CHAPTER XXXI
REPEAL OF STATUTES

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1. Right of repeal inherent in legislation.—Power of a legislative body to repeal a law is co-extensive with its power to enact such a law.[1] Just as the Legislature has the power to enact laws, similarly it has the power to repeal them. The efficacy of the Legislature depends upon the possession of the power to repeal the existing law, for without this attribute the power to enact will be ineffective and but for such plenary power, there will be a flood of contradictory enactments. Consequently, the legislative power to repeal prior laws is not inhibited by any

1. *Ram Krishna* v. *Janpad Sabha*, AIR 1962 SC 1073, 1080, quoting *Attorney-General for Ontario* v. *Attorney-General for Dominion*, 1896 AC 348, 366.

constitutional prohibitions, but exists as a necessary concommittant function of the legislative power.[1] It is firmly established that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective.[2] Nobody has a vested right in a statute. An Act may be very beneficial to a particular person, or its repeal may affect him injuriously yet the right of the Legislature to abrogate an Act by repealing it is absolute.[3] No statute can make itself secure against repeal. There is nothing to prevent any Parliament from enacting that a particular statute shall never in any circumstances be altered or abrogated, and at certain troubled periods of history this seems to have been the intention of the legislators. But it is equally clear that there is nothing to prevent any subsequent Parliament from treating such a provision as *pro non scripto*. In any enlightened Government an unrepealable statute is a contradiction in terms, striking as it does at the very root of the legislative theory.[4] It is within the power of any Parliament to repeal any of the Acts passed by its predecessors and that it is not within the power of any Parliament to prevent the repeal of any of its own Acts, or to bind its successors.[5] It is not competent for Parliament to pass a statute binding itself never to pass a contradictory statute, because that would be fettering the supremacy of Parliament : nor can the Legislature bind itself as to the form of the subsequent legislation and enact that in a later statute dealing with the same subject-matter there can be no implied repeal. If in a later statute, Parliament makes it plain that the earlier statute is being to some extent repealed, effect must be given to that intention.[6] If the several provisions of an Act can, without conflict with the provisions of the Constitution, exist, then notwithstanding the provisions of the Constitution making ineffective certain other provisions of the said law, the law itself cannot be held to be repealed and those provisions which are not inconsistent with the provisions of the Constitution, will be in force.[7]

The granting of an exemption from the operation of an Act is not, and cannot be, equivalent to a repeal of the Act.[8]

2. Objects of 'repealing Acts'.—Repealing and amending Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reasons for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts, which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law.[9] The main object of repealing and amending Act is only to strike out the unnecessary Acts and

1. Sutherland : *Statutory Construction*, Vol. I, 3rd Ed., Article 2003 at pp. 490-495.
2. *Income-tax Officer* v. *Mohd. Kunhi*, (1969)2 SCR 65, 69 (Grover, J.); *see* also *Bidi, Bidi Leaves and Tobacco Merchants' Association* v. *State of Bombay*, 1962 (Supp) 1 SCR 381, 402 (Gajendragadkar, J.)—Doctrine of implied powers.
3. *Amar Singh* v. *R.L. Aggarwal*, AIR 1960 Punj 312, 316 (FB).
4. Allen : *Law in the Making*, 4th Ed. at pp. 387-388.
5. Wilberforce : *Statute Law*, at p. 309; Craies : *Statute Law*, 4th Ed. at p. 292.
6. Halsbury : *Laws of England*, 2nd Ed., Vol. 31, Para 703.
7. *Sitarama Reddy* v. *Chinna Ram Reddy*, AIR 1959 Andh Pra 159 (it is one thing to say that some of the provisions of a law have become invalid and ineffective and it is another thing to say that the Act itself has been repealed; the duty enjoined in the High Court of Hyderabad to prepare decrees in conformity with the orders of H.E.H. the Nizam subsisted even after the jurisdiction of the Judicial Committee to entertain appeals from the judgment and orders of the High Court had been abolished after 26th January, 1950.).
8. *Bhikusa* v. *Sangamner*, AIR 1960 Bom 299, 310; *Sadhu Singh* v. *District Board*, AIR 1962 Punj 204, 211.
9. *Khuda Bux* v. *Manager, Caledonian Press*, AIR 1954 Cal 484.

excise dead matter from the statute book in order to lighten the burden of even increasing spate of legislation and to remove confusion from the public mind.[1]

If there is a repugnancy between the two pieces of legislation, to such an extent that both cannot stand together and operate simultaneously, the latter will have the effect of impliedly repealing the former.[2]

3. Express repeal.—*Express repeal and repeal by implication.*—Repeal of a statute may be express or by necessary implication. There is no reason to restrict the meaning of the word 'repeal' merely to an express repeal and to exclude the implied one.[3] Express repeal of a statute is usually made by stating that the earlier statute or a particular provision therein is thereby repealed. Usually enactments repealed are mentioned in a Schedule attached to the repealing statute. Such express repeal needs no construction of the later statute. The maxim *expressio unius est exclusio alterius* applies and accordingly those statutes and those alone are repealed.[4]

Sometimes the expression used in the later statute for such purpose runs :

"all provisions inconsistent with the Act are repealed," or

"all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed," or

"all laws and parts of law in conflict herewith are expressly repealed".

Provisions of this character leave the question open as to what laws are inconsistent and are intended to be so repealed. One view, therefore, is that here is a case not of express repeal but by implication and, therefore, all rules of law which apply to implied repeals generally will be applicable to repeals brought about in the aforesaid manner.[5] The question naturally arises in such cases as to the extent or scope of the repeal. Thus, where a repealing clause expressly refers to a portion of the prior Act, the remainder of such Act will not usually be repealed, as a presumption is raised that no further repeal is necessary, unless there is irreconcilable inconsistency between them. In like manner, if the repealing clause is by its terms confined to a particular Act, quoted by title it will not be extended to an Act upon a different subject. And a general Act repealing all Acts inconsistent therewith will usually apply to general Acts and not to special or local laws. The reason behind this rule, according to Crawford,[6] finds its foundation in two premises : the special Act is not repealed because it is not named, or because there is no absolute inconsistency between the general Act and the special Act. Consequently, if the repealing Act named the special Act and/or if the two were irreconcilably inconsistent, the special Act would also be terminated.

If the subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation.[7]

4. Implied repeal.—Where there is direct reference in the repealing clause to a particular Act, it is a case of express repeal. But where there is no direct reference, the matter will have to be determined by taking into account the exact meaning and scope of the general words contained in the repealing clause and the principles of law which govern the interpretation of the same. It is well settled that implied repeal is not readily inferred and the mere provision

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1. *Jethanand* v. *State of Delhi*, AIR 1960 SC 89, 91.
2. *Dharangadhra Chemical Works* v. *Dharangadhra Municipality*, AIR 1985 SC 1729 : (1985)4 SCC 92.
3. *Ambala Ex-Serviceman T. Co-opertative Society* v. *Punjab State*, AIR 1959 Punj 1, 4 (FB).
4. *Garnett* v. *Bradley*, (1878)3 AC 944, 965 (*per* Lord Blackburn); *D. Srinivasa Rao* v. *Govt. of Andh Pra*, AIR 1991 AP 112 (DB); *The Competent Officer Gujarat Housing Board* v. *Shri K.B. Parmer*, AIR 1993 Guj 5.
5. *See* for example, Crawford : *Statutory Construction*, Article 307 at pp. 627-628; Craies : *Statute Law*, 5th Ed. at p. 322.
6. *Statutory Constructions*, at p. 627.
7. Vide *Air India* v. *Union of India*, 1995(2) UJ (SC) 568.

of an additional remedy by a new Act does not take away an existing remedy.[1] Principles governing the cases of implied repeal can in such a case be called in aid to determine whether there is effective repeal of the earlier statute.[2] Where two apparently inconsistent provisions which were originally of different dates have been repealed and re-enacted in a consolidating Act the original priority of date is to be regarded in their interpretation, because one may possibly repeal the other by implication and that repeal by implication is not to be prevented by reason of those two provisions being repeated in one Act and, therefore, made on the same day.[3]

An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law that is where the two laws—the earlier law and the later law—cannot stand together. This is a logical necessity because the two inconsistent laws cannot both be valid without contravening the principle of contradiction. The later laws abrogate earlier contrary laws. This principle is however subject to the condition that the later law must be effective. If the later law is not capable of taking the place of the earlier law, and for some reason cannot be implemented, the earlier law would continue to operate. To such a case, the rule of implied repeal may result in a vacuum which the law-making authority may not have intended.[4]

As the Legislature must be presumed in deference to the rule of law to intend to enact consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or at least clear and unambiguous indication to that effect. This is essential in the interest of certainty and consistency in the laws which the citizens are enjoined and expected to obey. The Legislature, which may generally be presumed to know the existing law, is not expected to intend to create confusion by its omission to express its intent to repeal in clear terms. The rule, therefore, is that every effort should be made to reconcile the two enactments and to construe them so as to avoid their being repugnant to each other and care should be taken to see whether the two really operate in different heads without encroachment.[5] The Courts, therefore, as a rule lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together.[6] and it is not possible on any reasonable hypothesis to give effect to both at the same time. However, if two statutes by a fair course of construction are capable of being reconciled, that must be done, and both the statutes be allowed to stand.[7] In *Ali Hasan*'s case[8] it was held that Delhi Development Act, 1957 as amended by Amendment Act, 1963, did not

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1. *J.A. Trivedi Bros.* v. *Union of India*, 1975 Jab LJ 404 (DB); *Amali English Medium High School* v. *The Govt. of Andhra Pradesh*, AIR 1993 AP 338 (FB); *Yogender Pal Singh* v. *Union of India*, AIR 1987 SC 1015 : 1987 Lab IC 707 : 1987 JT (SC) 227 : (1987)54 Fac LR 225 : (1987)12 Del Rep J 147 : (1987)1 Cur LR 176 : (1987)9 (1) IJ Rep 98 : (1987)1 Serv LR 379 : (1987)1 SCC 631 : (1987)1 Lab LJ 337 : (1987)1 Supreme 193 : (1987)1 SCJ 487 : (1987)1 Cur CC 745 : 1987 Cur Civ LJ (SC) 280 : (1987)3 ATC 28 : (1987)1 UJ (SC) 569 : (1987)1 Lab LN 749; *Rajendra Singh Sethia* v. *State*, 1989 Cr LJ 255 (Cal) : (1988)2 Cal HN 194 : (1988)92 Cal WN 670.
2. *Kanhaiyalal* v. *Vilayat Khan*, AIR 1958 Madh Pra 63, 64.
3. *Mercantile Finance Trusees and Agency Co. of Australia* v *Hall*, (1893)19 VLR 233, 240; *Melbourne Corporation* v. *Barry*, 31 CLR 174 at pp. 186-187; *Bridge* v. *Bowen*, 21 CLR 582, 634.
4. See *Om Prakash Shukla* v. *Akhilesh Kumar Shukla*, AIR 1986 SC 1043 : 1986 Lab IC 796 : 1986 All LJ 662 : (1986)2 Supreme 284 : (1986)1 Serv LR 699 : (1986)2 Lab LN 38 : (1986)1 SCJ 606 : 1986 SCC (Lab) 644 : (1986)2 UJ (SC) 184 : 1986 Supp SCC 285 : (1986)3 Serv LJ 235.
5. *Ishwar Chandra Chitalangia* v. *State*, 81 CWN 690 at p. 692.
6. *Ali Hasan* v. *Lt. Governor, Delhi*, (1977)79 PLR 246 (DB).
7. *Ali Hasan* v. *Lt. Governor, Delhi*, (1977)79 PLR 246 (DB).
8. *Ali Hasan* v. *Lt. Governor, Delhi*, (1977)79 PLR 246 (DB).

impliedly repeal the Land Acquisition Act, 1894, within the territory of Delhi, and both the statutes can stand together. The repeal must, if not express, flow from necessary implication as the only intendment. The provisions must be wholly incompatible with each other so that the two provisions operating together would lead to absurd consequences which intention could not reasonably be imputed to the Legislature. It is only when a consistent body of law cannot be maintained without abrogation of the previous law that the plea of implied repeal should be sustained. To determine if a later statutory provision repeals, by implication, an earlier one it is accordingly necessary to closely scrutinize and consider the true meaning and effect both of the earlier and the later statutes. Until this is done it cannot be satisfactorily ascertained if any fatal inconsistency exists between them. The meaning, scope and effect of the two statutes, as discovered on scrutiny, determines the legislative intent as to whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface.

Statutes *in pari materia* although in apparent conflict should also, so far as reasonably possible, be construed to be in harmony with each other and it is only where there is an irreconcilable conflict between the new provisions and the prior statute relating to the same subject-matter, that the former, being the later expression of the Legislature, may be held to prevail, the prior law yielding to the extent of the conflict. Notwithstanding a provision or a section in two different statutes is *in pari materia*, it cannot be assumed that both the statutes are also *in pari materia*, unless it is found that one is simply carbon copy of the other.[1]

The same rule of irreconcilable repugnancy controls implied repeal of a general by a special statute. The subsequent provision treating a phase of the same general subject-matter in a more minute way may be intended to imply repeal *pro tanto* of the repugnant general provision with which it cannot reasonably co-exist when there is no inconsistency between the general and the special statute, the latter may well be construed as supplementary.[2]

The doctrine of implied repeal is based on the presumption that the Legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute book and that when the court applies this doctrine it does no more than give effect to the intention of the Legislature in the usual way by examining the scope and objects of the two enactments and by comparison of their provisions.[3] One must start with the presumption against repeal by implication and the absence of a repealing provision in the later Act the intention not to repeal the existing earlier legislation is all the greater. This presumption is, however, rebutted and a repeal is inferred when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that they cannot stand together.[4]

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1. *Ram Ballab Pd. Singh* v. *State of Bihar*, AIR 1986 Pat 218 : 1986 Pat LJR (HC) 249 : 1986 BBCJ (HC) 249 : 1986 BLJR 344 (FB).
2. *Municipal Corporation of Delhi* v. *Shiv Shankar*, (1971)3 SCR 607, 611-12 (Dua, J.).
3. *Municipal Council, Palai* v. *Joseph, T.J.*, AIR 1963 SC 1561 at p. 1565, followed in *Ganeshlal* v. *Board of Revenue*, ILR 1966 Raj 577 : 1966 Raj LW 396; *see* also *Joseph Pothan* v. *State of Kerala*, AIR 1965 SC 1514; *Ratanlal Adukia* v. *Union of India*, AIR 1990 SC 104; (1989)3 JT (SC) 148 : 1989 ACJ 1080 : (1989)3 SCC 537 (overruling AIR 1971 Assam 69 & AIR 1985 Mad 130.).
4. *Municipal Council, Palai* v. *Joseph, T.J.*, AIR 1963 SC 1562 at p. 1561; *TMLJ. Baradari* v. *Improvement Trust*, AIR 1963 SC 976, 979; *Northern India Caterers (Private), Ltd.* v. *State of Punjab*, AIR 1967 SC 1581, where the question was re-examined with reference to previous case-law. *See* also *Raja Ram Varma* v. *State of U.P.*, AIR 1968 All 369 (FB);

Court has to suppose that the Government have a consistent design and policy and intend nothing that is inconsistent or incongruous. Prior statutes are held to be repealed by implication by subsequent statutes if the prior enactment is special and the subsequent one is general. This rule must not be pressed too far. If a special enactment and a subsequent general enactment are absolutely repugnant and inconsistent with one another, the Courts have no alternative but to declare the prior special enactment as repealed by the subsequent general Act. In all such cases the legislative intention, rather than grammar or letter of the enactment, is the determining factor. If the intention is found to be to sweep away all previous orders and to establish one rule for all belonging to a class of persons that will be sufficient to get rid of any previous special provision.[1] There is no doubt that a repeal by implication is just as effective as by express words.[2] The general rule is that when you have an Act of Parliament enacting particular provisions and in a subsequent Act there are provisions which are inconsistent with the provisions of the first Act, both enactments cannot stand together. The enactment in the second Act stand and repeals the enactment in the first Act. Of course, from the necessity of the case it is an implied and not an express repeal.[3] Where two statutes passed in the same year appear to be repugnant, that which was passed latest must prevail.[4]

A repeal by implication is only effected when the provisions of a later enactment are *so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together*.[5] When an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it unless the two Acts are in irreconcilable conflict or unless the later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it and the intention of the Legislature to repeal must be clear and manifest.[6]

No repeal can, therefore, be implied unless the two Acts cannot stand together.[7] But where there are orders under two different Acts each inconsistent with the other and each Act providing that any order made thereunder shall have effect notwithstanding anything inconsistent therewith in any other enactment or instrument having effect by virtue of any other enactment, the doctrine of repeal by repugnancy does not apply and both orders remain in force

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Yembu Govinda Sival Guvlekar v. *Union of India*, AIR 1969 Goa 39; *Gujarat Electricity Board* v. *Shantilal R. Desai*, AIR 1969 SC 239; *Shakuntala Devi* v. *Dy. Director, Consolidation*, 1968 All WR (HC) 271; *Baliah, T.S.* v. *Rangachari, T.S.*, AIR 1969 Mad 145; *Ali Hasan* v. *Lt. Governor, Delhi*, (1977)79 Punj LR 246 (DB).

1. *Ramji* v. *Distt. Superintendent, Western Railway*, AIR 1957 Madh Bharat 155, 158; *M. Krishna Panicker* v. *V.M. Appukuttan Nair*, (1993)1 Ker LT 725.
2. *Summers* v. *Holborne District Board of Works*, (1893)1 QB 612; *Hakam Khudayar* v. *Emperor*, ILR 1940 Lah 242 : AIR 1950 Lah 129 (FB).
3. *Summers* v. *Holborne District Board of Works*, (1893)1 QB 612; *per* Cave, J.; *R.* v. *Inland Revenue Commissioner*, (1888)21 QBD 569; see *Boden* v. *Smith*, (1849)18 LJCP 121 (period of limitation); *Daw* v. *Metropolitan Board of Works*, (1862)142 ER 1104 (two public bodies); but see *Public Prosecutor* v. *Ranganayakulu*, AIR 1927 Mad 602 : ILR 50 Mad 845 (both provisions could co-exist).
4. *British Columbia Electric Ry. Co., Ltd.* v. *Stewart*, 1913 AC 816.
5. *Kutner* v. *Phillips*, (1891)2 QB 267, quoted in *Custodian, Evacuee Property* v. *Simla Banking and Industrial Co. Ltd.*, (1951)53 PLR 184, 187; *Ishwar Chandra Chitalangia* v. *State*, 81 CWN 690 (DB); *Ali Hassan* v. *Lt. Governor Delhi*, (1977)79 PLR 246 (DB); *Zaverbhai Amardas* v. *State of Bombay*, AIR 1954 SC 752; *T.S. Baliah* v. *T.S. Rangachari*, AIR 1969 SC 701; *Municipal Board Bareilly* v. *Bharat Oil Co.*, AIR 1990 SC 548; *Raj Kumar* v. *Food Corporation of India*, AIR 1990 Raj 64.
6. *Red Rock* v. *Henry*, 27 L Ed 251, 253 (Woods, J.) : Circumstances may, however, justify the conclusions of an earlier one is a continuation rather than an abrogation and re-enactment of the earlier Act; *Posadas* v. *National City Bank*, 80 L Ed 351, 356 : 296 US 497 (Sutherland, J.); *United States* v. *Tynen*, 28 L Ed 153,154 (Field, J.).
7. *Mathra Prasad & Sons* v. *State of Punjab*, AIR 1969 SC 745.

in spite of their repugnancy.[1] It is a maxim of law that implied repeals are not to be favoured, and where two statutes are entirely affirmative and identical, no question of inconsistency could arise.[2] Where the operative terms of two enactments are identical and the enactments, so to speak, seem parallel to each other, there would be no scope for the application of the doctrine of implied repeal and that would be particularly in case where the earlier enactment is one of temporary duration while the later is a permanent enactment.[3]

Implied repeal is a question of fact. No vested right exists in a citizen to ask for a declaration that a statutory provision has been impliedly repealed.[4]

Where there is a 'clear and direct' inconsistency between two Acts and it is 'absolutely irreconcilable', bringing the two Acts into 'direct collision', *then only* one of these may be regarded as impliedly repealed by the other.[5]

5. Onus in case of repeal by implication.—Repeal by implication is not favoured and such interpretation is not to be adopted unless it is inevitable. Any reasonable construction which offers an escape from it is more likely to be consistent with the real intention.[6] When the repeal is not express the burden is on those who assert that there is an implied repeal to show that the two statutes cannot stand consistently, the one with the other.[7] There is a presumption against implied repeal;[8] a presumption classically founded on the doctrine that the Parliament, when enacting a law, is presumed to picture or keep in view the whole body of the existing law on the subject and, therefore, if a repeal of the existing law is intended the Parliament would much rather expressly specify the offending provision than leave it to the not-too-certain rule of implied repeal during the interpretative process by the Courts.[9]

A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is a reasonable presumption that the Legislature did not intend to keep really contradictory enactments on the statute book, or on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted, unless it is inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention.[10] Repeal by implication is never to be favoured; it is no doubt the necessary consequence of inconsistent, legislation whenever it occurs, but which must not be imputed to the Legislature unless absolutely necessary.[11] We ought not to hold a sufficient Act repealed, not expressly as it might have been, but by implication, without some strong reason.[12] Unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not

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1. *Surajmal* v. *State of Rajasthan*, AIR 1967 Raj 104.
2. *State of M.P.* v. *Ramesh Nai*, 1975 MPLJ 1 (*per* Malik, J.) (FB); *Satya Prakash* v. *State*, 1983 All Cr C 212 (DB).
3. *Trust Mai Lachhmi Sialkot Biradari* v. *Chairman, Amritsar Improvement Trust*, (1963)1 SCR 242, 250 (Ayyangar, J.).
4. *State of U.P.* v. *Hindustan Aluminium*, AIR 1979 SC 1459.
5. *M.Karunanidhi* v. *Union of India*, AIR 1979 SC 898; *see* also *State of Maharashtra* v. *C.P. Managanese Ore Co.*, AIR 1977 SC 897; *DC Jain* v. *University of Rajasthan*, AIR 1977 Raj 89; *M. Redamma* v. *Revenue Divisional Officer*, AIR 1978 AP 367 (FB).
6. *Bhuban Chandra* v. *Biswanath Dey*, AIR 1962 Cal 34, 36, quoting Maxwell, 9th Ed. at p. 173.
7. *Lybbe* v. *Hart*, (1883)29 Ch D 8; The India, (1864)33 LJ Ad 193; *Charlton* v. *Tonge Overseers*, (1871) LR 1 CP 178.
8. *Ishwar Chandra Chitalangia* v. *State*, 81 Cal WN 690 (DB).
9. *Chautala, etc., Transport Society* v. *State of Punjab*, AIR 1962 Punj 94, 98.
10. Maxwell on *Interpretation of Statutes*, 11th Ed. at p. 162; *Kanhaiyalal* v. *Vilayat Khan*, AIR 1958 Madh Pra 63, 64.
11. *Dobbs* v. *Grand Junction Waterworks, Co.*, (1883)9 App Cas 9; *Hakam Khudayar* v. *Emperor*, AIR 1940 L 129 : ILR 1940 Lah 242 (FB); *Shridhar* v. *Ganesh*, 1938 NLJ 133.
12. *Great Western Rail Co.* v. *Swinden and Cheltenham Rail Co.*, (1884)9 AC 787, 809; *Lewis* v. *Berry*, (1935)1 Ch 274, 279; *Kalapataru Das* v. *Commissioner, Hindu Religious Endowments*, AIR 1949 Orissa 46.

be implied, and special Acts are not repealed by general Acts, unless there is a necessary inconsistency in the two Acts standing together.[1] Where Parliament passed a later Act without reference to an earlier Act, and that earlier Act is one which has been in force for a long time, and is, therefore, well known, it seems reasonable that we should try to construe the two consistently if it is possible to do so.[2] The language of every statute must be construed as far as possible in accordance with the terms of every other law which it does not in express terms modify, vary or repeal. It is not permissible to revoke or alter an enactment by the process of construction when the words in their ordinary meaning may be capable of proper operation, without such revocation or alteration. Repeal by implication is seldom favoured and it may be reasonably presumed that the Legislature does not usually intend to keep on the statute book enactments which are contradictory of or in conflict with each other : the Legislature must also be presumed not to effect an important measure like the repeal, or amendment of a law without expressing a clear and unambiguous intention to do so. Such an interpretation unless inevitable should be avoided. The primary function of the courts, while interpreting apparently conflicting provisions of different statutes, would thus always be to harmonise such provisions and if reasonably possible to avoid overlapping, conflict, implied repeal or abrogation. Any reasonable construction which offers an escape from implied repeal must be considered to be in consonance with the true intention of the Legislature.[3]

In a forensic situation where two laws exist on the same subject, the court should discern the intention of the Legislature and interpret the law to make it effective and not to frustrate legislative intention.[4]

An enactment or a rule having the force of law cannot be held to be repealed by implication by a later enactment or statutory rules unless the provisions of the earlier enactment or rule are plainly repugnant to those of the subsequent enactment or rule and the entire subject-matter of the first is taken away by the second. Repeal by implication is not to be lightly inferred and the mere inclusion in a later statutory provision of a portion of the subject-matter contained in an earlier statutory provision cannot by itself have the result of a repeal of the earlier provisions. Law does not favour repeal by implication and it is only in the last resort that courts hold that one enactment is repealed by another even without express words. It is only when the provisions of the later Act are so inconsistent with or repugnant to those of an earlier Act, that the two cannot stand together, that the earlier stands impliedly repealed by the later.[5] Repeal by implication is the consequence of contradictory or inconsistent legislation and should not be imputed to a legislative or rule-making authority unless one is driven to do so. Courts do not look with favour upon implied repeals, and the presumption is always against the intention of the Legislature to repeal legislation by implication. The absence of an express provision in a statute for the repeal of prior law gives rise to this presumption, which is accentuated where the various statutes were enacted at the same session of the Legislature. Consequently the intent to repeal must clearly appear, and such repeal will be avoided if at all possible. This presumption against the intent to repeal by implication rests upon the assumption that the Legislature enacts laws with a complete knowledge of all existing laws pertaining to the same

1. *Kutner* v. *Phillips*, (1891)2 QB 267, 271.
2. *Hill* v. *Pannefer*, (1904)1 KB 811, 818.
3. *Jullundhur T.C. Society* v. *Punjab State*, AIR 1959 Punj 34, 36; *Khimji Poonja* v. *Ramanlal*, AIR 1960 Bom 532; *Baliah, T.S.* v. *Rangachari, T.S.*, AIR 1969 Mad 145.
4. *Nand lal* v. *State of Haryana*, AIR 1980 SC 2097; *Shyamakant Lal* v. *Rambhajan Singh*, AIR 1939 FC 74; *O Sullivan* v. *Noarlung Meat Ltd.*, 1957 AC 1; *M. Krishna Panickar* v. *M. Appukuttan Nair*, (1993)1 Ker LT 725.
5. *S.I.E.L.R. Organization* v. *Madras State*, AIR 1954 Mad 737.

subject so that the failure to add a repealing clause indicates that the intent was not to repeal any existing legislation. This presumption, however, is overthrown if the new law is inconsistent with or repugnant to the old law, for the inconsistency or repugnancy reveals an intent to repeal the existing law. Similarly, when a statute specifically repeals certain Acts or parts of an Act it will not be presumed that the Legislature intended to repeal any Act or any part of an Act not mentioned.[1] Even in a case where there is repeal or amendment of an earlier Act by necessary implication, the repeal need not extend to the whole of the provisions of an earlier enactment and certain provisions of the earlier enactment may survive the repeal or amendment.[2]

What words would constitute a repeal by implication, Dr. Lushington[3] found it impossible to say from authority or decided cases. His Lordship observed : "If on the one hand, the general presumption must be against such a repeal, on the ground that the intention to repeal, if any had existed, would have been declared in express terms so, on the other, it is not necessary that any express reference be made to the statute which is to be repealed. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the entire subject-matter were taken away by the subsequent statute. Perhaps the most difficult case for consideration is where the subject-matter has been so dealt with in subsequent statutes, that, according to all ordinary reasoning, the particular provision in the prior statute could not have been intended to subsist, and yet if it were subsisting no palpable absurdity would be occasioned." "The Court must," to use the words of Hardcastle in his work on the *Interpretation of Statutes*,[4] "be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together, before they can from the language of the latter imply the repeal of an express prior enactment, *i.e.*, the repeal if not express, flows from necessary implication."[5] "As a general rule it is not open to controversy, that where a new statute covers the whole subject-matter of an old one, adds offences, and prescribes different penalties for those enumerated in the old law, that the former statute is repealed by implication; as the provisions of both cannot stand together."[6] If the provisions are not wholly inconsistent but may become inconsistent in their application to particular cases, then to that extent the provisions of the former Act are excepted or their operation is excluded with respect to cases falling within the provisions of the later Act.[7]

6. Cases of repeal by necessary implication.—No repeal can be implied, unless there is an express repeal of an earlier Act by the later Act, or unless the two Acts cannot stand together.[8] Hence, a statute is repealed by implication in the following cases, namely :

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1. Crawford on *Construction of Statutes*, at pp. 630-31; *Kanhaiyalal* v. *Vilayat Khan*, AIR 1958 Madh Pra 63, 64.
2. *Chinna Kannu Pillai* v. *Sundaram*, (1950)2 Mad LJ 644; *Rangacharya* v. *Dasacharya*, ILR 37 Bom 231, 242-43; *Baldeo Singh* v. *Government of Pepsu*, AIR 1954 Pepsu 98. (The rule of interpretation is of course that where the later Act does not purport or affect to supersede an earlier Act, the Court will endeavour to read the two enactments together and to avoid conflict, if possible. There cannot be a repeal by implication unless the two statutes are obviously inconsistent); *Fox* v. *Pett*, (1918)2 KB 196.
3. The India, (1864)88 LJ Ad 193, 194.
4. Craies on *Statute Law*, 5th Ed. at p. 338.
5. *Goodwin* v. *Phillips*, (1908)7 CLR 1, 10-11 (*per* Barton, J.); *Hakam Khudayar* v. *Emperor*, ILR 1940 Lah 242 : AIR 1940 Lah 129 (FB); *Municipal Council, Palai* v. *Joseph, T.J.*, AIR 1963 SC 1561, 1565.
6. *Norris* v. *Crocker*, 13 Howard 429, 438 (*per* Catron, J.); quoted by Issacs, J. in *Goodwin* v. *Phillips*, (1908)7 CLR 1 .
7. *Goodwin* v. *Phillips*, (1908)7 CLR 1, 7 (Griffiths, C.J.).
8. *Mathra Parshad & Sons* v. *State of Punjab*, AIR 1962 SC 745, 748; *Ali Hasan* v. *Lt. Governor, Delhi*, (1977)79 PLR 246 (DB).

(1) If its provisions are plainly repugnant to a subsequent statute.

(2) If the two standing together would lead to wholly absurd consequences.

(3) If the entire subject-matter of the first is taken away by the second.[1]

In this behalf Crawford in his *Statutory Construction*,[2] says : "Of course, where a repeal is effected through implication, the latter enactment thus affecting pre-existing law must be subjected to close scrutiny in the light of its own provisions and those of the law apparently abrogated in whole or in part. The construction of the new law becomes an important consideration, since its meaning and scope will determine whether a repeal takes place and if so, its extent. And usually one of two questions will arise : (1) Whether the new law is intended as a substitute for the old; or (2) whether the new law is irreconcilably inconsistent with the old, so that the former is thereby terminated. In brief, the problem will be simply to determine what is the legislative intention—whether the old law shall cease or whether it shall be supplemented." "The entire problem," says Sutherland in *Statutory Construction*,[3] "of determining the extent to which existing legislation is repealed by subsequent statutes ultimately resolves itself into one of legislative intent." There is indeed authority to show "that where the intention of the Legislature was apparent, that the subsequent Act should not have such an operation, there, even though the words of such statute, taken strictly and grammatically, would repeal a former Act, the Courts of law, judging for the benefit of the subject, have held, that they ought not to receive such a construction".[4] But when the second Act was passed reciting the first and saying that it was not repealing it, if it enacted a rule that was contrary to it, it had really the effect of repealing it, and was the same thing as if it had been repealed.[5] It is no doubt true that a law is not repealed by becoming obsolete but when it no longer served any useful purpose the Act must be deemed to have been impliedly repealed.[6]

When a *revising* statute covers the whole subject-matter of antecedent statutes the revising statute virtually repeals the antecedent enactment unless there is something in the nature of the subject-matter in the revising statute to indicate a contrary intention.[7]

7. Test of implied repeal.—The test as to whether there has been a repeal by implication by subsequent legislation is this : Are the provisions of a later Act so inconsistent with or repugnant to the provisions of an earlier Act that the two cannot stand together?[8] The test to be applied in considering whether there has been a repeal by implication is very clearly stated by Smith, J., in *Kutner* v. *Phillips*.[9] "Now a repeal by implication is only effected when the

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1. Halsbury : *Laws of England*, 4th Ed., Vol. 44, Para 966.
2. At p. 628.
3. 3rd Ed., Vol. I at p. 454.
4. *Williams* v. *Pritchard*, (1790)100 ER 862.
5. *Boobs* v. *Grand Junction Waterworks Co.*, (1883)9 AC 49, *per* Lord Blackburn.
6. *Jelejan Hormosji* v. *State of Andhra Pradesh*, AIR 1965 Andh Pra 288, 292 (Satyanarayana Raju, J.) : After the extension of the Code of Civil Procedure, 1908 to the territories forming part of the State of Hyderabad, the Hyderabad suits against Government Act, 5 of 1320 Fasli, was no longer serving the purpose for which it was enacted; *The Commissioner of Land Administration, Chepauk, Madras and others* v. *The Executive Officer, Arulmigu Theagarajaswamy Devasthanam, Thiruvarur*, (1996)1 MLJ 1 (Mad).
7. *Kohlsaat* v. *Murphy*, 24 L Ed 844, 846 (Clifford, J.).
8. *West Ham (Church Wardens, etc.)* v. *Fourth City Mutual Building Society*, (1892)1 QB 654, 658; *Kutner* v. *Phillips*, (1891)2 QB 267; *see* also *Wallwork* v. *Fielding*, (1922)2 KB 66; *Karsandas Ramji* v. *Karsanji Kalyanji*, AIR 1953 Sau 113; *Municipal Council, Palai* v. *Joseph T.J.*, AIR 1963 SC 1561, 1562; *T.M.L.S. Baradari* v. *Improvement Trust*, AIR 1963 SC 976, 979; *Arthur* v. *Homer*, 24 L Ed 811, 812 (Hunt, J.).
9. (1891)2 QB 267, 271-72; *see* also *Yarmouth Corporation* v. *Simmons*, 10 Ch D 518, 527; *Powell* v. *Appollo Candle Co.*, 10 AC 282, 291; *Gwalior R.M.S.Co.* v. *Union of India*, AIR 1960 MP 330, 344 (Statute imposing taxation and one granting exemption therefrom can stand together).

provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim, *leges posteriores contrarias abrogant* applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation or unless there is a necessary inconsistency in the two Acts standing together."[1] As a general rule it is not open to controversy, that where a new statute covers the whole subject-matter of an old one, adds offences, and prescribes different penalties for those enumerated in the old law, the former statute is repealed by implication, as the provisions of both cannot stand together.[2] So, when there is clear repugnancy between a later Union Law and an earlier State Law, it must be held that there is implied repeal of the State Law by the Union Law if the latter is a complete body in itself.[3]

Basing themselves on the authoritative pronouncements of the Supreme Court, their Lordships of the Calcutta High Court in the case of *Ishwar Chandra Chitalangia* v. *State*,[4] laid down the following three tests :

(1) Whether there is a direct conflict between the two provisions.
(2) Whether Parliament intended to lay down an exhaustive Code in respect of the subject-matter replacing the Act of the State Legislature.
(3) Whether the law made by Parliament and law made by State Legislature occupy the same field.

Another branch of the same proposition is that if the provisions are not wholly inconsistent, but may become inconsistent in their application for particular cases, then to that extent the provisions of the former Act are excepted or their operation is excluded with respect to cases falling within the provisions of the later Act.[5]

An amending Act may, either specifically or by necessary implication continue certain essential provisions in a repealed Act. This is particularly so when a repealing Act specifically states that the provisions of the repealed Act, shall to the extent of repugnancy, be void. It is also clear that an inconsistency between two statutes necessary to override or repeal the earlier one, must be such that the two cannot be reconciled nor can they stand together. Upon the interpretation of the High Court Regulation and the High Court Act, and on the principle *stare decisis* the appellate side of the Hyderabad High Court was held to have revisional jurisdiction over the orders of the Original side of the High Court.[6] The rule is that a particular enactment is not repealed by the general enactment in the same statute. So, where a person was appointed under a prior Act which was repealed by a later Act which did not interfere with the conditions of service under the earlier Act, the person retains his service subject to the earlier conditions.[7]

General Act should be construed as not repealing a particular one, that is one directed towards a special object or class of objects and more particularly so when the new Act is couched in affirmative language and the two can stand together. Where there is something in the

1. *State of Orissa* v. *M/s. M.A. Tulloch and Co.*, AIR 1964 SC 1284.
2. *Norris* v. *Crocker*, 13 Howard 429, 438; *see* also *Mitchell* v. *Brown*, 28 LJMC 53; *Youle* v. *Mappin*, 30 LJMC 234, 237; *Fortescue* v. *Vestry of St. Mathew, Bethnal Green*, (1891)2 QB 170; *Misralal* v. *State of Orissa*, AIR 1962 Orissa 24.
3. *Misralal* v. *State of Orissa*, AIR 1962 Orissa 24.
4. 81 Cal WN 690.
5. *Goodwin* v. *Phillips*, (1908)7 CLR 1, 7 (Griffiths, C.J.).
6. *C.I. Bank* v. *M.S. Ali Khan*, AIR 1956 Hyd 65 (FB).
7. *Gur Bux Raj* v. *Nagar Palika, Lucknow*, AIR 1966 All 552.

nature of a later general law which makes it unlikely that an exception was intended as regards the special Act then the general law will be taken to have repealed the special one.[1]

Where a statute made it actionable to sell a pirated copy of a work with knowledge that it was pirated and a subsequent Act contained a similar provision but without any mention of guilty knowledge, it was held that the earlier Act was so far abrogated that an action was maintainable for a sale made in ignorance of the piracy.[2]

If the co-existence of two sets of provisions would be destructive of the object for which the later Act was passed, the earlier would be repealed by the later.[3] Lord Halsbury while discussing whether there was inconsistency between an earlier and a later statute observed : "Where is the inconsistency if both may stand together and both operate without either interfering with the other?"[4]

In *Public Prosecutor* v. *Ranganayakulu Chettiar*,[5] the accused was charged under Sections 249 and 338 of Madras District Municipalities Act, V of 1920, for using a rice mill within three miles of Salem Municipality without licence. It was urged on his behalf that Section 249 had been repealed, because local boards had similar powers of licensing under Section 193 of the Madras Local Boards Act, XIV of 1920. Jackson, J., repealed the contention and observed : "Each local authority is invested with similar power because each authority has similar responsibility. To take the present case the Health Officer of the Municipality, and the Heath Officer of the District may each find that lung disease is prevalent and each trace to the rice mill and each ask his governing body to take necessary steps. The point in Maxwell which the learned Magistrate overlooks is that for one statute to cancel another they must be mutually destructive, for example, the Legislature would not have constituted two distinct bodies to name the streets in a town. The question is whether the Legislature can be said not to have intended the two rights to exist together. There is no reason to presume that the Legislature did not want both the Municipality and the District Board to be vigilant in the interest of public health; in fact, the natural presumption is exactly the other way." Where the question arises whether a rule framed under an Act of the Indian Legislature has, by implication, repealed a bye-law made under authority of local Legislature, the test to be applied to determine the question raised is, 'whether there is repugnancy between the two provisions?[6]

Commenting upon the inconsistency, which shall cause the repeal of an earlier statute, Lord Blackburn observed in *Garnett* v. *Bradley*[7] : "Now, my Lords an Act saying that all statutes inconsistent with itself shall be repealed, really goes no further than the general law, but it becomes a question upon which there is a vast quantity of authority in different ways, as to what shall be the inconsistency which shall cause the repeal of an earlier statute or existing general rule. I do not know that it is better stated anywhere than in *Fosters'* case,[8] where it is

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1. *State of Madhya Bharat* v. *Mohanlal Motilal*, AIR 1957 MB 58, 61 (Nevaskar, J.).
2. *West* v. *Francis*, (1822)5 B & Ald 737; *Gambart* v. *Summer*, (1859)29 LJ Ex 98.
3. Maxwell, 11th Ed. at pp. 160, 161; *Lal Mohan* v. *Ram Nath Shaha*, AIR 1954 Tripura 17-20; *State of Madras* v. *Krishnan*, AIR 1961 Mad 92, 104.
4. *Tabernacle Permanent Building Society* v. *John Knight*, 1892 AC 298; *Frannagon* v. *Shaw*, (1920)3 KB 96, 105; *Ram Chandra* v. *District Board, Ganjam*, AIR 1951 Orissa 1, 4 (SB).
5. ILR 59 Mad 845 : AIR 1927 Mad 602; but *see* also *Daw* v. *Metropolitan Board of Works*, (1862)31 LJCP 223; where two statutes give authority to two public bodies to exercise powers which cannot consistently with the object of the Legislature co-exist, the earlier must necessarily be replaced by the later statute. To the same effect is *Great Central Gas Consumers Co.* v. *Clarke*, (1862)32 LJCP 41 (inconsistent rates).
6. *Manager, Indian Motor Taxi Cab Co.* v. *Corporation of Calcutta*, AIR 1921 Cal 107.
7. (1878)3 AC 944, 965-966.
8. (1615)6 Rep at p. 107 : 11 Co Rep 62b.

said : 'This Act of 35 Eliz. is all in the affirmative, and, therefore, shall not repeal or abrogate a precedent affirmative law before; and the said rule that *leges posteriores priores constrarias abrogant* was well agreed; but as to this purpose *contrarium est multiplex*. And then he proceeds to give five instances, I think, of different rules, where he says that there may be a contrariety shown in the statute, and he ends by saying "what I have quoted .....I shall not attempt to do what Lord Coke has done. I shall not attempt to recite all the contrarieties which make one statute inconsistent with another; the *contraria* which make the second statute repeal the first. But there is one rule, a rule of commonsense, which is found constantly laid down in these authorities to which I have referred, namely, that when the new enactment is couched in general affirmative language, and the previous law, whether a law of custom or not, can well stand with it, for the language used is all in the affirmative, there is nothing to say that the previous law shall be repealed, and, therefore, the old and the new laws may stand together. There the general affirmative words used in the new law would not, of themselves, repeal the old. But when the new affirmative words are, as was said in *Stradling* v. *Morgan*,[1] such as, by their necessity to import a contradiction, that is to say, where one can see that it must have been intended that the two should be in conflict, the two could not stand together : the *second* repeals the *first*."

When the later of two general enactments is couched in negative terms, it is difficult to avoid the inference that the earlier one is impliedly repealed by it. Where a general Act exempted from licensing regulation the sale of a certain kind of beer and a subsequent one enacted that no beer should be sold without a licence, it would obviously be impossible to save the former from the repeal implied in the latter.[2] Similarly, when the former order sought to compel the dealers to sell salt in accordance with the instructions issued by the District Magistrate but by a later notification monopoly was given to one dealer, the earlier order must be deemed to have been impliedly repealed by the later notification.[3]

If a later statute again describes an offence created by a former statute, and affixes a different punishment to it, varying the procedure, etc., giving an appeal where there was no appeal before, the prosecutor must proceed for the offence under the later statute.[4] The principle does not, however, apply where the offence described in the later Act is not the same as described in the earlier Act, as for example, where the ingredients of the two offences are different.[5] If an offence is punishable by the general law such as the Indian Penal Code, and also by a later special law applicable to particular persons and particular circumstances, the special law should apply." If one statute makes the doing of an act felonious and a subsequent Act makes it only penal, the latter is considered as a virtual repeal of the former."[6] This is generally the case if the special Act read as a whole is intended to be complete in itself.[7]

In cases where the special Act is not a complete Code in itself repeal by implication would not be inferred. Inasmuch as the Press (Objectionable Matter) Act, 1951, does not provide for

1. 1560 Plowdon, 199, 206.
2. *Read* v. *Storey*, (1861)30 LJMC 110.
3. *Lal Mohan* v. *Ramnath Shaha*, AIR 1954 Tripura 17; *Tarabhai* v. *State of Bombay*, AIR 1954 SC 752.
4. *Michell* v. *Brown*, (1858)120 ER 909; *A.G.* v. *Lockwood*, (1842)152 ER 160; *R.* v. *Youle*, (1861)158 ER 311; *Robinson* v. *Emerson*, (1866)14 LT 291; *Whitehead* v. *Smithers*, (1877)2 CPC 553; but *see* also *Sings* v. *Pay*, (1889)60 LT 602; Empire Digest, Vol. 42 at p. 767.
5. *Om Prakash* v. *State of U.P.*, AIR 1957 SC 450.
6. *Rex* v. *Davis*, 1 Leach Cr C 271 (1783); quoted by Lord Esher in *Lee* v. *Dangar*, LR (1892)2 QB 337, 348; *see* also *Kuleda Prasad Majumdar* v. *Emperor*, 4 Cr LJ 439, 442 : 11 CWN 100.
7. *State* v. *Dinanath*, AIR 1956 Punj 85; *Gur Bux Raj* v. *Nagar Palika, Lucknow*, AIR 1966 All 552.

punishment for printing and publishing obscene matter which is provided for by Section 292, I.P.C., but provides only against the repetition of such publications, and the ingredients of the offence laid down in Section 292, I.P.C., cannot be said to have been repeated in the Act of 1951, and the Act of 1951 *qua* the provision of Section 292, I.P.C., does not cover the same ground, it cannot be said that Section 292, I.P.C., cannot be read together with the 1951 Act.[1]

The Prevention of Corruption Act, 1947, does not expressly repeal any of the provisions of the Penal Code, nor did Section 5(1)*(c)*, Prevention of Corruption Act, as it stood before the amendment of 1952, impliedly repeal Section 409, I.P.C., it was pointed out that there is no repugnancy or inconsistency between the two enactments. The one is enacted as a supplementary measure to the other with a different and special object. The two provisions can co-exist side by side even though the one may, to some extent, overlap the other.[2]

When there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by an earlier legislation, it is not to be held that such earlier and special legislation is either indirectly repealed or altered or derogated from merely by force of such general words without any express intention to do so.[3]

A later Act covering an entire subject is deemed to repeal an earlier one on the same subject without a repealing clause. The basic rule is that general legislation must give way to the special legislation, though a subsequent general legislation is not treated as repealing an earlier special legislation. Failure to add a repealing clause may lead to the presumption that it was not the intent of the Legislature to repeal the pre-existing law nor such a presumption may be overthrown when the comparison of the laws reveals an intention on the part of the Legislature to repeal the previous by the present.[4]

It is an essential condition for the application of the rule of implied repeal that there should be *identity of subject-matter* in the two enactments. There are vital differences between the Industrial Disputes Act, 1947, and the Minimum Wages Act, 1948, both as regards their purpose and scope. While the scope of an enquiry under the Minimum Wages Act is to fix minimum wages, under the Industrial Disputes Act, 1947 when a dispute regarding wages is referred to the adjudication of a tribunal, the question that has to be decided is, what is the fair wage to be awarded on the facts of the particular case. The difference between the two Acts is substantial in character and the Minimum Wages Act was not intended *co-extenti* to repeal Industrial Disputes Act and take its place as a substitute.[5]

8. Distinction between repeal and amendment.—Now it is clear that the provisions of an earlier Act may be revoked or abrogated in particular cases by a subsequent Act, either from the express language used being addressed to that particular point, or from implications or inference from the language used.[6] As is thus apparent, pre-existing laws may be repealed by the enactment of new and independent legislation, by amendments and by revision and codification.

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1. *State* v. *Dinanath*, AIR 1956 Punj 85.
2. *State* v. *Raj Kumar*, AIR 1956 Pepsu 1 (AIR 1952 Punj 89 dissented from).
3. *Gopalan* v. *Sippora*, 1951 KLT 337.
4. *Northern India Caterers (Private), Ltd.* v. *State of Punjab*, AIR 1963 Punj 290 : ILR (1963)1 Punj 761 : 65 Punj LR 344 (FB). *Bank of India* v. *M/s. Vijay Transport*, AIR 1988 SC 151 : (1987)5 JT 389 : (1987)2 LS (SC) 57: (1987)2 APLJ (SC) 80 : (1987)8 Reports 581 : (1988)1 Andh LT 137 : (1988)1 UJ (SC) 91 : (1988)63 Com Cas 428 : 1988 Bank J 175 : 1988 Supp CC 47, the Supreme Court held that the Banking Companies Act is a special law *vis-a-vis* the Agriculturists Relief Act and overruled AIR 1983 Andh Pra 347.
5. *S.I.E.L.R. Organisation* v. *Madras State*, AIR 1955 Mad 45, 46-47.
6. *In re* Williams, (1887)36 Ch D 573 at p. 578 (*per* North, J.); *Antaryami Patra* v. *State of Orissa*, 1993 Cri LJ 1908 : (1993)75 Cut LT 803.

An Act may be repealed not merely by a statute, the only provision of which is that the Act is repealed but also by a statute which besides repealing the[1] Act enacts provisions to be substituted. As a matter of fact a majority of repealing Acts are those which re-enact the law. In essence there is no distinction between such laws and laws which merely profess to amend. If the amendment of the existing law is small, the Act professes to amend; if it is extensive, it repeals the law and re-enacts it.[1] Sutherland in *Statutory Construction*[2] says : "The distinction between repeal and amendment, as these terms used by the Courts, is arbitrary. Naturally, the use of these terms by the Court is based largely on how the Legislatures have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitle the Act as an amendment..... When a provision is withdrawn from a section, the Legislatures call the Act an *amendment*, particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a *repeal*. Thus as used by the Legislatures, amendment and repeal may differ in kind—addition as opposed to withdrawal; or only in degree—abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree—addition of a provision to a section to replace a provision being abrogated as opposed to abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognized that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal the abrogation of an existing statutory provision—and have, therefore, applied the term 'implied repeal' and the rules of construction applicable to repeals to such amendments. The Courts also have recognized that Acts which the Legislature has treated as original frequently have the same effect in substance as amendments and repeals and that an independent Act in effect adds a provision to a prior Act pertaining to the same subject-matter or in effect adds a provision to a prior Act and abrogates a part of it by being in conflict with it, and have, therefore, applied the term 'implied amendment' to the first two of these results and the term 'implied repeal' to the last. The term 'implied amendment' has been used chiefly by Courts in determining whether the constitutional requirement as to the form of an amendatory Act has been violated, whereas the term 'implied repeal' has been used to justify the application to the Act of the rules of construction developed for express repeals. Where an independent Act in effect adds a provision to a prior Act and at the same time repeals a part thereof by being in conflict with it, the terms 'implied amendment' and 'implied repeal' are both used to describe the situation, the former in determining whether the constitutional legislation on the form of amendments has been violated, the latter in construing the Act." The repeal of the amending statute does not destroy the effect of the original statute as amended.[3]

It must be observed that an amending Act is not ordinarily a new and independent statute, but in some instances (as for example, the new Limitation Act of 1963) it may be a Law independent and complete in itself. It may be that the parent statute may be an unconstitutional Act, yet it may be amended by a subsequent Act which qualifies as a complete and independent statute by itself. A statute entirely unconstitutional is not rendered impossible of amendment.

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1. *N.S. Dal Mill* v. *Firm Sheo Prasad*, AIR 1958 All 404, 406; see *Ram Prasad Ramanarain* v. *Bijoy Kumar*, AIR 1966 Cal 483, where the new Limitation Act was held to be retrospective in respect of right to file appeal.
2. 3rd Ed., Vol. 1 at pp. 447-448.
3. *Shree Gopal Paper Mills* v. *Ram Labhaya Mal*, AIR 1960 Punj 375; *Ravi Dutt Sharma* v. *Ratan Lal Bhargava*, AIR 1984 SC 967 : (1984)25 DLT 235 : (1984)2 SCC 75 : (1984)1 ARC 519 : (1984)1 Rent CR 357: (1984)1 Rent LR 331 : 1984 UJ (SC) 408 : 1984 MPRCJ 76 : (1984)1 Rent LR 502: (1984) Delhi Rep J 37 : 1984 Rajdhani LR 153.

Where the statute purporting to make the amendment is a complete expression of the legislative will, it will be considered valid, provided it seeks to make a complete re-enactment within constitutional bounds.[1]

No amending Act can, of course, operate unless the parent Act is alive at the time the later Act was passed. As such even if the amending Act be treated as a complete and independent Act, it cannot have retrospective effect in respect of transactions which took place prior to the date of its passing,[2] save to the extent permitted by the Amending Act either expressly or by necessary application.[3] It is true that there exists a distinction between 'repeal' and 'deletion' of provision; deletion takes effect from the date the legislature has effected the said deletion; a repeal ordinarily brings about complete obliteration of the provision as if it had never been enacted.[4]

9. Effect of repeal on transactions completed.—Transactions that have been completed, rights that have been acquired and penalties that have been incurred while a statute is in force, are not (in the absence of an express provision to the contrary) affected by the mere fact of the statute having ceased to be in force.[5] Although the effect of repealing a statute is to obliterate it as completely as if it had never been passed, the rule must be taken with the qualification that it does not deprive persons of vested rights acquired by them in actions duly determined under the repealed law.[6] This rule seems to be founded not only on considerations of convenience, but also of reason and justice. It applies with equal force to statutes that had been expressly repealed and to temporary statutes the terms of which had expired.[7] In every case of repeal of an existing statute or existing provision of the statute, the question for examination would be whether any vested right is sought to be affected by the repealing statute and whether there is an intention in the repealing statute to keep alive the rights under the earlier statute.[8] In *Stevenson* v. *Oliver*,[9] the question that arose was the following : By Geo. 4, C. 133, Section 4, it was provided that every person who held or thereafter should hold a commission or warrant as surgeon or assistant surgeon in His Majesty's navy or army, should be entitled to practise as an apothecary in any part of England or Wales without having undergone the examination or received the certificate required by a previous statute. The Act was in terms temporary and was to continue until 1st August, 1826. The question arose whether the certificate of the plaintiff who had not passed the requisite examination, but who held a warrant as assistant surgeon in the navy during the period when the expired Act was in force enabling him to practise as an apothecary continued valid after the expiry of the Act and it was held that it

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1. *Dasu Khan* v. *Mohan Bhagat*, AIR 1966 Pat 425 : 1966 BLJR 723.
2. *Anthony* v. *S.T. Officer, Ernakulam*, ILR (1964)2 Ker 218.
3. Vide *State of Punjab* v. *Krishan Lal*, AIR 1987 P&H 222: (1987)91 Punj LR 688 : (1987)7 IJ Rep 299 : (1987) Punj LJ 335 : ILR (1987)2 P & H 117 : (1987)2 Cur LJ (Civ & Cri) 375 (FB).
4. Vide *Naurangapura Gam Dharmada Milkat Trust* v. *Ramtuji Ramji*, AIR 1994 Guj 75 (DB).
5. Section 6, General Clauses Act, 1897.
6. *Gopalan* v. *Sippora*, 1951 KLT 337; *Keshavan* v. *State of Bombay*, AIR 1951 SC 128, 131; *State of Punjab* v. *Mohar Singh*, AIR 1955 SC 84; *Ramkrishna Mandal* v. *Dhankisto Mandal*, AIR 1969 SC 204; *Gujarat Electricity Board* v. *Shantilal R. Desai*, AIR 1969 SC 239.
7. *Jogendra* v. *Superintendent of Dum Dum Special Jail*, ILR 60 Cal 742 : AIR 1933 Cal 280; *Stevenson* v. *Oliver*, (1841)10 LJ Ex 338 : 151 ER 1024.
8. *Saifuddin* v. *Pokkunhi*, 1977 Ker LT 516.
9. 151 ER 1024, 1027; *see* also *Krishna Chandra* v. *Sushila*, AIR 1951 Orissa 105, 109. A legislative enactment, which reveals a previous law either partially or wholly, cannot affect vested rights acquired under decrees. *Lakshman Rao Krishnaji* v. *Balkrishna Ranganath*, ILR 39 Bom 617, 621; *Lenm* v. *Mitchell*, 1912 AC 400, 406, following *Kay* v. *Goodwin*, (1830)6 Bing 576; *Jagannadhan* v. *Distt. Collector, Kurnool*, AIR 1966 Andh Pra 59.

did so continue to be valid.

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. But there is an exception to the rule, namely, where enactments merely affect procedure, and do not extend to rights of action. It is perfectly settled that if the Legislature forms 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.[1]

The normal effect of a repealing statute is to obliterate it from the Statute Book as completely as if it had never been passed; it must be considered as a law that never existed. But to this rule an exception is engrafted by the provisions of Section 6 of the General Clauses Act.[2]

10. Where rights and procedure both affected.—If rights and procedure are both altered by an amending or repealing statute, then if the rights accrued under the previous enactment are saved, it would seem to be consequential that the old procedure is saved as well unless the new Act makes the new procedure applicable to old rights. If such be not the case, the right would seem to be saved to no purpose, for if a suit be brought under the general law, it is likely to be met successfully by the plea that a special right created by a statute can only be enforced by the special procedure prescribed. The Legislature cannot be regarded as having contemplated such a result. It must, therefore, be one of the general rules of construction that if rights and procedure are both altered but rights accrued under the repealed enactment are saved, then, in the absence of an intention to the contrary expressed or necessarily implied in the new statute, it will be proper to interpret the intention of the Legislature to be that the old procedure will subsist for the enforcement of the saved rights. There is no question of any vested right in the procedure. The position simply is that the accrued rights having been saved and the new Act not having abrogated the old procedure as respects those rights, nor made the new procedure applicable to them, the old procedure is consequently saved, as the only possible machinery for enforcing those rights.[3]

If a *right to sue* had become barred by the provisions of the Limitation Act then in force on the date of the coming into force of a later enactment, then such a barred right is not revived by the application of the new enactment.[4] But a new rule of limitation must be read subject to an implied exception in case where its provisions would absolutely destroy the right of suit, which was in existence when that rule came into force.[5]

In *Badruddin* v. *Sitaram*,[6] it was held that the alteration in Clause 15 of the Letters Patent of the Bombay High Court did not entirely abolish a former *right of appeal*; it merely restricted it in a reasonable manner. The appellant could exercise the right of appeal if he persuaded the Judge that it was a fit case for appeal.

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1. Suche & Co., Ltd., *In re*, (1875)1 Ch D 48; *Gardner* v. *Lucas*, (1878)3 AC 582; *Kedar Nath* v. *Tarini Prasad*, AIR 1921 Pat 185, 186; *Eapen Chacko* v. *Provident Investment Co. Ltd.*, 1977 Ker LT 1 (SC).
2. *Sadasheo* v. *Hemaji*, AIR 1958 Bom 507 (S.P. Kotaval, J.).
3. *Jatindra Nath De* v. *Jetu Mahato*, AIR 1946 Cal 339, 347 (FB).
4. *Ramanathan* v. *Randappa*, AIR 1951 Mad 314.
5. *Rajah of Pittapur* v. *Venkata Subba Rao*, ILR 39 Mad 645 (FB); *Tirumalaisami Naidu* v. *Subramaniam Chettiar*, ILR 40 Mad 1009, 1015.
6. AIR 1928 Bom 371, 373 : ILR 52 Bom 753. It is really more on the footing of the alteration made in Section 195, Cr PC by Act 18 of 1923 which, in *Nataraja Pillai* v. *Rangaswami Pillai*, ILR 47 Mad 384 : AIR 1924 Mad 657, was held to be merely a change in procedure.

Under the ordinary law vested rights are not taken away by the repeal of any Act.[1] If a right has once been acquired it cannot be taken away again by the repeal of the statute under which it was acquired.[2] A repealing enactment cannot impose an impossible condition on pain of forfeiture of a vested right or be applied to cases, in which its provisions cannot be obeyed.[3] 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.[4]

Statutes in derogation of sovereignty receive a strict interpretation in favour of the public, and a right acquired under such a statute cannot be taken away by repeal.[5]

11. Repeal of repealing enactment.—Under the English Common Law when a repealing enactment was repealed by another statute, the repeal of the second Act revived the former Act. But this rule does not apply to repealing Acts passed since 1850, and now if an Act repealing a former Act is itself repealed, the last repeal does not revive the Act before repealed unless words are added reviving it. The present rule is the result of the statutory provisions introduced by the Interpretation Act of 1889, but though we are not bound by the provisions of any English Statute, we can still apply the English Common Law if it appears to be reasonable and proper. But it may be noted that even according to the Common Law doctrine, the repeal of the repealing enactment would not revive the original Act if the second repealing enactment manifests an intention to the contrary.[6]

If an Act which repeals former statutes or displaces the Common Law, be repealed by an Act which contains nothing in it that manifests the intention of Legislature that the former laws shall continue repealed, the former laws will by implication be revived by the repeal of the repealing Act.[7] but the whole matter is one of the intention of Parliament. If the last repealing Act or any statute that may properly be read with it, shows an intention that the statute first repealed or the Common Law first displaced shall continue so repealed or displaced, then he who shows that has rebutted the presumption of revival.[8] In Jewa Nathoo

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1. *Champa Lal* v. *Kanji Lal*, AIR 1925 Nag 249; *Makar Ali* v. *Sarfaddin*, ILR 50 C 115 : AIR 1923 Cal 85; *Gursaran Das* v. *Parmeshwari Charan*, ILR 6 Pat 296 : AIR 1927 Pat 203 (unless a contrary intention is made out expressly or by implication); *Shiba Kali Kumar* v. *Chuni Lal Chatterjee*, AIR 1927 Cal 748 (whether it is a Central or a Provincial Act).
2. *Manindra Nath* v. *Rampada Pal*, AIR 1950 Pat 505; *see* also *Lemm* v. *Mitchell*, 1912 AC 400 (judgment obtained.).
3. *Tirumalaisami Naidu* v. *Subramaniam Chettiar*, ILR 40 Mad 1009, 1015; *Gopeshwar Pal* v. *Jiban Chandar*, ILR 41 Cal 1125.
4. *N.C. Agarwal* v. *Krishan Lal Mehra*, AIR 1961 All 104, 106 (FB) (Raghubar Dayal, J.).
5. *Har Ka Trust* v. *State of Kerala*, ILR 1960 Ker 345 : 1960 Ker LJ 112.
6. *Ameerunnissa Begum* v. *Mehboob Begum*, AIR 1955 SC 352, 362, reversing ILR 1954 Hyd 658. (By a Firman the Nizam constituted a Special Commission to investigate and submit a report to him in case of succession of Nawab Waliuddowlah which was transferred to the Commission from the File of Darul Qaza Court. A Firman, dated 26th June, 1947 declared the report of the Commission worthy of implementation and directed it to be implemented. After police action the previous order was withdrawn by a Firman, dated 24th February, 1949 and the decision of the Special Commission was set aside in respect of certain claimants. This Firman was again revoked by a fresh Firman, dated 7th September, 1949 and the case was referred to another person for opinion and report. It was held that all the proceedings subsequent to the withdrawal of the suit instituted by the claimants in Darul Qaza Court must be held to have been wiped out and the suit must consequently be held to be undisposed of and still pending). *Syed Shamsuddin* v. *Munira Begum*, AIR 1963 Andh Pra 459.
7. *G.P. Nayyar* v. *State (Delhi Administration)*, AIR 1979 SC 602 at p. 606.
8. *Marshall* v. *Smith*, 4 CLR 1617, 1634.

and others, *In re*,[1] it was argued, in respect of Ordinances III and V of 1914 which had been embodied in Emergency Legislation Continuance Act (1 of 1915), ousting under Section 11 of Ordinance 3 of 1914 the jurisdiction of the Courts, that such a provision was *ultra vires*. Chaudhuri, J., stated the matter thus : "His argument is that Section 29 (26 Geo. III, C. 57) known as the East India Company's Act made residents in India amenable to the Courts and although that section was repealed by Act XI of 1872 the Repealing Act was *ultra vires* that inasmuch as Act XI of 1872 has again been repealed, Section 29 must be considered as restored. It is correct that where an Act is repealed and the repealing enactment is repealed by another, which manifests no intention that the first shall continue repealed, the Common Law rule was that the repeal of the second Act revived the first. But this rule does not apply to repealing Acts passed since 1850. The last repeal does not now revive the Act or provisions before repealed, unless words be added reviving them; *see* Sections 52 and 53 Vict., C. 63, Section 11. The same principle or rule of law applies to this country.[2] Section 3 of the General Clauses Act, 1 of 1868, expressly provides for the purpose of reviving either wholly or partially a statute, Act or Regulation repealed, it shall be necessary to state expressly such purpose. The same is the effect of Sections 6 and 7 of the General Clauses Act, X of 1897. Act XI of 1872 was repealed and re-enacted with modifications by Act XXI of 1879, which after various amendments was again repealed and re-enacted in a modified form by Act V of 1903. I do not find anything in these subsequent Acts reviving Section 29 of 26 Geo. III, C. 57. Nor does it seem to me to have been necessary to revive the section as various Acts and statutes had come into force making the persons mentioned in that section amenable to the Courts of Justice."

If the jurisdiction conferred on a Court by a certain Act is sought to be taken away, not by amending that Act but by passing a subsequent Act, and the subsequent Act is later on repealed the ban so placed on jurisdiction by the subsequent Act is thereby removed and the jurisdiction of the Courts rebounds to its original size. Thus, the jurisdiction conferred on the Indian Courts under Section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926 but taken away by Section 17(1) of the Indian Independence Act would normally have revived after the repeal of the Indian Independence Act, but since by virtue of Article 225 the power of the High Courts has been kept confined within the limits which existed immediately before the commencement of the Constitution, the Indian High Courts have now no jurisdiction to grant decrees for dissolution of marriages of couples domiciled outside India.[3]

A rule or law which has ceased to be in existence by virtue of the rule or law having been cancelled or repealed by a competent authority, would not revive on a rule or law made in substitution of the same being declared unconstitutional by a court.[4] But where a later statute which imposes a burden or condition is found to be *ultra vires*, the original enactment will, in the absence of indication of a contrary intention as it stood before such additions or alterations, would be revived.[5]

Effect on other Acts.—Where an enactment is repealed unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything

1. ILR 44 Cal 459, 460; *see* also *Mahomed Mehdi* v. *Sakinabai*, ILR 37 Bom 393 (remedy once barred cannot be revived by a repealing Act); *Nepal Chandra Roy* v. *Niroda Sundari Ghose*, ILR 39 Cal 506; *Chidambaram Chetty* v. *Karuppan Chetty*, 8 IC 543; *Krishna Mohan Bose* v. *Okhilmoni*, ILR 3 Cal 331.
2. *India Tobacco Co., Ltd.* v. *Commercial Tax Officer*, AIR 1975 SC 155.
3. *Mrs. Smith* v. *Mr. Smith*, AIR 1954 All 624; *see* also *Ameerunnissa Begum* v. *Mehboob Begum*, AIR 1965 SC 352 at p. 362 where the principle was applied.
4. *Rudre Gowda* v. *Angadi Chikkanna*, (1972)1 Mys LJ 310, 314.
5. *Sundareswarar* v. *Sambanda Mudaliar*, AIR 1963 Mad 369, 375 (Ramchandra Iyer, C.J.).

duly done or suffered thereunder nor will it affect any legal proceeding or remedy in respect of any right, privilege or liability or forfeiture under the repealed Act.[1]

12. Effect of repeal.[2]—"I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed ; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law."[3] In *Attorney-General* v. *Lamplough*,[4] Kelly, C.B., observed : "Where an Act of Parliament repeals a clause, it is not that the Act of Parliament is repealed which imposes the duty, but the clause of the Act of Parliament imposing the duty is repealed. We have only to substitute the word 'clause' for 'Act of Parliament', and then the dicta in *Surtes* v. *Ellison*,[5] and *Ray* v. *Goodwin*,[6] apply, that where an Act of Parliament is repealed, the effect of the repeal is that it is to be taken as if the statute had never been enacted, except as to transactions begun or prosecuted while it was existing law.

'Repeal' connotes abrogation or obliteration of a statute by another. Repeal is not a mere matter of form but one of substance, depending upon the intention of the Legislature. If the intention indicated expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part then it would be a case of total or *protanto* repeal. If the intention was merely to modify the former enactment by engrafting an exception or by superadding conditions, or by restricting, intercepting or suspending its operation, such modification would not amount to repeal.[7] No Judge ever laid down as law that where a particular clause in an Act of Parliament is repealed, the whole Act must be read as if that clause had never been enacted; all that can be said is that the clause is to be taken as if it never had been enacted. Bramwell, L.J., expressed himself thus : "It is argued that you cannot look at the repealed portion of the Act of Parliament to see what is the meaning of what remains of the Act. I know that it is not the argument of the Solicitor-General, but that opinion has been expressed. I, however, dissent from it. If it were an accurate opinion, this consequence would follow : that an Act of Parliament which at one time had one meaning would by the repeal of some one clause in it have some other meaning. I .....should say that where an Act of Parliament has been repealed it is as to all matters completed and ended at the time of its repeal as though it had never existed as a governing law with respect to these subject-matters." Brett, L.J., observed thus : "The judgments of the majority in the Exchequer Division lay down that the moment an Act of Parliament is partly repealed we cannot look at the repealed part for any purpose, but that the repealed part must be regarded as if it had never been enacted. I cannot help thinking that that part of the judgment is not sustainable, for what we have to consider is not what was the construction of the first statute, but what is the effect of the repealing statute. We cannot tell what is the effect of the latter without looking at the meaning of the statute which it has repealed. We must treat it as we treat all statutes for the purpose of construing them; we must look at the facts which were existing at the time the Act

1. *Ramesh Chandra* v. *Nagendra*, AIR 1951 Cal 435, 438.
2. *See* Sections 6 to 8 of the General Clauses Act.
3. *Kay* v. *Goodwin*, (1830)6 Bing 576 : 31 RR 500 (*per* Tindal, C.J.); *see* also *Lakshmanrao Krishnaji* v. *Balkrishna Rangnath*, ILR 36 Bom 617, 621; *Digambar Paul* v. *Taffazuddi*, ILR 60 Cal 1438 : AIR 1934 Cal 80(2), 82; *Watson* v. *Winch*, (1916)1 KB 688; *Attorney-General* v. *Lamplough*, (1878)3 Ex D 214, 217.
4. (1878)3 Ex D 214, 222-223, 227, 231.
5. (1829)9 BC 750, 752.
6. 31 RR 500.
7. *India Tobacco Co. Ltd.* v. *Commercial Tax Officer*, AIR 1975 SC 155.

was passed, to see what was its meaning." In *Parker* v. *Talbot*,[1] Vaughan Williams, L.J., stated : "If it is an Act which determines the construction of another Act of Parliament for the time being, the repeal cannot make it wrong for us to look at it. The construction of an Act of Parliament must be once and for all. It cannot be altered by the repeal of a statute which has defined the construction of the Act."

(i) Repeal how affects inchoate and vested rights.—In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to inquire if the new enactment, has, by its new provisions, kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive.[2] It is a well settled rule of interpretation that an unqualified repeal of a statute, conferring civil rights or powers, operates to deprive the citizen of all such rights or powers which at the time of the repeal are inchoate, incomplete or unperfected or which have not accrued or become vested. Of course, rights which have become vested, are not extinguished in the absence of express words to that effect, and a construction of a statute is always avoided, where the result would be to impair contracts or vested rights, and for this purpose, a repealing statute would not be given a retrospective operation. Savings of rights and liabilities acquired or incurred under a repealed enactment by virtue of Section 6 of the General Clauses Act, 1897, are always subject to a contrary intention evinced by the repealing Act.[3] For the purpose of ascertaining such intention the provisions of the new Act have to be looked into in order to determine how far it evinces a contrary intention affecting the operation of the General Clauses Act, Section 6.[4] If the right acquired under a repealed Act has not developed into a *jus in rem* and has not yet fully matured and is merely continuing as a *jus ad rem*, not having progressed beyond an inchoate statute, it cannot survive the repealed Act, and must fall with it, unless expressly saved. The distinction between a *jus in rem*, a right in a thing which implies an absolute dominion, and a *jus ad rem*, a right to a thing which signifies an imperfect right, assumes considerable importance in relation to survival, when the statute under which a right has been created, is unconditionally repealed.[5]

(ii) Saving clause.—Where an Act repeals a previous Act and provides that all orders issued under the repealed Act shall, so far as may be, be deemed to have been issued under the new Act, or is repealed with proviso 'except as to things done under it' the provision is designed to safeguard the validity of orders, appointments, etc., issued under the repealed Act and not to give retrospective effect to the new Act.[6] The proviso will receive a liberal interpretation.[7] There may be cases in which not the saving clause alone but the entire scheme of the new Act would be looked into to determine whether the protection given under the repealed Act is maintained.[8]

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1. (1905)2 Ch 643 (CA).
2. *Karam Singh* v. *Pratap Chand*, AIR 1964 SC 1309; *Nasib Singh* v. *Raja Ram*, AIR 1969 J & K 9 (FB).
3. *Indira Sohanlal* v. *Mohar Singh*, AIR 1965 SC 84, 88; *Brihan Maharashtra Sugar Syndicate* v. *Janardan R. Kulkarni*, AIR 1960 SC 794, 795; *Mohadilal* v. *Administrator-General, West Bengal*, AIR 1960 SC 936, 938.
4. *Jayantilal Amrithlal* v. *Union of India*, (1971)1 SCWR 424.
5. *Amar Singh* v. *R.L. Aggarwal*, AIR 1960 Punj 312, 316 (FB); see *Director of Public Works* v. *Ho Po Oang*, (1961)2 All ER 721 (PC) refd. to in *Free Lanka Insurance Co.* v. *Ranasinghe*, (1964)1 All ER 457 (PC).
6. *Basant Singh* v. *Rampal Singh*, AIR 1919 Oudh 217; *Ram Prasad* v. *State of Punjab*, AIR 1966 SC 1607.
7. *Ram Prasad* v. *State of Punjab*, AIR 1966 SC 1607.
8. *Srinivasan* v. *Accommodation Controller*, (1965)2 KLJ 201.

A provision to preserve the right accrued under a repealed Act is not intended to preserve abstract rights conferred by the repealed Act. It only applies to specific rights. The mere right to take advantage of the provisions of the repealed statute, which right existed on the date of the repealing statute is not a 'right accrued' within the meaning of the usual saving clause.[1]

When an Act is repealed it must be considered except as to transactions past and closed, as if it had never existed.[2] Similarly, if an Act gives a right to do anything, such as, the fixation of standard rent by the Samiti, the thing to be done, if not completed before the Act is repealed, must, upon the repeal of the Act, be left in *status quo*.[3]

(iii) Repeal of section abrogates bye-laws under it.—The general rule is that when a parent Act is repealed, all laws made thereunder stand repealed. The effect of repeal is to dry up the source of power. Repeal of an enactment only means that the power to create new law thereunder is abolished and no further law in exercise of that power can be made. If something has emerged in exercise of that power the source of which has been dried, it can continue to remain as an independent unit or may die with the Parent Act depending on the nature of the source of power. If the source of power is a Constitution Act, the law survives as an independent unit; if the source of power is legislative power other than that contained in the Constitution Act, the law ends with the dying out of its power source subject to such savings as the repealing law may provide.[4] In *Watson* v. *Winch*,[5] it was held that, where bye-laws have been made under powers conferred by a section of an Act, the repeal of the section abrogates the bye-laws unless they are preserved by the repealing Act by means of a saving clause or otherwise. but, this is subject to the provisions of Section 24 of the General Clauses Act, 1897, which provides for continuance of rules, etc. in certain cases.[6] Where a statute is repealed and re-enacted in a wider form, the old rules in so far as they are continued are not thereby enlarged. Similarly, where there is a delegation of power under a rule by the Government, the power does not acquire wider scope in the event of the rule being subsequently amended.[7]

A different result would follow where, from other sections which were not repealed, it was manifest that all the Parliament intended to do was to revoke the power to make further bye-laws, leaving the existing bye-laws in force, subject to their liability to be amended, varied or revoked under powers conferred by other sections contained in the Act at the time of the repeal or introduced into it by amendment at that time.[8]

(iv) Partial repeal.—"I do not wish it to be supposed", observed Denning, J., in *Chapman* v. *Kirke*,[9] "that when a section of an Act is repealed it cannot thereafter be considered when other provisions in the Act fall to be interpreted..." "It must be borne in mind", opines Craies,[10] "that there is a difference in effect between repealing an entire Act and merely repealing a single clause in an Act. It may no doubt be said that, if a clause is repealed, "this clause is to be taken

1. *Lalji Raja* v. *Firm Hansraj Nathuram*, 1971 SCC 721.
2. *Qudrat Ullah* v. *Municipal Board, Bareilly*, (1974)1 SCC 202.
3. *Damji Raghavji* v. *Jamiyatram*, AIR 1954 Sau 77.
4. *Mohan Agarwal* v. *Union of India*, 1979 All LJ 304 (FB).
5. (1916)1 KB 688; *Harishchandra* v. *State of M.P.*, AIR 1965 SC 932.
6. *State of Bombay* v. *Pandurang*, AIR 1963 SC 244; *Chief Inspector of Mines* v. *Thaper*, AIR 1961 SC 638; *Mohanlal* v. *State of West Bengal*, AIR 1961 SC 1544.
7. *Amar Singh Rajendra Singh* v. *State of M.P.*, AIR 1965 Madh Pra 126.
8. *Bird* v. *John Sharp & Sons Pvt., Ltd.*, (1942)66 CLR 233, 250, followed in *Queen* v. *Kelly* ex parte *Waterside Workers' Federation of Australia*, 85 CLR 601.
9. (1948)2 All ER 556 (the definition clause had been repealed).
10. *Statute Law*, 5th Ed. at p. 382.

as if it had never existed", but it cannot be said that 'where a particular clause in an Act is repealed, the whole Act must be read as if that clause had never been enacted" .....otherwise 'this consequence would follow that an Act of Parliament, which at one time had one meaning, would by the repeal of some one clause in it have some other meaning." In considering the effect of a repeal of a section it is necessary to consider the nature of what is repealed.[1]

Where there is a repugnancy in the repealing Act which is new and partial in its scope, the main scheme of the original Act will control the meaning of the amending provision. The repugnancy will yield to the controlling scheme in the parent Act.[2]

(v) Repealing Act substituting some provision in lieu of the one repealed.—When any Act passed repeals another in whole or in part and substitutes some provision in lieu of the provision repealed, the repealed enactment remains in force until the substituted provision comes into operation.[3]

In *Wigram* v. *Fryer*,[4] 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. So that 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.

(vi) Repealing clause attached to an unconstitutional statute.—"In the case of *Meshmier* v. *State*,[5] it was held : A repealing clause attached to an unconstitutional Act of the Legislature might repeal a former valid statute upon the same subject. The general principle announced in that case is undoubtedly correct, for it must be conceded that the Legislature may use such language as to leave no doubt as to its intention to repeal former law, in any event. In such a case the law intended to be repealed would cease to exist even though the law to which the repealing clause was attached would fall by reason of being in conflict with the Constitution."

"Where, however, it is not clear that the Legislature, by a repealing clause attached to an unconstitutional Act, intended to repeal the former statute upon the same subject, except upon the supposition that the new Act would take place of the former, the repealing clause falls with the Act to which it is attached."[6] On the latter principle it was held that the repealing section in Pepsu Land Acquisition Act, IV of 2006 B.K. would be ineffective and inoperative as the repealing Act itself, and hence Patiala Land Acquisition Act, 1995 B.K. which was sought to be repealed by the Act of 2006 B.K. still held the field.[7]

13. Legislation by incorporation.—*Legislation by incorporation* is of common occurrence, and is a known mode of legislation. And this may be by reference, in which case it is not necessary to set out the whole Act intended to be re-enacted.[8] At this juncture it is advantageous to extract from *Rajya* v. *Gopikabai*,[9] "Broadly speaking, legislational by referential incorporation falls

1. *Smith* v. *London Transport Executive*, (1949)2 All ER 295, 304.
2. *Sales Tax Commissioner* v. *Basta Colls Colliery Co.*, 1966 BLJR 438.
3. *Ram Dayal* v. *Shankarlal*, AIR 1951 Hyd 140 (FB).
4. (1887)36 Ch D 87.
5. 11 Ind 482.
6. Crawford : *Statutory Construction*, at pp. 652-53.
7. *Bhagat Singh* v. *State of Patiala*, AIR 1954 Pepsu 174, [The Act of 2006 BK was held to be violative of Article 31(2) not having been reserved for the consideration of the President].
8. *Bhagaban Roy* v. *First Land Acquisition Collector*, 85 Cal WN 59.
9. AIR 1979 SC 793.

into two categories : *First* where a statute by specific reference incorporates the provisions of another statute as of the time of adoption. *Second*, where a statute incorporates by general reference the law concerning a particular subject as a genus. In the case of the former the subsequent amendments made in the referred statute cannot automatically be read into the adoption statute. In the case of later category, it may be presumed that the legislative intent was to include all the subsequent amendents also made from time to time in the general law on the subject adopted by general reference. This principle of construction of a reference statute has been aptly summed up by Sutherland thus : A Statute which refers to law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference/statute was enacted.[1]

Corpus Juris Secundum also enunciates the same principle in these terms "....where the reference in an adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof.... the reference will be held to include the law as it stands at the time it is sought to be applied, with all the changes from time to time, at least as per on the changes are consistent with the purpose of the adopting statute".[2] The expressions used for such purpose usually are : 'So far as may be', '*mutatis mutandis*', 'as far as applicable'. Lord Esher observed in *In re* Wood[3] : "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it and the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

It is a settled principle of interpretation of statutes that a competent Legislature while amending one statute has, by necessary incorporation, could bring about changes in another statute also which it was competent to enact.[4]

It sometimes happens that one Act instead of expressly repeating the words of a section contained in an earlier enactment merely refers to it and by relation applies its provisions to some new state of things created by a subsequent enactment. For example, 'promissory note' referred to in Explanation to Section 13 of the Negotiable Instruments Act can only be such instruments, for purposes of stamp duty, as falls within the definition of 'promissory note' in Section 2(22) of the Stamp Act. The definition is thus by reference to a provision contained is another enactment. Instead of reproducing the entire language of the definition which is given in another statute, a mere reference is made for the sake of economy of words; but the true effect of definition in the other statute is as if it is cut out and pasted here, but no other provision.[5] It is not necessary that such incorporation must be with reference to a valid law or an existent

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1. Sutherland's *Statutory Construction*, 3rd Ed. at p. 5208.
2. Quoted in *R.D. Khubchandani* v. *M/s. Indo Mercantile Fund Ltd., rep. by Official Liquidator Madras*, 98 MLW 203 (DB) : (1985)1 MLJ 10; *see* also *Gauri Shanker Gaur* v. *State of U.P.*, AIR 1994 SC 169.
3. (1886)31 Ch D 607, 615; *Aggarwal Trading Corpn.* v. *Collector of Customs*, (1971)1 SCC 553, 560 (Reddy, J.); *see* also *Md. Safi* v. *State of West Bengal*, AIR 1951 Cal 97, 99; in other words, we must read West Bengal Land Development and Planning Act XXI of 1948 in such a way as if all the provisions of the Land Acquisition Act were repealed or set out in fuel *'totidem verbis'* in the West Bengal Act XXI of 1948; *R.* v. *Smith*, (1910)1 KB 17, 24, and a subsequent repeal of the provisions of the former Act will not affect the so incorporated part of the later Act; *Karuna Karan* v. *Dy. Supdt. Central Excise*, AIR 1961 Ker 93 (Central Excise and Salt Act.....*See* Customs Act); *Firoz* v. *Sub-Div. Officer*, AIR 1961 MP 110.
4. *Premier Insurance Co. Ltd.* v. *C. Thomas*, 96 LW 581 (DB).
5. *Sant Singh* v. *Ladharam*, 1976 MPLJ 238 (FB).

law.[1] Such an incorporation makes the section so incorporated a part of the new statute and even the repeal of the statute containing the incorporated section does not have the effect of repealing that provision in the statute in which it is incorporated.[2] Thus, where a statute is incorporated by reference into a second statute the repeal of the first by a third statute does not affect in any way the operation of the second statute. The principle is that incorporation of that kind by relation to another Act is only to save the trouble of repeating the same things, but the provisions referred to are made part of the second statute as much as if they had been expressly incorporated therein.[3] It is true that ordinarily when a section is incorporated into the principal Act by means of an amendment, reference in that section to 'This Act' means the principal Act.[4] Such adoption or incorporation, however, takes the statute as it exists at the time of adoption and does not include subsequent additions or modifications of the statute so taken unless it does so by express intent.[5] When the words of an old statute are either incorporated in or by reference made part of a new statute, this is understood to be done with the object of adopting any legal interpretation which has been put on them by the Courts.[6] If there is a law which is to the knowledge of the legislature and if any analogous law is being made and the Legislature does not incorporate a portion of that law, then the intention of the Legislature clearly is that it did not wish to incorporate a similar provision in its Act.[7] It is a dangerous mode of draftsman to incorporate a section from a former Act for unless the draftsman has a much clearer reflection of the whole of the former Act, then can always be expected, there is a great risk that something may be expressed which was not intended.[8] It is not permissible for the Court to proceed on the basis that the Legislature had enacted the amending Act by oversight. If a mistake has crept into that section, it is for the Legislature to correct the same and it is not for the court to proceed on the supposition that the same was enacted by oversight.

Where the term (agricultural produce) itself is defined, it is not permissible to import the definition or meaning of that term in one Act into another, but it must be interpreted in the light of the definition in the statute itself.[9]

There is neither precedent or warrant for the assumption that when one Act applies another Act to some territory, the latter Act must be taken to be incorporated in the former Act. It may be otherwise, if there were words to show that the earlier Act is to be deemed to be re-enacted by the new Act.[10]

With regard to Section 7 of the Indian Divorce Act, 1869, which use the expression 'as nearly as may be conferrable to the principles and rules on which the court for divorce and matrimonial causes in England for the time being acts and gives relief' it has been held by the Supreme Court that whatever interpretation was permissible before August 15, 1947 when the British Parliament had plenary powers of legislation over Indian territory no interpretation is now permissible which would incorporate post 1947 British Laws into Indian Law. It is

1. *Bhagaban Roy* v. *First Land Acquisition Collector*, 85 Cal WN 59.
2. *State of M.P.* v. *M.V. Narasimhan*, 1976 LW (Cr) 1 SC, exceptions to the principle enumerated also; *Bharat Aluminium Co. Ltd.* v. *Special Area Development Authority*, 1978 Jab LJ 494 (DB).
3. *Moosa Kazimi* v. *Sheriff*, AIR 1959 Mad 542, 543 (Ramchandra Iyer, J.).
4. *Arjun Singh* v. *State of Punjab*, (1969)2 SCR 347, 352 (Hegde, J.).
5. *Hasset* v. *Wilch*, 82 L Ed 858, 866 : 303 US 303 (Roberts, J.); *Bernardo S. Ultrich* v. *Asstt. Collecter of Customs*, AIR 1960 Ker 335, 339 (Ansari, J.).
6. *Banchanidhi* v. *Commissioner of Income Tax*, AIR 1965 Orissa 162, 164 (K.K. Das, J.).
7. *A Tellery & Sons* v. *Caryet Mazdoor Sabha*, AIR 1961 All 321, 324 (V.D. Bhargava, J.).
8. *Kishan Singh* v. *State*, AIR 1957 MP 67, 70 (FB).
9. *Agricultural Produce Market Committee, Jodhpur* v. *Ashok Kumar*, 1980 RLW 402 (DB).
10. *Rajputana Mining Agencies, Ltd.* v. *Union of India*, AIR 1961 SC 55, 58.

unthinkable that legislation whenever made by Parliament of foreign State may automatically become part of the law of another sovereign State Legislation by incorporation can never go so far.[1]

Further it is laid down generally that when the later enactment is worded in affirmative terms only, without any negative expressed or implied, it does not repeal the earlier law.[2] Affirmative Acts only repeal one another when a *repugnancy* clearly exists between them.[3] When there is no repeal by affirmative words, in a subsequent Act, of the provisions of previous Acts, the subsequent Act does not operate to repeal those provisions unless it is inconsistent with them.[4]

It is a well-settled provision of law that the repeal of a statute does not repeal such portions of the statute as have been incorporated into another statute. If the original Act is repealed the incorporated section or sections still operate in the latter Act.[5] It seems no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.[6] Maxwell in *Interpretation of Statutes*[7] states : "Where the provisions of one statute are, by reference, incorporated in another and the earlier statute is afterwards repealed the provisions so incorporated obviously continue in force so far as they form part of the second enactment."

If, however, there is a mere reference to the provisions of one statute in another without incorporation, reference should be considered as reference to the provisions as may be in force from time to time in the former statute.[8]

Broadly speaking, legislation by referential incorporation falls in two categories : *first*, where the statute by specific reference incorporates the provisions of another statute as of the time of adoption. *Second* where a statute incorporates by general reference the law concerning a particular subject, as a genus. In the case of the former, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the case of the latter

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1. *Reynold Rajamani* v. *Union of India*, AIR 1982 SC 1261, *per* C. Chennappa Reddy, J.
2. *Kalpataru Das* v. *Commissioner Hindu Religious Endowments*, AIR 1949 Orissa 46; *see* also *Garnett* v. *Bradley*, (1878)3 AC 944, 965-966, *per* Lord Blackburn; *Harcourt* v. *Fox*, (1693)89 ER 720. Statutes introductive of a new law penned in the affirmative, do always repeal former statutes concerning the same matter as implying a negative.
3. *Hill* v. *Hall*, (1876)1 Ex D 411, 415.
4. *Parsons* v. *Tinling*, (1977)2 CPD 119.
5. *Md. Safi* v. *State of West Bengal*, AIR 1951 Cal 97, 99; *Clarke* v. *Bradlaugh*, (1831)8 QBD 63, 69; *Jenkins* v. *Great Central Railway*, (1912)1 KB 1, 8 : Where a statute is incorporated by reference into a second statute, the repeal of the first...by a third does not affect the second; *Trimbak Kashiram* v. *Abaji*, ILR 35 Bom 307, 309; *Ram Sarup* v. *Munshi*, AIR 1963 SC 553; *Bolani Ores, Ltd.* v. *State of Orissa*, (1974)2 SCC 777; *see* also *New Central Jute Mills Co. Ltd.* v. *Asstt. Collector of Central Excise*, AIR 1971 SC 454; *Western Coal Field, Ltd.* v. *Special Area Development Authority*, AIR 1982 SC 697; *Valsad Zilla Sahakari Bank Ltd.* v. *D.K. Patel*, (1991)1 Guj LR 292 (Guj); *V.V.-Trans-Investments (P) Ltd.* v. *Commissioner of Income-tax*, (1994)74 Taxman 79 (AP); *Madhavi Amma* v. *Kalliali Amma*, 1988(2) KLT 964; *Ramchandra Marotrao Avachat* v. *The Collector, Nagpur* 1989 Mah LJ 558.
6. *Secretary of State* v. *Hindustan Co-operative Insurance Society, Ltd.*, AIR 1931 PC 149, 152. The general principle is that when a parent Act is repealed, all the laws passed under that Act stand repealed unless there is saving provision in the repealing enactment; *Atiqa Begum* v. *Abdul Maghni*, ILR 1940 All 455 : AIR 1940 All 272 (reversed on the main point in 1940 FCR 110).
7. 9th Ed. at p. 406.
8. *Beepathumma* v. *Spl. Dy. Tahsildar*, 1982 KLT 130, relying upon *Mahindra and Mahindra, Ltd.* v. *Union of India*, AIR 1979 SC 798.

category, it may be presumed that the legislative intent was to include all subsequent amendments also, made from time to time in the generic law on the subject adopted by general reference.[1]

The Factories Act of 1934 was repealed and re-enacted by the Act of 1948, and therefore references in the Workmen's Compensation Act, to the Act of 1934 must be construed as references to the Act of 1948. Had the Workmen's Compensation Act been amended after 1948 and had the reference to the Act of 1934 yet remained, there would be reason for saying that it was the Act of 1934 which was intended to be regarded, but there has been no amendment of the Workmen's Compensation Act after the Factories Act of 1948, nor is there any other indication that the new Act is not to be read for the old.[2]

Where a clause from a public Act has been incorporated with and forms part of a private Act, that part of the private Act is not repealed by the mere repeal subsequently of the public Act.[3]

If a subsequent Act of Parliament directs a form to be adopted, which is given in a previous Act, the form is thereby incorporated in the subsequent Act and so far as regards the subsequent Act, it will not be affected by a repeal of the previous Act.[4] Where an Act of Parliament prescribes a particular form, and a subsequent Act substitutes another form for it, which substituted form is to be read into the first Act, and the first Act is subsequently 'as to the form thereby prescribed', the substituted form is not thereby repealed.[5]

Where a single section of one statute has been incorporated into another, while interpreting the latter the Court can look into the whole of the former statute.[6]

The doctrine of incorporation by reference has been succinctly explained by Lord Esher M.R. in *In re* Wood's Estate[7] in the following words : "It is to put them into the Act of 1855, just as if they had been written into it for the first time. If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that as has often been held is to write these sections into the new Act as if they had been actually written in it with pen or printed in it and the moment you *have these clauses in the later Act you have no occasion to refer to the former Act at all.*

The Supreme Court also explained *the doctrine of incorporation* by reference in similar terms on *Shamrao* v. *Dist. Magistrate, Thana*[8] when the court observed at p. 326 "The rule is that when subsequent Act amends an earlier one in such a way as to incorporate itself or a part of itself into the earlier, then the earlier Act must thereafter be read and constrained (except where that would lead a repugnance, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the Amending Act at all. This is the rule in England. *See* Craies on *Statute Law*,[9] it is the law in America : *see* Crawford on *Statutory Construction*, page 110 and it is the law which the Privy Council applied to India in *Keshoram Poddar* v.

1. *Bajya* v. *Gopikabai*, 1978 Mah LJ 411 : 1978 MPLJ 426 : 1978 Jab LJ 541 : AIR 1978 SC 793 at p. 797).
2. *Khudi Bux* v. *Manager, Caledonian Press*, AIR 1954 Cal 484. Cf. *Jetindranath* v. *State of Delhi*, AIR 1960 SC 89.
3. *Jenkins* v. *Great Central Railway Co.*, (1912)1 KB 1.
4. *R.* v. *Stock*, (1838)112 ER 892.
5. *Clarke* v. *Bradlaugh*, (1881)8 QBD 63, (*per* Brett, L.J.).
6. *Bhagaban* v. *Bejoy*, AIR 1980 Cal 71 (FB); *see* also *Mahindra & Mahindra* v. *Union of India*, (1979)49 Com Cas 419.
7. (1886)31 Ch D 607.
8. AIR 1952 SC 324.
9. 5th Ed. at p. 207.

Nandulal Mallick[1]; *M/s. Onkarlal Nandlal* v. *State of Rajasthan.*[2] Definition of a term contained in the repealed Act cannot be of avail in interpreting another statute.[3]

14. Repealed sections whether to be considered to gather meaning of unrepealed section.— Where in the statute which is to be repealed there are separate and distinct enactments, and the repealing statute simply repeals one of these enactments, it seems impossible to construe the meaning of the repealing statute to be that it thereby gives a different meaning to the enactment with which it does not assume to deal at all.[4] If it were otherwise the consequence would be that an Act of Parliament which at one time had one meaning would by the repeal of some one clause in it have some other meaning.

15. Temporary Statutes.—The effect of the expiry of a temporary statute is really a matter of the construction of the statute itself.[5] A temporary statute could provide for its effectiveness beyond its expiry.[6] The general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will *ipso facto* terminate as soon as the statute expires.[7] When a temporary Act is repealed, the proceedings instituted under such an Act terminate at the time the temporary Act would have otherwise expired.[8] After the expiry of the Ordinance IV of 1968, if any conviction thereunder is made, it cannot be upheld and the prosecution would terminate.[9] There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transaction already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed and the duration of the provisions are matters of construction.[10] Thus, upon a construction of the Industrial Employees' Payment of Gratuity Act, 1969, it was held that the obligation in respect of gratuity which arose under the Ordinance was of an enduring character and, in the absence of any contrary intention, it continued to be binding upon the assessee even after the repeal of the Ordinance.[11] In *Spencer* v. *Hooton*,[12] Roche, J., held "he had no jurisdiction to hear appeals from Munitions Tribunals in proceedings taken under the Wages (Temporary Regulations) Acts by reason of the Act giving him jurisdiction having expired before the appeals came on for hearing." The case of *R.* v. *Ellis*,[13] was also one relating to the jurisdiction of Munitions Tribunal set up by the Industrial Courts Act, 1919, by which the provisions of an earlier Act, namely the Wages (Temporary

1. AIR 1927 PC 97.
2. AIR 1986 SC 2146 : 1987 Tax LR 1989 : (1985)15 STL (SC) 166 : (1985)4 SCC 404 : (1985)18 STA 478 : 1985 STI (SC) 167: (1985)60 STC 314 : 1986 SCC (Tax) 34 : (1986)1 Supreme 246 : 1986 Taxation 80(7) 6.
3. *Bundelkand Travels* v. *State of M.P.*, 1983 Jab LJ 240 (DB).
4. *Attorney-General* v. *Lamplough*,3 Ex D 214, 231, (*per* Brett, L.J.).
5. *Gopichand* v. *Delhi Administration*, AIR 1959 SC 609, 615; *State of Orissa* v. *Bhupendra Kumar*, AIR 1962 SC 945, 953; *State* v. *Janardan Das*, AIR 1954 SC 683, 685.
6. *Nandy & Co.* v. *Union of India*, 76 CWN 952, 959 (Sabyasachi Mukherji, J.).
7. *Krishnan* v. *State of Madras*, AIR 1951 SC 301, 304 : 1951 SCR 621, 623; *Krishna Chandra* v. *Sushila*, AIR 1951 Orissa 105, 121 (FB); *Gopi Chand* v. *Delhi Administration*, AIR 1959 SC 609, 615. It is true that the Legislature can and often does avoid such an anomalous consequence by enacting in the temporary statute a saving provision effect whereof is same as in Section 6 of the General Clauses Act; *Aringdas Rai* v. *Bir Bahadur Rai*, AIR 1986 Sikkim 1 (DB).
8. *Tarak Chandra* v. *Ratan Lal*, AIR 1957 Cal 257 (FB); *Rabindra Nath* v. *Gour Mondal*, AIR 1957 Cal 274 (FB) (but there may be provisions to the contrary in the Act itself or in the repealing Act); *Krishnan* v. *State of Madras*, AIR 1951 SC 301; *State* v. *Janardan Das*, AIR 1954 SC 683; *State of Orissa* v. *Bhupendra Kumar* , AIR 1962 SC 945.
9. *Bhola Singh* v. *State of Bihar*, 1978 PLJR 219.
10. *Kunhappu* v. *Chinkan*, 1958 Ker LJ 733 : 1958 Ker LT 804.
11. *CIT* v. *Kerala Nut Food Co.*, 1976 KLT 164 (DB).
12. (1920)4 Munitions Appeals 67, (1920)37 TLR 280, quoted by Craies : *Statute Law*, 4th Ed. at p. 348; *Kundamul Dalmia* v. *Dyer*, ILR 52 Cal 551 : AIR 1925 Cal 571, 572.
13. (1921)125 LT 397.

Regulations) Act, 1918, were extended so as to remain in operation until 30th September, 1920. The offence in question was created by the Industrial Courts Act, but the procedure in respect thereof was regulated in relevant respects by the earlier Act which, were it not for the Industrial Courts Act, 1919, would have ceased to operate with effect from 21st November, 1919. The prosecution was commenced before 30th September, 1920, but the order in the prosecution was made after that date, and it had been held by the Munitions Tribunal that on account of the Act of 1918 having expired they had no authority to issue a distress warrant for satisfaction of an award made by the Tribunal. Thereupon the party affected took out a *rule nisi* for a *mandamus* to the Chairman, commanding him to issue such a distress warrant. The rule was discharged and in the leading judgment Darling, J., observed as follows :

"No doubt there is some ground for saying that in cases of this kind, where one is dealing with a temporary Act (and I think this is all temporary legislation though I do not know that there is much in the term), one must look at the particular statute which is said to be temporary statute and see what is the meaning of it. It may be drawn in such a way that some parts of it will survive and be operative and that other parts of it are dead and gone, and this can only be ascertained by looking at the words of the particular statute which is before the Court. It might be perfectly reasonable to adopt the suggestion of Lord Abinger in the case of *Stevenson* v. *Oliver*,[1] when he says this : 'Take the case of a penalty imposed by an Act of Parliament; would not a person who had been guilty of the offence upon which the Legislature had imposed the penalty while the Act was in force be liable to pay it after its expiration. It may be that that would be just, and that it would be the manifest intention of the words of the statute under which he had been convicted. That suggestion was not altogether adopted by the Court, but I see nothing against it in what Parke, B., says, except that he is more careful and makes it more plain that the question must after all depend on the words of the statute which is being considered. But a case which is binding upon us shows that, in the absence of some such words as I think Parke, B., certainly would have looked for, we could not lay down such rule as Lord Abinger suggested; we could not lay it down as a general rule, because there is the case of *Rex* v. *Elizebeth M' Kenzie*,[2] which was decided in the year 1820 under the Statutes 10 and 11, Will. 3, C. 23, by which a person stealing money of a greater value than 5s. was liable to conviction without benefit of clergy. That meant that the person was to be hanged for having stolen something worth only 5s. A statute was passed in the first year of George IV, C. 17 which repealed the statute of Will. 3; But Elizebeth M'Kenzie and another had the misfortune, whilst the statute of William III was still unrepealed, to steal twenty-three yards of lace valued £ 1-3s and she and the other person were both tried before the Common Serjeant at the Old Bailey September Sessions in the year 1820. Between the commission of the offence and the trial and verdict, which was verdict of guilty, this statute of George IV had been passed, so that Elizebeth M'Kenzie was really in danger of being hanged for an offence which was not an offence subject to the penalty of death at the time when her trial took place. The Common Serjeant respited judgment in order to take the opinion of the Judges whether a sentence of death could be passed on the prisoners by virtue of the Statutes 10 and 11, Will. 3, which was in force at the date of the commission of the felony, or whether the prisoners should receive judgment as in cases of grand larceny by virtue of the statute of 1 George IV, which was passed before their conviction, and which would have rendered them liable not

1. 151 ER 1024.
2. 168 ER 881.

to death, but to transportation. 'In Michaelmas term 1820' says the report, 'this case was taken into consideration by the Judges. They all agreed that judgment could not be passed on I George IV, which was prospective only.'(That was simply because the statute had not come into force at the time when the offence was committed). 'But Wood, B. and Park, J. at first doubted whether the Statutes 10 and 11, Will. 3 must not be considered as in force for the trial and punishment of offences actually committed before its repeal'—that is the very point taken by Lord Abinger in the case of *Stevenson* v. *Oliver*,[1] 'but on further consideration and on referring to 1 Hale, P.C. 290, 291, they agreed with the other Judges that the prisoners must receive judgment as for a common larceny, without reference to either statute.' Therefore they, were not to be punished under the statute of Wiliam III, which would have meant that they were to be hanged ; they were not to be punished under the statute which repealed that one and substituted transportation for hanging, because that statute had not come into force; and they were simply punished for ordinary larceny under the common law. That case appears to me to be absolutely in point here. It may be that owing to legislation an offence may have to be punished in a manner different from that which the Legislature might have provided, if it had seen the exact point which might arise, but we cannot do what the Legislature might, it seems to me very justly and very properly have done; we cannot say that the Interpretation Act, 1889 shall apply so that legal proceedings can be completed, although they would be heard and determined at a time when no offence under the statute could be committed. We cannot do that when the Legislature has not itself done it and the Legislature might very easily have done it here, because the same statute, the Industrial Courts Act, 1919, constitutes the offence by the Schedule to the Act, and in the same Schedule it enacts that legal proceedings came within the same limit as that prescribed for the offence—that is, that they are all to be completed by the 30th September, 1920."[2]

But where the accused had committed an act which was an offence under Emergency Powers (Defence) Act, 1939, but was prosecuted after this temporary Act expired, it was held that Sub-section (3) of Section 11 of the said Act began with the words, 'Subject to the provisions of this section', which warn anybody that the provisions which follow are not absolute, but are subject to qualification, the conviction of the accused was upheld by the House of Lords in *Wicks* v. *Director of Public Prosecutions*.[3]

(i) How far a temporary Act may repeal a perpetual Act?— A temporary statute may now effect the permanent repeal of enactments inconsistent with it. Before Lord Brougham's Act[4] would only have suspended their operation.[5] It used to be held at one time that when a temporary Act repealed a perpetual Act and itself expired by efflux of time, the perpetual Act

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1. 151 ER 1024.
2. *Crown* v. *Haveli*, AIR 1949 Lah 191, 195-196. The general law in relation to temporary statutes is that once such a statute has expired it ceases altogether to have effect as if it had never been, except as to transactions past and closed . If the operation of an Act is withdrawn by a notification of the Provincial Government, such a withdrawal cannot be regarded as being in any sense a repeal; *Bansgopal* v. *Emperor*, AIR 1933 All 669 : ILR 55 All 901(FB); *Kalyan Das* v. *Emperor*, ILR 15 Lah 782 : AIR 1935 Lah 188; *Karim Shah* v. *Zenat Bibi*, ILR 1941 Lah 773 : AIR 1941 Lah 175.
3. (1947)1 All ER 205 : 1947 AC 362.
4. (1950)13,14 Vict. C. 21.
5. *See* Halsbury's *Laws of England*. 4th Ed. Vol. 44, Para 963 : "That an Act which, while substituting temporary provisions only, purports to repeal a prior permanent one will not be read as merely suspending its operation during the currency of the repealing statute, unless the intention of the Legislature to that effect be expressed, was decided by Lord Ellenborough in *Warren* v. *Windle*, (1803)3 East 205"; *Taylor* v. *New Windsor Corporation*, (1898)1 QB 186, 204, 205 (*per* Collins, L.J.).

revived. In England this was not possible after Lord Brougham's Act of 1850, and in our country it is not possible after 1897 when the General Clauses Act was passed. It is provided in the General Clauses Act that the repeal or expiry of a repealing Act does not *ipso facto* revive anything repealed thereby.[1] A temporary Act may either repeal a perpetual Act absolutely or only partially. If the intention be to repeal the perpetual Act absolutely, then the repeal operates notwithstanding the fact that it is done by a temporary Act ; but if the repeal is not intended to operate absolutely, then it may operate only partially, and it is always a question of the intention as to which it is to be gathered from the plain meaning of the repealing enactment.[2]

(ii) Continuation of temporary statute.—If a temporary Act is continued from time to time, by subsequent Act, it is, even as so continued, regarded as an Act, passed in the session when it was first passed.[3]

(iii) Effect of expiry of temporary statute.—When a temporary Act expires, any appointment, notification, order, rule, bye-law made or issued under the expired Act will also cease to be operative, and will not be revived or continued even if the expired Act is re-enacted.[4] Unless a temporary Act contains some special provision to the contrary, after it has expired, no proceeding can be taken under it and it ceases to have any further effect. The Legislature may expressly insert some special provision stipulating that even after the temporary Act expires, its operation and impact may be saved in relation to particular matters. The scope of such operation and effect is a matter of construction.[5] Thus, where a person is detained under the provisions of a temporary statute relating to preventive detention the detention will automatically come to an end on the expiry of the statute.[6] But proceedings in a departmental enquiry cannot be said to be proceedings either under the statute or for prosecution for the offence under the statute. The lapsing of such a temporary statute has not the effect of *ipso facto* terminating the proceedings in the departmental enquiry against the Government servant.[7] But, where a person has been convicted under the statute before its expiry he cannot be released before his full term expires even if the temporary Act expires in the meantime, because the Act is not dead for all purposes.[8] The nature of the right created by the temporary Act or obligations arising out of the provisions thereof, and their character may have to be taken into account to determine whether any right or obligation under the Act is enduring and survives in spite of the expiry of the Act or not.[9] It is true that the Legislature can and, often enough does avoid anomalous consequences by enacting in the temporary statute a saving provision, and the effect of such a saving provision is in some respects similar to the effect of the provisions of Section 6 of the General Clauses Act.[10] The effect of the expiry of a temporary Amending Act in relation to the revival of the original legislation was explained by their Lordships of the Privy Council, speaking through Lord Macmillan in a case from Ontario, *viz., Gooderham and Worts,*

1. *Union of India* v. *R.C. Jall,* AIR 1958 Madh Pra 425, 429.
2. *Union of India* v. *R.C. Jall,* AIR 1958 Madh Pra 425, 429.
3. *Tarak Chandra* v. *Ratan Lal,* AIR 1957 Cal 257, 261 (FB); for instance an Act passed in 1950 for a year, and continued by subsequent Act till March, 1956 would be regarded as a temporary Act passed in 1950 and limited in duration up to, say 31st March, 1956; *Rabindra Nath* v. *Gour Mondal,* AIR 1957 Cal 274 (FB).
4. *Baradari, T.M.I.S.* v. *Improvement Trust,* AIR 1963 SC 976, 979.
5. *Raja Ram Om Prakash* v. *Union of India,* 1971 ALJ 231, 235 (R.S. Pathak, J.).
6. *Krishnan* v. *State of Madras,* AIR 1951 SC 301.
7. *Vasudevan* v. *Mital,* AIR 1962 Bom 53, 68(Tambe, J.) : same in the case of a temporary Ordinance.
8. *State of Orissa* v. *Bhupendra Nath,* AIR 1962 SC 945.
9. *Union of India* v. *Thammana Sitaramajaneyulu,* AIR 1971 Andh Pra 145, 149 (Ekbote, J.).
10. *State of Kerala* v. *Raman Nair,* AIR 1962 Ker 78, 81 (P. Govinda Menon, J.).

Ltd. v. *Canadian Broadcasting Corporation*,[1] in the following words : The most formidable argument advanced by the appellants was founded on the terms of the legislation affecting the powers of the Commission and their successors, the present respondents. The requirement of the consent of the Governor-in-Council to a lease of a private station became operative for the first time, as has already been stated, on the 23rd May, 1933, by virtue of the Act of that year.[2] This Act was a temporary measure and by Section 4 was declared to expire on the 30th April, 1934. By two successive Acts passed in 1934 and 1935[3] the date of expiry of the Act of 1932 was postponed first to 30th April, 1934, and then to 30th June, 1935. Finally on 5th July, 1935 an Act was passed which provided as follows :

1. (1) The provisions of Sections 1, 2 and 3 of Chapter 35 of the Statutes of 1932-33 shall be deemed always to have been and hereafter they shall be operative and in force only until the 31st day of March, 1936.
   (2) Section 4 of Chapter 35 of statutes of 1932-33 and Chapter 60 of Statutes of 1934 and Chapter 24 of the Statutes of 1935 are wholly repealed.
   (3) On and after the first day of April, 1930, Chapter 51 of the Statutes of 1932 shall be read as if Chapter 35 of the Statutes of 1932-33 and Chapter 60 of the Statutes of 1934 and Chapter 24 of the Statutes of 1935 had respectively never been enacted.

Fastening upon the repeal in Sub-section (2) of the legislation requiring the consent of the Governor-in-Council to any lease and upon the words in Sub-section (3) providing that this legislation is to be treated as if it had never been enacted, the appellants maintained that the respondents could not in the present proceedings find any argument against the efficacy in whole or in part of the lease on the requirement of the approval of the Governor-in-Council inasmuch as at the date of the raising of the present action the whole legislation imposing this requirement had been not only repealed but directed by Parliament to be treated as if it had never been enacted. A plea, they said, founded on a statute which was to be deemed never to have been enacted could manifestly not be sustained.

"This argument, at first sight attractive as a point of pleading, is, in their Lordships' opinion, untenable on a sound appreciation of the structure and terms of the Act of 5th July, 1935 above quoted. The first temporary amending Act of 1933 repealed certain provisions of the principal Act of 1932 and substituted other provisions in their place. The operation of this amending Act was continued down to 30th June, 1935, by two further Acts. Then by the Act of 5th July, 1935, its operation was further extended to 31st March, 1936, but only till then. The sections of the three temporary Acts prescribing successive dates of expiry of this temporary legislation were repealed. The result is that on 31st March, 1936, the temporary legislation contained in the first Act of 1933 repealing provisions of the principal Act of 1932 and substituting other provisions came to an end not by repeal of the temporary legislation but by the efflux of the prescribed time. No question as to the revival of the temporarily repealed provisions of the principal Act of 1932 by the repeal of repealing legislation arises. The repeal effected by the temporary legislation was only a temporary repeal. When by the fiat of

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1. AIR 1949 PC 90, 93-94. In *Glaholm* v. *Barker*, 1865 LR 1 Ch 223, 229, Turner, L.J. referring to modifications made by Merchant Shipping Act in Lord Campbell's Act and the former's subsequent repeal in 1862 observed : "The modifications introduced by these sections are not in terms incorporated into Lord Campbell's Act. It must no doubt, have affected that Act so long as it subsisted, but when it was destroyed its effect must have ceased. Otherwise the consequence would be that where any provision of an Act of Parliament has been modified by a subsequent Act, the modification would not be altered without at the same time repealing or altering the original Act, a proposition, which cannot, I think, be maintained.
2. Chapter XXXV of the Statutes of 1932-33.
3. Chapter IX of the Statutes of 1934 and Chapter XXIV of the Statutes of 1935.

Parliament the temporary repeal expired, the original legislation automatically resumed its full force. No re-enactment of it was required. This is what Sub-section (3) of the Act of 5th July, 1935, was designed to make clear. The principal Statute of 1932 is to be read on and after 1st April, 1936 as if the temporary legislation had never been enacted; it is to be in force as if there had been no temporary legislation affecting the provisions. Sub-section (3) does not say that the temporary Acts are for all purposes to be treated as if they had never been enacted. It says only that the principal Act is to be read in future as if the temporary Acts had never been enacted. If the temporarily repealed provisions of the principal Act had not on 1st April, 1936, come into operation again, freed of the modifications substituted by the temporary legislation, the Commission would have been left without powers essential for the conduct of their business until 2nd November, 1936, when the Canadian Broadcasting Act of 23rd June, 1936 came into operation incorporating their successors, the present corporation and providing them with a complete Code of revised powers."

A repeal effected by a temporary legislation is only a temporary repeal and, with the expiration of the temporary repealing enactment, the original legislation would automatically, revive, without the necessity for its re-enactment.[1] A statute is perpetual unless it is expressly or by necessary implication made temporary.[2]

A person can acquire permanent and vested rights even under a temporary statute.[3]

(iv) Re-enactment of expired temporary statute.—Legislation by incorporation is a known mode of legislation. And this may be by reference in which case it is not necessary to set out the whole Act intended to be re-enacted. Further, it is not necessary that such incorporation must be with reference to a valid law or an existent law. Even an expired Act can be re-enacted. When the re-enacted Act does not contain any preamble it is permissible to look into the Preamble of expired Act, when any question as to the interpretation of the re-enacted Act arises.[4]

16. Effect on proviso.—It is a well-known rule in the construction of statutes, that if a substantive enactment in a former Act is repealed, that which comes by way of *proviso* upon it is impliedly repealed also.[5] When a bye-law is made under an Act of Parliament the repeal of the Act, abrogates the bye-laws unless the bye-law is preserved by the repealing Act by means of a saving clause or otherwise.[6]

17. Repeal with a saving clause.—It is a well-settled rule of common law that when an action is brought under a statute which is afterwards repealed, the Court loses jurisdiction of suit pending under the repealed Act and is unable to deliver judgment therein. The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted and conducted whilst it was an existing law. It follows as a corollary that if a statute is unconditionally repealed without a saving clause in favour of pending suits, all actions must stop where the repeal finds them, and if final relief has not been granted before the repeal goes into effect, it cannot be granted afterwards.[7] A party who did not claim and establish his rights when the statute was in force

1. *Kana Kachra* v. *Jadeja Bhikhubha Pathubha*, AIR 1953 Sau 195.
2. *Dulal Samanta* v. *District Magistrate*, AIR 1958 Cal 365, 371(FB) (P.B. Mukarji, J.).
3. *Surjan Singh* v. *East Punjab Government*, AIR 1957 Punj 265, 269.
4. *Bhagaban Roy* v. *First Land Acquisition Collector*, 85 Cal WN 59.
5. *Horsnail* v. *Bruce*, 1873 LR 8 CP 378, 385 (*per* Bovill, C.J.) Repeal of the Act abrogates Rules thereunder, unless they are preserved by the Repealing Act by means of a saving clause or otherwise; *Union of Burma* v. *Maung Maung*, 1949 Bur LR 1 (FB).
6. *Watson* v. *Winch*, (1916)1 KB 638.
7. *State of Maharashtra* v. *Chandrasekhar*, 1975 Mah LJ 607.

cannot claim rights under it, after it has been repealed.[1] A similar principle applies to a law conferring jurisdiction and it has been held repeatedly that the repeal of a statute giving jurisdiction to a court deprives it of the right to pronounce judgement in a proceeding previously pending. Whenever a statute from which a Court derives its jurisdiction in particular cases is repealed, the court has no right to proceed under the repealed statute even in suits pending at the time of the repeal unless the right is expressly saved by the repealing Act or by a general Act regulating repeals. To mitigate the harsh rule of the common law the Legislature considers its expedient from time to time to enact saving clauses which expressly provide that whenever a statute shall be repealed, such repeal shall not affect pending actions founded thereon.[2] *In re* R.,[3] Collins, M.R. observed : "Where you have a repeal, and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, yes or no; is there incompatibility between the two? And in those cases the Judges, in holding that there was a saving clause large enough to annul the repeal, said that you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as *pro tanto* wiped out." This is the doctrine of *'qualified repeal'*. It does not apply where saving is full and clear.[4]

Where an Act is repealed, it is the same thing as if it had never existed except with reference to such parts as are saved by the repealing statute. The opportunity of further cross-examination given to the accused under Sub-section (2) of Section 267 of Hyderabad Criminal Procedure Act [which stood repealed by the Criminal Procedure Code (Amendment) Act, 1 of 1951] is not a right accrued within the meaning of the usual saving clause providing that all rights accrued by virtue of the statute repealed, are to be unaffected by such repeal.[5]

"A proviso in a repealing statute, that the repealed statutes shall be repealed, except as to acts done under them," will operate to preserve to parties sued for acts alleged to have been done, under colour of the powers of the repealed statutes, a protection which those statutes conferred upon persons sued for such acts, at all events, if the action is brought before the repealing statute passes.[6]

18. Repeal of State Act by Central Act.—As regards conditions for such repeal.[7]

In *Zaverbhai Amaidas* v. *State of Bombay*,[8] it was observed : "It is true as already pointed out, that on a question under Article 254(1) whether an Act of Parliament prevails against A LAW OF THE STATES? no question of repeal arises, but the principle on which the rule of implied repeal rests, namely, that if the subject matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment will be equally applicable to a question under Article 254(2) where the further legislation by Parliament is in respect of the same matter as that of the state law.[9]

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1. *Valuthakunju* v. *Sankaran*, 1979 Ker LT 501.
2. *National Planners* v. *Contributors*, AIR 1958 Punj 230, 231 (FB).
3. (1906)1 Ch 730, 73[illegible]following; *In re* Busfield, (1886)32 Ch D 123; *Hume* v. *Samarton*, (1890)25 QBD 239.
4. *State of Maharashtra* v. *Chandrasekhar*, 1975 Mah LJ 607.
5. *Waheed Hasan Khan* v. *State of Hyderabad*, AIR 1954 Hyd 204 (FB).
6. *Foster* v. *Pritchard and Whitroe*, (1857)157 ER 63.
7. *D. Chelliah* v. *Lalitabai*, AIR 1978 Mad 66.
8. AIR 1954 SC 752.
9. Quoted in *Ratanlal Adhukia* v. *Union of India*, AIR 1990 SC 104 : (1989)3 JT 148 : 1989 ACJ 1080 : (1989)3 SCC 537 overruling AIR 1971 Assam 69 and AIR 1985 Mad 130.

PART II

CHAPTER XXXII

INTERPRETATION OF CONSTITUTION

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1. Constitution and other statutes.—Accustomed as we have been in our day-to-day administration of justice to the interpretation of numerous statutes, we are apt to lose sight of the fact that the Constitution is unlike most of the statutes that we came across and has to be judged from somewhat different standards. The Constitution is the very framework of the body policy : its life and soul; it is the fountain-head of all its authority, the main spring of all its strength and power. The Executive, the Legislature, and the Judiciary are all its creation, and derive their sustenance from it. It is unlike other statutes which can be at any time altered, modified or repealed. Therefore, the language of the Constitution should be interpreted as if it were a living organism capable of growth and development if interpreted in the broad and liberal spirit, and not in a narrow and pedantic sense. The need for this caution is greater when the Court is called upon to interpret the Constitution of the great democratic republic of India, devised by the people of the land who were anxious to insure for themselves a Government of the people, by the people and for the people. The Constitution was not merely concerned with

the present and the past; but also built for the future. It would be small credit to the makers of the Constitution, if we start with the erroneous assumption that they failed to visualise the problems with which we are at present confronted, and that in the Constitution they did not provide for them. We cannot but presume that in the normal course they must have peeped into the future 'far as human eye could see' or far as human intellect could probe, and foreseen these contingencies.[1] Both in a way emanate from the same source, that is, the people, but there is difference in the mode of their enactment. While the Constitution is the direct mandate of the people themselves, the statute is an expression of the will of the Legislature only, though the Legislature is also the representative of the people. A Constitution is but a higher form of statutory law. The Constitution, viewed as a continuously operative charter of Government is not to be interpreted as demanding the impossible or the impracticable.[2]

2. Constitution the paramount law.—The Constitution is written to be understood by the voters; its words and phrases are used in their normal and ordinary sense as distinguished from technical meaning. The simplest and most obvious interpretation of a Constitution; if in itself sensible, is the most likely to be that meant by the people in its adoption.[3] There is no war between Constitution and commonsense.[4] A written Constitution is to be interpreted and effect given to it as a paramount law to which all other laws must yield. It is equally obligatory on individual citizens and on all departments of Government including the Legislature and the Judiciary.[5] "A Constitution is a documentation of the founding faiths of a nation and the fundamental directions for their fulfilment. So much so, an organic, not pedantic, approach to interpretation, must guide the judicial process. The healing art of harmonious construction, not the tempting game of hairsplitting promotes the rhythm of the law."[6]

A Constitution is the mechanism under which laws are to be made, and not merely an Act which declares what the law is to be. It is also well settled that a Constitution must not be construed in a narrow or pedantic sense and the construction which is most beneficial to the widest possible amplitude of its power must be adopted. An exclusionary clause in any of the entries should be strictly and therefore narrowly construed. No entry should however be so read as not to rob it of entire content. A broad and liberal spirit should therefore inspire those whose duty it is to interpret the constitution and the courts are not free to stretch or prevent the language of an enactment in the interest of any legal or constitutional theory. Constitutional adjudication is not strengthened by such an attempt but it must seek to declare the law but it must not try to give meaning on the theory of what law should be put it must so look upon a constitution that it is a living and organic thing and must adopt itself to the changing situations and pattern in which it has to be interpreted. It has also to be borne in mind that where division of powers and jurisdiction in a federal constitution is the scheme, it is desirable to read the constitution in harmonious way. It is also necessary that in deciding whether any particular enactment is within the purview of one Legislature or the other, it is pith and substance of the legislation in question that has to be looked into. It is well settled that the various entries in the three lists of the Indian Constitution are not powers but fields of

1. *State of Rajasthan* v. *Shamlal*, AIR 1960 Raj 256, 265, 266 : ILR (1969)10 Raj 652 (FB); *Dalip Singh Gill* v. *Union of India*, AIR 1993 P & H 263 (DB).
2. *Opp. Cotton Mills.* v. *Administrator*, 85 L Ed 624, 636 : 312 US 126 (Stone, J.). *See* also *Amar* v. *C.J., Punjab*, AIR 1978 Punj 215.
3. *Green* v. *United States*, 2 L Ed 2d 672, 703 : 356 US 165.
4. *Mapp.* v. *Ohio*, 6 L Ed 1081, 1091 (Clark, J.).
5. *Chicago etc. R. Co.* v. *Swanger*, 137 Fed 783 (*affirmed* in 54 L Ed 978).
6. *Fatehchand Himatlal* v. *State of Maharashtra*, 1977 Mah LJ 205 : 1977 MPLJ 201 (SC) (*per* Krishna Iyer, J.).

legislation. These demonstrate the area over which the appropriate legislatures can operate. It is well settled that widest amplitude should be given to the language of the three entries but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then comes the duty of the court to find the true intent and purpose and to examine the particular in question. Each general word should be held to extend to all ancillary or subsidiary matters, which can fairly and reasonably be comprehended in it.[1]

3. Constitution outside the purview of Courts.—Being a paramount law a Constitution is outside the purview of the Courts, but a statute would be invalid if it contravenes any express provision of the Constitution or even if it is inhibited by the implied powers and restraints found in the Constitution. The implied restrains of the Constitution upon legislative power may be as effectual for its condemnation as the written words, and such restraints may be found either in the language employed, or in the evident purpose which was in view and the circumstances and historical events which led to the enactment of the particular provisions as a part of the organic law.[2] Questions of this character have frequently arisen in connection with legislation calculated to control municipal affairs, or in statutes prescribing conditions and qualifications for the selection of local officers, and in many cases such legislation has been declared unconstitutional, as being repugnant to the principal of local Government, although not contravening any express constitutional provisions.[3]

4. Applicability of rules of statutory construction.—The Constitution being essentially in the nature of a statute, the general rules governing the construction of statutes in the main apply to the constructions of Constitutions also.[4] The fundamental rule of interpretation is the same whether it is the provisions of the Constitution or an Act of Parliament, namely, that the Court will have to ascertain the intention gathered from the words in the Constitution or the Act as the case may be. And where two constructions are possible that one should be adopted which would ensure a smooth and harmonious working of the Constitution and eschew that which would lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory.[5]

In *Federated Saw Mill and Employees of Australasia* v. *James Moore & Son Proprietary Ltd.*,[6] Griffith, C.J., held that the Constitution is to be construed by the application of the same rules that are applicable to the construction of other laws as laid down in *Heyden*'s case.[7] It is undoubtedly true that a constitutional provision is frequently better understood by a knowledge of the evils which led to its adoption.[8] It is settled by very high authority that in placing a construction on a Constitution of any clause or part thereof, a Court should look to the history of the times and examine the state of things existing when the Constitution was framed and

1. *Synethetics & Chemicals Ltd.* v. *State of U.P.*, AIR 1990 SC 1927 (7J) : (1989)4 JT (SC) 267; *Supreme Court Advocates on Record Association* v. *Union of India*, (1993)4 SCC 441 (9J).
2. *Rathbone* v. *Wirtu*, 34 LRA 408.
3. *Levington* v. *Thompson*, 57 LRA 408.
4. *Knight* v. *Seltoon*, 124 Fed 423; *Dr. S.C. Barat* v. *Pataskar*, AIR 1962 MP 73, 76; *Shantilal Ambalal Mehta* v. *N.A. Rangaswamy*, 1977 Mah LJ 587 (FB).
5. *Chandra Mohan* v. *State of U.P.*, AIR 1966 SC 1987 : 1966 All LJ 778 : 1966 All WR (HC) 537; *Smt. Shakuntala S. Tiwari* v. *Hemchand M. Singhania*, AIR 1987 SC 1823 : (1987)3 JT 433 : 1987 Rajdhani LR 363 : (1987)10(1) IJ Rep 296 : (1987)3 SCC 211 : (1987)1 Supreme 697 : (1987)2 SCJ 481 : (1987)2 Guj LH 916 : (1987)2 Bom CR 480 : 1987 SCFBRC 319 : (1987)1 Rent LR 281 : (1987)2 UJ (SC) 439 : 1987 BBCJ (SC) 176.
6. (1908)8 Aust CLR 465, 486-87.
7. 3 Rep 7 at p. 7-*b*.
8. *Prigg* v. *Pennsylvania*, 16 Pet (US) 539 : 10 L Ed 1060; *Dartmouth College* v. *Woodward*, 4 Wheat (US) 518 : 4 L Ed 629.

adopted, in order to ascertain the prior law, the mischief, and the remedy.[1]

"Where two alternative constructions are possible, the Court must chose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to our Constitution with greater force....." said the Supreme Court in *Chief Justice of Andhra Pradesh* v. *L.V. A. Dixitulu.*[2]

The general rule of consequential repeal of laws framed under a repealed law does not apply to the laws enacted under a Constitution enactment. Such laws remain in force unless expressly repealed.[3]

(i) Same rules irrespective of form of Government.—In *Pannalal Lahoti* v. *State of Hyderabad,*[4] his Lordship Misra, C.J., observed : "It is not the form of Government or the nature of the law-making authority which governs the object underlying its laws. In every form of Government, the power to make laws vests in some authority or the other. Whether that authority is given to a federal or the unitary Legislature or it is enjoyed by an absolute ruler is immaterial for determining the intention underlying a legislation." And Ansari, J., agreeing with him, observed : "It is true that judiciary in written federal Constitutions generally interprets and construes the Constitutions but this is the inevitable consequence of all written ruling instruments, be they federal or unitary, or something of lesser importance..... the principles applied in the interpretation and construction of the written Constitutions are not different to those used in construing laws enacted by Legislatures where the constructions have not been reduced into writing.....a written Constitution is generally interpreted like any other statute by reference to its terms and without any consideration of the policy and the possibility of abuse of powers." Therefore his Lordship said the authority of Courts in countries with written Federal Constitution relating to emergency legislations should not be ruled out on the only ground that a particular legislation is by an authority where power was not reduced to writing.[5]

Manohar Pershad, J.,[6] in his dissenting opinion, however, observed : "Federation connotes among other things the supremacy of a written Constitution, setting up a Central Government, clothed with legislative, executive and judicial powers, which are exercised within the authority prescribed by the Constitution. This limitation of authority is in contracts to the supremacy of the Legislature under a unitary form of Government. There are no practical limits to the authority of a Supreme Legislature, such as, the Imperial Parliament of Great Britain except the lack of executive power to enforce its enactments. But in a federation neither the Legislature of the Central Government nor the Legislature of a component entity is supreme. Each such legislation can only assert its supremacy within the limits assigned by the Constitution."

(ii) Ascertainment of intention.—The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it.[7] That

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1. *Brushaber* v. *Union etc. Co.* 240 (US) 1, LO L Ed 493; *Maxwell* v. *Daw,* 176 US 581 : 44 L Ed 597; *United States* v. *Wong Kum Ark,* 169 US 649 : 42 L Ed 890; *Prigg* v. *Pennsylvania,* 16 Pet (US) 539 : 10 L Ed 1060.
2. AIR 1979 SC 193 : 1978 Lab IC 1672; *see* also *State of Karnataka* v. *Union of India,* AIR 1978 SC 68.
3. *Mohan Agarwal* v. *U.O.I.,* AIR 1979 All 170 (FB).
4. AIR 1954 Hyd 129, 135 (FB).
5. *Pannalal Lahoti* v. *State of Hyderabad,* AIR 1954 Hyd 129, 148-49 (FB).
6. *Pannalal Lahoti* v. *State of Hyderabad,* AIR 1954 Hyd 129, 148-49 (FB) at p. 139.
7. *Lake County Commissioners* v. *Rollins,* 130 US 662 : 132 L Ed 1060; *Whiteman* v. *National Bank,* 176 US 559 : 44 L Ed 587; *see* also *Woodson* v. *Murdock,* 22 Wall US 351 : 122 L Ed 716 (construed reasonably to carry out the intention of the

is, "according to the intent that made it". Normally such intent is gathered from the language of the provision. But if words used in the provision are imprecise, protean or evocative or can reasonably bear meaning more than one, then it is legitimate for the Court to go beyond and call in aid other well-recognised canons of constructions.[1] In the case of *Cooper* v. *Commissioner of Income-tax for the State of Queensland*,[2] Cooper, J., said : "There is no difference in the rules to be applied in the interpretation of a Constitution Act and in the interpretation of any other statute. The object of the Court must always be to ascertain the intention of the Legislature from the language it has used. We must, by applying the cardinal rules of construction ascertain the intention of the Constitution-makers from the language used by them.[3] But in determining whether a provision of the Constitution applies to a new subject-matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of Government, they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence one must read its words, not as one read legislative Codes, which are subject to continuous revision with the changing course of event, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of Government.[4] Where the language is ambiguous the Court may be aided by a consideration of the other sections of the statute, its scope and purpose as a whole, the subject-matter, and the condition of the law before it was passed.[5] But when the language is unambiguous the rule to be applied is that stated by Lord Chief Justice Tyndal in the *Sussex Peerage* case,[6] as follows : "My Lords, the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such cases, but declare the intention of the law-giver."[7]

The intention of Constituent Assembly as expressed in Entry 54, List II of the Seventh Schedule to the Constitution cannot be a guide for ascertaining the intention of a totally different body, the British Parliament in enacting Entry 43 in List II of the Seventh Schedule to the Government of India Act, 1935.[8]

Lamar, J., observed in *Lake County Commissioners* v. *Rollins*[9] :

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framers; *Prigg* v. *Pennsylvania*, 16 Pet US 539 : 10 L Ed 1060 (not to defeat the obvious intent), 'mischief rule' applied to interpretation of the Constitution; *Rhode Island* v. *Massachussetts*, 12 Pet (US) 657 : 9 L Ed 1233 should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it is aimed; *Jarroet* v. *Moberly*, 103 US 580 : 26 L Ed 492.

1. *C.J. of A.P.* v. *L.V.A. Dikshitulu*, 1978 Lab IC 1672 at p. 1684 (SC) : AIR 1979 SC 193; *(Dr.) Sudhakar* v. *Union of India*, AIR 1995 Andh Pra 86 (FB).
2. 4 CLR 1304, 1321.
3. *M.S.M. Sharma* v. *Sri Krishna Sinha*, AIR 1959 SC 395, 410.
4. *United States* v. *Classic*, 85 L Ed 1368, 1378 : 313 US 299 (Stone, J.).
5. *Deaken* v. *Webb*, 1 CLR 585, 630 *per* O'Connor, J. : "It is only if we fail to adduce reasonable meaning from them that we can have resort to the history of the clause or the cricumstance surrounding the framing of the Constitution."
6. (1844)11 Cl and Fin 85 at p. 143.
7. *Huddart, Parker and Co. Proprietary, Ltd.* v. *Moorehead*, 8 CLR 339, 392, *per* Isaacs, J. : "But whatever the worth or the consequence of the dictum as interpreted in *United States* v. *Dewitt* (9 Wal 41) having to choose between Chase, C.J. and the repeated opinions of the Privy Council, I have no room for hesitation, but am bound to construe the words of the Constitution according to their natural meaning and without reference to implied prohibitions."
8. *V.M. Syed Mohammad & Co.* v. *State of Andhra Pradesh*, AIR 1954 SC 314.
9. 132 L Ed 1060, 1063 : 130 US 662.

"Why not assume that the framers of the Constitution and the people who voted it into existence, meant exactly what it says? At the first glance, its reading produces no impression of doubt as to the meaning. It seems all sufficiently plain; and in such case there is a well-settled rule which one must observe. The object of construction applied to a Constitution, is to give effect to the intent of the framers, and of the people in adopting it. This intent is to be found in the instrument itself, and when the text of a constitutional provision is not ambiguous the Courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument. To get at the thought or meaning expressed in a statute, a contract or a Constitution, the first resort, in all cases, is to the natural signification of the words, in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involve no absurdity nor any contradiction of other parts of the instrument, then that meaning, apparent on the fact of the instrument, must be accepted, and neither the courts nor the Legislature have the right to add to it or take from it..... So also, where a law is expressed in plain and unambiguous terms whether those terms are general or limited, the Legislature should be intended to mean what they have plainly expressed and consequently no room is left for construction.....There is even stronger reason for adhering to this rule in the case of a Constitution than in that of a statute, since the latter is passed by a deliberative body of small numbers, a large proportion of whose members are more or less conversant with the niceties of construction and discrimination and fuller opportunity exists for attention and revision of such a character, while Constitution although framed by conventions, are yet created by the votes of entire body of electors in a State, most of whom are little disposed, even if they were able, to engage in such refinements. The simplest and most obvious interpretation of a Constitution, it in itself sensible, is the most likely to be that meant by the people in its adoption."

In the *State of New South Wales* v. *The Commonwealth*,[1] Griffith, C.J., said : " but, just as in construction of specification for a patent it is necessary to ascertain the subject-matter and the sense in which the words used would be understood by persons conversant with it, so is it in the construction of a Federal Constitution which regulates the relations between the Federal Government and the Government of the State. These are by no means the same as those of principal and agent."

(iii) Harmonious construction.—One section of an Act cannot be held *ultra vires* of another section of the Act. In a contingency of this kind the only course open to Court is to put a harmonious interpretation thereon.[2] In determining the scope and ambit of the fundamental rights, the Court may not entirely ignore the directive principles of State policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.[3] "*The Directive Principles* set proximate goals. When it is the task of examining statutes against the Constitution, it is through these clauses *that the court must look' distant vision'*. The Constitution being *sui generis* where constitutional issues are under consideration narrow interpretative rules which may have relevance when legislative enactments are interpreted may be misplaced..... Whatever article of the Constitution it is that the court seeks to interpret, whatever statute it

1. 7 CLR 179, 189.
2. *Mahavir Prasad* v. *State of Rajasthan*, AIR 1966 Raj 256, 258 (Dave, C.J.).
3. Kerala Education Bill, *In re*, AIR 1959 SC 956, 966-67; *M.S.M. Sharma* v. *Sri Krishna Sinha*, AIR 1959 SC 395, *Infra* 410 : Article 19(1)*(a)*...General yields to Article 194(1)(3)...Special; *Chandra Mohan* v. *State of U.P.*, AIR 1966 SC 1987.

is whose constitutional validity is sought to be questioned the court must strive to give such an interpretation as will promote the march and progress towards a socialistic Democratic State."[1]

In *Unnikrishnan, J.P.* v. *State of Andhra Pradesh*[2] the Supreme Court has further expounded as follows : 'This court has also been consistently adopting the approach that the Fundamental Rights and Directive Principles are supplementary and complementary to each other and that the provisions in Part III should be interpreted having regard to the preamble and the Directive Principles of the State policy. The initial hesitation to recognise the profound significance of Part IV has been given up long ago? Also it is reiterated in this decision that the Fundamental Rights and Directive Principles constitute the conscience of the Constitution. It is also conceded that since the decision in *State of Madras* v. *Champakam Dorairajan*,[3] there has been a perceptible drift in the Court's approach to the interplay of Fundamental Rights and Directive Principles.[4] And so construed, the provisions of Article 19(1)*(a)*, which are general, must yield to Article 194(1) and the latter part of its Clause (3) which are special.[5] "It is a well settled principle of interpretation" says the Andhra Pradesh High Court in *V.R. Sheerama Rao* v. *Telugudesam*,[6] "that all parts of the Constitution should be read together and harmoniously. Even if an intractable language is found to have been used preventing such harmonious reading making the squaring up of the assertion of fundamental right with its denial, the courts should, considering the paramounting of the fundamental rights, uphold the assertion of the Fundamental right given in absolute terms. It follows, therefore, that Article 29, Clause (1), must be given predominance over the 16th Constitutional Amendment even if it held that the 16th Amendment whittles down Article 29(1) of the Constitution." It may also be that an article embodying a fundamental right may exclude another by necessary implication, but before such a construction excluding the operation of one or other of the fundamental rights is accepted, every attempt should be made to harmonise the two Articles, so as to make them co-exist, and only if it is not possible to do so, one can be made to yield to the other.[7] Barring such exceptional circumstances, any law made would be void if it infringes any of the fundamental rights.[8]

Dhavan, J., stated in *Moinuddin* v. *State of U.P.*,[9] : "The choice between two alternative constructions should be made in accordance with well-recognized canons of interpretation—

> *Firstly*, if two constructions are possible the Court must adopt the one which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or gives rise to practical inconvenience or make well-established provisions of existing law nugatory.[10]

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1. Vide *Atam Prakash* v. *State of Haryana*, AIR 1986 SC 859 : 1986 Punj LJ 191 : 1986(1) 89 Punj LR 329 : (1986)1 Cur CC 641 : (1986)1 Land LR 478 : (1986)1 Supreme 628 : (1986)2 Supreme 213 : 1986 Rev LR 226 : 1986 Sim LC 132 : 1986 UJ (SC) 642 : 1986 Cur Civ LJ (SC) 490 : (1986)2 SCC 290 (5J).
2. AIR 1993 SC 2178 : 1993 ALJ 341 : 1993 AIR SCW 863 (5J).
3. AIR 1951 SC 2261.
4. *See* also *State of Tamil Nadu* v. *L. Ahu Kavur Bai*, (1986)1 MLJ 8 (SC) (5J).
5. *M.S.M. Sharma* v. *Sri Krishna Sinha*, AIR 1959 SC 395 : 1959 (Supp) 1 SCR 806, 860 (Das, C.J.).
6. AIR 1983 AP 96.
7. *Kavalappara Kottarithil Kochuni* v. *State of Madras and Kerala*, AIR 1960 SC 1080.
8. *Kochuni* v. *State of Madras* (*2nd Kochuni* case), (1960)3 SCR 887, 905.
9. AIR 1960 All 484, 491.
10. *State of Punjab* v. *Ajaib Singh*, AIR 1953 SC 10; *C.J. of A.P.* v. *L.V.A. Dikshitulu*, 1978 Lab IC 1672 at p. 1684 (SC) : AIR 1979 SC 193.

Secondly, constitutional provisions are not to be interpreted and applied, by narrow technicalities but as embodying the working principles for practical Government.

Thirdly, the provisions of a Constitution are not to be regarded as mathematical formulae and that their significance is not formal but vital. Hence practical considerations rather than formal logic must govern the interpretation of those parts of a Constitution which are obscure.

Fourthly, in a choice between two alternative constructions, the one which avoids a result unjust or injurious to the nation should be preferred.

Fifthly, before making its choice between two alternative meanings, the Court must read the Constitution as a whole, take into considerations its different parts and try to harmonise them.

Sixthly, above all Court should proceed on the assumption that no conflict or repugnancy between different parts was intended by the framers of the Constitution.

The rules which apply to the interpretation of other statutes, *e.g.*, if two constructions are possible, the Court must adopt that which ensures smooth and harmonious working, and eschew the other which will lead to absurdity or give rise to practical inconveniences or make well-established provisions of existing law nugatory,[1] or leads to confusion or friction or contradiction between various provisions or undermines or tends to defeat or destroy basic scheme and purpose of the enactment,[2] and every attempt must be made to harmonise the two provisions so as to make them co-exist and only if it is not possible to do so, one can be made to yield to the other,[3] apply equally to the interpretation of a constitutional enactment subject to this reservation that their application is of necessity conditioned by the subject-matter of the enactment itself.[4] "What is true of an ordinary Statute" said the Supreme Court in *Union of India* v. *S.H. Sheth*,[5] "is not anytheless true in the case of constitutional provision, and the same rule applies equally to both. If the words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision if read literally is patently incompatible with the other provisions of that instrument, the Court would be justified in construing the words in a manner which will make the particular provision meaningful. That is the essence of the rule of harmonious construction. But if the provision is clear and explicit it cannot be reduced to a nullity by reading into it a meaning which it does not carry". For instance, the requirement to avoid *obiter* observations and discussion of problems not involved in the proceedings is almost compulsory when the Court is dealing with constitutional matters.[6]

(iv) Constitution to be examined with reference to its own language.—In *Rex* v. *Smithers*, Ex parte *Benson*,[7] Higgins, J., expressed the rule in these words : "It is our duty merely to ascertain the meaning and application of the words used in our own Constitution, as they stand, as the words of an instrument which is complete in itself, and which has to be construed, by an examination of its own language within its four corners." The Supreme Court has expressed the rule in these words : The only safe guide for interpretation of Article or Articles of an organic

1. *State of Punjab* v. *Ajaib Singh*, AIR 1953 SC 10.
2. *C.J. of A.P.* v. *L.V.A. Dikshitulu*, AIR 1979 SC 193 : 1978 Lab IC 1672 at p. 1684 (SC).
3. *Karalappara Kottarithil Kochuni* v. *State of Madras and Kerala*, AIR 1960 SC 1080.
4. *In re* C.P. & Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938, AIR 1939 FC 1, 4-5; *Baksi* v. *Accountant-General, Bihar*, AIR 1957 Pat 515.
5. (1977)18 Guj LR 919, para 12.
6. *Naresh Shridhar* v. *State of Maharashtra*, AIR 1967 SC 1 (*per* Majority).
7. 16 CLR 99, 118.

instrument like the Constitution is the language employed, interpreted not narrowly, but fairly in the light of broad and high purposes of the Constitution, but without doing any violence to the language,[1] to suit the expanding needs of the society.[2] The best mode of ascertaining the meaning affixed to any words or sentence by a deliberative body is by comparing it with the words and sentences with which it stands connected.[3] The obscurity of any particular word may be removed by reference to associated words. And the meaning of a term may be enlarged or restricted by reference to the object of the whole clause in which it is used.[4] Clauses of the Constitution which involve a conflict of governmental powers must be considered with reference to the literal meaning of the words, their connection with other words and the general object to be accomplished,[5] and in a case of ambiguity, report of the Drafting Committee of the Constituent Assembly may be read.[6] The conventions prevalent at the time when the Constitution was framed, establishing a Parliamentary system of Government with a cabinet may well be kept in mind while interpreting the Constitution; but if words of an Article are clear, notwithstanding the relevant convention, effect will be given to the words.[7]

(v) Noctur a Sociis.

A Constitutional provision will not be interpreted in the attitude of a lexicographer, with one eye on the provision and the other on the lexicon. It is the duty of the Court to determine in what particular meaning or particular shade of meaning the word or expression was used by the constitution-makers, and in discharging the duty the Court will take into account the context in which it occurs, the object to serve which it was used, its collocation the general congruity with the concept or object it was intended to articulate and a host of other considerations. Above all, the Court will avoid repugnancy with accepted norms of justice and reason.[8]

(vi) Analogous provisions of other Constitution.—In *D'Emden* v. *Pedder*,[9] Griffith, C.J., said : " We cannot discharge the fact that the Constitution of the Commonwealth was framed by a convention of Representatives from the several Colonies. We think that, sitting here, we are entitled to assume—what, after all, is fact of public notoriety,—that some, if not all, of the framers of that Constitution were familiar not only with the Constitution of the United States, but with that of the Canadian Dominion and those of the British Colonies. When, therefore, under these circumstances, we find embodied in the Constitution provisions undistinguishable in substance, though varied in form, the provisions of the Constitution of the United States which had long since been judicially interpreted by the Supreme Court of that Republic, it is not an unreasonable inference that its framers intended that like provisions should receive like interpretation." The learned Chief Justice does not state what are the provisions.—'Undistinguishable in substance, though varied in form." It is indeed extremely difficult to understand the application of the principle involved unless the comparison is made clear by the juxtaposition of the provisions. The same learned Judge in *Deakin* v. *Webb & Lyne*[10] says; as

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1. *Union of India* v. *Harbhajan Singh*, (1971)2 SCC 779.
2. *I.C. Golaknath* v. *State of Punjab*, AIR 1967 SC 1643.
3. *Wheaton* v. *Peters*, 8 Pet (US) 591 : 8 L Ed 1055; *Virginia* v. *Tennessee*, 148 US 503 : 37 L Ed 537 (constitutional provision).
4. *Virginia* v. *Tennessee*, 148 US 503 : 37 L Ed 537.
5. *Brown* v. *Maryland*, 12 Wheat (US) 419 : 6 L Ed 678.
6. *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27.
7. *U.N.R. Rao* v. *Smt. Indira Nehru Gandhi*, AIR 1971 SC 1002.
8. *H.H. Maharajadhiraja Madhav Rao Jivaji Rao* v. *Union of India*, (1971)1 SCC 85.
9. 1 CLR 91, 113.
10. 1 CLR 606.

justifying his rejection of the relevancy of the distinction between the Governments of the United States and the Constitution of the English Monarchy : "It is a matter of common knowledge that the framers of the Australian Constitution were familiar with the two great examples of English speaking federation, and deliberately adopted, with regard to the distribution of powers, the model of the United States, in preference to that of the Canadian Dominion." It is somewhat difficult to know what it is to which the learned judge refers, and the only explanation he gives is that 'they used language not verbally identical, but synonymous for the purpose of defining that distribution'. In *Webb* v. *Outtrim*,[1] their Lordships of the Privy Council, however, observed : "It is, indeed, an expansion of the canon of interpretation in question to consider the knowledge of those who framed the Constitution and their supposed preferences for this or that model which might have been in their minds. Their Lordships are not able to acquiesce in any such principle of interpretation." However in order to understand the basic principles of freedom of speech and expression and the need for that freedom in a democratic country, the Court may take into consideration the decisions of the Supreme Court of United States, *Indian Express, Newspapers (Bombay) P. Ltd.* v. *Union of India*.[2]

A Constitution Bench of the Supreme Court held in M.C. *Mehta* v. *Union of India*[3] that it is not bound by foreign court decisions.

"We bring to our task", observed S.K. Das, J., in *Babu Lal Parate* v. *State of Bombay*,[4] "such considerations as are germane to the interpretation of an organic instrument like the Constitution; but it will be improper to import into the question of construction doctrines of democratic theory and practice obtaining in other countries, unrelated to the tenor, scheme and words of the provisions which we have to construe."

Reliance upon analogous provisions of other Constitutions and judicial precedents under other Constitutions demands great caution. The contention that the Indian Constitution, being a written one, must be assumed to have an American background and is based upon an acceptance of that theory of "Separation of powers" which determined the main lines on which the Constitution of the United States came to be drawn up cannot be accepted. The broad fact which stands out is that the executive provided by our Constitution is a removable executive, *i.e.*, an executive of the Parliamentary type, such as, obtains in Britain. Article 75(3) and (5) shows that the approach of our Founding Fathers of the Constitution was basically different from those responsible for the framing of the American Constitution.[5] It would not be always safe to rely upon the American or Australian decisions in interpreting the provisions of our Constitution. Valuable as those decisions might be in showing how the problem of freedom of trades, commerce and intercourse was dealt with in other Federal Constitutions, the provisions of our Constitution must be interpreted against the historical background in which our Constitution was made; the background of problems which the Constitution-makers tried to solve according to the genius of the Indian people whom the Constitution-makers represented in the Constituent Assembly.[6] None of the constituent units of the Indian Union was sovereign and

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1. 1907 AC 81.
2. *See* AIR 1986 SC 515 : (1986)159 ITR 856 : (1985)1 SCC 641 : (1985)1 Com LJ 115 : 1985 Tax LR 2451.
3. (1987)1 SCC 395.
4. AIR 1960 SC 51, 54; *see* also *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 378 (Sikri, C.J.).
5. *Basti Sugar Mills Ltd.* v. *State of U.P.*, AIR 1954 All 538, 541 (*per* Sapru, J.); *Standard Literature Co. (Private) Ltd.* v. *Union of India*, 71 Cal WN 719 : AIR 1968 Cal 1 (SB).
6. *Automobile Trnasport, Ltd.* v. *State of Rajasthan*, AIR 1962 SC 1406, 1415; *Atiabari Tea Co. Ltd.* v. *State of Assam*, (1961)1 SCR 809.

independent in the sense the American colonies or the Swiss Cantons were before they formed their federal unions. The Constituent Assembly of India, deriving its power from the sovereign people, was unfettered by any previous commitment in evolving a constitutional pattern suitable to the genius and requirements of the Indian people as a whole. Unlike some other federal Legislatures, Parliament, representing the people of India as a whole, has been vested with the exclusive power of admitting or establishing new States, increasing or diminishing the area of an existing State or altering its boundaries, the Legislature or Legislatures of the States concerned having only the right to an expression of views in the proposals. It is significant that for making such territorial adjustments it is not necessary even to invoke the provisions governing constitutional amendments.[1]

The intention of the Constituent Assembly as expressed in Entry 54 in List II of the Seventh Schedule cannot be a guide for ascertaining the intention of a totally different body, namely the British Parliament, in enacting Entry 48 in List II of the Seventh Schedule of the Government of India Act, 1935.[2]

If the legislative practice is to be invoked to aid the construction of any statutory provision of the Government of India Act, 1935, it is the legislative practice of Parliament of the United Kingdom that is relevant.[3]

Although decisions of American Supreme Court and the comments of well-known commentators like Willoughby and Cooley have great pursuasive force, the Supreme Court need not interpret the Constitution of India by too much reliance on them.[4]

(vii) Where wording of other Constitution exactly the same.—In many respects the power of pardon and reprieves conferred under the Indian Constitution by Article 72 on the President, and by Article 161 on the Governor of State, is very similar to the power of the President of the United States of America in granting reprieves and pardons. The wording of the corresponding Articles is also similar and such being the case, decisions of the United States Supreme Court are useful in the decision of questions with respect to the power of pardon and reprieves conferred under Articles 72 and 161.[5]

A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions.[6]

(viii) Constitution to be considered as a whole.—The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument.[7] An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous.[8] If the plain

1. *Babulal Parate* v. *State of Bombay*, AIR 1960 SC 51, 56.
2. *V.M. Syed Mohammad & Co.* v. *State of Andhra Pradesh*, AIR 1954 SC 314.
3. *Umma* v. *I.T. Commissioner*, AIR 1954 Mad 1120, 1122.
4. *Jagannath* v. *Authorised Officer*, (1971)2 SCC 893.
5. *In re* Channugadu, AIR 1954 Mad 911; *D'Emden* v. *Peddar*, 1 CLR 91, 110, 113 (Griffith, C.J.).
6. *Deepchand* v. *State of U.P.* 1959 (Supp) 2 SCR 8; *see* also *Kochuni* v. *State of Madras* (*2nd Kochuni* Case), (1960)3 SCR 887, 910; *Basheshar Nath* v. *Commissioner of Income-tax*, AIR 1959 SC 150.
7. *Old Wayne, etc. Association* v. *Mc-Donough*, 51 L Ed 345; *Downers* v. *Bidwell*, 182 (US) 244 : 45 L Ed 1088; *Myers* v. *United State*, 272 US 52 : 71 L Ed 60, 180 (Taft, C.J.).
8. *Williams* v. *United States*, 289 US 553 : 77 L Ed 1372; *Marbury* v. *Madison*, 1 Cranch (US) 137 : 2 L Ed 60; *Myers* v. *United States*, 272 US 52 : 71 L Ed 60; *United States* v. *Butler*, 297 US 1 : 80 L Ed 477.

meaning of an uncontradicted constitutional provision is to be disregarded, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would without hesitation unite in rejecting the application.[1] If two provisions are in apparent conflict, a construction which will reconcile the conflict is to be preferred. If then it is found that to give a particular meaning to a word of indefinite, and possibly large, significance would be inconsistent with some definite and distinct prohibition to be found elsewhere, either in express words or by necessary implication, that meaning must be rejected.[2] This gives rise to the universally recognised incontrovertibly established rule for construction that it is presumed that words appearing in a Constitution have been used, according to their plain, natural and usual signification and import.[3] The words of the Constitution, however, are to be taken in natural and obvious sense, and not in a sense invariably restrained or enlarged.[4] The Courts are not at liberty to disregard the plain meaning of the words of a Constitution in order to search for some other conjectured intent.[5] A word which has been plainly used in a limited sense in the Article of the Constitution relating to the legislative and executive departments must be understood as retaining the same sense when employed in an Article relating to the judicial department.[6]

In construing a constitutional provision it is the duty of the Court to have recourse to the whole instrument, if necessary, to ascertain the true intent and meaning of any particular provision.[7] The subject, the context, and the intention of the body inserting a word in the Federal Constitution are all to be considered in determining its construction.[8]

The preamble of the Constitution of India is a part of the Constitution.[9] When the provision of the Constitution is plain, clear and unambiguous, the preamble thereof cannot control the meaning of such a provision.[10] Where the provision of the Constitution is ambiguous, the preamble serves as a key to understanding thereof.[11]

(ix) Constitution to be read in the light of circumstances in which made.—"The one clear line of judicial inquiry as to the meaning of the Constitution must be made to read it naturally in

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1. *Sturgess* v. *Crowningshield*, 4 Wheat (US) 122 : 4 L Ed 529; *Brushaber* v. *Union P.R.C.*, 240 US 1 : 60 L Ed 493 (not self-destructive); *United States* v *Billings*, 232 US 289 : 58 L Ed 608; *Billings* v. *United States*, 232 US 261 : 58 L Ed 596; *Flint* v. *Stone Tracy Co.*, 220 US 107 : 55 L Ed 389; *McCray* v. *United States*, 195 US 27 : 49 L Ed 78; *Patton* v. *Brady*, 184 US 608 : 46 L Ed 713; *Treat* v. *White*, 181 US 264 : 43 L Ed 432.
2. *King* v. *Barger*, 6 CLR 41, 72; referred to in *Huddart Parker & Co. Proprietary, Ltd.* v. *Moorehead*, 8 CLR 350.
3. *Holmes* v. *Jennisen*, 14 Pet (US) 540 : 10 L Ed 579; *Tennesee* v. *Whitworth*, 117 US 139 : 29 L Ed 833; *McPherson* v. *Blacker*, 146 US 1 : 36 L Ed 879; *South Carolina* v. *United States*, 199 US 437 : 50 L Ed 201; *Hodges* v. *United States*, 203 US 1 : 51 L Ed 65; *Meyers* v. *United States*, 272 US 52 : 71 L Ed 160; *United States* v. *Sprague*, 282 US 716 : 75 L Ed 640; *Municipal Committee, Amritsar* v. *State of Punjab*, AIR 1969 SC 1100 (vagueness of a provision is no ground for striking down a statute).
4. *Martin* v. *Hunter*, 1 Wheat US 304 : 4 L Ed 97.
5. *McPherson* v. *Blacker*, 146 (US) 1 : 36 L Ed 879; *Craig* v. *Missouri*, 4 Pet (US) 410 : 7 L Ed 903; *Martin* v. *Hunter*, 1 Wheat (US) 304 : 4 L Ed 97.
6. *Hepburn* v. *Ellzey*, 2 Cranch US 45 : 2 L Ed 332.
7. *Downes* v. *Bidwell*, 182 US 244 : 45 L Ed 1088.
8. *M'Culloch* v. *Maryland*, 4 Wheat (US) 316 : 4 L Ed 579.
9. *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 324 (Sikri, C.J.), 709 (Palekar, J.), 787 (Khanna, J.), 852 (Mathew, J.), 928 (Dwivedi, J.), 988 (Chandrachud, J.).
10. *Burrakur Coal Co., Ltd.* v. *Union of India*, (1962)1 SCR 44, 49 (Mudholkar, J.); *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 549 (Ray, J.), 711 (Palekar, J.).
11. *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 326 (Sikri, C.J.), 420, 422 (Shelat & Grover, JJ.), 636-37 (Reddy, J.).

the light of the circumstances in which it was made, with knowledge of the combined fabric of the common law, and the statute law which preceded it, and then *lucet ipsa per se.*"[1] Very significant is the uncontrovertible proposition that it would indeed be undesirable for the Court to consider every conceivable situation which might possibly arise in the application of complex and comprehensive legislation. The delicate power of pronouncing an Act of Legislature unconstitutional is not to be exercised with respect to hypothetical cases thus imagined.[2] Constitutions, like statutes, are properly to be expounded in the light of conditions obtaining at the time of their adoption.[3] Whether a clause in the Constitution is to be restricted by the rules of the English law as they existed when the Constitution was adopted depends upon the terms or the nature of the particular clause in question.[4]

Courts should interpret the constitutional provisions against the social setting of the country so as to show complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the Legislature in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid.[5] Thus in ascertaining the meaning of the expression "migrate" in Articles 6 and 7, the Court would have regard to the scope and object of the Constitutional provisions examined in the light of the events which were witnessed both before and after the birth of the dominions of India and Pakistan, resulting in a violent upheaval in which large scale exodus of population took place from across the boundaries which divided the dominions.[6]

(x) Substance.—In construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect. The correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizens and not merely what manner and method has been adopted by the State in placing the restriction.[7]

(xi) Maxim 'expressio unius est exclusio alterius' *applied.*— In construing a Constitution, resort may be had to the well-recognised rule of construction contained in the maxim *"expressio unius est exclusio alterius"*, and the expression of one thing in a Constitution may necessarily involve the exclusion of other things not expressed.[8] An exception of any particular case presupposes that all those which are not included in such exception are embraced within the terms of a general grant or prohibition. The rule is likewise well established that where no exception is made in terms, none will be made by mere implication or construction.[9] Another established principle concerning the use of words is to the effect that in expounding the Federal

1. *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.*, 28 CLR 129, 152, *per* Knox, C.J., Isaacs, Rich & Starke, JJ.; *Garikapatti* v. *Subbiah*, 1957 SCR 488, 516.
2. *United States* v. *Raines*, 4 L Ed 2d 524 (Brennan, J.).
3. *Scott* v. *Sandford*, 19 How (US) 393 : 15 L Ed 691; *see* also *Mattox* v. *United States*, 156 US 227 : 39 L Ed 409 (the general spirit of the thing and the prevailing sentiments among the people); *United States* v. *David Paul*, AIR 1969 US SC 7.
4. *United States* v. *Wood*, 299 US 125 : 81 L Ed 78; *Continental Illinois, etc. Co.* v. *Chicago*, 294 US 648 : 79 L Ed 1110.
5. *Pathuma* v. *State of Kerala*, (1978)2 SCC 1(8) : AIR 1978 SC 771; *Ahmed Ali Akhtar* v. *Union of India*, (1993)1 Pat LJR 664 (FB).
6. *Kulathil Mammu* v. *State of Kerala*, AIR 1966 SC 1614.
7. *Sakal Papers* v. *Union of India*, AIR 1962 SC 305, 311, following *Dwarkadas Shrinivas* v. *Sholapur Spinning & Weaving Co. Ltd.*, 1954 SCR 674.
8. *Ex parte* Yallandingham, 1 Wall (US) 243 : 17 L Ed 589; *Brosnan* v. *Maryland*, 12 Wheat (US) 419 : 6 L Ed 678.
9. *Rhode Island* v. *Massachussets*, 12 Pet (US) 657 : 9 L Ed 1233.

Constitution, the omission in one place of an adjective used in others cannot be regarded as accidental under the rule that in expounding the Constitution every word must have its due force and appropriate meaning.[1] Laws enacted during the period when the framers of a Constitution were actively participating in public affairs may be treated as clearly approved by those who, as members of Parliament or of a State Legislature were in effect giving a practical construction to the Constitution which they had helped to establish.[2] Accordingly it has been recognised that they amount to a contemporaneous exposition of the Constitution within the meaning of the general principle, and that in doubtful cases the Courts may give considerable weight to it in upholding the constitutionality of such statutes.[3]

(xii) Not to be construed with reference to motives or public policy or political wisdom.—In construing the right given to the citizen and in interpreting the prohibition against depriving the citizen of his right, the court is not concerned with the motives or reasons that lead the Government to pass a law or issue an order. The reasons or motives may be the most laudable, but what the Court is concerned with is the operation of the law or order.[4] If the Legislature is competent to pass a particular law, the motives which impelled it to act are wholly irrelevant.[5] Similarly, the Court is not entitled to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful,[6] nor can inquiry into public policy or investigation into questions of political wisdom be undertaken by the Courts.[7]

(xiii) Not to be construed with reference to something which would commend itself to Court's mind.— In construing a Constitution we cannot look beyond the letter of the Constitution to adopt something which would commend itself to our minds as being a principle of abstract justice, *e.g.*, principles of international or inter-State ethics and, if possible, to read the Constitution in conformity with that principle. In the case of *State of Tasmania* v. *The Commonwealth of Australia and State of Victoria*,[8] Connor, J., dealing with the question, observed :

> "It appears to me the only safe rule is to look at the Statute itself and to gather from it what is its intention. If we depart from that rule we are apt to run the risk of the danger described by Pollock, C.B., in *Miller* v. *Salomons*.[9] 'If', he says, 'the meaning of the language be plain and clear, we have nothing to do but to obey it—to administer it as we find it; and, I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation.' Some passages were cited by Mr. Glynn from Black on the *'Interpretation of Laws'*, which seems to imply that there might be a difference in the rules of interpretation to be applied to the Constitution and those to be applied to any other Act of Parliament, but there is no foundation for any such distinction. The intention of the enactment is to be gathered from its words. If the words are plain, effect must be given to them; if they are doubtful, the intention of Legislature is to be gathered from the other

1. *Williams* v. *United States*, 289 US 553 : 77 L Ed 1372.
2. *Fairbank* v. *United States*, 181 US 289 : 45 L Ed 862.
3. *Cohen* v. *Virginia*, 6 Wheat US 264 : 5 L Ed 257.
4. *Bombay Education Society* v. *State of Bombay*, AIR 1954 Bom 466; *see* also *Kishori* v. *King*, AIR 1950 FC 69; *State of Bombay* v. *Balsara*, AIR 1951 SC 318, 322; *R.* v. *Berger*, 6 CLR 41; *Osborne* v. *Commonwealth*, 12 CLR 321, 361.
5. *RMDC (Mysore) Private, Ltd.* v. *State of Mysore*, AIR 1962 SC 594, 599; *Haji Usmanbhai Hasanbhai Qureshi* v. *State of Gujarat*, (1981)22 Guj LR 349.
6. *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661.
7. *Sardar Sarup Singh* v. *State of Punjab*, AIR 1959 SC 860.
8. (1904)1 CLR 329, 358-59.
9. (1852)7 Ex 475 at p. 560.

provisions of the statute aided by a consideration of surrounding circumstances. In all cases in order to discover the intention you may have recourse to contemporaneous circumstances—to the history of the law, and you may gather from the instrument itself the object of the Legislature in passing it. In considering the history of the law, you may look into previous legislation, you must have regard to the historical facts surrounding the bringing of law into existence. In the case of a Federal Constitution the field of inquiry is naturally more extended than in the case of a State Statute, but the principles to be applied are the same. You may deduce the intention of the Legislature from a consideration of the instrument itself in the light of these facts and circumstances, but you cannot go beyond it. If that limitation is to be applied in the interpretation of an ordinary Act of Parliament, it should at least be as stringently applied in the interpretation of an instrument of this kind, which not only is a statutory enactment, but also embodies the compact by which the people of the several colonies of Australia agreed to enter into an indissoluble Union."

It may be observed that a Judge is not a variety of impersonal calculating machine who merely applies the letter of the law. He is expected to pay due thought to a limited extent to the policies which he believes to represent the sober second thought of the community that framed the Constitution as suited to inarticulate minds of that community.[1]

5. Special rules of construction of a Constitution.—A democratic constitution cannot be interpreted in a narrow and pedantic (in the sense of strictly literal) sense. Constitutional provision is to be interpreted in the light of basic structure of the Constitution.[2] It lays down basic norms of community life which must find on judicial interpretation, their true reflection in every aspect of human life, individual and collective. Therefore, any constitutional interpretation which subverts the free social order is anti-constitutional.[3] It is the basic and cardinal principle of interpretation of a democratic constitution that it is interpreted to foster, develop and enrich democratic institutions. To interpret a democratic constitution so as to squeeze the democratic institutions of their life giving essence is to deny to the people or a section thereof the full benefit of the institutions which they have established for their benefit.[4] The function of a Constitution is to establish the framework and general principles of Government, and hence, merely technical rules of construction of statutes are not to be applied so as to defeat the principles of the Government or the objects of its establishment.[5] Being a paramount law there are certain rules which are specially applicable to the construction of a Constitution, rules which are not applicable to the construction of statutes. Even though the language may seem to be clear in its meaning, many questions arise where a word which would otherwise be unambiguous has two or more separate and distinct meanings or connotations. In such a situation a question of construction exists, for it must be determined which of the possible meaning of the term is intended. Words or terms used in a Constitution, being dependent upon ratification by the people voting upon it, must be understood in the sense most obvious to the common understanding at the time of its adoption although a different rule might be applied in interpreting Statutes and Acts of the Legislature.[6] Even though court of law has to gather the

1. *Rabindranath Malick* v. *Regional Passport Officer*, AIR 1967 Delhi 1 (*per* Kapur, J.) (FB).
2. Vide *(M/s.) Shriram Industrial Enterprises Ltd., Meerut* v. *Union of India*, 1995(2) LBESR 822 (All) (FB), quoting passages from *S.R. Bommai* v. *Union of India*, AIR 1994 SC 1918.
3. *Prof. Manubhai D. Shah* v. *Life Insurance Corporation*, (1981)22 Guj LR 206 (DB); *Fatehchand Himatlal* v. *State of Maharashtra*, 1977 MPLJ 261 (SC).
4. *Prof. Manubhai D. Shah* v. *Life Insurance Corporation*, (1981)22 Guj LR 206 (DB).
5. *Brien* v. *Williamson*, 7 How 14; *see* also *Rambhadra* v. *Union of India*, AIR 1961 AP 355, 358.
6. *Lake County* v. *Rollins*, 130 US 662 : 132 L Ed 1060; *United States* v. *Sprague*, 282 US 716 : 75 L Ed 640; *Chicestrel Iopovice* v. *Agler*, 280 US 379 : 74 L Ed 489.

spirit of the Constitution from its language.[1] That spirit cannot limit the general powers of legislation when the Constitution itself has not done so by its terms or necessary implication.[2] Many times the objects of a constitutional provisions are expressed in the instrument itself, and a statement of such objects may be given great weight in its interpretation.[3] It may also be noted that some rules of statutory interpretation have special significance with reference to the construction of Constitution, *e.g.*, the doctrine of *utres magis valeat quam pareat*; the doctrine of liberal interpretation, the doctrine of implied powers and restraints, etc. The said rules though equally applicable to interpretation of statutes have a special significance with reference to the construction of a Constitution. Fundamental constitutional principles are of equal dignity and none must be so enforced as to nullify or substantially impair the other.[4] The rule is well established that no Court is authorised so to construe any clause of the Constitution as to defeat its obvious ends where another constitution equally accordant with the words and sense thereof will enforce and protect it.[5] It is also settled law that if any interpretation is possible which will save an Act from the attack of unconstitutionality, that interpretation should always be accepted in preference to an alternative interpretation that might also be possible under which the statute would be void.[6] But it is not for the Court to put an unnatural and forced meaning on the words that have been used by the Legislature in the search for interpretation to save the statutory provisions, or to read a policy which is not there merely because it is thought that a policy could have been given.[7] In determining the constitutional validity of a measure or a provision therein regard must be had to the real effect and impact thereof on the fundamental right.[8] The naked words of the statute governing constitutional privileges are not always a safe guide for determining their applicability. Where fundamental rights are involved it is the *sententia legis* more than the *nuda verba* which throws light and gives guidance.[9] In the construction of constitutional provisions dealing with the powers of Legislature a distinction cannot be made between an affirmative provision and a negative provision, for both are limitations on the power.[10] The directive principles cannot override the categorical restriction imposed on the legislative power of the State. In determining the scope of legislative power conferred by the Constitution, besides placing itself in the position of the framers of it, the Court must have regard to what is ordinarily within that topic in legislative practice of that State in particular with a view to ascertain the general conception of the words used in the Act. Parliament must be presumed to have had Indian Legislative practice in mind, and unless the context requires to the contrary, not to have conferred a legislative power intended to be interpreted in a sense not understood by those to whom the Act was to apply.[11] A harmonious interpretation has to be placed upon the Constitution[12] and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting

1. *Keshavan Madhavan Menon* v. *State of Bombay*, AIR 1951 SC 128.
2. *State of Bihar* v. *Kameshwar Singh*, AIR 1952 SC 252 (302, 306); *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27.
3. *Gibbons* v. *Ogden*, 9 Wheat (US) 1 : 6 L Ed 23.
4. *Dick* v. *United States*, 208 US 340 : 52 L Ed 520.
5. *Prigg* v. *Pennsylvania*, 16 Pet (US) 539 : 10 L Ed 1060.
6. *Charanjit Lal Chowdhary* v. *Union of India*, AIR 1951 SC 41.
7. *S.M. Nawab Ariff* v. *Corporation of Calcutta*, AIR 1960 Cal 159, 162 (SB).
8. *In re* Kerala Education Bill, 1959 SCR 995, 1058.
9. *Peoples Insurance Co. Ltd.* v. *Sardul Singh*, AIR 1962 Punj 101, 103.
10. *Deepchand* v. *State of U.P.*, AIR 1959 SC 648, 656.
11. *Vishnu Agencies (P) Ltd.* v. *Commercial Tax Officer*, AIR 1978 SC 449 at p. 459.
12. *Kavalappara Kottarithil Kochuni* v. *State of Madras and Kerala*, AIR 1960 SC 1080.

provisions of Chapter III will 'be a mere rope of sand'.[1] It is now well settled that there is a general presumption that the Legislature does not intend to exceed its jurisdiction and it is a sound principle of construction that the Act of a sovereign Legislature should, if possible, receive such an interpretation as will make it operative and not inoperative.[2] It will, however, be improper to import into the question of construction doctrines of democratic theory and practice obtaining in other countries, unrelated to the tenor, scheme and words of the provisions of the Constitution of India.[3] We must try and construe a statute in such a way, where it is possible to so construe it, as to obviate a conflict between its various provisions and also so as to render the statute or any of its provisions constitutional.[4] It may also be that an Article in the Constitution embodying a fundamental right may exclude another by necessary implication, but before such a construction excluding the operation if one or other of the fundamental rights is accepted, every attempt should be made to harmonise the two Articles so as to make them co-exist and only if it is not possible to do so one can be made to yield to the other.[5]

Expressions of opinions of members of the Conventions in Australia were not allowed to be referred to by Griffiths, C.J. in *State of Tasmania* v. *Commonwealth of Australia and State of Victoria*.[6] Speeches made by the members of the Constituent Assembly in the course of the debates on the Draft Constitution cannot be used as aid for interpreting the Constitution.[7]

The American doctrine of police power as a distinct and legislative power is not recognised in the Indian Constitution and is, therefore, not in accordance with the scheme of the Indian Constitution.[8]

But contemporaneous and subsequent practical construction are entitled to greatest weight.[9]

We may turn to Constitutent Assembly debates with a view to ascertain the original instant underlaying the use of words 'backward class of citizen'. At the outset we must clarify that we are not taking these debates or even the speeches of Dr. Ambedkar as conclusive on the meaning of the expression 'backward classes'. *We are referring to these debates as furnishing the context in which and the objective to achieve which this phrase was put in Clause (4).* We are aware that what is said during these debates is not conclusive or binding upon the court because several members have expressed several views, all of which may not be reflected in the provision finally enacted. The speech of Dr. Ambedkar on this aspect however stands on a different footing. He was not only the chairman of the Drafting Committee which inserted the expression backward in draft Article 10(3)[10] he was virtually protecting the draft Article. In

1. *Mohd. Hanif Qureshi* v. *State of Bihar*, 1959 SCR 629 at p. 648; *State of Madras* v. *Champakam Dorai Rajan*, 1951 SCR 525, 531.
2. *State of Bihar* v. *Charusila Dasi*, AIR 1959 SC 1002, 1010.
3. *Babulal Parate* v. *State of Bombay*, AIR 1960 SC 51 at p. 54.
4. *State of U.P.* v. *Basti Sugar Mills Co. Ltd.*, AIR 1961 SC 420, 481; *Surajmal Nagarmull* v. *Commissioner of Income-tax*, AIR 1961 Cal 578, 613.
5. *Kavalappara Kuttarithil Kochuni* v. *State of Madras*, AIR 1960 SC 1080, 1089.
6. (1904)1 CLR 329, 337; *South Australia* v. *Commonwealth*, 65 CLR 378, 409 (Latham, C.J.); Halsbury's *Laws of England*, 3rd Ed., Vol. 36 at p. 410.
7. *State of Travancore-Cochin* v. *Bombay Co. Ltd.*, 1952 SCR 112; *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 492 (Hegde, J.), 1004-5 (Chandrachud, J.); 339-41 (Sikri, C.J.), 840-41 (Mathew, J. : not free from doubt no reason to exclude), *contra* 604-606 (Reddy, J.); *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27, report of the Drafting Committee may be read in case of ambiguity.
8. *State of West Bengal* v. *Subodh Gopal*, AIR 1954 SC 92.
9. *William McPherson* v. *Robert R. Blacker*, 146 US 1; *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 474, para 636 (Hegde, J.), 772 (Khanna, J.), 544 (Ray, J.), 840 (Mathew, J.), 962-3 (Chandrachud, J.); (Reddy, J.) *contra*.
10. It was not there in the original draft Article 10(3).

his speech he explains the reason behind the draft Clause (3) as also the reason for which the drafting committee added the expression backward in the clause. In this connection we fail to understand how any one can ignore his speech while trying to ascertain the meaning of the said expression. That the debate in the Constituent Assembly can be relied upon as an aid to interpretation of a constitutional provision is borne out by a series of decisions of this court.[1] (Subba Rao, J.); Opinion of Sikiri, C.J., in *Union of India* v. *H.S. Dhillon*[2] and the several opinions is *Keshavananda Bharati* case.[3]

Before proceeding further it may be mentioned that many decisions were cited of American Courts dealing with affirmative action for Negroes, and a parallel was attempted to be drawn from it for justifying reservation for other backward classes. But this ignores that unlike the United States our Constitution itself provides for reservation for backward classes, therefore, it is unnecessary to drive inspiration from decisions given by American Court on equal protection clause. They may be relevant for classification, and next test under Article 14 or even for judging if the provision by being arbitrary was violative of equality of doctrine but they cannot furnish relevant guideline for interpreting Article 16(4).[4]

6. Presumption of validity—Utres magis valeat quam pareat.[5]—When the vires of an entactment is impugned, there is an initial presumption of its constitutionality.[6] A Constitution like statutes is to be interpreted so that it should have validity rather than perish. While the scope for application of the maxim in the case of ordinary enactments is very narrow, the caution being that the Court should not pose as the legislator,[7] a more liberal use of the maxim is warranted in the case of a Constitution having regard to the nature of the instrument. As our Federal Court said :

> "A Constitution of Government is a living and organic thing, which of all instruments has the greatest claim to be construed *utres magis valeat quam pareat.*"[8]

Again, as the Privy Council has observed, with reference to the Canadian and Australian Constitutions, the Court is to remember :

> "That if there are at points obscurity in language, this may be taken to be due, not to uncertainty about general principles, but to the difficulty in obtaining ready agreement about phrases which attends the drafting of legislative measures by large assemblages."[9]

The Constitution has assigned a new role to the constitutional courts to ensure rule of law in the country.....Time has come to have a fresh look at the old precedents and to lay down law with the changed perceptions keeping in view the provisions of the Constitution.[10]

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1. See *Madhu Limaye*, case AIR 1969 SC 1014 at p. 1018; *Golaknath* v. *State of Punjab*, AIR 1967 SC 1643 (1657).
2. (1972)2 SCR 33 : AIR 1972 SC 1061.
3. (1973)4 SCC 225 : AIR 1973 SC 1461.
4. *Indra Sawhney* v. *Union of India & Ors.*, AIR 1990 SC 477 (9J) : JT (1992)6 SC 273.
5. *Harendranath* v. *State of M.B.*, AIR 1950 MB 46.
6. *P.J. Krishna Lal* v. *Government of Kerala*, (1995)2 SCJ 1 : 1995 AIR SCW 1325; *Jilubhai Nanbhai Khachar* v. *State of Gujarat*, AIR 1995 SC 142.
7. *Crawford* v. *Spooner*, (1846)6 Moor PC 9.
8. *In re* C.P. Motor Spirit Taxation Act, AIR 1939 FC 1; *Govind Pershad* v. *State of Bhopal*, AIR 1952 Bhopal 1; *P.K. More* v. *Union of India*, AIR 1959 Bom 134, 139.
9. *John Deere Plow* v. *Wharton*, 1915 AC 330, 333.
10. *Delhi Judicial Service Association, Tis Hajari Court, Delhi* v. *State of Gujarat*, AIR 1991 SC 2176 : (1991)3 JT 617 : 1991 Cr LJ 3086 : (1991)4 SCC 406 : 1991 AIR SCW 2419; *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87 : (1982)2 SCR 365; *M.V. Elisabeth and others* v. *Harwan Investment and Trading Pvt. Ltd., Hanockar House, Goa*, 1993 Supp. (2) SCC 433.

Even constitutional power when the text is doubtful may be established by usage.[1]

If two constructions are possible, the Court should adopt that which will implement and discard that which will stultify the apparent intention of the makers of the Constitution.[2] Courts are inclined to adopt that reasonable interpretation of a statute which removes it furthest from possible constitutional infirmity.[3]

(i) Limitation of power and its significance.—Another important cannon of construction of similar nature which is frequently applied to Constitutions is that limitations of a power furnish a strong argument in favour of the existence of that power.[4] Limitations upon a general grant of executive power should not be enlarged beyond the words used.[5]

In passing on the constitutionality of a State law, its effect must be judged in the light of its practical application to the affairs of men as they are ordinarily conducted.[6]

(ii) Limits of the presumption of constitutionality.—In considering the meaning of an expression in a legislative entry we have on the one hand to bear in mind the salutary rule that words conferring the right of legislation should be interpreted liberally and the powers conferred should be given the widest amplitude : on the other hand, we have to guard ourselves against extending the meaning of the words beyond their reasonable connotation, in an anxiety to preserve the power of the Legislature. Our task being to ascertain the limits of the powers granted by the Constitution, we cannot extend these limits by way of interpretation. But if there is any difficulty in ascertaining the limits, the difficulty must be resolved so far as possible in favour of the legislative body. The presumption in favour of constitutionality does not take us beyond this.[7]

7. Liberal interpretation.—*(i) General principle.*—We must never forget that a Constitution is always being expounded.[8] Provisions of a Constitution should not be interpreted in a narrow and pedantic sense.[9] It is true that the Supreme Court will give such meaning to the words used in the Constitution as would help towards its working smoothly.[10] Constitutional

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1. *Inland Waterways Corporation* v. *Young*, 48 L Ed 901 : 309 US 517 (Frankfurter, J.) : As to legislative practice; see *United States* v. *Curtis Wright Export Corpn.*, 81 L Ed 255, 266-67 (Sutherland, J.).
2. *State of Bihar* v. *Kameshwar Singh*, AIR SC 252; *Chandra Mohan* v. *State of U.P.*, AIR 1966 SC 1987; *Johri Mal* v. *Director of Consolidation of Holdings*, AIR 1967 SC 1958 (heading should have been in favour of holding statute *intra vires*); *Union Bank of India* v. *Panchayappa*. 1868 Mah LJ 64; *State of Andhra Pradesh* v. *Assistant Collector of Customs*, AIR 1968 Goa 105; *Adilabad Municipality* v. *Mahadeo Sitaram*, AIR 1967 Andh Pra 363; *Krishnaraju Reddiar* v. *Land Reforms Officer*, AIR 1967 Mad 952; *Ganesh Chandra Bhatt* v. *District Magistrate, Almora*, AIR 1993 All 291.
3. *Kovacs* v. *Cooper*; 93 L Ed 513, 521 : 336 US 77 (Reed, J.); *M.L. Kamra* v. *The Chairman cum Mg. Director, New India Assurance Co. Ltd.*, AIR 1992 SC 1972 : 1992 Lab IC 834 : JT 1992(1) SC 188 : (1992)2 SCC 36 : 1992 AIR SCW 558.
4. *Gibbons* v. *Ogden*, 9 Wheat (US) 1 : 6 L Ed 23.
5. *Myers* v. *United States*, 272 US 52 : 71 L Ed 160.
6. *North Larmie Land Co.* v. *Hoffman*, 69 L Ed 953, 957 (Stone, J.).
7. *Diamond Sugar Mills* v. *State of U.P.*, AIR 1961 SC 652, 655 : (1961)3 SCR 242, 248; *Punjab Distilling Industries, Ltd.* v. *Commissioners of Income-tax*, AIR 1965 SC 1862.
8. *McCulloch* v. *Maryland*, 4 L Ed 579.
9. *Bimalchandra* v. *Mukherjee*, HC 56 CWN 651; *Karkare, G.D.* v. *Shevde, T.L.*, AIR 1952 Nag 330; *Narain Prasad* v. *Indian Iron & Steel Co. Ltd.*, AIR 1953 Cal 695; *Ram Chandraa Rao* v. *Andhra Pradesh Regional Committee*, AIR 1965 Andh Pra 306, 310 (Gopalkrishna Nair, J.) : Procedural irregularities prior enactment of a valid Act cannot be impugned, *e.g.*, report by Regional Committee.
10. *Lt. Col Khajur Singh* v. *Union of India*, (1961)2 SCR 828, 841 (Sinha, C.J.); *Bain Peanut Co.* v. *Pinson*, 75 L Ed 482, 491: 282 US 499 (Holmes, J.); Allow a little play in its joints. But the Court is not at liberty to give an unnatural and artificial meaning to the expressions used based on ideological considerations; *All India Bank Employees Association* v. *National Industrial Tribunal*, (1962)3 SCR 269, 290 (Ayyangar, J.).

provisions are not to be interpreted and crippled by narrow technicalities but as embodying the working principles for practical government. The Constitution is not the home for legal curiosities. It is epitone of the national aspirations of a free political society. It must be so rendered in construction as to be able to receive and reflect the organ, *i.e.*, tones of the national life.[1] In considering the authorities of the superior Courts in the United States, in the matter of interpreting Article 14 of the Constitution of India, which appears to be adopted from the last clause of Section 1 of the 14th Amendment of the Constitution of the United States of America, it would not be incorporating principles foreign to the Constitution of India or be proceeding upon the slippery ground of apparent similarity of expressions, a concept in an alien jurisprudence developed by a society whose approach to similar problems on account of historical or other reasons different from those in India.[2] While construing Article 14 of the Constitution of Court should not adopt a doctrinaire approach which might choke all beneficial legislations.[3] A Constitutional provision is never static, it is ever evolving and ever changing and does not therefore admit of a narrow pedantic or syllogistic approach...It seems well settled from the decisions referred to us at the Bar that constitutional provisions must receive a broad interpretation and the scope and ambit of such provisions in particular, the fundamental rights should not be cut down by the astute or too restricted an approach.[4]

The American doctrine of *police power* as a distinct and legislative power is not recognised in our Constitution and it is, therefore, contrary to the scheme of the Constitution.[5]

The provisions in the Constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred.[6]

In *Edwards* v. *A.G. for Canada*,[7] their Lordships of the Privy Council observed :

> "There are statute and statutes and the strict construction deemed proper in the case, for example, of a penal or taxing statute or one passed to regulate the affairs of an English parish, would often be subversive to Parliament's real intention if applied to an Act passed to ensure the peace, order and good Government of a British Colony."

In *Jumbanna's* case,[8] O'Conor, J., observed : "Where it becomes a question of construing words used in conferring a power of that kind on the Commonwealth Parliament, it must always be remembered that we are interpreting a Constitution broad and general in its terms, intended to apply to the varying conditions which the development of our community must involve. For this reason, where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the Court should, in my opinion, always lean to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose."

And Barton, J., said in *Jumbanna's* case,[9] "In this connection we here may well apply as nearly as may be the words of the Supreme Court of the United States in *Julliard* v. *Greenman*

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1. *Ramadhari Mandal* v. *Nilmoni Das*, AIR 1952 Cal 184; *see* also *Sakal Papers* v. *Union of India*, AIR 1962 SC 305, 311; *Master Antenna System Operators Association of Chhota Nagpur* v. *State of Bihar*, 1992 East Cri Cases 688.
2. *State of U.P.* v. *Deoman Upadhyaya*, AIR 1960 SC 1125, 1131-32.
3. *Charanjit Lal Chaudhury* v. *Union of India*, 1950 SCR 869; *Dalip Singh* v. *Rakha Ram*, AIR 1960 Punj 176, 179.
4. See *Sakal Papers (P) Ltd.* v. *Union of India*, AIR 1962 SC 305 : (1962)3 SCR 842, considered in *LIC of India* v. *Prof. Manubhai R. Shah*, AIR 1993 SC 171.
5. *State of West Bengal* v. *Subodh Gopal Bose*, AIR 1954 SC 92.
6. *Hamdard Dawakhana* v. *Union of India*, (1960)2 SCR 671, 694 (Kapur, J.).
7. 1930 AC 124, 137; *Baxter* v. *Commissioner*, (1909)4 CLR 1087, 1107.
8. 6 CLR 309, 367-68.
9. 6 CLR 309, 343.

(one of the *Legal Tender* Cases)[1] 'A Constitution....is not to be interpreted with the strictness of private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the national Legislature; but it does not undertake, with the precision and detail of a Code of laws, to enumerate the sub-division of those powers, or to specify all the means by which they may be carried into execution'."

In interpreting the *Canadian Constitution* the Privy Council similarly observed :

"In interpreting a constituent or organic statute, that construction must be beneficial to the widest amplitude of its power must be adopted."[2]

".....If the text says nothing, then it is not to be presumed that the Constitution withholds that power altogether. On the contrary, it is to be taken for granted that the power is bestowed in some quarter, unless it is extraneous to the statute itself or otherwise clearly repugnant to its sense. For whatever belongs to self-Government in Canada belongs either to the Dominion or to the provinces within the limits of the British North America Act."[3]

(ii) Government of India Act, 1935.—Similarly, in interpreting the Government of India Act, 1935, the Federal Court said that the strict rules of interpretation applicable to the interpretation of the charter of incorporation of a company or public body are not applicable to interpretation of a Constitution Act.[4]

"A broad and liberal spirit should inspire those whose duty is to interpret it; but this does not imply that they are free to stretch or pervert language of the enactment in the interests of any legal or constitutional theory or even for the purpose of supplying omissions or correcting supposed error."[5]

(iii) The Indian Constitution.—The words of the Constitution must be naturally and liberally construed, and no narrow or restricted interpretation should be put upon the words unless such interpretation is forced by the context in which they occur. In construing words in a constitutional enactment conferring legislative power, the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.[6] Each general word should be held to include all ancillary and subsidiary matters which can be fairly and reasonably said to be comprehended by it. The word 'property' has not been defined in the Government of India Act, 1935 or in the Constitution. Article 31 like Article 19(1)(*f*) is concerned with property. The two Articles occur in the same Chapter which deals with fundamental rights. It may, therefore, be safely assumed that in construing the said Articles, the word 'property' must bear the same meaning.[7] The word apparently connotes all those bundles of rights, tangible or intangible, corporeal or incorporeal, which go to make up ownership.[7] The only safe guide for interpretation of an Article is the language employed, interpreted not narrowly but fairly in the light of the broad and high purposes of the Constitution, but without doing violence to the language.[8]

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1. 10 US 421 at p. 439.
2. *British Corporation* v. *King*, AIR 1935 PC 158; *Narayanappa* v. *State of Mysore*, (1960)3 SCR 742, 751 (Shah, J.); *Subramanyam* v. *Addl. Wealth Tax Officer*, AIR 1961 Andh Pra 75, 77 (Seshachalapati, J.).
3. *A.G. for Ontario* v. *A.G. for Canada*, 1912 AC 571, 583.
4. *Gas Plant Manufacturing Co., Ltd.* v. *King-Emperor*, AIR 1947 FC 38; *Bhola Pershad* v. *King-Emperor*, 1942 FC 17.
5. *In re* G.P. Motor Spirit Act, AIR 1939 FC 1, 31.
6. *Maneklal Chotalal* v. *M.G. Makwana*, AIR 1967 SC 1373.
7. *Girijanand* v. *State of Assam*, AIR 1956 Assam 33 (there can be no acquisition of the right to enjoy landed property free of land revenue, and there can, therefore, be no question of paying compensation when the land is assessed to land revenue, which is so long held free of land revenue).
8. *Union of India* v. *Harbhajan Singh Dhillon*, (1971)2 SCC 779 : (1972)2 SCR 33.

The wide words of a substantive article cannot be cut down by the wording of an entry in Schedule VII (Legislative Lists).[1]

At this stage it is apt to quote two theories of interpretation of constitution as propounded by the Allahabad High Court in *Ganesh Chandra Bhatt* v. *District Magistrate, Almora,*[2] and they are as under : The two theories are the mechanical and organic theories. The mechanical method of interpretation of a constitution was most authoritatively laid down by the US Supreme Court in *Dred Scott* v. *Standford,*[3] wherein Chief Justice Tanej said that the constitution must be construed now as it was construed at the time of adoption. In *Normen* v. *Baltrmore,*[4] Brews, J. declared that the meaning of the constitution never alters—that which it meant when adopted it means now. Thus the mechanical method requires that in interpreting a constitutional provision we should try to put ourselves in the shoes of the founding fathers of the Constitution and should seek 'to read their minds and gather their intention. For this purpose we should read the Constituent Assembly debates and look into other contemporaneous material to gather the intention of the Constitution makers'.

However it is universally accepted that the organic method of interpretation is to be preferred to the mechanical method.[5]

The *Organic Method requires* us to see the present social conditions and interpret the Constitution in a manner so as to resolve the present difficulties. The social conditions existing at the time when the Constitution was made may be very different from the present conditions and hence if we interpret the Constitution from the angle of the Constitution makers we may arrive at a completely outdated and unrealistive view. As justice Marshall observed in *Meculloch* v. *Mary Land,*[6] "The provision is made in constitution indeed to endure for ages to come, and consequently to be adopted to the various crises of human affairs."

The Supreme Court has followed the organic method in *Francis Coralie Mullin* v. *Administrator.*[7]

The Supreme Court of United States in *Weems* v. *U.S.*[8] Legislation both statutory and constitutional is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had therefore taken. Time works changes, bring into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wide application than mischief which gave it birth. This is peculiarly true of Constitutions. They are to use the words of Chief Justice Marshall, "Designed to approach immortality as nearly as human institutions can approach it'. The future is their care and provisions for events of good and bad tendencies of which no prophecy can be made. In the application of a Constitution, therefore, our contemplation cannot be of what has been but of what may be. Under any other rule of constitution would indeed be easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into important and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognised. The meaning and vitality of the Constitution have developed, against narrow and restrictive construction.

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1. *Union of India* v. *Harbhajan Singh Dhillon,* (1971)2 SCC 779 : (1972)2 SCR 33, 52 (Sikri, C.J.).
2. AIR 1993 All 291.
3. (1857)19 How 393, 426 (US).
4. (1934)294 US 240.
5. *Vide* the Fourteenth Amendment, Chap. 2 edited by Bernard Schwarz.
6. (1819)4 Wheat 316 US.
7. AIR 1981 SC 746.
8. (1909)54 L Ed 793 at p. 801.

The principle of interpretation which requires that a *constitutional* provisions must be construed not a in narrow and constricted sense, but in wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitution provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges applied with greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most previous human right and which form the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human persons."[1] Organic interpretation should be preferred to mechanical one.[2]

(iv) The Legislative Lists.—The function of the lists is not to confer power, they merely demarcate the legislative field,[3] and so must, as far as possible, be given a broad and comprehensive interpretation.[4] The doctrine of 'liberal interpretation' has a special application in interpreting the ambit of the various entries in the Legislative Lists included in Schedule VII of our Constitution.[5] None of the items in the lists is to be read in a narrow or restricted sense. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear that in construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein.[6] It is a well-settled principle that while considering the extent of legislative competence of a Legislature with respect to an Entry contained in the Seventh Schedule of the Constitution, the Entry must be given its widest amplitude.[7] The position after the amendment by the Constitution (42nd Amendment) 1976, is that the state legislature has exclusive jurisdiction to pass legislation regulating procedure in rent and revenue courts. It is also competent though not exclusive to pass legislation in respect of 'administration of justice' and constitution and organisation of all courts except the Supreme Court and the High Court. Entries in the three lists should be construed liberally. In passing a legislation which is within its competence, a legislature may incidentally encroach upon the field which has been earmarked in another list exclusively for the Parliament. But that by itself will not make the legislation void. The test

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1. *See* also *Delhi Transport Corporation* v. *D.T.C. Mazdoor Congress*, 1991 Supp. (1) SCC 600 : AIR 1991 SC 101; *Ramesh Singh* v. *Chinta Devi*, (1994)1 BLJR 464 : (1994)1 Pat LJR 650; *Subhash Chandra* v. *State of Bihar*, 1994 BBCJ 297 (Pat).
2. Vide *Oriental Insurance Co Ltd.* v. *Mohiuddin Kureshi*, (1994)1 Pat LJR 79, relying on *United India Insurance Co. Ltd.* v. *Immam Aminasah Nadaf and others*, 1990(2) ACJ 757 (FB).
3. *Union of India* v. *Harbhajan Singh Dhillon*, (1971)2 SCC 779 : (1972)2 SCR 33, 52 (Sikri, C.J.).
4. *N.A. Chidambaram Chettiar* v. *State*, AIR 1977 Mad 153 (DB); *Balaji* v. *Income-tax Officer, Akola*, (1962)2 SCR 983: AIR 1962 SC 123; *Punjab Distilling Industries, Ltd* v. *CIT, Punjab*, AIR 1965 SC 1862; *Raghu Seeds and Forms* v. *Union of India*, AIR 1994 SC 533.
5. *In re* C.P. Motor Spirit Act, AIR 1939 FC 1, 31; *Commissioner of Income-tax, West Bengal* v. *Benoy Kumar*, 1958 SCR 101, 107; *Navinchandra Mafatlal* v. *Commisioner of Income-tax, Bombay*, (1955)1 SCR 829, 836; *Chendulal Jathelal Jayaswal* v. *State of Gujarat*, AIR 1964 Guj 59; *State of Haryana* v. *Santlal*, (1993)4 SCC 380.
6. *Navinchandra Mafatlal* v. *Commissioner of Income-tax, Bombay City*, (1955)1 SCR 829, 836; *State of Madras* v. *Gannon Dunkerley & Co.*, 1959 SCR 379, 391; *Thakur Amar Singhji* v. *State of Rajasthan*, (1955)2 SCR 303, 324; *Sri Ram Ram Narain Medhi* v. *State of Bombay*, 1959 (Supp) 1 SCR 489, 496; *Jagannath Bakhsh Singh* v. *State of U.P.*, AIR 1962 SC 1563, 1568; *Lakshmana* v. *Additional Income-tax Officer*, AIR 1961 Mad 146; *Wilaiti Ram* v. *Municipal Committee, Rupar*, AIR 1960 Punj 669; *Durga Prashad* v. *Custodian of Evacuee Property*, AIR 1960 Punj 341 (FB); *Punjab Distilling Industries, Ltd.* v. *Commissioner of Income-tax*, AIR 1965 SC 1862; *Balaji* v. *Income-tax Officer, Akola*, AIR 1962 SC 123; *Punjab Distilling Industries, Ltd.* v. *C.I.T.*, AIR 1965 SC 1862; *Tuhi Ram* v. *Land Acquisition Collector, Urban Development, Punjab*, 1993 Tax LR 89.
7. *Virendrapal Singh* v. *State of U.P.*, 1977 All LJ 892 (DB); *Harakchand Ratanchand* v. *Union of India*, AIR 1970 SC 1453.

is to find out whether the legislation in respect of a matter which comes within the ambit of the power of the State legislature, then even though it incidentally trenches upon a field reserved for the Parliament, the legislation will not be bad.[1] The legislative Entries must be given a large and liberal interpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere *simplex enumeratio* of broad categories.[2] "That the provisions of an Act like the Government of India Act, 1935, should not be cut down by a narrow and technical construction, but considering the magnitude of the subjects with which it purports to deal in very few words, should be given a large and liberal construction." Legislative power normally includes all incidental and subsidiary powers, but the power to tax is neither incidental nor subsidiary to the power to legislate on a matter or topic.[3]

Every Entry in the three Lists (in Schedule VII of the Constitution) except Entry 97 in List I should be given the widest possible construction. This principle applies both to Entries relating to general powers of legislation as well as to Entries relating to power of taxation; recourse to residuary powers (Entry 97) must be had only as a last resort; general powers of legislation do not take within their fold the power to tax; and the power to tax property necessarily includes power to tax a right or an incidence of ownership.[4] A legislative entry does not merely enunciate powers; it specifies field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein. A taxing entry, therefore, confers power upon the Legislature to legislate for matters, ancillary or incidental including provisions for preventing evasion of tax. The power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods.[5]

In *Duggan* v. *I.T. Commissioner, Bombay*,[6] their Lordships observed :

> "A large and liberal construction should be placed upon all entries in Schedule VII of the Government of India Act and the widest import and significance to the language used by Parliament in these various entries. It must not be forgotten that the Legislature created by the Government of India was a sovereign Legislature within its own sphere and that when a topic was assigned to a particular Legislature in respect of which it could legislate, then all possible powers with regard to that topic must be attributed to that Legislature."

In the case of legislative entry conferring power of taxation, if the subject-matter is enacted but there exists no legal definition of it, it would be competent on the part of the State Legislature to give it a wide meaning and it would not necessarily be governed by mere judicial decisions or interpretation of any and every fiscal statute. It will be different, however, if the subject-matter itself has been defined by some statute, that definition should prevail.[7]

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1. Vide *M/s. Harish Tara Refractories (P) Ltd.* v. *The Certificate Officer*, AIR 1985 Cal 56; relying on *Ishwari Kheton Sugar Mills* v. *State Uttar Pradesh*, AIR 1980 SC 1955 about setting up special Court for Bank dispute.
2. *Assistant Commissioner, Urban Land Tax* v. *Buckingham and Carnatic Co. Ltd.*, (1970)1 SCR 268, 277 (Ramaswami, J.); *State of U.P.* v. *Bar Council*, AIR 1971 All 186, 189 (Dwivedi, J.).
3. *State of Mysore* v. *Cawasji & Co.*, AIR 1971 SC 152 (Shah, J.).
4. *Nazareth* v. *Gift Tax Officer*, AIR 1962 Mys 269, 272-3 (Hegde, J.).
5. *Check-Post Officer* v. *Abdulla*, AIR 1971 SC 792 (Shah, J.).
6. AIR 1952 Bom 261, 263; followed in *Amina Umma* v. *I.T. Commissioner*, AIR 1954 Mad 1120, 1122; *Raghubir Singh* v. *Union of India*, AIR 1954 Punj 261 (word 'disposal' in Entry 41 of List III is wide enough to cover the extinguishment of mortgage).
7. *Dakhineswar Sarkar* v. *Commercial Tax Officer*, AIR 1957 Cal 283, 292.

To determine the extent of the grant of power, the Court must place itself in the position of the men who framed and adopted the Constitution and inquire what they must have understood to be the meaning and scope of those grants. When a power is conferred to legislate on a particular topic, it is important, in determining the scope of that power to have regard to what is ordinarily treated as embraced within that topic in legislative practice, and, particularly in the legislative practice of the State which has conferred that power. The object of doing so is emphatically not to seek a pattern to which a due exercise of the power must conform, but to ascertain the general conception involved in the words of the Act.[1]

The cardinal rule of interpretation is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.[2] None of the items in the List is to be read in a narrow or restricted sense and each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in it,[3] and in a manner so as to avoid a conflict.[4]

The Constitution must be regarded as an instrument which was fashioned with great deliberation, with full knowledge of the working of other republican Constitutions and with an intimate appreciation of the peculiar local conditions. A Constitution must not be construed in any narrow and pedantic sense, and that construction most beneficial to the widest possible amplitude of its powers must be adopted,[5] especially a Federal Constitution with its nice balance of jurisdiction and of individual rights and State powers, and that it must be approached in a broad liberal spirit, so as, if possible, to validate legislative and administrative action.[6] Narrow and technical construction ought to be avoided, if possible.[7] It has been a well-established principle, laid down not only by the highest court in this country, but also in other countries, that any power conferred by an organic instrument is large and wide and must be construed as such. It has no application to the ordinary statutory instruments which must be construed in the context and should not be given wider amplitude than is warranted by the use of the term or context in which it occurs or with reference to the other provisions in the statute which have relation to it.[8] A broad and liberal spirit should inspire those who interpret the Constitution but they are not free to interpret or pervert the language of the enactment in the interests of legal or constitutional theory.[9] The Legislatures in our country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the Legislatures is confined to the topics mentioned as Entries in the List conferring respective powers on them. These Entries, it has been ruled on

1. *Vishnu Agencies (P) Ltd.* v. *Commercial Tax Officer*, AIR 1978 SC 449 at p. 459.
2. *Navinchandra Mafatlal* v. *Commissioner of Income-tax, Bombay City*, AIR 1955 SC 58, 61; *Commissioner of Wealth Tax* v. *Dr. Karan Singh*, (1993)2 MLJ 57; *Sriram Ramnarain Mehdi* v. *Bombay State*, AIR 1959 SC 459, 463; *Maniklal Chotalal* v. *M.G. Makwana*, AIR 1967 SC 1373.
3. *United Provinces* v. *Atiqa Begum*, AIR 1941 FC 16, 25; *State of Bombay* v. *Balsara*, AIR 1951 SC 318; *Joseph* v. *Gift Tax Officer*, AIR 1962 Ker 97, 100 (Vaidialingam, J.).
4. *M.P. V. Sundaramier* v. *State of A.P.*, AIR 1958 SC 468.
5. *N.A. Chidambaram Chettiar Firm* v. *State of Tamil Nadu*, AIR 1977 Mad 153 (DB); *H.C. Narayanappa* v. *State of Mysore*, AIR 1960 SC 1073.
6. *Champakam Dorairajan* v. *State of Madras*, AIR 1951 Mad 120.
7. *Brajnandan Sharma* v. *State of Bihar*, AIR 1950 Pat 322.
8. *Ram Chandra Reddy* v. *State of Andhra Pradesh*, AIR 1965 Andh Pra 40, 48.
9. *Harendra Nath Sharma* v. *State of Madhya Bharat*, AIR 1950 MB 46.

many an occasion, though meant to be mutually exclusive are sometimes not really so. They occasionally overlap, and are to be regarded as *enumeratio simplex* of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is conflict between rival list it is necessary to examine this impugned legislation in its pith and substance, and only if that pith and substance fall substantially within an entry or entries conferring legislative power, is the legislation valid, a slight transgression upon a rival list notwithstanding. It is equally well settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given.[1]

The Legislative Lists of the Constitution being modelled upon those of the Government of India Act, 1935, the observations made by the Federal Courts in relation to the Legislative entries of the Act of 1935, shall be equally applicable to the Constitution, except of course, where there has been a patent departure from that Act.[2] As in the Act of 1935, the allocation of subjects in the lists is not by way of scientific definition, but by way of a mere '*simplex enumeratio*' of broad categories.[3] Thus, like the Act of 1935, the Constitution—

> "Seems to have been content to take a number of comprehensive categories and to describe them by a word of broad and general import. In the case of some of those categories, *e.g.* local Government,[4] Education,[5] Water,[6] Agriculture,[7] the general word is amplified and explained by a number of examples and illustrations—some of which would probably on any construction have been held to fall under the more general words, while the inclusion of others might not be so obvious."[8]

According to the Supreme Court, the cardinal rule of interpretation is that the entries *in the legislature lists are not to be read in a narrow* or restricted sense and that *each general word should be held to extend to all authority* or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry must be put upon them. Reference to legislative practice may be admissible in reconciling two conflicting provisions in rival Legislature lists. In construing the words in a constitutional Document conferring legislative power the most liberal constitution should be put upon the words so that the same may have effect in their widest amplitude.[9] "*Entries to the legislative lists it must be recalled, are not sources of legislative power but are merely topics or fields of legislation and must receive a liberal* construction,

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1. *State of Rajasthan* v. *G. Chawala*, AIR 1959 SC 544, 546.
2. *V. M. Syed Mohammad & Co.* v. *State of Andhra Pradesh*, AIR 1954 SC 314; the intention of the Constituent Assembly as expressed in Entry 54, List II, cannot be guide for ascertaining the intention of a totally different body, *viz.*, the British Parliament in enacting Entry 48, List II (Government of India Act 1935); *Youngmen's Indian Association* v. *Commercial Tax Officer*, AIR 1964 Mad 63, 69 (Ramchandra Iyer, C.J.); *O.N. Mahendra* v. *Bar Council of Delhi*, AIR 1968 SC 888.
3. *In re* C.P. Motor Spirit Taxation Act, AIR 1939 FC 1, 31; *Menon M.P.* v. *State*, AIR 1953 Trav. Co. 540.
4. Entry 5, List II.
5. Entry 11, List II.
6. Entry 17, List II.
7. Entry 14, List II.
8. *In re* C.P. Motor Spirit Taxation Act, AIR 1939 FC 1; *Punjab Distilling Industries, Ltd.* v. *Commissioner of Income-tax*, AIR 1965 SC 1862, where the word 'Income' in Entry 82 of List I of VII Schedule was given a liberal construction so as to prevent evasion of Income tax; *Jaika Automobiles Pvt. Ltd., Nagpur* v. *State of Maharashtra*, AIR 1993 Bom 124 (DB).
9. Vide *The Elel Hotels* v. *Investments Ltd.* v.*Union of India*, AIR 1990 SC 1664 (5J) : 1990 Tax LR 651 : (1989)44 Taxman 304 : (1989)178 ITR 140 : (1989)77 CTR 168 : (1989)74 STC 146 : (1989)94 (2) Taxation 55.

inspired by a broad and generous spirit and not in a narrow and pendantic sense. The expression 'with respect to' in Article 246 brings in the doctrine of 'pith and substance' in the understanding of the exertion of the legislature power and wherever the question of legislative competence is raised the test is whether the legislation looked at as a whole is substantially 'with respect to' the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic.[1]

The rule of construction adopted for the purpose of harmonising the two apparently conflicting entries in the Union and State Lists would equally apply to an apparent conflict between two entries in the same list.[2]

For instance, in *Assam Sillimanite Ltd.* v. *Union of India*,[3] the Supreme Court held that all things which are capable of producing wealth for the community would be material sources and that the conservation of the essential ingredients necessary for the crucial iron and steel industry by nationalisation is only an implementation of policy declared in Clause *(b)* of Article 39 of the Constitution of India as that subserves the common good of the community at large.

The words 'that is to say' in the several entries are mere illustrative and not words of limitation.[4]

In *Megh Raj* v. *Allah Rakhia*,[5] it had been conceded before their Lordships that 'land in item 21 comprised both corporeal and incorporeal rights and interest, and their Lordships pointed out that this was clear from the words 'rights in or over land' in the opening portion of the entry. On appeal their Lordships of the Privy Council observed that the word 'land' is sufficient to include every form of land, whether agricultural or not, and that the expression 'rights over land' would include easements and other collateral rights, whatever form they might take.[6]

In *State of Bombay* v. *Narrottamdas Jethabhai*,[7] their Lordships observed that the legislative power conferred on the Provincial Legislature by item 1 of List II has been conferred by use of language which is of the widest amplitude and that the phrase employed would include within its ambit legislative power in respect to jurisdiction and power of courts established for the purpose of administration of justice.

The language employed in items 18 and 65 List II shows beyond a shadow of doubt that the State Legislature has got ample powers with regard to the jurisdiction and powers of courts for dealing with the properties described in item No. 18. The words of item No. 18 read with the words of item No. 65 are comprehensive enough to include the remedial as well as the procedural provisions concerned with reliefs in respect of several rights and remedies enumerated in item No. 18, and item No. 18 is wide enough to include rights in land, such as, rights like full ownership or leasehold or all such rights, and rights over land which include easements and other collateral rights of different nature.[8]

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1. *M/s. Ujagar Prints* v. *Union of India*, AIR 1989 SC 516 : (1988)4 JT SC 330 : (1988) ECR 578 : (1988)38 ELT 535 : (1988)18 ECC 435 : (1988)27 STL 207.
2. *Calcutta Gas Co.* v. *State of West Bengal*, 1962 (Supp) 3 SCR 1, 15 (Subba Rao, J.).
3. AIR 1992 SC 938 : JT 1992(3) SC 434 : 1992 AIR SCW 754 1992(1) SCC (Supp) 692.
4. *U.P.* v. *Atiqa Begum*, AIR 1941 FC 16; *Bhola Prasad* v. *King-Emperor*, AIR 1942 FC 17.
5. AIR 1942 FC 27; quoted in *M/s. Goodyear India Ltd.* v. *State of Haryana*, AIR 1990 SC 781 : (1989)4 JT 229.
6. *Megh Raj* v. *Allah Rakhia*, AIR 1947 PC 72.
7. AIR 1951 SC 69.
8. *Brij Bhukan* v. *S.D. O., Siwan*, AIR 1955 Pat 1, 15 (Bihar Land) Encroachment Act, 31 of 1950, is an Act within the competence of the State Legislature.

Entry 48 in List II of the Seventh Schedule to the Government of India Act on a proper construction, was wide enough to cover a law imposing tax on the purchase of goods as well and the Constituent Assembly in Entry 54 of List II in the Seventh Schedule to the Constitution accepted this liberal construction and expressed in clearer language what was implicit in that corresponding entry. The constitutionality of the Madras General Sales Tax Act 9 of 1939, cannot, therefore, be impugned on the ground that Provincial Legislature had no power under the Government of India Act, 1935, to enact a law imposing a tax on purchasers.[1]

Though the words of Section 65, Government of India Act, 1919, are not the same as that of Section 100, Government of India Act, 1935, with which Entry 54 of List 1 has to be read, there is nothing in Entry 54 itself to limit the legislative field not merely to tax on persons but further to limit the scope to tax only on the income of the person assessed. How wide was the scope of the legislative power in relation to income-tax was indicated by the Supreme Court in the decision in *Commissioner of Income-tax* v. *Bhogilal Laherchand.*[2] "The term 'deemed' brings within the net need of chargeability income not actually accruing but which is supposed notionally to have accrued. It involves a number of concepts. By statutory fiction income which can in no sense be said to accrue at all may be considered as so accruing. Similarly, the fiction may relate to the place the person or be in respect of the year of taxability." The incidence of the tax whether it is the immediate or apparent incidence or whether it is the ultimate or real economic incidence does not limit the taxing power given to the Central Legislature by Entry 54 of List I. All that Entry 54 requires is that the tax must be a tax on income other than agricultural income. Section 16(3)*(a)(ii)*, Income Tax Act, provides only for a tax on income. It does not cease to be a tax on income either in form or in substance though it provides for the incidence of the tax not on the person whose income is assessed to tax but on another.[3]

A Constitution is not to be interpreted with the strictness of a private contract.[4] In construing a Constitution it cannot be carved out with mathematical nicety to logical extremes.[5] The principles upon which the Federal Constitution was established, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions.[6]

According to the doctrine of liberal interpretation, the ambit of a particular power of a Legislature has to be determined with reference to the 'purpose' for which that power was conferred on that Legislature and the entry should receive such interpretation as would best effectuate that purpose rather than restrict or defeat it. The scope of a power may thus change with circumstances. But though a change in the circumstances may not create a power which the Legislature never possessed it may provide the occasion for the exercise of such power.

(v) Principle of liberality in construction.—The interpretation of constitutional principles must not be too literal. It must be remembered that the machinery of Government would not work if it were not allowed a little play in its joints.[7] The duty of the court is only to interpret the provisions of the Constitution in a liberal spirit but not to eradicate or modify the fundamental rights.[8] It it a fundamental canon of construction that a Constitution should receive

1. *V.M. Syed Mohammad & Co.* v. *State of Andhra*, AIR 1954 SC 314.
2. AIR 1954 SC 155; Patiala State Bank, *In re*, AIR 1941 Bom 93 : (1941)9 ITR 95.
3. *Duggan* v. *I.T.Commissioner, Bombay*, AIR 1952 Bom 261; *followed* in *Amina Umma* v. *T. Officer*, AIR 1954 Mad 1120, 1124.
4. *Juliard* v. *Greenman*, 110 US 421 : 28 L Ed 204.
5. *Paddell* v. *New York*, 211 US 446 : 53 L Ed 275.
6. *United States* v. *Lefkowitz*, 285 US 452 : 76 L Ed 877.
7. *Bain Peanut Co.* v. *Pinson*, 75 L Ed 482, 491 : 282 US 499 (Holmes, J.).
8. *Kochuni* v. *State of Madras* (*2nd Kochuni* case), (1960)3 SCR 887, 920.

a liberal interpretation in favour of a citizen, especially with respect to those provisions which were designed to safeguard the liberty and security of the citizen in regard to both person and property.[1]

It is a general rule of construction that where the fundamental rights guaranteed by the Constitution are suspended by the promulgation of an Ordinance, the order of suspension must be construed strictly in favour of the citizen, whose rights have been so deprived. It is true that so long as the Ordinance, or a Presidential Order promulgating the Ordinance remains in force the validity of the Order cannot be questioned on the ground that it contravenes Articles 14, 21 and 22 of the Constitution. But the limitation will not preclude the citizen from challenging the validity of the Ordinance, rule or order made thereunder on any ground other than the contravention of the said Articles. A citizen cannot be deprived of his right to move the appropriate court for a *writ of habeas corpus* on the ground that his detention has been ordered *mala fide*. The Presidential Order cannot even debar the citizen from contending that the orders of detention were the result of the excessive delegation of power.[2]

It will be remembered that the Constitution as the declaration of the will of the people should be interpreted liberally and not in any narrow or doctrinaire spirit. It must be interpreted according to its true purpose and intent as disclosed by the phraseology in its natural signification in the light of its setting and its dynamic character which is intended to fulfil the aspiration of the people.[3] Without doing violence to the language used, a constitutional provision should evince a fair, liberal and progressive construction so that its object might be promoted.[4]

The most striking application of the above principles is to be found in the interpretation of the 'defence power',[5] of the national Legislature of all countries.[6]

8. Progressive interpretation.—*(i) Constitution a mechanism.*—It is proper to assume that a Constitution is intended to meet and be applied to new conditions and circumstances as they may

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1. *Byars* v. *United States*, 273 US 28 : 71 L Ed 520; *Fairbank* v. *United States*, 181 US 283 : 45 L Ed 882; *Gulf, etc. Co.* v. *Ellis*, 165 US 150 : 41 L Ed 606; *Boyd* v. *United States*, 116 US 616 : 29 L Ed 746, *Ex parte* Lange, 18 Wall (US) 163 : 21 L Ed 872; *Thurlow* v. *Massachusetts*, 5 How (US) 504 : 12 L Ed 256; *Prigg* v. *Pennsylvania*, 16 Pet (US) 539 : 10 L Ed 1060.
2. *Ananda Nambiar* v. *Chief Secretary of the Government of Kerala*, AIR 1966 SC 657 : (1966)1 SCWR 427.
3. *S.T. Corporation of India* v. *Commercial Tax Officer*, AIR 1963 SC 1811.
4. *Ram Deka* v. *General Manager, N.E. Railway*, AIR 1964 SC 600.
5. *Vide* Entry 1, List I.
6. In *Andrews* v. *Howell*, (1941)65 CLR 255, 278, the Australian High Court said : "In dealing with that constitutional power (defence), it must be remembered that, though its meaning does not change, yet unlike some other powers its application depends upon facts, and as those facts change so may its actual operation as a power enabling the Legislature to make a particular law...The existence and character of hostilities or a threat of hostilities, against the Commonwealth are facts which will determine the extent of operation of the power. Whether it will suffice to authorise a given measure will depend upon the nature and dimensions of the conflict that calls it forth, upon the actual and apprehended dangers, exigencies and course of the war, and upon the matters that are incident thereto." And again in *Adelaide Co.* v. *Commonwealth*, (1943)67 CLR 116 at p. 161) the same High Court said : "Because war promotes abnormal conditions, abnormal measures are required to cope with them, and this justifies Parliament of the Commonwealth under the defence power enacting many laws in times of war which would be beyond its scope in times of peace....A state of war, therefore, justifies legislation in the exercise of the defence power, which makes many inroads on personal freedom, and which places many restrictions on the use of property of an abnormal and temporary nature which would not be legitimate in times of peace. A law that called up the whole of the civil population between the ages of 18 and 60 for continuous military service...in times of peace would be so fantastic that it could not be a real exercise of the defence power. The substance and purpose of such law would be to organize the Commonwealth as a military State and not to take the necessary steps to prepare for war; but it would be a valid exercise of the power to call up all or any citizens between these ages for continuous military service for the indefinite period of the war".

arise in the courts of the progress of the community.[1] "As Krishna Iyer, J., of the Supreme Court rightly observes : "Same words used in Constitutional enactments of various nations may bear different connotations and when Courts are called upon to interpret them they must acclimatise the expressions to the particular conditions prevailing in the country concerned. Different lands and life-styles, different value systems and economic solutions, different social milieus and thought ways, different subject-matters and human categories these vital variables influence the statutory projects and interpretations, although lexicographic aids and understandings in alien jurisdiction may also be looked into for light, but not beyond that."[2] ".....although we are to interpret the words of the Constitution on the same principles of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting, to remember that it is a Constitution, a mechanism under which laws are to be made, and not a mere Act which 'declares what the law is to be'.[3] Story in his Commentaries on the Constitution of the United States,[4] said : "While, then, we may well resort to the meaning of single word to assist our inquiries, we should never forget, that it is an instrument of Government that we are to construe." Marshall, C.J., in his famous judgment in *McCulloch* v. *Maryland*,[5] expressed this principle in these words : "In considering this question, then we must never forget, that it is a Constitution we are expounding." As changes come in social and political life the Federal Constitution embraces in its grasp all new conditions which are within the scope of the powers in terms conferred. In other words, while the powers granted do not change, they apply from generation to generation to all things to which they are in their nature applicable.[6] The true content of the words is not to be gathered by simply taking the words in one hand and a dictionary in the other, for the provisions of the Constitution are not mathematical formulae which have their essence in mere form.[7] It is the duty of the Court to determine in what particular meaning and particular shade of meaning the word or expression was used by the Constitution makers and in discharging that duty, the Court will take into account the context in which it occurs, the object to serve which it was used, its collocation, the general incongruity with the concept or object it was intended to articulate and a host of other considerations. Above all, the Court will avoid repugnancy with accepted norms of justice and reason.[8] A cardinal rule in dealing with Constitutions, however, is that they should receive a consistent and uniform interpretation, so that they shall not be taken to mean one thing at one time and another thing at another time, even though the circumstances may have so changed as to make a different rule seem desirable.[9] Constitutions do not change with the varying tides of public opinion and desire. The will of the people therein,

1. *Home Building & L. Association* v. *Blaisdell*, 290 US 398 : 78 L Ed 413.
2. *Fatehchand Himatlal* v. *State of Maharashtra*, 1977 MPLJ 201 (SC).
3. *Attorney-General for N.S.W.* v. *Brewery Employees' Union of N.S.W.*, 6 CLR 469, 611-12, *per* Higgins, J.
4. 2nd Ed., Section 455.
5. 4 Wheat 316, 407.
6. *South Carolina* v. *United States*, 199 US 437 : 50 L Ed 261; *Patton* v. *United States*, 281 US 276 : 74 L Ed 854. *In Missouri* v. *Holland*, 252 US 416 : 64 L Ed 641 Justice Holmes said : "When we are dealing with words that also are a constituent Act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred of years ago."
7. *State of West Bengal* v. *Anwar Ali Sarkar*, 1952 SCR 284, 359, (Bose, J.).
8. *H.H. Maharajadhiraja Madhav Rao* v. *Union of India*, (1971)1 SCC 85.
9. *South Carolina* v. *United States*, 199 US 437 : 50 L Ed 261; *Scott* v. *Sandford*, 19 How (US) 393 : 15 L Ed 691.

recorded is the same inflexible law until changed by their own deliberative action, and therefore, the Courts should never allow a change in public sentiment to influence them in giving a construction to a written Constitution not warranted by the intention of its founders.[1] If the words of the Article are clear, notwithstanding any relevant convention, effect will, no doubt, be given to the words, while interpreting a Constitution which establishes a Parliamentary system of Government with a Cabinet, one may well keep in mind the conventions prevalent at the time the Constitution was framed.[2]

In constitutional interpretation while value system may have a fair sprinkling, emotions, sentiments, unfounded suspicions, wild apprehensions and imaginary threats have no place.[3]

The chief consideration in the construction of a Constitution like a statute should present conditions, relations and requirements and when the language of the Constitution will bear it, these should determine the interpretation,[4] provided, of course, there is no express command or prohibition to the contrary.[5] But a Constitution, unlike other statutes, is intended to be paramount and is to endure for ages. If the ordinary rule of contemporary meaning were given to a Constitution, it would be to command the race to halt in its progress,[6] and 'to project oneself mentally backward through a period of transition'.[7] Though the terms of the Constitution do not undergo any change while extent and ambit of power may grow with progress of civilisation and the nature of the grant of power must always remain the same, its extent and ambit may grow with the progress of civilisation so as to include such new specific developments of particular matters as may rise from time to time.[8] Their terms and provisions are being constantly expanded and enlarged by construction to meet the advancing and improving affairs of men.[9] The doctrine should better be styled as the doctrine of 'generic interpretation', meaning that new developments of the same subject and new means of executing an unchanging power do arise from time to time and are capable of control and exercise by the appropriate organ to which the power was committed.[10]

As the Supreme Court has in *Ranjan Dwivedi* v. *Union of India*,[11] observed, in this connection : "Although in earlier decision the court paid scant regards to the directives on the ground that the courts had little to do with them since they were not justiciable or enforceable like the fundamental rights the duty of court in relation to the directives came to be emphasised in the later decision' which reached its culmination in *Kesavanand Bharati* v. *State of Kerala*,[12] laying down certain broad propositions. Law of these is that there is no disharmony between the Directives and the fundamental rights because they supplement each other on aiming at the same goal of bringing about a social revolution and the establishment of a welfare state, which is envisaged in the preamble. The courts, therefore, have responsibility in so interpreting the Constitution as to ensure implementation of the Directives and to

1. *Scott* v. *Sandford*, 19 How (US) 393 : 15 L Ed 691.
2. *U.N.R. Rao* v. *Smt. Indira Gandhi*, AIR 1971 SC 1002.
3. *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149 at p. 492.
4. *Toronto Corporation* v. *Bell Telephone Co.*, 1905 AC 52.
5. *Borgins* v. *Falk*, (1911)147 Wis 327.
6. *Borgins* v. *Falk*, (1911)147 Wis 327.
7. *Attorney-General* v. *Holland*, 15 CLR 46.
8. Wynes : *Legislative and Executive Powers*, pp. 30-31.
9. *Euclid* v. *Ambla Realty Co.*, 272 US 265 : 71 L Ed 303.
10. Wynes : *Legislative and Executive Powers*, at pp. 30-31.
11. (1983)3 SCC 307.
12. AIR 1973 SC 1461 : (1973)4 SCC 225 : 1973 Supp SCR 1.

harmonize the social objective underlying the Directives with individual rights. Primarily the mandate in Article 39-A is addressed to the Legislature and the Executive but in so far as the courts of justice can indulge in some judicial law making within the interstices of the Constitution or any statute before them for construction, the courts too are bound by this mandate". The language used in a Constitution is couched in general terms and it should be construed to include new scientific inventions not known at the time of passing of the Constitution.[1] On this construction, the term 'Cinema' in list was held to include V.C.R. and T.V. shows in restaurant.

The test in such cases is whether the application to the new conditions may be included in the scope of the power granted by the Constitution in general terms and whether such application would be barred by some other provisions of the Constitution.[2]

The Privy Council applied this doctrine in interpreting the term *'trade and commerce'* in Sections 51(1) and 82 of the Australian Constitution Act, in these words :[3]

> "The words used are necessarily general and their full import and true meaning can often be appreciated when considered as the year goes on in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of words change, but the circumstances illustrate and illuminate the full import of that meaning...It may be that in 1900 the framers of the Constitution were thinking of border tariffs and restrictions in the ordinary sense and desired to exclude difficulties of that nature, and to abolish the barrier of the State boundaries so as to make Australia a single country. Thus the framers presumably did not anticipate those commercial and industrial difficulties which have, in recent years, led to marketing schemes and price control, or traffic regulations such as those for the co-ordination of rail and road-services, to say nothing of new inventions, such as aviation or wireless. The problems, however, of the Constitution can only be solved as they emerge by giving effect to the language used."

Similarly, applying the doctrine to the Canadian Constitution, the Privy Council has held[4] that the power to regulate 'trade and commerce' under Section 91(2) of the British North America Act extended to creation of a 'National Mark' which is now a usual feature of national and international commerce :

> "There seems no reason why the legislative competence of the Dominion Parliament should not extend to the creation of juristic rights in novel fields, if they can be brought fairly within the classes of subjects confided to Parliament by the Constitution."[5]

In a later case, the Privy Council observed:[6]

> "In 1867, 'Postal services' [Section 91(5) of the British North America Act in Canada] were rendered by the help of land vehicles, but nobody could contend that the modern use of aeroplanes for carrying mail is, on that account, not within the phrase."

(ii) Court not to vary construction from time to time to meet supposed changing breezes of popular opinion.—In *Rex* v. *Commonwealth Court of Conciliation and Arbitration and Merchant Service Guild*,[7] Griffith, C.J., said : "The question for determination is entirely one of

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1. *Restaurant Lee Jagdalpur* v. *State of M.P.*, 1983 MPLJ 543 (DB).
2. *Pensacola Tel. Co.* v. *WK Tel Co.*, 24 L Ed 708 : 96 US 1.
3. *James* v. *Commonwealth*, 1936 AC 587, 614, quoted in *M/s. Goodyear India Ltd.* v. *State of Haryana & another*, AIR 1990 SC 781 : (1989)4 JT 229.
4. *A.G. of Ontario* v. *A.G. of Canada*, AIR 1937 PC 99, 100.
5. *A.G. of Ontario* v. *A.G. of Canada*, AIR 1937 PC 99, 100.
6. *A.G. of Alberta* v. *A.G. of Canada*, AIR 1939 AC 117.
7. 15 CLR 586, 592.

the construction, and it seems necessary to say, once more, that the function of this Court is to interpret the Constitution as it finds it, and neither to strain its language to a construction which the Court may think more beneficial than that which the words express, nor to vary its construction from time to time to meet the supposed changing breezes of popular opinion."

9. 'Stare decisis'—Whether principle of 'stare decisis' applicable in constitutional matters.—"It is true", observed Clarke, J., in *United States* v. *Barnett*,[1] "that adherence to prior decisions in constitutional adjudication is not a blind or inflexible rule. This Court has shown a readiness to correct its errors even though of long-standing. Still where so many cases in both Federal and State jurisdiction by such a constellation of eminent jurists over a century and a half a span teach us a principle which is without contradiction in our case-law, we cannot overrule it. The court should having interpreted a particular provision of the Constitution should as far as possible stick to the doctrine of *stare decisis*. It must be remembered that as Lord Wright pointed out in *James* v. *Commonwealth*,[2] that a constitution is a federal component and the constituents must hold a balance between all its ports. The Court which lays down the law of the land under Article 141 must be extremely careful and circumspect in interpreting statutes more so constitutional provisions so as to obviate the necessity of a constitutional amendment every time, which unlike in the Parliament of England and Australia, where a simple majority is all that is required for constitutional amendment, in India is an extremely onerous task requiring two-thirds majority of members present and voting and in most cases ratification by a majority of States.[3]

"Overemphasis on precedents furnishes an insurmountable roadblock to the onward march towards promised millenium. An over dose of precedents is the bane of our system which is slowly getting stagnant, stratified and atrophied. Therefore absence of a precedent.....(make us) all the more happy for the chance of scribbling on a clean slate.[4]

10. Doctrine of implied powers.—The doctrine of implied powers can be invoked where without the said power the material provision of the Act would become impossible of enforcement.[5] The Constitution of the United States conferred on the Congress very limited and defined powers which were covered by 17 entries, but Clause 16 of Article 1, Section 8 empowered the Congress to make laws which shall be necessary and proper for carrying into execution the foregoing power. "The residuary powers remained vested in the States so much so that Government by the Centre was the exception, while Government by the States was the rule." The pressure of economic forces, the development of Commerce and Industry, and the political conditions of the world have, however, tended towards greater centralisation by expanding the meaning of the various items within the legislative jurisdiction of the Congress, so much so that the position of the State and the Congress *inter se* is just reversed. As noted by Godshall : "During the past ten years (1936-46), the United States Supreme Court has removed substantially all restrictions upon national power that previously existed, so that the scope of national authority has become a question of Governmental policy, and has substantially ceased to be one of Constitutional law."[6] Thus the judiciary has allowed the Union to assume control over banking under the constitutional power over coinage, to regulate communication of ideas by

1. 12 L Ed 2d 23, 36 : 376 US 681. *See* also *Ex parte* Richard Qurise, 87 L Ed 3, 20 : 317 US 1 (Stone, C.J.).
2. (1936) AC 578.
3. *S.P. Gupta* v. *Union of India*, AIR 1982 SC 103, *per* S. Murtaza Fazal Ali, J.).
4. *D.S. Nankara* v. *Union of India* (1983) 1 SCC 305 : 1983 SCC (L & S) 145.
5. *Bidi Bidi etc, Association* v. *State of Bombay*, AIR 1962 SC 486, 495.
6. Godshall : *Government in the United States*, 1948, 688, quoting from *Dodd's Article on U.S. Supreme Court*.

telegraph, telephone or wireless,[1] under the authority to regulate commerce,[2] to regulate insurance business,[3] and to enact social security measures such as unemployment and old-age pensions under the power to tax and provide for the general welfare.[4] The logic behind the decisions is that the nation must have the control of any activity which has assumed national importance; whose incidents have become national.[5]

The proposition that the ordinary rules for construing Acts of Parliament do not apply to the Constitution may be true in one sense, *viz.*, that the Constitution is not a Code going into minute details of the means by which the Government is to be carried into effect by the sovereign power created by it. There are many powers necessary to that end which are conferred and one would expect them to be conferred—by necessary implication, rather than in express words. It is, however, always a question of construction, whether we are called upon to construe the terms of section, or to decide whether powers are necessarily to be implied in addition to those which are expressed. In this respect the same rules of interpretation apply which apply to any other written document.[6] A court in construing a provision of the Constitution may imply negative from affirmative words where the implication promotes but not where it defeats the intention.[7] The doctrine of construction by implication is limited to the extent of preventing judicial amendment of the fundamental law. Thus, the Supreme Court has declared that a court has no right to insert any clause in the Constitution which is not expressed and cannot be fairly implied.[8]

In *Queen* v. *Burah*,[9] Lord Selborne states the duty of Courts of Justice in ascertaining whether a statute violates a written Constitution, in these terms : "The only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction, by which that power is limited (in which category would, of course, be included any Act of Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions." Lord Loreburne, L.C., speaking for the Privy Council in *Attorney-General for Ontario* v. *Attorney-General for Canada*,[10] explained the same principle in these words : "In the interpretation of a completely self-governing Constitution founded upon a written organic instrument, such as, the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse may be had to the context and scheme of the Act. Again if the text says nothing expressly, then it is not to be presumed that the Constitution

1. *McCulloch* v. *Maryland*, 4 L Ed 579.
2. *Pensacola Tel Co.* v. *W.K. Tel Co.*, 96 US 1 : 24 L Ed 708.
3. *Pensacola Tel Co.* v. *W.K. Tel Co.*, 96 US 1 : 24 L Ed 708.
4. *Steward Machine Co.* v. *Davis*, 301 US 548; *Helvering* v. *Davis*, 301 US 619.
5. *U.S.* v. *S.E. Underwriters' Association*, 322 US 523.
6. *State of Tasmania* v. *Commonwealth of Australia & State of Victoria*, (1904)1 CLR 329, 338 *per* Griffith, C.J.
7. *Cohen* v. *Verginia*, 6 Wheat (US) 264 : 5 L Ed 257.
8. *Prigg* v. *Pennsylvania*, 16 Pet (US) 539 : 10 L Ed 1060.
9. 3 AC 889, 904-5; *Suvina B. Redkar* v. *The Govt. of Goa*, 1991(4) Bom CR 695, relying on, *In re*, Article 143 Constitution of India and Delhi Laws Act, (1912) etc., AIR 1951 SC 332; *Raj Narain* v. *Chairman and Administrative Committee*, AIR 1954 SC 569.
10. 1912 AC 571, 583.

withholds the power altogether. On the contrary, it is to be taken for granted that the power is bestowed in some quarter unless it be extraneous to the statute itself (as, for example, a power to make laws for some part of His Majesty's Dominions outside of Canada) or otherwise is clearly repugnant to its sense. For whatever belongs to self-Government in Canada belongs either to the Dominion or to the provinces, within the limits of the British North America Act. It certainly would not be sufficient to say that the exercise of a power might be oppressive, because that result might ensue from abuse of a great number of powers indispensable to self-Government, and obviously bestowed by the British North America Act. Indeed, it might ensue from the breach of almost any power." This pronouncement of the Privy Council in effect sums up on the subject of incidental powers, the fully reasoned opinion of Marshall, C.J., in *McCulloch* v. *Maryland*[1] : "We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended ..... Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." And in the case of *United States* v. *Fisher*,[2] the same learned Chief Justice said, as to the provision there under discussion : "In construing this clause it would be incorrect, and would produce endless difficulties, if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose, it might be said with respect to each, that it was not necessary because the end might be obtained by other means. Congress must possess the choice of means and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution."

The criterion laid down by Marshall, C.J., in the aforesaid cases has been followed by the Supreme Court of the United States in many later cases. The Australian High Court has also on several occasions adopted it. As has been well observed, the Constitution marks the outlines of the powers granted to the national Legislature, but does not undertake, as a Code of laws would, to enumerate the sub-divisions of those powers or to specify all the means of executing them.[3] Laws which, in the language of the American Constitution, are 'necessary and proper', or in the language of the Australian Constitution, 'incidental to the execution of the power', are alike constitutional.

The scope of the application of the doctrine is narrowed down where there is double enumeration of powers as in Canada and India. But the general principle is the same.[4]

It would not be practicable, if possible, in a written Constitution, to specify in detail all of its objects and purposes or the means by which they are to be carried into effect. Such prolixity in a Code designed as a frame of Government has never been considered necessary or desirable.[5] Therefore constitutional powers are often granted or restrained in general terms from which implied powers and restraints necessarily arise. The implied powers and restrictions to be found in constitutional provisions are therefore a very important element to be considered. It is an

1. 4 L Ed 579 : 4 Wheat 316, 406-11; *see* the observations of Isaacs, J., in *Colonial Sugar Refining Co. Ltd.* v. *Attorney-General for the Commonwealth*, 15 CLR 182, 241-15 (referred to in *Smith* v. *Oldham*, 15 CLR at p. 365) *(per* Isaacs, J.); *Rex* v. *Smithers*, 16 CLR 99, 111-112, *per* Isaacs, J. (referred to in the *State of N.S.W.* v. *Commonwealth*, 20 CLR at p. 95).
2. 2 Cranch 358, 396.
3. *Julliard* v. *Greenman*, 110 US 421, 439.
4. *A.G. for Ontario* v. *A.G. for Canada*, 1896 AC 348, holding that Sections 91 and 92 must be read together and each must be given when necessary a modifying effect upon the other.
5. *McCulloch* v. *Maryland*, 4 L Ed 579 : 4 Wheat 316.

established rule of construction that, where a Constitution confers a power or enjoins a duty, it also confers, by implication, all powers that are necessary for the exercise of the one or for the performance of the other,[1] and in like manner the Legislature may be restrained from the exercise of power, as well by implication from the language of the Constitution as by express prohibition.[2]

Where a right or power given by a constitutional instrument is challenged, the duty of the Court is to keep close to the words of the constitutional instrument and see first whether the power is granted, and secondly, whether there is anything else which restricts the rights so granted. If the text is explicit it is conclusive in what it directs and in what it forbids.[3] If the text says nothing expressly then it is not to be presumed that the Constitution withholds a particular power altogether.[4]

In *Ramkrishna* v. *Municipal Committee,*[5] their Lordships of the Supreme Court observed : "It is natural enough, when considering the ambit of an express power, to give a broad interpretation to the former at the expense of the latter. The case, however, is different, whereas in the Constitution Act there are two complementary powers, each expressed in precise and definite terms. There can be no reason in such a case for giving a broader interpretation to one power rather than to the other."

11. Doctrine of incidental and ancillary powers.—Some Constitutions specifically give their Legislatures the power of incidental legislation. But even in cases where the Constitution does not specifically vest ancillary power in the Legislature, the Legislature must, of necessity, be deemed to possess certain incidental and ancillary powers to make sure that legislation with respect to its enumerated powers may be effective.[6] In America these powers are termed as 'necessary and proper', while in Australia they are termed as powers 'incidental to the execution of that power'. The rule is based on the principle that in interpreting a Constitution or organic statute, that construction which is most beneficial to the widest amplitude of its powers must be adopted. If the text says nothing, then it is not to be presumed that the Constitution withholds that power altogether. On the contrary, it is to be taken for granted that the power is bestowed in some quarter, unless it is extraneous to the Constitution itself; or otherwise clearly repugnant to its sense.[7]

Thus, the power over inter-State commerce includes the power to regulate contracts relating to such commerce,[8] and the power to settle inter-State and industrial disputes by compulsory arbitration necessarily implies a power to make a law penalising strikes.[9]

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1. *Knox* v. *Lee,* 20 L Ed 287; *Julliard* v. *Greenman,* 28 L Ed 204; *U.S.* v. *Wadell,* 28 L Ed 678; *Ex parte* Yarbrough, 28 L Ed 274; *In re* Debs, 39 L Ed 1092; *Kedarnath* v. *Nagindra Narain,* AIR 1954 Pat 97.
2. *State* v. *Tucson Gas, etc. Co.,* 138 P 781; *Henier* v. *Scott,* 19 CLR 381, 393, *per* Griffith, C.J. The executive powers of the Commonwealth as well as its legislative powers, are limited to those conferred by the Constitution itself. If the carrying on of ordinary banking business is not an executive function of the Commonwealth conferred by the Constitution, the Parliament cannot confer that function upon its instrument, for the stream cannot rise above its source.
3. *Bidya Chaudhary* v. *Province of Bihar,* AIR 1950 Pat 19.
4. *Abhimanyu Adak* v. *State,* AIR 1952 Cal 1118.
5. AIR 1950 SC 11; *Kishori* v. *King,* ILR 1950 AC 69; *G.G.-in-Council* v. *Province of Madras,* AIR 1954 PC 93.
6. Cf. *Hepburn* v. *Criswold, Ltd.,* 19 L Ed 515.
7. *A.G. for Ontario* v. *A.G. for Canada,* 1921 AC 571, 583.
8. *King* v. *Associated Northern Collieries,* (1911)4 CLR 387.
9. *Stemp* v. *Australia Glass Manufacturers,* (1917)23 CLR 387.

Under the American and Australian Constitutions, only the powers of the Central Legislature are specified and enumerated. Hence under these Constitutions the scope of the application of these powers arises only in connection with the interpretation of the powers of the Congress or Commonwealth Parliament only.

Under Constitutions having double enumeration of powers as in Canada and India, the principle is applicable in the case both of the Union and the State Legislatures. Thus the Dominion Legislature has been held competent to provide for matter which, though otherwise within the legislative competence of the Provincial Legislature are necessary incidental to effective legislation by the Dominion Parliament upon a subject of legislation enumerated in Section 91 of the British North America Act.[1] Similarly, the Provincial Legislatures in the exercise of these powers under Section 92 have been held entitled to exercise a power which is 'reasonably and practically necessary for the efficient exercise of such enumerated powers'.[2]

The same principles have been held to be applicable to India. In *United Provinces* v. *Atiqa Begum*,[3] the Federal Court observed : "None of the items in the lists is to be read in a narrow or pedantic sense, and each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it." It was accordingly held that the validation of doubtful executive orders is a power subsidiary or ancillary to the power of legislating on a particular subject in respect of which orders have been issued. It was further observed that the power to impose penalties for disobedience of laws made by a Legislature, declare offences for violation of the laws, and to direct the determination of the fines imposed, are essential to the effectiveness of the power to legislate on any subject.[4]

When a Legislature is given plenary power to legislate on a particular subject there must also be an implied power to make laws incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power. It is true in respect of statutes also.[5] A Legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority.[6] The primary duty of law-making has to be discharged by the Legislature itself but delegation may be resorted to for a subsidiary or an ancillary measure.[7]

The Legislature did not intend to prevent Indian Tamils from attaining citizenship provided that they were sufficiently connected with the Island. It is a perfectly natural and legitimate function of the Legislature or a country to determine the composition of its nationals. Standards of literacy, of property, of birth or of residence are standards which a Legislature may think it right to adopt in legislation on citizenship and it is clear that such standards though they may operate to exclude the illiterate, the poor and the immigrant to a greater degree than they exclude other people, do not create disabilities in a community as such since the community is not bound together as a community by its illiteracy, its poverty or its

1. *A.G. for Ontario* v. *A.G. for Canada*, 1896 AC 226.
2. *Cushing* v. *Dupuy*, (1880)5 AC 409; *Jugal Prasad* v. *B. Dass*, AIR 1953 Pat 259 (it is within the province of Legislature to prescribe proper penalty).
3. AIR 1941 FC 16.
4. The Indian Constitution has expressly provided this power in Entry 93, List I and Entry 64 of List II.
5. *Velayudhan* v. *Aboobacker Haji*, 1979 Ker LT 162.
6. *In re* Delhi Laws Act, 1951 SCR 747; *State of Bombay* v. *Narottamdas*, 1951 SCR 51; *Vasanlal* v. *State of Bombay*, AIR 1961 SC 4; *State of Gujarat* v. *Raman Lal*, AIR 1965 Guj 60, 64 (Bhagwati, J.); *Chandulal* v. *State of Gujarat*, AIR 1964 Guj 59, 66 (Shelat, C.J.).
7. *Edward Mill Co., Ltd.* v. *State of Ajmer*, AIR 1955 SC 25 : 1955 SCR 735, 749; see *Jan Mohammad Noor Mohammad Bagham* v. *State of Gujarat*, AIR 1966 SC 385.

migratory character but by its race or its religion. The migratory habits of the Indian Tamils are facts which are directly relevant to the question of their suitability as citizens of Ceylon and have nothing to do with them as a community. The Ceylon Citizenship Act, 1948 and the Ceylon (Parliamentary Election) Acts are *intra vires* of the Ceylon Legislature.[1]

(i) Ancillary powers to be truly incident to main powers.—In the *King* v. *Kidman*,[2] Isaacs, J., said "The construction will probably be aided by first considering what is included in the words 'any power vested by this Constitution in the Government of the Commonwealth'. Whenever any such power is given, there is given with it by implication every ancillary power that is necessary to the existence of the government, and the proper exercise of the direct power it is intended to execute. Such ancillary powers must, in my opinion be truly 'incident' to the main powers, in other words, they must be impliedly included in the grant. This is how I understand the maxim *'quando lex aliquid concedit concedere videtur et illud, sine quo res ipsa esse non potest'*."

(ii) Court may compliment but not supplement a granted power.—The extent of the Federal Legislative authority was well stated by Isaacs, J., in *Australian Boot Trade Employees' Federation* v. *Whybrow & Co.*,[3] in these terms : "It is not open to the grantee of the power actually bestowed to add to its efficacy, as it is called, by some further means outside the limits of the power conferred, for the purpose of more effectively coping with the evils intended to be met ..... The authority must be taken as it is created, taken to the full, and not exceeded. In other words, in the absence of express statement to the contrary, you may complement, but you may not supplement a granted power."

(iii) Constitution not to cripple the ultimate power created by itself.—The Constitution cannot be so construed as to contemplate its own destruction or, what amounts to the same thing, to cripple by checks and balances to ultimate power which is created for the undeniable purpose of preserving at all hazards and by all available means the inviolability of the Commonwealth and of the several States.[4]

12. Doctrine of implied prohibition.—The doctrine of 'Implied prohibition' is the exact antithesis of the doctrine of implied powers. The doctrine is founded on the maxim, *'expressio unius exclusio alteris* that is, the express mention of one thing implied the exclusion of another. The doctrine has been held applicable to U.S.A. and Australia where only specific enumerated powers have been conferred on the Central Legislature leaving the residue to the State. The rule there is that the express grant of a particular power to the Central Legislature impliedly prohibits it from encroaching on the residuary powers of the States, unless such encroachment is incidental to the proper execution of the powers expressly granted to the Central Legislature.[5]

The doctrine does not apply in the case of Canada and India, where there is double enumeration of powers. There the only question is whether the power in question is really ancillary to the specific power under which the impugned Act has been enacted.[6]

The Supreme Court of U.S.A. observed in *United States* v. *Five Gambling Devices*,[7] "we do not question that liberal language of this Act is capable of the broad unlimited construction

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1. *Govindan Selloppah* v. *Punchi Banda*, 1953 AC 514.
2. 20 CLR 427, 440.
3. 11 CLR 311, 338; followed in *Stemp* v. *Australian Glass Manufacturers Co. Ltd.*, 23 CLR 22, 232-34.
4. *Stemp* v. *Australian Glass Manufacturers Co. Ltd.*, 23 CLR 226, 454, *per* Isaacs, J.
5. *U.S.* v. *DeWill*, 19 L Ed 593; *A.G. for N.S.W.* v. *Brewery Employers*, (1908)6 CLR 469; *Huddart Parker* v. *Moorehead*, (1908)8 CL 330.
6. *Grand Trunk Ry.* v. *A.G. for Canada*, 1907 AC 65.
7. 98 L Ed 179, 187-188 : 346 US 441.

urged by the Government. Indeed, if it were enacted by a unitary system of Government no other construction would be appropriate. But we must assume that the implications and limitations of our federal system constitute a major premise of all congressional legislations, though not repeatedly recited therein."

In India, a State Legislature has power to make laws with respect to only those matters that are exhaustively enumerated in Lists 2 and 3 and has no power whatsoever to make laws with respect to any matter that cannot be found in them. A State Legislature has no residuary power at all. Adopting a law made by another Legislature is not a matter to be found in Lists 2 and 3. Therefore no law made by a State Legislature can be justified on the ground that though it is not with respect to any of the matters dealt with in Lists 2 and 3, it is simply adopting a law validly made by another Legislature.[1] It is well established that a Legislature does not intend to exceed its jurisdiction and that general words in a statute are to be construed with reference to powers of the Legislature which creates it.[2]

There is another aspect of the 'doctrine of implied prohibition' considered by the High Court of Australia [a country where the institution of responsible Government—a Government under which the executive is directly responsible to (may, be almost the creature of) the Legislature—is established] in *Amalgamated Society of Engineers* v. *Adelaide Steamship Co., Ltd.*,[3] wherein it is observed :

> "Before approaching, for this purpose, the considerations of the provisions of this Constitution, we should state explicitly that the doctrine of 'implied prohibition' against the exercise of a power once ascertained in accordance with the ordinary rules of construction, was definitely rejected by the Privy Council in *Webb.* v. *Outrim.*[4] Though subsequently re-affirmed by three members of this court, and has never been unreservedly accepted and applied. From its nature, it is incapable of consistent application, because 'necessity' in the sense employed—a political sense—must vary in relation to various powers and various States, and, indeed various periods and circumstances. Not only is the judicial branch of the Government inappropriate to determine political necessities, but experience, both in Australia and America, evidenced by discordant decisions, has proved both the elusiveness and the inaccuracy of the doctrine as a legal standard. Its inaccuracy is perhaps the more thoroughly perceived when it is considered what the doctrine of 'necessity' in a political sense means. It means the necessity of protection against the aggression of some outside and possibly hostile body. It is based on distrust, lest powers, if once conceded to the least degree, might be abused to the point of destruction. But possible abuse of powers is no reason in British law for limiting the natural force of the language creating them. It may be taken into account by the parties when creating the powers, and they, by omission of suggested powers or by safeguards introduced by them into the compact, may delimit the powers created. But once the parties have by the terms they employ defined the permitted limits, no Court has any right to narrow those limits by reason of any fear that the powers as actually circumscribed by the language naturally understood may be abused. But the extravagant use of the granted powers in the actual working of the Constitution is a matter to be guarded against by the constituencies and not by the Courts. When the people of Australia, to use the words of the Constitution itself, 'United in a Federal Commonwealth', they took power to control by ordinary constitutional means any

1. *Durgeshwar Dayal* v. *Secretary, Bar Council, Allahabad*, AIR 1954 All 728.
2. *Burhanpur Tapti Mills* v. *State of M.P.*, AIR 1962 MP 225, 234.
3. (1920)28 CLR 129, 145-155.
4. 1907 AC 81.

attempt on the part of the national Parliament to misuse its powers. If it be conceivable that the representatives of the people of Australia as a whole would ever proceed to use their national power to injure the people of Australia, considered sectionally, it is certainly within the power of the people to resent and reverse what may be done. No protection of the Court in such a case is necessary or proper. Therefore, this doctrine of political necessity, as a means of interpretation, is undefensible on any ground ..... The doctrine of 'implied prohibition' finds no place where the ordinary principles of constructions are applied so as to discover in the actual terms of the instrument thus expressed a necessary implied meaning."

13. Doctrine of occupied field.—A federal constitution which provides for distribution of legislative powers between the Centre and the State eschews unlimited power for the Centre, and sets limits to the powers of the Centre as well as States. In no form whatsoever, one can entrench or trespass upon the field, exclusively reserved for another.[1] The doctrine of 'occupied field' follows as a corollary from this principle . The doctrine of occupied field means that if the Central Legislature legislates on a particular subject and thereby occupies the field, the State Legislature is completely debarred from legislating on the same subject. The doctrine of occupied field was enunciated by Issacs, J., in *Clyde Engineering Co.* v. *Cowburn*,[2] in the following words :

"If, however a competent Legislature expressly or impliedly evinces its intention to cover the whole field, that is, a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field."

The doctrine of 'occupied field' cannot be invoked to test the validity of a State law under Article 254 for in the framework of the Indian Constitution, the Concurrent List is not a forbidden field to the State Legislature and the mere fact that the State Legislature has legislated on a matter in the concurrent list is not enough to attract the mischief of Article 254.

Hardly there is any scope for invoking this doctrine in India in view of Article 254 of the Constitution of India. The very fact that a particular subject is in the Concurrent List means that both Parliament and the State Legislatures are entitled to legislate with regard to that subject. Therefore, Parliament cannot exclude or oust the jurisdiction of the State Legislature by legislating on any particular subject. The Indian Constitution clearly recognises the right of both Parliament and the State Legislatures to legislate concurrently with regard to a subject mentioned in the Concurrent List, and therefore the doctrine of repugancy to be applied in India is not so stringent as would be applied in other countries where constitutional position is different. There is no justification for laying down different tests for determining repugnancy, one for the purpose of Article 254(2) of the Constitution and another for implied repeal by a later Statute.[3] The repugnancy that has got to be found is the repugnancy in the actual provisions of the two laws and not with regard to the subject-matter of the two laws. The proper test is whether effect can be given to the provisions of both the laws or whether both the laws can stand together. If effect cannot be given to both the laws and both the laws cannot stand together, then the law made by Parliament must prevail as against the law made by the State Legislature.[4]

There must be actual repugnancy between such legislation and existing law as required by Article 254(1) and then only would the existing law prevail to the extent of the repugnancy and

1. *Cibatual Ltd.* v. *Union of India*, (1980)21 Guj LR 284 (DB).
2. (1926)37 CLR 466, 488; *State of Jammu & Kashmir* v. *Farooqi*, (1972)1 SCC 872 (Sikri, C.J.).
3. *M. Karunanidhi* v. *Union of India*, 1977 LW (Cr) 130 : 90 LW 467 (FB).
4. *State* v. *Javerbhai*, AIR 1953 Bom 171; *Deo Narayan Lall Das* v. *State of Bihar*, (1992)2 PLJR 560.

not otherwise.[1]

14. Doctrine of pith and substance.—Where the Legislature is supreme, as in England, the Parliament has the right to make or unmake any law whatever. Its legislative jurisdiction is not confined to any particular or enumerated subjects. There is under the circumstances no question in England for Parliament exceeding the limits of its legislative sphere.

It is only in cases where the powers of the Legislature are specified and enumerated that the question of exceeding the limits of its legislative sphere comes up for consideration. In a Federal Constitution there is division of legislative powers between the Central and Provincial Legislatures and it is inevitable that controversy should arise whether one or the other Legislature is not exceeding its own powers. Similar controversies do also arise even in cases where there is a single enumeration of powers in respect of the Central Legislature.[2] The question for consideration in either case would be whether the Legislature in question has exceeded its specified and enumerated powers. In India, notwithstanding the adoption of a three-fold division of powers, some overlapping between the several lists is inevitable.

The doctrine of 'pith and substance' means that if an enactment substantially falls within the legislative powers of a Legislature expressly conferred by the Constitution, the enactment cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another Legislature.[3] To determine the constitutional validity of an Act, its pith and substance should be considered.[4] In other words, where a law is impugned as *ultra vires*, it is the true character of the legislation that has to be ascertained. That is, it must be ascertained whether the impugned legislation is directly in respect of the subject covered by any particular Article of the Constitution or touches the said Article only incidentally or directly.[5] If it be found that the legislation is in substance one on a matter which has been assigned to the Legislature, there can be no question of its validity even though it might incidentally infringe on matters beyond its competence.[6]

Ray, J., observed in *Bennett Coleman & Co.* v. *Union of India*,[7] ".....the tests of pith and substance of the subject-matter and of direct and of incidental effect of the Legislature are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights .....this is a sound and correct approach to interpretation of legislative measures and State action in relation to fundamental rights. The Court in *Bank Nationalization* case laid drew tests :

> *First*, it is not the object of the authority making the law impairing the right of citizen nor the form of action that determines the invasion of the right;

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1. *Mungtulal* v. *Radha Shyam*, AIR 1953 Pat 14 (FB), *per* Ramaswamy, J. See *Kumaun Motor Owners' Union* v. *State of U.P.*, AIR 1966 SC 785 (where the question has been fully discussed). Also see *Tansukh Rai Jain* v. *Nilratan Prasad*, AIR 1966 SC 1780; *Mohammad Saha* v. *State of W.B.*, AIR 1966 Cal 359; *Vital* v. *State of Mysore*, AIR 1966 Mys 138.
2. *South Australia* v. *Commonwealth*, (1942)65 CLR 375, 432.
3. *State of Bombay* v. *Balasara*, (1951)2 SCR 682; *State of Bombay* v. *Narottam Jethabhai*, AIR 1951 SC 99, *per* Das, J.; *Border Security Force (BSF)* v. *State of Meghalaya* , AIR 1989 Gau 81 (FB).
4. *Sajjan Singh* v. *State of Rajasthan*, AIR 1965 SC 845.
5. *Naresh* v. *State of Maharashtra*, AIR 1967 SC 1; *Anant* v. *State of Maharashtra*, 1990(3) Bom CR 274; *Engineers (Overseas) Corporation Pvt. Ltd.* v. *West Bengal Finance Corporation*, AIR 1986 Cal 132 : (1985)89 Cal WN 700 (DB).
6. *Krishna* v. *State of Madras*, AIR 1957 SC 297, 303; *Manmohan* v. *State of Bihar*, AIR 1961 SC 189; *Chaturbhai* v. *Union of India*, AIR 1960 SC 424; see *Lakshminarayana, K.* v. *Chief Controller of Import and Export, Madras*, AIR 1969 Bom 224 where *Chaturbuj's* case was relied upon. *See* also *Buckingham & Carnatic Co. Ltd.* v. *State of Madras*, (1956)2 MLJ 17.
7. (1972)2 SCC 788, 812-3.

Secondly, it is the effect of the law and the action upon the right which attracts the jurisdiction of the Court to grant relief. The direct operation of the Act upon the rights form the real test. By direct operation is meant the direct consequence or effect of the Act upon the rights."

The test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the Legislature and it has to be resolved by reference to the entries to which the impugned legislation is relatable. Where there is a conflict between two entries in the legislative lists and legislation by reference to one entry would be competent but not by reference to the other, the doctrine of pith and substance is invoked for the purpose of determining the true nature and character of the legislation in question.[1]

(i) No conflict between entries in the same list.—The different entries in the same list should be construed as relating to a separate subject or group of cognate subjects but it would be practically impossible to define each item in the State List in such a way as to make it exclusive of every item in that list.[2] As there can be no question of conflict between two items in the same list there is no warrant for restricting the natural meaning of one for the simple reason that the same subject might, in some aspect, come within the purview of the other.[3] The different entries should thus be construed as supplementary of each other and not limited by each other in any way.[4]

It is only where the combined operation of two or more Acts, which form part of a scheme, invades constitutional limitations by way of legislative competence that one or the other or both become constitutionally void and not where the said Acts are, all taken together, within the competence of the same legislative authority unless it is clearly made out that some other kind of constitutional limitation is infringed thereby.[5]

(ii) Conflict between entries in different lists to be avoided.—The entries in the three lists should be read together and the language of one interpreted, and when necessary modified by that of the other so as to avoid any conflict between them.[6] As far as possible an attempt must be made to reconcile entries in the Union List, the State list and the Concurrent List and the Court must avoid attributing to the Constituent Assembly an intention of bringing about a conflict between the powers of the State Legislature and Parliament.[7] When the words are wide enough to bring a particular power within two mutually exclusive jurisdictions, recourse must be had to the context and scheme of the Act. The expression 'including the control of rent'

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1. *Atiabari Tea Co. Ltd.* v. *State of Assam*, AIR 1961 SC 232, 256; *Prafulla Kumar* v. *Bank of Commerce, Ltd.*, 74 IA 23 : AIR 1947 PC 60; *Raptakos, Brett and Co. Ltd.* v. *Bihar State Agri. Marketing Board*, 1988 Pat LJR 830 Referring to *Shyamakant Lal* v. *Rambhajan Singh*, 1939 FCR 193 and relying on, *Ch. Tikaramji* v. *State of Uttar Pradesh*, AIR 1956 SC 676.
2. *Banarasi Das* v. *Wealth Tax Officer*, (1965)2 SCR 355, 359 (Gajendragadkar, C.J.); *United Provinces* v. *Atiqa Begum*, AIR 1941 FC 16 : 1940 FCR 110.
3. *State of Bombay* v. *Norottam*, AIR 1951 SC 69; see *Jyotikana* v. *I.T. Commissioner, Assam*, AIR 1954 Assam 113, 126, *per* Ram Labhaya, J. : "There is no need for giving the expression 'agriculture' in Entry 46 of List II a restricted meaning on the ground that some process which may legitimately be regarded as agriculture is conferred by the expression "forest" which is the subject-matter of a separate entry (Entry No. 19) in the same list."
4. *State of Bombay* v. *Norottam*, AIR 1951 SC 69; *see Jyotikana* v. *I.T. Commissioner, Assam*, AIR 1954 Assam 113, 126, *per* Ram Labhaya, J. : "There is no need for giving the expression 'agriculture' in Entry 46 of List II a restricted meaning on the ground that some process which may legitimately be regarded as agriculture is conferred by the expression 'forest' which is the subject-matter of a separate entry (Entry No. 19) in the same list."
5. *King-Emperor* v. *Benoari Lal*, AIR 1945 PC 48.
6. *Governor General* v. *Province of Madras*, AIR 1945 PC 98; *Sundararamier* v. *State of A.P.*, AIR 1958 SC 468.
7. *F.E. Darukhanawala* v. *Khemchand*, AIR 1954 Bom 254.

in Entry 3 of List I meant that the control of rents contemplated by this entry is in relation to 'the house accommodation' which expression precedes the expression 'including the control of rent'. The expression 'including' is an expression of intention, and not the expression of limitation. The nature of that additional power was that Parliament should not only regulate house accommodation in the sense of acquiring, requisitioning or allocating houses in cantonment areas, but may also, in respect of the houses so acquired, requisitioned or allocated, control rents. Therefore, the control of rents with which Parliament could deal is not control of rents which had no relationship with the house accommodation which had to be regulated for the purpose of accommodation. It was not the intention of the Constituent Assembly to confer upon Parliament the power to control rents between private landlords and tenants; that power was left to the State Legislature under List II. Therefore the State Legislature was competent to enact the Amending Act XLIII of 1951 and to apply it to the cantonment area.[1]

Reference to legislative practice may be admissible for cutting down the meaning of a word in order to reconcile two conflicting provisions in two legislative lists[2] or to enlarge their ordinary meaning.[3]

(iii) Act and its subject-matter to be considered.—In order to decide the Legislature's competence with regard to an Act, the Courts must look first at the Act itself and consider what the Act is and what is the subject-matter with which the Act is dealing.[4] Reading Clauses (1) and (2) of Article 245 of the Constitution Act together it is clear that the State Legislatures have no extra-territorial powers of legislation. But it does not follow that a State legislation which is in substance in respect of matters within the competence of the State Legislative Assembly would be *ultra vires* merely because it may have possible effect beyond the territorial limits of the State.[5] When a statute is impugned as having extra-territorial operation, the validity of that legislation depends on the sufficiency of the purpose for which is used the territorial connection.[6] That is to say that a law enacted by a State Legislature cannot, in the absence of a territorial nexus, have any extra-territorial operation.[7] "Sufficiency of territorial connection", said S.R. Das, C.J.,"involves a consideration of two elements, *viz.*, *(a)* the liability sought to be imposed must be real, not illusory, and *(b)* the liability sought to be imposed must be pertinent to that connection."[8]

The legislative power of the Provincial Legislature to levy a tax on sale of goods is confined and restricted only to the transaction of sale and understood by the Parliament of the United Kingdom in the law relating to the sale of goods and any attempt of the Legislature to tax under the guise of or under the pretence of such a power, transaction which are wholly outside it, will be *ultra vires* and must be declared invalid. Building contracts, which term includes contracts

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1. *F.E. Darukhanawala* v. *Khemchand*, AIR 1954 Bom 254; *Sheetal Prasad Gupta & others Etc.* v. *State of Bihar and another*, AIR 1990 Pat 64 (FB) (it was held that laws relating to cooperatives are covered by item No. 32 of list II and are not laws relating to incorporation, regulation and winding up of trading corporation.)
2. *In the matter of* I.C.P. & Berar Sales of Motor Spirit and Lubricants Taxation, 1938, AIR 1939 FC 1.
3. *State of of Bombay* v. *F.N. Balsara*, AIR 1951 SC 318 : 1951 SCR 682; *Mahavir Prasad* v. *Yagnik*, AIR 1960 Bom 19; *Waverly Jute Mills* v. *Rayman & Co.*, AIR 1963 SC 90.
4. *State of Bombay* v. *R.M.D. Chamarbaugwala*, AIR 1956 Bom 1.
5. *Siddique* v. *State of Bihar*, (1949)4 DLR 29.
6. *Anant* v. *State of A.P.* AIR 1963 SC 853.
7. *State of Bombay* v. *R.M.D. Chamarbaugwala*, AIR 1957 SC 699.
8. *State of Bombay* v. *R.M.D. Chamarbaugwala*, AIR 1957 SC 699; referred to in *Tata Iron & Steel Co.* v. *State of Bihar*, AIR 1958 SC 452 and *State of Bihar* v. *Charusila Dasi*, AIR 1959 SC 1002; *Khyarbari Tea Co.* v. *State of Assam*, AIR 1966 SC 925.

for the construction of dams, road work, construction of bridges, etc., are always considered in law as entire and indivisible contracts in the sense that the complete fulfilment of the promise by one party is a condition precedent to the right of the other to call for the fulfilment of any part of the promise by the other. There is no element of sale of the materials in a building contract. The property in the materials passes to the owner of the land because they are fixed in pursuance of the contract to build and along with the *corpus*, which ultimately results by the erection of the superstructure, the materials also pass to the owner of the land. If the Madras General Sales Tax Act, 1939 as amended by Act 25 of 1947 intends to catch in the net of tax contracts of the aforesaid nature, to that extent the amendments are *ultra vires* of the Provincial Legislature, as they had no power to tax transactions which are not sale of goods.[1]

When the words or expressons used in a legislative list have to be construed, the rule of construction of *pari materia* statutes is not strictly applicable nor is it a conclusive or infallible test. We must, in such a case, try to ascertain the scope and ambit of the power intended to be conferred by the entry and consequently, though we may resort to judicial pronouncements and legislative practice, prevailing at the time when the Constitution was promulgated, the intention of the framers of the Constitution must be ascertained by reference to the plain meaning of the words and expressions under it. If, however, words and expressions have acquired legal currency and have been given a definite meaning in legal parlance it is safe to presume that the draftsmen could not but have intended to use them in the same sense.[2]

(iv) Power to legislate in respect of all ancillary and subsidiary matters covered by an entry.—In *Subrahmanyam Chettiar* v. *Muttuswami Goundan*,[3] Gwyer, C.J., of the Federal Court of India observed :

> "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance' or its 'true nature and character', for the purpose of determining whether it is legislation with respect to matters in this list or in that."

In the same case Sulaiman, J., observed :

> "In view of the large number of items in the legislative lists, it is almost impossible to prevent a certain amount of overlapping. Absolutely sharp and distinct lines of demarcation are not always possible .....To avoid such difficulties, the Imperial Parliament has thought fit to use the expression 'with respect to'[4] which obviously means

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1. *Gannan Dunkerley & Co.* v. *State of Madras*. AIR 1954 Mad 1130; see also *Jubilee Engineering Co.* v. *S.T. Officer*, AIR 1956 Hyd 79.
2. *Jubilee Engineering Co.* v. *S.T. Officer*, AIR 1956 Hyd 79 [the basic conception of sale is the completion of the transacton of sale. Hence Explanation (1)*(i)* to Section 2*(m)*, Hyderabad General Sales Tax Act, 1950 and Rule 5(3) of the Rules made thereunder held to be *ultra vires*, where bricks, rafters, beams, doors, windows, etc. were embedded in a building or go to make construction of a building as such, a contractor who has undertaken to build cannot, by any stretch of the words in Entry 54, be said to have agreed to sell].
3. AIR 1941 FC 47, 51; quoted in *Federation of Hotel & 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; *Prafulla Kumar* v. *Bank of Commerce*, AIR 1947 PC 28; *Durgeshwar Dayal* v. *Secretary, Bar Council, Allahabad*, AIR 1954 All 728; *Sri Durgaji* v. *State of Bihar*, AIR 1953 Pat 65.
4. The expression is used in all the clauses of Article 246 as well as in several other Articles.

that looking at the legislation as a whole, it must substantially be with respect to matters in one list or the other. A remote connection is not enough."

Sulaiman, J., further observed :

"The Federal Legislature has full and extensive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. A Provincial Legislature has exclusive power to legislate with respect to List II minus matters falling in List I or List III; has concurrent power to legislate with respect to matter in List III minus matters falling in List I. The dominant position of the Central Legislature with regard to matters in List I and List III is thus established. But the rigour of this interpretation is relaxed by the use of the words 'with respect to' which signify 'pith and substance' and do not forbid a mere incidental encroachment."[1]

On a contention that the U.P. Zamindari Abolition and Land Reforms Act was invalid inasmuch as it did not provide for payment of compensation, it was observed : "The power to legislate is given by Article 246 of the Constitution. Under that Article a State Legislature has power to legislate 'with respect to' matters enumerated in the various entries in List II and also with respect to matters mentioned in List III subject to any legislation by Parliament. Since there is no parliamentary legislation under Entry 42 of List III, the State could legislate upon the subject-matter of that Entry. It could legislate with respect to principles of compensation, etc. The expression 'with respect to' is of wide import and any legislation can be made so long as it is with respect to the subject-matter of a particular entry (provided of course it is not inconsistent with the other provisions of the Constitution). It follows that the U.P. State Legislature could enact under Entry 42 of List III in respect of property acquired that compensation shall be paid in bonds or even that there shall be no compensation. So the U.P. Act I of 1951 cannot be attacked on this ground."[2]

The expression extends the legislative power to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that category or subject.[3] It, in a way, invokes the principle of pith and substance.[4]

In *State of Bombay* v. *Narottam*,[5] their Lordships of the Supreme Court dealing with Entries 53 of List I, and 2 of List II and 15 of List III observed : "The legislative power conferred on the Provincial Legislature by Item I of List II has been conferred by use of language which is of the widest amplitude (administration of justice and constitution and organisation of all Courts). The phrase 'employed' would include within its ambit legislative power in respect to jurisdiction and power of Courts established for the purpose of administration of justice. Moreover, the words appear to be sufficient, to confer upon the Provincial Legislature the right to regulate and provide for the whole machinery connected with the administration of justice in the Province. Legislation on the subject of administration of justice and constitution of Courts of Justice would be ineffective and incomplete unless and until the Courts established under it were clothed with the jurisdiction and power to hear and decide causes.

I am, therefore, of the opinion that under Item I of List II the Provincial Legislature has complete competence not only to establish Courts for the administration of justice but to confer on them jurisdiction to hear all causes of a civil nature, and that this power is not curtailed or

1. *United Provinces* v. *Atiqa Begum*, AIR 1941 FC 16, 25 : 1940 FCR 110.
2. *Mst. Govindi* v. *State of U.P.*, AIR 1952 All 88.
3. *Subramanyan Chettiar* v. *Muttuswami Goundan*, AIR 1941 FC 47.
4. *United Provinces* v. *Atiqa Begum*, AIR 1941 FC 16, 25.
5. AIR 1951 SC 69.

limited by power of legislation conferred on the two Legislatures under Items 53 of List I, and 2 of List II and 15 of List III. On the other hand, these three items confer on the respective Legislatures power to legislate when dealing with particular subjects within their exclusive legislative field, to make laws in respect of the jurisdiction and powers of court that will be competent to hear causes relating to those subjects, in other words, this is a power of creating special jurisdictions only."

(v) Ambit of different entries dependent upon facts of each case.—The ambit of the different entries should be determined with reference to the facts of each case coming up for decision and abstract definitions circumscribing their scope once for all should be avoided. It is by confining decisions to concrete questions which have actually arisen in circumstances the whole of which are before the Court that injustice to future suitors can be avoided.[1]

Our task being to ascertain the limits of the power granted by the Constitution, we cannot extend these limits by way of interpretation.[2]

(vi) Validity of Act not dependent upon the label it bears.—The validity of an enactment has to be determined not with reference to the name and label the statute has been given, but with reference to the substance of the enactment, its true nature and character or its pith and substance as it is called. "What the statute may in any case be called is of little moment, the label may not correctly describe the goods."[3] The vires of a legislation does not depend on the purpose or motive behind the Legislature,[4] but must be judged in the light of legislative competence of the Legislature, which passed it, and by reference to the question whether fundamental rights of citizens have been contravened.[5] The Court must look behind the names, forms and appearances to discover the true character and nature of the legislation.[6] One has to ascertain the true nature and character of the enactment, its pith and substance,[7] it is the result of this investigation, and not the form alone which the statute may have assumed under the hand of the draftsman, that will determine within which of the 'legislative lists' the legislation falls and for this purpose the legislation must be scrutinized in its entirety.[8] The true nature and character of the legislation in the particular instance under discussion must always be determined in order to ascertain the class of subject to which it really belongs.[9] If the Act when so viewed substantially falls within the powers of the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another Legislature.[10]

(vii) Validity dependent upon pith and substance.

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1. Lefray, Canadian Constitution, at p. 72.
2. *Diamond Sugar Mills* v. *State of U.P.*, (1961)3 SCR 242, 249.
3. *Huddart Parker* v. *Commonwealth*, (1931)44 CLR 492; *Subramanyan Chettiar* v. *Muttuswami Goundan*, AIR 1941 FC 47; *Chandriah* v. *Civil Administrator*, AIR 1954 Hyd 121.
4. *Ganesh Nayak* v. *Commercial Tax Officer*, AIR 1964 Mys 240, 242 (Hegde, J.).
5. *Jaora Sugar Mills (P) Ltd.* v. *State of M.P.*, AIR 1966 SC 416.
6. *Dwarkadas* v. *Sholapur Spinning and Weaving Co. Ltd.*, AIR 1954 SC 119; *see* also *Kodarap Laxmiah* v. *State of Hyderabad*, AIR 1955 Hyd 41.
7. *Sajjan Singh* v. *State of Rajasthan*, AIR 1965 SC 845.
8. *Huddart Parker* v. *Commonweath*, (1931)44 CLR 492; *South Australia* v. *Commonwealth*, (1942)65 CLR 375, 432; *see* also *Ralla Ram* v. *Province of East Punjab*, 1949 FC 81; *Kishori* v. *King*, 1950 FC 69.
9. *Russell* v. *Queen*, (1882)7 AC 829, 838.
10. *State of Bombay* v. *F.N. Balsara*, AIR 1951 SC 319, 322; *see* also *Subramanyan Chettiar* v. *Muttuswami Goundan*, AIR 1941 FC 47; followed in *Chandriah* v. *Civil Administrator*, AIR 1954 Hyd 121. No doubt legislation with regard to the defence of India is a matter within the exclusive province of Parliament. The Defence of Hyderabad Regulation is

Resumption and acquisition connote two different legal concepts. While resumption implies that the person or authority which resumes the property has pre-existing rights over it, acquisition carries no such implication and in general while the effect of resumption is to extinguish the interest of the persons whose property is resumed, that of acquisition is to vest that interest in the acquirer. To determine whether the impugned Act is one for acquisition of *Jagirs* or for their resumption, we must see what the pith and substance of the legislation is, the name given to it by the Legislature not being decisive of the matter. Under the law, a *Jagir* could be resumed only under certain circumstances. It could be resumed for breach of the terms of the grant, such as, failure to render services or perform the obligations imposed by grant. It can be resumed for rebellion or disloyalty or for the commission of serious crimes. And again, a *jagir* was originally only a life-grant and when the holder died, it reverted back to the State and succession to the estate was under a fresh grant from the State and not by inheritance, even when the successor was the heir of the deceased holder. The right to resume *jagirs* within the limits aforesaid was founded on grant and regulated by general law. To exercise that right, there was no need to enact any legislation. But the resumption for which the Act provides is something different from the resumption which is authorised by Article VII(3) of the Covenant. It was a resumption not in accordance with the terms of the grant of the law applicable to *jagirs* but contrary to it. It was a resumption made not in enforcement of the rights which the rulers had as grantors but in exercise of the sovereign rights of eminent domain possessed by the State. The taking of properties is under the circumstances, in substance, acquisition which is covered by item 36 of List II, notwithstanding that it is

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not a regulation which pertains only to the law relating to the defence of Hyderabad. The regulation contains other matters as well. It contains Rules and Orders about various matters and every such matters about which Rules and Orders have been passed might very well be regarded as a separate enactment under the appropriate subject. The regulation also contains the Rules and Orders passed with a view to maintain public order, which is the first item in List II. with regard to acquisition and requisition of property which is item 36 of List II, etc. Thus in pith and substance the law is within the competence of the State Legislature; *Bank of N.S.W.* v. *Commonwealth*, (1948)76 CLR 1. A prohibition of imports on a very high duty in a customs tariff may bring about the closing of business enterprises in a State but the tariff is not a law with respect to such enterprise. Similarly, a State law may prohibit the carrying on of occupation with the result that they are necessarily abandoned, with perhaps great consequential loss to Commonwealth in customs duties or income-tax receipts, but the State law does not for this reason become a law with respect to customs duties or income-tax; *Ladore* v. *Bennett*, (1939) AC 468, a Provincial Act which appeared to deal with the Dominion subject of bankrupt and insolvency held valid as in pith and substance it related to municipal institutions in the Province; *A.G. for Canada* v. *A.G., Ontario*, 1937 PC 7. The Canadian Employment and Social Insurance Act, 1935, *held*, in pith and substance to come within the 'property and civil rights' within the province reserved to 'province' under Section 92(13) of the British North America Act and did not relate to the 'Public debt and property' or 'the raising of money by any system of taxation' in Section 91(1) or (3); *Abitibi Paper Co.* v. *Montreal Trust Co.*, 1944 PC 7. During pendency of action by a mortgagee for sale of the assets of a mortgagor Paper Co., an unsecured creditor applied for proceeding against Company under Bankruptcy Laws. The Royal Commission subsequently appointed for solving the financial difficulties of the Company recommended a plan to serve the interests of the parties concerned, and thereupon the Legislature passed a Moratorium Act directing a stay of action against the Company so that an oppurtunity might be given to all the parties to consider the plan. *Held* that the Legislation in its pith and substance did not relate to Bankruptcy and Insolvency which is a 'Dominion subject' but simply to property and civil rights which is a provincial subject; but see *Union Colliery Co. of British Columbia* v. *Bryden*, (1899) AC 330; *John Deere Plow Co. Ltd.* v. *Wharton*, (1915) AC 330; *Attorney-General for Queensland* v. *Attorney-General for Commonwealth*, 20 CLR 148, 160 holding that where having regard to the whole scheme of the Act it appears to be directed to a purpose not within the competency of the Provincial Legislature, the Act would be *ultra vires; (M/s.) Chandra Prakash Agarwal and Co.* v. *State of U.P.*, 1990 All LJ 459 (FB); *(M/s.) Hoechst Pharmaceuticals Ltd.* v. *State of Bihar*, AIR 1983 SC 109.

labelled as resumption.[1]

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1. *Amarsingji* v. *State of Rajasthan*, AIR 1955 SC 504 on appeal from AIR 1951 Raj 291; *see* also *Raghubir* v. *Government of U.P.*, AIR 1954 All 660. [The U.P. Board of Revenue (Declaration of Procedure and Validations) Act, 1953 providing that in Revenue Courts the procedure laid down in the Act shall be applied]; *United Provinces* v. *Atiqa Begum*, AIR 1941 FC 16. (The U.P. Regularisation of Remission Act XIV of 1938 barring civil remedy held valid); *Brij Bhukan* v. *S.D.O., Siwan*, AIR 1955 Pat 1 (Bihar Land Encroachment Act, 1950 not invalid, because of ousting jurisdiction of Court); *Megh Raj* v. *Allah Rakhai*, AIR 1947 PC 72. (The Punjab Restitution of Mortgaged Land Act, IV of 1938 barring the jurisdiction of Civil Courts held valid); *Vishnu Bhattathiripad* v. *Puolo Puolo*, AIR 1953 Trav. Co. 327. [The Travancore-Cochin Holdings (State of Execution Proceedings) Act, 1950 held to be covered by Entry 18 of List II and not by Entry 13 of List III and not repugnant to C.P.C. in view of Section 4, C.P.C.)]; *Basantlal* v. *Bansilal*, 56 Bom LR 1000. [The Bombay Forward Contracts Act, 1947 held not to have removed the illegality imposed on forward contracts by the Essential Supplies (Temporary Powers) Act, 1946]; *Ramayya* v. *State of Mysore*, AIR 1954 Mys 161. [The Mysore Court Fees (Amendment) Act, 1954 held to be covered by Item 3 of List II]; *Sri Krishna* v. *State of West Bengal*, AIR 1954 Cal 591. [The West Bengal Foodstuff Anti Hoarding Order, 1951 & WB Foodgrains (Movement Control) Order, 1951 held valid]; *Mst. Govindi* v. *State of U.P.*, AIR 1952 All 88 (The U.P. Zamindari Abolition and Land Reforms Act, 1951 held to be covered by Entry 42 of List III); *Janakinath Roy* v. *State of Bihar*, AIR 1953 Pat 105; *M.Abdul Hassan* v. *State of Bihar*, AIR 1953 Pat 337 (The Bihar Land Reforms Act, 1950 held to be covered by item 35 of list II); *Ramanathapuram* v. *State of Madras*, AIR 1954 Mad 291. [The provisions in Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, dealing with fisheries are only incidental. Article 297 vests sea beds in Union Government and not territorial waters); *Bhagirath* v. *State of Punjab*, AIR 1954 Punj 167 (The Punjab Security of Land Tenures Act falls under item 18 of List II); *Sadhusingh* v. *Financial Commissioner, Punjab*, AIR 1954 Punj 291 [Section 2 of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 as amended by Act IX of 1951 is inconsistent with Sections 4, 12, 16, 40 and 52 of the Evacuee Property Act]; *Shantilal* v. *State of Bombay*, AIR 1954 Bom 508 [The Press (Objectionable Matters) Act, 1951 deals with "newspapers, books and printing presses" which falls under Entry 29 of List III. Dealing with public order (State List subject) incidentally does not amount to encroachment by Parliament on State Legislature]; A.K. Krishna, *In re*, AIR 1954 Mad 993 [The Madras Prohibition Act (10 of 1937) is covered by items 37 and 2 of List II. The Criminal Procedure Code does not completely cover the field and so provision in the Act for issue of search-warrants in a manner other than that provided by Criminal Procedure Code is not prohibited]; *Menon, M.P.* v. *State*, AIR 1953 Trav. Co. 540; *George* v. *State of Trav. Co.*, AIR 1954 Trav. Co. 34 (The Trav. Co. Public Safety Measures Act 5 of 1950 *held* void because of non-compliance with Article 304*(b)*; *Toomma Chandriah* v. *Civil Administrator*, AIR 1954 Hyd 121 (Purpose of the Defence of Hyderabad Regulation is public safety and interest); *Edward Mills Co. Ltd.* v. *State of Ajmer*, AIR 1955 SC 25 (Section 27, Minimum Wages Act deals with subsidiary power); *Murari Lal* v. *State*, AIR 1955 All 48 (FB); [Section 1(5) of the U.P. (Temporary) Accommodation Requisition Act, 1947 in *intra vires*]; *Radhabhai* v. *Bombay State*, AIR 1955 Bom 439 (Bombay Prevention of Hindu Bigamous Marriages Act, 1946 cannot be regarded as legislation on subject of domicile); *Sarwaih* v. *Narsing Rao*, AIR 1955 Hyd 257 [Sections 31 & 21 of Hyderabad Houses (Rent, Eviction & Lease) Control Act, 20 of 1954 are not *ultra vires*]; *City Tobacco Mart* v. *I.T. Officer*, AIR 1955 Mys 49 (Section 13, Finance Act, 1947 is valid); *Piarelal Singh* v. *State of M.P.*, AIR 1955 Nag 11 (M.P. Act 13 of 1954 held to be *intra vires); Nemkumar* v. *Commr. of Sales Tax*, AIR 1955 Nag 99 [Proviso to Section 22(1), CP & Berar Sales Tax Act, 1947 held valid]; *Fatch Singh* v. *State*, AIR 1955 Pat 470 (Bihar Wakfs Act 8 of 1948 is not *ultra vires*); *Nagabhushanam* v. *Nagendramma*, AIR 1955 Andhra 181 [Section 4(1), Proviso to Madras Hindu (Bigamy Prevention and Divorce) Act is not repugnant to Section 494, IPC]; *Joint Family Firm of Jamnalal* v. *Kishendas*, AIR 1955 Hyd 194 (The Hyderabad Jagirdars Debt Settlement Act, 1952 is not void on ground of repugnancy to CPC); *Brij Bhukan* v. *S.D.O., Siwan*, AIR 1955 Pat 1 (Provisions of Bihar Land Encroachment Act, 1950 are repugnant to the Limitation Act); *In re* P.K. Velayudham, AIR 1955 Trav. Co. 219 (Pith and substance rule has nothing to do with question arising under Section 107, Government of India Act); *State of Bombay* v. *R.M.D. Chamarbaugwala*, AIR 1956 Bom 1 [Section 2(1)*(d)*, Bombay Lotteries & Prize Competition and Control Tax Act, 1948, held valid but Section 12-A, held invalid]; *Mirza Hamid Baig* v. *Nazim Saheb Araish Bolda*, AIR 1956 Hyd 10 (Rule 21, City Improvement Board Regulation, Hyderabad is not repugnant to Section 106, T.P. Act or Section 9, CPC); *P.M. Bamadatham* v. *Cochin Devaswam Board*, AIR 1956 Trav-Co. 19 (Section 66 of the T. Hindu Religious Endowments Act does not offend Articles 19, 26 and 254 of the Constitution);

(viii) Consequences how far affecting validity.—The consequences of a particular construction, if the text be explicit, can have no impact on the construction of a constitutional provision.[1] If the language employed is plain and unambiguous, the same must be given effect to irrespective of the consequences that may arise.[2] Consequences may well be considered in fixing the scope and ambit of a power, where the text of the statute creating the power is unclear ambiguous.[3]

(ix) In case of taxation.—In case of taxation also the same principles have been held to be applicable. The names employed and definitions given by the Legislature,[4] to a certain tax are not the determining factors in ascertaining the real nature and incidence of the tax nor is the mode or machinery of assessment,[5] nor the standard on which a tax is levied,[6] any positive criterion for determining the same. In such cases as in case of other laws the validity of a particular tax would depend upon its real nature and incidence.[7]

In order to decide whether a tax has been lawfully imposed by a State, it is necessary to enquire—

(1) whether it was enacted for the purposes of the State;
(2) whether the tax falls within the description of taxation set out in an entry of the State list;
(3) whether the person, property or business to be taxed is within or associated with the State, or in other words, whether there is a sufficient territorial connection between the object to be taxed and the taxing State; and
(4) whether there is anything in the Constitution or in any other law for the time being in force to indicate that the tax is not valid.[8]

Nuruddin Ahmed v. *State of Assam*, AIR 1956 Assam 48 (Rule 12) under the Assam Land & Revenue Regulation is *ultra vires*); *The State* v. *Dinanath*, AIR 1956 Punj 85 [Section 292, I.P.C., is not impliedly repealed by Press (Objectionable Matter) Act, 1951]; *Mukandi Ram* v. *Executive Engineer*, AIR 1956 Pepsu 40 [Section 3, Pepsu Sirhind Canal & Western Jamna Canal (Enforcement and Validation) Act *held* valid; *Bapu Rau* v. *State*, AIR 1956 Bom 300 [Section 37(3), Bombay Police Act, 1951 *held* not to be invalid]; *R.A. Dickie & Co.* v. *Municipal Board, Benares*, AIR 1956 Cal 216 [Section 79(2) of Government of India Act does not enable the U.P. Legislature to alter and repeal the Limitation Act with regard to other provinces; *C.R.H. Readymoney, Ltd.* v. *State of Bombay*, AIR 1956 Bom 304 (Bombay Prohibition Act is competently enacted in respect of medicinal preparations); *Jubilee Engineering Co.* v. *S.T. Office*, AIR 1956 Hyd 79 (Works contract not covered by Entry 54, List II); *Nagpur Kshatriya Bhatik* v. *Corporation of City of Nagpur*, AIR 1956 Nag 152 [Imposition of registration fee on animals and heads of cattle sold in the Corporation is not saved by Article 276(1)]; *State of Bihar* v. *Ramanand Tiwari*, AIR 1956 Pat 188 [Section 3, Bihar Essential Services Maintenance Act, 1948 *held* valid]; *Messrs Debi Jhora Tea Co.* v. *State of Bihar*, AIR 1956 Pat 178 [Section 2(*g*) of Bihar Sales Tax Act as amended by Act 6 of 1949 *held* valid]; *Shri Sundara Rajan & Co. Ltd.* v. *State of Madras*, AIR 1956 Mad 298 [Madras General Sales Tax (Definition of Turnover & Validation of Assessments) Act, 1954 is *intra vires* and valid]; *Jadu Bahuji* v. *Municipal Committee, Khandwa*, AIR 1956 Nag 167 [Khandwa Municipality (Validation of Tax) Act, 1941 *held* valid]; *D.K. Krishnan* v. *Secretary, Regional Transport Authority*, AIR 1956 Andhra 129 [Provisions of Section 44(5) of the Madras Motor Vehicles Act, and Rule 134-A made by the Provincial Government do not contravene Art. 245].

1. *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 989 (Chandrachud, J.).
2. *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 989 (Chandrachud, J.) at p. 475 (Hegde, J.); 552, 566 (Ray, J.) 690 (Palekar, J.); *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661.
3. *Kesavananda Bharati* v. *State of Kerala*, (1973)4 SCC 225, 989 (Chandrachud, J.) at p. 690 (Palekar, J.).
4. *Punjab Flour Mills* v. *Province of Punjab*, AIR 1947 FC 14.
5. *Byramjee* v. *Province of Bombay*, AIR 1940 Bom 65, 70.
6. Reference under the Government of Ireland Act, 1936 AC 352.
7. *R.* v. *Caledonian Collieries*, (1928) AC 358; *Governor-General-in-Council* v. *Province of Madras*, AIR 1945 PC 98; *Attorney-General* v. *Murphy Lumber Co.*, AIR 1930 PC 173.
8. *Surendra Transport & Engineering Co. Ltd.* v. *State of Punjab*, AIR 1954 Punj 264.

The contribution made under Section 70 of the Bihar Hindu Religious Trusts Act is in the nature of a fee and not in the nature of a tax and the State Legislature was competent to enact this provision. It is true that there is an element of compulsion in the payment of the fees and it is also true that the fee is not uniform and there is no relationship between the amount of the fee and the services rendered. But the main consideration in such a case is whether the contribution goes to swell the public revenue. The contribution imposed under Section 70 does not go to the consolidated fund of the State of Bihar. Under the Act, the authorities may be raising revenue from the trustees of religious endowments under Section 70 but the levy is not made for any Government purpose but for the limited specified purpose laid down in Section 70, *viz.*, defraying the expenses incurred in the administration of the Act.[1]

Article 286(1)*(a)* read with the explanation prohibits taxation of sales or purchases involving inter-State elements by all States except the State in which the goods are delivered for the purpose of consumption therein. The latter State is left free to tax such sales or purchases, which power it derives not by virtue of the explanation but under Article 246(3) read with Entry 54 of List II.[2]

The effect of the Explanation to Article 286 is to remove the limitation imposed by Article 245 and Article 285(1) on the power of the State to enact extra-territorial legislation and permit the State to levy sales-tax on extra-State sale, provided goods thereunder are delivered within the State. Thus where purchases are made in another State by a person living in Madras and the documents of title are received by post in Madras, or the price is paid to the banks in Madras against delivery of documents of title and the contracts in respect of the sales are concluded in the former State, they will be extra-State sales not liable for taxation under the Madras General Sales Tax Act. If, however, the goods are actually delivered in Madras, they will confer on the State of Madras a power to tax the goods under the Explanation to Article 286(1)*(a)*.[3]

Under the Constitution, the States enjoy a power under Entry 54 to tax goods on their entry into a local area, subject only to the limitation contained in Article 286. There is no conflict between the power of States to tax sales under Entry 54 and the power to impose taxes on the use of goods to which the Explanation relates.[4]

The Bihar Sales Tax Act, 19 of 1947 is in pith and substance not a law with respect to sale of goods but is a law imposing taxation on sale of goods and falls entirely within Item 54 of the State List, though the Act may incidentally trench to a certain extent upon Items 7 and 8 of the Concurrent List.[5]

A Full Bench of the Supreme Court, by a majority of four to three,[6] reversed its earlier decision in the *United Motors* case,[7] and held that until Parliament by law lifted the ban, no State would have the right to impose tax on goods sold or purchased in the course of inter-State

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1. *Bijayananda Giri* v. *State of Bihar*, AIR 1954 Pat 266.
2. *State of Bombay* v. *United Motors (India) Ltd.*, AIR 1953 SC 252 reversing 55 Bom LR 246 (reversed in AIR 1955 SC 661).
3. *Govindarajulu Naidu & Co.* v. *State of Madras*, AIR 1953 Mad 116.
4. *Govindarajulu Naidu & Co.* v. *State of Madras*, AIR 1953 Mad 116.
5. *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1953 Pat 87.
6. *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661, Das, Acting C.J., Bose, Imam & Bhagwati, JJ. (Jagannadha Das, Venkatrama Aiyar & Sinha, JJ., dissenting).
7. *State of Bombay* v. *United Motors (India), Ltd.*, AIR 1953 SC 252 (all cases not in consonance with this ruling should be considered to be overruled).

trade or commerce.[1] In the *United Motors* case it was held that Article 286(1)*(a)* read with the Explanation thereto and construed in the light of Articles 301 and 304 prohibited the taxation of sales or purchases involving inter-State elements by all States except the State in which the goods were actually delivered for the purposes of consumption therein and that Clause (2) of Article 286 did not affect the power of the State in which delivery of goods was made to tax the sales or purchases of the kind mentioned in the Explanation, the effect on which was not to convert inter-State transactions into intra-State transactions and to take them out of the operation of Clause (2) of the Article. His Lordship the Chief Justice in the Full Bench case observed that whichever view was taken of the Explanation to that Article, it should be limited to the purpose the Constitution-makers had in view when they incorporated it in Clause (1). The Explanation to Clause(1)*(a)*, it was held, could not legitimately be extended to Clause (2), either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of Clause (2). If the Explanation could not be read into Clause (2), it should follow that except in so far as Parliament might by law provide otherwise no State law could impose or authorize the imposition of any tax on sales or purchases when such sales or purchases took place in the course of inter-State trade or commerce and irrespective of whether such sales or purchases did not fall within the Explanation.

It is to be noted that the question of encroachment of one Legislature into the field of another is to be determined not by degree but by substance but nevertheless the extent of invention is not altogether irrelevant for the determination of the question. Its provisions may advance so far into Federal Territory as to show that its true nature is not concerned with provincial matters.[2]

(x) Amended provision also valid.—If the principal legislation is *intra vires*, it is difficult to see how an amendment thereof with respect to matters properly pertaining to the subject-matter covered by it could be *ultra vires*.[3]

15. Doctrine of colourable legislation.—The doctrine of colourable legislation really postulates that though the latter of the law is within the limits of the powers of the Legislature, in substance the law has transgressed those powers and by doing so it has taken the precaution of concealing its real purpose under the cover of apparently legitimate and reasonable provisions.[4] The doctrine of colourable legislation implies that though a Legislature is not fettered in the sphere of its power, it cannot 'under the guise or the pretence, or in the form of an exercise of its own powers, carry out an object which is beyond its powers, or trespass on the exclusive powers of the other'.[5] In other words, a Legislature cannot under the colourable exercise of its powers enact a law which does not fall within its sphere or nullify expressly or by implication statutes which it could not enact.[6] If the Act is within legislative competence no question of colourable legislation arises.[7] One has to examine the substance of the Act in order to

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1. *Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661.
2. *Prafulla* v. *Bank of Commerce*, AIR 1947 PC 28 holding that the power to make laws in respect of money-lending necessarily includes the power to effect the money-lender's right with respect to promissory notes given in money-lending transaction and since the pith and substance of the Provincial Act was 'money-lending' (Item 27, List II) it was not void for encroaching upon Item 28 of the Federal List which deals with promissory notes.
3. *Amarjit Singh* v. *State of Punjab*, AIR 1962 SC 1305, 1313.
4. *Sonapur Tea Co. Ltd.* v. *Deputy Commissioner and Collector of Kamrup*, AIR 1962 SC 137.
5. *A.G. for Alberta* v. *A.G. for Canada*, AIR 1939 PC 53.
6. *G.W. Saddlery* v. *King*, 1921 AC 91; *A.G. for British Columbia* v. *A.G. for Canada*, AIR 1937 PC 91; *G. Nageshwara Rao* v. *Andhra Pradesh State Road Transport Corpn.*, AIR 1959 SC 308, 315; *State of V.P.* v. *Moradhwaj*, AIR 1960 SC 796.
7. *Sri Ram Narain Medhi* v. *State of Bombay*, AIR 1959 SC 459.

find out whether under the guise of exercising a valid power, the Legislature has exercised a power which it did not possess, a power which is not conferred on it under any of the items of the List, or is contrary to the Fundamental Rights conferred to a citizen under Part III of the Constitution. If these requirements are satisfied it is a colourable legislation.[1] What cannot be done directly cannot be done indirectly.[2] Thus a Provincial Legislature cannot effect indirect taxation by enacting a pretended service tax which is in substance a Stamp Act,[3] nor can the exclusive power of the Dominion Parliament to regulate 'trade and commerce' be fulfilled by a Provincial Act requiring licence for Companies incorporated under Dominion Legislature.[4]

In order to determine whether an Act is a colourable piece of legislation the object and effect of the Act have a strong bearing. With regard to the object of an Act the observation in *Bank of N.S. Wales* v. *Commonwealth*,[5] are worth quoting :

> "Where a Parliament has only limited powers, the declaration of Parliament that a law is enacted for the purpose of securing the stated objects cannot bring an enactment within power if its operative provisions have no real connection with a subject with respect to which Parliament has power to make laws. Such a declaration is entitled to respectful consideration but it cannot be decisive upon a question of validity. Each provision must be considered in the context of the Act independently of any such statement of object though such a statement may suggest a connection between the legislation and a relevant subject-matter ..... It is the duty of the Court to determine what is the actual operation of the law in creating, changing, regulating or abolishing rights, duties, powers or privileges and then to consider whether the enactment does fall in substance within the relevant authorized subject-matter.... or whether it is really an endeavour by purporting to use one power, to make a law upon a subject which is beyond power."

It may further be noted that the mere fact that an Act has a lawful object does not necessarily make it a valid Act. An Act may have a perfectly lawful object, but it may seek to achieve that object by invalid methods.

Where an Act is void or inoperative any attempt to exclude attack on it will be deemed to be an attempt to achieve by indirect means what the Legislature was not entitled to do.[6]

The effect of legislation has also a bearing on the question whether a legislation is a colourable piece of legislation. For this purpose the Court may take into account any public general knowledge of which the Court would take judicial notice, and may, in a proper case, be required to be informed by evidence as to what the effect of the legislation will be. In examining the effect of an Act account may also be taken of any other Act operating or intended to operate, or recently operating in the Province.[7]

If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights,

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1. *Jiwan Chandra Sarma* v. *State of Assam*, AIR 1966 Assam 51; *see* also *Kunhi Koman* v. *State of Kerala*, AIR 1962 SC 723; see *Chandrashekar Singh* v. *State of Orissa*, ILR 1967 Cut 33 : (1967)33 Cut LJ 263 where the character of colourable legislation is discussed; *Federation of Hotel & 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.
2. *Board of Trustees* v. *Investment Orders*, 1910 AC 413; *Guy* v. *Baltimore*, 100 US 434.
3. *A.G. for Quebec* v. *Queen Ins. Co.*, (1878)3 AC 1080.
4. *Deere Plow Co.* v. *Wharton*, 1915 AC 330.
5. (1948)76 CLR 1.
6. *Megh Raj* v. *Allah Rakhia*, AIR 1947 PC 72.
7. *A.G. for Alberta* v. *A.G. for Ontario*, AIR 1939 PC 53.

questions do arise as to whether Legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements.[1]

The question whether a law was a colourable legislation and as such void did not depend on the motive or *bona fides* of the Legislature in passing the law but upon the competency of the Legislature to pass that particular law, and what the courts have to determine in such cases is whether though the Legislature has purported to act within the limits of its powers, it has in substance and reality transgressed those powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly.[2]

Time will not validate an Act which when challenged is found to be *ultra vires*. A Legislature is not competent to legislate by a series of Acts upon a matter which it could not regulate altogether.[3]

Here again the doctrine of pith and substance comes into play. The question for determination in such cases also is whether in substance the legislation falls within the enumerated or specified class of subjects within the legislative jurisdiction of the Legislature or whether on the contrary in the guise of an unenumerated class it is an encroachment on an excluded class.[4]

16. Supposed spirit of Constitution not to restrict powers.—We cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles, to limit the omnipotence of the sovereign legislative power by judicial interpretation, except so far as the express words of a written Constitution give that authority.[5]

The observations of Das, J. (as he then was) in *Keshava Madhava Menon* v. *State of Bombay*,[6] are also well worth noting :

> "An argument founded on what is claimed to be the spirit of the Constitution is always attractive for it has a powerful appeal to sentiment and emotion ; but a Court of law has together the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view."

In his dissenting opinion, in *Loan Association* v. *Topeka*,[7] Clifford, J., observed :

> ".....To concede it (*viz.*, the power to nullify a statute as being opposed to the spirit of the Constitution) would be to make the Courts sovereign over both the Constitution and the people and convert the Government into a judicial despotism."

> "It is well settled that recourse cannot be had to the spirit of the Constitution when its provisions are explicit in respect of a certain right or matter. When the fundamental law

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1. *K.C. Gajapati Narayan Deo* v. *State of Orissa*, 1954 SCR 1; *Bhairabendra* v. *State of Assam*, AIR 1956 SC 503, 512.
2. *K.C. Gajapati Narayan Deo* v. *State of Orissa*, 1954 SCR 1; *State of V.P.* v. *Moradhwaj Singh*, (1960)3 SCR 106, 112.
3. *K.C. Gajapati Narayan Deo* v. *State of Orissa*, 1954 SCR 1.
4. Wynes : *Legislative and Executive Power*, at p. 45.
5. *A.K. Gopalan* v. *State of Madras*, AIR 1050 SC 27, 42.
6. 1951 SC 128, 129 : 1951 SCR 228, 232-33.
7. 622 L Ed 455; *Calder* v. *Bull*, 1 L Ed 648; *see also Downes* v. *Bidwell*, 182 US 244 : 45 L Ed 1088.

has not limited either in terms or by necessary implication, the general powers conferred on the Legislature, it is not possible to deduce a limitation from something supposed to be inherent in the spirit of the Constitution. The spirit of the Constitution cannot prevail as against its letter."[1]

"Statutes made for the public good, such as : the Constitution of India ought to be liberally construed : *Statua pro publico commodo late interpretantur.* In doing so another principle should not be lost sight of, namely, that safety of the people is the supreme law : *salus populi est suprema lex.* But the application of the doctrines does not mean that the exact meaning of the words can be departed from or that in order to give effect to what is considered to be the underlying principle it is open to the Court to add by implication, intentions and objects to a statute, which cannot be properly construed from a clear reading of the written words *(sentus overborum est anima legis)* 'the meaning of the words in the spirit of the law'."[2]

The preservation of uniformity of construction of the Federal Constitution operates to limit the effect of any State interpretations of that document. If the effect of a clause of the Constitution depended wholly or in part upon the construction given to it by a State, different constructions would be given to it by different States and the spirit, if not the letter, would be broken.[3]

It has also been said that a Constitution is to be interpreted by the spirit which vivifies, and not by the letter which killeth.[4] A case falling within the words of a constitutional provision must also be within its operation, unless there is something in the literal construction so obviously absurd, mischievous, or repugnant to the general spirit of the instrument as to justify an exception.[5]

Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature, the courts cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules thereunder.[6] No statute can be held invalid on the ground that it is opposed of the spirit of the Constitution. Section 19, Preventive Detention Act, 1950 cannot be said to be *ultra vires* the Constitution on the ground that it is not in accordance with the spirit of the Constitution.[7]

When the order under Rule 66-A, Defence of Hyderabad Regulation, 1352-F is not against any express provision of the Constitution it does not matter whether it offends any spirit of the

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1. *State of Bihar* v. *Kameshwar Singh* , AIR 1952 SC 252, 309, 315 (*per* Mahajan & Das, JJ.); *see* also *A.K. Gopalan* v. *State of Madras,* AIR 1950 SC 27, 42, 80.
2. *State of Bihar* v. *Kameshwar Singh,* AIR 1952 SC 252, (*per* Mahajan and Das, JJ.).
3. *Per* M'Lean, J. in *Prigg* v. *Pennsylvania,* 16 Pet (US) 539 : 10 L Ed 1060.
4. *Downes* v. *Bidwell,* 182 US 244 : 45 L Ed 1088.
5. *Dartmouth College* v. *Woodward,* 4 Wheat (US) 518 : 4 L Ed 629.
6. *A.K. Gopalan* v. *State of Madras,* AIR 1950 SC 27; *Rananjaya Singh* v. *Baijnath Singh,* AIR 1954 SC 749; *Rama Krishna Singh* v. *State of Mysore,* AIR 1960 Mys 338, 345; *see* also *Kesavananda Bharati* v. *State of Kerala,* (1973)4 SCC 225, 988 (Chandrachud, J.); *Keshava Madhava Menon* v. *State of Bombay,* AIR 1951 SC 128; *State of Bihar* v. *Sir Kameshwar Singh,* AIR 1952 SC 252 at p. 302, 306.
7. *Ghulam Ahmad* v. *State,* AIR 1954 J & K 59.

Constitution.[1]

17. Self-executing and non-self-executing constitutional provisions.—*(i) General.*—A constitutional provision is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced without the aid of a legislative enactment.[2] It is within the power of those who adopt a Constitution to make some of its provisions self-executing,[3] with the object of putting it beyond the power of the Legislature to render such provisions nugatory by refusing to pass laws to carry them into effect.[4] Where the matter with which a given section of the Constitution deals is divisible, one clause thereof may be self-executing and another clause or clauses may not be self-executing.[5] Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given or the enforcement of a duty imposed.[6] That a right granted by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent the provision in question from being self-executing,[7] nor does the self-executing charter of the constitutional provision necessarily preclude legislation for the protection of the right secured.[8] A constitutional provision which is merely declaratory of the common law is self-executing.[9] A constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficacy and operation on Legislature.[10]

Constitutional provisions are not self-executing if they merely indicate a line of policy or principles, without supplying the means by which such policy or principles are to be carried into effect,[11] or if the language of the Constitution is directed to the Legislature,[12] or it appears from the language used and the circumstances of its adoption that subsequent legislation was contemplated to carry it into effect.[13] Provisions of this character are numerous in all constitutions and treat of a variety of subjects.[14] They remain inoperative until rendered effective by supplemental legislation.[15] The failure of the legislation to make suitable provision for rendering a clause effective is no argument in favour of self-executing construction of the clause.[16] Self-enforcing provisions are exceptional.[17]

The question whether a constitutional provision is self-executing is always one of intention, and to determine intent, the general rule is that Courts will consider the language used, the object to be accomplished by the provision, and surrounding circumstances.[18] Extrinsic matters

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1. *Chandriah* v. *Civil Administrator*, AIR 1954 Hyd 121.
2. *Groves* v. *Slaughter*, 15 Pet (US) 449 : 10 L Ed 800; *Whitman* v. *National Bank*, 176 US 559 : 44 L Ed 587; *Davis* v. *Burke*, 179 US 399 : 45 L Ed 249.
3. *Lyons* v. *Longmont*, 129, at p. 198.
4. *Lyons* v. *Longmont*, 129, at p. 198.
5. *State* v. *Duncan*, 175 SW 940.
6. *Tampa Water Works Co.* v. *Tampa*, 50 L Ed 170; *Davis* v. *Burke*, 47 L Ed 249.
7. *McGrew* v. *Missouri Pac R. Co.*, 132 SSW 1076; *Tampa Water Works Co.* v. *Tampa*, 50 L Ed 170.
8. *Gherna* v. *State*, 146 at p. 494; *State* v. *Hooker*, 98 at p. 964.
9. *Knight, etc. Co.* v. *Miller*, 87 NE 823.
10. *Peo* v. *Rumsey*, 64 Ill 44.
11. *Sharp* v. *National Biscuit Co.*, 78 SW 787; *Smith* v. *Harod*, 115 at p. 1015; *Clark* v. *Coos County*, 161 at p. 702.
12. *Blake* v. *Ada County*, 47 at p. 734; *State* v. *Helena*, 86 at p. 744.
13. *Sherwood* v. *Wilkins*, 45 SW 908.
14. *Adams* v. *Kelly*, 45 SW 859.
15. *Schubel* v. *Olpitt*, 120 at p. 475; *Cauthron* v. *Murphy*, 130 SW 671; *see* also Articles 36 to 51, Indian Constitution.
16. *McCollon* v. *Pipe*, 7 Kan 189.
17. *Fusz* v. *Spaunhorst*, 67 Mo 256.
18. *Illinois Cent. R. Co.* v. *Ihlenberg*, 75 F ed 873; *see* also *Rowan* v. *Runnels*, 12 L Ed 85; *Groves* v. *Slaughter*, 19 L Ed 800.

may be resorted to where the language of the Constitution itself is ambiguous.[1]

(ii) Prohibition and Restriction.—In determining when a constitutional provision is self-executing, there is a distinction between a declarative limitation of legislative power on a given subject, within which legislation may or should be enacted, and positive constitutional inhibition which no legislative Act can relieve or modify.[2] It is a settled rule of constitutional construction that prohibitive and restrictive provisions are self-executing and may be enforced by the Courts independently of any legislative action,[3] unless it clearly appears from a construction of the language of the entire provision and the circumstances of its adoption that the enactment of legislation was contemplated as requisite to put it into effect.[4] The scope and purpose of such provisions may not be restricted by adverse legislation,[5] and all statutes then existing, or which may thereafter be passed inconsistent with them, are rendered null and void.[6] Legislation, however, may be desirable and valuable for the purpose of enforcing the constitutional provisions,[7] as, for example, by providing a penalty for their violation,[8] and statutes passed for this purpose are valid. If a constitutional provision supplies the rule for enforcement and fixes penalty for their violation, it is not only self-executing, but also prohibitive.[9] But a constitutional provision may be both prohibitive[10] and mandatory[11] and yet not self-executing.

The absence of penalty is one of the circumstances to be considered in determining whether a constitutional prohibition is intended to be self-executing,[12] but it is not sufficient of itself to postpone the operation of a provision which it appears from all the circumstances was intended to be self-operative.[13]

(iii) Protection of individual rights.—Constitutional provisions of a negative or prohibitive character forbidding violations of individual rights are self-executing.[14] Of this character are provisions that right and justice shall be administered without delay, or prejudice,[15] and also the negative and prohibitive clauses of the thirteenth,[16] fourteenth[17] and fifteenth[18] amendments to the Constitution of America. But to the extent that constitutional provisions declaratory of individual rights are lacking in the means by which they may be enforced, they are not self-executing.[19] Thus provisions guaranteeing that every person injured shall have an adequate remedy by law gives no additional remedies for injuries suffered, until

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1. *Cleary* v. *Kincaid*, 131 at p. 1117; *State* v. *State Board of Examiners*, 104 at p. 1055.
2. *Wren* v. *Dixon*, 161 at p. 722.
3. *Ex parte* Riggins, 134 F ed 404
4. *Groves* v. *Slaughter*, 10 L Ed 800.
5. *Door Tp. District* v. *Cummins*, 35 L Ed 1044; *Buchanan* v. *Litchfield*, 26 L Ed 138.
6. *Oakland Pay Co.* v. *Hilton*, 11 at p. 3.
7. *Reeves* v. *Anderson*, 42 at p. 625.
8. *State* v. *Hooker*, 98 at p. 964.
9. *Louisville, etc. R. Co.* v. *Com.* 41 SW 416; *State* v. *State Board of Examiners*, 104 at p. 1055.
10. *Rowan* v. *Runnels*, 12 L Ed 85; *Groves* v. *Slaughter*, 10 L Ed 800.
11. *Older* v. *Kern County Super. Ct.* 109 at p. 478.
12. *Groves* v. *Slaughter*, 10 L Ed 800.
13. *State* v. *Holmes*, 240 at p. 735; Law Peo., 97 Ill, 385.
14. *Leedy* v. *Brown*, 113 at p. 177.
15. *Day* v. *Day*, 86 at p. 531; *Leedy* v. *Brown*, 113 at p. 177; *Mayes* v. *Pitchford*, 109 at p. 821.
16. *Ex parte* Hollman, 79 SC 9.
17. Civil Rights Cases, 27 L Ed 835; *U.S.* v. *Lackey*, 99 F ed 952.
18. *U.S.* v. *Reese*, 23 L Ed 563.
19. *Ohio Turnpike Co.* v. *Waechter*, 25 Oh. Cir. Ct. 605.

such remedies are provided by the Legislature.[1] A constitutional prohibition of certain defences in certain classes of actions is self-executing.[2]

(iv) Conferring privileges and imposing liabilities.—Constitutional provisions conferring privileges and imposing liabilities are self-executing in cases where the language used is positive and is completely independent of legislative action.[3] But such provisions are inoperative in cases where the object sought to be accomplished by them is made to depend in whole or in part on subsequent legislation.[4]

(v) Regulating municipal government.—Constitutional provisions requiring the establishment of a system of municipal government, without prescribing the territorial limits of the towns, counties, or districts, or indicating the officers or means by which they are to be governed, are not self-executing; and the range, area, population, and machinery of government and all other details will depend on legislative action.[5] So, a provision empowering the Legislature to give authority to municipal corporations to do certain things does not operate to give such authority in the absence of legislation.[6] And a constitutional provision that 'municipalities shall have authority to exercise all powers of local self-government' is not self-executing, where, by the same instrument, existing laws in regard to the powers of municipal corporations are continued in force until changed by one of the methods therein prescribed.[7] Nor is an amendment self-executing which provides for the separation of two offices before combined and authorizes the Legislature to provide for biennial elections.[8] A provision classifying municipal corporations into cities and villages and indicating population as a basis of classification, but leaving the time and manner of transition of a municipal corporation from one class to the other to be regulated by law, is not self-executing.[9] But provisions of a prohibitory nature, such as a provision forbidding the removal of a county seat except on compliance with certain conditions[10] or forbidding the enactment of special legislation,[11] or forbidding the granting of a franchise without public advertisement[12] are self-executing.

(vi) Relating to elections.—A constitutional provision prescribing qualifications of electors is self-executing,[13] as is also one prescribing the number of votes necessary to adopt a particular proposition.[14] Constitutional provisions fixing municipal elections on a particular date,[15] declaring that 'the Judges of the supreme, circuit and county Court shall be chosen at the first election held under the provisions' of a Constitution to be adopted, 'and thereafter as provided by law', are inoperative in the absence of supplemental legislation.[16] A constitutional provision

1. *Clark* v. *Coos County*, 161 at p. 702.
2. *Illinois Cent. R. Co.* v. *Ihlenberg*, 75 F ed 873.
3. *Lyons* v. *Longmont*, 129 at p. 198; *Whitley County* v. *Wood*, 170 SW 622; *Paden State Bank* v. *Lanam*, 126 at p. 220.
4. *Atchison etc. R. Co.* v. *Denver, etc. R. Co.*, 28 L Ed 291; *State* v. *Helena*, 85 at p. 744.
5. *State* v. *Gibson*, 94 SW 513.
6. *Burkhart* v. *Fizgerald*, 73 SE 583.
7. *State* v. *Lynch*, 102 NE 670.
8. *Blade* v. *Ada County*, 47 at p. 734.
9. *Murray* v. *State*, 110 NE 471.
10. *State* v. *Choutean County*, 111 at p. 144.
11. *Campbell* v. *Bryant*, 52 SE 638.
12. *Merchants' Police, etc. Tel Co.* v. *Citizens' Tel Co.*, 93 SW 642.
13. *Toncray* v. *Budge*, 95 at p. 26.
14. *State* v. *Duncan*, 175 SW 940
15. *Burkhart* v. *Fitzgerald*, 73 SE 583.
16. *State* v. *Gardner*, 54 NW 606

merely prescribing that a certain officer may be elected without more, is inoperative without legislation directing that the officer shall be elected and prescribing the procedure.[1] Similarly, a provision that a certain question may be submitted to a vote of the electors in the manner that shall be provided by law is not self-executing.[2] But a clause providing that an officer shall be elected 'at the time and in the manner prescribed by law for election of members of the General Assembly', When taken together with the statutes governing elections of members of the General Assembly, is self-executing.[3] Where the term of an office is fixed by the Constitution, and its commencement is once prescribed by law, the constitutional provision is self-executing to the extent of rendering valid an election to fill such office held at the last general election before the expiration of the term, although no provision has been made by statute for an election to fill this office.[4]

(vii) Relating to taxation.—A constitutional provision authorizing the levy of a tax is without effect, unless provision for such levy is made by the Legislature,[5] but, if fully supplemented by legislation in force at the time of its adoption, it takes effect at once.[6] A provision requiring the Legislature to levy a tax at a certain rate has been held self-executing.[7] Provisions that property shall be assessed for taxes under general law and by uniform rules according to its value are self-executing.[8] And a provision has been held self-executing, which authorized the levy by local officers of a tax to an amount and for purposes specified, subject to compliance with conditions fully stated therein.[9] A constitutional provision limiting the rate of taxation does not require legislative action to enforce it and goes into effect at once,[10] unless it appears from a consideration of the whole instrument that it was the intent of the framers to postpone the operation of the provision until action by the Legislature.[11] Provisions authorizing municipal authorities to levy taxes,[12] providing for an increase in the rate in taxation on submission to a vote of the tax-payers,[13] or for assessments by a jury or by commissioners,[14] requiring the Legislature to provide a uniform system of taxation,[15] declaring that all taxes shall be uniform to be collected under general laws,[16] declaring that all property shall be taxed in proportion to its value, 'to be ascertained as provided by law',[17] providing for the payment of certain taxes into the common school fund and for their distribution,[18] declaring that certain kinds of property shall be taxable as provided by law,[19] requiring provision to be made by

1. *Watkins* v. *Venable*, 39 SE 147.
2. *State* v. *Duncan*, 175 SW 940.
3. *Rodwell* v. *Rawland*, 50 SE 319; *State* v. *Moores*, 96 NW 1011.
4. *State* v. *Thoman*, 10 Kan 191.
5. *McHenry* v. *Downer*, 47 at p. 779; *Tilley* v. *Overton*, 116 at p. 945.
6. *Tilley* v. *Overton*, 116 at p. 945.
7. *Kitchin* v. *Wood*, 70 SW 995.
8. *Peo* v. *Auditor*, 12 Ill 307; *Louisville, etc. R. Co.* v. *Barbourville*, 48 SW 985.
9. *Logan* v. *Ouachita Parish*, 29 Section 975.
10. *St. Joseph's Public School* v. *Patten*, 62 Mo 444.
11. *Holtzhauer* v. *Newport*, 22 SW 752.
12. *Byrne* v. *Covington*, 21 SW 1050.
13. *Surget* v. *Chase*, 33 La Ann 833.
14. *Peo* v. *Ulster County*, 3 Barb (NY) 332.
15. *Williams* v. *Detroit*, 2 Mich 560.
16. *Southern Express Co.* v. *Patterson*, 123 SW 353.
17. *Davis* v. *Burke*, 45 L Ed 249.
18. *Linthicum* v. *Chotaw County School Dist No. 4*, 149 at p. 898.
19. *Mercur Gold Min., etc, Co.* v. *Spry.*, 52 at p. 382.

general laws to prevent the abuse by municipal corporations of the powers of taxation and contracting debts[1] and provisions for the collection of taxes without suit[2] are not self-executing and require supplemental legislation to render them effective. A provision fixing the minimum amount at which patented mining claims shall be assessed is self-executing.[3] Constitutional provisions declaring certain classes of property exempt from taxation are self-executing[4] : but provisions authorizing the Legislature to exempt specified classes of property,[5] or requiring the exemption of certain property from taxation by general law,[6] are not operative until such legislation is enacted. In all of the cases on this subject, if it appears from the provision that anything remains to be done to complete the objects contemplated, it is to that extent inoperative, and will remain so until all such requirements are complied with.[7]

(viii) Relating to Courts.—A constitutional provision in mandatory terms conferring original jurisdiction on a particular Court, over a class of cases the procedure for the trial of which exists, is self-executory.[8] But a provision to the effect that a Court may have jurisdiction within certain limits,[9] or may have such jurisdiction as may be provided by law,[10] or otherwise indicates an intention merely to authorize such jurisdiction to be conferred by statute,[11] or that contemplates the creation by the Legislature of the procedure or machinery to render it effective,[12] is not self-executing :

(a) Suit against State.—Constitutional provision authorizing suits to be brought against the State, in such Courts as may be by law provided, is inoperative until the enactment of legislation conferring jurisdiction of such suits on particular Courts.[13]

(b) Venue.—A provision prescribing the original venue of an action is self-executing,[14] but a provision authorizing a change of venue in certain cases does not become effective until the enactment by the Legislature of the procedure for such change of venue.[15]

(c) Civil Procedure.—Provision complete in themselves and relating to mere matters of procedure are self-executing.[16] But even a provision relating to procedure is not self-executing if it is dependent on legislative action to make it complete or to provide the machinery for its enforcement.[17]

(d) Judge pro tempore.—A constitutional provision authorizing the election or a special Judge, by the members of the bar present at the term is not self executing; and in the absence of

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1. *Turner* v. *Hattisesburg*, 53 S 681.
2. *New Orleans* v. *Wood*, 34 La Ann 732.
3. *Wren* v. *Dixon*, 161 at p. 722.
4. *Anniston City L & Co.* v. *State*, 48 Section 659.
5. *Philadelphia* v. *Barder*, 161 Pa 123.
6. *State* v. *Packard*, 160 NW 150.
7. *New Orleans* v. *Wood*, 34 La Ann 732.
8. *St. Louise, etc., R. Co.* v. *Bray*, 108 at p. 573; *State* v. *Holmes*, 40 at p. 735; *Marbury* v. *Madison*, 2 L Ed 60; *U.S.* v *Reese*, 23 L Ed 563.
9. *Niles Drain Comrs* v. *Harms*, 238 III 444.
10. *Niles Drain Comrs* v. *Harms*, 238 III 444.
11. *Ex Parte* Louisville, etc. R. Co., 58 Section 313; *Price* v. *Smith*, 24 SE 474.
12. *Mohave County* v. *Stephens*, 149 at p. 670
13. *General Oil Co.* v. *Grain*, 95 SW 824.
14. *Atchinson, etc. R. Co.* v. *Lambert*, 113 at p. 428.
15. *Older* v. *Kern County*, 109 at p. 478.
16. *Sharp* v. *National Biscuit Co.*, 678 SW 787.
17. *Ohio etc, R Co.* v. *Lawrence County*, 27 III 50; *Kelsey* v. *Platte County First Judicial Dist., etc.*, 139 at p. 433.

legislation, prescribing the mode of procedure such an election is void.[1] But a provision that where a Court is for any reason disqualified to sit on a case, the parties interested may by consent appoint a proper person to try such case is self-executing.[2]

(ix) Crimes and Criminal Procedure.—Constitutional provision relating to matters of criminal procedure may be self-executing, and may apply to offences committed before their adoption,[3] or they may merely authorize legislation.[4] But a constitutional provision that a certain act shall constitute a crime the nature and punishment of which shall be prescribed by law, is not self-executing.[5]

(x) Effect on existing law.—A constitutional provision that is not self-executing does not affect existing statutes until the enactment of legislation putting it into effect,[6] but if a portion of such provision is repugnant to a statute in force when the Constitution was adopted, it abrogates such statute, notwithstanding the remainder of the constitutional provision is not self-executing and is left without legislation in aid of it.[7]

While self-executing constitutional provisions operate wholly independently of legislative action,[8] clauses in a Constitution which are not self-executing but which direct legislation to carry them into effect have at most no more than moral force,[9] even when mandatory in terms,[10] and there is no remedy if the Legislature fails to act. A provision that 'suits may be brought against the State in such.....Courts as may by law be provided' imposes no duty on the Legislature to enact such a law.[11]

18. Mandatory and directory provisions.—*(i) In General.*—It is an established rule that constitutional provisions are to be construed as mandatory unless, by express provision or by necessary implication, a different intention is manifest.[12] Some cases even go so far to hold that all constitutional provisions are mandatory.[13] But more accurately, the test as to whether a provision is mandatory or directory is the intention of those who framed and adopted it.[14] This intention is to be gathered not so much from a technical construction of particular words, as from a consideration of the language and purpose of the entire clause.[15] There is a strong presumption in favour of its being mandatory.[16] But if it appears from the express terms of a provision, or by necessary implication from the language used, that it was intended to be directory only, it will be so construed.[17]

Nevertheless, there are certain provisions over which the Courts have no cognizance and these provisions must necessarily be regarded by the Courts as directory. As regards such

1. *Stanclift* v. *Swingle*, 120 at p. 252.
2. *Parkar County* v. *Jackson*, 23 SW 924.
3. *Davis* v. *Burke*, 45 L Ed 249.
4. *Jones* v. *McClaughry*, 151 NW 210.
5. *Prunty* v. *Spaunhorst*, 6 Mo A 579.
6. *In re* Cole, 107 at p. 581.
7. *Matter of* Sweeley, 12 Misc 174.
8. *Whitley County* v. *Wood*, 170 SW 662.
9. *Erie County* v. *Erie*, 113 Pa 360.
10. *Engstad* v. *Grand Forks County*, 84 NW 577.
11. *Ex parte* State, 52 Ala 231.
12. *State* v. *Gordon*, 158 SW 683.
13. *Nesbit* v. *Peo*, 36 at p. 121; *State* v. *Hitchcock*, 146 SW 40.
14. *Clark* v. *Los Angeles*, 116 at p. 722.
15. *State* v. *Burrow*, 104 SW 526.
16. *Merwin* v. *Fusell*, 124 SW 1021.
17. *Peo* v. *Lake County*, 33 Cal 487.

provisions, the United States Supreme Court observes[1] :

"The Constitution has many commands that are not enforceable by Court because they clearly fall outside the conditions and purposes that circumscribe judicial action. The Constitution has left the performance of many duties in our Governmental scheme to depend on the fidelity of the executive and legislative action, and ultimately, on the vigilance of the people in exercising their political rights."

(ii) Prescribing manner of performing acts.—As a general rule, all provisions that designate in express terms the time or manner of doing particular acts and that are silent as to performance in any other manner are mandatory and must be followed.[2] It is from the context, along with the other circumstances that the nature of the provisions is to be ascertained, and the mere use of words such as 'shall' is not conclusive in this respect.[3]

(iii) Passing Law.—By the weight of authority, a constitutional provision that no bill which embraces more than one subject shall become law and requiring that subject to be expressed in the *title* is mandatory.[4]

Provisions prescribing the *Form of the enacting clause of statutes* have, in some cases, been held to be mandatory and to render void statutes in which the exact form prescribed has not been followed.[5] But in other cases if an Act shows the authority by which it was enacted and that it was the intention of the Legislature that it should have the effect of a law, it has been held valid, notwithstanding the exact form of the enacting clause prescribed by the Constitution has not been followed,[6] and even entire omission of an enacting clause has been held not to invalidate a statute which had passed both Houses of the Legislature and been signed by the Governor.[7]

By the weight of authority constitutional provisions relating to the *mode or procedure of the Legislature in the enactment of laws* are directory only.[8] But in some cases such provisions have been held mandatory,[9] and they should be so regarded where the language of the Constitution clearly shows that such was the intent of those who adopted it.[10]

(iv) Discretionary powers of Legislatures.—Constitutional provisions which leave with the Legislature discretionary power to determine when action shall be taken, or whether or not any action shall be taken, are directory. Of this class are provisions inhibiting the enactment or special laws where general laws can be made applicable,[11] authorizing legislation to promote internal improvement,[12] imposing on the Legislature the duty of providing revenue for the current expenses of the State each year,[13] or requiring legislation providing for the election or appointment of officers,[14] or for the protection of religious denominations and the encouragement

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1. *Colegrove* v. *Green*, 90 L Ed 1432.
2. *State* v. *Osborne*, 125 at p. 834; *Aldrige* v. *Hamlin*, 184 SW 602.
3. *Osborne* v. *Commonwealth*, (1911)12 CLR 321.
4. *In re* Sheley, 80 at p. 631; *Metropolitan Casualty Ins. Co.* v. *Brafford*, 139 NW 795; *Burritt* v. *State Contracts Commissioners*, 120 Ill 322; *Contra*; Boston Min, etc, Co., *In re*, 51 Cal 624; *Weil* v. *State*, 46 Oh St 450.
5. *Burritt* v. *State Contracts Commissioners*, 120 Ill 322.
6. *McPherson* v. *Leonard*, 29 Mo 377.
7. *Cape Giradeau* v. *Riley*, 52 Mo 424.
8. *Washington* v. *Page*, 4 Cal 388.
9. *Burritt* v. *State Contracts Commissioners*, 120 Ill 322; *Spangler* v. *Jacoby*, 14 Ill 297.
10. *State* v. *Glenn*, TP, 186; *Rodman Health Cotton Mills* v. *Maxhaw*, 41 SE 488; *State* v. *Kisewetter*, 12 NE 807.
11. *Hendricks* v. *Block*, 97 SW 63.
12. *Gillinwater* v. *Mississippi, etc. R. Co.*, 13 Ill 1.
13. *State* v. *School Fund Commissioners*, 4 Kan 261.
14. *Rumsey* v. *Peo*, 19 NY 41.

of schools.[1]

(v) Constitutional mandates regarding legislation.—The Legislature is in duty bound to perform all duties imposed on it by the Constitution, but if it fails to do so, and neglects or refuses to pass legislation as required by mandatory constitutional provisions, there is no remedy.[2] For example, Article 35*(a)(ii)* says that Parliament shall have power to make laws "for prescribing punishment for those acts which are declared to be offences under this Part (Part III). This is obviously a mandatory power of Parliament since it would be meaningless to declare certain acts as offences by the Constitution, *e.g.* (Article 17), unless there is any punishment prescribed for them. But the Courts would be powerless to compel Parliament to make such laws, if Parliament fails to do so for any length of time. The remedy in such cases would lie in the hands of the electorate. Similar examples are to be found in Article 81(3) pertaining to re-adjustment of territorial constituencies,[3] Article 92 dealing with election of Speaker and Deputy Speaker and Article 85 providing for summoning sessions of Parliament.

(vi) Constitutional mandates pertaining to the Executive.—In relation to the Executive also there are many provisions which are beyond judicial cognizance, for example, Article 59(2) which enjoins that 'The President shall not hold any other office of profit'. But the only sanction against violation of this provision is impeachment (Article 61) and Courts would be powerless either to remove the President or to issue a prohibitory injunction upon him not to hold any alleged office of profit. Nor can the Courts issue a mandatory injunction upon the President to compel him to address to Houses of Parliament at the commencement of a session, notwithstanding the word 'shall' in Article 87(1).

19. Prospective and retrospective operation.—*(i) General.*—Constitutional provisions, like statutes, always operate prospectively,[4] and not retrospectively, unless the words used or the objects to be accomplished clearly indicate that a retrospective operation was intended.[5] It is well established that the Articles of the Constitution are not retrospective and that the Articles do not affect transactions which are past and closed or rights which have already vested or liabilities which have already accrued. Inasmuch as the charge of sales-tax, or in other words the liability to pay sales-tax was imposed on the assessee with effect from Ist October, 1948, and the sales tax officer had made order of assessment on 22nd July, 1949 and 24th September, 1949, for the two periods in dispute, though the Commissioner disposed of the appeal on 29th April, 1950 after the Constitution had come into force, the assessments of sales-tax upon the assessee under Section 4(1) read with Section 2*(g)*, Bihar Sales Tax Act are legally valid.[6] The Constitution is not retrospective in operation and suits which were barred or which had abated before the Constitution cannot be revived.[7]

But an expressed intention that a Constitution shall operate retrospectively will be enforced.[8] Nor will a retrospective intention clearly manifest be avoided by consideration of inconvenience or hardship.[9] The same principles have been held to apply to the interpretation

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1. *Cincinnati Board of Education* v. *Minor*, 23 Oh St 211.
2. *Griffin* v. *Rhoten*,107 SW 380; *Gottsten* v. *Lister*,153 at p. 595.
3. *Colegrove* v. *Green*, 90 L Ed 1432.
4. *Habibullah* v. *Ghulam Ahmad*, 1979 Ker LJ 310; *Keshavan Madhavan Menon* v. *State of Bombay*, AIR 1951 SC 128; *P. Mahendran* v. *State of Karnataka*, AIR 1990 SC 405 : 1990 Lab IC 369.
5. *Shreveport* v. *Cole*, 33 L Ed 589; *Calhoun County* v. *Galbraith*, 25 L Ed 410.
6. *Tata Iron & Steel Co.* v. *Bihar State*, AIR 1956 Pat 93 (Article 286 held not to be retrospective).
7. *Hirjibai* v. *State of Saurashtra*, AIR 1956 Sau 35, 38.
8. *In re* Lee's Bank, 21 NY 9.
9. *Buckner* v. *Street*, 4 F Cas No. 2098.

of the Indian Constitution.[1]

(ii) Taxation.—Constitutional provisions limiting the power of taxation to a certain percentage of the taxable property do not apply to taxes assessed prior to the adoption of such provisions,[2] and the same rule against retroactive operation applies to an enlargement of the power to tax.[3] Provisions exempting certain property from taxation are not retroactive and do not constitute exemptions from taxes assessed before their adoption, even though such taxes may not be due until after such adoption.[4]

(iii) Property rights.—The adoption of constitutional provision abrogating or otherwise affecting property rights operates prospectively and does not affect property rights that are vested at the time of their adoption,[5] unless it clearly appears, expressly or by necessary implication, that they were intended to operate retrospectively.[6]

(iv) Rights of action.—Where a contract is valid when made, the subsequent adoption of a constitutional provision which renders worthless the consideration received by one party does not on that account entitle him to a right of action against the other party.[7] And as a general rule, a right of action arising from a breach of a bond or contract, valid at the time of its execution and its breach will not be affected by the subsequent adoption of a constitutional provision rendering such bonds or contracts illegal and void.[8] But it has been held that a right of action arising by reason of the validity of a contract under the Constitution in force when made may be taken away by a change in the Constitution made after the accrual of such right of action, but before suit is brought.[9]

(v) Right of appeal.—In order that a 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 the hierarchy of the Courts remains the same, 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 so far as it may be expressly provided for. Hence where leave to appeal to the Supreme Court is sought after the commencement of the Constitution, there can be no appeal to the Supreme Court, as exercising jurisdiction under Article 133, except under conditions laid down in that Article, even though the suit was brought long before the commencement of the Constitution.[10] Where a party had right of appeal to go to the Federal Court before the Constitution, that right was not taken away on the coming into existence of the Supreme Court in place of the Federal Court. An interpretation and construction of the provisions of the Constitution which would lead to

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1. *Oswald Hugh Pedro* v. *State*, ILR 1952 Hyd 978; *Santokhu* v. *State*, 1953 HP 82; *Bhagwant Rao Shivaji Patil* v. *Vishwarao Amrit Rao*, 1953 Nag 313; *see* also *Brijlal Suri* v. *State of U.P.*, AIR 1954 All 393, though Constitution not retrospective, there exists no bar to exercising its power under Article 226 to enforce present right which arose prior to 1950.
2. *U.S.* v. *New Orleans*, 33 L Ed 110.
3. *Hutchinson* v. *Patching*, 129 SW 603
4. *Scotland County* v. *Missouri, etc. R. Co.*, 65 Mo 123.
5. *Willcox* v. *Edwards*, 123 P 276.
6. 12 CJS 85(c), at p. 723.
7. *Rogers* v. *Leftwhich*, 2 Heisk (Tem) 480.
8. *Coggeshall* v. *Groves*, 16 R 1, 18.
9. *Willcox* v. *Edwards*, 123 at p. 276.
10. *Prabirendra* v. *Berhampore Bank, Ltd.*, AIR 1954 Cal 289.

negation of such right of appeal in such circumstances should be avoided unless unavoidable.[1]

(vi) Judicial proceedings.—Provisions changing right of action from one class of persons to another,[2] removing statutory limitations as to amounts to be recovered,[3] changing the right to a special fund,[4] or the rate of interest recoverable,[5] abrogating the jurisdiction of the Court,[6] creating,[7] or abrogating,[8] right of appeal, limiting the time for bringing actions,[9] or changing the procedure for removal from office,[10] or otherwise changing the form of procedure,[11] do not affect the right of parties to pending actions at the time such provisions take effect, unless an intention to the contrary is clearly shown.[12] In a Schedule providing that all cases pending in the Courts on a certain day shall be heard and tried in the same manner and by the same procedure as is authorised by law, the word 'case' includes a prosecution for criminal offence.[13] The word 'pending' includes a criminal case in which the accused has been arrested and committed,[14] and the words 'proceedings of the judgment' include final judgment in the highest Court to which the case may be carried.[15] But a constitutional provision relating to procedure applies to every suit brought after its adoption, even though the cause of action may have arisen before.[16]

(vii) Article 226.—It is well settled that the Articles of the Constitution have no retrospective effect unless otherwise expressly provided for in the Constitution itself. No relief under Article 226 can be granted where the acts complained of have taken place long before the Indian Constitution came into force.[17] Past transactions,[18] which took place before the commencement of the Constitution, and rights vested and liabilities incurred[19] before the Constitution could not be questioned under Article 226.

The enforcement of the Constitution did not affect pending proceedings even though there was a violation of fundamental rights. Pending proceedings should be affected only if the Constitution or any part of it was given a retrospective effect in express terms or by necessary intendment.[20] Proceedings under Section 400, I.P.C., against a public servant started in 1949 could not be challenged on the ground of discrimination.[21]

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1. *Edmondson* v. *Kentucky*, 123 at p. 276.
2. *Daji Sahib* v. *Shanker Rao*, AIR 1956 SC 29, 31.
3. *Isola* v. *Weber*, 147 NY 329.
4. *McGeehan* v. *Burke*, 37 La Ann 156.
5. *Freeman* v. *Eldrige*, 110 at p. 1057.
6. *Halbert* v. *Martin*, 30 SW 388.
7. *Rogers* v. *Goldwaite*, McG (La) 127.
8. *Albaugh Bros Dover* v. *White*, 108 at p. 360.
9. *Grisby* v. *Peak*, 57 Tex 142.
10. *Gordon* v. *State*,47 Tex 208.
11. *Darling* v. *Miles*, 112 at p. 1084.
12. *Knox* v. *Gunnett*, 28 La Ann 601; *Hollingsworth* v. *Virginia*, 1 L Ed 644.
13. *State* v. *Morrow*, 107 NE 515.
14. *State* v. *Morrow*, 107 NE 515.
15. *Mahoning Valley R. Co.* v. *Santoro*, 112 NE 190.
16. 12 CJ 724, S. 9237.
17. *Nelakanta Iyer* v. *State*, AIR 1955 Trav-Co. 46.
18. *Gwalior Sugar Co.* v. *State of M.B.*, AIR 1954 Madh B 169; *see* also *Moti Ram* v. *Collector of Sangrur*, AIR 1954 Pepsu 159, holding further that the Article does not give the High Courts authority to interfere with the orders made by the authorities of the States before their accession to the Union.
19. *Mahabir Prasad* v. *Commissioner, I.T.*, AIR 1953 Punj 16.
20. *Amritlal* v. *Government of Assam*, AIR 1954 Assam 152; *Naresh Chandra* v. *Union of India*, AIR 1952 Cal 757.
21. *Omprakash* v. *State*, AIR 1955 All 275, *per* Mulla, J.

Where the basis of the proceedings is an infringement of a fundamental right which is alleged to have taken place before the Constitution came into force, the remedy under Article 226 would not be available inasmuch as there were no fundamental rights before the Constitution came into force. In regard to the enforcement of fundamental rights the Article has no retrospective effect.[1] But the position would be otherwise if the injury complained of is continued from day to day or periodically even after coming into force of the Constitution.[2]

On the same principle Article 227 does not entitle the High Court to interfere with an order which was passed when such power of interference did not exist.[3]

The enforcement of fundamental rights does not, however, exhaust the scope of Article 226. It could be utilized for other purposes as well. Other purposes include enforcement of legal rights not necessarily fundamental. The remedy under Article 226 is available to the petitioner against any illegal act or order which happened before the Constitution, where the petitioner does not claim that any substantive right created for the first time by the Constitution has been violated, but what he does claim is that the order challenged could not have been passed even under the then existing laws and rules.[4]

Article 226 has created no substantive rights but only provided a new form of remedy through the High Courts. Where the right asserted or the liability denied is one under the ordinary laws of the country and not one arising out of the Constitution, and an assertion or denial has taken place after the Constitution has come into force, it cannot be said that application of Article 226 is excluded by the fact that such right or liability originated before the commencement of the Constitution.[5] The High Court can exercise its power in respect of an imposed order passed prior to the commencement of the Constitution, if it interferes with a right *in praesenti* of the applicant and is illegal.[6] If the order which was passed before the Constitution was valid when it was passed, it would certainly not be open to the Court to hold after the Constitution that it is invalid by a retrospective application of the provisions of the Constitution.[7]

Where a law becomes void as contravening fundamental rights on the coming into force of the Constitution, an order passed under such law which has a continuing force would, however, become void and in such a case relief can be granted under Article 226.[8] In adjudging the validity of a statute which is impugned on the ground that it abridges fundamental right, the object and purpose of the statute is irrelevant. It is the effect brought about by the totality of the provisions on the concerned fundamental right and its exercise that has to be examined. It is the

1. *Amritall* v. *Government of Assam*, AIR 1954 Assam 152; *Hiranmoy Bhattacharjee* v. *State of Assam*, AIR 1954 Assam 224 (FB).
2. *Ranjit* v. *Commissioner of I.T.*, AIR 1962 SC 92; *Pramode* v. *State of Orissa*, AIR 1962 SC 1288.
3. *Rishindranath* v. *Sakti Bhusan*, AIR 1950 Cal 512.
4. *Hiranmoy Bhattacharjee* v. *State of Assam*, AIR 1954 Assam 224; *see* also *Lakshmi Devi Sugar Mills* v. *U.P. Government*, AIR 1954 All 705; *Hiralal* v. *State of M.P.*, AIR 1954 Nag 258; *Ravunny Nair* v. *State*, AIR 1954 Trav.-Co. 444; *Jaising* v. *Tehsildar, Neem-ka-Thana*, AIR 1954 Raj 200.
5. *Hindustan Motors Ltd.* v. *Union of India*. AIR 1955 Cal 151, it was further observed that so far as Calcutta High Court is concerned this is not even a new power.
6. *Hiralal* v. *Chunnilal Siriah* v. *State of Madhya Pradesh*, AIR 1954 Nag 258.
7. *Jaising* v. *Tahsildar, Neem-ka-Thana*, AIR 1954 Raj 200; *see* also *Calcutta Pinjrapole Society* v. *S. Banerjee*, AIR 1952 Cal 811; *Hundeo Das* v. *State of West Bengal*, AIR 1952 Cal 857; *Rajendra Kumar* v. *Government of West Bengal*, AIR 1952 Cal 573; *Harendranath* v. *State of M.B*, AIR 1950 Madh B. 46, where the proceedings impugned were *ultra vires* and void *ab initio* and could not have given rise to any vested rights, Article 226 would apply.
8. *Brahmeshwar Prasad* v. *State of Bihar*, AIR 1950 Pat 265; *Jeshingbhai* v. *Emperor*, AIR 1950 Bom 363 (FB).

effect of the law upon the right which attracts courts jurisdiction and the true test is whether the impugned provisions have the effect of taking away or abridging the fundamental rights.[1] Though the provisions of the Constitution have no retrospective effect, there exists no bar to the Court exercising its power under Article 226 to enforce a present right which arose prior to 1950.[2]

20. Repeal of older Constitution by new Constitution.—The adoption of a new Constitution repeals and supersedes all the provisions of the older Constitution not continued in force by the new instrument.

To have a correct appreciation of the scope of the amended clauses of an Article of the Constitution, it is necessary to consider, in the words of Lord Coke, the following circumstances :

(i) what was the law before the Act was passed;

(ii) what was the mischief or defect for which the law had not provided;

(iii) what remedy Parliament has provided; and

(iv) the reasons of the remedy.[3]

(i) Operation of amendments.—Amendments to Constitutions are not regarded as if they had been parts of the original instruments, but are considered rather in the nature of codicils or second instruments, altering or rescinding the originals to the extent to which they are in conflict, and of course are to be treated as having a force superior to the originals to the extent of such conflict.[4] Hidayatullah, C.J., observed in *Madhu Limaye* v. *Sub-Divisional Magistrate*[5] : "Assuming that the Constitution could be amended with retrospective effect (a point not free altogether from difficulty), the purpose of the amendment is to create a fiction. Whatever may be said of a law declared unconstitutional before the First Amendment cannot be said of a law which is being considered today after the First Amendment. The fiction in the amendment is to make the Constitution be read with the new clause and no other and a law restricting the freedoms in the interests of public order (among others) or in the interests of the general public must be held to be saved, not as a result of the amendment, but because of these available restrictions operating from the inception of the Constitution. Therefore, although we consider the matter today, after much history has been written and then unwritten by retrospective amendments of the Constitution (assuming this to be permissible), we read the protection of amended Clause (2) as available from January 26, 1950 without a break. The fiction, if given full effect leads to no other conclusion.' If a constitutional amendment does not in terms expressly repeal a constitutional provision, yet, if it covers the same subject provided for in such provision, the amendment will be regarded as a substitute for it and as suspending it.[6] But if, on a consideration of the language of the amendment and the history and purpose of its adoption, it appears that it was not the intent to alter or repeal a provision of the original Constitution, such provision remains in force, unaffected by the amendment,[7] saving clauses in an amendment except the matters indicated from the operation of the amendment.[8]

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1. *Krishnan* v. *Guruvayoor Devaswam Managing Committee*, 1979 Ker LT 350 (FB).
2. *Brijlal* v. *State of U.P.*, AIR 1954 All 393.
3. *Kochuni* v. *State of Madras* (2nd *Kochuni* case), (1960)3 SCR 887, 906-907.
4. *Grant* v. *Hardage*, 153 SW 826, 827.
5. (1971)2 SCR 711, 718-719.
6. *Willcox* v. *Edwards*, 123 at p. 276.
7. *Ferrell* v. *Keel*, 151 SW 269.
8. *Sands* v. *Manistee*, 31 L Ed 149; *Huse* v. *Glover*, 30 L Ed 487; *Escanaba, etc. Transport Co.* v. *Chicago*, 27 L Ed 442; *Strader* v. *Graham*, 14 L Ed 337; *Permoli* v. *New Orleans Municipality*, 11 L Ed 739; *Pollard* v. *Hagan*, 11 L Ed 565.

A law enacted under a Constitution Act does not lose its vitality and would continue even though there may be repeal of parts of the Constitution Act under which it was enacted so long as the law is not inconsistent with the Constitution Act as it emerges after the amendment and repeal of certain provisions thereof. It derives its binding force from the fact that it was within the competence of the Legislature when it was passed and being permanent would continue till amended or repealed under the amended Constitution Act.[1]

(ii) Act void under Constitution not revived by amendment.—The Amendment of Article 19(6) has no doubt been introduced with a view to provide that a State can create a monopoly in its own favour in respect of any trade or business, but the amendment does not make the establishment of such monopoly a reasonable restriction within the meaning of the first clause of Article 19(6). Moreover, a Statute void for unconstitutionality is dead and cannot be vitalised by a subsequent Amendment of the Constitution removing the constitutional objection and must be re-enacted, and hence the U.P. State Road Transport Act, 1951 which violates the fundamental right under Article 19(*g*) and is not shown to be protected by Clause (6) as it stood at the time of the enactment, must be held to be void under Article 13(2).[2]

21. Repeal of existing statutes.—While a new Constitution is, by its very nature, intended to supersede a prior Constitution, it is not intended to supersede the entire body of statutory law. To the extent, therefore, that existing statutes are not expressly or impliedly repealed by the Constitution, they remain in full force and effect.[3] The general rule of repeal that when a parent Act is repealed, and law made thereunder stand repealed does not apply to laws made under a Constitution Act. Such a law has to be expressly repealed if it has to be effaced.[4] The effect of Section 292 of the Government of India Act, 1935, is not merely to declare that the repeal of the Government of India Act, 1915, will not affect the validity of the laws passed under that Act, but it proceeds further and enjoins that all the laws in force in British India immediately before the commencement of Part III shall continue in force until altered or repealed or amended, which alteration, repeal or amendment would in its turn not be with retrospective effect.[5] Statutes may, however, be nullified, in so far as future operation is concerned, by a Constitution as well as by statute;[6] and the Constitution, as the highest and most recent expression of the law-making power, operates to repeal, not only all statutes that are expressly enumerated as repealed,[7] but also all that are inconsistent with the full operation of its provisions.[8] On the same principle Art. 13 declares that all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with the provisions of Part III, shall to the extent of such inconsistency be void.

(i) Saving clause.—Constitutions frequently contain either a general provision to the effect that all existing laws not repugnant to the Constitution are continued in force until they expire by their own limitation or are altered or repealed by the Legislature,[9] or special provisions to

1. *Rehman Shagoo* v. *State of Jammu & Kashmir*, AIR 1960 SC 1, 6; *Gulam Mohd Mir* v. *State of J. & K.*, AIR 1990 J & K 21 : (1989) Sri LJ 147 (DB).
2. *Saghir Ahmad* v. *State U.P.*, AIR 1954 SC 728.
3. *Calhoun County* v. *Galbraith*, 25 L Ed 440; *Sherman* v. *Smith*, 17 L Ed 163.
4. *Mohan Agarwal* v. *Union of India*, 1979 All LJ 304 (FB).
5. *Atiqa Begum* v. *Abdul Maghni*, AIR 1940 All 272 (FB).
6. *Wren* v. *Dixon*, 161 at p. 722.
7. *Morgan* v. *Wickliffe*, 61 SW 13.
8. *Escanaba, etc. Transport Co.* v. *Chicago*, 27 L Ed 442; *New Orleans Municipality No. 1* v. *Permoli*, 11 L Ed 739.
9. *Butler* v. *Lewiston*, 83 at p. 234; *Chicago etc. R. Co.* v. *Holliday*, 145 at p. 786; *State* v. *Ellis*, 60 at p. 186; *Piper* v. *Gunther*, 23 SW 872; *Stud* v. *Braham*, 31 SW 46; *Neal* v. *Owens*, 27 SW 233; *Mack* v. *Johnson*, 27 SW 231

the effect that certain statutes which otherwise would be repealed under the operation of the general rules stated above are to continue in force, either indefinitely,[1] or for a certain definite time.[2]

From the provisions of Section 130 of the Govt. of India Act 1915, it is clear that the laws and Regulations which were in force not repealed. Rather they were saved and even the provision of Section 112 of the 1833 Act was not repealed and this legal position continued even after 1915. Section 321 of the Govt. of India Act 1935 repealed the earlier Govt. of India Act, 1915, but Section 292 thereof saved the existing law.

After the commencement of the Indian Constitution the position remained the same as Article 372, of the Constitution saved the existing laws.

Further, the laws and regulations enacted or promulgated by the Governor-General of India in Council were not reposed by the Govt. of India Act, 1858. On the contrary, by the 1915 Act, they were saved by the provision contained in Section 130 and 1833 Act came to be repealed only by the 1915 Act except the provisions contained in Section 112. The very fact that 1833 Act was repealed by 1915 Act shows that by the 1858, 1833 was not repealed. There may be a case *of implied repeal* of any inconsistent provisions. But in any case, by Section 130 of the 1915 Act, all regulations which were in force at the commencement of that Act were saved. It could not be contended that with the repeal of the Charter Act of 1833 and subsequent constitutional statutes laws made in exercise of the legislative power also stood repealed. That may be true of ordinary laws when they were repealed but the same is not true when the constitutional statutes are repealed. So observed the Delhi High Court in *Shital Prashad Jain* v. *Union of India*.[3]

(ii) Validation of Statute by constitutional amendment.—An Act of the Legislature not authorised by the Constitution at the time of its passage is absolutely void, and is not validated by a subsequent adoption of an amendment to the Constitution authorising the passage of such an Act.[4] But a void statute is rendered valid by the adoption of a constitutional amendment which expressly ratifies and confirms it.[5]

(iii) Prohibition of local and special law.—A constitutional provision that the Legislature shall not pass local or special laws applies to future and not to past legislation, and, therefore, does not operate as a repeal of such laws passed before the Constitution went into effect.[6] Prior local or special laws are, however, repealed by constitutional provisions which expressly enact such repeal.[7] And if the Constitution contains general provisions which are clearly intended to cover the entire subject to which prior local or special Acts relate, and which are inconsistent with such local or special Acts, the constitutional provision will operate as an implied repeal of the local or special Acts.[8]

(iv) Affecting Charters of Municipal Corporations.—The adoption of a Constitution or amendment thereto inconsistent with the provisions of the charters of municipal corporations has the effect of repealing all such provisions as are inconsistent with the Constitution so

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1. *Macloy* v. *Woodward*, 120 at p. 1119; *S. Alphonse* v. *The Dt. Supply Officer*, (1986)1 MLJ 1 (DB).
2. *Morgan* v. *Wickliffe*, 61 SW 13; *Com.* v. *Grinstend*, 55 SW 720.
3. AIR 1991 Del 253 : (1991)2 DL 35
4. *Fleming* v. *Hance*, 94 at p. 620; *Banaz* v. *Smith*, 65 at p. 309; *State* v. *Ellis*, 60 at p. 186.
5. *Fontenot* v. *Young*, 54 Section 408
6. *Nevada School Dist.* v. *Sheocraft*, 26 at p. 211; *Meade* v. *Watson*, 8 at p. 311; *State* v. *Cox*, 99 at p. 1128; *Pearce* v. *Mason County*, 35 SW 1122; *State* v. *Frazier*, 11 SW 973; *Peo* v. *Jobs*, 4 at p. 798.
7. *Louisville* v. *Vreeland*, 131 SW 195; *Henning* v. *Stengel*, 66 SW 41.
8. *O'Connor* v. *Leddy*, 64 Ill 299; *Peo* v. *Rumsey*, 64 Ill 44.

adopted.[1] But the mere adoption of a constitutional provision prohibiting special municipal charters will not operate as a repeal of special charters therefor granted.[2] and it is clear that a constitutional amendment prohibiting the Legislature from enacting, amending, or repealing any municipal charter does not repeal a municipal charter previously granted[3] or an Ordinance enacted under the authority of the charter.[4]

(v) Affecting Charters of Private Corporations.—As a general rule the adoption of a constitutional provision forbidding the enactment of special or local laws does not affect the charter of private corporations previously granted or the rights conferred by them.[5] But in cases where the State has the constitutional power to amend or alter the charter of a private corporation, it may do so by the adoption of a subsequent constitutional provision which covers the subject-matter of provision in a charter and is inconsistent therewith.[6]

(vi) Appropriation laws.—A statute making an appropriation of money from the public treasury is not affected by the subsequent adoption of a constitutional provision prescribing a different method of making appropriations[7]; but a constitutional provision forbidding the appropriation of money for a longer time than that prescribed will operate to render prior appropriations unavailable after the lapse of the prescribed period from the time the Constitution takes effect;[8] and where money was appropriated but not expended before the adoption of a constitutional amendment limiting the amount of the appropriation, the money so appropriated is available only to the extent authorised by the constitutional provisions.[9]

22. Effect of declaring an Act void.—The validity of a statute is to be tested by the constitutional power of Legislature at the time of its enactment by that Legislature, and, if thus tested, it is beyond the legislative power, it is not rendered valid without re-enactment, if later, by constitutional amendment, the necessary legislative power is granted. An after-acquired power cannot, *ex proprio vigore*, validate a statute void when enacted.[10] In U.S.A.[11] and Australia[12] when the Court declares a Statute as unconstitutional on the ground of repugnancy to the Constitution the law is deemed to be void *ab initio*.

Professor Willis in his *Constitutional Law of the United States* sets out three classes of cases as to the effect of declaring an Act void :

(i) there are situations where the Courts are in substantial agreement that an unconstitutional statute is void *ab initio;*

(ii) there is a second class of situations in which the Courts are in conflict as to whether the rule should be the rule of void *ab initio* or the rule of void from the date of the

1. *Louisville* v. *Vreeland*, 131 SW 195; *State* v. *Lindell R. Co.*, 52 SW 248.
2. *Covington* v. *Campbell County*, 68 SW 669.
3. *Portland* v. *Parker*, 138 at p. 852.
4. *Portland* v. *Parker*, 138 at p. 852.
5. *State* v. *Roosa*, 11 Oh St 16.
6. *Com* v. *Porter*, 68 SW 621.
7. *Morgan* v. *State*, 11 SC 396.
8. *State* v. *Jumel*, 35 La Ann 537.
9. *Hilborn* v. *Nye*, 114 at p. 801.
10. *Deep Chand* v. *State of U.P.*, 1959 (Supp) 2 SCR 8, 24; but *see Bhaiyalal Shukla* v. *State of M.P.*, AIR 1962 SC 981, 987, if the cause of the unconstitutionality is removed then the law does not need to be re-enacted.
11. *Norton* v. *Shelby County Council*, 118 US 425. "An unconstitutional Act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates, no office, it is in legal contemplation, as inoperative as though it had never been passed"; *see* also *Schechter* v. *U.S.*, 295 US 495.
12. *South Australia* v. *Commonwealth*, (1942)65 CLR 373, 408.

declaration of unconstitutionality; and

(iii) there is a third class of situations where the Courts generally refuse to apply the void *ab initio* rule but instead apply the rule of void from the time of declaration.

Cushman, however, observes :

"In some cases the rigid application of the principle of invalidity works serious injustice. This fact has led the Court in some instances to soften and compromise the strict rule, and to hold in the words of Chief Justice Hughes : 'The actual existence of a statute prior to such a determination (of unconstitutionality) is an operative fact and may have consequences which cannot justly be ignored.' The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects with respect to particular relations, individual and corporate and particular conduct, private or official."[1]

In India, the Supreme Court, however, refused in the case of *Keshav Madhav Menon* v. *State of Bombay*,[2] to go so far. The majority of the Supreme Court agreed in the conclusion with the findings of the High Court by holding that Article 13(1) was prospective and not retrospective in operation so that not only past transactions but all *pending proceedings*, i.e. actions commenced but not terminated, before the commencement of the Constitution shall remain unaffected notwithstanding that they are rendered void under Article 13(1) Mahajan, J., who was one of the majority, drew a distinction between the word 'void' as used in Clause (1) and as used in Clause (2). In his Lordship's opinion, any law made by the Legislature subsequent to the commencement of the Constitution, which is inconsistent with the fundamental rights, shall under Article 13(2) be void *ab initio*, to the same extent as it is understood in U.S.A. but that under Clause (1), the existing law which is so inconsistent, will be void only with effect from the commencement of the Constitution, so that pending proceedings would be governed by the law which was valid when the right or liability involved in the pending proceeding arose.[3]

And Das, J., observed :

".....Article 13(1) does not in terms make the existing laws which are inconsistent with fundamental rights void *ab initio*, for all purposes.[4] On the contrary, it provides that the existing laws, in so far as they are inconsistent with the fundamental rights, shall be void to the extent of their inconsistency. They are not void for all purposes, but they are void only to the extent they come into conflict with the fundamental rights.[5] In other words, on and after the commencement of the Constitution no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing law is limited to the future exercise of the fundamental rights. Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect, which they do not possess."[6]

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1. Chusman : *Leading Constitutional Decisions*, 9th Ed. at pp. 247-48; *see* also *Chicot County Drainage Dist.* v. *Baxter State Bank*, 84 L Ed 349.
2. AIR 1951 SC 128.
3. *Keshavan Madhava Menan* v. *State of Bombay*, AIR 1951 SC 128.
4. *Cf.* Article 254(1) where also the word 'void' is used.
5. *State of Bombay* v. *Heman Santal*, AIR 1952 Bom16; *In re* C.G. Menon, AIR 1953 Mad 729; *Ram Saran* v. *Sunder Singh*, AIR 1952 Punj 417.
6. *Keshavan Madhava Menon* v. *State of Bombay*, AIR 1951 SC 128, 130; *see* also *Rajeshwari Devi* v. *State of U.P.*, AIR 1954 All 608, effect of declaring an Act void is not to render the law void from the date of its inception.

In *In re* C.G. Menon,[1] their Lordships of the Madras High Court, discussing the question, observed :

"By reason of Article 13, a section offending the said Article is not struck out from the statute book but no effect will be given to any of its provisions in regard to a person claiming that his fundamental rights are affected thereby."

"When such is the comparatively limited scope of determination by judicial Court even in cases where Article 13(1) of the Constitution is invoked, a Court will not undertake the investigation of the alleged invalidity of a statute except to the extent absolutely necessary."[2]

".....The learned Advocate-General drew a distinction between legislative power and infringement of a fundamental right. His argument may be put thus : So far as the question of the infringement of the fundamental right was concerned, having regard to the nature of the writ law it was not the position that any law to the extent it was inconsistent with fundamental rights would become void as if it had been off from the statute book. It was only the person, whose right had been infringed, that could raise the question of the unconstitutionality of the enactment and not others, and the unconstitutionality of the enactment had to be decided only so far as it related to the person raising the question. To put it differently, the impugned section is not struck off from the statute book, but its validity will have to be considered only in relation to the petitioner who complains that his fundamental rights have been infringed."

"On the scope of Article 13 of the Constitution, the learned Advocate-General repeated before us the arguments that were accepted by Subba Rao, J., in his decision of *W.P. No. 568 of 1952 Mad (unreported).*

The word 'void' in Article 13(1) so far as existing laws were concerned, cannot be held to obliterate them from the statute book, and could not make such laws void altogether, because Article 13 has not been given any retrospective effect. After the coming into force of the Constitution, however, the effect of Article 13(1) on such repugnant laws is that it nullifies them and makes them ineffectual and nugatory and devoid of any legal force or binding effect. The American rule that if a statute is repugnant to the Constitution the statute is void from its birth, has no application to cases concerning obligations incurred or rights accrued in accordance with an existing law that was constitutional in its inception but that if any law was made after the 26th January, 1950, which was repugnant to the Constitution, then the same rule shall have to be followed in India as followed in America. The result therefore is that part of the section of an existing law which is unconstitutional is not law and is null and void. For determining the rights and obligations of citizens the part declared void should be notionally taken to be obliterated from the section for all intents and purposes, though it may remain written on the statute book and be a good law when a question arises for determination of rights and obligations incurred prior to 26th January, 1950, and also for the determination of rights of persons who have not been given fundamental rights by the Constitution. Thus in these situations there is no scope for introducing terms like, 'relatively void' coined by American Judges in construing a Constitution which is not drawn up in similar language and the implications of which are not quite familiar in this country.

A declaration of unconstitutionality brought about by lack of legislative power does not stand on a different footing from a declaration of unconstitutionality brought about by reason of

1. AIR 1953 Mad 729.
2. *In re* C.G. Menon, AIR 1953 Mad 729.

abridgment of fundamental rights. It is not a correct proposition that constitutional provisions in Part III of the Constitution merely operate as a check on the exercise of legislative power. It is axiomatic that when the law-making power of a State is restricted by a written fundamental law then any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus a nullity. Both these declarations of unconstitutionality go to the root of the power itself and there is no real distinction between them. They represent but two aspects of want of legislative power. The legislative power of Parliament and the State Legislatures as conferred by Articles 245 and 246 of the Constitution stands curtailed by the fundamental rights chapter of the Constitution. A mere reference to the provisions of Articles 245 and 246 is sufficient to indicate that there is no competency in Parliament or a State Legislature to make a law which comes into clash with Part III of the Constitution after the coming into force of the Constitution. The authority conferred by Articles 245 and 246 to make laws subjectwise in the different Legislatures is qualified by the declaration made in Article 13(2). That power can only be exercised subject to the prohibition contained in Article 13(2).[1]

Rajagopala Aiyangar, J., answered the question : What is the effect of a law being or being declared unconstitutional by Court? as under, in *Mysore Spinning & Manufacturing Co., Ltd.* v. *Deputy Commercial Tax Officer.*[2]

Thus "In regard to this matter two alternative positions are possible :

(1) An unconstitutional law has a factual existence but is frozen and incapable of enforcement by reason of its contravening the Constitution.

When, however, the Constitutional ban ceases to operate and the fetters, whose existence rendered that law moribund, are removed, the law which therefore, was so to speak in a state of liberation, springs into activity because the superimposed shackles are removed. This is one possible view.

(2) The other possible view is that a law which is repugnant to any provision of the Constitution is no law at all though found in print. When the Courts hold that a law is valid, it is active and enforceable but when the Courts declare that it violates the provisions of the Constitution, the effect of such a declaration or holding, is as it were to obliterate the law and efface it from the statute book. From this it follows that the lifting of the constitutional ban whose existence led to the law being unconstitutional does not have the effect of resurrecting the law for the thesis is that an unconstitutional law is no law at all, that is, it was *non est* in the eye of the law."

In cases where the *vires* of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should *first* be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or framed do not attract the impugned provisions there is no occasion to decide the issue about the *vires* of the said provisions. Any decision on the said question would in such a case be purely *academic*. Courts are and should be reluctant to decide constitutional points merely as a matter of academic importance.[3] Whether the Constitution affirmatively confers power on the Legislature to make laws subjectwise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power.

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1. *Behram Khurshid* v. *State of Bombay*, AIR 1955 SC 123.
2. AIR 1957 Mad 368, 373-74. *See* also *Bhikaji Narain* v. *State of Madhya Pradesh*, AIR 1955 SC 781.
3. *State of Bihar* v. *R.B. Hardut Roy Ata Mills*, AIR 1960 SC 378, 380.

Doctrine of eclipse when invoked.—Secondly, the Constitution in express terms makes the power of a Legislature to make laws in regard to the entries in the lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution.

Thirdly, it follows from the premises that a law made in derogation or in excess of that power would be *ab initio* void wholly or to the extent of the contravention as the case may be.

Fourthly, the doctrine of eclipse can be invoked only in the case of law valid when made, but a shadow is cast on it by supervening constitutional inconsistency or supervening existing inconsistency; when the shadow is removed, the impugned Act is freed from all blemish or infirmity.[1]

23. Effect of unconstitutionality of an Act.—The American doctrine as laid down by Willoughby is : "The declaration by a Court of unconstitutionality of a statute which is in conflict with the Constitution affects the parties only and there is no judgment against the statute; that the opinion or reasons of the Court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute book; the parties to that suit are concluded by the judgment, but no one else is bound; a new litigant may bring a new suit, based on the very same statute, and the former decision cannot be pleaded as an estoppel, but can be relied on only as a precedent." The rule does not apply in India in view of the clear and specific provisions of the Constitution.

Mahajan, C.J. delivered the judgment on behalf of the majority in the case of *Behram Khurshid* v. *State of Bombay*[2] thus : "The effect of the declaration in AIR 1951 SC 318, that Clause *(b)* of Section 13 of the Bombay Prohibition Act is void under Article 13 of the Constitution in so far as it affects the consumption or use of liquid medicinal or toilet preparations containing alcohol, is to render part of Section 13*(b)* of the Bombay Prohibition Act inoperative, ineffective and ineffectual and thus unenforceable. The part of the section which has been declared void has no legal force so far as citizens are concerned and it cannot be recognized as valid law for determining the rights of citizens." Continuing his Lordship the Chief Justice observed : "In other words, the ambit of the section stands narrowed down so far as its enforceability against citizens is concerned and no notice can be taken on the part of the section struck down in a prosecution for contravention of the provisions of that section, with the consequence that in prosecutions....under Section 13*(b)*, the offence of contravention of the section can only be proved if it is established that they have used or consumed liquor or an intoxicant which is prohibited by that part of the section which has been declared valid and enforceable and without reference to its unenforceable part. No notice at all should be taken of that other part as it has no relevance in such an enquiry, having no legal effect. In a criminal case unless the prosecution proves a contravention of a provision that is legally enforceable and valid, it cannot succeed. No onus is cast on the accused to prove that his case falls under that part of the section which has been held unenforceable.

"For determining the rights and obligations of citizens the part declared void should be notionally taken to be obliterated from the section for all intents and purposes, though it may

1. *Deep Chand* v. *State of U.P.*, 1959 *(Supp)* 2 SCR 8, 40; *see* also *Bhikaji Narain* v. *State of Madhya Pradesh*, (1955)2 SCR 589; *State of Orissa* v. *Satyabadi Panda*, AIR 1961 Orissa 196.
2. AIR 1955 SC 123, 144-45 (Das, J., as he then was), in his dissenting opinion held that the judicial declaration that a part of the section is unconstitutional and void only nullified that offending part in the sense that it renders that part ineffective against and inapplicable to a citizen who consumes or uses liquid medicinal or toilet preparations, containing alcohol in exercise of his fundamental right. The declaration in *Balsara's* case serves to provide a defence only to a citizen who has consumed or used liquid medicinal or toilet preparations.

remain written on the statute book and be good law when a question arises for determination of rights and obligations incurred prior to 26th January, 1950 and also for determining the rights of persons who have not been given fundamental rights by the Constitution. Thus, in this situation, there is no scope for introducing terms like 'relatively void', coined by American Judges in construing a Constitution which is not drawn up in similar language and the implication of which are not familiar in this country."

The doctrine of 'prospective overruling' again an American innovation, adopted in *Golak Nath* v. *State of Punjab*,[1] and overruled in *Kesavanand Bharati* v. *State of Kerala*,[2] is yet in the melting crucible, and after the pronouncement in the latter case, there is no justification for applying the doctrine.[3]

A declaration of unconstitutionality brought about by lack of legislative power does not stand on a different footing from a declaration of unconstitutionality brought about by reason of abridgment of fundamental rights. Both these declarations of unconstitutionality go to the root of the power itself and there is no real distinction between them. They represent but two aspects of want of legislative power. The legislative power of Parliament and the State Legislature as conferred by Articles 245 and 246 stands curtailed by the fundamental rights chapter of the Constitution. The authority can be exercised only subject to the prohibition contained in Article 13(2).[4]

If an Act has been declared *ultra vires* being in violation of fundamental rights conferred under Part III of the Constitution, its subsequent inclusion in the IXth Schedule under the 17th Constitutional Amendment Act makes it immune from a subsequent attack thereon. It does not need re-enactment.[5]

Uncertainty.—In construing a statute or contract, a court should not hold a provision thereof to be void for uncertainty unless it cannot resolve the ambiguity which is said to be contained therein.[6]

24. Persons entitled to raise constitutional questions.—*(i) General.*—It is a firmly established principle of law that the constitutionality of a statute may not be attacked by one whose rights are not affected by the operation of the statute.[7] This rule applies to all cases

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1. AIR 1967 SC 1643.
2. AIR 1973 SC 1461.
3. *Southern Fisheries Corporation* v. *Corporation of the City of Cochin*, 1977 Ker LT 475 (DB).
4. *Behram Khurshid* v. *State of Bombay*, AIR 1955 SC 123, 145; *see* also *Deep Chand* v. *State of U.P.*, AIR 1959 SC 648 (declaration of invalidity goes to the root of the matter).
5. *Jagannath* v. *Authorized Officer, Land Reforms*, (1972)1 SCR 1055 (Mitter, J.).
6. *Fawcett Properties, Ltd.* v. *Buckingham County Council*, (1960)3 All ER 503, 508.
7. *Chesapeake, etc. R. Co.* v. *Conley*, 57 L Ed 1597; Railroad, etc. Commrs. St. Louis, etc. R. Co., 57 L Ed 1571; *U.S.* v. *Chandhur-Dunbar Water Power Co.*, 57 L Ed 1063; *Chicago Dock, etc. Co.* v. *Fraley*, 57 L Ed 1022; *Hampton* v. *St. Louis, etc. R. Co.*, 57 L Ed 596; *Pittsburg Steel Co.* v. *Baltimore Equitable Soc*, 57 L Ed 297; *Darnell* v. *Indiana*, 57 L Ed 267; *Rosenthal* v. *Peo.*, 57 L Ed 212; *Yazoo etc., R. Co.* v. *Jackson Vinegar Co.*, 57 L Ed 193; *Murphy* v. *California*, 56 L Ed 1229; *Standard Stock Food Co.* v. *Wright*, 56 L Ed 1197; *Collins* v. *Texas*, 56 L Ed 439; *Keeny* v. *New York*, 56 L Ed 299; *Williams* v. *Walsh*, 56 L Ed 253; *Provident Inst. for Sav.* v. *Malone*, 55 L Ed 899; *Lindsley* v. *Natural Carbonic Gas Co.*, 55 L Ed 369; *Brown Forman Co.* v. *Kentucky*, 54 L Ed 868; *Southern R. Co.* v. *King*, 54 L Ed 969; *Citizens' Nat. Bank* v. *Kentucky*, 54 L Ed 832; *Grenada Lumber Co.* v. *Mississippi*, 54 L Ed 826; *Laurel Hill Cemetery* v. *San Francisco*, 54 L Ed 515; *District of Columbia* v. *Brooke*, 53 L Ed 941; *Wilcox* v. *Consolidated Gas Co.*, 53 L Ed 382; *Home Tel etc. Co.* v. *Los Angeles*, 53 L Ed 176; *Hudson County Water Co.* v. *McCarter*, 52 L Ed 828; *Baxton County Ct.* v. *West Virgina*, 52 L Ed 450; *Iroquois Transport Co.* v. *De Laney Forge, etc. Co.*, 51 L Ed 836; *Peo* v. *Readon*, 51 L Ed 415; *Smiley* v. *Kansas*, 49 L Ed 546; *Turpin* v. *Lemon*, 46 L Ed 70; *Red River Valley Nat. Bank* v. *Craig*, 45 L Ed 994; *Wiley* v. *Sinkley*, 45 L Ed 84; *Clark* v. *Kansas City*, 44 L Ed 392.

both at law and in equity,[1] and is equally applicable to both civil and criminal proceedings. A constitutional question may not be raised by one whose rights are not directive and certainly affected,[2] nor in a case where no attempt is being made to enforce the provision attacked.[3] In other words, one attacking the constitutionality of a statute must show that it affects him injuriously and actually deprives him of a constitutional right.[4] It is not sufficient that the statute is unconstitutional as to other persons or classes of persons,[5] It must affirmatively appear that the person attacking the statute comes within the class of persons affected by it.[6] So a party benefited, rather than injured, by the operation of a statute may not question its constitutionality,[7] but a claim that the statute was passed for the benefit of persons of the same class as plaintiffs, does not preclude him from attacking the constitutionality of the statute where he sets forth a direct and substantial invasion of his constitutional rights.[8] Where the performance of certain acts is necessary to bring a person within the operation of a statute, one who has not performed these acts may not question the constitutionality of the statute.[9] Conversely, any person whose rights are prejudiced by the operation of the statute may raise the question as to its constitutionality.[10] Thus, a person may question the constitutionality of a statute the effect of which is to deny him a right that otherwise he would have.[11] A corporation may invoke the protection of the Constitution to the same extent as an individual.[12] A person whose rights are affected by one portion of a statute may not question the constitutionality of another portion, where the operation of the provision affecting him will not be influenced by the validity or invalidity of the contested provision,[13] but, conversely, he may question the constitutionality of a provision of a statute not affecting him where the invalidity of such provision would render the entire Act void.[14]

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1. *Benz* v. *Kremer*, 125 N.W. 99; *Riley* v. *Trinton*, 184 SW 3-4.
2. *Detroit, etc. R. Co.*, v. *Osborn*, 47 L Ed 860; *Chadwick* v. *Kelley*, 47 L Ed 293; *Charanjit Lal* v. *Union of India*, AIR 1951 SC 41.
3. *Chesapeake, etc. R. Co.* v. *Conley*, 57 L Ed 1597; *Del Castello* v. *McConnico*, 42 L Ed 622.
4. *Louisvile, etc, R. Co.*v. *Finn*, 59 L Ed 379; *Southern R. Co.* v. *King*, 54 L Ed 868; *D.K. Nabhirajiah* v. *State of Mysore*, AIR 1952 SC 339; *Mohd. Ishaq* v. *State*, AIR 1961All 522; *Everett* v. *Jasjit Singh*, AIR 1959 Cal 237; *District Board, Karnal* v. *M.R. Sharma*, AIR 1959 Punj 318.
5. *Newark Natural Gas, etc. Co.* v. *Newark*, 61 L Ed 393; *Erie R.* v. *Williams*, 58 L Ed 1155; *Collins* v. *Texas*, 56 L Ed 439; *Aluminium Co.* v. *Ramsey*, 55 L Ed 185; *Engel* v. *O'Malley*, 56 L Ed 128; *Assaria State Bank* v. *Dolley*, 55 L Ed 123; *Grenada Lumber Co.* v. *Mississippi*, 54 L Ed 826; *Laurel Hill Cemetary* v. *San Francisco*, 54 L Ed 515; *Seaboard Airline R. Co.* v. *Seegers*, 52 L Ed 108; *Lee* v. *New Jersey*, 52 L Ed 106.
6. *Mallinckrodt Chemical Works* v. *Missouri*, 59 L Ed 1197; *Louisville, etc. R. Co.* v. *Finn*, 59 L Ed 379; *Missouri, etc, R. Co.* v. *Code*, 58 L Ed 1135; *Ballard* v. *Hunter*, 51 L Ed 461; *Isher Singh* v. *Union of India*, AIR 1956 Punj 19.
7. *Loeb* v. *Columbia Tp*, 91 Fed 37; *Great Falls Manufacturing Co.* v. *Garland*, 31 L Ed 526; *Wall* v. *Parrot Silver & Copper Co.*, 61 L Ed 1226; *Shridhar Atmaram* v. *Collector of Nagpur*, 1951 Nag 90. (Petitioner allowing Collector to take possession of his property and then being dissatisfied with the compensation awarded appeared before the Tribunal to have the compensation enhanced and succeeded to a certain extent, cannot afterwards question the validity of the Nagpur Improvement Trust Act under which his property was acquired); *Nain Singh* v. *State of U.P.*, AIR 1953 SC 384.
8. *Bogni* v. *Perotti*, 112 NE 853.
9. *Collins* v. *Texas*, 56 L Ed 439; *Williams* v. *Walsh*, 56 L Ed 253.
10. *Savage* v. *Jones*, 56 L Ed 1182; *Dwarkadas* v. *Sholapur Spinning Co.*, (1954) SCR 674; *see*, however, *Beharam Khurshed* v. *State of Bombay*, AIR 1955 SC 123. But *see Dasaratha* v. *State of Andhra Pradesh*, AIR 1961 SC 564.
11. *State* v. *Turner*, 107 SW 1064; *State* v. *O'Leary*, 116 at p. 204; *Kochuni* v. *State of Madras*, AIR 1959 SC 725.
12. *Peo* v. *Priest*, 99 NE 547.
13. *Hampton* v. *St. Louis, etc. R. Co.*, 57 L Ed 595.
14. *Peo* v. *McBride*, 234 III 146; *State* v. *Cumberland Club*, 188 SW 583.

(ii) Estoppel or waiver.—A person may by his acts or omission to act waive a right which he might otherwise have under the provision of a Constitution,[1] and where such acts or omissions have intervened, a law will be sustained which otherwise might have been held invalid, if the party making the objection had not by prior acts precluded himself from being head in opposition.[2] Thus a person who has participated in proceedings under a statute, or who has acted under the statute and in pursuance of the authority conferred by it,[3] or who has claimed the benefit of the statute to the detriment of others,[4] or who asserts right under it,[5] may not question its constitutionality. The same rule has been held to apply in the case of defendant who was charged with an attempt to bribe an officer.[6] It has been held, however, that a party may question the constitutionality of a statute where his conduct with reference to the subject of the act has not been such that to permit him to do so would place his adversary in a less favourable position than he would have occupied if the Act had not been passed.[7] And the right of party otherwise entitled to attack a statute may not be waived for him by the action of the court in offering to dispense with the requirement alleged to be unconstitutional.[8] Also acquiescence in an unconstitutional statute for many years will not render it valid.[9] However the argument that, if an Act is invalid when passed, the vice continues and the statute may be annulled at any time does not apply to political or administrative legislation, but such laws must be attacked in reasonable time without delay.[10] A non-resident does not by doing business within a State, waive his right to object to the constitutionality of a statute subjecting non-residents who engage in business therein to judgments without personal service.[11] The right of a carrier to contest the validity of a State regulation of inter-State rates is not impaired by its putting them into effect.[12]

It is not open to a citizen to waive his fundamental rights conferred by Part III of the Constitution.[13]

(iii) By individual.—A waiver of a constitutional provision precludes the party waiving it from afterwards claiming protection under it,[14] even though it was adopted solely for his benefit,[15] and such a waiver is binding as to both past and future transactions.[16]

(iv) By the Government.—The doctrine of waiver and estoppel equally applies to the State,[17] and the Federal[18] Governments. Thus, where a State has invoked the benefits of a

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1. *Humbird* v. *Avery*, 49 L Ed 286; *Pierce* v. *Somerset R. Co.*, 43 L Ed 316.
2. *Skinner* v. *Franklin County*, 179 Fed 862.
3. *Musco* v. *United Surety Co.*, 196 NY 459.
4. *Grand Rapids, etc. R. Co.* v. *Osborn*, 48 L Ed 598.
5. *Orthwein* v. *New York Germania L. Ins. Co.*, 170 SW 885.
6. *State* v. *Gardner*, 42 NE 999.
7. *State* v. *Vail*, 95 NE 911.
8. *Matter of* Cullinan, 81 NYS 567.
9. *Hamann* v. *Heekin*, 102 NE 730.
10. *State* v. *Halwel*, 159 P 777.
11. *Moredock* v. *Kirby*, 118 Fed 180.
12. *Cleveland, etc. R. Co.* v. *Blind*, 105 NE 483.
13. *Basheshar Nath* v. *Income-tax Commissioner*, AIR 1959 SC 159, 163.
14. *Peo* v. *Viskniskki*, 99 NE 621.
15. *Baker* v. *Beaman*, 6 NY 47.
16. *New York* v. *Manhattan R. Co.*, 37 NE 491.
17. *State* v. *Turner*, 113 NE 327.
18. *U.S.* v. *Realty Co.*, 41 L Ed 215.

statute,[1] or has made a statute passed by its Legislature on the basis of a suit,[2] it may not question the constitutionality of such statute.

(v) Acquisition of property.—Property owners who assent to the taking of their property for public use under statutes authorizing it to be so taken, are estopped to deny the constitutionality of such statutes.[3] Those who proceed to condemn property under such statutes are also estopped to deny their validity,[4] and this rule applies not only to private corporations,[5] but to municipal corporations as well.[6] So the right to compensation for property taken for public use may be waived by the owners from whom it is taken, and such assent may be implied from the acts of the parties.[7] And a property owner who has agreed to the abandonment of property taken for a public purpose, under a statute authorizing such abandonment, is estopped to deny the validity of the statute.[8] But a corporation is not estopped, merely by reason of its former violation of another statute, from questioning the validity of a statute or municipal ordinance on the ground that such statute or ordinance deprives it of property without just compensation.[9] Neither is a corporation, proceeding under a statute to condemn, precluded from attacking a portion of the Act where the invalidity of such portion does not destroy the scheme of the Act.[10]

(vi) Taxation or assessment.—A taxing law will not be held unconstitutional at the instance of a taxing body which for years has acquiesced in its enactment.[11] The expression 'subject to' conveys the idea of a provision yielding place to another provision to which it is subject *Sri Vittal* combines rep. by its partner.[12] So those who participate in proceedings to levy a tax for the purpose of local improvements,[13] or for any other purpose,[14] may not attack the validity of the tax or assessment levied in pursuance of such proceedings. But the doctrine of estoppel will not be applied to one who has done nothing to encourage the legislation or the incurrence of expense on the faith of the unconstitutional law.[15] If the undertaking of a public improvement,[16] or the levy of an assessment therefor,[17] would have the effect of depriving a person of his property without due process of law, he is not estopped to deny the constitutionality of the statute under which the improvement is attempted,[18] or the assessment levied,[19] merely by his failure to contest the validity of the proceeding on notice to him,[20] but it has been held that a landowner who receives notice of the proceeding for a public improvement affecting him, and makes no objection thereto, and takes no appeal therefrom, is estopped to deny the

1. *Pen* v. *Santa Clara Lumber Co.*, 74 Misc 596.
2. *Pen* v. *Santa Clara Lumber Co.*, 74 Misc 596.
3. *Close* v. *Clenwood Cemetery*, 74 L Ed 408.
4. *Cand* v. *Minneapolis, etc. R. Co.*, 87 NW 714.
5. *Southern Power Co.* v. *Williams*, 85 SC 172.
6. *In re* Walton Ave, 197 NY 518.
7. *Embury* v. *Conner*, 3 NY 511.
8. *Hellen* v. *Medford*, 73 NE 1070.
9. *Peoria Gas, etc. Co.* v. *Peoria*, 50 L Ed 365.
10. *South Carolina Western R. Co.* v. *Ellen*, 95 SC 68.
11. *Peo* v. *Chicago etc. R. Co.*, 256 Ill 388.
12. *A.V. Padmanatha Acharya* v. *State of Tamil Nadu*, (1993)2 MLW 187 (DB).
13. *Shephard* v. *Barron*, 48 L Ed 1115.
14. *Ficklen* v. *Shelby County Taxing District*, 36 L Ed 601.
15. *Sellers* v. *Cox*, 56 SE 284.
16. *Parker* v. *Harris County Drain District No.* 2, 148 SW 351.
17. *Hutcheson* v. *Storrie*, 51 SW 848.
18. *Parker* v. *Harris County Drain District No.* 2, 148 SW 351.
19. *Hutcheson* v. *Storrie*, 51 SW 848.
20. *In re* Tuthill, 163 NY 133.

constitutionality of the law under which the proceedings are had after the expenditure of funds and the incurring of obligations on the faith of the validity of the proceedings.[1] Even persons to whom the doctrine of estoppel applies are not concluded as to acts not done strictly within the purview of the invalid Act,[2] nor as to matters that yet remain to be done in the future under the Act,[3] nor as to expenses not yet incurred,[4] nor are they estopped to deny the validity of a statute which has already been declared unconstitutional at the instance of other parties.[5] Demanding or receiving taxes assessed under an unconstitutional statute limits all claims of the demanding party to the taxes so received or demanded.[6] And tax collectors and their sureties are liable for taxes collected under invalid statutes although no liability would attach if no collections were made.[7]

It is not a sound principle of interpretation to adopt to first ascertain whether a tax was known to the framers of the Constitution and include it in the residuary powers only if it was not known. This would be an impossible test to apply.[8]

(vii) Procuring enactment of legislation.—One who is active in procuring the legislation of a special or local statute may not question its constitutionality,[9] even though it may be invalid as to other persons.[10] And this rule of estoppel applies also to grantees who derive title from persons who were active in procuring the enactment of a statute affecting the land conveyed.[11]

(viii) Participating in judicial proceedings.—A person may waive his constitutional right by taking part without objection in judicial proceedings otherwise unconstitutional as against him.[12] In civil proceedings the acts of the parties to the litigation which by fair inference acknowledge the validity of the statute are binding, and will preclude such parties from attacking such statute as unconstitutional.[13] Thus a party seeking to enforce a statute,[14] and to avail himself of its provisions,[15] may not question its constitutionality. A person invoking the jurisdiction of a Court may not deny the validity of a statute conferring such jurisdiction,[16] and the acceptance by parties in interest of emoluments to which they are entitled, and which are obtained through judicial proceedings to which they are not parties, also estops the parties so accepting from denying the jurisdiction of the Court in which such proceedings were instituted.[17] This rule of estoppel applies not only to the plaintiff in a cause, but also to a defendant who has claimed a right under the statute,[18] or who by appearing as a party to suit and submitting to the decrees of the Court, without objecting to the validity of the statute involved has induced

1. *O'Dea* v. *Mitchell*, 77 at p. 1020; *Smittle* v. *Haag*, 118 NW 869.
2. *Sellers* v. *Cox*, 56 SE 284.
3. *Sellers* v. *Cox*, 56 SE 284.
4. *Sellers* v. *Cox*, 56 SE 284.
5. *O'Brien* v. *Wheelock*, 46 L Ed 636.
6. *Philadelphia* v. *Ridge Avel R. Co.*, 142 Pa 484.
7. *Wilson* v. *State*, 1 Lea (Tenn) 316.
8. *Union of India* v. *Dhillon*, (1972)2 SCR 33, 55 (Sikri, C.J.).
9. *Housewirth* v. *Stevens*, 56 SE 288; *Sellers* v. *Cox*, 56 SE 284.
10. *Ferguson* v. *Landram*, 5 Bush (Ky) 230.
11. *Leahy* v. *Jefferson Southern Pond Draining Co.*, 85 SW 1181.
12. *Peo* v. *Scott*, 120 P 126.
13. *Detroit, etc. R. Co.* v. *Osborn*, 47 L Ed 860.
14. *Brown* v. *Warren County*, 135 NW 4.
15. *In re* Delvin, etc. Co., 107 at p. 583.
16. *Great Falls Mfg. Co.* v. *Garland*, 31 L Ed 537.
17. *Drexel* v. *Berney*, 30 L Ed 1219.
18. *Clay Dist.* v. *Tp. Buchanan Independent District*, 28 NW 449.

the other party to alter his position to his disadvantage.[1] So a party to an action who has actually appeared may not question the validity of the statute on which the action is brought because of its failure to provide for a sufficient notice of the proceedings.[2] Some authorities carry the rule of estoppel even further, and hold that a question as to constitutionality of a statute involved in a suit must be raised at the earliest possible moment consistent with good pleading and orderly procedure, otherwise it will be deemed to have been waived.[3] Thus, it has been held that the constitutionality of a statute may not be questioned on a motion for a new trial,[4] or after appeal.[5] An unsuccessful assertion by a party in one action, of the unconstitutionality of a statute does not estop such party in a subsequent action to assert the validity of the statute.[6]

Those rights guaranteed to accused persons by the Constitution in which the State as well as the accused persons are interested may not be waived by the accused, and therefore submission by him to proceedings under statutes in derogation of these rights does not estop him to deny the validity of such statutes.[7] Of this nature, for example, are all statutes affecting the jurisdiction of the Court.[8] But those constitutional guarantees which are in the nature of personal privileges of the accused may be waived by him, and therefore he may not question the constitutionality of a statute under which he has made such a waiver.[9] Of this nature, for example, is the guarantee of the right of the accused to be confronted with the witnesses against him.[10] In cases of misdemeanour in America, the consent of the accused to the trial by less than twelve jurors is valid and binding on him,[11] but the rule is otherwise in capital cases,[12] and also in cases of felony, unless the Constitution allows a trial by less than twelve jurors in express terms.[13] But statutes permitting defendants in criminal prosecutions for misdemeanours to be tried by the Court instead of by a jury are valid.[14] The right of defendant to demand the nature and cause of the accusation against him cannot be waived or surrendered by him.[15] A person who has made no attempt to comply with a law until after the lapse of more than a reasonable time after it is put in force may not question the constitutionality of the law on the ground that it makes no provision as to when he must comply with it.[16] The constitutionality of a statute giving defendant alone the right to a change of venue cannot be challenged by the State, as through the Legislature it has waived its rights to object.[17]

25. Determination of constitutional questions.—*(i) Judicial authority and duty in general.*—In England, notwithstanding occasional dicta to the contrary, Parliament is supreme, and the

1. *Lose* v. *Cockcroft*, 44 NY 415.
2. *Tennessee Fertilizer Co.* v. *McFall*, 163 SW 806.
3. *Lohmeyer* v. *St. Louis Cordage Co.*, 113 SW 1108.
4. *Lohmeyer* v. *St. Louis Cordage Co.*, 113 SW 1108.
5. *Pittsburg, etc. R.* v. *Chicago*, 242 III, 178.
6. *Cote* v. *Highland Park*, 139 NW 69.
7. *State* v. *Vanella*, 106 at p. 364.
8. *State* v. *Mannion*, 57 at p. 542.
9. *U.S.* v. *Gale*, 27 L Ed 857.
10. *State* v. *Vanella*, 106 at p. 364.
11. *State* v. *Sackett*, 38 NW 773.
12. *State* v. *Carman*, 18 NW 691.
13. *Harris* v. *Peo*, 21 NE 563.
14. *Lamar* v. *Prosser*, 48 SE 977.
15. *U.S.* v. *Smith*, 4 Alaska 396.
16. *Booth* v. *State*, 100 NE 563.
17. *Sate* v. *Hauptly*, 146 at p. 705.

Courts are without authority to declare void any statute duly enacted by Parliament.[1] In America the final authority for determining whether or not the Legislature, in enacting a statute, acted within its constitutional authority, is vested in the judiciary,[2] and that, in a proper case, it is not the right of the Courts, but also their duty, to declare invalid an unconstitutional statute.[3] Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, the Court's duty is to adopt the latter.[4] Where it does not appear that the statute has ever been before the Court or been acted on in any way, the Court will not refuse to consider its constitutionality merely because it has been on the statute books for a long time and has remained hitherto unchallenged.[5] The rule that an Act of competent Legislature may be 'struck down' by the Courts on the ground of vagueness is alien to our constitutional system. A law may be declared invalid by the Courts in India if the Legislature has no power to enact the law or that the law violates any of the fundamental rights guaranteed in Part III of the Constitution or is inconsistent with any constitutional provision but not on the ground that it is vague.[6] It is settled principle of law that notwithstanding the declaration by the Legislature that the Act has been made to implement the directive principles in Article 39, it would be open to the Court to ignore such a declaration in a given case and examine the constitutional validity of the Act; the declaration cannot act as a cloak to protect the law, bearing no relationship with the objectives contained in Article 39 of the Constitution quoting passage from *Assam Sillimanite Ltd.* v. *Union of India.*[7]

(ii) Judicial as distinguished from legislative power.—Legislature in India cannot exercise a power which can be described as essentially judicial and not legislative.

Where the Legislature on finding that there has been a *lacuna* in creating jurisdiction, supplies it, it acts within the legislative field. Where, however, the Legislature goes further than this and compels the determination of a case at the hands of a Court taking it completely out of the reach of the Court to make a contrary decision, the matter is one under judicial and not Legislative power. If the Legislature were to say that all cases which have been filed before a particular date shall stand dismissed, it would be an exercise of judicial and not legislative power.[8]

Relying on *State of Haryana* v. *Kamal Coop. Farmers' Society Ltd.*,[9] Justice Srinivasan speaking for the Division Bench succinctly stated thus : "The Court (the Supreme Court) said that a Legislature has the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively; but it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative

1. Blackstone Comm. at pp. 185-86.
2. *Weems* v. *U.S.*, 54 L Ed 792; *Cohens* v. *Virginia*, 5 L Ed 257; *Fletcher* v. *Peck*, 3 L Ed 162; *Marbury* v. *Madison*, 2 L Ed 60; *Cooper* v. *Telfair*, 1 L Ed 721; *Calder* v. *Bull*, 1 L Ed 648.
3. *Gillesby* v. *Canyon County*, 107 at p. 71; *Com.* v. *Smith*, 173 SW 340; *Penitentiary Comrs.* v. *Spencers*, 166 SW 1017.
4. *Texas* v. *Eastern Texas Railroad Co.*, 66 L Ed 566, 572 (Van Denanter, J.).
5. *McCamey* v. *Cummings*, 172 SW 311.
6. *Municipal Committee, Amritsar* v. *State of Punjab*, (1969)3 SCR 447, 453 (Shah, J.); see also *State of Maharashtra* v. *Lok Shikshan Sanstha*, (1971) Supp SCR 879, 895 (Vaidialingam, J.).
7. 1992 Supp (1) SCC 692. See *(Dr.) K.R. Lakshmanan* v. *State of Tamil Nadu and another*, (1996)2 SCC 266.
8. *Biharilal* v. *Ramcharan*, AIR 1957 Madh Pra 165, 167.
9. AIR 1994 SC 1.

power but a judicial power which cannot be encroached upon by a Legislature under the Constitution. In that case, by the Amendment Act of 1981, the State legislature has not made any provision to include the lands and immovable properties which were the subjects of the Civil Court's decrees, in *shalmilat deh* so as to bring them within the purview of the principal Act. But the provision merely directed the Assistant Collector of First Class, in effect, to disregard or disobey the earlier civil Court's decrees and judicial orders by which it had been held that certain lands and immovable properties fell outside *'shalmilat deh'* regulated by the principal Act. Such provisions were held to be unconstitutional. If the ruling is applied to the facts of the present case, it is clear that the impugned Act has included all the lands of the petitioners within its purview and the Legislature is, therefore, competent to pass the enactment with retrospective effect nullifying the orders passed by the Courts."[1]

(iii) Limitation of power.—"But it does not follow that the Courts are authorized to supervise every Act of the Legislature, or that they will inquire into the validity of all legislative proceedings that may have the force of law. Neither have the Courts any authority to avail the effect of failure of the Legislature to perform its duty. Nor is it within the power of a State Court to annul the Constitution to which it owes its existence and authority, or to question the legality of the structure of the Government created by the Constitution establishing the Court. On the contrary, when the people, acting within the constitutional powers have, by amendment to the Constitution, enumerated the subjects of legislative action, the constitutional provisions and statutes enacted in harmony therewith must be enforced and not nullified by the Courts. The Legislature is the exclusive judge of the means to be provided for the promotion of a constitutional object."[2]

(iv) What Courts may determine.—"In some jurisdictions, certain inferior Courts are forbidden by constitutional or statutory provisions to pass on the constitutionality of statutes. In the absence of such provisions, however, it is the rule, under the American constitutional theory, that inferior Courts including even those of original jurisdiction, have power to pass on the validity of a statute and to declare it unconstitutional in proceedings before them in the course of judicial administration. The power of an inferior Court, however, to declare a statute unconstitutional should be exercised with great caution. By some authorities it is considered the better practice in ordinary cases for a trial Court to assume that a statute is constitutional until the contrary is declared by a Court of appellate jurisdiction. And it is a generally recognized rule that, unless it appears beyond a reasonable doubt that a statute is unconstitutional, an inferior Court should not exercise the power of so declaring it. In any event, of course, a decision of an inferior Court on the constitutionality of a statute is not binding on an Appellate Court."[3]

"While it is the duty of all the Courts, both State and Federal, to uphold and enforce the Federal Constitution, it is the special office of the Federal Courts, with final jurisdiction in the United States Supreme Court, to declare unconstitutional any Acts of Congress, treaties, Acts of State Legislature, or ordinances of municipal corporation, which are in contravention of the Federal Constitution. As a general rule, the authority of the Federal Courts to pass on the unconstitutionality of legislation is limited to such acts as contravene or are repugnant to some provision of the Federal Constitution or, in the case of State Statutes, etc., to those that are repugnant to laws or treaties of the United States. Yet, while the Supreme Court of a State is a final authority as to whether a State Statute or Ordinance contravenes the State Constitution,

1. Vide *Parambikulam Aliyar Project Original Ayacutdars Association* v. *State of Tamil Nadu*, (1994)2 MLW 232.
2. 12 CJ, S. at p. 777.
3. 12 CJ, S. 209(2) at p. 779.

if a Federal Court has acquired jurisdiction of a case on other grounds, it will pass on the question as to whether a Statute or Ordinance is repugnant to the Constitution of the State. But a Federal Court will not, in a doubtful case, adjudge a State Statute to be in conflict with the State Constitution where that question has not been passed on by the State tribunals."[1]

The Indian Constitution follows the American principles. Article 132 ensures that though a High Court may pronounce upon the validity of an Act or decide any other question involving the interpretation of the Constitution, in all such cases the decision of the High Court shall not be final and that the final authority of interpreting the Constitution must rest with the Supreme Court, whatever the nature of the suit or proceedings in which such question may arise.

It used to be doubted that judges make law. Today it is no longer a matter of doubt that substantial volume of the law governing the lives of citizens, and regulating the function of the State flow from the decisions of the superior courts; the words of Lord Reid quoted are 'There was a time when it was thought almost indecent to suggest that judges make law, they declare it.... But we do not believe in fairy tales any more'.[2]

Article 228 makes provision for transfer of cases involving substantial question of law as to the interpretation of the Constitution from subordinate Courts to the High Court. The article thus denies to the subordinate Courts a right to the interpretation of the Constitution. The High Court may transfer the case on its own initiative or on the application of the party, it is as well the duty of the subordinate Court to refer a case to the High Court as soon as it comes to discover that it involves a question within the purview of the Article.

With regard to the lower judiciary the Codes of Civil and Criminal Procedure (Amendment) Act, No. XXIV of 1951 further provide that where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation, or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate, or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

(v) Necessity of decision.—Courts ordinarily ought not to go into the question of the validity of an Act or a provision of an Act unless it has been brought into force. Till then, such a question would be academic. Nobody can be aggrieved by a provision of law which is dormant and which cannot be enforced.[3] Courts are not eager to annul Acts of the Legislature. A becoming respect for a co-ordinante branch of the Government will make them loath to adjudicate the grave question of the constitutional validity of a statute, and they will not do so when the matters or questions presented by the record do not require it.[4] The decision of a case will be rested on grounds which do not involve a determination as to validity of the statute, if there be any such in the case. It is only when the question of the power of the Legislature under the limitations of the Constitution is the very gist and marrow of the case that the Courts will give their judgment on this point. Courts do not embark upon unnecessarily wide or general inquiry and confine their decision, as far as may be reasonably practicable within the narrow limits of

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1. 12 CJ, S. 210, at p. 779.
2. *Sarojini Ramaswamy* v. *Union of India*, (1992)5 JT (SC) 1 : AIR 1992 SC 2219 quoted in *Ganesh Chandra Bhatt* v. *District Magistrate, Almora*, AIR 1993 All 291.
3. *Chander Sekhar Singh* v. *State of Orissa*, (1972)2 SCR 279, 282 (Sikri, C.J.).
4. *Bray* v. *State*, 140 Ala 172; *Hill* v. *Tracer*, 130 Ala 592.

the controversy arising between the parties in the particular case.[1] The Courts will ordinarily refuse to decide upon the constitutionality of a statute except when the decision is necessary to the final disposition of the case.[2] The highest Court in the realm follows its traditional practice of refusing to decide constitutional questions when the record discloses other grounds of decision, whether or not they have been properly raised before it by the parties.[3] The Court will not formulate a rule of constitutional law broader than is required by the facts to which it is to be applied.[4] In *Brij Bhukan* v. *S.D.O., Siwan*,[5] Das and Jamuar, JJ., held that inasmuch as Sub-clauses *(d)* and *(f)* of Section 2*(ii)* of Bihar Land Encroachment Act, 31 of 1950, are unconstitutional and void under Article 13 of the Constitution, no proceedings can be taken under them, and it is immaterial to consider whether the applicants have or have not made out a case for their adverse possession. By reason of Article 13, a section offending the said article is not struck out from the statute book but no effect will be given to any of its provisions in regard to a person claiming that his fundamental rights are affected thereby. When such is the comparatively limited scope of determination by a judicial Court even in cases where Article 13(1) of the Constitution is invoked, a Court will not undertake the investigation of the alleged invalidity of a statute except to the extent absolutely necessary.[6]

Courts do not pronounce upon the vires of an Act or of a notification unless and until it is absolutely essential for giving relief to the party seeking it.[7]

(vi) Powers of Court and Legislature.—The Legislature and High Courts are supreme within their own sphere. None can encroach upon the jurisdiction of the other. The Legislature has unlimited and unrestricted powers to make law, provided that it is competent to make such law and the subject is covered by any of the items in the lists laying down the competence of the Legislature. Courts of law do not substitute their judgment for the wisdom of the Legislature and consequently if an enactment is *intra vires* but causes or appears to cause unnecessary hardship to a class of persons or on other grounds may appear to be unreasonable, or inequitable, High Courts will not set aside the enactment on those grounds. It will be for the Legislature to consider whether such an enactment should or should not remain on the statute book. For protection against abuses by Legislature the people must resort to the polls, not to the Courts.[8]

Where the Legislature has the power to make an enactment, it can validate invalid acts of the State Government or of subordinate offices or authorities by passing law which is not unconstitutional and is within the competence of the Legislature. The Legislature cannot, however, interfere with the jurisdiction of the Courts of law by declaring an illegal act to be

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1. *Atiabari Tea Co.* v. *State of Assam*, AIR 1961 SC 232.
2. *A.G. for Alberta* v. *A-G. for Canada*, 1939 AC 117; *Bhuwalka Bros., Ltd.* v. *Dunichand*, 1952 Cal 740; *Magdoom Mohiuddin* v. *State of Hyderabad*, 1952 Hyd 112; *Aluminium Corporation of India, Ltd.* v. *Regional Provident Fund Commissioner*, AIR 1958 Cal 570 (P. B. Mukherjee, J.).
3. *Neese* v. *Southern Co.*, 100 L Ed 60, 61 : 350 US 77; *Ker* v. *California*, 10 L Ed 2d 726, 750 : 374 US 23 (Brennan, J.), *United States* v. *37 Photographers*, 28 L Ed 2d 822, 830 : 402 US 363 (White, J.).
4. *Kameshvar Singh* v. *Province of Bihar*, AIR 1953 Pat 392.
5. AIR 1955 Pat 1 (Narayan, J. dissenting, held that an Act can be declared unconstitutional or invalid only on the contention of a person against whom action has been taken under the Act and who feels aggrieved by the action taken; but *see State of Bombay* v. *Chamarbaugwala*, AIR 1956 Bom 1. Court will not express academic opinion where nobody is aggrieved.).
6. *In re* Menon, C.G., AIR 1951 SC 128.
7. *State of Uttar Pradesh* v. *Sat Narain*, AIR 1959 All 218, 219 (B. Mukerji, J.).
8. *Williamson* v. *Lee Optical of Okla*, 99 L Ed 563, 572 : 348 US 483 (Douglas, J.); *Munn* v. *Illinois*, 24 L Ed 77, 87 : 94 US 113, 134 (Waite, C.J.).

legal without passing a proper law. If the Legislature decides to validate an illegal act by passing a defective law, or a law which is not constitutional in the eye of law, the illegal act shall continue as such and shall not be deemed to have been validated by or under an enactment which was passed by the Legislature to, in one way, encroach upon the jurisdiction of the Courts of law.[1] It is true that the judgment delivered by a High Court under Article 226 must be respected but that is not to say that the Legislature is incompetent to deal with problems raised by the said judgment if the said problems and their proposed solutions are otherwise within their legislative competence.[2]

26. **Collateral and preliminary proceedings.**—*Proceedings in which question may not be raised.*—"The constitutionality of a statute will not be determined on the question being raised in a collateral proceeding, or on preliminary motions, or interlocutory orders, such as motions to strike out part of a complaint as irrelevant, or a proceeding to determine the right to costs in a case,[3] or a motion in arrest of judgment, or applications for provisional remedies, or an application for a preliminary injunction. And the Courts will be especially reluctant to consider constitutional questions where summary action is demanded and there is no opportunity for research and mature consideration. It has even been held that the constitutionality of a statute under which the petitioner was indicted would not be determined on an application for a writ of *habeas corpus*, but the contrary has been ruled, where the petitioner is held on a commitment issued, not on an indictment or information, or complaint, but on a final judgment, and where the time for appeal has expired without one being taken."[4]

27. **Friendly or fictitious proceedings.**—The constitutionality of a statute will not be passed on in a friendly or in a fictitious suit, on waiver of other than constitutional questions involved, or on an agreed statement of facts. "It never was thought that, by means of a friendly suit, a party beaten in the Legislature could transfer to the Courts an inquiry as to the constitutionality of the legislative act."[5]

28. **Repeal of statute before decision of question.**—Where the impugned law is repealed by an Act before the Court decides upon its validity, the position is as if the repealed Act did not exist, and it is not necessary to pronounce its validity or otherwise.[6]

(i) Proceedings in which questions may be raised.—The constitutionality of a statute will be determined on a motion to strike out a judgment entered under it, or in a proceeding for *mandamus* to compel a Court to take jurisdiction under it, or on an application for an injunction to restrain action under it, or on application by an officer for advice as to his official duty, in *quo warranto* proceedings by the people for the forfeiture of the franchise of a corporation,[7] and even on an application for a temporary injunction in a case where a determination of the constitutionality of the statute is necessary to a decision.[8]

(ii) Form and sufficiency of objection or allegation.—"A constitutional question is raised when the constitutionality of a statute is denied on the one side and asserted on the other, the one claiming that his right will be infringed on if the purposes contemplated by such statute are

1. *Jairam Singh* v. *State of U.P.*, AIR 1962 All 350, 352.
2. *State of Orissa* v. *Bhupendra Kumar Bose*, AIR 1962 SC 945, 952.
3. 12 CJ, S. 213*(b)* at p. 783.
4. *Chicago & G.T.R. Co.* v. *Wellman*, 36 L Ed 176.
5. *Kameshwar Singh* v. *Province of Bihar*, AIR 1951 Pat 246.
6. *American Smelting Co.* v. *Colorado*, 51 L Ed 393.
7. *Hutchison* v. *Yord County*, 68 SE 577.
8. 12 CJ, S. 215*(c)* atp. 784.

carried out, and other claiming the right to carry out the purpose contemplated thereby. But no question as to the constitutionality of a statute will be considered where no right is claimed on the basis of its validity, and no injury is alleged as resulting from its application. In other words, the constitutionality of a statute cannot be raised by a mere allegation that it is invalid. Thus, one who has complied with a statute may not question its validity. The Court will not decide a constitutional question that a litigant has abandoned; and the same result follows where a litigant waived his right to enforce the statute.

(iii) Pointing out specific constitutional provisions infringed.—"A statute will not be declared void unless its invalidity is distinctly pointed out and clearly shown, and therefore one who alleges that a statute is unconstitutional must point out the specific constitutional provision that is violated by it. A general reference to such provision, however, is sufficient. It is not necessary to set out in the pleadings the sections of the Constitution violated, nor to refer to them by their numbers. The facts relied on to show the unconstitutionality of the statute must be made clearly to appear. Also, when illegal action by an official in administration of a valid statute is charged, it should be properly alleged and duly proved, or proof offered according to proper mode of procedure. Where the constitutionality of a statute has often been passed on the question will not be re-examined where no special reason is assigned why the statute is unconstitutional. On the other hand, where a statute has already been held unconstitutional in so far as it purports to confer certain jurisdiction, it is unnecessary for a party raising a point of want of jurisdiction specifically to attack the statute as unconstitutional."[1]

(iv) Time of raising question.—"It is a general rule applicable in civil cases that a constitutional question must be raised at the earliest opportunity, or it will be considered as waived. Such questions, however, may not be raised in advance of the time required by regular and orderly procedure; nor will the validity of a proposed statute be determined in advance of its enactment.[2] Neither is it proper for the Court to pass on the constitutionality of a statute before the arrival of the time when it is to go into effect and become operative, but the time between the passage of a statute relating to dormant judgments, and the date when it took effect, will be considered in determining whether reasonable time was given thereby to judgment-creditors in which to assert their rights. In considering a question affecting the constitutionality of an Act it is the Court's duty to exercise some discretion in determining the time when it shall be presented. If not raised by the pleadings, ordinarily it may not be raised at the trial and if not raised in the trial Court, it will not be considered on appeal. By way of exception to the general rule, however, it is the duty of a Court to pass on a Constitutional question, even if raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case. Thus a constitutional question will be considered by an appellate Court at any time, where it involves the jurisdiction of the Court in which the point is made, or that of the Court below.

The general rule forbidding the raising of constitutional questions for the first time on appeal has, by some authorities, been applied to criminal cases, but by the better rule the question as to the constitutionality of a statute on which a criminal prosecution is based may be raised for the first time at any stage of the proceedings either in the trial Court or on appeal. Where a statute authorizes a civil proceeding for a penalty and a criminal prosecution for, the same act, the question whether one is twice put in jeopardy for the same offence will not be considered until after one judgment is rendered and another is threatened.

1. 12 CJ, Section 216(2) at p. 755.
2. 12 CJ, Section 217(3) at pp. 785-86.

(v) Abuse of statute.—The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being 'unreasonable cannot be saved by its being' administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so judged it passes the test of reasonableness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Constitution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements.[1] Equally a possible chance or abuse of power would not permit denial of power if it is conferred.[2]

(vi) Presumption as to statutory notifications.—There is a presumption that the authority promulgating the statutory notifications, understands and correctly appreciates the need of the people, that its rules are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.[3] Whatever a preamble to a statutory order or notification might say, the presumption is that it is made in exercise of all the powers conferred by the statute in question.[4] If a statutory rule is within the powers conferred by a section of a statute protected by Article 31-B of the Constitution, it cannot be scrutinised under Articles 14, 19 and 31[5] of the Constitution.[6]

An Entry in the Legislative List cannot be impoverished by cutting down its scope under the guise of interpretation. In dealing with the scope of Entries in the State List in a Constitution which partakes of a federal character, caution with capital 'C' must be administered to oneself. A firmly balanced approach requires to be made lest the Court robs the State of the power to legislate or tax in the course of interpreting the meaning and content of the entry. Courts might well be taking away what the founding fathers intended to confer. This might give rise to an unseemly tussle between the State and Centre to the chagrin in of national unity, national integration and national good.[7]

(vii) Residual entry.—Where the source of power is definitely traceable to a particular Entry, no resort can be had to the residuary power of Parliament under Entry 97. Therefore where the impugned legislation falls under a specific Entry, it cannot be justified under residuary entry.[8]

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1. *Collector of Customs* v. *Sampathu Chetty*, AIR 1962 SC 316, 332.
2. *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149 at p. 492.
3. *Dalip Singh* v. *Rakha Ram*, AIR 1960 Punj 176, 179.
4. *Madhava Iyer* v. *Catholic Bank of India*, AIR 1957 Ker 109, 111 (Raman Nayar, J.).
5. Now omitted by 44th Amendment of the Constitution.
6. *Latafat Ali Khan* v. *State of U.P.*, (1971) Supp SCR 719, 722 (Sikri, C.J.).
7. *Cama Hotels Ltd.* v. *State of Gujarat*, (1980)21 Guj LR 913 (DB).
8. *Cibatul Ltd.* v. *Union of India*, (1980)21 Guj LR 284 (DB).

PART III

CHAPTER XXXIII

SELECT WORDS AND PHRASES

Abdication.—" 'Abdication' is a disinheriting, or rather a voluntary act of renouncing, disowning, etc." (Terms *de ta Ley*). To 'abdicate' is to renounce or give up the Throne or Government.[1] Clarke, J., observed in *People* v. *Board of Police* :[2] " I do not think that a formal notice of an intention to abdicate an office is necessary to constitute a legal resignation. But, nevertheless, whatever may be the manner by which the incumbent of an office indicates his intention of resigning or abdicating it, whether by acts inconsistent with the retention of the office or by a formal renunciation of it, it is never consummated—he is never legally out of office—until his resignation is accepted either expressly or by the appointment of another in his place."

'Abide the result'.—broadly speaking are equivalent to the words 'costs in the cause.' If the words used were 'to abide and follow the result' they may be interpreted as conveying the suggestion that the successful party must be given his costs. But the words 'abide the result' only connote that the order as to costs is to await the passing of the final decision in the case. They have not the effect of fettering the discretion of the trying Judge.[3]

'Able-bodied' and 'healthy'.—mean the possession of that health and physical ability, ordinarily possessed by men of sound bodies.[4]

About to commit.—This expression used in Prevention of Crimes Act, 1871 (English) does not include a mere intention to commit an offence.[5]

Absent.—The word 'absent' literally, that is etymologically, means 'not present'. 'Present' means 'being in the place in question'. When an executor is not in the Province in which the application is made at the time of the application, the first condition under Section 241, Indian Succession Act, 1925, is satisfied. There is no implication in the word 'absent' that the person should have been at any time present, or the person is only temporarily not present.[6] " 'Absent' does not connote that the person referred to was ever previously present; its ordinary sense is to describe a person or persons as not being in a particular place at the time referred to."[7] When a person is said to be "absent, say for a period of three months consecutively from the meetings of the Board the absence is to be reckoned not from the last meeting he attended but from the first meeting from which he was absent."[8]

"Absent without leave", used in respect of a soldier is not the same thing as desertion.[9]

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1. K.J. Aiyar's : *Judicial Dictionary* 11th (Reprint) Edition (1995) under the heading 'abdication', at p. 5.
2. 26 Barh (NY) 487.
3. *Periah* v. *Lakshmidevamma*, ILR 39 Mad 476.
4. Crawford : *Statutory Construction* at p. 725.
5. *R.* v. *Goodwin*, 1944 KB 518.
6. Lawrence Claude Leuack, *In re*, AIR 1954 Mad 898 (FB).
7. Stroud's *Judicial Dictionary*, Vol. I, (1952 Ed.) at p. 10, quoting *Ashbury* v. *Ellis*, 1893 AC 393.
8. *Kershaw* v. *Shoreditch*, 95 LJ 55.
9. K.J. Aiyar : *Judicial Dictionary*, 11th Reprint Edition 1997 at p. 11.

"Absenting himself with intent to defeat or delay creditors." A married woman, carrying on business and owing trade debts and attempting to evade service of a legal process, closed her shop, leaving no address, and joined her husband. It was held in *Re* Wasly[1] that she was absenting herself with intent to defeat or delay her creditors and the fact that she had gone to join her husband at his request was not sufficient to negative that conclusion. 'In my opinion, observed Lord Alversone, in that case, 'when you find a shop is shut up, no address left, and no means of finding out where the trader has gone, and when the evidence is sufficient, as it is here, to show an intention to evade service of proceedings, that is an 'absenting' within the sub-section."

Abuse of the process of the Court.—The phrase 'abuse of the process of the Court' is generally used in connection with action for using some process of the Court maliciously to the injury of another person.[2]

In *Chhatrapal Singh* v. *Kharag Singh*,[3] Sir Lawrence Jenkins observed :

> "In clear and distinct terms the Act (Insolvency) entitles a debtor to an order of adjudication when its conditions are satisfied. This does not depend on the Court's discretion, but is a statutory right and a debtor who brings himself properly within the terms of the Act is not to be deprived of that right on so treacherous a ground of decision as an 'abuse of the process of the Court'. This case illustrates the peril of this doctrine in India for what has been treated by the Courts below as such an abuse appears to their Lordships in no way to merit this censure."[4]

Accession.—The word 'accession' has not been defined in the (Transfer of Property) Act and in the Roman Law *'accessio'* is the general name given to every accessory thing, that has been added to a principal thing from without, and has been connected with it, whether by the powers of nature or by the will of man, so that in virtue of this connection, it is regarded as part and parcel of the thing. The question whether a particular thing can be regarded as a part and parcel of another thing has to be decided in the light of various facts—in some cases upon the intention of the parties and in some upon the law applicable thereto and in some upon both.[5]

Accident.—"The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word 'accident' is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness, but for legal purposes it is often important to distinguish careless from other unintended and unexpected results."[6]

In the same case Lord Macnaghten observed : "The expression 'accident' [in Workmen's Compensation Act, 1887, (now of 1925)] is used in the popular and ordinary sense of the word as

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1. (1901)1 KB 309.
2. *Thothu Naick* v. *Kondu Reddi*, 1 IC 221 (FB); *see* also *Tinva* v. *Subya*, 6 LBR 146 (FB).
3. 44 IA 11, 14.
4. Sanjeeva Row : *C.P.C. 5th Ed.*, Commentary on Section 115, Civil Procedure Code.
5. *Sheo Pujan Prasad* v. *Bhagwati Dubey*, AIR 1949 Pat 99, 101. As regards accession of Indian States and the jurisdiction of Supreme Court; *State of Serai Kelia, etc.* v. *Union of India*, 1951 SCR 474.
6. *Fenton* v. *Thorley & Co. Ltd.*, 1903 AC 443, 453, *per* Lord Lindley.

denoting an unlooked-for mishap or an untoward event which is not expected or designed."

"Etymologically," remarked Lord Loreburn in *Trim Joint District School, Board of Management* v. *Kelly*,[1] the "word means something which happens—a rendering which is not very helpful. We are to construe it in the popular sense, as plain people would understand it, but we are also to construe it in its setting, in the context, and in the light of the purpose which appears from the Act itself. When in *Fenton* v. *Thorley & Co., Ltd.*,[2] Lord Macnaghten spoke of the occurrence being 'undesigned', I think he meant 'undesigned by the injured' person."[3]

The expression 'accident' in Section 3 of the Workmen's Compensation Act must be construed in the popular sense. It has been defined as an unlooked-for mishap; an untoward event which is not expected or designed.[4]

Wharton *(Law Lexicon)* describes it as "an extraordinary incident; something not expected.... The meaning to be attached to the word 'accident' in relation to equitable relief, is some unforeseen and undesigned event, productive of disadvantage and due to negligence or misconduct on the part of the person seeking relief."

In *Fife Coal Co.* v. *Young*,[5] Lord Atkin was of the opinion that the meaning of the word 'accident' has been extended since the time of Lord Macnaghten. It is now used both in cases of external accident as well as in cases of internal accident, although the more usual case of an 'accident' is an event happening externally to a man. A man suffers from rupture, an aneurism bursts, the muscular action of the heart fails while the man is doing his ordinary work. The invasion of a workman's body by a bacillus derived from the employment is an accident. In *Brinton's* case[6] it was anthrax. In *Inne's* case,[7] it was *streptococci* derived from bone dust.

In ordinary language the word 'accident' includes an act of God.[8]

Accidental slip or omission.—Morton, J., observes in *In re Inchcape (Earl) Craigmyle* v. *Inchcapes*[9] :—

> It is clear that, if a Judge's attention is directed to a particular point, and applying his mind to that point he decides it, there can be no alteration under this rule even if the Judge has fallen into some manifest error. It is also established..... that, if the error in the order has arisen as a result of deliberate misrepresentation the case does not come within the rule....."

Where the omissions arose by a slip on the part of counsel, on the part of solicitor and on the part of a party to the action, the learned Judge was willing to correct the same. He observed :

> "I am glad to find it possible to give this construction to the rule, as I think it is a rule of great convenience, and.....real hardship would have resulted if I had not felt able to make the order asked for."

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1. 1914 AC 667, 680, 681.
2. 1903 AC 443.
3. *Pt. Parvila Laxmibai Atmaram* v. *Chairman & Trustees, Bombay Port Trust*, 55 Bom LR 924 : ILR 1954 Bom 353 : AIR 1954 Bom 180.
4. *Pt. Parvila Laxmibai Atmaram* v. *Chairman & Trustees, Bombay Port Trust*, 55 Bom LR 924 : ILR 1954 Bom 353 : AIR 1954 Bom 180.
5. 1940 AC 479, 488-89 : (1940)2 All ER 85.
6. 1905 AC 230.
7. 1919 AC 765, 770-71.
8. *Makin* v. *London and North Eastern Ry.*, 1943 KB 467, 475.
9. 1942 Ch 394, 396-99.

Accompany.—The ordinary meaning of 'accompany' is to go with. But there is nothing in Section 66(1) of the Income Tax Act or in any of the rules which prescribes that the fee should be enclosed along with the application, or that the application and the money should be delivered together at the same time. The words 'accompanied by a fee of Rs. 100' should not be given a too literal interpretation, and hence where the application under Section 66(1) was sent by registered post with money order for requisite fees, and the application was received within time but the money order was received one day after the due date, it was held that the provisions of Section 66(1) had been complied with.[1]

Account stated.—The essence of an 'account stated', is not the character of the items on one side or the other, but the fact that there are cross-items of account, and that the parties mutually agree, the several amounts of each and, by treating the items so agreed on the one side as discharging the items on the other side *pro tanto*, go on to agree that the balance only is payable..... There are mutual promises, the one side agreeing to accept the amount of the balance of the debt as true (because there must in such cases be, at least in the end, a creditor to whom the balance is due) and to pay it, the other side agreeing the entire debt as at a certain figure, and then agreeing that it has been discharged to such and such an extent so that there will be complete satisfaction on payment of the agreed balance.[2]

There can be an account stated between a money-lender and his client notwithstanding that the account is necessarily unilateral :

> "There are two forms of account stated. An account stated may take the form of a mere acknowledgment of a debt, and in those circumstances, though it is quite true it amounts to a promise and the existence of a debt may be inferred, that can be rebutted, and it may very well turn out that there is no real debt at all, and in those circumstances there would be no consideration and no binding promise. But, on the other hand, there is an account stated which is a very usual form between merchants in business, in which the account stated is an account which contains entries on both sides, and in which the parties who have stated the account between them have agreed that the items on one side should be set against the items on the other side and the balance only should be paid : the items on the smaller side are set-off and deemed to be paid by the items on the larger side, and there is a promise for good consideration to pay the balance, arising from this fact that the items have been so set-off and paid in the way described."[3]

Accrual of right to sue.—This expression is not synonymous with accrual of cause of action.[4]

Accrued right.—See *Zohrabai* v. *Arjuna*.[5]

Acquisition and resumption.—Provision for payment of compensation is the clearest possible indication of the fact of acquisition. Resumption implies taking back by a person who grants the land, and there can be no liability to pay compensation when such taking takes place because of breach of conditions of the grant.[6] Acquisition deprives the owner permanently of his land, and *requisition* deprives him only of his right to present possession.[7]

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1. *Nagappa* v. *Commissioner of Income-tax*, AIR 1955 Mad 162.
2. *Firm Bishum Chand* v. *Seth Girdhari Lal*, (1934)50 TLR 465 (PC).
3. *Sequeira* v. *Noronha*, 1934 AC 332, *per* Lord Atkin.
4. *Corporation of Calcutta* v. *Shyama Charan Pal*, ILR 32 Cal 277.
5. AIR 1980 SC 101.
6. *Amar Singh* v. *State of Rajasthan*, AIR 1954 Raj 291 (FB).
7. *Paresh Chandra* v. *State of Assam*, AIR 1962 SC 167, 170.

'Acquittal'.—This word, with reference to trial of an accused charged with an offence, does not mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge laid against him and has been convicted of lesser offence.[1]

'Act' within the meaning of the words used in various statutes may include omission or failure to do an act, but in order that the particular statute covers an omission or failure it must have been done under the statute or in the official capacity or under the official authority. There is no difficulty in respect of a positive act but in respect of a negative act, *i.e.*, from an omission or failure to do a certain act, there must be a statutory authority for the negative act or it must have been done in the official capacity of the authority concerned. In other words, there must be a provision in a statute requiring or permitting the authority not to do the act. If what is under the scope of the words is a positive act, an omission or failure to do it does not necessarily come within the scope and may not be said to be 'under the Act', merely because doing a positive act is within the scope of official authority or capacity or the statute it cannot be said that mere omission or failure to do it—also is within the official authority or capacity under the statute. It is essential to have a statutory provision expressly or impliedly requiring or authorising the omission or failure.[2]

The use of the word 'acts' includes a single gravest act of misconduct.[3]

Act of State.—(1) 'Act of State' is the taking over of sovereign powers by a State in respect of territory which was not till then part of its territory, either by conquest, treaty or cession, or otherwise, and may be said to have taken place on a particular date, if there is a proclamation or other public declaration of such taking over.

(2) By the taking over of full sovereign powers may be spread over a number of years, as a result of a historical process.

(3) Sovereign power, including the right to legislate for that territory and to administer it, may be acquired without the territory itself merging in the new State as illustrated in *Dattatraya Krishna Rao* v. *Secretary of State.*[4]

(4) Where the territory has not become a part of the State, the necessary authority to legislate in respect of that territory may be obtained by a legislation of the nature of Foreign Jurisdiction Act.

(5) As an act of State derives its authority not from a Municipal law but from *ultra* legal or *supra* legal means; municipal Courts have no power to examine the propriety or legality of an act which comes within the ambit of 'act of State'.

(6) Whether the act of State has reference to public rights or to private rights, the result is the same, namely, that it is beyond the jurisdiction of municipal courts to investigate the rights and wrongs of the transaction and to pronounce upon them and, that, therefore, such a court cannot enforce its decisions, if any. It may be that the presumption is that the pre-existing laws of the newly acquired territory continue, and that according to ordinary principle of international law private property of the citizens is respected by the new Sovereign, but municipal courts have no jurisdiction to enforce such international obligations.

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1. *Tara Chand* v. *State of Maharashtra*, AIR 1962 SC 130.
2. *Zila Parishad* v. *Shanti Devi*, AIR 1965 All 590, 593-4 (FB) (Desai, C.J.).
3. See *State of Haryana* v. *Lakshanlal*, AIR 1991 P & H 267 : (1991-2)100 Punj LR 595.
4. AIR 1930 PC 267 : 57 IA 318.

(7) Similarly, by virtue of the treaty by which the new territory has been acquired, it may have been stipulated that the precession rights of old inhabitants shall be respected, but such stipulations cannot be enforced by individual citizens because they are no parties to those stipulations.

(8) The municipal Courts recognised by the new Sovereign have the power and jurisdiction to investigate and ascertain only rights as the new Sovereign has chosen to recognise or acknowledge by legislation, agreement or otherwise.

(9) Such an agreement or recognition may be either express or may be implied from circumstances and evidence appearing from the mode of dealing with those rights by the new Sovereign. Hence, the municipal courts have the jurisdiction to find out whether the new Sovereign has or has not recognised or acknowledge the rights in question, either expressly, or by implication, as aforesaid.

(10) In any controversy as to the existence of the right claimed against the new Sovereign, the burden of proof lies on the claimant to establish that the new Sovereign had recognised or acknowledged the right in question.[1]

An act of State, as generally understood, is a term which is not applicable to an action of the Sovereign towards its own subjects in its own territory in time of peace. The expression is usually applied to an action of the Sovereign towards foreign subjects whether it be in time of war or in time of peace. There can be an act of State as between the Sovereign and its own subjects in time of war. It would be a misnomer to call the administrative acts of a Sovereign against its own subjects in time of peace as acts of State and to claim immunity in respect of them although they may amount to a contract in the ordinary sense between the Sovereign and his subject.[2]

"The test whether an act is or is not an act of State excluding the jurisdiction of the courts, is not whether it is capable of being legally performed only by persons specially empowered in that behalf as authorized by the law to perform specific acts of Government but whether it is an act of State in their external relations, which municipal or positive law addressed by political superiors to political inferiors does not profess to regulate. An Act of a State in respect of which the jurisdiction of the courts is barred, must be an Act which does not purport to be done under colour of legal title at all, and which could neither assert nor violate any right enforceable by law, but which must rest for its jurisdiction on considerations of external politics and inter-statal duties and rights."

"The transaction of independent States between each other are governed by other laws than those which municipal Courts administer; such Courts have neither the means of deciding what is right, nor the power of enforcing any decision which they may make.[3] In *Secretary of State for India-in-Council* v. *Kamachee Baje Sahaba*,[4] Lord Kingsdown observed :

> "The next question is, what is the real character of the act done in this case? Was it a seizure by arbitrary power on behalf of the Crown of Great Britain of the dominions and

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1. *Promod Chandra Deb* v. *State of Orissa*, AIR 1962 SC 1288, 1299-1300; *Buland Sugar Co., Ltd.* v. *Union of India*, AIR 1962 All 425; *State of Saurashtra* v. *Memon Haji Ismail*, AIR 1959 SC 1383; *Amar Sarjit Singh* v. *State of Punjab*, AIR 1962 SC 1305, 1310.
2. *Municipal Corporation, Bombay* v. *Secretary of State*, AIR 1934 Bom 277, 290; *Rao* v. *Khushaldas Advani*, AIR 1919 Bom 277, 287, reversed on appeal in *Province of Bombay* v. *Advani*, 1950 SCR 621 on another point; *Khemo* v. *Secretary of State for India-in-Council*, 105 PR 1903, quoting *Jahangir Manekji* v. *Secretary of State*, 6 Bom LR 131.
3. *Secretary of State for India-in-Council* v. *Kamachee Baje Sahaba*, 7 MIA 476, 529 at p. 539.
4. 7 MIA 529.

property of a neighbouring State, an act not affecting to justify itself on grounds of municipal law? Or was it, in whole or in part, a possession taken by the Crown under colour of legal title of the property of the late Rajah of Tanjore, in trust for those who by law, might be entitled to it on the death of the last possessor? If it were the latter, the defence set up, of course, has no foundation."

When possession is taken by the Government under colour of legal title, it does not constitute an act of State.[1] Where an estate is seized by the Crown by its right of conquest and not by virtue of any legal title, such seizure must be regarded as an act of State and is not liable to be questioned in a municipal Court.[2]

After a Sovereign State has acquired territory either by conquest, or by cession under treaty, or by the occupation territory, therefore unoccupied by a recognized ruler, or otherwise, an inhabitant of the territory can enforce in the municipal Courts only such proprietary rights as the Sovereign has conferred or recognized. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights, that gives them no right which they can enforce. The meaning of a general statement in a proclamation that existing rights will be recognized is that the Government will recognize such rights as upon investigation it finds existed. The Government does not thereby renounce its rights to recognize only titles as it considers should be recognized, nor confer upon the municipal Courts any power to adjudicate in the matter.[3]

When a grant is made out of grace and favour of the Government in exercise of its sovereign authority, the same considerations apply.[4] The removal of a rule of State, in the interest of that State, the inhabitants thereof and for the peace and good Government of the country as a whole is a political act—an act of State and therefore municipal Courts have no jurisdiction in that matter.[5]

Act or omission.—Comprehend not merely honest but also dishonest act or omission.[6]

Street, J. *neatly summarised* the thoughts on the concept in these words. "Whatever the popular signification of the word 'action' may be, it is clear, as was pointed out by Bramwell and Lush, L.JJ. in *Clarke* v. *Brad Laugh*,[7] and by the Earl of Salborne IC and Lord Blackburn in the same use on appeal to the House of Lords (1833) 8 App. on 354 (361, 374) that in its proper legal sense *it is a generic term or nomen generale* and includes every sort of legal proceedings. When used by the legislature it must.....be construed according to its true legal meaning unless it is apparent on the face of the Act in which it is used that it is intended to bear a *mere restricted meaning,"* quoted in *Velayudhan Ramakrishnan* v. *Rajeev*[8].

Additions to or alterations in buildings.—A thing is nonetheless an addition, in the largest sense of the word, because it is not of the same quality as that to which it is added. But in the context as above, if the words were understood in that sense there would fall within the word 'additions' all such things as venetian blinds, outside sun-blinds, furniture put into an

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1. *Rao* v. *Khushaldas Advani*, AIR 1949 Bom 277. 287; reversed in *Province of Bombay* v. *Advani*, 1950 SCR 621 on another point.
2. *Bhagwan Singh* v. *Secretary of State for India in Council*, 2 IA 38.
3. *Vajesingji Joravarsingji* v. *Secretary of State for India*, 51 IA 357.
4. *Ram Nundan Singh* v. *Janki Koer*, 29 IA 178 : ILR 29 Cal 828, 850.
5. *Maharaja Madhwa Singh* v. *Secretary of State for India-in-Council*, 31 IA 239, 240-41.
6. *Lingaiah* v. *Chittoor, etc., Co-operative Society*, AIR 1957 Andh Pra 98, 99 (Bhimsan Karam, J.).
7. (1881)7 QBD 38 at pp. 50, 57.
8. 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.

unfurnished house, a park added to a mansion house which enjoyed no park, or a right of fishing or shooting added to a country house which had none such. All these are additions but are they additions to buildings? Buckley, J., answered the question in negative in *In re* Clarke's Settlement.[1] According to him an addition to a building did not include the addition of Land to a house or furniture to a house (in a case under Settled Land Act). "The addition here means," observed his Lordship, "structural addition in some sense of the word. In such a context as this the addition must be of the same quality as the thing added to."

Adducing evidence.—Merely putting in papers through a witness for the prosecution in the course of ordinary cross-examination is, not 'adducing any evidence' on behalf of the accused.[2]

Adjoining.—The word 'adjoining' has been judicially interpreted in various ways. Its exact meaning was however held to be 'conterminous' as distinguished from 'near' or 'neighbouring'.[3] If certain premises are in close contact with a street or other premises though not in strict physical contact, it may fairly and reasonably be said that the premises 'adjoin' the other.[4] Actual physical proximity is not the criterion, but the situation must be so close and near as to confer some benefit or advantage which can be derived from such position. Nor it seems; does it depend upon the extent or area of contact or proximity.[5]

Administrative orders.—"The term 'administrative order' is one not known to law, British or Indian. Unlike France, with its *droit administratif* (administrative laws) and its *concild Etat* (State Council) to administer it, administrative laws and administrative Courts find no place in the Constitution of Great Britain or of India. The powers of the Local Government like the rights of other corporations and bodies can only be derived from the law and extend no further than what the ordinary law permits. The Executive Government, Local or Imperial, is as subject to the law and their acts and orders are not less open to test in the Courts than those of the humblest citizen."[6]

"Decisions which are purely administrative stand on a wholly different footing from quasi judicial as well as from judicial decisions and must be distinguished accordingly. Indeed, the very word 'decision' has a different meaning in the one sphere of activity and the other. When a person resolves to act in a particular way, the mental step may be described as a decision. Again, when a Judge determines an issue of fact upon conflicting evidence, or a question of law upon forensic argument, he gives a 'decision'. But the two mental acts differ. In the case of the administrative decision, there is no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh submissions and arguments, or to collate any evidence, or to solve any issue. The grounds upon which he acts, and the means which he takes to inform himself before acting are left entirely to his discretion. We may illustrate our meaning by two examples of such a 'decision' : (1) the decision of the Admiralty to place a departmental contract for stores—an act of purely 'business' character; (2) the decision of the Home Secretary to grant naturalization to a particular alien, a matter upon which Parliament has given him an absolute discretion."[7]

In interpreting administrative orders, it would not be right to apply the same canon of interpretation to its items as it applied to items in a legislative list.[8]

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1. (1902)2 Ch 327, 329, 330.
2. *Emperor* v. *Abdul Ali*, 1 C 280, 284 (Bom).
3. *Mayor, Councillors and Burgesses of the Borough of New Plymouth* v. *T.E. Power Board*, AIR 1933 PC 216.
4. *Buckinghamshire C.C.* v. *Trigg*, (1963)1 All ER 403, 406.
5. *Hukma* v. *State of Rajasthan*, AIR 1965 SC 476.
6. *Lakhsman* v. *Emperor*, AIR 1931 Bom 313, 315 (FB), *per* Madgavkar, J.
7. *Committee on Minister's Powers Report*, 1932 Cmd 40, 60 at p. 81.
8. *Central Bank of India* v. *Their Workmen*, AIR 1960 SC 12.

Adulteration of food and drugs.—With reference to this expression as used in 35 and 36 Vict. Section 2 (repealed; now *see* Food and Drugs Act, 1938) Blackburn, J., observed in *Roberts* v. *Egerton* :[1]

> "When a simple article like tea has foreign ingredients added to it, like gypsum and prussian blue, which are not required for the process of preparing and drying it, but are added for the purpose of making it look green, that is adulteration."

Affect the provisions.—In dealing with the effect of Indian Contract Act, 1872 , on the Carriers Act of 1865, their Lordships of the Privy Council observed in *Irrawaddy Flotilla Company* v. *Bhagwan Das*[2] :

> "Passing from these general considerations to the language of the Act of 1872, it is to be observed that the Act of 1865 is not merely left unrepealed by the later Act. As it is not 'expressly repealed, nothing in the Act of 1872 is to 'affect' its 'provisions'. It seems a wrong thing to say that provisions of an Act are not affected, when the whole foundation upon which the Act rests is displaced, and almost every section assumes a different meaning, or comes to have a different application."

Affray.—To constitute an affray, there must be a fight and it is not a fight when one side is aggressive and the other side is passive.[3]

Against the provisions of this Act.—"How are the words 'against the provisions of this Act' to be read?.....to break the regulations made under the authority of a statute is to break the statute itself."[4]

Agency.—The general principle of agency cannot prevail in the fact of the statutory provision, *i.e.* Section 5 of the Kerala General Sales Tax Act 15 of 1963.[5]

Agriculture.—The debt as defined in Madras Agricultural Debtors Act, 1954, must relate to contracts relating to the lawful use and occupation of land used for agricultural or horticultural purposes, *viz.* raising of food and garden products for men and beasts. The definition would exclude vacant sites which are not used for agriculture or horticulture.[6]

'Agricultural produce'.—It remains so whether it is stocked on the thrushing floor or stored in a house or godown.[7]

All parliamentary rates and taxes.—"Where an Act of Parliament contains an exemption from all parliamentary rates and taxes, that means, in the absence of any special words, rates and taxes existing at the time when the Act in question was passed, and the exemption does not extend to any rates or taxes subsequently imposed." A tax which is renewed every year like the income-tax is deemed to be an existing tax.[8]

Also.—Indicates the extent of the power rather than its limitation.[9] 'Also' and 'at least' signify peremptory legislative intent.[10]

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1. (1874) LR 9 QB 494, 500; *See* Section 2 of the Prevention of Food Adulteration Act, 1954 as to what constitutes 'adulteration'.
2. 8 IA 121, 130.
3. *Rami Reddy* v. *Narasi Reddy*, AIR 1938 Mad 924.
4. Bigham, J., in *Willingale* v. *Naris*, (1909)3 KB 57 at p. 66.
5. Vide *(M/s.) Cordamam Planters' Association, Bodinayakanur* v. *Dy. Commissioner of Sales Tax (Law), Board of Revenue Taxes, Ernakulam*, AIR 1989 SC 2202.
6. E.M. Chacko, *In re*, (1954)2 MLJ 737.
7. *Union Bank of India* v. *Dhanakula Venkataramaiah and others*, AIR 1985 AP 375 (DB).
8. *Stewart* v. *River Thames Conservators*, (1908)1 KB 893, 903, 904.
9. Chervirala Narayan, *In re*, AIR 1958 Andh Pra 235, 239.
10. *Urban Improvement Trust* v. *Balveer Singh*, AIR 1985 Raj 71 (DB).

Alter.—The word 'alter' means to make otherwise or different in some respect without changing the thing itself, to modify. It does not mean extinction or to abolish.[1]

'Alternative accommodation'.—The expression used in Rent Restriction Acts regarding dwellings does not suggest the consideration of the suitability of the alternative premises for the business carried on by the tenant.[2] Alternative accommodation, consisting of a house and one room in another building is not suitable accommodation, which does not contemplate anything but a single dwelling-house as constituting alternative accommodation.[3]

Amendment.—The term 'amended' must be construed in its natural meaning as altered by additions, substitutions and omissions.[4]

Amnesty.—As understood in common parlance, the word 'amnesty' is appropriate only where political prisoners are released and not in cases where those who committed felonies and murders are pardoned.[5]

And.—Where the intention of the Legislature is clear, 'and' may be read as 'or' even though the result is less favourable to the subject.[6] The use of the conjunctive 'and' and the disconjunctive 'or', one for the other, is permissible where liberal interpretation would be the intention of the Legislature or the object of the Act.[7] It is giving an uncommon sense to the word 'and' if it is given the meaning as 'for the purpose of' as used in Section 46 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.[8]

And the like.—The expression *'and the like'* would require to be construed *ejusdem generis*. The generis or the class of the items envisaged by the preceding words not having been exhaustive of the generis or class, the legislature, therefore, has supplied the words 'and the like' so as to bring in any other item of the same class or genus.[9]

And in any case.—The expression imports 'in any cases'.[10]

Anglo-Indian.—A person of mixed European and Indian descent professing Christian faith and domiciled in India is an Anglo-Indian.[11]

Annual value.—Whether used in judicial pronouncements of the highest authority or in taxing or rating statutes, the expression 'annual value' denotes the sum at which the property

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1. *District Local Board* v. *Krishna Sakharam*, AIR 1950 Bom 18, 24.
2. *Middlesex County* v. *Hall*, (1929)2 KB 110-112, 113.
3. *Sheehan* v. *Cutler*, 1946 KB 339.
4. *Deorajan Devi* v. *Satyadhan Ghosal*, AIR 1954 Cal 119.
5. Meedla Yerra Channugadu, *In re*, AIR 1954 Mad 981 (but the intention of the Andhra Government in G.O. Ms. No. 22, dated 12th January, 1954 was to pardon not only political prisoners but those convicted and sentenced to the extreme penalty of the law as well as for various terms of imprisonment for non-political crimes involving moral turpitude).
6. *R.* v. *Oakes*, (1959)2 All ER 92.
7. *Shyamapada Banerjee* v. *Assistant Registrar of Co-operative Societies*, AIR 1964 Cal 190; *Rambheja* v. *Newton Chikhli Collieries, Ltd.*, 1972 MPLJ 151, 153 (Naik, J.); *Municipal Corporation, Hyderabad* v. *Sarma*, AIR 1972 Andh Pra 96, 101 (Vaidya, J.); *See* also *Mazagaon Dock, Ltd.* v. C.I.T., 1959 SCR 848, 855 (Aiyar, J.); *Sundaram Finance Corporation, Madras by Mg. Dr. M. Subramaniam* v. *Regional Commissioner, Employees' Provident Fund, Madras*, 14 (1989)1 MLJ 356.
8. *Srinivas Prasad* v. *S.D.O., Mirzapur*, AIR 1961 All 590.
9. Vide *Express Hotels Pvt. Ltd.* v. *State of Gujarat*, AIR 1989 SC 1949 (5J) : (1989) Tax LR 944 : (1989)198 ITR 151 : (1989)3 JT 72 : (1989)29 STL 204 : (1989)74 STC 157.
10. *Sek Pershad Singh* v. *Ram Pertap Roy*, ILR 22 Cal 77.
11. *Clement Sargon* v. *Mrs. Mabel Sargon*, AIR 1933 Nag 337.

may reasonably be expected to let from year to year. In other words, the 'annual value' say of a house, must mean the annual money benefit derivable from it by the owner.[1]

'Answer'.—The words used in such Act, as are intended to prevent corruption and which give a certificate of indemnity to a witness who shall 'answer' question, is intended to mean a true answer, an honest *bona fide* answer.[2]

Any.—'Any' is a word which excludes limitation or qualification. It connotes wide generality. Its use points in a distributive construction. The word is used in the sense of 'any body', 'any person'.[3]

'Any agreement to the contrary'.—The words if read in their ordinary sense apply to any agreement whether made before the Act or after it.[4]

Any direction.—Words any direction require to be construed harmoniously with other provisions and appropriately confirmed to the objects and purposes of the Tenth Schedule. These objects and purposes define and limit the contours of its meaning. The assignment of a limited meaning is not to read it down to promote its constitutionality but because such a construction is a harmonious construction in the context. There is no justification to give the words the wider meaning.[5]

'Any lawful purpose'.—This expression used in registered societies relating to the application of the profits of the society to any lawful purpose, was subject-matter of adjudication in *Warburiton* v. *Huddersfield Industrial Society.*[6] Lindley, L.J., observed : "I cannot myself avoid coming to the conclusion that 'any lawful purpose' in Sub-section (7) means any lawful purpose which is consistent with the rules. It cannot mean anything inconsistent with the rules....can it mean 'any lawful purpose under the sun', or is it 'any lawful purpose of the society? If you look at the context, that which precedes and that which follows, I do not think 'anybody, certainly I do not think any lawyer would construe any lawful purpose, in the wide way in which Mr. Cohen invites us to construe it." According to Kay, L.J., in the same case : "The grammatical construction of the rule, looking at the words of it, seems to me to be clearly that 'lawful purpose' mentioned in that rule means 'lawful purpose of the society'."

Any of them.—It is equivalent to 'any one of them'. 'Any one of the directors' is an ambiguous term. In some contexts, it means 'only one of the directors, it does not matter which one' but in other contexts, it is capable of meaning 'every one of the directors'. Which of these two meanings was intended by the Legislature in any particular statutory phrase has to be decided by the Courts on a consideration of the context in which the words appear and in particular, the scheme and object of the legislation.[7]

Any other law for the time being in force.—To hold that this expression ought to be restricted to laws or Acts *ejusdem generis* would be stretching interpretation too far.[8]

Any person having charge or control of a train.—"The words 'any person having charge or control of the train', do not.....necessarily *point* to *one* person who is incharge of the whole train. Different duties in connection with different parts of the train may be assigned to different persons, and, in that case, each and all of these persons are charged with the conduct

1. *Chhuna Mal* v. *Commissioner, Income-tax*, AIR 1931 Lah 320(2) 328, 329 (FB).
2. *R.* v. *Hulme*, (1870) LR 5 QB 377, 378.
3. *Veeraswamy* v. *State of Andhra Pradesh*, (1959)1 Andh WR 308 (FB).
4. *Wooler* v. *North Eastern Breweries*, (1910)1 KB 247, 250, 251.
5. *Shri Kihota Hollohon* v. *Zachilhu*, AIR 1993 SC 412 (5)].
6. (1892)1 QB 817, 821, 822.
7. *Chief Inspector of Mines* v. K.C. *Thapar*, AIR 1961 SC 838, 847-48.
8. *Keshav* v. *Jairam*, ILR 36 Bom 123, 125.

of the train; and if any one of them be negligent in his own department that will constitute 'negligence' bringing the case within the terms of Section 1, Sub-section (5)" of the Employers' Liability Act, 1880.[1] Any Provincial authority, in a Constitution Act includes an Act of a Provincial Legislature."[2]

'Anything done'.—This expression would not include words spoken by a public servant, when a question of malice is under consideration while such public servant was bound to act judicially, in the sense of fairly and impartially.[3]

Appeal.—Ordinarily, the term 'appeal' means the judicial examination by a higher Court of the decision of an inferior Court.[4] An appeal in the strict sense is an enquiry by the appellate Court whether the order of the tribunal from which the appeal is brought was correct on the materials which that tribunal had before it.[5]

An appeal in legal parlance is held to mean the removal of a cause from an inferior or subordinate to a superior tribunal or forum in order to test and scrutinise the correctness of the impugned decision. It amounts in essence and pith to a complaint to a higher forum that the decision of the subordinate tribunal is erroneous and therefore liable to be rectified or set right. Supervisory or revisional power is also, normally speaking, considered to be a power vesting in the higher or superior tribunal to satisfy itself about the soundness or correctness of the order of the inferior tribunal. One usually accepted difference between the two powers (appellate and supervisory) appears to be that an appeal confers a right on the aggrieved party to complain in the prescribed manner to the higher forum, whereas the supervisory or revisional power has for its object the right and responsibility of the higher forum to keep the subordinate tribunals within the bounds of law. The latter powers, therefore, can always be exercised *suo motu* in order to see that the subordinate tribunals do not transgress the limits of law and keep themselves within the power conferred on them.[6] Appeal includes revision under Section 25 of the Provincial Small Causes Courts Act.[7] An appeal is a creature of a statute; is not an inherent or vested right and cannot survive if the very foundation-head of the right is obliterated from the provision, notwithstanding continuance of a procedural provision in the subordinate legislation.[8]

Appointed day.—A day fixed by an Act of Parliament for some purpose of the statute.

Approval.—Ordinarily, the difference between approval and permission is that in the first the Act holds good until disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous Act.[9]

Approved service.—This expression used in civil service or other similar regulations, in connection with right to pension, etc. is not restricted to continuous service.[10]

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1. *Per* Lord Watson in *McCord* v. *Comwell & Co.*, 1836 AC 57, 65.
2. *Broply* v. *A.G. of Manitolia*, 1895 AC 202, 221; *Roman Catholic Separate School Trustees* v. *R.*, 1928 AC 363, 368, 371.
3. *Royal Aquarium, etc., Society* v. *Parkinson*, (1882)1 QB 431.
4. *Wahiduddin* v. *Makhan Lal*, AIR 1941 Lah 458, 461 (FB); *Bharat Insurance Co., Ltd.* v. *State of Delhi*, 54 PLR 179, 181.
5. *Pye* v. *Minister for Lands of New South Wales*, (1954)3 All ER 514, 523.
6. *Chantala, etc. Transport Society* v. *State of Punjab*, AIR 1962 Punj 94, 100.
7. *Smt. Satyawati* v. *10th Addl. Distt. Judge*, AIR 1993 All 306 : 1993 ALJ 1128.
8. Vide *Ram Kishun Mandal* v. *State of Bihar*, AIR 1987 Pat 250 : 1987 Pat LJR (HC) 291 : 1987 BLJR 415 : (1987)7 IJ Rep 332 (FB).
9. *Shakir Hussain* v. *Chandoo*, AIR 1913 All 567, 568 (FB).
10. *Garbutt* v. *Durham Joint Committee*, 1906 AC 291.

Appurtenant to.—See *Harnam Singh* v. *Bhikimbar Singh.*[1]

Arbitrarily.—To act 'arbitrarily' is to act 'without any 'reasonable cause'. To act 'capriciously' is to act 'without any apparent reason.'[2]

Arrest.—An arrest is a restraint of the liberty of the person. Unless there is submission, actual contact is necessary to effect it. There must be touch or confinement of submission. Mere words cannot constitute an arrest.[3]

Arising out of the use of the motor vehicle.—The Kerala High Court held "We are of the view that the expression 'arising out of the use of the motor vehicle' has to be given a wider meaning.... In *N.K.V. Brothers Ltd.* v. *M. Karumai Ammal*,[4] the Supreme Court.... Save in plain cases culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes".[5]

Artisan.—Any person who participates in industrial activities or is a mechanic, is an artisan, the word 'artisan' is not confined to an artist who carries on activities in fine arts only.[6]

As appear to him to be necessary or expedient.—Scott, L.J., observed in *R.* v. *Comptroller-General of Patents*, ex parte *Bayer Products, Ltd.*,[7] with reference to such an expression appearing in Emergency Powers (Defence) Act, 1939, Section 1(1) :

> "The effect of the words 'as appear to him to be necessary or expedients is to give to His Majesty in Council a complete discretion to decide what regulations are necessary for the purposes named in the sub-section. That being so, it is not open to His Majesty's Courts to investigate the question whether or not the making of any particular regulation was in fact necessary or expedient for the specified purposes."

'As far as possible'.—When a person carrying on trade has to take precautions as far as possible in connection with a prescribed matter, the expression 'as far as possible' would mean as far as possible consistently with carrying on the trade in a proper manner.[8]

'As if had been enacted by this Act'.—In such a case the proper canon of construction of a rule or regulation, made under the power so given, is to read the original Act and the subordinate legislation together as if they were one Act and were to be construed together.[9]

'As nearly as may be'.—The expression 'as nearly as may be one-half' in Article 316 of the Constitution indicates only an approximation. It cannot be read as equivalent to 'not more than half'.[10]

Assessment.—The word 'assessment' is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax-payer.[11]

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1. AIR 1980 All 50, case under Easements Act, 1882.
2. *Quinion* v. *Horne*, (1906)1 Ch 596.
3. *Aldumal* v. *Emperor*, 23 IC 679.
4. AIR 1980 SC 1354.
5. Vide *Sharlet Augustine* v. *K.K. Raveendran*, AIR 1992 Ker 346 : ILR 1992(2) Ker 833 : 1992(1) Ker LJ 734 : 1992(1) KLT 795 (DB).
6. *Noor Ali* v. *Cawnpore Omnibus Service, Ltd.*, AIR 1955 All 707.
7. (1941)2 KB 306, 311, 312.
8. *Cooper* v. *Woobley*, 1867 LR 2 Exch 88.
9. *Baker* v. *Williams*, (1898)1 QB 23, 25, (*per* Wright, J.).
10. *Raghunadha Rao* v. *State of Orissa*, AIR 1955 Orissa 113.
11. *Commissioner of Income-tax, Bombay* v. *Khemchand Ramdas*, AIR 1938 PC 175 : 65 IA 236 : (1938)6 ITR 414, followed in *Abraham* v. *I.T. Officer, Kottayam*, (1961)2 SCR 765.

The word 'assessment' is used in two senses in the (Indian Income Tax) Act—the process of determining the amount of profit or loss and the process of levying tax, but if there is nothing repugnant in the context, the word refers to the process of determining profit or loss.[1]

Assess and re-assess.—The word 'assess' is used when an assessee has not been previously assessed, and the word 're-assess' is used when the assessee has been once assessed, and has to be re-assessed either because a portion of his income has escaped assessment or because he has been assessed at too low a rate.[2]

'Assign' and 'delegate'.—In legal parlance 'to assign' means to make or set over to another, to transfer or to assign property or some interest therein. In case of assignment, the assignor is deprived of the rights transferred and it vests in the assignee. On the other hand, the term 'delegation' does not imply deprivation of one's authority.[3]

Assignment.—Assignment is a transfer of an estate or interest in property and assignee is a person who takes some right, title or interest in property by an assignment from the owner.[4]

As soon as possible.—To do a thing 'as soon as possible' means to do it within a reasonable time, with an undertaking to do it in the shortest practicable time.[5]

'As the Court shall see fit'.—Must be construed having regard to the circumstances in respect of which the power is to be exercised.[6]

'At all times'.—Referring to the register being available for inspection, Ivory, J., observed in *Davies* v. *Winstanlly*[7] : "It is, I think, necessary to give a reasonable construction to those words and in my opinion a 'reasonable construction' is that which .....may mean 'at all reasonable times. But, at any rate, they do mean that the register must be available for inspection' at all times when the shop is open for business. In other words they mean that the register shall be open for inspection at all times during business hours.... If that is the meaning, as I think it is, of the words, then it is no answer for the manager or the proprietor to say that at some particular hour in the day during business hours he happened to be absent from the shop."

At any stage.—The expression 'at any stage' in Section 149 of C.P.C. pre-supposes that proceedings are actually pending.[8] The expression used in Order VI, Rule 17, C.P.C., does not preclude the Court of Appeal from allowing a written statement to be amended, if there are sufficient grounds therefor.[9]

At any time.—To amend a judgment or order at any time, it is manifest that the judgment, decree or order when it is amended must be in full operation and must not have become merged in or cancelled by the decree of a superior Court of Appeal.[10] The words 'at any time', in Section 125, Cr. P.C. (old) mean 'however early or however late.'[11] This expression in its literal and natural meaning is without limitation either in frequency or in duration and length of time. The

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1. *Income-tax Commissioner, Madras* v. *Muthukaruppan*, AIR 1939 Mad 376, 378 (FB).
2. *City Tobacco Mart, Bangalore* v. *Income-tax Officer, Bangalore*, AIR 1935 Mys 49.
3. *Hindu National School Movement Trust* v. *Deputy Director of Education*, 1980 All LJ 736 (FB).
4. *Chinnayya* v. *Sivaramarajee*, 1956 Andh WR 135.
5. *Hydraulic Engineering Co., Ltd.* v. *Mc. Haffie*, 1878 QBD 670; *King's Old County, Ltd.* v. *Liquid Carbonic, etc., Ltd.*, (1942)2 WWR 603, 606; see also *Vereist Administratrix* v. *Motor Union Insurance Co. Ltd.*, (1926)2 KB 137.
6. *Govinda Nair* v. *Kesava*, ILR 3 Mad 81, 84.
7. (1930)144 LJ 433, 436-437.
8. *Mg Wa Tna* v. *Abdul Ghani*, 18 IC 518.
9. *Rajammal* v. *Kannammal*, AIR 1950 Mad 695.
10. *Abbas Khan* v. *Nibarani Dassi*, 5 IC 261.
11. *Mare Gowd* v. *Emperor*, 21 IC 146 at p. 155 : ILR 37 Mad 125 (FB).

general tenure and purpose and scope of an instrument or a statute in a provision of which the expression may appear, may lead to the conclusion that the expression has not unlimited and uncontrolled literal and natural meaning but has limitations as emerge from the context and general scope not only of the particular provision in which the expression appears but also in the scheme of things in an instrument or a statute of which such a provision is an integral part.[1]

At least.—Ten days 'at least' must mean not less than ten days.[2] The rule of law is that when words such as so many 'clear days' or so many days 'at least' are used, the two terminal days must be excluded.[3]

At or about the time.—The expression must mean at once or at least very shortly thereafter. It does not mean at any time after the event.[4]

Attain the age of.—"A person attains the age of twenty-one years, or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth or other birthday, as the case may be."[5]

Attempt.—It may be broadly stated that an intentional act which a person does towards the commission of an offence but which fails in its object through circumstances independent of the volition of that person is attempt.[6]

Attendant circumstances.—'An attendant circumstance' under Section 81 of the Trust Act means a circumstance that accompanies or follows the transfer or bequest. Such circumstances mean the same as surrounding circumstances.[7]

'Authority competent'.—'Authority competent in this behalf', would mean, in accordance with the ordinary use of language, statutory authority.[8]

Authority of this Act.—An act done under the authority of an Act does not include an act of culpable negligence.[9]

Bailee.—The word 'bailee' means a person to whom goods are entrusted for a specific purpose without any intention of transferring the ownership to such person.[10]

Become.—The word 'become' in its usual and proper acceptation imports a change of condition, that is the entering into a new state or condition, by a change from some former state or condition.[11]

Before.—This word in its context may mean 'not after'.[12]

Being constructed.—A building is being constructed, although it is completed but the scaffolding is being removed.[13]

Belief in good faith.—The expression 'belief in good faith' in Section 51, Transfer of Property Act, must include a due enquiry. A belief must generally imply good faith; but where a

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1. *Chahat Khan* v. *State of Punjab*, AIR 1966 Punj 111, 119 (FB) (Mehar Singh, J.).
2. *Mitchell* v. *Foster* (1840)113 ER 891; *Howes* v. *Turner*, (1876)1 CPD 670; *R.* v. *Aberdare Canal Co.*, (1850)14 QB 854; *Norton* v. *Salisbury Town Clerk*, (1846)136 ER 412; *R.* v. *Middlesex*, (1845)14 LJMC 139.
3. *Rambharoselal Gahoi* v. *Statute of M.P.*, AIR 1955 Nag 35.
4. *In re* Appadurai Pillai, AIR 1945 Mad 358.
5. Re *Shurey Savory* v. *Shurey*, (1918)1 Ch 263 at 265.
6. *State of U.P.* v. *Ramcharan*, AIR 1962 All 359, 362.
7. *Richard Taylor* v. *Rajah of Parlakimedi*, ILR 32 Mad 443.
8. *Budhi Lal* v. *Morarji*, ILR 31 Bom 413.
9. *Hall* v. *Sample*, (1862)3 F & F 337, 559.
10. *State* v. *Jage Ram*, 54 PLR 18, 22.
11. *Archer* v. *Kelly*, (1860)29 LJ Ch 911 : 62 ER 394.
12. *R.* v. *Arkwright*, (1848)12 QB 960, 970.
13. *Frid* v. *Fenton*, (1900)69 LJQB 436.

man has consciously avoided making an enquiry on any matter, he may nevertheless be said to have a belief on that matter and that that belief would in such a case not be a belief in good faith. But looking at the obvious purpose of the section, this seems to attribute an unduly confined scope to the expression and if it means more than the absence of a conscious avoidance of enquiry, it must imply the necessity for a due enquiry.[1]

Believe.—The word 'believe' is a very much stronger word than 'suspect'.[2]

Belonging to.—See *Pathuramma Umma* v. *Spl. Tahsildar.*[3]

'Beneficially' means 'for his own benefit', in contradistinction to being entitled as a trustee.[4]

Black market.—A term euphemistically used in commercial transactions entered into between parties in defiance of law.[5]

Bona fide is opposite to fraud.[6]

"Sir Francis Jeune in *Goldberry & Son* v. *Mayor, etc. of Liverpool,*[7] to which I have referred defines the expression *'bona fide'* in terms particularly appropriate to the facts of the present case. The test according to him is, has the public body acted *bona fide* in the sense that it has fairly endeavoured to ascertain what is necessary or expedient, clearing its mind from personal motives and personal feeling? I quite realize that the mere fact that another person might arrive at a different conclusion, is no ground whatsoever for reviewing the decision of the public body in whom the discretion has been vested."[8]

Bonus.—In modern times, bonus is clearly regarded as deferred wages payable to employees which may be claimed by them as of right under the term of employment.[9]

Brought before.—A person is sufficiently 'brought before' a Magistrate if he appears in obedience to a summons issued to him. It is not necessary that he should have been actually arrested and brought in custody.

Building or structure.—In order to prevent the destruction of the uniformity by forbidding any 'building, structure or erection' to be put up in advance of the general line of houses, provisions are usually made therefor in Municipal Acts. These words would be ample to include any covered building whether made of wood or of bricks or stone. When one comes to consider a boundary wall, however, the case is somewhat different. It then becomes a question of degree and of intention.[10]

Business.—"Whether one or two transactions", observed Lord Esher, M.R. in *In re* Griffin Exp. Board of Trade,[11] "make a business depends upon circumstances of each case. I take the test to be this if an isolated transaction, which if repeated would be transaction in a business, is proved to have been undertaken with the intent that it should be the first of several transactions, that is, with the intent of carrying on a business, then it is a first transaction in an existing business. The business exists from the time of the commencement of that transaction with the intent that it should be one of a series."

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1. *Abhoy Churn Ghose* v. *Attarmoni Dassee,* 3 IC 415.
2. *Mohd. Ibrahim* v. *Emperor,* 32 IC 153; *Bharat Chandra Das* v. *State,* AIR 1950 Assam 193.
3. AIR 1980 Ker 125 (FB), case under Kerala Land Reforms Act, Section 75(2)*(iv)*.
4. *Wilcox* v. *Smith,* (1857)62 ER 16.
5. *Corporation of Calcutta* v. *Padma Devi,* AIR 1962 SC 151, 154.
6. *Teynham (Lord)* v. *Mullins,* (1674)86 ER 778.
7. (1900)82 LT 362.
8. *Rajah of Vizianagram* v. *Secretary of State,* AIR 1937 Mad 51, 60, *per* Venkatasubba Rao, O.C.J.
9. *Basti Sugar Mills, Ltd.* v. *State of U.P.,* AIR 1954 All 538 (FB).
10. *Ellis* v. *Plumstead Board of Works,* (1893)68 LT 291.
11. (1890)60 LJQB 235, 237.

The term 'business' includes every trade, occupation and profession. The term has no technical meaning, but has to be read with reference to the object and intent of the Act in which it occurs. The term 'business' means an affair requiring attention and care; that which busies or occupies one's attention and labour as his chief concern; mercantile pursuits; that which which one does for a livelihood; occupation; employment.[1]

The phrase 'carrying on business' implies a repetition or series of acts. This phrase is in itself one of varying import according as it is construed with an implied addition, so as to make it mean the whole business, the principal part of the business, any part of the business or that part of the business which may properly be supposed to have been contemplated. It has in the English Courts been interpreted according to the context and the apparent purposes of the Legislature.[2]

The activities which constitute carrying on business need not necessarily consist of activities by way of trade, commerce, or manufacture or activities in exercise of a profession or vocation. They may even consist of rendering services to others which services may be of a variegated character.[3]

The activities in order to constitute a business need not necessarily be concerned with several individuals or concerns. They would constitute business in spite of their being restricted to only one individual or concern. It is the nature and scope of these activities and not the extent of the operations which are relevant for this purpose.[4]

The work carried on by the Government of India in governing the country, in salt, opium, etc. although carried on by Government officers in charge of the several departments of Government, is not, properly speaking, business carried on by Government, but work carried on for the benefit of the Indian Exchequer.[5]

Bought and sold.—The words 'bought and sold' aim at a single transaction whereunder a dealer buys from a producer who brings his goods to the market for sale. The transaction is one which results in buying by one and selling by another. The words do not refer to a transaction having a dual aspect, viz., buying by the dealer from the producer and selling of the identical goods by the dealer to customers.[6]

Business connection.—The phrase 'business connection' is different from, though doubtless not unrelated to the word 'business' of which there is a definition in the Income Tax Act.[7]

By himself.—When prior to removal or dismissal of a Government servant a notice is sent to him giving him an opportunity of being heard 'by himself' and of calling evidence in his defence those words 'by himself' exclude him from being heard either by counsel or solicitor.[8]

C. & F. Contract.—Under C. & F. contract the buyer undertakes to insure the goods while in transit. A.C. and F. contract is for all practical purposes an F.O.B. contract. In the case of such contracts property passes not when the goods are ascertained but subsequently.[9]

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1. *Kesvan Nair* v. *C.K. Babu Naidu*, AIR 1954 Mad 892.
2. *Kesvan Nair* v. *C.K. Babu Naidu*, AIR 1954 Mad 892.
3. *Lakshminarayan Ram Gopal & Sons, Ltd.* v. *Government of Hyderabad*, AIR 1954 SC 364.
4. *Lakshminarayan Ram Gopal & Sons, Ltd.* v. *Government of Hyderabad*, AIR 1954 SC 364.
5. *Daya Narain Tewary* v. *Secretary of State*, ILR 14 Cal 256; *see* also *Rodricks* v. *Secretary of State*, ILR 40 Cal 308; *Govindarajulu* v. *Secretary of State*, AIR 1927 Mad 689, 692. The 'pilgrim business' of a hereditary priest is not deemed to be 'business' of which a receiver could be appointed; *Anand Mahanti* v. *Ganesh Maheshwar*, 21 IC 969 : ILR 40 Cal 678.
6. *Sri Krishna Coconut Co.* v. *E.G. Coconut & Tobacco Market Co.*, AIR 1967 SC 973.
7. *Commissioner of Income Tax, Bombay* v. *Currimbhoy Ebrahim*, AIR 1936 PC 1, 4 : 63 IA 1.
8. *R.* v. *Mansel Jones*, (1889)23 QBD 29, 32.
9. *India Coffee & Tea Distributing Co. Ltd.* v. *State of Madras*, AIR 1954 Mad 1030.

C.I.F. Contract.—The letters C.I.F. stand for costs, insurance and freight. A seller under such contract has *firstly*, to ship to the port of shipment goods of the description contained in the contract; *secondly*, to procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract; *thirdly*, to arrange for an insurance upon the terms current in the trade which will be available for benefit of the buyer; *fourthly*, to make out an invoice, and *finally*, to tender these documents to the buyer so that he may know what freight he has to pay and to obtain delivery of the goods if they arrive or recover their loss if they are lost on the way. The essential feature is that performance of the bargain is to be fulfilled by delivery of documents and not by the actual physical delivery of the goods by the vendor.[1]

Can be applied.—This expression used with reference to application of statutes to territories, has reference only to those statutes which 'can be reasonably applied'.[2]

Concellation and non-renewal.—There is no justification for stretching the word 'cancellation' to cover the case of 'non-renewal'.[3]

Cannot be found.—A company trustee, which has ceased to exist, is a trustee that 'cannot be found'.[4]

Capable of remedy.—This phrase in Sub-section (2) of Section 155 of the Bengal Tenancy Act means physically possible of remedy and does not mean possible of remedy by compensation.[5]

Carrier.— In the absence of a definition of the words 'carrier' in Article 30, Limitation Act, it has to be given the popular meaning and as it is commonly understood, that is, in the sense in which people conversant with the word would understand it. If anyone does the business of carrying goods as a public employment, he would be a carrier and the fact that Government is doing the business would not make any difference.[6]

Carry on business.—That has for its object the acquisition of gain. This expression when used in Companies Act, implies a repetition of acts, and excludes the case of an association for doing one particular act which is never to be repeated. That series of acts is to be a series of acts which constitute a business. Now, the word 'business might in a grammatical sense include things which no ordinary person would call a business, and inasmuch as the Legislature could not particularize every kind of business which they intended to include, they have, in order to confine the meaning of that large word 'business', stated that it is to be a business 'that has for its object the acquisition of gain.' The association, must be formed in order to carry on a series of acts having the acquisition of gain for their object.[7]

Government servants merely performing duties that are assigned to them cannot be regarded as carrying on business.[8]

The words 'carrying on business or personally work for gain' are inapplicable to the Secretary of State for India in Council.[9]

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1. *India Coffee & Tea Distributing Co., Ltd.* v. *State of Madras*, AIR 1954 Mad 1030.
2. *Whicker* v. *Hume*, (1852)21 LJ Ch 406, 409; *Jet* v. *McKinney*, (1889)14 AC 77, 81.
3. *Kanhaiyalal Azad* v. *District Magistrate*, AIR 1955 Ajmer 32.
4. *Re* Duttan's Patents, (1923)400 RPC 84, 86.
5. *Harak Singh* v. *Kirat Narain Singh*, 4 IC 734.
6. *Rahim Sahib* v. *Governor-General-in-Council*, (1955)1 MLJ 506.
7. *Smith* v. *Anderson*, (1880)15 Ch D, 247, 277, 278; *Azim Uddin* v. *Rangaswami Pillai*, (1958)2 MLJ 389.
8. *Abdul Monaf* v. *Sunamganj Municipality*, AIR 1941 Cal 482.
9. *Govindarajulu* v. *Secretary of State*, AIR 1927 Mad 689, 692.

Certain person.—The expression would include a person who is capable of being ascertained (when used with respect to a promissory note) at the time when such negotiable instrument is made.[1]

Certificate of character.—Section 7 of the Legal Practitioners Act lays down that a pleader at the end of the year "shall, subject to any rules consistent with this Act, which may from time to time be made in this behalf by the High Court, be entitled to have his certificate renewed." Rule 25 of the Rules made under the Act lays down that "with his application for renewal the pleader shall file a certificate of character from the presiding officer of the Court in which he practises." If this rule, therefore, is consistent with the Act, it would seem that if the certificate of character is not filed, the pleader is not entitled to renewal. A pleader practising in a Munsif's Court applied for a renewal of his certificate, appending to his application a certificate by the Munsif that he knew nothing against his character. The pleader had, however, been a defendant in a case tried before the District Judge and that officer had formed an unfavourable opinion of his character. Accordingly he refused to renew the certificate. The pleader came up to the High Court of Calcutta in *In re* Jadab Chandra Chakravarti,[2] for a rule against the order of the District Judge. Their Lordships thereupon opined : "We do not think, however, that the rule can be said to be consistent with the Act, so far as it requires a certificate of character, unless all real meaning is taken away from the expression. The presiding officer, as in the present case, may know nothing about the pleader, and a certificate to the effect that he knows nothing about the pleader can hardly, without straining language, be called a certificate of character. Or the presiding officer may even think the pleader to be not of good character, though his misconduct may not be so bad as to require the intervention of the Court under Section 13 or 14 of the Act. In such case also the presiding officer should not, if honest, give a certificate of character. But it could hardly have been the intention of the Legislature that the presiding officer of the Court in which a pleader practises should thus practically have it in his power, without any enquiry, to suspend a pleader for an indefinite time. Sections 12 to 14 prescribe by what proceedings a pleader may be suspended or dismissed, and we think, that rules framed under Section 7 must be consistent with these sections. The present rule can only be regarded as consistent with these sections if the expression 'certificate of character' is construed as meaning nothing more than a certificate that the presiding officer of the Court is not aware of any misconduct of the pleader justifying action under Sections 12 to 14. Such a certificate could hardly be regarded as a certificate of character in any ordinary sense of the words, but unless the words are construed in this way we think the rule cannot be lawfully enforced."

Cess.—'Cess' as defined in Murray's *Oxford Dictionary* means specially in relation to India 'a tax levied for a specific object'. It is no doubt said that sometimes it meant a rate levied by local authority and for local purposes; but as explained there, it is now superseded in general English use by the word 'rate'. Similarly, the word 'duty' is defined in the same dictionary as a 'payment to the public revenue levied upon the import, export, manufacture, or sale of certain commodities'. Tax in legal parlance also means nothing more than money which individuals are compelled to pay for public purposes. It is impossible therefore to distinguish 'tax' from 'cess' or 'duty'.[3]

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1. *Yeo Eng Puu* v. *Chetty Firm*, 14 IC 293.
2. 1 IC 334.
3. *Daulat Ram* v. *Lahore Municipality*, AIR 1941 Lah 40; *Emperor* v. *Munna Lal*, AIR 1942 All 156.

Charitable purpose.—See *Md. Yunus* v. *I.G., Reg.*[1]

While interpreting the expression 'charitable purpose' in Indian Laws, English decisions can, have no binding authority.[2]

A cess is a tax levied for specific purposes often with a prefixed word defining the object. A licence on the other hand, involves a permission to trade subject to compliance with certain conditions.[3]

Child.—The word 'child' has to be understood in the sense in which it best harmonises with the subject and context of the enactment in which it is used and with the objects of the statute itself. Even so understood 'child' apart from relationship must be taken to be a 'minor' whether under the Minority Act or Court of Wards Act or the Guardians and Wards Act. It cannot mean a person of tender age or any person who is unable to maintain itself, of whatever age. Inability to maintain itself relates to infancy.[4]

Cinema Exhibition of Movies, VCR and T.V.—Cinema Exhibition of Movies, VCR and T.V. in this manner in the petitioner's restaurant falls within the ambit of 'Cinema' in entry 32 of List II of the Constitution and is governed by the regulatory provisions of the M.P. Cinemas (Regulation) Act 17 of 1952.[5]

Circumstances creating a legal liability.—When used in Workmens' Compensation Act this expression means not merely circumstances which in fact create a legal liability, but circumstances which are alleged to create a legal liability which would be the foundation of an action for negligence.[6]

Civil proceedings.—A proceeding taken for the enforcement of civil right is a civil proceeding, even if the jurisdiction of the Court, which has been invoked, happens to be special or extraordinary.

Another civil proceeding.—The expression 'civil proceeding' is of wide import. 'Another civil proceeding' will include execution proceedings in another suit.[7]

The word 'civil' when prefixed before 'proceeding', 'action', 'suit', 'remedy' or other cognate expression relates to private rights and remedies given to individuals or corporations as members of the community in contradistinction to those which are public and relate to Government. An action which has for its object, the recovery of private or civil rights, or compensation for their infraction, is necessarily a civil proceeding. A civil action is a proceeding in a Court of justice by one party against another, for the enforcement or protection of a private right, or for the redress or prevention of a private wrong.

The word 'criminal' is used in contradistinction to civil proceedings or actions. The former includes proceedings taken in the name of the State the end and design of which is the punishment of the criminal; while the latter signifies actions for enforcement of civil rights.[8]

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1. AIR 1980 Pat 139, case under Societies Registration Act, 1860.
2. *Addl. I.T.C.* v. *Surat A.S.C. Manufacturers' Association*, AIR 1980 SC 389.
3. *Gwalior Sugar Co.* v. *State of M.B.*, AIR 1954 Madh B 196.
4. *Amritlal* v. *Marimedhu*, AIR 1967 Mad 77.
5. *Restaurant Lee Jagdalpur* v. *State of M.P.*, 1983 MPLJ 543 (DB).
6. *Page* v. *Buttwell*, (1908)2 MB 758.
7. *Shyamsundar* v. *Chand Bai*, AIR 1962 Raj 96, 98.
8. *Kehar Singh Nihal Singh* v. *Custodian-General, Evacuee Property*, AIR 1959 Punj 58, 60; *Jagannath Aggarwal* v. *State of Orissa*, AIR 1957 Orissa 42; *Ramayya* v. *State of Madras*, AIR 1952 Mad 300; *State of U.P.* v. *Mukhtar Singh*, AIR 1957 All 505, 522; *Brijlal Suri* v. *State of U.P.*, AIR 1958 All 621; *Kapur Singh* v. *Union of India*, AIR 1957 Punj 173 (FB); *Collector of Monghyr* v. *Pratap Singh*, AIR 1957 Pat 102 (FB). (A right to election is not a civil right and a proceeding relating thereto is not a civil proceeding); *V.V. Giri* v. *Dora*, AIR 1958 Andh Pra 642.

Class.—From the use of the word 'class' in Article 16(4), it cannot be contended either that class is antithetical to a caste or that a caste cannot be a class or that such a caste as such can never be taken as a backward class of citizens. The word 'class' in Article 16(4) is used in the sense of a social class and not in the sense it is understood in Marxist Jargon.[1]

Clear days.—Not later than ten days prior to the date fixed for the poll. In interpreting this expression, the date of the poll will have to be excluded, and ten days will have to be counted backwards from the date next before such date (but inclusive of that date), unless the expression used is ten 'clear' days.[2]

When words such as so many 'clear days' or so many days 'at least' are used, the two terminal days must be excluded.[3]

Clerical error.—'What is a clerical error or mistake'. An error that is committed in the course of the performance of what may be regarded as clerical duties must necessarily be regarded as clerical mistake or error.[4]

Collusion.—In divorce proceedings, 'collusion' is an illicit secret understanding by which parties who are jointly furthering a common purpose assume the semblance of hostility.[5]

Colourable legislation.—The doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot do directly. In other words, though the letter of the law is within the limits of the powers of the Legislature, in substance the law has transgressed those powers and by doing so it has taken the precaution of concealing its real purposes under the cover of apparently legitimate and reasonable provisions.[6]

Commercial transaction.—From the terms of the Agreement it appears that R.M.I. rendered consultancy services to Boeing as an independent contractor. The said services were for promoting the sales of new Boeing Model 737, 747, 757 and 767 types of aircrafts in India and to assist Boeing in the sale of such aircrafts. While R.M.I. was entitled to payment of compensation for such services, the costs, expenses and charges necessary or incidental to R.M.I.'s operations were to be borne by R.M.I.

It is not disputed that the sale of aircrafts by Boeing to customers in India was to be a commercial transaction. The question is whether rendering of consultancy services by R.M.I. for promoting such commercial transaction as consultant under the Agreement is not a 'commercial transaction'. It is held that the agreement to render consultancy services by R.M.I. to Boeing is commercial in nature and that R.M.I. and Boeing do stand in commercial relationship with each other. While construing the expression 'Commercial' in Section 2 of the Act it has to be borne in mind that the Act is calculated and designed to subserve the cause of facilitating

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1. *Indra Sawhney* v. *Union of India*, AIR 1993 SC 477 : (1992) JT (SC) 273 (9J).
2. *Chakrapani* v. *Chondoo*, AIR 1959 MP 84, 92 (part of a day is not taken note of in computing time).
3. *Rambharoselal Gahoi* v. *State of M.P. and others*, AIR 1955 Nag 35.
4. *Sutharsana* v. *Samarapuri*, AIR 1928 Mad 690, 692-93, *per* Srinivasa Ayyangar, J.
5. *Hall* v. *Hall*, AIR 1933 Sind 70, 74.
6. *Sonapur Tea Co.* v. *Deputy Commissioner, Kamrup*, AIR 1962 SC 137, 140; *Gajapati* v. *State of Orissa*, 1954 SCR 1; *Karimbilkun Gikoman* v. *State of Kerala*, AIR 1962 SC 723, 727. (Objections based on colourable legislation have relevance only in situations when the power of the Legislature is restricted to particular topics, and an attempt is made to escape legal fetters imposed on its powers by resorting to forms of legislation calculated to mask the real subject-matter); *All-India Bank Employees' Association* v. *National Industrial Tribunal (Bank Disputes), Bombay*, AIR 1962 SC 171, 184; *Thirubhuvanam Silk Handloom Weavers' Co-op. Production & Sales Society Ltd.* v. *State of Tamil Nadu*, (1992)2 MLJ 260 (DB).

international trade and promotion thereof by providing for speedy settlement of disputes arising in such trade through arbitration and any expression or phrase occurring therein should receive consistent with its literal and grammatical sense, a liberal construction.[1] The expression 'Commercial' should, therefore, be construed broadly having regard to the manifold activities which are integral part of international trade today.

In the context of Article 301 which assures freedom of trade, commerce and intercourse, it has been held :

> "Trade and commerce do not mean merely traffic in goods, *i.e.*, exchange of commodities for money or other commodities. In the complexities of modern conditions, in their sweep are included carriage of persons and goods by road, rail, air and waterways, contracts, banking, insurance, transactions in the stock exchange and forward markets, communication of information supply of energy, postal and telegraphic services and many more activities—too numerous to be exhaustively enumerated which may be called commercial intercourse".[2]

Committed after the passing of this Act.—"At the present time there are two well-known dates in many Acts of Parliament, the date of the passing and the date of coming into operation. If, therefore, an Act is silent as to the date of its coming into operation, it comes into operation at the date of its passing. When the Act is said to apply to a crime committed after the passing of the Act, it includes a crime committed before the Act came into operation and can be applied in the case of a crime committed at any time after the passing of the Act.[3]

Committee.—"The term 'committee' means an individual or a body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it in the expectation of their act being confirmed by the body they profess to represent or act for."[4]

Commodities.—It was held that commodities other than those specified cannot be introduced on the ground that they are derived from the primary commodities mentioned in Section 14(1) of Central Sales Tax Act. The said clause refers certain primary commodities; the goods produced or manufactured out of them cannot be included into those commodities.

Communications in official confidence.—The words 'communications in official confidence,' used in Section 124 of the Indian Evidence Act import no special degree of secrecy and no pledge or directing for its maintenance but include generally all matters communicated by one officer to another in the performance of his duties. These words have the same meaning as 'professional confidence' used in Section 126 of that Act.[5]

Compartment.—In a railway carriage, the word 'compartment' under Section 110 of Indian Railways Act connotes the quality of complete separation.[6]

Competent Jurisdiction.—Any decision by competent court or tribunal though of limited jurisdiction which includes pecuniary jurisdiction will operate as *res judicata* in a subsequent suit or proceeding on an issue which had arisen directly and substantially between the same parties notwithstanding the fact that such court of limited or special jurisdiction was not

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1. See *Renusagar Power Co. Ltd.* v. *General Electric Co.*, (1985)1 SCR 432, at p. 492 : AIR 1985 SC 1156 at p. 1181 and *Koch Nevigation* v. *Hindustan Petroleum*, 1989 Supp. (I) SCR 70 at p. 75 : AIR 1989 SC 2198 at pp. 2200-01.
2. *Atiabari Tea Co. Ltd.* v. *State of Assam*, 1961(I) SCR 809 at p. 874 : AIR 1961 SC 232 at pp. 259-60 (Shah, J.); *R.M. Investment & Trading Co. Pvt. Ltd.* v. *Boeing Co.*, AIR 1994 SC 1136.
3. *R.* v. *Smith, R.* v. *Weston*, (1910)1 KB 17, 24, 25; *Jugal Kshore* v. *Zawania Begam*, 1881 AWN 58.
4. *Reynell* v. *Lewis, Wyld* v. *Hopkins*, (1846)143 ER 954.
5. *Nagaraja Pillai* v. *Secretary of State*, 26 IC 723.
6. Padabhai Jamsedji, *In re*, ILR 24 Bom 293.

competent to try the subsequent suit.[1]

Concurrent jurisdiction.—The expression used in connection with the application of the principles of *res judicata,* means concurrent as regards pecuniary limit as well as the subject-matter.[2]

Conditional legislation.—When it is not possible to provide specifically the expediency of enforcement of different provisions of a statute at different dates in future, the Legislature delegates its power to an authority to decide such expediency and to enforce the provisions of the Statute of a later date. Such practice has been followed by the Legislature from earliest times and a legislation of this kind is known as conditional legislation.[3] It was *held* that Section 3(1) of the West Bengal Land Reforms Act is a piece of conditional legislation. The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective; and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the Legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words, by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the Legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend.[4]

Consortium.—Consortium under the Fatal Accidents Act indicates only the wife but not the children.[5]

Conspicuous place.—The word 'conspicuous' must be a relative term. Where there was large body of evidence which established that the place inside the *Nezarat* where the notice in question was put up was the usual place where such notice had always been affixed and that the public had free access to the place and everybody interested in matters of that description knew very well that it was to be found there, it was held that the notice was affixed in a conspicuous place.[6]

Constituted.—The term 'constituted' is not equivalent to 'incorporated'; it is of wider import. It seems to be equivalent to 'established'. The Act or Acts need not be the Act or Acts by which the company is incorporated by any Act, whether original or subsequent, by which the company is constituted for the purpose of constructing, maintaining or working a railway, is

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1. *Sulochana Amma* v. *Narayana Nair,* AIR 1994 SC 152 (AIR 1978 Cal 440 and AIR 1980 Cal 181 over-ruled).
2. *Rajah Run Bahadur Singh* v. *Mst. Lachoo Koer,* 12 IA 23, 38.
3. *Jagdish Chandra Chowdhury* v. *State of West Bengal,* 85 Cal WN 373.
4. *Hamdard Dawakhana* v. *Union of India,* (1960)2 SCR 671, 695; *Bangalore Woollen etc. Mills* v. *Corporation of Bangalore,* AIR 1962 SC 1263, 1266 (conditional legislation); *Baxter* v. *Ah Way,* 8 CLR 626 at 637 : "The aim of all Legislatures is to project their minds as far as possible into the future, and to provide in term as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specially for all cases and, therefore, legislation from the very earliest times and particularly in modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied", *quoted* in *Edward Mills Co., Ltd.* v. *State of Ajmer,* (1955)1 SCR 735, 748; *Bhatnagar & Co.* v. *Union of India,* AIR 1957 SC 478); *Sardar Singh* v. *State of Rajasthan,* AIR 1957 SC 510.
5. See *Minor Farooq* v. *Municipal Corporation of the City of Ahmedabad;* AIR 1985 Guj 114 (DB).
6. *Bhupendra Narayan* v. *Maharaj Bahadur,* AIR 1933 Cal 54, 61.

within the meaning of section."[1]

Consultation.—Is not to be understood as 'concurrence'.[2]

Contingency staff.—Employees on the contingency staff are employed not in regular employment but in employment merely incidental to an office for the period during which they have actually worked as no bill for any other period can be certified for payment. Such employees cannot claim to remain in employment when the work for which they are employed ceases to exist or they do not actually do the work or job. The contingency paid staff is thus not a part of any regular service or engaged against a regular civil post, but the employment of such staff is conditional upon *(a)* the funds being available for the contingency for which the casual employment is created, or *(b)* the duration of the work for such casual employment, or *(c)* the employee actually doing the work or job and not being entitled to pay wages for the period he does no such work or job.[3]

Continue in office.—An officer is said to 'continue in office' if his functions and duties are continued, though the tenure by which he holds office may be changed.[4]

Continue to be levied.—It posits a limited legislative power which enables the erstwhile Legislature to continue or discontinue the levy.[5]

Continuing offence.—The expression 'continuing offence' has acquired a well-recognised meaning in criminal law. If an act committed by an accused person constitutes an offence and if that act continues from day to day a fresh offence is committed by the accused so long as the act continues.[6]

Continuing wrong.—According to the test laid down in *Brojendra Kishore Roy* v. *Bharat Chandra Roy*,[7] "there is a 'continuing wrong' when the wrongful act complained of produces a state of affairs every moment a 'continuance of which is new tort'. There appears to be good authority for the proposition that in the case of 'trespass' there is a fresh injury and a fresh cause of action at every moment during the period during which the trespass continues.[8]

Co-option.—Co-option does not mean election, dictionary meaning cannot be taken as an authoritative exposition of the meaning of words in a statute. An Election Tribunal cannot, therefore, entertain a petition questioning co-option.[9]

Contrary to any provision of law.—Contrary to any provision of law is an expression of which import and the meaning to be given to it depends upon the content and the scheme of the statute. It should be understood as having reference to an existing Act made in opposition to law.[10]

Corporation.—While construing the expression 'Corporation' in Section 2*(e)*, 2*(ii)* of the Public Premises Act, it cannot be ignored that the object of the legislation in enlarging the definition of 'public premises' in Section 2*(e)* is to make available the machinery of Act for evicting unauthorised occupants of not only from the premises belonging to the Central Government but also from premises belonging to companies, corporations and statutory bodies in

1. Sections 3 and 4 of Railway Companies Act (1867).
2. *Kodambakkam Panchayat* v. *Inspector of Panchayats*, (1971)1 MLJ 184, 187 (Ramprasada Rao, J.).
3. *Kartar Singh* v. *State of Patiala & East Punjab States Union*, AIR 1955 Pepsu 25 at 27.
4. *Sweald* v. *Berwick upon-Tweed*, LR 5 HL Cases 856.
5. *Ram Krishna* v. *Jaunpad Sabha*, AIR 1962 SC 1073, 1080.
6. *State* v. *Bhiwandiwalla*, AIR 1955 Bom 161; *State* v. *Kunj Bihari Chandra*, AIR 1954 Pat 371 (FB).
7. 31 IC 242 : 20 CWN 481.
8. *Khair Mohd. Khan* v. *Mst. Jannat*, AIR 1940 Lah 359, 363 (FB).
9. *Manonmani* v. *Sesha Mudaliar*, ILR (1968)2 Mad 616.
10. *Lilly Stella Rodrigues* v. *Girija Bai*, AIR 1969 Mys 100.

which the Central Government has a substantial interest.[1]

Corruption.—An attempt to obtain a bribe in a single case which was never paid does not fall under Clauses *(a)*, *(b)* or *(d)* of Section 5(1) of the Prevention of Corruption Act, 1947, and therefore is not corruption within the meaning of that Act.[2]

Cost of construction.—Cost of construction in Section (2)*(h)(i)* of Madras House and Rents Act, 1960, mean not the original investment of owner but the value of the building on the date of the Act, being the cost of reproducing it on that date, depreciation being allowed backwards.[3]

'Cost to follow the event'.—Connote that the Court has no discretion in the matter.[4]

But when the Appellate Court directs that the cost of the appeal shall be costs in the case it means that it is left to the Court which passes the final order in the case to say by which party they are to be paid, or in other words to treat them as if they were costs incurred in proceedings before itself.[5]

Court of law.—"A Court of law may be defined as a tribunal dealing with and adjudicating upon civil disputes by operation of law in a judicial manner untroubled by ulterior considerations or matters of executive policy and observing certain definite rules of procedure which are either defined by statute or recognised by practice.[6]" In order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.[7]

Court or Judge thereof.—When jurisdiction may be exercised in a matter by 'the Court or a Judge thereof', it might be exercised by single Judge.[8]

Court or tribunal.—All tribunals are not courts, though all courts are tribunals. The word 'Court' is used to designate those tribunals which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish 'wrong'. Whenever there is an infringement of a right or an injury, the courts are there to restore the *vinculum juris* which is disturbed. When rights are infringed or invaded, the aggrieved party can go and commence an action before the ordinary Civil Courts. These Courts, which are instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or some Act of Legislature constituting them. Their number is ordinarily fixed and they are ordinarily permanent, and can try any suit or cause within their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent and go under the compendious name of 'Courts of Civil Judicature'.

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1. Vide *Ashoka Marketing Ltd.* v. *Punjab National Bank*, AIR 1991 SC 855 (5J) : (1990)4 SCC 406.
2. *Rajagopal Ayyar* v. *Madras State*, AIR 1955 Mad 182.
3. *K.C. Nambiar (Dr.)* v. *Rent Controller, Madras*, (1967)80 MLW 83 : ILR (1966)2 Mad 334.
4. *Templeton* v. *Laurie*, ILR 25 Bom 230, 237; *Periah* v. *Lakshmidevamma*, ILR 38 Mad 476.
5. *Prema* v. *Gobind Lal*, 23 PR 1880 at p. 54.
6. *Pitman's Shorthand Academy* v. *B. Lila Ram & Sons*, AIR 1950 EP 181, 186 : 52 PLR 1 (FB). Court is not confined to the court-room but is present, at least when in session, in all parts of the place set apart for its own use or the use of its judges and officers and of persons attending as witnesses, suitors or jurors. *In re* Rasik Lal Nag, ILR 44 Cal 639; *In re* Sudhir Chandra, AIR 1952 Cal 258, 265.
7. *Brajnandan Sinha* v. *Jyoti Narain*, AIR 1956 SC 66, 70; *Royal Aquarium, etc., Ltd.* v. *Perkinson*, (1892)1 QB 431, 446.
8. *Re* Thomas, (1893)1 QB 670.

With the growth of civilisation and the problems of modern life, a large number of administration's tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the States and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals and the residue go before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established.

A court in the strict sense is a tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the State under its Constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a Judge or by justices in Court, or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind—that is, a mind to determine what is fair and just in respect of the matters under consideration. Courts and tribunals act 'judicially' in both senses, and in the term 'court' are included the ordinary and permanent tribunals and in the term 'tribunal' are included all others, which are not so included.[1]

Credible information.—This expression used in Public Gambling Act, includes any information, which in the judgment of the officer to whom it is given, appears entitled to credit in the particular instance and which he believes and it need not be a sworn information.[2]

Criminal Court.—See *Mammoo* v. *State*.[3]

Criminal proceedings.—The test to distinguish a civil proceeding from criminal proceeding is this; if the subject-matter be of a personal character, that is, if either money or goods are sought to be recovered by means of the proceeding, that is a civil proceeding; but, if the proceeding is one which may affect defendant at once, by the imprisonment of his body, in the event of a verdict of guilty, so that he is liable as a public offender, that is, a criminal proceeding.[4]

Cruelty.—Not only physical cruelty but also mental cruelty accepted in matrimonial cause.

Crop.—The word 'crop' is of such a nature that its real meaning in a statute will have to be found out from the context. In its more general signification it means all the products of the soil that are grown and raised annually and gathered during a single season. In this sense the term includes both *fructus industriales* and *fructus naturales, i.e.* annual crops obtained by yearly labour and cultivation and crops that are produced by nature alone, respectively.[5]

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1. *Harinagar Sugar Mills* v. *Shyam Sundar Jhunjhunwala*, AIR 1961 SC 1669, 1680-1681; *See* Whether Central Government is a Tribunal under Section 111(3), Companies Act, 1956 : CA 37 & 38 of 1961; *Jaswant Sugar Mills Ltd.* v. *Lakshmichand*, AIR 1963 SC 677 : (1963)2 SCA 192 : 1963 (Supp) 1 SCR 242.
2. *Devi Dayal* v. *Emperor*, AIR 1929 Lah 720.
3. AIR 1980 Ker 19, case under Telegraph Act, 1885.
4. *A.G.* v. *Redloff*, (1854)10 Exch 84.
5. *State of Kerala* v. *Malayalam Plantations, Ltd.*, 1980 Ker LT 976 (FB).

Cultivation.—Flowers and grass are as much the produce of the soil as rice, and the upkeep of a garden or a grass lawn is cultivation.[1]

Currency notes.—The term 'currency notes' is large enough in its amplitude to include currency notes of any country but not restricted to Indian currency.[2]

Custody.—See *Niranjan* v. *Prabhakar.*[3]

Damage/damages.—See *Benoy Bhushan* v. *Sabitri,*[4] *Virendra Kumar* v. *State.*[5]

Date of application.—Under the Workmen Compensation Act, 1923, a claimant is entitled to that compensation to which he would have been entitled under law on the date of application. This is the ordinary rule of interpretation of statutes.[6]

Date of Notice.—Section 55 of the Life Insurance Act, 1945, provides that in certain circumstances, the Insurance Commissioner may serve on a life insurance company 'a notice in writing calling upon it to show cause, within such period, not less than 14 days from the date of the notice, as specified in the notice'. It was held that the date of the notice is the date of the service of the notice in writing upon the company and is not the date the document bears on its face.[7]

Decided.—The word 'decided' in Section 25, Provincial Small Cause Courts Act, means 'disposed of'. It does not mean that there must be a decision upon the merits.[8]

Decision.—" 'Decision' is a popular, and not a technical word and means little more than a concluded opinion. It does not by itself amount to judgment or order."[9]

Deemed.—In statutes, the expression 'deemed' is commonly used for the purpose of creating a statutory fiction, that is, for the purpose of extending the meaning of some term to a subject-matter which it does not properly designate.[10] The expression 'deemed' is used a great deal in many modern statutes and for many purposes. It is at times used to give a special glossary or paraphrase to an expression or an artificial construction to a word or a phrase. It is at times used to introduce artificial conceptions which are intended to go beyond settled legal principles. It is at times used to remove uncertainty or leave no scope for doubts and debates which may involve refined and ingenious points. At times it is used to give extended or restricted operation to a rule which cannot be given to it if it be read as enacted. This last proposition is of considerable importance when the Legislature lays down a rule the extent and operation of which according to ordinary canons of construction would be confined, say, to property or interest in property of a particular nature or type or class and the intention is that the rule should have a wider extent and embrace more than what it states. In such a case, the Legislature may well lay down and add that more than what is stated in the rule shall be

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1. *Kisen Lal* v. *Janmejaya,* AIR 1982 Bom 457, 465.
2. *State of Kerala* v. *Mathai Verghese,* AIR 1987 SC 33 : 1987 Cri LJ 308 : (1986)4 SCC 746 : 1986 JT 928 : 1986 All Cri C 570 : (1987)1 Ker LT 62 : 1987 BBCJ (SC) 14 : (1987)1 (1) IJ Rep 1 : 1987 SCC (Cr) 3 : 1986 Cal Cri LR 38 : (1987)1 Cri LC 344 : 1987 Cur Cri J (SC) 108 : (1986)88 Bom LR 698 : 1987 Cri R (SC) 122 : 1987 Mad LW (Cri) 192 : 1987 Bank J 335 : (1987)1 Chand LR (Cri) 696 : (1987)1 UJ (SC) 614 : (1987)2 Crimes 123 : (1987)1 Supreme 470 : (1987)1 SCJ 166 : (1987)1 SCWR 156.
3. AIR 1980 SC 785.
4. AIR 1977 Cal 199, case under TP Act, Section 108.
5. AIR 1980 All 100, case under Forest Act, 1927, Section 82.
6. *Smt. Ishwaribai Harchandrai Hergunani* v. *M/s. India (Pvt.), Ltd.,* 1978 UCR (Bom) 690.
7. *Associated Dominions Assurance Society Proprietary, Ltd.* v. *Balmford,* 81 CLR 161.
8. *Ramanathan Chetty* v. *Maruthappa Kavil,* 25 IC 643 (2).
9. Stroud's *Judicial Dictionary,* Vol. I (1952 Ed.) at p. 743; see also 'administrative order.'
10. *Muller* v. *Dalgery Co., Ltd.,* (1909)9 CLR 693, 696.

deemed to be included in the meaning and concept of the words or phrases used in the rule. In such a case the language of the rule notwithstanding the operation and extent if it is widened by the 'deeming' provision.[1]

"Now when a person is 'deemed to be something' the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were."[2]

This legal fiction can be applied only when it is proved that everything that was required to be done by the authority or officer was actually done.[3]

"When a statute enacts that something shall be deemed to have been done which, in fact and in truth, was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."[4]

"When a statute enacts that something shall be deemed to have been done which, in fact and in truth, was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.[5]

"The court is sometimes obliged by the Legislature to put an interpretation on a word which it does not ordinarily bear when it has been enacted that something 'shall be deemed' to be something else."[6]

"Generally speaking, when you talk of a thing being deemed to be something, you do not mean to say that it is that which it is deemed to be. It is rather an admission that it is not what it is to be deemed to be, and that, notwithstanding it is not that particular thing, nevertheless.....it is deemed to be that thing."[7]

In modern statutes, the expression 'deemed' is used a great deal and for many purposes. It is at times used to introduce artificial conceptions which are intended to go beyond legal principles or to give an artificial construction to a word or phrase. It is not possible to list the purposes for which legal fictions may be created by statute.[8]

The term 'deemed' in Section 4 of the Income Tax Act, 1922, brings within the net of chargeability income not actually accruing but which is supposed notionally to have accrued. It involves a number of concepts. By statutory fictions income which can in no sense be said to accrue at all may be considered as so accruing. Similarly the fiction may relate to the place, the

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1. *Khadizabai* v. *Controller of Estate Duty*, AIR 1960 Bom 61, 66.
2. *Income-tax Commissioner, Bombay* v. *Bombay Trust Corporation*, 571 IA 49, 55 : AIR 1930 PC 54; *Madhai Mandal* v. *Pran Krishna*, AIR 1951 Cal 139.
3. *Vinayak* v. *Moreshwar*, AIR 1944 Nag 40, 44.
4. *Ex parte* Walton, (1881)17 Ch D 746, 756, *per* James, L.J.; *Hill* v. *East and West India Dock Co.*, (1884)9 AC 448, 455, 456.
5. *Federal Bank of India, Ltd.* v. *Durga Das*, AIR 1954 Punj 21; *State of Bombay* v. *Pandurang Vinayak*, 1953 SCR 775, 778; *Ananta Kumar* v. *Land Revenue Officer*, AIR 1958 Cal 143, 145. We are to consider the fiction and not the fact; *New Shorrock S and M Co., Ltd.* v. *Raval*, AIR 1959 Bom 477, 481.
6. *Brook* v. *Baker*, (1906)1 KB 15, (*per*, Darling, J.).
7. *R.* v. *Norfolk County Council*, (1892)60 LJQB 379, 380; *Shakoor Hasan* v. *Emperor*, AIR 1944 Nag 40, 44, "Deeming a past event on thing to be something other than what it was or is, may be an interference with the course of use, since it creates artificial date in the place of existing fact. But it is not in my opinion a retrospective changing of the statute law"; *Habib & Sons* v. *Income-tax Commissioner, Bombay*, AIR 1947 Bom 380(2), 381, *per* Stone, C.J.; *John Crofton Home* v. *Rent Control and Eviction Officer, Allahabad*, 1978 All LJ 1127.
8. *New Shorrock S and M Co., Ltd.* v. *Raval*, AIR 1959 Bom 477, 480-81.

person or the year of taxability.[1]

The word 'deemed' in Rule 2 of the U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974, would hold the field as against any entry to the contrary in any other record, so that if a Government servant has passed the High School or any other equivalent examination, the date of birth recorded in such certificate shall be deemed to be his date of birth for purposes of superannuation.[2]

Where a statute declares that a person or thing shall be deemed to be or shall be treated as something which in reality it is not, it shall have to be treated as so during the entire course of the proceeding.[3]

Deemed always to have been substituted.—The expression 'the following clause shall be substituted, and shall be deemed always to have been substituted,' clearly means that the new clause is substituted and the old clause from the date of its inception is to be read in the form of the substituted clause. Obviously, if it had always been substituted, then there would be nothing for which it could have been substituted.[4]

'Default in payment'.—The word 'default' imports something wrongful, the omission to do some act which, as between the parties, ought to have been done by one of them.[5]

Defeating or delaying creditors.—Section 53, Transfer of Property Act, so far as it deals with defeating or delaying creditors, is aimed, not at a debtor who chooses to prefer one creditor to another, to transfer his property in satisfaction of one debt rather than another, but at a debtor who transfers his property with the object of screening it permanently or temporarily from all his creditors, who uses the transfer as a cloak to preserve the benefit of the property for himself or for some person in whom he is interested, instead of letting it go towards the payment of any of his debts.[6]

Define.—"The word 'define' taken by itself may not, in ordinary parlance cover 'include', and 'extend', but looking at (Cantonment) Act (XII of 1889, now repealed) as a whole, and Section 4 in particular as a whole, we think the section must be interpreted to give the power taken with Section 14 of the General Clauses Act, to 'define' from time to time, and such power includes the power to 'define' by way of extension, as well as by way of retrenchment."[7]

Demonstration.—A 'demonstration' is defined in the Concise Oxford Dictionary as 'an outward exhibition of feeling as an exhibition of opinion on political or other questions, especially a public meeting or procession'. In Webster's Dictionary it is defined as 'a public exhibition by a party, sect or society....as by a parade or mass meeting'. It might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect, therefore, a form of speech or of expression because speech need not be vocal since signs made by dumb person would also be a form of speech.[8]

Denotes.—If the word 'denotes' is used in contradistinction to the word 'means' the definition in the interpretation clause does not purport in the strict sense to be a definition of

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1. *Commissioner of Income-tax/Excess Profits, Bombay* v. *Messrs. Boogilal Laher Chand*, AIR 1954 SC 155.
2. *Narain Bux Singh* v. *State of U.P.*, 1981 All LJ 649.
3. *Malchand Agarwalla* v. *Santo Lal Agarwalla*, AIR 1954 Assam 177; *Consolidated Coffee Ltd.* v. *Coffee Board, Bangalore*, AIR 1980 SC 1468.
4. *Prabhakar Kondaji* v. *Emperor*, AIR 1944 Bom 119, 120.
5. *Albert* v. *Grosvenor Investment Co.*, LR (1867)3 QB 123.
6. *Nagarathna* v. *Chidambaram*, AIR 1928 Mad 860, 864.
7. *Sheik Fazal Ilahi* v. *Secretary of State*, 24 PR 1910 : 5 IC 905 (*per* Robertson, J.).
8. *Kameshwar Prasad* v. *State of Bihar*, AIR 1962 SC 1166, 1177.

that particular word.[1]

Department.—With reference to the Union or State Government department is a particular activity or a branch of Government, either Union or State, under the political control of a Minister (in a system of Parliamentary Government) or a Minister of State responsible to the Legislature. Individual officers serving under a department do not constitute a department. The department has an entity distinct and separate from the officers serving under it.[2]

'Dependant'.—The word 'dependant' used in Section 2(*g*) of Expenditure Tax Act, 1959, in relation to the members of a Hindu undivided family excludes all the coparceners including the *karta*. The expression is confided to persons who are mainly dependant on the *karta* for support and maintenance.[3]

Desertion for four years conferred a right on the deserted party to obtain divorce under the Bombay Hindu Divorce Act, 1947. On express repeal of this Act by the Hindu Marriage Act, Section 6 of the General Clauses Act comes into play. Now in matrimonial law desertion by one party to the marriage confers upon the other party a right of divorce. Desertion is a matrimonial offence, but in its very nature it is very different from other matrimonial offences like adultery or cruelty. In its very nature desertion is a continuing marital offence and is not completed until a suit is filed for divorce on the ground of desertion. Even though desertion might have taken place for a period of 4 years, no right to obtain divorce is acquired by the party deserted until he files a suit because he has to show that the desertion continued right up to the date he filed the suit. Therefore, desertion is not an offence which can be established as something specific and isolated. No right is acquired by the deserted party within the meaning of Section 6, General Clauses Act, which right can be saved by the provisions of that section.[4]

Destination.—"Now what is meant by sending goods 'to their destination'? "It seems to me," observed Brett, M.R. in *Ex parte Miles*,[5] "that it means sending them to a particular place, to a particular person who is to receive them there; and not sending them to a particular place without saying to whom."

Deterioration.—This word, as used in Railways Act, does include a loss in the value of the goods consigned owing to a delay in delivery. It bears the import of impairment of quality or value.[6] But see *E.I.R.* v. *Dina Mal Gulab Singh*,[7] where Martineau, J., observed : "The 'deterioration' of a thing, whether it be in quality or in value, implies in ordinary parlance a change for the worse in the thing itself. If a thing is worthless than it was before only because the market rate has gone down, it would be correct to say that it has depreciated in value, but not that it has deteriorated."

Discovers.—When an Income-tax Officer honestly comes to the conclusion upon the information in his possession, that a person chargeable has not made a full and proper return to income-tax, he is said to 'discover' it.[8]

In *Commercial Structures, Ltd.* v. *Briggs*,[9] it was held that although no new fact or circumstance had been ascertained by the inspector when he made the additional assessments,

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1. *Manik Ram* v. *Emperor*, AIR 1916 Pat 133, 135.
2. *Ram Chandra* v. *District Magistrate, Aligarh*, AIR 1952 All 520, 525.
3. *Commissioner of Expenditure Tax, Gujarat* v. *Darsan Surendra Parekh*, AIR 1968 SC 1125.
4. *Sitabai* v. *Ramchandra*, AIR 1956 Bom 116 (FB).
5. 15 QBD 43.
6. *Bhagwan Das* v. *B.N. Railway*, ILR 51 All 895 : AIR 1929 All 597(2).
7. ILR 5 Lah 523 at p. 525.
8. *R.* v. *Bloomsbury Income Tax Commissioners*, (1915)3 KB 768.
9. (1948)2 All ER 1041.

he had made a 'discovery' when he found that a mistake had been made with regard to the effect of the general law on a particular set of facts.

The word 'discovers' implies something more than a mere change of opinion on the same facts. It means something more than 'has reason to believe' or 'satisfies himself'. Merely because the Income-tax Officer disagrees with his predecessor's interpretation of law he is not deemed to 'discover' within the meaning of Section 39, Indian Income Tax Act.[1]

Discovery and production.—The rules as to discovery is the exact contrary to that as to production. You must set out every document you have in your possession, whether you are bound to produce them or not.[2]

Discretion.—The word 'discretion' in itself implies vigilant circumspection and care. It is, therefore, true to say that where the Legislature concedes wide discretion, it also imposes a heavy responsibility.[3] 'Discretion' when applied to a Court of Justice means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular.[4] Where an Act or a Rule invests a Court or a Tribunal with discretion, without indicating grounds upon which that discretion is to be exercised, the courts have declined to lay down any rules for the exercise of that discretion because if the Legislature did not choose to fetter the discretion of the Judge, why should the Courts do so.[5]

Dispose.—This word used in Land Acquisition Acts means the transfer of land to some other person and not the application of it by the acquiring company to a different purpose.[6]

Division Court.—A Division Court in a High Court must consist of at least two Judges.[7]

Domestic animals.—The expression 'domestic animals' does not include birds' category notwithstanding the word 'all' preceding and the word 'etc.' succeeding the expression, as the other construction will be against ordinary popular connotation of the expression 'Domestic animals' and also against the purpose of illustration.[8]

Drawing any lottery.—The word 'drawing' is used in Section 294-A of the Indian Penal Code in its physical sense.[9]

Due care and attention.—The standard of due care and attention is the same in case of a driver who is a learner.....as it is in the case of holder of an ordinary driving licence. The standard is an objective one fixed and impersonal, governed by the essential needs of the public. It is, in no way, related to the degree of proficiency or degree of experience attained by the individual driver.[10]

'Due course of law'.—Referring to this expression in Section 9, Specific Relief Act, Batchelor, J., observed in *Rudrappa* v. *Narsing Rao*,[11] : "To read the words 'due course of law' as

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1. *Raghavelu Naidu* v. *Commissioner of Income-tax, Madras*, AIR 1945 Mad 411; *Commissioner of Income Tax, Bombay* v. *Mohamed Yusuf*, AIR 1944 Bom 160.
2. *Swanston* v. *Lishman*, (1881)45 LT 360.
3. *Ibrahim* v. *Emperor*, AIR 1933 Sind 49.
4. *R.* v. *Wilkes*, (1769)4 Burr 252; *Gordhan Das Baldeo Das* v. *Governor-General-in-Council*, 54 PLR 1, 8 : AIR 1952 Punj 103, 107 (FB).
5. *Onkar Nath Agarwal* v. *State of U.P.*, 1976 All LR 149 (FB).
6. *Astley* v. *Manchester, etc. Co.*, (1858)25 LJ Ch 478.
7. *Raghubar Singh* v. *Jethu Mahto*, ILR 1 Pat 384 : AIR 1922 Pat 13 (1); *Guru Prosunno Lahiri* v. *Jotindra Mohan Lahiri*, ILR 32 Cal 963 ('Division Court' is not restricted to such a Court sitting on the original side).
8. *Royal Hatcheries Pvt. Ltd.* v. *State of Andhra Pradesh*, AIR 1994 SC 666.
9. *Vazirally* v. *Emperor*, ILR 53 Bom 57 : AIR 1928 Bom 550, 552.
10. *McCrone* v. *Riding*, (1938)1 All ER 157.
11. ILR 29 Bom 213 at p. 216.

merely equivalent to the word 'legally' is, we think, to deprive them of a force and a significance which they carry on their very face. For a thing, which is perfectly legal, may still be by no means a thing done 'in due course of law'. To enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law, and the 'due course of law' means, we take it, the regular, normal process and effect of the law operating on a matter which has been laid before it for adjudication. That, in our opinion, is the primary and natural meaning of the phrase, though it may be applied in a derived or secondary sense to the other proceedings held under the direct authority of the law; in this sense it may be said, for instance, that revenue or taxes are collected in due course of law.....there (in Section 9) we think they must be read in their primary sense as referring to the process and operation of the law invoked by the ordinary method of a civil suit."[1]

Earned on board the ship.—A master is entitled to sue the ship for wages as 'earned on board the ship' used in an Admiralty Court Act although most of his duties were performed on shore and he did not sleep on the ship.[2]

Education.—It may mean the action or process of educating or of being educated; may be used to describe any training physical or mental.[3]

Emergency.—An emergency may result from an unforeseen combination of circumstances. This combination may not take place all at once but gradually, and immediate action may be rendered necessary when the culminating point is reached.[4]

Employment.—The concept of employment involves three ingredients : (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, *i.e.*, one who engages the services of other persons. The employees is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. Employment brings in the contract of service between the employer and the employee.[5]

Endorsed.—The word indicates that the document must bear the personal signature of the person concerned and not merely his lithographic or a facsimile signature.[6]

Ends of justice.—Section 151, Civil Procedure Code, does not formulate any new doctrine but is only a legislative recognition of the well-known principle that every court has inherent power to act *ex debito justitie* and to do that real justice for the administration of which alone it exists. 'Ends of Justice' are solemn words and no mere polite expression in justice methodology and here secreted in the solemn words is the aspiration that justice is the pursuit and end of all law. But the words 'ends of justice' wide as they are do not, however, mean vague and indeterminate notions of justice, but justice according to the statutes and laws of the land. They cannot mean that express provisions of the statute can be overridden at the dictates of what one might by private emotion or arbitrary preference call or conceive to be justice between the

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1. *Maganlal* v. *Bhudar*, ILR 51 Bom 149 : AIR 1927 Bom 192, 195; *Moore* v. *Monoranjan Guha*, 7 CLJ 547; *Mst. Rajwanta Koer* v. *Mahabir Rai*, AIR 1931 All 205.
2. *The Chieftain*, (1863)32 LJPM & A 106.
3. *Mahendrapal Singh* v. *State of M.P.*, 1987 JLJ 626; *Chartered Insurance Institute* v. *London Corporation*, (1957)2 All ER 638; *Ramchand* v. *Malkapur Municipality*, AIR 1970 Bom 154.
4. *Des Raj* v. *Emperor*, AIR 1930 Lah 781, 789, *per* Bhide, J.
5. *Chintaman Rao* v. *State of Madhya Pradesh*, 1958 SCR 1340, 1346; *Shankar Balajiwaje* v. *State of Maharashtra*, AIR 1962 SC 517, 520-21.
6. *Kamala Bala* v. *State of West Bengal*, AIR 1962 Cal 269, 272; *A.G. Pant* v. *Rajasthan University*, AIR 1978 Raj 72 (FB).

parties.[1]

"The ends of justice", observed Medgavkar, J., in *Lakshman* v. *Emperor*,[2] "as I have pointed out in the case of Evans[3] is a term impossible to define. If I may be permitted to quote from that case: 'What then are the ends of justice? To the particular result in any particular case justice is indifferent. The ends of justice is no more conviction than acquittal. It is justice, by the ascertainment of the truth as to the facts on a balance of evidence on each side. If so, do the ends of justice require, or do they not, that the accused person from the moment of his arrest should have reasonable access to his legal advisers; or does it suffice that this access should commence under the Prisons Act (9 of 1894) from the time when the exclusive police custody has ceased? To this question the answer is in my opinion clear. If the ends of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own case and to lay its evidence fully, freely and fairly, before the Court....' To this I might add two other considerations second only in importance to this for the ends of justice. Confidence in the Court administering justice on the part of both parties and of the public is also a vital element in the administration of justice, so much so that a reasonable apprehension, tantamount to lack of confidence, has been held by the Courts to render a transfer advisable. A special Judge or a special venue directed by the Local Government is apt or at least is capable of being used to destroy this confidence, and except where the supreme need of justice is clearly such as to override these considerations, the ordinary course of justice is best left untouched."

Engaged in his employment.—A servant is said to be engaged in the employment of the employer although at the time of the accident the servant was leaving his work without lawful excuse or proper cause.[4]

Entertain.—The word 'entertain' used in respect of a suit means to 'receive and take into consideration'.[5] This expression is used in Sub-section (3) of Section 37-A, Bengal Agricultural Debtors Act, as well as in Section 147, Limitation Act. "To 'entertain' is to 'admit a thing for consideration' and when a suit or proceeding is not thrown out *in limine* but the Court receives it for consideration and disposal according to law it must be regarded as entertaining the suit or proceeding no matter whatever the ultimate decision might be....The object of Section 14, Limitation Act, is to give protection to a *bona fide* litigant against the bar of limitation when he has tried his best to get his case heard but has failed to get a hearing because the Court has been unable to entertain it on account of defect of jurisdiction or other grounds of a like nature. The inability to entertain a suit means not inability to grant relief to the plaintiff but inability to give him a trial at all, and as Section 14, Limitation Act, can be invoked only in cases where the previous suit or proceeding has not been heard on its merits the word 'entertain' seems to have been deliberately used by the Legislature. Because the section speaks of the inability of the Court to entertain a suit or proceeding on certain specific grounds only, which are of a formal nature, it cannot be argued that by implication the Legislature concedes that the Court might be regarded as not entertaining a suit even when the suit fails on its merits.....a suit is to be regarded as not 'entertained' by the Court only if it is thrown out at its inception and the Court does not decide it on merits.... It is true that the mere fact that a suit or application is entered in the register of the court is not conclusive to show that it was entertained. The question whether

1. *Debendra Nath* v. *Satyabala Dasi*, AIR 1950 Cal 217, 223, (*per* P.B. Mukharji, J.).
2. AIR 1931 Bom 313, 317 (SB).
3. *In re* Llewelyn Evans, ILR 50 Bom 741, 749 : AIR 1926 Bom 551.
4. *Marshall* v. *Stewart*, (1855)26 LT OS 58.
5. *N.K. Singh* v. *M.C. Singh*, AIR 1955 Manipur 39.

it was entertainable or not might be raised at a later stage and the Court might then decide not to entertain the case. It is not necessary for us to formulate exhaustively the different grounds upon which a court might refuse to entertain a suit or proceeding. They may include grounds of jurisdiction and of procedure as well and in each case the point for determination would be whether the Court did entertain the suit or application and then decide that the plaintiff was not entitled to any relief or it declined to embark upon the case at all."[1]

Equality before law.—Article 14 of the Constitutions enjoins upon the State not to deny to any person 'Equality before law' or the equal protection of law within the territory of India. The two expressions do not mean the same thing even if these may be much in common. Section 1 of XIV Amendment to the U.S. Constitution uses only the latter expression whereas Irish Constitution (1937) and the West German Constitution (1949) use the expression 'equal before law' alone. Both these expressions are used together in the Universal Declaration of Human Rights, 1948, Article 7 whereof says, "All are equal before the law and are entitled without any discrimination to equal protection of the law". While ascertaining the meaning and content of these expressions, harvest, we need not be constrained by the interpretation placed upon them in this countries though their relevance is undoubtedly great. It has to be found and determined having regard to the context and scheme of our Constitution. It appears to us that the word law in the former expression is used in a generic sense a philosophical sense, whereas the word 'laws' in the latter expression denote specific laws in force.

Equality before law is a dynamic concept having many facets. One facet the most commonly acknowledged is that there shall be no priveleged person or class and that none shall be above law. A fact which is of immediate relevance herein is the obligation upon the state to bring about through the machinery of law a more equal society envisaged by the preamble and Part IV of our Constitution. For, equality before law can be predicated meaningfully only in an equal society, *i.e.* a society contemplated by Article 38.[2]

Erected would include partially erected buildings.[3]

Error apparent on record.—Errors in appreciation of documentary evidence or errors in drawing inferences are not errors of law apparent on the face of the record.[4] An error which has to be established by a longdrawn process of reasoning on points where there may conceivably be two opinions can hardly be an error apparent on the face of the record.[5]

Established for any purpose of profit.—Where a society consisting of more than 20 persons raises money by subscription among its share-holders, and out of the money so raised advances loans to its members at interest, and upon such loans, premiums also are payable by monthly instalments and fines are incurred for default in payments, while all money arising from interest, premiums and fines goes into the general fund of the society, such a society is not deemed to be a company, 'established for any purpose of profit.'[6]

Established public conveyance.—In *Mahavir Prasad* v. *State of Rajasthan*,[7] it was held that the word *Evidence* in Section 319 Cr.P.C. has to be given general and not narrow meaning.

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1. *Nakul Chandra* v. *Shyamapada*, AIR 1945 Cal 381 (*per* B.K. Mukerjea, J.)
2. *Sri Srinivasa Theatre* v. *Govt. of Tamil Nadu*, AIR 1992 SC 999 : JT 1992(2) SC 312 : (1992)2 SCC 643 : 1992 AIR SCW 899.
3. *Munitions Minister* v. *Chamberlayne*, (1918)2 KB 758.
4. *Kaushilya Devi* v. *Bachittar Singh*, AIR 1960 SC 1168, 1171.
5. *Satyanarayan* v. *Mallikarjun*, AIR 1960 SC 137, 141.
6. *Bear* v. *Bromley*, (1852)18 QB 271.
7. 1995 Cr LR (Raj) 330; relying on *Dalip Singh* v. *State of Rajasthan*, 1989 Cr LJ 600 (Raj) (FB) : 1989 Cr LJ (Raj) 596.

This expression, used in Order XVI, Rule 19(2), C.P.C., does not mean disconnected buses belonging to different companies and with no certainty of continuous travel.[1]

Except where otherwise expressly enacted.—It means, unless some inconsistent provision is expressly made. In appropriate contexts 'express' may be used as the autonym of 'impliedly'. The word merely serves to emphasize the generality of the main provision by making clear that no case is outside that provision unless that is the necessary result of the operation of another enactment according to the intention it manifests.[2]

Excise duty.—The term 'excise duty' has not been precisely nor authoritatively defined anywhere. It is generally used in contradistinction to the term 'Customs duty'. Customs duties or duties of custom are levied on goods going abroad or imported from abroad, while duties of excise, on the other hand, are levied on home-made goods or goods made in the taxing territory. Its primary and fundamental meaning in English is still that of a tax on articles produced or manufactured in the taxing country and intended for home consumption.[3]

The measure of excise duty is the price of the goods charged by the assessee (seller) and not its value.[4]

Existing law.—The expression 'existing law' is wide enough to cover both written and unwritten law, that is to say, both statutory law and common law.[5]

Ex parte.—*'Ex parte'* does not necessarily only mean in the absence of the other party. An *'ex parte'* proceeding is a proceeding by one party for his own benefit and without contest by the other party.[6]

Expenses of the Commission.—The phrase 'expenses of Commission' (used in Order XXVI, Rule 15, C.P.C.) in ordinary parlance would mean only what the Commissioner has to spend for summoning witnesses and for other incidental expenses relating to the examination of the witnesses before him. It does not include the expenses to be defrayed by the opposite party to the one applying for the issue of a Commission for proceeding from the locality where the Court is situate to the place where the Commissioner is to function.[7]

Export and import.—The words 'export' and 'import' have no special meaning. These words mean only 'taking out of' and 'bringing into'.[8]

'Express provision' is provision the applicability of which does not arise by inference. The fact that the language used is wide and comprehensive and covers many points other than the one immediately under discussion does not make it possible to say that its application can arise by inference only. To be 'express provision' with regard to something it is not necessary that that thing should be specially mentioned; it is sufficient that it is directly covered by the language, however, broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom.[9]

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1. *Borrayya* v. *Rama Koti Sastri*, AIR 1949 Mad 468.
2. *Rose* v. *Huric*, 108 CLR 353 (Kitto, J.).
3. *Mewar Textile Mills* v. *Union of India*, AIR 1955 Raj 114.
4. *(M/s.) Hindustan Polymers* v. *Collector of Central Excise*, (1989)4 SCC 323, relying on *Union of India* v. *Bombay Tyre International Ltd.*, (1984)1 SCC 467 : 1984 SCC (Tax) 17 : 1984 SCR 347.
5. *Purushottamlal* v. *Premshankar*, AIR 1966 All 377.
6. *Hariram* v. *Pribhdas*, AIR 1945 Sind 98, 102.
7. *Saboora Bibi Ammal* v. *Julaika Bivi Ammal*, AIR 1950 Mad 144.
8. *Empress Mills* v. *Wardha Municipality*, AIR 1950 Nag 169, 176. The primary meaning of the words "importing into an area" is "bringing in something from outside that area"; *Magan Lal* v. *Ahmedabad Municipality*, AIR 1945 Bom 251.
9. *Shanmugam* v. *Commissioners for Registration of Indian & Pakistani Residents*, (1962)2 All ER 609, 612 (PC).

Extend.—The word 'extend' is to be read the same as if it were 'apply' when used in an enactment.[1]

Family.—Technically the word 'family' may be taken to mean the collective body of persons who live in one house and under one head or manager, and includes within its fold a household consisting of parents, children and servants and, as the case may be, lodgers or boarders. Popularly, however, the term indicates persons descended from common progenitor and having a common lineage.[2]

The main provision containing the definition of the term is to be found in the first part of Section 37*(b)* namely 'family' in relation to an individual means the individual the husband or the wife as the case may be of such individual and their children whether major or minor'. The later part of Section 37*(b)*, namely 'but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September 1970' does not on the face of it contain a matter which may in substance be treated as fresh enactment added something to the main provision but is apparently and unequivocally a proviso containing an exception. This admits of no doubt in view of the words 'but does not include'.[3]

Fee.—It is true that between a tax and a fee there is no generic different. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not be, supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of *quid pro quo* between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business, the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilized for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. The basic distinction between a tax and a fee is that levy of tax is for the purposes of general revenue, whereas fee in the strict sense is payable as a sort of return or consideration for services rendered, and the collections made are correlated to the expenses incurred in rendering the services.[4] It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of *quid pro quo* between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by the public authority. In regard to fees there is, and must always be co-relation between the fee collected and the service intended to be rendered. The use of the word 'fee' in an Act is not decisive of the question whether the Legislature intended to confer power to levy a fee in the strict sense and not a tax.[5] Cases may arise where under the guise of levying a fee. Legislature may attempt to impose a tax; and in the case of such a colourable exercise of Legislative power courts would have to scrutinise the

1. *Nag Hoong* v. *The Queen*, (1857)7 MIA 72, 99.
2. *Maidal Islam* v. *Commissioner of Wakfs*, AIR 1943 Cal 634, 639; *P. Kunhahammad* v. *Special Tahsildar*, AIR 1980 Ker 205, case under Kerala Land Acquisition Act, 1962.
3. Vide *Dibyasingh Malana* v. *State of Orissa*, AIR 1989 SC 1737 : (1989)2 JT (SC) 210 : (1989)1 Ori LR 538.
4. *Loonkaran Mukundlal Parekh* v. *State of M.P.*, 1975 MPLJ 515 : 1976 Jab LJ 442 (DB).
5. *Loonkaran Mukundlal Parekh* v. *State of M.P.*, 1975 MPLJ 515 : 1976 Jab LJ 442 (DB).

scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case.[1]

Fiction.—Fiction is defined in *Corpus Juris*, Vol. 25, at p. 1036, thus :

> "A legal assumption that a thing is true which is either not true, or which is as probably false as true; an assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place, an allegation in legal proceedings that does not accord with the actual facts of the case, and which may be contradicted for every purpose, except to defeat the beneficial and for which the fiction is invented and allowed. The rule on this subject is that the Court will not endure that a mere form or fiction of law, introduced for the sake of justice, should work wrong contrary to the real truth and substance of the thing. That means, fiction in the realm of law has a defined role to play and it cannot be stretched to a point where it loses the very purpose for which it is used and in no case should it be allowed to perpetrate injustice.[2]

Final.—When enquiry under the rules is summary and requires quick disposal, the presumption is that the decision is not final.[3] Where in the same Act the decisions under two sections are final with respect to the matters mentioned therein and in one of the sections it is specifically stated that these decisions cannot be questioned in a court of law and in the other section there is no such prohibition, the ordinary and legitimate inference is that where there is no such prohibition in a section court of law can question the legality, although the decision may be final as between the parties.[4]

Final and conclusive.—"I am clear that the phrase 'final and conclusive' means nothing more than it would not be open to challenge by an appeal or other proceeding. It should not be however interpreted to mean that the jurisdiction of the High Court under Article 226 or 227 of the Constitution was thereby excluded. The ordinary rule of construction is that a provision in any enactment if it is possible to put upon them such a construction without doing violence to the language used should be so interpreted as not to make them inconsistent with other statute.[5]

For the purpose of.—"It is contended before us that the words 'for the purpose of' unloading, loading, etc., which are to be found in Schedule 2*(v)* Workmen's Compensation Act (8 of 1923), should be interpreted very liberally, and as implying a wider meaning than had the word 'in' been used in their place. But it seems to me that such a meaning cannot be read into them and that the expression 'for the purpose of' used in this connection means the same thing as 'in' and that other words would have been used had it been intended to include a man, injured while engaged in preparations for the purpose of ultimately loading bales on to a ship. I think.....that

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1. *The Hinger Rampur Coal Co., Ltd.* v. *State of Orissa*, AIR 1961 SC 459, 464; *Commissioner, Hindu Religious Endowments, Madras* v. *Lakshmindra Tirtha*, 1954 SCR 1005.
2. Quoted in *Brijnandan Singh* v. *Jamuna Prasad*, AIR 1958 Pat 539, 595; *Rahas Bihari Das* v. *State of Orissa*, AIR 1995 Ori 23 (DB); *Kuldeep Singh* v. *Ganpat Lal*, (1996)1 SCC 243; see also *Bengal Immunity Co., Ltd.* v. *State of Bihar*, (1955)2 SCR 603 : AIR 1955 SC 661 : (1955)6 STC 446; *Bindesh Kumar Singh* v. *State of Bihar*, (1995)1 Pat LJR 86, following *State of Travancore-Cochin* v. *Shanmugavilas Cashewnut Factory*, AIR 1953 SCC 333.
3. *Shiam Kishore* v. *Madan Gopal*, AIR 1958 All 14 (Election).
4. *Ananda Rao* v. *Labour Officer*, AIR 1957 Ker 55, 56 (Menon, J.), *following In re* Vasudeva Bhat, 1957 Cr LJ 399 (Somasundaram, J.).
5. *Ram Dubey* v. *Government of Madhya Bharat*, AIR 1952 MB 59, 69 (FB), *per* Dixit, J.; *Parry and Co., Ltd.* v. *Commercial Employees' Association*, AIR 1952 SC 179, 181.

protection under the Act is meant for the workmen who are actually engaged in the process of handling the bales, so as to transfer them from the wharf to the hold of a ship which is actually being loaded.[1]

For the purposes of the Act.—"When the Legislature empowered the Mayor and Corporation to take lands, houses and buildings, for the purposes of the Act, it did not confine them to the mere width of the intended road, but gave them authority to take as much land as might be necessary for the formation of the street itself, by the erection of houses or other buildings on each side."[2]

For the time being.—These words do not mean 'from time to time'. "In my opinion", says Darling, J. in *Stone* v. *Wood*,[3] "the words mean 'on the appointed date'." Kindersley, V. C. observed in *Ellison* v. *Thomas*.[4] "The words 'for the time being' are capable of different interpretations, according to the context; for example, they might be used with a context showing clearly that they were intended to point one single period of time; and a case was put of a person intending to give a promissory note to a company, and giving it to the secretary 'for the time being,' meaning clearly the person who appeared to be the secretary at the particular time when the note became payable. It might be according to the context that the same words apply to a succession of periods. Take the common case of a petition for payment of dividends to the rector of a certain parish 'for the time being' which, of course, would point, not to a single period but a succession of periods."[5]

Forbidden by law.—When an enactment merely imposes a penalty, without declaring a contract made in contravention of it to be illegal or void, the imposition of the penalty, by itself and without more, does not necessarily imply a prohibition of the contract. In such cases, the question always is whether the Legislature intended to prohibit the contract. This must be decided upon a construction of the statute. If the object of the enactment, or one of its objects, in imposing the penalty is to protect the general public or any class thereof, it will be construed, in the absence of any other indication of contrary intention expressed in the statute, as implying prohibition of the contract. On the other hand, if the object of imposing the penalty is merely the protection of the revenue the contract will not be regarded as prohibited by implication.[6]

Forthwith may mean 'as soon as one conveniently can'.[7] "It should not receive a strict construction like the word 'immediately', but whatever is to be done 'forthwith' ought to be done without any unreasonable delay.[8] It may also mean 'with as little delay as the circumstances will reasonably admit of'[9] or at the earliest point of time without any avoidable delay.[10] Where the section provided that on dismissal of the complaint, the Judge shall forthwith make out a certificate stating such facts, the word 'forthwith' would mean

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1. *Parsu Dhondi* v. *Trustees of the Port of Bombay*, ILR 54 Bom 114, 117 : AIR 1930 Bom 44, 45, (*per* Murphy, J.).
2. *Galloway* v. *London Corporation*, (1866) LR 1 HL 34, 55, 56.
3. (1917)2 KB 885 at p. 890.
4. (1862)31 LJ Ch 867 at p. 869.
5. *Dakhina Mohan Roy* v. *Sareda Mohan Roy*, ILR 23 Cal 357, dissenting from *Param Sukh* v. *Ram Dayal*, ILR 8 All 650 and holding that the expression 'for the time being' means the time when the order of the Privy Council was passed with reference to Section 610 of the old Code of Civil Procedure.
6. *Janki Bai* v. *Ratan Melu*, AIR 1962 MP 117, 121.
7. *Nichols* v. *Chambers*, (1834) T. Tyr. 836 quoted by Burrows : *Words and Phrases*, Vol. 2 at p. 336.
8. *R.* v. *Worcestershire*, quoted in Vol. 33, Empire Digest at p. 396, Item 1068; *R.* v. *Robinson*, (1840)113 ER 969; *Joglekar* v. *Commissioner of Police*, AIR 1957 SC 28.
9. *Ex parte* Lowe, (1846)15 LJMC 99; *King* v. *Chamberlain*, (1871)40 LJCP 273, 277.
10. *Natwarlal Joyeshankar* v. *E.F. Deboo*, ILR 1966 Guj 580.

forthwith upon the application of the party entitled.[1] A clause in an Act directing vacancies....to be filled up 'forthwith' is directory only and will not receive too strict construction.[2]

When a statute or rule of Court requires an act to be done 'forthwith' it means that the act is to be done within a reasonable time having regard to the object of the provision and the circumstances of the case.[3] There is no doubt the word 'forthwith' means with all reasonable celerity.[4] 'Forthwith' does not mean within so many minutes, but within reasonable time.[5] When an act is required by a statute to be done 'forthwith', the word 'forthwith' must be construed with regard to the object of the provision and circumstances of the case.[6]

"The word 'forthwith' when used in an Act of Parliament has been construed to mean 'in a reasonable time'; as soon as the party who is to perform the act 'can reasonably perform it'."[7]

Found drunk.—It describes the condition of a person who was overcome or intoxicated by liquor or an intoxicating drug. The influence of the drink must be such as to betray the man.[8]

Fracture.—"The primary meaning of the word 'fracture' is 'breaking' though it is conceded that it is not necessary in the case of a fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack; but the point is that if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface.[9]

Fraudulently.—'Intent to defraud' means, of course, something more than deceiving. *A* tells *B* a lie and *B* believes him. *B* is deceived but it does not follow that *A* intended to defraud *B*. But as it seems to me, if *A* tells *B* a lie intending that *B* should do something which *A* conceives to be to his own benefit or advantage, or which, if done would be to the loss or detriment of *B*, intends to defraud *B*. Sir James Stephen in his *'History of the Criminal Law of England'*, Vol. II, page 121, observed : "Whenever the words 'fraud' or 'intent to defraud', or 'fraudulently' occur in the definition of a crime two elements at least are essential to the commission of the crime, namely, *first* deceit or an intention to deceive, or in some cases mere secrecy; and *secondly*, either actual injury, or possible injury, or an intent to expose some person either to actual injury, or to a risk of possible injury, by means of that deceit or secrecy. 'This intent', he adds, 'is very seldom, the only, or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. A practical conclusive test of the fraudulent character of a deception for criminal purposes is this : Did the author of the deceit derive any advantage from it which could not have been had if truth had been known? If so, it is hardly possible that the advantage should not have had an equivalent in loss or risk of loss to someone else, and, if so, there was fraud."[10]

The word 'fraudulently' and the expression 'with intent to defraud' are synonymous. It would seem that the difference between an act done dishonestly and an act done fraudulently is

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1. *Hannock* v. *Somes*, (1859)120 ER 1108.
2. *Doed Fowlere* v. *Clark*, (1842)6 JP 701.
3. *Ex parte* Lamb, (1881)19 Ch D 169; *Sansnath* v. *Bhagwat Nath*, AIR 1966 All 615 (D.S. Mathur, J.).
4. *Burges* v. *Boete Feur*, (1844)135 ER 193.
5. *King* v. *Chamberlain*, (1871)40 LJCP 273.
6. *Re* Southam *Ex parte* Lamb, (1881)19 Ch D 169.
7. *Murat Patwa* v. *Province of Bihar*, AIR 1948 Pat 135, 138; following *Queen* v. *Price*, (1953)8 Moore PC 203 at 213; *In re* Pandurang, AIR 1951 Bom 30, 32, 33 (FB). *See* also "Immediately."
8. *State of Gujarat* v. *Ukaji Devaji*, AIR 1962 Gujarat 84 (FB).
9. *Maung Po Yi* v. *Ma E Tin*, AIR 1937 Rang 253 (*per* Spargo, J.).
10. *Kotamraju Venkatarayadu* v. *Emperor*, ILR 28 Mad 90, 96 (*per* Sir Arnold White, C.J.); *Emperor* v. *Ali Hasan*, ILR 28 All 358.

this. If there is the intention by the deceit practised to cause wrongful loss, that is dishonesty; but even in the absence of such an intention, if the deceitful act wilfully exposes any one to risk of loss, there is fraud.[1]

Two elements are necessary to constitute fraud : deceit, that is to say, someone is deceived, and injury or loss to the same person.[2]

Frequenting.—Where a bye-law prohibited the frequenting of a public place for the purpose of betting, a person attended at an athletic ground to which the public had access on payment of an entrance fee and made bets there, it was held in *Airton* v. *Scott*,[3] that the word 'frequenting' meant being sufficiently long in the place to effect the object aimed at, namely, to bet.

Frivolous or vexatious.—There seems to be no room for doubt that an accusation may be frivolous or vexatious without being wholly false. A 'vexatious' charge may be partly true and the idea conveyed by the word is that the object of the person making the accusation should be primarily to harass the persons accused.[4]

From a named date.—This expression means, on and after that day.[5]

Where a statute fixes only the *terminus a quo* of a state of things which is envisaged as to last indefinitely, the common law rule obtains that you ought to neglect fractions of day and the statute of regulation or order takes effect from the first moment of the day on which it is enacted or passed, that is to say, from midnight of the day preceding the day on which it is promulgated; where, on the other hand, a statute delimits a period marked both by a *terminus a quo* and *a terminus ad quem*, the former is to be excluded and the latter to be included in the reckoning.[6]

From time to time.—"The words 'from time to time' are words which are constantly introduced", says Lord Penzance in *Lawrie* v. *Less*,[7] "when it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted and, therefore, not being able to act again in the same direction". 'From time to time' denotes repeated action as exigencies of the situation may require, thus the meaning of these words is that after one has made one order, he may make a fresh order to add something to it, or take something from it or reverse it altogether. One ought not to narrow these words by any construction which would throw impediments in the way of carrying on the business, where the object of the statute is to facilitate it.[8]

Functus officio.—It was urged in *Davies* v. *Home Bridge Spinning Co. Ltd.*,[9] that the medical referee, having given a decision which everybody agreed was no decision at all, was *functus officio*. Romer, L.J., observed : "I will only say this, that I entirely share the difficulty of Slesser, L.J., in understanding how it can be said that a person is *functus officio* when he has never performed his duty at all."

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1. *Sukhomoyi Maitra* v. *Emperor*, AIR 1938 Pat 165, 169.
2. *Biswambhar* v. *Nilambar*, AIR 1930 Cal 263 at p. 265; *Ba Shien* v. *Emperor*, AIR 1922 LB 10.
3. (1909)100 LT 393.
4. *Balkaji* v. *Mukund Singh*, AIR 1920 Nag 108. 'Frivolous' means 'trifling', 'silling' or 'without due foundation'; *Mst. Jaina* v. *Santukdas*, AIR 1920 Nag 78.
5. *Sriniwasa Silk Mills* v. *State of Mysore*, AIR 1963 Mys 117, 123.
6. *In re* Court Fees, AIR 1924 Mad 257 (SB).
7. (1881)7 AC 19, 29.
8. *Gurdit Singh* v. *State*, AIR 1970 P & H 491, 494 (Sandhawalia, J.).
9. (1934)27 BWCC 207, 209.

General control.—The expression 'general control' used in section 15-A of Sind Courts Act is synonymous with the word 'superintendence', used in Government of India Act, 1915, Section 107, and both the expressions are not restricted to administrative control but include as well judicial power of supervision.[1]

Gives information.—The expression 'gives information' means volunteer's information in Section 203 of Indian Penal Code.[2]

Good faith.—Good faith includes due enquiry.[3] 'Good faith' implies not only an upright mental attitude, and clear conscience of a person, but also the doing of an act, showing that ordinary prudence has been exercised according to the standards of a reasonable person. 'Good faith' contemplates an honest effort to ascertain the facts upon which exercise of the power must rest. It must, therefore, be summed up as 'an honest determination from ascertained facts'. 'Good faith' precludes pretence or deceit and also negligence and recklessness. A lack of diligence, which an honest man of ordinary prudence is accustomed to exercise, is in law, a want of good faith. Once this is shown, good faith does not require a sound judgment.[4]

The expression 'good faith', when not defined by statute, has several shades of meaning. In the popular sense, the phrase simply means 'honestly, without fraud, collusion or deceit, really actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme'. Although the meaning of the expressions 'good faith' may vary in the context of different statutes, subjects and situations, honest intent free from taint or fraud or fraudulent design, is a constant element of its connotation. It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning takes its colour, light and content from the context. The meaning and scope of the expression 'good faith' is, therefore, to be considered in the light of the scheme and purpose of the section in which the phrase occurs.[5]

Goodwill.—The goodwill of business is the benefit which arises from its having been carried on for sometime in particular house, or by a particular person or firm, or from the use of particular trade-mark or trade-name.[6] Goodwill may be either incident to premises or stock-in-trade. Sometimes it happens that on the sale or transfer of business the purchaser takes a lease of the old premises for a specified period and then removes his business to another site. On the termination of the lease, the question rises whether the goodwill of the business continues to be annexed to the premises or is carried away by the purchaser and lessee along with the stock-in-trade and machinery. The answer will depend on the original terms of sale, as well as on the nature of the business; one or more of the elements going to make up what is called goodwill may be retained, while others may be parted with and all and every such elements may be disposed of without express mention. Where the goodwill is incident to the means of production rather than to the place of business, as for instance, a manufacturing business, the goodwill will pass on with plant and stock to the lessee. On the other hand, where the attribute is the prominent feature, as in the business of a hotel or public house, the goodwill is generally incident to the

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1. *Khudabux* v. *Panjo*, AIR 1930 Sind 265 at p. 282 (FB).
2. *Emperor* v. *Akhtiar*, 19 IC 508, 510; *Queen-Empress* v. *Joy Narain Patro*, 20 WR 66 (Cr); *see*, however, *Sultan* v. *Welbourne*, AIR 1925 Rang 365.
3. *Bimal Chandra Das* v. *Manmatha Das*, AIR 1954 Cal 345.
4. *Harbhajan Singh* v. *State of Punjab*, AIR 1961 Punj 215 (Tek Chand, J.); *Kailas Sizing Works* v. *Bhiwandi Municipality*, AIR 1969 Bom 127, 131 (Nain, J.).
5. *Brijendra Singh* v. *State*, 1980 All LJ 1105 (SC) : AIR 1981 SC 637.
6. Earl Jowitt's *Dictionary of English Law*, followed in *Cambatta & Co.* v. *Commissioner of Excess Profits Tax, Bombay*, (1961)2 SCR 805, 810.

premises, and consequently passes to the reversioner.[1]

Government established by law.—The phrase 'Government established by law' means the established authority which governs the country and administers its public affairs and includes the representative to whom the task of Government is entrusted.[2]

Gratuity.—On principle, if gratuity is earned by an employee for long and meritorious service it is difficult to understand why the benefit so earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct for his dismissal.[3]

Grave and sudden provocation.—The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. In India words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.[4]

Growing crop.—A 'growing crop' necessarily means a crop which is in existence and which is in the process of coming to fruition.[5]

Habitually.—The word 'habitually', means 'usually', 'generally' or 'accordingly to custom'. It does not refer to the frequency of the occasions but rather to the invariability of the practice.[6] The word 'habitually' as use in Section 110, Cr. P.C., "must in my opinion be taken to mean 'repeatedly' or 'persistently'."[7]

Handicrafts.—See *M.S.C.O. Private Ltd.* v. *Union of India*.[8]

Handwriting.—What was understood by handwriting in 1872 must now in the present times after more than a century of the enactment of that provision be necessarily understood to include typewriting as well, since typing has become more common than handwriting and this change is on account of the availability of typewriters and their common use much after the statute was enacted in 1872 (Evidence Act).[9]

Hardware.—The expression does not include electric fans. Hardware includes, pots, pans and domestic appliances of that sort and simple articles made of metal. It cannot include complicated machinery, such as electric motors and articles of that type into which, of course, a

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1. *Venkatachellum* v. *Kabalamurthy Pillai*, AIR 1955 Mad 350.
2. *In re* Sunder Lal, ILR 42 All 233 : AIR 1919 All 91 (SB); *Annie Besant* v. *Government of Madras*, ILR 39 Mad 1035 : AIR 1918 Mad 1210.
3. *Garment Cleaning Works* v. *Workmen*, AIR 1962 SC 673, 675.
4. *Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605, 630.
5. *Imamali* v. *Rani Priyawati Devi*, AIR 1937 Nag 289, 290.
6. *Pande* v. *Emperor*, AIR 1925 Bom 429, 439; but *see Legal Remembrancer* v. *Shama Charan Ghose*, ILR 23 Cal 52, 54 (imports some degree of frequency).
7. *Local Government* v. *Hanmantrao*, AIR 1924 Nag 19, 21, *per* Kotral, A.J.C.
8. (1985)1 SCC 51 : 1985 SCC (Tax) 19 : 1985 ECR 110; *(M/s.) Padmini Products* v. *Collector of Central Excise, Bangalore*, (1989)4 SCC 275.
9. Vide *State* v. *S.J. Choudhary*, (1996)2 SCC 428.

certain amount of metal must necessarily enter. An electric fan comes much more nearly under the term 'machinery'.[1]

Has been.—Though the expression 'has been' in Clause *(f)* of Section 10(1) of the Tanjore Tenant and Pannaiyal Protection Act, 1952, may include past conduct also, the proper construction of the clause read along with other clause, and in the context would be to confine it only to conduct or behaviour of the tenant subsequent to the passing to the Act.[2]

Whether the expression has been occuring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or other provisions of the statute. The words 'has been' occuring in Section 53*(g)* contemplate the issuance of a special permit or a temporary permit as referred to in Clauses *(i)* and *(ii)* of Section 3*(g)* of the Act after the commencement of the Act which is clear from the exclusion clause *(ii)* of Section 3*(g)* which excludes a stage carriage from the definition of 'contract carriage', if special permits issued under Section 62(1) or Section 63(6) of the Motor Vehicles Act were in force on January 30, 1976.[3]

Hearing.—The word 'hearing' includes the stage of the delivery of the judgment itself.[4]

Holds any civil post under the Crown.—This expression used in Section 240 of the Government of India Act, includes a temporary employee as well.[5]

Holiday.—See *Ramnandan Rai* v. *D.J., Sitamarhi.*[6]

Hostile witness.—A hostile witness may be defined as one who, from the manner in which he gives his evidence (within which is included the fact that he is willing to go back upon previous statements made by him) shows that he is not desirous of telling the truth to the Court.[7]

Hour.—"The hour fixed for commencement of counting votes" means the hour fixed for commencement of counting of votes.[8]

House rent.—The expression includes shop rent with reference to Provincial Small Cause Courts Act.[9]

If it appears.—The word 'appears' or 'appearing' is one of frequent use in judicial proceedings and is sometimes used in the statutes referring to them as meaning 'clear to the comprehension when applied to matters of opinion or reasoning and satisfactory or legally known or made known, when used in reference to facts or evidence.' In one sense the word 'appear' may refer to that which is seen by the eye, but it is also used in its broader sense as signifying that which is made clear by evidence or is clear to the comprehension when applied to matters of reasoning or opinion.[10]

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1. *Municipal Board, Benaras*, v. *Krishna & Co.*, AIR 1934 All 550.
2. *Kamalappa Thanjirayar* v. *The Revenue Court at Mannargudi*, (1955)1 MLJ 258.
3. See *The Secretary, Regional Transport Authority, Bangalore* v. *D.P. Sharma*, AIR 1989 SC 509 : (1988)4 JT (SC) 686 : (1989)1 Cur CC 141 : ILR 1989 Kant 409 : (1989)103 MLW 497.
4. *Baldeo* v. *State*, AIR 1954 All 650.
5. *Yusuf Ali* v. *Province of Punjab*, AIR 1950 Lah 59; see also *Jayanti Prasad* v. *State of Uttar Pradesh*, AIR 1951 All 793, 794; *Bhojraj* v. *Chief Secretary, Saurashtra State*, AIR 1952 Sau 40, 43; *Des Raj* v. *Dominion of India*, AIR 1952 Punj 205.
6. AIR 1980 Pat 180.
7. *Panchanan Gogai* v. *Emperor*, AIR 1930 Cal 276, 278.
8. Vide *Ajit Singh* v. *Bansi Singh*, (1995)4 SCC 758.
9. *Nathu* v. *Sonasa*, AIR 1922 Nag 51.
10. *Abdoola Harroon & Co.* v. *Calcutta Corporation*, AIR 1950 Cal 36, 45 (*per* P.B. Mookerjee, J.).

Illegal.—The word 'illegal' is not synonymous with the word 'unlawful' though it may be sometimes used in that sense.[1]

Illegally ejected.—The words 'illegally ejected' [used in Section 108, Clause (10) of Oudh Rent Act, XXII of 1886] include an ejectment by a process of law if the ejectment is illegal.[2]

Immediately.—The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time' and imply prompt vigorous action, without any delay and whether there has been such action is a question of fact having regard to the circumstances of the particular case.[3] In *Thompson* v. *Gibson*,[4] it was held that the word 'immediate' meant 'with all convenient speed.' In *Page* v. *Pearce*,[5] Lord Abinger said : "When the Act says only that the Judge shall certify immediately after the trial, and does not more specially define the time, it must mean that it is sufficient if it be done within a reasonable time." And Alderson, B. said : "As it is to be assumed to be a reasonable and proper act *prima facie*, it is for the party who complains of it to show that he took an unreasonable time." Where a statute provides that a certain thing shall be done immediately, we must, in construing that word, have regard to the object of the statute, to the position of the parties and the purpose for which the Legislature intends that it shall be done immediately.[6] 'Immediately' may mean promptly, according to the circumstances of the case.[7] When a statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly' it would probably be understood as allowing a reasonable time for doing it.[8] But it would not mean that the act may be done some weeks afterwards.[9]

Impediment.—The word 'impediment' means an impediment in law and such impediments are well known, *e.g.*, minority, unsoundness of mind, apostacy, etc. The fact that two persons are rival claimants for the office, cannot be described as an impediment to the appointment of a *mutwalli* under Section 40 of the Bengal Wakfs Act, 1934.[10]

Impossible.—The word 'impossible' may include what has become impracticable.[11]

In connection with the serving of customers.—A person is said to be employed 'in connection with the serving of customers' if his services are rendered for the purpose of facilitating the serving of customers, although the services are not an essential part of the operation of serving.[12]

In discharge of his duty.—Referring to this expression in Section 332 of the Indian Penal Code, Edge, C.J. and Burkitt, J., observed in *Queen-Empress* v. *Dalip*.[13] "In our opinion the words 'in discharge of his duty' can have only one meaning, and that is that the officer has a duty to discharge and is discharging the same at a particular time."

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1. *Faqir Mohd.* v. *Municipal Committee, Philaur*, AIR 1937 Lah 120.
2. *Mahesh Shukla* v. *Rudra Pratab Singh*, 27 IC 525.
3. *R.* v. *Justices of Berkshire*, (1879)4 QBD 469 at p. 471; *Joglekar* v. *Commissioner of Police*, AIR 1957 SC 28.
4. (1841)8 M & W 281.
5. (1841)8 M & W 677 at p. 679.
6. See *In re* Land Acquisition Act, ILR 30 Bom 275, 284-85; *In re* the Application of Sheshamma, ILR 12 Bom 276, 277; *Queen-Empress* v. *Jammu*, ILR 12 Mad 450, 451. According to Wharton's : *Law Lexicon*, quoting Maxwell, the word 'immediately' in a statute, means within a reasonable time.
7. *R.* v. *Aston*, (1850)19 LJMC 236; *R.* v. *Justice of Berkshire*, (1879)4 QBD 469.
8. Maxwell : Interpretation of Statutes, 12th Ed. at p. 311.
9. *Leech* v. *Lamle*, (1855)11 Exch 437 : 156 ER 992.
10. *Huzrat Syed* v. *Commissioner of Wakfs*, AIR 1954 Cal 436.
11. *Rajaram* v. *District Board of Tanjore*, 8 IC 365.
12. *Prance* v. *London County Council*, (1915)1 KB 688.
13. ILR 18 All 246, 250.

Indulge in.—Term 'Indulge in' in Section 2*(b)* of the U.P. Gangster and Anti Social Activities (Prevention) Act, (1986) carries same meaning as 'does' or 'commits'.[1]

In good faith.—In *Brijendra Singh* v. *State of U.P.*,[2] commenting on the expression 'good faith' used in Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1961, the Supreme Court said that the meaning of this term could vary 'in the context of different statutes, subject and situations'. It added that an expression like this, which has no uniform meaning, 'takes its colour, light and content from the context'.

In his opinion.—In one sense, there is always a subjective element in arriving at a conclusion on the evidence by a Judge or Court. The words 'in my opinion' may very well occur in a judgment of a Judge of the High Court or the Supreme Court. But that would not mean that the conclusion is arbitrary or entirely subjective.[3]

In pursuance of any enactment.—"Where there is a provision of law limiting the time or regulating the procedure for bringing actions for things done in pursuance of an enactment, the defendant is entitled to the benefit or protection of such provision if he honestly believed in the existence of a state of facts which, if it had existed would have justified him under the enactment to do the thing complained of. The reasonableness of the belief is immaterial if the belief be honest, though it is an important element in determining the question of honesty".... "We cannot regard the words alleged 'to be in pursuance of any enactment' as used in the Article 2 of Schedule II of the Limitation Act to mean that the defendant in order to claim the protection of the article, must at the time of doing the act openly allege (*i.e.* assert) that he is acting in pursuance of a particular enactment. It is we think sufficient for him to show that in doing the act he was at the time under the honest belief that his act was authorised by statute."[4]

In pursuance of.—The words 'in pursuance of' used in a notification do not mean what would be conveyed by the expression 'in exercise of powers conferred by'. The words 'in pursuance of' have several meanings. Thus it may approximately in a particular case mean 'conformable to' or 'in accordance with'.[5]

In respect of.—This expression used in Section 80, C.P.C., is in a form going beyond 'for anything done or intended to be done'.[6]

Giving the words 'in respect of' in Section 18(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, 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 nearabout of time that the money is received, it cannot be said that the receipt was in respect of the grant of a lease.[7]

In the course of.—'In the course of' means 'during the winding up' (with reference to Companies Act).[8]

In the course of business.—This expression means in the way that business (which may be of a purely private or even trivial nature) is conducted. It has no connection with a course of

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1. Vide *Ajai Rai* v. *State of U.P.*, 1995 Cri LJ 2801 (All) (DB).
2. AIR 1981 SC 637 : 1980 All LJ 1105 (SC).
3. *Dirajlal Vithalji* v. *Deputy Custodian of E.P.*, AIR 1955 Mad 75.
4. *Richard Watson* v. *Simla Municipal Corporation*, 72 PR 1909 at p. 245 : 2 IC 819, 822.
5. *Sardaria* v. *Rajasthan Board of Revenue*, AIR 1954 Raj 224.
6. *Bhagchand* v. *Secretary of State*, 54 IA 338, 356, 357.
7. *Tolaram Relumal* v. *State of Bombay*, AIR 1954 SC 496. The expression 'in respect of' is wider than the words 'in' or 'on', *Commissioner of Income-tax* v. *Chunilal*, AIR 1968 Pat 364; *see*, however, *Krishnappa Lapāppa* v. *State of Mysore*, (1968)1 Mys LJ 313.
8. *Jadunath* v. *Bank of Calcutta*, AIR 1952 Cal 506, 508 (*per* Bannerjee, J.).

business, which suggests a series of act of business.[1]

In the service or pay of Government.—It was held in *Nizamuddin* v. *Queen-Empress*,[2] that a peon in the service and pay of Government and attached to the office of a Superintendent of the Salt Department was a public servant, as an officer in the service or pay of Government within the terms of Section 21, Clause Ninth of the Penal Code, is one who is appointed to some office for the performance of some public duty. A manager of an estate under the Court of Wards is not a public servant, unless so declared by the Legislature.

Includes.—The word 'includes' has an extending force, and does not limit the meaning of the term to the substance of the definition.[3] However, it is not an inflexible rule that the word 'include' should be read always as a word of extension without reference to the context.[4] Lord Watson observed in *Dilwarth* v. *Commissioner of Stamps*,[5] "..... 'include' is very generally used interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also things which the interpretation clause declares that they shall include.[6] In other words, the word in respect of which 'includes' is used bears both its extended statutory meaning and its ordinary popular sense whenever that would be properly applicable.[7] The expression 'mean and include' in the definition clause is not recommended by modern draftsmen, there is authority for the view that that expression is exhaustive but not expansive.[8]

The inclusive meaning of a term is not to be necessarily and indiscriminately applied to the word. When a term is interpreted in a statute as 'including', etc., the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require that they should.[9]

It is a well-known rule of interpretation that the word 'include' is used as a word of enlargement and ordinarily implies that something else has been given beyond the general language which precedes it : to add to the general clause a species which does not naturally belong to it.[10] When the word 'includes' was used in connection with 'income', their Lordships of the Privy Council observed in *The King* v. *The B.C. Fir and Cedar Lumber Co., Ltd.*,[11] ".....their Lordships cannot doubt that in consequence the word, as used in the statute, includes, unless the context otherwise requires not only those things which the interpretation clause declares that it shall include, but such things as the word signifies according to its natural import."[12]

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1. *Ramamurthi* v. *Subba Rao*, AIR 1937 Mad 19.
2. ILR 28 Cal 344.
3. *Nasibun* v. *Preo Sunker Ghose*, ILR 3 Cal 531, 536; *Vyankaji* v. *Sarjarao*, ILR 16 Bom 537 (not exhaustive); *Queen* v. *Kershaw*, (1856)6 E & B 999, 1007; *Queen* v. *Hermann*, (1879)48 LJMC 106 : 4 QBD 284. *See* also Chapter II.
4. *South Gujarat Roofing Tiles Manufactures' Assn.* v. *State of Gujarat*, (1977)18 Guj LR 688 (SC).
5. 1899 AC 99, 105-6; *Bansilal* v. *Commissioner, Sales-tax*, AIR 1957 Madh Pra 30; *South Gujarat Roofing Tiles Manufactures' Assn.* v. *State of Gujarat*, (1977)18 Guj LR 688 (SC).
6. *Fateh Chand* v. *Akimuddin*, AIR 1943 Cal 108, 110; *Kantilal C. Shah* v. *Charity Commissioner*, (1975)16 Guj LR 594.
7. *Kantilal C. Shah* v. *Charity Commissioner*, (1975)16 Guj LR 594.
8. *Satrughna Sahu* v. *State of Orissa*, AIR 1958 Orissa 187, 191.
9. *Bapu Vithal* v. *Secretary of State*, AIR 1932 Bom 370, 374; *Darbari Lal* v. *Dharamvati*, AIR 1957 All 541, 545 (FB); *Jagdeo Singh* v. *Surat Singh*, ILR (1962)2 Punj 300.
10. *Emperor* v. *Jiand*, AIR 1928 Sind 149, 153 (FB).
11. 1932 PC 121; *A.C. Patel* v. *Vishwanath Chanda*, AIR 1954 Bom 204.
12. *King* v. *B.C. Fir & Co.*, AIR 1932 PC 121, 124.

The word 'includes' is a word of enlargement rather than of restriction,[1] but cannot be taken to be exhaustive when used in a definition clause.[2]

When it is mentioned that a particular definition 'includes' certain things it should be taken that the Legislature intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question.[3]

The word 'include' in the statutory definition is generally used to enlarge the meaning of the preceding words or phrases occurring in the body of the statute, and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.[4]

"It is well known that the Legislature uses the word 'means' where it wants to exhaust the significance of the term 'defined' and the word 'includes' where it intends that while the term defined should retain its ordinary meaning its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative but not exhaustive."[5]

In *Reserve Bank of India* v. *Peerless General Finance and Investment & Co. Ltd.*,[6] the Supreme Court held that the word 'includes' was not intended to expand the meaning of 'prize chit' but to cover all transactions or arrangements of the nature of prize but under different names.

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1. *Mellows* v. *Low*, (1923)1 KB 522, 526; *Narayanaswami* v. *Inspector of Police*, AIR 1949 Mad 307, 312 (SB); *Municipal Commissioner of Bombay* v. *Mathurabai*, ILR 30 Bom 558, 566 (a phrase of extension, and not of restrictive definition. It is not equivalent to 'means'). Cf. *Emperor* v. *DeSouza*, ILR 35 Bom 412; *Bilas Singh* v. *Emperor*, ILR 47 All 934 : AIR 1925 All 737; *Chhagan Lal* v. *Emperor*, ILR 51 Bom 818, 821 : AIR 1927 Bom 401, 402; *Aminy Shariff* v. *Emperor*, ILR 61 Cal 607 : AIR 1934 Cal 580, 583. *'The Hindu'* v. *Workers*, (1957)2 Lab LJ 275 (Mad) : (1957-58)13 FJR 68.
2. *A. Poornachandra Rao* v. *Government of Andhra Pradesh*, (1982)1 Andh LT 119 : (1982)1 APLJ 106.
3. *Central Union Bank* v. *Corporation of Madras*, AIR 1932 Mad 474, 481, *per* Anantakrishna, J. In *Mellows* v. *Low*, (1923)1 KB 522, 526, McCardie, J. observed : "In my view the word 'includes' used in para *(g)* is not a term of limitation or precise definition; it means what it says—that it includes the matters thereafter mentioned; in other words, it is a word of enlargement rather than of restriction". *Narayanaswami* v. *Inspector of Police*, AIR 1949 Mad 307, 312 (SB). The term 'includes' does not mean 'means' in Section 3*(e)* of Malabar Tenancy Act, 14 of 1930; *Clement Aaran* v. *Chatu Nayar*, AIR 1949 Mad 838.
4. See Stroud's *Judicial Dictionary*, 5th Ed., Vol. III at p. 1263; *L.I.T. Andhra Pradesh* v. *(M/s.) Taj Mahal Hotel, Secunderabad*, (1971)3 SCC 550 : AIR 1972 SC 168 and *State of Bombay* v. *The Hospital Mazdoor Sabha*, (1960)2 SCR 866 (875) : AIR 1960 SC 610 (614); *The Regional Director, Employees' State Insurance Corpn.* v. *(M/s.) Highland Coffee Works of P.F.X. Saldanhigh and Sons*, AIR 1992 SC 129 : 1992 Lab IC 58 : 1991(3) JT (SC) 10 : (1991)3 SCC 617 : (1991)3 SCR 307 : 1991 AIR SCW 2821.
5. *Province of Bengal* v. *Hingul Kumari*, AIR 1946 Cal 217, 224 *per* Das, J.; *Bilas Singh* v. *Emperor*, AIR 1925 All 737. When it is intended to exhaust the signification of the word interpreted, the word 'means' is used; *In re* Strauss and Co., Ltd., AIR 1937 Bom 15, 16. "It seems to me clear that when in an interpretation clause it is stated that a certain term includes so and so, it is implied that the term retains its ordinary meaning whatever else it may mean" : Fazl Ali, J. in *Bishwanath* v. *Official Receiver*, ILR 16 Pat 69 : AIR 1937 Pat 185, 187 (FB). The word 'includes' though it may extend the meaning of an expression in one sense it may restrict it; *Masrab Khan* v. *Deb Nath Moh*, AIR 1942 Cal 321, 332.
6. 1 AIR 1987 SC 1023 : (1987)8 (1) IJR 42 : (1987)1 SCC 424 : (1987)1 Com LJ 162 : (1987)1 Supreme 169 : (1987)61 Com Cas 663 : 1987 JT (SC) 246 : (1987)1 SCJ 546 : (1987)1 Cur C C 721 : (1987)1 SCWR 201 : 1987 Bank 294 : (1987)1 UJ (SC) 586 : (1987)18 Lawyer 48 : 1987 Cur Cir LJ (SC) 302.

Income.—In the words of the Supreme Court the expression 'income' in the Legislative entry has always been understood in a wide and comprehensive connotation to embrace within it every kind of receipt or gain of a capital nature or of a revenue nature and it was held that the expressions 'taxable receipts' is comprehended in the genus 'income'.[1]

Inconsistency.—Things are said to be inconsistent when they are contrary to one another.[2]

Industry.—The concept of industry postulates partnership between capital and labour or between the employer and his employees. It is under this partnership that the employer contributes his capital and the employees their labour and the joint contribution of capital and labour leads directly to the production which the industry has in view. In other words, the co-operation between capital and labour or between the employer and his employees which is treated as a working test in determining whether any activity amounts to an industry, is the co-operation which is directly involved, in the production of goods or in the rendering of service. It cannot be suggested that every form or aspect of human activity in which capital and labour co-operate or employer and employees assist each other is an industry. The distinguishing feature of an industry is that for the production of goods or for the rendering of service, co-operation between capital and labour or between the employer and his employees must be direct and must be essential.[3]

Infamous conduct.—This expression used with reference to a medical practitioner was commented upon thus by Lopes, L.J., in *Allison* v. *General Council of Medical Education and Registration*[4]; "The Master of the Rolls (Lord Esher) has adopted a definition which, with assistance and that of my brother Davey, I prepared. I will read it again : "if it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the general medical council to say that he has been guilty of infamous conduct in a professional respect'."

Inhabit.—The word 'inhabit' simply means to dwell in.[5] A person may inhabit a place without sleeping there, or he may sleep there without inhabiting it. The fact that a person sleeps in a place is generally a very important ingredient in deciding whether he inhabits it, but it is not conclusive.[6]

Maule, J. in *Whithorne* v. *Thomas*,[7] referring to the word 'inhabitant' observed that it....."has a technical meaning attached to it when used in Acts of Parliament, which requires a different interpretation for it to that which one would otherwise give it. But, in popular language, no one could doubt that this appellant was residing in Gloucestor, and that he was not residing at Tewkesbury. No one but a lawyer could doubt it for an instant; and I see nothing to make it necessary, that as a matter of law we should decide it otherwise. It is no doubt possible that a person might have been a resident in Tewkesbury, who had slept in it during the year as many nights as the appellant, and no more; but it would require a great many other facts which

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1. See *The Elel Hotels & Investments Ltd.* v. *Union of India*, AIR 1990 SC 1664 (5J) : 1990 Tax LR 651 : (1989)44 Taxman 304 : (1989)178 ITR 140 : (1989)77 CTR 168 : (1989)74 STC 146 : (1989)94 (2) Taxation 55.
2. *Prem Chand Jain* v. *Regional Transport Authority, Gwalior*, 1967 Jab LJ 885 (FB).
3. *National Union of Commercial Employees* v. *Industrial Tribunal, Bombay*, AIR 1962 SC 1080, 1083-84. A solicitor's firm is not engaged in an 'industry'; *Papammal* v. *Labour Court*, AIR 1962 Mad 284 (Annachatram) *Rangaswami* v. *Registrar, Trade Unions*, AIR 1969 Mad 231. 233.
4. (1894)1 QB 750, 763.
5. *Atkinson* v. *Collard*, (1885)16 QBD 254, 266.
6. *R.* v. *Exeter (Mayor) Dipstale's* case, 1868 LR 4 QB 114, 115, 116.
7. (1845)14 LJCP 38, 40.

are wanting here to make that out—such, for instance, as that his wife or children had been all that time resident in the house, of which the contrary is here expressly found."

The word 'inhabitant' cannot be said to have any fixed meaning.[1] This word as used in Section 6 of Bombay Public Security Measures Act, 6 of 1947, is not used in the sense of the persons who are besides being permanent residents are also the occupants in the sense of carrying on business.[2]

Institutions of a prosecution.—"The institution of a prosecution seems to me to mean ordinarily the commencement of the proceedings by which a person is brought before the Court."[3]

Instructions for brief.—The following matters may be considered in arriving at a solution which is proper to be allowed under the heading 'Instruction, for Brief' : The length of the documents perused (in cases in which perusal has not previously been charged), the name of the witnesses who have been attended, the places to which journeys have been made, with the time occupied in each, and the amount of the travelling expenses, should be stated.[4]

Intention.—"In some branches of the law, 'intention' may be understood to cover results which may reasonably flow from what is deliberately done, the principle being that a man is to be treated as intending the reasonable consequence of his acts."[5]

Intentionally.—"It is also argued that the word 'intentionally' in Section (176 of Indial Penal Code) should be construed in the sense of an intention to conceal the facts which should be reported; but where a person is under a legal duty to report certain facts and fails to report them, he must be presumed to intend to conceal them, unless he can show that he had reason to suppose that the authority to which the report was due had the information from other sources." The mere fact that another person was also present who was under a similar obligation to report is, by itself no legal justification for his omission.[6]

Interest.—"Interest is not a technical word in the sense in which 'fee simple' or 'estate tail' may be said to be technical words, but includes all those various limitations of real estate allowed by law, vested, contingent, or executory.....We, therefore, think that, taking the word 'interest' in its ordinary meaning, it is impossible to deny that it is an apt word to describe that right to which the person named as contingent remainder-man or executory devisee in a devise of land is entitled. It is, in fact, the word which would generally be used in that connection either by a lawyer or by a layman."[7]

Interest in the estate of deceased person.—The provisions of Section 250 of Indian Succession Act of 1865 and Section 81 of the Probate and Administration Act, 1881, are that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person, that is to say, there should be no dispute whatever as to the title of the deceased to the estate, but the person who wishes to come in as caveator must show some interest in that estate derived from the deceased by inheritance or otherwise.[8]

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1. *King* v. *Mashiter*, 45 R R 433.
2. *Abdul Ghani* v. *Commissioner of Police, Bombay*, AIR 1949 Bom 365.
3. Wills, J. in *Beardsley* v. *Giddings*, (1904)1 KB 847, 851.
4. *Hill* v. *Peel*, 1870 LR 5 CP 172; *Slingsby* v. *A.G.*, (1918) at p. 236, 240-241.
5. Lord Simon, L. G. in *Crofter, etc., Ltd.* v. *Veitch*, 1942 AC 435, 444.
6. In re *Pavallimannakal* v. *Nambudripad*, 27 IC 843.
7. *Hoysted* v. *Taxation Federal Commissioner*, (1920)27 CLR 400, 497, quoted by Burrows : *Words and Phrases*, Vol. 3 at p. 134.
8. *Pirojshah Bikhaji* v. *Pestonji, Merwanji*, ILR 34 Bom 459, 461. The text is generally this : will the grant of probate to the petitioner, displace any right to which the caveator is otherwise entitled? If so, he has an interest, if not, he has none; *Swatantranandji* v. *Lunidaran*, AIR 1937 Bom 397, 398.

Interlineation.—The word 'interlineation' is not to be confined to something written between the lines. Hannen, J., observed in *Bagshawe* v. *Canning*,[1] ....."undoubtedly, that is its etymological meaning, or one of its meanings. But I think it has acquired a secondary signification, namely, the introduction of something into the will, and I think it would be equally an interlineation within the meaning of the Act if something were put into one of the lines written on the line."

Interlocutory order.—An interlocutory order is an order other than the final judgment or decree in an action.[2]

It shall be lawful.—"The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not, of themselves, do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Whether the power is one coupled with a duty such as I have described is a question which, according to our system of law, speaking generally, it falls to the Court of Queen's Bench to decide, on an application for a *mandamus*. And the words 'it shall be lawful' being, according to their natural meaning, permissive and enabling words only, it lies upon those, as it seems to me, who contend that an obligation exists to exercise this power, show in the circumstances of the case something which, according to the principles I have mentioned, creates the obligation."[3]

Lord Penzance in the same case observed :

> "The words 'it shall be lawful' are distinctly words of permission only —they are enabling and empowering words. They confer a legislative right and power on the individual named to do a particular thing, and the true question is not whether they mean something different, but whether, regard being had to the person so enabled—to the subject-matter, to the general objects of the statute, and to the person or class of persons for whose benefit the power may be intended to have been conferred—they do, or do not, create a duty in the person on whom it is conferred, to exercise it."

His Lordships had also opined :

> "It is surely not enough that the thing empowered to be done should be for the public benefit, in order to make it imperative to exercise that power on all occasions falling within the statute. It may be assumed that all powers conferred by statute on individuals in general public Acts, are for the public benefit, or they would not have been conferred."

The learned Judge was of opinion that there was no authority for the proposition that such words as 'it shall be lawful' in a certain class of statutes import *prima facie* not permission but obligation, and that the effect of the cases in which 'the exercise of the power conferred was held to be obligatory was that, though the statute in terms had only conferred a power, the circumstances was such as to create a duty' and to show that the exercise of any discretion by the person empowered could not have been intended in the particular circumstances of the case.

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1. (1888)52 JP 583.
2. *Smith* v. *Cowell*, (1880)29 WR 227, 228 : (1880)6 QBD 75, *per* Brett, L.J.; *V.C. Shukla* v. *State*, AIR 1980 SC 962.
3. *Julius* v. *Lord Bishop of Oxford*, (1880)5 AC 214, 222-223, *per* Earl Cairns, L.C. followed in *Smith* v. *Watson*, 4 CLR 802, 811; *Balak Ram* v. *Sita Ram*, AIR 1954 HP 6.

Lord Selborne stated in the same case :

"The language (certainly found in authorities entitled to very high respect) which speaks of the words 'it shall be lawful', and the like, when used in public statutes : as ambiguous and susceptible (according to certain rules of construction) of a discretionary or an obligatory sense, in my opinion, inaccurate. I agree with my noble and learned friends who have preceded me, that the meaning of such words is the same, whether there is or is not a duty or obligation to use the power which they confer. They are potential and never (in themselves) significant of any obligation."

His Lordship opined :

"This question whether a Judge, or a public officer to whom a power if given by such words is bound to use it upon any particular occasion, or in any particular manner, must be solved *aliunde* and, in general, it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power."

Lord Blackburn observed at p. 241 of the same case :

"I do not think the words 'it shall be lawful' are in themselves ambiguous at all. They are apt words to express that a power is given; and as, *prima facie*, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that *prima facie*, they are equivalent to saying that the donee may do it, but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it. It by no means follows that because there is a duty cast on the donee of a power to exercise it, that *mandamus* lies to enforce it; that depends on the nature of the duty and the position of the donee.'

But his Lordship could not agree with the view that, whenever the statute is for the public good, and of general interest and concern, powers conferred by enabling words are *prima facie* to be considered powers which must be exercised.[1]

In *Newmarch* v. *Atkinson*,[2] it was said : "If specific facts are established, then says the Act, 'it shall be lawful' to make an order. Those words by themselves are primarily permissive only, but the nature of the subject-matter and of the donee of the power shows that they are in this case mandatory. The extent of that mandate is the next consideration."

In *In re* Thuckur Bhagwandas Harjivan,[3] Marriot, J. considered the effect of these words in Section 9 of Indian Insolvency Act (Stat. 11 and 12 Vic., C. 21) and observed : 'It was urged that, as the Act fixes no limit within which the petition for adjudication is to be presented, it is but reasonable to conclude that the Legislature, by enacting that 'it shall be lawful for the Court to adjudge that such person has committed an act of insolvency', intended to give the Court a discretion to adjudicate, or not, according to the circumstances of each particular case. I think these words do not give the Court any such discretion; but that inasmuch as they confer on the Court authority to do a judicial act in a certain case, they make it imperative on the Court to exercise that authority when the case arises, and the exercise of that authority is

1. *Southwork and Vauxhall Water Co.* v. *Wandsworth Board of Works*, (1818)2 Ch 603, 607 : Lindley, M.R. said : "These words may, no doubt, under certain circumstances impose a duty as well as confer a power, but it is for those who contend that they do both to make good their contention."
2. 25 CLR 381, 387.
3. ILR (1880)4 Bom 489.

duly applied for."[1]

Strachey, J., however, considered the application of the principles established by the case of *Julius* v. *Oxford*,[2] in *In the matter of* Thuckur Bhagwandas Harjivan,[3] as open to question. His Lordship observed in *In re* Aranvayal Sabhapathy[4] : "None of the judgments lay down an absolute rule that where the words 'it shall be lawful' confer on a Court authority to do a judicial act in a certain case, they make it imperative on the Court to exercise that authority when the case arises, and the exercise of that authority is duly applied for. What they lay down is that the words themselves are always permissive and enabling, and never imperative; but that the context, the subject-matter of the statute, the nature of the authority or the thing authorised and all the circumstances may show that the Legislature intended to couple with the authority a duty to exercise it when invoked. Whether the Legislature intended to create an imperative duty or to allow a discretion in the matter, depends upon the nature, the objects, and the construction of the statute itself and not upon the enabling words 'it shall be lawful' which create the authority."[5]

Thus, in construing Acts of public utility where the framing of the rules and the making of the appointment is necessary in order that the objects of the Act may be attained such words (it shall be lawful) which might otherwise be considered permissive are really mandatory. The permissive form is a mere courteous convention. In *Lachmi Chand* v. *Ram Pratap*.[6] Courtney Terrell, C.J., observed with reference to such words used in the Bihar and Orissa Self-Government Act, as amended : "The Act really imposes a duty on the executive and it is implied that a public body will carry out the duties indicated by the Legislature in order that the purpose of the Legislature may not be frustrated. This rule of construction has been well recognised. The case is quite otherwise when a public body or officer is vested with authority to exercise a judicial discretion."[7]

In the Bombay case of *Readymoney, Ltd.* v. *State of Bombay*,[8] it was observed with reference to the said words in Section 11 of the Bombay Prohibition Act : "Where the words 'It shall be lawful' are to be found used in the provision of a statute, they should be taken to convey the meaning that if the law had not been enacted, there would have been no authority to do the act; in other words, that the law as it stood without the provision that was being considered did not in fact permit the doing of the act. It does not mean that it is to be inferred from the provision itself that there was in the law as it existed before the provision no authority to do the act."

Joint Tenancy/ Tenancy in common.—See *Ramesh* v. *Gopeshwar*.[9]

Judicial duties.—The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in Court, or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind—that is, a mind to determine what is fair and just in respect of the matters under consideration.[10]

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1. *Prasad Das Mullick* v. *Russick Lal Mullick*, ILR (1881)7 Cal 158.
2. 5 AC 214.
3. ILR (1880)4 Bom 489.
4. 21 Bom 380.
5. *In re* Baker, 44 Ch 262; Chunni Lal Oswal, *In re*, ILR 29 Cal 503.
6. AIR 1934 Pat 670(2), 672 : ILR 14 Pat 24 (FB).
7. *R.* v. *Worcestershire Justices* : Ex parte *Lower, etc. Co*, (1839)118 LJKB 513.
8. AIR 1956 Bom 304.
9. AIR 1977 All 39.
10. *Royal Aquarium, etc., Ltd* v. *Parkinson*, (1892)1 QB 413, 452.

May, C.J. observed in *Reg* v. *Dublin Corpn.*[1] :

"In this connection the term 'judicial' does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for the purpose of the question a judicial act seems to be an act done by competent authority upon a consideration of fact and circumstances, and imposing liability or affecting the rights of others. And if there is a body empowered by law to enquire into facts, make estimate to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts.[2]

Judicial experience.—This term would mean the knowledge or skill gained by a person by actually working as a Judge in a Court of law. In other words, it denotes the experience which a Judge obtains by regular application of his unbiased and unprejudicial mind to the determination of disputes between two or more parties adjudicating upon their legal rights or liabilities. Thus, where a person is called upon regularly to determine right of parties in contested cases and to investigate the merits of the claims of the parties and to apply his unbiased and impartial mind in order to determine the contest he may be regarded as thereby acquiring judicial experience.

Members of the Bar are no doubt part of the judicial machinery. However, the functions that are performed by lawyers are different from those of the Bench. Members of the learned profession of lawyers get little opportunity to apply their impartial and unbiased mind to judicial matters and though they may acquire legal knowledge and experience yet by the very nature of the work they perform, they cannot claim actual opportunity to acquire judicial experience in its true sense. They represent a party to the suit and consequently their approach is generally speaking partial and not impartial. Their legal experience cannot be regarded as judicial experience.[3]

Judicial proceeding.—The term is a general term for proceedings in Courts; for the course authorised to be taken in various cases to secure the determination of controversy; to obtain the enforcement of a right or the redress or prevention of a wrong.[4] The term includes an execution proceeding.[5] An application for leave to sue is a stage in a judicial proceeding.[6] Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath.[7]

Judicially.—Whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a *lis*, ordinarily there will be a duty on the part of the said authority to act judicially.[8]

Just cause.—The word 'just' does not add much weight, though it may add a little. It means some substantial reason must be shown.[9]

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1. (1878)2 LR Ir 371.
2. Lord Atkinson quoted this dictum in *Frome United Breweries Co.* v. *Bath Justices*, 1926 AC 586; *Venkata Narsimha* v. *Municipal Council, Narasaraopet*, AIR 1931 Mad 122, 123.
3. *Badridas Kanhaiyalal* v. *Appellate Tribunal of State Transport Authority*, AIR 1960 Raj 105, 114.
4. Abbot, L. : *Dictionary.*
5. 6 IC 801, 803.
6. *Budhulal* v. *Chotu Gopu*, 25 CLJ 401.
7. Section 47, Cr. P.C., 1898 now section 47(1), Cr. P.C., 1973 (2 of 1974).
8. *Gullapalli Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation*, AIR 1959 SC 308, 322 : 1959 Supp (1) SCR 319, 344.
9. Jessel, M.R. *Re* Pool, *Ex parte* Cock, (1882)52 LJ Ch 63, 65.

Justice, equity and good conscience.—A direction to decide by equity and good conscience is generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances.[1]

Knowingly.—The word 'knowingly' must mean with design.[2] It may also mean 'with knowledge of the facts' upon which the contravention depends and it is immaterial whether the person concerned had knowledge of the law or not.[3]

Knowledge.—Knowledge as contrasted with intention would more properly signify a state of mental realisation in which the mind is a passive recipient of certain ideas and impressions arising or passing before it. It would refer to a bare state of conscious awareness of certain facts in which human mind might itself remain supine or inactive. On the other hand, intention connotes a conscious state in which mental faculties are roused into activity and summoned into action for the deliberate purpose of being directed towards a particular and specified end which the human mind conceives and perceives before itself. Mental faculties which might be dispersed in the case of knowledge are in the case of intention concentrated and converged on a particular point and projected in a set direction.[4]

The distinction between the words 'knowledge' and 'intention' is fine but clear, and the use of the one in place of the other by the Legislature cannot be without purpose. The words must be given their full effect.[5]

Land.— See *P. Rami Reddy* v. *State of Andhra Pradesh*.[6]

Larceny by a trick.—"The difference between larceny by a trick and obtaining goods by false pretences may be shortly stated. Simple larceny is the felonious taking of goods belonging to another person against the will and without the consent of that person. In the case of larceny by a trick the person who has lost the goods has given an apparent consent to the possession being taken by the thief, and therefore, it is not in one sense a case of obtaining goods without the consent and against the will of the owner; but, as the consent of the person who parts with the goods has been obtained fraudulently by a trick, it is only an apparent and not a real consent and the person who has obtained the goods cannot set up that the owner has consented to his obtaining possession. The case of larceny by a trick, therefore, falls into line with the case of ordinary larceny. In the one case, as in the other, the thief has *animo furandi* deprived the owner of his goods without his consent, and, consequently, if the thief hands the goods on to another person, he confers no title to them upon that person. The case of obtaining goods by false pretences is the converse of that just mentioned. There the person who parts with the goods intends to pass the property in them and the person who obtains them by false pretences can convey a good title to some third person."[7]

Last place of abode.—Ten days after the birth of bastard child, a summons was left at the house where the alleged father had been residing but had left shortly after such birth and had gone to America where he had no place of abode. It was held in *R.*v. *Webb*,[8] that such house was his last place of abode and the service was sufficient.

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1. *Waghela* v. *Sheikh Masluddin*, 14 IA 89, 96; *Mehrban Khan* v. *Makna*, 56 IA 168, 171.
2. *R.* v. *Bannen*, (1844)174 ER 818.
3. *Burton* v. *Bevan*, (1908)2 Ch 240, 246; *A.G.* v. *Cozens*, (1934)50 TLR 320, 321.
4. *Faqira* v. *State*, AIR 1955 All 321.
5. *Faqira* v. *State*, AIR 1955 All 321.
6. (1988)3 SCC 433.
7. *Heap* v. *Motorists' Advisory Agency, Ltd.*, (1923)1 KB 577, 583 (*per* Lush, J.).
8. (1896)1 QB 487.

Law for the time being in force.—This expression must mean the whole body of law.[1]

Laws in force.—Laws are really commands embodying rules of conduct emanating from one whose will is sovereign, or, in other words, supreme.[2] The definition of the expression 'laws in force' in Article 13 of the Constitution is not exhaustive but is only illustrative as the word used is 'includes' and not 'means'. Under Clause (3)*(a)* law has been defined so as to include 'custom and usage having the force of law'. Under Section 13 of the General Clauses Act, a word used in plural has the same meaning as when it is used in the singular form and the context in Clause (1) of Article 13 makes it necessary to interpret 'laws in force so as to include customs and usages'.[3]

In the Full Bench case of *Moti Bai* v. *Kandkari*,[4] Palnitkar and Ansari, JJ., however, held that the right of pre-emption as claimed by a Hindu in Hyderabad State existed on the basis of custom and such a law is not covered by the definition of 'existing law' in Article 366(10). Chari, J., on the other hand, in his dissenting opinion held that the expression 'custom or usage having the force of law' is included in the term 'law in force' in Article 13(1) of the Constitution.

The expression 'law in force' in Article 20 of the Constitution has been held to mean law actually in force and not law deemed to be in force by retrospective operation of an amendment.[5]

Left behind.—The expression used in case of a seaman left behind in a port, would include one who has deserted from the ship and as to whom when the ship sails from the port, the master has no information whether he is in fact left there or has already joined and sailed from the port in another ship.[6]

Legal character.—A man's 'legal character' is the same thing as a man's status. "A man's status or 'legal character' is constituted by the attributes which the law attaches to him in his individual and personal capacity, the distinctive mark or dress, as it were, with which the law clothes him apart from the attributes which may be said to belong to normal humanity in general."

According to Holland, the chief varieties of status among natural persons may be referred to the following clauses :

(1) sex,
(2) minority,
(3) *'Patria potestas'* and *'manus'*,
(4) coverture,
(5) celibacy,
(6) mental defect,
(7) bodily defect,
(8) rank, caste and official position,
(9) slavery,
(10) profession,
(11) civil death,
(12) illegitimacy,

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1. *Krishnaswami* v. *Nalar Gounder*, AIR 1945 Mad 309.
2. *Jagannath Rao* v. *Commissioner, Income Tax, Hyderabad*, AIR 1962 SC 141, 143.
3. *Panch Gujar* v. *Amarsingh*, AIR 1954 Raj 100 (FB).
4. AIR 1954 Hyd 161 (FB).
5. *Rama Shankar Tewari* v. *State*, AIR 1954 All 562.
6. *Colbourne* v. *Lawrence*, (1917)2 KB 857.

(13) heresy,
(14) foreign nationality, and
(15) hostile nationality.

A declaration that a valid personal contract still subsists between the plaintiff and the defendant is not a right to declare a title to a legal character or a title to right to property.[1]

The words 'legal character' are enough to include the right of franchise and also a right of being elected as a Municipal Commissioner.[2]

The expression 'legal character' in Section 42, Specific Relief Act, cannot apply to the case of a defeated candidate at an election. "Having been elected, he had a claim to a legal character which may be defined to mean a position recognised by law, and his right to sue for a declaration that he possessed such a legal character may well be admitted. I cannot, however, understand how it can be held that a person who is defeated in such an election can assert a claim to a position recognised by law in respect of such an election, and thus, in my opinion, no declaratory suit would ordinarily lie."[3]

'Legal proceeding' in its normal connotation can only mean a proceeding in accordance with law. The expression is not synonymous with 'judicial proceedings'. Proceedings may be legal, even if they are not judicial proceedings if they are authorised by law.[4]

Legitimate expectation.—Legitimate expectation was correlated to the right of the allied who was permitted to stay for a definite period of time. It is also clear that irrespective of such right, there could not be any legitimate expectation. The principle of legitimate expectation was confined mostly to right to a fair hearing before a decision is revoked or a promise or undertaking is withdrawn but not the grant of a boon which had not fructified into a right by the Administration passing an order.[5]

Letting out for hire.—There is a well-recognised distinction between 'letting out for hire' and 'plying for hire'. Where the persons who are picked up have previously reserved accommodation and the driver or the person in control of the vehicle does not solicit or wait to obtain passengers, there is a 'letting out for hire', ; whereas, on the other hand, there being no antecedent contract or previous arrangement, passengers are received by some process of soliciting, then there is what is known as a 'plying for hire.' It is not correct to say that to constitute a 'plying for hire' the carriage must run along a fixed route or that the true test of letting is, that the hirer has the power to control the direction or destination of the vehicle.[6] If *A* keeps motors at Poona in order to let them out to clients who wish to go to Mahabaleshwar, the motors would not become on that account public conveyances, it would be otherwise if *A* kept a motor bus which plied regularly between Poona and Mahabaleshwar.[7]

Liable to be wound up.—The expression 'liable to be wound up' in Section 153(6) of Indian Companies Act cannot be regarded as synonymous with the expression 'can be wound up' under

1. *Ramakrishna* v. *Narayana*, ILR 39 Mad 80, 82.
2. *Subhapat Singh* v. *Abdul Ghafar*, ILR 24 Cal 107, 113; *see* also *In re* Venkataramayya, ILR 54 Mad 601 : AIR 1931 Mad 441 (SB); *Abdul Karim Venka* v. *Sarraya Begum*, AIR 1945 Lah 266 (FB) : "No person has, however, a right to continue in an elected office perpetually in spite of his term coming to an end. Such a claim will be a negation of all democratic principles and would result in elected officers becoming life members."—*Virendra Swarup* v. *President of India*, AIR 1969 All 56.
3. *Sunder Lal* v. *Mohd. Faiq*, 18 IC 122 (Oudh), *per* Stuart, A.J.C.; *see* also *Sat Narain* v. *Hanuman Prasad*, AIR 1946 Lah 85.
4. *Abdul Aziz* v. *State of Bombay*, AIR 1958 Bom 279, 282.
5. *Govt. of Andhra Pradesh* v. *H.E.H. the Nizam VIII of Hyderabad*, AIR 1993 AP 76 (DB).
6. *Municipal Council, Karaikudi* v. *Thirumalai*, AIR 1935 Mad 657.
7. *Emperor* v. *Nosarwanji Bomanji*, AIR 1923 Bom 248.

the Act.[1]

Limited estate.—The expression means the limited estate of a woman according to Hindu Mitakshara Law.[2]

Limited by law.—The term 'limited by law' when used in a statute, is to be construed as meaning limited by, the statute law, and not to mean limited by the general common law.[3]

Local authority.—See *Union of India* v. *R.C. Jain.*[4]

Lodge.—The word 'lodge' when used in regard to Courts is usually meant to convey a deposit of a formal 'document of information or complaint, etc.'[5]

Loiter.—The word 'loiter' with a vehicle in the street contrary to a municipal bye-law, connotes something in the nature of stopping to chat with other drivers, gossiping or idling, merely driving a char-a-banc slowly backwards and forwards to pick up passengers is not 'loitering' especially if there be no obstruction to the traffic.[6]

Loss.—The loss may result in any manner but so long as the claimant does not receive the goods as per the railway receipt, it must be considered as loss and a notice is required under Section 77 of the Railways Act.[7]

Luxuries.—The concept of 'luxuries' in the legislative Entry takes within it everything that can fairly and reasonably be said to be comprehended in it. The actual measure of the levy is a matter of legislative policy and convenience. So long as the legislation has reasonable means with the concept of 'luxuries' in the broad and general sense in which the expressions in the legislative tests are comprehended, the legislative competence extends to all matters 'with respect to' that yield of topic of legislation.[8]

Machinery.—"It is not an easy task to define its meaning.....A completed machine or a number of completed machines may, of course, according to the ordinary use of the language, be properly described as 'machinery,' so may those parts or members of a machine which, when assembled, as it is styled, form a complete machine; so also may some of such of those parts which, when assembled with the other necessary parts, would form a complete machine be styled 'machinery'.....The word 'machinery' must mean something more than a collection of ordinary tools. It must mean something more than a solid structure built upon the ground, whose parts either do not move at all or, if they do move, do not move the one with or upon the other in inter-dependent action with the object of producing a specific and definite result.....there is great danger in attempting to give a definition of the word 'machinery' which will be applicable in all cases. It may be impossible to succeed in such an attempt. If their Lordships were obliged to run the hazard of the attempt they would be inclined to say that the word 'machinery', when used in ordinary language, *prima facie* means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter-dependent operation of their respective parts generate power, or

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1. *Bhagwati* v. *New Bank of India*, AIR 1950 EP 111, 130 (FB).
2. *Ningamma* v. *Patel Linga Gowda*, AIR 1954 Mys 179.
3. Iyer : *Law Lexicon* at p. 739.
4. AIR 1981 SC 951, case under General Clauses Act, 1897, Section 3(31).
5. *Pichai Pillai* v. *Subbaraya Pillai*, AIR 1938 Mad 531.
6. *Ibrahim Ibeo* v. *Emperor*, AIR 1945 Bom 65.
7. *Ramalingam Chettiar* v. *Union of India*, (1955)1 MLJ 255.
8. *Express Hotels Pvt. Ltd.* v. *State of Gujarat*, AIR 1989 SC 1949 (5J) : (1989) Tax LR 944 : (1989)178 ITR 151 : (1989) JT (SC) 72 : (1989)29 STL 204 : (1989)74 STC 157.

evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result."[1]

'Mainly', 'Solely'.—Expression 'mainly' in Section 2*(d)*(1) of H.P. Urban Rent Control Act (23 of 1971) could not be interpreted 'solely' for the reason that these two expressions have altogether different meanings. Solely means 'exclusively' while mainly means 'substantially' but not in any case 'wholly' or 'solely'.[2]

Maintenance requiring.—The words 'requiring the maintenance in mines' of suitable rooms in Section 30*(bb)* of the Mines Act, where there are no such rooms, means their construction and then their maintenance.[3]

Making an order.—An order does not become an order unless and until steps are taken by the officer passing it to bring it to the consciousness and knowledge of the party against whom it is passed. If the party affected by the order acts in such a way as to prevent the officer from communicating it to him within reasonable time after he has written it, it may be that the date of the order would be the date when it could have been brought to the knowledge of the party wishing a reasonable period. Chandavarkar, J. in *Abdul Ali* v. *Mirja Khais*,[4] in construing expression 'making of an order' in Section 77 of Registration Act observed : "We think that the words 'the making of an order' must mean not merely recordjng it in writing, but communicating it to the party concerned so as to bind him by it."

The words 'malfeasance,' 'misfeasance' and 'non-feasance' cover a wide range of cases.

Malfeasance would apply to a case where an act prohibited in law is done by a person.

Non-feasance would apply to a case where a person omits to do some act prescribed by law, and

Misfeasance would apply to a case where a lawful act is done in an improper manner.[5]

Mala fide exercise of power.—An essential condition attached to the statutory exercise of power is that it must be exercised *bona fide*. A malicious or fraudulent use of the power for extraneous purposes, would, of course, negative *bona fides*. But where it is established that the statutory authority did not apply its mind to the matters to be considered before exercising the power it is a case of *mala fide* exercise of power. For example, where a person is deprived of his individual liberty, by an order passed by a statutory authority who without applying his mind simply signs a crystallised form or mechanically puts his signature to an order prepared by an officer or on the report of the police, the order so passed is a *mala fide* exercise of power and is liable to be annulled on that ground.[6]

Malice.—See *State* v. *Rameshwar Prasad*.[7]

Malice in law.—"A person who inflicts injury upon another person in contravention of the law is not allowed to say that he did with an innocent mind, he is taken to know the law and he must act within the law. He may, therefore, be guilty of malice in law, although so far as the state of his mind is concerned, he acts ignorantly and in that sense innocently".[8]

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1. *Calcultta Corporation* v. *Cossipur and Chitpur Municipality*, 48 IA 435, 440, 443, 445, per Lord Atkinson.
2. *Himachal Road Transport Corporation, Simla* v. *(M/s.) Bhanno Mull & Sons*, AIR 1992 HP 37 : (1991)2 Rent LR 566 : (1992) Sim LC 110 (DB).
3. *State* v. *Kunja Behari Chandra*, AIR 1954 Pat 371 (FB).
4. ILR 28 Bom 8 at p. 10.
5. *Khairul Bashar* v. *Thanna Lal*, AIR 1957 All 553, 556.
6. *Pramatha Nath* v. *State of West Bengal*, (1966)70 Cal WN 503.
7. AIR 1980 Pat 267 (Law of Torts).
8. Viscount Holdone in *Sharer* v. *Sheilds*, (1914) AC 808 at p. 813, quoted in *Ghulam Rasool Baba* v. *State of J. & K.*, 1982 Sri LJ 138 (DB).

Maliciously.—The term 'maliciously' in the sense in which it is familiarly used in the criminal law of England, signifies 'intentionally and without justification, or excuse or claim of right."[1]

Blackburn, J., observed in *Rex* v. *Ward*,[2] that a man acts maliciously, when he wilfully does that which he knows will injure another in person or property.

Manufacture.—See *P.C. Cherian* v. *Mst. Barfi Devi*.[3]

The word 'manufacture' used as a verb is generally understood 'to mean as bringing into existence a new substance' and does mean merely to produce some change in a substance, however minor in consequence the change may be.[4]

The words 'manufacture or produce articles' in Section 32-A of Income Tax Act (43 of 1961) were construed by the Supreme Court as follows : "The words are construction, manufacture or production of any one or more of the articles and things respectively. It is equally evident that in these sub-clauses as well as in IXth Schedule and XIth Schedule, the words 'articles and things' are used interchangeably. In the scheme and context of the provision, it would not be right to isolate the word 'thing', ascertain the meaning with reference to Law Lexicons and attach to it a meaning which it was never intended to bear. Regard must also be had to the scheme, context and to the legislative history of the provision and it was held that the Sub-clause *(iii)* of Clause *(b)* of Sub-section (2) of Section 32-A, does not comprehend within its ambit construction of a dam, a bridge, a building, a road, a canal and other constructions, and that the expression 'manufacture' and 'produce' are normally associated with movables—articles and goods big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter, a bridge, a road and building".[5]

Manufacturing Process.—See *Ravi Shankar Sharma* v. *State of Rajasthan*.[6]

Marketable.—It means salable or suitable for sale (Central Excise and Salt Act (1 of 1944).[7]

Material resources.—The expression 'material resources' in Article 39*(b)* in the Constitution is held to be wide enough to cover not only natural or physical resources but also movable or immovable property.[8]

Matters in controversy.—"That expression is not to be understood as referring solely to the merits of a case. Any question relating to the character and status of the party suing, to the jurisdiction of the Court, to the maintainability of the suit, and to other matters preliminary, which necessitate an adjudication before the suit is enquired into, will be covered by the expression. But there must be a suit pending. Taking first the application to sue in *forma pauperis*, it is only after the grant of the application that the suit begins.[9]

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1. *Reg* v. *Clemens*, (1893)1 QB 556.
2. (1871)12 Cox CC 123; see *Amrit Lal Hazara* v. *Emperor*, 29 IC 513, 527, 528 : ILR 42 Cal 957.
3. AIR 1980 SC 86; *Modern Candle Works* v. *Commissioner of Taxes, Assam, Gauhati*, (1988)1 Gau LR 310.
4. *Union of India* v. *Delhi Cloth and General Mills Co. Ltd.*, AIR 1967 SC 791 : 1963 (Supp) 1 SCR 586; *Saraswathi Sugar Mills* v. *Haryana State Board*, (1992)1 SCC 418.
5. *Commissioner of Income Tax, Orissa* v. *N.C. Bhudaraj & Co.*, AIR 1993 SC 2529 : [(1980)126 ITR 333 (Bom) and 1991 Tax LR 610 (Kant) reversed].
6. AIR 1993 Raj 117.
7. Vide *M/s. Indian Cable Co. Ltd., Calcutta* v. *Collector of Central Excise, Calcutta*, AIR 1995 SC 64.
8. *State of Tamil Nadu* v. *L. Abu Kavur Bai*, (1986)1 MLJ 8 (SC) (5J) relying on AIR 1978 SC 215 : (1977)4 SCC 471 & AIR 1983 SC 239 : (1983)1 SCC 233.
9. *Ankala Venkata Reddy* v. *Manchala Venkata Reddy*, 29 IC 393.

Matters in dispute.—This expression has always been held in arbitration to be the widest words."[1]

May.—The word 'may' is *prima facie* enabling and permissive.[2] In *Subodh Kumar* v. *Bihar Public Service Commission*,[3] it was held that it is the context in which 'may' or 'shall' has been used is to be looked to determine the nature, relying on *Madhya Pradesh Public Service Commission* v. *Navnit Kumar Poddar*,[4] *Madanlal* v. *State of Jammu and Kashmir*,[5] *Municipal Corporation of Bombay* v. *N.S.E. Co., Ltd.*[6]

It is no doubt true that the rule of interpretation permit the interpretation of the word 'may' in certain context as 'shall'[7] and *vice versa*, namely, permit the interpretation of 'shall' as 'may'.[8]

The words 'may, shall, must' do manifest the intention of Legislature and they may indicate whether the provision of rules are directory, mandatory or compulsory. But there is cast iron formulae by which the distinction between mandatory or directory can be discussed.[9]

When the Legislature employs the expression 'shall' it must normally be construed to mean 'shall' and not 'may'.[10]

When the Legislature in it's wisdom very deliberately uses the word 'shall' at two places and 'may' at another place in the very enacting provision, enacted on the very same day normally the Court cannot read the word 'may' as 'shall'.[11] In *Ukai Pradesh Sahakari Khand*

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1. *Bailey* v. *Bailey*, 1926 Ch 758, 764.
2. *Rajah of Vizianagram* v. *Secretary of State*, ILR 1937 Mad 383 : AIR 1937 Mad 51, 77; *Natvarlal* v. *Emperor*, AIR 1931 Bom 198. It gives a discretion [*Kartick Nath* v. *Tilukdhari Lal*, ILR 15 Cal 667, 670 (sometimes absolute direction); S.A. Pleader, *In the matter* of, ILR 57 Cal 337 : AIR 1929 Cal 771, 772]; Craies, *Statute Law*, 5th Ed. (1952) at p. 263, and an option (*Mahrana Kunwar* v. *David*, AIR 1924 All 40, 43); *Lachhman Prasad* v. *Ram Kishen*, 8 IC 1096 (successor Judge is not bound to pronounce judgment written out by the predecessor Judge). In its ordinary sense it leaves a discretion [*Wise* v. *Raj Kishan Rao*, 6 WR 84, 89 (FB)] to the authority or person and merely makes that legal and possible which there would otherwise be no right or authority to do (*Haji Musa Haji Ahmad* v. *Purmanand Nursey*, ILR 15 Bom 216, 218). Ordinarily it has a somewhat similar force to the words 'it shall be lawful' (*Prosad Doss Mullick* v. *Russick Lal Mullick*, ILR 7 Cal 157; *District Board, Khulna* v. *Jogesh Chandra*, ILR (1943)1 Cal 558 : AIR 1943 Cal 447, 449). Such expressions are potential and never in themselves significant of any obligation (*Julius* v. *Bishop of Oxford*, LR 5 AC 214, *per* Lord Selborne; *Bidhatree Dasee* v. *Mutty Lall Ghose*, ILR 21 Cal 832, 835). When a discretion is so conferred in a Court it is not an arbitrary one, but is liable to be corrected by a superior court (*Veeraraghava Aiyar* v. *Muga Seit*, 20 IC 704, 708); *see* also *Dominion of India* v. *Sohanlal*, AIR 1950 EP 40; *Sailendra Nath* v. *State*, AIR 1955 Cal 29 [word 'may' in Section 237(1), Companies Act be construed as an enabling and permissive provision]; *Brijesh Kumar* v. *State of U.P.*, 1969 All LJ 372. *Asst. Excise Commissioner* v. *Issac Peter*, 1994 AIR SCW 2616, while construing the expression 'may permit'.
3. (1996)1 PLJR 538 (DB).
4. AIR 1995 SC 77.
5. AIR 1995 SC 1088.
6. AIR 1991 SC 1362.
7. *Smt. Sudhira Bala Roy* v. *State of West Bengal*, (1980)11 Cal HN 516 (DB) : AIR 1981 Cal 130. *Tarun Ranjan Majumdar* v. *Siddhartha Dutta*, AIR 1991 Cal 76 : (1990)2 Cal LJ 306 : (1990)94 Cal WN 903 (DB); *Keshev Chandra Joshi* v. *Union of India*, AIR 1991 SC 284 : 1991 Lab IC 235; *(M/s.) Hyderabad Asbestos Cement Products Ltd., Hyderabad* v. *Md. Argobasi Enterprises*, AIR 1989 AP 286 : (1988)1 LS (AP) 239.
8. *Union of India* v. *Bhagat Ram*, AIR 1958 All 342, 344 (B. Mukerjee, J.). In English language 'may' sometimes means 'must'; *State* v. *Birda*, AIR 1957 Raj 318, 321 (Modi, J.).
9. *Lalji Singh* v. *State of Assam*, AIR 1984 Gau 47.
10. *Karnataka S. R. T. Corporation* v. *Karnataka S.T. Authority*, AIR 1984 Kant 4 : (1984) Kant LJ 552.
11. *State* v. *Kempaiah*, AIR 1984 Kant 208 : (1984)1 Kant LJ 521 : (1984)2 Kant LC 207.

Udyog Mandli Ltd. v. *Chhitubhai Gamit*,[1] 'may' in Sub-rule (2) of Rule 77 and Sub-rule (1) of Rule 75 of the Representation of the People Act was held as directory.

Where the Legislature has used the words 'may' and 'shall', in the same provision that itself is a clear indication that the word 'shall' has been used in a mandatory sense.[2]

Lord Justice Cotton observed in *In re Baker; Nichols* v. *Baker*,[3] : "I think the great misconception is caused by saying that in some cases 'may' means 'must'. It can never mean 'must' so long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a Judge has a power given him by the word 'may', it becomes his duty to exercise it." Sir Barnes Peacock had remarked while construing Section 21 of Act XIV of 1859 in *Delhi and London Bank* v. *Orchard*[4] : "There is no doubt that in some cases the word 'must' or the word 'shall' may be substituted for the word 'may'; but that can be done only for the purpose of giving effect to the intention of the Legislature; but in the absence of proof of such intention, the word 'may' must be taken to be used in its natural, and, therefore, in a permissive, and not in an obligatory sense." Lord Phillimore in a case from Bombay, *viz.*, *Alcock Ashdown & Co.* v. *Chief Revenue Authority, Bombay*,[5] with reference to the word 'may' in Section 51 of Indian Income Tax Act, 1918, about stating the case to the High Court, proceeded to observe : "And as the learned counsel for the respondent rightly urged, 'may' does not mean 'shall'. Neither are the words 'it shall be lawful' those of compulsion. Only the capacity or power is given to the authority. But when a capacity or power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it. To use the language of Lord Cairns in the case of *Julius* v. *Bishop of Oxford*[6] : "There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

"The authorities show", observed Das, J. in *Province of Bombay* v. *K.S. Advani*,[7] "that in construing a power the Court will read the word 'may' as 'must' when the exercise of the power will be in furtherance of the interest of a third person for securing which the power was given. Enabling words are always potential and never in themselves significant of any obligation. They are read as compulsory where they are words to effectuate a legal right."

The word 'may' is sometimes construed as imperative depending upon the context,[8] but that is only when a person has a legal right which he cannot exercise without the intervention of

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1. 1995(1) GLH 411 (Guj).
2. *Khanna & Co* v. *Union of India*, (1985)156 ITR 796 (All); Renewals cannot be claimed as a matter of right. The word 'may' cannot be read as 'shall'. *Ambika Quarry Works* v. *State of Gujarat*, (1987)1 SCC 213.
3. (1890)44 Ch D 262, 270.
4. (1877)4 IA 127 at p. 135.
5. 50 IA 227, 236.
6. 5 AC 214, 222. Kerala Education Bill, *In re*, AIR 1958 SC 956, 957.
7. 1950 SCR 621, 732; *Parmanand* v. *State of Jammu & Kashmir*, AIR 1959 J & K 110; *Soni Lal Jha* v. *State of Bihar*, 1966 BLJR 688, relying on AIR 1963 SC 19; *Umesh Thakur* v. *State of Bihar*, 1994 (1) Pat LJR 727.
8. *State of U.P.* v. *Manbodhan Lal*, AIR 1957 SC 912; *Gulammabi Gulam Akbar* v. *Haji Ismail Isakji Patel*, (1995)2 GCD 448; *Raju General Kamdar Mandal* v. *Vice President, Packart Press, Vadodara*, (1995)2 GCD 478 Guj (DB); *3 Aces, Hyderabad* v. *Municipal Corporation of Hyderabad*, AIR 1995 Andh Pra 17 (FB); *Mrs. Manorama S. Masurekar* v. *Mrs. Dhanalaxmi G. Shah*, AIR 1967 SC 1078; *Punjab Sikh Regular Motor Service* v. *R.T. Authority*, AIR 1966 SC 1318; *Ponnavolu Sasidar* v. *Sub-Registrar, Hayat Nagar*, AIR 1992 Andh Pra 198 : (1991) ALT 49 : (1991)2 AnWR 366; *Sub-Committee of Judicial Accountability* v. *Union of India*, (1991)4 SCC 699 (5]); *Raghav Singh* v. *State of Bihar*, 1987 Pat LJR 1024.

some other person, and the later person is authorised by the word 'may' to take the necessary steps to enable that legal right to be exercised.[1]

Maxwell (on *Interpretation of Statutes*, 11th Ed. at p. 235) quotes *Supervisors* v. *U.S.*,[2] stating that the Supreme Court of United States laid it down that that which public officers are empowered to do for a third person, the law requires, shall be done whenever the public interest or individual rights call for the exercise of the power, since the latter is given, not for their benefit, but for his, and is placed with the depository to meet the demands of right and to prevent the failure of justice. In all such cases, the Court observed the intent of the Legislature, which is the test, is not to grant a mere discretion, but to impose a positive and absolute duty. "No doubt," says Sale, J. in *Bidhatree Dassee* v. *Mutty Lall Ghose*,[3] "when a power or faculty is given to the Court that it may be exercised for a particular purpose or for the benefit of particular persons under certain specified circumstances, and it is shown that the particular circumstances exist under which it was contemplated that the power should be exercised, then it may be that an obligation is cast upon the Court to exercise that power. In that sense words which are in themselves enabling merely may under certain circumstances impose an obligatory duty.[4] In *Doraiswami* v. *Subramania*,[5] Kumaraswami Sastriyar, J. observed : "When different claims are dealt with in one rule under various sub-sections the fact that the word 'may' should be construed as 'shall' in respect of one of the sub-section owing to nature of the claim which it deals with does not necessarily mean that the word cannot be construed in its ordinary sense as regards other clauses."

Thus Section 130 of the U.P. Municipalities Act, 2 of 1922, empowers the Committee to give notice in writing requiring an offending structure to be demolished 'within such reasonable time as the Committee may think fit' after issuing a notice in that behalf. It was urged in *Emperor* v. *Gulabchand Sitaram*,[6] that the Municipal Committee was given the option to issue a notice or not, Bose, J. observed thereon : "But this, in my opinion, only means that the Committee is not bound to require demolition in all such cases. It may, in given cases, choose to overlook the breach, or it may compound the breach under Section 219 and allow the building to stand on payment of the requisite penalty. But if it wishes to prosecute, then the notice must be given."[7] Rajamannar, C.J., repelled the contention of the Advocate-General in *Narayanswami* v. *Inspector of Police*,[8] that an order under Section 491, Cr. P. C. (no corresponding reference in new Code) was discretionary and that a suitor cannot be said to have a vested right in it. "His contention was largely based," observed the Chief Justice, "on the use of the words 'may whenever it thinks fit,' I do not agree that the use of these words affects the legal position in any way. It has been so often decided as to have become an axiom that in such cases of statutes

1. *Chanter* v. *Blackwood*, 1 CLR 39, 51-52 (*per* Griffith, C.J.); *see* also *Whittaker Bros* v. *Australian Timber Workers' Union*, 31 CLR 564, 575; *Sreeramamurthy* v. *Income-tax Officer*, AIR 1957 Andh Pra 114; *Province of Bombay* v. *Khushaldas S. Advani*, AIR 1950 SC 222.
2. (1866)4 Wallace 446.
3. ILR 21 Cal 832 at pp. 835-836.
4. *(Dr.) N.B. Khare* v. *State of Delhi*, 1950 SCR 519, 526.
5. ILR 41 Mad 188, 196 (FB).
6. AIR 1949 Nag 18.
7. *Surendra Nath* v. *Governor-General-in-Council*, AIR 1952 Cal 341; *Ram Prasad* v. *Dina Kuar*, ILR 4 All 515, 517; *Kamakhya Narayan Singh* v. *Hazaribagh Municipality*, AIR 1939 Pat 499 ('may' equivalent to 'shall'); *see* also *Kothandarama Ayyar* v. *Swaminatha Sastrial*, AIR 1944 Mad 363.
8. AIR 1949 Mad 307, 317 (SB); *State of U.P.* v. *Jogendra Singh*, AIR 1963 SC 1963; *Societe De Traction et. D'Electricite Societe Anonyme* v. *Kamani Engineering Co.*, AIR 1964 SC 558; *see* also *Collector* v. *Habib-ullah-Din*, AIR 1967 J & K 441 (FB) where conditions for making use of 'may' as directory or mandatory were stated.

enacted for the public good and the advancement of justice, expressions which appear to belong to the language of mere permission like 'may' have a compulsory force." Mittra and Caspersz, JJ. construed the word 'may' in Section 140 of the Indian Railways Act in *Nadiar Chand Shaha* v. *Woor*,[1] as meaning 'must'. "When the word 'may' is used," opined Patkar, J., in *Tulsi Lalji* v. *Onkar Huna*,[2] "the ordinary rule of interpretation is that the requisite condition being fulfilled, the Court will and ought to exercise the power it may exercise, and the word 'may' though primarily permissive has been in certain circumstances treated as mandatory." In the well-known case of *Rex* v. *Barlow*,[3] it is laid down that where a statute directs the doing of a thing for the sake of justice or the public good, the word 'may' is the same as the word 'shall'.[4] Similarly, it was held in *Macdougall* v. *Paterson*,[5] that "when a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorized to exercise the authority when the case arises and its exercise is duly applied for by the parties interested and having the right to make the application; and that the exercise of such power depends, not upon the discretion of the Court or Judge, but upon proof of the particular case out of which such power arises.[6]

'May' sometimes implies a prohibition. As pointed out by Jessel, R. in *Ex parte* Stephens,[7] 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.[8]

Though the word 'may' is *prima facie* enabling, the Legislature may have used it in the sense of 'must' or 'shall'.[9]

'May' sometimes might mean a mandatory rule.[10]

The court has unfettered power to ascertain whether a provision is directory or mandatory subject to its ascertaining the real intention of the Legislature on a careful examination of the scope of the statute.[11]

'Means'.—'Use of this expression makes a definition restrictive.[12]

Merchant.—"A 'Merchant' is a person who trades in goods, that is to say, who buys and sells goods. It may not include a manufacturer of goods but I think it includes a General Manager,

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1. ILR 35 Cal 194, 197; *see* also *Cawnpore Cotton Mills* v. *Great Indian Peninsula Railway*, AIR 1923 All 301; *B & N. W. Rly* v. *Court of Wards, Balrampur*, AIR 1935 Oudh 419; *H.R. Singh and Co.* v. *Kekasingh*, AIR 1934 Sind 228; *Yakub Sheikh* v. *King*, AIR 1950 Cal 340.
2. ILR 51 Bom 492 : AIR 1927 Bom 399, 400; *Semomal* v. *Rajasthan State*, AIR 1957 Raj 211 (Section 42, Stamp Act).
3. (1693)2 Salk 609.
4. *Government of Burma* v. *Municipal Corporation*, AIR 1930 Rang 297, 306; *State* v.*Ram Ratan*, AIR 1957 MB 7, 8 (A.H. Khan, J.).
5. 138 ER 672.
6. *Vishambher Pandit* v. *Vasudev Pandit*, ILR 13 Bom 37, 41.
7. (1876)3 Ch D 659; *State of Uttar Pradesh* v. *Singhara Singh*, AIR 1964 SC 358; *Azizulla Khan* v. *State*, (1991)1 WLC (Raj) 132.
8. *Catholic Bank Ltd.* v. *Albuquerque*, AIR 1944 Mad 308 (FB); *Taylor* v. *Taylor*, (1876)1 Ch D 426, 431; Craies : *Statute Law*, 5th Ed., (1952) at pp. 265, 266.
9. *Sohanlal* v. *Hodal*, AIR 1979 All 230, case under Civil Procedure Code, Order XV, Rule 5.
10. *Sudhira Bala Roy* v. *State*, AIR 1981 Cal 130; *Sanjai Gandhi Grah Nirman Sahakari Sanstha Maryadit* v. *State of M.P.*, AIR 1991 Madh Pra 72; *(M/s.) Katwe Jaggery Traders, Hubli* v. *State of Karnataka*, AIR 1991 Kant 63 : ILR 1990 Kant 1882; *Proposed Dharawad Dist. Ex-Service Men's Coop Society Ltd.* v. *State of Karnataka*, AIR 1993 Kant 117.
11. *Agya Ram* v. *State of Uttar Pradesh*, 1989 All LJ 1392 : 1989 JIC 874 referring to *M. Karunanidhi* v. *M.V. Hande*, AIR 1983 SC 558; *Ajit Singh* v. *State of Punjab*, AIR 1983 SC 494; *Ganesh Prasad Shah Kesari* v. *Lakshmi Narayan Gupta*, AIR 1985 SC 964; *see* also *Deo Prasad Kashyap* v. *Chancellor Indira Gandhi Krishi Vishwavidyalaya*, 1989 MPLJ 285.
12. *Gwalior R.S. Mfg. Co.* v. *Textiles Committee, Bombay*, AIR 1980 MP 69.

as Mr. Godbert was, of a trading company. The test, it seems to me, is whether the person does buy or sell goods on his own initiative, and it appears that Mr. Godbert as General Manager, satisfied this test. It is immaterial in my opinion whether he was remunerated by a share of the profits or, as it appears, by salary."[1]

Migration.—The expression though often connotes moving from one country to another for the purpose of residence, it does not necessarily mean permanent residence. There can be no doubt that the word 'migrates' taken by itself is capable of the wider construction 'come from one place to another' whether or not which any intention of permanent residence in the latter place. It is beyond controversy that the word 'migrate' is often used also in the narrower connotation of 'coming from one place to another with the intention of residing permanently in the latter place.' In deciding whether the word 'migrate' is used in the wider or the narrow sense, it is necessary to consider carefully the purpose and the scheme of the statute.[2]

Mischief.—This word is often used as signifying the object or purpose of statute.[3]

Misconduct.—Misconduct on the part of a bailee (*e.g.*, Railway Administration as carrier of goods under Risk Note B) is not synonymous with negligence; for an act to amount to misconduct there must be a greater degree of wrong than is required for negligence. Misconduct is something in the nature of improper behaviour and is not merely wrongful commission or wrongful omission. An act of misconduct can well be negligence, but a negligent act by itself is not misconduct. Misconduct involves the passing of a moral judgment on the part of the person concerned, however, slight may be the lapse from rectitude which provokes it.[4]

In the Nagpur case of *Mohammad Sheikh Nathoo* v. *Governor-General-in Council*,[5] it was observed that misconduct literally means wrong or improper conduct, *i.e.*, conduct in violation of definite rule of action. It ordinarily means failure to do what is required of a person to be done. An omission to do what is required of a person to do may therefore constitute misconduct even though the person has not acted wilfully or maliciously. The word 'misconduct' is not synonymous with negligence but involves a greater degree of culpability than negligence.[6]

It could be seen that the word misconduct though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and nature of duty.[7]

Modify.—The word 'modify' in Section 60(1), Bombay Municipal Boroughs Act, 1925, means not only to alter the tax which has already been levied but also to increase the tax.[8]

Month.—The word 'month' in Section 25(2) of the Tamil Nadu Act 18 of 1960 will comprise of only 30 days and not 31 days.[9]

Moral turpitude.—The expression 'moral turpitude' is not defined. But it means anything done contrary to justice, honesty, modesty and anywhere good morals.[10] It implies depravity and wickedness of character or disposition of the person charged with the particular conduct.

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1. *Permeshwari Das Mehra & Sons* v. *Ram Chand Om Prakash*, AIR 1952 Punj 34, 37 (FB) *per* Weston, C.J.
2. *Shanno Devi* v. *Mangal Sain*, AIR 1961 SC 58, 62.
3. Wharton : *Law Lexicon*, at p. 659.
4. *Ralliram Dingar* v. *Governor-General-of-India in Council*, AIR 1946 Cal 246; *Governor-General-in-Council* v. *Jamuna Das Agarwala*, AIR 1949 Pat 119,123. It also means improper conduct; *Wajid Ali* v. *B.N.W. Rly Co.*, AIR 1941 All 164.
5. AIR 1954 Nag 337.
6. *Erachshaw* v. *Dominion of India*, AIR 1955 MB 70.
7. *State of Punjab* v. *Ram Singh, Ex-constable*, AIR 1992 SC 2188.
8. *Contonment Board* v. *Western India Theatres Ltd.*, AIR 1954 Bom 261.
9. *G. Deenadayalan* v. *Habibunnisa*, (1994)1 MLW 599.
10. *Durga Singh* v. *State*, AIR 1957 Punj 97.

Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private or social duty which a person owes to his fellowmen or the society in general. If, therefore, the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accept customary rule and duty between man and man. *See* in this connection *In the matter of* Mr. Tasadduq Ahmad Khan Sherwani.[1]

Muafidar.—The expression 'muafidar' is not necessarily confined to a grantee from a State or a Ruler of a State. A *muafidar* could be a person who is the holder of land which was exempted from the payment of rent or tax.[2]

National Income.—As an instance of what can be said to be fairly and *reasonably comprehended in a legislative entry* , reference may be made to the 'national' income for the purpose of a tax on income of a person from a house property in his own personal occupation or a property not actually let. In that context Supreme Court said "that which can be converted into an income can be reasonably regarded as giving rise to income".[3] A luxury which can reasonably be said to be amenable to a potential conception does provide the nexus.[4]

National interest.—"In considering what is the national interest various questions at once emerge. It is obvious that, as coal is a source of light, heat and power, it is a commodity which is necessary for the life of the nation and that it is in the interest of the State that it should be won and used to the best advantage. Any scheme which substantially increases the economy and efficient production and use of coal, provided that it is satisfactory in other respects, can be said to be in the national interest. We do not think that it would be desirable, even if it were possible, to lay down an exhaustive definition of what is in the national interest. As has been said in another set of circumstances, 'the fact that opinion, grounded on experience, has moved one way does not preclude the possibility of its moving, on fresh experience in the other. Nor does it bind succeeding generations when conditions have changed.' After all, the question whether a particular thing is in the national interest is a question of the times, and it is a question of fact".[5] Also traditional norms of statutory interpretation must yield to broader notions of national interest.[6]

Negligence.—'Negligence' is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.[7] On strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission; it

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1. ILR 44 All 352 : AIR 1922 All 140 (FB); *In re* Abdul Rashed, ILR 4 Lah 271 (FB); *In the matter of* an Advocate of the High Court, Madras, ILR 46 Mad 903 : AIR 1924 Mad 265; *In the matter of* Pleader Ram Govind Sinha, etc. AIR 1931 Pat 369 (FB); *Local Government* v. *N.B. Desphande*, AIR 1931 Nag 33 (FB); *In the matter of* an Advocate, Oudh, AIR 1931 Oudh 161 and the cases cited therein; *Prem Kumar* v. *State*, AIR 1980 HP 45, case under H.P. Panchayat Raj Act, 1968, Section 9.
2. *Pravir Chandra* v. *State of M.P.*, AIR 1961 SC 775, 778.
3. See *Bhagwan Dass Jain* v. *Union of India*, AIR 1981 SC 907
4. Vide *Express Hotels Pvt. Ltd.* v. *State of Gujarat*, AIR 1989 SC 1949 : (1989) Tax LR 944 : (1989)178 ITR 151 : (1989)3 JT (SC) 72 : (1989)29 STL 204 : (1989)73 STC 157 (5J).
5. Amalgamated Collieries Ltd., Application, *In re*, (1927)43 TLR 672, 673, *per* Shankey, J.
6. *Life Insurance Corporation of India* v. *Escorts Ltd.*, AIR 1986 SC 1370 : (1986)1 SCC 264 : (1986)1 Com LJ 91 : (1986)59 Com Cas 548 : (1986)11 Com NR 413 : (1986)1 SCJ 38 : (1986)8 ECC 189.
7. *Blyth* v. *Birmingham Water Works Co.*, (1856)11 Ex 781, 784, *per* Alderson, B.

properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.[1]

Next friend.—The expression 'a next friend' originally denoted the person through whom an infant acts without any necessary reference to litigation but in modern times it has come to assume a technical meaning of the person by whom a minor or an infant, as the case may be, is represented as a plaintiff in litigation. The real object of having a next friend is that there may be somebody to whom the defendant or the opposite party may be able to look for costs. The next friend himself does not actually become a party to the litigation. It is the minor who is the party and the next friend is a person—so to speak in the background—who can act on the minor's behalf and to whom the opposite party can look for costs.[2]

Non-obstante clause.—It has to be read in the context of what the Legislature conveys in the enacting part of the provision.[3] It should first be ascertained what the enacting part of the section provides on a fair construction of words used according to their natural and ordinary meaning and the *non-obstante* clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing law which is inconsistent with the new enactment. The enacting part of a statute must, where it is clear, be taken to control the *non-obstante* clause where both cannot be read harmoniously, for, even apart from such clause a later law abrogates earlier laws clearly inconsistent with it.[4] The proper way to construe a *non-obstante* clause is first to ascertain the meaning of the enacting part on a fair construction of its words. The meaning of the enacting part which is so ascertained is then to be taken as overriding anything inconsistent to that meaning in the provisions mentioned in the *non-obstante* clause. A *non-obstante* clause is usually used in a provision to indicate that that provision should prevail despite anything to the contrary in the provision mentioned in such *non-obstante* clause. In case there is any inconsistency between the *non-obstante* clause and another provision one of the objects of such a clause is to indicate that it is the *non-obstante* clause which would prevail over the other clause. It does not, however, necessarily mean that there must be repugnancy between the two provisions in all such cases.[5] The principle underlying *non-obstante* clause may be invoked only in the case of 'irreconcilable conflict'.[6]

It must be understood that a *non-obstante* clause is usually used in a provision to indicate that provision should prevail despite anything to the contrary in the provision mentioned in such *non-obstante* clause. In case there is any inconsistency or a departure between the *non-obstante* clause and another provision one of the objects of such a clause is to indicate that it is

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1. *Lechgelty Iron and Coal Co.* v. *M. Mullan,* 1934 AC 21, 25, *per* Lord Bright.
2. *Amar Chand* v. *Nem Chand,* AIR 1942 All 150, 151.
3. Vide *Jyotiben Ramlal* v. *State of Gujarat,* (1996)1 Guj LR 395 (FB), referring to *Aswini Kumar* v. *Arvinda Bose,* AIR 1952 SC 369 and *Union of India* v. *Shrinbai,* AIR 1954 SC 596.
4. *Thougla* v. *Hanuman Bank, Ltd.,* AIR 1958 Mad 403; *Venugopal M.* v. *The Divisional Manager, LIC Machilipatnam, A.P.,* (1994)(2) LW (SC) 23; *Aswani Kumar Ghose* v. *Arabinda Bose,* AIR 1952 SC 369; *South India Corporation (P) Ltd.* v. *Secretary Board of Revenue, Trivandrum,* AIR 1964 SC 207, holding Article 278 overrides Article 372; *A.V. Fernandez* v. *State of Kerala,* AIR 1957 SC 657; *Krishna Bhagwan* v. *State of Bihar,* AIR 1989 Pat 217 : (1989) Pat LJR (HC) 507 (FB); *Laxminarayan Saw Mill* v. *State of Orissa,* AIR 1995 Ori 114 (FB).
5. *Ganesh Trading Co.* v. *State of Madhya Pradesh,* 1972 MPLJ 864, 890 (FB) (G.P. Singh, J.); *Babu Lal* v. *State of Rajasthan,* (1995)3 WLC 237 (Raj); *Venugopal, M.* v. *The Divisional Manager, Life Insuraance Corporation of India, Machilipatnam, A.P.,* (1994)2 LW 23 (SC); relying on *Aswini Kumar Ghose* v. *Arabinda Bose,* AIR 1952 SC 369; *A.V. Fernandez* v. *State of Kerala,* AIR 1957 SC 657 and *South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum,* AIR 1964 SC 207; *Sri Vittal Combines* v. *State of T.N.,* (1993)2 MLW 187 (DB).
6. *Parasuramaiah* v. *Lakshmamma,* AIR 1965 Andh Pra 220, 223 (Ekbote, J.).

the *non-obstante* clause which would prevail over the other clause.[1]

The *non-obstante* clause must be given its natural and ordinary meaning. The word 'notwithstanding' must be given its full effect, and it is not a sound principle of interpretation to brush aside words in a statute as being in apposite or surplusage. The very purpose of *non-obstante* clause is that that provision shall prevail over any other provision and that other provision shall not be of any consequence. In case there is any inconsistency or a departure between a *non-obstante* clause and other provisions, one of the objects of such a clause is to indicate that it is the *non-obstante* clause which would prevail over other clauses. Even by the dictionary sense, the expression 'notwithstanding' implies that other provisions shall not prevail over the main provision.[2] For impact of *non-obstante* clause in Section 4-A of the Kerala Land Reforms Act, 1964, as amended by Act 35 of 1969 (Kerala).[3]

Not negotiable.—The words 'not negotiable' on a cheque amount to an express statement to any person taking the cheque that he would have no better title than that possessed by the person from whom he took it.[4]

Notice of appeal.—The expression 'notice of appeal' should be taken to mean 'notice' (actual or constructive) of the date on which the appeal is disposed of.[5]

No appeal shall be heard or determined.—'No appeal shall be heard or determined,' 'brought' and admitted in relation to an appeal has a significance. The first expression should receive a broader interpretation. In the statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be disposed off till the entire arrears of tax is paid.[6]

'Notwithstanding anything contained in any law for the time being in force.—"The Money Lenders Act is one of general application and having regard to its nature and its subject-matter as indicated in its preamble it seems to be only reasonable to suppose that the words 'notwithstanding anything contained in any law for the time being in force' which appear in Section 30 refer only to general statutes which by their terms might be construed to impose upon the borrowers a liability exceeding the limits contemplated by that section. The form of the words used may be regarded merely as a convenient method of repealing inconsistent provisions of such statutes as the Interest Act or the Contract Act without making any express reference thereto. Similarly, the use of these words in Section 36, which relates to the procedure to be adopted for obtaining relief under the Money Lenders Act, may be reasonably regarded as modifying or amplifying for the benefit of borrowers (subject to the limitations contained in the section) any statute of general application relating to procedure, such as, the Code of Civil Procedure, which would not otherwise give borrowers the measure of relief contemplated by the Bengal Money Lenders Act."[7]

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1. *Kaleva* v. *Vasakha Singh*, 1982 Punj LJ 165 (FB); quoting *K. Perasuramaih* v. *Pokuri Lakshamamma*, AIR 1965 AP 220 (DB); *Shri Ganesh Trading Co.* v. *State of M.P.*, 1972 MPLJ 864 (FB); *Nawab Bahadur of Murshidabad* v. *Rameshwara Lal Gauriwala*, AIR 1949 Cal 323; *Aswani Kumar* v. *Arabindra Ghose*, AIR 1952 SC 369; *A.V. Fernandes* v. *State of Kerala*, AIR 1957 SC 657.
2. *Lallu Prasad* v. *State of Bihar*, (1976)24 BLJR 208 (DB); *Mohd. Yunus* v. *State of Bihar*, (1981)29 BLJR 72 (DB); *Jagtar Singh* v. *State of Rajasthan*, AIR 1992 Raj 47; *Md. Yunus* v. *Bibi Phinkani* allias *Tasrun Nisa*, 1987 Pat LJR 65; *Rev. T. Ananthan* v. *P.C. Benjamin*, AIR 1992 Andh Pra 3 : (1991)2 ALT 572 : (1991)2 An WR 73 (DB).
3. *Varghese Sawnel* v. *Verkey Abraham*, 1975 Ker LT 372.
4. *Wilson and Meeson* v. *Pickering*, 1946 KB 422 : (1946)1 All ER 394.
5. *Nil Chand* v. *Hemal Chand*, AIR 1940 Lah 49.
6. *Shyam Kishore* v. *Municipal Corporation of Delhi*, AIR 1992 SC 2279 (1982 Rajdhani LR 247 overruled).
7. *Nawab Bahadur* v. *Rameshwarlal*, AIR 1949 Cal 323, 333, *per* Edgley, J.; *Sarup Singh* v. *Bhagwan Das*, AIR 1952 Punj 212.

Nuisance.—It would be rather stretching the word 'nuisance' in Section 338(1)*(d)(ii)* of the Hyderabad Municipal Corporation Act, 1950, to include the carrying on of an electrical press in it and to hold that it causes a nuisance in the public.[1]

Objectionable matter.—The ordinary grammatical meaning of the words is that words which are scurrilous are within the definition; words which are obscene are within the definition and the words which are intended for black-mail are within the definition of 'objectionable matters' in Section 3(6) of the Press (Objectionable Matters) Act, 1951.[2]

Occasioned by.—There is no difference between the expression 'occasioned by' and 'due to' in Workmen's Compensation Act.[3]

Occupation.— In describing the avocation of a person, the word 'occupation' means the business in which a man is usually engaged to the knowledge of his neighbours. The intention is, that such a description should be given that if enquiry be made in the place where the person resides, he may be easily identified.[4]

Of like description.—The equality clause in a Railway Act was thus commented upon by Willes, J. in *Great Western Ry. Co.* v. *Suttan*[5] : "The question, what is the meaning of the equality clause when it speaks of things of 'like description' conveyed under 'the like circumstances' ought, I think, to be answered by saying that things are of a 'like description, when, although their composition and structure are not, 'identical' which would be expressed by the 'same description', not 'like description', they are similar in those qualities which affect the risk and expense of carriage."

Offence of a political character.—Hawkins, J. adopted in *In re* Castioni,[6] the description of Stephen, J. in his *History of the Criminal Law of England* (Vol. II at pp. 70-71) about 'offence of a political character' used in Extradition Acts, who had said : "If a civil war were to take place, it would be high treason by levying war against the Queen. Every case in which a man was shot in action would be murder. Whenever a house was burnt for military purposes arson would be committed. To take cattle, by requisition would be robbery. According to the common use of language, however, all such acts would be political offences, because they would be incidents in carrying on a civil war. I think, therefore, that the expression in the Extradition Act, ought .....to be interpreted to mean that fugitive criminals are not to be surrendered for extradition crimes, if those crimes were incidental to and formed a part of political disturbances." Mr. Justice Willes opined : "I cannot help thinking that everybody knows there are many acts of a political character done without reason, done against all reason; but at the same time one cannot look too hardly and weigh in golden scales the acts of men hot in their political excitement."

The offence of a political character must be one which has been already committed.[7]

."It appears to me that," observed Cane, J., in *In re* Meunier,[8] "in order to constitute an offence of a political character, there must be two or more parties in the State, each seeking to impose the Government of their own choice on the other, and that, if the offence is committed by one

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1. *Mohd. Karim Khan* v. *Commissioner, Hyderabad Municipal Corporation*, AIR 1954 Hyd 171.
2. *S. Jeelani* v. *State*, AIR 1964 Cal 488.
3. *Dight* v. *Craster Hall (Owners)*, (1913)3 KB 700.
4. *Luckin* v. *Hamlyan*, (1869)21 LT 366; *Adams* v. *Graham*, (1864)33 LJQB 71.
5. (1869) LR 4 HL 226, 247.
6. (1891)1 QB 149, 165.
7. *Re* Arton, (1896)1 QB 108, 115.
8. (1894)2 QB 415, 419.

side or the other in pursuance of that object, it is a political offence, otherwise not."

Offences under the Indian Penal Code.—In *Surendra Nath Banerjea* v. *Chief Justice and Judges of High Court of Bengal*,[1] Sir Barnes Peacock, J. observed : "Their Lordships are of opinion that a contempt of the High Court by a libel such as the present, published out of Court when the Court is not sitting, is not included in the words 'offences under the Indian Penal Code' although the contempt may include defamation. Such an offence is something more than mere defamation, and is of a different character."

Office of profit.—The following test may be applied :

(1) The authority has the power to make an appointment to the office concerned.

(2) What authority can take disciplinary action and remove or dismiss the holder of the office? and

(3) By whom and from what source is his remuneration paid?

Of these the first two are more important than the third one.[2]

Oil seeds.—The expression 'oil seeds' does not include coconut, groundnut kernel and *jira*.[3]

Omission includes dishonest omission.[4]

On account of Government of India.—"The words 'on account of Government of India' mean merely on account of the governing of India.....The management of a railway is a private enterprise and, although conducted by Government, it is no part of the business of governing India."[5]

On behalf of.—The expression 'on behalf of' connotes some *benefit* to the person on whose behalf another person may act.[6]

On demand.—Technically the expression is equivalent to 'immediately or forthwith'.[7]

On the spot.—This expression used in connection with repair of a motor-car 'on the spot' pursuant to an accident, means at the point where the accident happened, where the thing comes to a standstill.[8]

Operation of an Act.—If an Act is silent as to the date of its coming into operation, it comes into operation at the date of its passing.[9]

Or.—When the word 'or' is used in relation to two or more alternatives it is not necessarily the case that the alternatives are mutually exclusive. The question as to whether they are mutually exclusive or not must be determined by applying the general rule that words should be construed to ascertain the intention of the provision in question to be collected from the whole of its terms.[10] It may, in an appropriate context mean 'and'.[11] But such a construction is not

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1. 10 IA 171, 179.
2. *Deorao Laxman Anande* v. *Keshav Laxman*, AIR 1958 Bom 314; *Ramchanderain* v. *India United Mills*, AIR 1962 Bom 92, 94.
3. *Commissioner of Sales-Tax* v. *Bhakat Rai*, 1966 Jab LJ 772; *Abdul Ghani Mir* v. *Mst. Sakina Bano*, AIR 1991 J & K 11.
4. *Lingaiah* v. *Chittoor, etc. Co-operative Society*, AIR 1957 Andh Pra 98, 99 (Bhimasankaran, J.).
5. *Mathra Das Ram Chand* v. *Secretary of State*, 2 IC 373 : 3 SLR 59.
6. *Uttam Chand* v. *Emperor*, ILR 39 Cal 344, 347; *Tamboli* v. *G.I.P. Rly.*, 55 IA 67. (A risk note is signed on behalf of a firm within Section 2 of the Indian Railways Act, if it is signed by an authorized agent, although the document does not disclose that the signature was attested by an agent).
7. *Perumal Ayyar* v. *Alagirsami Bhagovatner*, ILR 20 Mad 245.
8. *Chapmans* v. *Rawlings*, (1909)108 LT 605, 608.
9. *R.* v. *Smith*, (1910)1 KB 17; *R.* v. *Weston*, (1910)1 KB 17, 24.
10. *Horsey* v. *Caldwell*, 73 CLR 304, 314; *see* 1955 Andhra WR 66 and *Travancore Forward Bank* v. *State*, 1958 Ker LT 537 and Chapter XI; *Haridas Mundra* v. *National Grindlays Bank*, 67 CWN 58 : AIR 1963 Cal 132.
11. *Mazagaon Dock, Ltd.* v. *C.I., EPT*, AIR 1958 SC 861; *Koruprolu Atchaya* v. *Bideshi Raghuram Singh*, AIR 1995 Andh Pra 58; *K. Dasaratha* v. *Mysore City Municipal Corporation, Mysore*, AIR 1995 Kant 157.

warranted unless it would reduce the provision to absurdity or prevent the manifest intention of the Legislature from being carried out.[1] Harlan, J., observed in *De Sylva* v. *Ballentine*,[2] "we start with the proposition that the word 'or' is often used as a careless substitute for the word 'and', that is, it is often used in phrases where 'and' would express the thought with greater clarity. That trouble with the word has been with us for a long time".

In Section 6-C(2) of the Essential Commodities Act, 1955, the word 'or' cannot for any reason be read as 'and'.[3]

In Article 236 of the Constitution the word 'and' is not used in a cumulative sense; it has been used in disjunctive sense.[4]

Order.—An order may be taken to be made on the date it came into existence, if the nature of the order is such that it is not necessary to communicate it to anyone. But where an order is made which affects the rights of a person, then the order must be communicated to such person in order to be complete and effective. The date of the order is the date when it is made known to the affected party. To this, however, there are certain exceptions, which are :

(i) Where the order is made in the presence of the party, whose right has been affected.

(ii) Where notice has been given to the party affected by the order to be present at the announcement, but in spite of such notice he fails to be present, where the method of giving notice is prescribed, *e.g.*, by publication in the *Gazette*, compliance with the same shall be deemed sufficient, as also in a case where the law presumes knowledge.

(iii) Where, owing to the obstruction of the party affected, the order cannot be communicated within a reasonable time.

(iv) Where the authority making the order, in spite of reasonable efforts, has been unable to serve the order within a reasonable time or at all.

In such a case, the date of making of the order is the date of the order.[5]

Ordinarily.—In Putta Ranganayakulu, *In re*,[6] Subba Rao, C.J., observed that the word 'ordinarily' means habitually and not casually, and it cannot obviously mean 'always' and Chandra Reddy, J., held that the plain and popular meaning of the word 'ordinarily' is usually, normally, and not exceptionally as contrasted with extraordinarily. It means 'in the large majority of cases but not invariably'.[7]

The expression ordinarily 'tones down' the force of the word 'shall', as in Section 115(2) of the Bihar and Orissa Municipality Act, 1922.[8]

Original Suit.—The expression 'the original suit' in which or any proceeding out of which the decree or order was made occurring in Sub-section (2) of Section 16 of the Orissa Civil Courts Act was meant to be operative of the fact as to when the cause of action for the suit arose or when the suit was actually filed.[9]

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1. *Monmohan Das* v. *Bhisen Das*, AIR 1967 SC 643 (where the word 'or' was refused to be read as 'and').
2. 100 L Ed 1415, 1424 (judgment delivered by Buston, J.).
3. *Samisethi* v. *District Supply Officer*, AIR 1979 AP 19.
4. *Dinesh* v. *State of U.P.*, AIR 1977 All 311; *Pual Sanjay* v. *Mahabir Prasad*, AIR 1980 Sikkim 15, case under Gangtok Rent Control Act, 1956.
5. *N.N. Majumdar* v. *N.M. Pradhan*, AIR 1959 Cal 219, 221.
6. 1956 Andh WR 456 : AIR 1956 AP 161.
7. *Kailash Chandra* v. *Union of India*, AIR 1961 SC 1346, 1349.
8. *Shilji K. Tacker* v. *Commissioner, Dhanbad*, AIR 1978 SC 836.
9. See *Duryodhan Samal* v. *(Smt) Uma Devi*, AIR 1986 Orissa 30 : (1985)2 OLR 309 : (1985)60 Cut LT 360 (DB).

Or otherwise.—The expression 'or otherwise' in Section 22 of Bengal Tenancy Act means 'or in a similar way'. The construction herein is *ejusdem generis*.[1]

The word 'otherwise' is not to be construed *ejusdem generis* with the words 'circular, advertisements in Section 120(1) of Trade & Merchandise Marks Act 43 of 1958.[2]

Lord Simon observed in *National Association of Local Government Officers* v. *Bolton Corporation*[3] : "The use of the words 'or otherwise' does not bring into play the *ejusdem generis* principle, for 'manual labour' and 'clerical work' do not belong to a single limited *genus*. The only common class to which manual labour and clerical work can be said to belong is the broad class of 'mode of service'. I agree entirely with the Lord Chief Justice when he says that : 'The sentence is to be read as if it is said "whether by way of manual labour, clerical work, or some duty which is neither manual labour nor clerical work" .....As the derivation of 'otherwise' means 'or in another way'."

These are not words of limitation but of extension.[4]

"Where the Legislature have granted a relief in certain prescribed cases without using the words 'and for any other cause' or 'for other sufficient reasons' or 'otherwise', and they have stopped short after mentioning certain definite contingencies in which alone the relief can be claimed, it would not be right or proper to hold that the same relief could be granted even in cases falling outside those contingencies."[5]

The words 'otherwise destroying ' are to be taken to mean a destruction *ejusdem generis* with the modes beforementioned, that is the destruction in the proper sense of the word of the substance or contents of the will, or atleast complete effacement of the writing, as by pasting over it a blank paper; and not a 'destroying' in a secondary sense, as by cancelling or incomplete obliteration.[6]

'Ought reasonably'.—Means 'ought as a matter of prudence, having regard to what is usually done by prudent men of business in similar circumstances'.[7]

'Owner' and 'Keeps Control'.—It is well-settled principle of law that while interpreting a statute and the words or expression used therein, in the absence of a definition for them ordinary plain English meaning is to be attributed to them though not divorced from the context.

Overcrowding.—The word 'overcrowding' when used in a Municipal bye-law in respect of erection of houses, is a very general term. It appears to mean that houses should be at such distances from each other that one house is not injuriously affected by another house.[8]

The victims of Bhopal gas disaster cannot be considered to be any match to the multinational companies, or the government with whom in the conditions that the victims or

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1. *Badan Chandra Das* v. *Rajeswari Debya*, 2 CLJ 570; *Muktakeshi Dasi* v. *Pulin Behari Singh*, 1 IC 155; *R* v. *North Worcestershire Assessment Committee*, Ex parte *Hadly*, (1929)2 KB 397, 508 (Rating and Valuation Act); *Chatterton* v. *Glanford Rural Council*, (1915)3 KB 707, 713; *Re* Clerks, *Ex parte* Schulze, (1898)2 QB 330, 332; *Whittaker* v. *Kershaw*, (1890)45 Ch D 320, 327 (Married Women's Property Act); *Janak Yadav* v. *State of Bihar*, AIR 1992 Pat 51 : (1991)2 BLJR 1138 : (1991)2 PLJR (HC) 392 (DB).
2. Vide *Sidharth Wheels Pvt. Ltd.* v. *Bedrock Ltd.*, AIR 1988 Delhi 228.
3. 1943 AC 166, 176 : (1942)2 All ER 425.
4. *Lilavati Bai* v. *State of Bombay*, AIR 1957 SC 521, 528.
5. *Kanhaiya Lal* v. *Banshi Lal*, AIR 1950 All 444, 447.
6. *C.G. David Tharakan* v. *Dr. (Mrs.) Lily Jacob*, AIR 1993 Ker 9.
7. *Baily* v. *Barnes*, (1894)1 Ch 25.
8. *Abdul Qayum* v. *City Board, Mussoorie*, AIR 1931 All 147, 151 : ILR 51 All 500.

their representatives were after the disaster physically, mentally financially, economically and also because of the position of litigation would have to contend. They were in no position by themselves to look after their own interests effectively or purposefully. In that background they are people who needed the States' protection, and should come within the umbrella of States' sovereignty, to assert, establish, and to maintain their rights against wrong-doers in this mass-disaster. In that perspective, it is jurisprudently possible to apply the principle of *parens patriae* doctrine to the victims. But quite apart from that the State is acting on the basis of the statute itself. *By virtue* of the Act *these victims have been diverted of their rights.* To sue and such claims and such rights have been rested in the Central Government.[1]

Party interested.—"A person who makes a report to the police of a certain offence is a person who is interested in the prosecution which may be started by the police within the meaning of Clause (3) [now Section 407(2) of 1973 Code] and Clause (8) (no corresponding section in new Code) of Section 526, Criminal Procedure Code."[2] Under Section 69 of Contract Act, person interested in the payment of money must be a person who is not himself bound to pay the whole or any portion of the amount.[3]

Passenger.—Even a person in foot-board is a passenger.[4]

Passing of the Act.—This expression, *prima facie*, would mean the original Act and not the Amending Act, unless the contrary appears in the context or otherwise.[5]

Pending proceedings.—"A legal proceeding is 'pending' as soon as commenced, and until it is concluded, that is, so long as the Court having original cognizance of it, can make an order on the matters in issue, or to be dealt with therein."[6]

Pension.—The word 'pension' has been held to mean a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite or office, but on account of past service or particular merits or as compensation to dethroned princes, their families, and dependants. In Section 4 of the Pensions Act, 1874, the word 'pension' has been used in contradistinction to the words 'grant of money or land revenue'.[7]

Permit.—"To my mind the word 'permit' means one of two things, either to give leave for an act which without that leave could not be legally done, or to abstain from taking reasonable steps to prevent the act where it is within a man's power to prevent it."[8] "I am inclined to think", observed Luxmoore, J., in *Barton* v. *Reeds*,[9] "that in certain circumstances a man may permit the continuance of an act if he can prevent it by taking legal proceedings and refrains from doing so. I can imagine a simple case, where a bailee having agreed with the owner of a

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1. Vide *Charanlal Sahu* v. *Union of India*, AIR 1990 SC 1480 (5J).
2. In re *Abdul Naseer* in *Emperor* v. *Ghulam*, AIR 1937 All 664 (person interested *re* Evidence Act; that a financial advantage or disadvantage from the result of proceeding is not the sole test in deciding whether a person is interested); *Holton* v. *Holton*, (1946)2 All ER 534 (mother of petitioner in a divorce dispute not a person interested).
3. *Venkata Simhadri* v. *Pasupati Rudra*, 31 IC 255, 259; *Bonney* v. *Joshua Hoyle and Sons, Ltd.*, (1914)2 KB 257, 277 (Workmen's Compensation Act); *Re* Jones and Everest, (1904)2 Ch 363, 365 (Costs); *Re* Leadbitter, (1878)48 LJ Ch 242 (Bankruptcy).
4. *New India Assurance Co. Ltd.* v. *Annakutty*, AIR 1993 Ker 299 (DB).
5. *Vummethala Rama Rao* v. *Mukta Appayya*, AIR 1950 Mad 651.
6. Stroud's *Judicial Dictionary*; Clagett's Estate, In re *Bordham* v. *Clagett* (1882)20 Ch D 637, 653; *Jivanji Mamooji* v. *Ghulam Hussain*, 47 IC 771; *Asgarali* v. *State of Bombay*, AIR 1957 SC 503, 509.
7. *Bankey Beharilal* v. *Lala Babu*, AIR 1955 All 1 (FB).
8. *Berton* v. *Alliance Economic Investment Co.*, (1922)1 KB 742, 759.
9. (1932)1 Ch 362, 377.

chattel not to permit any third person to have possession of it, is deprived of it by a third person; where he knows the third person is in possession of the chattel, and that a writ claiming a specific return of it could have but one result; if he refrained from taking proceedings I suggest that he might be held to have permitted the third person to have possession."

But in a case where the defendant does not know that the person who was on his premises was in fact drunk, he cannot be said to permit drunkenness.[1] The word 'permit' means 'intentionally allow'[2] : "Indifference or omission is 'permission' within the plain meaning of that word when the party charged—

(1) knows or has reason to anticipate or suspect that the particular act is to be or is likely to be done,

(2) has the power to prevent it,

(3) makes default in some duty of control or interference arising under circumstances of the case, and

(4) thereby fails to prevent it."[3]

Person.—"The scope of the meaning of the word 'person' depends essentially on the connection and the circumstances in which it is used. In *Hirst* v. *West Riding Union Banking Co.*,[4] Stirling, J. said : "I will refer to what Lord Blackburn said in *Pharmaceutical Society* v. *London and Provincial Supply Association*,[5] with regard to the meaning of the word 'person' in a statute." And then the Lord Justice makes a quotation from a well-known judgment of Lord Blackburn. I will only pick out one sentence from that quotation which is in these words : 'I do think that the presumption that it (the word 'person') does include an artificial person, a corporation, if that is the presumption, is at all a strong one.' That means no more than this, that if there is (I put emphasis on the word 'if') any presumption that the word 'person' includes a corporation, the presumption is no more than of a slight nature and, therefore, easily displaced. One has to consider the subject-matter of the particular enactment in which the word 'person' appears and specially the immediate context in which it is used in order to decide whether that presumption will apply or whether it will not."[6]

'Person' does not include State.[7] Whether the term 'person' when used in a Federal State includes a State cannot be abstractly declared, but depends upon its legislative environment.[8]

Person having interest.—See *Digambar* v. *Satyanarayan*.[9]

'Person interested' for 'person having interest'.[10]

'Person in authority'—These words have been construed in England and the test which has been applied is this: Had the person authority to interfere in the matter; and any concern or

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1. *Somerset* v. *Wade*, (1894)1 QB 574, 576.
2. *Goldsmith* v. *Deakin*, (1933)150 LT 157, 158.
3. *Adelaide Corporation* v.*Australian Performing Rights Association, Ltd.*, (1928)40 CLR 481, 487; *see* also *Lowery* v. *Walker*, 1911 AC 10, 14.
4. (1901)2 KB 560 at p. 562.
5. (1880)5 AC 857.
6. *Bharat, etc. Cotton Mills, Ltd.* v. *Kameshar Singh*, AIR 1938 Cal 745, 747, 748 (*per* Castello, J.).
7. *Ram Saran Dass* v. *Province of East Punjab*, AIR 1954 Punj 49 (decision with reference to Section 43 of the East Punjab Public Safety Act, 1949). But see *Motilal* v. *U.P. Govt.*, ILR (1951)1 All 269 : AIR 1951 All 257 (FB).
8. *Sims* v. *United States*, 359 US 108 : 3 L Ed 667, 671; *Ohio* v. *Helvering*, 292 US 362, 370 : 78 L Ed 1307, 1310; *Georgia* v. *Evans*, 316 US 159, 161 : 86 L Ed 1346, 1350; *see* also 3 L Ed 2d 789, 791 ('Republican Party' is not a legal entity, but may be a 'person').
9. AIR 1978 Bom 196, case under Bombay Public Trusts Act, 1950, Section 2(10).
10. See *Amar Singh Yadav* v. *Shanti Devi*, AIR 1987 Pat 191 : 1987 Pat LJR (HC) 184 : 1987 BLJR 351 (FB).

interest in it would appear to be held sufficient to give him that authority. A too restricted a meaning should not be given to this expression. But the mere fact that accused thought that Mr. A was a 'person' in authority is clearly not sufficient.[1] Generally speaking (under Section 24, Evidence Act), a 'person in authority' is one who is engaged in the apprehension, detention or prosecution of the accused or one who is empowered to examine him.[2] The expression 'person in authority' has been held to include not only the prosecutor, but also the wife of the prosecutor or one of the prosecutors and even in some circumstances, relations of the same. An attorney engaged in an endeavour to get up a prosecution has also been treated as a person in authority.[3]

Person in his employ.—"The fact that he was bound to obey the respondent's directions if and when she gave them and that she retained the actual supervision was the proper test to apply to the case." It is not necessary that a person should be in the exclusive employ of the other.[4]

Person who has charge or control.—"I think the statute (Employers' Liability Act, 1888) points directly to the person having the charge or control of the train as being that person who, at the time when the negligent act is committed, has the duty laid upon him of performing that act with reasonable care."[5]

'Persona designata'.—A *persona designata*, as the phrase implies, is a person pointed out by name or other personal description in contradistinction to one whose identity is to be ascertained by the office which he holds.[6] A *persona designata* is a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character.[7] If a person be a judicial officer and is intended by the statute to act not otherwise than in a judicial capacity or Court of civil jurisdiction he cannot come within the expression *'persona designata'* so that he may, irrespective of his continuance in office, perform the duty. Whether the intention is one or the other has to be gathered from the words used, nature of the functions to be performed and object and purpose of the statute.[8]

Person aggrieved.—A 'person aggrieved' must be a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand.[9]

Personal appearance.—The words 'personal appearance' are synonymous with 'attendance'. A woman who is conveyed to the Court building in some suitably curtained vehicle and then escorted to a private room in that building suitably and completely veiled in a *burkah* or some

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1. *Emperor* v. *Ganesh Chandra Goldar*, ILR 50 Cal 127 : AIR 1923 Cal 458, 459; *Kunja Subudhi* v. *Emperor*, ILR 8 Pat 289 : AIR 1929 Pat 275, 277; *Emperor*, v. *Kutub Bux*, ILR 57 Cal 488 : AIR 1930 Cal 638; *Faqira Appaya* v. *Emperor*, 33 IC 309, 312 (Bom); *Dulichand* v. *Commissioner of Income-tax, Nagpur*, AIR 1956 SC 354 (firm not a person in Partnership Act).
2. *Santokhi Beldar* v. *Emperor*, AIR 1933 Pat 149. (A vakil's clerk is not a person in authority under Section 24, Evidence Act); *Emperor* v. *Ram Avadh*, AIR 1925 Oudh 597.
3. *Smith* v. *Emperor*, AIR 1918 Mad 111, 114.
4. *Wall* v. *Gibbs*, 1920 WN 187, 188.
5. *McCord* v. *Cammell & Co., Ltd.*, 1896 AC 57, 66, *per* Lord Watson.
6. *Mahabaleswarappa* v. *Gopalaswami*, AIR 1935 Mad 673, 675; *Pitman's Shorthand Academy* v. *Lila Ram & Sons*, AIR 1950 EP 181 : 52 PLR 1 (FB); *Kirti Someshwar Sevak* v. *Banisidhor Jaya Shanker Pathak*, (1995)1 Guj LR 693.
7. *Ram Milan* v. *Bansi Lal*, AIR 1958 Madh Pra 203, 205 (FB); *Nookama* v. *Election Commision*, (1958)1 Andh WR 241 : 1958 Andh LT 207 (is a person pointed out by name or other personal description in contradistinction to one whose identity is to be ascertained by the office which he holds).
8. *Yeleswarapu Ramachandra Rao* v. *State of Madras (now Andhra Pradesh)*, AIR 1962 AP 58, 61.
9. *Seetaram* v. *Ramabai*, AIR 1958 Madh Pra 221, 223; *In re* Reed Rowen & Co., *Ex parte* Official Receiver, (1887)19 QBD 174.

other garment, and is examined in a private room could not be said to be making 'a personal appearance in Court.'[1]

Personal negligence.—Lord Wright observed in *Lochgelly Iron and Coal Co., Ltd.* v. *M. Mullan*[2] L. : "The crucial question is, what is the meaning of the words as used in the section [Section 29(1) of Workmen's Compensation Act, 1925], 'the personal negligence' or wilful act of the employer or of some person for whose act or default the employer is responsible. It might seem at first that the word 'personal' is otiose since to bring home liability for negligence, the negligence must be 'personal'. The word may, however, have been used to exclude mere vicarious negligence and to preserve the peculiar but well-established rule described as the doctrine of common employment. Thus, an employer may be 'personally negligent' in respect of the acts and omissions of himself; but he may also, I think, be described as personally negligent in respect of breach of a duty imposed on him by law and of such a character that he is debarred from avoiding responsibility by delegating its performance, or by invoking the doctrine of common employment.

Peruse.—The proper meaning to give to the word 'peruse' would be 'to go through critically', that is, 'to read attentively and examine critically in detail, one by one'.[3]

Place of business.—In *In re* Norisis, *Ex parte* Reynolds,[4] Lord Esher, M.R., observed : "If a man has a room in a hotel where he keeps samples of his goods and sees customers, I should think it would be a place of business. But if all a man did was to negotiate paper contracts at a room in a hotel, I should hesitate to say it was a place of business. Certainly, if he did it first at one hotel and then at another, it would not."

Pleasure doctrine.—This doctrine is neither relic of feudal age nor is based upon any special prerogative of the British Crown but upon public policy. The pleasure of the President or the Governor is not required to be exercised by either of them personally as is obvious from Article 311..... Sympathy cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a constitutional prohibition.[5]

Plenary Powers.—The Legislature may at any time in exercise of *plenary powers* conferred on it by Articles 245 and 246 of the Constitution *render a judicial decision ineffective by enacting a valid legislation*.[6]

Poor.—The word 'poor' in a statute has been held to be used to describe those who are destitute and helpless, unable to support themselves and without means of support.[7]

Popular sense.—The words 'popular sense' is that which people conversant with the subject-matter with which the statute is dealing would attribute to it.[8]

Possession.—'Possession' can be said to be settled when it has been peaceful over a reasonable length of time. Even the possession of a trespasser over a considerable length of time

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1. *Mariambai* v. *Abdul Hamid*, AIR 1946 Bom 340.
2. 1934 AC 1, 21, 22.
3. *Sohan Mushar* v. *Kailash Singh*, AIR 1962 Pat 249, 251; *Mst. Sarfi* v. *Mst. Sugo*, AIR 1962 Pat 253.
4. (1888)4 TLR 452.
5. *Union of India* v. *Tulsiram Patel*, AIR 1985 SC 1416.
6. *I.N. Suksena* v. *State of Madhya Pradesh*, AIR 1976 SC 2250, *Hari Singh* v. *Military Estate Officer*, (1973)1 SCR 515 : AIR 1972 SC 2205; *Govt. of Andhra Pradesh* v. *Hindustan Machine Tools Ltd.*, 1975 Supp SCR 394 : AIR 1975 SC 2037.
7. Crawford : *Statutory Construction*, at p. 724.
8. *Collector of Central Excise, Kanpur* v. *Krishna Carbon Paper Co.*, AIR 1988 SC 2223; *Brooke Bond India Ltd.* v. *State of Gujarat*, (1991)2 Guj LR 1225.

may become settled possession in certain circumstances.[1]

Posting.—The word 'posting' in Article 233 of the Constitution means assigning someone to a post, that is 'a position' or a 'job', specially one to which a person is appointed.[2]

Post-graduation.—See *Jothika* v. *State of M.P.*[3]

Power.—Just as right and duty are correlative terms (Salmond at p. 240) : 'Rights and duties are necessarily correlative.....There can be no right without a corresponding duty, or duty without corresponding right, any more than there can be a husband without a wife, or a father without a child.' So are right, liberty and power species of the same genus : 'Of rights in this sense there are at least three distinct kinds, sufficiently important to call for separate classification and discussion.' There are (1) Rights (in the strict sense), (2) Liberties, and (3) Powers (Salmond at p. 246), and are complementary to one another. Right and power are, therefore, synonymous expressions, for instance, one may have a right of residence and one may be out of possession owing to the wrongful act of a trespasser. One will require the assistance of the Court for the enforcement of that right. The right to go to the Court and seek its aid is the right of enforcing the right of residence. It may be described as a power to go to the Court. It may also be described as a liberty to seek the assistance of the Court to compel the trespasser to carry out his duty and surrender possession to the rightful owner. But it is in the ultimate analysis the right of residence from which flow other rights assuming protean shapes and described in myriad ways the right or power or liberty or capacity to enforce the recognition of that right."[4]

"There is a distinction between 'jurisdiction' and 'power', in that jurisdiction has reference to the exercise of power and the extent and limits within which such power is exercisable for the administration of justice. But jurisdiction is defined in terms of power. It is the power of a Court to hear and determine a cause, to adjudicate and to exercise any judicial power in relation to it and to award the remedies provided by law upon a state of facts proved or admitted and presented to the Court in a formal way for its decision. The concept of jurisdiction embraces the power to grant the remedies provided by law."[5]

By the word 'power' when applied to a court of justice we understand an authority expressly or impliedly conferred on the Court by law to do that which without such sanction it could not have done; consent cannot give jurisdiction.

The power which a court of justice has included not only the jurisdiction to entertain a suit but also the execution of the decree passed therein.[6] In the case of Administrative Tribunals' importation of implied or inherent powers should not be too readily made.[7]

'Power' is distinguished from 'right'.[8]

Practice.—" 'Practice' in its larger sense like procedure, denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law that gives and defines the right."[9]

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1. *B.K. Sakku* v. *The Commissioner, Bangalore Development Authority and another*, AIR 1995 Kant 193; see *Supdt. & Remembrancer, Legal Affairs* v. *Anil Kumar*, AIR 1980 SC 52.
2. *State of Assam* v. *Ranja Muhammad*, AIR 1967 SC 903.
3. AIR 1976 SC 2534.
4. *Munna Lal* v. *Chunni Lal*, AIR 1945 All 239, 260 (FB) (*per* Sinha, J.).
5. *Dayabhai* v. *Regional Transport Authority*, AIR 1951 Madhya Bharat 121, 140-141 (FB) (*per* Dixit, J.).
6. *Ram Abhilakh* v. *Ram Jas*, AIR 1966 All 218.
7. *Pramatha Nath* v. *State of West Bengal*, 70 CWN 503.
8. *Rajah of Vizianagram* v. *Secretary of State*, AIR 1937 Mad 51, 57, *et seq.*
9. *State of Serai Kella* v. *Union of India*, 1951 SCR 474, 513 (*per* Mahajan, J.).

Premises.—The word 'premises' is a generic term meaning open land or land with buildings or buildings alone.[1]

Preliminary objection.—A preliminary objection is one that challenges the competence of a Court to hear and decide a particular cause before it.[2]

Prescribed.—As used in an Act, means prescribed by regulations or rules made by competent authority under that Act.[3]

Prescribed form.—When a certain petition or appeal is to be submitted in a prescribed form, it may be contended that unless it is submitted in the prescribed form, the same may be rejected. Swinfen Eady, L.J., however, opined that such a provision is not mandatory. His Lordship observed in *R.* v. *Lincolnshire Appeal Tribunal*, ex parte *Stubbins*,[4] : "I am of opinion that the provisions of the regulation are directory only; the right of appeal is given by statute, and the regulations prescribe the mode in which the appeal is to be carried out. It will be observed that the regulations, which provide that an appeal may be brought in a particular manner, do not provide that it shall not be brought in any other manner, and it is sufficient to say that on the constructions of the regulations they are manifestly directory only."

Prima facie case.—"The evidence discloses a *prima facie* case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused." "It only means that there is a ground for proceeding.....But a *prima facie* case is not the same thing as 'proof' which comes later when the Court has to find whether the accused (in a trial) is guilty or not guilty. 'Proof' is nothing but belief according to the conditions laid down in the Evidence Act, and it is obvious fallacy to say that because the Magistrate has found a *prima facie* case, therefore, he believes the case to be true in the sense that the case is proved."[5]

Principles of Natural Justice.—The principle of natural justice does not mean personal hearing in every case. If the opportunity to make comments or to furnish details, that is enough compliance of natural justice. The necessity of personal hearing depends upon the facts and circumstances of each case. If the legislature deliberately did not provide for personal hearing, no need to afford personal hearing.[6]

Privilege.—"Now, where the word 'privilege' is coupled with 'right' in a statute it must be held to have a well-defined meaning. It does not mean some advantage or boon which by reason of existing procedure a party may deem himself in fact to possess, but may be defined as a right, advantage or immunity in law enjoyed by a person or class of persons beyond the common advantage of others. The word must be construed in a strict sense as having a legal meaning when it is employed in a statute and not as having a loose or figurative meaning..... Again in *Pearson* v. *Mitchell*,[7] Cockburn, C.J., said : "The word 'right' especially when taken in conjunction with the words 'powers or privileges' must mean rights acquired adversely to the rest of the world and peculiarly to the individual. Therefore, the words 'right, privilege, obligation or liability already acquired, accrued or incurred,' in the Government of Burma

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1. *Ardeshir H. Bhiwandiwala* v. *State of Bombay*, (1961)3 SCR 592, 596; *Piara Singh* v. *State*, AIR 1960 Punj 538.
2. *British India Corporation* v. *Shanti Narain*, AIR 1935 All 310, 314.
3. K.J. Aiyar's : *Judicial Dictionary*, Eight Edition (1980) at p. 750; *Midnapore Zamindari Co., Ltd.* v. *Regional Forest Officer*, AIR 1954 Cal 580.
4. (1917)1 KB 1, 14.
5. *Sher Singh* v. *Jitendanath*, AIR 1931 Cal 607, 611, 615.
6. *Pyare Lal Tandon* v. *State of Uttar Pradesh*, AIR 1993 All 118 (DB), relying on, *A.R. Antulay* v. *R.S. Naik*, AIR 1988 SC 1531 : 1988 Cr LJ 1661 and *R.* v. *Secretary of State for Home Dept.*, (1973)3 All ER 796.
7. (1881)7 QB 690, 696.

Adaptation of Laws Order, 1937, must have reference not to the mere enjoyment of what is in fact a boon or to the existence of being in fact under a disadvantage, but to rights, privileges, obligations or liabilities which are enforceable at law."[1]

Proceeding.—Any application to a Court of Justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object.[2]

The word 'proceeding' would take colour from the context, and the context alone is determinative of its true scope, for 'proceeding' by itself may indicate the whole action or it may be a mere step in action. That term in the context of law is generally understood as indicating the form and manner of conducting juridical business before a Court or a Judicial Officer; regular and orderly progress in form of land including all possible steps in an action from its commencement to conclusion by judgment. The term can appropriately be applicable in a legal sense only to judicial acts before some judicial tribunal or may take in the prescribed mode of action for carrying the legal right or the scheme of the statute. It can be synonymous with a step in action or may even indicate as comprising of every stage of action, including that of the signing of the judgment.[3]

The expression 'proceeding' in Section 89(2)*(b)(ii)* for the Bombay Tenancy and Agricultural Lands Act, 1948, must in the context mean a suit or a proceeding in the nature of a suit, and an appeal or appeals which lie under the provisions relating to appeals, and execution proceedings for enforcement of rights declared by the decree or order passed in the suit or appeal must be regarded merely as continuation of the suit.[4] The expression 'any proceeding' occurring under Section 633 cannot be read out of context and treated in isolation. It must be construed in the light of the penal provisions. Otherwise what will happen is the penal clauses under the various other acts would be rendered ineffective by application of Section 633 of the Companies Act. Again if Parliament intended Sction 633 to have a coverage wider than the Act, it would have specifically provided for it, as otherwise it is a sound rule of construction to confine the provisions of a statute to itself.[5]

The procedure established by law.—Criminal trial can be held in any place provided the trial is open to public, and the mere fact that entry into the said place was regulated will not mean that the trial was not open to public.[6]

Process.—Process is a general word, meaning in effect anything done by the Court.[7]

Profess.—(Constitution Schedule Castes Order, 1950, Para 3).

"I think the expression 'profess' is intended to have the same meaning as the expression 'belongs to' and a person belongs to a religion either by birth or by conversion. Mere sympathy with or admiration for particular tenets of any religion by a person who was not born in it and who has not been converted to it would not bring him within the meaning of the expression

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1. *Arunachalam* v. *Valliappa*, AIR 1938 Rang 130, 132-33 (FB) (*per* Dunkley, J.).
2. *Asan Kutti* v. *Koyaman Kutti*, AIR 1937 Mad 342, quoting Black : *Law Dictionary*; *Govindaswami* v. *Rasu*, ILR 58 Mad 781 : AIR 1935 Mad 232.
3. *Jamunabai Motilal* v. *State of Maharashtra*, 1978 Mah LJ 93.
4. *Rajesab Imamsab Bagwan* v. *Harishchanda*, 56 Bom LR 638; *Reba Sircar* v. *Biswesvarlal*, AIR 1980 Cal 328, case under Civil Procedure Code, Order XXXIV, Rule 5(3).
5. Vide *Ratindra Chamria* v. *Registrar of Companies, West Bengal*, AIR 1992 SC 398 : JT 1991(4) SC 487 : (1992)2 SCC 10.
6. *Kehar Singh* v. *State (The Delhi Administration)*, AIR 1988 SC 1883 : (1988)3 JT 191 : (1988)17 Reports 306; *see* also *Chella Rama Konda Reddy* v. *State of Andhra Pradesh by Dist. Collector, Kurnool*, AIR 1989 AP 235 (DB) : (1989)2 Andh LT 1 : (1989)1 APLJ (HC) 547; *Jenendra Kumar Jain* v. *Roshanlal*, 1994 Jab LJ 19.
7. *In re* Llewelyn Evans, AIR 1926 Bom 551, 553.

'professing a particular religion'. Equally if a person has been born into a particular religion and has not been converted to another religion, the mere fact that he is of unorthodox type or has no belief personally in the tenets of that religion would not take him out of the category of a person professing that religion."[1]

Processing for export.—The expression 'processing for export' in the Excise Act or Sales Tax Act. Where a word has not been defined in the Act, the meaning has to be gathered from the context in which it has been used.[2]

Promulgate.—The word 'promulgate' connotes two ideas : *(i)* making known of an order, and *(ii)* the means by which the order is made known must be by something done openly and in public. Private information will not be 'promulgation'. But Section 188, I.P.C., does not prescribe any particular mode in which an order is made known openly and publicly. It may be by beat of drum; it may be by publication in the *Gazette;* it may be by reading out an order openly in public. An order duly pronounced in open Court must be deemed to be duly promulgated so far as the parties to the case are concerned.[3]

Promulgated.—The word 'promulgated' in Section 188, Indian Penal Code, refers, as pointed out in *In the matter of* Petition of Chandrakanta De,[4] to orders issued under the Code of Criminal Procedure and not to judgments and orders (*e.g.,* injunctions) of Civil Courts.[5]

Property.—This is a term of widest import, and unless there was something contrary in the enactment, it would take within its sweep business.[6]

Provided always.—The words 'provided always' are to be considered as words of reference to all that has gone before them. They constitute a qualification of the preceding limitation.[7]

Provided by.—There is a very wide distinction between the expressions 'provided for' and 'provided by'. "The word 'for' would imply that a remedy was elsewhere provided", opined Mahmud, J. in *Ajudhia Prasad* v. *Balmukand,*[8] "to meet the contingency; the word 'by' without the word 'for' means that the statute itself says there shall be no appeal."

Provided that.—"The words 'provided that' are ordinarily used to introduce an exception from, or qualification of, a general rule to which it is added, and when the rule is an enactment granting a privilege, suggest, *pima facie,* that the privilege is to be limited or qualified, and not that larger privilege is to be conferred, although the context may compel the latter construction."[9]

Public office.—To make the office a public office, the pay must come out of national and not out of local funds, and the office must be public in the strict sense of that term. It is not enough that the due discharge of the duties of the office should be for the public benefit in a secondary and remote sense.[10]

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1. *Michael* v. *Venkateshwaram,* AIR 1952 Mad 474, 478 (*per* Rajamannar, C.J.).
2. Vide *Regional Executive* v. *Fancy Food,* AIR 1995 SC 1620 : (1995)4 SCC 341; (*Delhi Cold Storage (P.) Ltd.* v. *Commissioner of Income-tax, New Delhi,* (1991)4 SCC 239 : 1991 AIR SCW 2478 and *Collector of Central Excise, Jaipur* v. *Rajasthan State Chemical Works Deedevane,* AIR 1991 SC 2222 are referred to).
3. *State* v. *S.M. Tugla,* AIR 1955 All 423 (*per* Agrawal & Desai, JJ., Mehrotra, J., dissenting).
4. ILR 6 Cal 445.
5. *Viniamkandy Thazha* v. *Thazitha Math Kutti,* 30 IC 144.
6. *C.I.T., Kerala* v. *P. Krishna Wariar,* AIR 1965 SC 59.
7. *Martelli* v. *Holloway,* LR 5 HL 532.
8. ILR 1 All 354) 364 (FB).
9. *Emmerton* v. *Federal Land Tax Commissioner,* (1916)22 CLR 40, 49.
10. *Re* Mirams, (1891)1 QB 594, 596.

Public officer.—A public officer is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public. If taxes go to supply his payment, and the public have an interest in the duties he discharges, he is a public officer.[1]

Public order.—"Now 'public order' is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of the internal regulations enforced by the Government which they have established."[2] There is a clear differentiation between public order, law and order, security of State, which may be illustrated in some cases by means of these imaginary concentric circles, the narrowest of them being that relating to the security of State, the next being that pertaining to public order, and the third, the largest, being that pertaining to law and order.[3]

Public place.—Open *chabutra* abutting on public street having unrestricted access, is a public place within the meaning of Section 13 of Public Gambling Act.[4] Bringing part of a razing ground under cultivation or to allot a land to a landless member of a backward class for his personal cultivation is also a public purpose.[5]

Public purpose.—The term 'public purpose' is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs.[6]

Public road.—The cases establish that a public road is *prima facie* a road that leads from one public place to another public place.[7]

Public safety.—'Public safety' ordinarily means security of the public or their freedom from danger.[8]

Publication.—"What is the meaning of 'publication'? The making known the defamatory matter after it has been written to some person other than the person of whom it is written. If the statement is sent straight to the person of whom it is written, there is no publication of it; for you cannot publish a libel of man to himself. If there was no publication, the question, whether the occasion was privileged does not arise. If a letter is not communicated to anyone but the person to whom it is written, there is no publication of it. And, if the writer of a letter locks it up in him own desk, and a thief comes and breaks open the desk, and takes away the letter and makes its contents known, I should say that would not be publication. If the writer of a letter shows it to his own clerk in order that the clerk may copy it for him, is that a publication of the letter? Certainly it is showing it to a third person; the writer cannot say to the person to whom the letter is addressed 'I have shown it to you and to no one else.' I cannot,

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1. *R.* v. *Whitaker*, (1914)3 KB 1283, 1296.
2. *Romesh Thapar* v. *State of Madras*, 1950 SCR 594, 598, *per* Patanjali Sastri, J.
3. *Amiya Kumar Karmakar* v. *State of West Bengal*, (1972)2 SCC 672, para 6 (Shelat, J.); *Lohia* v. *State*, (1966)1 SCR 709.
4. *Chuttan* v. *State*, 1954 All LJ 487.
5. *Samadhiyala Gram Panchayat, Bhava Nagar* v. *State of Gujarat*, AIR 1985 Guj 105.
6. *Sri Rajah Vasireddi Harihara Prasad* v. *Kota Jagannadham*, AIR 1955 Andhra 184 (where members of a community are to be benefited by the construction of temples, the acquisition for the purpose of construction of temples must be held to be a public purpose); *Amarsinghji* v. *State of Rajasthan*, AIR 1955 SC 504 (Rajasthan Land Reforms and Resumption of Jagirs Act); *State of Bombay* v. *Bhanji Munji*, AIR 1955 SC 41 (housing the homeless); *H.P. Khandelwal* v. *State of U.P.*, AIR 1955 All 12 (rehabilitation of refugees); *Shazad Khan* v. *Jhalla Singh*, AIR 1955 MB 146 (acquisition for carrying out scheme of land reforms); *Sampuram Singh* v. *Competent Officer*, AIR 1955 Pepsu 148 (Section 9, Evacuee Interest Separation Act).
7. *A.G.* v. *Antroleus*, (1905)2 Ch 188, 206.
8. *Romesh Thapar* v. *State of Madras*, 1950 SCR 594, 599, *per* Patanjali Sastri, J.

therefore, feel any doubt that if the writer of a letter shows it to any person other than the person to whom it is written, he publishes it. If he wishes not to publish it, he must so far as he possibly can, keep it to himself, or he must send it himself, straight to the person to whom it is written."[1]

Purchase.—See *Commissioner of Income Tax* v. *T.N. Aravinda Reddy.*[2]

Purporting to act in discharge of official duty.—"A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to be within the scope of his official duty. Thus, a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government Medical Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant if challenged, can reasonably claim that what he does, he does by virtue of his office."[3]

Purporting to be done.—See *Shyam Manohar* v. *Fourth Addl. District & Sessions Judge.*[4]

Quasi-Judicial.—The concept of quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power.[5]

Principles. Principles to determine as to what constitutes a 'quasi-judicial act' may be stated as under :

(i) if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) if a statutory authority has power to do any act which will prejudicially affect the subject, then, although these are not two parties apart from the authority proposing to do the act the subject opposing it; the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially.

Now the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not.

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1. *Pullman* v. *Hill & Co.*, (1891)1 QB 524, 527, *per* Lord Esher.
2. AIR 1980 SC 96.
3. *Gill* v. *King*, 1948 FCR 19, 40 (PC), *per* Lord Simonds; *Hori Ram Singh* v. *Crown*, 1939 FCR 159; *District Council, Bhandara* v. *Kisori Lal*, AIR 1949 Nag 190; but see *Prafulla Kumar* v. *Dhodha Sahani*, AIR 1948 Pat 409.
4. AIR 1978 All 238, case under Provincial Small Cause Courts Act, 1887, Schedule, Article I.
5. *Gullapalli Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation*, 1959 (Supp) 1 SCR 319, 353-54 : The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided these rules conform to the principles of judicial procedure.

The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend upon the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion, if any, to be adopted, the effect of the decision on the person affected and other *indicia* afforded by the statute.[1]

Ratify.—When originally there was in fact no authority to act on behalf of another by ratifying the act so done one adopts it as his own so as to make himself personally liable.[2]

Ready and willing.—An averment of readiness and willingness must connote that the non-completion of the contract was not the fault of the person so averring and that he was disposed and able to complete it if it had not been renounced by the other party.[3]

Reasonable steps to obtain employment.—Workmen's Compensation Act, 1931, Section 1 : "What employment is meant? Plainly employment of a kind for which the workman is fitted, including his pre-accident work if he is fit to do it", *per* Lord Hanorth, M.R. in *Inghans* v. *Red Lime Glico, Ltd.*,[4] Slesser, L.J. recommended that after the word 'employment' in the section one should read 'for work of a certain kind for which he is fit' (at p. 246). Romer, L.J. opined at p. 246 : "The steps to obtain employment must be reasonable not only for work for which workman thinks he is fit but for which he is fit.

Reasonably.—The word 'reasonably' is not capable of precise definition. 'Reasonable' signifies 'in accordance with reason'. In the ultimate analysis it is a question of fact. Whether a particular act is reasonable or not depends on the circumstances in a giving situation.[5]

Record its reasons in writing.—The adoption of a stereotyped printed form is not a sufficient compliance thereof.[6]

Recorded.—"In our opinion the word 'recorded' in the proviso to Section 11 of the Pre-emption Act (Punjab Act II of 1905, since *repealed*) means entered in the record of rights, and nothing is clearer than that a person cannot be properly said to be entered in the record of rights as the owner of land if only his name has been entered in the register of mutations by the *patwari* and a report has been put up in his favour in the appropriate columns of that register."[7]

Rectified.—When the register of members of a company is 'rectified' under the orders of Judge by ordering the removal of the name of a member therefrom, the effect of that is exactly the same as if it had never been put on the court having declared that it ought never to have been entered at all. It is struck out from the beginning.[8]

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1. *Province of Bombay* v. *Khushaldass Advani*, 1950 SCR 621, 725 : AIR 1950 SC 222; *Nagendra Nath* v. *Commissioner of Hills Division*, 1958 SCR 1240; *Radhey Shyam Khare* v. *State of Madhya Pradesh*, 1959 SCR 1440; *G. Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation*, 1959 (Supp) 1 SCR 319; *Shivji Nathubhai* v. *Union of India*, (1960)2 SCR 775; *Board of High School, Allahabad* v. *Ghanshyam Das Gupta*, AIR 1962 SC 1110 at pp. 1113, 1114 (University Committee cancelling an examination of an examinee); *Board of Revenue* v. *Vidyawati*, AIR 1962 SC 1217 [decision under Section 56(7) of Stamps Act : juidicial.] A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively; *R.* v. *Manchester Legal Aid Committee*, (1952)2 QB 413.
2. *Jones* v. *Hope*, (1880)3 TLR 247.
3. *Court* v. *Ambergate, etc. Railway Co.*, (1851)17 QB 127, 144.
4. (1932)25 IWCC 243, 245.
5. *Corporation of Calcutta* v. *Padma Debi*, AIR 1962 SC 151, 153.
6. *Sukheswar Phukhan* v. *Emperor*, ILR 38 Cal 789, 790.
7. *Jagat Ram* v. *Mehr Din*, 32 IC 528 (Punj).
8. *Pulbrook* v. *Richmond Consolidated Mining Co.*, (1878)9 Ch D 610, 615.

Reduction in rank.—When an officer is put 'under suspension' he is said to be reduced in rank.[1]

Reference.—In *'The Law Lexicon of British India'* compiled by Ramanatha Aiyar, 'Reference' has been stated to mean the sending of a pending case, or some question therein, by the court in which it is pending to a private person or some other tribunal to hear and determine the cause or the question. In all Acts of the Indian Legislature wherever provision is made for reference to the High Court by a court subordinate thereto, it is invariably a provision for reference of a disputed question for decision by the former.[2]

Regularly kept in the course of business.—Books are 'regularly kept in the course of business' within the meaning of the provisions of Section 34, Indian Evidence Act, if they are kept in pursuance of some continuous and uniform practice in the current routine of the business of the particular person to whom they belong.[3]

A day book, which has been entered after four months and the rough notes of which are not available, is not a document which can be held to have been kept in the regular course of business, nor so is the ledger which is prepared from such a day-book.[4]

The words 'regularly kept' are not synonymous with 'correctly kept'. The words 'regularly kept' only mean that they should be kept in accordance with certain fixed method or in some customary form. The form 'regularly kept' has reference to the system of book keeping rather than to the truth or correctness of the entries in that account-books.[5]

Regularly performed.—In illustration *(e)* to Section 114 of the Evidence Act, the expression 'regularly performed' means done with due regard to form and procedure.[6]

'Regulate' and 'Prohibit'.—In both there is the element of restriction, though in varying degree.[7]

Relating to.—The phrase 'relating to' as occurring in act enactment (Section 4, Pensions Act) restrictive of the right to sue must be construed strictly, *i.e.*, in favour of the right to proceed.[8]

Section 154, Cr. P.C. : "The question whether an information relates to the commission of a cognizable offence depends, not even on what the police officer thinks but on what the informant says. By the word 'relating' is meant that there need not to be complete or satisfactory proof or evidence given it is sufficient if it indicates that a cognizable offence has been committed. But until there is this indication, it cannot be said that the information is one 'relating to' such an offence."[9]

'In relation to', 'pertaining to'.—"The expression in relation to (*see* also 'pertaining to') is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might both have direct significance as well as an indirect

1. *Provincial Government, C.P.* v. *Shamsul Hussain*, AIR 1949 Nag 118.
2. *Bashir Ahmed* v. *Crown*, ILR 1948 EPB 209, 281 (FB), *per* Achhu Ram, J.
3. *Ramchand Pitambhardas* v. *Emperor*, 19 IC 534 (Sind).
4. *Arjan Singh* v. *Surjan Singh*, AIR 1935 Pesh 45, 46.
5. *Gulab* v. *Bhagwan Das*, AIR 1932 Oudh 225, 226.
6. *Nishan Singh* v. *State*, AIR 1955 Punj 65.
7. *Sujatha Touring Talkies* v. *State of Karnataka*, AIR 1986 Karn 21 (FB) : ILR 1985 Karn 2477.
8. *Balvant Ramchandra* v. *Secretary of State*, ILR 20 Bom 480.
9. *Mani Mohan Ghose* v. *Emperor*, ILR 58 Cal 1312, 1324 : AIR 1931 Cal 745, 749.

significance depending upon the context.[1] Reference may be made to 76 *Corpus Juris Secundum* at page 620 and 621 where it is stated that the term 'relate' is also defined as meaning to bring into association or connection with. It has been clearly mentioned that 'relating to' has been held to be equivalent to or synonymous with as to 'concerning with' and 'pertaining to'. The expression 'pertaining to' is an expression of expansion and not of contraction.

Relief.—This word is sometimes confounded with the larger and more comprehensive expression 'cause of action'. Stuart, C.J. observed in *Sarsuti* v. *Kunj Behari Lal*,[2] "The word 'relief' at least as used in this country, is not a term of exact or precise technicality, but simply means the remedy which a Court of Justice may afford in regard to some actual or apprehended wrong or injury, such remedy being large or small as the case may be. But it is not synonymous with 'cause of action' that term including all the reliefs covered by the facts, on the strength of which a plaintiff comes into Court....."

"Now cause of action" observed Lord Watson in *Chand Kaur* v. *Partab Singh*,[3] "has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the *media* upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Religion.—Religion is a matter of faith with individuals or communities and it is not necessarily theistic. There are well-known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being but it will not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of a religion and these forms and observances might extend even to matters of food and dress.[4]

Remedy.—Any person who is entitled to two remedies under a statute, he has the right to elect either of them, but election of one bars resort to the other.[5]

Remuneration.—In its ordinary connotation means 'reward', recompense, pay, wages or salary for service rendered. It means *quid pro quo* . If a man gives his services, whatever consideration he gets for giving his services is "a remuneration for them. Consequently if a person was in receipt of a payment, or in receipt of a percentage, or any kind of payment which would not be actual money payment, the amount he would receive annually in respect of this would be remuneration."[6]

Requisite.—The word 'requisite' is a strong word, it may be regarded as meaning something more than the word 'required'. It means 'properly required'.[7] The word 'requisite' to suggests a

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1. See *State Wakf Board* v. *Abdul Azeez*, AIR 1968 Mad, 79, 81, paras 8 & 10. Following and approving, *Nitai Charan Bagchi* v. *Suresh Chandra Paul*, (1962)66 Cal WN 767; *Shyamlal* v. *M. Shayamlal*, AIR 1933 All 649 (FB) and 76 *Corpus Juris Secundum*, at p. 621.
2. ILR 5 All 345, 358 (FB).
3. 15 IA 156, 157.
4. *Commissioner, H.R.E., Madras* v. *Sri L.T. Swamiar*, AIR 1954 SC 282; *Ratialal Panachand Gandhi* v. *State of Bombay*, AIR 1954 SC 388.
5. *(M/s.) Bags and Cartons* v. *Haryana Financial Corporation*, AIR 1993 P & H 156; finding support from *K. Subba Reddy* v. *A.P. State Financial Corporation*, AIR 1987 AP 119 (FB) and *M/s. Gulf Fishing & Co.* v. *Orissa State Financial Corpn.*, AIR 1987 Orissa 119 (DB).
6. *Per* Blackburn, J. in *R.* v. *Postmaster-General*, (1876)1 QBD 658, quoted in *Accountant-General, Bihar* v. *N. Bakshi*, AIR 1962 SC 505, 509; *C.I.T., Bengal* v. *Calcutta Stock Exchange*, AIR 1959 SC 763.
7. *Surty* v. *Chettyar*, 55 IA 161, 170; *Kanji Devsi* v. *Velji Haridas*, AIR 1950 Bom 350.

meaning 'properly required', but does not and cannot mean 'appropriate' or matching' or 'corresponding' or 'analogous'.[1]

Requisition.—The term 'requisition' is used in the sense of taking possession of property for the purpose of the State or for such purposes as may be specified in the statute authorising a public servant to take possession of private property for a specified purpose for a limited period in contradistinction to acquisition of property by which title to the property gets transferred from the individual to the State or to a public body for whose benefit the property is acquired. In requisition the property dealt with is not acquired by the State but is taken out of the control of the owner for the time being for certain specified purposes. Even for this limited purpose, however, the owner becomes entitled to compensation because requisition of the property amounts at least to a temporary deprivation of the property.[2]

The public servant to whom this power to requisition private property, is delegated, broadly speaking, should observe strict compliance with the terms of the delegating order, and should be careful not to stretch it lightly or unduly. Neither should he be too dogmatic in construing the terms of the order, for it is the intention underlying the act of delegation which is the guiding factor. A Court of law is entitled to scrutinise the manner in which the order is carried out, and must attempt to grasp the real intention, the object and purpose of the delegating authority in making the order. The Court is not confined to the literal meaning of the words used in the provisions of the statute but has to adopt a rational attitude by attempting to align its vision to that of the draftsman while drafting the provisions in question.[3]

Reside (ordinarily resides).—The word resides must mean the actual place of residence and not constructive, residence, it did not certainly denote the place of origin. It was the actual residence of the wife at the commencement of the proceeding that has to be considered for jurisdiction.[4]

Respective.—"The meaning of the word 'respective' in legal and statutory language generally is 'pertaining to each group or class of those in question.'"[5]

Retainer.—A retainer is the engagement of a pleader or an advocate to give his service to a client, and involves the payment of a fee—the acceptance of a retainer binds the pleader or advocate to accept a brief on behalf of the client who retains him and not to accept a brief from his opponent. One of the most important principles—on which rules relating to retainers are based—is that a pleader or advocate ought not to accept a brief against a former client, because, he, by reason of his former engagement, is likely to know of anything which may be prejudicial to the client in the latter litigation.[6]

Right to enjoy such property.—The expression means the right to enjoy the property in the manner in which that property can be enjoyed.[7]

Right to sue.—"The words 'right to sue' must be construed as meaning, 'the right to prosecute by law', to obtain relief by means of legal procedure."[8]

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1. Vide *(M/s.) Dada Silk Mills* v. *Indian Overseas Bank and Banking Co.*, (1995)1 GLH 458 (Guj).
2. *Mangilal Karwa* v. *State of M.P.*, AIR 1955 Nag 153; *State* v. *Ram Chandra*, AIR 1955 All 438 [Requisition order under Section 54(1) (no corresponding reference in 1973 Code), Cr.P.C. may be oral].
3. *Hari Chand Agarwal* v. *Batala Engineeering Co.*, AIR 1966 Punj 141 : ILR (1965)2 Punj 576.
4. *K.C. Shasidhar* v. *Smt. Roopa*, AIR 1993 Kant 120.
5. *R.* v. *Licensing Court Ex P. Ive etc. Club*, 1921 VLR 266, 273.
6. *State* v. *Jagadanand Panigrahi*, AIR 1962 Orissa 67 (FB).
7. *Income Tax Commissioner* v. *Kamaksha Narain*, AIR 1940 Pat 633, 647 (FB).
8. *Chetti Kulam Prasanna Reddiar* v. *Collector of Trichinopoly*, 24 IC 369, *per* Tyabji, J. (Order XXII, CPC); *Prasanna Venkatachella* v. *Collector of Trichinopoly*, 33 IC 45.

Riparian land.—Riparian land may be described as land which is on the bank of a stream and which extends from the bank to a reasonable depth inland.[1]

Rule of law.—The term 'rule of law' in brief connotes the undisputed supremacy of law and envisages a state of things in which everyone respects the law and where law has to be followed by every citizen collectively and individually, by the citizens as well as the States.[2]

Rule of the road.—"There is not any rule or custom by which a person in one carriage, wishing to pass another, is necessarily, under all circumstances bound to go on the right or off side. If it were so—in streets broad enough to admit six or seven carriage abreast, if there was but one carriage passing along it, nearly on the right side, then another, going in the same direction, would be compelled to take a circuitous direction round it, or its owner would be liable to an action for negligence. Whereas it is the practice, if the street is wide enough, to drive on either side, and very often carriages three or four abreast may be observed in the streets, the common rule applies when the street or road is narrow. The principle upon which all the rules for driving are founded', is this :—that the driver must bear to the left hand. Hence the known rules, that, in meeting, you must go the left and that, when two carriages are coming the same way, the foremost should move to the left side. These rules of driving are of course not rules of law, but evidence of custom."[3]

Rusticate.—See *B.P. Puttaraju* v. *Bangalore University*.[4]

Safe system of working.—Lord Greene, M.R. observed in *Speed* v. *Thomas Swiftand Co. Ltd.*,[5] "What exactly is meant by 'a safe system of working' has never, so far as I know, been precisely defined. I do not venture to suggest a definition of what is meant by system, but it concludes, in my opinion, or may include, according to circumstances, such matters as the physical lay-out of the job—the setting of the stage, so to speak—the sequence in which the word is to be carried out, the provision in proper case of warnings and notices, and the issue of special instructions. A system may be adequate for the whole course of the job or it may have to be modified or improved to meet circumstances which arise. Such modifications or improvements appear to me equally to fall under the head of system."

Satisfactory account of himself.—A satisfactory account of himself in Section 109 of Cr. P. Code, does not necessarily mean that the person should give his correct name and address or even the object of his being present at night, but that he should satisfy the authorities by explaining the suspicious circumstances appearing against him.[6] Nor does the expression mean that the person should satisfy the magistrate that he spends his time or at least his leisure hours in a satisfactory manner.[7]

Satisfied.—'Satisfied' should be read as meaning 'reasonably satisfied'. It cannot import an arbitrary or irrational state of being satisfied. Satisfaction must be honest, careful and deliberate, arrived after exercising due care and caution.[8] The question of satisfaction is, however, a question of fact and it is a subjective consideration and not an objective

1. *Ram Sewak Kazi* v. *Ramgir Chowdhury*, AIR 1954 Pat 320.
2. *Laxminarayana Gupta* v. *Collector, District Shivpuri*, AIR 1956 MB 163; *New Educational Society* v. *State*, AIR 1968 Goa 49, where some of the implications of the observance of rule are explained.
3. *Wayte* v. *Carr*, (1823)1 LJOSKB 63.
4. AIR 1980 Kant 39.
5. (1943)1 KB 557 : (1943)1 All ER 539 (CA).
6. *Emperor* v. *Bishi Sahara*, AIR 1935 Pat 69.
7. *Sharif Ahmad* v. *Emperor*, 12 IC 304 (All).
8. *In re* V. Venkataraman, AIR 1949 Mad 529; *Leversidge* v. *Anderson*, 1942 AC 206, 271; *Ratam Roy* v. *State of Bihar*, AIR 1950 Pat 332, 345.

consideration.[1]

Science.—The expression 'science' or 'art' in Section 45 in addition to the expression 'foreign law' and 'handwriting' used in the section as originally enacted, and the expression 'finger impressions inserted in 1899 is sufficient to indicate that the expression 'science or art' therein is of wide import and cannot have a narrow meaning. Each of the words, 'science' and 'art' has to be construed widely to include within its ambit the opinion of an expert in each branch of these subjects whenever the court has to form an opinion upon a point relating to any aspect of science or art. The meaning of the word 'science' as understood ordinarily with reference to the dictionary meaning must be attributed to the word as used in Section 45 of the Evidence Act. It is clear from the meaning of the word 'science' that the skill or technique of the study of the peculiar features of a typewriter and the comparison of the disputed typewriting with the admitted typewriting on a particular typewriter to determine whether the disputed typewriting was done on the same typewriter is based on a scientific study of the two typewritings with reference to the peculiarities therein and the opinion formed by an expert is based on recognised principles regulating the scientific study. Such an opinion is the opinion of an expert in a branch of science which is admissible in evidence under Section 45 of the Indian Evidence Act.[2]

Sentence.—"The contention is that the words 'the sentence' in Section 11 of the Prevention of Crime Act, 1908, include the sentence of penal servitude as well as the sentence of preventive detention. The fact that a sentence of preventive detention can only be passed when a sentence of penal servitude is first imposed may well be relied upon in support of the appellant's contention. The point is not a clear one, but it seems to us that *prima facie* the words 'the sentence' in Section 11 refer to the sentence of preventive detention and do not include the sentence of penal servitude."[3]

Serious and wilful misconduct.—In the expression 'serious and wilful misconduct' used in Workmen's Compensation Act, 1897, the word 'serious' applies to the misconduct itself and not to the actual consequences of it and the word 'wilful' imports that the misconduct was deliberate and not merely a thoughtless act on the spur of the moment.[4]

Shall.—The word 'shall' in its ordinary signification is mandatory though there may be considerations which influence the Court in holding that the intention of the Legislature was to give a discretion.[5] But this word is not necessarily mandatory,[6] nor always mandatory. Whether the matter is mandatory or directory only depends upon the real intention of the Legislature which is ascertained by carefully attending to the whole scope of the statute to be construed.[7]

The use of the word 'shall' would not by itself make a provision of the Act mandatory. It is

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1. *In re* Jayantilal, AIR 1949 Bom 319, 333 (FB).
2. Vide *State* v. *S.J. Choudhary*, (1996)2 SCC 428.
3. *R.* v. *Smiths*, (1910)1 KB 17, 21.
4. *Johnson* v. *Marshall Sons and Co. Ltd.*, 1906 AC 409.
5. *Tirumalla Chinnape* v. *Kolakula Thomasu*, AIR 1928 Mad 265, 268; *Rustom J. Irani* v. *Keneedy*, ILR 26 Bom 397, 408; *Shrikhurushna Sadshiv Dhamankar* v. *The Nasik Merchants Co-op. Bank Ltd.*, AIR 1990 Bom 90 (DB).
6. *Jhingur Raut* v. *Emperor*, AIR 1931 Pat 386, 388; *Sukumar Mukherjee* v. *State of W.B.*, (1993)3 SCC 723; *Shree Sanand Textile Industries Ltd.* v. *Naranje Peraj Transport Co.*, 1996(1) GCD 36 (Guj).
7. *Liverpool Borough Bank* v. *Turner*, (1860)129 RR 172; *Mohd. Ikhtiyar* v. *Khanna*, AIR 1941 Lah 310; *Gurdit Singh* v. *Gurdwara Management Committee*, AIR 1940 Lah 266; *Madan Gopal* v. *Bhagwan Singh*, ILR 11 All 305; *Ram Bharose* v. *Rampal Singh*, AIR 1925 Oudh 699; *Lakshmanasami Gounder* v. *C.I.T. Selvamani*, (1992)1 SCC 91 and *P.K. Karunan Nair* v. *Joint Registrar*, (1992)2 Ker LJ 19.

to be construed with reference to the context in which it is used.[1] Similarly, mere use of the word 'shall' or the absence of it, does not decide the question whether a provision is directory or mandatory.[2]

When a statute uses the word 'shall' *prima facie*, it is mandatory, but the Court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, *inter alia*, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.[3]

If the imperative meaning were to defeat the purpose of the provision then the word 'shall' must be considered as not mandatory.[4]

"In my opinion", says Edge, C.J. in *Ramesh Singh* v. *Sheodin Singh*,[5] "there is a difference between a case in which a court or an officer of a court omits to do something which by a statute it is enacted shall be done, and cases in which a court or an officer of a court does something which by a statute it is enacted shall not be done. In the one case the omission to do an act which by the statute it is enacted shall be done may not amount to more than an irregularity in procedure, whilst in the other case, in which the prohibition is enacted, the doing of the prohibited thing by the Court or the official is *ultra vires* and illegal, and if *ultra vires* or illegal, it must follow that it was done without jurisdiction."

Shall and may.—"If the words are 'It shall and may' be so and so done, by such and such officer and body, then the word 'may' is held in all soundness of construction to confer a power, but the word 'shall' is held to make that power, or the exercise of that power, compulsory; cases are not wanting where, even without the use of so stringent a word as 'shall', it has been held that a power so conveyed must be executed. But where it is intended not to compel, but to leave it optional with the parties, the words 'think fit' are the very ordinary, technical and appointed words, to show that the power is not compulsory."[6]

Obviously where legislature uses two words 'may' and 'shall' in two different parts of the same provision *prima facie* it would appear that the legislature manifested it's intent on to make one part directory and another mandatory. But that by itself is not decisive. The power of

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1. *Pandurang* v. *Ramchandra*, AIR 1930 Bom 554, 560; *Shah Mohammad Umar* v. *Ram Charan Singh*, AIR 1954 Pat 225 (word "shall" in Section 82, Representation of the People Act not used in a mandatory sense); *State of Madhya Pradesh* v. *Azad Bharat Finance Co.*, AIR 1967 SC 276; *Ammal Chandra Dutt* v. *II Addl. District Judge*, (1989)1 SCC 1(7) : (1989 All LJ 27 (SC).
2. *Shiveshwar* v. *District Magistrate, Monghyr*, AIR 1966 Pat 144 : 1965 BLJR 876 (FB).
3. *State of U.P.* v. *Babu Ram*, AIR 1961 SC 751, 765 : (1961)2 SCR 679, 710-11; *Municipal Corporation of Greater Bombay* v. *Workers' Union*, (1973)3 SCC 546, 566 (Vaidyalingam, J.); *Hitesh Kumar Ojha* v. *Krushna Chandra Mahapatra*, AIR 1992 Ori 91; *Sainik Motors* v. *State of Rajasthan*, AIR 1961 SC 1480, quoted in *Subrati* v. *Bhagwati Prasad*, AIR 1991 Raj 59 (DB) : (1989)2 Raj LW 345 overruling 1986 RLW 343 & 1988 RLR (1) 1023; *see* also *K. Kamath* v. *Syed Ahmed Ishaque*, (1955)1 SCR 1104 : AIR 1955 SC 233; *Ajit Singh* v. *State of Punjab*, (1983)2 SCC 217 : AIR 1983 SC 494; *(M/s.) Rubber House* v. *M/s. Excellsior Needle Industries Pvt. Ltd.*, AIR 1989 SC 1160 : (1989)1 JT 488 : (1988) HRR 193 : (1989)2 SCC 413 : (1989)95 Punj LR 584.
4. *Paradise Printers* v. *Union Territory of Chandigarh*, (1988)1 SCC 440.
5. ILR 12 All 510, 517 (FB).
6. *Queen* v. *Allee Paroo*, 5 MIA 488, 492-493 per, Lord Brougham.

court to find out whether the provision is directory or mandatory remains unimpaired.[1]

The phrase 'shall be deemed' is frequently used in statutes when the Legislature wants to confer a status or an attribute to a person or thing which is not intrinsically possessed by that person or thing on whom this conferment is made. This phrase is commonly used in statutes to extend the application of a provision of law to a class not otherwise amenable to it. It implies that the Legislature after due consideration exercised its judgment in conferring that status or attribute to a person or thing. It is not open to a court to sit in judgment over the judgment of the Legislature and ignore the express direction contained in the statute on the ground that the person on whom a statute is conferred by statutory fiction is not the real person and so it cannot refuse to recognise him as such person. The important thing is not the meaning of the word 'deemed' but the effect of its use in the statute.[2] In *State of Haryana* v. *Raghubir Dayal*,[3] the Supreme Court has elaborated as to when 'shall' be read as 'may' relying on *Raza Buland Sugar Co., Ltd.* v. *Municipal Board*.[4]

The word 'shall' used in the expression deposition shall be signed by witnesses in Rule 4 has to be given the meaning keeping in view the intention of the legislature, the purpose of the enactment and the consequence which would follow from construing it as mandatory or directory.[5]

'Shall be held'.—Where this expression occurs in a statute, the intention of the Legislature is directed more towards its imperative character, to show command than point towards its futurity. The decisions sometimes say that 'shall' is used in remedial statutes to include both past and future. There might be something in the context of an Act or to be collected from its language which might give to words *'prima facie* prospective', a larger operation, but they ought not to receive a larger operation unless some reason for giving such effect thereto is found therein.[6]

'Shall be lawful'.—When found in the bye-law of a company are not to be construed as obligatory to do what the law ordains.[7]

'Shall be presumed'.—The term means that the Court is bound to take the fact as proved until evidence is adduced to disprove it and the party interested in disproving it, must produce such evidence if he can.[8]

Shop.—Place used for arranging musical performance on occasions, such as, marriages is a shop.[9]

Premises of an advertising agency is a shop.[10]

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1. *Ganesh Prasad* v. *Laxmi Prasad*, AIR 1985 SC 964.
2. *Malhotra* v. *State of U.P.*, AIR 1958 All 492, 498-99 : Special Judge regarded as Court of Session, although he was not a Session Judge.
3. (1995)1 SCC 133 : 1995 AIR SCW 46.
4. AIR 1965 SC 895 : (1965)1 SCR 970; *see* also *Suvernaben* v. *Competent Authority and Addl. Collector (ULC) Ahamedabad*, (1995)2 GCD 157 (Guj).
5. *See* Owners and Parties interested in *M.V. 'Vali Press'* v. *Fernandeo Lopez.*, AIR 1989 SC 2206.
6. *Ramsewak* v. *Sheopujan*, AIR 1959 Pat 75, 78; *Main* v. *Stark*, (1890)15 AC 384, 388; 'Cases and other materials on Legislation', by Reid & Mac Donald.
7. *R.* v. *Eye Corporation*, (1822)107 ER 32; *Bharat Hari Singhania* v. *Commissioner of Wealth Tax (Central)*, AIR 1994 SC 1355.
8. *Public Prosecutor* v. *A. Thomas*, AIR 1959 Mad 166, 171.
9. *Hindu Jea Band* v. *Regional Director, ESIC*, (1987)2 SCC 101 : 1987 SCC (L & S) 88 : AIR 1987 SC 1166, which is referred to in *Employees' Statute Insurance Corporation* v. *R.K.Swamy*, (1994)1 SCC 445 : (1994) SCC (L & S) 586.
10. *E.S.I. Corporation* v. *R.K. Swamy*, (1994)1 SCC 445 : 1994 SCC 586 (L & S).

Signature.—"A signature is only a mark, and where a statute merely requires that a document shall be signed, the statute is satisfied by proof of the making of a mark upon the document by or by the authority of the signatory".[1]

"Signature does not necessarily mean writing a person's Christian and surname, but any mark which identifies it as the act of the party."[2]

Signed.—"A judgment of a Bench of Magistrates has to be signed as required by law and the requirements of public policy necessitate the writing of the full name of the Magistrate that signs the judgment and the mere putting in of the initials is not, in my opinion, a sufficient compliance with the mandatory provision of Section 265 of Cr.P.Code".[3]

When the law says 'signed' it means writing of the name of the person who signs it either by his own hand or by the hand of an agent, who must be disclosed and have authority.[4]

So far as may be.—The expression 'so far as may be' is equivalent to 'as far as possible' or, 'so far as it exists'. But this expression does not mean 'so far as is consistent.'

Sovereign Function.—The theory of sovereign Functions do not clothe the state with a right to violate the fundamental right to life and liberty guaranteed by Article 21 of the Constitution.[5]

'Speaking order'.—Is one which, on mere perusal, springs to one's mind as being erroneous and does not require a careful and elaborate argument to establish that there has been an error of law.[6]

Special law.—Code of Civil Procedure is a general law, though it purports to deal only with procedure. The Forfeited Property Act of 1859 is obviously a special law. The Registration Act has been held to be a special law. Provincial Insolvency Act is a special law.[7]

"But it appears to me that the special laws contemplated in Sections 40 and 41 of the Indian Penal Code are only laws, such as, the Excise, Opium and Cattle Trespass Act, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the general Penal Code. The Whipping Act is not a special law in this sense, it creates no fresh offences, but merely provides a supplementary or alternative form of punishment for offences which are already punishable primarily under the Penal Code or (in case of juvenile offences) other enactments".[8] [The Whipping Act, 1909, has been repealed by the Abolition of Whipping Act, 1955 (44 of 1955)].

"What is a general statute and what is a special statute is often a question of difficulty to solve in most cases ; but the classification has to be made with reference to the context in each case and the subject-matter dealt with by each statute. As Justice Ramesam has pointed out in *Gunpally Thammayya* v. *Viswanatha Mallapuraj*,[9] most Acts can be classed as General Acts

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1. *R.* v. *Moore*, Ex parte *Myers*, (1884)10 VLRL 322, Aut *per* Higginbottom, J., quoted by Burrows, *Words and Phrases*, Vol. 5, at p. 108.
2. *Morton* v. *Copeland*, (1855)139 ER 861.
3. *Brahmaiah* v. *Emperor*, AIR 1930 Mad 867, *per* Sundaram Chetty, J.; *Abdul Gafur* v. *Queen-Empress*, ILR 23 Cal 896 (signing of a warrant of arrest).
4. *Mohabarsha Bankapur* v. *Secretary of State*, 32 IC 393 (Cal).
5. *Challa Rama Kenda Reddy* v. *State of Andhra Pradesh by Dist. Collector, Kurnool*, AIR 1989 AP 235 (DB) : (1989)2 Andh LT 1 : (1989)1 APLJ (HC) 547 (DB); *State of Orissa* v. *Ramachandra Rao*, AIR 1991 Ori 197 : (1991)71 Cut LJ 612 : (1991)1 CLR 103.
6. *Sita Devi* v. *Commissioner of Bhagalpur*, AIR 1952 Pat 57, 59.
7. *Dropadi* v. *Hira Lal*, ILR 34 All 196, 500 (FB).
8. *Emperor* v. *Po Han*, 22 IC 147 (*per* Twomey, J.).
9. AIR 1930 Mad 963.

from one point of view and Special Acts from another. For example, it may be argued, as he says that the Contract Act which is applicable to all is general in relation to the Labour Act which is limited to the relationship of the employer and the employee ; and in another sense the Labour Act which applies to all concerns will be general in relation to the labour employed in concerns engaged in supplies as essentials. In this case looking at the preambles in the two Acts, it may be said with more justification that in the particular context the Labour Act is a General Act and the Essential Services Act is a Special Act. The preamble to the Labour Act seeks to make provisions for the organisation of the employees and promotion of their welfare and is broadly concerned with labour problems in all departments and concerns, and in his sense the Act may be called a General Act. On the other hand, the Essential Services Act as its very title signifies and in this sense is more narrowed and restricted as compared with the other Act may be properly considered to be a Special Act."[1]

Statement.—Something that is stated.[2]

A Statute.—'*A Statute*' says *Max Radin is neither* literary text nor a divine revelation. Its effect is, therefore, either an expression laid on immutable emotional over-tones nor a permanent creation of infallible wisdom. It is a statement of situation or rather a group of possible events within a situation and as such it is essentially ambiguous (See *'Statutory Interpretation'* 43 Har LR 863 at p. 868.[3]

Statutory Power.—Prof. Wade on *Administrative Law*, 5th Ed. at p. 216—"A statutory power will, however, be considered as impliedly authorising everything which can fairly be regarded as incidental or consequential to the power itself; and this doctrine is not to be applied narrowly".[4]

Statutory Tenant.—The word 'Statutory Tenant' has not been defined in the Act. However the word is defined. From the definition it is clear that a tenant after expiry of period of tenancy is entitled to continue in possession of the rented premises. The Act provides protection to such a person. Therefore, in common parlance he is called a statutory tenant.[5]

Subject.—The status of a person must be either that of a sovereign or a subject. There is no *tertium quid*. The law does not recognise an intermediate status of a person being partly a sovereign and partly a subject. A subject might occupy an exalted position and enjoy special privileges, but he is nonetheless a subject.[6]

Subject to.—Conditional upon[7]; conditional upon observance of condition prescribed.[8]

Subject to approval.—It does not mean that action taken without approval will remain valid till disapproved.[9]

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1. *Labour Commissioner, Mysore* v. *Mysore Iron & Steel Works Labour Association*, AIR 1952 Mys 21, 23 (FB) (*per* Balakrishnaiya, J.).
2. *Bhogilal Chunilal* v. *State of Bombay*, AIR 1959 SC 356, 357 (the element of communication to another person is not necessary).
3. Quoted in *The Commissioner of Wealth Tax* v. *Smt. Hashmatunnessa Begum*, AIR 1989 SC 1024 (1989) Tax LR 393 : (1989) JT 92 : (1989)40 ELT 239 (1989)176 ITR 198 : (1989)42 Taxman 133 : (1989)75 CTR 194 : (1989)93(2) Taxation 1.
4. Quoted in *K. Pamanna* v. *State Transport and Appellate Tribunal, A.P. Hyderabad*, AIR 1992 Andh Pra 368 (FB) : 1987(2) ALT 900 (over ruled).
5. *(M/s.) Bhagwan Singh & Co.* v. *Central Bank of India, Kaithal*, AIR 1989 P & H 9 : (1988)26 Reports 126 : (1988)1 Rent L R 252 : (1988)1 Rent CR 202 : 1988 HRR 137 : (1988) Punj IR 290 : (1988)1 Cur LJ (C & Cr) 481 : ILR (1988)2 P & H 122 (1988)1 Bank CIR 345 : 1989 Bank J. 44 (DB).
6. *Amar Singh* v. *State of Rajasthan*, (1955)2 SCR 303; *Amarsarjit Singh* v. *State of Punjab*, AIR 1962 SC 1305, 1310.
7. *Balakrishna Chetty* v. *State of Madras*, (1961)2 SCR 736, 741.
8. *Inspector-General of Police* v. *K.V. Xavier*, 1976 Ker LT 438 (DB).
9. *Inspector-General of Police* v. *K.V. Xavier*, 1976 Ker LT 438 (DB).

Sub-letting.—Sub-letting implies the leasing of land at a fixed rent to a sub-tenant. Where the tenant allowed his brother to cultivate a part of the land and thereby associated the brother with himself in the cultivation of the holding, there is no sub-letting.[1]

Substance of the evidence—Section 264, Cr. P. Code.—"The meaning of the expression 'substance of the evidence' is, we think, reasonable clear and implies a judicious selection or piece of that part of the evidence which was really material.....A judgment could not be regarded as sufficiently embodying the substance of the evidence, unless the substance was so recorded that there was no likelihood of any prejudice resulting to the accused, when exercising his right of appeal. An omission to refer in a reasonably sufficient manner to any piece of evidence which was of a character likely to affect the decision of any important point involved in the case might easily be an omission likely to prejudice the accused.[2]

Substantial question of law.—The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the Supreme Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd. The question would not be a substantial question of law.[3]

The following are questions of Substantial Law within the meaning of Section 100, C.P.C. :

(a) Perversity in finding of fact or misconduct in collection and evaluation of evidence.

(b) Erroneous application of law

(c) A question of law affecting exclusively the rights of parties to that case, though not of general importance.

(d) Mixed question of fact and law affecting substantially the rights of parties.

(e) Finding based on no evidence.

(f) Vitiated finding of fact.[4]

Substantive and permanent.—The phrase 'substantive and permanent' is more descriptive of the nature and character of the appointment than indicative of the duration of that appointment.[5]

Substituted.—This word is used where old rule is made to cease to exist, and new rule is brought into existence in its place.[6] In other words the process is repeal and re-enactment.

Such.—It may mean 'of such description as'.[7]

" 'Such' refers generally and naturally to its last antecedent."[8]

"The word 'such' is a word which must have relation to something else."[9]

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1. *Pyare Lal* v. *Ram Bharose*, 29 IC 36.
2. *Emperor* v. *Hansraj Dindayal*, AIR 1948 Sind 59, 62 (*per* Tyabji, C.J.).
3. *Chunilal Mehta* v. *Century, etc. Co. Ltd.*, AIR 1962 SC 1314, 1318.
4. See *Ratanlal Bansilal* v. *Kishorilal Goenka*, AIR 1993 Cal 144 (FB of 5J)
5. *Bimal Charan* v. *Trustees, Indian Museum*, AIR 1930 Cal 404, 409.
6. *State of Maharashtra* v. *Zahid Husain Kikabhai*, 1975 Mah LJ 455.
7. *R.* v. *Randall*, 119 FR 207.
8. *Re* Ninnes, 1920 SALR 480, 488, quoted by Burrows : *Words and Phrases*, Vol. 5 at p. 212, who also referred to *Re* Godfrey, 1921 SALR 148, 152.
9. *Union of India* v. *Wazir Singh*, AIR 1980 Raj 252, case under the Rajasthan High Court Rules, 1952, Rule 97.

Such as.—The expression is, meant to be illustrative and not exhaustive.[1]

Suspense account.—This is an expression in common use in bank business where a person whose money is held in suspense is entitled to withdraw it any moment he likes, though he neither gets a pass book nor is entitled to draw any cheques or to be paid interest in respect of the amount.[2]

Taxes, rates and assessments.—'Under English law ground rent would not come within any of the terms 'taxes, rates and assessments'; but it does not follow that what is charged by Government in this country does not do so. Under Section 24 of the Lower Burma Town and Village Lands Act, 1898, all sums of money payable to Government in respect of land, including sums for rent, are recoverable as if they were arrears of land revenue under the Burma Land Revenue Act, 1876. Under Section 25, every sum due to Government in respect of any land is given priority over every other charge on the land, and under Section 26, every sum due to Government in respect of land is payable by all persons in possession (which means occupation) of the land, at the time the sum is demanded, and by all persons in possession during the period for which the sum is payable. These provisions put ground rent due to Government in a very different position from ground or other rent due to an ordinary landlord. They virtually make ground rent payable to Government a tax or assessment."[3]

Telegraph.—Telegraph includes telephone within the meaning of that word in Acts of 1863 and 1869.[4]

Termination.—The words 'terminated' or 'termination' indicate only determination of contract of service. It postulates some act by somebody which is taken to bring the employment to an end. It is well settled that the form of the order is not decisive.[5]

'Territoriality'.—From the provisions of Central General Clauses Act and the State General Clauses Act it is patent that territoriality of the courts is the general rule while extra-territoriality is an exception which shall not be readily assumed.[6]

Text.—The word 'text' in its dictionary meaning, means 'subject or theme'. When an enactment amends the text of another, it amends the subject or theme of it, though sometimes it may expunge unnecessary words without altering the subject.[7]

Text-book.—The word 'text-book' would involve either some original matter contributed and published by the author or it may even include an intelligent selection of the work of another author or authors for use in schools. It may also include some books which have been copyrighted and if the scheme of the book or books involves a graduated or considered study or training of particular subjects like, say, books of drawing, it might be said to be a text-book. A copy book cannot, however, be strictly a text-book in that sense.[8]

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1. See *Royal Hatcheries* v. *State of Andh. Pradesh*, AIR 1994 SC 666. In this context the Supreme Court referred to *Casher* v. *Holmes*, (1831)109 (King's Bench) English Reports 1263 where Lord Tenterden, C.J. construed, 'metals' not including gold and silver giving weight to the popular sense of the word 'metals'.
2. *Official Assignee of Madras* v. *Rajam Iyer*, ILR 33 Mad 299 at p. 300 affirmed on appeal in ILR 36 Mad 499 (FB); *Commissioner of Income-tax, Madras* v. *Thiagaraja*, AIR 1952 Mad 305, 332.
3. *Swan Tee* v. *Ma Ngwe*, 32 IC 630.
4. Vide *State* v. *S.J. Choudhary*, (1996)2 SCC 428.
5. *Yeotmal Dist. Central Co-operative Bank Ltd.* v. *Ramchandra Wamanrao Deshpande*, 1977 Mah LJ 680 (DB).
6. *Syed Zafrul Hassan* v. *State*, AIR 1986 Pat 194 : 1986 Cr LJ 606 : 1986 Pat LJR 274 : 1986 BLJR 298 : 1986 BLJ 367 : (1986)1 Rec Cr R 60 : 1986 East Cri C 516 : (1986)2 Cri LC 299 (FB).
7. *Jethanand* v. *State of Delhi*, AIR 1960 SC 89, 92.
8. *Gopala Chetty* v. *D.P.I., Mysore*, AIR 1955 Mys 81.

Textile, manufacture and production.—The word 'textile' will include anything from yarn to woven material which may be coarse or fine, which may be made of cotton, wool, jute or silk, which may be bleached or unbleached, which may be printed or just plain, and for the purpose of its being made available for human wants may have to undergo several processes covered by the expression 'manufacture or production'.[1]

'Manufacture' means making an article which is capable of being used in ordinary life, and the word 'production' means making goods available for human wants.[2]

That is to say.—*See* Chapter II.

The.—As regards implications of the article 'the', see *Consolidated Coffee, Ltd.* v. *Coffee Board, Bangalore*,[3] and *Ishwari Singh* v. *State of U.P.*[4]

Things previously done.—The phrase covers 'offences previously committed'.[5]

Think.—One of the dictionary meanings of 'think' is 'to judge, to form or hold as an opinion, to consider'. The word 'think' in Section 7 of the Police Act is thus milder than the expression 'found' or 'established', for it requires a less degree of positive certainty than those words as regards the fact in controversy or dispute. The processes, however, by which the Police Officers must think, have been indicated by the Police Regulation.[6]

Title.—The expression 'title' has been constantly misinterpreted. That term, as used in Section 11, C.P.C., refers to the capacity or interest of a party, that is to say, whether he sues or is sued for himself, in his own interest, or for himself as representing the interest of another or representing the interest of others along with himself. It has nothing to do with the particular cause of action on which he sues or is sued.[7]

To reside.—'To reside' means 'to live or to have a dwelling-place or an abode'.[8]

To show cause.—The term 'to show cause' is a technical term having a well-understood meaning. It does not mean merely to alleged cause, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court.[9]

The expression 'showing cause' connotes an opportunity of leading evidence in support of one's allegations and in controverting such allegations as are made against one.[10]

To sue.—The words 'to sue' signify not only 'to prosecute' but also 'to defend' or 'to do something' which the law requires for the better prosecution or defence of the cause.[11]

The word 'suit' does not include appeal.[12]

Trade.—Undoubtedly in its primary sense the word 'trade' means, exchange of goods for goods or goods for money; but in a secondary sense it includes any business carried on with a view

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1. *Kanpur Textile Finishing Mills* v. *Regional Provident Fund Commissioner*, AIR 1955 Punj 130.
2. *Kanpur Textile Finishing Mills* v. *Regional Provident Fund Commissioner*, AIR 1955 Punj 130.
3. AIR 1980 SC 1468.
4. 1980 All LJ 984 (DB).
5. *Wicks* v. *Director of Public Prosecution*, (1947)1 All ER 205, 297 : 1947 AC 362.
6. *Lalta Prasad* v. *Inspector-General of Police*, AIR 1954 All 438.
7. *Rafiqunnisa* v. *Abdul Shukur Khan*, AIR 1929 All 400, 401 (*per* Ashworth, J.).
8. *Rifaqatullah* v. *Emperor*, AIR 1947 All 4.
9. *Dandekar* v. *Dandekar*, ILR 6 Bom 663, 666; *Dutto Singh* v. *Dosad Bahadur Singh*, ILR 9 Cal 575, 579; *Jones* v. *Ledgard*, ILR 8 All 340, 352; *Rung Lall* v. *Hem Narain Gir*, ILR 11 Cal 166, 168; *Jaggan Nath* v. *Manna Lal*, ILR 16 All 231, 233-34; *Amrit Ram* v. *Darshan Ram*, ILR 17 All 21, 26; *Surjan Raot* v. *Bhikari Raot*, ILR 21 Cal 213; *Atma Ram* v. *Jamita*, 134 PR 1888 at p. 364; *Rajmal Motiram* v. *Krishna*, ILR 20 Bom 208, 210.
10. *Ravi Pratap* v. *State of Uttar Pradesh*, AIR 1952 All 99, 102.
11. *Haradhone Haldar* v. *Usha Charan Karmakar*, AIR 1955 Cal 292.
12. *Shantilal Ambalal Mehta* v. *N.A. Rangaswami*, 1977 Mah LJ 587(FB).

to profit, whether manual or mercantile as distinguished from the learned arts or learned professions or agriculture. The word, however, is of very general application and must always be considered with the context with which it is used. It is evident that the connotation of 'trade' is not limited to an occupation which primarily concerns itself with sale and purchase of goods, pursuit of a skilled employment with a view to earn profit, such employment not being in the nature of a learned profession or agriculture must be regarded as engaging in a trade. A skilled occupation which involves the application of manufacturing processes to a commodity submitted to the person carrying on the occupation must, therefore, be regarded as trade.[1]

Transfer.—(See assignment, *supra*).

See *Deepchand* v. *M.P.S.R.T. Corpn.*[2]

Trial.—A trial is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal.[3]

Tribunal.—The expression 'Tribunal', as used in Article 136 of the Constitution, does not mean the same thing as 'court' but includes, within its ambit all adjudicating bodies, provided they are constituted by the State and are invested with judicial powers as distinguished from purely administrative or executive functions. The only courts or tribunals, which are expressly exempted from the purview of Art. 136 of the Constitution, are those which are established by or under any law relating to the Armed Forces as laid down in Article 136(2).[4]

Unable to entertain.—This expression is not identical with 'unable to decide'.[5]

Under.—In Butterworth's *Words and Phrases*, 'under' is defined thus : "In one sense every act of a body which is the creature of statute may be said to be done 'under' or 'by virtue of the statute creating it'.

The author has extracted the observations made by O'Bryan, J. in *R.* v. *Clyne, Exp Harrap*,[6] as under :—

> "In another sense the acts of such a body may be said to be done 'under' or by virtue of some provision granting a general jurisdiction to act in relation to a variety of matters. But relation to a particular expression is also quite commonly used in relation to a particular act. When the general jurisdiction to act is assumed to designate the more particular power to do that particular act. It is rash to attempt to substitute a different expression for the more simple and usual one used, but in this connection 'under' is perhaps more aptly translated by the expression 'pursuant to' than by the phrase 'by virtue of'. It is necessary to have regard to the context to determine in which sense the word is used."[7]

Under colour of.—The expression 'under colour of' does not mean the same thing as 'by virtue of', for instance, proper fees are received 'by virtue of office,' while an extortion is 'under colour of office'. Any rightful act in office is, 'by virtue of office, and a wrongful act in office may be 'under colour of' office. 'Where an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour, it is said to be done 'under the colour of office.' (Wharton: *Law Lexicon*). 'In general, colour of office is a pretence of

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1. *Chopda Municipality* v. *Motilal*, AIR 1958 Bom 487, 489 (to press cotton into bale is to carry on trade).
2. AIR 1977 MP 42.
3. *Asgarali* v. *State of Bombay*, AIR 1957 SC 503, 509.
4. *Durga Shankar Mehta* v. *Thakur Raghuraj Singh*, AIR 1954 SC 520.
5. *Allan Khan* v. *Dost Mohd. Khan*, 8 PR 1911; *Bhai Jai Kishen* v. *People's Bank*, AIR 1944 Lah 186 (FB).
6. (1941) VLR 200 at p. 201.
7. Quoted in *N.K. Jain* v. *C.K. Shah*, AIR 1991 SC 1289 : 1991 Cr LJ 134 : 1991 Lab IC 1013 : (1991)2 JT 52(2) : (1991)2 SCC 495 : 1991 AIR SCW 960.

official right to do an act made by one who has no such right'. (Bonner's *Law Dictionary*). In Stroud's *Judicial Dictionary*, the expression is thus explained : "The 'colour of office' is always taken in the worst part, and signifies an act evilly done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office, is but a veil to the falsehood, and the thing is grounded upon vice, and the officer is the shadow to it." The distinction between an act done under colour of or in excess of duty and an act not so done is clearly brought out in the Full Bench case in *Narayan* v. *Yashwant Rao Ji.*[1] There, a Police Sub-Inspector, when investigating an offence of theft, recorded deliberately incorrect statements of witnesses under Section 162, Criminal Procedure Code, and in another case *Dattatraya* v. *Annuppa*,[2] another investigating officer abused the witness and pulled him by holding his moustache. It was held that the former was acting under colour of office, though in excess of his authority, while the latter was not."[3]

Under protest.—The phrase 'under protest' has been in use for many years. The only object of using that phrase is to safeguard the position of the person who makes the payment and to ensure that it may not be said that the payment be made was a voluntary one.[4]

Undertaking.—When an undertaking is given in Court whereupon the court passes the order in consonance with such undertaking, the breach of such an undertaking may result in committal of the wrongdoer for contempt of court. "In our opinion", observed Chagla, C.J. in *Bajrangalal Khemka* v. *Kapurchand Lal*,[5] "the expression 'undertake' has come to acquire through long practice a technical meaning. In all orders and decrees of the Court, whether the expression 'a party undertakes' has been used, it has always borne the meaning that the undertaking has been to the Court".

Undertaking is a going concern as distinguished from its assets and liabilities.[6]

Under the Provincial Government.—"The word 'under' cannot be interpreted, irrespective of context in its literal sense as meaning 'with respect to derivative rights'."[7]

Unless there is anything repugnant in the subject or context.—"As is usual with most of the definition sections, with the clause, "unless there is anything repugnant in the subject or context". This clearly indicates that it is always a matter for argument whether or not this statutory definition is to apply to the word 'workman' as used in the particular clause of the Act which is under consideration, for this word may both be restricted or expanded by its subject matter. The context and the subject-matter in connection with which the word 'workman' is used are accordingly important factors having a bearing on the question. The propriety or necessity of thus construing the word 'workman' is obvious because all parts of the Act have to be in harmony with the statutory intent".[8]

Unless such ground has been declared and specified.—"It has been urged by Mr. Das that what is meant by the ground being declared and specified is that it should be given with all

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1. ILR 52 Bom 832 : AIR 1928 Bom 352.
2. AIR 1928 Bom 352 : 30 Bom LR 1018 : 52 Bom 832 : 30 Cr LJ 270 (FB).
3. *Ammiyamammiya* v. *Emperor*, AIR 1948 Bom 197, 210, Per Lokur, J.; *Abdullah Khan* v. *Emperor*, AIR 1932 Sind 28.
4. *Bashiam* v. *Corporation of Madras*, AIR 1935 Mad 627.
5. AIR 1950 Bom 336, 338.
6. Vide *R.C. Cooper* v. *Union of India*, (1970)3 SCR 530 : AIR 1970 SC 564, quoted in *M/s. Doypack Systems Pvt. Ltd.* v. *Union of India*, AIR 1988 SC 782 : (1988)1 JT 304.
7. *Collector of Bombay* v. *Burjor Hurmusji Goomgar*, AIR 1964 Bom 7.
8. *National Buildings Construction Corporation* v. *Pritam Singh Gill*, (1973) SCR 40 : AIR 1972 SC 1579, quoted in *N.K Jain* v. *C.K. Shah*, AIR 1991 SC 1289 : 1991 Cri LJ 1347 : 1991 Lab IC 1013 : (1991)2 JT (SC) 52(2) : (1991)2 SCC 495 1991 AIR SCW 960.

fullness and definiteness, that is, the particular reason for which the sale is now being said to be premature, has to be stated before the Commissioner. We are unable to accept that contention."[1]

Until further order.—When an interim order is made to extend over a certain day or until further order, it does not mean that it is to go on after that day or until further order, but it is to stop earlier if the court shall so order—'until that day or further order, meaning at an earlier date'.[2]

Urgently.—See *Jai Gurudev Dharam Pracharak Sangh* v. *State of Uttar Pradesh.*[3]

Vegetables.—The word 'vegetable' in taxing statutes is to be understood as in common parlance, *i.e.*, denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table.[4]

Vehicle.—Taking the dictionary meaning of vehicle it means a conveyance or carriage. An agricultural tractor is not used to convey anything and it is employed for agricultural operations and is driven by a driver. It is not a vehicle within the meaning of Section 3(1)*(b)* of the Madras Sales Tax Act.[5]

Vest.—So far as public town-walls, gates, public streams, springs, public sewers, drains, public streets and roads, etc. within the area of the Municipality are concerned, the vesting section must be so construed as to give to the municipality the least interest in the property that is compatible with the proper exercise of the powers in relation to these things given to the municipality under the Act.[6]

Vested right.—A right is said to be vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest, independent of a contingency. It is a right which cannot be taken away without the consent of the owner.[7] 'Now what exactly is a 'vested right', which cannot be taken away even by the Legislature unless it manifests its intention of doing so in express terms or by necessary and distinct implication? A right is said to be vested when the right to enjoyment present, or prospective, has become the property of some particular person or persons as present interest, independent of a contingency. It is a right which cannot be taken away without the consent of the owner. Vested rights can arise from contracts, from statutes and from operation of law. A person, for example, who enters into a contract with another acquires a vested right in the performance of the contract and is entitled to claim that the contract should be performed in accordance with the terms thereof. Again, a right to compensation for property actually taken for public use and a right or title to property acquired by adverse possession are vested rights

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1. *Ananga Mohan* v. *Kalidas*, AIR 1747 Cal 283, 285, *per* K.C. Chunder, J.
2. *Bolton* v. *London School Board*, (1878)7 Ch D 766 at 771; *Hall* v. *Hall*, 1915 at p. 105, 109; *Bennett* v. *Bennett*, (1934)103 LJP 38, 40 (matrimonial cases).
3. AIR 1985 All 158 (DB) dealing with Land Acquisition Act.
4. *Ramavatar Budhai Prasad* v. *Assistant Sales Tax Officer*, AIR 1961 SC 1325 (betel leaves not vegetables); *Motipur Zamindary Co. Ltd.* v. *State of Bihar*, AIR 1962 SC 660 (sugarcane not green vegetables); *(M/s.) Oswal Agro Mills Ltd.* v. *Collector of Central Excise*, AIR 1993 SC 2228 : 1993(2) JT (SC) 260; *(M/s.) Saraswathi Sugar Mills* v. *Haryana State Board*, (1992)1 SCC 418.
5. *State of Madras* v. *Marshall Sons & Co.*, AIR 1954 Mad 884.
6. *Raigarh Municipality* v. *Ram Karan*, AIR 1958 Madh Pra 355, 359 (same observations to apply when property vests in the State on supersession of the municipality till its reconstruction).
7. *Gordhan Das Baldeo Das* v. *Governor-General-in-Council*, AIR 1952 Punj 103, 106 (FB); *Amar Singh* v. *R.L. Aggarwal*, AIR 1960 Punj 312, 316 (FB).

which cannot be impaired by subsequent legislation unless the statute contains that clear words to effect. Again, a right of action conferred by a particular statute is said to be a vested right....."[1]

A person can only claim to have a vested right under a statute when he has complied with all the formalities prescribed thereby for acquiring a status and before that the right is only an inchoate one.[2]

The right to have an appeal heard by a particular number of judges of the High Court is not vested right.[3]

Vicinity.—The word 'vicinity' is a term of relative import and in the absence of any special statutory significance attaching to it, it must be under-stood in its ordinary meaning of the neighbourhood of a place different from the place itself.[4]

Village.—The Village in Article 243*(g)* is the one which the Governor has to specify for the purpose of carrying out the provisions of Part IX of the Constitution and not for any other purpose.[5]

Voluntarily giving up.—'Voluntarily giving up' the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and go elected joins another (new) party, it will certainly amount to his voluntarily giving up of the political party which had set him up as a candidate for election as such member.[6]

Void not valid.—See *Chandrabhan* v. *Shrawan Kumar*.[7]

Wife.—Wife in Section 125, Cr.P.C. will not include a divorced woman.[8]

Wilful default.—Wilful default is indicative of some misconduct in the transaction of business or in the discharge of duty of omitting to do something either deliberately or by reckless disregard of the fact whether the act or omission was or was not a breach of duty.[9] To make out wilful default these elements must concur, *viz.* (1) the doer or abstainer of the act or omission must be a free agent, (2) he must be conscious of what he is doing or not doing and the probable result which might arise from his act or omission; and (3) this default may range from a state of mind all the way from supine indifference to conscious violation as a result of deliberation.[10]

Wilful neglect.—The expression 'wilful neglect' means that the act is done deliberately and intentionally and not by accident or inadvertence, but so that the mind of the person who does the act goes with it.[11]

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1. *Gordhan Das Baldeo Das* v. *Governor-General-in-Council*, AIR 1952 Punj 103, 106 : 54 PLR 1, 5 (FB); *Chellappan* v. *State*, 1959 MLJ (Cr) 271.
2. *Sunil Kumar* v. *State of West Bengal*, AIR 1963 Cal 614, 617 (G.K. Mitter, J.).
3. *Kochupennu* v. *Kunjipennu*, AIR 1961 Ker 226 (FB).
4. *Taher Hossain* v. *State*, AIR 1955 Cal 513.
5. *State of U.P.* v. *Pradhan Singh Kshettra Samiti*, AIR 1995 SC 1512.
6. Vide *G. Viswanathan* v. *The Hon'ble Speaker, Tamil Nadu Legislative Assembly*, (1996)2 SCC 183.
7. AIR 1980 Bom 49, case under the Bombay Public Trusts Act, 1950, Section 36 (1), both expressions have the same meaning.
8. *M. Alavi* v. *T.V. Safia*, AIR 1993 Ker 21.
9. *Bhogilal M. Davay* v. *S.R. Subramania Iyer*, AIR 1954 Mad 514.
10. *N.S. Ramalinga Iyer* v. *Gujuluva Seetharama Iyer*, (1954)2 MLJ 763.
11. *R.* v. *Senior*, (1899)1 QB 282, *per* Lord Russell; *Ardeshir* v. *Agent, G.I.P. Railway*, AIR 1928 PC 24, 26; *Radhey Mohan* v. *Har Narain Das*, AIR 1952 All 504.

Wilfully failed.—The expression 'wilfully failed' means not an unintentional failure or a failure by inadvertence but a deliberate failure, where the mind has been brought into play and a man has, after taking the facts into consideration, refused to act. The expression 'wilful neglect' is stronger than 'wilful failure'.[1]

Without prejudice to the generality of.—Anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision.[2]

It is well settled that the enumeration of specific matters 'without prejudice to the generality' of a particular provision does not restrict the general application of that provision to the matters enumerated because the words 'without prejudice' have the effect of preserving the full effect of the general provision and also because the rule of *ejusdem generis* has no inverse application.[3]

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1. *Radhey Mohan* v. *Har Narain Das*, AIR 1952 All 504.
2. *Shiv Kripal Singh* v.*V.V. Giri*, AIR 1970 SC 2097; *Ram Niwas* v. *Mithanlal*, AIR 1979 Punj 262, case under Civil Prodecure Code (Amendment) Act, 1976, Section 97(2).
3. *Sheshkumar Pradhan* v. *Keshev Narayan Acharya*, 1980 MPLJ 335 : 1980 Jab LJ 338 (DB).

APPENDIX

THE GENERAL CLAUSES ACT, 1897

(No X of 1897)

(As modified up-to-date)

[11th March, 1897]

An Act to consolidate and extend the General Clauses Acts, 1868 and 1887.

Whereas it is expedient to consolidate and extend the General Clauses Acts, 1868 (1 of 1868) and 1887 (1 of 1887), it is hereby enacted as follows :

Preliminary

1. Short title.—This Act may be called the General Clauses Act, 1897; [1][***].

2. Repeal.—[Repealed by the Repealing and Amending Act, 1903 (1 of 1903), Section 4 and Schedule III.]

General Definitions

3. Definitions.—In this Act, and in all Central Acts and Regulations made after the commencement of this Act unless there is anything repugnant in the subject or context,—

(1) *'abet'* with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;

(2) *'act'* used with reference to an offence or a civil wrong, shall include a series of acts and words which refer to acts done extend also to illegal omissions;

(3) *'affidavit'* shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(4) *'barrister'* shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland;

(5) *'British India'* shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India, or through any Governor or officer subordinate to the Governor-General of India, and as respects any period after that date and before the date of the establishment of the Dominion of India means all territories for the time being comprised within the Governor's Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar;

(6) *'British possession'* shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a Central and a local

1. The word 'and' in Sub-section (1) and Sub-section (2) repealed by the Repealing and Amending Act, 1914 (10 of 1914), Section 3 and Schedule II.

Legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one British possession;

(7) *'Central Act'* shall mean an Act of Parliament and shall include—

(a) an Act of the Dominion Legislature passed before the commencement of the Constitution, and

(b) an Act made before such commencement by the Governor-General-in-Council or the Governor-General acting in a legislative capacity;

(8) *'Central Government'* shall—

(a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General-in-Council, as the case may be; and shall include—

(i) in relation to functions entrusted under Sub-section (1) of Section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under the sub-section; and

(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under Sub-section (3) of Section 94 of the said Act; and

(b) in relation to anything done or to be done after the commencement of the Constitution mean the President; and shall include—

(i) in relation to functions entrusted under Clause (1) of Article 258 of the Constitution to the Government of a State, the State Government acting, within the scope of the authority given to it under that clause; [1][***]

(ii) in relation to the administration of Part C State, [2][before the commencement of the Constitution (Seventh Amendment) Act, 1956 and] the Chief Commissioner or Lieutenant-Governor or Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under Art. 239 or Art. 243 of the Constitution, as the case may be; [3][and]

[4][*(iii)* in relation to the administration of Union Territory, the administrator thereof acting within the scope of the authority given to him under Section 239 of the Constitution];

(9) *'Chapter'* shall mean a chapter of the Act or Regulation in which the word occurs;

(10) *'Chief Controlling Revenue Authority'*, or *'Chief Revenue Authority'* shall mean—

(a) in a State where there is a Board of Revenue, that Board,

(b) in a State where there is a Revenue Commissioner, that Commissioner

(c) in Punjab, the Financial Commissioner, and

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1. The word 'and' is omitted by Section 2, AO (1), 1956.
2. Ins. by Section 2, AO (1), 1956.
3. Added by Section 2, AO (1), 1956.
4. Ins. by Section 2, AO (1), 1956.

(*d*) elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Constitution, the Central Government, and in relation to other matters, the State Government, may, by notification in the official Gazette, appoint;

(11) '*Collector*' shall mean in a Presidency town, the Collector of Calcutta, Madras or Bombay as the case may be, and elsewhere the chief officer in charge of the revenue administration of a district;

(12) '*Colony*'—

(*a*) in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, shall mean any part of His Majesty's dominions exclusive of the British Islands, the Dominions of India and Pakistan (and before the establishment of those Dominions British India), any Dominion as defined in the Statute of Westminster, 1931, any Province or State forming part of any of the said Dominions, and British Burma; and

(*b*) in any Central Act passed before the commencement of Part III of the said Act, shall mean any part of His Majesty's Dominions exclusive of the British Islands and of British India;

and in either case where parts of those dominions are under both a Central and local Legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one colony;

(13) '*Commencement*' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force; [1]

(14) '*Commissioner*' shall mean the chief officer in charge of the revenue administration of a division;

(15) '*Constitution*' shall mean the Constitution of India;

(16) '*Consular officer*' shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent;

(17) '*District Judge*' shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

(18) '*document*' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter;

(19) '*enactment*' shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

(20) '*father*' in the case of any one whose personal law permits adoption shall include an adoptive father;

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[1] Obviously an Act can only commence in a particular area on the date on which that Act comes into force in that area. The mere fact that it was in operation in other areas will not result in the Act having commenced in the area where it had not yet been applied. There is a distinction between an Act coming into operation, and the commencement of the Act. The date of coming into operation is not necessarily the date of commencement; *Manik Chand* v. *Mohd. Sait*, (1969)2 SCR 1061, 1079 (Bhargava, J.).

(21) *'financial year'* shall mean the year commencing on the first day of April;

(22) *'good faith'* a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not;

(23) *'Government'* or *'the Government'* shall include both the Central Government and any State Government;

(24) *'Government securities'* shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B State;

(25) *'High Court'* used with reference to civil proceedings shall mean the highest Civil Court of Appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates;

(26) *'immovable property'* shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

(27) *'imprisonment'* shall mean imprisonment of either description as defined in the Indian Penal Code;

(28) *'India'* shall mean,—

(a) as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler and the tribal areas;

(b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that dominion; and

(c) as respects any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India;

(29) *'Indian law'* shall mean any Act, Ordinance, Regulation, Rule [order, bye-law or other instrument] which before the commencement of the Constitution had the force of law in any Province of India or part thereof, and thereafter has the force of law in any Part A State or Part C State or Part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, Rule or other instrument made under such Act;

(30) *'Indian State'* shall mean any territory which the Central Government recognised as such a State before the commencement of the Constitution whether described as a State, an Estate, a Jagir or otherwise;

(31) *'local authority'* shall mean a municipal committee, district board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund;

(32) *'Magistrate'* shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

(33) *'master'* used with reference to a ship shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship;

(34) *'merged territories'* shall mean the territories which by virtue of an order made under Section 290-A of the Government of India Act, 1935, were immediately before the commencement of the Constitution being administered as if they formed part of a Governor's Province or as they were a Chief Commissioner's Province:

(35) *'month'* shall mean a month reckoned according to the British calendar;

(36) *'movable property'* shall mean property of every description, except immovable property;

(37) *'oath'* shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(38) *'offence'*, shall mean any act or omission made punishable by any law for the time being in force;

(39) *'official Gazette'* or *'Gazette'* shall mean the Gazette of India or the official Gazette of a State;

(40) *'Part'* shall mean a part of the Act or Regulation in which the word occurs;

(41) *'Part A State'* shall mean a State for the time being specified in Part A of the First Schedule to the Constitution, [1][as in force before the Constitution (Seventh Amendment) Act, 1956]. 'Part B State' shall mean a State for the time being specified in Part B of that Schedule and 'Part C State' shall mean a State for the time being administered by the President under the provisions of Article 243 of the Constitution;

(42) *'persons'* shall include any company or association or body of individuals whether incorporated or not;

(43) *'Political Agent'* shall mean,—

(a) in relation to any territory outside India, the Principal Officer, by whatever name called, representing the Central Government in such territory, and

(b) in relation to any territory within India to which the Act or Regulation containing the expression does not extend, any officer appointed by the Central Government to exercise all or any of the powers of a Political Agent under the Act or Regulation;

(44) *'Presidency-town'* shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be;

(45) *'Province'* shall mean a Presidency, a Governor's Province, a Lieutenant-Governor's Province or a Chief Commissioner's Province;

(46) *'Provincial Act'* shall mean an Act made by the Governor-in-Council, Lieutenant-Governor-in-Council or Chief Commissioner-in-Council of a Province under any of the Indian Councils Acts or the Government of India Act, 1915 or an Act made by the local Legislature or the Governor of a Province under the Government of India Act, or an Act made by the Provincial Legislature or Governor of a Province or the Coorg Legislative Council under the Government of India Act, 1935;

(47) *'Provincial Government'* shall mean, as respects anything done before the commencement of the Constitution, the authority or person authorised at the relevant date to administer executive Government in the Province in question;

(48) *'public nuisance'* shall mean a public nuisance as defined in the Indian Penal Code;

(49) *'registered'* used with reference to a document, shall mean registered in [2][India] under the law for the time being in force for the registration of documents;

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1. Ins. by Section 2, AO (1), 1956.

(50) *'Regulation'* shall mean a Regulation made by the President [1][under Article 240 of the Constitution and shall include a regulation made by the President under Article 243 thereof] a Regulation made by the Central Government of India Act, 1915, or the Government of India Act, 1935;

(51) *'rule'* shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;

(52) *'schedule'* shall mean a schedule to the Act or Regulation in which the word occurs;

(53) *'Scheduled District'* shall mean a 'Scheduled District' as defined in the Scheduled Districts Act, 1874 ;

(54) *'section'* shall mean a section of the Act or Regulation in which the word occurs;

(55) *'ship'* shall include every description of vessel used in navigation not exclusively propelled by oars;

(56) *'sign'* with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include 'make' with its grammatical variations and cognate expressions;

(57) *'son'* in the case of any one whose personal law permits adoption shall include an adopted son;

(58) [2][*'State'*—

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State, and

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory.]

(59) *'State Act'* shall mean an Act passed by the Legislature of a State established or continued by the Constitution;

(60) *'State Government'*—

(a) as respects anything done before the commencement of the Constitution, shall mean in a Part A State, the Provincial Government of the corresponding Province in a Part B State the Authority or person authorised at the relevant date to exercise executive Government in the corresponding Acceding State, and in a Part C State, the Central Government; [3][* * *]

(b) as respects anything done [4][after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean, in Part A State, Governor, in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;]

[5][*(c)* as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean, in a State, the Governor, and in a Union Territory, the Central Government;

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2. Subs. by Section 2 of AO (1), 1956.
1. Subs. by Section 2 of AO (1), 1956.
2. Subs. by Section 2 of AO (1), 1956.
3. Omitted by Section 2 of AO (1), 1956.
4. Subs. by Section 2 of AO (1), 1956.
5. Ins. by Section 2 of AO (1), 1956.

and shall, in relation to functions entrusted under Article 258-A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that Article;]

(61) *'sub-section'* shall mean a sub-section of the section in which the word occurs;

(62) *'swear'* with its grammatical variations and cognate expressions shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

[1][(62-A) *'Union Territory'* shall mean any Union Territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that schedule.]

(63) *'vessel'* shall include any ship or boat or any other description of vessel used in navigation;

(64) *'will'* shall include a codicil and every writing making a voluntary posthumous disposition of property;

(65) expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

(66) *'year'* shall mean a year reckoned according to the British calendar.

4. Application of foregoing definitions to previous enactments.—(1) The definitions in Section 3 of the following words and expressions, that is to say, 'affidavit', 'barrister', 'District Judge', 'father', 'immovable property', 'imprisonment', 'Magistrate', 'month', 'movable property', 'oath', 'person', 'section', 'son', 'swear', 'will' and 'year', apply also, unless there is anything repugnant in the subject or context to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, 'abet', 'chapter', 'commencement', 'financial year', 'local authority', 'master', 'offence', 'part', 'public nuisance', 'registered', 'schedule', 'ship', 'sign', 'sub-section' and 'writing', apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

4-A. Application of certain definitions of Indian laws.—(1) The definitions in Section 3 of the expressions 'British India', 'Central Act', 'Central Government', 'Chief Controlling Revenue Authority', 'Chief Revenue Authority', 'Constitution', 'Gazette', 'Government', 'Government securities', 'High Court', 'India', 'Indian law', 'Indian State', 'merged territories', 'official Gazette', 'Part A State', 'Part B State', 'Part C State', 'Provincial Government', 'State' and 'State Government', shall apply, unless there is anything repugnant in the subject or context, to Indian laws.

(2) In any Indian law, references, by whatever form of words to revenues of the Central Government or of any State Government shall, on and from the first day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.

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1. Ins. by Section 2 of AO (1) of 1956.

General Rules of Construction

5. Coming into operation of enactments.—(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent—

(a) in the case of Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of Parliament, of the President.

(2) [*Omitted by A.O.*, 1950.]

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

5-A. Coming into operation of Governor-General's Act.—[*Repealed by A.O.*, 1947].

6. Effect of repeal.—Where this Act or any Central Act or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted or continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed.

6-A. Repeal of Act making textual amendment in Act or Regulation.—Where any Central Act or Regulation made after the commencement of this Act repeals an enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

7. Revival of repealed enactments.—(1) In any Central Act or Regulation made after the commencement of this Act,—it shall be necessary, for the purpose of reviving either wholly or partly, any enactment wholly or partly repealed, expressly to state that purpose.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

8. Construction of references to repealed enactments.—(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former

enactment, then references in any Central Act, or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

9. Commencement and termination of time.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies also to all Central Acts, made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. Computation of time.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Provided that nothing in this section shall apply to any act or proceeding to which the [1] [Indian Limitation Act, 1877 (XV of 1877)], applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

11. Measurement of distance.—In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless different intention appears, be measured in a straight line on a horizontal plane.

12. Duty to be taken *pro rata* in enactment.—Where, by any enactment now in force or hereafter to be in force, duty of any customs or excise, or in the nature thereof, is leviable on any given quantity by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

13. Gender and number.—In all Central Acts and Regulations, unless there is anything repugnant in the subject or context—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural,[2] and *vice versa*.

13-A. References to the Sovereign.—[*Repealed by the A.O.*, 1950].

Power and Functionaries

14. Powers conferred to be exercisable from time to time.—(1) Where, by any Central Act or Regulation made after the commencement of this Act any power is conferred then, unless a different intention appears, that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

15. Powers to appoint to include power to appoint ex-officio.—Where, by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred,

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1. Now Limitation Act, 1963.
2. Exception to the above; see *Regional Settlement Commissioner* v. *Sunderdas Bhasin*, (1963)2 SCR 534 (*per* Wanchoo, J.).

then unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

16. Power to appoint to include power to suspend or dismiss.—Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss[1] any person appointed whether by itself or any other authority in exercise of that power.

17. Substitution of functionaries.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

18. Successors.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries of corporations.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

19. Official chiefs and subordinates.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Provisions as to Orders, Rules, etc., made under enactments

20. Construction of Notification, etc., issued under the enactments.—Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant[2] in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

21. Power to make to include power to add to, amend, vary or rescind orders, rules or bye-laws.—Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.—Where, by any Central Act or Regulation which is not to come into force

1. *Union of India* v. *Gurbaksh Singh*, AIR 1975 SC 641 (power to determine employment).
2. *M.P.M. Industry* v. *Regional Labour Commissioner*, AIR 1960 SC 1068, words capable of two constructions—that to be preferred which helps to sustain the validity of the notification.

immediately on the passing thereof, a power is conferred to make rules or bye-laws or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

23. **Provisions applicable to making of rules or bye-laws after previous publication.**—Where, by any Central Act or Regulation, a power to make rules or bye-laws, is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely—

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires in such manner as the Government concerned prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority, also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

24. **Continuation of orders, etc., issued under enactments repealed and re-enacted.**—Where, any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form, or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under Section 5 or 5-A of the Scheduled Districts Act, 1874 (XIV of 1874), or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

Miscellaneous

25. **Recovery of fines.**—Sections 63 to 70 of the Indian Penal Code (XLV of 1860) and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue

and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

26. Provisions as to offences punishable under two or more enactments.—Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

28. Citation of enactments.—(1) In any Central Act or Regulation, and in any rule, bye-law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of any other enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description of citation.

29. Saving of previous enactments, rules and bye-laws.—The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

30. Application of Act to Ordinances.—In this Act, the expression 'Central Act' whenever it occurs, except in Section 5, and the word 'Act' in Clauses (9), (13), (25), (40), (43), (52) and (54) of Section 3 and in Section 25 shall be deemed to include an Ordinance made and promulgated by the Governor-General under Section 23 of the Indian Councils Act, 1861 (24 and 23 Vict., Clause 67) or Section 72 of the Government of India Act, 1915 (5 and 6 Geo., 5, c. 61) or Section 42 of the Government of India Act, 1935 (26 Geo. 5, Clause 2) and an Ordinance promulgated by the President under Art. 123 of the Constitution.

30-A. Application of Act to Acts made by the Governor-General.—*Repealed by the A.O. 1937].*

31. Construction of reference to Local Government of a Province—*[Repealed by the A.O. 1937].*

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