required to perform their duties continuously or habitually in the office, that is to say, indoors, but occasionally have to do outdoor work in the course of their employment. The word 'permanent' denotes continuity and the expression in its concrete application will mean not continuously working in any office. I concede that this may appear to be a forced interpretation but it yields a sense which accords with the experience of practical life. To sum up : The plain grammatical meaning of the expression under consideration leads to absurdity; while extending the enacting words beyond their common-place import yields a rational meaning. The task of making the choice involves me in no difficulty. I have no hesitation in accepting the second interpretation which avoids imputation of an absurd intention to the Legislature."

In *Shridhar Krishnarao* v. *Narayan Namaji*,[4] their Lordships of the Nagpur High Court (Stone, C.J. and Vivian Bose, J.) found Section 13 of C.P. Debt Conciliation Act, 3 of 1933, running counter to Section 12(2) of the same Act. Their Lordships therefore observed : "In these circumstances it being impossible to reconcile these contradictory provisions, it becomes necessary for us to modify the ordinary sense of the words used. Our power to do so is contained in a passage from Lord Wensleydale's speech in *Grey* v.

1. *Prayagrao* v. *District Council, Betul*, AIR 1932 Nag 105.
2. *Sobharam* v. *Jagmohan Singh*, AIR 1936 Nag 269 : ILR 1937 Nag 161.
3. AIR 1938 Nag 91.
4. AIR 1939 Nag 227 : ILR 1939 Nag 503.

Pearson,[1] which was quoted with approval by the Privy Council in Privy Council Appeal No. 81 of 1938 on a question relating to the construction of a statute : 'I have been long and deeply impressed with the wisdom of the rule, now I believe, universally adopted.....that in construing.....statutes.....the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or to 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'. We have now to see how and in what way the modification is to be made. As regards this we bear in mind (1) the fact that this legislation makes drastic inroads upon vested rights and that therefore (2) we should not attempt to fetter the usual freedom of contract permissible under the law for the settlement of these vested claims except in so far as we are expressly or by necessary implication directed to do so; and (3) we note that Section 12 not only imposes no restrictions upon the kind of settlement which may be made, but on the contrary indicates that it is using at least one word, the word 'amounts', in a much wider sense than usual. We also think it right to take into consideration other matters to which reference would not have been permissible had the words of the Act been clear and unambiguous."

14. Orissa.—In the absence of there being anything contrary to the context, the language of the statute should be interpreted according to the plain dictionary meaning of the terms used therein. Taking the dictionary meaning of the words 'exertion' and 'immediately' in Clause *(c)* of Section 2(6-AA) of the Income Tax Act it is clear that if the income from other sources can be attributable to the direct personal effort of the assessee without the use of any intermediate agency, then alone the assessee can claim the benefit of earned income under Clause *(c)*. This is made still clearer by the adjective 'personal' which qualifies 'exertion'.[2]

15. Patna.—Following *Abbot* v. *Middleton*,[3] their Lordships of the Patna High Court,[4] opined : "If words used are 'unambiguous' they cannot be departed from merely because they lead to consequences which may be considered capricious or even harsh." Equitable principles cannot possibly be allowed to defeat the statute.[5]

In *Sashi Bhusan Rai* v. *Bhuneshwar Rai and others*,[6] their Lordships Imam, C.J. and Narayan, J. held that it is quite wrong to read in the words of Article 182(2), Limitation Act, a meaning which is contrary to the plain and ordinary meaning of words actually used in the statute. With reference to Article 182(2), Limitation Act, 1908, their Lordships held that the order of the Appellate Court granting the appellant certain time to deposit the printing cost is a judicial order and the further direction that if the printing cost was not deposited within the time allowed, the appeal shall stand dismissed without further reference to the Bench is not only a judicial order, but an order which, if not complied with, finally disposes of the appeal and furnishes a fresh starting point of limitation.

16. Pepsu and Punjab.—In *Ghumand Singh* v. *State*,[7] the question was with regard to the meaning of the word 'different' in Section 239*(d)*, Cr.P.C. Chopra, J. (Gurnam Singh, J.,

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1. (1857)6 HLC 61, 106.
2. *Ramchandra Deo* v. *I. T. Commissioner, B & O*, AIR 1955 Orissa 116. [Income from forestry, interest on arrear rents, fisheries and royalties from quarries, etc. is not earned income within the meaning of Section 2(6-AA)]; *see* also *Vasanta Rao Lakshmana Rao* v. *Sanghvi Amritlal Becharlal*, 1966 Guj 784. where aid of dictionary was held permissible.
3. (1858)7 HLC 68 : 28 LJ Ch 110.
4. *Ramprasad Sahu* v. *Mst. Basantia*, AIR 1925 Pat 729, 731.
5. *Hiralal* v. *Bastocola Colliery Co. Ltd.*, AIR 1957 Pat 331, 333 (Sinha, J.); Monthly tenant-building on land leased believing to be permanent tenant.
6. AIR 1955 Pat 124. *See* also *S. N. Sahi* v. *Vishwanathlal*, AIR 1960 Pat 10 (some rules of interpretation).
7. AIR 1955 Pepsu 43.

concurring with him) delivering the judgment on behalf of the Court, observed : "Every word of a statute is to be ascribed to its natural and ordinary meaning and it is not permissible to limit it to a particular sense or add anything to the words used in the statute. While interpreting you must not imply anything in them which is inconsistent with the words expressly used. It is always desirable to adhere to the words of the Act, giving to them that sense which is their natural import in the order in which they are placed." His Lordship held that the ordinary meaning of the word "different" is separate, distinct, unlike or dissimilar. Offences may be different because they are of different kinds and also because though of the same kind, they are committed with respect to different persons. Again, they may be different because they are committed on different occasions, even though they are of the same kind and are committed against the same person.

Punjab.—It is an established principle of construction of statutes that words used in an enactment should be taken in their ordinary sense especially when the sense is appropriate to the context.[1] A Court has to interpret the law as it stands and is not competent to play the role of a legislator to introduce amendments on equitable considerations to remove the possible defects.[2] A legal enactment must be interpreted in its plain sense and so long as its language is clear and unambiguous a subject cannot be penalised for construing it literally and not interpreting it in a manner not warranted by its plain language.[3] If a plain word carries a plain sense in the English language, however, strict the law may interpret it, it will not ignore the *ordinary meaning* which it carries.[4]

After all, it must not be forgotten that every expression used in the statute must be construed ordinarily in its natural sense and general words should be given general meaning unless the context indicates otherwise.[5] In *B. S. Bali* v. *Batalia Ram and others*,[6] Harnam Singh, J., observed : "In interpreting statutes Judges should not infer an intention contrary to the literal meaning of the words of the statute, unless the context, or the consequences which would ensue from a literal interpretation , justifying the inference that the Legislature has not expressed something which it intended to express, or unless such interpretation leads to any manifest absurdity or repugnance, with this superadded qualification that the absurdity or repugnance must be such as manifested itself to the mind of the law-maker, and not such as may appear to be so to the Tribunal interpreting the statute." It was held that from the words used in Section 2*(c)* of the Displaced Persons (Debts Adjustment) Act, 1951, it is plain that the debtor may be a displaced person or may not be a displaced person and where a debtor is not a displaced person, no question can arise about the debt having been incurred before the debtor came to reside in any area now forming part of India.

In the case of *Amrith Singh* v. *Jagjit Singh*,[7] the Court observed that in interpreting statutes the plain meaning of the words must be given full effect to,—Order XXXVII, Rule 3, C.P.C., no doubt vests discretion in the Court to impose or not to impose any conditions, and the discretion must be exercised judicially but it cannot be said that the hands of the Court are tied

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1. *Mula* v. *Crown*, ILR 11 Lah 24, 27, *per* Bhide, J.; *In the matter of* Jamadar Munshi Ram, AIR 1931 Lah 399, 400 : ILR 12 Lah 658; *Shive Charan Lal* v. *Bhawani Shanker*, AIR 1928 Lah 495.
2. *Abdul Hussain* v. *Mst. Mahmudi Begum*, AIR 1935 Lah 364, 367.
3. *Uda (Mst.)* v. *Ram Autar Singh*, AIR 1935 Lah 423 , 424.
4. *Madan Mohan* v. *Commissioner of Income-tax*, ILR 16 Lah 937 : AIR 1935 Lah 742, 746; *Shamo Bai* v. *Daya Ram*, AIR 1934 Lah 115 (1) : "Primary meaning."
5. *Hyderabad (Sind) Electric Supply Co.* v. *Union of India*, AIR 1959 Punj 199, 202.
6. AIR 1954 Punj 105, 106.
7. AIR 1955 Punj 101.

and that only in those cases can conditions be imposed where the defence seems to be a sham one.

Bhandari, C.J., in *Hazarimal Kuthalia* v. *Income-tax Officer, Ambala*,[1] repeated certain well-known rules for construction of statutes :

1. The first and foremost rule, to which all others are subordinate, is that where the language of a statute is plain and unambiguous and conveys a clear or definite meaning there is no occasion for resorting to the rules of statutory interpretation. If a statute speaks for itself clearly, any attempt by the Court to make it clearer by imposing another meaning would not be construing the statute but enacting one.
2. The second rule is that the words appearing in a statute must be presumed to have been used in their popular sense and should be given their ordinary, natural and familiar meaning. "It would be a new terror in the construction of Acts of Parliament," said Lord Loreburn in *Macbeth* v. *Chislett*,[2] "if we were required to limit a word to an unnatural sense because in some Act, which is not incorporated or referred to, such an interpretation is given to it for the purpose of that Act alone". The same word may mean one thing, one context and another in a different context, for as pointed out by Mr. Justice Holmes in *D. N. Banerjee* v. *P. R. Mukerjee*,[3] in an oft-quoted passage—'A word is not crystal, transparent and unchanged : it is the skin of a living thought and may vary greatly in colour and content according to the circumstance and the time in which it is used.'[4]
3. The third rule, if it may be designated as such, is that the Courts are not at liberty to create an imaginary ambiguity in the terms of a statute and later to clear it up by a long and tedious process of subtle analysis. We must proceed on the assumption that the Legislature knew its mind, that it understood the meaning of the terms employed by it and that those terms do not contain a hidden meaning which only the study of a powerful intellect can discover.

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1. AIR 1957 Punj 5, 10.
2. 1910 AC 220.
3. 1953 SCR 302, 309.
4. See *Callanan* v. *U.S.*, 364 US 587 : 5 L Ed 2nd 312, 319 : The 'rule of lenity' only serves as an aid for resolving an ambiguity : it is not to be used to beget one.

CHAPTER IV
MAXIMS OF INTERPRETATION

SYNOPSIS

1. *A pactis privatorum publico juri non derogatur* ---- 123
2. *A verbis legis non est recedendum* ---- 124
3. *Absoluta sententia expositore non indiget* ---- 125
4. *Abundans cautela non nocet.* ---- 125
   —*Actus Curiae Neminem Gravabit* ---- 125
5. *Actor sequitur forum rei* ---- 126
6. *Actus non facit reum, nisi mens sit rea* ---- 127
   (i) *Illustration* ---- 127
   (ii) *Exception to the rule.* ---- 129
   (iii) *English case* ---- 130
   (iv) *Indian case* ---- 131
   (v) *Exception usually limited to minor offences* ---- 133
   (vi) *Defences in statutory crimes* ---- 133
7. *Ad proximum antecedens fiat relatio nisi impediatur sententia* ---- 134
8. *Ad ea quae frequentius accidunt jura adaptatur* ---- 134
9. *Argumentum a simili valet in lege* ---- 136
10. *Argumentum ab auctoritate est fortissimum in lege* ---- 137
   (i) *Subordinate Courts* ---- 138
   (ii) *Expression of its own opinion by subordinate Court* ---- 138
   (iii) *Revenue Courts* ---- 139
   (iv) *High Court Benches* ---- 139
11. *Argumentum ab impossibili plurimum valet in lege* ---- 140
12. *Argumentum ab communiter accidentibus in jure frequens est* ---- 141
13. *Boni judicis est jus dicere, non jus dare : or judicis est jus dicere non dare* ---- 142
14. *Communis error facit jus* ---- 143
15. *Contemporanea exposito est optima et fortissima in lege* ---- 143
16. *Contra legam facit, quid facit quod lex prohibet in fraudem vero qui salvis verbis legis sententiam ejus circum venit* ---- 144
17. *Copulatio verborum indicat acceptationem in eodem sensu* ---- 145
18. *Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit* ---- 145
19. *Cuilibet licet renuntiar juri prose introducto* ---- 145
20. *Delegatus non potest delegare* ---- 145
   (i) *Delegation of legislative power* ---- 145
   (ii) *State can challenge allegated legislation as ultra vires* ---- 148
21. *Expressum facit cessare tacitum* ---- 148
22. *Expressio unius est exclusio alterius* ---- 148
23. *Exampla illustrant, non-restringent legem* ---- 149
24. *Ex anticedentibus et consequentibus fit optima interpretatio* ---- 149

25. *Exceptio probat regulam de rebus non exceptis* ---149
26. *Extra territorium jus dicenti impune non paretur*---149
27. *Generalia specialibus non derogant*---149
(i) *Illustration of the maxim*---151
(ii) *Limits to rule*---152
28. *Generalia verba sunt generalita intelligenda*---152
29. *In civile est nisi tota lege perspecta una aliqua particula ejus proposita judicare vel respondere*---153
30. *Inclusio unius exclusio alterius*---154
31-32. *Impotentis excusat legem*---154
33. *Hoc quidem perquam durum es sed ita lex scripta est*---154
34. *In paridelicto potior est conditio possidentis*---154
35. *Judex est lex loquens*---155
36. *Jura naturae sunt immutabilia*---155
37. *Leges posteriores priores contrarias abrogant*---155
38. *Lex nil frusta facit*---155
39. *Doctrine of 'Lex non congit and impossibilia'*---155
40. *Maxima ita dicta quia maxima est ejus dignitas et certissima auctoritus, atque quod maxime omnibus probetur*---155
41. *Nemo allegangs turpitudinem suam audiendus est*---155
42. *Non obligat lex nisi promulgata*---156
43. *Nova constitutis futuris formam imponere debet, non praeteritis*---156
44. *Omne majus continet in se minus*---156
45. *Optima est legum interpres consuetudo*---156
46. *Privatorum conventio juri publico non derogat*---157
47. *Quando aliquid prohibetur, prohibetur et omne perquod devinetur ad illud.*---157
48. *Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa esse non potest.*---157
49. *Sulus populi est suprema lex*---157
50. *Uti loquitur vulgus*---157
51. *Ut res magis valeat quam pereat*---157
52. *Verba chartarum fortius accipiuntur contra proferentem*---158
53. *Ut res valet potius quam pereat*---159

1. A pactis privatorum publico juri non derogatur.—Dr. Lushington, in the course of argument in *Phillips* v. *Innes*,[1] with respect to this maxim said : "It is impossible to compel one who is unwilling to disobey the law to contravene it. He is entitled to plead freedom from a compact into which he should never have entered, and to be protected in maintaining an obedience to the law which the law would of itself have interposed to enforce, had the Act come otherwise within its cognizance." "The consent or private agreement of individuals is ineffectual in rendering valid any direct contravention of the law, and it will altogether fail to make just or sufficient that which [is unjust or deficient in respect to any matter which] the law declares to be indispensable."[2] This rule is also embodied in the maxim *pacta privata jure publico derogare non possunt*. Where a contract, express or implied, is expressly or by implication, forbidden by statute, no court will lend its assistance to give it effect.[3] The principle is well put by Parke, B, in *Cope* v. *Rowlands*[4] : "It is perfectly settled, that where the contract which the plaintiff

1. (1837)4 Cl & F 234 at p. 241 : 7 ER 90.
2. *Thakersey Dewraj* v. *Hurbhum Nursey*, ILR 8 Bom 432 at p. 454.
3. *Millis* v. *Shirley*, (1885)16 QBD 446.
4. (1836)2 M & W 149, 157 : 6 LJ Ex 63.

seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or statute law, no court will lend its assistance to give it effect. It is equally clear that a contract is void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition. Lord Holt in *Barlett* v. *Vinor*,[1] said that it may be safely laid down, notwithstanding some dicta apparently to the contrary, that if the contract be rendered illegal, it can make no difference, in point of law, whether the statute which makes it so has in view the protection of the revenue, or any other object. The sole question is, whether the statute means to prohibit the contract. In *Longton* v. *Hughes*,[2] Lord Ellenborough, C.J. said : ".....it may be taken as a received rule of law that what is done in contravention of the provisions of an Act of Parliament, cannot be made the subject-matter of an action."[3] Craies[4] in dealing with the effect of statutes creating duties says : "One of the most important effects of statutes which create duties or impose obligations (whether they be obligations to do or to refrain from doing some particular thing) is that a contract which involves in its performance, either directly or collaterally, the doing of something which would be in contravention of a statute of this kind is held to be invalid and unenforceable. This is expressed by the legal maxim, *A pactis privatorum publico juri non derogatur.*"

2. **A verbis legis non est recedendum.**[5]—(From the words of the law there should not be any departure), Lord Macnaghten quoted in *Vacher & Sons, Ltd.* v. *London Society of Compositors*[6] the note of warning given by Tindal, C.J., delivering the opinion of the Judges who advised the House of Lords in the *Sussex Peerage* case.[7] ("If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense) The words themselves alone do, in such case, best declare the intention of the law-giver."[8] This maxim directs the construction to be put upon Acts of Parliament, against the express letter or which the Courts will not sanction any interpretation, for the meaning of the Legislature cannot be so well explained as by its own direct words, since *index animi sermo*. (language conveys the intention of the mind). and *maledicta expositio quae corrumpit textum* (an exposition which corrupts the text is bad)[9] : A Judge is not at liberty, in favour of a supposed intention, to disregard the express letter of the statute, where, for anything that appears, the wording may correspond with the actual design of the Legislature—the maxim in cases of this description being that a *verbis legis non recedendum est.*[10] And it would be dangerous to give scope to make a construction in any case against the express words when the meaning of the makers doth not appear to the contrary, and when no inconvenience will thereupon follow; and therefore in such cases a *verbis legis non recedendum est.*[11] The Court may sometimes be faced with the question of applying maxims contradicting each other. In such cases, the rule is that if from the context where the question of

1. 4 Carthew 252.
2. (1813)1 M & S 593, 596 : 105 ER 222.
3. *Sundrabai Sitaram* v. *Manohar Dhondu*, AIR 1933 Bom 262, 263.
4. *Statute Law*, 5th Ed. at pp. 232-233.
5. 5 Coke 118.
6. (1913) AC 107.
7. (1844)11 Cl & F 85 : 8 ER 1034.
8. *Amin Shariff* v. *Emperor*, ILR 61 Cal 607 : AIR 1934 Cal 580, 588 (FB); *Raj Mal* v. *Harnam Singh*, ILR 9 Lah 260, 266; *Muttum Mal* v. *Bank of Madras*, ILR 7 Mad 115, 122; *Ram Awatar* v. *Hubrajee*, AIR 1935 Rang 123, 125. *Anant* v. *Dist. Judge, Ballia*, 1990 All LJ 825.
9. See Warton : *Law Lexicon*, 14th Ed. at pp. 101-102.
10. Bonnerjee (TLL 1901) : *The Interpretation of Deeds, Wills and Statutes in British India*, 12 at pp. 28, 194.
11. Wilberforce : *Statute Law*, at p. 102, quoting *Edriche's* case, 5 Rep at p. 118 b.

applicability arises, that maxim which would render the words in the statute a surplusage should not be applied.[1]

3. Absoluta sententia expositore non indiget.[2]—It means that language that is unequivocal and unambiguous does not require an interpreter, in other words, plain words need no explanation. 'Nothing', said Lord Denman, in *Everard* v. *Poppleton*,[3] "is more unfortunate than a disturbance of the plain language of the Legislature, by the attempt to use equivalent terms." Maxwell in Interpretation of Statutes,[4] says : "When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation. *Absoluta sententia expositore non indiget.* Such language best declares, without more, the intention of the law-giver, and is decisive of it." This passage has been quoted and applied in many cases.[5]

4. Abundans cautela non nocet.—Excess of caution does no harm or extreme caution does no harm (Abbot). "Sometimes", says Craies,[6] "a term is defined in an interpretation clause merely *ex abundanti cautela*—that is to say, to prevent the possibility of some common law incident relating to that term escaping notice. Thus in *Wakefield* v. *West Riding. etc. Rly.*,[7] it appeared that by Section 3 of the Railways Clauses Consolidation Act, 1845, the term 'justice of the peace' is defined as a 'justice of the peace acting for the..... place' where the matter requiring the cognizance of a justice shall arise, *and who shall not be interested in the matter.* It was, therefore, argued that by this definition jurisdiction was altogether taken away from a justice who was interested in the matter, and that this objection could not be waived. But it was held that the latter words of the definition were merely declaratory of the common law, and were only added *ex abundanti cautela* : 'in the apprehension', as Cockburn, C.J. said, 'that justices, if not warned of what the law is, might act although interested. Had it been intended to render an interested justice absolutely incompetent, notwithstanding that both parties might waive the objection, a positive enactment to this effect would have been interested." Lord Fitzgerald called it an old maxim of the law in *West Riding Justices* v. *R.*[8]

It may also be noted that it is not uncommon in an Act of Parliament to find special exemptions which are already covered by a general exemption. Lord Herschall pointed out in *Commissioner of Income Tax* v. *Pemsel*,[9] that "such specific exemptions are often introduced *ex majori cautela* to quit the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution, and who are apprehensive, that it may not be held to fall within a general exemption."

The *Actus Curiea neminem gravabit.*—It is well established that no man should suffer because of the fault of the court or delay in the procedure, Broom has stated the maxim, *Actus*

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1. *Syamapada Banerjee* v. *Asstt. Registrar, Co-operative Societies*, AIR 1964 Cal 190.
2. 2 Inst. 533.
3. (1843) 5 QB 181 at pp. 181, 184.
4. 9th Ed. at pp. 3-4. *Om Prakash* v. *State of U.P.*, (1990)1 Rent CR 460 : 1989 All LJ 1367.
5. *See* for instance, *Barru* v. *Lachhman*, 111 PR 1913 at p. 417; *Piara Singh* v. *Mula Singh*, ILR 4 Lah 323, 325 : Bonnerjee (TLL 1901) : *The Interpretation of Deeds, Wills and Statutes*, at p 190; *Mahavir Prasad* v. *Yagnik* , AIR 1960 Bom 191; Cf. *Pandurang K. More* v. *Union of India*, AIR 1959 Bom 134, 137 (S.T. Desai, J.).
6. *Statute Law*, 5th Ed. at pp. 199-200.
7. (1865) LR 1 QB 84.
8. (1883) 49 LT 786.
9. (1891) AC 531, 589; *see* also *Auchterarder Presbytery* v. *Lord Kinnoull*, 6 Cl & F 646, 686; *Victorian Railways Commissioners* v. *Brown*, 3 CLR 316, 341. *See* also *Gopalan* v. *State of Madras*, AIR 1950 SC 27, 34 [Inclusion of Clauses (1) and (2) of Article 13 in the Constitution.]

curiae neminem gravabit.[1] an act of court shall prejudice no man.....purposive interpretation in a social amelioration legislation is an imperative irrespective of anything also. The net unusual delay in courts will make the 10 years, holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve the problem of shortages of houses.

5. Actor sequitur forum rei.—The plaintiff follows the forum of the thing; in other words, the plaintiff follows the Court of the defendant.[2] Sardar Gurdyal Singh was for five years, beginning in 1869, in the service of the Raja of Faridkot, a Native State, having independent civil, criminal and fiscal jurisdiction; the judgment of whose Courts were regarded as foreign judgments. After Sardar Gurdyal Singh left the Raja's service and ceased to reside within the territorial jurisdiction of the Faridkot State, the Raja of Faridkot obtained in the Civil Court of his Native State two *ex parte* judgments for sums amounting together to Rs. 76,474-11-3 and two actions, founded on these judgments, were brought by the Raja in the Civil Court at Lahore in British India. The trial Court dismissed the actions on the ground that the judgments were pronounced by the Faridkot Court without jurisdiction against Sardar Gurdyal Singh. The Chief Court of Punjab reversed the said decision and upheld the jurisdiction of Faridkot Court. Sardar Gurdyal Singh appealed to the Judicial Committee of the Privy Council, who, speaking through Lord Selborne, said[3] :

> "Under those circumstances, there was, in their Lordships' opinion, nothing to take this case out of the general rule, that the plaintiff must sue in the Court to which the defendant is subject at the time of the suit. *'Actor sequitur forum rei'* which is rightly stated by Sir Robert Phillimore,[4] to 'lie at the root of all international, and of most domestic jurispurdence on this matter.' All Jurisdiction is properly territorial, and *extra territorium jus dicenti impune non paleton.* Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory; while they are within it, but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over movables within the territory; and, in questions of status or succession governed by domicile, it may exist as to persons domiciled, or who when living were domicile, within the territory. As between different provinces under one sovereignty (*e.g.*, under the Roman Empire) the legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign Court ought to recognize against foreigners who owe no allegiance or obedience to the Power which so legislates. In a personal action, to which none of these causes of jurisdiction applies, a decree pronounced *in absentum* by a Foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by International Law an absolute nullity. He is under no obligation of any kind to obey it, and it must be regarded as a mere nullity by the Courts of every nation except (when authorised by special local legislation) in the country of the *forum* by which it was pronounced."

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1. Vide *Atma Ram Mittal* v. *Ishwar Singh Punia*, AIR 1988 SC 2031.
2. Iyer : *Law Lexicon*, at p. 25.
3. *Gurdyal Singh* v. *Raja of Faridkot*, ILR 22 Cal 222, 237-238; *Christien* v. *Delanvey*, ILR 26 Cal 931; *Kassim Mamojee* v. *Isuf Mohd. Sulliman*, ILR 29 Cal 509; *cf. Moazzim Hossein Khan* v. *Raphael Robinson*, ILR 28 Cal 641; *Adams* v. *Emperor*, ILR 26 Mad 607.
4. *International Law*, Vol. 4 (Section 891).

6. Actus non facit reum, nisi mens sit rea.—An act does not make one guilty unless there be guilty intention.[1] Broom[2] says : "....as a general rule of our law, a guilty mind is an essential ingredient of crime at common law, and that *prima facie* penal statutes should be so construed as to make *mens rea* an ingredient of any offence created." The modern conception of *mens rea* apparently took shape in the 15th and 16th centuries[3] : "The general conditions of penal liability," says Salmond[4] "are indicated with sufficient accuracy in the legal maxim *Actus non facit reum, nisi mens sit rea*—The act alone does not amount to guilt, it must be accompanied by a guilty mind. That is to say, there are two conditions to be fulfilled before penal responsibility can rightly be imposed. The one is the doing of some *act* by the person to be held liable. A man is to be accounted responsible only for what he himself does, not for what other persons do or for events independent of human activity altogether. The other is the *mens rea* or guilty mind with which the act is done. It is not enough that a man has done some act which on account of its mischievous results the law prohibits; before the law can justly punish the act, an enquiry must be made into the mental attitude of the doer. For although the act may have been objectively wrongful, the mind and the will of the doer may have been innocent." "The intent and the act must both concur to constitute the crime," said Lord Kenyon, C.J., in *Fowler* v. *Padget*.[5]

(*i*) *Illustration.*—Section 57 of the Offences Against the Person Act, 1861, provided *inter alia* : "Whoever being married shall marry any other person during the life of the former husband or wife shall be guilty of felony."[6] The accused in *R.* v. *Tolson*,[7] married Tolson on 11th September, 1880. He deserted her on 13th December, 1881, and she married another man (who knew the full circumstances) on 10th January, 1887, having been told that Tolson had perished in a ship wreck. In December, 1887, Tolson returned from America. The Court was called upon to decide the question whether a woman could be convicted of bigamy who had married a second time, believing in good faith and upon reasonable grounds, that the first husband was dead. Willes, J., construing the statute literally held her guilty saying : "There is no doubt that under the circumstances, the prisoner falls within the very words of the statute. She, being married, married another person during the life of her former husband, and, when she did so, he had not been continually absent from her for the space of seven years last past." But his Lordship was in a minority of five Judges as nine Judges of the Bench held the conviction to be wrong. It became necessary in this case to discuss the maxim, *Actus non facit reum, nisi mens sit rea.* Cave, J., observed : " At common law an honest and reasonable belief in the existence of circumstances which, if true, would make the act for which a prisoner is indicted, an innocent act has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim, *Actus non facit reum, nisi mens sit rea.* Honest and reasonable mistake stands, in fact, on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy. Instances of the existence of this common law doctrine will readily occur to the mind. So far as I am aware, it has never been suggested that these exceptions do not equally apply in

1. 3 Inst. 307.
2. *Legal Maxims*, 10th Ed. at pp. 207, 208.
3. Keeton : *4 Jurisprudence*, at p. 313.
4. *Jurisprudence*, 10th Ed. at p. 367.
5. (1798) 7 Term Rep 509 at 514.
6. Provided that "nothing in this Act shall extend to any person marrying a second time whose husband or wife shall have been continually absent for the space of seven years last past, and shall not have been known by such person to be living within that time."
7. (1889)23 QBD 168.

the case of statutory offences unless they are excluded expressly or by necessary implication." At the same time his Lordship remarked : "Now it is undoubtedly within the competence of the Legislature to enact that a man shall be branded as a felon and punished for doing an act which he honestly and reasonably believes to be lawful and right ; just as the Legislature may enact that a child or a lunatic shall be punished criminally for an act which he has been led to commit by the immaturity or perversion of his reasoning faculty. But such a result seems so revolting to the moral sense that we ought to require the clearest and most indisputable evidence that such is the meaning of the Act." Sir James Stephen, in the same case, looked at it from another point of view. He said : "My view of the subject is based upon a particular application of the doctrine usually, though I think, not happily, described by the phrase *Non est reus nisi mens sit rea* (one is not guilty unless his intention be guilty). Though the phrase in the common use, I think it most unfortunate, and not only likely to mislead but actually misleading, on the following grounds : It naturally suggests that apart from all particular definitions of crimes, such a thing exists as *mens rea*, or guilty mind which is always expressly or by implication involved in every definition....to an unlegal mind it suggests that by the law of England, no act is a crime which is done from laudable motives—in other words, that immorality is essential to crime.....the principle involved appears to me, when fully considered, to amount to no more than this. The full definition of every crime contains, expressly or by implication, a proposition as to a state of mind. Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed. Or again, if a crime is fully defined, nothing amounts to that crime which does not satisfy that definition. Crimes are, at the present day, far more accurately defined, by statute or otherwise, than they formerly were. The mental element of most crimes is marked by one of the words 'maliciously', 'fraudulently', 'negligently' or 'knowingly'. But it is the general—I might, I think, say the invariable—practice of the Legislature to leave unexpressed some of the mental elements of crime. In all cases, whatever, competent age, sanity, and some degree of freedom from some kind of coercion are assumed to be essential criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined."[1]

In *Brend* v. *Wood*,[2] the Lord Chief Justice of England made the following observations : "It should first be observed that at common law there must always be *mens rea*, to constitute a crime; if a person can show that he acted without *mens rea* that is a defence to a criminal prosecution.There are statutes and regulations in which Parliament has seen fit to create offences and make people responsible before criminal Court, although there is an absence of *mens rea*, but it is certainly not the court's duty to be acute to find that *mens rea* is not a constituent part of a crime. It is, in my opinion, of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules out *mens rea* as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind. I should be sorry to think that in any case where the essence of the offence is an

1. *See* Craies : *Statute Law*, 5th Ed. at pp. 508-510; *See* however, *R.* v. *Wheat*, (1921)2 KB 119.
2. (1946) 110 JP 317 : 175 LT 306; see *Hatimali* v. *Crown*, AIR 1950 Nag 38, 42; Stephen, J., observed in a leading case, *Reg* v. *Tolson*, (1889)23 QBD 168, 187 : "The full definition of every crime contains, expressly or by implication, a proposition as to a state of mind. There- fore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed; or, again, if a crime is fully defined, nothing amounts to that crime which does not satisfy that definition." *see* also *Arab Mihan* v. *Emperor*, AIR 1942 Sind 167, 168.

intent to deceive if the man charged proves that he acted in good faith and was innocent of intent to deceive, the Court would hold that he should nevertheless be convicted of intent to deceive." *Mens rea* may be dispensed with by statute, although the terms which should induce the Court to infer that it is dispensed with must be very strong.[1] With the complexity of modern legislation one knows that there are times when the Court is constrained to find that by reason of the clear terms of an Act of Parliament, *mens rea* or the absence of *mens rea* becomes immaterial and that if a certain act is done, an offence is committed whether the person charged knew or did not know of the act.[2] But it is laid down as a principle of general application that unless the statute creates an offence independently of dishonest intention, there ought not be a conviction unless the guilty mind is proved.[3] Thus under Sections 62 and 63 and Rule 91 of the Factories Act, 1948, the obligation to maintain registers is imposed on a manager and not on an occupier, who cannot be said to have a guilty mind when he is not charged with the duty of maintaining the registers."[4]

(ii) Exception to the rule.— "There is no general rule of law", said Griffith, C.J., in *Ferrier* v. *Wilson*,[5] "that I know of that an act may not be punishable without *mens rea*. There are innumerable instances nowadays in which *mens rea* is not an essential element of an offence." *e.g.* statutes which deal with public welfare, like enactments regulating sale of food or drink.[6] There may be expressions in an enactment which rebut the presumption that the intentional commission is the only thing the Legislature aimed at, and which make an act or omission the subject of criminal liability, no matter whether such intention exists or not.[7] There are enactments, however, which by their form seem to constitute the prohibited acts into crimes, and yet by virtue of which enactments the defendants charged with the committal of the prohibited acts, have been convicted in the absence of the knowledge or intention supposed necessary to constitute a *mens rea*. That can be done only by express words of the enactment or by necessary implication, as appears from the case of *Massey* v. *Morris*.[8] In *Mausell Brothers* v. *L. & N. W. Ry.*,[9] it was said : "I think that the authorities cited by my Lord make it plain that while *prima facie* a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute, in which case the principal is liable if the act is in fact done by his servants. To ascertain whether a particular Act of Parliament has that effect or not regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would, in ordinary circumstances, be performed, and the person upon whom the penalty is imposed."

Whether there are sufficient grounds for inferring that Parliament intended to exclude the general rule that *mens rea* is an essential element in every offence, it is generally necessary to go behind the words of the enactment and take other factors into consideration.[10]

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1. *R.* v. *Sleep*, (1861) L & C 44, 52, *per* Cockburn, C.J.
2. *Evans* v. *Dell*, (1937) 53 TLR 310, 313.
3. *Emperor* v. *Chaturbhuj Narain*, ILR 15 Pat 108 : AIR 1936 Pat 350, 352.
4. *State Government, M. P.* v. *Maganbhai*, AIR 1954 Nag 41.
5. 4 CLR 785, 794.
6. *Hari Krishna* v. *State*, (1980)17 ACC 43.
7. 4 CLR 785, 794, *per* Barton, J. *See* also *Widgee Shire Council* v. *Bonney*, 4 CLR 977, 981.
8. (1894)2 QB 412.
9. (1917)2 QB 836, by Atkin, J. (as he then was), cited with approval in *Allen* v. *Whitehead*, (1930)1 KB 211, 220; see *Mohd. Basheer* v. *Emperor*, AIR 1947 Bom 315, 317.
10. *Inder Sain* v. *State of Punjab*, 1973 SCC (Cr) 813.

The real test is, as was pointed out by Lord Russell of Killowen, in the case of *Coppen* v. *Morre No. 2*,[1] what was the intention of the Legislature? Did they intend to prohibit the act under all circumstances? If they did, the question of *mens rea* does not arise. In the case of *Duncan* v. *Ellis*,[2] in considering Section 226 of the Factories and Shops Act, 1915 (Vict.), their Lordships adopted the principle laid down by Wright, J., in *Sherras* v. *De Rutzen*,[3] namely, that the presumption that *mens rea* is an essential ingredient in every offence "is liable to be displaced either by the words of the statute creating the offence or by subject-matter with which it deals," and that both must be considered. The answer to the question whether the Legislature intended that no one should be deemed to contravene its provisions so long as he was honestly ignorant "depends upon the terms of the statute or ordinance creating the offence." In *Myerson* v. *Collard*,[4] Issacs and Rich, JJ., observed : "In the present instance, having regard to the terms of the regulation itself, to its subject-matter, to the difficulty, amounting in many cases almost to impossibility, of proving guilty knowledge prior to seizure, to the futility, if such proof were necessary, to which the regulation would probably be reduced, and having regard also to the fact that the enacting authority knew of the statutory provision prohibiting any prosecution without the consent of the Government authorities, the regulation should be read as a simple prohibition of the act itself. The absence or presence of knowledge as an element in the act might influence the Crown as to instituting a prosecution, or in the event of a prosecution might affect the mind of the tribunal in awarding the punishment."

It is not an unknown course for Parliament, when important public ends are to be attained and public dangers to be met, to put an unusually heavy burden on the individuals from whose operations the necessity for legislation arises;[5] but this is not wholly true of Income Tax Act of 1961, where *mens rea* has been made a necessary ingredient for the offence under Section 276-CC for penalty proceedings under Section 271(1)*(a)* *mens rea* is not a necessary ingredient.[6] An illustrative instance occurs in *Shepherd* v. *Broome*,[7] under the Companies Acts. Lord Lindley said : "To be compelled by Act of Parliament to treat an honest man as if he was fraudulent is at all times painful, but the repugnance which is naturally felt against being compelled to do so will not justify your Lordships in refusing to hold the appellant responsible for acts for which an Act of Parliament clearly declares he is to be held liable."

The rule that *mens rea* is not a necessary ingredient always applies to revenue statutes.[8]

(iii) English case.—In *Allen* v. *Whitehead*,[9] Albert Whitehead was charged with an offence that on 26th February, 1929, he being the keeper of premises, namely, 16, Norton

1. (1898)2 QB 306, followed in *Ros* v. *Sickerdick*, 22 CLR 197, 200, 201.
2. (1916)21 CLR 379.
3. (1895)1 QB 918, 921.
4. 25 CLR 154, 163.
5. *Bear* v. *Lynch*, (1909)8 CLR 592, 608.
6. *I. T. Commissioner* v. *M/s. Patram Das Raja Ram Basi*, AIR 1982 P & H 1 (FB).
7. (1904) AC 342, 346.
8. *The King* v. *Erson*, 17 CLR 506, 508.
9. (1930) 1 KB 211; See *Harish Chandra* v. *Emperor*, AIR 1945 All 90, 95; In *Evans* v. *Dell*, (1937) 53 TLR 310, 313, Goddard, J., observed : "With the complexity of modern legislation one knows that there are times when the Court is constrained to find, by reason of the clear terms of an Act of Parliament, *mens rea* or the absence of *mens rea* becomes immaterial and that if a certain act is done, an offence is committed whether the person charged knew or did not know of the act." But in 1946, his Lordship said in *Brend* v. *Wood*, (1946) 62 TLR 462, 463 : "It is of the utmost importance for the liberty of the subject that a Court should always bear in mind that unless a statute either clearly or by necessary implication rules out *mens rea* as a constituent part of a crime, the Court should not find a man guilty of an offence against the criminal law unless he has a guilty mind."

Folgate, in the County of London, where refreshments were sold or consumed, did knowingly offer prostitutes to meet together and remain therein contrary to Section 44, Metropolitan Police Act, 1839. It was proved that Whitehead was the occupier and licensee of premises at 16, Norton Flogate, Stepney, which he used as licensed refreshment house open day and night, and while he received the profits of the business he did not himself manage the refreshment house but employed a manager for the purpose. On a number of consecutive days a number of women known to the manager to be prostitutes resorted to the refreshment house and stayed there for several hours in the night time. The occupier had expressly instructed his manager that no prostitutes were to be allowed to congregate on the premises. Whitehead only visited the premises once or twice a week and had no personal knowledge of what had taken place. The question arose whether the knowledge of the manager must be imputed to the employer. Lord Hewart, C.J., after adopting the rule laid down by Atkin, J., in *Mausell Brothers* v. *L. & N. W. Ry.* observed : "Applying that canon to the present case, I think that this provision in this statute would be rendered nugatory if the contention raised on behalf of this respondent were held to prevail. That contention was this, that as the respondent did not himself manage the refreshment house and had no personal knowledge that prostitutes met together and remained therein, and had not been negligent in failing to notice these facts, and had not wilfully closed his eyes to them, he could not, in law, be held responsible.....This seems to me to be a case where the proprietor, the keeper of the house, had delegated his duty to a manager, so far as the conduct of the house was concerned. He had transferred to the manager the exercise of discretion in the conduct of the business, and it seems to me that the only reasonable conclusion is, regard being had to the purpose of this Act, that the knowledge of the manager was the knowledge of the keeper of the house."[1]

(iv) Indian case.—In *Harish Chandra* v. *Emperor*,[2] the accused, proprietor of a firm known as Durga Prasad Harish Chandra in Generalganj, Cawnpore was charged that on 7th March, 1944, he sold 43 pieces of *Malmal* cloth No. 677 of Swadeshi Mills, Bombay, at the rate of Rs. 14 per piece when the control price of the same was only Rs. 13-4-6 fixed by the Textile Commissioner under the provisions of Clause 12(4) of the Cotton Cloth and Yarn (Control) Order of 1943. The defence of the accused was that on 4th March, 1944, he had left for Bombay in connection with a marriage and did not return to Cawnpore till 15th March, 1944, and that he had left his *Munim*, Badri Prasad, in charge of his shop during his absence and that if, against his instructions and without his knowledge his *munim* sold the cloth at a rate higher than the control rate, the accused was not liable and should not be punished for contravention of Rule 81 of the Defence of India Rules and the said Order. Malik J., thereupon observed *inter alia* : "As a general proposition of law, it cannot be doubted that the master is not liable for the criminal

1. *See* also *Harding* v. *Price*, (1948) 1 KB 695, 701. Lord Goddard, C.J., opined : "If a statute contains an absolute prohibition against the doing of some act, as a general rule *mens rea* is not a constituent of the offence, but there is all the difference between prohibiting an act and imposing a duty to do something on the happening of a certain event. Unless a man knows that the event has happened, how is he to carry out the duty imposed." His Lordship further clarified this matter in *Young-husband* v. *Lufting*, (1949) 2 KB 354, 370 : "*Actus non facit reum nisi, mens sit rea* is a cardinal doctrine of criminal law. No doubt the Legislature can create offences which consist solely in doing an act whatever the intention or state of mind of the actor may be.....of late years the Courts have been so accustomed to dealing with a host of offences created by regulations and orders independent of guilty intention, that it is desirable to emphasise that such cases should be regarded as exceptions to the rule that a person cannot be convicted of a crime unless it is shown not only that he has committed a forbidden act or default but also that a wrongful intention or blameworthy condition of mind can be imputed to him."

2. AIR 1945 All 90.

acts of his servants not done at his instigation. The general rule no doubt is that there is no criminal liability of the principal for any act or omission of his agent unless the principal himself takes part in, authorises or connives at, such act or omission. A man cannot be guilty by his agent of an illegal act, and be held responsible for that act, unless he has given the agent authority, directly or indirectly, to do that illegal act. No one who is an agent for a legal purpose can make the principal responsible for an illegal act, unless the principal has in some way, directly or indirectly, authorised it. The reason for the rule is obvious. It is a general principle of criminal law that there must be some blameworthy condition of mind or *mens rea*—there may be negligence, malice, guilty knowledge or the like. The other well-known principle is that there is no vicarious liability in criminal law; the condition of the mind of the servant is not to be imputed to the master. In a civil action the master is liable for damages for injury caused to another by the negligence of the servant while acting within the scope of his authority or in the course of his employment. But the master is not criminally responsible for his servant's negligence and still for an offence depending on the servant's malice. The general principles apply to all offences though it is in the power of the Legislature if it so pleases, to enact that a man may be convicted and punished, although there was no blameworthy condition of mind. But this exception would have to be made out convincingly from the language of the statutes as it cannot lightly be presumed that the Legislature intended that *A* should be punished for the fault of *B*. Besides these statutory offences where the statute, expressly or by necessary implication, has made the master criminally responsible for the acts or omission of the servant or agent, common law, in England, recognised only one exception, that is of a public nuisance. The reason for this exception is rather instructive. For public nuisance, no civil action could be brought in England and the only remedy was by an indictment and the master could always escape by setting a servant upon work that may result in a nuisance. The question whether a statute has by necessary implications made the master liable depends upon various considerations. Primarily it depends upon the language of the statute, the words used, then its scope, its object, the nature of the duty laid down and whether it intends to impose a public duty binding on the master apart from any question of knowledge or frame of his mind. In many such cases the provision of the statute would be rendered nugatory if it be held that the prohibition or the duty imposed was not absolute. After taking into consideration various decisions in England and India, his Lordship continued : "From a discussion of the above cases it will be clear that in cases of offences created by statute, we have to examine the language of the statute, its scope and its object, to *see* whether the principal could be held liable. So far as the scope and object are concerned, it is obvious that the intention was to put an end to blackmarketing and a duty was cast on the dealer not to sell cloth at a rate higher than the rate fixed. It was a public duty imposed by the Legislature. The legislaton was passed in the general interest, for the protection of the public, and there can be no doubt about its usefulness. There can be no doubt further that in this case the servant was acting within the scope of his authority and in the course of his employment, and it was the duty of the master to *see* that, while acting within the scope of his authority, delegated to him, the servant carried out the provisions of the Act. If this interpretation were not accepted the result would be that the dealer would not be punished for the acts of his servant and the servant has not been made punishable for the contravention of the rules, and in cases of firms dealing in cloth, which must of necessity act through an agent or a servant, neither the firm nor the servant could thus be held liable." In *Uttam Chand* v. *Emperor*,[1] the proprietors, though absent at the time of refusal to sell cloth, were held similarly liable. The case-law was discussed at length.

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1. AIR 1945 Lah 238 (FB); *Emperor* v. *Jayanti Lal Ravji*, AIR 1947 Sind 130 : ILR 1946 Kar 276.

"Many statutes", says Odgers, in *Construction of Deeds and Statutes*,[1] "especially recent ones do not require a *mens rea* in order to justify a conviction under their provisions, and the modern tendency seems to be to decrease the importance of the *mens rea* in crime." Wharton in Law Lexicon,[2] says : "The trend of modern legislation in regard to the health or security of the public is to attach the offence to the person who possesses, at least hypothetically, some control over the acts constituting the offence and to impose penalties on the breach of the regulation either without inquiring into the knowledge or volition of the accused or leaving the onus on him of proving that he is innocent." According to Paton[3] only a lip service is paid to this general maxim.

(v) Exception usually limited to minor offences.—Their Lordships of the Privy Council in *Shrinivas Mall* v. *Emperor*,[4] concurred in the view expressed by Lord Chief Justice in *Brend* v. *Wood*,[5] in case dealing with the Defence of India Rules[6] wherein the High Court of Patna took the view that even if appellant 1 (proprietor) had not been proved to have known of the unlawful acts of appellant 2 (servant) he would still be liable on the ground that 'where there is an absolute prohibition and no question of *mens rea* arises, the master is criminally liable for the acts of his servant,' their Lordships dissented from this view and observed : "They see no ground for saying that offences against those of the Defence of India Rules here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. *See* the judgment of Wright, J., in *Sherras* v. *De Rutzen*.[7] Offences which are within that class are usually of a comparatively minor character, and it would be a surprising result of this delegated legislation if a person who was morally innocent of blame could be held vicariously liable for a servant's crime and so punishable 'with imprisonment for a term, which may extend to three years."

(vi) Defences in statutory crimes.—"It is a disputed question whether the common law ingredient of intent is necessary in a crime, the origin of which is purely statutory. That each criminal enactment is a direct repeal of the common law on its particular subject, and that the offence is complete if the bare words of the statute are satisfied, is one prevailing view. Another theory is that such legislative interference is not a repeal, but merely a modification of the common law to the extent of the words of the enactment. All defences, then, which were good before it was passed, are to be regarded as still effectual, unless the words of the statute expressly negative their application. Between these two extreme views there is a middle one which commends itself as a convenient rule. To certain offences, such as police regulations, in their nature mere torts against the State, to a conviction of which no moral obloquy attaches, intent may well be considered irrelevant. But to the more serious statutory offences justice requires that a defendant may plead successfully all defences not expressly negatived by the Legislature. And in such a grave statutory crime as bigamy, the defendant should be able, as at common law, to avail himself of a mistake of fact, but by an inflexible rule could take no advantage of a mistake of law....It may be stated generally, however, that if with full knowledge of the facts one is in error as to the true rule of law to be applied, or if, labouring under an erroneous impression that a certain state of facts exists, one is in error as to the true

1. 2nd Ed. at p. 268.
2. 14th Ed. at p. 25.
3. *Jurisprudence*, 1946, *see* at pp. 365—371, comparing German and English points of view.
4. AIR 1947 PC 135, 139.
5. (1946)110 JP 317.
6. Rule 81(2).
7. (1895)1 QB 918 at p. 921.

rule of law to be applied to those supposed circumstances, the mistake is one of law. Otherwise it is a mistake of fact."[1]

7. Ad proximum antecedens fiat relatio nisi impediatur sententia.—Relative words refer to the next antecedent, unless by such construction the meaning of the sentence would be impaired (Broom) : words of reference are in general referred to that to which the context appears properly to attract to it— to the last sensible antecedent.

"It is an ordinary rule, not so much of law as of the grammatical construction of the English language, that words of relation *prima facie* refer to the nearest antecedent," observed Blackburn, J., in *Eastern Counties and London & Blackwell Railway* v. *Marriage*.[2] "It could not be denied," said Cromption, J., in the same case,[3] "that 'such' is in general a word of reference, relating to the last sensible antecedent, according to the rule by which words of reference are in general referred to the last sensible antecedent". Lord Chelmsford quoted Lord Coke's expression *Samper proximo antecedente refertur* and said : "At the same time it must be admitted that every relative ought to be referred, not perhaps to the next antecedent 'which will make sense with the context,' but to that to which the context appears properly to attract it."

In this case the heading : "And with respect to small portions of intersected land, be it enacted as follows" was followed by Section 93 which began : "If any land not being situated in a town....." and Section 94 provided : "If any *such* land shall be so cut through and divided....." The only question was whether the word 'such' in Section 94 referred to the words in Section 93, *viz*, 'land not being situate in a town or built upon,' or referred to the heading prefixed to these two sections, *viz.*, 'and with respect to small portions of interested land'. Channel, B., after referring to *Thelluson* v. *Woodford*.[4] observed : "The grammatical rule referring qualifying words to the last of the several antecedents, is not even supposed by grammarians themselves to apply, when the general intent of a writer or speaker would be defeated by such a confined application of them. Reason and commonsense revolt at the idea of overlooking the plain intent which is declared in the context, *viz.*, that they (that is qualifying words) should be applicable to such classes as require them, and as to the others, to consider them as surplusage." The House of Lords ultimately decided that the word 'such' referred to the words used in the heading.

"It is true that,"observed Lord Abinger, C.B., in *Staniland* v. *Hopkins*,[5] "in strict grammatical construction, the relative ought to apply to the last antecedent, but there are numerous examples in the best writers to show that the context may often require a deviation from this rule, and that the relative may be connected with nouns which go before the last antecedent, and either take from it or give to it some qualification. Suppose, for example, this phrase : " 'If there be any powers or provisions of an Act of Parliament of which the corporation are sole commissioners for executing,' it is not obvious here that the relative 'which' refers to the 'powers and provisions', and not to the 'Act of Parliament'."

8. Ad ea quae frequentius accidunt jura adaptatur.—The laws are adapted to those cases

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1. *See* 13 Harvard Law Review, at pp. 50-51; *see* also 12 Harvard Law Review, 568; *Regina* v. *Tolson*, 23 QBD 168.
2. (1860)9 HLC 32 at 37 : 11 ER 689; *see* also Broom : *Legal Maxims*, 10th Ed. at pp. 462, 463.
3. At p. 54; see *Re* Ninnes, (1920) SALR 480, 488, *per* Poole, J. (Australia) : "such" refers generally and naturally to its last antecedent." The 'last antecedent' being the last word which can be made an antecedent so as to have a meaning; *R.* v. *Wright*, 1 A & 445, *per* Trindal, C. J.
4. (1805)1 B & PNR 359, 392, *see* also Craies : *Statute Law*, 5th Ed. at p. 193.
5. (1841)9 M & W 178, 192 : 11 LJ Ex 65, 71.

which more frequently occur. In *Gurhrie* v. *Fisk*,[1] authority was given to the secretary of an insurance society to sue, as nominal plaintiff under a private Act. It was held that this Act did not enable the secretary to institute bankruptcy proceedings for the expression 'to sue', generally speaking, means to bring actions and the Legislature was providing for every and not for exceptional occurrences (6 Geo. 3, C. 53, S. 1) gave statutory form of oath which contained the name of King George III which was to be taken by certain persons. The Act made no provision for the necessary alteration in the name of the sovereign at his death. It was contended in *Miller* v. *Salomons*[2] that the obligation to administer it lapsed with the demise of that sovereign, because it was applicable to no other than to him. Parke, B, repelled the argument by saying : "I think this argument cannot prevail. It is clear that the Legislature meant the oath to be taken always thereafter, and as it could not be taken in those words during the reign of a sovereign not of the name of George, it follows that the name George is merely used by way of designating the existing sovereign, and the oath must be altered, from time to time, in the name of the sovereign. This is an instance in which the language of the Legislature must be mentioned, in order to avoid absurdity and inconsistency with its manifest intentions."[3] It was also argued in the same case that Parliament could not have meant that a Jew, before sitting in the House of Commons, must take the oath in the words 'on the true faith of a Christian', prescribed in the oath of abjuration of the said Act, because any person refusing to take the same oath when administered by two Justices, would,[4] under Geo, I, St. 2, C. 13, be deemed to be a *popish recusant*, and would be liable to penalties as such; and to enforce these provisions against a Jew would be the merest tyranny. Parke, B., again answered the argument thus : "If in the vast majority of possible cases—in all of ordinary occurrence—the law is in no degree inconsistent or unreasonable, construed according to its plain words, it seems to me to be an untenable proposition, and unsupported by authority, to say that the construction may be varied in *every* case, because, here is one possible but highly improbable one in which the law would operate with great severity, and against our own notions of justice. The utmost that can be reasonably contended is, that it should be varied in that particular case, so as to obviate that injustice—no further."[5]

Lord Blackburn considered it to be a good sound maxim in construing Acts of Parliament.[6] The maxim is closely associated with rules relating to 'hardship', 'absurdity' and *'casus omissus'*. Broom in *Legal Maxims*,[7] introduces the subject thus : Laws ought to be, and usually are, famed with a view to such cases as are of frequent rather than such as are of rare or accidental occurrence;.....laws cannot be so worded as to include every case which may arise, but it is sufficient if they apply to those things which most frequently happen. All legislation proceeds upon the principle of providing for the ordinary cause of things and to this principle frequent reference is to be found, in the reports, in answer to arguments, often speciously advanced, that the words of an Act cannot have a particular meaning, because in a certain contingency that meaning might work a result of which nobody would approve."

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1. (1824) 3 B & C 178 : 107 ER 700; *see Ebrahim Sait* v. *Mettupalayam Narayani Bank Ltd.*, AIR 1940 Mad 958, 959.
2. (1852)7 Ex. 47.
3. *Bapu Singh Ram Singh* v. *Additional Collector, Indore*, 1977 MPLJ 550 : 1977 Jab LJ 691 (FB).
4. *See* Broom's *Legal Maxims*, 10th Ed. at pp. 358-360; Odgers : *Interpretation of Deeds and Statutes*, 2nd Ed. at pp. 180-181; Craies : *Statute Law*, 5th Ed. at pp. 83-85; *St. Margaret, Rochester, Burial Board* v. *Thompson*, LR 6 CP 445; *Williams* v. *Roberts*, 7 Exch. 618, 628 : Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 200.
5. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 200.
6. *Dixon* v. *Caledonian Railway Co.*, (1880)5 AC 820, 838; *Clarke* v. *Wright*, (1861) 6 H and N 849, 862; *Dalton* v. *Angus*, 6 AC 740, 818; Wharton : *Law Lexicon*, 14th Ed. at p. 25.
7. 10th Ed. at p. 358.

9. Argumentum a simili valet in lege.—(Co. Litt. 191)—An argument from a like or analogous case is good in law. In *Sadhu Singh* v. *Secretary of State of India*,[1] the question for decision was : When ancestral property held by a man subject to Punjab Customary Law is attached and sold by order of a Criminal Court under Section 88, Criminal Procedure Code, does the sale dispose of the life-interest of that man only, or is the effect of the sale that the right of inheritance after his death of his male lineal descendants or of collaterals, descended from the original holder of the property, is extinguished ? Chatterji, J., observed thereon : "A case of this description has not arisen before and is not to be found referred to in the record of Customary Law. It does not follow, however, that it is not capable of being decided on principles of that law by applying them to the present set of facts. Law always lags behind the progress of society and if we were to insist that for every fresh complication of facts that requires decisions some positive rule directly applicable must be found, Courts of Justice would be paralysed in exercising their functions in many instances and the greatest inconvenience would be caused. Principle underlying the existing law must be extended by analogy and other approved methods to new phases of affairs. This equally applies in the case of Customary law. Paton in his Jurisprudence,[2] writes : 'When there is no Code which provides precise directions as to the sources in the absence of authority, a judge will normally turn to persuasive precedents, text-books, the use of analogy, and such help as may be afforded by custom or the course of business. Analogy is a useful weapon but it must be cautiously applied." Mill describes it as follows : "Two things resemble each other in one or more respects; a certain proposition is true of the one; therefore it is true of the other." The accuracy of the conclusion drawn will depend upon the relative importance of the resemblances and the unimportance of the differences between the two things—the situation being analysed from the point of view of the proposition which it is desired to establish. For example, it may be desired to find a rule to apply to electricity, and an analogy is sought in the rules relating to water. Artificial accumulations of water are likely to cause a great damage if they escape, and the risk, even with reasonable care on the part of the owner, is greater than that to which an occupier normally subjects a neighbour. Yet analogy can furnish only a guide, not a decisive answer. There are nearly always two conflicting analogies which may be used in law. In life we find almost every degree between actual identity and remote resemblance, and a supporter of an analogy will emphasize the points of resemblance, an opponent will maintain that the differences are crucial. Thus it has been accepted by the Courts that although electric wiring in a private house may be a source of danger similar in kind if not in degree to a high-tension cable, nevertheless there is no unusual risk created by an occupier who has his house fitted with electric light, since such a procedure is the normal practice. The advantage of a proper use of analogy is that it enables the new situation to be dealt with by a rule which can be placed in a coherent relation with rules that are already established. It is thus assumed that the law is a consistent body of principles and every attempt is made to keep it such."

Their Lordships of the Privy Council have crystallized the use of analogy in *Ram Chander Dutt* v. *Jogesh Chander Dutt*,[3] "Now arguments from analogy may arise where a principle of law is involved ; but where the Courts are dealing with the positive enactments of a statute, reasons founded upon analogies are scarcely applicable." In another case[4] it was said : "We

1. 18 PR 1908 : 19 PWR 1908 : 156 PLR 1908 (FB).
2. (1946) at p. 166.
3. (1873) 19 WR 353; *Guru Das* v. *Kali Das Changa*, (1914) 24 IC 287 (Cal); *Hemendra Nath Roy* v. *Upendra Narain Roy*, (1916)32 IC 437, 441 (Cal); *Khushrobhai* v. *Hormazsha*, ILR 11 Bom 727, 732.
4. *Jumoone Dassaya* v. *Bamasoondary Dassaya*, ILR 1 Cal 289, 291, *per* Sir J. Colville.

cannot extend positive law by analogy or parity of reasoning." And Lord Selborne, L.C., *Pinkerton* v. *Easton*,[1] held that in a law of procedure, as in any other law, the language of the Legislature ought not to be extended, except when the intention is clear. In *Vishwanath* v. *Ram Krishna*,[2] the plaintiff claimed abatement of rent on the ground, *inter alia*, that the land had then become exposed to inundation from the sea. But there was no legislation in the Bombay Presidencey such as there existed in other parts of India (*cf.* Bengal Act VIII of 1885, Sections 38 and 52; Bengal Act VI of 1908, Sections 35 and 36; Central Provinces Act XI of 1898, Sections 15 and 18; Madras Act 1 of 1908, Sections 38, 39 and 42; Oudh Act XXII of 1868, Sections 18, 29 and 35-B; Punjab Act XVI of 1887, Sections 20-26; United provinces Act II of 1901, Sections 41-48) permitting abatement of rent in case of such deterioration as opposed to the case of total loss of the land held on tenancy; or part thereof. No usage for abatement of rent in cases analogous to that of the plaintiff was pleaded or attempted to be proved at the trial. Fawcett, J., (with whom Coyajee, J., concurred) thereon observed : "But I can see no sufficient ground for holding that it is part of the general law of the country recognised by the courts, that a tenant can get abatement of rent for anything less than total unfitness of part of his land for cultivation.....The mere fact that statutory rights to abatement of rent on a lesser ground like that now in question have been created in other provinces does not justify the view that such a right exists, as part of the general law of the country. On the contrary, I think it indicates, that it was considered necessary to legislate, in order to create such a right. The enactments are in an ordinary form, not in that of affirmatory legislation." Under a verbal agreement to let the site to the respondent for five years, the respondent erected substantial building thereon but did not enforce the contract specifically by getting a lease deed executed by the appellant in the respondent's favour and allowed his right to specific performance barred by limitation. The appellant sued for recovery of possession of the site after serving a notice to quit as if the respondent was a monthly tenant. The respondent pleaded the doctrine of part-performance in bar of the claim. Section 107 of the Transfer of Property Act, however, enacted that 'a lease of immovable property from year to year, or to any term exceeding one year, or reserving a yearly rent' can be made only by registered instrument. All other leases of immovable property may be made either by an instrument or by oral agreement. The rule in *Maddison* v. *Alderson*,[3] was sought to be applied. But their Lordships of the Privy Council, in *Ariff* v. *Jadunath Majumdar*,[4] did not agree thereto. Lord Russell of Killowen said : "Whether an English equitable doctrine should in any case be applied so as to modify the effect of an Indian statute may well be doubted, but that an English equitable doctrine affecting the provisions of an English statute relating to the right to sue upon a contract, should be applied by analogy to such a statute as the Transfer of Property Act and with such a result as to create without any writing an interest which the statute says can only be created by means of a registered instrument appears to their Lordships, in the absence of some binding authority to that effect, to be impossible." It is a well-established principle of construction of statutes that the court cannot supply omissions by implication and analogy, unless the existing provisions of a statute by necessary intendment so compel the court.[5]

10. Argumetnum ab auctoritate est fortissimum in lege.— (Co. Litt. 254)—An argument from authority is most powerful in law.

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1. LR 16 Eq Ca 490 at 492, applied in *Khushrobhai* v. *Hormazsha*, ILR 11 Bom 727, 732.
2. AIR 1926 Bom 86 : ILR 50 Bom 94.
3. (1883)8 AC 467.
4. AIR 1931 PC 79.
5. *Rajammal* v. *Chief Judge*, AIR 1950 Mad 185.

(i) Subordinate Courts.—A Magistrate is bound to follow the authority of the High Court to which he is subordinate. Wherever, therefore, he is called upon to decide a question of law, it becomes his duty to ascertain whether any pronouncement of the High Court exists on the point. Omission to do so is as much dereliction of duty as omission to refer to sections of the statute. The disregard of authority is, however, something still more objectionable. It amounts to an act of insubordination.[1] "It is the bounden duty," says Pathak, J., in *Karam Hussain* v. *Mohd. Khalil*,[2] of the Judges of Courts subordinate to this court to implicitly follow the decisions pronounced by this court and we deprecate any attempt on their part to criticize them or to refuse to follow them. The rule that every subordinate Judge is, in duty bound, loyally to accept the rulings of the High Court to which he is subordinate is a well recognised rule, to which attention has been called by this court on a number of occasions. In *King-Emperor* v. *Devi*,[3] Stanley, C.J., and Burkit, J., had to consider the genesis of this rule at some length and in the Course, of their, judgment, they remarked that the Judge of a subordinate court, however, brilliant and well trained a lawyer he may be, is not entitled to assume the powers of an Appellate Court or to refuse to follow the decision of the High Court to which his court is subordinate, and that it is the duty of every subordinate Judge to accept loyally the rulings of this court unless and until they have been overruled by a higher tribunal. In our judgment, the learned Civil Judge has deviated from this rule and it is a matter of regret that he has tried to cover the departure from it by an attempt to distinguish the ruling of this court..... No authority is necessary for the proposition that a judicial precedent of a higher court does not cease to be binding upon subordinate courts merely because all the relevant reasons in support of or against the view taken by the higher court are not mentioned in the judgment or the actual decision is based upon a reason which does not appeal to the subordinate Judge." Abdul Rahman, J. in *Agha Ali* v. *Emperor*,[4] observed : "Every Judge or Magistrate in this Province is bound to follow the decisions of this court and to accept the law as laid down by this court, no matter what his personal views may be. He has no option in the matter. If he considers himself impelled to present his point of view and does not find it to have been considered and rejected, he may submit it respectfully but nevertheless he has no option but to follow the authority of this court and decide the case accordingly unless it has been overruled by a Division Bench if the previous decision happened to be that of a Single Judge, by a Full Bench if it was a decision of a Single Judge or of a Division Bench or by the Privy Council in any other case."

(ii) Expression of its own opinion by subordinate court.—A Judge has always the right of expressing his own opinion and indicating that he is not in agreement with an authority binding on him, but he is nevertheless in duty bound to follow it. The fact that a Judge thinks that some argument has been overlooked in a judgment binding on him is no reason for refusing to follow it.[5] Such expression of opinion by the subordinate Judge must be couched in a respectful language. In *Kashi Ram* v. *Emperor*,[6] Chief Justice Young had to reprimand severely the Sessions Judge in the following terms : "There is one matter to which we must allude before leaving this case. The learned Sessions Judge has discussed in a most disrespectful manner certain legal rulings of

1. *Rex* v. *Ram Dayal*, AIR 1950 All 134; *see* also *Dhondo Yeshwant* v. *Mishrilal Surajmal*, ILR 60 Bom 290 : AIR 1936 Bom 59 (FB).
2. AIR 1946 All 509, 511; *see* also *S.K.R.M. Chettyar* v. *V.E.A. Chettyar*, AIR 1935 Rang 525.
3. ILR 28 All 62.
4. AIR 1944 Lah 54-55 : ILR 1943 Lah 760; *see* also *Dhala Bahlok* v. *Dhala Lakhan*, AIR 1936 Lah 612.
5. *Manilal* v. *Venkatachalapathi*, AIR 1943 Mad 471 : ILR 1944 Mad 95; *Seshamma* v. *Venkata Narasimharao*, ILR 1940 Mad 454 : AIR 1940 Mad 356.
6. AIR 1935 Lah 433, 434.

this High Court and others. He discusses the law with regard to the admission of statements of the accused under Section 27, Evidence Act. He talks about 'mental gymnastic', 'ridiculous game' and 'artificiality of the law'. He himself says that he is prepared to take part in this force, which the law enjoins. We must point out that it is highly improper for a subordinate Judge so to criticize rulings by which he is bound and especially to criticize them in disrespectful language. We draw the attention of the Registrar to these observations of this learned Judge and direct him to call for an explanation from the learned Judge."

If there are two decisions of a High Court, one of a Single Judge and another of a Bench composed of two Judges, then, unless the subordinate Court found some grounds for distinguishing the one decision from the other, it would be bound to follow the decision given by the Bench.[1]

Where there are decisions of a High Court, it is the duty of courts subordinate to that High Court to be guided by them rather than by the decisions of other High Courts.[2] Niyogi, J., regretted, in *Kishan Deolomall* v. *Gangabai*,[3] the tendency on the part of the subordinate Courts of the Central Provinces to take recourse to the decisions of the Allahabad High Court in matters specially provided for by any local enactments of those Provinces, which was deprecated in *Ram Chandra* v. *Rupchand*.[4] "It is high time," his Lordship said, "that the subordinate Court put themselves on their guard against infringing the rule laid down in that case, otherwise they would betray themselves into the error of making the law instead of applying the law as it stands." It is not open to the lower Court not to follow a direct decision of their High Court and to rely upon what appeared to it some grounds of equity and follow a decision of another High Court.[5]

(iii) Revenue Courts.—In cases in which appeals lie to the District Judge and ultimately to the High Court, it is the duty of the Assistant Collectors to follow the rulings of the High Court in preference to the rulings of the Board of Revenue.[6] The decisions of the Board of Revenue are entitled to respect in the High Court and if possible differences should be avoided. But those rulings are not binding upon the High Court in any way and the High Court cannot be held responsible for any practical difficulties which may thus arise. A view adopted by the High Court, however, contrary to the view taken by the Board, would be of mere academical interest and of no practical utility for the simple reason that the Revenue Officers (Collectors) are bound by the decisions of the Board and not by the decisions of the High Court.[7]

(iv) High Court Benches.—A Judge in the High Court is ordinarily bound to consider with respect the decision of another Judge of the same court, but if he is convinced that the decision of the single Bench is erroneous, he is not under an obligation to follow it against his own judgment.[8] Judges are not entitled to legislate or to bind their successors to a construction of an

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1. *Raghavalu* v. *Thandaroya*, AIR 1931 Mad 71.
2. *Thadi Subbi Reddi* v. *Emperor*, AIR 1930 Mad 869; *Mahadeo Prasad* v. *Jagarnath Prasad*, ILR 13 Pat 303 : AIR 1934 Pat 173; *Lala Mistry* v. *Ganesh Mistry*, ILR 17 Pat 281 : AIR 1938 Pat 120. A lower Court is not entitled to prefer decisions of other High Courts even by Full Benches to a decision of Division Bench of the High Court to which it is subordinate. *Raghavalu* v. *Thandaroya*, AIR 1931 Mad 71; *Ram Saran* v. *Emperor*, AIR 1945 Nag 72.
3. AIR 1936 Nag 278 : ILR 1937 Nag 108.
4. AIR 1927 Nag 296.
5. *Poomalai Padayachi* v. *Annamalai Padayachi*, AIR 1944 Mad 124.
6. *Bisheshar Nath* v. *Abdul*, AIR 1934 All 333. Decisions of the Revenue Courts are not binding on the High Court; *Kashi Pershad* v. *Bed Pershad*, AIR 1940 Nag 113.
7. *Fitrat Husain* v. *Liaqat Ali*, AIR 1939 All 291 (FB).
8. *Virjiban Dass Moolji* v. *Biseswar Lal Hargovind*, ILR 48 Cal 69, 77; *In re* Peregrino Rodrigues, AIR 1945 Bom 173; *See* however, *Emperor* v. *Abdul Wahab*, AIR 1945 Bom 110; *Chaitram* v. *Birdhi Chand*, ILR 42 Cal 1140.

Act which the language plainly does not justify.[1] By interpreting statutes they do not make new law but only declare that the provision interpreted by them was only according to the said interpretation.[2]

A Special Bench is not bound by Full Bench decision of that court.[3]

There can be no doubt that a Full Bench can overrule a Division Bench and that a Full Bench must consist of three or more Judges; but it would seem anomalous to hold that a later Full Bench can overrule an earlier Full Bench, merely because the later Bench consists of more Judges than the earlier. If that were the rule, it would mean that a Bench of seven Judges, by a majority of four to three, could overrule a unanimous decision of a Bench of six Judges, though all the Judges were of co-ordinate jurisdiction.[4] But a Full Bench case decided by three Judges although it may be a decision of two Judges against the decision of third, is always entitled to respect from a Division Bench presided over by two Judges.[5]

A Division Bench of the High Court must follow the Full Bench decision of that court until their Lordships of the Privy Council (now Supreme Court) express a definite disagreement with them. Mere expression of dissatisfaction by their Lordships of the Privy Council about the principles decided by the Full Bench is not sufficient to take away their authority.[6]

The decision of a Division Bench of a High Court is binding not only on the subordinate Courts but ordinarily also on the other Division Benches of that court so long as that decision is not overruled by a Full Bench of that High Court, or, on appeal, by a higher court.[7]

A decision of the Bench of the Chief Court is not binding upon the High Court.[8] And similarly the Chief Court is not bound by the decision of Judicial Commissioner's Court.[9]

11. Argumentum ab impossibili plurinum valet in lege.—(Co. Litt. 92)—An argument from an impossibility is good in law.

Allied to the above maxim is another maxim : *Lex non cogit ad impossibilia;* Law does not compel one to do that which cannot possibly be done.

When the obligation is one implied by law, impossibility of performance is a good excuse for its non-performance. Thus, where an Act required a prior notice to be sent to the respondent of his having entered into a recognizance before in default of which appeal should not be allowed, it was held that the death of the respondent before service was not fatal to the appeal, but the service was dispensed with. "We are of opinion that, as the duty of appellant, to give such notice was cast upon him by the law, not by his own voluntary contract, he is excused from performing that duty by its becoming impossible by the

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1. *Punam Chand* v. *Bombay Cloth Market Co., Ltd.*, AIR 1943 Bom 141, *per* Beaumont, C.J.
2. *Raja Traders* v. *Union of India*, 1976 Jab LJ 807.
3. *Chandra Binode Kundu* v. *Ala Bux Dewa*, ILR 48 Cal 184, 188, 193, 251, 252.
4. *Ningappa* v. *Emperor*, AIR 1941 Bom 408 : ILR 1942 Bom 26.
5. *Dip Chand* v. *Sheo Prasad*, AIR 1929 All 593 : ILR 51 All 910.
6. *Anant Ram* v. *Khushal Singh*, AIR 1927 All 244; *Ramija Bibi* v. *Sharifa Bibi*, AIR 1943 Mad 560. An expression of doubt is a different thing from overruling.
7. *Mahadeo Prasad* v. *Jagannath Prasad*, AIR 1934 Pat 173 : ILR 13 Pat 303; *Billimoria* v. *Central Bank of India*, AIR 1943 Nag 340 (FB). The convention in Nagpur High Court is to refer the matter to the Chief Justice to constitute a Full Bench if the later Division Bench considers that the view expressed by the former Division Bench is wrong.
8. *Daula* v. *Amar Singh*, AIR 1944 Lah 427; but see *Lachhman Singh* v. *Naman*, AIR 1929 Lah 174.
9. *Jasraj* v. *Sugrabai*, AIR 1943 Sind 242; *Mahabir Prasad* v. *Secretary of State*, AIR 1927 Oudh 1; *Sheo Balak* v. *Emperor*, AIR 1926 Oudh 367; *Duma* v. *Farzand Husain*, AIR 1926 Oudh 544; *see* also *Sewakram* v. *Gulam Shah*, AIR 1927 Sind 223.

act of God."[1] Where the consignees were prevented from unloading the cargo on account of strike, Lord Lindley, L.J., said, in *Hick* v. *Radocanachi* :[2]"We have to do with implied obligations, and I am not aware if any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control." Broom illustrates the maxim by reference to the law relating to *mandamus* : "The maxim under notice may be exemplified by reference to the law of *mandamus*. A writ or order of *mandamus* to a railway company, enjoining them to prosecute works in pursuance of statutory requirements, supposes the required act to be possible and to be obligatory when the writ or order issues; and, in general, suggests facts showing the obligation, and the possibility of fulfilling it; though, where an obligation is shown to be incumbent on the company, the onus of proving that it is impossible, lies upon those who contest the demand of fulfilment; if they succeed in doing so, the doctrine applies that on *mandamus, nemo tenetur ad impossibilia*.[3] Upon the same principle, where an order had been made by the Board of Trade upon a railway company requiring the company to carry turnpike road across the railway, the court refused a *mandamus* to compel the company to carry out the order upon proof that the company had no funds, was practically defunct, and was not in a position to obey the writ if granted."[4] In *Campbell* v. *Dalhousie (Earl)*,[5] Lord Westbury opined to the effect : The only question is, whether there is any impediment to the recovery of the debt for which he is constituted a creditor by reason of there being non-compliance with this provision and if that compliance is shown to have been rendered impossible, not by his neglect, or in consequence of his own acts but by the act of God, it would be impossible, consistently with the established principles of law, to hold that he has lost his right through a provisionary or directory clause which it was impossible for him to comply with. Lord Cairns observed, however, in *River Wear Commissioners* v. *Adamson*.[6] "No man is compelled to do that which is impossible....If, however, a man contracts that he will be liable for the damage occasioned by a particular state of circumstances, or if an Act of Parliament declares that a man shall be liable for the damage occasioned by a particular state of circumstances, I know of no reason why a man should not be liable for the damage occasioned by that state of circumstances, whether the state of circumstances is brought about by the act of man or by the act of God."

Section 4, Limitation Act, and Section 10, General Clauses Act, give expression to the general principle of law enunciated by the maxim *'lex non cogit ad impossibilia'*—the law does not compel a man to do that which he cannot possibly perform.[7]

12. Argumentum ab communiter accidentibus in jure frequens est.—An argument drawn from common understanding of a thing is common in law. For instance, in determining the meaning of "Direct Taxation, in British North America Act, Earl of Selborne, L.C. said in *A. G. for Quebec* v. *Reed*,[8] "Now it seems to their Lordships that those words must be understood with some reference to the common understanding of them which prevailed among those who had treated more or less scientifically such subjects before the Act was passed." Lord Hobhouse, similarly speaking for their Lordships of the Privy Council in the leading case of *Bank of Toronto* v.

1. *R.* v. *Leicestershire Justices*, (1850) 15 QB 88, *per* Patterson, J.; *see* Craies: *State Law*, 5th Ed. at p. 228; Broom's *Legal Maxims*, 10th Ed. at p. 162 *et seq*; *see* also *Waterton* v. *Baker*, 1868 LR 3 QB 173.
2. (1899)2 QB 626, 638.
3. No one is bound to an impossibility.
4. Broom : *Legal Maxims*, 10th Ed. at pp. 163, 164.
5. (1868)22 LT 879 (HL).
6. (1877)2 AC 743, 750.
7. *Raja Pande* v. *Sheopujan Pande*, AIR 1942 All 429, 437 (FB).
8. (1884)10 AC 141, 143.

Lamhe,[1] in dealing with the same expression, took Mill's definition thereof as a fair basis for testing the character of the tax, because it seems to them to embody with sufficient accuracy for this purpose, an understanding of the most obvious indicia for direct and indirect taxation, which is a common understanding and is likely to have been present to the minds of those who passed the Federation Act."

13. Boni judicis est jus dicere, non jus dare : or judicis est jus dicere non dare.—It is the function of the Judge to declare the law and not to make it; or briefly : *jus dicere et non jus dare* : to declare the law and not to give it.

"One function is," said Tek Chand, J., In *Mirza* v. *Jhanda Ram*,[2] "to interpret the law, not to make it *jus dicere* and not *jus dare*". "It is to be borne in mind," warned Lord Blackburn in *River Wear Commissioners* v. *Adamson*.[3] "that the office of the Judge is not to legislate, but to declare to the expressed intention of the Legislature, even if that intention appears to the court injudicious." "It may be," observed Devadoss, J., In *Abuvakkar* v. *Kunhikuttiyali*,[4] "that the Malayalee community which is one of the most progressive communities of Southern India, feels shackled by its peculiar laws and customs which are archaic and antiquated and quite unsuited to its present advancement and enlightenment. However, much one may sympathise with the present feelings of the community, it is not the duty of a Judge to alter the law, however , opposed it may be to the consciousness of the people. It is his duty to administer it as he finds it."

A court has to interpret the law as it stands and is not competent to play the role of a legislator and to introduce amendments based on equitable considerations to remove the possible defects.[5] However, strongly a court may feel that the Legislature has overlooked a necessary provision or, however, obvious it may be that a provision has been inserted or omitted owing to the blunder of the draftsman, a court is not at liberty to make laws or amend them.[6] In construing a statute it is not permissible to import into its text any words of limitation unless the text requires those words by necessary implication.[7] The duty of the court is to construe the law as it stands and not to make a new, though it may be a better law.[8] A court has no power to alter the law or to read into a statute words which it thinks ought to have been there.[9] The courts are naturally not concerned with the desirability, utility or reasonableness of any particular enactment. It is their duty to give effect to the law as it stands, without regard to expediency or consequences.[10] In *Abel* v. *Lee*,[11] the question was about the construction of the

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1. (1887)12 AC 575, 581-582.
2. AIR 1930 Lah 1034, 1040; *see* also *Nageshwar Prasad* v. *Chandraj Bahadur*, AIR 1943 Oudh 78, 80.
3. (1877)2 AC 743, 764; *see* also Mayne's *Ancient Law*, 8th Ed., at p. 33; *Bhagwanji Govindji* v. *Puna Gopal*, AIR 1934 Sind 95.
4. AIR 1923 Mad 153, 159.
5. *Abdul Hussain* v. *(Mst.) Mahmudi Begum*, ILR 16 Lah 667 : AIR 1935 Lah 364, 367; *Tata Electric Agency* v. *Commissioner of Income-tax, Bombay*, ILR 58 Bom 361 : AIR 1934 Bom 62; *see* also *Rajah of Mandasa* v. *Jagannyakulu*, AIR 1932 Mad 612, 619 (Referring order).
6. *Bristol Guardians* v. *Bristol Waterworks Co.*, 114 AC 379; *Ram Nath* v. *Harendra Kumar*, ILR 58 Cal 801 : AIR 1931 Cal 580, 581.
7. *Radha Mohan* v. *Abbas Ali*, ILR 53 All 612 : AIR 1931 All 294, 297 (FB).
8. *Rai Charan* v. *Kundu Mohan Dutt*, ILR 25 Cal 571, 578.
9. *Damodar Das* v. *Jhaoo Singh*, 39 IC 87 (All); *A. I. Railwaymen's Benefit Fund* v. *Ram Chand*, AIR 1939 Nag 179.
10. *Emperor* v. *Hari*, AIR 1935 Sind 145, 175.
11. 1871 LR 6 CP 365, 371 : 40 LJCP 154, 158; *see* also *Young* v. *Royal Leamington Ltd.*, (1882)8 QBD 579 : 8 AC 517; Craies : *Statute Law*, 5th Ed. at pp. 86-87.

expression : "all poor rates have become payable" in Section 3(4) of the Representation of the People Act, which provided *inter alia* for the registration as a voter of a person who, on or before July 20, has paid "all poor rates that have become payable by him up to the preceding fifth day of January." The person in question had paid all the rates of the current year, but had been excused, on account of poverty, from paying a rate that had been payable in the preceding year. It was pleaded that according to strict grammatical or ordinary meaning such a person would be deprived of the franchise for ever unless he paid up this old rate which he had been excused. It was sought, therefore, to, modify the language and construe it in a restricted sense. Willes, J. repelled this contention and observed: "No doubt the general rule is that the language of an Act of Parliament is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy or injustice. One recognizes that rule where the repugnance arises between the words of the section to be construed and those of some other section in the same Act, or in some other Act which is in *pari materia* with it. But I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable. No such duty is imposed upon him." The principles which guide the Courts of Justice in their relations to the Legislature are expressed by Willes, J., in clear and cogent language in *Lee* v. *Bude & Torrington Rail Co.*[1] : "We do not sit here as a Court of Appeal from Parliament. It was once said—I think in Hobart, that if an Act of Parliament were to create a man judge in his own case the court might disregard it. That dictum, however, stands as a warning rather than an authority to be followed. We sit here as servants of the Queen and the Legislature. Are we to act as regents over what is done by Parliament with the assent of the Queen, Lords and Commons? I deny that any such authority exists. The proceedings here are judicial, not autocratic, which they would be if we could make law instead of administering them."

14. Communis error facit jus .—Common error makes law.

See law relating to *Stare decisis.*

Contemporanea Exposito : See State of Orissa v. *Dinabandu Sahu and Sons*[2]; *Bastin* v. *Daivies*[3]; *Jagadamba Industries* v. *State of Madhya Pradesh.*[4]

15. Contemporanea exposito est optima et fortissima in lege.—The maxim means that contemporaneous exposition is the best and strongest in the law.[5] The language of a statute must be understood in the sense in which it is understood when it was passed. Those who lived at or near the time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it has relation, as well as with the sense then attached to legislative expressions.[6] But this maxim is not to be applied while interpreting modern statutes and in modern progressive society it would be unreasonable to contain the intention of the legislature to the meaning attributable to the word used at the time

1. LR 6 CP at 582 quoted by Wilberforce : *Statute Law*, at p. 27.
2. (1976)37 STC 583.
3. (1950) All ER 1095.
4. (1988) MP LJ 620 (FB).
5. Black, L Diet Broom.
6. *I.T.C. Ltd* v. *Union of India*, AIR 1989 Cal 294 (DB) : (1988)1 Cal LJ 109 : (1988)25 Reports 179 : (1988)34 ELT 473 : (1988)16 ECC 68 : (1988)17 ECR 148 : (1988)92 Cal WN 1035 : (1988)1 Bank CLR 563. *Clyde Navigation* v. *Laird*, (1833)8 App Cas 658, 673, affirmed in *Goldsmith's Co.* v. *Wyatt*, (1907)1 KB 95, 107; *Regent Street* v. *Oxford*, 1948 Ch 735. See *Raja Ram Jaiswal* v. *State of Bihar*, AIR 1964 SC 828, as to applicability of the maxim to modern statutes and especially to Section 25 of the Evidence Act.

when the law was passed.[1]

In *Government Transport Service, Bombay* v. *S.L. Mishra*,[2] it is brought out as under :

> The rule of interpretation of a Statute by resorting to the principle of *contemporance expositio*, though acted upon in certain cases by the Supreme Court in our country, has been held to be a rule which must be confined within compass and applied with care and caution. It has been pointed out by the Supreme Court that where the words used in the Statute are clear and admit of no ambiguity, it would be erroneous to construe them by resorting to the principle of *contemporance expositio*. Even if it be true that the person who dealt with the statute understood its provision in a restricted sense, such mistaken construction of the statute did not bind the Court so as to prevent it from giving it its true construction.

As pointed in *(M/s.) Punjab Traders* v. *State of Punjab*,[3] even in England doubt has been expressed whether the above principle, if at all, could be applicable to modern statute.[4]

The principle though not decisive, is entitled to considerable weight.[5]

The Supreme Court in *Mitra Prakashan Pvt. Ltd.* v. *Collector of Customs*,[6] cited all the decisions upto date and applied the doctrine to the understanding by the revenue of the provision in Income Tax Act. In *Desh Bandu Gupta* v. *Delhi Stock Exchange*,[7] the Supreme Court held that this principle can be invoked thought the same will not always be decisive on the question of construction. But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling is nevertheless entitled to considerable weight as highly persuasive. If the interpretation is erroneous, court without hesitation refuse to follow such construction.[8]

16. Contra legam facit, quid facit quod lex prohibet in fraudem vero qui salvis verbis legis sententiam ejus circum venit.—The maxim means : "He does contrary to the law who does what the law prohibits; he acts in fraud of the law, who, the letter of the law being inviolate, uses the law contrary to its intention." To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.[9]

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1. See *(M/s). J.K. Cotton Spinning and Weaving Mills Ltd.* v. *Union of India*, AIR 1988 SC 191 : (1987)32 ELT 234 : (1987)5 (JT) SC 421 : 1987 Supp. SCC 350 : (1987)14 ECC 239 : (1987)13 ECR 1280 : (1987)12 Rep. 491 : (1988) SCC (Tax) 26 : (1988)24 STL 19 : (1988)68 STC 42 : 1988 UPTC 305 : 1988 ATJ 557; *(M/s.) Doypack Systems Pvt. Ltd.* v. *Union of India*, AIR 1988 SC 782 : (1988)1 (JT) SC 304. *The Commercial Corporation of India Ltd.* v. *The Income-tax Officer Ward 2, Panaji, Goa and others*, 1993 Tax LR 725 (Bom).
2. (1996)72 Fac LR 675 (Bom).
3. AIR 1990 SC 2300.
4. *See* in this connection the observations of Lord Blackburn in *The Trustees of the Clyde Navigators* v. *Laird & Sons*, (1883)8 AC 658, as quoted in *National and Grindlays Bank Ltd.* v. *The Municipal Corporation of Greater Bombay*, (1969)1 SCC 541 : AIR 1969 SC 1048; in *Senior Inspector* v. *Laxminarayan Chopra*, AIR 1962 SC 159, the Supreme Court refused to apply the principle and so also in *Raja Ram Jaiswal* v. *State of Bihar*, AIR 1964 SC 828.
5. *Desh Bandhu Gupta* v. *Delhi Stock Exchange Association Ltd.*, AIR 1979 SC 1049 (1054) : (1979)3 SCR 373 : (1979)4 SCC 565. *State of Tamil Nadu* v. *Mahi Traders*, (1989)1 SCC 724; *Vijayamohini Mills* v. *State of Kerala*, 1989(1) KLT 515.
6. 1991(51) ELT 111 (115).
7. (1979)3 SCR 373 : AIR 1979 SC 1049.
8. *(M/s.) Oswal Agro Mills Ltd.* v. *Collector of Central Excise*, AIR 1993 SC 2288.
9. Bac Ab. Statute.

17. Copulatio verborum indicat acceptationem in eodem sensu.—The coupling of words together shows that they are to be understood in the same sense.

Corpus Juris Secundum : Vol. 85, page 580 in *Corpus Juris Secundum* : "A penalty imposed for a *tax delinquency* is a civil obligation, remedial and coercive in its nature and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of penal law. It was held the element of *mens rea* is not required to be proved."[1]

See in this connection law relating to *'Nocitur a sociio'*.

18. Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit.—The maxim means : 'To whomsoever a jurisdiction is given, those things are also supposed to be granted, without which the jurisdiction cannot be exercised.[2]

19. Cuilibet licet renuntiar juri prose introducto.—The maxim means : "Anyone may, waive or renounce the benefit of a principle or rule of law that exists only for his protection." Everyone has a right to waive and agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy.

Generally speaking, enactments of the Legislature must be obeyed by all persons, but there is an exception. Where the Legislature has enacted something which only gives a right to an individual, and nothing more, that individual may waive that right. In order, however, to bring the case within that exception, it must be shown that the enactment of the Legislature is one which deals only with an individual right. If it has behind it some object of public policy indicated by the enactment itself, which makes it an enactment not only for the benefit of one individual by one party to the contract, but for the benefit of the whole community, the ordinary rule will apply and the statute must be obeyed.[3]

When public policy requires the observance of the provision, it cannot be waived by an individual. *Privatorum conventio juri publico non derogat.*[4]

20. Delegatus non potest delegare.—A delegated authority cannot be redelegated, or in other words, one agent cannot lawfully appoint another to perform the duties of agency.

(i) Delegation 'of legislative' power.—"This maxim, however," says Fazal Ali, J., in Special Reference 1 of 1951, in the Supreme Court of India (opinion dated 25-5-1951) "has a limited application even in the domain of the law of contract or agency wherein it is frequently invoked and is limited to those cases where the contract or agency is of a confidential character and where authority is coupled with discretion or confidence. Thus auctioneers, brokers, directors, factors, liquidators and other persons holding a fiduciary position have generally no implied authority to employ deputies or sub-agents. The rule is so stated in Broom's *Legal Maxims*, and many other books, and it is also stated that in a number of cases the authority to employ agents is implied. In applying the maxim to the act of a legislative body, we have necessarily to ask 'who is the principal and who is the delegate'? In some cases where the question of the power of the Indian or a Colonial Legislature came up for consideration of the

1. Vide *(M/s.) Gujarat Travancore Agency, Cochin* v. *The Commissioner of Income Tax, Kerala, Ernakulam*, AIR 1989 SC 1671 : (1989)177 ITR 455 : (1989)3 SCC 52 : (1989)44 Taxman 278 : (1989)2 (JT) SC 446 : (1989)77 CTR 174 : (1989)1 Ker LT 1 : (1989)42 ELT 350.
2. *State of Bihar* v. *Ram Balak Singh*, AIR 1966 SC 1441; *see* also Chapter XXI.
3. *Equitable Life Assurance Society of the United States* v. *Bogie*, (1906)3 CLR 878, 905.
4. Maxwell : *Interpretation of Statutes*, 11th Ed., p. 378; *Equitable Life Assurance Society of the United States* v. *Bogie*, (1906)3 CLR 878, 896-897.

courts, it was suggested that such a Legislature was a delegate of the British Parliament by which had been vested with the authority to delegate. But this view has been rightly repelled by the Privy Council on more than one occasion....." His Lordship referred to *Reg* v. *Buran*,[1] and *Hodge* v. *Queen*,[2] and proceeded on to observe : "It has also been suggested by some writers, that the Legislature is a delegate of the people on the electors. The view again has not been accepted by some constitutional writers, and Dicey dealing with the powers of the British Parliament with reference to the Septennial Act, states as follows : "That Act proves to demonstration that in a legal point of view Parliament is neither the agent of the electors nor in any sense a trustee for its constituents. It is legally the sovereign legislative power in the State, and the Septennial Act is at once the result and the standing proof of such parliamentary sovereignty." The same learned author further observes : "The Judges know nothing about any will of the people except in so far as that will is expressed by an Act of Parliament, and would never suffer the validity of a statute to be questioned on the ground of its having been passed or being kept alive, in opposition to the wishes of the electors. There can be no doubt that members of a Legislature represent the majority of their electors, but the Legislature as a body cannot be said to be an agency of the electorate as a whole. The individual members may and often do represent different parties and different shades of opinion, but the composite Legislature which legislates, does so on its own authority or power which it derives from the Constitution, and its acts cannot be questioned by the electorate, nor can the latter withdraw its power to legislate on any particular matter." As has been pointed out by Dicey,—"the sole legal right of electors under the English Constitution is to elect the members of Parliament". Electors have no legal right of initiating, or sanctioning, or of repealing the legislation of Parliament. It seems to me, therefore, that it will not be quite accurate to say that the Legislature being an agent of its constituents, its power are subject to the restrictions implied in the Latin maxim referred to." His Lordship further observed : "I will now deal with the third principle, which, in my opinion, is the true principle upon which the rule against delegation may be founded. It has been stated in Cooley's *Constitutional Limitations*,[3] in these words :

> "One of the settled maxims in constitutional law is that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."

The same learned author observes thus in his well-known book on *Constitutional Law* [4] :

> "No legislative body can delegate to another department of the Government, or to any other authority, the power, either generally or specially, to enact laws. The reason is found in the very existence of its own powers. This high prerogative has been entrusted to its own wisdom, judgment and patriotism, and not to those of other persons, and it will act *ultra vires* if it undertakes to delegate the trust, instead of executing it."

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1. 3 AC 889 : 5 IA 178.
2. 9 AC 117.
3. Vol. I at page 224.
4. 4th Ed., page 138.

"This rule in a broad sense involves the principle underlying the maxim *delegatus non potest delegare*, but it is apt to be misunderstood and has been misunderstood. In my judgment, all that it means is that the Legislature cannot abdicate its legislative functions and it cannot efface itself and set up a parallel Legislature to discharge the primary duty with which it has been entrusted.....What constitutes abdication and what class of cases will be covered by that expression will always be a question of fact, and it is by no means easy to lay down comprehensive formula to define it, but should be recognised that the rule against abdication does not prohibit the Legislature from employing any subordinate agency of its own choice for doing such subsidiary acts as may be necessary to make its legislation effective, useful and complete, Mukherjee J., in the same case observed : 'The maxim *delegatus non potest delegare* is sometimes spoken of as laying down a rule of the law of agency; its ambit is certainly wider than that and it is made use of in various fields of law as a doctrine which prohibits a person upon whom a duty or office has devolved or a trust has been imposed delegating his duties or powers to other persons.' The introduction of this maxim into the constitutional field cannot be said to lie altogether unwarranted, though its bases rest upon a doubtful political doctrine. To attract the application of this maxim, it is essential that the authority attempting to delegate its powers must itself be a delegate of some other authority. The Legislature, as it exists in India at the present day, undoubtedly is the creature of the Indian Constitution, which defines its powers and lays down its duties and the Constitution itself is a gift of the people of India to themselves. But it is not a sound political theory that the Legislature acts merely as a delegate of the people."

In the case of a Legislature which is a sovereign Legislature there is power to permit others after declaring the policy to fill up details. It would be impossible otherwise for a Legislature to legislate efficiently. To quote the words of Justice Cardozo in *Panama Refining Co.* v. *Ryan*,[1] "the discretion which has been left to the subordinate legislative authority must not be undefined and vagrant. It must be canalised within even banks which keep it from overflowing." Applying this test, there is nothing in Section 59(1), Clause *(xi)* of the Bombay District Municipal Act 3 of 1901 which renders that section *'ultra vires'* of the Governor-in-Council because of legislative power, having been delegated. The Governor-in-Council in this case was legislating upon the subject of Local Self-Government. It was deemed desirable that Municipalities are to be constituted within the Province, and if Municipalities are to be constituted within the Province, it was necessary to allot to them sources of taxation. The sources of taxation mentioned in Clauses *(i)* to *(x)* of Section 59(1), therefore, were in the first instance allotted to them. Then it was considered necessary apparently either because these sources were insufficient or because sometimes the Municipalities might prefer to levy another tax in lieu of taxes mentioned in Clauses *(i)* to *(x)* that they should have power to levy other taxes also. Section 59(1), Clause *(x)* provides that they had the power to impose any other tax provided that the previous approval of the Governor-in-Council to the nature and object of the tax had been obtained. It cannot possibly be said, therefore, in this case that the Legislature had not itself legislated at all on the subject-matter.[2]

Entry 5 in List II, Schedule VII, Constitution of India, is very wide in its terms and legislation is permissible to the State Legislature with regard to any subject of local Government and it is also permissible to the State Legislature to confer powers upon a local authority provided the power is for the purpose of Local Self-Government. The power of

1. 79 L Ed 446.
2. *Cantonment Board, Poona* v. *W. I. Theatres Ltd.*, AIR 1954 Bom 261, 265, 267.

taxation conferred upon the Bombay Municipality under Section 139 of the Bombay Municipal Corporation Act 3 of 1888 is without doubt for the purpose of Local Self-Government. If the Legislature is competent to impose a tax, it can, for the purposes of Local Self-Government, instead of levying the tax itself, confer that power upon the local authority, and the competence of the Legislature cannot be affected because the power that has been conferred is an unlimited power. A delegation of certain functions is bad only if it amounts to an abdication of its functions by the Legislature. In other words, if the Legislature instead of legislating itself, which is its own function, permits legislation by some other authority or again, to put it in different language, if the Legislature, without laying down the policy, permits the carrying out of a particular activity or a particular function by some authority, then it might be said that the Legislature has abdicated its own functions. Hence Section 169, Bombay Municipal Corporation Act, 1888, which empowers the Commissioner to charge for water supplied by measurement is valid.[1]

(ii) State can challenge allegated legislation as ultra vires.—It is open to the State to point out in Court that a particular body to whom subordinate or delegate legislation is entrusted has exceeded its limits of power under which it was functioning and hence, the particular piece of allegated legislation is *ullra vires.* But the State cannot be allowed to plead before Courts the unconstitutionality of its own statutes. It would be a very dangerous course.[2]

21. Expressum facit cessare tacitum.—What is expressed makes what is implied to cease. When a deed or statute contains express covenants or specific mention of things and contingencies, no implication of any covenant, or contingency on the same subject-matter can be raised. Thus, power to pull down the wall of a house without causing unnecessary inconvenience would not impliedly involve the obligation of putting up a hoarding for the protection of rooms exposed by the demolition.[3] In *Shev Bux Mohata* v. *Ajit Nath Dutta*[4] where there was a clause in a will authorising the executrix to sell a portion of the property for certain specified purposes, it was held that the existence of the special power does not militate against the general power of the executrix to dispose of the property in due course of administration. In the absence of clear language restricting the general power of the executrix, the mere mention of the special clause does not deprive the general right of management which includes the power of leasing out. This maxim is synonymous with the next one.[5]

22. Expressio unius est exclusio alterius.—(Co. Ltt. 210a)—The express mention of one thing implies the exclusion of another.[6] This maxim is a product of logic and common sense. No doubt this rule is neither conclusive nor of general application and is to be applied with great caution. It may be applied only when in the natural association of ideas the contract between what is provided and what is left out leads to an inference that the latter was intended to be excluded.[7] Very often particular words are used by way of abundant caution, and the application of the

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1. *Hirabhai Ashabhai Patel* v. *State of Bombay*, AIR 1955 Bom 185; see *Union of India* v. *P.K. Roy*, AIR 1968 SC 850, a case under Section 115(5) of the States Integration Act, where the limits to the delegation of legislative powers by the Central Government to State Government were pointed out.
2. *Haryant C. Shelat* v. *State of Gujarat*, (1978)19 Guj LR 970 (DB).
3. See *Amalgamated Electricity Co.* v. *Bathena*, AIR 1958 Mys 148, 150.
4. AIR 1967 SC 1204 : (1967)1 SCWR 509.
5. See *Makunda Das* v. *Bidhan Chandra*, AIR 1960 Cal 67.
6. *Thomson* v. *Hill*, (1870) LR 5 CP 564; see *In re* Kerala Educaton Bill, AIR 1958 SC 956, 992; *State of Kerala* v. *Malayalam Plantations Ltd.*, 1980 Ker LT 976 (FB).
7. *State of Kerala* v. *Malayalam Plantations Ltd.*, 1980 Ker LT 976 (FB).

maxim becomes inadvisable.[1]

For exposition and application of this maxim, *see* 'Internal aids to Interpretation'.[2]

23. Exampla illustrant, non-restringent legem.—Examples illustrate but do not narrow the scope of a rule of law.

(*See* Statutes and its Parts under the heading 'Illustration'.)

24. Ex anticedentibus et consequentibus fit optima interpretatio.—(2 Inst. 317)—The best interpretation is made from the context. (*See* law relating to 'Context'.)

25. Exceptio probat regulam do rebus non exceptis.—(92 Rep. 14.)

An exception shows the rule concerning things not excepted.

Exceptio quoque regulam declarat.—Exception also declares the rule. (*See* Statutes and its Parts under the heading 'Exceptions').

26. Extra territorium jus dicenti impune non paretur.—The maxim means that the decision of one adjudicating beyond his territory cannot be obeyed with impunity.[3]

27. Generalia specialibus non derogant.—General words do not derogate from special provisions, or, special provisions will control general provisions (Ilbert 250).

In *Fitzgerald* v. *Champneys*,[4] Wood, V.C. said "In passing the special Act, the Legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstances of that special case; and, having so done, they are not to be considered by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which, by their own special Act, they had thus carefully supervised and regulated." When the Legislature has given its attention 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. Each enactment must be construed in that respect according to its own subject-matter and its own terms.[5] "Now if anything be certain," said Earl of Selborne, L.C., in *Seward* v. *Vera Cruz*,[6] "it is this that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly is repealed, altered or derogated from merely by force of such general words, without indication of a particular intention to do so." "That rule (that posterior laws repeal prior ones to the contrary) is subject to a qualification excellently," says Bramwell, L.J., in *Garnet* v. *Bradley*,[7] "as it seems to me, expressed by Sir P.B. Maxwell in his book on the

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1. *I.M. Lall* v. *Gopal Singh*, AIR 1963 Punj 378 : ILR (1963)2 Punj 571; *see* also *State* v. *Chatrapati Sivaji Co-operative Housing Society*, 1968 Mah LJ 909 : 70 Bom LJ 588; *Pal J.K.* v. *State of Madhya Pradesh*, AIR 1969 Madh Pra 143; see *Lakhia Singh Patra* v. *Jatilal Aditya Deo*, AIR 1968 Pat 169, where this maxim was applied in defeating a devise to evade the provisons of Section 46(7) and 72 of the Chota Nagpur Tenancy Act, 1908.
2. *See* also *Khima & Co.* v. *State of Maharashtra (under the Central Sales Tax Act)*, AIR 1975 SC 1549.
3. *See* Chapter V.
4. 2 J & H 31, 54 quoted with approval in Re *Smith's Estate, Clements* v. *Ward*, 35 Ch D 389; *Marbury* v. *Plowman*, 16 CLR 468, 473.
5. *Barker* v. *Edgar*, 1898 AC 748, 754, *per* Lord Hobhouse.
6. 10 AC 59, 68; *see* also *King-Emperor* v. *Raja Probhat Chandra*, ILR 54 Cal 863 : AIR 1927 Cal 423, 443 (FB); *Approved in Probhat Chandra Burua* v. *Emperor*, AIR 1930 PC 209, 214.
7. (1877)2 Ex D 349, 351, 352; *see* also *Ashton-under-Lyne Corpn.* v. *Pugh*, (1898)1 QB 45, 49; *Lodon and Blackwall Rail Co.* v. *Limehouse District Board of Works*, (1856)26 LJ 164, 166; *City and South London Rail Co.* v. *London County Council*, (1891)2 QB 513; Bonnerjee (*T.L.L., Interpretation of Deeds, Wills & Statutes in British India*, at p. 200); *Lancashire Asylums Board* v. *Manchester Corporation*, (1900)1 QB 458, 470, *per* Smith, L.J.; *D. Mangayarkarasi* v. *Distt. Backward Classes Welfare Officer, Vellore*, (1988)2 MLJ 370

Interpretation of Statutes. He says, at page 157 (now 183, 9th Ed.), under the heading '*Generalia specialibus non derogant*'." "It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general Act is to be construed as not repealing a particular one by mere implication. A general later law does not abrogate an earlier special one. It is presumed to have only general cases in view, and not particular cases, which have been already provided for by a special or local Act, or, what is the same thing, by custom. Having already given its attention to the particular subject, and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment, unless it manifests that intention in explicit language." Where there is a conflict between a special Act and a general Act, the provisions of the special Act prevail.[1] Craies in *Statute law*,[2] quotes the reason of this rule from the observations of Wood V.C. in *London and Black-wall Railway* v. *Limehouse District Board of Works*.[3] thus : "The Legislature in passing a special Act has entirely in its consideration some special power which is to be delegated to the body applying for the Act on public grounds. When a general Act is subsequently passed, it seems to be a necessary inference that the Legislature does not intend thereby to regulate all cases not specially brought before it, but looking to the general advantage of the community, without reference to particular cases, it gives large and general powers which in their generality might, except for this very wholesome rule of interpreting statutes, override the powers which, upon consideration of the particular case, the Legislature had before conferred by the special Act for the benefit of the public. The result of a contrary rule of construction would be that the Legislature, having authorised by special Acts the construction of some public work, would be supposed afterwards by a general Act to throw it into the power of a few persons to prevent that public work from being carried out."

"The reason," Says Crawford in *Statutory Construction*, at p. 627, "behind this rule finds its foundation in two premises; the special Act is not repealed because it is not named, or because there is no absolute inconsistency between the general Act and the special Act." It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one.[4] A general statute is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by special or local Act.[5]

If the Legislature makes a special Act dealing with a particular case and later makes a general Act, which by its terms would include the subject of the special Act and is in conflict with the special Act, nevertheless unless it is clear that in making the general Act, the Legislature has had the special Act in its mind and has intended to abrogate it, the provisions

1. *Collector of Bombay* v. *Kamalawahooji*, AIR 1934 Bom 162; *Bhana Makan* v. *Emperor*, AIR 1936 Bom 256; *Gwalior R.S. M. Co.* v. *Union of India*, AIR 1960 MP 330; *see* also *Lakshmichand Gulabchand* v. *President, Municiality*, 1962 MPLJ 1100; *Anandilal* v. *State of Bihar*, 1963 BLJR 797; *Allapichai Rowther* v. *Sree Chokkanathaswami Temple*, ILR 1961 Mad 1128 : (1961)2 MLJ 490 : 74 Mad LW 598; *Abdul Halim* v. *State of M.P.*, 1962 MPLJ 183 : 1962 MPC 153 : 1961 Jab LJ 1446; *Patna Improvement Trust* v. *Lakshmidevi*, AIR 1963 SC 1077; *Chinta Devi* v. *Rikhi Kesh Sharma*, 1992 Sri LJ 413 (J & K); *Jogendra Lal Saha* v. *The State of Bihar*, AIR 1991 SC 1148. *Shri Shyamkishore* v. *Municipal Corporation of Delhi*, AIR 1991 Del 104 : (1991)43 DLT 459 (FB).
2. 5th Ed. at pp. 350-351.
3. (1856)26 LJ 164.
4. *Nicolle* v. *Nicolle*, (1922)1 AC 284 : *see* also *Parry* v. *Harding*, (1925)1 KB 111.
5. *Siha Singh* v. *Sundar Singh*, AIR 1921 Lah 280.

of the general Act do not override the special Act. If the special Act is made after the general Act, the position is even simpler. Having made the general Act if the legislature afterwards makes a special Act in conflict with it, we must assume that the Legislature had in mind its own general Act when it made the special Act and made the special Act which is in conflict with the general Act, as an exception to the general Act.[1]

(i) Illustration of the maxim.—The case of *Khemraj Shri Krishnadas* v. *Kisanlal Surajmal*,[2] is a good illustration of the application of this maxim. The applicant was the successful plaintiff who obtained a decree against the defendant on the ground that an adoption under which the defendant obtained certain property was invalid. The defendant appealed by his natural father, he being a minor, and applied for leave to appeal in *forma pauperis*. This application was granted. But it was contended by the plaintiff-respondent that an order for security should be made against the pauper and that he should give security for both the cost incurred in the lower Court and the costs of the appeal because Order XLI, Rule 10 of the Civil Procedure Code provides for such a security to be furnished. This contention was repelled by Scott, C. J., who observed : "In such a case as the present the question is whether that general provision relating to appeal in Order XLI applies also to pauper appeals, so as to impose upon the court the duty of demanding security from a pauper appellant, who *ex hypothesi* having been found to be a pauper cannot give security. In my opinion it does not apply. The maxim is *generalia specialibus non derogant*—a general does not weaken a special rule. Here the special rule is the rule regarding pauper appeals and pauper suits."

The same maxim was applied while considering the operation of two statutes passed in the same year 1872, *viz.*, Indian Evidence Act, I of 1872, Section 115 and Indian Contract Act, IX of 1972, Section 11, in *Khan Gul* v. *Lakha Singh*.[3] Tek Chand, J., gave his opinion therein as under : "This brings us to the remaining but really substantial point, *viz.*, whether the specific provision of the substantive law (Section 11 of the Contract Act), which declares a minor's contract to be void, can be rendered nugatory by a general provision embodying the rule of estoppel found in a procedural Code like the Evidence Act. In order to find a satisfactory answer to this question two fundamental principles must be borne in mind. The first is embodied in the great maxim *generalia specialibus non derogant* which has frequently been applied to resolve the apparent conflict between provisions of the same statute or of different statutes. In such cases, the rule is that wherever there is a particular enactment and a general enactment and the latter, taken at its most comprehensive sense, would overrule the former, the particular statute must be operative,[4] and its provisions must be read as excepted out of the general.[5]

Section 5 of the Criminal Procedure Code which says nothing in the Code shall affect any special or local law, is another illustration of the maxim. Section 468, Criminal Procedure Code

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1. *Corporation of Madras* v. *Madras Electric Tramways, Ltd.*, AIR 1931 Mad 152, 156 : ILR 54 Mad 364.
2. ILR 42 Bom 5, 9. 'Where the Legislature has in a special Act laid down particular conditions for the exercise of a power by the Court. I do not think that we are justifited in disregarding those conditions and holding by reference to a general Act that we have powers beyond those given in the special Act." *Chettyar, E. A. Firm* v. *Commissioner of Income tax*, AIR 1930 Rang 27; *see* also *Municipality of Karachi* v. *Karachi Electric Supply Corporation*, AIR 1926 Sind 115. *Damodara Haribaksha Agrawal* v. *Smt. Ramratidevi & others*, AIR 1989 Bom 257 : 1989 Mah LJ 425 : (1989)2 Bom CR 26 (DB). *Aska Central Multi Purposes Co-op Society* v. *Secretary, Orissa Khadi & Village Industries*, AIR 1992 Ori 238 (DB).
3. ILR 9 Lah 701, 742 (FB) : 1928 Lah 609 (625) (FB).
4. *Pretty* v. *Solly*, 26 Beav. 606, 610. *Mer Ramda Vejurnandbhai* v. *Hardasbhai Parbatbhai*, AIR 1992 Guj 122 : (1992)1 ACJ 399 : (1992)2 Guj LR 1296.
5. *Dryden* v. *Overseers of Putney*, (1876)1 Ex D 223, 232; *Taylor* v. *Corporation of Oldham*, (1876)4 Ch D 395, 410.

prescribes a limitation of six months for taking cognizance of an offence punishable with fine only and Tamil Nadu District Municipalities Act, 1920 prescribes a limitation of twelve months. The latter prevails by virtue of Section 5, Criminal Procedure Code and it was held that the complaint filed within twelve months was within time.[1]

(ii) Limits to rule.—"But the rule must not be pressed too far" as Bramwell, L.J., said in *Pellas* v. *Neptune Ins. Co.*,[2] "a general statute may repeal a particular statute. And if a special enactment, whether it be in a public or private Act, and a subsequent general Act are absolutely repugnant and inconsistent with one another, the courts have no alternative but to declare the prior special enactment repealed by the subsequent general Act."[3]

When two parts of the same statute, and that statute a *constitution*, are being interpreted, the limitations to the doctrine *generalia specialibus non derogant* must not be lost sight of. On the one hand, it is true that if a general intention is expressed in one part of the Constitution and a particular intention in another part which is incompatible with the general one, the particular intention is treated as an exception to the general one. On the other hand, the following principles must be applied and exhausted before this rule is applied :

First, the two provisions must cover the same area before one can be treated as an exception to the other, *Secondly*, the two provisions must be so incompatible with each other that they cannot be reconciled and the special provision must be treated within its own area, as an exception to the general provision. *Thirdly*, the entire Constitution must be read as a whole and each part must be given the same sanctity without giving undue weight to any particular part. This applies with particular force to the Constitution of India, which is very detailed and elaborate. The edifice of our Constitution contains many mansions no part of which can claim a greater sanctity than others, except to the extent clearly specified expressly or by clear implication, in the Constitution itself. *Fourthly*, each and every part of the Constitution must be so interpreted as to preserve the spirit of a Constitution, which is fundamentally a different document from other statutes.[4]

There is another class of cases to which this maxim is hardly applicable. If there is a conflict between a basic natural right, even though not specifically declared by the Constitution, and the provisions of any general or special law, it is the basic right of natural justice that would prevail, and such provisions being in conflict with it must consequently give way.[5]

The maxim *generalia specialibus non derogant* was explained and applied also in the recent cases of *Gujarat State Co-operative Land Devetopment Bank* v. *P.R. Mankad*,[6] *Paradip Port Trust* v. *Workmen*,[7] *U.P. Electricity Board* v. *H. S. Jain*,[8] and *State of Gujarat* v. *Patel*.[9]

28. Generalia verba sunt generalita intelligenda.—(3) Inst. 76—(General words are to be understood generally).—It is a rule, that what is generally spoken shall be generally

1. *Commissioner* v. *Kothandaraman*, 1979 LW (Cr) 112.
2. (1860)5 CPD 34, 40. This maxim was not applied by Sulaiman, J., in his dessenting judgment in the case of *Subramanyam* v. *Muttuswami*, 1940 FCR 188, 214-215.
3. Craies : *Statute Law*, 5th Ed., at p. 352.
4. *Moinuddin* v. *State of U.P.*, AIR 1960 All 484, 488 (Dhawan, J.).
5. *Sonrexa*, K.C. v. *State U.P.*, AIR 1963 All 33 : (1963)1 Cr LJ 38.
6. AIR 1979 SC 1203.
7. AIR 1977 SC 36.
8. AIR 1979 SC 65.
9. (1979)3 SCC 347.

understood, *generalia verba sunt generalita intelligenda*, unless it be qualified by some special subsequent words, as it may be, *e. g.*, the operative words of a bill of sale may be restricted by what follows.[1] General words in a statute must receive a general construction; unless there is in the statute itself some ground for restricting their meaning by reasonable construction not by arbitrary addition or retrenchment.[2] But it is clear also that general words are to be restricted to the matter with which that Act is dealing.[3] One of the safest guides to the construction of sweeping general words, which it is difficult to apply in their full literal sense, is to examine other words of like import in the same instrument.[4]

Crawford epitomises the rule thus[5] :

> "It is also a basic rule of construction that general words should be given a general construction, that is, they should be given their full and natural meaning, unless the statute in some manner reveals that the legislative intent was otherwise. Such a contrary intent may be found in the purpose and subject-matter, of context of the statute, so that as a result general terms may be qualified or restricted. For example, a statute which provides for the taxation of all property of a certain kind, means all of such property that is within the jurisdiction of the taxing power. And where any other construction will lead to unjust, oppressive, or absurd consequences, general words should be given a limited or restricted meaning. In addition to these, general terms may also be restricted by specific words with which they are associated, with the result that the general language will be limited by the specific language which indicates the statute's object and purpose. For instance, the word 'land' will usually include the buildings thereon, but the building will be excluded where the word 'land' is coupled with the word 'building'. Special words, on the other hand, may be expanded in their meaning as well as limited or restricted, provided the purpose of the statute is general, if such expansion will make the intent of the Legislature effective. Nevertheless the general rule may be announced that in the construction of statutes, general words are to be considered more broadly than specific words, and specific words more narrowly than general words."

No doubt general words may in certain cases properly be interpreted as having a meaning and scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the Legislature, read in its entirety, points to consistency as requiring the modification of what would be the meaning apart from any context, or apart from the purpose of the legislation as appearing from the words which the Legislature has used, or apart from the general law.[6]

29. In civile est nisi tota lege perspecta una aliqua particula ejus proposita judicare vel respondere.—The maxim means that it is improper, unless the whole law has been examined, to give judgment or advice upon a view of a single clause of it. It is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself.

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1. Broom : *Legal Maxims*, 10th Ed., at pp. 430, 440; *see* also 69 Corpus Juris Secundum, at p. 980. *Forbes Forbes Campbell & Co Ltd.* v. *Commissioner of Income-tax*, (1994)74 Taxman 268 (Bom).
2. *Beckford* v. *Wade*, (1805)34 ER 34 (PC), *per* Sir William Grant, MR; *see* also *Taylor* v. *Davies*, 1920 AC 636 (Reading into the statute words which limit its *prima facie* operation and make it do something different from and smaller than what its terms express is not proper); *R.* v. *Liverpool*, JJ., (1883)11 QBD 638.
3. *Phillips* v. *Poland*, (1886) LR 1 CP 204 : 35 LJCP 128 (Words which are general and not express or precise should be restricted to the fitness of the matter); *Washer* v. *Elliot*, (1876)1 CPD 169.
4. *Blackwood* v. *R.*, 10 (1882)8 AC 82.
5. At pp. 324, 325, Article 189.
6. *Watney, etc., Co.* v. *Barners*, 1915 AC 885 (*per* Lord Haldane).

30. **Inclusio unius exslusio alterius.**—(Inclusion of one excludes the other) *Alterius* is the genetive of a Latin word which means 'the other of two', not 'another'. The logic of the proposition and the force of the proposition, depends entirely on establishing that there is only a choice between two named persons or objects; in such a case it can be said that if one of the two available is chosen, the other is excluded. But save in that special case, the maxim has no effect in logic or in law.[1]

The rule of exclusion is merely an auxiliary rule of construction adopted for the purpose of ascertaining the intention of the law-giver. It is neither conclusive nor of universal application and is to be applied only when in the natural association of ideas the contrast between what is provided and what is left out leads to an inference that the latter was intended to be excluded; it may accordingly be held inapplicable if there exists a plausible reason for not including what is left out.[2]

31-32. **Impotentis excusat legem.**—This maxim must be understood in this qualified sense that "impotentis excuses when there is a necessary or invincible disability to perform the mandatory part of the law, or to forbear the prohibitory". In Broom's *Legal Maxim*[3] it has been observed :

> "Impossibility may, however, be created by a change of the law."
>
> "The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intentions of compelling to impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases." (p. 172).

The general rule which can be summed up from the above is that where the law creates a duty or charge, and the party is disabled from performing it, without any default in him and has no remedy, the law will in general excuse him.[4]

Interpretare et concordanre lages legibus, est optimus interpretandi modus : An interpretation of the words 'private Land' and 'ryoti land' has to be made in consonance with legislative purpose. To interpret in such a way as to harmonise laws with laws is the best mode of interpretation.[5]

33. **Hoc quidem perquam durum es sed ita lex scripta est.**—(Hard may be the law yet it should be given effect to). *See* law relating to 'Hardship'.)

34. **In pari delicto potior est conditio possidentis.**—As to application of this maxim.[6] The maxim is to the effect that where both parties are equally in the wrong, the position of the possessor is the more favourable.[7]

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1. *R.* v. *Palfrey*, (1970)2 All ER 12 (Winn, L.J.).
2. *Chantala Workers, Co-op. Transport Society* v. *State of Punjab*, AIR 1962 Punj 94, 98 (Dua, J.); *Parbhani Transport Co-op. Society, Ltd.* v. *RTA, Aurangabad*, (1960)3 SCR 177, 185 (Sarkar, J.) : (not applicable where language is plain and the meaning is clear. *See* also 85 L Ed. 58, 62.)
3. 9th Ed. p. 176.
4. *Bal Mukund* v. *District Judge, Rae Bareli*, 1977 All WC 225 (230).
5. *Pollisetti Pullamma* v. *Kalluri Kameswaramma*, AIR 1991 SC 604 : (1990)4 (JT) SC 293 : 1991 AIR SCW 81 (AIR 1952 Mad 323 (FB), partly overruled.).
6. *Raja Ram* v. *Daulat Ram*, AIR 1980 All 161 : 1980 UPLR 129.
7. *M/s. Mohan Singh Saheb Singh* v. *Babulal Rameshwardas*, 1982 GLH 536 (DB).

35. Judex est lex loquens.—The Judge is the speaking law; or, *Judicium est quasi juris dictum* : 'Judgment is as it were a saying of the law', or *legis interpretatio legis vim obtinet* : "The interpretation of the law obtains the force of law." *(See* Statutes and its parts.)

36. Jura naturae sunt immutabilia.—The maxim means that the laws of nature are unchangeable. It was formerly the rule that a statute contrary to natural equity or reason was void. But such dicta cannot be supported. They stand as a beacon to be avoided, rather than an authority to be followed.[1]

37. Leges posteriores priores contrarias abrogant.—The maxim means that latter laws repeal earlier laws inconsistent therewith.[2] The rule is that if the provisions of a later Act are so inconsistent with or repugnant to those of an earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later.[3] The courts as a rule do not favour repeals of earlier statutes by implication, except where the repugnancy between the two enactments is manifest and irreconcilable. Where, however, the conflict between two statutes cannot be reconciled, the earlier Act yields to the later.[4] But where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act it is presumed that the situation was intended to be continued to be dealt with by the specific provision rather than the later general one.[5]

38. Lex nil frusta facit.—The law does nothing in vain.

It is a fundamental legal principle, as well as a dictate of commonsense, that the law will not itself attempt to do an act which would be vain.[6]

39. Doctrine of 'Lex non congit and impossibilia.—Doctrine of *'Lex non congit and impossibilia'* or for that purpose the doctrine of impossibility applies in relation to future transactions and has no application to completed transactions which may stand nullified as a result of any retroactive enactment. The maxim aforesaid, or as it is also expressed *'impotentia excusal legem'* must be understood in the sense that *'impotentia excuses'* where there is necessary or invisible disability to perform the mandatory part of law or forbear the prohibitory.[7]

40. Maxima ita dicta quia maxima est ejus dignitas et certissima auctoritus, atque quod maxime omnibus probetur.—(Co. Litt. 10-11)—Maxim is so called because its dignity is the greatest, and its authority the most certain, and because it is universally approved by all.[8]

41. Nemo allegangs turpitudinem suam audiendus est.—This maxim applies where the transaction itself is based on fraud committed by a party to the impugned transaction.[9]

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1. *Lee* v. *Bude & Torrington Ry.*, (1871) LR 6 CP 532, *per* Willes, J.; Re *Monolithis Building Co., Tacon* v. *The Company*, (1915)1 Ch 643, 653.
2. Broom : *Legal Maxims*, 10th Ed.; *Arka Vasanth Rao* v. *Government of Andhra Pradesh*, AIR 1995 Andh Pra 274 (DB).
3. *Hall* v. *Arnold*, (1950)2 KB 543; *Argyll* v. *I.R.C.*, (1913)109 LT 893; *(Smt.) Charu Deka* v. *(Smt.) Uniaswari Nath*, AIR 1995 Gau 9, relying on *Mandanlal Fakirchand* v. *Changdeo Sugar Ltd.*,.AIR 1962 SC 1543—(rule of harmonious construction adopted in case of inconsistency in sub-sections of same section of statute). If harmonious construction is not possible, doctrine of *leges posteriores priores contrarias abrogant* (later laws abrogate prior laws that is to say, Sub-section 2, added by Amending Act, shall prevail over Sub-section 1).
4. *Hind-Iran Bank, Ltd.* v. *Ishar Singh Narain Singh*, AIR 1960 Punj 111, 114.
5. Vide *Ashoka Marketing Ltd.* v. *Punjab National Bank*, AIR 1991 SC 855 (5J) : (1990)4 SCC 405.
6. *See* Broom : *Legal Maxims*, 10th Ed. at p. 169.
7. Vide *State* v. *S.J. Choudhary*, (1996)2 SCC 428.
8. Ramanatha Iyer : *Law Lexicon*, at p. 799.
9. *Raja Ram* v. *Daulat Ram*, AIR 1980 All 161.

42. Non obligat lex nisi promulgata.— A law is not obligatory unless it be promulgated.

43. Nova constitutis futuris formam imponere debet, non praeteritis.—(2 Inst. 292)—A new law ought to affect the future and not the past.

The general rule on this subject is stated by Lord Coke, in the Second Institute; 292 in his commentary on the Statute of Gloucester. This maxim is one of such obvious convenience and justice, that it must always be adhered to in construction of statutes, unless in cases where there is something on the face of the enactment putting it beyond doubt that the Legislature meant it to operate retrospectively.[1] It is a general rule that where a statute is passed altering the law, unless the language is expressly to the contrary, it is to be taken as intended to apply to a state of facts coming into existence after the Act.[2] Words not requiring a retrospective operation, so as to affect an existing status prejudicially, ought not to be so construed.[3] "Now the general rule," observed Lord Blackburn in *Gardner* v. *Lucus*,[4] "not merely of England and Scotland, but I belive of every civilised nation, is expressed in the maxim, *Nova constitutio futuris formam imponere debet, non praeteritis,—prima facie* any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance I think it is perfectly settled that if the Legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly these bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal. But whether the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid—to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding—I think the *prima facie* construction of the Act is that it is not to be retrospective, and that it would require strong reasons to show that is not the case."

It is a fundamental rule of English law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.[5]

44. Omne majus continet in se minus.—(The greater contains the less)[6]—The Legislature must be attributed full knowledge of this maxim.

45. Optaima est legum interpres consuetudo.—The maxim means that custom is the best interpreter of law. Maxwell says : "The meaning publicly given by contemporary or long professional usage is presumed to be the true one, even when the language has etymologically or popularly a different meaning."[7]

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1. *Moon* v. *Druden*, (1848)2 Ex 22, 33, *per* Rolfe, *B. Vansittart* v. *Taylor*, (1855)24 LJQB 198, 199; *Jacksons* v. *Wooley*, (1853)27 LJQB 448, 449; *Gloucester Union* v. *Woolwich Union*, (1917)2 KB 374.
2. *R.* v. *Ipswich Union*, (1877)2 QBD 269, 270, *per* Cockburn, C.J.
3. *Main* v. *Stark*, (1890)15 AC 384 (Lord Selborne).
4. (1878)3 AC 582, 603.
5. Maxwell : *Interpretation of Statutes*, 11th Ed. at pp. 204-205; *West* v. *Gwaynne*, (1911)3 Ch 15; *Smith* v. *Callander*, 1910 AC 297.
6. *Atma Ram* v. *State of Punjab*, AIR 1959 SC 519, 526.
7. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 296.

This rule was applied by the Supreme Court in *National and Grindlays Bank, Ltd.* v. *Municipal Corporation*,[1] and it was laid down that where the language of an enactment is obscure the court may adopt the construction which the authorities have given to it by their usage and conduct for a long period of time as a rule of justice based on the maxim *optima legum interpres consuetudo*.

46. Privatorum conventio juri publico non derogat.—(A private agreement does not derogate from the public right)—Private compacts are not permitted either to render that sufficient between themselves which the law declares essentially insufficient or to impair the integrity of a rule necessary for the common welfare, such, for instance, as the enactment which requires the attestation of wills.[2]

47. Quando aliquid prohibetur, prohibetur et omne perquod devinetur ad illud.—The maxim means that when anything is prohibited, everything by which it is reached is also prohibited. That which cannot be done directly cannot be done indirectly.

48. Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa esse non potest.—(Whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect).—Whenever any thing is authorised, and specially if, as a matter of duty, required to be done by law, and it is found impossible to do that thing unless something not authorised in express terms be also done, then that something will be supplied by necessary intendment. This doctrine can be invoked in case "where an Act confers a jurisdiction it also confers, by implication, the power of doing all such acts, or employing such means, as are essentially necessary to its execution". In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead letter and cannot be enforced unless a subsidiary power is implied. The doctrine of implied power, accordingly, can be invoked where without the said power the material provision of the Act would become impossible of enforcement.[3]

49. Sulus populi est suprema lex.—(Regard for public welfare is the supreme law).—To this maxim all other maxims of public policy must yield, for the object of all law is to promote the general well-being of society.[4]

50. Uti loquitur vulgus.—In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense.

51. Ut res magis valeat quam pereat.—The Court strongly lean against any construction which tends to refute a statute to a futility. The provision of a statute must be so construed as to make it effective and operative on the principle *'ut res majis valeat quam pereat'*.[5] It is no doubt true that if a statute is absolutely vague and its language wholly intractable and

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1. AIR 1969 SC 1048.
2. *Croker* v. *Hertford (Marquess)*, (1844) Moor PC 339, 366.
3. *Bidi, Bidi Leaves and Tobacco Merchants' Association* v. *Bombay State*, AIR 1962 SC 486, 494-495; *Assistant Collector of Central Excise* v. *National Tobacco Co. Ltd.*, (1972)2 SCC 560.
4. *Pranballav Saha* v. *Tulsibala Dassi*, AIR 1958 Cal 713, 730.
5. Vide *Commissioner of Wealth-tax Patna* v. *Jagadish Prasad Choudhary*, AIR 1996 Pat 58.

absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Art. 14, but what a Court of construction, dealing with the language of a statute does in order to ascertain from, and accord to, the statute the meaning and purpose which, the legislature intended for it. In *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*[1] Farewell, J. said : "Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."

In *Fawcett Properties* v. *Buckinghum County Council,*[2] Lord Denning approving the dictum of Farewell said "But when a statute has some meaning even though it is little to choose between them, the courts have to say what meaning the statute has to bear than reject it as a nullity.

In *Whitney* v. *Inland Revenue Commissioners*[3] Lord Dunedin said : "A statute is designed to be workable and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes the end unattainable."[4] "That the thing may rather have effect than be destroyed", in order that the thing may be valid rather than invalid.[5] Before the doctrine can apply, the court must be left in a state of real and persistent uncertainty of mind.[6]

"The rules for the construction of statutes are," observed Bowen, L.J., in *Curtis* v. *Stovin,*[7] "very like those which apply to the construction of other documents, especially as regards one crucial rule—*viz.*, that, if possible, the words of an Act of Parliament must be construed so as to give a sensible meaning to them," so that the intentions of the Legislature may not be treated as vain or left to operate in the air.[8] The same rule applies to Constitution of a State. A Constitution of Government is a living and organic thing which of all instruments has the greatest claim to be construed *ut res magis vleat quam pereat.*[9]

52. Verba chartarum fortius accipiuntur contra proferentem.—The maxim says that the words of deeds are to be understood most strongly against the person making use of them. Enactments of a local or personal character which confer any exceptional exemption from a common burden, or invest private persons or bodies, for their own benefit and profit, with

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1. (1900)2 Ch 352.
2. (1900)3 All ER 503.
3. 1926 AC 37.
4. Vide *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam,* AIR 1990 SC 123 : (1989)2 JT (SC) 217 : (1989)45 Taxman 29 : (1989)2 Com LJ 377 (5J).
5. *Corporation of Calcutta* v. *Liberty Cinema,* AIR 1965 SC 1107 : 1965 SCA 657, where this maxim and the rule based on it were applied; *Ram Dayal* v. *Central Narcotics Bureau, Gwalior,* 1993 JLJ 24 (FB); *Rao Shiv Bahadur Singh* v. *State of Vindya Pradesh,* AIR 1953 SC 394; *Gur Sahai Saigal* v. *Commissioner of Income-tax, Bengal,* AIR 1963 SC 1062.
6. *Inland Revenue Commissioner* v. *William,* (1969)3 All ER 614, 618 (Megarry, J); *see* also *State of Gujarat* v. *Shah Lakhamshi,* AIR 1966 Guj 283. 290 (FB): *ubi aliquid conceditur, conceditur et id sine quo resipsa non esse potest :* Where any thing is granted, that is also granted without which the thing itself is not able to exist.
7. (1889)22 QBD 513, 517; *see* also *Lal Ram Singh* v. *Deputy Commissioner of Partabgarh,* 50 IA 265, 273.
8. Craies : *Statute Law,* 5th Ed. at p. 67; *see* also *Re* Florence Land Co., (1878)10 Ch D 544; *A.G.* v. *Beauchamp,* (1920)1 KB 605; *Dhoom Singh* v. *PC Sethi,* (1975)1 SCC 597 : AIR 1975 SC 102.
9. *In the matter of* C.P. and Berar Sales of Motor Spirit and Lubri, Taxation Act, 1939 FCR 18, 37 : AIR 1939 FC 1 : 1939 MWN 25; *see* also *C.T.S.* v. *Mangal Sen,* AIR 1975 SC 1106 and *Dhoom Singh* v. *P.C. Sethi,* AIR 1975 SC 1012 : (1975)1 SCC 597; *Sailesh Kumar Singh* v. *High Court of Judicature at Patna,* (1995)2 BLJR 754 (Pat) (DB); *State of Madhya Pradesh* v. *(M/s.) Chahal and Co., New Delhi,* 1995 MPLJ 885 (890) (FB).

privileges and powers interfering with the property or rights of others, are construed against those persons or bodies more strictly, perhaps, than any other kind of enactment.[1]

53. Ut res valet potius quam pereat.—In construing the machinery provision for assessment and collection of the tax to make the meaning workable *ut res valet potius quam pereat*, i.e., the Court would avoid that construction which would fail to relieve the manifest purpose of the legislation on the presumption that the legislature would enact only for the purpose of bringing about an effective result. It is not the function of the Court to hunt for ambiguities by strained and unnatural meaning, close reasoning is to be adopted; harmonious construction is to be adhered to; all the relevant provisions are to be read together to gather the intention from the language employed, its context and give effect to the intention of the legislature. Ingenious attempt to avoid tax is to be thwarted.[2]

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1. *Maxwell* : *Interpretation of Statutes*, 11th Ed. at p. 293.
2. *Film Exhibitors Guild & Another* v. *State of Andhra Pradesh*, AIR 1987 A.P. 110 : (1987)1 Andh LT 154 : (1987)1 APLJ (HC) 330 (FB).

CHAPTER V
PRESUMPTIONS IN INTERPRETATION

SYNOPSIS

1. *Statutes are presumed to be valid :* ----162
   (i) *Executive action* ----168
   (ii) *Severability* ----168
   (iii) *Formulation of the doctrine* ----169
   (iv) *The problem of separable application* ----170
   (v) *Difference between civil and criminal statutes* ----171
   (vi) *Difference between State and Federal statutes* ----171
   (vii) *The importance and meaning of legislative intention* ----172
   (viii) *The trend of recent decisions and the separability clause* ----174
   (ix) *The separability clause.* ----175
   (x) *The presumption of divisibility and indivisibility* ----175
   (xi) *Test of severability.* ----176
   (xii) *Failure to properly express subject-matter in title* ----177
   (xiii) *Australian view* ----177
   (xiv) *Indian view* ----180
2. *Statutes are territorial in operation* ----182
   (i) *Extra-territorial jurisdiction of Sovereign Legislatures* ----185
   (ii) *Colonial Legislatures* ----185
   (iii) *Indian Legislatures* ----186
   (iv) *Parliament* ----186
   (v) *State Legislatures in India* ----186
   (vi) *Municipal courts bound to follow it* ----187
   (vii) *Recognition not dependent upon its being capable of execution* ----187
   (viii) *Presumption when displaced* ----187
3. *Statutes are presumed to be in conformity with International law :* ----187
   (i) *Legislature presumed not to enact contrary to International law* ----188
   (ii) *Municipal courts bound by enacted law.* ----188
   (iii) *Peace treaties and consequential municipal law.* ----191
4. *Legislature does not commit a mistake :* ----192
   (i) *Causes of mistakes in legislation* ----192
   (ii) *Presumption against mistake* ----193
   (iii) *Correction of mistakes when permissible* ----194
   (iv) *Misstatement of law* ----195
   (v) *Misstatement of facts* ----195
   (vi) *Burden of proving mistake of Legislature* ----195
5. *Legislature does not waste its words :* ----195

(i) Construction consistent with smooth working of system---198
(ii) Repetition and surplusage---199
6. Words interpreted in ordinary sense unless technical :---200
(i) Plain and natural meaning not interchangeable with popular meaning---201
(ii) Ordinary meaning subject to context and other factors---202
(iii) Technical words have technical meaning---203
7. Legislature presumed to know the rules of grammar---205
8. Legislature presumed to know the law, judicial decisions and general principles of law :---206
(i) Misapprehensions as to state of law---207
(ii) Recitals---207
(iii) Wrong recital---207
9. No alteration in law is presumed---208
10. Presumptions in re-enactment :---210
(i) Prior Judicial interpretation---210
(ii) Reproduction of language of old Act in new Act---210
(iii) Statutes in pari materia---211
(iv) Effect of change of phraseology by amending Act---212
(v) Presumption subject to anything showing a contrary intention---213
(vi) Adoption of construction in a statute in pari materia does not amend original statute---213
11. Legislature is fair---214
12. Vested rights are preserved :---216
(i) Vested rights are not presumed to be abrogated---216
(ii) No retrospective operation---216
(iii) Substantive rights distinguished from matters of procedure---217
(iv) What are vested rights ?---218
(v) General character of Act to be kept in view---220
13. Jurisdiction of Court :---221
(i) Meaning of jurisdiction---221
(ii) Jurisdiction---223
(iii) Jurisdiction conferred and taken away only by law---223
(iv) Consent cannot give jurisdiction---223
(v) Statutory jurisdiction to be exercised subject to specified limitations---224
(vi) Consensual jurisdiction---224
(vii) Jurisdiction of superior Courts---224
(viii) No implied authority to deprive superior Courts of their jurisdiction---224
(ix) Jurisdiction of Civil Courts---224
(x) Presumption against ouster of jurisdiction---225
(xi) Court's jurisdiction to determine jurisdictional facts---226
(xii) New right and special remedy---226
(xiii) Special Tribunal---227
(xiv) Provision making performance enforceable in a specified manner---227
(xv) Prescribing statutory duty without laying down remedy---228
(xvi) Where special tribunal does not come into existence or neglects to function---228
(xvii) Avoidance of conflict of jurisdiction---229

1. Statutes are presumed to be valid.—There is a presumption in favour of the validity of a statute.[1] Courts of law have to presume that the particular law is *intra vires* and not *ultra vires*.[2] It is also to be presumed that the power conferred shall be exercised for the purpose for which it has been conferred and shall be exercised reasonably though there is no guide-lines contained in the Act.[3]

The presumption is in favour of the constitutionality of an enactment and the burden is upon him who attacks to show that there has been a transgression of constitutional principles.[4] There is always a presumption that a Legislature, be it Central or Provincial, never intended to exceed its legislative ambit so as to conflict with the jurisdiction of another Legislature.[5] Indeed there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the Legislature understands and correctly appreciates the needs of its own people that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds, as clearly enunciated in *Middleton* v. *Texas Power and Lights Company*,[6] observations of Marshal, C.J. *in Pellock* v. *Farmers Loan & Trust Co.*[7] It must be borne in mind that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be concerned existing at the time of the legislation.[8] The validity of an Act

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1. *Narsing Das* v. *Chogemull*, AIR 1939 Cal 435, 444 : ILR 1939 Cal 93 (FB), *per* Nasim Ali, J.; *Atiqa Begum* v. *Abdul Maghni*, ILR 1940 All 456 : AIR 1940 All 272, 275 (FB) (reversed in *United Provinces* v. *Atiqa Begum*, 1940 FCR 110 on other points); Sutherland : *Statutory Construction*, Vol. 2, Article 2409, Note 2; *Butterfield* v. *Stranahan*, 192 US 70; *Gopala Krishnayya* v. *State of Andhra Pradesh*, AIR 1959 Andh Pra 292, 299; *Express Newspapers Ltd.* v. *Union of India*, 1959 SCR 12 : AIR 1958 SC 578, 623; *Jalan Trading Co. (Private), Ltd.* v. *Mill Mazdoor Sabha*, AIR 1967 SC 691 : (1967)1 SCJ 189; *Lucknow Officials' Co-operative Housing Societies* v. *Registrar of Co-operative Societies*, AIR 1967 All 305; See *Behampur Tapti Mills, Ltd.* v. *State of M.P.*, AIR 1962 Madh Pra 225 : 1961 LJ 1011; *see* also *Waverly Jute Mills Co., Ltd.* v. *Raymond & Co. India (Private), Ltd.*, AIR 1963 SC 90, where it was held that the observations of the Supreme Court in AIR 1954 SC 728 could not be read as negativing the presumption as to the constitutionality of a statute; *Haji Islam Qureshi* v. *Director of Education, U.P.*, 1978 ALR 70; *Habibullah* v. *Ghulam Ahmad*, 1979 Ker LJ 310; *Ram Krishna Dalmia* v. *S.R. Tendolkar*, AIR 1958 SC 538.

2. *Gopal Narain* v. *State of M.P.*, 1979 Jab LJ 682.

3. Vide *Mehsana Municipality* v. *State of Gujarat*, (1995)1 GLH 487 (Guj).

4. *Charanjit Lal* v. *Union of India*, AIR 1951 SC 41; *Mohd. Hanif Qureshi* v. *State of Bihar*, AIR 1958 SC 731 : 1959 SCR 629; *Abdul Karim Thakur* v. *State*, 1983 Kash LJ 296 (DB); *Udayan Narayanan Namboodri* v. *State of Kerala*, (1988)2 KLT 928.

5. *Thangia* v. *Hanuman Bank, Ltd.*, AIR 1958 Mad 403, 408 (Ramaswami, J.); *Gopala Krishnayya* v. *State of Andhra Pradesh*, AIR 1959 Andh Pra 292, 299 (Chandra Reddy, officiating, C.J.); *State of Madhya Pradesh* v. *Dadabhoy, etc, Colliery Co., Ltd.*, (1971)1 SCC 298, 307 (Shelat, J.) : Literal meaning would invalidate the notification; *Tata Engineering and Locomotive Company Ltd.* v. *State of Bihar*, (1979)27 BLJR 502 : 1979 Pat LJR 398.

6. 246 U.S. 152, 157.

7. 158 U.S. 609, 621.

8. *Mohd. Hanif Qureshi* v. *State of Bihar*, AIR 1958 SC 731 : 1959 SCR 629; *In re* Kerala Education Bill, AIR 1958 SC 956, 972; *Express Newspapers, Ltd.* v. *Union of India*, 1959 SCR 12 : AIR 1958 SC 578, 623; *Gopala Krishnayya* v. *State of Andhra Pradesh*, AIR 1959 Andh Pra 292, 299; *Moti Das* v. *Sahi*, AIR 1959 SC 942, 947; *Ramkrishna Dalmia* v. *Tendolkar*, 1959 SCR 274, 297; *Sukhdev Singh* v. *Union Territory, Chandigarh*, AIR 1987 P & H 5 : (1986)90 Bom LR 109 : ILR (1986)2 P & H 231 : (1986)2 Chand LR (Cri) 348 : (1986)2 Rec Cri R 261 : (1986)13 Cri LT 43 : (1986)2 Cur LJ (Civ & Cri) 497 (FB).

depends on the legislative competency irrespective of the intention which leads to its enactments.[1] Hence that construction has to be preferred which would make the provisions in an Act *intra vires* the Legislature which passed it.[2] Judicial salvage of a statutory provision by limiting the semantic sweep of the expressions used and tailoring it to the constitutional requirements, if that is possible without a re-writing of the provisions, is a sound practice honoured and adopted by eminent Judges. It is well accepted that the mode of construction of an Act which used wide words as will bring it within constitutional limits should be preferred.[3] It is a sound principle of construction that Acts of a sovereign Legislature, and indeed of subordinate Legislatures, such as a municipal authority, should, it possibly receive such an interpretation as will make them operative and not inoperative.[4]

The presumption of constitutionality recognised by courts arises only when it is otherwise not possible to come to a satisfactory conclusion as to the constitutionality of a statute. If we consider that presumption as a 'China Wall', then the sanctity of the constitutional provisions would vanish. Such a view is bound to incite the Centre and the States to trespass on each other's fields. Presumption are relevant only when more than one reasonable conclusion is possible.[5]

If the language of an enactment is *ambiguous* and on one construction it would be within the powers of the Legislature, the Courts will construe ambiguous expression in such a manner as to maintain the validity of the statute if the language will reasonably bear such interpretation.[6]

It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.[7]

The Act should be so read as to prevent it from being exposed to the vice of unconstitutionality.[8]

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1. *Gourishankar* v. *Sales Tax Officer, Secunderabed*, AIR 1959 SC 883, 885.
2. *Madan Gopal* v. *Lachmidas*, AIR 1948 Cal 322, 324; *Golam Bari* v. *State of West Bengal*, AIR 1954 Cal 248; *State* v. *Ratanlal*, AIR 1956 Ajmer 52; *Nusserwanji* v. *State of Bombay*, AIR 1951 Bom 210, 217, *per* Chagla, C.J. "However repugnant any legislation may be to the conception which the court has, of what is right or wrong and however drastic provisions of such legislation may, be, if it does not, in fact, contravene any of the articles of the Constitution which lay down fundamental rights, then it would be the duty of the court to uphold such legislation"; *Tata Engineering and Locomotive Co. Ltd.* v. *State of Bihar*, (1979)27 BLJR 502 (DB) : 1979 Pat LJR 398; *Navinchandra A. Shah* v. *Modasa Nagar Panchayat*, (1977)18 Guj LR 762 (DB).
3. *Makku Rowther's Children* v. *Manahapara*, AIR 1972 Ker 27, 33 (V.K. Krishna Iyer, J.); *see* also *New York* v. *O' Neill*, 3 L Ed 2d 585, 589 : US 1 (Frankfurter, J.); *Navinchandra A. Shah* v. *Modasa Nagar Panchayat*, (1977)18 Guj LR 762 (DB).
4. *D'Emden* v. *Pedder*, 1 CLR 91, 119; *Federated Engine Driver's and Firemen's Association of Australasia* v. *Adelaide Chemical and Fertilizer Co. Ltd.*, 28 CLR 1, 14; *Navinchandra A. Shah* v. *Modasa Nagar Panchayat*, (1977)18 Guj LR 762 (DB).
5. *Nazareth* v. *Gift Tax Officer*, AIR 1962 Mys, 269, 274 (Hedge, J.).
6. *Durga Parshad* v. *Custodian, Evacuee Property*, AIR 1960 Punj 341, 344 (FB). There is a rule of presumption against absurdity which must be applied in the construction of statues; *Brahmananda Reddy* v. *Members, Election Tribunal, Hyderabad*, (1963)2 Andh LT 138 : (1963)2 Andh WR 257.
7. *Kedar Nath* v. *State of Bihar*, AIR 1962 SC 955, 969; *Ram Krit Singh* v. *State of Bihar*, (1979)27 BLJR 384 (SB); *Rayala Corporation (P) Ltd.* v. *Director of Enforcement*, AIR 1970 SC 494; *State of Rajasthan* v. *Mewar Sugar Mills Ltd.*, AIR 1969 SC 880; *Management of Advance Insurance Co. Ltd.* v. *Gurudasmal*, AIR 1970 SC 1126; *Takhtray Shivdatrai* v. *State of Gujarat*, AIR 1970 SC 143; *Krishna Coconut Co.* v. *East Godavari Coconut*, AIR 1967 SC 973; *Ashok Kumar Ghosh* v. *Union of India*, 1989 BLJR 300; *All Saints High School* v. *Govt. of A.P.*, AIR 1980 SC 1042; *Union of India* v. *Tulsiram Patel*, AIR 1985 SC 1416.
8. *Yudhishtir* v. *Ashok Kumar*, (1987)1 SCC 204; (Since a liberal interpretation is likely to expose it to successful challenge on the basis of Article 14, not adopted), *Winifred Ross* v. *Ivy Foneseca*, AIR 1984 SC 458 : (1984)1 SCC 288 : (1984)1 Rent CR 117 : (1984)1 ARC 259 : (1984)86 Bom LR 178 : 1984 Har Rent R 206 : (1984)1 Rent LR 418 : (1984)1 Bom LR 385 : 1984 Mah LJ 411 : 1984 Mah LR 343 : (1984)2 Rent LR 23 : 1984 MPRCJ 107: 1984 UJ (SC) 860.

A statutory rule may be read down in order to uphold its constitutionality.[1]

Any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved.[2]

A contract has to be construed so as to make it valid, the terms of the lease have to be understood in a reasonable manner so as to make the lease arrangement valid.[3]

Courts must find out the literal meaning of the expression in the task of construction. In doing so if the expressions are ambiguous then the construction that fulfils the object of the legislation must provide the key to the meaning.[4] Lacuna argument lost—Too much is being read into too little for no more laudable purpose.[5]

The construction which lead to unconstitutionality[6] or a construction that results in validity rather than invalidity[7] must be avoided. Where two reasonable constructions are possible one which does not infringe fundamental rights,[8] or the one which would make the law *intra vires*[9] or is consistent with constitutionality,[10] or the one which validates the statute and shortens litigation[11] or which sustains the validity of the provision of law[12] should be preferred.

The rule applies to enactments of Colonial and State Legislatures. It would be presumed that the Legislature did not intend to enact anything beyond its competent territorial limits,[13] and to treat the Act as limited to such subjects as would be within the power of the Legislature.[14] A State Act should similarly be so construed as not to make it inconsistent with the Constitution.[15] In determining the constitutional validity of measure or a provision therein, regard must be had to the real effect and impact thereof on the fundamental right.[16] In order to decide whether a statute is beyond the competence of the State Legislature, the rules framed under the Act can well be called in aid for the purpose of understanding the scheme and purpose of legislation.[17]

The rule is equally applicable to by-laws.[18] In *Richards* v. *Attorney General of Jamaica*,[19] the Privy Council, dealing with a statutory rule, said : "These words, no doubt, are very large

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1. *A. K. Patel* v. *Anand Municipality*, 1984(1) Guj LR 645 (Guj); *Sukhdeo Singh* v. *Union Territory*, AIR 1987 PH 5 : 1986 Cr LJ 1957 : (1986)90 Punj LR 109 : ILR (1986)2 P & H 231 : (1986)2 Chand LR (Cri) 348 : (1986)2 Rec Cr R 261 : (1986)13 Cr LT 43 (FB).
2. *Kanhaya Lal Omar* v. *R. K. Trivedi*, AIR 1986 SC 111.
3. *A. K. Thangadurai* v. *D.F.O. Madurai*, AIR 1985 Mad 104.
4. *H. Shiva Rao* v. *Cecilia Pereira*, (1987)1 SCC 258 : AIR 1987 S.C. 248.
5. *M.G. Wagh* v. *Jay Engineering Works Ltd.*, (1987)1 SCC 542.
6. *State of Kerala* v. *M.K. Krishnan Nair*, (1978)1 SCC 552 (571).
7. *Krishna Coconut Co.* v. *East Godavari Coconut*, AIR 1967 SC 973.
8. *Tilkayat Sri Govindlalji* v. *State of Rajasthan*, AIR 1963 SC 1638.
9. *Johri Mall* v. *Director of Consolidation*, AIR 1967 SC 1568.
10. *State of M.P.* v. *Chotabhai Jethabhai*, (1972)1 SCWR 109.
11. *B. Banerjee* v. *Smt. Anita Pan*, (1975)1 SCC 166.
12. *State of M. P.* v. *Dadabhoy's New Chirimiri Ponri Hill Colliery Co. (P.) Ltd.*, (1972)1 SCC 298.
13. *Macleod's* case, 1891 AC 455; *Hewson* v. *Ontario Power Co. of Niagara Falls*, (1905)36 SCR 596; *In re* the Hindu Women's Rights to Property Act (Opinion), 1941 FCR 12, 27; *Deodat Rai* v. *State*, AIR 1951 All 718.
14. *Macleod's* case, 1891 AC 455; *see* also *Juswantsingh* v. *Members of the Tribunals*, AIR 1957 Bom 182, 185.
15. *Davies and Jones* v. *State of Western Australia*, 2 CLR 29, 43.
16. *In re* Kerala Education Bill, AIR 1958 SC 956, 981; *Rashid Ahmad* v. *Municipal Board, Kairana*, 1950 SCR 566, 571; *Mohd, Yasin* v. *Town Area Committee, Jalalabad*, 1952 SCR 572, 577; *State of Bombay* v. *Bombay Education Society*, (1955)1 SCR 568.
17. *Atma Ram Budhia* v. *State of Bihar*, AIR 1952 Pat 359 : ILR 31 Pat 493 (SB).
18. *R.* v. *Saddler's Co.*, 10 HLC 404, 463; *Widgee Shire Council* v. *Bonney*, 4 CLR 977, 983.
19. 6 Moo PC 381, 398; *see* also *McCowley* v. *King*, 26 CLR 9, 67-8.

but as they are made under the power of the Act, and to provide for cases mentioned in the Act, we must look to the Act itself in order to construe them."

As a matter of fact, it is cardinal rule of English law applicable to all documents. The observations of Brougham, L.C., in *Langston* v. *Langston*,[1] deserve particular notice in this context : "There are two modes of reading an instrument where the one destroys and the other preserves, it is the rule of law, and of equity, following the law in this respect (for it is a rule of commonsense.....) that you should rather lean towards that construction which preserves, than towards that which destroys. *Ut res magis valeat quam pereat* is a rule of common law and commonsense; and much the same principle ought surely to be adopted where the question is, not between two rival constructions of the same words appearing in the same instrument, but where the question is on so ready an instrument as that as that you may either take it verbally and literally, as it is, or with a somewhat large and more liberal construction, and by so supplying words as to read it in the way in which you have every reason to believe that the maker of it intended it should stand; and thus again, according to the *rule ut res magis valeat quam pereat*, to supply, if you can safely and easily do it, that which he *per incuriam* omitted, and that which instead of destroying preserves the instrument; which instead of putting an end to the instrument and defeating the intention of the maker of it, tends, rather to keep alive and continue and give effect to that intention." There is a general presumption that a Legislature does not intend to exceed its jurisdiction.[2] Fazl Ali, J., in *Chiranjilal* v. *Union of India*,[3] observed : "It is the accepted doctrine of the American Courts, which I consider to be well founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It is useful to refer to the decision of the Supreme Court in *C.S.T., M.P.* v. *Radhakrishnan*,[4] and it was held :

(i) In considering the validity of a statute, presumption is in favour of its constitutionality and the burden to prove it *ultra vires* is on one who so claims. For sustaining the presumption of validity, the Court may consider matters of common knowledge.

(ii) It must always be presumed that the legislature understands the need, of its own people and that the discrimination, if any, is based on adequate grounds.

The true rule has been stated by Stone, J., in *Hardware, etc.* v. *Glidden & Co.*[5] *A statute dealing with a subject within the scope of the legislative power is presumably constitutional.*[6] It is settled law that if any interpretation is possible which will save an Act from the attack of unconstitutionality, that interpretation should always be accepted in preference to an alternative interpretation that might also be possible, under which the statute would be void. But it is not for the court to put an unnatural and forced meaning on the words that have been used by the Legislature in the search for interpretation to save the statutory provisions, or to

1. (1834)2 Cl & F 194 at p. 243.
2. *Deodat Rai* v. *State*, AIR 1951 718; *In re* the Hindu Women's Rights to Property Act (Opinion), 1941 FCR 12, 27, quoting Maxwell on *Interpretation of Statutes*, (8th Ed. at p. 126) now 11th Ed., p. 138, 143; *Hewson* v. *Ontario Power Co. of Niagara Falls*, (1905)36 SCR 596; *Berhampur Tapti Mills, Ltd.* v. *State of M.P.*, AIR 1962 Madh Pra 225; *State of Bihar* v. *Smt. Charusila Dasi*, AIR 1959 SC 1002.
3. 1950 SCR 869, 879,; *see* also *Sher Singh* v. *State of Rajasthan*, AIR 1954 Raj 65.
4. (1979)2 SCC 249; *see* also *Joshi* v. *Ajit Mills*, AIR 1977 SC 2279; *Ishardas* v. *State*, AIR 1975 Punj 29 and *S. Avtar Singh* v. *State*, AIR 1977 J & K 4.
5. 284 US 151, 158 : 76 L Ed 214, 219.
6. *Munn* v. *People of India*, 24 L Ed 77.

read a policy, which is not there merely because a policy could have been given.[1]

A Court usually starts with the presumption in favour of the constitutionality of a statute, and it is its duty to uphold it, if it be possible, without doing violence to the meaning of the words used in it, to bring it into harmony with any of the provisions of the Constitution.[2] Although the Court will often strain to construe legislation so as to save it from constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute.[3]

A reasonable doubt as to the validity of an Act must be solved in favour of the legislative action and the act sustained. The third amendment of the Hyderabad General Sales Tax Act made in 1952 cannot be held as colourable, as it is covered by item 54 of List II, and was passed earlier than the Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act of 1952 and is not covered by law as used in Article 286.[4]

Where the validity of a statute is impugned on the ground that its provisions contravene fundamental rights guaranteed by the Constitution and two constructions are possible as to the meaning and intention of the Legislature, the Court should adopt that construction which upholds the validity.[5]

The same rule applies to the construction of a section of an enactment. Where two constructions of a section are possible, one of them leaning in favour of its constitutionality and the other against it, the former should be adopted.[6]

Once a citizen shows that the impugned statute invades either his individual fundamental right, or the right of freedom of trade, the presumption has worked itself out and the onus shifts to the State to show that the invasion amounts to a restriction or it is in the interests of the general public.[7]

In the Supreme Court in many cases *affidavits* were allowed to be given to show the reasons for the enactment of a law, the circumstances in which it was concerned and the evils it was to cure.[8]

There is always the presumption against the interference by the Legislature with the liberty of the subject, and if a particular statute is found to be ambiguous and susceptible of two meanings, one leading to the invasion of the liberty of the subject and the other not, the latter has to be preferred.[9] The benefit of doubt must always go to the person on whose liberty an inroad has been made without trial.[10]

It is true that the presumption is in favour of the constitutionality of a legislative enactment and it has to be presumed that a legislature understands and correctly appreciates the needs of its own people. But when on the face of a statute there is no classification at all, and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others, this

1. *Nawab Ariff* v. *Corporation of Calcutta*, AIR 1960 Cal 159, 162 (SB).
2. *Bankey* v. *Jhingan*, 30 Pat 1085 : AIR 1952 Pat 166.
3. *Junius I. Scales* v. *United States*, 367 US 203 : 6 L Ed 782, 791.
4. *Firm Soma Rajaib* v. *S.T. Officer*, AIR 1954 Hyd 50, 52; *see* also *Janki Nath Roy* v. *State of Bihar*, AIR 1953 Pat 105.
5. *Sree Govindalalji Maharaj* v. *State of Rajasthan*, AIR 1963 SC 1638.
6. *Atmaram Budhia* v. *State of Bihar*, AIR 1952 Pat 55 : ILR 31 Pat 439 (FB).
7. *Khyerabari Tea Co.* v. *State of Assam*, (1964)5 SCR 975, 1002 (Gajendragadkar, J.).
8. *Hamdard Dawakhana* v. *Union of India*, (1960)2 SCR 671, 686; *Ramkrishna Dalmia* v. *Tendolker*, 1959 SCR 279; *Kathi Raning* v. *State of Saurashtra*, 1952 SCR 435; *Kochuni* v. *State of Madras*, (1959)2 SCR (Supp) 516.
9. *Kanaiya* v. *State*, ILR 32 Pat 55.
10. *Gulam Nabijan* v. *State*, AIR 1954 J & K 7.

presumption is of little or no assistance to that state.[1]

In *State of Bombay* v. *Heman Santhal*,[2] the Bombay High Court made a distinction between a case where the law contravenes a fundamental right and the case where simply the letter of law is challenged. It was held that the Court must always lean in favour of validity of an Act rather than against it, except where a law is said to contravene a fundamental right, in which case the Court will zealously scrutinize the provisions of the impugned Act and see that no fundamental right is violated. Where the challenge is directed against the letter of the law merely, the law being substantially in the interest of a large body of citizens, the Court will try to uphold the law and not permit the letter of the law to defeat the objects of the Legislature. It may sound technical, but in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points of distinction on the ground that they are technical.[3]

It is, however, a very serious matter to hold that, where the intention of the statute is clear, it shall be reduced to a nullity by the draftman's unskilfulness or ignorance of law. It may be necessary for a Court to come to such a conclusion, but nothing can justify it except necessity, or the absolute intractability of the language used.[4] When an Act is open to two constructions you may always, to use the words of Tindal, C.J., 'call in the ground and cause of making the statute'.[5] If certain provisions of law construed in one way will be consistent with the Constitution and if another interpretation would render them unconstitutional, the court would lean in favour of the former construction,[6] and was construing if necessary to keep it within powers of Legislature, in a more limited sense, the generality of the language of the Act, which, if read literally, will apply to matters beyond relevant legislative powers.[7]

The intention with which a provision of law is made is, however, not relevant of the purpose of deciding if it is void, as infringing any provision in the Constitution. If it does infringe, then whatever the intention may be, it is void.[8]

It may be noted that with the initial presumption in favour of the validity of a statute, investigations of the validity of a given statute or any part thereof should be limited to the extent absolutely necessary for the disposal of the issue before the Court.[9]

It is a well-settled principle of interpretation that as long as an authority has power to do a thing, it does not matter if it purports to do it by reference to a wrong provision of law.[10] The power to make law includes the incidental power to prevent its evasion.[11] *Good faith* of a legislation must also be presumed.[12]

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1. *Ram Prasad Narayan Sahai* v. *State of Bihar*, AIR 1953 SC 215 at p. 220.
2. AIR 1952 Bom 16 : 52 Bom LR 837.
3. *Ram Padarath Mahto* v. *Mishri Singh*, (1961)2 SCR 470, 477 (Gajendragadkar, J.).
4. *Sussex Peerage* case, 11 Cl & F 85; *Central Distillery & Chemical Works* v. *State of U.P.*, AIR 1964 All 156.
5. *Miller* v. *The Commonwealth*, 1 CLR 1668, 1674, (*per* Griffith, C.J.).
6. *R. L. Arora* v. *State of Uttar Pradesh*, (1964)6 SCR 784, 797 (Wanchoo, J.); *see* also *Kedar Nath Singh* v. *State of Bihar*, (1962) (Supp) 2 SCR 769.
7. *All Saints High School* v. *Govt. of A.P.*, AIR 1980 SC 1042; (1980)1 Serv LR 716 : (1980)2 SCC 478 : (1980)2 SCJ 273. *R.C. Pandey* v. *State of Madhya Pradesh*, AIR 1988 MP 60 : 1987 Jab LJ 442 : (1987)13 Reports 448 : 1987 MPLJ 486 (DB).
8. *(Mrs.) A Crockneil* v. *State of U.P.*, AIR 1952 All 746 : 1952 ALJ 293 : 1952 AWR (HC) 284.
9. *In re* Govind Menon, AIR 1953 Mad 729.
10. *Devi Prasad Khandelwal & Sons Ltd.* v. *Union of India*, AIR 1969 Bom 163, 173 (Nain, J.).
11. *Chhotabhai Jethabhai Patel* v. *State of Madhya Pradesh*, 1972 MPLJ 619, 622 (Shiv Dayal, J.).
12. *Rateal and Co.* v. *Ramachandran*, AIR 1967 Mad 57, 69 (FB) (Anantanarayanan, Offg C.J.).

(i) Executive action.—If any statutory provision or executive action does not contravene any specific Article of the Constitution, Court should be reluctant to hold any such thing as unconstitutional merely on the ground that it is violative of something so undefinable as the spirit, especially in the light of the well-recognised principle that the person who assails the constitutionality of any particular Act or order must carry the burden of showing how it is vulnerable to attack, there being a presumption in favour of its constitutionality.[1]

(ii) Severability.—A statute may be found invalid in some of its parts but valid in others; it may be valid at one time and not another; it may be valid under one state of facts but not another; it may be valid as to one class of persons and invalid as to others.[2] Sutherland in the Statutory Construction,[3] furnishes the following useful opinion in the presumptions as to severability or inseverability of parts of a statute :

> "In commenting upon the independence of the parts of a statute, or upon the inducement for the passage of an Act, it may be said that a presumption in favour of severability or inseverability is justified. The most usable rule of presumption is that adopted by the United States Supreme Court and followed in many States. As stated in *Williams* v. *Standard Oil Co. of Lousiana*[4] the effect of separability clause in an enactment is to replace a presumption that the statute was meant to be indivisible by a presumption in favour of separability. This latter presumption must be overcome by proof of considerations making evident the inseparability of the statute."

Crawford in his learned treatise on the *Construction of Statutes*[5] has summed up the law in the following words :

> "Simply because a statute happens to be unconstitutional or invalid in part, does not necessarily mean that the part which is not invalid must also fail, not even though the statute be penal. It is only where the valid parts are so clearly dependent upon and inseparably connected with the invalid parts that they cannot be separated without defeating the object of the statute, that they too must fall with those parts which are invalid. It is also well to remember that separability is not dependent upon whether the various provisions are contained in the same section for the division of a statute into sections is purely artificial. In determining separability the test is whether the Legislature had manifested an intention to deal with a part of the subject-matter covered, irrespective of the rest of the subject-matter; if such an intention is manifest, the subject-matter is separable. If the valid parts are complete in themselves and independent of the invalid parts and capable of being executed according to the intention of the Legislature, they must be sustained by the Court, notwithstanding partial invalidity. The invalid parts, however, may be dropped only where the part which is retained is fully operative as a law. And where the invalid and valid parts are inter-independent and essentially and inseparably connected in substance, there is a strong presumption that the Legislature

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1. *Surya Rao* v. *Government of Andhra Pradesh*, ILR 1956 Andh Pra 448.
2. 2 L Ed 2d 302, 316.
3. (3rd Ed.) Art C 409.
4. 278 US 235 : 73 L Ed 287.
5. 1946 Ed. p. 216; quoted with approval in *State* v. *Philipose Philip*, AIR 1954 TC 257 (Section 3 of the Public Safety Measures Act, 1950, declared void as a whole). But *see* also *Sivarama Choudhuri* v. *Guntur D. V. Co-operative Central Bank*, (1966)2 Andh LT 65 : (1966)2 Andh WR 382, a case under Co-operative Societies Act where the invalid portion alone was struck down.

would not have enacted one part without the other, and the entire statute will fall. A similar result would occur where all the provisions of the Act are connected as parts of a single scheme. In such a case if the main object and purpose is invalid, those provisions which are incidental will also fall. But in any instance, there is a presumption that the legislature intended for the statute or Act to be effective in its entirety, unless something in the Act indicates to the contrary.

"In order to ascertain the intention of the Legislature the Court may examine the entire statute, including the invalid as well as the valid portions and resort to the usual principles of statutory construction. But where it is impossible to determine what part of a statute was intended by the Legislature to be operative when certain of its provisions have been held invalid, the whole statute will fall."

It may be noted that the question of severability is material only if the enactment is in some measure held to be *ultra vires* the Legislature. Where the problem can only be one of conflict between the provisions of the local law and the provisions of a Central enactment, each being *intra vires* the particular Legislature, it is unnecessary to invoke the rule of severability to uphold the validity of the impugned Act.[1]

Mr. Robert L. Stern has also contributed a very instructive Article[2] : "Severability and Separability Clauses in the Supreme Court (U.S.A.)" in 1937. Some extracts therefrom may be found useful in this behalf :

"The problem of determining which portions of a partly invalid law may stand alone is one of more than usual significance at the present time, when many laws are being challenged on constitutional grounds. Only if legislators are able to guess how the Courts will act in exercising invalid parts of a statute can they proceed intelligently to enact laws with any assurance that their work will not be completely nullified because of judicial disapproval of any part of the statutory scheme. The attitude of the Supreme Court, the final arbiter of the constitutionality of State and Federal legislation, is, of course, of prime importance. The inquisitive legislator seeking light on this problem will find that the Supreme Court, the State Courts, and secondary authorities will appear to agree that invalidity of part of a law or of some of its applications will not affect the remainder (1) if the valid portions or applications are capable of being given legal effect standing alone, and (2) if the Legislature would have intended them to stand with the invalid provisions stricken out.

"This rule seems fair enough, but ill-will fare the legislator who relies on its exclusive simplicity. For it has been embroidered by the Supreme Court with negative and positive presumptions, and with conflicting rules, some of which are applied in some cases and some in others—usually without any explicit recognition that they conflict. Even when the intention of the legislative body is set forth in a separability clause, there is no assurance that the express will of the Legislature will be respected ....."

(iii) Formulation of the doctrine.—"....The first decision that the invalid parts of a law might nullify the remainder was handed down in 1954 by the Supreme Judicial Court of Massachusetts in *Warren* v. *Mayor of Charlestown*.[3] In his opinion in that case Chief Justice Shaw declared that if constitutional and unconstitutional portions of a statute were so mutually

1. *Bank of Commerce Ltd.* v. *Amulya Krishna Basu*, 1943 FCR 126, 141.
2. 51 *Harvard Law Review*, at pages 76, 128.
3. 2 Gray 84, 99 (Mass 1954).

connected with and dependent on each other.....as to warrant a belief that the Legislature intended them as a whole, and that, if all could not be carried into effect, the Legislature would not pass the residue independently the entire statute must fall. This doctrine, reiterated and expanded in subsequent Massachusetts cases, soon came to be accepted by other Courts as a correct and reasonable statement of the tests by which the severability of the provisions of a statute was to be determined.....

".....The Supreme Court, speaking through Mr. Justice Brandeis, in 1924,.....said in *Dorchy* v. *Kansas*,[1] a statute bad in part is not necessarily void in its entirety. Provisions within the legislative power may stand if separable from the bad.[2] But a provision inherently unobjectionable, cannot be deemed separable unless it appears both that standing alone, legal effect can be given to it and that the Legislature intended the provision to stand, in case others included in the Act and held bad should fall.

"During this early period, the Courts were very reluctant to invalidate an entire law on grounds of inseparability. Doubts were resolved in favour of the severance of legislation; indeed, in a number of cases, in both State and Federal Courts, it was apparently assumed that laws were intended to be sustained to the extent that they could possibly be held valid. Although the language of presumption was not employed, it is clear that the Courts at that time presumed that laws were intended to be severable, rather than the contrary....."

".....In the first edition of Judge Cooley's famous treatise on Constitutional Limitations, published in 1868, the author stated : 'A Legislative Act may be entirely valid as to some classes of cases, and clearly void as to others.....in any such case, the unconstitutional law must operate as far as it can, and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the Constitution forbids. If there are any exceptions to this rule, they must be of cases only where it is evident, from a contemplation of the statute and of the purpose to be accomplished by it, that it would not have been passed at all, except as an entirety, and that the general purpose of the Legislature will be defeated if it shall be held valid, as to some cases and void as to others."

"In 1875 in *United States* v. *Reese*,[3] the Supreme Court first refused to apply these principles to a statute containing language capable of both valid and invalid applications on the ground that the Court lacked power to read words of limitation into a law in order to sustain its valid applications. The decision has been followed in a number of cases, but either disregarded or distinguished in many more in which the Court has continued to adhere to the principles approved by Judge Cooley. The conflict between these principles and what may, for convenience, be described as the rule of the *Reese* case gives rise to the problem of separable application."

(iv) The problem of separable application.—"The problem of separable applications may be treated either as a problem of separability or as one of statutory construction. When a Court is confronted with statutory language applying to situations both within and without legislative power, the question of whether to sustain the valid applications of the law is very similar to that of whether to sustain the constitutional provisions of a statute containing invalid language. But the judicial technique to be applied is somewhat different. When

1. (1924)264 US 286, 289-90 : 68 L Ed 686, 689.
2. *Berea College* v. *Kentucky*, 211 US 45, 54-56; *Carey* v. *South Dakota*, 250 US 118, 121.
3. 92 US 214.

particular words of section of a statute are unconstitutional, a Court may exercise them from the law in order to save the remainder. When statutory language is too broad, however, there is nothing to be severed. The question before the Court in such a case is whether it should construe the language employed as limited to its constitutional applications, in accordance with the maxim that a statute should not be given an unconstitutional construction. But in dealing with both situations the only standard for a court to follow in its judgment as to whether the legislative body would intend the law to be given effect to whatever extent was constitutionally possible.....

> ".....The elementary rule of construction that where two interpretations of a statute are in reason admissible, one of which creates a repugnancy, to the Constitution and the other avoids such repugnancy, the one which makes the statute harmonize with the Constitution must be adopted....."[1]

(v) Difference between civil and criminal statutes.—"In several cases the court had intimated that the true distinction may be between those statutes having penal consequences and those having purely civil effects— that words of limitation cannot be read into the former, since such statutes must be strictly construed. But the decisions do not square with the suggested distinction. Both State and Federal criminal laws have had exceptions read into them in order to save them in so far as they be constitutionally applied. And the converse rule that limiting words may not be read into a law so as to save its constitutionality has been given effect in dealing with civil as well as with criminal statutes. The criminal nature of the statute, however, may not be dismissed without significance.....The penal nature of the law accordingly cannot explain all the decisions but it does help to explain the Court's attitude in many of them. Examination of the opinions indicates that the Court may not have been as much concerned with the problem of separability as with the inability of citizens to tell what acts were prohibited, if the law were interpreted to have any other meaning than that of the words used. The Court's aversion to indefinite penal statutes affords a more satisfactory basis for these decisions than its invocation of peculiar principles of statutory construction or separability not otherwise applied.

(vi) Difference between State and Federal statutes.—"The cases cannot be reconciled on the ground that the Court applies one rule when dealing with Federal statutes and another when determining the validity of State laws.....In *Hatch* v. *Reardom*,[2] Mr. Justice Holmes, recognizing the logical difficulty in reconciling the authorities, pointed out that the reasoning of *Reese* case and similar decisions had not been extended to State tax cases. "Whatever the reason, the decisions are clear, he stated, that the Court will not nullify a State tax statute because of the invalidity of possible applications of the law not before the Court, 'notwithstanding the seeming logic of the position that it must do so, because if for any reason, or against any class embraced, the law is unconstitutional, it is void as to all'. Mr. Justice Holmes' statement would seem to apply as well to State regulatory laws as to State taxing statutes, for despite the dicta already referred to, no case has been discovered in which the Court has held a State law of any kind entirely invalid, because of the unconstitutionality of some of its possible applications.

> "A reason for this method of treatment of State statutes is not hard to find. Whether or not a State law should be interpreted so as to exclude unconstitutional applications is a matter of statutory construction, and the duty of construing State statutes rests upon the

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1. See *Brahmananda Reddy* v. *Member, Election Tribunal*, (1962)2 Andh LT 138.
2. (1907)204 US 152.

State Court and not Federal.[1] If a State law has been construed by the State Supreme Court, the Federal Courts accept the State ruling. If the State Courts have not acted, the Federal Courts may, when necessary to a decision, interpret the State law in the manner they deem proper; but even the holding of the Supreme Court would not be binding on the State Courts in subsequent cases, and accordingly the Court in some cases has preferred to await the judgment of the State Supreme Court to construing the State law itself.[2].....In recent cases appealed from the State Courts, the Supreme Court has adopted the technique of remanding the case to the State Court for determination of the issue of separability.....

"The broad basis of such decisions as the *Reese* case, the *Trade Mark* cases[3] and the *Employer's Liability* case,[4] is the supposed inability of the Court to read word into a statute in order to save it when the meaning of the language employed by the Legislature is clear, regardless of actual legislative intention on the question of separability. Although in some of these there are references to the penal nature of the statute and in others to the intention of Congress, these factors cannot explain the entire line of decisions. In two relatively recent opinions[5] there seems to have been assumption that there was a rule of automatic application which made it incapable of writing saving language into a Federal law, and the line of authorities, looked at as a whole, seems to justify the conclusion that this is true *ratio decidendi*. The 'writing in' of language, referred to in these opinions as beyond the capacity of the Court, is of course, only a *figurative* means of describing the result of a restrictive interpretation of language already there. Whenever a Court construes a law in a manner not clearly demanded by the words used, the result can be described as amending the law or inserting new language in it. The Court apparently only refers to the process of interpretation in this manner when it is not willing to depart from the literal meaning of the statute, when it is willing, its action is described as giving effect to the intention of the Legislature. The rule that the Court is unable to save statute by construction in such cases would seem to have nothing whatever to do with whether or not a law is passed by Congress or by a State Legislature, if it is reasonable, it should apply to State laws as well as to Federal.....

(vii) The importance and meaning of legislative intention.—"Although the impression left by the entire series of case; beginning with the *Reese* case is that intention of the Legislature was not the true *ratio decidendi* and that the Court has—in those cases—established a positive rule of law, irrespective of Legislative intent, this analysis is subject to the hazards

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1. *Tullis* v. *Lake Erie Y.W.*, RR 175 US 348 (1899); *Sincley* v. *Kansas*, (1905)196 US 447; *Gatewood* v. *North Carolina*, (1906)203 US 531; *Schneider Granite Co.* v. *Gart Reality and Investment Co.*, (1917)245 US 288; *Drochy* v. *Kansas*, (1924) US 286; *Morehead* v. *Tipaldo*, (1836)298 US 587.
2. *St. Louis, S. W. Ry.* v. *Arkansas*, (1914)235 US 350; *Plymouth Coal Co.* v. *Pennsylvania*, (1914)232 US 536; *Utah Power and Light Co.* v. *Pfost*, (1932)286 US 165.
3. 100 US 82, 98.
4. (1908)207 US 463 : White, J., said in this case at p. 501 : "Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an Act is unambiguous, that it may be re-written to accomplish that purpose. Equally clear is it, generally speaking, that where a staute contains provisions which are constitutional and others which are not, effect may be given to legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable. and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save the rule, applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated."
5. *Yu Cong Eng* v. *Trinidad*, (1926)271 US 500; *Crowell* v. *Benson*, (1932)285 US 22, 76.

which necessarily accompany any attempt to read the Court's collective mind in a field of conflicting decisions where the opinions are not clear. In a number of cases in which the Court has refused to limit a Federal law to its constitutional applications, the Court has reinforced its reasoning by reference to the Legislative intention. Some of the cases invalidating Federal laws might well have been decided on the ground that the Legislature would not have intended the law to stand with its invalid application severed. Thus, Congress might not have enacted a law forbidding racial discrimination in the granting of accommodations in inns, conveyances, or theatres, for all persons within the jurisdiction of the United States if it had known that such a law would be invalid in all the States and effective only in territories, the district of Columbia and on the High Seas. The Court was not unreasonable in *Trade Mark* cases in assuming that Congress might not have enacted an incomplete system of trade-mark regulation, restricted to inter-State commerce, when it appeared that the Trade mark statute had been originally enacted as an amendment to the laws regulating patents and copyrights. which are, of course, completely national in scope and not limited by the commerce clause. In that case the application of the general principles for determining separability might have achieved the same result without the benefit of the automatic rule of the *Reese* case.

"But the discussion of legislative intention in this line of authorities does not satisfactorily explain the decisions reached, for it glosses over the difference between what the Legislature intended when the law was passed and what it would have intended if it had known that certain applications of the statute were invalid. In the *Reese* case, as well as in several of the others, the Court indicated that it could not construe the statute as limited to its constitutional applications because it was not the intention of Congress thus to limit the operations of the Act. The same thing could be said of most cases of separability; if the fact that the Legislature originally intended both valid and invalid portions or applications of statutes to be effective prevented severance, most laws invalid in part would be totally void. The test for severability clearly must be whether the Legislature would have intended the valid parts or applications of a statute to stand if it had known when the law was enacted of the invalidity of the remainder; or more accurately since presumably the legislative body would not have enacted the statute in a form known to be invalid, would it have passed the law at all with the constitutional defects removed. The test would seem to have been properly described in the *Employer's Liability* cases, and to have been properly applied in the recent case of *Lynch* v. *United States*.[1]

> "Difficult problems of statutory construction generally arise because the Legislature has not thought of the particular situation which has come before the Court, and accordingly had no real intention as to how the law should be construed with respect to it. Under such circumstances, when the Legislature was not aware of the particular problem, Judges searching for legislative intention must try to discover what the Legislature would have intended if the particular situation had been brought to its attention. Where the disturbing situation is the partial invalidity of certain applications of the law, the same standards should be accepted. Where the Legislature has definitely stated its intention as to how the Act should be construed under such circumstances, as in a separability clause, this express intention should control. Where the legislative intention is not known, the Court must conjecture as to what the Legislature would have done if it had known of the partial invalidity not as to what its intention was with respect to a problem it knew nothing about.....

1. (1934)202 US 571, 586; Cf. *Carter* v. *Carter Coal Co.*, (1936)298 US 238, 313.

"In *Robert Dollar Co.* v. *Canadian Car and Foundry Co.*[1] the Court accepting the rule from Judge Cooley on pages 81-82, *supra*, stated : 'We think that the same rule (the rule governing the separability of two sections of a statute) in principle is applicable where a single section of a statute attempts or purports to cover two entirely distinct and separable classes of cases, one properly and the other improperly, and that it may be upheld as to the class which constitutionally may be thus covered, even though condemned as to the other'. The use of the ordinary principles of separability in dealing with statutes of partially invalid application is therefore entirely feasible. The Courts should determine whether valid applications of a law can be given legal effect by themselves, and if so, whether the Legislature would have intended them to survive if it had known of the invalidity of the remainder. A statutory declaration of legislative intention in a separability clause should be deemed controlling. When neither the statute itself nor its legislative history afford any clue to the intention of the legislative body, the Court should look to the policy sought to be effectuated by the statute and decide whether that policy will be more nearly attained by partial application or complete nullification of the law. The same test should be employed in dealing with all statutes; the Court should not segregate an undefined class of Federal laws and apply more stringent rules of them. The separability of the various applications of State laws should be left for the State Courts to decide, but the policy which the Court seems to follow in dealing with such statutes should be made explicit, such a judicial approach would be clearly preferable to the one presently prevailing, which enables the Court to select arbitrarily and without satisfactory explanation from conveniently conflicting formulae the one which it wishes to use in particular case.....

(viii) The trend of recent decisions and the separability clause.—"The trend of recent decisions indicates that the Supreme Court no longer looks with favour upon the rule of the *Reese* and *Employers' Liability* cases....[2] 'Although the *Employers' Liability* cases, cannot as yet be treated as overruled, even *sub-silentio*, it is reasonably clear that the Court in Virginian case,[3] did not regard the views of the majority in those cases with approval.....But the recent decisions do justify some hope that the use of the automatically destructive principles of the *Reese* case will decline and disappear. The separability clause permits this result to be achieved without overruling the earlier authorities. None of the statutes held totally void because of the invalidity of some of their possible applications contained a separability clause. All the statutes containing separability clauses with respect to which the question has been raised have been held valid in so far as constitutionality applied. The Court might well follow the precedent, established in *Cromwell* v. *Benson*,[4] where a separability clause was

1 220 NY at 278, 115 NE at 713 (1917).

2. *See* in this behalf *Associated Press* v. *National Labour Relations Board*, (1937)301 US 103; *National Labour Relations Board* v. *Jones and Laughin Steel Corporation*, (1937)301 US 103 : "But we are not at liberty to deny effect to the specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. The cardinal principle of statutory construction is to save and not destroy. We have repeatedly held that as between two possible interpretations of a statute by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act. Even to avoid a serious doubt the rule is the same. *Federal Trade Commissioner* v. *American Tobacco Co.*, 264 US 298, 307; *Panama R. Co.* v. *Johnson*, 264 US 375, 390; *Missoari Pacific R. Co.* v. *Boone*, 270 US 466, 472; *Bledgets* v. *Holden*, 275 US 148, 149; *Richmond Screw Anchor Co.* v. *United States*, 275 US 331, 346.

3. 300 US 515.

4. (1932)285 US 22, 76.

considered, and hold that an express statutory provision that the valid applications of the law be given effect is conclusive evidence of the intention of Congress and binding upon the Court....."

(ix) The separability clause.—"That the philosophies of the individual judges affect decisions on separability should not occasion surprise in view of the fact that such questions invariably arise in connection with problems of substantive constitutionality. The vital difference between the two kinds of problems, however, would seem to warrant an entirely different legislative attitude towards judicial freedom from restraint in deciding them. The legislative body cannot, in advance of judicial action, remedy substantive constitutional defects in statutes. Only after an unfavourable decision can it be determined whether and how a law should be modified to meet constitutional objections, whether it must be abandoned because of the basic lack of legislative power over the subject-matter, or whether other action should be taken. But separability, as the Courts have frequently reiterated, depends ultimately upon legislative intention. The Legislature always has the constitutional power to re-enact the valid provisions of law which was nullified on grounds of inseparability."

"The decisions make it plain that whether or not a particular statute may be severed is a question of statutory construction. In determining such matters, the Courts search for the intention of the Legislature. If this intention is clearly expressed in the law, the judicial determination must be controlled by it. The basic power of legislative bodies to make the law necessarily carries with it the power to decide, on the first instance, what the law means. Only when there is doubt are the Courts called upon to intervene. These principles would seem applicable to questions of separability as much as to other questions of statutory construction. The idea of legislative control of judicial decisions on separability is, of course, not a new one. The device of the separability clause is now familiar. Such clauses first began to come before the Courts about 1910.....The standard separability clause at the present time generally reads as follows : 'If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby'.....In the Supreme Court, the separability clause was given effect in the *Ohio tax* cases,[1] the first case in which such a clause appears to have come before the Court, but the same result undoubtedly would have been reached without it..... Such a provision was said to 'provide a rule of construction which may sometimes aid in determining that (legislative) intent. But it is an aid merely; not an inexorable command.'.....

(x) The presumptions of divisibility and indivisibility.—Subsequently in *Willians* v. *Standard Oil Co.*[2] Mr. Justice Sutherland sought to formulate a more definite principle out of the general language of the *Dorchy* case, to establish a rule which would decide for the future how much—or how little—of an aid the separability clause would be permitted to be. Citing a direct authority only a *New Jersey* case[3] be stated : 'In the absence of such a legislative declaration, the presumption is that the Legislature intends an Act to be effective as an entirety.....The effect of the statutory declaration is to create in the place of the presumption just stated the opposite one of separability. That is to say, we begin, in the light of the declaration, with the presumption that the Legislature intended the Act to be divisible; and the presumption must be overcome by considerations which make evident the inseparability of its provisions or the clear probability that the invalid part being eliminated the Legislature

1. (1914)232 US 576.
2. (1929)278 US 235.
3. (1929)278 US at 241-42.

would not have been satisfied with what remains'. These presumptions of divisibility or indivisibility, at first referred to only in Mr. Justice Sutherland's opinions have come to be accepted by the entire Court[1] .....It is significant, however, that these presumptions have only been availed of by the Court in construing statutes containing a separability clause. Thus the Court has only been called upon to apply the presumption of divisibility...only after the separability clause had become a customary legislative device were the presumptions first discovered and applied...One consequence the presumption invoked in *Williams* v. *Standard Oil Co.*,[2] has been that the Court now applies the same rule to a statute with a separability clause that it had originally used in determining the separability of statutes lacking such provisions. Where formerly there had been a presumption of separability without any specific statement by the Legislature, now a clause is necessary; and conversely a statute with a separability clause now is no better off than statutes formerly were without one. The second consequence of the Court's new rule may in time become more important. If the Court strictly applies the presumption of indivisibility to statutes not containing separability clauses the mortality of such statutes will be greatly increased; the test applied to them will be much stringent than that in effect before 1929 and the chance of survival for the valid parts of such laws will be correspondingly less. This result logically must follow from the recently repeated Supreme Court pronouncements that there is a presumption of indivisibility....."

(xi) Tests of severability.—In determining whether the valid parts of a statute are separable from the invalid parts, it is the intention of the Legislature that is the determining factor. One test is whether the Legislature would have enacted the valid part if it had known that the rest of statute was invalid. The second test is that if the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the Legislature, then also it will be rejected in its entirety.[3]

Rules of construction laid down by American courts were summarised by Vekatarama Aiyar, J. in *R. M. D. Chamarbaugwala* v. *Union of India*[4] as under :

1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the Legislature that is the determining factor. The test to be applied is whether the Legislature would have enacted the valid part if it had known that the rest of the statute was invalid.
2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable.
3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be

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1. *Utah Power and Light Co.* v. *Pfost*, (1932)286 US 165; *Carter* v. *Carter Coal Co.*, (1936)278 US 238.
2. (1929)278 US 235.
3. *Bullion & Grain Exchange, Ltd.* v. *State of Punjab*, AIR 1961 SC 268, 271-2; *see* also *State of Bombay* v. *R. M.P. Chamarbaugwala*, 1957 SCR 930.
4. 1957 SCR 930, 930-2; *see* also *K. S. Iyer* v. *Bar Council*, AIR 1964 Mad 390, 394 (Ramchandra Iyer, C. J.); First two principles applied. *Harakchand R. Banthia* v. *Union of India*, (1970)1 SCR 479, 505 (Ramaswami, J.). Cf. *Vacuum Oil Co. Pvt. Ltd.* v. *Queensland*, 51 CLR 677, 691-2 (Dixon, J.).

operative as a whole, then also the invalidity of a part will result in the failure of the whole.

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the Legislature, then also it will be rejected in its entirety.
5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.
6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation.
7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the preamble to it.

(xii) Failure to properly express subject-matter in title.—In America the question of partial invalidity of a statute for failure to properly express the subject-matter in the title has also been raised in some cases. The general rule is stated in Colley's *Constitutional Limitation* as under:

> "But if the title to the Act actually indicates, and the Act itself actually embraces two distinct objects, when the Constitution says it shall embrace, but one, the whole Act must be treated as void, from the manifest impossibility in the Court choosing between the two, and holding the Act valid as to the one and void as to the other."[1]

It may be noted that the same general principles are applicable here as in those situations where the partial invalidity results from other defects. If all the provisions contained in the statute are so related and inseparably connected that the rejection of the invalid portion leaves the law incomplete, unintelligible or incapable of being executed, the entire enactment will be invalid. Conversely, if the valid provisions are idependent and complete in themselves, sensible and capable of being executed, they will be effective.

(xiii) Astralian view.—The view in Australia is now stated. In *King* v. *Barger*, [2] it was found that three of the four conditions of exemption from the tax were bad as discriminating between States or parts of States. Chief Justice Griffith, delivering the opinion of himself, Mr. Justice Barton and Mr. Justice O'Connor said : "It was suggested that any condition which is obnoxious to the prohibition against discrimination may be rejected and the others enforced. But this would be to make the incidence of the tax depend upon conditions different from those prescribed by Parliament 'to make a new law, not to enforce the old one". Mr. Justice Higgins observed in *Jumbunna Coal Mine* v. *Victorian Coal Mines' Association*[3] : "It is urged that where we find an enactment in general terms in one section, terms that may include something that Parliament has no power to legislate about, the whole enactment is void. In my opinion, there is no such rigid rule of law whenever Parliament transcends its powers in legislation, the Court

1. At p. 178.
2. 6 CLR 40, 80-81.
3. 6 CLR 309, 316, 318, 319.

has to determine, as in the case of any other agent exceeding its powers, whether the part *intra vires* is so bound up with the part *ultra vires* that it cannot be disentangled." His Lordship proceeded further to observe : "In the Massachusetts case of *Commonwealth* v. *Hitchings*,[1] the Court said as follows : 'The constitutional and the unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand, though the last fall. The point is not whether they are contained in the same section, for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. Again in *Warren* v. *Charlestown*,[2] the same Court said : 'If they (the parts) are so mutually connected with, dependent on each other, as conditions, considerations, or compensations for each other, as to warrant a belief that the Legislature intended them as a whole, and that, if all could not be carried into effect the Legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.' To prevent an unconditional law from operating as far as it can, it must be evident (again to quote Colley, p. 250), from a contemplation of the Statute and of the purpose to be accomplished by it, that it would not have been passed at all except as an entirety, and that the general purpose of the Legislature will be defeated if it shall be held valid as to some cases and void as to others." In the same year O' Connor, J, delivering his opinion in *A.G. for N. S. W.* v. *Brewery Employees' Union of N. S. W.*,[3] followed Black's Construction and Interpretation of Laws,[4] *viz.*, "In such cases it is the duty of the Courts not to pronounce the whole statute unconstitutional, if that can be avoided but, rejecting the invalid portions, to give effect and operation to the valid portions. The rule is, that if the invalid portions can be separated from the rest, and if, after their excision, there remains a complete, intelligible, and valid statute, capable of being executed, and conforming to the general purpose and intent of the Legislature, as shown in the Act, it will not be adjudged unconstitutional, but sustained to that extent." In the undernoted case,[5] Isaacs, J., said : "If good and bad provisions are wrapped up in the same word or expression, the whole must fall. Separation is there from the nature of the case impossible, and as it is imperative to reject the bad—and this can only be done by condemning the word or phrase which contains it—the good must share the same fate." Griffith, C.J., opined in the same case[6] : "I venture to think that a safer test is whether the statute with the invalid portions omitted would be substantially a different law as to the subject-matter dealt with by what remains from what it would be with the omitted portions forming part of it." His Lordship the Chief Justice applied the same test in *Owners of S. S. Kalibia* v. *Wilson*[7] and held : "...it is clear that a statute which deals with all persons carrying on a trade on the same footing is substantially different law from one which differentiates between them, which would be the effect of holding the Act in question valid, but applicable to inter-State trade only. A conspicuous instance of the differentiation which would be thus effected is afforded by the Queensland Coasting Trade." Isaacs, J., in the same case after quoting his observations made in the *Bootmakers'* case, observed : "This follows a strong and consistent line of American authority such as the *Trade Mark* cases[8] and *United States* v. *Jutory*.[9] But American authorities, though more prominently

1. 5 Gray (Mass) 482 at p. 486.
2. 2 Gray (Mass) 84 at p. 99.
3. 6 CLR 469 at p. 547.
4. 1896 Ed. at p. 96.
5. *Rex* v. *Commonwealth Court of Conciliation and Arbitration;* Ex parte *Whybrow & Co.*, 11 CLR 1 at p. 54.
6. At p. 27.
7. (1910)11 CLR 689, 697, 699; *see* also *Osborne* v. *The Commonwealth*, (1911)12 CLR 321, 359.
8. 100 US 82.
9. 198 US 253.

cited in connection with legislation are founded upon and in accordance with well-established British principles and precedents. In *R.* v. *Faversham Fishermen's Co.*,[1] Lord Kenyon, C.J., speaking of a by-law, said : 'Though a by-law may be good in part and bad in part, yet it can be so only where the two parts are entire and distinct from each other.' In *Blackpool Local Board of Health* v. *Bennett*,[2] Watson, B., which says : 'Although the old rule of law to be found in Com. Dig. By-law (C7), which says that a by-law bad in part is bad in the whole, is qualified to this extent that, if the good part is independent and unconnected with the bad, the good part would be valid and binding' and he cited *R.* v. *Faversham Fishermen's Co.*[3] So *per* Quaim, J., in *Hall* v. *Nixon*[4] : "But it is also clear on the authorities that a by-law may be good in part and bad in part, provided the parts are separable.' No distinction can be made in this respect between a by-law and a statute, because, although very different considerations apply in determining the extent of the power granted, when it is given to a municipal corporation, or a Parliament, yet once the limits of the power are ascertained the excess is as unlawful in the one case as in the other and the partial validity of the act done must depend upon the same principles. A valid corporation by-law is a law, and as Lord Abinger, C.B., said in *Hopkins* v. *Swansea Corporation*,[5] it has same effect within its limits and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large." His Lordship proceeded further to observe : "The Privy Council seem to have taken the same view in *Macleod* v. *A. G. for New South Wales*,[6] because the question turned on the meaning of one word 'wheresoever'. If it were construed to mean 'wheresoever within New South Wales' it would be *intra vires*, and if 'wheresoever universally' it would be beyond the competency of the local Parliament. And Lord Chancellor Halsbury uses the very largest words. Speaking of the latter construction he says[7] : "If that constructions were given to the statute, it would follow a necessary result that the Statute was *ultra vires* of the Colonial Legislature to pass." No doubt the question of separability was not specially under consideration, and, therefore, the language cannot be pressed too far, but the form of the expression is consistent with the authorities I have cited as to by-laws, and though a more limited meaning might have been intended, one would have expected to find it indicated by saying that the statute would be *ultra vires* to the extent that it exceeded the jurisdiction." Isaacs, J., again observed in *State of New South Wales* v. *Commonwealth*[8] : "As the ultimate test for determining whether after discarding invalid portions, of a statute, the portions that remain are to be regarded as law or not, I apply the rule I have stated in *Osbornie's* case[9] and the cases there cited. It is like the case of various promises in a contract apart from questions affecting the consideration. "Where, says Lopes, L.J., in *Kearney* v. *Whitehaven Colliery Co.*,[10] 'some of the provisions are legal and others illegal, the illegality of those, which are bad does not communicate itself to, or contaminate those, which are good, unless they are inseparable from and dependent upon one another".

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1. (1799)8 TR 352 at p. 356.
2. 4 H & N 127 at p. 137.
3. (1799)8 TR 352 at p. 356.
4. LR 10 QB 152 at p. 160.
5. 4 M and W 621 at p. 640.
6. 1891 AC 455.
7. 1891 AC 455 at p. 459.
8. 20 CLR 54, 83.
9. 12 CLR 321 at pp. 367, 368.
10. (1893)1 QB 700 at p. 713.

In *In re* the Initiative and Referendum,[1] their Lordships of the Privy Council in case arising from Canada and earlier in case *(viz. A. G. for the Commonwealth* v. *Colonial Sugar Refining Co., Ltd.)*[2] arising from Australia, where the offending portions were so interwoven into the scheme that they were not severable, inasmuch as the invalid portions were regarded merely as steps towards the accomplishment of a purpose that was *ultra vires*, the whole Act was held to be bad. To obviate this consequence, sections have been added in a number of Acts of the Parliament of the Commonwealth and of the States designed to preserve the valid portions of the enactments. In 1930, Section 15-A was added to the Interpretation Act of the Commonwealth in the following words :

> "Every Act, whether passed before or after the commencement of this section, shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power."

In the *Airways case*[3] effect was given to Section 15-A and the portion of the Act was saved. In *Australian Railways Union* v. *Victorian Railways Commissioners.*[4] the limits of the provisions were stated in the following words : "The truth is that Section 15-A cannot apply to divert legislation from one purpose to another. In *New Castle and Hunter River Steamship Co.* v. *A. G. for the Commonwealth*,[5] this Court considered a similar provision in the Navigation Act, 1912—1920. It may be that a general proposition applying to all legislation cannot be given the same operation as a special provision introduced into legislation the precise character of which was before the Legislature. Apart from any other considerations, a later enactment would prevail if it disclosed a clear intention inconsistent with the application to it of Section 15-A as perhaps it may be said Act No. XLIII of 1930 does in this very case. But, adopting the metaphor which was employed to describe the effect of the provision in the Navigation Act, it enables the court to uphold provisions, however, interwoven, but it cannot separate the woof from the warp and manufacture a new web." Dixon, J., explained in *Fraser Henleins Property, Ltd.* v. *Cody*[6] : "The device of expressly providing against the consequences of some parts of a statute proving *ultra vires* originated in the United States. .....It can at least be said of them that they establish a presumption in favour of the independence, one from another, of the various provisions of an enactment, to which effect should be given unless some positive indication of interdependence appears from the text, context, content or subject-matter of the provisions."

In 1937 provisions similar to Section 15-A were added for application to regulations and resolutions and by Section 5 of the National Security Act, 1939-43, it was enacted that similar rule should apply to orders passed under the authority of regulations.

(xiv) Indian view.—In India it is well-established that if the part of the Act which is held to be invalid is severable from the rest of the Act, then the Act cannot be held to be

1. AIR 1919 PC 145, 149.
2. 1914 AC 237.
3. 71 CLR 29; *see* as well *Bank of New South Wales* v. *The Commonwealth*, (1948)76 CLR 1 [on appeal 79 CLR 497 (PC).
4. 44 CLR 319, 386.
5. 29 CLR 357.
6. 70 CLR 100, 167; *see* also *R.* v. *Poole*, 61 CLR 634, 652; *Pidoto* v. *Victoria*, 63 CLR 87.

wholly void.[1] And if the invalid part were not severable from the rest of the provisions, it is established beyond controversy that the whole Act would have to be declared *ultra vires* and void. In *Gopalan* v. *State of Madras*,[2] it was observed that in case of repugnancy to the Constitution, only the repugnant provision of the impugned Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the Act, if the omission of the repugnant provision will not change the nature of the structure or the object of the legislation. It was held that all the provisions of the Preventive Detention Act, IV of 1950, save only Section 14, were valid and since Section 14 was severable from the rest of the Act, the detention of the applicant under the Act was not illegal. The same principles were upheld in the case of *State of Bombay* v. *F. N. Balsara*.[3] It was held, following the case of *Attorney-General for Alberta* v. *Attorney-General for Canada*,[4] that the provisions of the Bombay Prohibition Act, declared invalid were not inextricably bound up with the remaining provisions of the Act, and it was difficult to hold that the Legislature would not have enacted the Act at all without including that part which was found to be *ultra vires*. The Legislature may exercise its powers within its competence to the extent of a part of the legislation and it may overstep those powers with regard to the other part of the legislation, and if those parts are severable then the Court would only hold that a part of the legislation is *ultra vires*.[5] But where the different parts of a statute are so mutually connected with and dependent upon each other as to warrant a belief that the Legislature intended them as a whole, then if some parts are unconstitutional and void, all the provisions must fail with them.[6] This test of severability, would however, not be adequate in all cases. A safe test would be whether the statute with the invalid portion omitted would be substantially a different law as to the subject-matter dealt with by what remains from what it would be with the omitted portions forming part of it.[7] In *Punjab Province* v. *Daulat Singh*,[8] their Lordships of the Privy Council found that the retrospective element in Section 13-A of the Alienation of Land Act enacted by Section 5 of the Punjab Alienation of Land (Second Amendment) Act X of 1938 was easily severable, "and by the deletion of the words 'either before or' from the early part of Sub-section (1) of the new section 13-A, enacted by section 5 of impugned Act, the rest of the provisions of the impugned Act may be left to operate validly."

> "The real question is whether what remains is so *inextricably* bound up with the part declared invalid that what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed

1. *Bank of Commerce* v. *Nripendra Nath Datta*, 1944 FCR 387; see *Sivaramiah Choudhuri* v. *Guntur Dt. Co-operative Central Bank*, (1966)2 Andh LT 65, a case under Co-operative Societies Act where, after striking down the invalid part of the statutory rules, the valid parts were given effect to. *See* also *Jagadati Singh* v. *State of U.P.*, AIR 1962 All 606, where the impugned part (proviso) of the Act was easily severable and, therefore, the rest remained valid.
2. AIR 1950 SC 27 : 1950 SCR 88, 131; *see* also *Kshitindra Narain Roy* v. *Chief Secretary, Government of West Bengal*, Misc. Case No. 166 of 1950.
3. AIR 1951 SC 318, 331 : 1951 SCR 682, 727.
4. 1947 AC 503.
5. *Emperor* v. *Kishori Shetty*, AIR 1950 Bom 221, 52 Bom LR 29; *see* also *Kishori Lal Potdar* v. *Devi Prasad*, AIR 1950 Pat 50 (FB).
6. *Prahalad Gena* v. *State*, AIR 1950 Orissa 157 : ILR 1950 Cut 222; *Kameshwar Singh* v. *Province of Bihar*, AIR 1950 Pat 392; *Bhutnath* v. *Province of Bihar*, 28 Pat 782 : AIR 1950 Pat 35; *State* v. *Philipose Philip*, AIR 1954 TC 257.
7. *New Motor Transport Co.* v. *Regional Transport Authority, Raipur*, AIR 1952 Nag 111 : ILR 1952 Nag 69.
8. AIR 1946 PC 66 : 1946 FCR 1.

that the Legislature would have enacted what survives without enacting that that is *ultra vires* at all."[1]

Thus the question whether the unconstitutional provision in a statute invalidates the whole enactment depends upon :

(*a*) whether the constitutional and unconstitutional parts are capable of separation so that each may be read and may stand by itself;

(*b*) whether the unconstitutional part is so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is struck off[2];

(*c*) whether the insertion of words or terms is necessary in order to separate the constitutional part from the unconstitutional part and to give effect to the former only.[3]

The correct test of severability is to ascertain whether after the invalid portions of the statute in question are deleted, a different law is created.[4] However, where the question is one of severability which depends upon the intention of the Legislature, the history of the legislation is admissible to ascertain that intention. The statement of the objects and reasons being no part of the legislation is inadmissible for this purpose.[5] Where an enactment is unconstitutional in part, but valid as to the rest, assuming of course that the two portions are severable, it cannot be held to have been wiped out of the statute book as it admittedly must remain there for the purpose of enforcement of the valid portion thereof, and being on the statute book, even that portion which is unenforceable on the ground of its being unconstitutional will operate *proprio vigore* when the constitutional bar is removed; there is no need for a fresh legislation to give effect thereto.[6]

2. Statutes are territorial in operation.—The ordinary principle of construction is that a Legislature is dealing with the subject-matter situate within its own territorial jurisdiction.[7] Now, *prima facie*, the legislation of a country is territorial. Its acts are intended to apply to matters occurring within its realm and not beyond it, and this principle applies especially to acts that are penal in their character. According to the comity of nations all laws are presumed to be territorial only.[8] It is true that the language of an enactment or the nature of the subject-matter may indicate an intention to the contrary, but otherwise the *prima facie* presumption holds and the statute applies only to acts within the realm.[9]

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1. *Attorney-General for Alberta* v. *Attorney-General for Canada*, 1947 AC 505, 518; followed in *State of Bombay* v. *Balsara*, 1951 SCR 682, 727; *see* also *Gopalan* v. *State*, 1950 SCR 88, 131. If the omission of the invalid part will "not change the nature or the *structure* of the object of the Legislature" it is severable.
2. *New Motor Transport Co.* v. *Regional Transoport Authority, Raipur*, AIR 1952 Nag 111 : ILR 1952 Nag 69.
3. *State* v. *Bickford*, 147 NW 407.
4. *Abdul Rahim* v. *Joseph A Pinto*, AIR 1951 Hyd 11.
5. *Jai Lal* v. *Delhi Administration*, AIR 1962 SC 1781 : 1962 All WR (HC) 765 : 64 Punj LR 1051.
6. *M.P. V. Sundararamier & Co.* v. *State of Andhra Pradesh*, AIR 1958 SC 468 : 1958 SCJ 459 : 1958 SCA 492 : (1958)1 Andh WR (SC) 179.
7. *Chhanubhai* v. *Sardul*, AIR 1957 B. 99, 100 (Chagla, C.J.); *Janardhana Shetty* v. *Union of India*, AIR 1970 Mys 171, 176 (Chandrashekhar, J.); *Treacy* v. *Director of Public Prosecutions*, (1971)1 All ER 110, 113 (Lord Morris) : applies only to U.K.
8. *Fazalhussain* v. *Yusufally*, AIR 1955 Bom 55.
9. *Moulis* v. *Ower*, (1937)1 KB 746, 764, *per* Fletcher Moulton, L.J.

All jurisdiction is properly territorial and *'extra territorium jus dicenti, impune non paretur'*.[1] The laws of a nation apply to all its subjects and to all things and acts within its territories, including in this expression not only its ports and waters, but its ships, whether armed or unarmed, and the ships of its subjects on the high seas in foreign tidal waters, and foreign private ships within its ports.[2] They apply also to all foreigners within its territories (not privileged like sovereigns and ambassadors) as regards criminal, police and, indeed, all other matters except some questions of personal status or capacity, in which, by the comity of nations, the law of their own country or the *lex loci actus* or *contractus*, applies. This does not, indeed, comprise the whole of the legitimate jurisdiction of a State; for it has the right to impose its legislation on its subjects, natural or naturalised, in every part of the world, and, on such matters as personal status or capacity, it is understood always to do so; but, with that exception, in the absence of an intention clearly expressed or to be inferred, either from its language, or from the object or subject-matter or history of the enactment, the presumption is, that the Legislature does not design its statutes to operate on them beyond the territorial limits of the State.[3] The presumption is that, if the statute is silent on the point, the intention of the Legislature is to confine the operation of statute to the territorial limits of the State and also that it does not include foreigners.[4] In *Nihoyet* v. *Nihoyet*,[5] Brett, L.J., observed : "It is true that the words of the statute are general, but general words in a statute have never, so far as I am aware, been interpreted so as to extend the action of the statute beyond the territorial authority of the Legislature. All criminal statutes are in their terms general, but they apply only to offences committed within the territory or by British subjects. When the Legislature intends the statute to apply beyond the ordinary territorial authority of the Courts, it so states expressly in the statute as in Merchants Shipping Act and in some of the Admiralty Acts." Lord Brougham in *Jeffreys* v. *Bossey*,[6] said : "Generally we must assume that the Legislature confines its enactments to its own subjects over whom it has authority and to whom it owes a duty in return for their obedience. Nothing is more clear than that it may also extend its provisions to foreigners in certain cases and may without express words make it appear that such is the intendment of these provisions. But the presumption is rather against the extension and the proof of it rather upon those who would maintain that such is the meaning of the enactment." It may be accepted as a general principle that States can legislate effectively for their own territory.[7] Where the language of a statute is general, and may include foreigners or not, the true cannon of construction is to assume that the Legislature has not so enacted as to violate the rights of other nations.[8]

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1. "You cannot safely obey one exercising jurisdiction out of his own country." see *Sardar Gurdial Singh* v. *Raja of Faridkot*, ILR 2 Cal 222 at p. 238; *Christien* v. *Delanney*, ILR 26 C 931; *Kassim Mamooji* v. *Isuf Mohd. Sulliman*, ILR 29 Cal 509; *cf. Moazzim Hussein Khan* v. *Raphael Robinson*, ILR 28 Cal 641; *Adalus* v. *Emperor*, ILR 26 Mad 607.
2. One exception to this rule is piracy *Jus genlium*; *R.* v. *Walkem*, (1908)14 AC 1.
3. Bannerjee's *Tagore Law Lectures*, 1901 (1909 Ed.) at pp. 184-185, quoting from Maxwell : *Interpretation of Statutes*, (now 11th Ed.) at pp. 138—142.
4. Odgers : *Construction of Deeds and Statutes*, 1946 Ed. at p. 274.
5. (1878) LRPD (CA) 1 at pp. 19, 20.
6. (1854)4 HLC 815 at 970, *per* Lord Brougham.
7. *Croft* v. *Dunphy*, AIR 1933 PC 16, 17 : 1933 ALJ 284 : "To what distance seaward the territory of a State is to be taken as extending is a question of international law upon which their Lordships do not deem it necessary or proper to pronounce. But whatever be the limits of territorial waters in the international sense, it has long been recognised that for certain purposes, notably that of police, revenue, public health and fisheries, a State may enact laws affecting the seas surrounding its coasts to a distance seaward which exceeds the ordinary limits of its territory," *per* Lord Macmillan.
8. *Queen* v. *Keyn*, (1876)2 Ex D 63, 210 : 46 LJMC 17, 88 *per* Cockburn, J.

Sir W. Page Wood, V.C., remarked in *Cope* v. *Doherty*[1] : "It being the plain and obvious rule in construing the Acts of any Legislature, the Legislature of each independent country must be supposed to deal with those subject-matters which are within its own control and jurisdiction, As Dr. Lushington expresses it in the case of *The Zollverein*,[2] in looking to an Act of Parliament with reference to such a question as I am now discussing, *viz.*, as to whether it is intended to apply to foreigners or not, I should in endeavouring to ascertain the construction of the Act, always bear in mind the power of the British Legislature, for it is never to be presumed unless the words are so clear that there can, by no possibility, be a mistake, that the British Legislature exceeded that power which, according to the law of the whole world, properly belonged to it. The power of this country is to legislate for its own subjects all over the world, and as to foreigners within its jurisdiction, but no further." In *Ex parte* Blain,[3] James, L.J. observed : "It appears to me that the whole question is governed by the broad, general, universal principle that English legislation, unless the contrary is expressly enacted, or so plainly implied, as to make it the duty of an English Court to give effect to an English statute, is applicable only to English subjects, or to foreigners who, by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction. Every foreigner who comes into this country, for however, limited a time, is, during his residence here within the allegiance of the sovereign, entitled to the protection of the sovereign and subject to all the laws of the sovereign. But, if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English Legislature could have ever intended to make such a man subject to particular English legislation." Brett, L.J., in the same case opined : "The governing principle is, that all legislation is *prima facie* territorial, that is to say, that the legislation of any country binds its own subjects and the subjects of other countries who, for the time being, bring themselves within the allegiance of the legislating power. The English Legislature has a right to make a bankruptcy statute which shall bind all its own subjects, and any foreigner who for the time being is in England, and does something there which the statute forbids. As long as he is in England he is under the allegiance of the Queen of England, and the power of the English Legislature. Therefore, it has been held, that if a foreigner, though not domiciled or permanently resident in this country, comes into England and does, or omits to do, some act in England which the English Legislature has declared to be an act of bankruptcy, then, by reason of the act of bankruptcy, done or suffered in England, he may be made a bankrupt in England. But, upon the ground of the limited power of the Legislature of England to legislate, all the authorities have held that it is necessary that the act of bankruptcy should have been committed, in England, if the person against whom the statute is invoked is a foreigner who is not domiciled in England." In the same case Cotton, L.J., said[4] : "All we have to do is to interpret an Act of Parliament which uses a general word, and we have to say how that word is to be limited, when of necessity there must be some limitation. I take it the limitation is this, that all laws of the English Parliament must be territorial—territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation of them, and so also all aliens who come to this country and who, during the time they are here, do any act which, on an interpretation of the statute as regards them, comes within its provisions."

1. (1858)27 LJ Ch 600 at 601.
2. (1856)2 Jun NS 429.
3. (1879)12 Ch D 521 at 526.
4. 12 Ch D 522, 531.

Lindley, M.R., put the same principle in *Re* A. B. & Co.,[1] thus : "What authority or right has the court to alter in this way the status of foreigners who are not subject to our jurisdiction? If Parliament had conferred this power in express words, then of course the court would be bound to exercise it. But the decisions go to this extent, and rightly, I think, in principle that unless Parliament has conferred on the court that power in language which is unmistakable, the court is not to assume that Parliament intended to do that which might seriously affect foreigners who are not resident here, and might give offence to foreign Governments."

The case of *Ex parte* Blain *In re* Sawers,[2] was, together with two other cases, depending upon the same principle, namely, *Ex parte* Crispin, *In re* Crispin,[3] and *Ex parte* Pearson,[4] expressly approved by the House of Lords in *Cooke* v. *Charles A. Vogeler Co.*[5] The meaning of the doctrine is that unless the language of a statue by express words or necessary implication indicates the contrary, the persons, property, and events in respect of which Parliament has legislated are presumed to be limited to those in the territory over which it has jurisdiction and for the welfare of which it exercises that jurisdiction.[6]

The rule rests on the presumption that the Legislature did not intend to give its enactment an effect which would be inconsistent with international law or with the comity of nations. It is not consistent with ordinary principles of justice or the comity of nations that the Legislature of one country should call on the subject of another country to appear before its tribunals when he has never been within their jurisdiction.[7]

In the case of a statute of self-governing part of the Empire, the construction which limits general words to a territorial application rests on the further ground that the result of the wider construction would be that the statute exceeded the power of the Legislature which has passed it.[8]

The power to make laws must be taken to mean power to make effective and enforceable laws. A law is not effective or enforceable if there is no power to compel its observance. The power cannot include power to make such laws which any one may break with impunity.[9]

(i) Extra-territorial jurisdiction of Sovereign Legislatures.—But it may be noted that Sovereign Legislatures have powers of enacting extra-territorial laws, at least so far as recognition by their own Courts is concerned though non-sovereign Legislatures do not have such power unless it is conferred on them expressly or by necessary implication.[10] Ordinarily extra-territorial operation would not be intended by State Legislature (which are non-sovereign) and the State Legislature which is conversant with the needs of the subjects of the State would be making legislation for their benefit only.[11]

(ii) Colonial Legislatures.—The Colonial Legislatures of the British Empire, being non-sovereign had no such power.[12] Section 3 of the Statute of Westminster removed this limitation

1. (1900)1 QB 541, 544.
2. 12 Ch D 522.
3. LR 8 Ch 374.
4. (1892)2 QB 263.
5. 1901 AC 102.
6. *R.* v. *Earl Russell*, 1901 AC 446.
7. *Morgan* v. *White*, 15 CLR 1, 4-5.
8. *Macleod* v. *A. G. for N. S. W.*, 1891 AC 455.
9. *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association*, (1913)16 CLR 664, 676-77.
10. *British Coal Corporation* v. *King*, 1935 AC 500.
11. *Devji Meghji* v. *Lalmiya Mosammiya*, (1977)18 Guj LR 515.
12. *British Coal Corporation* v. *King*, 1935 AC 500.

so far as Parliaments of the Dominions were concerned[1] though the limitation continues to exist as regards Provincial Legislatures of these dominions.

(iii) Indian Legislatures.—In India prior to the coming into force of the Constitution, the position was that Sub-section (21) of Section 99, Government of India Act, 1935, empowered the Federal Legislature to make laws for the whole or any part of British India and the topics on which it could legislate were specified in Lists I and III of Schedule VII. Sub-section (2) of the section laid down that without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal law shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applied to the cases enumerated in Clauses *(a)* to *(e)*. It was, however, held that the Federal Legislature's power of extra-territorial legislation was not limited to the cases specified in Clauses *(a)* to *(e)* of Sub-section (2), and this was apparent from Entry 23 of List I of Schedule VII relating to 'fishing and fisheries' beyond territorial waters.[2] The fetters, whatever they were, were subsequently removed by Section 6(1) of the India Independence Act, 1947, which was followed by the Provisional Constitution Order, 1947, by virtue of which the words, 'including laws having extra-territorial operation' were inserted after the word 'Law' in Sub-section (1) of Section 99 and Sub-section (2) of Section 99 was omitted.

(iv) Parliament.—The Indian Parliament being a Sovereign Legislature, Clause (2) of Article 245 of the present Constitution lays down that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

(v) State Legislatures in India.—While the Union Parliament has power to make laws for the whole or any part of the territory of India, the State Legislature can make laws only for the State or any part thereof. The legislative power of the State is confined under Article 245(1) to the territory of the State. The State Legislatures have no extra-territorial legislative powers.

In *Bengal Immunity Co.* v. *State of Bihar*,[3] Venkatarama Ayyar, J., held that where there was sufficient territorial connection between the person who is sought to be charged or proceeded against under the law, and the country which enacts the law, the law is not, strictly speaking, extra-territorial and it is not *ultra vires* on the ground that the person is not residing within the State which enacts the law. In *Abdul Khader* v. *Union of India*,[4] it was held that a law passed by Legislature having plenary powers is not involved on the ground that it has extra-territorial operation. In that case warrants for detention were issued under *Cofeposa Act* after the alleged smugglers had fled the country. When proclamation under Section 7(1)*(a)* of the Act read with Section 82(1) of the Criminal Procedure Code was issued, the same were challenged as illegal and *ultra vires*.

It was observed :

> "The words 'extra-territorial' are normally used in two different senses, as connoting firstly, laws in respect of acts and events which take place inside the State but have operation outside; and secondly, laws with reference to nationals of a State in respect of their acts outside. In its former sense, the laws are strictly speaking intra-territorial though loosely termed as extra-territorial under Article 245(1). Therefore, merely because the law passed by the Parliament has extra-territorial consequences, it cannot be invalidated as set out in Article 245(2) of the Constitution."

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1. *Croft* v. *Dunphy*, AIR 1933 PC 16 : 1933 AC 156.
2. *G. G.-in Council* v. *Raleigh Investment Co., Ltd.*, AIR 1944 FC 51, 61, 62.
3. AIR 1955 SC 661, 749, *per* Venkatarama Ayyar, J.
4. (1977)90 LW 501 (FB).

In the case of *Mobarak Ali Ahmad* v. *State of Bombay*.[1] A Pakistani National at Karachi made from that place certain false and dishonest representations by means of letters, telegrams and trunk telephone calls to the complainant at Bombay, who on the faith of such false representations paid money to the Pakistani National's agent at Bombay. It was held that the accused residing outside India, can be prosecuted in India, because all the essentials of the offence of cheating have occurred within this country, and that it was not necessary in every case that the accused foreigner should be corporeally present within India at the time the offence was committed.

In *Radhabai* v. *State of Bombay*,[2] the question arose whether the Bombay Prevention of Bigamous Marriages Act (25 of 1946), was *ultra vires* the State Legislature because of its being made applicable to marriages contracted outside the State of Bombay, either or both the contracting parties to which are domiciled in the State. It was held that there was sufficient territorial connection between such marriages and the Bombay State which is provided by a party to the marriage possessing the domicile of the Bombay State, and in enacting Section 4*(b)* , the Legislature cannot be said to have exceeded the territorial limits of its powers. On a general question of law a Court cannot have a precedent applicable to one portion of its territorial jurisdiction and a different precedent on the identical question applicable to the remaining portion of its territorial jurisdiction.[3]

(vi) Municipal Courts bound to follow it.—Whatever may be the weight of extra-territorial legislation in international law, Municipal Courts of the State enacting the law are bound to follow it. The validity of such laws would have to be judged and determined, so far as Municipal Courts are concerned, by the same principles and standards which govern other statutes regardless of any law of the Nations.

(vii) Recognition not dependent upon its being capable of execution.—The recognition is not dependent upon the question of such law being capable of execution. The enforcement of a law is altogether different from its operation. Thus, for instance, an offender may be tried in the State where the offence is committed only when he is found there.[4] The enforcement of the law is territorial by its nature, though its operation may all the same be extra-territorial. A Legislature which passes a law having extra-territorial operation may find that what it has enacted cannot be directly enforced, but the Act is not invalid on that account and the Courts of its country must enforce the law with the machinery available to them.[5]

(viii) Presumption when displaced.—The prima facie presumption may be displaced by clear intention to extend the Legislation to extra-territorial limits and in that case, if the Legislature is sovereign, the Court within the jurisdiction are bound.[6]

3. Statutes are presumed to be in conformity with International law.—Under the same general presumption that the legislature does not intend to exceed its jurisdiction, every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations or with the established rules of international law. If, therefore, it designs to effectuate any such object, it must express its intention with irresistible clearness to induce a

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1. AIR 1957 SC 857.
2. AIR 1955 Bom 439.
3. *Padmanabha* v. *Velayudhan*, AIR 1957 TC 32, 38 (FB).
4. Subject, however, to Extradition agreements.
5. *British Columbia E. R. Co.* v. *King*, AIR 1946 PC 180.
6. *R.* v. *Earl Russell*, 1901 AC 446; *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owner's Association*, (1913)16 CLR 664, 689; *Delaney* v. *Great Western Milling Co.*, 22 CLR at p. 173.

Court to believe that it entertained it, for if any other construction is possible, it would be adopted to avoid imputing such an intention to the Legislature. All general terms must be narrowed in construction to avoid it,[1]

(i) Legislature presumed not to enact contrary to International law.—According to recognised rules of construction of statutes, the Legislature is presumed not to enact anything contrary to international law or the common law of the realm. Unless, therefore, the intention to do so is clearly expressed in the enactment the Courts would incline to favour an interpretation which would bring the enactment into consonance with those principles rather than accept a grammatical interpretation, the result of which would be startling or unusual.[2] As between two possible constructions, that which is conformable to international law as declared in our own tribunals is to be preferred to that which would involve infringement of the right of other communities.[3] The Judges may not pronounce an Act *ultra vires* as contravening international law, but may recoil, in case of ambiguity, from a construction which would involve a breach of the ascertained and accepted rules of international law.[4] The reason for the rule lies in the respect for diplomatic privilege : a sovereign power is always presumed to respect the subject and the rights of all other sovereign powers outside its territory.[5]

(ii) Municipal Courts bound by enacted law.—Legislation of the State even in contravention of generally acknowledged principles of international law is binding upon and must be enforced by the Courts of the State.[6] If the language of a legislative enactment unambiguously and without reasonably admitting of any other meaning is in conflict with any principle of international law, the Court must obey and administer it as it stands whatever may be the responsibility incurred by the nation to foreign powers in executing such a law, for the Courts cannot question the authority of Parliament or assign any limits to its power.[7] "It is all very well to say", observes Lindley, L.J. in *In re Queensland Mercantile and Agency Ltd.*,[8] "that international law is one and indivisible, but it is notorious that different views are entertained in different civilized countries on many questions of international law, and when international law is administered by a Municipal Court, it is administered as part of the law of that country."

In the Bombay case of *Indrajit Singhji* v. *Rajendra Singhji*[9] his Lordship Chagla, C.J., dealing with Section 86, C.P.C., observed :

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1. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 183, quoted by Bannerjee; *(Tagore Law Lectures) Interpretation of Deeds, Wills and Statutes*, 1909 at p. 187; *Mohd. Mohyuddin* v. *Emperor*, 1946 FCR 94, 105. Davis, C.J., called it in aid in *Allen* v. *Allen*, AIR 1945 Sind 171, 172 (SB) : ILR 1946 Kar 1. "There is indeed a presumption against any intention to frame a statute so as to contravene a rule of international law"; Craies : *Statute Law*, 4th Ed. at p. 393.
2. *Hatimbhai* v. *Framroz*, AIR 1927 Bom 278, 337 : ILR 51 Bom 516 (Mirza, J.).
3. *Lee* v. *Lee*, ILR 5 Lah 147, 166 (FB); *per* Shadi Lal, C.J. : "Every Statute is to be interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations or with the established principles of international law"; *Bloxam* v. *Favre*, (1883)8 PD 101, 104 : (1884)9 PD 130.
4. Craies : *Statute Law*, 5th Ed. at p. 67; *Rochefoucauld* v. *Boustead*, (1896)66 LJ Ch 75; *see* also Odgers : *Construction of Deeds and Statutes*, 2nd Ed., 1946 at p. 277; *Venkataluchmi Ammal* v. *Srirangapatnam Srinivasamurthy*, 11 MLJ 91; *St. Gobain Chauny Cerey Company* v. *Hoyermann's Agency*, (1893)2 QB 96.
5. *R.* v. *Jameson*, *(Re* Foreign Enlistment Act, 1870, 33 & 34 Vict, c. 90).
6. *Croft* v. *Dunphy*, AIR 1933 PC 16, 18.
7. *Hatimbhai* v. *Framroz*, ILR 51 Bom 516 : AIR 1927 Bom 278, 333, Maxwell on *Interpretation of Statutes*, at pp. 157-158; *Inland Revenue Commissioners* v. *Collco Dealings Ltd.*, (1960)2 All ER 44 (CA); *Mirza Ali Akbar* v. *A. R.*, 1965 SCN 244.
8. (1892)1 Ch 219, 226.
9. AIR 1956 Bom 45.

"....But whatever the principles of international law may be, we are concerned with the statutory form that it has taken in our country. In the very forefront we notice that there is an important departure from the rule of international law because in India a Ruler of a Foreign State can be sued with the consent of the Central Government. Further, in England, a Foreign Ruler can waive the privilege of being sued.

"The Privy Council has held that the consent required under Section 86 cannot be waived and, therefore, it would not be treading on safe ground to inquire what is the principle of international law and to construe Section 86 in the light of that principle. If the language of Section 86 permitted such a construction, perhaps it would not be objectionable to consider rules of international law because our country also is in the comity of nations, and there is no reason why we should not, as much as other countries, give effect to well-settled principles of international law. But if the language of the section is clear and is capable of any one construction in the context in which that language is used, then, in our opinion, it would be an unjustifiable attempt on the part of the Court to engraft upon the statutory provision a principle of international law which the Legislature itself did not think it proper to do."

It was held that Section 86 in terms applies only to suits and not to other proceedings under Section 268, Succession Act and there is no reason why any extensive meaning should be given to the expression 'suit' in Section 86 which is not justified by the scheme of the Act. The same view of the law has been taken in *Madan Lal* v. *Reza Ali Khan*.[1] In that case a debtor presented a petition for being adjudicated an insolvent and the petition was opposed by a Ruling Chief who was a creditor, and Nasim Ali and Narsing Ram, JJ., held that Section 86, C.P.C., applied in terms only to suits.

The general principle is that though Municipal Courts are competent to inquire into matters involving the construction of treaties and other Acts of State, treaty obligations cannot be enforced in Courts.[2] Assuming that according to the Anglo Tibet Trade Regulations, 1914 free-export to Tibet (out of India) articles not specifically referred to in Clause VIII was permitted, it does not appear that so far as Indian citizens are concerned, it received statutory recognition and became a part of the Municipal law of India. There is apparent repugnance between the implied provision of the Anglo-Tibet Trade Regulations, 1914 permitting free trade between two countries on the one hand, and subsequent Indian statutes, *e.g.* Essential Supplies Act, 1946 and the numerous orders issued thereunder, the Imports and Exports (Control) Acts of 1945 and 1947 and Notification No. 91-C. W. (1)-51, dated the 7th July 1952, putting restrictions on such free trade on the other and it is not easy to reconcile the divergent set of provisions.[3] The language of the several Indian statutes, *e.g.* the Essential Supplies Act, 1946, the Imports and Exports (Control) Acts of 1945 and 1947 and Notification No 91-C. W. (1)-51, dated the 7th July, 1952, is clear enough. In the interests of India, they seek to put restrictions in the way of trade between India and other countries. If that language be in conflict with any principle of international law as is said to be deducible from the implied provisions of the Anglo-Tibet Trade Regulations of 1914, Municipal Courts of India have to obey the law passed by the Legislature of the country to which they owe their allegiance. In interpreting and applying municipal law, these courts will try to adopt such a construction as will not bring it into conflict with rights and obligations deducible from rules of international law. If such rules, or rights

1. AIR 1940 Cal 244.
2. *Shri Krishna Sharma* v. *State of West Bengal*, AIR 1954 Cal 591, 593.
3. *Ibid.*

and obligations are inconsistent with the positive regulations of municipal law, Municipal Courts cannot override the latter.[1] As pointed out in Schwarzenberger's International Law, the maxim *'expressio unius est exclusio alterius'* is 'applicable to the construction of treaties as well as the municipal statutes and contracts'. The Tripartite Convention of 1914 expressly cancelled the existing trade regulations, *viz* ., the Tibet Trade Regulations of 1893 and 1904 and the Tibetan Government engaged to negotiate new trade regulations. It was in these circumstances that the Anglo-Tibet Trade Regulations of 1914 were negotiated. The primary rule is that a treaty has to be liberally construed so as to carry on the intention of the contracting parties thereto. In the interpretation of international agreements it is often necessary to adopt a more liberal method of construction than that which might be fairly applied in the case of private instruments. Reading the various clauses of the Regulations and bearing in mind the background of the circumstances in which they came to be negotiated, it would be somewhat surprising to suppose that the high contracting parties confined their attention to only a few articles of trade, *viz* ., arms, ammunition, military stores, liquors and intoxicating or narcotic drugs and left other and commoner articles of merchandise, *e.g.* clothing, foodstuff, etc. entirely unprovided for.[2]

The general principle of international law is that every person who is found within a foreign State is subject to, and is punishable, by its law.[3] Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory, while they are within it; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over movables within the territory, and, in questions of *status* or succession governed by domicile, it may exist as to persons domiciled , or who when living were domiciled, within the territory. As between different provinces under one sovereignty the legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign court ought to recognize against foreigners who owe no allegiance or obedience to the power which so legislates.[4] Lord Cranworth in *Jefferys* v. *Boosey*,[5] where a question arose as to the application of the Copyright Act, 1710, which enacted that 'the author of any book.....shall have the sole liberty of printing.....such book.....' opined : *Prima facie* the Legislature of this country must be taken to make laws for its own subjects exclusively, and where an exclusive privilege is given to a particular class at the expense of the rest of Her Majesty's subjects, the object of giving the privilege must be taken to have been a national object, and the privileged class to be confined to a portion of that community for the general advantage of which the enactment is made. But when I say that the Legislature must *prima facie* be taken to legislate only for its own subjects, it must be taken to include under the word 'subjects' all persons who are within Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here and composing and publishing a book here is an author within the meaning of the

1. *Shri Krishna Sharma* v. *State of West Bengal*, AIR 1954 Cal 591, 593.
2. *Shri Krishna Sharma* v. *State of West Bengal*, AIR 1954 Cal 591, 598.
3. *Adams* v. *Emperor*, ILR 26 Mad 607 at pp. 617, 621; *De Jager* v. *A. G. for trial*, 1907 AC 326.
4. *Narain Singh* v. *Raja of Faridkote*, ILR 22 Cal 222, 238 (PC), *per* Lord Selborne.
5. (1854)4 HLC 815, 955; *see* also *Macleod* v. *A. G. of N. S. Wales*, 1891 AC 455, 458, where Lord Halsbury cited the following observation of Parke, B, in *Jefferys* v. *Boosey* : "It is clear that the Legislature has no power over any persons except its own subjects, that is, persons, natural born subjects, or residents, or whilst they are within the limits of the kingdom. The Legislature can impose no duties except on them, and when legislating for the benefit of persons must *prima facie* be construed to mean the benefit of those who owe obedience to our laws, and whose interests the Legislature is under a correlative obligation to protect."

Statute, and I go further—I think that if a foreigner, having composed, but not having published, a work abroad, were to come to this country and print and publish it here, he would be within the protection of the statute."

If a foreign national were to be detained under any law of preventive detention it is a recognised principle in national legal system that in case of doubt the national rule is to be interpreted in accordance with states international obligations, though the municipal law is attracted and interpreted.[1]

Notwithstanding any rule of international law that aliens cannot be compelled to serve in the military forces of a foreign State in which they happen to be, Section 13-A of the National Security Act, 1939-43 should be construed as authorizing the Governor-General to make regulations under which the service of any person in Australia, including aliens, may be compelled for defence purposes.[2]

(iii) Peace treaties and consequential municipal law.—When a municipal statute incorporates the terms of international conventions or peace treaties in the operative part of the enactment, it falls to be determined whether such a provision is to be interpreted according to the rules of interpretation adopted in England and India or the same must be interpreted according to the intent of the Legislature, so as to obtain a uniformity of interpretation. Lord Mac Millan observed in *Stag Line, Ltd.* v. *Foscolo Mango & Co.*,[3] while construing the words 'reasonable deviation' in Article IV, Rule 4 of the Schedule of such an Act : "It is important to remember that the Act of 1924 was the outcome of an international conference and that the rules in the Schedule have an international currency. As these rules must come under the consideration of foreign courts, it is desirable in the interests of uniformity that their interpretation should not be rigidly controlled by domestic precedents of antecedent date but rather that the language of the rules should be construed on broad principles of general acceptation. In *Grin* v. *Imperial Airways Ltd.*,[4] Greer, L.J., observed : "If there be any doubt ambiguity in the language used, the statute should be so interpreted as to carry out the express and implied provisions of the Convention."

As regards other countries, Mr. F.A. Mann summarises the attitude of the courts in his Article, "The Interpretation of Uniform Statutes, published in Vol. 62 of Law Quarterly Review[5] thus : "In the first place almost everywhere the municipal rules of statutory interpretation are so much more liberal and flexible than in England that at the outset they permit methods of construction which really conform to the particular requirements of uniform legislation; this is notoriously so on the continent where precedents have persuasive as opposed to binding authority, where the historical methods of interpretation is freely resorted to and where the intention and object of legislation is of far greater weight than its language and even in the United States the rigidity of the common law has of late been greatly alleviated. Secondly, the constitutional methods of transforming treaties into municipal law are in most countries such that the character of treaties is preserved. They are not usually given the form of statutes in the ordinary sense of the words. Thirdly, many countries have developed specific

1. *Kubic Darusz* v. *Union of India*, (1990)1 SCC 568 Relying on *Jolly George Verghese* v. *Bank of Cochin*, (1980)2 SCC 360 : AIR 1980 SC 470.
2. *Polities* v. *The Commonwealth and another*, 70 CLR 60.
3. 1932 AC 328, 350; *Josef Inwald A. G.* v. *Pfeifer*, (1928)44 TLR 352 (HL); *Administrator of German Property* v. *Knoof*, 1933 Ch 439; But see *Kramer* v. *A. G.*, 1923 AC 528.
4. (1937)1 KB 50, 66, 67.
5. Pages 278, 291.

theories relating to the interpretation of uniform legislation, and these have undoubtedly contributed to an understanding of its problems." Mr. Justice Hughes gave the following authoritative ruling in *Commercial National Bank of New Orleans* v. *Louisiana Canal Bank and Trust Co.*[1] on the subject : "It is said that under the law of Louisiana, as it stood prior to the enactment of the Uniform Warehouse Receipt Act, the Commercial Bank would not have taken title as against the Louisiana Canal Bank; and it is urged that the new statute is but a step in the development of the law and that decisions under the former State statutes are safe guides to its construction. We do not find it necessary to review these decisions. It is apparent that, if these Uniform Acts are construed in the several States adopting them according to former local views upon analogous subjects, we shall miss the desired uniformity and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the Uniform Warehouse Receipt Act expressly provides (Section 57) : 'This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.' This rule of construction requires that in order to accomplish the beneficial object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should take into consideration the fundamental purpose of the Uniform Act and that it should not be regarded merely as an off-shoot of local law."

If a statutory provision of India is open to two valid constructions, the Court should prefer the one that may be in harmony with international law. This was observed by Khanna, J. in his dissenting judgment in *A. D. M., Jabalpur* v. *S. K. Shukla.*[2]

4. Legislature does not commit a mistake.—The Legislature is a proverbial good writer in its own field, no matter that august body is subjected to periodic criticism. It is not competent for the court to proceed on the assumption that the Legislature knows not what it says, or that it has made a mistake.[3] It may be presumed as a rule that exact and correct words are used in the statute.[4] There is a sort of assumption that the Legislature is an ideal person which does not make mistakes, but assumption sometimes has its own limitations. It is too much to expect that legislation drawn up in haste to bring about changes in law in a large part of the territory of India in a short time, the legislative authorities had devoted the same care and attention in drafting such enactments as would have been necessary and desirable. It would not be proper to construe such emergency legislation with the same amount of strictness as in construing the statutes which have come out after considerable thought and attention on the part of Legislature.[5]

(i) Causes of mistakes in legislation.—Mistakes may creep into legislation due to various circumstances and causes. They may be caused by the printer making an incorrect reproduction of the draftsman's manuscript, or they may be due to the draftsman's unskilfulness. They may also creep into a Bill during its passage through the Legislature. "No one," says Grove, J., in

1. (1915)239 US 520, 528.
2. AIR 1976 SC 1207 : (1976)2 SCC 521 : 1976 Cr LJ 945 : 1976 Cr LR (SC) 303 : 1976 UJ (SC) 610.
3. *Harendra Nath* v. *Sailendra Krishan Saha*, AIR 1967 Cal 185, 188 (Bljayesh Mukherji, J.), quotes *Commission for Special Purposes* v. *Pemsel*, 1891 AC 531, 549. *per* Lord Halsbury; *Sawan Ram* v. *Guman Singh*, AIR 1959 HP 25, 26 (Ramabhadran, J.), *Ramananta* v. *Judge, Commerce Court*, AIR 1966 Goa 1, 9. (FB) (Jetley, J.C.); President Promualgating Regulation, *State of Rajasthan* v. *Rao Takhat Singh*, 1973 Raj LW 23 *per* Beri, J.
4. *Shobha Bhatnagar* v. *State*, AIR 1959 MP 367, 372 (Shiv Dayal, J.). *T. A. Chidambaram* v. *The University of Madras*, (1989)1 MLJ 302 (DB).
5. *Govt. of Rajasthan* v. *Sangram Singh*, AIR 1962 Raj 43, 51 (FB) (Bhandari, J.).

Richards v. *McBride*,[1] "in construing a statute or any other literary production, could put such a construction upon the words unless by supposing they were at a mistake. But we cannot assume a mistake in an Act of Parliament. If we did so we should render many Acts uncertain by putting different constructions on them according to our individual conjectures. The draftsman of the Act may have made a mistake. If so, the remedy is for the Legislature to amend it." The Legislature is presumed not to have made a mistake even if there is some defect in the language used by the Legislature, it is not for the Court to add to or amend the language, or by construction make up deficiencies which are left in the Act. Even where there is a *casus omissus*, the remedy lies not with the Court, but with the Legislature.[2] It is not given to a Court of Law to construe a section on the footing that the Legislature has committed an error.[3] "That, in fact, the language of an Act of Parliament may be founded on some mistake and that words may be clumsily used, I do not deny. But I do not think it is competent," says Lord Halsbury in *Commissioner for Special Purposes of Income Tax* v. *Pemsel*[4] to "any Court to proceed upon the assumption that the Legislature has made a mistake. Whatever the real fact may be, I think a Court of law is bound to proceed upon the assumption that the *Legislature is an ideal person* that does not make mistakes. It must be assumed that it had intended what it has said, and I think any other view of the mode in which one must approach the interpretation of a statute, would give authority for an interpretation of the language of an Act of Parliament which would be attended with the most serious consequence." Under the Punjab Alienation Land Act, 1900, permanent alienations of agricultural land by members of certain notified agricultural tribes to persons not belonging to the same tribe or of a tribe in the same group was prohibited except in certain cases. Section 298 of the Government of India Act, 1935, provided : "No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them.....be prohibited on any such ground from acquiring, holding or disposing of property....." To this was appended an exception : "Nothing in this section shall affect the operation of any law which prohibits, either absolutely or subject to exceptions the sale or mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class." This evidently referred in the Punjab to the Punjab Alienation of Land Act, which was the principal Act introducing such prohibition in that Province. This exception exempted from the operation of the prohibition only so much of the existing law as prohibited sale or mortgage of agricultural land; the exemption did not extend to exchanges, gifts, wills or grants of occupancy rights which were included in the enlarged definition of 'permanent alienation' as given in the Punjab Alienation of Land Act. The effect of this provision in the Government of India Act, 1935, therefore was that on and after 1st April, 1937, a person belonging to a notified agricultural tribe, was free to exchange, gift or bequeath agricultural land or grant occupancy rights in it to a person who did not belong to any of the

(ii) Presumption against mistake.

1. (1881)8 QBD 119,122; *see* also *R.* v. *Irwin Printing Co., Ltd.*, (1926) Exch. Rep. Canada, 104, 106 (presumption against defect of Parliamentary procedure behind an Act); *Haplin* v. *Att-Gen*, (1935)69 Ir LTR 259 (failure to endorse date of passing).
2. *Nalinakha Bysak* v. *Shyam Sunder Haldar*, AIR 1953 SC 148; *(M/s.) Nehru Motor Transport Corporation Society, Ltd.* v. *Dy Registrar Co-operative Societies*, 1977 RLW 136.
3. *Kalu Khoda* v. *State*, AIR 1962 Guj 283, 286 (FB).
4. 1891 AC 531, 548 "It is our duty neither to add nor to take from a statute unless we see good grounds for thinking that the Legislature intended something which it has failed precisely to express" : Tindal, C.J., in *Everett* v. *Wells*, (1841)10 LJ CP 81, 84.

agricultural tribes in the same group. The counsel for the appellant in *Madho Singh* v. *James Skinner*,[1] urged that it could not have been the intention of Parliament to keep intact laws like the Punjab Alienation of Land Act with regard to forms of alienations only and to repeal them as regards others. He maintained that no reason existed for this distinction and suggested that the omission of exchange, gift, will or lease in Section 298 of the Government of India Act was probably an oversight. But their Lordships of the Lahore High Court did not agree with him and relying as well on the above quoted observations of Lord Halsbury rejected his contention.

In the Indian Councils Act, 1861, it was provided in Section 22 thereof that "The Governor-General-in-Council shall have.....to make laws (operative) in the Indian territories *now* under the dominion of Her Majesty....." There were subsequent Acts of the Imperial Parliament which did not interfere with any of the numerous legislative enactments of the Governor-General-in-Council which were passed between 1867 and 1886 inclusive in relation to Indian territories which were not on the 1st August, 1861, the dominion of Her Majesty and which since the 1st August, 1861, had been acquired by conquest or cession. A question arose in *Abdulla* v. *Mohangir*,[2] as to whether Act XVII of 1886 passed by the Governor General-in-Council was *intra vires* as relating to a territory acquired after 1st August, 1861. Their Lordships of the Allahabad High Court unanimously observed in the Full Bench : "Even if the interpretation which has been put by the Imperial Parliament on Section 22 of the Indian Councils Act, 1861, was erroneous, we are of opinion that that interpretation has been so declared by the Imperial Parliament as to make it obligatory upon us to adopt it in this case. In the case of the *Postmaster-General of the United States* v. *Early*,[3] the Supreme Court of the United States decided that though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future. Whether the word 'now' was intentionally or by inadvertence introduced into Section 22 of the Indian Councils Act, 1861, it is difficult to say. To hold that the Governor-General-in-Council has no power to legislate except in respect of Indian territories which were on the 1st August, 1861, under the dominion of Her Majesty, would..... lead to anomalous results which the imperial Legislature must have foreseen and could not have intended." The impugned legislation was accordingly held to be *intra vires*.

(iii) Correction of mistakes when permissible.—A Court of law is no doubt not authorised to supply a *casus omissus*. or to alter the language of a statute for the purpose of supplying a meaning, even though they may be of opinion that a mistake has occurred in drawing up the Act, but it is an equally recognised principle of interpretation that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsmen's unskilfulness or ignorance of the law except in case of necessary or the absolute intractability of the language used.[4] On this principle words in a statute may be added, altered or even rejected according to the requirements of the case.[5] When there is an error of either of law or fact contained in a statute, their Lordships of the Privy Council unequivocally affirmed the

1. AIR 1942 Lah 243, 251.
2. ILR 11 All 491, 502-504 (FB).
3. Curtis's *Reports of Decisions in the Supreme Court of the United States*, p. 86.
4. *Salmon* v. *Duncombe*, (1886)11 AC 627; *R* v. *Vasey*, (1905)2 KB 748; *R*. v. *Ettridge*, (1909)2 KB 24.
5. *Laird* v. *Briggs*, (1881)19 Ch D 22, 33 (word "convenient" in Section 8 of the Prescription Act, 1832, ignored as being absurd in the context); *Lyde* v. *Barnard*, (1836)1 M & W 101, 115,143. (In Section 6 of Lord Tenterden's Act the word "credit" or the words "such representations" after the word "upon" was held to be necessary to make sense); *Green* v. *Wood*, (1845)7 QB 178 (the words "or execution issued" in Section 2 of the Warrants of Attorney Act, 1822, were substituted by the words "and execution levied."

discretion which is reserved to the Judge in such a case, in *Mollwo March & Co.* v. *Court of Wards*,[1] "Some reliance was placed on 28 and 29 Vict., 86, S. 1*(g)*, which enacts that the advance of money to a firm upon a contract that the lender should receive a rate of interest varying with the profits, or a share of the profits, shall not of itself constitute the lender a partner, or render him responsible as such. It was argued that this raised an implication that the lender was so responsible by the law existing before the passing of the Act. The enactment is no doubt entitled to great weight as evidence of the law, but it is by no means conclusive; and when the existing law is shown to be different from that which the Legislature supposed it to be, the implication arising from the statute cannot operate as a negation of its existence." Similarly, the recital in an Act that an earlier Act was a temporary Act only be held to be inaccurate.[2]

(iv) Misstatement of law.

(v) Misstatement of facts.—A recital of facts in the preamble may be used as evidence but it is not conclusive evidence, and it is liable to be rebutted.[3] It may, however, be noted that the erroneous declarations of the Legislature, though historically inclusive as to the past, may create law as to the future, or may be prospectively, though not retrospectively, conclusive.[4] On the same principle an evidently accidental omission in the Schedule to an Act may be supplied.[5] The Court will also not be bound by the letter of the Act where there is an obvious misprint.[6]

(vi) Burden of proving mistake of Legislature.—A rule of law enunciated in an Act is very strong evidence of what the law on the subject actually is, but though the Court is not absolutely bound by its recital, 'the burden of proving that the Legislature has fallen into a mistake is cast upon those who say so.'[7]

5. Legislature does not waste its words.—Legislature is deemed not to waste its words or to say anything in vain.[8] The presumption is always against superfluity in a statute.[9] An Act

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1. LRIA (Supplement) 86 at pp. 104-105 : (1872) LR 4 PC 419, 437.
2. *Houghton* v. *Fear Brothers Ltd.*, (1913)1 KB 343, 352. Pickford, J., pointed out : "The draftsman was under an erroneous impression that the whole Act would expire at the end of seven years and acting upon that view he drafted the Section so as to continue all the provisions of the earlier Act for a further period of seven years."
3. *Merttens* v. *Hill*, (1901)1 Ch 842, 852; *R.* v. *Houghten (Inhabitants)*, (1852)22 LJMC 89, 92, 94 : *Wharton Peerage Claim*, (1844)12 Cl & F 295, 302.
4. *Labrador Co.* v. *R.*, (1893) AC 104, 123.
5. *R.* v. *Straham*, (1872) LR 7 QB 463, 465.
6. *The Punjab State Civil Supplies Corporation Ltd.* v. *Commissioner of Income Tax, Patiala*, 1993 Tax LR 407 (FB). *Chancellor of Oxford* v. *Bishop of Coventry*, (1615)10 Co Re 57*(v)*; *R.* v. *Wilcock*, (1845)7 QB 317, 338; *Re* Poothroyd, (1846)15 M & W 1, 9.
7. *R.* v. *Treasury*, (1851)20 LJQB 305, 311, *per* Lord, Campbell.
8. *Govindrama* v. *(Smt.) Jhimi Bai*, 1988 JLJ 235; *Kashi Singh* v. *State of Bihar*, (1995)2 BLJ 362 (Pat); *Quebec Railway, Light, Heat and Power Co., Ltd.* v. *Vandry*, AIR 1920 PC 181, 186, *per* Lord Sumner. It will also be presumed that words in stautes are used precisely and exactly, not loosely or inexactly : Odgers : *Construction of Deeds and Statutes*, 2nd Ed. 1946 at p. 174; *Cf., Law Society* v. *U. S. Bureau*, 1934 KB 343; *Kamleshwar Singh* v. *Dharamdeo Singh*, AIR 1957 Pat 375 (FB); *Uma Shankar Prasad Singh* v. *Lakshmi Narayanjee*, AIR 1958 Pat 609, 611 (C.P. Sinha, J.); *Agaiah* v. *Mohd. Abdul Kareem*, AIR 1961 Andh Pra 201, 207 (Chandra Reddy, C.J.).
9. *Sri Awadh Kishore Singh* v. *Sri Brij Bihari Singh*, AIR 1993 Pat 122 (DB). *Andhra Pradesh Wakf Board* v. *Bowlal Bibi*, AIR 1983 AP 57 (DB); *M/s. Powar and Powar* v. *C.B. C. I. Society*, AIR 1983 Karn 77 (DB). *Municipal Corpn. for Greater Bombay* v. *Monopol Chemicals Pvt. Ltd.*, AIR 1988 Bom 217 (FB) : 1988 Mah LJ 353 : (1988)25 Reports 294 : 1988 Mah LR 884 : (1988)2 Land LR 384 : (1988)3 Bom CR 197, overruling AIR 1987 Bom 321. *Ganeshlal* v. *Dhandiba*, 17 IC 721; *Barada Kanta Roy* v. *Shaikh Maijuddi*, ILR 52 Cal 275 : AIR 1925 Cal 1, 3 (FB); *Moher Sheikh* v. *Queen-Empress*, ILR 21 Cal 392, 399; *The Queen* v. *Bishop of Oxford*, (1879)4 QBD 245, 261 (*per* Cockburn, C.J.); *Hough* v. *Windus*, (1884)12 QBD 224, 229; *Saleh Mohd.* v. *Khanmull*, AIR 1959 Mys 102, 105; *Uma Shankar* v. *Lakshmi Narayanjee*, AIR 1958 Pat 609; *Dharam Deo* v. *State*, AIR 1958 All 865; *Ambalal Chotalal* v. *Babaldas Durgabai*, (1962)3 Guj LR 425 : AIR 1964 Guj 9; *Chhotey Lal* v. *I.T.O.*, 1968 All 273, 274 (Dwivedi, J.).

should be construed as to avoid redundancy or surplusage.[1] It is no doubt true that as a general rule legislatures may be presumed not to make a superfluous provision. But this presumption is not a strong presumption and it is not uncommon to find the legislature inserting superfluous provision under the influence of what may be abundant caution.[2] It is a well settled principle of construction that no part of a statute shall be so construed as to convict the Legislature of having engrafted a statutory clause which would be of no purpose or avail to anyone.[3] In short, a court should not be prompt to ascribe, and should not without necessity or sound reason, impute to the language of a statute tautology or superfluity.[4]

In *The king* v. *Berchet*[5] a case decided in 1688, it was said that it is a well-known rule in the interpretation of statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent. The Court applied this rule in *Queen* v. *Bishop of Oxford*.[6]

Every part of a statute should be given as far as possible its full meaning and effect and no word or clause should ordinarily be rejected as superfluous.[7] An interpretation which makes a provision of law completely nugatory cannot be correct.[8] Effect should be given to every part of the section in an enactment. It should not be assumed that the Legislature used language without any purpose. Thus the clear language of Section 27, Evidence Act, clearly indicates that statements in order to fall under the section must contain every one of the qualifications laid down therein. When the person giving the information leading to the discovery of certain facts relating to crime under investigation does not happen to be accused at the time he offers the said information, his statement cannot be used as evidence as it does not come within the meaning of Section 27.[9]

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1. *Aidal Singh* v. *Karan Singh*, AIR 1957 All 414, 424 (FB); *Shabbir Fatima* v. *Chancellor, University of Allahabad*, AIR 1966 All 45; *Laxmandas* v. *Barfi Bai*, (1972) MPLJ 15, 22 (Rama, J.); *Dinsshaw Manekji* v. *Badkas*, AIR 1969 B 151, 156 (Nathwani, J.); *State of West Bengal* v. *S. Narayanarao*, AIR 1968 Cal 512; *see* also *Hill* v. *William Hill, (Park Lane) Ltd.*, (1969)2 All ER 452 (HL), Legislature cannot be presumed to be guilty of tautology. *Dattatraya Eknath Lanke* v. *Returning Officer, Amaravathi*, AIR 1986 Bom 354 : (1985)2 Bom CR 185 : (1985)87 Bom LR 405 : 1985 Mah LJ 875 : 1985 Mah LR 241.
2. *See* G.P. Singh on *Principles of Statutory Interpretation*, 4th Ed., p. 51. *Hakim Ali* v. *Board of Revenue, U.P.*, AIR 1991 SC 972 : 1990 All LJ 966 : (1991)1 JT (SC) 22 : 1991 AIR SC 252 : 1991 Supp. (1) SCC 565 : (1986) All LJ 1110 overruled.
3. *Per* S.K. Jha, J. in *Ahmad Raza Khan* v. *Bhola Prasad*, (1979)27 BLJR 699 (DB).
4. *Manicka Gounder* v. *Arunachala Gounder*, AIR 1965 Mad 1 (FB) : ILR (1964)2 Mad 598 : 77 MLW 404.
5. 1 Show 106.
6. 4 QBD 245; *see* also *Champaran Sugar Co. Ltd.* v. *State of Bihar*, (1994)2 Pat LJR 71. *Borough of Glebe* v. *Luckey*, 1 CLR 158; *The Commonwealth* v. *Baume*, 2 CLR 405, 414; *Mayor of Melbourne* v. *Attorney-General for the State of Victoria*, 3 CLR 467, 474; *Brisbane City Council* v. *Attorney General for Queensland*, 5 CLR 695, 720-21; *Hulaschand* v. *State of Orissa*, AIR 1976 SC 1016; *Indian Chamber of Commerce* v. *C.I.T.*, AIR 1976 SC 348; *Dinesh* v. *State of Assam*, AIR 1978 SC 17; *Zilay Singh* v. *State of U.P.*, 1978 All LJ 772; *Bhasker Atmaram Joshi* v. *State of Maharashtra*, 1976 Mah LJ 229 (DB); *Govindrao Ranoji Musale* v. *Anadibai Govindrao*, 1977 Mah LJ 144; *Mankunwar* v. *Udairam*, 1976 JLJ 681; *Mst. Rulia Debi* v. *Raghunath Prasad*, (1979)27 BL JR 38 : AIR 1979 Pat 115.
7. *S.K. Shana Ltd.* v. *State of Bihar*, AIR 1953 Pat 161; *Veeraswamy* v. *Andhra Pradesh*, (1959)1 Andh WR 303; *State* v. *Jujarsingh*, AIR 1959 Raj 80; *Nelluru* v. *Andhra State*, (1958)2 Andh WR 536 (FB); *Raja Ram* v. *State*, AIR 1966 All 192 (FB); *Dharamchand Premchand* v. *Kapargoan Taluka Kapus G & G Society*, AIR 1967 Bom 124 : 68 Bom LR 177 : ILR 1966 Bom 414; *Ambiah* v. *Avadhanula*, AIR 1964 Andh Pra 514, 518 (Chandra Reddy, C.J.).
8. *Shanti Lal* v. *State*, AIR 1958 Raj 7, 8 (Wanchoo, C.J.); *Abdul Aziz* v. *Mysore State Transport Appellate Tribunal*, AIR 1965 Mys 286, 290 (Santosh, J.); *see* also *United States* v. *Neal Powers*, 83 L Ed 1245 : 307 US 214 (Doglous, J.) There is a presumption against a construction which would render a statute ineffective, or inefficient or which would cause grave public-injury or even inconvenience.
9. *In re* Malladi Ramaiah, AIR 1956 Andh 56.

their full and natural meaning, unless the context, or some other admissible consideration indicates that the Legislature intended them to be taken in a more limited sense. General terms in a statute may be restrained and limited by specific words with which they are associated. They may be taken in a limited and restricted sense when the construction of them according to their widest meaning would lead to unjust, oppressive or absurd consequences. The words must, therefore, be construed having regard to the subject and the occasion and the object of the enactment. It must also be remembered that the exact colour and shape of the meaning of any word in an enactment is not to be ascertained by reading them in isolation. It must be viewed in the context of other enacting part of the statute.[1] They must be read structurally and in their context for their signification may vary with their contextual setting.[2] An expression in a statute is controlled by its context, by the scheme of the statute and the object which the enactment seeks to achieve.[3] The Supreme Court in *Municipal Corporation of Delhi* v. *Mohd. Yasin*[4] speaking of different meanings to be adopted for words used in different contexts, says, "vicissitudes of time and necessitudes of history contribute to changes of philosophical attitudes, concepts, ideas and ideals with them, the meanings of the words and phrases and the language itself. The philosophy and the language of law are no exceptions, words and phrases take colour and character from the contexts and the times and speak differently in different contexts and times. And it is worthwhile remembering that words and phrases have not only a meaning but also content, a living content. This is particularly so where the words and phrases, properly belong to other disciplines. 'Tax', and 'Fee' are such words. They properly belong to the world of Public Finance, but since the Constitution and the Laws are also concerned with Public Finance, these words have often been adjudicated upon in an effort to discover their context. A word which is not defined, but which is a word of every day use must be construed in its popular sense.[5]

On the same principle special words in a statute may sometimes be expanded in their meaning by the fact that the purpose of the law is general.

The rule, it may be noted, is not a rule of law but a subsidiary rule of construction which may often be usefully applied in considering the intention of the Legislature. But it is the duty of the court not to confine itself to the mere verbal or literary effect of the provisions, as if applied to an abstract subject. It must, in the first place, have regard to the paramount rule laid down in *Heydon's* case[6] that the court must consider the occasion of passing the statute, the matter which was regarded as requiring an alteration of the law, and the nature of the remedy provided for the evil which required alteration.[7]

(iii) Technical words have technical meaning.—Where a word used by the Legislature has a fixed *technical meaning*, it is to be taken in that sense, unless the context or other evidence of meaning indicates a contrary legislative intent. The technical words and phrases of the law are presumed to have been used in their proper technical signification when used in statutes, unless

1. *Western Coalfields, Ltd.* v. *Chaturi Singh*, 1980 MPLJ 60 (DB); *Tara Chand Chandani* v. *Shashi Bhushan Gupta*, 1980 Cur LJ (Civil) 231.
2. *Nadiad Borough Municipality* v. *Nadiad Electric Co. Ltd.*, AIR 1964 Guj 30, 36 (P.N. Bhagwati, J.); *Bijay Cotton Mills, Ltd.* v. *Rashtriya Mill Mazdoor Sangh*, AIR 1965 Raj 213, 216 (Dave, C.J.).
3. *Yerramilli Radraraju* v. *Suryanarayana*, AIR 1960 Andh Pra 257, 258 (Ansari, J.).
4. (1983)23 DLT 493.
5. *Ramabai* v. *Dinesh*, 1976 Mah LJ 565; *Madanlal Sharma* v. *Smt. Santosh Sharma*, 1980 Mah LJ 391.
6. 3 Rep 7.
7. *Luckey* v. *Edmund*, 21 CLR 336; *Ramaswamy Nadar* v. *State of Madras*, AIR 1958 SC 56; *A.K. Moorthy* v. *D. Ramachandran*, (1992)2 Ker LJ 215; *Birendra Kumar Rai* v. *Union of India*, 1992 Cri LJ 3866 (All) (FB).

it plainly appears that a different meaning was intended by the Legislature.[1] The first and most elementary principle is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning.[2]

Similarly terms of art should be understood according to their usage in the art to which they belong.

Where words have been used which have acquired a *legal meaning* it will be taken , *prima facie* that the Legislature has intended to use them with that meaning[3] unless a contrary intention clearly appears from the context.[4] To use the words of Denman, J., in *R.* v. *Slator* :[5] "But it always requires the strong compulsion of other words in an Act to induce the court to alter the ordinary meaning of a well-known legal term." A very sound rule of interpretation is laid down by Truro, J., in *Stephenson* v. *Higginson*[6] : "In construing an Act of Parliament, I apprehend every word must be understood according to the legal meaning, unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense."[7]

Where a word or phrase has an established *meaning at common law,* it is to be given the same meaning in the interpretation of a statute in which it is used, unless it is evident that such was not the intention of the Legislature. Similarly, the Legislature, is presumed to know the meaning attributed to a word by previous legislation.[8]

The Supreme Court has cautioned that the meaning given to the same word occurring in a social security measure or a regulating enactment may not be apposite or appropriate when the same word is interpreted with reference to a taxing statute. [9]

The general rule with respect to *terms used in trade or commerce,* is that in the absence of evidence of a contrary legislative intent, words of commerce or trade, when used in a statute relating to those subjects, are presumed to have been used by the Legislature in their trade or commercial meaning.[10]

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1. Crawford : *Statutory Construction*, Article 187 at pp. 319-320; *Burton* v. *Reevell*, (1847)16 LJ Ex. 85, 86, *per* Parke, B.; *R.* v.*Commissioner of Income-tax*, (1888)22 QBD 296, 309; *Laird* v. *Briggs*, (1881)19 Ch D 22, 34, *per* Jessel, M.R.; *Lord Advocate* v. *Stewart*, 1902 AC 344, 351, *per* Lord Macnaghten.
2. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 28, quoting *R.* v. *Commissioners of Income-tax*, (1888)22 QBD 296, 309; *Victoria City* v. *Bishop of Vancouver Island*, (1921)2 AC 384, 387; *Achru Mal* v. Balwant *Singh*, ILR 18 Lah 415 : AIR 1937 Lah 178.
3. *Workmen of National and Grindlay's Bank, Ltd.* v. *National and Grindlays Bank, Ltd.*, AIR 1976 SC 611.
4. *Attorney-General for N.S.W.* v. *Brewery Employees' Union of N.S.W.*, 6 CLR 469, 531, *per* O'Connor, J.
5. 8 QBD 267, 272.
6. 3 HLC 638, 686.
7. *Davies & Jones* v. *State of Western Australia*, 2 CLR 29, 51.
8. *Kusum Lata* v. *Kampta Prasad*, AIR 1965 All 280.
9. See *(M/s.) Saraswathi Sugar Mills* v. *Haryana State Board*, AIR 1992 SC 224 : (1992)1 SCC 418; *Pollisetti Pullamma* v. *Kalluri Komeswaramma*, AIR 1991 SC 604; *Pandey Oran* v. *Ram Chander Sahu*, 1992 Supp. (2) SCC 77 : AIR 1992 SC 195; *Ramesh Singh* v. *Chinta Devi*, (1994)1 BLJR 464 : (1994)1 Pat LJR 650.
10. *(M/s.) United Off-set Process Pvt. Ltd.* v. *Asstt. Collector of Customs, Bombay*, AIR 1989 SC 622 : (1988)4 JT 198 : (1988)19 ECR 571 : (1988)38 ELT 568 : (1988)18 ECC 473 : (1989)1 Com LJ 53 : (1989) Cri LR (SC) 109 : (1989)73 STC 81. *Tata Engineering and Locomotive Co. Ltd., Jamshedpur* v. *State of Bihar*, AIR 1989 Pat 23 (DB) : (1988) BLJR 707 : (1988) Pat LJR (HC) 1024 : 1989 BLJ 767; *The Sirsilk Ltd.* v. *The Textiles Committee*, AIR 1989 SC 317 : (1988)27 STL 53 : (1988)4 JT 592. *Re* 200 Chests of Tea, (1824)9 Wheaton 435; *see* also *Codwaladar* v. *Zeb*, 38 L Ed 115, 117 (Gray, J.); *Union of India* v. *Minimum Wages Act Authority*, AIR 1969 Bombay 310 (Nain, J.); *Vimla Cold Storage* v. *State of Kerala*, 1976 Ker LT 624; *Baroda Municipal Corporation* v. *Hindustan Conductors (P), Ltd.*, (1979)220 Guj LR 502 (DB).

alive while the Parent Act stands repealed.[1]

The words who is not removable, etc., which were inserted by the Legislature in Section 197, Cr.P.C., 1973, are words of limitation and are inseparable from the words 'Public servant' and to exercise them would have the result of widening its scope and would quite clearly bring into existence a law which was never within the contemplation of the Legislature.[2]

The words 'any such controlled industry as may be specified in this behalf by the Central Government' in Section 2*(a)* of the Industrial Disputes Act, denote a further condition of specification by which the Central Government reserved authority for making a reference.[3]

In *Kanpur Textile Finishing Mills* v. *Regional Provident Fund Commissioner*,[4] Kapur and Dulat, JJ., interpreting the words 'textile, manufacture, production and factory' in Section 2(1) and Schedule I of the Employees Provident Funds Act, 1952, observed that it is one of the principles of construction that the Courts cannot impute superfluity to Legislatures and should give a meaning to every word used in an Act of Parliament. Continuing their Lordships observed that if an Act is one passed with reference to a particular trade, business or transaction and words are used which everybody conversant with the trade, business or transaction, knows and understands to have a particular meaning, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.

When there is a new enactment establishing a new body of law it is desirable to give effect, if possible, to every provision and every word, so that no word shall be wasted, but it very often happens that in passing fresh legislation the Legislature makes a statement declaratory of the law. When it does so it does not add to the law, nor does it alter the duty of the Court. When there is fresh legislation dealing with matters which have already been the subject of legislation then *ex necessitate rei*, all the Acts must be construed together for the purpose of answering any question arising under them.[5]

(ii) Repetition and surplusage.—In interpreting Acts of Legislatures although it is necessary if possible to give every word of a particular clause some meaning, it is not always possible to do so. Acts of Legislatures are no more exempt than any other documents from looseness of language or inaccuracy of expression, and it is sometimes impossible, doing the best one can, to give full and accurate meaning to every word.[6]

The general rule of interpretation, no doubt, is that a meaning must be given if possible to every word of a statute, for a statute is never supposed to use words without a meaning.[7] All the words used must be taken into consideration, and no word should be considered as redundant, and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage.[8] The words used in an Act of Parliament must be construed in such a manner as to give them a sensible meaning, and it is improper to hold that the language of a statute is not strictly

1. *Naresh Chandra Bose* v. *Sachindra Nath Deb*, AIR 1956 Cal 222.
2. *Ghanairam* v. *State*, AIR 1955 Nag 265 (it was pointed out that if Section 197, Cr PC, is rendered wholly void the applicant does not stand to gain at all because there will then be no necessity for sanction for the prosecution of any class of Government servants whatsoever).
3. *Venkataramiah* v. *Vanajakshamma*, AIR 1956 Mys 8.
4. AIR 1955 Punj 130.
5. *Sweeney* v. *Fitz Hardinge*, 4 CLR 716, 726.
6. *Yorkshire Fire & Life Insurance Co.* v. *Clayton*, (1881)8 QBD 421.
7. *Auchterarder of Presbytery* v. *Lord Kinnoull*, 6 Cl & F 646, 686.
8. *Babu Ram* v. *Roshanlal Sri Krishna Das*, 1963 Jab LJ 656 : 1963 MPLJ 665; *Triveni Engineering Works, Ltd.* v. *Government of U.P.*, 1978 All LJ 744.

accurate.[1] Courts will, however, when necessary, take cognizance of the fact that the Legislature does sometimes repeat itself, and does not always convey its meaning in the style of literary perfection. It may not always be possible to give a meaning to every word used in an Act of Parliament and many instances may be found of provisions put into statutes merely by way of precaution.[2] Thus it is not uncommon in an Act of Parliament to find special exemptions, which are already covered by a general exemption, introduced *ex majori cautela*.[3] Nor is surplusage, or even tautology wholly unknown in the language of the Legislature.[4] "A Statute"; said Lord Brougham, in *Auchterarder of Presbytery* v. *Lord Kinnoull*,[5] "is always allowed the privilege of using words not absolutely necessary." In every case, the construction of every Act depends upon its language as applied to the subject-matter, after giving full weight to every legitimate aid to interpretation.[6]

6. Words interpreted in ordinary sense unless technical.—The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise in their ordinary meaning.[7] It is to be presumed that the Legislature has used the words in their known and ordinary signification, particularly when they are themselves precise and unambiguous.[8]

It is a familiar rule in the construction of legal instruments, alike dictated by authority and commonsense, that common words in a statute are to be extended to all the objects which, in their usual acceptation, they describe or denote, unless the context indicates that such a construction would frustrate the real intention of the draftsman. Words of common use are generally to be construed according to their natural, plain and ordinary signification. It is presumed that the Legislature has used the words in their known and ordinary signification. In *Commercial Banking Co. of Sydney & Bank of New South Wales* v. *Federal Commissioner of Taxation*,[9] the question was with regard to the meaning of the word *'dividend'* Barton, A.C.J., observed : "I considered that according to the generally accepted meaning of a dividend as periodically declared by a company upon its operations was, normally, the profit distributed to the members and shareholders of the concern, and paid out of its total income, and that this dividend, when less than the profit seem to have been made for the period under review, was, according to common understanding, referable to that profit." As their Lordships of the Privy Council observed in *Bank of Toronto* v. *Lambe*,[10] the common understanding of men is 'one main

1. *Autar Singh* v. *State of Punjab*, AIR 1965 SC 666 : (1965)2 SCJ 137.
2. *Yorkshire Fire & Life Insurance Co.* v. *Clayton*, (1881)8 QBD 421, 424.
3. *Income-tax Commissioners* v. *Pemsel*, 1891 AC 532.
4. *Income-tax Commissioners* v. *Pemsel*, 1891 AC 531, 532, 589.
5. 6 Cl & F 646, 686; *see* also *Brisbane City Council* v. *Attorney-General for Queensland*, 5 CLR 596, 720-21; *British India Corporation* v. *State of U.P.*, 1962 STC 459.
6. *Jackson* v. *Federal Commissioner of Taxation*, 27 CLR 503, 507. How to find out as to use of words as abundant caution and as surplage is set out in *Wahid Ullah Khan* v. *District Magistrate, Naini Tal*, AIR 1993 All 249 (FB).
7. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 28, quoting *R.* v. *Commissioners of Income-tax*, (1888)22 QBD 296, 309; *Victoria City* v. *Bishop of Vancouver Island*, (1921)2 AC 384, 387; *Achhru Mal* v. *Balwant Singh*, ILR 18 Lah 415 : AIR 1937 Lah 178.
8. *Dilip Damodaran* v. *Govt. of Andh. Pra.*, AIR 1991 AP 194 : (1991)1 APLJ 221. *Miss Parvati K. Moojani* v. *Fonseca, Director, DL & C Ministry of Defence, Pune*, AIR 1988 Bom 366 : (1988)22 Reports 305 : (1988)2 Bom CR 464 : 1988 Mah LJ 786 : 1988 Mah LR 1331 (FB). *Tata Engineering and Locomotive Co., Ltd., Jamshedpur* v. *State of Bihar*, AIR 1989 Pat 23 : (1988) BLJR 707 : (1988) Pat LJR (HC) 1024 : 1989 BLJ 767 (DB).
9. 23 CLR 102, 111.
10. 12 AC 575, 582.

clue to the meaning to the Legislature'. In interpreting the words of a statute, their natural meaning should be given, unless there is some special meaning given to it by the Legislature, which it has clearly expressed. The word 'entry' in Section 3 of the Passport Act, 1920, cannot mean continuance of stay.[1]

With reference to taxing statutes, Lord Haldane, L.C. dealing with the English Finance Act, in *Attorney-General* v. *Milne*,[2] observed : "All we are permitted to look at is the language used. If it has a natural meaning we cannot depart from that meaning unless, reading the Statute as a whole, the context directs us to do so. Speculation as to a different construction having been contemplated by those who framed the Act is inadmissible, above all in a statute which imposes taxation."

(i) Plain and natural meaning not interchangeable with popular meaning.—The rule is that words used by the Legislature should be given their plain and natural meaning, by plain and natural meaning being meant the literal and popular as opposed to a figurative or technical meaning.[3] Statutes should *prima facie* be construed literally, but that only means that the document is to be construed according to the grammatical and ordinary sense of the actual words employed in the Act itself[4]—the rule of Lord Wensleydale in *Grey* v. *Pearson*.[5] This was the basis of the judgment of the majority in *Amalgamated Society of Engineers* v. *Adelaide Steamship Co.*[6] But there is no authority which makes the word 'popular' equivalent to 'plain and ordinary'. The terms may in some cases coincide but not always. In the *Amalgamated Society of Engineers'* case,[7] the judgment of the majority relied on cases establishing that the 'natural sense' was the *prima facie* sense to adopt. But the natural sense of any word must depend on the subject-matter in connection with which it is used and on its collocation. It is not necessarily the same as the 'popular sense': it cannot even be said to be primarily the same. The natural sense of an expression may be its legal or technical sense. In *Stephenson* v. *Higginson*,[8] Lord Truro said : "In construing an Act of Parliament, I apprehend every word must be understood according to the legal meaning unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense." Lord Robertson again said in *Lord Advocate* v. *Stewart*[9] : The principle that in statutes words are to be taken in their legal sense has..... a special cogency when the words in question represent only legal conceptions. The popular use of such words does not represent the primary meaning of the words, but some half understanding of them." The Privy Council has also expressed its opinion as to the popular meaning of words in a statute in *the Lion*[10] : "The meaning of particular words in an Act of Parliament, to use the words of Abbot, C.J., in *R* v. *Hall*,[11] ' is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion, on

1. *Chhanga Khan* v. *State*, AIR 1956 All 69, "All that can be said against the applicant is that he overstayed in India after the time-limit given to him by the last visa had expired. As overstaying in India under these circumstances had not been made an offence under any provision of law....the applicant cannot be convicted by importing a meaning in a penal statute which does not exist there."
2. 1914 AC 765, 771 followed in *Jackson* v. *Federal Commissioner of Taxation*, 27 CLR 503, 509.
3. *Martison* v. *Hart*, (1854)14 CB 357.
4. *R.* v. *Halliday*, 1917 AC 260, 303.
5. (1857)6 HLC 61.
6. (1920)28 CLR 129.
7. (1920)28 CLR 129, 148-49.
8. (1952)3 HLC 638, 686.
9. 1902 AC 344.
10. 1869 LR 2 PC 525.
11. (1822)1 B & C 123 at p. 136.

which they are used'." In *Wilmott* v. *London Road Car Co.*,[1] the danger of a court proceeding to construe words in legal instruments by analogy to the manner in which persons understand the same words in ordinary parlance was specially pointed out. Moulton, L.J. referring to Lord Blackburn in the *Pharmaceutical Society's* case,[2] says, "He intends I think, to indicate that as we proceed from common parlance towards the most technical legal documents there will be a gradually increasing probability that the full legal sense is to be attached to the word."[3]

Collins, M.R. in *A.G.* v. *Glossop*,[4] observed : "It was strenuously argued by the defendant's counsel that we ought not to deal with the construction of the Finance Acts in a strict technical manner, but that, clearing our heads of the technicalities of conveyancing and the terms of art used by conveyancers, we should approach the matters involved from the point of view—I will not say of the man in the street, but of an ordinary well-educated English gentleman, not a lawyer. I do not think, however, that that suggestion must be carried too far; for, after all, the Acts have been framed by draftsman acquainted with conveyancing terms, and they must, in the nature of things, be addressed to a large extent to a section of the public familiar with those terms; and I do not think that it would be right or possible, in dealing with provisions of the Finance Acts, to ignore altogether the technicalities of conveyancing, and to disengage one's mind entirely from all acquaintances with the technical terms which conveyancers use, and in which likewise to some extent the draftsmen of Acts of Parliament couch the provisions which they frame." "There has been", observed Lord Esher in *Clerical, etc., Assurance Co.* v. *Carter*,[5] "a long discussion of various puzzling matters in relation to the provisions of the Income Tax Acts, but, after all, we must construe the words of Schedule D according to the ordinary canon of construction, that is to say, by giving them their ordinary meaning in the English language as applied to such a subject-matter, unless some gross and manifest absurdity would be thereby produced."

The expression 'water cooler' and 'refrigerator' are popular words well understood as meaning different things. They should not be interpreted according to any technical or scientific meaning.[6]

But the rule does not imply that the court is not entitled to depart from the ordinary meaning of words under all circumstances. The court may depart from the ordinary dictionary meaning in some situations, and give it a meaning which will advance the remedy and suppress the mischief according to the true intention of the statute.[7]

(ii) Ordinary meaning subject to context and other factors.—The general terms and expressions in a statute are to receive a general construction, that is, they are to be accorded

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1. (1910)2 Ch 525.
2. (1880)5 AC 857.
3. *Jamieson* v. *Christenson*, 4 CLR 1489, 1494, the words 'is distributable' in Section 25 of the Married Women's Property Act, 1890, have a simple and natural meaning. *'Is'* primarily means *'Is now'* and not 'may from time to time be'. In like manner the Intestates Estates Act, 1896, has also its ordinary and natural meaning in favour of widow only; *Australian Temperance & General Mutual Life Assurance Society, Ltd.* v. *Howe*, 31 CLR 290, 302, 303-4, the word 'resident' construed as having a meaning it has in common language. *Markelle* v. *Wallaston*, 4 CLR 141, 147. In the absence of any special commercial meaning the word 'insecticide' was interpreted as an ordinary English word.
4. (1907)1 KB 163, 172.
5. (1889)22 Q BD 444, 448.
6. *Deputy Commissioner, Agricultural Income-tax and Sales Tax* v. *Chandra Corporation*, 1976 Ker LT 22 (DB); *K.S. Gangadhar Panicker* v. *Vasuderan*, 1975 Ker LT 469, the word 'cashew-nut' includes cashew-nut kernel; *Km. Sonia Bhatia* v. *State of U.P.*, 1981 All LJ 467 (SC).
7. *Kanwar Singh* v. *Delhi Municipality*, AIR 1965 SC 871 : (1965)2 SCJ 115 : 1965 MLJ (Cr) 435; *N.K. Jain* v. *V.C.K. Shah*, AIR 1991 SC 1289 : 1991 Cri LJ 1347 : 1991 Lab IC 1013 : (1991)2 JT (SC) 52(2) : (1991)2 SCC 495 : 1991 AIR SCW 960.

As far as possible, full meaning must be given to every word of a statute.[1] No word should be regarded as superfluous unless it be not possible to give a proper interpretation to the enactment or the meaning given is absurd or inequitable.[2] A court should not be prompt to ascribe and indeed should not, without necessity or some sound reason, impute to the language of a statute, tautology or superfluity. In other words, although surplusage of even tautology is not an uncommon feature in Legislature enactments, the ordinary rule is that a statute is never supposed to use words without a meaning.[3] It is a well-settled principle of construction that words in a statute are designedly used, and an interpretation must be avoided which would render the provision either nugatory or part thereof otiose.[4] No part of a provision of a statute can be just ignored by saying that the Legislature enacted the same not knowing what it was saying. We must assume that the Legislature deliberately used that expression and it intended to convey some meaning thereby.[5] It is not to be assumed that the Legislature has used words meaning nothing.[6]

A Court must be very loath to hold that, when a Legislature in an important social measure solemnly enacts a provision to give protection to a particular class of tenants, such a provision is a mere surplusage to which no effect should be given.[7]

No word is superfluous, redundant or surplus.[8] A construction which makes any provision superfluous must be avoided.[9] A construction that makes any provision of a statute a 'dead letter' must be rejected.[10]

In using words or expressions, the Legislature must always be presumed not to be redundant.[11] Law should be interpreted so as not to make any word redundant if it is possible to interpret it so as to utilize the meanings of all words used in the legislation.[12] The cardinal rule of

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1. *Abdul Karim* v. *Gulbarga Municipality*, AIR 1967 Mys 127, 128; *Davies & Jones* v. *State of Western Australia*, 2 CLR 29, 49. *Balakishan* v. *Shrilal*, AIR 1994 Madh Pra 14.
2. *Prem Parkash* v. *Ram Pratap*, AIR 1967 All 47, 49 (D.S. Mathur, J.); *Sheo Kumar* v. *Tribhuwan Rai*, AIR 1965 Pat 25, 27 (Ramratna Singh, J.); *Purshottam Lal* v. *Prem Shanker*, AIR 1966 All 377, 383 (Dhawan, J.); *Rama Shankar Pathak* v. *Collector, Central Excise*, AIR 1971 All 287, 289 (D.S. Mathur, J.); *Raja Ram* v. *State*, AIR 1966 All 192, 193 (FB) (Takru, J.); ordinary meaning must be given to every word, unless, the doing so, would result in some anomaly, repugnance, or conflict with the other provisions or the allowed object of that statute.
3. *State of Rajasthan* v. *Rajasthan Civil Services Appellate Tribunal*, (1993)2 WLC 140 (Raj). *Ali* v. *Sufaira*, 1988(2) KLT 94. *Manicka* v. *Arunachala*, AIR 1965 Mad 1, 4 (FB) (Ramchandra Iyer, C.J.); *Sundararamareddi* v. *State of Andhra Pradesh*, AIR 1959 Andh Pra 215, 218 (FB) (Chandra Reddy, C.J.); *Ganga Manufacturing Co., Ltd.* v. *State of West Bengal*, 76 CWN 389, 392 (Alakchandra Gupta, J.).
4. *Charan Singh* v. *(Smt.) Majo*, (1976)78 Punj LR 726 (FB). *Laxminarain Mittal* v. *Municipality, Neemuch*, 1983 Jab LJ 479.
5. *Commissioner of Income Tax, Gujarat* v. *Distributors, etc., Ltd.*, 1972 SCJ 445, 450 (Hegde, J.).
6. *Mayor of Melbourne* v. *Attorney-General for Victoria*, 3 CLR 467, 476; *Brisbane City Council* v. *Attorney-General for Queensland*, 5 CLR 695, 720-21; *Shantilal* v. State, AIR 1958 Raj 7, 8; *Harendra Nath* v. *Sailendra Krishna*, AIR 1967 Cal 185; *Shivraj, F.A.L., Works* v. *Authority under the Minimum Wages Act*, AIR 1967 B 223, 224.
7. *Jaswantrai* v. *Bai Jiwi*, AIR 1957 Bom 195, 197 (Chagla, C.J.).
8. *D.C. Sangma* v. *State of Assam*, AIR 1978 SC 17; *Indian Chamber of Commerce* v. *C.I.T.*, AIR 1976 SC 348.
9. *D. M. Jawarilal* v. *Spl. L. A. O., Bangalore*, AIR 1975 Kant 129.
10. *Binod* v. *S.P. & R. Authority*, AIR 1975 Pat 227, case under Motor Vehicles Act, 1939; *see also Rama Rao* v. *Shanti Bai*, AIR 1977 M.P. 222 and *Bhaskar* v. *State*, AIR 1976 Bom 206.
11. *Kewalchand* v. *Sugan Chand*, 1983 Jab LJ 302. *Indra Kumar Karnani* v. *Sunderdas Thackersey & Bros.*, 57 CWN 239; *Dharamchand Premchand* v. *Kapargaon Taluka K.G. and P. Society, Ltd.*, AIR 1967 Bom 124 : 68 Bom LR 177 : ILR 1966 Bom 414 : *Chotey Lal* v. *Income-tax Officer*, AIR 1968 All 273; *Gangadhar Narsingdas Agarwal* v. *Asstt. Collector of Customs*, AIR 1968 Goa 105; *Shambhudatt* v. *Balwant Lal*, (1968)70 Punj LR 790.
12. *Durga Prasad* v. *State*, 1953 AWR (HC) 334 : 1953 ALJ 425; *Aswini Kumar* v. *Arabinda Bose*, AIR 1952 SC 369, 377; *Triveni Engineering Works Ltd.* v. *Govt. of U.P.*, 1978 All LJ 744.

interpretation is that every section of the Code is to be given a proper interpretation.[1] It is not permissible in interpreting a statute to omit words as redundant unless reading them in the statute would lead to absurdity.[2] The Court cannot supply a clear and obvious lacuna in a statute, but it is incumbent on it to avoid a construction which would render a part of the statute devoid of any meaning or application.[3]

The rule of harmonious construction requires that no provision of the Act should be rendered totally ineffective as a result of interpretation.[4]

(i) Construction consistent with smooth working of system.—Lord Hewart, C.J., in *Spillars, Ltd.* v. *Cardiff Borough Assessment Committee.*[5] observed : "It ought to be the rule and we are glad to think that it is the rule that words are used in an Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. And they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred." The primary and exact meaning of 'adjoining' is 'conterminous'. The word is also used in a looser sense as meaning 'near' or 'neighbouring'. In *Mayor, Councillors and Burgess of the Barough of New Plymouth* v. *Taranaki Electric Power Board,*[6] their Lordships of the Privy Council had to consider the meaning to be assigned to the word 'adjoining' as employed in Section 282, New Zealand Municipal Corporations Act, 1920, which provided : "A council, having established electric light works for the purpose of lighting the streets and public places of the borough and of supplying electricity to the inhabitants of the borough may.....*(b)* contract with the local authority of any adjoining district to supply electricity to such local authority upon such terms and conditions as may be mutually agreed upon. Macgregor, J., adopted the loose meaning of the word. The Court of Appeal in turn unanimously came to a contrary decision. Their Lordships of the Privy Council agreed with the latter, Lord Macmillan after referring to the abovequoted observations of Lord Hewart considered it enough to say "that there is here no context constraining their Lordships to give to the word 'adjoining' any other than its exact and literal meaning". In another case[7] their Lordships of the Privy Council said : "Where the words of a statute are clear, they must, of course, be followed, but in their Lordships opinion where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative to be rejected which will introduce uncertainty, friction or confusion into the working of the system".

The opening phrase of Article 373—"Notwithstanding any repeal by this Constitution of the enactments referred to in Article 395, but subject to the other provisions of this Constitution....." not merely does not make the first clause of the Article meaningless but seems to emphasize what an examination of Article 395 suggested; in other words, if the different orders issued under the provisions of the Indian Independence Act, 1947, had been intended to be repealed by Article 395, there would really be no sense in using this phrase; on the other hand, if those orders are not included in the enactments repealed by Article 395, the use of this phrase can be fully explained as one designed to stress the fact of the subsidiary legislation being still

1. *Ram Charan* v. *Residents, Shahabad,* AIR 1958 Raj 248, 249.
2. *Bhailal Jagadish* v. *Additional Commissioner, Akola,* AIR 1953 Nag 89 : 1952 NLJ 613 (FB).
3. *Shiv Bahadur Singh* v. *State of V.P.,* AIR 1953 SC 394.
4. *Mst. Rulia Devi* v. *Raghunath Prasad,* AIR 1979 Pat 115.
5. (1931)2 KB 21.
6. AIR 1933 PC 216.
7. *Mary Teresa Martin* v. *E. Martin,* AIR 1994 Ker, 264. *Shannon Realities* v. *Vile de St. Michael,* 1924 AC 185.

Word and expressions in a sales tax law should be construed as understood in the trade by the dealer and the consumer. The sense in which they understand them is the 'definitive index of legislative intention'.[1]

Particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used, and not in their scientific or technical sense "for the Legislature does not suppose our merchants to be naturalists, or geologists or botanists." In 1951 C.L.R. Ex. 122, the question as to whether salted peanuts and cashew-nuts fell within the category of 'fruits' or 'vegetable' for the purpose of the Excise Act, Ch. 179, R.S.C. 1927, came up for consideration, and the question was answered in the negative in spite of the evidence of botanists that both peanuts and cashew-nuts are vegetables in the wider meaning of that word, that each is a 'fruit' and that neither is a 'nut'. On these principles, it has been held that under the Travancore General Sales Tax Act 18 of 1124 agricultural land horticultural produce grown by the owner in the circumstances specified is exempt from tax, but tea though an agricultural produce shall not have the benefit of that exemption. 'Tea' in the context in which it occurs cannot but mean the leaf gathered from the tea bush whether it has or has not been subjected to the processes which prepare it for the market and hence, the green leaves just like processed leaves are liable to sales tax.[2] 'Cooked Food' in the context does not include 'Biscuits, for purposes of taxation under the U.P. Sales Tax Act, and hence not liable for lower rates of Sales Tax.[3]

In *Unwin* v. *Hansom*,[4] the question for decision was the meaning to be attributed to the expression 'pruned or loped' in connection with the cutting off the tops of trees. The Court of Appeal held that the expression 'lop' was used in its popular sense, that is to say, of cutting off branches laterally. Lord Esher observed therein : "If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business or transaction and words are used which everybody conversant with this trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning though it may differ from the common or ordinary meaning of the words. For instance, the 'waist' or 'skin' are well-known terms as applied to a ship, and nobody would think of their meaning the waist or skin of a person when they are used in an Act of Parliament dealing with ships."

7. Legislature presumed to know the rules of grammar.— Crawford in his *Statutory Construction* (p. 337) says : "Since one may assume that the Legislature knew and understood the rules of grammar such rules should be considered by the Court in their efforts to ascertain the meaning of a statutory enactment on the theory that they will reveal or tend to reveal the correct sense or meaning thereof."

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1. *Delhi Cloth Mills* v. *State of Rajasthan*, AIR 1980 SC 1553.
2. *K.V. Varkey* v. *Sales Tax Officer*, AIR 1956 TC 105; *(M/s.) Mukesh Kumar Agrawal & Co.* v. *State of Madhya Pradesh*, AIR 1988 SC 563 : (1988)1 JT 50 : (1988)14 ECR 353 : (1988)1 SCJ 285 : (1988)68 STC 324 : (1988)24 STL 129 : (1988)21 VKN 157 : 1988 STI (SC) 19 : 1988 Jab LJ 245 : (1988) SC (Tax) 235 : (1988) ATJ 849 : 1988 Supp SCC 232 : 1987 UP TC 1534; *Collector of Central Excise, Kanpur* v. *Krishna Carbon Paper Co.*, AIR 1988 SC 2223 referriing to *Commissioner of Sales Tax, U.P.* v. *(M/s.) S.N. Brothers, Kanpur*, AIR 1973 SC 78, *Porritts and Spencer (Asia) Ltd.* v. *State of Haryana*, (1979)1 SCC 82.
3. *Annapoorna Biscuit Manufacturing Co. Kanpur* v. *C.I.T., U.P., Lucknow*, 1981 All LJ 906 (SC) : 1981 Tax LR 3055 : (1981)3 SCC 442 : (1981)48 STC 254 : 1981 STI (SC) 366 : (1981)1 STL (SC) 261.
4. (1891)2 QB 115.

8. Legislature presumed to know the law, judicial decisions and general principles of law.— "The legislative language will be interpreted on the assumption that the Legislature was aware of existing statutes, the rules of statutory construction, and the judicial decisions and that if a change occurs in legislative language a change was intended in legislative result."[1] The Legislature must be presumed to know the course of the legislation,[2] as well as the course of judicial decisions in the country,[3] a *fortiori* of the superior Courts of the country.[4] It is a well-settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them in the repealed Act, because the Legislature is presumed to be acquainted with the construction which the Courts have put upon the words, and when they repeat the same words, they must be taken to have accepted the interpretation put on them by the Court as correctly reflecting the legislative mind.[5]

In *Young* v. *Mayor*, etc. of *Leamington*[6] Lord Blackburn said : "We ought, in general, in construing an Act of Parliament, to assume that the Legislature knows the existing state of the law." The Legislature is presumed to have informed itself as to the state of the law on any subject as to which it undertakes to legislate.[7]

It is equally presumed that the Legislature is in the know of the general principles of law and did not intend to overthrow a fundamental legal principle, in the absence of a contrary intention expressed in unmistakable terms.[8]

It is a sound inference to be drawn as a matter of construction that the Legislature is aware of the practice of inquiries (and investigations) and its incidents and about treating the reports therein as confidential.[9]

Lord Atkin in *Evans* v. *Bartlam*,[10] however, did not make a similar presumption *qua* the judges. He said :"I am not prepared to accept the view that there is in law any presumption that any one, even a judge, knows all the rules and orders of the Supreme Court. The fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse a maxim of very different scope and application....."

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1. Sutherland : *Statutory Construction*, Vol. 2, Article 4510; *see* also Wilberforce : *Statute Law*, at p. 16; *Bipul Behari* v. *Nikhilchandra*, AIR 1929 Cal 566, 567; *Jogendra Chandra Roy* v. *Shyam Das*, ILR 36 Cal 543, 555; *Kamini Debi* v. *Pramatha Nath Mookerjee*, ILR 39 Cal 33, 39-40; *Mohammad Mazaharal Ahad* v. *Mohammad Azimuddin Bhuinya*, AIR 1923 Cal 507, 511.
2. *Abdullah* v. *Mohan Gir*, ILR 11 All 490, 530 (FB) quoting *Empress* v. *Burah*, 5 IA 178, 196.
3. *Shanta Nand* v. *Basudeva Nand*, AIR 1930 All 225, 240 : ILR 52 All 619 (FB); *Pitam Lal* v. *Kallu Ram*, ILR 53 All 687 : AIR 1931 All 489, 490 (FB); *Kayastha Co., Ltd.* v. *Sita Ram Dubey*, AIR 1929 All 625 (FB).
4. *Babadur Molla* v. *Ismail*, AIR 1925 Cal 329, 331 : ILR 52 Cal 463.
5. *Bengal Immunity Co.* v. *State of Bihar*, AIR 1955 SC 661, 749. Legislature must be presumed to know the facts and conditions rendering a statute expedient and beneficial, *Raval & Co.* v. *Ramachandran*, AIR 1967 Mad 57 at p. 69 (FB).
6. (1888)8 AC 517, 526.
7. *London Clearing Bankers' Committee* v. *IRC*, (1896)1 QB 222, 227; *Kellock's* case, (1868) LR 3 Ch App 769, 781; *see* also *Mulcahy* v. *R.*, 1868 LR 3 HL 306, 319 (Interpretation of the Statutes of Treasons); *In re* Demerara Rubber Co., Ltd., (1913)1 Ch 331, 335 (Construction of Sections 161 and 162, Companies Act, (1862).
8. *Graham* v. *Van Wyck*, 14 Barb. 53.
9. *Local Government Board* v. *Arlidge*, (1914)1 KB 160 at p. 197, Hamilton, J. (minority). Case reversed in 1915 AC 120, 150.
10. 1937 AC 473, 479.

"The Legislature is presumed to know the law as it is," says Wilber- force,[1] "not the law as it may be at some future time. An enactment, therefore, which correctly recites the effect of the decisions in force at the time of its passing, is not rendered inoperative by the reversal of those decisions, nor does it serve to keep them alive."

"In construing an Act of Parliament", said Lord Reid in *Rookes* v. *Barnard*,[2] "we are attempting to find out the intention of Parliament. We must find that intention from the words which Parliament had used, but these words must be construed in the light of the facts known to Parliament when the Act was passed. One assumes that Parliament knows the law, but if the law is notoriously uncertain we must not attribute to Parliament prescience of what the law will ultimately be held to be."

(i) Misapprehensions as to state of law.—If it appears from the wording of an enactment that the Legislature was under some misapprehension as to the state of law on a particular subject, "such a misapprehension would not have the effect of making the law which the Legislature had erroneously assumed it to be."[3] One of the most important consequences of the presumption, that the Legislature is presumed to know the law, is that an erroneous declaration of existing law is wholly inoperative.[4] In *Mollwo, March & Co.* v. *Court of Wards*,[5] some reliance was placed on Section 1, the Statutes 28 and 29 Vict., C. 86, which enacts that the advance of money to a firm upon a contract that the lender shall receive a rate of interest varying with the profits, or a share of the profits, shall not, of itself, constitute the lender a partner, or render him responsible as such. It was argued, that this raised an implication that the lender was so responsible by the law existing before the passing of the Act. Sir Montague E. Smith did not agree thereto. Their Lordships of the Privy Council observed : "The enactment is no doubt entitled to great weight as evidence of the law, but it is by no means conclusive; and when the existing law is shown to be different from that which the Legislature supposed it to be, the implication arising from the statute cannot operate as a negation of its existence."

(ii) Recitals.—The recitals of a statute must be real in the light of the circumstances attending its enactment.[6]

(iii) Wrong recital.—As to the effect of a wrong recital in an Act, Lord Chelmsford was of the opinion in *Jones* v. *Mersey Docks*,[7] that "a mere recital in an Act of Parliament, either of fact or law, is not conclusive; and we are at liberty to consider the fact or the law to be different from the statement in the recital." The reason thereof appears to be evident from the observation made in *Earl of Leicester* v. *Heydon*[8] : "This recital cannot be taken to proceed but upon information, and the Court of Parliament may be misinformed as well as other Courts; none can imagine they would purposely recite a false thing to be true.... From hence it follows that they do not intend anyone to be concluded by such recital grounded upon falsehood, for he who

1. *Statute Law*, at p. 19.
2. (1964)1 All ER 367 at p. 378.
3. *Earl of Shrewsbury* v. *Scott*, (1859) LJCP 34, 53, *per* Cockburn, L.J.
4. Willberforce : *Statute Law*, at p. 13.
5. LR IA Supplement 86, 104-105.
6. *Morehead* v. *New Yord ex Re L. Tipaldo*, 80 L Ed 1347 : 298 US 587 (Butler, J.).
7. (1864)11 HLC 443, 518.
8. (1572) Plowd, 398 (cited in *Stead* v. *Carey*, (1845)14 LJCP 182. Coke's observations : Co. Litt. 1, 196 do not appear to be strictly true at the present day, he had said : "By the authority of our author the rehearsal or preamble of a statute is to be taken for truth, for it cannot be thought that a statute that is made by authority of the whole realm, as well as of the King and of The Lords and Temporal, and of all the Commons, will recite a thing against the truth."

says to the contrary affirms that their intention is to oppress men wrongfully."[1]

"The presumption that the Legislature knows", says Wilberforce,[2] "What is the existing law at the time when it passes any statute, is a most important element in the consideration of the changes which such statute may effect. It would be impossible to form a consistent or harmonious view of our law if each statute were to be regarded as an independent act of legislation, and not as a part of a general system. We are, therefore, bound to assume that in passing a statute, the Legislature has before its mind's eye an exact outline of the law affecting the particular subject with which it is dealing. The new statute is intended, as far as possible, to fix into the existing frame-work."

There is a general presumption against an intention to disturb the established state of the law, or to interfere with the vested rights of the subject, and that a strong bearing now exists against construing a statute so as to oust or restrict the jurisdiction of a superior Court, although this feeling may be due to its origin to the pecuniary interests of the Judges in former times, when their emoluments depended mainly on fees. But at the same time the supposition is that the Legislature would not make any important innovation without a very explicit expression of its intention. If the intention is explicit and clear, then no question of applying this presumption will arise.[3] The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.[4]

9. No alteration in law is presumed.—"Statutes are not presumed to make any alteration in the common law, further or otherwise than the Act does expressly declare" : so observed Trevor, J., in *Arthur* v. *Bokenham*[5]. A statute is *prima facie* to be construed as changing the law to no greater extent than its words or necessary intendment require.[6] It is a general principle of law when an act is done by one person at the request of another which act is not in itself manifestly tortious to the knowledge of the person doing it, and such act turns out to be injurious to the rights of a third party, the person doing it is entitled to an indemnity from him who requested that it should be done. This principle is of the widest general application. It is often said to be based on a contract implied by law, the request importing a promise to indemnify the other party against the consequences to him of acting upon the request. In *Secretary of State* v. *Bank of India*,[7] the bank who had obtained a Government promissory note under a forged endorsement applied to the Public Debt Office under the Indian Securities Act, 1920, for the renewal of the note. In the meanwhile the original owner of the Government promissory note coming to know of

1. Wilberforce : *Statute Law*, at p. 15.
2. *Statute Law*, at p. 19.
3. *Meena Ram* v. *Mst. Diwarki*, AIR 1958 Punj 417, 418.
4. *Garikapati* v. *Subbiah Choudhry*, AIR 1957 SC 540, 553; *Leeds and County Bank Ltd.* v. *Walker*, (1883)11 QBD 84, 91; *Moon* v. *Duodener*, (1848)2 Ex 22 : 76 RR 479, 495. *M.P. State Transport Corporation* v. *The S.T. Appellate Tribunal*, M.P., AIR 1993 MP 95.
5. (1708)11 Mad 150. In *Rolfe* v. *Flower*, (1866) LR 1 PC 27 : 35 LJ PC 13, it was urged that it was intended to alter the wellknown principle of the law of insolvency that a joint creditor having a security upon the separate estate is entitled to prove against the joint estate without giving up his security. Their Lordships of the Privy Council repelled this contention saying : "If this were the establishment of a new Code of Insolvency Law, and it was the object of the colonial Legislature to prevent the operation of a rule which they considered unjust, it is hardly to be imagined that they would have committed their intention to the equivocal meaning of a few words in a single section of the Act."
6. *Secretary of State* v. *Bank of India, Ltd.*, AIR 1938 PC 191, 194 *per* Lord Wright.
7. *Secretary of State* v. *Bank of India, Ltd.*, AIR 1938 PC 191, 194 *per* Lord Wright.

the fraud sued the Secretary of State for conversion of the note, whereupon the Secretary of State sued the Bank of India, at whose instance the note was renewed, for indemnity under the abovementioned well-established rule of law. In answer to such claim Section 21 of the Indian Securities Act was pleaded as a bar on the ground that it impliedly abrogated the said rule of indemnity. Lord Wright repelled this contention. His Lordship observed : "If it had been intended by the insertion of that section in the Act of 1920 to abrogate the common law indemnity existing under the repealed Act, the Legislature would, it seems, have used words clearly expressing that intention, so as to secure that, save as provided by Section 21, there should be no right of indemnity." Where the language is not clear and unequivocal, the Legislature should not be taken to have intended any substantial alteration of the existing law by words of doubtful import.[1] Now there is a well-recognised presumption against altering the law by implication except where without such implication the object of the enactment would be defeated.[2] In *Dalsingar Singh* v. *Jainath Kuer*.[3] Mr. Justice Hamilton reiterated : "There is a presumption that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness.

The Legislature must be held to have intended that the *new remedy* is to be confined to cases falling within the four corners of the section.[4]

Out of two constructions suggested in the argument before their Lordships of the Privy Council in *Vasudeva Mudaliar* v. *Srinivasa Pillai*,[5] the narrower construction was accepted as it 'escapes the necessity of attributing to the Legislature a great and sudden change of policy'. In *Mst. Ananti* v. *Chhanu*,[6] Sulaiman, Mukerji and Kendall, JJ., observed : "We do not think that the Legislature could have intended to alter the law in both respects by the use of language which is capable of two interpretations; and even if we were to allow that both interpretations are possible, we should have to hold that the one which leaves the law unchanged is to be preferred to the one which drastically alters it."

In construing an Act which is in the nature of a *consolidating* measure one should not presume that the Legislature intended to effect any substantial changes in the pre-existing law.[7]

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1. *Veerabhadrappa* v. *Firm Vannejee*, AIR 1918 Mad 1100, 1102, relying on Maxwell : *Interpretation of Statutes* and *Arthur* v. *Bokenham*, (1708)11 Mad 150. "Even if the section is capable of two interpretations, by one of which effect is given to a clearly established principle of law and by the other of which the law is unsettled, the former should be accepted." *Shatrughan Singh* v. *Kedar Nath*, AIR 1944 All 126, 130 : ILR 1944 All 288 (FB), *per* Dar, J.
2. *Ahmad Hossein* v. *Chembelli*, AIR 1951 Cal 262, 264, quoting Maxwell : *Interpretation of Statutes*, 9th Ed. at pp. 85, 86. "One of these presumptions is that the Legislature does not intend to make any substantial alteration in the law beyond what it expressly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute.
3. AIR 1940 Oudh 138, 142 (FB); *see* also *Sobhraj Dwarkadas* v. *Emperor*, 45 IC 399, 440 (Sind); *Hayat Uddin* v. *Mst. Rahiman*, AIR 1935 Sind 73, 76; Craies : *Statute Law*, 4th Ed. at p. 114; *Khudabux* v. *Panjo*, AIR 1930 Sind 265, 279 (FB), *per* Rupchand, A.J.C.; *Mohammad Ali Essaji* v. *Karachi Municipality*, 20 IC 572 (Sind); *Harnam Singh* v. *Man Singh*, AIR 1961 Punj 133, 136; *Thakurji* v. *Parmeshwar Dayal*, AIR 1960 All 339.
4. *Gadiraju Sanyasi Raju* v. *Kamappadu*, AIR 1960 AP 83, 89 (FB) (Specific Relief Act : Lease).
5. ILR 30 Mad 426 , 433 (PC).
6. AIR 1930 All 193, 197 : ILR 52 All 501 (FB).
7. *Poonam Chand* v. *Municipal Board*, AIR 1965 Raj 98, 101.

Sir John Wallis, C.J., expressing the unanimous opinion of the Full Bench in *Govinda Iyer* v. *Emperor*,[1] concluded :

> "I may add that, where sections are repealed and re-enacted in slightly different form, there is a presumption against implied as contrasted with express alterations in the scope of the section."

Amendments are often made to clear up ambiguities and such amendments which are intended to prevent misinterpretation do not in themselves alter the law in any way.[2] It is a recognised canon of construction that when a law is merely being codified and especially when it is being transferred almost bodily from one Code to another, departure is not to be presumed unless it is made in express terms.[3] As observed by Mookerjee, A.C.J., in *Nilmani Kar* v. *Sati Prasad Garga*,[4] "In the case of a codifying statute there may sometimes be a presumption that a particular provision was intended to be a statement of the existing law rather than a substituted enactment, and from this point of view an enquiry into the pre-existing law may conceivably be useful where the language of codifying statute is open to doubt."

10. Presumptions in re-enactment.—*(i) Prior judicial interpretation.*—There is a presumption that the Legislature, when it repeats in substance in a later Act an earlier enactment, that has obtained a settled meaning by judicial construction, intends the words to mean what they meant before.[5] However, Denning, L.J., observed in *Royal Crown Derby, Porcelain Co.* v. *Russell* [6] : "I do not believe that whenever Parliament re-enacts a provision of a statute, it thereby gives statutory authority to every erroneous interpretation which has been put upon it. The true view is that the court will be slow to overrule a previous decision on the interpretation of a statute when it has long been acted on, and it will be more than usually slow to do so when Parliament has, since the decision, re-enacted the statute in the same terms." It is always possible that Parliament, however, vigilant, may overlook a decision.[7]

(ii) Reproduction of language of old Act in new Act.—When the language of a particular section of a statute has been interpreted in a particular way by the Courts and that language has been reproduced by the Legislature in the new Act, we are entitled to assume that the

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1. AIR 1919 Mad 7 at p. 8 : ILR 42 Mad 530, 546 (FB).
2. *Secretary of State for India* v. *Purnendu Narayan Roy*, ILR 1940 Cal 123, 135. It is a recognised rule that where there have been decided cases before an Act is amended, if the amendment does not expressly show that the law as interpreted by the decisions is altered, the rule laid down by the decisions is to be adhered to. *Harnandan Rai* v. *Baliram*, AIR 1931 Pat 1, 3.
3. *Jainarayan* v. *Balwant*, AIR 1939 Nag 35 at p. 38, *per* Vivian Bose, J. But the presumption that the Legislature did not intend to alter the law by an Act described as a Consolidatory Act, cannot override the plain meaning of the words used. *In re* Goods of Bholanath Pal, ILR 58 Cal 801 : AIR 1931 Cal 580, 581.
4. ILR 48 Cal 556 at pp. 564-565.
5. *Vasudeva Mudaliar* v. *Srinivasa Pillai*, ILR 30 Mad 426, 433 (PC) *per* Sir Arthur Wilson; *Sabha Chand* v. *Piare Lal*, AIR 1930 Lah 764, 767 : ILR 11 Lab 481 (FB). When the Legislature has copied out part of the language of the old section, it may be presumed that it accepeted the interpretation put upon those expressions by the Courts under the old law; *Manohar Singh* v. *Sheo Saran*, AIR 1927 All 369, 371 (FB); *Applanarasimha Raju* v. *Seethayamma Garu*, (1959)1 Andh WR 319; *Manek Chand Choudhry* v. *State*, 62 CWN 94 repeats words on which practice was founded; *Zimmerman* v. *Grossman*, (1971)1 All ER 363, 369 (Widgery, L.J.).
6. (1949)2 KB 417, 429, *see* also *Kesavananda Bharati* v. *State of Kerala*, WP 135 of 1970, dated 24-4-1973 by Supreme Court, *per* Mathew, J. : "The presumption, if there is any, is always subject to an intention to the contrary." *Gallowey* v. *Gallowey*, 1956 AC 299, *per* Lord Radcliffe.
7. *R.* v. *Bow Road Domestic Proceedings Court*, Ex parte, *Adedigba*, (1968)2 All ER 89 (Solomon, L.J.).

judicial interpretation has been accepted.[1] The principle underlying this rule of construction has only to be restated in different words when the interpretation of the previous statute was not by judicial decisions but by the Houses of the Legislature themselves and is implied in the rules of procedure or course of conduct of business set up or followed by them.[2] Where, however, the object of two enactments are different, the language used in one should not be permitted to control or influence the language of the other.[3] As pointed out by Blackburn, J., in *Mersey Docks* v. *Cameron*,[4] where an Act of Parliament has received a judicial construction putting a certain meaning on its words and the Legislature in a subsequent Act in *pari materia* uses the same words, there is a presumption that the Legislature used those words intending to express the meaning which it knew had been put upon the same words before, and unless there is something to relent that presumption, the Act should be so construed even if they were such that they might originally have been construed otherwise. While interpreting an expression which is found in one Act, in *pari materia* with the other; it is permissible, nay necessary, to bear in mind the decision given by the Courts in relation to the same expression under the other law.[5] This principle of construction is based on the ground that, as the Legislature knows that the law is and has the power to alter it, any mistake on the part of the judges may at once be corrected, and the absence of any such correction, specially during a long period of time, indicates that the Courts have rightly ascertained the intention of the Legislature.[6] Decisions on the English statute in *pari materia* with the Indian statute can be referred to for the purpose of construction of the Indian statutes. They are not compelling decisions, but they are certainly persuasive decisions.[7]

(iii) Statutes in pari materia

In *Attorney-General* v. *Clarkson*,[8] Sir Francis Jeune said : "Our duty is to interpret the meaning of the Legislature, and if the Legislature in one Act have used language which is admittedly ambiguous, and in a subsequent Act have used language which proceeds upon the hypothesis that a particular interpretation is to be placed upon the earlier Act. I think the Judges have no choice but to read the two Acts together, and to say that the Legislature have

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1. *Kayastha Co., Ltd.* v. *Sita Ram Dubey*, AIR 1929 All 625, 630 (FB); *Pitam Lal* v. *Kalla Ram*, ILR 53 All 687 : AIR 1931 All 487 (FB); *Mohd. Mazaharul Ahad* v. *Mohd. Azimuddin Bhuinya*, AIR 1923 Cal 507, 511; *Bipul Bihari* v. *Nikhil Chandra*, AIR 1929 Cal 566; *Cursetji Dinshaw Bolton* v. *Gangaram Limbaji Gaikwad*, 30 IC 545 (Bom); *Pannalal* v. *State of Delhi*, AIR 1954 Punj 251, 253; *Madras Corporation* v. *K. Naidu*, AIR 1955 Mad, 82, 87; *State* v. *Editor etc., Matribhumi*, AIR 1955 Orissa 36 : The principle applies to well-known cases of decisions by important Court, because the Legislature cannot be expected to be aware of a decision arrived at by every District Court; *Ghayar Ali Khan* v. *Keshav*, AIR 1959 All 264, 275; *Talib Hussain* v. *A.D.J.*, AIR 1986 All 196 : 1986 All LJ 845.
2. *Faridi* v. *U.P. Legislature*, AIR 1963 All 75.
3. *Bank Silver Co.* v. *Employees' State Insurance Co.*, AIR 1965 Bom 111 : 66 Bom LR 780; *Lakhanpal* v. *Union of India*, AIR 1967 SC 908.
4. (1864-65)11 HLC 433, 480; see *Isan Gangaram* v. *Saptulla Sikdar*, AIR 1922 Cal 331, 333; *Nagendra Mohan Roy* v. *Pyari Mohan Saha*, ILR 43 Cal 103, 112.
5. *Madanlal Sharma* v. *Smt. Santosh Sharma*, 1980 Mah LJ 391 : held Parliament intended to bring the provision relating to cruelty in Hindu Marriage Act on par with the concept of cruelty as it is found under the Special Marriage Act.
6. *Jogendra Chandra Roy* v. *Shayam Das*, ILR 36 Cal 543, 556; *National Lead Co.* v. *United States*, 64 L Ed 496, 499 (Clarke, J.).
7. *Binapani* v. *Rabindranath*, AIR 1959 Cal 213, 215 ('Moneylender').
8. (1900)1 QB 156, 165; Approved though distinguished by the Privy Council in *Attorney-General for Victoria* v. *Melbourne Corporation*, (1907) AC 469, 474; *see* also *Archibold* v. *Commissioner of Stamps*, (1909)8 CLR 739, 759; *Hederwick* v. *Federal Commissioner of Land Tax*, 16 CLR 27, 45; *Vajravelu Mudaliar* v. *Special Deputy Collector*, AIR 1965 SC 1017.

acted as their own interpreters of an earlier Act."

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 previously been assigned to it.[1]

Where a word has been construed judicially in a certain legal area, it is right to give it the same meaning if it occurs in a statute dealing with the same subject-matter unless the context makes it clear that the word must have a different construction,[2] that when words and phrases previously interpreted by the *Courts* are used by the Legislature in a later enactment replacing the previous statute, there is a presumption that the Legislature intended to convey by their use the same meaning which the courts had already given to them. This presumption can, however, only be used as an aid to the interpretation of the later statute and should *not* be considered to be *conclusive*. The presumption will naturally be much weaker when the interpretation was given in one solitary case and was not tested in appeal.[3]

The re-enactment of the statute by the Legislature as well as the failure to amend in the face of the consistent administrative construction is at least persuasive of a legislative recognition and approval of the statute as construed.[4]

(iv) Effect of change of phraseology by amending Act.—While interpreting a re-enacted statute, the Court can look into the preamble of the earlier enactment and also into the facts and circumstances under which the re-enactment was made.[5] An amended statute remains the same statute as originally amended, but from that proposition it does not follow that the law contained in the amended statute is the same law as was contained in the original one.[6] When the phraseology of the law is changed by an amending Act, the presumption will be that some change in the law is intended.[7] It is an ordinary rule of construction that a change of language in the same Code or Act may be presumed to indicate a change of intention on the part of the Legislature.[8] Lord Wright observed in *Rosa* v. *Ford*[9] : "I venture respectfully to think that the view of the Court of Appeal illustrates a tendency common in construing an Act which changes the law, that is, to minimise or naturalise its operation by introducing notions taken from or inspired by the old law which the words of the Act were intended to abrogate and did abrogate." A legislative amendment of an enactment using a different phraseology from what is

1. *Barras* v. *Aberdeen Steam Trawling & Fishing Co.*, 1933 AC 402, 411, *per* Lord Buckmaster; *see* also *North British Railway* v. *Budhill Coal & Sandstone Co.*, 1910 AC 116, 127.
2. *Madanlal Sharma* v. *Smt. Santosh Sharma*, 1980 Mah LJ 391.
3. *Diamond Sugar Mills, Ltd.* v. *State of U.P.*, 1961 SCR 242, 255; *Federal Commission* v. *Columbia B. System*, 311 US 151; *Melbourne Corporation* v. *Barry*, 31 CLR 174, 181 (Knox, C.J.).
4. *McCaughn* v. *Hershay Chocolate Co.*, 75 L Ed 1183, 1187 : 283 US 488 (Stone, J.); *see* also *Panama Railroad Co.* v. *Johnson*, 68 L Ed 749 (Van Deventer, J.) unless a diffferent purpose is manifest.
5. *Bhagaban Roy* v. *L.A.C.*, AIR 1981 Cal 73.
6. *S. Krishnan* v. *State of Madras*, AIR 1951 SC 301.
7. *Chidambaram* v. *Somasundaram*, AIR 1937 Rang 317; *see Nilmoni Kar* v. *Sati Prasad Garga*, ILR 48 Cal 556, 564, 565; *Hem Raj* v. *Krishen Lal*, AIR 1928 Lah 361, 362 (FB) (referring order, Bhide, J.); *see* also *Amarnath* v. *Deputy Custodian-General*, AIR 1963 Punj 225.
8. *Farid* v. *Peru*, 28 IC 105 (Sind) quoting Maxwell on *Interpretation of Statutes*, (9th Ed. at p. 324, now *see* 11th Ed. at pp. 36, 315-316); *see* however, the Order of Reference to Full Bench in *Nanarao* v. *Arunachalam*, AIR 1940 Mad 385 at p. 392); *Manick Lall* v. *Dabiruddin Ahmad*, AIR 1951 Cal 236, 237 : Maxwell : *Interpretation of Statutes*, 11th Ed. at pp. 36, 315-316.
9. 1937 AC 836, 846.

contained in the old Act naturally gives room to the inference that the law was intended to be changed.[1]

A change of language effected by the omission in a later statute of words which occurred in an earlier one would, however, make no difference in the sense when the omitted words of the earlier statute were unnecessary. [2] But it is also well-known that occasionally draftsmen use different words to indicate the same idea for the purpose of elegance or what is called 'the grace of style' or their wish to avoid the same word, or sometimes by the circumstance, that the Act has been complied from different sources and sometimes by alteration and addition from various hands which the Acts undergo in their progress in Parliament.[3]

(v) Presumption subject to anything showing a contrary intention.—If the Legislature uses forms of words which have received judicial construction, the presumption is that the Parliament in subsequent statutes did so use them unless there is anything in the Acts showing that the Legislature did not mean to use the words in the sense attributed to them by the Courts.[4] The presumption in such cases is that the Legislature did not intend to depart from the meaning given by the Court.[5]

Thus, the Legislature knowing fully well the judicial interpretation put on the word 'discharge' occurring in Section 437 of the old Cr. P.C. has in the new Cr. P.C. also used the word 'discharge' in Section 398. This word should, therefore, be interpreted in the sense which has been judicially put under the old repealed Code.[6]

(vi) Adoption of construction in a statute in pari materia *does not amend original statute.*— It may be noted that adoption of the construction of a statute by Parliament in subsequent enactments in *pari materia* but not amending the statute in question, does not import an addition to or modification of the statute, but it can be looked to as a legislative interpretation to resolve any ambiguity in it.[7] But where statutes are in *pari materia* it is not permissible to interpret words in one enactment with reference to those used in the other.[8]

The adoption of a statute of another State or country carries with it the construction or interpretation placed upon such statutes by highest Courts of jurisdiction from which the statute was adopted.[9]

If the two Acts are not in *pari materia*, decisions on expressions used in one of them cannot be relied upon to interpret the same in the other.[10] Decisions under one Municipal Act containing similar provisions may 'with profit be perused' while interpreting another such Act, but the former cannot be treated as 'binding pronouncement' on the latter.[11] The doctrine of *pari materia*

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1. *Natesa Mudaliar* v. *Dhanpal Bus Service*, AIR 1964 Mad 136 (FB).
2. *Mohindra Supplying Co.* v. *G.G.-in-Council*, AIR 1954 Punj 211.
3. *Kesvananda Bharati* v. *State of Kerala*, WP 135 of 1970, dated 24-4-1973 (*per* Mathew, J., quoting Maxwell on *Interpretation of Statutes*, 12th Ed. at p. 286). Referred to by Chandrachud, J., also in the above case.
4. *Mohindra Supplying Co.* v. *G.G.-in-General*, AIR 1954 Punj 211. [Section 39*(i)* of the Arbitration Act, 1940 is not very different from Section 588, C.P.C. of 1877 as amended in 1879 and the corresponding Section 588 of the Code of 1882].
5. *Vajravelu Mudaliar* v. *Special Deputy Collector*, AIR 1965 SC 1017 : (1965)2 SCA 396 : (1964)2 Andh WR (SC) 173 : (1964)2 MLJ (SC) 173.
6. *Gauranga Charan Bhuyan* v. *Fakir Charan Nayak*, (1977)44 Cut LT 311.
7. *Camilla & Henry Dryfus Foundation Inc.* v. *Inland Revenue Commissioners*, (1954)2 All ER 466.
8. *Ranga Rao* v. *Srinivasa Swamy*, 1962 Andh LT 356 : (1962)1 Andh WR 340.
9. *Gauri Lal Gurdev Das* v. *Jugal Kishore Sharma*, AIR 1959 Punj 265, 271 (FB). There is no reason why this rule should not be applicable to constitutional provisions. *See* also *Anand Stores, New Delhi* v. *Prabhat Sharma*, 66 Punj LR 12.
10. *Board of Muslim Waqfs* v. *Radha Krishan*, AIR 1979 SC 289.
11. *New Delhi M.C.* v. *L.I.C.*, AIR 1977 SC 214.

is applied on the presumption that the Legislature knew the meaning assigned to the particular word in the existing statutes.[1]

11. Legislature is fair—Brett, L.J., in *Ex parte Corbett*,[2] opined : "I think also that there is a general rule of construction of statutes which is applicable to this matter, namely, that unless you are obliged to do so, you must not suppose that the Legislature intended to do a palpable injustice." Where there are two constructions, the one of which will do great and unnecessary injustice, and the other of which will avoid that injustice, and will keep exactly within the purpose for which the statute was passed, it is the bounden duty of the Court to adopt the second and not to adopt the first of those constructions.[3] The Commissioner of Income-tax sought to tax the income of the assessee in *King-Emperor* v. *Bhusen Sarkar*,[4] arising out of Jalkars subject to Permanent Settlement alleging that such income was included in the term 'other sources' in Section 6 of the Income Tax Act. Mr. Justice Cumming repelled the contention of the Commissioner of Income-tax relying *inter alia* on the observations of Lord Blackburn in *Garnett* v. *Bradly*,[5] which run as follows : "But where there is the case where the particular enactment is particular in the sense that it protects the right, the property, the privileges of a particular person, or class of persons the reasons for the rule which has been acted upon is exceedingly plain and strong. It would be very unjust or I would rather,say unfair (I do not go further than that) to pass an enactment taking away from a particular person, or class of persons his or their rights without hearing what he or they have got to say about it; and if general words were to have the effect of taking away the rights of a particular person or class, which had been given to them before and, it would be done without their having any knowledge or opportunity of resisting it and it is not to be impugned to the Legislature or to be supposed that the Legislature would do what was unfair." His Lordship proceeded to remark : "Let us apply these observations also to the present case. Regulation 1 of 1973 does certainly confer rights and privileges on a particular class of persons with whom these estates were settled at the time of the Permanent Settlement, enacting that the revenue which they should pay for their estates then settled with them was fixed for ever. If these rights are to be taken away by the general words 'other sources of income', clearly their rights would be taken away without their having any knowledge or opportunity of resisting it. As Lord Blackburn puts it, it is an intelligible principle that the Legislature shall not be presumed to have done anything unfair and to have taken away a privilege not having openly stated that they meant to take it away or in such open or clear language that the persons affected might come and resist and use arguments to show why it should not be taken away but having simply used general words quite consistent with their never having thought of the privilege at all. "We must take care", observed Lord O' Hajan in *River Wear Commissioners* v. *Adamson*,[6] "that a hard case should not make a bad

1. *Basti Ram* v. *Ghewarchand*, AIR 1979 Raj 148; *see* also *Arun Narayan* v. *State*, AIR 1976 Kant 174.
2. (1880)14 Ch D 122, 129; *see Banwari Gope* v. *Emperor*, AIR 1943 Pat 18, 20 (FB) : Upon this presumption is based the rule against retrospective operation of statutes affecting vested rights; *see* Bannerjee : *Interpretation of Deeds, Wills and Statutes*, at pp. 195-196.
3. *Hill* v. *East and West India Dock Co.*, (1884)9 AC 448, 456, *per* Earl Cairns; *see* also *Railton* v. *Wood*, (1890)15 AC 363-367. "If an enactment is such that by reading it in its ordinary sense you produce a palpable injustice, whereas by reading it in a sense which it can bear although not exactly its ordinary sense, it will produce no injustice, then I admit one must always assume that the Legislature intended that it should be so read as to produce no injustice" : *per* Brett, MR in *Queen* v. *Overseers of Tonbridge*, (1884)13 QBD 339, 342.
4. ILR 53 Cal 524 : AIR 1926 Cal 819, 821.
5. (1878)3 AC 944.
6. (1876-77)2 AC 743, 758.

law, but we must also take care that we do not attribute to Parliament the intention of injustice so very flagrant, without coercive necessity." A Full Bench of the Allahabad High Court in *Maikoo Lal* v. *Santoo*[1] agreed with the principle enunciated by Maxwell[2] : "In determining either the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one."

"The underlying purpose of all legislation is to promote justice among men. The object and effect of the statute should be of primary concern in the interpretation of statutes. The equities of the controversy should be the tilting factor. It has been wisely stated that the construction of statutes is 'eminently a practical science'. As a result too much reliance upon various maxims and principles of interpretation may defeat the legislative intention rather than assist in its ascertainment and effectuation. Similarly, reliance upon precedents will not necessarily assure the discovery of the legislative intent..... The (construction) which operates in a harsh, unreasonable and absurd manner certainly does not represent the legislative intent because it must be presumed that Legislature has acted for the welfare of the people. Therefore, the Court should strive to avoid a construction which will render the statute unjust and oppressive or unreasonable or contrary to public interest."[3]

A construction which permits one to take advantage of one's own wrong or to impair one's obligations under a current statute should be discarded.[4]

If a benevolent interpretation is possible without violation to the spirit of the enactment, the Courts are bound to resort to it in order to obviate inconvenient or unjust consequences.[5] No statute should be construed as destructive of or prejudicially affecting any existing right unless such a result is brought about by express words or by necessary implication.[6] A statute should be so interpreted as to interfere as little as possible with existing interests.[7] If the Legislature, however, fails to carry out its object by giving proper expression to it by using adequate language for the purpose, the Court would not violate the canons of construction merely for the purpose of assisting the Legislature for a supposed object which it might have.[8] If an amending Act takes away a right of appeal and the commencement of the Act is postponed, it is indicative of the retrospective operation of the amending Act.[9]

The construction should be as far as possible beneficial, that is, to suppress the mischief and advance the remedy, if this can be done without violence to the language of the section.[10]

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1. AIR 1936 All 576, 578.
2. Maxwell : *Interpretation of Statutes*, 9th Ed. at p. 198 (now 11th Ed. at p. 183).
3. *Per* P. Chennakesai Reddy, J. in *Gorla Suryanarayana Naidu* v. *State of A.P.*, (1978)2 APLJ 187.
4. *Ajit kumar Roy* v. *Surendra Nath Ghose*, AIR 1953 Cal 733 (FB).
5. *River Wear Commissioners* v. *Adamson*, (1876-77)2 AC 743; *Rula Ram* v. *Rex*, AIR 1949 All 716; *R.* v. *Ram Dayal*, AIR 1950 All 134; *Radha Kishan* v. *Ram Nagar Co-operative Society*, AIR 1951 All 341 (FB); *Emperor* v. *Ranchodlal*, AIR 1940 Bom 370; *D.N. Cooper* v. *Shivax Cowasji*, AIR 1949 Bom 131; *Sir Kasturchand, Ltd.* v. *Commr. of I.T.*, AIR 1950 Bom 1; *Soleman Bibi* v. *E.I. Rly.*, AIR 1933 Cal 358; *Manohardas* v. *Golam*, AIR 1949 Cal 225; *Ratikanta Haldar* v. *Burro*, AIR 1950 Cal 354; *Gurdevi* v. *Mohammad Baksh*, AIR 1943 Lah 65; *Milkha Singh* v. *Mst. Shankari*, AIR 1947 Lah 1; *Narsoomai* v. *Jointhimal*, AIR 1915 Sind 48.
6. *Ouseph Chacko* v. *Inthuruthi Shankaran*, ILR 1953 TC 396 (FB).
7. *Sampat Kumari* v. *Lakshmi Ammal*, ILR 1962 Mad 832 : (1962)2 MLJ 464 : 75 MLW 639; *Amireddi Raja* v. *Amireddi Sitaramamma*, AIR 1963 SC 1970; *Nilakantha Mishra (dead)* v. *Collector and Dist. Magistrate Ganjam*, (1987)63 CLT 75.
8. *D.N. Cooper* v. *Shivax Cowasji*, 1949 Bom 131, 134.
9. *Ramanathan* v. *Lakshmanan*, AIR 1963 Mad 175 : (1963)1 MLJ 46 : ILR 1963 Mad 183 : 76 MLW 745 (FB).
10. *R.N. Singh* v. *Surajdeo*, (1949)28 Pat 430, 436.

A construction which would make the statute effective and productive of the most good of the people should be accepted. A construction that produces an effect at variance with commonly recognised concept of what is just, right and ethical should be avoided. Moreover, in a fast changing society the law has to be liberal and flexible to serve the modern concept of social purpose.[1]

It is a legitimate method of construction to give an Act a liberal meaning if that can be done reasonably. Too liberal a construction should not be followed when it leads to an absurdity if a somewhat more liberal construction would lead to an effective application of the Act.[2]

12. Vested rights are preserved.—*(i) Vested rights are not presumed to be abrogated.*— There is a presumption against the taking away of a vested right by any fresh legislation, and a construction which involves the taking away of vested rights ought not to be adopted if the words of the enactment are open to any other construction.[3] It has been consistently held that repeal of an Act followed by re-enactment does not automatically wash away the right accrued and the liabilities incurred under the repealed law unless a contrary intention appears in the repealing law.[4] As regards the distinction between a right which is vested and the right which did not vest, Lord Morris of Borth-y-Gest said in *Director of Public Works* v. *Ho Po Sang* :[5]

> "It may be, therefore, that under some repealed enactment a right has been given but that in respect of it some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. Upon a repeal the former is preserved by the Interpretation Act, 1889. The latter is not."

(ii) No retrospective operation.—"Perhaps no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." So observed Wright, J., in *In re* Athlumney, *Ex parte* Wilson,[6] *Nova constitutio futuris formam imponere debet, non praeteritis*[7] is a maxim stated by Lord Coke in the Second Institute, 292, in his commentary on the Statute of Gloucester.[8]

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1. *Gorla Suryanarayana Naidu* v. *State of A.P.*, (1978)2 APLJ 187.
2. *United Commercial Press, Ltd.* v. *Satyanarain Chamaria*, (1952)56 CWN 346.
3. *Greville* v. *Williams*, 4 CLR 694, 703; *Clissold* v. *Peorry*, 1 CLR 363, 373; *Municipal Board Fyzabad* v. *(Mst.) Vidyadhari*, 63 IC 334 : 22 Cr LJ 638 (Oudh); *Garikapati* v. *Subbiah Chowdhry*, 1957 SCR 488, 515, following *Hough* v. *Windus*, (1884)12 QBD 224, 237 (vested rights should be respected by Courts in construing a statute); *Gopala Rao* v. *Ammireddi Sitharamamma*, AIR 1965 SC 1970; *Ram Niwas* v. *Mithan Lal*, 1979 Rev LR 529 : 1979 Cur LJ (Civil) (Punj) 497 : (1979)81 Punj LR 665 (DB).
4. *Bansidhar* v. *State*, 1976 RLW 570 (FB). *Controller of Estate Duty, Gujarat-1, Ahmedabad* v. *M.A. Merchant*, AIR 1989 SC 1710 : (1989)77 CTR 177 : (1989)177 ITR 490 : (1989)44 Taxman 342.
5. 1961 AC 901; *see* also *Nanawaty* v. *Employees' State Insurance Corporation*, 1971 MPLJ 821, 824 (Bishambar Dayal, C.J.).
6. 1898 QBD 547 at pp. 551, 552; Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 216; *Haidar Husain* v. *Puranmal*, AIR 1935 All 706, 710 (FB); *Pannirselvam* v. *Veeriah Vandayar*, AIR 1931 Mad 83, 91; *Sham Singh* v. *Vir Bhan*, ILR 1942 Lah 349 : AIR 1942 Lah 102, 104; *A.A. Calton* v. *The Director of Education*, AIR 1983 SC 1143.
7. A new law ought to be prospective, not retrospective in its operation.
8. *Moon* v. *Durden*, (1848)2 Ex. 22, 23 (Rolfe, B).

The rule of presumption against retrospective operation does not require addition of words to any section, otherwise plain. The rule applies only where the words are not plain or are capable of two meanings.[1] However, if the intention of the Legislature is apparent, the Act, though prospective in form, may be given retrospective operation, if the object of the Act is to protect the public against same evil or abuse.[2]

A law is said to be not retrospective when right or liability arising out of jural relation constituted before the new law come into force or created by a jural fact or event taking place before the new law, or any relief or remedy in respect of that right or liability remains unaffected by the new law.[3]

(iii) Substantive rights distinguished from matters of procedure.—Lord Blackburn in *Gardner* v. *Lucas*,[4] stated : "Now, the general rule, not merely of England and Scotland but I believe of every civilized nation, is expressed in the maxim, *'Nova constitutio.....'* any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think it is perfectly settled that if the Legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly these bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal. But where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid—to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding—I think the *prima facie* construction of the Act is that it is not to be retrospective, and that it would require strong reasons to show that is not the case." In *Colonial Sugar Refining Co.* v. *Irving*[5], it is in effect laid down that, 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. Bowen, L.J., said in *In re* Cuno[6] : "In the construction of statutes you must not construe the words so as to take away rights which already existed before the statute was passed, unless you have plain words which indicate that such was the intention of the Legislature."

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1. *Gulabchand* v. *Kudilal*, AIR 1958 SC 554.
2. *Shah Bhojraj Kuverji Oil Mills* v. *Subhas Chandra Yograj*, AIR 1961 SC 1596.
3. *Rajeshwar Singh* v. *State of Bihar*, AIR 1983 Pat 194 (DB).
4. (1873)3 AC 582, 603; *see* also *Reg* v. *Inswich Union*, (1877)2 QBD 269; *Paras Ram* v. *Emperor*, AIR 1931 Lah 145, 151-152; *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593-617; *Vedavalli Narasiah* v. *Mangamma*, ILR 27 Mad 538. A statute which may affect vested rights will not be read or understood as having retrospective effect unless there are clear words in it or is capable of necessary intendment that retrospective effect is meant; *V.C.K. Bus Service (P.), Ltd.* v. *Setbna*, AIR 1965 Mad 149 : ILR (1965)1 Mad 136; *Eapen Chacko* v. *Provident Fund Investment Co.*, 1977 Ker LT 1 (SC).
5. 1905 AC 369 followed in *Delhi Cloth & General Mills Co., Ltd.* v. *Income-tax Commissioner, Delhi*, ILR 9 Lah 284, 290 (PC). In the latter case their Lordships had no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, were provisions which touched existing rights.
6. (1889)48 Ch D 12, 17.

Where vested rights are concerned, an amendment has no retrospective effect unless it is so stated expressly in the Act.[1] The repealing enactment cannot be given retrospective operation so as to impose an impossible condition on pain of forfeiture of a vested right.[2]

These principles apply not only to legislation taking away existing rights but also to legislation which creates new rights.[3]

(iv) What are vested rights?—Every statute which *prima facie* takes away or impairs vested rights acquired under existing laws or creates new obligations, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed to be intended not to have a retrospective operation.[4] Where an equivocal word or ambiguous sentence leaves a reasonable doubt as regards its meaning, the benefit of doubt must be given to the subject and against the Legislature which failed to explain itself. In order to take away a right it must be shown that the Legislature has authorised in express terms the taking away of such right irrespective of the possible interference with existing right.[5]

The presumption applied not only to a substantive right but also to a right of suit,[6] and a right of appeal,[7] both of which is a vested right.[8] If the application of the provision of an amending Act makes it impossible to exercise a vested right of suit, the Act should be construed as not being applicable to such cases.[9] It may, however, be noted that the presumption does not apply to a possible right of suit which may arise in future as it is not a vested right at all.[10] When the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms made applicable to pending actions; do not affect them.[11] Where a plaintiff institutes a suit claiming some relief in respect of a right he thereby acquires a substantive right to get the relief determined with reference to the law at the time when he takes his action.[12] Thus, an Act should not be construed so as to affect contracts on which action has already been commenced,[13] or to appeals already filed,[14] unless the Legislature gives the clearest indication that the law shall have retrospective effect so as to

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1. *Sukul Lakhpat Ram* v. *Raghu Koeri*, AIR 1928 Pat 109, 110; *Braja Lal Dutta* v. *Kenaram Pal*, 50 IC 515 (Pat); *Sardar Harisingh Jhelum* v. *State of M.P.*, 1964 Jab LJ 585.
2. *Makar Ali* v. *Sarfuddin*, AIR 1923 Cal 85.
3. *Lal Mohan* v. *Jogendra*, ILR 14 Cal 636 (FB).
4. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 216; *Bourke* v. *Mutt School Board Elections*, (1894)1 QB 925; *Haider Husain* v. *Puran Mal*, AIR 1935 All 706, 710 (FB); *Gurmukhdas* v. *Hossomal*, AIR 1932 Sind 71; *Bantwari Gope* v. *Emperor*, ILR 22 Pat 175 : AIR 1943 Pat 18, 20; *Sripatichandra* v. *Kailash Chandra*, AIR 1936 Cal 386; *Subramania Aiyar* v. *Namaswaya*, AIR 1918 Mad 162; *Promotha Nath Pal* v. *Mohini Mohan Pal*, ILR 47 Cal 1108, 1113 : "The rule that enactments in a statute are generally to be construed to be prospective and intended to regulate the future conduct of persons, is deeply founded in good sense and strict justice and it has been repeatedly laid down that in the absence of clear words to that effect, a statute will not be construed so as to take away a vested right of action acquired before it was passed". *Lachmi Chand* v. *Bajirao*, AIR 1921 Nag 170.
5. *Sreeram Durgaprasad* v. *Deputy Collector of Customs*, AIR 1965 Andh Pra 294.
6. *Venugopala* v. *Krishnaswamy*, AIR 1943 FC 24.
7. *Sainuddin* v. *Pokkunhi*, 1977 Ker LT 516.
8. *Nabin Chandra* v. *Pran Krishna*, AIR 1944 Cal 163; *Gopeshwar Pal* v. *Jiban Chandra*, AIR 1914 Cal 806; *Mohd. Taqi Khan* v. *Mohd. Shafi*, AIR 1948 Oudh 36.
9. *Ajit Singh* v. *Bhagbati Charan*, AIR 1922 Cal 491.
10. *Gopeshwar Pal* v. *Jiban Chandra*, ILR 41 Cal 1125 : AIR 1914 Cal 806 (FB); *Ajit Singh* v. *Bhagbati Charan*, AIR 1922 Cal 491; *Nabin Chandra* v. *Pran Krishna*, AIR 1944 Cal 163; *Tirumalaiswami* v. *Subramaniam*, AIR 1918 Mad 353.
11. *Shibnath* v. *Porter*, AIR 1943 Cal 377.
12. *Prasanna Dev* v. *Bisseswar Das*, AIR 1944 Cal 46.
13. *Doolubdass Pettamber Dass* v. *Ramloll*, 5 MIA 109.
14. *Damodar Prasad* v. *State of Bihar*, 1978 Pat LJR 584 (DB).

apply to pending proceedings.[1] If, however, the object of the Act requires that the Act should apply to pending proceedings it will be so applied, unless there is a saving clause in the Act itself to the effect that it would not apply to pending proceedings.[2] Where a retrospective Act is passed after the decision appealed against and before the appeal is heard, the Court of Appeal must give effect to the Act, as an appeal is a rehearing.[3] And, where there is a change in law after a suit has been decided but before the filing of an appeal, the court-fee payable on the memorandum of appeal is to be calculated under the old law, unless the amendment is made specifically retrospective.[4]

The right of appeal is a substantive right which belongs to a suitor and to deprive him in a pending action of his right of appeal which belonged to him as of right is a very different thing from regulating procedure.[5] Where the appeal is given under a repealed Act, the repealing Act would not take away the appeal.[6] In particular, there is no difference between abolishing an appeal altogether and transferring an appeal to a new tribunal. On the same principle, where the repealed Act excluded an appeal the repealing Act cannot give an appeal.[7] The finality of a decision cannot be taken away by a statute passed after the decision unless a right of appeal against that order is expressly or by necessary implication conferred by the statute.[8] When an authority is conferred on any well established court, its procedure becomes subject to the law governing that court; and that even if the decision made by that court is made *final*, it only means that no appeal lies against that decision; but that it does not take away the right of the *revisional Court* to interfere with that order subject to the limitations imposed on the revisional court.[9]

There is no difference in principle between abolishing a right of appeal and putting a restriction on that right.[10] Neither of this is possible, unless the statute expressly or by implication indicates this.[11] When the new law takes away or curtails an existing right of appeal, it is not retrospective, and there is a very strong presumption that the vested right of appeal in pending proceedings is not impaired by a change in law.[12] The right of an assessee to have the case referred to the High Court,[13] the right to prove a debt in the winding-up of a company,[14] and the right to have a new trial[15] are all in the nature of substantive rights.

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1. *Ram Karan* v. *Ram Das*, AIR 1931 All 635, 643 (FB).
2. *Shibnath* v. *Porter*, AIR 1943 Cal 377.
3. *Quilter* v. *Mapleson*, (1882)9 QBD 672.
4. *Gohd Singh* v. *Teja Singh*, AIR 1965 Punj 224.
5. *Colonial Sugar Refining Co.* v. *Irving*, 1905 AC 369; *Ramesh Chand* v. *Shyam Lal*, AIR 1946 All 34; *Secretary of State* v. *Mansey*, AIR 1930 Bom 262; *Nagendra Nath* v. *Mon Mohan Singh*, AIR 1931 Cal 100; *Ataur Rahman* v. *Income-tax Commissioner*, AIR 1934 Lah 1013; *Firm Hazi Sheikh* v. *State*, AIR 1954 VP 5.
6. *Sainuddin* v. *Pokkunhi*, 1977 Ker LT 516 (DB).
7. *Nana* v. *Sheku*, ILR 32 Bom 337; *Hurro Sundari* v. *Bhojohari Das*, ILR 13 Cal 86; *People's Bank* v. *Wahid Bux*, AIR 1943 Lah 170; *Doraiswamy* v. *Vaithilinga*, AIR 1918 Mad 548.
8. *Delhi Cloth Mills* v. *I.T. Commr.*, AIR 1927 PC 242; *Dilaram* v. *Atmaram*, AIR 1949 All 225; *Het Ram* v. *Collector of Aligarh*, AIR 1941 All 355; *Bimala Prasad* v. *State of West Bengal*, AIR 1951 Cal 258; *Subramania Aiyar* v. *Namasivayya*, AIR 1918 Mad 162; *Shridhar* v. *Collector of Nagpur*, AIR 1950 Nag 90.
9. *Jawala Prasad* v. *Board of Revenue*, 1972 MPLJ 381, 385 (Bhave, J.).
10. *Nagendra Nath* v. *Mon Mohan Singh*, AIR 1931 Cal 100; but *see Badruddin* v. *Sita Ram*, AIR 1928 Bom 371 (where right is restricted in a reasonable manner it would apply to pending proceedings.).
11. *Sainuddin* v. *Pokkunhi*, 1977 Ker LT 516 (DB).
12. *Chuluram Hariram* v. *Bhagatram Bodlo*, 1980 MPLJ 37 (DB).
13. *Ataur Rahman* v. *Income-tax Commissioner*, AIR 1934 Lah 1013.
14. Such & Co., *In re*, (1875)1 Ch D 48.
15. *Madurai Pillai* v. *Muthu Chetty*, AIR 1914 Mad 287; *Chotilal* v. *Tula Singh*, AIR 1928 Pat 561.

But there is no vested right in a litigant to wait for a particular period of limitation before instituting his suit,[1] nor is a mere right to take advantage of the provisions of an Act, an accrued right.[2] So also there is no vested right in a litigant to institute his action in a particular forum. A forum belongs to the realm of procedure and does not constitute the substantive right of a party or a litigant.[3]

The right of a decree-holder to realise his decree by attachment and sale of property belonging to the judgment-debtor is a vested right, and the subsequent exemption of such property from sale does not affect his right.[4] Similarly, execution proceedings legally started would not become illegal by a change in the procedural law affecting the matter of initiation of the execution proceedings.[5]

(v) General character of Act to be kept in view.—Paton in his jurisprudence strikes a note of warning, however, and says at page 189 : "When an individualist common law is modified by collectivist legislation, we sometimes see an unsympathetic construction. Thus the real basis of housing legislation is a sacrifice of private rights of ownership in order to make possible a planned attack on the problem of the provision of suitable accommodation—hence, an over-emphasis on the presumption against interference with the private rights of the landowner has sometimes led to a defeat of the real purpose of an Act." And he quotes Jennings[6] : "What administrative lawyers ask is not that judges shall pervert legislation in favour of a 'bureaucracy' but that they shall not interpret it against public policy in the interests of private property."

Beaumont, C.J., in *Rustomji* v. *Bai Moti*,[7] observed : "No doubt the general principle is that Acts of the Legislature are not given retrospective effect unless the language makes it clear that such was the intention, but I apprehend that in applying that principle one must have regard to the general character of the Act in question, and when construing an Act introduced for the purpose of applying an equitable doctrine to certain transactions considered *ex hypothesi* to be lacking in equity one should not assume that the Legislature intended that the Act should not have retrospective effect, but wished to preserve rights acquired in such transactions.

Thus, in the case of a declaratory Act there is no such presumption.[8] When the very purpose of an Act is to impose restrictions on a particular class of owners, it is no argument against the application of it that such a restriction will, in a particular case, be effectual and defeat the wishes of some of the owners.[9]

Where a statute is ambiguous, the presumption that a Legislature does not intend to interfere with vested rights is no doubt reinforced by the absence of provisions for compensation.[10]

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1. *Union Motor and General Insurance Co.* v. *Kartar Singh*, AIR 1965 Punj 102 : ILR (1965)1 Punj 104 : 65 Punj LR 1083.
2. *Johrabai* v. *Arun*, 1980 Mah LJ 58 (SC); *Rajmal Mishrilal Jain* v. *Collector of Jhabua*, 1975 MPLJ 748 (DB).
3. *V.C.K. Bus Service (P.) Ltd.* v. *Sethna*, AIR 1965 Mad 149 : ILR (1965)1 Mad 136 : (1965)1 MLJ 203; *Kandaswamy Mudaliar* v. *Sheik Ahmad Peer Mohammad Mustafa*, 90 LW 123 : (1977)1 Mad LJ 244.
4. *Revati* v. *Chiranjilal*, 1944 AIR Lah 29; *People's Bank* v. *Wahid Bux*, AIR 1943 Lah 170.
5. *Shri Raja Satrucherla* v. *Maharaja of Jaypur*, AIR 1928 Mad 1194.
6. 49 Harvard Law Review 426.
7. AIR 1940 Bom 90.
8. *Rashid Bibi* v. *Tufail Mohammad*, AIR 1941 Lah 291; *Hemandas* v. *Chellaram*, 13 IC 264 (Sind); *Nicol* v. *Verelet*, 96 ER 751; *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 615-616.
9. *Gulab Narotam* v. *Secretary of State*, ILR 8 Bom 596, 598; *Nilkant* v. *Ghulya*, 42 IC 394 (Nag).
10. *Bhola Prasad* v. *King Emperor*, 1942 FCR 17, 28; *see* observations of Beaumont, C.J., in *Shreekant Pandurang* v. *Emperor*, AIR 1943 Bom 169, 173 : ILR 1943 Bom 331 (FB); *Gokaran Prasad* v. *Waris Ali*, AIR 1924 Pat 183; *Gopeshwar Pal* v. *Jiban Chandra*, ILR 41 Cal 1125 (SB); *Champalal* v. *Kanjilal*, AIR 1925 Nag 249; *Commissioner of Public Works (Cape Colony)* v. *Logan*, 1903 AC 355.

13. Jurisdiction of Court.—It may be useful to quote here the observations of Mookerjee, A.C.J., in *Hriday Nath Roy* v. *Ram Chandra Barna Sarma*[1] :

(i) Meaning of jurisdiction.—In the order of reference to a Full Bench in the case of *Sukhlal* v. *Tara Chand*,[2] it was stated that jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it; in other words, by jurisdiction is meant the authority by which a Court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction,' which has been stated to be 'the power to hear and determine issues of law and fact' : 'that authority by which the judicial officers take cognizance of and decide causes'; 'the authority to hear and decide a legal controversy'; 'the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them'; 'the power to hear, determine and pronounce judgment on the issues before the Court'; 'the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect'; 'the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution.' [Reference may in this connection be made to the discussion of the nature of jurisdiction in the judgment of this Court in *Ashutosh* v. *Behari Lal*,[3] and *Gurdeo* v. *Chandrika*.[4] This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject-matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matter of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of land for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject-matter is obviously of a fundamental character. Given such jurisdiction, we must be careful to distinguish exercise of jurisdiction from existence of jurisdiction; for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction. The authority to decide a cause at all and not the decision rendered therein is what makes up jurisdiction; and when there is jurisdiction of the person and subject-matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. The extent to which the conditions essential for creating and raising the jurisdiction of a Court or the restraints attaching to the mode of exercise of that jurisdiction, should be included in the conception of jurisdiction itself, is sometimes a question of great nicety, as is illustrated by the decisions reviewed in the order of reference in *Sukhlal* v. *Tara Chand*,[5] and *Khosh Mahomed* v. *Nazir Mohd*,[6] : *see* also the observation of Lord Parker in *Raghunath* v. *Sunder Das*.[7] But the distinction between existence of jurisdiction and exercise of jurisdiction has not always been borne in mind and this has sometimes led to confusion. [See *Mabulla* v. *Hemangini*,[8] and *Moser*

1. AIR 1921 Cal 34, 36 : ILR 48 Cal 134, 140-150 (FB); *see* also *Musaji Lukmanji* v. *Durga Das*, ILR 1945 Lah 281, 289 (FB); *Bepin Behary* v. *Mohit Kumar Pal*, AIR 1942 Cal 496, 498.
2. ILR 33 Cal 68, 71.
3. ILR 35 Cal 61.
4. ILR 36 Cal 193.
5. ILR 33 Cal 68.
6. ILR 33 Cal 352.
7. ILR 42 Cal 72, 83.
8. 11 CLJ 512.

v. *Marsden*,[1] when the term 'jurisdiction' is used to denote the authority of the Court to make an order for a particular description]. We must not thus overlook the cardinal position that in order that jurisdiction may be exercised, there must be a case legally before the Court and a hearing as well as a determination. A judgment pronounced by a Court without jurisdiction is void, subject to the well-known reservation that when the jurisdiction of a Court is challenged, the Court is competent to determine the question of jurisdiction, though the result of the enquiry may be that it has no jurisdiction to deal with the matter brought before it : [2]

> "Since jurisdiction is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the correctness of the decision pronounced for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. As an authority for the proposition, reference may be made to the celebrated *dictum* of Lord Hobhouse in *Malkarjun* v. *Narhari*[3] : 'A Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken, the decision, however wrong, cannot be disturbed. Lord Hobhouse then added that though it was true that the Court made a sad mistake in following the procedure adopted, still in so doing the Court was exercising its jurisdiction; and to treat such an error as destroying the jurisdiction of the Court was calculated to introduce great confusion into the administration of the law. The view that jurisdiction is entirely independent of the manner of its exercise, and involves the power to decide either way upon the facts presented to the Courts is manifestly well-founded on principles and has been recognized and applied elsewhere : *Ex parte* Watkins[4] and *Herran* v. *Dater*.[5] There is a clear distinction between the jurisdiction of the Court to try and determine a matter, and the erroneous action of such Court in the exercise of that jurisdiction. The former involves the power to act at all, while the latter involves the authority to act in the particular way in which the Court does act. The boundary between an error of judgment, and the usurpation of power is this : the former is reversible by an Appellate Court within a certain fixed time and is therefore only voidable, the latter is an absolute nullity. When parties are before the Court and present to it a controversy which the Court has authority to decide, a decision not necessarily correct but appropriate to that question is an exercise of judicial power or jurisdiction. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Were it held that a Court had jurisdiction to render only correct decisions, then each time it made an erroneous ruling or decision, the Court would be without jurisdiction and the ruling itself void. Such is not the law, and it matters not what may be the particular question presented for adjudication, whether it relates to the jurisdiction of the Court itself or affects substantive rights of the parties litigating, it cannot be held that the ruling or decision itself is without jurisdiction or is beyond the jurisdiction of the Court. The decision may be erroneous, but it cannot be held to be void for want of jurisdiction. A Court may have the right and power to determine the status of a thing and yet may exercise its authority erroneously; after jurisdiction attaches in any case, all that follows is exercise of jurisdiction and continuance of jurisdiction is not dependent upon the correctness of the determination.

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1. (1892) 1 Ch 487.
2. *Rashmoni* v. *Gyanoda*, 19 CWN 84.
3. 27 IA 216 : ILR 25 Bom 337, 347.
4. (1833)7 Peter 568.
5. (1886)120 US 464.

It is the function of the Legislature to enact the laws and the duty of the judiciary to interpret and enforce them. It is no doubt the characteristic of a good Judge to amplify his jurisdiction where the words of the statute conferring the jurisdiction can reasonably be interpreted as giving him jurisdiction, where, however, jurisdiction can only be snatched by a strained interpretation of the law.....the good judge becomes a bad citizen."[1]

(ii) Jurisdiction.—The word 'jurisdiction' does not connote form or manner in which the act is to be done but relates to the power, the scope and the ambit of authority.[2]

(iii) Jurisdiction conferred and taken away only by law.— It is only by virtue of statutes that jurisdiction is conferred on Courts, or taken away from them. In the absence of clear provisions, the ordinary rule of interpretation that a statute does not create new jurisdiction or enlarge existing ones, applies.[3] It cannot be impliedly affected by a statute which has nothing to do with jurisdiction.[4] Exclusion of jurisdiction must be in express terms or by use of such terms as must lead to interference of such exclusion.[5] The requirement of venue is specified and unambiguous; it is not one of those vague principles which, in the interest of some overriding policy, is to be given a 'liberal' construction.[6]

It is well known that whenever the Legislature wants to confer upon any specified authority the powers of a Civil Court in the matter of holding inquiries, specific provision is made in that behalf.[7] In *(M/s.) Coljax Laboratories (India) Ltd.* v. *State of Goa*,[8] it was held that the court will not favour an interpretation which has the effect of taking away the jurisdiction of the competent authority, unless the same is expressly provided for in law.

(iv) Consent cannot give jurisdiction.—The parties can, by mutual consent, no more take away a jurisdiction vested by law in any Court than they can confer on it when it is not so vested by law.[9] When a Judge has no inherent jurisdiction over the subject-matter of suit, the parties cannot confer jurisdiction on him by mutual consent, though they may constitute the Judge their arbiter. Moreover, the right to object to the jurisdiction does not admit of waiver.[10]

But when in a cause which the Judge is competent to try the parties without objective join issue and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the ground that there were irregularities in the initial proceedings, which, if objected to at the time, would have led to the dismissal of the suit.[11]

Where the Court possesses inherent jurisdiction over the subject-matter, but exercises it irregularly, the objection may be waived, and may, in general, be assumed to have been waived, when not taken at the time the exercise of jurisdiction is first claimed to the knowledge of the party affected.[12]

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1. *Khudabux* v. *Panjo*, AIR 1930 Sind 265, 271 (FB).
2. *Anwar Hussain* v. *Ajoy Kumar Mukherji*, AIR 1959 Assam 28.
3. *Vyankatesh Dhonddev Deshpande* v. *Kusum Dattatraya Kulkarni*, 1976 Mah LJ 373 (DB).
4. *Official Liquidators, Dehra Dun Mussoorie Electric Tramway Co.* v. *Nabha State Regency*, AIR 1936 All 826, 829.
5. *Magiti Sasamal* v. *Pandab Bissoi*, AIR 1962 SC 547.
6. *Schnell* v. *Eckrich & Sons*, 365 US 260 : 5 L Ed 546, 550.
7. *Kasturi and Sons (P), Ltd.* v. *N. Salivatiswaran*, AIR 1958 SC 507.
8. (1995)1 Goa LT 325 (DB).
9. *Maha Prasad* v. *Ramani Mohan*, AIR 1914 PC 140; *Jagat Chandra* v. *Shyama Charan*, AIR 1919 Cal 1033, 1034; *Bepin Behary* v. *Mohit Kumar*, AIR 1942 Cal 496; *Kamleshwari* v. *Mahadeo Sahai*, AIR 1944 Pat 98, 101.
10. *Special Deputy Collector, Land Acquisition* v. *Kodandarama Charlu*, AIR 1965 Andh Pra 23 : (1964)2 Andh WR 225.
11. *Ledgard* v. *Bull*, ILR 9 All 203; *Minakshi Naidu* v. *Subramanya Sastri*, ILR 11 Mad 26, 36.
12. *Bepin Behary* v. *Mohit Kumar*, AIR 1942 Cal 496; *Karashiddyaya* v. *Shri Gajanan Urban Co-operative Bank*, AIR 1943 Bom 288, 290.

(v) Statutory jurisdiction to be exercised subject to specified limitations.—Where the jurisdiction of a Court in certain matters is statutory, the Court, however admirable its intentions, is not entitled to go outside those provisions, and in effect to legislate for itself.[1] A statute conferring jurisdiction under certain particular conditions cannot be taken to confer jurisdiction also in cases which do not fall within the ambit of the conditions laid down merely on the basis of analogy.[2] But where an Act confers jurisdiction on a tribunal, it must be taken to have impliedly granted the power of doing all such acts or employing such means as are essentially necessary to its exercise or execution.[3]

(vi) Consensual jurisdiction.—Where a consensual jurisdiction requires for its constitution the consent of all parties, the absence of consent, whether due to unwillingness to consent or inability to consent, is fatal.[4]

(vii) Jurisdiction of superior Courts.—The old rule for jurisdiction is that nothing shall be intended to be out of the jurisdiction of the superior Court but that which specifically appears to be so; nothing is intended to be within the jurisdiction of an inferior Court but that which is expressly alleged.[5]

The exercise of jurisdiction by the Supreme Court in India, it may, however, be noted, is dependent upon and governed by the specific provisions of the Constitution. It cannot claim to exercise a jurisdiction not vested in it under the provisions of the Constitution.

(viii) No implied authority to deprive superior Courts of their jurisdiction.—It is a well-known rule of interpretation of provisions barring the jurisdiction of Civil Courts that they must be strictly construed for the exclusion of the jurisdiction of a Civil Court and least of all the Supreme Court, is not to be lightly inferred.[6] There is not to be presumed without express words an authority to deprive the Supreme Court of a jurisdiction which it had previously exercised or to extend the privative jurisdiction of the Supreme Court to the inferior Courts.[7] The general presumption is against construing a statute as ousting or restricting the jurisdiction of the superior Courts.

(ix) Jurisdiction of Civil Courts.—Section 9, C.P.C., lays down that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. One general rule of law is that when a legal right and an infringement thereof are alleged, a cause of action is disclosed and unless there is a bar to the entertainment of a suit, the ordinary Civil Courts are bound to entertain the claim. Section 9, C.P.C, lays down a general rule in favour of the jurisdiction of the Civil Court and the burden of proof is on the party who pleads an exception to the general rule.[8] The exclusion of the jurisdiction of Civil Courts is not to be readily inferred, but such exclusion must either be

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1. *King-Emperor* v. *Dahu Raut*, AIR 1935 PC 89, 91.
2. *Shanti Prasad* v. *Bachchi Devi*, AIR 1948 Oudh 349, 350.
3. *Central Bank of India* v. *P.S. Rajagopalan*, AIR 1964 SC 743; *Sub-Divisional Officer, Sadar, Faizabad* v. *Shambhoo Narain Singh*, AIR 1970 SC 140.
4. *Hanna Eissa* v. *Bishara Elias*, AIR 1944 PC 5, 6.
5. Broom's *Legal Maxims*, 10th Ed. at p. 647; *Peacock* v. *Bell*, 1 Wms Soind, 73 *Gosselt* v. *Howard*, 2 Scott NR 39; *Kinnging* v. *Buchanan*, 137 ER 513; *Emperor* v. *Noor Mohamed*, AIR 1928 Sind 1, 11.
6. *Madhav Rao* v. *Union of India* (1971)3 SCR 9, 63 (Hidayatullah, C.J.) 95 (Shah, J.).
7. *Dunbar* v. *Scottish County Investment Co.*, 1920 SC 210 (English); *Oram* v. *Brearey*, (1877)2 Ex D 346, 348; *Albon* v. *Pyke*, (1942)4 M & G 421, 424 : *Balfour* v. *Malcolm*, (1842)8 Cl & F 485, 500.
8. *Ramayya* v. *Lakshmi Narayana*, AIR 1934 PC 84, 86.

explicitly expressed or clearly implied.[1] Interpretation in favour of the jurisdiction of a Civil Court should be preferred to the one for its absence.[2]

(x) Presumption against ouster of jurisdiction.—In *Prosunno Coomar Paul* v. *Koylash Chunder Paul*,[3] Peacock, C.J., said : "The jurisdiction of the ordinary Courts of Judicature is not to be taken away by putting a construction upon an Act of the Legislature which does not clearly say that it was the intention of the Legislature to deprive such courts of their jurisdiction. The right of a person to relief in a Civil Court is a common law right and so long as he can show a cause of action he can bring a suit for redress.[4] If a statute purports to exclude the ordinary jurisdiction of Civil Courts it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion.[5] A statute, therefore, which purports to oust the jurisdiction of the Civil Court must be strictly construed.[6] But this rule is subject to the qualification that it does not defeat the very object of the statute itself.[7] When the language is doubtful, the Courts will lean against an ouster of the jurisdiction of the ordinary Courts except in cases which are clearly and specifically indicated by the Legislature.[8]

Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right.[9]

Any statute which encroaches on the jurisdiction of Courts is subject to a strict interpretation, and it is, therefore, expected that if such was the intention of the Legislature, care should be taken to manifest it, if not in express words, at least by clear indication and beyond reasonable doubt. Thus, there was nothing in Section 226(1), Government of India Act, 1935, which had taken away or restricted the jurisdiction of the High Court to try a suit for declaration of title by a third party who was not in any way concerned with or sought to be held liable for any arrears of revenue.[10]

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1. *Secretary of State* v. *Mark & Co.*, AIR 1940 PC 105, 110; *Mani Ram* v. *Bhagat Sarup*, 1948 ALJ 40; *Shanta Nand* v. *Basudeva Nand*, AIR 1930 All 225; *Cowasjee Pestonjee* v. *Rustomjee Sorabjee*, AIR 1949 Bom 42; *Narsing Das* v. *Chogemull*, AIR 1939 Cal 535; *State of M.P.* v. *Sunderlal Jaiswal*, 1976 Jab LJ 323 (DB); *Union of India* v. *Ganpat Rai*, AIR 1983 Cal 14 (DB).
2. *Bundi Municipal Board* v. *Bundi Electric Supply Co., Ltd.*, AIR 1957 Raj 278, 279; *Madhusudan Tripathi* v. *Bhagat Deb Goswami*, ILR 1966 Cal 661.
3. 8 WR 428, 436; *see* also *Shewakram* v. *Ghulam Shah*, AIR 1927 Sind 225, 227.
4. *Jagannatha* v. *Kathaperumal*, AIR 1927 Mad 1035, 1036.
5. *Magiti Sasamal* v. *Pandab Bissoi*, AIR 1962 SC 547, 549; following *Secretary of State* v. *Mask & Co.*, 67 IA 222, 236 : AIR 1940 PC 105, 110; *Manphool* v. *Dulichand*, AIR 1969 Raj 169 (FB) (exclusion must be made on clear and unambiguous terms); *Nasib Singh* v. *Raja Ram*, AIR 1969 J & K 9 (FB). (bar of jurisdiction cannot be spelt out by implied reasoning); *Raja Ram Varma* v. *State of U.P.*, AIR 1968 All 369 (FB).
6. *Fazal Ibrahim* v. *Appabhai*, AIR 1959 Bom 337; *Gulam Hussain* v. *D'Souza*, AIR 1929 Bom 471; *Balwant Ram Chandra* v. *Secretary of State*, ILR 29 Bom 480; *Ibrahim* v. *Mst. Zainab*, AIR 1935 Lah 613; *Chota* v. *Baija*, AIR 1927 Lah 452; *Rama Krishnayya* v. *Venkataranga*, AIR 1932 Mad 724; *Arunachalam Chetty* v. *Official Receiver, Rannad*, AIR 1927 Mad 166; *Manager, Court of Wards* v. *Moolchand*, AIR 1941 Nag 226; *B. D. Birai* v. *Lal Nilmani Nath*, AIR 1928 Pat 615; *Mg Ba Lat* v. *K. T. Co-operative Society*, AIR 1933 Rang 124; *Ram Awalamb* v. *Jata Shanker*, AIR 1969 All 526 (FB); *M.I. Haider Bux Rizvi* v. *R. G. Rainabhai*, AIR 1969 SC 439.
7. *Shyamapada Banerjee* v. *Asst. Registrar of Co-operative Societies*, AIR 1964 Cal 190.
8. *Shivji Bhara & Co.* v. *Kanji Vasanji*, AIR 1949 Bom 337; *Port of Madras* v. *Bombay Co.*, AIR 1967 Mad 318; *Madhusudan Tripathy* v. *Bhagat Deb Goswami*, ILR 1966 Cal 661.
9. *Sardar Ali* v. *Doliluddin*, AIR 1928 Cal 640 at p. 643 : ILR 56 Cal 512; *Garikapti* v. *Subbiah Choudhry*, AIR 1957 SC 549, 550.
10. *Lalita Bai* v. *Dominion of India*, AIR 1954 Bom 527.

When the right of action in a Civil Court is taken away in the cases specifically mentioned in the Act, the right of a party to seek relief in the Civil Court in other cases would not be necessarily taken away.[1] Statutes affecting the jurisdiction of Civil Courts are to be construed, as far as possible, in such a way as to avoid the effect of transferring the determination of rights and liabilities from the ordinary Civil Courts to Executive Officers.[2]

It is an accepted principle of statutory interpretation that when a right of suit is taken away and the remedy by way of application is substituted, the prohibition in regard to the filing of the suit should be read as co-extensive with the remedy that is provided. But at the same time a statute which is in the form of a Code should be construed as exhaustive on the subject dealt with. For that purpose its express words should be given full effect, consistent with the general scheme of the Act.[3]

(xi) Court's Jurisdiction to determine jurisdictional facts.—It is well-settled that a tribunal can investigate into the facts relating to the exercise of its jurisdiction when that jurisdictional fact itself is in dispute. Where a tribunal is invested with jurisdiction to determine a particular question, it is competent to determine the existence of the facts collateral to the actual matter which the tribunal has to try. This power to decide collateral facts is the foundation for the exercise of its jurisdiction.[4]

(xii) New right and special remedy.—Where a special tribunal, out of the ordinary course, is appointed by an Act, to determine questions as to rights which are the creation of that Act that tribunal's jurisdiction to determine those questions is exclusive,[5] except in so far as is expressly provided for or necessarily implied. "It is an essential condition," observed Sir Lawrence Jenkins, C.J. "of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the Civil Courts, for they never had any; there is no change of the old order of things; a new order is brought into being."[6]

Prima facie where the same statute creates a new right and specifies the remedy, the remedy is exclusive. The natural presumption to begin with is that Parliament in creating the novel right attaches to it the particular mode of enforcement as part of its statutory scheme.[7] In *Barrachlough* v. *Brown*,[8] it was held that "where a statute gives a right to recover expenses in a Court of summary jurisdiction from a person who is not otherwise liable.....he can only take proceedings in the latter Court."

It follows that where an Act creates an obligation and enforces the performance in a specified manner, the general rule is that performance cannot be enforced in any other manner.[9]

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1. *Jagannatha* v. *Kathaperumal*, AIR 1927 Mad 1035.
2. *Gir Har Saroop* v. *Bhagwan Din*, AIR 1935 Oudh 96, 106.
3. *Mohemad Yusuf Levai Saheb* v. *Haji Mohamad Hussain Roiether*, (1963)2 MLJ 287 : 76 MLW 482 (FB).
4. *Jaddu Veeraswami* v. *Sub-Collector, Narasapur*, (1975)1 Andh WR 337.
5. *Nawal Kishore* v. *Municipal Board, Gorakhpur*, AIR 1937 All 365; *Tara Prasad* v. *Abdul Kasem*, AIR 1938 Cal 359; *Sultan Ali* v. *Nur Hussain*, AIR 1949 Lah 131 (FB); *see* also *V. C. K. Bus Service (P.) Ltd.* v. *Sethna*, AIR 1965 Mad 149 : ILR (1965)1 Mad 136 : (1965)1 MLJ 203 : 77 MLW 515.
6. *Bhai Shanker* v. *Municipal Corportation, Bombay*, ILR 31 Bom 604, 609.
7. *Pasmore* v. *Oswaldtwistle Urban Council*, 1898 AC 387; *see* also *Cobar Corporation, Ltd.* v. *Att. Gen. for N. S. W.*, 9 CLR 378, 387.
8. 1897 AC 615.
9. *Doe* v. *Bridges*, 1 B & Ad 847, 859; *see* also *Josephson* v. *Walker*, (1914)18 CLR 691, 694,-696.

If statute has conferred a power to do an act and has laid down method in which that power has to be exercised, it necessarily prohibits the doing of the act in another manner.[1]

Similarly, where a statute creates an offence, and denies particular remedies against the person committing that offence, *prima facie* the party injured can avail himself of the remedies so provided, and no other.[2]

(xiii) Special Tribunal.—When a special tribunal is constituted under a statute, its jurisdiction depends upon the specific provisions of the statute. It may be limited by conditions as to its constitution, as to the persons whom or the offences which it is competent to try, and as to the orders which it is empowered to make, or by other conditions which the law makes essential to the validity of its proceedings and orders. Where the special tribunal acts *ultra vires*, or refuses to exercise its jurisdiction, or acts *mala fide* or arbitrary in the exercise of its jurisdiction, the Civil Court has power to interfere and set matter right.

The Civil Court is the final authority to determine the issue whether the special tribunal has or has not jurisdiction over a certain cause,[3] but where the special tribunal is vested with exclusive jurisdiction to determine its own authority in certain matters, the jurisdiction of the Civil Court will be deemed to have been taken away to that extent.[4]

Statutes creating special jurisdiction have, however, to be strictly construed when their language is doubtful. A construction which would impliedly create a new jurisdiction is to be avoided, specially where it would have the effect of depriving the subject of his full proprietary rights or of any common law right or of creating an arbitrary procedure. But where a power has been conferred in unambiguous language by statute, the Courts cannot interfere with its exercise and substitute their own discretion for that of persons and bodies selected by the Legislature for the purpose.[5]

(xiv) Provision making performance enforceable in a specified manner.—"Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."[6] This general rule is, however, subject to exceptions. It may be that, though a specific remedy is provided by the Act yet the person injured has a personal right of action in addition. That depends upon the scope and purpose of the particular statute, in particular for whose benefit it is intended.[7]

The principle is well settled that when certain duties or conditions are imposed by a statute, when these duties or conditions are not conditions precedent to the exercise of jurisdiction, they are subject to the maxim *lex non cogit ad impossibilia aut inutilia*. They are understood as dispensing with the performance of what is prescribed when performance of it is idle or impossible. Where railway authorities had taken notice of the plaintiff's claim and sent an inspector to investigate, a notice under Section 72, Railways Act, was not necessary.[8]

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1. *State of U.P.* v. *Singhera Singh*, AIR 1964 SC 358; *Nazir Ahmad* v. *King Emperor*, (1936)63 Ind. App. 372 : AIR 1936 PC 253; *Prem Singh* v. *Sahayak Abhiyanta Sa. Niva Upkhand Adhikari*, 1993 All LJ 666.
2. *Brain* v. *Thomas*, 50 LJQB 633, 662; *M.P. State Road Transport Corporation* v. *Jahi Ram*, AIR 1969 Madh Pra 89.
3. *Royal Calcutta Turf Club* v. *Kishen Chand Manchand*, AIR 1942 Lah 179.
4. *Manibhai* v. *Arbuthnot*, AIR 1947 Bom 413; *Mokesh Chandra Shaha* v. *Abdul Gafur*, AIR 1946 Cal 435.
5. *Balwant* v. *Secretary of State*, 7 Bom LR 497.
6. *Doe* v. *Bridges*, (1831)1 B & Ad 847, 859, *per* Lord Tenterden, C.J., cited with approval, in *Pasmore* v. *Oswaldtwistle Urban Council*, (1898) AC 387, 394; *Prakash Textile Mills* v. *Manilal*, AIR 1955 Punj 197, (The Displaced Persons (Debts Adjustment) Act, 1951, held to give exclusive jurisdiction to the Tribunal created by it.).
7. *Black* v. *Fife Coal Co., Ltd.*, 1912 AC 149, 165; *Vinaya Nath* v. *Bihar Journals Ltd.*, AIR 1954 Pat 1, 4.
8. *Amarchand* v. *Union of India*, AIR 1955 Assam 221.

(xv) Prescribing statutory duty without laying down remedy.—If a statutory duty is prescribed but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damnified by the breach. For if it were not so, the statute would be wholly ineffectual.

(xvi) Where special tribunal does not come into existence or neglects to function.—If a special tribunal is constituted to adjudicate upon the rights created by a statute and if that tribunal functions, then in that event the jurisdiction of the Civil Court would stand ousted. But if that special tribunal never comes into being or refuses or neglects to function, the jurisdiction of the Civil Court cannot be said to be ousted in that event.[1] "If is not possible to hold", said Mahajan. J., "that though the statute has given a right and also prescribed a remedy for giving effect to that right in case there is an infringement of that right yet if that remedy becomes merely illusory, in that event the right stands defeated. To hold that though the plaintiff has statutory right yet he had no remedy in the situation that has arisen would amount to a denial of the statutory right. I am unable to subscribe to such a position. The Legislature did contemplate that the right conferred by the statute was an enforceable right and they did contemplate a remedy for giving effect to that right. But once that remedy becomes illusory and ineffective and the special tribunal refuses to function, in that eventuality it cannot be said that the right which is of a civil nature stands defeated and cannot be enforced. In my opinion there is no ouster of the jurisdiction of the Civil Courts till the Special Courts created by the statute function in accordance with the intent and spirit of the statute. Mere contemplation of a tribunal is not enough. It must come into being and having come into being it must function effectively and till that stage is reached the right which is a civil right is enforceable in the Civil Court under the provisions of Section 9, Civil Procedure Code, 1908 and it cannot be held that something illusory can take away the jurisdiction of the Civil Courts.[2]

In *Lachmi Chand* v. *Rampratap*,[3] the Local Government failed to carry out its duty of appointing an election tribunal and Courtney Terrell, C. J., said : "It cannot be supposed that the Legislature contemplated that the Government might deprive persons to whom it had given a right, from having recourse to a tribunal to enforce that right and in such circumstances that subject has the right to proceed in the ordinary Civil Courts, unless and until Legislature carries out its duty of appointing a special tribunal. It is clear that when this shall have been done, the jurisdiction of the Civil Court will be ousted." The theory of conditional ouster is based on the assumption that the Legislature creating the right could never intend that the right should come into existence but that there should be no machinery for its enforcement. In *Sultan Ali* v. *Nur Husain*,[4] Munir, Ag. C. J., did not accept the correctness of the law laid down in the above cases. He observed : "If there is ouster, it must be held to be absolute and not dependent on the functioning of the special tribunal. The implied ouster depends on the intention to be inferred from the fact that the statute does contain a provision for a constitution of a tribunal to which the enforcement of such right is entrusted. If there be such a provision, then it is wholly immaterial whether the statute itself creates the tribunal or delegates to some other authority, and the authority does not act or the authority having acted, the tribunal does not act. The intention of the Legislature being the determining factor it is impossible to suppose

1. *Sat Narain* v. *Hanuman Parshad*, AIR 1946 L 85 (91); *Ganesh Mahadeo* v. *Secretary of State*, ILR 43 B 221; *Sarvothama Rao* v. *Chairman, Municipal Council*, AIR 1923 M 475; *Gopesh Chandra* v. *Benode Lal*, AIR 1936 C 424; *Lachmi Chand* v. *Ram Pratap*, AIR 1934 Pat 670 (FB).
2. *Sat Narain* v. *Hanuman Parshad*, AIR 1946 L 85 (91).
3. AIR 1934 Pat 670 (2) (FB).
4. AIR 1949 Lah 131, 159 (FB). The observations were, however, *obiter*.

that when it directed another authority to create a special tribunal, it also envisaged and intended to provide for the position created by that authority's disobeying the direction or the tribunal's refusal to function. More or less a similar view has been taken in *Joti Prasad* v. *Amba Prasad*,[1] where the Court observed : "We find it difficult to believe that the Legislature while providing that a tribunal appointed by the Local Government should be seized of the matter, intended that the Civil Court should also have, so to say, dormant jurisdiction to decide the question and that that jurisdiction is to become active the moment the Local Government refuses to appoint a tribunal. If the Legislature wanted not to bar the jurisdiction of Civil Courts and not to give exclusive jurisdiction to the tribunal appointed by it, nothing would have been easier to give expression to such an intention by express words in the enactment."

(xvii) Avoidance of conflict of jurisdiction.—In *Jopson* v. *James*,[2] Farewell, L.J., states : "The existence of concurrent jurisdiction renders very necessary the observance of a comity between those jurisdictions the disregard of which would lead to most unfortunate friction. Two points appear to me to be usual on considering whether the Court should have regard and defer to a jurisdiction with which it may come into conflict, or whether the Court can fairly expect that other jurisdiction to defer it. One is priority in time, and the other is the extent of the relief asked for or obtainable in the other jurisdiction." It is a matter of great public importance that there should be no conflict or clash of jurisdiction between two equally competent authorities. Applying the principle it was held in *Bhabaprintananda* v. *President, Bihar State Board of Religious Trusts*,[3] that the expression 'Religious Trust' in the title and preamble and in Section 2(1) and (3) of the Bihar Hindu Religious Trusts Act, 1951, must be construed not in the plain and grammatical sense but must be cut down so as to exclude such religious trusts which are administered under a scheme prepared by Court outside the territorial limits of Bihar. Under the circumstances, the Bihar Act does not apply to Baidyanath Temple and the President has no jurisdiction to take any proceedings against the petitioner under any of the sections of the Act.

In the case of *Gujarat Co-operative Land Development Bank* v. *P. R. Mankad*,[4] the Supreme Court observed that "if a Court is incapable of granting the relief claimed, normally the proper construction would be that it is incompetent to deal with the matter."

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1. AIR 1933 All 358 : 1933 ALJ 305 (310).
2. (1908)77 LJ Ch 824.
3. AIR 1954 Pat 262.
4. AIR 1979 SC 1203 : (1979)3 SCC 1213.

CHAPTER VI

SOME IMPORTANT CONSIDERATIONS IN INTERPRETATION

SYNOPSIS

1. *Preliminary Note*----230
2. *Absurdity.*----231
   (i) *Futility.*----232
   (ii) *Not meaningless or ineffective.*----237
   (iii) *Two meanings possible.*----237
3. *Reasonableness :*----238
   (i) *Preference given to a reasonable meaning if provision not plain.*----239
   (ii) *Should not be reduced to a nullity.*----239
   (iii) *Intention of Legislature not to be defeated.*----240
4. *Injustice :*----241
   (i) *Where plain meaning interfered with.*----241
   (ii) *Two possible interpretations.*----243
5. *Hardship :*----244
   (i) *No wishful thinking.*----247
   (ii) *General and particular hardship.*----248
   (iii) *Two meanings possible.*----248
6. *Inconvenience :*----249
   (i) *Argumentum ab inconvenienti to be used with caution.*----249
   (ii) *In case of doubt.*----250
   (iii) *Inconvenience to one or many.*----251
   (iv) *Multiplicity of litigation.*----251
7. *Anomaly.*----252
8. *Consequences*----253

1. Preliminary Note.—Some important basic rules of interpretation are precisely set out in two decisions of the Supreme Court : (i) *Balasinor Nagrik Co-op. Bank Ltd.* v. *Babuthai Shankarlal Pundya,*[1] and *Lt. Colonel Prithvi Pal Singh Bedi* v. *Union of India,*[2] both quoted in *Mohan Kumar Singhania* v. *Union of India.*[3] In the former the passage is : "It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For the principle that the statute must be read as a whole is equally applicable to different parts of the same section," while in the latter "The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised commons of construction is that the Legislature speaks its mind by use of correct expression and unless there is any ambiguity, the court should adopt literal construction if it does not lead to absurdity."

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1. AIR 1987 SC 849 (851) : (1987)1 SCC 606 (608).
2. AIR 1982 SC 1413 (1419) : (1983)1 SCR 393 (404).
3. AIR 1992 SC 1 : 1991 Lab IC 2334 : 1992 (1) SCC (Supp.) 594; *Mohinder Pal* v. *State of H.P.*, AIR 1995 MP 15 (FB).

2. Absurdity.—If the words of an Act are clear the Court must follow them even though they lead to a manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity.[1] We are bound to construe a section according to the plain meaning of the language used, unless we can find either in the section itself 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 produced even of absurdity.[2] The purpose of the law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful. The letter of the law is the body but the sense and reason of the law is the soul; it was held that the right of residence to the male member of the dwelling house of the Hindu intestate should be respected.[3] Words are the skin of the language. The language gives its own meaning and interpretation of the law. It does so employing appropriate phraseology to attain the object of legislative policy which it seeks to achieve.[4] The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the Legislature, their ordinary, natural and grammatical meaning; if, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same; but if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation.[5] It matters not in such a case what the consequence may be. When by the use of clear and unequivocal language capable of only one meaning anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous.[6] It is a well known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly.[7] Where the language of law is clear, it is not necessary to see whether the interpretation put on the law is likely to lead or not to hardships and to absurdities. But the *test* may be applied to see whether the interpretation is a sound one or not.[8] Where, therefore, the simple application of the words in an unqualified sense leads apparently to some injustice or absurdity at variance with, or not required by, the scope and object of the legislation,[9] it becomes necessary to examine further and to test, by certain settled rules of interpretation, what was the real and true intention of the Legislature, and having ascertained it, then to apply the words, if they are

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1. *Reg* v. *Judge of the City of London Court*, (1892)1 QB 273, 290, *per* Lord Esher, followed in *Vacher & Sons Ltd.* v. *London Society of Compositors*, 1913 AC 107, 122, *per* Lord Atkinson; *Corporation of City of Victoria* v. *Bishop of Vancouver Island*, AIR 1921 PC 240, *per* Lord Atkinson; *see* also *Muhammed Hayat* v. *Commissioner, Income-tax, Punjab*, ILR 12 Lah 129 : AIR 1931 Lah 87 (FB); *see* also *Logan* v. *Burslow*. The Guina, 4 Moo PCC 284 : 13 ER 312; *State of Manipur* v. *A.N. Singh*, AIR 1957 Manipur 1.
2. *Rajib* v. *Lakhan*, 27 Cal 11, 15; *Wilkinson* v. *Wilkinson*, ILR 47 Bom 843 : AIR 1923 Bom 321; *see* also *Piara Singh* v. *Mila Mal*, ILR 4 Lah 323, 325.
3. Vide *Narasimha Murthy* v. *(Smt.) Susheelabai*, 1996(2) CCC 86 (SC) : (1996)3 Supreme 611.
4. Vide *Pannalal Bansilal Pitti v: State of A.P.*, (1996)2 SCC 498.
5. *Veerappa* v. *State of Mysore*, AIR 1965 Mys 227, 229 (FB) (Hegde, J.).
6. *Ghulam Mohd.* v. *Panna Ram*, AIR 1924 Lah 374, 376, quoting Maxwell on *Interpretation of Statutes*, 11th Ed. at p. 4; *Manjulabai Laxman Chanan* v. *Manikchand Tuljaram Shah*, 1977 Mah LJ 185 (DB). *Punjab National Bank* v. *M/s. Laxmi Chand Sunder Das*, AIR 1982 P & H 48 (FB); *Harish Tandon* v. *Addl. District Magistrate, Allahabad, U.P.*, 1995 All LJ 350 : (1995)1 All RC 220 : (1995)1 SCC 527 : 1995 AIR SCW 453 : (AIR 1985 SC 1118) overruled.
7. *See American Home Products Corporation* v. *Mac. Laboratories Pvt. Ltd. & another.*, AIR 1986 SC 137: (1986)1 SCC 465 : 1985 Arbi LR 555 : 1986 Cur Civ LJ (SC) 150 : (1986)1 Cur CC 665 : (1986)1 Supreme 585 : 1986 Recent Laws 120 relying on AIR 1961 SC 1107 : (1961)2 SCR 295; *(Smt.) Usha Devi* v. *State of Madh Pra*, AIR 1990 MP 268 (FB).
8. *Mst. Kaulapati* v. *Ram Baran*, ILR 54 All 954 : AIR 1932 All 494, 498, *per* Mukerji, J. (FB).
9. *Ram Adhin* v. *Shyama Devi*, (1977)14 ACC 264.

capable of being so applied.[1] It may, therefore, be taken as a settled rule that, if a statute, leads to absurdity, hardship or injustice in its working, a construction may be put upon it which modifies the meaning of words employed therein and even the structure of sentences.[2] And for this purpose even words may be added and the construction changed so that absurdities and additions not intended by the Legislature may be avoided.[3] The golden rule of interpretation is that we must first try to ascertain the intention of the Legislature from the words used, by attaching the ordinary meaning of the word on the grammatical construction—adding nothing and omitting nothing and to give effect to the intention thus ascertained, if the language is unambiguous, and no absurdity results. If the language is not free from ambiguity, it becomes necessary and proper to take into consideration the background of the legislation and other circumstances which may help the ascertainment of the intention. If, even though free from ambiguity, the ordinary meaning of the words used gives rise to an absurdity, we have to endeavour to avoid the absurdity, by adding, if possible, some words and omitting some words, to ascertain the Legislature's intention.[4]

'Absurdity' observed Lord Greene, M.R. in *Grundt* v. *Great Bolder Gold Mines, Ltd.*,[5] "I cannot help thinking, like public policy, is a very unruly horse.....that although the absurdity or the non-absurdity of one conclusion as compared with another may be, very often, is of assistance to the Court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with very great care, remembering that Judges may be fallible in this question of an absurdity, and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to rewrite the language in a way different from that in which it was originally framed."

(i) Futility.—In *Lord Haward de Walden* v. *I.R.C.*[6] Lord Uthwatt, while holding that the amendment was not futile, observed :

> ".....but I must not be taken as suggesting that futility is a reason for the Courts, under the guise of construing an enactment, to depart from the plain meaning of unambiguous language appearing in it."

The provisions of a statute must be construed fairly so as reasonably to effect the object which the Legislature may be presumed to have had in view. If the choice is between two interpretations, the narrower of which will fail to achieve the manifest purpose of the legislation, the Court should avoid the construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that the Legislature would legislate only for the purpose of bringing about an effective result.[7]

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1. *Harding* v. *Preece*, (1882)9 QBD 281, *per* Watkins Williams, J. Restricted meaning may be given to avoid absurd results; *Helvering* v. *Hammel*, 85 L Ed 303, 307 (Stone. J.); *Commissioner of Internal Revenue* v. *Brown*, 14 L Ed 2d. 75, 82 (White, J.).
2. *State of Madhya Pradesh* v. *Azad Bharat Finance Co.*, AIR 1967 SC 276; *Hariprasad Raghuram Dave* v. *State of Gujarat*, AIR 1965 Guj 283.
3. *Rameshwardas Radheylal* v. *State*, AIR 1967 Punj 132 (D).
4. *Promode Ranjan* v. *Mullick*, AIR 1959 Cal 318, 319 (K.C. Das Gupta, J.) : *Rameshwardas Radheylal* v. *State*, AIR 1967 Punj 132 (D) at p. 134 (Narula, J.).
5. (1948)1 All ER 21, 29, 30; *see* also *Kesavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461 (CJ); *Punjab National Bank* v. *M/s. Laxmi Chand Sunder Das*, AIR 1982 P & H 48 (FB).
6. (1948)2 AER 825, 829, 830, relied on in *Commissioner of Sales Tax, U.P. Lucknow* v. *M/s. Super Cotton Bowl Refilling Works*, (1989)1 SCC 643.
7. *Nadiad Borough Municipality* v. *Nadiad Electric Co., Ltd.*, AIR 1964 Guj 30 at p. 36 (P.N. Bhagwati, J.).

When the Legislature places upon the statute book a provision in terms which are entirely without ambiguity, it is the duty of the Court to give effect to the provision, unless by doing so it is obvious that it would lead to an absurdity.[1] A Court must always *avoid* as far as possible giving an entirely *absurd interpretation* to a section drafted by the Legislature unless a Court looking to the plain and grammatical language used has no other option except to give such a construction.[2] To avoid absurdity or incongruity grammatical and ordinary sense of the words can, in certain circumstances, be avoided.[3] There is no obligation on a Court of law so to construe a clause as would lead to a clear absurdity which could not possibly be regarded as contemplated by the legislating authority or agency.[4] Since the basic and underlying purpose of all legislation, at least in theory, is to *promote justice*, it would seem that the effect of the statute should be of primary concern. If this is so, the *effect* of a suggested construction is an important consideration and one which the Court should never neglect. As a result, the Court should strive to avoid a construction which will tend to make the statute unjust, oppressive, unreasonable, absurd, mischievous or contrary to the public interest.[5] One should avoid results which would result in absurdity and give a harmonious construction so as to avoid making one provision of the Act conflict with the other.[6]

One of the cardinal rules of interpretation of statutes, which is oftentimes referred to as the golden rule is that the grammatical and ordinary sense of the words used by the Legislature in expressing its intention is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the statute, in which case the grammatical and ordinary sense of the words may be *modified*, so as to avoid absurdity, repugnance and inconsistencies but no further.[7] When the language of a statute in its ordinary meaning and

1. *Venkateswara* v. *Venkatesa*, AIR 1941 Mad 449, 460 : ILR 1941 Mad 599 (FB); *Bertell* v. *Dawes*, 155 ER 963 : *Clerical, etc., Society* v. *Carter*, (1889)22 QBD 444.
2. *Sir Kasturchand Ltd.* v. *I.T. Commissioner, Bombay*, AIR 1950 Bom 1; *State of Bombay* v. *Bai Meti*, AIR 1948 Bom 18, 20.
3. *State* v. *Sat Ram Das*, AIR 1959 Punj 497, 498.
4. *Mohideen Pichai* v. *Tinnevely Mills Co.*, AIR 1928 Mad 571, *per* Srinivasa Ayyangar, J.
5. Crawford on *Statutory Construction*, Article 177, pp. 286-289. A thing which is within the letter of statute is not within the statute unless it be within the intent of the Legislature. It is a rule of statutory construction that if a too liberal adherence to the words of an enactment appears to produce an absurdity or an injustice, it will be the duty of a Court of construction to adopt a construction not quite strictly grammatical; *Mallappa* v. *Government of Mysore*, 24 Mys LJ 59; *Simpson* v. *Unwin*, 110 ER 50. *Hem Narain Jhunjhunwala* v. *State of Bihar*, AIR 1990 Pat 214 : 1990 Pat LJR 664 : (1990)1 BLJ 765.
6. *Kishen Singh* v. *Mohd. Shafi*, AIR 1964 J & K 39, 41 (Bhat, J.).
7. *(Dr.) Bheemappu* v. *The Returning Officer for election to Indian Medical Council, Bangalore*, AIR 1989 Kant 75 : (1988) Kant LJ 513 : (1988)22 Reperts 221 : ILR 1988 Kant 1726; *Emperor* v. *Jiand*, AIR 1928 Sind 149, 158 (FB), *per* Rupchand, A.J.C.; *Balaji* v. *Gopalrao*, 33 IC 489, 490 quoting Lord Blackburn in *Eastern Counties, etc.* v. *Marriage*, 11 ER 639, 641; *Becke* v. *Smith*, 150 ER 724, *per* Parke, B; *Turner* v. *Sheffield*, 152 ER 536; *Hollingworth* v. *Palmer*, 154 ER 1211; *R.* v. *Bird*, 169 ER 431; *Eastern Union Ry. Co.* v. *Cochrane*, 156 ER 84; *Grey* v. *Pearson*, (1857)6 H Leas 61 : 10 LR 1216 (HL); Lord Fitzgerald quoted with approval in *Bradlaugh* v. *Clarke*, (1883)8 AC 354, 384 the observation of Burton, J. in *Warburton* v. *Loveland*, (1828)1 Hud and Br 632, 648, *viz.* "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of statute, or if it would involve any absurdity, repugnance, inconsistency, the grammatical sense must then be modified, extended or abridged, so far to avoid such inconsistency but no further. Willes, J., would agree to such a rule or that propounded by Lord Wensleydale in *Grey* v. *Pearson*, except the word 'absurdity' unless that be considered as used there in the same sense as repugnance, that is to say, something which would be so absurd with reference to the other words of the statute as to amount to a repugnance; *Christopherson* v. *Lotinga*, (1864)33 LJCP 123, Lord Blackburn observed as follows in *Caledonian Ry.* v. *North British Ry.*, (1881)6 AC 114, 131 : "There is not much doubt about the general principle of construction. Lord Wensleydale used to enunciate (I have heard him many and many a time) that which he called the golden rule for

grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence.[1] For instance, where no meaning can be given to certain words of statute without rejecting some of those used in it, or where a statute would become nullity were all the words retained, the Court has power to read a section as though the words which would make it meaningless or nullify it, were not there.[2] It is true that the normal and ordinary rule of construction of any statute is to construe it according to the plain, literal and grammatical meaning of the words used. But under exceptional circumstances with a view to avoid manifest absurdity, serious hardship and gross injustice, Courts have recognised certain exceptions where the plain, literal and grammatical meaning of the words used would render the statute a nullity creating a situation of manifest contradiction of the very purpose of the enactment. The rule as to when the literal construction of a statute can be deviated when the result of such a construction would lead to absurd or startling results opposed to the intention of the Legislature or would completely frustrate the purpose of the statute was stated by Pollock, C.B. in *Waugh* v. *Middleton*,[3] thus :

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construing all within instruments. I find that he stated it very clearly and accurately in *Grey* v. *Pearson*, (1857)6 HLC 61 in the following terms : "I have been long and deeply impressed with the wisdom of the rule now, I believe universally adopted—at least in the courts of law in Westminster Hall—that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further.' I agree in that completely, but in cases in which there is a real difficulty this does not help us much, because the cases in which there is a real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the words used with reference to the subject-matter is. To one mind, it may appear that the most that can be said is that the sense may be that is contended by the other side and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it may appear that the words are perfectly clear—that they can bear no other meaning at all, and that to substitute any other meaning would be not to interpret the words used, but to make an instrument for the parties—and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing which perhaps it would have been better to have avoided, but which we have no power to deal with." *See* also *Emperor* v. *Jiand*, AIR 1928 Sind 149, 158 (FB). In *Miller* v. *Solomons*, (1852)7 Ex. 47 it was contended that as the form of the oath mentioned the name of King George only, the obligations to administer it ceased with the reign of that sovereign because it was applicable to no other than to him. Whereupon Parke, B., observed in his judgment : "I think this argument cannot prevail, it is clear that the Legislature meant the oath to be taken always thereafter, and as it could not be taken in those words during the reign of a sovereign not of the name of George, it follows that the name George is merely used by way of designating the existing sovereign, and the oath must be altered from time to time in the name of the sovereign. This is an instance in which language of the Legislature must be modified, in order to avoid absurdity and inconsistency with its manifest intentions." (1872)7 Ex 475; *Nasiruddin* v. *State Transport Appellate Tribunal*,-(1975)2 SCC 671.

1. *Mohamed Java* v. *Wilson*, 10 IC 787, *per* Tomey, J., quoting Maxwell's *Interpretation of Statutes*, 12th Ed., at p. 228; *Hyderabad Municipality* v. *Kazi Fakhruddin*, AIR 1925 Sind 90, 92, *per* Raymond, A.J.C. By some improper use of the *language* it might be possible to construe a statute so as to lead to a mischievous result but the interpretation should always be made so as to carry out the object of the Legislature where the language can be so interpreted; *Lock* v. *Queensland Investment and Land Mortgage Co.*, 1896 AC 461, 467, *per* Lord Halsbury, L.C. *See* especially *State of Madhya Pradesh* v. *Azad Bharat Finance Co.*, AIR 1967 SC 276.
2. *Pallumal* v. *Naraindas*, AIR 1933 Sind 151 (2), 154 (FB). "In order to prevent absurdity we must read the word 'surrendered' in a qualified sense," said Lush, J., *in Ex parte* St. Sepulchre's, (1881)17 Ch D 746, 757.
3. (1853)8 Ezch 352 at p. 357; *Swastik Agency* v. *Madras Post Trust*, AIR 1966 Mad 130, 133 (Ramamurti, J.); *see* also *Harish Chandra* v. *Deputy Land Acquisition Officer*, (1962)1 SCR 676 (Gajendrgadkar, J.); *United States* v. *Bryan*, 94 L Ed 884, 894 (Vinson, C.J.).

"..... however, plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it."

When there is a doubt or a patent absurdity and the grammatical construction fails to give effect to the plain intention of the Act, as gathered from the preamble, then the Courts are competent to and should rewrite the section in such a way so as to give effect to the Act.[1] If a too liberal adherence to the words of the enactment appears to produce an absurdity or an injustice, it will be the duty of a Court of construction to consider the state of the law at the time the Act was passed with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation or whether it may not be desirable to put upon the language used a *secondary or restricted meaning* or perhaps to adopt a construction not quite strictly grammatical.[2]

In *Re* The Duke of Buccleugh,[3] Lord Lindley has enunciated the rule thus : "You are not so to construe the Act of Parliament as to reduce it to rank absurdity. You are not to attribute to general language used by the Legislature in this case, any more than in any other case, a meaning which would not carry out its object, but produce consequences which, to the ordinary intelligence, are absurd. You must give it such a meaning as will carry out its object." The use of the word 'direction' in Section 17 of the Payment of Wages Act, 1936, no doubt lends support to the contention that it is only a positive direction made under Section 15(3) or Section 15(4) that is appealable under Section 17. But if that interpretation is adopted the result would be that an employee would have a right of appeal only if his claim has been allowed in part and not when it has been rejected *in toto*. Such a strange result is not contemplated of the Legislature.[4]

The principle that the literal meaning of a statute is to be rejected in favour of a construction in harmony with the supposed spirit and purpose, when it leads to absurd result is, however, to be applied only when the absurdity is so gross as to shock the general moral or commonsense, and there is something to make plain the legislative intent that the letter of the statute is not to prevail; and it is not enough that hard and objectionable or absurd consequences, which were probably not within the contemplation of the framers, are produced.[5] Unless the words used in the section compel a Court to do so, an interpretation leading to an absurdity or which renders the working of the work impracticable should not be adopted.[6]

Section 90 of Bombay District Municipal Act provided : "It shall be lawful for the Municipality to lay out and make new public streets, and to construct tunnels and other works subsidiary to the same, and to widen, open, enlarge, or otherwise improve any such streets, and to turn, divert, discontinue, or step up any such streets, and, subject to the provisions of Section 40, to sell any such land, therefore, used or acquired by the Municipality for the purposes of such streets, as may not be required for any public street or for any other purposes of this Act."

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1. *Abdul Rauf* v. *Mohammad Umar*, AIR 1949 Nag 137, 139 (FB). relying upon *Shridhar* v. *Narayan*, ILR 1939 Nag 503, 507 : AIR 1939 Nag 227; *Commissioner for Special Purposes of Income-tax* v. *Pamsel*, 1891 AC 531, 543; *Provincial Government C.P. and Berar* v. *Haji Habib*, ILR 1946 Nag 930, 933 : AIR 1947 Nag 45; *Rex* v. *Vasey*, (1905)2 KB 748; *Garby* v. *Harris*, (1852)21 LT Ex 160; *Becke* v. *Smith*, 46 RR 567; *Mann* v. *Malemson*, (1865)16 ER 9, 10-11; *Ex parte* James Greenwood, (1858)27 LJQB 28, 31; *King* v. *Everdone*, (1807)133 ER 512, 513 : Craies on *Statute Law*, 5th Ed. at p. 454.
2. Craies on *Statute Law*, 5th Ed. at p. 82; *United States* v. *Katz.*, 70 L Ed 986, 988-9 (Stone, J.).
3. (1889)15 PD 86; in Appeal 1891 AC 310. *See* also *Heyden Feldt* v. *Daney, etc. Co.*, 23 L Ed 995, 996 (Davis, J.).
4. *Payment of Wages Inspector, M.B, Government* v. *Bramhodatta Bargrodia*, AIR 1956 MB 152.
5. *Crooks* v. *Harrelson*, 282 US 55 : 75 L Ed 156.
6. *Gangaram* v. *Bhabichhan Rai*, AIR 1953 Pat 295; *R. N. Vasudeva* v. *Union of India*, (1976)12 DLT 109 (DB).

The argument for the Crown was that word 'such' as used in the clause applied only to new public streets. Raymond, A.J.C., observed thereupon, in *Hyderabad Municipality* v. *Kazi Fakhruddin*[1] : "It is true that Section 90 has not been happily worded but in construing it one must take into consideration the *apparent purpose* of the enactment and there can be little doubt that this section was intended to vest the Municipality with certain specific powers with regard to public streets, which by the Act 'belong to them'. The argument that Section 90 is to be restricted to new streets alone and that similar power have not been conferred upon the municipality with regard to old public streets which equally are vested in the Municipality would lead to a *reductio ad absurdum.* It was argued that we must interpret the section as it stands and not attempt to define the intention of the Legislature. But as has been observed by such a high authority as Maxwell in his *Interpretation of Statutes,*[2] "when the language of a statute in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice presumably not intended constructions must be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether or by interpolating other words, under the influence no doubt of an irresistible conviction that the Legislature could not possibly have intended what the words signify and the modifications thus made are mere corrections of careless language and really give the true intention. The rules of grammar yield readily in such cases to those of *commonsense.*" It was held that the word 'such' was not intended by the Legislature to refer only to new public streets.

The *golden rule* is that the words of a statute must *prima facie* be given their ordinary meaning. But to arrive at the real meaning, it is necessary to get an exact conception of the aim, scope and object of the whole Act. The true meaning of any passage is to be found not merely in the words of the passage but in comparing it with other parts of the law. Construction is to be made of all parts together, and not of one part only by itself, because the true meaning is that which harmonises with every other passage of the statute.[3] We must not shrink from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are quite adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a *narrower construction.* At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.[4] A construction from which one's judgment *recoils* cannot be

1. AIR 1925 Sind 90, 92.
2. 12th Ed., p. 228.
3. *Ram Narayan* v. *State,* (1981)18 ACC 196.
4. *Nokes* v. *Doncaster Amalgamated Collieries,* 1940 AC 1014, 1022; *see* also Maxwell on *Interpretation of Statutes,* 12th Ed. at p. 45; *Satyanarain* v. *Bishwanath,* AIR 1957 Pat 550, 554; *Ram Singh* v. *Ram Karan,* AIR 1965 Madh Pra 264; *Sheikh Gulfan* v. *Samat Kumar Ganguli,* AIR 1965 SC 1839; (1965)2 SCA 156. *See* also *Ishwar Singh Bindra* v. *State of U.P.,* AIR 1966 All 168, 171; *Tola Ram* v. *Shop Inspector,* AIR 1959 MP 382, 383 (Shiv Dayal, J.).

a true construction of a statute.[1] The implications and intendments arising from the language of a statute are as much part of it as if they had been expressed. But it is only necessary implication which may thus be read into the statute. Mere desirability or plausibility alone will not meet the test. And while the implication does not need to shut out every other possible conclusion, or be one from which there is no escape, it must be one, which under all the circumstances, is compelled by a reasonable view of the statute, and the contrary of which would be improbable and absurd.[2]

(ii) Not meaningless or ineffective.—It is well settled that in construing the provisions of a statute Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute.[3]

(iii) Two meanings possible.—If the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an absurdity, and the other does not, the Court will conclude that the Legislature did not intend to lead to an absurdity and will adopt the other interpretation.[4] If the language employed admits of two constructions one of which renders the meaning absurd and mischievous and the other reasonable and wholesome the latter ought undoubtedly to be preferred.[5] When two constructions are equally open, that alternative construction is to be chosen which will be consistent with smooth working of the system which the statute purports to regulate and that alternative construction is to be rejected which will introduce absurdity, uncertainty, friction or confusion in the working of the system.[6] The Courts will not lightly impugn the wisdom of the Legislature, and if any alternative construction, although not the most obvious, will give a reasonable meaning to the Act and obviate the absurdities or inconveniences of absolutely literal construction, the Courts deem themselves free to adopt it.[7]

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1. *Reg* v. *Clarence*, (1888)22 QBD 23, *per* Lord Coleridge, C.J.
2. Crawford : *Statutory Construction*, Article 168 at p. 266. No rule of construction necessitates acceptance of an interpretation of a statute resulting in patently absurd consequences; *U.S.* v. *Brown*, 333 US 18 : 92 L Ed 443.
3. *Sirajul Haq Khan* v. *Sunni Central Board of Wakf, U.P.*, 1959 SCR 1287, 1299; *Sadhu Singh* v. *Pritam Singh*, 1976 Cur LJ (Civil) 28 (FB); *Smt. Bimla Devi* v *Singh Raj*, 1977 Cur LJ (Civil) 154 (FB).
4. *Corporation of the City of Victoria* v. *Bishop of Vancouver Island*, AIR 1921 PC 240, *per* Lord Atkinson; *Khan Gul* v. *Lakha Singh*, ILR 9 Lh 701, 710 (FB); *Arunachala Chetty* v. *Official Receiver, Ramnad*, AIR 1927 Mad 166; *Dost Mohammed* v. *Mohandas*, AIR 1926 Sind 81; *see* also remarks of Rentfry, J., in *Giribala Dasi* v. *Mader Gazi*, AIR 1932 Cal 699.
5. *Reg* v. *Skeen*, (1859)28 LJMC 91, 94; *see* also *Moti Bai* v. *Kand Kari Channaya*, AIR 1954 Hyd 161 (FB), *per* Srinivasa Chari, J., who dissenting from the majority held that if the definition of the word "law" in Article 13(3)*(a)* were read along with Article 13(2) it would lead to an absurdity. The interpretation of the words can be reconciled only by holding that a custom or usage having the force of law is included in the term "laws in force" occurring in Article 13(1); *Turabuddin* v. *Commissioner, Meerut Division*, AIR 1972 All 146, 151 (K.N. Singh, J.); *B.B. Mali Patel* v. *Sreedhar Rao*, AIR 1970 Mys 60 at p. 63 (Tukul, J.); *Ram Singh* v. *Ram Karan*, AIR 1965 MP 264 (S.P. Bhargava, J.); *Shiv Ram* v. *Lalchand*, AIR 1964 J & K 53, 54 (J.N. Wazir, C.J.).
6. *Shanan Realties, Ltd.* v. *St. Michael*, 1924 AC 185, relied upon by Tek Chand, J., in *Sohan Singh* v. *Jagir Singh*, ILR 1942 Lah 364 : AIR 1942 Lah 114, 117 (FB); *see* also *Taru Sen Deka* v. *State*, AIR 1949 Assam 50, 54.
7. *Kurra Koteswara Rao, Vijayawada* v. *The Dy Director, Mines and Geology, Guntur*, AIR 1993 AP 108 (DB); *R* v. *Commissioner, under the Boiler Explosions Act*, (1891)1 QB 716 where Lord Esher said, "It is said that it is very inconvenient that the Board of Trade should have jurisdiction (under the Boiler Explosions Act, 1882) because it is not denied that the Home Secretary has jurisdiction under the Mines Regulation Act. The inconvenience is manifest in my opinion, and if I could have done properly. I should have been very willing to hold that the sole jurisdiction was in the Home Secretary; but if any mistake has been made, it is not the province of the Court, to legislate so as to cure defects." *see* also *In re* Law, (1891)1 QB 47; *R.* v. *Cumberland Justices*, (1881)8 QBD 309.

Rules framed under statute are to be construed in the same manner as the provisions in an Act in this behalf.[1] In case of conflict between one of such rules and a section of the Act, it is to be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with.[2] Likewise the rules must harmoniously be interpreted as a connected whole giving life and force to each word, phrase and rule and no part is rendered ineffective or as a surplusage.[3] Judge-made Rules have to be interpreted in the same way as enactments of the Legislature and words and expressions occurring in the Rules have to be construed according to the ordinary meaning of the English language unless there is something in the context which shows that they ought not to be so construed.[4]

3. Reasonableness.—The canons of construction of statute do not permit the Court to take the reasonableness or unreasonableness of the consequences of a particular interpretation, as it is in substance a question of expediency for the Legislature.[5] The first rule of construing any enactment is to give the words their natural meaning and it is only if no reasonable results can be arrived at by giving the words their natural meaning that some other interpretation is permissible.[6]

When the language of a statute is clear and unambiguous it must be interpreted in its ordinary sense. A reasonable interpretation is to be preferred to one that leads to unreasonable results,[7] like absurdity or unworkability.[8] "It seldom happens", says Cleasby, B., in *Scott* v. *Legg*,[9] "that the framer of an Act of Parliament or the Legislature has in contemplation all the

1. The Fanny M. Carvil, (1875)13 AC 455; The Glamorganshire, (1888)13 AC 454; *Bhagwati Dhar* v. *Jabalpur University*, AIR 1967 MP 233 at p. 243 (Bhargava, J.); *C. P. Syndicate (P) Ltd* v. *State of M.P.*, 1972 MPLJ 699 at p. 701 (Shiv Dayal, J.).
2. *Daya Swarup Nabra* v. *State of Punjab*, AIR 1964 Punj 533 at p. 540 (Dua, J.).
3. See *Keshav Chandra Joshi* v. *Union of India*, AIR 1991 SC 284 : 1991 Lab IC 235.
4. *Venkateswarulu* v. *Satyanarayana*, AIR 1957 AP 49, 50 (FB) (Viswanatha Sastry, J.).
5. *Ajit Kumar Ray* v. *Surendra Nath Ghosh*, AIR 1953 Cal 733 (FB).
6. *Sobharam* v. *Jagmohan Singh*, AIR 1936 Nag 269; *O.G.S.L.A. Co.* v. *Krishnamurthi*, AIR 1957 Mad 449.
7. *Dwarka Mehton* v. *Patna City Municipality*, AIR 1936 Pat 282, 284 : ILR 15 Pat 36 : following Beal's *Cardinal Principle of Legal Interpretation*, Ed. 3 at p. 370. But the Court's duty is not to make the law reasonable; *Public Prosecutor* v. *Muqarrab*, AIR 1933 Pesh 35. *See* also *Patna Municipality* v. *Kailash Bihari*, AIR 1965 Pat 288, 291.
8. *R. N. Vasudeva* v. *Union of India*, (1976)12 DLT 109 (DB).
9. (1876)2 Ex D 39; *Gopalswami* v. *Secretary of State*, AIR 1933 Mad 748, 750 : ILR 57 Mad 237; *see* also *Pramatha Chandra* v. *Bhagwandas*, ILR 19 Cal 40 : AIR 1932 Cal 136, 240, Rankin, C.J., in construing Section 264 of the Contract Act [now Section 45(1) of the Partnerships Act] observed : "The section does purport to deal with cases where no public notice has been given and the plaintiff has no notice of the dissolution; and the proposition enunciated by the section is that a person dealing with a firm will not be affected by the dissolution in these circumstances. Are we then to say that the section only applies to cases where particular individuals who are sought to be made responsible as partners were known to have been partners to the parties seeking to make them so responsible? I will not enlarge upon the principle that a section of an Act is *prima facie* to be interpreted according to the plain meaning of the words, or will I trouble here with the cases now some what numerous in which the Judicial Committee has affirmed and applied this doctrine notwithstanding that the result is to make the law in India somewhat different from the law that would obtain according to the English principles. If it were in any way clear to me that to take the language of the section at its face value was to make the section say something paradoxical or plainly inconvenient or disastrous to commerce I might not be prepared even yet to forego the claim that in such a case the statute ought to be interpreted if possible to leave room for an implication that would render the provision reasonable. It is to my mind not paradoxical or in any way impossible to suppose that the Legislature meant to say that if a firm is dissolved and no notice is given and people continue to trade with the firm under the old firm's name they are not to be affected by secret dissolution. After considering this matter somewhat carefully while I quite appreciate that the section so construed is from the point of view of accepted English principles an anomaly, I am not prepared to hold that the question under Section 264, Contract Act, can be dealt with on the footing that there is any implied exception saving the liability of some persons."

cases which are likely to arise, and the language, therefore, seldom fits every possible case. Whenever the case is clearly within the mischief, the words must be read so as to cover the case, if by any reasonable construction they can be read so as to cover it, though the words may point more exactly to another case; this must be done rather than make such a case a *casus omissus* under the statute." Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the *draftsman's unskilfulness* or ignorance of the law, except in a case of necessity or the absolute intractability of the language used.[1] It is more reasonable to hold that the Legislature expressed its intentions in an unguarded manner than that a meaning should be given to them which could not have been intended.[2]

(i) Preference given to a reasonable meaning if provision not plain.—It is not the duty of the Court to make the law reasonable but it is its duty to expound it as it stands according to the real sense of the words and leave the remedy to others.[3] It is of course true to say that it is not competent for a Judge to modify the language of a section of the Act in order to bring it in accordance with one's own views as to what is right or reasonable but it is not improper for a Judge to express his own view of the reasonableness of the alternative meaning when once it appears from other considerations that that meaning is the one more likely to have been intended. When once it has been found that one of the two possible alternative meanings is *prima facie* to be preferred to the other, then the question of the reasonableness of the former meaning appears to be material; the fact that that meaning is an unreasonable one may destroy the *prima facie* case in favour of the latter meaning.[4]

(ii) Should not be reduced to a nullity.—Where no meaning can be given to certain words of a statute without rejecting some of those used in it, or where a statute would become a nullity were all the words retained, the Court has power to read a section as though the words which would make it meaningless or nullify it, were not there.[5] If in spite of deletion of a clause, a meaning is sought to be given to a provision as if the deleted clause was in existence, it would make the specific deletion wholly nugatory, purposeless and futile.[6] If in construing the section, the Court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the construction which is more in consonance with reason and justice.[7] A reasonable construction should, if possible, prevail and it must not be assumed that Legislature foresees every result which may accrue from the use of a particular word; and yet effect must be given to every part of the statute even if the consequences be a hardship on some individuals, where the meaning, the object and the spirit of a statute are clear from the title, preamble or otherwise, it should not be reduced to a nullity by a literal following of the language or the words used, which may be due to a want of skill on the part of the draftsman, and in certain circumstances it is permissible to supply the omitted words or expressions.[8] The process of carrying judicial interpretation dangerously near the process of legislative enactment is

1. *Ram Bharose* v. *Ganga Singh*, AIR 1931 All 727, 732 : ILR 54 All 154 (FB) : quoting Maxwell's *Interpretation of Statutes*, 12 Ed. at p. 228; *Mst. Mewa Kunwari* v. *Bourej*, ILR 56 All 781 : AIR 1934 All 388; *Oudh Sugar Mills* v. *State of U.P.*, AIR 1960 All 136 at p. 141 : ILR (1960)1 All 487 (FB).
2. *Ram Chander* v. *Gouri Nath*, ILR 53 Cal 492 : AIR 1926 Cal 927, 932.
3. *Venugopalan* v. *Vijayawada Municipality*, AIR 1957 Andh Pra 833, 835.
4. *Commissioner, Income-tax, Burma* v. *Lakshmi Insurance Co., Ltd., Rangoon*, AIR 1941 Rang 212, 219. Expedience may tip the scales, when arguments are nicely balanced. *Woolford Realty Co.* v. *Rose*, 76 L Ed 1128, 1134 (Cardozo, J.).
5. *In re* Ettridge, (1906)2 KB 772, *per* Darling, J.; *Pahlumal* v. *Narain Das*, AIR 1933 Sind 151(2), 154 (FB).
6. *P.C. Pradhan* v. *Union of India*, 1981 JLJ 128 (DB), where such a construction was not adopted.
7. *Ramaswamy Nadar* v. *State of Madras*, AIR 1958 SC 56, 59.
8. *In re* Acting Advocate-General, AIR 1932 Bom 71, 75 (FB).

permissible where there seems to be no other alternative but to admit that the Act is inconsistent or unintelligible.[1]

(iii) Intention of Legislature not to be defeated.—It is quite true that in interpreting a statute, to meet the obvious intention of the Legislature, 'a construction may be put upon it which *modifies* the meaning of the words and even the *structure* of the sentence'[2] but that is allowed only where the Court is coerced to do so to avoid some serious injustice or to prevent a statute from being reduced to nullity; or for any other similar reason.[3] It is also well settled that if the Court comes to the conclusion from a study of the whole statute that the Legislature had a *particular intention* in putting that legislation on the statute book, then the Court would shrink from inferring that that intention has not been carried out. The Court would also, unless driven to such a necessity, not permit the intention of the Legislature to be defeated or to be rendered a nullity.....Unless the language of the statute is so intractable or so incapable of that particular interpretation, the Court must try and see that the intention of the Legislature gathered from the statute itself is carried out and not defeated.[4]

In discerning the intention of the Parliament, the Court can have access to the aids (utilised by the Parliament in bringing about a legislation) such as report of a special committee preceding the enactment, existing state of law, the environment necessitating the enactment of the legislation and the object sought to be achieved.[5]

Where the plain meaning of words used in a statute produces an unreasonable result 'plainly at variance with the policy of the legislation as a whole', we may follow the purpose of the statute rather than the literal words.[6] The legal representatives or the heirs of the deceased employee or officer would squarely fall within the ambit of Section 630 of the Act. Any restrictive interpretation to the provisions as would defeat the very object of the provisions should be avoided.[7]

A case not provided for in a statute cannot be dealt with merely because there seems to be no reason why it would have been omitted and the omission may appear unintentional.[8] It is not the function of the Court to make the law reasonable, but to expound it as it stands according to the sense of the words.[9] The Court's duty is to administer the law as it finds it, and it cannot allow itself to be deflected from this straight cause by its own notions of the propriety or

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1. *Jagdamba Prasad* v. *Mata Prasad*, AIR 1935 Oudh 427, *per* King, C.J.
2. Maxwell on *Interpretation of Statutes*, 12th Ed. p. 228.
3. *Rai Charan* v. *Kumud Mohan Dutt*, ILR 25 Cal 571, 578; *see* also *Ex parte* Raleigh, (1875) LR 2 Ch D 9, 13; *Salmon* v. *Dincombe*, 1886 LR 11 AC 627.
4. *Emperor* v. *Ranchhodlal*, AIR 1948 Bom 370, 371, *per* Chagla, C.J. (FB); *Meera Gupta (Smt.)* v. *State of W.B.*, (1992)2 SCC 494; *Moideenkutty Haji* v. *Kunhikoya*, AIR 1987 Ker 184 (FB) : 1987 Ker LJ 492 : (1987)1 Ker LT 492 : (1987)2 Rec. Cri R 485 : ILR (1987)2 Ker 123 : 1987 APLJ (Cri) 237; *Ashok Ambu Parmar* v. *The Commissioner of Police, Vadodara City*, AIR 1987 Guj 147 (FB) : 1987 Cri LJ 886 : (1987) Cri LR (Guj) 33 : (1987)1 Guj LH 240 : 1987 (1) 28 Guj LR 580 : (1987)2 Rec Cri R 89; *Nrushingha Charan Sarangi* v. *Utkal University*, AIR 1987 Orissa 88 (DB).
5. *Vide Himachal Road Transport Corporation, Simla* v. *Sushila Devi*, AIR 1986 HP 78 (DB) : ILR 1984 HP 882.
6. *United States* v. *Rosenblum Truck Lines*, 86 L Ed 671, 676 (*per* Murphy, J.); *Veeraraghavan* v. *Lalith Kumar*, 1995 Cri LJ 1882 (Mad) (DB).
7. Vide *Sumita Bhagat* v. *Voltas Ltd.*, (1995)84 CC 28 (SC); *(Smt.) Abhilash Vinod Kumar Jain* v. *Cox and King (India) Ltd.*, AIR 1995 SC 1592.
8. *Deputy Commissioner, Jhang* v. *Budhu Ram*, AIR 1938 Lah 38, 40, following Maxwell on *Interpretation of Statutes*, 7th Ed., p. 12.
9. *Mohd Hayat* v. *Commissioner, Income-tax*, AIR 1931 Lah 87 (FB); *Prayagrao* v. *Betul District Council*, AIR 1932 Nag 105, *per* Niyogi, A.J.C.

otherwise of the law.[1]

4. Injustice.—The mere fact that the literal meaning of the words used leads to an injustice is no ground for disregarding the meaning.[2] It is to be taken as a fundamental principle standing as it were on the threshold of the whole subject of interpretation, that the plain intention of the Legislature, as expressed by the language employed is invariably to be accepted and carried into effect, whatever may be the opinion of the judicial interpreter of its wisdom or justice. If the language admits of no doubt or secondary meaning, it is to be obeyed.[3] "The question depends entirely upon the construction of the Act of Parliament, and it seems to me," says Martin, B., in *Ornamental Pyrographic Woodwork Co.* v. *Brown*.[4] "that the true mode of deal with Acts of Parliament is to give them their ordinary meaning, and to carry out what the Legislature in words enacts. Even if the result of such a construction is attended with injustice, still the true mode is to carry it out, instead of endeavouring to tamper with it, and to give it what it supposed to be a construction more consonant with justice." Where the Legislature has spoken in positive terms, it is not for us to speculate upon their intention nor to vary the effect which ought to be given to the Act by what we may consider to be the hardships or injustice arising from it.[5] However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect.[6] As result flowing from a statutory provision is never an evil. A Court has no power to ignore the provision to relieve what it considers a distress resulting from its operation. A statute must be given effect to whether the Court likes it or not.[7]

(i) Where plain meaning interfered with.—A sense of possible injustice of an interpretation ought not to induce a Judge to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other to reasonable interpretations.[8] Lord Selborne observed in *Middlesex, JJ.* v. *R.* :[9] "I think that your Lordships, without doing any real violence either to the spirit or to the language of the Act of Parliament, may dispose of that argument in a manner which certainly will avoid consequences in the last degree inconvenient and I may add unjust which otherwise might possibly result." "If that is the true interpretation of the statute", wrote Brett, M.R., in *Plumstead Board of Works* v. *Spackman*,[10] "if there are no means of avoiding such an interpretation of the statute, a Judge must come to the conclusion that the Legislature by inadvertence has committed an act of legislative injustice; but to my mind a Judge ought to struggle with all the intellect he has and with all the vigour of mind that he has, against such an interpretation of an Act of Parliament; and unless he is forced to come to a

1. *Prithvi Das Sharma* v. *Emperor*, AIR 1931 Lah 283 : ILR 12 Lah 345.
2. *Ashutosh Basu* v. *Sudhangshubhushan*, AIR 1931 Cal 6 : ILR 58 Cal 510, *per* Remfry, J. : following the speech of Lords Haldane, L.C., Macnaghten, Atkinson, Shaw and Moulton in *Vacher & Sons, Ltd.* v. *London Society of Compositors*, 1913 AC 107; *see Suresh Datta* v. *Changalal*, 1962 All LJ 612 : 1962 All WR (HC) 528 (same rule applies even if absurdity results from plain meaning).
3. *Gopal Chandra* v. *Guru Charan*, AIR 1941 Cal 141, 143, *per* Mitter, J., quoting Maxwell on *Interpretation of Statutes*, 6th Ed. at p. 94.
4. 159 ER 17; *see* ali Rankins, C.J., in *Mukerjea* v. *Karnani Industrial Bank*, AIR 1930 Cal 770, 773.
5. *R.* v. *Calthrop*, 122 DF 441, *per* Cockburn, C.J.; *Sahdeo Chawdhary* v. *State of Bihar*, 1976 Pat LJR 85.
6. Maxwell on *Interpretation of Statutes*, 10th Ed. at p. 5; *see Bhagwan Kaur* v. *State of Punjab*, AIR 1963 Punj 522 : ILR (1963)1 Punj 802; *Sahdeo Chawdhary* v. *State of Bihar*, 1976 Pat LJR 85; *Nasiruddin* v. *State Transport Appellate Tribunal*, (1975)2 SCC 671.
7. *Martin Burn* v. *Calcutta Corporation*, AIR 1966 SC 529 : (1966)1 SCA 205.
8. *Arrow Shipping Co.* v. *Tyne Commissinors*, 1894 AC 516.
9. (1884)9 AC 757.
10. (1884)13 QBD 878, on appeal; *Spackman* v. *Plumstead Board of Works*, (1885)10 AC 229 (HL).

contrary conclusion, he ought to assume that it is impossible that the Legislature could have so intended." In such a case, the simple application of the words in their primary and unqualified sense is not always sufficient, and will sometimes fail to carry out the manifest intention of law-giver as collected from the statute itself, and the nature of the subject-matter and the mischiefs to be remedied. Where, therefore, the simple application of the words in an unqualified sense leads apparently to some injustice or absurdity at variance with, or not required by, the scope and object of the legislation, it becomes necessary to examine further and to test, by certain settled rules of interpretation, what was the real and true intention of the Legislature, and having ascertained it, then to apply the words, if they are capable of being so applied, so as to give effect to that intention.[1] Where the plain literal interpretation of a statutory provision were to result in a manifestly unjust result never intended by the Legislature, the Court is entitled to modify the language used by the Legislature so as to achieve the intention of the Legislature and to produce a rational construction.[2] In *Tirath Singh* v. *Bachittor Singh*,[3] while interpreting Section 99 of Representation of the People Act, the Supreme Court has laid down that where the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence, quoted in *D.V.V. Satya Prasad* v. *Government of Andhra Pradesh*.[4] A very *strong case* of injustice arising from giving the language of an Act of Parliament its natural meaning must be made out before the Court will construe a section in a way contrary to the natural meaning of the language used.[5] Where the Legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the mind of any reasonable man, the Court will always endeavour to place on such words a reasonable limitation, on the ground that the Legislature could not have intended such consequences to ensue, unless express language in the Act or binding authority prevents such limitation being interpolated into the Act.[6] The meaning of a word or expression used in the Constitution often is coloured by the context in which it occurs : the simpler and more common the word or expression, the more meanings and shades of meanings it has. It is the duty of the Court to determine in what particular shade of meaning the word or expression was used by the Constitution makers and in discharging the duty the Court will take into account the context in which it occurs, the object to serve which it was used, its collocation, the general congruity with the concept or object it was intended to articulate and a host of other considerations. Above all, the court will avoid repugnancy with accepted norms of justice and reason.[7] The view that would work less injustice would be preferable than the view which would have the effect of causing greater injustice.[8] In construing an act, a construction ought not to be put that would work injustice, or even hardship or inconvenience, unless it is clear that such was the intention of the Legislature.[9] Wright, J.,

1. *Harding* v. *Preece*, (1882)9 QBD 281, *per* Watkins Williams, J.; *see* also *Re* North Midland Railway Act, *Ex parte* Slaters, (1849)18 LJ Ch 431; *Ellias* v. *Nightingale*, (1858)120 ER 260.
2. Vide *Commissioner of Income-tax, Bangalore* v. *J.H. Gella*, AIR 1985 SC 1698; *Andhra Cotton Mills Ltd.* v. *Sri Lakshmi Ganesh Cotton Ginning Mill*, (1996)1 ALT 537 (AP).
3. AIR 1955 SC 830
4. (1996)1 ALT 390 (DB) (AP).
5. *Re* Hall, (1888)21 QBD 137, *per* Cave, J.
6. *Re* Brockelbank, *Ex parte* Dun and Raeburn, (1889)23 QBD 461; *Baburam* v. *Sitabai*, AIR 1935 Nag 168, 170.
7. *Madhav Rao* v. *Union of India*, AIR 1971 SC 530 at p. 577.
8. *(Mst.) Janku* v. *Kishan*, AIR 1959 MP 1, 4.
9. *Tarak Nath Gupta* v. *Lt. Col. Karuna Kumar Chaterjee*, 62 CWN 830.

went so far as to say in *R. V. Durham JJ.*[1] "In the absence of authority, I think we ought to be guided by the bare letter of the statute, unless there is something in principle or on the ground of public convenience or failure of justice, to qualify the *prima facie* meaning of the language used." Gale, C.J., said in *Smurthwaite* v. *Wilkins*[2] : "The *consequences* which this would lead to are so *monstrous*, so manifestly unjust, that I should pause before I consent to adopt this construction of the Act of Parliament."

To the similar effect are the observations of the Supreme Court in the *State of Rajasthan* v. *Leela Jain*,[3] where it was said that unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice. It has been repeatedly held that in the matter of economic offences, the enactment should be interpreted so as to make it workable and that the rule that a construction in favour of the subject should be adopted is not be applied.[4]

(ii) Two possible interpretations.—Whenever the language of the Legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words.[5] Again out of the two interpretations, that which ends in the furtherance of the object of the statute should be preferred to the one that would frustrate it.[6] If fictional retrospective operation is given to Section 13, Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977, (which is equivalent to Section 11-A of the 1947 Act) then it will defeat the very purpose of the Act, that of giving protection to the tenant, and is therefore, not to be preferred.[7] It is a cardinal rule governing the interpretation of statutes that when the language of the Legislature admits of two constructions, the Court should not adopt a construction which would lead to an absurdity or obvious injustice.[8] If the words are ambiguous and are fairly capable of two different meanings, one of which will or may work an injustice and the other will not or may not work an injustice, then the latter interpretation is the one which should be preferred. But if the words are plain, the Court has no right to put an unnatural interpretation upon them simply because the putting of natural interpretation upon them might work an injustice[9]. In *Birch* v. *Wigan Corporation*,[10] Denning, L. J., observed : "Where there is a fair choice between a literal interpretation and a reasonable one—and there usually is—we should always choose the reasonable one." It is equally well-settled that where alternative is to be chosen which will be consistent with the smooth working of the system

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1. (1895)1 QB 801.
2. (1862)31 LJCP 214, quoted by Boys, J., in *Ram Sahai* v. *Debi Din*, AIR 1926 All 617, 622 : ILR 49 All 8 (FB).
3. AIR 1965 SC 1296.
4. *Ajantha Cashew Co.* v. *Asst. Director of Enforcement*, AIR 1987 Ker 34 : (1986)9 ECC 352 : 1986 Ker LT 1075 : ILR (1987)1 Ker 205 (DB), relying on *Union of India* v. *Shreeram Durga Prasad (P) Ltd.*, AIR 1979 SC 1597.
5. *R.* v. *Skeen*, 28 LJMC 91, *per* Lord, Campbell; *see* also *Jhagru Tewari* v. *State of West Bengal*, AIR 1959 Cal 176, 171; *Jai Kishan* v. *Income-tax Officer*, AIR 1960 All 19 (FB).
6. *Dr. S. N. Roy* v. *Dr. Geeta Mazumdar*, 1978 BLJ 182.
7. *M/s Tune House* v. *Smt. Kailash Devi*, 1978 BLJ 786.
8. *Khan Gul* v. *Lakham Singh*, ILR 9 Lah 701, 710, *per* Shadi Lal, C.J.; *Arunachalam Chetty* v. *Official Receiver, Ramnad*, AIR 1927 Mad 169; *Heritable Reversionary Co.* v. *Miller*, 1892 AC 598, *per* Lord Field; *see* also *State of Rajasthan* v. *Leela Jain*, AIR 1965 SC 1296; *see* also *Bhagwan Kaur* v. *State of Punjab*, AIR 1963 Punj 522; *Manager, Ashoka Mills, Ltd.* v. *Industrial Court*, AIR 1964 Guj 198 : ILR 1964 Guj 260.
9. *Nankie Colliery Co.* v. *Ireland Revenue Commissioner*, (1921)3 KB 344.
10. (1953)1 QBD 136, 142.

which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion with the working of the system[1].

Interpretation should make sense and not nonsense of legislation. Section 149(2) of the Berar Land Revenue Code, 1928, speaks of an encumbrance imposed on the immovable property by any person other than the purchaser. The word 'imposed' must be construed liberally so as to give a logical or rational meaning and the description of the person, who would be bound by a prior mortgage, includes not only the predecessor-in-interest who actually imposes the encumbrance on the property but also the successor-in-interest.[2]

The Court must always lean to the interpretation which is reasonable one, and discard the literal interpretation which does not fit in with the scheme of the Act under consideration. Reading Sections 82, 85 and 90(4) of the Representation of the People Act, 1951, the provision contained in Section 82 with respect to the joinder of respondents to an election petition is not mandatory, though the words 'shall join' are used in the section.[3]

Section 42(1) of the Bombay Industrial Relations Act, 1946, is open to two interpretations. One is that notice must be given to the employee himself and the Representative Union merely acts as post office and forwards the notice to the employee. The other Interpretation that is possible is that the notice is to be given by the employee in the name of the Representative Union; the notice is to be forwarded to the employee by the Representative Union itself and it is made incumbent upon the Representative Union also to forward a copy of the notice to the various authorities mentioned in the sub-section. The second construction is the more *reasonable construction*. Sections 44 and 56 conclusively show that the right to give a notice of change under Section 42(2) was not conferred upon the individual employees but was conferred upon the Representative Union. It is for the employees to place before their Union what their grievances are, and ultimately it is for the Union, if it is satisfied that the grievances are justified, to give the necessary notice of change under Section 42.[4]

Ordinances are no doubt issued because of emergencies but reasonable construction must always be applied when the question arises as to whether provisions contained in the Rules subsequently issued have been followed or not. Under Rule 5 of the Rules promulgated under the High Denomination Bank Notes (Demonetisation) Ordinance 23 of 1946, notes received up to the 15th January, 1946, would be exchanged provided the bank receives such notes in good faith and without the knowledge of the Ordinance. Parties concerned had no idea of the Rules which were going to be framed and which were actually framed about two weeks after the promulgation of the Ordinance on the 13th January, 1946, or the tests to be applied as between the 12th and 15th January, 1946. It was held that though there may be slight deviations if the rules be strictly interpreted, but if the different statements filed by the plaintiff are taken into account there is no doubt that there was sufficient compliance with them.[5]

An interpretation should be avoided which might lead to multiplicity of proceedings.[6]

5. **Hardship.**—When the language of a section of an Act is not ambiguous, in interpreting the plain words of such a positive enactment any suggestion of hardship is out of

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1. *Collector of Customs* v. *Digvijaysinhji Mills*, (1962)1 SCR 896, 899; *see* also *Kesvananda Bharati* v. *State of Kerala*, W. P. 135 of 1970, dated 24-4-1973 by SCJ Khanna, J. also Chandrachud, J.
2. *Co-operative Central Bank, Ltd.* v. *Mulchand Hirasa Parwar*, AIR 1954 Nag 43
3. *Shah Mohammad Umair* v. *Ram Charan Singh*, AIR 1954 Pat 225.
4. *Usman Habib* v. *State of Bombay*, AIR 1955 Bom 177, 179-180.
5. *Dominion of India* v. *Manindra Land & Bldg. Corporation*, AIR 1954 Cal 174, 178.
6. *Ramchandra* v. *Jhumarmal*, AIR 1958 Assam 171, 173.

place.[1] In *Morvi Mercantile Bank* v. *Union of India*,[2] the Supreme Court held that the argument that there will be a possible inconvenience and hardship to merchants if a particular practice was not judicially recognized could be met with, the answer that an argument based on an inconvenience and hardship was a dangerous one and was only admissible in construction where the meaning of the statute is obscure. Where the meaning of a statute is clear and explicit but any hardship or inconvenience is felt,[3] it is for the Parliament to take appropriate steps to amend the law and not for the Courts to legislate under the guise of interpretation. The Court should not be called upon to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful, when the Constitution has itself provided for another authority more competent to evaluate the correct position to do the needful.[4] It is well known that hard cases make bad law, and the argument of hardship has been said to be always a dangerous one to listen to, especially where it concerns the interpretation of a statute and much more so of the Constitution itself. It is the Court's duty to see whether the law in its natural construction is not inconsistent or unreasonable or unjust, and that construction should on no account be departed from merely because it may operate with hardship or injustice in a particular case.[5] Hardships or no hardships, if the language of the statute is quite plain, we are no entitled to take liberties with it under the guise of construing it.[6] The Supreme Court says that both by common practice and the application of recognised rules of statutory construction, harsh consequences following upon an interpretation are not considered as governing factor in the construction of a statute, unless its language is equivocal or ambiguous. If the language is

1. *Amarnath* v. *Tekchand*, 1972 RCR 380, 383 (SC) (Jaganmohan Reddy, J.); *Secretary of State for India* v. *Shib Narain Hajra*, ILR 46 Cal 199, 207. Such considerations have little weight; *Corporation of Calcutta* v. *Arun Chandra*, ILR 61 Cal 1047 : AIR 1934 Cal 862, 863; *Basheshar Das* v. *Devan Chand*, AIR 1933 Lah 615; *Hirabhai Bhai Asha Bhai* v. *State of Bombay*, 1956 Bom LR 1035 : AIR 1955 Bom 185; *Chiman Lal* v. *Moti Ram*, AIR 1955 Pepsu 113; *Gonthireddi* v. *J. Raja Rao*, (1954)2 MLJ 192; *Khagendranath* v. *Umesh Chandra*, AIR 1958 Assam 183; *State* v. *Ramjivan Kalaram*, ILR 1961 Bom 853 : 63 Bom LR 570 : AIR 1962 Bom 8; *Jai Singh* v. *Mangtoo*, AIR 1962 Him Pra 10; *John* v. *Joseph*, ILR (1961)2 Ker 419; *Gouri Ammal* v. *Tulsi Ammal*, AIR 1962 Mad 510 (Section 16 of the Hindu Marriage Act, 1955); *Bhagwan Kaur* v. *State of Punjab*, AIR 1963 Punj 522 : ILR (1963) Punj 802; *Bhukan Lal* v. *Ishwar Dayal Singh*, AIR 1968 All 587 : 1963 All LJ 220; An argument based on hardship ought not to be heard in interpretation. *Muthiah Nather* v. *Ibrahim Rowther*, (1968)1 MLJ 190; *Punna Rao* v. *Krishnan*, (1968)81 Mad LW 172; *State of Karnataka* v. *Gopalakrishna Nelli*, AIR 1992 Kar 198 : ILR Kar (1991) 2210 : (1991)2 Kar LJ 270.

2. AIR 1965 SC 1954 : (1965)2 SCA 187 : (1965)35 Com Cas 629; *see* also *State of Madhya Pradesh* v. *Vishnuprasad Sarma*, AIR 1966 SC 1593 : (1966)2 SCJ 231; *Rajkumar* v. *State Board of Technical Education Punjab, Chandigarh*, AIR 1991 P&H 1 : (1990)2 Pun LR 179 (FB).

3. *Commissioner of Agriculatural Income-tax* v. *Keshab Chandra*, AIR 1950 SC 265; *(Dr.) Ajay Pradan* v. *State of Madhya Pradesh*, AIR 1988 SC 1875; *Rajkumar* v. *State Board of Technical Education, Punjab, Chandigarh*, AIR 1991 P & H 1 : (1990)2 Pun LR 179 (FB).

4. *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661 : 1955 SCJ 672.

5. *Hiranmoy* v. *State of Assam*, AIR 1954 Assam 224 (FB); *Ramachandra Rao* v. *Lakshminarayana Sastri*, (1963)1 Andh WR 235; *Shivamurti* v. *Vijaysingh*, AIR 1972 B 152, 154 (*per* Umadalal, J.).

6. *Seeti Kutti* v. *Kunbi Pathumma*, ILR 40 Mad 1040, 1069 (FB), *per* Srinivasa Ayyangar, J.; *Aziz Ahmad Khan* v. *Chhotte Lal*, ILR 50 All 569 : AIR 1928 All 241, 246; *Emperor* v. *Hatimati*, 9 IC 720; *R.* v. *Calthrop*, 122 ER 441, *per* Cockburn, C.J. It is not for a Court to decline to give effect to a clearly expressed statute because it may lead to apparently hardship; *Young & Co.* v. *Royal Leamington Spa Corporation*, (1883)8 AC 517, *per* Lord Blackburn; *O.G.S.L.A. Co.* v. *Krishnamurthi*, AIR 1957 Mad 449; *see* also *Radhacharan Das* v. *Bhima Patra*, AIR 1966 Orissa 1 : ILR 1965 Cut 219 : 31 Cut LT 996; *State of Madhya Pradesh* v. *Vishnuprasad Sarma*, AIR 1966 SC 1593; *Babu Ram* v. *Mantri Lal*, AIR 1965 All 498 (FB); *Ram Shanker Prasad* v. *Sindri Iron Foundry*, AIR 1966 Cal 513; *Corporation of Ahmedabad* v. *Jhaveri Keshavlal Lallubhai*, ILR 1965 Guj 701; *State of U.P.* v. *Ram Narain Lall*, AIR 1966 All 62; *Sunkaiah B.* v. *Town Panchayat, Kottur*, AIR 1967 Mys 150.

plain, and capable of one interpretation only, the Court will not be justified in reading into the words of the Act a meaning which does not follow naturally from the language used by the Legislature, and the Supreme Court found that the language of Section 95(2) of the Motor Vehicles Act was equivocal or ambiguous and interpreted it so with reference to hardship it caused.[1] If any provision of law is clear, beyond all ambiguity, it is to be implemented regardless of the fact that it causes hardship to a particular party,[2] and hardship is no ground to interpret it in a manner not consistent with its language.[3] The only duty of the Courts is to interpret law as it stands irrespective of the consequences which the interpretation may cause.[4] An argument based on hardship or injustice is not sufficient to overcome the effect of the expressed language of the statute.[5] It is for the Legislature to provide or remedy for cases of hardships, if any. The duty of the Courts is to enforce the law as they find it and they cannot allow their interpretation of the law to be influenced by any extraneous circumstance.[6] The argument of hardship is always a dangerous one to listen to.[7] Where the Legislature has expressed itself in clear and unambiguous terms, the consequence of the enactment, ignorance of which cannot be attributed to it, and any consideration of hardship or supposed hardship can scarcely affect the interpretation.[8] Where a statute provided that contracts for a sum over £50 shall be under seal and plaintiff executed the work stipulated approved by the other party under the supervision of its engineer but the contract was not sealed, the Court gave no relief to the plaintiff for recovery of the sum due to him. Lord Lindley observed in *Young* v. *Mayor of Leamington*,[9] : "It may be that this is a hard and a narrow view of law; but my answer is, that Parliament has thought it expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute because it may lead to apparent hardship." Grounds of hardship or the like, when the language used in a statute is plain, cannot be taken into consideration in the interpretation of the same. A revision under Section 115, C.P.C., against an interlocutory order amounting to a case decided, made in the course of the trial of a suit or other proceeding is competent, even though the order can be challenged under Section 105(1), C.P.C., and question of hardship does not arise.[10]

Where the statute defines the limits for the purpose of grant of benefits in a particular way, the Courts are bound to give effect to such limitation without travelling outside those limits on a presumed intention of the Legislature, however great the hardship might be to the parties, if any other course is followed.[11]

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1. *Motor Owners Insurance Co., Ltd.* v. *Jadhavji Keshavji Modi*, 1982 UP Cr C 98 (SC).
2. *Mangala Prasad* v. *Krishna Kumar*, 1977 All LR 1 (DB).
3. *Iqbal Singh* v. *Ram Narain*, 1975 All LR 275 (DB).
4. *Municipality , Jammu* v. *(M/s.) Glacier Cold Storage*, 1980 Chand LR (J & K) 39 (DB).
5. *Girdhari Lal* v. *Johnson*, AIR 1961 Punj 464, 466.
6. *Duni Chand* v. *Commissioner of Income-tax*, ILR 10 Lah 596, 602 (FB), *per* Shadilal, C.J.; *Balkaran Rai* v. *Gobind Nath Tewari*, ILR 12 All 129, 137 (FB); *see* also *Jamna Bibi* v. *Sheikh Jhau*, ILR 24 All 532, 537, 538; *Subramanian Golden Transport* v. *Raman Raman Transport*, AIR 1967 M 232, 237 (*per* Natesan, J.); *Manjulabai Laxman Chavan* v. *Manikchand Tuljaram Shah*, 1977 Mah LJ 185 (DB).
7. *Munro* v. *Butt*, (1858)8 E & B 754 : 112 RR 752; *Mansoon* v. *Mian Sabedin*, 12 IC 234.The Court must look hardships in the face rather than break down the rules of law. *Rhodes* v. *Sumthurst*, 7 LJ Ex 273.
8. *Fool Kumari Dasi* v. *Khirod Chandra Das Gupta*, AIR 1927 C 474, 476; *P.R. P.L. Chetty Firm* v. *G. Lon Pow*, AIR 1923 Rang 103; *Ram Sarup* v. *State of Bihar*, AIR 1957 Pat 190, 191 (*per* Raj Kishore Prasad, J.).
9. (1882)8 QBD 579, 585; *see* also *Young* v. *Royal Leamington Sha*, (1883)8 AC 517.
10. *Chiman Lal Bhagwant Rai* v. *Moti Ram*, AIR 1935 Pepsu 113.
11. *Gouri* v. *Thulasi*, AIR 1962 Mad 510, 512 (Rama Krishnan, J.).

The convenience or inconvenience of collecting a sales-tax or a purchase tax is not a relevant consideration when one is considering the validity or otherwise of such a tax.[1]

The period of two months prescribed by the proviso to Sub-section (4) of Section 145 [now Sections 145 and 146(1) of 1973 Cr. P. Code], cannot be extended under any circumstances. Hence, no order can be passed in favour of the party who was dispossessed even though forcibly and wrongfully, but more than two months before the date of preliminary order.[2] The possibility of hardship on a husband by being deprived of the company of both the wives, on account of the Hindu Marriage Act, 1955 cannot be taken into consideration in giving effect to a provision of law which does not present any ambiguity.[3]

Section 34, Income Tax Act, imposes a time-limit but within this time limit there is no restriction imposed as to the number of proceedings that can be taken to reopen the assessment whether by way of assessment or reassessment, computation or recomputation. It cannot be held that the section grants the power to reassess only once. This interpretation will in some cases lead too much hardship on the part of the assessee, but this cannot be the reason for interpreting the section otherwise than according to its plain intendment.[4]

Cases of hardship cannot be any ground for giving such a construction to an Act so as to affect vested rights unless there are express words taking away such rights. Thus where the entire joint family property devolved on the sole surviving coparcener prior to the date of the commencement of the Hindu Women's Right to Property Act, 1937, the widow of another coparcener who dies long before 1937 is not entitled to the benefits of Section 32.[5]

Where the intention of the Legislature as expressed in the statute is clear, the Court must give effect to it even though there is lacuna. It is not the function of the Court to add to the law. It must confine itself to interpreting the law as it exists.[6]

If the effect of the application of a provision of law is to create hardships, it is not the duty of the Courts to alter that law in a manner which they think is fit or proper.[7]

Where there is a difference of opinion as to the quantum of compensation between the Accountant Member and the Judicial Member, the President or the Third Member to whom the case is referred is legally bound to agree with the figures of assessment of either of the two members. The reason is that if the President takes a different view as to the quantum of assessment there is no majority opinion in favour of any particular figure of assessment and the machinery provided by Section 5-A(7) of the Income Tax Act, would become unworkable. In this respect there is a lacuna in the statute. But it is not the function of the Court to fill in the gap left in an Act of the Legislature and to speculate with what material the Legislature would, if it had discovered the gap, fill it in.[8]

(i) No wishful thinking.—"If the language in a statute does not admit the construction sought, wishful thinking is no substitute", said the Supreme Court in *Carew & Co.* v. *Union of*

1. *Bengal Immunity Co., Ltd.* v. *State of Bihar*, AIR 1955 SC 661, 710.
2. *Fatima Sultana Begum* v. *Rangrao*, AIR 1954 Hyd 215 : ILR 1954 Hyd 288.
3. *Venkatamma* v. *Venkataswamy*, AIR 1963 Mys 118 (Tukol, J.).
4. *Jagmohan Goenka* v. *K.D. Banerjee*, AIR 1954 Cal 564; *Oriental Govt. Security Life Association Co., Ltd.* v. *Krishnamurti*, AIR 1957 M 449, 450 (Panchapakesa Ayyar, J.).
5. *Smt. Haramani* v. *Dinabandhu Misra*, AIR 1954 Orissa 54.
6. *Sodhi Harnam Singh* v. *Sodhi Mohindar Singh*, AIR 1954 Punj 137 : 56 Punj LR 50; *Shushila Bala Dasi* v. *Corporation of Calcutta*, AIR 1954 Cal 257.
7. *Ram Chandra Rao* v. *Venkata Lakshminarayana*, AIR 1964 Andh Pra 31, 35 (Jagganmohan Reddi, J.).
8. *Hanutram Chandamul* v. *Commissioner, Income-tax*, AIR 1954 Pat 95.

India.[1]

"The mere fact that the results of a statute may be unjust does not entitle the Court to refuse to give effect to it", the same Court said in another case (under U.P. High Courts Amalgamation Order, 1948).[2]

"Courts should not substitute their social and economic beliefs for the judgments of legislative bodies."[3]

The function of the Court is to find out what the law is, not what it should be.[4]

Where language is clear, resulting hardship is immaterial (case under Partnership Act).[5]

(ii) General and particular hardship.—"It must be observed", said Lord Cranworth, in *Ellias* v. *Nightingale*,[6] "that the doing occasionally what I must not call injustice, for that would imply that it was contrary to law, but hardship to particular individuals is almost a necessary condition of any human law." If there is a general hardship affecting a general class of cases, it is a consideration for the Legislature, not for a Court of Justice. If there is a particular hardship from the particular circumstances of the case, nothing can be more dangerous or mischievous than upon those particular circumstances to deviate from a general rule of law.[7]

However, Courts have evolved canons of interpretation to soften the rigour of law created by technicalities and literal construction. The basic principle of equity and justice which has been adopted by statutory construction dictates that where a statute or law requires something to be done and in default of which detrimental consequences will follow, the rigour of the rule must be relaxed and it must be so construed as to enjoin on the performance of that duty only when all legal impediments, to its performance, which could legitimately be claimed in defence, have ceased to exist and the duty enjoined under the law becomes absolute in its operation.[8]

(iii) Two meanings possible.—But where it is not incompatible with a construction that avoids hardship and injustice, the Courts are at liberty to adopt that construction.[9] When the words of an enactment are clear and imperative, considerations of inconvenience or hardship have no place in its application to circumstances falling within the words. But where there is no express indication in an enactment as to whether the powers given by it were meant to be used in particular circumstances, the fact that great hardship and inconvenience would result thereby is a reason for so construing the words as to meet all attempts to abuse the power either by exercising them in cases not intended by the statute or by refusing to exercise them when the occasion for their exercise has arisen.[10] "Where there are two meanings," said Lord Hobhouse,

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1. AIR 1975 SC 2260.
2. *Nasiruddin* v. *State Transport Appellate Tribunal*, AIR 1976 SC 331.
3. *R.S. Joshi* v. *Ajit Mills*, AIR 1977 SC 2279.
4. *Shri Ram Nath* v. *Chandigarh, U.T.*, AIR 1975 P & H 138.
5. *Iqbal Singh* v. *Ram Narain*, AIR 1977 All 352; *see*, however, *K.K. Krishnan* v. *M.K. Vijayaraghvan*, AIR 1977 Ker 1974 and *Prasuraman* v. *Purshotham & Co.*, AIR 1977 Ker 133 (case under Limitation Act).
6. (1858)120 ER 260.
7. *Per* Lord Loushborough in *Brydges* v. *Chandos*, 2 Ves 416; *see* also Broom's *Legal Maxims*, 10th Ed. at p. 92 : Judges ought to take care for the general good of the community that hard cases do not make bad law; *East India Company* v. *Oditchurn Paul*, 5 MIA 43, 69.
8. *Bal Mukund* v. *District Judge, Rae Bareli*, 1977 All WC 225.
9. *Jageshwar Singh* v. *Jawahir Singh*, ILR 1 All 311, 315 (FB); *Burnet* v. *Guggenheim*, 77 L Ed 748, 751 (Cordozo, J.).
10. *Gulam Mohd. Ali* v. *Corporation of Madras*, ILR 52 Mad 866 : AIR 1930 Mad 200, 205, quoting Maxwell on *Interpretation of Statutes*, 11th Ed., pp. 116, 117; *Rameshwar Deva* v. *District Magistrate*, AIR 1960 All 399.

in *Simms* v. *Registrar of Probates*,[1] "each adequately satisfying the meaning (of an Act), and great hardness is produced by one of them, that has a legitimate influence in inclining the mind to the other.....'In such circumstances it seems that the Court has to prefer that construction which would avoid hardship.[2]

As between two constructions, the construction which is more beneficent and less onerous to a subject is the construction towards which the Court should lean in interpreting the wording of the statute.[3]

The provisions of the *Municipal* Act should be understood and worked in such a way as to avoid friction and without causing hardship to the public. Municipalities are statutory bodies and they are created by statute for the *benefit of the public* and it is not proper that any provision of law relating to them should be so construed as to work hardship, if not injustice.[4]

6. Inconvenience.—The *argumentum ab inconvenienti* is only admissible in construction where the meaning of the statute is obscure. When the language is explicit, its consequences are for Parliament, and not for the Courts, to consider. In such a case the suffering citizen must appeal for relief to the law-giver, and not to the lawyer.[5] It is not for the Court to extend the scope of the Act on the ground of convenience when the language of the law is clear beyond doubt. Under the rules framed under Section 26(3) of the Payment of Wages Act, 1926, it is obligatory for every factory owner to display a notice specifying rates of wages payable to all persons employed in that factory. There is, therefore, nothing in the definition of wages from which it would be inferred that a dispute regarding wages can be determined by the authority appointed under Section 15 of the Act.[6]

Where the language of the section clearly expresses the intention of the Legislature, it must be given effect to, regardless of the consequences and the Court cannot consider the fact that such effect causes hardship or inconvenience in some cases.[7] Inconvenience is never considered as a decisive factor in interpreting a statute.[8]

(i) Argumentum ab inconvenienti to be used with caution.[9]—The inconvenience caused to the Corporation of Madras which is required to file a suit for realising the betterment charges has been held not to constitute a reason for getting over the clear language of the rule. The function of the Court is to interpret the rule as it stands and not to legislate.[10] In *Lee* v. *Lee*,[11] Shadi Lal,

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1. 1900 AC 323, 335.
2. *Ram Dayal* v. *Bhim Sen*, 1965 All LJ 1142 : 1965 All WR 755.
3. *State* v. *Jamnabai Mauji Keshavji*, AIR 1955 Bom 280.
4. *Municipal Council, Chidambaram* v. *Subramania Iyer*, AIR 1928 Mad 1157, 1158, *per* Devadoss, J. The provisions, prescribing 30 days prior notice for renewal of licence should not be understood as if it were one of the Articles of Limitation Act.
5. *Satyanarayanamurthi* v. *Papayya*, ILR 1941 Mad 824 : AIR 1941 Mad 713, 718 quoting Craies : *Statute Law*, at p. 87; *see* also Order of Reference by Bhide, J. in *Hem Raj* v. *Krishen Lal*, ILR 10 Lah 106 at 111; *In re* Lloyds Bank, Ltd., ILR 58 Bom 152 : AIR 1934 Bom 74, 78, *per* Broomfield, J., *Sooniram* v. *S. A. R. M. Chettyar*, ILR 12 Rang 64 : AIR 1933 Rang 363, 371; *R.* v. *Commissioners under the Boiler Explosion Act*, 1882, (1891)1 QB 703, 716; *State of Andhra* v. *Persetty Sriramulu*, AIR 1957 AP 130, 132 (FB) (Viswanatha Sastri, J.); *Mc Clain* v. *Com., Internal Revenue*, 85 L Ed 319, 322 : 311 US 527 (Roberts, J.).
6. *Rajkumar Mills* v. *Inspector, P.W.M.B.*, AIR 1955 MB 60.
7. *State* v. *Ramjivan Kaluram*, AIR 1962 Bom 8, 12; *State of Punjab* v. *Ajaib Singh*, 1953 SCR 254, 264 (Das, J.).
8. *Mysore State Electricity Board* v. *Bangalore Woollen, etc. Mills, Ltd.*, AIR 1963 SC 1128.
9. *Ramesh Chandra Ramanbhai Patel* v. *Collector, Kheda*, (1979)20 GLR 191 (DB); *Lord Krishna Bank Ltd.* v. *Inspector General of Registration*, 1976 Ker LT 374, a dangerous agrument.
10. *Corporation of Madras* v. *Balakrishna*, (1953)1 MLJ 403.
11. ILR 5 Lah 147.

C.J., pointed out that the conflict of laws relating to divorce of persons domiciled in England but residing in India was bound to lead to a scandal. "The scandal is not confined to their own personal 'relations', observed Sir Shadi Lal, "but affects also the validity of a subsequent marriage entered into by either of the parties, the legitimacy of the issue of that marriage, and succession to the property owned by the parties to the second marriage. Indeed the second marriage could be treated by the English Courts as a bigamous marriage and parties can be arraigned before a Criminal Court. These and other consequences which must result from a conflict between the two systems of law are very serious matters, and while they cannot influence the decision of the Courts, they, must receive due consideration from the authorities who are responsible for amending the law." (And the law was amended by the Indian and Colonial Divorce Jurisdiction Act, 1926).[1] This argument is one which requires to be used with great caution. There is a danger that it may degrade into mere judicial criticism of the propriety of acts of the Legislature.[2] All that the Court has to do is to construe the words as it finds them in their ordinary and natural meaning, and where they have acquired a technical meaning, to give it to them, even though the result of such a construction may lead to inconvenience or where any other construction would be less arbitrary.[3] So when the words used by the Legislature are clear and of unambiguous import, it is not permissible for a Court of law to attempt to abridge the effect of those words by considerations of inconvenience resulting from multiplicity of proceedings in Court.[4] The duty of a Court is not to put a construction which seems to the Court to be best in the sense that it will work out with most justice or with the least inconvenience but to put a construction which seems to the Court to be best in the *sense* that it is nearest to the language of the Legislature.[5] "In my opinion," said Rangnekar, J., in *In re* Acting Advocate-General,[6] "Judicial interpretation should be directed to avoiding consequences which are convenient and should be such as would in effect carry out the intention and spirit of the Act."

It is well to remember the principle that the Court should avoid putting on the statute a construction which is inconvenient or unjust unless it is clear that this is the intention of the Legislature,[7] or which creates a vacuum.[8]

(ii) In case of doubt.—It is at the same time a maxim of law that an argument drawn from inconvenience is forcible in law.[9] The way to interpret a section is not to interpret it in such a way that inconveniences and lawlessness may be caused unless it is absolutely necessary to do

1. 16 and 17 Geo 5, Ch D 40.
2. *Vacher & Sons, Ltd.* v. *London Society of Compositors*, 1913 AC 107, 130, *per* Lord Moulton; *see* also *Akbar Husain* v. *Ali Ahmad*, 116 PR 1916 at p. 359, *per* Johnstone, C.J. : "The argument of convenience is not very often a sound argument where the language of the law itself is clear beyond doubt"; Mukherji, J., in *Anand Prakash* v. *Narain Das*, ILR 53 All 239 : AIR 1931 All 162, 173 (FB); *In re* Llyods Bank, Ltd., ILR 58 Bom 152 : AIR 1934 Bom 74, 78.
3. *Omar Tyab* v. *Ismail Tayab*, AIR 1928 Bom 69, 73, *per* Rangnekar, J.; *see* also *Public Prosecutor* v. *Muqarrab*, AIR 1933 Pesh 3, 5, *per* Saduddin, A.J.C.
4. *Sri Nath* v. *Puran Mal*, AIR 1942 All 19, 24 : ILR 1942 All 45, *per* Iqbal Ahmad, C.J.; *see* also *Basheshar Das* v. *Diwan Chand*, AIR 1933 Lah 615.
5. *Mukherjee* v. *Karnani Industrial Bank*, AIR 1930 Cal 770.
6. AIR 1932 Bom 71, 75 (FB).
7. *Jhagru Tewari* v. *State of West Bengal*, AIR 1959 Cal 176, 178.
8. *Vide B.N. Shankarappa* v. *Utharur Srinivas*, AIR 1992 SC 836 : (1992)1 JT (SC) 389 : (1992)2 SCC 61 : 1992 AIR SCW 635.
9. *Argumentum ab inconvenienti purimum valet in lege* "And no less, but rather more, force is due to any drawn from an absurdity or injustice" : Maxwell on *Interpretation of Statutes*, 11th Ed. at p. 183.

so.[1] Inconvenience is not a final consideration in a matter of construction but it is at least worthy of consideration.[2] But the *argumentum ab inconvenienti*, although forcible in the law is only applicable in cases of doubt and not when the legislation is clear.[3] But a statutory provision should be so construed as not to lead to inconvenience.[4] When language is not clear and unambiguous and when more than one interpretation is possible, the interpretation which appears to be most 'in accord with reason, convenience and justice' is to be preferred.[5] Brett, L.J., in *R.* v. *Tonbridge Overseer*,[6] observed : "If the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not in its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning". Cotton, L.J., laid down the rule thus in *Reid* v. *Reid*,[7] : "In considering the true construction of an Act, I am not so much affected as some Judges are by the consequences which may arise from different constructions. Of course, if the words are *ambiguous*, and one construction leads to *enormous* inconvenience, and another construction does not, the one which lead to least inconvenience is to be preferred." Lord Macmillan, in *Altrincham electric Supply Co.* v. *Sale Urban District Council*,[8] expressed : "I do not doubt that, if the language of an enactment is ambiguous and susceptible of two meanings, one of which is consonant with justice and good sense while the other would lead to extravagant results, a Court of law will incline to adopt the former and reject the latter even though the latter may correspond more closely with the literal meaning of the words employed."

(iii) Inconvenience to one or many.—The *argumentum ab inconvenienti* moreover, is under many circumstances valid to this extent, that the law will sooner suffer a private mischief than a public inconvenience, a principle which we have already considered. It is better to suffer a mischief which is peculiar to one, than an inconvenience which may prejudice many.[9] The object with which the law was enacted should not be lost sight of but must be borne in mind and given due weight.[10]

(iv) Multiplicity of litigation.—Court will not interpret the Act in a manner which will lead to multiplicity of litigation or offend against well-established principles of jurisprudence.[11] A rule of law should be interpreted in such a manner as to avoid multiplicity of suits.[12]

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1. *Tribeni Kusmi* v. *Ram Dulari*, AIR 1958 All 168.
2. *Venkata Rao* v. *Secretary of State*, AIR 1937 PC 31, 34, *per* Lord Roche; see *Mysore State Electricity Board* v. *Bangalore Woollen etc., Mills, Ltd.*, AIR 1963 SC 1128.
3. *Abdul Karim* v. *Mauji Hansraj*, ILR 1 Bom 295, 300, *per* Westroop, C.J., see also *Abdulla Haroon & Co.* v. *Calcutta Corporation*, AIR 1950 Cal 36, 45; *Dale* v. *Inland Revenue Commissioner*, (1953)2 All ER 671.
4. *Manjibhai Khatu & Co.* v. *Jamal Bros & Co.*, ILR 5 Rang 483 : AIR 1927 Rang 306, *per* Chari, J.
5. *Parmanand* v. *Emperor*, AIR 1939 Lah 81, 85 (FB), *per* Bhide, J., quoting Maxwell on *Interpretation of Statute*, Chap, VIII; *Ram Dayal* v. *Bhim Sen*, 1965 All LJ 1142 : 1965 All WR 755.
6. (1818)13 QBD 342, If a benevolent interpretation is possible without doing yoilence to the spirit of the enactment the courts are bound to resort to it in order to obviate inconvenient or unjust consequences; *Baliram* v. *Sitabai*, AIR 1935 Nag 168, 170, quoting *Justice of Middlesex* v. *Reg*, (1884) AC 757.
7. (1886)31 Ch D. 402, 407.
8. (1936)154 LT 379, 388.
9. Broom's *Legal Maxims*, 10th Ed. at p. 388.
10. *Associated Banking Corporation of India, Ltd.* v. *Nazarali Kassambhai & Co.*, ILR 1952 Bom 873 : 54 Bom LR 22 : AIR 1952 Bom 223.
11. *Maya Devi* v. *Inder Narain*, AIR 1967 All 118, 120 (Dhawan, J.)
12. *Janki* v. *Jamuna*, AIR 1963 All 535, 536 (Kailash Prasad, J.); *Mam Raj* v. *State of Haryana*, (1982)4 LLR 360 (FB).

7. Anomaly.—Courts are bound to construe a section of an Act, according to the plain meaning of the language unless either in the section itself, or in any part of the Act anything is found to modify, qualify or alter the statutory language even if absurdity or anomaly be the result of such interpretation.[1] Where the text is clear and the anomalous interpretation is irresistible, the Court has to accept it leaving it to the Legislature to remove the anomalies. A case of this kind where it was left to the Legislature to intervene is *Srinibas Jena* v. *Janardan Jena*.[2] But what may apparently be clear and compelling may not appear to be so on a closer and more careful scrutiny in the light of the scheme and context of the enactment sought to be interpreted.[3]

But when on a construction of a statute, two views are possible, one which results in an anomaly and the other not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies.[4] A consideration of possible anomalies is not a ground for construing the plain words of a statute in a manner opposed to their plain meaning.[5] If, on its true construction, a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law.[6] Arguments based on possible anomalies are not of relevance when the provisions of the section are clear and unambiguous. In *Srinivascharyulu* v. *Hanumanth Rao*,[7] his Lordship Subba Rao, C.J., of the Andhra High Court observed : "Assuming without deciding that Section 66, C.P.C., would apply in case an award is executed through Court, in my view that cannot be a reason for holding that in the case of a sale under the rules made under Madras Co-operative Societies Act, Section 66 would apply. When Section 66 in terms will not apply, it cannot be applied by analogy unless it is held that it embodies a well-settled general principle of law applicable to all cases.

When the words of a statute are clear, it is not within the province of a Court, simply with a view to avoid apparent anomalies, to put such an interpretation on the words as they are incapable of bearing.[8] Courts, while interpreting a section of statute, are really not concerned with the practical difficulties that may result in their giving a particular interpretation to it although they do not construe a particular section in a statute in such a way as would result in anomalies or insuperable difficulties unless the plain language of the section drives the Court to such a conclusion.[9] A construction which leads to an anomaly can be given effect to only if the

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1. *Rajib Panda* v. *Lakhan Sendh Mahapatra*, ILR 27 C 11, 15, *per* Maclean, C.J. following Lord Halsbury, L.C., in the case of *Vestry of Parish St. John's Hampstead* v. *Cotton*, 1886 LR 12 AC 1, 6; *see* also *Wilkinson* v. *Walkinson*, ILR 47 Bom 843 (FB), *per* Cramp, J.; *Yarlagada Sivarama Prasad* v. *Majethi Potu Raju*, ILR 1957 Andhra 700 : 1958 Andh LT 50.
2. (1980)50 Cut LT 337 (FB).
3. *State* v. *Tribeni Sharma*, AIR 1960 All 214, 216.
4. *(M/s.) Shusil Kumar and Sons* v. *State of Uttar Pradesh*, 1987 All LJ 502; *Chet Ram* v. *Amin Lal*, 1982 Punj LJ 115 (FB); *Veluswami Thevar* v. *Raja Nainar*, AIR 1959 SC 422, 427-8; *Hari Raj Singh* v. *Shah Nawaz Khan*, AIR 1964 All 196 [repugnancy or inconsistency between Section 90(5) and the proviso to Section 83(1) of the Representation of the People Act, 1951]. See *Shahdara (Delhi) Saharanpur Light Ry.* v. *S. S. Workers' Union*, AIR 1969 SC 513.
5. *Viraraghava Rao* v. *Narasimha Rao*, AIR 1950 Mad 124; *In re* the Allocaion of Lands and Buildings in a Chief Commissioner's Province, 1943 Federal Court Reports, 20, 28 *per* Gwyer, C.J.
6. *Veluswami* v. *Raja Nainar*, AIR 1959 SC 422, 427; *Balu Deochand* v. *Fundibai Anupchand*, AIR 1972 MP 22, 29 (FB) (Bhave, J.).
7. AIR 1955 Andhra 10; *see* also *Provat Chandra* v. *R. C. Sen*, AIR 1955 Cal 83.
8. *Ganga Sagar* v. *Rpoti Prasad*, AIR 1950 All 507, 510 (FB), *per* Iqbal Ahmad, J.; *Gurcharan Lal* v. *Shiva Narain*, AIR 1948 Oudh 162; though serious anomalies result or what the Court conceives to have been the intention of the Legislature is not carried out; *Kasim Ali* v. *Chairman of Municipal Commissioners, Chittagong*, 35 IC 782.
9. *Municipal Corporation, Bombay* v. *Govind Laxman*, AIR 1949 Bom 229, 238, *per* Chagla, C.J.

words of the statute are clear and unambiguous and admit of no other interpretation,[1] otherwise such a construction has to be avoided.[2] At the same time Courts cannot read into statutes provisions which are not there even if they think that anomalies are not to be avoided otherwise.[3] Although it is one of the recognised canons of interpretation of statutes that the words used in a statute should normally be given their plain ordinary meaning, if such a method of interpretation leads to manifest anomalies and is calculated to defeat the professed and declared intention of the Legislature, it is open to the Courts to give a go-by to the rule mentioned above and to interpret the words used as to give effect to the intention of the Legislature.[4] That could be done of necessary even by modification of the language used. The legislators do not always deal with specific controversies which the Courts decide. They incorporate general purpose behind the statutory words and it is for the Court to decide specific issue. If a given case is well within the general purpose of the legislation but not within the literal meaning of the statute, then the Court must strike the balance.[5]

Undoubtedly when a term is defined in an enactment, wherever that term occurs, the definition would ordinarily apply; but there is a well-known canon of construction that in certain circumstances when a strict adherence to the rule would lead to an anomaly or repugnance, the rule will apply only when there is nothing repugnant to it in the context.[6]

Anomalies in Rules framed under an Act cannot control the construction to be placed on the provisions of the statute.[7]

When there are two possible constructions to be put on an Act it is right to prefer that which would not lead to anomalies that would follow from the other construction.[8] It is well settled that an interpretation which leads to glaring anomalies must be avoided.[9] It is no doubt true that if on its true construction a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law.[10] The intention is to be judged from all the provisions of a statute taken together and anomalous results have always to be avoided.[11]

8. Consequences.—If the language employed is plain and unambiguous, the same must be given effect to irrespective of the consequences that may arise.[12] But if the language employed is reasonably capable of more meanings than one then the Court will have to call into aid various wellsettled rules of construction and, in particular, the history of the legislation, to find out the evil that was sought to be remedied and also in some cases the underlying purpose of the legislation—the legislative scheme, and the consequences that may possibly flow from

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1. *Dial Singh* v. *Gurdwara Sri Akal Takht*, ILR 9 Lah 649, 658 (*per* Tek Chand, J.).
2. *Chet Ram* v. *Amin Lal*, AIR 1983 P & H 50 (FB).
3. *Hadayat Ullah* v. *Ghulam Mohammad Beg*, AIR 1923 Lah 529 (*per* Campbell, J.).
4. *Chaturbhuj* v. *Mauji Ram*, AIR 1938 All 456, 460-61 : ILR 1938 All 702 (FB), (*per* Iqbal Ahmad, J.).
5. Vide *Union of India* v. *Filip Tiage De Gama Vedem Vasco De Gama*, AIR 1990 SC 981.
6. *Vanguard Fire and Gneral Insurance Co., Ltd.* v. *Fraser & Ross*, AIR 1959 Mad 336, 339 (Ramaswami, J.); *(Smt.) Pushpa Devi* v. *Milki Ram*, (1990)1 Rent CR 334 (SC).
7. *Manadeosa* v. *Deputy Commissioner, Amraoti*, AIR 1954 Nag 217.
8. *Newman* v. *Lipman*, (1950)2 AER 832, 834. (*per* Lord Goddard, C.J.).
9. *Sardarni Sampuran Kaur* v. *Sant Singh*, 1982 CLJ (C & Cr) 233 (DB), quoting Lord Denning in *Seaford Court Estates, Ltd.* v. *Asher*, (1949)2 KB 481, and overruling *Amar Nath* v. *Nand Kishore*, CR 1711 of 1977 decided on 18.4.80 (unreported).
10. *Veluswami Thevar* v. *Raja Nainar*, AIR 1959 SC 424, 428; *Lok Nath* v. *State of M.P.*, AIR 1960 MP 181.
11. *Jagir Singh* v. *Dharu*, AIR 1958 Punj 847, 889.
12. *Daryabai* v. *Surajmal*, 1979 MPLJ 413, (FB); *Secretary to Government, Punjab* v. *Jagar Singh*, 1977 Rev LR 104.

accepting one or the other of the interpretations because no legislative body is presumed to confer a power which is capable of misuse.[1] Lord Shaw observed in *Vachers'* case,[2] : "Were they (words) ambiguous, other sections or sub-sections might have to be invoked to clear up the meaning; but being unambiguous, such a reference might distort that meaning and so produce error. And, of course, this is a *fortiori* the case, if a reference is suggested, not to something within, but to considerations extraneous to, the Act itself. If, for instance, it be argued that the mind of Parliament 'looking before and after' having in view the past history of a question and the future consequences of its language, must have meant something different from what is said, then it must be answered that all this essay in psychological dexterity may be interesting, may help to whittle language down or even to vaporise it, but is a most dangerous exercise for any interpreter like a Court of law, whose duty is loyally to accept and plainly to expound the simple words employed." Where the language of an Act is clear and explicit, one 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.[3]

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1. *Kesvananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461 : (1973) 4 SCC 225, 473, 756 (*per* Hegde, J.) (Khanna, J.), 552, 566 (Ray, J.).
2. 1913 AC 107, 126, quoted by Palekar, J. in *Kesvananda Bharati's* case cited above at p. 690.
3. *Kesvananda Bharati's* case, *supra*, *per* Chandrachud, J.; *Commissioner of Immigration* v. *Gottlieb*, 68 L Ed 1021, 1033 (Sutherland, J.); *Rajaram Bhiwaniwala* v. *Nandkishore*, 1975 MPLJ 225 : 1975 Jab LJ 347 (FB).