CHAPTER I
INTRODUCTION

SYNOPSIS

1. Construction and interpretation.—*(i) Interpretation.*—Interpretation is the method by which the true sense or the meaning of the word is understood.[1] The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law.[2] The process by which a Judge (or indeed any person, lawyer or layman, who has occasion to search for the meaning of a statute) constructs from the words of a Statute Book a meaning which he either believes to be that of the Legislature, or which he proposes to attribute to it, is called, according to Gray[3] 'interpretation'. Salmond[4] describes interpretation or construction as the process by which the courts seek to ascertain the meaning of the

1. *State of Jammu & Kashmir* v. *Thakur Ganga Singh*, (1960)2 SCR 346 at 351 (Subba Rao, J.).
2. *Brutus* v. *Cozens*, (1972)3 WLR 521, 525 (HL).
3. *Nature and Sources of the Law*, 2nd Ed. at pp. 176-178.
4. At p. 152, 11th Ed.

Legislature through the medium of the authoritative forms in which it is expressed. "The operation of statute," says Allen in *Law in Making*,[1] "is not automatic, and can never be so. Like all legal rules, it has to operate through application—in other words, through the interpretation of the courts. The art of interpretation is the 'art of proliferating a purpose'.[2] The interpretation of statutes is a science by itself...". "The function of the Judges," says Keeton,[3] "in interpreting statutes is twofold. In the first place they must decide upon the exact meaning of what the Legislature has actually said, and, in the second place, they must consider what the Legislature intended to have said, or ought to have said, but did not, either because it never visualised such a set of circumstances arising as that before the court, or because of some other reason". In *Francis Bennion Statutory Interpretation* it is put down thus : In interpreting an Act of Parliament it is not, in general, a true line of construction to decide according to the strict letter of the Act but the Courts will rather consider what is its fair meaning and will expound it differently from the letter in order to preserve the intent.[4] "Interpretation is generally spoken of", writes Gray,[5] "as if its chief function was to discover what the meaning of the Legislature really was. But when a Legislature has had a real intention, one way or another, on a point, it is not once in a hundred times that any doubt arises as to what its intention was. If that were all that a Judge had to do with a statute, interpretation of statutes, instead of being one of the most difficult of a Judge's duties, would be extremely easy. The fact is that the difficulties of so-called interpretation arise when the Legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine what the Legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present".

The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction.[6] The judicial function is confined to applying what Legislature has enacted after ascertaining what it is that the Legislature has enacted. But such ascertainment, that is, construing legislation, is nothing like a mechanical endeavour. It could not be accomplished by the subtlist of modern 'brain' machines. Because of the infirmities of language and the limited scope of science in legislative drafting, inevitably there enters into the construction of statutes the play of judicial judgment within the limits of the relevant legislative materials.[7] Law is, however, not an exercise in linguistic discipline. It is emerging as an important therapy in disorder of social metabolism. It is a complex process, and can be fully understood only by an attentive regard to its therapeutic function and its synthesis. There is accordingly growing recognition by courts that a statute should be construed, rather than interpreted with due regard to its avowed object and to its character. In the words of a learned

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1. At pp. 396-397. See *Bloomer* v. *Todd*, 3 Wash T. 599, the process of discovering the true meaning of the language used.
2. *Brooklyn Nat. Corp.* v. *Commissioner*, 157 Fed 450, 451; *United States* v. *Shirly*, 359 US 255 : 3 L Ed 2d 789, 794.
3. Jurisprudence, at p. 89 (1949 Ed) : "A Court will resort to interpretation when it endeavours to ascertain the meaning of a word found in a statute, which when considered with the other words in the statute may reveal a meaning different from that apparent when this word is considered abstractly or when given its usual meaning"; *Anderson* v. *City of Hattiesburg*, 131 Miss 216 quoted by Crawford in *Statutory Construction*, at p. 241.
4. *Ashok Ambu Parmar* v. *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.
5. *Nature and Sources of Law*, (2nd Ed., 1921 at pp. 172-173).
6. *Vacher & Sons, Ltd.* v. *London Society of Compositors*, 1913 AC 107, 118 (*per* Lord Macnaghten); quoted in *Amalgamated Society of Engineers* v. *Adelaid Steamship Co. Ltd.*, 28 CLR 125, 142; All construction is the ascertainment of meaning, *Utah Jink Co.* v. *Porter*, 90 L Ed 1071, 1074 : 328 US 39 (*per* Frankfurter, J.).
7. *Local etc. Joiners of America* v. *National Labour Relations Board*, 357 US 93, 100 : 2 L Ed 2d 1186, 1194.

Judge the art of interpretation is the 'art of proliferating a purpose'.[1]

In relation to the interpretation of Statutes courts will have a positive role to play. If a section yields two different interpretations, that which leads to an arbitrary or shockingly unreasonable result has to be eschewed. If an interpretation is such that it will expose the enactment to a distinct peril of invalidation as offending a constitutional provision, the courts would be fully justified in reading down the provision and giving it an interpretation consistent with its constitutionality. Even the courts without much of enthusiastic exhuberance of judicial activism can bring about just results by a meaningful interpretation.[2]

Interpretation distinguished from construction.—According to Cooley,[3] interpretation differs from construction in that the former is the art of finding out the true sense of any form of words; construction, on the other hand, is the drawing of conclusions respecting subjects that are beyond the direct expression of the text; conclusions which are in the spirit, though not within the letter of the law. 'Interpretation is the act of making intelligible what was before not understood, ambiguous, or not obvious. It is the method by which the meaning of the language is ascertained. The word 'construction', on the other hand, means to determine from its known elements its true meaning or the interest of its framers and the people who have adopted it, in the application of its provisions to cases or emergencies arising and not specifically provided for in the text of the instrument, by drawing conclusions beyond direct expressions used in the text. Thus, when the court goes beyond the language of the statute and seeks the assistance of extrinsic aids in order to determine whether a given case falls within the statute, it resorts to construction.[4] Construction therefore is the means of interpretation and interpretation is the end.[5] The distinction, however, between the two processes is of no great consequence as the dominant purpose in each case is to ascertain the intent of the Legislature.[6] In all cases the object is to see what is the intention expressed by the words used.[7] Eugene Wambaugh therefore concludes : "Some authors have attempted to introduce a distinction between 'interpretation' and 'construction'. The distinction, however has not been accepted by the profession, and the two expressions are in practice synonymous. The more common term is 'construction'.[8] According to Sutherland the distinction is erroneous.

The very concept of interpretation connotes the introduction of elements which are necessarily extrinsic to the words in the statute. Though the words *'interpretation'* and

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1. *Ramesh Metal Works* v. *State*, AIR 1962 All 227, 231-2 (FB).
2. *P. Asokan* v. *Western India Plywoods Ltd., Cannanore*, AIR 1987 Ker 103 : 1987 Lab IC 310 : (1987)1 Ker LT 89 : (1987)70 Fac LR 30 : (1987)1 Lab LN 333 : ILR (1987)1 Ker 505 : 1987 ACJ 358 : (1987)2 Lab LJ 183 : (1987)2 TAC 153 (FB).
3. *Constitutional Limitation*, at p. 70; *see* also *Webb* v. *Outrim*, 1907 AC 31; Wyn : *Legislative and Executive Powers*, at p. 90; *Bloomer* v. *Todd*, (1888)3 Wash T. 59 *per* Jones, C.J.; Crawford : *Statutory Construction*, at p. 241 : 211 US 370, White, J.; *see* also *Utah Jink Co.* v. *Porter*, 90L Ed 1071-1074 : 328 US 39 (*per* Frankfurter, J.); "All construction is ascertainment of meaning".
4. Crawford : *Statutory Construction*, at p. 241 quoting *Union Trust Co.* v. *Mc Ginty*, 212Mass 205; see *P. C. Gulati* v. *Lajya Ram Kapur*, AIR 1967 Punj 79 : 68 Punj LR 310, where this distinction has been pointed out; *see* also *In re* Sea Customs Act, AIR 1963 SC 1760 at p. 1794, *per* Hidayatullah, J.
5. Kocourek : *An Introduction to the Science of Law*, Article 41 at p. 191.
6. Lord Wrenbury in *Viscountess Rhonda's Claim*, (1922)2 AC 339 at p. 397; *see* also *Inter-State Commerce Commission* v. *Baird*, 194 US 75; *Parson* v. *Circuit Judge*, 67 Mich 287.
7. Lord Blackburn in *River Wear Commissioners* v. *Adamson*, (1877)2 AC 743, 763; referred to by Earl of Halsbury in *Eastman, etc. Co.* v. *Comptroller*, (1899) AC 571, 575-76.
8. 'How to Use Decisions and Statutes' condensed by him from his earlier work, *The Study of Cases* referred to by Arthur T. Vanderbilt in *Studying Law*, at p. 584
9. *Statutory Construction*, Vol. 2, Article 4504 at p. 319, 3rd Ed.

'construction' are used interchangeably the idea is somewhat different. Dr. Patrick Derlin says : ....A better word, I think would be construction, because construction although one often used it alternatively with interpretation, suggests that something more is being got out in the elucidation of the subject matter than can be got by strict interpretation of the words used. In the very full sense of the word construction the judges have set themselves in the branch of the law to try to frame the law as they would like to have it.[1]

Rules of interpretation according to legislative practice.—Rules of interpretation of statutes have now reached such a condition that they themselves require to be interpreted. As applied in India, their source is, apart from the General Clauses Act, decisions of English Courts, rendered with reference to English statutes, but since the Privy Council itself applied those rules of interpreting Indian enactments, it is not open to anyone to say that they are not appropriate. Mr. Justice Chakravarti made two observations in this behalf in *Badsha Mia* v. *Rajjab Ali.*[2] "The primary object in interpreting a statute is always to discover the intention of the Legislature and in England the rules of interpretation, developed there, can be relied on to aid the discovery because those whose task it is to put the intention of the Legislature into language fashion their language with those very rules in view. Since framers of statutes couch the enactments in accordance with the same rules as the judicial interpreter applies, application of those rules in the analysis of a statute naturally brings up the intended meaning to the surface. It is at least doubtful whether in the case of framers of Indian statutes of the present times, specially of the Provincial Legislature, the same assumption can always be made." His Lordship observed further : "Be that as it may, even if English rules of interpretation have to be applied there is another consideration which must be borne in mind in applying them. As will appear from a reference to any comprehensive treatise on the subject, as to any problem of interpretation, rules in completely opposite senses, sponsored by equally eminent authorities, can be found. Stated together they appear incongruous; but if a little care is bestowed on examining them, it will appear that the different rules were formulated with reference to statutes of different times and to legislative practice of different kinds and also that they were formulated by courts of different jurisdiction acting with different judicial aims. All of them cannot be applicable today. A rule formulated in comparatively ancient times, in view of the extreme conciseness of ancient statutes, cannot properly be applied to the prolix enactments of modern Legislatures; on the other hand, rules applied in days 'when Acts were framed in harmony with the lax method of interpretation, contemporaneously prevalent,' cannot properly be applied today; and again, it is not possible to countenance now the method of construction, according to the equity of the statute, which Courts of Chancery at one time adopted in order to extract out of words meanings, which no one else would find there. In deciding whether it is legitimate to adopt a particular rule of interpretation, one must have regard to the kind of statute with reference to which it was formulated, the court which formulated it and the *legislative practice* of the time. There is otherwise the risk of being misled by conflicting rules." Panchapakesa Ayyar, J. observed in *Subramania* v. *Narayanaswami*[3] : "Our country has only recently become a democracy. Law is not so advanced in this country as in England and U.S.A. and the Legislature is not yet keeping a *vigilant standing committee* to watch all judicial decisions and bring about amendments of the law at

1. *See* Samples of Law Making—Oxford University Press, at pp. 70-71; *Commissioner of Wealth Tax* v. *(Smt.) Hashmatunnissa Begum*, AIR 1989 SC 1024 : 1989 Tax LR 393 : (1989) JT (SC) 92 : (1989)40 ELT 239 : (1989)176 ITR 98 : (1989)42 Taxman 133 : (1989)75 CTR 194 : (1989)93 (2) Taxation 1.
2. AIR 1946 Cal 348 at 353 (FB).
3. AIR 1951 Mad 48, 51 (FB).

once where the decisions given are contrary to the intention of the Legislature." A well-established Legislative practice is itself a good guide in interpreting statutes and notifications.[1] The Supreme Court has more than once, pointed out that lack of legislative simplicity has led to interpretative complexity. There are many canons of statutory construction, but the golden rule is that there is no golden rule.[2]

(ii) Other views.—Application.—Fredrick, J. de Sloovere[3] says : "Interpretation may be defined as the process of reducing the statute applicable to a single sensible meaning—the making of a choice from several possible meanings. Application, on the other hand, is the process of determining whether the facts of the case came within the meaning so chosen. In reality, all law relevant to a case is applied to it, not merely the particular statute involved... Application of a statute from another angle is often misunderstood. The meaning of a statute is not doubtful, merely because its application in a particular case is doubtful. Even though the statute is so plain and explicit as to be susceptible of only one sensible meaning, and even though in many cases the problem of application is clearly solved when a single meaning is ascertained as a matter of interpretation, it often remains in doubt whether the facts are within or outside the penumbra of the single meaning. To determine this question, then, is what is meant by application. It is not interpretation at all... Of course, if a word or phrase is to take its technical, legal meaning or if its meaning depends on the meaning of the whole or other parts of the statute, its interpretation is always a question of law for the court... In short, making a choice from the several possible meanings of words or phrases if the choice depends on other parts of the statute upon decisions interpreting the statute, or upon rules of construction or of substantive law is always legal interpretation, strictly so-called, and is always therefore a question of law for the court... All information necessary for the court to interpret a statute or define its terms, not being evidence in any sense, is for the court in its discretion."

Heydon's rule.—Max Radin traced the genesis of interpretation in his Article, *"A Short Way with Statutes"* published in Vol. 56 of Harvard Law Review[4] wherein he says : "It has taken the common law a little over three centuries to come to the full realization that it has to deal with something called statutes. The common law became conscious of this new factor just at the turning of the seventeenth century, when in so many respects modern times begin... In *Heydon's* case,[5] he (Coke) set up a definite and workable method of dealing with statutes—the kind of statutes he knew. It is quite true that he did not always follow his method of construing statutes to suppress only the mischief it was intended to cure... As long as the common law is basic, the rule of *Heydon's* case has much to commend it. The nature of a statute determined as it was bound to be determined, by the conditions in which it grew... Statutes in aid of the common law, *i.e.*, statutes declaring restating, and emphasizing it, as well as recalling the attentions of royal officials to it when it had been disregarded, were common enough. Statutes supplementing the law—dealing with new situations that the common law did not know—were almost equally common. Indeed, by *Heydon's* rule it was to be assumed that a statute, not obviously meant to be taken otherwise, was such a supplement... On the continent, both before and after the Revolution, there was no doubt that the legislative function was the supreme and sovereign activity of the State. When legislative activity flowered into great codes that consciously

1. *Chandappa* v. *Sadruddin*, AIR 1958 Mys 132, 134 (remissions in court-fees).
2. Chitan J., *Vaswami* v. *State of West Bengal*, 1976 Mad LJ (Cri) 333 (SC).
3. *'The Function of Judge and Jury in the Interpretation of Statutes'* : 46 Harvard Law Review, (1086-1110).
4. Pages 333-424.
5. 3 Co Rep 7 a : 76 ER 637.

sought to construct complete systems, it seemed, to those who executed the law, even more clearly to be a different kind of law. In England, on the other hand, there was less reason to deal with statutes as supremely authoritative, since there had never been among English theorists an unqualified admission that legislation was the highest of governmental functions. But in the nineteenth century, Parliament—not the King in Parliament—was conceded a position of political omnipotence, a position which Henry VIII would not have dared to claim for himself. Nor could the devoutest of the adherents of Coke be unaware that the yearly volumes of Statutes of the Realm had left of the common law only a torso, even if a substantial one. But while an omnipotent Legislature was issuing statutes which could not help partaking of this omnipotence to some extent, English Courts had long possessed a *de facto* independence of Parliament as complete as their *de jure* independence of the Crown. The courts not only interpreted statutes but declared that nobody else could. The statute as it appeared on the statute roll spoke for itself. The Parliament that had enacted it had no further concern with it. Statutes of interpretation and definition might well be passed, but these dealt with technicalities. No real constraint could be exercised by Parliament over the manner in which the courts dealt with what in theory was the expression of a governmental will far higher than that of the Courts, since it was supreme and accountable to nothing, not even to reason and divine law... On the continent, the Legislatures after the Revolution were not, like the English Parliament, slowly maturing development out of a feudal Grand Council. They were new bodies and the new constitutions of which they were part meant to carry into effect the political theories that had analysed Government on the basis of reason. Despite the half-accepted doctrine of the separation of powers, the continental attitude and theory not only exalted the legislative function to a position of unquestioned primacy, but invested all the details, incidents, and accessories of legislation with an aura of sanctity. Out of this grew the 'cult of materials', the use of debates and reports and examination of all the stages in the preparation of the statute, in order to apply it. In effect this meant giving legislative force to debates, drafts, and committee reports. And there was ample logic in it, since if the Legislature was supreme, every member of it was in fact a legislator. Indeed it was common to speak as though the law as the word of a single person, *le legislateur, der Gaseizgeber*. The English method of statutory interpretation was consciously and deliberately, at times emphatically, to repudiate these 'materials'. The Statute spoke for itself. Debates and journals were not merely inconclusive, they were incompetent. They might not even be introduced, and the Court must be kept, so far as possible, in sedulous ignorance of them. The Courts announced the doctrine that the chief basis of statutory interpretation was the determination of 'the intent of the Legislature', but it was an artificial intent just as the reason of the common law was an artificial reason. Only the Courts knew how to discover it and, when they were concerned with something more than grammatical details, they were inclined to follow *Heydon's* case, which based on political presumptions wholly different from their own..."

In England Court's exclusive function.

On the continent 'cult of materials'.

It is well settled that it is the function of the judiciary to interpret the law and it is its exclusive jurisdiction. The function of the Legislature is to enact a law. It is not the function of the Legislature to interpret or to endorse an interpretation put by the Court on any provision of law.[1] But the Legislature is competent in the absence of any restrictions placed on it by the

1. *Darjimohan Lal* v. *Muktabai*, (1971)2 Guj LR 272, 279 (A.D. Desai, J.); but see *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 99 L Ed 510, 526 : 348 US 437, *per* Reed, J.; "...power to enact gives power to interpret."

Constitution to give its own meaning to the words used by it in a statute.[1]

Originally akin to translation.—"Interpretation, in origin, meant something very much like what we understand by translation. It meant translating from one language into another. And in the case of ancient statutes, it was often literally such a translation since these statutes were often expressed in a language different from that of the people for whom the statutes were passed, or were written in an ancient or a special form of the popular speech.

"The statute is expressed in definite written words. They have been selected not for their symbolic or esoteric value, not even for their logical or aesthetic quality but primarily to let us know the statutory purpose. But if the words are not ends in themselves at all, may they be disregarded as entities? In recent years we have been invited with considerable vehemence to consider the science of semantics. It is still the popular notion that a word is a unit, more or less solid, capable of being translated or paraphrased by other words and retaining a constant relation of equivalent to this translation or paraphrase..."

(iii) Construction.—"What both lawyers and moralists declared to be an unmistakable evil was a far-fetched and strained interpretation that made a law harsh in application when it was not designed to be. It was this sort of interpretation that was originally meant by a 'construction'. A 'construction' meant an addition to the statute of things that were not in it at all, a deflection from the right sense. These constructions, said a fifteenth century chronicler, were 'subtle and sinister thing,' by which the true meaning of a statute was impugned and overthrown. Bacon warns Judges to beware of 'hard constructions and strained inferences.' When, later, 'construction' came to be practically the equivalent of 'interpretation' it still occasionally suggested something undesirable. Popular feeling definitely regarded both 'construction' and 'interpretation' with hostile eyes. There was always a persistent belief that there is a 'true' and a 'just' meaning to words, and that if anyone speaks of construing or interpreting, he is doing violence to this true and just meaning... It suffers, however, from the fatal defect that there are almost always several meanings equally true and just, so that the problem of choice is presented after all. Evidently this is not a choice between the 'spirit' and 'the letters'. Generally we take it to be a choice between a 'broad' or a 'liberal' construction and a 'narrow' or 'restrictive' one...

"A statute is better described as an instruction to administrators and courts to accomplish a definite result, usually the securing or maintaining of recognized social, political, or economic values. If figures of speech will help, we may call the statute or ground design, or a plan in which the character and size of a structure are indicated, and in which details are given only so far as they are necessary to assure the election of the desired structure. We may follow the figure further, in these days of priorities, and say that details of construction may sometimes be provided in order that losses may not be suffered in other social structures of equal or even greater value..."

Purpose and policy.—"The purpose of the statute is not quite the same as its policy. The policy may be part of a general governmental theory. The purpose is the specific result that can reasonably be taken to be what the statute is striving to attain. Again, 'policy' may be used in the sense of wisdom or unwisdom in attempting to achieve this result. But unless the purpose is unmistakably indicated, the distinction between policy and purpose is not always easy to make...

"Courts must inevitably feel approval or disapproval or indifference to the 'purpose' of the statute when that purpose is apparent. And since it is binding on them, it would seem that the disentangling of that purpose is the first duty of interpreters, and that a judgment which

1. *Commissioner of Wealth Tax* v. *Kripa Shanker Daya Shanker*, (1972)1 SCJ 219, 222 (Hegde, J.).

restricts or frustrates that purpose must justify itself.

"It ought not to seek to justify itself by leaning upon the dictionary or other meaning of this or that word or phrase of the statute's instrumental part...

"The determination both of purpose and means must be effected by reading the words of the statute. To be sure, as even the orthodox canons of interpretation tell us, it should be from a reading of the whole statute and not from an examination of detached words. We cannot lift ourselves out of a consideration of the language of a document merely by lofty reference to spirit, purpose and method...

"In *F. T. C.* v. *Bunte Bros. Inc.*[1] Mr. Justice Frankfurter stated : 'To be sure, the construction of every such statute presents a unique problem in which *words derive vitality from the aim and nature of the specific legislation*...

"Decision is not to be reached by a strict construction of the words of the Act, nor by the application of artificial canons of construction. On the contrary, we are to read the statutory language in its ordinary and natural sense, and if doubts remain, resolve them in the light, not only if the policy intended to be served by the enactment, but, as well, by all other available aids to construction. But it is not our function to engraft on a statute additions which we think the Legislature logically might or should have made..."

It seems therefore that the proper function of a court is merely to interpret what a statute lays down, and not to legislate according as to what it thinks should be the law.[2] An interpretation which would frustrate the object of enacting any legal provision shall have to be avoided.[3] A statute should be interpreted in such a way that it should advance the remedy and suppress the mischief where two views are possible.[4]

Each word, phrase, or sentence is to be considered in the light of general purpose of the Act itself.[5] That is the rule of purposive legislation. It is a recognised rule of interpretation of statutes that expressions therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature.[6] A provision has to be read and understood in the context of the entire scheme of the enactment.[7]

Canons of construction.—Evidently 'canons of interpretation' cannot always be rejected. There are statutes whose purpose is exhausted in the statute itself. These are for the most part procedural statutes, in which the word 'procedural' is used in the broadest possible manner. The purpose of a statute limiting the time of appeal to sixty days is clearly that and nothing more. Its purpose is to apprise all parties concerned as to when an appeal will no longer lie. There is no question on strictness or liberality of interpretation. It may, however, be important to know the type of appeal or appealable determination involved, but ordinarily there is no reason why this would involve a large number of cases. All that is involved is clarity. And if *ejusdem*

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1. (1941)312 US 349.
2. *Raja Shatranjai* v. *Azmat Azim Khan*, AIR 1966 All 109 : 1965 All LJ 490.
3. Vide *Dada Silk Mills* v. *Indian Overseas Bank and Banking Co.*, 1995(1) GLH 458 (Guj) : (1991) Crimes 226 Kant : (1992) 2 Crimes 215 (AP) : (1993)76 Com. Cas. 241 (P & H) : 1992 Cr LJ 1233 (Mad) : (1992)3 Crimes 306(2) Bom and 1992 Cri LJ 3946 (Ker) dissented while 1992 Cri LJ 4048 (AP) : 1993 Cri LJ 68 (Bom) and 1992 Cri LJ 3080 (Ker) followed; *see* also *Ramdas* v. *Smt. Shakuntala Devi*, 1995 JLJ 272 (MP).
4. *Kerala State Housing Board* v. *Rampriya Hotels (P) Ltd.*, (1994)5 SCC 672 and *S.C. Garg* v. *Desu*, AIR 1995 Del 62; See *Fakaruddin Malick* v. *State of West Bengal*, 1995 AIHC 6140 (Cal); *Ram Babu* v. *Dist. Judge, Banda*, (1996) JCLR 560.
5. *Poppatlal Shah* v. *State of Madras*, AIR 1953 SC 274.
6. *Badri Prasad Baldeo Prasad* v. *Aerofil Paper Ltd., Industrial Area, Banmore*, AIR 1992 MP 137 : 1992 MPLJ 668.
7. Vide *Administrator, Municipal Committee, Charkhi Dodri* v. *Ramaji Lal Bagla*, AIR 1995 SC 2329 [AIR 1984 P & H 61 (FB) overruled].

generis can make it clear, by all means let us use it...

The law is not static, but is a dynamic process. The task of judicial interpretation is not merely to reiterate. Judicial interpretation can be creative, but, of course, within the limits of the most rigorous discipline and in entire harmony with the boundaries of statute law, and previous growth.[1] Statutes are not always rational and it may not be within the province of the court to import *rationality* in an enactment under the guise of interpretation.[2]

Lord Denning, L. J. observed :

"The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if the Acts of Parliament were drafted with divine pre-science and perfect clarity. In the absence of it *when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of legislature.* A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out. He must then do so as they would have done. A judge must not alter the material of which the Act is woven but he can and should iron out the creases."

Lord Simon of Glaisdale made the following observations in *Ealing London Borough Council* v. *Race Relations Board* :[3]

"It is the duty of a court so to interpret an Act of Parliament as to give effect to its intention. The Court sometimes asks itself what the draftsman must have intended. This is reasonable enough : the draftsman knows what is the intention of the legislative initiator (nowadays almost always an organ of the executive); he knows what canons of construction the courts will apply; and he will express himself in such a way as accordingly to give effect to the Legislature's intention. Parliament of course in enacting legislation assumes responsibility for the language of the draftsman. But the reality is that only a minority of legislators will attend to the debates in the Legislature. Failing special interest in the subject-matter of the legislation, what will demand their attention will be something on the face of proposed legislation which alerts them to a questionable matter". Accordingly such canons of construction as that words in a non-technical statute will primarily be interpreted according to their ordinary meaning or that a statute establishing a criminal offence will be expected to use plain and unequivocal language to delimit the ambit of the offence (*i.e.*, that such a statute will be construed restrictively) are not only useful as part of that common code of juristic communication by which the draftsman signals legislative intention but are also constitutionally salutary in helping to ensure that legislators are not left in doubt as to what they are taking responsibility for. In some jurisdictions the courts, in order to ascertain the intention of the instrument calling for interpretation, can look at the legislative history or the 'preparatory works'. Though this may sometimes be useful, it is open to abuse and waste; an individual legislation may indicate his assent on an assumption

1. *Mrs Nellie Wapshare* v. *Pierce Leslie & Co. Ltd.*, AIR 1960 Mad 410, 422.
2. *Lakshmi Ammal* v. *Ramchandra*, AIR 1960 Mad 568, 570.
3. (1972)2 WLR 71, 82 (HL).

that the legislation means so and so, and the courts may have no way of knowing how far his assumption is shared by his colleagues, even those present. Moreover, by extending the material of judicial scrutiny the cost of litigation is inevitably increased. Finally, our own Constitution does not know a pure Legislature; the sovereign is the Queen in Parliament and the legislative history of a statute stretches back from the Parliamentary proceedings—by successive drafts of a Bill, heads of instruction to the draftsman, departmental papers and minutes of executive committees—into the *areana imperii*. (All this is not, of course, to say that an exploratory memorandum accompanying a complicated measure, such as accompanies almost every statutory instrument, might not often be useful both in apprising legislators of the details for which they are assuming responsibility and in assisting the courts in their task of interpretation). In the absence of such material, the courts have five principal avenues of approach to the ascertainment of legislative intention :

(1) examination of social background, as specially proved if not within common knowledge, in order to identify the social or juristic defect which is the likely subject of remedy;

(2) A conspectus of the entire relevant body of the law for the same purpose;

(3) particular regard to the long title of the statute to be interpreted (and where available, the preamble), in which the general legislative objectives will be stated;

(4) scrutiny of the actual words to be interpreted in the light of the established canons of interpretation;

(5) examination of the other provisions of the statute in question (or of the other statutes in *pari materia*) for the light which they throw on the particular words which are the subject of interpretation.

Difficult questions can arise when the various avenues lead in different directions.

Craies on Statute Law[1] in his own terse language : "If the requirements of a statute which prescribe a manner in which something is to be done are expressed *in negative language*, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that these requirements are *in all-cases absolute* and that neglect to attend to them will invalidate the whole proceedings." Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance *are necessarily forbidden*.[2]

2. Kinds of interpretation.—Interpretation is of two kinds, grammatical and logical. Grammatical interpretation is arrived at by reference to the laws of speech to the words used in the statute; in other words, it regards only the verbal expression of the Legislature. Logical interpretation gives effect to the intention of the Legislature by taking into account other circumstances permissible according to the rules settled in this behalf. 'Proper construction' is not satisfied by taking the words as if they were self-contained phrases. So considered, the words do not yield the meaning of a statute.[3]

(i) Grammatical.
(ii) Logical.
(iii) Proper construction.

According to Gray,[4] grammatical interpretation is the application to a statute of the laws of speech; logical interpretation calls for the comparison of the statute with other statutes and

1. 6th Edn., p. 263.
2. *A.K. Roy* v. *State of Punjab*, AIR 1986 SC 2160 : 1986 Cri LJ 2097 : 1986 JT (SC) 566 : (1986)4 SCC 326 : (1986)3 FAC 66 : (1986)2 APLJ (SC) 34 : 1986 SCC (Cri) 443 : (1986)3 Supreme 490 : 1986 FAJ 514 : (1986)2 Rec Cri R 569 : 1986 Cri LR (SC) 456 : (1986)2 Cri LC 633 : (1986)2 Chand LR (Cri) 69.
3. *Romero* v. *International Terminal Operating Co.*, 358 US 354 : 3 L Ed 2d 368, 375.
4. *Nature and Sources of the Law*, (2nd Ed., 1911, at pp. 176-178).

with the whole system of law, and for the consideration of the time and circumstances in which the statute was passed. It is the duty of the judicature to ascertain the true legal meaning of the words used by the Legislature.[1] A statute is the will of the Legislature and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded, according to the intent of them that made it.[2] The object of interpretation is to find out the intention of the Legislature.[3]

3. Object of interpretation.—The primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed."[4] The words of the statute are to be construed so as to ascertain the mind of the Legislature from the natural and grammatical meaning of the words which it has used.[5] "The essence of the law," writes Salmond,[6] "lies in its spirit, not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it. Nevertheless in all ordinary cases the courts must be content to accept the *litera legis* as the exclusive and conclusive evidence of the *sententia legis*. They must, in general, take it absolutely for granted that the Legislature has said what it meant, and meant what it has said. *Ita scriptumest* is the first principle of interpretation. Judges are not at liberty to add to or take from or modify the letter of the law simply because they have reason to believe that the true *sententia legis* is not completely or correctly expressed by it. That is to say, in all ordinary cases grammatical interpretation is the sole form allowable."

It is no doubt true that the felt necessities of the times must, in the last analysis, affect every judicial determination, for the law embodies the story of a nation's development through the centuries and it cannot be dealt with as if it contains only axioms and corollaries of a book of mathematics. A Judge cannot stand aloof on chill and distant heights. The great tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judge by. But at the same time, the Judge must remember that his primary function is to interpret the law and to record what the law is. He cannot allow his zeal, say, for social or agrarian reform, to overrun his true function. He does not run a race with the Legislature for social or agrarian reform. His task is a more limited task; his ambition a more limited ambition. Of course, in this process of interpretation he enjoys a large measure of latitude inherent in the very nature of judicial process. In the skeleton provided by the Legislature, he pours life and blood and creates an organism which is best suited to meet the needs of society and in this sense he makes and moulds the law in a creative effort. But he is tied by the basic structure provided by the Legislature, which he cannot alter and to appeal to the spirit of the times or to the spirit of social or agrarian reform or for the matter of that any other reform for the purpose of twisting

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1. Pollock, C.B. in *Attorney-General* v. *Sillem*, (1863)2 H & C 178 : 159 ER 178; *see* also *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 620 : 64 CLJ 212; *Victoria City* v. *Bishop of Vancouver Island*, (1921)2 AC 384, 387, 388.
2. Maxwell on *Interpretation of Statutes*, at pp. 1, 2; *Mohd. Baqar* v. *Mohd. Casim*, ILR 7 Luck 601 : AIR 1932 Oudh 210, 216; *Sussex Peerage* Case, 65 RR 11 (FB).
3. *Omar Tyab* v. *Ismail Tyab*, AIR 1928 Bom 69, 73, *per* Rangnekar, J; *Inter State Commerce Commission* v. *Baird*, 194 US 25; *Viscountess Rhonda's Claim*, (1922)2 AC 339-397.
4. *(M/s.) Girdharlal and Sons* v. *Balbir Nath Mathur*, AIR 1986 SC 1499 : (1986)2 SCC 237 : (1986)1 Rent LR 314 : (1986)1 SCJ 422 : (1986)2 Supreme 69 : (1986)1 Cur CC 1070 : 1986 SCF BRC 249 : (1986)30 DLT 68 : (1986)2 Rent CR 361; *Surindra Narayan Bhanja Deo* v. *Spl. Officer-Cum-Competent Authorities, Urban Land Ceiling, Cuttack*, AIR 1991 Ori 19 (DB).
5. *Viscountess Rhonda's Claim*, (1922)2 AC 339 at p. 365, *per* Viscount Birkenhead, LC.
6. Jurisprudence at p. 152 (11th Ed) : "It is an elementary rule of construction of statutes that the judicature in their interpretation have to discover and act upon the *mens* or *sententia legis*. Normally, Courts do not look beyond the *litera legis*," *per* Hidayatullah, J., in *Motilal* v. *I.T. Commr*, AIR 1951 Nag 224, 225.

the language of the Legislature is certainly a function which he must refuse to perform.[1]

But from the imperfection of language it is sometimes impossible to know what that intention is without enquiring further and seeing what the circumstances were with reference to which the words were used and what was the object appearing from those circumstances, which the person using had then in view.[2] Salmond[3] goes on to say : "There are two cases in which the *litera legis* need not be taken as conclusive, and in which the *sententia legis* may be sought from other indications. The first of these cases is that in which the letter of law is *logically defective*, that is to say, when it fails to express some single, definite, coherent and complete idea." The second case, according to Salmond,[4] "is that in which the text leads to a result so unreasonable that it is self-evident that the Legislature could not have meant what it has said. For example, there may be some obvious clerical error in the text, such as a reference to a section by the wrong number or the omission of a negative in some passage in which it is clearly required." The subject is treated *in extenso* in Chapters X, XI, XII and XIII *post*.

4. Importance of subject.—*(i) Due to necessity of knowing the rules.*—The importance of collecting together and succinctly stating the legal rules of interpretation arises in the first place from the fact that the subjects are bound to construe rightly the statute law of the land, for the averment in a court of justice that they have mistaken the law is a plea which no court is at liberty to receive.[5]

(ii) Due to difference of rules and construction of statutes from those relating to contracts or wills.—Another reason why it is of importance to know the rules is that while all statutes must be construed on the same principles, whether the object of the statute be of the utmost national importance or whether the Act be merely an Act "regulating the nearest points of practice or some such trifling matter,"[6] those principles are not wholly the same which govern the construction of other written instruments such as wills, deeds, or parole agreements. It may be said that the rules for the construction of all written instruments, whether of a public or private nature, are almost, if not entirely, the same. Sir George Jessel[7] and Lord Justice Bowen[8] have both expressed this view, but while it is valuable to correct any tendency to set up narrow distinctions, documents expressing the will of a sovereign Legislature, and the result of political strife and compromises, can never be regarded in quite the same light as private documents, however, solemnly prepared and authenticated.

5. Contracts.—In the construction of a contract there cannot be said to be any rules of law applicable, but "the governing principle is to ascertain the intention of the parties to the

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1. *Thakorelal Amritlal Vaidya* v. *Gujarat Revenue Tribunal*, AIR 1964 Guj 183, 187 (Bhagwati, J.).
2. *River Wear Commissioners* v. *Adamson*, (1876-77)2 AC 743, 763.
3. Jurisprudence at p. 154 (11th Ed.).
4. *Ibid*, at p. 172 (10th Ed.).
5. The Charlotta, (1814)1 Dods Adm 392; *see* also *Cooper* v. *Phibbs*, (1867) LR 2 HL 170, where Lord Westbury said : "It is said, *Ignaranti Juris haud excusat*, but in that maxim the word 'juris' is used in the sense of denoting general law, the ordinary law of the country. But when the word *jus* is used in the sense of denoting a private right, maxim has no application. A private right of ownership is a matter of fact : it may be the result also of matter of law : but if parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that the agreement is liable to be set aside as having proceeded upon a common mistake." Similarly, in *Spread* v. *Morgan*, (1864)11 HLC 538, 602, Lord Westbury observed that this maxim will not be carried so far as to expect every person to know the rules of equity.
6. *Attorney-General* v. *Sillam*, (1863)2 H & C 537, *per* Bramwell, B.
7. *In re* levy, (1881)17 Ch D 746-50.
8. *Curtis* v. *Stovin*, (1889)2 SQBD 513.

contract through the words they have used,"[1] which words "are to be taken in the sense which the common usage of mankind has applied to them in reference to the context in which they are found."[2] It is seldom, in construing "mercantile contracts, that any technical or artificial rule of law can be brought to bear on their construction; the question really is the meaning of the language,"[3] and "the grammatical meaning is, as in other cases, the meaning to be adopted, unless there be reason to the contrary."[4]

The main rules of construction applicable to contracts are well laid down by Sir Howard Elphinstone[5] with reference to deeds—

First.—"When the words in an instrument are in their primary meanings unambiguous, and when such meanings are not excluded by the context, and *are sensible with respect to the circumstances of the parties to the instrument at the time of execution*, such primary meanings must be taken to be those in which the parties used the words." Thus, the modification already indicated, is applicable to statutes.

Second.—"Extrinsic evidence is admissible for the purpose of determining the primary meanings of the words employed, and for no other purpose whatever."

Third.—"Where the primary meaning of a word is excluded by the context, we must affix to that word such of the meanings as it may properly bear, as will enable us to collect uniform and consistent intentions from the whole instrument."

"In these rules, by primary, sometimes called literal, meaning is intended not necessarily the primary etymological (*i.e.* literally or dictionary) meaning, but either—

(1) the meaning usually affixed to the words, at the time, of execution, by persons of the class to which the parties to the instrument belonged; or

(2) the meaning in which the words must have been used by the parties, having regard to the circumstances at the time of execution; or

(3) the meaning which it can be conclusively shown that the parties were in the habit of affixing to them."

"It follows that the primary meaning of a technical word in an instrument relating to the art of science to which it belongs is its technical meaning. Thus in a legal document, wherever a word occurs which in law bears a technical meaning, that technical meaning, and not the popular meaning, if any, is the primary meaning, for the purpose."

Decisions upon the construction of deeds and contracts are not further referred to in this work, because they are rarely of any assistance in construing an Act, save so far as they evidence contemporary exposition of the practice of conveyancers as interpreting a statute long in force. The difficulty of applying such cases is, that the deeds may be drafted to evade the Act in question or with intentions quite irrespective of the Act.

6. Wills.—With regard to the construction of wills, although the rules as to the interpretation of statutes and of wills are, to a certain extent, analogous, and although some Judges have stated that, in their opinion, a will, especially one of personal property, ought to be construed according to the rules of construction applicable to all documents and not according to artificial rules,[6] there are to be observed "many and striking discrepancies such, for instance,

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1. *M'Connel* v. *Murphy*, (1873) LR 5 PC 203, 218.
2. *Lord* v. *Commissioners of Sydney*, (1858)12 Moore PC 497.
3. *M'Connel* v. *Murphy*, (1873) LR 5 PC 203, 219.
4. *Southwell* v. *Bowditch*, (1876)1 CPD 374, 376, *per* Jessel, MR.
5. Conveyancing, 3rd Ed., p. 29 and 1 LQR 446.
6. *Grant* v. *Grant*, (1870) LR 5 PC 727, *per* Blackburn, J.; *see* also *Biddulph* v. *Lees*, (1858) FB & E 289, 317; *Towns* v. *Wentworth*, (1858)11 Moore PC 526, 543; *Re* Bedson's Trusts, (1885)28 Ch D 525.

as the rules which govern the evidence to be admitted in explaining ambiguities in wills, the arbitrary principles which have been adopted for their construction, and the vague discretion exercised by the courts under the name of the doctrine of *cy pres*."[1] Decisions on the construction of wills are, therefore, of little or no value in interpreting statutes.

According to the Supreme Court the rules of the interpretation of the 'will' are different from the rules which govern the interpretation of other documents say for example a sale deed, or a gift deed or a mortgage deed or for that matter any other instrument by which interest in immovable property is created; while in these documents if there is any inconsistency between the earlier or the subsequent part or specific clauses *inter se* contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a will under which the subsequent part, clause or provision prevails over the earlier part on the principle that in the matter of 'will' the testator can always change is mind and create another interest in place of bequest already made in the earlier part or on an earlier occasion. Undoubtedly, it is the last will prevails.[2]

7. Distinction between rules of law and rules of construction.—In *Superintendent and Legal Remembrancer, West Bengal* v. *Corporation of Calcutta*,[3] the Supreme Court held that the common law doctrine that the Crown is not bound by statute save by express provision or necessary implication, is a rule or canon of interpretation as distinguished from a rule of substantive law. Sir H. Elphinstone[4] has pointed out with reference to deeds the distinction between rules of law and rules of construction. A rule of law exists independently of the circumstances of the parties to a deed, and is inflexible and paramount to the intention expressed in the deed. A rule of law cannot be said to control the construction of a statute, inasmuch as a statute is itself part of the supreme law of the land and overrides any pre-existing rules with which it is inconsistent. A rule or canon of construction, whether of will, deed, or statute, is not inflexible, but is merely a presumption in favour of a particular meaning in case of ambiguity. These canons do not override the language of a statute where the language is clear; they are only guides to enable us to understand as to what is inferential.[5]

8. Distinction between interpretation and casuistry.—There is a distinction sometimes forgotten between the judicial construction of statutes and mere casuistry or metaphysics.[6]

9. Classification of cases.—"It seldom happens", said the Court in *Scott* v. *Legg*,[7] "that the framer of an Act of Parliament has in contemplation all the cases that are likely to arise under it, therefore the language used seldom fits every possible case; consequently the difficulties as to the construction of statutes consist chiefly in the application to various and complicated circumstances of words which are of a wide and general meaning,"[8] and a very large proportion of the cases which turn upon the construction of Acts of Parliament arise from the fact that the

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1. Sedgwick's *Statutory Law*, p. 223.
2. Vide *Kaivelikkal Ambunhi* v. *Ganesh Bhandary*, 1995 AIR SCW 3667.
3. (1967)2 SCR 170. (A rule of construction is not a 'law in force' within the meaning of Article 372 of the Constitution). See *Stoneware Pipe & Sanitary etc. Co.* v. *State of Rajasthan*, 1972 RLW 103 (*per* Shinghal, J.).
4. *On Interpretation of Deeds*. Pref. p. 5.
5. *L.N.W.R.* v. *Evans*, (1893)1 Ch 16, 27.
6. *See Re* New University Club, (1887)18 QBD 702) limits of free will in deciding what 'voluntary' meant in a Revenue Act discussed); *Penny* v. *Henson*, (1887)18 QBD 478 (foreknowledge and the foundations of rational relief in deciding whether an astrologer could sanely or honestly believe in his power to tell fortunes); *Reg* v. *Clarence*, (1888)22 QBD 23 (nature of assent on the part of married women to sexual intercourse).
7. (1876)2 Ex D 42.
8. *Attorney-General* v. *Cecil*, 1870 LR 5 Ex 263, 270, *per* Kelly, CB.

particular point under consideration was not present in the mind of the draftsman when he drew the Act.[1] Such cases, therefore, are simply decisions upon the language used in the particular statute as applied to the particular case under consideration, and can be only to a very slight degree useful for the purpose of elucidating the general rules upon which statutes are to be construed.[2]

The cases upon statutes, which occupy a large portion of reports, fall into three classes :

(1) those which lay down general rules of construction;

(2) those which decide on the applicability of the established rules to particular enactments; and

(3) those which decide whether the accepted construction of an enactment includes or excludes a particular set of facts.

10. Special rules for interpretation of Constitutions.—There are certain general rules which are guides for the interpretation of all statutes, or rather all written documents, whether they be in the nature of acts of private parties, Acts of Legislatures or even Constitutions. But by reason of the special nature of a Constitution as being the fundamental law, there are certain special rules for interpretation of a Constitution, just as there are some special rules for interpreting laws having a particular object, such as fiscal, penal, or emergency laws, which would not be applicable to other statutes. The special rules for constitutional interpretation are dealt with in detail in Part II.

1. *Clemenston* v. *Mason*, (1875) LR 10 CP 209, 221 (*per* Denman, J.).
2. See *Fishburn* v. *Hollingshead*, (1891)2 Ch 371.

CHAPTER II
STATUTE AND ITS PARTS

SYNOPSIS

1. Statute.—A statute is the formal expression in writing of the will of the legislative organ in a State.[1] A statute is a declaration of the law as it exists or as it shall be from the time at which such statute is to take effect.[2] It is usually called an Act of the Legislature. It expresses the collective will of that body. Allen, in his Law in the Making,[3] states : "A statute is the highest constitutional formulation of law, the means by which the supreme Legislature, after the fullest deliberation, expresses its final will."

An 'enactment' may mean something other than an Act of Parliament, but an Act means an Act of Parliament.[4] In other words 'enactment' does not mean the same thing as 'Act'. 'Act' means the whole Act, whereas section or part of a section in any Act may be an enactment.[5]

"To a person unversed in the science, or art, of legislation" observed Lord du Parcq in *Cutler* v. *Wandsworth*,[6] "it may well seem strange that Parliament has not by now made it a rule to state explicitly what its intention is in a matter which is often of no little importance, instead of leaving it to the courts to discover, by a careful examination and analysis of what is expressly said, what that intention may be supposed probably to be. There are, no doubt, reasons which inhibit the Legislature from revealing its intention in plain words. I do not know, and must not speculate, what those reasons may be, I trust, however, that it will not be thought impertinent, in any sense of that word, to suggest respectfully that those who are responsible for framing legislation might consider whether the traditional practice which obscures, if it does not conceal, the intention which Parliament has or must be presumed to have, might not safely be abandoned." Sir Alexander Cockburn, in a speech at the Guildhall delivered in 1876, described the Acts of Parliament as being "more or less unintelligible, by reason of the uncouth, barbarous phraseology in which they are framed," and according to him it was due to the fact that "the work of framing them is committed to few hands, while the task is a Herculean one, far beyond the strength of the men employed properly to discharge". The situation improved, however, later on. And Denning, L.J., remarked in *Seaford Court Estates, Ltd.* v. *Asher*[7] :

> "Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise; and that, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of the Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his

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1. *See* Bac. Abe, (1832) 7th Ed., Vol. VII at p. 431; *River Wear Commissioners* v. *Adamson*, (1876-77)2 AC 743, 763, *per* Lord Blackburn. "The word 'statute' has *several meanings*. It may mean what is popularly called an Act of Parliament, or a Code such as the Statute of Westminster the First, or all the Acts, passed in one session, which was the original meaning of the word"; *R* v. *Bakewell*, (1857)7 Ellis and Blackburn's Reports, Queen's Bench, 846 at p. 851-2, *per* Lord Campbell, CJ; Maxwell on *Interpretation of Statutes*, 12th Ed. at p. 2.
2. *See* Halsbury : *Laws of England*, 4th Ed., Vol. 44, para 801.
3. 4th Ed., at p. 423.
4. *Director, Public Prosecutions* v. *Lamb*, (1941)2 All ER 499 at pp. 499, 506.
5. *Wakefield, etc. Co.* v. *Wakefield Corporation*, (1906)2 KB 140, 145, 146.
6. 1949 AC 398, 410 : (1949)1 All ER 544, 549.
7. (1949)2 KB 481, 498 : (1949)2 All ER 155, 164; *see* also *Norman* v. *Norman*, (1950)1 All ER 1082, 1084; *Directorate of Enforcement* v. *Deepak Mahajan*, AIR 1994 SC 1775; *Ramesh Singh* v. *Chinta Devi*, (1994)1 BLJR 464 : (1994)1 Pat LJR 650.

hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which give rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the Legislature. That was clearly laid down by the Resolution of the Judges in *Heydon's* case which is set out by Lord Coke in the third volume of his Reports,[1] and it is the safest guide today. Good practical advice on the subject was given at about the same time by Plowden in the second volume.[2] Put into homely metaphor it is this : A Judge should ask himself the question : If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A Judge must not alter the material of which it is woven, but he can and should iron out the creases."

Notwithstanding all the care and anxiety of the persons who frame Acts of Parliament to guard against every event, it frequently turns out that certain cases were not foreseen.[3] Statute law and judge-made law are not the only laws. There is something like a common or general law, the principles of which govern the making of judicial decisions and which courts and tribunals state from time to time.[4] The court, however, can only interpret the written statute, and cannot undertake the responsibility of presuming an unwritten statute.[5]

Statute law.—"Statute law may," says Wilberforce,[6] "be properly defined as the will of the nation, expressed by the Legislature, *expounded by Courts of Justice*. The Legislature, as the representative of the nation, expresses the national will by means of statutes. Those statutes are expounded by the courts so as to form the body of statute law." This exposition of the statute by the Judges must be according to the well-recognised legal rules for the interpretation of statutes.[7]

Crawford in *Statutory Construction*,[8] says : "Statute law is a term often used interchangeably with the word 'statute'. Technically the former term is broader in its meaning, it not only includes 'statute', as herein defined (an Act of the Legislature as an organised body : a written will of the Legislature expressed according to the form necessary to constitute it a law of the State and rendered authentic by certain prescribed forms and solemnities : an Act of the Legislature declaring, commanding or prohibiting something) but also the judicial

1. 3 Co. Rep. 7 b.
2. at p. 467.
3. *Farmer* v. *Legg*, (1797)7 TR 190, *per* Lord Kenyon, CJ : "There is nothing so common in the framing of instruments as that whilst the framer of them is studious to avoid one inconvenience, he incurs another which does not present itself to his view. This is often to be seen in Acts of Parliament"; *Lord Nelson* v. *Tucker*, (1802)3 and Bros Pul 275, *per* Rooke, J., quoted by Iyer in *Law Lexicon* at p. 1215.
4. *Pankaj Kumar* v. *Bank of India*, AIR 1957 Cal 560, 570.
5. *Thragesan Dharma Varikam* v. *Commissioner of Income-tax*, AIR 1964 M 483, 486 (Jagadisan, J.). A general practice cannot take the place of a statutory obligation; *Sivduttrai* v. *Union of India*, AIR 1960 Andh Pra 406, 410 (Srinivasachari, J.). The statutory law does not justify the courts holding that the remedy of an appeal should be gone through before applying for permission to sue.
6. *Statute Law*, 1881 at p. 8. "The interpretation approved by the Supreme Court of U.S.", says McRerynolds, J., in *Gulf & Co.* v. *Masar*, 275 US 133 : 72 L Ed 200 "of an Act of Congress becomes an integral part of the Statute".
7. See *Fletcher* v. *Hudson*, (1880)5 Ex D 287 at p. 293, *per* Brett, LJ; *Ex parte* Walton, (1881)17 Ch D 746 at p. 750; *Bradlaugh* v. *Clarke*, (1883)8 App Cas 354 at p. 384, *per* Lord Fitzgerald; Beal's *Cardinal Rules of Legal Interpretation*, 3rd Ed. at pp. 268, 269; *see* also *Williams* v. *Bishop of Salisbury*, (1868)2 Moore PC (NS) 375, 424; Craies on *Statute Law*, 5th Ed. at p. 3.
8. At p. 2.

interpretation and application of the enactment. In other words, 'statute law' may be defined as the will of the State expressed by the Legislature or by the people through its initiative and expounded by the courts." Statute is to be considered always speaking.[1] It embraces all its parts.[2]

Text of statute.—The text of a statute as published in the official Gazette must be taken to be the authorised text of the Act.[3] If the original Act is in Hindi, in cases of doubt and principally for the purpose of properly interpreting any provision of such an enactment, the proper course is to look at the original Act as published in Hindi.[4] If there is a conflict between the Act in English, and the Act in Hindi, the former must prevail, in that, the Act was passed by the Legislature in English, when there is nothing to show that the Act was passed by the Legislature in Hindi, and not in English, or in both,[5] where Hindi has been adopted as a language by the legislative of a State, Hindi and English are both authorised versions, and it is permissible to rely on the Hindi version in case of a doubt,[6] but in case of a conflict between the two versions the English version prevails,[7] but when the Act was originally passed by the Legislature in Hindi, then the Hindi version must prevail, and not the authorised translation of the Act in English.[8] When the Act is in English and it uses English words, the recognised meaning of the expression which it carries in English speaking world may alone be attributed to it. No extended meaning may be given to it even when used by the Indian Legislature.[9]

Where in a social legislation the Legislature intends to give protection or confer a privilege on a class of persons which it otherwise did not possess, the legislation should be taken to apply ordinarily to the entire class, unless there was some saving or exception meant by the terms of the legislation itself. The law is not something static. It reflects and registers the growing needs of the people and their varying moods. Its language has, therefore, to be interpreted not as dead letters in black and white printed on the pages of the statute, but as a voice of a representative Legislature speaking through those pages, which it is always the privilege of the judiciary to interpret. But if the language of the statute is itself so obscure that its dominant purpose cannot be effectuated, the court must cry a halt. At some stage a line has to be drawn between interpretation and legislation and the court cannot under the guise of interpretation do something which the Legislature itself has not been able to fulfil. As to where the line has to be drawn is not always an easy matter, the best guarantee in such cases is the sound judicial discretion of the Judge himself.[10]

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1. *Ghulam Rasul* v. *State of J & K*, AIR 1965 J & K 78, 82 (Bhat, J.).
2. *United States* v. *Darbeg*, 85 L Ed 609, 622 (Stone, J.).
3. *Bhagat Govind Das* v. *Rup Kishore*, ILR 4 Lah 367, on appeal from *Rup Kishore* v. *Bhagat Govind Das*, AIR 1922 Lah 211. The latter case was not followed by Page, J., in *Sheodoyal* v. *Joharmull*, ILR 50 Cal 549 : AIR 1924 Cal 74; but it was approved or followed in *Sanwal Das* v. *Jaigo Mal*, AIR 1924 Lah 68; *Arjun Das* v. *Nanak Chand*, AIR 1925 Lah 98; *A. G. Skinner* v. *Mukaram Ali*, AIR 1925 All 77; *Mumtazud-Daula Mukaram Ali* v. *Skinner*, ILR 47 All 335 : AIR 1925 All 263, aplication for leave to appeal to Privy Council; *Ata-ur-Rahman* v. *Mashkur-un-nisa*, AIR 1926 Lah 474; *Subramania Aiyar* v. *Shanmugam Chettiar*, AIR 1926 Mad 65; *Rai Brijnandan* v. *Mahabir Prasad*, AIR 1927 Pat 142.
4. *H. L. M. Biri Works* v. *Sales Tax Officer*, AIR 1959 All 208, 210; *Pt. Mata Badal Pandey* v. *Board of Revenue*, 1976 All LR 393 (FB).
5. *Jameel Ahmad* v. *Anant Singh*, AIR 1957 Pat 241, 243 (*per* Raj Kishore Prasad, J.).
6. *Mangi Lal* v. *Board of Revenue*, MP, 1983 PLJ 254, (FB); *see* also *Haji Lal Mohammad Biri Works* v. *Sales Tax Officer*, AIR 1959 All 208; *M/s. J. K. Jute Mills Co. Ltd.* v. *State of U.P.*, AIR 1961 SC 1534.
7. *(Smt.) Ram Rati* v. *Gram Samaj, Jehua*, 1974 RD 163 (FB); *Ram Devi* v. *Board of Revenue, U.P.*, 1983 RD (HC) 36.
8. *Mata Badal Pandey* v. *Board of Revenue*, 1976 All LR 393 (FB).
9. *Messrs. Delhi Mistanna Bhandar* v. *State of Assam*, AIR 1957 Assam 31.
10. *Harsukh* v. *Mashulal*, AIR 1957 Assam 22; *Indramani Nath* v. *Lokenath*, AIR 1957 Assam 83, 89 (SB).

Legislation based on mistake.—It has been found that mistakes sometimes creep into legislative enactments, as they do into executive orders. It is true that courts naturally attach great importance to the language of the statute because of the formality attached to it, the care with which it is expected to be drafted and its scrutiny at every stage. But this is not to be taken as an invariable rule, for the courts have often read words into a statute and filled up omissions, and on rare occasions they have held that a word found in a statute is a mistake for another.[1] Legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the Legislature had erroneously assumed to be so.[2]

2. Parts of statutes.—A statute consists of several parts :

(i) Title.
(ii) Title of a chapter.
(iii) Preamble.
(iv) Interpretation clause.
(v) Headings.
(vi) Marginal Notes.
(vii) Sections.
(viii) Punctuations and brackets.
(ix) Illustrations.
(x) Proviso, exception and saving clause.
(xi) Explanation.
(xii) Schedules and Forms.
(xiii) Erratum.

Title, Long title.—The long title of an Act undoubtedly forms part of the Act and a very important part of it. The old opinion in England that the long title is not part of the Statute is no longer tenable owing to the changes in Parliamentary procedure for dealing with titles. The full title is always on the roll[3] and under the present procedure in both Houses title are now the subject of amendment.[4] That the policy and purpose of a given measure may be deduced from the long title and the Preamble thereof has been recognised in many decisions of the Supreme Court.[5]

The long title of an Act no doubt indicates the main purpose of the enactment but it cannot obviously control the express operative portion of the Act.[6]

The title of an Act will not limit the plain meaning of the text.[7] It is none the less a useful guide in resolving an ambiguity.[8]

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1. *Subhashini* v. *State of Mysore*, AIR 1966 Mys 40.
2. *Hari Prasad* v. *Divekar*, AIR 1957 SC 121, 131.
3. *Sutton* v. *Sutton*, (1882)22 Ch D 511, 513.
4. May, 14th Ed., p. 475.
5. *In re*, Kerala Education Bill, AIR 1958 SC 956, 974; *Bishambar Singh* v. *State of Orissa*, 1954 SCR 842, 855.
6. *Manohar Lal* v. *State of Punjab*, AIR 1961 SC 418, 419 : (1961)2 SCR 343, 346; *Bodhanlal* v. *Addl. Collector, Bilaspur*, 1989 MPLJ 58 : 1989 Jab LJ 245.
7. *Maguire* v. *Commissioner of Inland Revenue*, 85 L Ed 1149 at 1154 : 313 US 1, *per* Douglas, J.; *U. S.* v. *Minker*, 100 L Ed 185 : 320 US 179, *per* Frankfurter, J.; *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369.
8. *Federal Trade Commissioner* v. *Mondel Bros.*, 359 US 385 : 3 L Ed 2nd 893, 897, *per* Douglas, J.; *Bengzou* v. *Secretary of Justice, Phillipine Islands*, 81 L Ed 312, 316 : 299 US 410, *per* Sutherland, J.; *Lapina* v. *Williams*, 58 L Ed 515, 520, *per* Pitney, J.).

Short title.—Lord Thoring in his *Practical Legislation*[1] says that every Act of Parliament should have a short title, ending with the date of the year in which it is passed. Modern Statutes generally contain a section enacting that the Act may be cited by some short title. The short title is, however, given to the Act solely for the purpose of facility of reference. In the words of Lord Moulton, "It is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title."[2]

It may be noted that Section 28 of the General Clauses Act, 1897, lays down that an Act or Regulation may be cited by reference to the title or short title (if any) conferred thereon. These short titles which are given for the sake of convenience being numbered as sections of the Act are part of the Act.[3]

As an aid to determine scope and purview of Act.—The title of an Act being a part of the Act it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.[4]

The full title and Preamble have been often used to determine the scope and the purview of the Act and the object of the Legislature.[5] But while it is admissible to use the full title of an Act to throw light upon its progress and scope, it is not legitimate to give any weight in this respect to the short title which is chosen merely for the sake of convenience, its object being identification and not description.[6] In *Debendra Narain Roy* v. *Jogendra Narain Deb*,[7] their Lordships observed : "The short title is the 'Bijni Succession Act, 1931', the full title is, 'An Act to regulate the succession in the Bijni Raj.' The full title must not be neglected or disregarded and it may be some guide to the meaning."

Not a conclusive aid.—The title, however, is not conclusive of the intent of the Legislature but constitutes only one of the numerous sources from which assistance may be obtained in the ascertainment of that intent in cases of doubt. It is but indicative of the legislative intent.[8] It

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1. Page 37.
2. *Vacher & Sons, Ltd.* v. *London Society of Compositors*, 1913 AC 107, 128.
3. E. M. Chacko, *In re*, (1954)2 MLJ 737.
4. *Vacher & Sons, Ltd.* v. *London Society of Compositors*, 1913 AC 107, 128 (prior to 1854, title of a statute was not a part of the statute in England but now forms part of a statute). "I read the title advisedly, because now and for some years past the title of an Act of Parliament has been part of the Act. In old days it used not to be so, and in the old law books we were told not so to regard it, but now the title is an important part of the Act and is so treated in both Houses of Parliament." *Fielding* v. *Morley Corporation*, (1899)1 Ch 1, *per* Lindley, M. R.; *State* v. *Hyder Ali*, 1955 Hyd 128; *Aswini Kumar Ghose* v. *Arbinda Bose*, AIR 1952 SC 369.
5. *Griffiths Carr* v. *Griffiths*, (1879)12 Ch D 655, *per* Jessel, *M. R.*; *Dartford Rural Council* v. *Bexley Health & Co., Ltd.*, 1898 AC 210. They as well as the rest of the enacting part of the statute are to be all taken together; *Brett* v. *Brett*, 162 ER 456; *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 622; *Abdullah Khan* v. *Bahram Khan*, AIR 1935 Pesh 69; *Pannalal Lahoti* v. *State of Hyderabad*, AIR 1954 Hyd 129 (FB), *per* Chari, J.; *Mangilal Karwa* v. *State of M.P.*, AIR 1955 Nag 153.
6. *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593.
7. AIR 1936 Cal 593, 622, quoting *Smith* v. *Preston*, (1836)2 Hr & W 9, *per* Williams, J.; *Hinton* v. *Dibbin*, (1842)2 QB 646, *per* Lord Denman; *Blake* v. *Midland Railway Co.*, (1852)18 QB 93, *per* Coleridge, J.; *Kenricke & Co.* v. *Lawrence & Co.*, (1890)25 QBD 99, *per* Wills, J.; *East and West India Dock Co.* v. *Shaw, etc. Co.*, (1888)39 Ch D 524, *per* Chitty, J.; *A. G.* v. *Margate Pier & Harbour Co.*, (1900)1 Ch 749, *per* Kakewich, J; *Fenton* v. *Thorley & Co., Ltd.*, 1903 AC 443, *per* Lord Macnaghten; *see also London County Council* v. *Bermondsey Bioscope Co.*, (1911)80 LJ KB 144, *per* Lord Alvertone, C; *Consett Iron Co.* v. *Clavering Trustee*, (1935)2 KB 42, 77, *per* Roch, LJ; *Watkinson* v. *Hollington*, (1944)1 KB 16, 29, *per* Scott, LJ.
8. E. M. Chacko, *In re*, (1954)2 MLJ 737; *Mangilal Karwa* v. *State of Madhya Pradesh*, AIR 1955 Nag 153.

will not supply defects or omissions in the enacting part, but may be resorted to merely as an aid in the ascertainment of the legislative intent where the meaning is uncertain by reason of the use of general language of indefinite signification or of words of doubtful import.[1] Reference to the long or short title of a statute for purposes of interpretation must always be secondary to reference to enacting part, for the title may be colourless, or the Act may deal with subjects not expressed in the title.[2]

None if statute clear.—The construction of a statute cannot be limited by its title.[3] The true nature of the law is to be determined not by the name given to it or by its form but by the substance.[4] Where the language of the enactment is clear, its construction cannot be affected in any way by the consideration of the title of the Act.[5] If the language of the Act is plain, the courts cannot refuse to give effect to it generally because it happens to go beyond the matters mentioned in the title. When there is no doubt as to the construction to be put upon the words of a section, the court cannot limit its construction because of the title of the Act though the said construction clearly exceeds the scope of both the title and the Preamble.[6]

Useful if statute ambiguous.—Where the language of the Act is ambiguous the title can be usefully referred.[7] "where an Act uses ambiguous language, one is entitled to look at the title of the Act with a view to give the doubtful language in the body of the Act a meaning consistent rather than at variance with the clear title of the Act."[8] In *Shaw* v. *Ruddin*,[9] the question arose whether the Dublin Carriage Act, 1853, applied to a 'Cart' used for private purposes only. The title of the Act was 'An Act to consolidate and amend the laws relating to hackney and stage carriages, also job carriages and horses and carts let for hire within the police district of Dublin.' "Now the title of the Act," observed Lefroy, C.J., "shows that the Legislature intended to make regulations with respect to carriages and other vehicles let for hire. It is quite true that, although the title of an Act cannot be made use of to control the express provisions of the Act, yet if there be in these provisions anything admitting of doubt, the title of the Act is a matter proper to be considered, in order to assist in the interpretation of the Act, and thereby to give to the doubtful language in the body of the Act a meaning consistent rather than at variance with the clear title of the Act." Hence if the statute is ambiguous the title may be considered as an aid in ascertaining the legislative intent.[10] While the title of an Act or a section heading will not limit the plain meaning of the text, it may be of aid in resolving an ambiguity.[11]

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1. Crawford : *Statutory Construction*, Article 206 at 359.
2. Craies on *Statute Law*, 5th Ed. at pp. 182, 183.
3. *In re* Groo, (1904)73 LJP 82; Sutherland : *Statutory Construction*, 3rd Ed., Vol 2, Article 4802 at p. 344.
4. *Jadva Sugar Mills (P), Ltd.* v. *State of M.P.*, AIR 1964 Madh Pra 118 : 1964 MPLJ 17.
5. *Surendra Kumar Goel* v. *State Transport Appellate Tribunal*, (1979)5 All LR 599 (FB).
6. *Wilmot* v. *Rose*, (1854)23 LJQB 281; *Sage* v. *Eicholz*, (1919)2 KB 171, 176, 177; E.M. Chacko, *In re*, (1954)2 MLJ 737; *Mangilal Karwa* v. *State of Madhya Pradesh*, AIR 1955 Nag 153.
7. *Surendra Kumar Goel* v. *State Transport Appellate Tribunal*, (1979)5 All LR 599 (FB).
8. E. M. Chacko, *In re*, (1954)2 MLJ 737; *Mangilal Karwa* v. *State of Madhya Pradesh*, AIR 1955 Nag 153.
9. (1859)9 Ir CLR 214; *see* also *Powell* v. *Kempton Park Race Course Co.*, (1897)2 QB 242, 260, *per* Lopes, LJ.
10. See *Coomber* v. *Justices of Berks*, (1882)9 QBD 17, 32, 33, *per* Huddleston, B.; *see* also *Briggs* v. *Walker*, 171 US 466 : 43 L Ed 248; *U.S.* v. *Katz*, 271 US 354 : 70 L Ed 986; Bonnerjee : *Interpretation of Deeds, Wills and Statutes*, 1909 Ed at 203 (TLL). But the title may not be used as a means of creating an ambiguity when the body of the Act is clear. Sutherland : *Statutory Construction*, 3rd Ed. Vol. 2, Article 4802 at p. 344; *see* also *Duncan* v. *Theodore*, 23 CLR 510, 538.
11. *Maguire* v. *Commissioner of Inland Revenue*, 313 US 1 : 85 L Ed 1149; *Federal Trade Commissioner* v. *Mendel Bros*, 359 U S 385 : 3 L Ed 2nd 893, 897.

"There may perhaps" held the court in *Ex parte Steavenson*,[1] "be some obscurity in the words of the statute, but there is none in the title, and this being a remedial statute, we should construe it so as to give full effect to the intention of the Legislature." Applying this rule, the court applied the Annual Indemnity Act passed in February, 1823 to persons who had not yet incurred any penalties by February, 1823.

3. Title of chapter.—The title of a chapter in statute is not a determining factor regarding the interpretation of the provisions of a section in the chapter, but the title certainly throws considerable light upon the meaning of the section and where it is not inconsistent with the section, one should presume that the title correctly describes the object of the provisions of the chapter.[2] The title of a chapter or part of the Constitution is an important aid to construction.[3] The heading of a chapter in a statute was not considered by their Lordships of the Privy Council in *Secretary of State* v. *Mark and Co.*,[4] to be of any material assistance in the construction of the Sea Customs Act. The title of a chapter cannot be legitimately used to restrict the plain terms of an enactment.[5] Very little weight is attachable in any case to the mere title in a Schedule, as qualifying the enacting words of a statute.[6]

Titles of chapters cannot "take away the effect of the provisions contained in the Act so as to render those provisions legislatively incompetent; if they are otherwise within the competence of the Legislature to enact".[7]

4. Preamble.—It cannot be doubted that the 'Preamble precedes the words of enactment, and is in the nature of a recital of the facts operative in the mind of the law given in proceeding to enact'. It may also be assumed that the *via media* suggested by the learned jurist (Craies) is to regard the Preamble as conclusive in so far as it elucidates the intention of the Legislature; but the Preamble alone cannot be held to be conclusive of the intent and purpose of the legislation. The object, purpose and intent of the legislation have to be gathered from the various provisions of the statute itself and not merely from an isolated examination of the Preamble, which may indicate the primary object in view, but may not refer in detail to certain other objects, which are incidental and essential to the working out of the primary object of the legislation.[8]

The Supreme Court tersely stated "whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the preamble to the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation."[9]

In England different opinions have been held at different times on the question whether a Preamble is a part of the Act. There have been distinguished jurists who have maintained that the Preamble is not an integral part of the Act, but that it is something outside it. No less an

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1. (1823)2 B & C 34 : 107 ER 295.
2. *Dwarka Prasad* v. *B. K. Roy*, AIR 1950 Cal 349, *per* Sen, J.
3. *Kesavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461 (Ray, J.).
4. AIR 1940 PC 105, 109; but see *Dwarka Nath Chaudhri* v. *Tafazar Rehman Sarkar*, ILR 44 Cal 267, 271; *see* also *Kalipada* v. *Shree Bank Ltd.*, AIR 1960 Cal 285; *see* also *Commissioner of Income-tax* v. *Sardar*, 1965 MPLJ 682.
5. *I.T. Commissioner* v. *Ahmedbhai Umarbhai & Co.*, 1950 SCR 335 at p. 353 : AIR 1950 SC 134, 141, *per* Patanjali Sastri, J.
6. *Trustees of Clyde Navigation* v. *Laird*, (1883)8 AC 658, 672-73, *per* Lord Watson.
7. *Tara Pd.* v. *Union of India*, AIR 1980 SC 1682 : (1980)4 SCC 179.
8. *Anil Kumar* v. *Deputy Commissioner*, AIR 1959 Assam 147, 151; *C. Kaliammal* v. *The Forest Range Officer, Sathanur Range, Sathanur Dam, N.A. Dist.*, (1991)1 MLJ 564 (DB).
9. Vide *Atam Prakash* v. *State of Haryana*, AIR 1986 SC 859 : 1986 Punj LJ 191 : (1986)1 Punj LR 329 : (1986)1 Cur CC 641 : (1986)1 Land LR 478 : (1986)1 Supreme 628 : (1986)2 Supreme 213 : 1986 Rev LR 226 : 1986 Sim LC 132 : 1986 UJ (SC) 642 : 1986 Cur Civ LJ (SC) 490 (5J).

authority than Lord Holt is reported to have said that a "Preamble of a statute is not part of it, but contains generally the motives or inducement thereof."[1] On the other hand, equally eminent lawyers have considered the Preamble to be undoubtedly a part of the Act, a key to open the meaning of the makers of the Act and mischiefs it was intended to remedy.[2] Lord Halsbury has expressed the view that the Preamble may now be regarded, like the title, as part of the Statute.[3] According to *Crawford* "it is an excellent aid to the construction of an ambiguous statute or statutes of doubtful meaning or as has been said it is a key to the construction of a statute and should be resorted to unlock the mind of the makers;" quoted in *C. Narayanan* v. *Gangadharan*.[4]

Not an operating part.—But though the Preamble is a part of the Act, it is not an operating part thereof.[5] The aid of the Preamble can be taken only when there is some doubt about the meaning of the operative part of the Act,[6] which have to be given effect to when they go beyond the Preamble, the Preamble notwithstanding.[7]

Not part of any particular section.—The Preamble undoubtedly throws light on the intent and design of the Legislature and indicates the scope and purpose of the legislation itself but it should not be read as a part of a particular section of the Act.[8] It cannot operate to annul section.[9]

A prefatory statement.—The Preamble of a statute is a prefatory statement at its beginning following the title and preceding the enacting clauses, explaining or declaring the reasons or motives for, and the object sought to be accomplished by the enactment of the statute. It is the introductory part of the Statute which states the reasons and intent of the law. It serves to portray the intent of the framers and the mischiefs to be remedied. It affords in general a key to the construction of the statute, a clue to discover the plain object and general intention of the Legislature in passing the Act and often helps to the solution of doubtful points.[10] Viscount Simonds observed in *Attorney-General* v. *H. R. H. Prince Augustus*,[11] as follows : "My Lords, the

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1. *Mills* v. *Wilkins*, (1703) Holt KB 662 : 6 Mod Rep 62 : 99 ER 1266; Not a part of the Act and cannot enlarge or confer powers, nor control the words of the Act, unless they are doubtful or ambiguous; *Yazoo, etc., Railroad Co.* v. *Thomas*, 33 L ed 302.
2. Coke 4 Ins 330; *Shobha* v. *State of U.P.*, AIR 1963 All 29 : 1962 All LJ 831 : Reference by President of India—Indo-Pakistan Agreement, *In re*, AIR 1960 SC 845, *re* : Preamble to the Constitution.
3. Halsbury *Laws of England*, 4th Ed., Vol. 44, Para 814; Indeed the Preamble may now be regarded, like the title, a part of the statute for the purpose of explaining, restraining, or even extending enacting words, but not for the purpose of qualifying or limiting express provisions couched in clear and unambiguous terms; *State of Madhya Pradesh* v. *Mahant Kamal Puri*, AIR 1965 MP 183, 185 (Pandey, J.).
4. AIR 1989 Ker 256 : (1988)2 Ker LJ 230 : (1988)2 Ker LT 307 : (1988)22 Reports 616 : (1988)2 Civil LJ 568 : ILR (1989)1 Ker 648.
5. *Mohammad Yusuf* v. *Imtiaz Ahmad Khan*, ILR 14 Luck 492 : AIR 1939 Oudh 131, 137 (FB), *per* Yorke, J.; *see* also *Raghavendra Singh* v. *Pushpandra Singh*, AIR 1955 VP 19 "*Rasbihari Panda* v. *State of Orissa*, AIR 1968 Orissa 189 (preamble cannot restrict or extend enacting part)."
6. *Rahman Shagoo* v. *State of J & K*, AIR 1958 J & K 29, 33 (FB); *see* also *Arunachelam Chettiar* v. *Annamalai Chettiar*, ILR 1961 Mad 1113 : 74 MLW 593.
7. *Rehman Kunju* v. *State of Kerala*, 1968 SCD 552.
8. *Brij Bhukhan* v. *S.D.O., Siwan*, AIR 1955 Pat 1 (SB).
9. *R. Venkataswami Nandi* v. *Narasaram Naraindas*, AIR 1966 SC 361 : (1965)2 SCWR 924 : (1965)2 SCJ 880 : (1966)1 Mad LJ (SC) 1 : (1966)1 SCR 110 : (1966)1 Andh WR (SC) 1.
10. *In re* Chacko, (1954)2 MLJ 737; *see* also *District Board, Bhagalpur* v. *Province of Bihar*, 1954 Pat 529.
11. (1957)1 All ER 49, 53 (HL). Lord Normand observed at page 58 : "If they (sections) admit of only one construction, that construction will receive effect even if it is inconsistent with the Preamble, but, if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the Preamble may be preferred."

contention of Attorney-General was, in the first plea, met by the bald general proposition that, where the enacting part of a statute is clear and unambiguous, it cannot be cut down by the Preamble and a large part of the time which the hearing of this case occupied was spent in discussing authorities which were said to support that proposition. I wish, at the outset, to express my dissent from it, if it means that I cannot obtain assistance from the Preamble in ascertaining the meaning of the relevant enacting part. For words, and particularly general words, cannot be read in isolation, their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same statute, but its Preamble, the existing state of the law, other statutes *in pari materia*, and the mischief which I can, by those and other legitimate means, discern that statute was intended to remedy." It is true that a Preamble to a statute is a prefatory explanation or statement which purports to state the reason or occasion for making a law or to explain in general terms the policy of the enactment. At the same time it cannot be lost sight of, that the Preamble is 'no part of the law'. It cannot, therefore, either enlarge or abridge the scope, purpose or policy of the statute. The Preamble can certainly be called in aid to interpret the purpose of the enactment as it is considered "a key to open minds of the makers of the Act and the mischief which it is intended to redress". Unfortunately, however, the Preamble is not always true, accurate and complete and if it is allowed to control any enacting part of the Act, many hardships and some absurdities are likely to result. The Preamble may, therefore, provide one of the several valuable intrinsic aids to find out the purpose of the Act. Yet if it is not consistent or complete, the intention or purpose of the legislation can as well be gathered from the provisions of the Act. By this mode we would be giving equal weight to all parts of the Act including the Preamble. It is thus plain that the Preamble cannot control the enacting part of the statute in cases where the enacting part, *viz.*, any provision, is expressed in clear and unambiguous terms leaving no doubt in the minds of the Courts.[1]

Recitals in Preamble.—A litigant cannot dispute the correctness of the recitals in the Preamble.[2] The recital in the Preamble of a public Act of Parliament is evidence to prove the existence of that fact.[3]

It throws light on the intent and design of Legislature.—The title and Preamble whatever their value might be as aids to the construction of a statute, undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the legislation itself,[4] but the amended note always be strictly confined to its preamble and the provisions contained therein.[5] In *Kedar Nath Bajoria* v. *State of West Bengal*,[6] while dealing with the validity of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, Sastri, C.J. observed :

"The real issue, therefore, is whether having regard to the underlying purpose and policy of the Act as disclosed by its title, Preamble and provisions as summarised above,

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1. *Chintapalli Achaiah* v. *Gopala Krishna Reddy*, AIR 1966 Andh Pra 51, 54 (Ekbote, J.); *Nani Gopal* v. *State of W.B.*, AIR 1966 Cal 167, 177, (B. N. Banerjee, J.); quoting *Powell* v. *Kempton Park Racecourse, Co.*, (1899) AC 143, 157 *per* Earl of Halsbury; *Jagjit Kumar* v. *Jagdish Chandra*, AIR 1982 MP 144 (DB).
2. *Inder Singh* v. *State of Rajasthan*, AIR 1957 SC 510, 516.
3. *Watkins* v. *Lessee of Holman*, 10 L Ed 873 at p. 885 (McLean, J.); But raises no presumption as to the validity of Government action under an Ordinance, *Bates* v. *Little Rock*, 4 L Ed 2d. 480, 487 (Stewart, J.).
4. *Poppatlal Shah* v. *State of Madras*, AIR 1953 SC 274, 276; see also *Tej Bahadur* v. *State*, 1954 All 755; *Ajantha Cashew Co.* v. *Asst. Director of the Enforcement*, AIR 1987 Ker 34 : (1986)9 ECC 352 : 1986 Ker LT 1075 : ILR (1987)1 Ker 205 (DB).
5. *(M/s.) Punjab Tin Supply Co.* v. *Central Government*, AIR 1984 SC 87 : (1984)1 SCC 206.
6. AIR 1953 SC 404.

the classification of the offences, for the trial of which the Special Court is set up and a special procedure is laid down, can be said to be unreasonable or arbitrary and therefore, violative of the equal protection clause."

The Preamble of an Act sets forth the reasons for the particular Act of Legislature and foreshadows what is intended to be effected by the Act. It is a key to open the minds of the framers of the Act.[1] It is a good means of finding out the meaning of the Legislature.[2] The Preamble of a statute is "a key to the understanding of it" and it is well established that it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt.[3] It may, therefore, be taken to be beyond all doubt that aid can be taken from the Preamble of an enactment, because it is that which denotes the policy and the object behind the Act. Recourse to the Preamble becomes necessary in order to control the otherwise wide language of the provisions of any enactment conferring executive powers and to construe the same as being confined in its ambit and exercisable to the extent intended and in a manner so as to fulfil the object.[4]

Not without importance.—The Preamble though not an operative part of a statute or any section thereof is, however, not without importance in a statute.[5]

Where Act unambiguous.—Where the enacting part is explicit and unambiguous the Preamble cannot be resorted to, to control, qualify or restrict it.[6] In *Deo* v. *Brandling*,[7] Lord Tenterdon said : "If on a review of the whole Act a wider intention than that expressed in the Preamble appears to be the real one, effect is to be given to it notwithstanding less extensive import of the Preamble." This position was further explained by Lord Denman in *Fellow* v. *Clay*.[8] "The Preamble is often no more than a recital of some of the inconveniences, and does not exclude any others for which a remedy is given by the statute. The evil resisted is but the motive for the legislation; the remedy may both consistently and wisely be extended beyond the cure of that evil." Similarly, Tindal, C.J., observed in the well-known *Sussex Peerage* case[9] : "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 cases, best declare the intention of the law-giver." An authoritative pronouncement on the subject is by Lord Halsbury, L.C., in *Powell* v. *Kempton Park Racecourse Co.*,[10] where his Lordship expressed himself as follows : "Two propositions are quite clear, one that Preamble affords useful light as to what a statute intends to reach, and another that if an enactment is itself clear and unambiguous, no Preamble can qualify or cut

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1. *State v. Hyder Ali*, AIR 1955 Hyd 128 : ILR 1955 Hyd 214 (FB); *Dhani Ram* v. *Jage Ram*, 59 PLR 631; *Musaliar* v. *Venkatachalam*, AIR 1956 SC 246.
2. *District Board, Bhagalpur* v. *Province of Bihar*, AIR 1954 Pat 529; *Passari Lal* v. *Chatturbhan*, AIR 1958 MP 417, 421, (Chaturvedi, J.).
3. *Kochuni* v. *State of Madras*, AIR 1960 SC 1080, 1097; *Tippaya* v. *Ramnarayana*, AIR 1961 Mys 131, 141.
4. *Sarskies, H.A.* v. *District Magistrate, Meerut*, AIR 1966 All 458; *Surju Prakash* v. *State*, AIR 1964 All 95; *Shoba* v. *State*, AIR 1963 All 29; *Harishankar Bagla* v. *M.P. State*, AIR 1954 SC 465; *Kavalappara* v. *States of Madras & Kerala*, AIR 1960 SC 1080; *Sardar Balwant* v. *Paras Ram*, AIR 1962 Punj 147; *Mohd. Shafi* v. *District Magistrate*, AIR 1964 J & K 23.
5. *Secretary of State for India* v. *Maharaja of Bobbili*, 46 IA 302, 303; *see* also *Radha Kishen* v. *Ramnagar Co-operative Society*, AIR 1951 All 341, 346 (FB) (*per* Malick, CJ).
6. *Att-Gen.* v. *Prince Earnest Augustus*, 1957 AC 436, 460, 463 (Viscount Simon, J.).
7. (1843)4 QB 349; *Calcutta Corporation* v. *Padma Debi*, AIR 1957 Cal 466; *Shaib Ali* v. *Jinnatan Nahar*, AIR 1960 Cal 717.
8. (1828)7 B & C 660.
9. (1844)11 Cl & Fin 85, 143; *Rajindra Collieries, Ltd.* v. *Coal Controller*, AIR 1960 Cal 736.
10. 1899 AC 143, 157.

down the enactment." Regarding the use which can be made of the Preamble in interpreting an ordinary statute, there is no doubt that it cannot be used to modify the language if the language of the enactment is plain and clear. If the language is not plain and clear, then the Preamble may have effect either to extend or to restrict the language used in the body of an enactment.[1]

It cannot restrict scope of Act.—The enacting words of the Act are not always to be limited by the words of the Preamble and must in many instances go beyond it, and where they do so, they cannot be cut down by reference to it.[2] The Preamble of a statute has been said to be a good means of finding out its meaning, and, as it were, as key to the understanding of it, and as it usually states or professes to state, the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt.[3] The Preamble usually only mentions the general object and intention of the Legislature in passing the enactment; further it is well established that the Preamble cannot restrict the enacting part of an Act though it may be referred to for the purpose of solving an ambiguity.[4] Neither the Preamble nor the supposed object of an Act can control the express language of the statute. They merely afford help in the matter of construction if there is any ambiguity. Where the language is clear the Court is bound to give it effect. If there is some ambiguity and if more than one constructions are possible, the Court accepts the one which is consistent with the objects of the Act as explained by the Preamble.[5] One of the purposes of the U. P. Land Acquisition (Rehabilitation of Refugees) Act, 26 of 1948, was no doubt as stated in the Preamble to acquire lands for the rehabilitation of refugees from Pakistan but the enacting provisions make it clear that the object was also to acquire such lands expeditiously.[6]

It cannot be said that the Defence of Hyderabad Regulation was a piece of Emergency Legislation which could not continue to be in force eternally. No doubt, the legislation was introduced primarily for the defence of Hyderabad but the fact that the Preamble says that it

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1. *Keswananda Bharati* v. *State of Kerala*, W.P., 135 of 1970 decided on 24th April, 1973 (*per* Sikri, C.J.); (A. N. Ray, J., H. B. Khanna, J.).
2. *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 621, quoting *Salked* v. *Johnson*, (1848)2 Ex 256; *Pocock* v. *Pickering*, (1852)18 QB 739; *Taylor* v. *Corporation of Oldham*, (1876)4 Ch D 395; *Overseers of West Ham* v. *Iles*, (1883)8 AC 386; *Powell* v. *Kempton Park Racecourse Co.*, (1897)2 QB 242; *Fletcher* v. *Birkenhead Corporation*, (1907)1 KB 205; *Mani Lal Singh* v. *Trustees for the Improvement of Calcutta*, ILR 45 Cal 343 (SB). The Preamble does not control the enacting provisions of the Act; *Amrut* v. *Mst. Thagon*, AIR 1938 Nag 134, 141 (FB); *In re* "New Sind," AIR 1942 Sind 65 (SB); *Emperor* v. *Dhola Ram Hola Ram*, AIR 1941 Sind 221; *Kameshwar Singh* v. *Rampat Thakur*, AIR 1938 Pat 607; *Debi Das* v. *Maharaj Rup Chand*, ILR 49 All 903 : AIR 1927 All 593; *Corporation of Calcutta* v. *Kumar Arun Chandra*, AIR 1934 Cal 862, *Seshayya* v. *State of Madras*, AIR 1957 Andh Pra 466; *see* also *Indulal K. Yagnik* v. *State*, AIR 1963 Guj 259 : (1963)4 Guj LR 209.
3. Maxwell : *Interpretation of Statutes*, 9th Ed at p. 46, quoted in *Official Assignee* v. *Chimniram*, ILR 57 Bom 346 : AIR 1933 Bom 51, 57; *see* now 3rd Ed at p. 370, para 544; *Taherally* v. *Chanahasappa*, AIR 1943 Bom 226; *Arudhya* v. *Antonemuthu*, AIR 1945 Mad 47, 49; *Finch* v. *Finch*, ILR 1943 Lah 765 : AIR 1943 Lah 260, 264 (SB); *Tribhuvan Prakash Nayyar* v. *Union of India*, AIR 1970 SC 540 : (1970)2 SCJ 387; *Imrat and others* v. *Lanjua and others*, 1991 JLJ 23 (FB); *Safari Sales (P) Ltd.* v. *State of Kerala*, (1988)2 Ker LT 423.
4. *Mani Lal Singh* v. *Trustees for the Improvement of Calcutta*, ILR 45 Cal 343 at p. 365 (FB), *per* Fletcher, J.; *State of Rajasthan* v. *Leela Jain*, AIR 1965 SC 1296 : (1966)1 SCJ 37; *Y. A. Mamarde* v. *Authority* under the Minimum Wages Act, (1972)2 SCC 108.
5. *Abdul Rahman* v. *Kulkarni*, AIR 1962 Bom 287, 289 (Patel, J.). It cannot be used to defeat the enacting clause, but it has been treated to be a key for the interpretation of the statute, *Kashi Prasad* v. *State of U.P.*, AIR 1967 All 173, 176.
6. *H. P. Khandelwal* v. *State of U.P.*, AIR 1955 All 12.

is a legislation intended for the defence of Hyderabad would not restrict its scope if the provisions of the Regulation extended far beyond the scope of merely the defence of Hyderabad.[1]

It cannot extend the scope of the Act.—The Preamble does not extend the provisions of the Act beyond what the enacting part of the Act contains.[2] "It does not follow," said Wills, J., in *Kinnaird Cory & Son*,[3] "that because large words are used in a Preamble everything to which they can be referred is within the scope of the Act. They may be useful to a limited extent in helping to interpret doubtful passage or phrases in the Act, but they do not extend its provisions or its scope beyond what the enacting parts of the Act contain, and it is necessary, therefore, to see, what the Act does provide for."

It cannot confer power.—The function of the Preamble, it may further be noted, is to explain and not to confer power.[4]

It cannot restrict meaning of Act.—Where the enacting words are clear, the Preamble cannot operate to restrict that meaning.[5] The Preamble cannot limit or change the meaning of the plain words of a statutory provision.[6] Where the words of the enacting clause are more broad and comprehensive than the words of the Preamble, the general words in the body of the statute, if free from ambiguity, are not to be restrained or narrowed down by particular and less comprehensive recitals in the Preamble. The Preamble can be used only as an aid to the interpretation of the provisions of the Act itself, and it cannot be held that, if any particular provisions of the Act are not covered by the brief language of the Preamble, the Legislature did not intend to make provision for purposes which can clearly be inferred from those provisions of the Act though not mentioned in the Preamble.[7] As stated by Dewaris on Statutes[8] the Preamble of a statute is no more than a recital of some inconvenience, which by no means excludes any others for which the remedy is given by the enacting part to the statute.[9] The Carriers Act[10] referred in its Preamble to the practice of sending 'articles of great value' in small compass, and protected carriers from liability for various articles above a specified value. Glass is one of the articles mentioned in the Act. It was held in *Owen* v. *Burnett*[11] that a looking glass came within that description although it was not an article of great value in small compass.

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1. *Chandriah* v. *Civil Administration*, AIR 1954 Hyd 121.
2. *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 621, quoting *Basset* v. *Basset*, (1744)26 ER 916; *Kinnaird* v. *Cory & Son*, (1894)1 KB 811.
3. (1893)2 QB 578, 584.
4. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4804 at p. 346; *Yazoo and M.V.R. Co.* v. *Thomas*, (1889)132 US 174 : 33 L Ed 302.
5. *Balkishan* v. *Mst. Fatuabui*, AIR 1938 Nag 298.
6. *Motipur Zamindary Co.* v. *State of Bihar*, AIR 1962 SC 660, 663; *Renuka Bala* v. *Aswini Kumar*, AIR 1961 Pat 498; *Kangra Valley State Co.* v. *Kedar Nath*, AIR 1961 Punj 540 (FB).
7. *Tej Bahadur* v. *State*, AIR 1954 All 655. Not a compelling reason if enacting words go somewhat further than the Preamble indicates, *Mukhtiar Chand* v. *Marketing Committee*, AIR 1955 Punj 33, 36, (Dua, J.).
8. Potter's Edition, 108.
9. *Gopi Krishna Roy* v. *Raj Krishna Rai*, 6 IC 259, 261 (Cal), quoting *Copeman* v. *Gallant*, 1 P Wins 314; *King* v. *Pierce*, 3 M&S 62 at 66; *Copeland* v. *Davies*, LR 5 HL 358; *Fellous* v. *Clay*, 4 QB 313, 349; *Nga Hoong* v. *Queen*, 7 MIA 72; *Chinna Aiyar* v. *Mahomed Fakruddin Saib*, 2 MHCR 322; *Queen-Empress* v. *Inderjit*, 11 All 262; *Vithu* v. *Govinda*, 22 B 321, 327; *Rasbihari* v. *State of Orissa*, AIR 1968 Orissa 189, 193 (Berman, C.J.); *All Saints High School* v. *Government of A.P.*, AIR 1980 SC 1042 : (1980)1 Serv LR 716 (SC) : (1980)2 SCC 478 : (1980)2 SCJ 273.
10. II Geo IV & 1 Will 4 c. 68.
11. Cr & M 553.

In *Secretary of State for India* v. *Maharaja of Bobbili*,[1] their Lordships of the Privy Council interpreted the plain meaning of the Madras Irrigation Cess Act, regardless of the restrictive position of the Preamble thereof. Lord Shaw in delivering the judgment of the Judicial Committee remarked that as the section of Act made operative provisions in excess of the apparent ambit of the Preamble, 'it is the section that must govern' and not the Preamble. A Full Bench of the Calcutta High Court in the well-known case of *Mani Lal Singh* v. *Trustee for the Improvement of Calcutta*,[2] followed the same rule and held that the Preamble of Calcutta Improvement Act did not restrict or control its enacting provisions. "If the Legislature has thought fit to give protection to tenants," said Panduranga, J., in *Thayarammal* v. *Junus Chettiar*,[3] and the protection given extends to persons other than those whom a strict interpretation of the Preamble will embrace, it is not open to the Courts to question the right of the Legislature to go beyond what was stated in the preamble as the reason for legislation. The Legislature may very well have done actually a little more than what it started to do."

If there is a conflict between the Preamble and the enacting part, the latter must prevail.[4] In *Rajmal* v. *Harnam Singh*,[5] such a conflict arose inasmuch as the Preamble of Punjab Custom (Power to Contest) Act, II of 1920, stated *inter alia* :

> "Whereas it is expedient to enact certain restrictions on the power of descendants or collaterals to contest an alienation of immovable property...on the ground that such alienation...is contrary to custom."

while Section 6 of the Act provided *inter alia* :

> "Subject to the provisions contained in Section 4 and notwithstanding anything to the contrary contained in Section 5, Punjab Laws Act, 1872, no person shall contest any alienation of ancestral immovable property...on the ground that such alienation...is contrary to custom unless such person is descended in male lineal descent from the great-grandfather of the person making the alienation..."

If Section 6 was to be literally interpreted the plaintiff had no *locus standi* to sue. If, on the other hand, that section was to be controlled and qualified by the Preamble, then the Act was inapplicable to the plaintiff and whatever rights he possessed under the contrary law, they were still left intact. It was held that the Act has the effect of limiting the right to contest an alienation of ancestral land only to those persons who are descended in the direct male line from the great-grandfather of the alienor.

In *Tej Bahadur's* case,[6] it was contended that the constitution of village *panchayats* and trial of criminal offences by them by a simple procedure was not covered by the objects of the U.P. Panchayat Act, as disclosed in the Preamble, but considering the express provisions of the Act the contention was rejected.

It cannot override enacting part of statute.—Where the enacting part of the statute is not exactly co-extensive with the Preamble, the former, if expressed in clear and unequivocal terms, will override the latter.[7] The words of operating sections of the Act must be given effect to

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1. 46 IA 302.
2. ILR 45 Cal 342.
3. AIR 1936 Mad 844, 848.
4. *Puranmal Fatehchand Saraogi* v. *Sushila Devi Kaushal Chand Baldar*, 1979 MPLJ 58.
5. AIR 1928 Lah 35 : ILR 9 Lah 260, 265, 267; *see* also *Sahib Singh* v. *Data Ram*, ILR 14 Lah 203.
6. AIR 1954 All 655.
7. *Manilal Singh* v. *Calcutta Improvement Trust*, ILR 45 Cal 343, Preamble of Calcutta Improvement Act held not to restrict or control its enacting provisions. *Zeenutunnissa* v. *Warris Ali*, AIR 1965 Cal 43 (46) (D. N. Sinha, J.).

irrespective of inferences to be drawn from the Preamble if the words themselves are clear, and capable of only one meaning.[1] When the language of a section is clear, the Court ought not to look at the Preamble in order to cut down the effect or scope of the section.[2] "The Preamble may no doubt show the object of enacting a law, but you shall not infer from it that the Legislature did not mean to go further than the declared object."[3]

The Preamble may now be regarded, like the title, as part of the statute for the purpose of explaining, restraining or, even extending enacting words but not for the purpose of qualifying or limiting express provisions couched in clear and unambiguous terms.[4]

Scope of Preamble.—It is permissible to understand the scope of the Preamble in the light of the Statement of Objects and Reasons.[5]

An intrinsic aid to interpretation.—The Preamble like the title affords an intrinsic aid in the interpretation of the Act, where the Act is ambiguous.[6] If ambiguous and doubtful phraseology is used in the body of the Act, the Preamble may be referred to resolve the ambiguity. Where the enacting part of the statute is ambiguous the Preamble can be referred to, to explain and elucidate it.[7] It is an excellent aid to the construction of ambiguous statutes or statutes of doubtful meaning. It is a key to the construction of a statute, and should be resorted to, to unlock the minds of its makers.[8] If any doubt arises from the terms employed by the Legislature, the Preamble 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 Chief Justice Dyer is a key to open the minds of the makers of the Act and the mischiefs they intended to redress.[9] As observed by Sir John Nicholl in the case of *Brett* v. *Brett*,[10] "The key to the opening of every law is the reason and spirit of the law—it is the

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1. *Ramireddi* v. *Sreeramulu*, AIR 1933 Mad 120, 122, *per* Pandalai, J.; *Rangareddi* v. *Dasradharami Reddi*, ILR 1938 Mad 841 : AIR 1938 Mad 441, 445 (FB); *Keshal Panda* v. *Bhobani Panda*, 21 IC 538, 540 (Cal); *Corporation of Calcutta* v. *Kumar Arun Chandra*, AIR 1934 Cal 862, 864; *Altaf Ali* v. *Jameur Ali*, AIR 1926 Cal 638, 639; *Nani Gopal Paul* v. *State of West Bengal*, AIR 1966 Cal 167.
2. *Madhavprasad* v. *Indirabhai Chandrawarkar*, AIR 1953 Bom 192 : ILR 1953 Bom 332.
3. *Anwar Ali Sarkar* v. *State of West Bengal*, AIR 1952 Cal 150; *Commissioner of Labour* v. *Associated Cement Companies Ltd.*, AIR 1955 Bom 363.
4. *See* Halsbury's *Laws of England*, 4th Ed., Vol. 44, Para 814; *Nageshwara Rao* v. *State of Madras*, AIR 1954 Mad 643; *State of Madhya Pradesh* v. *Mahant Kamal Puri*, AIR 1965 MP 183, 185 (Pandey, J.).
5. *Kevalchand* v. *State of Madras*, AIR 1957 Mad 514, 516.
6. E. M. Chack, *In re*, (1954)2 MLJ 737; *Patiram Tukaram* v. *Baliram Parashram*, AIR 1954 Nag 44.
7. *Parmeswara Ayyar* v. *Kittuni Valia Mannadiar*, 43 IC 173, 174 (Mad); *Sital Chandra Chaudhari* v. *Allan J. Dellaunary*, 34 IC 450, 455 (Cal); *Deorgin* v. *Satyadhan Ghosal*, AIR 1954 Cal 119; *Commissioner of Labour* v. *Associated Cement Companies Ltd.*, AIR 1955 Bom 363.
8. *Shamshir Ali* v. *Ratnaji*, AIR 1952 Hyd 58 (FB); *Patiram Tukaram* v. *Baliram Parashram*, AIR 1954 Nag 44; *Bernard Augustine* v. *Krishnan Kunju*, ILR (1961)2 Ker 39 : 1961 Ker LJ 473 : 1961 Ker LT 165; *Renuka Bala Chatterjee* v. *Aswani Kumar Gupta*, AIR 1961 Pat 498; *See* also *Devji Meghji* v. *Lalmiya Moosammiya*, (1977)18 Guj LR 515; *State of Kerala* v. *Sukumara Panicker*, 1987 (2) KLT 341 (FB); *Sita Devi* v. *State of Bihar*, (1995)2 BLJ 198 (SC); *Rameh Chandra* v. *State of U.P.*, (1980)3 SCR 105 (125) is distinguished.
9. *Sussex Peerage* case, (1844)11 Cl & Fin 85, 143; *Jai Singh* v. *Union of India*, AIR 1993 Raj 177 (FB).
10. (1826)162 ER 456, 457, quoted by Wazir Husain, C.J., in *Kedar Nath* v. *Pearey Lal*, AIR 1932 Oudh 152 (FB); *see* also *Abitibi Power, etc., Co.* v. *Montreal Trust Co.*, AIR 1944 PC 7, 11. Their Lordships saw no reason to reject the statement of the Ontario Legislature contained in the Preamble to the Act that the power to stay the action was given in order that an opportunity might be given to all the parties concerned to consider the plan submitted in the report of the Royal Commission. "The tendency of Courts today is to apply an interpretation which gives equal weight to all parts of the Act, and thus the Preamble serves no unique function in statutory interpretation. Perhaps

animus imponents, the intention of the law-maker expressed in the law itself taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context in the statute, it is to be viewed in connection with its whole context meaning by this as well as the title, and the Preamble as the purview or enacting part of the statute. It is to the Preamble more specially that we are to look for the reason or spirit of every statute, rehearsing it, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the State, and so evidencing in the best and most satisfactory manner, the object or intention of the Legislature in making and passing the statute itself." Where there is some doubt as to the enacting part of a statute the Preamble may always be referred to for the purpose of ascertaining generally the scope of the Act.[1] In case of doubt as to the true scope of the Act, the title and Preamble of a statute may be relied upon as an aid to the understanding of the meaning thereof, and for determining the general object and intention of the Legislature in passing the enactment where it is doubtful. Where there is any doubt as to the true scope of the provisions of an enactment,[2] or there is ambiguity in the sections thereof[3] the Preamble may afford a valuable guidance. The intention to exclude medicinal preparations from the operation of the Madras Prohibition Act was held to be clear from the Preamble and Section 16(1) of the Act.[4] In Punjab Debtors' Protection Act, II of 1936, it is significant that though the interpretation clause defines certain expressions, the same are not to be found in the other sections of the Act. "It is, therefore," says Mahajan, J., in *Pirji Safdar Ali* v. *Ideal Bank Ltd.*,[5] "a matter for enquiry whether in the interpretation clause, any of these expressions would have been defined if they were not intended to be an important part of the statute. If these definitions were not an important part of the statute, then what was the object with which the Legislature enacted Section 2 of the Act? As the statute is silent on this subject, and the matter is not free from ambiguity, therefore in order to find an answer to this question, it becomes necessary to refer to the Preamble which has been cited above." If any word in a statute has more than one meaning and is a matter of doubt as to which of the meaning is to be attributed to the word, it is permissible to look at the Preamble of the Act to decide which of the several meanings attaching to the word was intended by the Legislature.[6] Where a word is capable of two meanings, that meaning should be preferred which is in consonance with

Indicates the intention of Legislature

Or where sections are ambiguous.

Or where a word is capable of two meanings.

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the most candid statement of any rule, which is in fact a denial of any rule, was made by Lord Ellenborough when he said that, whether the words shall be restrained or not must depend on a fair exposition of the particular case and not upon any uniform rule of construction; *King* v. *Pierce*, 105 ER 534 (1814)"; Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4804 at pp. 347-48.

1. *Ramchandra* v. *Janardhan*, AIR 1955 Nag 225.
2. *Bhola Umar* v. *Mst Kausilla*, AIR 1932 All 617, 618 : ILR 55 All 24 : (FB) (*per* Suleman, C.J.).
3. *Mst. Rajpali* v. *Surju Rai*, AIR 1936 All 507, 511 (FB), but where the language of the section is clear a Preamble cannot control its provisions; followed in *Shah Mohd.* v. *Crown*, AIR 1950 Pesh 1; *see* also *Madhav Prasad* v. *Indirabhai Chandrawarkar*, AIR 1953 Bom 192, where a Court with an exclusive jurisdiction is created and where the jurisdiction of the High Court is excluded it is perfectly legitimate to look at the Preamble in order to ascertain what was the object with which the special Court was created; *see* also *Tukaram Savalaram* v. *Narayan Balkrishna*, ILR 1952 Bom 565 : AIR 1952 Bom 144; *Commissioner of Labour* v. *Associated Cement Companies Ltd.*, AIR 1955 Bom 363.
4. *Nageshwar Rao* v. *State of Madras*, AIR 1954 Mad 643.
5. AIR 1949 EP 94, 99 (FB).
6. *Manohar Lal* v. *Emperor*, AIR 1943 Lah 1, 2 : ILR 1943 Lah 95, *per* Ram Lal, J. (Referring order); *Deorajin Debi* v. *Satyadhyan*, AIR 1954 Cal 119, 121.

the Preamble.[1] The title and Preamble of a statute may legitimately be consulted for the purpose of solving any ambiguity or for fixing the meaning of ambiguous words, but with this important proviso that this can only be done when the enacting part is open to doubt in any of the respects.[2]

Aid can be taken from the Preamble which denotes the policy and the object behind the Act, in order to control the otherwise wide language used in any section of the Act conferring *executive* powers and it will be legitimate to construe the same as being confined in its ambit and exercisable to the extent and in a manner so as to fulfil the object.[3]

Cannot create an ambiguity.—The Preamble cannot be invoked for creating ambiguity in the Act.[4] As Lord Davey observed in *Powel* v. *Kempton Park Racecourse Co.*,[5] : "There is, however, another rule or warning which cannot be too often repeated, that you must not create or imagine an ambiguity in order to bring in the aid of the Preamble or recital. To do so would, in many cases, frustrate the enactment and defeat the general intention of the Legislature." Where the terms of an enactment are clear, precise and unambiguous, it must be applied and enforced according to its plain meaning, and it is not the business of the Court to speculate as to what might have been in the mind of the Legislature as it may appear to the Court from the Preamble or otherwise.[6]

Preamble of no significance if statute clear.—It is well settled that the Preamble to a statute can neither expand nor control the scope of application of the enacting clause, when the latter is clear and explicit.[7] We cannot, therefore, start with the Preamble for construing the provisions of an Act.[8] No limitation can be imported in such a case by reason of anything contained in the Preamble. It is true that it has sometimes been said that a Preamble is a key to the intention of the Legislature. But that rule applies only when the language of the enacting portion of any Act of the Legislature is ambiguous or doubtful or produces in its ordinary meaning any absurdity or unreasonableness. The rule is not applicable to cases where the words of the enactment are quite clear and no doubt exist.[9] It is one of the cardinal principles of construction that where the language of an Act is clear, the Preamble must be disregarded though, where the object or meaning of an enactment is not clear, the Preamble may be resorted to, to explain it. Again, where very general language is used in an enactment which, it is clear, must be intended to have a limited application, the Preamble may be used to indicate to what particular instances the enactment is intended to apply. We cannot, therefore, start with the Preamble for construing the provisions of an Act, though we would be justified in resorting to it, nay, we will

1. *Anwar Ali Sarkar* v. *State of West Bengal*, 1952 Cal 150.
2. *Abdullah Khan* v. *Bahram Khan*, AIR 1935 Pesh 69, 72, *per* Middleton, C.J.
3. *Sarkies* v. *District Magistrate, Meerut*, AIR 1966 All 458, 464 (K.B. Asthana, J.).
4. *Jnanendra Nath* v. *Jadu Nath*, AIR 1938 Cal 211, 214; *Nepra* v. *Sajer Pramanik*, AIR 1927 Cal 763, 765; Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4801 at p. 342 : Article 4806 at p. 350.
5. 1899 AC 143; *Siba Prasad Misra* v. *Mst. Nurabati*, AIR 1949 Orissa 37, 43 (FB).
6. *Badri Prasad* v. *Ram Narain Singh*, AIR 1939 All 157, *per* Collister, J.
7. *Gopi Krishna Rai* v. *Raj Krishna Rai*, 6 IC 259, 261 (Cal); *Abdullah Khan* v. *Bahram Khan*, AIR 1935 Pesh 69; *Tej Bahadur* v. *State*, AIR 1954 All 655; *Commissioner of Labour* v. *Associated Cement Companies Ltd.*, AIR 1955 Bom 363; *Mohammad Ali* v. *Gokul Prasad*, AIR 1954 Nag 209; *Bernard Augustine* v. *Krishnan Kunju*, ILR (1961)2 Ker 39 : 1961 Ker LJ 473 : 1961 Ker LT 165; *Renuka Bala Chatterjee* v. *Aswini Kumar Gupta*, AIR 1961 Pat 498.
8. *Burrakur Coal Co.* v. *Union of India*, AIR 1961 SC 954, 957 : (1962)1 SCR 44, 49; *Saleem* v. *Deputy Collector*, (1988)1 KLT 757 (Ker).
9. *Bhagwan Das* v. *Moti Chand*, AIR 1949 All 612; *Venkataswami Naidu* v. *Narasram Naraindas*, AIR 1966 SC 361 : (1966)1 MLJ (SC) 1 : (1966)1 Andh WR (SC) 1, referred to in AIR 1993 Raj 177 (FB); *Jai Singh* v. *Union of India*, (1993)2 WLC 1 (Raj) : 1993 Cri LJ 2705 (Raj).

be required to do so if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application.[1]

Preamble resorted to in two classes of cases.—Now it is well settled that the terms of a Preamble may be resorted to in two classes of cases. The first class is where the text of the statute is susceptible of different constructions. The second class of cases is that if very general language is used in an enactment, which, it is clear, must have been intended to have some limitation put upon it, the Preamble may be used to indicate to what particular instances the enactment is intended to apply. That is to say, that in some cases it may be permissible to control the scope of the enactment by the terms of the Preamble.[2] Trevelyan, J., in *Kristo Nath Koondoo* v. *Brown*,[3] observed : "It is almost impossible to deduce from the cases any very clear rule as to how far a Preamble cuts down a statute, but I think the tendency of the cases is not to give effect to the Preamble unless it be quite clear that Legislature can have only in contemplation the particular mischief to which the Preamble relates, and the words of the operative part are ambiguous. In many cases it has been held that the remedy provided in the statute has been intended to be more extensive than was necessary to get rid of the mischief to which the Preamble relates."

The Preamble can, no doubt, neither cut down nor restrict nor extend or enlarge the enacting part when the language, scope and object of such part are clear and unambiguous; the Preamble not being an essential or an integral part of an Act but at the same time the Preamble, where it exists, has always been described to open the mind of the makers of the law and it constitutes a good means of finding out the meaning of the statute, as if it were a key to the understanding of it, professing as the Preamble usually does to state the general object and intention of the Legislature in enacting the statutory instruments. The Preamble may thus be legitimately consulted in order to keep the true effect of the enactment within its intended scope and object, provided of course there is reasonable doubt about its precise and true scope and effect.[4] Again, if any provision of a statute is capable of two interpretations, the one which is more in consonance with the Preamble of the statute must be accepted in preference to the other.[5]

Lord Blackburn's view.—In *Overseers of West Ham* v. *Iles*,[6] Lord Blackburn observed : "I quite agree with the argument which has been addressed to your Lordships, that in construing an Act of Parliament where the intention of the Legislature is declared by the Preamble, we are to give effect to that Preamble to this extent, namely, that it shows us what the Legislature are intending; and if the words of an enactment have a meaning which does not go beyond that Preamble, or which may come up to the Preamble, in either case, we prefer that meaning to one showing an intention of the Legislature which would not answer the purposes of the Preamble or which would go beyond them. To that extent only is the Preamble material."

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1. *Burrakur Coal Co.* v. *Union of India*, AIR 1961 SC 954, 957; *Income-tax Officer, Kanpur* v. *Mani Ram*, AIR 1969 SC 543; *Kishore Chandra Patel* v. *State of Orissa*, AIR 1993 Ori 259 (DB).
2. *Kannammal* v. *Kanakasabai*, AIR 1931 Mad 629, 630 : ILR 54 M 845; *see* also *Siba Prasad Misra* v. *Mst. Nurabati*, AIR 1949 Orissa 37, 44 (FB); *Asharfilal* v. *Board of Revenue*, AIR 1971 All 465, 469 (R. B. Misra, J.); quoting *Burrakur Coal Co.* v. *Union of India*, (1962)1 SCR 44 : AIR 1961 SC 954; *(M/s.) Motipur Zamindary & Co., (P) Ltd.* v. *State of Bihar*, 1962 Suppl. (1) SCR 498 : AIR 1962 SC 660; *Mohindar Pal* v. *State of H.P.*, AIR 1995 HP 15 (FB).
3. ILR 14 Cal 176, 183.
4. *Sardha Ram* v. *Paras Ram*, AIR 1962 Punj 147, 150; *Rashtriya Mill Mazdoor Sangh* v. *National Textile Corporation (South Maharashtra) Ltd.*, AIR 1996 SC 710 : 1996 AIR SCW 1.
5. *Parameswaram Pillai* v. *Joseph*, 1960 KLT 1073.
6. (1883)8 AC 386. (The contention herein was that the construction would baffle the Preamble).

Not conclusive on the question of vires of an Act.—Whilst a statement in the Preamble of a statute as to its ultimate objective may be useful as throwing light on the nature of the matter legislated upon and must undoubtedly be taken into consideration, it cannot be conclusive on a question of *vires*, where the Legislature concerned has power to legislate on certain specified matters only.[1] The Preamble has been said to be good means of finding out its meaning and as it is a key to the understanding of it, it may be consulted to keep the effect of the Act within its real scope with the object of explaining or elucidating its provisions or for the purpose of keeping it within its proper limits to which its general language may be found to have been intended to apply, although it must be admitted that this can only be done when its enabling provisions are open to doubt or when giving full effect to their meaning a Court may be faced with the situation of having to express against its validity, *e. g.* on the ground of its being *ultra vires* of the body which passed it. In short, the Preamble may be looked at with the object of finding out the mischief which it was intended to prevent or suppress although it cannot ordinarily be invoked to control or restrict the scope of such of its provisions as the Legislature was competent to make.[2] The Court is, therefore, entitled to obtain assistance from the Preamble in ascertaining the true meaning of an enacting part.[3]

Presumption in case of a consolidating Act.—As the Preamble shows that it was a consolidating Act, the presumption is that such an Act is not intended to alter the law. If the words are capable of more than one construction, then the Court will give effect to that construction, which does not change the law. But this *prima facie* view must yield to the plain words to the contrary.[4]

Rules regarding use of Preamble summed up.—The use of the Preamble in the interpretation of a statute may be summed up as under[5] :

(1) Whether the purpose for which a Preamble is framed to a statute is to indicate what in general terms was the object of the Legislature in passing the Act.

(2) Where the Preamble cannot be invoked to determine the *vires* of an Act.

(3) Where the enacting words of a statute may be carried beyond the Preamble if words be found in the former strong enough for the purpose.

(4) Where the enacting part of a statute is couched in clear and unequivocal language, the Preamble cannot control, restrict, qualify, alter, detract from or add to the enactment.[6]

(5) Where the general terms of the Preamble do not indicate or cover all the mischiefs which are found to be provided for in the enacting provisions of the Act itself, the

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1. *Rex* v. *Basudeva*, 1949 FCR 657, 671, *per* Patanjali Sastri, J.
2. *Darbar Patiala* v. *Narain Das*, AIR 1944 Lah 302, 307-308 : ILR 1944 Lah 79, *per* Abdur Rehman, J.; *see* also *Pirji Safdar Ali* v. *Ideal Bank, Ltd.*, AIR 1949 EP 94, 99 (FB). Sutherland, in his *"Statutory Construction"* (3rd Ed by Horack), Vol. 2, Article 1803 at p. 352, writes : "Although the Preamble has been in disuse for many years there is a modern tendency to use it of a policy section to explain the basis for legislative action on the theory that it will assist in the establishment of the constitutionality of the Act. The Preamble is useful in constitutional litigation where it is alleged that the Act (1) conflicts with specific constitutional prohibitions, and (2) where the Act is alleged to be unreasonable and arbitrary."
3. *Kelappan Nair* v. *Payingaten*, 1961 Ker LJ 788 : 1961 Ker LT 527, relying on *Attorney-General* v. *Ernest Augustus*, (1957)1 All ER 49.
4. *Beswick* v. *Beswick*, (1967)2 All ER 1197, 1209 (*per* Lord Guest).
5. *In re* Chacko, (1956)2 MLJ 737.
6. *Raghvendra Singh* v. *Pushpendra Singh*, AIR 1955 VP 19; *Mohd. Salem* v. *Umaji*, ILR 1955 Hyd 169 : AIR 1955 Hyd 113 (FB); *Mohammadali* v. *Gokulprasad*, AIR 1954 Nag 209.

enacting provisions would override the Preamble.[1]

(6) Where the Preamble provides for a wider mischief than the statute in its sections enacts, the Courts are not to give those sections a wider scope than their language properly interpreted justify; *Absolute sentential expositors non indiget.* There is no necessity to explain that which requires no explanation. The office of the Judge is *jus dicere* and not *jus dara,* to interpret the law and not make the law.

(7) Where radical amendments are effected in an Act showing a different intention to that expressed in the Act, the fact that the Preamble has not been amended does not in any way, indicate that the legislative intention is unchanged.[2] But the Preamble of an amending Act cannot limit or change the meaning of the plain words in the Act so amended.[3]

(8) Where the text of the statute is susceptible of different constructions, help may be taken from the Preamble for the purpose of explaining, containing, or even extending enacting words.

(9) Where it is clear that very general language used in the enactment must have some limitation, help may be taken from the Preamble.

When an Act does not purport to enact the material provisions for the first time but it purports to continue the previously existing provisions in that behalf, it would be legitimate to consider the Preamble of the predecessor Act and relevant provisions in it to find out whether the Legislature has laid down clearly the policy underlying that Act, and has enunciated principles for the guidance of those to whom the authority to implement the Act has been delegated.[4]

Neither Preamble nor statement aims and objects can be used for interpreting a statute. Both can be used for the limited purposes of ascertaining the conditions prevailing at the time of its enactment and finding out the purpose of its enactment (case under Nagpur Corporation Act, 1950).[5]

Unless the Legislature exempts certain liabilities, the Courts cannot provide for the same in the garb of interpretation by calling in aid the Preamble.[6]

5. Interpretation clause.—It is a common practice for legislative bodies to define words used in statutes, and to place such definition in a general interpretation of statute.[7] These statutes are of valuable aid in resolving questions of statutory meaning, and they should control except where the language of the Act, examined in the light of relevant and permissible guides to meaning, indicates that a different meaning is intended.

It is equally a common practice to provide an interpretation or definition clause in every statute and the normal canon of interpretation of statutes lays down that while interpreting a particular word in a statute the best guide is the definition of that word in the concerned statute itself.[8] Most modern statutes contain an interpretation clause wherein is declared the meaning

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1. *Commissioner of Labour* v. *Associated Cement Co. Ltd.*, AIR 1955 Bom 363; *Moti Ram* v. *Union of India*, AIR 1966 Him Pra 24.
2. *Mohd. Salem* v. *Umaji*, AIR 1955 Hyd 113 : ILR 1955 Hyd 169 (FB).
3. *Motipur Zamindari Co.* v. *State of Bihar*, AIR 1962 SC 660 : (1962)2 SCJ 288.
4. *Bhatnagar & Co., Ltd.* v. *Union of India*, AIR 1957 SC 478, 486.
5. *Nagpur Hotel Owners' Association* v. *Nagpur Municipality*, AIR 1979 Bom 190 : (1980)2 FAC 176.
6. *Poorannal* v. *Sushila Devi*, AIR 1979 MP 58 : 1979 MPLJ 58 : (1979)1 Ren CJ 387 : *See* also *All Saints High School* v. *Government of Andhra Pradesh*, AIR 1980 SC 1042 : (1980)1 Serv LR 716 : (1980)2 SCC 478 : (1980)2 SCJ 275.
7. *e. g.* Interpretation Act, 1889; The General Clauses Act, 1897.
8. *Mandal Gopalan* v. *Rohim*, 1977 Ker LT 386.

which certain words or expressions are to bear or may bear for the purposes of the statute in question. An interpretation clause is not meant to prevent the word receiving its ordinary popular natural cause whenever that would be properly applicable, but to enable the word as used in the Act, where there is nothing to the contrary either in the subject-matter or the context, to be applied to something to which it would not be ordinarily applicable, taking into consideration the setting in which those terms are used and the purpose that they are intended to serve.[1] When a word or phrase is defined as having a particular meaning in an enactment, it is that meaning and that meaning alone which must be given to it in interpretation of a section of the Act, unless there be anything repugnant in the context.[2] Definitions in statutes must be read subject to qualifications variously expressed in the definition clauses which created them such as 'unless the context otherwise requires.'[3] Thus, all statutory definitions must be read subject to the qualifying words 'unless the context otherwise requires', though such words are not contained in the definition.[4] In other words, the definition section in an Act would ordinarily apply to the provisions of the Act, unless any particular provision therein either expressly or by intendment excludes it by giving to the words used a different meaning or a wider construction.[5] When an expression is not defined in the statute and such expression happens to be one of everyday use, thus it must be construed in popular sense, as understood in common parlance, and not in any technical sense.[6] If it is possible to gather the intent of the Legislature and it is then found that such legislative intent cannot be given effect because of the legislative definition, the latter should not be allowed to control the former. This must all the more be so in cases where the definition clause opens with the words 'subject to the context to the contrary', or 'unless the context otherwise requires' or expressions similar in effect.[7] A definition term does not, however, enlarge the limited scope of the Act in which it occurs.[8] Where the definition is exhaustive, it has been held to cover cases not expressly stated by understanding the definition against the background and the circumstances that gave rise to the legislation or statutory provision.[9]

In view of the qualification 'unless the context otherwise requires', the Court has not only to look at the words, but also to look at the context, the collocation and the object of such words relating to such matter. This rule of *ex visceribus actus* is never allowed to alter the meaning of what is in itself clear and explicit, and there is no obscurity in the language of the section.[10]

Unusual appellations of words of common parlance.—Fixing an artificial name for the description of a thing which in common parlance does not answer to that name is very commonly

1. *Commissioner of Gift Tax* v. *N. S. Chetty Chettiar*, (1971)2 SCC 741.
2. *Official Liquidators* v. *Jugal Kishore*, AIR 1939 All 1, 3.
3. *Tiruchi-Srirangam Transport Co.* v. *Labour Court*, AIR 1961 Mad 307, 308 (Ramachandra Iyer, CJ.).
4. *Bala Krishnan* v. *Ashoka Bank Ltd.*, AIR 1966 Ker 42 : 1965 Ker LT 1059 : ILR (1965)2 Ker 564 (FB). It does not necessarily apply to all possible contexts in which the word may be found in a particular statute. It may otherwise lead to an anomaly or even repugnancy; *Bala Krishnan* v. *Ashoka Bank Ltd.*, AIR 1966 Ker 42 (FB) (Krishnamurty Iyer, J.); *N. K. Jain* 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.
5. *Sharma, T.K.R.* v. *District Collector, Kurnool*, (1966)1 Andh WR 42 : (1966)1 Andh LT 162.
6. *Principal S. D. Kanya Vidhyalya* v. *Authority under the Payment of Gratuity Act*, 1983 Sri LJ 239 (J & K).
7. *Kuriakose Kurian* v. *Saramma*, AIR 1964 Ker 154, 156 (FB) (Raghavan, J.).
8. *Arunachalam Chettiar* v. *Annamalai Chettiar*, ILR 1961 Mad 113 : (1961)2 MLJ 587 : 74 Mad LW 593; *Kassimiah Charities* v. *Madras State Waqf Board*, AIR 1964 Mad 18, 22 (Ramachandra Iyer, C.J.).
9. *Govinda Pillai* v. *Taluk Land Board, Parur*, 1977 Ker LT 258 (DB).
10. *Commissioner of Sales Tax* v. *Union Medical Agency*, 1980 Tax LR 1800 (SC) : AIR 1981 SC 1 : (1981)1 SCC 51 : 1981 STI (SC) 19 : 1981 SCC (Tax) 26 : 60 Taxation 8 (SC).

done in statutes. Cases are numerous in which appellations are given to things, persons and circumstances which they would not in ordinary conversation bear or be supposed to bear.[1]

Use of artificial expressions or terms of art.—If the Legislature uses an artificial expression or a term of art, then that expression or that term must be construed according to the language used by the Legislature. If the Legislature advisedly provides that the termination of the service of an employee for any reason whatsoever shall be deemed to be 'retrenchment' within the meaning of the Act, there is no reason why the Court should select or accept certain reasons as coming within the meaning of the definition and certain other reasons as not coming within the meaning of the definition.[2] In interpreting a word it is true that the particular definition given to it by a statute must be followed, but where an artificial definition is given, there must be a clear indication that this artificial definition is intended to take away the natural meaning of the word.[3]

The connotation of a term in one portion of an Act may often be clarified by reference to its use in others.[4]

Definition binding on Court.—When a word or phrase is defined as having a particular meaning, it is that meaning and that meaning alone which must be given to it, in interpreting a section of the Act, unless there be anything repugnant in the context.[5] When a Legislature defines the language it uses, its definition is binding upon the Court and this is so even though the definition does not coincide with the ordinary meaning of the word used.[6] It is not for the Court to ignore the statutory definition and proceed to try and extract the true meaning of the expression independently of it.[7] If the Legislature's intention is clear and unambiguous, it is obviously outside the jurisdiction of the Court to correct or amend the definition in the interpretation clause.[8]

Definitions apply wherever expression occurs.—The definition of an expression given in an Act applies wherever that expression occurs in the statute.[9] Where a particular word is defined in the Act, which narrows and *restricts* its ordinary meaning, the meaning given in the definition must be applied to the word wherever it appears in the Act, unless the contrary is clearly indicated.[10]

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1. *McCann* v. *Butcher*, 23 CLR 422, 424.
2. *K. N. Joglekar* v. *B. L. Rly. Co.*, AIR 1955 Bom 295, definition of 'retrenchment' in Section 2*(oo)* of the Industrial Disputes Act, 1947.
3. *Abid Ali* v. *State*, 1958 All LJ 333.
4. *United States* v. *Cooper Corporation*, 85 L Ed 1071, 1076 : 312 US 600 (Roberts, J.).
5. *S. K. Gupta* v. *K. P. Jain*, (1979)3 SCC 54; *Dial Singh* v. *Gurdwara Sri Akal Takht*, AIR 1928 Lah 325, 328 *per* Tek Chand, J. "Where a Statute gives a definition for an instrument, that definition may not be controlled by the understanding of the common people with regard to it." *per* Coutts Trotter, C.J., in *Official Assignee* v. *Basudevadoss*, AIR 1925 Mad 723, 724 *(obiter)*.
6. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4814 at p. 358 : If, however, the definitions are arbitrary and result in unreasonable qualifications or are uncertain, then the Court is not bound by the definition. At page 224 : Where a definition clause is clear it should control the meaning of the words used in the remainder of the Act, for that is the legislative intent. Where the definition is not clear then the Court should use all intrinsic and extrinsic aids to determine the legislative intent but presumption should be that a fair interpretation of the meaning of words as defined in the definition section should control; *Hazari Singh* v. *Vijay Singh*, 1963 MPLJ 235.
7. *Nand Rao* v. *Arunachalam*, AIR 1940 Mad 385; *(Smt.) Kasturi (dead) by LRs.* v. *Gaon Sabha*, (1989)4 SCC 55.
8. *Mordhwaj Singh* v. *State of V.P.*, AIR 1954 VP 24.
9. *Anant Sadashiv Pandit* v. *Ratnagiri Jitha*, 54 Bom LR 841; *Sailu Pahan* v. *Poltu Chik*, AIR 1954 Pat 367; *Bhaskar Narayan* v. *Daithonrai*, AIR 1971 B, 188, 192 (Padhye, J.).
10. *Gian Chand* v. *Bahadur Singh*, AIR 1961 Punj 164; *Kannu Pillai* v. *Pankajakhi*, AIR 1960 Ker 158, 163 (Vaidialingam, J.).

Definitions apply to all sections without exception.—It is a well-settled rule of drafting that the same word or term is used in an Act in the same meaning throughout, and, where in a particular place it is necessary to use the same term in a different sense from that which it bears in the rest of the Act, a special definition is added.[1] In *Immigration Board* v. *Govind Swamy*,[2] Lord Dunedin observed : "It is a novel and, to their Lordships, unheard of idea that an interpretation clause which might easily have been so expressed as to cover certain sections and not to cover others should be, when expressed in general terms, divided up by a sort of theory of *applicana singula singulis*, so as not to apply to sections where context suggests no difficulty in its application." A statute should be construed according to the intent of the Legislature which passed it and that intention has to be gathered from the words which the statute employs. Where the words used in a statute are not defined, they have to be understood in their grammatical or popular sense,[3] unless the words are technical in which case the special meaning attached to them in their particular fields would be attached. The subject-matter of the statute, the object of the legislation, the mischief the enactment seeks to remedy or the declared intention of the Act, would be factors throwing light on the precise import of expressions used in the case of any ambiguity. Where however, a word or an expression is the subject of statutory definition for the purpose of a particular enactment, that definition should be adopted for the construction of that word or expression in that enactment, whether the definition accords with its popular or etymological meaning or not.[4]

Definition to be substituted for the word 'defined'.—A definition given in an Act must be substituted for the word 'defined' wherever it occurs in the Act.[5] 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]

Wider definition prevails where some word defined differently in two cognate forms.—If the same word is defined differently and there is nothing in the context to show that a distinction was intended, the Court will apply the wider definition unless there is something repugnant to it in the context of the application. The Court cannot cut down the definitional amplitude in a statute.[7] Thus the terms *'Jagirdar'* and *'Jagir'* as defined in Section 2*(c)* and 2*(d)* of the V. P. Abolition of Jagirs and Land Reforms Act, 1953, are cognate terms, the former being the holder of the interest and the latter the interest itself and hence when the term *'Jagirdar'* has been defined very extensively and comprehensively an apparent narrowness in the definition of *Jagir* is not of any material consequence.[8] The definition of the phrase 'member of the family' in Section 12(1)*(c)* of the M. P. Accommodation Control Act, 1961, is restrictive and

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1. *Mohammad Jalil* v. *Assistant Custodian*, AIR 1958 All 679, 681.
2. AIR 1920 PC 114, 116. It is recognised in England to be a rule with regard to the effect of interpretation clauses of a comprehensive nature such as we have here that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances, but merely as declaring what things, may be comprehended within the term where the circumstances require that they should; *Emperor* v. *Braz H De' Souza*, 12 Cr LJ 426, 428 : 13 Bom LR 494; *see* also *Queen* v. *Justice of Cambridgeshire*, (1828)7 Ad and E 480, 491, *per* Lord Denman; *Meux* v. *Jacobs*, (1855)7 E & Ir App 431, 493, *per* Lord Selborne, *Mayor of Portsmouth* v. *Smith*, (1885)10 AC 564, 575, *per* Lord Watson.
3. *State of U.P.* v. *M/s. Kores (India) Ltd.*, 1976 UJ (SC) 876.
4. *'Hindu'* v. *Their Workers*, (1957)2 Lab LJ 275 : (1957-58)13 FJR 68 (Mad).
5. *Jagat Chandra* v. *Bombay Province*, AIR 1950 Bom 144, *per* Tendolkar, J.
6. *Vanguard Fire & General Insurance Co., Ltd.* v. *Fraser & Ross*, AIR 1959 Mad 336, 339; *(Smt.) Pushpa Devi* v. *Milki Ram*, (1990)1 Rent CR 334 (SC).
7. *State of West Bengal* v. *Sudhir Chandra Ghose*, AIR 1976 SC 2599 : (1976)4 SCC 701.
8. *Mordhwaj Singh* v. *State of V.P.*, AIR 1954 VP 24.

not exhaustive, and the words 'or any other relation dependant or heir' do not take within its sweep widowed daughter-in-law and grand children, without proof of actual dependence.[1]

Definition not limited by Schedule.—Words defined in an Act cannot be limited by reference to some item in the Schedule.[2]

Use of word 'denotes'.—If the word 'denotes' is used in contradistinction to the word 'means', the definition in the interpretation clause does not purport in the strict sense to be a definition of that particular word.[3]

Use of words 'includes', 'shall include' or 'shall mean and include'.—As pointed out in Craies on Statute Law,[4] where an interpretation *clause defines a word to mean a particular thing*, the definition *is explanatory and prima facie* restrictive and where at interpretation clause *defines a term to include something, the definition is extensive.* While an explanatory and restrictive definition confines the meaning of the word defined to what is stated in the interpretation clause so that wherever the word so defined is used in the particular statute in which that interpretation clause occurs, it will bear only that meaning unless where as is usually provided the subject or context otherwise requires, an extensive definition expands or extends the meaning of the word defined to include within it what would otherwise not have been comprehended in it when the word defined is used in its ordinary sense. Article 12 uses the word 'includes'. It thus extends the meaning of the expression 'the state' so as to include within it also what otherwise may not have been comprehended by that expression when used in its ordinary legal sense.[5] It has only an extended force and does not limit the meaning of the terms to the substance of the definition.[6] The term 'include' is used in interpretation clauses where it is intended that while the term 'defined' should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative, and not exhaustive,[7] and when it is so used these words or phrases must be construed as comprehending not only such thing as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.[8] Not being exhaustive, its meaning has to be understood in the light of the context and the purposes of the provisions in connection with which the same has

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1. *Gopinath Nainsukh* v. *Girdhardass Visheshwardass*, 1977 MPLJ 358 : 1977 Jab LJ 207.
2. *Sanwaldas Gobindram* v. *State of Bombay*, 55 Bom LR 478.
3. *Manikram* v. *Emperor*, AIR 1916 Pat 133, 135.
4. 7th Ed. Page 213
5. *Central Inland Water Transport Corpn. Ltd.* v. *Broja Nath Ganguly*, AIR 1986 SC 1571 : 1986 Lab IC 1312 : (1986)3 SCC 156 : 1985 2 Supreme 479 : 1986 SCC (Lab) 429 : (1986)2 Cur LR 322 : (1986)2 Cur CC 335 : (1986)2 Lab LJ 171 : (1986)2 SCJ 201 : (1985)2 Serv LJ 320 : (1986)2 Serv. LR 345 : (1986)69 FJR 171 : (1986) Lab LN 382 : (1986)3 Camp. LJ 1 : (1986)60 Com. Cases 797 : (1986)50 Fac LR 523; *London School Board* v. *Jackson*, (1881)7 QBD 502; *Dilworth* v. *Commissioner of Stamps*, 1899 AC 99; *King* v. *B. C. Fir & Co.*, 1932 PC 121; *Bansgopal* v. *P. K. Banerji*, AIR 1949 All 433, 435; *In re* Strauss & Co., AIR 1937 Bom 15; *Fatehchand* v. *Akimuddin*, AIR 1945 Cal 108; *Province of Bengal* v. *Hingul Kumari*, AIR 1946 Cal 217, 224; *Central United Bank* v. *Madras Corporation*, AIR 1932 Mad 474, 481; *Bishwanath* v. *Official Receiver*, AIR 1937 Pat 185; *Official Assignee, Bombay* v. *Chandu Lal*, AIR 1924 Sind 89, 90; *Jeram Das* v. *Emperor*, AIR 1934 Sind 96, 97; *(M/s.) Mahalakshmi Oil Mills* v. *State of Andhra Pradesh*, AIR 1989 SC 335 : (1988)27 STL 22 : (1988)4 JT (SC) 161 : (1988) STC (SC) 115 : (1988)71 STC 285 : (1988)3 SCJ 537 : (1989)13 ECC 25 : (1988)38 ELT 714 : (1989)1 SCC 164 : (1989) STJ 8 : (1989) SCC Tax (56); *A. Poornachandra Rao* v. *Govt. of A.P.*, (1982)1 APLJ 106.
6. *Kantilal C. Shah* v. *Charity Commissioner*, (1975)16 Guj LR 594; *A. Poornachandra Rao* v. *Govt. of A.P.*, (1982)1 APLJ 106.
7. *In the matter of* the petition of Nasibun, ILR 8 Cal 534, 536; *Pancharatham Pillai* v. *Emperor*, AIR 1929 Mad 487; *Bapu Vithal* v. *Secy of State*, AIR 1932 Bom 370; *Province of Bengal* v. *Hingul Kumari*, AIR 1946 Cal 217, 224.
8. *A. Poornachandra Rao* v. *Govt. of A.P.*, (1982)1 ALT 119 : (1982)1 APLJ 106.

been used.[1] The expression 'shall also include' in Section 3 of the Public Accountant Default Act, 1850, defining a 'public accountant', makes the definition *prima facie* extensive. The meaning is enlarged, and it is not necessary, that is, person should have been appointed as an accountant, but any person who by reason of any office held by him the State Service is entrusted with receipt of money, is accountable for loss or defalcation if he is a Public Accountant.[2] Again, where a term is interpreted in a statute as 'including', the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what things should be comprehended within the terms where the circumstances require that they should.[3] The inclusive definition cannot be stretched to *ejusdem generis*.[4]

'Including' is a term of extension. It imports addition. It adds to the subject-matter already comprised in the definition.[5] It is not an inflexible rule that the word 'include' should be read always as a word of extension without reference to the context.[6] It is true that in some instances the word 'include' may be used in a restrictive sense by way of illustrating what has been said before.[7]

In *Dilworth* v. *Commissioner of Stamps*,[8] it was laid down that the words 'include' or 'shall be deemed to include' are very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute, or where it is intended that while the term 'defined' should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which in its ordinary meaning may or may not comprise so as to make the definition enumerative and not exhaustive, and when it is so used, these words or phrases must be considered as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Sometimes the word 'includes' though it may extend the meaning of the term in one sense, may in another sense restrict it.[9] In *State of Tamil Nadu* v. *Adhiyaman Educational and Research Institution*,[10] it was held 'means and includes in Rule 2*(b)* of T.N. Private College (Regulation) Rules, 1976, confines the definition to only those species of the genus which are specifically enumerated in the definition.

Where the interpretation clause in a statute uses the word 'includes', a Court in construing a statute is bound to give effect to the direction unless it can be shown that the context of the particular passage where the particular word is used shows clearly that the meaning is not in

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1. *Somdutt* v. *State of U.P.*, 1976 All LR 529.
2. *Chatur Singh* v. *Asstt. Collector, Durg*, 1980 Jab LJ 405 (DB).
3. *Calico Mills Ltd.* v. *State of Madhya Pradesh*, AIR 1961 MP 257, 259; *S. M. James* v. *Abdul Khan*, AIR 1961 Pat 242.
4. *Cheerpireddy Pulla Reddy* v. *K. Mamidi Nazamma*, AIR 1988 AP 374 : (1987)2 APLJ (HC) 420 : (1987)2 Andh LT 875 : (1988)1 Ren CR 411.
5. *A.C. Patel* v. *Vishwanath*, AIR 1954 Bom 204.
6. *South Gujarat Roofing Tiles Manufacturers Association* v. *State of Gujarat*, (1977)18 Guj LR 688 (SC).
7. *Sankarasana Ramanuja* v. *State of Orissa*, AIR 1957 Orissa 96, 100 (Narasimham, C.J.).
8. *Lucknow Development Authority* v. *M. K. Gupta*, 1993 (6) JT SC 307 : (1994)1 SCC 243; *Delhi Judicial Service Association, Tis Hajari Court, Delhi* v. *State of Gujarat*, AIR 1991 SC 2176 : (1991)3 JT 617 : 1991 Cri LJ 3086 : (1991)4 CC 406 : 1991 AIR SCW 2419 : 1899 AC 99, followed in *Sujdivram* v. *Lal Shyamshab*, AIR 1956 Nag 67, holding that as the term 'Magistrate' in the General Clauses Act is not limited to Magistrates appointed under the Cr. P.C., it is permissible to find out its meaning in the ordinary sense.
9. *Bapu Vithal* v. *Secy. of State*, AIR 1932 Bom 370, 374; *Masrab Khan* v. *Debnath Mali*, AIR 1942 Cal 321; *(M/s.) Madras Rubber Factory Ltd.* v. *Rubber Board, Kottayam*, AIR 1982 Ker 257.
10. 1995 AIR SCW 2179 (SC).

this place to be given effect to, or unless there can be alleged some general reasons of weight why the interpretation clause is to be denied its application. The words 'include' and 'shall include' are very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute, or where it is intended that while the term 'defined' should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative and not exhaustive[1], and when it is so used, these words and phrases must be considered as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.[2] The words 'shall include' do not generally amount to *'shall mean and include.'*[3] But the word 'include' may be equivalent to 'mean and include' and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to these words and expressions.[4] Ordinarily, when it is intended to exhaust the significance of the word interpreted the word 'means' is used by the Legislature. The use of the word 'means' shows that the definition is a hard and fast definition and that no other meaning can be assigned to the expression than is put in the definition.[5]

It follows that the word 'means' is restrictive and the expression 'includes' is expansive. Both the words may, however, be used simultaneously, and in such a case, it is the restricted meaning which should primarily be assigned. But when the expansive meaning can be applied without violence to the Act that meaning may be given.[6]

'Includes' or 'means'.—'Include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they should include. The word 'include' is susceptible of another construction which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expression defined. When it is mentioned that a particular definition 'include' certain things, it should be taken that the Legislature intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question; but it cannot be taken to be exhaustive.[7] The Legislature uses the word 'means' where it wants to exhaust the significance of the term defined and the word 'include' when it intends that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative but not

1. *A. Poornachandra Rao* v. *Government of Andhra Pradesh*, (1982)1 An LT 119 : (1982)1 APLJ 106; *Universal Communication System* v. *State of U.P.*, 1995 (2) JCLR 239 : (1995)2 LBESR 123 (All) (DB), relying on *M/s. Doy Pack System (P) Ltd.* v. *Union of India*, AIR 1988 SC 782 and *P. Kasilingam* v. *P.S.G. College of Technology*, 1995 (3) JT 193; *State of Bombay* v. *Hospital Mazdoor Sangh*, AIR 1960 SC 610; *S.G.R. Tiles Manufacturing Ltd.* v. *State of Gujarat*, AIR 1971 SC 90.
2. *Chandra Mohan* v. *Union of India*, AIR 1953 Assam 193, 195.
3. *In re* Strauss & Co., Ltd., AIR 1937 Bom 15, 16.
4. *Dilworth* v. *Commissioner of Stamps*, 1899 AC 99, 105-6; *Seeni Nandan* v. *Muthuswamy*, AIR 1920 Mad 427, 433; *Jeramdas* v. *Emperor*, AIR 1934 Sindh 96, 97.
5. *Moharam* v. *Emperor*, AIR 1918 All 168, 170.
6. Section 3, Christian Marriage Act, 1872.
7. *A. Poornachandra Rao* v. *Government of Andhra Pradesh*, (1982)1 An LT 119 : (1982) APLJ 106.

exhaustive.[1]

Use of words 'that is to say'.—The words 'that is to say' which follow the word 'land' in Entry 18 of List II of the Seventh Schedule to the Constitution of India are really not words of restriction but words of illustration indicating instances which may furnish guidance and clue in particular cases.[2] In *Wasudeo Gulabrao Deshmukh* v. *State of Maharashtra*,[3] it was held that the words *'that is to say'* have to be construed in context of each statute; reference is made to *Rajathan Roller Flour Mills Association* v. *State of Rajasthan*.[4]

Deeming provisions.—The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purpose of a statute and artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.[5] Legal fiction treating something not done as done requires legislative authority and cannot be indulged in by Court without it.[6] But see *Pratap Narain* v. *Ram Narain*,[7] where legal fiction was adopted without legislative sanction, and it was observed : "It does not stand to reason as to why the concept of legal fiction should be confined to the sphere of legislation and why the Courts should bereft of the power to adopt a legal fiction in order to do substantial justice." Where the Legislature says that 'Something should be deemed to have been done' which in truth has not been done, it creates a legal fiction and in that case the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.[8] Where in defining anything the Legislature uses the word 'include' or 'includes' the rule of interpretation is that it was used as

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1. *Tajmahal Hotel, Secunderabad* v. *Commissioner of Income-tax*, AIR 1969 Andh Pra 84, 86-87 (Venkatesam, J.); *see* also *Ahmeddlu* v. *Mufizuddin*, AIR 1973 Gauhati 56 (B. N. Sarma, J.); *South Gujarat Roofing Tiles* v. *State of Gujarat*, (1976)4 SCC 601; *Ratanlal Nath* v. *State of Tripura*, (1994)2 Gau LR 46.
2. *Brij Bhukan* v. *S.D.O., Siwan*, AIR 1955 Pat 1, 15.
3. AIR 1995 Bom 390 (DB).
4. JT 1993 (5) (SC) 138; *Royan Hat Cheries (P) Ltd.* v. *State of Andh. Pra.*, JT 1993 (6) SC 248; *Bhola Prasad* v. *Emperor*, AIR 1942 FC 17; *Megh Raj* v. *Allah Bakhsh*, AIR 1947 PC 72 and *Atmaram* v. *State of Punjab*, AIR 1959 SC 519.
5. *St. Aubyn* v. *Attorney-General*, 1952 AC 15 : (1951)2 All ER 473; Lord Radcliffe. Commenting on these remarks Danckwerts, J. said : "This seems to me to resemble the methods of Humpty Dumpty mentioned by Lord Atkin in *Liversidge* v. *Anderson*, (1941)3 All ER 338 at 361. It is not necessary for me to import Alice in Wonderland for the purpose of this case. Suffice it to say, that a deeming provision is not always used in a statute in aid of an artificial construction as Lord Radcliffe himself recognised. In my opinion, the deeming provision is used in Sub-section (2) of Section 20 to underline what is obvious and to make doubly certain what is certain." See *India Tobacco Co., Ltd.* v. *Deputy Labour Commissioner*, 75 CWN 217, 225 (S. K. Mukherjea, J.); Section 20(2)*(a)*, Industrial Disputes Act, 1947. Quoted in *Chipping, etc., Ltd.* v. *Zambre*, AIR 1969 B. 274, 281; *Consolidated Coffee Ltd.* v. *Coffee Board, Bangalore*, AIR 1980 SC 1468 : 1980 Tax. LR 1723 : 1980 STI (SC) 293 : (1980)3 SCC 358 : 1980 SCC (Tax) 279.
6. *Ghulam Maula* v. *State of U.P.*, AIR 1964 All 353, 355 (Desai, C.J.).
7. 1981 All LJ 762 (DB).
8. *Rangaraj* v. *R. R. Subbaroyan*, (1990)1 LW 70 (DB); *State of Bombay* v. *Chapnalkar*, AIR 1953 SC 244; *Amar Singhji* v. *State of Rajasthan*, AIR 1955 SC 504, 526; *Radha Kissen* v. *Durga Prasad*, AIR 1940 PC 218; *Commissioner of Income-tax, Bombay* v. *Bombay Corporation*, AIR 1930 PC 54; *Triloknath* v. *State*, AIR 1950 All 657, 659; *Emperor* v. *Atmaram*, 31 Bom 480, 490; *Ramdayal* v. *Shankar Lal*, AIR 1951 Hyd 140 (FB); *Mahadeosa Makamansa* v. *Deputy Commissioner, Amraoti*, AIR 1954 Nag 217; *Income-tax Officer* v. *Alfred*, AIR 1952 SC 663. Assessee includes his legal representative and can be penalised; *State of Gujarat* v. *Ramanlal Sankarchand and Co.*, AIR 1965 Guj 60; *Naubatram* v. *Commissioner of Income-tax, M.P.*, 1972 MPLJ 324, 328 (Naik, Actg. C. J.); *State of Bombay* v. *Pandurang Vinayak*, AIR 1953 SC 244.

a word of enlargement and that it ordinarily implies that something else has been included which falls outside the general language and which does not naturally belong to it.[1] In construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate.[2] In the word of Lord Asquith, "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."[3] When a statutory fiction is enacted, it must be given its full effect and one must not allow one's mind to boggle on the ground that some apparent anomaly may arise from the assumption stipulated.[4] With respect to the law relating to the application of statutory fictions to facts, the Court has got in the first instance to determine what are the limits within which and the purposes for which the Legislature has created the fiction. This may be determined from the actual words used in creating that fiction, and those words must be given their literal and full effect, unless in doing so the purposes of creating the fiction are not achieved.[5] It is rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate.[6] When a statute declares that a person or thing shall be deemed to be or shall be

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1. *Chorionso* v. *Sasoon Haligna*, AIR 1969 Ker 11 (FB); *see* also *Dathi Apparao Machati* v. *Digamber Govindrao*, AIR 1968 Bom 361; *Kesava Reddi* v. *Revenue Divisional Officer, Anantapur*, (1966)1 Andh LT 255; *see* also *Alimiya Mahmadmiya* v. *Syed Mahamood Baqur*, AIR 1968 Guj 257; *Premnarayin* v. *Zenab Bai*, 1968 MPLJ 257.

2. *Income-tax Commissioner, Delhi* v. *Teja Singh*, AIR 1959 SC 352, 355, following *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council*, 1952 AC 109, 132 : If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably had flowed from or accompanied it. *See* also *Sheik Jumrati* v. *S. B. Banerjee*, 66 CWN 891 (FB); *Govinda Iyer* v. *Villupuram Municipality*, AIR 1962 Mad 290, as to the effect of Section 250 and Section 321(11) of the District Municipalities Act; *Jumrati* v. *S. B. Banerjee*, AIR 1962 Cal 525, 528 (FB) (Sinha, J.); *G. Viswanathan* v. *Hon'ble Speaker, Tamil Nadu Legislative Assembly*, (1996)2 SCC 183 : (1996)1 SC 323, referring to *M. Venugopal* v. *Divisional Manager, LIC*, (1994)2 SCC 323 : 1994 SCC (L & S) 664 : (1994)27 ATC 84; *Md. Iqbal Madar Sheik and others* v. *State of Maharashtra*, 1996 JIC 499 (SC) : (1996)1 East Cri Cases 516.

3. *In the matter of* reference made by Shri Ravi Nandan Sahay, Sessions Judge, Patna, (1993)1 BLJR 750 : (1993)3 Recent Cri R 456 (Pat) : 1993 Cri LJ 2436 (FB); *Venugopal, M.* v. *Divisional Manager Life Insurance Corporation of India, Machilipatnam, A.P.*, (1994)2 LW 23 (SC); *Governing Body of Paramananda College, Bolagarh* v. *State of Orissa*, (1992)73 Cut LT 451; *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council*, 1952 AC 109 at pp. 132-33, quoted in *Ahmad Raza Khan* v. *Bhola Prasad*, (1979)27 BLJR 699 at 705 (DB).

4. *Sain Ditta Mal* v. *Union of India*, AIR 1982 Delhi 509.

5. *Mahadeosa Makamansa* v. *Deputy Commissioner, Amraoti*, ILR 1954 Nag 341 : AIR 1954 Nag 217; *Ahmad Raza Khan* v. *Bhola Prasad*, (1979)27 BLJR 699 (DB).

6. *Shital Rai* v. *State of Bihar*, AIR 1991 Pat 110 (FB) : (1990)1 BLJR 719 : 1990 BLJ 470, over-ruling *Bhola Choudry* v. *State of Bihar*, (1988) PLJR 692.; *S. Rangaraj* v. *R. R. Subbayan and others*, (1990)1 LW 70; *S. Appukuttan* v. *Thundiyil Janaki Amma*, AIR 1988 SC 587 : (1988)1 JT 154; *Krishna Bhagwan* v. *State of Bihar*, AIR 1989 Pat 217 : (1989) Pat LJR (HC) 507 (FB); *Ram Prasad Chaudhary* v. *State of U.P.*, AIR 1987 All 169 : 1986 All LJ 916 : 1986 All Cri R 124 : 1986 All WC 198 : 1986 All Cri C 186 (FB); *Oriental Insurance Co. Ltd.* v. *Dinabandhu Pradhan*, AIR 1994 Ori 177 (DB); *Commissioner of Income-tax, Delhi* v. *Teja Singh*, AIR 1959 SC 352, quoting *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council*, 1952 AC 109, 132, Lord Asquith : "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably had flowed from or accompanied it...The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to *boggle*

treated as something which in reality it is not, it shall have to be treated as so during the entire course of the proceeding. If an order under Section 4(1) of the Assam Urban Areas Rent Control Act, 3 of 1946, has to be regarded as tantamount to a decree for purposes of appeal, the order on appeal will have the same status as though the appeal were from a decree and therefore notwithstanding the absence of any express provision for second appeal in Section 9 the effect of carrying the provisions of that section to their logical conclusion would be that the order under Section 4(1) which has to be deemed as a decree would result in an appellate decree if appealed from and therefore a second appeal would lie if the case is covered by the provisions contained in Section 100, C.P.C. The case is also governed by the principle that when a dispute is referred to an established Court without any limitations, the ordinary incidents of procedure in that Court, including any general right of appeal from its decision, attach thereto.[1]

A legal fiction could validly be carried to its logical conclusions; and to hold that the fiction embodied is the expression 'as if it were a decree passed by heir' amounts to making an order of eviction a decree of the Munsiff and therefore of a Civil Court, is only to give full play to the fiction and the object of its section. This construction would attract not only the provisions of C.P.C. but also of Limitation Act.[2] The effect of a legal fiction is that a position which otherwise would not obtain is deemed to obtain under these circumstances.[3]

In *Industrial Supplies Pvt. Ltd.* v. *Union of India*,[4] the Supreme Court has tersely put thus : "It is now axiomatic that when a *legal fiction* is incorporated in a statute, the court has to ascertain for what purpose the fiction is created. After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical fiction. The court has to assume all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. The legal effect of the words 'as if he were' in the definition of owner in Section 3(*n*) of the Nationalisation Act read with Section 2(1) of the Mines Act is that although the petitioners were not the owners they being the contractors for the working of the mine in question were to be treated as such in fact they were not so."

As Explanation 11-A has been specifically provided for giving greater thrust to the intendment of the legislature, the Explanation warrants a liberal and purposive interpretation so as to fulfil the object of the legislation and comply with legislative intent.[5]

All that Section 193(4) of Punjab Municipal Act, 1911 says is that the unsanctioned plan will be treated as duly sanctioned. It is a case of deemed sanction. The statute introduces a legal fiction for certain purposes and it would not be legitimate to travel beyond that purpose. Fiction is an assumption or supposition of Law that something which is or may be false is true, or that a state of facts exists which has never really taken place. The state of things does not accord

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when it comes to the inevitable corollaries of that state of affairs. When a statute requires that something shall be deemed to be that which it is not, it is frequently not difficult to conjure up illustrations which may seem to reduce to absurdity the requirement of the statute; but that does not relieve a Court of its duty to make the hypothesis which the statute demands;" *R.* v. *Cox*, (1961)3 All ER 1194, 1199 (that the motor vehicle was being driven on road in England whereas it was in fact being driven on a road in Germany).

1. *Malchand* v. *Santolal*, AIR 1954 Assam 177; *Commissioner of Income-tax, Bombay* v. *Bombay Trust Corporation*, AIR 1930 PC 54; *Chipping etc., Ltd.* v. *Zambre*, AIR 1969 Bom 274, 281.
2. *M. V. Ali* v. *Kunjanamma Philipose*, 1975 Ker LT 527.
3. *K. Kamraj Nadar* v. *Kunju Thevar*, AIR 1958 SC 687.
4. AIR 1980 SC 1858 : (1980)4 SCC 341.
5. *S. Appukuttan* v. *Thundiyil Janaki Amma*, AIR 1988 SC 587 : (1988)1 JT 154 and *Krishna Bhagwan* v. *State of Bihar*, AIR 1989 Pat 217 : (1989 Pat) LJR (HC) 507 (FB).

with the actual facts of the case. The fiction in the realm of law has a defined role to play and it cannot be stretched for a point where it loses the very purpose for which it is invented and employed. The fiction is strictly limited to the present and is introduced for the sake of justice. It does not import the doctrine of relation back. It has no relation with the past. If it is held that the plan will be deemed to have been sanctioned in 1971, it will work injustice and shall be contrary to the real truth and substance of the thing. It will object the beneficial purpose for which the fiction has been employed.[1]

When by a legal fiction, a manager is deemed to be an owner of the endowment, it is immaterial whether he is lawfully in management or unlawfully.[2] In the absence of a specific provision it is not proper to import a fiction in favour of the State and to so interpret the fiscal statute as to cause hardship to the tax-payer by increasing the burden of tax upon him.[3]

When the Legislature says that rules, regulations and bye-laws which have been framed under the statutory power conferred by the Act "shall have effect as if enacted in this Act', it is adopting the well-known device of legal fiction whereby we are bidden to treat 'Rule' not framed under the Act as the 'Rules' framed under the Act. In such cases canons of construction which are usually applicable for interpreting legal fictions will have to be resorted to.[4] In the case of *Govind Prasad* v. *Bahoran Lal Jindal*,[5] it was held on facts that the legal fiction created was not applicable and that such a construction did not render the section nugatory.

If the deeming provision is invalid, all the ancillary provisions fall to the ground along with it. And if the latter Act is entirely dependent upon the continuing existence and validity of the earlier Act, which is held to be unconstitutional and has no legal existence, the provisions of the latter Act are incapable of enforcement.[6] When certain provisions of an Act are by means of a legal fiction deemed to have been imposed under the provisions of another Act, and the structure of that Act is thereby made applicable, what the courts really have is an instance of referential legislation by means of a legal fiction and not of incorporation proper of one statute in another.[7]

Rules of construction is 'hunt in pairs' so in construing a provision creating a statutory fiction, two rules operate : the statutory fiction should be carried to its logical conclusion but the fiction cannot be extended beyond the language of the section by which it is created or by importing another fiction. The solution is found by harmoniously applying the rules.[8]

Once a fiction arises, full effect to that legal fiction will have to be given and as observed by the House of Lords 'imagination would not be allowed to boggle' because of a peculiar situation which arises by the operation of the fiction.[9] The only limit on the power of a

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1. *(Mrs.) Daya Wanti Punj* v. *New Delhi Municipal Committee*, AIR 1982 Delhi 534 (DB).
2. *Balakrishnamurthi* v. *Sambayya*, AIR 1959 Andh Pra 186, 191 (Ranganadham Chetty, J.).
3. *Rajshri Pictures* v. *Income-tax Commissioner*, AIR 1963 Raj 251, 255 (Dave, J.).
4. *State of Madhya Pradesh* v. *A. K. Jain*, AIR 1958 Mad 162, 165.
5. 1981 All LJ 342.
6. *Deputy Commissioner* v. *Durga Nath*, (1968)1 SCR 561, 580 (Bachawat, J.).
7. *Mohd. Kasim* v. *Asstt. Collector of Central Excise*, AIR 1962 Mad 85, 93 (FB) (Anantanaranayan, J.); *Neithanga* v. *Asstt. Collector of Central Excise*, AIR 1963 Manipur 1, 4 (Tirumalpad, J.C.).
8. *Commissioner of Income-tax* v. *Chhotelal Kanhiyalal*, (1971)2 ITJ 347, 351 (C. P. Singh, J.).
9. *Union of India* v. *Jalyan Udyog*, AIR 1994 SC 88 [(1987)32 ELT 697 (Bom) and (1987)30 ELT 118 (Cal) over-ruled]; *see* also *Syidabad Tea Co. Ltd.* v. *State of Bihar*, (1983)1 SCC 30, where logical effect was given; *Chandubhai Jematbhai* v. *Gujarat State Co-op. Land Development Bank Ltd., Senkheda*, (1981)22 Guj LR 807; *M. V. Ali* v. *Kunjannamma Philipose*, 1975 Ker LT 527.

Legislature to create a fiction is that it should not transcend its power by its creation.[1] A deeming provision cannot be pushed too so far as to result in a most anomalous or absurd position.[2]

It must be remembered that legal fictions are created for a particular and definite purpose, and they are to be limited to the very purpose for which they are created. They should not be extended beyond that legitimate field.[3] The fiction should, of course, be carried to its logical conclusion, but must be within the framework of the purpose for which it is created.[4] A part is always a part and never the whole, and no amount of fiction can alter that fact.[5] Fiction cannot be resorted to for the purpose of interpreting statutory provisions.[6]

Legal fiction.—It is a settled rule that a deeming fiction should be confined only for the purpose for which it is meant, said the Supreme Court while interpreting Section 5 of the Prevention of Corruption Act.[7]

Double fiction.—The creation of statutory fictions may compel the Court to adopt the principle of *mutatis mutandis*. For instance, there may be two fictions created by a section of an Act : one, that the Act shall be deemed to have commenced on a particular anterior date, and the other, that the notification issued under the earlier Ordinance shall be deemed to have been issued under the later Act. Unless the word 'Ordinance' herein is read as an 'Act', the Court cannot give full effect to the twin fictions created by the Act.[8]

Meaning conclusive.—Where in the same statute the Legislature defines the meaning of the words used, it expresses most authoritatively its intent and its definitions and construction is binding on the Courts. If the rules applicable to a matter contain an interpretation clause and such clause provides that the rules shall be taken to mean what the President may interpret their meaning to be, it would seem to follow that the party subject to those rules shall accept the President's interpretation of the rules and that what the party is really governed by is not the rules, as such, but the rules as interpreted by the President.[9] Such internal legislative construction is of the highest value and prevails over executive or administrative construction and other extrinsic aids.[10]

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1. *Chandrana & Co.* v. *State of Mysore*, (1972)2 SCR 344, 351 (Mathew, J.).
2. *Ashok Ambu Parmar* v. *Commissioner of Police, Badodara City*, AIR 1987 Guj 147 : 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 (FB); *K. S. Dharmadatan* v. *Central Government*, 1979 Ker LT 621 (SC).
3. *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661.
4. *Commissioner of Income-tax, Gujarat* v. *Bai Vina*, (1965)6 Guj LR 583; *Mohammad Jaffar Sahib* v. *Palaniappa Chettiar*, ILR 1964 Mad 34 : (1964)1 MLJ 112 : 76 MLW 582; *Navnit Lal Pitambardas* v. *Bhagwandas Gordhan Das Gandhi*, 1977 MPLJ 115.
5. *Sampathkumari* v. *Lakshmi Ammal*, ILR 1962 Mad 882 : 75 MLW 689 : (1962)2 MLJ 464; *Merchants Bank, Ltd.* v. *Dharmasambarthani*, AIR 1966 Mad 26, 29 (Ramamurthi, J.); *Vadilal* v. *Commissioner of Income-tax, Gujarat*, 86 ITR 28 (SC); *Commissioner of Income-tax* v. *Amarchand*, 1963 (Sup) 1 SCR 699.
6. *Seshamma* v. *Ramakoteswara*, AIR 1958 Andh Pra 280, 284 (Bhimasankaram, J.).
7. *K.S. Dharmadatan* v. *Central Government*, (1979)4 SCC 204; see also *Cambay Electric Supply Industrial Co.* v. *Commissioner of Income Tax, Gujarat*, (1978)2 SCC 644; *Ram Charan* v. *State*, AIR 1979 All 114 : 1979 All LJ 166 : 1978 WC 677 : (1978)4 All LR 819 (FB); *Ramanshai* v. *Vaghasai*, AIR 1979 Guj 149 : (1979) 20 Guj LR 268 (FB); *Achary* v. *Rappai*, AIR 1979 Ker 34 : 1979 Ker LT 130 (FB); *Amsalal* v. *Mangalbhai*, AIR 1978 Guj 208; *Nand Kishore* v. *Mahabir*, AIR 1978 Ori 129 : (1977) 44 Cut LT 505 : (1977)2 Cut WR 667.
8. *Jute & Gunny Brokers, Ltd.* v. *New Central Jute Mills Co. Ltd.*, AIR 1959 SC 569, 572.
9. *Basanta Kumar Pal* v. *Chief Electrical Engineer*, 62 CWN 765.
10. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 3002 at pp. 222-223. The word 'define' does not mean 'enumerate'. It is equivalent to 'declare'; *Dill* v. *Murphy*, (1864)1 Moo PCC (NS) 487, 514.

Caution.—A statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. It is thus not safe to adopt the process of etymological dissection and after taking words out of their context and applying definitions given by lexicographers to proceed to construe the statute on the basis of such definitions. Parliamentary enactments must be *construed as a whole* and their meaning attributed to words should, as a general rule, be inspired by the context[1] and the nature and object of the subject-matter, for the words may be enlarged or restricted to harmonise with the provisions of the statute.[2]

The problem of definition, however, is not an easy one—for it never stops. Inevitably, the definition must itself be defined, and the definition itself will need interpretation. Thus Lord Denman said :[3] "We cannot refrain from expressing a serious doubt whether interpretation clause will not embarrass the Courts in their decision rather than afford that assistance which they contemplate. For the principles on which they themselves are to be interpreted may become matters of controversy; and the application of them to particular cases may give rise to endless disputes."

Interpretation of definition.—It is a settled principle of law that if a term stands defined in the Act, the said term is to be given the same meaning wherever it is needed in the Act, unless a contrary intention is expressed.[4] A phrase having been introduced, and then defined, the definition *prima facie* must entirely determine the application of the phrase; but the definition must itself be interpreted before it is applied, and interpreted, in case of doubt, in a sense appropriate to the phrase defined and to the general purpose of the enactment.[5] There is no doubt that when an Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute, and if that word is defined, then it will ordinarily have that meaning assigned to it in the definition clause.[6]

"Whereas in a definition section of a statute a word is defined to mean a certain thing. Wherever that word is used in that statute, it shall mean what is stated in the definitions unless the context otherwise requires. But where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable

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1. *Vikram Yashwant* v. *Eknath Trimbak Godakar*, 1977 Mah LJ 520.
2. *Gulzara Singh* v. *Tej Kaur*, AIR 1961 Punj 288, 291.
3. *Reg.* v. *Justices*, 112 ER 551 (1838), *see* Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 3002 at p. 223. This unwillingness to be bound by legislative decision has led Courts to ignore definition sections, to hold that the 'words of the Act' control the definition section, or to hold that definition is an usurpation of the judicial function. [*Ogden* v. *Blackledge*, (1804)2 Cranch (6 US) 272 : 2 L Ed 276], Those positions, so far as definitions contained within the challenged Act are concerned, are not only unsound, but are outrageously so. To ignore a definition section is to refuse to give legal effect to a part of the statutory law of the State. To hold that "The words of the Act control the definition section is to declare that the legisltive intent is exactly the opposite of that declared by the Legislature. To hold that a definition incorporated into an Act is an usurpation of the judicial function is to hold that intention is a judicial question." Fortunately the modern decisions reflect better understanding of and greater desire on the part of the Courts to co-operate with the Legislature in the proper integration of the legislative and judicial functions. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 3002 at pp. 323-324. "The whole object of an interpretation clause," observed Lord Greene in *Hood Barrs* v. *I.R.C.*, (1946)2 All ER 768, 773, "expressed in this way I should have thought was to give a word, which, for the sake of convenience, is used in the body of the section, an extended meaning which it would not otherwise bear."
4. *Shyam Vir Singh* v. *State of U.P.*, 1978 All WC 263.
5. *Cadija Umma* v. *Manis Appu*, AIR 1939 PC 63, 65, *per* Sir George Rankin.
6. *State of Punjab* v. *Kesari Chand*, (1987)1 Recent Cri R 297 (P&H) (FB), relying on Craies on Statute Law, 7th Ed. page 213; *Probandar Nagar Palika* v. *V. G. Patel*, (1975)16 Guj LR 963.

but it also bears its extended statutory meaning. At any rate, such expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect."[1]

We are not concerned with any presumed intention of the Legislature; our task is to get at the intention as expressed in the statute. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of the definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended.[2] Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined. A definition clause, however, does not enlarge the scope of the Act containing it.[3] Where the definition of a word gives it an extended meaning, the word is not to be interpreted by its extended meaning every time it is used, for the meaning would depend on the context. Thus, the word 'tenant' does not always include a 'sub-tenant.'[4] If the context so requires a word or expression may be given a meaning not covered by the definition clause.[5]

Definition has to be understood in the context and its light of the phraseology used.[6]

The phrase duly sealed not defined anywhere in the Act or Statute though the word 'sealed' has been defined as meaning 'sealed with sealing wax'. The phrase has to be understood in context of this definition it would mean 'duly sealed with sealing wax'.[7]

The phrase 'essential supply or service' being beneficial in nature is given wider meaning.[8]

There is another way of looking at the problem. Let us assume that the definition clause is so worded that the requirements laid down therein are fulfilled, whether we give a restricted or a wider meaning : to that extent there is an ambiguity and the definition clause is readily capable of more than one interpretation, what then is the position? We must then see what light is thrown on the true view to be taken of the definition clause by other provisions of the Act or even by the aim and provision of subsequent statutes amending the Act or dealing with the same.[9] To define a word by using the word 'defined' offends against all canons of interpretation.[10]

It would be clearly wrong for a Court to lay down a rigid definition and thereby to crystallize the law, when the Legislature for the best of reasons, has not defined that expression.[11]

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1. *S. K. Gupta* v. *K. P. Jain*, (1979)3 SCC 43 : AIR 1979 SC 734 quoted in *N. K. Jain* v. *C. K. Shah*, AIR 1991 SC 1289 : 1991 Cri LJ 1347 : 1991 Lab IC 1013 : (1991)2 JT 52 (2) : (1991)2 SCC 495 : 1991 AIR SCW 960.
2. *Hariprasad* v. *A. D. Divelkar*, AIR 1957 SC 121.
3. *Pappathi Ammal* v. *Nallu Pillai*, AIR 1964 Mad 173 (FB).
4. *Kanhailal* v. *Ganeshbai*, 1963 MPLJ (Notes) 228; *Hazuri Singh* v. *Sardar Vijay Singh*, ILR 1963 Madh Pra 132 : 1963 Jab LJ 714.
5. *M/s. Bharat Steel Tubes Ltd.* v. *State of Haryana*, (1977)79 Punj LR 340 (FB).
6. *Administrator, Krishi Upaj Mandi* v. *State of M.P.*, 1982 JLJ 684.
7. *R. R. P. Singh* v. *Awadhesh Pratap Singh University, Rewa*, AIR 1986 MP 115 : 1986 MPLJ 169 : 1986 Jab LJ 294.
8. *Veera Raj* v. *S. P. Sachdeva*, AIR 1985 Del 300 : 1984 Raj LR 383 : (1985)8 Del Rep J 272 : (1985)27 DLT 340 : (1985) Cur CC 805.
9. *Hariprasad* v. *A. D. Divelkar*, AIR 1957 SC 121, 126-7; *see* also *Ram Saroop* v. *S. P. Sahi*, AIR 1959 SC 951, 958.
10. *Madura Devasthanam* v. *Madura Municipality*, AIR 1928 Mad 569, 570 : ILR 51 Mad 301.
11. *Krishna Charan Barman* v. *Sarat Kumar Das*, ILR 44 Cal 162, 178, *per* Mookerjee, J.

It should not disturb plain meaning of words.—Interpretation clauses are not to be construed as positive enactments.[1] An interpretation clause is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary to be applied to something to which it would not ordinarily be applicable.[2] But there is nothing to prevent the declaration of a particular meaning to a word in an interpretation clause also containing in it a positive enactment. A definition may be in one part declaratory and a positive enactment in the other part.[3] The definition should be used only for interpreting words which are ambiguous or equivocal and so as not to disturb the meaning of such as are plain. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition, but there must be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.[4]

It is recognised in England to be a rule with regard to the effect of interpretation clause of a comprehensive nature that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances, but merely as declaring what may be comprehended with the term where the circumstances require that they should.[5] In *Meux* v. *Jacobs*,[6] Lord Selborne said : "It appears to me that the interpretation clause does no more than say that, where you find those words in the Act, they shall, unless there be something repugnant in the context or in the sense include 'fixture'." Das, J., in *Pratap Singh* v. *Gulzari Lal*,[7] quoted Craies on *Statute Law* as saying "another important rule with regard to the effect of interpretation clause is, that an interpretation clause is not to be taken as substituting one set of words for another or as strictly defining what the meaning of a term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended."

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1. *Manik Ram Ahir* v. *Emperor*, 38 IC 964 (Patna); Bonnerji (TLL) : Interpretation, p. 205, r. 7.
2. *Commissioner of Gift Tax* v. *Getty Chettiar*, (1972)1 SCR 736, 742 (Hegde, J.).
3. *Pritpal Singh* v. *Chief Commissioner of Delhi*, AIR 1966 Punj 4 : ILR (1965)1 Punj 225 (FB).
4. *Rajasthan State Electricity Board* v. *Labour Court, Rajasthan*, AIR 1966 Raj 56.
5. *Queen* v. *Justices of Cambridgeshire*, (1838)7 Ad & E 480, 491, *per* Lord Denman; *Meux* v. *Jacobs*, 1875 LR 7 HL 481, 493, *per* Lord Selborne; *Mayor of Portsmouth* v. *Smith*, (1885)10 AC 364, 375, *per* Lord Waston; *Emperor* v. *De'Souza*, ILR 35 Bom 412, 417, *per* Scott, C. J.
6. 1875 LR 7 HL 481.
7. AIR 1942 All 50, 65 : ILR 1942 All 185 (FB).
8. *Queen* v. *Justices of Cambridgeshire*, (1838)7 Ad & E 480, 491, *per* Lord Denman; *Meux* v. *Jacobs*, 1875 LR 7 HL 481, 493, *per* Lord Selborne; *Mayor of Portsmouth* v. *Smith*, (1885)10 AC 364, 375, *per* Lord Waston; *Emperor* v. *De'Souza*, ILR 35 Bom 412, 417, *per* Scott, C. J.
9. 1875 LR 7 HL 481.
10. AIR 1942 All 50, 65 : ILR 1942 All 185 (FB).

a term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended."

His Lordship proceeded to observe : "But I do not understand it to be the law that interpretation clause must necessarily apply wherever the word 'interpreted' is used in the statute and in spite of the fact that there are indications in the statute and in the section where it occurs to control and modify and explain the meaning of the word in a different sense than what is borne out by the interpretation clause." It is by no means the effect of an interpretation clause that the thing defined shall have annexed to it every incident which may seem to be attached to it by any other Act of the Legislature.[1]

It should not be repugnant to context.—Definitions given in the Act should be so construed as not to repugnant to the context and as would not defeat or enable the defeating of the purpose of the Act.[2] The definition in a statute must be read in its context and in the background of the scheme of the statute and the remedy intended by it. All these control the definition.[3] A definition clause in a statute does not necessarily apply in all possible contexts of the other provisions of the statute.[4]

It is an established principle of construction that statutory interpretation clauses or definitions should be read subject to qualifications therein expressed. This is so even where the definition is exhaustive. So, where the defined word means or includes a certain thing, it may well be otherwise if the subject or context in any part of the statute so requires. Therefore, normally definitions are enacted subject to qualifications such as "unless there is anything in the subject or context." But it is quite unusual to say that a statutory definition does not mean or include what it plainly means or includes,[5] particularly when its application to the various provisions of the Act does not present much difficulty.[6]

Words like 'unless there is anything repugnant in the subject or context' are usually inserted in modern drafting. Even if there be no such words used they are always to be implied and little weight is to be attributed to such an omission. Some such words are to be implied in all statutes[7] where the expressions which are interpreted by a definition clause are used in a number of sections with meaning sometimes of a wide and sometimes an obviously limited character.[8]

An interpretation clause of a comprehensive character is not to be taken as strictly defining what the meaning of a word must be under all circumstances but merely as declaring what things

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1. *Umachurn Bag* v. *Ajadannissa Bibee*, ILR 12 Cal 430, 433.
2. *Kanniyan* v. *Income-tax Officer*, (1968)68 ITR 244 (SC) : (1968)2 SCR 103; *Pushpa Devi* v. *Milkhi Ram (died) by his LRs*, (1990)2 SCC 134; *Commissioner of Income-tax* v. *J.I.H. Gotla*, (1988)156 ITR 323 (SC) : (1985)4 SCC 343; *State of Kerala* v. *Malayala Manorama*, (1994) Ker LT 992 (SC); *K. V. S. Vasan Bros.* v. *Official Liquidator, Associated Banking Corporation of India, Ltd.*, AIR 1952 TC 170; *Official Liquidator* v. *Jugal Kishore*, AIR 1939 All 1; *Subodh Chandra Das* v. *Panchu Khan*, ILR 33 Pat 49 : AIR 1954 Pat 367.
3. *Employers of the Osmania University* v. *Industrial Tribunal*, AIR 1960 AP 388, 391.
4. *R. Balakrishna Rao* v. *Haji Abdulla Sait*, (1980)1 Rent CJ 179 (SC).
5. *S.K. Gupta* v. *K. P. Jain*, AIR 1979 SC 734 at p. 743 : (1979)3 SCC 54 : 1979 Tax. LR 2053 : (1979)2 SCR 1184 : (1979)49 Com Cas 342; *Thakur Manmohan Deo* v. *State of Bihar*, AIR 1960 SC 189; *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610.
6. *Madhya Pradesh State Road Transport Corporation* v. *Industrial Court*, AIR 1971 MP 54, 57 (Pandey, J.); quoting *Indian Immigration Trust Board* v. *Govindaswamy*, AIR 1920 PC 114, 116.
7. *Maulana Shamshuddin* v. *Khushilal*, 1978 UJ (SC) 723 at p. 726.
8. *Knightsbridge Estate Trust* v. *Byrne*, 1940 AC 613; *Partap Singh* v. *Gulzari Lal*, AIR 1942 All 50, 65; *Emperor* v. *B. H. De'Souza*, ILR 55 Bom 412, 417; *Bapu Vithal* v. *Secretary of State*, AIR 1932 Bom 370, 374; *Kartik Chandra* v. *Harsh Mukhi*, AIR 1943 Cal 345, 354; *Mohammad Manjural Haque* v. *Biseswar*, AIR 1943 Cal 368; *Narain Das* v. *Karachi Municipality*, AIR 1933 Sind 258, 259.

may be comprehended within the term, where the circumstances require that they should.[1] Section 2(3) of the Madras Shops and Establishment Act, 36 of 1947, mentions bank as within the definition of 'commercial establishment' and Section 2(6) defines 'establishment' as meaning a 'commercial establishment.' Therefore, banks are clearly 'establishment' as defined in Section 2(6). It was contended for the appellant that under Section 2(3) it is not all banks that are 'commercial establishments' but only such of them as are also 'establishments' and that as the appellant is a bank but not an 'establishment' as defined in Section 2*(d)*, it is outside the mischief of the Act. 'The argument', it was pointed out, 'involves that the definition of 'establishment' in Section 2(6) should be bodily imported into the definition of 'commercial establishment' in Section 2(3) and that accordingly when the definition enacts that a 'commercial establishment' means an 'establishment' which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange, it should be read as 'commercial establishment', means restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment, which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange. To limit clerical department of a factory or industrial undertaking or an insurance company, joint stock company, bank, broker's office or exchange, to those which are restaurants and the like would yield no sense and would render the provisions altogether nugatory..... that the interpretation contended for by the appellant is not correct will be plain from Section 2(6) which defines 'establishment' as including 'commercial establishment'. That clearly shows that the definition of 'commercial establishment' in Section 2(3) is not qualified by the word 'establishment'. If it is construed otherwise, the result would be that while under Section 2(3) a 'commercial establishment' is a species of the genus 'establishment' according to Section 2(6) which defines 'establishment' as meaning a 'commercial establishment', the genus would mean the species."[2]

Again, in construing the word 'business' used in the Employment Exchange (Compulsory Notification of Vacancies) Act XXXI of 1959, it was held that the expression need not necessarily be associated only with the carrying of an activity which included profit motive, but that a wider meaning should be given to it so as to include a club run for the benefit of its members also as coming within the scope of the provisions of the Act.[3]

Definition in other Acts.—It is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act of Parliament in the definition clause of other statutes dealing with matters more or less cognate, even when enacted by the same Legislature.[4] Even otherwise, the definition of an expression contained in one enactment cannot furnish any safe guideline for determining the scope and contents of the same expression used in a different context in a separate enactment. This is all the more so than the two enactments have been passed by different legislative bodies.[5] So far as the Courts are concerned they have to gather the intention of the Legislature from the words used by the Legislature in the particular enactment. If the meaning put on those words does not do violence to the objects and purposes of the Act and the language is plain and unambiguous, the Courts will not be justified in putting a different meaning on the words merely because a sister Legislature has in its wisdom thought to enlarge

1. *S.I. Bank* v. *Pichuthayappan*, AIR 1954 Mad 377, 378-79.
2. *S. I. Bank* v. *Pichuthayappan*, AIR 1954 Mad 377, 378, 79.
3. *Cosmopolitan Club, Madras* v. *District Employment Officer*, 1967 MLJ 474.
4. *Adamson* v. *Melbourne Board of Works*, AIR 1929 PC 181, 183 *per* Anglin, C. J.; *Jainarayan Ramkishan* v. *Moti Ram Ganga Ram*, AIR 1949 Nag 34, except in General Clauses Act; *Biswanth Naik* v. *Shaikh Dilbar*, 28 Cut LT 6; *Khazan Singh* v. *President of India*, AIR 1968 Punj 478, where it was observed that such reference is unwarranted.
5. *Sales Tax Officer* v. *P.K. Nair*, 1980 Kar LT 940.

the scope of these words.[1]

Where a special statute, *e. g.*, revenue or tenancy legislation, lays down the definition of a word or class of persons the meaning so given must be given to that word or category of persons wherever it occurs in the statute unless in the context in the same statute it is otherwise indicated.[2]

The definition of expression used in an Act with reference to another Act would remain effective even after the other Act ceases to exist. In other words the operation of the former Act does not depend upon the continued existence or otherwise of the former Act.[3]

It should be confined to the particular Act.—Where a definition is given in an Act, it should be confined as a general rule to interpret the word defined for that Act only and not explain the meaning of the word in other statutes particularly when the two statutes are not *in pari materia*.[4] The definition given in due statute is for effectuating the provisions of that statute and not for effectuating the provisions of another statute. Definition for expression given in an Act cannot be used for purposes of another Act.[5]

It may be applied to statute in pari materia.—When a phrase used in an Act has been used in another Act *in pari materia* in which it is not defined, it should be given the same meaning as in that other Act.[6]

It does not create rights.—The effect of the interpretation clause is to give the meaning assigned by it to the word interpreted, in all places of the Act, in which the word occurs and not to create rights.[7] A *fortiori* must it be so when resort is had for the purpose to the enactments of other Legislature.[8] But power can be conferred by means of a definition clause, it does not need a separate and independent clause to do so.[9]

Definition by court.—The material language of the section has to be always borne in mind, for if a court is prone too much to indulge in exposition and attempted definition, there will be substituted for the language chosen by Parliament some other form of words and in an attempt at wide survey some essential factor be omitted or some inessential factor be substituted or added.[10]

Definition.—The frame of any definition is more often than capable of being made flexible but the precision and certainty in law requires that it should not be made loose but should be kept tight as far as possible.[11]

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1. *Rulia Ram* v. *Fateh Singh*, AIR 1962 Punj 256, 260.
2. *Jeewansinghji* v. *Members of Tribunal*, AIR 1957 Bom 182, 185.
3. *Narottam Das* v. *State of M.P.*, AIR 1964 SC 1667.
4. *Tulsiram* v. *Shaw and R.C. Pal, Ltd.*, 89 CLJ 127; *Guru Prasad* v. *Rly. Board*, (1973)77 CWN 249, 254 (B.C. Mitra, J.).
5. *Cibatul Ltd.* v. *Union of India*, (1980)21 Guj LR 284 (DB).
6. *Ramaciotti* v. *Federal Commissioner of Taxation*, 29 CLR 49, 53.
7. *Lingo Bai* v. *Bansilal*, AIR 1955 Hyd 27 (FB). Definition of Shikmidar in Section 2(2), Land Revenue Act, did not entitle a Pattedar who has failed to get mutation effected in his name to claim a prescriptive right of Shikmidari under Section 67.
8. *Adamson* v. *Melbourne Board of Works*, AIR 1929 PC 181, 183, *per* Anglin, C.J.; *Jainarayan Ramkishan* v. *Motiram Gangaram*, AIR 1949 Nag 34, except in General Clauses Act.
9. *Venkata Ramaiah* v. *State of Andhra Pradesh*, AIR 1964 Andh Pra 416 (Bassi Reddy, J.).
10. *Menna* v. *Lachhman*, AIR 1960 Bom 418, 423. This seems peculiarly applicable to matrimonial offences of desertion and cruelty, causes relating to which are by far the most common of the matrimonial causes contested before the courts. The circumstances vary infinitely from case to case and the modes of life involved at times present sharp contrasts. The importance, therefore, of satisfying the language of the section cannot be overstressed in a breach of the law which has been predominantly judge-made.
11. *S.K. Gupta* v. *K.P. Jain*, AIR 1979 SC 734 : (1979)3 SCC 54 : 1979 Tax LR 2053 : (1979)2 SCR 1184 : (1979)49 Com Cas 842; *Kalya* v. *Genda*, (1976)1 SCC 304.

The word 'includes' is generally a word of extension.[1]

As the words 'person' and 'residence' in Kerala Land Reforms Act, 1964.[2]

Definition of an expression in one particular Act cannot be imported into another Act if the latter does not define that expression.[3] It is not only impermissible but indeed dangerous while interpreting over *Act to travel beyond the same and apply definitions of other Acts except those of the General clauses Act* or to seek the meaning of a word used in an Act in the definition clauses of another statute even though dealing with cognate matter by the same Legislature.[4]

Definitional clause in a statute is a 'small dictionary'. Meaning given to a particular expression by this clause is always subject to the context.[5]

6. Headings.—*Akin to Preamble of an Act.*—The heading prefixed to sections or set of sections are Preambles to those sections,[6] Pollock, C.B., in *Bryan* v. *Child*[7] observed : "The question is whether the 137th Section may not be construed differently, by reference to the mode recently introduced in statutes, namely, by having certain clauses connected by a sort of Preamble to each separate set of clauses, which Preamble may really operate as part of the statute. The question then is whether the introductory Preamble to that set of clauses, beginning with the 133rd section and terminating with 138th Section is to be read as incorporated with each of those sections. In my opinion it must, in order to ascertain what the meaning of the Legislature was, and so reading the statute, there is no difficulty in construing it." "As might have been expected," opined Baron Channell, as one of the Judges summoned to the House of Lords in *Eastern Counties Ry, Companies* v. *Francis Marriage*,[8] "the enactment contained in the statute embraces various objects or purposes". Headings are not analogous to marginal notes of the sections in an enactment but are descriptions of the articles mentioned in that class.[9]

Heading of a fasciculus of sections.—It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision, they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and

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1. *South Gujarat Roofing Tiles* v. *Gujarat State*, (1976)4 SCC 601.
2. *State* v. *A.K.V.S. Samithi*, AIR 1979 Ker 113 : 1979 Ker LT 1 (FB); *see* also *Syed Abbas* v. *Mushtiri*, AIR 1978 Mad 27 : (1977)1 Mad LJ 255 : (1977)90 Mad LW 318; *Shivacharan* v. *State*, AIR 1976 Punj 262; *Haridas Mundhra* v. *Mahabir*, AIR 1975 Cal 357; *Gurdit* v. *State*, AIR 1975 Punj 189.
3. *Union of India* v. *R.C. Jain*, AIR 1981 SC 951 : (1981)2 SCC 308 : (1981)1 SCWR 376 : (1981)2 SCJ 58 : (1981) Lab IC 498; *Parvatibai* v. *Maharashtra Revenue Tribunal*, AIR 1995 Bom 19.
4. *Kundori Labour Co-op. Society Ltd.* v. *State of Bihar*, AIR 1986 Pat 242 : 1986 BB CJ (HC) 280 : 1986 BLJ (Rep.) 106 : 1986 Pat LJR 837 (FB).
5. *S. Laxmana Rao* v. *D. China*, AIR 1980 Andh Pra 191 : (1980)1 Andh Pra LJ 928 : (1980)1 Andh LT 466 : (1980)2 Andh WR 86.
6. *Official Assignee* v. *Chuniram Motilal*, AIR 1933 Bom 51, 57 : ILR 1933 Bom 346, *see* Maxwell : *Interpretation of Statutes*, 12th Ed.; *see* also *Mst. Savitri Devi* v. *Dwarka Prasad*, AIR 1939 All 305, 307; *Durgadas* v. *State*, 56 Bom LR 188; *Fletcher* v. *Birkenhead Corporation*, (1907)1 KB 205, 218; *Martins* v. *Fowler*, 1926 AC 746, 750, *per* Lord Darling; *Union Steamship Co. of New Zealand* v. *Melbourne Harbour Trust Commissioner*, (1884)9 AC 365; *Ramashanker* v. *Sindri Iron Foundry*, AIR 1966 Cal 512, 530; *Salaam M. Bavazier* v. *Md. Azgaruddin*, AIR 1995 Andh Pra 312, referring to *Bhinka* v. *Charan Singh*, AIR 1959 SC 960 : 1959 Cr LJ 1223 : 1959 All LJ 557 (SC).
7. (1850)5 Exch, 368 at p. 374 : 19 LJ Ex 264.
8. (1862)9 HLC 32 at p. 41, approved by Lord Wensleydale; quoted in *Janki Singh* v. *Jagan Nath*, AIR 1918 Pat 398, 409 (FB); *Mallikarjuna Rao* v. *Official Revceiver*, ILR 1938 Mad 1063 : AIR 1938 Mad 449, 453, 454; *Chunnilal* v. *Sheo Charan Lal*, AIR 1925 All 787, must be read in the light of *Durga* v. *Narain*, ILR 54 All 220 : AIR 1931 All 597, 599 (FB).
9. See *Municipal Corpn. for Greater Bombay* v. *Monopol Chemicals Pvt. Ltd.*, AIR 1988 Bom 217 : 1988 Mah LJ 353 : (1988)25 Reports 294 : 1988 Mah LR 884 : (1988)2 Land LR 384 : (1988)3 Bom CR 197 (FB), overruling AIR 1987 Bom 321.

unambiguous, nor can they be used for cutting down the plain meaning of words in the provision. Only in the case of ambiguities or doubt the heading or sub-heading may be referred to as an aid in construing the provision, but even in such a case it could not be used for cutting down the wide application of the clear word, used in the provision.[1]

Heading and title.—That the heading fails to refer to all the matters which the framers of the section wrote into the text is not an unusual fact. The heading is but a shorthand reference to the general subject-matter involved. While accurately referring to a particular subject, it neglects to reveal that the section also deals with cognate and allied matters. But headings and titles are not meant to take the place of the detailed provisions of the text. Nor are they necessarily designed to be a reference guide or a synopsis. Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a most general manner; to attempt to refer to each specific provision would often be ungainly as well as useless. As a result, matters which deviate from those falling within the general pattern are frequently unreflected in the headings and titles. Factors of this type have led to the wise rule that the title of a statute and the heading of section cannot limit the plain meaning of the text.[2] For interpretative purposes they are of use only when they shed light on some ambiguous word or phrase. They are but tools available for the resolution of a doubt. But they cannot undo or limit that which the text makes plain.[3]

Heading 'Miscellaneous'.—The part of the statute placed under the heading 'Miscellaneous' indicates that the sections in that part cannot be allocated wholly to a part dealing with specific subjects, for the reason that the section entirely fall outside the other parts or for the reason that they cannot entirely fall within a particular part.[4]

As key to the construction thereof.—In different parts of the Act there are to be found classes of enactments applicable to some special object. Such enactments are, in many instances, preceded by a heading, special no doubt in one sense, as addressed to the object or purpose, but where not otherwise provided for, general in its application to the enactments passed to accomplish the object. These various headings are not to be treated as if they were marginal notes, or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself. They may be read, I think, not only as explaining the sections which immediately follow them, as a Preamble to a Statute may be looked to, do explain its enactments, but as affording as it appears to me a better key to the construction of the sections which follow than might be afforded by a mere Preamble.[5] The *title of a chapter* is not a determining factor regarding the interpretation of the provisions of a section in the chapter but the title certainly throws considerable light upon the meaning of the section and where it is not inconsistent with the section one should presume that the title correctly describes the object of the provisions of the Chapter.[6] Chapter headings unlike marginal notes, are admissible in

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1. *M/s. Frick India Ltd.* v. *Union of India*, AIR 1990 SC 689. *Siba Shankar Sahu* v. *Utkal Asbestos Ltd.*, (1994)1 OLR 165 (Orissa).
2. *Chandroji Rao* v. *C.I.T.*, AIR 1970 SC 1582.
3. *Godrej & Boyce Mfg. Co. Pvt Ltd.* v. *Municipal Corporation of Greater Bombay*, AIR 1992 Bom 104 : 1992 Mah LJ 827; *Railroad Trainmen* v. *Baltimore and Ohio Railroad Co.*, 91 L Ed 1646, 1652 : 331 US 519 (*per* Murphy, J.); *see* also *Cornell* v. *Coyne*, 192 US 418, 430 : 48 L Ed 504, 509; *Strathearn etc. Co.* v. *Dillo Dillon*, 252 US 348, 354.
4. *Rajya Parivahan Karmachari Mahasangh* v. *State of M.P.*, 1983 MP LJ 68 (DB); *Mahijibhai Mohanbhai* v. *Patel Manibhai*, AIR 1965 SC 1477.
5. Craies on *Statute Law*; *Bhinka* v. *Charan Singh*, AIR 1959 SC 960; *Ramesh Kumar* v. *State of M.P.*, 1983 MPLJ 204.
6. *Ramesh Kumar Mishra* v. *State of M.P.*, 1983 Jab LJ 358; *Bhushan Lal Sahu* v. *Jamnadas Sukhwani*, 1983 Jab LJ 722; *Dwarka Prasad* v. *B.K. Roy*, AIR 1950 Cal 349.

the construction of a statute.[1]

Cannot restrict the meaning of sections.—If the language of a section is clear, *headings* are not to be taken into consideration.[2] Though there is authority for the proposition that the mere heading of a Chapter is to be dealt with as though it were a Preamble, yet it cannot be used to cut down the clear words of the section which are contained in the Chapter.[3] Although the heading of a section or a marginal note could not control the clear language of the section,[4] a due consideration must be given to the heading and the marginal note for the purpose of arriving at a conclusion as to what according to the Legislature was the purpose of enacting the section.[5] Thus, limited use of the heading as an aid to construction may be made.[6] Lord Sumner in *Abdul Rahim Mohd.* v. *Municipal Commissioner for the City of Bombay,*[7] observed : 'Preservation of Regular line in Public Streets' is the heading to group of sections beginning with Section 297, but this cannot be expressed into a constructive limitation upon the exercise of the powers given by the express words of the Act. The title of a Chapter

Or Schedule

cannot be legitimately used to restrict the plain terms of an enactment.[8] Nor to legislatively invalidate it, if they are otherwise valid.[9] Same is the case with the heading of a schedule,[10] which are only descriptives and are given by way of broad classification.[11] The circumstance that the two provisos bear identical headings cannot furnish any assistance in the construction of the provisos.[12]

Useful aid in cases of doubt.—No doubt, headings in the body of an Act are of some help in clearing up obscurities when there is an ambiguity, but they cannot control the provisions of the sections when they are unequivocal and clear.[13] The headings are like Preambles which supply a key to the mind of the Legislature but do not control the substantive section of the enactment.[14]

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1. *Bolmer* v. *I.B.C.*, (1967) Ch 145; *Fisher* v. *Raven*, 1964 AC 210; *Bhushan Lal Sahu* v. *Jamnadas Sukhwani*, 1983 MPLJ 743.
2. *Kalyanji* v. *Ram Deen Lala*, AIR 1925 Mad 609, 612 : ILR 48 Mad 395; *Shadanchandra* v. *Sheonarayan Golabrai*, ILR 60 Cal 936 : AIR 1933 Cal 699; *Harprasad Singh* v. *District Magistrate*, AIR 1949 All 403; *Ram Chandra Deo* v. *Bhola Patnaik*, AIR 1950 Orissa 125, 127 (FB); *R.* v. *Surrey*, (1947)2 All E R 276; *Gangabai* v. *Vatsalabai*, 1966 MLJ (Notes) 13.
3. *In re* Ananda Lal, ILR 59 Cal 528 : AIR 1932 Cal 346, 358, *per* Rankin, C.J.; *In re* Tripura Modern Bank, Ltd., AIR 1950 Cal 240; *Durga Das* v. *State*, 56 Bom LR 188; *Sulakhan Singh* v. *Central Bank of India*, 55 Punj LR 348 : AIR 1954 Punj 66; *Durga Das* v. *Tulsi Ram*, AIR 1955 Bom 82; *see* also *State* v. *Marsi*, AIR 1954 Bom 55 at p. 56.
4. *Narbada Prasad* v. *State of M.P.*, AIR 1981 MP 101 at p. 110 : 1981 Jab LJ 294 (FB).
5. *Madan Lal* v. *Changdeo Sugar Mills*, AIR 1958 Bom 491 at p. 496; *Ramaben* v. *Jyoti, Ltd.*, AIR 1958 Bom 214; *Wazirkhan Sherkhan* v. *Proprietor, M/s. Shrikrishna Gyanodaya Cottage Industries*, 1979 Mah LJ 325 (DB); *Refugee Cooperative Housing Society Ltd., New Delhi* v. *Harbans Singh Bhasin*, AIR 1982 Delhi 335 (FB).
6. *Ramarao* v. *Shanti Bai*, 1977 Jab LJ 147 (FB).
7. AIR 1918 PC 20 : ILR 42 Bom 462 at p. 473 (PC); *see* also *Secretary of State* v. *Mask & Co.*, AIR 1940 PC 105 at p. 109.
8. *Income-tax Commissioner* v. *Ahmadbhai Umarbhai & Co.*, AIR 1950 SC 134 at p. 141 : 1950 SCR 335 at p. 353, *per* Patanjali Sastri, J., following *Thakurain Balraj Kuar* v. *Rai Jagatpal Singh*, 31 IA 132 at pp. 142-43, *per* Lord Macnaughten.
9. *Tara Prasad Singh* v. *Union of India*, AIR 1980 SC 1682 : (1980)4 SCC 179.
10. *Inland Revenue Commissioners* v. *Gittus*, (1920)1 KB 563, on appeal (1921)2 AC 81 (HL); *Suresh Kumar Sohanlal* v. *Town Improvement Trust, Bhopal*, 1975 MPLJ 413 : 1975 Jab LJ 468.
11. *India Explosives, Ltd.* v. *Kanpur Nagar Mahapalika*, 1982 ALJ 1140 (DB).
12. *Sonelal* v. *State of Madhya Pradesh*, 1972 MPLJ 763, 767 (G.P. Singh, J.).
13. *Yogendra Khan* v. *State of Bihar*, 1983 Pat LJR 214; *Smt. Asha Devi Jauhari* v. *Smt. Sharda Devi*, 1977 All WC 517.
14. *Durga Thathera* v. *Narain Thathera*, AIR 1931 All 597 at p. 599 : ILR 54 All 220, *per* Suleman, Ag. C.J.; *Baldeo Kurmi* v. *Kashi Chamar*, AIR 1926 All 312 (earlier case); *Debi Das* v. *Maharaj Rup Chand*, ILR 49 All 903 : AIR 1927 All 903; *Narayanaswami Naidu* v. *Rangaswami Naidu*, ILR 49 Mad 716 : AIR 1926 Mad 749. But no reliance can be placed upon the 'headings' of Chapters or descriptions given of sections specially in Acts which cannot be held to be a model of good drafting; *Ajnasi Kuar* v. *Payag Singh*, 45 IC 534 (All) referring to Agra Tenancy Act, 11 of 1901.

Even though the heading prefixed to a section cannot control the plain word of a statute, they can be used as a key to the interpretation of the section and for explaining ambiguous words.[1] Accordingly the heading in a statute can be referred to for the purpose of finding out the meaning of a doubtful expression in a section.[2] While however , the Court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is clear, that those headings cannot be used to give a different effect to clear words in the section where there cannot be any doubt as to the ordinary meaning of the words. They may be usefully referred to, to determine the sense of any doubtful expression in a section ranged under a particular heading,[3] or as indicating the general drift of the clause, and affording a key to better understanding of its meaning.[4] If there is any doubt in the interpretation of the words in a section, the heading certainly helps us to resolve the doubt,[5] and may be referred to as an aid to construction.[6] In *Queen* v. *Local Government Board*,[7] Brett, L.J., observed : "I cannot come to the conclusion that the heading of a series of sections introduced into an Act of Parliament is not to be considered as part of the Act. I think that the word 'appeal' at the head of the section may properly be considered as part, and used for the purpose of construing any doubtful matter in the section under that heading."

7. Marginal notes.—In order to find out the legislative intent, we have to find out what was the mischief that the Legislature wanted to remedy. It is now well settled that marginal note is a part of the section. It is a key to open mind of the Legislature affording guidance in understanding their intendment.[8] The marginal note may also give an indication as to exactly what was the mischief that was intended to be remedied.[9] A marginal note is merely an abstract of the clause intended to catch the eye[10] and furnishes a clue to the meaning and purpose of the section.[11] It can afford little guidance to the construction of an enactment,[12] specially when the language is plain and unambiguous.[13] There has been considerable

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1. *Gopalakrishna Kurup* v. *Narayana Ayyar*, 1980 Ker LT 852.
2. *Emperor* v. *Ismail Sayadsahib*, AIR 1933 Bom 417 : ILR 57 Bom 537 (FB), *per* Beaumont, C.J.; *Fletcher* v. *Birkenhead Corporation*, (1907)1 KB 205, 213, *per* Collins, M.R.; *Ramchandra Deo* v. *Bhalu Patnaik*, AIR 1950 Orissa 125 at p. 127 (FB); *Ram Saran Das* v. *Bhagwat Prasad*, ILR 51 All 411 : AIR 1929 All 53, 58, as giving a *contemporanea expositio of the* meaning of a section; *Gokul Chit Funds and Trades (P.) Ltd.* v. *Kochu Ouseph Vareed*, 1976 Ker LT 747; *Laxmi Prasad Tamrakar* v. *Municipal Corporation, Raipur*, 1980 Jab LJ 646.
3. *Kamod Singh Sharma* v. *State Bank of India, Agra*, 1988 All LJ 177; R. v. *Surrey Assessment Committe*, (1947)2 All ER 276, 278; *Fletcher* v. *Birkenhead Corporation*, (1907)1 KB 213; *Hammersmith and City Rly. Co.* v. *Brand*, (1869) LR 4 HL 171.
4. *Union of India* v. *Raman Iron Foundry*, AIR 1974 SC 1265 : 1974 SCD 507 : (1974)2 SCC 231.
5. *State Bank of India, Staff Association* v. *Election Commission of India*, (1994)1 BLJR 128; *Krishna Nand Singh* v. *The Commissioner, Varanasi Division, Varanasi*, 1987 All LJ 1236; *Bhinka* v. *Charan Singh*, AIR 1959 SC 960 at p. 966; *Kesava Pillai* v. *Parvati Amma*, 1968 Ker LJ 736.
6. *Suresh Kumar Sohanlal* v. *Town Improvement Trust, Bhopal*, 1975 MPLJ 413.
7. (1882)1 QBD 309, 321; but see *Kalyanji* v. *Ram Deen Lala*, ILR 48 Mad 395 : AIR 1925 Mad 609, 612; *see* also *Qualter, Hall & Co.* v. *Board of Trade*, (1961)1 All ER 210; on appeal, *Flae* v. *Withers*, (1961)3 All ER 389 (CA).
8. Vide *The Film Exhibiters Guild* v. *State of Andhra Pradesh*, AIR 1987 AP 110 : (1987)1 Andh LT 154 : (1987)1 APLJ (HC) 330 (FB).
9. *Commissioner of Income Tax, Gujarat* v. *Vadelal Laloobhai*, 1973 SCC 17, 23-24 (Hegde, J.).
10. *Vadlamudi* v. *State of Andhra Pradesh*, AIR 1961 Andh Pra 448, 451-52 (Anantanarayana Ayyar, J.); *see* also *Jayalakshmi etc. Co.* v. *C.I.T.*, AIR 1967 Andh Pra 99, 101.
11. *Navnagan Transport and Industries Ltd.* v. *Parikh*, AIR 1965 Guj 105, 109 (PN Bhagwati, J.) : The marginal note to the amended section clearly indicates the drift of the section; *Juvan Sinhji* v. *Balbhadrasinhji*, AIR 1963 Guj 209, 219 (P.N. Bhagwati, J.); *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661.
12. *Board of Muslim Wakfs, Rajasthan* v. *Radha Kishan*, AIR 1979 SC 289 at p. 295.
13. *P. Udaya Shanker* v. *Andhra Bank*, 1984 Lab IC 149 (Mad) (DB); *Shakuntala* v. *Mahesh Atmaram Badlani*, AIR 1989 Bom 353 : 1989 Mah LJ 332 : (1989)1 Bom CR 575 : (1989)1 Hindu LR 705; *Sharaf Shah Khan* v. *State of Andhra Pradesh*, AIR

divergence of judicial opinion upon the question whether marginal notes ought to be relied upon in the interpretation of a statute. If the marginal note or heading is any indication it certainly is a relevant factor to be considered in construing the ambit of the section.[1] The marginal note of Section 35 of Bihar Shop and Establishment Act does not necessarily control the provision.[2] Marginal notes cannot, in any manner, limit the meaning of the plain words of the section.[3]

The divergence of judicial opinion has been settled by the pronouncement of the Supreme Court in *S. P. Gupta* v. *Union of India*,[4] in the following words :

> "Whether the marginal notes would be useful to interpret the provisions and if so to what extent depend upon the circumstances of each case. No settled principles applicable to all cases can be laid down in this fluctuating state of the law as to the degree of importance to be attached to a marginal note in a statute. If the relevant provisions in the body of the statute firmly point towards a construction which would conflict with the marginal note, the marginal note has to yield. If there is any ambiguity in the meaning of the provisions in the body of the statutes, the marginal note may be looked into as an aid to construction."

It is well known that a marginal note cannot take away the effect of the substantive provision.[5] The Supreme Court has since laid down "Nothing turns on the marginal notes as it is usually not resorted to for construing meaning of a section, particularly when the language is plain and simple."[6]

When section clear

In the *first* instance, if the words used in a section of the enactment are clear and unambiguous the marginal notes cannot control the construction of the section.[7] There can be no justification for restricting the contents of the section by the marginal note.[8]

1963 Andh Pra 314 at p. 322 (Krishna Rao, J.); quoting Baggallay L.J. in *Attorney-General* v. *Great Eastern Railway Co.*, (1879)11 Ch D 449, 461; Lord Macnaughten in *Balraj Kunwar* v. *Jagatpal Singh*, 31 IA 132 at p. 142; *see* also *Bangalore etc. Co. Ltd.* v. *Corporation of Bangalore*, (1961)3 SCR 707, 711 (Kapur, J.).

1. See *Shree Sajjan Mills Ltd.* v. *Commissioner of Income-tax, Bhopal, M.P.*, AIR 1986 SC 484 : 1986 Tax LR 48 : (1985)23 Taxman 37 : 1985 Taxation 79 (3) 173 : (1985)49 Cur Tax Rep. 193 : (1985)4 SCC 590 : (1985)19 Tax Law Rev. 341 : (1985)42 ITJ 1109 : (1985)156 ITR 585 : 1986 SCC (Tax) 82 : (1986)2 Supreme 45 : (1986) UPTC 786.
2. See *Badri Prasad Gupta* v. *State of Bihar*, AIR 1986 Pat 186 (FB) : 1986 Cvl LJ 699 : 1986 Pat LJR 246 : 1986 BLJR 244 : 1986 BLJ 484 : 1986 BBCJ (HC) 187 : 1986 East Cri C 368 : 1986 EFR 524.
3. *Shirlekar, L.S.* v. *Agarwal, D.L.*, AIR 1968 Bom 439; *Gangadhar Narsingdas Agarwal* v. *Assistant Collector of Customs*, AIR 1968 Goa 105; *Subhash Ganpatrao Buty* v. *Maroti Krishnaji Dartikar*, 1975 Mah LJ 244 (FB).
4. AIR 1982 SC 149 (para 1096).
5. *M/s. Shriram Bearing Ltd.* v. *Bihar State Electricity Board*, AIR 1982 Pat 91 (DB).
6. *Kalawati Bai* v. *Soriyabai*, 1991 AIR SCW 1525 : AIR 1991 SC 1581 : (1991)3 SCC 410.
7. *Chandoji Rao* v. *Commissioner of Income Tax*, (1971)1 SCR 422, 425 (Grover, J.); *see* also *Nadiad Electiric Co., Ltd.* v. *Nadiad Municipality*, AIR 1970 Guj 194, 201 (Mehta, J.); *Kavasji Pestonji* v. *Rustomji Sorabji*, AIR 1949 Bom 42, 46, *per* Chagla, C.J.; *Thola Udayar* v. *Sedai Udayan*, ILR 1939 Mad 977 : AIR 1940 Mad 8, *per* Leach, C.J.; *Natinakhya Bysack* v. *Shyam Sunder Haldar*, AIR 1953 SC 148; *Pheku Chamar* v. *Harish Chandra*, 1953 ALJ 197 : AIR 1953 All 407; *Baseshwar Dayal* v. *Mst. Bhagwati Devi*, 1954 All LJ 421 : AIR 1954 All 742; *State of Bombay* v. *Hemant Sant Lal*, 53 Bom LR 837 : AIR 1952 Bom 16; *State* v. *Mansi Karamsi*, (1952)55 Bom LR 717. *See* also *Commissioner of Income-Tax* v. *Sardar O. S. Augre*, 1965 MPLJ 682; *Ramanugrah Jha* v. *State of Bihar*, AIR 1966 Pat 97; *Bashit Oil Mills* v. *State of Maharashtra*, ILR 1961 Bom 1944 : 63 Bom LR 751 : 1961 Nag LJ 309; *Union of India* v. *Shri Labh Chand*, AIR 1963 Him Pra 12; *Swaran Singh* v. *Municipal Committee*, ILR (1963)2 Punj 320 : AIR 1963 Punj 427; *Western India Theatres Ltd.* v. *Municipal Coroporation of the City of Poona*, AIR 1959 SC 586.
8. *Emperor* v. *Sadashiv*, AIR 1947 PC 82, 84; 'Marginal note is not an operative part of the section'; *per* Lord Thankerton; *Mother Mar* v. *State*, 1953 ALJ 243; *Anandrao* v. *Board of Revenue*, AIR 1965 MP 237, 245 (FB) (Newaskar, J.).

The marginal note cannot be referred to for any purpose in connection with the construction of the section to which it is annexed.[1] In any case, it plays a very little part in the construction of a statutory provision.[2]

If there is discrepancy between the marginal note and the enacting part of section, the section overrides the marginal note.[3]

But in case of ambiguity or doubt, the marginal note may be referred to.[4]

It is settled law that reference can be made to headings of sections or marginal notes when difficulty arises in interpreting the scope and meaning of a provision.[5]

In *State* v. *Mansi Karamsi*,[6] it was pointed out that the marginal note in the case is not quite correct for Clause *(f)* of Sub-section (1) of Section 61 of the Bombay Municipal Boroughs Act, *viz.*, 'Milk shops', in terms refers not only to places at which trade or business is done in milk, but also to places, at which trade or business is done in sweetmeats, butter, and other milk products, and to places for stabling milch cattle.

When not assented to by Legislature.—Secondly, on the assumption that the marginal note is not put there by the Legislature or is assented to by them, it does not form part of the Act, and accordingly cannot be used in the construction of such an Act.[7] In case of ambiguity, marginal note can be looked into indeed, the Supreme Court, referring to this rule, used it in *R. S. Joshi* v. *Ajit Mills*,[8] and *Madurai Coats Ltd.* v. *Workmen*,[9] Lord Macnaughten observed in *Thakurain Balraj Kunwar* v. *Rai Jagat Pal Singh*,[10] "It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary

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1. *Buddhan Singh* v. *Nabi Bux*, AIR 1962 All 43, 51; *Prasad* v. *State of Mysore*, AIR 1960 Mys 230; *Board of Muslim Wakfs* v. *Radha Kishan*, AIR 1979 SC 289 at p. 295.
2. *Keswananda Bharati* v. *State of Kerala*, (1973)4 SCC 225 at p. 469 (Hedge, J.).
3. *Nalinakhya Bysack* v. *Shayam Sunder Haldar*, AIR 1953 SC 148 : 1953 SCA 191 : 1953 SCJ 201 : 1953 SCR 1057; *Jayalakshmi Rice and Oil Mills* v. *Commissioner of Income-tax*, AIR 1967 Andh Pra 99 : (1967)1 Andh WR 192.
4. *Eric John Singh* v. *The District Magistrate, Varanasi*, 1989 JIC 48 (All) (relying on *Nandini Satpathy* v. *P.L. Dani*, AIR 1978 SC 1025); *Model Electric Oil Mills* v. *Corporation of Calcutta*, AIR 1960 Cal 388, 390; *see* also *Waqf Alu Allah Kayankarda Ahmad Ullah Khan* v. *Balak Singh*, (1965) All WR (HC) 381 : 1965 All LJ 645; *Therumalpad* v. *Krishnan*, AIR 1958 Mad 117, 121 (Ramaswami, J.).
5. *Kerala Housing Board* v. *E. A. Yusuf*, AIR 1984 Ker 112.
6. AIR 1954 Bom 55; *R.S. Joshi* v. *Ajit Mills*, (1977)4 SCC 98; *Madurai Coats Ltd.* v. *Workmen*, AIR 1977 SC 449.
7. *K. Kelppan* v. *State of Kerala*, 1990 Cri LJ 697 (Ker); *Claydon* v. *Green*, (1863)37 LJCP 226 at p. 230, *per* Bovil C.J.; *A. G.* v. *Great Eastern Railway Co.*, (1879)11 Ch D 449, *per* Bhaggally, L.J. "Is it not mere abstract of the clause intended to catch the eye", asked James, L.J.; *Sutton* v. *Sutton*, (1882)22 Ch D 511, 513, *per* Jessel, M. *R. Minho* v. *Emperor*, AIR 1938 Sind 9, *per* Rup Chand Bilaram, Ag C.J.; *Balaji Singh* v. *Gangarama*, 1927 Mad 85, 87 *per* Devadass. J. (even when section is not clear); *see* also *Nawab Bahadur of Murshidabad* v. *Gopi Nath Mandal*, 6 IC 392, 395 (Cal); *Brijmohan Singh* v. *Tulsi Ram Sakharam*, AIR 1940 Nag 377 : ILR 1942 Nag 53; *Anandrao* v. *Board of Revenue*, AIR 1965 MP 237, 245 (FB) (Newaskar, J.) (given on convenience or reference).
8. (1977)4 SCC 98.
9. AIR 1977 SC 449.
10. 31 IA 132, 142-43 : 11 Bom LR 516 : 1 ALJ 384 : 8 CWN 699 : 14 MLJ 149 (PC); *Dukhi Mullah* v. *Halway*, ILR 23 Cal 55; *Punardeo Narain* v. *Ram Sarup*, ILR 25 Cal 858; *Howrah Municipality* v. *Levis and Co.*, ILR 47 Cal 809, 812; *Emperor* v. *Alloomiya Husain*, ILR 28 Bom 129, 142; *Sholapur Spinning and Weaving Co.* v. *Pandharinath*, AIR 1928 Bom 341, 343; *Sheikh Chaman* v. *Emperor*, 21 Cr LJ 143 (Pat); *Jamnadas Gordhandas* v. *Damodardas*, AIR 1927 Bom 424 (cannot be taken as an index to what the section was meant to apply to). *In re* Ratanji Ramaji, ILR 1942 Bom 39 : AIR 1941 Bom 397, 402 (SB), *per* Kania, J. *(cf) Kameshwar Prasad* v. *Bhikan Narain Singh*, ILR 20 Cal 609 : "The State publication of the Indian Acts being framed with marginal notes, such notes may be used for the purpose of interpreting of the Act", following in *Emperor* v. *Wallace Flour Mill Co.*, ILR 29 Bom 193, 197.

opinion originated in a mistake, and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament." Following this dictum of their Lordship of the Privy Council, their Lordships of the Supreme Court, in *Commissioner of Income Tax* v. *Ahmadbhai Umarbhai & Co.*,[1] held that the marginal notes in an Indian statute, as in an Act of Parliament, cannot be referred to for the purpose of construing the statute.

Drift of the section.—In *Bushell* v. *Hummond*,[2] Collins, M. R., observed : "The side-note although it forms no part of the section is of some assistance inasmuch as it shows the drift of section." Similarly, in *In re* A. E. Smith,[3] Krishnan, J., was inclined to think that it was legitimate to look at the marginal note to see what the drift of the section itself was. "Marginal notes can", observed Beaumont, C.J., in *Secretary of State* v. *Bombay Municipality*,[4] "as it has been said, be looked at in order to see the general trend of the section and here the marginal note is certainly of consequence when we have to consider whether the general trend of the section is validate past Acts or to deal only with future Acts". The opinion of Collins, M. R. mentioned above was quoted with approval by Nasim Ali, J., in *Murradan* v. *Secretary of State*.[5] Narasimham, J., in *Ramachandra Deo* v. *Bhalu Patnaik*,[6] agreed with the view. It is no doubt true that the marginal note cannot be relied upon as an aid in interpretation of a section but it can certainly be referred to as indicating the drift of the section.[7] Though the marginal heading of a section is not an aid to its construction, it can be relied upon as indicating the 'drift of the section'.[8]

When assented to by the Legislature.—Thirdly, where the marginal note is inserted by or under the authority of the Legislature, it forms part of the Act and as such like the headings of Chapters or the headings of groups of sections can properly be regarded as giving a *contemporanea expositio* of the meaning of a section, when the language of the section is obscure

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1. 1950 SCR 335 at p. 353, *per* Patanjali Sastri, J.; *C.I.T. Bombay* v. *Ahmedbhai Umarbhai & Co.*, AIR 1950 SC 134, 141; *see* also *J. M. D'Souza* v. *Reserve Bank of India*, AIR 1946 Bom 510, 512; *Dharwar Urban Bank* v. *Krishna Rao*, ILR 1937 Bom 293 : AIR 1937 Bom 198; *Madhab* v. *Emperor*, AIR 1926 Bom 382; *Padamsi Narayan* v. *Collector of Thana*, ILR 46 Bom 366 : AIR 1922 Bom 161, 165; *Sushil Kumar* v. *Emperor*, AIR 1943 Cal 489, 494, following Halsbury's *Laws of England*, 2nd Ed., Vol. 31 at p. 464; ("The modern view is that these (side-notes) are not part of the statute and the Court will not regard them"); *see* now 3rd Ed., Page 373, para 548 (authorities not unanimous); *Syamo* v. *Emperor*, ILR 55 Mad 903 : AIR 1932 Mad 391; *In re* Natesa Mudaliar, ILR 50 Mad 733 : AIR 1927 Mad 156; *Kesava Chetty* v. *Secretary of State for India*, ILR 42 Mad 451, 453; *Sheffield Waterworks Co.* v. *Bennett*, (1872) LR 7 Exch 409; *W. I. Theatres* v. *Municipal Corporation, Poona*, AIR 1959 SC 586 at p. 588; (if the section is otherwise clear and unanimous). See *Shabbir Fatima* v. *Chancellor, University of Allahabad*, AIR 1966 All 45; *Buddhan Singh* v. *Nabi Bux*, AIR 1962 All 43 (FB) : ILR (1962)2 All 321 : 1961 ALJ 536; *Haridas Mundra* v. *National & Grindley's Bank*, AIR 1963 Cal 132 : 67 CWN 58; *Sharif Shah Khan* v. *State of Andhra Pradesh*, AIR 1963 Andh Pra 314 : ILR 1962 AP 96.
2. (1904)2 KB 563; *B.M. Desai* v. *Ramamurthy*, AIR 1959 Bom 89 (unless language of the section is clear); *The Poddar Mills Ltd.* v. *The State Bank of India*, 1991 (4) Bom CR 82 quoting *K. P. Verghese* v. *I. T. Officer, Ernakulam*, AIR 1981 SC 1922; *K. Nazeema* v. *State of Kerala*, 1983 Ker LJ 291; *Salaam M. Bavazier* v. *Azaruddin*, 1995 Andh Pra 312.
3. AIR 1924 Mad 389; *Narayanswami* v. *Rangaswami*, ILR 49 Mad 716 : AIR 1926 Mad 749.
4. AIR 1935 Bom 347, 349 : ILR 59 Bom 681; *see* also *Emperor* v. *Ismail*, ILR 57 Bom 537 : AIR 1933 Bom 417; *State of Bombay* v. *Heman Santlal*, 53 Bom LR 837 : AIR 1952 Bom 16; *Dattatraya Motiram* v. *State of Bombay*, 55 Bom LR 323 : AIR 1953 Bom 311.
5. AIR 1939 Cal 313 : ILR (1939)1 Cal 425; *See* also *Gola* v. *Emperor*, AIR 1919 Nag 17, 20 (FB).
6. AIR 1950 Orissa 125 at p. 127 (FB). *See* also *Visindas Lachmandas* v. *Emperor*, AIR 1944 Sind 1, 13 (FB).
7. *Govind Singh* v. *Subbarao*, AIR 1971 Guj 131 at p. 144 (Bhagwati, C.J.); *Indian Aluminuim Co.* v. *Kerala Electricity Board*, AIR 1975 SC 1967.
8. *Indian Aluminuim Co.* v. *Kerala Electricity Board*, AIR 1975 SC 1967.

or ambiguous.[1]

The marginal note to Article 286 is 'Restrictions as to imposition of tax on the sale or purchase of goods', which unlike the marginal notes in Acts of British Parliament, is part of the Constitution as passed by the Constituent Assembly, and *prima facie*, furnishes some clue as to the meaning and purpose of the Article.[2] Although a marginal note is inserted merely for convenience of reference and although, generally speaking, it is inadmissible as an element bearing upon the intention of the Legislature, it is entitled to some consideration as indicating the *intention* of the Legislature by which it was adopted.[3] While the marginal note to a section cannot control the language used in the section, it is at least permissible to construe the section in the background of its general purpose and the mischief at which it is aimed, keeping at the same time the marginal note in mind.[4]

Of little assistance.—"The best argument", writes Crawford,[5] "against permitting consideration of the various *heading* is that they are inserted for convenience of reference and are not therefore essential parts of the statute. Furthermore, due to the probability of inaccuracy, in most cases, very little, if any, reliance should be placed upon the heading in order to control the statute's construction. *Marginal notes*, in a manner similar to headings, may also be considered, if they constitute a part of the original statute but apparently not if they have been inserted for the sake of convenience." Instances in recent times are unfortunately not uncommon when a Court of law has come across a misleading marginal note. The Supreme Court has also frowned upon attempts to derive assistance in statutory construction from marginal notes.[6] Marginal note plays a very little part in the construction of a statutory provision.[7]

Hints on drafting.—In Russell's Legislative Drafting and Forms[8] it is observed, "Marginal notes should be framed with great care. Their object is to give a concise indication, not a summary, of the contents of the sections, and to enable a reader to glance quickly through them relying upon their accuracy". They form the basis of any index dealing with the Act. Although there are decisions of the Courts purporting to disregard them, they should not be considered

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1. *Ramsarandas* v. *Bhagwat Prasad*, AIR 1929 All 53, 58 : ILR 51 All 411 (FB). (It was found that in modern statutes marginal notes are assented to expressly or tacitly by the Legislatures.); *Cf. Shiv Nath* v. *Puran Mal*, ILR 1942 All 45 : AIR 1942 All 19 (FB). *See* also *Ganpat Rai Deviji* v. *Emperor*, AIR 1932 Nag 174; *Emperor* v. *Lukman*, AIR 1927 Sind 39, 43; *Emperor* v. *Fulabhai Bhulabhai*, AIR 1940 Bom 363; *Emperor* v. *Mumtaz Hussain*, AIR 1935 Oudh 337 (FB); *Arun Bhushan Roy* v. *Hari Sardar Pal*, ILR (1945)1 Cal 240. *See* also *Bashil Oil Mills* v. *State of Maharashtra*, ILR 1961 Bom 1944 : 63 Bom LR 75 : 1961 Nag LJ 309.
2. *Bengal Immunity Co.* v. *State of Bihar*, AIR 1953 SC 161, *per* S.R. Das, Ag. C.J., Bose, Bhagwati & Imam, JJ. (Venkatarama Ayyar. J., dissenting), (held that the marginal note to Article 286(1)*(a)* cannot be referred to for construing the Explanation. It is clearly inadmissible for cutting down the plain meaning of the words of the Constitution.)
3. *Harnam Singh* v. *State of Punjab*, AIR 1960 Punj 186, 190.
4. *Narendra Kumar Mehta* v. *Smt. Suraj Mehta*, AIR 1982 AP 10; *Stephens* v. *Cuckfield Rural District Council*, (1960)2 All ER 716, 720; *Aneshwar Prasad* v. *Misri Lal*, AIR 1961 Pat 28.
5. *Statutory Construction*, 1940 Ed., Article 207 at pp., 360-61. Maxwell : *Interpretation of Statutes*, 9th Ed. at p. 45; (considers "that the rule regarding their rejection for the purposes of interpretation is now of imperfect obligation.") See *Manik Chand Chowdhury* v. *State*, 62 Cal WN 94.
6. *Shabbir Fatima Dr. (Mrs)* v. *Allahabad University*, AIR 1966 All 45 at p. 53 (R. S. Pathak, J.) quoting *Commissioner of Income Tax* v. *Ahmadbhai Umarbhai & Co.*, AIR 1950 SC 134 : 1950 SCR 335; *Nalina Khoja* v. *Shyam Sunder*, 1953 SCR 1104; *Longdon Griffiths* v. *Smith*, (1951)1 KB 205.
7. *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225 at p. 469 (Hegde, J.), (much less importance in construing a constitutional provision).
8. 4th Ed. at p. 95.

trivial or unimportant , since most people are likely to accept the guidance of a marginal note. And the marginal note, though it forms no part of the section, is of some assistance, inasmuch as it shows the drift of the section.[1]

Amendment of section without amendment of marginal note.—In the old Section 84 of the Calcutta Port Act, 1890, the words used were 'previous sanction'. The word 'previous' was omitted from the section as amended in 1951, but retained in the marginal note. The dropping of the word 'previous' was deliberate and the marginal note could not govern the substantive provisions.[2] The marginal note of a section after amendment cannot affect the interpretation when the avowed object of the Legislature is not changed.[3]

Marginal notes in different statutes.—There is no authority whatever for making a use of the change in the marginal note when the enactments are not the same, but are statutes which can possibly said *in pari materia.*[4]

Side-notes or side headings.—"Side-notes cannot be used as an aid to construction. They are mere catch words", observed Lord Reid in *Chandler* v. *Director of Public Prosecutions,*[5] "and I have never heard of it being supposed in recent times that an amendment to alter a side-note could be proposed, in either House of Parliament. Side-notes in the original Bill are inserted by the draftsman. During the passage of the Bill through its various stages amendments to it or other reasons may make it desirable to alter a side-note. In that event, I have reason to believe that alteration is made by the appropriate officer of the House—no doubt in consultation with the draftsman. So side-notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act." Headings are treated differently from side-notes. The Courts are not entitled to look at the side-headings of statute. The Legislature is not responsible for the side-heading.[6]

8. Sections.—Sections constitute the principal or enacting part of a statute. Every section of a statute is substantive enactment in itself. One section may contain more than one enactment.[7] Each section in each Act must, for its true meaning and effect, depend on its own language, context and setting.[8] In *Nuth* v. *Tamplin,*[9] Jessel, M. R., obsereved : "Now any one who contends that a section of an Act of Parliament is not to be read literally must be able to show one of two things, either that there is some other section which cuts down its meaning, or else that the section itself is repugnant to the general purview of the Act," and yet, if we find a latter section in such Act repugnant to a former one, the latter must be accepted as repealing the former.[10]

The words in a section have to be given their plain grammatical meaning to find out the intention of the Legislature and this intention cannot be found out by calling into aid any outside

1. *Bushell* v. *Hammond,* 73 LJKB 1005; *Bakare* v. *Lieut-Governor, Southern Provinces,* 1929 AC 679.
2. *Nagendra Kumar Roy* v. *Commissioner for Port of Calcutta,* 58 CWN 527.
3. *J.K. Iron & Steel Co. Ltd.* v. *Income Tax Officer,* AIR 1967 All 248 at p. 252 (Satish Chandra, J.).
4. *State of Bombay* v. *Vishwakant Shrikant Pandit,* 55 Bom LR 719.
5. 1964 AC 763, quoted by G. K. Mitter, J., in *Rama Shankar Prosad* v. *Sindri Iron Foundry,* AIR 1966 Cal 512 at p. 530.
6. *Mirza Mohd. Afzal Beg* v. *State,* AIR 1959 J & K 77 at p. 79 (Wazir, C.J.).
7. *R.* v. *Newark upon-Trent (Inhabitants),* (1824)3 Barnewall and Cresswell's *Reports,* King's Bench, 59, 71 : Halsbury's *Laws of England,* 4th Ed. Vol. 44, para 821.
8. *State of U. P.* v. *Tobit,* AIR 1958 SC 414 at p. 419; *Commissioner of Income-tax, Nagpur* v. *Sardar O.S. Augra,* 1965 MPLJ 682.
9. (1881)8 QBD 247, 253.
10. Crawford : *Statutory Construction,* at p. 671.

consideration.[1]

A section has only one interpretation and one scope; a process resulting in more than one interpretation and scope is clearly erroneous.[2]

Every section must be considered as a whole and self-contained, with the inclusion of saving clauses and provisos.[3] "It is an elementary rule", says Subbarao, J. "that construction of a section is to be made of all the parts together[4] and that "it is not permissible to omit any part of it."[5] Sub-sections in a section must, therefore, be read as part of an integral whole and as being inter-dependent, each portion throwing light, if need be, on the rest,[6] and harmonious construction should be placed on their for the purpose of giving effect to the legislative intent and object.[7] So also, a sentence should be construed in its entirety in order to grasp its true meaning.[8] It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision.[9]

9. Sub-section.—All sub-sections of a section must be read as a 'parts of an integral whole' interdependent. Repugnancy between them must be avoided and they must be reconciled to the extent possible. *(Karanataka Rent Control Act, 1961).*[10]

10. Rules.—Rules made under the Act must be consistent with the Act and construed harmoniously with provisions contained in it.[11] In the garb of corrigendum, a rule cannot be altered and/or changed :

> The dictionary meaning of the word 'corrigendum' means things to be corrected.[12]

11. Punctuations and brackets.—*In England*—Prior to 1849 no punctuation normally appeared in the Acts on the Rolls of Parliament in England. But since 1849 punctuation has been inserted.[13] Wills, J., however, remarked in *Claydan* v. *Green*[14] : "I desire to record my conviction that this change in the mode of recording them cannot affect the rule which treated the title of the Act, the marginal notes, and the punctuation, not as forming part of the Act, but as a *temporanea expositio.* The Act, when passed, must be looked at just as if it were still entered upon a Roll, which it may be again if Parliament should be pleased so to order; in which case it would be without these appendages, which, though useful as a guide to a hasty enquirer, ought not to be relied upon in construing an Act of Parliament."

American view.—Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to when all other means fail, but the Court will first take the instrument by its four corners, in order to ascertain its true meaning; if that is apparent on judicially inspecting

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1. *Shri Babu Ram* v. *Om Prakash*, 1983 Sri LJ (J & K)3.
2. *R. Venkataswami Naidu* v. *Narasram*, AIR 1966 SC 361.
3. *Tahsildar Singh* v. *State of U. P.*, AIR 1959 SC 1012 at p. 1022.
4. *Gurmej Singh* v. *Pratap Singh*, AIR 1960 SC 122 at p. 124 : (1960)1 SCR 909.
5. *State of Bihar* v. *Hiralal*, AIR 1960 SC 47 at p. 50.
6. *Madanlal Fakir Chand* v. *Changdeo Sugar Mills*, AIR 1962 SC 1543 at p. 1551; *Ram Singh* v. *Ram Karan*, AIR 1965 Madh Pra 264.
7. *Asharfi Lal* v. *Board of Revenue*, 1977 AWC 454.
8. *State of Kerala* v. *Malayalam Plantations Ltd.*, 1980 Ker LT 976 (FB).
9. *Radha Kant Yadav* v. *State of Bihar*, (1995)2 Pat LJR 898, relying on *S.L. Kapoor* v. *Jagmohan*, AIR 1981 SC 1361.
10. *M. Balaram* v. *M. S. Vasanth*, AIR 1978 Kant 102; *see* also *Sudhir Bala Roy* v. *State*, AIR 1981 Cal 130 : (1980)2 Cal HC 516 : (1981)1 Cal LJ 29 : (1981)85 Cal WN 273 (sometimes all sub-sections need not be read together).
11. Vide *Velur D. Narayanan* v. *General Manager, Madras Telaphones*, AIR 1995 Mad 290.
12. Vide *Asom Rajyck Udyog Karmi Sangha* v. *State of Assam*, (1996)1 Gau LR 236.
13. *Taylor* v. *Charles Bleach*, ILR 39 Bom 182, 189.
14. (1868) LR 3 CP 511, 522; *see* also *Inland Revenue Commissioners* v. *Hunchy*, 1960 AC 748, 765.

the whole, the punctuation will not be suffered to change it.[1] For the purpose of arriving at the true meaning of a statute Courts read with such stops as are manifestly required.[2] Punctuation is a minor, and not a controlling, element in interpretation, and the Courts will disregard the punctuation of a statute, or re-punctuate it, if need be, to give effect to what otherwise appears to be its purpose and true meaning.[3] Punctuation marks are no part of an Act. To determine the intent of the law, the Court, in construing a statute, will disregard the punctuation or will re-punctuate it, if that be necessary, in order to arrive at the natural meaning of the words employed.[4]

Regarding old enactments in India.—But though the punctuation of an Act cannot be discarded wholly, it would be unsafe to allow it to govern the construction. In *President of Shire of Charlton* v. *Ruse*,[5] Griffith, C.J., observed : "I think that stops, which may be due to a printer's or proof reader's error, ought not to control the sense if the meaning is otherwise tolerably clear." Dealing with Regulation VIII of 1819, Lord Hobhouse in *Maharani of Burdwan* v. *Murtonjoy Singh*[6] opined that it was an error to rely on punctuation in construing Acts of the Legislature. It is from the words, and from the context, and not from the punctuation, that the meaning of the statute is to be collected.[7] The punctuation is altogether secondary.[8] Referring to an enclosure Act,[9] Lord Esher, M. R., observed in *Duke of Devonshire* v. *O' Connor*[10] : "It has been said that there are brackets in it, but that we must read it as though the brackets were removed to some other part of the clause. But if notice is to be taken of the brackets, it must be subject to the language used, and then it may be shown that either at both ends or at one end of the parenthesis the bracket must have been erroneously placed, and that the brackets must be put in the right place according to the sense and construction of the language used. To my mind, however, it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops." Maclean, C.J., agreed with the contention of the counsel for the appellant in *Secretary of State for India in Council* v. *Rajlucki Debi*,[11] that looking, if one may look, at the punctuation of the section,[12] and at the section grammatically, his Lordship was inclined to take the view so submitted as the correct construction, but his Lordship did not regard that as really material for the purposes of that decision.

Parsons, C.J., in *A (wife)* v. *B. (husband)*[13] made a pointed reference to a 'colon' separating the proviso from the prior clauses of the section. But he was in error as was pointed out by Strachey, C.J., in *Caston* v. *Caston*,[14] that there was not a colon, but a full-stop, and their Lordships constituting the Full Bench followed the dictum of Lord Hobhouse, which, in the view of their Lordships, was in accordance with many English authorities.

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1. *The Lessees of Ewap* v. *Burnet*, 9 L Ed 624, 630; *Caston Zo* v. *Tellinghart*, 77 L Ed 350, 353 : 287 US 350 (not decisive).
2. *U.S.* v. *Lacher*, 33 L Ed 1080, 1083 (Fuller, CJ); *Hammock* v. *Farmers Loan & Trust Co.*, 26 L Ed 1111, 1113 : 105 US 77, 84.
3. *Barrett* v. *Van Pelt*, 69 L Ed 857; *Chicago etc. Co.* v. *Voelker*, 129 Fed 522, 527.
4. *Ibid.*
5. (1912)14 CLR 220, 229.
6. (1887)14 IA 30, 35.
7. *Gorden* v. *Gorden*, LR 5 HL 254, 276.
8. *President of Shire of Charlton* v. *Ruse*, (1912)14 CLR 220, 229.
9. 38 Geo. 3, C 18.
10. (1890)24 QBD 468, 478.
11. ILR (1897)25 Cal 239, with whom O' Kinealy and Travelyan, JJ., agreed.
12. 424 of old C.P.C.
13. ILR 1898 Bom 460, 451 (referring to Government of India, Legislative Department, Edition 1887, of Act IV of 1896).

Maxwell in his *Interpretation of Statutes*,[1] had opined that punctuation was not a very safe guide in the interpretation of a legislative enactment, but Krishnaswami Ayyar, J., in *Veeraraghavulu* v. *President, Corporation of Madras*,[2] considered the punctuation in the old Madras Act of 1884, as furnishing a clue to the interpretation of a corresponding section of Madras Act, III of 1904. In *Secretary of State* v. *Kalekhan*,[3] the construction of Section 424 of the old Code of Civil Procedure[4] came up for consideration as in *Secretary of State for India in Council* v. *Rajlucki Debi*,[5] in which it was argued before the Bench that punctuation could not be taken note of in considering the statute, Sundara Ayyar, J., thereupon observed : "There is no doubt authority in English cases for this proposition but no Indian case has been cited to us, and it may be permissible to express a doubt whether the consideration which induced Judges in England to lay down such a rule would be equally applicable in the construction of statutes in this country. The question, however, does not depend on the punctuation alone." In *Taylor* v. *Charles Bleach*,[6] the 3rd clause of Section 37 of the Divorce Act, IV of 1869, came up for consideration wherein the material words were "...order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard....." etc. Scott, C.J., observed thereon : "I can see no reason why the punctuation of the editions of the Act issued by the Government of India should be disregarded for so far as I am aware there is not in India any unpunctuated original Statute Book. The position is not the same as in England where in *Stephenson* v. *Taylor*,[7] Cockburn, C.J., said : "On the Parliament Roll there is no punctuation, and we therefore are not bound by that in the printed copies."

Modern view.—In *Barrow* v. *Wadkin*,[8] Sir John Romilly, M. R. said : "I suppose I should not learn much on the subject from the inspection of the Roll of Parliament, but, as it was in my custody, I have examined it. It seems that in the Rolls of Parliament the words are never punctuated and accordingly very little is to be learnt from this document". Hayward, J., in the same case, after referring to Maxwell : *Interpretation of Statutes* and the refusal of Lord Fry in *Duke of Devonshire's* case to 'pause at those miserable brackets where the sense was strong', proceeded to observe : "It should be no matter of surprise therefore that the old rule be applied to the old Regulations promulgated in this country and it will be found that the Privy Council remarked upon a consideration of an old Bengal Regulation of 1819 that it was an error to rely on punctuation in construing the Act of the Legislature in the case of the *Maharani of Burdwan* v.

14. ILR (1869)22 All 270, 277 (FB) (referring to *Gazette of India*, 6th March, 1869 at p. 375.).

1. Halsbury's 4th Ed., Vol. 44, para 820, Maxwell : *Interpretation of Statutes*, 12th Reprint Ed. 1993. (In America it was observed : "Punctuation marks are no part of a statute; and to determine its intent the Court in construing will disregard puntuation, or will repunctuate, if that be necessary, in order to arrive at the natural meaning of the word employed"); *U.S.* v. *Shreneport Grain & Elevar Co.*, 287 US 77 : 77 L Ed 175; *Hammock* v. *Loon & T. Co.*, 105 US 77, 84, 26 L Ed 1111, 1114; *U.S.* v. *Lacher*, 134 US 624, 628 : 33 L Ed 1980, 1983; *U.S.* v. *Oregan & G.P. Co.*, 164 US 526, 541 : 41 L Ed 541, 545 : ("Punctuation is a minor, and not a controlling, element in interpretation, and the Courts will disregard the interpretation of a statute or repunctuate, if necessary to give effect to what otherwise appears to be the purpose and true meaning of the statute); *Barrett* v. *Van Pelt*, 268 US 85 : 68 L Ed., 857.
2. (1910) ILR 34 Mad 130.
3. (1914) ILR 37 Mad 113, 115.
4. New Section 8 of CPC of 1908.
5. ILR (1897)25 Cal 239.
6. (1914) ILR 39 Bom 182, 185, 189-90.
7. (1861)1 B & S 101, 106.
8. (1857)24 Beav 327, 330.

Krishna Kamini Dasi.[1] But whatever may have been the practice under the old Regulation, the practice would appear since the constitution of regular Legislatures in India to have been to insert stops in Bills before the Legislatures and to retain them in the authentic copies of the Act signed by the Governor General and published in the *Gazette of India*, and Maclean, C.J., ventured to look at the stops in such an Act in the case of *Secretary of State for India in Council* v. *Rajlucki Debi* and so did Parsons, C.J., in the case of *A (wife)* v. *B. (husband)*, though the action of the latter was reprehended by the "Full Bench of the Allahabad High Court in the case of *Edward Caston* v. *L. K. Caston*, relying on the remarks of the Privy Council. With due deference to that Bench there would, however, appear to me no sufficient ground in view of the fact that it was an old Regulation under consideration of the Privy Council and in view of the deliberate insertion of stops by the regular Legislatures, for refusing the assistance of the punctuation where the sense might otherwise be doubtful in Acts of the regularly constituted Legislatures of India." The use of a hyphen was taken notice of by a Full Bench of seven Judges in *Isap Ahmed* v. *Abrahamji Ahmadi*.[2] In *Gale* v. *Gale*,[3] the decision turned on the interpretation of the last paragraph of Section 3(1) of the Indian Divorce Act, IV of 1869, "....within the local limits of whose ordinary appellate jurisdiction or of whose jurisdiction under this Act, the husband and wife reside or last resided together", Sir Arthur Reid, C.J., with whom Kensington, J., concurred, put the matter thus : "The punctuation of the words above cited 'the husband and wife reside or last resided together' indicates clearly that 'together' must be read with 'last resided' only. Had the intention of the Legislature been to make 'together' apply to 'reside' we should have expected a comma after 'reside' and after "resided'. Rattigan, J., who agreed hesitatingly with the majority opined; "Legal documents in strictness should not be punctuated, and I take it that the rule applies equally to Acts of Legislatures, and it may have been for this reason that the comma was omitted after 'reside' ". The same expression came for consideration before Morton, J., sitting singly in *Bargonha* v. *Bargonha*,[4] who on account of conflict of authority considered himself entitled to act on his own opinion of the Act and did not report the case of the Chief Justice for hearing by a Bench of two or more Judges. He, however, arrived at the same conclusion, as was arrived at in the Punjab, nine years ago, though despite an adjournment the counsel did not cite the Punjab Full Bench case before his Lordship who proceeded to observe : "Looking at the sentence from a purely grammatical point of view, I think it by no means follows that the word 'together' governs 'reside.' If the printer had put a comma after the word 'reside', it would, I take it, be clear that 'together' would not govern 'reside'. But whether or not there is a comma in the original Act, I do not propose to let my decision depend on the punctuation which the *printer thought fit to adopt*." In *Mani Lal* v. *Trustees for Improvement of Calcutta*.[5] Chaudhari, J., referred to the punctuation, while agreeing with the majority while Chatterjee, J., in his minority judgment followed the rule laid down in *Maharani of Burdwan's* case in rejecting the aid of punctuation. In a Rangoon case,[6] the Bench did not consider it always safe to rely on punctuation as a deciding factor in a question of construction. Schwabe, C.J., was, however, more emphatic in *Board of Revenue, Madras* v. *S. R.*

1. ILR 14 Cal 365.
2. (1917)ILR 41 Bom 588, 613, 614 (FB); *cf.* Shah, J., at p. 617.
3. 47 PR 1911 (FB); *see* also *Leadon* v. *Leadon*, AIR 1926 Oudh 319. (The general rule is that a qualifying word shall be deemed to qualify the word nearest to it).
4. (1920) ILR 44 Bom 924, 928, 932; *Gobardhan Joshi* v. *State of Bihar*, AIR 1957 Pat 340 at p. 348 (Ahmad, J.,) (commas do not form part of the statute.)
5. (1917) ILR 45 Cal 343, 374, 427 (FB).
6. *Jupiter Insurance Co.* v. *Abdul Aziz*, AIR 1923 Rang 185, 186 : ILR 1 Rang 226.

M. A. R. Ramanadhan Chettiar,[1] and said :".....The Statute has been punctuated, and we must take the punctuation marks, as part of the statute." In *Pugh* v. *Ashutosh Sen*,[2] their Lordships of the Privy Council observed : "The truth is that, if the Article is read without the commas inserted in the print, as a court of law is bound to do, the meaning is reasonable clear. In *Niaz Ahmad* v. *Parsottam Chandra*.[3] Sulaiman, J., felt that the difficulty was caused mainly by the punctuation and following the dicta of the two Privy Council cases ignored the comma. S. K. Ghosh, J., however, in *Birendra Lal Chaudhary* v. *Nagendra Nath Mukherjee*,[4] observed : "No doubt there is an old rule that punctuation is not a part of the statute, but where it is not contended that the punctuation is wrongly placed, there is no reason why the punctuation should not be taken as a good guide for the purpose for which it is there, namely, to understand the sense of the passage." Kania, J. (as he then was) held in *Indian Cotton Co. Ltd.* v. *Hari Poonjoo*,[5] after taking into consideration the previous Bombay case and the two Privy Council cases above referred to, that in considering the plain words of a section punctuation could not be relied upon. In a case in Bombay, viz., *In re* Krishnaji Gopal,[6] their Lordships made full use of the comma after the word 'conditions' and of the omission thereof after the word 'circumstances' in the expression "shall in such circumstances and under such conditions, if any, as may be specified in the order...." enacted in Section 21 of Bombay Public Security Measures Act, 1947. In the Lahore High Court, Dalip Singh, J. In *Bhola Singh* v. *Raman Lal*,[7] opined that a 'statute must be interpreted without regard to punctuation'. And in a later Full Bench case, *Gurmukh Singh* v. *Commissioner of Income-tax*,[8] Munir, J. observed : "In the interpretation of statutes punctuation, not being a part of the statute to be construed, is not the determining factor and if the provision, as punctuated leads to an absurd result or conflicts with some other provisions of the statute which is unambiguous and free from doubt, the punctuation must yield to an interpretation that is reasonable and makes it consistent with the other provisions of the Act." So far as the Acts of the Indian Legislature and the Constitution of India are concerned, it has been held that in India, the punctuations in the statutes should not be ignored.[9] It is of course said that punctuations do sometimes lend assistance in the constructions of sentences, but they are always subordinate to the context and Court may legitimately punctuate or disregard existing punctuation or re-punctuate in order to give effect to the legislative intent. Even where a punctuation may be considered and given weight, for the purpose of discovering the intention of the Legislature, it can be done so only where a statute has been very carefully and accurately punctuated when enacted, and where all other means have proved futile.[10] In *Gopalan* v. *State of Madras*,[11] Chief Justice Kania took notice of the comma in construing Sub-clause (7) of Article

1. AIR 1924 Mad 455 (Wallace, J., concurring.)
2. AIR 1929 PC 69, 71.
3. AIR 1931 All 154 156 : ILR 53 All 374; *see* also *Mansa* v. *Mst. Ancho*, ILR 55 All 700 : AIR 1933 All 521; *Bijibai Saldhana* v. *Rama Manohar*, AIR 1969 B 103, 108, (Bal, J.).
4. (1935)39 CWN 910, 912.
5. AIR 1937 Bom 39, 41 : ILR 1937 Bom 763.
6. AIR 1940 Bom 360.
7. AIR 1941 Lah 28, (Tek Chand, J., agreed thereto).
8. AIR 1944 Lah 353, 367 : ILR 1944 Lah 173 (FB).
9. *Badrinarain* v. *State*, AIR 1959 Raj 64.
10. *State* v. *Satram Das*, AIR 1959 Punj 497.
11. AIR 1950 SC 27 at p. 45 : 1950 SCR 88 at p. 126. "The better rule is that punctuation is a part of the Act and that it may be considered in the interpretation of the Act but may not be used to create doubt or to distort or defeat the intention of the Legislature. When the intent is uncertain, punctuation, if it affords some indication of the true intention, may be looked to as an aid. In such a case the punctuation may be disregarded, transposed or the Act

22 of the Constitution of India and observed : "The use of the word 'which' twice in the first part of the sub-clause, read with the comma put after each, shows that the Legislature wanted these to be read as disjunctive and not conjunctive." When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation. Hence punctuation may have its uses in some cases, but it cannot be allowed to control plain meaning of a text.[1] Punctuation is after all a minor element in the construction of a statute and very little attention is paid to it by English Courts. There is no rule which says that two parts of a sentence separated by a semi-colon cannot deal with two different states of affairs.[2] To construe Acts according to punctuation works, or according to absence of punctuation marks, or completion or incompletion of brackets, would be to constitute legislative enactment according to the intention of the draftsman, and not according to the intention of the Legislature.[3] It is well settled that punctuation forms no part of any Act.[4]

Punctuation marks do not control the meaning of a statutory provision if it is otherwise obvious.[5]

To summarise, while marks of punctuation contained in a statute will not generally be wholly ignored by the Court in interpreting a statutory provision, it may not always be safe to rely on punctuation as a deciding factor. Great importance will be attached by the Court to the language employed by the legislature and if it is found that the word used in the section when read as a whole, clearly furnish a clue to the legislative intent underlying the section and they admit of an interpretation consistent with the said legislative intent, any punctuation work which is inconsistent with such construction will be disregarded and the punctuation will not be allowed to control the plain meaning of the text.[6]

12. Illustrations.—An illustration to a statutory provision merely illustrates a principle and *ex hypothesi* it cannot be exhaustive.[7] It is illustrative of the true scope and ambit of a section.[8] It must be read subject to the relevant provision in the section itself.[9]

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may be re-punctuated if the Act as originally punctuated does not reflect the true legislative purpose. An Act should be read as punctuated unless there is some reason to the contrary, and this is specially true where a statute has been repeatedly re-enacted with the same punctuation, Sutherland : *Statutory Constuction*, 3rd Ed., Vol. 2, Article 4939 at pp. 447, 478; But see *Sarju Singh* v. *Gurdwaru*, AIR 1963 Him Pra 9 and *Syamapada Banerji* v. *Assistant Registrar, Co-operative Societies*, AIR 1964 Cal 190; *see* however *Rajni Kant Kesheb Bhandari* v. *State*, AIR 1967 Goa, 40.

1. *Ashwini Kumar* v. *Arabindo Bose*, AIR 1952 SC 369; *India Sugars & Refineries Ltd.* v. *State*, AIR 1960 Mys 326 at p. 335; *Hari Das Mundra* v. *National Grindlay's Bank*, 67 CWN 58. But see *Rajni Kant* v. *State*, AIR 1967 Goa 40 at p. 44 (Jetley, J.C.); *Rajkumar Singh Ji* v. *Commissioner of Expenditure Tax*, AIR 1968 MP 107 at p. 111 (Bhave, J.); *Bijibai Saldhana* v. *Rama Manohar Thamu Misra*, AIR 1969 Bom 103; *Gangu Pundalik Waghware* v. *Pundalik Maroti Waghware*, 1979 Mah LJ 862 (DB); *Dadaji* v. *Sukhdeobabu*, AIR 1980 SC 150.
2. *Pravita Bose* v. *Rupendra Deb*, (1964)4 SCR 69 at p. 79 (Sarkar, J.) (the word 'but' after the semi-colon does not show that what follows it must contemplate the case dealt by the words preceding it.)
3. *Jethanand* v. *Nagar Palika*, 1980 Jab LJ 494.
4. *Daulat Ram* v. *Lt-Governor, Delhi*, AIR 1982 Delhi 470 (FB).
5. *Dadaji* v. *Sukhdeobabu*, AIR 1980 SC 150; *see* also *A. Annamalai* v. *S. Ammal*, AIR 1979 Mad 238; *V. U. Uttarwar* v. *State*, AIR 1977 Bom 99.
6. *M.G. Kollankulan* v. *C.I.T.*, 1977 Ker LT 990 (DB).
7. *Bama Jena* v. *The State*, AIR 1958 Orissa 106 at p. 108; *Government of Andhra Pradesh* v. *Mohammed Azam Abdul Bari & Co.*, (1958)1 Andh WR 299 (FB) : 1958 Andh LT 185 (when the main provision imposed a tax in regard to a transaction between licensed dealers, the illustrations cannot be construed to take in transactions between other persons); *(Dr.) Mahesh Chand Sharma* v. *(Smt.) Raj Kumari Sharma*, AIR 1996 SC 869 : (1996)1 JCLR 726.
8. *Aley Ahmad Abdi* v. *Tribhuwan Nath Seth*, 1979 All LJ 542.
9. *Bhagabat* v. *Madhusudan*, AIR 1965 Orissa 11 at p. 13 (Barman, J.).

For use of untrained Judiciary.—Illustrations merely illustrate a principle and what the Court should try and do is to deduce the principle which underlies the illustrations.[1] An illustration is a simple statement of facts to which the section itself has got to be applied.[2] It only exemplifies the law as enacted in a statute.[3] Stuart, C.J. in *Nanak Ram* v. *Mehin Lal*,[4] offered the following remarks about the 'illustrations' inserted in the Acts in India : "I allude to those 'illustrations' which the Government of India in its legislative capacity have thought fit of late years, and no doubt with the best and most considerate motives, to add to its legislative enactments. These illustrations, although attached to, do not in legal strictness form part of the Acts, and are not absolutely binding on the Courts. They merely go to show the intention of the framers of the Acts, and in that and in other respects, they may be useful, provided they are correct. In this country, where the administration of the law is for the most part conducted by persons who are not only not professional lawyers, but who have had no legal education or training in any proper or rational sense of the terms, the Legislature act with wisdom and salutary consideration of the interests of justice by putting into the hand of judicial officers appliances such as the illustrations in question for the guidance and direction in the performance of their duties. But, for myself, I can truly say I have never experienced their utility, and I fear they sometimes mislead, and I observe they are more regarded in the subordinate Courts in these provinces, and even by the pleaders of the High Court than is the paramount language of the Act itself, of which, however, as I have remarked, they, strictly speaking, form no part. With respect to the present case, plainer language than that used in Section 127 of the Contract Act, it would be difficult to imagine, and why it should have been thought proper to illustrate it at all I do not very well comprehend." In the construction of the Straits Settlements Evidence Ordinance, Lord Shaw of Dunfermline, delivering the opinion of the Judicial Committee in *Mohammed Syedol Ariffin* v. *Yeoh Ovi Gark*,[5] observed : "On the second point their Lordships are of opinion that in the construction of the Evidence Ordinance, it is the duty of a Court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should, in no case, be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired."

Useful now

It is not to be readily assumed that an illustration to a section is repugnant to it and rejected.[6] Illustrations are only aids to understanding the real scope of an enactment. If the text

1. *Ashrafalli* v. *Mohammedalli*, AIR 1947 Bom 122, 130, *per* Chagla, C.J.
2. *V. E. A. Chettiyar Firm* v. *Sein Htaung*, AIR 1935 Rang 420, 429, *per* Banguley, J.
3. *Chhotey Lal* v. *King-Emperor*, AIR 1925 All 220; *Krishnadas* v. *Dwarkadas*, ILR 1937 Bom 679 : AIR 1936 Bom 459. 462, *per* B. J. Wadia, J.
4. ILR (1877)1 All 487, 495.
5. 43 IA 256, 263. *See* also *Janoo* v. *Joseph Heap & Sons Ltd.*, AIR 1918 LB 97, 99; *Hallappa* v. *Irappa*, ILR 46 Bom 843 : AIR 1922 Bom 415; *Durga Priya* v. *Durga Pada*, ILR 55 Cal 154 : AIR 1928 Cal 204; *Hem Chandra* v. *Narendra Nath*, ILR 61 Cal 148 : AIR 1934 Cal 402; *Ramaswamy Pattamali* v. *Lakshmi*, AIR 1962 Ker 313 : ILR (1962)2 Ker 132 : 1962 Ker LJ 364 (FB).
6. *Jumma Masjid, Mercara* v. *Kodimaniandra Deviah*, AIR 1962 SC 847 at p. 851; following *Mohd. Syedol Ariffin* v. *Yeoh Ovi Gark*, 43 IA 256 : AIR 1916 PC 242.

is clear, and the illustration beyond it, the illustration cannot extend or limit the scope of the text. In all other cases, the illustration is explanatory of the section.[1] It may be rejected on the ground of its absolute repugnancy to the section itself.[2]

Higher value than that of marginal note.—Being part of the statute,[3] and not standing on the same footing as marginal notes,[4] they go a great way to explain the intention of the Legislature.[5]

Beasley, J., In *Ramalinga Mudaliar* v. *Muthuswami Ayyar*,[6] after referring to *Ariffin's* case and *Balla Mall's* case expressed : "I do not take either judgment to mean that under every circumstance an illustration must be taken as part of the statute. All that in my view is meant is that Court should not lightly disregard the illustrations merely because they do not seem to be in accord with generally accepted ideas as to the law in other places." Their Lordships of the Privy Council again in *Sopher* v. *Administrator-General, Bengal*,[7] ruled that the "section must, of course, be read and construed in connection with the illustrations to be found in the Act."

Higher value than that of headings.—A clue or guidance can be had from the scheme of arrangements or heading of parts and chapters in the Act only if the language of the section to be interpreted is not clear enough but where the Legislature has itself tried to make its meaning clear by providing illustrations under the section, then those illustrations may appear to furnish a better clue to the meaning sought to be conveyed by the language of the section than the setting in which the section appears in the Act, or the heading that the sections, parts or chapters carry.[8]

Conflict between section and illustration thereto.—The statement of law in the illustrations used in an Act cannot be taken as laying down substantive law,[9] and does not bind the Court to place a meaning on the section which is inconsistent with its language.[10] If there be any conflict between the illustration and the main enactment, the illustration must give way to the latter.[11]

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1. *Lal Haribansha Nikunja* v. *Bihari*, ILR 1960 Cal 230. But see *Sonrexa, K. P.* v. *State of U. P.*, AIR 1963 All 33.
2. *Shivjit Singh* v. *Charan Singh*, 1973 RCR 43 (FB) (Manmohan Singh Gujral, J.).
3. *Balla Mal* v. *Ahad Shah*, AIR 1918 PC 249, 250, *per* Lord Atkinson.
4. *Ram Lal* v. *Emperor*, AIR 1928 Oudh 15, 16-17, *per* Wazir Hassan, J.
5. *Ram Subhag Singh* v. *Emperor*, 30 IC 465, 478 (Cal), *per* Sharfuddin, J.; *Satish Chandra Chakravarty* v. *Ram Dayal De*, ILR 48 Cal 388, 399 (SB); *Nga Mya* v. *Emperor*, 32 IC 641 (FB).
6. AIR 1927 Mad 99 : ILR 50 Mad 94 (FB); followed in *Official Assignee, Madras* v. *Sampath Naidu*, AIR 1933 Mad 795, 797 (Beasley, C.J. and Bardswell, J.)
7. AIR 1944 PC 67, 69, *see* also *Aniruddha* v. *Administrator-General of Bengal*, AIR 1949 PC 244, 250.
8. *Amar Singh* v. *Chhajju Singh*, AIR 1973 P & H 213, 220 (FB) (Suri, J.).
9. *Bengal-Nagpur Railway Co. Ltd.* v. *Ruttonji Ramji*, AIR 1938 PC 677; *Nga Mya* v. *Emperor*, 32 IC 641 (FB) (Lower Burma).
10. *Satish Chandra Chakravarty* v. *Ram Dayal De*, ILR 48 Cal 388, 398 (SB); *Myingyan Municipal Committee* v. *Maung Pon Nyun*, ILR 8 Rang, 320 : AIR 1930 Rang 173, 174 (illustration wrong); *Krishen Das* v. *Dwarkadas*, ILR 1937 Bom 679 : AIR 1936 Bom 459, 462; *Maruti* v. *Bankatlal*, AIR 1933 Bom 313, *per* Beaumont, C.J. (illustrations cannot be used to defeat the plain words of the section).
11. *Mst. Sajid-un-nisa* v. *Sayed Hidayat Hussain*, AIR 1924 All 748. (Illustrations appended to sections of an Act of the Legislature are not to be taken as express provisions of law or as binding on the Court. Illustration in Section 10 of the Evidence Act is inconsistent with the section. The way that the words "and to prove A's complicity in it" come into the illustration is not quite in accordance with commonsense or with the section but where the fact from the nature of things cannot, of its own force, help towards the conviction of *A*, it does not matter much whether it is technically relevant against *A* or not); *Balmokand* v. *Emperor*, 16 Cr LJ 354 : 28 IC 738.

It is true that illustrations cannot control the language of a section, but they certainly afford a guidance to its construction.[1]

Where meaning doubtful.—Illustrations to a section are valuable guides in ascertaining the meaning of a section.[2] If the meaning of the enactment itself is doubtful, reference to the illustration in order to clear the meaning would be justified.[3] But an illustration cannot have the effect of modifying the language of the section which alone forms the enactment.[4]

It is well settled that just as illustrations should not be read as extending the meaning of a section, they should also not be read as restricting its operation, especially so, when the effect would be to curtail a right which the plain words of the section should confer.[5]

13. Proviso, exception, saving clause.—A proviso is something engrafted on a preceding enactment.[6] The proviso follows the enacting part of a section and is in a way independent of it.[7] Normally, it does not enlarge the section, and in most cases it cuts down or makes an exception from the ambit of the main provision.[8] Provisos are often inserted to allay fears or misapprehension.[9]

Proviso.—A proviso is a proviso to the section.[10] It assumes the tenor and colour of the substantive enactment.[11] The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment,[12] and its effect is confined to that case.[13] While rulings and text books have assigned many functions for

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1. *Jadav Kumar* v. *Pushpabai*, AIR 1934 Bom 29, 31, *per* Chagla, C.J.; *Nga Mya* v. *Emperor*, 32 IC 641 (FB) (may be useful if correct).
2. *Kumarswami Chettiar* v. *Karuppaswami Moopanar*, (1952)2 MLJ 785.
3. *Mst. Sajid-un-Nissa* v. *Sayed Hidayat Hussain*, AIR 1924 All 748.
4. *Bengal-Nagpur Railway Co. Ltd.* v. *Ruttonji*, AIR 1938 PC 67, *per* Sir Shadi Lal, J. *see* also *Ramalinga* v. *Muthuswami Ayyar*, ILR 50 Mad 94 : AIR 1927 Mad 99, 109; *Kamalammal* v. *Peeru Meeza Levvai Rowthen*, ILR 20 Mad 491; *Sampuran Singh* v. *Arjan Singh*, AIR 1961 PC 414, 416; *Kadorilal* v. *Sukhlal Sajan Singh*, AIR 1968 Madh Pra 4 foollowing AIR 1962 SC 847; *see* also *Sirajuddin* v. *Government of Madras*, AIR 1968 Mad 117, (where ilustration to a section in another enactment similarly worded was relied on).
5. *Anirudha* v. *Administrator-General of Bengal*, AIR 1949 PC 244, 250; *Balmokand* v. *Mst. Sohano Kueri*, ILR 8 Pat 153 : AIR 1929 Pat 164; *Govinda Pillai v. Theyammal*, ILR 28 Mad 57; *Shambhu Nath Mehra* v. *State of Ajmer*, AIR 1956 SC 404.
6. *R.* v. *Taunton St. James (Inhabitants)*, (1829) 109 ER 309, *per* Bayley, J. (The presumption is that a proviso in a statute refers only to the provisions to which it is attached); *U.S.* v. *Mc Clure*, 305 US 472 : 83 L Ed 296.
7. *Kartar Singh* v. *Lallusingh*, AIR 1962 Madh Pra 104 : 1961 Jab LJ 405 : 1961 MPLJ 1241.
8. *Valliammal* v. *Area Committee for Madras City*, ILR 1962 Mad 812 : (1962)1 MLJ 320 : 75 MLW 36.
9. *Madanlal Fakirchand* v. *Changdeo Sugar Mills*, AIR 1962 SC 1543.
10. *Rajah of Venkatagiri* v. *State of Andhra Pradesh*, AIR 1958 Andh Pra, 520 at p. 529 (Subba Rao, C.J.).
11. Vide *Rampratap Sah* v. *Ayodhya Prasad Srivastava*, (1991)1 Pat LJR 839. See *S. Sundaram* v. *V.R. Pattabhiraman*, AIR 1985 SC 582; Craie's *Statute Law*, 7th Ed., p. 208; Odgers on *Constitution of Deeds and Statute*, 5th Ed., p. 317; *A.N. Sehgal* v. *R. Shevram*, AIR 1991 SC 1406; *Rhodde Arvan District Council* v. *Taffvale Railway Co.*, 1909 AC 253; *Jagroop Singh Gill* v. *State of Punjab*, AIR 1995 P & H 303.
12. *Vedehi Saran* v. *Municipal Board, Konch*, 1978 All LJ 907; *B.M. Mundkur* v. *Life Insurance Corporation of India*, (1976)89 LW 587; *State of Rajasthan* v. *Mrs. Leela Jain*, AIR 1965 SC 1296.
13. *Rameshchandra* v. *Union of India*, 1991 MPLJ 271; *Border Security Force (B.S.F.)* v. *State of Meghalaya*, AIR 1989 Gau 81 (FB); *Modern Homeopathy Society, Hubli* v. *State of Karnataka*, (1992)1 Kar LJ 349; *New India Assurance Co Ltd.* v. *Minalata Ray*, (1992)74 CLT 251; *M. & S. M. Rly.* v. *Bezwada Municipality*, AIR 1944 PC 71, 73, *per* Lord Macmillan; *Mullins* v. *Surrey Treasurer*, (1880)5 QBD 170, *per* Lush, J.; *Duncan* v. *Dixon*, (1890)44 Ch D. 211, *per* Kekewich, J.; *Halliswell* v. *Corporation of Bridgewater*, 2 Anderson at 192; *Broach Co-operative Bank* v. *Commissioner of Income-tax*, AIR 1950 Bom 45, 46; *Juggilal Kamlapat* v. *Sew Chand*, AIR 1960 Cal 463. *See* also *Kedarnath Jute Manufacturing Co.* v. *Commercial Tax Officer*, AIR 1966 SC 12 : (1965)16 STC 607; *Duggirala Amara* v. *State*, (1966)1 Andh LT 114; *Dwarka Prasad* v. *Dwarka Das Saraf*, 1975 All LR 516 (SC); *B. Sudhakar (Dr.)* v. *Union of India*, AIR 1995 Andh Pra 86 (FB).

proviso, the Court has to be.....having regard to the text and context of a statute.[1] There is no magic in the words of a proviso.[2] The proper way to regard a proviso is as a limitation upon the effect of the principal enactment.[3] "I think the proviso is a qualification of the enactment", said Lord Macnaghten in *Local Government Board* v. *South Stoneham Union*,[4] "which is expressed in terms too general to be quite accurate". A proviso, which is in fact and in substance a proviso, can only operate to deal with a case which but for it would have fallen within the ambit of the section to which the proviso is a proviso. The section deals with a particular field and the proviso excepts or takes out or carves out from the field a particular portion, and therefore it is perfectly true that before a proviso can have any application, the section itself must apply. A proviso is nothing but an exception to the enacting clause. Its object is to cut down or qualify something which has gone before.[5] If the proviso is taken away, the enacting clause is not affected. Hence if the proviso is unlawful as *ultra vires*, it can be severed from the rest of the enactment, as only the offending part will go.[6] It is equally true that the proviso cannot deal with any other field which the section itself deals with.

The duty of the Court also must be to give to the proviso as far as possible a meaning so restricted as to bring it within the ambit and purview of the section itself.[7] If a proviso is capable of a wider connotation and is also capable of a narrower connotation, and if the narrower connotation brings it within the purview of the section then the Court must prefer the narrower connotation rather than the wider connotation of the two possible interpretations, the Court should prefer that one which brings it within the purview of the section.[8] Court is not justified in construing proviso as enlarging the scope of the enactment when it can be fairly and properly construed without attributing it that effect.[9]

In *Baba Ajaibdas* v. *State of Bihar*[10] the Court, while reconciling the apparent conflict between proviso *(a)* to Sub-section (2) of Section 167 and Sub-section (1) of Section 437 of the new Code of Criminal Procedure laid down the following rules of interpretation :

(1) A proviso is not independent of the section. Its object is to carve out from the main section a class or category to which the main section does not apply.

(2) In case of conflict or repugnancy between proviso to a section and another section, the provisions of the section should prevail.

(3) That interpretation should be avoided which may lead to friction with other well-established law or may cause absurd or outrageous consequences.

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1. *Dwarka Prasad* v. *Dwarka Das Saraf*, 1975 All LR 516 (SC).
2. *Basant* v. *A.G. of Madras*, ILR 43 Mad 146, 155, *per* Lord Phillimore.
3. *Raj Rani (Mst.)* v. *Dwarka Nath*, AIR 1933 Oudh 491, 500; *see Chooramani, G. S.* v. *State of U.P.*, AIR 1969 All 43 (for the proviso was considered as a positive independent provision, *Commissioner, Commercial Taxes* v. *Ramakrishna*, AIR 1968 SC 59; *Rupchand Hemandas* v. *Heera Jawaharmal*, AIR 1968 Bom 100.
4. 1909 AC 57.
5. *J.C. Saraswathi* v. *P. N. Bhute*, AIR 1991 HP 64 : (1990)1 Servi LC 91; *Jamnabai Motilal* v. *State of Maharashtra*, 1978 Mah LJ 93 (DB).
6. *Jagdatt Singh* v. *State of Uttar Pradesh*, AIR 1962 All 606 at p. 608 (Jagdish Sahai, J.).
7. *Surinder Kumar* v. *State of Haryana*, (1979)81 Punj LR 331 (FB).
8. *Ibid.*
9. *Sri Ram* v. *State*, AIR 1958 Punj 47 at p. 51 (Tek Chand, J.), following Lord Watson in *West Derby Union* v. *Metropolitan Life Assurance Co.*, 1897 AC 647, 652.
10. 1975 PLJR 109 (DB); *Togru Sudhakar Reddy* v. *The Govt. of A.P.*, AIR 1992 Andh Pra 19 (DB) : (1991)3 ALJ 173 : (1991)2 APLJ 308.

But.—And this is equally clear—a Legislature may enact a substantive provision in the garb or guise of a proviso and if the Court is satisfied that the language used in the so-called proviso is incapable of making it applicable to the section, then the Court, if the proviso has clear meaning, must look upon the proviso as a substantive provision enacted by the Legislature and give effect to it as such.[1] But, though ordinarily, the proviso is not independent of the section, it may sometimes contain a substantive provision.[2] And in such case it has to be given its effect.[3] In *Udai Bir Singh* v. *State of U.P.*,[4] where proviso *(a)* to Section 12-A of the U.P. Imposition of Ceilings on Land Holdings Act, was independently construed and interpreted observing that it was not an inflexible rule that proviso should generally be interpreted as coming out something of an exception of the main section.

When the language of the main enactment is clear and unambiguous, a proviso can have no repercusion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.[5] But if the main provision is not clear, the proviso cannot be deemed to be a surplusage and can properly be looked into for ascertaining the meaning and scope of the main provision.[6] In such a case, if the language is susceptible to the interpretation which is consistent with the proviso, the latter may be called in aid.[7]

A proviso is to be strictly construed and it has no existence apart from the provision which it is designed to limit or qualify. Generally speaking, a proviso is intended to restrain the enacting clause and except something which would have otherwise been within it or in some measure to modify the enacting clause. It is a rule of interpretation that the appropriate function of a proviso is to restrain or modify the enacting clause, or preceding matter, and it should be confined to what precedes unless the intention that it shall apply to some other matter is apparent.[8] It is, however, correct to say that a proviso should always be assumed to be and read as an exception. A substantive provision may also appear in the form of a proviso, and if the clear meaning of the proviso established that it is not a qualifying clause of the main provision, the Court is bound to give effect to it without straining to attribute to it the character of segment of the main enactment. The meaning of the proviso should be derived from its terms without any predilection that its subject-matter is already covered by the main provision and that its object is to exclude something out of the main provision.[9] We ought to put on the proviso a construction which will favour the assessee and which would not deprive him of the right of

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1. *Keshav Lal* v. *Commissioner of Income-tax, Bombay*, AIR 1957 Bom 20.
2. *Jummarlal Suraj Karan* v. *Commissioner of Income-tax*, (1962)2 Andh WR 126; *Vedehi Saran* v. *Municipal Board, Konch*, 1978 All LR 907; *C.I.T., Kerala* v. *P. Krishna Warrier*, AIR 1965 SC 59; *S.N. Trivedi* v. *M.P. Road Tranport Corporation, Bhopal*, 1980 MPLJ 146 (DB); *Ishwarlal Thakorelal* v. *Motibhai Nagajibhai*, AIR 1966 SC 459.
3. *Rupchand* v. *Heera*, AIR 1968 B 100, 103 (Patel, J.).
4. 1978 All LJ 1187.
5. *A.N. Seghal* v. *Ram Sheoram*, AIR 1991 SC 1406 : 1991 Lab IC 1227; *Tribhovandas Harbhai Tamboli* v. *Gujarat Revenue Tribunal*, AIR 1991 SC 1538 : (1991)2 JT 604 : (1991)3 SCC 442 : 1991 AIR SCW 1459; *Shri Kohota Hollohan* v. *Zachilthu*, AIR 1993 SC 412 (5J); *Vanda Singh (Smt).* v. *Steel Authority of India Ltd.*, 1993 JLJ 55; *Mahadeo Aon* v. *Chairman of the Howarah Municipality*, ILR 37 Cal 697, 702 quoting Lord Macnaghten in *Commissioner for Special Purposes of Income-tax* v. *Pemsel*, 1891 AC 531, 539 and Lord Herschell, L.C., in *West Derby Union* v. *Metropolitan Life Assurance Society*, 1897 AC 647, 652.
6. *Bachan Singh* v. *Election Commissioner*, AIR 1966 Punj 472; *Hindustan Life Insurance* v. *Life Insurance Corporation*, AIR 1963 SC 1083.
7. *Narasimha Rao* v. *Jalavya*, AIR 1957 Andh Pra 1007, 1010 (Subba Rao, C.J.).
8. *Sri Ram* v. *The State*, AIR 1958 Punj 47 at p. 51.
9. *Thaigisar Dharma* v. *Commissioner of Income-tax*, AIR 1963 Mad 660; *Jummarlal Suraj Karan* v. *Commissioner of Income-tax*, (1962)2 Andh WR 126.

appeal altogether, because such a construction would be in consonance with right and justice rather than the construction which would deprive him of that right altogether.[1]

A proviso cannot, by construction, be permitted to defeat the basic intent expressed in the substantive provision.[2]

A proviso generally modifies the general principles contained in a general rule.[3]

Negative proviso.—A negative proviso cannot be construed as imposing a positive and imperative duty, and the most that can be said for it is that it is for the benefit of the tax-payer and, if he chooses to waive it, he cannot afterwards rely on it.

Object.—It is well known that a proviso is not infrequently inserted in an Act merely to allay fears, although such fears are absolutely unfounded and no proviso is really necessary to protect the persons at whose instance it is added.[4] The object of the proviso sometimes, however, is to curtail to some extent the very wide jurisdiction conferred upon the Court by the main body of the section.[5] A proviso has generally the purpose of modifying the general principles enunciated as a general rule.[6]

Ordinarily, a proviso is no doubt designed to restrict rather than to enlarge the provision to which it is appended but this is not an inflexible rule and there are cases in which the language might well lead to the conclusion that the Legislature intended to exercise its enacting power. If after a careful examination of the proviso, the provision to which it is attached and the Act as a whole, the Court comes to the conclusion that the Legislature intended to create a liability, it is the duty of the Court to give effect to the intention even though it is embodied in a proviso. The substance and not the form must be looked at for as pointed out by Craies on *Statute Law*, that which is in form a proviso may in substance be a fresh enactment adding and not merely qualifying that which comes before.[7] After a review of the authorities, a Full Bench of the Punjab High Court has held in *Khanchand Tikkaram* v. *State of Punjab*[8] that provisos added to a section can be of three types. One is that a proviso may be intended to except or take out of the purview of the enactment a certain class or certain contingency. In the second type of cases, the object of the proviso is merely to qualify the purview. The third is the one usually known as the saving clause. Where the purview of the section and the proviso cover the same field and the

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1. *Commissioner of Income-tax, Bombay* v. *Filmistan*, AIR 1958 Bom 345 at p. 346 (Tendolkar, J.) (A statute should, if possible, on the language of the proviso, be so interpreted as to avoid defeat of the right of any party for no fault of his own); *Zafaruddin* v. *Madan Mohan*, AIR 1960, All 612 at p. 614 (V. Bhargava, J.) (Proviso as to dismissal); see *Management of D.T.U.* v. *Hajelay*, (1972)2 SCC 744 at p. 748 (Palekar, J.).
2. *N.R. Narayana Pillai* v. *Joint Registrar*, (1993)1 Ker LJ 440; *Vishesh Kumar* v. *Shanti Prasad*, AIR 1980 SC 892 : 1980 All LJ 411 : (1980)2 SCC 378 : (1980)6 All LR 233 : 1980 All WC 263 : (1980)1 Rent CR 661 : (1980)2 SCJ 111 : (1980)2 SCWR 1 : (1980)3 Mah LR 192 (SC); *see* also *Dwarka Prasad* v. *Dwarka Das Saraf*, (1976)1 SCC 128 : 1975 All LR 516 (SC).
3. *Bhagelu Mian* v. *Mahboob Chick*, AIR 1978 Pat 318; *see* also *Vishesh Kumar* v. *Shanti Prasad*, AIR 1980 SC 892 (C.P.C., Section 115, U.P. Amendment, 1978).
4. *The King* v. *Atkinson*, 3 CLR 632, 643.
5. *Lakshmi* v. *Official Assignee*, AIR 1950 Mad 410, 414 (FB) (*per* Satyanarayan Rao, J.). (The effect of a proviso to a statute is to except something from the operative effect or to qualify or restrain the generality of the substantive enactment to which it is attached); *Cox* v. *Hurt*, 67 L Ed 332.
6. *Bhagelu Mian* v. *Mahboob Chick*, 1978 BLJ 123.
7. *In the matter of* Crown Flour Mills, AIR 1955 Punj 5.
8. AIR 1966 Punj 423 (FB) : ILR (1966)2 Punj 447 : 68 Punj LR 543; see *Commissioner of Income-tax* v. *Jagannath Mahadeo Prasad*, AIR 1969 SC 209 (where it was held that when language is quite clear and no other interpretation is possible, it is pitiable to go into the question whether the proviso operates as a provision or only by way of an exception.)

two are irreconcilable, the proviso is given its full effect since it happens to be the last expressed intention of the Legislature. The Courts always presume that the Legislature inserted every part of the statute for a purpose and the legislative intention is that every part of the statute should have effect.

Application.—A proviso must be considered in relation to the principal matter to which it stands as a proviso.[1] The section must be read along with the proviso as a whole. It is impossible to read the section as it were contained in watertight compartments. It may be that read as a whole the effect of the proviso is to qualify the words which immediately precede it,[2] whether proviso to all preceding matters or only to those immediately preceding. "The question whether a proviso in the whole or in part relates to and qualifies, restrains or operates upon the immediately preceding provisions only of the statute," observed, Holroyd J., in *R.* v. *Newark Inhabitants*[3] "or whether it must be taken to extend in the whole or in part to all the preceding matters contained in the statute, must depend, I think, upon its words and import, and not upon the division into sections that may be made for convenience of reference in the printed copies of the statute." The general rule, no doubt, is that the operation of a proviso should be confined to that clause or portion of the statute which directly precedes it, but the rule will not be applicable where in so construing it some repugnancy or absurdity occurs. Thus, the proviso to Sub-section (6) of Section 10 of the Bihar Sales Tax Act, X of 1944, is restricted to an original order of assessment and does not apply to a fresh order of assessment directed by the appellate or the revisional authority and the period of limitation mentioned in the proviso to Sub-section (6) of Section 10 does not apply to and control the power of review given by Sub-section (4) of Section 20.[4] The proviso to Section 2(1)*(d)* (as amended in 1954) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, did not expand by implication, the protected area of building tenements to embrace 'business' leases.[5]

A proviso, therefore, is normally an exception or qualification carved out of a substantive provision; but it may in some cases be a substantive provision itself.[6] In any view, whether a proviso is construed as restricting the main provision or as a substantive clause it cannot be divorced from the provision to which it is attached as a proviso. It must be construed harmoniously with the main enactment.[7] The object of a proviso is to qualify or modify the scope and the ambit of the matter dealt with in the main section;[8] the proviso may impose certain restrictions on the power to be exercised as conferred by the main section or it may in

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1. *State of Punjab* v. *Kailash Nath*, AIR 1989 SC 558 : 1989 Cri LJ 813 : (1988)4 JT 502 : (1989)1 Cur LR 60 : (1989)1 ATLJ 55 : 1989 Cri LR (SC) 16 : (1989)1 Crimes 126 : (1989)1 SCC 321 : (1989) 58 Fac LR 32 : (1989)1 Lab LW 256 : (1989)1 Rec. Cri R 139 : (1989)1 Serv. LR 12 : (1989)1 UPLBEC 113 : 1989 Bank, J. 121 : (1989) SCC (Cri) 128; *Abdul Jabar* v. *State of Jammu and Kashmir*, AIR 1957 SC 281 at 284; *Dorothy* v. *Mullick*, AIR 1958 Pat 240 at p. 242.
2. *A.G. for New South Wales* v. *Trethowan*, 1932 AC 526, 533, *per* Lord Sankey, LC; *Ex Parte* Partington, (1844)6 QB 649, 653. (Section 27 of the Indian Evidence Act was held to be a proviso to both Sections 25 and 26. "Had the proviso been intended to be a proviso to Section 26 only, it would not have been put in the form of a separate section"; *Queen-Empress* v. *Babu Lal*, ILR 6 All 509, 511 (FB) (*per* Oldfield, J.).
3. 3 B & C at p. 71.
4. *Gajo Ram (Messers)* v. *State of Bihar*, AIR 1956 Pat 113.
5. *Dwarka Prasad* v. *Dwarka Das Saraf*, 1975 All LR 516 (SC) : (1976)1 SCC 128.
6. *Al Haj Amir Hasan Properties (P) Ltd.* v. *Corporation of Calcutta*, (1979)2 Cal HN 361 : 84 CWN 172 (DB).
7. *Commissioner of Income-tax* v. *Ajay Products*, AIR 1965 SC 1358; *Belapur Co.* v. *M. S. Farming Co.*, AIR 1969 Bom 231; *Bhagelu Mian* v. *Mahboob Chick*, 1978 BLJ 123; *Starling Steel and Wires Ltd.* v. *State of Punjab*, 1980 Cur LJ (Civil) 411 (FB).
8. *Bhagelu Mian* v. *Mahboob Chick*, 1978 BLJ 123; *Starling Steel and Wires Ltd.* v. *State of Punjab*, 1980 Cur LJ (Civil) 411 (FB).

certain cases incorporate circumstances under which extended power may be exercised by the authority concerned. But under any circumstances, it is well established that the section and the proviso have to be read together and have to be construed harmoniously,[1] such that neither is rendered ineffective or redundant.

Reading Section 18(1) of the Forward Contracts (Regulation) Act, 1952, and its proviso, the Allahabad High Court has observed :

> "It is a cardinal principle of interpretation that the operative part of the section should be given a construction which would make the exception carried out by the proviso necessary, and construction which would make it unnecessary and redundant should be avoided."[2]

Section not to be construed in the light of proviso.—One does not construe a section in the light of a proviso. If anything, one may construe a proviso in the light of a section. Thus, Section 4(1)*(b)(iii)*, Income Tax Act, 1922, cannot be read with reference to the third proviso to Section 4(1).[3]

Object of proviso.—The object of a proviso is to cut down or qualify something which has gone before. It would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary.[4] Where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carries special exceptions only out of the enacting clause, and those who set up any such exception, must establish it as being within the words as well as within the reason thereof.[5] The object and purpose of every proviso in an enactment is not to destroy the general proposition to which it is a qualification, but to limit the operation of the general propositions.[6] Court should not so construe a proviso as to attribute to the Legislature an intention 'to give with one hand and take with another'. A sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two. The proviso cannot be interpreted in a manner which would defeat the main provision, *i. e., to* exclude, by implication, what the enactment expressly says would be covered by the main provision.[7]

Proviso embraces field covered by main section.—It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.[8] Thus the terms of the proviso to Article 286(2) make it clear that the proviso is meant only to lift the ban under Article 286(2) and no other. The effect of the Sales

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1. *Bommon Behram* v. *Government of Mysore*, AIR 1970 Mys 89, 94 (Tukol, J.); Land Acquisition Act, Section 11 (Proviso inserted by Mysore Act 17 of 1961); *Starling Steel and Wires Ltd.* v. *State of Punjab*, 1980 Cur LJ (Civil) 411 (FB); *Bhagelu Mian* v. *Mahboob Chick*, 1978 BLJ 123.
2. *Jagdish Prasad* v. *State of U.P.*, 1978 All WC 564.
3. *Shanker Iranna* v. *Income-tax Commissioner*, AIR 1956 Bom 280 [even assuming one could look at the language of the proviso in order to construe Section 4(1)*(b)(iii)*, the third proviso does not give any assistance to the Department].
4. *In re* Talerisky, (1947)2 All 182; *M.A. Mohamed* v. *R.T. Authority*, AIR 1958 Ker 140 at 142; *see* also *Sales Tax Officer, Jabalpur* v. *Hanuman Prasad*, AIR 1967 SC 565.
5. *United States* v. *Dickson*, (1841)15 Pat 141; *M.A. Mohammed* v. *R.T. Authority*, AIR 1958 Ker 140 at p. 142.
6. *Vajrapuri* v. *New Theatres, etc. Ltd.*, AIR 1960 Mad 108 at p. 115.
7. *Chellammal* v. *Nallammal*, (1971)1 Mad LJ 439 at p. 446 (Ramamurti, J.) quoting *Tehsildar Singh* v. *State of U.P.*, 1959 (Supp) 2 SCR 875, 893.
8. *Ram Narain Sons, Ltd.* v. *Asstt. Commissioner of Sales Tax*, AIR 1955 SC 765; *Municipal Council, Kukshi District Dhar* v. *Ramdas Haribhai, Mukati*, 1982 MPLJ 260.

Tax Continuation Order (1950) issued by the President was to raise the ban in so far as it was imposed by the provisions of Clause (2) of Article 286. It could not be projected into the sphere of any other clauses of Article 286.[1] A proviso must be considered in relation to the principal matter to which it stands as a proviso. To treat the proviso as if it were an independent enacting clause instead of being dependent on the main enactment is to sin against the fundamental rule of construction, as observed by Moulton, L.J., in *R.* v. *Dibdin*.[2] Provisos and sub-clauses should be governed by the operative portion of the section.[3] "But it is important to observe upon the general structure of Section 11," remarked Lord Simonds in *Governor-General in Council* v. *Madura Municipality*,[4] that Sub-section (3) of Section 11 contains nothing more than provisos on the two preceding sub-sections, and in this connection the well-established rule of construction must be borne in mind which was thus stated by Lord Watson in *West Derby Union* v. *Metropolitan Life Assurance Co.*[5] : "I am perfectly clear that, if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso."[6] An enacting power cannot in general be implied from the language of a proviso. B. K. Mukherjee, J., in *Comilla Electric Supply Ltd.* v. *East Bengal Bank Ltd., Calcutta*,[7] observed : "The application of the proviso must be held limited to cases where the provisions of the sub-section itself, which in one sense are qualified by the proviso, are applicable and it is well-established canon of interpretation that a proviso shall not be construed so as to enlarge the scope of the enactment when it can fairly and properly be construed, so as not to attribute to it this effect." But where there is a doubt as to the true meaning of the substantive part of section, it is surely legitimate to look to the words of a proviso to it in order to determine which interpretation is correct.[8] In the case of provisos enacted in the Hindu Wills Act, White, J., made the following pertinent observations in *Alangamonjori Dabee* v. *Sonamoni Dabee*[9] : "But the Hindu Wills Act is not drawn in the ordinary form of a statute, or indeed of an Act of the Government of India. It does not enact a series of provisions relating to Hindu wills, but, in point of form, it applies to certain Hindu Wills, certain portions only of the Indian Succession Act, and it does this by mentioning only the numbers of particular sections and the numbers of particular parts or chapters or portions of

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1. *Ram Narain Sons Ltd.* v. *Asstt. Commissioner of Sales Tax*, AIR 1955 SC 765.
2. 1910 p. 57, 125 affirmed in 1912 AC 533; *Ram Singh* v. *Ram Karan*, AIR 1965 Madh Pra 264; *Dwarka Prasad* v. *Dwarka Das*, 1975 Ren CJ 593.
3. *Deputy Legal Remembrancer* v. *Upendra Kumar Ghosh*, 12 CWN 140 at p. 144.
4. AIR 1949 PC 39, 42.
5. 1897 AC 647, 652.
6. Halsbury's *Laws of England*, Vol. 44, 4th Ed., Para 881, 882.
7. ILR (1939)2 Cal 401 : AIR 1939 Cal 669, 670; *Smithet* v. *Blythe*, (1891)1 Ch. 337 (same is the rule with regard to an explanation annexed to a section; *Kishen Singh* v. *Prem Singh*, ILR 1940 Lah 223 : AIR 1939 Lah 578). (A proviso appended to a section is either an explanation or a qualification of the section; *In re* Mrs. Besant, ILR 39 Mad 1164. The substance, and not the form, must however be looked at, and that which is in form a proviso may, in substance, be a fresh enactment, adding to and not merely qualifying that which goes before : Halsbury's *Laws of England*, 4th Ed., Vol. 44, Para 880, 882.
8. *Sankaran Nambudripad* v. *Ramaswami Ayyar*, ILR 41 Mad 691, 695 : 34 MLJ 446 : 8 LW 12 : (*per* Ayling, J.), *Ram Chander* v. *Gouri Nath*, ILR 53 Cal 492 : AIR 1926 Cal 927, 932 (*per* Rankin, J.), in *Mahadeb* v. *Chairman, Howrah Municipality*, ILR 37 Cal 697, 702.
9. ILR 8 Cal 637, 641 (It is true that this limitation is introduced by way of proviso. But their Lordships think that looking at the various parts of the Act and gathering the purpose and intention of the Legislature from the whole, this was a substantive enactment; and that, although it appears under the form of a proviso, it was a limitation intended by the Legislature to apply to all suits brought by any person in respect of forfeited property); *Mohd. Bahadur Khan* v. *Collector of Bareilly*, 1 IA 167, 175.

parts or chapters of the principal Act. The sections and portions of parts so specified are applied bodily *in globo* as it were, without any limitation and without any adaptations of the section of the peculiar law or custom or circumstances of Hindus. Hindus were expressly excluded from the operation of the Indian Succession Act when it was passed, and although it is not improbable that the Legislature, even at the time, contemplated that at some future day the Act might be extended to Hindus, the Legislature must have considered in 1865 that the Act, as it then stood, was not in all respects suited for Hindus, otherwise Hindus would have been included. It is obvious that an unqualified extension to Hindus of a large number of section and parts of an Act, in its origin passed for persons other than Hindus, would be attended with some most unexpected and undesired results, unless the operation of the applied sections were controlled. The third section, accordingly, enacts five provisos, the object of which, as it appears to me, is to prevent so far as Hindus are concerned the wholesale application, as it were, of the sections and chapters mentioned in Section 2 from directly or indirectly altering or affecting the Hindu Law in those matters to which the provisos relate, and from thus introducing changes not contemplated by the Legislature. Hence in construing an Act of the Government of India passed in form peculiar to the Hindu Wills Act, I think, the sound rule of construction is to give their full and natural meaning to the provisos, and only to give effect to the enactments contained in the applied sections and chapters, so far as the latter do not contravene the full and natural meaning of the provisos; and that is the sound rule of construction, although the result of carrying it out may be, and in the present case is, that some of applied sections are rendered nugatory."

A proviso should not, by mere implication, withdraw any part of what the main provision has given,[1] and should be construed in a manner that the main part of the enactment also remains operative and is not rendered absolutely inefficient and totally ineffective.[2]

Proviso subsidiary to main section.—A proviso to a section is not independent of the section calling for independent consideration or construction detached from the construction to be placed on the main section as it is merely subsidiary to the main section and is to be construed in the light of the section itself. The object of the proviso is to carve out from the main section a class or category to which the main section does not apply; and in so carving out, the Court has always to bear in mind what is the class referred to in the section and must also remember that the carving out intended by the proviso is from the particular class dealt with by the main section and from no other class. The proviso cannot possibly deal with an entirely different topic or subject,[3] and it is subservient to the main provision.[4] It is a cardinal rule of interpretation, that is, proviso to a particular provision of statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other,[5] but this rule is not inflexible. A proviso depending upon the subject matter can be treated as an independent substantive proviso. It is well recognised that in exceptional cases a proviso may be substantive provision itself.[6]

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1. *Commissioner of Income-tax* v. *Suppan Chettiar and Co.*, AIR 1930 Mad 124 (SB).
2. *Sharad* v. *Shobharam*, 1980 Jab LJ 606.
3. *Cambatta & Co. Ltd.* v. *Commissioner of Income-tax, Bombay City*, 54 Bom LR 202 : AIR 1952 Bom 290.
4. *South Asia Industries (P) Ltd.* v. *Sarup Singh*, AIR 1966 SC 346; *Kedarnath Jute Manufacturing Co.* v. *Commercial Tax Officer*, AIR 1966 SC 12; *C.I.T. Madras* v. *Ajay Products Ltd.*, AIR 1965 SC 1358.
5. *R.N. Sons Ltd.* v. *Asst. Sales Tax Commissioner*, AIR 1955 SC 765; *Kanchanbhai* v. *Maneklal*, AIR 1966 Guj 19 at pp. 28-29 (Bhagwati, J.); *S. Sundaram Pillai* v. *V. R. Pattabiraman*, 98 MLW 49 (SC).
6. *Shco Narain Chaudhary* v. *Distt. Judge*, 1982 Alld Rent Case 441 (DB).

The general object of a proviso is to except something from the enacting clause or to qualify or restrain its generality and prevent misinterpretation. Its grammatical and logical scope is confined to the subject-matter of the principal clause. And although some times used to introduce independent legislation, the presumption is that, in accordance with its primary purpose, it refers only to the provisions to which it is attached.[1] Ordinarily, a proviso to a section is intended to take out a part of the main section for special treatment; it is not expected to enlarge the scope of the main section. But cases have arisen in which the Supreme Court has held that despite the fact that a provision is called a proviso, it is really a separate provision and the so-called proviso has substantially altered the main section.[2] For example, relying upon the dictum laid down in *Piper* v. *Harvey*[3] that if the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect. It was held that the clear language of the proviso to Sub-section (2) of Section 202, Cr.P.C., made it obligatory upon the Magistrate in a case exclusively triable by the Court of Session, to proceed to inquire and at such inquiry call upon the complainant to produce his entire evidence.[4]

Unless there are special indications to show that a proviso to a section is limited to one part of it, normally the proviso governs the entire section. Secondly, it is not necessary for the purpose of making a proviso applicable to the entire section to repeat it after each clause of that section. The proviso is really in the nature of an exception which takes a class out of the operation of the main section.[5]

Proper function.—The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an *addendum* or dealing with a subject which is foreign to the main enactment. 'It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.' Therefore it is to be construed harmoniously with the main enactment. A proviso is subservient to the main provision.[6] The territory of the proviso, therefore, is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that, that is its necessary effect.[7] Unless the words are clear, the Courts should not so construe the proviso as to attribute an intention to the Legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid the repugnancy between

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1. *U.S.* v. *Morrow*, 69 L Ed 425, 427 (Sanford, J.) quoting *Minis* v. *U. S.*, 19 L Ed 791, 799; *Georgia, etc. Co.* v. *Smith*, 32 L Ed 377, 380 : 128 US 174; *White* v. *US*, 48 L Ed 295, 297 : 191 US 545, 551; *Cox* v. *Hart*, 67 L Ed 332, 337 : 260 US 427, 435 and *U. S.* v. *Falk*, 51 L Ed 411, 413 : 204 US 143, 149.
2. *Hiralal Ratanlal* v. *State of U.P.*, AIR 1973 SC 1034 : (1973)1 SCC 216 at p. 224 (Hegde, J.).
3. (1958)1 QB 439.
4. *Gokulanand Mohanty* v. *Muralidhar Mallik*, (1979)49 Cut LT 244 (DB).
5. *Soradambal* v. *Seethalakshmi*, AIR 1962 Mad 108 at pp. 109-10.
6. *South Asia Industries (P) Ltd.* v. *S. Sarup Singh*, AIR 1966 SC 349.
7. *Dibyasingh Malana* v. *State of Orissa*, AIR 1989 SC 1737 : (1989)2 JT 210 : (1989)1 Cri LR 538; *Commissioner of Income-tax, Mysore* v. *Indo Mercantile Bank Ltd.*, AIR 1959 SC 713 at p. 718; *Commissioner of Income-tax* v. *Ajay Products*, (1965)1 SCR 700, 708, 709 (Subba Rao, J.); *Ishwarlal* v. *Motibai*, AIR 1966 SC 459.

the two.[1] They should be read together.[2] In any event, a proviso cannot be read in a manner that it will nullify the main provision.[3] Reading Section 18(1) of the Forward Contracts (Regulations) Act, 1952, and its proviso, the Allahabad High Court has observed :

> "It is a cardinal principle of interpretation that the operative part of the section should be given such a construction which would make the exception carved out by the proviso necessary, and a construction which would make the exception unnecessary and redundant should be avoided."[4]

It is settled law that the proviso and the main part of the Act or Rule are to be harmoniously read together and interpreted to give effect to the object of the provision.[5]

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But provisos are often added not as exceptions or qualification to the main enactment but *as saving clauses*, in which cases they will not be construed as controlled by the section. Saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings would be lost.[6]

Strict construction.—It is a rule of law that a proviso should receive a strict construction. It is not open to the Court to add words to a proviso with a view to enlarge the scope of the proviso.[7] The proviso must be restricted to the scope reasonably conveyed by the words used therein.[8] But the strict construction may be deviated from by ascertaining the legislative intention.[9] But a proviso or an exception cannot be so interpreted as to nullify or modify the main provision,[10] or to defeat the basic intent expressed in the substantive provision.[11]

"Where there are two sections dealing with the same subject-matter," observed Pickford, J. in *Moss.* v. *Elephic*,[12] "one section being unqualified and the other containing qualification, effect must be given to the section containing the qualification."

More provisos than one.—In *Broach Co-operative Bank* v. *Commissioner, Income-tax*,[13] it was contended that Section 8 of the Indian Income Tax Act must be construed in the light of proviso 1 and that provisos 2 and 3 must be given effect to after due effect has been given to proviso 1. Chagla, C.J., repelled the contention saying : "But to my mind the proper canon of

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1. *Tahsildar Singh* v. *State of U.P.*, AIR 1958 SC 1012 at p. 1022; *Dwarka Prasad* v. *Dwarka Das Saraf*, 1975 Ren CJ 593.
2. *Shri Krishna* v. *Satya Dev*, AIR 1959 Punj 501.
3. *Somasundara Nadar* v. *Second Income-tax Officer, Virudhunagar*, (1966)59 ITR 306 (Mad); *Vishesh Kumar* v. *Shanti Prasad*, AIR 1980 SC 892.
4. *Jagdish Prasad* v. *State of U.P.*, 1978 All WC 564.
5. *Sales Tax Commissioner* v. *B.G. Patal*, (1995)6 JT (SC) 271.
6. *Shah Bhojraj etc., Mills* v. *Subhas Chandra*, AIR 1961 SC 1596 at p. 1600; *Commissioner of Commercial Taxes* v. *Ram Krishan*, (1968)1 SCR 148; *Belapur Co. Ltd.* v. *Maharashtra State Farm Corpn.*, AIR 1969 Bom 231, 251 (Vimadalal, J.); *Calcutta Pinjrapole Society* v. *Hubu Candra Ghose*, 77 CWN 1, 4, 12-13 (Chakravarti, J.).
7. *Babu Ali* v. *State of U.P.*, 1981 All LJ 103.
8. *Perichippa* v. *Nachiappan*, AIR 1932 Mad 46, 52, *per* Anantakrishna Ayar, J.; *United States* v. *Dickson*, (1841)15 Pat 141 at 165, (*per* Story, J.). Where the proviso itself must be considered in an attempt to determine the intent of the Legislature, it should be strictly construed; Sutherland *Statutory Construction*, 3rd Ed., Vol. 2, Art 4933 at p. 471. *See* also *Ude Bhan* v. *Kapur Chand*, AIR 1967 Punj 53 (FB) : 68 Punj LR 597 : ILR (1966)2 Punj 400.
9. *Punjab Trading Co.* v. *Commissioner of Income-tax*, (1963) Cr LJ 147 (Punj).
10. *T. Devdasan* v. *Union of India*, AIR 1964 SC 179.
11. *Vishesh Kumar* v. *Shanti Prasad*, 1980 All LJ 411 (SC).
12. (1910)1 KB 465, 468.
13. AIR 1950 Bom 45, 46.

construing a section which has several provisos is to read the section and the provisos as a whole, try and reconcile them and give a meaning to the whole of the section along with the provisos which is a comprehensive and logical meaning." The true principal undoubtedly is that the sound interpretation and the meaning of the statute on a view of the enacting clause, saving clause and proviso, taken and construed together, is to prevail.[1]

When the three provisos *(v)*, *(vi)* and *(vii)* of amended Section 3*(d)* of Tamil Nadu Debt Relief Act, 1980 are intended to serve the same purpose, that if finding out whether a particular person comes within the purview of the Act or not, the Legislature could not have provided different and inconsistent tests in respect of the same person. Therefore, giving a harmonious construction to the said provisos and reading them conjointly, the only conclusion possible is that the proviso act on different sets of individuals and not on due and the same set of persons.[2]

Proviso repugnant to enacting part.—Where a section of an Act contains two provisos and the latter of the two is repugnant in any way to the first proviso, it must prevail for it stands last in the enactment and so to quote Lord Tenterden, C.J., in *Rex* v. *Justices of Middlesex*,[3] speaks the last intention of the makers.[4] When the proviso appended to the enacting part is repugnant to it, it unquestionably repeals the enacting part.[5]

Section as proviso.—Just as a proviso to a section may contain an exception to the rule set out in the main part of that section, certain section or sections of an Act may also provide for an exception to the general scheme contained in the other provisions of that Act. Just as the main part of a section and the proviso thereto, must be read together to ascertain the scope of that section, the rule contained in some section of an Act and an exception contained in other section or sections of that Act, together constitute the scheme of that Act.[6]

Repeal of enactments.—When the enactment is repealed, the proviso falls with it.[7]

In *Togru Sudhakar Reddy* v. *The Govt of A.P.*,[8] some relevant passages from authors other than Indian were quoted and as they are of immense help. They are reproduced as under :

According to George Code :

> "It is most desirable that the use of provisos should be kept within some reasonable bounds. It is indeed a question whether there is ever a real necessity for proviso."

E. A. Driedger said :

> "Notwithstanding its frequency or antiquity, the proviso is hardly more than a legal incantation. The best that can be said for it is that it is an all purpose conjunction, invented by lawyers but not known to or understood by grammarians."

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1. *Gangamoyee* v. *Manindra Chandra*, 53 CWN 718 at p. 722 : AIR 1950 Cal 225; *see* also *Jenning* v. *Killy*, 1920 AC 206, 229.
2. *T. S. Kothandaraman* v. *Sub-Collector, Mettur*, 95 LW 433 (DB).
3. (1831)2 B and Ad 818, 821.
4. *Togru Sudhakar Reddy* v. *Govt. of A.P.*, AIR, 1992 Andh Pra 19 (DB) : (1991)3 ALT 173 : (1991)2 APLJ 308. *King* v. *Dominion Engineering Co.*, 1947 PB 94, 95, *per* Lord Macmillan; *A. G.* v. *Chelsea Water Works*, 94 ER 716; *Khan Chand Tilokaram* v. *State of Punjab*, AIR 1966 Punj 423 (FB); *Thangliana* v. *Bawichhuaka*, AIR 1971 A and N 78, 79 (Goswami, C.J.); *see* cases quoted therein; *Pfizer Employee's Union, Bombay* v. *Mazdoor Congress, Bombay*, 1979 Mah LJ 571 (DB).
5. *Burmah Shell, etc., Co.* v. *Municipal Committee, Jubbulpore*, ILR 1948 Nag 581 : AIR 1949 Nag 141, Maxwell : *Interpretation of Statutes*, 12th Reprint Ed. 1993; *Sham Sunder* v. *Ram Das*, AIR 1951 Punj 52, 57 (FB).
6. *Janardhana Shetty* v. *Union of India*, AIR 1970 Mys 171, 175, (Chandrashekhar, J.) : Industrial Disputes Act, 1947, Section 2-A.
7. *Horsnail* v. *Bruce*, (1873) LR 8 CP 378, 385, *per* Bovil, C.J.
8. AIR 1992 Andh Pra 19 (DB) : (1991)3 ALT 173 : (1991)2 APLJ 308.

G.C. Thornton, an outstanding authority on Legislative *Drafting*, expressed the view—

"Historically, the phrase 'provided that' is a relic of the past when each enactment in a statute commenced with words of enactment..... Legal usage itself recognises differing grades of propriety for the proviso. In the first place, lawyers have accepted as correct and proper usage, a proviso which follows an enactment of general application and makes special provision inconsistent with that enactment for a particular case..... Frequently the purpose of a proviso is to exclude a special case from the operation of the general proviso without making further provision for that special case.....If the draftsman were concerned to communicate law only to lawyers, the use of lawyer's jargon would be acceptable. The draftsman, however, has a wider purposes in that the legislation he drafts should communicate effectively with all those members of society affected by the law, not only those who are familiar with practices where by lawyers are wont to deviate from common speech. It is basic that legislation should not deviate from common speech patterns unless such a course is made necessary by special circumstances. The uses which lawyers make of the proviso never make his necessary and it is suggested therefore that all use of the proviso form be abandoned."

According to Craies—

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the proceeding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

The learned author extracted the following view of Lush, J. in *Mullins* v. *Treasurer of Survey* :[1]

"When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

What is the legal position if the proviso is repugnant to the main Act was considered by Craies.

"It sometimes happens that there is a repugnancy between the enacting clauses and the provisions and saving clauses. The question then arises, how is the Act taken as a whole to be construed. The generally accepted rule with regard to the construction of a proviso in an Act which is repugnant to the view of the Act is that laid down in *Att. Gen.* v. *Chelsea Waterworks*,[2] namely, "that where the proviso of an Act of Parliament is directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers."

According to Maxwell :

"Difficulties sometimes arise in construing provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken 'absolutely in their strict liberal sense', but that a proviso is "of necessity....limited in its operation to the ambit of the section which it qualifies." And so far as that section itself is concerned, the proviso again receives a restricted construction : where the section confers powers. "It would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond that compliance

1. (1880)5 QBD 170, 173.
2. (1731) Fitzg. 195.

with the proviso renders necessary. If however, the language of the proviso marks it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect. If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that 'it speaks the last intention of the markers'.[1]

Exception.—An exception exempts something which would otherwise fall within the purview of the general words of the statute. It is a familiar principle of statutory construction that where you find in the same section express exceptions from the operative part of the section, it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary, as otherwise the subject-matter of the exceptions would have come within the operative provisions of the section.[2] It is not possible to hold that an exception refers to a different subject from the general rule to which it is an exception.[3] In *Brown* v. *Maryland*,[4] Marshall, C.J. said : "If it be a rule of interpretation to which all assent, that the exception of a particular thing from general words, proves that, in the opinion of the law-giver, the things excepted would be within the general clause had the exception not been made, we know no reason why this general rule should not be as applicable to the Constitution as to other instruments.[5] Sometimes it is also used to explain the general words of the Act and to exclude some ground of misinterpretation which would extend it to cases not intended to be brought within its operation or purview.[6] Where the Legislature desires to enact an exception to any provision, it normally does so by way of a proviso or an exception to the section itself; and it is seldom that an exception to the particular exemption is in itself a separate exemption.[7] Exceptions or provisos to a section are not meant to render the section itself nugatory.[8]

Distinguished from a proviso.—Wilberforce, in his Statute Law[9] says : "The substantial distinction between a proviso and an exception is that the former follows an enacting clause, and qualifies it in certain specified cases, while the latter is part of the enacting clause, and is of general application." Halsbury[10] considers an exception as a part of the enacting part of section, while a proviso follows the enacting part of it and is in a way independent of it. Crawford in his Statutory Construction in Article 91, opines : "While there is considerable similarity between an exception and a proviso—each restrains the enacting clause and operates to except something which would otherwise fall within the general terms of the statute. There is a technical distinction between them, although even that is frequently ignored and the two terms used synonymously. The exception, however, operates to affirm the operation of the statute to all cases not excepted and excludes all other exceptions; that is, it exempts something which would otherwise fall within the general words of the statute. A proviso, on the other

1. *See* Maxwell : *Interpretation of Statutes*, 12th Ed., p. 189.
2. *Government of the Province of Bombay* v. *Hormusji Manekji*, AIR 1947 PC 200, 205, 206; *Punjab National Bank* v. *Punjab Property Development Co.*, AIR 1958 Punj 57, 59.
3. *Shankarlal* v. *Gangabisen*, AIR 1972 Bom 326, 333 (FB) (Kotwal, C.J.).
4. 12 Wheat 419, 438.
5. *Duncan* v. *State of Queensland*, 22 CLR 556, 592, *per* Barton, J.
6. *See* Crawford at pp. 128, 891.
7. *J.K. Trust, Bombay* v. *Commissioner of Income-tax*, AIR 1958 Bom 191, 193.
8. *Bolumal* v. *Gollapudi*, AIR 1959 Andh Pra 612, 613 (P. Chandra Reddy, C.J.); see *Tehsildar Singh* v. *State of Uttar Pradesh*, (1959) Supp 2 SCR 875, 893 : not to give with one hand and take away with the other.
9. 1881 Ed. at p. 304.
10. *Laws of England*, 4th Ed., Vol. 44, Para 882; see *Kartar Singh* v. *Lallu Singh*, AIR 1962 MP 104, 105 (P.R. Sharma, J.); dissents from *Sri Ram* v. *State*, AIR 1958 Punj 47 (Tek Chand, J.).

hand, is a clause added to an enactment for the purpose of acting as a restraint upon, or as a qualification of the generality of the language which it follows."

When an exception is attached to a provision in a statute, it is *prima facie* to be assumed that the Legislature thought that the thing excepted would otherwise have been within the enactment.[1] Notification made in accordance with the power conferred by the statute has statutory force and validity and, therefore, the exemption is as if it is contained in the parent Act itself.[2]

Practical effect of the distinction.—In *Thibault* v. *Gibson*[3] Park, B., observed : "Whenever a statute inflicts a penalty for an offence created by it upon conviction before one or more Justices of the Peace, but there is an enacting clause of persons under particular circumstances, it is necessary to state in the information that the defendant is not within any of the exceptions. And it seems immaterial whether the exception be in the same section or in a preceding Act of Parliament referred to in the enacting clause. But where the exception is contained in a proviso in a subsequent section or Act of Parliament, it is matter of defence, and, therefore, it is necessary to state in the conviction that the defendant is not within the proviso." In other words, in pleadings a distinction was drawn that a declaration or information must allege that a particular case was not within an exception while proviso was matter for defence.[4] Julius Stone in his Province and Function of Law,[5] writes : "This seems to have been the distinction in the rule that when the statutory definition of a crime includes a ground of excuse within itself in the same section then the burden is on the Crown to negative the excuse; *aliter* if it be contained in a separate section."

Assumption regarding necessity of.—Where you find in the same section express exceptions from the operative part of the section, it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary as otherwise the subject-matter of the exceptions would have come within the operative provisions of the section.[6]

Exception to be ignored if repugnant to enactment.—Where there is an exception co-extensive with, and therefore repugnant to, the enactment, it must be ignored for contrariety. A proviso in similar circumstances might, so far as relates to cases falling within it, repeal a foregoing enactment.[7] Court cannot construe an exception so as to make it ambiguous or meaningless where it is possible to give it a reasonable construction consistent with the intention of the Legislature.[8]

Particular intention incompatible with general intention serves as exception.—Where a general intention is expressed, and the Act also expresses a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception.[9] An exception out of the provisions of a general statute may be a ground from which

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1. *Richardson* v. *Austin*, 12 CLR 463, 470. (The argument must not be pressed too far); *see* also *Duncan* v. *State of Queensland*, 22 CLR 556, 592. (Rule applies to interpretation of Constitution).
2. *Kailash Nath* v. *State of U. P.*, AIR 1957 SC 790.
3. 13 LJ (Ex) 2. But this former rule of pleading is now abrogated, Craies on *Statute Law*, 4th Ed. at p. 199.
4. *R.* v. *Jarvis*, 1 East 643n at 647n, *per* Lord Mansfield quoted in Halsbury's *Laws of England*, 2nd Ed., Vol. 31 at p. 485, note (now *see* 3rd Ed. at p. 400). Thus an exception forming part of enacting words of a statute must be negatived by a complainant : Wilberforce at p. 350.
5. 1946 Ed. at p 172.
6. *Province of Bombay* v. *Hormusji Manekji*, AIR 1947 PC 200 : 74 IA 103 : quoted with approval in *Western Railway, Bombay and others* v. *Railway Rates Tribunal, Madras*, AIR 1955 Mad 513, 516.
7. Halsbury's *Laws of England*, 4th Ed., Vol. 44, Para 881.
8. *Rupchand Hemandas* v. *Heera Jawaharmal*, AIR 1968 Bom 100.
9. *R. V. & Co.* v. *Hindu Religious Endowments Board*, AIR 1940 Mad 10, 11 : ILR 1940 Mad 388.

an intention may be implied to repeal a statutory provision which would, if not repealed, have excepted a particular matter not expressly included in the exception from the provisions of the general statute.[1]

Interpretation of exception.—It is one of the established canons of interpretation that exceptions are to be taken most strongly against the party for whose benefit they are introduced.[2] An exception must be construed strictly.[3] And it cannot be assumed but should be proved.[4] An exemption also must be strictly construed.[5]

Crawford in his *Statutory Construction* at page 10, has stated : "Unlike that of the proviso, however, it is apparent that the position of the exception in the statute is unimportant. But the exception is also subject to the rule of strict construction; that is, any doubt will be resolved in favour of the general provision and against the exception, and anyone claiming to be relieved from the statute's operation must establish that he comes within the exception. Indeed, the liberal construction of a statute would, in many instances, seem to require that the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction. Where, however, criminal or penal statute is involved, the exception must receive a liberal construction in favour of the defendant. Similarly, an exception appearing in a statute which imposes a burden on the public, must also be given a liberal construction in favour of the public."[6]

It is obvious that an exception cannot be so interpreted as to nullify or destroy the main provision.[7] It cannot swallow the general rule.[8] The judicial maxim of interpretation that to exclude one by name is to include all that is not covered by that name has got many limitations. A specific exception may be construed as an implied inclusion of all that is not covered by the

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1. *See* Halsbury's *Laws of England*, 4th Ed., Vol. 44, Para 882.
2. *E. I. Ry.* v. *Jot Ram Chandra Bhan*, AIR 1928 Lah 162, *per* Tek Chand, J. : Beal Cardinal : *Rules of Legal Interpretation*, 3rd Ed. at p. 183.
3. *Madho Singh* v. *James Skinner*, AIR 1942 Lah 243, 248, *per* Din Mohammad, J. A provision of law which is an exception to the general rules of evidence must be applied only to the cases to which it is confined by the Legislature; *Emperor* v. *Pyn Sin*, AIR 1920 LB 86, *per* Maung Kin, J.; *Gaya Prased* v. *Kalap Nath*, AIR 1929 Oudh 389 (FB). Exemptions from operation of a statute made in detail preclude their enlargement by implication; *Addison* v. *Holly Hill Fruits Products*, 322 US 607 : 88 L Ed 1488. An exception clause in a statute limiting the time for a criminal prosecution though denominated a proviso is to be narrowly construed; *U.S.* v. *Schartan*, 285 US 518 : 76 L Ed 917; *Harcharan Singh* v. *Shashpal Singh*, 1966 Cur LJ 252; *Desu Rayudu* v. *Andhra Pradesh Public Service Commission*, AIR 1967 Andh Pra 353.
4. Vide *Mahalingam* v. *Kanniappan*, (1990)1 MLW 246.
5. *Union of India* v. *Commercial Tax Officer*, AIR 1956 SC 202; *State of West Bengal* v. *Ashutoch Lahari*, (1995)7 JT (SC) 443, referring to *Union of India* v. *Wood Papers Ltd.*, (1991)1 JT (SC) 151 and *Novopal India Ltd., Hyderabad* v. *C.C.E. & Customs, Hyderabad*, JT 1994(6) SC 80. See *Devi Ram* v. *Chet Ram*, 1995(2) Sim LC 222 (DB).
6. Sutherland in his *Statutory Construction*, 3rd Ed., Vol. 2 at pp. 474-75, has dealt with the matter thus : "Provisos and exceptions both operate to restrict the generality of legislative language. Normally, a proviso occurs within the body of a section while an exception is drafted as an individual section. The older rule strictly interpreted both exceptions and provisos but today exceptions and to some extent provisos are interpreted principally in view of the legislative intent and no presumption arises becauses of the form of the Act that the interpretation must be strict. Generally, an exception is considered as a limitation only upon the matter which precedes it, but if it is clear from the legislative intent that it is considered a general limitation on the entire Act it will operate to restrict all provisions of the Act. In drafting legislation the exception is to be preferred as a method of limiting generality over the proviso. This is true not only because the exception can be drafted in simpler form than the proviso but also because the proviso has frequently been used as conjunctive and may not be interpreted as a limitation. The exception both because of its caption and its form clearly indicates the legislative intent."
7. *Desu Rayudu* v. *A. P. Public Service Commission*, AIR 1967 Andh Pra 353, 357 (Ekbote, J.)
8. *Shree Raghuttilakathirtha Sreepadangalvaru Swamiji* v. *State of Mysore*, (1963)2 SCR 226, 236 (Gajendragadkar, J.).

specific exception. This rule has many exceptions.[1] Even if there be overlapping or contradiction between two provisions, the specific provision ought to be regarded as an exception to the general provision.[2]

Saving clause.—Saving clause reserves something which would be other wise included in the words of the enacting part.[3] Saving clauses may be inserted where one statute is repeald and re-enacted by another, the scope and purport of both remaining the same. Their effect is that the repealed statute remains in force as if the second statute had not been passed.[4] 'Savings' means that it saves all the rights the party previously had, not, that it creates any new rights in his favour.[5] A saving clause can only preserve things which were *in esse* at the time of its enactment and, therefore, cannot affect transactions which were complete at the date of the repealing statute.[6]

In construing a saving clause, the line of inquiry would be, not whether the new Act keeps alive the old rights and liabilities, but whether it manifests an intention to destroy them.[7]

A saving clause, as its name implies, is a clause which is inserted in the repealing statute in order to protect or save a person as regards rights which he may have acquired under the then existing law. But to use it in determining the construction of the Act, or to extend it so as to give a wider scope of the Act, amounts to ignoring the very purpose for which a saving clause is inserted.[8]

May be enacted in any part of statute.—An exception or a saving clause may be enacted in any part of a statute, either in the section to which the exception is sought to be made, or in a separate section, part or chapter. The mere fact that a saving clause or exception enacted in a subsequent section controls and limits the operation of a former section cannot render the subsequent section repugnant to the former section.[9]

Object of saving clause.—A saving clause in an enactment is void if it is repugnant to the main clause.[10] As generally speaking, you cannot raise out of a proviso or exception in a statute any affirmative enactment, so you cannot, generally speaking, raise out of a saving clause any affirmative or positive right whatever.[11] In *Fitzgerald* v. *Champaney*,[12] Sir W. Page Wood,

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1. *In re* Calcutta Stock Exchange Association, AIR 1957 Cal 438, 441 (P.B. Mukharji, J.)
2. *Bakhshish Singh* v. *Hazara Singh*, AIR 1957 Punj 155, 157 (Chopra, J.).
3. Maxwell on *Interpretation of Statutes*, 11th Ed. at p. 154.
4. *See* Halsbury's *Laws of England*, 4th Ed., Vol. 44, Para 883.
5. *Arnold* v. *Mayor of Gravesend Corporation*, (1856)69 ER 911. It is intended to prevent the enactment from interfering with rights already acquired : *Re* Thompson, *Bedford* v. *Teal*, (1890) 45 Ch D 161; *Gulab Chand* v. *Kudi Lal*, AIR 1951 MB 1 (FB); *Ramdas Shriram* v. *Regional Asstt. Commissioner Sales-tax*, 1967 Jab LJ 38 : 1967 MPLJ 142.
6. *S. Alphone* v. *District Supply Officer, Nagercoil*, AIR 1986 Mad 20 (DB) : 1985 Writ LR 100 : (1986)1 MLJ 1 : ILR (1986)2 Mad 1; *see* Halsbury's *Laws of England*, 4th Ed., Vol. 44, para 883.
7. *State of Maharashtra* v. *Atmaram*, 1979 Jab LJ 57 (SC).
8. *Gulab Chand* v. *Kudi Lal*, AIR 1951 MB 1, 28 (FB).
9. *Govindan Nair* v. *Narayani Ammal*, AIR 1955 TC 235.
10. *Stroud's* case, 73 ER 700; *A. G.* v. *Bushopp*, 76 EQ 89; *Riddell* v. *White*, 145 ER 873. It will cease to operate if it is inconsistent with the operation of a subsequent special statute; Halsbury's *Laws of England*, 4th Ed., Vol. 44, para 930 quoting *Yarmouth Corporation* v. *Simmons*, (1878)10 Ch D 518.
11. *Lord Advocate of Scotland* v. *Hamilton*, (1852)1 Macq 46 (HL).
12. 30 LJ Ch 777, 783. The insertion of words in a statute protecting or excepting certain persons does not necessarily by implication exclude others. Many things find their way into saving clauses *ex abudanti cautela* and upon the insistence of particular bodies of persons, Halsbury's *Laws of England*, 4th Ed., Vol. 44, para 883 quoting *Smyth* v. *R.*, 1898 AC 782; *McLaughtein* v. *Westgarth*, (1906)75 LJ PC 117. Crawford in *Statutory Construction*, para 300 writes : "As we have stated elsewhere the saving clause is used to exempt something from immediate interference or

V.C., observed : "The insertion of a saving clause is never safe ground for determining the construction of an Act of Parliament whether local or general. We all know the anxiety which is there on the part of everyone who imagines that his right may be infringed by the passing of an Act, whether general or local, to procure the insertion of a saving clause to protect them, even where the ordinary rules of construction supersedes the necessity of any such protection." Craies on Statute Law[1] writes : "In the American case of *Savings Institution* v. *Makins*, [2] it was held that a saving clause in a statute in the form of a proviso, restricting in certain cases the operation of the general language of the enacting clause, was not void, though the saving clause, was repugnant to the general language of the enacting clause. 'The true principle,' says the editor of *Kents Commentaries*, 'undoubtedly is, that the sound interpretation and meaning of the statute on a view of the enacting clause, saving clause, and proviso, taken and construed together, are to prevail. If the principal object of the Act can be accomplished and stand under the restriction of the saving clause or proviso, the same is not to be held void for repugnancy.' Thus, it is submitted, would be held by our English Courts at the present day to be good law."[3]

The object of an Explanation to a statutory provision is—

(a) to explain the meaning and intendment of the Act itself;

(b) where there is any obscurity or vagueness on the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve;

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpretating the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute

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destruction. It is generally used in repealing statutes in order to prevent them from affecting rights accrued, penalties incurred, duties imposed, or proceedings started under the statute sought to be repealed. Its position or verbal conflict is unimportant. But if it is in irreconcilable conflict with the body of the statute of which it is a part, it is ineffective or void." Maxwell in *Interpretation of Statutes*, 12th Reprint Ed. 1993 says : "A difference, indeed, has been said to exist in this respect between the effect of a saving clause, or exception, and a proviso in a statute. When the proviso appended to the enacting part is repugnant to it, it unquestionably repeals the enacting part, but it is said by Lord Coke that when the enactment and the saving clause (which reserves something which would be otherwise included in the words of the enacting part) are repugnant,.....The saving clause is to be rejected because otherwise the enactment would have been made in vain.' *See* also *Sham Sunder* v. *Ram Das*, AIR 1951 Punj 52, 57 (FB).

1. 4th Ed. at p. 199.
2. (1845)23 Maine 300.
3. *See* also *Gangamoyee* v. *Manindra Chandra*, AIR 1950 Cal 225 : 53 CWN 718, 722. Sutherland in his *Statutory Construction*, 3rd Ed., Vol. 2 at pp. 475-476. writes : "A saving clause is, like a proviso, an exemption from the general operation of the statute. It is generally employed to restrict repealing Acts; to continue repealed Acts in force as to existing powers, inchoate rights, penalties incurred, and pending proceedings, depending on the repealed statute. A repeal destroys such rights, powers and proceedings and discharges the penalties. Thus to preserve them a special provision with saving effect is necessary. Although saving clauses are usually strictly construed unlike the case of a proviso, repugnancy between the saving clause and the purview does not act to void the enacting part but operates to invalidate the saving clause. There is no logical basis for the distinction and the better rule of interpretation considers the entire Act and attempts to determine the legislative intent and to adjust the conflicts on the basis of that intent. Thus in special instances a saving clause will be liberally construed."

has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.[1]

Saving clause in temporary statute.—'Things done or omitted to be done' in a saving clause of a temporary statute : The phrase is sufficiently wide to continue a prosecution not completed under a temporary Act.[2]

Strict or liberal construction.—Unlike exceptions from an enacting clause, saving clauses are liberally construed.[3] Crawford[4] considers : "Whether the saving clause should receive a *strict or liberal construction* is a matter upon which there seems to be some conflict of opinion. Perhaps the best rule would make nature of the construction of the saving clause to depend upon the nature of the statute involved—for example, whether it was remedial, penal or procedural."

14. Explanation.—The purpose of Explanation is often to explain some concept or expression or phrase occurring in the main provision and it is not uncommon for the legislative to accord either an extended meaning or a restricted meaning to such concept or expression or phrase by inserting appropriate explanation.[5] But is not substantive provision.[6] Explanations are keys to the sections to which they are appended. They explain the heart of the matter with a purpose.[7] An *explanation* does not enlarge the scope of the original section that it is supposed to explain.[8] As put by the Supreme Court, "The explanation should be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to induce the ambit of the section.[9] An explanation cannot be read into a definition as limiting or restricting the scope of the latter.[10] The role of explanation is to remove any ambiguity in the main section or to make explicit that may be otherwise ambiguous. Its basic function is to elucidate the main enactment. The construction of the explanation must depend, however, in the ultimate analysis upon its plain terms and the language used therein.[11] It is axiomatic that an explanation only explains and does not expand or add to the scope of the original section.[12] Explanation cannot be made to operate as 'exception' or 'proviso'.[13] But there is no general rule that an explanation cannot enlarge the scope of the section to which it is appended.

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1. *S. Sundaram* v. *V.R. Pattabhiraman*, AIR 1985 SC 582.
2. *State of Madhya Bharat* v. *Hiralal Sutwala*, AIR 1959 MP 93, following *Wicks* v. *Director of Public Prosecutions*, 1947 AC 362; *J.K. Gas Plant Mfg. Co.* v. *Emperor*, AIR 1957 FC 38; *Dhawanji Rawji* v. *Emperor*, AIR 1949 Nag 134; *Jogendrachandra Ray* v. *Superintendent of Dum Dum Special Jail*, ILR 60 Cal 742 : AIR 1933 Cal 280.
3. *R.* v. *West Riding of Yorkshire Justices*, (1876)1 QBD 220; *Narula Transport Service* v. *State of M. P.*, 1978 MPLJ 654 : 1978 Jab LJ 857 (DB).
4. *Statutory Construction*, at pp 300-301.
5. *(M/s.) Keshavji Rawji & Co.* v. *Commissioner of Income Tax*, AIR 1991 SC 1806 : 1991 Tax LR 669 : (1991)1 JT (SC) 235 : (1991)2 SCC 231 : (1991)1 SCR 243 : 1991 AIR SCW 1845; *Subhash Ganpatrao Buty* v. *Maroti Krishnaji Doctikar*, 1975 Mah LJ 244 (FB).
6. *S. Sundaram* v. *V. R. Pattabhiraman*, 1985 (1) Rent CR 432 (SC).
7. *Naimuddin* v. *Lokeswar Gogoi*, 1972 Assam Law Reports 8, 11 (Goswami, C.J.).
8. *Kishen Singh* v. *Prem Singh*, AIR 1939 Lah 587 : ILR 1940 Lah 223.
9. *N. Nagamanckam Setty* v. *Collector of Central Excise*, AIR 1983 Karn 193 : (1983)1 Kar LJ 457.
10. *Rai Saheb Rekchand Mohota Spining and Weaving Mills* v. *Labour Court*, AIR 1968 Bom 151. Explanations simply explain what has been said in substantive provisions of the enactment, *Chotabhai Jethubhai Patel & Co.* v. *State of Madhya Pradesh*, AIR 1968 Madh Pra 127.
11. *Jagannath* v. *Ram Chandra Srivastava*, 1982 All Rent Cas 665 (DB).
12. *Kelappan Nair* v. *Payingaten*, 1961 Ker LJ 788 : 1961 Ker LT 528; see *Bihta Co-operative Development and Cane Marketing Union, Ltd.* v. *State of Bihar*, AIR 1967 SC 389; *Ramabai* v. *Dinesh*, 1976 Mah LJ 565.
13. *State of Bombay* v. *United Motors*, AIR 1953 SC 252.

The purpose of an explanation is, however, not to limit the scope of the main provision.[1] When any phrase or word or expression in an enactment is explained by the Legislature, the Act has to be applied with the authoritative explanation; for the very object of authoritative explanation is to enable the Court to understand the Act in the light of the explanation.[2] Explanation or proviso is added to a section generally by way of exception to what is stated in the main section. Sometimes an explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provision in the section.[3] The construction of the explanation must depend upon its terms [4] and no theory of its purpose can be entertained unless it is to be inferred from the language used.[5] An 'explanation' must be interpreted according to its own tenor. It is an error to explain the explanation with the aid of the section to which it is annexed.[6]

The object of explanation :—

(a) To explain the meaning and intendment of the Act itself.

(b) Where there is any obscurity or vagueness in the main enactment, to classify the same so as to make it consistent with the dominant object which it seeks to subserve.

(c) To provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

(d) An explanation cannot in any way interfere with or change the enactment or any part thereof, but where some gap is left which is relevant for the purpose of the explanation in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment and

(e) It cannot however take away a statutory right with which any person under a statute has been clothed, or set at naught the working of an Act by becoming a hindrance in the interpretation of the same.[7]

The mere description of a certain provision, such as 'Explanation' is not decisive of its true meaning, and ultimately it is the intention of the legislative which is paramount.[8] The interpretation must obviously depend on the words used therein, but it must be borne in mind that when the provision is capable of two interpretations, that should be adopted which fits the description.[9]

An explanation to a section makes plain or intelligible or clear from obscurity something which may arise from the section. This construction mainly depends upon the language used. If the language of the explanation permits of two constructions, one that is consistent with its being an explanation and the other that would make it operate as a proviso, the former meaning ought to be preferred.[10]

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1. *P. P.* v. *A. I. Gladstone*, (1963) MLJ (Cr) 555 : (1963)2 Andh WR 388.
2. *Balaji Singh* v. *Chakka Gangamma*, AIR 1927 Mad 85, 88; (*per* Devados, J.).
3. *State of Bihar* v. *Mohd Ismail*, AIR 1966 Pat 1, 4 (FB) (U. N. Sinha, J.).
4. *Collector of Customs* v. *G. Dass & Co.*, AIR 1966 SC 1577.
5. *Krishna Ayyangar* v. *Nallaperumal Pillai*, ILR 43 Mad 550 , 564 (PC), *per* Viscount Finlay.
6. *Burmah-Shell Oil, etc. Ltd.* v. *Commercial-tax Officer*, AIR 1961 SC 315, 321.
7. Vide *Jiwan Nath Razdan* v. *State of Maharashtra*, AIR 1991 Bom 196 : (1990)3 Bom CR 306.
8. *Dattatraya Govind Mahajan* v. *State of Maharashtra*, AIR 1977 SC 915 (928) : 1977 UJ (SC) 129 : (1977)2 SCC 548 : (1977)2 SCR 790 : 1977 RD 160 (SC) : 1977 All WC 180 (SC).
9. *State of Bombay* v. *United Motors (India) Ltd.*, AIR 1953 SC 252.
10. *Sulochana Amma* v. *Narayanan Nair*, AIR 1994 SC 152 (AIR 1978 Cal 440 and AIR 1980 Cal 181 overruled). *P. P.* v. *A. I. Gladstone*, (1963) MLJ (Cr) 555 : (1963)2 Andh WR 388.

Explanation may also be in respect of matters implicit. Where the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms. But an explanation is different in nature from a proviso for the latter excepts, *excludes* or *restricts* while the former *explains* or *clarifies*. Such explanation or clarification may be in respect of matters whose meaning is implicit and not explicit in the main section itself.[1]

If on a true reading of an 'Explanation' it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an explanation.[2]

In *D. G. Mahajan* v. *Maharashtra State*,[3] the Supreme Court discussed the rules of interpretation relating to 'explanations' and held that if necessary an explanation must be construed according to its plain meaning and 'not on any *a priori* considerations.[4]

In *S. Sundaram Pillai* v. *V. R. Pattabhiraman*,[5] the Supreme Court had well brought out the object of an explanation and quoted a passage there from in *Jiwan Nath Razdan* v. *State of Maharashtra*[6] and the same is set out herein- after : "It is well settled that an *explanation* added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision."

Explanation may not relate to same subject.—The principle of construction that the particular or special rule must control or cut down the general rule cannot be called in aid in construing Clause (2) to Article 286 and the explanation to Clause (1)*(a)* to Article 286, for it cannot be said that Clause (2) contains the enunciation of the general rule and the explanation embodies a particular or special rule. The two provisions do not relate to the same subject and, therefore, it is not possible to hold that one is the enunciation of a general rule and the other enunciation of a particular or special rule on one and the same subject.[7]

It offends all canons of construction to transplant the explanation added to one section to another.[8]

15. Schedule.—The Schedule is as much a part of the statute, and is as much an enactment as any other part, and may be used in construing provisions in the body of the Act.[9] A Schedule in an Act of Parliament is a mere question of drafting—a mere question of words.[10] The liability imposed in the schedule is equally binding.[11] It must be read together with the Act for all

1. *Govindram Laxman Prasad* v. *State of Madhya Pradesh*, 1951 NLJ 503.
2. *Hitalal Ratanlal* v. *State of U.P.*, (1973)1 SCC 216, 225 (Hegde, J.); *Hari Singh* v. *Smt. Sringar Kanwar*, 1981 Raj LW 190 (DB).
3. (1977)2 SCC 548.
4. *Subhash* v. *Maroti*, AIR 1975 Bom 244 (FB).
5. AIR 1985 SC 582.
6. AIR 1991 Bom 196 : (1990)3 Bom CR 306.
7. *Bengal Immunity Co.* v. *State of Bihar*, AIR 1955 SC 161, *per* Majority (Jagannadhadas, Venkatarama Ayyar & Sinha, JJ. *Contra.*).
8. *Govt. of Andhra* v. *Govindarajulu*, AIR 1958 Andh Pra 109, 111 (Subba Rao, C.J.).
9. *In re* Ranchhoddas Govinddas Banatwala, 1976 Mah LJ 636.
10. *A.G.* v. *Lamplough*, (1878)3 Ex D 214, 229, *per* Brett L.J.; see *Indira Bai* v. *Gift Tax Officer*, ILR 1961 Mad 1214 : 74 MLW 552.
11. *In re* Abdul Gafoor, AIR 1958 Andh Pra 267, 269 (Kumarayya, J.).

purposes of construction.[1]

The purpose and usefulness of a schedule is succinctly set out by the Supreme Court as under "*A Schedule in an Act* of Parliament is a mere question of drafting. It is the legislative intent that is material. *An explanation* to the Schedule amounts to an explanation in the Act itself. As we read in *Halsbury's Laws of England*,[2] : "To simplify the presentation of statutes it is the practice for their subject-matter to be divided where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement and a schedule is as much a part of statute and as much as an enactment as is the section by which it is introduced". The schedule may be used in construing provision in the body of the Act. It is as such as an Act of Legislature as the Act itself and it must be read together with the Act for all purposes of construction. *Expressions in the Schedule cannot control or prevail against the express* enactment and in the case of any inconsistency between the schedule and the enactment. The enactment has to prevail, and of any part of the schedule cannot be made to correspond it must yield to the Act. Lord Sterndale in *Inland Revenue Commissioner* v. *Gittus*[3] said, "It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and schedule. If the Act says that the schedule is to be used for a certain purpose and the heading of the part of Schedule in question shows that it is *prima facie* at any rate devoted to that purpose then you must read the Act and the schedule as though the schedules were operating for the purpose and if you can satisfy the language of the section without extending it beyond that purpose you find in the language of the schedule the words and terms that go clearly outside that purposes then you must effect to them and you must not consider them as limited by the heading of that part of the schedule or by the purpose mentioned in the Act for which the Schedule is *prima facie* to be used. You cannot refuse to give effect to clear words simply because *prima facie* they seem to be limited by the heading of the schedule and the definition of the purpose of the schedule contained in the Act'."[4]

The Act and the Schedule thereto are part of the Act, as enacted by the Parliament in English language, and the Court would take judicial notice of the Acts of Parliament and would interpret the Schedule in the light of the English version being an authoritative text of the Act and the second Schedule.[5]

According to sound canons of construction, where a provision is capable of two interpretations, that should be adopted which fits the description.[6]

But expressions in the Schedule cannot control or prevail against the express enactment. If there is any appearance of inconsistency between the Schedule and the enactment, the enactment shall prevail, and if the enacting part and the Schedule cannot be made to

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1. *Dhonessur Kooer* v. *Roy Gooder Sahay*, ILR 2 Cal 336, 339 (FB); *Altaf Ali* v. *Jamsur Ali*, AIR 1926 Cal 638; *In re* Swatanath Bhatia, AIR 1948 Mad 427, 429 (Schedules showing form of permit and conditions of licence form part of the Madras Cotton Cloth Dealers Control Order). *See* also *Canadian Northern Pacific Ry. Co.* v. *Corporation of New Westminster*, AIR 1918 PC 303. Agreement in the Schedule operates as if it were a clause in the Act. A plan annexed as a Schedule to an Act may be regarded as illustrating the scope and meaning of the enactment without of course restricting the extent of rights conferred in the enacted part; *Simpson* v. *South Staffordshire Waterworks Co.*, (1865)34 LJ Ch 380, *per* Lord Westbury : *Muneshwara Nand* v. *State*, AIR 1961 All 24, 30.
2. 4th Ed., Vol. 44, Para 822.
3. (1920)1 KB 563.
4. *Aphali Pharmaceuticals Ltd.* v. *State of Maharashtra*, AIR 1989 SC 2227.
5. *Nityanand Sharma* v. *State of Bihar*, 1996(1) JCLR 698 (SC).
6. *State of Bombay* v. *United Motors (India) Ltd.*, AIR 1953 SC 252.

correspond, the latter must yield to the former.[1]

Usefulness of Schedule when statute ambiguous.—A Schedule cannot be referred to on the construction of an enacting part of a statute, unless the language of that enacting part is ambiguous.[2] Very little weight is attachable in any case to the mere title of a Schedule, as qualifying the enacting words of a statute.[3] Nor can it restrict the plain terms of the Schedule.[4] It is axiomatic that the statute has to be read as a whole and that the Schedule to the Act is as much part of the Act as any other provision thereof. Rules of interpretation even require that if an enactment in a Schedule other than one merely of form contradicts an earlier clause, it is the Schedule that would prevail.[5] In case of an ambiguous enactment scheduled-form is a legitimate aid to construction.[6]

16. Forms in Schedules.—Forms appended to Schedules are inserted merely as examples and are only to be followed implicitly so far as the circumstances of each case may admit.[7] "It would be quite contrary to the recognised principles upon which Courts of law construe Acts of Parliament to enlarge the conditions of the enactment, and thereby restrain its operation, by any reference to the words of a mere form, given for convenience sake in a Schedule, and still more so, when that restricted operation is not favourable to the liberty of the subject, but the reverse. It is needless to cite authorities for these principles of construction, but it so happens that there is in existence a most apposite one by a Judge of high repute (Lord Cottenham) in relation to the Schedules of this very statute. *In re* Baines,[8] he said, speaking of this very Schedule, 'if the enacting part and the Schedule cannot be made to correspond, the latter must yield to the former'."[9]

Forms appended to a Schedule to a statute may be referred to for the purpose of throwing light on the construction of the statute.[10] If such forms are merely given as models, and by way of example, or for departmental purposes, their bearing on the construction of enacting sections is less than if they form an essential element in the operation of a statute. If a form included in a Schedule to a statute is made imperative by the statute, or is in terms which indicate that it is intended to be imperative, it must be strictly followed.[11]

The meaning of an Act should not be derived from the forms which may be prescribed by the Government under its rule-making power.[12] And Schedule forms are always dangerous guides to the meaning of a statute.[13] But Courts can derive support by a reference to the statutory forms and rules with a view to show that they are not alone in the view which they have taken of

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1. *Muneshwara Nand* v. *State*, AIR 1961 All 24, 30.
2. *Ellerman Lines, Ltd.* v. *Murray*, 1931 AC 126.
3. *Trustees of Clyde Navigation* v. *Laird*, (1884)8 AC 658, 672, 673, *per* Lord Watson.
4. *Inland Revenue Commissioners* v. *Gittus*, (1920)1 KB 503, on appeal (1921)2 AC 81, HL.
5. *Indira Bai* v. *Gift Tax Officer*, AIR 1962 Mad 96, 98.
6. *Kallu* v. *Munna*, 1972 MPLJ 56, 59 (G. P. Singh, J.).
7. *Batlett* v. *Gibbs*, 13 LJ CP 40.
8. 10 LJQB 34.
9. *Dean* v. *Green*, (1882) PC 79, 89, 90, *per* Lord Penzance.
10. *Jashoda Factories (P) Ltd.* v. *Judge Labour Court, Nagpur*, 1980 Mah LJ 453 (DB).
11. *Commissioner of Agricultural Income-tax* v. *Keshabchandra Mandal*, AIR 1950 SC 265; *Banarsidas* v. *Cane Commissioner*, AIR 1963 SC 1417 at 1425; *In re* Swara Nath Bhatia, AIR 1948 Mad 427, 429; *Saunders* v. *White*, (1902)1 KB 472; *Ryan* v. *Oceanic Steam Navigation Co.*, (1914)3 KB 731; *Davison* v. *Gill*, 1 East 64; *R.* v. *Pinder*, 24 LJQB 148; *Liverpool Borough Bank* v. *Turner*, 29 LJ Ch 827 : 30 LJ Ch 379.
12. *Pandiri Sarveswara Rao* v. *Maturi Umamaheswari*, ILR 1941 Mad 383 : AIR 1941 Mad 152, 153.
13. *Ma Tin Tin* v. *Maung Aye*, AIR 1941 Rang 135; *Pandiri Sarveswara Rao* v. *Maturi Umamaheswari*, ILR 1941 Mad 383; *Chellappa Pillai* v. *Bhargavan Paniker*, (1963)1 Ker LR 206 : 1963 Ker LT 639.

the section.[1]

Form prescribed under the Rules can be used as an aid on the basis of principles of *contemporea expositio* which is a well-settled rule of interpretation of a statute.[2]

Lord Sterndale's rule.—In *Inland Revenue Commissioners* v. *Gittus*,[3] Lord Sterndale, M. R., observed : "It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is *prima facie* at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for the purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if inspite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is *prima facie* to be used. You cannot refuse to give effect to clear words simply because *prima facie* they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act."

When the provisions in a statute have been incorporated in consonance with resolutions adopted by different countries in consultation with each other, this international character of the provisions of law as incorporated in the Schedule to an Act makes it incumbent upon the Court to pay more than usual attention to the normal grammatical sense of the words and to guard itself against being influenced by similar words in other Acts of our Legislature. As such rules or provisions will often have to be interpreted in the Courts of foreign territories, it is an additional reason why the Court should be careful not to attach to the words used in the rules set out in the Schedule to the Act anything more or less than their normal meaning consistent with the context in which they appear and consistent with the scheme of the legislation.[4]

Conflict.—In case of a conflict between the body of the Act and its Schedule, the former prevails.[5]

17. Erratum.—Ordinarily, the erratum should take effect to rectify the error with effect from the date of the original publication of the statutory provision.[6]

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1. *Commissioner of* W. T. v. *Raipur Manufacturing Co. Ltd.*, AIR 1964 Guj 151 : (1963)4 Guj LJ 741.
2. *Abdul Rahim* v. *Padma*, AIR 1982 Bom 341 (DB).
3. (1920)1 KB 563.
4. *East and West Steamship Co.* v. *Ramalingam*, AIR 1960 SC 1058, 1062.
5. *Rahim Manjhi* v. *Sheikh Ekbar*, 22 IC 690 (Cal); *R.* v. *Baines*, 10 LJQB 34, *per* Lord Denman, C. J.; *Allen* v. *Flicker*, 9 LJQB 42; *R.* v. *Russell*, (1849)13 QB 237.
6. *Narasimhaswamy* v. *Indian Dominion*, AIR 1951 Orissa 31, 32 (notification).