Unit II

METHODS OF INTERPRETATION.

1) Primary Rule.
2) Golden Rule.
3) Mischief Rule.

Primary Rule

The judges have devised various methods of interpretation amongst which the literal interpretation has been accepted as the Primary rule . This rule was evolved in England. According to this rule if the language of the statute is expressly clear, it shuts the possibility of further speculation .

In Abley v. Dale (1851)11 CB 378,it was laid down:

If the precise words are plain and unambiguous, in our judgement, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice.

Firm L. Hazari Mal v .ITO Ambala AIR 1957 Punj.5,the Division Bench of Punjab HC observed:

The first and foremost rule to which all others are subordinate is where the language of the statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory construction. If a statute speaks for itself clearly, any attempt by court to make it clearer by imposing another meaning would not be construing statute but enacting one. The second rule is that the words appearing in a statute must be presumed to have been used in their sense and should be given their ordinary, natural and familiar meaning.

In Nelson Motis v. UI AIR 1992 SC 1981,

The Apex Court laid down that when the words of a statute are plain ,clear and unambiguous i.e; they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences.

Again in Rohitash Kumar v. Om Prakash Sharma AIR 2013 SC 30, the court laid down that there may be a statute which causes great hardships or inconvenience, the court has no choice but to enforce it in full rigour. Hardships can’t be used as a basis to alter the meaning of the language, if such meaning is clear.

For the proper application of the rule it is, therefore, necessary to determine whether the language is plain or ambiguous?

In Ormond Investment Co. v. Betts (1928) AC 143 (HL), it was laid down that by ambiguity is meant any phrase fairly and equally open to diverse meaning.

There is inherent weakness in the plain meaning rule that it is not always easy to say whether a word is plain or not? According to Paton, judges frequently disagree as to whether a section is plain or not, where it is agreed that the meaning is plain each may differ from the other as to what that plain meaning is ?

There are certain weaknesses in the literal interpretation or plain meaning rule:-

1. It is not always easy to say whether a word is plain or not?
2. It is ill suited to modern social legislations.
3. It can't be applied to the changing needs of a developing society.

GOLEDN RULE

According to Maxwell, Golden Rule is the modification of the literal rule. Literal interpretation has its limitations. It can proceed up to a certain point. When literal int. results in absurdity and repugnance them Golden Rule is to be applied in order to avoid absurdity,

"Golden rule" contradicts "literal rule" according to which, the plain meaning has to be adhered to even to the point of absurdity

DIFFERENT VERSIONS OF GOLDEN RULE

Lord Wensleydale's Golden Rule

Grey v. Pearson (1857) 6 HL 61.

In construing Wills and indeed Statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that word lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the word may be modified, so as to avoid that absurdity or inconsistency but no further.

Jervis, C.J., in Mattison v. Hart (1854) 14 CB 357, observed :

We must take recourse to what is called the Golden Rule as applied to the Acts of parliament, viz; to give to the words used by the Legilature their plain and natural meaning unless it is clear from the general scope and intention of the statute, injustice and absurdity would result from so construing them.

Lord Reid in Luke v.IRC (1963) 557, observed :

To apply the words literally is to defeat the obvious intention of the legislature and to produce wholly an unreasonable result. To achieve the obvious intention and to produce a reasonable result we must do some violence to the words…The general principle is well settled. It is only when the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result that the words of the enactment must prevail.

The purpose of invoking the Golden Rule is to avoid the rigour of literal rule when its application results in absurdity or inconsistency. Although the Golden Rule permits the Plain meaning rule to be departed from if a strict adherence to it would result in an absurdity but the later part of the Golden Rule must be applied with much caution. The Apex Court in Jugal Kishore v. Raw cotton co. Ltd. AIR 1955 SC 376, laid down that the cardinal rule of interpretation is to read the statute literally. If however such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. If no such alternative construction is possible the court may adopt the ordinary rule of interpretation.

MISCHIEF RULE

A completely different approach to statutory interpretation is embodied in the Mischief Rule. This rule has its origin in Heydon's Case which was decided in 1584.This rule is also known as Purposive Construction.

Heydon's Case (1584) 76 ER 637. In this case it was sated that four things are to be discussed 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 for,
3. What remedy the parliament hath resolve and appointed to cure the disease of the commonwealth, and
4. The true reason of the remedy.

The rule further lays down what the judges are to do-

To make such constructions as shall suppose the mischief and advance the remedy.The approach here laid down contemplates a wide enquiring into the policy and purpose behind the statute.

The Apex court in Bengal Immunity Co. V State of Bihar AIR 1955 SC 661 applied this rule.

While applying rule the court highlighted the significance by saying that the method of interpretation found in mischief rule is as necessary now as it was when Lord Coke reported Heydon case .Expressed in modern times it only means that the purpose and significance of an enactment is to be found after exploring the defect or the shortcoming which are sought to be removed by means of it by parliament which does not legislate in vain or without some reason or need for it.

The court applied the rule in costuming A-286 of the Constitution.

The court referred to the previous state of Law (Pre-Constitution law) in the Provinces which was in the state of chaos and confusion because of the indiscriminate exercise of taxing power .The court observed that it was to cure this mischief of multiple taxation and to preserve free flow of inter-state trade a commence.

This rule was again applied by the SC in similar context in Goodyear India Ltd. V. State of Haryana AIR 1990 781 while construing the change brought about by Constitution 46th Amendment Act.

The SC applied this rule in 2005 in construing penal statute in Iqbal Singh Marwah v. Meenakshi Marwah AIR 2005 SC 2119.The Court said that the strict interpretation of penal statute is not of universal applicability. Penal statute should be construed in a manner as shall suppress the mischief and advance the remedy.

Some Guiding Principles

Regard to Subject and object

When two interpretations are open, the one which is in harmony with the object is to be followed.

U.P. Bhoodan Yagna Samiti v. Braj Kishore AIR 1988 SC 2239.

While interpreting section 14 of U.P.Bhoodan Yagna Act 1953,it was held that the expression ‘landless persons’ which made provision for grant of land to landless persons, was limited to landless labourers and did not include landless businessman residing in a city.

The object of the Act was to implement the Bhoodan Movement, which aimed at distribution of land to landless labourers who were well versed in agriculture and who had no other means of subsistence.

Legal Sense of words

When words are used in legal sense they are to be interpreted accordingly. In State of Punjab v. Inder Singh AIR 1998 SC 7, it was laid down that the word 'deputation' has a different connotation in service law and dictionary meaning is of no help.

Exact meaning preferred to loose meaning

In an Act of Parliament the words are used in exact sense and therefore they are to be interpreted in exact sense. There is a presumption says SC(in Prithipal Singh v.Union of India AIR 1982 SC 1413) that the words are used in an Act of Parliament correctly and exactly and not loosely and inexactly.

Mayor, Councillors and Burgesses v.Taranaki Electric Power Board, AIR 1933 PC 216.The question in this case before the PC was what is the true meaning of the word 'adjoining'. It was pointed out that the exact meaning of the word was 'conterminous' as distinguished from its loose meaning of 'near' or 'neighbouring',; accordingly the former meaning was preferred.

Technical words in technical sense

Words relating to business, profession, art or science have a special meaning and this special meaning is called technical meaning .Technical words in a statute are to be interpreted in technical sense.

Cemento Corporation Ltd. v. Collector Central Excise AIR 2002 SC 3680.The question in this case before the court was regarding the meaning the of the word 'cement'. It was laid down that the meaning of 'cement' as known in trade connotes 'cement' and not as used in dictionary . Accordingly 'Lympo' used as a substitute for cement was not held to be cement.

The court may even prefer popular meaning .The SC in Commissioner of Sales Tax, M.P.,Indore v. Jaswant Singh Charan Singh,AIR 1967 SC 1454 while, construing the word 'coal' in a Sales Tax Act, ruled in favour of popular meaning by applying the test: "what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word". On this test coal was held to include charcoal and not restricted to coal obtained as a mineral. In contrast, it was said that in the Colliery Control Order, the word 'coal' will be understood in its technical or scientific sense and will be interpreted as a mineral product and will, therefore, not include charcoal.

Ramavatar Budhaiprasad v. Assistant Sales Tax Officer AIR 1961 SC 1325.

The question before the court was whether the word 'vegetables' included betel leaves or not under C.P. and Berar Sales Tax Act, 1947. Being a word of everyday use it must be construed in its popular sense, meaning that sense which people conversant with the subject matter with which the statute is dealing would attribute to it. The word was construed to denote

those classes of vegetable matter which were grown in kitchen garden. Betel leaves were excluded.

Avoiding Addition or Substitution or Rejection of words

As a general rule it is not allowed to add or substitute or reject the words of the statute. Any interpretation which requires for its support addition or substitution or which results in rejection of words as meaningless has to be avoided. This has been observed by the SC in.

Shyam Kishore Devi v. Patna Municipal Corporation, AIR 1966 SC 1678.

The PC in Crawford v. Spooner (1846) 6 Moore PC 1, laid down that we can't aid the Legislature's defective phrasing of an Act, we can't add or mend and, make up deficiencies which are left out there.

In State of Kerala v.M.Verghese AIR 1987 SC 33 and UI v. D.N.Aggarwal AIR 1992 SC 96, the SC observed that the court can't reframe the legislation for very good reason that it has no power to legislate.

On the one hand it is not permissible to add words or to fill up gap or lacuna, on the other hand effort should be made to give meaning to each and every word used by the legislature.

In Quebec Railway, Light, Heat and Power Co. v. Vandry AIR 1920 PC 181, it was laid down that the legislature is deemed not to waste its words or to say anything in vain.

To this general rule there is an exception. In Inco Europe Ltd. v.First Choice Distribution (2000) 2 All ER 109, it was stated that the court will 'add words' or 'omit words' or 'substitute words'. But before interpreting a statute in this way the court must be abundantly sure of three matters:

The intended purpose of the statute or provision in question,

That by inadvertence the draftsman and parliament failed to give effect to that purpose in the provision in question and

The substance of the provision parliament would have made, although not necessarily the precise words parliament would have used, had the error in the Bill been noticed.

The SC in S. K. Devi v. Municipal Corpn. AIR 1966 SC 1678, laid down that the power to add words should not be exercised unless there is almost a necessity in order to give the section a workable meaning.

Casus omissus (a point not provided for by a statute)

As a general rule it is not permissible to supply omissions in a statute. There is a strong presumption that the legislature does not make mistakes and no court is competent to proceed

upon the assumption that the legislature has made a mistake. The courts can't say to themselves that through oversight the legislature has failed to provide for a particular situation and, therefore, what was not done by the legislature may be done by the court. This is not within the competence of court's jurisdiction.

In Dunpont v. Mills 1967 All ER 168, the court stated the general rule –

> "While the court may interpret doubtful or obscure phrases and obscure language in a statute so as to give effect to the presumed intention of the legislature and to carry out what appears to be general policy of the law, it can't by construction, cure a casus omissus……"

The PC in K. Roy v. Secretary of State AIR 1938 PC 281 and the SC in Hiradevi v. District Boardboard, Shahjahanpur AIR 1952 SC 362 have observed that a matter which should have been ,but has not been provided for in a statute can't be supplied by the courts, as to do so will be legislation and not construction.

To this general rule there is an exception. In Padmasundra Rao v. State of T.N. AIR 2002 SC 1334, it was laid down that the two principles of construction one relating to casus omissus and the other in regard to reading statute as a whole appear to be well settled. Casus omissus can't be supplied by the court except in case of clear necessity and when the reason for it is found in the four corners of statute itself.

Ut res magis valeat quam pereat (statute to be construed to make it effective and workable)

The provision of a statute must be so construed so as to make it effective and operative. A statute can't be declared void for being merely vague .It is the duty of the court to find out the meaning of the statute even if its language appears vague. It is no doubt true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness.

Manchester Ship Canal Co. v. Manchester Racecourse Co., (1900) 2 Ch 352, Farwell J., said:

> ''Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty".

Ejusdem generis (of the same kind)

The rule of ejusdem generis is that where the particular words are followed by general words, the general words are not to be construed in their widest sense but should be construed

ejusdem generis i.e., are held to be intended to describe only other things of the same kind as enumerated by particular words.

According to Crawford the rule of ejusdem generis is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would have not be mentioned.

The SC in Amar Chandra v. Collector of Excise,Tripura AIR 1972SC 1863, laid down certain conditions for the application of the rule:

the statute contains an enumeration of specific words,

the subjects of enumeration constitute a class or category,

that class or category is not exhausted by the enumeration,

the general terms follow the enumeration and

there is no indication of a different legislative intent.

Powel v. Kempton Park Racecourse Co. (1889) AC 143, the question before the House of Lords was the connotation of the words – "other places". Section 1 of the Betting Act prohibited betting in a "house, office, room or other places". The HL following the rule, restricted the words 'other places' to 'covered enclosures'. Betting in an uncovered place was held not to be prohibited.

Jiyajirao Cotton Mills Ltd. v. M. P. Electricity Board AIR 1989 SC 788.

Section 49(3) of the Electricity Supply Act, 1948 empowers the Electricity Board to fix different tariffs for the supply of electricity to any person having regard to the geographical position of any area, the nature of supply and the purpose for which the supply is required and any other relevant factors. The SC refused to apply the rule of ejusdem generis for limiting the ambit of other relevant factors on the ground that there was no genus of the other relevant factors .The enumerated factors viz., geographical position of the area and the nature and purpose of the supply couldn't be related to a common genus to enable the application of ejusdem generis rule.

Noscitur A Sociis (doubtful words are interpreted according to context)

According to Maxwell when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense they take colour from each other and more general is restricted to a sense analogous to less general.

In order to ascertain the meaning of any word or phrase that is ambiguous or susceptible of more than one meaning the court may, says Crawford, properly resort to other words with which the ambiguous word is associated in the statute.

Rainbow Steels Ltd. v. Commissioner of Sales Tax AIR 1981 SC 2101.

In interpreting Entry 15 of the Schedule to the UP Sales Tax Act,1948 which reads 'old, discarded, unserviceable or obsolete machinery stores or vehicles including waste products', the word old was construed to refer old machinery which had become 'non functional' or 'non usable'.

Some judges do not distinguish between the rule of ejusdem generis and the rule of noscitur a sociis. Noscitur a sociis is wider than ejusdem generis .Rather ejusdem generis is only an illustration or specific application of noscitur a sociis.

Reddendo Singula Singulis

The phrase 'reddendo singular singulis' indicates that different words in one part of the statute are to be applied respectively to the other portions or sentence to which they respectively relate, even if strict grammatical construction should demand otherwise.

The SC applied the rule in K.V. Kamath v.Rangappa Baliga & Co. AIR 1969 SC 504.

Proviso to article 304 of the Constitution reads:

'Provided that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous of the president. It was held by the SC that the word 'introduced' referred to 'Bill' and the word 'moved' to 'Amendment'.

Unit –III Aids of Interpretation

Intrinsic/internal

Etrinsic/External

Internal Aids/ Parts of Statute

1.Title

Title indicates the main purpose of enactment. Earlier in England the title was not considered part of statutes, but presently the position is different. It forms the part of the Act. Title may be long or short.

In R v. Secretary of State Common Wealth Affairs, 1994 All ER 457, the court held that it is now settled that long title of an Act is part of Statute and it is admissible as an aid to its construction.

In P. Shah v. State of Madras, 1953 SC 274, the title of Madras General Sales Tax Act, 1939, was utilized to indicate that the object of the Act is to impose Taxes on sales that take place within the Province.

The title however, is not conclusively aid of the intent of legislature but constitutes only one of the numerous sources from which assistance may be obtained in the ascertainment of that intent in case of doubt.

2. Preamble

In England different opinions have been held at different times on the question whether a preamble is a part of statute? Some jurists were of the opinion that preamble is not the internal

part of the Act but something outside it but on the other hand there were lawyers to whom the preamble was undoubtedly a part of the Act.

According to Halsbury Laws of England, preamble may now be regarded like the title a part of the statute. Crawford says it is an excellent aid to the construction of ambiguous statute or statutes of doubtful meaning or has been said it is a key to the construction of a statute and should be used to unlock the minds of the makers.

Preamble is an introductory part of a statute which very briefly gives the purpose of the legislation. In M. Yousuf v. I.A Khan, ILR,14 Luck 492, it was held that though preamble is a part of the Act, it is not operating part thereof.

Rahman Shagoo v. State. of J&K, AIR 1950 JK 29, the aid of preamble can be taken only when there is some doubt about the meaning of the operative part of the Act.

Preamble is of no significance when the statute is clear. Help is taken from preamble only in two classes of cases:

1. The first class is were the text of the statute is susceptible of different constructions.

2. The second class of cases is that if very general language is used in an enactment, which, it is clear must have been intended to have some limitation put upon it, the preamble may be used to indicate to what particular instances the enactment is intended to apply. That is to say, that in some cases it may be permissible to control the scope of the enactment by the terms of the enactment. [Kannammal v. Kanakasabai, AIR 1931 Mad 629; Motipur Zamindari and C. v. St. of Bihar, AIR 1962 SC 660; M. Pal v. St. of HP, AIR 1995 HP 15]

Preamble of the Constitution

In re Berubari v. Union and exchange of Enclaves, AIR 1960 SC 845, the Apex Court held that preamble is not part of constitution and according to it, it is not a source of substantive power. But this view was rejected in Keswananda Bharti v. St. of Kerala, AIR 1970 SC1461, were it was held that preamble is a part of the constitution. C. J. Sikri obsereved, it seems to me

that the preamble of our constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the constitution.

The majority judgment in Keswanada Bharti strongly relied upon the preamble in reaching the conclusion that the power under Art 368 was limited and did not enable parliament to alter the basic structure of the constitution.

Definition sections or Interpretation Clauses

Definition is a statement that explains the meaning, nature and content of something one is defining in a precise and articulate manner. It is a usual practice for legislative bodies to define words used in a statute and to place such definition in the definition sections. These sections are a valuable aid of resolving questions of statutory meaning.

In M. Gopalan v. Rohim 1977 KLT 386, it was held that it is equally a common practice to provide an interpretation or definition clause in every statute and the normal canon of interpretation of statute lays down that while interpreting the particular word in a statute the best guide is the definition of that word in the statute itself.

The definition may either be restrictive or extensive in nature.

In Kasilingam v. PSG College of Technology AIR 1995 SC 1395 it was laid down that whenever a word is defined to mean a particular thing, such definition is prima facie restrictive and exhaustive, whereas a word is defined to include a particular thing, the definition prima facie is extensive.

Term‘ include’ is used in order to enlarge the meaning of words or phrases used in a statute. For example section 5 of the Hindu Marriage Act,1955 which defines the word Hindu uses the word ‘includes’. It thus extends the meaning of the word Hindu so as to include within it also what otherwise may not come within the ambit of the word Hindu when used in its ordinary legal sense.

Carter v. Bradbeer (1975) 3All ER 158.

Section 201 (1) of Licensing Act,1964 defines bar to include a place which is exclusively and mainly used for the sale and consumption of intoxicating liquor. The HL while referring to this definition held that the word ‘include’ showed that the definition did not exclude what would ordinarily and common parlance be spoken of bar, and therefore counters used for serving liquor were held to be bar.

Sometimes definition section may borrow definitions from earlier Act and the definitions so barrowed may not necessarily be in the definition section but in some other provision of the earlier Act.

Ambiguous definitions

Definitions sometimes require interpretation. Although it is presumed that the legislature will be precise and careful in its choice of language in a definition section yet at times language used in interpretation clause requires interpretation.

The word 'industry' in the Industrial Dispute Act,1947 is so ambiguous that it had defied analysis. Instead of promoting precision it has achieved opposite.-- Banglore water supply v. A.Rajappa, AIR 1978SC 548.Therfore it is not to be read in isolation but in the context of the function of the definition.

Headings And Marginal Notes

Heading generally introduces a section. It is prefixed to sections and can be referred to in interpreting an Act of Legislature. Heading can't change the meaning of the enacting words .

In CIT v.Ahmedbhai Umerbhai AIR1950 SC 134, it was observed that the title of chapter can't legitimately used to restrict the plain terms of an enactment.

Again in R.Prabhakar v. R.Dugar AIR 2004 SC 3625,it was reiterated that heading and title can't control the meaning which is plain and clear.

Marginal Notes

There is no uniform opinion whether marginal note can be of any significance in construing a statute. The majority view is that it can't be used for construing the section. Lord Reid in Chandler v. Director of Public Prosecutions 1964 AC 763, expressed the view that marginal note can't be used as an aid to the construction. The SC in CIT v. Ahmedbhai Umerbhai AIR 1950 SC 134 observed that marginal note can't be referred to for the purpose of construing the statute.

Marginal note appended to the Articles of the Constitution have been held to constitute part of the Constitution and have been made use of in construing the Articles. In Golaknath v. State of Punjab AIR 1967 SC 1643, the AC observed that Article 368 does not contain the power to amend the Constitution but it only prescribes the procedure for amendment.

Punctuations

Before 1849 no punctuation normally appeared in the Acts of Parliament in England. But since 1849 the same has been inserted. According to Maxwell punctuation is not a very safe guide in the interpretation of a legislative enactment. The opinion is still doubtful whether punctuation can be looked at for the purpose of construction. Lord Reid in Director of Public Prosecitions v. Schildkemp 1969 AC 1640,Punctuation can be of some assistance in construction.

The SC in Aswini Kumar v. Arbinda Bose AIR 1952 SC 369, observed that punctuation is after all a minor element in the construction of the statute and very little attention is paid to it by the English courts.

M. Shabir v. State of Maharashtra AIR 1979 SC 564.

Section 27 of the Drugs and Cosmetics Act came for construction before the SC. Under this section whoever, manufactures for sale, sells, stocks or exhibits for sale or distributes a drug without a license is liable for punishment. In holding that mere stocking is not an offence within the section, the SC pointed out that the presence of comma after manufacture for sale and sells and absence of any comma after stocks. It was, therefore , held that only stocking for sale could amount to offence and not to mere stocking.

Illustrations

Illustration appended to section illustrates a principle. These are aids to understanding the real scope of an enactment. If the text is clear and the illustration beyond it, the illustration can't extend or limit the scope of the text. It can be rejected on the ground of repugnancy to the section itself.

Explanations

The purpose of explanation is to explain some concept or expression or phrase contained in the main provision. They are keys to the sections to which they are appended. Explanation doesn't enlarge the scope of the section to which it is appended. The purpose of explanation is to remove any ambiguity in the main section or to make explicit that may be otherwise ambiguous.

Proviso, Exception, Saving clause

Proviso follows the enacting part of a section. Normally it doesn't enlarge the section and in most cases it cuts down or makes an exception from the ambit of the main provision.

When the language of the statute is clear and unambiguous, a proviso can have no effect on the enactment so as to exclude from it by implication what clearly falls within its express terms. But if the main provision is not clear, the proviso can properly looked into for ascertaining the meaning and scope of the main provision.--- Bachan Singh v. Election Commr. AIR 1966 Punj.472

Exception exempts something which would otherwise fall within the purview of the general words of a statute. According to Crawford while there is considerable similarity between an exception and a proviso each restrains the enacting clause and operates to except something which would otherwise fall within the general terms of the statute. There is a technical distinction between them although even that is frequently ignored and the two terms are used synonymously.

Saving clause reserves something which would otherwise be included in the words of the enacting part. It may be inserted when one statute is repealed or re enacted by another.

Schedule

A Schedule is as much a part of the statute as any other part and is used in construing provisions in the main body of the Act. In Ellerman Lines Ltd. v.Murray 1931 AC 126, it was laid down that a schedule can't be referred to on the construction of an enacting part of the statute unless the language of the enacting part is ambiguous.

Kallu v.Munna 1972 MPLJ 56 . in this case it was also observed that in case of an ambiguous enactment schedule is a legitimate aid to construction. The SC in Aphali Pharmaceuticals Ltd. v. State of Maharashtra AIR 1989 SC 2227 laid down that in case of a conflict between the body of the Act and the schedule, the former prevails.

Please note also refer to Ejdem generis , Noscittur a soccis, Reddendo singular singuilis too.

Extrinsic Aids

If the words of the statute are explicit and unambiguous there can be no resort to external aid for construction. Recourse to extrinisic aids will be justified only within the well recognized limits.

Parliamentary History

Initially no recourse was taken to Parliamentary History as an aid to construction. In Administrator General of Bengal v. Premlal Mullick,ILR 22 Cal.788, the PC deprecated the use of proceedings of the Legislature as legitimate aids to the construction of a statute.

Basically in England no recourse was taken to Parliamentary History. The dominant idea there was that the intent of the Parliament which passed the Act can't be gathered from the Parliamentary History of the statute. Presently the position is different. In Pepper v. Hart (1993) 1 AllER 50, it was laid down that the reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or literal meaning of which leads to absurdity.

In A.K.Gopalan v. State of Madras AIR 1950 SC 27, the SC observed that a speech made in course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental process lying behind the majority vote which passed the bill. A contrary view was taken in Chiranjit Lal Chowdhury v. UI AIR1951 SC 41.Fazal Ali,J. admitted Parliamentary History including the speech of the minister introducing the bill as evidence of the circumstances which necessitated the passing of the Act.

In Kesvananda Bharti v. State of Kerala AIR 1973 SC 1461 , it was held that the Constituent Assembly Debates although not conclusive, yet show the intention of the framers of the Constitution and throw light in ascertaining the intention behind such provisions. Again in re Gujarat Assembly Election matter (2002) 8 SCC 237 the SC held that the Constituent Assembly Debates are permissible aids in the construction to ascertain the intention.

Historical Facts and Surrounding Circumstances

Contemporaneous events may constitute an important extrinsic aid to the construction of a statute. The concept of such events embraces the history of the period when the statute was enacted including the history of the statute itself, the previous state of law, the mischief or evil against which the statute was aimed as a remedy. According to Blackstone, the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislators to enact it. In

Keats v. Lewis (1911) AC 64, it was laid down that in the construction of statutes it is, of course at all times and all circumstances permissible to have regard to the state of things existing at the time the statute was passed and to the evils which appear from the provisions, it was designed to remedy.

Like other rules, the rule steps in only when there is some ambiguity. In Commr. of Income Tax M.P.v. Socha Devi (1958) SCR 1, it was held that it is only when the words used are ambiguous that they would stand to be examined and construed in the light of the surrounding circumstances.

Please note also refer to Parliamentary History and Mischief Rule too .

Developments—Social ,Political, Economic and Scientific

No earthly wisdom how so towering that may be can forsee every possible situation which may have to be faced in future. It is therefore impossible to make a law which can satisfy the needs of the people for all times to come.According to Waisman:

Judges are not robots. They have to evolve various methods and techniques to tackle a problem which confronts them. True, there may be rules, but this does not mean that acceptance of a rule puts the judge into a strait jacket. They are free to decide a lis under the rule. Rules of law are not linguistic or logical rules, but to a great extent rules for decoding.

In R v. Ireland (1997) 4 All ER 225, it was observed that generally the statutes are of the, "always speaking variety" and the court is free to apply the current meaning of the statute to present day conditions. The psychiatric injury which was caused by silent telephone calls was held to amount to "assault" or "bodily harm"under sections 20 and 47 of the Offence Against Person Act,1861 in the light of the current scientific appreciation of the link between the body and psychiatric injury.

In R v. Fellows (1997) 2All ER 548, it was pointed out that the data stored in a computer disc, a technique not known in 1978 amounts to "indecent photograph" within the meaning of section 1 of the Protection of Children Act,1978 which penalizes taking or distribution of indecent photograph of children under the age of sixteen.

In A.G. v. Edison Telephone Co. of London (1885) 6QBD 244 it was held that telephone is "telegraph" within the meaning of that word in Telegraphs Acts 1863 and 1869 although telephone was not invented in 1869.

Reference to other statutes

Statutes in Pari materia

Statutes in Pari materia i.e; statutes dealing with the same subject matter or forming the part of the same system.

Statutes which relate to the same subject, the same person or thing or the same class of persons or things are deemed to constitute one system of law, they are considered as one statute.

R v.Loxdale (1758) 97 ER 394 Lord Mensfield stated:

"Where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other".

State of Assam v. D.P. Barua AIR 1969 SC831 .

Section 19 of Assam Agriculture Income Tax Act 1939 has been held to be in pari materia with section 22 of the Indian Income Tax Act,1922.

Ahmehabad Pvt. P.T. Association v. Adm. Officer AIR 2004 SC 1426.

It was observed that the word "employee" defined in section 2(e) of Payment of Gratuity Act is to be construed by referring to other Labour Enactments dealing with the same subject.

When the two legislations have different scopes it cannot be said that they are in pari materia.

In, Shah and Co., Bombay V. State of Maharashtra AIR 1967 SC 1877. The Bombay Rents, Hotel and Lodging Rates Control Act, 1947 and the Bombay Land Requisition Act, 1948 were not held to be Acts in pari materia as they do not relate to the same persons or thing or to the same class of persons or things.

Assistance of Earlier Statutes.

When words in an earlier Statutes have received an authoritative exposition by a court use of the same words in similar context in a later Act will give rise to the presumption that parliament

intends that the same interpretation should also be followed for construction of those words in the later statute.—Bugga v. Emperor (1920) 47 IA 128.

Please note also refer to codifying and consolidating statutes.

Dictionaries

When a word is not defined in the Act, it is permissible to refer to dictionaries. In State of Bihar v. R.K.Singh (1983) 3SCC 118 the SC observed that the dictionaries can always be referred to in order to ascertain not only the meaning of the word but also the general use of it. Earlier same view was expressed by the PC in Coca Cola Co. of Canada ,Ltd. v.Pepsi Cola Co of Canada Ltd. AIR1942 PC 40.

In Ram Naraian v. State of U.P.AIR1957 SC 18 it was laid down that in selecting one out of various meanings of the word regard must always be had to the context as it is a fundamental rule that the meanings of the words and expressions used in an Act must take colour from the context in which they appear.

In Rev. Stainslaus v. State of M.P.AIR 1977 SC the court quoted the meaning of the word Propagate from the Oxford and Century dictionaries.

Foreign Decisions

Reference to English and American decisions may be made because the system of Jurisprudence is same. The foundation of present Indian Legal system of India has been laid down by the Britishers.

In Express Newspaper (P) Ltd. v. UI AIR 1958 SC 578 the SC held that reference to the decisions of the US SC for interpreting Art.19(1)(a) of the Constitution of India is valid.

Bagwati J. in National Textile Workers Unoin v. P.R. Ramakrishnan AIR 1983 SC 75, observed that the courts in India will have to build their own jurisprudence though they may receive light from whatever source it comes. They can't surrender their judgement and accept as valid in India whatever has been decided in England.

International Law

In Pratab Singh v. State of Kharkhand (2005) 3 SCC 551, the court held that the Internationl treaties, covenants and conventions although may not be a part of our Municipal Law can be referred to and followed by the courts having regard to the fact that India is a party to the said treaties. Some provisions of the International Law may not be part of our Municipal Law but the courts are not hesitant in referring thereto so as to find new rights in the context of the constitution.

Please note also refer to precedents.

Unit IV

I. Interpretation of Penal Statutes
II. Interpretation of Tax Statutes

Interpretation of Penal Statutes

The general rule governing the interpretation of penal statute is that it must be strictly construed. Strict interpretation in the words of Crawford connotes:

"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 exact and technical meaning with no extension on account of implications or equitable considerations; or 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 close and conservative adherence to the literal or textual interpretation"

According to Sutherland by the rule of strict construction it is not meant that the statute shall be stringently or 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.

In Sohan Lal v. Col.Prem Singh AIR 1989 (P&H) 316 the Punjab HC laid down that a strict construction is one which limits the application of the statute by the words used.

When it is said that all penal statutes are to be construed strictly, it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words.

Two reasonable interpretations and Doubt regarding the meaning

If a penal statute is open to two interpretations the court must adopt that interpretation which leans in favour of the accused. Secondly in case of any doubt regarding the meaning ,the benefit of doubt is given to the accused.

In Tuck &Sons v. Priester (1887) 19 QBD 629 it was laid down that if there are two reasonable constructions we must give effect to the most lenient one. That is the settled rule for the construction of penal sections.

Tolaram v. State of Bombay AIR 1954 SC 496.

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 the one which imposes the penalty.

In Director of Public Prosecutions v. Good Child (1978) 2All ER 161, it was laid down that a man should not be gaoled on an ambiguity.

State of West Bengal v. S.K. Guha AIR 1982 SC 949.

It is recognized rule of construction of the penal statutes that where the equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve , the benefit of doubt should be given to the subject and against the legislature which has failed to explain itself.

Wide and Comprehensive language

If the language used in the statute is comprehensive enough, it can't be subjected to a strict meaning on the pretext that a penal statute is to be construed strictly. In Elderton v. Kingdom Totalistor Co. Ltd. (1945) 2 All ER 624 , it was observed that o wide and comprehensive language is used to cover a particular operation in question can't be restricted.

Suman Sethi v. Ajay K. Churiwal AIR 2000 SC 828.

While referring to the Prevention of Corruption Act 1947, the court laid down that the Act was brought in to purify public administration. When the legislature used comprehensive terminology to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used therein.

Iqbal Singh Marwah v. Meenakshi Marwah AIR 2005 SC 2119, the SC said that the rule of strict construction is not of universal applicability. Penal statutes should be construed in a manner as shall suppress the mischief and advance the remedy.

Badshah v.Urmila Badshah AIR 2014 SC 869

The court opined that the purposive construction needs to be given to the provisions of sec.125 of CrPC. The purpose is to achieve social justice. While dealing with the application of destitute wife or hapless children or parents under this provision, the court is dealing with the marginalized sections of the society. The purpose is to achieve the social justice which is the Constitutional vision, enshrined in the preamble of the Constitution.

Scientific advancements and current meaning

The rule of strict construction does not also prevent the court in interpreting a statute according to its current meaning and applying the language to cover the developments in science and technology not known at the time of passing the statute.

Further see Rv. Ireland and R v.Fellaw

Loopholes

It is a well settled rule of penal jurisprudence that a loophole in the statute can't be supplied by the court. In Spicer v. Holt (1976) 3 All ER 71 ,the HL made it clear that if in a penal statute a loophole is found, it is not for the judges to cure it, for it is dangerous to derogate from the principle that a citizen has a right to claim that howsoever much his conduct may seem to deserve punishment, he should not be convicted unless that conduct falls fairly within the definition of crime of which he is charged.

Presumption of innocence

Under civilized penal jurisprudence an accused is always presumed to be innocent unless his guilt is proved beyond any reasonable point of doubt. Infact what is meant by this is that the burden of proving the guilt of an accused is upon the prosecution. However, more and more laws are being passed in UK and India where the burden of proving innocence seems to have been shifted to the accused. There may be some issues on which it is not possible for the prosecution to give evidence from its own hand and , in these circumstances it would not be a serious departure from the traditional principle of presumption of innocence to require the accused to give evidence on such issues. Sections 105 and 106 of the Evidence Act,cover such situations.

Over stretching of presumption of innocence

The principle of presumption of innocence has sometimes taken to absurd length. The Romans laid down that it would be better for an accused person to go unpunished than for an innocent man to be condemned. Fortesque raised the ratio to 20:1, Hale 5:1 and Blackstone 10:1.According to Viscount Simond a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of an innocent .Allen is of the opinion that some sentimentalists would assent to the proposition that it is better that a thousand or even a million guilty should escape than that one innocent person should suffer. But no responsible practical person would accept such a view . For it is obvious that if a ratio is extended indefinitely, there comes a point when the whole system of justice breaks down and the society is in a state of chaos.