CHAPTER XXI
ENABLING STATUTES

SYNOPSIS

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1. In general.—According to Craies,[1] "many statutes have been passed to enable something to be done which was previously forbidden by law, with or without prescribing the way in which it is to be done. Such statutes are passed for a variety of purposes. In order to discuss the rules which regulate the effect of a Statute of this class, we may conveniently consider the question under the following heads :

(i) Statutes which prescribe or regulate the way in which something is to be done.

(ii) Statutes which grant to private individuals powers for carrying out some public work.

(iii) Statutes which enable bye-laws and rules to be made.

(iv) Statutes which empower the Crown to do something, not comprised within the prerogative.

(v) As respects enactments falling under heads *(i)—(iv)* the question may also arise whether the enactment is permissive or obligatory."

The learned author further says[2] : "One of the first principles of law with regard to the effect of an enabling Act is that if the Legislature enables something to be done, it gives powers at the same time, by necessary implication to do everything which is indispensable for the purpose of carrying out the purpose in view. It is also an established rule of construction that when a negative condition in the shape of non-existence of a certain fact is prescribed as an essential prerequisite to a particular legal result, the condition is deemed to be satisfied if the existence of the fact has been rendered impossible by circumstances."[3]

Moreover, if a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some details of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, it is beyond doubt that Courts are at liberty to infer that the statute by necessary implication empowers that the details be carried out.[4] Thus, the Rent Controller under the Rent Control Act, has an implied power as essential to proper exercise of his jurisdiction to dismiss an application for default or

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1. *Statute Law*, 5th Ed. at p. 238.
2. *Statute Law*, 5th Ed. at p. 239; *Gopalaswami* v. *Secretary of State*, ILR 57 Mad 237 : AIR 1933 Mad 748, 750; *In re* Dudley Corporation, (1845)13 M and W 706, 721; although such a meaning cannot be implied in relation to circumstances arising accidentally only. *See* for instance *Doyle* v. *Falconer*, (1886)4 Moore PC (NS) 203.
3. *Rai Ram Taran Banerji* v. *Mrs. D.J. Hill*, 1949 FCR 292, 308, *per* Mukherjea, J.; *see* also *Campbell* v. *Earl of Dalhousie*, (1868) LR 1 HL (SC) 259.
4. *Thottuvarambath Velayudhan* v. *Pottanyil Aboobacker Haji*, 1980 Mad LJ (Cr) 54.

for non-compliance with orders.[1]

It would, however, be contrary to all canons of construction to assume that where the Legislature has dealt with a specific topic and has conferred specific powers and has put certain limitation on those powers it can be contended that the Legislature has, in another part of the same statute, given similar powers on a wider scale and without the limitations imposed in the specific section which dealt with that power.[2] Indeed, where there is a special affirmative power given which would not be required because there is a general power it is always to be read to import the negative.[3] When a rule of law lays down the conditions under which an order or judgment shall not be invalid, it by necessary implication must be deemed to lay down the further rule that the order will be invalid if those conditions are not fulfilled.[4] This follows from the maxim *expressio unius exclusio alterius est*. Where a statute directs that performance of certain things in a particular manner it forbids by implication every other manner of performance.[5] Crawford in his *Statutory Construction*,[6] writes : "As a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing. It, therefore, logically follows that if a statute enumerates the things upon which is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. For instance, if the statute in question enumerates the matters over which a Court has jurisdiction, no other matters may be included. Similarly, where a statute forbids the performance of certain things only those things expressly mentioned are forbidden. So also, if the statute directs that certain acts shall be done in a specified manner, or by certain person, their performance in any other manner than that specified, or by any other person than one of those named is impliedly prohibited." Sutherland in his *Statutory Construction*,[7] says : "The rule of *expressio unius exclusio alterius est* may be used advantageously in some cases in determining whether a statute should be construed as mandatory or permissive. As applied in this connection is that if a statute provides one thing, a negative of all others is implied. Where a statute granted authority to do a thing and prescribed the manner of doing it, the rule was clearly set out that the provision as to the manner of doing the thing was mandatory, even though the doing of it in the first place was discretionary." "No universal rule", said Lord Campbell in *Liverpool Bank* v. *Turner*,[8] "can be laid down as to whether mandatory enactment shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of Legislature by carefully attending to the whole scope of the statute to be construed." In *Howard* v. *Bodington*,[9] Lord Penzance, after quoting the above observation of Lord Campbell, remarked : "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 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 enactment is what is called imperative or only directory." Acts of Parliament authorising companies to make railways are now (1859) regarded as but enabling

1. *Haji Zakaria Suleman* v. *Collector, Yeotmal*, AIR 1963 Bom 233 : ILR 1962 Bom 441 : 64 Bom LR 483.
2. *Nayak* v. *Bejen Bharucha*, 53 Bom LR 654, 660.
3. *Catholic Bank* v. *Albuquerque*, AIR 1944 Mad 308 : ILR 1944 Mad 385 (FB).
4. *Qaboot* v. *Chajju*, AIR 1948 All 411.
5. *State* v. *Hauson*, 210 Iowa 773.
6. At pp. 334-335; *see* also *Blackburn* v. *Flavelle*, (1831)6 AC 628, 634.
7. 3rd Ed., Vol. 3 at pp. 117-118.
8. (1861)30 LJ Ch 379, 380.
9. (1877)2 PD 203, 211.

statutes, which give powers but do not render compulsory or obligatory the exercise of those powers[1]. One must look at the Act to see whether there are words of compulsion; but if enabling words only are there to be found, then they are not words of compulsion according to the ordinary construction of English language.[2] "Statutes", says Maxwell,[3] "which authorize persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. "The truth is", says Bower, L.J.[4] : "that when a statute confers powers upon a public body there may be duties which arise out of the powers when they are exercised, but the mere fact that such powers are conferred involves no implication, when the statute is silent upon the point that the powers must be exercised. Statutes relating to rights of married women must be construed in accordance with the same rules of interpretation as are applicable to other statutory enactments. Such statutes are remedial in their nature and right to be construed liberally in favour of the equality of the legal personality of husband and wife, in respect of property, contracts, torts and civil rights where this is the clear purpose of the statute. But the Court has no right to depart from the language of the statutes. They should be fairly and favourably construed with the object of promoting justice, avoiding harsh or incongruous results, suppressing the mischief of evil sought to be remedied and defeating all attempts at evasion. The liberality with which a statute is construed cannot, however, enable the Court to ignore the words of the statute or give them a forced or unnatural meaning or to engraft upon the law something which the Legislature has chosen to suit, or to give the law a retrospective operation when none was intended.[5] "Permissive words are not compulsory," while the provisions of an enabling and enlarging Act must be construed in the spirit of the rights enlarged by them, they should not be extended by construction beyond the plain meaning of the language used.[6]

2. Inference from negative words.—If the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, such requirements are, in all cases absolute and neglect to attend to them will invalidate the whole proceeding.[7] In *Caterall* v. *Sweetman*,[8] the validity of a marriage was in question which did not comply with the provision of a Colonial Act which provided that no marriage between Presbyterians and Catholics should be had and solemnized until one or both of such persons, as the case may be, shall have signed a declaration in writing. Dr. Lushington opined : "The words in this section are negative words and are clearly prohibitory of the marriage being had without the prescribed requisites, but whether the marriage itself is void.....is a question of very great difficulty. It is to be recollected that there are no words in the Act rendering the marriage void and I have sought in vain for any case in which a marriage has been declared null and void unless there were words in the statute expressly so declaring it." His Lordship examined various marriage enactments and observed : "From this examination of these Acts I draw two conclusions. *First*, that there never appears to have been a decision where words in a

1. *Scottish North-Eastern Railway Co.* v. *Stewart*, (1859)7 WR 458 (HL).
2. *R.* v. *Great Western Railway Co.*, (1893)62 LJQB 572.
3. *Interpretation of Statutes*, 11th Ed. at p. 231.
4. *R.* v. *Great Western Railway Co.*, (1893)62 LJQB 572.
5. *Ram Prakash* v. *Savitri Devi*, AIR 1958 Punj 87 at p. 90 (FB).
6. *Ram Prakash* v. *Savitri Devi*, AIR 1958 Punj 87 at p. 90 (FB).
7. Craies : *Statute Law*, 5th Ed. at p. 243.
8. (1845)9 Jur 954.

statute relating to marriage, though prohibitory and negative, have been held to infer a nullity unless such nullity was declared in the Act. *Secondly*, that, viewing the successive marriage Acts, it appears that prohibitory words, without a declaration of nullity were not considered by the Legislature to create a nullity." The marriage in question was accordingly held to be valid.

3. Inference from affirmative words.—Statutory enactments, although expressed in affirmative language, are sometimes treated as having a negative implied and that their provisions, 'though' as Lord O'Hagan said in *R.* v. *All Saints, Wigan*[1] "affirmative in words, are not necessarily so, if they are absolute, explicit and peremptory."[2] Section 10 of 38 and 39 Vict., c. 91, provided that a trade-mark might consist of *inter alia*, "any special and distinctive words of combination of letters used as a trade-mark *before* the passing of this Act." Jessel, M.R., held that a distinctive word which had not been used as a trade-mark before the passing of the Act, could not be so used after the passing of the Act. "Otherwise it would be contravening the well-known rule," observed his Lordship, "that when there is a special affirmative power given which would not be required because there is general power, it is always read to import the negative, and that nothing else can be done. Therefore the power to use as a trade-mark a word used before the passing of the Act clearly negatives the conclusion that a distinctive word can be so used if the word was not so used before the passing of the Act."[3]

"It has been so often decided", observed Coleridge, J., delivering the judgment of the Court in *Queen* v. *Tith Commissioners for England and Wales*,[4] "as to have become an axiom, that in public statutes words only directory, promissory, or enabling, may have a compulsory force where the thing to be done if for the public benefit or in advancement of public justice." "But the conditions in an enabling Act", says Craies in his *Statute Law*,[5] "which have been prescribed for the purpose of protecting or benefiting the public cannot be dispensed with." Where the power is coupled with a duty of the person to whom it is given to exercise it, then it is imperative.[6]

In *India Council of Legal Aid and Advice* v. *Bar Council of India*,[7] it is ruled that "where a provision is couched in positive language and is in the nature of an enabling provision, there is no canon of construction which says that by necessary implication the rule making authority can make a provision disentitling admission or enrolment to the profession.

Sometimes a statute, passed for the purpose of enabling something to be done, gives a discretionary power to the persons who are to carry out the purposes of the statute.[8] That discretion like other judicial discretion must be exercised according to common sense and according to justice, and if there is no indication in the Act of the ground upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view to indicating the particular grooves in which the discretion should run.[9] 'Discretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to rules of reason and justice, not according to private opinion, according to law, and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be

1. (1874)1 AC 611, 629.
2. Craies : *Statute Law*, 5th Ed. at pp. 244-246.
3. *Ex parte* Stephens, (1876)3 Ch D 659.
4. (1849)14 QB 459, 474.
5. 5th Ed. at p. 250.
6. *Re* Bake, (1890)44;Ch D 262; *Julius* v. *Bishop of Oxford*, (1880)5 AC 214; *Balak Ram* v. *Sita Ram*, AIR 1954 HP 6.
7. (1995)1 JCLR 238 (SC).
8. Craies : *Statute Law*, 5th Ed. at p. 231.
9. *Gardner* v. *Jay*, (1885)29 Ch D 50, 58.

exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."[1] Lord Wrenbury in *Roberts* v. *Hopwood*,[2] laid down as follows : "A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so .....he must, in the exercise of his discretion do not do what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs."

4. Power conferred within specified purposes.—With regard to the effect of statutes which give power to carry out some object which it is assumed will benefit the public at large like making and working a railway or tramway, one of the most important rules is, that although it is not obligatory upon persons who have obtained an Act of Parliament enabling them to form themselves either into an incorporated company or a statutory corporation for some specific purpose, to carry out that purpose, still, if they do proceed to exercise the powers conferred upon them by the Act which they have obtained," it is their bounden duty", as Turner, L.J., said in *Tinker* v. *Wandsworth District Board of Works D.B.W.*,[3] "to keep strictly within these powers, and not to be guided by any fanciful view of the spirit of the Act which confers them."[4] In deciding what may be done under statutory powers, Court of Law will always take into consideration the objects for which the statutory powers have been conferred. If the powers are conferred in order to enable a body of adventurers like a railway company to construct works which, although of public utility, will or ought to yield to the constructors a lucrative return, those adventurers will always be compelled to confine their operations strictly to the purposes contemplated by the enabling statute, whereas if the powers are granted to some public body, like a corporation or vestry, solely to enable them to carry out some work of public utility or necessity like making a new street or constructing a sewer more latitude will be allowed in the exercise of the powers which have been granted.[5] Lord Cranworth observed in *Galloway* v. *Mayor, etc. of London* :[6] "The principle is this : that when persons embark in great undertakings for the accomplishment of which those engaged in them have received authority from the Legislature to take compulsorily the land of others, making to the latter proper compensation, the persons so authorised cannot be allowed to exercise the powers conferred on them for any collateral object, that is, for any purposes except those for which the Legislature has invested them with extraordinary powers. The necessity for strictly enforcing this principle became apparent when it became an ordinary occurrence that associations should be formed of large numbers of persons possessing enormous pecuniary resources, and to whom are given powers of interfering for certain purposes with the rights of private property. In such a state of things it was very important that means should be devised whereby the Courts, consistently with the ordinary principle on which they act, should be able to keep such associations or companies strictly within the powers, and should prevent them when the Legislature has given them

1. *Sharp* v. *Wakefield*, 1891 AC 173, 179; *Brij Inder Singh* v. *Kanshi Ram*, 44 IA 218, 225, 226; *Babu Lal* v. *Emperor*, AIR 1938 PC 130, 134 (to be exercised fairly and honestly); *Holland* v. *Worley*, (1884)26 Ch D 578, 584.
2. 1925 AC 578, 613; *I.M. Lall* v. *Secretary of State*, ILR 1944 Lah 325 : AIR 1944 Lah 240, 253.
3. (1858)2 De G & J 261, 274.
4. Craies : *Statute Law*, 5th Ed. at p. 254.
5. Craies : *Statute Law*, 5th Ed. at p. 260.
6. 1866 LR 1 HL 34; *Lyon* v. *Fishmonger Company*, (1876)1 AC 662. It is well settled that a public body invested with statutory powers such as are conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committee to it. It must act in good faith and it must act reasonably; *per* Lord Macnaghten in *Westminister Corporation* v. *L. and N. Ry.*, 1905 AC 426.

power to interfere with private property for one purpose, from using that power for another purpose. Lord Cottenham in numerous instances interfered in such cases, and the principle has been cordially approved of and acted on in all Courts of Law and equity and has been frequently recognised and confirmed in this House. It has become a well settled head of equity that any company authorised by the Legislature to take compulsorily the land of another for a definite object will, if attempting to take it for any other object, be restrained by the injunction of the Court of Chancery from so doing." "But it is not sufficient for the company to make a mere statement that the purposes for which they are about to exercise their power of taking lands are within the contemplation of the Act ; they must do more than this, they must be prepared with satisfactory evidence to prove this to a Court of Justice if they are called upon to do so.[1] But although, if powers are given by Act of Parliament they must be exercised strictly and not extended, still, they are not to be curtailed.[2] Powers conferred by statute cannot be assigned without express statutory permission to do so.[3]

5. Anticipatory provisions.—It is a fairly common legislative practice to insert in an Act a provision authorising certain action to be taken in anticipation of its being brought into force and to be kept ready for operation simultaneously with the bringing into force of the Act. Such a provision is usually found in many statutes where a certain interval of time is contemplated by the Legislature between the date of the passing of the Act and the commencement of its operation. The exercise of the powers so conferred in anticipation of the commencement of the Act is perfectly legal and valid. Thus, the power to hold the elections expressly given by Section 1(5) of the Orissa Municipal Act must necessarily be held to imply the application of the various relevant provisions of the Act and the rules notwithstanding that the Act itself, in its general application, has not been brought into force.[4]

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1. Craies : *Statute Law*, 5th Ed. at p. 261. At any rate the benefit of doubt is to be given to those who might be prejudiced by the exercise of the power which the enactment grants and against those who claim to exercise them; *John Earnest* v. *Jogendra Chandra*, AIR 1935 Cal 298, 310 : ILR 62 Cal 886.
2. Craies : *Statute Law*, 5th Ed. at p. 261.
3. Craies : *Statute Law*, 5th Ed. at p. 262.
4. *Bishnu Charan Mukherjee* v. *State of Orissa*, AIR 1932 Orissa 11.

CHAPTER XXII

IMPLIED POWERS AND OBLIGATIONS

SYNOPSIS

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1. Implied powers.—The doctrine of implied powers is embodied in the maxim *'Quando lex aliquid alicue concedit conceditur et id sine quo res ipsa esse non potest'*. Its full and true import is set out in the judgment in the case of *Fenton* v. *Hampton*,[1] as follows : "Whenever anything is authorised and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorised in express terms be also done, then that something else will be supplied by necessary intendment. But, if, when the maxim comes to be applied adversely to the liberties or interests of others, it be found that no such impossibility exists, that the power may be legally exercised without the doing that something else, or even going a step further, that it is only in some particular instances, as opposed to its general operation, that the law fails in its intention unless the enforcing power be supplied, then, in any such case, the soundest rules of construction point to the exclusion of the maxim, and regard the absence of the power which it would supply by implication as a *casus omissus*." In other words, when any power or control is expressly granted, there is included in the grant, to the full extent of the capacity of the grantor and without special mention, every power and every control the denial of which would render the grant itself ineffective. Where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.[2] This is, in truth, not a doctrine of any special system of law, but a statement of a necessary rule of construction of all grants of power, whether by unwritten Constitution, formal written instrument, or other delegation of authority, and applies from the necessity of the case, to all to whom is committed the exercise of powers of Government.[3]

(i) The reason for the rule.—The reason for the rule is quite apparent. Many matters of minor detail are often omitted from legislation. "If these details", as Crawford observes, "could

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1. 11 Moo PCC 347, 360; *see also the Trolly Draymen & Carters' Union of Sydney & Suburbs* v. *The Master Carriers, Association of N.S.W.*, (1905)2 CLR 509, 523, 524.
2. *Mohd. Fazlul Rahman* v. *Custodian, E.P.*, AIR 1956 Hyd 91 (FB). When the Evacuee Property Act has conferred jurisdiction upon the Custodian to secure and administer evacuee property, it impliedly also grants powers to take possession in proper cases of evacuee property though it be joint property); *Matajog Dubey* v. *H.C. Bhari*, AIR 1956 SC 44; *Kumbhalia Municipality* v. *State of Gujarat*, AIR 1967 SC 1048.
3. *D'Emden* v. *Pedder*, 1 CLR 91, 109, 110.

not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most significant omission."[1] In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective.

(ii) As much part of the Act as if they had been expressed.—"What is necessarily implied is just as much a part of the statute as if it were especially written therein."[2] The implication and intendments arising from the language of an Act are as much a part of it as if they had been expressed. It is only necessary implications which may thus be read into the statute.

(iii) Only necessary implication to be read in the statute.—A necessary implication does not mean to shut out every other possible or imaginary conclusion, from which there is no possible escape but one leading to such a conclusion as under the circumstances, a reasonable view impels to take, the contrary of which would be improbable or absurd.

(iv) What necessary implication means?—An implication is necessary in the sense that it should be read into an express grant of statutory power which may be ascertained by examining the inconvenience, inconsistencies and absurdities in the contrary consideration. Necessity represents so strong a probability of an intention that a contrary intention cannot be reasonably supposed. Whether a provision can be read into an enactment is ultimately a question of the intention of the Legislature and hence the usual means of determining such intention may be employed. In considering the question whether there was implicit in the Act sufficient authority for the election of Mayors in certain cities, the Supreme Court of Kansas[3] particularised the sources from which such power might be inferred in the following words : "It may be drawn from public policy, past Acts;[4] the entire terms, purposes and scope of the Act to be considered, the inconvenience, inconsistencies and absurdities involved in the contrary consideration—indeed, from all things found in the Act, the condition surrounding it, the purposes to be accomplished by it, and the policy dictating it."

In his '*Construction and Interpretation of the Laws*'[5] Black states the rule in these words : "And as a statute must always be construed with reference to the pre-existing law, it will often happen that many details are to be inferred from the general language of the Act, which are understood as necessarily involved in it though not enumerated."

While there are many situations where there is warrant for extending statutes by implication to cases not expressly included by their language, the evolution or extension of a statute by implication should be limited to its strictly necessary incidents or logical consequences. An implication will be rejected in the face of persuasive evidence that it was not intended to be a part of the enactment being considered. Maxwell observes : "But when an Act confers such powers, it also impliedly requires that they shall be exercised only for the purposes for which they were given and subject to the conditions which it prescribed, and also with due skill and diligence and in a way to prevent a needless mischief or injury."[6] The power, in short, must be exercised reasonably and where a nuisance is committed, the onus is on the

1. Crawford : *Statutory Construction*, at p. 267.
2. *People* v. *Meakin*, 133 NY 214.
3. *Gilbert* v. *Craddock*, 17 Kan 346.
4. Francis J. McCaffrey : *Statutory Construction*, p. 21 : "Wherever the language of a statute admits of implications....the provisions to be inferred may be revealed by viewing the statute subject to construction in the place it occupies in the system of law of which it forms a part. It is logical to believe that the Legislature intended the general terms of a law to contain such matters of minor detail or subsidiary matters as are necessary to give them an effective operation as a part of the body of law to which it has been added."
5. 2nd Ed., pp. 84-85.
6. Maxwell on the *Interpretation of Statute*, 11th Ed. at p. 353.

body exercising the power to show it could not reasonably have been avoided.[1]

To authorize the supplying of a power by implication, reference, or presumption of intention, it is not sufficient that the Act is advantageous or convenient to the major power conferred, or even effectual in the exercise of it. The power to be supplied by such process must be practically indispensable and essential in order to execute the power actually conferred.

An implication will not moreover be read, into an express statutory power nor will an implication be permitted when it would be inconsistent with or would contradict the already expressed intent of the Legislature.

Where the Legislature intends to effect a radical departure from a firmly established public policy, such intention will not be implied, but must find support in the express language of the statute under consideration.

It may also be noted that penal statutes are not usually enlarged by implication.

(v) Illustrations.—When a statute grants a power, privilege or property, it carries with it by implication, everything necessary for its enjoyment or exercise. By the *grant of mines*, the power to dig them is impliedly conferred.[2] Similarly, an *authority to build a bridge on a stranger's land* carries with it the right of erecting on the land the temporary scaffolding which was essential to the execution of the work.[3]

Where the Act laid down that at the election of poor law guardians the votes should be taken and returned as the Commissioners should direct it was held to have impliedly authorised the *appointment of a returning officer*.[4]

Where the Legislature authorises the construction of a work, or the use of a particular thing for a particular purpose, the permission carries with it impliedly an *exemption from liability for any damage arising from the construction or the use without the negligences*.[5]

Where Commissioners have to construct works and may *levy a rate to pay for the construction*, they have implied powers to levy a rate to provide for a liability incurred through work being done negligently by their servants.[6]

Where a statute authorises a local authority to employ a proper number of persons to act as firemen, the firemen have implied powers to preserve order during fire and to exclude third

1. *Manchester Corporation* v. *Farnworth*, (1930) AC 171, 183; *Marriage* v. *E. Norfolk Catchment Board*, (1950)1 KB 284 (CA); *Darling* v. *Attorney-General*, (1950)2 All ER 793; *Pride of Derby Angling Association* v. *Br. Celanese, Ltd.*, (1953)2 WIR 58 (CA).
2. *A.R.* v. *Bristol Dock Co.*, (1827)6 B & C 181; *Wright* v. *Scott*, (1855)26 LT (OS)180 (HL); *Perth Gas Co.* v. *City of Perth Corporation*, (1911) AC 506.
3. *Clarence Ry.* v. *G.N. of England Railway*, (1845)4 QB 46; see also *Re* Dudley Corporation, (1881)8 QBD 86, (where an express statutory right is given to make and maintain something requiring support, the statute in absence of a controlling context, must be taken to mean that the right of support shall accompany the right to make and maintain); *L. & N. W. Ry.* v. *Evans*, (1893)1 Ch 1 [approved in *Clippens Oil Co.* v. *Edinburgh Water Trustees*, (1904) AC 64]. If the Act does not so provide, the landowner has no right to obtain compensation for loss occasioned by his having to leave support.
4. *R.* v. *Oldham*, (1852)16 LJMC 100.
5. *Thomas* v. *Quartermaire*, (1887)18 QBD 683, 695; *Amos* v. *Duffy*, (1890)6 TLR 339, CA; *Longhurst* v. *Metropolitan Water Board*, (1948)2 All ER 834; *H.L. Birch* v. *The Australian Mutual Provident Society*, 4 CLR 324; see also *Whitehouse* v. *Fellowes*, (1861)10 CB (NS) 780 : 30 LJCP 305. Where trustees and official bodies are authorised to execute a work (*e.g.*, to raise a road) they are impliedly authorised, if necessary, for the due execution of their task, to prejudice the rights or injure the property of third persons without liability for action, provided they do no more than the statute under which they are acting authorises and requires them to do.
6. *Gallsworthy* v. *Selby Commissioners*, (1892)1 QB 348; *Mersey Docks* v. *Gibbs*, (1866) LR 1 HL 93; *R.* v. *Williams*, (1884)9 AC 418. "Where an Act authorises the making of bye-laws, there is an implied power to impose reasonable pecuniary penalty for infringement of such bye-laws recoverable by action or distress—*Ram Saran & Sons* v. *Punjab State*, ILR (1969)1 Punj 756."

persons from the premises as may be necessary to prevent inconvenience.[1]

Where a private Act vested certain lands in trustees for the purpose of enabling them to sell the land for building purposes but the Act contained no express power to expend any portion of the purchase-money in setting out the lands or making roads, it was held that having regard to the object of the Act, namely, the sale of the property as building land, such power ought to be implied.[2]

In the Allahabad Full Bench case of *Motilal* v. *Government of the State of U.P.*,[3] Malik, C.J., held that : "In a written Constitution the executive power must be such power as is given to the Executive or is implied, ancillary or inherent. It must include all powers that may be needed to carry into effect the aims and objects of the Constitution.....It must mean more than merely executing the laws.....There is no reason why the State should not have the right to manage its own property and carry on such trade or business as a citizen has the right to carry on so long as such activity does not encroach upon the rights of others or is not contrary to law." And Sapru, J., observed : "There is no law prohibiting persons from entering into competition with one another in the same business. Whether it is against public policy or not for the State to enter into competition with private business is a question of economics and political theory with which Courts have no concern."

On the same principle a corporation in addition to the powers specifically granted to it, possesses all such powers as are necessarily incidental to those specified or essential to the purposes and objects of its corporate existence.

Where an Act confers a jurisdiction, it carries with it by implication the power of doing such act or employing such means as are necessary for its proper execution.[4] Thus where a judgment was recovered in a country Court against its bailiff, a power to appoint a special bailiff to levy execution in that case was held to be necessarily incidental to the Court.[5]

Under section 15(3) of the Payment of Wages Act, 1936, the authority has to make an inquiry not for making the pretence of enquiry but for coming to a conclusion how far the claim of the employee is justified and no provision giving an authority power to decree the claim in full can be interpreted to mean that it has no power to decree the claim in part or to dismiss it in full if the enquiry shows that nothing be due.[6]

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1. *Carter* v. *Thomas*, (1893)1 QB 673.
2. *Cookson* v. *Lee*, (1854)23 LJ Ch 473, 475.
3. AIR 1951 All 257. The question whether a statutory power has to be exercised purely on the subjective satisfaction of the authorities on which the power was conferred or has to be exercised subject to some objective test depends upon a variety of factors, such as the language of the provision, the nature of the power, the manner of its exercise, the things affected by its exercise, etc. The intention of the Legislature in granting the power has to be gathered as usual from the language of the employer and where the language is not clear, all the various relevant factors have to be taken into consideration. *Dr. Hari Singh* v. *E.F. Deboo*, AIR 1969 Guj 349.
4. *Attorney-General* v. *Fulham Corporation*, (1921)1 Ch 440; *see* also Oath before Justices, (1611)12 Rep 131; *R.* v. *Twyford*, (1836)5 A & E 430. An Act which gave Justices, power to require persons to take an oath as Special Constables and to inquire into an offence was impliedly held to give them jurisdiction to apprehend the person who unlawfully failed to attend before them for that purpose; *Ex parte* Martin, (1879)4 QBD 112. (The power to grant an injunction carried with it the power to punish disobedience of it). As long as an authority has power to do a certain thing, it does not matter if he purports to do it by reference to a wrong provision of law; *Deviprasad Khandelwal & Sons* v. *Union of India*, AIR 1969 Bom 163. It is, however, necessary that "when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all." *Chiranjit Pal* v. *West Bengal Khadi Village Industries Board*, AIR 1969 Cal 152; *see* also *Kundanlal* v. *Divl. Canal Officer*, 1968 Punj LJ 324.
5. *Bellamy* v. *Hoyle*, 1875 LR 10 Ex 220.
6. *Mohd. Matin Kidwai* v. *District Executive Engineer, N.E. Rly.*, AIR 1955 All 180.

In treating of statutory implications as relating to jurisdiction it is of value to consider the following general observations by Maxwell : "In giving judicial powers to affect prejudicially the rights of person or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules of judicial procedure, such, for instance, as that which requires that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself."[1]

Where a power is conferred to do some act of a judicial nature, or of public concern and interest, there is an implied obligation to exercise it when the occasion for it arises. This implied obligation converts a permissive power into an imperative one.

If a statute which creates a right does not prescribe a remedy for the party aggrieved by the violation of such right, a remedy will be implied and the party aggrieved may have relief in an appropriate action founded upon the statute.[2] The creation of a new duty or obligation or the prohibition of an act formerly lawful, carries with it, by implication, a corresponding remedy to assure its observance.[3]

An Act which authorises the making of bye-laws, impliedly authorises the annexation of a reasonable pecuniary penalty for their infringement, recoverable by action or distress.[4]

In *Wigram* v. *Fryer*,[5] North, J., held that notwithstanding the repeal of a section in a principal Act by an amending Act, certain powers expressly conferred by the repealed section must be implied from the amending Act because of the necessity of those powers to the effective performance of the duties cast upon the Metropolitan Board of Works by the two Acts there in question. The very Act which repealed the section in the principal Act was held, notwithstanding the repeal, to impliedly embody in itself the powers that had been expressed only in that repealed section.

2. Implied obligations.—The grant of powers and privileges often carries with it implied obligations.[6]

Sometimes the express imposition of one duty impliedly imposes another. Thus where no licence for the sale by retail of beer, cider or wine, not to be consumed on the premises, should be refused except on one or more of four specified grounds the justices were under an implied obligation to state on which of the specified grounds they based their refusal.[7]

A duty or right imposed or given to one may also cast by implication a corresponding burden on another,[8] and the grant of a privilege or of property to one person may sometimes impliedly give right to another person.[9]

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1. Maxwell on the *Interpretation of Statutes*, 11th Ed. at p. 358.
2. *People ex rel Lewis* v. *White*, 59 Barb 665.
3. *People* v. *Stevens*, 13 Wend (NY) 341.
4. *Hall* v. *Nixon*, (1875) LR 10 QB 152; *R.* v. *Sankey*, (1878)3 QBD 379.
5. 23 Ch D 87.
6. *Gray* v. *Pullen*, (1864)34 LJQB 265; *Bawer* v. *Peate*, (1876)45 LJQB 446; *Grovers* v. *Wimborne*, (1898)2 QB 402 (an Act which gives power to dig up the soil of streets for making a drain, etc., impliedly casts on those thus empowered the duty of filling up the ground again and of restoring the street to its original condition); *London & S. W. Ry.* v. *Flower*, (1875)1 CPD 77. (If the Act imposed all liability on one person to keep in repair a work in the possession of another, it would be understood as impliedly imposing on the latter the obligation of giving notice of the needed repair to the party liable; *Forbes* v. *Lee Cons. Board*, (1879)4 Ex D 116. (A public authority authorised to make a bridge and take tolls is impliedly bound to keep it in proper repair).
7. *Ex parte* Smith, (1878)3 QBD 374.
8. *R.* v. *Chantrell*, 1875 LR 10 QB 587.
9. *Perring* v. *Trail*, 1874 LR 18 Eq. 88.

CHAPTER XXIII
STATE WHEN BOUND BY A STATUTE

SYNOPSIS

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1. Crown not bound.—*(i) Unless expressly named in statutes.*— The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein. *Roy n'st lie par ascun state si il ne soit expressment nosme.* The reason of the rule was thus stated by Plowden : "Because it is not an Act without the King's assent, it is to be intended that when the King gives his assent he does not mean to prejudice himself or to bar himself of his liberty and his privilege, but he assents that it shall be a law among his subjects."[1]

(ii) Or bound by necessary implication.—If it is manifest from the very terms of the statute, that it was the intention of the Legislature that the Crown should be bound, then the result would be the same as if the Crown had been expressly named.[2] Lord Du Parcq explained the rule by stating : "The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein.....But the rule so laid down is subject to at least one exception. The Crown may be bound as has often been said 'by necessary implication'. If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the Legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions."[2]

The rule is merely one of construction which raises an initial presumption in favour of the State or Government of the State, and is not a rule of law. It is not law within the meaning of Art. 372 of the Constitution of India, and it cannot be applied in construing statutes in India.[3] It is a rule intended to give effect to the intention of the Legislature and consequently if there is

1. Plowden, at p. 240, cited in *Attorney-General* v. *Hancock*, (1910)1 KB 427.
2. *Bombay Province* v. *Bombay Corporation*, AIR 1947 PC 34.
3. *Superintendent and Remembrancer of Legal Affairs, West Bengal* v. *Corporation of Calcutta*, AIR 1967 SC 997.

either in the purpose of the Act or in its provisions the manifestation of a clear intention to the contrary, the presumption would be rebutted. The intention to bind the State would be clearly made out if the beneficient purpose of a statute would be wholly frustrated unless the Government were bound. In construing the true meaning of words or expressions used by the Legislature, the Court must have regard to the aim, object and scope of the statute read in its entirety.[1]

2. The modern sense of the rule.—The modern sense of the rule, at any rate, is that the Executive Government of the State is not bound by a statute unless the intention is apparent.[2] As Story, J., cogently put it in *The United States* v. *Hoard*[3] : "Where the Government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischief to be redressed, or the language used, that the Government itself was in contemplation of the Legislature, before a Court of law would be authorised to put such a construction upon any statute. In general, Acts of the Legislature are meant to regulate and direct the acts and right of citizens, and in most cases the meaning applicable to them applies with very different and often contrary force to the Government itself. It appears to us, therefore, to be a safe rule founded on principles of the common law that the general words of a statute ought not to include the Government unless that construction is clear and indisputable upon the text of the Act." This inference arises with redoubled strength when the subject-matter is taxation.

The rule is well settled that if an Act of Parliament would otherwise divest Crown of its property, its rights or its prerogatives, it is not to be construed as applying to the Crown unless the Crown is specifically named or referred to by necessary implication.[4]

3. Rule as applicable to representatives of the Sovereign.—The rule of exclusion of the Sovereign is less stringently applied where the operation of the law is upon the agent or the servants of the Sovereign rather than on the Sovereign itself.[5] It does not apply to every person who in any part of the world represents the Crown, but only to those representatives of the Sovereign who have the executive authority in the place where the law applies, and even there, only as to the matters to which the executive authority extends.[6]

4. Rule as applicable to public officers.—The Rule that the general words of a statute do not include the Government or affect its right unless the construction be clear and indisputable upon the text of the Act also applies to public officers in certain contingencies. Public officers may be impliedly excluded from language embracing all persons when a reading of the statute which would include such officer would work obvious absurdity, as for example, the application of a speed law to the policeman pursuing a criminal or the driver of a fire-engine corresponding to an alarm.[7]

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1. *State of Punjab* v. *O.G.B. Syndicate*, AIR 1964 SC 669; *see* also *Director of R. & D.* v. *Calcutta Corporation*, AIR 1960 SC 1355; *Madras Electric Corporation* v. *Boarland*, (1955)1 All ER 753 (HL).
2. *Roberts* v. *Ahern*, 1 CLR 406, 418; *Attorney-General for New South Wales* v. *Curator of Inter-State Estates*, 1907 AC 519, 523.
3. 2 Mason (U.S. Circuit Court) 311; cited with approval in *The Commonwealth* v. *State of New South Wales*, 3 CLR 807, 818-819; *see* also *Broken Hill Associated Smelters' Proprietary, Ltd.* v. *Collector of Imports (Vict)*, 24 CLR 61, 66; *Federated Municipal and Shire Council Employees' Union of Australia* v. *Melbourne Corporation*, 26 CLR 508, 537.
4. *Attorney-General* v. *Hancock*, (1940)1 KB 427.
5. *Frank Carmine Nardone* v. *United States*, 82 L Ed 314.
6. *Municipal Council of Sydney* v. *The Commonwealth*, 1 CLR 208; *see* also *Musgrave* v. *Pulido*, 5 App Cas 109, 111 (limits of authority of Governor pointed out.).
7. *Frank Carmine Nardone* v. *United States*, 82 L Ed 314.

5. Whether rule contemplates that Crown though not bound by a statute can take advantage of it?— In *Cayzer Irvine & Co.* v. *Board of Trade*,[1] the question was whether the Crown could successfully say : "We are not bound by the statute, but we are at liberty to take advantage of it." Scrutton, L.J., though he did not decide the question, made these observations : "This looks rather odd. There is undoubtedly a long series of statements to that effect in text-books repeating each other for some centuries ; but there is something to be said for the view argued by Sir John Simon that those statements start with a passage in the unsuccessful argument of the law officer which had not even the merit of being relevant to case which the Court had to decide, which has been taken out by a text-writer and repeated by a text-writer after text-writer for centuries until people began to believe that it must have some foundation somewhere. The history of the statement in the text-books will need to be carefully looked into when the question becomes material to be decided." There is no doubt that the contention looks odd, and it may be said that there is no clear authority behind. On the other hand, we have the authority of the Supreme Court in *V.S.R. & Oil Mills* v. *State of Andhra Pradesh*,[2] where it was held that both the questions, whether the State is bound by a statute and whether the State can take the benefit of the provisions of a statute, the same rule of construction may have to be applied. The answer in each case depends upon the intention of the Legislature to make the relevant provisions applicable to the State. Even where the statute is for the public good and by claiming the benefit conferred on it by the provisions of the statute the State may be taken as acting for the public good. Still it would be necessary to ascertain whether the intention of the Legislature was to make the relevant provisions applicable to the State.

In the practical application of the rule, general words capable of including the State are construed or excluding it unless the statute by necessary implication manifests an intention to include it. For instance, the word 'person' which is comprehensive enough to include the Crown or State will be read as excluding them.[3] Courts are not even precluded from reading an exemption in their favour (though not expressly mentioning) in order to avoid impairment of the rights of the State.[4]

6. Rule not applicable to Constitution but only to statutes.—The rule as to the Crown's rights not being affected by an Act unless by express words or by necessary implication applies, not to the Constitution, but only to the Acts, made by the Parliament under the powers of the Constitution. According to O'Connor. J., in *R.* v. *Sutton*,[5] the doctrine that the King is not to be treated as bound unless named does not apply to the Constitution at all.[6]

7. Rule not applicable to India.—The whole question was examined by a Full Bench of the Supreme Court in the latest case of *Superintendent and Remembrancer of Legal Affairs, West Bengal* v. *Corporation of Calcutta*,[7] and, after overruling A.I.R. 1947 P.C. 34 and a previous judgment of the same Court in *Director of R. & D.* v. *Calcutta Corporation*,[8] it was held by the majority[9] that the archaic rule of English law has no application in India after the

1. (1927)1 KB 272 : 95 LJKB 1054.
2. AIR 1964 SC 1781, 1785.
3. *Director of R. & D.* v. *Calcutta Corporation*, AIR 1960 SC 1355; *Madras Electric Corporation* v. *Boarland*, (1955)1 All ER 753 (HL).
4. *Minister of Agriculture* v. *Jenkins*, (1963)2 All ER 147.
5. 5 CLR 805-7.
6. *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.*, 28 CLR 129, 164-65.
7. AIR 1967 SC 997 : (1967)1 SCA 508; followed in *Union of India* v. *Jubbi*, AIR 1968 SC 360.
8. AIR 1960 SC 1355.
9. Shah, J. (dissenting).

establishment of a Sovereign Democratic Republican form of Government by the law of Constitution. The Court also held that "in the context of modern notions of a welfare State it is difficult to regard any particular activity of the State as exclusively sovereign. The State was originally regarded as merely concerned with the maintenance of law and order, and was not concerned with any trading activity. But that is now an exploded doctrine. For the welfare of the people the State does and is required in modern times to enter into many trading activities. Hence, there is no sufficient reason to justify any distinction in the application of the rule of interpretation of statutes concerning sovereign authority and trading authority."

But in *Synthesises and Chemicals Ltd.* v. *State of U.P.*,[1] the Supreme Court observed "We recognise power of the State to regulate though perhaps not as emanation of police power but as an expression of the Sovereign power of the State."

8. **Crown when bound.**—The classes of statute by which the Crown is bound, though not expressly named, are described in Comyn's Digest, tit., 'Parliament,' at p. 8, and Bacon's Abridgement, tit., 'Prerogative', E. (5). Though Statutes are *prima facie* inferred to be made for subjects and not for the Crown,[2] yet, if the intention of the statute be to provide for 'the public good', or 'the advancement of religion and justice', or 'to give a remedy against a wrong', or 'to prevent fraud', or 'tortious usurpation', it is said that the King is bound, and examples are given in the two digests quoted above.[3]

(i) In respect of inferior right belonging indifferently to the Crown and the subject.—In Craies on *'Statutory Interpretation,'*[4] it is observed that the rule "does not mean that the King, looked upon as a mere individual, may not be in certain cases precluded by statutes, which do not specially name him of such inferior rights as belong indifferently to the King or to a subject, such as the title to an advowson or a landed estate, what it does mean is that the King cannot in any case whatever be stripped by a statute, which does not specially name him, of any part of his ancient prerogative, or of those rights which are incommunicable and are appropriated to him as essential to his regal capacity."

(ii) In respect of statutes for suppression of wrong.—It was said by Lord Coke in the *Magdalene College* case,[5] "that there are three kinds of statutes which always bind the King without naming him. The second class mentioned comprises statute for the suppression of wrong. The King is the fountain of justice and common right, and the King being God's lieutenant cannot do a wrong, *solum rexhoc non potest facere quod non potest injuste agree*.....And although a right was remediless, yet the Act which provides a necessary and profitable remedy for the preservation of it, and to suppress wrong, shall bind the King." Accordingly Plowden says that the statute of Merton, Chapter V, which enacts that usuries shall not run against any being within age, prevents the King from a usurious doubling of rent against an infant upon default in payment, "for although the statute is general yet the king is bound by it because it is made for the remedy of infants and for the public good."[6]

(iii) In respect of statutes for public good.—If the intention of the statute be to provide for public good, the Crown would be bound by implication.[7] But in *Attorney-General* v. *Hancock*,[8]

1. AIR 1990 SC 1927 (7J) : (1989)4 JT SC (267).
2. *Sydney Harbour Trust Commissioners* v. *Ryan*, (1914)13 CLR 358, 370.
3. *Sydney Harbour Trust Commissioners* v. *Ryan*, (1914)13 CLR 358, 370.
4. Page 394.
5. 11 Co. Rep 66b at p. 72a.
6. Comm 236*b*.
7. *Bac Abrid.*, 7th Ed., 462.
8. (1940)1 KB 427.

Wottersley, J., held that the Crown was not bound although the statute in question was clearly for the public benefit. In *Bombay Province* v. *Bombay Corporation*,[1] the High Court held that it was not shown to be for the public good that the Crown should be bound by the Municipal Act, but Lord Du Parcq observed : "This is perhaps not a wholly satisfactory way of dealing with the respondents contention, which was, not that the Court must consider whether it is for the public good that the Crown should be bound by a particular Act, but that wherever the Act is 'for the public good' it must be taken to bind the Crown. Their Lordships prefer to say that the apparent purpose of the statute is one element, and may be an important element, to be considered when an intention to bind the Crown is alleged. If it can be affirmed that, at the time the statute was passed and received the Royal sanction, it was apparent from its terms that its beneficient purpose must be wholly frustrated, unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound."

No distinction, can be drawn between property held *jure coronae* and other property of the Crown.[2] Lord Dunedin observed in *Magistrates of Edinburgh* v. *The Lord Advocate*,[3] that "when you come to a set of provisions in a statute having for its objects the benefit of the public generally there is not an antecedent unlikelihood that the Crown will consent to be bound, in the case of regulations which are meant to apply to all the land in a city, and where the Crown's property is not property held *jure coronae* but has been acquired from a subject-superior for the use of one of the public departments." But the view above expressed has not been adopted in England and was held by the Privy Council to be inapplicable to India.[4] Where the Crown is the 'Landlord' or 'Tenant' the provisions of the Rent Restriction Act which apply to 'a house to let', will not apply to the Crown[5] Similarly, where property in the occupation of the Crown or for Crown purposes, a tax imposed on every 'occupier' of property will be read as excluding any liability on the part of the Crown.[6]

(iv) When Government engages in an enterprise carried on by individuals.—In *Farwell* v. *Bowman*,[7] it was held that an action for a wrong will lie against the Government of New South Wales in any case in which an action would lie against a subject in *consimili casu*. Their Lordships observed : "It must be borne in mind that the local Government in the Colonies, as pioneers of improvements, are frequently obliged to embark on undertakings which in other countries are left to private enterprise, such, for instance, as the construction of railways, canals, and other works for the construction of which it is necessary to employ many inferior officers and workmen. If, therefore, the maxim that 'the King can do no wrong' were applied to Colonial Governments in the way now contended by the appellants, it would work much greater hardship than it does in England."

In *Sydney Harbour Trust Commissioners* v. *Ryan*,[8] Griffith, C.J., while dealing with the implications of Act 20, Vict. No. 15, observed : "It appears from the recital in Act, 20, Vict. No. 15 that one of the reasons which induced the Legislature to pass that Act was that the ordinary remedy by petition of right was of limited operation, and insufficient to meet all cases of disputes and differences which had arisen or might arise between the subjects of Her Majesty

1. AIR 1947 PC 34; *see* also *Cooper* v. *Hawkins*, (1904)2 KB 165.
2. *Bombay Province* v. *Bombay Corporation*, AIR 1947 PC 34.
3. 1912 AC 1085.
4. *Bombay Province* v. *Bombay Corporation*, AIR 1947 PC 34.
5. *Clark* v. *Downes*, (1931)2 All ER 157, 159.
6. *Mercy Docks* v. *Cameron*, (1861-79) All ER 78 (HL).
7. 12 AC 643.
8. (1911)13 CLR 358, 365-67.

he Queen and Her Majesty's local Government in the Colony. It could not, therefore, have been ntended to limit the operation of the Act to cases in which the subject had a remedy by etition of right. The very object of the Act was to give a remedy in cases to which a petition of ight did not extend. Why, then, should it be supposed that the Legislature intended to exclude ases of tort? Justice requires that the subject should have relief against the Colonial Governments for torts as well as in cases of breach of contract or the detention of property vorngfully seized into the hands of the Crown. And when it is found that the Act uses words ufficient to embrace new remedies, it is hard to see why full effect should be denied to them." Continuing, his Lordship said : "Applying the principle thus laid down, I am of opinion that, vhen the Government of New South Wales engages, either in its own name or through the gency of a corporation created for that purpose, in enterprises which in former times were only arried on by individuals, it is subject to the same liabilities, and is governed by the same laws, o and by which individuals are subject and governed under the same circumstances. In my pinion, therefore, the benefits of the Employers' Liability Act extend to workmen employed by he Crown in New South Wales, whether directly or through corporate agents such as the ppellants."[1]

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[1] *Duncan* v. *Theodore*, 23 CLR 510, 535. "The rights of the Crown", whatever they may be, under the Meat Act, are not prerogative rights, but are the creation of an Act of the same Legislature.

CHAPTER XXIV

FISCAL STATUTES

SYNOPSIS

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1. Taxation only by express words.—The concept of a welfare State is that the State is entitled to make a levy even against the will of the people sought to be benefited. Therefore, the fact that the person sought to be benefited by the Act does not consider it to be so, is of no relevance.[1] No proposition is better established than that a tax cannot be *imposed* on a subject unless by *clear words*. In other words taxation to be effective must be imposed, by unequivocal

1. *Satyanarayana Venkataraja* v. *East Godavari Coconut and Tobacco Market Committee*, (1959)1 Andh WR 285.

and unambiguous language.[1] Taxing statutes must start with the utmost clearness what and whom and in what manner they are taxing.[2] Tax planning may be legitimate provided it is within the framework of law.[3] The Allahabad High Court has aptly summarised the rule of interpretation of taxing statutes as follows: "It is well-settled that in a taxing statute one has to look at what is clearly said. There is no room for any intendment, there is no equity about a tax. Nothing is to be read in and nothing is to be implied."[4] Whenever it is sought to impose a rate, the burden lies on those seeking to enforce it to show that the words used by the Legislature are clear and unambiguous in order to charge the subject.[5] In a taxing provision if there are two possible constructions of the words of the statute then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.[6]

If a statute professes to impose a charge, the rule, said the Judicial Committee in *Oriental Bank* v. *Wright*,[7] is that the intention to impose a charge upon a subject must be shown by clear and unambiguous language". A taxing statute must be construed strictly; you must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed.[8] There is no rule that every provision in a taxing statute is mandatory.[9] Taxing authority must show

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1. *Braybrook (Lord)* v. *A.G.*, (1861)9 HL Cas 150 : 11 ER 685 (Lord Wensleydale); *Royal Trust Company* v. *Minister of Finance, Br. Columbia*, AIR 1921 PC 184, 196 (Viscount Cave); *Tenant* v. *Smith*, 1892 AC 150 : You must see whether a tax is expressly imposed (Lord Halsbury); *Lord Advocate* v. *Fleming*, 1897 AC 145; whether the duty claimed under it is that which the Legislature has enacted (Lord Halsbury); *Brunton* v. *Stamp Duties Commissioners*, 1913 AC 747; the intention to increase a tax or duty already imposed must be shown by clear and unambiguous language and cannot be inferred from ambiguous words (Lord Parker); *Ormond Investment Co.* v. *Betts*, 1928 AC 143 (Lord Atkinson); *Brown* v. *National Provident Institution*, (1921)2 AC 222, 257; *Cox* v. *Rabbits*, (1878) LR 3 AC 473, 479; *Inland Revenue Commissioner* v. *Gribble*, (1913)3 KB 212; *Att.-Genl.* v. *Beech*, 1899 AC 53; *Emperor* v. *George Banerjee*, 14 ALJ 850; *Dullabh Shivlal* v. *Hope*, 8 BHCAC 213; *In re* The Port Canning Land Company, 16 WR 208; *Manindra Chandra Nandi* v. *Secretary of State*, ILR 34 Cal 257, 268; *Janardhan Rao* v. *Secretary of State*, ILR 58 Cal 33 : AIR 1931 Cal 193, 201 (FB) (Stamp Act); *Radha Govinda* v. *Ram Brahma*, AIR 1936 Cal 814 : clear and positive words (Stamp Act); *Sunder Das* v. *Collector of Gujarat*, ILR 3 Lah 349, 356 (FB) (Income-tax); *Emperor* v. *Gian Chand*, AIR 1946 Lah 255; *Ramier* v. *Gould*, ILR 13 Mad 255; *Kolliappa* v. *Kandaswami*, AIR 1938 Mad 498 : ILR 1938 Mad 981; clear and unequivocal language (Court Fees); *Vulcan Insurance Co.* v. *Madras Corporation*, AIR 1939 Mad 626(2) (Municipal Taxation); *Damodar Prasad* v. *Madhusudan Singh*, AIR 1928 Pat 85; *Nok Singh* v. *Bholu Singh*, AIR 1930 Nag 73, 76 : must use very clear and unambiguous language (Court Fees); *Empress Mills* v. *Wardha Municipality*, AIR 1950 Nag 169, 174 : ILR 1950 Nag 403 (FB) (Municipal Taxation); *Kumbhakonam Municipality* v. *Kumbhakonam Bank*, AIR 1944 Mad 449; *Subban Khan* v. *Mohammad Eusoof*, AIR 1938 Rang 141, 143 [clear and unambigous language (Court-fees)]; *Mercantile Express Co.* v. *Asstt. Collector of Customs*, AIR 1958 Cal 630, 631 (P.B. Mukharji, J.).
2. *Madura Devasthanam* v. *Madura Municipality*, ILR 51 Mad 301 : AIR 1928 Mad 569, 571 (Municipal Profession Tax).
3. *Mc. Dowell & Co.* v. *Commercial Tax Officer*, AIR 1986 SC 649 : 1986 Tax LR 2174 : (1985)16 Tax Law Rev 529 : 1985 Taxation 77(3) 150 : 1985 ITR 148 : 1985 UPTC 747 : (1985)3 SCC 230 : 1985 SCC (Tax) 391.
4. *C.T.I., Kanpur* v. *Upper Doab Sugar Mills, Shamli*, 1978 All LJ 128.
5. *Ingram* v. *Drinkwater*, (1875)44 LJPC 83.
6. *The Central India Spinning, Weaving and Manufacturing Co. Ltd., The Empress Mills, Nagpur* v. *Municipal Committee, Wardha*, AIR 1958 SC 341, 344; *Ramchand* v. *Moti Thad*, AIR 1962 All 353 : ILR (1962)2 All 123; *Delhi Municipal Committee* v. *Bhagwan Das*, ILR 1961 Punj 14; *Panzy Fernandez* v. *M.F. Queves*, AIR 1963 All 153 (FB) : 1962 ALJ 1135; *Piara Lal* v. *State of Punjab*, (1966)68 Punj LR 695; *Timber Traders Assn.* v. *Distt. Board*, AIR 1965 Punj 97, 101 (Grover, J.); *Chandu Lal* v. *Special Land Acquisition Officer*, AIR 1967 Guj 182, 184 (Vakil, J.); *Ammunni Amma* v. *Amalu Ammal*, 1977 Ker LT 285; *Petrex Engineering Construction Pvt. Ltd.* v. *Central Board of Direct Taxes*, AIR 1989 SC 501 : (1989) Tax LR 335 : (1988)4 JT (SC) 666 : (1988)41 Taxman 294 : (1989)75 CTR 20 : (1989)1 Comp LJ 43 : (1989)175 ITR 523 : (1989)92(2) Taxation 3 : 1989 ATJ 246 : 1989 UPTC 106.
7. 5 App Cas, 842 853; see also *Attorney-General* v. *Milne*, (1914) AC 768, 781; *Faruq Anwar Co.* v. *Market Committee*, AIR 1960 Mys 73; *The Film Exhibitors Guild* v. *State of Andhra Pradesh*, AIR 1987 AP 110 : (1987)1 Andh LT 154 : (1987)1 APLJ (HC) 330 (FB).
8. *Cox.* v. *Rabbits*, 3 App Cas 478, *per* Lord Cairns.
9. *Director of Inspection, I.T.* v. *Pooran Mal*, AIR 1975 SC 67.

that the tax sought to be recovered has been imposed in language which admits of no *reasonable doubt*.[1] The Crown has to show that the tax in question is imposed upon a fair construction of the language used.[2] In construing a taxing Act the presumption is that the Legislature has granted precisely that tax in the Crown which it has described and no other and there is no presumption of any desire to extend it.[3]

Power of a legislature to pass a law includes the power to validate actions retrospectively, of course, within constitutional limits. It is apt to remember that the State's power to tax is derived from the constitution and the municipality's power to tax is derived from the State Legislature.[4]

In fiscal laws due importance should be given to the charging section.[5]

It is well-settled principle of law that when the Legislature has empowered an authority to impose taxes after doing a certain act it cannot impose the taxes unless that act is done and the authority must show if challenged that the act was done.[6]

At this juncture it is useful to refer to the pungent comment made by the Kerala High Court in *Kali Narayani* v. *Neelankantan Nana*[7] and it is as under "It is elementary that legislative draftsmanhip, even when endowed with the highest skill and the greatest construction, *cannot conceive of all situations* to be within the sweep of the enacted provisions. Innovative imagination could certainly abuse a provision intended for the promotion of the most laudable objectives. Frustration of the legislature's desire is more frequently seen in the area of Taxing Legislation.

2. **Rule to determine tax liability.**—Lord Cairns observed in *Partington* v. *Attorney-General*[8] : "As I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law, he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however,

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1. *Commissioner of Income-tax* v. *Darabsha Mehta*, AIR 1935 Bom 167, 168, *per* Beaumont, C.J.; *A.G.* v. *Selborne*, (1902)1 KB 388 : interpreted according to their natural meaning; *Wilcox* v. *Smith*, (1857)26 LJ Ch 596; *Whitley* v. *Burns*, (1908)1 KB 705; *Ballimal Nawal Kishore* v. *Punjab General Sales Tax Act*, ILR (1966)2 Punj 311.
2. *A.G.* v. *Saccombe*, (1911)2 KB 688.
3. *Sharanbasappa* v. *Sanganbasappa*, AIR 1935 Bom 256 (Stamp Act). Their Lordships of the Privy Council in *Radha Krishen* v. *Municipal Committe, Khandwa*, were reluctant to come to any conclusion which would involve the voidance of taxation which had been in operation for so many years, without first ensuring that all the available evidence had been placed before the Court : AIR 1934 PC 62, 67 (Lord Thankerton).
4. See *Yadlapati Venkateswarulu* v. *State of A.P.*, AIR 1991 SC 704 : (1990)4 JT (SC) 19.
5. Vide *State of Bihar* v. *Ashok Industries*, AIR 1987 SC 838 : 1987 JT (SC) 394 : (1987)1 Cur CC 641 : 1987 Pat LJR (SC) 15 : (1987)1 SCC 691 : (1987)8 (1) IJ Rep. 75 : 1987 BRLJ 78 : (1987)1 Supreme 234 : 1987 BLJR 399 : (1987)21 STL 2 : 1987 SCC Tax 147 : 1987 BBCJ (SC) 77 : (1987)66 STC 88 : (1987)2 SCJ 212 : 1987 UPTC 795 : (1987)1 UJ (SC) 700.
6. *Chairman, Dhanbad Municipality* v. *Janeswar*, AIR 1934 Pat 82, 84 : No doubt there is a presumption that the official acts were duly performed. But it is a rebuttable presumption; *Municipal Council, Cuddapah* v. *M. & S.M. Ry. Co.*, ILR 52 Mad 779 : AIR 1929 Mad 746; *Panchayat Board* v. *Western India Matches Co.*, AIR 1939 Mad 421 (FB).
7. AIR 1991 Ker 66 (DB) : (1990)2 Ker LJ 253 : (1990)2 Ker LT 154 : (1986) Ker LTJ 79 (overruled).
8. (1869) LR 4 HL 100; see *Sunderdas* v. *Collector of Gujarat*, ILR 3 Lah 349, 356; *Jiwan Das* v. *Income-tax Commissioner, Lahore*, ILR 10 Lah 637, 665-666 (FB); *In re* Makund Sarup, ILR 50 All 495 : AIR 1928 All 81, 84 (FB); *Emperor* v. *Prabhat Chandra*, ILR 51 Cal 504 : AIR 1924 Cal 668, 683; *In re* Bijay Singh, ILR 57 Cal 918 : AIR 1930 Cal 641, 644 (FB); *Board of Revenue, Madras* v. *Ramanadhan Chetty*, ILR 48 Mad 75, 88 (SB); *Noksingh* v. *Bholusingh*, AIR 1930 Nag 73, 76; *Damodar Prasad* v. *Majsudan Singh*, AIR 1928 Pat 85; *Arunachalam* v. *Commissioner of Income-tax, Madras*, AIR 1929 Mad 769, 772 (FB); *Killing Valley Tea Co., Ltd.* v. *Secretary of State*, ILR 48 Cal 161, 175; *Bank of Chettinad* v. *I.T. Commissioner*, AIR 1940 PC 183, 185.

apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable constructioh, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."[1] "In construing a taxing statute one has to look merely at what is clearly said. There is no equity about a tax. There is no room for any intendment. There is no presumption as to a tax. Nothing is to be read in and nothing is to be implied. One can only look fairly at the language used.[2] In a case of reasonable doubt, that construction which is more beneficial to the subject should be adopted.[3] There is no equity about a tax. *A taxing statute,* if it provides to impose a charge, its intention must be expressed in clear, unequivocal and unambiguous language. The Court has to look at the language couched. Hunt into intention to find a charge is impermissible. There *is no equity about a tax. There is no presumption as to a tax.* Nothing is to be read in and nothing is to be implied. No equitable construction of a charging section is to be applied. The charging section is to be construed strictly regardless of its consequences that may appear to the judicial mind to be. The burden is on the State to show that the subject is within the provisions of the Act. But in construing the machinery provisions for assessment and collection of the tax to make the machinery workable *ut res valeat petius quam pereat,* i.e., the court would avoid that construction which would fail to relieve the manifest purpose of the legislation on the presumption that the Legislature would enact only for the purpose of bringing about an effective results. It is not the function of the court to hunt out ambiguities by strained and unnatural meaning, close reasoning is to be adopted ; harmonious construction is to be adhered to; all the relevant provisions are to be read together to gather the *intention from the language employed,* its context, and give effect to the intention of the Legislature. Ingenius attempt to avoid tax is to be thwarted.[4] There is no equity about tax[5] Even so the fundamental rule of construction is the same, whether the statute is fiscal or otherwise, namely, that the meaning and intention of a statute must be gathered from the plain and unambiguous language employed therein rather than from any notions which the court entertain as to what is just or expedient.[6]

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1. *Partington* v. *Attorney-General,* (1869) LR 4 HL 100, 122; *Murarilal Mahabir Prasad* v. *B.R. Vad,* (1975)2 SCC 736; *State of Punjab* v. *Jullundur Vegetables Syndicate,* AIR 1966 SC 1295; *C.A. Abraham* v. *Income Tax Officer, Kottayam,* AIR 1961 SC 609 : (1961)41 ITR 425; *Smt. Tarulata Syam* v. *Commissioner of Income Tax, West Bengal,* AIR 1977 SC 1802; *Cape Brandy Syndicate* v. *I.R.C.,* (1921)1 KB 64 (71); *Central Coal Fields Ltd.* v. *State of Bihar,* AIR 1989 Pat 210 (DB) : 1989 Pat LR (HC) 88 : 1989 BLJR 336 : 1989 BLJ 710.
2. *Per* Rowlett, J. in Cape Brandy Syndicate, (1971)2 WLR 39 (42) (PC); quoted in *Commissioner of Income-tax* v. *Agrawal Brothers,* 1980 Jab LJ 207; *State of Punjab* v. *(M/s.) Jaswant Theatre Sunem,* 1990 Punj LJ 436; *(M/s.) V.P. Theatre, Kurali* v. *State of Punjab,* 1990 Punj LJ 282; *The Controller of Estate Duty, Madras* v. *Sri Sileshkumar R. Mehta,* (1989)1 MLJ 381 (FB)
3. *C.I.T.* v. *Shahjadanand,* AIR 1966 SC 1342; *C.I.T.* v. *Vegetable Products, Ltd.,* (1973)88 ITR 192; *State of Punjab* v. *Jullunder Vegetable Syndicate,* AIR 1966 SC 1295; *Alladi Venkateswarulu* v. *Government of Andhra Pradesh,* AIR 1978 SC 945; *Commissioner of Wealth Tax* v. *Kripa Shankar Daya Shankar,* (1971)2 SCC 570; *Central India Spinning, Weaving and Manufacturing Co. Ltd.* v. *Municipal Committee, Wardha,* AIR 1958 SC 341; *Board of Revenue, U.P.* v. *Sidhnath Mehrotra,* AIR 1965 SC 1092; *C.I.T. Punjab* v. *Kulu Valley Transport,* AIR 1970 SC 1734.
4. *The Film Exhibiters' Guild* v. *State of Andhra Pradesh,* AIR 1987 AP 110 : (1987)1 Andh LT 154 : (1987)1 APLT (HC) 330 (FB).
5. *The Film Exhibiters' Guild* v. *State of Andhra Pradesh,* AIR 1987 A.P. 110 (FB) : (1987)1 Andh LT 154 : (1987)1 APLJ (HC) 330 (FB). *Referring to Gursahai* v. *I.T. Commr.,* AIR 1963 SC 1062 (1065).
6. *Commissioner of Income-tax, Patiala* v. *Shahjadanand & Sons,* AIR 1966 SC 1342 : 1966 Guj LJ 488 : (1966)1 SCJ 715; *Baidyanath Ayurved Bhavan (P), Ltd.* v. *Excise Commissioner, U.P.,* AIR 1971 SC 378, 380 (Hegde, J.); *see* also *Govindram Ram Prasad* v. *Assessing Authority, Sales Tax,* AIR 1958 MP 16, 18; (two views possible), *Banamali Tea State* v. *State of Assam,* (1985)2 GLR 163.

In a taxing statute one has to look merely at what is clearly stated.[1]

Royalty on mineral rights is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under entry 23 of list II of Schedule 7 of the Constitution. In any event cess on royalty cannot be sustained under entry 49 of list II as being a tax on land royalty on mineral rights is not a tax on land but a payment for the user of the land. However the levy of cess was declared to be *ultra vires* only prospectively keeping in view the fact that the amounts were collected by the State on the basis that the Supreme Court decision in AIR 1965 SC 177 was the correct position.[2]

It is always necessary to get an exact conception of the aim, scope and object of the whole Act; and to consider—(1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has provided; and (4) the reason for the remedy.[3]

It is a well-known principle of interpretation that when construing a fiscal statute the court has to lean in its interpretation in favour of the subject rather than in favour of the State.[4]

Adverting to the passage Collins, M.R., said in *Attorney-General* v. *Earl of Selborne*[5] : "Therefore, the Crown fails if the case is not brought within the words of the statute, interpreted according to their natural meaning; and if there is a case which is not covered by the statute so interpreted, that can only be cured by legislation, and not by an attempt to construe the statute benevolently in favour of the Crown." Cases under the taxing Acts always resolve themselves into the question whether or not the words of the Act have *reached* the alleged *subject of taxation*.[6] In *Coltness Iron Co.* v. *Black*,[7] Lord Blackburn stated the same rule somewhat differently. The noble Lord said : "No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him. But when that intention is sufficiently shown it is not open to speculate on what would be the fairest and most equitable mode of levying the tax." As observed by Lord Halsbury in *Lord Advocate* v. *Fleming*,[8] "in construing such Acts we have no governing principle of the Act to look at ; we have simply to go on the Act itself. to see whether the duty claimed is that which the Legislature has enacted". "I cannot think," observed Lord Thankerton in *I.R.C.* v. *Bladnock Distillery Co.*,[9] "that there can be much doubt as to the proper canons of construction of this taxing section. It is not a penal provision, counsels are apt to use the adjective 'penal' in describing the harsh consequences of a taxing provision, but if the meaning of the provision is reasonably clear, the Courts have no jurisdiction to mitigate such harshness. On the other hand, if the provision is

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1. *Banamali Tea State* v. *State of Assam*, (1985)2 GLR 163 (No scope—some meaning into the provisions which have not been specifically provided). *Income Tax Officer* v. *Manmohan Lal*, (1987)63 Cut LT 140.
2. Vide *The India Cement Ltd.* v. *State of Tamil Nadu*, AIR 1990 SC 85(7J) : (1989)4 JT (SC) 190 : AIR 1965 SC 177 (overruled).
3. *C.I.T. Patiala* v. *Shahjada Nand & Sons*, AIR 1966 SC 1342.
4. *Vishwa Nath Singh* v. *State*, AIR 1959 All 637, 639 (B. Mukerji, J.).
5. (1902)1 KB 388, 396, followed in *Cobar Corporation, Ltd.* v. *Attorney-General for N.S.W.*, (1903)9 CLR 378, 396-97.
6. *Tenant* v. *Smith*, 1892 AC 150, 154, *per* Lord Halsbury; *see* also *Landale and Clark, Ltd.* v. *Jalpaiguri Municipality*, AIR 1937 Cal 551, 552.
7. (1881)6 AC 315; see *Board of Revenue, Madras* v. *Ramanadhan Chetty*, ILR 43 Mad 75, 88, 89 (FB); *Parlington's* case is a guide to the principle of legislation while *Black's* case is a guide to the construction of the language of the statute.
8. (1897) AC 145; see *Arunachalam* v. *Commissioner, Income-tax*, AIR 1929 Mad 769, 772 (FB); *Heward* v. *King*, 3 CLR 117, 126, 127.
9. (1948)1 All ER 616, 625 (HL); *Kohli* v. *Union of India*, (1966)18 STC 320.

reasonably capable of two alternative meanings, the Courts will prefer the meaning more favourable to the subject. If the provision is so wanting in clarity that no meaning is reasonably clear, the Courts will be unable to regard it as of any effect."

The Income-tax law seeks to put in the net certain class of income, and can only successfully do so, if it frames a provision appropriate to that end. If the law fails and the tax-payer cannot be brought within its letter, no question of *unjustness* as such arises.[1] If the Legislature has failed to classify its meaning by the use of appropriate language, the benefit thereof must go to the tax-payer. In case of doubt that interpretation of a taxing statute which is beneficial to the tax-payer must be adopted.[2] Undoubtedly if two views are possible it is better to lean in favour of that construction which would lead to the least amount of difficulty and which would be more favourable to the assessee.[3] But if the construction is clear then it is for the Legislature to amend the law so as to avoid hardship being caused to a certain type of assessee.[4]

If an assessee gets an advantage which the legislature may not have intended, but which he is entitled to on the construction of the statute, the Court should not deprive him of that advantage.[5] At the same time we can only ascertain the intention of the Legislature from the words used by it in the legislation we are considering. Reliefs to assessees, avoiding hardship to them, are all matters of policy with which the Legislature is more concerned than the Courts. If there is ambiguity or doubt, we must give the benefit of that to the subject and relieve him of taxation,[6] but when the language is clear and admits of no other interpretation, it is impossible for the Court merely by looking at the history of the legislation and speculating as to the object for which the Legislature enacted a particular piece of legislation to get away from the plain natural meaning and to give it an interpretation which is entirely unwarranted.[7]

It is well known that taxation laws are generally complete codes in themselves. Where there are specific provisions regarding a certain tax, whether the provision is substantive or procedural, then the matter must be governed by such provisions, in preference to the general law.[8] It is a general rule in the construction of revenue statutes that the specific provisions for duties on a particular article are not repealed or affected by the general words of a subsequent statute, although the language is sufficiently broad to cover the subject first mentioned.[9]

When a transaction is embodied in a document the taxing statute has to be applied in accordance with the legal rights of the parties to the transaction, and the liability to tax depends upon the meaning and content of the language used in accordance with the ordinary rules of construction.[10] In *ONGC* v. *Commissioner of Taxes*,[11] it was held that the Court has a

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1. *Commissioner of Income-tax, Bombay* v. *Jalgaon Electric Supply Co.*, AIR 1960 SC 1182, 1185.
2. *Rama Krishna Setty* v. *State of Andhra Pradesh*, AIR 1965 Andh Pra 420, 424 (Anantanarayana Ayyar, J.) When the Legislature used both the expressions 'fee' and 'tax' in the Act, it must be presumed to have understood the distinction between the two expressions; *Pravulal* v. *State of Orissa*, AIR 1960 Orissa 43, 44 (Narasimham, C.J.).
3. *Alladi Venkateshwarlu* v. *Govt. of A.P.*, AIR 1978 SC 945; *see* also *Leela Bai* v. *State*, AIR 1979 Bom 206; *Diwan Bros.* v. *C.B.I.*, AIR 1976 SC 1503; *State of Tamil Nadu* v. *M.K. Kandaswami*, AIR 1975 SC 1871; *C.I.T., Bhopal* v. *Badri Prasad Agarwal*, 1982 MPLJ 796 (DB).
4. *Rowje Sojpal* v. *C.I.T.*, AIR 1957 B 294, 296.
5. *Tobacco Manufacturers (India), Ltd.* v. *State of Bihar*, AIR 1950 Pat 450, 454; *Broach Co-operative Bank, Ltd.* v. *Commissioner, Income-tax, Bombay*, AIR 1950 Bom 45, 46.
6. *Federal Commissioner of Taxation* v. *Mc Comas*, 31 CLR 479.
7. *Kikabhoy* v. *Income-tax Commissioner, Bombay*, AIR 1950 Bom 6, 9, 10.
8. *Bawa Charan* v. *Commissioner of Commercial Taxes*, AIR 1964 Cal 332, 334 (D.N. Sinha, J.).
9. *Movius* v. *Arthur*, 24 L Ed 420, 421 (Hunt, J.).
10. *C.I.T., Andhra Pradesh* v. *Motors and General Stores (P), Ltd.*, AIR 1968 SC 200.
11. (1995)3 Gau LR 32 (Gau).

right to look to the dictionary meaning and also to other scientific and technical meaning to understand the meaning of a taxable item.

3. Literal construction of words used.—It is well settled that words in a taxing statute should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. The question whether wider or narrower meaning should be given, if words are capable of both, depends upon the context and background.[1] It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law[2] and not merely to the spirit of the statute or the *substance* of the law. If the Revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter. We must, of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before one can come to the conclusion that the subject is liable to the tax.[3] "This rule", said Lord Cairns in *Pryce* v. *Monmouthshire Canal and Railway Co.*,[4] "probably means little more than this, that inasmuch as there was not any *a priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the tax-payer and the taxing authority, no reasoning founded upon any supposed relationship of the tax-payer and taxing authority could be brought to bear upon the construction of the Act and, therefore, the tax-payer has a right to stand upon the literal construction of the words used, whatever might be the consequence."

Any provision in a taxing statute imposing a vicarious liability must be strictly construed[5] in favour of the assessee.[6]

"In the construction of a taxing Act we have nothing to go by as to the intention of the Legislature except what they have said. We are not at liberty to speculate as to what they might have done if certain possible applications of the provisions of the Act had been present to their minds. The duty of the Court is simply to read the language of the Legislature and find out whether the particular case falls within the statute, and if it does give effect to it; and if the case does not fall within the statute, it is their duty to let the defendant go free."[7]

The principle that fiscal statutes should be strictly construed does not rule out the application the principles of reasonable construction to give effect to the purposes or intention of any particular provision as apparent from the scheme of the Act, with the assistance of such

1. *Annapurna Biscuit Manufacturing Co., Kanpur* v. *C.I.T., U.P., Lucknow*, 1981 All LJ 906 (SC).
2. *Leelabai* v. *State of Maharashtra*, 1979 Mah LJ 69; *M/s. Binayak Sabatho & Sons* v. *Municipal Council, Behrampur*, AIR 1985 Ori 263 : 1984 Ori LR 640.
3. *Fernandez* v. *State of Kerala*, AIR 1957 SC 657, 661; *Commissioner of Income-tax, Bombay* v. *Provident Investment Co., Ltd.*, AIR 1957 SC 664; *Ballimal Nawal Kishore* v. *Punjab General Sales Tax Act*, ILR (1966)2 Punj 311; *Bajaj Electricals, Ltd.* v. *State of Punjab*, AIR 1964 Punj 530, 532 (Gurudev Singh, J.); *see* also *State of West Bengal* v. *Indian Iron & Steel Co.*, 67 CWN 138; *Pawzy Fernandez* v. *M.F. Queoros*, AIR 1963 All 153 (FB); *Shivraj Fine Arts Litho Works, Nagpur* v. *Authority under Minimum Wages Act*, AIR 1967 Bom 223 : 68 Bom LR 933; *Kamappa Mudaliar* v. *State of Madras*, AIR 1968 Mad 329; *Sarda Plywood Industries Ltd.* v. *Union of India*, (1993)2 GLR 202.
4. (1879)4 App Cas 197.
5. *Modi Spinning and Weaving Mills Co., Ltd., Modinagar* v. *State of U.P.*, 1980 All LJ 1137 (DB).
6. *B.M. Desai* v. *Ramamurthy*, AIR 1959 Bom 89, 90; *District Board, Hoshiarpur* v. *Hira Singh Jagat Singh*, AIR 1968 P & H 289, 291 (Narada, J.); *Life Insurance Corporation of India* v. *Dinanath Mahadeo Tembhakar*, 1976 Mah LJ 369, (case under Stamp Act).
7. *King* v. *Atkinson*, 3 CLR 632, 639 (*per* Griffith, C.J.); *see* also *C.I.T., Madhya Pradesh Nagpur* v. *Kisan Co-operative Rice Mills, Ltd.*, 1975 MPLJ 717 : 1975 Jab LJ 873 (DB).

external aids as are permissible under law.[1]

"We must also, of course, have regard to the subject-matter with which the Legislature is dealing; and the first thing to be done is, having regard to that subject-matter, to find out what the Legislature has said as a matter of English, that is, to discover the grammatical construction of the words used, of course giving to words of art their technical meaning."[2]

In statutes imposing taxes or penalties the person sought to be charged has to be brought within the letter of the law,[3] and the duty claimed by the States must be clearly shown by the letter of the law.[4]

The normal and grammatical meaning of the words 'paid the tax leviable under the Act' in Rule 16(3) of the Madras General Sales Tax (Turnover and Assessment) Rules, would be 'paid such tax if any as has been levied under the Act'. As Rule 16 provides for single-point taxation only it follows that if a licensed tanner has paid such tax as was payable by him on his purchase turnover, the words of Sub-rule (3) would confer upon him exemption from payment of tax on his sale turnover. Moreover, if the sub-rule were so read as to impose a tax liability on the sales of licensed tanners, there is no single point at all fixed to exempt from tax the series of sales which might take place within the State subsequent to the purchase from such tanner and as the rules have not fixed a single-point for fixing liability in respect of such series of transactions, the impositions of the tax by Sub-rule (3) would be invalid as contravening the specific direction in Section 5(*vi*) of the Act. Hence, no tax can be levied on sales by licensed tanners, where they have not paid tax on their purchases because such purchases being outside the State are not subject to taxation under the Madras General Tax Act.[5]

The duty of Judges in construing statutes is to adhere to the literal construction unless the context renders it plain that such a construction cannot be put on the words. The rule is specially important in cases of statutes which impose taxation.[6] A Court of law has no power to refuse to give effect to the language of the enactment merely because that some financial loss may in certain circumstances, be caused to the State.[7]

It will be a valid presumption in a taxing statute to attribute common and popular meaning to the denominating words with regard to the articles which are the objects of sale and of which the transactions are subjected to the incidence of tax.[8]

Taxing statute to be construed strictly to give power to impose tax.—The terms used in a section should be interpreted with reference to the context in which expressions have been used in the statute. in Section 23(4) of the Income tax Act the expression 'has not made a return or a revised return' appears as a default clause providing for legal consequences on account of non-compliance with the provisions of Section 22. The word 'make' as used in Section 23(4) conveys the same meaning as the words 'furnish' and 'deliver' used in Section 22(2) and its proviso; otherwise there would be no meaning in the default provision contained in Section 23(4). If

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1. *Shree Sajjan Mills* v. *I.T. Commissioner*, AIR 1986 SC 484 : 1986 Tax LR 48; *Nowroji Jehangir* v. *Dy. Collector*, AIR 1986 Bom 371 : 1986 Mah LJ 582.
2. *Webb* v. *Mc Cracken*, 3 CLR 1018, 1022-23 (*per* Griffith, C.J.).
3. *Scott* v. *Caiwsey*, 5 CLR 132, 173.
4. *Commissioner of Stamps (Q.B.)* v. *Wienholt*, (1915)20 CLR 531, 540-41; *Attorney-General* v. *Milne*, 1914 AC 765, 781; *Lumsden* v. *Inland Revenue Commissioners*, 1914 AC 877, 896-97.
5. *A.K. Munuswamy Mudaliar and Co.* v. *State of Madras*, AIR 1956 Mad 101; *Commissioner of Income-tax, West Bengal* v. *National & Grindlays Bank*, AIR 1969 Cal 71.
6. *Emmerton* v. *Federal commissioner of Land Tax*, 22 CLR 40, 51.
7. *Commissioner of Income-tax* v. *Anantarao B. Kamal*, ILR (1962)12 Raj 447.
8. *Lakshmi Oil Mills* v. *Sales Tax Officer, Wardha*, 1976 Mah LJ 326 (DB).

there is no request on the part of the department or any prescribed rule that the Return may be sent by post, the Post Office cannot serve as an agent of the Income-tax Department, and, therefore, mere posting of the Return is not equivalent to the furnishing of the Return under Section 22(2).[1]

The intention to impose a tax or duty, or to increase a tax or duty already imposed, must be shown by clear and unambiguous language and cannot be inferred by ambiguous words.[2]

Neither the language of a taxing statute can be added to,[3] nor is a statute supposed to use the words without a meaning. To reject words as insensible is the ultimate ratio when an absurdity would follow from giving effect to the words of an enactment as they stand. Lord Holt is quoted to have said : "I think we should be very bold men, when we are entrusted with the interpretation of Acts of Parliament, to reject any words that are sensible in a Act.' Unless and until the language used in a statute makes the meaning entirely insensible, every word must be given its plain meaning.[4] The court cannot undertake, out of its own notions of what is fair, to adapt or rearrange the machinery of the taxing statute.[5] In a fiscal or a taxing Act one has to look merely at what is clearly said for there is no room for any intendment nor for any equity nor for any presumption.[6] The only criterion is whether or not the words of the Act have reached the alleged subject of taxation. There is no question of equity.[7]

4. No governing principle to be looked at.—"And in construing such Acts", said Lord Halsbury, in *Lord Advocate* v. *Fleming*,[8] "we have no governing principle to look at : we have simply to go to the Act itself, to see whether the duty claimed is that which the Legislature has enacted." But interpretation of a provision in a taxing statute rendered years back and accepted and acted upon by the department should not be easily departed from. It may be that another view of the law is possible but the law is not a mere mental exercise. The Court while reconsidering the decision rendered a long time back particularly under taxing statutes cannot ignore the harm that is likely to happen by unsettling law that had been once settled.[9]

5. No special canons of construction.—In *Attorney-General* v. *Calton Bank*,[10] Lord Russel, L.C.J., said : "I see no reason why any special canons of construction should be applied to any Act of Parliament and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same,

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1. *R.K. Bala, Betnoti* v. *Commissioner of Income-tax, B. & O.*, AIR 1955 Orissa 119, 121-122.
2. *Brunton* v. *Acting Commissioner of Stamp Duties for N.S.W.*, (1913) AC 747, 760; *Gibson and Howes, Ltd.* v. *Lennon*, 24 CLR 140, 149.
3. *Royal Trust Co.* v. *Minister of Finance, Br. Columbia*, AIR 1921 PC 184, 187.
4. *In re* Lachman Prasad, AIR 1930 All 49, 53 (FB).
5. *In re* Bijay Singh, AIR 1980 Cal 641, 644 (FB).
6. *Jawansinghji* v. *Members of Tribunal*, AIR 1957 Bom 182, 185; *see* Maxwell on *Interpretation of Statutes*, 12th Ed. at p. 256; *Sree Krishna Dress Manufacturing, etc. Works* v. *State of Madras*, ILR 1962 Mad 399 : 75 MLW 48; *New Delhi Municipal Committee* v. *Chaman Lal Chopra*, (1979)81 Punj LR 134.
7. *Sree Krishna Dress Manufacturing, etc. Works* v. *State of Madras*, ILR 1962 Mad 399 : 75 MLW 48; *Commissioner of Income-tax, Patiala* v. *Sahajanand & Sons*, AIR 1966 SC 1342; *Nasir Ali Mohammad Ali* v. *Sugarcane Commissioner*, 1969 All LJ 218 (taxation laws should be interpreted most favourably to the tax-payer).
8. 1896 AC 152; see *Arunachalam* v. *Commissioner of Income-tax*, AIR 1929 Mad 769, 772 (FB); *Heward* v. *King*, 3 CLR 117.
9. *Commissioner of Income-tax* v. *Balkrishna Malhotra*, (1972)1 SCJ 258, 261 (Hegde, J.); *Krishna Flour Mills* v. *CIT, Mysore*, AIR 1966 Mys 70, 71 (Hegde, J.); Uniformity of Construction of various High Courts is eminently desirable. *See* also *CIT* v. *Jethalal Zaverchand*, AIR 1967 Guj 141, 142.
10. (1899)2 QB 158, 164; *Pithapuram T.T., etc.* v. *State*, AIR 1958 Andh Pra 558; *see* also *Commissioner of Income-tax, Patiala* v. *Sahajanand & Sons*, AIR 1966 SC 1342, where the point is elaborately discussed; *The Commissioner of Wealth Tax* v. *(Smt.) Hashmatunnisa Begum*, AIR 1989 SC 1024 : 1989 Tax LR 393 : (1989)1 JT (SC) 92 : (1989)40 ELT 239 : (1989)176 ITR 98 : (1989)42 Taxman 133 : (1989)75 CTR 194 : (1989)93 (2) Taxation 1; *The Film Exhibiters' Guild* v. *State of Andhra Pradesh*, AIR 1987 AP 110 (FB) : (1987)1 Andh LT 154 : (1987)1 APLJ (HC) 330 (quoting Lord Russel).

whether the Act to be construed relates to taxation or to any subject, *viz.*, to give effect to the intention of the Legislature, as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed. The Court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by considerations of hardship or business convenience, or the like."

The subsequent legislation or rule cannot ordinarily be taken into account for finding out the legislative intent or intent of the taxing authority when it made the prior rule. But this rule also has its exceptions. If the rule-making authority tried to remove some mischief, the Court may look into prior rule to find out what the mischief was which was sought to be removed by the subsequent rule.[1]

You must give effect to Acts of Parliament according to their language, and with respect to matters as to which rights are concerned, those rights are not to be taken away by implication.[2]

When you are considering the taxing statute of a country, you must go to the statutes themselves and not construe sections of those statutes in the light of decisions given in other countries of their own taxing statutes.[3]

In the assessment of excise duty, the words of a statue have to be read in the context and setting in which they occur.[4]

6. No extension by implication.—In the United States of America too, the rule in *Gould* v. *Gould*,[5] held the field till 1938. This rule was to the effect : "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favour of the citizen." The real objection to the rigid rule of *Gould* v. *Gould*,[6] was "that it represented in large part the abnegation by the Courts of one of their greatest and legitimate functions, the ascertainment as near as may be of the meaning of legislative Acts." Accordingly in *White* v. *United States*,[7] Mr. Justice Stone opined : "We are not impressed by the argument that as the question here decided is doubtful, all doubts should be resolved in favour of the tax-payer. It is the function and duty of Courts to resolve doubts. We know of no reason why that function should be abdicated in a tax case more than in any other where the rights of suitors turn on the construction of statute and it is our duty to decide what that construction fairly should be."

A taxing provision always receives a strict interpretation for the obvious reason that there must be clear and express language imposing a tax and the date from which such tax shall come into effect. There cannot be any taxation by implication.[8]

Deficiencies not made good.—In interpreting a fiscal statute, the Court cannot proceed to make good deficiencies if there be any; the Court must interpret the statute as it stands and in

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1. *Baroda Municipal Corporation* v. *Hindustan Conductors (Pvt.), Ltd.*, (1979)20 Guj LR 502 (DB); quoted in *The Commissioner of Wealth Tax* v. *(Smt.) Hashmatunnissa Begum*, AIR 1989 SC 1024 : (1989) Tax LR 393 : (1989)40 ELT 239 : (1989)176 ITR 98 : (1989)42 Taxman 133 : (1989)75 CTR 194, 93 (2) Taxation.
2. *Heward* v. *King*, 3 CLR 117, referred to in *Webb* v. *McCracken*, 3 CLR 1022.
3. *Commissioner of Income-tax, Bombay* v. *Donald Miranda*, AIR 1959 Bom 33, 34.
4. *(M/s.) Hindustan Polymers* v. *Collector of Central Excise*, (1989)4 SCC 323.
5. (1917)245 US 151, 153; *Hecht* v. *Malley*, 68 L Ed 949, 957 (Sanford, J.).
6. (1917)245 US 151, 153; *Hecht* v. *Malley*, 68 L Ed 949, 957 (Sanford, J.).
7. (1938)305 US 281, 292.
8. *Atlas Cycle Industries, Ltd.* v. *State of Haryana*, (1972)1 SCR 127, 135 (Ray, J.).

case of doubt in a manner favourable to the tax-payer.[1]

7. No extension by analogy.—We cannot extend the scope of the statute by analogy.[2] The Court Fees Act, 1870, is a fiscal enactment and as such must be strictly construed and no extension of application of its provisions is permissible by analogy.[3] Court-fees cover in the category of fiscal enactments and must be construed strictly. At the same time it is an established principle that court-fee is payable on the substance of the relief asked for, and that, even though the plaintiff might try to conceal the real relief which he seeks and has framed his relief in a manner which might attract the provision of the Court Fees Act under which a lesser court-fee is payable, the Court is entitled to look to the substance and not to the mere form of the relief.[4] In a poor country like India, the court may not be able to render justice to all or effectively ensure the observance of the rule of law if parties can be scared away by demand of heavy sums initially before entry into the temple of justice. This means that the Court Fees Act will have to be so construed that the benefit of any serious doubt must go against the levy of fee, and only if the court, on a strict construction, finds that the proceedings come squarely within any of the provisions of the Act, will in direct payment thereof.[5]

In a taxing statute analogies play no part.[6]

Analogies are out of place when the statute itself prescribes a particular mode of taxation for deciding whether or not it is logical.[7]

8. No straining of language.—In construing a taxing Act, the Court is not justified in straining the language in order to hold a subject liable to tax.[8] Thus if the Legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the Legislature must provide proper machinery and not leave it to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of such statute.[9] Where the question was what court-fee, if any, should be paid by another creditor, who came in with a claim after a preliminary decree for administration had been made in a suit for administration,

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1. *C.A. Abraham* v. *Income-tax Officer, Kottayam*, (1961)2 SCR 765, 771; *Nooney Kondaiah* v. *Nayudu Ramanareddy*, AIR 1971 Andh Pra 142 (Parthasarthy, J.).
2. *Jiwan Das* v. *Income-tax Commissioner, Lahore*, ILR 10 Lah 657, 665 (FB) (Income Tax Act); *Kameshwar Singh* v. *Rajbansi Singh*, AIR 1943 Pat 433, 440 : "In my view provisions of the Court Fees Act cannot be made use of by way of analogy, in construing the provisions of other statutes relating to rights in property, and much less in construing documents executed by parties, *per* Chatterji, J. Articles in the Court Fees Act cannot be applied, by analogy; *Brown* v. *Brown*, AIR 1946 Pat 401; *Ramaswami* v. *Rangaswami*, AIR 1931 Mad 683, 684; *Inland Revenue Commissioners* v. *Duke of Westminster*, 1936 AC 1, 24 : "I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substances of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy but only by the plain words of a statute applicable to the acts and circumstances of his case" (Lord Russell of Killowen); *see* also *Nishikanta* v. *Pramathnath*, AIR 1938 Cal 785 (Court Fees Act).
3. *In re* Thirupathiammal, AIR 1956 Mad 179 (Suit for declaration of title and possession on allegation that sale-deed executed by defendant was sham. Plaintiff not being a party to the deed can ignore it and need not ask for cancellation of the deed); *Union Bank of India* v. *Bharat Bhushan*, 1987 Sri LJ 121 (J & K).
4. *Mohd. Wasiulhaq* v. *Jagannath Chaudhary*, AIR 1958 Pat 560, 561.
5. *Koongaran Mukundan* v. *Nalini*, AIR 1971 Ker 183, 185 (V.K. Krishna Iyer, J.).
6. *Allagappa* v. *Controller of Estate Duty*, AIR 1967 M 229, 230 (Veeraswami, J.).
7. *Mst. Durghatia* v. *Ayodhya Prasad*, AIR 1953 VP 28.
8. *Controller of Estate Duty* v. *Allagappa Kuppuswamy*, AIR 1977 SC 2069; *Yashwant Rao* v. *Commissioner of Wealth Tax*, AIR 1967 SC 135.
9. *Commissioner of Income-tax, Bombay* v. *Reid*, AIR 1931 Bom 333, 335, *Income-tax Commissioner, Bombay* v. *Chunilal B. Mehta*, AIR 1935 Bom 423, 425; *see* also *I.R.C.* v. *Wolfson*, (1949)1 All ER 865, 868; *Rukmaji Rao* v. *Govt. of Andhra Pradesh*, AIR 1971 Andh Pra 114, 116 (Kondaiah, J.).

there seemed to be no specific provision in the Court Fees Act which exactly covered the point in issue. Mr. Justice Ananta Krishna Ayyar observed in *Ramaswami* v. *Rangaswami*[1] : "The Court Fees Act being a fiscal enactment has to be construed according to well-known rules of interpretation. The Courts are not entitled to strain the wordings of the Courts Fees Act with a view to tax the subject. It may be that the present is a case of omission. If that is so, it is not a matter for the Courts but one for Legislature." Court cannot read words which are not there, or exclude words which are there.[2]

According to the Supreme Court, it is very hazardous to decide cases (relating to agricultural land ceilings) in which proprietary rights arise for determination on the basis of decisions under taxation laws which have their own peculiarity. The Income Tax Act is one levying tax, the Land Celling Act has to be construed in accordance with its own scheme and object. The two have no common meeting point, and the principle of analogy cannot be extended to apply the principles of taxation laws to cases where proprietary rights in law have to be determined.[3]

Little can be gained by trying to construe an Income Tax Act of one country in the light of decision upon the meaning of the Income Tax legislation of another.[4]

Anyhow technicalities in a fiscal statute must be strained in favour of the subject, if they are to be strained at all.[5]

9. No equitable construction.—In interpreting a taxing statute, equitable considerations are entirely out of place.[6] Nor can taxing statutes be interpreted on any presumptions or assumptions.[7] The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.[8] In a taxing statute one has to look merely at what is clearly said. There is

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1. AIR 1931 Mad 683, 687. Burden can never be imposed by giving a word a meaning different from its ordinary meaning or by giving a word a forced construction which it could not ordinarily bear; *Calcutta Electric Supply Corporation, Ltd.* v. *Commissioner, I.T.W., Bengal*, 55 CWN 261; see *Chandra Dhar* v. *Ram Janki*, AIR 1957 All 90; *Jitendranath* v. *Commissioner of Padyria Municipality*, AIR 1967 Cal 423; *Madhya Pradesh Electricity Board* v. *Commissioner of Sales Tax*, AIR 1968 Madh Pra 163.
2. *Collector of Estate Duty* v. *R. Kanakasibai*, AIR 1973 SC 1214 : (1973)1 SCWR 591; *Sarda Plywood Industries Ltd.* v. *Union of India*, (1993)2 GLR 202.
3. *Bhikoba Shankar Dhunal* v. *Mohan Lal Punamchand*, 1982 Mah LJ 329 (SC), overruling *Dadarao Kashiram* v. *State*, 1969 Mah LJ 833 : 72 Bom LR 246.
4. *Gopal Saran Narain Singh* v. *Commissioner of Income-tax, Bihar*, AIR 1935 PC 143, 146; *Commissioner of Income-tax, Bengal* v. *Shaw Wallace & Co.*, AIR 1932 PC 138; but *see Auraiya Pay Office* v. *Notified Area Committee, Auraiya*, AIR 1938 All 302 : "When we are construing a fiscal rule, which imposes a liability on a subject, we have got to give a meaning to these words which would be consistent with the principles of natural justice recognized in other similar fiscal enactments." One fiscal act cannot be construed by another fiscal Act; *In re* Saroj Bashini Devi, 36 IC 125 : 20 CWN 1125.
5. *Balkishan Nathani* v. *Commissioner of Income-tax* AIR 1924 Nag 153; *Commissioner of Sales Tax* v. *Bekhat Rai*, 1966 MPLJ 977 : 1966 Jab LJ 772.
6. *C.I.T.* v. *M.P. Jatia*, AIR 1977 SC 420; *Hukumchand and Mannalal Co.* v. *C.I.T., M.P.*, AIR 1966 SC 1552; *Santosh Kumar Chandra Shekhar* v. *State of Punjab*, 1977 Cur LJ (Civil) (P & H) 184 : (1977)79 Punj LR 353 (DB); *see* also *McDowell & Co.* v. *C.T.O.*, (1977)1 SCC 441; *N.D.M.C.* v. *Chamanlal*, AIR 1979 Delhi 108; *Mohanlal* v. *State*, AIR 1978 Cal 12; *Raja Jagadambika Pratap Narain Singh* v. *Central Board of Direct Taxes*, (1975)4 SCC 578 : 1975 SCC (Tax) 156 : (1975)100 ITR 698; *C.I.T., Bombay* v. *(M/s.) Gwalior Rayon Silk Mfg. Co. Ltd.*, (1992)3 SCC 326.
7. *Tarulata* v. *C.I.T.*, (1977)3 SCC 305; *see* also *C.S.T.* v. *Parson Tools*, AIR 1975 SC 1039.
8. *Sales Tax Commissioner, U.P.* v. *Modi Sugar Mills*, AIR 1961 SC 1047, 1051; *Balu Deochand* v. *Fundibai Amichand*, AIR 1972 MP 22, 27 (S.P. Bhargava, J.); *Kamal Singh* v. *Commissioner of Wealth Tax*, AIR 1966 Pat 282, 284 (Mahapatra, J.).

no room for any intendment. There is no equity about a tax, and there is no presumption as to tax. Nothing is to be read in and nothing is to be implied.[1] Lord Cairns observed in *Partington* v. *Attorney-General*[2] : "If there be admissible in any statute what is called an equitable construction certainly such a construction is not admissible in a taxing statute where you should simply adhere to the words of the statute." In *Cape Brandy Syndicate* v. *Inland Revenue Commissioners*,[3] Rowlatt, J., remarked : ".....in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no necessity about a tax. There is no presumption as to a tax. Nothing has to be read in, nothing is to be implied. One can only look fairly at the language used."

It is true that equitable considerations are irrelevant in interpreting tax laws. But these laws like all other laws have to be interpreted reasonably and in accordance with justice.[4]

While it is certainly true that when an interpretation of a fiscal enactment is open to doubt, and even where a literal construction would defeat the obvious intention of the legislation and produce a wholly unreasonable result, the Court must try its best to achieve the obvious intention and produce a rational construction.[5]

It was said that the general principle was that in a taxing statute there was no room for what could be called equitable construction, but that principle applied only to the taxing part of the statute and not to the procedural part.[6]

While equitable considerations are of no avail in the construction of taxing statutes, a proper balance must be struck between the essential needs for revenue of a modern welfare State on the one hand and the desirability that the citizen must know his liability clearly before he can be called upon to contribute to the revenue on the other.[7]

10. Considerations of reason and justice not material.—Considerations of equity, reason or justice have no place in a taxing statute, which must be construed only on the basis of the language used therein.[8] Questions of hardship cannot justify the court in departing from the

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1. *Baidyanath Ayurved Bhawan (P.) Ltd.* v. *Excise Commissioner*, (1971)2 SCR 590, 592-3 (Hegde, J.); *Commissioner of Income-tax* v. *Bai Vira*, (1965)6 Guj LR 583 : (1965)3 ITR 100; *Commissioner of Income-tax, Patiala* v. *Sahajanand & Sons*, AIR 1966 SC 1342; *N.V. Shanmigham & Co.* v. *C.I.T., Madras*, (1970)2 SCC 139; *Innamuri Gopalan* v. *State of A.P.*, (1964)1 SCJ 67 : (1964)2 SCR 888; *CIT, West Bengal* v. *Central India Industries*, (1972)1 SCJ 10; *C.I.T.* v. *Madho Prasad*, 1976 UJ (SC) 810; *C.I.T.* v. *Maharashtra Sugar Co.*, AIR 1971 SC 2434; *Commissioner of Sales Tax* v. *Modi Sugar Mills*, AIR 1961 SC 1047; *Gokaraju Rangaraju* v. *State of Andhra Pradesh*, AIR 1981 SC 1473; *Commissioner of Income-tax, Bihar, Ranchi* v. *Shri Dungarmal Tainwala, Upper Bazaar, Ranchi*, (1991)1 BLJR 478.

2. 1869 LR 4 HL 1008; *Ormand Investment Co.* v. *Bets*, 1928 AC 143; *see* also *Sunder Das* v. *Collector of Gujarat*, ILR 3 Lah 349, 356; *Jiwan Das* v. *Income-tax Commissioner, Lahore*, ILR 10 Lah 657, 665 : "We cannot extend the scope of the statute by analogy or place upon it what is called a beneficient or equitable construction in order to prevent a real or supposed anomaly; *Krishna Mohan* v. *Raghunandan*, ILR 4 Pat 336, 376 : AIR 1925 Pat 392, 408 (FB); *Killing Valley Tea Co. Ltd.* v. *Secretary of State*, ILR 48 Cal 161, 175; *Damodar Prasad* v. *Masudan Singh*, AIR 1928 Pat 85; *Radha Govinda Sen* v. *Ram Brahma*, AIR 1936 Cal 814 (Stamp Act); *Commissioner of Income-tax, Patiala* v. *Shahzada Nand & Sons*, AIR 1966 SC 1342.

3. (1921)1 KB 64, 71; *see* also *S.I. Railway* v. *Panchayat Board, Mandapam*, AIR 1943 Mad 733, 736; *Best & Co., Ltd.* v. *Madras Corporation*, AIR 1924 Mad 420, 430 (FB); *Jiwan Singhji* v. *Members of Tribunal*, AIR 1957 Bom 182, 185; *New Shorrock Spg. & Mfg. Co., Ltd.* v. *N.U. Rawal*, AIR 1959 Bom 477, 480; *Panchamlal Sikrilal* v. *Municipal Board Rewa*, 1962 Jab LJ 232 : AIR 1962 Madh Pra 105; *Kanpur Sugar Works, Ltd.* v. *S.T.O.*, 1962 ALJ 1028.

4. *Jodhamal* v. *Commissioner of Income-tax*, (1972)1 SCR 639, 644 (Hegde, J.).

5. *C.I.T.* v. *Malayala Manorama Co., Ltd.*, 1983 Ker LT 304 (DB).

6. *Income-tax Officer* v. *Mohd. Kunhi*, (1969)2 SCR 65, 70 (Grover, J.).

7. *Shahzada Nand & Sons* v. *Central Board of Revenue*, AIR 1962 Punj 74 (FB).

8. *Vyaje R. B. Narayanamurthy* v. *Commissioner of Wealth Tax*, AIR 1964 Orissa 128, 134 (Narasimham, C.J.); *Azam Jha Bahadur* v. *Expenditure Tax Officer*, (1971)3 SCC 621 : (1972)83 ITR 92; *C.I.T., Bombay* v. *(M/s.) Gwalior Rayon Silk Mfg. Co., Ltd.*, (1992)3 SCC 326.

plain provisions of the Act.[1] In *Morley* v. *Hall*,[2] Tounton, J., observed with reference to stamp law that it "imports nothing of reason and justice but depends entirely upon the language of the Legislature." Their Lordships of the Privy Council in *Bank of Chettinad* v. *I.T. Commissioner, Madras*[3] thought it necessary once more to protest against the suggestion that in revenue cases 'the substance of the matter' may be regarded as distinguished from the strict legal position. In case of a taxing statute the Court should be guided by the general scope of the enactment and the express provisions of the statute and not by considerations that might weigh in a case arising under the statute of frauds or similar statutes.[4] In enactments like Court Fees Act and Stamp Act artificial methods are adopted for fixing the court-fee or stamp duty payable and reason and justice of imposition has no bearing.[5]

If the plaintiff's case clearly falls under any specific provision of the Court Fees Act, he cannot be allowed to escape paying the court-fee due by him on grounds of kindness.[6] The question of hardship is not relevant.[7]

It is futile both for the Taxing Department and for the assessee to look for logic in the provisions of a taxing statute. Undoubtedly if a construction which can legitimately be placed upon such an Act, can avoid anomalies and inconveniences, the Court should prefer that interpretation rather than the one which leads to anomalies and inconveniences and also if an interpretation can be legitimately put which would benefit the subject as against the Taxing Department the Court should accept that interpretation in preference to the other.[8]

In the case of a fiscal enactment, one has to look at what is clearly said. There is no room for any 'intendment'. No argument based on hardship or inconvenience can be entertained.[9] In the construction of a taxing provision there is no room for any intendment and nothing can be read in or implied. But the rule of strict construction does not mean that the language of the provision should be tortured into meaning something artificial, if its natural meaning is not repugnant to reason.[10]

It may sound a little unjust that the amount covered by railway freight should be charged against the dealer under Section *2(h)(i)* of the C.P. and Berar Sales Tax Act, 1947, but such considerations do not weigh with the court in construing a fiscal statute where the words of a statute have to be construed in their natural sense, irrespective of considerations of hardship.[11]

11. No extension by fiction.—Quite obviously the scope of a fiscal provision cannot be enlarged by creating a fiction.[12] It is an incontestable principle that fiscal Acts must be interpreted for the benefit of the subject rather than the State. It is no doubt true that partition

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1. *Liberty Talkies* v. *State of Gujarat*, (1971)1 SCC 471, 476 : (1971)3 SCR 398, 404 (Shah, C.J.).
2. (1834)2 Dowl 497; *see* also *Kameshwar Singh* v. *Rajabansi Singh*, AIR 1943 Pat 433, 440.
3. AIR 1940 PC 183, 185; *see* also *Inland Revenue Commissioner* v. *Duke of Westminster*, 1936 AC 1; *S.I. Rly.* v. *Panchayat Board, Mandapam*, AIR 1943 Mad 733, 737.
4. *A.S. Krishna & Co.* v. *State of Andhra*, AIR 1957 AP 706, 710.
5. *In re* Venkataratnam, AIR 1941 Mad 639, 640; *Amarendra Lal Khan* v. *Commr. I.T., W.B.*, 62 CWN 670.
6. *Motilal, J., Boal* v. *Ramachar*, AIR 1952 Mys 80.
7. *Liberty Talkies* v. *State of Gujarat*, (1971)1 SCC 471.
8. *Machiney Manufacturers Corpn., Ltd.* v. *Commissioner of Income-tax, Bombay*, AIR 1957 Bom 14, 16 (Chagla, C.J.); *Girdharidas & Co., Ltd.* v. *Commissioner of Income-tax, Bombay*, AIR 1957 Bom 4, 5 (Chagla, C.J.).
9. *Doma Sao Kishan Lal* v. *State of Bihar*, AIR 1952 Pat 357; *Liquidators, Pursa, Ltd.* v. *Commissioner of Income-tax, Bihar and Orissa*, 30 Pat 1033 : AIR 1952 Pat 106; *Jitendra Nath* v. *Commissioner of Baduria Municipality*, AIR 1967 Cal 423.
10. *Panchamlal* v. *Municipal Board, Rewa*, AIR 1962 MP 105, 107.
11. *S.T. Commissioner* v. *A.K. Mahboob Co.*, AIR 1956 Nag 16.
12. *Wilayatullah* v. *Civil Station Sub-Committee, Nagpur*, AIR 1950 Nag 223, 225; *Johnson* v. *Smith*, (1760)97 ER 617.

suits frequently involve great expenditure of labour on the part of the Court concerned and that they frequently relate to property of very great value.[1] This, however, is no reason for requiring a larger court-fee, where on a strict interpretation of the law a lower would suffice. Declaratory suits of all descriptions are frequently fought on an exiguously low court-fee, although their decision may occupy the time of the Courts for many years and they may affect property of very great value. Yet it is for the State to determine whether in view of these considerations the court-fee on such suits should be made to bear some relation to the value of the property concerned. The Courts have only to determine the meaning of legislative enactments.[2] A legal fiction must be limited to the purposes for which it has been created and cannot be extended beyond its legitimate field. If the turnover, in a Sales Tax Act, of the previous year is fictionally made the turnover of the year of assessement : it is not the actual or the real turnover of the year of assessment. By the imposition of a different tariff in the course of the year, the incidence of tax liability may competently be altered by the Legislature, but for effectuating that alteration, the Legislature must devise machinery for enforcing it against the tax-payer and if the Legislature has failed to do so, the Court cannot resort to a fiction which is not prescribed by the Legislature and seek to effectuate that alteration by devising machinery not found in the statute.[3]

12. Strict construction.—Taxing Acts must be construed strictly[4] you must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed. In interpreting a fiscal statute the Court cannot proceed to make good deficiencies if there be any; the Court must interpret the statute as it stands and in the case of a doubt in a manner

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1. *Hasan Khan* v. *Ahmad Khan*, AIR 1935 Pesh 30, 33.
2. *Cox* v. *Rabbits*, (1878)3 AC 473; *Emperor* v. *Kadarbhai*, ILR 51 Bom 896 : AIR 1927 Bom 483, 484; *Municipal Council, Cuddappah* v. *M. & S.M. Ry.*, ILR 52 Mad 997 : AIR 1929 Mad 746, 748; *Noksingh* v. *Bholasingh*, AIR 1930 Nag 73, 76; *Maung Nyi* v. *Municipal Committee, Mandalay*, ILR 12 Rang 335 : AIR 1934 Rang 268, 270 (Court-fees); *Srikant Chand* v. *Ram Mohni*, AIR 1959 Pat 186 : ILR 37 Pat 83; *'Club' Mahabaleshwar* v. *Municipality, Mahabaleshwar*, 61 Bom LR 52; *State of Bihar* v. *Tulshi Ram*, AIR 1958 Pat 201, 203; *District Board, Jhang* v. *Nanak Chand*, AIR 1937 Lah 319, 320 : a taxing statute which also takes away the ordinary jurisdiction of the Civil Courts must be strictly construed in favour of the subject and against the taxing authority; *Bank of Chettinad* v. *I.T. Commissioner, Madras*, AIR 1940 PC 183, 185; *Kameshwar Singh* v. *Rajbansi Singh*, AIR 1943 Pat 438, 440 (Court-fees); *Brown* v. *Brown*, AIR 1946 Pat 401, 402 (Court-fees); *Commissioner, Agricultural Income-tax* v. *Raja Jagdish Chandra Deo*, 53 CWN 596, 600 (the charging section must always be interpreted strictly and unless a particular type of income is made taxable the revenue authorities cannot levy the tax); *see* also Sutherland : *Statutory Construction*, 3rd Ed. at p. 293; Maxwell : *Interpretation of Statutes*, 9th Ed. at p. 291; Odgers : *Construction of Deeds and Statutes*, 2nd Ed. at p. 305; Crawford : *Statutory Construction*, at p. 503; *Davies* v. *Evons*, (1882)9 QBD 238, 242 (strictly construed as against the party in whose favour the charge is imposed); *Chuni Lal* v. *Sheo Charan Lal*, ILR 47 All 756 : AIR 1925 All 787, 790 (construed strictly against the Government, reference under Stamp Act, 1899 ILR 30 Cal 565, 575); *Balasore Municipality* v. *Mohd. Abdul Sattar Khan*, AIR 1954 Orissa 224; *Commissioner of Income-tax, Bombay* v. *Kishore Singh*, ILR 1960 Bom 1021 : 62 Bom LR 680; *Nizamali* v. *Municipal Board, Fatehpur*, 1962 All LJ 226; *Mishrilal Tarachand Lohia* v. *State of Maharashtra*, AIR 1962 Bom 52 : 63 Bom LR 689; *Venkataratnam* v. *Vijayawada Municipality*, AIR 1962 AP 342.
3. *Commissioner, Sales Tax, U.P.* v. *Modi Sugar Mills, Ltd.*, (1961)2 SCR 189, 199 (Shah, J.); *N.H. Lokhmi Bai* v. *Commissioner of Wealth Tax*, (1994)72 Taxman 455 (SC) : (1994)2 SCC 534.
4. *State of W.B.* v. *Wasi Ahmad*, (1977)3 SCC 149; *(M/s.) Durga Oil Mills* v. *Agriculture Produce Marketing Board*, (1995)1 Pat LJR 30 (DB); *see* also *H.H. Lakshmi Bai* v. *Commissioner of Wealth Tax*, AIR 1995 SC 140; *Hiralal Ratanlal* v. *Sales Tax Officer*, AIR 1973 SC 1045; *C.W.T.* v. *Kripashankar Dayashankar*, (1971)2 SCC 570; *Atlas Cycle Industries, Ltd.* v. *State of Haryana*, (1971)2 SCC 564; *M. Narasimhaiah* v. *Commissioner for Transport, Bangalore*, AIR 1988 SC 240; *Vasudeo* v. *Lal Singh*, AIR 1992 Raj 133 : (1992)1 Raj LR 90; *Thillai Chidambara Nadar* v. *Addl. Appellate Asst. Commissioner*, (1985)60 STC 80 (SC), quoted the passage from (1981)47 STC 359 (SC) : (1981)3 SCR 294; *State of Tamil Nadu* v. *K.V. Dhanuskodi Nadar*, (1994)19 STC 231 (Mad).

favourable to the tax-payer.[1] "My Lords", observed Lord Cairns in *Pryce* v. *Monmouthshire Canal and Railway Co.*,[2] "the cases which have decided that taxing Acts ate to be construed with strictness, and that no payment is to be exacted from the subject which is not clearly and unequivocally required by Act of Parliament to be made, probably meant little more than this, that inasmuch as there was not any *a priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the tax-payer and the taxing authority, no reasoning founded upon any supposed relationship of the tax-payer and the taxing authority could be brought to bear upon the construction of the Act, and, therefore, the tax-payer had a right to stand upon a literal construction of the words used whatever might be the consequence, I cannot think that this principle applies, to any considerable extent, where the payment spoken of in the Act of Parliament is a payment to be made in return for services rendered, and, above all, in a case where Parliament does not step in to give the right of payment, but rather to moderate and limit a right to payment which otherwise might exist without limit, or at all events with only such limits as would be placed upon it by a *quantum meruit* assessment. "In construing this Act", observed Talfound, J., in *London Corporation* v. *Parkinson*,[3] "imposing the duty, we must assume that the word 'coal' is used in its ordinary and popular sense, and see whether the article in question comes within this meaning according to that criterion. If a person were to order to a coal merchant a quantity of coal, would it be complied with by the delivery of the patent fuel? Surely no one would contend in the affirmative or, if a vendor were to contract to deliver coal of any description named by the purchaser, would he be called upon to deliver patent fuel? We apprehend he could not. Why should we give a different meaning to the same word in different sections for the purpose of extending the operation of a clause imposing a tax? We think, therefore, that we ought to construe the word according to its ordinary meaning which will make the different parts of the Act consistent with each other". Lord Halsbury expressed himself thus in *Tenant* v. *Smith*.[4] "This is an Income Tax Act and what is intended to be taxed is income. And when I say 'what is intended to be taxed', I mean what is the intention of the Act as expressed in its provisions, because in a taxing Act it is impossible, I believe, to assume any intention—any governing purpose in the Act—to do more than take such tax as the statute imposes. In various cases the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this—that, inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed. Cases, therefore, under the taxing Act always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation." Lord Wensleydale said in *In re* Micklewati[5] : "It is well-established rule, that the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its

1. *C.A. Abraham* v. *Income-tax Officer, Kottayam*, AIR 1961 SC 609, 612; *Brilliant Traders, Ltd.* v. *Board of Revenue*, AIR 1962 Ker 132, 133 (FB); *Dattimal Nawalkishore* v. *Punjab General Sales Tax*, ILR (1960)2 Punj 311; *Diwan Brothers* v. *Central Bank of India*, AIR 1976 SC 1503; *C.I.T., Madras* v. *T. Sundaram Iyengar (P), Ltd.* (1975)2 SCWR 256; *(M/s.) Park View Enterprises* v. *State of Tamil Nadu*, AIR 1990 Mad 251 : 1989 TLNJ 375 (DB).
2. (1879)4 AC 197, 202, 203; *Kumbhakonam Muncipality* v. *Kumbhakonam Bank, J.*, AIR 1944 Mad 449 at p. 450, (Byers, J. opined that Rule 4(1) of Schedule 4, District Municipalities Act, the word 'person' did not include a 'company'); *Heward* v. *King*, 3 CLR 117, 126, 127.
3. (1850)138 All ER 93.
4. 1892 AC 150, 154; *Hari* v. *Federal Commissioner of Land Tax*, 15 CLR 445, 447 (you cannot speculate as to the general intention of the Legislature, *per* Griffth, C.J.).
5. (1855)11 Ex 452 at p. 456.

words." Wills, J., observed in *Swayne* v. *Inland Revenue Commissioners*,[1] : "I would observe that the act of interpreting statute of this character—statutes which impose taxation—cannot be considered an exact science, it is rather a practical art, and the questions which arise cannot be dealt with as though they were simple questions to be settled upon principles of common law." It has been designated as a 'great role' in the construction of fiscal law, "that they are not to be extended by any laboured construction, but that you must adhere to the strict rule of interpretation; and if a person who is subjected to a duty in a particular character or by virtue of a particular description no longer fills that character or answers that description, the duty no longer attaches upon him and cannot be levied."[2] In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favour of the citizen.[3] "The truth is that," said Earl of Halsbury, L.C., in *Simpson* v. *Teignmouth and Shaldon Bridge Co.*,[4] "when you are dealing with question of this sort, and endeavouring to find out whether a thing (bicycle) is taxable or not under Acts of this character, the first thing to do is to find out whether there is anything which corresponds in the ordinary and natural course of meaning to the language which the Legislature at the particular time used in making the things mentioned in such Acts the subject of taxation. I do not think it is a question merely of words whether the thing sought to be made taxable was called a coach or not, if it was intended to fulfil the functions of a carriage according to the description given in the original Act. I quite agree that the mere fact that it was called by a different name from those enumerated in the Act would not matter, because the language would have been used by the Legislature in a sense which everybody could understand, and which would comprehend the particular thing although it might be called by another name." A similar point arose before Walsh, J., in *George Banerji* v. *Emperor*,[5] in the Allahabad High Court. His Lordship observed :

> "The complaint was made by the Municipal Board against Mr. G. Banerji of Canning Road for using a bicycle with a motor wheel attachment without a licence. The question is one of taxation, and, as the Sessions Judge rightly says in his order of reference, enactments which render the public liable to pay taxes or charges of this nature must be construed strictly; or in other words, unless the language under which they are sought to be charged is perfectly clear, the charging authorities are not entitled to assess a charge inasmuch as the public have a right to know what exactly are the charges imposed upon them. Now in this case there are three classes of vehicles which are material : (1) a motor car, (2) a motor bicycle, (3) a bicycle. The vehicle in question is of modern inventions, that is to say, it is an ordinary bicycle with a motor wheel which may be affixed to or detached from the bicycle itself as the rider chooses, but which when attached provides a motor power which enables the rider to propel the machine by motor power. Now that is really not a motor car, neither in the ordinary nor in the commercial sense of the word; and there is a definition of motor car in the notification of the Municipality itself which does not include the bicycle in

1. (1899)1 QB 335, 344.
2. *Dickson* v. *R.*, 11 HL Cas 175, 184, *per* Lord Westbury.
3. *Gould* v. *Gould*, (1915)245 US 151 : 62 L Ed 211; *Madan Singh* v. *Collector of Sikar*, AIR 1954 Raj 104.
4. (1903)1 KB 405, 411, 412.
5. 18 Cr LJ 45; *Pithal Chhagan & Sons* v. *State of Gujarat*, (1966)17 STC 96 (Guj), where it was held that the word 'goods taxable under the statute (Sales Tax Act)' must be construed not in any technical or scientific sense but as understood in common parlance.

question. Secondly, it is not, in my opinion, a motor bicycle, which in the ordinary commercial use of the term must be understood to mean a bicycle, which is propelled entirely by motor. A motor bicycle means a motor. The vehicle in questions is a vehicle with two wheels which is propelled sometimes by motor and sometimes without. It is built and constructed and designed for the purpose of being used and propelled both by mechanical power and by human agency. The motor which is only contained in the extra motor-wheel or auto-wheel, as it is called, is a temporary attachment and is no part of the vehicle itself. A bicycle may be propelled presumably in various ways besides that of ordinary propulsion by human agency from the saddle, *e.g.*, it may be propelled before a wind with a sail that is merely a temporary aid or attachment which is independent of the original construction and design of the vehicle. The vehicle was undoubtedly a bicycle, and Mr. Banerji has never disputed his liability to have it treated as such. If the municipal authorities have the right and desire to impose a further burden upon him they must obtain a notification which in clear terms will bring it within the definition and impose an additional liability by way of tax."

To justify imposition of a penalty under Section 271(1)*(a)* (old Section 28(1)*(a)* Income Tax Act, 1961, it has to be construed strictly as a penal clause.[1]

Laws which impose a tax on sales being tax laws are subject to strict construction.[2] A power to enact a law with respect to tax on the sale of goods under Entry 54 of the Constitution Act must, to be *intra vires*, be one relating in fact to sale of goods and accordingly a State Legislature cannot tax transactions which are not sales by merely enacting that they may be deemed to be so. Where the authority to legislate is limited or circumscribed by the Constitution, a fiction which has the effect of extending the scope of an enactment beyond the constitutional limits, must necessarily be invalid. The principle is that a Legislature cannot do indirectly what it cannot do directly.[3]

In the case of fiscal enactments *e.g.*, Madras General Sales Tax Act, 1939, the Courts will strictly construe the material provisions to determine whether an undoubted liability is cast on the subject, for failure to discharge which he could be made to suffer penalty.[4]

While interpreting entries in *Sales Tax Legislation*, there is one cardinal rule of interpretation which must always be borne in mind, and that is, that the words used in the *entries* must be construed neither in any technical sense nor from the scientific point of view, but as understood in common parlance. The words used by the Legislature must be given their popular sense meaning, "that sense which people conversant with the subject-matter with

1. *Radhakrishna Trading Co.* v. *I.T. Commissioner*, AIR 1955 Mad 367.
2. *Ganan Dinkerley & Co.* v. *State of Madras* , AIR 1954 Mad 1130. (The word 'business' employed in the definition of 'dealer' in the Madras General Sales Tax Act is used in the sense of buying or selling goods with a view to earn profit. The assessees who were a firm of engineers and contractors supplied foodgrains for the benefit of the workmen and recovered the cost of these by debiting the value against their wages. There was no element of profit. It was intended merely as a scheme for the amelioration of the workmen and it was in no sense a business of selling goods within the meaning of the definition. Under the circumstances the assessees were not liable to pay sales tax on the turnover in respect of sale of foodgrains to their workmen).
3. *Century Club, Bangalore* v. *State of Mysore*, AIR 1967 Mys 25. [In this case it was held that Section 2(1)*(k)* and 2(1)*(t)* of Mysore Sales Tax Act cannot apply to supplies of goods or articles at fixed rates by the Management of a Members' Club registered or unregistered to its constituent members as they are not sales within the meaning of the Act].
4. *In re* M.P. Kumaraswami Raja, AIR 1955 Mad 326.

which the statute is dealing would attribute to it."[1]

Some useful expositions about tariff entries are made by the Supreme Court in *Akbar Badrūdevi Jeivani of Bombay* v. *Collector of Custom, Bombay*[2] and so the same is extracted hereunder : There is no doubt that the general principle of interpretation of tariff entries accruing in a text (tax) statute is of commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the tariff entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory content in which the said word was used then the said principle of interpretation should not be applied. Trade meaning or commercial nomenclature would be applicable of a particular product description occurred by itself in a tariff entry and there is no conflict between the tariff entry and any other entry requiring to reconcile and harmonise that tariff entry with any other entry.[3]

In taxing statutes which have to be construed strictly, it is the natural meaning of the word which must be adhered to.[4] Resort should be had not to the scientific or technical meaning[5] but to the meaning attached to the objects of taxation by those dealing in them in their commercial sense.[6]

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1. *Deputy Commissioner, Sales Tax* v. *G.S. Pai & Co.*, AIR 1980 SC 611; *Minerals and Metals Trading Corporation of India* v. *Union of India*, (1972)2 SCC 620; *Delhi Cloth and General Mills* v. *State of Rajasthan*, AIR 1980 SC 1552; *Dunlop India, Ltd.* v. *Union of India*, (1976)2 SCC 241; *State of Orissa* v. *Nalanda Sales Corporation*, (1994)93 STC 581 (Ori); *State of U.P.* v. *Renusagar Power Co.*, 1988(4) SCC 59; *Aditya Mills Ltd.* v. *Union of India*, (1988)1 SCC 315; *(M/s.) Asian Paints India Ltd.* v. *Collector of Central Excise*, (1988)2 SCC 470.
2. AIR 1990 SC 1579 : (1990)1 JT 256.
3. In *Union of India* v. *Delhi Cloth & General Mills*, 1963 Supp. (1) SCR 586 : AIR 1963 SC 791, doctrine was applied; *see* also in *Dunlop India Ltd.* v. *Union of India*, (1976)2 SCR 98 : AIR 1977 SC 597; contra *K.V. Varkey* v. *Agricultural of Income-tax & Rural Sales Tax Officer*, (1954)5 STC 348 : AIR 1956 Tra. Co., 105 and *Cannanore Spinning and Weaving Mills Ltd.* v. *Collector of Customs and Central Excise, Cochin*, (1970)2 SCR 830 : AIR 1970 SC 1950; *Healthways Dairy* v. *Union of India*, AIR 1976 SC 2221 (Spl. Bench); both principles explained in *Collector of Central Excise, Kanpur* v. *Krishna Carbon Paper Co.*, (1989)1 SCC 150 : AIR 1988 SC 2223. In AIR 1976 SC 2221 : "It is by new well known that *custom tariff* import Scheme hardly let any scope to go in for trade parlance or common parlance because it statutorily defined almost everything with the help of rules of interpretation and explanatory notes. In such a scheme the statutory definition must prevail over the trade parlance or any other aids to interpretation; SC quoted observation of Pullock B in *Grenfell* v. *Inland Revenue Commissioner*, (1876)1 Ex. D. 242, 248.
4. *Akhtar Abbas* v. *Asst, Collector Central Excise*, AIR 1961 MP 353, 356 (Pandey, J.). *See* also 16 L Ed 102, 104.
5. *S.R. Tamrakar* v. *State*, AIR 1978 MP 97 (HB); *see* also *Ghulam Mohiudden* v. *Board of Revenue*, AIR Mad 327 (FB); *Cycle Halt of Jaipur* v. *Board of Revenue*, AIR 1977 Raj 172 (FB); *Nihal Singh* v. *State*, AIR 1975 P & H 48.
6. *Minerals and Metal Trading Corporation* v. *Union of India*, (1972)2 SC 620, 623, 625 (Grover, J.); *Royal Hatcheries Pvt.* v. *State of Andh Pra*, AIR 1994 SC 666; *(M/s.) Champaran Sugar Co., Ltd.* v. *State of Bihar*, 1989 Pat LJR 543; *Chitta Ranjan Saha* v. *State of Tripura*, (1989)2 Gau Law Reports 101; *(M/s.) Jamuna Flour and Oil Mills* v. *Bihar State Pollution Control Board*, 1989 BLJR 195; *Union of India* v. *Gujarat Woollen Felt Mills*, AIR 1977 SC 1548; *(M/s) Annapurna Biscuit Mfg Co., Kanpur* v. *Commissioner of Sales Tax, U.P., Lucknow*, AIR 1981 SC 1656; *Delhi Cloth and General Mills Co., Ltd.* v. *State of Rajasthan and Ors*, (1980)46 STC 256; *Collector of Central Excise, Bombay 1 and Another* v. *(M/s.) Parle Exports (P.) Ltd.*, 1988(4) JT (SC) 454; *Collector of Central Excise, Kanpur* v. *Krishna Carbon Paper Co.*, AIR 1988 SC 2223; *Dy. Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam* v. *M/s. Coco Fibres*, AIR 1991 SC 378; *Plasme Macine Mfg. Co. (P.) Ltd.* v. *Collector of Central Excise, Bombay*, AIR 1991 SC 999; *Brooke Bond India Ltd.* v. *State of Gujarat*, (1991)2 Guj LR 1225; *Cable Corporation of India Ltd.* v. *Municipal Corporation of Greater Bombay*, AIR 1992 Bom 21; *(M/s.) Filterco* v. *Commissioner of Sales Tax, MP*, AIR 1986 SC 626 (5J) : 1986 Tax LR 2275 : (1986)2 SCC 103 : (1986)24 Taxman 797 : (1986) UPTC 476 : 1986 SCC (Tax) 356 : (1986)61 STC 318 : (1986)8 ECC 150 : (1986)1 SCJ 333 : (1986) Taxation 81 (7) : (1986) VKN 150 : (1986)2 Supreme 366 : (1986)16 STL 162 : (1986)6 ECR 558 : 1986 STT (SC) 1 : 1986 KLT 180 : 1986 Jab LJ 306 : (1986)2 UJ (SC) 202; *Commissioner of Sales Tax, U.P.* v. *(M/s.) Bansal Bottle Company*, 1983 UPTC 420.

A fiscal statute like the Stamp Act is to be strictly interpreted, and where words in such an enactment are capable of lending themselves to an obvious interpretation which is favourable to the subject, there is every reason to prefer the same.[1] The Cess Act is a fiscal enactment.[2]

Taxing statutes have to be strictly construed and the requirements thereunder have to be strictly complied with. In order that the Municipal Body may assume powers for the purpose of enhancing the tax of the assessee fixed by the General Assessment, they must be satisfied, as provided in the last clause of Section 95 of the Bihar and Orissa Municipalities Act, (7 of 1922) that it is so on account of mistake or fraud.[3]

In interpreting a fiscal statute, the Court cannot proceed to make good deficiencies if there be any; the Court must interpret the statute as it stands and in case of doubt in a manner favourable to the tax payer.[4] But where by the use of words capable of comprehensive import, provision is made for imposing liability for penalty upon the tax-payers guilty of *fraud, gross negligence* or *contumacious conduct*, an assumption that the words were used in a restricted sense so as to defeat the avowed object of the Legislature *qua* a certain class will *not* be lightly made.[5]

The rule of strict construction of taxing statutes is 'often misunderstood'. It is not the same thing as saying that a taxing law should not receive reasonable construction.[6]

It is well settled that the principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as charging provision or provision imposing penalty and not to those parts of a statute which contain machinery provision.[7]

English 'authorities' can be a useful guide on 'analogous provisions', fundamental concepts and general principles unaffected by the specialties of English Income-tax Statutes.[8]

In taxing statutes 'words of everyday use' are to be construed 'as understood in common parlance' and not in their scientific or technical sense.[9]

13. Fair interpretation.—It is true that a taxing provision must receive a strict construction at the hands of the courts and if there is any ambiguity the benefit of that ambiguity must go to that assessee. But that is not the same thing as saying that a taxing provision should not receive a reasonable construction. The tendency of modern decisions upon the whole is to narrow down materially the difference between what is called a strict and a beneficial construction.[10]

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1. *Ram Chand* v. *Moti Thad*, AIR 1962 All 353, 355; *Surendra Pal Singh* v. *State of U.P.*, (1995)1 All RC 71 (All) (DB).
2. Vide *(M/s.) Saraswathi Sugar Mills* v. *Haryana State Board*, AIR 1992 SC 224.
3. *Chairman Municipality of Balasre* v. *Moulvi Muhammad Abdul Sattar Khan*, AIR 1954 Orissa 224.
4. *Leelabai* v. *State of Maharashtra*, 1979 Mah LJ 69.
5. *C.A. Abraham* v. *Income-tax Officer*, AIR 1961 SC 609, 612; *Income-tax Officer, Tuticorin* v. *T.S. Devinatha*, AIR 1968 SC 623; *Kamappa Mudaliar* v. *State of Madras*, AIR 1968 Mad 329; *Maganlal* v. *Bedi Gram Panchayat*, (1967)8 Guj LR 956.
6. *Murarilal* v. *B.R. Vad*, AIR 1976 SC 313; *Broach Dist. Coop. Cotton Sales, Ginning and Pressing Society Ltd.* v. *C.I.T.*, (1989)2 SCC 679 : 1989 SCC (Tax) 351 : (1989)177 ITR 418; *C.I.T.* v. *Strawford Manufacturing Co., Ltd.*, (1989)2 Supp 8 SCC 523 : (1989)177 ITR 431; *Bajaj Tempo Ltd., Bombay* v. *Commissioner of Income-tax Bombay City, III Bombay*, (1992)3 SCC 78.
7. *Indian Explosives, Ltd.* v. *Kanpur Nagar Mahapalika*, 1982 ALJ 1140 (DB).
8. *Nawan Estate* v. *C.I.T., W.B.*, AIR 1977 SC 153.
9. *Porrits and Spencer* v. *State of Haryana*, AIR 1970 SC 300; *see* also *Union of India* v. *Gujarat Woollen Felt Mills*, AIR 1977 SC 1548, case under Central Excise and Salt Act, 1944; *(M/s.) Oswal Agro Mills Ltd.* v. *Collector of Central Excise*, AIR 1993 SC 2228 : 1993(3) JT (SC) 260; *Ess Dee Carpet Enterprises* v. *Union of India*, (1990)1 SCC 461; *Collector of Central Excise, Kanpur* v. *Krishna Carbon Paper Co.*, AIR 1988 SC 2223; *(M/s.) Champaran Sugar Co., Ltd.* v. *State of Bihar*, 1989 Pat LJR 543.
10. *Rajputana Agencies, Ltd.* v. *CIT*, AIR 1959 SC 265.

If the intention of the Legislature is clear and beyond doubt then the fact that the provision could have been more artistically drafted cannot be a ground to treat any part of a provision as otiose.[1] While it is the duty of the Court to see that the public revenue is safeguarded, it is equally the duty of the Court to see that a litigant is not required to pay in court-fees more than the law requires him to pay.[2] The fair rule of construction of taxing statutes, thus, appears to be to adopt a reasonable construction of the words used in the Act without leaning to the one side or the other, neither as the guardian of the revenue nor as protector of the taxed subject to resist tax aggression.[3] There is no question of literal interpretation of taxing statute where the language is plain and unambiguous.[4] As observed in *In re* Scottish Widows Fund and Life Assurance Co., [5] in one sense it is true that a taxing statute should be construed liberally and favourably to the subject, but on the other hand, equality and impartial justice in the incidence of taxation are of greater moment and the statute should be construed so as to promote that equality and that impartiality of justice. There is no presumption in favour of the exemption of the few from the incidence of a general tax. The presumption is for equality and rather against the partiality which is involved in special exemptions.[6] In construing taxing enactment very little weight attaches to the argument that because a specific exemption from tax is found in it, other cases not specifically exempted must be deemed to have been charged to tax. Such exemptions are often introduced under the influence of excessive caution to quiet the fears of the timid and the unduly apprehensive.[7] In *Coltness Iron Co.* v. *Black*,[8] Lord Blackburn, in a passage quoted with approval by Lord Herschell in *Colquhoun* v. *Brooks*,[9] said : "The object of those framing a taxing Act is to grant to Her Majesty a revenue, no doubt they would prefer, if it were possible to raise that revenue equally from all, and as that cannot be done, to raise it from those on whom the tax falls with as little trouble and annoyance and as equally as can be contrived; and when any enactments for the purpose can bear two interpretations it is reasonable to put that construction upon them which will produce these effects." That construction should be avoided which involves injustice and that construction should be adopted which produces the greatest harmony. Taxing statutes should be construed to suppress the mischief against which they are directed and to advance the intended remedy.[10] There is no reason why a word of wide import should be given a narrow meaning when there is nothing in the context or underlying policy of the Legislature to import any such limited meaning.[11]

No rule or principle of construction requires that close reasoning should not be employed to arrive at the true meaning of a badly drafted entry in an Excise Act.[12] In *(M/s.) Indian Cable Co., Ltd., Calcutta* v. *Collector of Central Excise, Calcutta*,[13] it is pointed out that in construing

1. *Commissioner of Wealth Tax, Bihar* v. *Kripashanker*, 1971 ITR 763, 768 (SC) : (1971)2 SCC 570, 574 (Hegde, J.); *State of Tamil Nadu* v. *Kandaswami*, AIR 1975 SC 1871; quoted in *(M/s.) Goodyear India Ltd.* v. *State of Haryana*, AIR 1990 SC 781: (1989)4 JT (SC) 229.
2. *Mung Nyi* v. *Municipal Committee, Mandalay*, ILR 12 Rang 335 : AIR 1934 Rang 268, 270.
3. *M.CT. Bank* v. *Commissioner of Income-tax, Madras*, ILR 1963 Mad 222 : (1963)2 MLJ 102.
4. *Ratnaswamy* v. *Subbuswami Iyer*, AIR 1967 M 180 (Natesan, J.) : Court-fee Refunded.
5. (1881)1 Tax Cases 10; *Commissioner of Income-tax, Bihar and Orissa* v. *Viseshwar Singh*, AIR 1935 Pat 1935 Pat 342, 343 : ILR 14 Pat 785 (SB).
6. *In re* Young, (1881)1 Tax Cases 59.
7. *Provincial Government, Madras* v. *Verabhadrappa*, AIR 1950 Mad 521.
8. 6 App Cas 315, 330; followed in *Bowles* v. *Federal Commissioner of Taxation*, 26 CLR 205, 216.
9. 14 App Cas 493, 505.
10. *Buttu Lal Makhanlal Jain* v. *Commissioner of Sales Tax, M.P.*, 1962 MPLJ 915 : 1962 Jab LJ 657.
11. *P. Orr & Sons (P.) Ltd.* v. *Collector of Customs*, AIR 1965 M 312, 314 (Rama Chandra Iyer, C.J.).
12. *J.K. Steel Ltd.* v. *Union of India*, AIR 1970 SC 1173; *Shailendra Kumar* v. *Union of India*, (1989)175 ITR 494 (All).
13. AIR 1995 SC 64.

the relevant items of entry, in fiscal statutes, if it is one of every day use, the concerned authority must normally construe it, as to how it is understood in common parlance or in the commercial word or trade circles; it must be given its popular meaning and the meaning given in the dictionary must not prevail.

Machinery Section.—In the case of machinery section in a taxing statute, that construction should be preferred which makes the machinery workable,[1] and the principle of strict construction applicable only to charging provisions or a provision imposing penalty, is not applicable to these parts of the taxing statute which contain machinery provisions.[2]

14. Exemptions from taxation.—It is true that when in a fiscal provision if benefit of exemption is to be considered this should be strictly considered. But the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented.[3] Where an exemption is conferred by a statute by an exemption clause, that clause has to be interpreted liberally and in favour of the assessee but must always be without any violence to the language used. The rule must be construed together with the exempting provisions, which must be regarded as paramount.[4] If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority.[5] A provision intended for the benefit of the tax-payer must be construed liberally in favour of the tax-payer.[6]

Claims of exemption must fall within the four corners of the exemption provision.[7] One of the settled principles of construction of an exemption notification is that it should be construed strictly but once a good is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly and once good is to fall even narrowly in any of these categories there appears no justification to exclude it[8] :

> Provision providing for exemption in taxing statutes has to be construed strictly; where two views of the exemption are possible, it need not necessarily to be construed in favour of the subject.[9] It is useful to study the whole judgment for number of judgments, mostly of the

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1. *Ramjimal* v. *Piparia Municipality*, AIR 1959 MP 82, 84 (FB); *Commissioner of Income-tax, Bengal* v. *Mahabram Rumjidas*, AIR 1940 PC 124; *Bhimraj Pannalal* v. *Commissioner of Income-tax*, AIR 1957 Pat 638; *Piara Lal* v. *State of Punjab*, 68 Punj LR 695; *Khem Chand* v. *Malhotra*, AIR 1963 Punj 383, 386; *Municipal Committee, Harda* v. *Bansilal*, 1971 MPLJ 846, 850-51.
2. *C.I.T., Calcutta* v. *National Taj Traders*, AIR 1980 SC 485.
3. *(M/s.) Swadeshi Polytex Ltd.* v. *Collector of Central Excise*, AIR 1990 SC 301 : (1989)44 ELT 794.
4. *Commissioner of Agricultural Income-tax* v. *Raja Jagdish Chandra Deo*, 53 CWN 596; see also *Upper India Chamber of Commerce* v. *Commissioner of Income-tax C.P. and U.P.*, AIR 1948 All 64 at p. 70; *Petron Engineering Construction Pvt., Ltd.* v. *Central Board of Direct Taxes*, AIR 1989 SC 501 : (1989) Tax LR 335 : (1988)4 JT 666 : (1988)41 Taxman 294 : (1989)75 CTR 20 : (1989)1 Comp LJ 43 : (1989)175 ITR 523 : (1989)92 (2) Taxation 3 : 1989 ATJ 246 : 1989 UPTC 106; *Bindal Agro Chem. Ltd.* v. *State of M.P.*, 1991 JLJ 79; *Commissioner of Income Tax, Amritsar* v. *Strawboard Mfg. Co. Ltd.*, (1989)177 ITR 431 (SC).
5. *Hansraj* v. *Dave*, (1969)2 SCR 253, 259 (Ramaswami, J.)
6. *Nawab Ghazzi* v. *Asst. Collector, Estate Dutty*, AIR 1965 Andh Pra 218, 220 (Gopalakrishnan Nair, J.).
7. *Vidarbha Co-op. Marketing Society* v. *CIT*, (1985)156 ITR 422 (Bom).
8. Vide *(M/s.) Bombay Chemical (P) Ltd.* v. *Collector of Central Excise, Bombay*, 1995 AIR SCW 2175; *Mac Laboratories (P) Ltd.* v. *Collector of Central Excise, Bombay*, (1995)2 SCC 56; *Rajasthan Spinning and Weaving Mills Ltd., Bhilwara* v. *Collector of Central Excise, Jaipur*, (1995)4 SCC 473.
9. *State Level Committee* v. *M/s. Morgardshammar India Ltd.*, AIR 1996 SC 524 : 1996 All LJ 157 (SC) : 1995 AIR SCW 4127.

Supreme Court were discussed. It is useful to note that in this case the Supreme Court did not agree to the view expressed in *Collector of Central Excise, Bombay* v. *Parle Exports (P) Ltd.*,[1] to the effect that where two views of the exemption notification are possible, it should be construed in favour of the subject.

In *Liberty Oil Mills (P) Ltd., Bombay* v. *Collector of Central Excise, Bombay*,[2] it was held that in the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the Revenue and not in favour of the assessee, relying on *Novopan India Ltd.* v. *Collector of Central Excise and Customs*.[3]

In a taxing Act provisions establishing an exception to the general rule of taxation are not to be construed strictly against those who invoke their benefit. In *Warrington* v. *Furbor*,[4] Lord Ellenborough said : "I think that when the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out, and we should give a liberal construction to words of exception, confining the operation of the duty." In *Moorey* v. *Commissioners of Taxation*.[5] Barton, J., observed : :As this is the statutory authority for the tax, the amount only of which is to be declared by separate enactment, nothing but the most cogent expressions in other parts of the Act could have the effect of controlling its clear terms.....to take away from its effect, 'you must have,' as Jessel, M.R., said in *Bentley* v. *Rotherhem Board of Health*,[6] a 'context even more plain, or at least as plain—it comes to the same thing—as the words to be controlled.' Applying Lord Wensleydle's golden rule, I find first a clear exclusion of all gross incomes under £ 200 and in the sense, justly attributed to the rule by Willes, J., in *Christopherson* v. *Lotinga*,[7] I fail to find the expressions having that effect anything which would be so absurd with reference to the other words of the statute as to amount to a repugnance."

The principle that in case of ambiguity a taxing statute should be construed in favour of the tax-payer does not apply to a provision giving a tax-payer relief in certain cases from a section clearly imposing a liability.[8] In construing an Act which imposes a burden, doubts should no doubt be resolved in favour of the tax-payer but this general rule cannot be applied either when the taxing provision is clear and explicit or when a doubt arises in regard to a provision granting a deduction of an exemption from payment of tax. Any such machinery or plant in the second proviso to Section 10(2)*(vii)* of the Income Tax Act refers to the machinery or plant in respect of which the allowances is to be given under that clause. Indeed the position has been made clear and placed beyond doubt by the subsequent amendment of 1946 which added the word 'such' in Clause *(vii)*. The words 'used for the purpose of business' obviously mean used for the purpose of enabling the owner to carry on the business, and earn profits in the business. In other words, the machinery or plant must be used for the purpose of that business which is actually carried on and the profits of which are assessable, at least for a part of the accounting year. The proviso can have no application to sale of machinery and plant which had not been used for the purpose of business carried on in the accounting year.[9]

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1. (1989)1 SCC 345 : AIR 1989 SC 644.
2. (1995) SCC 451.
3. 1994 Suppl. (3) SCC 606 : JT (1994)6 SC 80.
4. 8 East 245 followed in *Armytage* v. *Wilkinson*, 3 AC 355, 369.
5. 3 CLR 221, 243-44.
6. 4 Ch D 588, 592.
7. 33 LJCP 121, 123.
8. *Rangaswami Chettiar & Co.* v. *Madras Govt.*, AIR 1957 Mad 301, 309.
9. *Liquidators of Pursa, Ltd.* v. *Commissioner of Income-tax, Bihar*, 1954 SCJ 294 : AIR 1954 SC 253 : 1954 SCR 767.

In *In re* Nirabai,[1] it was held that an exemption must be strictly construed in favour of the State. Sutherland in his *Statutory Construction*[2] says :

"As a general rule grants of tax exemptions are given a rigid interpretation against the assertion of the tax-prayer and in favour of the taxing power. The basis for the rule here is the same as that supporting a rule of a strict construction of positive revenue laws—that the burdens of taxation should be distributed equally and fairly among the members of society. However, exemptions claimed by the State or its sub-divisions are usually liberally construed and the same rule has frequently been applied to exemptions made in favour of charitable organisation."

Brewer, J., stated the reasons thus in *Stahl* v. *The Education Association of the Methodist Church* :[3]

"All property receives protection form the State. Every man is secured in the enjoyments of his own, no matter to what use he devotes it. This security and protection carry with them the corresponding obligation to support. It is an obligation which rests equally upon all. It may require military service in time of war, or civil service in time of peace. It always requires pecuniary support. This is taxation. The obligation to pay taxes is co-extensive with the protection received. An exemption from taxation is a release from this obligation. It is the receiving of protection without contributing to the support of the authority which protects. It is an exception to a rule, and is justified and upheld upon the theory of peculiar benefits received by the State from the property exempted. Nevertheless, it is an exception; and they who claim under an exception must show themselves within its terms."

In *Bank of Commerce* v. *Tennesse*,[4] the following further reasons are given :

"Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of anyone to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded on plain language. There must be no doubt or ambiguity used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implications will be indulged in for the purpose of construing the language used as giving the claim for the exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power."

And yet, where an Act, after imposing a stamp on contracts, exempted those which were made relative to the sale of goods, a guarantee for the payment of the price on such a sale was held included in the exemption, the same words being susceptible of meaning different things when used to impose a tax, or to exonerate form it.[5] It is to be observed that all exemptions from taxation increase the burden on other members of the community and should, therefore, be deprecated,[6] Crawford on *Statutory Construction*,[7] opines :

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1. 29 Bom 203; *Art Emporium* v. *State of Orissa*, (1980)50 CLT 547 (DB).
2. Volume 3, Ed. 3 at p. 296; quoting *Providence Bank* v. *Billings*, (1830)29 US 514 : 7 L Ed 939; *Tucker* v. *Fergusson*, (1874)89 US 527 : 22 L Ed 805; *US* v. *Denver & R.G.R. Co.*, (1893)150 US 1 : 87 L Ed 975.
3. 54 Kan 542 : 38 Pac 796.
4. 161 US 134, 145 : 40 L Ed 546.
5. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 280; quoting *Rein* v. *Lane*, 2 QB 144 (*per* Blackburn, J.).
6. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 281; quoting *Inland Revenue Commissioners* v. *Forrest*, (1899)15 AC 334, (*per* Lord Halsbury, L.C.).
7. At pp. 506-508.

"Provisions providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognised, the person or property claimed to be exempt must come clearly within the language apparently granting the exemption....Moreover exemption laws are in derogation of equal rights, and this is an equally important reason for construing them strictly ....One other possible instance exists in which a tax law may be liberally construed. If the law is designed to prevent fraud upon the revenue, even though it is a penal Act, some decisions favour a liberal construction. Such a statute, however, is more properly a statute against fraud rather than a taxing statute, and for this reason properly subject to a liberal construction in the Government's favour."

The English law as to exemption of the Crown and Crown property from payment of tolls, poor rates and other taxes, local or imperial, imposed by statute rests, partly upon historical reasons and principally upon judicial decisions which do not proceed a course of reasoning of principle which will be binding on Indian Courts; according to the uniform course of Indian legislation, statutes imposing duties or taxes bind Government as much as its subjects, unless the very nature of the duty or tax is such as to be inapplicable to Government, and whenever it is the intention of the Legislature to exempt Government from any duty or tax which in its nature is not applicable to Government the Government is specially exempted, and this is specially so in regard to taxes imposed by the Legislature for the benefit of local authorities and in particular Municipalities.[1]

In Australia, Barton, J., observed in *Burt* v. *Commissioner of Taxation*[2] :

"The several deductions allowed by Section 30 are exceptions to the general rule of taxation prescribed by the Act. Where the construction of such exceptions is seriously in doubts the interpretation should favour those whose claims are based upon the exceptions. For that position there is the highest authority, if authority be necessary. In *Armytage* v. *Wilkinson*,[3] the Judicial Committee express their dissent from the principle that in a taxing Act provisions establishing an exception to the general rule of taxation are to be construed strictly against those who invoke their benefit. They point out that such a principle is opposed to the rule expressed by Lord Ellenborough in *Warrington* v. *Furbor*[4] and followed and confirmed in *Hobson* v. *Neale*.[5] Lord Ellenborough's words are[6] : "I think that when the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out; and we should give a liberal construction to words of exception, confining the operation of the duty. It is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction need arise."

In the same case Higgins, J. (at p. 487) expressed himself thus :

"Assuming, however, that the words are equally open to the contrary interpretation, there are certain rules of construction which ought to turn the balance in favour of the interpretation which I have adopted. One is that a liberal construction ought to be given to words of exemption confining the exception of the duty.[7] Another is that construction should

1. *Bell* v. *Municipal Commissioners of the City of Madras*, ILR 25 Mad 457, 501, 502.
2. 15 CLR 469, 482.
3. 3 AC 355, 369.
4. 3 East 242.
5. 8 East 242 at p. 245.
6. 17 Beav 178.
7. *Armytage* v. *Wilkinson*, 3 AC 355.

be avoided which involves injustice in this case to the pastoralist; and that construction should be adopted which produces the greatest harmony and the least inconsistency as between the different classes of tax-payers."

It is no doubt the object of an exemption is to narrow the effect of general taxing words. But where the taxing words are not general, but special, where they select a special class of goods for taxation, the Court will be disinclined to hold, unless forced by plain words to that conclusion, that the Legislature has in the exemption freed from duty the greater proportion of the class of goods which it has specially made liable to duty in the taxing item.[1] When exemption from taxation or deduction is claimed, they should not be extended beyond the express requirements of the language of the provision.[2] Arguments urging upon the broadening of a tax-deduction statute beyond its plain meaning to avoid harsh results are more properly addressed to the Legislature than to the Courts.[3]

Where it has been provided for in the statute that a particular commodity would be exempted from sales tax, exemption cannot be claimed by way of analogy or a *priori* reasoning. Omission cannot be supplied by implication or by analogy. Exemption of rice does not warrant exemption of *'idlies'* and *'doshas'* from the sales tax.[4]

Since all exemptions from taxation increase the burden on other members of the community they should be deprecated, except to the extent permissible by the express language of the statute itself.[5] All exemptions from taxation must be strictly construed and must not be extended beyond the express requirements of the language used.[6] A word requiring interpretation for purpose of grant of exemption from tax must be interpreted according to its popular sense.[7] Taxation laws are not in the nature of penal laws; they are substantially remedial in their character and are intended to prevent fraud, suppress public wrong and promote the public good. They should be, therefore, construed in such a way as to accomplish those objects.[8]

It is advantageous to quote from *Union of India* v. *(M/s.) Wood Papers Ltd.*[9] the exposition of principle of interpretation about exemption from tax the passage runs thus : "Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, especially in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with specific objective etc. That is why its construction, unlike charging provision, is like an exception and on normal principle of construction or interpretation of statutes, it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exemption or exception becomes applicable no rule or principle requires it to be construed strictly. Truly speaking literal and strict construction of an exempted provision are to be invoked at different stages of

1. *Chandler & Co.* v. *Collector of Customs*, 4 CLR 1719, 1734.
2. *Tungbhadra Industries* v. *Commercial Tax Officer*, AIR 1955 Andh 257; *Inder Singh* v. *Sales Tax Officer*, ILR (1961)11 Raj 268 : 1961 Raj LW 314.
3. *Helvering* v. *Ohio Leather Co.*, 87 L Ed 113, 121 : 317 US 102 (Murphy, J.).
4. *M.A. Gangapathy Iyer* v. *Hyderabad State*, AIR 1954 Hyd 94.
5. *Inland Revenue Commissioners* v. *Forest*, (1890)15 AC 334.
6. *Art Emporium* v. *State of Orissa*, (1980)50 Cut LT 547 (DB).
7. *Shree Ram Vastra Bhandar* v. *Sales Tax Officer, Raipur*, 1980 MPLJ 282 : 1980 Jab LJ 173 (DB).
8. *Kapildeoram* v. *J.K. Das*, AIR 1954 Assam 170 (*chira* and *muri* do not cease to be cereals, which are exempted under Schedule 3 of the Assam Sales Tax Act, merely because rice or paddy had undergone the process of being flattened or fried in assuming the form of *chira* and *muri*); Helvering North-West Steel Rolling Mills, 85 L Ed 29, 33 (Black, J.).
9. AIR 1991 SC 2049 : 1991(1) JT 151 : (1990)4 SCC 256.

interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject; but once about ambiguity or doubt about applicability is lifted and the subject falls in the notification, then full play should be given to it and it calls for a wider and liberal construction," and reiterated in *Mangalore Chemicals & Fertilisers Ltd.* v. *Dy. Commissioner of Commercial Taxes*.[1]

Invalidity of exemption does not invalidate statute.—No Government can be carried on without taxation. In taxing statutes the presumption is that the Legislature's predominant intention was to tax and the exemptions granted were secondary in importance. If the exemptions are found to be invalid, the presumption is that the Legislature would still have intended that the rest of the statute should be enforced. On the other hand, in statute creating offences, if the exemptions are invalid, and by reason of their invalidity, certain objects or activities would be rendered unlawful and subject to punishment no such presumption can be raised.[2]

Onus on assessee.—If an assessee is under a section of taxing statute assessable to tax, it is for that person to show that he has been exempted.[3] For instance, if exemption is claimed for any item of income received by an assessee, it is for him to show that the receipt does not arise from business and is of a casual or non-recurring nature.[4] In *Income-tax Commissioner, Madras* v. *S.L. Mathias*,[5] their Lordships of the Privy Council speaking through Sir George Rankin observed : "there can be no general presumption that exemption from the provisions of a sub-section is intended as complete exemption from the tax. The distinction is between exempting a class of income in some events and exempting it in all events."

Where the language used in a fiscal statute is clear, questions of hardship and equalities cannot be taken into consideration. But where it is not clear, such considerations may properly be taken into account.[6]

15. Ambiguous words.—As in the case of other statutes, even in the case of a fiscal statute, the rules of interpretation have to be resorted to only when there is genuine doubt about the interpretation or where two opinions are capable of being entertained.[7] An authority to impose a tax or to levy fees cannot be deduced from provisions of doubtful import and when the words used in a statute are capable of two interpretations, one in favour of the taxing authority and the other in favour of the subject, the latter interpretation must hold the field. The reason for these rules is that it is opposed to the well-recognised conceptions governing a progressive state of society to permit statutory bodies to assume by inference from the words of an enactment the authority to impose taxes or to levy fees, as nothing is more liable to abuse than such supposed authority.[8] Hence, if there be any doubt or if there be two alternative interpretations possible,

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1. AIR 1992 SC 152 : 1992(3) JT (SC) 482 : (1991)3 SCR 336 : 1992(1) SCC *(Supp)* 21.
2. *Firm Jaswant Rai Narain* v. *Sales Tax Officer*, AIR 1955 All 585 [Section 3, Proviso 1 as it stood in 1951, and Section 4(1)*(b)* of U.P. Sales Tax Act held severable from the rest of the Act.].
3. *Madras Provincial Co-operative Bank, Ltd.* v. *Commissioner of Income-tax, Madras*, AIR 1933 Mad 489(FB). *See* also *Commissioner of Income-tax* v. *Veeraswami Nainar Bus*, AIR 1965 Mad 533, 535 (Ramchandra Iyer, C.J.).
4. *In re* Amritsar Produce Exchange, Ltd., AIR 1938 Lah 44, 48 : ILR 1938 Lah 706.
5. AIR 1939 PC 1, 6.
6. *Commissioner of Income-tax, Madras* v. *C.S. Sastri*, (1959)1 Mad LJ 168.
7. Vide *Commr. of Income Tax, Gujarat* v. *(M/s.) Cellulose Products of India Ltd.*, AIR 1991 SC 2285 : 1991 Tax LR 981 : (1991)3 JT 599 : (1991)4 SCC 467 : 1991 AIR SCW 2635.
8. *Mewa Ram* v. *Muttra Municipal Board*, AIR 1939 All 466, 47 : ILR 1939 All 770 (FB) (taxes on stands for motor cars, lorries and hackney carriages); *Central India etc., Co. Ltd.* v. *Municipal Committee, Wardha*, AIR 1958 SC 341, 344.

taxing statute must be interpreted in favour of the assessee and against the Revenue Authority.[1] This rule cannot, however, be applied when evasion is unlawful.[2] But an evasion arising from the bar of limitation is not unlawful, and as such the rule is applicable.[3] In construing Income Tax Acts if there is any ambiguity of language, the benefit of that ambiguity must be given to the assessee.[4] It is a well-known and well -recognized rule that in a statute imposing pecuniary burden, if there is a reasonable doubt with regard to the construction of any burdensome provisions, the construction most beneficial to the subject is to be adopted.[5] If there is any doubt, it is the duty of the Court not to impose it,[6] for the intention to impose a tax or duty cannot be inferred from ambiguous words.[7] The principle has often been laid down that taxing Acts are to be construed strictly. In the case of a taxing statute in the event of there being a doubt, that should be resolved in favour of the subject. But this cannot be extended to cases where the words are reasonably capable of only one meaning and they are unequivocal. That principle would govern only when the words are susceptible of two meanings.[8] Where the Legislature has given the Crown the revenue, that revenue must be exacted, however, burdensome; but where the Legislature has not clearly given the Crown the revenue, the Acts cannot be strained or supplemented by any implications to effect that object.[9] Where the interpretation of a fiscal enactment is open to doubt, it should be construed favourably to the subject.[10]

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1. *Commissioner of Agricultural Income-tax* v. *Tarak Nath*, 53 CWN 725, 728; *Assam Cotton Mills Ltd.* v. *Commissioner of Taxes*, (1988)2 Gau LR 398, referring to *Tungabhadra Industries Ltd.* v. *C.T.O., Kurnool*, (1960)11 STC 827; *Madan Singh* v. *Collector, Sikar*, AIR 1954 Raj 104; *Collector of Sales Tax, Bombay* v. *Parimal Bros.*, 64 Bom LR 705; *Lala Purushottam* v. *Khem Chand*, AIR 1963 Him Pra 27; *Rameshwar Lal Sarup Chand* v. *Excise Taxation Officer*, AIR 1964 Punj 1 : ILR (1963)2 Punj 370 (FB); *C.I.T., Madras* v. *T. Sundaram Iyengar (P). Ltd.*, (1975)2 SCWR 256; *C.I.T.* v. *Shahzadanand*, AIR 1966 SC 1342; *State of Punjab* v. *Jullundar Vegetable Syndicate*, AIR 1966 SC 1295; *Commissioner of Wealth Tax* v. *Kripa Shankar Daya Shankar*, (1971)2 SCC 570; *Board of Revenue* v. *Sidhanath Mehrotra*, AIR 1965 SC 1092; *C.I.T.* v. *Vegetable Products Ltd.*, (1973)88 ITR 192 : AIR 1973 SC 927; *Alladi Venkateswarulu* v. *Government of Andhra Pradesh*, AIR 1978 SC 945; *Central India Spinning, Weaving and Manufacturing Co. Ltd.* v. *Municipal Committee, Wardha*, AIR 1958 SC 341; *C.I.T., Punjab* v. *Kulu Valley Transport*, AIR 1970 SC 1734.
2. *Rameshwar Lal Sarup Chand* v. *Excise Taxation Officer*, AIR 1964 Punj 1 (FB).
3. *Rameshwar Lal Sarup Chand* v. *Excise Taxation Officer*, AIR 1964 Punj 1 (FB).
4. *Commissioner of Income-tax, Ahmedabad.* v. *Karamchand Premchand, Ltd.*, AIR 1960 SC 1175, 1182.
5. *Stockton and Darlington Ry. Co.* v. *Barrett*, (1840-44)7 M & G 870; *In re* Thorely, (1891)2 Ch 613; *In re* Micklethwait, (1855)11 Ex 452; *Pryce* v. *Monmouthshire etc. Co.*, (1879)2 AC 197; *Commissioner, Income-tax* v. *Sind Light Ry. Co.* AIR 1932 Sind 189, 197; *Dhan Kumari* v. *Municipal Committee, Saugor*, AIR 1931 Nag 156; Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 278. Where a question of penalty is involved in the matter of the stamping of an ambiguous document and there can be two alternative explanations (whether a bond or promissory note) relating to the character of the document, the one more favourable to the execution should be preferred. According to *Mohd Sadik* v. *Amiya Nath Dutt*, 41 IC 693 (FB) the expression. "W by Chintamon Jena Mirza Bazar, Cuttack" was interpreted as 'written by' and not 'witnessed by' Jena and the document was held to be a promissory note and not a bond.
6. *Baddeley* v. *Gingell*, (1847)1 Exch 319.
7. *Brunton* v. *Stamp Duties Commissioner*, 1913 AC 747; *Ajit Singh* v. *Karachi Muncipality*, AIR 1945 Sind 116.
8. *Motilal* v. *State of Andhra Pradesh*, (1958)2 Andh WR 699 : 10 STC 20.
9. *A.G.* v. *Peek*. (1912)2 KB 192; see also *Maharaja of Kapurthala* v. *Income-tax Commissioner*. AIR 1945 Oudh 35; *Vulcan Insurance Co., Ltd.* v. *Corporation of Madras*, AIR 1930 Mad 626(2) (doubtful or difficult of interpretation).
10. *Seth Rustomji* v. *Crown*, 115 PR 1918 at p. 367 (FB); *Biharilal* v. *Income-tax Commissioner*, ILR 1941 All 54 : AIR 1941 All 135, 140; *Jr. Secretary, Board of Revenue, U.P.* v. *Lalta Baksh Singh*, AIR 1931 Oudh 99, 103 (SB); *Deputy Commissioner, Akola* v. *Muncipal Committee, Basim*, AIR 1931 Nag 45; *Bhimji Naik* v. *Commissioner of Income tax*, AIR 1945 Bom 271, 273; *Nek Mohammad* v. *Emperor*, AIR 1936 All 83 (Municipal Terminal Tax interpreted liberally in favour of the subject); *In re* Court fee Ref No. 1 of 1950 : AIR 1953 TC 104 (FB); *Bangalore Municipality* v. *Messrs N. Sirur & Co.*, 1955 Mys 147; *Ram Narayan* v. *State*, AIR 1953 Assam 58; *Kapildeoram* v. *J.K. Das*, AIR 1954 Assam 170, Motilal J.; *Boal* v. *Ramachar*, AIR 1952 Mys 80; *Vikram Deo* v. *Income-tax Commissioner*, AIR 1955 Orissa 185.

Statutes which impose pecuniary burden or penalties have to be construed strictly and if on a certain point such a statute is silent or its language is ambiguous, the doubt is to be resolved by adopting the construction which is beneficial to the tax-payer and which avoids inconsistency and repugnance among its various provisions or to any constitutional provision.[1]

In the case of doubt, as to whether any additional stamp duty or penalty is or is not chargeable in respect of a document, the decision must be in favour of the subject.[2] If an assessee gets an advantage which the Legislature may not have intended and which he is entitled to on the construction of the statute, the Court should not deprive him of that advantage.[3]

It would be against every principle of justice, equity and good conscience if more court-fee is to be paid on an application for revision than on a plaint in case where the subject-matter in dispute is the same both in revision and in the suit.[4] Where a suit falls under two provisions of the Court Fees Act, that which presses *least heavily on the subject* should be adopted.[5] A taxing statute which also takes away the ordinary jurisdiction of the Civil Courts, must be strictly construed in favour of the subject and against the taxing authority.[6] A construction which would have the effect of making a person liable to pay the same tax twice in respect of the same subject-matter would not be adopted unless the words were very clear and precise to the effect.[7] In a doubtful case it is reasonable to refuse to pay higher court-fee until it is decided that that fee is payable. The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State.[8]

In a taxing statute when the Legislature has used language which in a particular case subjects the assessee to tax and in another case does not subject him to tax, we cannot possibly construe the section against the assessee and hold in favour of the department that the different language used by the Legislature must mean the same thing although obviously and patently they mean entirely different things. Reading Sections 4 and 14(2)*(c)* of the Income Tax Act, the schemes seem to be that if income has accrued or arisen in a B State, if the assessee brings that accumulated income into the taxable territories in the very year when it accrues or arises, then that income becomes liable to tax even though it may have been received in the taxable territories indirectly or constructively. But if the assessee does not choose to send the

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1. *Chandra Industries* v. *Punjab State*, (1972)29 STC 558, 563.
2. *Emperor* v. *Gianchand*, AIR 1946 Lah 265; *White* v. *Aronoon*, 82 L Ed 20, 23 : 302 US 16 (Mc Reynolds, J.).
3. *Broach Co-operative Bank* v. *Commissioner of Income-tax, Bombay*, AIR 1950 Bom 45; *Tobacco Manufacturers (India), Ltd.* v. *State of Bihar*, AIR 1950 Pat 450, 454. In a taxing statute unless the matter is made reasonably clear, the parties are entitled to bring their cases under the less onerous provision of the Act if otherwise they could do so; *Vaithilinga Aiyaswami Aiyar* v. *District Board, Tanjore*, ILR 52 Mad 972 : AIR 1930 Mad 43, 45.
4. *UKYaw Zan* v. *U Tin Hla U*, AIR 1941 Rang 126; *In Kalliappa* v. *Kandaswami*, AIR 1938 Mad 498, in the Lower Appellate Court the plaintiff, who was the appellant, paid as court-fee on his memorandum of appeal Rs. 100. The District Judge held that the correct fee payable was Rs. 412-7.0; the appellant failed to pay the deficit court-fee and the appeal was dismissed. From the dismissal he filed a second appeal in the High Court, which he valued @ Rs. 312.7.0 being a difference between Rs. 412.7.0 and Rs. 100. On that valuation he paid a court-fee of Rs. 35.15.0. The question for decision was as to what was the subject-matter of appeal in the High Court. It was contended that the subject-matter in dispute was the subject-matter of the suit itself. This contention was repealed and the natural and plain meaning of Article 1, Schedule I of the Court-fees Act was held to be that the difference between the court-fee paid and the court-fee demanded is the matter in dispute in the second appeal.
5. *Kisanlal* v. *Co-operative Central Bank, Ltd.*, AIR 1941 Nag 243.
6. *District Board, Jhang* v. *Nanak Chand*, AIR 1937 Lah 319.
7. *Daulat Ram* v. *Municipal Committee, Lahore*, AIR 1941 Lah 40, 43.
8. *Shiban* v. *Abdul Alam*, AIR 1930 Cal 787, 793, 794; *Rachappa Subrao* v. *Shidappa Venkatarao*, AIR 1918 PC 188 : 46 IA 24; *Noksingh* v. *Bholusingh*, AIR 1930 Nag 73, 76.

money into taxable territories but accumulates it in the B State, then a certain concession has been made by the Legislature and the concession is that unless he directly receives that income in the subsequent years or directly brings it into the taxable territories in subsequent years, the income is not liable to tax. Where at the request of the assessee the money was sent by the Mahalaxmi Silk Mills, Ltd., Bhavanagar, to the New Mahalaxmi Mills, Ltd., Bombay, by a cheque drawn in favour of the Bombay Mills, it cannot be held that the sum was directly received by the assessee himself and so the sum was not liable to tax under section 4(1)*(b)(iii)*.[1]

While the principle of construction of a fiscal statute is that any ambiguity in the language of the section should be resolved in favour of the tax-payer and not the State, it is not permissible for a Court to create an ambiguity by interpretation as a preliminary to the grant of relief to the tax-payer to which he would not otherwise be entitled,[2] nor to strain and stress the language of the section so as to enable the tax-payer to escape the tax, when the phraseology of the section takes within its sweep the transaction which is taxable.[3]

The principle is that in a taxing statute, wherever there is ambiguity of language, the ambiguity must be resolved in favour of the person to be taxed rather than the taxing authority. But when a legislation advisedly confers upon the taxing authority two modes of taxation, and the authority chooses a mode which makes it possible to raise a larger amount, it cannot be urged that the second mode is unlawful because the first mode is more beneficial to the citizen.[4]

Where an exemption in a taxing statute is of doubtful making it must be resolved in favour of the assessee. The burden is on the revenue authorities to show that a certain item of receipt sought to be taxed is, in the first instance, liable to be taxed.[5]

16. Intention of the Legislature how far effectuated.—The opinion that statutes passed with the intention of imposing a tax are to be so construed as to defeat that intention, provided the words admit of several constructions and any of the constructions would have that effect; also the opinion that if the words admit of doubt in the mind, either of the tax-collector or the tax-payer, the one ought to refuse to collect and the other to pay, appears to require limitation. Effect is to be given to the intention of the Legislature, to be collected from the context of the whole statute construed with reference to the purposes expressed therein. It is no part of the duty of the Judges to endeavour to defeat the intention of the Legislature, either in respect to the imposition of the tax or otherwise. The whole community has an equal requirement that every part of it should contribute its quota to the general income derived from taxes, and all statutes are to be construed by the rules that tend to discover the intention of the Legislature expressed therein.[6] Chitty, L.J., observed in *A.G.* v. *Beech*[7]:

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1. *Dharmdas Hargovandas* v. *Commissioner of Income-tax*, AIR 1954 Bom 249.
2. *General Commercial Corporation* v. *Income-tax Commissioner*, AIR 1955 Mad 64, 66; *Abdul Karim* v. *Municipality, Gulbarga*, AIR 1967 Mys 127.
3. *Controller of Estate Duty* v. *Alladi Kuppuswamy*, (1977)2 SCC 385 (396).
4. *Hirabhai Ashabhai* v. *State of Bombay*, AIR 1955 Bom 185, 189 [the Legislature empowered the Municipality to levy a water-tax under Section 140*(a)* of the Bombay Municipal Corporation Act or to recover water tax under section 169 of the Act. It is obvious that the Municipality will recover a larger amount by resorting to the mode laid down in Section 169 rather than to the mode laid down in Section 140*(a)*. But if the Legislature has in its wisdom permitted the Muncipality to tax the tax-payer in one way or the other, the tax-payer cannot make a grievance of the fact that he is being taxed more because the Muncipality is exercising its power under section 169 and not under Section 140*(a)*.]
5. *Vikram Deo* v. *Income-tax Commissioner*, AIR 1955 Orissa 185.
6. *R.* v. *Dickson*, (1863)11 WR 919 (Erle, C.J.), affirmed on other grounds in (1865)11 HL Cas 175; *see* also *Powell Lane Manufacturing Co.* v. *Putnum*, (1931)2 KB 305 ; *Newman Manufacturing Co.* v. *Marrables*, (1931)2 QB 297, 304; *(M/s.) D.H. Brothers Pvt. Ltd.* v. *Commissioner of Sales Tax U.P. Lucknow*, AIR 1991 SC 1992 : (1991)3 JT (SC) 378 : 1991 AIR SCW 2119.
7. (1898)2 QB 147; affirmed on other grounds in 1899 AC 53; *Astor* v. *Perry*, 1935 AC 398, 416.

"The right and indeed, the only method of interpretation is to ascertain the intention of the Legislature from the language and the provisions of the Act itself. In construing a statute regard must be had to the ordinary rules of law applicable to the subject-matter and these rules must prevail except in so far as the statutes show that they are to be disregarded; and the burden of showing that they are to be disregarded rests upon those who seek to maintain that proposition. It is incumbent on the Crown when claiming the tax to make out affirmatively that the case falls within the statute. The principles applicable to the interpretation of a taxing Act are laid down in the passage already cited.[1] You must see that the tax is expressly imposed; the subject is not to be taxed, without clear words, and the Act, like every other Act, must be read according to the natural construction of the words."

In construing a taxing statute you cannot speculate as to the general intention of the Legislature.[2] "The only safe rule", as pointed out by Lord Blackburn in *Coltness Iron Co.* v. *Black*,[3] "is to look at the words of the enactment and see what is the intention expressed by those words."

In *A.G.* v. *Carlton Bank*,[4] Lord Russel, C.J., said : "In the course of the argument reference was made on both sides to the supposed special canons of construction applicable to a Revenue Act. For my part I do not accept the suggestion. I see no reason why special canons of construction should be applied to any Act of Parliament and I know of no authority for saying that a taxing Act is to be construed differently from any other Act." Wills, J., in *Styles* v. *Middle Temple Treasurer*, [5] had observed a little earlier : "Though I agree that every tax, if it is to be supported, must be found within the clear language of an Act of Parliament, I am disposed to repudiate the notion of there being an artificial distinction between the rules to be applied to a taxing Act and the rules to be applied to any other Act." "The Crown does not tax by analogy but by statute", said Lord Sumner in *Ormond Investment Co.* v. *Betts*.[6] And Lord Hanworth, M.R., followed this observation of Lord Sumner, in *Dewar* v. *Inland Revenue Commissioner*,[7] when he said : "Either in the clear words of taxing statute the subject is liable or if he is not within the words, he is not liable."

In *Best & Co., Ltd.* v. *Corporation of Madras*,[8] the Madras City Municipal Act, 1919 was invoked by the Madras Corporation to impose a tax on an English Company with sterling capital and it was contended by the assessee that the charging section limited the application of the tax to companies whose capital was in share of a rupee denomination. Chief Justice Schwabe opined therein : "The principle of construction to be applied to taxing statutes is, that if the words of the statute are capable of two otherwise equally opposite constructions, the construction to be adopted is that in favour of the tax-payer; but to ascertain whether two opposite constructions are equally opposite, the ordinary rules of construction of statutes are to be applied."Legislative history of a taxing statute called, in aid, are useful for construing such a provision.[9]

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1. *Tenant* v. *Smith*, 1892 AC 150.
2. *Hart* v. *Federal Commissioner of Land Tax*, 15 CLR 545, 547.
3. 6 AC 315, 330.
4. (1899)2 WB 158, 164; *Best & Co., Ltd.* v. *Corporation of Madras*, AIR 1924 Mad 420, 430 (FB).
5. (1898)68 LJQB 157.
6. 1928 AC 143, 158.
7. (1935)2 KB 351, 360.
8. AIR 1924 Mad 430 : ILR 47 Mad 262; *Mathai Mathew* v. *Thampi*, 1989(I) KLT 138.
9. *Empress Mills* v. *Municipal Committee, Wardha*, AIR 1958 SC 341, 346; *see* also *Helvering* v. *Morganes Incorporated*, 79 L Ed 232, 236 : 299 US 121 (Stone, J.).

His Lordship quoted the observations of Rowlatt, J., in *Cape Brandy Syndicate* v. *Inland Revenue Commissioners*,[1] and of Lord Russel, C.J., in *A.G.* v. *Carlton Bank*[2] and said :

> "Now in this case, we have to see what was the intention of the Legislature, to be deduced from the words used and the surrounding circumstances. The Act purports to impose a tax on every incorporated company (which word, it is admitted, include English Companies) carrying on business within the city, and in terms imposes on its paid-up capital, a tax on the scale shown in the rules in the Schedule. So far, the language clearly indicates an intention to tax all Incorporated Companies. Turning to the rule in the Schedule, we find that the Company has to pay licence fee at a varying rate in rupees, according as its capital is more or less in lakhs of rupees, or, in cases where the capital is an exact amount reckoned in lakhs, then by the amended Act on that amount. It is contended that that limits the application of the tax to companies whose capital is in shares of a rupee denomination. I do not think that is the plain meaning of the words of the statute, or the proper interpretation to be put upon those words, even though they are capable of bearing that construction. I think it is merely stating the scale, in the terms of the currency of this country and I see no difficulty at all in answering the question how many lakhs of rupees is the capital of an English Company with a capital, say, of a million pound sterling. Given the rate of exchange, it merely provides a simple sum in arithmetic. I entirely fail to see how, in stating the scale by reference to the capital in the currency of the taxing country, it can be properly construed to exclude all companies, whose nominal capital is usually expressed in the currency of some other country."

As Griffith, C.J., said during the argument in the case of *Benett* v. *Minister for Public Works*,[3] "that may be the object of the Legislature, but the question is what have they said." To use the words of Lord Macnaghten in *Williams* v. *Permanent Trustee Co. of New South Wales, Ltd.*,[4] the Act of 1898 must "be read and construed as it was enacted. The Court has no authority to tear the Act to pieces and to re-arrange the sections so as to produce an effect which, on the face of the Act as it stands, does not seem to have been intended." To pursue such a process in the case of any Act would be a dangerous departure from the principle. If it can be more dangerous in one case than in another, then the taxing of the subject is the last case for its application,[5] nor can the Court recast the statute, a course open only to the Legislature.[6]

As there is a specific provision in Section 10(2)(*x*) of the Income Tax Act, circumscribing the limits under which commission or bonus paid to an employee is to be allowed as a deduction, that specific provision must prevail, and resort cannot, in those circumstances, be had to Section 10(2)(*xv*) of the Act.[7]

17. Substance and not form to be taken into consideration.—It is a settled rule that in the determination of liability to taxation under a taxing Act, the Court has regard to the substance rather than the form of the transaction sought to be taxed,[8] that is to say, in the case of an instrument that the court is not bound by its apparent tenor but will decide according to the real

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1. (1921)1 KB 64.
2. (1898)2 QB 158; *Heward* v. *King*, 3 CLR 117, 127, 128.
3. 7 CLR 372 at p. 374.
4. 1906 AC 249 at p. 253.
5. *Commissioner of Stamp Duties (N.S.W.)* v. *Simpson*, 24 CLR 209,217.
6. *C.I.T., Bombay* v. *Khatau Makanji Spinning and Weaving Co. Ltd.*, AIR 1960 SC 1022.
7. *N.M. Rayaloo Iyer & Sons* v. *Commissioner of Income-tax & E.P. Tax, Madras*, AIR 1955 Mad 56.
8. *Joint Commercial Tax Officer* v. *Youngmen's Indian Association*, AIR 1970 SC 1212.

nature of the transaction.[1] It is not the name of the tax but its real nature which must determine into what category it falls.[2] At the same time it is not proper to take the motives of the assessee, in bringing about a particular arrangement, into consideration, and a subject is entitled, if he can, in any legal manner, to circumvent the incidence of a particular taxing or financing Act.[3] And especially in the case of an enactment for revenue purposes, such as Court Fees Act, it is open to parties to avail themselves of any camouflage that the law allows and does not forbid. It is not open to a Court in such circumstances to neglect the actual form of the instrument and determine the question of court-fees having regard to what may be said to be the substance of the claim.[4]

"It is trite law", observed Lord Sumner in *Levene* v. *Inland Revenue Commissioners*,[5] "that His Majesty's subjects are free, if they can, to make their own arrangements so that their cases may fall outside the scope of the taxing Acts. They incur no legal penalties and, strictly speaking, no moral censure if, having considered the lines drawn by the Legislature for the imposition of taxes, they make it their business to walk outside them."

18. Evasion.—But Lord Greene observed in *Haward de Wladen* v. *I.R.C.*[6]:

> "For years a battle of manoeuvre has been waged between the Legislature and those who are minded to throw the burden of taxation of their shoulders on to those of their fellow-subjects. In that battle the Legislature has often been worsted by the skill, determination and resourcefulness of its opponents of whom the present appellant has not been the least successful. It would not shock us in the least to find that the Legislature has determined to put an end to the struggle by imposing the severest penalties. It scarcely lies in the mouth of the tax-payer who plays with fire to complain of burnt fingers."

Odgers in *Construction of Deeds and Statutes*,[7] says : "Grove, J., said,[8] the word 'evasion', may mean either of two things. It may mean an evasion of the Act by something which, while it evades Act, is within the sense of it, or it may mean an evasion of the Act by doing something to which the Act does not apply.' The first of these methods suggests underhand dealing, the second merely the intentional avoidance of something disagreeable which is a wholly different thing. There is no obligation not to do what the Legislature has not really prohibited and it is not evading an Act to keep outside it." Lord Cranworth has said in an earlier case, *Edwards* v. *Hall*[9] : "I never understood what is meant by an evasion of an Act of Parliament; either you are within the Act or you are not within it; if you are not within it you have a right to avoid it, to keep out of the prohibition." Wills, J., observed in *Jefferies* v. *Allexander*[10] : "To

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1. *Commissioner of Stamp Duties (N.S.W.)* v. *Perpetual Trustee Co. Ltd.*, 21 CLR 69, 75; *see* also *Christie* v. *Commissioner of Inland Revenue*, LR 2 Ex 46; *Wale* v. *Commissioner of Inland Revenue*, 4 Ex D 270; *Attorney-General* v. *Power*, (1906)2 IR 272.
2. *Organon (India) Ltd.* v. *Collector of Excise*, 1977 MPLJ 119 (DB).
3. *Commissioner of Income-tax, Madras* v. *Ibrahimsa*, AIR 1928 Mad 543 (FB).
4. *Pathumma Umma* v. *A. Mohiuddeen*, AIR 1928 Mad 929; *see* also *V. Aiyaswami* v. *District Board, Tanjore*, AIR 1930 Mad 43, 45 : ILR 52 Mad 972.
5. 1928 AC 217, 227; *see* also *Simms* v. *Registrar of Probates*, 1900 C 323, 335; *A.G.* v. *Duke of Richmond, etc.*, 1909 AC 466; *Bhola Ram & Sons, Ltd.* v. *Crown*, ILR 15 Lah 501.
6. (1942)1 KB 389, 397 : (1942)1 All ER 287.
7. 2nd Ed. at pp. 306-307.
8. *Attorney-General* v. *Noyes*, (1881)8 QBD 125, 133; *see* also *Bullisant* v. *A.G. for Victoria*, 1901 AC 196, 202; *Simms* v. *Registrar of Probates*, 1900 AC 323, 335; *Macbeth* v. *Ashley*, 1874 LR 2 SC App 352, 359; *Maclay* v. *Dixon*, (1944)1 All ER 22.
9. (1856)25 LJ Ch 84.
10. (1860)7 HLC 594, 637.

say that what was done is an evasion of the law is idle, unless it means that, though *(sic)* an apparent in accordance with it, it really was in contravention of the law." Lindley, L.J. remarked in *Yorkshire Railway Wagon Co.* v. *Macluse*[1] :

> "There is always an ambiguity about the expression 'evading an Act of Parliament'; in one sense you cannot evade an Act, that is to say, the Court is bound so to construe every Act as to take care that which is really prohibited may be held void. On the other hand, you may avoid doing that which is prohibited by the Act, and you do something else equally advantageous to you which is not prohibited by the Act."

An Act evaded is not an Act infringed.[2] In a later case,[3] Lord Lindley illustrated the matter thus :

> "A person may go to a solicitor and ask him how to keep out of an Act of Parliament—how to do something which does not bring him within the scope of it. That is evading in one sense, but there is nothing illegal in it. The other is when a man goes to his solicitor and says "tell me how to escape from the consequences of the Act of Parliament although I am brought within." That is an act of quite a different character."

There must, in every law, be marginal cases which come very near the point at which the statute may be avoided; and the persons intending to avoid the operation of statute can always succeed by doing it directly. If a man with a mortal disease, although he knows he cannot live six months, chooses to convey his property to his heirs expectant, he may do so and they will pay no succession duty. So, again, an old man may do so. He may hand over his property by a *bona fide* conveyance.[4]

The proper way to construe a taxing statute, while considering a device to avoid tax, is to ask whether the transaction is a device to avoid tax, and the transaction is such that the judicial process may accord its approval to it.[5]

19. Statute to prevent fraud upon revenue.—Statutes to prevent fraud upon the revenue are considered as enacted for the public good and to suppress a public wrong, and, therefore, although they impose penalties or forfeiture, not to be construed, like penal laws generally, strictly in favour of the assessee, but they are to be reasonably and fairly construed, so as to carry out the intention of the Legislature.[6]

Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of the tax-planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the tax honestly without resorting to subterfuges.[7]

> "In the interpretation of our system of revenue law", says Nelson, J., in *United States* v. *Sixtyseven Packloads of Dry Goods*,[8] "which is very complicated, and contains numerous

1. (1882)21 Ch D 318.
2. *Ramsden* v. *Lupton*, 1873 LR 9 QB 28.
3. *Bullivant* v. *A.G. for Victoria*, 1901 AC 196, 207.
4. *A.G.* v. *Noyes*, (1881)8 QBD 125,137.
5. *M/s. McDowell & Co.* v. *Commercial Tax Officer*, AIR 1986 SC 649 : 1986 Tax LR 2174 : (1985)18 Tax Law Rev 529 : 1985 Taxation 77(3) 150 : (1985)154 ITR 148 : 1985 UPTC 747 : (1985)3 SCC 230 : 1985 SCC (Tax) 391.
6. *United States* v. *Stowell*, 33 L Ed 555, 558 (Gray, J.); *see* also *Krishna & Co.* v. *State of Andhra Pradesh*, AIR 1957 Andh Pra 706, 709 (Subba Rao, C.J.).
7. *(M/s.) McDowell & Co. Ltd.* v. *Commercial Tax Officer*, AIR 1986 SC 649 : (1986) Tax LR 2174 : (1985)18 Tax Law Rev 529 : 1985 Taxation 77(3) 150: 1985 STJ (SC) 39 : (1985)2 Com LJ 137 : (1985)13 STL (SC) 243 : (1985)154 ITR 148 : 1985 UPTC 747 : (1985)5 ECC 259 : (1985)47 Cur Tax Rep 126 : (1985)3 SCC 230 : 1985 SCC (Tax) 391 : (1985)59 STC 277 : (1985)2 Indian Tax Cases 345 : 1985 All Tax J 401 : (1985)22 Taxman 11 : (1985)3 SCR 791 : 1986 UJ (SC) 595(2).
8. 15 L Ed 54, 56.

provisions to guard against frauds by the impostors, this Court has not been disposed to apply with strictness the rule which repeals a prior statute by implication, where a subsequent one has made provisions upon the same subject, and differing in some respect from the former, but have been inclined to uphold both, unless the repugnancy is clear and positive, so as to leave no doubt as to the intent of the congress, especially in cases where the new law policy have been auxiliary to, and in aid of the old, for the purpose of more effectually guarding against the fraud."

20. Taxing legislation subject to fundamental rights and other constitutional provisions.—Taxing legislation is controlled by the fundamental rights guaranteed in Part III of the Constitution,[1] and other provisions in the Constitution.

A taxing statute is not *per se* a restriction on the freedom under Article 19(1)(*g*). The policy of a tax, in its effectuation, might, of course, bring in some hardship in some individual cases. But that is inevitable, so long as law represents a process of abstraction from the generality of cases and reflects the highest common factor. Then again, the mere excessiveness of a tax or even the circumstance that its imposition might tend towards diminution of earnings or profits of the persons of incidence does not *per se*, and without more, constitute violation of rights.[2]

In tax legislation, as the Legislature has to deal with complex problems, legislature must be given a greater latitude and a greater play in the joints as elucidated in *R.K. Garg* v. *Union of India*.[3] it was further stressed that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. In *R.K. Garg* v. *Union of India*,[4] the Constitution Bench of the Supreme Court pointed out that there may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid, that the courts cannot as pointed out by the United States Supreme Court in *Secy. of Agriculture* v. *Central Roig. Refining Co.*,[5] be converted into tribunals for relief from such crudities and inequities and the courts must therefore adjust the constitutionality of such legislation by the generality of its provisions and not by crudities or inequities or by the possibilities of abuse of any of its provisions. In regard to taxing statute the courts have conceded a greater lattitude to the legislators both in the matter of classification of the persons as also the mode and method of recovery.[6]

21. Partial invalidity.—Taxing statute imposing tax on subjects divisible in their nature which do not exclude in express terms subjects exempted by the Constitution, should not, for that reason be declared wholly *ultra vires*, for in such cases it is possible to separate authorised subjects from exempted subjects, and exclude the latter in the assessment of the tax.[7]

If a particular action is valid under a particular provision such action will not become invalid because reference was made to another section, notwithstanding both the sections are in

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1. *Amina Uma* v. *Income-tax Officer*, AIR 1954 Mad 1120, 1124; *Hari Krishna Bhargava* v. *Union of India*, AIR 1966 SC 619.
2. Vide *Federation of Hotel and Restaurant* v. *Union of India*, AIR 1990 SC 1637(5J) : 1990 Tax LR 623 : (1989)178 ITR 97 : (1989)77 CTR 141 : (1989)74 STC 102 : (1989)46 Taxman 47 : (1989)3 SCC 634.
3. AIR 1981 SC 2138. Vide *Bharat Hari Singhania* v. *Commissioner of Wealth Tax (Central)*, AIR 1994 SC 1355.
4. AIR 1981 SC 2138.
5. (1950)94 L Ed 381
6. Vide *Tuntum Prasad Chaurasia* v. *State of Bihar*, (1996)1 Pat LJR 754, referring to the *Elal Hotels and Investments Ltd.* v. *Union of India*, AIR 1990 SC 164; *Sri Srinivasa Theatre* v. *Government of Tamil Nadu*, AIR 1992 SC 999; *Karnataka Film Industry Development Corporation Ltd.* v. *State of Karnataka*, AIR 1995 Ker 397 and *H.P. Automobiles* v. *State of Karnataka*, 55 STC 93.
7. *State of Bombay* v. *United Motors (India), Ltd.*, AIR 1953 SC 252.

the same Act.[1]

22. **Retrospective effect.**—The intention to impose a tax on the subject must be shown by clear and unambiguous language. The principle that a tax cannot be levied or collected except by authority of law, does not, however, involve the further proposition that under the Indian Constitution taxes cannot be levied retrospectively. Once a competent Legislature has passed a fiscal law with retrospective effect, the tax levied thereby must be held to be by authority of law and it would be perfectly constitutional and not invalid because of its being retrospective.[2] It is also well settled that retrospectivity by itself would not amount to unreasonable restriction on the right to carry on business nor does such legislation act harshly nor is there any room for complaint of arbitrariness or discrimination. Further the very object of levying a tax is to augment the revenue of a state.[3] But no retrospective effect should be given to a fiscal statute unless there is a clear provision or unless the effect is a necessary implication of the provision.[4]

23. **Constitutional validity.**—*Constitutional validity of fiscal statutes.*—'Taxation' has ceased to be regarded as an 'impertinent intrusion into the sacred rights of property' and it is now increasingly regarded as a potent fiscal tool of State policy to strike the required balance required in the context of the felt needs of the times between citizens claim to enjoyment of his property on the one hand and the need for an equitable distribution of the burden of the community to sustain social services and purposes on the other in *(M/s.) Keshavji Ravji & Co.* v. *Commissioner of Income Tax*,[5] is apt and expedient to be reproduced. In construing a taxing measure for determining its constitutional validity, the question of reasonableness cannot enter a judicial mind. The only consideration which is germane is whether the legislation challenged is permitted by the Constitution. The reasonableness or otherwise of such a statute is a matter of legislative policy and it is not for the Courts to adjudicate upon.[6] A taxing statute if divisible in nature, and partly falls within and partly outside the Constitution, should not be declared wholly *ultra vires*. The principle of severability includes separability in enforcement and this principle should be applied in cases of all taxing statutes.[7]

In order that a tax may be valid it is, *firstly*, within the competency of the Legislature imposing it; *secondly*, that it is for a public purpose : and thirdly, that it does not violate the fundamental rights guaranteed by Part III of the Constitution.[8] Even though the charging section may not be *ultra vires*, the procedural section can be held to be *ultra vires* if it exceeds the constitutional competence of the Legislature which enacted it. It was held that while Section 3, the charging section of the Central Excise and Salt Act, 1944, is valid, Section 4, the machinery or procedural section, is invalid as it impinges upon the legislative authority of the

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1. Vide *Commissioner of Sales Tax* v. *(M/s.) Anoop Wines, Khuldabad, Allahabad*, AIR 1988 SC 2042.
2. *Mewar Textile Mills. Ltd.* v. *Union of India*, AIR 1955 Raj 114 [Dhoties (Additional Excise Duty) Act, 1953 held to be retrospective].
3. *Empire Industries Ltd.* v. *Union of India*, AIR 1986 SC 662 : 1986 Tax LR 1933 : (1985)2 Com LJ 260 : 1986 ECR 1169 (SC) : (1985)3 SCC 314 : (1985)20 ELJ 179 : (1985)87 Bom LR 362 : 1985 SCC (Tax) 416 : 1985 Cr LR (SC) 549 : (1986)7 ECC 208 : (1986)162 ITR 846 : (1987)64 STC 42; *Mothibai Lalloobhai & Co.* v. *Union of India*, AIR 1957 All 84 (86).
4. *Tikamdas Nathirmal* v. *State of Madhya Pradesh*, AIR 1965 Madh Pra 271.
5. AIR 1991 SC 1806 : 1991 Tax LR 669 : (1991)1 JT 235 : (1991)2 SCC 231 : (1991)1 SCR 243 : 1991 AIR SCW 1845, [Tax LR 89 (Mad) (Overruled)].
6. *Aswathanarayana* v. *State of Andhra*, (1959)1 Andh WR 347.
7. *State of Bombay* v. *United Motors (India), Ltd.*, AIR 1953 SC 252.
8. *Vivian Joseph* v. *Municipal Corporation, Bombay*, (1972)2 SCR 268 (Shelat, J.); *Hari Krishna Bhargava* v. *Union of India*, AIR 1966 SC 619.

State.[1] If the petitioner has been subjected to hardship on account of excessive taxation brought about by valid enactments of competent Legislature, it will not be a matter for interference by courts.[2]

It is not for the Court to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the Legislature, has a wide discretion of selecting properties, persons and rates, and a provision in a taxing Act cannot lightly be held to be invalid on the ground of violation of Article 14 of the Constitution.[3] But generally stated, when authority to tax at such rate as the Court may specify without the Legislature fixing any maximum is conferred, it would be invalid on the ground of excessive delegation if no other guideline is indicated, for when tax is levied for the benefit of the government, no implied limitation of quantum of tax can be inferred because the Governments' needs are unlimited. In contrast, when power to levy a tax is conferred on a Municipal Corporation without prescribing the maximum the taxing power can be upheld on the ground that the power to tax conferred on a Corporation is necessarily limited by the expenses required to discharge its functions.[4] Court's concern is only with the validity of the tax, all else is beyond the domain of Court's jurisdiction.[5]

While determining the vires of a taxing statute the courts shall bear in mind that the power of the State to levy taxes for the purpose of governance and carrying out its welfare activities is a necessary attribute of sovereignty and is of paramount character.[6]

Machinery Provisions.—Though the charging sections which fix the liability is generally to be construed strictly, yet the machinery provisions require to be construed so as to effectuate the object and purpose of the statute.[7]

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1. *Cibatul Ltd.* v. *Union of India*, (1980)21 Guj LR 284 (DB).
2. *Sunkaiah* v. *Town Panchayat, Kuttur*, AIR 1967 Mys 150, 155 (Sadasivayya, J.).
3. *Controller of Estate Duty, MP* v. *Santram*, 1981 MPLJ 5 (DB).
4. *Rewa Transport Service* v. *State of MP*, 1980 MPLJ 341 (DB).
5. *Horn Silver Mining Co.* v. *State of New York*, 36 L Ed 161, 167 (Field, J.).
6. *(M/s.) Saraswathi Udyog* v. *State of Haryana*, (1987)1 Punj LR 305, relying on *Kheyerbari Tea Co. Ltd.* v. *State of Assam*, AIR 1964 SC 925.
7. *Birla Cement Works* v. *State of Rajasthan*, (1994)4 SCC 277, referring to *Whitney* v. *I.R.C.*, 1926 AC 37 : 42 TLR 58; *C.I.T.* v. *Mahalirahn Ramjidas*, (1940)8 ITR 442 : AIR 1940 PC 124 : 67 IA 239; *India United Mills Ltd.* v. *Commissioner of Excess Profits Tax, Bombay*, (1955)1 SCR 810 : AIR 1955 SC 79 : (1955)27 ITR 20; *Gurusahai Saigal* v. *C.I.T. Punjab*, (1963)3 SCR 893 : AIR 1963 SC 1062 : (1963)48 ITR 1; *J.K. Synthetics Ltd.* v. *Commercial Tax Officer*, 1994, Bihar Revenue and Labour Journal, 113 (SC) (5J).

CHAPTER XXV
CROWN GRANTS

SYNOPSIS

1. *Crown grants*----------705
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1. Crown grants.—It is well settled that a strict rule of construction against the subject and in favour of the Crown applies to Crown grants and to statutes affecting Crown revenues.[1] But in construing a taxing statute, we cannot adopt an interpretation less favourable to the subject than the Government does in its official Manual.[2] Usually, no doubt, the views of Government departments as to the meaning of a statute which is administered by them are not admissible as an aid to construction, but it has been suggested by Lord Macnaghten in *Commissioner of Income-tax* v. *Pemsel*,[3] that when, in any particular case it is impossible to suppose that the Legislature is ignorant of the manner in which its own Income Tax Act is being administered by a department of the State and yet the Legislature re-enacts the same provisions, it may not be improper for the Courts to take notice of the fact that the new enactment is in precisely the same terms as the previous one.[4] But in *Commissioner of Agricultural Income-tax, West Bengal* v. *Raja Jagdish Chandra Deo*,[5] R.P. Mookerjee, J., observed :

> "In the present case we are asked to take judicial notice of the executive instructions contained in the Manual and the practice followed by the department for a very long period. This line of argument cannot be accepted. There is no evidence before us that the Legislature was aware of the practice and the executive instructions by the Income-tax Department. Moreover, irrespective of the fact whether a particular department interpreted the law in a particular manner for a long series of years or not, it would not be of much consequence when the Court is called upon to interpret that particular provision of the statute."

The question recently came up for consideration before the Judicial Committee in *Commissioner of Income-tax, Bihar and Orissa* v. *Raja Bahadur Kamakhya Narayan*.[6] The following observation by the Judicial Committee may be said to conclude the question as raised :

> "It was stated—and the statement was not disputed—that for a considerable period Income-tax Authorities had not treated interest on rent in arrears as taxable, and that in their Manuals published from time to time this view was openly stated. In their view such interest fell within the definition of agricultural income, the Income Tax Act, 1922, had in that period been amended from time to time without a change in the definition of

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1. *Ramchand* v. *Secretary of State*, AIR 1936 Sindh 108, 113.
2. *Tribune Press* v. *Income-tax Commissioner*, AIR 1935 L 570 at p. 578 (FB) (reversed otherwise in AIR 1939 PC 208).
3. 1891 AC 531, 591.
4. *Commissioner of Income Tax, Burma* v. *Lakshmi Insurance Co. Ltd., Rangoon*, AIR 1941 Rang 212, 219 (SB).
5. AIR 1949 PC 1 : 53 CWN 596.
6. (1948)53 CWN 579; *see* also *Empress Mills* v. *Wardha Municipality*, AIR 1950 Nag 169, 175 (FB); Memoranda and instructions of Central and Provincial Governments are not law and cannot be called in aid at all.

agricultural income. Their Lordships were asked to make the inference that the definition had thereby obtained the meaning attributed to it by the Income-tax Authorities and the Legislature must be taken to have adopted the definition in the sense in which the Income-tax Authorities had understood and applied it. The observations of Lord Macnaghten in *Pemsel's* case[1] and of their Lordships in *Burah's* case[2] were relied on. Their Lordships are unable to accept this contention, for the reason that they are unable to draw from the facts brought to their attention the inference that the Legislature had by repetition of the debated phrase adopted the meaning attributed to it by the taxing authorities. There is indeed no evidence that the Legislature was aware of the practice and their Lordships are not prepared to make the assumption that a practice purporting to give to a definition has resulted in the creation of such a generally received meaning embodying that practice as would justify the inference that the attributed meaning has been silently adopted by the Legislature."

2. Control of Legislature over Crown grants.—The Crown cannot deprive a Legislature of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists, and no Court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence. If, therefore, it be found that the subject of a Crown grant is within the competence of a Provincial Legislature, nothing can prevent that Legislature from legislating about it, unless the Constitution Act itself expressly prohibits legislation on the subject either absolutely or conditionally.[3]

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1. 1891 AC 581.
2. ILR 3 Cal 63.
3. *Manmohan Deo* v. *State of Bihar*, AIR 1961 SC 189.

CHAPTER XXVI

EXPROPRIATING STATUTES

It is undoubtedly in the power of the Legislature to take away a vested right of any subject, but it is a recognised rule of construction that in order to hold that the Act has had this effect, it must be necessary to find the indication of such an intention in the plain words of the Act.[1] As a matter of construction such an expropriating statute should be construed as applying only to matters within the competence of the Legislature.[2] The principle of law as enunciated in various authorities is that statutes imposing restrictions upon the subject's rights should be strictly construed and such restrictions should not be extended beyond what the words used actually cover[3]; however, the presumption of strict construction does not extend to the procedural part of the enactment, which has to be interpreted in such a way as to make the procedure provided effective.[4] An expropriating statute has to be construed, if the language allows it in favour of the person whose property is sought to be acquired.[5] Where the Act is drastic in its character and makes a great invasion on private rights, their Lordships of the Privy Council, speaking through Lord Dunedin, directed in *Secretary of State for India* v. *Birendra Kishore Manikya,*[6] that those pleadings it must, therefore, bring the matter strictly within its provisions.

Where the expropriation is for a public purpose and not for private gain, still the owner is deprived of his property and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. It has been repeatedly held by the Board that an intention to alienate private rights without compensation should not be imputed to the Legislature, unless expressed in clear terms.[7] In order to affect the rights of persons who have got an interest in holding, so as to debar them from preventing the total loss of the holding, the statute must either expressly or by plain implication say that they are so debarred.[8] Now, it is well settled that where special provisions are made by the Legislature for compulsory acquisition of property belonging to a person, the provisions of the law must be strictly complied

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1. *Badri Narayan Singh* v. *Ganga Singh*, AIR 1937 Pat 605; Cripps on *Compensation*, 8th Ed. at p. 1.
2. *State of New South Wales and Inspector of Police* v. *Commonwealth*, (1915)20 CLR 54, *per* Griffith, C.J.—known as wheat case : "Just as in the cases of statute which in its terms includes matters beyond the territorial jurisdiction of the State, unless it appears on the face of the Act that it was intended to deal with matters beyond, as well as with matter, within the competence of Parliament, and that the provisions dealing with both are not severable."
3. *Zamindara Bank* v. *Suba*, AIR 1924 Lah 418, 419-420; *Sayed Mohammad Beevi Amma* v. *Mathai Davasia*, ILR 1960 Ker 610 : 1960 Ker LT 163 : 1960 Ker LJ 343; *Palani Goundan* v. *Peria Goundan*, AIR 1941 Mad 158; *Dhanmull Sowcar* v. *Syed Ali Mahammad*, AIR 1969 Mad 214; *Gujarat Electricity Board* v. *Girdharlal Motilal*, AIR 1969 SC 267; *see* also *Gupta K.L.* v. *Municipal Corporation of Greater Bombay*, AIR 1968 SC 303 (powers exercised which make inroads into private properties of individuals. Court is bound to exercise caution and consider the question strictly); *see* again *Dr. Hari Singh* v. *E.F. Deboo*, AIR 1969 Guj 349; *Horam Singh* v. *District Judge, Moradabad*, 1979 All LJ 85 (DB).
4. *Horam Singh* v. *District Judge, Moradabad, (supra).*
5. *Kedar Prasad Singh* v. *Sita Saran Singh*, (1963) BLJR 198; *Horam Singh* v. *District Judge, Moradabad, (supra).*
6. ILR 44 Cal 328, 343.
7. *Australia Commonwealth* v. *Hazeldeli*, AIR 1921 PC 224, 227 quoting *Commissioners of Public Works (Cape Colony)* v. *Logen*, 1903 AC 355 (PC); *see* also *Inglewood Pulp and Paper Co. Ltd.* v. *New Brunswick Electric Power Commissioner*, AIR 1928 PC 287, 290; *A.G. De Keyser's Royal Hotel*, 1920 AC 508, 576.
8. *Sailaja Sundari* v. *Surja Kanta*, AIR 1929 Cal 133; *Umachurn Bag* v. *Ajadunessa Bibi*, ILR 12 Cal 430.

with.[1] The Court ought not to strain an Act in favour of an interference with private rights which is not justified by the primary sense of the language.[2]

Lord Truro laid down in *East and West India Docks and Birmingham Railway Co.* v. *Gattke*,[3] in respect of a statute like the Land Acquisition Act, that 'it is to be liberally expounded' in favour of the public and strictly expounded as against the Government or Company taking land. "The Land Acquisition Act aims at promoting important public interest; *Salus populi suprema les.* And to interest of such paramount importance, private interest may justifiably be subordinated. And it has been recognised that in interpreting the intention of the Legislature in statutes of that character, a construction necessary to effectuate that intention must be given."[4] In Halsbury's *Laws of England*,[5] it is stated : "If there is any doubt in the matter, the Act will be construed in favour of the landowner, but in the case of local authorities carrying out public improvements, the interest of the public as well as of the landowner will be considered in construing a doubtful provision." In accordance with this principle it has been held by the Supreme Court in *State of Madhya Pradesh* v. *Vishnuparsad Sharma*,[6] that the Land Acquisition Act being an expropriating legislation, the interpretation of it must be accepted which would impose the least burden on the expropriated owner, and that arguments on hypothetical considerations could have little bearing in interpreting statutes more especially of this kind, which must be strictly construed.[7]

Speaking of Madras Agriculturists' Relief Act, (14 of 1938), Patanjali Shastri, J., observed in *Palani Goundan* v. *Peria Goundan*[8] : "Its provisions being of an exproprietary character should be strictly construed and its scope ought not to be extended beyond what is clearly and expressly indicated by its terms."

In *Ram Prasad Narayan Sahi* v. *State of Bihar*,[9] it was held by Ramaswami, J. (Sarjoo Prasad, J. *debutante*) : "There is nothing to forbid confiscatory measures of any kind, it is quite regular for a Legislature to interfere with private property rights, it may also legislate to interfere with pending proceedings in the law Courts as well as to declare unsound a view of law taken by Court *Ex post facto* legislation is as a rule perfectly legal and, though it may be prohibited in places, the prohibition can be removed by a simple Act. An Act cannot, on that ground, be held to be invalid or *ultra vires*.

Speaking of the U.P. Imposition of Ceiling on Land Holdings Act, 1961, the Allahabad High Court observed that the provisions of the Act were confiscatory in nature and deprive a person of valuable right in the property. It is but proper for an authority to take liberal view and it should not take recourse to technicalities. Rather its attitude should be such that the tenure holder is not put to hardships.[10]

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1. *Tara Prasad Chaliha* v. *Secretary of State*, AIR 1930 Cal 471.
2. *Queen-Empress* v. *Harilal*, ILR 14 Bom 180.
3. 3 M. & G. 155; *see* also *Zulfikar Khan* v. *Collector of Mianwali*, 90 PR 1905 at p. 277; *Ram Saran Das* v. *Collector of Lahore*, 9 PWR 1911 at p. 20.
4. *Balwant Ram Chandra* v. *Secretary of State*, ILR 29 Bom 480, 505; *see* also *Shivram Udaram* v. *Kondiba Muktaji*, ILR 8 Bom 340, 347; *Sham Lal* v. *Hira Chand*, ILR 10 Bom 376.
5. 2nd Ed., Vol. 6, Para 28 at p. 29.
6. AIR 1966 SC 1593 : (1966) SCJ 231; see *Dalchand* v. *District Judge, Mathura*, 1967 All LJ 48 : 1967 All WR (HC) 141 (narrow and literal construction refused).
7. *Khub Chand* v. *State of Rajasthan*, AIR 1967 SC 1074.
8. AIR 1941 Mad 158, 160; *Chellammal* v. *Abdul Ghafoor*, AIR 1962 Mad 17(FB).
9. AIR 1952 Pat 194.
10. *Shco Prasad* v. *State of U.P.*, 1978 All LJ 155.

CHAPTER XXVII
PENAL STATUTES

SYNOPSIS

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1. What is criminal law?—Criminal Law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State. The domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the State to be crimes, and the only common nature they will be found to possess is that they are prohibited by the State and that those who commit them are punished.[1]

Ordinarily every crime which is created by a statute, however, comprehensive and unqualified the language used is always understood as requiring the element of *mens rea* or a blameworthy state of mind on the part of the actor. But there may be cases in which the

1. *Proprietary Articles Trade Association* v. *A.G. Canada*, AIR 1931 PC 94, 99, *per* Lord Atkin. In no country in the world it is laid down that the criminal law should be interpreted by the canons of Civil Law; *Emperor* v. *Sikhdar*, AIR 1932 All 441.

Legislature completely rules out the principle of *mens rea* while providing for penalty. One class of cases in which the Legislature may insist on strict liability rule, excluding the applicability of *mens rea*, are statutes which deal with public welfare, *e.g.* statutes regulating the sale of food and drink. Before presumption as to *mens rea* is to be displaced, strict liability must be required to give practical effect to the legislative intention and the person charged with breach of the statute must have had some opportunity of furthering its observance.[1]

2. Strict construction : early times.—From early times it has been held that penal statutes must be strictly construed.[2] The degree of strictness applied to the construction of a penal statute depended in great measure on the severity of the statute.[3]

Human experience has shown that legislators are generally solicitous of individual liberties and desire to interfere with them as little as possible. Thus the rule of interpretation has been evolved according to which a penal statute should be very strictly construed.[4] And they should be construed in favour of the subject.[5]

But, if there is no ambiguity, and the act or omission in question falls within the mischief of the statute, the construction of a penal statute differs little, if at all, from that of any other.[6]

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, not the Court, which is to define a crime and ordain its punishment.[7]

3. Import of strict construction.—Statutes which take away the rights of parties under the ordinary law, particularly those provisions which impose penalty have to be construed

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1. *Hari Krishna* v. *State*, (1980)17 ACC 43.
2. *Steel Authority of India Ltd* v. *Bihar Agricultural Produce Market Board*, AIR 1990 Pat 146 (FB); *Kent* v. *Whitley*, (1738)1 ER 1457 (HL); *Camplin* v. *Bullman*, (1761)145 ER 755; *AG* v. *King*, (1817)146 ER 579; *Flether* v. *Lord Sondes*, (1826)3 Bing 501, 580; *R* v. *Mitchell*, (1829)172 ER 692; *Gordon* v. *Dalzell*, (1852)21 LJ Ch 206 : 51 ER 573; *Jeffreys* v. *Higgins*, (1853)21 LTOS 35; *Woodall* v. *Voight*, (1860)158 ER 57; *Smith* v.*Wood*, (1889)24 QBD 23; *Cotterill* v. *Lempriere*, (1890)24 QBD 634; Strictness of statement is still valuable specially in a case where the result may be highly penal. *Reid* v. *Wilson and Ward*, (1895)1 QB 315 : The Act imposes penalities and, therefore, must be construed and applied strictly. *Kamla Prasad* v. *King Emperor*, (1947)230 IC 160 (Pat); *Arab Mihan* v. *Emperor*, AIR 1942 Sind 167; High Court Bar Assiciation, Lahore—*Chandi Ram* v. *Emperor*, AIR 1941 Lah 301; *In the matter of* Gurcharan Prasad Khatri of Benaras, ILR 53 All 445 : AIR 1931 All 421 (A section in regard to a penalty, such as Section 28 of the Income Tax Act must be strictly construed. The word 'income-tax' would accordingly not include 'Super-tax'); *Rameshwar* v. *Emperor*, AIR 1931 Nag 177 (strict and narrow sense); *Ismail Panju* v. *Emperor*, AIR 1926 Nag 137 : 26 Cr LJ 1115; *In re* Punvanur Athamu, AIR 1925 Mad 239 (criminal statute has to be rigidly interpreted. Statutory rules which involve penal consequnces for infringement must be strictly interpreted; *Gopal Singh* v. *Crown*, AIR 1929 Lah 163). Rules made under statutory powers enforceable by penalties are to be construed like other provisions encroaching on the ordinary rights of persons. They must, on pain of invalidity, be not unreasonable, nor in excess of the statutory power authorising them, nor be repugnant to the statute or to the general principles of the law; *Eng. Hock* v. *Emperor*, AIR 1934 Rang 178, 180; *(M/s.) Banshiham Rice Mills (P) Ltd.* v. *State of West Bengal*, 1995 AIHC 4851; *Satya Narayan Das* v. *Government of India*, AIR 1995 Ori 253.
3. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 255.
4. *Rulia Ram* v. *Rex*, AIR 1949 All 716; *Collector of Central Excise, Hyderabad* v. *Phoolchand Mohanlal*, AIR 1968 Andh Pra 103; *Jethalal Nandalal* v. *State of Gujarat*, AIR 1968 Guj 165; *Hari Krishna* v. *State*, (1980)17 ACC 43; *Dilawar Singh* v. *State of Haryana*, (1992)2 Recent Cri R 692 (P & H); *S.K. Salim* v. *State of West Bengal*, AIR 1975 SC 602; *State of Punjab* v. *Jagdev Singh*, AIR 1984 SC 444; *Vijay Narain Singh* v. *State of Bihar*, AIR 1984 SC 1334.
5. *Jugal Singh* v. *Emperor*, AIR 1934 Pat 315; *Gulati* v. *Lajya Ram Kapur*, AIR 1967 Punj 79; *Hari Krishna* v. *State*, (1980)17 ACC 43.
6. Quoting Maxwell in *Maharaja Book Depot* v. *State of Gujarat*, (1979)20 Guj LR 99 (SC) : 1979 Mad LJ (Cr) 164 (SC)
7. *U.S.* v. *Wilthberger*, (1820)5 Wheaton (US) 76, 95 (*per* Marshall, C.J.).

strictly.[1] The well-settled rule is that the subject should be held to be free unless he can be found guilty according to the clear and unambiguous language of the statute.[2] When there is a question about the sense in which a phrase is used, a construction adopted for the purpose of fixing penal liability upon a person must be founded upon words bearing a clear sense in the Act under consideration.[3] True, penal statutes should always be very strictly construed. However, it must be remembered that no rule of construction requires that a penal statute should be unreasonably construed or construed so as to defeat the obvious intention of the Legislature or construed in a manner as would lead to absurd results; on the other hand, it is of the utmost importance that the Court should endeavour to ascertain the intention of the Legislature and to give effect thereto.[4] While dealing with a penal provision, it would not be proper for the Courts to extend the scope of that provision by reading into it words which are not there and thereby widen the scope of that provision.[5] A penal provision must be clear and unequivocal before effect can be given to it. The word 'paper' in Section 3, Press and Registration of Books Act, 1867, was intended to cover all those papers which could not be defined as 'books' or 'newspapers' but which had historical, cultural or literary value. It did not include the notice announcing the holding of a public meeting to oppose the transfer of the Deputy Commissioner.[6] But the same word 'paper' in Section *2(a)(vii)* of the Essential Commodities Act, 1955, which is not ambiguous and does not call for strict or narrow construction, will not exclude exercise books therefrom.[7] 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.[8] Thus, before a person can be convicted under Section 176. I.P.C., the prosecution are bound to prove *(a)* that the accused person was legally bound to furnish a certain information to a public servant, and *(b)* that he intentionally omitted to give such information.[9]

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.[10]

But this degree of strictness may be regarded as extreme.[11] It was held that the repealed Engraving Copyright Act, 1734 (Clause 13), which imposed a penalty for piratically engraving, etching, or otherwise or 'in any other manner' copying prints and engravings, applied to copying by photography, though that process was not invented till more than a century after the Act was passed.[12]

Though regulations contained in an Act are enacted on the economic and financial interest of the country, the rigour and sanctity of these regulations should be maintained; even then it should not be forgotten that Customs Act being penal deserves to be construed as pointed out by

1. *Pettia Ganeshprasad* v. *Jaibhai*, ILR 1951 Nag 852 : AIR 1952 Nag 70.
2. *Bansraj* v. *State*, AIR 1956 All 27, 29 (*per Upadhyaya*, J.).
3. *Richardson* v. *Austin*, (1911)12 CLR 463, 474 (*Per* Barton, J.).
4. *Fakir Mohan* v. *State*, AIR 1958 Orissa 118 122; *Teja Singh* v. *State*, AIR 1952 Punj 145; *McQuade* v. *Barnes*, (1949)1 All ER 154.
5. *Motibhai Fulabhai* v. *Collector, Central Excise*, AIR 1970 SC 829; *State of A.P.* v. *Andhra Pradesh Potteries*, AIR 1973 SC 2429; *Dilip Kumar Sharma* v. *State of M.P.*, 1975 Cr LR (SC) 624.
6. *State* v. *Udit Narain*, AIR 1955 All 524.
7. *Maharaja Book Dept.* v. *State of Gujarat*, (1979)20 Guj L R 99 : 1979 Mad LJ (Cr) 164 (SC)
8. Maxwell: *Interpretation of Statutes*, 11th Ed. at p. 250.
9. *Shridhar* v. *State*, AIR 1954 HP 67.
10. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 261.
11. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 262.
12. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 102.

Plowman, J. in *H.P.C. Production Ltd.*,[1] "It is, therefore, clear that their Lordships relied on the rule of construction holding that penal provision has to be strictly construed and held that where the provision itself did not require the value to be supplied for any error in respect of that, no penalty could be imposed; besides in order to interpret a particular provision and to infer the intention of the legislation, reliance could be placed on the objects and reasons stated in the bill when it is presented to the Legislature.[2]

4. No extension by implication.—An Act entailing penal consequences should not be applied to anyone who is not brought within it in express language.[3] It is elementary that in dealing with a penal provision the rule of strict construction requires that the language shall be construed so that no case shall be held to fall within it which does not fall within the reasonable interpretation of the enactment.[4] A penal statute should not suffer from vagueness. It should clearly indicate the provision enacted by it, so that persons affected are in a position to know the true intention.[5] An order of a penal nature must be clear and specific in its language and must not leave anything to presumption. If a member of the public is prohibited from doing an act, he must be prohibited clearly and in an unambiguous language. The prohibition cannot be left to be implied. There is thus no reason for holding that the words 'Flour Mill' in Clause (3) of the U.P. Flour, Rice and Dal Mills Control Order, 1948, should mean the owners of a flour mill even if they are not present in it.[6] Courts should always guard against tendency to take recourse to the theory of 'common parlance' which has no application to penal statutes.[7] Rejecting the contention that the accused should be 'deemed' to be on active duty under the Bombay State Reserve Police Act and hence, penalty liable, a division Bench of Bombay High Court observed that deeming effect cannot be given to an express provision of law defining active duty. Any expansion of the said definition or any deeming fiction while interpreting an express provision of law is normally not permissible in a criminal prosecution.[8]

(a) No constructive offences.—There can be no constructive offences, and before a man can be punished, his case must be plainly and unmistakably within the statute, but all the same penal statutes ought not to be construed so strictly as to defeat the obvious intention of the Legislature.[9] In *Dickenson* v. *Fletcher*,[10] Brett, J., said : "Those who contend that a penalty may be inflicted, must show that the words of the Act distinctly enact that it shall be incurred under the present circumstances. They must fail, if the words are merely equally capable of

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1. (1962) Ch D 466 at 473.
2. Vide *Rib Tapes (India) Pvt. Ltd.* v. *Union of India*, AIR 1986 SC 2014 : (1986) Tax LR 2103 : 1986 JT 302 : (1986)8 ECR 731 : (1986)26 ELT 193 : (1986)4 SCC 1985 : 1986 SCC (Cr) 421 : (1986)3 Supreme 450 : (1986)2 Cur CC 906 : (1986)19 STL 137 : 1986 SC Cri R 332 : 1986 All Cri C 482.
3. *London County Council* v. *Aylesbury Dairy & Co.*, (1898)1 QB 106, 109 (*per* Wright, J.); *Rathnammal* v. *Secretary of State*, ILR 1940 Mad 7 : AIR 1939 Mad 963, 967; *Veerarajan* v. *Secretary of State*, AIR 1940 Mad 521, 522; *Ismail Panju* v. *King-Emperor*, AIR 1929 Nag 137; *Ruhmall* v. *Schmidt*, (1882)8 QBD 603, 608; *see* also *U.S.* v. *Wiltbberger*, (1820)5 Wheaton (US) 76, 96.
4. *Dattatraya* v. *Emperor*, AIR 1937 Bom 28, 30; *Rahmat Aslam* v. *Crown*, AIR 1950 Lah 232; *Chand Khan* v. *Gound*, 1972 Mah LJ 792, 797 (Chandukar, J.).
5. *Harish Chandra Gupta* v. *State of U.P.*, AIR 1960 All 650, 652 (J.K. Tandon, J.).
6. *Bishambhar Dayal* v. *State*, AIR 1954 All 183; *Commissioner of Income-tax, Gujarat* v. *Hiralal Mohanlal Shaw*, 9 Guj LR 650 (no expansion of the scope and ambit of the punitive provision should be made); *see* also *Rashpal Singh* v. *Punjab University*, ILR (1968)2 Punj 677; *see* also *Bhagat Prasad* v. *Municipal Board, Dhampur*, 1968 All LJ 1061.
7. *Municipality, Jammu* v. *Glacier Cold Storage Co.*, 1980 CLR (J & K) 39 (DB).
8. *State of Maharashtra* v. *Nanaji Kalu Jadhav*, 1982 Mah LJ 565 (DB).
9. *United States* v. *Lacher*, 134 US 624, 628.
10. 1873 LR 9 CP 1, 7.

construction that would, and one that would not, inflict the penalty. It is as true now as when Blackstone wrote it that the law of England does not allow of offences by construction."[1]

(b) Spirit and scope of Act.—Indeed, it is well settled that in construing such an enactment no case must be held to fall within it which does not come within reasonable meaning of its terms as well as within its spirit and scope.

As remarked by Wright, J., In *London County Council* v. *Aylesbury Dairy & Co.*[2] :

> "Where an enactment may entail penal consequences no violence must be done to its language in order to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language. To determine that a case is within the intention of a statute its language must authorise the Court to say so; but it is not admissible to carry the principle that a case, which is within the mischief of a statute, is within its provisions so far as to punish a crime not specified in the statute, because it is of equal atrocity or of a kindred character with those which are enumerated."

If the Legislature has not used the word 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.[3]

We must not only look on the one side, at the mischief intended to be remedied, but also on the other side, we must consider that persons are not to be made subject to penalties unless the offence charged is clearly brought within the purview of the statute. No one can be brought within a statute unless his case falls within the letter and the spirit of the statute.[4] The person charged has a right to say that the "thing charged, although within the words, is not within the spirit of the enactment."[5]

The rule of strict construction requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both *within the reasonable meaning of its terms and within the spirit and scope of the enactment.*[6] Lord Truro states the rule thus in *Stephenson* v. *Higginson*[7] : "In construing an Act of Parliament, I apprehend every word must be understood according to the *legal meaning*, unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense; that is the general rule; but in a penal enactment, where you depart from the ordinary meaning of the words used, the intention of the Legislature that those words should be understood in a more large and popular sense must plainly appear." Those who contend that the penalty may be inflicted, must show that the words of the Act distinctly enact that it shall be incurred under the circumstances proved in a case. They must fail, if the words are merely equally capable of a construction that would, and one that would not, inflict the penalty.[8]

5. Benefit to the subject in case of doubt.—Another accepted canon of interpretation is that a penal statute should be construed strictly and that in case of doubt the benefit should go to the

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1. *Lyons* v. *Smart*, (1908)6 CLR 143, 157-58.
2. (1898)1 QB 106, 109.
3. *Municipal Committee, Multan* v. *Bhai Kishan Chand*, AIR 1927 Lah 276, 278; *Proctor* v. *Manwaring*, (1819)3 By Ald 145 : 106 ER 616; *Robinson* v. *Emerson*, (1866)4 H & C 352 at p. 356.
4. *Diwan Singh* v. *Emperor*, AIR 1936 Nag 55, 62.
5. *Ram Chander* v. *Gouri Nath*, ILR 53 Cal 492 : AIR 1927 Cal 927, 934.
6. *Ram Saran* v. *King-Emperor*, 12 PR 1906 (Cr) at p. 54 (FB) : 4 Cr LJ 293, 301, 319, 320; *Hyder Ali* v. *State of Hyderabad*, AIR 1950 Hyd 128 (FB); *R* v. *South Shields Licensing Justices*, (1911)80 LJ KB 810.
7. (1852)3 HL Cas 638, 686.
8. *Dickenson* v. *Fletcher*, 1873 LR 9 CP 1, 7 (*per* Brett, J.).

subject.[1] Where there is a reasonable ground for doubt as to the correct interpretation of an enactment, that interpretation should be adopted which is most in favour of the person to be penalised.[2] It is recognized rule of construction of penal statutes that where an 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. [3] The rule, that penal statute should be construed in favour of a citizen, is applicable only where the meaning of the statute is not clear.[4]

All the provisions of penal law must be interpreted, if there is room for doubt, in favour of the subject, and most of all, the provisions relating to the offence of murder.[5]

But it may be noted that the existence of an ambiguity in the words to be construed does not necessarily create a doubt. It is then necessary to opt for an examination of the context, the scope and object of the enactment. But that meaning may satisfy the Court beyond all doubt as to the meaning to be placed on an expression which is on its face ambiguous. In the interpretation of a penal or a taxing statute mere ambiguity of expression or loose or inaccurate language will not prevent a Court from giving effect to the meaning of the Legislature if, by the application of the ordinary rules of construction applicable to all other statutes, that meaning can be ascertained. If, notwithstanding a careful examination by the aid of these rules of the words to be interpreted, a doubt still remains as to their meaning, the Court is not at liberty to resolve the doubt against the accused or the tax-payer by the application of any principle of public policy or general intent of the enactment, but in such a case must give him the benefit of the doubt.[6]

In the case of penal statutes, it is the duty of Court to interpret words of ambiguous meaning in the broad and liberal sense, so that they will not become traps for men, honest, unwary and unlearned in law. If there is honest and substantial compliance with an array of puzzling directions that should be enough even if on some hypercritical view of the law other ingenious meanings can be devised.[7]

Referring to Section 95, Cr.P.C. (1973) (old Section 99-A of the Cr.P.C.) the Court observed that a provision drastically restricting citizens' fundamental rights, especially when it leads to quasi-penal consequences, must be construed strictly.[8]

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1. *Parmanand* v. *Emperor*, AIR 1939 Lah 81, 85 (FB); *Thiraj* v. *Crown*, ILR 11 Lah 55, 64; *Seth Balkishen* v. *Emperor*, AIR 1928 Nag 219 (Arms Act); *London County Council* v. *Aylesbury Dairy & Co.*, (1898)1 QB 106, 109; *R.* v. *Champman*, (1931)2 KB 606, 609. Courts must generally lean, in cases of doubt, against any construction of a penal law which is patently oppressive to the subject, and in favour of a construction which is in accord with the general policy of the criminal law, which is to protect the subject from a fresh prosecution after he has been convicted or acquitted in respect of what is in substance the same matter; *Rangachariar* v. *Venkataswami*, AIR 1955 Mad 456(2); *Chhutan* v. *State*, AIR 1960 All 629; *Jiwanmal Sons (P) Ltd.* v. *Deputy Commissioner of Sales Tax*, 1971 MPLJ 684, 687 (Bishambhar Dayal, C.J.); *State of Maharashtra* v. *Laxmi Narsimham*, 1977 Mah LJ 715 (DB); *Municipality, Jammu* v. *Glacier Cold Storage*, 1980 CLR (J & K) 39 (DB); *Abdul Azees* v. *State of Karnataka*, (1977)2 SCC 485 (490).
2. *Emperor* v. *Himachal Singh*, AIR 1930 All 265, 267 : ILR 52 All 568 (FB); *Madho Saran Singh* v. *Emperor*, ILR 1944 All 42 : AIR 1943 All 379 (FB).
3. *Diwan Singh* v. *Emperor*, AIR 1936 Nag 55, 62; *see* also *Jonathan Edward* v. *DeSilva*, AIR 1934 PC 36, 40; *M/s. Singh and Co.* v. *State of Uttar Pradesh*, 1989 All LJ 987, relying on *State of West Bengal* v. *Swapan Kumar Guha*, AIR 1982 SC 949.
4. *Ranchhoddas* v. *Union of India*, AIR 1961 SC 935, 940.
5. *King* v. *Aung The Nyun*, AIR 1940 Rang 259 (FB).
6. *Chandler & Co* v. *Collector of Customs*, 4 CLR 1719, 1735 (*Per* O'Connor, J.).
7. *Sakaria Cotton Mills, Ltd.* v. *State of Bombay*, AIR 1953 SC 278.
8. *State of U.P.* v. *Lalai Singh*, AIR 1977 SC 202; *Maharaja Book Depot* v. *Gujarat State*, (1979)1 SCC 295.

In case of ambiguity the benefit of construction must go to the accused.[1]

The Court can depart from the literal meaning of words, and give that meaning that would advance the remedy and suppress the mischief.[2]

While interpreting a prohibitive clause leading to penalties, no addition is permissible.[3]

6. Where two interpretations possible.—Where two equally reasonable interpretations are possible, the penal provisions should be so construed as not to place a burden on the subject.[4] Thus where two interpretations of, say Section 30, Evidence Act, are grammatically possible, the ordinary canons of interpretation would compel the Court to adopt in the interest of accused persons the stricter and narrower constructions—the construction which gives less scope to any exceptional extension than what may be used against an accused person at the trial.[5]

In *Tuck & Sons* v. *Priester*,[6] Lord Esher, M.R., put the rule in this way : "if there are two reasonable constructions, we must give the more lenient one", and Lindley, L.J.,[7] spoke of "the well settled rule that the Court will not hold that a penalty has been incurred, unless the language of the clause which is said to impose, it is so clear that the case must necessarily be within it." The matter was put even more conclusively by Cave, J., in *Crane* v. *Lawrence*,[8] in these words : "It is a sound rule of construction that when any penalty or disability is imposed by statute on any of Her Majesty's subjects, the Court before which any charge is preferred must be able to see clearly what the conduct is which will render a person liable to the penalty so imposed." "We have the authority of Lord Esher in *Tuck & Sons* v. *Priester*."[9] observed Collins, L.J., In *Hildesheimer* v. *W. & F. Faulkner. Ltd.*,[10] "to the effect that if there are two possible constructions of a penal clause in a statute, one which would mitigate and the other which would aggravate the penalty, we ought to adopt that which will impose the smaller sum." When the provision in question is open to more interpretations than one, we ought not to adopt a construction adverse to the accused unless he is brought clearly within the words of the Act.[11]

It is well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction

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1. *Shaikh Abdul Azees* v. *State of Karnataka*, AIR 1977 SC 1485.
2. *Damyanti* v. *S.G. University*, AIR 1979 Guj 62; *see* also *Oberoi Motors* v. *Union Territory, Chandigarh*, AIR 1978 Punj 294, case under the Essential Commodities Act.
3. *Wasudeo* v. *State*,.AIR 1977 Bom 94.
4. *Gurandittа* v. *Emperor*, AIR 1938 Lah 691 : 39 Cr LJ 970 (Lah) : 177 IC 975; *Bhai Lal Chand* v. *Emperor*, AIR 1942 Lah 253 (more favourable to the subject is to be taken); *Sharma, R.S.* v. *State*, ILR 1961 All 507 : 1961 All LJ 624 : 1961 AWR (HC) 476; *Raghunath Swarup* v. *Raghurai Bahadur*, AIR 1967 All 145 (Gyanendra Kumar, J.); *Hari Krishna* v. *State*, (1980)17 ACC 43; *Aslam Babalal Desai* v. *State of Maharashtra*, AIR 1993 SC 1 : (AIR 1990 SC 71 Overruled).
5. *Periyaswami* v. *Emperor*, AIR 1931 Mad 177, 179.
6. 19 QBD 629, 638.
7. 19 QBD 629, 645.
8. 25 QBD 152, 154.
9. (1887)19 QBD 629, 638. If there is a reasonable interpretation which will avoid the penalty in any particular case, that construction must be adopted. If there are two reasonable constructions, the more lenient one be adopted.
10. (1901)2 Ch 532, 561; *see* also *Emperor* v. *Ahmed*, AIR 1926 Sind 273 : 27 Cr LJ 865, 867 (FB); but *see L'lewellyan* v. *Vale of Glamorgan Ry. Co.*, (1898)1 QB 473, 478 : "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." If a statute, which so affects a man's status as to be in effect a penal enactment, is capable of two constructions, that one should be adopted which is most favourable to the person affected; *Re* North *Ex parte* Hasluck, (1895)2 QB 264; *Remington* v. *Larchin*, (1921)3 KB 404 (a more lenient construction avoiding the imposition of a penalty).
11. *Ingham* v. *Hie Lee*, 15 CLR 267, 271; *Raghunath Swarup Mathur* v. *Raghuraj Bahadur*, AIR 1967 All 145.

which exempts the subject from penalty rather than the one which imposes penalty.[1]

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. *Elliott, The Gauntlet*,[2] found it necessary to say a few words on this topic, which was so often pressed in argument. His Lordship observed :

> "No doubt all penal statutes 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 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. But where the thing is brought within the words and within the spirit, there 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."

The rule with regard to the construction of sections which create a criminal offence is not to be used to restrict the scope of the section where *wide* and comprehensive *language is used*, not in terms of art, but in terms of ordinary English which are sufficiently broad in their meaning to cover the particular operation in question.[3]

When an Act 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. The more literal construction is not to prevail if it is opposed to the intentions of the Legislature, as apparent by the statute, and if the words are sufficiently flexible, to admit of some other construction by which the intention will be better effectuated.[4]

If two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute.[5]

This is in perfect accordance with the statement of the Supreme Court of the United States in *Johnson* v. *Southern Pacific Co.*,[6] Fuller, C.J., in delivering the unanimous judgment of the Court said, "It is settled that though penal laws are to be construed strictly, yet the intention of the Legislature must govern the construction of penal as well as other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the Legislature." The learned Chief Justice quotes a passage from a judgment of Mr. Justice Story in *United States* v. *Winn*,[7] in which that learned Judge says : "I agree to that rule 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

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1. *Commissioner of Income-tax* v. *Vegetable Products, Ltd.*, (1971)80 ITR 14, 20 (Cal) (Sankar Prasad Mitra, J.); *Kamala Kant Singh* v. *Chairman/Mg. Director Bennetta Colman and Co. Ltd.*, 1987 All LJ 1508.
2. 1872 LR 4 PC 184, 191; *see* also *Gamadia* v. *Emperor*, 27 Cr LJ 165 : 91 IC 949 (Bom).
3. *Elderton* v. *United Kingdom Totalisator Co. Ltd.*, (1945)2 All ER 624, 625 (CA).
4. *L'lewellyan* v. *Vale of Glamorgan Railway Co.*, (1898)1 QB 473, 478; *Caledonian Railway Co.* v. *North British Railway Co.*, 6 AC 114, 122.
5. *Dilip Kumar Sharma* v. *State of M.P.*, 1975 Cr LR (SC) 624.
6. 196 US 1, 17-18 followed in *Scott* v. *Cawsey*, (1907)5 CLR 132, 154-157.
7. 3 Sumn 209, Fed Case No. 16, 740.

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 harmonises best with the context, and promotes in the fullest manner the apparent policy and objects of the Legislature."

Modern view.—The rule of strict construction of penal statutes as modified *in 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 rule means 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.[1] Hence, the rule which requires that penal and some other statutes should be construed strictly has lost much of its force in recent times, and it is now recognized that the paramount duty of the judicial interpreter is to put upon the language of the Legislature, *honestly and faithfully, its plain and rational meaning and to promote its object.*[2]

Pollock, C.B., observed in *Attorney-General* v. *Sillem*[3] :

> "The distinction between a strict construction and a more free one has, no doubt, in modern times, almost disappeared, and the question now is : What is the true construction of a statute? If I were asked whether there be any difference left between a criminal statute and any other statute not creating an offence, I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law."[4]

Craies writes :

> "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.

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1. *Emperor* v. *Noor Mohamed*, AIR 1928 Sind 1, 7. "The rule of strict construction, derived from cases decided when almost the only purpose of criminal legislation was to abolish benefit of clergy and substitute the death penalty, has no proper general application today, although still salutary in a few specific instances. The interpretation and application of statutes providing an indefinite test of liability presents an allied problem. As the boundaries of crime have been extended to include, more and more conduct made criminal only because in securing conflict with some vague ideal of social policy, or to reach some potential evil in an indirect manner, the need for a clear and comprehensive statement of the prohibited Acts has become increasingly pressing. A canon of strict construction, limiting the statute to its obvious meaning, and excluding potentialities, perhaps implicit to the Legislature, but uncertain of application to the uninformed reader, does much to prevent injustice.": (50 Harvard : *Law Review*, at pp. 637-638).
2. *State of Bombay* v. *Jal K. Patel*, AIR 1951 Bom 203, 204; *Emperor* v. *Harmazadyar Irani*, AIR 1948 Bom 250; *see* also *United States* v. *Bremblett*, 99 L Ed 594, 600 : 348 US 503 (Reed, J.).
3. (1864)33 LJ Ex 92, 110; *S.K.D. Lakshmanan Fire Works Industries* v. *K.V. Sivaramakrishnan*, (1995)84 Com Cases 447 (Ker (FB); *Gulshan Raj* v. *Darshan Lal*, (1995)84 Com Cases 445 (P & H), and *K.P.V. Textiles* v. *Nalook Chand Naresh Chand*, (1994)79 Com Cas 125 (P & H); dissented from *K. Chellakannu Nadar* v. *Chenkal M.R. Simon*, (1995)84 Com Cas 459 (Ker) and *Kumaresan (N.C.)* v. *Ameerappa*, (1992)74 Com Cas 848 (Ker) overruled; *Mahadevan Sunil Kumar* v. *Bhardran*, (1992)74 Com Cas 805 (Ker) approved.
4. *Statute Law*, 5th Ed. (1952) at p. 503.

'All modern Acts are framed with regard to equitable as well as legal principle':[1] 'A hundred years ago,' said the Court in *Lyon's* case,[2] 'statutes were required to be perfectly precise, and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the Legislature'. Therefore, 'although the common distinction', as Pollock, C.B, said in *Nicholson* v. *Fields*,[3] 'taken between penal Acts and remedial Acts, that the former are to be construed strictly and the others are to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a Judge', yet the distinction now means little more than 'that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the Court refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by mere verbal nicety, forced construction, or equitable interpretation, to exonerate parties plainly within their scope'.

Day, J., observed in *Newly* v. *Sims*[4] :

"I cannot concur in the contention that because these Acts impose penalties, therefore, their construction should necessarily, be strict I think that neither greater nor less strictness should be applied to those than to other statutes."

Maxwell[5] states the rule thus :

"The rule of strict construction does not, indeed, require or sanction that suspicious scrutiny of the words, or those hostile conclusions from their ambiguity or from what is left unexpressed, which characterise the judicial interpretation of affidavits, in support of *ex parte* applications, or of Magistrate's convictions where the ambiguity goes to the jurisdiction. Nor does it allow the imposition of a restricted meaning on the words, wherever any doubt can be suggested, to withdraw from the operation of the statute a case which falls both within its scope and the fair sense of its language. This would be to defeat, not to promote, the object of the Legislature; to misread the statute and misunderstand its purpose. A Court is not at liberty to put a limitation on general words which is not called for by the sense or the objects, of the mischiefs or the enactment, and no construction is admissible which would sanction a fraudulent evasion of an Act."

In construing a criminal statute the words used must be construed in their ordinary, grammatical and natural sense, and not in a forced or artificial sense unless such conclusion would give rise to an obvious absurdity which could never have been intended.[6]

At the present day the distinction between a strict and liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed substantially by the same rules. But Courts do recognize some shade of difference in the application of rules of interpretation in the case of penal and taxing Acts and other Acts. In *Nicholson* v. *Fields*,[7] Pollock, C.B., pointed out :

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1. *Edwards* v. *Edwards*, (1876)2 Ch D 291, 297. Mellish, L.J., quoted with approval by Lord Cozens Hardy, M.R., Monolithic Building Co. Ltd., *In re*, (1915)1 Ch 643, 665.
2. 1858 Bell CC 38, 45 : 169 ER 115.
3. (1862)31 LJ Ex 233, 235.
4. (1894)63 LJMC 229 (against adulteration).
5. *Interpretation of Statutes*, 11th Ed. at p. 254.
6. *Kesar* v. *Emperor*, 20 Cr LJ 161, 167 : 49 IC 481 (Pat) (FB).
7. 31 LJ Ex 233, 235.

"Now I freely admit that though the common distinction taken between penal Acts and remedial Acts, that the former are to be construed strictly and the latter to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a Judge, yet I think that we ought always to look, whatever be the Act, be it penal or be it remedial, for the true construction of the Act by its language and in that respect I think that there ought to be no distinction between a penal and a remedial statute. If the remedial statute does not extend to a particular case where we think that it ought to have extended, we have no power to legislate so far as to extend it. We are, I think, bound, undoubtedly, to this sort of strict construction in a penal statute, that if there be a fair and reasonable doubt, we must do that which we always do in revenue cases—not to charge the subject with a tax unless the language by which the tax is imposed is perfectly clear and free from doubt : still more, perhaps are we bound to do so in the case of penalty."

7. Proper view.—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. To put it in other words, the rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute. It has been held that in construing a penal statute, it is a cardinal principle that in case of doubt the construction favourable to the subject should be preferred.[1] But these rules do not in any way affect the fundamental principles of interpretation, namely, that the primary test is the language employed in the Act and when the words are clear and plain the Court is bound to accept the expressed intention of the Legislature.[2] To determine that a case is within the intention of a statute, its language must authorize the Court to say so. 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, with those which are enumerated.[3] No doubt as Maxwell observes, the rule of strict construction in the case of penal statute was more rigorously applied in former times, and the tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. The rule of strict construction must yield to the paramount rule that every statute is to be expounded according to its express or manifest intention. Nevertheless the intention to use words in a sense different from their natural and ordinary sense must first be established and this more strictly in a criminal case.[4] A penal Act must be read plainly,[5] in an atmosphere free from all bias,[6] and in a manner consistent with commonsense.[7] One cannot, however, read into it certain words or provisions unless the language in terms or by necessary implication so warrants.[8] In *Attorney-*

1. *Ishar Das* v. *State of Punjab*, 1972 SCD 262; *W.H. King* v. *Republic of India*, AIR 1952 SC 156.
2. *M.V. Joshi* v. *M.U. Shimpi*, AIR 1961 SC 1494, 1498; *Narendra Bhogi Lal* v. *State of Maharashtra*, 73 Bom LR 828, 834 (Vimadalal, J.).
3. *Bouie* v. *Columbia*, 12 L Ed 2d 894, 905 : 378 US 347 (Brennan, J.); However deserving of punishment his conduct may seem; 87 L Ed 734; *see* also *Yates* v. *United States*, I L Ed 2d 1356, 1367 : 354 US 298 (Harlan, J.).
4. *State of Kerala* v. *West Coast Planters Agencies Ltd*, AIR 1958 Ker 41, 43.
5. *Chedi Mala* v. *K.E.*, 1 Cr LJ 205, 207 (Cal).
6. *Madho Saran Singh* v. *Emperor*, AIR 1943 All 379 : ILR 1944 All 42 (FB).
7. *Jogendra Chandra Roy* v. *Superintendent, Dum Dum Special Jail*, ILR 60 Cal 742 : AIR 1933 Cal 280, 282; *Gamadia* v. *Emperor*, ILR 50 Bom 34 : AIR 1926 Bom 57, 59; *Dyke* v. *Elliot, The Gauntlet*, 1872 LR 4 PC 184, 191; *State* v. *Hyder Ali*, AIR 1950 Hyd 128 (FB).
8. *Payndah Venkatanarayana* v. *G.V. Sudhakar Rao*, AIR 1967 Andh Pra 41; *see* also *Merya Dharmiah* v. *Meeya Basavaiah*, (1966)2 Andh WR 83.

General v. *Sillem*,[1] Bramwell, B., quoted a passage from Sidgwick on *Statutory and Constitutional Law*, which he said was "a passage in which good sense, force and propriety of language are equally conspicuous, and which is amply borne out by the authorities, English and American." The passage is as follows :

> "But the rule that statutes of this class are to be considered strictly, is far from being a rigid and unbending one, or rather it has in modern times been so modified and explained away as to mean little more than that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment; the Courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and, on the other, equally refusing by mere verbal nicety, forced construction or equitable interpretation, to exonerate parties plainly within their scope."

A penal statute has to be construed no doubt strictly but the intention of the Legislature must govern in the construction of a penal statute as much as in any other statute. The distinction between a strict and liberal construction has almost disappeared. To hold that because on 20th July, 1950, Ordinance 22 of 1950 was not in force in Hyderabad[2] and, therefore, A's stay in Hyderabad was not an offence and it could never be an offence on any subsequent date would be doing violence to the words of the Influx from Pakistan (Control) Act, 1949 and the Rules. There was no doubt as regards the correctness of the principle that any law that is made should ordinarily affect future transactions, not past ones, but it was pointed out that the accused was not charged for any act committed by him before the amending Ordinance No. 22 of 1950 came into force. After the Ordinance was introduced any stay after the period fixed in the permit came within the mischief of Rule 19 and the omission to leave India constituted as offence.[3] The paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object.[4] "In short, it appears to me," says Isaacs, J. in *Scott* v. *Cawvsey*,[5] "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 policy and objects of the Legislature," Penal statutes, accordingly, should be construed according to what appears to be their true meaning.[6] In *Corpus Juris*,[7] it is stated : "Penal statutes are to be interpreted by the aid of all the ordinary rules for the construction of statutes. The Court should construe these statutes in the light of the evil to be remedied and with the cardinal object of ascertaining and giving effect to the intention of the Legislature, when it can be discovered, must, control." "It is of the utmost importance", says Bhandari, J., in *Teja Singh* v. *State*,[8] "that the Court should endeavour to ascertain the intention of the Legislature and to give effect thereto." Sedgwick states[9] the rule thus : 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."

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1. (1863)2 H & C 431 : 33 LJ 93.
2. The Act was applied to Hyderabad State on 24-7-1950.
3. *State* v. *Hyder Ali*, AIR 1950 Hyd 128 (FB) (Qamar Hassan, J., dissenting).
4. *Hormazdyar Ardeshir* v. *Emperor*, AIR 1948 Bom 250, 253; *State of Bombay* v. *Jal K. Patel*, AIR 1951 Bom 203, 204.
5. (1907)5 CLR 132, 154-157.
6. *Myers* v. *Baker*, (1858)28 LJ Ex 90; *R.* v. *Lyons*, (1858)28 LJ MC 33.
7. Vol. 59 at pp. 1112-13, Article 659.
8. AIR 1952 Punj 45.
9. *Statutory Law*, (2nd Ed.) at p. 287; *see* also *Foley* v. *Fletcher*, (1858)117 RR 967.

While it is true that the benefit of every doubt, even in the matter of interpretation, must be given to the accused, a construction that would defeat the very object of the law must be avoided if it is reasonable to do so. Every distinct offence in Section 233, Cr.P.C.[1] cannot be treated as having the same meaning as every offence. The only meaning that the word 'distinct' can have in the context in which it occurs is to indicate that there should be no connection between the various acts which give rise to criminal liability. The fact that three houses were looted one after the other cannot have the effect of proving three 'distinct' offences. There may even in such a case be sufficient continuity of purpose to make it one offence.[2]

Penal laws directed against corruption must always be construed to further justice, and the Court should never put subtle interpretation for protecting corrupt officials.[3]

But where two interpretations are possible one that is favourable to the accused must be accepted.[4]

The paramount object in construing penal as well as other statutes, is to ascertain the legislative intent, and the strict rule of construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention.[5] The rule that penal statutes should receive a strict construction does not mean that a Court should construe an Act of Parliament so as to exclude from it asmuch as an ingenious mind can by a possible interpretation contrive to exclude. The rule simply means that the Court should not strain the words beyond their fair meaning.

There is no principle of law of interpretation to authorize a Court to withdraw a case from the express prohibition of one statute on the ground that the offence was also punishable, though differently, in another statute. In case of two parallel provisions, the prosecution may proceed under either.[6]

Where an enactment entails penal consequences, no violence should be done to its language to bring people within it but rather care must be taken to see that no one is brought within it, who is not within the express language. In order to determine that a case is within the intention of the statute, its language must authorise the court to say so. If the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases within the mischief intended to be prevented, it is not competent to a Court to extend them. It is immaterial for this purpose whether the procedure prescribed for the enforcement of the penal law is criminal or civil.[7]

Law as it exists on the date of the judgment.—The true rule of construction of a penal statute is that where the Legislature evinces its intention to modify the law, in favour of the accused, so as to reduce the rigour of the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction,

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1. Now Section 218 of 1973 Code.
2. *Ali Chunnoo* v. *State*, AIR 1954 All 795.
3. *Public Prosecutor* v. *Audinarayan Chetty*, (1953)1 MLJ 75.
4. *Sardar Khan* v. *State of Maharashtra*, 1982 Mah LR 316.
5. *Harumal Parmanand* v. *Emperor*, 16 Cr LJ 632 : 30 IC 456 (Sind). But *see Emperor* v. *Sita Ram*, 12 Cr LJ 371 : 11 IC 139 [Penal sections of the (Cantonment) Code are of so rigorous a nature that they must be construed strictly in favour of an accused as well as against him. When, therefore, a Magistrate convicts under the wrong section of Code, whether by inadvertence or otherwise, an accused is entitled to benefit by the mistake, and the Magistrate's orders are liable to be set aside as illegal]; *see*, however, *U.S.* v. *Hastwell*, (1867)6 Wallace 396.
6. *State* v. *Raj Kumar*, AIR 1956 Pepsu 1; Section 409. IPC.
7. *Gill & Co. (P), Ltd.* v. *Sri Damodar Das Haridas*, (1964)1 Andh WR 197.

the proceeding against him are regarded as inchoate and the law applicable to him would be the law as amended by the Legislature. The Court trying an accused person has to take into consideration the law as it exists on the date of the judgment.[1]

(a) Surrounding circumstances.—"The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that the sense of the words is to be adopted which best harmonizes with the context and promotes in the fullest manner the policy and object of the Legislature.....They are indeed, frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Lord Coke's words, 'to suppress the mischief, and advance the remedy'.[2] *A* threatening letter is 'sent' when it is dropped in the way of the person for whom it is destined, so that he may pick it up; or is sent to *A* that he may deliver it to *B*; or is affixed in some place where B would be likely to see it; or is placed on a public road near his house, so that it may, however, indirectly reach him, which it eventually does after passing through several hands; or perhaps even if it does not reach the person addressed; although in none of these cases would the paper be popularly aid to have been 'sent'.[3]

Undoubtedly Section 4 of the Bombay Harijan Temple Entry Act, 1947, is a part of a penal statute, and it must be construed in favour of the accused. But even while construing the statute in favour of the accused the Court cannot give to the material words used in Section 4 a narrow and unreasonable construction. The word 'prevent' in Section 4 does not necessarily denote the use of physical force or threat of physical force. In construing the provisions of the Act judicial notice must be taken of the position that unfortunately prevails in many places in the Hindu community. The object of the Act is obviously beneficient, and a too restricted meaning should not be put on the Act so that its object might be defeated.[4]

(b) Meaning of words, however, cannot be cut down.—Clear words of an Act of Legislature, conveying a definite meaning in the ordinary sense of the words used, cannot be cut down or added to so as to alter that meaning.[5] Although penal statutes are to be construed strictly, beneficial construction to promote the object of an Act is not excluded and a *genus* may include species whether or not that species was in direct contemplation of the Legislature.[6]

Baguley, J., observed in *Emperor* v. *Maung Pu Kal*[7] :

> "Words when perfectly plain and clear must be given their natural meaning and although I fully recognise that a penal law must be interpreted as far as possible in favour of the subject, I do not think that a Court is justified in adding at the end of a section a qualifying or explanatory phrase which is not to be found in the section itself."

"It is a settled rule of construction of penal statutes that the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It was 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." Section 18(1) of the Bombay

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1. *Shyamlal* v. *State*, AIR 1968 All 392, 394 (Uniyal, J.).
2. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 266; *see* also *M. Abdul Wahid* v. *Crown*, 1949 Pak LR 780 : AIR 1950 Lah 101.
3. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 278.
4. *State* v. *Kaun Dharma*, AIR 1955 Bom 390.
5. *Hari Singh* v. *Crown*, ILR 7 Lah 348, 354.
6. *Barikrao* v. *Emperor*, AIR 1943 Nag 139 : ILR 1943 Nag 358.
7. AIR 1929 Rang 203, 204 : ILR 7 Rang 329 (Referring order).

Rent, Hotel and Lodging House Rates (Control) Act, 57 of 1947, provides that if any landlord receives any fine, premium or other like sum or deposit or any consideration other than the standard rent "in respect of the grant, renewal or continuance of a lease of any premises, such landlord or person shall be punished with imprisonment or fine as laid down in the section." Giving the words 'in respect of' their widest meaning, *viz.*, 'relating to' or 'with reference to' it is plain that this relationship must be predicated of the grant, renewal or continuance of a lease, and unless a lease comes into existence simultaneously or near about the time that the money is received, it cannot be said that the receipt was in 'respect of' the grant of a lease. On its *plain, natural, grammatical meaning* the language of the section 'in respect of the grant, renewal or continuance of a lease' envisages the existence of a lease and the payment of an amount in respect of that lease or with reference to that lease. The section does not cover the case of an agreement to grant a lease as distinguished from a lease. If the Legislature intended to punish persons receiving *pugree* or merely executory contracts, it should have made its intention clear by use of clear and unambiguous language.[1]

(c) No straining of language permitted.—Words and phrases in a penal statute cannot be strained beyond their ordinary meaning in order to confer penal jurisdiction.[2] Nor the Judges can add sections of their own to penal statutes with a view to improve them by some fancied completeness or consistency.[3]

It is not merely unsound but unjust to read words and infer meanings that are not found in the text.[4] It would not be proper for the Courts to extend the scope of a penal provision by reading into it words which are not there, and thereby widen the scope of the provision.[5] A provision in statutes which is of a special nature and not a penal statute in itself should be interpreted with great caution.[6]

(d) Omission how dealt with.—The general principle of strict construction is 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.[7] *In re* Wainewright,[8] Lord Lyndhurst, L.C., observed : "It is not the Court's province 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." *In re* Puvanur Athamu[9] was a case where the main question for decision was, whether an offence under Section 126, Indian Railways Act or Section

1. *Tolaram* v. *State of Bombay*, AIR 1954 SC 496; *Sosamma* v. *Rajendran*, (1994)80 Com Cas 503 (Ker); *N.K. Jain* v. *C.K. Shah*, AIR 1991 SC 1289 : 1991 Cri LJ 1347 : 1991 Lab IC 1013 : 1991 AIR SCW 960; *Sachidanand Singh* v. *(Smt.) Tarawati Mishrain*, AIR 1992 Pat 164 (DB).
2. *Emperor* v. *Deomal*, 10 Cr LJ 395 : 3 SLR 66. [It is general rule of construction of statutes (though it is subject to some qualification) that since, as it is sometimes phrased "crime is local," a statute creating an offence and imposing a penalty for it should be construed as to apply only to those persons who by virtue of residence, or, in some cases, citizenship or nationality are regarded as subject to the jurisdiction of the State which has enacted the statute]; *Naim Molvan* v. *Attorney-General, Palestine*, AIR 1948 PC 186, 190; *see* also *Macleod* v. *Attorney-General for New South Wales*, 1891 AC 455.
3. *Emperor* v. *Jaffur Mohammed*, 14 Cr LJ 204 : 15 Bom LR 106.
4. *Nag Po Chein* v. *Emperor*, 13 Cr LJ 54 (Upp Bur); *Pyndah Venkatanarayana* v. *Sudhakar Rao*, AIR 1967 Andh Pra 111, 116 (Kummarayya, J.) : International form of Indian Numerals or Devnagri form.
5. *Motibhai Fulabhai Patel & Co.* v. *Collector of Central Excise*, AIR 1970 SC 829.
6. *Mewa Lal Jha* v. *Emperor*, 26 Cr LJ 1162: 88 IC 522 (Pat) (Railways Act). Income Tax Act is a special Act, and must, therefore, be construed in favour of the subject; *Jagdeo Sahu* v. *Emperor*, 18 Cr LJ 438 : 38 IC 993 (All).
7. Maxwell: *Interpretation of Statutes*, 11th Ed. at p. 264.
8. (1843)12 LJ Ch 426.
9. AIR 1925 Mad 239.

7(c), Martial Law Regulations, was an 'offence' as that word is used in Section 149, Indian Penal Code. The public prosecutor urged that as the words 'unlawful assembly' in Section 141, Indian Penal Code, would cover an assembly whose object was to commit an offence under Section 126, Indian Railways Act (*vide* Section 40, I.P.C.), the same phrase in Section 149 must import that offence into Section 149 also. Wallace and Madhavan Nair, JJ., observed : "But we consider that a criminal statute has to be rigidly interpreted and that Section 40 in terms clearly implies that in Section 149 the word 'offence' only covers offences punishable under the Indian Penal Code. With the reasons for such a provision we are not concerned." In construing a statute the Court will not supply even an obvious omission if to do so would render an accused person liable to conviction.[1]

8. Mode of punishment.—Where a special offence is created by a statute and the mode how the penalty should be imposed is provided in that statute, it can only be imposed in the mode provided therein and in no other mode.[2] When the punishment or penalty is altered in degree but not in kind, the later provision would be considered as superseding the earlier one.[3] An Act which authorises the making of bye-laws, impliedly authorises the annexation of reasonable pecuniary penalties for their infringement recoverable (in the absence of other provision) by action or distress.[4] Where the provisions of a Companies Act impose a penalty, such a provision must be strictly construed.[5]

9. Implied repeal.—It is settled both on authority and principle that when a later statute again describes an offence created by an earlier statute and imposes a different punishment or varies the procedure the earlier statute is repealed by implication. This rule, however, is a subject to the limitations contained in Article 20(1) of the Constitution against *ex post facto* law providing for a greater punishment and has also no application where the offence described in the later Act is not the same as in the earlier Act, *i.e.* when the essential ingredient of the two offences are different.[6]

10. No retrospective effect.—Ordinarily, cannon of interpretation of penal legislation does not permit penal provisions to have retrospective effect.[7] It is true that in case of statutes of a penal character which create certain offences and make certain acts punishable as such offences for the first time, no proceedings under them are generally maintainable in respect of acts done before the commencement of the statute. The reason is plain. For first of all the doer of the act cannot be imputed with the element of *mens rea* which is ordinarily the principal ingredient for proof of guilt. Further to punish a person for his act which was then not an offence under a subsequent legislation which came into operation after his said act will *per se* unconscionable besides amounting to negation of fair play and justice.

It is true that *mens rea* is an essential ingredient of a criminal offence. But a statute may exclude the element of *mens rea* from the offence created by it. It is only where it is absolutely

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1. *In re* S.S. Vasan, AIR 1945 Mad 441.
2. *Gangully* v. *Watson*, 27 Cr LJ 1268, 1275 : 98 IC 116 (Cal); *see* also *Reg* v. *Cubit*, (1889)22 QBD 622; *Doe'd, Rochester, Bishop* v. *Bridges*, (1831)1 B & Ad 847, 850; *Wake* v. *Mayor of Sheffield*, (1883)12 QBD 142, 145; *Vallance* v. *Falle*, (1884)13 KBD 109, 110; *Hooper* v. *Emperor*, 17 Cr LJ 321: 35 IC 497 (Mad).
3. *Zaverbhai Amaidas* v. *State of Bombay*, AIR 1954 SC 752.
4. *Abdul Rauf* v. *State*, AIR 1960 Cal 436, 437 (D.N. Das Gupta, J.).
5. *Union of India* v. *Allied International Products, Ltd.*, (1971)2 SCR 661, 669.
6. *T. Boral* v. *Hurry Ah Hoe*, (1983)1 SCC 177 : AIR 1983 SC 150: 1983 SCC (Cr) 143.
7. *Nag Po Ngwe* v. *Emperor*, ILR 7 Rang 355 : AIR Rang 278; *Paras Ram* v. *Emperor*, AIR 1931 Lah 145. (A new Act or statute which penalises what otherwise is not an offence must be so construed as to make it strike at future acts or omissions unless the Legislature has clearly said so); *Gadai Sahu* v. *Emperor*, AIR 1943 Pat 361.

clear that the implementation of the object of the statute would otherwise be defeated that *mens rea* may be necessary implication be excluded from a statute. Of course, the nature of the *mens rea* that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof.[1]

Professional misconduct.—It may be said that cases of professional misconduct do not differ essentially from cases of offences. Two tests, however, must be looked for. Is the offence of misconduct created for the first time by the Act concerned, and *secondly*, does the Act contain any indication that activities of the kind mentioned are intended to be covered by its provisions, whenever they may have been done? In spite of the ordinary or say cardinal rule of construction that statutes, particularly statutes creating liabilities ought not to be so construed as to give them a retrospective operation unless there is a clear provision to that effect or a necessary intendment implied in the provisions, there is another principle on which Courts have sometimes acted. It has been held that where the object of an Act is not to inflict punishment on anyone but to protect the public from undesirable persons, bearing the stigma of a conviction or misconduct or their character, the ordinary rule of construction need not be strictly applied. If a person has been guilty of conduct, which the Act regards as misconduct before the Act and another has been guilty of the same kind of conduct after the Act had been commenced, 'one is equally bad as the other'. But even when construing Acts of this class, Courts ought not to construe them against the clear intention of the language used. When the limits of the Act are not clear, a court, in construing its provisions will not consider itself bound by the presumption that an Act is intended to operate prospectively rather than retrospectively to the same extent as in the case of ordinary Acts.[2]

It is open to a party to avoid the provisions of penal statute, provided he does not infringe the law.[3]

Sub-section (3) of Section 5 of the Preventive Detention Act, 1947, does not make the Act retrospective merely because the provisions of Sub-section (3) take into consideration the pecuniary resources and property acquired before March 16, 1947 on which date the Act came into force.[4]

11. Illustration of rational interpretation.—In *Emperor* v. *Nathalal Vanmali*,[5] the question arose about the effect of the presumption arising under Section 7 of the Bombay Prevention of Gambling Act, 4 of 1887. In the raid of the business premises of the accused persons certain books and documents were seized and it was suggested by the prosecution that those books and documents were instruments of gaming and that since the raid took place under Section 6 of the Act, a presumption arose under Section 7 that the premises raided were used as a common gaming house. The documents seized, however, were not on the face of them instruments of gaming and reliance was placed by the Government Pleader particularly on the words which were added to Section 7 by an amendment in 1936. Beaumont, C.J. (as he then was) observed thereon :

> "Section 7, as amended provides that in certain events the house, room or place raided under Section 6 shall be presumed to be used as a common gaming house until the contrary is proved. Now, there are two events as I read the section, on which that presumption arises. The first event is when any instrument of gaming has been seized in the house, room or place

1. *Nathulal* v. *State of Madhya Pradesh*, AIR 1966 SC 43 : (1965)2 Andh LT 206 : 1965 MPLJ 832.
2. *Ganesan* v. *A.K. Toscelyne*, AIR 1957 Cal 33, 38, 39 (Chartered Accountants Act).
3. *Balmukanda Mishra* v. *Lalit Mohan*, AIR 1945 Pat 465; *Inland Revenue Commissioner* v. *Duke of Westminster*, 1936 AC 1.
4. *Sajjan Singh* v. *State of Punjab*, AIR 1964 SC 464.
5. AIR 1939 Bom 339 : ILR 1939 Bom 434.

entered under Section 6, or about the person of anyone found therein. There is no particular difficulty in determining when that event occurs. All that the Court has to do is to see whether the documents and the things found in the house raided fall within the definition of 'instruments of gaming'. If they do, then the presumption arises. The other event is more difficult to determine. It is worded in this way : 'And in the case of any other things so seized' (that must mean anything other than an instrument of gaming) if the Court is satisfied that the police officer who entered such house, room or place had reasonable grounds for suspecting that the thing so seized was an instrument of gaming, then the seizure leads to the presumption. So that the occurrence of that event requires two things to be proved, *first* that something has been seized, which is other than an instrument of gaming, and, *secondly*, that the police officer had reasonable ground for suspecting that the thing so seized was an instrument of gaming. When these two things are proved, then the Court must presume that the house, which has been entered, was used as a common gaming house until the contrary is proved. But obviously if the only evidence of the house being used as a common gaming house lies in the seizure in the house of something which is in fact not an instrument of gaming, although the police officer had reasonable ground for suspecting that it was an instrument of gaming, then there is no evidence of such user and the presumption is rebutted. It seems to me that the presumption arising in the second event specified in Section 7 must always be still-born, because it is rebutted by proof of the very event which gives it birth, namely, seizure of something other than an instrument of gaming. The learned Government Pleader says that that construction reduces the amendment of the Act to a nullity, and that what the section really means is that where there is found in a raid an instrument of gaming, or something which is reasonably suspected to be an instrument of gaming, though it cannot be definitely proved to be so, then the presumption arises, and the burden is thrown upon the accused to prove that the suspected thing is not an instrument of gaming. That, no doubt, would be a reasonable construction to be placed upon the section if the language so permitted. *But in construing a section of Penal Act which cast upon the accused the burden of proving his innocence, the Court must act strictly (italics mine)* and it seems to me that it is impossible, reading the language of the section according to its ordinary and natural meaning, to give to the section the meaning for which the learned Government Pleader contends. I think that what I have called the second event can only arise, on the language used, when it is proved that the thing which was found in the house raided was not an instrument of gaming; and, as I have pointed out, directly you prove that you destroy the evidential value of the thing found. So that, in my opinion, in this case in order to bring into play the presumption under Section 7 it must be proved that the things seized in the raid were instruments of gaming."

The law should be construed liberally in favour of the accused if he has acted in *good faith* for the protection of his person and property.[1]

A *proviso* which has the effect of saving parties from penal enactments, should be liberally construed.[2] And where a proviso to a section is open to a double construction, one which inflicts a penalty and the other which does not, the latter construction should prevail.[3]

In construing a statute which gives a valuable *protection to the subject*, the probable intention of the Legislature cannot prevail against the literal grammatical meaning of the

1. *King-Emperor* v. *Kyaw Zan Hla*, 1 Cr LJ 997, 1001.
2. *Hutchinson* v. *Manchester etc Ry. Co.*, (1846)153 ER 869.
3. *Khemchand* v. *Commissioner of Income-tax*, AIR 1926 Sind 46, 51.

words of the section so as to whittle down the protection that is given by taking that meaning.[1]

12. Maxwell's view.—Maxwell[2] summarizes the modern trend of construction in the following words : "The tendency of modern decisions upon the whole, is to narrow materially the difference between what is called a strict and a benefical 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 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 eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischief aimed at are, if the language permits, to be held to fall within its remedial influence."

13. Different Acts.—A penal law like the *Excise Act* has to be strictly construed and should be interpreted generously in favour of the subject.[3]

A penal enactment like the *Arms Act* must be construed in favour of the individual person where any doubt exists.[4]

Penal provisions of law, which impose a penalty on a person who fails to comply with those provisions *(U.P. Court of Wards Act)* must be strictly construed.[5]

It cannot properly be said to be penal legislation to take possession and dispose of the property within the country of a supposed enemy *alien.*[6]

14. Law as a controlling factor.—*Livingstone Hall.*—Livingstone Hall gives an interesting and at the same time instructive account of 'Strict and Liberal Construction of Penal Statutes' which is published in Vol. 43 of *Howard Law Review* at pages 748 to 774.

Some extracts therefrom are printed below :

"Doctrines of strict or liberal construction have a peculiarly important place in the interpretation of criminal statutes....

"*(a) The Common Law.*—Undoubtedly precedent—the hundreds of cases stating and usually applying the common law rule of strict construction of penal statutes is one of the most powerful forces shaping the attitude of the Courts today towards this problem. 'Some history of benefit of clergy is necessary for a proper understanding of the growth of the rule. Benefit of clergy (freedom from the usual death penalty for common law felonies) did not become really important until the growing literacy among laymen in the latter part of the 14th century made

1. *Bansi Ram* v. *Emperor*, AIR 1944 Lah 51, 53 (FB).
2. *Interpretation of Statutes*, 11th Ed. at pp. 274, 275.
3. *Radhey Shiam* v. *Mewa Lal*, ILR 51 All 506 : AIR 1929 All 210, 211.
4. *Seth Balkishen* v. *Emperor*, AIR 1928 Nag 219.
5. *Bakhtawar Singh* v. *Balwant Singh*, AIR 1927 All 599.
6. *Ingenhol* v. *Wing & Co.*, AIR 1928 PC 83, 85. (The question was whether any recognition of the assignment by the American Custodian would give effect to the penal legislation of a foreign country, their Lordship were of opinion that the statute under which the property was seized and assigned by the Custodian was not penal legislation within the meaning of English authorities cited to them on behalf of the appellant).

a considerable number of them eligible to claim it under the literacy test adopted some year earlier. A century later the number of successful claimants became so large that the first of many statutes outside benefit of clergy in specified crimes was passed, applying to a lay person murdering his lord or master. In the reign of Henry VIII, who is said to have executed 72,000 of his subjects, numerous statutes were passed to exclude from benefit of clergy persons convicted as principals or accessories before the fact in a number of serious felonies. These statutes were repealed by Edward VI in 1547 except as to principals in five named felonies, to which accessories were added in 1557. A few other felonies were made non-clergyable by Elizabeth and James I. It was against this background of unmitigated severity in serious crimes that the doctrine of strict construction emerged. Prior to the seventeenth century there were only a few cases where it was employed and there were others where it was rejected. It did not become a general rule of conscious application until the growing humanitarianism of the seventeenth century England came into serious conflict with older laws of the preceding century. During this period there seem to have been no further non-clergyable offences created. But from 1691 to 1765 benefit of clergy was ousted in various forms of fraud, embezzlement and aggravated larceny, and a conflict ensued between the Legislature on the one hand and courts, juries, and even prosecutors on the other. The former was committed by inertia, or pressure from property owners, to a policy of deterrence through severity, while the latter tempered this severity with strict construction carried to its utmost absurd limits, verdicts contrary to the evidence, and waiver of the non-clergyable charge in return for a plea of guilty to a lesser offence. It was from cases and text-writers in England of this period that the doctrine of strict construction was brought to this country (U.S.A.). The nineteenth century, both here and in England marked the end of the death penalty as the chief mode of punishment for serious crimes. And with its passing, the factor which had brought the doctrine of strict construction into existence as literally *in favorem vitae* disappeared yet the doctrine itself lived, the sole relic of what had once been a veritable conspiracy for administrative nullification.

"The unrestricted application of this rule particularly in regard to the extreme technicality invoked to find an ambiguity which would call for its application, led to the formulation, after the reason for the rule had largely passed away, of a counter-irritant, thus stated by Chief Justice Marshall: '.....Though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the Legislature....The intention of the Legislature is to be collected from the words they employ. When there is no ambiguity in the words, there is no room for construction.....' "

(b) The rationale of the legal rules.—"The common law rule requires the strict construction of all penal statutes.....

"*For strict construction,* potentially the most serious argument is that the rule is founded 'on the plain principle that the power of punishment is vested in the Legislature, not in the Judicial Department.' For if this were true a liberal construction of statute would be an unconstitutional delegation of legislative power to the judiciary. But this objection is clearly unsound. Liberal construction does not involve going beyond the intention of the Legislature. Want of power to depart from the legislative intent exists as clearly in remedial as in penal statutes, yet this objection has never been urged against a liberal construction of remedial statutes. Where liberal construction statutes have been passed, Courts have never raised the objection to their enforcement and only one court has doubted the power of the Legislature to 'direct the judiciary in the interpretation of existing statutes'. It has further been claimed that as the State makes the laws, they should be most strongly construed against it. But the contract analogy is weak, for the State is presumably acting in the public interest in enacting criminal statutes, and need not in every case be subjected to a rule of interpretation designed to secure

justice between private parties. Nor can the rule be justly defended as a bulwark against tyranny in a country where both executive and Legislature are elected by the people, and the rule has never achieved the dignity of a constitutional amendment.

"Obviously the original reason for the growth of the rule, to mitigate the extension of capital felonies, no longer applies to all penal statutes if indeed it was ever of such widespread application. This has often been recognized in States where the rule has been abrogated and where this argument is still made it has been limited to those few statutes carrying punishment believed by the Courts to be disproportionately severe as compared with the act sought to be punished....."

"Changing conditions of modern civilization and the growth of scientific knowledge on criminology render imperative a new approach to the problems of crime. New categories of crimes and criminals cannot always be accurately defined on the first attempt. Shall the new machinery be nullified from the start under the guise of 'strict construction' or shall it be carried out liberally in the spirit in which it is conceived? Merely to state the issue is to answer it."

"But this does not mean that all penal statutes should be liberally construed. Political liberty does require that people should be able to pursue certain types of conduct with definite assurance of the bounds of criminal liability. Carelessly drafted legislation may still require limitation to avoid unforeseen consequences. The doctrine of strict construction often returns like Banquo's ghost to trouble courts committed by legislation and decision to the principle that it has ceased to exist....

(c) Guides to rationale construction.—"The conclusions which may be drawn from the foregoing are twofold, *first* that there is no sound reason for a general doctrine of strict construction of penal statutes and *prima facie* all such should have as liberal a construction as statutes generally, and, *secondly* that certain penal statutes should be strictly construed to avoid injustice. These exceptions range themselves into a few fairly well-defined categories.

(d) Effect of a disproportionate penalty.—"A statute imposing penalty which the Courts regard as disproportionately heavy for the acts committed can hardly escape a strict construction. It was with such statutes taking away benefit of clergy that the doctrine arose and history of the past four hundred years has amply proved that under such circumstances courts, juries and even prosecutors will co-operate to defeat a clearly avowed legislative will by any available means. But a strict construction for this reason is often the fault of the courts and not of needlessly severe legislation. Courts are not always fully aware of the social interests at stake or may lack the necessary 'Judicial humanity' to bow to what may seem undue harshness on the part of the Legislature but a power of judicial limitation in these cases does not exist and is exercised. It would serve only to perpetuate an unnecessary conflict between principle and decision to ignore this tendency, hence, a cautious modification of the rule of liberal construction here seems proper, such a relaxation does not often involve real judicial interference with legislative policy. An extension of a statute by construction to cover acts as to which the penalty may reasonably be believed disproportionate would usually do violence to the intent of the Legislature. A careful distinction is necessary however. It is not whether the penalty is light or heavy which should control but whether it is disproportionately light or heavy as compared with the culpability of the conduct which is sought to be penalized. As a practical matter the minimum penalty rather than the maximum should be important at least where there is some protection against arbitrary action on the part of the trial Judge by appeal on the ground that the sentence is excessive as there is in England and a few States. If such appeal becomes common or if some sentencing tribunal is provided in which the upper Court has confidence the widespread availability of probation and suspended sentence and the low

minimum penalty for most crimes even where these are not available will largely do away with the necessity of this type of strict construction. Where the existing penal sanctions seem to the Courts to be grossly inadequate great ingenuity is sometimes displayed in bringing about a conviction for some greater crime which only by analogy could cover the case. Here all that is necessary is to give those Courts still controlled by the common-law rule the right to interpret the statute liberally."

(e) Effect of honest attempt at compliance.—"Where an honest attempt is commonly made by those to whom the law applies to ascertain the precise limits of the legal sanction imposed particularly in the regulation of business practices for the social welfare indefiniteness is usually fatal to the enforcement of the law. It is unfair to those affected to inflict punishment which is *ex post facto* by nature for acts whose criminality was not readily apparent before the commission of the crime where the honest motive of the defendant cannot be questioned, as is true in many crimes. And a mistake as to the proper interpretation of the statute itself is never a defence. Strict construction plays an important part in preventing this injustice. Grammar and deductive logic narrowly applied give a reasonably certain clue to the meaning of most statutes but it is difficult to forecast with any approach to certainty the limits of liberal interpretation....."

(f) Effect of changed conditions.—"The spasmodic attempt to enforce old legislation which is inapplicable to changed social or economic conditions presents another instance in which the doctrine of strict construction provides some measure of needed protection against administrative tyranny. The dead hand of the past where it bars rather than leads social progress must be narrowly limited in scope until outright repeal becomes possible.....

"Strict construction of statutes inapplicable because of changed social or economic condition does not do violence to the intent of the Legislature in the true sense. Although unusually perpetual in form statutes are passed in the light of the condition at the time and there would seem no proper ground for inferring that the Legislatures of one generation ever intended to insist upon a broad interpretation of their statutes where they run clearly contrary to the social economic policies of a subsequent generation."

Ex-propriatory statutes, although beneficial and meant for public good, must be construed strictly.[1]

An extraordinary drastic measure like Terrorists and Disruptive Activities (Prevention) Act, 1987, can be resorted to, if the law enforcing machinery finds the ordinary penal law is inadequate and ineffective *vis-a-vis* terrorists and disruptionists, notwithstanding it is an extreme measure appearing to infringe personal liberty.[2]

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1. *Srila Moitra* v. *State*, AIR 1981 Cal 126, case under Urban Land (Celing and Regulation) Act, 1976.
2. *Niranjan Singh Karan Singh Punjabi, Advocate* v. *Jitendra Bhimraj*, (1990) 4 SCC 76, referring to *Usmanbhai Dawoodbhai Menon* v. *State of Gujarat*, (1988)2 SCC 271 : 1988 SCC (Cr) 318. (If the scales were to tilt in favour of curbing terrorism and disruptive activities, it is submitted, it is but just and expedient to resort to this drastic measure.).

CHAPTER XXVIII
EMERGENCY LEGISLATION

SYNOPSIS

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3. *War-time legislation*----735

1. Interpretation of.—Where the provisions of a statute are of exceptional character meant to be in force for a specified period during which the Legislature thought it advisable and expedient to provide for extraordinary remedies which are inroads upon the freedom of action of a particular class of persons, such provisions have to be construed strictly in accordance with the words actually used by the legislation and they cannot be given an extended meaning.[1] Legislature enacted for the purpose of alleviating grave conditions which result from economic disaster and public calamity is deserving of a generous interpretation so that its purposes may be accomplished.[2] War-time measures which often have to be enacted hastily to meet a grave pressing national emergency in which the very existence of the State is at stake, should be construed more liberally in favour of the Crown or the State than peace-time legislation.[3] Lord Macmillan in *Liversidge* v. *Anderson*,[4] in interpreting the words of Regulation 18-B of the Defence (General) Regulations, 1939, observed :

> "In the first place, it is important to have in mind that the regulation in question is a war measure. This is not to say that the Courts ought to adopt in wartime canons of construction different from those which they follow in peacetime. The fact that the nation is at war is no justification for any relaxation of the vigilance of the Courts in seeing that the law is duly observed, specially in a matter so fundamental as the liberty of the subject—rather the contrary. But in a time of emergency when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which because of its drastic invasion of the liberty of the subject the Courts would be slow to attribute to a peacetime measure. The purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is in accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peacetime as well as in war-time."

Lord Romer in the same case observed :

> "It was, indeed, said on behalf of the appellant in *Greene's* case[5] that where an Act of Parliament is capable of more than one construction, the Courts will adopt that construction which is the least likely to lead to an invasion of the liberty of the subject. That in general is a very salutary rule, but we are dealing here with an Act passed and regulations made

1. *K.C. Momin* v. *Indumati Potdar*, AIR 1958 SC 444, 447 (affecting landlord's freedom of action).
2. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 3 at p. 442.
3. *State of Bombay* v. *Vir Kumar*, AIR 1952 SC 335.
4. 1942 AC 266 : (1941)3 All ER 338; *see* also *Keshav Talpade* v. *K.E.*, 1943 FCR 49, 63; *P.K. Tare* v. *Emperor*, ILR 1943 Nag 154 : AIR 1943 Nag 26, 29 (Vivian Bose, J.); *Sitao Jholia* v. *Emperor*, ILR 1943 Nag 73 : AIR 1943 Nag 36.
5. *R.* v. *Home Secretary* Ex parte *Green*, (1941)3 All ER 104 (Digest Supp).

under it in times of a great national emergency, and in view of this circumstance and of the objects which that Act and those regulations so plainly had in view, the Courts should, in my opinion, prefer that construction which is the least likely to imperil the safety of this country."[1]

Indeed, the Courts have stretched the language of the sections to meet the emergency in the highest interest of the country.[2] Referring to U.P. (Temporary) Control of Rent and Eviction Act, III of 1947, Walliullah, J., observed in *Rex* v. *Nain Sukh Das*[3] :

"Further, we may note that this Act like so many others was passed by the Legislature as an emergency measure, to meet the situation arising out of the great shortage of housing accommodation in the province. The central object of the Act is to invest the District Magistrate with powers to control the letting, or subletting of houses within the territorial jurisdiction. It is well settled that an enactment of the character should be interpreted, as far as possible, in conformity with the fundamental canons of interpretation of a statute, in such a manner as to promote the object, or the main purpose of the enactment."

Holmes, J., while evolving for the first time on 3rd March, 1919 'the clear and present danger' principle in *Schenck* v. *U.S.*[4] proceeded to observe : "When a nation is at war many things that might be said in time of peace are such a hindrance to its efforts that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." The rule applicable to all statutes or statutory regulations in war or in peace is to interpret emergency legislation so as to promote rather than defeat its efficiency for the defence of the realm.[5] As a result of the economic depression, mortgage moratorium laws were enacted in many States of U.S. in the early thirties of this century, and in accordance with their obvious objectives, the Courts have tended to give them a liberal interpretation in favour of the hard-pressed debtors.[6] It is imperative that legislation providing for national defence and the prosecution of war shall be liberally construed to accomplish its important objectives.[7] In *Sweester* v. *Emerson*,[8] the Court said : "A public statute of this character which relates to the vital question whether the military power of the Government shall be potential and effective in the hands of the constitutional authorities or is to be contingent upon the option of the constituent members of the lawful military organisations, is one to be determined under the broad rules of lawful construction." Thus says Sutherland in his *Statutory Construction*[9] :

"The Courts have been justly slow to allow exclusion from the Selective Service Act, unless exclusions are clearly within the letter of the statute. Likewise, legislation pertaining to war production must not be impeded by technical interpretations. In time of war, criminal statutes pertaining to national defence and the unimpaired conduct of the war should not be given the strict construction which is ordinarily applied to penal statutes;

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1. *Basanta Chandra* v. *Emperor*, ILR 23 Pat 968 : AIR 1945 Pat 44, 50 (FB).
2. Kania, C.J. in *In re* Delhi Laws Act, 1912, 1951 SCR 747, 780, 781 : Such action, it was stated, was not permissible in ordinary times.
3. AIR 1949 All 345, 347.
4. 249 US 47, 52 : 63 L Ed 470, 473.
5. *Nishi Kanta Basu* v. *Province of West Bengal*, 53 CWN 9, relying on *Rex* v. *Halliday*, 1917 AC 260; *Ratan Roy* v. *State of Bihar*, AIR 1950 Pat 332, 344, para 7.
6. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 3 at p. 443.
7. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 3 at p. 441.
8. 236 Fed 161,163 (CCA, 1st, 1916).
9. 3rd Ed., Vol. 3 at pp. 446-448.

and it has not been uncommon for the Courts to recognize that a statute may have a different meaning in time of war from that it does have in time of peace."

While interpreting such statutes the Court cannot ignore matters which are of public general knowledge at the time of their enactment and it is entitled to take such matter into consideration.[1] The Soldiers and Sailors Civil Relief Act was read in the United States of America with an eye friendly to those who dropped their affairs to answer their country's call.[2] "Legislation enacted for the purpose of preserving," writes Sutherland,[3] "the security and rights of those engaged and participating in defence and war efforts must be given a broad interpretation. Thus, the Soldiers and Sailors Civil Relief Act is given an extended interpretation. 'A statute of this nature should be liberally construed in favour of the rights of men engaged in military service absorbed by the exacting duties required of him and unable to attend to matters of private business.' In addition, legislation undertaking to reward and repay those who have contributed by energy and even their lives in the service should be given unselfish construction."

In *Eliezer Zobrovsky* v. *General Officer Commanding, Palestine*,[4] Lord Wright of the Privy Council observed :

> "In the troublous times of war and in the chaotic post-war conditions the score of legal and permissive interference with personal liberty has been extended and restraints have been legalized by the Legislature which would not have been accepted as legitimate in normal times. Thus in England... the House of Lords upheld the legality of a detention of the applicants by the Executive without trial and also held that the Executive could not be compelled to give its reasons for the detention. The Executive was, in these respects, exercising an emergency power vested in it by the Legislature. There was a restraint outside the ordinary course of law but it was not illegal because it was justified by the terms of the Statutory Regulation which gave the power and imposed the duty for the purpose of securing the defence of the realm during the world war which has recently ended. A somewhat similar rule of law applied during the war of 1914-1918. Thus in *Rex* v. *Halliday*,[5] Lord Finley, L.C., said that the suggested rule, that legislation dealing with the liberty of the subject must be construed if possible in favour of the subject and against the Crown had 'no relevance in dealing with an executive measure by way of preventing a public danger' when the safety of the State was involved. Viscount Maugham adopted this view in *Liversidge* v. *Anderson*,[6] when he observed : 'Before dealing with the consideration of the regulation it is desirable to consider how the matter should be approached. The appellant's counsel truly say that the liberty of the subject is involved. They refer in emphatic terms to the Magna Carta and the Bill of Rights and they contend that legislation dealing with the liberty of the subject must be construed, if possible, in favour of the subject and against the Crown.' Adopting the language of Lord Finley, L.C., in this House in *Rex* v. *Halliday*,[7] 'I hold that the suggested rule has no relevance in dealing with

1. *Attorney-General of Alberta* v. *Attorney-General of Canada*, AIR 1939 PC 53, 57; *Itwari* v. *Rex*, AIR 1948 All 369, 371-372 (FB).
2. *Le Maistre* v. *Leffers*, 333 US 1 : 92 L Ed, 429; *Socony Vacuum Oil Co* v. *Smith*, 305 US 424 : 83 L Ed, 265; *Bainbridge* v. *Marchants, etc., Co.*, 287 US 278 : 77 L Ed 302 (favoured class).
3. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 3 at pp. 447-48.
4. 1947 AC 246.
5. 1917 AC 260, 270.
6. 1942 AC 206; see *Rattan Roy* v. *State of Bihar*, AIR 1950 Pat 332, 334; *Amrit Banaspati Co., Ltd.* v. *Emperor*, AIR 1947 Bom 306; *Basanta Chandra* v. *Emperor*, ILR 23 Pat 968 : AIR 1945 Pat 44, 56.
7. 1917 AC 260, 271.

an executive measure by way of preventing at public danger when the safety of the State is involved. My Lords, I think we should approach the construction of Regulation 18-B of the General Regulations without any general presumption as to its meaning except the universal presumption, applicable to Orders-in-Council and other like instruments that, if there is a reasonable doubt so to the meaning of the words used, and we should prefer a construction which will carry into effect the plain intention of those responsible for the Order-in-Council rather than on which will defeat that intention'."

With respect to another similar regulation prohibiting a person from residing in a particular locality where a military authority suspects him of acting in a manner prejudicial to the public safety, Scrutton, L.J., observed in *Ronnfeldt* v. *Phillips*,[1] "The Courts were always anxious to protect the liberty of the subject. They did so both in the interests of the subject himself and in the interests of the State. In time of war there must be some modification in the interest of the State." Similarly, in *U.S.* v. *Peggy*,[2] the Court sacrificed individual rights for national purposes in great national concerns (war). Such an interpretation may encroach upon the liberty of the subject and may entail chance of abuse. But, however, precious the personal liberty of the subject may be, there is something, for which it may well be, to some extent, sacrificed by legal enactment, namely, national success in war or escape from national plunder or enslavement. It must not be assumed that the powers conferred by the statute will be abused.[3]

It is a profound mistake for Courts of Justice, in construing emergency legislation introduced for the protection of public safety, to give effect to the plain and natural meaning of the words used on some supposed reluctance of the enacting authority to interfere with individual liberties and vested rights.[4] Beaumont, C.J., after referring to the speech of Viscount Maugham in *Liversidge's* case explained in *Shree Kant's* case[5]—

"If emergency legislation is not to be construed with a presumption in favour of preserving the liberty of the subject, I fail to see why it should be construed with a presumption in favour of preserving vested rights. In my opinion, the normal presumption that a statute is not intended to interfere with vested rights has no application to the construction of this Ordinance. In the same strain Greer, J., had observed in *Huson Bay Co.* v. *Maclay*.[6] Under circumstances such as these the notion that there is any effective presumption that Parliament did not intend to interfere with the liberty or property of the subject becomes so thin as to be describable as the shade of a shadow, and disappears altogether when we find in the statute express words which show that the Legislature expressly authorised particular regulation which would of necessity restrict the liberty of the subject and his freedom to enjoy his normal rights over his real and personal property'."

An Ordinance or an emergency measure is usually drafted in hurry to meet unexpected contingencies or to meet some immediate need. In view of such circumstances and the speed with which such a legislation is brought out, it would be unfair to criticize it in the way that a statute might be criticized. The proper course is to take such an Ordinance as a whole and in the light of the surrounding circumstances construe it so as to give effect to what appears to be its proper meaning.[7] Davis, C.J., observed with reference to the construction of Sind Rent Control

1. (1918)35 TLR 46, 47.
2. 1 Cranch 103 : 2 L Ed 49; *see* also *Ajmer Singh* v. *Crown*, (1949)1 Pepsu LR 22.
3. *Nishi Kanta Basu* v. *Province of West Bengal*, 53 CWN 9.
4. *Shreekant Pandurang* v. *Emperor*, AIR 1943 Bom 169, 174 : ILR 1943 Bom 331.
5. *Shreekant Pandurang* v. *Emperor*, AIR 1943 Bom 169, 173 : ILR 1943 Bom 331.
6. (1920)36 TLR 469, 475.
7. *Sushil Kumar* v. *Emperor*, AIR 1943 Cal 489, 493.

(Residential Premises) Order, 1942, in *Newandmal* v. *Chandumal*[1] :

> "But we do not think the words of Control Orders passed in the stress and urgency of war to be construed with that strictness and precision which applied to statutes passed after long consideration, discussion and debate. Words must be construed reasonably, their ordinary grammatical meaning must be given to them and the purpose of the Order must be kept in mind."

In a Full Bench case the contention that the COFEPOSA was an emergency legislation and, therefore, the provisions of the Act have to be construed as far as possible in furtherance of the policy and object of the Act and whatever statutory provisions are ambiguous, a construction which is favourable to the State should be adopted, was raised, but was not decided.[2]

2. Repeal on termination of emergency.—The Legislature may make temporary laws for the purpose of meeting an emergency in which case it may fix the period of expiration either expressly or it may fix no period and in such a case the temporary laws may expire otherwise. They cannot be allowed to outlast the emergency which brought it forth.[3]

The general rule is that on the expiration of a temporary provision which repeals an earlier Act, the earlier Act is revived after the temporary provision is spent. This rule will prevail except in cases where the intention of the temporary Act is clearly expressed for the purpose of repealing the earlier Act permanently.[4]

3. War-time legislation.—The rule of liberal construction of such legislation does not apply to its constitutionality.[5]

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1. AIR 1947 Sind 146 : ILR 1946 Kar 329.
2. *Abdul Khadar* v. *Union of India*, 90 LW 501 (FB).
3. *Panna Lal Lahoti* v. *State of Hyderabad*, AIR 1954 Hyd 129 (FB), *per* Misra, C.J., Palnitkar and Ansari, JJ. (*contra* Manohar Pershad and Chari, JJ.). The Defence of Hyderabad Regulation held to have lapsed on the termination of the emergency.)
4. *Govindaswami Naidu* v. *Additional Commercial Tax Officer*, ILR (1962)2 Mad 294.
5. *Union of India* v. *Deben Adhicary*, AIR 1979 Cal 230.

CHAPTER XXIX
DELEGATED OR SUBORDINATE LEGISLATION

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1. Delegated legislation.—In England the word 'Legislation' has grammatically two meanings—the operation or function of legislating and the laws which result therefrom. So too 'delegated legislation' may mean either exercise by a subordinate authority, such as a Minister of the legislative power delegated to him by Parliament, or the subsidiary laws themselves, passed by the Minister, in the shape of departmental regulations, and other statutory rules and orders.[1] The nomenclature of delegated legislation is confused. The Act of Parliament which delegates the power may in so many words lay down that 'regulations', 'rules', 'orders', 'warrants', 'minutes', 'schemes', 'bye-laws', or other instruments—for delegated legislation appears under all these different names—may be 'made' or 'approved' under defind conditions. On the other hand, the statute may merely authorize the Minister to 'prescribe' or 'approve' certain requirements or to 'appoint' a day, or 'fix' some standard, but give no directions about the particular method or form to be adopted in framing his decision; he may even be left free to perform his prescribing, approving, appointing or fixing by an *ad hoc* decision—perhaps even informally in the course of correspondence—without any obligation to formulate it in general terms as a legislative regulation.[2]

(i) Rules cannot override the Act.—It must be borne in mind that Rules made under any Act could never be intended to override the specific provisions of the Act itself. The purpose of the Rules is to provide for procedural matter or matters which are subsidiary to the provisions of the Act.[3] They may in some cases explain the provisions of the Act and it might in certain cases be legitimate to read the rules along with the provisions of the Act in order to find out the true intention of the Legislature in enacting the latter, no rules can ever be construed to override the specific provisions of the Act itself.[4] Although rules made under the Act cannot override the Act, they may be used as *contemporanea expositio* of an ambiguous provision in the Act, specially when they are to have effect as if enacted in the Act.[5]

(ii) The essentially subordinate character of delegated legislation.—"The power to legislate, when delegated by Parliament, differs from Parliament's own power to legislate.

1. *Blackpool Corporation* v. *Locker*, (1948)1 All ER 85, 91. Scott, L.J., quoting from *Committee on Ministers' Powers Report*, at p. 15, "Such delegated legislation is also called subordinate legislation." *In re* Natesan, ILR 40 Mad 125, 161.
2. *Committee on Ministers' Powers Report*, at pp. 16-17.
3. *Shanta Prasad* v. *Collector, Nainital*, 1978 All LJ 126; *Dattatraya Narhar Pitale* v. *Vibhakar Dinkar Gokhale*, 1975 Mah LJ 701 (FB); *Narayana* v. *Food Inspector, Calicut Corporation*, 1979 Ker LT 469; *Umesh Thakkur* v. *State of Bihar*, (1994)1 Pat LJ R 727.
4. *Ganpat* v. *Lingappa*, AIR 1962 Bom 104, 105; *Adarsh Industrial Corporation* v. *Marker Committee, Karnal*, AIR 1962 Punj 426, 430 (Tek Chand, J.); *Devjeet* v. *Gram Panchayat*, AIR 1968 Raj LW 231 (if the rule provides anything which prevent the result aimed at by statute, the rule-making authority goes beyond its power).
5. *Shri Synthetics, Ltd., Ujjain* v. *Union of India*, 1982 Jab LJ 279 : 1982 MPLJ 340 (DB); *Central Bank of India* v. *Their Workmen*, AIR 1960 SC 12.

Parliament is supreme and its power to legislate is, therefore, unlimited. It can do the greatest things; it can do the smallest. It can make general laws for vast Empire, it can make a particular exception out of them in favour of a particular individual. It can provide—and has in fact provided—for the payment of old-age pension to all who fulfil the statutory conditions; it can also provide—and has in fact provided—for boiling the Bishop of Rochestern's Cook to death. But any power delegated by Parliament is necessarily a subordinate power, because it is limited by the terms of the enactment where by it is delegated."[1]

(iii) Limitations to delegated authority.

In Halsbury's *Laws of England*,[2] it is stated :

(iv) Delegation of statutory authority.—"The tendency of modern legislation is to lay down general principles and to avoid going into administrative details. It is within the competence of Parliament to delegate authority, as may be seen in the statutes by which Constitutions have been granted to the dominions, and in the powers given in the administrative Acts for the making of rules, regulations and bye-laws, and for the suspensory or operative action of proclamations, or of Orders in Council, and of departmental orders."

(v) Exercise of delegated authority.—Statutory powers cannot be assigned without statutory authority to do so. It must, therefore, bear a strict construction.[3] It is further stated : "Delegated authority of the kind above referred to must be exercised strictly in accordance with the powers creating it and in the spirit of the enabling statute. Statutes of a subordinate Legislature, and also rules, ordinances, orders and bye-laws, which have fulfilled all conditions precedent to their validity, have the force of statutes, and must be construed as such."[4]

In the latest (Fifth) edition of Craies on *Statute Laws* the chapter on this subject has been almost entirely rewritten. Sir Charles E. Odgers has observed therein (at pp. 269-71) :

> "In subordinate legislation the Legislature delegates to some person or body of persons the duty of framing regulations for carrying out the policy and objects of the statute. One of the dangers of delegation, unless controlled, is that the delegate or delegates may in effect legislate without the sanction of Parliament under the guise of issuing orders or regulations under the relevant Act. This in some instances undoubtedly happens. Although the expansion of this type of legislation is comparatively modern, and largely caused by the national crises in the two World Wars, delegation is ancient. The earliest example of it is 11 Edw. 3, C. 1, in 1337, which regulated the export of wool. In 1385, the Statute of the Staple conferred on the King power to regulate the Staple. By the Statute of Sewers in the reign of Henry VIII Commissioners were appointed 'with full power and authority to make, constitute and ordain laws, ordinances and decrees, and further to do all and everything mentioned in the said Commissions...and the same laws and ordinances so made to reform repeal and amend, and make new from time to time as the cases necessarily shall require in that behalf.' 'Here, then, was a remarkable blend of delegated powers, legislative,

1. *Committee on Ministers' Powers Report*, at pp. 20-21. Referring to Kelson's *'Pure Science of Law'* Julius Stone in his *Province and Function of Law*, (1946 Ed.) at p. 97 says : "In short, from Professor Kelson's point of view the provisions of the Constitution Act (Australian) would represent norms devolving power to the Australian authorities. The Australian authorities are strictly delegated authorities, even though within the limits of the matters delegated they have all the attributes of sovereignty. In particular they are free to delegate further by the making of futher norms."
2. *See* Fourth Ed., Vol. 44, Para 981 at p. 618.
3. *Parasnath, etc. Singhai* v. *Kanhaiyalal Komulchand*, 1972 MPLJ 206, 210 (A.P. Sen, J.).
4. *See* Halabury's *Laws of England*, 4th Ed., Vol. 44, Para 981 at p. 618.

administrative and judicial.' There were many examples of delegated powers in the period of social and legal reform, in the nineteenth century."

"The name given to delegated legislation is Administrative Law and this now forms a separate topic in our jurisprudence. The reason for its recent revival and expansion is said to be the new conception of social rights and the consideration of the common good, and, its development consists in the placing by Parliament of judicial functions in the hands of State departments or under the jurisdiction of tribunals controlled or appointed by executive Ministers, and without appeal to the Courts of law. The necessity for delegation to Ministers and others lies in the fact that Parliament has simply no time for the discussion of details of the legislation it passes. It is probably the only way in which parliamentary government could, as regards its legislative functions, be carried on. Also the Houses of Parliament possess no ability to decide technical details—as is shown in the matter of jury service and the Civil Service left to delegated legislation in the Sex Disqualification (Removal) Act, 1919. Further, there may be necessity for speedier action than is possible in the slow-moving procedure of Parliament which does not in fact govern. Government is in the hands of the executive, *i, e.*, the Ministers of the Crown. In an emergency there is need for rapid action by the executive who must be empowered to take the necessary step to meet it. *See* the Emergency Power Act, 1920 which enables a state of emergency to be proclaimed, if at any time it appears to His Majesty that any action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with means of locomotion, to deprive the community or any substantial portion of the community, of the essentials of life."

(vi) Safeguards against abuse of delegated powers.—The safeguards against the abuse of delegated powers lie in the following :

(i) The delegation must be to some trustworthy authority, *e.g.*, a public department;

(ii) The limits of the delegated power should be strictly defined by the statute; in other words the delegated authority shall act strictly within the parameters of the authority delegated to it under the Act.[1]

(iii) If the interests of any particular section of the community are likely to be affected, it should be consulted by the delegated authority before the regulations are made;

(iv) *Publicity.*—This is extremely important and Judges have from time to time pointed out the difficulty of discovering the relevant rules and regulations affecting any particular line of conduct or branch of industry; and

(v) There should be machinery provided for revoking or amending the delegated legislation.[2] The provisions for laying the rules before Parliament afford, or should afford, a valuable safeguard.

"At the present time it seems to be the settled policy of the Legislature to confine its effort to the task of laying down general principles of law and to delegate to subordinate authorities not only the power of making rules and orders for the purpose of settling the details of the procedure necessary for giving effect to the general principles but even the principles themselves."

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1. Vide *Ahmedabad Urban Development Authority* v. *Sharad Kumar Jayantikumar Paswala*, AIR 1992 SC 2038 : 1992(3) JT SC 417 : (1992) SCC 285 : 1992 AIR SCW 2255; *Govt of Tamil Nadu by its Secretary R.D. & LA Dept., Madras 9* v. *Chengleput Dravidar, Kazhagam by its President, C.P. Rajamanickam*, 99 MLW 159 (DB).

2. *cf.* The Interpretation Act, 1889, Section 32(3).

The principal commendations of subordinate powers are based on convenience and efficiency.[1]

A piece of subordinate legislation is not as immune as a statute passed by a competent legislative and is liable to be challenged on any of the grounds on which plenary legislation is questioned.[2]

2. Scope of Court's scrutiny.—The courts should make a cautious approach in construing the subordinate legislation and adopt almost the same standard as adhered to in interpreting legislative enactments.[3] "Where Parliament has delegated its legislative function to a Minister of the Crown without retaining any specific control over the exercise of that function by the Minister (such as a condition that an order made by the Minister should be laid before Parliament and be subject to annulment by Parliament) the Court has the right and duty to decide whether the Minister has acted within the limits of his delegated power. Where, however, the power delegated to the Minister is a discretionary power, the exercise of that power, within the limits of the discretion, will not be open to challenge in a Court of law."[4]

Where a Court is required to determine whether a piece of delegated legislation is bad on the ground of arbitrary and excessive delegation, the Court must bear in mind the following well-settled principles :

(1) The essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and this cannot be delegated by the Legislature.

(2) The Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act.

(3) Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere.

(4) What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of a particular Act with which the Court has to deal, including its Preamble.

(5) The nature of the body to which delegation is made is also a guidance in the matter of delegation.

(6) What form the guidance should take will depend upon the circumstances of each statute under consideration, and cannot be stated in general terms. In some cases guidance in broad general terms may be enough, in other cases more detailed guidance may be necessary.[5]

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1. Allen : *Law and Order*, 1947 at p. 114. "The word 'delegation' when used in connection with the statutory duty of the employer does not mean the same thing as 'employment'. An employer does not, merely by employing his servant to work a crane, delegate to him the statutory duty of seeing that the crane is not overloaded. The theory of delegation of a statutory duty is intelligible where the duty is a positive duty such as to keep the guard of a power said in adjustment. In the case of a negative duty, such as not to overload a crane, the conception of delegation presents considerable difficulty"; *Galagher* v. *Dorman, Lang & Co., Ltd.*, (1947)2 All ER 38, 41-42.
2. *Indian Express Newspapers (Bom) Private Ltd.* v. *Union of India*, AIR 1986 SC 515; *N.C. Narayanan Nair* v. *State of Kerala*, (1988)1 Ker LT 894 : (1988)1 Ker LJ 689; *Pankajaksy* v. *George Mathew*, 1987(2) KLT 723.
3. Vide *P.V. Mani* v.*Union of India*, AIR 1986 Ker 86 : 1985 Ker LT 722 : ILR (1985)2 Ker 412 (FB).
4. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 292. "As it is axiomatic that the enactments of Parliament can never be subject to judicial review, so it is axiomatic that all enactments made subordinately by virtue of specific statutory or common law authority on subject to the test, whether they fall within the periphery of the power thus conferred." Allen, *Law in the Making*, 4th Ed. at p. 461; *District and Sessions Judge, Quilon* v. *State of Kerala*, AIR 1968 Ker 158 (FB) (Court has no power to go into the reasons for change in the rules).
5. *Organ on (India) Ltd.* v. *Collector of Excise, Mandasaur*, 1977 MPLJ 118-B (DB).

3. Forms of subordinate legislation.—The chief forms of subordinate legislation, according to Salmond,[1] are five in numbers :

(1) *Colonial*.....

(2) *Executive* : The essential function of the executive is to conduct the executive departments of State, but it combines with this certain subordinate legislative powers which have been expressly delegated to it by Parliament, or pertain to it by the common law. Statute, for example, frequently entrust to some department of the executive government the duty of supplementing the statutory provisions by the issue of more detailed regulations bearing on the same matter. So it is part of the prerogative of the Crown at common law to make laws for the Government of territories acquired by conquest or cession, and not yet possessed of representative local Legislatures.

(3) *Judicial* : In the same way certain delegated legislative powers are possessed by the Judicature. The Superior Courts have the power of making rules for the regulation of their own procedure. This is judicial legislation in the true sense of the term, differing in this respect from the so-called legislative action of the Courts in creating new law by way of precedent.

(4) *Municipal* : Municipal authorities are entrusted by the law with limited and subordinate powers of establishing special law for the districts under their control. The enactments so authorised are termed bye-laws, and this form of legislation may be distinguished as municipal.

(5) *Autonomous* : All the kinds of legislation which we have hitherto considered proceed from the State itself, either in its supreme or in one or other of its many subordinate departments. But this is not necessarily the case, for legislation is not a function that is essentially limited to the State..... The law gives to certain groups of private individuals limited legislative authority touching matters which concern themselves. A railway company, for example, is able to make bye-laws for the regulation of its undertaking. A university may make statutes binding upon its members. A registered company may alter those articles of association by which its constitution and management are determined. Legislation thus affected by private persons, and the law so created, may be distinguished as *autonomous*.

(i) Scope of delegated powers.—The problem of delegation of powers like that of the separation of powers involves *constitutional law* rather than statutory construction.[2] In U.S.A. in *Lock's* Appeal[3] the Court said :

> "To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know . The Court cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make its own action depend. To deny this would be to stop the wheels of Government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside the halls of legislation."

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1. *Jurisprudence*, 10th Ed. at pp. 159-161; *see* also Keeton : *Jurisprudence*, 2nd Ed. (1950) at pp. 86-89.
2. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 1 at p. 54.
3. 22 Pa S 491.

"The true distinction," observed Judge Rancy, in *Cincinnati, W. & Z. R. Co.* v. *Clinton County Commissioner*,[1] speaking for the Supreme Court of Ohio, "is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under, and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

In India the subject has been discussed *in extenso* by the Judges of the Supreme Court in *In re* Delhi Laws Act, 1912, etc.,[2] Mr. Justice Mukherjea observed therein at p. 997 :

> "It cannot be said that an unlimited right of delegation is inherent in the legislative power itself. This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an *ancillary measure* which the Legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. *The Legislature must retain in its own hands the essential legislative functions which consists in declaring the legislative policy and laying down the standard* which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it."

(ii) Extending operation of Act.—In *Jatindra Nath Gupta* v. *Province of Bihar*,[3] the majority of the Federal Court consisting of their Lordships Kania, C.J. and Patanjali Sastri, Mahajan and Mukherjea, JJ., held : "The power to extend the operation of the Act beyond the period mentioned in the Act *prima facie* is a legislative power. It is for the Legislature to state how long a particular legislation will be in operation, and it cannot be left to the discretion of some other man."

Similarly, in the Allahabad Full Bench case of *Ram Kishan* v. *State*,[4] it was held that "the duration of a statute is a matter of determination by the Legislature itself. It is of the nature of an essential legislative act. Delegation of such a power is not permitted by law."

With reference to the Rajasthan (Protection of Tenants) Ordinance, (9 of 1949) it was held by the Rajasthan High Court that the extension of the period of Ordinance was a legislative act, and could be made only by the Legislature of the State and this power could not be delegated to any other authority.[5]

(iii) Giving retrospective effect.—The rule-making authority does not possess plenary power to give the subordinate delegated legislation retrospective operation unless and until that power is expressly conferred by the parent enactment. Thus the added Clause *(b)* to Sub-rule (3) of Rule 11-E, Evacuee Interest (Separation) Rules, 1951, cannot operate retrospectively so as to affect pending proceedings.[6]

Though ordinarily rules framed by the Government will have prospective operation, it was held in *State of Tamil Nadu* v. *(M/s.) Hind Stone*,[7] that they will apply to pending proceedings while adverting to Rule 8-C introduced by Government Order, *viz.* G.O.MS. 1312,

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1. 1 Ohio St 88.
2. 1951 SCR 747; In *Schechter Poultry Corp.* v. *U.S.*, 295, US 495, 551. (The sick chicken case) it was said by Cardozo, J. : "The delegated power of legislation which has found expression in this Code is not canalised within banks that keep it from overflowing, it is unconfirmed and vagrant." *Bihar Motor Transport Federation* v. *State of Bihar*, (1994)1 Pat LJR 343.
3. AIR 1949 FC 175.
4. AIR 1951 All 181 (FB).
5. *Sardaria* v. *Rajasthan Board of Revenue*, AIR 1954 Raj 224.
6. *M.L. Bagga* v. *C. Murhar Rao*, AIR 1956 Hyd 35.
7. AIR 1981 SC 711 : (1981) 3 SCC 205 : (1981) 3 SCR 742.

dated 2.12.1977; followed in C. *Stephenson Roobasingh, Manager and Correspondent, Ebenezer Teachers Training Institute for Women, Poonagaram, Tuticorin* v. *State of Tamil Nadu.*[1]

4. Dual control in England.—Provided the legislative policy is enunciated with sufficient clearness, or a standard laid down the Courts cannot and should not interfere with the discretion that undoubtedly rests with the Legislature itself in determining the extent of delegation necessary in a particular case.

In England there is a dual control over such subordinate legislation. *First*, there is a Parliamentary control which is provided by the Rules Publication Act, 1893, which is now replaced by the Statutory Instruments Act, 1946. *Secondly*, there is the judicial control which operates through the doctrine of *ultra vires.*

5. Statutory rules forming part of the original schedule.—If the rules concerned are in the original schedule, then they are part of a legislative enactment in every sense of the word and in such a case the principle might have to be applied that the later portion shall be effective. When, however, the rules have been framed by non-legislative body under rule-making power, the principle applicable is that by such rule or regulation you cannot affect a provision of the Act, even though it is to be considered as embodied in the Act and forming part of it. In the latter case it must give way to the provisions of the Act.[2] Rules made by a subordinate authority cannot control the construction to be placed on the provisions of the Act.[3] Rules framed under prospectus by a University is not a law much more a special law to override the statutory rule though a general law.[4]

6. Statutory rules framed by Executive.—*(i) Statutory but not part of statute.*—In *R.* v. *Walker*,[5] Lush, J., referring to an order of the King-in-Council, said : "An order made under a power given in a statute is the same thing as if the statute enacted what the order directs or forbids." Where it is provided that rules framed under an Act and duly published shall thereupon *have effect as enacted in the Act itself*, it is duty of the Court to construe an Act in such a manner as to give effect to its provisions if it is possible to do so, and this can be done by reading the rules, as part of the section under which they are framed and not as part of rest of the Act.[6] Rules and Regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. It is well settled that Rules made under a statute must be treated for all purposes of construction or application exactly as if they were in the act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction and application. Such Rules cannot be treated as administrative directions.[7] They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in

1. (1993) 2 MLJ 311.
2. *Union of India* v. *Satyendranath*, AIR 1955 Cal 581 (under Section 51 of the Bengal Public Demands Recovery Act, 3 of 1913, clear right of appeal has been given against every order made under the Act by a Certificate Officer. This right cannot be taken away or modified by Rule 43 in Schedule II or regulation made under rule-making power of Board of Revenue).
3. *Battulal Makhanda Jain* v. *Commissioner of S.T., M.P.*, 1962 Jab LJ 657 : 1962 MPLJ 915; *Dahyalal Bapulal* v. *Patan Municipality*, ILR 1967 Guj 18 (Rules consistent with provisions of the Act have same force as provisions of Act itself); *Nanak Chand* v. *Vachaspati*, 1968 All LJ 29.
4. Vide *Dilip Damodaran* v. *Govt. of A P. rep. by its Secretary to Govt. Education Dept., Hyderabad*, AIR 1991 AP 194 : (1991)1 APLJ 221.
5. LR 10 QB 355, 358.
6. *Kandasami Pillai* v. *Emperor*, ILR 42 Mad 69, 73; *Kunhikrishna* v. *Nadapuram S. Co-operative Bank*, (1987)1 KLT 201.
7. *Harilal* v. *Dy. Director of Consolidation*, 1982 All LJ 223.

the Act, their true nature as subordinate rule is not lost. Therefore, with regard to the effect of a repeal of the Act, they continue to be subject to the operation of Section 24 of the General Clauses Act.[1] The rule of interpretation is that if subordinate legislation is directly repugnant to the general purpose of the Act which authorizes it, or indeed is repugnant to any well-established principle of statute....., it is either *ultra vires* altogether, or must, if possible, be so interpreted as not to create an anomaly.[2] If reconciliation were found to be impossible between the section and the rules made thereunder and the latter is found to be in excess of the statutory power authorising them, the subordinate provision, the rules so made, must give way and such rules shall be held to be *ultra vires* the rule-making authority. But before we go to that length, we will have to struggle against such a construction and will have to make an effort within the bounds of reason to bring them within the ambit of the rule-making power if that can be possibly so done. This is because when a competent authority, entrusted with the task of making rules, exercises that power, the rules made by it should be as far as possible supported even by a 'benevolent' interpretation, particularly when the result of holding otherwise would be to give rise to a conflict of jurisdiction.[3]

"I have asked myself in vain", says Lord Herschell in *Institute of Patent Agents* v. *Lockwood*,[4] "for any explanation of the meaning of those words[5] or any suggestion as to the effect to be given to them if, notwithstanding that provision, the rules are open to review and consideration by the Courts."

(ii) Former view in England.—The effect of an enactment is that it binds all subjects who are affected by it. They are bound to conform themselves to the provisions of the law so made. The effect of a statutory rule, if validly made, is precisely the same—that every person must conform himself to its provisions, and if in each case a penalty be imposed, any person who does not comply with the provisions, whether of the enactment or the rule, becomes equally subject to the penalty. But there is this difference between a rule and an enactment, that whereas, apart from such provision as we are considering, you may canvass a rule and determine whether or not it was within the power of those who made it, you cannot canvass in that way the provisions of an Act of Parliament. Therefore, there is that difference between the rule and the statute. There is no difference if the rule is one within the statutory authority, but that very substantial difference, if it is open to consideration, whether it be so or not.

"I own I feel great difficulty in giving effect to this provision that they shall be of the same effect as if they were contained in this Act,[6] any other meaning than this, that you shall, for all purposes of construction or obligation or otherwise, treat them exactly as if they were in the Act. No doubt there might be some conflict between a rule and a provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best as you may. If you cannot, you have to determine which is the leading provision and which is the subordinate provision, and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case probably the enactment itself would be treated

1. *Chief Inspector of Mines* v. *K.C. Thapar*, AIR 1961 SC 838, 845.
2. Allet : *Law and Order*, at p. 133.
3. *Narasimha Raju* v. *Brundavanasaha*, AIR 1943 Mad 617, 621; *Aribam Pishak Sharma* v. *Aribam Tuleswar Sharma*, AIR 1968 Manipur 74.
4. 1894 AC 347, 359-361; *Baker* v. *Williams*, (1893)62 LJ Ch 315.
5. 'Of the same effect as if they were contained in this Act'; Patents, Designs and Trade Marks Act, 1883, Section 101(3).
6. 'Of the same effect as if they were contained in this Act': Patents, Designs and Marks Act, 1883, Section 101(3).

as the governing consideration and the rule as subordinate to it. Those are points which I need not dwell upon on the present occasion.

"Although it is not necessary for the determination of the case to express an opinion upon it, yet, as the matter has been so much discussed, I think it only right to express the opinion which I entertain, that the words to which I have referred are really meaningless unless they have the effect which I have described, and they seem to me to be the apt and appropriate words for bringing about the effect which I have described. These are words, I believe, to be found in legislation only in comparatively recent years, and it is difficult to understand why they have been inserted unless with the object I have indicated."

(iii) Later view in England.—It would appear that the opinion delivered by Lord Herschell on the point under discussion was *obiter*. Moreover, Lord Herschell was wrong in premising that such words were to be found in legislation only in comparatively recent years. Lord Dunedin, however, gave cogent reasons in *R.* v. *Minister of Health* ex parte *Yaffe*,[1] against accepting Lord Herschell's opinion. His Lordship observed : "The confirmation makes the scheme speak as if it was contained in an Act of Parliament, but the Act of Parliament in which it is contained is the Act which provides for the framing of the scheme, not a subsequent Act. If, therefore, the scheme, as made, conflicts with the Act, it will have to give way to the Act. The mere confirmation will not save it. It would be otherwise if the scheme had been, *per se*, embodied in a subsequent Act, for then the maxim to be applied would have been *'Posterioraderogant prioribus'*. But as it is, if one can find that the scheme is inconsistent with the provisions of the Act which authorises the scheme, the scheme will be bad, and that only can be gone into by way of proceedings in *certiorari."* But this opinion of Lord Dunedin itself was not necessary for the decision of the case and was accordingly *obiter*.

Sir Charles E. Odgers, the learned editor of the 5th Edition of Craies on *Statute Law* refers to *Miller* v. *Wm. Boothman*,[2] with reference to this topic and proceeds to observe (at pp. 282-283) :

> "The conflict between these two learned authorities might have occurred in the very complicated recent case of *Miller* v. *Boothman* which turned upon regulations containing the words 'as if enacted in this Act' under the Factories Acts of 1901 and 1937. There appeared to be a repugnancy in which case the question might be whether certain of the regulations, having on the Herschell theory the force of a statute, would enable a later section to prevail over an earlier or whether, if certain regulations were only of force if not inconsistent with the general intendment of the Act, they should on Lord Dunedin's principle yield to the earlier section. This conflict did not occur owing to the fact that power was reserved to the Secretary of State to modify or extend by special regulations some of the provisions of the Act of 1937. This is an instance rather rare, of a regulation overriding a statutory provision. It appears then that the effect of the words 'as if enacted in this Act still remains undecided and awaits an authoritative decision. Sir W. Graham Harrison has exhaustively reviewed both *Lockwood's* case and the relevant cases in which it has been cited or dealt with judicially. His own opinion is that these words are merely a survival, a common form, which may originally have served a useful purpose but which in view of the decisions of the Courts, has long ceased to serve any purpose at all."

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1. 1931 AC 494, 503, *see* Halsbury's *Laws of England*, 4th Ed., Vol. 44, Para 1000 : " The Court is not precluded from enquiring into the validity of an order because the statute authorising the making of the order provides that it shall have effect as if it were enacted in the statute."
2. (1944) KB 337.

(iv) In India.—The same learned editor had opined in his *The Construction of Deeds and Statutes*,[1] "Rules which must be read together with the Act under which they are made, cannot repeal or contradict express provisions in the Acts from which they derive their authority, and 'if the Act is plain, the rule must be interpreted so as to be reconciled with it, or, if it cannot be reconciled, the rule must give way to the plain terms of the Act'."[2]

For instance, it is for the Legislature to confer a right of appeal or revision, or not to confer. The right so conferred may be a restricted one. If the right conferred is unrestricted the executive can only regulate the right in procedural matters but cannot impose impediments and restrictions of an onerous and burdensome nature in its exercise not contemplated by the statute under which the right is conferred.[3]

It is a well-recognised principle of interpretation of statutes that if the rules framed under the statute..... are in excess of the provisions of the statute or are in contravention of or inconsistent with such provisions then these provisions must be regarded as *ultra vires* of the statute and cannot be given effect to.[4] In *In re* Newly Enrolled Advocates,[5] the question arose as to whether an advocate enrolled under the Indian Bar Councils Act, 1926, is entitled to act in the insolvency jurisdiction of the High Court. Kumarswami Sastri, J., in giving the opinion of the Full Bench concluded by saying : "I am unable to agree with the contention of Mr. Srinivasa Ayengar that as an advocate is allowed to practice in the High Court even if he is prevented from acting in the insolvency court, there is no repugnancy. I am of opinion that where an Act confers rights to a party in general terms and entitles him to perform more than one function, the cutting down of those rights by a rule would make that rule repugnant to the provisions of the Act." The following observations of Wills, J., in *Reg* v. *Bird Needes Ex parte*,[6] are in point : "I desire in my judgment to adopt a broad principle which is too clear to need cases to be cited for its justification—the principle that where a power to make regulations is given to a public body by statute, no regulation made under it can abridge a right conferred by the statute itself." *Municipal Corporation of Toranto* v. *Virg*,[7] may also be referred to.

It would be a grave departure from well-recognised legislative practice and it would be a mockery of the Legislature if the existence or efficacy of the provisions of a statute is left to the kind mercies of the rule-making powers of the Government. No interpretation favouring such a construction could commend itself to Courts. It is something revolting to our jurisprudence to imagine that the command of the Legislature could be overriden by the fiat of the Government.[8]

(v) How construed.—Certainly being one of the essential attributes of laws, the interpretation of the rule which can give rise to looseness and speculation has to be discarded, and rather it has to be put on a firm and straight footing. Although the Punjab General Clauses Act permits singular in a statute to be read as plural but this is subject to the qualification of the context so permitting and in the context of the Punjab Gram Panchayat Election Rules, 1933, Rule 33, the word 'lot' recurring there has to be read in singular only.[9]

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1. 2nd Ed. (1946) at p. 283.
2. Quoted James, L.J. in *ex parte* Davies, (1872)7 Ch A 526, 529; *see* also *In re* 'New Sind', AIR 1942 Sind 65, 71 (SB); *Poulson Distillery* v. *State of Kerala*, 1989(1) KLT 962.
3. *Daya Krishnan* v. *Excise and Taxation Officer*, AIR 1966 Punj 490 : 68 Punj LR 673.
4. *Barisal Co-operative Central Bank* v. *Benoy Bhusan*, AIR 1934 Cal 537; *see* also *Municipal Corporation* v. *Saw Willie*, AIR 1942 Rang 70, 74.
5. AIR 1928 Mad 1182 at p. 1186 (FB); *see* also *Madurai Pillai* v. *Muthu Chetty*, ILR 38 Mad 823, 826.
6. (1898)2 QB 340.
7. 1896 AC 88.
8. *Rama Rao* v. *Mund Kur*, AIR 1960 Mys, 313, 314 (Hegde, J.).
9. *Harbans Singh* v. *State of Punjab*, AIR 1982 P & H 402.

7. Statutory rules may do anything within the scope of the Act.—The Statutory rules framed under the powers conferred by an Act become integral part of the Act;[1] so too service rules framed in exercise of power under the Proviso to Art. 309 of the Constitution of India.[2] The statutory rules must be held to be a part of the parent Act and can do anything if within its scope. If power is conferred to make subordinate legislation in general terms, the particularisation of topics is construed as merely illustrative and does not limit the scope of the general power.[3] It is the business of the Court to observe laws, however, unreasonable, if validly made.[4] A rule or a bye-law made under a statute cannot, unless there are express indications in the statute itself, override the provisions of other statutes or the general law.[5] Nor can a rule militate against the provisions of an Act under which it has been framed,[6] and must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction and obligation.[7]

Excessive delegation.—In dealing with the challenge to the *vires* of any statute on the ground of excessive delegation it is necessary to enquire whether the impugned delegation involves the delegation of an essential legislative function or power and whether the Legislature has enunciated its policy and principle and given guidance to the delegate.[8] In applying this test the Supreme Court has taken into account the statements in the *preamble* to the Act, and if the said statements afford a satisfactory basis for holding that the legislative policy and principle has been enunciated with sufficient accuracy and clarity the preamble itself has been held to satisfy the requirements of the relevant tests. In every case it would be necessary to consider relevant provisions of the Act in relation to the delegation and the question as to whether the delegation is *ultra vires* or not will have to be decided by the application of the relevant tests.[9]

8. Validity of enactment does not depend upon statutory rules.—Rules framed under an Act cannot be said to save the Act.[10] Rules do not control the construction to be placed on the provisions of the Act, nor can they enlarge the meaning of the section.[11] The validity of an Act of a competent Legislature does not depend upon what some subordinate authority, which the rule-making authority is, chooses to do or not to do.[12]

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1. Vide *(M/s.) Ram Autar Santosh Kumar* v. *State of Bihar*, AIR 1987 Pat 13 : 1986 BLJ 700 : 1986 Pat LJR (HC) 818 : 1986 BBCJ (HC) 759 (FB).
2. *Jacob, M. Puthuparambil* v. *Kerala Water Authority*, AIR 1990 SC 2228 : (1990)4 JT (SC) 27.
3. *Munnalal* v. *B.S. Basawan*, 1978 MPLJ 152 (FB); *Shankarlal Laxminarain* v. *Authority under Minimum Wages Act*, 1979 MPLJ 15 (DB).
4. *Saligram Singh* v. *Emperor*, ILR 23 Pat 22, 24 (Rules made under Defence of India Act, 1939 repealed the provisions of Criminal Procedure Code, inconsistent therewith).
5. *Burrakar Coal Co. Ltd.* v. *Labour Appellate Tribunal*, AIR 1958 Cal 226, 228; *Co-operative Society, Kottapalli* v. *Registrar, Co-operative Societies*, AIR 1966 Andh Pra 160.
6. *Kashi Prasad Saksena* v. *State of U.P.*, AIR 1967 All 173; *Orissa Local Bodies Employees Federation* v. *State of Orissa*, (1981)51 Cut LT 545 (DB).
7. *State of U.P.* v. *Babu Ram Upadhyaya*, AIR 1961 SC 757.
8. *Registrar of Co-operative Societies, Trivandrum* v. *Kunhambu*, 1980 Ker LT 112 (SC).
9. *Vasanlal Maganlal* v. *State of Bombay*, (1961)1 SCR 341, 346 : AIR 1961 SC 4, 7; *Harishanker Bagla* v. *State of Madhya Pradesh*, (1955)1 SCR 380.
10. *State of Bombay* v. *United Motors (India) Ltd.*, AIR 1953 SC 252.
11. *His Holiness Sri-la-Sri Ambalavana Pandara Sannathi Avergal* v. *Commissioner, Hindu Religious and Charitable Endowments Board, Madras*, (1980)93 LW 224.
12. *State of Bombay* v. *United Motors (India) Ltd.*, AIR 1953 SC 252.

9. Rules as aid to construction of ambiguous statutes.—Where the construction of the Act is ambiguous and doubtful on any point, or where more than one construction is possible recourse may be had to the rules which may have been made by the rule-making authority thereunder. Although the rules made under the Act cannot override the Act, they may be used as *contemporanea expositio* of an ambiguous provision in the Act specially when they are to have effect as if enacted in the Act.[1] And if the Court finds that in the rules any particular construction has been put on the Act, it is the duty of the Court to adopt and follow that construction.[2]

10. Interpretation of Rules.—Where two interpretations of a Rule are possible, the one that makes it unworkable should be avoided.[3] If the language used in the Rules leads to one irresistible result it would not be proper to read it differently only for purpose of finding out the same to be valid.[4]

11. Regulations.—The term 'regulations' has of recent years been much used to denote ordinances having the force of law made by subordinate authorities under delegated powers.[5] Regulations framed under an Act are of the very great importance. Such regulations are framed for the successful operation of the Act. Without proper regulations, a statute will often be worse than useless.[6] The contents in the correspondence exchanged between the officers cannot override the express provisions of the regulations made under any Act.[7]

How construed.—Businessmen must not be left to guess the meaning of regulations involving penal consequences, which should be strictly construed.[8]

Where the liberties of the citizens are involved, the Court will construe narrowly all delegated powers that curtail or dilute them.[9]

When an Act enables an authority to make regulations, a regulation which is validly made under the Act, *i.e.* which is *intra vires* of the regulation making authority, should be regarded as though it were itself an enactment.[10] To break the regulations made under the authority of a statute is to break the statute itself.[11] Where the Legislature enacts that 'All orders and regulations made under this section shall have the force of law' it means only that such orders and regulations shall have an obligatory character analogous to that of the law..... the word

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1. *Shri Synthetics, Ltd. Ujjain* v. *Union of India*, 1982 Jab LJ 279 (DB); *Tata Engineering and Locomotive Co. Ltd.* v. *Gram Panchayat*, (1976)4 SCC 177.
2. *Rathnammal* v. *Secretary of State*. ILR 1940 Mad 87 : AIR 1939 Mad 963, 965, 966, quoting *ex parte* Weir, *In re* Weir, (1871)6 Ch A 875 (This is specially so when such rules are directed by the statute authorising them to be read as part of the Act); *Ramanuja* v. *Pichu Iyengar*, ILR 1938 Mad 1023 : AIR 1937 Mad 481; *Pramod Bhat* v. *Katwar Raj*, AIR 1954 Bom 518; but see *The Great Fingall Consolidated, Ltd.* v. *Sheehan*, 3 CLR 176 (A regulation cannot be used for the purpose of construing the statute under which it is made); *Jannabai* v. *State*, AIR 1964 Bom 267, 273 (Chandrachud, J.); *Veerappa* v. *State of Mysore*, AIR 1965 Mys 227, 228 (FB) (Hegde, J.); *Amroo Ram* v. *State of Rajasthan*, AIR 1957 Raj 87, 88 (Wanchoo, C.J.).
3. *N.C. Singhal* v. *Union of India*, AIR 1980 SC 1257; *see* also *Heckett Engineering Co.* v. *Workmen*, AIR 1977 SC 2257 (on construction of Standing Order).
4. *Tara Chand* v. *State of U.P.*, 1975 ALR 39; *Mark Netto* v. *Govt. of Kerala*, AIR 1979 SC 83 (Kerala Education Rules, 1959).
5. *Lloyd* v. *Wallach*, (1915)20 CLR 299 (*per* Sir Samuel Griffith, C.J.).
6. *Chief Inspector of Mines* v. *K.C. Thapar*, AIR 1961 SC 838, 843.
7. Vide *Himachal Pradesh State Electricity Board* v. *Somdutt Uppal*, AIR 1993 SC 1234.
8. *United States* v. *Mersky*, 361 US 131 : 4 L Ed 423, 431.
9. *Gulknecht* v. *United States*, 24 L Ed 2d 532, 542 : 396 US 295 (Douglas, J.).
10. *Wicks* v. *Director of Public Prosecutions*, (1947)1 All ER 205, 206 : 1947 AC 362 (RL).
11. *Willingale* v. *Norris*, (1909)1 KB 57, 66.

'law' here is not synonymous with 'Act of Legislature' in other words, it is not synonymous with statutory law or with statute. Here in the expression 'force of law' the word 'law' is used in its generic sense. It applies as well to the common law as to the statutory law.[1]

Where the words of the Act are repeated *totidem verbis* in the regulations, they must bear the same interpretation as in the Act.[2]

12. Proclamations.—Every act authorised by a proclamation validly issued is an act done or purporting to be done under the Act.[3] The rules governing regulations are equally applicable to proclamations.

13. Executive instructions.—Executive instructions issued by either the Government of India or the State Government can have no binding force on the interpretations of statutory rules, nor can they override or supersede statutory rules.[4] It is well settled that public orders publicly made in exercise of statutory authority have to be construed objectively with reference to the language used in the order itself.[5] The Court must interpret the statutory rules in accordance with the language used in the statutory rules, in the light of well-established rules of interpretation. Hence, executive instructions issued by the Government of India to the State Government regarding 'Procedure to be followed in disciplinary cases' can have no bearing on the question of the interpretation of the statutory rules like the Bihar and Orissa Subordinate Services (Classification, Control and Appeal) Rules.[6]

Administrative instructions issued by the Government departmental authorities did not conclude a judicial determination of the question. It was held that only such articles the use of which cannot be had except within application of electrical energy can be termed electrical goods or appliances.[7]

The *note* added to Rule 57*(d)*, Bihar and Orissa Service Code, that the compulsory retirement effected under Rule 75*(d)* amounts to removal from service within the meaning of Article 311(2) of the Constitution, whether it is treated as part of Rule 75*(d)* or not, is merely the view of the Executive Government as to the interpretation of Rule 75*(d)*. The question whether a case of compulsory retirement in Rule 75*(d)* is tantamount to removal from service under Article 311 is a judicial question to be decided in a proper Court, and the view of the Executive Government as to the legal effect of Rule 75*(d)* cannot be conclusive on the point.[8] But Note to Rule 51-A under Kerala Education Rules, 1959, being statutory, its scope has necessarily to be judged in the light of the clarification given by the rule-making authority in the note which has been incorporated with the obvious intent to clear up any possible ambiguity existing in the main body of the rule or to fill any lacuna or gap. Such a purpose can be legitimately fulfilled by a note added to a rule.[9]

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1. *R.* v. *Singer*, (1940)4 DLR 151, 164 (Canada).
2. *Riddell* v. *Reid*, (1942)2 All ER 161, 174 (HL).
3. *Duncan* v. *Theodore*, 23 CLR 510, 543-44.
4. *Babulal Chowdhury* v. *Editor and Publishers, Nav Bharat*, 1982 Jab LJ 230 (DB).
5. *Yograj Behramji Sachdeva* v. *National Textile Corporation Ltd., (M.P.)*, 1983 MPLJ 789.
6. *Brajnandan Prasad* v. *State of Bihar*, AIR 1955 Pat 353, 355-56.
7. *Williams Tacks & Co., Ltd., Madras* v. *State of Madras*, AIR 1955 Mad 656.
8. *Ram Adhar Singh* v. *State of Bihar*, AIR 1954 Pat 187; *Central Inland Water Transport Corpn. Ltd.* v. *Broja Nath Ganguly*, AIR 1986 SC 1571 : 1986 Lab IC 1312 : (1986)3 SCC 156 : (1986)2 Supreme 479 : 1986 SCC (Lab) 429 : (1986)2 Cur LR 322 : (1986)2 Cur CC 335 : (1986)2 Lab LJ 171 : (1986)2 SCJ 201 : (1986)2 Serv LJ 320 : (1986)2 Serv LR 345 : (1986)69 FJR 171 : (1986) Lab LN 382 : (1986)3 Comp LJ 1 : (1986)60 Com Cases 797 : (1986)50 Fac LR 523.
9. *Krishna Verma Raja* v. *Distt. Education Officer, Kasaragad*, 1976 Ker LT 506.

Where, however, an established practice grows upon the basis of interpretation of service rules given by higher Administrative Authorities, the High Court may and can use them as useful guides while interpreting the rules, though it is not bound either by the opinion given by the Public Service Commission or by the Governor as regards the construction of a statutory service rule.[1]

It may also be noted that a mere instruction to a workman as to the method of carrying out his duties did not constitute a delegation of statutory duty relating to that matter; for them to be a delegation of statutory duty it must be made clear that it is such a duty that is being delegated and that it is not a mere instruction that is being given.[2]

14. Notifications.—A notification has no statutory force and cannot override rules statutorily made.[3] One of the practical and effective ways of proliferating the purpose is to see how far the suggested meaning destroys and defeats or promotes the ultimate purpose. In this research the Court is not confined to the literal meaning of the words used in the notification but it has to adopt a rational attitude by attempting to align its vision to that of the draftsman while drafting the notification in question.[4] However in the absence of express power conferred by law, there is no inherent power of review of a statutory order by successor-in-office.[5] Whether Government has power to grant by a Notification exemption from the provisions of an Act with retrospective effect should be seen from the provisions of the Act, and not of the notification.[6] Mere mistake in the opening part of notification in reciting the wrong source of power does not affect the validity of the amendments thereby.[7] The expressions or words used in a notification must be read as such and not in any other manner, unless the context requires that the latter course should be followed.[8]

When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and therefore, the exemption under the notification is as it were contained in the Act itself see in this connection the observations of the apex court in *Orient Weaving Mills (P) Ltd.* v. *Union of India*.[9] The principle is well settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is a part of fiscal enactment. But in this connection it is well to remember the observations of the judicial committee in *Coroline M. Armytaze* v. *Fredrick Wilkinson*,[10] that it is only however in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at page 369 of the report that in a taxing Act provisions

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1. *Durga Charan Das* v. *State of Orissa*, AIR 1961 Orissa 65 : ILR 1963 Cut 470 : 30 Cut LT 49.
2. *Manwaring* v. *Billington*, (1952)2 All ER 747.
3. See *Union of India* v. *Arun Kumar Roy*, AIR 1986 SC 737 : 1986 Lab IC 686 : (1986)1 Cur LR 141 : 1986 SCC (Lab) 199 : (1986)1 SCC 675 : (1986)1 SCJ 246 : (1986) UP LBEC 391 : (1986)66 FJR 183 : (1986)1 Lab LN 476 : (1986) Cur Cir LJ (SC) 181 : (1986)1 Lab LJ 290 : (1986) UJ (SC) 346 : (1986)52 Fac LR 219 : (1986)1 Ser LR 474.
4. *Hari Chand* v. *Batala Engineering Co.*, AIR 1966 Punj 141, 147.
5. Vide *I.T.C. Ltd.* v. *Union of India*, AIR 1989 Cal 294 : (1988)1 Cal LJ 109 : (1988)25 Reports 179 : (1988)34 ELT 473 : (1988)17 ECR 148 : (1988)92 Cal W.N. 1035 : (1988) Bank CLR 563 (DB).
6. *Sengalaneer Pillaiyar Temple* v. *Manickam Chettiar*, 90 LW 162 (DB).
7. *Hukumchand Mills, Ltd.* v. *State of M.P.*, AIR 1964 SC 1329; *Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd.* v. *State of Madhya Pradesh*, AIR 1988 M.P. 129 (DB); *Ahmedabad Khangi Prath Nilkshala Sanchalak Sangh* v. *State of Gujarat*, AIR 1989 Guj 225 : (1988)2 Guj LH 314 : (1989)30 Guj LR 1 : (1989)1 Cur LR 507 (DB).
8. *Hari Chand Agarwal* v. *Batala Engineering Co. Ltd.*, AIR 1969 SC 483.
9. 1962 supp. (3) SCR 481 AIR 1963 SC 98. *See also Kailashnath* v. *State of U.P.*, AIR 1957 SC 790.
10. (1878)3 AC 355 at p. 370.

establishing an exception to the general rule of taxation are to be construed strictly against those who invokes its benefits. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must however be borne in mind that absurd results of construction should be avoided are the rules of interpretation laid down by the Supreme Court in *Collector of Central Excise* v. *(M/s.) Parle Exports (P) Ltd.*[1] It is not the duty of the Court to import words in the notification and thereby to legislate or interpret in a manner which may render the scheme to an absurdity.[2] Notification should be strictly construed but there is another equally valid principle that such notifications should be given their due effect keeping in view the purpose underlying.[3]

15. Rules framed by judiciary.—In the case of rules framed for the guidance of Courts of Justice one should look for greater degree of reasonableness and fairness.[4] Under the Letters Patent of Calcutta High Court, that Court has the power to make rules inconsistent, if that be necessary, with the rules in the Schedule to the Civil Procedure Code. Where a rule of the Code, owing to the operation of rules framed by that Court cannot be applied exactly, it must be applied as reasonably as possible. Where it can be applied strictly, it must be so applied and if the result is unsatisfactory, the Court can frame a different rule but unless and until it does so, the rule must be followed, and cannot be enlarged or altered in any way by any judicial decision of the Court.[5] In *Alliance Bank, Simla* v. *Feroz Shah*,[6] Peshawar Court observed : ".....we are unable to recognize rules under an Act made by a High Court as giving an authoritative indication of the meaning of that Act." High Courts are empowered under Section 12 of the Code of Civil Procedure to make rules for regulating their own procedure and the procedure of the Civil Courts subject to their superintendence. Such rules shall (by Section 128) be not inconsistent with the provisions in the body of the Code but subject thereto may provide for any matters relating to the procedure of Civil Courts. Prior to 27th January, 1937, according to a rule framed by the Rangoon High Court under Section 122, C.P.C., a judgment-debtor applying to set aside a sale under Order XXI, Rule 90, C.P.C., was required to deposit the amount mentioned in the sale warrant or an amount equal to the amount realized by the sale, whichever be less, when applying for setting aside the sale. Roberts, C.J., observed in respect of such a rule added as a proviso *(c)* to Rule 90 of Order XXI, C.P.C., in *Chettyar Firm* v. *Central Bank*[7] :

> "It is not a rule to regulate procedure but lays down an indispensable preliminary before any proceeding takes place at all. Although the Rule Committee has wide powers and can, provided any new rule it seeks to lay down is not inconsistent with the body of the Code, abrogate existing rights of the subject, it can only do so in matters of procedure, and has no power to make any alteration which goes beyond a matter of procedure. Hence, a rule

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1. AIR 1989 SC 644 : (1988) JT (SC) 454 : (1989)1 SCC 345 : (1988)38 ELT 741 : (1989) SCC (Tax) 84 : (1989)19 ECC 49 : (1989)20 ECR 1 : (1989) APJ 318 : (1989)1 Sim LC 322 : (1989)29 STL 197, quoted in *Mangalore Chemicals and Fertilisers Ltd.* v. *Dy. Commissioner of Commercial Taxes*, AIR 1992 SC 152 : 1992(3) JT SC 482 : (1991)3 SCR 336 : 1992(1) SCC (Supp) 21; *Indian Metals & Ferro Alloys Ltd., Cuttack* v. *Collector of Central Excise, Bhuneshwar*, AIR 1991 SC 1028 : (1990)4 JT (SC) 763 : (1991) Supp. (1) SCC 125; *Mangalore Chemicals & Fertilisers Ltd.* v. *Dy. Commissioner of Commercial Taxes*, AIR 1992 SC 152 : 1992(3) JT SC 482 : (1991)3 SCR 336 : (1992)1 SCC (Supp.) 72; *Madhu Silica Pvt. Ltd.* v. *State of Gujarat*, (1993)1 Guj LR 143.
2. *(M/s.) Jagdish Trading Co.* v. *State of Bihar*, (1982)9 Bihar Cr C (Pat) 35.
3. *Collector of Central Excise* v. *Neoli Sugar Factory*, AIR 1993 SC 1921 [1972 Tax LR 1684 (Pat) (overruled)].
4. *Kannisa* v. *Devichand*, ILR 46 Mad 847 : AIR 1924 Mad 46.
5. *Ashutosh Basu* v. *Sudhangshubhushan*, AIR 1931 Cal 688, 692 : ILR 58 Cal 510.
6. AIR 1936 Pesh 57.
7. AIR 1937 Rang 419 (FB).

which directed that upon an application being heard, the Court might require the deposit of moneys, or put the applicant upon terms (though stringent) as part of the procedure in the hearing of the application, would seem to be valid. But the rule as laid down does not do this; it purports to shut out any applicant who fails to deposit the amount required from proceeding with his application at all. Our attention was called to the unreported case, Civil Misc. Appeal No. 13 of 1930,[1] in which a Bench of this Court declared that the Provisos to Order XXI, Rule 90 which are in question 'do not deprive the judgment-debtor of any substantial legal right' and hold, therefore, that they were valid. But as Lush, J., pointed out in *Poyser* v. *Minors*,[2] procedure 'denotes the mode of proceeding by which a legal right is enforced as distinguished from the law which gives or defines that right'. The only valid rules which can, therefore, be made by the High Court under the provisions of Section 122 of the Code which confer the rule-making power must regulate the mode of proceeding to enforce a legal right, and cannot stray beyond it. The provision under review seeks to take away an existing right, namely, the right of being heard to impeach a sale in execution subsisting in a person whose interests are affected by it, unless he is able and willing to deposit with his application the amount mentioned in the sale warrant or an amount equal to that realized by the sale whichever is less. The right which exists is not, I am persuaded, conferred upon the person interested by Order XXI, Rule 90 which is in this respect declaratory of the common law. As pointed out in Broom's Maxims,[3] it has long been a received rule that no one is to be deprived of his property in any judicial proceeding unless he has an opportunity of being heard. (See *Capel* v. *Child*).[4] I am of opinion that as Order XXI, Rule 90, proviso *(b)* (which has since been cancelled by an Order of the Rule Committee, dated the 29th January, 1937) does not regard the procedure by which the right can be enforced, it is invalid as *ultra vires* the Rule-making Committee of the High Court."

If the rule framed by the High Court deals with procedure only, even then the maxim, that no statute operates to repeal or modify the existing law, whether common or statutory, or to take away rights which existed before the statute was passed, unless the intention is clearly expressed or necessarily implied, applies with greater force in respect of a rule made by the High Court.[5]

Where a rule framed under an Act prescribed a flexible procedure for the proper working of that Act, narrow and technical concepts of orthodox jurisprudence pertaining to suits and their regular trials should not be allowed to clog the flexibility indicated in the rule.[6]

16. Statutory rules distinguished from bye-laws.—Statutory rules and bye-laws differ in this respect. Bye-laws are framed by corporation for carrying out their purposes and courts have retained a certain amount of control over the by-laws by considering their reasonableness. Statutory rules stand on a different footing. Parliament or Legislature instead of incorporating them into the statute itself ordinarily authorises Government to carry out the details of the policy laid down by the Legislature by framing rules under the statute and once the rules are framed, they are incorporated in the statute itself, and become part of the statute and the rules must be governed by the same rules as the statute itself. Hence, a statutory rule cannot be

1. AIR 1931 Rang 179.
2. (1882)7 QBD 329 at p. 333.
3. Now 10th Ed. at pp. 56-66.
4. 149 All ER 235.
5. *Gordon Woodroffe & Co.* v. *Radhakrishna*, AIR 1931 Mad 61.
6. *Ramalal Madanlal* v. *Binapani Debi*, AIR 1963 Cal 479.

challenged as unreasonable.[1]

17. Bye-laws framed by municipalities, etc.—*(i) Early history and definitions.*—When the Danes acquired possession of a shire in England, the township was often called a 'by' and as they enacted laws of their own they were called by-laws or town laws.[2] Chief Justice Russell defined it in *Kruse* v. *Johnson*,[3] as an ordinance affecting the public or some portion of the public imposed by some authority clothed with statutory powers ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. Further, it involves this consequence, that if validly made it has the force of law within the sphere of its legitimate operation. Higgins, J., observed in *Australian Boot Trade Employees' Federation* v. *Whybrow and Co.*[4] : "The Federal Act plus the award made under it, together constitute a law.[5] As Holt, C.J., said of the bye-laws of the London Corporation, every bye-law is a law, and as obligatory to all persons bound by it, that is, within its jurisdiction, as any Act of Parliament."[6] The word 'law' in a concrete sense, means 'any particular rule, having the nature of law in the abstract sense, which is especially prescribed by the supreme power in the State, or by some person or body having authority for that purpose, though not generally supreme; and law in the abstract is the 'sum of rules administered in a State and by its authority."[7] Whenever a valid order is given—whether by a judicial or by a legislative or by an executive authority—in pursuance of an Act, that order—at all events if it prescribes a rule of conduct for judicial endorsement—is a law to the persons to whom it is addressed, be they many or few."

As stated in Craies' *Statute Law*,[8] the term 'bye-laws', as now generally understood, applies to the local laws or regulations made by public bodies of a municipal kind, or concerned with local government, or by corporations, or societies formed for commercial or other purposes, including gas, water and railway companies, trade unions and friendly, industrial and building societies.

(ii) Bye-law not an agreement.—A bye-law is not an agreement, but a law binding on all persons to whom it applies, whether they agree to be bound by it or not. Thus all regulations made by a corporate body and intended to bind not only themselves and their officers and

1. *Mulchand* v. *Mukand*, 54 Bom LR 285 : AIR 1952 Bom 296.
2. *Board of Health* v. *Copcutt*, 24 NY Suppl 625, quoted by P. Rama Natha Iyer : *Law Lexicon* at p. 168. *see* also Arnold Municipal Corporations, 7th Ed. at p. 150.
3. (1898)2 QB 91 at p. 94; *Khurai Municipality* v. *Firm Kaluram Hiralal*, ILR 1943 Nag 740 : AIR 1944 Nag 73, 75; *Trustees of Port of Madras* v. *Aminchand Pyarelal*, AIR 1975 SC 1935; *(M/s.) Carborandum Universal Ltd.* v. *The Trustees of Port of Trust by its Chairman* (1994)1-MLW 183 (DB).
4. (1910)10 CLR 266, 332.
5. *Powell* v. *Apollo Candle Co.*, 10 AC 282, 291.
6. *City of London* v. *Wood*, 12 Mad 669 at p. 678.
7. Pollock, *First Book of Jurisprudence*, 2nd Ed. at pp. 15-17.
8. 5th Ed. at pp. 269-297. But *see* observation of Courts, J. in *K.E.* v. *Abdul Hamid*, ILR 2 Pat 134 : AIR 1923 Pat 1, 7 : "Can it be said for a moment that a bye-law which unlike the law, may be attacked on various grounds and which the Courts may refuse to enforce, stands on the same footing in the law, I think not for the essence of law is that it is enforceable as law, and that though the Court may construe the law the Courts cannot reject it or quash it. If I am right in my view as to the distinction that exists between the law and a bye-law framed under a statute but not made part of the statute by the express provision of the statute, it must follow that an order issued by the Superintendent of Police under Section 30 of the Police Act, cannot be claimed as the law. That order may be a valid order or an invalid order; but as there is no provision in the Police Act giving to the orders issued by the police under Section 30 of the Police Act the same effect as if they were contained in the Act, they cannot be regarded as law for any purpose whatsoever."

servants, but members of the public who come within the sphere of their operation, may be properly called bye-laws whether they be valid or invalid in point of law, for the term bye-law is not restricted to that which is valid in point of law.[1]

The *limits* of a valid bye-law may be stated in *negative terms* as follows :

(i) a by-law must not be in excess of the statutory power authorising it;

(ii) it must not be repugnant to that statute or to the general principles of law; and

(iii) it should not be unreasonable.[2]

A municipal bye-law prohibited quarrying operation within the municipality except with the consent of the Council but it was subject to a proviso that it should not apply to operations in connection with works commenced before 4th January, 1911. After that date the defendant acquired from a quarry master land in the municipality on which quarrying and work associated therewith had been carried on regularly from a time prior to that date and also adjoining land on which there had been no quarrying prior to 4th January, 1911. The adjoining land had been the property of a stranger until, at a time after 4th January, 1911, the defendant's predecessor-in-title purchased it and extended the face of the quarry to it. It was held that the fact that the operations for which the appellant was prosecuted (quarrying in the adjoining land) were carried on beyond the boundary of the land on which the quarry was started does not deprive them of the character of operations carried on in connection with works commenced on that land.[3]

Hence, bye-laws must be made, sanctioned, and published in the manner prescribed by the statute which authorises them.[4] It is not the function of Courts to amend by-laws so as to make them *intra vires*, they can only decide whether the bye-laws as they stand are within the bye-law-making power.[5] It is a well-recognised principle of interpretation of statutes that if the rules framed under the statutes, or bye-laws framed under the rule, are in excess of the provisions of the statute or are in contravention of or inconsistent with such provisions then these provisions must be regarded as *ultra vires* of the statute and cannot be given effect to.[6]

(iii) Presumption.—There is, however, a presumption that the by-laws in question had been duly made, published and sanctioned.[7] It was, however, decided in very early times that the approval of the bye-law by the authorities mentioned in the statute did not give it validity if not otherwise legal.....the validity of the bye-laws must be determined by the Judges when they are properly brought before them.[8] The mere fact of the Local Government having signified its approval to a bye-law would not render the bye-law valid, in the absence of clear and unmistakable language in the Act empowering a committee to make such a bye-law.[9] Where a Board was authorized to make bye-laws with respect, *inter alia*,.....'to the level, width and construction of new streets' and the Board made a bye-law 'empowering it to cause any works in new or existing buildings' of which it did not approve 'to be pulled down or

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1. *London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee*, (1892)3 Ch 242.
2. *Khurai Municipality* v. *Kaluram Hiralal*, ILR 1943 Nag 740 : AIR 1944 Nag 73, 75; *Mewa Ram* v. *M.M. Board*, ILR 1939 All 770 : AIR 1939 All 466, 480 (FB); *K.E.* v. *Abdul Hamid*, ILR 2 Pat 134 : AIR 1923 Pat 1, 7.
3. *Merri Creek Quarry Pty., Ltd.* v. *Foletta*, 82 CLR 347.
4. Allen : *Law in the Making*, 4th Ed. at p. 463.
5. *Deputy Commissioner* v. *President N.A. Committee*, AIR 1949 All 683, 685.
6. *Barisal Co-operative Central Bank* v. *Benoy Bhusan*, AIR 1934 Cal 537, 540.
7. *Queen-Empress* v. *Ramchandar*, ILR 19 All 455, 493.
8. *Kruse* v. *Johnson*, (1898)2 QB 91.
9. *Mohd. Sarwar* v. *Amraoti Municipality*, AIR 1919 Nag 111.

otherwise dealt with as the case may require'. Pollock, C.J. observed[1] : "We are all of opinion that the bye-law is not valid, or it is not in pursuance of the authority."

18. Validity of statutory rules and bye-laws.—*(i) Competency.*—A law or a statutory rule should be so interpreted as to make it valid and not invalid.[2] All bye-laws made by subordinate authorities are subject to a *system of checks.* In England, as stated by Allen in *Law in the Making,*[3] by statute, some require the approval of different Government Departments, thus bye-laws made by railway companies must be approved by the Minister of Transport, and those made by local authorities for public health or 'good order and government' are subject to supervision and alteration by the Minister of Health. Apart from this ministerial scrutiny, bye-laws have always been liable to review by the courts. In India Statutory rules are usually required to be laid before the Legislature for scrutiny; but failure to place the rules before the Legislature does not affect their validity.[4]

Where a literal construction of statutory rules would render them *ultra vires* of the rule making authority, they must be so construed as to be *intra vires* and held valid rather than be construed *ultra vires* and initially void.[5] A subordinate legislation should be avoided only if a reasonable construction in favour of its vires is not possible.[6]

The possibility of a misuse of a rule is no ground for holding the rule to be bad. It is a sound principle of law, to assume, that the persons who are in charge of the Government are discharging their onerous duties and resposibilities in a fair and honest manner. This assumption we know from experience, is not always true. But those deviations from proper conduct are exceptions, which, as is said in logic, proves the rule.[7]

Of course if they have been duly made have the same force as law itself,[8] and no permission is required from anyone to enforce them, none can resist them.[9]

The rules governing disciplinary proceedings cannot be treated as administrative directions, but have the same effect as the provisions of the statute whereunder they are made, insofar as they are not inconsistent with the provisions thereof.[10]

(ii) Powers to make rules and scope of.—"I quite agree", says, Griffith, C.J., in *Ferrier* v. *Wilson,*[11] "that if the Legislature deals with a particular act, and prescribes the conditions under which it will be lawful and, those under which it will be unlawful, the subordinate authority cannot, under the pretence of making a bye-law, alter the law as so declared by the Legislature. But when the Legislature does not do that, then so far as the matter is left untouched by the express provisions of the Act, the powers of the delegated authority to deal with it bye-law are not affected." Now it is a recognised principle of law that the rules made

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1. *Brown* v. *Holyhead Local Board,* (1862)32 LJ Ex 25; *see* also *Sorab* v. *Emperor,* 21 Cr LJ 88 : 54 IC 488 (Bom) (notice modifying a bye-law of tramway company not confirmed by Governor-in-Council, as provided under the Tramway Act, had no legal effect).
2. *Takhatray* v. *State of Gujarat,* (1970)1 SCR 244, 250.
3. 4h Ed. at pp. 462-463.
4. *Jan Mohammad Noor Mohammad* v. *State of Gujarat,* AIR 1966 SC 385.
5. *Burma-Shell Co.* v. *Manmad Municipality,* AIR 1958 Bom 43 : ILR 1957 Bom 756.
6. *Gosulananda* v. *President District Board,* AIR 1964 Cal 568, 571 (D. Basu, J.).
7. *A. Noronha* v. *State of Mysore,* AIR 1966 Mys 267, 269 (Hegde, J.).
8. *M.P. State Road Transport Corporation* v. *Ramachandra,* 1977 MPLJ 341 (FB).
9. *Dy. Commissioner* v. *President, Notified Area Committee,* AIR 1949 All 683, 684.
10. *State of U.P.* v. *Babu Ram Upadhyaya,* AIR 1961 SC 751.
11. 4 CLR 785, 791. The bye-law of a statutory corporation cannot travel beyond the powers vested in it by the Act; *Narayan Sakharam* v. *Co-operative Central Bank,* AIR 1938 Nag 434, 437.

in pursuance of a delegated authority must be consistent with the statue under which they came to be made. The authority is given to the end that the provisions of the statute may be better carried into effect, and not with the view of neutralizing or contradicting those provisions.[1] Rules framed under the rule-making power given by an Act should not be repugnant to the Act and in case of conflict between the rules and the Act, the Act should prevail.[2] The general power to make rules cannot, however, be used, to widen the purposes of the Act or to add new and different means for carrying out or to depart from, and vary its terms.[3] Subject to the above, the general power is liberally construed.[4] Statutory bye-laws will only be valid in so far as they are consistent with the provisions and within the powers of the statute under which they purport to be made.[5] And Lord Devey said that through all the cases a general principle may be traced that Municipal powers of regulation or of making bye-laws for good government without express words of prohibition does not authorize the making it unlawful to carry on a lawful trade in a lawful manner.[6]

Before a bye-law framed by a bye-law-making authority is declared *ultra vires* the Court must be satisfied not only that it had no power to act under the power it purported to act, but also that it had no power at all under any law to so act. If power can be found elsewhere than the section quoted, the rules will be referred to that power and held not to be *ultra vires*.[7] When rules are framed they may be referred to any power in the Act which validates them.[8] Where an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule.[9]

Provided that the law-making body had authority to make it under some other provisions of law misquoting their authority by oversight or mistake does not take away any authority given by law.[10] In order to justify a rule the rule itself need not show on its face under what particular section of the Act it is being made. So long as the rule can be justified under the rule-making power, the non-recital of the fact that it has been so made will not make the rule bad or invalid.[11]

According to Sugden on *Powers*,[12] "a donee of a power may execute it without referring to it, or taking the slightest notice of it, provided that the intention to execute it appears."[13]

A regulation or a bye-law may be *ultra vires* in the sense that it deals with a subject not within the scope of the power conferred upon the delegated legislative authority, or it may be *ultra vires* because, although dealing with such a subject, it exceeds the prescribed limits within which the authority may be exercised.[14]

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1. *Rajam Chetti* v. *Seshayya*, ILR 18 Mad 236, 245; *Raghanallu Naidu* v. *Corporation of Madras*, AIR 1930 Mad 648.
2. *Central Karnataka Motor Services, Ltd.* v. *State of Mysore*, AIR 1957 Mys 7.
3. *Shankarlal Laxminarayan Rathi* v. *Authority under Minimum Wages Act*, 1979 MPLJ 15 (DB).
4. *Shankarlal Laxminarayan Rathi* v. *Authority under Minimum Wages Act*, 1979 MPLJ 15 (DB).
5. *In the matter of* G.A. Natisan, ILR 40 Mad 125, 144.
6. *Varma* v. *Emperor* AIR 1933 Cal 243, 245.
7. *Secretary of State* v. *Appurao*, AIR 1924 Mad 92, based on *Rajam Chetti* v. *Seshayya*, ILR 18 Mad 236; *King-Emperor* v. *Shriballabh*, AIR 1925 Nag 393; *Hukam Chand Mills* v. *State of M.P.*, AIR 1959 MP 195, 196.
8. *Gulabbai* v. *Board of Revenue*, AIR 1957 MP 43.
9. *Bala Kotiah* v. *Union of India*, AIR 1958 SC 232; *Prem Shankar Sharma* v. *Collector*, 1962 Jab LJ 997 : AIR 1962 Madh Pra 262 (FB).
10. *Raghanalu Naidu* v. *Corporation of Madras*, AIR 1930 Mad 618, 650.
11. *Brojendra Kumar* v. *Union of India*, AIR 1961 Cal 217, 220.
12. 8th Ed. at p. 289.
13. *Pandhurst* v. *Kiernan*, 24 CLR 120 at p. 135; *Joseph* v. *Colonial Treasurer*, N.S.W., 25 CLR 32, 52 (*per* Gavan Duffy, J.).
14. *Young* v. *Tockassie*, 2 CLR 420, 477.

A rule, which the rule-making authority has power to make will normally be declared invalid only on the following grounds :

(1) Bad faith, that is to say that powers entrusted for one purpose are deliberately used with the design of achieving another, itself unauthorised or actually forbidden;

(2) that it shows on its face a misconstruction of the enabling Act or a failure to comply with the conditions prescribed under the Act for the exercise of the powers; and

(3) that it is not capable of being related to any of the purposes mentioned in the Act.[1]

Rules cannot go beyond the scope of the Act[2] not can they, by themselves, englarge the scope of statutory provisions.[3] They cannot also militate against the provision under which they were made.[4]

Section 30(2) of the Ajmer-Merwara Municipalities Regulations 6 of 1925, lays down as to who are the persons entitled to be enrolled as electors of the Municipality. Rule 7 purports to lay down that the Municipal roll shall be the same as the roll for the Parliamentary Constituency representing the area covered by the Municipality. There may be persons who may have without right got themselves enrolled as voters and no one may have attached any significance to the entry of their names at that time. If a fresh roll is prepared for the Municipality it would be open to persons to file an objection that though the name of a particular person was entered in the roll of the Parliamentary Constituency, he was not entitled to be registered as such. Again, there may be persons whose names may have been entered in the Parliamentary Constituency in an area which is not included in the Municipality but who are qualified to get their names entered in the Municipal roll as well. Hence, Rule 7 is not in consonance with and is in contradiction of Section 30.[5]

In certain cases, specific provisions are merely illustrative and should not be read as restrictive of the generality of powers prescribed in a provision.[6]

Under Section 8(1)*(c)(ii)* of the Patna Municipal Corporation Act 13 of 1952, a registered trade union may exercise its vote through an individual authorized by it in this behalf and named as such in the electoral roll. The State Government have authority under the Act to frame a rule prescribing the qualifications of person entitled to vote under the Act but cannot prescribe a rule stating who are the persons entitled to vote for a special constituency.[7]

A bye-law or regulation being in the nature of subsidiary legislation, has statutory force, and the general principle covering the interpretation of statutes would, therefore, apply in construing them.[8]

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1. *Shankar Lal Laxmi Narayan Rathi* v. *Authority under Minimum Wages Act*, 1979 MPLJ 15 (DB).
2. *In re* M.P. Kumaraswami Raja, AIR 1955 Mad 326; *Anant Sadashiv Pandit* v. *Ratnagiri Jilha (District) Local Board*, 54 Bom LR 841; *Pratap Singh* v. *Sri Krishna Gupta*, AIR 1956 SC 140.
3. *K. Mathuvadivelu* v. *R.T. Officer*, AIR 1956 Mad 143 (Rules 183 and 185 under the Motor Vehicles Act, 1939, considered).
4. *Kashi Prasad Saksena* v. *State of U.P.*, AIR 1967 All 173; *see* also ILR (1966)45 Pat 168. But not *ultra vires* on other rule; *Badlu* v. *State of Haryana*, (1971)73 PLR 161, 165 (Narula, J.); *Newspaper, Ltd.* v. *State Industrial Tribunal*, U.P., AIR 1957 SC 532, (*per* Kapur, J.).
5. *Radhey Sham* v. *Chief Commissioner, Ajmer*, AIR 1956 Ajmer 25.
6. *Ajzalullah* v. *State of U.P.*, AIR 1964 SC 264, followed in *Jarmel Singh* v. *State of Rajasthan*, AIR 1992 Raj 173 : 1992(1) Raj 264.
7. *Rajendra Nath Roy* v. *State of Bihar*, AIR 1954 Pat 312.
8. *Damodar Mahanty* v. *Utkal University*, AIR 1955 Orissa 151 (Regulation of the Academic Council of the University); but see *P.A. George* v. *Tatapuram Co-operative Society Ltd.*, 1975 Ker LT 367, which held that the bye-laws of the co-operative society are not statutory in nature.

(iii) Construction of rule or bye-law.—To the various expressions used in the rules the same meaning should be given as is given to those expressions in the Act itself,[1] and if the words are not defined, dictionary will have to be referred to find out the general sense in which the words are understood in common parlance.[2] In construing a bye-law regard must be had to the nature of the evil intended to be dealt with.[3]

It is settled rule of construction that the Courts will interpret local bye-laws benevolently, and will not be astute to invalidate them on purely technical grounds.[4] The two rules of construction—benevolent and strict—only represent different modes of approach, and their application depends on the nature of the rule or bye-law in question and the nature of the attack made against it if the local body is acting within its jurisdiction in making the rule or bye-law and the irregularity alleged is merely in respect of a matter which is not essential, it will not be held to be *ultra vires* on the technical ground of such irregularity. Where the local body purports to levy tax, the construction must be strict, specially where it is doubtful whether the taxing statute really touches the person or the subject taxed. If the provisions of the Act emphasize that compliance with the preliminary procedure amounts to a condition precedent before the levy of the tax, it would not be open to the local authority, to contend that the tax levied by it or the rule framed by it in that behalf should be benevolently construed and that its failure to comply with the preliminary procedure should be condoned.[5]

The provision in Section 28 of the Motor Vehicles Taxation Act (Kerala), 1976 that rules are to be made by notification in the Gazette cannot mean the date under which the notification is issued but date on which the Gazette is released to the public, in order that the rule may be effective and operative.[6] Parliamentary Act comes into operation from the date it receives the assent of the President or the Sovereign but not so with subordinate or delegated legislation.[7]

(iv) Existence of rule not a condition precedent for exercise of power.—The phrase 'subject to such rules as may be prescribed' in Section 85 of the Kerala Municipal Corporation Act do not lay down the existence of rules as a condition precedent to the exercise of power under that section, although the rules, whether in existence or to be framed in future, regulate the exercise of that power.[8]

Taxing rules must be strictly construed in favour of the subject.[9] When a bye-law is open to two constructions, on one of which it would be within the powers of the local authority, and on the other outside of these powers, the former construction should be adopted, *ut res magis valeat quam pereat.*[10] Lord Russell, C.J., made the following pertinent observation in a leading

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1. *Bhagwati Prashad* v. *U.P. Government*, AIR 1959 All 589, 594.
2. *Nagar Palika Parishad, Sabalgarh* v. *Damodardayal*, 1977 Jab LJ 724.
3. *Beetham* v. *Tremesne*, 2 CLR 582, 586, 587; *Bundelkhand Motor Trnasport Co.* v. *State Transport Appellate Authority*, AIR 1968 Madh Pra 215 (FB) (where there is no inconsistency between rule and provisions of Statute it is not reasonable to construe the rule upon a *priori* notions).
4. Allen : *Law in the Making*, 4th Ed. at p. 463; *Salem Fairlands Co-operative House Building Society, Ltd.* v. *Sugunaleelavathi Ammal*, (1968)1 MLJ 300.
5. *Borough Municipality of Amalner* v. *Pratap Spinning, Weaving and Manufacturing Co., Ltd.*, ILR 1952 Bom 918 : AIR 1952 Bom 401.
6. *R.K.V. Motors* v. *Regional Transport Officer*, 1982 KLT 166 (FB).
7. *R.K.V. Motors* v. *Regional Transport Officer*, 1982 KLT 166 (FB). Overruling *Kochusara* v. *Gracy C.T.*, 1973 KLT 880 and affirming *Gracy* v. *State of Kerala*, 1972 KLT 141 and approving *R. Narayana Reddy* v. *State of A.P.*, (1969)1 An WR 77.
8. *Gopalakrishna Pillai* v. *State of Kerala*, 1976 Ker LT 755 (DB).
9. *Anant Sadashiv Pandit* v. *Ratnagiri Jilha (District) Local Board*, AIR 1953 Bom 71 : 54 Bom LR 841.
10. *Wigee Shire Council* v. *Bonney*, 4 CLR 977, 983; *Collmon* v. *Mills*, (1897)1 QB 396, 399.

case *(Kruse* v. *Johnson*[1]) on the subject :

> "The great majority of the cases in which the question of bye-laws has been discussed, are not cases of bye-laws of bodies of a public representative character entrusted by Parliament with delegated authority, but are for the most part cases of railway companies, dock companies, or by other like companies, which carry on their business for their own profit, although incidentally for the advantage of the public. In this class of cases it is right that the Court should jealously watch the exercise of these powers, and guard against their unnecessary or unreasonable exercise to the public disadvantage. But when the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves no new canon of construction. But further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think Courts of Justice ought to be slow to condemn as invalid any bye-law, so made under such conditions, on the ground of supposed unreasonableness."

The tribunal which has to administer the bye-laws, upon a complaint being made that they have been broken, ought to apply the same liberal construction to them in favour of the party complained against as the Court applies to them in favour of the local authorities.[2]

The interpretation placed by non-judicial authority, like the Joint Public Service Commission or the opinion expressed by the Governor, though perhaps relevant, cannot have material bearing on the construction of the rule in question when the matter reaches the Court which has to consider the rule fairly, taking into account the spirit underlying the rule and the object intended to be achieved by it.[3]

(v) Statutory rule conferring powers to be strictly construed.—The words of a notification should be construed strictly and not liberally. No power can be exercised by a person, unless it is vested in him and where the authority who could vest such powers has not chosen to do so by the notification, these powers cannot be exercised. By virtue of the notification under Section 10(2)*(e)* of the U.P. Excise Act issued by the Provincial Government the power to file a complaint is not specifically conferred upon a second officer attached to a police station and from the mere fact that they are made Excise Officers for the limited purpose of conducting a search it would be incorrect to infer that such officers are empowered to exercise all the powers of an Excise Officer.[4]

The rule making power under Section 296 read with Section 300(2) of the U.P. Municipalities Act, 1916 enables the State Governments to exempt any one municipality from the operation of the general rule by express provision in that behalf. Where the identical authority in exercise of its rule making power duly framed the rules in respect of the same matter expressly providing that the new rules shall apply to a particular municipality in

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1. (1898)3 QB 91 at pp. 99-103; *see* also *White* v. *Morley*, (1899)2 QB 34, 37, 39; *Mewa Ram* v. *M.M. Board*, ILR 1939 All 770 : AIR 1939 All 466, 480 (FB); *Pillay* v. *Moulmein Municipal Committee*, 22 Cr LJ 113 (Lower Burma) 59 IC 545.
2. *Leyton Urban Council* v. *Chew*, (1907)2 KB 283, 288.
3. *State of Orissa* v. *Durga Charan Das*, AIR 1966 SC 1547.
4. *Baij Nath* v. *State*, AIR 1956 All 234.

supersession of the existing rules, it must be deemed that the existing rules are repealed to that extent.[1]

(vi) Repugnancy.—A rule or regulation must not be inconsistent with the Act and a bye-law should not be repugnant to the law or the rule.[2] If it can stand with the Act a regulation may prescribe not only anything the Act requires or permits to be prescribed (the word 'permitted' meaning expressly or impliedly allowed'), but also anything, 'necessary or convenient' to be prescribed for giving effect to the Act.[3] Where the words of an enactment are clear, the rules made thereunder must, if possible, be reconciled with it, and where that cannot be done, must, give way to the enactment.[4] A bye-law is not repugnant to the general law merely because it creates a new offence, and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful.....if it expressly or by necessary implication professes to alter the general law of the land.....if it adds something inconsistent with the provisions of a statute creating the same offence, but if it adds something not inconsistent, that is not sufficient to make the bye-law bad as repugnant.[5] A bye-law cannot be denounced as being repugnant to general law simply because of two lawful courses, it adopts one and rejects the other, and on that which it adopts it imposes special conditions or limitations or even penalties. Repugnancy implies a conflict between two provisions neither of which can be given effect to without infringing the other. There can be no such conflict between a bye-law and the general law if the bye-law operates in a particular sphere selected by it even though to the exclusion of another, so long as it confines itself within the broader limits of the general law and does not involve any violation of its fundamental principles or policy and is capable of being construed as supplementing the general law. When the purpose of power includes both prohibiting and regulating, it authorizes a bye-law which prohibits conditionally, although the conditions may properly be described as regulatory.[6]

The word 'suit' includes appeals and Section 6(1) of the U.P. Zamindari Abolition and Land Reforms Act I of 1950, which permitted the framing of rules with respect to abatement of suits, therefore, conferred power on the State Government to frame rules with respect to abatement of appeals as well.[7]

Rules framed under the Act have the force of law.[8]

The Government framed the following rule under the City of Bangalore Municipal Corporation Act 69 of 1949 :

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1. Vide *Municipal Board, Bareilly* v. *Bharat Oil Co.*, AIR 1990 SC 548.
2. *Bangalore Municipality* v. *M/s. N. Sirur & Co.*, AIR 1955 Mys 147 : ILR (1966)45 Pat 108. A circular issued by an officer of Government cannot be construed in such a way as to circumvent or make nugatory the statutory provisions; *Muddi Narayanan* v. *Subbaraju*, AIR 1957 Andh Pra 837, 841 (Subba Rao, C.J.); *Loitongbam C. Singh* v. *Chief Commissioner*, AIR 1958 Manipur, 1, 3 (Datta, J.C.).
3. *R.* v. *Industrial Registrar*, 25 CLR 9, 20; *see* also *Anant Sadashiv Pandit* v. *Ratnagiri Jilha (District) Local Board*, 54 Bom LR 841 : AIR 1953 Bom 71 [Rules framed by District Board not to be inconsistent with the Act]; *Ganpat Shantaram More* v. *Lingappa Balappa Gowda*, AIR 1962 Bom 104 : 63 Bom LR 832; *Firm A. I. Corporation* v. *Market Committee*, AIR 1962 Punj 426.
4. *Somdutta Choubey* v. *Janapada Sabha*, 1962 Jab LJ 181; *Chandrakant* v. *State of Rajasthan*, ILR (1963)73 Raj 1.
5. *Gentel* v. *Rapps*, (1902)1 KB 106, 166, quoted in *Khurai Municipality* v. *Kaluram Hiralal*, ILR 1943 Nag 740 : AIR 1944 Nag 73, 75.
6. *The County Roads Board* v. *Neale Ads. Proprietary Ltd.*, 43 CLR 127; *see* also *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27; *Balkrishna* v. *State of Madras*, AIR 1952 Mad 565; *Loknath* v. *State of Orissa*, AIR 1952 Orissa 42; *W B S K Co-operative Society* v. *Bella Banerjee*, AIR 1951 Cal 111; *State of WB* v. *Subodh Gopal*, AIR 1954 SC 92; *Dwarka Das* v. *Sholapur Spinning & Weaving Co.*, AIR 1954 SC 119 (whether imposing of restrictions authorizes total prohibition).
7. *Ram Saroop* v. *Board of Revenue*, U.P., AIR 1954 All 639.
8. *Ram Saroop* v. *Board of Revenue*, U.P., AIR 1954 All 639.

"No person shall use any place not belonging to the Municipal Council as a place for gold and silver boiling or for installation of power-driven machinery, except under and in accordance with the conditions of a licence to be obtained in this behalf from the Municipal Council."

In the bye-law framed by the Municipality, the words 'or otherwise for any purpose' were added after the words 'power-driven machinery' in the aforesaid rule. It was held that the bye-law provided for what was beyond the limits laid down by the rule by requiring persons other than those mentioned in the rule to obtain licence and this was not legally permissible and extent of the bye-law was invalid.[1] If the bye-law keeps to the prescribed limits and is valid, the question of the necessity or expediency of it is not open to question in a Court of law unless it is unreasonable.[2] Lord Alverstone, C.J., in *London County Council* v. *Bermondsey Bioscopa Co.*,[3] emphasised the ".....well-recognised principle that where there is a competent authority to which an Act of Parliament entrusts the power of making regulations, it is for that authority to decide what regulations are necessary; and any regulation which they may decide to make should be supported unless they are manifestly unreasonable or unfair." The Court is not concerned with the wisdom or otherwise of any regulation : that is a matter for the Legislature. It is concerned only with the question of legality.[4] In *Edmonds* v. *Waterman's Company*,[5] the Court said : ".....a bye-law cannot be said to be inconsistent with the laws of this kingdom merely because it forbids the doing of something which might lawfully have been done before, or requires something to be done which there was no previous obligation to do, otherwise, a nominal power of making bye-laws would be utterly nugatory."

In the case of statutory rules, the Court can always go into the question as to whether they are inconsistent with the statute under which they are made.[6] If statutory rules are inconsistent with the Act, they are *ultra vires*.[7] If the Legislature in its wisdom grants a concession and by creating concession a reciprocal right or privilege is vested in an assessee, such a reciprocal right cannot be wildly dealt with so as to negate its usefulness by making a rule which cannot be reconciled with the main statutory provision..... if the rule or the form prescribed therein, which no doubt gets itself built into the structure of the Act, is to create a situation and which, if accepted, would divest a vested right in an assessee to obtain a statutory privilege, then such a form which is prescribed in accordance with the mandate of the main provisions should be held to be *ultra vires* and not enforceable.[8] If a new rule is held *ultra vires*, the old rule does not get revived.[9]

A rule-making body cannot frame rules in conflict with or derogating from the substantive provisions of the law or statute under which the rules are framed. Rule 2 of the Assam Settlement Rules framed under the Assam Land and Revenue Regulation has got to be interpreted in such a way as to be consistent with the provisions of the Regulation itself and

1. *Bangalore Municipality* v. *M/s N. Sirur & Co.*, AIR 1955 Mys 147.
2. *Khurai Municipality* v. *Kaluram Hiralal*, AIR 1944 Nag 73, 75 : ILR 1943 Nag 740.
3. (1911)1 KB 445 : (1911)80 LJKB 141, 144, quoted in *Khurai Municipality* v. *Kaluram Hiralal*, AIR 1944 Nag 73, 75 ILR 1943 Nag 740; *see* also *Varma* v. *Emperor*, ILR 60 Cal 689 : AIR 1933 Cal 243.
4. *Sickerdick* v. *Ashton*, 25 CLR 506, 512-13.
5. (1855)24 LJMC 124-128; *see* also *Powell* v. *May*, (1946)1 KB 330, 335, 338 : Chief Justice Goldard observed : "Obviously it (bye-law) cannot permit that which a statute expressly forbids though it can of course forbid which otherwise would be lawful at common law since otherwise no prohibitory by law could be valid."
6. *Hazrat Syed Shah Mustarshid Ali Al-Quadari* v. *Commissioner of Wakfs*, AIR 1954 Cal 436.
7. *Ram Piara* v. *Municipal Committee, Hoshiarpur*, AIR 1955 Punj 125; *Shri Bishweshwar* v. *Board of Revenue*, AIR 1956 Raj 101.
8. *Muthiah Chettier Family Trust* v. *4th I.T.O., Madras*, 86 ITR 282 (Mad) (Ramprasada Rao, J.).
9. *A.T.B. Mehtab Majid and Co.* v. *State of Madras*, AIR 1963 SC 928.

the words 'general or special orders' though somewhat broad in their import, cannot mean that at any stage, the Government can interfere with the settlement effected by the Deputy Commissioner. These general and special orders would relate to a stage when the Deputy commissioner has not already created rights in favour of third parties. The order of the Provincial Government directing reduction of the area already settled with the petitioners, is, therefore, without any warrant in law.[1]

Rules made under the rule-making provision of an Act cannot take away what is given by the Act. Rules are meant only for the purpose of carrying out the provisions of the Act. Hence, Rule 84 under the U.P. Zamindari Abolition and Land Reforms Rules, 1952 taking away the discretion of the compensation officer under Section 69 to deposit or not to deposit the amount of compensation payable to a limited owner cannot be accepted.[2]

(vii) Reasonableness.—The jurisdiction of testing bye-laws by their reasonableness was originally applied to such cases as those of manorial bodies, towns or corporations having inherent powers or general powers conferred by charter in making such laws. As new corporations and administrative bodies had arisen, the same jurisdiction has been exercised over them.[3] Lord Russell, C.J., proceeded to observe, further in *Kruse* v. *Johnson*:[4]

> "Notwithstanding what Cockburn, C.J., said in *Bailey* v. *Williamson*,[5] an analogous case, I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn bye-laws, made under such authority as these were made (the County Council of Kent), as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.' But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent, or necessary, or convenient, or because it is not accompanied by a qualification or an exception which some Judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local Government bodies, such representatives may be trusted to understand their own requirements better than Judges. Indeed, if the question of the validity of bye-laws were to be determined by the opinion of Judges as to what was reasonable in the narrow sense of that word, the cases in the books on that subject are no guide; for they reveal as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle or definite standard by which reasonableness or unreasonableness may be tested....."

"Reasonableness in the main," says Barton, J., in *President, etc. of the Shire of Tungamah* v. *Merreit*,[6] "is a question for a representative body like a shire council to determine, and, if there

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1. *Abdul Gani* v. *Settlement Officer, Nowgong*, AIR 1955 Assam 45, 48.
2. *Radha Krishna* v. *Compensation Officer, Meja*, AIR 1954 All 202.
3. *Slattery* v. *Naylor*, (1888)12 AC 446, 452, (*per* Lord Hobhouse).
4. (1898)2 QB 91, 99-103; *Mewa Ram* v. *M.M. Board*, ILR 1933 All 770 : AIR 1939 All 466, 480.
5. 1873 LR 8 BB 118, 124,
6. 15 CLR 407 at p. 418. "There are means provided in the Act for preventing abuse of power by local bodies and it is the duty of the party aggrieved to have recourse to such remedies as are provided in the Act for rectifying mistakes of the local bodies"; *Mewa Ram* v. *M.M. Board*, ILR 1939 All 770 : AIR 1939 All 466, 480.

is any case in which a determination on such a subject is fatal to a bye-law, it would have to be an extreme one." The test 'of reasonableness' gives the Courts the widest power of appraising the general expediency of a bye-law; but the test is as variable and as difficult here as it is in all other branches of the law.[1] Allen gives some good illustrations in this behalf : 'In the leading case of *Kruse* v. *Johnson*,[2] it was held not unreasonable to give a policeman power to prevent street music of any kind within fifty yards of a dwelling-house, even without proof that the music was an annoyance to any person or persons. In *Da Prato* v. *Provost, etc., of Patric*,[3] it was held not unreasonable for a bye-law to close all ice-cream shops at 10 p.m. In *Baird* v. *Corporation of City of Glasgow*,[4] it was held not unreasonable for a Corporation, at its discretion, to exclude petrol stations from certain areas. On the other hand, the following provisions in bye-laws have been held unreasonable; not to keep swine within fifty feet of any dwelling-house,[5] to compel a person in charge of a vehicle selling a small quantity of coal to re-weigh it at the request of the purchaser, or of anybody on behalf of the purchaser, or of an inspector of weights or measures, or any of constables,[6] to prohibit the sale in public places of newspapers, etc., devoted to tips and information about horse races.[7] It sometimes happens that a bye-law which has been accepted as valid for a considerable period will eventually be declared unreasonable, and the same objection which is made to the irregular operation of case-law becomes equally applicable to the operation of subordinate enactment.[8] Thus in *Repton School Governors* v. *Repton R.D. Co.*,[9] the Court pronounced against a building bye-law which had been long accepted without demur—*viz.*, that every new building (including in that term any *addition to an existing building)* should have an open space of not less than 150 feet at the back.[10] The cases are not all easy to reconcile, but it is clear that the Courts will uphold the regulations of local authorities so far as they can. It would appear that bye-laws may be valid even when they interfere with, or take away, without compensation, existing rights of property,[11] and sometimes they are undoubtedly enforced in what seems to be a very high-handed manner.[12] A bye-law providing that a passenger shall be guilty of an offence who quits a tram-car without paying his fare, when no fare has been demanded, is *ultra vires* as being against the general law and is unreasonable.[13]

Any bye-law purporting to regulate *trade* is calculated to some extent to hamper it, but if it does not result in preventing or stifling it, the bye-laws cannot be denounced as unreasonable. The *test of reasonableness* is to consider whether the restraint is such only as to afford a fair protection to the interest of the parties not so large as to interfere with the interest of the public.[14]

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1. Allen : *Law in the Making*, 4th Ed. at p. 463.
2. (1898)2 QB 91.
3. 1907 AC 153.
4. 1936 AC 32.
5. *Heap* v. *Busuley Union*, 1884 12 QBD 617.
6. *Alty* v. *Farrel*, (1896)1 QB 636.
7. *Scott* v. *Pilliner*, (1904)2 KB 855.
8. Allen : *Law in the Making*, 4th Ed. at pp. 463-464.
9. (1918)2 KB 133.
10. *Att., Gen.* v. *Denby*, 1925 Ch 596.
11. *Slattery* v. *Naylor*, (1888)13 AC 446; *Att. Genl.* v. *Hodgson*, (1922)2 Ch 429.
12. *L.C.C.* v. *St. George's Union Assessment Committee*, (1894) AC 600 (HL).
13. *London Passenger Transport Board* v. *Summer*, (1936)52 TLR 13.
14. *Khurai Municipality* v. *Kaluram Hiralal*, AIR 1944 Nag 73, 77 : ILR 1943 Nag 740.

In *Jagmohan Singh* v. *State of U.P.*,[1] the Supreme Court indicated the following guidelines for testing the reasonableness after observing that no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases :

> "The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, disproportion of the imposition, the prevailing conditions at the time, should all enter the judicial verdict. In evaluating facts and forming conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of elected representatives of the people have, in authorising the imposition of the restrictions considered them to be reasonable."

In *Widgee Shire Council* v. *Bonney*,[2] Griffith, C.J., said : "With regard to the objection that the bye-law is unreasonable, I think that since the cases of *Slattery* v. *Naylor*,[3] and *Kruse* v. *Johnson*,[4] it is very difficult to make a successful attack on a bye-law on this ground." "Reasonableness is in the main a question for a representative body like a shire council to determine, and, if there is any case in which a determination on a subject is fatal to a bye-law, it would have to be an extreme one."[5]

19. Bye-laws adding to the law.—In *Widgee Shire Council* v. *Bonney*,[6] Griffith, C.J., said : "The suggestion that a bye-law may not add to the law is, of course, untenable, for that view the power to make bye-laws would be absolutely nugatory. It cannot be disputed that under the power to regulate traffic the local authority would have power by bye-law to prescribe that certain form of traffic, for instance, heavily loaded wagons, or indeed any wheeled vehicles, shall be confined to a prescribed portion of the width of a highway; otherwise the power to control highways and make them safe and convenient for foot passengers would be futile. Nor can it be disputed that *prima facie* the width of the carriageway is a matter for the local authority to determine. Again, it is clear that if they thought fit to allow wagons or other wheeled vehicles to use the whole width of a highway, they might impose a condition that they should not injure the water-tables or kerbs separating one part from another. It is equally plain that they might, under the power to make bye-laws to prevent injury or obstruction to works, prohibit the passing of a heavy vehicle from the carriage-way to another part of the highway, if doing so, would be likely to injure the kerb or water-table."

It was further held that a bye-law can prohibit an act *simpliciter* and it would not be invalid simply because it dispenses with the element of *mens rea* in an offence.

In some statutes power is given to frame rules and when so framed they are made part of the statute. In such a case it might be permissible to supplement the provisions of the statute itself, with limits. But where rules are to be framed for 'carrying on the purposes of the Act', such rules cannot travel beyond the four-corners of the Act itself. Section 84 of the Bengal Wakf Act 13 of 1934, conferred powers on the Provincial Government to make rules 'for carrying out the purposes

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1. (1973)1 SCWR 20.
2. 4 CLR 977, 982.
3. 13 AC 446.
4. (1898)2 QB 91.
5. *President, etc. of the Shire of Tungamah* v. *Merreit*, 15 CLR 407, 417 (*per* Barton, J.).
6. 4 CLR 977, 981.

of the Act'. One such rule authorised the Commissioner to appoint a temporary *Mutwalli* under Section 40 merely on the ground that there are two rival claimants. The rule is *ultra vires* inasmuch as Section 40 itself does not grant such power and the rules to be framed under Section 84 were intended only to carry out the purposes of the Act.

Note to a Rule.—"The notes are promulgated with rules in exercise of Legislature power. The notes are made contemporaneously with the rules. The function of the notes is to provide procedure and to control discretion. The real purpose of the notes is that where rules are silent the notes will fill up gaps."[1]

20. Bye-laws may restrict powers.—The promulgation of a bye-law may, at times, have the effect of limiting the scope of the power of the local body or company to exercise a right which otherwise be deemed to be vested in it. Lord Lindley observed in *London Association of Shipowners* v. *London and India Docks*[2] :

> "The Legislature has expressly conferred on the company many powers which the company as owner of property could have exercised without any express statutory authority. Whenever this is the case, the power expressly given must be treated either as superfluous, or as purposely inserted in order to define, that is, to limit the right conferred and as implying a prohibition against the exercise of the more extensive rights which the company might have by virtue of its ownership of property. That the latter is the true mode of regarding statutory powers conferred on bodies created for public purposes and authorised to acquire land for such purposes cannot, I think, admit of any doubt."

Otherwise it would be contravening the well-known rule that when there is a special affirmative power given which would not be required because there is a general power, it is always read to import the negative and that nothing else can be done.

21. Severability.—Where a bad portion of an enactment can be separated from the good portion, the good portion can still be enforced. But where the bad portion cannot be so separated and it is inextricably mixed up, then the whole enactment becomes bad. Where a statute is in part void, it would be enforced as regards the rest, of this is severable from what is invalid.[3] It is immaterial for the purposes of this rule whether the invalidity of the statute arises by reason of its subject-matter being outside the competence of the Legislature or by reason of its provisions contravening constitutional prohibitions. The test to find out whether the portion which is bad can be separated from the rest or not is to see if after omitting the bad portion, the rest of the enactment is workable, and does not frustrate the intention of the rule making body, and is quite independent of the bad portions.[4] Thus in *Municipal Board, Banaras* v. *Samiullah*,[5] the bye-law framed under Section 299(1), U.P. Municipalities Act II of 1916, which prescribed the maximum fine for a breach of a bye-law at Rs. 500 by the Municipal Board of Banaras provided :

> "In exercise of the powers conferred by Section 299(1) of the Act, the Board hereby directs that any breach of the above bye-laws shall be punishable with fine which may extend to Rs. 1,000 and shall in no case be less than Rs. 100. Samiullah was convicted for such a breach and was fined Rs. 15. It was contended before the High Court, in a revision filed by the Municipal Board (before the District Magistrate who referred the case to the

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1. *Kunhi Krishnan* v. *State of Kerala*, 1982 KLT 13 (FB); quoting Supreme Court in *Tara Singh* v. *State of Rajasthan*, AIR 1975 SC 1487 (1490).
2. (1892)3 Ch 242-251.
3. *Ex parte* Stephens, (1876)3 Ch D 659, 660.
4. *R.M.D.* v. *Union of India*, AIR 1957 SC 628; *Nand Ram* v. *Kishori Ram Singh*, AIR 1962 All 521.
5. AIR 1949 All 220.

High Court) on behalf of Samiullah that there was no power in the Municipal Board to fix the maximum limit at Rs. 1,000 when Section 299(1), Municipalities Act laid down the maximum limit as Rs. 5.00 only and since the Board had attempted to do what it could not do, the bye-law as a whole, was invalid and could not be enforced. Their Lordships of the Allahabad High Court did not agree with this contention. Speaking for the Bench, Mr. Justice Agarwala observed : "In this case, we find that if we exclude from consideration the clause in the bye-law which fixes the maximum limit of fine at Rs. 1,000, the rest of the bye-law is workable and is in harmony with the intention of the Board, and is not dependent on the clause which is bad. Under these circumstances, we think that the minimum penalty that should have been imposed by the Bench Magistrate, II grade, who tried the case was Rs. 100'."

22. Repeal of Act, effect on bye-law.—When a bye-law is made under an Act, the repeal of the Act abrogates the bye-law unless the bye-law is preserved by the repealing Act. The same principle should apply to the case of an order made under an Act which has lapsed by efflux of time.[1]

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1. *Ramamurthi & Co.* v. *Seetharamayya*, (1957)2 Andh WR 503 : 1957 Andh LT 516; *Government of Andhra* v. *East India Commercial Co. Ltd.*, AIR 1957 Andh 83, 87 (FB). A stream can rise no higher than its source; *Watson* v. *Winch*, (1916)1 KB 688. See *Atlas Cycle Industries* v. *State of Haryana*, AIR 1979 SC 1149; *Desh Bandhu Gupta* v. *Delhi Stock Exchange*, AIR 1979 SC 1049; *Prag Ice & Oil Mills* v. *Union of India*, AIR 1978 SC 1296; *Avinder* v. *State of Punjab*, AIR 1979 SC 321; *Jai Bharat Cold Storage* v. *State*, AIR 1980 Punj 52, case under Essential Commodities Act, 1955 and Haryana Cold Storage (Licensing & Regulation) Order, 1979.

CHAPTER XXX

RETROSPECTIVE OPERATION OF STATUTES

SYNOPSIS

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1. Meaning of 'retrospective operation'.—" 'Retrospective operation' is an inaccurate term causing confusion. The purest cases of retrospective laws are those in which the date of commencement is earlier than enactment, or which validates some invalid law. Otherwise every statute effects rights which would have been in existence but for the statute and a statute does not become a retrospective one because a part of the requisites for its action is drawn from a time antecedent to its passing. All what it means is that save in cases where the law creates a new offence or increases a penalty, a Legislature is not prevented from enacting an *ex post facto* law but if any such law takes away or impairs any vested right acquired under an existing law, or creates a new obligation, or imposes a new duty or attaches a new disability in respect to transactions on considerations already past, it must so provide in express terms or such should be a necessary implication from the language employed."[1] The word 'retrospective' is somewhat ambiguous.[2] 'Retrospective' means looking backwards; having reference to a state of things existing before the Act in question. A retrospective statute contemplates the past and gives to a previous transaction some different legal effect from that which it had under the law when it occurred or transpired. Every statute which takes away or impairs a vested right acquired under existing law or creates a new obligation, imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be deemed to be prospective.[3] A retrospective law is one which reaches back to and gives to a prior transaction some different legal effect from that which it had under the law when it took place.[4] If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act is deemed to be retrospective.[5] *Corpus Juris*[6] defines it thus :

> "Literally defined, a retrospective law is a law that looks backward or on things that are past; and a retroactive law is one that acts on things that are past. In common use, as applied to statutes, the two words are synonymous, and in this connection may be broadly defined as having reference to state of things existing before the Act in question. A retroactive or retrospective law, in the legal sense, is one that takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty or attaches a new disability in respect to transactions or considerations already past."

The question whether a statute operates prospectively or retrospectively is one of legislative intent. If the terms of a statute are clear and unambiguous and it is manifest that the Legislature intended the Act to operate retrospectively, it must unquestionably be so construed.[7] If, however, the terms of a statute do not of themselves make the intention certain or clear, the statute will be presumed to operate prospectively,[8] where it is in derogation of a common law right, or where the effect of giving it a retrospective operation would be to interfere with an existing contract, destroy a vested right or create a new liability in connection

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1. *Nemi Chand* v. *State of Rajasthan*, 1977 Raj LW 430.
2. *R.* v. *St. Mary Whitechapel (Inhabitants)*, (1848)12 QB 120, 127; *Allen* v. *Gold Reefs of West Africa Ltd.*, (1900)1 Ch 656, 673.
3. *Ram Parkash* v. *Savitri Devi*, AIR 1958 Punj 87, 90 (FB); *(M/s.) Saharanpur Electric Supply Co. Ltd.* v. *Commissioner of Income Tax*, (1992)1 JT (SC) 287.
4. Cooley : *Constitutional Limitations*, at p. 771.
5. *West* v. *Gwynne*, (1911)2 Ch 1, 12, *per* Lord Wrenbury; *South Australia Land, etc. Co. Ltd.* v. *King*, 30 CLR 523, 546; *Mohd. Jamil Ahmad* v. *Suraj Narain*, ILR 29 Pat 400; *New Singhal Dal Mill* v. *Sheo Prasad*, AIR 1958 All 404, 407, 408 (M.C. Desai, J.).
6. Volume 59 at pp. 1158-1159.
7. *Mohd. Rashid Ahmed* v. *State of U.P.*, AIR 1979 SC 592, 598.
8. *Mohd. Rashid Ahmed* v. *State of U.P.*, AIR 1979 SC 592, 598.

with a past transaction or invalidate a defence which was good when the statute was passed.[1]

While considering the question of the retrospective operation of the statute, the nature of the right affected must first be considered. Where there is a vested right, an amendment will be considered as prospective so as not to affect the vested right. If the right is merely procedural then normally there is no vested right.[2]

Every legislation is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. This rule of interpretation is applicable for the purpose of interpreting the Constitution also.[3]

All laws which affects substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive.[4]

A section may be prospective in some parts and retrospective in other parts.[5]

2. Its use in different senses, ex post facto laws.—It is used in several different senses, *viz*, *(a)* an Act may be called retrospective because it affects existing contracts as from the date of its coming into operation; *(b)* it may be more properly described as retrospective because it applies to the actual transactions which have been completed or to rights and remedies which have already accrued; *(c)* or, it may apply again to such matters as procedure and evidence; and in each of these matters retrospective legislation has a different effect.[6] The terms 'retroactive' and 'retrospective' are synonymous in judicial usage and may be employed interchangeably. The term *'ex post facto'* used with respect to law signifies something done so as to affect another thing that was committed before, in other words, refers to the law which affects the transaction after its happening. Chase, J., defined[7] four types of *ex post facto* laws : (1) Every law that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action. (2) Every law that aggravates a crime, or makes it *greater* than it was, when committed. (3) Every law that *changes the punishment* and inflicts *greater punishment*, than the law annexed to the crime, when committed. (4) Every law that alters the legal rules of *evidence*, and receives less or different testimony, than required at the time of the commission of the offence, in order to convict the offender. Chief Justice Marshall observed in *Fletcher* v. *Peck* :[8] "An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when committed." In *Duncan* v. *Missouri*,[9] the Supreme

1. *Ram Parkash* v. *Savitri Devi*, AIR 1958 Punj 87 (FB).
2. *Debi Dutta Moody* v. *Bellan*, AIR 1959 Cal 567, 570 (D.N. Sinha, J.); *Dahiben* v. *Vasanji Kevalbhai*, AIR 1995 SC 2268; following *Mohanla Chunilal Kothari* v. *Tribhovan Haribhai Tamboli*, AIR 1963 SC 758 : (1963)2 SCR 707 (CB), the amendment made by Bombay Act 33 of 1952 (Bombay Tenancy and Agricultural Lands Act 67 of 1948) was held to have retrospective operation.
3. *Narsing Rao* v. *Shankar Saran*, AIR 1958 All 775, 786 (A.P. Shrivastava, J.); *see* also *Nilakantha Misra* v. *Collector*, (1987)63 Cut LT 75; *Pirbux* v. *Babulal*, AIR 1987 MP 18.
4. *M/s. Punjab Tin Supply Co.* v. *Central Government*, AIR 1984 SC 87 : (1983)2 Rent CJ 658 : (1983)2 Rent LR 681 : (1984)1 Ali RC 80 : (1984)1 SCC 206 : 1984 MPRCJ 29 : (1984)1 Rent CR 168 : 1984 Har Rent R 228.
5. *Shah Bhojraj, etc. Mills* v. *Subhas Chandra*, AIR 1961 SC 1596, 1601.
6. *Gardner & Co.* v. *Cove*, (1928) Ch 955. The term describes Acts which operate on transactions, which have occurred on rights and obligations which existed before passing of the Act; Sutherland : *Statutory Construction*, 3rd, Ed., Vol. 2 at p. 117.
7. *Calder* v. *Bull*, (1798)3 US 386 : 1 L Ed 648.
8. (1810)3 L Ed 162.
9. 152 US 377; *see* also *Gibson* v. *Mississipi*, 164 US 565; *Medly's* case, 134 US 160.

Court of the United States held : "An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed, or an additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required, or in short, in relation to the offence, or its consequences, alters the situation of a party to his disadvantage. The prescribing of different modes of procedure, and the abolition of Courts and creation of new ones, leaving untouched all the substantial protection with which the existing law surrounds the person accused of crime are not considered within the constitutional prohibition." Sutherland in his *Statutory Construction*,[1] referred to two additional classifications, *viz.*, (1) A law which assuming to regulate civil rights and remedies only, in effect imposes a penalty on the deprivation of a right which when done was lawful. (2) A law which deprives persons accused of crime of some lawful protection to which they have become entitled, such as, the protection of a former conviction or acquittal or of the proclamation of amnesty. The learned author quotes from Willes, *Construction of Law* (at p. 516) adding yet a further classification : "When they make retrospective qualifications for office which are not a proper exercise of the police power." Crawford in his *Statutory Construction* (at pp. 573-574) poses the question whether a statute which alters the method of inflicting the death penalty after the defendant has been convicted and sentenced to death by one method, falls within the inhibition against *ex post facto* legislation. "The principle seems to be well established", says he, "that such a statute is not within the inhibition, specially where the new method of inflicting the penalty is more humane."

Blackstone[2] considers *ex post facto* laws as those under which "after an action indifferent in itself is committed, the Legislature then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it." "Every *ex post facto* law", said Chase, J., in *Clader* v. *Bull*,[3] "must necessarily be retrospective, but every retrospective law is not an *ex post facto* law. Every law that takes away or impairs rights vested agreeable to existing law is retrospective, and literally both concerning and after the facts committed. I do not consider any law *ex post facto* that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence, for the purpose of conviction..... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime." The general rule indubitably is that where a statute is passed altering the law it is to be presumed as intended to apply to a state of facts coming into existence after the Act. It is a fundamental and firmly established rule of interpretation that a statute which deals with matters of substantive law and taxation would not be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary implication. Now the use of the expression 'retrospective operation' is at times vague and misleading. In a broad general sense it may be right to say that a statute has retrospective operation when it purports to touch facts or events which took place before the enactment came into force. It is sometimes used in a different sense when vested rights are sought to be affected. It is sometimes loosely used in the context of certain fictions of law which the law-maker deems it necessary to introduce in existing laws for the purpose of setting certain matters right or avoiding certain mischief which might be possible but for the change in the law; and this is done by laying down that certain facts or things which did not in fact exist shall be deemed to

1. 3rd Ed., Vol 2 at p. 162, footnote 4.
2. *Commentaries*, Vol. 1 at p. 46.
3. (1798)3 US 386 : 1 L Ed 648; *see* also Craies, *Statute Law*, 5th Ed. at p. 539.

have existed. This last need not necessarily be called retrospective legislation. It may be more appropriate to describe it as *ex post facto* legislation of a curative nature.[1]

A legislative judgment in a subsequent statute making a section retrospective does not necessarily or conclusively mean that its previous counterpart before the amendment was not intended to be retrospective. Parliament may amend to make a doubtful point clear or it may do so for many other reasons germane to the particular amendment.[2]

3. Rule of questionable policy.—Retrospective laws are, as a rule, of *questionable policy*, and contrary to the general principles that legislation by which the conduct of mankind is to be regulated ought to deal with future acts,....and ought not to change the character of past transactions carrierd on upon the faith of the then existing law.[3] "In dealing with the problem of retroactivity, it is extremely difficult to establish definite criteria upon which Court's decisions can be foretold. A statute must not act unreasonably upon the rights of those to whom it applies, but what is reasonable and what is unreasonable," says Sutherland in *Statutory Construction*,[4] "is difficult to state in advance of actual decisions. ".....the method to be pursued is not the unerring pursuit of a fixed legal principle to an inevitable conclusion. Rather it is the method of intelligently balancing and discriminating between reasons for and against."[5] Particular cases will be decided on their particular facts, though in light of established general principles." Broom in his *Legal Maxims* writes : *'Moon* v. *Durden'*,[6] is a leading case upon this subject. It was an action upon a wager, commenced before the passing of the Gaming Act, 1845, which enacts that all contracts by way of wagering shall be null and void,' and that 'no suit shall be brought or *maintained'* for recovering money alleged to be won upon a wager. This Act was passed while the action was pending and the question was whether it operated to defeat the plaintiff's claim. The Courts of Exchequer decided that it did not. 'The language of the clause', said Parke, B. 'if taken in its ordinary sense, as in the first instance we ought to take it, applies to all contracts-both past and future, and to all actions both present and future on any wager, whether past or future.' But it is, as Lord Coke says, ' a rule and law of Parliament that regularly, *nova constitutio futuris formam imponere debet, non praeteritis.* This rule, which is in effect that enactments in a statute are generally to be construed to be prospective, and intended to regulate the future conduct of persons, is deeply founded in good sense and strict justice, and has been acted upon in many cases.... but this rule, which is one of construction only, will certainly yield to the *intention* of the Legislature; and the question in this and in every similar case is, whether that intention has been sufficiently expressed."

It is a well-known rule of statute drafting that a statute is to be regarded as *always speaking*. This rule does not mean that the statute is to be construed as operative with reference to the past as much as with reference to the present and the future : it only means that, with reference to any particular case that falls within the scope of the wording of the statute, the statute must be taken to be speaking with reference thereto and it is not to be regarded as a rule of guidance as to the retrospective or prospective operation of the statute.[7]

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1. *New Shorock S. & M. Co., Ltd.* v. *Raval*, AIR 1959 Bom 477, 480.
2. *Kalipada* v. *Sree Bank, Ltd*, AIR 1960 Cal 285, 289.
3. *Phillips* v. *Eyre*, (1871) LR 6 QB 1, 123, *per* Willes, J.; *Raj Jogendra Chandra* v. *Bhawani Charan*, AIR 1945 Cal 425, 429.
4. 13th Ed., Vol. 2 at pp. 117-118.
5. 10th Ed. at pp. 353-354.
6. 2 Ex Ch 22, 42; followed in *Doolubdas* v. *Ramlole*, (1850) MPC 239; *Sudkya Ramji* v. *Md. Issak*, AIR 1950 Bom 236, 239. It would be very hard to say that, where a man has received a sum of money which he could not lawfully be made to repay, a subsequent statute imposes upon him an obligation to repay money which he has lawfully received; *Wilson* v. *Moss*, 8 CLR 146, 158.
7. *R. Jhi Bewa* v. *Bhagwan Sahu*, ILR 1951 Cut 177; *Kothari Roadways* v. *R.T. Authority, Udaipur*, 1969 Raj LW 74.

Lord Watson observed in *Young* v. *Adams*[1] :

"In the present case the learned Chief Justice was right in saying that the retrospective operation ought not to be given to the statute, unless the intention of the Legislature that it should be so construed is expressed in a plain and unambiguous language, because it manifestly shocks one's sense of justice that an act legal at the time of doing it should be made unlawful by some new enactment. The ratio is equally apparent when a new enactment is said to convert an act wrongfully done at the time into a legal act and to deprive the person injured of the remedy which the law then gave him."

In *Mohd. Abdus Samad* v. *Kurban Hussain*,[2] Murtaza Bakhsh, a Taluqdar of Oudh, died on 18th January, 1865, leaving behind his mother, two widows and some cousins, His mother's name was entered in the Collector's books in March, 1865, in substitution for his own, with the consent of the two widows and the cousins. In 1869 Oudh Estates Act was passed which regulated succession to the estates of Taluqdars whose names were entered in certain prescribed lists. After the death of the mother in 1870, the widows' names were substituted for heir in the Collector's books. The heirs of the last surviving widow claimed the estate when the widow died. The claim was resisted by the heirs of the first wife. The trial Court held that the entry of Murtaza Bakhsh's name in the lists, after his demise, was *ultra vires* and of no effect; that the mother held the estate as absolute owner; that after her death the two widows held as absolute owners in equals shares; that on the death of the first wife one-half of the estate descended on the heirs of the first wife, in accordance with ordinary Mahomedan Law and that on the death of the second wife her half descended on her heirs by the same law. This decision was affirmed in appeal. On appeal by the heirs of the first wife, their Lordships felt no hesitation in confirming the decision. Lord Lindley observed :

"The whole case turns on the entry of Murtaza Bakhsh's name in two of the lists ordered to be made by the Act of 1869. Section 10 of the Act compels the Court to regard such lists as conclusive evidence that the persons named therein are Taluqdars or grantees within the meaning of the Act. When the lists referred to are looked at, it will be found that there are six lists : *see* Section 8, Murtaza Bakhsh's name is in the first and third. The entries, therefore, by Sections 8 and 10 are conclusive evidence (1) that he is to be considered as having been a Taluqdar within the meaning of the Act : Sections 2, 8 list 1; and (2) that he was a Taluqdar to whom a Sanad had been made declaring that the succession to the estates comprised Sections 2, 8, in it should be regulated by the rule of primogeniture; *See* list 3.

"These enactments are clear and pre-emptory, and would be decisive if they applied to this case. It is not, however, in accordance with sound principles of interpreting statutes to give them a retrospective effect. The Courts cannot construe Sections 8 and 10 so as to deprive the successors of the estates of a person who had died before those sections came into operation of rights which they acquired on his death. Entries of the names of the deceased person in the lists mentioned in Section 8 do not appear to have been contemplated by the Act, but such entries have no doubt been made and they are practically harmless if the names were already in former lists made under the Orders in Council, or if the entries do not alter the previously acquired rights of anyone. This was the case in *Achal Ram* v. *Udai Partab Addiya Dat Singh*.[3] But no decision has been referred to which supports the

1. 1898 AC 469, cited in *Kishori Lal* v. *Debi Prasad*, AIR 1950 Pat 50 at p. 174; *Nannu Ram* v. *Vishwanatha*, 1968 Raj LW 358.
2. 31 IA 30, 37; *see* also *Gurcharan Lal* v. *Shiva Narain*, AIR 1948 Oudh 162 (FB).
3. 11 IA 51.

contention that the entry of the name of a person who dies before the Act came into force can divest rights previously acquired on his death. In this case the death occurred in 1865, and the successors then acquired their rights under the ordinary Mahomedan Law. The Oudh Estates Act did not come into operation until 1869; and to construe its provisions as altering the succession would be not only unjust, but plainly contrary to the well-settled principles."

It is hardly necessary to point out that nothing is more firmly established in all civilized systems of jurisprudence than the proposition that the *Legislature is presumed to enact prospectively and not retrospectively.* The rule is embodied in the well-known maxim *nova constitutio futuris formam imponere debet non praeteritis* (every new enactment should affect future and not past times). It may also be stated that while this principle is of general application it is followed with particular strictness in reference to penal statutes.[1] Upon the presumption that the Legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation.[2]

This rule not applicable to penalties imposed.—It is true that so far as the creation of any substantive offence is concerned a statute is not retrospective. In *Director of Public Prosecutions* v. *Lamb*,[3] the offences were alleged to have been committed between 3rd September, 1939 [the day when the Defence (Finance) Regulations, 1939, came into force], and 11th May, 1940, that being the date when the matters came to light. The information was laid before the Magistrate on 27th August, 1940. At that time the Regulation provided that the fine should not exceed £ 100 (besides imprisonment, if any). On 11th June, 1940, the Regulation was amended thereby enacting :

"Where any person is convicted of an offence against any of these Regulations in relation to (certain matters) the maximum fine which may be imposed on him shall be (certain things, one of such things being), a fine equal to three times the value of the security, currency....."

The case came up before the Magistrate on 4th September, 1940, and he considering that the amended rule did not apply, whereby he could impose a fine of £ 1,58,000, imposed a fine of only £ 100. On appeal, Tucker, J., set aside the order and observed :

"It is not making an offence of something which previously was not an offence, and it is, of course, dealing with the future when it says 'Any person is convicted', and is not referring to any person who has been previously convicted. However, when I think that it has a retrospective effect is with regard to the penalty which it imposes. If we suppose that next week the regulation with regard to looting were to be amended by a provision which said, 'Any person convicted of looting shall suffer the penalty of death and regulation so and so shall be amended accordingly,' I think that it would be difficult to persuade anybody who was next week convicted of the offence of having looted six months ago that that regulation had not a retrospective effect. I think that it clearly would have retrospective effect *qua* punishment, and I think that this regulation has a retrospective effect with regard to the penalty which it imposes."

These observations have, however, to be read subject to the provisions of Article 20 of the Indian Constitution.

It is obviously competent for the Legislature, in its wisdom, to make the provisions of an Act of Legislature retrospective.[4]

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1. *Paras Ram* v. *Emperor*, AIR 1931 Lah 145; *Ayub Ali Khan* v. *Smt. Haseena Bano*, (1977)14 ACC 20.
2. Maxwell : *Interpretation of Statute*, 12th Ed. at p. 215; *(Smt.) Shakuntala* v. *Bhagwan Das*, AIR 1967 Delhi, 12, 14, (S.K. Kapur, J.).
3. (1941)2 All ER 499, 502, 503.
4. *Smith* v. *Callander*, 1901 AC 297, 305, *per* Lord Ashborne.

The *principles* that have to be applied for interpretation of statutory provisions are well settled. The *first* of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective, they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective;[1] and the retrospective operation will be limited only to the extent to which it has been so made by express words, or necessary implication.

The *second* rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning.

The *third* rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted.

The *fourth* rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency, such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had, will be put on the words, if necessary, even by modification of the language used.[2]

The *fifth* rule is that where a statute is not clear as to whether it has retrospective effect and can be interpreted either way on this point, the court should not give it retrospective effect.[3] Except where necessary, a statute should not be read retrospectively.[4] Pending actions are not affected by new statute, unless the latter are expressly made applicable to the former.[5]

4. **Competency to enact retrospective laws.**—The Legislature of a State is a sovereign authority in the sphere of legislation on State subject, and in the exercise of that authority it has competence to enact legislation with retrospective effect.[6] Constitutionality of an Act must be judged on the basis of the Constitution as it was on the date the Act was passed, subject to any retrospective amendment of the Constitution.[7] Higgins, J., observed in *Kin* v. *Kidman*[8] : "The British Parliament admittedly has power to make its laws retrospective; and I know of no instance in which a Legislature created by the British Parliament has been held to have overstepped its powers by making legislation retroactive. There are plenty of passages that can be cited showing the inexpediency, and the injustice, in most cases of legislating for the past, of interfering with posted rights, and of making acts unlawful which were lawful when done; but these passages do not raise any doubt as to the power of the Legislature to pass retroactive legislation, if it sees fit. The maxim runs : *Nova constitutio futuris forman imponere debet, non praeteritis*. The word used is *'debet'* not *'potest'*. This is the British system, whether it be right or wrong. It is not the system of the French Code for, even in civil matters, it is provided *'la loc*

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1. *Associated Cement Co., Ltd.* v. *State of Bihar*, 1979 PLJR 429 (DB).
2. *Mahadeo Lal* v. *Administrator-General, W.B.*, AIR 1960 SC 936, 939; *Sree Bank Ltd.* v. *Sarkar Dutt Roy*, AIR 1966 SC 1953; *Kunhiraman* v. *Pura., ineri Service Co-operative Bank, Ltd.*, 1970 KLT 1057, 1061 (E. K. Moidu, J.). "*Income-tax Officer, Tuticorin* v. *T.S. Devinatha*, AIR 1968 SC 623; *State of Madhya Pradesh* v. *Poonam Chand*, 1968 Jab LJ 116 : 1967 MPLJ 891."
3. *Govind Das* v. *I.T.O.* AIR 1977 SC 552.
4. *State of Kerala* v. *Philomina*, (1976)4 SCC 314.
5. *Kapen* v. *Provident Investment Co.*, AIR 1976 SC 2910.
6. *Tamboli Bhogalal* v. *Mohanlal Chunilal*, AIR 1957 Bom 130; *Associated Cement Co., Ltd.* v. *State of Bihar*, 1979 PLJR 429 (DB).
7. *Mahendralal Jain* v. *State of U.P.*, 1963 (Suppl)1 SCR 912. Same applies to subordinate legislation; *State of Kerala* v. *Annami*, AIR 1969 Ker 38, 54 (FB) (Madhavan Nair, J.).
8. 20 CLR 424, 451, 452; *see Jada Ram* v. *Faziullah Khan*, AIR 1934 Pesh 30.

ne dispose que pourlavenier; ellen' a point 'de ffet retroactif' (Code Civil 2). The British Parliament, by Acts attainder and otherwise, has made crimes of acts after the acts were committed, and men have been executed for the crimes; and—unless the contrary be provided in the Constitution—a subordinate Legislature of the British Empire has, unless the Constitution provides to the contrary, similar power to make its statutes retrospective. The general position is stated by the Judicial Committee of the Privy Council in a case arising as to the validity of an Act passed by the Legislature of the Province of Ontario thus: "When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive power to make laws for the Province and for provincial purposes in relation to the matters enumerated in Section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of Imperial Parliament, but authority as plenary and as ample within the limits prescribed by Section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow."[1] It is to be noticed that these words used with reference to a Provincial Legislature—a Legislature of limited, specified powers. The residuary powers of legislation are committed by the British North America Act to the Parliament of Canada; so that it cannot be said that this unqualified language is inapplicable to the Parliament of Australia, which also has only limited, specified powers. The power of a Provincial Legislature to make retroactive legislation is actually exemplified in a case from the Province of Quebec.[2] In that case, "it was held by the Privy Council that the Provincial Legislation was valid although it reduced liabilities under existing contracts. It was not a case of bankruptcy—the debtor was not a bankrupt; and the power to make laws as to bankruptcy was vested in the Dominion Parliament, not in the Provincial Legislatures." "No one denies," said Dr. Lushington in *The Ironside*,[3] "the competency of the Legislature to pass retrospective statutes if they think fit and many times they have done so."

The *Parliament* in India is endowed with plenary powers of legislation and it is competent to legislate with prospective or retrospective effect. Retrospective legislation is one of the incidents of plenary legislative powers. Under the Constitution there is only one restriction imposed upon the power of retrospective legislation under Article 20.[4]

There is nothing in the Government of India Act or the present Constitution to deprive even the *Provincial Legislatures* of the power of retrospective legislation.[5]

Within the framework of Article 246 of the Constitution, the Central and State Legislatures have respectively exclusive powers to make laws with respect to any matter enumerated in lists I, II and III in the Seventh Schedule. In the plenitude of that power, subject of course to certain constitutional limitations, the Parliament or State Legislatures would be within the ambit of their competence if they deem fit to legislate retrospectively.[6]

If a statute is passed under Article 304*(b)* of the Constitution retrospectively, its reasonableness may fall to be considered on the merits in a given case, but it cannot be said that in no case can a statute, passed under the said Article, operate retrospectively. It follows that such an Act is not invalid solely because it operates retrospectively.[7]

It is true that as a matter of construction the Courts presume that a statute is not intended to be given retrospective effect unless the intention is made clear by express words or necessary

1. *Hodge* v. *Reg.*, 9 AC 117, 132.
2. *L'Union St. Jacqess de Montreal* v. *Beliste*, LR 6 PC 31.
3. (1862)31 LJPM and A 131.
4. *Bihar Cotton Mills* v. *Union of India*, AIR 1956 Pat 131.
5. *United Provinces* v. *Atiqa Begum*, AIR 1941 FC 16
6. *M.L. Bagga* v. *Muhar Rao*, AIR 1956 Hyd 35.
7. *Khyerbari Tea Co.* v. *State of Assam*, AIR 1964 SC 925.

implication, but that is only a canon of construction and not a constitutional principle. The Bihar Legislature had the constitutional power and authority to enact Section 10 of Bihar Act 6 of 1949, expressly making the newly substituted Section 4(1) retrospective with effect from 1st July, 1947.[1]

Executive rules not retrospective.—A Legislature can certainly give retrospective effect to pieces of legislation passed by it but an executive Government exercising subordinate and delegated powers cannot make legislation retrospective in effect unless that power is expressly conferred.[2] The rule-making authority does not possess plenary power to give the subordinate delegated legislation retrospective operation unless and until that power is expressly conferred by the parent enactment.[3] Hence, the rule is well established that even in a case where the Executive Government, acts as a delegate of legislative authority, it has no plenary power to provide for retrospective operation unless and until that power is expressly conferred by the parent enactment.[4]

As for executive instructions, merely because it affects existing rights it cannot be held that they have retrospective effect.[5] There cannot be any doubt whatsoever that an executive instruction unless issued for the benefit of the employees cannot be given retrospective effect and retrospective operation.[6]

5. Existing rights usually not affected.—Perhaps no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment.[7] A statute which impairs vested rights or the legality of past transactions or the obligations of contract should not *prima facie* be held to be retrospective. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions already past must be presumed to be intended not to have retrospective effect.[8] Such rights cannot be taken away by implication. A statute affecting private rights is to provide expressly for either the taking away of the private right or for imposing restrictions on that right. The rights *cannot be taken away or restricted by implication.*[9] "In order to take away the right," observed Lord Watson in *Western Counties Railway Co.* v. *Windsor etc. Co.*,[10] "it is not sufficient to show that the thing sanctioned by the Act, if done, will of sheer physical necessity put an end to the right, it must also be shown that the Legislature have

1. *Tata Iron & Steel Co.* v. *Bihar State*, AIR 1956 Pat 93.
2. *Modi Food Products Ltd.* v. *Commissioner, Sales Tax*, AIR 1956 All 35, 39.
3. *M.L. Bagga* v. *Muhar Rao*, AIR 1956 Hyd 35 at p. 38; *Madras Steelware Industry* v. *Joint Chief Controller, Imports and Exports, Madras*, 89 LW 408.
4. *Calicut Wynad Motor Service (Private) Ltd.* v. *State of Kerala*, AIR 1959 Ker 347, 348; *India Sugars & Refineries, Ltd.* v. *State*, AIR 1960 Mys 326, 330; *Justiniano Augusto da P. Barreto* v. *Antonio Vicente de Fonseca*, AIR 1969 Goa 124.
5. *Satyadeo Singh* v. *State of Bihar*, 1981 BLJ 571 (DB).
6. Vide *Mukul Chandra Misra* v. *Rabindra Nath Das*, (1996)2 Ser LR 559 (Cal) (DB).
7. *K. Eapen Chacko* v. *Provident Investment Co. (P) Ltd.*, AIR 1976 SC 2610; *(M/s.) Saharampur Electric Supply Co. Ltd.* v. *Commissioner of Income-tax*, (1991) JT (SC) 287.
8. *Sitaram* v. *State of M.P.*, 1979 MPLJ 817 (FB); *G. Narasa Reddy* v. *Collector, Adilabad Distt.*, AIR 1982 AP 1 (FB).
9. *N.C. Agarwal* v. *Krishan Lal Mehra*, AIR 1961 All 104, 106 (FB); *Additional Income-tax Officer, Visakhapatnam* v. *Uppala Peda Venkataramayya*, (1966)2 Andh LT 92; *Sree Bank, Ltd.* v. *Sarkar Dutt Roy*, AIR 1966 SC 1953 : (1966)2 SCA 602.
10. (1882)7 A.C 178, 189; *Shantibai* v. *Bihari Lal*, AIR 1966 MP 11, 12 (Dixit, C.J.) : Spirit of the law an exclusive and unsafeguide; *Sushma Mehta* v. *C.P. Transport Service, Ltd.*, AIR 1964 MP 133, 135 (Shrivastava, J.).

authorized the thing to be done at all events and irrespective of its possible interference with existing rights."[1] Ordinarily, an Act has no retrospective operation on substantive rights which have become fixed before the commencement of the Act, but a Legislature may enact laws affecting substantive rights by making the laws expressly retrospective or by using language which has that effect.[2] It is well settled that a statute is not to be construed to operate retrospectively so as to take away a vested right, unless that intention is made manifest by language so plain and unmistakable that there is no possibility of any choice of meaning.[3] A law which affects substantive right is presumed to be prospective unless made retrospective either expressly or by necessary intendment, whereas a law which affects procedural rights is presumed to be retrospective as no litigant can claim a vested right in procedure. The right to bring a suit is substantive right and the right to bring it in a particular forum merely a procedural right.[4] If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.[5] The prospectivity of a procedural statute will not, however, affect substantive rights which have already vested in a citizen. One such right is that although nobody has a vested right in any course of procedure, there is a vested right to continue the proceedings in the tribunal before which the same had already commenced according to the state of law as it stood at the time of the commencement of the proceedings.[6]

The same rule governs the applicability of an *amending statute* to a pending action.[7] When an amending section avoids transactions, then it is necessary to have clear words in the statute if transactions entered into before the Act are to be affected.[8] Substantive rights cannot be taken away by a subsequent amendment unless specifically enacted by legislation.[9]

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1. *Harindar Singh* v. *State of Punjab*, AIR 1957 Punj 209, 213 : A right to compensation for property actually taken for public use is clearly a vested right. A right to continue a duly instituted suit is a vested right. *See also Gordhan Das* v. *G.G.-in-Council*, ILR 1951 Punj 395 (FB) : AIR 1952 Punj 103, 105 (FB); *Narayan Singh Jugaro Singh* v. *Board of Revenue*, AIR 1962 Madh Pra 280.
2. *Thillai Govindaraja Swami Temple* v. *Rukmini Ammal*, 67 Mad LW 767; *Additional Income-tax Officer, Visakhapatnam* v. *Uppala Peda Venkataramayya*, (1966)2 Andh LT 92; *Ghanshyam Das* v. *S.T.O.*, AIR 1964 Madh Pra 161; *Commissioner of Income-tax* v. *Sundaram Industries, Ltd.*, (1969)71 ITR 780 (Mad); *Controller of Estate Duty* v. *M.A. Merchant* (1989)177 ITR 490 (SC).
3. *Cooly for Vested Rights*, *K.L. Gupta* v. *Municipal Corporation*, AIR 1968 SC 303; *Gopi Kanta Sen* v. *Abdul Gaffar*, (1968)1 SCJ 515.
4. *Prithi Nath Kaul* v. *Municipal Council*, 1982 Kash LJ 134. Case-law referred.
5. *In re* Althlumney. *Ex parte* Wilson, (1898)2 QB 547, 551, 552, *per* Wright, J. *In the matter of* Tripura Modern Bank, AIR 1950 Cal 240, 243; *Kishori Lal* v. *Devi Prasad*, AIR 1950 Pat 50, 74 (FB); *Janardan Singh* v. *Karan Singh*, AIR 1951 MB 118 (FB); *Sham Singh* v. *Vir Bhan*, ILR 1942 Lah 352 : AIR 1942 Lah 102 : (FB); *Henry Hunter* v. *Basanti Devi*, 13 Luck 317 : AIR 1957 Oudh 241, 242; *Haider Husain* v. *Puranmal*, ILR 58 All 63 : AIR 1935 All 706, 710 (FB); *National Real Estate and Finance Co., Ltd.* v. *Hasan*, (1939)1 AER 712, 715; *Govind Narayan Tilva* v. *Government of Goa*, AIR 1969 Goa 6; *see* the case of *Gwalior Red Chalk Corporation* v. *Additional Tahsildar, Pargana Gird, Gwalior*, AIR 1965 Madh Pra 48, [Where retrospective operation was given to a provision in a mining lease which provided for recovery of money 'due' before the Mines and Minerals Act, 1857, came into force.].
6. *Chari* v. *State*, AIR 1959 All 149, 152, quoting *Colonial Sugar Refining Co., Ltd.* v. *Irving*, 1905 AC 369; *Marsh* v. *Higgings*, (1850)9 CB 551; *Venugopala Reddiar* v. *Krishnaswami Reddiar*, 1943 FCR 39; *Veerayya* v. *N. Subbiah Choudhry*, 1957 SCR 438. The principle laid down in this case is equally applicable in criminal cases.
7. *Sham Singh* v. *Vir Bhan*, ILR 1942 Lah 349 : AIR 1942 Lah 102 (FB).
8. *Banerji* v. *Income-tax Commissioner, Bihar and Orissa*, AIR 1941 Pat 59, 61 : ILR 20 Pat 202 : [Where, however, the amendment does not avoid the transactions in any way, there is no need for such a provision.].
9. *Vishnu Awatar* v. *State*, 1978 All WC 769.

Prima facie an Act deals with future and not with past events. If this were not so, the Act might annul rights already acquired while the presumption is against the intention.[1] As a matter of principle an Act of Parliament is not without sufficient reason taken to be retrospective. There is, so to speak, a presumption that it speaks only as to the future. But there is *no like presumption that an Act is not intended to interfere with existing rights.* Most Acts of Parliament in fact do interfere with existing rights.[2] Maxwell in *Interpretation of Statutes,*[3] refers to the repealed (English) Bankruptcy Act, 1849 (c. 106) which made a deed of arrangement 'now or hereafter' entered into by a trader with six-sevenths of his creditors binding on the non-executing creditors at the expiration of three months after they 'should have had' notice, as applying only to deeds executed after the passing of the Act. He says :

> "To apply such an enactment to past transactions, even though the property had been completely distributed among the creditors who had signed, would have been so unjust, that it was expedient to seek any means of getting rid of the apparent effect of the word 'now' which was accordingly understood as restricted to arrangement not completed but yet binding in equity at the time when the Act was passed."

Provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.[4] The rule that a statute is not to have retrospective operation is only applicable where it is doubtful from the language used whether or not it was intended to have such operation. Where language of a statute plainly gives it a retrospective operation, the rule has no application, for, of course, it is obviously competent, for the Legislature, if it pleases, in its wisdom to make the provisions of an Act of Parliament retrospective."[5] We may usefully read here what Bowen, L.J., said in *Reid* v. *Reid*[6] :

> "Now the particular rule of construction which has been referred to, but which is valuable only when the words of an Act of Parliament are not plain, is embodical in the well-known trite maxim *nova constitutio futuris formam imponere debet non praeteritis,* that is, that except in special cases the new law ought to be construed so as to interfere as little as possible with vested rights. We wish to emphasise that it is not as if all efforts should be made so as not to give a statute a retrospective operation whatever its language is. The rule does not require of the Courts an *'obdurate persistence'*, in refusing to give a statute retrospective operation."[7]

While it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication, many Acts, though prospective in form, have

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1. *Ward* v. *British Oak Insurance Co., Ltd.,* (1932)1 KB 392, 398, *per* Scrutton, L.J., unless an intention to the contrary is clear, an Act is to be construed as operating only on cases or facts which come into existence after the Act, and not retrospectively on cases or facts which had come into existence before the Act. *Harilal* v. *Lalla Prasad,* AIR 1931 Nag 138.
2. *West* v. *Gwyne,* (1911)2 Ch 1, 12, *per* Buckley, L.J.
3. 12th Ed. at pp. 218-219; quoting *Waugh* v. *Middleton,* (1853)22 LJ Ed 111; *Marsh* v. *Higgins,* (1850)19 LJCP 297; *Larpent* v. *Bibley,* (1855)5 HL Cas 181; *Noble* v. *Godban,* (1855)5 HL Cas 504; *Re* Phoenix Bessemor Co., (1876)45 LJ Ch 11; *Reed* v. *Higgins,* (1863)32 LJCP 131.
4. *Delhi Cloth and General Mills Co., Ltd.* v. *Income-tax Commissioner, Delhi,* (1927)59 IA 421, 425; *Sree Krishna Coconut Co.* v. *State of AP,* AIR 1962 Andh Pra 375.
5. *Smith* v. *Callander,* 1901 AC 297, 305. Particularly if the existing right had been vested by a Legislature itself; *Prem Narain* v. *State of UP,* AIR 1960 All 205, 209 (V.D. Bhargava, J.).
6. LR (1886)31 Ch D 402, 408; *see* also *Om Prakash* v. *Moti Lal,* AIR 1958 All 409 (a new state of law ought to affect the future, not the past).
7. *Gulab Chand* v. *Kudilal,* 1959 SCR 313, 322.

been given retrospective operation, if the intention of the Legislature is apparent. This is more so, when Acts are passed to protect the public against some evil or abuse.[1] When the provisions of an Act are made retrospective by the use of express words or by necessary intendment then the closed transactions or substantive rights which would have continued undisturbed but for the retrospective operation, are undoubtedly affected and re-opened.[2]

In *B. Prabhakar Rao* v. *State of Andhra Pradesh*,[3] the Supreme Court has laid down : "It is open to the court *to give retrospectivity* to a legislation to which the Legislature plainly and expressly refused to give retrospectivity because unlike United Kingdom, India has a written Constitution which confers justifiable fundamental rights and so that very refusal to make an Act retrospective or the non-application of the Act with reference to a date or to an event that took place before the enactment may, by itself, create an impermissible classification justifying the striking down of the non-retrospectivity or non-application clause, as offending the fundamental right to equality before the law and the equal protection of the law."

6. Applicability of the rule to substantive rights.—In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to law, as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights. There are no words in the Notification of 1355F including the community of Lingayats in the Schedule of 'Protected Tribes' in the Hyderabad Land Alienation Restraint Act giving the amendment a retrospective effect. At the time when the sale transaction took place, the plaintiff had acquired a right in the sense that the appellant was not a member of a protected tribe and there was no bar to the sale being enforced and this right of his could not be taken away by the amendment which came into force subsequently.[4] Similarly, no vacancy in the accommodation was created on account of transfer of the tenant, according to the law in force prior to the commencement of the Amending Act of 1976. The Amending Act did not indicate that any retrospective operation was to be given to Sub-section (3-A) of Section 12 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972; and, therefore, it was held that no vacancy was created by the transfer which took place before the Amending Act came into force.[5]

The question of prospectivity or retrospectivity might arise in pending suits, *i.e.* suits which were pending on the date when the amendment Act came into force. However, to contend that the amending provision would never be applicable even in future to a sitting tenant would not be a tenable contention.[6]

Where rights and procedure are dealt with together, the intention of the Legislature may well be that old rights are to be determined by the old procedure and that only the new rights under the substituted section are to be dealt with by the new procedure. If the procedural alteration is closely and inextricably linked with the changes simultaneously introduced in another part of the statute dealing with substantive rights and liabilities, it is not possible to

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1. *Shah Bhojraj etc. Mills* v. *Subhas Chandra*, AIR 1961 SC 1596, 1601; *Sree Bank* v. *Sarkar Dutt Roy*, AIR 1966 SC 1953; *B. Vilasini* v. *SRTC*, AIR 1989 Ker 95 : (1988)1 Ker LJ 762 : (1988)1 Ker LT 915 : (1988)27 Reports 295 : (1988)2 TAC 331 : 1988 ACJ 755 : (1988)2 ACC 584 : ILR (1989)1 Ker 116 : (1989) SC Cri R 36 (DB).
2. *Ghanshyamdas* v. *Sales Tax Officer*, AIR 1964 MP 161, 165 (Dixit, C.J.)
3. AIR 1986 SC 210 : 1985 Lab IC 1555 : 1986 SCC (Lab) 49 : (1985)2 Cur CC 555 : (1985) Suppl SCC 432 : (1985)51 Fac LR 501 : (1985)3 Serv LR 138.
4. *Ramchander* v. *Ramappa*, AIR 1954 Hyd 158 (FB); *Ghanshyam Das* v. *STO*, AIR 1964 Madh Pra 161; *Meenakshi Amma* v. *Madhavan Nair*, 1968 Ker LT 744 .
5. *Khubi Singh Yadava* v. *Dist. Judge, Allahabad*, 1980 ALJ 233 (FB).
6. *Atar Singh* v. *IIIrd Additional District Judge*, 1982 Alld Rent Cas 624.

give retrospective operation to the amendment regarding procedure unless the Legislature has indicated such an intention either by express words or by necessary implication.[1]

Notwithstanding anything contained in the U.P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952, a suit, appeal or other legal proceeding under Section 180, UP Tenancy Act, 1939, pending on 30th June, 1952, will be decided with reference to any right which may have accrued to either party in the land, the subject-matter of the suit, appeal or other proceeding under the UP Zamindari Abolition and Land Reforms Act, 1950.[2] The right of a landlord to *terminate the tenancy* of his tenant must be determined according to the State of affairs existing on the date he files the suit and the plaintiff in such a case acquires a vested right which cannot be taken away except by legislation which is either expressly or by necessary implication made retrospective.[3] As the Pepsu Urban Restriction Ordinance, 8 of 2006, is not a procedural Ordinance, it has no retrospective effect.[4] In *Rajah of Pittapur* v. *Venkata Subba Rao*,[5] The question was whether Sections 210 and 211 and Article 8 of Part A of the Schedule to Madras Estates Land Act, 1 of 1908, should be given a retrospective effect. In that case the Act came into force two days after it received the Viceroy's assent; and as pointed out by Sir John Wallis, C.J., it left no opportunity to the plaintiff for the exercise of his vested right of suit, and Sir John Wallis held that the effect of the amendment would be, if construed retrospectively, to destroy the plaintiff's right of suit which was in existence when the Act came into force. Kumaraswami Sastriar, J., agreed with the view taken by Sir John Wallis and in his judgment too he has stressed the point that there was not sufficient time between the assent given to the Act by the Governor-General and its coming into force so that the public had not due notice of the provisions of the new statute which was to come into force.

Whether a person has a *right to recover property* is a question of sub-stantive law.[6] An enactment conferring substantive rights cannot be given a retrospective operation unless the Legislature has made an explicit and express provision to that effect therein or such a consequence inevitably follows by necessary intendment.[7]

A *fiscal provision* cannot, by construction, be regarded as retrospective except where the statute containing it expressly makes it retrospective.[8] An enactment ought not to be construed so as to give it a retrospective operation, especially in the case of a *criminal matter* unless the language used indicated such intention in the Legislature.[9] A criminal offence is a peculiar thing and the law is very particular that only a person with the necessary *mens rea* or guilty knowledge at the time it was committed shall be convicted of a criminal offence and punished

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1. *Assainar* v. *Commissioner of Income-tax, Kerala*, (1971)81 ITR 423, 428 (Bala Krishna Eradi, J.); *K.S. Paripoornam* v. *State of Kerala*, AIR 1995 SC 1012.
2. *Jagannath* v. *Board of Revenue*, AIR 1955 All 432(FB); *(Bikram Singh* v. *Sunehra*, 1954 All 434 overruled).
3. *Popat Lal Gokul Chand* v. *Ram Chandra Narayan Rao*, AIR 1950 Nag 3; *National Real Estate & Finance Co.* v. *Hassan*, (1939)2 KB 61 (right of forfeiture); *Jiban Krishna* v. *Abdul Qader*, ILR 60 Cal 1037 : AIR 1933 Cal 435 (FB).
4. *Tirath Ram* v. *Malwa Ram*, AIR 1954 Pepsu 18.
5. ILR 39 Mad 645 (FB).
6. *Bireswar* v. *Indu Bhusan*, AIR 1943 Cal 573, 574 : ILR (1943)1 Cal 134 [But in what Court, he must institute proceeding, is a question of procedural law.].
7. *Mst. Mohari* v. *Chukli*, AIR 1960 Raj 82, 83 (Modi, J.); *Union of India* v. *Zora Singh*, (1992)2 MLJ 42.
8. *Wilayatullah* v. *Civil Station Sub-Committee, Nagpur*, AIR 1950 Nag 223, 226. [A statute which confers a benefit, such as, abolishing a tax, would not be construed retrospectively to relieve the persons subject to the burden before it was abolished. *Prince* v. *US*, (1814)2 Gallison 294, quoted by Maxwell : *Interpretation of Statutes*, 9th Ed. at p. 226; *Lord Suffield* v. *Inland Revenue Commissioner*, (1908)1 QB 856, 892.
9. *Chuni Lal* v. *Corporation of Calcutta*, ILR 60 Cal 892 : AIR 1933 Cal 732, 734; *see Paras Ram* v. *Emperor*, AIR 1931 Lah 145; *Toronto Railway* v. *Toronto Corporation*, AIR 1920 PC 223; *Hooper* v. *K.E.*, ILR 40 Mad 31.

for it, except in very exceptional cases.[1]

With regard to the effect of statutes authorizing the levy of rates, Craies in *Statute Law*[2] quotes Cockburn, C.J., in *Boradford Union* v. *Wilts*,[3] that the principle, 'was adopted long ago, and has been long acted upon, that if the language of the statute is *prima facie* prospective 'the rate must be prospective and not retrospective, so that the expenses shall fall on the rate-payers who are rate-payers at the moment of the expenses being incurred.' Consequently, his Lordship added, "when even the Legislature thinks it expedient to authorize the making of retrospective rates, it fixes the period as to which the rate may be retrospectively made."

Where the intention is to *prevent certain acts or transactions*, the law must be construed to be prospective and not retrospective.[4]

(i) Right of a suitor in Court.— The right of a suitor to have his pending application disposed of by a competent Court is a matter of right and not a matter of procedure.[5] The Civil Procedure Code is not confined to procedure. The provisions of the Code are regulations dealing with the jurisdiction and governing the procedure of the Courts in India. But jurisdiction and procedure are distinct : jurisdiction does not come under the description of processual matter. The right of a party to institute a suit or to a file an appeal in a particular court must, in view of the decision of the Privy Council in *Colonial Sugar Refining Co.* v. *Irving*,[6] be regarded as a substantive right and not merely a matter of procedure or processual law.[7] In *Suprabhat* v. *Bhupati Bhushan*,[8] their Lordships of the Calcutta High Court observed :

> "By giving the landlord, not the tenant option either to continue the proceeding in the revenue Court and get a judgment from that Court, or to withdraw from the Revenue Court and to enforce the right of action in the Civil Court, the Legislature did not alter the rights of the parties by destroying or creating a new right of action. The right of action is not touched. The bar imposed by the old section to the trial of the matter in the Civil Court is removed. The enactment merely affected the procedure and comes within its exception to the general rule laid down in *In re* Joseph Suche and Co. Ltd.[9] There can be no objection to an

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1. *In re* The Calicut Hosieries, Calicut, AIR 1950 Mad 231, 232.
2. 5th Ed. at p. 367.
3. (1868) LR 3 QB 604, 616.
4. *Syenna Taher Saifuddin* v. *Tyebbhai Moosaji Koicha*, 55 Bom LR 1.
5. *Narayanaswami* v. *Inspector of Police*, AIR 1950 Mad 307, 316 (CB). [Whether a person has a right to recover property is a question of substantive law. But in what Court he must institute proceeding is a question of procedural law; *Bireswar* v. *Indu Bhushan*, AIR 1943 Cal 573.].
6. 1905 AC 369.
7. *Krishnaswami* v. *Venugopala*, ILR 1942 Mad 376 : AIR 1942 Mad 614.
8. AIR 1936 Cal 307, 309-310. (But a right to sue in one Court rather than another or a right to wait for a particular period of time before suing is not a substantive right.The selection of a forum and the period of limitation are ordinarily matters of procedure only. The selection of a Court in no way affects the right of suit itself); *Ram Karan* v. *Ram Das*, ILR 54 All 299 : AIR 1932 All 635, 639 (FB); Sulaiman, Ag. C.J. observed in *Hazari* v. *Mst. Maktula*, AIR 1932 All 30; ["It seems to us that a right of action is something different from the choice of the forum. There may be a vested right of action when the cause of action has accrued before the old Act has been altered; but there can be no vested right in the choice of a particular forum. If the Legislature has thought fit to deprive the Civil Court of its jurisdiction to entertain suits of a particular nature, a plaintiff cannot compel the Civil Court to hear his suit merely because his cause of action had accrued before the new Act depriving the Civil Court of its jurisdiction was passed. The choice of forum is a matter of procedure and not a substantive right, and in most cases a new Act would have a retrospective effect so far as the choice of forum is concerned. The analogy of a new Act not affecting a pending action does not apply." *See* also *Bunni Pandey* v. *Brahamdeo Pandey*, AIR 1931 All 735; *Gokal Prasad* v. *Govind Rao*, AIR 1929 Nag 282; *Kalawati* v. *Shital Das*, AIR 1964 Raj 220.].
9. (1876)1 Ch D 48 : When the Legislature alters the right of the parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions do not affect them; *see* also *Shiya Janki* v. *Kirta Nand Singh*, AIR 1936 Pat 173; *Narendra Nath Ghosh* v. *Behari Barat*, 164 IC 873 : 39 CWN 1006; *Gardner* v. *Lucas*, (1878)3 AC 582, 603.

enactment relating to procedure having effect immediately although it should affect past transactions and the mode of enforcement of vested rights,[1] provided of course as Mellish, J., said in *Republic of Costa Rica* v. *Erlanger*,[2] that no injustice is done. Again in *Pardo* v. *Bingham*,[3] Lord Hatherley observed as follows : 'Baron Parke did not consider it an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed and said that the question in such case was whether the Legislature had sufficiently expressed an intention. In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law and what it was that the Legislature contemplated'."

(ii) Jurisdiction.—When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed. The rule that "a statute relating to procedure operates retrospectively unless otherwise provided in the statute' is not applicable when the statute in question affects the jurisdiction of a Court. Provisions relating to jurisdiction are more than matters of procedure. They touch a right in existence at the passing of the statute.[4]

The law requiring *how a document is to be completed* is not a mere rule of procedure but a substantive provision.[5]

7. Presumption against retrospectivity.—As a general rule every statute is deemed to be prospective, unless by express provision or necessary implication it is to have a retrospective effect, whether a statute is to have retrospective effect depends upon its interpretation having regard to well-settled rules of construction.[6] A statute is presumed to be prospective in its operation and no further retrospective effect should be given to the provisions of a statute then is expressly provided therein.[7] According to the Supreme Court, "all Laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they effect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective effect is intended. Hence, the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstance retrospective effect should be given to it or not."[8] Retrospection is not to be presumed; but many statutes have been regarded as retrospective without declaring so. Remedial statutes are always regarded as prospective, but declaratory statutes, retrospective.[9]

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1. *Gardner* v. *Lucas*, (1878)3 AC 582.
2. (1878)3 Ch D 69.
3. (1870)4 Ch D 740.
4. *Yankappa* v. *Shavakka*, AIR 1960 Mys 265, 266; *see* also *Colonial Sugar Refining Co.* v. *Irving*, 1905 AC 369; *State of UP* v. *Atiqa Begum*, AIR 1941 FC 16.
5. *Nepra* v. *Sajer Pramanik*, ILR 55 Cal 67 : AIR 1927 Cal 763, 766.
6. *Municipal Corporation* v. *Charanjit Lal*, (1980)82 PLR 7, (FB); *G. Narasa Reddy* v. *Collector, Adilabad*, AIR 1982 AP 1 (FB).
7. *Ram Dayal* v. *Ganga Prasad*, 1982 ALJ 255.
8. *M/s. Punjab Tin Supply Co.* v. *Central Government*, (1984)1 Alld RC 80 (SC) : AIR 1984 SC 87 : (1984)1 SCC 206.
9. *Sukhram Singh* v. *Smt. Harbheji*, AIR 1969 SC 1114; *UP State Electricity Board* v. *M/s. Aryavart Nirman Ltd.*, 1989 All LJ 1386.

The statute would operate retrospectively when the intent that it should so operate clearly appears from a consideration of the Act as a whole, or from the terms thereof, which unqualifiedly give the statute a retrospective operation or imperatively require such a construction or negative the idea that it is to apply only to future cases. If the Court is in doubt whether the statute was intended to operate retrospectively, it should resolve the doubt against such operation.[1] Black has summed up the rule in these words : "Except in the case of remedial statutes and those which relate to procedure in the Courts, it is a general rule that Acts of Legislature will not be so construed as to make them operate retrospectively, unless the Legislature has explicitly declared its intention that they should so operate, or unless such intention appears by necessary implication from the nature and words of the Act so clearly as to leave no room for a reasonable doubt on the subject." [2] The general rule is that a retrospective effect is not given to a statute. There is a presumption against retrospective effect.[3] Any new law that is made should ordinarily affect future transactions, not past ones. Hence, unless there be something in the language, context, or object of an Act showing a contrary intention, the duty and practice of Courts of justice is to presume that the Legislature enacts prospectively and not retrospectively.[4] Provisions of an Act are to be applicable from the date it comes into force and not retrospectively unless it is so specifically provided by that Act.[5] But an Act cannot be said to have retrospective effect because it has been made to commence from a date anterior to its notification by the Government under a power given by the enactment, and this circumstance does not attract the principle of disfavouring the retrospective operation of a statute.[6]

It requires extremely strong words to deprive words used in legislation of the prospective meaning they naturally have, and to constitute a section retrospective in meaning.[7]

Nor is a statute retrospective because a part of the requisites for its action is drawn from a time antecedent to its passing.[8]

Exception.—"But sometimes a statute, although not intended to be retrospective, will, as a matter of fact, have a retrospective operation. For instance, if two persons enter into a contract, and afterwards a statute is passed, which, as Cockburn, C.J., said in *Duke of Devonshire* v.

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1. *Ram Perkash* v. *Savitri Devi*, 1958 Punj 87, 91 (FB).
2. Black : *Construction and Interpretation of the Laws*, 2nd Ed., p. 385; *Govind Das* v. *Income-tax Officer*, (1976)1 SCC 906; *Commissioner of Wealth-tax* v. *Man Behadur Singh*, (1994)208 ITR 658 (Raj); *B.Vilasini* v. *SRTC*, AIR 1989 Ker 95 : (1988)1 Ker LJ 762 : (1988)1 Ker LT 915 : (1988)27 Reports 295 : (1988)2 TAC 331 : 1988 ACJ 755 : (1988)2 ACC 584 : ILR (1989)1 Ker 116 : 1989 SC Cri R 36 (DB).
3. *Rashid Bibi* v. *Tufail Mohammad*, AIR 1941 Lah 291. [It is a 'well-recognised rule that statutes should be interpreted if possible, so as to respect vested rights']; *Hough* v. *Windus*, (1884)12 QBD 224, 237, *per* Bowen, L.J.; *Re* A debtor, 1936 Ch 237, 243; *National Real Estate and Finance Co.* v. *Hassan*, (1939)2 KB 61; Craies: *Statute Law*, 5th Ed. at p. 368; *Abdul Jameel* v. *Simson & Machonochy, Ltd.*, ILR (1967)2 Mad 324 : (1967)1 MLJ 337.
4. *Tika Sao* v. *Harilal*, ILR 19 Pat 752 : AIR 1940 Pat 385 (FB). [Courts have tried to visualise the object which the Legislature had in view in introducing the section in the new enactment in order to find out whether any light could be thrown on the intention of the Legislature with a view to find out the meaning of the words employed.] *Jagdamba Prasad* v. *Anandi Nath*, ILR 17 Pat 460 : AIR 1938 Pat 337, 350. [The Rule is applicable to Constituton also]; *Maloji Narsing Rao* v. *Shankar Saran*, AIR 1958 All 775; *State of Kerala* v. *Philomina*, AIR 1976 SC 2363.
5. *Kishori Lal* v. *Debi Prasad Kejriwal*, AIR 1954 Pat 70; *Keshavan Madhavan Menon* v. *State of Bombay*, AIR 1951 SC 128.
6. *T.K. Musaliar* v. *Venkatachalam*, AIR 1956 SC 246.
7. *State of Tasmania* v. *The Commonwealth of Australia and State of Victoria*, 1 CLR 329; *Pardo* v. *Bingham*, LR 4 Ch 735, 740 .
8. *Queen* v. *St. Mary Whitechapel*, (1848)12 QB 120; *Ananda Kumar Bhattacharjee* v. *Secretary of State for India*, ILR 43 Cal 973, 981; *see also R.* v. *Christ Church*, (1849)12 QB 149; *Bashiruddin Ashraf* v. *Bihar Subai Sunni Majlis —A Waqaf*, AIR 1965 SC 1206; *Kapur Chand* v. *B.S. Grewal*, AIR 1965 SC 1491.

Barrow, etc. Co.[1] engrafts an enactment upon an existing contract, and thus operates so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, as a matter of fact, a retrospective operation. Similarly, if a statute is passed which renders the performance of a contract impossible, the rule of law is that the contract is cancelled; consequently in this case also this statute operates retrospectively."[2]

The principles governing retrospective operations of statutes are well settled. When a statute takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions of considerations already past, the presumption is, but it is only a presumption, that it is not to have retrospective operation. It is a general rule that a statute which takes away or affects a right of action is presumed not to apply to pending actions. But these are general rules and are displaced when the intention of the Legislature, either expressed or to be gathered by necessary implication, is otherwise. Where the intention of the Legislature to give retrospective operation is not indicated by express words, the scope of the Act must be taken into consideration in deciding whether retrospective operation was intended by necessary implication.[3]

In *Bailey* v. *Crespigny*,[4] a railway company acquired a piece of land (under its compulsory powers) belonging to a lessor on which he had covenanted that neither he nor his assigns would build, and had erected a station thereon. Lord Holt exempted the lessor from liability under the covenant and observed : "The difference when an Act of Parliament will amount not to repeal of a covenant and where not, is this : Where a man covenanted not to do a thing which was lawful for him to do and an Act of Parliament comes after and compels him to do it, there the Act repeals the covenant and *vice versa;* but where a man covenants not to do a thing which was unlawful at the time of the covenant, and afterwards an Act makes it lawful, the Act does not repeal the covenant."

Presumption against retrospective construction has no application to enactments which affect the procedure and practice of the Court,[5] even where the alteration which the statute makes has been disadvantageous to one of the parties. A person has only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode. A right of action is something different from a choice of the forum. A litigant does not have a vested right to wait for a particular period of limitation before instituting his suit. There is ordinarily no vested right in a trial in a particular forum or according to a particular procedure but once the trial has begun according to

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1. (1877)2 QBD 286, 289; *New India Assurance Co. Ltd.* v. *Satyanath Hazarika,* AIR 1990 Gau 26 (FB); *M/s. Spedra Engineering Corporation Engineers and Contractors, Bhopal* v. *State of Madhya Pradesh,* AIR 1988 MP 111 : 1988 Jab LJ 601 : (1988)19 Reports 282 : (1988)2 Arb LR 212(DB).
2. Craies : *Statute Law,* 5th Ed. at p. 366; *see* also cases of 'frustrated' contracts, *e.g. Bank Line Ltd.* v. *Arthur Capel,* 1919 AC 435, etc.
3. *Habiba Bibi* v. *Ram Ranjan Mullick,* ILR (1937)2 Cal 54 : AIR 1937 Cal 207, 208; *see* also *Bhansarlal* v. *Naval Kishore,* AIR 1958 MP 21 (Samvatsar, J.) : [regard must be had to the general scope, the purview of the statute and the purpose of enacting it.].
4. 1869 LR 4 QB 180.
5. *Tika Ram and Sons* v. *Commissioner of Sales Tax, UP,* AIR 1968 SC 1286; *Mrs. Nirmaljit Arora* v. *Bharat Steel Tubes Ltd.,* AIR 1990 Del 160 : (1991)43 DLT 394 : 1991 Rajdhani LR 151 (DB); *K.S. Paripoornan* v. *State of Kerala,* AIR 1995 SC 1012.

the law which was in force on the date of the institution of the action, certain other vested rights emerge, *e.g.* the right of appeal to a particular Court or forum. In other words, the institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.[1]

8. Rights accrued before operation of statute.—A statute will not affect rights which had accrued before a statute came into force unless there are express words in the statute affecting such rights or where a retrospective effect to the statute is inevitable by necessary intendment or implication.[2] Statutes should be interpreted, if possible, so as to respect vested rights. It is not to be presumed that interference with existing rights is intended by the Legislature, and if a statute be ambiguous the Court should lean to the interpretation which would support existing rights. In the absence of anything to show that it is to have retrospective operation, it cannot be so construed as to have the effect, of altering the law applicable to a claim in litigation at the time when the Act is passed.[3] The suit filed by the plaintiff was pending when the Bombay Tenancy and Agricultural Lands Act, 67 of 1948, came into force in December, 1948, though the decree was passed subsequently. As the rights given to the plaintiff by the decree had accrued to him at the date of the suit, he must be entitled to execute the decree as if the Act had not been passed.[4]

Rights that have passed from the original, contractual or relational character into rights measured by judicial determination are *prima facie* outside retrospection, which usually applies to rights not yet so determined.[5] An order made by a tribunal, if valid when made, will not be nullified by a later amendment of the law with a retrospective effect.[6] A portion of certain property which was declared to be evacuee property on the 15th September, 1949 was purchased by the petitioner by sale-deed executed and registered on the 18th January, 1950. The sale was confirmed by the Deputy Custodian under Section 38 of the Central Ordinance No. 27 of 1949, and *A* erected a house on it costing Rs. 26,000. On the 1st July, 1953, the Custodian set aside the order under Sections 40 and 41 of the Central Act 31 of 1950 as amended by Act 11 of 1953 on the contention that Deputy Custodian had no jurisdiction to confirm the sale. It was held that though the amending Act is retrospective in the sense that it applies to transactions which have taken place after 15th August, 1947 but it is surely not correct to postulate that the procedure mentioned in the amending Act of 1953 should be applied to transactions of sale which have already been confirmed by the Deputy Custodian under Section 38 of the Ordinance. The question may be asked, said the Court, "How is the Deputy Custodian to forecast in the year 1950, that the Parliament would make an amending Act in the year 1953 making distinction between the two classes of transactions?"[7] In another case, *Ram Lal* v. *State*

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1. *Unique Motor, etc, Ltd.* v. *Kartar Singh*, AIR 1965 Punj 102, 105, 106 (Grover, J.).
2. *Commissioner of Income Tax, West Bengal* v. *P.M. Bagchi & Co.*, (1951)20 ITR 33; *Ouseph Chacko* v. *Inthuru thi Shankaran*, ILR 1953 TC 396 (FB); *State* v. *Pyarey Mohan Lal Srivastava*, 1953 ALJ 339.
3. *Leeds and County Bank* v. *Walker*, (1883)11 QBD 84, 91; *Krishna Chandra* v. *Sushila*, AIR 1951 Orissa 105, 115 (FB); *Provincial Government of Madras* v. *Basappa*, AIR 1964 SC 1873; *Chandra Singh* v. *Surjilal*, AIR 1951 SC 199.
4. *Ningappa* v. *Abaskhan*, AIR 1956 Bom 345; *Manibai* v. *Raj Kumar Harpal Deo*, AIR 1967 Bom 92 : 68 Bom LR 180 : ILR 1966 Bom 659; *Saraswati Bai* v. *Bikram Chand Premsukhdas*, AIR 1967 Bom 158 (FB); (case under Bombay Tenancy and Agricultural Act, 1958); *Collector* v. *Habibhulla Din*, AIR 1967 J & K 44 (FB).
5. *Federated Engine Driver & Firemen's Association of Australia* v. *Broken Hill Proprietary Co. Ltd.*, 16 CLR 245, 277.
6. *Sharif* v. *RTA*, AIR 1978 SC 209; *see* also *Sundardas* v. *Ram Prakash*, (1977)2 SCC 662; *Jagir Singh* v. *Ranbir Singh*, (1979)1 SCC 560; *Jose Da Costa* v. *BSS Norcornim*, AIR 1975 SC 1843, a case relating to application of Indian laws in Goa.
7. Namely, transactions entered into by persons with respect to property subsequently declared to be evacuee property and transaction with respect to properties which have been previously declared to be evacuee properties.

of UP,[1] judicial determination had finalised the rights of the petitioner, and the amending Act incorporating provisions for redetermination of ceiling on landholdings, did not affect that earlier decision of the Court declaring petitioners holding as ancestral *Sir* and *Khudkast* it was held that a reopening of the earlier proceedings was not called for. The Court observed, "A change in law can thus affect the decision of a court only to the extent that the decision becomes contrary to law. If the change in law does not touch the question decided by the competent court the decision is not affected and would continue to be binding between the parties." It is a familiar rule that no statute shall be construed to be of retrospective operation unless the terms of the statute expressly state that it is retrospective or such a construction arises by necessary implication. The rule is based on the presumption that the Legislature does not intend what is unjust or that transactions which have already vested title to property should be reopened or thrown into doubt. There is nothing in the amending Act of 1953 to suggest either in express terms or by necessary implication that the distinction made in the new Sections 40 and 41 should have retrospective effect. Taking this view of the construction of the amended Sections 40 and 41 the order of the Deputy Custodian, dated the 20th February, 1950 was an order passed with jurisdiction.[2]

It is hardly necessary to remark that the Crown's vested rights are to be respected as much as are the rights of private persons.

But this is not an absolute or rigid one. In England the liability of a husband for the torts committed by his wife was abrogated by the Law Reform (Married Women and Tortfeasors) Act, 1935, which came into force on 2nd August, 1935.[3] In *Barber* v. *Pigden*,[4] it was contended by Mr. Slade, counsel for Mr. Barber that the Act did not apply in respect of a tort committed prior to 2nd August, 1935 by Mrs. Pigden and the writ had been issued a fortnight prior to the said date, and accordingly it would be wrong to attribute retrospective effect to the Act. Scott, LJ observed thereon :

> "The language of Part 1 discloses an intention to make a clean sweep of the old legal fiction of our common law that a woman on marrying became merged in the personality of her husband, and ceased to be a fully qualified and separate human person..... as far as the present case is concerned, the dominant intention of the Act is clear beyond all doubt : it is to effect a drastic reform of our law in a branch where there has been too much legal fiction and too much technicality of legal procedure : and I do not think the rule against retrospective interpretation, on which Mr. Slade relies, is properly applicable to such a statute abolishing legal fictions any more than to merely procedural statute. The purpose of Part 1 of the Act is to give back to woman, though married, the full human status allowed by the common law to a man, a maiden, or a widow of which the common law had robbed her; in short, it restores to her natural status and capacity. It does it by sweeping away a host legal *fictions*—fictions which in origin were inextricably mixed up with old procedural law. It is well recognized that the canon against retrospective interpretation does not apply to a statute dealing with adjective law, *i.e.*, procedure, and I think that a statute abolishing old legal fictions is so nearly akin to a procedural statute that the canon can have little, if any, application. After all, the canon expresses no rigid or absolute rule. It *rests on a presumption of commonsense* in a well ordered and civilised society; and that presumption does not seem germane to the root and branch view. Parliament was obviously

1. 1978 All LJ 1197.
2. *Kusum Kumari Devi* v. *Custodian, Evacuee Property*, AIR 1954 Pat 238.
3. *Hedderwic* v. *Land Tax Federal Commissioners (Aus)*, 16 CLR 27.
4. (1937)1 All ER 115, 124-126.

taking, when it passed this Act, of the historical interferences by lawyers with the natural rights of woman. Anyhow, the inhibition of the rule is a matter of degree and must vary *secundum materiam.*"

9. Operation of rule by express words or by necessary implication.—It is fundamental rule that no statute shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the statute or arises by necessary and distinct implication.[1] It has been held that a statute should not be given retrospective operation unless its words are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature could not be otherwise satisfied particularly where retrospective operation would alter the pre-existing situation of parties or affect or interfere with their antecedent rights. The rule that laws are not to be construed as applying to cases which arose before their passage is applicable when to disregard it would impose an unexpected liability that if known might have caused those concerned to avoid it.[2] When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed.[3]

The intention to take away a vested right without compensation or any saving is not to be imputed to the Legislature unless it be expressed in unequivocal terms.[4] Statutes have retrospective effect when the declared intention is clearly and unequivocally manifest from the language employed in the particular law or in the context of connected provisions. It is always a question whether the Legislature has sufficiently expressed itself. One must look at the general scope and purview of the Act and the remedy the Legislature intends to apply in the former state of the law and then determine what the Legislature intended to do. More retrospectivity is not to be given than what can be gathered from expressed or clearly implied intention of the Legislature.[5]

Acts which have the effect of impairing contracts and effect vesting rights must be strictly construed and in interpreting such laws the Courts must lean against giving retrospective effect to their provisions. Unless there is something in the language of an Act showing a contrary intention. The duty and the practice of the Court of justice is to presume that the Act is prospective and not retrospective.[6]

"It requires, as we all know", says Barton J., In *State of Tasmania* v. *Commonwealth of Australia and State of Victoria,*[7] "extremely strong words to deprive words used in legislation of the prospective meaning they naturally have, and to constitute a section retrospective in meaning."

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1. *Kishori Lal* v. *Debi Prasad,* AIR 1950 Pat 50, 74 (FB); *R. Rajagopal Reddy* v. *Padmini Chandrasekharan,* 1995(1) GLH 808 (SC), referring to Maxwell on the *Interpretation of Statutes,* 12th Ed.; *In re* Athlumney,·(1898)2 QB 551 at pp. 551, 552; *Garikapti* v. *N. Sibbiah Choudhary,* AIR 1957 SC 540 at p. 553; *Gulab Chand* v. *Kudilal,* AIR 1951 MB 1 (FB); *Venkata Perumal* v. *Ramuda,* ILR 39 Mad 84; *Sri Krishna Coconut Co.* v. *State of Andhra Pradesh,* AIR 1962 AP 375, 378; *JR Jain* v. *Indu Prasad Devashankar,* AIR 1969 SC 778; *Mst. Rafiqunnissa* v. *Lal Bahadur,* AIR 1964 SC 1511; *C. Mohd. Yunus* v. *Syedunnissa,* AIR 1961 SC 808; *Moti Ram* v. *Suraj Bhan,* AIR 1960 SC 655; reamendments*Velayudhan Ramakrishnan* v. *Rajeev,* AIR 1989 Ker 12 : (1988)2 Ker LJ 271 : (1988)2 Ker LT 369 : (1988)23 Reports 63 : (1988)174 ITR 482 : (1989)1 Comp LJ 154 : (1989)92 (3) Taxation 235 : ILR (1989)2 Ker 17; *Kanshi Ram* v. *Narain Singh,* (1983)2 LLR 245; *Bachan Singh* v. *Chotu Ram,* AIR 1986 SC 1910 : (1986)3 SCC 652.
2. *Ram Parkash* v. *Savitri Devi,* AIR 1958 Punj 87, 91 (FB).
3. *U.P.* v. *Atiqa Begum,* 1940 FCR 110, 164.
4. *Gokaran Prasad* v. *Warris Ali,* AIR 1924 Pat 183; *Gopeshwar Pal* v. *Jiban Chandra,* ILR 41 Cal 1125.
5. *Sukhram Singh* v. *(Smt) Harbhejt,* AIR 1969 SC 1114.
6. *Lalchand Nathuram* v. *Nandu,* AIR 1948 Nag 139; *see* also *Bhagwant Rao* v. *Damodhar,* ILR 1938 Nag 91 : AIR 1938 Nag 112; *U.P.* v. *Atiqa Begum,* 1940 FCR 110, 164.
7. 1 CLR 329, 356.

Where a statute alters rights of persons, or creates fresh liabilities in regard to persons, or creates or imposes obligations upon persons and thereby alters the law, such a statute ought not to be held to be retrospective in its operation, unless the words are clear, precise and quite free from ambiguity.[1]

The Calcutta Thika Tenancy (Amendment) Act, 1953, gives retrospective operation to the definition of a *thika* tenant in a pending second appeal.[2]

Or necessary implication.—It is not necessary that it should be expressly stated that the provisions of a statute are retrospective in their operation if the intention can be gathered by necessary implication.[3] The principle is, that if the object of an Act, and that object must be gathered from the words of the enactment, itself requires, that the Act, should apply to pending proceedings, it will be so applied, unless there is a saving clause in the Act itself to the effect that it would not apply to pending proceedings.[4] Maxwell in *Interpretation of Statutes*,[5] says : "At the same time, it is laid down that regard must be paid to the dominant intention, and the Act in question, Law Reform (Married Women and Tortfeasors) Act, 1935 (C. 30) was held to be retrospective and was construed as putting an end to the liability of a husband for his wife's torts whenever committed unless legal proceedings had been started before the passing of the Act."

It is no doubt a rule of construction that an Act will not be so interpreted as to be retrospective unless it declares in express terms, or it is to be gathered from the whole of the Act, that the Legislature intended it to be retrospective. That, after all, is only a branch of the higher and more important rule that we must in all cases ascertain what is the real intention of the Legislature, and if the intention as expressed in the Act is such that on the whole we can see that it was intended to be retrospective, then, whatever the effect may be upon existing contract, it must be held to be retrospective.[6] If the necessary intendment of a statute is to affect pending causes of action, then, the Court will give to the intention of the Legislature even though there is no express reference to pending actions.[7]

As observed by a Full Bench of the Andhra Pradesh High Court. "The question whether the statute or any provision in it has retrospective operation has to be determined with reference to the dominant intention of the Legislature to be gathered from the language used, the object and the scheme of the Act, the nature of the rights affected and the circumstances under which the statute came into being."[8]

Thus the amendment brought by Tamil Nadu Act, 17 of 1956 in Madras Civil Courts Act was held to be retrospective by necessary intendment by a Full Bench.[9] On a parity of reasoning in that case, new Sub-section (2-A) to Section 15 of the Madras City Civil Courts Act, 1892 brought in by amendment was also held retrospective by necessary intendment.[10]

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1. *Grocock* v. *Grocock*, (1920)1 KB 1 DC; *R.* v. *Chandra Dharma*, (1905)2 KB 335; *Director, Public Prosecutions* v. *Lamb*, (1941)2 All ER 499, 504.
2. *Sushila Bala Dassi (Smt)* v. *Corporation of Calcutta*, AIR 1954 Cal 257.
3. *Dila Ram* v. *Atma Ram*, AIR 1949 All 225, 227 (FB); *Raja Ram* v. *Madho Prasad*, AIR 1954 All 592.
4. *Mukherjee* v. *Ram Ratan Koer*, 63 IA 47 : AIR 1936 PC 49; *Shib Nath* v. *Porter*, AIR 1943 Cal 377, 391 (SC); *KE* v. *Sibnath*, 1945 FCR 149 (PC).
5. *See* 12th Ed. at p. 226, quoting *Barber* v. *Pidgen*, (1937)1 KB 664, 673.
6. *Wilson* v. *Moss*, 8 CLR 146, 161, 162.
7. *Velayudhan* v. *Trowell*, AIR 1966 Mad 32, 35 (Anantanarayanan, officiating C.J.).
8. *G. Narasa Reddy* v. *Collector, Adilabad Distt*, AIR 1982 AP 1 (FB).
9. *AVPL Ct Ramanethour Chettiar* v. *LP Lakshman Chettiar*, 76 LW 1(FB) : (1963)1 MLJ 46; approving Parthasarathi Naidu, *In re*, 70 LW 595 : (1957)2 MLJ 250.
10. *K. Murli Monohar* v. *K. Raghavan*, (1982)95 LW 621.

The Hindu Women's Right to Separate Residence and Maintenance Act, 19 of 1946, applied to Athmallick State on 16th June, 1948 by an amendment made to the Schedule to the Administration of Orissa State's Order, 1948. The expression 'proceedings' in Clause (c) of para 12 of the Orissa State's Order is wide enough to include pending suits, and they have to be decided on the basis of the provisions of Act 19 of 1946.[1]

In *Municipal Council, Sydney* v. *Troy*,[2] in accordance with the provisions of the Sydney Corporation Act, 1902 and the amending Acts, a notice was issued on 6th June, 1924 to the owner of a piece of land for its acquisition. The rate of interest payable under the provisions of law then applicable was 4 per cent. But in 1924 an Act was passed whereby under Section 17 thereof : "Notwithstanding the provisions of any other Act the rate of interest payable upon compensation for land acquired by the Council by resumption or by the re-alignment method, or by any compulsory purchase, shall be 6 per cent *per annum*." This Act came into operation on 17th September, 1924. The owner claimed that on the proper construction of Section 17 of the Act of 1924 interest at 4 per cent was payable on the agreed amount of compensation as from 6th June in that year, the date of the publication of the notice and of consequent vesting in the corporation up to 17th September, 1924 and thereafter at 6 per cent, notwithstanding that the Act did not become operative until 17th September, when it received the Royal Assent. The other party contended, on the other hand, that the title to interest 6 per cent under Section 17 could not arise in regard to an acquisition before the Act became operative. It was further argued *inter alia* that the word 'acquired' in Section 17 of the Act of 1924 should be read as meaning acquired after that Act came into operation. The Chief Justice of Supreme Court of new South Wales observed thereupon : "It cannot be contended and it is not contended that it is retrospective in its operation, so as to affect the rate at which interest was payable before it came into operation, but the question is whether the direction that interest thereafter is to be at the rate of 6 per cent *per annum* applies only to subsequent acquisition of land, or applies as well to prior acquisitions, the compensation for which was still unpaid when it came into force. The words used are perfectly general. What is spoken of is the rate of interest payable upon compensation for land acquired by the Council. No distinction is made between land acquired before the Act and that acquired after, and to give effect to the contention of the Municipal Council it would be necessary to substitute for the wide and general word 'acquired', some such words as, 'to be acquired,' or 'hereafter acquired'. I can find nothing in the section to justify the imposition of any such limitation and there is no rule or presumption which requires that the word should be so limited in its meaning." The learned Chief Justice went on to say that it is plain that the purpose of the section was to bring up the rate of interest from one which was too low to 6 per cent., the lower rate being inadequate to the ruling rate of interest. Their Lordships found themselves in full agreement with the conclusions, thus expressed. They observed :

> "In their opinion this conclusion is neither affected by the well-known rule of construction against retrospective interpretation, nor by anything to be imported from the expression used in the earlier statutes in the series which has to be read in conjunction. Section 17 must in their opinion be read as laying down a principle standing by itself, and to prevail, as the section declares, notwithstanding the provisions of any other Act. The new rate of interest relates to the compensation for land acquired by any of the alternative methods. This provision is a substantive one which is not made to depend on any reference to corresponding provisions in the earlier statutes, and does not give rise to any question of retrospective operation. On 16th June, 1924, the entire title to the piece of land in question

1. *Kulamani Hote* v. *Parbati Devi*, ILR 1955 Cut 354 : AIR 1955 Orissa 77.
2. AIR 1928 PC 128.

was acquired by and become vested in the appellants.....On 17th September, 1924, the new standard rate of interest was declared to be applicable to the compensation for all land acquired. Their Lordships think that these words are unambiguous. They give a title to the higher rate of interest as from 17th September and apply subsequently to the passing of the Act which contains this fresh provision to compensation for land acquired prior thereto, notwithstanding that the Act was assented to later. Accordingly, between 6th June and 17th September, the rate will remain 4 per cent and after that is 6 per cent."

Unless the Legislature makes such a declaration of its intention with respect to retrospective or prospective operation, the intended meaning of the language of the statute must be sought by the aid of all pertinent and admissible considerations though we would have to start with the presumption that the Act is prospective only. In *United States* v. *American Sugar Refining Co.*,[1] the US Supreme Court observed : "There is a presumption against retrospective operation, and.....words in a statute ought not to have such operation unless they are so clear, strong and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied."

The general rule is that grammatical and ordinary sense of the word used should be adhered to, particularly in the case of a codified law. Where, however, a statute is only modifying the form of any previous law, it may be necessary to refer to the prior state of law in order to determine whether it is retrospective in operation.[2] The same rules of interpretation apply to the application of a law to existing cases.

10. No greater retrospectivity than necessary.—It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and a *subordinate rule* to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.[3] The principle as explained by the Supreme Courts is that "a statute which is not declaratory of a pre-existing law nor a matter relating to procedure, but affects vested rights cannot be given a greater retrospective effect that its language renders necessary, and even in construing a section which is to a certain extent retrospective, the line is reached at which the words of the section cease to be plain."[4] Even in construing an Act which is to a certain extent retrospective, and in construing a section, which is to a certain extent retrospective, we ought nevertheless to bear in mind that maxim as applicable whenever we reach the line at which the words of section cease to be plain. That is a necessary and a logical corollary of the general proposition that you ought not to give a larger retrospective power to a section even in an act which is to some extent intended to be

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1. 202 US 563.
2. *Gulab Chand* v. *Gudilal*, AIR 1951 MB 1 (FB).
3. *Lauri* v. *Renad*, (1892)3 Ch 402, 420, 421, (*per* Lindley, L.J.); *Tabarak Khan* v. *Province of Bihar*, AIR 1950 Pat 228; *Kanak Kanti Roy* v. *Krupa Nath Gaur*, ILR 58 Cal 817 : AIR 1931 Cal 321; *Narayanaswami* v. *Inspector of Police*, AIR 1949 Mad 307 (SB); *Daulat Singh* v. *State*, AIR 1950 MB 112 (FB); *Nautilus Steam Shipping Co*, Ex parte *Gibbs & Co*, (1936)1 Ch 17, 26; *Moss* v. *Donshoe*, 20 CLR 615, 621; *RS Howard & Sons, Ltd*, v. *Brinton*, 21 CLR 366, 371; *Gadgil, SS* v. *Lal & Co.*, AIR 1965 SC 171 at p. 177; *Additional Income-Tax Officer, Visakhapatnam* v. *Uppala Peda Venkataramanayya*, (1966)2 Andh LT 92; *Smt Shakuntala* v. *Bhagwan Das*, AIR 1967 Delhi 12, 14 (SK Kapur, J.); *Provas Chandra* v. *Visyaraju*, AIR 1962 Orissa 149, 151 (Narasimham, C.J.); *Rama Sharma* v. *Pinki Sharma*, 1992(2) PLJR 722; *State of Rajasthan* v. *(Dr) Kami Singh*, AIR 1986 Raj 84 : 1985 Raj LW 71; *Ram Dayal* v. *Ganga Prasad*, 1982 ALJ 255; *G. Narasa Reddy* v. *Collector Adilabad Distt*, AIR 1982 AP 1 (FB).
4. (*Per* S K Das & Kapur, JJ.) in *Ahmedabad M & C Printing Co.* v. *S G Mehta*, AIR 1963 SC 1436; *Income Tax Officer* v. *S A Habibullah*, AIR 1962 SC 918; *Syndicate Bank* v. *Rallis (India) Ltd.*, AIR 1979 Delhi 40.

retrospective, then you can plainly see what the Legislature meant.[1] Even where it is retrospective in operation, Court should confine its operation only to the extent the language renders it necessary. Further, if an Act is to certain extent retrospective, when the Court reaches the lines at which the words of the section cease to be plain, the same rule of construction leaving against retrospectivity should be applied.[2] Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so. It is a well-recognized rule that statutes should, as far as possible, be so interpreted, as not to affect vested rights adversely, particularly when they are being litigated.[3] Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability.[4]

Retrospective operation should be strictly confined to the limits expressly declared or necessarily implied by statute, and *there cannot be retrospective operation by analogy.* The provision under the Madras Buildings (Lease and Rent Control) Act, 1946, which makes the landlord liable to pay the amount of rent collected by him in excess of the fair rent fixed, cannot have general application, and as such the landlord cannot claim a refund of the tax paid by him to the Municipality on the basis of the rent which was there actually being paid by the tenant.[5] The extent of the retrospective effect of a statute must be determined by the language employed keeping in view the purpose sought to be achieved.[6]

The notice which did admittedly comply with Section 80, C.P.C., as it stood on the date of the cause of action is not invalid and insufficient by reason of the subsequent amendment of Section 80 in 1948, which required that the notice should be addressed to the General Manager of the administration and not to the Secretary to the Central Government.[7]

Retrospective effect of a statute may be partial in its operation.[8]

Whenever a statute affects pending proceedings strict construction is to be adopted bearing in mind the principle of presumption that a pending proceeding is not ordinarily to be affected and when it is affected by a statute the statute must be confined to the limits that it has itself laid down and the pending proceeding will only be affected to the precise extent and precise limits prescribed by the statute and no more.[9]

11. Canons of construction.—In *Jagdamba Prasad* v. *Anandi Nath,*[10] Manohar Lal, J., observed : "It is necessary to keep in mind the following well-known *canons of construction* which are laid down by highest authorities, in order to decide whether an Act is retrospective or prospective :

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1. *Reid* v. *Reid,* (1866)31 Ch D 402; *Lauri* v. *Renad,* (1892)3 Ch 402; *Jogendra Chandra* v. *Bhawani Charan,* AIR 1945 Cal 425, 429; *Kirpa Singh* v. *Ajaipal Singh,* ILR 10 Lah 165, 176 (FB); *Main* v. *Stark,* 15 App Cas 388 : 1980 AC 384; *Reynolds* v. *AG Nova Scotia,* 1896 AC 240; *Katikara Chintamani Dora* v. *Guntreddi Annamanaidu,* (1974)1 SCC 567.
2. *Kanmalapudi Lakshminarayana* v. *First Additional Income-tax Officer,* AIR 1957 Andh Pra 159, 161 (Subba Rao, C.J.).
3. *U.P.* v. *Atiqa Begum,* 1950 FCR 110, 164, (*per* Sulaiman J.); *Krishna Chandra* v. *Sushila,* AIR 1951 Orissa 105, 116 (FB).
4. *U.P.* v. *Atiqu Begum,* 1950 FCR 110, 164, *per* Sulaiman J.; *Krishna Chandra* v. *Sushila,* AIR 1951 Orissa 105, 116 (FB).
5. *Madurai Municipality* v. *R Kamakshi Sundaram,* AIR 1956 Mad 49; *see* also *Digambar Gopal* v. *Vithoba Jogu,* AIR 1954 Bom 450.
6. *Bangali Mal* v. *Sales Tax Officer,* AIR 1958 All 478, 481 (FB).
7. *Union of India* v. *Kedarnath,* AIR 1954 Assam 147.
8. See *Bath* v. *Barwick,* (1892)1 QB 731.
9. *Manick Lall* v. *Dabirudin Ahmad,* AIR 1951 Cal 236, 238; *Sylhet Loan and Banking Co.* v. *Ahmad Majtoba,* AIR 1946 Cal 337 (as the Act applied to suits and appeals execution proceedings were impliedly executed); *Lal Chand Nathu Ram* v. *Nandu,* AIR 1948 Nag 139.
10. ILR 17 Pat 460 : AIR 1938 Pat 337, 350; *see* also *State of Bombay* v. *Vishnu Ram Chandra,* AIR 1961 SC 307.

(1) There is no presumption that the statute which takes away any existing right is intended to apply to a state of facts which came into existence before its commencement.

(2) When the effects of the statute would be to make a transfer valid which was previously invalid, to make an instrument, which had no effect at all and from which the party had liberty to depart as long as he pleased, binding the *prima facie* construction of the Act is that it is not to be retrospective.

(3) If it is a necessary implication from the language employed that the Legislature intended a particular section to have a retrospective operation, the courts will give it such an operation because it is obviously competent for the Legislature if it pleases in its wisdom to make the provisions of an Act retrospective.

(4) But if, on the other hand, the language employed by the Legislature is ambiguous or not clear and explicit, the court must not give a construction to the new Act which would take away vested rights, in other words, should treat the Act as prospective.

In *Banwari Gope* v. *Emperor*,[1] Fazal Ali, J., observed :

"The question as to how far a statute which repeals or alters the old law can be given retrospective operation has been discussed in numerous cases and I will state here very briefly some of the principles which may be taken to have been well settled in those cases. These are—

(1) upon the presumption that the Legislature does not intend to enact what is unjust, every statute which takes away or impairs a vested right acquired under the existing law or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions[2] or considerations already passed must be presumed to be intended not to have retrospective operation;

(2) if there are words in the enactment which either expressly state or necessarily imply that the statute is to be given retrospective operation, then the Act should have retrospective operation even though the consequences may appear unjust and hard;

(3) a statute is not to be construed to have a greater retrospective operation than its language renders necessary; and

(4) as no person has a vested right in any course of procedure, alterations in procedure are to be retrospective, unless there is some good reason against it."

The test is : What did the Legislature mean when its words are read after giving due weight to every relevant consideration? In *Irving's* case,[3] the Judicial Committee only entered into consideration of the distinction between 'right' and 'procedure' after stating that 'the judiciary Act is not retrospective by express enactment or by necessary intendment'. If it had been, inquiry as to nature of the appeal would have been useless. This was the method of approach which the Master of the Rolls preferred in *Welby's* case.[4] To follow this method, we have the guidance of Lord Hatherly in *Pardo* v. *Bingham*.[5] There it is said : "We must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated. The language of Lord Selborne in *Main* v. *Stark*,[6] and of Lord Morris in *Reynolds*

1. AIR 1943 Pat 18, 20 : ILR 22 Pat 175 (FB).
2. *Nani Gopal Mittra* v. *State of Bihar*, AIR 1970 SC 1636.
3. 1905 AC 369.
4. (1916)2 Ch 1.
5. LR 4 Ch 375 at p. 740.
6. (1890) AC 384, 387-88 : 15 App Cas 388.

v. *Attorney-General for Nova Scotia.*[1] runs in the same direction. If doing this, we find that no express words are found, yet the necessary intendment of the language is retrospective, the task is at an end. Necessary intendment only means that the force of language in its surroundings carries such strength of impression in one direction, that to entertain the opposite view appears wholly unreasonable."[2]

The real test when deciding whether a particular provision of law is to be given retrospective effect or not, is not to consider merely whether the law is a law of procedure or substantive law but also whether the law in question affects or impairs existing rights including rights of action which are substantive rights. If a law destroyed an existing right or even placed any restrictions on it no retrospective effect would be given to it unless the statute expressly enacted to that effect.[3]

12. Where two interpretations possible.—If an enactment is expressed in language, which is fairly capable of either interpretation, it ought to be construed as prospective only.[4] Even in construing a section which is to a certain extent retrospective the maxim must be borne in mind as applicable whenever the line is reached at which words of the section cease to be plain.[5] The question as to whether a statute should have prospective and retrospective effect as well can only arise when the words of the statute are capable of giving the enactment both prospective and retrospective effect. The question can never arise if the words of the statute make it clear that it should have prospective effect only.[6]

It is a well-known principle in the construction of statutes that where the words admit of two constructions you are not to construe them so as to produce a retrospective effect, or impose disabilities not existing at the passing of the Act.[7] Whenever the language of the Legislature admits of two constructions, and if construed in one way results in too obvious an injustice, the court acts upon the view that such a result would never have been intended unless the intention has been manifested in express words.[8]

Where there is a doubt as to the meaning of a word which is grammatically capable of being interpreted either as interfering with an existing right or not, the word will not be construed as having a retrospective effect so as to take away an existing right.[9]

No doubt, even admittedly retrospective legislation is limited by the clearness of its retrospectivity; and, no doubt, also rights that have passed from the original contractual or relational character into rights measured by judicial determination, are *prima facie*, outside retrospection, which usually applies to rights not yet so determined.[10]

13. Effect must be given to language irrespective of consequences.—If the meaning of words used indicates an intention that the Act is to have retrospective operation, then, no matter,

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1. (1896) AC 240 at p. 244.
2. *Worrall* v. *Commercial Banking Co. of Sydney Ltd.*, 24 CLR 28, 31, 32.
3. *Mohd. Saleem* v. *Umaji*, AIR 1955 Hyd 113, 122 (FB), (*per* Srinivasachari, J.), (Section 9, Hyderabad Money-Lenders Act as amendment in 1355 F has no retrospective effect).
4. *Daulat Singh* v. *State*, AIR 1950 MB 112, 113 (FB); *Henry Hunter* v. *Basanti Devi*, 13 Luck 317 : AIR 1937 Oudh 241, 242; *Ganpati* v. *Maruti*, AIR 1962 Bom 75, 76; *Gorden* v. *Lucas*, (1878)3 AC 582, 601; *Kempiah* v. *Girigamma*, AIR 1966 Mys 189; *Govind Das* v. *Income-tax Officer*, (1976)1 SCC 906.
5. *Abdul Ruzak* v. *Kuldip Narain*, AIR 1944 Pat 147, 162 : ILR 22 Pat 577 (Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability); *U.P.* v. *Atiqa Begum*, 1940 FCR 110, 164.
6. *Feroz Ahmad* v. *Akbar Ali*, AIR 1943 Lah 238, 239.
7. *Re* Pulborough Parish School Board Election, (1894)1 QB 725.
8. *Gopal Vakta* v. *Gopal Munsi*, AIR 1941 Cal 432, 433.
9. *Cowan & Sons* v. *Lockyer*, 1 CLR 460, 468, 469.
10. *Federated, etc., Association of Australasia* v. *Broken Hill Proprietary Co., Ltd.*, 16 LRC 245, 277.

what the *consequences* this operation must be given to the provisions.[1] No doubt whenever the intention is clear that the Act shall have retrospective operation, it must unquestionably be so construed even if the consequences may appear unjust and hard.[2] If the language used by the Legislature is so clear that the effect of retrospectivity in relation to the operations of the provisions of an enactment, cannot be avoided, without doing violence to the language of the enactment and the language is not such as to lend support to the construction of their prospectivity only, then the court must give effect to the language and hold the Act to be retrospective.[3] If the language is plainly retrospective it must be so interpreted.[4] If there are words in the enactment which either expressly or by necessary intendment (*e.g.*, from the object of the statute) imply that the statute is to be given retrospective operation even in respect of substantive rights or pending actions, the courts have no other alternative than to give such operation to the statutes even though the consequences may appear to be unjust or hard.[5]

In determining whether any provision of an Act was intended to be retrospective or not, the consequences of holding that it is not retrospective must be looked at.[6]

14. Prior State of law, how far relevant.—When the question for consideration is whether a statute is retrospective so as to affect existing rights, it is impossible to determine the question without considering the prior state of the law.[7] The courts have sometimes taken into consideration the state of law which was existing at the time when the Amendment Act was passed.[8] In fact, we must look at the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was the Legislature contemplated.[9] But laws made justly and for the benefit of individuals and the community as a whole, as in this case, may relate to a time antecedent to their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature may be said to have so expressed its intention.[10]

Where words or expressions in a statute are reproduced from an earlier statute which is repealed, it must be assumed that the Legislature wanted to give those words or expressions only that much and that kind of retrospective operation neither more nor less than that which

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1. *Rashid Bibi* v. *Tufail Muhammad*, AIR 1941 Lah 291, 292 (it does not follow that a meaning is to be given to the words of the statute, which according to ordinary usage they could not carry, so as to give to the provisions retrospective operation).
2. *Gopal Vakta* v. *Gopal Munshi*, AIR 1941 Cal 432; *Kundanlal* v. *Fakir Baksh*, AIR 1938 Oudh 127, 128 (FB); *Hindusingh* v. *Mangal*, AIR 1923 Nag 227; *Sant Kuer* v. *Ganesh*, AIR 1949 Pat 137; *Modibai* v. *Nagraj*, 1982 Jab LJ 218.
3. *Siba Prasad* v. *Nurabati*, AIR 1949 Orissa 37 (FB).
4. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 216; *Rex* v. *Oliver*, (1944)1KB 68, 76.
5. *M. L. Bagga* v. *C. Murher Rao*, AIR 1956 Hyd 35; *Mohammad Habibuddin* v. *Government of Hyderabad*, ILR 1953 Hyd 147 : AIR 1953 Hyd 157.
6. *Ex parte* Todd, (1887)19 QBD 186, 195.
7. *Gulab Chand* v. *Kudilal*, AIR 1951 MB 1, 7 (FB); *see* also *Delhi Cloth General Mills Co., Ltd.* v. *Income-Tax Commissioner*, Delhi 54 IA 421, 423 (Legislative history considered).
8. *Jagdamba Prasad* v. *Anadi Nath*, ILR 17 Pat 460 : AIR 1938 Pat 337, 350; *see* also *Clarkson's* case, (1900)1 QB 156, 165; *Hedderwick* v. *Federal Commissioner of Land Tax*, 16 CLR 27.
9. *Pardo* v. *Bingham*, (1870) LR 4 Ch 735, 739, 740, *per* Lord Hatherley.
10. This passage in *Rafiquennissa* v. *Lal Bahadur Chetri*, AIR 1964 SC 1511 : (1964)6 SCR 876, quoted by the Supreme Court in its later decision in *Darshan Singh* v. *Ram Pal Singh*, AIR 1991 SC 1654 : (1990)4 JT (SC) 561 : 1991 AIR SCW 1651.

was given to the words or expressions of the statute repealed.[1]

Where rights and procedure are dealt with together, the intention of the Legislature may well be that the old rights are to be determined by the old procedure, and that only the new rights under the substituted section are to be dealt with by the new procedure.[2]

In *Nepra* v. *Sajer Pramanik*,[3] it was contended that in order to construe whether an earlier Act was retrospective or not, it was permissible to look at the Bill which it was said was introduced into the Legislature to overcome a decision of the Court to the contrary. But as this Bill was not passed into law, the contention was repelled.

The fact that a section is worded in the *future tense* is a matter which cannot be ignored when dealing with the contention, that a particular provision not explicitly retrospective, nor described explicitly as declaratory is yet to be considered as retrospective.[4] In the absence of any express declaration in the Act, it is always a question of construction whether a law is prospective or retrospective. The use by the Legislature of further words, such as 'shall' or 'hereafter', is taken to indicate an intent that the statute is to be construed as prospective only; on the other hand, the use of words denoting past time, such as 'has been' or 'heretobefore' is held to constitute an explicit declaration that the Act is to be construed retrospectively. Where the statute contained the provision that it is to take effect immediately and apply, 'in any action brought', the language was taken as expressing a command that was 'prospective rather than retrospective in tone'.[5]

"In considering whether a statute was intended to be retrospective in its operation, reference has been made to prescribed *forms* appended to rules made under the statute, and to the fact that their being headed 'the day of.... 189', indicated that they were not intended to apply to a period before 1890."[6]

Basis of presumption.—"It is chiefly", States Maxwell in *Interpretation of Statutes*,[7] "where the enactment would prejudicially affect vested rights, or the legality of past transactions or impair contracts that the rule in question prevails. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past, must be presumed, *out of respect* to the Legislature, to be intended not to have a retrospective operation."

A statute ordinarily speaks from the date from which it is specified in the Act to come into operation or from the date when it receives assent where such assent is necessary and is prospective in its operation unless it, in clear terms, says that it will have retrospective effect or when such an intention can be unhesitatingly gathered, and it is only then that vested rights

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1. *Daulat Singh* v. *State*, AIR 1950 MB 112, 117 (FB); *see* also *Mahadeo Prasad* v. *Jokhan Ram*, AIR 1947 Oudh 133 (FB) : 22 Luck 71; *Ex parte* Todd, (1887)19 QBD 186, 195.
2. *Sardar* v. *State*, AIR 1961 Cal 181, 183.
3. ILR 55 Cal 67 : AIR 1927 Cal 763, 766.
4. *Pannirselvam* v. *Veeriah Vandayar*, AIR 1931 Mad 83, 87; *Smithies* v. *National Association of Operative Plasterers*, (1909)1 KB 310.
5. *Coane* v. *American Distilling Co*, 298 NY 197, cited by McCaffery, at pp. 131-32.
6. Maxwell : *Interpretation of Statute*, 11th Ed. at p. 210; *see* also *Re Norman*, (1893)2 QB 369. The expression 'shall be deemed always to have' are construed as giving the effect of retrospective operation; *Indubai* v. *Vyankati Vithoba Sawadha*, AIR 1966 Bom 64 : 67 Bom LR 612.
7. 11th Ed. at p. 206; quoting Chancellor Kent, *Dash* v. *Vars Kleek*, (1811)7 Johnson, 502; *Ward* v. *British Oak Insurance Co.*, (1932)1 QB 392.

might be impaired, otherwise vested rights would not be affected.[1] It is an established canon of interpretation that statutes should be interpreted, if possible, so as to respect vested rights, and that in the absence of anything in an enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed.[2]

It would not be a fair reading of an enactment to hold that it was intended to impose an impossible condition under pain of forfeiture of a vested right. The law as amended may regulate the procedure in suits in which the plaintiff complies with its provisions but cannot govern suits where such compliance was from the first impossible. In the later case the amendment would not apply.[3]

15. Alteration of law during pendency of action.—Sufficient interval of time between the date of the enactment of a law and the date on which it is to come into force, would, no doubt, enable litigants whose cases have been decided before the enactment or immediately after it, to have resort to the old law before the new law comes into force, but litigants whose cases happen to be pending on the date the new law comes into force and decisions therein are given only afterwards would go even without such an opportunity if the postponing clause is understood to carry a retrospective intendment. To extend the application of it to the domain of vested rights would be to annihilate the right altogether.[4] The ordinary rule is that the rights of litigants are to be governed by the *law in force when the action was commenced.* The corollary from this is that a change in the substantive law, as opposed to adjective law would not affect pending actions, unless the Legislature had indicated otherwise either by express enactment or by necessary implication.[5] In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.[6] "The golden rule of construction," said S.R. Das, C.J., "is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."[7] Where rights and procedure are dealt with together, the intention of the Legislature may well be that the old rights are to be determined by the old procedure and that only the new rights under the substituted section are to be dealt with by the new procedure.[8] An enactment may not be wholly prospective or absolutely retrospective. It may be retrospective only in the sense that it applies to pending proceedings and affects vested rights to the extent that a particular provision therein, warrants and gives it that effect.[9] The provision taking away the

1. *Saligram* v. *Emperor*, AIR 1943 All 26, 42 : ILR 1943 All 238 (FB); *Jnanendranarayan* v. *Saradasundari*, ILR 57 Cal 796 : AIR 1931 Cal 25.
2. *Kirpa Singh* v. *Ajaipal Singh*, ILR 10 Lah 165 (FB).
3. *Gokaran Prasad Singh* v. *Waris Ali*, AIR 1924 Pat 183; *Makar Ali* v. *Saraddin*, AIR 1923 Cal 85 : ILR 50 Cal 115.
4. *Chinna Kunjukunju* v. *Neelakantan*, AIR 1958 Ker 251, 256, dissenting from *In re* Parthasarathi Naidu, AIR 1958 Mad 94; *Velayudam Thankayyan* v. *Rev G.W.T . Trowell*, AIR 1966 Mad 32.
5. *Hitchcock* v. *Way*, (1837)6 LJ (NS) KB 215; *In re* Joseph Suche, Ltd., (1876)1 Ch D 48; *Sylhet Loan and Banking Co.* v. *Ahmad Majtobah*, AIR 1946 Cal 337; *Kulwant Singh Gurdip Singh* v. *Registrar, Co-operative Societies*, 1963 Cr LJ 321.
6. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 220.
7. *Garikapati* v. *Subbaiah Chowdhary*, AIR 1957 SC 540 at p. 553; *see* also *Shafeeq* v. *Mohammadi Begum* (1964)1 Andh LT 42 : (1963)2 Andh WR 73; *Pirbux* v. *Babu Lal*, AIR 1987 MP 18 : (1986) Cur Civ LJ (MP) 36 : (1986)2 Cur CC 249 : 1986 MP LJ 720.
8. Maxwell : *Interpretation of Statutes*, 10th Ed. at p. 219; *Ramini Ranjan Bose* v. *Corporation of Calcutta*, AIR 1955 Cal 410; *see* also *Assainar* v. *Commissioner of Income-tax, Kerala*, (1971)81 ITR 423, 428 (Balakrishna Eradi, J.)
9. *Gurupada Haldar* v. *Subodh Gopal Bose*, 1958 Cal LJ 293.

jurisdiction of the *Civil Courts* cannot be considered to be a mere matter of procedure which should not be held to operate retrospectively. If the suit had been instituted at a time when the Civil Courts was fully competent to entertain the suit later amendment cannot without express words, or necessary intendment divest the court of the jurisdiction which it exercised at the time of entertaining the suit so as to undo the entire proceedings held by the Civil Court up to the date of the amendment. Such a construction would be contrary to all canons of statutory interpretation and would also tend to defeat the cause of justice and fairplay.[1] If the Legislature retrospectively affects pending proceedings, then it would be the duty of the Court of Appeal and for the matter of that of a Court of Revision to apply the law prevailing on the date of appeal or revision pending before the Court; the mere passing of decree does not preclude from taking into consideration the change in the law effected after the passing of the decree.[2] Whenever it is decided by the Legislature to take away or impair vested rights, the decision is taken in public interest. Hardships to individuals are caused, but their interests are subordinated to the public weal under the necessity or compulsion of circumstances. The general rule, therefore, has been that the intention of the Legislature to give retrospective effect to its enactments, where vested rights are taken away or impaired, must appear in express terms or by necessary implication. This necessary implication is a recognized mode of expression. It creates a similar compulsion for the Courts as the use of express terms.

But the rule of interpretation which assists the Courts in determining whether a law can be retrospectively applied to pending suits, is stated differently from the general rule. In such cases the rule is that pending cases should be decided in accordance with the law which was in force when the suit was instituted. Changes of the law during the pendency of the suit, unless purely procedural, do not affect its course or tenor. Even where it is retrospective, it does not necessarily affect pending actions. Under Section 6 of the General Clauses Act, 1897, repeal of an enactment does not *prima facie* affect pending actions, unless the Legislature has shown a contrary intention either in express words or by necessary implication.[3] Since application of a new law to a pending suit is an extreme form, which retrospective application of measures of the Legislature may take, a clearer statement of intention has generally been insisted on. Even here, the intention may be made manifest in express terms or by necessary implication. Where the intention of the Legislature is made clear in some known way, the courts would be bound to give effect to it by applying it to pending suits. The freedom of the Legislature to express its mind in any form cannot be restricted or reduced. But if extreme retrospective effect is sought to be given by the application of a law to pending suits whatever the stage they have reached and vested rights are intended to be varied, courts may expect a clear, adequate and unequivocal expression of intention which should not be easy to mistake. For, if there is ambiguity or equivocation, retrospective effect could not be given to the law. In the ultimate analysis the matter is one of construction, and if upon a consideration of the enactment it is apparent that it was the intention of the Legislature that the provision of the Act should apply to pending suits, they should be so applied.[4]

Thus Courts bear in mind two well-established principles when ascertaining the effects of enactments, on pending suits or appeals. *Firstly*, while provisions of a statute dealing wholly

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1. *Gram Panachayat, etc.* v. *Kesho Narain*, AIR 1964 Punj 462, 464 (Dua, J.); *see* also *Khatumal Ghanshamdas* v. *Abdul Qadir*, AIR 1961 MP 295, 297 (Dixit, C.J.) : deprivation of right to sue, or affecting power or jurisdiction of court.
2. *M.L. Bagga* v. *C. Murher Rao*, AIR 1956 Hyd 35; see *Dayawanti* v. *Inderjit*, AIR 1966 SC 1423 : (1966)68 Punj LR 218; *Punnamchand Ravishankar Joshi* v. *Ramjibai Magan Lal*, (1966)7 Guj LR 807.
3. *Ayub Ali Khan* v. *Smt. Haseena Bano*, (1974)14 ACC 20.
4. *Harsukh* v. *Mashulal*, AIR 1957 Assam 22, 28; *Indramoni Nath* v. *Lokenath*, AIR 1957 Assam 83 (Special Bench).

with matters of procedure may properly have, unless that construction be textually inadmissible, retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not applied retrospectively in the absence of express enactment or necessary intendment. *Secondly*, a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit.[1]

There are two exceptions to the application of the above-mentioned principle. *Firstly*, when by competent enactment such right of appeal is taken away expressly or impliedly by retrospective effect, and *secondly*, when the Courts to which appeal lay at the commencement of the suit stands abolished.[2]

A right of appeal, is not a matter of procedure, but the procedure for filing appeal, including limitation and forum is procedural.[3] To disturb an existing right of appeal is not a mere alteration in procedure and an intention to interfere with, or to impair or imperil, an existing right of appeal cannot be presumed unless such intention be clearly manifested by express words or necessary intendment.[4]

If the enactment is express in language, no question of retrospective effect arises. But if it is fairly capable of either interpretation, it ought to be construed prospectively only when the enactment prejudicially affects vested rights or the legality of past transactions or impairs contracts, the question of retrospective effect will have to be looked into carefully; in such cases the Legislature must be presumed not to have intended a retrospective operation. A repeal does not affect the previous operation of the repealed enactment.[5]

The rule under Criminal Law is not different. Where a revision under Section 145 of the old Cr.P.C. was pending before the Sessions Court, when the new Cr.P.C. came into force, it was held applying the principle laid by Supreme Court in *P. Phiilips* v. *Director of Enforcement*,[6] that the criminal Revision application was an 'application' within the meaning of Section 484(2) of the new Code and the Sessions Judge had no jurisdiction to interfere with finding of fact rendered by Civil Court and adopted by the Magistrate, observing that "where a part of the old procedure has been applied and concluded before the amendment came into force, that part of the old procedure cannot be re-opened after amendment."[7]

Court of Appeal.—The Court of Appeal can give effect to a retrospective Act passed in the interval since the case was at first instance, no matter whether it deals with vested rights or with procedure only.[8] In other words, if a new law speaks in language which expressly or by intendment takes in even pending matters, the Court of Trial as well as the Court of Appeal must have regard to the intention so expressed, and the Court of Appeal may give effect to such law even after the judgment of the trial Court.[9]

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1. *Jose Da Costa* v. *Ba Cora Sadashiv Sinai Narcornin*, AIR 1975 SC 1843.
2. *Jose Da Costa* v. *Ba Cora Sadashiv Sinai Narcornin*, AIR 1975 SC 1843.
3. *Usman Yusuf Kamani* v. *Foreign Exchange Regulation Board, New Delhi*, 1980 Mah LJ 316.
4. *Nathulal Chhotelal Shellac Factory* v. *Deputy Commissioner of Sales Tax*, AIR 1962 MP 287, 289 (Pandey, J.) : Right of revision is also a vested right, at p. 290.
5. *Shafeeq* v. *Mohammadi Begum*, (1964)1 Andh LT 42 : (1963)2 Andh WR 73.
6. (1976) UJ (SC) 287.
7. *Domodar Panigrahi* v. *Banchhanidhi Panigrahi*, (1975)41 Cut LT 842 (DB).
8. *Attorney-General* v. *Vernazza*, (1960)3 All ER 97, 101.
9. *Dayawanti* v. *Inderjit*, AIR 1966 SC 1423; *Suresh Kumar* v. *Bhim Sain*, (1978)80 Punj LR 751.

To make matter clear and to put them beyond dispute, it is open to court to give retrospectivity to a legislation to which the legislature plainly and expressly refused to give retrospectivity.[1]

16. No vested right in procedure.—No person can have a vested right in a course of procedure[2] and it is an elementary principle that a plaintiff or a defendant has the right of prosecution or defence in the manner prescribed for the time being[3] by or for the Court in which he sues and if there is an Act which alters that mode of procedure, he has no other right than to proceed according to the altered mode.[4] The general principle certainly is that alteration in a procedure is retrospective unless there be some good reason against it. Procedural laws are meant to observe the ends of justice and not thwart it.[5] Where a statute is passed for the purpose of *supplying an omission* in a former statute or for explaining a former statute, the subsequent statute relates back to the time when the prior statute was passed.[6] The general rule that no statute should be construed so as to have a retrospective operation unless its language is such as to require such a construction has no application to validating Acts or Ordinances which, by their very nature, are intended to act upon past transactions and are, therefore, necessarily retrospective.[7] The fact of a statute *being remedial* or designed *to protect the public interest* is a matter to which great weight is to be attached and a different principle prevails where a statute is one that introduces a new remedy.[8] In such matters one must have regard to the general character of the Act in question, and when construing an Act introduced for the purpose of applying an equitable doctrine to certain transactions *ex hypothesi* to be lacking in equity one should not assume that the Legislature intended that the Act should not have retrospective effect, but wished to preserve rights acquired in such transaction.[9]

If the Legislature has thought fit to deprive the Civil Court of its jurisdiction to entertain suit of a particular nature a plaintiff cannot compel the Civil Court to hear his suit merely because his cause of action had accrued before the new Act depriving the Civil Court of its jurisdiction was passed. The choice of forum is a matter of procedure and not a substantive right and in most cases a new Act will have retrospective effect so far as the choice of forum is concerned. A right of action is something different from the choice of forum.[10]

"When a demurrer stood for argument before the passing of the Common Law Procedure Act, 1852 (C. 76), it was held that the judgment was not to be affected by that Act, which abolished special demurrers, but must be governed by the earlier law. The judgment was, in strictness, due before the Act, and the delay of the Court ought not to affect it."[11]

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1. *B Prabhakar Rao* v. *State of AP*, AIR 1986 SC 210 : 1985 Lab IC 1565 : (1985)2 Cur C C 555.
2. *Mahadeo Prasad Singh* v. *Ram Lochan*, 1980 All LR 548 (SC).
3. *Modibai* v. *Nagraj*, 1982 Jab LJ 218.
4. *Anant Gopal Sheorey* v. *State of Bombay*, AIR 1958 SC 915, 917; *Attorney-General* v. *Vernazza*, (1960)3 All ER 97; *South India Education Trust* v. *Jagadambal*, (1972)1 MLJ 379, 383 (Ramanujam, J.); *Vishnu Awatar* v. *State*, 1978 All WC 769; *Chironjilal Ramjibhai* v. *Chunarmal Motiram & Co*, 1976 MPLJ 33.
5. *Darshan Kumar* v. *Raghunandan Sharma*, 1978 Rev LR 266 : (1978)80 Punj LR 368.
6. *Balmukund* v. *Pirthiraj Ganesh Das*, AIR 1951 Pat 333, 338; *Tabarak Khan* v. *Province of Bihar*, AIR 1950 Pat 228, 235; *R.* v. *Drislay*, (1832)1 LJ MC 37 'to explain'; but see *Gurcharanlal* v. *Shib Narain*, AIR 1948 Oudh 162 (FB); *Reddy* v. *Provincial Government*, AIR 1950 Nag 146, 148; *Laiq Ram* v. *Sahu Har Prasad*, AIR 1934 All 253.
7. *Ahamad Khan* v. *Crown*, 49 PLR 265.
8. *Kaniz Abid* v. *Anrudh Singh*, 198 IC 780 (Oudh).
9. *Rustomji* v *Bai Moti*, ILR 1940 Bom 501: AIR 1940 Bom 90.
10. *Mangat Ram* v. *Motor Accident Claims Tribunal*, 1970 ALJ 1409, 1412 : 1971 ACJ 85, 87 (C.D. Parekh, J.) : Section 110-F; Motor Vehicles Act, 1939; see also *Usman Yusuf Kamani* v. *Foreign Exchange Regulation Appellate Board, New Delhi*, 1980 Mah LJ 316; *Municipal Board Bareily* v. *Bharat Oil Co.*, AIR 1990 SC 548.
11. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 219.

As was observed by Lord Blackburn in *Gardner* v. *Lucas*,[1] "it is perfectly settled that if Legislature intended to frame a new procedure that, instead of proceeding in this form or that, you should proceed in another and a different way, clearly then bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be." In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties, the new procedure will *prima facie* apply to all such proceedings as well as future.[2] No party has a vested right to a particular procedure or to a particular forum. All procedural laws are retrospective, unless the Legislature expressly says that they are not.[3] Hence, when a suit or proceeding comes on for hearing or disposal the procedural law in force at that time must be applied.[4]

No litigant has, or can have, vested right in a particular forum.[5] He cannot say as a matter of right that his suit or application should be tried by this or that forum which existed on the date his cause of action arose. Forum belongs to the realm of procedure and does not constitute substantive right of a party or a litigant. It should also be borne in mind that cause of action is not to be confused with a forum, and a cause of action, whatever vested rights it may carry with it, does not include a right to insist upon a particular court or a Tribunal or Judge or any other. It follows, therefore, that any statutory law which changes a forum, may not raise a question of retrospective operation, unless, of course, in exceptional cases it is inseparably intertwined with vested rights.[6]

The law is not in doubt that amended law relating to procedure operates retrospectively, but it is a very misunderstood branch of the law. It is necessary, therefore, to emphasize that it only means that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but it does not mean that the part of the old procedure already applied and concluded before the amendment came into force becomes bad or can be re-opened under the new procedure after the amendment. This doctrine of retrospective operation does not mean that whatever procedure was correctly adopted and concluded under the old law will be re-opened again for the purpose of applying the new law of procedure. That will be not merely making it retrospective but going a step further to make *ex post facto* the procedure, legal when applied and concluded, illegal by subsequent law. No Court will permit such a consequence unless, of course, the statute expressly or by compelling implication says so.[7]

Where there is nothing in the Act which expressly takes away the jurisdiction of the Civil Court, the suggestion that there is an implied exclusion of its jurisdiction from the mere fact of

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1. (1878)3 AC 582, 603; *Murli Dhar* v. *Firm Bashesharlal*, ILR 1938 Lah 264 : AIR 1938 Lah 126.
2. *Dhirendra Nath* v. *Ijjetali Miah*, ILR (1940)2 Cal 148 : AIR 1940 Cal 423, 425 (change in procedural law has an immediate effect and must, unless the contrary is expressed, apply to all actions, whether commenced before or after the passing of the Act); *Nisar Hussain* v. *Sunderlal*, AIR 1927 All 657; *Narayan Panicker* v. *Sankaranarayan Panicker*, 1953 Ker LT 339.
3. *Babu Ram* v. *Ram Kishan*, 1981 Cur LJ (Civil) 426.
4. *Shiv Bhagwan* v. *Onkarmal* , AIR 1952 Bom 365 : 54 Bom LR 330.
5. *Usman Yusuf Kamani* v. *Foreign Exchange Regulation Appellate Board, New Delhi*, 1980 Mah LJ 316.
6. *V.C.K. Bus Service* v. *Sethna*, AIR 1965 Mad 149, 151. (Veeraswami, J.) : or in a given mode of procedure, *Denver R Co* v. *Railroad Trainmen*, 18 L Ed 2d 957, 960 (White, J.).
7. *Memon Abdul Karim* v. *Deputy Custodian-General*, AIR 1964 SC 1256; *Anant Gopal Sheorey* v. *State of Bombay*, AIR 1958 SC 915; *Ajit Kumar* v. *State*, AIR 1961 Cal 560, 566-67 (FB); see *Indraj Singh* v. *Savitri Kunwar*, AIR 1966 All 234 : 1965 All LJ 651, where it was held that where a party obtained a decree in a proceeding validly instituted, no change in the procedure affecting the trial will vitiate the decree obtained before the change.

the existence of a statutory tribunal, which may give the same relief as may be had in the Civil Court cannot be accepted. Nor is the cognizance of a suit by the Civil Court to be regarded as barred merely because another statutory tribunal proceeding for the object to be gained by a suit is available. There must be something in the provisions of the statute constituting such tribunal or providing for such proceeding to clearly rule out the remedy of a suit in the Civil Court.[1]

The proviso to Article 225 deals only with the question of restriction on jurisdiction previously existing and that restriction was abrogated by it. That certainly is a matter of procedure and, therefore, the procedural law at the time of the trial of the suit would be applicable.[2]

Section 25(2) of the Mines and Minerals (Regulation and Development) Act, amended in 1972, made for the purpose of recovery of the price or royalty for the mineral taken out otherwise than by virtue of any grant, is purely procedural, and hence, retrospective in character; and any rule such as Rules 55 and 64 of the Rajasthan Minor Mineral Concession Rules, made thereunder, though made before 1972, is protected by the cover retrospectively spread over it by the said amendment to the parent Act.[3]

Statutes relating to practice or procedure which does not create new or take away vested rights are generally held to operate retrospectively where they do not contain language clearly showing a contrary intention.[4] According to Maxwell[5] a new procedure would be presumably inapplicable, where its application would prejudice rights established under the old, or would involve a breach of faith between the parties.

Execution legally started does not, by a change in the processual law, *which affects* the matter of initiation of execution proceedings, become illegal.[6] But amendment of a plaint is a mere question of procedure.[7]

Where *vested rights are affected prima facie* it is not a *question of procedure*[8] (Forfeiture of lease).

Lord Cairns, L.C. observed in *Gardner* v. *Lucas*[9] : "No doubt there is with regard to some of its sections a very clear statement that they shall apply only to instruments written after the passing of the Act; and with regard to the other sections there is an equally clear statement that those sections shall apply to things done both before and after the passing of the Act, and there is a third class of cases, of which the 38th and 39th sections are examples, in which the Act contains no clear or explicit statement of whether it is to be retrospective or merely to be

1. *Raja Ram Verma* v. *State of UP*, AIR 1968 All 369, 373 (FB) (G. Prasad, J.); *Abida Khatun* v. *State of UP*, AIR 1963 All 260, 263 (Dhawan, J.).
2. *Lalitabai* v. *Dominion of India*, AIR 1954 Bom 527.
3. *Nemi Chand* v. *State of Rajasthan*, 1977 Raj LW 430.
4. *Ram Prakash* v. *Savitri Devi*, AIR 1958 Punj 87, 91 (FB).
5. Maxwell : *Interpretation of Statutes*, 10th Ed. at pp. 227-28.
6. *Satrucherla* v. *Ram Chandra Deo*, AIR 1928 Mad 1194. "Further it appears to us that by the order of the Lower Court the respondent has acquired a vested interest in having his decree realized under the procedure in force at the time." *See* also *Durga Prasad* v. *Thakur Prasad*, AIR 1925 Nag 377 : An Act cannot affect the validity of a decree passed before it came into operation, nor can an Act be made applicable to the case of such a decree, simply because an application for its execution is made after the commencement of the Act.
7. *Gokul Prasad* v. *Ali Baksh*, 6 IC 1015.
8. *National Real Estate Finance Co.* v. *Hassan*, (1939)2 All ER 154, 159 : (1939)2 KB 61, 66; *Reddy* v. *Provincial Government*, AIR 1950 Nag 146, 148; Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 206.
9. (1878)3 AC 582, 589.

prospective. But in a case of that kind your Lordship have to examine the subject-matter of the enactment of the particular section you have to construe, to bear in mind the effect of the construction, which would make it retrospective, and to ask yourself whether it is to be supposed that that construction was intended by the Legislature to be given to it. Your Lordship have further to guide and direct you the observations which were made in this House in the case last referred to at the Bar, the case of *Urquhart* v. *Urquhart*,[1] that in a matter of this nature any Court will be slow to construe an enactment as retrospective and thereby as disturbing existing rights, unless Parliament has clearly said that the enactment is to be construed retrospectively".[2]

If the Legislature expressly declared *one particular section* of the Act to be retrospective in its operation without saying anything in regard to the other sections of the Act, the conclusion appears to be irresistible that the other sections were not meant to have retrospective effect.[3] The general rule for deciding as to whether a particular section of a statute is retrospective or not where portions of a statute are silent in that regard, is that they are to be taken *prima facie* as clearly indicating prospective intention and prospective intention only, acting from the time the Act comes into operation.[4]

It is said that where an Act contains a *clause postponing its operation* for a certain period, it is an indication that the Legislature intended it to have a retrospective action, because it gives time for proceedings to be taken in respect of causes of action, already accrued and if the litigant neglects or omits to take advantage of that opportunity he must take the consequences of being caught by the retrospective effect, if any, of the new Act.[5] In *R.* v. *Leeds and Bradford Ry*,[6] with respect to the damage done in 1847 an award was obtained in 1850. But in 1848 the Summary Jurisdiction Act was passed providing that awards must be applied for and obtained within six months from the time the damage was sustained. The Act came into operation six weeks after it was passed. Under the circumstances the award obtained in 1850 was held to be ineffectual. Lord Campbell observed : "if the Act had come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention on the part of the Legislature not to give it a retrospective operation, but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the Legislature has provided that as a period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal.....A certain time was allowed before the Act was to come into operation and that removes all difficulty." It cannot be said, however, that such interval can be explained only on the ground that the provision must have been intended to be retrospective. For instance in the case of Section 69 of the Partnership Act in *Girdharilal Son & Co.* v. *Cowder*,[7] Varadachariar, J. (as he then was) observed : "There are other considerations which required such an interval, particularly the necessity for bringing into existence the necessary machinery and for the framing of rules contemplated by Section 71." The mere existence, therefore, of a postponing

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1. 1 Macq 736.
2. *Kripa Singh* v. *Ajaipal Singh*, ILR 10 Lah 165, 175 (FB).
3. *Rewati* v. *Chiranji Lal*, ILR 1943 Lah 666 : AIR 1944 Lah 29, 30.
4. *Srinivasulu* v. *Damodaraswami*, AIR 1938 Mad 779; *see* also *Kundan Lal* v. *Faqir Baksh*, AIR 1938 Oudh 127, 128 (FB); *see* also *Udai Nath* v. *Chhaya*, AIR 1963 Orissa 27, 28 (G.K. Misra, J.) : pending cases regarding restitution of conjugal rights under the Hindu Marriage Act.
5. Odgers : *Construction of Deeds and Statutes*, 2nd Ed. at p. 193; *Re* Athlumney, (1898)2 QBD 547, 552.
6. (1852)21 LJMC 193, 195; *Asa Ram* v. *Budhu Mal*, 88 PR 1916; *Mehamandas* v. *Chettaram*, 13 IC 264 (Sind).
7. AIR 1938 Mad 688, 704; *see* also *Vishwanatha* v. *Sitalakshmi*, AIR 1921 Mad 126, 129.

clause in an enactment affecting vested rights cannot always be construed as an indication by the Legislature for its retrospective operation. Such statutory intention must be gathered from the terms of the statute itself. If there be no express words, there must at least be a clear indication from the subject-matter of the wording of the statute. And this rule holds good for statutes whether original or amending.[1]

Where the change brought by amendment is not operative with effect from any earlier date it is not retrospective.[2]

Where a *statute is passed pending an action* as distinct from 'after the date of cause of action' it has been held that strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of action.[3] The law existing at the commencement of an action or proceeding must decide the right of the parties and *not the law that existed at the date of the judgment or order.*[4] In *Hitchcock* v. *Way*,[5] where an Act of Parliament was passed during the pendency of an action to recover money due on a bill-of-exchange, which had materially affected the rights of the parties, it was contended that the law which existed at the time of the judgment would be applicable, but that contention was overruled by Lord Denman, C.J., who observed that in the absence of any provision in the statute, that had been passed during the pendency of an action, the law as it had existed at the date when the action commenced must decide the rights of the parties. It is well settled that in general when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary such rights.[6] or it lays down a mere rule of procedure which it is the duty of the Courts to follow.[7]

The Legislature can always provide that pending proceedings shall be affected by an amending Act, though in the absence of such an express provision an amending Act cannot be held to govern pending proceedings.[8]

It would not be correct to apply an Act which was passed subsequent to the trial of the case to the procedure in the case.[9]

Though an act may have some retrospective effect and apply to pending proceedings it does not follow that every provision of an Act will have retrospective effect.[10] Though statutes dealing with procedural law are ordinarily treated as retrospective, where some of the provisions affect vested rights or create new obligation they cannot be treated as retrospective in the absence of clear words.[11] No litigant has any right to have his litigation decided by any

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1. *Ramanathan Chettiar* v. *Lakshman Chettiar*, (1963)1 MLJ 46 (FB).
2. *Punjab University* v. *Subhas Chandar*, AIR 1984 SC 1415 : 1984 UJ (SC) 772.
3. *The Midland Railway Co.* v. *Pye*, (1861)30 LJ CP 314; *Turnbell* v. *Forman*, (1885)85 QBD 234; *Sudkya Ramji* v. *Mohd. Issak*, AIR 1950 Bom 236, 239; *Doolubdass* v. *Ram Lal*, 5 MIA 109, 126, not affecting those contracts on which actions have already been commenced; *A.F. Ferguson Co.* v. *Lalit Mohan*, AIR 1954 Pat 594.
4. *Narayan Panicker* v. *Sankara Narayan Panicker*, 1953 Ker LJ 339.
5. (1837)45 RR 653; *see* also *Shib Nath* v. *Porter*, AIR 1943 Cal 377, 390 (SB) : 1945 FCR 195 (PC); *United Provinces* v. *Attiqa Begum*, 1940 FCR 110; *Devendra Narain* v. *Jogendra Narain*, AIR 1936 Cal 593; *Narayana Swami* v. *Inspector of Police*, AIR 1949 Mad 307, 316 (SB); *Durga Pada* v. *Nrisingha*, ILR 62 Cal 492 : AIR 1935 Cal 541.
6. *Kanak Kanti Roy* v. *Kripa Nath Gain*, ILR 58 Cal 817 : AIR 1931 Cal 321.
7. *Sheopujan* v. *Bishnath*, AIR 1930 All 706, 709.
8. *Chandulal Sarupchand* v. *Bhan Buwajirao*, 55 Bom LR 279.
9. *Banwari Lal* v. *Gopi Nath*, AIR 1931 All 411, 412.
10. *Chaudhuri* v. *Joy Kumar*, AIR 1950 Cal 515, 517; *Y. Arul Nadar* v. *The Authorised Officer, Land Reforms, Thanjavur*, AIR 1990 M 33 (FB).
11. *In re* Dosabhai Ardeshir Cooper, 52 Bom LR 625.

particular procedure and all procedural laws are, therefore, retrospective in their character and affect even suits filed prior to the passing of such legislation. But a right of appeal which a suitor has in a pending action is not merely a matter of procedure. It is a vested right and the Legislature cannot take away that right retrospectively unless it does so by express words or necessary intendment.[1] A right to have a review of a decision also stands on the same footing.[2]

A *change of law* (or bye-law) *pending an administrative hearing* must be followed as applicable at the date of such hearing.[3]

17. Declaratory Acts.—A *declaratory* Act is described in Craies on *Statute Law* as an Act to remove doubts existing as to the meaning or effect of statute, and it is also stated that the usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error.[4] Mere use of the words 'It is declared' does not make it of a declaratory character.[5]

Declaratory provision are presumed to be retrospective unless a contrary legislative intention is shown.[6] The Parliament has the competence to pass a declaratory legislation and such a legislation can be retro-active though not strictly be retrospective.[7] As regards retrospective effect of procedural laws.[8]

A declaratory Act must, however, be constitutionally valid. Where the Supreme Court has struck down a State Taxing Statute as *ab initio* void, the Parliament has no power to enact a merely validating Act giving retrospective operation, by declaring any action taken under the statute so struck down as valid without furnishing authority of law required for it. The later Act is, therefore, invalid on ground of incompetency.[9]

If a statute is in its nature a declaratory Act, the argument that it must not be construed so as to take away previous right is not applicable.[10] Where the statute and its intendment partake of the characteristics of a declaratory law then it would be considered to have retrospective effect. The Hindu Married Women's Right to Separate Maintenance and Residence Act, 19 of 1946, came into force in Hyderabad in 1952, and relief could be granted to the wife in view of

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1. *Kavasji Pestonji* v. *Rustamji Sarabji*, AIR 1950 Bom 42.
2. *Narayan Singh* v. *Board of Revenue*, AIR 1962 Madh Pra 280; *see*, however, *Ravi Sankar Joshi* v. *Ramjeebai Maganlal*, 1966 Guj LR 807.
3. *Ziffrin* v. *U.S.*, 318 US 73; *Commissioners, Port, Calcutta* v. *Asit Ranjan*, AIR 1962 Cal 530.
4. *Mst. Mohammadi Bibi* v. *Kashi Upadhyay*, AIR 1926 All 725(2) : Declaratory Acts like judgment, decide cases pending when the judgments are given, but do not reopen decided cases. An appealable decree, and one against which an appeal has been filed, cannot be regarded as a decided case in the present connection; *Central Bank of India* v. *Their Workmen*, AIR 1960 SC 12; *Commissioner of Income Tax* v. *Vithal Textiles*, (1989)175 ITR 629 (MP)
5. *Jotiram Khan* v. *Janaki Nath Ghosh*, 33 IC 54 (Cal); *Habib Ullah* v. *Suleman Kader*, 24 CWN 18; *A.F. Ferguson* v. *Lalit Mohan*, AIR 1954 Pat 594.
6. *Narayan* v. *State*, AIR 1979 Ker 139 (FB); *Banque Indoznez* v. *M/s. Pawan & Co.*, AIR 1991 Bom 47.
7. *Mithilesh Kumari* v. *Prem Behari Khare*, AIR 1989 SC 1247 : (1989)1 JT (SC) 275 : (1989)1 Ker LJ 424 : 1989 MPLJ 156 : (1989)1 APLJ (SC) 31 : 1989 BBCJ (SC) 54 : (1989)76 CTR 27 (1989)40 ELT 267 : (1989)177 ITR 97 : (1988)2 Cur CC 33 : (1989)2 SCC 95 : (1989)1 LS (SC) 14 : 1989 Mah LJ 210 : (1989)92 (2) Taxation 23 : (1989)1 Civ LJ 635 : (1989)2 Land LR 97 : 1989 TLNJ 1 : (1989)103 Mad LW 430; *Maheswari Mills Ltd., Ahmedabad* v. *Union of India*, (1992)1 Guj LR 172.
8. *Ranchi Club* v. *State*, AIR 1978 Pat 32; *Raich Ali* v. *Sadiq Ali*, AIR 1977 Cal 295. *Fazi* v. *M. Bhat*, AIR 1979 J & K 69 (FB), case under J[& K CrPC Sections 145-146.
9. *Lakshmi Kant Jhunjhunwala* v. *State of U.P.*, AIR 1965 All 420 (FB).
10. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 224.

this subsequent legislation.[1] Declaratory statutes must be presumed to be retrospective unless contrary intention appears from them.[2]

The Hindu Women's Right to Property (Extension to Agricultural Lands) Madras Act, 26 of 1947, is a declaratory statute which has adopted certain clauses relating to inheritance of agricultural lands from the Central Act,—Hindu Women's Right to Property Act, 1937—and but for the provisions of Section 3 of the Madras Act, would have operation from 1937. Section 3 fixes 26th November, 1946 as the date from which the Act applies so far as agricultural lands are concerned and to this extent the Act is certainly retrospective.[3]

18. Curative and validating Acts.—Curative statutes are by their very nature intended to operate upon and affect past transactions and are therefore wholly retrospective. Curative and validating statutes operate on conditions already existing and can have no prospective operation.[4]

It is well settled that if a statute is curative or merely declares the previous law, retroactive operation would be more rightly ascribed to it than the legislation which may prejudicially affect past rights and transactions.[5]

In the case of a declaratory Act there is no presumption against retrospective effect.[6] A declaratory statute has a retrospective effect.[7] In *Debendra Nath* v. *Jogendra Narain Deb*,[8] Their Lordships of the Calcutta High Court made the following pertinent observations : "*Thirdly*, Mr. Das has addressed to us some arguments in order to emphasise the distinction between declaratory and remedial Acts, Declaratory statutes are generally retrospective in their operation. Blackstone, J., in *Nicol* v. *Verelst*,[9] said 'declaratory statutes do not prove the law was otherwise before, but rather the reverse'. 'A declaratory Act,' said Coleridge, C.J. in *Jones* v. *Bennet*,[10] 'means to declare the law, or to declare that which has always been the law, and there having been doubts which have arisen, Parliament declares what the law is and enacts that it shall continue what it then is.' But declaratory statutes may be of various kinds. For instance a statute may correct an error in a former statute, and if the two are of the same session of Parliament, the second has relation back to the time when the first one was passed.[11] It may be explanatory of a former statute; and so there may be cases in which, unless retrospective operation is given, it would fail of its object.[12] There is also abundant authority

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1. *Varalakshmi* v. *Viramulu*, AIR 1956 Hyd 75. (Even if the Act 19 of 1946 cannot be regarded as a declaratory statute it is certainly a remedial statute because the object of the statute is to relieve women from their unhappy and miserable position in having to live with the other wife on whom the husband bestows all affection. The diversity of opinion among the different High Courts in India on the question whether retrospective effect is to be given to the Act noted and explained).
2. *Peer Hassam Uddin* v. *State of J. & K*, AIR 1959 J & K 1, 2 (Murtaza Fazl Ali, J.). *Central Bank of India* v. *Their Workmen*, AIR 1960 SC 12.
3. *L. Bappu Ayyar and another* v. *Ranganayaki*, AIR 1955 Mad 394.
4. *Ram Prakash* v. *Savitri Devi*, AIR 1958 Punj 87, 91 (FB); see *Amalgamated Coalfields, Ltd.* v. *State of Madhya Pradesh*, AIR 1967 Madh Pra 56, where the case law has been discussed; *Ramji Virji* v. *Kadarbhai*, AIR 1973 Guj 110, 113 (Mehta, J.) : applicable whenever question in dispute arises in Court.
5. *Chanan Singh* v. *Jai Kaur*, (1970)1 SCR 803, 807 (Grover, J.).
6. *Rashid Bibi* v. *Tufail Muhammad*, AIR 1941 Lah 291, 292; *Mst. Mohammadi Bibi* v. *Kashi Upadhyay*, AIR 1926 All 725 (2).
7. *Fazal Begum* v. *Hakim Ali*, AIR 1941 Lah 22; *Kundan Lal* v. *Faqir Baksh*, AIR 1938 Oudh 127, 128 (FB).
8. AIR 1936 Cal 593, 615, 616.
9. (1779)26 ER 751.
10. (1890)63 LT 705.
11. *A.G.* v. *Pongett*, (1816)146 ER 130.
12. *R.* v. *Dursley*, (1832)110 ER 168.

for holding that if an Act is in its nature a declaratory Act the argument that it must not be construed so as to take away previous rights is not applicable.[1] But it has been held that the use of the words 'it is declared' in a statute does not necessarily import that the statute is merely declaratory of existing law and, therefore, retrospective; and that the use of the expression 'it is declared to introduce new rules of law' is not incorrect and is far from uncommon.[2] In *Young* v. *Adams*,[3] Lord Watson delivering the judgment of the Judicial Committee pointed out that the cases do not lay down an invariable rule and observed as follows : 'It does not seem to me probable that the Legislature should intend to extinguish by means of retrospective enactment, rights and interests which might have already vested in a very limited class of persons, consisting so far as appears of one individual, namely, the respondent. In such cases their Lordships are of opinion that the rule laid down by Erle, C.J., in *Midland Ry. Co.* v. *Pye*,[4] ought to apply. They think that in a case like the present the learned C.J. was right in saying that a retrospective operation ought not to be given to the statute unless the intention of the Legislature that it should be so construed is expressed in plain and unambiguous language, because it manifestly shocks one's sense of justice that an act legal at the time of doing it should be made unlawful by some new enactment.' It will serve no useful purpose to refer to the other cases cited before us in this connection because here we are able, as we shall presently proceed to show, to distinguish upon the words of the Act itself, the language of the Act in that respect being plain and unambiguous, which of its provisions are retrospective and which prospective, and we have not to rely upon any presumption as to intent relating to its operation to be inferred from the character of the Act being declaratory or otherwise." No doubt when it is clear from a declaratory statute that its object was to 'explain' certain words or clauses in a prior enactment it would be very easy to infer the intention of the Legislature to be that the new Act should be retrospective.[5] Where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date it was passed.[6] All validating Acts lead to two distinct classes—those in which validation is necessary and those in which it is not. The Legislature is always competent to validate procedural defects without in any way losing its jurisdiction by reason of the existence of the other class.[7]

The argument that mere validation of an action invalidated by a judgment amounts, in effect, to exercising judicial power cannot be accepted because it proceeds upon an unwarranted

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1. *A.G.* v. *Theobold*, (1890)24 QBD 557; *AG* v. *Hertford*, (1849)154 ER 1014.
2. *Harding* v. *Queensland Stamp Commissioner*, 1898 AC 769.
3. 1898 AC 469 : "It may be true that the enactments are declaratory in forms but it does not necessarily follow that they are therefore retrospective in their operation, and were meant to apply to acts which had been completed or to interests which had vested before they became law." The context of the statute and the terms of the clauses in question should be examined before even statutes which are declaratory in form are held to be retrospective; *Panniselvam* v. *Veeriah Vandayar*, AIR 1931 Mad 83, 92 : ILR 54 Mad 627. Enactments which are declaratory in form are not necessarily retrospective in their operation; *Nepra* v. *Sajer Pramanik*, ILR 55 Cal 67 : AIR 1927 Cal 763.
4. (1861)30 LJ CP 314 : 10 CBNS 179, 191.
5. *Panniselvam* v. *Veeriah Vandayar*, AIR 1931 Mad 83, 92.
6. *Rai Ram Ramkrishna* v. *State of Bihar*, (1964)1 SCR 891, 908-09 (Gajendragadkar, J.).
7. *State of Mysore* v. *Achiah Chetty*, (1969)3 SCR 55, 63-64 (Hidayatullah, C.J.).

assumption that validation *simpliciter* is not within the ambit of the power of legislating on a particular subject. In the first place, the Legislature can be regarded as exercising judicial power only when, without amending the law, it directs, contrary to the law in force, that pending cases shall be disposed of in a particular manner or that cases decided in one way shall be deemed to have been decided in another way.[1]

For validating past acts, it is not always necessary to amend the law with retrospective effect with a view to authorising the doing of those acts at the time when they were actually done without such authority. It is well settled that diverse methods are available to the Legislature for effecting validation of past acts and any one of them is as efficient and sufficient to achieve the object as any other.

One of them is simple validation effected by employing an appropriate enacting clause without amending the law with retrospective effect.

Another is the making of a retrospective amendment and this is usually adopted when it is desired to change the law.

A third may well be a combination of two or more methods.[2]

19. Right of appeal a substantive right.—As soon as a suit is brought, the right to prefer an appeal or appeals provided by the law, current at the time, becomes vested in the parties and such right cannot be taken away except by a new law and except by the express words or the necessary intendment of such law.[3] The right which would accrue to the plaintiff would be the right governing the *lis* as its commencement and such rights would be available to both parties for the entire course of the litigation regarded as an intrinsic unity, and remain unaffected by any change in the law brought about by a supervening enactment. This is, however, subject to an exception, *viz.*, that any such right might conceivably be affected either by a retrospective provision in enactment itself, or by any law having that consequence by necessary intendment.[4] A right of appeal which is one of the methods by which a decision which would otherwise be final, can be challenged has been held by their Lordships of the Privy Council in *Colonial Sugar Refining Co., Ltd.* v. *Irving*,[5] to be not a procedural right but a substantive right and therefore an Act purporting to take away a right of appeal could have no retrospective effect if such was not clear from the express words of the statute or could not be inferred from its terms.[6]

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1. *Krishi Upaj Vyavasai Mandal* v. *State of M.P.*, AIR 1965 MP 6, 8.
2. *Amalgamated Coalfields* v. *State of Madhya Pradesh*, AIR 1967 MP 56, 66. Regarding Ist method, see *U.P.* v. *Atiqa Begum*, 1940 FCR 110; *Ram Krishna* v. *State of Bihar*, (1964)1 SCR 897; *Mst. Jadao Bahuji* v. *Municipal Committee, Khandwa*, (1962)1 SCR 633; *J.K. Jute Mills Co. Ltd.* v. *State of U.P.*, (1962)1 SCR 1; *Sunderaramier* v. *State of Andhra Pradesh*, 1958 SCR 1422. The Validating Act, however, did not fulfil the required purpose. It did not by the amendment dispense with the requirement which came in the way to make the notification effective, at p. 77. *See* also *Manglaram* v. *State of Rajasthan*, AIR 1970 Raj 32, 35 (B.P. Beri, J.).
3. *H.K. Dada (India), Ltd.* v. *State of M.P.*, AIR 1953 SC 221; *Prabirendra Mohan* v. *Berhampore Bank, Ltd.*, AIR 1954 Cal 289, 292. *New Singhal Dal Mills* v. *Sheo Prasad*, AIR 1958 All 404, 407-408, (M.C. Desai, J.); *Lal Chand Aggarwal* v. *Keshao Rao*, AIR 1958 MP 197; *Vallemal* v. *Periaswami*, AIR 1959 Mad 510, 513 (Ram Chandra Iyer, J.); *Sonya Dagdu* v. *Manhu Dagdu*, 1980 Mah LJ 17 : AIR 1980 Bom 62.
4. *Velayudam Thankayyan* v. *Rev. G.W.T.Trowell*, AIR 1966 Mad 32.
5. 1905 AC 369.
6. *Bimala Prasad* v. *State of West Bengal*, AIR 1951 Cal 258, 260 (FB); *Guha* v. *Basil*, AIR 1951 Cal 554 : Statutes affecting such right must be construed to apply only to decisions made after they came into force; see *Kirpa Singh* v. *Ajaipal Singh*, ILR 10 Lah 165 (FB); *Ram Singh* v. *Shanker Dayal*, ILR 50 All 965 : AIR 1928 All 437 (FB) : it was held that the right to appeal to the Court of District Judge was governed by the law prevailing at the date of the institution of the suit and not by the law that prevailed at the date of its decision or at the date of filing of the appeal; *Firm Hazi Sheikh* v. *State of V.P.*, AIR 1954 V.P. 5; *Chinna Kunjukunju* v. *Neelakantan*, AIR 1958 Ker 251; *Dawood Mohammad Pathan* v. *Union of India*, AIR 1969 Goa 79, *Sazro Govind Gadi* v. *Malvu Madhav Surlia Rau Desai*, AIR 1969 Goa 42.

An appeal or revision pending in a forum at the time the statute affecting the jurisdiction of that forum comes into force is not affected by the statute unless the statute clearly expresses an intention to operate retrospectively.[1] But if the right of appeal is given for the first time after a final order has been passed, such a provision in the new enactment, if applied retrospectively, would deprive of their existing finality of orders which, when the statute came into force, were final and are therefore provisions which touch existing rights. It is legally presumed that any change in the law adversely affecting the right of appeal after the institution of a suit is presumed to be not retrospective.[2] Accordingly if the new provision is to apply to orders final at the date when it came into force, it must be clearly so provided.[3] If the orders are not final and are subject to appeal, that right is not taken away by a subsequent enactment, unless expressly or by necessary implication the right to appeal is negatived.[4]

The following propositions are well established :

(i) The legal proceedings of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the *lis* commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.[5]

The institution of a suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the Legislature has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the Act a retrospective effect.[6]

Thus "it follows that the Court to which an appeal lies is altogether abolished without any forum substituted in its place for the disposal of pending matters or for the lodgment of appeals the vested right perishes.....[7]

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1. *Kandaswami Mudaliar* v. *Sheikh Ahmad Peer Mohammed Mustafa*, 90 LW 12.
2. *Garikipati* v. *Subbiah Choudhary*, AIR 1957 SC 540; *State of Bombay* v. *S.G. Films Exchange*, AIR 1960 SC 980; *Kasibi* v. *Mahada*, 1965 SC 703; *Ravi Shanker Joshi* v. *Ramjibai Maganlal*, 1966 Guj LR 807; *Mohamanand Jha* v. *The Receiver in respect of Kedla-Jharkand Rewta & Dhosi Collieries*, AIR 1992 Pat 107 : (1991)2 BLJR 1038 : (1991)2 PLJR (HC) 81.
3. *Delhi Cloth and General Mills Co. Ltd.* v. *Income Tax Commissioner, Delhi*, AIR 1927 PC 242 : 54 IA 421, 425, *per* Lord Blanishburgh.
4. *Dila Ram* v. *Atma Ram*, AIR 1949 All 225, 226 (FB).
5. *Garikapati* v. *Subbiah Choudhry*, AIR 1957 SC 540, 553; *Ram Niwas* v. *Mithan Lal*, 1979 Rev LR 529 : 1979 Cur LJ (Civil) (P & H) 497 (DB).
6. *In re* Vasudeva Samiar, ILR 52 Mad 361 : AIR 1929 Mad 381 (FB); see *Ittyavira* v. *Varkey Varkey*, AIR 1964 SC 907 at p. 914 (A litigant has no right to contend that a tribunal before whom he should have taken an appeal when he instituted the suit should not be abolished).
7. *Daji Saheb* v. *Shankar*, AIR 1956 SC 29, 30.

When the right of appeal is restricted by a new enactment, *e.g.*, by requiring a deposit to be made by the appellant as a condition precedent to the admission of the appeal, a new restriction is put on the right of appeal the admission of which is now hedged in with a condition.[1] There can be no doubt that the right of appeal has been affected by the new provision and in the absence of an express enactment. This amendment cannot apply to proceedings pending at the date when the new amendment came into force. It is true that the appeal may have been filed after the Act came into force but that circumstance is immaterial for the date to be looked into for this purpose is the date of the original proceeding which eventually culminated in the appeal.[2]

Under the ordinary law, vested rights including rights to appeal and to demand a reference that have already accrued are not taken away by the repeal of any Act; but the procedure would be under the new Act.[3] The right to finality, however, does not arise or vest or accrue until the making of the order, and therefore if a new right of appeal or revision is created before the making of the order, although after the institution of the proceedings, such right of appeal or revision is available against all orders subsequently made.[4]

But it may be noted that in order that the right of appeal may subsist, it is necessary that the conditions under which the right can be exercised should also subsist. It may be that when the judicial system and hierarchy of the courts remain the same, the right of an eventual appeal or appeals accrued at the date of a suit, remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication, but when the whole political structure of a country, including the judicial system itself, changes and a new court of final appeal is set up under a new Constitution with a new jurisdiction created for and assigned to it there can no longer be any question of appealing to such new jurisdiction under the old right except as it may be expressly provided for. There can thus be no appeal to the Supreme Court, as exercising jurisdiction under Article 133 of the Constitution of India except under conditions laid down in that Article.[5]

"We have frequently held," observed Hughes, C.J., in *Patterson* v. *State of Alabama*,[6] "that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered." In *Lachmeshwar Prasad* v. *Keshwar Lal*,[7] certain appellants before the Federal Court having sought to claim the benefit of Section 7 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, it was contended that, as the section had been enacted after the High Court had given its decision in the case, the Federal Court had no power to apply the new provisions in deciding the appeal, it was held that the Federal Court, as a Court of Appeal, was entitled to take into consideration

1. *H.K. Dada (India) Ltd.* v. *State of Madhya Pradesh*, AIR 1963 SC 221.
2. *Nagendra Nath Bose* v. *Man Mohan Singh Roy*, AIR 1931 Cal 100.
3. *Income Tax Commissioner* v. *Dharamchand*, AIR 1924 Nag 24 : The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or right of action including rights of appeal.
4. *Indira Sohanlal* v. *Custodian of Evacuee Property*, AIR 1956 SC 77; *Nathulal* v. *Durga Prasad*, AIR 1954 SC 355; *Motiram* v. *Surajbhan*, AIR 1960 SC 655.
5. *Prabirendra Mohan* v. *Berhampur Bank, Ltd.*, AIR 1954 Cal 289, 292; but see *Bhagwant Rao Shivaji Patil* v. *Viswarao Amritrao*, AIR 1953 Nag 313.
6. (1934)294 US 600, 607; see also *Minnesota* v. *National Tea Co.*, (1940)309 SC 551, 555; *New Brunswick Ry. Co.* v. *British and French Trust Corporation*, 1939 AC 1, 32-33.
7. 1940 FCR 84.

legislative changes which had supervened since the decision under appeal was given and that as the Act had in terms been made retrospective, the appellants could be given the benefit of Section 7 of the Act.

An Appellate Court is entitled to give effect to remedies introduced by enactments passed pending appeal.[1] In *In re* a Deotor,[2] the argument rested upon a construction of the Bankruptcy statutes. Under Section 125, Sub-section (1), Bankruptcy Act of 1914 provides : "Every Married woman who carries on a trade or business, whether separately from her husband or not shall be subject to the bankruptcy laws as if she were a *feme sole.*" A married woman entered into a large number of speculative Stock Exchange transactions with the petitioning creditors and was indebted to a very large extent. The creditors obtained judgment against her. The creditors then petitioned for a receiving order. The debtor disputed the petition on the ground that she was a married woman who was not carrying on a trade or business within the meaning of Section 125 of the Act of 1914. The Registrar held that the transactions in which the debtor had been engaged constituted the carrying on by her of a business within the meaning of Section 125 and make a receiving order against her. Then an appeal was preferred. During the pendency of appeal, the Law Reform (Married Women and Tortfeasors) Act, 1935 was passed. It was provided by Section 1*(d)* of the Act of 1935 that a married woman shall be 'subject to the law relating to bankruptcy in all respects as if she were a *feme sole.* By Schedule II of that Act, Section 125 of the Bankruptcy Act of 1914 was repealed and by Section 4, Sub-section (1) it was provided as follows : 'Nothing in this part of this Act.....shall enable any judgment or order against a married woman in respect of a contract entered into or debt or obligation incurred before the passing of this Act, to be enforced in bankruptcy.....' The Court of Appeal held that the Registrar was right in holding that the transactions in question constituted the carrying on by the debtor of a business within Section 125(1) of the Act of 1914. An argument was advanced before the Court of Appeal on the basis of the new legislation which altered the law. Lord Wright in negativing that argument observed as follows : 'The same reasoning would, I think, justify the court in proceeding under Section 125, Bankruptcy Act, 1914, even though the bankruptcy proceedings were not commenced until after the Act of 1935 came into operation so long as the Act of Bankruptcy was anterior to that Act.' Counsel for the debtor relied on *Quilter* v. *Mapleson.*[3] That, however, was a case merely dealing with matters of procedure or remedies to which a different rule applies. It is not necessary to quote any authority for that distinction save what was said by Jessel, M. R. in *In re* Joseph & Suche Co.[4] 'It is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments unless in express terms they apply to pending action do not affect them. It is said that there is one exception to that rule, namely that where enactments merely affect procedure and do not extend to rights of action, they have been held to apply to existing rights and it is suggested here that the alteration made by this section, *i.e.* Section 10, Judicature Act (1875) is within that exception. I am of opinion that it is not. This is an alteration not merely in procedure, but in the right to prove for a debt which is not distinguishable in substance from a right of action before winding up, being simply a legal proceeding to recover a debt against a company in legislation.....' 'Thus while an Appellate Court is able and bound to give effect to new remedies which have been introduced by enactment passed after the order appealed from was made by the Court of First Instance, yet with regard to substantive right, it is well

1. *In the Matter of* Tripura Modern Bank, AIR 1950 Cal 240, 243; *Dayawanti* v. *Indirjit*, AIR 1966 SC 1423.
2. 1936 Ch 237.
3. (1882)9 QBD 672.
4. (1875)1 Ch D 58; *Eapen Chacko* v. *Provident Investment Co. Ltd.*, 1977 Ker LT 1 (SC).

established that the Appellate Court must give effect to the same law as that which was in force at the date of the earlier proceeding."

In *Mohummad Buhadoor Khan* v. *Collector of Bareilly*,[1] *A* died as the ostensible owner of certain lands, leaving two sons underage. Upon *A*'s death *B*, alleging that he was himself the real owner of the lands, caused himself to be recorded as owner in the Collector's books, and took possession. Some years later, *B* was convicted and executed as a rebel, and all the property in his possession confiscated in May 1858 including the land so taken by him. The sons of *A* sued on May 1, 1865 for the recovery of the lands of which they had been dispossessed by *B* and which had been subsequently granted or sold by Government to defendants (other than the Collector of Bareilly). In 1859 an Act of Limitation being Act IX of 1859 was passed for the special purpose of providing a court for the adjudication of claims by innocent persons upon the property of rebels which had been forfeited to the Government. Section 20 of the said Act provided that no suit brought by party in respect of forfeited property shall be entertained unless it be instituted within the period of a year from the date of seizure. It was contended that this Act was not retrospective in its effect. Their Lordships of the Privy Council thereupon observed : "Undoubtedly *Mr. Doyne* was able to suggest cases in which hardship might arise to persons who would not have a full year to claim before they would be barred under the provisions of this Act, or even where the year might have elapsed between the date of the confiscation and the passing of the Act. Although hard cases may arise, their Lordships consider that the Act is plainly retrospective in its operation, and includes claims to forfeited property which had been confiscated previously to its passing." But a right of revision is not a vested right.[2]

20. Confirmative statute.—A confirmative statute giving new rights does not by itself and of necessity destroy a previously existing right (such as to invoke the jurisdiction of the Civil Court). No doubt the Legislature can make its intention apparent in a particular statute that the two rights should not exist together. But until that intention is established either by express provision or by compelling implication the right of the litigant that existed before a statute is enacted will continue to be available to him.[3]

21. Statute of limitation.—The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide.[4] The law of limitation is, however, an artificial mode to terminate justiciable causes and has to be construed strictly with a leaning on the benefits to the suitor.[5] Rules of limitation as distinct from rules of prescription are regarded and classified as matters pertaining to procedure.[6] As a rule statute of limitation being procedural laws must be given a retrospective effect in the sense that they must be applied to all suits filed after they came into force. The effect of the introduction of the Indian Limitation Act in Travancore-Cochin is only

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1. (1873)1 IA 167, 176-177.
2. *Chiranjilal Ramjibhai* v. *Chunarmal Motiram & Co.*, 1976 MPLJ 33.
3. *Arun Kumar Sinha* v. *Union of India*, AIR 1964 Pat 338, 346 (Mahapatra, J.).
4. *General Accident Fire & Life Asurance Corporation, Ltd.* v. *Jan Mahomed*, AIR 1941 PC 6; *Kirpal Singh* v. *Harkishun Das*, AIR 1957 Punj 273, 275; *Kiran Devi* v. *Abdul Wahid*, AIR 1966 All 105; *State of Bihar* v. *Md. Ismail*, AIR 1966 Pat 1 (FB); *Boota Mal* v. *Union of India*, AIR 1962 SC 1716; *Trichua Dt. Co-operative Bank* v. *Dy. Collector*, ILR (1963)1 Ker 438; *Kiran Devi* v. *Abdul Wahid*, AIR 1966 All 105, 107 (D.S. Mathur, J.) : Equity and fairplay can thus be construed as much in favour of one as in favour of the opposite-party.
5. *State of Bihar* v. *Md. Ismail*, AIR 1966 Pat 1; *Kiran Devi* v. *Abdul Wahid*, AIR 1966 All 105 (FB).
6. *Usman Yusuf Kumani* v. *Foreign Exchange Regulation Appellate Board, New Delhi*, 1980 Mah LJ 316.

to shorten the period of limitation for applying for restoration of a suit dismissed for default. No person can be said to have a vested right to bring an action or to prefer an appeal or to make an application within a particular time and as such it is Order IX, Rule 9 of the C.P.C. which was in force in the State when the restoration application was filed by the plaintiff and not the corresponding provision. Travancore-Cochin which was in force when the suit was instituted, that would apply.[1] This general rule has got to be read with one important qualification and that is that if the statute of limitation, if given retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party for the exercise of his vested right of action, then the Courts would not give retrospective effect to the statute of limitation. The reason for this qualification is that it would inflict such hardship and such injustice on parties that the Courts would hesitate to attribute to the Legislature an intention to do something which was obviously wrong.[2] Legislature does not part with the power to prescribe limitation which it jealously retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment.[3] Although a law of limitation is primarily a law relating to procedure and as such comes into effect right from the moment it has been enacted and governs all proceedings instituted thereafter and thus has retrospective operation, when a subsequent law curtails the period of limitation previously allowed, and such law comes into force at once, it should not be allowed to have retrospective effect, which it would otherwise have, so as to destroy pre-existing rights of suit, because the giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates.[4] If a right to sue or apply had become barred by the provisions of the law in force on the date of the coming into force of the later (or amended) enactment, such barred right is not revived by the application of the later enactment.[5] In the garb of interpretation the Courts cannot take away valuable rights accrued to the other party by expiry of limitation.[6] Advantage, however, cannot be taken by the plaintiff whose right was limited at the date of the suit in a particular way, of the removal of the limitation by subsequent enactment.[7]

If the provisions of law are capable of two interpretations, the one which would further the cause of justice shall be adopted and not the other. Consequently, where the law is not unambiguous and is capable of more than one interpretation the view in favour of the decree-holder shall have to be adopted such that the decree is not barred by limitation.[8] Unless the

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1. *Pappathi Ammal* v. *Sivagannam*, AIR 1954 Trav.-Co. 526; *see* also *Desai Bhao* v. *Karviram Gouda*, AIR 1952 Hyd 142. (While recognizing the principle that unless the contrary is provided the law of limitation applicable to suits, applications. etc., is the law at the date of the suit or application and not the amending law coming into force during its pendency, it was held that where the amending law is procedural, as for example, the rule made by the High Court under Section 5. Limitation Act, governing applications under Order IX, Rule 13, C.P.C., it takes effect immediately and applies to pending proceedings.
2. *Belgaum District School Board* v. *Mohammad Mulla*, AIR 1945 Bom 377, 380; *see* also *Ram Karan* v. *Ram Das*, ILR 54 All 299 : AIR 1931 All 635 (FB); *Manjuri* v. *Akkel Mahmud*, 19 IC 793 (Cal); *Chotmal Ganesh Ram* v. *Ramchand Tarachand*, AIR 1958 Bom 137, 138; *Ramayya* v. *Lakshmiah*, AIR 1942 PC 54; *S.S. Gadgil* v. *Lal & C.*, AIR 1965 SC 171, 175.
3. *Bharat Barrel and Drum Manufacturing Co. Ltd.* v. *Employees' State Insurance Corporation*, (1972)1 SCR 867, 881 (Jaganmohan Reddy, J.).
4. *Jethmal and another* v. *Ambsingh*, AIR 1955 Raj 97.
5. *N.K.C. Syed Mahamad Rowther* v. *Dy. C.T.O.*, (1958)1 MLJ 30.
6. *Laxmi Chand* v. *Challu*, 1978 Jab LJ 245 (DB).
7. *Kalanand Singh* v. *Bhekh Dhari Singh*, 9 IC 805.
8. *Uma Shankar* v. *Kanodia Bros*, AIR 1966 All 409, 411-2 (D.S. Mathur, J.); *Parmeshri* v. *Atti*, AIR 1858 Punj 81 (Bishan Narain, J.).

contrary appears by express words or by necessary implication a statute extending the *period of limitation* is presumed *not* to operate *retrospective* so as to revive a decree which has become unenforceable by operation of the law of limitation. A statute which has the effect of reviving unbarred decree is not a mere matter of procedure and such a statute is presumed not to have retrospective effect[1]; similarly when statute which prescribes a period of limitation which has the effect of destroying vested rights, without any provision to safeguard them, the Courts have struggled against the acceptance of interpretation that the law of limitation is a matter of procedure only.[2]

By virtue of Kutch (Application of Laws) Order, 1949, the Indian Limitation Act was applied to Kutch. By the Adaptation Order the extended period of three years' limitation from the date of commencement of the Act in Kutch was allowed in respect of suits and applications which would be barred as a result of coming into force of the Act in Kutch. This modification did not apply to suits and applications which would not be barred on the date the Act came into operation. It is true that a suit or an application which became so barred would get an extended period of three years while a suit or an application which would become barred under the Act a date after the coming into force of the Act, would not get the advantage. Such anomalies could be removed only by the Legislature and not by the Court.[3]

The only safe guide in construing the provisions of the Limitation Act is to give strict grammatical meaning to the words used in the statute and in that process equities should not be imported.[4]

22. Rules of evidence.—If alteration is made in a rule of evidence, the alterations shall be ordinarily deemed to be retrospective.[5] The law of evidence is a law of mere procedure and does not affect substantive rights. Alterations in the forms of procedure are always retrospective unless there is some good reason or other why they should not be.[6]

The provisions of the said section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is *retrospective* and will be applicable to this case. It is profitable to refer in this connection to Halsbury's *Laws of England*,[7] wherein it has been stated, "The general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure and evidence, are *prima facie prospective* and retrospective effect should not be given to them unless, by express words or necessary implication it appears that this was the intention of the legislature.

Again at page 574, "the presumption against *retrospection* does not apply to legislation concerned merely with matters of procedure or of evidence, on the contrary provisions of that

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1. *Sarkar Dutt Roy & Co.* v. *Shree Bank Ltd.*, AIR 1960 Cal 243, 248; *see* also *Bansidhar Lal* v. *Assistant Custodian, Evacuee Property*, AIR 1980 Pat 306; *Sachindranath* v. *Maharaj Bahadur*, AIR 1922 PC 190, 191; *Lakhmir Singh* v. *Commissioner of Income-tax*, AIR 1957 Pat 538, 540.
2. *Som Singh* v. *M.P. State Road Transport Corporation*, 1979 MP LJ 750 (DB).
3. *Laxmidas* v. *Kanbi Ratna*, AIR 1955 Kutch 2.
4. *Kairunnisa* v. *Pingal Venkatarama*, AIR 1960 Andh Pra 456, 458 (Chandra Reddy, C.J.); *Jambekar* v. *State of Gujarat*, (1973)3 SCC 524, 527 (Mathew, J.); *Shadiram* v. *Ruldu*, (1971)73 PLR 841, 845 (Tuli, J.); *Bholanath* v. *Kruppasindhu*, AIR 1964 Orissa 215, 220 (Burman, J.) (cannot be extended by analogy); *Dominion of India* v. *Aminchand*, AIR 1957 Punj 49, 51 (Bishan Narain, J.); *Mela Ram* v. *Dharam Chand*, AIR 1958 Punj 132, 134 (FB).
5. *Tika Sau* v. *Hari Lal*, ILR 19 Pat 752 : AIR 1940 Pat 385, 392 (FB) (Section 49, Registration Act).
6. *Pars Ram* v. *Mst. Mewa Kunwar*, AIR 1930 All 561, 567; *Gardner* v. *Lucas*, (1878)3 AC 582; *Blyth* v. *Blyth and Pugh*, (1965)2 All ER 817.
7. 4th Ed., Vol. 44 at p. 570.

nature are to be construed as retrospective unless there is a clear indication that such was t the intention of Parliament.[1]

The right of a defendant to raise technical pleas, *e.g.* as to court-fee or want of notice, is r a material right and it could be effected by a new statute making changes in the processu law.[2]

23. Procedure regulating hearing of review.—The procedure regulating the hearing review petitions being a matter of procedure, any amendment in such rules would govern pendi proceedings also.[3]

24. Court fee.—The law of court-fee is procedural law and, where there is change in the l as to court-fee between the date of the suit and the date on which an appeal arising from t suit is filed, the law in force at the later date would govern the court-fee payable on appeal.[4]

The Madras High Court has, however, held that a Notification enhancing court fees can be said to be in the nature of a procedural law. The right of appeal vested in the appellan the time he instituted the suit and it cannot be curtailed or restricted by the unexpected hea burden thrown on the appellant by subsequent enhancement of court-fees.[5]

The right to pay a fixed court-fee without reference to any computation of the claim or arbitrary basis is a right vested in the litigant under the Court Fees Act. If the amendm thereto requires the claim to be computed on a certain arbitrary basis, it prescribes a new r for computation under the Court Fees Act as so amended. It changes the classification of item and shifts it from the Schedule of fixed fees to the Schedule of *ad valorem fees*. It is n mere matter of enhancing the existing rate of fees but it involves a change in the basis of imposition. The change in the law introduced by the new Act relates to computation of claim because the fee payable is made dependent on the computation. Such a change wh introduces a new method of computation where none existed before is as much a change relat to computation as when an existing rule of computation is replaced by another. A change of s a nature in the law brought about by the new Act is not made retrospective under the new Act

25. Statute imposing new penalties and liabilities.—A statute imposing a new penalty new liability will not be construed retrospectively if such effects can fairly be avoided interpretation. In *People ex rel D. W. Griffith Inc.* v. *Laughman*[7] the Court while holding t Section 481 of the New York Tax Law,[8] was not intended to apply to past transactions decla that 'the general principle' that the laws are not to be considered as applying to cases wh arose before their passage is preserved, when to disregard it would be to impose an unexpec liability that if known might have induced those concerned to avoid it and to use their mo in other ways.

But if after the offence is committed, and before he is found guilty and convicted, *penalty* imposed in respect of the offence is *enhanced*, the higher penalty could be imposed.[9]

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1. *See Gurbachan Singh* v. *Satpal Singh*, AIR 1990 SC 209 : (1990) Cri LJ 562 : (1989)4 JT (SC) 38 : 1989 Marriage LJ 60
2. *Muthiah Chettiar* v. *Ramaswami*, 20 IC 689.
3. *Marati Raibhan* v. *Board of Revenue. M.P.*, AIR 1954 Nag 191; *Ravishankar Joshi* v. *Ramjibai Maganlal*, 1966 Guj LR
4. *Shamlal* v. *Om Prakash*, AIR 1955 Punj 223; but see *Firm Hazi Sheikh Faizullah* v. *State of V.P.*, AIR 1954 VP 5.
5. *R.M. Sheshadri* v. *Province of Madras*, AIR 1954 Mad 543, 549.
6. *Central Provinces Syndicate (Pvt.) Ltd.* v. *Commissioner of Income-tax, Nagpur*, AIR 1962 Bom 106, 120-21.
7. 249 NY 369 cited by McCaffrey, at pp. 134-35.
8. Section 181, *New York Tax Law* : "The issued capital stock of any corporation issuing shares without desig monetary value shall pay for the use of the State a licence fee of 6 cents on each such sharer employed in this as hereinbefore provided." This provision was an amendment to Section 181, which took effect about ten m after the relator began to do business in State of New York.
9. *Buckman* v. *Button*, (1943)2 All ER 82.

26. Tax legislation.—Legislature may by specific enactment retrospectively impose a tax. Rules made under statutes may, if so expressed, validly be made to operate with retrospective effect.[1] By retrospective tax legislation is meant a tax statute which affects a period of time prior to the date of enactment of the Act. It may be noted that there is no limitation upon the power of the Legislature to give retrospective effect to a tax statute, but retrospective effect can only be given when the language or the intention of the Legislature is clear and unambiguous. In India a tax statute would not be challengeable on the ground of denial of due process nor on the ground that it amounts to taking of private property arbitrarily.[2]

But it must be noted that in giving retrospective operation to a fixed statute the rule of strict construction should be applied, and no such construction should be given unless there is a clear provision to that effect or unless the effect is necessarily implied from the language.[3] There can be no doubt that the power to tax can be competently exercised by the Legislature either prospectively or retrospectively. It becomes, however, necessary to consider whether such retrospective taxation is reasonable or not.[4]

Validation of tax which has been declared to be illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is achieved by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. The Legislature can give its own meaning and interpretation of the law under which the tax was collected and by legislative fiat make the new meaning binding upon the courts.[5]

27. Remedial Statutes.—Remedial statutes constitute an exception to the general rule against retrospective laws. "Legislative Acts remedial in their nature are frequently construed so as to act retrospectively and amendments to existing laws to strengthen legislative effort to correct abuses are to be so applied and construed as to suppress the mischief and advance the remedy. Such remedial statutes may be of retrospective nature when they do not impair contracts or disturb vested rights."[6] A remedial act is not necessarily retrospective, it may be either enlarging or restricting, and it takes effect prospectively, unless it has retrospective effect by express terms or necessarily intendment.[7] If it is necessary to give a remedial statute a retrospective operation in order to accomplish its object, then it will be so applied, although there may be express words in the Act giving it such an effect, unless to do so would impair some vested right or violate some constitutional guarantee.

The term 'remedial' means the opposite of criminal or penal. It has been often employed to describe acts which pertain to the remedy of course and form of procedure as distinguished from those which affect substantive rights.[8] Many modern statutes are of a dual nature, *viz.*, they are penal when regarded in one aspect and remedial when considered in another light. It may be that some of the provisions may be remedial and others affecting substantive rights. Some of the decisions limit the concept of remedial laws to statutes intended to remedy a mischief, promote public justice, correct innocent mistakes, cure irregularities, or give effect to the acts or

1. *Guruviah Naidu* v. *State of Madras*, AIR 1958 Mad 249, 251 : (1958)1 Mad LJ 132 (Rajagopala Ayyangar, J.).
2. *Bihar Cotton Mills* v. *Union of India*, AIR 1956 Pat 131 [Dhoties (Additional Excise Duty) Act, 1953 though retrospective, held to be valid].
3. *Tikamdas Nadirmal* v. *State of Madhya Pradesh*, AIR 1965 Madh Pra 271; *Chacko* v. *State of Kerala*, AIR 1966 Ker 46.
4. *Jawaharmal* v. *State of Rajasthan*, AIR 1966 SC 764.
5. *State of Tamil Nadu* v. *Thirumagal Mills, Ltd.*, (1972)2 SCR 395, 399 (Grover, J.).
6. *Levy* v. *Birn Schien*, 240 NW 140.
7. *Central Bank of India* v. *Their Workers*, AIR 1960 SC 12 at p. 27; *Kopparti Satyanarayana* v. *Kopparti Sitaramiah*, AIR 1963 Andh Pra 270 (FB).
8. *People* v. *Spicer*, 99 NY 225.

contracts of individuals fairly done and made.[1]

Though changes of procedure, *i.e.*, of the form of remedies, constitute in exception to the general rule that statutes are to be construed as prospective only, that exception does not reach a case where before the statute there was no remedy whatever. The destruction of every remedy destroys the cause of action. By parity of reasoning to grant a remedy where previously there was none of any kind is equivalent in substance to the creation of a cause of action.[2]

According to the Supreme Court it is well settled that the normal rule of construction is that a provision in a statute is prospective but not retrospective, but however in the case of statutes which are merely declaratory or which relates to only matters of procedure or of evidence, it may have retrospective effect if there are indications to that effect or the manifest purpose compels one to construe the Act as such.[3]

28. Repealing Acts.—"An unqualified repeal operates to destroy inchoate rights, as a release of imperfect obligations and as a remission of penalties and forfeitures dependent upon the destroyed statute."[4] The injustice of the retrospective operation of repealing statutes has led to the insertion in such Acts of provisions, known as saving clauses, which preserve existing rights or causes of action or pending proceedings from the effect of the repeal.

It may be noted that Section 6 of the General Clauses Act X of 1897 has changed the common law doctrine as to the effect of repeals by laying down statutory presumptions.

But where a particular repealing Act contain its own saving clause a general saving statute will not be held to apply.[5] This is also the case where the effect of the application of the general statute would be to defeat the purpose of the repealing Act.[6]

In the case of amendments which take the form of re-enactments, it is the practice of the Legislature to state in the amendatory Act that the original law is amended 'to read as follows', and thereupon to set out the original Act, or section as amended. Those clauses or provisions of the old law or section which are repeated in the amendment 'are not to be considered as repealed and again re-enacted, but to have been the law all along; and the new parts, or the changed portions, are not to be taken to have been the law at any time prior to the passage of the amended Act'.[7] The effect of the rule which considers the provisions of the original Act which are re-enacted as a continuation of the original law is that rights and liabilities accrued under such provisions are presumed.

But instead of re-enacting, the Legislature may enact a fresh law. When repeal is followed by fresh legislation on the same subject, the line of inquiry is not whether the new Act keeps alive old rights and liabilities, but whether it manifests an intention to destroy them.[8]

The rule which directs that an original law and an amendment to it should be construed as one law passed at the same time is applied only for the purpose of ascertaining the meaning of the particular doubtful statute. Such consideration does not have the effect of making the amendatory Act retroactive to the time when the original law was passed.[9]

29. Retrospective effect through rules.—Rules cannot ordinarily be given retrospective

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1. *Ex parte* Buckley, 53 All 42; *Keval Wadhera* v. *Laxmi Narain*, 1985(1) Rent CR 107 (Del).
2. *Jacobus* v. *Colgate*, 217 NY 235.
3. *State of Madhya Pradesh* v. *Rameshwar Rathod*, AIR 1990 SC 1849 : 1990 Cr LJ 1756 : (1990)3 JT (SC) 298, quoted in *Aimala Jayaram* v. *State of Andhra Pradesh*, 1992 Cr LJ 2217 (AP).
4. *Hertz* v. *Woodman*, 288 US 205.
5. *Palmer* v. *Hickory Grove Cemetary*, 82 NYS 973.
6. *Matter of* New York, 138 NYS 594.
7. *Ely* v. *Holton*, 15 NY 595, cited by Francis, J. McCaffrey at p. 139.
8. *Ayub Ali Khan* v. *Smt. Haseena Bano*, (1977)14 ACC 20.
9. *Bonton* v. *Wickware*, 54 NY 226, cited by McCaffrey at p. 140.

effect, but the Legislature may confer such a power on the rule-making authority.[1] It is well settled that the subordinate legislative authority (rule-making authority) has no power to make a rule or regulation with retrospective effect, unless it is expressly empowered to do so.[2] Legislature might by specific enactment retrospectively impose a tax. The rules made under such an Act might, if so expressed, validly be made to operate with retrospective effect.[3] Section 3-A which was introduced in the principal U.P. Sales Tax Act, 1948, was not given a retrospective effect and the subsequent notification issued under Section 3-A could be considered to have laid down prospective rates only.[4]

Where the *notification* itself does not, by its own terms, make its operation retrospective, it would be extravagant to claim that by necessary implication it has retroactive operation,[5] and takes effect from the date it is issued and not from any prior date.[6]

Rules under Article 309 of the Constitution.—The rule making power conferred by Article 309 on the Governor or his nominee is not confined to prospective rule-making and appears to be wide enough to include the making of rules with retrospective effect. In fact, if rules regulating conditions of service can be made only with prospective effect and cannot be made applicable to persons already in Government employment administration may sometimes become impossible.[7]

30. View in Corpus Juris.—In Vol. 69 of *Corpus Juris* under Article 692 at pp. 1159 to 1169, the following observations are made in general on this topic :

"Retrospective or retroactive legislation is not favoured.[8] Hence, it is a well settled and fundamental rule of statutory construction, variously stated that all statutes are to be construed as having only a prospective operation,[9] and not as operating retrospectively.[10] It is equally well settled as a fundamental rule of statutory construction supported and established by numerous judicial decisions that statutes are not to be construed as having a retrospective effect.[11] Both the above statements and rules are of course contingent upon the absence of any words expressing a contrary intention, or, more specifically, unless the purpose and intention of the Legislature to give them a retrospective effect clearly,

1. *Mohd. Rashid* v. *State of U.P.*, AIR 1979 SC 592.
2. *P.V. Sitarama Swami* v. *State Transport Appellate Tribunal*, (1980)2 Andh WR 362.
3. *Hukam Chand* v. *Union of India*, (1972)2 SCC 601 (Khanna, J.); *Income-tax Officer* v. *Ponnoose*. (1970)1 SCR 678, 681 (Grover, J.) : Rules framed under Article 309 of the Constitution stand on a different footing—at p. 683; *Guruviah Naidu* v. *State of Madras*, AIR 1958 Mad 249 : (1958)1 Mad LJ 132; *J.E. Bilimoria & Sons* v. *State of Maharashtra*, 1990 Mah LJ 1079.
4. *Modi Food Products* v. *Commissioner of Sales Tax*, AIR 1956 All 35, 39. Bhargava, J., also observed : "We of course express no opinion on the question whether, if such express power is conferred (on the Executive Government), it will or will not be a valid power." *See* also *Basti Sugar Mills, Ltd.* v. *State of U.P.*, AIR 1954 All 538 (Order under U.P. Industrial Disputes Act, 1947, directing payment of past bonus was invalid).
5. *Sardar* v. *State*, AIR 1961 Cal 181, 183.
6. *Sri Vijayalakshmi Rice Mills* v. *State of A.P.*, 1976 UJ (SC) 367.
7. *Ram Autar* v. *State of U.P.*, AIR 1962 All 328, 336 (FB).
8. *White* v. *U.S.*, 191 US 545 : 58 L Ed 295.
9. *Brewster* v. *Gage*, 280 US 327 : 74 L Ed 457; *Fullerton Kruger Lumber Co.* v. *Northern Pac. Ry. Co.*, 266 US 435 : 69 L Ed 367; *Cox* v. *Hart*, 260 US 427 : 67 L Ed 332; *Stephens* v. *Cherokee Nation*, 174 US 445 : 43 L Ed 104; *Shrev-port* v. *Cole*, 129US 36 : 32 L Ed 589; *Sohn* v. *Waterson*, 21 L Ed 737; *Harvey* v. *Tyler*, 17 L Ed 871, etc.
10. *Brewster* v. *Gage*, 280 US 327 : 74 L Ed 457; *Shwale* v. *Doyle*, 258 US 529 : 66 L Ed 747; *Union Pac. R.R.* v. *Laramie Stock Yards*, 231 US 190 : 58 L Ed 179; *U.S.* v. *American Sugar Refining Co.*, 202 US 563 : 50 L Ed 1149; *Chew Heong* v. *U.S.*, 112 US 536 : 28 L Ed 536; *Sohn* v. *Waterson*, 21 L Ed 737; *Reynolds* v. *McArthur*, 7 L Ed 470; *U.S.* v. *Heth*, 2 L Ed 479, etc.
11. *U.S.* v. *Mongolia Petroleum Co.*, 276 US 160 : 22 L Ed 509; *U.S.* v. *St. Louis, etc Co.*, 270 IL 1 : 70 L Ed 435.

expressly, plainly, obviously unequivocally and unmistakably appears or is clearly,[1] or as it has sometimes been stated in instances where the subject-matter was under consideration, distinctly, indisputably, manifestly, most positively, most explicitly,[2] plainly, unambiguously, unequivocally or unmistakeably or shown by express declaration,[3] or command or by a very clear, fair, necessary,[4] unavoidable, or unequivocal implication. In every case of doubt, the doubt must be solved against the retrospective effect and in favour of prospective construction only. Where a statute is expressly or by clear implication made retroactive to a certain extent or for a certain purpose, the Courts will not by construction give to it a retroactive operation to any greater extent or for any other purpose."[5]

It is further stated in Article 694 at pp. 1169-70 :

Presumptions.—"Statutes are presumed to be prospective only in their operation, rather than retrospective, or retroactive, unless the contrary clearly appears or is very clearly, plainly and unequivocally expressed or necessarily implied."

In respect of Remedial Statutes it is stated in Article 695 at pp. 1170-1171 : "The general rule that statutes are to be construed as prospective only unless the language employed conclusively negatives that construction applies to remedial statutes. However, as to such statutes the rule is not so insistent, as remedial statutes are favoured by the Courts, and remedial statutes may be of retrospective nature, provided they do not impair contracts, or disturb vested rights, and do not create new obligations. So, in accordance with the general rule that remedial statutes should be liberally construed so as to suppress the mischief and advance the remedy, such statutes will be construed to have a retrospective operation whenever the intention of the Legislature is clearly indicated, provided such construction does not disturb vested rights, does not destroy existing contracts, and does not create new obligations, but not if the intention to give the Act a retrospective effect is not so clearly found as to satisfy the Court that such was the intention, and if, from the reading of the Act the Court is doubtful whether such was the intention the doubt must be resolved against the retrospective effect."

As regards statutes impairing vested rights, it is stated :

Statutes impairing vested rights, Article 696.—'Retroactive legislation' changing rights is not favoured, and the rule that statutes are not to be construed retrospectively unless such construction was plainly intended by the Legislature applies with peculiar force. Hence, in so far as affecting vested rights, a statute will be construed as prospective only, and not as operating retrospectively or retroactively unless that intention is made manifest either by express words or by a clear, distinct, necessary, plain, strong, unmistakable implication. A statute therefore is not to be construed to impair the validity of contracts entered into before its passage. It is only where the intent of the Legislature to make an Act retrospective is plainly expressed that Courts will undertake to apply it to antecedent contracts and determine whether it impairs their validity. Where a particular contract is lawful when made, but such contract or its further performance is rendered illegal or void by a subsequent statute acts done or rights acquired in pursuance of the contract and before the passage of the statute are not affected by it; but the contract is discharged from the time the statute takes effect, without liability of either party on

1. *Shwale* v. *Doyle*, 258 US 529 : 66 L Ed 747, etc.
2. *U.S.* v. *St. Louis, etc. Ry Co.*, 270 US 1 : 70 L Ed 435, etc.
3. *Fullerton Qrueger Lumber Co.* v. *Northern Pac. Ry. Co.*, 266 US 435 : 69 L Ed 367; *Sohn* v. *Waterson*, 21 L Ed 737, etc.
4. *U.S.* v. *St. Louis, etc. Ry. Co.*, 270 US 1 : 70 L Ed 435; *Fullerton Qrueger Lumber Co.* v. *Northern Pac. Ry. Co.*, 266 US 435 : 69 L Ed 367; *Sohn* v. *Waterson*, 21 L Ed 737, etc.
5. *Reid* v. *Reid*, 31 Ch D 402.

account of such discharge. A statute subsequent to a judgment vesting rights in a party can have no retrospective operation to divest such rights unless such intention of Legislature is clearly expressed."

Presumption.—"An intention to limit or affect existing rights will not be presumed unless it clearly appears.

As regards statutes imposing liabilities, it is stated :

Statute imposing liabilities, Article 697 at pp. 1172-73.—"A statute will not be given a retrospective construction by which it will impose liabilities not existing at the time of its passage."

As regards statutes relating to offences and prosecutions it is stated :

Statutes relating to offences and prosecutions, Article 698 at p. 1173.—"*Ex post facto* construction is as pernicious as *ex post facto* legislation. Hence, statutes of criminal or penal nature will not be construed to have a retrospective operation unless the intention of the Legislature to give them such operation is expressed in clear and unequivocal language. Furthermore, a statute will not be construed to operate retrospectively, so as to take away a penalty or condone a crime unless such intention is clearly expressed."

It is further stated :

Prospective validity of invalid retrospective statutes, Article 699 at p. 1173.—"Where statues intended from their language to be given both prospective and retrospective operation are void as to their retrospective effect, they are not necessarily void *in toto*, and will usually be upheld and applied in their prospective sense."

It is also stated in general as to statutes relating to remedies and procedure :

Procedure—Article 700 at pp. 1173-74.—"A difference is recognised between statutes affecting substantial rights and those affecting only procedure the Courts being more liberal in the interpretation relative to retrospective operation in the latter than in the former case. The general rule that statutes will be construed to be prospective only and not retrospective or retroactive ordinarily does not apply to statutes affecting remedy or procedure, or, as is otherwise stated, such general rule is subject to an exception in the case of a statute relating to remedies or procedure. While it has been said that statutes relating to remedies or procedure may be given a retroactive operation, a more accurate statement of the principle intended is that, unless expressly prohibited by statute, and in the absence of directions to the contrary, or unless in doing so some contract obligation is violated or some vested right divested, statutes merely affecting the remedy or law of procedure apply to actions thereafter, whether the right of action accrued before or after the change in the law. The Legislature has full control over the mode, times, and manner of prosecuting suits, and whenever, upon consideration of an entire statute relating to those matters, it appears to have been the legislative intent to make it retroactive, it will be given this effect. However, a retrospective operation will not necessarily be given to such statute and unless an intent that the statute have a retroactive effect is expressed therein or is capable of being inferred from the circumstances, the statute will not be given such effect. Where under the guise of making a change in the remedy, a new right or obligation is created, or where the intention of the Legislature to give the statutes only a prospective operation is clearly expressed in the Act, it will not be construed to affect remedies and procedure as to cause of action arising before its passage."

Presumption.—"The presumption against retrospective construction of statutes as a general rule does not apply to statutes that relate merely to remedies and modes of procedure."

As regards pending actions the rule is thus stated in general :

Pending actions.—Article 701 at pp. 1174-76.—"No statute should be so construed as to give it a retroactive effect so as to affect pending litigation, unless a clear intent to the contrary is plainly manifest, either by express declaration or necessary implication; but unless the contrary intent is expressed, a statute providing, or merely affecting, the remedy may apply to, and operate upon, causes of action that had accrued and were existing at the time of the enactment of the statute, as well as causes of action thereafter to accrue, and also, unless the contrary intent is expressed, such enactments, as do not affect the nature of the remedy, but relate solely to incidents of procedure, are applicable to all proceedings taken in pending actions from the time they take effect. A statute which expedites litigation or prevents a delay of justice should be made to apply to pending proceedings."

Jurisdiction of Courts—Article 703 at p. 1176.—As regards jurisdiction and venue of Courts, it is stated : "Where such intention is clearly expressed in the Act, or in the absence of a saving clause, a statute depriving a Court of jurisdiction may operate retrospectively to suspend proceedings then pending. Further, where clearly intended, or in the absence of a contrary intent, a statute conferring jurisdiction may operate to give jurisdiction over causes of action arising before the passage of the Act."

"A statute relating to venue may be construed to apply to actions accrued or pending at the time it takes effect, but, unless such intention is clearly expressed, it will not be given a retroactive effect."

The rules regarding parties, pleading and evidence are thus stated :

Parties, pleading and evidence—Articles 705, 706, 707 at pp. 1176-78.—"A statute determining who may be proper parties to actions, especially when of a remedial nature, will be applied to actions accrued or pending at the time of its passage."

"Depending on the expressed intention of the Legislature, application of statutes relating to pleading to existing causes of action has been permitted or refused. In the absence of any such expression of intention, they will not be construed to invalidate pleadings, filed before the time they take effect, but will be applied to all pleadings, thereafter filed, even though the cause of action had accrued or was pending." Rules of evidence are at all times subject to modification by the Legislature, and statute relating to such rules constitutes an exception to the general rule against retroactive construction. While it has been said that statutes relating to rules of evidence are always retrospective unless there is some good reason against it, statutes changing rules of evidence are applicable from their passage not only to causes of action arising thereafter, but also to actions accrued or pending at the time. Where, however, it was clearly the intention of the Legislature not to make the Act retrospective, or, as in the case of evidence in criminal prosecutions, where a retrospective construction would render the statute unconstitutional, it will be given only a prospective operation."

As regards judgments and enforcement thereof it is stated :

Judgments and enforcement thereof.—Article 709 at pp. 1177-78.—"A statute should not be construed to impair the force or validity of a judgment previously obtained, to give validity to a judgment, therefore, rendered without authority, or to authorise a judgment in a pending proceeding to which a party was not entitled at the time the action was commenced. So statutory phrases have been construed to apply the statute only to judgments obtained after the statute taken effect, but all statutes relating to the enforcement of judgments, such as those relating to the issue, return, and levy of executions, and the sale of property, in the absence of a contrary legislative intent, are applicable to all judgments, whether obtained before or after their passage."