CHAPTER XV
LIBERAL OR STRICT INTERPRETATION

SYNOPSIS

1. Problem of, when arises.—"One of the most significant tools of statutory construction, " says Sutherland,[1] " is the approach to statutory meaning by the process of liberal or strict construction. In a general sense 'strict' or 'liberal' construction constitutes an attitude of mind assumed by the person of Judge confronted with a statute and the problem of applying that statute to a particular set of facts. The chief value of the device is to be found in the fact that it serves as a synoptic expression which recognises the intrinsic and extrinsic aids of construction, and the inter-relation of those aids to the social and economic problems with which the statute deals." Crawford in *Statutory Construction* says at p. 453 : "As we have already suggested, one cannot but be impressed with the fact that after all, in most cases, interpretation generally boils down to the sole problem whether the statute involved shall be strictly or liberally construed, that is, whether what has been aptly called a 'determinate' shall be included or

1. *Statutory Construction*, 3rd Ed., Vol. 3 at pp. 33-34, Article 5501.

excluded from the statute's operation. If it is to be included, then the statute will be liberally construed; if it is to be excluded, then it should be strictly construed. Almost any problem of interpretation basically involves the judicial attitude. Consequently, the type of construction to which the Court will subject a statute is a most important consideration." Why should a statute be subjected to a strict or a liberal construction as the case may be? The only answer that can possibly be correct is becaure the type of construction utilized gives effect to the legislative intent. Sometimes a liberal construction must be used in order to make the legislative intent effective, and sometimes such a construction will defeat the intent of the Legislature. If this is the proper conception concerning the rule of construction to be adhered to, then a strict or a liberal construction is simply a means by which the scope of a statute is extended or restricted in order to convey the legislative meaning. If this is the proper position to be accorded to strict and liberal constructions, it would make no difference whether the statute involved was penal, criminal, remedial or in derogation of common right as a distinction based on the classification would then mean nothing.[1]

When there is no ambiguity about the definition of an expression in a statute, the question of strict or liberal construction does not arise.[2]

2. Liberal.—In a liberal construction of the statute, its meaning can be extended to matters which come within the spirit or reason of the law or within the evils which the law seeks to suppress or correct, although, of course, the statute can under no circumstances be given a meaning inconsistent with, or contrary to the language used by the legislators. Consequently, any matter reasonably within the statute's meaning, may be included within the statute's scope, unless the language necessarily excludes it.[3] Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of law except in the case of necessity or the absolute intractability of the language used.[4] Where the literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative.[5] If the letter of the law is logically defective, it must be made logically perfect, and it makes no difference in this respect whether the defect does or does not correspond to one in the *sententia legis* itself. Where there is a genuine and perfect intention lying behind the defective text, the Courts must ascertain and give effect to it where there is none, they must ascertain and give effect to the intention which the Legislature presumably would have had, if the ambiguity, inconsistency, or omission had been called to mind. This may be regarded as the dormant or latent intention of the Legislature, and it is this which must be sought for as a substitute in the absence of any real and conscious intention....To correct the *sententia legis* on logical grounds is a true process of interpretation... it fulfils the ultimate or dormant, if not the immediate or conscious intention of the Legislature.[6] "We are of the opinion that the term 'liberal construction' means to give the language of a statutory provision, freely and consciously, its commonly, generally accepted meaning, to the end that the most comprehensive application thereof may be accorded, without doing violence to any of

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1. Crawford : *Statutory Construction*, 1940 Ed. at p. 454, quoted with approval in *Subba Rao* v. *Commissioner of Income-tax, Madras*, AIR 1956 SC 604, 609-10; *Maharaja Book Depot* v. *State of Gujarat*, AIR 1979 SC 180 (184).
2. *Haji Sheikh Subhan* v. *Madhorao*, AIR 1962 SC 1230, 1236.
3. Crawford : *Statutory Construction*, at p. 451.
4. *Salmon* v. *Duncombe*, (1886)11 AC 627, *per* Lord Hobhouse; *see* also *Emperor* v. *Noor Mohomed*, AIR 1928 Sind 1 (FB); *Rex* v. *Vasey*, (1935)2 KB 748, 750, 751; *Janrao Jairamji Vidhale* v. *Devidas Deorao Vayvhare*, 1980 Mah LJ 899.
5. *Siraj-ul-Haq Khan* v. *Sunni Central Board of Wakf, U.P.*, AIR 1959 SC 198, 204.
6. Salmond : *Jurisprudence*, 10th Ed. at pp. 172-173.

its terms."[1] Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the Legislature could not have possibly intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning.[2] Liberal construction is that by which the letter or the statute is enlarged or restricted so as to more effectually accomplish the purpose intended.[3] But a liberal construction does not require that words be accorded a forced, strained or unnatural meaning or warrant an extension of the statute to the suppression of supposed evils or the effectuation of conjectural objects and purposes not referred to nor indicated in any of the terms used,[4] or should be carried to the extent of always trying to discover a dormant or patent legislative policy to sustain an arbitrary

1. *Maryland Casualty Co.* v. *Smith (Tex)*, 40 SW (2) 913, 914, quoted by Crawford in *Statutory Construction*, at p. 451 footnote and by Sutherland in *Statutory Construction*, 3rd Ed., Vol. 3 at pp. 39-40.
2. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 228.
3. *Causey* v. *Guilford County*, (1926)192 NC 29 quoted by Sutherland in *Statutory Construction*, 3rd Ed., Vol. 3 at p. 39.
4. Crawford : *Statutory Construction*, at pp. 451-452 :
"Genuine interpretation seeks to determine what the words of a statute provide as to a particular situation. But when it is clear what the words of a statute provide, is it ever permissible by interpretation to depart from those words on the ground that, had the Legislature adverted to the particular situation at issue, it would not have desired the statute to be applicable to it? What in reality is the process by which such a result may be reached? Courts almost invariably justify any such departure from the language of the statute as an application of the true legislative intent which supposedly had been inaptly expressed by the 'literal' words of the Act. Surely in many cases, this talk is inaccurate.... The most that can be said is that the Court seeks to apply the intent which in its opinion the Legislature would have had, had it considered that situation. Austin speaks more accurately of applying the 'reason of the statute'. This he calls spurious interpretation. When the words of the statute include cases which its reason would not, the application of the reason he calls restrictive interpretation.....This sort of interpretation has certain peculiarities. Normally, in the case of genuine interpretation the Court assumes that the words used by the Legislature express the 'reason of the statute'. To be sure if the words are ambiguous the Court may itself determine otherwise the 'reason of the statute', but only as a guide to show which is the correct sense of the words. It gives effect to its independent determination only so far as the words will allow; it is truly construing words. Here it gives effect to such determination further than the words will allow—even though the words cannot without qualification bring about any such result. It is no longer merely construing words, but might be said to construe the 'reason of the statute'. To do so is in effect to amend the words; where the Legislature has failed to use apt words, the Court steps in. Dean Pound has likened this to the compensations in the human system when some member fails to function properly. The line between interpretation and judicial legislation here becomes shady. So far as the words go, this looks like the latter, but inasmuch as the Court attempts to apply the 'reason of the statute', it may well be called one form of interpretation. Its peculiarities should, however, be recognized. To admit such a rule is to enter upon a dangerous ground. Once the jurisdiction to apply some other standard than that indicated by the words of the statute is admitted, then in a doubtful case it becomes open to question whether the law as written is really applicable? The Court's discretion is in some measure subsituted for the written law. There is the danger of abuse. Ground is furnished for the belief that the Courts make and the unmake the law at will. This leads to the desire for political control of the Courts and demand for an elective Judiciary. Whether this jurisdiction should nevertheless be entered upon involves large problem of jurisprudence—that arising out of the conflicting desires for certainty in the laws, and for due regard for the equities of individual cases. Suffice it here to say that under prevailing methods of drawing statutes this sort of interpretation seems at times necessary to avoid absurd and untimely results from ill-framed legislation." (*33 Harvard Law Review*, at pp. 711—713).

power conferred on executive authorities.[1] From *Commissioner of Income Tax, Orissa* v. *(M/s.) N.C. Budharaja & Co.,*[2] is borrowed the following elucidation propounded by the Supreme Court : Liberal Interpretation, however, cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the Court to re-write the section or substitute words employed by the legislature in the name of giving effect to the supposed underlying subject. After all the underlying object of any provision has to be gathered on a reasonable interpretation of the language employed by the legislature". It is no doubt true that the Legislature has put the Employees' Provident Fund Act on the Statute Book primarily for the benefit of the employees and that the provisions of the enactment must receive a liberal construction at the hands of the Courts. So too Section 140 of the Motor Vehicles Act, 1988 (old Section 92-A, Motor Vehicles Act, 1939) was held to be a beneficial legislation by the Madhya Pradesh High Court in *Deviji* v. *Anukarkhan.*[3] But at the same time the Court should not, unless compelled to do so by the clear language used in the Act, put any construction which will lead to absurdity. Courts should not in the guise of liberal construction assume the role of Legislature.[4] Courts should give liberal interpretations to a section to avoid constitutional invalidity.[5]

Any ambiguous expression is bound to receive a beneficient legislation.[6] The ameliorating conditions of weaker partner must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.[7] It is well settled that where the legislature enacts a law for the solution of human problem, in the construction of such legislation and particularly judging of its validity, the Courts have necessarily to approach it from the point of furthering the purpose of the legislation.[8] The Act being a beneficial statute granting exemption to the employer from the liability to make contributions should receive strict construction.[9] On the basis of the statute being beneficial, a partner should also count as an employee.[10]

3. Strict.—A strict construction is one which limits the application of the statute by the words used.[11] "Strict construction refuses to extend the import of words used in a statute so as to embrace *(sic)* cases or acts which the words do not clearly describe....Again, it has been stated,

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1. *(M/s.) Devi Dass Gopal Krishna* v. *State of Punjab*, AIR 1967 SC 1895.
2. AIR 1993 SC 2529..
3. AIR 1989 MP 101 : (1988)27 Indian Judicial Reports 377 : 1988 MPLJ 11 : (1989)1 ACC 445 : 1989 Jab LJ 396 : 1989 ACJ 567.
4. *Pamadi Subbarama* v. *Zewar Ali*, AIR 1960 Mys 14, 18; *Magite Sasmal* v. *Pandab Bissoi*, AIR 1962 SC 547 (Orissa Tenants' Protection Act, 1948).
5. *Commissioner of Sales Tax, MP* v. *Radha Krishan*, (1979)2 SCC 249 (257). *The Andhra Cement Co. Ltd., Secunderabad* v. *A.P. State Electricity Board*, AIR 1991 AP 269 : (1991) Andh WR 539 (DB).
6. *M/s. Harihar Polyfibers* v. *Regional Director, E.S.I. Corpn.*, AIR 1984 SC 1680 : 1984 Lab IC 1570 : (1984)65 FJR 199 : (1984)2 Crimes 563 : (1984)4 SCC 324.
7. *M/s. Glaxo Laboratories (P) Ltd.* v. *Presiding Officer*, AIR 1984 SC 505 : (1983)47 FCR 508 : (1984)1 Lab LJ 16 : (1984)1 SCC 1 : (1984)64 FJR 16 : 1984 SCC (Lab) 42 : (1984)16 Lawyer 2 (2) : (1984)1 Lab LN 57 : (1984)1 Serv LJ 229 : (1984)1 SCWR 129 : 1983 ICR 486.
8. *Shesharao* v. *Sonchand*, AIR 1986 Bom 54; *Escorts Ltd.* v. *Union of India*, (1985)57 Comp. Cas 241 (Bom); *Shesharao* v. *Sonchand*, AIR 1986 Bom 54 : 1986 Mah LJ 445 : 1986 Mah LR 361 : (1986)1 Rent CR 411.
9. *Sayaji Mills* v. *Regional PF Commissioner*, AIR 1985 SC 323; *Jeewanlal (1929) Ltd.* v. *Appellate Authority*, AIR 1984 SC 1842 : 1984 Lab IC 1458: (1984)65 FJR 204 : (1984)2 Lab LN 459 : (1984)49 Fac LR 313.
10. *Regional Director, E.S.I.C., Trichur* v. *Ramanuja Match Industries*, AIR 1985 SC 278.
11. *Chrisman* v. *Terminal Association of St. Louis*, (1942)157 SW (2d) 230, 234; *Sohanlal* v. *Col. Prem Singh Grewal*, AIR 1989 P & H 316 : (1989)96 Punj LR 139.

'By the rule of strict construction...' it is not meant that the statute shall be stringently, or even narrowly construed, but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used".[1] Crawford in *Statutory Construction*, at pp. 449-450 says : "If a statute is to be strictly construed, nothing should be included within its scope that does not come clearly within the meaning of the language used. Its language must be given its exact and technical meaning, with no extension on account of implications or equitable considerations; or, as has been aptly asserted, its operation must be confined to cases coming clearly within the letter of the statute as well as within its spirit and reason. Or stated perhaps more concisely, it is the close and conservative adherence to the literal or textual interpretation."

When a strict construction is appropriate, the particular case to come within the purview of the statute must be within both its letter and its spirit and reason. The construction of a statute according to its letter is a construction which takes the language used in its literal sense. The literal meaning of a statute is that which the words express, taking them in their natural and ordinary sense, that is, giving to words of common use their commonly accepted meaning and to technical words their proper technical connotation. The spirit and reason of the law on the other hand is nothing more than the legislative purpose, that is the purpose with which the law was made or the reason why the Legislators enacted the statute. Strict construction of a statute confines its operation to cases which are clearly within the letter of the law as well as within its spirit and reason. Though the letter of the law may include the given situation, that is not enough unless the spirit and reason of the law also include it.[2] The framers of a law are presumed to have in mind a reasonable consistent and intelligible plan or scheme for achievement of the legislative purpose. Such a plan or scheme as is discoverable from the statutory language may always be taken into account in interpreting statutes.[3]

Exemption, a creature of Statute, must be strictly construed.[4]

From the view point of the intended effect of the statute upon the existing body of law, strict construction is such a construction as 'presumes the Legislature to have intended the least innovation upon previous law'.[5]

Whatever may be said of the rule of strict construction, it cannot provide a subsitute for commonsense, precedent and legislative history.[6]

4. Basis for determination of strict or liberal construction.—Crawford in *Statutory Construction*, Article 239, has discussed at length what according to him is the rational basis for determining what statutes shall be strictly construed and what statutes shall be liberally construed. Briefly he observed :—

> "The only answer that can possibly be correct is because that type of construction utilized gives effect to the legislative intent. Sometimes a liberal construction must be used in order to make the legislative intent effective, and sometimes such a construction will defeat the intent of the Legislature.... If this is the proper position to be accorded to strict and liberal construction, it would make no difference whether the statute involved was

1. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2 at p. 39.
2. *Church of Holy Trinity* v. *United States*, 243 US 457.
3. *Mota Singh* v. *Prem Prakash Kaur*, ILR (1961)2 Punj 614.
4. *Union of India* v. *Commercial Tax Officer*, AIR 1956 SC 202; *Municipal Committee* v. *Mani Lal Maneckji (P), Ltd.*, AIR 1967 SC 1201; *Sayaji Mills, Ltd.* v. *Regional Fund Commissioner*, AIR 1985 SC 323.
5. *Shorey* v. *Wyckoff*, 1 Wash T 348 cited by McCaffrey, at p. 146.
6. *United States* v. *Standard Oil Co.*, 16 L Ed 2d 492, 494 (Douglas, J.); *Harilal* v. *Lilavati*, AIR 1961 Guj 207 (K.T. Desai, C.J.); grammatical construction repugnant to good sense.

penal, criminal, remedial or in derogation of common right, as a distinction based upon this classification would then mean nothing.[1] On the contrary, to take a penal statute as an example, it might be subject to a strict or a liberal construction depending upon which would *effectuate the legislative intent*.....Strict and liberal constructions should be used as instruments in the process of ascertaining the legislative intent when it is in doubt; otherwise they have little or no value...It is surely an unobjectionable standard if the Court will determine the scope and extent of a statute's operation on the basis whether in a given case the suggested construction is just and reasonable, as determined by existing standards of what is right and wrong, equitable and inequitable, reasonable and unreasonable... If we adhere to the view that the Legislature in enacting a statute, possibly does not have a specific intent with reference to every possible case that may arise under the statute, the standard just suggested for determining whether it shall be subjected to a strict or liberal construction, seems all the more logical. And in enacting a statute, the Legislature, so it would appear, impliedly delegates to the Courts the power to determine this intent—the just and reasonable operation of the law—whenever specific cases arise.....By making the type of construction turn upon the nature of the statute being subjected to the process of interpretation, a certain amount of objection which arises from leaving the determination entirely to the Court's conception of what is just and reasonable, is removed. Or perhaps better, whether a statute should be subjected to a liberal or strict construction should depend upon the nature of the right involved. This would eliminate the objection to allowing the character of the statute to be determinative of the type of construction, where the statute may partake of several natures—being part penal and part remedial.....Undoubtedly, certain human rights are so valuable and essential that the law looks upon them with favour at all times. Any tendency towards their impairment or destruction should be avoided or limited as much as possible. Any method or means set up for the promotion and the protection of such rights should at all times be favoured. In a democracy, at least, certain rights are regarded beyond the encroachment of the Government; there are certain matters in which man is superior to the Government. Even with reference to rights which the Government may reasonably regulate for the benefit of the general good, there is a limit beyond which the Government cannot go. All men are endowed with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. Of course, the problem is to know when individual rights must give way to the general welfare. On one side of the dividing line, the statute should always be liberally construed in favour of the individual; on the other side, the statute might perhaps be liberally construed in favour of the public. While public welfare may be a superior consideration beyond a certain point, it should not be so regarded any further than is clearly compatible with the democratic philosophy of Government. There is undoubtedly a limit to the right of society in general to regulate or limit individual rights, although its boundary may not be well defined..... It would, therefore, seem that any statute pertaining to the promotion and protection of individual rights, at least so long as these rights are beyond the legitimate control or regulation of the Government is entitled to be liberally construed in favour of the individual in a contest with the Government. When the right of the individual reaches the point that it may from thereon be regulated on behalf of the public, then perhaps a liberal construction in favour of the public is not out of place....Nevertheless, even where the public welfare is involved, highly important as individual rights are, and realizing how easily they may be impaired or destroyed, the

1. *Rayulu Subbarao* v. *Commissioner of Income-tax, Madras*, AIR 1956 SC 604 : 1956 SCR 577 : (1956)2 MLJ (SC) 43.

better judicial attitude might subject all statutes of this type to a liberal construction in favour of the individual..... It seems to be the rule already applied by the Courts generally in the construction of criminal statutes even in face of the fact that they are statutes pertaining to the public welfare....Naturally since all persons should stand before the law on an equal footing, any statute which grants special rights to certain individuals should be strictly construed against the statutory beneficiary... Moreover, where a statute regulates the conduct of public officials, since such a statute has as its purpose the promotion of the welfare of the members of the public, the statute should be liberally construed in favour of the members of the public. One might go on and enumerate other rights and indicate the type of construction desirable in each instance. But, as will be apparent, if we make the construction turn upon the nature of the right, we will establish a basis with practically the same difficulties that exist where we make the construction depend upon the type of statute. And besides, even should we determine whether a statute should be liberally or strictly construed in the light of the right involved, the consideration of which construction will be the most productive of justice is actually the decisive factor..Hence, neither the nature of the statute nor the type of the right, need give the Court any concern, except as they may indicate the legislative meaning.... To the Courts, the Legislature must leave the 'application of statutes to particular cases', in accord with the obvious basic legislative intent that its enactments are intended to operate reasonably and equitably as determined by our generally accepted standards of proper conduct and what is right and just. By this process alone, is it possible for our Courts to maintain a workable and practical as well as an equitable system of jurisprudence, for Legislature cannot deal with all individual cases as they arise any more than they can enact legislation which will cover every conceivably human controversy. By utilizing strict or liberal construction in order to rightly determine human controversies, the Courts may include or exclude those cases which apparently violate our concepts of reason and justice, from the operation of a given statute. Such a construction, so it would seem, since it appears to be primarily concerned with determining the pending controversy in accord with our general concepts of proper conduct, might well be designated as 'ethical interpretation'....It would, therefore, seem that whether a statute should receive a liberal or strict construction, should depend upon which will make the legislative intent effective, such legislative intent in any case of doubt being largely determined by ethical considerations. It would seem that the 'ethical interpretation' of any statute eliminates the objection to 'spurious interpretation' the excercise of legislative power by judiciary and at the same time provides a broad and all comprehensive method of determining whether a statute shall be strictly or liberally interpreted."

All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose.[1]

In Vol. 59 of *Corpus Juris* at pp. 1105-1106 it is stated : "Laws enacted in the interest of the public welfare, or convenience, or in regard to the rights of citizenship, or relating to the military power of the Government, or relating to schools and school districts, laws for the construction of works of great public utility, laws for the protection of human life, or for the preservation of health, and laws for the prevention of fraud or providing remedies against

1. *Haggar Co.* v. *Helvering*, 14 L Ed 340, 344 : 308 US 389 (Stone, J.); *Income-tax Commissioner, Banglore* v. *J.H. Gotla*, AIR 1985 SC 1698; *American Home Products Corporation* v. *Mac Laboratories*, AIR 1986 SC 137; *Commissioner of Income-tax* v. *J.H. Gotla*, (1985)156 ITR 323 (SC); *Asokan* v. *Western India Plywoods*, (1987)1 KLT 89 (FB). If a section yields two different interpretations, that which leads to an arbitrary or shockingly unreasonable result has to be eschewed.

either public or private wrongs should be liberally construed with a view *to promote the object* in the mind of the Legislature. Statutes conferring special privileges on individuals or corporations, or which constitute exceptions to general statutes or which are in derogation of common rights are to be strictly construed. The powers given by a statute to subordinate local authorities are strictly construed, and every reasonable doubt as to the existence of a particular power is resolved against its existence. Statutes passed in the exercise of the police power of the State should be strictly construed, while all statutes of a penal nature, whether civil or criminal, must be construed strictly in favour of those whom they affect. The requirements of a statute which are mandatory must be strictly construed, while those which are directory should receive a liberal construction for the accomplishment of the purpose of the act; but the rule of strict construction of a mandatory statute becomes inoperative when its application will limit, if it does not destroy, the purpose of the statute. An administrative statute in its application is to be limited to its plain unequivocal terms. However, the rules of strict and liberal construction may be departed from in order that absurd results may be avoided, and to the end that a statute shall be effective for the purposes intended, that the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extended of two meanings. Where the provisions of a statute are adopted by a general reference, the adopting Act will receive a more liberal construction than if originally passed with reference to the particular subject."

When some benefit is conferred under an act subject to performance of certain conditions and the benefit to be enjoyed affects rights of others adversely, the conditions imposed by law must be strictly enforced.[1]

If the language of a provision of a statute is clear and unambiguous, it should be strictly construed,[2] and should not be given a wider meaning than what the words actually denote.[3] The mere fact that the result of a statute is unjust or absurd would not entitle a Court to refuse to give effect to it. Where the language of a statute is clear and explicit effect should be given to it regardless of the consequences, unless the absurdity is such that it amounts to repugnance.[4]

Where the language of a statute is ambiguous and the meaning of the law-makers uncertain, the subject-matter of the statute will control, to some extent, in determining whether a strict or liberal interpretation shall be adopted.[5] Adjudicating a person insolvent results in bringing about serious consequences. It becomes, therefore, necessary to take particular care to see that the provisions of the Insolvency Act are observed strictly and correctly applied.[6] The Court can look behind the letter of the law in order to determine the true purpose and effect of an enactment when the language of the statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or some inconvenience, or absurdity, hardship or injustice, presumably not intended. In such cases, a construction modifying the meaning of the words and even the structure of a sentence is permissible, and in order to avoid absurdity or incongruity, even grammatical and ordinary sense of the words can in certain circumstances be avoided.[7]

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1. *Kali Kumar Sen* v. *Makhan Lal*, AIR 1969 A & N 66, 73 (FB) (Goswami, J.), no one way traffic.
2. *Gangadhar Singh* v. *Shyam Sunder Singh*, AIR 1958 Orissa 153, 158; *Jagannath Agarwala* v. *B.N. Dutta*, AIR 1963 Cal 26.
3. *Md. Sabir Husain* v. *State of Orissa*, (1983)56 Cut LT 288.
4. *Subbarayulu Reddiar* v. *Rangammal*, ILR 1962 Mad 1001 : (1962)2 MLJ 318 : 73 MLW 452; *Surajram* v. *Collector, Ganganagar*, ILR (1960)10 Raj 900 : 1960 Raj LW 519.
5. 159 Corpus Juris, at p. 1105.
6. *Vadamala Sanjeevi Reddy* v. *Ekappa Reddy*, AIR 1967 Andh Pra 243, 244 (Ekboate, J.).
7. *Jalpu Ram* v. *Dy. Commissioner, Kulu*, AIR 1966 Punj 148 : ILR (1965)2 Punj 761.

According to Sutherland,[1] a strict or liberal interpretation will depend upon a combination of many factors. Broadly speaking, a strict or liberal interpretation, according to him, will be made with reference to four different elements. They are :

(i) with reference to former law,

(ii) with reference to the persons and rights affected,

(iii) with reference to the letter or language of the statute, and

(iv) with reference to the purposes and objects of the statute.

Directory.—Directory statutes are to be liberally construed.[2] In all cases it must be borne in mind that where the interpretation sought to be put upon the words is arrived at by implication and by reference, the Court ought not to adopt a construction which has a restricting and penalizing operation unless it is driven to do so by the irresistible force of language.[3] It must also be remembered that the rule of strict construction of *penal statutes* as modified in the *modern times* is not so rigid or unbending as it was in times gone by when the cutting down of a cherry tree in an orchard or the begging or wandering without a pass by a soldier or sailor was punishable in the United Kingdom with death. During the present times the rules mean very little more than that such statutes are to be fairly construed like all others according to the legislative intent as expressed by the statute itself or arising out of it by necessary implication.[4] What that 'little more' is, has been stated by Pollock, B., in *Parry* v. *Croydon Commercial Gas Co.*,[5] in the following passage :

> "It appears to me that in construing a penal state of any kind, we are bound to take care that the party is brought strictly within it, and to give no effect to it beyond what it is clear that the Legislature intended. If there be any fair and legitimate doubt, the subject is not to be burthened. Though no doubt in modern times, the old distinction between penal and other statutes has, in this respect, been discountenanced, still I take it to be a clear rule of construction at the present day that in the imposition of a tax or a duty, and still more of a penalty if there be any fair and reasonable doubt, we are so to construe the statute as to give the party sought to be charged the benefit of the doubt."

The tendency of modern decisions, upon the whole, according to Maxwell,[6] is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and *criminal statutes with a more rational regard to the aim and intention of the Legislature*, than formerly, it is unquestionably right, he says, that the distinction should not be altogether erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty and this tendency is still evinced in a certain reluctance to supply the defects of language, or to take out the meaning of an obscure passage by strained or doubtful influences.

The *justification* for the strict or the liberal construction of a statute must be found in the fact that the kind of construction utilized by the Court gives effect to the legislative intent. In *Inhabitants of Whiting* v. *Inhabitants of Lubec*,[7] the Court, in speaking of strict construction,

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1. *Statutory Construction*, 3rd Ed., Vol. 3 at p. 34.
2. Halsbury : *Laws of England*, 2nd Ed., Vol. 31 at p. 531, para 693.
3. *Abdul Karim* v. *Islamunnisa Bibi*, ILR 38 All 339, 343; *Moung Tha* v. *Ma Pyu*, 46 IC 323.
4. *Emperor* v. *Noor Mohd.*, AIR 1928 Sind 1, 7 (FB).
5. (1863)15 CB (NS) 568.
6. *Interpretation of Statutes*, 9th Ed. at p. 288.
7. 121 Me 121.

observed : "Its oneness of aim is to effectuate, never to thwart, legislative intention. In the main it works well. Being a good rule it will work both ways. When it would be destructive of legislative intent, then the reason for using it ceases." This statement applies with equal force to the object of and the limitation upon the doctrine of liberal construction.

The rational approach to strict or liberal construction dictates that the kind of construction chosen should assist in the execution of the intention of the Legislature. The nature of the statute is usually an important factor in the selection of a strict or liberal construction. The nature of a statute in derogation of common law rights indicates that its scope should be limited by its express words; the character of laws designed to simplify legal procedure suggests that they should be construed with liberality. In some situations, the emphasis is placed upon the purpose or object of the law, with a view to the choice of the kind of construction which will execute the real legislative intent. Illustrations of this latter approach are to be found in cases involving legislation relating to public safety and protection of citizens against injury.[1] The purpose of such legislation points to the necessity for liberal interpretation in favour of those persons whose protection and safety the legislators had in mind in framing the law. A liberal construction has to be given to a provision like Section 523, Cr.P.C. (new Section 457 of 1973 Code) and the spirit and substance behind such a provision has to be considered, so as not to frustrate the purpose behind it.[2]

The rule of strict or liberal construction, however, combines with the other aids to statutory interpretation. In *United States* v. *Raynor*,[3] the nature of the Act was largely determined by the history of the law and its language. In *Surace* v. *Danna*,[4] the rule in *pari materia* and the maxim of construction "*reedendu singula singulis*" were applied to reinforce the meaning indicated by a literal construction. The nature of the Act may suggest a construction which must be rejected to the face of considerations drawn from other relevant rules.

5. Liberal interpretation with reference to former law.—Any statute purporting to interfere with the established state of law must receive a strict interpretation.[5] One of the situations in which a liberal or strict construction first became of importance was with reference to changes made in existing laws.[6] Accordingly it is well established that in enactment which restricts the jurisdiction of Civil Courts ought to be construed strictly.[7] For the like reason the principle received wide adoption that repeals of previous statutory laws by implication would not be presumed.[8] But it cannot be gainsaid that statutes are enacted usually with a view to bring about reformation or to remove defects in former laws. Sutherland[9] says; "In addition, changing social and economic conditions have often made reference to the older jurisprudence of less value, with the result that the most responsive interpretative technique is one which recognizes that one of the best sources of information is the policy of general plan of the legislation itself. And so the Courts today," says he, are repeating with less frequency these older rules which rebuked changes in existing laws.

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1. *Johnson* v. *Southern Pacific Co.*, (1904)196 US 1 : 49 L Ed 363.
2. *Suraj Mohan* v. *State of Gujarat*, AIR 1967 Guj 126, 129 (N. G. Shelat, J.).
3. 302 US 540.
4. 248 NY 18.
5. *Ibrahim* v. *(Mst) Zainab*, AIR 1935 Lah 613, 615.
6. *Johnson* v. *Southern Pacific Co.*, (1904)196 US 1, 17 : 49 L Ed 363.
7. *Baru* v. *Niadar*, AIR 1942 Lah 217, 227 (FB).
8. *Frost* v. *Wenie*, 157 US 46 : 39 L Ed 614.
9. *Statutory Construction*, 3rd Ed., Vol. III at p. 36.

The ambit and scope of a section should not be limited by reference to general jurisprudence or principles or policy.[1]

6. Strict or liberal interpretation with reference to persons and rights affected.—Where the liberty of a subject is concerned, the statutes prejudicially affecting such liberty must be strictly interpreted,[2] especially when quasi-penal consequences also ensue.[3] The power can be exercised only in the manner and according to the procedure laid down by the law.[4] When a statute interferes with the liberty of the subject it will not be taken to deprive him of that liberty to any greater extent than is expressly stated, or inferred by necessary implication.[5] A statute imposing limitations on the freedom of contract should be construed strictly.[6] If the Act is in restriction of the common law rights of the subject it is no reason why the fullest effect should not be given to its provisions but it is a reason why the meaning should not be strained against the liberty of the subject.[7] The Court must take care to see that every condition which the law lays down has been fulfilled before the liberty of the subject is curtailed.[8] Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to strict construction. They should be interpreted if possible so as to respect such rights.[9] Provisions of statutes whereunder the concerned authorities have powers to attach and sell properties or to deny a citizen his personal liberty have to be very strictly construed and unless the authorities exercising such powers satisfy the court about the source of such power the courts will be extremely slow in going to the rescue of the authorities to uphold the action taken by them.[10] Partition Act (Section 4) has almost always been liberally construed and widely interpreted in favour of the members of the family and strictly against the stranger-purchaser.[11] It is the duty of a court to adopt a liberal and strict construction of Acts affecting contracted or proprietary rights.[12] The beneficent construction of a rule of limitation is permissible, if alternative construction is permissible.[13] For instance, a provision which confers a privilege on certain classes of debtors and curtails the rights of the creditor to realise the debt requires a strict construction without defeating the object of the statute itself.[14] Provisions of

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1. *Enoch Pharma* v. *State of Kerala*, AIR 1965 Ker 280 (P. Govindan Nair, J.).
2. *Le Hong Mi* v. *Attorney-General of Hong Kong*, AIR 1920 PC 219.
3. *State of U.P.* v. *Lalai Singh Yadav*, 1977 CLR (SC) 121.
4. *State of U.P.* v. *Lalai Singh Yadav*, 1977 CLR (SC) 121.
5. *Great Fingall Consolidated Ltd.* v. *Sheehan*, 3 CLR 176, 186; *The Commonwealth and the Postmaster-General* v. *The Progress Advertising and Press Agency Co. Proprietary, Ltd.*, 10 CLR 457, 464; *Ananda Nambiar* v. *Chief Secretary*, AIR 1966 SC 657 : (1966)1 SCWR 427.
6. *Pushpa Bai* v. *Sulochana Menon*, (1959)1 Andh WR 363; Hyderabad Houses (Rent, Eviction and Lease) Control Act, XX of 1954.
7. *Clancy* v. *Butchers Shop Employees' Union, James John News Secretary and the President and the Members of Court of Arbitration, N.S.W.*, 1 CLR 181, 201; *see* also *Bishop* v. *Chung Bros.*, 4 CLR 1262, 1273; *The Master Retailers' Association of N.S.W.* v. *The Shop Assistants' Union of N.S.W.*, 2 CLR 94, 106-7; *Prabhakar* v. *Shanker*, AIR 1967 Goa 126.
8. *Yusuf* v. *Rex*, AIR 1950 All 69.
9. *Nagin Singh* v. *Jagannath*, AIR 1944 Lah 422; *see* also Maxwell : *Interpretation of Statutes*, 12th Ed.
10. *A. Padmanabhan* v. *Distt. Collector, Trivandrum*, AIR 1982 Ker 177.
11. *Sunil Kumar* v. *Provash Chandra*, AIR 1969 Cal 88, 90 (P.N. Mookerjee, J.) demolished houses as dwelling-houses.
12. *Indian Iron & Steel Co.* v. *Ramrichpal Marwari*, 67 CWN 644; *Angrej Singh* v. *Financial Commissioner*, ILR (1962)2 Punj 766.
13. *Anandilal* v. *Ram Narain*, AIR 1984 SC 1383 : (1984)3 SCC 561 : 1984 MPLJ 414 : (1984)10 All LR 514 : (1984)2 Land LR 77 : (1984)1 Ori LR 522 : 1984 UJ (SC) 784 : 1984 AWC 677 : 1984 BBCJ (SC) 138 : (1984)2 SCWR 122 : 1984 LS (SC) 78.
14. *Ude Bhan* v. *Kapoor Chand*, AIR 1967 Punj 53 (FB); *Bali Kumar Seth* v. *Makhan Lal*, AIR 1969 Assam 66 (FB); *Patil, R.A.* v. *Redeker, A.B.*, AIR 1969 Bom 205.

debt laws which restrict the rights of creditors accrued under valid contracts entered into with debtors or under general law, *e. g.*, Section 60 of the Contract Act in relation to appropriation of payment made, must be strictly construed.[1] Such restrictions should not be extended beyond what the words used actually cover.[2] Lord Blackburn observed in *Metropolitan Asylum District* v. *Hill*,[3] : "It is clear that the burden lies on those who seek to establish that the Legislature intended to take away the private rights of individuals, to show that by express words, or by necessary implication, such an intention appears."

If the words of a statute are capable of being interpreted in two ways, one of which creates an inequity and the other removes it, the interpretation which removes the inequity should be preferred. Of course, if the words are incapable of giving that meaning it cannot be imported.[4]

The right to hold an election, to stand in an election and to be elected thereto as Commissioner, are all *rights which spring under the statute.* There is no common law right which is involved. Therefore, the provisions of the Act and the Rules made thereunder must be strictly followed in constituting the municipality and in regulating the functions thereof.[5] Similarly, a disqualifying or disabling provision of law, as for instance, election rules, must be subject to strict construction.[6]

The Supreme Court has, in a case, *Ram Swaroop* v. *Hari Ram*,[7] ruled that a broad and liberal interpretation should be given to Section 36(2)*(a)* of the Representation of the Peoples Act, 1951 in order to give full effect to the Parliamentary intent observing, "To our mind according to the scheme for the conduct of elections the candidate should not be qualified or disqualified when the scrutiny of nomination is taken up by the returning officer for the purpose of finalising the list of nominated candidates".

It is a settled canon of construction of statutes that a provision which has the effect of conferring a privilege on certain classes of debtors and of trenching on the ordinary right of a creditor to realize his money from the property of his debtor, must receive a strict construction and it ought not to be extended to matters to which it does not in terms apply.[8] Thus statutes granting special

privileges to a group of persons who are in no particular need may be strictly construed against such beneficiaries.[9]

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1. *Soornudi* v. *Batchu Venkatarao*, AIR 1966 Andh Pra 154 : (1965)2 Andh WR 450.
2. *Zamindar Bank* v. *Suba*, AIR 1924 Lah 418 (as rule of law, be it even Hindu law, which, for instance, deprives an heir of his legal rights must be construed strictly); *Surendra Narain* v. *Bholanath Roy*, AIR 1943 Cal 613, 622; *Secretary of State* v. *Balvant Ganesh*, ILR 28 Bom 105, 114.
3. (1881)6 AC 193, 208; *see* also *Secretary of State* v. *Balvant Ganesh*, ILR 28 Bom 105, 114. *New Kerala Roadways (P) Ltd.* v. *Nanu*, 1988(2) KLT 465.
4. *Om Prakash* v. *State*, AIR 1955 All 275, (*per* Mulla, J.).
5. *Om Prakash* v. *State*, AIR 1955 All 275, (*per* Mulla, J.).
6. *Provat Chandra* v. *R.C. Sen*, AIR 1955 Cal 83.
7. 1983 ALJ 686 SC.
8. *Mirza* v. *Jhanda Ram*, AIR 1930 Lah 1034, 1036. It may, however, decide that persons known to be suffering hardships and disadvantages are deserving of generous consideration, and so statutes enacted with such objectives in view will be liberally construed. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at p. 38. Thus statutes regulating transactions between the insurer and insured will be strictly construed against the former and liberally in favour of the latter, as the former is traditionally always in a better bargaining position. Similarly, Workmen's Compensation Acts will be liberally construed in favour of labourers. Insolvency Acts, for the same reasons, are liberally construed in favour of debtors. See *Rai Ram Taran Banerjee* v. *Mrs. Hill*, 1949 FCR 292, 302; *Soornudi* v. *Batchu Venkatarao*, AIR 1966 Andh Pra 154.
9. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at p. 38; but *see Wittaker* v. *Durban Corporation*, AIR 1920 PC 218.

On the other hand, statutes in derogation of sovereignty will be construed strictly against the individual, and liberally in favour of the State.[1] Crawford in *Statutory Construction* at pp. 477-478 says : "Statutes in derogation of sovereignty are strictly construed in favour of the State. Consequently, statutes authorising suits against the State, statutes granting exemption from taxation, or statutes vesting sovereign powers in corporations will not divest the State of any of its sovereign powers or prerogative, unless the law-makers clearly reveal an intention to do so."

Here the problem, as stated by Sutherland in *Statutory Construction*,[2] is that of balancing one interest against the other; and being such the function is a judicial one.

Instead of a carefully matured enactment, where the legislation was a make-shift patch-work, such legislation strongly counsels against literalness of application. It favours a wide latitude of construction in enforcing its purposes.[3]

(i) Disabling statutes.—Disabling statutes must be strictly construed.[4] It is a trite proposition that statutes of limitation must be strictly construed and that no man is to be deprived of rights which would by law belong to him unless the specific provisions of law, which are alleged to take away these rights can be shown to apply clearly and in precise terms to his case.[5] In the words of Chatterji, J., in *Dheru* v. *Sidhu*[6] : "The law of limitation must be strictly construed, *i. e.* its scope cannot be stretched to extend to cases not covered by its language, and when the indications as to its application are not clear the construction must be in favour of the right to proceed." On the same principle a generous construction should be placed on the enactment which gives the power to restore a case dismissed for default of appearance.[7]

(ii) Limitation statute.—It has often been observed that the provisions of the Limitation Act, which take away the right to sue, have to be strictly construed. If the language is clear, express, precise and unambiguous, it must be enforced,[8] but where two interpretations are found to be equally possible, the Court may reasonably impute to the Legislature an intention to prescribe a larger period of limitation.[9] It is to be remembered that the Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy, and where the

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1. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at p. 38; but *see Wittaker* v. *Durban Corporation*, AIR 1920 PC 218.
2. 3rd Ed., Vol. III at p. 39.
3. *Guessefeldt* v. *McGarth*, 96 L Ed 342, 351 : 342 US 308 (Frankfurter, J.) : Trading with Enemy Act.
4. *Pratab Chandra* v. *Jagdish Chandra*, AIR 1925 Cal 116.
5. *Sunder* v. *Saligram*, 26 PR 1911 at p. 71; *Aminchand* v. *Gujar Mal*, 73 PR 1906 at 278. Crawford in *Statutory Construction* at p. 498 says : "On the other hand, statute of limitations constitute an important class of legislation, which should be liberally construed, in order to effectuate the general intention of Legislature, and specially when they relate to real estate. Statutes of limitation should not, therefore, receive a construction that will create exceptions or qualifications not clearly expressed. Nevertheless, if a statute of this type contains a provision excepting certain persons from its operation these exceptions should be strictly construed."
6. 56 PR 1903 at p. 259; *Miran Bakhsh* v. *Ahmad*, 145 PR 1907 at p. 683; *see* also *Bhagwan Das* v. *Collector of Lahore*, 79 PR 1904.
7. *Namperumal* v. *Alwar Naidu*, AIR 1928 Mad 831.
8. *Subhas Ganpatrao Buty* v. *Maroti Krishnaji Dorlikar*, 1975 Mah LJ 244 (FB).
9. *Karnal Distillery Co.* v. *Ladli Parshad*, AIR 1960 Punj 655, 664; *Jayalakshmi Rice & Oil Mills Co.* v. *Commissioner of Income Tax*, AIR 1967 Andh Pra 99; *Bundelkhand Motor Transport Co.* v. *State Transport Appellate Authority*, AIR 1968 Madh Pra 215 (FB) strict construction to be given (equitable considerations have no place); *Mohammad Hasan* v. *Mohammad Anwar*, AIR 1968 Pat 82; *Keshavlal Jethalal Shah* v. *Mohanlal Bhagwandas*, AIR 1968 SC 1336 (consideration of equity and hardship have no place in administering limitation of statutes); *Seva Singh* v. *State of Punjab*, ILR (1967)2 Punj 89 (being a disabling) enactment must be strictly construed).

language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A court ought to avoid an interpretation upon a statute of limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the Legislature.[1]

It is well recognised that the law of limitation is to be strictly construed[2] in respect of a right to proceed and a citizen is to be non-suited only if his case clearly falls within the letter of a provision of the statute of limitation. Unless an Article in the Limitation Act clearly and without doubt applies to the case made out in a plaint, a litigant should not be non-suited on the ground of time bar. Mere provision of a period of limitation is, howsoever, peremptory or imperative language is not sufficient to bar the Courts from exercising its power to extend the period of limitation provided the Court is satisfied that the exercise of the power is necessary.[3] The law of Limitation, as is well-known, has not to be utilised as a trap for depriving the citizens of their right to establish their claims in a court of law but is really meant to present stale cases being revived and, indeed, they are for this reason called statutes of repose.[4] The statute of limitation is of course a statute of repose and is inspired by a desire not to keep indefinitely alive controversies. Dictates of substantial justice demand such a course. In construing provisions of limitation, equitable considerations are irrelevant.[5] It is, however, not permissible to strain or stretch the language of the Limitation Act with a view to bar a suitor and the limitation seems to call for a strict construction in favour of right to proceed if the language on plain reading permits it.[6] Courts ought to avoid that interpretation of the statute of limitation as may, by implication or inference, have a penalising effect unless driven to do so by the irresistable force of its language.[7]

(iii) Registration Act.—There can be no doubt that strictest construction shall be placed on the prohibitory and penal sections of the Registration Act which impose serious disqualification for non-observance of registration.[8]

7. With reference to the letter or language of the statute.—The rule of strict construction is not applicable, where the meaning of the statute is certain and unambiguous, for under these circumstances, there is no need for construction. If the language is clear, it is conclusive of the legislative intent, for the object of all construction is simply to ascertain that intent, and of course, the rule of strict construction is subordinate thereto.[9] "The starting point in the construction of legislative enactments is the statute itself, and so logic favours an analysis of liberal or strict construction on the basis of the language of the statute. But where the liberal or strict construction is limited to the mere letter of the statute, the possibility is ever present that the interpreter will fail to penetrate deeply into the general purposes of the statute as gathered from other sources, from which the reason of the statute may best be determined.

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1. *Lala Bal Mukund* v. *Lajwanti*, 1975 All LJ 256 (SC); *Biyyata Attabi* v. *Muthukoya*, 1977 Ker LT 50.
2. *Subhash Ganpatrao Buty* v. *Maroti Krishnaji Dorlikar*, 1975 Mah LJ 244 (FB).
3. *Thaga Pillai* v. *Superintendent Regulated Market of South Arcot Market Committee*, 1977 LW (Cr) 19.
4. *Jugal Kishore Jagdish Prashad* v. *State of Delhi*, AIR 1962 Punj 142, 143; *Kiran Devi* v. *Abdul Hamid*, AIR 1966 All 105 (there is no room for application of principles of equity or justice in interpreting limitation of statute); *Sardarni Ram Khetri* v. *Hind Iran Bank*, AIR 1962 Punj 526, 529 (Dua, J.).
5. *Siraj-ul-Haq* v. *Sunni Central Board of Waqfs, U.P.*, AIR 1959 SC 198, and out of place *Boota Mal* v. *Union of India*, AIR 1962 SC 1716.
6. *Ram Lal* v. *Gokalnagar Sugar Mills Co., Ltd.*, AIR 1967 Delhi 91, 93-4 (Dua, J.).
7. *Lala Balmukund* v. *Lajwanti*, (1975)1 SCC 725.
8. *Brahmanath* v. *Chandrakali*, AIR 1961 Pat 79, 81.
9. Crawford : *Statutory Construction*, at p. 450.

Statements appear and re-appear in the decisions to the effect that the rules of strict or liberal interpretation have no application where the language of the statute is clear. However, it is submitted that a meaning seldom, if ever, is clear and unambiguous when divorced from its surroundings."[1]

8. With reference to the purposes and objects of the statutes.—As long ago as *Heydon's* case,[2] Lord Coke says, that it was resolved that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive of enlarging of the common law) four things are to be discerned and considered :

(1) What was the common law before the making of the Act?

(2) What was the mischief and defect for which the common law did not provide?

(3) What remedy the Parliament has resolved and appointed to cure the disease of the commonwealth? and

(4) The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy.

The task of interpretation is not a mere exercise of any mechanical jurisdiction. Courts are entitled to probe and find the intention of the instrument, and its purpose and give meaning to words to further the same so as to suppress the mischief and further just and fair results.[3]

A literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law making body which may be apparent from the circumstances in which the particular provision came to be made. Therefore, a literal and mechanical interpretation is not the only interpretation which courts are bound to give to the words of a statute and it may be possible to control the wide language in which a provision is made by taking into account what is implicit in it in view of the setting in which the provision appears and the circumstances in which it might have been enacted.[4]

Statutes have to be construed in a manner so as to promote the purpose and object of the Act, and not too literally so as to defeat the purpose or render the provision meaningless and otiose.[5]

In construction of public statutes of general policy, there is no room for equitable consideration but full effect must be given to legislative intent.[6] It is worthwhile to refer to the principle laid down by the Supreme Court in *Reserve Bank of India* v. *Peerless General Finance and Investment Co.*[7] Interpretation must depend on the text and the context. They are the basis

1. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at p. 40.
2. (1584) Co. Rep. *7a*, *7b*.
3. *Chandrabhan Ganpatrao Tale* v. *State of Maharashtra*, 1977 Mah LJ 278 (DB); *Administrator, Municipal Corporation* v. *Dattatraya Dahanakar*, AIR 1992 SC 1846 : (1992)1 SCC 361; *Ramesh Singh* v. *Chinta Devi*, (1994)1 BLJR 464 : (1994)1 Pat LJR 650; *CESC, Ltd.* v. *Subhash Chandra Bose*, (1992)1 SCC 441 : AIR 1992 SC 573.
4. *R.L. Arora* v. *State of Uttar Pradesh*, (1964)6 SCR 784, 794 (Wanchoo, J.).
5. *Koipally Brothers* v. *Income-tax Officer, Thiruvalla*, 1979 Ker LT 175.
6. *Gauri Shanker Gaur* v. *State of U.P.*, AIR 1994 SC 169.
7. AIR 1987 SC 1023 : (1987)8 (1) IJ Rep 42 : (1987)1 SCC 424 : (1987)1 Com LJ 162 : (1987)1 Supreme 169 : (1987)61 Com Cas 663 : 1987 JT (SC) 246 : (1987)1 SCJ 546 : (1987)1 Cur CC 721 : (1987)1 SCWR 201 : 1987 Bank 294 : (1987)1 UJ (SC) 586 : (1987)18 Lawyer 48 : (1987) Cur Cir LJ (SC) 302.

of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.[1]

Where a statute takes over and occupies a field previously not regulated by legislation, the rights and powers conferred and the obligations imposed by the statute must be worked out within the statutory framework. If a *statute confers a particular right and prescribes a particular mode for its enforcements*, the enforcement of the right must be sought in that mode.[2] It is but a common place rule of construction that where statute directs a certain thing to be done and prescribes a mode for doing it, such mode is the only mode in which the act may lawfully be done, because all other modes are, by necessary implication, excluded.[3]

No application under a special statute can be made unless the right to make such an application has been given by such statute itself. The right is not in nature of a common law right and is but a creature of the statute and can be claimed only in the manner and to the extent that the Act prescribes and permits. Thus the Workmen's Compensation Act, 1923, does not provide for a second application for further compensation on the ground of an aggravation of a permanent disability for which compensation has once been fixed and declared.[4]

Provisions in the *law which oust the jurisdiction of a Civil Court* must be strictly construed, and any Civil Court will be loath to come to the conclusion that its jurisdiction in a civil matter has been taken away. But when we are dealing with an act passed for special reasons, applying to special persons, and setting up a special tribunal, it is not difficult to appreciate the object which Parliament had in mind in placing certain matters solely within the jurisdiction of the special tribunal set up and preventing the Civil Court from dealing with those matters.[5] If the very object of a statute is defeated the rule of strict construction ousting the jurisdiction of Civil Courts cannot be applied under any circumstances.[6]

Procedural provisions must be construed liberally,[7] and must be read in the light of object and purpose of the Act.[8]

But it is to be borne in mind that the office of the Judges is not to legislate, but to declare the expressed intention of the Legislature, even if that intention appears to the Court injudicious.[9] In other words, we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed and the reason of the remedy. That is a general way of stating it; but no doubt one is entitled to

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1. Quoted in *Ashok Sharma* v. *State of M.P.*, 1993 JLJ 99.
2. *D. Nagarathnammal* v. *Ibrahim Sahib*, AIR 1955 Mad 303 [neither the Board of Revenue nor the Government had power to interfere with the order of the District Collector under Section 10(5). Madras Hereditary Village Officers Act, appointing a deputy to a post registered in the name of minor, and hence the orders of the Board of Revenue were without jurisdiction.
3. *Nagendra Prasad Singh* v. *State of West Bengal*, 63 CWN 158.
4. *Agus Co., Ltd.* v. *Chouthi*, AIR 1933 Cal 616.
5. *Babu Rao D. Pai* v. *Dalsukh M. Pancholi*, AIR 1955 Bom 89, 92 [Section 18, Displaced Persons (Debts Adjustment) Act, 1951 held valid]; *Abdul Waheed Khan* v. *Bhawin*, AIR 1966 SC 1718; *State of Kerala* v. *Ramaswami Iyer*, AIR 1966 SC 1738.
6. *Syamapada Banerjee* v. *Asst. Registrar of Co-operative Societies*, AIR 1964 Cal 190.
7. *N.T. Veluswami Thevar* v. *Raja*, AIR 1959 SC 422.
8. *Manharlal Bhogilal* v. *State of Maharashtra*, (1971)2 SCWR 126.
9. *River Wear Commissioner* v. *Adamson*, (1877)2 AC 743, 764, *per* Lord Blackburn J.; *see* also *Eastman Photographic Materials* v. *Comptroller-General of Patents Designs and Trade Marks*, 1898 AC 871, 873.

put oneself in the position of the Legislature, at the time the Act was passed in order to see what was the state of knowledge, what were circumstances brought before the Legislature, and what it was that the Legislature was aiming at.[1] A large number of the decisions have come to recognize that a construction is preferred which is either strict or liberal with reference to the purposes and objects of the statute.[2] Where general construction of a term leads to the defeat of the legislative intent, then limited or restricted meaning may be given to that term.[3] This according to Sutherland,[4] makes for the soundest analysis of the problem of liberal and strict construction. Thereunder, according to him, a statute is liberally construed when the letter of the statute is extended to include matter within the spirit or purpose of the statutes; and a statute is strictly construed when the letter of the statute is narrowed to exclude matters, which if included would defeat the policy of the legislation and lend itself to absurdity. The learned author has appended in the footnote a passage from *Cousey* v. *Guilford County*[5] : "The strict construction...must not squeeze out the life blood of the statute, nor should the liberal construction result in the exercise of the legislative power of amendment under the mask of so-called interpretation."[6] And another passage from *Inhabitants of Whiting* v. *Inhabitants of Lubec*,[7] is cited saying :

> "Even the rule of strict construction will not be so closely followed as to make unreasonableness. Often has it been stated in effect, that the intention of the Legislature is the law. Novelty may have gone from this expression, but cogency is with it yet. The language of the law is inartificial, nevertheless the real purpose of the Legislature, if that purpose be discernible from its statute, will prevail over the literal import of the words employed. There is nothing hallowed about the rule of strict construction; there should be nothing wrongful. Nor is it purely mechanical. It is a very *practical rule*. Its oneness of aim is to *effectuate*, never to thwart, *legislative intention*. In the main it works well. Being a good rule it will work both ways. When it would be destructive of legislative intent then the reason for using it ceases. Reasoning and judgment, not mere bald literalness of statutory phrasing, must guide and control research for a judicial legislative design."

If the Court finds that there is something implicit behind the words which are actually used in the statute which would control the apparent literal meaning of those words then it would also be open to the Court to give the true and proper meaning to those words with a view to bring about the implicit meaning.[8]

9. Beneficial statutes—Rule of beneficient construction.—Registration Act, though it is a very useful and beneficent enactment, as it is extremely stringent, it has got to be strictly construed.[9] A statute which purports to confer a benefit on individuals or a class of persons, by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individual with whom they stand in certain relations, is called a beneficial legislation. In interpreting such a statute, the principle

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1. *Attorney-General* v. *Metropolitan Electric Supply Co., Ltd*, (1905)1 Ch 24, 31, *per* Farwell, J.
2. *Prem Raj* v. *Rameharan*, 1974 SCD 375.
3. *Mohan Singh* v. *Rana Pratap*, ILR 1957 Punj 687.
4. *Statutory Construction*, 3rd Ed., Vol. III at p. 41.
5. (1926)192 NC 298.
6. *State* v. *Baker*, (1913)88 Ohio St. 168.
7. (1922)121 Me 121.
8. *Ahmedbhai Abdul Kadar* v. *Custodian, Evacuee Property*, AIR 1971 Guj 181, 187 (T.U. Mehta, J.).
9. *Jiwan Ali Beg* v. *Besu Mal*, ILR 9 All 108 (FB); *Panchapagesa* v. *Kalyana Sundaram*, AIR 1957 Mad 472, 477.

established is that there is no room for taking a narrow view,[1] but that the Court is entitled to be generous towards persons on whom the benefit has been conferred.[2] It is a well settled canon of construction that in construing the provision of beneficient enactments, the court should adopt that construction which advances, fulfills and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory.[3] This rule of liberal construction can only be resorted to without doing any violence to the language of the statute.[4] It is also well settled that a beneficent provision must be meaningfully construed, so as to advance the object of the Act, and causing any lacuna or defect appearing in the same.[5] Statutes like Minimum Wages Act should be given a beneficient interpretation, because such Acts are meant for the social welfare of the masses.[6] In interpreting provisions of beneficial pieces of legislation which is intended to achieve the object of doing social justice to women workers employed in the plantations and which squarely falls within the purview of Article 42 of the Constitution, the beneficient rule of construction which would enable the woman worker not only to subsist but also to make up for her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the Court.[7] For instance, where an Act aimed at protection from eviction of the cultivating tenant that sense of the words should be adopted which harmonises with the context and promotes in the fullest manner the policy and object of the legislation.[8] Where an act tends to benefit the tiller of the soil by conferring on him the proprietary right, the relevant provisions should be interpreted to the benefit of the tiller.[9] Adopting this principle the Madras High Court has held that the word 'suit' in Section 2(1) of the Usurious Loans Act, a beneficient legislation, should be interpreted as including a reference under Section 30 of the Land Acquisition Act, so as to give relief from payment of usurious interest.[10] The High Court of Orissa has also adopted this rule in construing the provisions of Orissa Money-Lenders Act.[11] It is for the Legislature to say, how far it will go, even if it be a benevolent enactment. A court can only take the words as they are written in the

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1. *Modern Movies* v. *S.B. Tiwari*, (1966)1 Lab LJ 763.
2. *Chotilal Sowcar* v. *Jawantraj*, AIR 1966 Mad 322 : (1966)2 MLJ 526 : ILR (1966)1 Mad 388 : 78 MLW 720; *Ambiah* v. *Avadhanula*, AIR 1964 Andh Pra 514, 518 (Chandra Reddy, C.J.). *Vijay Kumar Bhambari* v. *Ramnath Bajaj*, AIR 1990 P & H 208; *Bhonagiri Saidamma* v. *The Secretary, Government of Andhra Pradesh Revenue (FFO) DEPT.*, AIR 1995 Andh Pra 318; *Union of India* v. *Pradeep Kumari*, (1995)2 SCC 736, referring to *Jnan Ranjan Sen Gupta* v. *Arun Kumar Bose*, (1975)2 SCC 526 (530).
3. *Chinnamar Kathian alias Muthu Gounder* v. *Ayyavoob* alias *Periana Gounder*, AIR 1982 SC 137.
4. *Suraj Narain* v. *Laxmi Devi*, AIR 1982 Raj 63.
5. *Baldeo Sahai Bongia* v. *R.C. Bhasin*, AIR 1982 SC 1094.
6. *Asansol Bus Association* v. *Asst. Labour Commissioner*, AIR 1967 Cal 371 (Sinha, C.J.); *Bhawani Shanker Mica Mines* v. *Union of India*, 1984 Lab IC 140 (Del) (DB).
7. *B. Shah* v. *Presiding Officer, Labour Court, Coimbatore*, 1977 UJ (SC) 699 (705).
8. *R.S. Mani* v. *Palanimuthu Pillai*, AIR 1967 Mad 16 : 79 MLW 181.
9. *Khushi Ram* v. *Jaswant Rai*, 68 Punj LR 922; *Muthiah Pillai* v. *Sri Masilamaniswami*, 88 LW 281.
10. *Chotilal Sowcar* v. *Jawantraj*, AIR 1966 Mad 322 : (1966)2 MLJ 526 : ILR (1966)1 Mad 388 : 78 MLW 720.
11. *Aliana Annapurnamma* v. *Vaddadi*, ILR 1966 Cut 246; *see* also *Asansol Bus Association* v. *Assistant Labour Commissioner*, AIR 1967 Cal 371 (a case under Minimum Wages Act); *R. S. Mani v. Palanimuthu Pillai*, AIR 1967 Mad 16 : 79 MLW 181 (a case under Land Tenancy Act); *Khushi Ram* v. *Jaswant Rai*, 1966 Cur LJ 899 (also a case under Tenancy Law); *Gulshan Khandsari* v. *Union of India*, AIR 1968 All 75 (a case under Employees' Provident Funds Act and Rules made thereunder); *Ray Lime Stone Co.* v. *Sub-Divisional Officer, Ranchi*, AIR 1968 Pat 39 (a case under Minimum Wages Act); *British India General Insurance Co.* v. *Chanbi Shaikh Abdul Kadar*, AIR 1968 Goa 78; *Narayandas S. Kanuya* v. *Saraswatibai D. Joshi*, AIR 1968 Bom 280 (Bye-law made by a society to be benevolently construed.).

statute.[1] Indeed there is binding authority for holding that the Rent Acts are social legislation which while protecting the tenants give equal statutory rights to landlord as well. Therefore, the plea for slanted approach to the construction of rent laws was rejected.[2]

Where an Act is conceived to establish industrial peace and harmony between the employers and the employees and the object would not be achieved or advanced by adopting a technical interpretation, it might further embitter the relations between the management and labour and create more difficult situation for both. The provisions of such an Act cannot be interpreted in such a manner as to bring about a result so plainly contrary to the object of the legislation. An interpretation likely to advance the remedy and suppress the mischief has to be adopted, otherwise the intention of the Legislature will be defeated.[3] Industrial Disputes Act is legislation to bring about peace and harmony between labour and management in an industry. It is, therefore, necessary to interpret the definitions of 'industry', 'workman', *i. e.*, industrial dispute, etc. so as not to whittle down but to advance the object of the Act. Disputes between forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act.[4] It is not the law that rights other than those created by a particular statute may be taken away in proceedings under that statute without affording a hearing to those desiring to be heard. If, however, the statute says only so and so will be heard and no other, of course, no other will be heard. If the statute does not say who may be heard, but prescribes the procedure for hearing that procedure must be followed by every one who wants to be heard and what applies to one will apply to the other.[5]

In rent matters it is not open to the courts to utterly disregard the legislative mandate and hold in favour of the tenant.[6] Though the beneficial legislation has to receive liberal construction, the courts shall caution themselves not to travel beyond the scheme, and not to extend the benefit to those who are not covered by the scheme.[7] It is true that beneficial provisions have to be liberally construed, but it is equally true that once the provision envisages the conferment of benefit limited in point of time and subject to the fulfilment of certain conditions, their non-compliance will have the effect of nullifying the benefit.[8]

10. Remedial statute and its interpretation.—A remedial statute is one which remedies defect in the pre-existing law, statutory or otherwise. Their purpose is to keep pace with the views of society. They serve to keep our system of jurisprudence up to date and in harmony with

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1. *Madras Pencil Factory* v. *Regional Provident Fund Commissioner*, AIR 1959 Mad 235, 238 (Bala Krishna Ayyar, J.); *Shellac Industries, Ltd.* v. *Workmen*, AIR 1966 Cal 371, 373 (Datta, J.); *State* v. *A.H. Khan*, AIR 1966 B 107, 108 (Patel, J.) (construed reasonably and sensibly).
2. *Harnam Singh* v. *Surjit Singh*, AIR 1984 P & H 126 : 1984 Haryana Rent R 182 : (1984)1 Rent CJ 181 : (1984)1 Rent CR 247 : ILR (1984)1 P & H 430 : (1984)1 Rent LR 478 (FB).
3. *Andhra Handloom Weavers' Co-operative Society* v. *State of Andhra Pradesh*, AIR 1964 Andh Pra 363, 364 (Gopala Krishnan, J.). But see *Shibu Metal Works* v. *Regional Provident Fund Commissioner*, AIR 1963 Punj 19, 22 (Dua,J.) (not to strain the language); *Abdul Ahad Khan* v. *Ghulam Mohd. Bhat*, 1983 Kash LJ 290.
4. *S.K.Verma* v. *Mahesh Chandra*, (1983)4 SCC 2142 : 1983 SCC (L & S) 510.
5. *National Textile Workers' Union* v. *P.R. Rama Krishnan*, (1983)1 SCC 228 : 1983 SCC (L & S) 72.
6. *Rajasthan State Agricultural Marketing Boa.d* v. *Gurdeep Kaur*, AIR 1984 Raj 67 : 1983 Raj LR 362 : 1983 Raj LW 210 : 1983 WLN 214; Courts ought to adopt construction which would subserve and carry out the purpose and object of the Act rather than defeat it); *N.T. Corporation, Ltd.* v. *Sitaram Mills, Ltd.*, AIR 1986 SC 1234; (beneficial to the purpose in favour of and in whose interest the Act has been passed). *Oriental Fire & Gen. Ins* v. *Allixo Fernandes*, AIR 1986 Bom 280.
7. *Har Sharan Varma* v. *State of U.P.*, AIR 1985 SC 378; *Beldih Club* v. *Commissioner of Labour, Bihar, Patna*, 1987 BLJ 269 (Pat).
8. Vide *Noor Hussain and another* v. *Financial Commissioner*, AIR 1995 J & K 102 (DB).

new ideas or conceptions of what constitute just and proper human conduct. Their legitimate purpose is to advance human rights and relationships. Unless they do this, they are not entitled to be known as remedial legislation nor to be liberally construed. Manifestly, a construction which far promotes improvement in the administration of justice and the eradication of defects in our system of jurisprudence, should be favoured over one which perpetuates wrong. It seems proper to assume that the law-makers intended to advance our laws forward as far as our conception of justice and proper conduct extend. For this reason, if no other, remedial legislation is entitled to a *liberal construction*.[1] In construing a remedial Act of Parliament passed to prevent what would have been an apparent injustice, the court is not astute to apply to its construction mere technical rules.[2] It is true having regard to the *beneficient* object which the Legislature has in view in passing an Act, its material provisions should be liberally construed.[3] It is a welfare legislation and it should be so construed as to give necessary effect to that object.[4] Sutherland in *Statutory Construction*,[5] observes :

"But the mere fact that a statute is given liberal interpretation because it is a remedial statute is of little value in statutory construction unless the term 'remedial' has some sort of restrictive meaning. For if all laws are 'remedial' (and certainly all statutes are enacted to remedy some defect in existing laws), the rule amounts to nothing more than a statement that all legislation is to be liberally construed. Possibly the trend, today, favours a liberal construction of all legislation with the view to effectuating the legislative purpose. Traditionally, however, the Courts have been more discriminating, and in selecting a liberal or strict construction the emphasis has usually been placed upon the persons, things or interest affected by the statute.

An examination of the decisions will show that the Courts have assumed that the term 'remedial' has a limited meaning in two respects. They are : (1) Usually 'remedial' is used in connection with legislation which is not penal or criminal in nature, in that such laws do not impose criminal or other harsh penalties, and (2) the term 'remedial' is often employed to describe legislation which is procedural in nature in that it does not affect substantive rights.

In most of the cases applying the rule that remedial statutes are to be liberally construed, 'remedial' is employed to mean the converse of legislation imposing criminal or other severe penalties. Therefore, where the burdens imposed by a statute are limited to compensatory damages the statute is frequently regarded as remedial. Similarly, legislation providing for the remission of penalties has often been accorded a liberal construction on the ground that such legislation is remedial in nature. And it is not uncommon to find decisions referring to 'remedial' statutes in the conflicts sense as meaning the converse of penal legislation."

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1. Crawford : *Statutory Construction* at p. 494 : "Remedial statutes, that is, those which supply defects, and abridge superfluities in the former law, should be given a liberal construction in order to effectuate the purposes of the Legislature, or to advance the remedy intended, or to accomplish the object sought, and all matters fairly within the scope of such a statute should be included, even though outside the letter, if within its spirit or reason. But, as we have stated elsewhere, a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature, even if the statute is purely remedial and a liberal construction would produce a result highly beneficial or desirable" : *see* at pp. 492, 494.
2. *Befarfold & Co., Ltd.* v. *Macintosh*, 12 CLR 139, 149 (Griffith, C.J.).
3. *Magiti Sasamal* v. *Pandab Bissoi*, AIR 1962 SC 547, 549; *Central Bank of India, Ltd., Delhi* v. *Gokulchand*, ILR (1968)2 Punj 862.
4. *Ramesh Metal Works* v. *State*, AIR 1962 All 227, 232; see *R.S. Mani* v. *Palanimuthu Pillai*, (1966)79 MLW 181 and *Niau* v. *Kunwar Sen*, 1966 All LJ 135 (both cases of legislation aimed at protection of cultivating tenants of lands).
5. 3rd Ed, Vol. III at p. 68.

In his book on *Construction and Interpretation of Laws*, Blackstone observes in relation to the doctrine under consideration that "it may also be stated generally that the Courts are more disposed to relax the severity of this rule (which is really a rule of strict construction) in the case of statutes obviously remedial in their nature or designed to effect a beneficient purpose." This disposition on the part of the Courts, it may be noted, has not lessened since the learned author made the observation. *Beneficial provisions* call for liberal and broad interpretation so that the real purpose, underlying such enactments, is achieved and full effect is given to the principles underlying such legislation.[1] In interpreting provisions of a beneficial legislation the Courts always lean in favour of the interpretation which will further that beneficial purpose of that legislation.[2] Remedial statutes are liberally construed, and in cases of doubt or ambiguity that construction is adopted which will best advance the remedy provided and help to suppress the mischief against which it was aimed. The words of a remedial statute must be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved.[3] Starting from antiquity this rule has often been invoked by Courts, though within well-defined limits, to prevent statute from becoming nullities or failing to achieve their purpose on account of unskilful or inartistic drafting. Recent instances are to be found in *Raghuraj Singh* v. *Harkishan*,[4] *Rai Ram Taran Banerjee* v. *Mrs. D.J. Hill*,[5] and *Amulya Chandra Ray* v. *Pashupati Nath*.[6] The true application of this rule involves no conflict with the other rule of strict grammatical construction re-affirmed by the Supreme Court in *Nalinakhaya* v. *Shyam Sundar*,[7] and no unwarranted excursion or 'voyage of discovery' against which a broad warning was sounded by the House of Lords in the case of *Magor & St. Mellons Rural District Council* v. *Newport Corporation*.[8] The two rules have their own separate fields, and, although, at some points, the boundaries may tend to overlap and the demarcation may become indistinct, and extreme caution is needed to avoid straying into the unwarranted region, the interpretation of Section 1(2) of the Calcutta Thika Tenancy Amendment Act, 6 of 1953, hardly involves such uncertain dividing lines. The ambiguity in the provision appears to be such as to bring it readily within the former rule of interpretation, and as the intention of the statute in question and its object and scope definitely point to a liberal construction in favour of the Thika tenant, the section should be construed, as far, of course, as language permits, so as to give effect to that intention. As in such cases too the limit is set by statutory language, the construction which is more in consonance with the legislative intent is also literal construction, although it may not always be strictly grammatical. It is only one amongst two or more literal constructions and as it gives effect to the object and purpose of the statute, reason dictates that it should be preferred and

1. *Dhanji Ram* v. *Union of India*, AIR 1961 Punj 178, 180.
2. *Satyanarayan* v. *Mallikarjun*, AIR 1960 SC 137, 141; *Chebrolu Nagabhushanam* v. *Rachapudi Seetharamiah*, AIR 1961 Andh Pra 224. *Ravi Shankar Sharma* v. *State of Rajasthan*, AIR 1993 Raj 117; *Lucknow Development Authority* v. *M. K. Gupta*, (1993)6 JT SC 307 : (1994)1 SCC 243.
3. *Rai Ram Taran Banerjee* v. *Mrs. D.J. Hill*, 1949 FCR 292, 300; *Amulya Chandra Ray* v. *Pashupati Nath*, AIR 1951 Cal 48, 54 (FB); *Sarju Prasad* v. *Gauri Sankar*, AIR 1928 Oudh 396 (FB); *Due Dada Colvi* v. *Sita Ram*, ILR 32 Bom 46, 49 (Mamlatdar's Act); *Deorajin Debi* v. *Satyadhyan*, AIR 1954 Cal 119; *Amirtham Kudumban* v. *Sarnam Kudamban*, AIR 1991 SC 1256 : 1991 2 JT 427 : (1991)3 SCC 20 : 1991 AIR SCW 984 (overruled AIR 1933 Bom 42, AIR 1939 Cal 460 and AIR 1956 Mad 476.)
4. AIR 1944 PC 35.
5. AIR 1949 FC 135.
6. AIR 1951 Cal 48 (FB).
7. AIR 1953 SC 148.
8. (1951)2 All ER 839.

ought to be allowed to prevail.[1]

The provisions of a statute must be construed with reference to their context and with due regard to the object to be achieved and the mischief to be prevented.[2] Rent Control Act should be interpreted reasonably and not literally. They should be interpreted so as to give effect to the objects of the statute and not to defeat them.[3] It is true that mediaeval conservative approach in progressive times should be avoided, with reference to laws which purport to make reforms and introduce innovations in personal laws in order that women folk particularly are invested with more rights and better freedom. But the fact remains that any approach to the question, though it should be liberal, has necessarily to be within the four corners of the relative legislative measures. While a legislative enactment may be liberally construed, the liberality cannot overstep the legitimate limits of interpretation and put into the legislation something which is not there.[4] In the main the material provisions of Beneficient Acts should be liberally construed and the construction should be such as to suppress the mischief and advance the remedy.[5] The Supreme Court held that Section 10(2)*(ii)(a)* of Tamil Nadu Buildings (Lease & Rent Control) Act being a penal provision should be construed strictly.[6]

Even while giving liberal construction to socially beneficient legislation, if the language is plain and simple, the working of law being a matter for the Legislature and not Courts, the Court must adopt the plain grammatical construction. The Court must take the law as it is. And, accordingly, it is not entitled to pass judgment on the propriety or wisdom of making a law in the particular form and further the Court is not entitled to adopt the construction of a statute on its view of what Parliament ought to have done. However, when two constructions are possible and legitimate ambiguity arises from the language employed, it is a plain duty of the court to

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1. *Deorajin Debi* v. *Satyadhyan*, AIR 1954 Cal 119, 122, *per* Mookerjee, J. [In 1948 the Thika Tenancy Ordinance was enacted to give relief particularly to the *bustee*-dwellers. Within a few months came the Act of 1949 which replaced the 1948 Ordinance. The Act, however, practically failed in its object, primarily because of bad draftsmanship. Then came the Amending Ordinance of 1952 to cure the defects of language and to carry out the intention of framers of the Act and in the early part of 1953 other amendments were made to give more effective protection to Thika tenants. Section 1(2) of the Amending Act, however, was so worded as to leave ample scope for a perplexing controversy as to whether a large body of Thika tenants who had protection under the Ordinance, immediately preceding would continue to be so protected].
2. *Ramchandiram* v. *India United Mills, Ltd.*, AIR 1962 Bom 92 : 63 Bom LR 678 : ILR 1962 Bom 186.
3. *Sideswar Paul* v. *Prakash Chandra Dutta*, AIR 1964 Cal 105 : 68 CWN 30; *Yudhishter* v. *Ashok Kumar*, AIR 1987 SC 558 : 1986 JT (SC) 1021 : (1987)1 Rent CR 225 : (1987)1 SCC 204 : 1987 SCF BRC 85 : (1987)1 Rent LR 29 : (1987)91 Punj LR 11 : 1987 Har Rent R 151 : (1987)1 SCJ 307 : (1987)100 MLW 356 : (1987)1 Cur LJ (Civ & Cri) 653 : 1987 MPRCJ 201 : (1987)2 Supreme 72; *H. Shiva Rao* v. *Cecilia Pereira*, AIR 1987 SC 248 : ILR 1987 Kant 450 : (1987)10 (1) IJ Rep 27 : (1987)1 UJ (SC) 15 : (1987)1 SCC 258 : (1987)1 SCJ 73 : 1987 SCF BRC 71 : (1987)1 Kant LJ 182 : (1987)1 Ren CR 273 : (1987)2 Supreme 145 : (1987)2 Ren CJ 359 (ILR 1985 Kant 2304 reversed); *Kameshar Singh Srivastava* v. *IV Addl. Dist Judge, Lucknow*, AIR 1987 SC 138 : 1986 JT (SC) 842 : (1986)12 All LR 688 : (1986)4 SCC 661 : (1986)4 Supreme 236 : 1987 SCF BRC 34 : (1987)10 (1) IJ Rep 1 : (1987) Cur CC 192 : 1987 All WC 91 (1987)1 All Rent Cas 1 : (1987)1 Ren CR 231 : (1987)1 SCJ 84 : (1987)1 Ren CJ 94 : (1987) UJ (SC) 268 : (1987) MPRCJ 94 : 1987 UPRJ 23 : (1987)1 Rent LR 62.
4. *Narayanaswami* v. *Padmanabhan*, AIR 1966 Mad 394, 397 (Veeraswami, J.).
5. *Provas Chandra* v. *Visyaraju*, AIR 1962 Orissa 149 (Orissa House Rent Control Act); *Magili Sasamal* v. *Pandab Bissoi*, AIR 1962 SC 547 : (1962)1 SCJ 636 (Orissa Tenants' Protection Act). *New India Assurance Co., Ltd.* v. *Nafis Begum*, AIR 1991 MP 302 : 1991 Jab LJ 490 : 1991 MPLJ 700. (FB).
6. Vide *A.S. Subochana* v. *Dharmalingam*, AIR 1987 SC 242 : 1986 JT (SC) 1068 : (1987)1 Ren CR 213 : (1987)1 Ren CJ 394 : (1987)1 SCC 180 : 1 UJ (SC) 207 : 1987 SCFBRC 95 : (1987)1 Rent LR 37 : (1987)2 Rent CJ 363 : (1987)1 SCJ 174 : (1987)100 Mad LW 138 : (1987)2 Supreme 148.

prefer and adopt that which enlarges the protection of a socially beneficient statute rather than one which restricts it.[1]

The old distinction drawn between remedial and penal Acts has of late years been much discredited. What has been laid down in modern cases is that the duty of the Court is to interpret Acts according to the intent of Parliament which passed them. 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. As observed by Lord Loreburn, L.C., in *Samuel* v. *Newbold*.[2] "Nor ought a Court of law to be alert in placing a restricted construction upon the language of remedial Acts."

In case of ambiguity, a remedial statute should, however, be construed beneficially.[3] This means not that the true signification of the provision should be strained or exceeded, but that it should be construed so as to give the fullest relief which the fair meaning of its language will allow.[4] It is true that the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions, the court should adopt what is sometimes described as a beneficient rule of construction. If the relevant words are capable of two constructions, preference may be given to that construction which helps to sustain the validity of the impugned notification, but it is obvious that an occasion for showing preference for one construction rather than the other can legitimately arise only when two constructions are reasonably possible, not otherwise.[5] Moreover, where Courts are dealing with the beneficial provision intended for the protection of tenants, if there is any doubt about the meaning of any provision, it should be resolved in favour of the tenants.[6]

"The commanding principle," says Lord Shaw in *Butler* v. *Fife Coal Company*,[7] "in the construction of a statute passed to remedy the evils and to protect against the dangers which confront or threaten persons or classes of His Majesty's subjects is that consistently with actual language employed, the Act shall be interpreted in the sense favourable to making the remedy effective and protection secure." The observations of Lord Dunedin in *Equitable Life Assurance Society of the United States* v. *Reed*,[8] also deserve notice in this connection : "In all cases where something not *ipso natura* unlawful is prohibited by statute, the word of prohibition must be taken as they stand; they must not be amplified in order to meet a supposed evil, or restricted in order to protect a natural freedom. In other words, the evil that was to be checked can only be considered so far as necessary for the interpretation of the words, but must not be used for an independent determination of the scope of the remedy."

Where the right is based on grounds of humane public policy, and the statute which gives such right should be liberally construed, and when there are disqualifying provisions, the

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1. *Harcharan Singh* v. *Smt. Shivrani*, 1981 All WC 273 (SC) (*per* D.A. Desai, J in connection with Rent Control Legislation).
2. 1906 AC 461.
3. *Bist* v. *London and South-Western Railway Co.*, 1907 AC 209, 211.
4. *Giovanni Depueto* v. *Wyllia (James) & Co.*, The Pieve Syperiore, LRPC 482, 492; *Grover's* case, 1 Ch D 182, 189.
5. *Madhya Pradesh Mineral Industry Association* v. *Regional Labour Commissioner (Central), Jabalpur*, AIR 1960 SC 1068, 1071; *Chebrolu Nagabhushanam* v. *Rachapudi Seetharamiah*, AIR 1961 Andh Pra 224.
6. *Kuriakos Kurian* v. *Saramma*, AIR 1964 Ker 154 (FB) (Kerala Buildings, Lease and Rent Control Act); *Jivanbhai Purushottam* v. *Chhagan Karson*, AIR 1961 SC 1491; *Chinnamarkathian* alias *Muthu Gounder* v. *Ayyavoob* alias *Periana Gounder*, AIR 1982 SC 137.
7. 1912 AC 149, 178-79.
8. 1914 AC 587, 595-96.

latter should be construed, strictly with reference to the words used therein.[1] For example, although the Madras Hindu Bigamy Prevention and Divorce Act, 1949 has been designed for removing certain disabilities of Hindu women and for conferring better rights on them for maintenance and property, the construction should not be so liberal as to overstep the legitimate limits of interpretation and impart what is not recognised by the Legislature. Thus, where the marriage of a woman has become illegal under the Act, she cannot be considered as an 'illegitimate wife' for the purpose of claiming maintenance from the person the marriage with whom has been declared illegal.[2]

Full effect must be given to a remedial measure to the extent the language used is capable of extending the remedy to the mischief intended to be remedied.[3] The Courts should adopt an interpretation which maintains rather than entails a remedial right even if it leads to multiplicity of proceedings.[4] In construing the provisions of a statute, it is the duty of the Court to give the words used by the Legislature their plain grammatical meaning, and in doing so, the Court cannot unduly emphasise or press into service the object with which the statute may have been enacted. But where they are dealing with a somewhat unusual piece of legislation, such as, Displaced Persons (Debts Adjustment) Act, 1951, which is enacted with a specific object and in order to achieve its object a special mode of defining debts has been adopted by the Legislature, it would be legitimate to consider the scheme of the Act, the nature and scope of the relief which is intended to be granted to the different classes of persons for whose benefit the Act has been passed and to bear in mind the reason why this Act was passed while dealing with the applicant's right to make the application under it. The Act mentions three categories of debts in Section 2(6), and the word 'debts' has been used at several places in the Act. Wherever the Act refers to the debts due by a displaced debtor it is necessary to apply the provisions of Section 2(6)*(a)* or Section 2(6)*(b)*, as the case may be. The definition of the word 'debts' in Section 2(6)*(c)* would be inapplicable in the context. But where the Act refers to the creditor's claim for the recovery of his debts, the Court must turn to the definition of the word 'debts' in Sub-section (6)*(c)* and not Sub-section (6)*(a)* or *(b)*. A displaced debtor can, therefore, apply under Section 5 only if the debt which he seeks to be adjusted satisfies the requirements of Section 2(6)*(a)* or Section 2(6)*(b)*.[5]

The U.P. Debt Redemption Act, (13 of 1940) is of a remedial nature, and, hence, its provisions must be interpreted literally so as to promote the object which the Legislature had in view in enacting the Act. The proper interpretation of Explanation II attached to the definition of an 'Agriculturist' in Section 2(3) of the Act is that the benefit of a temporary remission of land revenue goes both to the landlord who actually pays the land revenue as well as to the landlord or proprietor who is assumed to pay land revenue. In this view, the *waqf* estate is also entitled to claim a reduction in the local rate payable in respect of non-revenue paying items of property comprised in the *waqf*.[6]

In interpreting an Act which is directed to guard against accidents and to the *preservation of human life*, one should endeavour to carry out the objects of the Legislature as far as the

1. *Associated Cement Companies, Ltd.* v. *Workmen*, AIR 1960 SC 56, 64.
2. *Narayanaswami Reddiar* v. *Padmanabhan*, AIR 1966 Mad 394 : 1966 MLJ 529 : 79 MLW 231.
3. *Syedna Taher Saifuddin* v. *Tyebhai Moosaji Koicha*, 55 Bom LR 1.
4. *In re*, Shankar Kumar Ghose, AIR 1983 Cal 250.
5. *Ramchand Tillumal* v. *Khubchand Daswani*, AIR 1955 Bom 138.
6. *B. Chotey Lal* v. *Fazlul Rahman Khan*, AIR 1954 All 176 : 181; see *Soorvedi* v. *Batchu Venkata Rao*, AIR 1966 Andh Pra 154 (a case under Madras Agriculturists' Relief Act, IV of 1938).

language of the Act will reasonably permit.[1]

Statutes pertaining to the right of appeal should be given liberal construction in favour of the right since they are remedial and the right should not be restricted or denied, and in case of doubt, the same should be resolved in favour of the right of appeal.[2]

In *Plumb* v. *Tritton*[3], the Court observed : "The Act is one of a remedial nature for the *preservation of the public health* and the suppression of deception, particularly in cases where individuals are practically helpless to detect it. There is no reason for any special rigidity in construing the words of the Legislature. They should have their full and natural meaning, both on the side of the public, whose interests are to be conserved, and on the side of the individual, whose conduct is to be restrained."

The High Court is always reluctant to put an interpretation upon *labour legislation* which is likely to prejudice the rights or welfare of labour,[4] and the Supreme Court holds that benefit of reasonable doubt must go to labour.[5] Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations. Hence, social justice ought not to be imported while interpreting the provision of labour legislation.[6] In Industrial law, interpreted and applied in the perspective of Part IV of the Constitution the benefit of reasonable doubt on law and facts, must go to the weaker section, labour.[7]

But in *K.T. Rolling Mills* v. *M.R. Meher*,[8] the High Court of Bombay has held that in *Muir Mills* v. *Suti Mills Mazdoor Union*,[9] the Supreme Court had not rejected the principle of social justice as an aid to the interpretation of statute, and that there is no injunction to the acceptance of the proposition that no economic legislation can be considered by the Court without keeping in mind the principles of social justice in construing legislation which comes for interpretation before it.

In regard to remedial and beneficient legislation like the Factories Act, what is sometimes described as the equitable construction of the statute is permissible and it is the duty of the Court to adopt such construction as shall suppress the mischief and advance the remedy. Even if the words of Rule 4 of the Factories Rules may and can be improved upon, the object of the provision is clear, and hence, the failure to apply for registration of the factory as well as the failure to apply for the grant of a licence are punishable within the meaning of Section 92 of the Factories Act.[10]

Where in keeping with the policy of the State, *i.e.*, to establish ..elfare State with the

1. *Rice* v. *Henley*, 19 CLR 19, 22.
2. *Babulal Mohanlal Kandale* v. *Commissioner, Sales Tax, M.P.*, 1980 MPLJ 504 (DB); *Asstt. C.I.T.* v. *Chaturbhuj Radhakishan*, (1985)156 ITR 257 (Raj).
3. 20 CLR 408, 412.
4. *Mahadeo Dhondu Jadhav* v. *Labour Appellate Tribunal of India at Bombay*, AIR 1955 Bom 304 [prerequistes of grant of permission under Section 22, Industrial Disputes (Appellate Tribunal) Act, 1950—whether a *prima facie* case has been made out and whether action taken by the employer is *bona fide*).
5. *K.C.P. Employees' Association, Madras* v. *Management of K.C.P., Ltd., Madras*, 1978 UJ (SC) 69 (71).
6. *Muir Mills Co., Ltd.* v. *Suti Mills Mazdur Union*, (1955)1 SCR 991; cf. *Spinning, etc., Co., Ltd.* v. *State Industrial Court*, AIR 1959 B. 225.
7. *K.C.P. Employees' Association* v. *Management, of K.C.P., Ltd., Madras*, (1978)2 Mad LJ 11 (SC) : 1978 UJ (SC) 69.
8. AIR 1963 Bom 146 : 64 Bom LR 645.
9. AIR 1955 SC 170 : (1955)1 SCR 991.
10. *State* v. *Bhiwandiwalla*, AIR 1955 Bom 161.

directive principles of State policy as contained in Part IV of the Constitution, a statute is enacted by Parliament for the benefit of workers, a beneficial construction must be put upon it. As the object of the Employees' Provident Funds Act, 1952, is to provide for a Provident Fund for workers, it is the duty of the Courts to give effect to that intention and not to put a very narrow construction which may defeat the object of the Act.[1]

Kelly, C.B., said in *Bank of India* v. *Wilson*[2] : "We are bound to put a large and liberal construction upon any provisions in any Act of Parliament, where the construction proposed to be put upon it is in favour of the *trade and commerce of the country.*" Where a statute seeks to control contractual obligations, such a statute must always be strictly construed. Courts will not be astute to construe an Act so as to avoid a contract, or a contract so as to bring it within the prohibition of a statute.[3]

The words of a remedial statute must be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the persons intended to be relieved.[4] A provision in an enactment by which the jurisdiction of the ordinary Courts is taken away has to be strictly construed.[5]

According to the High Court of Orissa Land Acquisition Act is to benefit the claimant and should be construed liberally in favour of the claimants.[6]

(i) Transitional statute.—The provisions of transitional enactment should be construed liberally and should be given as comprehensive a scope as its language permits.[7]

(ii) To prevent a failure of intention.—Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible of it. It may, however, be noted that a statute, expressed in general and comprehensive terms and prospective in operation will be applied to things and conditions within its general scope, though coming into existence after its enactment, where the language fairly includes them. This canon has its basis in the usual intention of the Legislature that enactments declaring standards shall have broad coverage. This occurs when the Act deals with a *genus* and the thing which afterwards comes into existence is a species of it.[8]

It would seem that courts are justified in curing a *casus omissus* by construction where the law is remedial in its nature and it is clearly ascertained that the Legislature clearly intended to include the omitted case. Where, however, the statute is subject to strict construction, the

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1. *Kanpur Textile Finishing Mills* v. *Regional Provident Fund Commissioner*, AIR 1955 Punj 130.
2. 3 Ex, D. at p. 113, followed in *W and A. McArthur, Ltd.* v. *State of Queensland*, 28 CLR 530, 547.
3. *Jamuna Bai* v. *Naraynamurthy*, AIR 1959 Andh Pra 108, 109 (Srinivasachari, J.) (Rent Control Legislation).
4. *Rai Ram Taran Banerjee* v. *Mrs. D.J. Hill*, 1949 FCR 292, 302; *Amulya Chandra* v. *Pashupati Nath*, AIR 1951 Cal 48, 54 (FB); *Sarju Prasad* v. *Gauri Shankar*, AIR 1928 Oudh 396 (FB); *Deu Dada Galvi* v. *Sita Ram*, ILR 32 Bom 46, (Mamlatdar's Act); *see* also *Shambu Reddi* v. *Ghalamma*, AIR 1966 Mys 311 [a case under Section 488(3) of Cr PC where it was held that proviso *(a)* as amended by Act IX of 1949, being intended to remedy a social evil must be liberally construed (husband offering conditional maintenance to first wife after his second marriage was held illegal)].
5. *Lachman Das* v. *Goverdhandas*, AIR 1960 Punj 11, 13 (Chopra, J.).
6. Vide *Collector Cuttack* v. *(Smt.) Jayasri Dabe*, AIR 1988 Ori 163 accepting the view taken in *Spl. Land Acquisition Officer, Dandobi* v. *Soma Gopal Gowda*, AIR 1986 Kant 179 (FB) and *The Spl. Deputy Collector, Sri Saila Project (L.A.) Atmakur* v. *S.Venkataseshamma* and differing from *State of Punjab* v. *Krishanlal*, AIR 1987 P & H 222 (FB).
7. *State of West Bengal* v. *Basanta Kuar Mondal*, AIR 1959 Cal 168; Indian Independence (Rights, Property and Liabilities) Order, 1947; *Ahidhar Ghose* v. *Jagbandhu Ray Choudhry*, AIR 1952 Cal 846, 848; *Midnapore Zamindary Co., Ltd.* v. *Province of Bengal*, AIR 1949 FC 143; *State of Tripura* v. *Province of East Bengal*, AIR 1951 SC 23.
8. *See* Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 303.

refusal of the courts to supply apparent omissions or oversights is generally justified. An omission would not be supplied in those cases also where the language of the statute is plain and free from ambiguity, and expresses a single, definite and sensible meaning.

In extending the language of the laws, Courts do not confine themselves to situations where the effect of literal construction is objectionable, but include cases which would reasonably have been within the contemplation of the law-makers on the basis of consideration of the legislative purpose. On the other hand, a restricted interpretation is usually limited to cases where an evil consequence would follow from an obvious meaning.[1] There is little difference, if any, between the purpose and the spirit and reason of the law. Blackstone affirms this in these words : "The most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the meaning and spirit of it, or the cause which moved the legislator to enact it."[2] The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words.[3] Sometimes the governing principle of the remedial enactment has been extended to cases not included in its language to prevent a failure of justice and consequently of the probable intention.[4]

"The beneficial spirit of construction is also well illustrated by cases where there is so far a conflict between the general enactment and some of its subsidiary provisions, that the former would be limited in the scope of its operation if the latter were not restricted. An Act which, after authorising the imposition of a local rate on all occupiers of land in a parish, gives a dissatisfied rate-payer an appeal, but at the same time requires the appellant to enter into recognisances to prosecute the appeal, presents such a conflict. Either it excludes corporations from the right of appeal, because a corporation is incapable of entering into recognisances, or it extends the right to them, without compliance with the special requirement. The latter would be unquestionably the beneficial way of interpreting the statute. The general and paramount object of the Act would receive full effect by giving to corporate bodies the same right of appeal against the burthen imposed on them and the subsidiary provision would be understood as applicable only to those who were capable of entering into recognisances."[5]

There is no better key to a difficult problem of statutory construction than the law from which the challenged statute emerged. Remedial laws are to be interpreted in the light of previous experience and prior enactments.[6]

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1. See *Rector, etc., of Holy Trinity Church* v. *U.S.*, 143 US 457. A duly incorporated religious society in the United States made a contract with an alien in England to serve as its rector and pastor in New York. The said alien in pursuance of the contract removed himself to New York and entered upon his duties. The question arose whether the contract came within the prohibition of the statute forbidding the importation into U.S.A., of any alien under contract "to perform labour or service of any kind". Holding that the case was excluded from the operation of the statute because of not being within its intent and purpose, the Court observed : "It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of the makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the Judge for that of the Legislature, for frequently words of general meaning are used in a statute, words broad enough to include an act in question and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurb results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislation intended to include the particular act."
2. 1 Bl Comm 61.
3. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 92.
4. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 74.
5. Maxwell : *Interpretation of Statutes*, 11th Ed., at pp. 75-76, quoting *Curtis* v. *Kent Waterworks*, (1827)5 LJWC 106; *Oriental Insurance Co.* v. *Md. Zarija*, AIR 1995 J & K 81; *New India Assurance Co. Ltd., Ahmedabad* v. *Mithakhan Dinakkan Netiyar*, AIR 1995 Guj 126; *Sumitha Rani* v. *Hardev Singh*, AIR 1995 P & H 300 (DB).
6. *U.S.* v. *Congress of Industrial Organisations*, 335 US 106 : 92 L Ed 1849.

In ascertaining the legislative purpose where the language used is ambiguous or admits of more than one meaning, recourse may be had, among other things, to circumstances existing at the time of passage of the law, the occasion for the new law and the evil intended to be cured, the remedy intended to be applied, the law prior to the enactment of the Act under consideration and the consequences of the interpretation proposed. "In construing an obscure law, there is no interpretative method more fruitful of result than that which (1) determines and considers the effect of a suggested construction, and (2) examines such effect in the focus of the legislative purpose."[1]

In case of a remedial legislation of a regulatory nature the task of the Court is to fit, if possible, all parts into an harmonious whole.[2]

The *proviso* in a remedial statute, defining exemptions, is to be read in harmony with the purpose of the measure.[3]

(iii) Illustrations.—Where an Act authorised local bodies to construct bridges, and provided that in certain circumstances the authorities of 'adjacent' districts should contribute to the cost, it was held that the word 'adjacent', is not confined to places adjoining but that the degree of proximity which would justify its application is frequently a question of circumstances. It includes places to close or near.[4] An agreement by a shareholder with a company to set-off a present liability to pay cash to him against future calls on his shares was a payment of the calls 'in cash' within Section 25 of the English Companies Act, 1867.[5] 'Member' in Article 27 of Table 'A' of the repealed English Companies Act, 1862, which provided that any increased capital should be offered to the 'members' *pro rata*, was held to include the deceased's executors or administrators, if his name was still on the register.[6]

(iv) Welfare legislation.—It is well settled that in construing the provisions of a welfare legislation, courts should adopt what is sometimes described as a beneficient rule of construction,[7] and should construe liberally.[8] It is probably true that all legislation in a welfare State is enacted with the object of promoting general welfare, but certain types of enactments are more responsive to some urgent social demands and also have more immediate and visible impact on social vices by operating more directly to achieve social reforms. Factories Act belongs to this category and, therefore, demand an interpretation liberal enough to achieve the legislative purpose, without doing violence to the language.[9] So also Krishi Upaj Mandi

1. Francis McCaffrey : *Statutory Construction*, 1953 Ed. at p. 13.
2. *Federal Trade Commission* v. *Mandel Pros*, 359 US 358 : 3 L Ed 893, 897.
3. *Crescent Express Line* v. *U.S.*, 320 US 401 : 88 A L Ed 128.
4. *Mayor of Wellington* v. *Mayor of Lower Hutt*, 1904 AC 773, 775, 776, *per* Sir Arthur Wilson.
5. Jones Lloyd & Co., *Re*, (1889)41 Ch 159.
6. *James* v. *Buena Ventwa*, (1896)1 Ch 456; *Sahadra (Delhi) Saharanpur Light Rly. Co.* v. *S.S. Railway Worker's Union*, AIR 1969 SC 513; *Sita* v. *State of U.P.*, AIR 1969 All 342 (FB); *Natthu* v. *Amar Nath Agarwal*, AIR 1995 All 420.
7. *Alembic Chemical Works* v. *Workmen*, AIR 1961 SC 647 at p. 649; *see* also *Raval & Co.* v. *K.G. Ramchandran*, AIR 1967 Mad 57 : 79 MLW 331 (FB) (a case under Madras Houses and Rents Act, where it was held that the doctrine of inviolability of contract cannot be sustained in construing the provisions of such beneficial legislation); *Workmen Fire-stone Tyre & Rubber Co.* v. *Management*, (1973)1 SCC 813, 829 (Vaidialingam, J.).
8. *Sitaram* v. *Chhate*, 1980 Jab LJ 858 (DB).
9. *Central Railway Workshop* v. *Vishwanath*, (1970)2 SCR 720, 731 (Dua, J.); Employees entrusted solely with clerical duties included in the definition of 'worker'. *See* also *Regional Provident Fund Commissioner* v. *Krishna Metal Manufacturing Co.*, (1962) Supp 3 SCR 815, 820 (Gajendragadkar, J.); *Alembic Chemical Works* v. *Workmen*, AIR 1961 SC 647 : (1961)3 SCR 297, 300 (Gajendragadkar, J.) : Factories Act making reasonable provision for the preservation of health of the workmen, their safety and their welfare. *(M/s.) Cochin Shipping Co.* v. *E.S.I. Corporation*, AIR 1993 SC 252; *(Smt.) Veera Bai* v. *S.P. Sachdeva*, AIR 1985 Del 300 (DB) : (1985)8 Del Rep J 272; *T. Srinivasalu Reddy* v. *Gavardana Naidu*, AIR 1990 AP 289 (DB).

Adhiniyam, 1972 (M.P.).[1] Thus, a piece of socio-economic legislation, the object of which is to secure social welfare, should not be construed narrowly so as to defeat its very purpose.[2] The canon of construing a social legislation is very different from the canon of construing ordinary law. The Court cannot countenance any tactics to circumvent or defeat the provisions of legislation of this kind. Courts will be justified in even straining the language of the Act, if found necessary to achieve the purpose of the Legislature in enacting. Not only Courts should disapprove all subterfuges to defeat social legislation, but must actively try to prevent such subterfuges succeeding in their object.[3] The rules of construction applicable to expropriatory legislation are not applicable to the Interpretation of Ceiling on Agricultural Holdings Act which is a social welfare legislation and that construction which best secures the object of the Ceiling Act must be preferred against others which seek to defeat agrarian justice.[4]

In construing a welfare legislation, the Court should adopt a beneficient rule of construction; if a section is capable of two constructions, that construction should be preferred which furthers the policy of the Act and is more beneficial to those in whose interest the Act has been passed.[5] In *Hindustan Lever Ltd.* v. *Ashok Vishnu Kate*,[6] the Supreme Court has succinctly summed up as follows :

> "In interpreting a social welfare legislation such a construction should be placed on the relevant provisions which effectuates the purpose for which such legislation is enacted and does not efface its very purpose, (that case related to prevention of unfair labour practice."

Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.[7]

(v) Socio-economic legislation.—Socio-economic legislation, with the object of securing social welfare, is not meant to be interpreted narrowly so as to defeat its object.[8] The same principle applies to construction of social welfare legislations like the Motor Vehicles Act, 1988.[9]

In connection with statute relating to agrarian reform. Krishna Iyer, J. of the Supreme Court has observed : "The judiciary in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation, must be animated by goal oriented approach. This is a part of the dynamics of statutory interpretation in the developing countries so that courts are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so familiar. The

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1. *State of M.P.* v. *Galla Tilhan Vyapari Sangh*, 1977 Jab LJ 439 (SC).
2. *State of U.P.* v. *R.K. Modi*, AIR 1968 All 197.
3. *Kunju Mohamed* v. *Labour Officer*, 1975 Ker LT 448 (DB), case under Shops & Commercial Establishments Act, 1969 (Kerala), Section 11; *see* also *Lakshmi* v. *Kunhipperachan*, 1978 Ker LT 122; *Gujarat Electricity Board, Ukai* v. *Hind Mazdoor Sabha*, (1991)1 Guj LR 577 (Guj).
4. *State of M.P.* v. *Board of Revenue*, 1983 Jab LJ 208 : AIR 1983 MP 111 (DB).
5. *Rajaram Bhivandiwala* v. *Nandkishore*, 1975 MPLJ 225 : 1975 Jab LJ 347.
6. 1995 SCC (L & S) 1385 : (1995)6 SCC 326 : (1995)6 JT (SC) 625.
7. *Surendra Kumar Verma* v. *Central Government Industrial Tribunal*, 1980 Lab IC 1292 (SC) : AIR 1981 SC 422 : (1980)4 SCC 443 : (1980)57 FJR 67 (SC) : (1980)2 Lab LN 456.
8. *State of U.P.* v. *R.K. Modi*, AIR 1968 All 197.
9. *D.R. Venkatachalem* v. *Dy. Transport Commissioner*, (1977)2 Mad LJ 6 (SC); *Ramesh Singh* v. *Chinta Devi*, (1994)1 BLJR 464 : (1994)1 Pat LJR 650; *Skandia Insurance Co. Ltd.* v. *Kokilaben Chandravadan*, AIR 1987 SC 1184 : (AIR 1983 Pat 246 : AIR 1980 Madh Pra 154 and AIR 1980 Ori 70 overruled); *United India Insurance Co. Ltd., Regional Office* v. *Member, Motor Accident Claims Tribunal, Lakhimpur*, (1992)2 Gau LR 391.

judiciary is not a mere umpire, as some assume, but an active catalyst in the constitutional scheme.[1] Socio-economic trust of the land reform law should not be retorted by judicial construction but should be filliped without departing from the plain meaning and objective of the Act."[2]

In "social welfare legislation literal construction is not commended, but the Court must look to the object and purpose of legislation", said the Supreme Court in *Chairman, Board of Mining Examination* v. *Ramjee*.[3]

"Welfare legislation" said the Supreme Court case "must be interpreted in a Third World perspective"...., favouring the "weaker and poorer class".[4]

In interpreting *labour legislation*, Courts cannot stick to grammatical constructions, they must have regard to 'teleological purpose and protective intendment' of the legislation.[5]

Agreeing that buffalo milk is not 'cow milk', the Supreme Court said : "Consumer's understanding of the expressions used in legislation relating to them is in input in judicial construction."[6]

Rent Control Legislation in a country of terrible accommodation shortage is a beneficial measure whose construction must be liberal enough to fulfil the statutory purpose and not frustrate it.[7] So construed, the benefit of interpretative doubt belongs to the potential evictee, unless the language is plain and provides for eviction,[8] where a similar observation was made in respect of the word 'house' used in Bombay Village Panchayats Act, 1933.[9]

Tenants are in all cases not the weaker sections. There are those who are weak both among the landlords as well as the tenants, observed the Supreme Court in *Prabhakaran Nair* v. *State of Tamil Nadu*.[10] In *Kirloskar Brothers Ltd.* v. *Employee State Insurance Corporation*,[11] it is pointed out that interpretation of provisions of Employees State Insurance Act must be read in the light not only of the object of the Act but also the constitutional and human rights in the background of Universal Declaration of Human Rights, 1948, referring to *Consumer Education*

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1. *Authorised Officer, Thanjavur* v. *S. Naganatha Ayyar*, (1980)2 Mad LJ 34 (SC).
2. *Gurucharan Singh* v. *Kamla Singh*, (1976)2 SCC 152.
3. 1977 SC 965; *see* also *Gurcharan Singh* v. *Kamla Singh*, AIR 1977 SC 5; *State of M.P.* v. *Galla Tilhan Vyapari Sangh*, AIR 1977 SC 2208; *Directorate of Enforcement* v. *Deepak Mahajan*, AIR 1994 SC 1775; *Gopalan Bhavani* v. *Raghavan Aravindakshan*, 1989(2) KLT 118; *The Official Liquidator, High Court, Bombay* v. *United Commercial Bank*, 1991(4) Bom CR 369; *(Shri) Shyamsunder Kaka Talkar* v. *Rent Controller, Goa North, Panaji*, (1995)1 Goa LT 117.
4. *Sant Ram* v. *Rajinderlal*, AIR 1978 SC 1601; *Sheela Barse* v. *Union of India*, AIR 1986 SC 1773 : 1986 All LJ 1369 : 1986 Cri LJ 1736 : 1986 SCC (Cri) 337 (1986)3 JCC 596 : 1986 JT (SC) 53 at p. 136 : 1986 Cri LR (SC) 359 : 1986 Cri LR (SC) 405 : 1986 SCC (Cri) 352 : 1986 East Cri C 686 at p. 727 : (1986)30 DLT 350 : 1986 BBCJ (SC) 116 : 1986 Cal Cri LR (SC) 139 at p. 155 : 1986 Cur Cri J (SC) 249 : 1986 SC Cri R 311 : 1986 Cri App R (SC) 223; *The J & K Bank Ltd.* v. *State of J & K*, AIR 1987 J & K 18 : 1986 Sri Nagar LJ 146 : (1987)1 Ren CR 614 : 1987 J & K LR 73.
5. *State Bank of India* v. *M.S. Money*, AIR 1976 SC 1111.
6. *Kisan Trimbak Kothula* v. *State of Maharashtra*, AIR 1977 SC 435; case under Prevention of Food Adulteration Act, 1954.
7. Vide *Ruby Banerjee* v. *M/s. Mechanics Enterprises Pvt. Ltd.*, AIR 1988 Cal 252 : (1987)2 Cal HN 1 : (1987)2 Ren CJ 133 : 1987 Cal LT (HC) 130 : (1988)92 Cal W N 152 : (1988)1 Rent LR 503: (1988)1 Rent CR 340.
8. *Mani Subrat* v. *Raja Ram*, AIR 1980 SC 299; *Swaran* v. *Kasturi*, (1977)1 SCC 750; *see* also *Telco* v. *Gram Panchayat*, (1976)4 SCC 177; *Pachappan Narayanan* v. *Maniyadan Gopalan*, AIR 1991 Ker 154 (DB).
9. Further see *Bega Begum* v. *Abdul Ahad*, AIR 1979 SC 272; *Lalappa Lingappa* v. *Laxmi Vishnu Textile Mills*, AIR 1981 SC 852, case under Payment of Gratuity Act, 1972.
10. AIR 1987 SC 2117, quoted in *Navalmal* v. *Laxman Singh*, 1992 JLJ 728; *see* also *Arjun Khairmal Makhijani* v. *Jamnadas G. Tuliani*, 1990(1) Bom CR 334 (SC).
11. (1996)1 LBER 827 (SC).

and Research Centre v. *Union of India.*[1]

11. Penal statute to be strictly construed.—A *penal statute* has to be construed *strictly.*[2] "The word 'penal' connotes some form of punishment imposed against the individual by mandate of the State. Where the primary purpose of the statute is expressly enforceable by fine, imprisonment, or other punishment the statute is always construed as penal. One test is that if the executive of the State has the power to pardon for the offence charged, the statute defining that offence is penal. Another test is whether the injury sought to be redressed affects the public. The prime object of every law strictly penal, is to enforce obedience to the mandates of the law by punishing those who disregard them. If there is some sanction in the statute to compel obedience beyond mere redress to an individual for injuries received, the statute is penal. If the redress is remedial to an individual and the public is only indirectly affected thereby, the law is not regarded as solely and strictly penal in its nature. A statute that is penal in the conflicts of law sense is usually regarded as penal for the purpose of statutory construction. Substance and effect, rather than form, control as to which category a particular statute will be placed by courts."[3] According to Craies,[4] the term 'penal statute', if employed without qualification, is ambiguous[5]. "Most, if not all, Acts containing a command or prohibition contain also some express penalty or sanction for disobedience to the command or prohibition which they contain, and where they are silent as to the sanction for disobedience to command or prohibition the common law or the received rules of construction import into them the appropriate sanction, *i.e.*, where the disobedience affects the public interests, liability to indictment for misdemeanour; and where it affects private interests, liability to action by the person injured by the disobedience." According to the same author "the cause of the ambiguity is that statutes fall, from the point of view of penalty or sanction, into three and not into two classes, *viz.* :

(1) Acts enforceable by criminal remedies;

(2) Acts enforceable by civil remedies by way of damages;

(3) Acts enforceable by civil remedies in the form of penalty, forfeiture or disability."

The following rules apply, according to Craies, for deciding where statutes are or are not to be deemed penal :

(1) *Prima facie*, the imposition of a fine or penalty or forfeiture by a statute makes the procedure criminal.

(2) That the fine, penalty, or forfeiture is payable to an individual does not *per se* render the remedy civil.

(3) But where the penalty is recoverable by action of debt the remedy is civil.

(4) In certain cases the penalty has been held to be in truth liquidated damage, and not a penalty in the stricter sense.[6] Where an Act imposes a penalty for its contravention, the question arises whether the penalty is inflicted by way of punishment or by way of

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1. (1995)3 SCC 42.
2. *The Crown* v. *Mihan Singh*, ILR 5 Lah 1, 8; *Fletcher* v. *Lord Sondel*, (1826)3 Bing 501, 580-581; *Graff* v. *Evans*, (1882)8 QBD 373, 377; *London County Council* v. *Aylesbury Dairy Co.*, (1898)1 QBD 106, 109; *Ramji Pandey* v. *State of U.P.*, 1981 All LJ 897 (FB); *Boehringer Knoll Ltd., Bombay* v. *Regional Director, Employees' State Insurance Corporation*, 1977 Mah LJ 389 (DB).
3. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III, pp. 47-48.
4. *Statute Law*, 5th Ed. at p. 497.
5. *Huntington* v. *Attril*, 1893 AC 150.
6. *Reeve* v. *Gibson*, (1891)1 QB 652.

compensation for the breach. If the former, the contravention is a criminal offence, and even if the sole remedy for the offence is the statutory penalty, the contravention is nonetheless criminal.[1]

(5) In certain other cases, the penalty being recoverable only by a person aggrieved, the action is deemed so far penal that discovery in aid of it is not permitted.

(6) An Act may be remedial from one point of view and penal from another.

According to Halsbury : *Laws of England*,[2] a penal statute is one of which the primary object is expressly enforceable by fine, imprisonment, or other punishment.

Where a proceeding is one to enforce a penalty, or where a proceeding is one—not that must end in a penalty, because the decision may be in favour of the person against whom it is taken—but where the proceeding is of such a nature that it may result in a penalty, it is a penalty proceeding.[3]

Control orders make provisions for punishing breaches, and have to be interpreted strictly.[4]

(i) Ambit of strict construction of penal statute.—A strict construction requires, at least, that no case shall fall within a penal statute, which does not comprise all the elements which, whether morally material or not, are in fact made to constitute the offence as defined by the statute.[5] "Criminal and penal statutes", says Crawford,[6] must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its term in order to carry into effect the general purpose for which the statute was enacted." "Unless penalty provisions are imposed in clear terms", says Lord Loreburn, L.C., in *Attorney-General* v. *Till*,[7] "they are not enforceable..... Where various interpretations of a section are admissible, it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive." According to Halsbury : *Laws of England*,[8] it is a general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning. At the present day, this general rule means no more than that if, after the ordinary rules of construction have first been applied, as they must be. There remains any doubt or ambiguity, the person against whom the penalty is sought to be enforced is entitled to the benefit of doubt. "When an Act imposing a penalty, is open to two constructions, that construction ought to be adopted which is the more reasonable and the better calculated to give effect to the expressed intention which in this case is that the penalty shall be paid."[9] Where

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1. *R.* v. *Tyler*, (1891)2 QB 590 (Kays, L.J.).
2. 4th Ed., Vol. 44 Para 989 at p. 560 : A statute is to be regarded as penal for purposes of construction if it imposes a fine, penalty or forfeiture other than a penalty in the nature of liquidated damages or other penalties which are of the nature of civil remedies.
3. *Derby Corporation* v. *Derbyshire County Council*, (1897) AC 550, 552 (Lord Herschell).
4. *Raghubar Dayal* v. *State*, 1953 All LJ 309.
5. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 256.
6. Crawford : *Statutory Construction*, Article 240 : "But it should always be remembered that the rules of strict construction does not require such a narrow, restrictive, verbal or unreasonable technical construction as will defeat the clear intention of the Legislature. Similarly, unless unavoidable, a strict construction should not be used so as to render a statute ineffective or to lead to absurd result or to defeat the obvious intention of the Legislature. Nor should a penal statute be construed so strictly as to work a public mischief, unless required by words of explicit and unequivocal import."
7. 1910 AC 50, 51.
8. 4th Ed., Vol. 44, Para 910 at p. 560.
9. *Llewellyn* v. *Vale of Glamorgan*, (1898)1 QB 473, 478.

there is an enactment which may entail penal consequences, you ought to do violence to the language in order to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it by express language.[1] If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable construction, we must give the more lenient one. That is the settled rule for construction of penal sections.[2] If two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than one which imposes a penalty. The principle of construing a statute in order to suppress a mischief and to advance the object of the legislation does not apply to a penal statute. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. A penal statute must be construed according to its plain, natural and grammatical meaning.[3]

But penal words must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptation would comprehend.[4] In construing penal statute the evil sought to be overcome must be given special attention.[5] The principle that criminal laws are to be strictly construed and accused are not to be convicted under statutes too vague to apprise the citizen of the nature of the offence does not require distortion or nullification of the evident meaning and purpose of legislation.[6] When the words of a statute are plain, there is no room for construction even where the statute is highly penal and, therefore, to be construed strictly.[7]

(ii) Reasons for strict constructions of penal statutes.—In *Attorney-General* v. *Sillem*,[8] Pollock, C.B. observed : "Mr. Justice Blackstone well lays down the rule in the first volume of his Commentaries, at p. 92 : 'The freedom of our Constitution will not permit that in *criminal cases* a power should be lodged in any Judge to construe the law otherwise than *according to the letter.*' Our institution were never more safe, in my opinion, than at the present moment, but we cannot afford to lose any of the grounds of out security, and no calamity would be greater than to introduce a lax or elastic interpretation of a criminal statute to serve a special but temporary purpose." "No doubt all penal statutes," says James, L.J., delivering the judgment of the Court (Sir J.W. Colville, James and Mellish, L. JJ., and Sir E.M. Smith) in *Dyke* v. *Elliot*,[9] "are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a *casus omissus*, that the thing is so clearly within the mischief that it must have been intended to be included, and would have been included if

1. *Rumball* v. *Schmidt*, (1882)8 QB 603, 608; *Remmington* v. *Larchin*, (1921)3 KB 404.
2. *Tuck & Sons* v. *Friester*, (1887)19 QBD 629; *Re* North Ex. P. Harthluck, (1895)2 QB 264; *Hildesheimer* v. *W.&F. Faulkner Ltd.*, (1901)2 Ch 552, 561; *Kumaresan* v. *Ameerappa*, 1991 (1) KLT 893; *Awdesh Kumar* v. *The District Magistrate, Banda*, 1989 All LJ 1953.
3. *Toluram Reluma* v. *State*, 55 Bom LR 336 (FB).
4. Craies : *Statute Law*, 5th Ed. at p. 504.
5. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at p. 57.
6. *U.S.* v. *Gaskin*, 320 US 527 : 88 L Ed 287.
7. *Osaka Shosen Kaisha Line* v. *U.S.*, 300 , US 98 : 81 L Ed 532.
8. (1864)33 LJ Ex 92, 110.
9. (1872) LR 4 PC 184, 191, 'But where the thing is brought within the words and within the spirit then a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment." This rule is said to be "founded on the tenderness of the law for the rights of individuals and on the plain principle that the power of punishment is vested in the Legislature, and not in the Judicial department, for it is the Legislature and not the Court, which is to define a crime and ordain its punishment... It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases."[1] "It is unquestionably a reasonable expectation that, when the Legislature intend the infliction of suffering, or an encroachment on natural liberty or rights, or the grant of exceptional exemptions, powers, and privileges, it will not leave its intention to be gathered by mere doubtful inference, or convey it in 'cloudy and dark words' only but will manifest it with reasonable clearness."[2] Maxwell further says that the degree of strictness applied to the construction of a penal statute depended in great measure on the severity of the statute.

Where there is a considerable doubt concerning the statutes, definition of the crime, justice would demand that the statute be construed to give *'fair warning'* of the conduct considered criminal.[3] It was observed in *McBoyle* v. *U.S.*[4] : "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible, the line should be clear." Crawford (p. 472) proceeds to state further :

> "Moreover no real objection can be raised to submitting to a strict construction those penal statutes which impose exceedingly harsh penalties. Habitual criminal statute would fall within this category, as would statute which impose the death penalty. From this standpoint, it would be more proper to subject statutes creating misdemeanour to a liberal construction that it would be to subject statutes defining felonies to such a construction. And regardless of the type of the statute, the more disproportionate the punishment with the unlawful act, the more deserving is the statute of a liberal construction in favour of the accused. Furthermore, statutes which deal with conduct which men generally regard as illegal, such as murder, theft and forgery, may more properly be subjected to a liberal construction than statutes which are concerned with conduct not necessarily contrary to the general moral standards of mankind. And where a statute of this latter type is involved and the accused has made an honest effort to meet the requirements of the law the statute should surely be subjected to a strict construction."

As illustrative of the rule of strict construction, it has been said that while remedial laws may extend to new things not *in esse* at the time of making the statute, penal laws may not.[5] The

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1. *U.S.* v. *Walterberger*, (1820)5 Wheaton, 79, 95 : 5 L Ed 37, *per* Marshall, C.
2. Maxwell : *Interpretation of Statute*, 11th Ed. at p. 255 : If the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent to a court to extend them, "Moreover, the creation of an offence by interpretation may operate to entrap the unwary and ignorant and threaten the rights of the people generally; Crawford : *Statutory Construction*, at p. 463.
3. Crawford : *Statutory Construction*, at p. 472.
4. 283 US 25 : 75 L Ed 816.
5. Maxwell : *Interpretation of Statute*, 11th Ed. at p. 261.

general principle of strict construction is further well exemplified by comparing the manner in which an omission which, it was inferable from the text, was the result of accident, has been generally dealt with in penal and in remedial Acts.[1] "It is not the Court's province," said Lord Lyndhurst, L.C., in *Re* Wainewright,[2] "to supply an omission in an Act, and if any such correction would extend the penal scope of an Act, still less will the Court be inclined to correct." Pollock, C.B., observed in *Nicholson* v. *Field*[3] :

> "I admit that the common distinction between penal and remedial Acts, *viz.*, that the one is to be construed strictly, the other liberally ought not to be erased from the mind of a Judge, yet, whatever be the Act, be it penal, and certainly if remedial, we ought always to look for its true construction. In that respect, there ought to be no distinction between a penal and a remedial statute. If the remedial statute does not extend to the particular matter under consideration, we have no power to legislate so far to extend it. Undoubtedly we are thus far bound to a strict construction in a penal statute that, if there be a fair and reasonable doubt, we must act as in revenue cases, where the rule is that the subject is not to be taxed without clear words for that purpose."

Thus, in *Chengadi Venkataramadas* v. *Bonnam Latchann*,[4] the High Court of Andhra Pradesh, held that in interpreting a provision of law which has penal consequences the court should give a strict interpretation and construe it within the terms specified therein. In that case, where under the provisions of Section 11 of the Madras Revenue Recovery Act, which empowers a distraint of standing crops for non-payment of arrears of revenue, a distrainer has no right to distrain crops which were already cut and served, because as soon as the crops were cut they cease to be standing crops within the meaning of Section 11.

12. Limitations to the rule of strict construction.—The strict construction of a criminal statute does not mean such construction of it as to deprive it of the meaning intended. Penal statutes must be construed in the sense, which best harmonizes with their intend and purpose.[5] The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the Legislature, without unwarrantable severity on the one hand or unjustifiable levity on the other, in cases of doubt the Courts inclining to mercy.[6] A penal statute has no doubt to be construed strictly but the intention of the Legislature must govern in the construction of a penal statute asmuch as in any other statute.

The distinction between a strict and liberal construction has almost disappeared and it may be taken to be the present law that the same rules would govern construction of penal statutes as in the construction of other statutes.[7]

In *United States* v. *Raynor*,[8] the Court observed : "We are not unmindful of the salutary rule which requires strict construction of penal statutes. No rule of construction, however, requires

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1. Maxwell : *Interpretation of Statute*, 11th Ed. at p. 264.
2. (1943)12 LJ Ch 426, but if existing words are deprived of all meaning, words which appear to have been accidentally omitted may be supplied.
3. (1862)31 LJ Ex 233, 235.
4. AIR 1966 Andh Pra 277 : (1966)1 Andh WR 313.
5. *U.S.* v. *Petteridge*, (1942)43 F Supp 53, 56; *U.S.* v. *Lacker*, 134 US 624 : 33 L Ed 1080 (The rule that penal statutes are to be narrowly construed does not require rejection of that sense of the word which best harmonizes with the context and the end in view); *Gooch* v. *U.S.*, 297 US 124 : 80 L Ed 522.
6. Sedgwick : *Statutory Law*, 2nd Ed., p. 287 cited with approval by Bramwell. B., in *Foley* v. *Fletcher*, (1858)27 LJ Ex 106, quoted by Craies in *Statute Law*, 5th Ed. at pp. 503-504.
7. *State* v. *Hyder Ali*, AIR 1955 Hyd 128 : ILR 1955 Hyd 214.
8. 302 US 540.

that a penal statute be strained or distorted in order to exclude conduct clearly intended to be within its scope—nor does any rule require that the Act be given the 'narrowest meaning'."

The rule of strict construction does not negative the use of other rules of construction in order to ascertain the legislative purpose. The ascertainment of the legislative intent is, even where penal statutes are concerned, the sole legitimate purpose of judicial construction, and the rule of strict construction is to be utilized, along with the various other rules of construction, simply as a means for discerning and making the legislative intend effective.[1] Sutherland[2] says :

> "The intent of the Legislature is the controlling factor in their interpretation, and so the other canons of statutory construction must be given full consideration and may result in the rejection of a restricted interpretation. The history of the legislation, other statutes in *pari materia*, committee reports, and contemporary or practical interpretation may weigh heavily upon the issue of the meaning to be given to criminal statute."

A *proviso* which has the effect of saving parties from penal enactments should be liberally construed.[3] A proviso which follows and restricts an enacting clause general in its scope should be strictly construed so as to take out of the enacting clause only those cases which are fairly within the terms of the proviso, and the burden of proof is on one claiming the benefit of the proviso. But where a proviso in a penal statute affects the main or penal clause, the statute as a whole must be construed favourably to accused, by application of the rule of strict construction to the penal clause and the rule of liberal construction to the proviso.[4] In *Johnson* v. *Southern Pac.*,[5] it was stated :

> "I agree to that rule (of strict construction) in its true and sober sense, and that is, that penal statutes are not to be enlarged by implication or extended to cases not obviously within their words and purport. But where the words are general, and include various classes of persons, I know of no authority, which would justify the Court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them. And where a word is used in a statute, which has various known significations, I know of no rule, that requires the Court to adopt one in preference to another, simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word. In short, it appears to me, that the proper course, in all these cases, is to search out and follow the true intent of the Legislature and to adopt that sense of the words which harmonizes best with the context and promotes in the fullest manner, the apparent legislative policy and objects of the Legislature."

More lately the same Court expressed the principle thus in *U.S.* v. *Raynor*[6] :

> "We are not unmindful of the salutary rule which requires strict construction of penal statutes. No rule of construction, however, requires that penal statute be strained and distorted in order to exclude conduct clearly intended to be within its scope. Nor does any rule require that the Act be given the 'narrowest meaning.' It is sufficient if the works are given their fair meaning in accord with the evident intent of Congress."

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1. Crawford : *Statutory Construction*, at pp. 464-465.
2. *Statutory Construction*, 3rd Ed., Vol. III at pp. 65-66.
3. *Hutchinson* v. *Manchester, etc. Co.*, (1846)153 ER 869.
4. 59 *Corpus Juris*, at pp. 1089-1090.
5. 196 US 1 : 49 L Ed 363 (*per* Story, J.).
6. 302 US 540 : 83 L Ed 413.

In *State* v. *Fargo*,[1] it was observed :

"The principle that a penal statute should receive a strict construction and that no act should be held within it which does not fall within its spirit and the fair import of its language.....had its origin in England at a time when English law was exceedingly harsh in its penalties and sweeping in its condemnations. There is not now the same necessity for adherence to technical niceties or artificial distinctions in aid of persons accused of crime as there was then..... The Criminal Code of this State is clear in its definitions of crimes, mild in its punishments, and careful in its provisions for securing full and impartial trials. It is a false humanity which would protect offenders, either by stifling detection and prosecution, or by affording facilities to escape conviction, by unnecessary and artificial technicalities in the administration of the law. The purpose of the rule of strict construction is not to enable a person to avoid the clear import of a law through some mere technicality but to enable the people of the State to know clearly and precisely what acts the Legislature has forbidden under a penalty, that they may govern their conduct accordingly, and to make sure that no act which the Legislature did not intend to include will be held by the courts within the penalty of the law. To enforce the rule beyond its purpose would be to exalt technicalities above substance."

Craies in *Statute Law*,[2] says : The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes so that all statutes, whether penal or not, are now construed by substantially the same rules.

A statute should not be given a literal construction if such construction is contrary to the legislative intent and leads to *absurd* conclusions.[3]

One does not have to give a literal interpretation in interpreting statutes. The object of the statute has to be looked into and the interpretation has to be purposeful.[4] A construction which the language of the statute can bear and promotes a larger national purpose must be preferred to a strict literal construction tending to promote factionalism and discord.[5]

13. Illustrations of liberal interpretation.—In U.S.A. the Soldiers and Sailors Civil Relief Act must be read with an eye friendly to those who dropped their affairs to answer their country's call.[6]

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1. 118 Conn 267 quoted by Crawford . *Statutory Construction*, at pp. 469-470.
2. 4th Ed. at p. 454.
3. *U.S.* v. *Bryan*, 339 US 32 : 94 L Ed 884 (*per* Vinson, C.J.).
4. *(M/s.) Sramajibi Stores* v. *Union of India*, AIR 1982 Delhi 76.
5. *(Dr.) M. Ismail Faruqui* v. *Union of India*, AIR 1995 SC 605.
6. *Le Maistre* v. *Leffers*, 333 US 1 : 92 L Ed 229; *Socony Vacuum Oil Co.* v. *Smith*, 305 US 424 : 83 L Ed 265; *Bainbridge* v. *Merchants, etc. Co.*, 287 US 278 : 77 L Ed 312 (favoured class); *Boone* v. *Lightmer*, 319 US 561 : 87 L Ed 1587 (to protect those who have been obliged to drop their own affairs to take the burden of the nation).

CHAPTER XVI
DUTY, POWER AND PRACTICE OF COURTS

SYNOPSIS

1. Duties.—A Court has to interpret law as it stands.[1] "We have to administer and to apply as accurately as lies in our power," says Costello, J., in *Abdur Rahman* v. *Emperor*,[2] "the precise words of the relevant statutory enactment." It is the duty of the Court to construe the provisions of an enactment and to construe them according to the language used.[3] Courts are bound to apply the law as it is made and cannot enter into the question of what it should have been, however, laudable the object behind the latter is.[4] In *Sadananda Pyne* v. *Harinam Sha*,[5] their Lordships observed : "Courts must resist the temptation to change the law under cover of interpretation of law. If they use their power to interpret law, to alter laws which they may not like, and to make new laws which they think should be made, that would be a corrupt use of their power." The function of the Court is to interpret the law and not to amend, modify or alter it.[6] It cannot

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1. *Abdul Husan* v. *Mahmudi Begum*, AIR 1953 Lah 364, 367 : ILR 6 Lah 667; *Chand Shanker* v. *Sukh Lal*, AIR 1951 All 383, 386; *Kidar Nath* v. *Bhag Singh*, ILR 1937 Lah 143 : AIR 1937 Lah 504, 506; *Gopi Nath* v. *Thakurdin*, AIR 1935 All 636.
2. AIR 1935 Cal 316, 327 : ILR 62 Cal 749.
3. *Dhirendra Nath* v. *Nurul Huda*, AIR 1951 Cal 133, 136 (FB).
4. *Sanwaldas* v. *Narain Das*, AIR 1955 Bhopal 3; *Gulam Nabi Jan* v. *State*, AIR 1954 J & K 7; *Gulam Ahmad* v. *State*, AIR 1954 J & K 59 (the fact that Section 19 of the Preventive Detention Act, 1950, is very wide in its scope and has deprived the detenu of the remedies which were available to him according to the previous law cannot be a matter for consideration by the Court).
5. AIR 1950 Cal 179.
6. *Ram Narayan* v. *Dinapur Cantonment Board*, AIR 1958 Pat 71, 72; *Tankhepas Changsan* v. *Enjalian Lengthang*, AIR 1986 Gau 46 : (1985)1 Gau LR 296 (SB); *State of Kerala* v. *Mathai Verghese*, AIR 1987 SC 33 : 1987 Cri LJ 308 : (1986)4 SCC 746 : 1986 JT (SC) 928 : 1986 All Cri C 570 : (1987)1 Ker LT 62 : 1987 BBCJ (SC) 14 : (1987)1 (1) IJ Rep 1 : 1987 SCC (Cri) 3 : 1986 Cal Cri LR 38 : (1987)1 Cri LC 344 : 1987 Cri R (SC) 122 : 1987 Cur Cri J (SC) 108 : (1986)88 Bom LR 698 : 1987 Mad LW (Cri) 192 : 1987 Bank J 385 : (1987)1 Chand LR (Cri) 696 : (1987)1 UJ (SC) 614 : (1987)2 Crimes 123 : (1987)1 Supreme 470 : (1987)1 SCJ 166 : (1987)1 SCWR 156.

add to or subtract words in interpreting a statute, neither is it competent for any court to imply a provision which is not in the statute for remedying an omission.[1] The Court has necessarily to carry out the law as it stands unless it is proved to be *ultra vires* and it cannot rectify any alleged injustice caused by any valid legislative enactments.[2]

A Judge should not allow himself to be swayed by his own personal wishes, desires or predilections, for rights of the parties to a litigation are not regulated by the whim or caprices of the presiding officer but by the law as applied to the fact of the particular case. A Judge is not a machine and is expected to take decision on matters by application of his intellect on proper understanding of the facts presented before him. To act merely on the face value of the words without trying to know the true meaning or import of the words by looking at the context, circumstances and the manner of expression, would be unrealistic and undeserving of a Judge.[3] If a rule of law prescribed by a statute operates to the prejudice of a person or class of persons application must be made to the Legislature and not to the Courts.[4] It is not the function of the Court to state what the law should have been but what it is. Simply with a view to achieve the object of avoiding further litigation the Court cannot overlook the provisions of Section 47, C.P.C.[5]

The function of a court is *to interpret the language of a statute.*[6] It is for the Legislature to make enactments and for the Courts to enforce such enactments.[7] It must be borne in mind that the Courts are not legislators, they have to carry out loyally the directions of the Legislature. They can only interpret it. "We can only express our opinions", observes Mohammad Noor, J., in *Ishar Singh* v. *Shama Dusadh*,[8] "about the reasonableness of a particular provision of law and point out the difficulty in administering it." But so long as the law remains as it is, it is the duty of the Court to obey it explicitly. Once the conclusion was reached that a particular measure was lawfully enacted by a legislative authority covering the particular case in question, the hands of the Court would be tied and the legislative measure would have to be given its legitimate effect, unless *mala fides* or abuse of power was alleged.[9] The Judges can only interpret and apply a statute.[10] It is a misinterpretation of the judicial function to helplessly and indifferently abstain from the task of interpreting the provisions of a statute on the ground that the language is vague. It is not the judicial function to be deterred by the obscurity of the expression of the draftsman. The Court's task is more constructive than that. It is the duty of the Court in relation to each forensic situation to examine the language of the law, the context in which it was made, to discover the intention of the Legislature and to interpret the law to make it effective and not to frustrate the legislative intent. To interpret the law the Court must, and it can always call in aid the well-known canons of interpretations, *viz.*, rule of

1. *Amalgamated Coalfield Ltd., Calcutta* v. *State of M.P.*, AIR 1967 MP 56; *State of Tamil Nadu* v. *K.N. Dhanasekharan*, 93 LW 207 (DB).
2. *Govindaswami Goundar* v. *Ramaswami Goundar*, (1958)2 MLJ 185; the fact that an agriculturist has obtained a benefit under another Act, will not be a ground for presuming against his right to a second benefit under the enactment in question as the policy of the Legislature in recent times has been to confer more and more benefits on an agriculturist.
3. *Girish Chandra Podhan* v. *Amrit Bewa*, (1980)50 Cut LT 48.
4. *Ram Prakash* v. *Savitri Devi*, AIR 1958 Punj 87, 91 (FB).
5. *Sanwal Das* v. *Narain Das*, AIR 1955 Bhopal 10.
6. *Harish Chandra* v. *Rex*, AIR 1949 All 15.
7. *Sohan Lal* v. *Atal Nath*, AIR 1933 All 846, 849 : ILR 56 All 172.
8. AIR 1937 Pat 131, 132.
9. *Dominion (now Union) of India* v. *Shirinbai A. Irani*, AIR 1954 SC 596.
10. *Salig Ram* v. *Emperor*, AIR 1943 All 26, 36 : ILR 1943 All 238 (FB).

harmonious construction, special to prevail over general, amendment to prevail over the original, etc. The Judge cannot shrug his shoulders and remain placidly content with the observations that the provisions are irreconcilable.[1]

A statute only enacts its substantive provisions, but, as a necessary result of legal logic it also enacts, as a legal proposition, everything essential to the existence of the specific enactments.[2]

A statute is not to be construed like a contract.[3]

The plain duty of the Court is to gather the intention of the Legislature from the words used in the statute taking its plain and ordinary meaning.[4] It is also the duty of the Court to give effect to the legislative intent.[5]

It is equally the duty of the Court to accept a contention which promotes the object and for that purpose the court can go beyond the language in order to give effect to the intention of the Legislature.[6]

The Court has to discharge the onerous duty of ascertaining the intention of the law-maker which may be obscure due to error in draftsmanship. Statutes must not be construed in a manner leading to absurd results defeating the legislative intention.[7]

The courts shall not under the pretext of interpretation amend or override a provision in an endeavour to prevent alleged misuse or prolongation of the litigation by a recalcitrant defendant.[8]

Courts should assume that the law-makers who are the representatives of the people, enact laws which the society considers as honest, fair and equitable and the object of every legislation is to advance public welfare.[9]

It is always *dangerous to paraphrase* an enactment, and not the less so if the enactment is perhaps not altogether happily expressed.[10] And "it would clearly be wrong for the Court to lay down a rigid definition," observes Sir Asutosh Mukerjee, J., in *Krishna Charan Barman* v. *Sanat Kumar Das*,[11] "and thereby to crystallise the law, when the Legislature for the best of reasons, has not defined that expression." But an erroneous definition or interpretation by the Legislature is binding on the Courts. As observed by the Supreme Court of the United States in

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1. *Jaswant Kaur* v. *State of Haryana*, 1977 Cur LJ (Civil) (P & H) 324 (FB).
2. *Leman* v. *Damodarayya*, ILR 1 Mad 158, 163; *Anand Prakash* v. *Narain Das*, AIR 1931 All 162, 176 : ILR 53 All 239 (FB).
3. *Branson* v. *Municipal Commissioners of Madras*, ILR (1879)2 Mad 362 (FB). (Kernan, J., refers to some general rules relating to the construction of statutes at pp. 363, 364.)
4. *Federation Bank of India* v. *Hanutmal*, AIR 1951 Cal 382, 385 (Official translations do not, however, possess any legislative sanction and Courts ought not to rely too much upon them); *Jetha Parkha* v. *Ramchander Vithoba*, ILR 16 Bom 689, 698; *S.S. Harishchandra Jain* v. *Capt. Inder Singh Bedi*, 1977 Jab LJ 312 (FB).
5. *Gauri Shankar Gaur* v. *State of U.P.*, AIR 1994 SC 169.
6. *Fakaruddin Malick* v. *State of West Bengal*, 1995 AIHC 140 (Cal).
7. Vide *Gangaram Atmoram Vishwas Rao* v. *National Textile Corporation (SN) Ltd.*, 1995 Lab IC 2662 (Bom), referring to *Bangalore Water Supply* v. *A. Rajappa*, AIR 1978 SC 548, which approved the dictum of Lord Denning, L.J. in *Seaford Court Estates Ltd.* v. *Asher*, (1949)2 All ER 155.
8. See *Md. Alam* v. *Gopal Singh*, AIR 1987 Pat 156 : (1987) Pat LJR (HC) 370 : 1987 BBCJ (HC) 298 : 1987 BLJR 451 : (1987)5 IJ Rep 401 (FB) (overruling AIR 1983 Pat 67 and AIR 1982 Pat 47).
9. *Bhudan Singh* v. *Nabi Bux*, AIR 1970 SC 1880.
10. *Durga* v. *Jawahir Singh*, 17 IA 122, 127; *per* Lord Macnaghten; *Saleh Mohd.* v. *Khanmul*, AIR 1959 Mys 102, 105. To effectuate the true purpose of the Act and not allow it to be defeated.
11. ILR 44 Cal 162, 178.

Postmaster-General of United States v. *Early*,[1] that a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future.

"It is not for us," says Currie, J., in *Gurdwara Nankana* v. *Hira Das*,[2] "however, to try to discover what the intention of the Legislature was" when an Act is passed. "We have only to deal with the clear language of the Act as passed and endeavour to interpret it." The question for the Court is *not what the Legislature meant, but what the language means, i.e.*, what the Act has said that it meant.[3] The Courts must give first precedence to the plain meaning of the language used in the statute and, if the meaning is clear and quite unambiguous, that meaning must be accepted by the Courts irrespective of other considerations even though the *purpose* of the Legislature might be defeated by that interpretation.[4] In truth when the meaning of words is plain, it is not the duty of the Courts to busy themselves with supposed intentions.[5] In such cases the words themselves declare the intention of the Legislature.

If the words of an Act are clear, you must follow them, even though they had to manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity. Its duty is not to make the law reasonable, but to *expound* it as it stands, according to the real sense of the words.[6] Courts have no right to legislate, however, desirable that legislation may be on principle.[7] It is, however, one of the cardinal rules of construing a statute that in construing it *absurdity should be avoided*.[8] The Courts set upon themselves the task of discovering the legislative intent when the words create doubt and admit of more meanings than one. For that purpose the Courts resort to the relevant rules of construction.[9] No universal rule can be laid down for construction of statutes. It is the duty of the Courts to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.[10]

If it be true that it is the duty of the Court to ascertain the meaning of the Legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of the general words, whenever it is found necessary to do so in order to carry out the legislative intention.[11]

It is not the province of the Court to add any further conditions or limitations to those provided by the Legislature,[12] nor can the Court abdicate the power to interpret enactment or

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1. Curtis : *Reports of decisions in the Supreme Court of United States*, at p. 86 quoted in *Abdulla* v. *Mohan*, ILR 11 All 490, 503, 504 (FB).
2. AIR 1936 Lah 298, 299.
3. *Palmer* v. *Thatcher*, (1878)3 QBD 346 (per Cockburn, C.J.); *Secretary of State* v. *Arunachalam*, ILR 1939 Mad 1017 : AIR 1939 Mad 711, 714.
4. *Mohan Lal* v. *Grain Chamber, Ltd.*, AIR 1959 All 276, 287; *Sunder Das Bhasin* v. *Regional Settlement Commissioner*, AIR 1959 Raj 102 : ILR (1959)9 Raj 76, regardless of the consequences thereof.
5. *Narayana Swami* v. *Emperor*, AIR 1939 PC 47, 51.
6. *Md. Hayat* v. *Commissioner of Income-tax*, AIR 1931 Lah 87, 92 (FB).
7. *Nawsher* v. *Hazratullah*, AIR 1929 Cal 508.
8. *Secretary of State* v. *Fakir Mohd. Mandal*, AIR 1927 Cal 415; *Central Distillery and Colliery Works* v. *State of U.P.*, AIR 1954 All 156 (in order to avoid injustice and confusion and absurdity meaning of words can be enlarged); *Peria Maria Goundan* v. *Ramaswami Goundan*, ILR 1962 Mad 107 : (1962)1 MLJ 106 : 74 MLW 485 (in such a case restricted meaning can be given to the section so as to apply only that case); *Somdutta* v. *Janapada Saleha*, 1962 Jab LJ 181 : 1961 MPLJ 181.
9. *Roshan Lal Goswami* v. *Gobind Raj*, AIR 1963 Punj 532 : 65 Punj LR 852.
10. *Arunima Das* v. *Secretary, Board of Secondary Education*, AIR 1957 Cal 182, 186.
11. *Reiche* v. *Smythe*, 20 L Ed 566 (Davis, J.); *United India Insurance Co.* v. *Hukum Singh*, 1995 JLJ 467 (MP), referring to *Skindia Insurance Co. Ltd.* v. *Kokilaben Chandravadan*, 1987 JLJ 662 : (1987)1 TAC 471.
12. *Shriram* v. *State of Bombay*, (1961)2 SCR 890, 902.

statutory rule.[1] *Modification* of the language of a statute is permissible only *under exceptional circumstances*[2] such as mentioned in the following quotation from the Maxwell, on the *Interpretation of Statutes*[3] :

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the Legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. The rules of grammar yield readily in such cases to those of commonsense."

In *Provincial Government, C.P. and Berar* v. *Habib Mohammad*,[4] the notification issued under Clause 23 of Cotton Cloth and Yarn (Control) Order, 1943, was unhappily worded. A Division Bench of Nagpur High Court comprising of Niyogi and Bose, JJ., observed thereon thus :

> "We will first deal with the point relating to the notification which has been held by the lower appellate Court as being inoperative. The notification is No. 9418-9218-VII-P. C., dated the 9th December, 1944, which was published in the *C.P. and Berar Gazette*, dated the 15th December, 1944. It reads as follows :
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> 'In pursuance of Clause 23, Cotton Cloth and Yarn (Control) Order, 1943, the Provincial Government is pleased to authorize all District Magistrates in the Central Provinces and Berar within their respective jurisdiction to sanction prosecutions for an offence punishable under the said Order.'
>
> "Clause 23, Cotton Cloth and Yarn (Control) Order, 1943, runs as follows :
>
> 'No prosecution for the contravention of any of the provisions of the Order shall be instituted without the previous sanction of the Provincial Government or of such officer of the Provincial Government not below the rank of District Magistrate as the Provincial Government may, by general or special order in writing, authorise in this behalf.'
>
> "The learned Sessions Judge was right in so far that the words, 'for an offence punishable under the said Order' used at end of the notification were meaningless for reason that the Cotton Cloth and Yarn (Control) Order, 1943, does not provide for the punishment of the contravention of any of the provisions of that Order. The contravention of any of the provisions of that Order is punishable under Rule 18(4), Defence of India Rules. The proper wording in the notification should have been 'for the contravention of any of the provisions of this Order punishable under Rule 81(4), Defence of India Rules. But the question is

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1. *Kishan Singh* v. *State of Rajasthan*, (1996)2 WLC 118.
2. *Harish Chandra* v. *Rex*, AIR 1949 All 15, 17; *Mewa Kunwar* v. *Bourey*, ILR 56 All 781 : AIR 1934 All 388; *see* also *Mohammed Jewar* v. *Wilson*, 12 Cr LJ 246 : 10 IC 787 (FB); *Municipal Board* v. *Ram Autar*, AIR 1960 All 119.
3. Maxwell : *Interpretation of Statutes*, 12th Ed., p. 228; *see* also *Surajmull* v. *C.I.T.*, AIR 1961 Cal 573, 613.
4. AIR 1947 Nag 45, 46, 47.

whether the inartistic expression which occurs in the Provincial Government's notification render the whole notification void and of no effect. In our opinion, it does not invalidate it. Reading the notification from the beginning to the words 'to sanction prosecutions' the notification clearly indicates the intention to authorise all District Magistrates to sanction prosecutions for the contravention of any of the provisions of the Cotton Cloth and Yarn (Control) Order, 1943. Clause 23 of that Order contemplates prosecution for the contravention of any of the provisions thereof. On the supposition that the contravention constitutes an offence, the use of the word 'offence' in the last clause would be correct because the contravention is made punishable by Rule 81(4), Defence of India Rules, though not by Cotton Cloth and Yarn (Control) Order itself. The error, which crept into the notification, was to describe the contravention of any of the provisions of this Order as an offence punishable under that Order. That error, patent as it is, does not obscure the intent of the notification, which up to the words 'to sanction prosecutions' is intelligible and capable of taking effect. Indeed the last clause, *viz.* 'for an offence punishable under the said Order' is by itself meaningless but that does not destroy the effect of the first part of the notification. The notification when read without the last clause or with the addition of words 'read with Section 81(4), Defence of India Rules' after the words 'said order' makes the meaning of the notification absolutely clear.

"The question is whether it is open to the Court to read the notification leaving out the last clause which is meaningless, or to add to it certain words which would invest it with meaning in view of the intention clearly conveyed by the earlier part of the notification. In *Shridhar* v. *Narayan*,[1] it was pointed out that the words of a statute can be modified in order to give effect to the intention of the statute and reference was there made to Lord Wensleydale's speech in *Grey* v. *Pearson*,[2] as authority for the proposition that in order to avoid absurdity and inconsistency, the grammatical and ordinary sense of the words used in a statute may be modified. In *Salmon* v. *Duncombe*,[3] it was held that where the main object and intention of a statute are clear it could not be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. Their Lordships of the Privy Council, on the true construction of Natal Ordinance I of 1856 came to the conclusion that the words 'as if such subject resided in England which reduced Section 1 of which it was a part, to a nullity, ought not to be construed so as to destroy all that has gone before; and, therefore, they were treated as immaterial. That rule of construction was followed in *Rex* v. *Vasey*,[4] and Wills, J.[5] pointed out that if the intention of an enactment on the whole is clear and unmistakable it is permissible to cast aside some words *in order to make sense* of the enactment. The authorities clearly show the power of the Court to modify the language of a statute where it is necessary to carry out its plain meaning : in *Rex* v. *Inhabitants of Everdon*,[6] and *Fowler* v. *Padget*,[7] words which have a perfectly plain meaning were read not in their ordinary sense; in *Fisher* v. *Valde Travers Asphalt Co.*,[8] *Rex* v. *Inhabitants of East Ardsley*,[9] *Salmon*

1. AIR 1939 Nag 227 : ILR 1939 Nag 503, 507.
2. (1857)6 HLC 61 at p. 106.
3. (1886)11 AC 627 at p. 634.
4. (1905)2 KB 748.
5. (1905)2 KB 748 at p. 752.
6. (1807)9 East 109.
7. (1798)7 TR 509.
8. (1875)1 CPD 259; *D.M.S. Rao* v. *State of Kerala*, AIR 1963 Ker 113 : ILR (1962)1 Ker 166 : 1962 Ker LJ 586.
9. (1850)14 QB 798.

v. *Duncombe*,[1] and the two cases already noticed above certain words were struck out and in *Rex* v. *Vasey*,[2] words were inserted in a statute in order to carry out its intention. These cases were referred to in the course of the argument in *Rex* v. *Attridge*,[3] and Darling, J., held that where no meaning can be given to certain words of a statute without rejecting some of those used in it, or where the statute would become a nullity were all the words retained, the Court has power to read a section as though the words which make it meaningless or nullity are not there.

"In the light of these authorities, it is perfectly open to this Court to ignore the clause 'for an offence punishable under the said order' since it does not destroy the effect of the preceding part of the notification which is perfectly plain in meaning and capable of taking effect. We, therefore, hold that the notification was intended to authorise the District Magistrates in terms of Clause 23, Cotton Cloth and Yarn (Control) Order, 1943, to sanction prosecution for the contravention of any of the provisions of that order which are punishable under Rule 81(4), Defence of India Rules."

No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be construed directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed,[4] and must give effect to the will and inbuilt policy of the Legislature as discernible from the object and scheme of the enactment and the language employed therein.[5]

In *Amalgamated Society of Engineers* v. *Adelaide Steamship Co., Ltd.*,[6] Higgins, J., observed : "The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning even if we think the result to be inconvenient, impolitic or improbable."

The office of the Judges is not to legislate, but to declare the expressed intention of the Legislature, even if that intention appears to the Court injudicious.[7] "Whatever I may think", said Jessel., M.R., in *Taylor* v. *Corporation of Oldham*,[8] "of the extraordinary results which are so caused, it is my duty to interpret Acts of Parliament as I find them. I must read them according to the ordinary rules of construction, that is, literally, unless there is something in the context or in the subject to prevent that reading."

It is not competent to a Judge to modify the language of an Act of Parliament in order to bring it into accordance with his own views as to what is right or reasonable. This was well pointed out by Willes, J., in *Abel* v. *Lee*.[9] In that case the question was as to what should be the proper construction to be put upon Section 3(4) of the Reforms Act, 1867, which enacted that any man is entitled to be registered as a voter who, on or before July 20, has paid 'all poor rates that have

1. (1886)11 AC 627.
2. (1905)2 KB 748.
3. (1909)2 KB 24.
4. *Government of Assam* v. *Sahebullah*, 24 Cr LJ 881 : 75 IC 129 (Cal) (FB).
5. *Superintendent and Legal Remembrancer, West Bengal* v. *Abani Maity*, (1979) Mad LJ (Cr) 557 (SC).
6. 28 CLR 129, 161-162; *see* also *Archibald* v. *Commissioner of Stamps*, 8 CLR 739, 756.
7. *River Wear Commissioner* v. *Adamson*, 2 AC 743, 764.
8. 4 Ch D. 395, 405; *see* also *National Mutual Life Association of Australia* v. *Godrich*, 10 CLR 1, 21, 22.
9. (1871) LR 6 CP 365.

become payable by him up to the preceding fifth day of January'. It appeared that the person in question had paid all the rates of the current year, but had been excused, on account of poverty, from paying a rate that had been payable in the preceding year. The question, therefore, was, did the expression 'all poor rates that had become payable' include the rate he had been excused or not? It was argued that if these words were construed in their ordinary and strictly grammatical meaning so as to include all past rates, this absurdity might follow that the claimant would lose his franchise for ever unless he paid up his old rate he had been excused, and that, therefore, the language of the Act ought to be modified and the words construed in a restricted sense. This argument, however, did not prevail. An extreme instance of this rule is to be found in *Young* v. *Mayor of Leamington*,[1] when it was held that the defendant corporation was not bound by a contract which was not under seal although they had the benefit of it. "It may be," said Lindley, L.J., "that this is a hard and narrow view of the law; but my answer is that Parliament has thought it expedient to require this view to be taken and it is not for this or any other Court to decline to give effect to a clearly expressed statute because it may lead to apparent hardship."

(i) Undesirable results do not affect the rule of interpretation.—The Court is bound to give effect to the language of the Act so long as it is in existence, even though it thinks that the Act is capricious or unjust. The capriciousness or injustice of a particular result is a matter to which the Court can pay attention in deciding what is the true construction of the words used in the Act, but too much weight must not be given to those matters. It is the right of the Legislature, if it so wishes, to be capricious or unjust.[2] The Legislature may have unconsciously done a thing deemed injurious. It may have acted with improvidence or without sufficient forethought; but if so, it must be left to correct its own error. Court has no power to defeat its plain intention because of the result which it may or may not have contemplated.[3] If the meaning is plain, it is not permissible to give a go-by to that meaning simply on the ground that that meaning would lead to undesirable results.[4]

The Courts have only to administer the law as it stands and they have no concern whatsoever with the effect that this may have upon the fiscal policy of the Government. If a particular provision of law is so defective that if enforced, it must cause loss in Government revenue, it is the business of the Legislature to amend it.[5]

It is the duty of the Court to construe the provisions of an Act and to construe them according to the language used. It is not for a Court to speculate as to what the Legislature should or might have said. Regard can only be had to what the Legislature had said.[6] The fact that a Judge thinks that a particular enactment is irrational or unfair, is irrelevant, provided the enactment is in such clear terms as to admit of no doubt as to its meaning. "But I protest," observed Beaumont, C.J. (as he then was) in *Emperor* v. *Somabhai Govindbhai*,[7] "against the

1. (1882)8 QBD 579, 585, case under Section 174, Public Health Act, 1857, which required contracts entered into by a sanitary authority for a sum over £ 50 to be under seal. *State of Karnataka* v. *Gopalakrishna Nelli*, AIR 1992 Ker 198 : ILR 1991 Ker 2210 : (1991)2 Ker LJ 270,
2. *In the matter of* Saptaha, AIR 1950 Cal 444, 455 (SB).
3. *Garnett* v. *Bradley*, (1878)3 AC 944, 961; *Hakam Khuda Yar* v. *Emperor*, AIR 1940 Lah 129, 132; ILR 1940 Lah 242 (FB); *Mohd. Yaqub Khan* v. *Azizunnissa*, ILR 11 Luck 376 : AIR 1935 Oudh 437, 439 : unless there are strong and adequate grounds for it.
4. *Hirdey Narain* v. *Emperor*, AIR 1929 All 850, 854.
5. *Gainda Mal* v. *Madan Lal*, AIR 1948 EP 30, 33.
6. *Dhirendra Nath Bera* v. *Nurul Huda*, AIR 1951 Cal 133, 166 (FB).
7. 40 Cr LJ 97, 100 : 178 IC 588.

suggestion that a Judge, construing an Act of Parliament, is a mere automation whose only duty is to give out what he considers to be the primary meaning of the language used. A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament, and if he comes to the conclusion that a particular construction leads to a result which he considers irrational or unfair, he is entitled, and indeed bound, to assume that the Legislature did not intend such a construction to be adopted, and to try to find some more *rational meaning* to which the words are sensible."

(ii) Policy does not affect interpretation.—It is well settled that "with the wisdom or expediency or policy of an Act, lawfully passed, no Court has a word to say" and that "it is the province of the statesman, not of the lawyer, to discuss, and of the Legislature to determine, what is best for the public good, and to provide for it by proper enactments. It is the province of the Judge to expound the law only."[1] A Court of law is not concerned with the policy of the administration, nor with the effect of a piece of legislation on any section of the society. Courts have to administer the law as they find it and they cannot twist the clear language of any enactment to avoid the real or imaginary hardships in which it may result.[2]

Courts should carefully refrain from extending their powers on grounds of public policy, that is to say, of expediency, and thus encroach on the province of the Legislature. It is better that the public, if it is of the opinion that a certain course is opposed to public policy, should make its view clear through constitutional channels, *i.e.*, the Legislature.[3] To use the language of Lord Macnaghten in *Vacher and Sons, Ltd.* v. *London Society of Compositors*,[4] "a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. 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."[5]

It is not open to the judiciary to enquire as to whether the Legislature acting within its jurisdiction, has exercised it wisely or not, nor is it open to the Court to pronounce on the reasonableness or otherwise of anything which has been done by the Legislature within its limits.[6]

A *court* has to interpret the law as it stands and *is not* competent to play the rule of a *legislator* and to introduce amendments based on equitable considerations to remove the possible defects.[7] However, strongly a Court must feel that the Legislature has overlooked a necessary provision or, however, obvious it may be that a provision has been inserted or omitted owing to the blunder of the draftsman, a Court is not at liberty to take laws or amend them.[8] The Court cannot, in order to promote its social philosophy turn and twist the plain and unambiguous

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1. *See* Street on *Ultra Vires*, 1930 Ed. at p. 439, 440; *Madho Saran* v. *Emperor*, AIR 1943 All 379, 386 : ILR 1944 All 42 (FB), *Salig Ram* v. *Emperor*, ILR 1943 All 238 : AIR 1943 All 26, 36 (FB); *Harish Chandra* v. *Rex*, AIR 1949 All 15; *Mohd. Hayat* v. *Commissioner of Income-tax*, AIR 1931 Lah 87, 91 : ILR 12 Lah 129 (FB); *Chand Shankar* v. *Sukhlal*, AIR 1951 All 383, 386, so long as a distinction is found to exist according to the recognized rules of interpretation, it has to be recognized and effect has to be given to it. *See* also *Abdul Majid* v. *Nayak*, AIR 1951 Bom 440.
2. *Kidar Nath* v. *Bhag Singh*, AIR 1937 Lah 504, 506 : ILR 1937 Lah 143.
3. *Hoondraj Mithomal* v. *Emperor*, 26 Cr LJ 243 : 84 IC 58.
4. (1913) AC 117, 118.
5. *Amalgamated Society of Engineers* v. *Adelaide Steamship Co., Ltd.*, 28 CLR 129, 142.
6. *Union Colliery Co., etc.* v. *Bryden*, 1899 AC 580, 585 (Lord Watson); *Brajnandan Sharma* v. *State of Bihar*, AIR 1950 Pat 322, 327 (FB) (not overruled by the Supreme Court on this point).
7. *Abdul Hussain* v. *Mahmudi Begum*, AIR 1935 Lah 364, 367 : ILR 16 Lah 667; *Purshotam* v. *B.M. Desai*, AIR 1956 SC 20 (not what the law should be).
8. *Satyabala Dasi* v. *Sudharani Dasi*, AIR 1931 Cal 580, 581 : ILR 58 Cal 801; *Bristol Guardians* v. *Bristol Waterworks*, 1914 AC 379.

language of the law so as to ascribe to it a meaning different from the one intended by the Legislature.[1]

It is not the function of the Court *to strain* the meaning of the particular section, or to so construe provision as to do violence to the phraseology used therein.[2] Indeed it is very dangerous for Courts to try and find out the intention of the Legislature and then strain the language used in the statute to carry out the intention. The primary duty of the Court is to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find another intention.[3] If the Legislature has failed to express its intention in the statute, that will have to be remedied by legislative action.[4] One such case is *Arakhita* v. *Revenue Officer, Aska*,[5] where the Legislature by an amendment provided for a revision, when by interpretation of the unamended Act finality attached to appellate order was held not to open the door for revision.

It is not the duty of Courts to stretch the words used by the Legislature to fill in *gaps or omissions*, in the provisions of an Act.[6] The function of the Court is to interpret and not to legislate and the Court cannot fill up a gap under the guise of interpretation.[7] That would be legislation and not interpretation. If there is a gap it is for the Legislature to provide the remedy by enacting suitable amending legislation. Section 171 of Income Tax Act, 1961 (old Section 25-A), Income Tax Act, 1922, refers to assessment of a Hindu undivided family which had become separated in the course of the assessment year, and cannot be applied to the proceedings taken under Section 271 of Income Tax Act, 1961 (old Section 28), of the Act for imposing penalty on a Hindu undivided family after it had disrupted and after the Income-tax Officer had made an order under Section 171 of Income Tax Act, 1961, (old Section 25-A).[8] The Courts are not to enact the law but to construe and administer it as it stands and it is not open to them to read into the language of the section something which is not there.[9]

The function of the Judge is limited to interpretation of the law within the limits of recognized canons of interpretation. It is not for the Judge to legislate and *introduce exceptions or compromises* into the plain text of an enactment.[10]

However the Judge is entitled to iron out the creases to make articulate an inarticulate premise.[11]

Any general observation made by Supreme Court cannot apply in interpreting the provisions of an Act, unless the Supreme Court has applied its mind to and analysed the provision of that particular Act.[12]

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1. *Mrs. Raj Kanta* v. *Financial Commissioner, Punjab*, 1980 Cur LJ (Civil) 323 (DB).
2. *Heckett Engineering Co.* v. *Their Workmen*, AIR 1977 SC 2257 at p. 2261.
3. *Nathu Prasad* v. *Singhai Kapurchand*, 1976 Jab LJ 340 (FB).
4. *Legal Remembrancer, Bengal* v. *Trailokya Nath*, AIR 1922 Cal 194 : ILR 49 Cal 1014; *Manoo Ali* v. *Hawabi*, AIR 1936 Rang 63, 64; *Guna Durga Prasad Rao* v. *Krishna Rao*, AIR 1946 Pat 134, 135 (Rule).
5. (1975)41 Cut LT 796 (DB).
6. *Hira Devi* v. *District Board, Saharanpur*, AIR 1952 SC 362; *see* also *Ranendra Roy Chowdhury* v. *State of Bihar*, AIR 1954 Pat 312 [Court cannot add the phrase 'the members of' before the expression 'the registered trade unions' in Section 80(1)*(c)* of the Patna Municipal Corporation Act, 13 of 1952].
7. *S.S. Harishchandra Jain* v. *Capt. Inder Singh Bedi*, 1977 Jab LJ 312 (FB).
8. *I.T. Commissioner, B. & O.* v. *Sanichar Sah*, AIR 1955 Pat 103, 105-106.
9. *Dhruv Chhotalal Khushalchand* v. *Gandhi Gulabraj Fragji*, AIR 1954 Sau 99; *see* also *Amalgamated Coalfield* v. *State of Madhya Pradesh*, AIR 1967 Madh Pra 56.
10. *Nand Kishore Naik* v. *Sukti Dibya*, AIR 1953 Orissa 240 : ILR 1953 Cut 24.
11. Vide *Alka Sharma (Smt.)* v. *Shri Abhinash Chandra Sharma*, 1992 JLJ 607 (MP).
12. *Mool Raj Jain* v. *M/s. Jayna Engineering Works*, 1977 Cur LJ (Civil) (Punj) 1.

If a mistake has been made, the Legislature alone can correct it. It would not be competent for the Court of law to disregard Acts lawfully passed.[1] Courts are established to do justice according to law, they are to proceed on the lines which the Legislature has laid down; and if a Legislature should deviate from the straight and narrow path of natural justice, to correct their mistakes is not one of the duties committed to the judiciary.[2] Corndiff, J., observed in *Khetra Nath* v. *Paru Beari*,[3] : "I have little doubt, therefore, but that a *mistake in drafting* has been made, and this is, of course, much to be regretted. But it is well established that, where the words of an Act, as enacted, are clear, the Legislature only, and not the Courts, can correct any mistake involved in their use." "We cannot aid the Legislature's defective phrasing of the statute," observed Lord Brougham in *Crawford* v. *Spooner*.[4] "We cannot add, and mend, and by construction make up deficiencies which are left there."

It is not for the Court to *dispense with or suspend the operation of a part of a statute*, and thus usurp the function of Legislature.[5]

(iii) Things to be considered by Court.—For the sure and true interpretation of all statutes in general, be they penal or beneficial, restrictive or enlarging of the common law, four things are to be discerned and considered : 1st, What was the common law before the making of the Act, 2nd, What was the mischief or defect for which the common law did not provide, 3rd, What remedy the Parliament has resolved and appointed to cure the disease, and 4th, The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, to add force and life to the cure and remedy, according to the true intent of the makers of the *Act pro bono publico*.[6]

It is proper for the Courts to assume that the law-makers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare.[7]

(iv) Rules of harmonious construction.—It is the duty of the Court whenever it is possible to do so to construe provisions which appear to conflict so that they harmonise. It is equally well settled that if two constructions are possible the Court must adopt that which will implement and which ensures the smooth and harmonious working of the Act or the rule and reject that which will stultify the apparent intention, and, therefore, eschew the other which leads to absurdity or gives rise to practical inconvenience or makes well-established provisions of law nugatory.[8] Where there are in an enactment two provisions which cannot be reconciled with

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1. *Labrador Co*, v. *R.*, 1893 AC 104; *Gupinath* v. *Thakurdin*, AIR 1935 All 636.
2. *Emperor* v. *Hari*, AIR 1935 Sind 146, 157.
3. 9 IC 478, 480. A Court is not permitted to read into the rules a difinite provision on which the rule itself is silent; *V. E. etc., Chettyar Firm* v. *M.P.N. Firm*, AIR 1934 Rang 174, 175.
4. 4 MIA 179, 187; *Gurdial Singh* v. *Central Board, Local Committee, Sri Darbar Sahib*, ILR 9 Lah 689, 698; *Partapa* v. *Bishna*, AIR 1937 Lah 558.
5. *Ajit Kumar Roy* v. *Surendra Nath Ghose*, AIR 1953 Cal 733 (FB).
6. *Bengal Immunity Co., Ltd.* v. *State of Bihar*, AIR 1955 SC 661 : 1955 SCJ 672. To the same effect see *Sodradevi N. Daga* v. *I.T. Commissioner, M.P.*, ILR 1955 Nag 180; *Heydon's* case, 9 Ex 709.
7. *Bhudan Singh* v. *Nabi Bux*, AIR 1970 SC 1880.
8. *State of Punjab* v. *Ajaib Singh*, 1953 SCR 254; *State of Bihar* v. *Kameshwar Singh*, 1952 SCR 889 : AIR 1952 SC 252, 285; *Raj Krishna Bose* v. *Bimal Kanungo*, 1954 SCR 913; *Tirath Singh* v. *Bachittar Singh*, (1955)2 SCR 457; *Yugal Kishore* v. *B.N. Rastogi*, AIR 1958 Pat 154 at p. 157; *M.S.M. Sharma* v. *Sri Krishna Sinha*, AIR 1959 SC 395 at p. 410; *Bhola Mian* v. *S.M. Islam*, AIR 1958 Pat 48; *Chandra Mohan* v. *State of U.P.*, AIR 1966 SC 1987 : 1966 All LJ 778 : 1966 All WR (SC) 537; *Deorao Pandurang Mangrulkar* v. *Collector, Chandrapur*, 1978 Mah LJ 47; *State of Bihar* v. *Commissioner of Income-tax, Bihar*, 1993 Tax LR 176 (Pat); *Directorate of Enforcement* v. *Deepak Mahajan*, AIR 1994 SC 1775.

each other, they should be so interpreted that, if possible, effect could be given to both.[1] This is what is known as the rule of harmonious construction.[2] "What is true of an ordinary statute", said the Supreme Court in *Union of India* v. *S.H. Sheth*,[3] "is not any-the less true in the case of constitutional provisions, and the same rule applies equally to both. If the words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision if read literally, is patently incompatible with the other provisions of that instrument, the Court would be justified in construing the words in a manner which will make the particular provision meaningful. That is the essence of the rule of harmonious construction.... But if the provision is clear and explicit, it cannot be reduced to a nullity by reading into it a meaning which it does not carry."

Similarly, the rule of harmonious construction of statutes can be legitimately extended to statutory rules.[4]

For harmonious construction of Sections 3, 4 and 5 and Forms of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.[5]

It is doubtful whether the rule of harmonious construction extends the scope of the Court's inquiry beyond the confines of the particular statute which the Court has to construe.[6]

2. Alteration of law not permissible.—*(i) Courts should not alter the laws in construing them.*—Courts must resist the temptation to change the law under cover of interpretation of law. If Courts of law use their power to interpret law, to alter laws which they may not like, and to make new laws which, they think, should be made, that would be a corrupt use of their power. Courts have to observe constant vigilance against such corrupt use of power by themselves. If and when the ground on which a law is enacted, ceases to exist, it is the province of the proper legislative authority to consider the matter of repealing the same; but the Courts cannot arrogate to themselves the functions of the Legislature. Judges have no right to repeal a law, because what appears to them to be the reasons for which the law was enacted no longer exist.[7]

"A Court cannot", observed Lord Wright in *Kamalaranjan* v. *Secretary of State*,[8] "put into the Act words which are not expressed, and which cannot reasonably be implied on any recognized principles of construction. That would be a work of legislation, not of construction and outside the province of the Court."

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1. *Vyayaraju Vadrunarayana* v. *Epari Vemgopalam*, (1980)49 Cut LT 227 (DB).
2. *Venkatarama Devaru* v. *State of Mysore*, AIR 1958 SC 255 at p. 268; *Niau* v. *Kunwar Sen*, 1966 All LJ 135; *see* further *Govinda Narayan Tilvo* v. *Assistant Collector of Customs*, AIR 1968 Goa 105; *Mohindroo* v. *Bar Council of Delhi*, AIR 1968 SC 888; *Timmarayappa* v. *State of Mysore*, AIR 1968 Mys 296; *Rayashi Hansraj* v. *Kunji Mulji*, (1968)9 Guj LR 453; *Narayan Gopal Mhatre* v. *Shankar Sitaram Shantokhi*, (1967)69 Bom LR 699; *Chadha Motor Transport Co.* v. *R.N. Chopra*, AIR 1968 Del 75; *Nandlal* v. *Ramachandra*, AIR 1968 Bom 208; *Special Land Acquisition Officer, Bombay* v. *Natverlal Jamnadas*, AIR 1961 Bom 31; *Budhulal Kasturchand* v. *Chhotelal Kasturchand*, 1976 MPLJ 734 (FB); *M. Krishna Panickar* v. *M. Appukuttan Nair*, (1993)1 Ker LT 725; *Krishnan Kumar* v. *State of Rajasthan*, (1991)4 SCC 258; *C. Chinnabasappa* v. *Davangere Primary Coop. Agriculture & Rural Development Bank Ltd.*, AIR 1990 Kant 290 : (1989)2 Kant 277 : (1989) Kant LJ (Suppl) 164.
3. (1977)18 Guj LR 919, para 12.
4. *Bhupendra Kumar Jain* v. *Y.S. Dharmadhikari*, 1976 Jab LJ 115 (DB); *Banshilal* v. *State of M.P.*, 1981 Jab LJ 143; *Buddhu Lal* v. *Chhotelal*, 1976 Jab LJ 797 (FB).
5. *Vedavalli Ammal* v. *Rajamanickam Pillai*, 90 LW 692 (DB).
6. *Amirtha Kudumban* v. *Sarnam Kudumban*, 89 LW 696 (FB).
7. *Sadananda Pyne* v. *Harinam Sha*, AIR 1950 Cal 179, 183, 184.
8. AIR 1938 PC 281, 283; *Viswanandha Pillai* v. *Shanmugham Pillai*, AIR 1969 SC 453.

(ii) Courts should not import words into statutes.—It is undesirable to import into a section, when the Court's duty is to apply the language of the section to the facts of the case before it, any expression which is not to be found there.[1] We are not permitted by the ordinary law to import words that are not in a statute unless there are very compelling reasons for the same.[2] Tindal, C.J., observed in *Everett* v. *Wells*[3] : "It is our duty neither to add to nor to take from a statute unless we see good reason for thinking that the Legislature intended something which it has failed precisely to express." The same rule applies to deletion of words.

To read into the section words limiting its operation would be to usurp the functions of the Legislature which is not within the competence of the High Court or any other Court to do.[4] Courts cannot read into statutes provisions which are not there, even if they think that anomalies are not to be avoided otherwise.[5]

It is the duty of the Court to give full effect to the language used by the Legislature. It has no power either to give that language a wider or narrower meaning, other than the literal one unless the other provisions of the Act compel it to give such other meaning.[6]

(iii) Courts should not extend scope of Act.—It is not for the Court to extend the scope of the Act on the ground of convenience when the language of the law is clear beyond doubt. The scope of the Payment of Wages Act, 1936, being confined to the claims under Section 15, the authority appointed under the Act cannot adjudicate upon any and every dispute in respect of wages.[7] Similarly, the Court cannot interpret the precise language of Section 17 of the Act in any different manner merely because the Legislature had not been logical in providing for all the eventualities in connection with certain dispute.[8] No Court can introduce arbitrary conditions or limitations under a statute, this must be left to the Legislature.[9] Whether statute confers authority on Court as *persona designata* and considerations for determining the question.[10]

3. Practice of Courts.—A practice which is in contravention of the law, even if such practice be the practice of a High Court cannot make lawful that which is unlawful; nor can a practice of a High Court justify a court in putting upon an Act of the Legislature a construction which is contrary to the plain wording of the Act. If it were otherwise, cases might occur in which an absolutely different construction, based upon practice only, might be placed by Allahabad High Court, the High Court at Calcutta, the High Court at Madras, the High Court at Bombay, etc., upon a General Act, applicable to the whole of India, which was susceptible of one construction only. Such a principle of construction in such a case would lead, not to making the law certain, but to confusion and uncertainty.[11] These questions must be considered with

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1. *Majidan* v. *Sabir Ali*, AIR 1928 All 62; *Kayastha Co.* v. *Sita Ram Dube*, AIR 1929 All 625, 641 (FB); *Multan Municipality* v. *Kishan Chand*, AIR 1927 Lah 276, 277; *Nandi Ram* v. *Jogendra Chandra*, AIR 1924 Cal 881, 882; *Noksingh* v. *Bholasingh*, AIR 1930 Nag 73, 77; *Brij Bhukan* v. *S.D.O., Siwan*, AIR 1955 Pat 1 (SB) : ILR 1954 Pat 690; see *Agrasen* v. *Ramrichmal Jhunjhunwala*, AIR 1955 Cal 379; *Ahammathunni* v. *Subramania Aiyar*, ILR 1953 TC 206.
2. *Smt. Sushila Bala Dassi* v. *Corporation of Calcutta*, AIR 1954 Cal 257.
3. (1841)133 ER 747; *Vickers Son & Maxim* v. *Evans*, 1910 AC 444 (Lord Loreburn); *Abhayanand* v. *Rameshwar*, ILR 9 Pat 314, 329 : AIR 1930 Pat 395, 402 (words not to be found in a section may be supplied by necessary implication, if the context so require); *Ram Sarup* v. *Gaya Prasad*, AIR 1952 All 610 : ILR 48 All 175 (FB).
4. *Shebalak Singh* v. *Kamaruddin Mandal*, AIR 1922 Pat 435, 436 : ILR 2 Pat 94 (FB).
5. *Hadayat Ullah* v. *Ghulam Muhammad Beg*, AIR 1923 Lah 529.
6. *London Rubber Co., Ltd.* v. *Durex Products Inc.*, AIR 1963 SC 1882.
7. *Rajkumar Mills, Ltd., Indore* v. *Inspector, Payment of Wages, Madhya Bharat*, AIR 1955 MB 60.
8. *Mohd. Matin Kidwai* v. *District Executive Engineer, N.E.R.*, AIR 1955 All 180 : 1955 All LJ 262.
9. *Tarachand* v. *Gangaram*, AIR 1978 Delhi 58; see also *Harbans* v. *Rajpaltan*, AIR 1975 Pat 187.
10. *Public Prosecutor, A.P.* v. *Legisetty Ramayya*, 1975 Mad LJ (Cr) 155 (FB) : (1975)1 Andh WR 133; *T.V.K. Sastry* v. *D.F.O., Warangal*, (1980) 1 Andh WR 83.
11. *Balkaran Rai* v. *Gobind Nath Tiwari*, ILR 12 All 129, 135 (FB); *V.E.R.M.N.R.M. Chettyar Firm* v. *M.P.N. Firm*, AIR 1934 Rang 174, 175.

reference to the provisions of an enactment, and it is clear that the Court cannot allow considerations of convenience and practice to control the plain meaning of the words used in a statute. If the interpretation involves any inconvenience or departure from any practice which may be found to be suited to any class of cases, it would be for the Legislature to consider the matter.[1] There is no necessity of giving effect to a wrong view merely because that wrong view has not been challenged for a long time, that is to say, where the question is the construction to be put upon a certain enactment.[2]

There is, however, a very wholesome maxim of law *'optimus legis interpress consue tude.'* Garth, C.J., quoting Mr. Broom in his work on *'Legal Maxims'*,[3] says : "Where a statute uses *language of doubtful import*, the acting under it for a long term of years may well give an interpretation to that obscure meaning, and reduce that uncertainty to a *fixed rule,"* observed in *Kishori Lal Roy* v. *Sharut Chander Mozumdar*[4] : "And I take it, that this principle is especially applicable, where the subject of interpretation is a matter of everyday occurrence. And when we find that for a series of eight or ten years, a law which imposes a heavy tax upon litigation has received a particular interpretation in favour of the suitor and a course of practice has prevailed for years, throughout the whole country, in accordance with that interpretation, I think that any Court of Justice ought to be very slow in changing that interpretation or course of practice to the prejudice of the suitor, unless it sees clear and weighty reasons for so doing."

Practice, accordingly, is an useful guide where a statute uses a language of doubtful import. As observed by the Supreme Court of India, "in the matters of State statutes, where procedure has to be pronounced upon, the practice of the Court is the best guide to interpretation",[5] but a practice which is in contravention of the law, even if such practice be the practice of a High Court, cannot make lawful that which is unlawful.[6] It is also a well-settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it, although such interpretation has not by any means a controlling effect upon the Courts and may be disregarded for cogent and persuasive reasons, and in a clear case of error, a court would without hesitation refuse to follow such construction.[7]

If the words of the statute be plain and clear, it is not for the Court to raise any doubt as to what they mean.[8] Nor has the Court right to seek to get behind the rule by any enquiry into the reason of the rule.[9]

Where a statute, however, uses language of doubtful import, and has been interpreted in a particular manner for a term of years the interpretation given to that obscure meaning may reduce the uncertainty to a fixed rule.[10]

4. When two constructions possible.—It is the duty of the Court, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. If two constructions are possible, the Court must adopt that which will implement and ensure smooth

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1. *Emperor* v. *Fernandez*, ILR 45 Bom 672, 674.
2. *Bohra Tula Ram* v. *Bohra Dwarka Das*, AIR 1928 All 248, 250 : ILR 50 All 610.
3. 2nd Ed., at p. 534.
4. ILR 8 Cal 593, 597 (FB).
5. *Ved Prakash Wadhwa* v. *Vishwa Mohan*, 1982 All LJ 202 (SC).
6. *Murudally Shamji* v. *B.N. Lang*, ILR 41 Bom 555, 565.
7. *Muthura Mohan Saha* v. *Ram Kumar Saha*, ILR 43 Cal 790, 810; *Baleshwar Bagarti* v. *Bhagirathi Das*, ILR 35 Cal 701, 713.
8. *Padam Prashad* v. *Emperor*, AIR 1929 Cal 617, 630 (SB).
9. *Arunachala* v. *Bala Krishna*, AIR 1925 Mad 449, 451 : ILR 48 Mad 559; *Komul Singh* v. *Krishna Bai*, AIR 1946 Bom 304.
10. *Ijjatullah Bhuyan* v. *Chandra Mohan Banerjee*, ILR 34 Cal 954, 969, 970 (FB).

and harmonious working of the Constitution and discard that which will stultify the apparent intention of the Constitution, and, therefore, eschew the other which leads to absurdity or gives rise to practical inconvenience or makes well-established provisions of existing law nugatory.[1] When there are two possible constructions, it is the duty of the Court to use the commonsense construction.[2] At the same time as between two possible constructions, that which is conformable to international law as declared in our own tribunals is to be preferred to that which would involve infringement of the rights of other communities.[3] The Legislature is presumed not to enact anything contrary to international law or the common law of the realm. But if the language of a legislative enactment unambiguously and without reasonably admitting of any other meaning is in conflict with any principle of international law, the Court must obey and administer it as it stands whatever may be the responsibility incurred by the nation to foreign powers in executing such a law, for the Courts, cannot question the authority of Parliament or assign any limits to its power.[4]

The duty of the Court is not to put construction which seems to the Court,[5] to be best in the sense that it will work out with the most justice or with the least inconvenience, but to put a construction which seems to the Court to be the best in the sense that it is *nearest to the language* of the Legislature.[6]

On a procedural matter pertaining to execution, when a section yields to two conflicting constructions, the Court shall adopt a construction which maintains rather than disturb the equilibrium in the field of execution.[7]

Where a rule of law is absolute in terms the said rule has got to be observed and duly given effect to, and it is no province of a Court to deviate from the said rule upon any grounds of expediency.[8] Whatever may be the opinion of the judicial interpreter of its wisdom or justice, if the language admits of no doubt, it is to be obeyed.[9]

It is not permissible to examine and discuss the principle underlying statute, unless the words of the statute are vague and ambiguous and unless the principle is helpful in clearing up the ambiguity.[10] The business of the interpreter is not to improve the statute, it is to expound it.[11]

So far as the intention of the Legislature is concerned, it is dangerous, even if it be permissible, to arrive at it by any process of logical reasoning, for distinction between logical reasoning and legal reasoning.[12] The Legislature means what it says and it is not open to law

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1. *Dorothy* v. *Mullick*, AIR 1958 Pat 240-242; *Chandra Mohan* v. *State of U.P.*, AIR 1966 SC 1987; *Anandji Haridas* v. *S.P. Kasturi*, AIR 1968 SC 565; *Chunnilal Tukkimal Firm* v. *Mukat Lal Ramchandra Firm*, AIR 1968 All 164.
2. *Mansa Singh* v. *Emperor*, AIR 1929 All 750 (1).
3. *Lee* v. *Lee*, ILR 5 Lah 147, 166 (FB).
4. *Hatimbhai* v. *Framroz*, AIR 1927 Bom 278 : ILR 51 Bom 516 (FB); *Tukajirao* v. *Sowkabai*, ILR 53 Bom 251 : AIR 1929 Bom 100.
5. *Union of India* v. *Maj Bakshi Chand*, 1976 Rev LR 312 : 1976 Cur LJ (Civil) 245 : (1976)78 Punj LR 370; *Sham Lal* v. *Union Territory of Chandigarh*, (1977)79 Punj LR 421; *State* v. *Nanoo*, (1978)80 Punj LR 17.
6. *Mukerjee* v. *Karnani Industrial Bank*, AIR 1930 Cal 770, 773 : ILR 58 Cal 521 : (when provisions of law are clear it is not competent to Courts of justice to enter into question of natural justice); *Ezra* v. *Secretary of State*, ILR 30 Cal 36.
7. *Mahijibhai Mohanbhai Barot* v. *Patel Manibhai Gokalbhai*, AIR 1965 SC 1477 : (1965)2 SCJ 29 : (1965)2 SCWR 1 : (1965)2 SCA 632 : 1965 All LJ 529 (SC).
8. *Lutter* v. *Emperor*, AIR 1930 All 263.
9. *Gopal Chandra* v. *Guru Charan*, AIR 1929 Cal 141, 143; *see* Maxwell on *'Interpretation of Statutes'*, 12th Ed.
10. *Anand Prakash* v. *Narain Das*, ILR 53 All 239 : AIR 1931 All 162, 175 (FB).
11. *Secretary of State* v. *Arunachalam*, ILR 1939 Mad 1017 : AIR 1939 Mad 711; *Bhagat Govind Das* v. *Rup Kishore*, ILR 4 Lah 367; *see* also Maxwell on *'Interpretation of Statutes'*, 12th Ed.; *Gurdwara Nankana* v. *Hira Das*, AIR 1936 Lah 298; *Gurdial Singh* v. *Central Board, Local Committee, Sri Darbar Sahib*, ILR 9 Lah 689, 700.
12. *Sujir Ganesh Nayak & Co.* v. *Income-tax Officer, Quilon*, 1975 Ker L T 763 (DB).

Courts to say that it would have meant something else. If the Legislature gives a right, it is not open to law Courts to take away or curtail that right merely because a Court thinks the Legislature has acted illogically.[1]

5. Court should not decide what is unnecessary.—A Court should *decide* only those *questions which directly arise* from the facts of the particular case before it. It is always inadvisable to travel outside the facts of a particular case and express hypothetical opinions which may only embarrass Judges who may have to consider cases in future which arise on different facts.[2] Lord Blackburn observed in *Baroness Wenlock* v. *River Dee Company*[3] :

> "It is not necessary to decide anything as to the effect of *Ashbury Co.* v. *Riche*.[4] The course of argument took makes me think it proper to say—though it is quite true as Mr. Righby said that it was not necessary for the decision in *Ashbury Co.* v. *Riche* to do more than decide what the law was with regard to a company formed under the Companies Act, 1862,—that I think the law there laid down applies to all companies created by any statute for a particular purpose. I think that if I were to confine the effect of the decision to companies created under the Act of 1862, and to say it did not extend to such corporation as this, I should do wrong. The law is proverbially uncertain. That cannot be helped. But I think *I should unjustifiably add to the uncertainty if I set an example of adhering to my previous reasoning* (even should I still think it better than that of noble and learned Lords who decided against it) in every case not precisely involving the very same point."

6. Admission of a party does not affect construction.—When the facts are fully set and admitted, a party's opinion about the legal effect of those facts is of no consequence in construing the section. No estoppel arises by reason of the admission of the party of such effect.[5]

7. No waiver of compliance with statutory provisions.—There can be no waiver of compliance with statutory provisions enacted in the public interest, nor estoppel against setting up non-compliance with them even when the provisions relate to the form of contracts between individuals and public bodies created by or under a statute.[6]

8. To make the statute effective, if possible.—It is the duty of the Court to make what it can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should allow a Judge to declare a statute unworkable.[7]

However rigid, the law should be interpreted in a flexible manner so as to see that the rule of law is not abrogated and merely on a technical ground one is not made to suffer.[8]

It is true that as observed by Burrough J. in *Richardson* v. *Mellish*,[9] public policy is "an unruly horse and dangerous to ride" and as observed by Cave, J. in *Re* Mirami,[10] it is, "a branch of the law, however, which certainly should not be extended, as judges are more to be trusted as interpreters of the law than as expounders of what is called public policy." But as observed by

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1. *Mahomed Jamil* v. *Saudagar Singh*, ILR 1945 Lah 335 : AIR 1945 Lah 127 (SB).
2. *Heman* v. *State of Bombay*, AIR 1951 Bom 121.
3. (1885)10 AC 354, 360.
4. LR 7 HL 653.
5. *Kalidas* v. *State of Bombay*, AIR 1955 SC 62 : 1955 SCJ 159; *Ramachandra Reddy* v. *Rani Shankaramma*, AIR 1956 SC 319, 333.
6. *Young* v. *Mayor, etc. of Leamington*, (1882)8 QBD 579 : (corporation held not bound by a contract which was not under seal); *see* also *Melliss* v. *Shirley Local Board*, (1885)16 QBD 446.
7. *Murray* v. *Inland Revenue Commissioner*, 1918 AC 541, 553; *Pye* v. *Minister for Lands of New South Wales*, (1954)3 All ER 514, 524 (PC); *Nokes* v. *Doncaster Amalgamated Collieries, Ltd.*, (1940)3 All ER 549, 554 : 1940 AC 1014.
8. [illegible] v. *Arjunlal*, AIR 1978 All 243; *see* also *Samsuddin Mia* v. *Munsi Adal*, AIR 1976 Cal 52.
9. (1824)2 Bing 229, 252 : 130 ER 294.
10. (1891)1 QB 594, 595 : 7 TLR 309.

Prof. Winfield in his article 'public policy in the English common Law'[1] "some judges appear to have thought it (the unruly horse of public policy) more like a tiger and refused to mount it at all, perhaps because they feared the fate of the young lady of Riga. Others have regarded it like Balaam's ass which would carry its rider nowhere. But none, at any rate at the present day, has looked upon it as a Pegasus that might soar beyond the momentary needs of the community". After quoting the above, the Supreme Court in *Ratanchand Hira Chand* v. *Askar Nawaz Jung*[2] pointed out that all courts have at one or the other felt the need to bridge the gap between what is and what is intended to be, that the courts cannot in such circumstances shirk from their duty and refuse to fill the gap, that in performing this duty they do not foist upon the society their value judgments, that they respect and accept the prevailing values, and to what is expected of them, and that on the other hand the Court will fail in their duty if they do not rise to the occasion but approve helplessly of an interpretation of a statute or a document or of an action of an individual which is certain to subvert the social goals and endanger the public good.

Effect should be given to the intent of the legislature even if the provision in a statute is unhappily worded. Lord Denning in (1949)2 Au ER 155 said, "whenever a statute comes up for consideration it must be remembered that it is not within human powers to forsee the manifold set of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity.....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 the Parliament, and he must do this not only from the language of the statute but also from a construction of the social conditions which gave rise to it and of the mischief 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. Put into Homely metaphor it is this : A Judge should ask himself the question how if the makers of the Act have themselves come across this ruck in the contexture of it they would have straightened it out. He must then do what they would have done. A Judge should not alter the material of the Act is woven, but he can and should iron out the creases."

In *Rugly Joint Water Board* v. *Foothit*,[3] *Lord Simon of Claisdale said* : "The task of courts is to ascertain what was the intention of Parliament, actual or to be imputed, in relation to the facts as found by the court..... But on scrutiny of a statutory provision, it will generally appear that a given situation was within the direct contemplation of the draftsman as the situation calling for statutory regulation, this may be called the primary situation. As to this, Parliament will certainly have manifested an intention. The primary statutory Intention. But situations other than the primary situation may present themselves for judicial secondary situations. As regards these secondary situations, it may seem likely in some cases that the draftsman had them in contemplation, in others, not. Where it seems likely that a secondary situation was not within the draftsman's contemplation, it will be necessary for the Court to impute an intention to the Parliament in the way I have prescribed, that is, to determine, what would have been the statutory intention if the secondary situation had been within the parliamentary contemplation (a secondary intention)."

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1. (1928)42 *Har* v. *L. Rev*, 76, 91.
2. (1991)3 SCC 67.
3. (1972)1 All ER 1057; quoted in *(Dr) Sattur's Sushrushalya Nursing Home* v. *State of Karnataka*, AIR 1992 Karn 274 (DB) : ILR 1991 Karn 3072.

CHAPTER XVII
GENERAL AND SPECIAL STATUTES

SYNOPSIS

1. Classification of Acts—General and Special.—What is a general statute and what is a special statute is often a question of difficulty to solve in most cases; but the classification has to be made with reference to the *context* in each case and the *subject-matter* dealt with by each statute. As Justice Ramesan has pointed out in *Thammayya* v. *Rajah Tyadapusapati*,[1] most Acts can be classed as General Acts from one point of view and Special Act from another. For example, it may be argued as he says that the Contract Act which is applicable to all is general in relation to the Labour Act which is limited to the relationship of the employer and the employee; and in another sense the Labour Act which applies to all concerns will be general in relation to the labour employed in concerns engaged in supplies as essentials.[2] "A General Act *prima facie*, is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and, as regards the individual, in its effects."[3] A special law must be taken as exhaustive in the subject it enacts. Rights not expressly conferred by it cannot be allowed to be spelled out by means of analogy nor can considerations of expediency and convenience unwarranted by the term of the statute be called in aid to enlarge the scope of its provisions.[4] If there is a Special Act and a General Act, dealing with the same matter, the Special Act overrides the General Act.[5] Thus, it has been held that the provisions of Section 41 of the Life Insurance Corporation Act, which is a Special

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1. AIR 1930 Mad 963.
2. *Labour Commissioner* v. *Mysore Iron and Steel Works Labour Association*, AIR 1952 Mys 21, 23 (FB). In this case looking at the preambles to the two Acts, it may be said with more justification that in the particular context the Labour Act is a General Act and the Essential Services Act is a Special Act.
3. *R.* v. *London C.C.*, (1893)2 QB 454, 462.
4. *Pushpa Bai* v. *Sulochana Menon*, (1959)1 Andh WR 363 [Hyderabad Houses (Rent, Eviction and Lease) Control Act, XX of 1954].
5. *Jethmal* v. *Heeralal*, AIR 1958 Raj 48, 50; *State* v. *Rahimbhoy*, AIR 1957 Bom 78; *Faguram* v. *Pannalal*, AIR 1962 Pat 272 (special provision in Section 31, Presidency Small Cause Courts Act and general provision in Order XXI), Rule 5, CPC.; *Kutumbayya* v. *Municipal Council*, AIR 1959 Andh Pra 1, 2 (Chandra Reddy, C.J.); *Dr. Lallabhai* v. *Karimbhai*, AIR 1958 Bom 276, 277 (Chainani, J.); *Suresh Kumar Sharma* v. *2nd Additional District Judge, Etawah*, 1981 All LJ 528.

Act, will override the provisions of Section 446 of the Companies Act, which is a General Act.[1] Similarly, Section 49-E of the Income-tax Act, 1922 being a general provision has been held to give way to the special provisions of Sections 228 and 229 of the Indian Companies Act, 1913.[2] In *T.M. Dharmarajan* v. *Union of India*,[3] the contention that Rule 48 of Defence and Internal Security of India Rules, 1971 being a General law must give way to the Prevention and Publication of Objectionable Matter Act, which is a Special law, did not find favour with the Court. When there is a special provision made by the Legislature in the matter of a presumption to be drawn in particular prosecutions, the drawing of presumption in those prosecutions shall be regulated by the special provisions and not by the general provision.[4] It is familiar law that a specific statute controls over a general one 'without regard to priority of enactment'.[5]

The Delhi Court Act is a general law and the Arbitration Act, a special law which is earlier and which is later is, therefore, not relevant. The principle will have to be kept in view whether the right created by law, *e.g.* Section 10 of the Delhi High Court Act, being later in point of time can confer a right of appeal without repealing Section 39 of the Arbitration Act which is earlier in point of time. The doctrine of repeal by implication is not available. Both Section 10 of the Delhi High Court Act and Section 39 of the Arbitration Act have to be construed harmoniously and on this principle of harmonious construction it has to be held that an order under Section 5 of the High Court being a judgment within the meaning of Section 10 of that Act, appeal against it is specifically barred being impermissible on a mere reading of Section 39, Arbitration Act.[6]

Where a specific power is conferred without prejudice to the generality of the general powers already specified the particular power is only illustrative and does not in any way restrict the general power.[7]

This familiar doctrine of special overriding the general can only be applied in a case where both deal with the same subject-matter.[8]

"Special statutory provisions do prevail over the general provisions of the law", said the Rajasthan High Court while interpreting, an amended provision of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.[9]

2. Special provisions followed by General Act.—A general statute is presumed to have only general cases in view, and not particular cases which have been already otherwise provided

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1. *Damji Valji Shaw* v. *Life Insurance Corporation*, AIR 1966 SC 135 : (1965)2 SCJ 371.
2. *Union of India* v. *India Fisheries (Private), Ltd.*, AIR 1966 SC 35 : (1965)2 SCJ 248.
3. 90 LW 145 (DB).
4. *State* v. *Kapur Chand*, AIR 1958 Bom 311, 313.
5. *Bulova Watch Co.* v. *United States*, 365 US 753 : 6 L Ed 2d 72, 76; *Townsend* v. *Little*, 109 US 504, 512 : 27 L Ed 1012, 1015 : 285 US 204, 208 : 76 L Ed 704, 708 : 322 US 102, 107 : 88 L Ed 1163, 1167 : 353 US 222, 228 : 1 L Ed 2d 786, 790.
6. *(M/s.) Banwari Lal Radha Mohan* v. *The Punjab State Co-operative Supply and Marketing Federation Ltd.*, AIR 1983 Delhi 402 (DB).
7. *Om Parkash* v. *Union of India*, AIR 1971 SC 771, 773-74 (Jaganmohan Reddy, J.); *D.K. Trivedi & Sons* v. *State of Gujarat*, AIR 1986 SC 1323 : (1986)1 SCJ 475 : 1986 (Supp) SCC 20 : (1986)2 Cur CC 481 : (1986)3 Supreme 1 : (1986)2 UJ (SC) 301 : 1986(2) 27 Guj LR 1250, quoting with approval AIR 1945 PC 156 : (1945)72 Ind App 241 and (1971)2 SCR 197 : AIR 1970 SC 2097.
8. *The Authorised Officer* v. *M. Ramaswamy Gounder*, 1983 MLJ 269.
9. *Carona Sahu Co.* v. *V.K. Goyal*, AIR 1979 Raj 1; *see* also *R.K. Parikh* v. *Uma Verma*, AIR 1979 Delhi 17, case under Delhi Rent Control Act, 1958; *Chanan Singh* v. *Majo*, AIR 1976 Punj & Har 310 (FB).

for by Special or Local Act. Maxwell in *Interpretation of Statutes*[1] has put the matter thus :

> "Having already given its attention to the particular subject and provided for it the Legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the Legislature had been turned to the Special Act and that the General one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the General one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the Special one."

The rule that general provisions will not abrogate special provisions cannot be pressed too far. A general statute may repeal a particular statute, and there is no rule of law which prevents this. If the provisions of the Special Act are wholly repugnant to the general statute, it would be possible to infer that the special Act was repealed by the general statute.[2] There may be facts and circumstances showing that the Legislature intended to repeal the special Act. Each case is to be decided on its own facts and circumstances.[3] A general statute may repeal a prior special Act, without expressly naming it, when the provisions of both cannot stand together, and it is clear the Legislature intended to effectuate such repeal. A general law does not abrogate an earlier special one by mere implication. Where there are general words in a later Act which are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, the earlier and special legislation cannot be held to have been indirectly repealed, altered or derogated from merely by force of such general words, without indication of a particular intention to do so.[4]

3. General Act followed by special Act.—"If the special Act is made after the general Act", says Reilly, J., in *Corporation of Madras* v. *Electric Tramways, Ltd.*,[5] "the position, is even simpler. Having made the general Act if the Legislature afterwards makes a special Act in conflict with it, we must assume that the Legislature had in mind its own general Act when it made the special Act, and made the special Act which is in conflict with the general Act, as an exception to the general Act." Where there was a conflict between Section 27 of the Evidence Act, 1872 and Section 162 of Criminal Procedure Code, 1898, as amended in 1923 (Section 162 of Act No. 2 of 1974), Din Mohammad, J., opined in *Hakam Khudayar* v. *Emperor*[6] :

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1. 9th Ed at p. 184 (followed in *Siba Singh* v. *Sunder Singh*, 3 LLJ 522, 526) : AIR 1921 Lah 280; *Ghulam Mohd.* v. *Rajeshwar*, AIR 1941 Lah 364; *Govind Ram* v. *Kashi Nath*, ILR 58 All 505 : AIR 1936 All 239; *Corporation of Madras* v. *Madras Electric Tramways, Ltd.*, AIR 1931 Mad 152, 156; *Montreal Corporation* v. *Montreal Industrial Land Co., Ltd.*, AIR 1932 PC 252, 254; quoting *Barker* v. *Edgar*, 1898 AC 749; *Somasundara* v. *M.P. Co-operative Society*, AIR 1950 Mad 711. (General law would not prevail over specific enactment).
2. *Municipal Council* v. *T.J. Joseph*, AIR 1963 SC 1561.
3. *Maharaj Shree Umaid Mills* v. *Union of India*, AIR 1960 Raj 92, 98.
4. *Barsay* v. *State*, AIR 1958 Bom 354, 364; *Seward* v. *Vera Cruz*, (1884)10 AC 59, 68; *Barker* v. *Edgar*, 1898 AC 748, 754; *see* also *Lakshmi Chand Gulabchand* v. *President, Municipal Committee, Bhanpura*, 1962 Jab LJ 1023 : 1962 MPLJ 1100; *see* also *Pratap Singh* v. *Manmohan Dey*, AIR 1966 SC 1931; *Surajmal* v. *State of Rajasthan*, AIR 1967 Raj 104; *Rustomji Cawasji Jal* v. *Income-tax Officer*, AIR 1965 MP 170, 175 (Dixit, C.J.).
5. AIR 1931 Mad 152, 156 : ILR 54 Mad 364; *Antulal* v. *R. Pal Singh*, AIR 1958 MP 7, 8.
6. AIR 1940 Lah 129, 152 : ILR 1940 Lah 242 (FB) : "The principle is that a General Act is to be construed as not repealing a particular one, that is one, directed towards a special object," *per* Ramaswamy, J., in *Laxmi Narain* v. *Panchanan Khan*, AIR 1949 Pat 78 : "It is patent that Order 21, Rule 55, is framed in wider language. It does not restrict the class of persons who may make the deposit, and to that extent is not inconsistent with Section 224, Orissa Tenancy Act, 1913." *See* also *Ramanugrah Jha* v. *State of Bihar*, AIR 1966 Pat 97.

"I am, therefore, of opinion *(a)* that the Evidence Act is not a 'Special law', but a 'general Act' which to borrow the language of Lord Bowen 'applies to the whole community and is unlimited both in its area and as regards individuals in its effect' or, in the words of Lord Blackburn, 'is a general enactment for the benefit of all His Majesty's liege subjects'; and *(b)* that being an earlier Act, it has been abrogated to that particular extent with which we are at present concerned by the enactment of Section 162 at a later period. Consequently, statements which were, prior, to the enactment of Section 162, admissible in evidence in the circumstances specified in Section 27, cannot now be used as evidence for any purpose whatever."

"Where general words in a later Act are capable of reasonable and sensible application without extending to subjects specially dealt with by earlier legislation that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words without any indication," says Thein Maung, J., in *Daw Kyai Nyunt* v. *King*,[1] "of a particular intention to do so. Section 14*(b)* of the Courts (Emergency Provisions) Act, 1943, does not purport to amend Section 413 (Section 376 of Act No. 2 of 1974) of the Code of Criminal Procedure. It really provides that the said section shall have effect as if it read in a certain manner. So long as Section 14*(b)* of the said Act is in force, that is to say, so long as the emergency continues, Section 413 (Section 376 of Act No. 2 of 1974) of the Code is to have the same effect regardless of any amendment or amendments that may be made in its wording by any general Amendment Act. In other words, the special enactment for the emergency must override any general enactment and the latter can have full play only after the special enactment has expired."

Where there was a special Act dealing with a special subject resort should be had to that Act instead of to a general provision which is exercisable or which was available under extraordinary circumstances only.[2] The Orissa Merged States (Laws) Act of 1950 is admittedly a special enactment which expressly makes provision in respect of the private lands of the Ruler and creates a machinery for the decision of disputes between him and his tenants in respect of Khamar lands. The definitions of 'landlord' and 'tenant' given in Orissa Tenants Protection Act, 3 of 1948, should, therefore, be extended only to those classes of persons who answer the description of landlord and tenant in those areas, and not to a Ruler who was not a landlord at any time.[3]

In the very nature of things a general Act must yield to a special Act dealing with a specified subject-matter.[4] The Essential Commodities Act, 1955, being a general Act must yield to the Defence of India Act, 1971, which is a special legislation designed for the period of proclamation of emergency and for six months thereafter. This principle applies to the Defence of India Rules also.[5] This is so in the case of statutory Rules also. If there be any conflict, the Special Rules framed by the Government under Section 134, which are in relation to a particular tax and a particular Municipal Board, will override or supersede the general Rules framed by the State Government under Section 153 read with Section 296, Municipalities Act.[6] A power conferred in general terms cannot be construed to authorise the doing of something which is contrary to or inconsistent with some other specific provision of a statute.[7]

1. 1946 Rang LR 209, 210-211.
2. *Gopalji* v. *Shree Chand*, AIR 1955 All 28.
3. *Hari Hara Singh* v. *Harihar Patrick*, AIR 1950 Orissa 101.
4. *Patna Investment Trust* v. *Lakshmi Devi*, AIR 1963 SC 1077.
5. *Adarsh Krishi Sewa Kendra* v. *Government of M.P.*, 1980 Jab LJ 829 (DB).
6. *Central Distillery & Chemical Works, Ltd.* v. *State of U.P.*, (1979)5 All LR 466 (FB).
7. *State of Gujarat* v. *Shah Lakshmi Umarshi*, AIR 1966 Guj 283 : ILR 1966 Guj 283 (FB).

The provisions of Bihar Land Encroachment Act, 31 of 1950, are certainly repugnant to the provisions of the Limitation Act inasmuch as they completely ignore the law of limitation which prevails in the country. Section 29(2) of the Limitation Act cannot save the Act because in fact the Act does not prescribe a period of limitation different from the one prescribed by the Limitation Act.[1]

4. Presumption.—Where a general intention is expressed, and also a particular intention which is compatible with the general one, the particular intention is considered an exception to the general one. Even when the later, or later part of the enactment is in the negative, it is sometimes reconcilable with the earlier one by so treating it. If, for instance, an Act in one section authorized a corporation to sell a particular piece of land and in another prohibited it from selling 'any land', the first section would be treated, not as repealed by the sweeping terms of the other, but as being an exception to it.[2] In *Siba Singh* v. *Sunder Singh*,[3] the question for decision was whether the suit was governed by the provisions of the Punjab Loans Limitation Act, 1904 or by Article 75 of the Indian Limitation Act, 1908. "In other words", observed Shadi Lal, C.J. : "we have on the one side Article 75 of the Indian Limitation Act which in express terms governs all suits based on bonds payable by instalments and containing a default clause, on the other hand, there is Article 162 of the Punjab Act which is a provision applicable to all suits based on bonds payable by instalments by containing no such clause. Which of these two provisions is to prevail? Now the rule of interpretation of statutes is that a general statute must yield to a special Act applicable to a particular *locality*. A general statute is presumed to have only general cases in view, and not particular cases which have already been provided for by special or local Act."

Where special provision is made in a special statute that special provision excludes the operation of general provision in the general law.[4] Thus, Section 12 of the Bihar Money Lenders Act, 1974, opens with a *non-obstante* clause, *i.e.* "Notwithstanding anything to the contrary contained in any law or anything having the force of law or in any agreement" is a special provision which excludes the operation of a general provision in the general law.[5] When there was a special Act such as, the Guardians and Wards Act, 1890 dealing with a special subject, that is, the subject of minors, resort should be had to that Act instead of to the general power under Section 491 (no corresponding section in 1973 Code), Cr. P.C., which was exercisable and available under extraordinary circumstances only.[6] A special Act on the same subject passed subsequently where an earlier general Act deals with the same matter as the special Act constitutes an exception to the general enactment.[7] Thus where Rent Control Acts are in force, the landlord cannot obtain eviction, unless he satisfied the requirements of those Acts. The

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1. *Brij Bhukhan* v. *S.D.O., Siwan*, AIR 1955 Pat 11, 21, 27.
2. See *Anand Reddi* v. *State of Andhra Pradesh*, AIR 1959 Andhra 144; see Maxwell on *Interpretation of Statutes*, pp. 168-169, 11th Ed., principle being enunciated in *De Winton* v. *Brecon Corporation*, (1859)28 LJ Ch 598, 600; *Taylor* v. *Oldham Corporation*, (1876)4 Ch D 395; *Churchill* v. *Crease*, (1828)130 ER 1028, 1030; see also *Nagpur K.K. Samaj* v. *Corporation of City of Nagpur*, AIR 1959 Bom 112.
3. AIR 1921 Lah 280, 282; see also *Thammayya* v. *Rajah Tyadapusapati*, AIR 1930 Mad 963; *Secretary of State* v. *Hindustan Co-operative Insurance Society, Ltd.*, AIR 1931 PC 149, 153.
4. *Official Liquidators* v. *Narain Deomal*, AIR 1934 Sind 89; *Chettyar E.A. Firm* v. *Commr. of I.T.*, AIR 1930 Rang 37; *Collector, Bombay* v. *Kamala Vahoji*, AIR 1934 Bom 162; *Baburao* v. *Sunder*, AIR 1936 Nag 180; *Doongarshi Das* v. *State*, AIR 1965 Cal 215, 216 (Amaresh Roy, J.); see also *Vijai Shankar Lal* v. *Radha Krishna Ji*, 1979 All LJ 512.
5. *Mohd. Yunus* v. *State of Bihar*, (1981)29 BLJR 72 (DB).
6. *Gopalji* v. *Shree Chand*, AIR 1955 All 28, 30; *Mst. Haidari Begum* v. *Jawad Ali*, AIR 1935 All 55.
7. *Labour Commissioner* v. *Mysore I. & S.W.L. Association*, AIR 1952 Mys 21, 23 (FB).

general law of landlord and tenant to that extent will give way to the special Act.[1]

Where a statute creates a special liability (like Stamp Act) the special definition of any term given in such a statute must supersede and prevail over the ordinary connotation of that term in which it is understood at common law (like mortgage-deed in Transfer of Property Act).[2]

Penal provisions.—Thus it is ordinarily desirable that when an act or omission is made penal by two Acts, one general and other special, the sentence should be passed under the special Act.[3]

It is a clear principle of law that when there is a conflict between a special statute dealing with a special kind of property and a general statute enacted subsequently and dealing with all kinds of property, it is by the former that the rights of the parties must be governed with regard to the special kind of property.[4] *The rule is that the general provisions do not derogate from the special provisions,*[5] *but that the latter do derogate from the former.*[6] To what extent the provisions of a special enactment override the provisions of a general enactment must depend upon the language of the special Act.[7]

Pursuant to Section 22 of the Oudh Estates Act, 1869, a widow is entitled to succeed to a settled estate and hold it according to the provisions of the Act. Under Sections 16 and 17 of Oudh Settled Estates Act, 1917, the person entitled to and in possession of a settled estate has certain limited powers of transfer for public purposes and for granting agricultural leases. It was contended in *Ramanuj Bhan* v. *Manraj Kuer,*[8] as the widow has only a life-interest under the Act of 1869, she could make any transfer or lease which would enure beyond her life-time. Their Lordships of the Oudh Chief Court repelled the contention and observed :

> "It appears to us that Sections 16 and 17 apply in terms to any person who is for the time being entitled to and in possession of a settled estate and we have already shown that such a person may be a widow who succeeds to the estate on an intestacy. The Act of 1917 is a special Act relating to a special class of estates in Oudh and if there is any conflict between the powers given to the holder of a settled estate under the Act of 1917 and the power conferred upon a widow who succeeds under Section 22 of the Act of 1869 then the provisions of the special Act must override the provisions of the Act of 1869."

When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly.[9]

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1. *Nai Bahu* v. *Ram Narayan*, 1978 Jab LJ 252 (SC).
2. *Padum Chayd Jain* v. *Chief Controlling Revenue Authority*, AIR 1970 All 644, 645 (SB) (Mukherjee, J.).
3. *Kuloda Prasad Majumdar* v. *Emperor*, 4 Cr LJ 439, 442 : 11 CWN 100; *see* also *Ram Nath* v. *Emperor*, 26 Cr LJ 362 : 84 IC 714 (All).
4. *Sripad* v. *Tuljaramarao*, AIR 1938 Bom 372, 374.
5. *Mongibai Hariram* v. *State of Maharashtra*, AIR 1966 SC 882.
6. *Mishrilal* v. *Ratanlal*, 163 IC 623 (Nag); *Khemchand* v. *Dhanraj*, 16 CP LR 52 at 54. A general article does not govern where there is a particular article to cover the case; *Krishna* v. *Sita Ram*, AIR 1931 Nag 47; *Bikram Kishore* v. *Tafazzal Hossain*, AIR 1942 Cal 587, 592; *Narna* v. *Ammani*, ILR 39 Mad 981, 986; *see* also *J.K. Cotton Spinning and Weaving Mills Co., Ltd.* v. *State of U.P.*, AIR 1961 SC 1170; *State of Gujarat* v. *Patel Ramjibhai Danabhai*, AIR 1979 SC 1098 (1103); *(M/s.) Torrent Laboratories Pvt. Ltd., Ahmedabad* v. *Union of India*, (1990)2 Guj LR 1017; *Ashoka Marketing Ltd.* v. *Punjab National Banks*, AIR 1991 SC 855 (5J) : (1990)4 SCC 405.
7. *Jagwa Dhanuk* v. *King-Emperor*, AIR 1926 Pat 232 : ILR 5 Pat 63. But the intention to limit the operation of the general provisibn must be clear; *Fernandez* v. *Emperor*, ILR 45 Bom 672 : AIR 1921 Bom 374.
8. AIR 1955 Oudh 198, 206 : ILR 10 Luck 606.
9. *Barker* v. *Edgar*, 1898 AC 748.

5. No repeal by implication ordinarily.—A general statute cannot be treated as impliedly repealed by a local or special statute, because ordinarily the general law of the country is not altered by special legislation made without particular reference to it. Thus the Transfer of Property Act enacts the general law of transfer for India, whereas the Central Provinces Tenancy Act is nothing more than a subsequent local legislation made for a particular purpose and with reference to a particular locality.[1] Under Section 26, General Clauses Act, if an act constitutes an offence under two or more separate enactments, the offender is liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. It is implicit in Section 26 that two separate enactments can exist side by side, although both of them make the same act punishable as an offence. If the Legislature intended to repeal Section 409, I.P.C., by the enactment of the Prevention of Corruption Act, 1947, it would have expressly said so in the special Act itself. There must appear some strong reason to suggest that the previous enactment which has not been expressly repealed by the subsequent Act stands repealed by implication. Section 5, I.P.C., specifically provides that the provisions of the Code shall remain unaffected by any special or local law. That being so, if the intention of the Legislature was to substitute Section 5(1)*(c)* of Act 2 of 1947 in place of Section 409, I.P.C., in relation to public servants, one would expect a specific provision to that effect in the special Act itself. In the absence of such express provision it would be difficult to read any repeal by implication. The mere fact that under the special Act the accused has been given certain privileges which are not available to him under the general law will hardly be a good reason for inferring repeal by implication.[2]

Where a statute confers a general power to make rule as well as a particular power to make rules relating to specified matters, the particular power cannot be held to curtail the width of the general power.[3]

It is a well-recognised rule of interpretation that where there is a general law and a special law relating to a particular class of object, the general law should be so applied as not to affect the special provisions unless an intention to abrogate the special law can be spelt out from the provisions in the general law.[4]

Where the provisions of the special statute are wholly repugnant to the general statute it would be possible to infer that the special statute was repealed by the general enactment.[5]

6. Conflict between special and general statutes.—In case of conflict between the two statutes—one special and the other general—the tests to determine as to one which would prevail are as elucidated by the Supreme Court in *Ajoy Kumar* v. *Union of India*,[6]:

"*(i)* The legislature has right to alter a law already promulgated through subsequent legislation.

(ii) A special law may be altered, abrogated or repealed by a later general law by an express provision.

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1. *Ram Nath* v. *Hazari Lal*, AIR 1929 Nag 246, 249; *see* also *Wiltshire County Valuation Committee* v. *Marlborough and Ramsbury Rating Authority*, (1948)1 AER 694, exemption from 'poor' rate not abrogated by later General Act, unless it was addressed in plain language to the former.
2. *Omprakash* v. *State*, AIR 1955 All 275 (FB); *Amarendra Nath Roy* v. *State*, AIR 1955 Cal 236 (In 1952 Punj 96 it was held to the contrary).
3. *Abaran Chandra Saha* v. *Sanat Kumar Sen*, AIR 1964 Cal 460, 465 (Durga Das Basu, J.).
4. *Food Inspector* v. *Suvert and Dholakar (P) Ltd.*, 1983 EFR (Ker) 164.
5. *Union of India* v. *Bhagwandas*, (1968)1 SCWR 270 : 1968 SCD 420.
6. 1984(3) SCC 127.

(iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law.

(iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later law."[1]

The question sometimes arises when there is a conflict between two special Acts each of which may be described as special in some particular sense as to how far the later Act should prevail over the earlier Act. In such cases, it would seem that the rule is that the Court should lean against repeal of the earlier Act by implication and unless it is absolutely clear that the operation of the first Act has to be curtailed by the later Act, the previous Act should be held to continue in force, even though the later Act may be regarded as special in some other sense. Special in respect of locality is given greater importance rather than speciality in respect of subject-matter, otherwise it would be impossible to compare the degree of speciality.[2]

Ramesan, J., illustrates the above principles in *Thammayya* v. *Rajah Tyadapusapati*[3] thus, "For instance, in *Seward* v. *Vera Cruz*,[4] first we had Lord Campbell's Act relating to claims for damages for loss of life by reason of tort, and later on the Admiralty Court of 1861 was passed giving jurisdiction over any claim for damages done by any ship. In this case it may be said that each Act is a special Act from one point of view, but general from the other point of view. It was held that jurisdiction under Lord Campbell's Act was not affected and the Admiralty Court had no jurisdiction under the second Act. At page 68 Lord Selborne says : 'Now if any thing be certain it is this; that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with the earlier legislation you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.' And he refers to the case of *Hawkins* v. *Gaihercole*.[5] I may observe that he starts by saying : 'Where there are general words in a later Act.' He does not refer to the nature of the later Act, general or special. As I will presently show, though the Estate Lands Act may be regarded as a special Act from one point of view, the provision of Section 191 providing 30 days for first appeal is really a very general provision and not in the nature of special provision. In *Kutner* v. *Philips*,[6] first we had the City of London Courts Act giving jurisdiction over defendants who had employment within the city, though they did not dwell or carry on business there; and then came the County Courts Act, 1888. It was held that the first Act was unaffected by the second one. In *Smith's Estate Clements* v. *Wards*,[7] an earlier Act, 43 Geo. 3, giving power to all persons to settle or devise lands or goods for any church, provided it was months before death held not to be affected by the Married Women's Property Act, 1882; which gave absolute power to married women to dispose of property by will. Here the later Act is a special Act in the sense that it applied to married women and not to all persons, but the first

1. Vide *Prahladhbai Rajaram Mehta* v. *Popatbhai Haribhai Patel*, (1995)2 Guj LR 1752 : 1995(2) Guj LH 473 : (1996)1 Guj CR 564.
2. *Thammayya* v. *Rajah Tyadapusapati*, ILR 54 Mad 92 : AIR 1930 Mad 963, 968, 969.
3. AIR 1930 Mad 963, 968-69 : ILR 54 Mad 92; *see* also *Gola* v. *Emperor*, AIR 1929 Nag 17 (FB); *King-Emperor* v. *Indu Bhusan*, AIR 1926 Cal 819 : ILR 53 Cal 524.
4. (1884)10 AC 59.
5. (1855)24 LJ Ch 332.
6. (1891)2 QBD 267.
7. (1887)35 Ch D 589.

Act is special in the sense that it dealt with property given to church, whereas the Married Women's Property Act, 1874, dealt with all kinds of settlements and devices. The general principle of a special Act not being repealed by a later Act, was recognized by the Privy Council in a case from India in *Unnoda Persad* v. *Kristo Kumar*.[1] There their Lordships held that the rule of limitation under the Bengal Tenancy Act, 10 of 1859, was not affected by the rule of limitation in Act 14 of 1859 which is a general Limitation Act. Now in that case, the first Act, of course, was a special Act as it related to the relation between the land-holders and tenants in the Bengal Presidency but from another point of view it may be said that the second Act is also special Act because it relates to one particular question of procedure, *viz.*, limitation of action and does not deal with any substantial right whereas the earlier Bengal Tenancy Act deals not only with a question of procedure but with questions of substantial rights also relating to landlords and tenants. But from the point of view of the area to which the Act applied, undoubtedly the first was a special and the second was not. Their Lordships after relying on the general rule as laid down in *Fitzgerald* v. *Champneys*,[2] refer with approval to the Full Bench decision in *Poulson* v. *Madhusudan Pal Chaudury*.[3] In that case the learned Judges laid stress on the fact that the earlier Act was an Act applying to a smaller area and the later applied to a larger area."

When a statute provides for the forum for adjudication of certain matters and provisions are made regarding the details thereof, a subsequent statute cannot in the absence of inconsistency or express terms in that behalf operate to abrogate any of the provisions of the earlier Act. The Travancore-Cochin Co-operative Societies Act contained a complete machinery for the adjudication of disputes and there is nothing in the later Act 11 of 1115 (which provides for arbitration by agreement) abrogating any of those provisions.[4] It is equally well established principle of construction that exclusion of Civil Court's jurisdiction will not be taken for granted in the absence of express words in or necessary intendment of the statutory provision to that effect. Exclusion of Civil Court's jurisdiction will, however, be assumed where a statute prescribes a special forum for adjudicating particular classes of causes of action. This is on the principle that the special excludes the general.[5] The rule is, therefore, clear that a special Act does not derogate from another special Act without express words of abrogation. For instance, the special provisions made under the Workmen's Compensation Act do not abrogate the rights accrued under the Fatal Accidents Act. So, a workman making a claim under the former special Act has also an alternative remedy in the Civil Court under the Fatal Accidents Act.[6] Court is primarily guided by the provision of the statute itself in deciding whether the particular *remedy* indicated by the statute is the exclusive remedy available to an aggrieved party or it is only a tentative remedy or an additional remedy.[7]

7. Special and general provisions in same statute.—Where there is in the same statute a specific provision and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must be operative and the general provision must be taken to affect only such cases within its general language as are not within

1. 19 WR 5 (PC).
2. (1861)30 LJ Ch 777.
3. 2 WR 21 (FB).
4. *Kannu Neelakantan* v. *Ramakrishna Pillai*, AIR 1955 TC 260.
5. *V.C.K. Bus Service* v. *Sethna*, AIR 1965 Mad 149, 151 (Veeraswami, J.).
6. *Union of India* v. *Satyabati*, AIR 1966 Pat 130.
7. *Management Southern Roadways (P), Ltd.* v. *Venkateswaran*, (1971)1 MLJ 97, 117 (Ismail, J.).

the provisions of the particular provision.[1] Where a general expression is expressed and the Act expresses also a particular intention, incompatible with the general intention, the particular intention is to be considered in the nature of an exception.[2] When there are two sections in a statute, one dealing specially with any particular subject which is also included in some of the provisions of another section, which is couched in general terms, the provisions of this latter section should not affect the provisions of the former section unless there is a specific provision to the contrary in the statute itself.[3] In other words, where the same statute makes general provisions in respect of a particular subject-matter, and makes specific provisions with respect to special category, the latter must prevail over the general.[4] Where there are specific provisions regarding a tax, whether it is substantive or procedural the matter must be governed by that special provision in preference to the general law.[5] When a statute deals with a special case it is not permissible to contend that the special case would also fall within the general provision in the statute. Thus when an expenditure falls under Section 10(2)*(x)* of the Income Tax Act in the sense that it is an expenditure in the nature of bonus or commission paid to an employee for services rendered, then its validity can only be determined by the test laid down in Section 10(2)*(x)* and not the test laid down in Section 10(2)*(xv)*.[6]

A specific provision will prevail over the general provisions, unless on a consideration of the statute in its entirety a contrary intention of the Legislature is indicated as contained in the maxim *generalia specialibus non derogant*.[7]

In *Public Prosecutor* v. *K. Velayudhan*,[8] it was held that Cr. P.C. has not completely occupied the field of criminal procedure in the matter of search warrants, and when there is a special provision like Section 29 in the Madras Prohibition Act which governs searches without warrant it is this that must apply and not the general provision which is contained in Section 34 of the Act.

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1. *Mulji Tribhovan Sevak* v. *Dakore Municipality*, AIR 1922 Bom 247 : ILR 46 Bom 663 (FB); *Harnam Singh* v. *State of Punjab*, AIR 1960 Punj 186, 191; *P.V. Naik* v. *State of Maharashtra*, AIR 1967 Bom 482, 491 (K.K. Desai, J.); *State* v. *Gulab Singh*, AIR 1965 All 300 (Uniyal, J.); *Uma Shankar* v. *Bihar State Co-operative Marketing Union Ltd.*, AIR 1985 Pat 46.
2. *Venkatesan* v. *Nihal Chand*, AIR 1962 Cal 258, 262 (Debabrata Mookerjee, J.).
3. *Baldeo Singh* v. *State*, AIR 1951 MB 149; *Vithalji Madhavaji* v. *I.T. Commissioner*, AIR 1948 Mad 353; *Ko Maung Gyi* v. *Daw Tok*, ILR 6 Rang 474 : AIR 1928 R 249; *Bhana Mekan* v. *Emperor*, AIR 1936 Bom 256; *Union Insurance Society* v. *Mohd. Karam Ilahi Khan*, AIR 1934 Pesh 37; *Ram Nath* v. *King-Emperor*, AIR 1925 All 230 : ILR 47 All 268; *Darshan Hosiery Works* v. *Union of India*, (1981)22 Guj LR 533 (DB).
4. *Kameshwar Singh* v. *Province of Bihar*, AIR 1950 Pat 392, 418 (SB); *Jyotirindra Narayan* v. *Puran Chandra*, AIR 1950 Assam 161; *Koka Ram* v. *Salig*, AIR 1928 All 536 (special provision should ordinarily receive effect unqualified by the general); *Krishnamachari* v. *Shaw Wallace & Co.*, ILR 39 Mad 576, 577; *Vaidyanath Iyer* v. *L.I.C., Madras*, AIR 1964 Mad 24 (Section 9 of the L.I.C. Act) being general, must yield to Section 11 of the same Act); *Vidyanand* v. *Erramma*, AIR 1962 Andh Pra 394; *Koshalya Rani* v. *Gopal Singh*, AIR 1963 Punj 145, 148; *Mac Evoy* v. *United States*, 88 L Ed 1163, 1167 : 322 US 102 (Murphy, J.). *Ram Ranvijay Prasad Sinha* v. *State of Bihar*, 1978 BLJ 349 (DB); *Punjab Book Centre* v. *Union Territory, Chandigarh*, 1981 Cur LJ (Civil) 248 (DB); (1981)83 Punj LR 371; *Chanan Singh* v. *Smt. Majo*, (1976)78 Punj LR 726 (FB); *Dharam Pal* v. *Shri Bagicha Singh*, (1975)77 Punj LR 737; *Darshan Hosiery Works* v. *Union of India*, (1981)22 Guj LR 533 (DB).
5. *Bama Charan De* v. *Additional Commissioner, Commercial Taxes*, AIR 1964 Cal 332.
6. *Subodhchandra* v. *I.T. and E.P.T. Commissioner*, AIR 1954 Bom 234.
7. *Anand Reddy* v. *State of Andhra Pradesh*, AIR 1959 Andhra 144, 146; *Abdul Hakim* v. *State of M.P.*, 1962 MPLJ 183.
8. (1955)1 MLJ 70; *see* also *Brij Bhukan* v. *S.D.O., Siwan*, ILR 33 Pat 690 : AIR 1955 Pat 1. (The Bihar Land Encroachment Act is a special or local law and it cannot be said that there is any specific provision in Cr PC which can affect this special law).

Where a special Act has made a special provision for punishment to be awarded by a Magistrate irrespective of the limitations placed upon his powers under the Criminal Procedure Code, it amounts to an abrogation of the general law.[1]

Where there is a general provision which, if applied in its entirety, would neutralize a special provision dealing with the same subject-matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far as it is inconsistent with the special provision, must be deemed not to apply.[2] Power includes not only the jurisdiction to entertain and decide a suit but also the execution of the decree passed therein. In other words, if the special law makes a provision for the execution of a decree and thereby confers a special power on the executing Court, that provision shall override the corresponding provisions of the Code of Civil Procedure and the decree can be executed in the manner laid down in the special law.[3]

It is one of the settled principles of interpretation that the Court should lean in favour of sustaining a decree and should not permit the benefits under a decree to be lost unless there be any special reasons for it.[4]

Where the statute confers the general right of appeal and then imposes certain limitation on that right, the limitations have got to be strictly construed. Where, however, it is not so, the only question is whether on the terms of the section which creates the right of appeal interpreted in its strict gramatical sense, there is a right of appeal. Section 411 [new Section 374(3)], Cr.P.C., contains two clauses. The subordinate clause beginning with 'If the Magistrate' and ending with 'two-hundred rupees', obviously lays down the conditions when there will be a right of appeal from convictions by a Presidency Magistrate. It is not correct to say that the first part of the section gives a general right of appeal and then the second part contains the limitations on the general power.[5] So also Section 10 of the Child Marriage Restraint Act, 1929 makes a special provision that the Magistrate cannot issue process without conducting an inquiry or directing a subordinate Magistrate to do the same and to that extent overrides Section 202 of Cr.P.C. which makes a general provision to the effect that the Magistrate can issue process even without conducting an inquiry or directing an investigation.[6] Similarly, Section 177, Cr. P.C. (same section), is a general section which has to be read subject to the provisions of the succeeding sections.[7]

Where there are two articles (Limitation) which may possibly govern a case, the one more general and the other more particular and specific, the latter article ought to be adopted.[8]

8. Conflict to be reconciled.—It is also well settled that different provisions of the same statute, which are apparently inconsistent with one another should be construed as to give effect to all the provisions, so as to avoid a repugnancy.[9] When there are two provisions having

1. *Khushi Ram* v. *State*, AIR 1959 All 778, 779 (A.N. Mulla, J.).
2. *Goodwin* v. *Philips*, 7 CLR 14.
3. *Ram Abilakh* v. *Ram Jas*, AIR 1966 All 218, 220 (D.S. Mathur, J.).
4. *Aruna Basu Mullick* v. *Mrs. Dorathea Mitra*, 1983 SCC (Cr) 739 : (1983)3 SCC 522.
5. *Md. Safi* v. *State*, AIR 1954 Cal 301, 302.
6. *C.K. Moidod* v. *Vayyaprath Kunnoth Moyon*, 1983 Ker LJ 528.
7. *A.H. Desai* v. *State of Mysore*, AIR 1956 Mys 46.
8. *Magundappa* v. *Javali*, AIR 1965 Mys 237, 238 (Tukol, J.); *see* also *Manickvasagam* v. *Muthuveeraswami*, AIR 1963 Mad 362, 364 (Ram Chandra Iyer, C.J.) : Court would choose that article which keeps alive the remedy; *Bodh Raj* v. *Dy. Commissioner*, AIR 1962 J & K 62, 66 (Wazir, J.).
9. *Kameshwar Singh* v. *Province of Bihar*, AIR 1950 Pat 392, 418 (SB); *Amar Chand Roy* v. *Prasanna Dasi*, AIR 1921 Cal 603 (effort must be made to reconcile them); *Jyotirindra Narayan* v. *Purna Chandra*, AIR 1950 Assam 161, 162 (to be reconciled with each other so far as possible by reading one as qualification to the other).

the force of law and regulating the same subject, they should if possible be so construed as to be consistent with each other,[1] and effect should be given to both.[2] The rule of construction is that repeal by implication will not be admitted if the two Acts can be reconciled and can stand together.[3] Thus, Section 43 of the Orissa Homeopathic Act, 1956, which is a special provision dealing with reservation of certain appointments to registered Homeopathic practitioners has to be harmoniously construed with Section 29*(b)* of that Act, and so construed, the position is that while in regard to institutions covered by Section 29*(b)*, institutional qualification of registered Homeopathic practitioner is not necessary, such a qualification is a condition precedent for the field limited by Section 43.[4] Where you find a section dealing with a particular form of crime, it will require strong words to show that any section of more general application is intended to deal also with that particular crime.[5] Where there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, could overrule the former, the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply. This is the rule laid down by Romily, M.R., in *Pretty* v. *Sally.*[6] As Lord Blackburn puts it, it is an intelligible principle that the Legislature shall not be presumed to have done anything unfair and to have taken away a privilege not having openly stated that they meant to take it away or in such open or clear language that the persons affected might come and resist and use arguments to show why it should not be taken away but having simply used general words quite consistent with their never having thought of the privilege at all.[7] Where there are two conflicting provisions of the Legislature and the question is which one must be taken to govern the case, it is the duty of the Court to see the terms of which provision are more appropriate to the circumstances of the case in order to decide whether the one provision or the other governs the rights of the parties. Hence where the rights of the parties have been expressly laid down in an Act specifically appropriate to classes of transactions exactly similar to those which are the subject of enquiry, it must be clearly made out that a general Act governs the case which is applicable not to the particular class of transaction or persons before the Court but to a body of persons amongst whom the parties may be brought, and it must be very clearly shown that such general Act is intended to override the special Act.[8] Where the Legislature passes a later Act without reference to an earlier Act and that earlier Act is one which has been in force for a long time and is, therefore, well known it seems reasonable and proper that one should try to construe the two Acts should be construed consistently if it is possible to do so.[9]

All efforts must be made to make a harmonious interpretation of different parts of the

1. *In re* B, an Advocate of Benares, AIR 1933 All 241, 243-44 : ILR 55 All 432 (FB); *see* also *Syed Abdul Azeezkhan* v. *Divisional Accountant S. Rly.*, (1966)2 MLJ 5 : 79 MLW 269 (as to the relative scope of special and general provisions in the same statute); *Subash Chander* v. *State of Haryana*, AIR 1992 P & H 20.
2. *Badri* v. *Dy. Director of Consolidation, U.P.*, 1975 All LR 158.
3. *Hassan Imam* v. *Brahmadeo Singh*, AIR 1930 Pat 301, 304 : ILR 9 Pat 747; *Wilcox* v. *Patel*, AIR 1942 Rang 30.
4. *Dr. Sarat Chandra Mohanti* v. *State*, (1981)51 Cut LT 371 (DB).
5. *In re* Jivandas Savchand, AIR 1930 Bom 490, 492 : ILR 55 Bom 59.
6. (1859)26 Beav 606, 610 : 53 ER 1032; *Mulji Tribhovan Sevak* v. *Dakore Municipality*, AIR 1922 Bom 247, 251 : ILR 46 Bom 663; *see* also *Garnet* v. *Bradley*, 3 AC 944, 966.
7. *King-Emperor* v. *Indu Bhusan Sarkar*, AIR 1926 Cal 819, 821 : ILR 58 Cal 524.
8. *Karachi Municipality* v. *Karachi Electric Supply Corporation, Ltd.*, AIR 1926 Sind 115. (The general law should be given effect to if there is no special law to the contrary); *Municipal Board, Lucknow* v. *Deb*, AIR 1932 Oudh 193 : 8 Luck 1 (FB).
9. *King-Emperor* v. *Raja Probhat Chandra*, AIR 1927 Cal 432 at p. 433 : ILR 54 Cal 863 (FB).

statute and thereby to reconcile.[1]

If it is possible to avoid a conflict between two provisions on a proper construction thereof, then it is the duty of court to so construe them that they are in harmony with each other.[2]

The provisions contained in statutory enactment or in rules, regulations framed thereunder have to be construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such provision will exclude the applicability of any general provision.[3]

The construction which furthers the object of the Act, namely, to promote thrift and channelise private savings for national use the same must be preferred.[4]

When the language of a document is not clear, it must be construed in favour of grantor.[5]

In interpreting a law applicable to all, two different meanings should not be given to a word occurring more than once in the same enactment.[6]

There is not much difference between the test laid down in Section 10(2)*(xv)* of the Income Tax Act and that laid down in Rule 12 of Schedule I of the Excess Profits Tax Act. Claims for deductions allowed under Section 10(2)*(x)* have to be considered over again if they are to be allowed as deduction under the Excess Profits Tax Act by the application of Rule 12 of Schedule I. Both the tests include commercial expediency. The fact that it was a voluntary payment should not really matter, if the payment was made for reasons of commercial expediency, and it was shown that the payment was intended for making or increasing the profits of the assessee company.[7]

No doubt when we have to ascertain what a particular word used in a statute means, as also the scope of its content, it would be legitimate to examine the sense in which it is used in other enactments. In the construction of the word 'Court' in Criminal Procedure Code, it would thus be legitimate to look into the Evidence Act and try to find out in what sense the word is used in that Act. And if the context and circumstances justify it one may assume that the word is used in the same sense, but not otherwise.[8] Again, in the construction of the word 'Court' substituted for the word 'Collector' by Amendment Act of 1958 in Section 182 of the U.P. Zamindari Abolition and Land Reforms Act, 1952, the word 'Court' should be held to include both Civil and Revenue Courts. If the intention of the Legislature was not to include 'Civil Court', it could have used the expression 'Revenue Court' in substitution of the word 'Collector', but it has not done so, even though the word 'Revenue Court' is to be found defined in the Land Revenue Act, 1901. The word 'Court' is all embracing and without any ambiguity in it.[9] When reference to 'Court' in a statute is reference to *persona designata* and when not.[10]

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1. *State* v. *Prem Singh Vahi*, AIR 1986 All 332 : 1986 AWC 558.
2. *Subrata Sarkar* v. *Union of India*, AIR 1986 Cal 198 : (1984)88 Cal WN 885 : (1984)2 Cal HN 224.
3. *Maharashtra S.B.O.S. & H.S. Education* v. *Paritosh*, AIR 1984 SC 1543 : (1984)4 SCC 27 : (1984)86 Bom LR 428.
4. *Wealth-tax Commissioner, Punjab* v. *Amrinder Singh*, AIR 1986 SC 959 : 1986 Tax LR 23 : (1985)23 Taxman 25 (SC) : 1985 Taxation 79(3) 165 : (1985)156 ITR 525 : 1986 Supreme 253.
5. *M/s. R.B. Jodhanmal Bishen Lal* v. *State*, AIR 1984 J & K 11.
6. *Municipal Board, Bijnor* v. *Bhim Singh*, AIR 1962 All 450 : ILR (1961)2 All 538 : 1962 ALJ 275 : 1962 AWR (HC) 199.
7. *Rayaloo Iyer & Sons.* v. *Commissioner of Income-tax*, AIR 1955 Mad 56 : ILR 1955 Mad 613.
8. *Krishna* v. *Govardhanaiah*, AIR 1954 Mad 822.
9. *Thakur Prasad* v. *Smt. Kishore*, 1976 All LR 673.
10. *T.V.K. Sastry* v. *D.F.O., Warangal*, (1980)1 Andh WR 83, para 17; *Public Prosecutor, A.P.* v. *L. Ramayya*, (1975)1 Andh WR 133, para 50 : 1975 Mad LJ (Cri) 155 (FB).

9. Repeal by necessary implication.—It is no doubt true that it is one of the canons of the interpretation of statutes that repeal by implication of an earlier enactment is not to be favoured, especially when the earlier enactment is dealt with a particular subject. But if the later statute is so worded that the repeal flows from it as a necessary consequence, it is the duty of the Court to give effect to it. A well-known instance of the repeal by implication of an earlier 'special law' by a later 'general law' will be found in *The Dart*.[1]

Practice.—A specific provision in a statute cannot be nullified by a practice of the Court which is not contained in any particular provision of the statute.[2]

If a provision of law contains something which is intrinsically germane to the determination of the point at issue between the parties, it must be construed as a rule of evidence (adjective law). On the other hand, if it is not in itself relevant for the purpose of determining the point in controversy between the parties but by itself it leads to a positive conclusion or makes a particular kind of inference irresistible, it acquires the shape of substantive law.[3]

10. Strictly construed.—A particular provision or enactment whenever found must be construed strictly as against a general provision.[4] General words and phrases, however, wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act, and as not altering the law beyond.[5] A special legislation like the Tamil Nadu Buildings (Lease and Rent Control) Act cannot be interpreted in a wide way so as to further infringe the general right under the general law, *i.e.* the Transfer of Property Act.[6] Where an Act vests a special jurisdiction in an authority divesting the parties of certain rights which they could exercise under the general law, the provisions of such an Act must be strictly construed, and if there exists no provision in the Act for the exercise of certain jurisdiction, it shall have to be held that such jurisdiction cannot be exercised by that authority.[7]

The maxim *leges posteriores priores contrarias abrogant* (that is, the provisions of a subsequent law always take precedence, and override the provisions of a previous law) is subject to the maxim *generalia specialibus non derogant*.[8]

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1. (1893)69 LT 251 : 1893 LRP 33; *see* also *Hakam Khuda Yar* v. *Emperor*, AIR 1940 Lah 129, 134 (FB) (*per* Tekchand, J.).
2. *Asutosh Sasmal* v. *Bhupendra Narayan Bera*, AIR 1947 Cal 190, 192.
3. *Sharda Prasad* v. *Sampati Das*, 1983 ALJ 868; *Izhar Ahmad* v. *Union of India*, AIR 1962 SC 1052, para 29.
4. *De Winton* v. *Brecon Corporation*, (1859)53 ER 1004; *Pretty* v. *Sally*, (1859)26 Beav 606 : 53 ER 1032; *Amarchand Roy* v. *Prasanna Dasi*, AIR 1921 Cal 603, 604; *Qaiser Jahan* v. *Court of Wards*, AIR 1930 Lah 333, 334 (Special Acts must be strictly interpreted).
5. *Ram Nath* v. *Hazari Lal*, AIR 1929 Nag 246, 249.
6. *M/s. Mahalaxmi Metal Industries* v. *K. Suseela Devi*, (1982)2 MLJ 333.
7. *Shamsher Bahadur* v. *State of U.P.*, AIR 1964 All 395, 405 (D.S. Mathur, J.).
8. *Parasram Gidandas* v. *Tarachand Amardinomal*, AIR 1936 Sind 209; *see*, however, *Nagendra Chandra* v. *Probhat Chandra*, AIR 1942 Cal 607, 609.

CHAPTER XVIII
SUBSTANTIVE AND ADJECTIVE LAW

SYNOPSIS

1. Substantive and adjective law.—Law defines the rights which it will aid and specifies the way in which it will aid them. So far as it defines, thereby creating, it is 'Substantive Law'. So far as it provides a method of aiding and protecting, it is 'Adjective Law'.[1] The adjective law is also termed as 'procedure' which is a term used to express "the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which by means of the proceeding, the Court is to administer; the machinery as distinguished from the product."[2] In other words the expression 'procedure' means the manner and form of enforcing the law.[3] According to Salmond,[4] the law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions—using the term action in a wide sense to include all legal proceedings, civil or criminal. All the residue is substantive law, and relates, not to the process of litigation, but to its purpose and subject-matter. Substantive law is concerned with the ends which the administration of justice seeks ; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relations of Courts and litigants in respect of the litigation itself, the former determines their conduct and relations in respect of the matters litigated. Holland in his book on *Jurisprudence* explains the scope of adjective law thus[5] : "A remedial right is in itself a mere potentiality deriving all its value form the support which it can obtain from the power of the State. The mode in which that support may be secured, in order to the realization of a remedial right is prescribed by that department of law which has been called 'adjective' because it exists only for the sake of 'substantive law' but is probably better known as 'procedure'. In the exceptional cases in which an injured party is allowed to redress his own wrong, adjective law points out the limits within which such self-help is permissible. In all other cases it announces what steps must be taken in order duly to set in motion the machinery of the law Courts for the benefit either of a plaintiff or a defendant". "Thus it will be seen," says Venkataramana Rao, J., in *Girdhari Lal Son & Co.* v. *K. Gowder*,[6]

1. Holland : *Jurisprudence*, Ch VII end.
2. *Poyser* v. *Minors*, LR 7 QBD 333 (*per* Lash, J.).
3. Mukherjea, J. in *A.K. Gopalan* v. *The State*, 1950 SCR 407 at p. 464.
4. *Jurisprudence*, 10th Ed. at pp. 475-476. *See* also T.W. Arnold, *"The Rule of Substantive Law and Procedure in the Legal Process"* (1932)45 Harward : *'Law Review'*, 617; W.W. Cook, *"Substance and Procedure in the Conflict of Law"*, (1932)42 Yale L Journal 358.
5. At pages 358, 359, Edition 13 (1924) : Wharton in his *Law Lexicon* explains it thus : "The mode in which successive steps in litigation are taken."
6. AIR 1938 Mad 688, 692.

"that under 'procedure' are comprised all steps which a party must take in order to get the aid of the Court for the enforcement of his rights." It, therefore, includes not only the steps which he has to take after an action is launched in Court but also steps which a party has to take before commencing it. After examination of a number of cases, on this branch of the law, it appeared to be fairly clear to his Lordship[1] that the law of procedure deals with the process by which a remedy for the enforcement of a right is made available. A right of suit, a right of appeal and a right of distraint are all remedies for the enforcement of a right and they are equally substantive rights though remedial in nature. The law makes a distinction between rules of law which in any way impair or destroy those rights and those which a litigant has to comply with for availing himself of those remedial rights. The latter belong to the law of procedure. "A statute not only enacts its substantive provisions, but, as a necessary result of legal logic, it also enacts, as a legal proposition, everything essential to the existence of specific enactments".[2] No litigant has a vested right that this appeal should be heard by a particular number of Judges. The provisions of an Act prescribing the powers of Single Judge and Division Courts are only matters affecting procedure. There is a distinction between 'a right of action' and 'a right of action to be conducted in a particular way'. The former is a vested right while the latter is merely a matter of procedure.[3]

2. Rule of construction.—There is difference in the matter of construction between a law dealing with substantive rights which are already vested and on relating to procedure. There is no vested right in procedure but the case of vested rights is different.[4] "Procedure is," says Lord Penzance in *Kendall* v. *Hamilton*,[5] "but the machinery of law after all the channels and means whereby law is administered and justice reached. It strangely departs from its proper office when, in place of facilitating, it is permitted to obstruct, and even extinguish, legal rights and is thus made to govern where it ought to subserve." It stands to reason that the procedure provided in a statute for enforcement of substantive rights conferred thereby should be construed as far as possible so as to give effect to and not to nullify those rights.[6] A mere procedural provision ought not to be allowed to whittle down or modify a substantive provision of law.[7] Procedural enactments should be construed liberally and in such manner as to render the enforcement of substantive rights effective.[8]

Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct pathway to justice. Construction of the rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of permissible construction must be preferred to that which is rigid and negatives the ends of justice. The reason is obvious. Procedure is a means to subserve and not rule

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1. AIR 1938 Mad 688, 692, 695.
2. *Lernan* v. *Damodarayya*, ILR 1 Mad 158, 163.
3. *Chellappan* v. *State*, 1959 MLJ (Cr) 271 : It follows that the provision in the High Court Act of 1959 empowering a Single Judge to hear an appeal of the category in question must have retrospective operation so as to apply to pending appeals.
4. *Manendra Raut* v. *Darsan Raut*, 31 Pat 446 : AIR 1952 Pat 341.
5. (1879)4 AC 504, 525. Procedure is the judicial process for enforcing rights and duties recognised by substantive law and for justly administering remedy and redress for disregard or infraction of them; *Sibbach* v. *Wilson & Co.*, 85 L Ed 479 : 312 US 1, (*per* Roberts, J.).
6. *Palam Goundan* v. *Peria Goundan*, AIR 1941 Mad 158, 160.
7. *Rustam Dinshaw Patel* v. *State of Bombay*, 55 Bom LR 268.
8. *Velluswami* v. *Raj Nainar*, AIR 1959 SC 422, 426; *Chitra Kumar* v. *Ganga Ram*, 1966 Jab LJ 1028; *Amritsar Improvement Trust* v. *Smt. Ishri Devi*, 1979 Rev LR 307 : 1979 Cur LJ (Civil) (P & H) 246 : (1979)81 Punj LR 354 (FB).

the cause of justice.[1]

A rule of procedure enacted in a statute must, moreover, be liberally construed : so as to lead to the smooth working of the scheme of the statute.[2] It is a general rule relating to the construction of statute that in the absence of an express provision, an adjective law cannot control the provisions of substantive law.[3]

While interpreting a procedural law, the Court takes into consideration also the impact it is calculated to have on the course of litigation and decision making.[4]

In *Sangram Singh* v. *Election Tribunal, Kotah,*[5] the Supreme Court observed : "A Code of Procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties : not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should, therefore, be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and, subject to that proviso, our laws of procedure should be construed wherever that is reasonably possible, in the light of that principle."

Limitation Act and C.P.C.—Both the Law of Limitation and the Civil Procedure Code are procedural laws. Accordingly, the same meaning should be given to same expressions used in these two laws. [6]

The Code of Criminal Procedure is also procedural law. Accordingly reasonable interpretation should be given to the period of limitation prescribed by Sub-section (2) of Section 126 of Cr.P.C. and so interpreted, the period of three months "in its proviso begins from the date the aggrieved party had or ought to have knowledge of the *ex parte* order, and not 'three months' from the date of the said order."[7]

Limitation Act.—The provisions of the Limitation Act have to be strictly construed and they cannot be extended by analogy or on principle.[8] The provisions in the Limitation Act cannot necessarily be taken as formulating or effecting principles of substantive law. In fact, if history of the several amendments carried in the Articles of the Limitation Act is looked into, it will be noticed that the amendments particularly regarding the starting point of limitation have been affected more with a view to avoid difficulties met with in practical application of the amended Articles than with a view to change the principles of substantive law. In any event

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1. *M.V. Vali Press* v. *Fernandee Lopez*, AIR 1989 SC 2206.
2. *Ram* v. *Ram Narain*, 1953 AWR (HC) 143 (FB); *Somulu* v. *Venkataswamy*, (1962)2 Andh WR 138; *Qazi Vemat Ullah* v. *6th Addl. Dist. Judge, Gorakhpur*, AIR 1993 All 126.
3. *Collector of Breach* v. *Ochhavlal*, AIR 1941 Bom 158, 159 : ILR 1941 Bom 147; *Mst. Huri* v. *Roshan*, AIR 1923 Sind 5 (FB).
4. *Ram Jas* v. *Surendra Nath*, AIR 1980 All 385 (FB), case under Evidence Act, Sections 90, 90-A.
5. AIR 1955 SC 425, 429; *Central Bureau of Investigation, Spl. Investigation Cell, New Delhi* v. *Anupam J Kalkani*, 1992 Cri LJ 2768 (SC).
6. *P.N. Films, Ltd.* v. *Overseas Films Corporation, Ltd.*, AIR 1958 Bom 10, 12 (*ex parte* decree); *Ramachandra Keruji Deoker* v. *Raghunath Shankar Bichekar*, (1994)2 Bom CR 1; *Chinnammal* v. *Arumugham*, (1990)1 MLJ 31 (SC).
7. *Mohan Lal* v. *Smt. Kundanbai*, 1983 MPWN 24.
8. *Ramaswami* v. *Krishnier*, AIR 1957 Mad 431, 432.

substantive provisions of other statutes cannot be interpreted on the basis of the wording of the Articles in the Limitation Act.[1]

3. Procedural law, retrospective effect.—It is no doubt true that no body has a vested right in procedural law, that is to say, that when a change is made in procedural law it takes retrospective effect. But this is not always true. The Supreme Court in *Vinod Gurudas Raikar* v. *National Insurance Co., Ltd.*,[2] held that, the right to claim benefit of a provision for condonation of delay is governed by the law in force at the time of delay, though there was no change in the duration of delay. Where a suit in its initial stages was pending in the trial Court and a change was effected by amendment of the procedure to be followed in the trial of the suit, the changed procedure should be followed, because no right of any person would be affected at that stage. But when by the enforcement of the amendment the validity of a judicial order validly passed is affected it cannot be given retrospective effect if proceeding has reached the appellate stage. If a party has already obtained certain right under the old procedure as for instance a decree, it would be very unfair to disturb that right, and direct the suitor to begin afresh by following the amended procedure.[3]

4. Res judicata in procedural law.— As regards *res judicata* in procedural law, *see* the Supreme Court ruling in *G. Vijayalakshmi* v. *G.P.S. Sastry*.[4]

5. Some general principle.—Unless there is compulsion the procedural law should be read so as to advance the cause of justice and should not be construed strictly so that vested rights of the parties to get a matter adjudicated on merits are frustrated and the surest test for determination as to whether the provision is mandatory or directory is to see as to whether sanction is provided therein.[5]

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1. *Union of India* v. *Shia Vastimull Harakchand*, AIR 1959 Mys 13, 16.
2. AIR 1991 SC 2156.
3. *Indraj Singh* v. *Savitri Kunwan*, AIR 1966 All 234 : 1965 ALJ 651 : 1965 All WR (HC) 227.
4. AIR 1981 SC 1143, case under Hindu Marriage Act, 1955.
5. *Naran Anappa Shethi* v. *Jayanthilal Chunilal Shah*, AIR 1985 Guj 205.

CHAPTER XIX
MANDATORY AND DIRECTORY PROVISIONS

SYNOPSIS

1. General.—There is a well-known distinction between a case where the directions of the Legislature are imperative and a case where they are directory.[1] The real question in all such cases is whether a thing has been ordered by the Legislature to be done? What is the consequence if it is not done? The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.[2] Some rules are vital and go to the root of the matter, they cannot be broken;

1. *R.* v. *Lincolnshire Appeal Tribunal*, (1917)1 KB 1.
2. *Woodward* v. *Sarsons*, (1875) LR 10 CP 733; Halsbury : *Laws of England*, 4th Ed., Vol. 44, para 933, at p. 584.

others are only directory and a breach of them can be overlooked provided there is substantial compliance. With the rules read as a whole and provided no prejudice ensues, and when the Legislature does not itself state which is which, Judges must determine the matter and exercising a nice discrimination sort out one class from the other alone broad-based commonsense lines.[1] In the case of statutes that are said to be imperative, the Courts have decided that if it is not done the whole thing fails and the proceedings that follow upon it are all void. On the other hand, when the Courts hold the provisions to be directory, they say that although such provisions may not have been complied with, the subsequent proceedings do not fail.[2] No universal rule can be laid down for construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of the Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.[3] No universal rule can be laid down in this matter. The Supreme Court of India has also been stressing time and again that the question whether a statute is mandatory or directory, is not capable of generalisation and that in each case the Court should try and get at the real intention of the Legislature by analysing the entire provisions of the enactment and the scheme underlying it.[4] No general rule can be laid down and the Court has to consider not only the actual words used in the scheme of the Statute but also the intended benefit to the public by following the provisions and the material danger to the public by contravention of the same.[5] In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory. Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed. Where, however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it is essential to the acquisition of the right or authority.[6] An absolute enactment must be obeyed or

1. *Narayan Krishnaji* v. *State*, AIR 1967 Bom 213, 214 (Chainani, C.J.); *Haribandhu* v. *Chandrasekhar*, AIR 1966 Orissa 12, 13 (Barman, J.) (where no public policy is involved, the rule should be held to be directory); *Satyanarayana* v. *Subbiah*, AIR 1957 Andh Pra 172, 181 (FB) (S. Raju, J.).
2. *Howard* v. *Bodington*, (1877)2 PD 203; *Pearse* v. *Morrice*, (1834)111 ER 32; *see* also *District Board, Kheri* v. *Abdul Majid Khan*, AIR 1930 Oudh 434, 440.
3. *The Liverpool Borough Bank* v. *Turner*, (1860)30 LJ Ch 379, Lord Campbell, LC; *Clantex* v. *Blackwood*, 1 CLR 39, 51; *Girdhari Lal Dhall* v. *Krushi Kesh Roy*, ILR (1949)1 Cut 392, 399 (it is necessary to see what is the intention of the Act); *Clantex* v. *Blackwood* (No. 2), 1 CLR 121 at p. 126; *Mathura Mohan Saha* v. *Ram Kumar Saha*, ILR 43 Cal 790, 812 : 59 *Corpus Juris* 1072; *Motibhai* v. *State of Gujarat*, AIR 1961 Guj 93, 100; *Narendra Nath* v. *Amiya Chowdhry*, AIR 1959 Cal 231, 234 (S.C. Lahiri, J.); *Bapusingh Ram Singh* v. *Additional Collecter, Indore*, 1977 MPLJ 550 : 1977 Jab LJ 691 (DB); *Shankarlal Patidar* v. *State of M.P.*, 1975 MPLJ 116 (DB).
4. *Raghubir Singh* v. *Town Area Committee*, 1981 All LJ 130 (DB); *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196; *T.V. Usman* v. *Food Inspector*, (1994)1 SCC 750; *Dalchand* v. *Municipal Corporation, Bhopal*, (1984)2 SCC 486 : 1984 SCC (Cri) 311 : AIR 1983 SC 303.
5. *Banawarilal Agrawalla* v. *State of Bihar*, AIR 1961 SC 849.
6. *Haridwar Singh* v. *Bagun Sambrui*, (1973)3 SCC 889, 895 (Mathew, J.) : 1972 SC 1242; *Dattatraya Moreshwar* v. *State of Bombay*, 1952 SCR 612, 624 (observations of Das, J.); *see* also *Haribandhu* v. *Chandrasekhar*, AIR 1966 Orissa 12, 13 (Barman, J.); *Harihar Prasad* v. *Distt. Magistrate*, AIR 1961 All 365, 368 (Dwivedi, J.); *Ram Rattan Shukla* v. *State of Punjab*, 1987 Punj LJ 72 : (1987)1 Punj LR 627.

fulfilled exactly. A provision or a statute which is vital and goes to the root of the matter cannot be broken and its breach cannot be overlooked.[1] A mandatory statute is one if it imposes a condition satisfaction whereof is essential to the validity of the Act as to which it is imposed, a directory statute is one if it prescribes the formalities which may be disregarded without invalidating the thing to be done.[2]

While considering the question as to whether a particular rule is mandatory or directory no test or invariable formulae to determine this question can be laid down. For this purpose, the object of the particular provision is required to be considered.[3]

It is not conducive to justice as dispensed by Courts of Law to ignore statutory provisions, particularly when those provisions are mandatory in their nature, for the sake of what has been called 'justice' of the matter. Courts dispense justice in accordance with the procedure laid down by law and they cannot and should not invent or by-pass a procedure laid down by the Legislature. It is no doubt true that there is ample judicial authority for the view that Courts can in proper circumstances mitigate the rigours of procedural law in order to give a party a relief but this principle is obtainable for application only in cases where a party would have no other remedy to have the wrong undone or where the procedure is purely a technical procedure involving no rights acquired by any other party by virtue of non-compliance with any procedure.[4]

"The classification of statutes as mandatory and directory is useful in analysing and solving the problem of what effect should be given to their directions. But it must be kept in mind in what sense the terms are used, that they are only descriptive of the effect that it has been determined should be given to statutory provision, and that there is no essential difference in statutes whereby their mandatory and directory character can be determined as a means to determining their effect. No statutory provisions are intended by the Legislature to be regarded; but where the consequences of not obeying them in every particular are not prescribed, the Courts must judicially determine them. In doing so they must necessarily consider the importance of the literal and punctilious observance of the provisions in question to the object the Legislature had in view. If it is essential it is mandatory and a departure from it is fatal to any proceeding to execute the statute or to obtain the benefit of it."[5] Crawford in his *Statutory Construction* at p. 104 says : "A statute, or one or more of its provisions, may be either mandatory or directory. While usually in order to ascertain whether a statute is mandatory or directory, one must apply the rules relating to the construction of statutes; yet it may be stated, as a general rule, that those whose provisions relate to the essence of the thing to be performed or to matters of substance, are mandatory, and those which do not relate to the essence and whose compliance is merely a matter of convenience rather than of substance, are directory." One of the important tests that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and if it does then the court would say that that provision must be complied with and that it is obligatory in its character.[6] Mandatory provisions of a statute cannot be ignored merely on the ground of hardship or as merely

1. *Ramachander Singh* v. *Gopi Krishna*, AIR 1957 Pat 260, 264 (Raj Kishore Prasad, J.).
2. *Firm Hazarimal Kutalia* v. *Income-tax Officer, Ambala*, AIR 1957 Punj 5, 12.
3. *Machhua Matsya Vikas Sahkari Samiti Ltd.* v. *State*, AIR 1986 All 300 : 1986 All CJ 401.
4. *Akbar Ali* v. *Dr. Iswar Saran*, AIR 1957 All 622, 632.
5. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at pp. 76-77.
6. *D.A. Koregaonkar* v. *State*, AIR 1958 Bom 167 : ILR 1957 Bom 120, 122; *Ismail* v. *Labour Appellate Tribunal*, AIR 1956 Bom 584.

procedural.[1] Maxwell in *Interpretation of Statutes*[2] has put the matter thus : "The reports are full of cases dealing with statutory provisions which are devoid of indication of intention regarding the effect of non-compliance with them. In some of them the conditions, forms or other attendant circumstances, prescribed by the statute have been regarded as essential to the act or thing regulated by it and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of which did not affect its validity or involve any other consequence than a liability to a penalty, if any, were imposed, for breach of the enactment. The propriety, indeed, of even treating the provisions of any statute in the latter manner has been sometimes questioned, but it is justifiable in principle as well as abundantly established by numerous authorities. It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with the implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the Legislature. The whole scope and purpose of the statute under consideration must be regarded." The principle of interpretation in such class of cases is that the intention of the Legislature should be construed as mandatory if the aim and object of the statute would be clearly defeated if the direction to do a thing in a particular manner is not strictly observed.[3] And it is also well settled that, where there are provisions in an Act which are only directory, and not mandatory, any disregard of those provisions will not make the transaction void altogether.[4]

No universal rule can be framed to decide if a statute is mandatory or directory the Court must interpret it according to the intention of the Legislature.[5]

What is regarded as mandatory traditionally may have to be 'moderated' into wholesome directions.[6]

In *Lila Gupta* v. *Laxmi Narain*,[7] interpreting the proviso to Section 15 of the Hindu Marriage Act, 1955 (repealed in 1976), the Supreme Court said that a legislative provision, though couched in 'prohibitory and negative' language, could be of directory nature.

The phrase 'shall be consulted' in Article 320(3) of the Constitution is mandatory.[8]

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1. *Anandi Transport Co., Ltd.* v. *Himachal Pradesh Administration*, AIR 1958 HP 1, 4; *Vedakannu Nadar* v. *Naguneri T.S.A. Chetram*, AIR 1938 Mad 982.
2. 12th Ed., Chapter 13; *see* also *Brijlal* v. *State of Patiala*, AIR 1957 Punj 100, 101.
3. *District Board, Kheri* v. *Abdul Majid Khan*, AIR 1930 Oudh 434, 439.
4. *Damodar Shanhogue* v. *Rama Row*, ILR 39 Mad 101, 106; *Queen* v. *Lofthouse*, 1866 LR 1 QB 433; *Queen* v. *Ingal*, (1876) LR 2 QBD 199; *Hori Lal* v. *Deputy Director of Consolidation*, 1982 ALJ 223.
5. *Ramchandra* v. *Govind Joti*, (1975)1 SCC 559.
6. *State of Punjab* v. *Shyamlal*, AIR 1976 SC 1177; *see* also *Official Liquidator* v. *Dharti Dhan (P), Lt...*, AIR 1977 SC 740; *State of Mysore* v. *V.K. Kangan*, AIR 1975 SC 2190; *Rangaswami* v. *Sugar Textiles*, AIR 1977 SC 1516; *Mannalal Khetan* v. *K.N. Khetan*, AIR 1977 SC 536; *Rajkot Municipal Corporation* v. *Manjulaben Jagantilal Nakum*, (1991)1 Guj LR 650 (Guj); *Bejoy Kumar Choudry* v. *State of Assam*, (1992)2 Gau LR 283 (FB).
7. AIR 1978 SC 1351.
8. *Union of India* v. *Sankalchand*, AIR 1977 SC 2328; *see* also *In re*, Presidential Election, AIR 1974 SC 1682, case under Article 62(1) of the Constitution.

Use of the word 'shall' in any statutory provision [as in Proviso to Order V, Rule 19-A(2) of the C.P.C.] shows that it is *prima facie* mandatory, since the word 'shall' is ordinarily imperative. But much would depend upon the real intention of the Legislature for ascertaining which the Court may consider nature of the statute and expected consequences, etc.[1] Following *Mani Lal Mohan Lal* v. *Syed Ahmed*,[2] it was held that as Order XXI, Rules 84, 85 and 96 etc., are mandatory, the provisions 285-D and 285-E of UP Zamindari Abolition and Land Reforms Rules, 1952, being similar in terms of the aforementioned corresponding provisions of the Code are mandatory.[3]

A mandatory provision in a statute is one, the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding, and a statute may be mandatory in some respects, and directory in others.[4] In the case of *Hari Vishnu* v. *Ahmad Ishaque*.[5] The Supreme Court observed that the practical bearing of the distinction between a provision which is mandatory and one which is directory is that while the former must be strictly observed, in the case of the latter it is sufficient that it is substantialy complied with.

. The subject-matter of a statutory provision is not changed whether it is read as directory or as mandatory.[6] Where there is a clear statutory provision, it is not open to Courts in this country to look to English common law for guidance in matters covered by the mandatory statutory provision.[7]

2. Definition.—Sutherland[8] says : "The difference between mandatory and directory statutes is one of effect only. The question generally arises in a case involving a determination of rights as affected by the violation of, or omission to adhere to, statutory directions. This determination involves a decision of whether or not the violation or omission is such as to render invalid acts or proceedings pursuant to the statute, or rights, powers, privileges or immunities claimed thereunder. If the violation or omission is invalidating, the statute is mandatory; if not, it is directory." Craies[9] puts the matter thus : "When a statute is passed for the purpose of enabling something to be done and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute, but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory." "So a mandatory statute," according to Crawford,[10] "may be defined as one whose provisions or requirements, if not complied with, will render the proceedings to which it relates illegal and void, while a directory statute is one where non-compliance will not invalidate the proceedings to which it relates."

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1. *Prakash Chandar* v. *Sunderbai*, AIR 1979 Raj 108; see also *M.R. Reddy & Co.* v. *State*, AIR 1978 AP 449; *P.M. Daraswamy* v. *E.A. & Director, Marketing*, AIR 1977 AP 286; *A.V. Subramanyam* v. *C.Venkatarmanamma*, AIR 1981 AP 147, (case under AP Court-fees and Suits Valuation Act, 1956).
2. AIR 1954 SC 349.
3. Vide *Rao Md. Ahmed Khan* v. *Sri Rambir Singh*, 1995(2) UJ (SC) 205.
4. 59 *Corpus Juris* at p. 1072; *Subrata Sarkar* v. *Union of India*, AIR 1986 Cal 198 : (1984)88 Cal WN 885 : 1984 (2) Cal HN 224.
5. AIR 1955 SC 233, 245; see also *Ranjit Singh* v. *State of Rajasthan*, 1953 Raj LW 15; see also *Bali Ram* v. *Election Tribunal*, AIR 1958 J & K 54, 58; *Nadella Satyanarayana* v. *Yamanoori Venkata*, AIR 1957 Andhra 172, 181 (FB).
6. *Drigraj Kuer* v. *Amar Krishna Narain Singh*, AIR 1960 SC 444, 447.
7. *Hungerford Investment Trust, Ltd.* v. *Haridas Mundhra*, AIR 1971 Cal 182, 195 (B.C. Mitra, J.).
8. *Statutory Construction*, 3rd Ed., Vol. III at p. 77.
9. *Statute Law*, 5th Ed. at p. 60.
10. *Statutory Construction*, 3rd Ed., Vol. III at p. 104.

Thus, where certain conditions are prescribed by a statute for the conduct of any business or profession, and such conditions are not observed, agreements made in the course of such business or profession become void, if it appears that the object in imposing the conditions is the maintenance of public order or safety, or the protection of persons dealing with those on whom the conditions have been imposed. On the other hand, where the conditions are imposed merely for administrative purposes and no specific penalty is imposed for breach or violation of such conditions, agreements in breach of them are valid. It is clear law that an act forbidden in public interests, cannot be made lawful for paying penalty in violation, whereas an act which is lawful in itself cannot become unlawful merely because some collateral requirement imposed for reasons of administrative convenience has not been fulfilled.[1]

3. Legislative intent.—Whether a statute is mandatory or directory, depends upon the intent of the Legislature and not upon the language in which the intent is clothed.[2] The meaning and intentions of the Legislature are the governing factor, and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it one way or the other.[3] In determination of the question whether a provision of law is directory or mandatory the prime object must be to ascertain the legislative intent, from a consideration of the entire statute, its nature, its object and the consequences that would result from construing it in one way or the other, or from such statute in connection with other related statutes, and the determination does not depend on the form of the statute.[4] "It appears to be well settled that in order to judge the nature and scope of a particular statute or rule, *i.e.*, whether it is mandatory or directory, the purpose for which the provision has been made, and its nature, the intention of the Legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.[5] Further to this end, an enquiry into the purpose behind the enactment of the Legislature must always be made.[6] The mandatory language of an enactment by itself affords no justification for the conclusion that its provisions are always imperative in the sense that any act done in violation will be invalid. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to get at the real intention of the Legislature by carefully attending to the whole scope of the enactment.[7] The legislative mandate must be considered as mandatory not merely because of the language employed therefor, but also in view of the purpose behind the provision in

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1. *Calcutta National Bank, Ltd.* v. *Rangoon Tea Co.*, AIR 1967 Cal 294.
2. *Lachmi Narain* v. *Union of India*, AIR 1976 SC 714; *The Sholapur Municipal Corporation* v. *Shivaji Works Ltd.*, AIR 1993 Bom 213 (DB); *State of Madhya Pradesh* v. *Beni Prasad Rathore*, 1996 MPLJ, 158 (FB); *Ramakrishna Bus Transport* v. *State of Gujarat*, 1995(1) GLH (Guj) 520.
3. *Arunima Das* v. *Secretary, Board of Secondary Education*, AIR 1957 Cal 182, 185; *Thangamani* v. *Chief Secretary, Madras*, AIR 1965 Mad 225 : 1965 MLJ 486 : ILR 1964 Mad 327; *see* also *Calcutta National Bank, Ltd.* v. *Rangoon Tea Co.*, AIR 1967 Cal 294.
4. *Vide* 59 *Corpus Juris*, at p. 1072-73.
5. *Hindu National School Management Trust Society* v. *Deputy Director of Education*, 1980 All LJ 736 (FB); *Commissioner of Income tax* v. *Shivanand Electronics*, (1994)1 SCC 60; *State of Punjab* v. *Balbir Singh*, 1994 SCC (Cri) 634.
6. *Santosh Kumar* v. *Maharashtra Revenue Tribunal*, 1971 Mah LJ 531, 535 (M.N. Chandurkar, J.); *see* also *Dr. S.C. Barat* v. *Hari Vinayak Pataskar*, AIR 1962 MP 180, 184 (Dixit, C.J.); *Karrial Leather Karamchari Sangathan (Regd)* v. *Liberty Footwear Company (Regd)*, AIR 1990 SC 247 : 1990 Lab IC 301 : (1989)3 JT (SC) 537 : (1989)2 Lab LN 507 : (1989)2 Cur LR 531 : (1989)75 FJR 409 : (1989)2 Lab LJ 550.
7. *Narendra Nath Nandi* v. *Amiya Chowdhry*, 63 Cal WN 216.

question.[1] The Supreme Court of Pennsylvania observed in *in re* McQuiston's Adoption[2] : "Whether a statute is mandatory or directory does not depend upon its form, but upon the intention of the Legislature, to be ascertained from a consideration of the entire Act, its nature, its object, and the consequences that would result from construing it one way or the other." In the same strain the Court observed in *People* v. *De Renna*[3] : "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other." And in *People* v. *Smith*,[4] the Court remarked : " In determining how far a statute is mandatory the legislative intent must govern. We must consider the importance of the punctilious observance of the provision in question with reference to the object the Legislature had in view. All laws are mandatory in the sense that they impose the duty of obedience on those who come within their purview, but it does not follow that every slight departure therefrom shall taint the whole proceeding with a fatal blemish. The omission of the signor of the petition (referendum) to write in the year and month when they were already in the petition, did not render the petition invalid."

In *Hari Vishnu Kamath* v. *Ahmad Ishaque*,[5] the Supreme Court observed that the various rules for determining when a statute might be construed as mandatory and when directory are only aids for ascertaining the true intention of the Legislature which is the determining factor, and that must ultimately depend upon the context. An enactment in form mandatory might in substance be directory. The use of the word 'shall' does not conclude the matter, and the practical bearing of the distinction between a mandatory and directory provision is that while the former must be strictly observed, is the case of the latter it is sufficient that it is substantially complied with.[6]

When a statute requires that something shall be done or done in a particular manner of form without expressly declaring what shall be the consequence of non-compliance, the question often arises what intention is to be attributed by inference to the Legislature. It has been said that no rule can be laid down for determining whether the requirement is to be considered as a mere direction or instruction involving no invalid consequence for its disregard, or as imperative with an implied notification for disobedience beyond the rule that it depends on the scope and object of the enactment. The question whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it used the word 'shall' is merely directory cannot be resolved by laying down any general rule and depends on the facts of each case and for that purpose the object of the statute in making the provision is the determining factor.[7] In order to determine whether a particular provision is mandatory or directory, it would be necessary to ascertain whether the admission to comply with the requirement affects the very foundation or authority for the proceedings so as to make it void and incapable of being validated. It is

1. *Baidyanath* v. *Sitaram*, (1970)1 SCR 839, 842 (Hegde, J.); *Vishandas* v. *Savitri Devi*, AIR 1988 Raj, 198 : (1988)1 Raj LR 1 : (1988)2 Rent LR 131(FB).
2. (1931)238 Pa 304.
3. 2 NYS (2) 694.
4. 14 NE (2) 820.
5. AIR 1955 SC 233; *Chacko* v. *Chacko*, AIR 1959 Ker 149, 150.
6. *State of Punjab* v. *Satyapal*, AIR 1969 SC 903.
7. *Hiralal* v. *Rampadarath Singh*, (1969)1 SCR 328, 337, 339 (Shelat, J.); *Buland Sugar Co.* v. *Municipal Board*, (1965)1 SCR 970, 975.

always difficult to demarcate with any degree of accuracy in a particular case what is mandatory and what is directory or what is irregularity and what is a nullity. When a question arises as to how far the proceedings are affected by the contravention of any provision it is necessary to see the scope and object of the particular provision which is said to be violated.[1] There is no universal rule to aid in determining whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to try real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.[2] Section 5-A and proviso to Section 3 of the Prevention of Corruption Act as it stood prior to its amendment by Act 59 of 1952 and the corresponding Section 5-A as inserted by Amending Act 59 of 1952 are mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality.[3]

4. Purpose behind the enactment.—"It can be stated as a general proposition that, as regards the question of mandatory and directory operation, the Courts will apply that construction which best carries into effect the purpose of the statute under consideration. To this end, the Courts may inquire into the purpose behind the enactment of the legislation requiring construction as one of the first steps in treating the problem. The ordinary meaning of language may be overruled to effectuate the purpose of the statute."[4] Chief Justice Bhandari observed in *Aeron Steel Rolling Mills* v. *State of Punjab*[5] : "The statutory provision which empowers Government to transfer cases from one tribunal to another, after recording its reasons for doing so, inclines one to the belief that the provision is directory and not mandatory. It has been enacted with the object of imposing confidence in the fairness and impartiality of orders of Government and of showing to the public at large that orders of transfer are not made wantonly or capriciously or with the object of favouring one party or injuring another. It empowers Government to transfer cases from one tribunal to another and specifies the manner in which the power shall be exercised. The provision requiring Government to specify the reasons on which the order of transfer is based does not relate to the essence of the thing to be performed and compliance with its terms is a matter of convenience rather than of substance. A failure to comply with this provision is not likely to result in any injury or prejudice to the substantial right of interested persons or in the loss of any advantage, the destruction of any right or the sacrifice of any benefit. On the other hand, insistence on a strict compliance with it is likely to result in serious general inconvenience or injustice to hundreds of innocent persons who have no control over Government without promoting the real aim and object of the Legislature. The power to transfer is not so limited by the directions to give reasons that it cannot be exercised without following the directions given. No penalty has been provided for failure to comply with the terms of the provision and the enactment is silent in regard to the consequence of non-

1. *Ramakrishnamma* v. *Lakshmibayamma*, 1958 Andhra 497, 501; *Dwarka Prasad Misra* v. *Kamal Narain Sharma*, AIR 1964 Madh Pra 278.
2. *Liverpool Borough Bank* v. *Turner*, (1861)30 LJ Ch 379, *per* Lord Campbell followed in *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196; *Narendra Nath* v. *Amiya Choudhury*, AIR 1959 Cal 231, 234 (S.C. Lahiri J.); *Eravi Pillay Krishna Pillay* v. *Maluk Mohamed Sahul Mohd.*, ILR 1953 TC 405 (FB).
3. AIR 1955 SC 196. (It was observed that where the cognizance of the case has been taken and the case has proceeded to termination the invalidity of the precedent investigation does not vitiate the result unless miscarriage of justice has been caused thereby).
4. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at pp. 79-80; *see* also *United States* ex rel *Siggel* v. *Thomas*, (1894)156 US 353 :39 L Ed 450; *see* also *Sudhansu Kanta* v. *Manindra Nath*, AIR 1965 Pat 144, 150 (Mahapatra, J.).
5. AIR 1960 Punj 55; *see* also *Brijlal* v. *State of Patiala*, AIR 1957 Punj 100; *Prabhu Dayal* v. *State of Punjab*, AIR 1959 Punj 400.

compliance. No substantial rights depend on strict observance of this provision, no injury can result from ignoring it, and no court can declare that the principal object of the Legislature that cases should be capable of being transferred has not been achieved. Considerations of convenience and justice plainly require that this provision should be held to be directory and not mandatory." Lord Penzance observed in *Howard* v. *Bodington*[1] : " I believe, as far as any rule is concerned, you cannot safely go further than that, in each case you must look to the subject-matter, consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory." "Where, indeed," says Maxwell in *Interpretation of Statutes*,[2] "the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention." "The scope and object of a statute are the only guides," says Pal, J., in *Dharendra Krishna* v. *Nihar Ganguly*,[3] "in determining whether its provisions are directory or imperative." Thus in construing Acts of public utility where the framing of the rules and the making of the appointment is necessary in order that the objects of the Act may be attained, such words which might otherwise be considered permissive are really mandatory. The permissive form is a mere courteous convention.[4] Words only directory, permissory or enabling may have a compulsory force where the thing to be done is for the public benefit or in advancement of public justice.[5] Where a public body is vested with a power or discretion, it is for the exercise and not for inaction and it is especially so, when the power or discretion has been vested for the benefit of those who will be affected by its non-exercise.[6] Where no public policy is involved, the provisions of a statute should be held to be directory and not mandatory.[7]

According to our system of law, provisions in *criminal statutes*, meant for the protection of the accused persons, are to be considered to be imperative or mandatory, because the laws of this country protect the innocent to the greatest degree ; likewise when statutes provide for the doing of acts or for the exercise of the power or authority, they are generally assumed to be mandatory or peremptory, irrespective of the phraseology used though manifest intention of the Legislature may replace this assumption.[8]

Whether in a given context a statute should be termed *mandatory or directory* would depend upon the larger aspect of public interest, nicely balanced with the precious right of the comman man. Whether accused in a particular case had been prejudicial to such a degree or delay or to liberate him from the unabated agony resulting from delay is a matter for decision

1. (1877)2 PD 203, 211; *Clandex* v. *Blackwood*, 1 CLR 39, 55; *Chacko* v. *Chacko*, AIR 1959 Ker 149, 150.
2. 12th Ed. at p. 315; *see* also *Dasondha Singh* v. *State*, AIR 1957 Punj 13, 14; *Ram Asray Baiswar* v. *Subedar Pandey*, AIR 1964 All 169.
3. AIR 1943 Cal 266 at p. 277 (The question whether mandatory enactment ought to be construed as directory only or obligatory, depends upon the general scope and object of the statute to be construed and there are the guides upon which a court can decide whether the provisions are directory or imperative); *Gurdit Singh* v. *Gurdwara Committee*, AIR 1940 Lah 266 : ILR 1940 Lah 649.
4. *Lachmi Chand* v. *Ram Pratap*, AIR 1934 Pat 670 (2), 672 (FB).
5. *R.* v. *Tithe Commissioners*, (1849)14 QB 459; *Chotabhai Jethabhai Patel & Co.* v. *State of M P.*, AIR 1966 Madh Pra 34.
6. *Corporation of Madras* v. *Sundaram*, (1971)2 MLJ 365, 369 (Veeraswami, C.J.); *Jagannadha Rao* v. *State of Andhra Pradesh*, AIR 1960 Andh Pra 343, 346 (Chandra Reddy, J.).
7. *Nadella Satyanarayana* v. *Yamanoori Venkata Subbiah*, AIR 1957 Andhra 172, 181 (FB); *Krishnan Nair* v. *Narayan Nair*, ILR (1966)2 Ker 63.
8. *Ram Narain* v. *Bishambar Nath*, AIR 1961 Punj 171, 173.

in the individual case, are some of the guidelines pointed out by the Kerala High Court in *The Food Inspecter, Cannanore Municipality, Cannanore* v. *M.Gopalan.*[1]

5. Historical retrospect.—Previous statutes dealing with the same subject-matter may be looked to determine the mandatory or directory import of a provision.[2] Sutherland further says :

> "If an earlier statute has been construed and a later statute re-adopts the terms of the earlier statute, of course, the new statute will be construed the same as the old. If the statute under consideration has taken the place of an earlier statute on the same subject-matter, and one of the constructions contended for would cause the new statute to have no different effect than the old one, the other construction is proper. And if an Act amends a previous Act so as to change either a permissive or imperative verb in the original Act to the opposite in the amending Act, the rule is clear. It is uncertain what significance the Courts should give to the fact that the Legislature has omitted to re-enact some of the provisions of an earlier Act into a later one, under circumstances where such omission may have a bearing on what construction should be placed on the statute. In most cases this is probably a fact to be given very little weight. But in some cases, where the wording of a statute, and what should be included and what excluded, has obviously been decided with meticulous care, it may be an important fact."

6. Affirmative and negative words.—There is a difference between a case in which a court or an officer of a court omits to do something which by a statute it is enacted shall be done, and cases in which a court or an officer of a Court does something which by a statute it is enacted shall not be done. In the one case, the omission to do an act which by the statute it is enacted shall be done may not amount to more than an irregularity in procedure, whilst in the other case, in which the prohibition is enacted, the doing of the prohibited thing by the Court or the official is *ultra vires* and illegal and if *ultra vires* or illegal, it must follow that it was done without jurisdiction.[3] Negative words would give a statute an imperative effect.[4] Negative words are clearly prohibitory and are ordinarily used as a Legislative device to make a statute imperative.[5] Generally a command in the negative form is construed as mandatory, yet the principle is not without exception and decided cases are not wanting where though expressed in negative terms, the provision has been construed to be directory only.[6] It does not mean that the Legislature cannot incorporate in a statute or in a Constitution a provision mandatory in character by expressing it in the form of a positive injunction rather than in the form of a

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1. AIR 1991 Ker 240 : 1991 Cri LJ 1783 : (1991)1 Ker LT 520 (FB).
2. Sutherland : *Statutory Construction*, 3rd Ed, Vol III at p. 81 "The history of the statutory provision under consideration either in the course of the Bill, through the Legislature or in previous statutes on the same subject, may be an important aid in determining whether it should be construed as mandatory or directory. Where the history, of the Bill in the Legislature shows that when it was originally introduced it contained a permissive verb, and that when finally passed it had been changed into one of mandatory import, or *vice versa* it is clear that the verb used in the Bill as it was finally passed was intended to carry its ordinary meaning : discussions of the Bill in the Legislature, executive messages concerning the measure and the like may show the proper construction that should be given to a provision." I, respectfully, do not agree with all what has been said in the footnote.
3. *Rameshur Singh* v. *Sheodin Singh*, ILR 21 All 510, 517 (FB).
4. *R.* v. *Leicester*, (1827)108 ER 627 (The general rule of construction has been that, unless there are negative words, they are directory only); *R.* v. *Sneyd*, (1841)5 JP 579; *Cole* v. *Green*, (1843)134 ER 1145.
5. *Pentiah* v. *Muddala Veeramallappa*, (1961)2 SCR 295, 308 (Subba Rao, J.); *Lachmi Narain* v. *Union of India*, AIR 1976 SC 714.
6. *Zaheer Ahmad* v. *Hon. Kuladhipati, Bhopal University*, 1983 Jab LJ 716.

negative injunction.[1] For example, if the legislative intent is expressed clearly and strongly such as the use of 'must' instead of 'shall' that itself will be sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the inquiry further.[2] But in a statute respecting marriage prohibitory and negative words do not create a nullity unless such nullity be expressly declared in the statute.[3] *Corpus Juris*[4] deals with the matter thus :

> "It is a general rule that a statute which is negative or prohibitory, although it provides no penalty for non-compliance, or which contains exclusive terms, shows a legislative intent to make the provision mandatory, and it has been said that negative words in a grant of power are never construed as directory ; but provisions framed in negative language have, in some cases, been construed as merely directory. On the other hand, while the use of affirmative words only is a circumstance to be construed in determining whether the statute is mandatory or directory, an intention that it shall be directory is not conclusively drawn by the absence of negative words, since affirmative words may and often do imply a negative of what is not affirmed. So affirmative words, if absolute, explicit and peremptory, showing that no discretion was intended to be given, render the statute mandatory. But the rule that an affirmative statute, without any negative expressed or implied, is directory merely and leaves the common law in force has more special reference to statutes giving a new remedy."

In *Diversy* v. *Smith*,[5] it was held that an affirmative statute of a new law which directs a thing to be done in a certain manner, means that such thing shall not be done in any other manner, even though there be no negative words prohibiting it. This shows that affirmative words may, at times, be so absolute as to render a statute imperative. The following observations are quoted on the other hand, from *Bowditich* v. *New England Mutual Insurance Co.*[6] by Crawford in *Statutory Construction* at pp. 524-525 :

> "Each statute must be judged by itself as a whole, regard being had not only to its language, but to the objects and purposes for which it was enacted. If the statute does not declare a contract made in violation of it to be void, and if it is not necessary to hold the contract void in order to accomplish the purpose of the statute, the inference is that it was intended to be directory, and not prohibitory of the contract. The statute we are considering, does not, in terms, prohibit the corporation from lending money to its officers, or declare that such contracts shall be void. It is directed to the officers, and by its terms seems intended to furnish rules to regulate the duty of the officers to the corporation and its members. It does not say that the corporation shall not lend, but that the officers shall not borrow ..... It is designed to forbid officers who are charged with the duty of investing funds of the corporation borrowing from themselves and thus to prevent the risk of the funds being invested by them, under the promptings of self-interest, upon insufficient security. In other words, the purpose is to protect the corporation and the policy-holders from the dishonesty or self-interest of the officers. It is intended as a shield to the corporations. To construe it as making the promises of the officers, who borrow money in violation of its provisions void, would defeat the main purpose of its enactment, and would visit the consequences of the unlawful act of the officers not upon themselves, but upon the

1. *D.A. Koregaonkar* v. *State*, AIR 1958 Bom 167, 172 : ILR 1957 Bom 120.
2. *Lachmi Narain* v. *Union of India*, AIR 1976 SC 714.
3. *Cotterall* v. *Sweetman*, (1845)163 ER 1047; *see* also *Abhiraj Kuer* v. *Debendra Singh*, AIR 1962 SC 351, 354.
4. Vol. 59 at pp. 1075-1076.
5. 108 Ill 378 followed in *Vestel* v. *Robertson*, 277 Ill 425.
6. 55 Am Rep 474.

corporations for whose protection the statute was made. It would require a plain expression of the legislative intention to lead us to such a construction."

Crawford remarked earlier at pp. 523-524 of *Statutory Construction* :

"Prohibitive or negative words can rarely, if ever, be directory, or, as it has been aptly stated, there is but one way to obey the command 'Thou shalt not' and that is to completely refrain from doing the forbidden act. And this is so, even though the statute provides no penalty for disobedience. Accordingly, negative, prohibitory and exclusive words or terms are indicative of the legislative intent that the statute is to be mandatory but their absence does not, of itself, conclusively indicate a legislative intention that the statute is permissive, for affirmative words may imply a negative, although of course, their absence is a circumstance to be considered. Nevertheless, where affirmative words are used if a negative is neither expressed nor implied, the statute is merely directory."

"What intention is to be attributed by inference to the legislative ? Where, indeed, the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention 'and then' where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with it seems neither unjust not inconvenient to exert a rigorous observance of them as essential to the acquisition of the right or authority conferred and it is, therefore, probable that such was the intention of the Legislature."[1]

Lord O'Hagan observed in *R. v. All Saints Wigan (Churchwardens)*[2] : "I do not know how language could have made the intent more clear and I can see no sufficient reason for holding the clause directory. Words, though affirmative, are not necessarily so if they 'are absolute, explicit and peremptory.' In Halsbury's *Laws of England*,[3] it is stated that affirmative statutes are sometimes regarded as *prima facie* directory and negative statutes as mandatory. At the same time, affirmative words may be so absolute and peremptory that they make the statute mandatory. On the other hand, a provision derived by inference from negative language may be merely directory. When an affirmative direction is followed by a negative or limiting provision, the negative or limiting provision makes the statute mandatory."[4]

7. Mandatory and permissive words.—The use of the expression 'may' or 'shall' in a statute is not decisive,[5] and other relevant provisions which can throw light have to be looked into in order to find out whether the character of the provision is mandatory or directory.[6] In such a case the legislative intent has to be determined.[7] The words 'may', 'shall', 'must' and the like, as employed in statutes, will in cases of doubt require examination in their particular context in order to ascertain their real meaning or the opposite one. Such words, all words, must however, be initially presumed to have been used in their natural and ordinary sense. Words of command are to be taken as mandatory and words of authorization or licence as merely permissible.[8]

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1. *See* Maxwell's *Interpretation of Statutes* while dealing with imperative or directory aspects, 11th Ed. at pp. 362-364 quoted in *(Smt.) Rudrani Chatterji* v. *Nabadwip Municipality*, AIR 1990 Cal 397.
2. (1876)1 AC 611.
3. *See* 4th Ed., Vol. 44 at p. 583.
4. *Matter of* Douglas, 49 N.Y. 42 cited by Francis, J. McCaffrey, at p. 109.
5. *(M/s.) Atlas Cycle Industries, Ltd.* v. *State of Haryana*, (1979)2 SCC 196 (202, 203, 204).
6. *Hukam Singh* v. *State of Punjab*, 1976 Cr LT 1 (FB); *State of Punjab* v. *Kartar Singh Grewal*, (1977)79 Punj LR 311 (DB).
7. *Bhaurilal* v. *Sub-Divisional Officer*, AIR 1973 Pat 1, 16 (FB); (K.B.N. Singh, J.), following *State of Uttar Pradesh* v. *Jogendra Singh*, (1964)2 SCR 197; *Sardar Govind Rao* v. *State of Madhya Pradesh*, (1965)1 SCR 678; *State of J. & K.* v. *Abdulghani Patwari*, 1979 Kash LJ 46 (FB) Para 6; *Maniyani* v. *State of Kerala*, 1979 Ker LT 183; *State of Punjab* v. *Kartar Singh Grewal*, (1977)79 Punj LR 311 (DB).
8. For particular signification of these words, *see* Part II.

Ordinarily, the words 'shall' and 'must' are mandatory and the word 'may' is directory although they are often used inter-changeably. It is this use. without regard to the literal meaning, that generally makes it necessary for the courts to resort to construction in order to ascertain the real intention of the draftsman. Nevertheless, it is generally presumed that the words are intended to be used in their natural meaning. Law Reports do show that when a statute deals with the rights of the public, or where a third person has a claim in law to the exercise of the power, or something is directed to be done for the sake of justice of public good, or when it becomes necessary to sustain the constitutionality of a statute, the word 'may' is sometimes used as 'must'. In the last analysis it is always a matter of construction of the statute in question.[1]

It may, however, be noted that the presumption that the Legislature used mandatory and permissive terms in their primary sense is a rebuttable one. The intention of the Legislature will control and prevail over the literal meaning of these words. The literal and ordinary meaning of imperative and permissive terms will give way when the interpretation of the statute according to the literal meaning of its words would lead to absurd, inconvenient or unreasonable results. But as Black observes, this power is 'dangerously liable to abuse, and one which should be most carefully guarded in its exercise'.[2]

Shall.—The use of the word 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid, on the other hand, it is not always correct to say that when the word 'may' has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid.[3]

The question whether particular provision of a statute which on the face of it appears mandatory inasmuch as it used the word 'shall', or is merely directory cannot be resolved by laying down any general rule, but depends upon the facts of each case particularly on a consideration of the purpose and object of the enactment in making the provision. To ascertain the intention, the Court has to examine carefully the object of the statute, consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part.[4] The purpose for which the provision has been made, the object to be attained, the intention of the Legislature in making the

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1. *Sidhu Ram* v. *Secretary, Railway Board*, AIR 1967 Punj 383, 384 (D) (S.K. Kapur, J.); *see* also *Bhikan Bobla* v. *Punjab State*, AIR 1963 Punj 255, 261(FB) (Tek Chand, J.); *Food Inspector* v. *Rang Lal Gujar*, 1982 Jab LJ 777 (DB).
2. Black : *Construction and Interpretation of the Laws*, 2nd Ed. at p. 533
3. *State of U.P.* v. *Manbodhan Lal*, AIR 1957 SC 912, 917-18; *see* also Crawford : *Statutory Construction*, Art. 26 at p. 516; see *Khub Chand* v. *State of Rajasthan*, AIR 1967 SC 107, where 'shall' was considered mandatory; *Collector of Monghyr* v. *Keshav Prasad*, AIR 1962 SC 1694; *Ram Asrey Baiswar* v. *Subedar Pandey*, AIR 1964 All 169; *Sadi Harbaksh Singh* v. *Central Government*, AIR 1964 Punj 137; *Washdev Singh* v. *Union of India*, ILR 1969 Delhi 469 : AIR 1970 Delhi 85, 88 (Dua, C.J.) : Context and statutory aim and object, failing that normal meaning in English language; *Kalyan Singh* v. *Baldeo Singh*, AIR 1961 HP 2, 7 (Capoor, J.C.); *State of Madhya Pradesh* v. *Azad Bharat Finance Co.*, A.R 1967 SC 271; *Kusumchand Kisanlal Chandak* v. *District Judge, Nagpur*, AIR 1968 Bom 381; *Md. Yamin* v. *Jafar Mohammad*, AIR 1968 Delhi 149.
4. *K. Narasimhiah* v. *H.G. Singri Gowda*, AIR 1966 SC 330; *In re* Presidential Poll, (1974)2 SCC 33; *Smt. Juthika Bhattacharya* v. *State of M.P.*, (1976)4 SCC 96 : 1976 Jab LJ 873 (SC); *Lakhbir Chand* v. *Land Acquisition Collector, Delhi*, (1979)81 Punj LR 73; *M.M. Pandya* v. *Bhagwandas Chiranjilal*, (1979)20 Guj LR 553 (FB); *Martand Balwant* v. *Chaganlal Ambalal*, (1978)19 Guj LR 487 (DB); *Collector of Monghyr* v. *Keshava Prasad Goenka*, AIR 1962 SC 1694; *Natha Singh* v. *State of M.P.*, 1982 Jab LJ 805.

provision, the serious inconvenience or injustice which may result in treating the provision one way or the other, the relation of the provision to other consideration which may arise on the facts of any particular case have all to be taken into account in arriving at the conclusion whether the provision is mandatory or directory.[1] Two main considerations for regarding a rule as directory are : (1) absence of any provision for the contingency of any particular rule not being complied with or followed, and (2) serious general inconvenience and prejudice to the general public would result if the act in question is declared invalid for non-compliance with the particular rule.[2]

Notwithstanding the use of the permissive expressions, such as, 'as he thinks fit', 'may, at his discretion', etc., a power conferred by a statutory rule may be imperative if it is conferred on public servants for performance of public duties.[3]

The mere presence of the word 'shall' does not necessarily mean that proceedings in disregard of the requirement of the statute are null and void. The question whether it is so is in the main governed by considerations of convenience and justice. An intention that the disregard of the provision should be followed by a nullification of the proceedings must not be attributed to the Legislature when that result would involve general inconvenience or injustice to innocent persons or advantage to those guilty of the neglect, without promoting the real aim and object of the Act. The Arbitration Act does not say that where the reference is to an even number of arbitrators the failure to appoint an umpire vitiates the award. Whatever may be the result in a case of a disagreement between the arbitrators, where no disagreement arises between the arbitrators, and there is no need for an umpire, to regard the omission to appoint him as fatal to the validity of all the proceedings would only result in general inconvenience without promoting any object considered essential by the statute. When the objector cannot point to any prejudice because of the omission to appoint the umpire, the omission does not vitiate the award.[4] In the same Act, Clause 2 of the First Schedule is not mandatory.[5] The words 'shall' torn from its context, cannot make the provision of the section wherein that word is used obligatory and imperative. Section 82 of the Representation of the People Act, 1951, is merely directory in spite of the use of the words 'shall join'. The failure to join as respondents any candidates who were duly nominated but had withdrawn their candidature does not entail the dismissal of the petition on that ground alone.[6] As to the mandatory/directory nature of provisions relating to procedure for filing nomination under election rules.[7]

It is true that a legislative provision expressed in a permissive form is sometimes construed as really mandatory and the word 'may' is taken as if it read 'must or 'shall'. Ordinarily, however, the word 'may' is used in a permissive sense and not in the sense of being obligatory.[8]

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1. *Raza Buland Sugar Co.* v. *Municipal Board, Rampur*, AIR 1965 SC 895 : (1965)25 SCA 431; *Mohd Mahboob Khan* v. *State Transport Appellate Tribunal*, 1982 All LJ 300; *Martand Balvant* v. *Chaganlal Ambalal*, (1978)19 Guj LR 487 (DB); *M.M. Pandya, Food Inspector* v. *Bhagwandas Chiranjilal*, (1979)20 Guj LR 555 (FB); *Karnataka State Road Transport Corporation* v. *Karnataka State Transport Authority*, AIR 1984 Kam 4 (DB).
2. *Thangaswami* v. *Chief Secretary, Madras*, AIR 1965 Mad 225.
3. *Hindusthan General Electric Corp., Ltd.* v. *Superintendent of Central Excise*, AIR 1966 Pat 248, 253 (Narasimham, C.J.); *Jagannadha Rao* v. *State of Andhra Pradesh*, AIR 1960 Andh Pra 343, 346 (Chandra Reddy, J.).
4. *Tikaram* v. *Hansraj*, AIR 1954 Nag 241.
5. *Chowdhury and Gulzar Singh* v. *Frick India Ltd.*, AIR 1979 Delhi 97.
6. *Shah Mohammad Umair* v. *Ram Charan Singh*, AIR 1954 Pat 225.
7. *K. Pullaya* v. *Konarchapalli Weavers' Co-operative P. & S. Society*, AIR 1980 AP 289, case under A.P. Co-operative Society Rules, 1964.
8. *Ram Devi* v. *State*, ILR (1963)2 All 543.

But that is only when a power is conferred on a person by saying that he may do a certain thing, giving him liberty to do it so far as the form of expression goes, which on the other hand, it appears either from the nature of the thing to be done or from other indication in the provision, that the Legislature intended to make it the duty of the person concerned to exercise the power. In such a case, it is said that the effect of the word 'may' is not to make it optional or discretionary with the donee of the power to exercise it or not, but the effect is to enable him to exercise it which is otherwise made his duty to do. That principle of construction cannot apply in a case where the word 'may' is not used with a verb which confers a power on a certain person and enables or permits him to exercise it, but is used with a verb in the passive voice which occurs in an adjectival phrase, describing a fact and occurs in conjunction with other words which completely exclude implications of an obligation.[1] If, however, the prescription was imperative or absolute in its terms, being in the nature of a *condition precedent* to the acquisition of the power itself, it is clear that nullification for disobedience of the prescription is implicit.[2]

On its true construction Section 85 of the Representation of the People Act, 1951, does not make it imperative on the part of the Election Commission to dismiss the election petition for defective verification. The word 'shall' in the section is not conclusive, and the intention of the Legislature must be gathered on a reading of the enactment as a whole. Whatever might be the powers of the Election Commission under Section 85, when once the matter comes before the Tribunal, it is thereafter governed by Section 90(4) and under the latter section the Tribunal has a discretion in the matter of dismissing the petition for non-compliance with the requirements of Section 83.[3]

Where under the Rules framed in pursuance of an Act (Election to Market Committee) there is a requirement that the deposit receipt should be attached to the nomination paper, the requirement is satisfied if there is an actual deposit though the receipt is not attached to the nomination paper.[4] The principle is that when by the Rules framed under a statute a power given by the Statute is to be exercised in certain manner that power should be exercised in that particular manner and in no other.[5]

Sections 234 and 239*(c)*, Criminal Procedure Code, are not mandatory but permissive. If each of the offences is to be improved by distinct and separate evidence and this is likely to lead to confusion in the trial, the Court might well—and indeed should—refuse to try more than one offence at a time.[6]

The expression 'shall be punishable' clearly means that the offender shall not escape the penal consequences.[7]

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1. *Manik Chand Chawdhary* v. *State*, 62 CWN 94; *Collector* v. *Habib Ullah Din*, AIR 1967 J & K 44 (FB); *Mithila Motor Transport Corporation Society* v. *State Transport Authority, Bihar*, ILR 45 Pat 1544; *Ram Chander* v. *State of Haryana*, ILR (1968)1 Punj 234; Indo-Burmah Wood Products, Ltd., *In re.*, AIR 1968 Cal 198; but see *Ramgopal* v. *Asstt. Housing Commissioner, U.P.*, AIR 1969 All 278 (FB), where use of the word 'may' was held to be permissive. For use in the other sense see *Brijesh Kumar* v. *State of U.P.*, 1916 All LJ 372.
2. *Ratilal Bhogilal Shah* v. *State of Gujarat*, AIR 1966 Guj 244, 247, (Mehta, J.) : Arms Act, Section 18*(a)*; recording of reasons for cancellation or suspension of licence is mandatory.
3. *A. S. Subbarao* v. *M. Muthiah*, AIR 1954 Mad 336.
4. *Amarnath Gupta* v. *Sub-Divisional Officer, Faridkot*, AIR 1965 Punj 505.
5. *Chhotabhai Jethabhai* v. *State of Madhya Pradesh*, AIR 1966 MP 34, 41 (Dixit, C.J.); *Chunilal Mansa Ram* v. *Ratti Ram*, AIR 1965 Punj 340, 341-2 (Gurdev Singh, J.); jurisdiction affected.
6. *Chunoo* v. *State*, AIR 1954 All 795.
7. *State of Maharashtra* v. *Jugmander Lal*, AIR 1966 SC 940.

Provisions of Section 35(3) of the Bombay Municipal Boroughs Act, 18 of 1925, requiring notice of a special general meeting to be given in writing and prescribing the mode of service of notice, are directory and not mandatory, and any omissions in the manner of service of notice are mere irregularities which could not vitiate the proceedings unless it was shown that those proceedings had prejudicially affected the proceedings.[1]

The use of the word 'shall', in Section 177, Criminal Procedure Code, however, indicates the mandatory nature of the provision and all offences which do not come within the special provisions under the exceptions provided by the Code are to be tried by a Court within the local limits of whose jurisdiction the offences are committed.[2]

The fact that the section uses the word 'shall' and imposes an obligation upon the Collector to refer the matter of the decision of the Court, does not preclude the application of the provision for limitation prescribed in regard to the making of an application for reference.[3]

8. Where statute creates new right, privilege or immunity and regulates the manner of its exercise.—Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred and it is, therefore, probable that such was the intention of the Legislature.[4] Where a statute creates a new right, privilege or immunity and regulates the manner of its exercise, it must be construed as mandatory. The rights to hold an election stand for an election and to be elected as a member of a Municipal Committee are all rights created by the Madhya Bharat Municipal Act, 1954 and the rules made thereunder. They are not common law rights existing apart from the statutory provisions. It follows therefore that the provisions of the Act and rules made thereunder relating to the constitution of the Municipal Committee must be strictly followed and the right to stand for an election and to present a nomination paper can be exercised only in the manner and within the time prescribed by the Act and the Rules. The direction in Rule 26(1) that the person presenting nomination paper shall sign it in the presence of the Election Officer at the time of the presentation is absolute and mandatory so as to invalidate the nomination paper if it is not complied with.[5]

If the Statute is mandatory, the act or thing done not in the manner or forms prescribed can have no effect or validity; if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good.[6]

Statutory provisions which abridge right and are declared to be mandatory are to be strictly construed.[7]

9. Where disobedience made penal.—Generally speaking the position is that the language of each statute along with other circumstances has to be seen in order to find out whether the statutory direction is mandatory or directory. One of the tests for determining

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1. *Shyabuddin Sab Mohidinsab Akki* v. *Gadag Betgeri Municipal Borough*, AIR 1955 SC 314. (Intimation had been given to all the councillors who were present at a prior meeting.)
2. *A.H. Desai* v. *State of Mysore*, AIR 1956 Mys 46.
3. *Kajari Lal Agarwal* v. *Union of India*, AIR 1966 SC 1538
4. *Bai Kamla* v. *Mane*, AIR 1966 Guj 37, 39 (Mehta, J.), quoting Maxwell on *Interpretation*, 1962 Ed. at p. 364.
5. *Purshottamas* v. *Collector, Gird*, AIR 1955 MB 179.
6. *Mohanlal Ganpatram* v. *Sayaji Jubilee, etc. Co. Ltd.*, AIR 1965 Guj 96, 104 (Bhagwati, J.); see also *Seth Banarsi Dass* v. *Cane Commissioner*, 1963 (Supp) 2 SCR 760, 779-81 (Hidayatullah, J.); *Hori Lal* v. *Deputy Director of Consolidation*, 1982 ALJ 223.
7. *Rama Chandra Rao* v. *Lakshaminarayna Sastri*, (1963)2 Andh WR 235.

the nature of a provision is to see whether it entails any penal consequences[1] and in cases where the disobedience of a provision is made penal it can safely be said that the provision is mandatory.[2] If no penalty is provided for non-compliance with the provisions of a statute, it may be held to be non-mandatory.[3] In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the tribunal entrusted with the trial of the case is not affected. Thus non-compliance with the provisions of the law relating to the impleading of parties, *viz.*, Section 82 of the Representation of the People Act, 1951, is not necessarily fatal and can be cured. It is for the tribunal to determine the matter as and when it arises in accordance with the provisions of C.P.C., which have been expressly made applicable.[4]

10. Where there can be no degrees of compliance.— Rule 47(1)*(c)* of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, provides that a ballot paper shall be rejected if it is spurious or if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established. There can be no degrees of compliance so far as rejection is concerned, and that is conclusive to show that the provision is mandatory.[5] In order to determine whether a particular provision is mandatory or directory, it would be necessary to ascertain whether the omission to comply with the requirement affects the very foundation or authority for the proceedings so as to make it void and incapable of being validated. It is always difficult to demarcate with any degree of accuracy in a particular case what is mandatory and what is directory or what is irregularity and what is a nullity. When a question arises as to how far the proceedings are affected by the contravention of any provision it is necessary to see the scope and object of the particular provision which is said to be violated.[6]

11. Test.—"There are no ready test", says the Supreme Court in *Dal Chand* v. *Municipal Corporation, Bhopal*[7] "or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief but the enforcement of a particular provision literally to its letter will lead to defeat that design the provision

1. *State of J & K* v. *Abdul Ghani*, 1979 Ker LJ 46 (FB); *Lakhbir Chand* v. *Land Acquisition Collector, Delhi*, (1979)81 Punj LR 73; *Jagannath* v. *Jaswant Singh*, AIR 1954 SC 210; *Administrator Municipal Committee, Charkhi Dadri* v. *Ramji Lal Bagla*, AIR 1995 SC 2329; *Manbodhan Lal Srivastava* v. *State of U.P.*, AIR 1957 SC 912, relied on. (Section 44-A, Punjab Town Planning Act was held to be directory notwithstanding the use of 'the word 'shall'.).
2. *Banarasi Das* v. *Cane Commissioner*, U.P., AIR 1955 All 86, 91. [The provision in Section 18(2) of the U.P. Sugar Factories Control Act 1 of 1938 is mandatory inasmuch as the word "shall" has been used and a penalty for intentionally failing to enter into an agreement is also provided for by Section 27(3) of the Act]; *Sant Prasad Singh* v. *Dasu Sinha*, AIR 1964 Pat 26 : 1963 BLJR 897; *Jagdish Chandra Gupta* v. *Union of India*, AIR 1965 Punj 129; *S. Vellaikkan* v. *State of Tamil Nadu*, (1988)1 MLJ 128.
3. *Amar Krishna* v. *Deputy Commissioner*, AIR 1958 All 710. (Section 56 of U.P. Court of Wards Act, 1912); *Martand Balwant Risaldar* v. *Chhaganlal Ambalal*, (1978)19 Guj LR 487 (DB).
4. *Jagan Nath* v. *Jaswant Singh*, AIR 1954 SC 210; *Ram Chandra Prasad* v. *State of Bihar*, AIR 1965 Pat 250, followed in *Lakshmana Shastri* v. *State of Bihar*, 1966 BLJR 770 : AIR 1967 Pat 160.
5. *Hari Vishnu* v. *Ahmad Ishaque*, AIR 1955 SC 245.
6. *Ramakrishnamma* v. *Lakshmillayamma*, AIR 1958 Andh Pra 497, 501 (Jaganmohan Reddy, J.).
7. AIR 1983 SC 303.

must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of." Statutes conferring private rights are in general construed as being imperative in character and those creating public duties are construed as directory.[1] In *The Liverpool Borough Bank* v. *Turner*,[2] Lord Campbell, L.C., in an appeal from the Vice-Chancellor laid down the test : "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the act, and, upon a review of the case in that aspect, decide whether the matter is what is called imperative or only directory.

A realistic test for the interpretation of any such provision, when question arises whether it is absolute and imperative or not, is to consider the importance of exact and literal observance of it having regard to the purpose and object of the statute, the end sought to be achieved and the consequences that must follow upon preferring one meaning to another bearing in mind the subject-matter and the relation of the provisions to the general object intended to be secured by the Act as also the scheme of the Act. The presence or absence of negative words in the provision at times serves a useful test of the character of it. An inference may be drawn from the negative language used in laying down the requirement of a provision which prescribes something to be done under it; as, for instance, when it is enacted that it shall be done in a particular manner and in no other manner. In such a case the requirement is regarded as absolute.[3] There is no general rule, however, that an enactment expressed in negative and prohibitory language must be considered as absolute. Nor on the other hand, is there any general rule that an enactment expressed in affirmative language must not be considered as absolute.

Difficulty arises at times when the court has to interpret affirmative provisions in a statute prescribed for public benefit. As a general rule a provision which enacts a rule of public policy or a condition precedent for the purpose of benefiting the public would be regarded as indispensable. So any construction should strive to avoid adopting one which is in any way adverse to the public interest.[4] But this also is a rule of construction useful to a limited degree and one though helpful at times is not to be applied with blind obedience and must operate in harmony with other broad general rules of interpretation. Every provision and every condition in a statute of this nature under consideration will not be read as imperative and absolute. The court will closely scrutinise the provision and draw a distinction between that which goes to the root of the matter and cannot be permitted to be violated with impunity and that which does not affect the basis and essence of the matter. It often happens that the statute does not consist of one provision or one condition but a number of different provisions some of which are of the nature of antecedent conditions and some regulating the mode or manner in which something is to be done. In any such case the provision relating to the condition precedent must, as a general rule, compel an imperative construction whereas that which relates to the mode or manner of fulfilling that condition may be considered as requiring a directory construction. The affirmative provision which relates to the mode or manner of exercising jurisdiction or an authority and is not limitative of the jurisdiction or authority should be given directory

1. *Arunima Das* v. *Secretary, Board of Secondary Education*, AIR 1957 Cal 182, 185; *Caldow* v. *Pixell*, (1877)2 CPD 562.
2. (1860)30 LJ Ch 379. Quoted in *Govt. of Assam* v. *Sahebullah*, AIR 1924 Cal 1, 7 : ILR 51 Cal 1 (FB); *see* also *Hira Lal Ghose* v. *King-Emperor*, AIR 1924 Cal 889 : ILR 52 Cal 159.
3. *Haridwar Singh* v. *Begum Samruj*, AIR 1972 SC 1242; *Mannalal Khetan* v. *Kedarnath Khetan*, 1976 UJ (SC) 1017.
4. See *Ashok Ambu Parmar* v. *Commissioner of Police, Vadodara City*, AIR 1987 Guj 147 : 1987 Cr LJ 886 : 1987 Cr LR (Guj) 33 : (1987)1 Guj LH 240 : 1987(1)28 Guj LR 580 : (1987)2 Rec Cr R 89 (FB).

construction.[1]

(i) Essence of the matter or mere matter of form.—"Whether a statute is mandatory or directory depends on whether the thing directed to be done is of the essence of the thing required, or is a mere matter of form. Accordingly, when a particular provision of a statute relates to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, it is generally regarded as directory, unless followed by words of absolute prohibition; and the same is true where no substantial rights depend on the statute, no injury can result from ignoring it, and the purpose of the Legislature can be accomplished in manner other than the prescribed, with substantially the same results. But a provision relating to the essence of the thing to be done, that is, to matters of substance, is mandatory, and when a fair interpretation of a statute which directs acts or proceedings to be done in a certain way, shows that the Legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, or when some antecedent and pre-requisite conditions must exist prior to the exercise of power, or must be performed before certain other powers can be exercised, then the statute must be regarded as mandatory."[2] In the words of Rangarajan, J. in *Lakhan Chandra* v. *State of Assam*,[3] "The question whether a provision is mandatory or directory has to be determined upon a number of considerations. The effect, however, of the former is that if neglected or contravened a Court of law will treat the thing which is being done as invalid and altogether void; the effect of the latter is that such neglect or contravention would not render the act or action taken invalid and altogether void—it would then be a question for consideration on the facts of each case whether by reason of the said neglect or contravention it has resulted in any prejudice." "In other words," says Crawford,[4] "most statutes of a comprehensive and detailed nature are likely to contain many requirements which pertain to minor or non-essential particulars. The basic test by which to determine whether the requirement is essential or not, is to consider the consequences of the failure to follow the statute. In this way the importance of the requirement will be revealed. If the requirement is revealed to be important, it may logically be assumed that the Legislature intended that it be met; if found to be unimportant, that it need not be met.....After all, if every minor and unessential detail of a statute were considered imperative, almost every act performed in accordance therewith would be invalid or ineffective, whether the act was performed by individuals or by public officers. The confusion and impotency which would take place would in all probability break down our legal system. In order for law to be administered efficiently, effectively and expeditiously, the distinction between essential and non-essential requirements must be maintained, either by the Courts or by express legislative enactment." "In the absence of an express provision, the intention of the Legislature," says Pal, J. in *Dharendra Krishna* v. *Nihar Ganguly*,[5] "is to be ascertained by weighing the consequences of holding statute to be directory or imperative.....In each case the subject-matter is to be looked to and the importance of the provision in question in relation to the general object

(ii) Basic test; consequences of failure to follow the statute

1. *Motibhai* v. *State of Gujarat*, AIR 1961 Guj 93, 101; *Narottam Das* v. *Gowarikar*, AIR 1961 MP 182; *Ram Narain* v. *Bishambar Nath*, AIR 1961 Punj 171; *see* also *Jaiwant Rao* v. *State of Rajasthan*, AIR 1961 Raj 250 (FB).
2. 59 Corpus Juris at pp. 1074-75.
3. 1977 ALR 6.
4. *Statutory Construction*, at p. 518.
5. AIR 1943 Cal 266, 277-278; *Calcutta National Bank Ltd.* v. *Rangasdon Tea Co. Ltd.*, AIR 1967 Cal 294, 305 (S.P. Mitra, J.).

intended to be secured by the Act, is to be taken into consideration in order to see whether the matter is compulsory or merely directory." "There may be many provisions in Acts of Parliament," observes Lord Penzance in *Howard* v. *Bodington*,[1] "which although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the Legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Courts would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceeding that subsequently follows must come to an end." Some authorities have made the question to depend on the presence or absence of words declaring the effect of a failure to comply with the statute, holding that a statute which requires certain things to be done, or provides what result shall follow a failure to do them, is mandatory, but that if the statute does not declare what result shall follow a failure to do the required acts, it is directory.[2] Lord Blackburn observed in *Middlesex Justices* v. *R.*[3] : "There is a numerous class of cases in which it has been held that certain provisions in Acts of Parliament are directory in the sense that they were not meant to be a condition precedent to the grant, or whatever it may be, but a condition subsequent : a condition as to which the responsible persons may be blameable and punishable if they do not act upon it but their not acting upon it shall not invalidate what they have done, these persons having nothing to do with that." "In the absence of an express provision," says Denman, J., in *Caldow* v. *Pixell*,[4] "the intention of the Legislature is to be ascertained by weighing the consequences of holding a statute to be directory or imperative."

"After all, Courts are to do justice," says the Supreme Court, "not to wreck.....this end product on technicalities. Viewed in the perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied within time or in extended time",[5] and taking the view that if breach can be corrected without injury to disposal of the case, the Court should not enthrone....a regulatory requirement into a dominant desideratum. It was held that Rule 3 of the Punjab and Haryana High Court Rules and Orders, Vol. V, relating to filing of three copies of Memorandum of appeal in Letters Patent Appeal is directory.

The fact that a statutory provision is mandatory in form need not necessarily indicate that any violation of it would imply a nullification. The question whether a contravention thereof would lead to a total nullification of the transaction or only to an invalidation making it voidable at the option of the person prejudiced thereby, depends not on the form but on the purpose of the enactment. If the provision is designed to promote public interests, its contravention would entail a nullification, but if the object is to promote private interests of individuals or groups of individuals, its contravention would only make the transaction voidable at the option of the person affected thereby.[6]

In *Miller* v. *Lakewood Housing Co.*,[7] the Ohio Court said : "Whether a statutory requirement is mandatory or directory depends on its effect. If no substantial rights depend on it and no injury can result from ignoring it, and the purpose of the Legislature can be accomplished

1. (1877)2 PD 203; *see* also *District Board, Kheri* v. *Abdul Majid Khan*, AIR 1930 Oudh 434, 440.
2. 59 Corpus Juris at p. 1075; *Breja Behara* v. *Gangadaram Behera*, AIR 1990 Orissa 94.
3. (1884)9 AC 778.
4. (1877)2 CPD 562, 566.
5. *State of Punjab* v. *Shyam Lal Murari*, 1976 Rev LR 472 (SC).
6. *Chacko Mathew* v. *Ayyappan Kutty*, AIR 1962 Ker 164, 174 (FB) (Madhavan Nair, J.).
7. (1932)125 Ohio St. 152.

in a manner other than that prescribed and substantially the same results obtained, then the statute will generally be regarded as directory; but if not, it will be mandatory." In considering whether a statute is imperative, a balance may be struck between the inconvenience of rigidly adhering to, and the inconvenience of sometimes departing from, its terms.[1]

(iii) No fixed rule giving an exact answer.—There can be no rule of universal application for the determination of the question whether a provision in a statute is imperative or merely directory, the question in each case being one to be decided on a consideration of the scope, object and nature of the statutory provision.[2] There is no fixed rule that will give an exact answer to the question of mandatory and directory provisions. The various special rules deduced from the authorities offer no more than a clue or guide to the character of a statutory provision. As of fact, some of the rules are so weighed with exceptions that it is difficult to fix their value. Each individual case has to be decided on the basis of its facts. A realistic approach to the problem is to utilize the recognized aids to construction with a view to ascertaining the actual legislative intent. One of such sources is the purpose of the statute, that is, the purpose with which the law was made. In the *matter of Cuddeback*,[3] the Court said : "In determining whether the provision of a statute is mandatory or directory, the end sought to be attained by the provision is always important to be considered, and if the end cannot be effectuated by holding the provision to be directory, it must, if it can consistently with the language, be held to be mandatory."

No statutory provisions are intended by the Legislature to be disregarded, but where the consequences of not obeying them in every particular are not prescribed, the court must judicially determine them. In doing so they must necessarily consider the importance of the literal and punctilious observance of the provision in question to the object the Legislature had in view. If it is essential it is mandatory, and a departure from it is fatal to any proceeding to execute the statute or to obtain the benefit of it.....The difference between mandatory and directory statutes is one of effect only. The question generally arises in a case involving a determination of right as affected by the violation of, or omission to adhere to, statutory directions. This determination involves a decision of whether or not the violation or omission is such as to render invalid acts, or rights, powers, privileges or immunities claimed thereunder. If the violation or omission is invalidating, the statute is mandatory; if not, it is directory.[4]

According to the Supreme Court in order to determine whether a provision is mandatory or directory, there is no general rule which may help. It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. The use of the expression 'shall' is not considered decisive and the question whether a provision is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed.[5]

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1. *Velliappa* v. *Subrahmanyam*, ILR 39 Mad 485; *Caldow* v. *Pixell*, (1877)2 CPD 562.
2. *Appannah* v. *State of Mysore*, AIR 1962 Mys 157, 159 (Somnath Iyer, J.); quoting *Jagannath* v. *Jaswant Singh*, 1954 SCR 892; *H.N. Rishbud* v. *State of Delhi*, (1955)1 SCR 1150; *Hari Vishnu Kamath* v. *Ahmed Ishaque*, (1955)1 SCR 1104; *see* also *Ratnawa* v. *Gurushiddappa*, AIR 1962 Mys 135, 136 (Hegde, J.).
3. 39 N.Y.S. 388 Cited by Francis, J. McCaffrey, at pp. 103-4; *Ramchandra Keshav Adke* v. *Govind Joti Chavare*, 1975 Mah LJ 515 (SC).
4. *Manglaram* v. *State of Rajasthan*, AIR 1970 Raj 32, 34-35 (B.P. Beri, J.); quoting Sutherland, *Statutory Construction*, 3rd Ed. Vol. III at p. 77; *Sharifuddin* v. *Abdul Ghani*, AIR 1980 SC 303; *Bhikraj Jaipuria* v. *Union of India*, AIR 1962 SC 113; *Ravi Drigraj Kuer* v. *Amar Krishna*, AIR 1960 SC 444.
5. *Ajit Singh* v. *State of Punjab*, (1983)2 SCC 217; *M. Karunanidhi* v. *H.V. Hande*, (1983)2 SCC 473.

Francis, J. McCaffrey in his *Statutory Construction* (pp. 103-4) has summed up the law beautifully in the following words :

"Those statutes which contemplate that action shall or may be taken under them often present to the Courts problem of determining whether they are to be considered as mandatory or as merely directory. At times it must be decided whether the Legislature intended to command and require that the contemplated action be taken whenever the prescribed conditions occur, with no option or discretion allowed to the person or body to which the statute is addressed. If such is the legislative intention the statute is said to be mandatory. On the other hand, if the Legislature intended to grant to the person or body concerned discretion, choice or judgment as to doing or not doing the act in question, the statute is considered as directory. Again, there may be offered for consideration the manner or time of doing the act spoken of in the statute. As to this, if the Legislature intended to exact a strict and literal compliance with its terms as a condition precedent to the validity of the act or proceeding to which the statute relates, the provisions of the Act are called mandatory. Generally speaking, therefore, a condition laid down by the Legislature is mandatory and cannot be dispensed with : orders passed without complying with the condition are illegal.[1] Should it be determined that the Legislature intended to give mere instructions and directions as to the mode or time of the performance of the act in question, then precise compliance with the words of the statute is not essential to a valid act or proceeding and the statute is considered directory. It is noted that each of the foregoing problems or questions finds its answer in the intention of the Legislature, such intention as the controlling factor in determining the imperative or directory character of a statute or statutory provision.[2]

"As has been indicated, the Legislature may intend to issue a command or it may wish to grant mere authority or jurisdictions or to set out mere directions and instructions for the guidance of those to whom the statute is addressed. Legislative bodies ordinarily use appropriate language in framing laws. The difficulty is that the writers of laws do not always attach the usual and ordinary meaning to imperative and permissive terms. At times mandatory and directory verbs are used interchangeably in legislation. It must be remembered that legislative bodies like individuals, do not always use words in their literal sense; they may speak in words of authorization when they really wish to issue a command or *vice versa*. It is this use of terms of command and terms of authorization without regard to their literal meaning that generally creates the necessity of seeking the aid of the rules of construction to determine if such words were intended to carry their primary or ordinary meaning. The constant task of the interpreter of laws is to give to the language used that meaning which its writers attached to it, even though that requires a departure from the literal meaning of the text."

The question as to whether mandatory provisions contained in statutes should be considered merely as directory or obligatory has often been considered in judicial decisions. In dealing with the question no general or inflexible rule can be laid down. It is always a matter of trying to determine the real intention of the Legislature in using the imperative or mandatory words and such intention can be gathered by a careful examination of the whole scope of the statute and the object intended to be achieved by the particular provision containing the mandatory clause. If it is held that the mandatory clause is obligatory, it inevitably follows that contravention of the said clause implies the nullification of the contract. Thus the provision is made in public

1. *Ratilal Bhajilal* v. *State of Gujarat*, AIR 1966 Guj 244.
2. *Wuesthoff* v. *Germania Life Ins Co.*, 197 NY 580.

interest, there can be no difficulty in holding that the word 'shall' used in making the provision is intended to make the provision itself obligatory and not directory.[1]

In *Poona Electric Co.* v. *State of Bombay*,[2] it has been pointed out that where the enactment is absolute, that is, if it is mandatory in character, it requires exact compliance, whereas if it is merely directory, a substantial compliance with its provisions is sufficient. Thus, where under the provisions of Section 33(1) of the Electricity Act of 1910, a notice of accident was required to be given within 24 hours after the accident before any action may be maintained, the absence of a written notice within the time prescribed would not defeat the action where the party injured was incapable of complying with the provision by reason of his injuries.

(iv) Three fundamental tests.—In *Howard* v. *Bodington*,[3] Lord Penzance said : "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

The question whether a particular provision is mandatory or directory is in many instances extremely difficult. And strong grounds are needed to read a mandatory provision as directory and *vice versa*.[4] The language employed is not always a sure index and it is scarcely possible to lay down a hard and fast rule of general application. Broadly speaking, however, there are three fundamental tests which are often applied with remarkable success in the determination of this question. They are based on considerations of the scope and object sometimes called the scheme and purpose—of the enactment in question, on considerations of justice and balance of convenience and on a consideration of the nature of the particular provision, namely, whether it affects the performance of a public duty or relates to a right, privilege or power—in the former case the enactment is generally directory, in the latter mandatory.[5] A provision which is directory in form might be mandatory in substance. Whether it is one or the other must depend upon a number of things such as the declared object of the statute, the indications to be found in the various portions thereof, the persons for whose benefit the power is to be exercised and such other matters as might appear on the statute. That the intention of the Madras Prohibition Act 10 of 1937 was to exclude medicinal preparations from the operation of the Act is clear from the preamble and Section 16(1) of the Act which was enacted for giving effect to this object must be construed in the light of the intention expressed in the preamble and in such manner as to effectuate it. If Section 15 is to be read as directory, then it will defeat one of the declared objects of the legislation.[6] The use of the words 'reasonable period' before the words 'not being less than one month' is of significance and in this context the provision in regard to time must be held to be directory and not mandatory.[7]

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1. *State of West Bengal* v. *B.K. Mondal*, AIR 1962 SC 779, 783; *Collector of Monghyr* v. *Keshav Prasad*, AIR 1962 SC 1694; *Rani Rattan Shukla* v. *State of Punjab*, AIR 1987 P & H 229 : 1987 Pun LJ 72 : (1987)91 Pun LR 627 : (1987) Rev LR 366 : (1987)2 Land LR 479 : ILR (1987)2 P & H 403 : (1987)2 Land LR 92 (DB).
2. AIR 1967 Bom 27.
3. (1877)2 PD 203, 211, followed in *Clantex* v. *Blackwood*, 1 CLR 39, 65, 66; *Clantex* v, *Blackwood*, (No. 2) 1 CLR 121, 126.
4. *Bhagwant Singh* v. *Surjit Kaur*, (1981)83 Punj LR 219 (DB).
5. *Ajit Kumar Sen & another* v. *State of W.B.*, AIR 1954 Cal 49, 55-6; *Chacko* v. *Chacko*, AIR 1959 Ker 149, 150; *Parmeshwar Mahaseth* v. *State*, AIR 1958 Pat 149, 151; *Sarat Padhi* v. *State of Orissa*, (1988)65 CLT 122 (FB).
6. *Nageswara Rao* v. *State of Madras*, AIR 1954 Mad 645-47, 693; *see* also *Collector of Monghyr* v. *Keshav Prasad*, (1963)1 SCR 98, 113 (Ayyangar, J).
7. *Pioneer Motors* v. *Municipal Council, Nagarcoil*, AIR 1967 SC 684.

The word 'shall' in Section 17(3) of the West Bengal Tenancy Act 12/56 was held to be directory as the legislation is a beneficial one and as such construction is in accord with legislative intent.[1]

12. Statutes pertaining to official action.—A Statutory provision which pertains to an official action is generally construed as directory rather than mandatory.[2] "Where the prescription of statute relates to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal indeed, but it does not affect the validity of the act done in disregard of them."[3] Mr. Justice Swayne observed in *Board of Supervisors, Rock Island Co.* v. *U.S.* [4] " The conclusion to be deduced from the authorities is, that where power is given to public officers....—whenever the public interest or individual rights call for its exercise—the language used, though permissive in form, is in fact peremptory." Crawford in *Statutory Construction* at pp. 529—531 says :

(i) Distinction between grant of powers and rights and imposition of duties.

> "As a general rule, a statute which regulates the manner in which public officials shall exercise the power vested in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order and convenience, and neither public nor private rights will be injured or impaired thereby. If the statute is negative in form or if nothing is stated regarding the consequences or effect of non-compliance, the indication is all the stronger that it should not be considered mandatory. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive or directory in form, is in fact peremptory or mandatory as a general rule. For example, where the statute declared that the Board of Supervisors 'may, if deemed advisable,' levy a special tax to pay certain debts which their current revenue is insufficient to pay, the statute was held to be mandatory. After all, the power vested in the officer is not for his benefit but for the benefit of the public or of third persons and it must be exercised. A duty is imposed upon the officer rather than a privilege. Conversely, however, where the statute simply regulates the manner in which public officers shall exercise the power vested in them in order to promote uniformity, order and convenience, the statute is predominantly intended for the benefit of the officers. Moreover, word 'mandatory' in form should be construed to be permissive even where statutes regulating the exercise of powers by public officials are concerned, if the permissive construction will effect justice, or save a proceeding from invalidity, provided, however,

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1. Vide *M/s. B.P. Khemka Pvt. Ltd.* v. *Birendra Kumar Bhowmick*, AIR 1987 SC 1010 : 1987 JT (SC) 665 : (1987)10 (1) IJ Rep. 169 : (1987)2 SCC 407 : 1987 Rajdhani LR 190 : 1987 SCFBRC 177 : (1987)1 Ren CR 256 : (1987)1 Rent LR 659 : (1987)2 UJ (SC) 1, reversing (1978)1 Cal LJ 456.
2. *Birij Lal* v. *State of Patiala*, AIR 1957 Punj 100, 101 : The provision does not lay down how a Municipal Committee is to be superseded, it only prescribes the mode in which the Act of supersession is to be expressed. The manner of such an expression should be construed as merely matter of form and formality to doing a public act. *Thangaswami* v. *Chief Secretary, Madras*, AIR 1965 Mad 225.
3. Maxwell : *Interpretation of Statute*, 11th Ed. at pp. 369, 380; *see* also *Montreal Street Rly. Co.* v. *Normandi*, 1917 AC 170, 174 : AIR 1917 PC 142; *Vithaldas Kedar Nath* v. *Income Tax Officer, Rampur*, AIR 1969 All 390, 392 (Oak, C.J.); *Amananda* v. *Compensation Officer*, AIR 1966 A & N 81, 82-83 (Mehrotra, C.J.) : Object of the Act to be considered.
4. 71 US 345, 346 : 18 L Ed 419, quoted in Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at p. 87.

that such a construction does not destroy or impair the rights of the public, or of any member thereof. In other words, whether a statutory requirement which relates to official action shall be considered mandatory or permissive, depends upon the effect the suggested construction has upon public and private rights. If the requirement of the statute must be regarded as mandatory in order to promote justice, it should be so construed; and if a mandatory construction operates mischievously, then the statute should be given a permissive construction, for in construing a statute it is not reasonable to presume that the Legislature intended to violate a settled principle of natural justice or to destroy a vested right or to enact a mischievous law."

It is a well-settled rule that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.[1] Bose, J., speaking on behalf of the Court in *Pratap Singh* v. *Krishna Gupta*,[2] observed :

".....We deprecate this tendency towards technicality; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter; they cannot be broken : others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as a whole and provided no prejudice ensues; and when the Legislature does not itself state which is which, Judges must determine the matter and, exercising a nice discrimination sort out one class from the other along broad-based, commonsense lines."

It is well settled that where powers or rights are granted with a direction that certain regulations or formalities shall be complied with, it is neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred. Where there is a power conferred under a statute coupled with a duty, the statute must ordinarily be construed as absolute,[3] and the use of the words 'for reasons to be recorded in writing' does not derogate from the mandatory character of the statutory duty.[4] Where a statute says that a thing shall be in the 'form' prescribed, that means that the 'form' shall be strictly and literally followed. It cannot be done in any other manner.[5] As the Legislature has conferred power on a Rent Control and Eviction Officer only in respect of a building, it is not possible to extend the said power to an item of property which is not building.[6] That would be legislating, and a court under the garb of interpretation cannot legislate.[7] Where either under the Act or the Rules, a procedure for the performance of a particular act has been prescribed, the same has got to be done in that manner or not at all. Every Court or Tribunal has to exercise jurisdiction in the manner provided in the Act or Rules, and orders passed in disregard of them are illegal, unwarranted in law and an irregular exercise of jurisdiction.[8] The words 'in the form' are more imperative than 'in accordance with the form'.[9] On the other hand, where a public duty is imposed and the statute requires that it shall be performed in a certain manner or within a certain time, or under other specified conditions, such prescriptions may well be

1. *Punjab Co-operative Bank, Ltd.* v. *Income-tax Officer, Lahore*, AIR 1938 Lah 852.
2. AIR 1956 SC 140.
3. *Bai Kamla* v. *Mane Patil*, AIR 1966 Guj 37.
4. *Nand Nandan Sarup* v. *District Magistrate*, (1966)68 Punj LR 747.
5. *Gulab Singh* v. *First Additional District Judge, Bareilly*, 1980 All LJ 633; *Sana Ullah* v. *Ashok Kapil*, (1979)5 All LR 113; *Ballabhdas Agarwala* v. *J.C. Chakravarty*, AIR 1960 SC 576.
6. *Sana Ullah* v. *Ashok*, (1979)5 All LR 113.
7. *Sana Ullah* v. *Ashok*, (1979)5 All LR 113.
8. *Hari Lal* v. *Deputy Director of Consolidation*, 1982 All LJ 223.
9. *Kallu* v. *Munna*, 1972 MPLJ 56, 59 (G. P. Singh, J.).

regarded as intended to be directory only, when injustice or inconvenience to others, who have no control over those exercising the duty, would result, if such requirements were deemed essential and imperative.[1] Where the prescription of an Act relates to the performance of a duty by a public officer the breach of such prescription when it does not cause any real injustice does not invalidate the act done under the Act and therefore such prescriptions are merely directory.[2] "There are many statutory requisitions," observed Field, J., in *French* v. *Edwards*,[3] "intended for the guidance of officers in the conduct of business devolved upon them, which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such generally are regulations designed to secure order, system, and despatch in proceedings, and by disregard of which the rights of parties interested cannot be injuriously affected....But when the requisitions prescribed are intended for the protection of the citizen and to prevent a sacrifice of his property, and by a disregard of which the rights might be and generally would be injuriously affected, they are not directory but mandatory." When an enactment confers a power on a certain officer and prescribes the manner in which the power is to be exercised, it is common sense that the power should be exercised in the manner prescribed. There is no doubt that a distinction exists between the exercise of a power and the performance of a duty. But when a manner of exercise of power is prescribed, it cannot be held that the exercise of the power in that manner becomes a performance of the duty only because the particular manner is prescribed with a view to protect the interests of the person to be affected thereby. In certain cases, in the context of a particular statute the manner prescribed may be either mandatory or directory depending on the context of the statute.[4] In *Corpurs Juris*, [5] the law on this subject is stated thus :

> "Statutes which confer upon a public body or officer's power to act for the sake of justice, or which clothe a public body or officer with power to perform acts which concern the public interests or the rights of individuals, are generally regarded as mandatory, although the language is permissive merely since they are construed as imposing duties rather than conferring privileges. On the other hand, where statutes are purely enabling in character, simply making that legal and possible which otherwise there would be no authority to do, and no public interests in private rights are involved, they will be construed as permissive. Generally statutes, directing the mode of proceeding by public officers, designed to promote method, system, uniformity and despatch in such proceeding, will be regarded as directory if a disregard thereof will not injure the rights of parties, and the statute does not declare what result shall follow in non-compliance therewith, nor

1. *Mathura Mohan Saha* v. *Ram Kumar Saha*, ILR 43 Cal 790, 813. The distinction between the two classes of cases is illustrated by the decision in *Ward* v. *Back*, (1863)134 RR 691; *Stapleton* v. *Haymen*, (1864)133 RR 858; *The Andalusion*, (1878)3 PD 182; *Le Feuvre* v. *Miller*, (1857)112 RR 582; *Cope* v. *Thames Haven Ry. Co.*, (1849)77 RR 859; *Diggle* v. *London and Blackwall Rly. Co.*, (1850)5 Exch 442; *Frend* v. *Dennet*, (1858)114 RR 859; *Cornwal Mining Co.* v. *Bennet*, (1800)120 RR 670; *Irish Peat Co.* v. *Phillips*, (1861)124 RR 680; *Bottomley's* case, (1880)16 Ch D 681; *Re* Gifford and Bury, (1888)20 QBD 268.
2. *District Board, Kheri* v. *Abdul Majid Khan*, AIR 1930 Oudh 434, 439.
3. (1871)80 US 506, 511, quoted by Sutherland in *Statutory Construction*, 3rd Ed., Vol. III at p. 89; *Chotabhai Jethabhai Patel & Co.* v. *State of Madhya Pradesh*, AIR 1966 MP 34.
4. *Habib Khan* v. *State of Madhya Pradesh*, 1971 MPLJ 883, 887 (R.J. Bhave, J.).
5. Vol. 59 at pp. 1076-1078; *Jharia Water Board* v. *Jagdamba Loan Co.*, AIR 1938 Pat 539, 541, quoting Maxwell : When a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions such prescriptions may well be regarded as intended to be directory only in cases where injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

contain negative words importing a prohibition of any other mode of proceeding than that prescribed. Especially is this true when to hold void acts done in violation of the statute would work serious in inconvenience, or would cause injustice to persons having no control over those entrusted with the duty enjoined and at the same time would not promote the main object of the statute. Permissive words in a statute in respect of officers or courts will not be construed as mandatory, where such construction would create a new public obligation and it has been held that even mandatory words or provisions in a statute defining the duties of administrative officers may be construed as directory only, unless something in the body of the statute indicates the contrary." According to Sutherland[1] :

"One of the places where rules for the construction of statutes as mandatory or directory has been most clearly defined is with respect to provisions directing action or conduct on the part of public officers. Where statutes provide for the doing of acts or the exercise of power or authority by public officers, and private rights or the public interest require the doing of such acts or the exercise of such power or authority, they are mandatory, regardless of whether they are phrased in imperative or permissive terms.....Where a mandatory construction might do injury to some primary public interest, as by hampering the taxing power, a directory construction might be applied if the general purpose of the statute may thus be effected without injury to private rights."

(ii) Two provisions, one importing objection to do an act and the other not.—Where two provisions of law apply to a given act of circumstances one requiring a person to do a certain set and the other imposing no such obligation, the person must do the act because if he were to rely upon the other provision, he would be infringing, or not complying with, the mandatory provision. By doing the act he would be complying with or not infringing, either of the two provisions, whereas by not doing the act he would not be complying with one provision at least. Since he must comply with all the provisions of law, he must comply with the provisions requiring him to do a certain act. While Section 54, Cr.P.C., lays down in what cases may a police officer arrest a person without warrant, Section 56 prescribes the procedure to be followed in those cases when instead of making the arrest himself, the police officer deputes an officer subordinate to him to do so. Under Section 56 it is incumbent on the police officer to deliver to the officer required to make the arrest an order in writing and want of such written order shall vitiate the arrest.[2]

(iii) No limitation on powers unless justified by express words or necessary implication.—Limitations should not be placed on powers conferred by enactments, unless they are justified by express words or by necessary implication. The words 'after 15 days' in Section 7 of the Hyderabad City Improvement Board Regulations make it incumbent on the acquiring authority to start proceedings after the expiry of the period. They do impose limits as to within what time the statutory power of acquiring property should not be started, but not when it should be completed. There being no express limits in the powers of acquisition, nor there being anything in the regulation to imply such restrictions, restriction cannot be imposed merely because the exercise may result in hardship. If such hardship results from a proper construction of the statute, it cannot be a reason for different interpretation that is justified neither by express terms of the enactment nor by necessary implication.[3]

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1. *Statutory Construction*, 3rd Ed., Vol. III, at pp. 86-90,
2. *State* v. *Ramchandra*, AIR 1955 All 438.
3. *Butool Begum* v. *State*, AIR 1956 Hyd 26 (failure to acquire property within a reasonable time would not result in the nullification of the earlier notifications published before 16 years under Sections 3 and 5).

(iv) Command to do a thing in a particular manner.—A command to do a thing in a particular manner would imply a prohibition to do it in any other manner, otherwise the whole aim and object of the law would plainly be defeated.[1] When power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all. The other modes of performance are necessarily forbidden.[2] Where authority is granted to public officers to do a thing in a certain way, the manner of doing the thing is mandatory, or jurisdictional, and a limitation on the authority of the officer, even though the doing of the thing in the first place may be discretionary.[3] If the statutory provision which uses imperative words imposes an obligation or duty on a public officer subject to certain other requirements, the public officer's failure to comply with the said requirements does not make his subsequent action invalid. The use of imperative words does not involve the invalidating consequence in connection with such provisions. On the other hand, if the use of the imperative words is to be found in a provision that confers upon a public officer a privilege or power subject to certain conditions and these conditions are not complied with, the exercise of that power or privilege would be rendered invalid. Even in respect of duties the performance of which is required subject to certain conditions, if it appears that the failure to comply with the conditions is likely to lead to injustice or patent hardship, then the Court would hesitate to come to the conclusion that the non-performance of the conditions does not involve the invalidating of the performance of duty itself. The effect of Section 12(6), Industrial Disputes Act, 1947, is not that, as soon as 14 days expire, the conciliation officer virtually becomes *functus officio* and the proceedings which were validly pending before him till then become wholly invalid thereafter. If Section 12(6) is construed otherwise it would lead to this unfortunate result that in a very large majority of cases, conciliation efforts are bound to fail, for however responsible both the parties to the dispute may be it is very unlikely that within the statutory period of 14 days many industrial disputes can be settled.[4] A time clause in a statute will not be considered as mandatory unless its non-observance will result in the object of the provision being frustrated.[5]

The test to be applied in such cases is : Do the statutory prescriptions affect the performance of a duty or do they relate to a privilege or power?[6] In *East Suffolk Rivers Catchment Board* v. *Kent*,[7] Lord Porter observed : "The sole question in the present case is whether the mere undertaking of a task which the Legislature has empowered an authority to do puts them in the same position as if that task had been imposed as a duty upon them."

(v) Direction to do a duty within a specified time.—Where a public officer is directed by a statute to perform a duty within a specified time, the provisions as to time are only directory. Mr. Justice Lopes said in *Caldon* v. *Penell*,[8] that in deciding whether a rule is mandatory or directory the possibility of justice suffering from a too rigid application of the time-limit should be taken into account. The same rule of construction is put in *Corpus Juris*[9] in the

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1. *Mathura Mohan Saha* v. *Ram Kumar Saha*, ILR 43 Cal 790, 811-812; *Bharat Hari Singhania* v. *Commissioner of Wealth Tax (Central)*, 1994 Tax LR 417.
2. *Madho Singh* v. *Hira Lal*, 1983 MPWN 281.
3. Sutherland : *Statutory Construction*, 3rd Ed., Vol., III at p. 89.
4. *The State* v. *Andheri, Etc. Bus Service*, AIR 1955 Bom 324.
5. *Lakshman Shastri* v. *State of Bihar*, 1966 BLJR 770 : AIR 1967 Pat 160.
6. *Jharia Water Board* v. *Jagdamba Loan Co.*, AIR 1938 Pat 539, 541; *Mathura Mohan Saha* v. *Ram Kumar Saha*, ILR 43 Cal 790, 812.
7. 1941 AC 74,107.
8. (1877)2 CPP 562; *see* also *Queen* v. *Ingall*, (1876)2 QBD 199; *Brumfit* v. *Bremner*, (1860)9 CB (NS) 1 at p. 11; *Queen* v. *Lafthouse*, (1866) LR 1 QB 433; *Veiliappa* v. *Subrahmanyam*, ILR 39 Mad 485, 487.
9. Vol. 59 at pp. 1078-79; *see* Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at pp. 101-102.

following words :

"A statute specifying a time within which a public officer to perform an official act regarding the rights and duties of others, and made with a view to the proper orderly, and prompt conduct of business, usually directory, unless the phraseology of the statute, or the nature of the act to be performed and the consequences of doing or failing to do it at such time, is such that the designation of time must be considered a limitation on the power of the officer. So a statute requiring a public body, merely for the orderly transaction of business, to fix the time for the performance of certain acts which may as effectually be done at any other time is usually regarded as directory. But such rule of construction is not to be applied to the acts of private parties, when the law to be construed creates no new rights or remedy, but is designed to regulate one already existing. So under statutes conferring privileges on private individuals for a certain period of time, such privileges cannot be exercised after the lapse of the time allowed. As a general proposition, the rule with respect to statutory directions to individuals is the opposite of that which obtains with respect to public officers. When a statute directs things to be done by a private person within a specified time and makes his rights dependent on proper performance thereof, unless the failure to perform in time may injure the public or individuals, the statute is mandatory. When an individual is the person not strictly complying, he has no grounds for complaint. Under statutes of procedure, failure to complete required steps within the time specified is fatal to the case."[1]

When a statute regulates the time at or within which an act is to be done by a public officer or body, it is generally construed to be permissive only as to the time, for the reason "that the public interests are not to suffer by the laches of any public officer."[2] It is well settled that the word 'shall' does not necessarily indicate that the provision is mandatory. The object of the provision has to be ascertained, and it has to be seen whether a time clause in it is a matter of substance. In other words, the time clause will not be considered to be mandatory unless its non-observance will result in the object of the provision being frustrated.[3] The Courts will hold such provisions to be mandatory if the nature of the acts to be performed or the phraseology of the statute indicates an intention on the part of the Legislature to exact a literal compliance with the requirement of time. The Courts seek to achieve a just result in not ascribing an invalidating effect to the failure of the public officers to observe the time provisions of statutes; a contrary rule would operate unfairly in prejudicing the rights of persons who have no control over the conduct of public officers. In *People ex rel Huff* v. *Graves*,[4] the New York Court of Appeal observed : "Public policy often requires that minor omissions and failures of officials shall not make void all their proceedings ; otherwise Government in some special feature might come to a standstill or result in confusion. This liberality of construction is not necessary when the duty to act rests upon the individual, as his omission or failure will apply to himself and not bring confusion or damage to the whole community."

(vi) Where compliance discretionary.—For deciding whether a provision of law is directory or mandatory, the test to be applied is whether under the law it is the duty of the person on whom the power is conferred, to exercise that power. If not, it is

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1. Sutherland : *Statutory Construction*, 3rd Ed., Vol. III at p. 107; see *also Municipal Committee, Khandwa* v. *Radha Kisan*, AIR 1930 Nag 157, 165.
2. *Looney* v. *Hughes*, 26 NY 514.
3. *Lakshman Shastri* v. *State of Bihar*, AIR 1967 Pat 160 (Sahai, J.); *see* also *Ramchander Prasad Sahi* v. *State of Bihar*, AIR 1965 Pat 250.
4. 277 NY 115; *see* also *Hirday Narain Singh* v. *Jang Bahadur Singh*, ILR 30 Pat 865 : AIR 1952 Pat 265.

discretionary.[1] So, where a power is coupled with a duty, the statute must generally be treated as an absolute enactment.[2] Since in such a case the powers and duties are inseparable, the delegation of powers takes with it the performance of the duties also.[3] Article 320(3) appears to be of a directory nature. The Article itself gives the liberty to the President and the Governors to exempt themselves from its operation by regulations framed by themselves. A mandate which leaves it open to the mandated person to carry or not to carry out the mandate according to his pleasure and direction cannot be a mandate, property so called, at all.[4] Thus mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to bar the Court from exercising its power to extend the period of limitation provided the Court is satisfied that the exercise of the power is necessary.[5]

A provision giving a discretionary power leaves the donee of the power free to use or not to use it at his discretion. A directory provision, however, gives no discretionary power to do or not to do the thing directed. A directory provision is intended to be obeyed but a failure to obey it does not render a thing duly done in disobedience of it, a nullity.[6]

(vii) May.—It is well settled that the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases the Legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may' the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word and the like. It is equally well settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief or where giving the word a directory significance, would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force.[7] As a general rule the word 'may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words 'may', 'shall' , 'must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the Legislature should be looked into along with the pertinent circumstances. If it appears to be the settled intention of the Legislature to convey the sense of compulsion, as where an obligation is created the use of the word 'may' will not prevent the Court from giving in the effect of compulsion or obligation. Where the statute was passed purely in the public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interest of removal of slums and insanitary areas. It is, therefore, precisely the sort of statute where though the power is conferred upon the statutory body by the use of the word 'may' that power

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1. *Balak Ram* v. *Sitaram*, AIR 1954 HP 6.
2. *Bai Kamala* v. *Mane Patil*, AIR 1966 Guj 37.
3. *Daluram Pannalal* v. *Asst. Commr. Sales Tax*, AIR 1963 SC 1581; *Jagdish Chandra Gupta* v. *Union of India*, AIR 1965 Pun 129.
4. *Munna Lal* v. *H.R. Scott*, AIR 1955 Cal 451, 458.
5. *Thaga Pillai* v. *Superintendent, Regulated Market of South Arcot Market Committee*, 1977 LW (Cr) 19.
6. *Drigraj Kuer* v. *Amar Nath Singh*, AIR 1960 SC 444; see also *Jagdish Chandra Gupta* v. *Union of India*, AIR 1965 Pun 129.
7. *Collector* v. *Habibulahdin*, AIR 1967 J & K 44, 48 (FB) (Ali, J.); *Abida Begum* v. *Rent Control Officer*, AIR 1959 All 675, 677 (V.D. Bhargava, J.). For the public benefit or in advancement of public justice.

must be construed as a statutory duty.[1] Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Though in general sense 'may' is enabling or discretional and 'shall' is obligatory, the connotation is not inelastic and inviolate.[2]

The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of words 'may' and 'shall' is not decisive of discretion or mandates. The use of the words 'may' and 'shall' may help the Courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The Courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed.[3]

(viii) Discretion to be exercised properly.—In construing a statute we must always assume that the discretionary power conferred upon various authorities under the statute will be used properly and not in an arbitrary or capricious manner. When a discretion is given to an authority, the exercise of that discretion necessarily involves the application of mind and acting reasonably and with justice, which in turn necessarily involves the observance of natural justice which means that the other party must be heard before any adverse order is passed.[4] It was held that the power given to the Collector under Section 41(1) of the Bombay Village Panchayat Act, 1959, is a discretionary power which has to be exercised judicially, with application of mind which has not been done.[5] A discretion conferred on an authority by statute is intended to be exercised by that authority and no other.[6] The power given to the Collector under Section 56 of the Bombay Tenancy and Agricultural Lands Act, 67 of 1948 is sufficiently wide to include control over the action of the manager not only in respect of settling the mode in which debts and liabilities should be discharged, but also in respect of the actual determination of the debts and liabilities, but we cannot comprehend that the Collector would perversely refuse to accept the settlement of debts and liabilities in respect of which the power is solely conferred upon the manager and who is made the final authority in the sense that he has to determine the debts and liabilities subject to the control and sanction of the Collector.[7] Sub-rule (2) of Rule 5 framed under Section 11 of the Ordinance 3 of 1946 [High Denomination Bank Notes (Demonetisation) Ordinance] no doubt lays down that when a declaration is made as provided in Rule 5(1) it is left to the discretion of the Central Government to authorise the Reserve Bank to exchange the High Denomination Notes as shown in the declaration under Sub-rule (1) but the discretion which the Central Government has, must be properly and judicially exercised. If the requirements and conditions imposed in Rule 5(1) are satisfied, the Central Government is bound to authorise the Reserve Bank to exchange the notes in question in conformity with the provisions contained in Rule 2. The use of the word 'may' does not indicate

1. *Municipal Corporation of Greater Bombay* v. *Advance Builders (India), Ltd.*, 1971 Mah LJ 918, 927 (Kotwal, C.J.) : Bombay Town Planning Act, 27 of 1955, Sections 54, 55; *see* also *City Board, Mussoorie* v. *State Electricity Board*, AIR 1971 All 219, 221 : whether the purpose of the enactment shall not be achieved without making regulations.
2. *Societe De Traction* v. *Kamani Engineering Co., Ltd.*, AIR 1964 SC 558.
3. *Bishan Singh* v. *Central Govt.*, 1961 Punj 451, 459; *see* also *Joginder Singh* v. *Raj Mohindar Kaur*, AIR 1960 Punj 249 ('may' is construed as 'shall' when used in construction unless sufficient cause is shown to the question); *In re* Shuter (No. 2), (1959)3 All ER 481; *Mithila Motor Transport Co-operative Society, Ltd.* v. *State Transport Authority*, ILR 45 Pat 1544; *see* also *Sodhi Harbaksh Singh* v. *Central Govt.*, AIR 1964 Punj 137; *Sant Prasad Singh* v. *Dasu Sinha*, AIR 1964 Pat 26; *Dwarka Prasad Misra* v. *Kamal Narain Sarma*, AIR 1964 Madh Pra 273.
4. *Namdeo Ragho Arote* v. *State of Maharashtra*, 1979 Mah LJ 363 (DB).
5. *Namdeo Ragho Arote* v. *State of Maharashtra*, 1979 Mah LJ 363 (DB).
6. *Barium Chemicals, Ltd.* v. *Company Law Board*, AIR 1967 SC 295.
7. *E.H. Gimcula* v. *State of Bomby*, AIR 1954 Bom 151.

that it left to the absolute and uncontrolled discretion of the Central Government as to whether after a declaration is made under Sub-rule (1) of Rule 5, such notes are to be exchanged.[1]

When such a discretionary power is invested in an authority, the authority would be bound to exercise that power and the word 'may' conferring discretionary power has to be read as 'must', except in those cases where there are grounds for not exercising such power.[2]

(ix) Action in respect of statutory duty.—If a provision gives a power coupled with a duty, it is mandatory and whether it does so or not will depend on such considerations as the nature of the thing empowered to be done, the object for which it is done and the persons for whose benefit the power is to be exercised.[3] Whenever an Act of the Parliament creates a duty or obligation to pay money, an action will lie for its recovery, unless the act contains some provision to the contrary.[4]

In cases in which the statute contain no express denial of the right to bring an action, the proper course to adopt in order to determine whether it contains 'some provision to the contrary' within the meaning of the rule stated above is to consider whether it appears from the whole purview of the Act that it was the intention of the Legislature that the remedy provided should be a substitute for the right of action which would otherwise exist; and in determining this question it is material to consider whether the obligation imposed by the Act was designed to benefit a particular class of persons (*e.g.*,employees) and to compel their employees to perform certain duties for their benefit.[5] It is also material to consider whether the provisions made by the Act for compelling obedience to its commands is in the nature of a penalty for disobedience or in the nature of compensation to the person whose rights are affected by the failure to perform the obligations imposed by the Act. As was said by Vaughan Williams, L.J., in *Graves* v. *Lord Wimborne*[6] : "It cannot be doubted that, where a statute provides for the performance by certain persons of a particular duty, and someone belonging to a class of persons for whose benefit and protection that statute imposes the duty is injured by failure to perform it, *prima facie*, and if there be nothing to the contrary, an action by the person so injured will lie against the person who has so failed to perform the duty. I have equally no doubt that, where in a statute of this kind a remedy is provided in cases of non-performance of the statutory duty, that is a matter to be taken into consideration for the purpose of determining whether an action will lie for injury caused by non-performance of that duty or whether the Legislature intended that there should be no other remedy than the statutory remedy ; but it is by no means conclusive on the only matter to be taken into consideration for that purpose. If it be found that the remedy so provided by the Statute is to ensure for the benefit of the person injured by the breach of the statutory duty, that is an additional matter which ought to be taken into consideration in dealing with the question whether the Legislature intended the statutory remedy to be the only remedy. But again, the fact that the Legislature has provided that the remedy shall enure, or under some circumstances shall enure, for the benefit of the person injured, is not conslusive of the question, and, although it may be a cogent and weighty consideration, other matter also have to be considered." Among other matters that have to be considered is the question whether the

1. *Dominion of India* v. *Manindra Land & Building Corporation*, AIR 1954 Cal 174, 178.
2. *Mohmedmiya Mohamad Sadik* v. *State of Gujarat*, (1975)16 Guj LR 583.
3. *Prafulla Chandra* v. *Calcutta Credit Corporation*, AIR 1965 A & N 21, 23 (Dutta, J.) (notice to judgment-debtor before auction sale).
4. *Shepherd* v. *Hills*, (1855)11 Ex 55 at p. 67.
5. *Groves* v. *Lord Wimborne*, (1898)2 QB 402.
6. (1898)2 QB 402, 415-16.

remedy provided is co-extentive with right given by the Act.[1]

The rule to be applied in determining whether, when a statute imposes a penalty for a breach of a statutory obligation first created by it, a civil action will lie to recover damages occasioned by the breach was laid down by Lord Cairns, L.C., in the Court of Appeal in the case of *Atkinson* v. *Newcastle Waterworks Co.*[2] Regard must in every case be had to the whole purview of the statute to ascertain whether the Legislature so intended.[3]

13. Statutes relating to judicial duties and proceedings.—A statute directing judicial action, although it may be expressed in positive and imperative terms, will be read as directory only when the subject to which it relates is embraced within the sphere of judicial discretion,[4] for to hold that the Legislature has the power to issue a command as to a matter involving the exercise of judicial discretion would be to permit the Legislature to usurp the judicial function. When, however, it is the supposed intention of the Legislature that a party shall have an absolute right to the benefit of a statute upon the proof of stated facts, and the matter of judicial discretion is not involved, the statute will be construed as peremptory even though phrased in permissive terms.[5]

Wherever judicial discretion is conferred by statute in unlimited terms, a well-settled and inevitable function of interpretation is to canalise that judicial discretion in well-directed and foreseeable channels.[6]

A statutory requirement relating to a matter of practice or procedure in the Courts should be interpreted as mandatory if it confers upon a litigant a substantial right the violation of which will injure him or prejudice his case. On the other hand, a statutory provision regulating a matter of practice or procedure will generally be read as directory when the disregard of it or the failure to follow it exactly will not materially prejudice a litigant's case or deprive him of a substantial right.

The cause of justice of paramount and a procedural law cannot be raised to the pedestal of being such a mandatory provision as would take away the court's right in a given case to exercise its discretion in the interests of justice. The language in which Section 35-B of C.P.C. has been expressed must be considered to be directory. Section 35-B is admittedly a procedural provision.[7]

It was held that identical provisions in the statute are either directory or substantial compliance is sufficient even if treated as mandatory in a general sense and that the prosecution can fail only if prejudice is shown to have been caused to the accused.[8]

In *Macdougall* v. *Patterson*,[9] Jervis, C.J., said : "Where a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised, to exercise the authority when the case arises, and its exercise is duly applied for by a party interested, and having the

1. *Stabbs* v. *Martin*, (1895)2 IR at p. 74; *see* also *Mallinson* v. *Scottish Australian Investment Co., Ltd.*, 28 CLR 66, 70, 72.
2. 2 Ex D 441.
3. *London & West Australian Exploration Co., Ltd.* v. *Ricci*, 4 CLR 617; *J & K Industries (P), Ltd.* v. *Ganges Manufacturing Co.*, (1968)2 Comp LJ 36 : 38 Comp Cas 603.
4. *Jenkins* v. *Putnam*, 106 NY 272.
5. *In the matter of* Ruttledge, 162 NY 31.
6. *Gurbux Singh Sibbia* v. *State of Punjab*, 1977 CLR (P & H) 309 (FB); *see* also *Gudikanti Narasimhulu* v. *Public Prosecutor, Andhra Pradesh*, 1978 CLR (SC) 153.
7. *Kesi Bishwanath Dev* v. *Paramanand Routrai*, AIR 1982 Orissa 80.
8. See *Food Inspector, Punalur Municipality* v. *K. Hari Kumar*, 1991 Cri LJ 641 (Ker); Relying on *Dalchand* v. *Municipal Corporation*, AIR 1983 SC 303 : 1983 Cr LJ 448.
9. (1851)11 CB 755, 773; followed in *Wittakar Bros* v. *Australian Timber Workers' Union*, 31 CLR 564, 575.

right to make the application. For these reasons, we are of opinion that the word 'may' is not used to give a discretion, but to confer a power upon the Court and Judges; and that the exercise of such power depends not upon the discretion of the Court or Judges, but upon the proof of the particular case out of which such power arises."

In *Julius* v. *Lord Bishop of Oxford*,[1] Lord Cairns said : "The question has been argued and has been spoken of by some of the learned Judges in the Courts below as if the words 'it shall be lawful' might have a different meaning and might be differently interpreted in different statutes, or in different parts of the same statute. I cannot think that this is correct. The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of thing empowered to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so, Lord Penzance in his speech pointed out that in some of the cases cited although the statute in terms had only conferred a power, the circumstances were such as to create a duty, and he said,' 'I entirely agree with what has fallen from the Lord Chancellor as to the proper and legitimate way of stating the question here involved." The words 'it shall be lawful' are distinctly words of permission only, they are enabling and empowering words. They confer a legislative right and power on the individual named to do a particular thing, and the true question is not whether they mean something different, but whether regard being had to the person so enabled—to the subject-matter, to the general objects of the statute, and to the person or class of persons for whose benefit the power may be intended to have been conferred—they do, or do not, create a duty in the person on whom it is conferred, to exercise it."

In *Smith* v. *Watson*,[2] Barton, J., observed :

> "The words, 'it shall be lawful' and the word 'may' when used in a statute, are, I think, equivalent in meaning, and all that I have quoted of the one applies to the other."[3]

14. Statutes regulating elections and tax proceedings.—In some cases the mandatory or directory nature of the provisions has been determined with reference to the particular subjects dealt with by the statute.

There is clearly a public duty imposed on the State Government under Sub-section (2) of Section 45 of the Calcutta Municipal Act to fix the date for the general election. as otherwise, that is, in the absence of such fixation, no such election be held and it will be impossible to carry on the work of municipal administration of the city in accordance with the provisions of the Act—in other words, the purpose of the Act would be frustrated. The power that is conferred is for the purpose of this public duty and Sub-section (3) contains prescriptions affecting such performance. It is abundantly clear that to hold the State Government's neglect or failure in the matter of such performance fatal to the elections would work serious general inconvenience and injustice to the municipal electorate and the intending candidates who have no control over the State Government, and at the same time would not promote the main object of the Legislature, namely, the carrying on of the civil administration of the city by elected

1. (1880)5 AC 214, 235.
2. *Smith* v. *Watson*, 4 CLR 802 at pp. 820, 821, (*per* Barton, J.).
3. *Smith* v. *Watson*, 4 CLR 802 at pp. 820, 821, (*per* Barton, J.); see *Bai Kamala* v. *Mane Patil*, AIR 1966 Guj 37.

councillors and aldermen.[1] Representation of the People Act is a self-contained Code.[2]

Discretion to accept or not to accept is not available to the State Government when resignation is submitted by the President of the Municipality under Section 18-A(1) of the C.P. and Berar Municipalities Act, (2 of 1922), but before accepting the resignation or acting under Section 18-A(3) the State Government has the power to scrutinize the facts whether the meeting was held after proper notice and the resolution expressing no confidence in the President was validly moved and passed.[3]

Statutory provisions relating to conduct of public elections are oftentimes given permissive construction where irregularities of election offices are free from fraud and have not interfered with a full and fair expression of the voter's choice. So, if the statute confers an authority on a tribunal to proceed with an election-petition in accordance with the procedure laid down by the statute and when it does not state the consequences of non-compliance with the prescribed procedure, the principle that an election-petition seeking interference with the success of a candidate must strictly conform to the requirements of the law has no application. Any defect arising from the strict observance of the rules cannot be remedied by the tribunal on proper application.[4]

Statutes regulating the assessment and collection of taxes are, on the other hand, given a mandatory construction if they are designated for the benefit and protection of the tax-payer but there is no rule that every provision in a taxing statute is mandatory.[5]

15. Mandatory provisions to be strictly construed while directory provisions to be liberally construed.—Generally, a mandatory provision is to be construed strictly while a directory provision is to be construed liberally. There have been many instances where the Court has held that a substantial compliance with the statute or with the rules framed thereunder is enough even if there be no literal compliance. There is no reason to adopt a different line of reasoning in the construction and interpretation of the Constitution. In all such cases, one must consider the real purpose of the provision whether statutory or constitutional, to find out whether notwithstanding the apparent mandatory form of the words used any deviation therefrom was to be struck down. The non-compliance with the provisions of a statute or Constitution will not necessarily render a proceeding invalid if by considering its nature, its design and the consequences which follow from its non-observance one is not led to the conclusion that the Legislature or the Constitution-makers intended that there should be no departure from the strict word used.[6]

Directory provision does not mean that compliance with it is purely discretionary.—The fact that particular provision is directory does not mean that it can be followed or not followed just as one pleases. It means merely that whereas in the case of mandatory provision strict compliance with every letter of the law is necessary and absence of such compliance will invalidate the act, in the case of a directory provision, substantial compliance is sufficient and even where there is no compliance at all, the act is not invalidated by such non-compliance

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1. *Ajit Kumar and another* v. *State of W.B. and others*, AIR 1954 Cal 49, 55-56.
2. *Inamatimallappa Basappa* v. *Desai Basevaraj Ayyappa*, AIR 1958 SC 698 (governing the trial of election petitions, to which provisions of Order XXIII, Rule 1, C.P.C., do not apply, hence, it would not be open to a petitioner to withdraw or abandon a part of his claim once an election petition was presented to the Election Commission); *Kapildeo* v. *Suraj Narayan*, AIR 1959 Pat 250.
3. *Rambharoselal Gahoi* v. *State of M.P.*, AIR 1955 Nag 36.
4. *Mahesh Prasad Sinha* v. *Manjay Lal*, AIR 1964 Pat 53.
5. *Director of Inspection, Income-tax, New Delhi* v. *(M/s.) Pooran Mall & Sons*, AIR 1975 SC 67.
6. *Virji Ram Sutaria* v. *Nathalal Premji*, (1969)2 SCR 627, 632-633 (Mitter, J.).

alone. It does not, however, mean that where a provision is directory, the persons or authorities to whom it applies can make a habit of disregarding it on the ground that they are no imperatively required to follow it and can follow or not follow it as they choose. It is because the Constitution expects the President and the Governors of the States to consult the Public Service Commission in cases covered by Article 320(3) and because it assumes that normally and except in case of an oversight, they will follow the provisions of the Article that a specific power is given to make consultation with the Public Service Commission unnecessary in certain cases by means of framing regulations in that behalf.[1]

It is, therefore, clear that even a directory provision is intended to be obeyed and it does not authorise its deliberate and conscious violation or breach. It does not necessarily follow that there is an absolute discretion to do or not to do the thing directed. Directory provisions do call for obedience but a failure to obey the direction may not render the thing otherwise duly done but in disobedience of it, an absolute nullity or *non est* which the judicial eye must decline otherwise duly to see.[2]

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1. *Munna Lal* v. *H.R. Scott*, AIR 1955 Cal 451, 458.
2. *Jagdish Chandra Gupta* v. *Union of India*, AIR 1965 Punj 129.

CHAPTER XX

AMENDING, CODIFYING AND CONSOLIDATING STATUTES

SYNOPSIS

A. Amending Statutes

1. What is an amendatory provision?—There are different definitions of the term 'Amendment' as it applies to legislation. Sometimes it is used in the sense of charge of something proposed in a Bill. But the term 'amendment' is used therein in the sense of an Act which changes the law. A law is amended when it is, in whole or in part, permitted to remain, and something is added to or taken from it, or it is in some way changed or altered to make it more complete or perfect, or to fit it the better to accomplish the object or purpose for which it was made, or some other object or purpose.[1] It is an alteration or change of something

1. U.S. *ex rel Palmer* v. *Lapp*, (1917)244 Fed 377.

established as law. Quoting *U.S.* v. *La Franca*,[1] Sutherland says : "Any change of the scope or effect of an existing statute, whether by addition, omission, or substitution of provisions, which does not wholly terminate its existence, whether by an Act purporting to amend, repeal, revise, or supplement, or by an Act independent and original in form, is treated as amendatory. And it is the effect, not the name given to an Act that determines its character. If a subsequent statute does, in fact, modify and change the proceedings to be had under a former Act, the latter Act is an amendment of the earlier Act and must be so regarded and treated, although it is not so called in the Act itself."[2]

The exposition of the purpose and effect of amending law and the distinction between repeal and amendment are well brought out by the Supreme Court in *Bhagat Ram Sharma* v. *Union of India*.[3] It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an amendment.

Amendment is, in fact, a wider term and includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.

In Sutherland's *Statutory Construction*,[4] the learned author makes the following statement of law : "*The distinction between repeal and amendment* as these terms are used by courts is arbitrary. Naturally the use of these terms by the court is based largely on how the Legislature has developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitled the Act as an amendment.....When a provision is withdrawn from a section, the Legislatures call the Act an Amendment particularly when a provision is added to replace the one withdrawn. However when an entire act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a repeal. Thus as used by the Legislatures amendment and repeal may differ in kind—addition as opposed to withdrawal or only in degree—abrogation of part of a section as opposed to abrogation of a whole section of an Act. The arbitrary distinction has been followed by the Courts and they have developed separate rules of construction for each. However they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal—the abrogation of an existing statutory provision—and have therefore applied the term implied repeal and the rules of construction applicable to repeals to such amendments."

The power of *adaptation* is limited to the making for formal or verbal changes in the Act so as to make it applicable to new administrative set up in that area. Under the guise of adaptation no authority can make any essential change in the Act, nor alteration in the policy.[5]

"Since an amendatory Act alters, modifies or adds to a prior statute all Courts hold", says Sutherland,[6] "that a repealed Act cannot be amended, that is, no Court will give effect to a repealed law because the Legislature attempted to amend it.....The reference to the repealed

1. (1931)282 U.S. 568 : 75 L Ed 551.
2. *State* v. *Chadbourne*, (1883)74 Mc 506, 508.
3. AIR 1988 SC 740 : (1987)5 JT (SC) 476.
4. 3rd Ed. Vol. 1 at p. 477.
5. *Dandapani* v. *State of Orissa*, AIR 1962 Orissa 17, 19 (Narasimham, C.J.).
6. *Statutory Construction*, 3rd Ed. Vol. 1 at pp. 328, 335.

statute is dismissed as surplusage and the will of the legislature as embodied in the provisions of the attempted amendments are enforced as an Independent Act. But where it is clear that the Legislature enacted the amendment as part of a plan in which the continued vitality of the provisions of the repealed statute is fundamental and necessary, or where such an intention is indicated by the fact that the amendment is unintelligible or incomplete without reference to and enforcement of the repealed Act, the provisions of the attempted amendment are not enforced." The learned author, dealing with amendments of the constitutional statutes, says :

> "Amendments are frequently used to cure an unconstitutional enactment but clearly no Court will enforce the amendment unless the law as amended is constitutional.....If the provisions of the attempted amendment are intelligible, complete, considered and constitutional, it is evident that the Legislature did not intend their enforcement to be dependent on the continued legal existence of the original Act and the Court will enforce the new provisions as an original Act.....If the intent of the Legislature appears to be otherwise, as where the provisions of the attempted amendment are unintelligible or incomplete without reference to the unconstitutional Act, the attempted amendment will be held invalid.....Probably a majority of the Courts have rejected the theory that unconstitutional Act has no existence, at least for the purpose of amendment. The unconstitutional Act physically exists in the official statutes of the State and is there available for reference, and as it is only unenforceable, the purported amendment is given effect. If the law as amended is constitutional it will be enforced.....Amendment offers a convenient method of curing a defect in an unconstitutional Act."

Crawford[1] says :

> "There is likewise a conflict in the authorities whether a statute which is unconstitutional in its entirety, can be amended. Some authorities hold that such a statute cannot be amended, for the reason that if the original enactment is completely unconstitutional, there is nothing to amend, since an unconstitutional Act, being void, has no existence as a law. Other authorities, however, adhere to the view that a statute unconstitutional in its entirety, may be amended, provided the amendment qualifies as a complete and independent statute in aid of itself.....But where a statute is unconstitutional in part only, it may be laid down, as a general rule, undoubtedly in all jurisdictions, that the statute may be amended by obliterating the invalid provisions or by correcting those which violate the Constitution."

The same author proceeds to observe at pp. 182-183 :

> "Of course, if the amendatory statute is wholly void, the statute sought to be amended is not affected but remains in force. It is as inoperative as if it had never been enacted ; or the Act sought to be amended is, at least, reinstated in its effectiveness upon the established invalidity of the amendment."

When the Legislature amends an Act by deleting something which was there, then in the absence of an intention to the contrary, the deletion must be taken to be deliberate.[2] A change of language suggests a change of intention.[3]

When a statute is passed to explain a previous Act, the later statute is taken to relate back to the time when the earlier statute was passed. If there is any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put

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1. *Statutory Construction*, 3rd Ed. Vol. 1 at pp. 172-173.
2. *H.V. Kamath* v. *Election Tribunal*, AIR 1958 MP 168, 173; *D.R. Fraser & Co.* v. *Minister of National Revenue*, 1949 AC 24.
3. *Sufi Mohd. Akbar* v. *State*, AIR 1960 J & K 15, 16.

upon the earlier.[1]

2. Clarification or settling conflict of decisions.—*(i) Clarification.*—Now it is not necessary to hold that in every case where the Legislature amends the law that it does so because but for the amendment the effect would have been something different. There are innumerable cases in the history of legislation where the Legislature has added or deleted words in order to *clarify* the position.[2] Amendments are often made to clear up ambiguities and such amendments which are intended to prevent misinterpretation do not in themselves alter the law in any way.[3] When the Legislature amends to clarify things it does not necessarily mean that the original Act did not include and cover those things.[4]

(ii) Settling conflict of decisions.—The object of amendment at times is to end as far as possible the conflict of old decisions.[5] In Tax legislation it is far from uncommon to find amendments introduced at the instance of the Revenue Department to obviate judicial decisions which the department considers to be attended with undesirable results.[6] The draftsmen may change the wording simply to improve the style.[7]

(iii) Repealing obsolete enactments.—Repealing and amending Acts are enacted by the Legislature from time to time in order to repeal enactments which have ceased to be in force or have become obsolete or the retention thereof as separate Acts is quite unnecessary. The principal object of such Acts is to "excise dead matter, prune off superfluities and reject clearly inconsistent enactments." An Act of this kind may be regarded as ' legislative scavenger'.[8]

3. Effect of amendment on parent statute.— An amendment must be read as if the words of amendment have been written into the Act except where that would lead to an inconsistency.[9] The purpose of an Amending Act is to plant the necessary amendments in the parent or the main Act, and once such planting has been effected, the planting Act (the Amending Act), having served its purpose, need not any more remain there to tend the plant, as it were the plant has taken root, in the main Act, and thereafter, the amending Act has only to be repealed and if an Amending Act is so repealed by a repealing Act the repeal does not affect the plant, the amendment already planted in the main Act.....Therefore the repeal of an amending Act does not affect the amendments which have already been brought into the main Act.[10] *In Dasu Khan* v. *Mohan Bhagat*,[11] the Patna High Court has held that although ordinarily an amending Act is not a new and independent statute, it may in certain instances not be so, and be a law

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1. *Deep Chand* v. *Food Corporation of India*, (1984)1 SLR 7 (Delhi).
2. *Kikabhoy* v. *I.T. Commissioner*, AIR 1950 Bom 6, 9; *Midnapur Zamindary Co.* v. *Secretary of State*, AIR 1938 Cal 804, 811; *Helvering* v. *New York Trust Co.*, 292 US 455 : 78 L Ed 1361.
3. *Secretary of State* v. *Purnendu Narayan Roy*, ILR 60 Cal 123, 135 (Their Lordships did not assent to the proposition that any amendment made in the language of any legal enactment must be taken to import a change in the law.).
4. *Kanpur Textile Finishing Mills* v. *R.P.F. Commissioner*, AIR 1955 Punj 139 (Explanation added to the Employees' Provident Funds Act, 1952 by Amending Act 37 of 1953).
5. *Amolak Chand* v. *Sarat Chunder*, 16 CWN 49 (2); *Saker Chand* v. *Yakoob*, AIR 1923 Sind 14.
6. *Fraser & Co.* v. *Revenue Minister*, AIR 1947 PC 120.
7. *Hopes* v. *Hopes*, (1948)2 AER 920, 925 (*per* Denning, L.J.).
8. *Mohindar Singh* v. *Mst. Harbhajan Kaur*, AIR 1955 Punj 141 [The provisions of Section 4 of the CrPC (Amendment) Act, 1952, make it quite clear that although the Act of 1949 has been repealed the substantive portion of the Act which was incorporated in CrPC and which became a part and parcel of it, continue to remain intact. The Act of 1952 was enacted with the sole object of getting rid of a certain quantity of obsolete matters].
9. Vide *Yeddapati Venkateswaralu* v. *State of A.P.*, AIR 1991 SC 704 : (1990)4 JT (SC) 19.
10. *Raman Sahadevan* v. *Kesavan Nair*, AIR 1973 Ker 136, 137 (Raghavan, C.J.); *see* also *Khuda Bux* v. *Caledonian Press*, AIR 1954 Cal 484, 486 (Chakravarti, C.J.).
11. AIR 1966 Pat 425.

independent and complete in itself. Even where the parent statute is held to be unconstitutional, a statute unconstitutional in its entirety, may be amended provided the amendment qualifies as a complete and independent statute in aid of itself. If an unconstitutional Act is amended, the question for consideration is the ascertainment of the intention of the Legislature when the amending Act was passed. If the intention in amending an unconstitutional Act is to make a complete re-enactment of the law which was found to be unconstitutional and invalid, the amending Act will be valid. A statute which is entirely unconstitutional does not render it impossible of amendment, so that an amendment of such a statute is valid, where the statute purporting to make the amendment is independent and is a complete expression of the legislative will. In other words, the amending Act must appear to be an independent statute in aid of itself. In such a case reference to the unconstitutional statute will only be considered as being purely for identification purposes.

The rule of construction with regard to effect of amendment is that a statute amended is to be understood in the same sense exactly as if it had read from the beginning thus amended.[1]

4. Construction of.—In interpreting an amendment, it is not proper to assume that the Legislature intended to make any basic departure from the existing law, unless the language employed either expressly or by necessary implication suggests that interpretation is the most appropriate one. Ordinarily an amendment is intended to carry out the immediate legislative objective.[2] When a Legislature amends an Act by deleting something which was there, then in the absence of an intention to the contrary, the deletion must be taken to be deliberate.[3] When one section is amended, leaving another untouched, the two are designed to function as parts of an integrated whole. Each should be given as full a play as possible.[4] According to Sutherland[5] : "In interpreting an amendatory Act, the Courts have followed the principles of construction used in the interpretation of an original Act, making special use of certain principles of interpretation particularly applicable to an amendatory Act; but in addition they have developed at least one principle of construction peculiar to an Act purporting to change an existing statute. Thus, as in the case of original Acts, the object in construing an amendatory Act is to determine the legislative intent. To do so, the Court will reach the amendment as a whole. Words of common use will be construed in their natural, plain and ordinary meaning. If possible, effect must be given to every word. The amendment will be given a reasonable construction : a literal construction which would lead to absurd consequences will be avoided. When the intent of the Legislature is not clear from its language, the Court will consider surrounding circumstances. The Court will examine the title of the amendment. It will consider records of legislative proceedings and reports of legislative committees concerning the amendments; also previous judicial and executive construction thereof. Statutes in *pari materia* will be looked at and amendments of procedural statutes will be liberally construed." Crawford[6] summarizes the position thus :

> "Of course amendments or amendatory statutes are subject to the rules and principles of construction applicable to original enactments. For instance, the only legitimate recourse to construction is to ascertain the legislative intention. In ascertaining this intent the Court

1. *Burhanpur Tapti Mills, Ltd.* v. *Industrial Court*, AIR 1965 MP 43, 47 (Dixit, C.J.).
2. *Saleh Mohd.* v. *Khanmull*, AIR 1959 Mys 102, 106.
3. *Hari Vishnu Kamath* v. *Election Tribunal*, AIR 1958 MP 168, 173.
4. *Markham* v. *Cabell*, 90 L Ed 165, 169 (Douglas, J.).
5. *Statutory Construction*, 3rd. Ed., Vol. III at pp. 410-412.
6. *Statutory Construction*, 3rd Ed., Vol. I at pp. 616-617.

may not only examine the body of the statute, but its caption. Statutes in *pari materia* may also be resorted to for assistance. Executive as well as judicial construction may likewise be of assistance. And the evil sought to be remedied by the amendment may be considered as some indication of the legislative intent."

In *Nathar* v. *Federal Commissioner of Taxation*,[1] Isaacs, J., said : "It is trite law that, in order to ascertain the intention of the Legislature in one part of the Act, the proper course is to read the whole instrument. Before doing so, we have to make sure what the whole instrument consists of. When the Income Tax Act No. 41 was passed on 13th September, 1915, the Assessment Act passed on the same day was No. 34. Afterwards, on 15th November, 1915, an amending Assessment Act was passed, No. 47. But what is extremely material is the fact that by Section 11 of the amending Act it is enacted : 'This Act shall be deemed to have commenced on the same day as the Principal Act.' We have, therefore, to deem that both were in existence on 13th September, 1915, and that the Assessment Act stood on that day as it was afterwards amended by the latter Act. So reading the Act, we turn to various sections for enlightenment as to what income the Legislature has intended to tax."

"It is necessary, in construing an Act which alters the law, to inquire what was the state of the law before the alteration was made, what was the mischief intended to be remedied, and what was the nature of the remedy provided."[2] It is permissible in construing the scope of an amended provision of an Act to examine what the law was before it was amended.[3] Ordinarily, the Court is not at liberty to construe a statute with reference to the motive which influenced the Legislature in passing the enactment. Yet, when the history of a provision of law tells the Court what the object of the Legislature was in effecting a change in the law, the court has to see whether the terms of the section are such as would fairly carry out the object and to read the section with a view to finding out what it means and not with a view to extending it to something which was expressly intended not to apply. The golden rule to follow in such a case is *first* to find out what was the provision before the amendment; *secondly*, what was the defect in the previous law : *thirdly*, what remedy the Legislature has adopted to cure the defect; and *lastly*, to find out the true reason of the remedy now adopted. This appears to be the only way to avoid all difficulties in suppressing the mischief under the old provision and in advancing the remedy.[4]

A clarifying amendment can be used to construe the provision so amended, even though the amendment has no retrospective effect.[5]

Sometimes amendment is in the nature of expansion of the original definition.[6]

A reading of Section 97 of the Amending Act shows that it deals with the effect of the amending Act on the entire Code both the main part of the Code consisting of sections and the First Schedule to the Code which contains orders and Rules. Section 97*(c)* of the Amending Act

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1. 25 CLR 183,188.
2. *Badishche Anilin and Soda Fabrick* v. *Nickson*, (1906) AC 419, 426; *Weedon* v. *Davidson*, 4 CLR 895 at p. 898; *Rameshwar Prasad* v. *State*, (1983)2 SCC 195 : AIR 1983 SC 383.
3. *Adityan* v. *Kandaswami*, (1958)1 Mad LJ 61.
4. *Morisetty Bhadriah* v. *Sales Tax Appellate Tribunal*, (1964)1 Andh WR 361.
5. *Thiru Manikam & Co.* v. *Tamil Nadu State*, AIR 1977 SC 518; *Govindji Jamnadas* v. *Commissioner of Sales Tax*, 1983 Jab LJ 376 (FB).
6. Vide *The Regional Director, Employees State Insurance Corporation* v. *M/s. High Land Coffee Works of P.F.X. Saldanha & Sons*, AIR 1992 SC 129 : 1992 Lab IC 58 : 1991 (3) JT (SC) 10 : (1991)3 SCC 617 : (1991)3 SCR 307 : 1991 AIR SCW 2821.

takes note of several local amendments made by a State legislature and by a High Court before the commencement of the Amending Act and states that any such amendment shall except in so far as such amendment or provision is consistent with the provisions of the Code as amended by the Amending Act stands repealed. It means that any local amendment of the Code which is inconsistent with the Code as amended by the Amending Act would cease to be operative on the commencement of the Amending Act.

Under such circumstances the Allahabad High Court put the interpretation that any local amendment which is not modified or amended by the Amending Act shall remain operative but their view was reversed by the Supreme Court and it was held that all the local amendments shall cease to operate on the commencement of the Amending Act irrespective of the fact whether such provision is touched by the Amending Act or not.[1]

Notwithstanding that the corresponding provision in the Civil Procedure Code was not amended by the Amending Act, 1976, all local amendments by a State Legislature or a court which are inconsistent with the amended Code stood repealed.[2]

Generally local amendment of one State cannot be used in interpreting the same provision (not so amended) in another State.[3]

"Sometimes light may be thrown upon the meaning of an Act by taking into consideration parliamentary expositions as revealed by the later Act which amends the earlier one to clear up any doubt or ambiguity", said the Supreme Court in a case under Section 10-A inserted into the Bihar Land Reforms Act by an amendment in 1964-1965.[4]

When a right of suit is taken away and the remedy by way of application is substituted, the prohibition in regard to the filing of the suit should be read as co-extensive with the remedy that is provided.[5]

5. Cautious interpretation.—It is a well-recognised canon of interpretation of amendments intended to bring about desirable change in the law or to overcome interpretations put on the law by Courts that the law existing before the amendment was made must be considered to continue to be good law, except in so far as amendment makes it clear on the face of it that a change in the law as it stood before the amendment was intended.[6] It may be useful to enquire, as to whether the state of law at the time when the amending Act was passed, and the object which the Legislature had in introducing the section could throw any light upon its interpretation. This is a permissible matter to look into for the purpose of construing a statute, provided it is taken with the warning that we must not strain the language of statute unduly by attempting to bring it within the supposed intention of the Legislature.[7] When an amending Act

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1. *Ganapat* v. *IInd Addl. District Judge*, AIR 1986 SC 589 : 1986 ALJ 271 : (1986)1 SCC 615.
2. Vide *Ganpat Giri* v. *IInd Addl. Dist. Judge, Ballia*, AIR 1986 SC 589 : 1986 All LJ 271 : (1986)1 SCC 615 : 1986 UJ (SC) 287 : 1986 All WC 181 : 1986 Cur Civ LJ (SC) 189 : (1986)12 All LR 165 : (1986)1 SCJ 152 : 1986 BB CJ (SC) 35 : (1986)2 All Rent Cas 80 : (1986)99 Mad LW 481 : 1986 SLFBRC 323 : 1986 UPRJ 363.
3. *Ganpat* v. *Shashikant*, (1978)2 SCC 573.
4. *Sona V. P. Cement Co.* v. *General Mining Syndicate*, AIR 1976 SC 2520.
5. *Mohd. Yusuf* v. *Mohd. Hussain*, AIR 1964 Mad 1, 6 (FB) (Ram Chandra Iyer, C.J.). (A court cannot be divested of jurisdication to hear a pending case, notwithstanding the amendment of law, unless it expressly provides so); *Indermull Lonia* v. *Subordinate Judge*, AIR 1958 Andh Pra 779, 783 (Kumarayya, J.).
6. *Tirupatirayalu* v. *Venkata Subba Rao*. AIR 1950 Mad 287 (Where there have been decided cases before an Act is amended, if the amendment does not expressly show that the law as interpreted by the decisions is altered, the rule laid down by the decisions is to be adhered to); *Harnandan Rai* v. *Baliram Prasad*, AIR 1931 Pat 1.
7. *Mohamed Hussen* v. *Jamini Nath*, AIR 1938 Cal 97, 101.

alters the language of the principal statute the alteration must be taken to have been made deliberately.[1] In Halsbury's *Laws of England*,[2] the view is thus expressed :

"Mere amending provisions should not be interpreted so as to alter completely the character of the principal law. Unless clear language is found indicating such an intention, and where a statute of limited operation is repealed by one which re-enacts its provisions in an amended form it need not be presumed that its operation was to be extended to classes of persons hitherto not subject to them.[3] Where, however, expressions of larger meaning are used in an amending statute than in the principal Act, it must be taken that they are used intentionally.[4] If the words of a latter statute differ from those of an earlier statute the Court in construing the latter statute is not bound by a decision under the earlier one, even though it relates to the same subject-matter."

6. Alteration in law.—Ordinarily, by an amendment the Legislature must be taken to have intended a change in the law, but it does not necessarily follow that such is the intendment in every case.[5]

The Legislature may, at any time, in exercise of the plenary power conferred on it by Articles 245 and 246 of the Constitution render judicial decision ineffective by enacting a valid law. The Legislature, however, cannot, by a bare declaration without more directly overrule, reverse, or set aside any judicial decision.[6]

The title of an amendatory Act is not a sure guide as to such intendment.[7] When a short title is given in an original Act, the Act, however, subsequently amended can be called by that short title. To hold otherwise would be to hold that where the Legislature had prescribed a short title, it was necessary to use a longer one. The original Act and the amending Act constitute but one Act but not two Acts.[8]

"Because it is defined", says Sutherland[9] : "as an Act that changes an existing statute, the Court have declared that the mere fact that the Legislature enacts an amendment indicates that it thereby intended to change the original Act by creating a new right or withdrawing an existing one. Therefore, any material change in the language of the original Act is presumed to indicate a change in legal rights. The Legislature is presumed to know the prior construction of terms in the original Act, and an amendment substituting a new terms or phrase for one previously construed indicates that the judicial or executive construction of the former terms or phrase did not correspond with the legislative intent and a different interpretation should be given to the new term or phrase. Thus, in interpreting and amendatory Act there is a

1. *Fraser & Co.* v. *Revenue Minister*, AIR 1949 PC 120.
2. 2nd Ed., Vol. 31 at p. 693; see *Union of South Africa* v. *Simmer and Jack Proprietary Mines*, 1918 AC 591, 596 : AIR 1918 PC 161.
3. *Govinda Iyer* v. *Rex*, ILR 42 Mad 540, 546 (FB).
4. *Hurlbatt* v. *Barnett & Co.*, (1893)1 QB 77, 79.
5. *Midnapore Zamindary Co.* v. *Secretary of State*, AIR 1938 Cal 804, 811. (Introduction of new words into an existing section may alter meaning of the words already there. But no such alteration can result unless (1) the requirements of the English language demand it, or (2) those requirements permit it and the section demands it); *Lord Howard de Walden* v. *I.R.C.*, (1948)2 All ER 825, 830, *per* Lord Uthwatt.
6. *Hari Singh* v. *Military Estate Officer*, (1973)1 SCR 515 : AIR 1972 SC 2205; *Govt. of Andhra Pradesh* v. *Hindustan Machine Tools Ltd.*, 1975 Supp. SCR 394 : AIR 1975 SC 2037; *I.N. Saxena* v. *State of M.P.*, (1976)2 SCR 237 : AIR 1976 SC 2250 and *Misrilal Jain* v. *State of Orissa*, AIR 1977 SC 1686; *see* also *(M/s.) Utkal Constructions & Joinery (P) Ltd.* v. *State of Orissa*, AIR 1987 SC 2310 : AIR 1987 SC 2310 : (1987)5 JT (SC) 1 : 1987 Raj LR 652 : (1987)8 IJ Rep 461.
7. *Balaji Singh* v. *Gangamma*, AIR 1927 Mad 15, 87. (Even when mistakes in legislative enactments are corrected by later amending Act, the amending Act should be read as part of the Act, which it was intended to correct).
8. *Phool Chand* v. *Rammath*, AIR 1928 All 186, 189; *see* also *In re* Keer, 21 IC 502.
9. *Statutory Construction*, 3rd Ed., Vol. III at pp. 412-414.

presumption of change in legal rights. This is a rule peculiar to amendments and other Acts purporting to change the existing statutory law.....And as to changing statutory law there is a presumption against the implied repeal or amendment of any existing statutory provision. In accord with this conservative attitude, an amendatory Act is not to be construed to change the original Act or section further than expressly declared or necessarily implied." It is perfectly true that whenever an amended Act has to be applied subsequent to the date of the amendment, the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it.[1] This is for the purpose of the determining what the meaning of any particular provision of the Act as amended is, whether it is the unamended part or in the amended part. But this is not the same thing as saying that the amendment must itself be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication.[2] "Since an amendment", says Crawford,[3] "becomes a part of the original statute, both must be construed together as if they constituted one enactment, even if the amendment occurs merely by implication. Their provisions should be harmonized, if possible, but where there is irreconcilable conflict, the provisions of the amendment must prevail over those of the original statute on the theory that the former constitutes the last expression of the will of the Legislature. The amended statute should also be construed as if it had been originally passed in its amended form, since the amendment becomes a part of the original enactment. And words used in original statute should, at least, be presumed to be used in the same sense in the new statute. Conversely, a change in the phraseology creates a presumption that the Legislature intended a change of meaning. Indeed, the mere fact that the legislature enacts an amendment is of itself an indication of an intention, as a general rule, to alter the pre-existing law. A portion of an amended statute, however, which has been left unchanged, is not affected by the amendment.[4] And obviously, in the absence of a contrary intention, an amendatory statute will not have a wider scope than the original statute, but should be construed to have the same operation. For instance, where an Act purports to amend a particular section of a general law, it is limited in its scope to the subject-matter of the section proposed to be amended. And as we have already indicated the previous judicial construction becomes a part of the amended statute, where the terms construed are retained in a subsequent amendment. In fact, it may be presumed that the Legislature intended to adopt the prior construction of the unamended portions. Moreover, in construing the amended statute, the Court should consider the change sought to be effected by the Legislature. The amendatory Act should be construed in relation to the conditions created by the amended Act as well as the objects and purpose of the Act itself as therein defined. In short, regard must be had for the law as it was before being amended, and the amendatory Act should be construed to repress the evils under the old law and to advance the remedy provided by the amendment." A deliberate separation of the two parts of the old section—applying a restriction to one and not the other—indicates that a change was intended. This is in accord with the presumption that a proviso 'refers only to the provision to which it is attached'.[5]

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1. *Shambhu Dayal* v. *State of U.P.*, 1979 All LJ 95 (SC).
2. *Ram Narain* v. *Simla Banking and Industrial Co., Ltd.*, 1956 SCR 603, 613-14 (Jagannadhadas, J.); *Thakorelal* v. *Gujarat Revenue Tribunal*, AIR 1964 Guj 183, 190 (Bhagwati, J.).
3. *Statutory Construction*, 3rd Ed., Vol. III at pp. 617-619.
4. *Ramlal* v. *State of U.P.*, 1978 All LJ 1197.
5. *United States* v. *McClure*, 83 L Ed 296, 299 : 305 SC 472 (Black, J.).

There are, however, cases where the Legislature departs from the language previously used without intending to depart from the meaning, the *prima facie* rule of construction is that where draftsman uses different words be presumably intended a different meaning. It is, however, not an invariable rule that from variation of language variation of intention must necessarily be inferred. Sometimes without there being any change of intention, legislative draftsman uses different language with a view to 'improve the graces of the style and to avoid using the same words over and over again'.[1] However, while considering the effect of the amendment, it must be borne in mind that a change in the phraseology brought about by amendment creates the presumption that the Legislature intended a change of meaning.[2]

When statutes are codified, compiled, or collected and revised, a mere change in phraseology should not be deemed to effectuate a change in the law, unless there was an evident intention to make such change. In such work words which do not materially affect the meaning are often omitted from the statutes as incorporated in the Code, or a general idea will be expressed in briefer phrases. Such modifications of the language are rightfully held not to justify a finding of an intention to alter the law. But where a Legislative amendment of an enactment uses a different language from what is contained in the old Act, it naturally gives room for the inference that the law was intended to be changed. If the phraseology, past and present, is strikingly dissimilar, and the requirements of the language employed demand a change of meaning, and the sense of the section requires it, the Court must give effect to it. It is an established law that change in the language of an amending or repealing Act postulates a change of law.[3] If it appears to the Court that a change in the law has resulted, it is the duty of the Court to give effect to it. It will, however, be observed that a mandatory statute should not be construed as to alter completely the existing scheme and the principles of the law contained in the parent statute, unless the Legislature has expressed its intention with irresistible clearness.[4]

Where amendments are used as legislative declarations of the object and intent of prior legislation, that is, to interpret such legislation, they do not make change in the law as it stood previously.

Whether an amendatory Act adds something to or takes something from the original Act, so as to effect a change in the law, or is merely an interpretation of the intent of the original Act, depends much on the time when and the circumstances under which, the amendment is enacted. The case of *People* v. *Dovenport*,[5] is one of the leading judicial pronouncements dealing with the subject. It affirms these general principles :

(a) If an amendment follows soon after controversies have arisen as to the meaning of the original Act, there is reasonable likelihood and it is logical to believe that it was merely intended to clarify the meaning of the pre-existing law;

(b) if it is enacted after a considerable lapse of time and after the intervention of other session of the Legislature, it is reasonable to assume that a radical change of phraseology indicates an intention to change the law as it stood previously.

However, it may be noted that the mere fact of controversy as to legislative meaning and amendment soon after such controversy do not force a conclusion that the original act is merely

1. *Grison Knitting Works* v. *Laxmi Commercial Bank, Ltd.*, AIR 1960 Punj 98, 107 (Tek Chand, J.).
2. *Madanlal Sharma* v. *Smt. Santosh Sharma*, 1980 Mah LJ 391.
3. *Pramod M. Jhaveri* v. *Sukhdeo Ratan*, 1978 Mah LJ 300.
4. *Natesa Mudaliar* v. *Dhanpal Bus Service*, AIR 1964 Mad 136 : ILR (1964)1 Mad 288 : (1964)2 MLJ 23 (FB).
5. 91 NY 574.

being interpreted. It would seem desirable to confirm a meaning suggested by the rule of formal change only by recourse to other pertinent *indicia* of legislative intent.

The very fact that the Legislature provided in Order XXI, Rule 49, C.P.C., for an application being made by the decree-holder for a charging order provided that thereafter an order for sale may be made with the precautions that the application should be served on all the partners and that the partners would be at liberty an any time to redeem the interest charged or, in the case of a sale being directed to purchase the same, clearly shows that the Legislature intended to change the previous law as embodied in Section 266, C.P.C., that a partner's interest was saleable property in execution of a decree just like any other property.[1]

Section 116, I.P.C., lays down that where no express provision is made for the punishment of an abetment of an offence punishable with imprisonment, the accused shall be punished as provided in the section. By the insertion of Section 165-A, I.P.C., by virtue of Section 3, Criminal Law (Amendment) Act, 1952, the Legislature has clearly and expressly made provision for punishment of abetment in bribery cases and such abetment has been made a substantive offence. Even if two sets of provisions be deemed to be co-existing and the result of this co-existence would be destructive of the object for which the new law was passed, the earlier would be repealed by the later.[2]

But an amendatory Act is not to be construed to change the original law further than expressly declared or necessarily implied.[3] Legislature does not intend to make any substantial alteration in the law beyond what it expressly declared either in express terms or by clarification, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed.[4]

Ordinarily, the pre-existing position of law cannot be interpreted with reference to subsequent amendment. But there may be cases where the subsequent amendment merely gives recognition to the pre-existing position of law.[5]

Sub-clauses *(c)* and *(d)* are introduced in Section 9 of the U.P. Encumbered Estate Act, 25 of 1934, by the Amending Act of 1939. No amendment is made in Section 13 of the Act. Therefore, the interpretation of Section 13 should not be dependent on the effect of the provisions of Section 9(5)*(c)* and *(d)*. It must continue to bear the same interpretation which it would have borne without those provisions.[6]

Where an earlier Act is amended by a later Act, it cannot be said that the earlier Act applies, incorporates or refers to the Amending Act. The earlier Act cannot incorporate the later Act, but can only be amended by it.[7]

The manifest intention of an adaptation under Section 293 of the Government of India Act, 1935, was not to alter the law but merely bringing it into line with the circumstances and nomenclature brought in the constitutional changes effected by the Act of 1935.[8]

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1. *R.E. Ramsay* v. *Pasupatinath*, AIR 1955 Cal 255.
2. *Ukakhasia* v. *Manipur State*, AIR 1956 Manipur 9 : *see* Maxwell on the *Interpretation of Statutes*, 10th Ed. at p. 168.
3. *Bennet* v. *Greenwalt*, 226 Iowa 1113; *Shambhu Dayal* v. *State of U.P.*, 1979 All LJ 95 (SC); *see* also *Ram Lal* v. *State of U.P.*, 1978 All LJ 1197.
4. *Workmen, Rohtas Industries, Ltd.* v. *Choudhuri*, AIR 1965 Pat 127, 132 (Ramaswami, C.J.); *see* also *Manicka* v. *Arunachala*, AIR 1965 Mad 1, 7 (FB) (Ram Chandra Iyer, C.J.); Sole Surviving Coparcener and Hindu widow.
5. *Kalinga Tubes, Ltd.* v. *Shanti Prasad Jain*, AIR 1963 Orissa 189.
6. *Sukhnandan Lal* v. *Raj Kali (Mst.)*, AIR 1954 All 463.
7. *Jethanand* v. *State of Delhi*, AIR 1960 SC 89, 92.
8. *Kapur* v. *Pratap Singh Kairon*, AIR 1964 SC 295.

7. Amendment not to incorporate something inconsistent with or repugnant to object of Act.—By an amendment the Legislature would not incorporate something in the Act which would be inconsistent with or repugnant to the object of the Act. In the construction of the term 'premises' in Clause *(m)* of section 2 of the Factories (Amendment) Act, 1954, guidance may be derived from the words 'premises or building' in Sub-clause *(bb)* of Clause (1) of Section 7 of the Act which was added by the Factories (Amendment) Act, 1954. If 'premises' under the Act were to mean only buildings it would be scarcely appropriate to use the words 'premises or building' in Sub-clause *(bb)* of Clause (1) of Section 7.[1] Nothing more can be read into the explanation added to the first proviso to Sub-section (3) of Section 488, Cr. P.C., than what it says in the context of the first proviso to Sub-section (3). The provisions of the Hindu Married Women's Right to Separate Residence and Maintenance Act cannot be invoked for the purposes of construing Sub-section (1) of Section 488, Cr. P.C.[2]

It is dangerous mode of draftsmanship to incorporate a section from a former Act, for unless the draftsman has a much clearer reflection of the whole of the formal Act than can always be expected, there is a great risk that something may be expressed which was not intended.[3]

It is appropriate on the part of the Government to amend the *notification* and not attribute impossible meanings to familiar words and stretch the sense beyond the breaking point.[4]

8. Amendment in procedural and substantive provisions.—A change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective.[5] If rights and procedure are both altered by an amending or repealing statute, even if the rights accrued under the previous enactment are saved, it would seem to be consequential that the old procedure alone is applicable unless the new Act makes the new procedure applicable to old rights. If such be not the case, the right would seem to be saved to no purpose, for if a suit be brought under the general law, it is likely to be met, and met successfully, by the plea that a special right created by the statute can only be enforced by the special procedure presented. The Legislature cannot be regarded as having contemplated such a result. It must, therefore, be one of the general rules of construction that if rights and procedure are both altered but rights accrued under the repealed enactment are saved, then, in the absence of an intention to the contrary expressed or necessarily implied in the new statute, it will be proper to interpret the intention of the Legislature to be that the old procedure will subsist for the enforcement of the saved rights. There is no question of any vested right in procedure. The position simply is that the accrued rights have been saved and the new Act not having abrogated the old procedure as respects those rights, nor made the new procedure applicable to them, the old procedure is consequently saved, as the only possible machinery for enforcing those rights.[6] If the application of the provision of an Amending Act makes it impossible to exercise a vested right of suit, the Act should be construed as not being applicable to such cases.[7] The promulgation of an Amending Act cannot without any express term take away from a party any right which

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1. *State* v. *Ardeshir*, AIR 1956 Bom 219, 223.
2. *Bela Rani, (Smt.)* v. *Bhupal Chandra*, AIR 1956 Cal 134.
3. *Mayor (etc.) of Portsmouth* v. *Smith*, (1885)10 AC 364. It is better when there is a reference to other statutes, to state the limits within which that incorporation by reference is to apply; *Kishna Singh* v. *State*, AIR 1957 MP 67, 70 (FB).
4. *Provident Fund Inspector* v. *Paul Abrao*, AIR 1965 Ker 239, 240.
5. *Sadhucharan* v. *Sudarshan*, AIR 1965 Orissa 2, 4 (R.K. Das, J.); *Anwar Mohd.* v. *Custodian, Evacuee Property*, AIR 1964 Raj 260, 266-7 (Tyagi, J.).
6. *Jatendra Nath De* v. *Jetu Mahato*, AIR 1946 Cal 339, 347 (FB).
7. *Ajit Singh* v. *Bhagbati Charan*, AIR 1922 Cal 491.

might be vested in him under a prior Act.[1] As already observed the amending Act does not affect rights which have vested or obligations which have been defined before the amending Act came into operation, but no person has a vested right in the procedure of a Court and consequently an Act which merely regulates procedure governs all proceedings that are pending at the time when the Act comes into operation provided that existing orders are not deprived of their finality and that the application of the provisions does not work injustice. If the Amending Act is a remedial one it should be construed as widely as possible to give effect to the intention of the Legislature in as many cases as possible in so far as this can be done without injustice to the parties.[2] Thus where an Amending Act lays down a rule of procedure, it ordinarily affects pending actions. Hence, where a document which is inadmissible under the law at the time the suit is pending in the trial Court is made admissible by an Amending Act when the appeal is pending, the Appellate Court can admit the document.[3] In every case the language of the amending statute has to be examined to find out whether the Legislature clearly intended even pending proceedings to be affected by an amending statute. Section 3 of the Bombay Municipal Boroughs(Amendment) Act, 54 of 1954 provides that 'all elections to the office of the President or Vice-President, held on or after the said date and before the coming into force of this Act, shall be deemed to be valid' and hence it must be held that the amendment was clearly intended by the Legislature to apply to all cases of election of President and Vice-President, whether or not the matter had been taken to Court.[4] Reading section 23(1) of the original Bombay Municipal Boroughs Act 18 of 1925 as amended by Act 34 of 1954, the position is that the councillors elected at a general election under this Act for three years shall hold office for a term of four years. It would be not true to say that this is giving retrospective effect to the amendment. The amendment deals with a future event, *viz.*, the election of the councillors, and it is this future event that is altered or modified by the amendment.[5]

If it is a section which has effected an alteration in the substantive law, it is plain that unless Parliament expressly by clear implication makes such a section retrospective, it will not be retrospective so as to interfere with rights that have accrued prior to the passing of the Act.[6]

In *Mohd. Salem* v. *Umaji*,[7] a Full Bench of the Hyderabad High Court (all the judges concurring) held that the amendment of Section 9 of the Hyderabad Money Lenders Act, (5 of 1349F) affects substantive right and the provisions relating to dismissal of suits apply to transaction entered into after the amendment of Section 9 and not before. There was, however, difference of opinion on the question whether the suit is liable to be dismissed under the amended Section 9, if the plaintiff does not possess a licence at the time of the suit transaction. The majority consisting of Qamar Hasan, Mohd. Ahmed Ansari and Jagan Mohan Reddy, JJ.,

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1. *Braja Lal* v. *Kenaram Pal*, 50 IC 515; *Shiba Kali Kumar* v. *Chuni Lal*, AIR 1927 Cal 748.
2. *Bigan Singh* v. *Zaffer Hussain*, AIR 1940 Pat 567.
3. *Sohan Lal* v. *Atal Nalu*, AIR 1933 All 846; but see *Banwari Lal* v. *Gopi Nath*, AIR 1931 All 411. (it is not correct to apply an Act which is passed subsequent to the trial of the case to the procedure in the case. No recital in an amending statute, however, can avoid that which has been declared by the Courts to have been done rightly under the law); *Balaji Singh* v. *Gangamma*, AIR 1927 Mad 85, 86.
4. *Shiabuddinsah Mohiuddinsah Akki* v. *Godag Betgiri Municipal Borough and others*, AIR 1955 SC 314.
5. *B.G. Chavan* v. *State of Bombay*, AIR 1955 Bom 334. (it was, however, held that no question could arise of the term of office of the President being extended by reason of the extension of the duration of the Municipality as the second proviso to Section 19 as amended by Act 35 of 1954 did not apply to this case.).
6. *Carson* v. *Carson*, (1964)1 All ER 681, 687 (Scarman, J.); *see* also *Ch. Mukhtar Singh* v. *State of U.P.*, AIR 1957 All 297, 304 (Aggarwala, J.).
7. AIR 1955 Hyd 113 (FB).

held that the suit was liable to be dismissed in contingency. The object of the amendment, according to their Lordships, was to serve a public purpose and the mischief is sought to secure was to protect borrowers from unscrupulous and usurious money-lenders by prohibiting them from lending monies without obtaining licences on pain of imprisonment as well as by empowering Courts to dismiss suits of such money-lenders. Palnitkar and Chari, JJ., however, held that the suit was not liable to be dismissed if the plaintiff is in possession of a licence at the time of the institution of the suit or at the time of the passing of the decrees for, to interpret it otherwise, would be going against the express purpose of the legislation.

9. When amendment takes effect.—The Amendment Act, though it lays down that it would be decided to have been always in force since the date of the enactment of the original Act, does not invalidate a decree already passed and set aside in appeal, the Amendment Act in such a case is to be given retrospective effect but only after its enforcement, before its enforcement there could not possibly be any question of giving retrospective effect to it.[1] Where Court Fees Act was amended so as to enhance the fee payable on a review petition between the date of suit and the petition for review, it was held that the amendment did not affect the court-fee payable on the review-petition.[2] And when the Letters Patent were amended curtailing the right of appeal after the suit had been filed, the amended provisions were held to be not applicable to such a case.[3] It is an agreed principle of law that the rights and liabilities of the party would be governed by the law as it stood when the proceedings started or the cause of action arose and no amendment of the law can affect such rights and liabilities until and unless it provides specifically or by necessary intendment.[4] The First Schedule to the Workmen Compensation Act, 1912—41 (W.A.) provided, by Clause (17), for the redemption of weekly payments by payment of a lump sum and, by Clause (18) for the assessment of the lump sum in accordance with an actuarial calculation. An Amending Act altered the method of assessment so as to increase the lump sum to which a worker was entitled by way of redemption. It was held that the amendment did not apply to a case in which the accident in respect of which weekly payments were being made had occurred before, but an application for redemption was heard after, the date of the amendment.[5] The amendment in the Jammu and Kashmir Land Requisition Act introduced by Act 34 of 1960 in regard to the rate of interest is prospective in operation and would not apply to the proceedings resulting in an award given before coming into force of the aforesaid amendment.[6]

In *Fazluddin* v. *Zubaida Khanam*,[7] the Calcutta High Court has held that where during the pendency of a suit for ejectment and an application under Section 17(3) of the West Bengal PremisesTenancy Act, 1956, an amendatory West Bengal Act 27 of 1959 was passed, it was held that the proceedings were governed by the unamended Section 17(3) of the old Act and not by the new Amending Act.

In *Corpus Juris*,[8] the following general observations are made on this topic ·

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1. *District Board, Muzaffarpur* v. *Upper India Sugar Mills, Ltd.*, AIR 1957 All 527, 535 (Desai, J.).
2. *Nandi Ram* v. *Jogendra Chandra*, AIR 1924 Cal 881, 884.
3. *Sadar Ali* v. *Doiluddin*, AIR 1928 Cal 640 (FB); *see* converse case, *Gosta Behari* v. *Nawab of Murshidabad*, AIR 1932 Cal 207.
4. *Sagar Narayan Banerjee* v. *State of West Bengal*, 75 CWN 849, 852 (S.K. Chakravarti, J.); *Oriental Insurance Co. Ltd.* v. *Dharam Singh*, AIR 1990 All 104 : 1990 All LJ 133 (DB).
5. *Kraljevich* v. *Lake View & Star, Ltd.*, 70 CLR 647.
6. *Collector* v. *Habibullah Din*, AIR 1967 J & K 44 (FB) (Ali, J.).
7. 66 CWN 849.
8. Volume 59, at pp. 1181-1184.

"In accordance with the rule generally applicable to legislative enactments, unless required in express terms, or by clear implication, an amendatory Act will be construed prospectively and not retrospectively and the parts not altered are considered as having been the law from the time they were enacted. So also where a statute, or a portion thereof, is amended by setting forth the amended section in full, the provisions of the original statute, that are repealed are to be considered as having been the law from the time they were first enacted, and the new provisions or the changed provisions are to be understood as enacted at the time the amended Act takes effect not to have any retrospective operation. Proceedings instituted, orders made, and judgments rendered, before the passage of amendment will, therefore, not be affected by it, but will continue to be governed by the original statute. However, in accordance with the rule applicable to statutes generally, amendments which are purely remedial operate retrospectively, and those which merely cause changes in the adjective or procedural law apply to all cases pending and subsequent to their enactment, whether the cause accrued prior to or subsequent to the time the change became effective unless there is a saving clause as to existing litigation, or accrued causes of action. But amendments causing changes in the adjective or procedural law will not operate retrospectively so as to affect a proceeding entirely closed before the amendment became effective."

Though it is an extremely hazardous proceeding to refer to provisions which have been repealed in order to ascertain what the Legislature meant to enact in their room and stead, there may possibly be occasions on which such a reference would be legitimate. Where the terms of the section as it stands are sufficiently difficult and ambiguous and secondly, where the object of the instant inquiry is to ascertain the true meaning of the part of the section which remains as it was and which there is no ground for thinking that the substitution of a new provision was intended to alter, consideration of its evolution in the statute book, by referring to the original provision, would be justified as proper and logical course.[1] "Since an amendment changes an existing statute, the general rule of statutory interpretation that the surrounding circumstances are to be considered is particularly applicable to the interpretation of amendatory Acts. The original Act or section and conditions thereunder must be looked at. Judicial and executive interpretation of original Act especially must be considered. The Court will determine what defects existed in the original Act, which defects the Legislature inteneded to ease, and then construe the amendment so as to reduce or eliminate the defect intended to be remedied."[2] The same learned author in dealing with retrospective operation of an amending statute, at pp. 434-439 says :

"In determining the effect of an amendatory Act on transactions and events completed prior to its enactment, it is necessary to distinguish between provisions added to the original Act by the amendment, and provisions of the original Act repealed by the amendment, and provisions of the original Act re-enacted thereby. In accordance with the rule applicable to original Acts, it is presumed that provisions added by the amendment affecting substantive rights are intended to operate prospectively. Provisions added by the amendment that affect substantive rights will not be construed to apply to transactions and event completed prior to its enactment unless the Legislature has expressed its intent so that effect or such intent is clearly implied by the language of the amendment or by

1. *Bradlaugh* v. *Clarke*, (1883)8 App Cas 354, 380; *Tumahole Bereng* v. *King*, AIR 1949 PC 172, 176; *Mohanlal Tripathi* v. *District Magistrate, Rai Barcilly*, (1992)4 SCC 80 : (1992)4 JT (SC) 363.
2. Sutherland : *Statutory Construction*, 3rd Ed., Vol. I at pp. 416-417.

circumstances surrounding its enactment. However, as in the case of the original Acts, in the absence of a saving clause or statute or some other clear indication that legislative intent is to the contrary, provisions added by the amendment that affect procedural rights—legal remedies—are construed to apply to all cases pending at the time of its enactment and all those commenced subsequent thereto, whether the substantive rights sought to be enforced thereby accrued prior or subsequent to the amendment, unless a vested right would thereby be impaired. But the new provisions will not affect a proceeding entirely closed before the amendment became effective. In accordance with the rule applicable to repealing Acts, the general rule against the retrospective construction of statutes does not apply to those provisions of the original Act repealed by the amendment, whether affecting substantive or procedural rights. In the absence of a saving clause or statute, or some other clear indication that the legislative intent is to the contrary, all rights dependent on the repealed provisions of the original Act which had not vested or been prosecuted to completion prior to the enactment of the amendment are destroyed."[1]

The normal assumption is that when the Legislature amends only one section of the law, leaving another untouched, the two are designed to function as parts of an integral whole and each should be given as fully a play as possible.[2]

If the amending Act is *ultra vires*, the statute sought to be amended remains in operation.[3]

When rule amended.—The amended rule must be deemed to have been in existence from the original making and publication of the rules.[4]

10. Effect of amendment on judicial decisions.—A change in law can affect the decision of a Court only to the extent that the decision becomes contrary to law, but where the change in law does not touch the question already decided by the competent Court, the judicial decision is not affected by such amendment.

Where an earlier judicial determination of the rights of the parties had become final, and the Amending Act incorporating provisions for redetermination of the rights, did not touch that particular right which had become final, it was held that Act the reopening of the earlier proceeding under the Amending Act, was uncalled for.[5] The mere fact that a statute has been amended in certain particulars but has not been amended in respect of a wrong decision given by a Court, does not lead to the conclusion that the Legislature has accepted the decisions as correctly interpreting the provision in question. Conversely, the rule is well established that a Court is not prevented from overruling an earlier decision and placing a different construction on the words of a statute, even though the same words were re-enacted by the Legislature, and thus may be said to have been statutorily adopted.[6] In *Subramania Chettiar* v. *Narayanaswami*,[7] the question referred to the Full Bench of the Madras High Court for its authoritative decision was : "Whether a non-agriculturist surety would be liable for the entire debt even though the principal debt was scaled down under the provisions of the Madras Agriculturists' Relief Act." The occasion for such reference arose on account of a Division Bench

1. *Norris* v. *Crocker*, 14 L Ed 210; *U.S.* v. *Tynen*, 20 L Ed 153.
2. *Markhan* v. *Cabbell*, 326 US 409 : 90 L Ed 165.
3. *Frost* v. *Corporation Commissioners*, (1929)278 US 515 : 73 L Ed 483; *Sundareswaran Devasthanam* v. *Marimuthu*, AIR 1963 Mad 369 : 76 MLW 381.
4. *Administrator, Howrah Municipality* v. *Byron & Co.*, 1958 Cr LJ 169 (2).
5. *Ram Lal* v. *State of U.P.*, 1978 All LJ 1197.
6. *P.C. Bagla (Post Graduate) College* v. *Vice-Chancellor, Agra University*, 1980 All LJ 785 (FB).
7. AIR 1951 Mad 48, 51 (FB).

decision of Wadsworth and Patanjali Sastri, JJ.,[1] who opined that the liability of the surety (non-agriculturist) was not reduced by the scaling down of the debt of the principal debtor who is as agriculturist under the Madras Agriculturists' Relief Act, IV of 1938.

Panchapakesa Ayyar, J., in answering the question observed :

> "It was finally urged by Mr. Ramchandra Aiyar for the appellant that the Madras Agriculturists' Relief Act could not have really intended to extend the benefit of the extinguishing of the debt of the principal debtor to his surety, as otherwise the Legislature when amending various sections of the Madras Agriculturists' Relief Act as soon as decisions of this Court were given against the intention of the Legislature in enacting those sections, had not amended the sections, and stated that the surety's liability also would stand discharged or would be deemed to stand discharged *pro tanto* on the principal debtor's liability standing discharged by scaling down, in spite of the decision of a Bench of this Court in *Subramanian Chettiar* v. *Batcha Rowther*.[2] I cannot accept this argument, 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 once where the decisions given are contrary to the intention of the Legislature. Even under the best of conditions the argument will not have much weight, as a Court is not concerned with the lack of amendment of sections by a Legislature consequent on a wrong decision, when it is satisfied about the true import of a particular section or sections in a piece of legislation."

The above statement of law as a rule of interpretation has lost its force and can no more be an authority as the grounds on which the ruling was made to rest were obliterated by long passage of time, by steady and steep growth in case-laws and by a quite rich experience gained by our Legislatures for well over 45 years since the above decision.

But a Full Bench of the Allahabad High Court held as follows : "Where a statute is *repeated and re-enacted* and words in the repealed statute are reproduced in the new statute they should be interpreted in the sense which has been judicially put on them under the repealed Act because the legislature is presumed to be aware of the construction which the courts have put up on these words."[3]

Where recovery proceedings for penalty under M.P. General Sales Tax Act, for concealment, were restarted after the Legislature passed the Sales Tax (Amendment) Act, 1976, to get over the Supreme Court judgment confirming the judgment of the Commissioner for Sales Tax holding the penalty provisions were inapplicable. It was held, that they were validly restarted, after the amendment.[4] The approval of Legislature of a particular judicial construction put on the provisions of an Act on account of its making no alteration in those provisions, is presumed only when there had been a consistent series of cases putting the same construction on the same provisions.[5]

11. Effect of invalidity of amendment on original Act.—The rule that the invalidity of an amendment does not affect the original Act applies whether the amendment stands by itself as

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1. *Subramanian Chettiar* v. *Batcha Rowther*, AIR 1942 Mad 145; *see* also *Nellore Cooperative Urban Bank, Ltd.* v. *Mallikarjunayya*, AIR 1948 Mad 252 decided by Patanjali Sastri and Thyagarajan, JJ. on the same aspect.
2. AIR 1942 Mad 145.
3. Vide *Talib Hussain* v. *Ist Addional District Judge*, AIR 1986 All 196 : 1986 All LJ 845 : 1985 All WC 1001 : (1986)12 All LR 113 : 1986 All CJ 1 : 1986 UPLJ 116 : (1986)1 All Rent Cas 1 (FB).
4. *Laxman Das* v. *State of M.P.*, 1980 Jab LJ 775 (DB).
5. *Purshottamdas Dalmia* v. *State of West Bengal*, AIR 1961 SC 1589.

an independent enactment, or is incorporated in the setting of the original Act by a provision that the Act 'shall read as follows'.[1] When an amendatory exception to a statute proves unconstitutional, the original statute stands wholly unaffected by it.[2]

B. Codifying Statutes

12. Codifying Acts.—*Codifying Acts* are Acts passed to codify the existing law. That is not merely to declare the law upon some particular point, but to declare in the form of a Code the *whole of the law upon some particular subject.*[3] "The purpose of such a statute surely is that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used in stead of as before, roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions."[4] Codification contemplates, implies and produces continuity of existing law in clarified from rather than its interpretation.[5] As Lord Davey observed in *Gokul Madan* v. *Pudmanund Singh*,[6] the *essence of a Code is to be exhaustive* on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction."

The British Parliament passed the Bills of Exchange Act, 1882, which was an Act to codify the law relating to Bills of Exchange, Cheques and Promissory Notes. In *Bank of England* v. *Vagliano*,[7] Lord Herschell in discussing the opinions of the Court of Appeal, said :

> "*Leading case.*—The conclusion thus expressed was founded upon an examination of the state of the law at the time the Bills of Exchange Act was passed. The prior authorities were subjected by the learned Judges who concurred in this conclusion to an elaborate review, with the result that it was established to their satisfaction that a bill was made payable to a fictitious person or his order was, as against the acceptor, in effect a bill payable, to bearer only when the acceptor was aware of the circumstance that the payee was a fictitious person, and, further, that his liability in that case depended upon an application of the law of estoppel. It appeared to those learned Judges that if the exception was to be further extended, it would rest upon no principle, and that they might well pause before holding that Section 7(3) of the statute was 'intended, not merely to codify the existing law, but to alter it, and to introduce so remarkable and unintelligible a change.'[8]

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1. *Reitz* v. *Mealey*, 86 L Ed 211.
2. *Davis* v. *Wallace*, 66 L Ed 325.
3. Craies : *Statute law*, 4th Ed. at p. 61; *see* also *Tiruvengada* v. *Tripura Sundari*, ILR 49 Mad 728 : AIR 1926 Mad 906, 908 (FB).
4. Lord Herschell in *Bank of England* v. *Vagliano*, 1891 AC 107; quoted by Lord Macnaughten in *Narendra Nath Sircar* v. *Kamalbasini Dasi*, ILR 23 Cal 563 at p. 572 : 23 IA 18; *Burn & Co.* v. *Macdonald*, ILR 36 Cal 354; *Suraj Prasad* v. *Gulabchand*, ILR 28 Cal 517, 528 (T.P. Act), where the application of the principle was considered with reference to Section 4 of the Hindu Adoption and Maintenance Act.
5. *United States* v. *Grainger*, 97 L Ed 1575, 1585 : 346 US 235 (Burton, J.).
6. ILR 29 Cal 707, 715 : 29 IA 196; *(Firm) Nathumal* v. *Firm Lachhmi Narain*, AIR 1926 Lah 670; *Gopi Chand* v. *Muhammad Umar*, AIR 1935 Pesh 176; *Firm of Nootan Das* v. *Firm of Pribhudayal*, AIR 1921 Sind 38; *see* also *Mohori Bibbee* v. *Dhurmodas Ghose*, 30 IA 114, 125; *Gulabchand* v. *Kudilal*, AIR 1951 MB 1 (FB); *Ramaswamy* v. *Bhagyammal*, AIR 1967 Mad 457, 458 (Veeraswami, J.); *Mohd. Yusaf* v. *Mohd. Hussain*, AIR 1964 Mad 1, 6 (FB) (Ram Chandra Iyer, C.J.).
7. 1891 AC 107; *see* also *Wilkinson* v. *Wilkinson*, ILR 4 Bom 843 : AIR 1923 Bom 321, 351 (FB); *Gopal Naidu* v. *King-Emperor*, ILR 46 Mad 605 : AIR 1923 Mad 523, 525 (FB).
8. *Vagliano Brothers* v. *Bank of England*, (1889)23 QBD 243 at p. 261 (Court of Appeal) which affirmed the decision of Charles, J., in *Vagliano* v. *Bank of England (Governor & Co.)*, (1888)22 QBD 103.

With sincere respect to the learned Judges who have taken this view, I cannot bring myself to think that this is the proper way to deal with such a statute as the Bills of Exchange Act, which was intended to be a Code of the law relating to negotiable instruments. I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring that how the law previously stood, and then, assuming that it was probably intended to leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with this view.

If statute intended to embody in a Code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am, of course, far from asserting that recourse may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a Code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the Code. I give these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon, is that the first step taken should be to interpret the language of the statute and that an appeal to earlier decisions can only be justified on some special ground.

One further remark I have to make before I proceed to consider the language of the statute. The Bills of Exchange Act was certainly not intended to be merely a Code of the existing law. It is not open to question that it was intended to alter, and did alter it, in certain respects. And I do not think that it is to be presumed that any particular provision was intended to be a statement of the existing law, rather than a substituted enactment."

Lord Halsbury in the same case observed at p. 120 of the Report :

"It seems to me that, construing the statute by adding to it words which are neither ground therein nor for which authority could be found in the language of the statute itself, is to sin against one of the most familiar rules of construction, and I am wholly unable to adopt the view that, where a statute is expressly said to codify the law, you are at liberty to go outside the Code so created, because before the existence of that Code another law prevailed."

Lord Watson affirmed the rule laid down by Lord Herschell while applying it in *Robinson* v. *Canadian Pacific Rail Co.*,[1] in respect of the Code of Lower Canada. Mr. Justice Channel

1. 1892 AC 481 at p. 487; but *see* also *Despatie* v. *Trembly*, (1921)1 AC 702 at pp. 709-710, *per* Lord Moulton : "The essence of a Code, whether it relates only to a particular subject or is of a more general character, is that it is a new departure. The codifiers have no doubt the task of examining the various authorities on each point in order to come to a right conclusion from the conflicting decision as to what is the law upon the subject and their duty is to embody the result in the corresponding clause of the Code they are framing. But when they have done this and the Code has become a statute, the question whether they were right or wrong in their conclusion becomes immaterial. From thenceforth the law is determined by what is found in the Code and not by a consideration of the

speaking of the sa Bills of Exchange Act in *Herdman* v. *Wheeler*,[1] observed ...."(it) is now the Code of law o ne subject, and in cases where it differs from the old law it prevails over the old law. But i ne words used in the Act are fairly capable of being construed as meaning the same as the w rds used by judges previously to the Act in stating the law, it would be right to give them that meaning in the absence of anything to indicate a clear intention of the Legislature to alter the previous law." When the same phrase or expression is used in several codified laws of a particular territory, all emanating from the same source, that phrase or expression m t have the same significance wherever used, unless such a meaning would b e repugnant tc e context.[2] It is not permissible in interpreting a statute which codifies a branch of the law t tart with the assumption that it was not intended to alter the pre-existing law.[3] It is a reco ed cannon of construction that when a law is merely being codified and specially when i i eing transferred almost bodily from one Code to another *departure is not to be presumed* ess it is made in express terms.[4]

In V 59 of *Corpus Juris* at p. 887 it is stated :

> The purpose of a revision or codification of law is to make them as certain as pr ticable and to enable every citizen readily to find where they are and what they d lare, by publishing them in a systematic, condensed, but clear and comprehensive form. revision or codification of statutes is something more than a restatement of the substance ereof in different language. It implies a re-examination of them, and is applied to a estatement of the law in a corrected and improved form, which restatement may be with or without material change. Revision or codification of laws may be effected by the omission of some laws, by changing words or phrases for the purpose of harmony or brevity without in fact changing the meaning, or by the incorporation of new and material matter, and may operate to change the existing law. The Code or revision is intended to take place of law as previously formulated, and to include all the statute law of the State of a general or

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conclusions which ought to have been drawn from the materials from which it has been framed. The language used by Lord Herschell in the *Bank of England* v. *Vagliano Bros.*, 1891 AC 107, 140, 145, has always been accepted as expressing the object of codification. In speaking of the Bills of Exchange Act which codified this particular branch of the law, he says : The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities. It will be noticed that lord Herschell confines his principle to those points which are specifically dealt with by the law. But it almost always happens that in codification there occur particular points where the codifiers find it impossible or for some reason undesirable to deal specifically with the matter and they leave it to be decided by the law as it previously existed. They accordingly make no pronouncement on these points, so that there is no language in the Code which can form a new departure which authoritatively replace the law as it previously existed. Sometimes this may be done by mere omission to deal with the point, but it may also be done specifically, as for instance, by saying that in that particular matter (or more generally that in matters not dealt with by the Code) the previous law shall apply. But, however, it be done, the essence is the same. It is a refusal to codify the law on the particular point.....*i.e.*, a refusal to substitute for the law as it existed previously a new and authoritative pronouncement which expresses the law that is to operate in the future. Instead of formulating what the law should be, it says directly or by implication that it shall remain as it was in the past."

1. (1902)1 KB 361, 367; Halsbury : *Laws of England*, 4th Ed., Vol. 44 in para 892 at p. 545 states : "After the language has been examined without presumptions resort may be had to the previous state of the law on some special ground, for example, for the construction of provisions of doubtful import or of words which have acquired a technical meaning."
2. *G.I.P.R. Company* v. *Amraoti Municipality*, 16 IC 449 (Nagpur).
3. *Union of India* v. *Mohinder Supply Co.*, (1962)3 SCR 497, 507 (Shah, J.).
4. *Jainarayan* v. *Balwant*, AIR 1933 Nag 35, 38 (*per* Vivian Bose, J.).

permanent nature up to the date of its adoption, unless it is otherwise provided in the Code or revision, or in the Act of the Legislature adopting it; and it must be considered and treated as comprising all the statute law on the subjects indicated by the various titles in the Code or revision. If the system is defective in any of its parts, the remedy is to be found in legislative amendment."

At pp. 894 to 897 of the same volume it is further stated :

"A mere change of phraseology, or punctuation, or the addition or omission of words in the revision or codification of statutes, does not necessarily change the operation or effect thereof, and will not be deemed to do so unless the intent to make such change is clear and unmistakable. Usually a revision of statutes simply iterates the formal declaration of legislative will. No presumption arises from changes of this character that the revisers or the Legislature in adopting the revision intended to change the existing law; but the presumption is to the contrary, unless an intent to change it clearly appears. The reasons assigned are that the changes made by the revision may usually be accounted for by the desire to render the provisions more concise and simple, and to bring the laws into some system and uniformity. Nevertheless, it is an equally well-recognized doctrine that changes of the character under consideration appearing in a Code or revision may have the effect of changing the existing law; and must be given that effect where the legislative intent to make a change appears clearly and unmistakably, as where no effect can be given to the new language otherwise, or where the language used in the revision cannot possibly bear the same construction as the revised Act. And where there is a material change between the original Act and the provisions thereof in the Code or revision, this difference must be given effect, even though not noted by the revisers in an explanatory note. And the mere intention of the legislative body to compile existing laws without altering them does not require the Courts to give to a particular section a construction in opposition to the positive provisions thereof in order to conform to the pre-existing statute."

Sutherland in *Statutory Construction*, Vol. 3 (3rd Ed.) at p. 255 says :

"A statute incorporated into a Code is presumed to be incorporated without change even though it is re-worded and re-phrased and in the organization of the Code its original sections are separated. Where, however, the legislative intent is clear that a change in the law is intended, the new provision prevails. In case of ambiguity it is permissible to resort to the prior legislative history of the Act, the form and language of the prior statute, prior interpretation and all matters in *pari materia* in order to arrive at the true meaning of the Code's provision."[1]

Crawford in his *Statutory Construction* at pp. 184-185 has put the matter thus :

"The object of a revision or codification.....is to clarify existing statute law and make it easily found. Consequently it is really more than a mere restatement. A re-examination of the existing statute law is necessarily implied. But the restatement may be in the original language of the statute. Or words and phrases may be altered, new matter incorporated, and statutes even omitted from the revision or codification. And after the revision or codification has been adopted, it becomes the reservoir of all the statute law on the subjects indicated by various titles; the revision being a substitute for the displacing the

1. Reliance is placed on *U.S.* v. *Sischo*, (1923)262 US 165 : 67 L Ed 925; *Pedro* v. *Hapai*, (1926)20 Haw 744; *Chicago R.I. & P. Ry. Co.* v. *Nichols*, (1930)130 Kan 509.

former law. As a result, any errors must be corrected by legislative amendments after the revision or Code has been enacted into law."

Relying *inter alia* on *U.S.* v. *Bathgate*,[1] and *Vance* v. *Vanderacock*,[2] as well as on either State decisions, he further says at pp. 190 and 191 :

> "Not only may the statutes composing the codification be relocated but their language may also be changed. Generally, however, the revision is simply a re-statement of existing statute law, either in the same or in substantially the same language. Where this is true, the old statutes are continued without any change in their meaning. But in many instances, the language of existing statutes are substantially altered; words may be added or omitted; phraseology and punctuation changed. In such instances, however, there is a presumption that the Legislature did not intend to change the meaning of the statute, unless the intent to do so is clearly apparent. Where it is the intent of the Legislature to make a change in the statutes' meaning it must be given effect."

Codification systematizes case-law as well as statutes.[3] The difficulty arises which must always exist when an attempt is made to enact an exhaustive Code of any branch of the law. However able the codifier may be, when the Code comes to be applied to some of the innumerable cases that must arise, there is found every now and then some case which it is impossible to suppose was in fact intended to be governed by the Code. At the same time a Code purports to be exhaustive, and, therefore, it is necessary to try to treat every case as falling within it.[4] It is bad policy to add to codified law some of the provisions of, say English common law on the ground that the codified law is silent as to them.[5] When law has been codified, it cannot be modified gradually from day to day as the changing circumstances of a community require, by rules of practice made to meet these imperceptibly changing conditions. Any modification, however small, must be made by the Legislature, when a suitable opportunity arrives.[6]

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1. 246 US 220 : 62 L Ed 676.
2. 170 US 438 : 42 L Ed 1100.
3. Paton : *Jurisprudence*, at p. 186, Salmond says on page 168 : "Codification means, not the total disappearance of case-law, but merely the reversal of this relation between it and statute law."
4. *Wren* v. *Holt*, (1903)1 KB 610, 613, 614.
5. *Peddabba Reddi* v. *Varada Reddi*, ILR 52 Mad 432 : AIR 1929 Mad 236. Whether defamatory words in a complaint are absolutely privileged under the Indian Penal Code came up for consideration before a Full Bench of Madras High Court in *Truvengade Mudali* v. *Tiripurasundari*, AIR 1926 Mad 906, 908 : ILR 49 Mad 728 (FB). Referring to *In re* Venkata Reddy, ILR 36 Mad 216 (FB). Their Lordships said : "The inference drawn in *In re* Venkata Reddy was that it was inconceivable that the statute should have been silent on such obvious topics unless it meant to leave the English common law relating to them intact. That is a line of reasoning which seems to us to be wholly inapplicable to a codifying statute and the Indian Penal Code is obviously meant to be a codifying statute, an expression which may sufficiently for our present purposes be defined as a statute intended to be complete in itself with regard to the subject-matter with which it deals. Indeed the very title 'Indian Penal Code' involves the conception of a codifying statute. As we understand the principles of construction applicable to such matters, a codifying statute does not exclude reference to earlier case-law on the subject covered by the statute for the purpose of throwing light on the true interpretation of the words of the statute where they are, or can be contended to be open to rival constructions. We are unaware of any instance other than the present where it has been argued that matter outside of the statute can be invoked not by way of construing its provisions but of adding something to it which is admittedly not to be found with it. We agree with Sir Arnold White, Chief Justice, that these matters must have been present to the mind of the draftsman. We differ from him in the inference to be drawn from the silence of the statute regarding them. It seems to us inconceivable that that silence can be interpreted otherwise than as a deliberate refusal to incorporate that part of the Common Law of England into the law of India."
6. *Rebati Mohan* v. *Emperor*, ILR 59 Cal 150 : AIR 1929 Cal 57.

In a body of codified law, no one enactment should be so construed as to render the express provisions of another enactment absolutely nugatory.[1]

13. Codification a gamble in India.—Dalal, A.J.C., in *Achal Singh* v. *Shaghunath Koer*[2] was pleased to observe :

"In my opinion codification in India is to a certain extent a gamble. First of all Indians have to express themselves in a language which is after all foreign to them. Local Governments do not command the help of men trained in drafting laws and even at the time of legislation. I do not think that it is settled accurately and in detail what a particular Act is required to provide for. There are vague notions to remedy an evil or to satisfy certain sentiments but the full details are not worked out. When this is my view of present-day codification in India, arguments as to what the Legislature desired or did not desire leave me unimpressed."

Crawford in *Statutory Construction*[3] opines :

"A Code is simply a part of the statutory law and has no higher standing or sanctity than an ordinary statute. Like many other legislative enactments, a Code or revision should be subjected to a liberal construction in order to promote the objects for which it was enacted—to clarify existing statutes—although the liberality of construction should not be extended so far as to annul any of the Code's provisions or to defeat the intention of the Legislature as revealed in any particular section or portion thereof ..... Of course, the provisions of the revision of Code should first be examined in order to ascertain their meaning, but where the language is ambiguous and uncertain, the original statutes, as well as those in *pari materia* may be resorted to for assistance in seeking the legislative intent..... Accordingly, where there is ambiguity in the revised statutes, it should be construed as expressing the law as it was prior to the revision, unless the Court finds a clear intention to alter the old law. Furthermore, the judicial construction of a statute later incorporated in a codification or revision may be referred to for assistance, since the Court's interpretation of the law under such circumstances, by adoption, becomes a part of the Code or revision. Even a change in the language of phraseology of a statute included in a codification or revision will not, as a general rule, alter the law, unless the change be so material or radical as to indicate an intention on the part of the Legislature to modify the law, or unless the intention to change clearly appears from the language of the revised statute, and specially when considered in connection with the subject-matter and the legislative history."

Rearrangement of statutory provisions in the process of codification leaves their meaning unaffected.[4]

C. Consolidating Statutes

14. Consolidating statutes.—Consolidation is the combination in a single measure of all the statutes relating to a given subject-matter and is distinct from codification in that the latter systematizes case-law as well as statutes.[5] According to Craies on *Statute Law*,[6] consolidation is

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1. *Pundalik* v. *Bhagwant Rao*, AIR 1926 Nag 491.
2. AIR 1926 Oudh 2.
3. In Chapter XXIX.
4. *Hale* v. *Iowa State Board of Assessment and Revenue*, 302 US 95 : 82 L Ed 72 (*per* Cordozo, J.).
5. Paton : *Jurisprudence* at p. 186 : The object of Consolidating Acts is to consolidate in one Act the provisions contained in a number of statutes. They may be regarded as Acts codifying the statute law upon a subject; Craies : *Statute Law*, 4th Ed. at p. 61.
6. 4th Ed. at p. 305.

the reduction into a systematic form of the whole of the statute law relating to a given subject, as illustrated or explained by judicial decisions. Odgers opines : "Consolidating Acts are Acts to comprehend in one statute the provisions contained in a number of statutes and which codify the law on some subject as far as they go, as for instance, the Bills of Exchange Act, 1802."[1]

Lord Watson discounted the proposition that, in dealing with a consolidating statute, each enactment must be traced to its original source, and when that is discovered must be construed according to the state of circumstances which existed when it first became law. In *Administrator-General of Bengal* v. *Prem Lal Mullick*,[2] his Lordship proceeded to observe : "The proposition has neither reason nor authority to recommend it. The very object of consolidation is to collect the statutory law bearing upon a particular subject and to bring it down to-date, in order that it may form a useful Code applicable to the circumstances existing at the time when the consolidating Act is passed."

If an Act is instituted "An Act to consolidate previous statutes", the Courts may lean to a presumption that it is *not intended to alter the law*, and may solve doubtful points by aid of such presumption of intention rejecting the literal construction.[3] "In construing a consolidation Act," says Craies,[4] "prior statutes repealed, but reproduced in substance, are regarded as *in pari materia*, and judicial decisions on the repealed statute are treated as applicable to substantially identical provisions of the repealing Act." He further says[5] :

> "The effect of the most of these Acts may be described as purely literary. In so far as the Act is purely a consolidation Act, although it may repeal the reproduced enactments, the repeal is merely for the purpose of re-arrangement, and there is no moment at which the substance of the older enactments ceases to be in force, although it is true that its ancient form is destroyed by the process of reproduction and repeal. The consolidation merely places together in a later volume of the Statute Book enactments previously scattered over many volumes. But it must not be forgotten that it is almost inevitable that in the process of consolidation the re-arrangement of the former Acts and the modernisation of the language should, to some extent, alter the law. And often a consolidation Act is not a statute merely collecting into one chapter any original or principal Act with subsequent amendments and codifications, but involves the co-ordination and simplification of former enactments."

"The Sheriffs Act, 1887," observed Fry, L.J., in *Mitchell* v. *Simpson*,[6] "is a consolidating Act, and does not profess to amend or alter the provisions of the Acts consolidated. *Prima facie* therefore, the same effect ought to be given to its provisions as was given to those of the Acts for which it was substituted." This rule, however, is to be adopted with caution, for it is almost impossible in the process of consolidation to avoid some dislocation and change in the effect of the consolidated enactments. The true effect of such Acts is to combine in a consecutive form the

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1. *The Construction of Deeds and Statute*, 2nd Ed. at p. 226 : "By these Acts a number of prior statutes are usually repealed but reproduced in substance, it being, as we shall see, a presumption that it is not the intention of the Legislature to alter the law by a Consolidating Act but merely to collect it and fit it together in one Act, unless an intention to alter it plainly appears" at p. 227; *F. Swan* v. *Pure Ice Co.*, (1935)2 KB 265, 274.
2. ILR 22 IA 116.
3. Maxwell: *Interpretation of Statutes*, 12th Ed. at pp. 22 to 25; *I.R.C.* v. *Hinchy*, (1960)1 All ER 505 (HL) at p. 512.
4. Craies : *Statute Law*, 5th Ed. at p. 127.
5. Craies : *Statute Law*, 5th Ed. at p. 333. Maxwell in his *Interpretation of Statutes*, at p. 24, says : "In a plain Consolidation Act such as the Income Tax Act, 1952 (C. 10) if it re-enacts, with a like context, a word or phrase in one of the Acts consolidated which has received judicial interpretation, that interpretation will, generally, be applicable to the same word or phrase in the Consolidation Act."
6. (1890)25 QBD 185, 190; *see* also *Warren* v. *Vagg*, 30 CLR 353, 359; *In re*, goods of Chandra Das, AIR 1950 Cal 578; *Toole* v. *Scott*, (1965)2 All ER 240 (PC) at pp. 246, 247.

provisions scattered about the Statute Book to avoid repetitions and remove inconsistencies."[1] "Whenever I have to deal with consolidating legislation", says Vaughan William, L.J., in *Fitch* v. *Bermandsey Guardians*,[2] "I am always struck with the enormous difficulties imposed upon the draftsman, and I am thankful that I have not to undertake the work myself." Isaacs, J., quoted Maxwell : *Interpretation of Statutes* in *Melbourne Corporation* v. *Barry*,[3] : "In a consolidation Act.....it will be found that the language bears the meaning attached to it in the original enactment," and referring to Victorian Legislature consolidating its principal statutes including the Local Government Act, quoted Holroyd, J. :

> "They were not intended to change the law in any singular particular and of that there cannot be the least doubt. Numerous clauses have been introduced into them for the express purpose of providing against such a possible contingency; and especially is this evidenced by that one clause in the Acts (Interpretation Act) which provides that where two apparently inconsistent provisions which were originally of different dates have been repealed and re-enacted in a consolidating Act the original priority of date is to be regarded in their interpretation, because one may possibly repeal the other by implication and that repeal by implication is not to be prevented by reason of these two provisions being repealed in one Act and made on the same day.[4] I entirely agree with those observations."

"Of course, the consolidation of a consolidating Act," says Barton, A.C.J., in *Maybury* v. *Plowman*,[5] "depends on disclosed intention like the construction of any other Act. But when two Acts have led to a definite state of the laws in relation of the one to the other of them, I am not sure that a change in their order effected by mere consolidation must needs be taken in all cases to alter that state of the law, in the absence of any internal indication of intention to make that or any other change. Whether it was really intended to alter the law must depend on the effect in each case of the inversion of the order in which the provisions stand." In dealing with a consolidating statute the Court will consider the pre-existing law, and, if the statute is one affecting the liberty of the subject, will not construe it as amending the statute consolidated, or as altering the common law, unless the intention of the Legislature to make such a change in the law is shown by clear words.[6]

15. Construction of consolidating statutes.—*(i) Not necessary to resort to earlier legislation.*—When the consolidating Act re-enacts in an orderly form the various statutes embodying the law on the subject, it is not necessary or proper to resort to, or consider, the earlier legislation on the subject.[7] "Where words or expressions in a statute are plainly taken from earlier statute in *pari materia* which have received judicial interpretation, it must be assumed that Parliament was aware of such interpretation and intended to be followed in later enactments.....The rule is especially applicable in the case of consolidatory Codes."[8] *Prima facie* the same words in an earlier Act and a later Act have the same meaning, when the Acts deal with the

(ii) Words in statutes in pari materia.

1. Craies : *Statute Law*, 5th Ed. at p. 127, quoting Lord Watson in Bradlaugh Clarke, (1883)8 AC 354, 380. Who said that it appeared to him "to be an extremely hazardous proceeding to refer to provisions which have been absolutely repealed in order to ascertain what the Legislature intended to enact in their room and stead."
2. (1905)1 KB 524, 526.
3. 31 CLR 174, 186, 187.
4. *Maybury* v. *Plowman*, 16 CLR 468 at p. 476.
5. 16 CLR 468 at p. 476.
6. *Nolan* v. *Clifford*, 1 CLR 429.
7. *Williams* v. *Permanent Trustee Co. of New South Wales*, (1906) AC 249, 252; *Rex* v. *Abrahams*, (1904)2 KB 859, 863; *Taylor* v. *Corporation of Oldham*, 4 Ch D 395, 405; *Bennett* v. *Minister for Public Works (N.S.W.)*, 7 CLR 372, 379.
8. *Radha Mohan* v. *Abbas Ali*, AIR 1931 All 294, 298 (FB) : ILR 53 All 612, quoting Halsbury's *'Laws of England'*; see *Ram Chandra Deo* v. *Bhalu Patnaik*, AIR 1950 Orissa 125 (FB).

same subject, especially where the later Act is a consolidating Act.[1] Craies in *Statute Law*[2] states :

> "But in case of statutes consolidating former law or adopting former Acts words which have been judicially construed, the case-law on the enactments consolidated or copied may be of great value in interpretation, and in the case of the adoption by a Dominion of Colonial Legislature of the substance of a British statute the same may be said."

In Maxwell on *Interpretation of Statutes*,[3] occurs this statement : "In a consolidating, Act.....it will be found that the language bears the meaning attached to it in the original enactment." One of the authorities cited is *Mitchell* v. *Simpson*,[4] in which the Court of Appeal gave to words in the new Act the same meaning as had been attached by judicial decisions to similar words in a former Act. But that was not because the Legislature had adopted a decision, but because the new Act, being a consolidation Act could not be supposed to change the law and it would be as wrong to disregard judicial decisions after the consolidation as it would have been if the old Act had remained in force. In *Mercantile Finance Trustees and Agency Co. of Australia* v. *Hall*,[5] Holróyd, J., states as to consolidating Acts : "They are not intended to change the law in any singular particular, and of that there cannot be the least doubt. Numerous clauses have been introduced into them for the express purpose of providing against such a possible contingency; and especially is this evidenced by that one clause in the Act (Interpretation Act) which provides that where two apparently inconsistent provisions which were originally of different dates, have been repealed and re-enacted in a consolidating Act original priority of date is to be regarded in their interpretation, because one may possibly repeal the other by implication and that repeal by implication is not to be prevented by reason of these two provisions being repealed in an Act and therefore made on the same day."

Odgers[6] treats *consolidation and codifying statutes* almost on the same level. While dealing with the use of 'cases' as aid to construction he says : "If the numerous cases on statutes are examined they will be found to fall into three classes :

(a) Those which lay down a general principle or principles such, for instance, as *Heydon's* case.[7]

(b) Those which decide which of the established principles should be applied to particular enactments. This is a matter upon which Judges may differ.... One Judge may hold that a particular principle (say the Literal Rule) should be applied; another may hold that the Mischief Rule ought to be applied in the same case; or the Court may hold that the Mischief Rule having regard to the object of the statute, should be applied as, *e.g.* in *Powell Lane Manufacturing Co.* v. *Putnam*.[8]

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1. *Waren* v. *Vagg*, 30 CLR 353, 359.
2. 4th Ed. at p. 9 : "And in the interpretation of the Constitution of the Australian Commonwealth it has been held reasonable to infer that when the framers of that instrument inserted provisions undistinguishable in substance though varied in form, from the provisions of other legislative enactments which had received judicial interpretation they intended that such provisions should receive like interpretation"; see *D'Emden* v. *Peddar*, (1904)1 Australia CLR 91, 112.
3. 11th Ed. at p. 58.
4. (1890)25 QBD 183.
5. (1893)19 VLR 233 : 14 AIT 291; followed in *Melbourne Corporation* v. *Barry*, 31 CLR 174, 186.
6. *'The Construction of Deeds and Statutes'*, 2nd Ed. at p. 237.
7. 76 ER 637.
8. (1931)2 KB 305.

(c) Those which decide whether the accepted construction of a statute includes or excludes a particular state of facts. This may be illustrated by the cases on evasion of taxing statutes.

Of these the first class is the most important, but in the case of a consolidating Act, all three may become of great importance and influence. A consolidating statute, being merely a codification, will almost certainly adopt language which has already received judicial interpretation; the case-law, therefore, on this language will be most valuable."

(iii) Read literally.—In *Riddle* v. *King*,[1] Barton, J., after referring to the observations of Jessell, M.R., in *Taylor* v. *Corporation of Oldham*,[2] "Whatever I may think of the extraordinary results which are so caused, it is my duty to interpret Acts of Parliament so, I find them. I must read them according to the ordinary rules of construction, that is, literally, unless there is something in the context or in the subject to prevent that reading", stated :

> "No statute, even though it be a consolidating Act, constitutes an exception to this undoubted rule. I think the most that can be said is that where two constructions are open, under one of which the Act is read to make an amendment of the law, while the other appears to confine the Act to its professed purpose of mere consolidation; then, other things being equal, the Court will adopt the construction which confines the Act to its purpose of consolidation. But if the Act itself speaks so plainly that Parliament will appear from its terms to have exercised its undoubted power of amending the law, even though the title of the Act professes that its purpose is consolidation, it is the duty of the Judge to read the Act in that plain sense."

A consolidating statute, like any other statute, must be read literally, unless there is something in the context or the subject to prevent that reading. The most that can be said is that where two constructions are open, under one of which the Act is read to make an amendment of the law, while the other appears to confine the Act to the professed purpose of mere consolidation then, other things being equal, the Court will adopt the construction which confines the Act to its purpose of consolidation. But if the Act speaks so plainly that Parliament will appear from its terms to have exercised its undoubted power of amending the law, even though the title of the Act professes that its purpose is consolidation, it is the duty of the Judge to read the Act in that plain sense.[3] The presumption that the Legislature did not intend to alter the law by an Act described as a consolidatory Act, cannot override the plain meaning of the words used.[4] When the words of a consolidating statute are clear, their effect cannot be cut down by a comparison with the language of earlier statutes.[5] "It is a consolidating Act" says O'Connor, J., in *Bennett* v. *Minister for Public Works (N.S.W.)*,[6] "which re-enacts in an orderly form the various statutes embodying the law on the subject I may adopt Lord Macnaghten's words describing it in his judgment in *Williams* v. *Permanent Trustee Co. of New South Wales*.[7] The whole law with respect to the acquisition of lands for public purposes is now to be found in the Act of 1900, and it is not necessary or proper to resort to, or to consider, the earlier legislation on the subject." Barton, J., in *Commissioner of Stamp Duties (N.S.W.)* v.

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1. 12 CLR 622, 632.
2. 4 Ch D 395, 405.
3. *Riddle* v. *King*, 12 CLR 622, 632.
4. *Gibert* v. *Gilbert*, 1928 at p. 769; *In re goods of* Bholanath Pal, AIR 1931 Cal 580, 581 : ILR 58 Cal 801; *Grey* v. *I.R.C.*, (1959)1 All ER 603 at p. 606 (HL).
5. *Balasubramania* v. *Swarnammal*, ILR 38 Mad 199, 201.
6. 7 CLR 372, 379.
7. 1906 AC 249 at p. 252.

Simpson,[1] with reference to the Stamp Duties Act, 1898, expressed himself thus : "The Stamp Duties Act, 1898, purports to be a consolidation of the taxing statutes on that subject. Dealing with a consolidating statutes which afforded ample room for a conjectural interpretation conveying the probable meaning of Parliament, Griffith, C.J., in *Benett* v. *Minister for Public Works*[2] *(N.S.W.)* observed :

> "We have to look at the language of the Legislature, and where we find that the Legislature has expressed itself in clear and unmistakable languages we must give effect to that language, although we may conjecture that it was used through inadvertence." And in the case of *Lumsden* v. *Commissioner of Inland Revenue*,[3] Viscount Haldane, L.C. said : "A mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used if they be, however, literally interpreted is no sufficient reason for departing from the literal interpretation."

(iv) Speak from date of passing.—With respect to the mode of construing consolidating Acts, it must be remembered that they, like all other Acts, speak as from the date of passing, unless some other date is expressly fixed and so speaking the law must be taken as declared therein.[4]

16. Distinction between codification and consolidating statutes.—The distinction to be drawn between statutes which codify and those which consolidate the law is that in construing the latter there is a presumption that the law was not intended to be altered so that regard may be had to decisions on the construction of the earlier enactments which are consolidated, even if the words used are not identical; but this presumption must yield to plain words to the contrary. Where statutes are replaced by others which consolidate them with amendments, however, the same rules do not apply, and where earlier legislation has been profoundly altered by amending legislation before consolidation or a provision in an earlier statute is replaced by a provision in different terms in a later one, decisions on the earlier provision cannot affect the construction of the later, and the earlier statute connot generally be resorted to for the purpose of bringing within the purview of the new statute anything omitted therefrom. Where a consolidating statute re-enacts sections that have come into existence at different previous dates, the statute must be construed on the same principles as one which enacts the provisions in question for the first time; but, if there is inconsistency in the section of a consolidating statute, it may be proper to look at the respective dates of their first enactment to explain the inconsistency. Where provisions of a consolidating Act have their origin in different legislation, the same word may bear different meanings in different provisions.[5] "The contention is", says Lord Alverstone, C.J., in *Rex* v. *Abrahanis*,[6] "and to that extent I think it is well founded, that in a consolidation Act, where there are ambiguous expressions, regard may be had to the previous Act of Parliament in *pari materia* for the purpose of interpreting those ambiguous expressions." According to Craies' *Statute Law*[7] following consequences ensue in relation to the interpretation of a consolidating statute :

(1) The courts will lean against any presumption that such an Act was intended to alter the common law . . . . .[8]

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1. 24 CLR 209, 215-216.
2. 7 CLR 372 at p. 378.
3. 1914 AC 877, 892.
4. *Bennett* v. *Minister for Public Works (N.S.W.)*, 7 CLR 372, 382.
5. Halsbury : *Laws of England*, 4th Ed., Vol. 44, para 893 at p. 546; *Maybury* v. *Plauman*, 16 CLR 468, 479.
6. 1904 KB 859, 863.
7. 4th Ed. at pp. 306, 307.
8. *I.R.C.* v. *Hinchy*, (1960)1 All ER 505 at p. 512 (HL).

(2) Decisions on the older enactments are usually accepted as conclusive in the construction of the substituted section in the later Act, even, it would seem, although the words would, if used for the first time in the substituted section of the later Act, presumably bear another sense.....[1]

(3) statutes not expressly repealed continue in force without modification, so far as stated in the provision last set forth.

17. Amending and consolidating statutes.—Where the Act is an amending as well as a consolidating one, it is not to be read as merely embodying the law as existing when it was passed, and beyond the reasonable interpretation of its provisions there is no means of its determining whether any particular section is intended to consolidate or amend the previously existing law.[2] "The words 'consolidate' and 'amend' often occur in statutes repealing and re-enacting provisions which have been there before its enactment. These are generally used when the experiences gathered by the working of a statute, the interpretation placed on the statute by judicial decision, the lacuna and defects in the statutes, which have been discovered in the course of years have to be altered and amended and put in clearer form."[3] Law relating to Legal Practitioners came up for consideration before a Full Bench of seven Judges of Allahabad High Court in *Shantanand* v. *Basudevanand*,[4] wherein Niamatullah, J., observed : "Act 18 of 1879 (Legal Practitioners Act) consolidated and defined all powers of a disciplinary character which it was intended the High Court should exercise over legal practitioners. The object of the Act, noted in the very first line is to consolidate and amend the law relating to legal practitioners. The preamble recites the expediency to 'amend and consolidate such law'. It should be noted that it does not merely consolidate pre-existing law, but also 'amends' it, which taken with consolidation of it implies both addition to and derogation from the pre-existing law. It follows that it is complete Code in itself as regards the subject it deals with." The difficulties encountered in construing a consolidating and amending statute were expressed by Sir W. Page Wood, V.C., in *Cope* v. *Doherty*,[5] in the following words with respect to Merchant Shipping Act, 1854 : "Now the circumstances under which this Act was passed, and the preamble of the Act in fact resolve themselves into one question. Preamble of the Act there is none beyond the recital 'that it is expedient to amend and consolidate the Acts relating to merchant shipping'. Therefore the circumstances under which it was passed are exactly narrated in the preamble. The Act was passed with the intention of consolidating and amending (which opens a little wider the question as to the law) the Acts relating to merchant shipping. With respect to the subject of consolidation and amendment, it is a question always of grave difficulty, and it has especially been felt to be so by those who have had to deal with the subjects of the consolidation of the statutes in general, and who have had to consider how far the object they have in view is to be attained by a process of mere consolidation, and how far amendments should be allowed. What will be the effect of introducing the identical words of a former statute, but denuded of the preamble which has hitherto formed in some degree a key to its construction? What, again, will be the effect of combining the words introduced from a former statute with other clauses introduced by way of consolidation into the new statute, and what may have the effect of attaching to the words of the earlier Acts a construction entirely different from that which has hitherto prevailed upon these very words as they stand in their

1. *O'Toole* v. *Scoott*, (1965)2 All ER 240 at pp. 246, 247 (PC).
2. *Ramadas Vithaldas Durbar* v. *S. Amer Chand & Co.*, 43 IA 164, 170.
3. *K.P. Condayi* v. *Sales Tax Officer*, AIR 1967 Ker 47.
4. AIR 1930 All 225, 247 : ILR 52 All 619, followed in *Banney Khan* v. *Chief Inspector of Stamps*, 1976 All LR 482 (FB).
5. (1858)2 De G & J 614 at p. 623.

original context? In consolidating various statutes the Statute of Uses, for instance, and many others which have been the subjects of numerous judicial interpretations—one sees at once the extreme difficulties to which such processes would give rise." Chitty, J., distinguished the rule enunciated in *Vagliano Brothers'* case in relation to a consolidating and amending statute in *In re* Budgett[1] :

> "I have here to deal, not with an Act of Parliament codifying the law but with an Act[2] to amend and consolidate the law and therefore it is, I say, those observations of Lord Herschell, L.C., in *Bank of England* v. *Vagliano Brothers*,[3] do not apply, and I think it is legitimate in the interpretation of the sections in this amending and consolidating Act to refer to the previous state of the law for the purpose of ascertaining the intention of the Legislature."

This rule has been adopted and applied by the Supreme Court in *Subbarao* v. *Income-tax Commissioner*[4] and *Sales Tax Officer* v. *Kanhaiyalal*,[5] as well as in *Union of India* v. *Mahindra Supply Co.*,[6] in all of which the Acts concerned were consolidating and amending Acts. It may, therefore, be taken as a settled rule of construction in respect of such statutes.

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1. (1894)2 Ch 557 at pp. 561-562.
2. Bankruptcy Act (1883), 46-47, Vict. 52.
3. 1891 AC 107, 144; *I.R.C.* v. *Hinchy*, (1960)1 All ER 505 at p. 512 (HL). *See* also *K.P. Condayi* v. *Sales Tax Officer*, AIR 1967 Ker 47.
4. AIR 1956 SC 604, 660.
5. AIR 1959 SC 135.
6. AIR 1962 SC 256, 260.