CHAPTER VII
INTERNAL AIDS TO INTERPRETATION

SYNOPSIS

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1. Context.—Internal aids are definitions, exceptions, explanations, fictions, deeming provisions, headings, marginal notes, preamble, provisos, punctuations, saving clauses, non-obstinate clauses etc., however the notings in the files of various officials do not fall in the category of internal aids, as pointed out by the Supreme Court in *(M/s.) Deypack Systems Pvt. Ltd.* v. *Union of India*,[1] *(M/s.) Orissa Cement Ltd.* v. *Union of India*[2] and *Modi Industries Ltd.* v. *State of U.P.*[3] It is one of the cardinal principles of the interpretation of statutes that, where the language is plain and unambiguous and admits of but one meaning, the Courts must give effect to it according to its plain meaning and they are not justified in departing from it even though serious anomalies result or what the Court conceives to have been the intention of the Legislature is not carried out. It is, however, equally well settled that the meaning of the words used in any portion of the statute must depend upon the context in which they are placed. Moreover, in interpreting an enactment all its parts must be construed together as forming one whole and it is not in accordance with sound principles of construction to consider one section, or group of sections, alone, divorced from the rest of the statute. Further, so far as possible, that construction must be placed upon words used in any part of the statute which makes them consistent with remaining provisions and with the intention of the Legislature to be derived from a consideration of the enactment. The words may be given a wider or more restricted meaning than they ordinarily bear if the context requires it.[4] In construing a particular section of an Act, one must look at the whole Act, and it is necessary to consider the context in which such section occurs,[5] so as, as far as possible, to make a consistent enactment of the whole statute.[6] General words of a particular provision of a statute may be given a restrictive meaning if the context requires it. By 'context' is meant not only the textual context arising out of the other provisions of the statute, but also factual context including the mischief to be remedied, and the circumstances under which the statute was passed. But for such restriction a compelling reason must be found.[7] It is no sound principle of construction to interpret expressions used in one

1. AIR 1988 SC 782 : (1988)1 JT 304.
2. AIR 1993 Ori 17.
3. (1994)1 SCC 159.
4. *Gurcharan Lal* v. *Shiva Narain*, AIR 1948 Oudh 162 (FB); *Kedar Nath* v. *Pearey Lal*, ILR 7 Luck 618 : AIR 1932 Oudh 152 (FB); *Emperor* v. *Jinand*, AIR 1928 Sind 149 (FB); *Buddhan Singh* v. *Nabi Bux*, AIR 1962 All 48 (FB) : ILR (1962)2 All 321 : 1961 All LJ 536 : 1961 AWR (HC) 452 (words having narrow as well as a broad sense). *See* also *Ambikalal Das* v. *Abhinandan Prasad*, AIR 1964 Pat 90 : 1963 BLJR 192. *See* also *Khushilal* v. *Board of Revenue*, AIR 1967 MP 201, 203. Widest possible interpretation unless context otherwise directs : occupant includes a *muafidar*.
5. *Muthammal* v. *Secretary of State*, 19 IC 68 (Mad); *Banshidhar Mohanty* v. *Gourgopal Das*, (1982)53 Cut LT 564 (DB).
6. *Punjab Beverages (Pvt.) Ltd., Chandigarh* v. *Suresh Chand*, (1978)2 SCC 144 (150).
7. *Surendra* v. *Nabakrishna*, AIR 1958 Orissa 168, 174 : ILR 1958 Cut 195, one such reason may be the repugnancy between the immediate enacting provision and the other provisions of the Act. *See* also *Dr. Mrs. Shabbir Fatima* v. *Allahabad University*, AIR 1966 PCC 45, 51 (R.S. Pathak, J.).

Act with reference to their use in another Act. The meaning of words and expressions used in an Act must take their colour from the context in which they appear.[1] The ordinary rule of grammar cannot be treated as an invariable rule which must always and in every case be accepted without regard to the context. If the context definitely suggests that the relevant rule of grammar is inapplicable, then the requirement of the context must prevail over the rule of grammar.[2]

It is well settled that the language of a statute constitutes the depository or reservoir of the legislative intent, and in order to ascertain or discover that intent, the statute must be construed as a whole just as it is necessary to consider a sentence in its entirety in order to grasp its true meaning. Meanings of certain words used in a section may be construed by attending to such other provisions of the statute as may tend to throw light upon them. This is a principle based upon human experience with man's mode of expression and the inevitable limitations of language.[3]

"The general rule of construction is not to look at the words but to look at the context", said the Supreme Court while interpreting the word 'owner' in a transport legislation of Bihar State.[4]

"The first thing one has to do in construing words in a section of an Act of Parliament, observed Lord Green, M.R., in *Bidie* v. *General Accident, Fire and Life Insurance Corporation*,[5] "is not to take those words in *vacuo*, so to speak, and attribute to them what is sometimes called their natural and ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of *prima facie* meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question :

> "In this state, in this context, relating to this subject-matter what is the true meaning of that word."[6]

"In construing this Act (English Bankruptcy Act)", said Lord Blackburn in *Turquand* v. *Board of Trade*,[7] "of course like every other Act, we must take the *whole of the Act* together, and as this is a very long Act, containing, I think, about sixty pages of very closely printed matter, it requires, in order that we may be certain that we omit nothing, that one should look carefully at it altogether and consider all the clauses." Every clause of a statute should be construed with reference to the context, and the other clauses of the Act, so as, as far as possible,

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1. *Ram Narain* v. *State of U.P.*, AIR 1957 SC 13, 23; *Kesavan Govindan* v. *Janardhanan Damodara Plappalli*, 1958 Ker LT 449 : 1958 Ker LJ 585; *Devi Prasad* v. *Board of Revenue*, (1960) Jab (LJ) 779 : 1960 MPC 605; *Raghunath Singh* v. *Gamugbai*, 1960 Jab LJ 996 : 1961 MPLJ 398 (context not only relevant but may at times be conclusive); *Bashiruddin (Dr.)* v. *District Judge, Bulandshahr*, 1978 All LJ 82; *P. Mariappa* v. *State of Tamilnadu*, (1990)2 MLW 655 (Mad) (DB).
2. *Regional Provident Fund Commissioner, Bombay* v. *Shree Krishna Metal Manufacturing Co.*, AIR 1962 SC 1536, 1540 : *See* also 90 CLR 345, 347 (Dixon, J.).
3. *Roop K. Shorey* v. *State*, AIR 1967 Punj 42, 44 D (S.K. Kapur, J.). Section 493, Cr PC, construed in the light of Section 495 and *vice versa*; *see* also *Romero* v. *International Terminal Operating Co.*, 3 L Ed 2d 368, 375 : 358 US 354 (Frankfurter, J.) : (Words not as self contained phrases but with a history and part of a serial).
4. *Jagir* v. *State of Bihar*, AIR 1976 SC 997 : 1976 Tax LR 1549 : (1976)2 SCC 242; *see* also *Hajari* v. *State*, AIR 1976 MP 76 : 1976 Jab LJ 253 : 1976 MPLJ 293 (FB); *Syed Hasan Rasul Nama* v. *Union of India*, AIR 1991 SC 711 : (1990)4 JT 463 : (1991)1 SCC 401; quoted in *Bakelite Hylem Ltd.* v. *Commissioner of Income-tax*, (1994)73 Taxman 107 (AP).
5. (1948)2 All ER 995, 998.
6. (1948)2 All ER 995, 998.
7. (1886)11 AC 286, 291.

to make a consistent enactment of the whole statute.[1] "The ultimate result must be determined," observed Lord Wright in *James* v. *Commonwealth of Australia*,[2] "upon the actual words used not *in vacuo* but as occurring in a single complex instrument in which one part may throw light on the other." "The Constitution," his Lordship went on saying, "has been described as the federal compact and the construction must hold a balance between all its parts." Every statute must be construed *ex visceribus actus, i. e.* within four corners of the Act. "The office of a good expositor of an Act of Parliament," said Coke in the *Lincoln College* case, "is to make construction in all parts together and not one part only by itself." When construing the terms of any provision found in a statute, the Court is bound to consider other parts of the statute which throw light on the intention of the Legislature and serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the statute. Every clause of a statute should be construed with reference to the context and other clauses in the statute so as, as far as possible, to make a consistent enactment of the whole statute. No part of a statute should be construed in isolation,[3] for the intention of the law-maker is to be found not in one part of the statute or another but in the entire enactment and that intention can best be gathered by viewing a particular part of the statute not detached from its context in the statute but in connection with its whole context.[4]

As observed by a Division Bench of the Allahabad High Court, in *Kalyan Rai* v. *II Addl. District Judge*.[5] "In order to ascertain the true intent and purpose of a statutory provision" the Court "should not read the provision completely divorced or detached from the context in which the provision is set or loose sight of the object or purpose of the enactment as manifested by the other related provisions appearing on the same statute". The Court 'should prefer to adopt a contextual construction rather than read the provision in a literal sense or in isolation'.

Words do not always retain their abstract or primary definitions and their meanings vary in accordance with the contextual use. It is often the *secondary* meaning which acquires more extensive recognition and receives ready comprehension.[6]

(i) All parts of statute to be taken together.—It is a fundamental principle in the construction of statutes that the whole and every part of the statute must be considered in the determination of the meaning of any of its parts.[7] In construing a statute as a whole the Courts seek to achieve two principal results to clear up obscurities and ambiguities in the law and to make the whole of the law and every part of it harmonious and effective. It is presumed that the Legislature intended that the whole of the statute should be significant and effective. Different sections, amendments and provisions relating to the same subject must be construed together and read in the light of each other.[8] Every statute must be construed *ex vigoenibus*

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1. *Canada Sugar Refining Co.* v. *Reg.*, 1898 AC 735, *per* Lord Davey, quoted in *Bapu Rao* v. *Narayan*, AIR 1950 Nag 117, 125; *Goverdhan Lal* v. *Union of India*, (1974)1 SCC 597; *Municipal Corporation of City of Hubli* v. *Subba Rao Hanumantha Rao*, AIR 1976 SC 1398.
2. 1936 AC 578, 613.
3. *Vaddeboyina Tulasamma* v. *Vaddeboyina Sesha Reddy*, AIR 1977 SC 1944 (1948) : (1977)3 SCC 99 : (1977) 3 SCR 261 : 1977 Hindu LR 287.
4. *In re* Krishna Kant, AIR 1961 Guj 68, 71; *Natesa Mudaliar* v. *Dhanpal Bus Service*, AIR 1964 Mad 136 (FB) : (1964)2 MLJ 23 : ILR 1964 Mad 283; *Partabmal Rameswar* v. *Fulchand Kanpagalal*, AIR 1964 Cal 452 : 68 Cal WN 586; *National Machinery Manufacturers* v. *P.D. Vyas*, AIR 1964 Bom 184 : 66 Bom LR 169.
5. 1982 All Rent Cas 363.
6. *Commissioner of Income-tax, Punjab* v. *Jagan Nath*, AIR 1957 Punj 226, 230 (Tek Chand, J.).
7. *Rajeev Khandelwal* v. *Arun Bannalal*, 1988 JLJ 416 (FB) : 1 Bl Comm. 89; *M.P.V. Sundararawier and Co.* v. *State of A.P.*, AIR 1958 SC 468.
8. *Gayler* v. *Wilder*, 13 L Ed 504; *Bellard* v. *Bailey*, 29 L Ed 376.

actus, that is, within the four corners of the Act. When the Court is called upon to construe the term of any provision found as a statute, the Court should not confine its attention only to the particular provision which falls for consideration but the Court should also consider other parts of the statute which throw light on the intention of the Legislature and serve to show that the particular provision ought not to be construed as if it stood alone and apart from the rest of the statute. Every clause of a statute should be construed with reference to the context and other clauses of the statute so as, as far as possible, to make a consistent enactment of the whole statute.[1] Warren, C.J. observed in *Richards* v. *United States*,[2] "We belive it fundamental that a section of a statute should not be read in isolation from the context of the whole Act, and that in fulfilling our responsibility in interpreting legislation we must not be guided by a single sentence or a number of sentences, but should look to the provisions of the whole law and to its object and policy."

The presumption and legal intendment is that each and *every clause* in a statute has been inserted for some useful purpose, and, therefore, the instrument must be read as a whole to ascertain both its intent and general purpose and also the meaning of each part.[3] The language used by the Legislature is the true depository of the legislative intent, and words, phrases and sentences occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context but are to be read together and construed in the light of the purpose and object of the Act itself.[4]

It is an elementary rule of construction, that the general rule of construction in every case, therefore, is that the Court is not only to look at the words, but it has to look at the context, the collocation and the object of such words relating to such a matter, and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstances.[5] It is beyond dispute, too, that the Court is bound when considering the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the Legislature, and, which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act.[6] In *Colquhoun* v. *Brookes*,[7] Lord Herschell said : "It is beyond dispute too, that we are entitled and indeed bound when construing the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the Legislature and which may serve to show that the particular provisions ought not to be construed as it would be if considered alone and apart from the rest of the Act." Every effort should be made to find such a meaning as will give operation and effect to every part and provision of the enactment. The Court should endeavour, so far as practicable, to reconcile the different provisions so as to make them harmonious and

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1. *Commissioner of Income-tax* v. *Amin*, (1971)2 Income-tax Journal 300, 307 (Bhagwati, C.J.); *see* also *Giridhari* v. *Corporation of Calcutta*, AIR 1966 Cal 634, 636 (Niyogi, J.); *Vaddeboyina Tulasamma* v. *Vaddeboyina Sesha Reddi*, AIR 1977 SC 1944 at p. 1948 : (1977)3 SCC 99 : (1977)3 SCR 261 : 1977 Hindu LR 287.
2. 7 L Ed 2d 492, 499 : 359 US 1.
3. *Mohammed Mateen* v. *Baijnath Bajoria*, 54 CWN 217; *Salman Raje* v. *Madhavsang*, (1969)4 Guj LR 817.
4. *Darshan Singh* v. *State of Punjab*, AIR 1953 SC 83; *Poppat Lal Shah* v. *State of Madras*, AIR 1953 SC 274; *Commissioner of Expenditure Tax* v. *Darshan Surendra Parekh*, AIR 1968 SC 1125.
5. *Jagir Singh* v. *State of Bihar*, AIR 1976 SC 997.
6. *Dorothy* v. *Mullick*, AIR 1958 Pat 240, 242; *Bijoy Cotton Mills Ltd.* v. *Rastriya Mills Mazdoor Sangh*, AIR 1965 Raj 213 : 1965 RLW 321 : (1965)2 Raj LJ 83; *State of Rajasthan* v. *Leela Jain*, AIR 1965 SC 1296; *State of Punjab* v. *Olcar Grain Buyers' Syndicate*, AIR 1964 SC 669 : (1964)2 SCA 451; *Mastro Plastic Corporation* v. *National Relation Labour Board*, 100 L Ed 309, 321 (Burton, J.).
7. (1889)14 AC 493, 506; *Dorothy* v. *Mullick*, AIR 1958 Pat 240, 241.

sensible.[1] As far as possible, each provision must be construed so as to harmonise with all others.[2]

The principle is equally applicable in the case of different parts of a single section and none the less that the latter part is introduced by the words 'provided that' or like words.[3] As Lord Maugham said :

> "The true principle undoubtedly is, that the sound interpretation and meaning of the statute on a view of the enacting clause, saving clause and the proviso taken and construed together, is to prevail."[4]

But this general principle is meant to guide the Court in furthering the intent of the Legislature, not overriding it. When rigid adherence to the general rule would require disregard of clear indications to the contrary, the rule must yield.[5]

A Constitution, likewise, must be read as a whole. The whole Constitution is to be examined, with a view to determining the intention of each part, and the construction must be uniform. The Constitution of India is a very detailed one and the whole of it, including Part III, has to be read with the same sanctity, without giving undue weight to any part.[6]

A Constitution does not mean one thing at one time and another subsequently.[7] "The Constitution is a logical whole, each provision of which is an integral part thereof, and it is, therefore, logically proper and indeed imperative, to construe one part in the light of the provision of the other parts."[8] Such a survey is often indispensable, even when the words are the plainest, for the true meaning of any passage is that which (being permissible) best harmonizes with the subject and with every other passage of the

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1. *Mohammad Mateen* v. *Baijnath Bajoria*, 54 CWN 217; *Genamal* v. *Ramaswami*, AIR 1960 Andh Pra 465, 470 (Chandra Reddy, C.J.).
2. *Canada Sugar Refining Co.* v. *R.*, 1898 AC 735; *Lumsden* v. *Inland Revenue Commr.*, 1914 AC 877; *Durgaprasad* v. *State*, 1953 All LJ 425; *Pheku Chamar* v. *Harish Chandra*, AIR 1953 All 406; *Kalka Prashad* v. *Ajodhya Prasad*, AIR 1929 All 421; *Ganpat Chandrabhan* v. *Tulsi Mard Ramchandra*, AIR 1924 Bom 219; Acting Advocate-General, *In re*, AIR 1932 Bom 71; *Emperor* v. *Mahmood Kassam*, AIR 1942 Bom 39; *Narshing Das* v. *Chogemul*, AIR 1939 Cal 435; *Devendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593; *Durga Shankar* v. *Profulla Chandra*, AIR 1947 Cal 294; *Madan Gopal* v. *Lakshmi Das*, AIR 1943 Cal 296; *Daulat Rai* v. *Vazir Chand*, AIR 1941 Lah 511; *Union of Burma* v. *Maung Nyun*, (1948) Burma LR (FB); *In re* Khairatiram, AIR 1931 Lah 476; *Dalsingar Singh* v. *Jainath Kuar*, AIR 1940 Oudh 138; *A. Nesamony* v. *T.M. Varghese*, 1950 KLT 371; *Khushi Ram* v. *Commr, of I.T.*, AIR 1953 Punj 300; *Janeswar Das* v. *Bishambar Nath*, 55 Punj LR 116; *Hassan Mohammad* v. *Co-operative Society*, AIR 1937 Lah 912; *Lalji Tiwari* v. *Emperor*, AIR 1920 Pat 428; *Commr. of I.T.* v. *Visheswar*, 1936 Pat 342; *see* also *Cheladina Venkata Rama Rao* v. *Engu Narayana*, AIR 1963 Andh Pra 168 (FB) : (1962)2 Andh WR 376 : (1962)2 Andh LT 476; *Ram Babu* v. *Additional Sub-Divisional Officer*, ILR (1963)1 All 537 : 1963 All LJ 142; *S.C. Prashar* v. *Vasantsen Dwarkadas*, AIR 1963 SC 1356; *New India Sugar Mills* v. *Commissioner of Sales Tax, Bihar*, AIR 1963 SC 1207 : (1963)2 SCA 266; *Mohammad Ali* v. *Sri Ram Swarup*, AIR 1965 All 161 : 1963 All WR (HC) 760; *Ram Chand Textiles* v. *Sales Tax Officer*, AIR 1965 All 24 (FB) : 1964 All LJ 396 : ILR (1964)2 All 88; *Chandra Mohan* v. *State of U.P.*, AIR 1966 SC 1987 : 1966 All LJ 778. *See* also Ch. XVI, *infra* for rule of harmonious construction. *See* further *Siddheswar Paul* v. *Prakash Chandra Dutta*, AIR 1964 Cal 105 (SB) : 68 CWN 30.
3. *Gangamoyee Dey* v. *Manindra Chandra*, AIR 1950 Cal 225; *Anand Nivas (Private), Ltd.* v. *Anandji Kalyanji Pedhi*, AIR 1965 SC 414 : (1965)1 SCA 172.
4. *Jennings* v. *Kelly*, 1940 AC 206; *Gangamoyee Dey* v. *Manindra Chandra*, AIR 1950 Cal 225 (227).
5. *United States* v. *Zacks*, 11 L Ed 2d 128, 135 (Harlan, J.).
6. *Gopalan* v. *State of Madras*, AIR 1950 SC 27; *Moti Ram Deka* v. *General Manager, N.E.F. Ry.*, 1964 SC 600 : (1964)2 SCA 372 : (1964)3 Lab LJ 467. *See* also Ch XXXII for Interpretation of Constitutional Provisions.
7. Cooley : *Constitutional Law*, p. 427.
8. Willoughby : *Constitutional Law*, Part I at p. 65.

statute.[1] It is a well-known rule of construction that each part of statute must expound every other part.[2] The words of an Act must be construed in the light of their context.[3] It is a sound cannon of construction that a section of an Act should be read as part of the Act, and interpreted by the general intent of the whole instrument, that is the section should be construed by what precedes and what follows it.[4]

The meaning to be given to a particular statutory language depends on the evaluation of number of interpretative criteria. Shorn of the context, the words by themselves are 'slippery customers'. The general presumption is that these criteria do not detract, or stand apart from but are to be harmonised with the well accepted legal principles. In a difficult case, the number of relevant interpretative criteria may be so high that the task of the Court in assessing their effect, is correspondingly difficult. Even the statutory language apparently free from the sins of sementic ambiguity might not in the context of the purpose, connote or convey its lexicographic thrust, but would acquire a different shade or colour imported to it by the variations of the interpretative criteria. The ambiguity need not necessarily be grammatical one but one of appropriateness of the meaning in a particular context are the general guidelines in the interpretation of statutory language pointed out by the Supreme Court in *Nydar Singh* v. *Union of India*.[5]

The meaning of words in a particular context must be ascertained by considering the subject-matter and considering the nature of the context in which they are found,[6] and words in other statutes and in different context are of no value.[7] It is a well-settled proposition of law that where a word is used in an Act, which is capable of various shades of meaning, the particular meaning to be attached must be arrived at by reference to the scheme of the Act or of the section

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1. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 16 : *Incivile est nisi tota lege pesspesta Una atiqua particula ejus porposita Judicare vel respondere.* "It is wrong to judge of a part unless the whole sentence is regarded." *Daulat Rai* v. *Liquidators, Hindustan Bank, Ltd.*, 20 PR 1915 at 118, (*per* Shadi Lal, J.).
(*Note.*—The word 'always' was substituted for the word 'often' which appears to be a clerical error). In *Ram Khelawan* v. *Lakshmi Prasad*, AIR 1950 Pat 194, Narayan, J., observes at p. 197 : "The *mimansa* always looks to the words and the words alone for their meaning and the *mimansa* system is identical with the judicial principles of interpretation. The fundamental rule of interpretation which we apply in the case of statutes is to be applied even in interpretating these *sutras*, and just as a statute is to be expounded 'according to the intent of them that made it' the *sutras* have also to be expounded in a like manner. If the words are precise and unambiguous and declare the intention of the writer, nothing further is necessary to expound those words in their natural and ordinary sense. It is also a cardinal principle of interpretation that the construction is to be made of all the parts together and not of one part only by itself, and the true meaning of a passage is to be found not merely in the words of that passage but in comparing it with the passage preceding it and the passage following it asserting at the same time what were the circumstances with reference to which the words were used and what was the object appearing from the circumstances."
2. *Lalji Tewari* v. *Emperor*, AIR 1920 Pat 428; *see Chaturbhuj* v. *Mauji Ram*, AIR 1938 All 456 at p. 461; *Mahadeo* v. *Nago*, 12 IC 357.
3. *Jitendra Nath* v. *Bengal Government*, AIR 1932 Cal 753, 757; *Rudraraju* v. *Suryanarayan*, AIR 1960 AP 257; *State of U.P.* v. *Hindustan Aluminium Corporation*, (1973)3 SCC 229 at p. 242; *Commissioner of Wealth Tax* v. *Officer-incharge, Court of Wards*, (1976)3 SCC 864; *Links Advertisers and Business Promoters* v. *Commissioner of Corporation of the City of Bangalore*, AIR 1977 SC 1646 : 1977 Tax LR 2051 (SC) : 1977 UJ (SC) 411 : (1977)3 SCC 204 : 1977 SCC (Tax) 431 : (1977)2 SCJ 224.
4. *Pankhurst* v. *Kiernan*, 24 CLR 120, 132.
5. AIR,1988 SC 1979 : (1988)3 JT (SC) 448.
6. *Williams* v. *Dunn's Assignee*, 6 CLR 425, 458; *Deputy Chief Controller of Imports and Exports* v. *K.T. Kosalram*, AIR 1971 SC 1283.
7. *Jeewanlal* (1929) *Ltd., Calcutta* v. *Its Workmen*, AIR 1961 SC 1567.

in particular taken as a whole.[1] All words if they be general and not express or precise are to be restricted to the fitness of the matter, *i. e.*, they must be construed with reference to the subject-matter of the legislation and limited to it.[2] The effect of any enactment, however, plain on its face, may be controlled by an equally plain context.[3]

Any construction of Section 2(11)*(c)* of the Income Tax Act, 1922 and the proviso thereto as they stood before the amendment of 1953, should be consistent with the general scheme of taxation that underlies the Income Tax Act, and the words of Section 2(11)*(c)* should not be isolated from their context for the purpose of construction. The Act provides that no portion of an accounting period escapes assessment in the assessment; and it also provides that no period higher than a year [in the circumstances provided for by Section 2(11) the accounting period may not always coincide with 12 calendar months calculated according to the Gregorian Calendar] should be considered for purposes of assessment in any given assessment year.[4] It was held that if there was a comma after the word 'pledge' there would have been no difficulty whatsoever about its meaning. In that case the clause would have meant that a mortgage or a charge on any movable property except stock-in-trade would have to be registered, but, if it were a pledge it would not have to be registered.[5]

When there are two sections dealing with the same subject-matter, one section being unqualified and the other containing qualification, effect must be given to the section containing the qualification.[6]

(ii) Section to be read as a whole.—Indeed we are not justified in interpreting a paragraph of single section, which is capable of more than one construction by the light only of the words employed in it and without reference to other parts of the enactment.[7] It is no doubt true that if the words used in a criminal statute are reasonably capable of two constructions, the construction which is favourable to the accused should be preferred, but in construing the relevant words, it is obviously necessary to have due regard to the context in which they have been used. It does not matter if the policy underlying the provisions in question sounds inconsistent with modern notions, as for example, of the status of women and of the mutual rights and obligations under marriage.[8]

Where the language of a Section [557*(iii)* of the Income Tax Act], 1961, is clear and unambiguous it has to be construed according to its plain and natural meaning. Merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that the first said section should be given a narrow and constricted meaning not warranted by the language of the section and in fact, contrary to such language.[9]

It is a fundamental error to detach the first portion of a section and settle its meaning first, ignoring even the rest of the section, and then proceed to apply the remainder of the section on

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1. *Rullia Ram* v. *Fateh Singh*, AIR 1962 Punj 256, 261; *Shibu Metal Works* v. *Regional P.F. Commissioner*, AIR 1963 Punj 19 : ILR (1962)2 Punj 716.
2. *Jeevansinghji* v. *Members of Tribunal*, AIR 1957 Bom 182, 185 : 'Person' may or may not include 'Corportation'.
3. *Palmer* v. *Public Trustee*, 21 CLR 645, 650.
4. *General Commercial Corporation* v. *I.T. Commissioner, Madras*, AIR 1955 Mad 64.
5. *Ramamurthi* v. *Indian Bank, Ltd*, AIR 1556 Mad 234.
6. *Moss* v. *Elphick*, (1910)1 KB 465, 468; *Lal Mohan* v. *Ramnath Shaha*, AIR 1954 Tripura 17.
7. *Sukhnandan* v. *Lakhmichand*, 12 IC 364, 368. *The Balasinor Nagrik Coop. Bank Ltd.* v. *Babubhai Shankerlal Panchya*, AIR 1987 SC 849 : 1987 JT (SC) 462 : Rep (1987)1 SCC 606 : (1987)1 UJ (SC) 379 : (1987)1 Land LR 521 : 1987 Bank J 364 : (1987)1 Guj LH 423 : 1987 Coop. LJ 283 : 1987 (2) Guj LR 715 : (1987)23 Coop TJ 149.
8. *Alamgir* v. *State of Bihar*, AIR 1959 SC 436, 439.
9. *C.I.T., Calcutta* v. *Rajendra Prasad Moody*, 1978 UJ (SC) 825 (828).

the basis that the meaning of the first part is already fixed. We must read the whole section, and perhaps the whole Act, to ascertain the meaning of a section.[1]

A statute like any other document must be read as a whole 'to extract its meaning and intendment correctly'.[2] No provision of a statute can be read 'in isolation', it has to be construed with reference to the context and in the light of other provisions thereof.[3]

'Context and collocation' of the words in a statute may 'induce' a court to depart from their ordinary meanings. The exact 'colour and shape' of the meaning of words cannot be ascertained by reading them 'in isolation'.[4]

(iii) Phrase to be taken as a whole.—In *Swinburne* v. *Federal Commissioner of Taxation*,[5] it was observed : "We are not to pull the phrase to pieces and consider the various meanings of its component parts, if, when so read, it has a known signification, that should *prima facie* be taken to be its meaning in the statute." In *Robertson* v. *Day*,[6] the Privy Council, speaking by Sir Robert Collier, said : "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them."

As a general rule, relative and qualifying words or clauses in a statute are to be referred to the next preceding antecedent, unless the evident sense and meaning of the enactment requires a different construction.[7] This grammatical rule is limited in its application to cases when there is ambiguity or doubt on the face of the statute, and should be utilised only when its application is consistent with the apparent and rational interpretation of the Act. When general words occur at the end of a sentence they usually refer to and qualify the whole sentence and not merely the last preceding antecedent. If, however, such words occur in the middle, they are generally held not to extend to that which follows.

(iv) Plain meaning controlled by context as plain as words to be controlled.—There is no doubt a rule applicable to Acts of Parliament as well as to other legal instruments that you may control the plainest words by reference to the context. But then, as has been said very often, you must have context even more plain, or at least as plain as the word to be controlled.[8] The rule is also expressed thus[9] :

> "It is only when any part of the Act of Parliament is penned obscurely and when other passages can elucidate that obscurity, that recourse ought to be had to such context for that purpose. No rule of construction can require that when the words of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part."

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1. *Gibson and Howes Ltd.* v. *Lennon*, 24 CLR 140, 157. *Kalawati Bai* v. *Soiryabai*, AIR 1991 SC 1581 : (1991)3 SCC 410 : 1991 AIR SCW 1525.
2. *Vijaywada Municipal Council* v. *Andhra Pradesh State Electricity Board*, (1976) 4 SCC 548.
3. *V. Tulasamma* v. *Sesha Reddy*, (1977)3 SCC 99; *Organo Chemical Industries* v. *Union of India*, AIR 1979 SC 1803 : (1979)4 SCC 573 : (1979)2 Lab LJ 416 : 1979 Lab IC 1261.
4. *Shri Umed* v. *Raj Singh*, (1975)1 SCC 76.
5. 27 CLR 377.
6. 5 App Cas 62, 69; *see* also *Gibson and Howes Ltd.* v. *Lennon*, 24 CLR 140, on appeal 26 CLR 285.
7. *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369.
8. *Bentley* v. *Rothecham and Kimbarworth Local Board of Health*, (1876)4 Ch D 585, *per* Jssel, MR.
9. Craies on *Statute Law*, 5th Ed. at pp. 94 and 95, quoting *Palmer's* case, (1784) Leach CC, 4th Ed. at 355 and *Warburton* v. *Loveland*, 5 ER 499; *State of Tasmania* v. *Commonwealth of Australia and State of Victoria*, 1 CLR 329, 357; *Rydor* v. *Foley*, 4 CLR 442; *Dibendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 620; *see* also *Kesvananda Bharati* v. *State of Kerala*, WP 135 of 1970, dated 24-4-1973 by SC (*per* Palekar, J., quoting Tindal, C.J. in *Warburton* v. *Loveland*).

If a word is capable of being understood in a narrow as also in a broad sense then one has to look to the *setting* in which the word appears in order to ascertain the sense in which the Legislature used the word.[1]

Though we are to examine every part of the instrument we must be guided by its language alone as applied to the subject-matter, and it is not permissible to wander at large upon a sea of speculation searching for a suitable intent by the misty and uncertain light of what is sometimes called the spirit of the document, for that is largely fashioned subjectively by the preconceptions of this individual observer.[2]

"The first thing one has to do," says Lord Greene, M.R. in *Bidie* v. *General Accident, Fire and Life Insurance Corporation*[3] 'I venture to think, in construing words in a section of an Act of a Parliament, is not to take those words *in vacuo*, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of *prima facie* meaning which you may have to displace or modify. It is to read the statute as a whole and ask myself the question : "In this statute, in this context, relating to this subject-matter, what is the true meaning of that word' ?"

"A word is not a crystal transparent and unchanged; it is the skin of living thought and may vary greatly in colour and context according to the circumstances and the time in which it is used," observed Holmes, J. in *Towne* v. *Eisner*.[4] "English words derive colour from those which surround them. Sentences are not mere collection of words to be taken out of the sentence defined separately by reference to the dictionary or decided cases and then put back again into the sentence which you have assigned to them as separate words, so as to give the sentence or phrase a meaning which, as a sentence or phrase, it cannot bear without distortion of English language."[5]

It is a settled canon of construction that to arrive at the true meaning of any particular phrase in a statute, it has not to be read detached from the context. Words and phrases occurring in a statute are not to be taken in an isolated or detached manner dissociated from the context.[6]

The meaning of an ordinary word of English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the Court will determine in other words what that unusual sense is.[7]

In *Jenning* v. *Kelly*,[8] the House of Lords says that there is no rule that the first or enacting part is to be construed without reference to the proviso. The proper course is to apply the broad

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1. *Budhan Singh* v. *Natia Bux*, AIR 1962 All 43, 48, 50 (FB).
2. *Haddart Parker & Co. Proprietary Ltd.* v. *Moorehead*, 8 CLR 330, 338.
3. (1948)2 All ER 995, 998 : 1949 Ch 121, quoted by Sikri, C.J. and Shelat, J., in *Kesawanand Bharati* v. *State of Kerala*, WP, 135 of 1970, dated 24-4-73 by SC; see *Teja Singh* v. *State*, AIR 1952 Punj 45, 46.
4. 62 L Ed 372, 376 : 245 US 418, 425. Referred to by Sikri, C.J., Hedge, Mathew and Chandrachud, JJ., in *Kesawanand Bharati* v. *State of Kerala*, WP, 135 of 1970, dated 24-4-73 by SC. *See* also *Lynch* v. *Overhosler*, 8 L Ed 2d 211, 215 dangerous to confine to bare words of a statute.
5. *Bourne* v. *Norwich Crematorium*, (1967)2 All ER 576, 578. Quoted by Sikri, C.J. in *Keswanand Bharati* v. *State of Kerala*, WP, 135 of 1970, dated 24-4-1973 by SC.
6. *Nar Singh* v. *Kamandas*, 1980 Jab LJ 27 (FB).
7. *Brutus* v. *Cozens*, (1972)3 WLR 521 (HL) *(per* Lord Reid) : 527 *(per* Lord Morris) : 529 (Viscount Dulhorne); "Insulting behaviour".
8. 1940 AC 206 quoted in *Gangamoyee Dey* v. *Manindra Chandra*, AIR 1950 Cal 225, 227.

general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light, if need be on the rest. Viscount Maugham in his speech at page 219 says :

> The principle is equally applicable in the case of different parts of a single section and none the less that the latter part is introduced by the words 'provided that' or like words. There can, I think, be no doubt that the view expressed in Kent's *Commentaries on American Law*[1] is correct. The true principle undoubtedly is that the sound interpretation and meaning of the statute on a view of the enacting clause, saving clause and proviso, taken and construed together, is to prevail."

Chagla, C.J., in *Broach Co-operative Bank* v. *Income-tax Commissioner*,[2] observed :

> "But to my mind the proper canon of construing a section which has several provisos is to read the section and the provisos as a whole, try and reconcile them and give a meaning to the whole of the section along with the provisos which is a comprehensive and logical meaning."

(v) Context need not be restrictive.—But the words of a statute may be given an extended meaning of which they are reasonably suspectible rather than interpret their meaning as restricted by context when such restriction would reduce them to mere surplusage.[3]

(vi) Each statute to be looked to by itself.—In *Commissioner of Inland Revenue* v. *Scott*,[4] Lord Herschell said : "Each Statute must be looked to by itself for the purpose of ascertaining its meaning."[5] Each statute must be judged by itself[6]. The phraseology of each section has to be interpreted in the light of the context and no assistance can be taken from reference to the provisions of other similar Acts.[7] The improper rejection of a nomination paper was expressly made one of the grounds for challenging an election, and consequent upon this addition to Section 19 of the Cantonments Act, 1924, by the amending Act 7 of 1949, it became necessary, having regard to the language of Section 20, to make a special provision giving a right to a person whose nomination paper has been rejected to challenge the election. It is a clear indication of the intention of the Legislature that wherever a wrongful rejection of a nomination has been made one of the grounds for setting aside the election, a person whose nomination has been wrongfully rejected has been given a right to file an election petition. The rules under the Cantonments Act were framed subsequent to a judicial decision on the point,[8] and if the framers of the Rules had thought the words 'at the election' in Rule 43 did not include persons whose nominations had been wrongly rejected, an express provision would have been made to that effect.[9]

(vii) Addition of words if context so requires.—It is permissible while interpreting a statute to read in it some words which have not been used in the section if the context of the section

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1. Cited with approval in Maxwell : *Interpretation of Statutes*, 8th Ed. at p. 140.
2. AIR 1950 Bom 45, 46.
3. *Har Narayan* v. *Ramji Das*, 15 Cr LJ 375 : 23 IC 743 (All).
4. (1892)2 QB 163 at p. 165.
5. *See* also *Swinburne* v. *Federal Commissioner of Taxation*, 27 CLR 283-84, 377.
6. *Whiteman* v. *Sadler*, 1910 AC 514, 526, *per* Lord Dunedin; *Ishwarlal Girdharlal Joshi* v. *State of Gujarat*, AIR 1968 SC 870, (Statute itself is the safest guide).
7. *Indulal K. Yagnik* v. *State*, AIR 1963 Guj 259; *Rama Rao* v. *Srinivasa Swamy*, (1962) 1 Andh LT 356 : (1962) 1 Andh WR 349; *State of M.P.* v. *Orient Paper Mills Ltd.*, AIR 1977 SC 687 (690).
8. *Shiv Kumar* v. *G.V. Oak*, AIR 1953 All 633.
9. *Vishwamitra* v. *District Judge, Jhansi*, AIR 1956 All 89.

admits it and if it appears that that was the effect of the words already existing in the section even without reading the words that are sought to be read, in order to make clear what already is visible from the section.[1]

2. Same words have same meaning.— Words are generally used in the same sense throughout in a statute unless there is something repugnant in the context.[2] So too the same expressions if it appears more than once in the same statute or for that matter in the same provision should receive the same meaning unless, the context suggests otherwise.[3] Same word in a section should bear the same meaning in both places unless there is something in the context to the contrary,[4] *i.e.*, unless there is a clear indication in the statute itself to show that the Legislature has used the words and phrases with different meanings, or where uniform construction of the words and phrases will lead to absurd conclusions and results.[5] Where in a statute, a word is not defined, but is used in different sections, it ought to be interpreted in the same sense throughout, unless the context in any particular section plainly requires that it should be understood in a different sense.[6] The same words used in different statutes on the same subject are interpreted to have the same meaning. Indeed it has been said that if a statutory meaning is attached to certain words in a prior Act, there is a presumption of some force that the Legislature intended that they should have the same signification when used in a subsequent Act in relation to the same subject-matter.[7] It is an ordinary canon of interpretation that a word keeps the same meaning at last throughout in any one Act,[8] and, as far as possible,

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1. *Oudh Sugar Mills* v. *State of U.P.*, AIR 1960 All 136, 140-1 : ILR (1960)1 All 487 (FB); *see* also *Ramaswamy Nadar* v. *State of Madras*, AIR 1958 SC 56; *Moorthy* v. *Ramachandran*, (1992)2 KLT 206. *Shital Raj others* v. *State of Bihar*, AIR 1991 Pat 110 : (1990)1 BLJR 719 : 1990 BLJ 470 (FB).
2. *Bhogilal Chunnilal* v. *State of Bombay*, AIR 1959 SC 356, 357; *Anem Pedda* v. *Executive Officer*, AIR 1957 Orissa 285, 286 (Narasimham, C.J.); *Durga Prasad* v. *State*, AIR 1962 Raj 92, 93 (C B Bhargawa, J.); *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369; *Shamras Vishnu Parulekar* v. *Distt. Magistrate, Thana*, AIR 1957 SC 23; *K.N. Guruswamy* v. *State of Mysore*, AIR 1954 SC 592. *Darshan Singh* v. *Ghewarchand*, AIR 1993 Raj 126 (DB).
3. See *Sureshchand* v. *Gulam Chisti*, AIR 1990 SC 897 : 1990 All LJ 145 : (1990)1 JT (SC) 118.
4. *Velaswami* v. *Raja Nainar*, AIR 1959 SC 422, 427; *Khimji Poonja* v. *Ramanlal*, AIR 1960 Bom 532; *Poluru Ranga Rao* v. *Kapulu Ramadoss*, AIR 1959 Andh Pra 182, 184; *Pramod Kumar* v. *State*, 1981 All LJ 577; *Lal Chand* v. *Radha Kishan*, AIR 1977 SC 789 (794); *Narayandas Dubey* v. *State of M.P.*, 1983 MPLJ 840 (DB).
5. *Sulochana* v. *State, Registrar of Chits (Investigation and Prosecution) Madras*, 1977 LW (Cr) 161.
6. *Dr. Sita Ram Gandhi* v. *4th Addl. Distt. Judge, Meerut*, 1983 ALJ 48. *In Re* Baba Yashwant Desai, ILR 35 Bom 401, 403, *per* Chandravarkar, J.; *Sri Nath* v. *Puran Mal*, ILR 1942 All 45 : AIR 1942 All 19 (FB); *Harkishandas* v. *Bai Dhanu*, ILR 50 Bom 566 : AIR 1926 Bom 497 (FB); *Balbhadar Singh* v. *Lakshmi Bai*, AIR 1930 All 669; *Rameshwar* v. *Emperor*, AIR 1931 Nag 177; *Baij Nath* v. *Sital Singh*, ILR 13 All 224, 251 (FB); *Namdeo* v. *Kesho*, ILR 1937 Nag 469, 472 : AIR 1938 Nag 59; *Achhrumal* v. *Balwant Singh*, ILR (1937)18 Lah 415 : AIR 1937 Lah 178; *Ganpat Kinushet* v. *Vithal Bhikh*, ILR 1942 Bom 94, 99; *Bhaiyalal* v. *Santwal Singh Pannalal*, ILR 1944 Nag 447 : AIR 1944 Nag 152; *Inayat* v. *Rex*, AIR 1950 All 369, 370; *Puransashi Chaudharani* v. *Nabendra Kishore Roy*, ILR (1945)1 Cal 225; *Gajadhar Singh* v. *Emperor*, AIR 1946 Nag 200 : This is specially so when the sense contended for imports the ordinary grammatical meaning of the word. *Narsinghdas* v. *Chogemull*, ILR (1939)2 Cal 93 : AIR 1939 Cal 435; *Sri Pat Charan* v. *Kailash Chandra*, AIR 1936 Cal 331; *Helvering* v. *Stockholmes, etc. Bank*, 29 US 84 : 75 L Ed 211; *Bhogilal Chunnilal* v. *State of Bombay*, AIR 1959 SC 356; *K.M. Narayan Rao* v. *Asst. Registrar, Co-operative Societies*, (1958)2 Andh WR 362; *Gulaher Ahmad* v. *Election Tribunal*, AIR 1958 MP 224; *Kamaleshwar Singh* v. *Dharamdeo Singh*, AIR 1957 Pat 375 (FB); *Dev Lal* v. *Kodu Totaram*, AIR 1957 B 68 (Vyas, J.); *M/s. Mewalal Kapildeo Prasad* v. *State of Bihar*, 1978 BLJ 206 (FB).
7. *National Planners* v. *Contributories*, AIR 1958 Punj 230, 232 (FB); *Jagat Ram* v. *Shanti Sarup*, AIR 1965 Punj 175.
8. *In re* Acting Advocate-General, AIR 1932 Bom 71, 77 (FB); *Kekra* v. *Sadhu*, 23 IC 238; *Emperor* v. *Makunda*, 8 Cr LJ 18 : 4 NLR 78; *Ajit Kumar Mukherjea* v. *Chief Operating Superintendent, EIR, Calcutta*, AIR 1953 Pat 92; *Balakrishna Murthy* v. *Somhayya*, AIR 1959 Andh Pra 186, 192 (Ranganadham Chetty, J.). Courts may be justified in taking the aid of a sub-section in construing statutes, when the same word is used in both the section and the sub-section; *Shabuddin Sheik* v. *J.S. Thakor*, AIR 1969 Guj 1 (FB).

same meaning ought to be given to that expression.[1] It is well established that in order to interpret a term in a particular legislation its use in the same legislation in another provision is the best clue for interpretation. The use of the term 'or' used in Section 397 of the Cr.P.C. could, therefore, be safely used as a clue to interpret the word 'or' in Sections 438 and 439 of the Cr.P.C. In this view of the matter it could not be contended that once an application under Section 438 of the Code is rejected by the Sessions Judge, another application on the same facts and for the same offence could not be made to the High Court.[2] When the same word is used in the same context in the sections of the same enactment it is reasonable to suppose that it is used in the same sense in both.[3] In *In re* Birks,[4] Lindley, L.J., said : "I do not know whether it is law, or canon of construction, but it is good sense to say that whenever in a deed, or will, or other document, you find that a word used in one part of it has some clear and definite meaning, then the presumption is that it intended to mean the same thing where, when used in another part of the document, its meaning is not clear." It is reasonable to presume that the same meaning is implied by the use of the same expression in every part of the Act. If the language of the statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd and mischievous results.[5]

"It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act."[6] But this is only one element in deciding what the true import of the enactment is, to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute. "The presumption," says Craies,[7] "that the same words are used in the same meaning is, however, very slight, and it is proper 'if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act."[8] But it is a well settled principle of construction that from the presumption that the Legislature has used the same word with the same meaning has not much weight, and the same word may be used in different senses in the same statute, and even in the same section. This rule of construction is now recognised even by legislative bodies, since it is now usual in the interpretation clause of every Act to insert the words 'unless a contrary intention appears', or 'unless the context otherwise requires', or other similar words cutting down the general application of the definition. The proper rule of construction, therefore, is to look at the section itself and find out the meaning of a word in question from the context in which it is used, though it would be permissible to find out its meaning from the other sections, where the same word is used, it is not possible to do so, from the section itself. But it is clear also that the same word might carry different meanings when used in different parts of the statute depending upon the context in which it is used, and in such a case that sense has to be adopted which is harmonious with the context and promotes in

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1. *Lal Chand* v. *Radha Kishan*, 1977 Cur LJ (Civil) (SC) 57. *W.B. Headmasters' Association* v. *Union of India*, AIR 1983 Cal 448.
2. *Bhagirath* v. *State of M.P.*, 1983 Jab LJ 30.
3. *Burma Oil Co., Ltd.* v. *Baij Nath Singh*, AIR 1920 UB 1 *per* Heald, A.J.C.; *Gopal Krishna* v. *Krishna*, AIR 1955 Andhra 264; *Govind Nair* v. *Narayani Amma*, AIR 1955 TC 235; *Motilal Surajmal* v. *Mohd. Safi*, AIR 1956 Nag 179; *Ghamandi Ram* v. *Shankar Lal*, AIR 1966 Raj 19, 21 (Kan Singh, J.) : statute providing a dictionary of its own.
4. (1900)1 Ch 417, 418; *see also Brunswick Corporation* v. *Baker*, 21 CLR 407, 427.
5. *Sadhu Ganaji* v. *Shanker Rao*, AIR 1955 Nag 84. The interpetation of the word "son" as legitimate son does not lead to any absurd or mischievous result. *See* also *Gulraj Singh* v. *Mota Singh*, AIR 1965 SC 608 : (1965)1 SCJ 254.
6. Maxwell : *Interpretation of Statues*, 12th Ed. at p. 278. But the presumption is not of much benefit.
7. Craies' *Statute Law*, 5th Ed. at p. 159.
8. *S.V. Parulekar* v. *District Magistrate, Thana*, AIR 1957 SC 23, 26-27.

the fullest manner the policy and object of the legislation.[1] Indeed, cases are not lacking where the same word would carry different meanings, even though used in the same section.[2]

The same words may not necessarily have the same meaning attached to them when found in different parts of the same instrument, since their meaning is actually controlled by the context.[3] Thus on a reasonable construction, the word 'person' may have to be given different meaning in the same section, one wider and the other narrower, and there is nothing wrong in reading Section 75 of the Kerala Land Reforms Act, 1964 like that.[4]

The word 'tenement' should be given the same meaning both in provisos 2 and 4 to Section 22 of the Bombay Finance Act, 1932 and so interpreted the word 'tenement' in the second proviso must be held to mean a house, apartment, suite of rooms or a room, which is separately owned or which is occupied as a separate unit.[5]

When the same language is used in different parts of the same statute in relation to the same subject-matter, if in one connection its meaning is clear, and in another it is ambiguous, the ambiguous language is to receive the same construction as is given to the unambiguous language, unless the general meaning and intention of the Act requires a different construction.[6]

(i) In the notification.—Where a word in the section is used in the *notification* under the section, the word must be construed similarly both in the section and the notification.[7] The interpretation should be such as to make the notification effective and not nugatory.[8]

(ii) Rules.—The same word appearing in the same section of the same set of rules must be given the same meaning unless there is anything to indicate the contrary. The rules under the Madras Excise Act, 1901, do not tie down the authorities to the method of auction and tender; nor are they bound to follow Rule I/2 as an alternative. They have a discretion under Rule I/1 and can act 'otherwise'. But if they wish to do that, then it is essential that due notice and publicity be given of the 'otherwise' method in a Government notification as Rule I/1 discretion. The word 'otherwise' in Rule II/10 cannot be interpreted to give an absolute discretion, but has the same meaning as in Rule I/1.[9]

The same word in a statute cannot have two different and diametrically opposite meanings in two different local areas governed by the same statute.[10]

The words occurring in a statute ought not to be so interpreted as to have both wider and narrower meaning in some or other of the cases to which it applies. The words have the same meaning uniformly whenever the statute applies, if it applies at all.[11]

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1. *Budhulal Kasturchand* v. *Chhotelal Kasturchand*, 1976 Jab LJ 797 : 1976 MPLJ 734 (FB).
2. *Appabhai Hemabhai Patel* v. *State of Gujarat*, AIR 1962 Guj 218; *M. Arasan Chettiar* v. *S.P. Narasimhalu Naidu's Estate Trust*, (1980)2 Mad LJ 303 Vol. 93, LW 392 (DB); *U. Dakshinamoorthy* v. *Commission of Inquiry*, AIR 1980 Mad 89 (Mad).
3. *K.K. Bhaskaran* v. *State of Kerala*, 1983 Ker LT 894; *Cherokee Natiar* v. *Georgia*, 5 Pet (US) 1 : 8 L Ed 25; *Roy* v. *Rudra*, 75 CWN 691, 697 (Anil Kumar Sen, J.); *River Wear Com* v. *Adamson*, (1877)2 App Cas 743, 763; *see* also *M/s. Jeewan Lal Ltd.* v. *Workmen*, (1962)1 SCR 717, 721 : (continuous service).
4. *Thrikkaruva Kuttyazhikom Devaswam* v. *Aliyummer Asan*, 1976 Ker LT 111; *see* also *Budhulal Kasturchand* v. *Chhotelal Kasturchand*, 1976 Jab LJ 797: 1976 MPLJ 734 (FB).
5. *State of Bombay* v. *Nagindas Maneklal*, AIR 1956 Bom 89.
6. *James* v. *Dubois*, 15 NLJ 285.
7. *Emperor* v. *Bhimaba Sita Ram*, AIR 1934 Bom 176.
8. *Trikamji* v. *Bhikhalal*, ILR 1961 Bom 667 : 63 Bom LR 732 : 1961 NLJ 131.
9. *Guruswamy* v. *State of Mysore*, AIR 1954 SC 592.
10. *Municipal Board, Kanpur* v. *Janki Prasad*, AIR 1963 All 433, 435 (FB) (Jagdish Sahai, J.).
11. *Panu Nayak* v. *Chintai Mallik*, AIR 1948 Pat 435, 438 (*per* Ray, J.). *Arolkar Ganshyam Govind* v. *Chandrakant Tukaram Kargaonkar*, AIR 1991 Bom 216 : (1991)1 Bom CR 460 (DB).

Ordinarily, when the same word occurs in two different parts of the same section the same meaning should be assigned to it, but if there is anything in the context to indicate a different meaning or the principle underlying the section makes it more logical to assign a different, but legitimate, meaning, it is permissible to construe the same word occurring in two parts of the same section differently.[1] A word or phrase does not necessarily have the same meaning in all statutory provisions; indeed, it may even be used in different sense in one and the same statute.[2] In *Anglo-French Drug Co. (Eastern) Private Ltd. Tinaikar*,[3] it was held that the word 'act' in Section 80 of Trade Marks Act, includes pleading, while in *Samdukhan* v. *Madan Lal*,[4] the word 'act' did not authorise the agent to plead. Where an extended meaning is given to an expression, Court shall not necessarily substitute the extended meaning for the expression wherever it occurs in the Act.[5] If the same words occur in different parts of a statute, the same meaning should be given to them unless there is sufficient reason to construe them differently.[6]

When words in different sections of the same statute, enacted for similar purpose, are susceptible of a possibly different construction, one which is approved by considerations derived from the *policy* of the law has to be adopted.[7] In *Gibson & Howes, Ltd.* v. *Lennon*,[8]

1. *In the matter of* Income-tax of Madan Gopal, AIR 1935 All 444 : ILR 57 All 745; *Hyderabad (Sind) Electric Supply Co., Ltd.* v. *Union of India*, AIR 1959 Punj 199, 203, presumption of the main rule is very slight as the same words or expressions may be used in the same Act or even in the same section in two different senses. Words take their colour from their context; *Shamrao Vishnu Parulekar* v. *District Magistrate, Thane*, AIR 1957 SC 23; *Abdul Aziz* v. *State of U.P.*, AIR 1958 All 109, 113; *Apabhai Hemabhai Patel* v. *State of Gujarat*, AIR 1962 Guj 218 : (1962)3 Guj LR 14; *Naralingayya* v. *Revenue Divisional Officer*, AIR 1964 Andh Pra 433, 437 (Narasimham, J.). *Special Secretary* v. *State Bank of India*, AIR 1989 Cal 40.
2. *Dau Dayal* v. *State*, AIR 1959 All 45, 47; *Ramjeet* v. *State*, AIR 1958 All 439; *see* also *Shamrao Vishnu Parulekar* v. *District Magistrate, Thane*, AIR 1957 SC 23 in which their Lordships of the Supreme Court affirmed the views of Craies and Maxwell that although it is reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act, the presumption is not of much weight and that if sufficient reason can be assigned the same word or phrase may be used in different senses in the same statute, even in the same section.
3. AIR 1959 Bom 21.
4. AIR 1959 Raj 35.
5. *Madhya Pradesh Electricity Board* v. *State of Madhya Pradesh*, AIR 1972 MP 188, 191 (Naik, J.).
6. *Ghanshyam Mahopatra* v. *Surjamani Swami*, ILR 1963 Cal 723; *Raghubans Narain Singh* v. *U.P. Government*, AIR 1967 SC 465.
7. *Abdul Latif* v. *Jawahar State*, ILR 1940 Bom 225 : AIR 1940 Bom 172, 177. The presumption that identical words used in different parts of the same statute are intended to have the same meaning yields readily to the controlling force of the circumstances that the words are found in such dissimilar connection as to warrant the conclusion that they were employed in the different parts of the Act with different intent; *Helvering* v. *Stockholmes, etc. Bank*, 293 US 84 : 79 L Ed 211; *see* also *Atlantic Cleaners and Dyers* v. *U.S.*, 286 US 427, 433 : 76 L Ed 1204, 1207 : "The presumption is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the Act with different intent. Where the subject-matter to which the words refer is not the same in the several places where they are used or the conditions are different, or the scope of legislative power exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law to be arrived at by a consideration of the language in which these purposes are expressed and of the circumstances under which the language was employed. It is not unusual for the same word to be used with different meanings in the same Act and there is no rule of statutory construction which precludes the Courts from giving to the word the meaning which the Legislature intended it should have in each instance. Thus, for example, the meaning of the word 'Legislature' used several times in the Federal Constitution differs according to the connection in which it is employed, depending upon the character of the function which that body in each instance is called upon to exercise."
8. 24 CLR 140, 148.

Barton, J., said : "I am of opinion that there is no general intention disclosed in this Act which entitles the Court to attach two different meanings to the word 'cane-grower' in Sections 3 and 20. The general intention seems to me to indicate the identity of the meaning attachable to that word in the two sections. If I saw or suspected any general intention which pointed to a variation of meaning I should still like for a clear context outside the interpretation clause and governing it, and not finding one, I should feel bound to let the interpretation prevail. That course is indicated by the principles of construction as well as by the third section itself. In *R.* v. *Poor Law Commissioners*,[1] Lord Denman, C.J., said : 'We disclaim altogether the assumption of any right to assign different meanings to the same words in an Act of Parliament on the ground of a supposed general intention in the Act. We find it necessary to give a fair and reasonable construction to the language used by the Legislature; but we are not to assume the unwarrantable liberty of varying that construction for the purpose of making the Act consistent with any views of our own. We must look at the actual state of things, and not be governed merely by words; we are to see, not whether this has been called a union, but whether it is one within the meaning of the Act'."

(iii) Meaning in changed circumstances.—Whatever might have been the content of the word 'gift' in Section 129 of the Transfer of Property Act, 1882, when it was originally enacted, its meaning has to be gathered today in the constitutional perspective of Articles 14, 15, 25 and 44 of the Constitution. As years go on, meanings of words change and the changing circumstances illuminate the new import of that meaning. In gathering the new meaning courts will remember that a Judge is not a variety of impersonal calculating machine who merely supplies the letter of the law. When interpreting the provisions of law, susceptible of different meanings, a Judge has to pay due regard, though to a limited extent, to the policies which he believes to represent the sober second thought of the community that framed it, and one suited to its inarticulate needs.[2]

But this is not an inflexible rule. Where by subsequent amendment 22 years later, the definition of wages was amended in the Payment of Wages Act, 1936, it was held that for the purposes of applicability of the Act as governed by Section 1(6), the term 'wages' occurring in Section 1(6) has to be given the meaning it had in 1936, observing that even if one were to assume that it is permissible to incorporate by reference the definition of the expression 'wages' contained in Section 2*(vi)* in interpreting Section 1(6), it will have to be done in the light of circumstances that from 1936 to 1958 the expression 'wages' as defined in Section 2*(vi)* was not of wide amplitude, which it became after the amendment of 1958.[3]

(iv) Context and object of Act determining factors.—The obligation of interpreting the word in the same sense everywhere in the statute does not exist when the word has not been defined by the Legislature. Ordinarily the same meaning should be given to the word in the different sections of an enactment. The presumption that the same meaning is implied by the use of the same expression is not of much weight. If the context justifies it, the same word may be interpreted differently in the same statute and even in the same section. But there must be good reason for doing so.[4] It is not an inflexible rule that one word cannot be interpreted in two or more senses if it has been used in different senses and this is apparent from the context or the subject

1. 6 A & E 56 at p. 68.
2. *Rawther* v. *Charayil*, AIR 1972 Ker 27, 33 (V.R.K. Iyer, J.).
3. *Baboo Husain* v. *N.P. Nopany*, (1978)19 Guj LR 360.
4. *Pappathi Ammal* v. *Sivagnanam*, AIR 1954 Trav-Co 526.

in which the word appears.[1] Terms which have not been defined and are flexible must be construed according to the object and intent of the particular legislation where it may be found.[2] Its meaning must then be determined in the different sections in its relation to the subject with reference to which it is used.[3] Words in a statute must not be read in isolation but structurally and in their context, for their significance may vary with their contextual setting.[4] The context and the object intended to be achieved by the Legislature may indicate that the word was not intended to be used in the same sense throughout the statute. When the Legislature having defined the word in a previous statute, omits the definition from a subsequent statute, this inference becomes more probable.[5]

Where in a particular case it is necessary to use the same terms in a sense different from the one which it bears in the rest of the Act, a special definition is added, as for example, in Section 203, I.P.C.,[6] and in Article 132 of the Constitution.

(v) Words in different Statutes.—It is no sound principle of construction to interpret the expressions used in one Act with reference to their use in another Act.[7] The meaning of words and expressions used in an Act take their colour from the context in which they appear.[8] To take a word bearing a peculiar meaning in a particular Act and to clothe that word with the same meaning when found in a different context in a different Act is a fallacious process of interpretation.[9] If there are different enactments dealing with similar topics and containing same phrases, interpretation given to one of them cannot be relied on for interpreting the other.[10] It is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in *pari materia*.[11] The meaning of an expression need not be restricted because the same expression has been used in restricted sense in other enactments.[12] The meaning of the words of an Act of Parliament is to be ascertained from the subject to which

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1. *Dayachand* v. *Sanwalchand*, AIR 1956 Raj 6 : the term 'prescribed period' in Section 9 of the Rajasthan Limitation Act (Adaptation) Ordinance, 1950, held to have been used in two different senses because it is qualified by other words which follow it.
2. *Paster J.S. Singh* v. *Jyotsana Singh*, AIR 1982 MP 122 (FB).
3. *Hodge* v. *King*, 5 CLR 373, 384; *Chenniappa* v. *CIT*, AIR 1965 M 62, 66 (SB) (Ramchandra Iyer, C.J.).
4. *Honnalige Gowda* v. *State of Mysore*, AIR 1964 Mys 84; *Superintendent and Remembrancer of Legal Affiars to Govt. of West Bengal* v. *Abani Maity*, AIR 1979 SC 1029 (1032-33) : (1979)4 SCC 85 : (1979)2 SCJ 176 : 1979 SCC (Cr) 902 : 1979 UJ (SC) 923 : (1979)3 SCR 472.
5. *Inayat* v. *Rex*, AIR 1950 All 369, 370, (*per* Seth, J.).
6. *Noor Banno* v. *Custodian, Evacuee Property*, AIR 1956 Hyd 56. The words 'commencement of the Administration of Evacuee Property (Amendment) Act, 1954' in Section 7-A and the second proviso to Section 16 of the Act have the same meaning.
7. *State of Gujarat* v. *Maharaj Sajjan Singhji*, (1980)21 Guj LR 818 (DB); *State of Kerala* v. *Amalgamated Malabar Estates (P) Ltd.*, 1979 Ker LT 829, (FB); *State of Kerala* v. *Malayalam Plantations*, 1980 Ker LT 976 (FB); *Board of Muslim Waqfs, Rajasthan* v. *Radha Kishan*, AIR 1979 SC 289 (295); *Ashok Maniklal Harkut* v. *Collector of Amaravati*, AIR 1988 Bom 207 : 1988 Mah LJ 378 : (1988)2 Bom CR 399 : 1988 Mah LR 952 : (1987)89 Bom LR 637 (DB). *Nirmala Industries, Uthagamandalam, Nilgiris Dist.* v. *Srinivasaperumal Finance Corpn. Tatabad, Coimbatore*, (1987)2 MLJ 3 (Mad) (DB).
8. *District Board, Farrukhabad* v. *Prag Dutt*, AIR 1948 All 382, 390 (FB), (*per* Bindbasni Prasad, J.).
9. *Duraivelu* v. *Corporation of Madras*, AIR 1935 Mad 600, (*per* Cornish, J.).
10. *Mukut Singh* v. *Bhavan Singh*, 1963 MPLJ Notes 237. But meaning attributed in one Act is far from irrelevant to the interpretation of another; *United States* v. *Embassy Restaurant*, 3 L Ed 2d 601, 607 : 359 US 29.
11. *Hari* v. *Dy. Commissioner of police*, AIR 1956 SC 559, 568; *In re* Calcutta City Bank, Ltd., AIR 1957 Cal 508; *Mana Kutty* v. *Lonan*, (1960)1 Ker LR 709 : 1960 Ker LJ 681; *Municipality Jammu* v. *M/s. Glacier Cold Storage*, 1980 Chand LR (J & K) 39 (DB), object of context of two statutes different.
12. *Collector of Meerut* v. *Chaudhary Risal Singh*, AIR 1934 All 681.

it refers, so that the same words receive a very different construction in different statutes.[1] "It is, I apprehend," said Blackburn, J., in *Rein* v. *Lane*,[2] "in accordance with the general rule of construction in every case, that you are not only to look at the words, but you are to look at the context, the collection and the object of such words relating to such matter, and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the user of the words under such circumstances. The same words might mean a very different thing, when put in to impose a tax from what they would mean when exempting from a tax." Every Act must be construed upon its own provisions, and a ruling given on one Act does not necessarily cover an Act which in some respects may have identical provisions.[3] Moreover, it is wrong to construe an expression used in an Act by reference to the construction placed on the same expression in the Constitution and used in a different context.[4] Thus, in construing a section dealing with bar on Civil Courts under one Act, the court should not be guided by the provisions of a bar imposed by a section on a different Act.[5]

(vi) Words in statutes in pari materia.—Words defined in a statute may have the same meaning in another statute which is in *pari materia* therewith.[6] What do we mean by the statutes *in pari materia?* Where Acts are so related as to form a system or code of legislation and when they relate to same persons or things or to the same class of persons or things or have the same purpose or object, the statutes are called *in pari materia.* The word 'par' must not be confounded with the word *similis.* It is used in opposition to it as in the maxim *magis paris sunt quam similis eg* intimating not likeness merely but identity. It would, however, be a mistake to expect identity in the language of the Acts. They may be independent and amendatory in form, they may be complete enactments dealing with a single limited subject-matter or sections of a code or provision or they may be combination of these. It must be remembered that in order to be *in pari materia,* the Acts need not have been enacted simultaneously or that they should refer to one another. However, application of the rule that statutes *in pari materia* should be construed together is most justified in the case of provisions of the Acts relating to the same subject-matter, that were passed at the same or successive sessions of the Legislature in the same year. In such cases, the probability that Acts relating to the same subject-matter were actuated by the same policy is very high for the Acts were enacted by the same men at almost the same time. This, of course, is subject to one overriding consideration that, unless the two enactments clearly indicate two different considerations. If the language of the two statutes in all respects is identical, no question of construing one Act with the assistance of the other Act can arise. It is only where one Act is ambiguous or some provision appears to be of doubtful meaning that the assistance is sought from another statute *in pari materia* to remove the doubt or ambiguity. It is only in such circumstances that assistance in ascertaining the meaning of an

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1. *In re* East India Interests, 3 Bing at 196 (*per* Best, C.J.).
2. (1857)2 QB 114, 151. The rule as to giving the same meaning to the same words occurring in different parts of an Act, is by no means inflexible and if special reasons exist, may be departed from, but the interpreter is bound in general to disclaim the right to assign different meanings to the same words on the ground of a supposed general intention of the Legislature; *Kanniappa Mudaliar* v. *Secretary of State,* AIR 1936 Mad 42, 46, following *Courtauld* v. *Legh,* (1896)4 Ex 126, 130.
3. *Bir Pratap Singh* v. *State of U.P.,* 1960 All LJ 52 : 1960 All WR (HC) 77.
4. *Indulal K. Yagnik* v. *State of Gujarat,* AIR 1963 Guj 259.
5. *Viswa Mohan Moti* v. *Indravadan,* (1963)4 Guj LR 389.
6. *State of Madras* v. *Vaidyanatha Iyer,* AIR 1958 SC 61, 65; *see* also *Adilabad City Municipality* v. *Mahado Seetha Ram,* AIR 1957 Andh Pra 363, where the question when statutes are in *pari materia* was elaborately considered. *See* again *Shaw & Co., Bombay* v. *State of Maharashtra,* AIR 1967 SC 1877; *Jagdish Bharti* v. *Union of India,* 1969 Lab IC 205 (All); *Rani Bhargawa* v. *State of U.P.,* 1968 All LJ 1011; *Sonia Bhatia* v. *State of U.P.,* 1981 All LJ 467 (SC).

enactment is permitted under this rule to be obtained by comparing its language with the words given in an earlier statute relating to the same subject.[1] English Income Tax Act is not in *pari materia* with Indian Act.[2] But where different statutes deal with identical subjects at different times or deal with a person or thing for same purpose, they are *in pari materia* and they should be taken and considered together as one system and as explanatory of each other.[3] Where words and expressions in a statute are taken from earlier statutes *in pari materia* which have received judicial construction, it must be assumed that the Legislature was aware of such interpretation, and intended it to be followed in later enactment.[4] A Judge, however, is not justified in construing one statutory provision by a decision dealing with interpretation of another statutory provision in the wordings of which are substantially different.[5] It was held in *Desh Raj Gupta* v. *Industrial Tribunal IV, U.P., Lucknow*,[6] that a relevant decision under the central Act must be applicable to a case under the U.P. Act, provided the provisions of the two Acts are in *pari materia*.

The expression 'review' used in Section 26(2), Administration of Evacuee Property Act, must be construed not in a grammatical sense but it must be construed to have the same legal meaning as in Order XLVII, Rule 1, C.P.C. In that view the Custodian has no jurisdiction to review the order of his predecessor, in the absence of any fresh material, or of any mistake or error apparent on the face of the record.[7] It will also be observed that the Limitation Act and the Code of Civil Procedure are statutes in *pari materia* and should be read together, and taken and construed together as one system and explanatory of each other.[8]

(vii) Words previously judicially interpreted.—In the absence of any context indicating a contrary intention, it may be presumed that the Legislature intended to attach the same meaning to the same words when used in a subsequent statute in a similar connection.[9] Similar words and expressions occurring in two statutes *in pari materia* which are to be 'taken and construed together as one system as explanatory of each others', should be given the same meaning unless there is something repugnant in the subject or context.[10] When the same phrase or

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1. See *Adilabad City Municipality* v. *Mahado Seetha Ram*, AIR 1967 Andh Pra 363, 368-369 (Ekbote, J.); *Indore Iron and Steel, etc., Ltd.* v. *State of Madhya Bharat*, AIR 1957 MB 83, 87 (Nevaskar, J.); *United States* v. *Freeman*, 11 L Ed 724, 727-8 (Wayne, J.); *Kohisaat* v. *Murphay*, 24 L Ed 844, 846 (Clifford, J.); *Vane* v. *Newcomb*, 39 L Ed 310, 315 (Blatchford, J.); *Tigeir* v. *Western Investment Co.*, 55 L Ed 738 (Day, J.); *Rajaram Anna Yede* v. *Shashikala Bhagwan Yede*, 1976 Mah LJ 47 (DB), case of construction of prior statute with the aid of later statute in *pari materia*.
2. *Commissioner of Income-tax* v. *Shamlal*, AIR 1963 Punj 411, 415 (Tek Chand, J.).
3. *Indore 1, and S. Association, etc.* v. *State*, AIR 1957 MB 83, 87. Agra Pre-emption Act and Punjab Pre-emption Act are in *pari materia*; *Teekam Ram* v. *Mangtu*, AIR 1970 Delhi 224, 230 (Hardy, J.).
4. *Thakur Prasad* v. *Baleshwar Ahir*, AIR 1954 Pat 106, 107, the word 'suit' in Section 21, Arbitration Act, 1940, included 'appeal'.
5. *Charandass* v. *Asst. Collector, Customs*, AIR 1968 Cal 28, 31 (Sinha, C.J.).
6. AIR 1990 SC 2174.
7. *Bibi Nazma* v. *R.P. Sinha*, AIR 1954 Pat 43.
8. *Vidyacharan* v. *Khubchand*, AIR 1964 SC 1099.
9. *Lennon* v. *Gibson and Howes Ltd.*, AIR 1919 PC 142. A Court is not legally authorised to place a more arbitrary or restricted interpretation on a word than is in common use in English language. There may be in England a judicially restricted interpretation accepted in English Common Law which differs from the common and current meaning; but in India we are not bound by common law and are obliged to give current meaning to any word used in a statute; *Emperor* v. *Gurbaksh Singh*, AIR 1934 Lah 840; *Sukar Gope* v. *State of Bihar*, ILR 31 Pat 145.
10. *Ramchandra Deo* v. *Bhalu Patnaik*, AIR 1959 Orissa 125, 127 (FB); *Vishnu Tatya Naik* v. *Emperor*, ILR 1941 Bom 191 : AIR 1941 Bom 85, 89 (statutes having similar objects); *Omar Tyab* v. *Ismail Tyab*, AIR 1928 Bom 69, 71 (cognate statutes). *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd.* v. *Custodian of Vester Forests, Palghat*, AIR 1990 SC 1747 : 1990 JT 130.

expression is used in several codified laws of a particular territory, all emanating from the same source, that phrase or expression must have the same significance wherever used, unless such an intent meaning would be repugnant to the context.[1] But it may be noted that before calling in aid the construction of the words and phrases used in one Act, meaning given to them in an earlier Act *in pari materia*, both Acts must be substantially identical.[2]

When certain words used in a statute have received judicial interpretation and are repeated in a subsequent statute, it is to be assumed that the Legislature has used them in the same sense in which they have been judicially interpreted. This rule of construction appears to be established beyond doubt. "It has long been a well-established principle to be applied in the consideration of Act of Parliament that when a word *of doubtful meaning* has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be so construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it." James, L.J., in the case of *Ex parte* Campbell, *In re* Cathcart,[3] expresses this rule in the following terms :

> *"Interpretation by superior court.*— Where once certain words in an Act of Parliament have received a judicial construction in one of the superior Courts, and the Legislature has repeated them without alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a court of competent jurisdiction has given to them. And this opinion was expressed in a case where the learned Lord Justice himself said that it was difficult to bring the interpretation within the words of the Act. The same opinion was expressed by Lord Halsbury in delivering the judgment of the Judicial Committee in *Webb* v. *Outrim*,[4] and I know of no authority 'that has, in any way, weakened the effect of this pronouncement.' It is in my opinion a statutory rule and one necessary to confer upon Acts of Parliament that certainty which, though it is often lacking, is always to be desired."[5]

Where a word has been construed judicially in a certain legal area, it is right to give it that same meaning if it occurs in a statute dealing with the same general subject-matter, unless the context makes it clear that the word must have a different construction.[6] There is a presumption in such cases that the Legislature used those words intending to express the meaning which it knew had put upon the same words before, and unless there is something to rebut that presumption, the words should be so construed, even if they were such as might originally have been construed otherwise. In other words, the presumption is that the Legislature did not intend to depart from the meaning given to the words by courts of law.[7] This is, however, not universally true. 'I do not believe,' observed Denning, L.J., in *Royal Porcelain*

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1. *G.I.P. Ry. Company* v. *Amraoti Municipality*, 16 IC 449 (Nag).
2. *Mohd. Saleem* v. *Umaji*, AIR 1955 Hyd 113 : ILR 1955 Hyd 169 (FB).
3. (1871)5 Ch 703, 706 quoted in *Kunwar Bahadur Singh* v. *Sheo Shankar*, AIR 1950 All 327, 330, (*per* Seth, J.); *Barras* v. *Aberdeen Steam Trawling and Fishing Co.*, 1933 AC 402, 411. *F.S. Gandhi* v. *Commissioner of Wealth Tax, Allahabad*, (1990)3 SCC 624.
4. 1907 AC 81, 89.
5. *Per* Viscount Buckmaster in *Barras* v. *Aberdeen Steam Trawling and Fishing Co.*, 1933 AC 402; *see* also *Greaves* v. *Tofield*, (1884)14 Ch D 563, 571; *Joy* v. *Johnstone*, (1893)1 QB 25 quoted in *Kunwar Bahadur Singh* v. *Sheo Shankar*, AIR 1950 All 327, 330.
6. *Beaman* v. *A.R.T.S. Ltd.*, (1949)1 All ER 465, 470 : (1949)1 KB 550, 567.
7. *Vajravelu Mudaliar* v. *Land Acquisition Spl. Dy. Collector*, AIR 1965 SC 1057; *Rukminibai Rathor* v. *Commissioner of Wealth Tax*, AIR 1964 Orissa 274 : ILR 1964 Cut 339; *see* also *Jagat Ram Hamir Chand* v. *Shanti Sarup*, AIR 1965 Punj 175 : ILR (1965)1 Punj 516.

Co. v. *Russell*,[1] "that whenever Parliament re-enacts a provision of a statute, it thereby gives statutory authority to every erroneous interpretation which has been put on it. The true view is that the Court will be slow to overrule a previous decision on the interpretation of a statute when it has long been acted on, and it will be more than usually slow to do so when Parliament has, since the decision, re-enacted the statute in the same terms, but if a decision is, in fact, shown to be erroneous, there is no rule of law which prevents it being overruled."

(viii) Different words in the same section are different parts of statute.— When the Legislature uses different language in the same connection, in different parts of the statute, it is presumed that a different meaning and effect was intended,[2] and if different language is used in contiguous provisions, it must be presumed to have done so designedly.[3] However, it is well-settled that much weight to this presumption cannot be given. For instance, when dealing with long complicated statute containing incongruous provisions Jumped together, it has been found that this rule does not operate.[4] When two distinct words are used in the same section, the ordinary rule of construction is that they do not mean identically the same thing.[5] When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense.[6] Different expressions used by the same statute, especially where they are used in the same section must be attributed to different senses.[7] It is perfectly true that when the Legislature uses two different expressions in a statute, the court must try, if possible, to attribute to each one of such expressions a different legal connotation and by ordinary canon of construction it would be necessary to try and determine what the difference is between the two. But there are occasions when the Legislature does use two different expressions without meaning to make any distinction between them.[8] Where the draftsman uses different words he presumably intended a different meaning. It is, however, *not an invariable rule* that from variation of language, variation of intention must necessarily be inferred. Sometimes without there being any change of intention, legislative draftsmen use different language 'to improve the graces of the style and to avoid using the same words over and over again'.[9] It is a well-established canon of construction that when dealing with the same subject or similar subject the Legislature uses different languages, one must attribute to the Legislature the intention of meaning different things when it uses different languages, and in a

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1. (1949)1 All ER 749, 755; *see* also *P.C. Bagla (Post-graduate) College* v. *Vice-Chancellor, Agra University*, 1980 All LJ 785 (FB) where the erroneous decision was overruled, notwithstanding legislative recognition.
2. *Shyamali Sarkar* v. *Ashim Kumar Sarkar*, AIR 1988 Cal 124 : (1988)1 Cal HN 129 : (1988)92 Cal WN 659 : 1988 Mat LR 178 : (1988)2 Hindu LR 534 (DB). *Catalanello* v. *Cudahy Packing Co.*, 27 NYS 2d 637; *Mohd. Afzal Beg* v. *State of J.& K.*, AIR 1960 J & K 1, 2 (Gopalakrishnan Nair, J.); *Rameshchandra Ramanbhai Patel* v. *Collector, Kheda*, (1979)20 Guj LR 191 (DB).
3. *Gurcharan Singh* v. *State of Haryana*, 1979 Rev LW 1 (FB).
4. *Rameshchandra Ramanbhai Patel* v. *Collector, Kheda* (1979)20 Guj LR 191 (DB).
5. *Emperor* v. *Puchai*, AIR 1929 All 33, 37 : ILR 50 All 909 (FB); *Kulkarni* v. *Ganpat Teli*, AIR 1942 Bom 191; *Achutan* v. *Narayan Amma*, 1980 Ker LT 160 (DB).
6. *Member, Board of Revenue* v. *Arthur Paul Benthal*, (1955)2 SCR 842, 846; *Yugal Kishore* v. *B.N. Rah'ogi*, AIR 1958 Pat 154, 158.
7. *Ram Pratap Jaidayal* v. *Dominion of India*, AIR 1953 Bom 170; 34 Bom LR 927; *L.I.C. by the Chairman, Bombay* v. *Kalanathi B. Jawa*, (1985)1 MLJ 7 (Mad) (DB).
8. *Biharilal* v. *Emperor*, AIR 1949 Bom 405. Thus the expression 'screening any person from legal punishment' in Section 213, IPC, has the same meaning as the expression 'saving any person from legal punishment' in Section 277 and Section 218, IPC; *Ashoka Marketing, Ltd.* v. *Union of India*, AIR 1967 Cal 159, 167 (BN Banerjee, J.).
9. *Gerson Knitting Works* v. *Laxmi Commercial Bank*, AIR 1960 Punj 98, 107, quoting Lord Blackburn in *Hadley* v. *Perks*, (1866)1 QB 444, 457.

legislation of such great importance where the liberty of the subject and liberty of the press is involved, one must not lightly credit the Legislature with using different expressions without having carefully applied its mind to the necessity of using different languages.[1] It has to be seen in the context of every article as to what is the meaning of the word used in regard to it. In the schedule to the unamended Employees' Provident Fund Act, two words 'manufacture' and 'production' have been used and a meaning should be given to each of them.[2]

The words 'with respect to the Legislature' and 'in relation to the Legislature' in Article 208(2) of the Constitution have wider significance than the words 'in the Legislature' and that Article 208(2) includes within its scope not only the rules dealing with procedure and conduct of business during that actual session of the Legislature but all other incidental or an ancillary matter.[3]

But there are occasions when the Legislature does use two different expressions without meaning to make any distinction between them. It is equally so in cases of constitutional provisions. Thus the expressions 'existing law' and 'law in force' used in the Constitution have been treated and interpreted as interchangeable and synonymous though they are respectively of a wider and narrower connotation.[4]

(ix) Section of an Act introduced into another Act.—"It is wellknown that where a single section of an Act is introduced into another statute, it must be read in the sense which it bore in the original Act from which it is taken and consequently it is legitimate to refer to all the rest of that Act to ascertain what the section means, although one section is only incorporated in the Act". Where Section 13(1)*(b)* of the West Bengal Premises Tenancy Act, 1956 referred to Clause *(p)* of Section 108 of the Transfer of Property Act, it was held that there was no incorporation in the full sense.[5]

It is worthwhile to quote from *State of Kerala* v. *(M/s.) Attesee (Agra Industrial Trading Corpn.)* [6]. This court summed up the position thus : "On a consideration of these authorities therefore, it seems that the following position emerges :

Where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an internal and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases :

(a) Where the subsequent Act and the previous Act are supplement to each other,

(b) where the two Acts are *in pari materia*,

(c) where the amendment in the previous Act if not imported into the subsequent Act wholly unworkable and ineffectual, and

(d) where the amendment of the previous Act either expressly or by necessary intendment applies the said provisions to the subsequent Act."

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1. *Ramesh* v. *Province of Bombay*, AIR 1949 Bom 213, 215 (*per* Chagla, C.J.).
2. *Kanpur Textile Finishing Mills* v. *R.P.F. Commissioner*, AIR 1955 Punj 130.
3. *Godavari Misra* v. *Nand Kishore*, AIR 1953 Orissa 111.
4. *State of Bombay* v. *Heman Santlal*, AIR 1952 Bom 16 : 53 Bom LR 837; *see* also *Kesavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461 (Chandrachud, J.).
5. *Bhabpuban Biswas* v. *Bijoy Singh Nahar*, (1979)2 Cal HN 378 (FB).
6. AIR 1989 SC 222 : (1988)4 JT (SC) 250 : (1989)19 ECC 60 : (1989)38 ELT 720 : (1989)72 STC 1 : 1988 STJ (SC) 129 : (1989)28 STL 1 : 1989 UPTC 241. *See* also *State of Madhya Pradesh* v. *Narasimhan*, (1976)1 SCR 6 : AIR 1975 SC 1835; *Secretary of State* v. *Hindustan Cooperative Insurance Society Ltd.*, (1931)58 Ind. App. 259 : AIR 1931 PC 149.

3. Technical meaning.— The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning.[1] As has been said the use of technical terms and technical language is necessary for the purpose of obviating the difficulty that arises by the use of popular expressions in regard to legal subjects. When the Legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning unless the contrary manifestly appears.[2] In construing Acts of Parliament it is a general rule.... that words must be taken in their legal sense, the contrary intention appears.[3] Where words have been long used in a technical sense, and have been judicially construed to have a certain meaning, and have been adopted by the Legislature as having a certain meaning prior to a particular statute, in which they are used, the rule of construction of statute requires that the words used in such statute should be construed according to the sense in which they have been so previously used, although that sense may vary from the strict literal meaning of the words.[4]

Where words have been used which have acquired a legal meaning, it will be taken, *prima facie*, that the Legislature has intended to use them with that meaning unless a contrary intention clearly appears from the context.[5] In construing an Act of Parliament, 'every word', said Lord Truro, "must be understood according to the legal meaning, unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense."[6] To use the words of Denman, J., in *R.* v. *Slator*,[7] ".....it always requires the strong compulsion of other words in an Act to induce the Court to alter the ordinary meaning of a well-known legal term."

In the case of *Attorney-General for Quebec* v. *Queen Insurance Co.*,[8] in which the question for consideration was the meaning of the term 'direct taxation' under the British North America Act, Sir George Jessel, M.R., delivering the opinion of the Judicial Committee, said : "Now, here again we find words used which have either a technical meaning or a general, or, as it is sometimes called, a popular meaning. One or other meaning the words must have; and in trying to find out their meaning we must have recourse to the usual sources of information, whether regarded as technical words, *words of art*, or words used in popular language." The learned Master of the Rolls then proceeded to apply this test, and considered the words first as words of art and then as words used in popular language. It is a safe rule of construction to presume that

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1. *Achhru Mal* v. *Balwant Singh*, AIR 1937 Lah 178 : ILR 18 Lah 415; "We do not intend to exclude the possiblity of referring to another enactment to find out the meaning of a technical term or a term of art if both enactments have used that term in the same sense but where that is not the case, we do not think that such a reference would be proper", *per* Din Mohammad, at p. 179 of AIR 1937 Lah; *Jivanji Mamooji* v. *Ghulam Hussain*, 47 IC 771 (Sind); *Jhari Singh* v. *Emperor*, 21 Cr LJ 443 (Pat) : AIR 1920 Pat 349.
2. *Makhan Lal* v. *Nagendra Nath*, ILR 60 Cal 379 : AIR 1933 Cal 467, 468, *per* Guha, J., following *Laird* v. *Briggs*, (1881)19 Ch D 22; *A.G.* v. *Mitchell*, (1881)6 QBD 548. A difficulty arises when a term has both a recognised common and technical meaning. In such an event, in the absence of a contrary legislative intent, the term is presumed to be used with its common meaning; Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4919.
3. *Chesterman* v. *Federal Commissioners of Taxation*, 1926 AC 128, 131, *per* Lord Wrenbury following *Pemsel's* case, 1891 AC 531, 536; *Adamson* v. *Melbourne Board of Works*, AIR 1929 PC 181, 182; *Holt* v. *Collyer*, (1881)50 LJ Ch 311.
4. *Her Highness Ruckmaboye* v. *Lulloobhoy Motichand*, 5 MIA 234.
5. *Attorney-General for New South Wales* v. *Brewery Employees' Union of New South Wales*, 6 CLR 469, 531; *Jagat Ram Hamir Chand* v. *Shanti Sarup*, AIR 1965 Punj 175 : ILR (1965)1 Punj 516.
6. *Stephenson* v. *Higginson* 3 HLC 638, 686, *per* Lord Truro followed in *Davies and Jonnes* v. *State of Western Australia*, 2 CLR 29, 51.
7. 8 QBD 267, 272.
8. 3 App Cas 1090, 1100, followed in *Attorney-General for New South Wales* v. *Brewery Employees' Union of New South Wales*, 6 CLR 459, 509.

the same technical expression occurring in different parts of the same statute must have been used by the Legislature in the same sense, unless it is otherwise indicated by the particular context.[1]

If the Legislature uses an artificial expression or a term of art, then that expression or that term must be construed according to the language used by the Legislature. 'Retrenchment' as defined in Section 2*(oo)* of the Industrial Disputes Act, 1947, means the termination by the employer of the service of a workman for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action, and then three cases are set out which are not included in the definition of 'retrenchment', *viz.*, voluntary retirement, retirement on reaching the age of superannuation and termination of the service of a workman on the ground of continued ill-health. If the Legislature advisedly provides that the termination of the service of an employee for any reason whatsoever shall be deemed to be retrenchment within the meaning of the Act, there is no reason why the Court should select certain reasons as coming within the meaning of the definition and certain other reasons as not coming within the meaning of the definition. Whether the reason is that the employer is dismissing his servant on the ground of economy or that he is dismissing him because he does not like the colour of his politics or that he wishes to close down his business, it would amount to retrenchment within the meaning of Section 2*(oo)*.[2]

When dealing with particular businesses or transactions, words are presumed to be used with the particular meaning in which they are used and understood in the particular business.[3]

In *K.V. Varkey* v. *Sales Tax Officer*,[4] it was held that the particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used, and not in their scientific or technical sense, 'for the Legislature does not suppose our merchants to be naturalists or geologists or botanists'.

In a technical matter (such as construction of Limitation Act), when the language relied upon does not in express terms cover the case, it is of the highest importance to realize the position of the parties and the context in which the language is used. Where the interpretation sought to be put upon the words is arrived at by implication and by reference, the Court ought not to adopt a construction which has a restricting and penalizing operation unless it is driven to do so by the irresistible force of language.[5]

It is a general rule of construction that technical terms used in a statute should receive their technical meaning unless it is clear from the context, or the subject-matter, that the Legislature has used them in a popular and more enlarged sense.[6] Where the Legislature has used a phrase

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1. *V.M. Patel* v. *Inspector of Factories*, AIR 1958 Ker 237, 240; see *Butcher* v. *Poole Corporation*, (1942)2 All ER 572, 579. ('It is of course impossible to construe particular words in an Act of Parliament without reference to their context and to the whole tenor of the Act').
2. *K.N. Joglekar* v. *Barsi Light Rly. Co.*, AIR 1955 Bom 294, 297.
3. *M/s. Kanpur Textile Finishing Mills* v. *R.P.F. Commissioner*, AIR 1955 Punj 130, 132; *Kwality Ice Cream Co.* v. *Sales Tax Officer, New Delhi*, (1975)11 Delhi LT 180 (DB).
4. 1956 TC 105, holding that argicultural and horticultural produce grown by the owner in the circumstances specified are exempt from tax under Section 2*(j)(m)* and 3, Travancore General Sales Tax Act, but tea, though an agricultural produce, shall not have the benefit of that exemption. Reliance was placed upon the case reported in 1951 CLR Ex 122 where it was held that salted peanuts and cashew-nuts did not fall within the category of 'fruit' and 'vegetable' for the purpose of the Excise Act, Ch 179, RSC 1927, though the botanists had given evidence that both were vegetables in the wider meaning of the words.
5. *Abdul Karim* v. *Islamunnissa Bibi*, ILR 38 All 339, 343 : 54 IC 231 at p. 232; *Maung Tha* v. *Ma Pyu*, 46 IC 323.
6. *Laird* v. *Briggs*, 19 Ch D 22, 34; *Davies and Jones* v. *State of Western Australia*, 2 CLR 29, 42, 43.

or a group of words which have a well-recognised technical legal meaning, it will be taken *prima facie* that they were intended to have that meaning and the Act will be so construed.[1] Collins, M.R., said in *Attorney-General* v. *Glossop*[2] : "The Acts have been framed by draftsmen acquainted with conveyancing terms, and they must in the nature of things be addressed to a large extent to a section of the public familiar with those terms, and I do not think that it would be right or possible, in dealing with the provisions of the Finance Acts, to ignore altogether the technicalities of conveyancing, and to disengage one's mind entirely from all acquaintance with the technical terms which conveyancers use, and in which likewise to some extent the draftsmen of Acts of Parliament couch the provisions which they frame."

And in *Lord Advocate* v. *Stewart*,[3] Lord Robertson expressed himself thus : "The principle that in statutes words are to be taken in their legal sense, has a special cogency when the words in question represent only legal conceptions. The popular use of such words does not represent the primary meaning of the words, but some half understanding of them."

The presumption would always be in favour of technical meaning unless the contrary manifestly appears,[4] or it is clear from the context, or the subject-matter that the Legislature has used them in a popular and more enlarged sense.[5]

Again in cases where the words used have acquired a technical meaning which is wellknown, or where they have acquired a legal meaning by decisions of the Courts, it may be presumed that the Legislature used the word in the legal or the technical sense, as the case may be, rather than in the ordinary sense. But before the exception to the general rule can arise, there must be some strong ground for attaching to the words used a meaning different from the ordinary meaning.[6]

In *Attorney-General for N.S.W.* v. *Brewery Employees' Union of N.S.W.*,[7] Higgins, J., said : "The burden lies on the plaintiffs of showing that the meaning has become narrowed and limited. If the words can be treated as technical at all, they make up a trade term, a commercial term. They are not technical legal terms (at all events where—as in the Constitution—the words are not made one word or hyphenated). Trade marks—both the phrase and the things—were used by men of business long before the Courts took up the subject in the last century. To my mind the unfounded assumption that these words in themselves constitute a technical legal term (apart from their use for particular purposes, such as the purposes of particular statutes), is at the root of much of the difference of opinion in this case. Owing to the form in which this case comes before us, we have not any evidence of any non-legal technical meaning for the words; and the burden of proof lies on those who affirm that a word is technical.[8] As was said by Lindley, L.J., in *Chatenay* v. *Brazilian Submarine Telegraph Co.*,[9] the meaning of the words is a question of fact in all cases. But here we have no evidence on the question and we have to fall back on the ordinary grammatical primary meaning in the English

1. *Burton* v. *Reevell*, 16 M & W 307, 309; *Webb* v. *McCracken*, 3 CLR 1018; 1027; *Deputy Federal Commissioner of Land Tax* v. *Hindmarsh*, (1912)14 CLR 334, 340.
2. (1907)1 KB 163, 172; followed in (1912)14 CLR 334, 338; *see* also *The Queen* v. *Commissioner of Income-tax*, 22 QBD 296, 309; *Mohun Singh Roy* v. *Chukkun Lal Roy*, 24 IA 76; *Brett* v. *Barr Smith*, 26 CLR 87, 93.
3. (1902) AC 344, 356.
4. *Burton* v. *Reevell*, 16 M & W 307, 309.
5. *Laird* v. *Briggs*, 19 Ch D 22, 34; *Davies and Jones* v. *State of Western Australia*, 2 CLR 29, 42-43.
6. *Williams* v. *Dunn's Assignees*, 6 CLR 425, 447-48.
7. 6 CLR 469 at pp. 604, 605.
8. *Mansell* v. *Queen*, 8 E & B 54 at p. 109.
9. (1891)1 QB 79 at p. 85.

language; and that meaning is plain."[1]

Presumption.—In the construction of a statute, ordinarily speaking, the primary meaning of a word has to be considered unless there is something to show that that was not the meaning of the Legislature.[2] The elementary rule of construction is that it is to be assumed that the words and phrases of a technical legislation are used in their ordinary meaning.[3]

It is an established principle of construction of statutes that words used in an enactment should be taken in their ordinary sense specially when the sense is appropriate to the context.[4]

In construing statutes it should be borne in mind that completed generality is not necessarily to be attributed to the *general words*. These are to be construed so as to pursue the interest of the makers of the statute, and so as to import all those exceptions which arise from a close consideration of the mischiefs sought to be remedied and of the state of the law at the moment when the statute was passed.[5]

It is an established rule of interpretation that, unless something to the contrary appears, it will be taken that the Legislature expressing its will in a statute uses words in their ordinary meaning.[6] 'It is our duty to look for the meaning of the words as they would be understood by plain men who know nothing of technical rules of the Courts,[7] and not to be guided by dictionaries.

In *Attorney-General of Ontario* v. *Mercer*,[8] : Lord Selborne, L.C. for the Privy Council, said : "It is a sound maxim of law, that every word ought, *prima facie*, to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context."

"Court of Justice ought not to depart from the plain meaning of words used in Acts of Parliament; when they do so, they make, but do not construe, the laws."[9]

Where words in their ordinary sense are unambiguous, it is not for the Court to raise an ambiguity by considering that if used in that sense they may have some unusual effect.[10] But it is not permissible first to create an artificial ambiguity and then try to resolve the ambiguity by resort to some general principle.[11] In dealing with matters relating to the general public statues are presumed to use words in their popular sense *uti loquitur vulgus*.[12]

If a plain word carries a plain sense in the English language, however, strict the law may interpret it, it will not ignore the ordinary meaning which it carries.[13] 'Words used in an Act

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1. *Attorney-General for N.S.W.* v. *Brewery Employees' Union of N.S.W.*, 6 CLR 496 at pp. 604, 605.
2. *Shamobai (Mst.)* v. *Daya Ram*, AIR 1934 Lah 115 (1).
3. *Harendra Nath* v. *Dakhyamani Dasi*, AIR 1950 Cal 191, 192. quoting *Corporation of the City of Victoria* v. *Bishop of Vancouver Island*, AIR 1921 PC 240; *Union of India* v. *Gujarat Woollen Felt Mills*, AIR 1977 SC 1548.
4. *Mula* v. *Crown*, ILR 11 Lah 24, 27, *per* Bhide, J.; *Mumtaz Begum (Mst.)* v. *(Mst.) Lachmi*, AIR 1929 All 174; *Member-Secretary, A.P. State Board for Prevention and Control of Water Pollution* v. *A.P. Rayons Ltd.*, (1989)1 SCC 44.
5. *Viscountess Rhondda's Claim*, (1922)2 AC 339; *Jatinga Valley Tea Co.* v. *State of Assam*, AIR 1960 Assam 67, 69.
6. *Colon Peaks Mining Co.* v. *Wollondilly Shire Council*, 13 CLR 438, 455.
7. Cargo Ex Schiller, 2 PD 145, 161; *Attorney-General* v. *Winstanley*, 2 Dow & GI 302, 310; *see* also *Attorney-General for N.S.W.* v. *Brewery Employees' Union of N.S.W.*, 6 CLR 469, 606, 607.
8. 8 AC 767, 778, referred to in *Gibson and Howes, Ltd.* v. *Lannon*, 24 CLR 140, 149; *Millaquin Sugar Co., Ltd.* v. *Lutz*, 13 QJPR 53-54.
9. *York and North Midland Railway Co.* v. *Queen*, 1 E & B 858, 864 (*per* Jervis, C.J.).
10. *John Hein & Son, Ltd.* v. *Pickard*, 29 CLR 592, 595.
11. *Commissioner of Income-tax* v. *Indian Bank*, AIR 1965 SC 1473 : (1965)2 SCA 208 : (1965)1 SCJ 231.
12. *Baijnath Singh* v. *Oudh Tirhut Railway*, AIR 1960 All 362, 365.
13. *Madan Mohan* v. *Commissioner of Income-tax*, ILR 16 Lah 937 : AIR 1935 Lah 742, 746 (FB). (It is the duty of the Court when interpreting Acts of the Legislature to give to the words used their natural significance); *Sooniram* v. *S.A.R.M. Chettyar (Firm)*, ILR 12 Rang 64 : AIR 1933 Rang 363.

should be interpreted in their ordinary sense except when it is shown that they have been used in a special or technical sense'.[1] In *Corporation* v. *Bishop*,[2] Lord Atkinson observed : "In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. Lord Williams, J., in *Rahim Bux* v. *Central Bank*,[3] said : "In my opinion, therefore, when construing an Indian Act, words should be given their widest possible meaning, consistent with the context, unless there is something in the Act itself to indicate that they are intended to be used in the artificial and technical sense which they have acquired in English law, or in any other restricted sense." Words must be taken in the ordinary meaning 'as applied to the subject-matter with regard to which they are used', 'until you find something which obliges you to read them in a sense which is not their ordinary sense in the English language as so applied'."[4]

We must adopt the plain meaning unless we have 'a context even more plain, or at least as plain—it comes to the same thing—as the words to be controlled.'[5] If giving them their ordinary meaning would result in some contradiction of the context, it is only then that some other meaning of which the words are capable will be sought.[6]

When words have acquired settled meaning, the same must be accepted. Dictionary meaning cannot be given to such words. So :

(i) 'Post-graduate degree' does not include B.T., LL.B., etc.[7]

(ii) 'Working fund' in respect of a banking company has got its own settled meaning.[8]

(iii) Undefined words (like 'paper') must be understood in their popular and commercial sense.[9]

4. Surplusage.— A statute ought to be so construed that no part of it shall be 'superfluous, void or nugatory'.[10] It is true that an interpretation which renders any provision of the Act nugatory or redundant should be avoided, but if avoiding this necessitates giving the words a sense different from the ordinary and doing violence to the language of the enactment, great caution is necessary. This should only be done when it is absolutely unavoidable and necessary. If a course is open by which this can be avoided, that course should be avoided.[11] Effect must be given, if possible, to all the words used in the statutory provision, for the Legislature is deemed not to waste its words or to say anything in vain.[12] It is a well-known rule that in construing an

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1. *In re* Jagmandar Das, ILR 57 All 737 : AIR 1935 All 378; *Hari (Mst.)* v. *Roshan*, AIR 1923 Sind 59 (FB) : 16 SLR 112; *In re* Jamadar Munshi Ram, AIR 1931 Lah 399 ('dependant'); *State of Assam* v. *Deva Prasad Borua*, AIR 1969 SC 831.
2. AIR 1921 PC 240, 242.
3. AIR 1929 Cal 497, 500 : ILR 56 Cal 467; *Choodamani* v. *State of U.P.*, AIR 1969 All 43.
4. *Lion Mutual Insurance Association* v. *Tuckler*, 12 QBD 176, 186.
5. *Bentley* v. *Rotherham and Imberworth Local Board of Health*, 4 Ch D 588, 592.
6. *Anderson* v. *Egan*, 3 CLR 269, 277.
7. *Judhika* v. *State of M.P.*, (1976)1 SCC 925.
8. *Workmen* v. *National & Grindlays Bank*, AIR 1976 SC 611.
9. *State of U.P.* v. *Kores (India) Ltd.*, AIR 1977 SC 132 : (1976)4 SCC 477 : (1977)1 SCR 837 : (1977)1 SCJ 407.
10. *Radhabai* v. *State of Bombay*, AIR 1955 Bom 439; 57 Bom LR 827; *Amalgamated Electricity Co., Ltd.* v. *Bathena*, AIR 1958 Mys 148, 150; *see* also *Shabbir Fatima* v. *Chancellor, University of Allahabd*, AIR 1966 All 45; *Man Kunwarbai* v. *Udairam*, 1976 Jab LJ 681; *Bhaskar Atma Ram Joshi* v. *State of Maharashtra*, 1976 Mah LJ 229 (DB) : *Govindrao Ranoji Musale* v. *Anandibai Govindrao Musale*, 1977 Mah LJ 144.
11. *Muthenderjee* v. *Ram Naidu*, AIR 1957 Hyd 27.
12. *Quebec Railway* v. *Vandry*, AIR 1920 PC 181, 186, *per* Lord Sumner; *Sat Pal* v. *Abdul Hayi*, AIR 1949 EP 1; *Brij Mohan Lal Murli Dhar* v. *Raj Kishore*, AIR 1956 Punj 555.

Act, words found therein should not be regarded as surplusage and full effect should be given to them, if a reasonable interpretation should be found.[1] In a statutory enactment every word used must receive its full and proper connotation in the construction.[2] An Act or part of an Act cannot be ignored or treated as being meaningless; it must be construed as having some operative result.[3] When the Legislature for reasons best known to itself, requires certain formalities to be gone through or certain formalities to be observed, in order to make a contract valid, or when it requires certain descriptions or particulars to be given in a contract to make it valid, the court cannot consider any one of the terms or requisites as of no importance.[4] It is not a conclusive argument as to the construction of an earlier Act to say that unless it be construed in a particular way a later enactment would be surplusage. The later Act may have been designed, *ex abundante cautela*, to remove possible doubts.[5]

Sections 1-A and 2 of the Fatal Accidents Act and 110-B of the Motor Vehicles Act both operate in the same field, and both the substantive provisions are intended to supplement each other. Both the provisions have to be construed harmoniously, or else by process of interpretation the substantive power to determine just compensation given under Section 110-B, would be rendered surplusage, which could not be intended by the Legislature.[6]

Where one or two conflicting legal maxims appear to be applicable in the construction of a statute, it is the duty of the Court to reject that maxim which would render the statute a surplusage.[7] Similarly, an interpretation clause in a statute should not be applied in interpreting the language of a section in that statute, if there is something in the section itself which is repugnant to the definition in the interpretation clause.[8]

In the interpretation of statutes the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These *presumptions* will have to be made in the case of *rule-making authority* also.[9]

The canon of construction, of course, is that a statute ought to be construed so that, if it can be prevented, no clause, sentence or word should be 'superfluous, void or insignificant'.[10] If the words can be given a meaning, they must be given that meaning and not be regarded as purely superfluous verbiage.[11] It is a good general rule of interpretation of a statute that one should not

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1. *Barada Kanta Roy* v. *Shaikh Maijuddi*, AIR 1925 Cal 13 : ILR 52 Cal 275 (FB), (*per* Sanderson, C.J.); *Emperor* v. *Shera*, ILR 50 All 625 : AIR 1928 All 207 (FB); *Emperor* v. *Bhairon*, AIR 1927 All 50. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4705 at p. 339; *Madan Singh* v. *Collector, Sikar*, AIR 1954 Raj 104.
2. *Opparti Padhi* v. *Paila Ujjulla*, AIR 1927 Mad 998, 999; *Haramani Dasi* v. *Hari Charan Chowdhry*, ILR 22 Cal 838, 840. "It cannot be presumed that any clause in the Constitution is intended to be without effect." *Myers* v. *U.S.*, 272 US 52, 229 : 71 L Ed 160, 212; *Vimal and Amar Talkies* v. *C.I.T.*, 1982 Jab LJ 324 (DB); *Bhagat Narain* v. *Jai Prakash*, 1982 MPWN 119; *Madan Mills (P.) Ltd.* v. *Collector of Central Excise*, 1982 BLJR 538 (DB).
3. *Brahmdeo Sao* v. *Haro Singh*, AIR 1935 Pat 237.
4. *Public Prosecutor* v. *Ayitha*, AIR 1926 Mad 670 : ILR 49 Mad 426.
5. *In the matter of* Stuart Sammuel, 19 IC 765, 768 (PC), *per* Earl Halsbury.
6. *Polovarupu Sommarajyam* v. *A.P. Road Transport Corporation*, AIR 1983 AP 407.
7. *Banerjee* v. *Asst. Registrar of Co-operative Societies, Burdwan*, AIR 1964 Cal 190.
8. *State* v. *Lakshminarayan*, AIR 1965 Raj 5.
9. *J.K. Cotton Spinning, etc., Mills* v. *State of U.P.*, AIR 1961 SC 1170, 1174; *Munnibai Mazdoor Sabha* v. *Bombay Dyeing and Manufacturing Co., Ltd.*, 1982 Mah LJ 617.
10. *Swaminatha Ayyar* v. *Vaidyanatha Sastri*, ILR 28 Mad 466, 471, quoting *Queen* v. *Bishop of Oxford*, LR 4 QB D 245 at 261 : (1897)48 LJQB 609, 620 (*per* Cockburn, C.J.).
11. *Bank of Chettinad, Ltd.* v. *Ko Tin*, AIR 1936 Rang 393, 395; *Vasanbai* v. *Radhabai*, AIR 1928 Sind 118; *Moti Ram* v. *Union of India*, AIR 1965 Punj 318.

without necessity or some sound reason, impute to its language any superfluity.[1] One should proceed with great caution in holding that a section in an Act is surplusage. It calls for still greater caution when we find that the two *sections*, one of which is said to be surplusage, are actually *contiguous* to each other in the Act and neither could by any possibility have been overlooked when framing the other.[2] As observed by Lord Justice James in *Ebbs* v. *Boulnois*[3] : " It is a cardinal principal in the interpretation of statutes that if there are two inconsistent enactments it must be seen if one is a *qualification* of the other." Hence before deciding that one of two apparently inconsistent enactments therein is superfluous, void or insignificant, it shall first be seen whether one is not a qualification of the other, and then, if reconciliation is found impossible, the last must prevail and override the other.[4]

Every portion of a statute must be given effect to and unless the construction leads to an absurdity, no portion of a statute should be deemed to be redundant.[5] It is, therefore, clear law that a construction which would attribute redundancy to a Legislature should not be accepted except for compelling reasons.[6] To ascertain the meaning of a section, it is not permissible to omit any part of it; the whole section should be read together and an attempt should be made to reconcile both the parts.[7]

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The above-mentioned principles apply with equal, if not greater, force in the construction of *statutory rule.*

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The rule is stated in Maxwell on the Interpretation of Statutes[9] in these words : "Where two or more words, susceptible of analogous meaning, are coupled together, *noscitur a sociis*, they are understood to be used in their cognate sense. They take as it were, their colour from each other,

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The maxim of *noscitur a sociis* has been described by Diplock, C.J. as a "treacherous one unless one knows 'the societ as to which the socii belong *vide Letang* v. *Cooper*"[2] and the same has been quoted by the Supreme Court in *(M/s.) Rohit Pulp and Paper Mills Ltd.* v. *Collector of Central Excise, Baroda*,[3] and the Supreme Court further reiterated therein as follows—'These maxims and precedents are not to be mechanically applied, they are of assistance only in so for as they furnish guidance by compendiously summing up principles based on rules of common sense and logic. As explained in *Collector of Central Excise* v. *Parle Exports (P) Ltd.*[4] in interpreting the scope of any notification the court has first to keep in mind the object and purpose of the notification. All parts of it should be read harmoniously in aid of, and not in derogation of, that purpose'.

The maxim *noscitur a sociis*, that a word is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the statute.[5] When words are used in such juxtaposition (immediately following others) the earlier words have a demonstrative or limiting effect. Later expression should be deemed to take its colour from the earlier expression in the same statute.[6] The earlier words are illustrative or demonstrative of the intention of the Legislature.[7]

In order to ascertain the meaning of any word or phrase that is *ambiguous* or susceptible of more than one meaning, the Court may properly resort to other words with which the ambiguous word is associated in the statute.[8] But this is so only if the result is consistent with the legislative intent, for the maxim *noscitur a sociis* is a mere guide to legislative intent.[9] In

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2. (1965)1 QB 232.
3. AIR 1991 SC 754 : (1990)3 JT 245 : (1990)3 SCC 447.
4. (1989)1 SCC 345 (357) : AIR 1989 SC 644 (651-52) & *Tata Oil Mills Co. Ltd.* v. *C.C.E.* (1989)4 SCC 541 (545-6) : AIR 1990 SC 27.
5. *(Smt.) Sipra Dey* v. *Ajit Kumar Dey*, AIR 1988 Cal 28 (DB) : (1987)2 Cal LJ 446 : (1988) Mat LR 88 : (1988)1 Hindu LR 735 : (1988)1 Cur CC 1034 : (1988)92 CWN 600, *Jarecki* v. *Searle*, 367 US 303 : 6 L Ed 859, 863; *Neal* v. *Clark*, 95 U 5 704 : 24 L Ed 586, 587.
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without necessity or some sound reason, impute to its language any superfluity.[1] One should proceed with great caution in holding that a section in an Act is surplusage. It calls for still greater caution when we find that the two *sections*, one of which is said to be surplusage, are actually *contiguous* to each other in the Act and neither could by any possibility have been overlooked when framing the other.[2] As observed by Lord Justice James in *Ebbs* v. *Boulnois*[3] : " It is a cardinal principal in the interpretation of statutes that if there are two inconsistent enactments it must be seen if one is a *qualification* of the other." Hence before deciding that one of two apparently inconsistent enactments therein is superfluous, void or insignificant, it shall first be seen whether one is not a qualification of the other, and then, if reconciliation is found impossible, the last must prevail and override the other.[4]

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9. Maxwell : *Interpretation of Statutes*, 11th Ed., p. 321; *Baksi* v. *Accountant-General*, AIR 1957 Pat 515, 523; *Ambika Lal Das* v. *Abhinandan Roy*, AIR 1964 Pat 90 : 1963 BLJR 192; *see* also *Ratan Lal Rastogi* v. *Corporation of Calcutta*, 76 CWN 288, 293 (Talukdar, J.).

that is, the more general is restricted to a sense analogous to the less general." In *Kempton Park* case,[1] Lord Esher said that "where general words are used following particular or more limited words there should be an interpretation of the general words limiting them to matters or things of the same kind, as to the mischief being dealt with, as the previous words, but an interpretation as wide as the limitation just described will admit." And according to Lopes, J., in the same case : "That doctrine may be thus expressed, namely, where there are general words following particular and specific words, the general words must be confined to things of the kind as those specified."

The maxim of *noscitur a sociis* has been described by Diplock, C.J. as a "treacherous one unless one knows 'the societ as to which the socii belong *vide Letang* v. *Cooper*"[2] and the same has been quoted by the Supreme Court in *(M/s.) Rohit Pulp and Paper Mills Ltd.* v. *Collector of Central Excise, Baroda*,[3] and the Supreme Court further reiterated therein as follows—'These maxims and precedents are not to be mechanically applied, they are of assistance only in so for as they furnish guidance by compendiously summing up principles based on rules of common sense and logic. As explained in *Collector of Central Excise* v. *Parle Exports (P) Ltd.*[4] in interpreting the scope of any notification the court has first to keep in mind the object and purpose of the notification. All parts of it should be read harmoniously in aid of, and not in derogation of, that purpose'.

The maxim *noscitur a sociis*, that a word is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the statute.[5] When words are used in such juxtaposition (immediately following others) the earlier words have a demonstrative or limiting effect. Later expression should be deemed to take its colour from the earlier expression in the same statute.[6] The earlier words are illustrative or demonstrative of the intention of the Legislature.[7]

In order to ascertain the meaning of any word or phrase that is *ambiguous* or susceptible of more than one meaning, the Court may properly resort to other words with which the ambiguous word is associated in the statute.[8] But this is so only if the result is consistent with the legislative intent, for the maxim *noscitur a sociis* is a mere guide to legislative intent.[9] In

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1. (1897)2 QB 242, 257; *see* also *Sathappa* v. *Umayal Achi*, AIR 1960 Mad 569.
2. (1965)1 QB 232.
3. AIR 1991 SC 754 : (1990)3 JT 245 : (1990)3 SCC 447.
4. (1989)1 SCC 345 (357) : AIR 1989 SC 644 (651-52) & *Tata Oil Mills Co. Ltd.* v. *C.C.E.* (1989)4 SCC 541 (545-6) : AIR 1990 SC 27.
5. *(Smt.) Sipra Dey* v. *Ajit Kumar Dey*, AIR 1988 Cal 28 (DB) : (1987)2 Cal LJ 446 : (1988) Mat LR 88 : (1988)1 Hindu LR 735 : (1988)1 Cur CC 1034 : (1988)92 CWN 600, *Jarecki* v. *Searle*, 367 US 303 : 6 L Ed 859, 863; *Neal* v. *Clark*, 95 U 5 704 : 24 L Ed 586, 587.
6. *(M/s.) Oswal Agro Mills Ltd* v. *Collector of Central Excise*, AIR 1993 SC 2288, *Prithvi Pal Singh* v. *State of U.P.*, 1982 All LJ 437.
7. *Kajaria Traders* v. *Foreign Import Association*, AIR 1961 Bom 65, 68 (K.T. Desai, J.).
8. Crawford : *Statutory Construction*, Article 190 at pp. 325-326; quoting *Neal* v. *Clark*, 95 US 704 : 24 L Ed 586; *Patton* v. *U.S.*, 159 US 500 : 40 L Ed 233.
9. "That a word may be known by the company it keeps, is, however, not an invariable rule, for the word may have a character of its own not to be submerged by its association. Rules of a statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful. They have no place, as the Court has many times held, except in the domain of ambiguity"; *Russel Motor Car Co.* v. *U.S.*, (1923)261 US 514 : 67 L Ed 778.

Reiche v. *Smythe*,[1] in U.S.A. observed : "These rules are not the masters of the Court but merely their servants to aid in ascertaining the legislative intent. They afford a mere suggestion to the judicial mind that where it clearly appears that the law-makers were thinking of a particular class of persons or objects their words of a general description may not have been intended to embrace any other than those within the class....". Crawford, in his *Statutory construction* (at p. 326) opines that like all other principles of construction, it is to be used only as an instrumentality for determining the intent of the Legislature where it is in doubt. If the intent of the Legislature is plain, the maxim *noscitur a sociis* must give way. It is permissible to determine the meaning of word by a reference to the associated words provided such reading of it is not inconsistent with the general intent and ambit of the rule. It is in such cases that the maxim *noscitur a sociis* affords a guide and at times even a key to the ascertainment of the legislative intendment. Of course, it is not to be understood that the character of the expression under consideration should be submerged by its association. If the legislative intent is clear and plain, the maxim must give way. But when the import is doubtful, associated words can explain and limit the application of each other.[2]

The doctrine of *noscitur a sociis* in the interpretation of statutes does not operate to render general words meaningless. The rule is one well established and frequently invoked, but it is, after all, a rule of construction, to be resorted to only as an aid to the ascertaining of the meaning of doubtful words and phrases and not to control or limit their meaning contrary to the true intent.[3] *Noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the above rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful;[4] but where the object of the Legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.[5]

Rule distinguished from ejusdem generis *rule*.—Some Judges do not distinguish between the *ejusdem generis* doctrine and the rule of construction *noscitur a sociis*. Maxim *ejusdem generis* is applied where general term follows the expression of narrower connotation preceding it. On the other hand, where two or more words which are susceptible of analogous meaning are complied together, *noscitur a sociis*, they are understood to be used in their cognate sense.[6] At one time, no doubt, the rule of *ejusdem generis* was somewhat liberally applied, so as to construe general words as being cut down by the use of antecedent specific words. Thus one of the Judges in *Smelting Company of Australia* v. *Commissioner of Inland Revenue*,[7] observed : "I think the

1. (1872)13 Wall (80 US) 162 : 20 L Ed 566.
2. *Chhanalal* v. *State of Gujarat*, AIR 1961 Guj 27, 29.
3. *Mason* v. *U.S.*, 67 L Ed 396.
4. *Brijendra Singh* v. *State of U.P.*, 1980 All LJ 1105 (SC); *Muddeerswere Mining Industries* v. *Commissioner of Income-tax*, (1994)72 Taxman 186 (Kam.), *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh* v. *Presiding Officer, Labour Court, Chandigarh*, (1990)3 SCC 682 (5J), referring to *whiteley*. v. *Chappell*, (1868-69) QBD 147 : 1868 LR 4; *Prince Ernest of Hanover* v. *Attorney General*, 1956 Ch D 188; *Muir* v. *Keay*, (1875)10 QB 594 : 44 MJMC 143; *Queen* v. *Commissioners under the Boiler Explosions Act*, 1882 (1891)1 QBD 703.
5. *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610, 614; *Nagpur Corporation* v. *Its Employees*, AIR 1960 SC 675 : (1960)2 SCR 942, 951 (Subba Rao, J.).
6. *Petlad Nagarpalika* v. *R.N. Mills Co. Ltd.*, (1975)16 Guj LR 193.
7. (1897)1 QB 175, 181.

proper way of construing those words is to apply to them what is known as the *ejusdem generis* doctrine, or, as it is sometimes expressed, the doctrine *noscitur a sociis*, which is that, where general words immediately follow or are closely associated with specific words, their meaning must be limited by reference to the preceding words." Another Judge in the same case,[1] observed : "The rule of construction which is called the *ejusdem generis* doctrine, or sometimes the doctrine *'noscitur a sociis,'* is one which, I think, ought to be applied with great caution; because it implies a departure from the natural meaning of words, in order to give them a meaning which may or may not have been the intention of the Legislature." Broom in *Legal Maxims*,[2] with reference to statutes says : "In the construction of statutes, likewise, the rule *'noscitur a sociis'* is frequently applied, the meaning of a word, and, consequently, the intention of the Legislature being ascertained by reference to the context, and by considering whether the words in question and the surrounding words are, in fact, *ejusdem generis* and referable to the same subject-matter."

In pointing out the difference between the two maxims, Gajendragadkar, J., observed : "Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*. In fact the latter maxim is only an illustration or specific application of the broader maxim *noscitur a sociis*."[3]

The principle of *noscitur a sociis* applies to sections and sentences in a manner similar to the application of the doctrine of *in parri materia* to statutes covering the same subject-matter. Likewise, the rule of *noscitur a sociis* and the rule of *ejusdem generis* operate in most situations identically.[4]

In the more modern cases, such as *Anderson* v. *Anderson*,[5] and another of the same class,[6] there has been a contrary tendency, and in general the rule has been adopted by giving the words their natural construction. In *Anderson* v. *Anderson*,[7] the Court of Appeal was called upon to interpret the words 'other goods, chattels and effects' in a voluntary settlement. Lord Esher referring to some observations of Lord Justice Knight Bruce in the case of *Parker* v. *Merchant*,[8] says : "Nothing can well be plainer than that to show that *prima facie* general words are to be taken in their general sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before." This was, however, not a case in which what is generally understood as the *ejusdem generis* rule was applicable. A maxim more appropriate to the matter in question was *noscitur a sociis*, but the rule and the maxim rest upon the same principle, *viz.*, *prima facie* you must take general words as used in their most extensive meaning, unless you find something in the context in which they stand or in the rest of the deed to indicate that the parties have intended them to have a more

1. (1897)1 QB 175, 181 at p. 182.
2. 10th Ed. at p. 400.
3. *Muddeerswere Mining Industries*, v. *Commissioner of Income Tax*, (1994)72 Taxman 186 (Karn); *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610 at 613; *Melicio Fernandes* v. *Mohan*, AIR 1966 Goa, 23, 30 (SB) (Jelley, J.C.); *Dr. Devendra M. Surti* v. *State of Gujarat*, AIR 1969 SC 63.
4. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4908 at p. 395.
5. (1895)1 QB 749.
6. *Attorney-General for New South Wales* v. *Metcalfe*, 1 CLR 421, 427.
7. (1895)1 QB 749, 753.
8. 1 Y and CCC 290.

restricted meaning.[1]

6. Reddendo singula singulis.— This phrase indicates that different words in one part of a section or statute are to be applied respectively to the other portions or sentences to which we can say they respectively relate, even if strict grammatical construction should demand otherwise. Where several words importing power, authority and obligation are found at the commencement of a clause containing several branches, it is not necessary that each of those words should be applied to each of the different branches of the clause; it may be construed *reddendo singula singulis*, the words giving power and authority may be applicable to some branches, those of obligation to others.[2] Where a sentence contains several antecedents and several consequents they are to be read distributively. That is, the words are to be applied to the subjects to which they appear by context most properly to relate and to which they are most applicable.[3] The rule was used in *Quim* v. *Lowell Electric Light Corporation*,[4] where the legislative enactment provided for its adoption 'at a legal meeting of the city council or the inhabitants of the town called for that purpose' and it was held that only in case of a town it was necessary for a meeting to be called for a specified purpose. This method of limiting the effect of expressions which are obviously too wide to be construed literally, is most frequently adopted when the opening words of a section are general, while the succeeding parts of it branch out into particular instances.[5]

Acts. 3 and 4 Wm. IV, c. 22 provided that "the property in all lands, tenements, hereditaments, buildings, erections, works and other things which shall have been or shall hereafter be purchased, obtained, erected, construed or made by or by order of, or which shall be within or under the view, cognizance, or management of any Commissioners of Sewers," should be vested in such Commissioners. If this section had been read literally the property in all lands which were under the view or cognizance of any Commissioners of Sewers would have vested in them, and the owners would have been deprived of their lands without compensation. To avoid this result the Court read the words *reddendo singula singulis*, and held that the section vested in the Commissioners of Sewers, that property in lands purchased by them, and in works and other things under their view, cognizance and management.[6]

Likewise, where the words under consideration appear in different sections or are widely dispersed throughout an Act the same principle will be applied.[7] Crawford in his *Statutory Construction* at p. 334 observes : "Obviously, the maxim *reddendo singula singulis*, finds its

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1. *See* also *Goldsborough Mort & Co., Ltd.* v. *Tolson*, (1910)10 CLR 470, 478. It was argued for the appellant that "chattels and effects", taken apart from all other expressions included *prima facie* the receipts and certificates and the moneys represented by them, and that there was nothing to counteract that primary significance. But the contention was rejected on the ground that if that argument were right the specific reference to compensations and to 'the whole right of brands' would have been unnecessary; *Richardson* v. *Austin*, (1911)12 CLR 463, 468 : The words 'or other public passages or places' mean 'or other public passages or public place'.
2. *R.* v. *Bristol Dock Co.*, 11 RR 440 : 108 ER 420 (*per* Bayley, J.).
3. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4918 at p. 423; Crawford : *Statutory Construction*, at pp. 332-333; *U.S.* v. *Simms*, 1 Cranch 252 : 2 L Ed 98.
4. 140 Mass 106, quoted by Crawford : *Statutory Construction*, Article 194 at p. 334. *See* also Wharton : *Law Lexicon*, 14th Ed. at p. 850 : The method of construction applied in such a sentence is this : 'If anyone shall draw or load any sword or gun' the word 'draw' is applied to 'sword' only and the word 'load' to 'gun' only, the former verb to the former noun, and the latter to the latter, because it is impossible to load a sword or draw a gun; and so of other applications of different sets of words to one another.
5. Wilberforce : *Statute Law*, at p. 189. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4918 at p. 423.
6. *Stracey* v. *Nelson*, 13 LJ (Ex) 9; Wilberforce : *Statute Law*, at pp. 190-191.
7. Sutherland : *Statutory Construction*, at p. 424.

justification in our use of the English language. If this maxim, or some principle closely allied to it, were not used, many legislative enactments would be filled with inconsistencies. And in addition, it is doubtful whether the Legislative intent could be ascertained, in many instances, at least, if every part of the statute were considered separately and apart from the other parts instead of distributively and in relation to all of the other words, phrases and clauses of the enactment."

The difficult problems of interpretation involved in the rule of *reddendo singula singulis*, says Sutherland in Statutory Construction at p. 424, may be almost entirely *eliminated by careful drafting*. If sentences are short and contain but a single subject and a single object this problem will be resolved.

Section 59(1) of the Local Government Act, 1933, provided for disqualification from acting as an elected member of a local authority, if he has within five years before the date of election or since he was elected, been convicted of an offence and imprisoned for three months at least without the option of a fine. The defendant in *Bishop* v. *Deakin*,[1] was convicted and sentenced to imprisonment for more than three months. All action was brought for a declaration that he was disqualified from acting as a member of the local authority. Clauson, J., observed that the section provided for two disqualifications and two definitions : *(i)* what is to be a qualification for election, and *(ii)* what is to be a disqualification for being member after election. By applying the first definition to *(i)* and the second to *(ii) (i.e.,* on the rule of *reddendo singula singulis)* he held that a conviction within five years before election disqualified from election and that conviction after election disqualified from continuance in office. He said :

> "If the section is to be read as providing that a person is disqualified from being a councillor if he was convicted within five years before his election, it may well be that he is so disqualified when he acts as a councillor at a date later than five years from the date of the conviction. In that case the effect of the disqualification operating would be that he would cease to be a councillor, but he would be eligible at once for re-election to the vacant office, the five years having expired before the new election. I cannot think that the Legislature intended such a whimsical result. All difficulty can be avoided by applying the well-known method of construction commonly known as *reddendo singula singulis*, and applying the first disqualification mentioned to the first case dealt with, and the second disqualification to the second case dealt with, a construction which, so far as I can see, infringes no rule of syntax or grammar. The result reached seems to be quite sensible, namely, that conviction within five years before the day of election, disqualifies from election, and conviction after election disqualifies from continuance in office."

7. Ejusdem generis.—*(i) Meaning.*—The words *'ejusdem generis'* 'means of the same kind or nature'.[2] The rule of *ejusdem generis* is that where particular words are followed by general, the general words should not be construed in their widest sense but should be held as applying to objects, persons or things of the same general nature or class as those specifically enumerated,[3] unless of course there is a clear manifestation of a contrary purpose. Or to put it in a slightly different language where general and special words which are capable of analogous

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1. (1936)1 Ch 409, 414; (1936)1 All ER 255, 257; *see* Odgers : *Interpretation of Deeds and Statutes*, 2nd Ed. at p. 180; *Maxwell* : *Interpretation of Statutes*, 11th Ed. at p. 198.
2. *Municipal Corporation* v. *Saw Willie*, AIR 1942 Rang 70, 72; Wharton : *Law Lexicon*, 14th Ed. at p. 362; *Anirudh Prasad Choudhary* v. *The High Court of Judicature at Patna*, (1996)1 BLJ 572 (Pat), relying on *Housing Board of Haryana* v. *Haryana Housing Board Employees Union*, (1995)5 JT (SC) 37.
3. *Rajaram Baijnath* v. *Nandkishore Sheobux Rai*, 1975 MPLJ 419 (DB).

meaning are associated together, they take colour from each other and the general words are restrained and limited to a sense analogous to the less general.[1] The *ejusdem generis* doctrine has been described in the words of Lopes, L.J., in *Smelting Co. of Australia* v. *Commissioner of Inland Revenue*,[2] as meaning "that where general words immediately follow or are closely associated with specific words, their meaning must be limited by reference to the preceding words". *Ejusdem generis* is not a rule of law but a rule of construction[3] which enables a Court to ascertain the intention of the Legislature when the intention is not clear, and does not warrant the Court in subverting or defeating the legislative will by confining the operation of a statute within narrower limits than intended by the law-makers. It should be resorted to not for the purpose of defeating the intention of the Legislature but for the purpose of elucidating its words and giving effect to its intention. It is based on the idea that if the Legislature intended its general words to be used in an unrestricted sense so as to embrace the objects, persons or things covered by the particular words, it would not have taken the trouble of using the particular words at all.[4] Whether the rule of *ejusdem generis* should be applied to a particular provision depends on its terms and the purpose and object the provision is intended to achieve. The fact that this particular rule has been applied to one provision is no indication that it should be applied to another provision even if it recurs in the same enactment.[5] The rule of *ejusdem generis* is not one of universal application. It is merely a rule of construction and as such it may be of no assistance when the intention of the Legislature is so plain as to require no resort to canons of construction. The rule is to be made use of only where the language of the statute under consideration is somewhat vague or uncertain. It will not be proper to follow the rule where to do so will defeat to impair the plain purpose of the Legislature. Nor can it be employed to restrict the operation of an Act within narrower limits than was intended by the law-makers.[6]

(ii) General words which follow controlled by specific words which precede.

This doctrine is a variation of the doctrine of *noscitur a sociis*. Where general words follow specific words[7] in an enumeration describing the legal subject the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.[8] It is not uncommon for the Legislature to set out a series of special words of a like nature and to close the enumeration with

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1. *Punjab State* v. *Meluchand*, AIR 1959 Punj 222, 223; *Dinkuray, Raghunath* v. *State*, AIR 1960 Guj 31; *Ganesha Ram* v. *Collector*, AIR 1968 Raj 72, 76 (Mody Actg. CJ.); *see* also *Burmah Shell Oil Storage and Distribution Co. of India* v. *State of Madras*, (1968)21 STC 227 (Mad) and *Gwalior Sugar Co., Ltd.* v. *Shyam Charan Gupta*, AIR 1969 Madh Pra 74; *Petlad Nagarpalika* v. *R.N. Mills Co. Ltd.*, (1975)16 Guj LR 193; *Sankaran Nair* v. *Madhavan Pillai*, 1976 Ker LT 837; *K.P. Poulose* v. *Asstt. Labour Officer*, 1975 Ker LT 281.
2. (1897)1 QB 275, quoted in *Haji Mohammad* v. *Province of Bengal*, ILR (1942)1 Cal 343, 347.
3. *Raja Ram Baijnath* v. *Nandkishore Sheo Bux Rai*, 1975 MPLJ 419 (DB); *Benglore Electric Supply Co. Ltd.* v. *C.I.T., West Bengal*, AIR 1978 SC 1272 (1275); *Jage Ram* v. *State of Haryana*, (1971)1 SCWR 491.
4. *Punjab State* v. *Meluchand*, AIR 1959 Punj 222, 223-4; *Thakurani Gulabkunverba* v. *State of Gujarat*, AIR 1966 Guj 1.
5. *Hyderabad (Sind) Electric Supply Co.* v. *Union of India*, AIR 1959 Punj 199, 202.
6. *Jhanda Singh* v. *Chief Settlement Commissioner, Punjab*, ILR 1958 Punj 1090.
7. Words are 'general' or 'special' relatively. A word specific in one context may be general in another context. For the purpose of the doctrine of *ejusdem generis*, a word is specific when it falls within the ordinary meaning of a second word; the first word is specific in relation to the second word; the second word is general in relation to the first word : Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4909.
8. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4909, quoting the following cases as statute and applying the rule; *Gunerstad* v. *Price*, (1895) LR 10 Exch 65; *Willis* v. *Thorp*, (1875) LR 10 QB 383; *Williams* v. *Golding*, (1865) LR 1 CP 69; *Rex* v. *Wallis*, (1793)101 ER 210; *Clark* v. *Gaskarth*, (1818)129 ER 430; *Bramwell* v. *Pennock*, (1827)109 ER 823; *Sabdmian* v. *Breach*, (1827)108 EL 661; *Peate* v. *Dicken*, 149 ER 1145; *Kitchen* v. *Shaw*, 112 ER 280; *Ex parte* John Hill, 172 ER 397; *Radmorshire Co., Roads Board* v. *Evans*, (1863)122 ER 151; *Rex* v. *Cleworth*, (1869)122 ER 707; *Somnath* v. *Diwarka Prasad*, 1963 Raj LW 40.

a general term, such as'and all other', 'any other', 'other persons', 'or business', 'other property' and similar expressions. In fixing the meaning of such final general terms it is usual to restrict them to persons or things *ejusdem generis* with those specifically mentioned, that is, persons or things 'of the same kind' with those designated by the preceding particular words. When, therefore, we find general words following particular and specific words of the same nature, they must be construed as taking their meaning from the specific words which precede them and must be restricted to the same *genus*.[1]. The rule of *ejusdem generis* is that "where general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified." But it is clearly laid down by decided cases that the specific words must form a distinct *genus* or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary.[2] Sir Stuart Samuel being a member of the House of Commons for the Taver Hamlets was partner in a firm which made contracts with Secretary of State for India in Council for borrowing money upon short loans, for purchasing India Council Bills and India Treasury Bills, for subscribing to India Government loans, and for purchasing silver for the purposes of the Indian currency. If any of those contracts answered the description given in Section 1 of 22 Geo. III, c. 45 (1782), as to the person with whom and the service for which it was made, then his seat was forfeited. This Act of Parliament itself declared that it was made to preserve the freedom and independence of Parliament, and the mischief guarded against was the sapping of that freedom and independence by members admitted to profitable contracts. But the enacting words did not apply to all contracts. Their application was limited. The member of Parliament must have 'directly or indirectly' undertaken the contract with 'the Commissioners of His Majesty's Treasury, or of the Navy or Victualling Office' or 'the Master-General or Board of Ordinance' or 'any one or more of such Commissioners' or 'any other person or persons whatsoever.' The meaning of this limitation was determined by their Lordships of the Privy Council in *In the matter of Sir Stuart Samuel*,[3] by the familiar canons of construction thus :

> "All the persons enumerated in the first section of this Act were servants of the Crown in 1782 (the date of the Act) holding offices in the British as contrasted with Irish Government or any other Government of the King's dominions or dependencies beyond the seas. They were officers of the British Government, which was also the Imperial Government of the King. When, therefore, the first section of the Act of 1782, after enumerating these several office-holders proceeds to add the words 'any other person or persons whatsoever,' the doctrine of *ejusdem generis* applies. Any 'other person' meant 'any one who held an office in the British Government of a similar kind to those enumerated.' In *Thames and Mersey Marine Insurance Co.* v. *Hamilton Fraser & Co.*,[4] Lord Halsbury, L.C.,

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1. *Ramdayal* v. *Sheodayal*, ILR 1939 Nag 250 : AIR 1939 Nag 186, 189 (FB); *Balmokand Lall* v. *Jurjuhdun Roy*, ILR 9 Cal 271, 274; *Kali Charan* v. *Kesho Prasad*, AIR 1919 Pat 541; *see* also *Chhaju Ram* v. *Neki*, ILR 3 Lah 127, 133 (PC), Just and equitable in the provision relating to 'winding -up companies'; *Spackman's* case, (1849)84 RR 41 Anglo-Greek Steam Co., *Re* 1886 LR 2 Ed. 1 : German Date Coffee Co., (1882)51 LJ Ch 564; *Thomas* v. *St. Joseph Tile Works, Ltd.*, AIR 1957 TC 6, 8.
2. *Kochuni* v. *States of Madras and Kerala*, AIR 1960 SC 1080, 1103; *Ratanlal Hira Singh* v. *R.T.A.*, AIR 1934 Punj 152; *Melicio Fernandes* v. *Mohan Nair*, AIR 1966 Goa 23.
3. 19 IC 765, 768 (PC); *see* also *Williams* v. *Golding*, (1865) LRICP 69.
4. (1887)12 App Cas 484 at 490; *see* also *Thorman* v. *Dowgtate Steamship Co.*, (1910)1 KB 410; *Re* Richardson and Samuel, etc., (1898)1 QB 261; *Lambourn* v. *McLellar*, (1903)2 Ch 268. "A very familiar, canon of construction that, where you have a word which may have a general meaning wider than that which was intended by the Legislature, when you find it associated with other words which show the category within which it is to come, it is cut down and overridden according to the general proposition which is familiarly described as the *ejusdem generis* principle." *Ystradyfodwg, etc. Board* v. *Benstead*, 1907 AC 264, 268, *per* Earl Halsbury.

referred to two rules of construction now firmly established as part of our law. One is that words, however general, may be limited in respect to the subject-matter in relation to which they are used. The other is that general words may be restricted to the same *genus* as the specific words that precede them."

The trade or business contemplated by the main portion of the definition of shop in Section 2(27), Bombay Shops and Establishments Act, 1948, is not any business of selling wherever and however conducted but only those trades where the selling is conducted on defined premises. The very idea of a shop in that connotation betokens a room or a place or a building where goods are sold. The rest of the definition merely links on the main definition ancillary places, such as store-rooms, godowns, work-places, etc., which are mainly used in connection with 'business' and 'business' means the kind of business defined in the earlier part of the definition, that is to say, no business in general but that portion of the business of selling which is confined to selling on some defined premises. There is no jurisdiction for ignoring the limitation which the Legislature has placed on the main portion of the definition and holding that 'such' relates to a much wider classification of 'selling' which the main portion of the definition not only does not envisage but has deliberately excluded.[1]

The principle underlying the doctrine is designed to reconcile an incompatibility between specific and general words in view of other rules of construction, *e.g.*, all words in a statute have, if possible, to be given due effect, the Legislature does not use superfluous words, and all parts of a statute are to be considered together. It is then really a question of assumed intention of a statute; it is not a rule of law, but a rule of construction. Its application is thus presumptive and not pre-emptory. In order to attract the doctrine it may safely be said to be necessary that—(1) the statute contains an enumeration of specific words which constitute a class or *genus;* (2) the said class or *genus* is not exhausted by the enumeration; (3) the general words follow the specific words; (4) the legislative intention is not clearly manifest in favour of according broader meaning to the general words. It may however be said that since the class of enumeration may often be an artificial creation, the rule of *ejusdem generis* is at times described as a dangerous yardstick with which to measure the legislative intent, requiring caution in its application.[2]

The doctrine of *ejusdem generis* should not be invoked where the intention of the Legislature is clear, where it would result in disregarding the plain language of the statute, where a perusal of the statute as a whole indicates that the Legislature intended the general words to go beyond the class specially designated, where the specific things enumerated have no common characteristic and differ greatly from one another, or where the particular words embrace all objects of their class so that the general words must bear a different meaning from

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1. *Kalidas* v. *State of Bombay*, AIR 1955 SC 62 : Section 2(2) of the Bombay Shops and Establishments Act, 1948, runs : "Shop means any premises where services are rendered to customers, and includes any office, a store-room, godown, warehouse, or work-place, whether in the same premises or otherwise mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment."

2. *Amarchandra* v. *Collector of Excise*, (1972)2 SCC 442, 447 : AIR 1972 SC 1863 (Dua, J.); *Housing Board of Haryana* v. *Haryana Housing Board Employees' Union and others*, 1994 SCC (L & S) 278 : (1995) Guj LH 780, referring to *K.K. Kochunni* v. *State of Madras*, AIR 1960 SC 1080 : 1960 KLT 71 : 1966 Ker LJ 1077; *Thakur Amar Singhji* v. *State of Rajasthan*, AIR 1955 SC 504; *Tribhuvan Prakash Nayyar* v. *Union of India*, (1969)3 SCC 99 : AIR 1970 SC 904; *Gurubachan Singh* v. *Ichhar Singh*, ILR (1965)1 Punj 532; *Calcuttawala S.R. Situgwn* v. *Sales Tax Commissioner, Madhya Pradesh*, AIR 1967 Madh Pra 180; *East India Hotels Ltd.* v. *Corporation of Calcutta*, AIR 1988 Cal 104 (DB), referring to *Jageram* v. *State of Haryana*, 1971(1) SCC 671 : AIR 1971 SC 1033 and (1972)2 SCC 442 : AIR 1972 SC 1863.

the particular words or be meaningless.[1]

The words *et cetra* have been held to be too vague to invoke the *ejusdem generis* rule.[2] In the case of *Sun Fire Office* v. *Hart*,[3] Lord Watson in delivering the opinion of the Privy Council observed : "The canon (*i.e.*, the rule of *ejusdem generis*) is attended with no difficulty, except in its application. Whether it applies at all, and if so, what effect should be given to it, must in every case depend upon the precise terms, subject-matter and context of the clause under consideration. In the present case there appears to be no room for its application. The antecedent clause does not contain a mere specification of particulars, but the description of a complete *genus*, if not of two *general*. The first of these is any and every act done to the insured property, whereby the risk of fire is increased." Taking that as a particular, none of the learned Judges has suggested what circumstances would constitute *alia similia*.

(iii) Specific words which precede general words not controlled by the latter which follows the former.—"The principle underlying this approach to statutory construction is that the subsequent general words were only internal to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, *ejusdem generis* rule is not attracted and such broad construction as the subsequent words may admit will be favoured.

E.A. Driedger P. 95 quoted by Francis Bennion in his *Statutory Construction* at pp. 829 & 830 : "If a class can be found but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary."

Francis Bennion in his statutory construction For the *ejusdem generis* principles to apply there must be a sufficient indication of a category that can properly be described as a class or genus even though not specified as such in the enactment. Further more the genus must be narrower than the words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it.... (p. 830)

"It is necessary to be able to formulate the genus; for it cannot be formulated, it does not exist. Unless you can find a category said Farwell, L.J. there is room for the application of the *ejusdem generis* doctrine."

Mc. Cardie J. said in SS Magnhild (Owners) v. *McIntyre Bros. & Co.*,"[4] so far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the specified things must possess some common and dominant feature.[5]

(iv) Reasons.—The doctrine is an attempt to reconcile an incompatibility between specific and general words in view of other rules of construction that all words in a statute are to be

1. *Punjab State* v. *Mehrchand*, AIR 1959 Punj 222, 224.
2. *Herman* v. *Morris*, (1914)35 TLR 328, 574.
3. (1889) LR 14 App Cas 98, 104.
4. (1920)3 KB 321.
5. *(M/s.) Siddeshwari Cotton Mills (P) Ltd.* v. *Union of India*, AIR 1989 SC 1019 : (1989)1 JT (SC) 150 : (1989)21 ECR 7 : (1989) 39 ELT 498 : (1989) Cri LR (SC) 221 : (1989)37 DLT 383 : (1989)2 SCC 458 : (1989)28 STL 161. *Mumbai Kamgar Sabha* v. *State of Maharashtra*, 1991(1) Bom CR 422; *H & R Johnson (India) Ltd* v. *Municipal Commissioner, Thane Municipal Corporation*, 1993(3) Bom CR 356.

given effect, if possible; that parts of a statute are to be construed together; and that the Legislature is presumed not to have used superfluous words. If the general words are given their full and natural meaning, that is, the meaning they would receive in the abstract, they would include the objects designated by the specific words, making the latter superfluous. If, on the other hand, the series of specific words is given its full and natural meaning, the general words are redundant. The rule accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.[1] The doctrine of *ejusdem generis* was only a part of a wider principle of construction, namely, that, where reasonably possible, some significance and meaning should be attributed to each and every word and phrase in a written document.[2]

The rule of *ejusdem generis* is founded upon the idea that if the Legislature intended the general words to be used in an unrestricted sense, the particular classes would not have been mentioned.[3] In the whole scheme of Legislation, by the application of the doctrine of *ejusdem generis* the legislation is presumed to use the general words in a restricted sense. The effect is the same as if the specific or the particular words were actually enacted by the Legislature itself. Hence whenever by applying the doctrine of *ejusdem generis* certain words of limitation or restriction are read in a statute that should be treated as having been enacted.[4]

The resolution of this conflict by ascribing to the series its natural meaning and by restricting the meaning of the general words to things *ejusdem generis* with the series is justified on the ground that had the Legislature intended the general words to be used in their unrestricted sense, it would have made no mention of the particular words, but would have used 'only one compendious'[5] expression.[6]

Francis, J., McCaffrey in his *Statutory Construction* at page 42 observes : "While these observations may make for an interesting and helpful rationalization of this canon of statutory construction, perhaps a realistic reason for following the doctrine when the prescribed conditions occur, is to be found in the fact that the writers of laws attach to the language of the rule a meaning fixed by long usage. This mode of expression, that is the subjoining of general words to specific words of a like nature, signifies an intention to limit the operation of an enactment to the particular class of kind of persons or things designated. In order to ascertain the true legislative meaning it is necessary that the interpreter should know and follow such mode of expression in reading statutes so that the meaning chosen should be the same as that which the writers of an Act attached to the language employed. It is unfortunate that this language of limitation is sometimes used by the law-makers without regard to its usual and ordinary meaning. In such cases it is necessary for the courts to resort to construction in order to determine the true intent."

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1. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4909 at pp. 396-399.
2. *Brownsea Haven Properties, Ltd.* v. *Poole Corporation*, (1958)2 WLR 137.
3. Crawford : *Statutory Construction*, Article 191 at p. 327.
4. *Union of India* v, *Mohd. Usman*, AIR 1965 All 269, 272 (Chandra, J.).
5. Lord Kenyon in *Rex* v. *Wallis*, (1793)101 ER 210, 212. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4909 at p. 399.
6. "Now if the Legislature had intended to embrace every description of persons, and every species of business, it would not have been necessary to make an enumeration of several classes of persons exercising particular descriptions of labour or business. It would have been sufficient to say that no person whatever should do any work or business on the Lord's Day. If the enactment had been intended to be general, the Legislature would have used general words." Bayley, J. in *Rex* v. *Inhabitants of Whitmarsh*, (1827)108 ER 845; *see* Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4909, footnote 8.

It is but advantageous to extract from *Utkal Contractors and Heinery (P.) Ltd.* v. *State of Orissa.*[1]

A Statute is *best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation.* The words of a statute take their colour from the reason for it. How do we discover the reasons for a statute? There are *external and internal aids.* The *external aids* are the statement of the objects and reasons when the bill is presented to Parliament, the reports of committees which proceeded the bill and the reports of Parliamentary committees. Occasional excursions into the debates of Parliament are permitted. *Internal aids* are the preamble, the scheme, and the provisions of the Act..... No provision in the statute and no word of the statute may be constructed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something. Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation nor can it be assumed to make pointless legislation... For instance "the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by the statute and the context of any Act may well indicate that wide or general words, should be given a restrictive meaning."[2]

In *Attorney General* v. *H.R.H. Prince Augustus,* Viscount Simonds said[3]:" My Lords, the contention of the Attorney General was, in the first place, met by the bald general proposition that, where the enacting part of a statute is clear and unambiguous, it cannot be cut down by the preamble and a large part of the time which the hearing of the case occupied was spent in discussing authorities which are said to support that proposition. I wish, at the outset, to express my dissent from it, if it means that I cannot obtain assistance from the preamble in ascertaining the meaning of the relevant enacting part. For words, and particularly general words, cannot be read in isolation; their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia,* and the mischief, which I can by these and other legitimate means discern that the statute was intended to remedy."

In *Chertsey, U.D.C.* v. *Maxnam's Properties,*[4] Reid said that the general effect of the authorities was properly stated in Maxwell's Interpretation of Statutes as follows :—"General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act."

In *Maunsell* v. *Olins*[5] Lord Wilberforce observed :

"..... I am not, myself, able to solve the problem by a simple resort to plain meaning. Most language, and particularly all languages used in rent legislation is opaque : all

1. AIR 1987 SC 1454 : (1987)3 JT 466 : (1987)13 IJ Rep. 396 : (1987)1 Supreme 655 : (1987)3 SCC 279 : (1987)2 Cur CC 81 : (1987)2 SCJ 521 : (1987)64 Cut LT 256.
2. *See* Halsbury : *Laws of England,* 4th Ed., Vol. 44 at p. 894.
3. (1957)1 All ER 49.
4. (1964)2 All ER 627.
5. (1975)1 All ER 16.

general words are upon to inspection, many general words demand inspection to see whether they really bear their widest possible meaning."

(v) Where meaning is plain.— But if the intention of Legislature is clear, the occasion for the introduction of the *ejusdem generis* rule of interpretation would not arise.[1] General and comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment.[2] In *Commissioner of Income-tax* v. *Laxmidas Devidas*.[3] Beaumont, C.J. observed : "The so-called *ejusdem generis* rule which, I cannot help thinking, is sometimes misapplied in India,—is merely a rule of construction. When you have general words following particular words, the general words are limited to things which are *ejusdem generis* with the particular words. But that rule being one of construction should never be invoked where its application appears to defeat the general intent of the instrument to be construed." Where the object of the Legislature has been clearly expressed and the intention is to extend the scope of the general words a wider meaning should be given to the succeeding words.[4] This rule ought to be applied with great caution, because it implies a departure from the natural meaning of words, in order to give them a meaning which may or may not have been the intention of the Legislature.[5] Its use is permissible only as an aid to the court, in its attempt to ascertain the intent of the law-makers.[6] It cannot be employed to render the general words meaningless.[7]

(vi) To ascertain intent.— The rule of *ejusdem generis*, that words are to be interpreted by the association in which they are found, is applied as an aid in ascertaining the intent of the Legislature and not to subvert it when ascertained and gives no warrant of narrowing alternative provisions which the Legislature has adopted with the purpose of affording added safeguards.[8]

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1. *Kallingal Moosa Kutti* v. *Secretary of State*, ILR 43 Mad 65, 67; *Venkatasubba* v. *Chatram*, AIR 1942 Mad 462, 463. "The court is, therefore, bound to follow the general rule that special expressions take from things general. Where there are general words in the latter clause capable of reasonable application without being extended to the subject specially dealt with by the earlier clause and in the absence of any indication of any particular intention to that effect, the presumption would be in my opinion that the Legislature did not intend by the use of the general expression to repeal or reduce the effect of the earlier and special clause or qualify it in any sense by taking away a particular privilege of a particular class of persons." *Kulkarni* v. *Ganpat Teli*, AIR 1942 Bom 191, 193; *Jagmohandas Purushottamdas* v. *Jamnalal Vrajlal Gandhi*, AIR 1965 Guj 181; *Kochuni* v. *Cochin Dewaswom Board*, 1970 KLT 1074, 1077 (Mathew, J.).
2. *State of Bombay* v. *Ali Gulshan*, AIR 1955 SC 810
3. ILR 1937 Bom 830, 834. *See* also *Gulab Kunwar Bai* v. *State of Gujarat*, AIR 1966 Guj 1, 4 (Mehta, J.) where meaning doubtful.
4. *Atul* v. *Ramkishore*, AIR 1936 Orissa 77. (No justification for importing the construction put upon Order XLVII, Rule 1, into the language of Order XXXIII, Rule 1).
5. *Smelting Co.* v. *Commissioners*, (1879)1 QB 175, 182. *See Gurubachan Singh* v. *Ichhar Singh*, ILR (1965)1 Punj 532; *Pramatha Nath Taluqdar* v. *State of West Bengal*, AIR 1963 Cal 554 : 67 CWN 387.
6. Crawford : *Statutory Construction*, Article 191 at p. 328; *Mason* v. *U.S.*, 260 US 545 : 67 L Ed 396.
7. *United States* v. *Alpers*, 94 L Ed 457, 460 : 338 US 680 (Minton, J.).
8. *U.S.* v. *Gilliland*, 312 US 86 : 85 L Ed 598; *Texas* v. *U.S.*, 292 US 522 : 78 L Ed 1402. The rule is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty and may not be used to defeat the obvious purpose of legislation, *Gooch* v. *U.S.*, 297 US 124 : 80 L Ed 522. This rule is neither final nor conclusive; and if upon a consideration of the context and the object sought to be attained and of the Act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, they should not be given that restricted sense; *Helvering* v. *Stockholms, etc. Bank*, 293 US 84 : 79 L Ed 211.

Nor is there any room for the application of the *ejusdem generis* doctrine unless there is *genus* or class or category,[1] or where the specific words exhaust the *genus*.[2] If only one instance is given and that does not fix a *genus*, then unless a *genus* or a category is fixed, there is no room for the application of the doctrine of *ejusdem generis*.[3]

(vii) Application of the doctrine.—The doctrine applies when the following conditions exist :

(i) The statute contains an enumeration by specific words;

(ii) The members of the enumeration constitute a class or category;

(iii) The class is not exhausted by the enumeration;

(iv) A general term follows the enumeration;

(v) There is a distinct genus which comprises more than one species.

(vi) There is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.[4]

(i) It is a principle of the interpretation of statutes that where a list of certain circumstances in which a particular act can be done is followed by a general clause, that clause must be interpreted as referring to circumstances*ejusdem generis* as those which have been recited in the foregoing clauses.[5] This well settled rule of interpretation applies as much to associated words in one sentence as to terms or phrases appearing in parts of the same section or in different sections in the same chapter.[6] The doctrine of *ejusdem generis* should be restricted only to cases where the generic words follow specific words in the very same clause or sentence. But where the object of the Legislature had been clearly expressed and the intention is to extend the scope of the general words a wider meaning should be given to the succeeding words.[7] The *ejusdem generis* rule not only applies where there is more than one thing mentioned and then an expression of general import and intent added to the end but also where there is only one.[8] Vaughan Williams, L.J., in *In re* Clark,[9] observed :

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1. *Tillmans & Co.* v. *Knutsford, Ltd.*, (1908)2 KB 385 affirmed on appeal; *Knutsford, Ltd.* v. *Tillmans & Co.*, 1908 AC 406, 409, *per* Lord Macnaghten; *Municipal Corporation* v. *Saw Willie*, AIR 1942 Rang 70, 72; *Suryajirao* v. *Shivakacharu*, AIR 1949 Bom 421, 422; *Iqbal Ahmad* v. *Rex*, AIR 1950 All 162, 169. See *Dr. Indramani Pyarilal Gupta* v. *W.R. Nathu*, AIR 1963 SC 274, where in construing the terms of Clause *(f)* of Section 4 of Forward Contracts Act, 1952, the Supreme Court held that there is no common positive thread running through Clauses *(a)* to *(e)* of the section so as to bring them under one *genus*, and as such the word 'other' in Clause *(f)* could not be considered *ejusdem generis*.
2. *Suryajirao* v. *Shivakacharu*, AIR 1939 B 421, 423; Crawford : *Statutory Construction*, Article 191 at p. 328.
3. *Sarat Chandra* v. *Corporation of Calcutta*, AIR 1959 Cal 36, 40; *United Towns Electric Co., Ltd.* v. *A.G. for Newfoundland*, (1939)1 All ER 423; *Bhutnath Garai* v. *Divisional Forest Officer*, 62 Cal WN 610; *see*, however, *Brounsea Haven Properties, Ltd.* v. *Poole Corporation*, (1958)2 WLR 137 : (1956)1 All ER 205, 223-4 (there instances).
4. *Amarchandra* v. *Collector of Excise*, (1972)2 SCC 442, 447, (Dua, J.) Sutherland : *Statutory Constructions*, 3rd Ed., Vol. 2, Article 4910 at p. 400; *Universal Cables Ltd.* v. *Union of India*, 1977 MPLJ 394 : 1977 Jab LJ 862 (DB) : *Mangalore Electric Supply Co. Ltd.* v. *C.I.T., West Bengal*, AIR 1978 SC 1272 (1275).
5. *Sital Ram* v. *Thakur Das*, AIR 1938 Pesh 70. The meaning of the general term should be settled with reference to all the instances preceding it; *Godigi Mareppa* v. *Firm of Marwari Vannajee Vajanjee*, 38 IC 823, 826 (Mad); *Kajoria Agency (Private), Ltd.* v. *Iron and Steel Controller*, 67 CWN 120.
6. *Bharat National Bank, Ltd.* v. *Bhagwan Singh*, AIR 1943 Lah 140, 143 (FB).
7. *Mohinder Singh* v. *Union of India*, AIR 1958 Punj 212, 213.
8. *Williams* v. *Golding*, (1866)1 CP 69 at p. 78; *Anil Kumar* v. *Corporation of Calcutta*, ILR (1937)2 Cal 397 : AIR 1937 Cal 603, 617.
9. (1898)2 QB 330 at pp. 336, 337.

"Now it seems to me that, just as where there are general words following particular words, the general words are presumed to be restricted to the same *genus* as the particular words; so where there is a specified proposition followed by general words, the general words ought to be presumed, unless there are some words, which lead to a contrary conclusion, to be restricted to the matter that is covered by the specific proposition. The fact is that general words in a section of this sort can hardly avoid being ancillary in their nature. When one looks at a clause like this it is quite plain that the words 'or otherwise' are ancillary to the specific proposition which precedes them, and it seems to me that where there are ancillary words of that sort it is a sound and wholesome rule not to give such a construction to the ancillary words as will wipe out or do away with the specific proposition with which the clause commences." Lord Bramwell in *Great Western Rail Co.* v. *Swindon, etc.*[1] remarked : "I think that as a matter of ordinary construction, where several words are followed by a general expression, as here, which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all. For instance, horses, oxen, pigs and sheep, from whatever country they may come, the latter words would apply to horses as much as to sheep."

The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct *genus* or category. It is not an inviolable rule of law, but is only permissible inference in the absence of the indication to the contrary.[2]

(viii) When the doctrine does not apply.—If some words are specified and general words follow them, the general words should be restricted to the same *genus* or category as the specific words. This rule of *ejusdem generis* will not apply,

(i) if the specific words do not come under a *genus* or category,[3] or

(ii) where the context of the whole scheme of the enactment and the object and mischief of the enactment do not require such a restricted meaning to be attached to words of general import.[4]

It is only when generic words follow the more specific that the rule of *ejusdem generis* comes into play and not when specific words follow a general term.[5]

A corollary of the *ejusdem generis* rule is that where general words are subjoined to specific words, the general words will not include any objects of a class superior to that designated by the specific words.[6] The operation of general words has almost invariably been restrained when they follow closely upon words of a limited meaning, upon words which refer to a particular

1. (1884)9 AC 787 at p. 888; *R.* v. *Cambridgeshire Justices*, (1835)5 LJ (MC) 6; Halsbury : *Laws of England*, 4th Ed., Vol. 44, para 878.
2. *Kochuni* v. *State of Madras*, (2nd Kochuni case), (1960)3 SCR 887, 937.
3. *Maharashtra State Electricity Board* v. *Talegaon Dabhade Municipality*, AIR 1967 Bom 75 : 68 Bom LR 169 (A single word caannot generally constitute a genus); *Roshan Lal* v. *Regional Transport Authority*, AIR 1964 Punj 152, 153 (Grover, J.); *Kasi Prasad* v. *Moti Lal*, AIR 1959 Cal 566 at p. 567 (K.C. Das Gupta, J.).
4. *Satrughana Sahu* v. *State of Orissa*, AIR 1958 Orissa 187 at p. 190, following *Lilavati Bai* v. *State of Bombay*, AIR 1957 SC 521 at p. 529.
5. *Abdul Qavi Khan* v. *Asaf Ali Khan*, AIR 1962 All 364 at p. 368. *In the matter of* Ashraya, AIR 1991 Kant 10 : (1990)2 DMC 524 (DB).
6. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4911 at p. 401; Archbishop of *Canterbury's* case, (1596)76 ER 519.

class of things or persons, or which necessarily exclude such matters as are of higher dignity.[1] Thus, where a statute enumerates persons or things of an inferior rank, dignity, or importance, it is not to be extended by the addition of general words to persons or things of a higher rank, dignity or importance than that of the highest enumerated, if there are any of a lower species to which the general words can apply.[2] This corollary is based on the ground that when the Legislature enumerates objects in descending order, objects of a higher order are ordinarily named at the beginning of the enumeration, and, if not so named, are not intended to be included within the statute at all. The general term is construed to embrace only those objects said by the court to be of equal or inferior rank to those enumerated.[3] But where the specification of those objects classed as inferior is exhaustive and general words are added, then objects of a superior nature are embraced within the meaning of the general words so as to prevent their rejection as surplusage.[4]

"I can see no reason" observed Lord Esher, M.R. in *Powell* v. *Kemptons, etc., Co.*[5] "why the rule of construction as to the interpretation of general words in a statute following particular or more limited words should not be applied. That rule requires an interpretation of the general words limiting them to matters or things of the same kind, as to the mischief being dealt with, as the previous words; but interpretation is wide *as* the limitation just described will admit."

(ii) Unless it is possible to find a category or class, there is no room for the application of this doctrine.[6] A 'class' is an artificial creation to provide case in dealing which numerous items with similar characteristics occur. Thus, 'a class' is a generalization which accurately or inaccurately associates items for a particular purpose or treatment. Without some objective or purpose classification is impossible. Consequently, the rule of *ejusdem generis* depending as it does on pure form provides a dangerous yardstick with which to measure the statutory coverage which the Legislature intended.[7] Hence the rule has no application where specific words enumerate subjects which greatly differ from each other,[8] or where the preceding term is general as well as that which follows. But the rule that, where there are general words following particular and specific words all of one *genus*, the general words are presumed to be restricted to the same *genus* as the particular words, is a familiar rule of construction.[9] If no

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1. Wilberforce : *Statute Law*, at pp. 179, 180.
2. Crawford : *Statutory Construction*, at p. 329, Article 191.
3. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4911 at pp. 401-403; Craies : *Statute Law*, 5th Ed. at p. 171 : Thus in *Casher* v. *Holmes*, 9 LJ (IS) (KB) 280, it was held that the general words "all other metals" following the particular words "copper, brass, pewter and tin," in the local Act of 6 Geo 4 Ch CLXX did not include silver or gold, those latter metals being of superior kind to the particular metals mentioned in this Act. But the insertion of such words as "or things of whatever description" in a definition of words would exclude the *ejusdem generis* rule; *Attorney-General* v. *Leicester Corporation*, (1910)2 Ch 359, 369.
4. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4911 at p. 403; Wilberforce : *Statute Law*, at p. 184.
5. (1897)2 QB 242 at pp: 256-257.
6. *Iqbal Ahmad*, v. *Rex*, AIR 1950 All 162, 164.
7. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4910 at p. 400; *Bhojraj Singh* v. *State of Bombay*, AIR 1960 Guj 31, 34 (Desai, C.J.); *Commissioner of Income Tax* v. *Anglo India Jute Mills Co. Ltd.*, (1994)72 Taxman 49 (Cal.).
8. Crawford : *Statutory Construction*, Article 191 at p. 328; *Bajoria Agency (P.), Ltd.* v. *Dy. Iron and Steel Controller*, AIR 1963 Cal 335, 336 (B.N. Banerjee, J.); *Kundan Lal* v. *Union of India*, AIR 1961 All 567, 570 (Srivastava, J.); *Chotanagpur Banking Association.* v. *Govt. of India*, AIR 1957 Pat 666, 669 (Rajkishore Prasad, J.).
9. *In re* Clark, (1898)2 QB 330, 336-37, *per* Vaughan Williams, L.J. Thus in *Attorney General* v. *Brown*, (1920)1 KB 773 on appeal (1921)3 KB 29 the rule was applied to the construction of Section 43 of the Customs Consolidation Act, 1876, which provides that "The importation of arms, ammunition, gun-powder or any other goods may be prohibited by the proclamation." The question was whether a proclamation prohibiting the importaion of pyrogallic

enumeration is attempted, if the terms preceding the general terms are themselves general, or if the members of the enumeration, although specific, are essentially diverse in character, the inference that the Legislature attached to the general term a restricted meaning, *ejusdem generis* with preceding specific terms, does not arise. In these instances, the general term remains unaffected by its association with the preceding words because the language of the statute furnishes....no criterion by which to restrict its general words.[1] The rule of *ejusdem generis* does not apply where the expression used is : "Loss of time from deficiency of men, or owner's stores, breakdown of machinery, or damage to hull or other accident preventing the work of the steamer.[2]" The Sunday Observance Act, 1677 (Ch. 7) which enacts that "no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any labour, business or work of their ordinary callings upon the *Lord's Day*," has been held not to include a coach proprietor, a farmer, a barber, and possibly a solicitor, the word 'person' being confined to followers of calling like those specified by the preceding words.[3] Section 412-A*(b)* of the Bombay City Municipal Act 3 of 1888 refers to the sale of milk, butter or other milk products and if the words 'other milk products' are to be used *ejusdem generis* with butter they would include such products of milk as are the direct results of milk, as butter, that is curd, whey, cream, etc., but would not include *ghee* which is not a direct product of milk but is prepared out of butter which is a direct product of milk. Further 'other milk products', if construed strictly, and *ejusdem generis* with milk and butter, would include such products of milk as are liable to speedy decay, like butter, as for example, whey, curd, or cream, and would not include *ghee* which is not liable to speedy decay.[4] In *In re* Hassan Saheb,[5] sand was not deemed to be included in the expression 'other building material' following the words 'bricks, stone, metal' in By-law No. 54 of the Ootacamund Municipality. The by-law ran as follows : "Every vehicle within the

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acid was valid, and Mr. Justice Sankey, after an elaborate review of the authorities held that the proclamation was invalid, as pyrogallic acid was not in the same class as the particular articles set out in the section; *see* Craies : *Statute Law*, 5th Ed. at pp. 169-170. But see *Poddar Trading Co., Ltd., Bombay* v. *Francois Tagher, Barcelona*, (1949)2 AER 62, where the word force *majeure* occurring after the words 'obstruction to traffic, strike, lock-out, riot, war, quarrantine (which mattters may delay the fulfilment of a contract)' referred to time and was construed *ejusdem generis* thereto.

1. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4912 at p. 414.
2. *Owners of S.S. Magnhild* v. *Macintyre*, (1920)3 KB 321.
3. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 327. According to Craies (*Statute Law*, 5th Ed. at p. 170) "the *ejustem generis* rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being what it is, a mere presumption, in the absence of the other indication of the intention of the Legislature. "The modern tendency of the law" it was said (Asquith, J. in *Allen* v. *Emmerson*, 1944 KB 362), "is to attenuate the application of the rule of *ejusdem generis*.' To invoke the application of the *ejusdem generis* rule there must be a distinct *genus* or category. The specific words must apply not to different objects of a widely different character but to something which can be called a class or kind of object. Where this is lacking the rule cannot apply; *Hood Barrs* v. *I.R.C.*, (1946)2 AER 768."
4. *Ratansi Hirji* v. *Emperor*, AIR 1929 Bom 274, 278, *per* Parker, J. in *Clark* v. *Gaskarth*, (1818)129 BR 450, where it was contended under Statute II, George 2, C 19, Section 8 which empowered the landlord to seize as a distress for rent 'corn, grass or other product whatsoever which shall be growing on any part of the estate demised'.

   That trees and shrubs came within that description and were also liable to be distrained for rent, it was held that the word 'product' did not extend to trees and shrubs growing in a nurseryman's ground, but it was confined to products of a similar nature with those specified in that section, *viz.*, corn or grass to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe, was incidential. *See* also *R.* v. *Hodges*, (1829)20 RR 465n : 1 Moo and M 341.
5. 39 IC 1004 (Mad); *see* also *National Association of Local Government Officers* v. *Bolton Corporation*, 1943 AC 166, 186; *R.* v. *Dickenson*, (1857)26 LJMC 204.

municipality for the conveyance of bricks, stone, metal or other building materials shall be so constructed that the contents shall be duly secured therein during transit through the public streets. Owners of vehicles failing to secure such conditions shall be liable to a fine not exceeding Rs. 20." His Lordship agreeing with the dissenting Magistrate thereon observed : "As has been pointed out, sand may be used for many purposes unconnected with building and in the present case there appears to be no evidence to show for what purpose the sand in the cart was destined. Apart from this the object of the section is obviously the protection of the public streets from the obstruction caused by the accidental falling out of the contents of moving carts. In the case of bricks, stone and metal (by which is presumably meant road metal), this obstruction is obvious, inevitable and a serious nuisance. So much cannot be predicated of sand. No doubt the upsettal of a cartload of sand in the road would be a nuisance and obstructive to traffic, but the falling of sand in such small quantities as would be due to the absence of a backboard to the cart could hardly be either. I think the dissenting Magistrate was right in holding that the 'other building material' must be *ejusdem generis* to bricks, stone and road metal in its potentially deleterious effect on the public thoroughfares, and that sand does not satisfy this requirement." The enactment which prohibited the establishment, without licence, of "the business of a blood boiler, bone boiler, fellmonger, slaughterer of cattle, horses or animals of any description, soap boiler, tallow melter, tripe boiler, or other noxious or offensive business, trade or manufacture," was held not to include under the final general terms any employments not connected, as all the specified trades were, with animal matter and so did not reach brick-making[1] nor a small-pox hospital.[2]

(iii) If the particular words exhaust a whole *genus*, the general words must refer to some larger *genus*.[3] In *Le Mesurier* v. *Wajid Hossain*,[4] the primary question was whether the general words of Clause *(f)* of Section 13 of the Legal Practitioners Act, 1879, as amended by Act XI of 1896, 'for any other reasonable cause' were to be read, by the operation of the rule of *ejusdem generis*, as applying only to misconduct of a strictly professional kind, or as embracing what might be called for the sake of convenience disqualifying causes of a different kind. Mr. Justice Hill, with whose opinion the majority of the Judges in the Full Bench concurred, observed :

> "It is said, however, that inasmuch as the causes for suspension or dismissal specified in the clauses of Section 13 preceding Clause *(f)* all involve professional misconduct in one form or another, the general words of the last mentioned clause must, on the *ejusdem generis* principle, be restricted to misconduct of which the practitioner has been guilty in his professional capacity. I still venture to think with very great deference to the learned Judges, who have taken the contrary view, that the principle upon which I decided the question in the case of *In re* Purnachunder Pal,[5] is the correct one, and that each of the clauses of Section 13, which precede the general words of Clause *(f)*, being exhaustive of the kind of offence or misconduct to which it relates, there is no room for the application of the *ejusdem generis* rule." His Lordship after referring to the cases of *In re* Purnachunder Pal,[6]

1. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 302, quoting *Wanstead Board* v. *Hill*, (1863)32 LJMC 135.
2. Maxwell : *Interpretation of Statutes*, 12th Ed. at p. 302, quoting *Withengton L Board* v. *Manchester Corporation*, (1893)62 LJ Ch 393.
3. *Fenwick* v. *Schmalz*, LR 3 CP 313 at p. 315, (*per* Willes, J.); *Le Mesuier* v. *Wajid Hossain*, ILR 29 Cal 890, 907 (FB); Beal's *Cardinal Rules of Legal Interpretation*, 3rd Ed. at p. 355; *Suryajirao* v. *Shivakacharu*, AIR 1939 Bom 421, 423; *see* also *Ambatielos* v. *Antan, etc. Works*, 1923 AC 175, 183.
4. ILR 29 Cal 890, 901, 907; *see* also *District Judge of Kistna* v. *Hanumanulu*, ILR 39 Mad 1045 (FB).
5. (1899) ILR 27 Cal 1023.
6. *Ibid.*

and of *Sun Fire Office* v. *Hart*,[1] proceeded to remark : "Applying the test applied in these cases to the present case, it seems to me that it would be difficult to suggest other kinds of professional misconduct which are similar in kind to those enumerated specifically in the clauses of Section 13 preceding Clause *(f)*. I shall content myself with referring to Clauses *(a)* and *(b)*. It seems to me impossible to find *(a)* a case of professional misconduct which resembles in kind the taking of instructions from persons other than those from whom it is lawful to take them, or *(b)* a case of professional misconduct which is similar in kind of fraudulent or grossly improper professional misconduct, which is not itself fraudulent or grossly improper, and it is so throughout the series as it seems to me. But I may add, in order to avoid possible misconception, that I think the general words of Clause *(f)* are amply sufficient of their own inherent force and effect to cover all cases of professional misconduct, other than those enumerated in the section, which would afford reasonable ground for suspension or dismissal."

Where the specific words embrace all the persons or objects of the class designated by the enumeration, the general words take a meaning beyond the class.[2] To apply the rule in this instance would render the general words meaningless for the reason that there is nothing *ejusdem generis* to fall within their purview.[3] Its application, consequently, would contravene the more important rule of construction that all words are to be given effect. In order to prevent their rejection as surplusage, the general words take an unrestricted meaning on the ground that the Legislature by the addition of general words to an exhaustive enumeration, must have intended that they have meaning outside the class.[4] In such a case we must have recourse to the rule already mentioned that if the particular words exhaust a whole *genus*, the general words must refer to some larger *genus*. Wilberforce in his *Statute Law*, at p. 185 gives some interesting illustrations of this rule : "Thus the words 'all halls, goals, chapels, meeting-houses, schools, alm-houses, and other public buildings' include an infirmary and fever hospital.[5] The words mask, dress or other disguise, or any letter or any other article or thing brought into a prison with intent to facilitate the escape of any prisoner, include a crowbar;[6] street, lane, or other place may include a parish[7]; 'dog, gun, net, or other engine or instrument for the purpose of killing or taking game,' a snare[8]; 'dwelling house; outhouse, yard, garden or other place or places,' a ware-house[9]; 'slaughter-house, shop, building, market or other place,' a yard[10]; 'house, office, room or other place used for betting', an umbrella employed as a tent,[11] and

1. (1899) LR 14 App Cas 89, 104.
2. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4913 at p. 405 quoting *Mid-Northern Oil Co.* v. *Walker*, (1925)268 US 45 : 69 L Ed 841; *Meson* v. *United States*, (1923)260 US 545 : 67 L Ed 596.
3. Sutherland : *Statutory Construction*, at p. 406. "If the particular words exhaust the *genus*, there is nothing *ejusdem generis* left; and in such case we must give the general words a meaning outside the class indicated by the particular words, or we must say that they are meaningless, and, therefore, sacrifice the 'general to preserve the particular words'. *National Bank of Commerce* v. *Estate of Ripley*, 161 No. 126, 132 (1901); *see* also *Amar Singh* v. *State of Rajasthan*, 1955 SCJ 822 : AIR 1955 SC 810.
4. Sutherland : *Statutory Construction*, at pp. 406-407; see also *Larsen* v. *Sylvester & Co.*, 1908 AC 295.
5. *Governors of Bedford Infirmary* v. *Commissioners of Bedford*, 7 Ex. 768.
6. *R.* v. *Payne*, LR 1 CCR 27.
7. *R.* v. *Spratley*, 6 E and B 336.
8. *Allen* v. *Thompson*, LR 5 QB 336.
9. *R.* v. *Edmundson*, 2 E & E 77.
10. *Young* v. *Grattridge*, 1868 LR 4 QB 166.
11. *Bates* v. *Fenwick*, LR 9 CP 339.

enclosed grounds which were used for pigeon-shooting."[1] An Act[2] which gave a vote to the occupier of a 'house, warehouse, counting house, shop or other building', included, in the latter term, only buildings which like those specifically mentioned, were of some permanence and utility, and contributed to the beneficial occupation of the land, increasing thereby its value.[3]

But under no circumstances, and regardless of the type of statute involved, must the rule be used where the language of the statute under consideration is plain and there is no uncertainty.[4] The rule of *ejusdem generis* is merely one of *construction*, and not a rule of law,[5] and like all the rest is useless when the intention is so plain as to require no resort to canons of construction. Such rules and canons are of use only when ambiguity or uncertainty calls for aids to a correct solution.[6] The *ejusdem generis* rule is one to be applied with caution and not pushed too far, as is the case in many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the intention of the Legislature.[7]

(iv) Before the rule can be applied it is further necessary that there must be a distinct *genus*, which must comprise more than one species. In Clause *(a)* of Sub-section (4) of Section 6 of Bombay Land Requisition Act, 1948, if the words 'any other public purpose' had been used to mean a State purpose, they would become mere surplusage, and Courts should lean against such a construction as far as possible.[8]

To invoke the application of the *ejusdem generis* rule there must be a distinct *genus* or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply. The words 'other tenure' in Explanation 1 to Section 3(2)*(d)*, Madras States Land Act I of 1908 cannot be construed *ejusdem generis* with 'service tenure'. The Legislature did not intend to restrict the minor *inams* to the group of service *inams* alone.[9] Unless there is *genus* or category, there is no room for the application of the *ejusdem generis* doctrine. The intention of a single species does not constitute a *genus*. Thus, the mention of a single species, for example cisterns, does not constitute a *genus* and, therefore, there is no scope for the application of the *ejusdem generis* doctrine in construing the word 'fittings' in the expression 'cisterns and fittings' in Section 274(1) of the Bombay Municipal Corporation Act, 1888.[10] Similarly, in construing the expression 'any other person' in Section 10(2)*(n)* of the Administration of Evacuee Property Act, the Supreme Court has held that the doctrine of *ejusdem generis* should not be invoked in categorising the powers of the Custodian in distributing sums due by the evacuee and that the Custodian having funds in his hands is not restricted in distributing them to persons who are members of the family of the evacuee and that persons other than such members are entitled to

1. *Eastwood* v. *Miller*, LR 9 QB 440.
2. Representation of the People Act, 1832 (Clause 45), Section 27, repealed : Representation of the People Act, 1918 (Clause 64), Section 47 and Schedule VIII.
3. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 330, quoting Powell v. *Boraston*, (1864)34 LJCP 73.
4. Crawford : *Statutory Construction*, Article 191 at pp. 327, 328; *State of Bombay* v. *Ali Gulshan*, AIR 1955 SC 810.
5. *Manglore Electric Supply Co. Ltd.* v. *C.I.T., Calcutta*, AIR 1978 SC 1272 at p. 1275.
6. *State* v. *Miller*, 90 Kan 230 : 133 Pac 878 quoted by Crawford : *Statutory Construction*, at p. 380.
7. Craies : *Statute Law*, 5th Ed at p. 170, quoting *Anderson* v. *Anderson*, (1895)1 QB 749; Cf. *Re Haynes, Knapp* v. *Haynes*, (1950)2 AER 879.
8. *State of Bombay* v. *Ali Gulshan*, AIR 1955 SC 810; *see* also *Rajasthan State Electricity Board* v. *Mohan Lal*, AIR 1967 SC 1857, *Khadar Shariff* v. *Tamil Nadu State Wakf Board*, AIR 1987 Mad 40 : (1986) TNLJ 281 : (1986)99 MLW 1041 : (1987)1 MLJ 159.
9. *Bhavanarayana* v. *Venkatadu*, AIR 1954 Mad 415.
10. *State* v. *Jamnabai V. Manji Keshavji*, AIR 1955 Bom 280 at p. 281.

receive at his hands,[1] 'other legal proceedings' must be read *ejusdem generis* with preceding words 'suit' and 'prosecution' as they constitute a *genus*.[2]

(v) A final qualification of the doctrine is that the general words are not restricted in meaning to objects *ejusdem generis* if there is a clear manifestation of a contrary intent.[3] While the rule is a well-established and useful one, it is, like other canons of statutory construction, *only an aid* to the ascertainment of the true meaning of the statute. It is neither final nor exclusive, nor an inviolable rule of law. It is permitted to infer by applying it only in the absence of an indication to the contrary. The rule cannot be applied when the preceding words and the general words constitute description of two categories or the general words in question themselves constitute description of a distinct category.[4] To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction, of which the rule of *ejusdem generis* is only one. If upon a consideration of the context and the objects sought to be attained and of the Act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the Legislature shall not fail.[5]

The intent that the general words have their full and natural meaning, regardless of their connection with a series of specific words, may be found in the context of the statute as a whole, by a consideration of its purpose. Likewise, the rule of *ejusdem generis* will not be applied if it results in a construction inconsistent with the statute's legislative history, other controlling rules of construction, or statutes *in pari materia*.[6]

The question whether, when the Legislature has used general words in a statute, not following particular or specific words, those words are to receive any (and, if so what) limitation, is one which may sometimes be answered by considering whether the intention of the Legislature on this point can be gathered from other parts of the statute.[7]

In *U.S.A.* "The rule of *ejusdem generis* while firmly established is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty. Ordinarily, it limits general terms, which follow specific ones to matters similar to those specified; but it may not be used to defeat the obvious purpose of legislation."[8] While (the rule) is a well-established and useful one, it is, like other canons of statutory construction,

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1. *Raja Bhanu Pratap Singh* v. *Asst. Custodian*, AIR 1966 SC 245.
2. *Asst. Collector of Central Excise* v. *Ramdev Tobacco Co.*, AIR 1991 SC 506 : (1991)1 JT (SC) 199 : (1991)2 SCC 119 : (1991)1 SCR 126 : 1991 AIR SCW 306.
3. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4914 at pp. 407, 408 quoting *Hacke* v. *Dunn*, 1897 LR 1 QBD 579; *Young* v. *Grattridge*, 1868 LR 4 QB 166; *Regina* v. *Doubleday*, (1861)121 ER 530; *Regina* v. *Edmundson*, (1859)121 ER 30; *Tisdel* v. *Combs*, (1838)112 ER 667; *Gooch* v. *U.S.*, (1836)297 US 124 : 80 L Ed 522; *Helvering* v. *Stockholmes Enskilda Bank*, (1934)293 US 84 : 79 L Ed 211; *Texas* v. *U.S.*, (1934)292 US 522 : 78 L Ed 1402; *Mason* v. *U.S.*, (1923)260 US 548 : 67 L Ed 396; *Danciger* v. *Cooley*, (1919)248 US 319 : 63 L Ed 266; *see* also *Ridge* v. *Baldwin*, 1964 AC 40, 132 (Lord Hodson) : unfitness is antethesis of negligence; *Aligarh Muslim University, Aligarh* v. *Nadir Raza Naqvi*, 1978 All LJ 950.
4. *Sukhi Ram Tamrakar* v. *State of M.P.*, 1978 MPLJ 120 : 1978 Jab LJ 160 (FB).
5. *Helvering* v. *Stockholmes Enskilda Bank*, (1934)293 US 84, 88-89 : 79 L Ed 211 (1934).
6. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4914 at pp. 411, 412.
7. Craies : *Statute Law*, 5th Ed. at p. 171.
8. *Gooch* v. *U.S.*, (1936)297 US 124 : 80 L Ed 522 : And while penal statutes are narrowly construed, this does not require rejection of that sense of the words which best harmonizes with the context and the end in view (at p. 128).

only an aid to the ascertainment of the true meaning of the statute. It is neither final nor exclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction of which the rule of *ejusdem generis* is only one. If upon a construction, of the context and the objects sought to be attained and of the Act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the Legislature shall not fail."[1] Where the question was whether the shipment of obscene phonograph record was prohibited under a statute which made illegal the shipment of any obscene.....book, pamphlet, picture, motion picture film, paper, letter, writing, print or other matter of indecent character, Mioton, J., said in *U.S.* v. *Alpers* :[2] "In interpreting the statute as applied to this case the Court of Appeal invoked the rule of *ejusdem generis*.....When properly applied, the rule of *ejusdem generis* is a useful canon of construction. But it is to be resorted to not to obscure and defeat the intent and purpose of Congress, but to elucidate its words and effectuate its intent. It cannot be employed to render general words meaningless.... 'We think that to apply the rule of *ejusdem generis* to the present case would be to defeat the obvious purpose of legislation'."[3]

The doctrine is not an 'inviolable rule of law'. It is applicable only in the absence of indication to the contrary and, when applied, caution must be exercised not to push it too far.[4]

8. Expressio unis est exclusio alterius.— The maxim *expressio unis est exclusio alterius*, that is, the express mention of one person or thing implies the exclusion of other persons or things, enunciates one of the first principles not only as applicable to the construction of written instruments, but as observed by Tindal, C.J., in *Dewhurst* v. *Fielden*,[5] 'the ordinary construction of an Act of the Legislature is *expressio unis est exclusio alterius'*. Where, for example, certain specific things are taxed, or subjected to a charge, it seems probable that it was intended to exclude everything else even of a similar nature, and *a fortiori*, all things different in *genus* and description from those which are enumerated. On the principle of interpretation that what is left unexpressed was in all probability not intended at all.[6] Accordingly, where the Poor Relief Act, 1601 (Eng.) Section 1, enacted that every occupier of lands, houses, coal mines or saleable underwood, should be rated for the relief of the poor it was decided by the House of Lords, that as coal mines alone were mentioned in the Act as rateable, iron mines were not.[7] If there be any one rule of law clearer than another, it is this, that, where the Legislature have expressly authorised one or more particular modes of dealing with property, such expression always

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1. *Helvering* v. *Stockholmes Enskilda Bank*, (1934)293 US 84 : 79 L Ed 211. The rule of *ejusdem generis* is applied as an aid in ascertaining the intention of the Legislature, not to subvert it when ascertained; *Texas* v. *U.S.*, 292 US 522 : 78 L Ed 1402.
2. 338 US 680 : 94 L Ed 457, 460, following *Mason* v. *U.S.*, 260 US 545, 554 : 67 L Ed 396, 399.
3. *Line* v. *Stephenson*, 5 Bing NC 183.
4. *S.R. Tamarkar* v. *State*, AIR 1978 MP 97 (FB); *see* also *State* v. *Amalgamated Malabar Estates*, AIR 1980 Ker 137 (FB); *A.B. Tukaral* v. *G.V. Javalkar*, AIR 1981 Bom 72, case under Railway Act.
5. (1845)135 ER 79 "Express enactment shuts the door to further implication" : *Whiteman* v. *Sadler*, 1910 AC 514, *per* Lord Dunedin; *Subramania Ayyar* v. *Saminatha Ayyar*, ILR 21 Mad 69, 71; *Allahatala* v. *2nd Addl. Munif, Ghazipur*, 1988 All LT 1323.
6. *Qurabali* v. *Govt. of Rajasthan*, AIR 1960 Raj 152 at p. 162.
7. Broom : *Legal Maxims*, at pp. 452-453, quoting *Morgan* v. *Crawshry*, LR 5 HL 304, 334; *Devison* v. *Holiday*, 1 H and N 631. Iron mines became Grateable in England by the Rating Act, 1874, Section 3; *see* also *Lead Smelting Co.* v. *Richardson*, (1762) Burr 1341.

excludes any other mode, except as specifically authorised.[1] An Act imposed a rate on houses, buildings, works, tenements and hereditament, but exempted 'land', it was construed to mean land without buildings, houses or works upon it.[2] It is a rule of statutory and constitutional interpretation that, where a restriction is not general but is provided in a specific instance, such application of the specific instance will not be carried into other statements which do not provide such limitations.[3] "As a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing. It, therefore, logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. For instance, if the statute in question enumerates the matters over which a Court has jurisdiction, no other matters may be included. Similarly, where a statute forbids the performance of certain things, only those things expressly mentioned are forbidden. So also, if the statute directs that certain acts shall be done in a specified manner, or by certain person, their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited."[4]

Before the principle of construction *expressio unius est exclusio alterius* can be applied at all, the Court must find an express mode of doing something that is provided in a statute, which, by its necessary implication, could exclude the doing of that very thing and not something else in some other way. There is no room whatever for applying *expressio unius* rule to exclude what falls within an expressly provided legislative entry. The maxim is a 'useful servant but a dangerous master.'[5]

This maxim, or general principle of construction, as must be apparent, is based upon the *probable intention of the Legislature*.[6] While the maxim has received considerable mention in legalistic thinking, it is not of legal origin, rather it is a product of 'logic and commonsense.'[7] It has received recognition in the interpretation of *constitutions*, the treaties, wills, contracts and leases as well as statutes.[8] Historically, it was first applied to legislation where the statute designated a particular remedy for enforcing a right or power which did not previously exist.[9] Its use was gradually extended, so that it has received mention in the interpretation of practically all types of statutes, including legislation on taxation, administrative bodies, corporations, contracts, marriage, dower, liens, exemptions, crimes, procedure, evidence and others.[10] This maxim properly applies only when in the natural association of ideas in the mind

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1. *Blackburn* v. *Flavelle*, (1881)6 App Cas 628, 634; *Krishna* v. *Nilamadhab*, AIR 1923 Cal 66, 69; *Notandas* v. *Pribhadayal*, AIR 1921 Sind 38, 41.
2. *R.* v. *Midland Ry.*, (1855)4 E and B 958; *Crayford* v. *Rutter*, (1867)1 QB 650. "In fact the insertion of the provision in one case and the omission of it in the other is in argument of considerable force against the construction on the principle *expressio unius personal est exclusio alteriues*"; *Ahmad* v. *Ghulam Mohd.*, 94 PA 1904 at p. 361 (FB).
3. *Indiana* v. *Grand Superior Court*, 202 Ind 197, 209; *see* also Sutherland : *Statutory Construction*, at pp. 414-415, footnote.
4. Crawford : *Statutory Construction*, Article 195 at pp. 334-335; Sutherland : *Statutory Construction*, Article 4915 at p. 414. *See* also *Habib Seth* v. *Kashinath*, 1968 All LJ 446; *Ramchandra Keshav Adke* v. *Govind Joti Chavare*, 1975 Mah LJ 515 (SC); *Assistant Collector of Central Excise, Calcutta* v. *National Tobaacco Co. of India Ltd.*, (1972)2 SCC 560.
5. *State of Karnataka* v. *Union of India*, (1977)4 SCC 608.
6. Crawford : *Statutory Construction*, Article 295 at p. 335.
7. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4916 at p. 415, relying on Broom's *Legal Maxims*, at p. 453.
8. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4916 at p. 415, quoting *Springer* v. *Govt. of the Phillipines*, (1928)277 US 189 : 72 L Ed 845 (Constitution : On separation of powers).
9. Sutherland : *Statutory Construction*, at pp. 415-416 quoting *Earl of Southampton's* case, 73 PR 109; *Townsend's* case, (1954)75 ER 173; *Caste's* case, (1620)79 ER 555; *Rex* v. *Wright*, (1620)79 ER 411; *Rex* v. *Robinson*, (1759)97 ER 568.
10. Sutherland : *Statutory Construction*, at pp. 416-417, quoting *Case* v. *Kelly*, (1890)133 US 21 : 33 L Ed 513 (Private Corporations); *see* also *Ford* v. *United States*, 273 US 593.

of the reader which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment.[1] Where the intention clearly reveals that the law-makers did not mean that express mention of one thing should operate to exclude all others, of course, the principle is not applicable. Consequently where statutory language is plain and the meaning clear, there can be no implied exclusion. In other words, the principle is to be used only as a means of ascertaining the legislative intent where it is doubtful and not as a means of defeating the apparent intent of the Legislature.[2] It is important to bear in mind that the method of construction summarised in the maxim cannot be applied without limitation; for a failure to make an *expressio* complete may easily arise from the accidents of legislative procedure, and it is common to find provisions put into statutes ex *abundanti cautela* and at the instance of parties interested. Consequently provisions sometimes found in statute enacting imperfectly or for particular cases only, that which was already and more widely the law, have occasionally furnished ground for a specious argument, based on the maxim, that an intention to alter the general law was to be inferred from the partial or limited enactment. But the maxim is plainly inapplicable in such cases. Provisions sometimes found in statutes, enacting imperfectly or for particular cases only that which was already and more widely the law, have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial or limited enactment, resting on the maxim, *expressio unius exclusio est alterius*. But that maxim is inapplicable in such cases. The only inference which a Court can draw from such superfluous provisions (which generally find a place in Acts to meet unfounded objections and idle doubt) is that the Legislature was either ignorant or unmindful of the real state of the law or that it acted under the influence of excessive caution.[3] The maxim is one which applied with caution but often affords assistance in matters of construction.[4] The principle of interpretation that the express mention of one thing implies the exclusion of another is not a rule of law but a rule of construction. It is a product of logic and common sense and ought to be applied with care and caution so that a rational interpretation is produced and the policy of the law-maker promoted. If the rejection of the maxim will serve the purpose for which the statute was enacted or will accomplish beneficial results, the maxim must be refuted.[5] The point of view is lucidly explained in the following passage from the judgment of Farwell, L.J., in *Lowe* v. *Dorling & Son*[6]: "Acts of Parliament are not, in my experience, expressed with such accuracy and precision as to justify the Court in striking out unambiguous words in order to make a sentence grammatical or logical. The generality of the maxim *expressuna facit cessare tacitum*,[7] which was relied on, renders caution necessary in its application. It is not enough that the express and the tacit are merely incongruous. It must be clear that they cannot reasonably be intended to co-exist. In *Colquohoun* v. *Brooks*,[8] Wills, J., says : "I may observe that the method of construction summarised in the maxim *expressio unis est exclusio alterius* is one that certainly requires to be *watched*. Perhaps

1. *State* v. *De Corps*, 134 Ohio St. 225, quoted by Crawford : *Statutory Construction*, at p. 337.
2. Crawford : *Statutory Construction*, at pp. 335, 336.
3. Maxwell on *Interpretation of Statutes*, 10th Ed at pp. 316-17 now 11th Ed. at pp. 306-307, quoted in *Harish Chandra* v. *Triloki Singh*, AIR 1957 SC 444, 454.
4. *State of Tasmania* v. *Commonwealth of Australia and State of Victoria*, (1904)1 CLR 329, 343.
5. *Ishar Singh & Sons* v. *Market Committee, Taru Taran*, 59 PLR 628, 631.
6. (1906)2 KB 772, 784.
7. A thing expressed puts an end to tacit implication (Trayner Leg Max quoted in *Iyer's Lexicon*, at p. 420).
8. (1887)19 QBD 400, 406; *see also Mukanda Das* v. *Bidhan Chandra*, AIR 1960 Cal 67.

few so-called rules of interpretation have been more frequently misapplied and stretched beyond their due limits. The failure to make the *expressio* complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind; and the application of this and every other technical rule of construction varies so much under differing circumstances, and is open to so many qualifications and exceptions, that it is rarely that such rule helps one to arrive at what is meant. Lopes, L.J., in the Court of Appeal,[1] says : "The maxim *expressio est unis exclusio alterius* has been pressed upon us. I agree with what is said in the Court below by Wills, J., about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The *exclusio* is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to subject-matter to which it is to be applied, leads to inconsistency or injustice".... We may also usefully recall here the warning given by Lord Halsbury in *Mclanghlin* v. *West Garth*[2] : "It might be that modern statutes were drawn with greater particularity and minuteness. The misfortune in the framing of those statutes was that anybody of persons, seeing a possibility of liability on their part, applied to Parliament to have special provisions inserted for their protection. That application was occasionally complied with, and then the argument arose, which their Lordships had heard that day, namely, that anybody who was not included in the enumeration of the particular persons so inserted, must be taken to be excluded by the operation just because they were not included and others were. The doctrine applicable to all such cases was that a great many things were put into a statute *ex abundanti cautela*, and it was not to be assumed that anybody not specifically included was, for that reason alone, excluded from the protection of the statute."[3]

The rule of exclusion, as is well known, is merely an auxiliary rule of construction adopted for the purpose of ascertaining the intention of the law-giver. It is neither conclusive nor of universal application and is to be applied with great *caution*. It may be applied only when in the natural association of ideas the contrast between what is provided and what is left out leads to an inference that the latter was intended to be excluded; it may accordingly be held inapplicable if there exists a plausible reason for not including what is left out.[4]

M. Patanjali Sastri J., observed in Special Reference I of 1951 (decided on 22nd May, 1951) : "The maxim *expressio unis est exclusio alterius* is not one of universal application, and it is inconceivable that the framers of the Constitution could have intended to deny to the Indian Legislature a power, which..... has been recognised on all hands as a desirable, if not, a necessary concomitant of legislative activity in modern States.

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1. (1888)12 QBD 52, 62. It may be observed that the view taken by Wills. J., in *Colquhoun* v. *Brooks*, which gave way to that of Stephen, J., in the Division Court, was approved by Lord Esher, MR and Lopes, LJ in the Court of Appeal, Fry , LJ dissenting; and ultimately, the decision in the House of Lords was in accordance with the dissident judgment of Wills, J., *Colquhoun* v. *Brooks* (1889)14 AC 493; *see* also *Dean* v. *Wicsengrund*, (1955)2 All ER 432, 438 (CA).
2. (1906)75 LJPC 117.
3. *Krishna* v. *Nilmadhab*, AIR 1923 Cal 66 at pp. 69-70; *see* also *Daily Gazette* v. *Karachi Municipality*, AIR 1930 Sind 287, 294; *Pahlumal Santdas* v. *Naraindas Dipchand*, AIR 1933 Sind 151, 154 (FB). This maxim is at best an uncertain guide to the true meaning of a statute; *Midnapore Zamindari Co.,Ltd.* v. *Hrishikesh Ghosh*, ILR 41 Cal 1108, 1123. It can only be applied with great caution and more so when interpreting two different sections providing for different contigencies; *In re* Narandas Sunderdas, AIR 1926 Sind 133. 'Unsafe'; *Vishwanatha Sastri* v. *Sitalakshmi Ammal*, AIR 1921 Mad 126, 128-129; *Bharat Swamigal* v. *Duraiswami*, ILR 54 Mad 900 : AIR 1931 Mad 659, 666; *M. Lall* v. *Gopal Singh*, AIR 1963 Punj 378.
4. *Calcutta, etc. Transport Society* v. *State of Punjab*, AIR 1962 Punj 94, 98.

The maxim *expressio unis est exclusio alterius* does not apply where the statutory language is plain and its meaning is clear.[1]

When a rule of law lays down the conditions under which an order or judgment shall not be invalid, it by necessary implication, must be deemed to lay down the further rule that the order will be invalid, if these conditions are not fulfilled. This follows from the maxim *expressio unis est exclusio alterius.*[2]

9. Casus omissus.—*Casus omissus* is point or case unprovided for.[3] When a given state of affairs does not come within the obvious meaning of the words of the statute, that is, when certain contingencies are not provided for, or when the words do not embrace the particular question in hand, it is a case of *casus omissus.*[4] We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.[5] A *casus omissus* should not be readily inferred.[6] In trying to solve a difficulty, Courts must not proceed as mere grammarians of the written law but must search for the true intention of the Legislature. But the intention of the Legislature is not to be judged by what is in its mind but by its expression of that mind in the relevant statute itself. The only repository of a Legislature's intention is the language it has used and in examining that language, it must be presumed that the Legislature knows the accepted vocabulary of legislative bodies and so knows what words are required and considered apt to effect a particular result. If it has not made a provision or used words from which a particular result can properly be found, Courts will not be justified in finding it, simply because a contrary decision would cause hardship to public. It is true that one must not expect in a statute the completeness and elaboration of a deed and where the minimum required to make a particular meaning which is obviously intended is found effect must be given to such meaning. But Courts cannot dispense with even the minimum. Where even such minimum is absent Courts must declare the deficiency and let it have its effect rather than strain themselves to make it good. Thereby, not only will the Courts prevent themselves from taking up the functions of the Legislature but the Legislature may also profit because it may take care to avoid such deficiencies in future.[7] "We cannot aid the Legislature's defective phrasing of the statute : We cannot add, and mend, and, by construction, make up deficiencies which are left there. If the Legislature did intend that which it has not expressed clearly; much more, if the Legislature intended something very different; if the Legislature intended something pretty nearly the opposite of what is said, it is not for Judges to invent something which they do not meet with in the words of the text (aiding their construction of the Act always, of course, by the context), it is not for them so to supply a meaning, for, in reality, it would be supplying it : The true way in these cases is, to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered; and, therefore, if any other meaning was intended than that which the words purport plainly to import, then let another Act supply that meaning, and supply the defect in the previous

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1. *Parbhavi Transport* v. *Regional Transport Authority,* AIR 1960 C 801 at p. 804; *Shakila* v. *State,* AIR 1961 All 633.
2. *Qabool* v. *Chajju,* AIR 1948 All 411, 413 (Section 350-A, Cr. P. Code, 1898, No corresponding section in 1973 Code).
3. *See* Wharton : *Laws Lexicon,* 14th Ed. at p. 167.
4. *Bhadramma* v. *Kotam Raj,* AIR 1955 Hyd 140.
5. *Vickers* v. *Evans,* (1910)79 LJKB 955, *per* Lord Loteburn, LC; *Commissioner of I.T., Bombay* v. *Kishore Singh,* ILR 1950 Bom 102 : 62 Bom LR 680; *Commissioner of Income-tax* v. *National Taj Traders,* AIR 1980 SC 485.
6. *Commissioner of Income-tax* v. *National Taj Traders,* AIR 1980 SC 485.
7. *Tarak Chandra* v. *Ratanlal,* AIR 1957 Cal 257 at p. 261 (FB).

Act."[1] The Courts by supplying the omissions in an Act of Legislature would be travelling for a field, and it would be open to serious objection when the Courts deviate from their real function of construction and enter upon legislation which is obviously outside their purview. The Courts cannot say to themselves that through oversight the Legislature has failed to provide for a particular situation and, therefore, what was not done by the Legislature may be done by the Court. This does not lie within the judicial field. If the meaning of the statute is sensible without the omitted words, Courts will not be justified in making interpretations. The general rule in all such cases, is that the Court may interpret doubtful or obscure phrases in a statute so as to give effect to the presumed intention of the Legislature and to carry out what appears to be the general policy of the law. Court cannot by construction cure a *casus omissus*, however, just and desirable it may be to supply the omitted provision, and it will make no difference, if is appears that the omission on the part of the Legislature was a mere oversight, and even if there be no doubt that the Act would have been worded otherwise, if the attention of the Legislature had been drawn to the oversight at the time of the passing of the Act, it is not possible for the court to deflect from its course on the spacious plea that the interpretation would cause hardship and suffering to those for whose benefit it was enacted. In such a contingency the hardship of the law should not be a consideration for the courts, but only for the Legislature. The courts are guided by the logic of this law where construction admits of no doubt, and for the hardship the relief can only be given by the Legislature.[2] In *Dunpont* v. *Mills*,[3] the Court stated the general rule thus : "While the court may interpret doubtful or obscure phrases and obscure language in a statute so as to give effect to the presumed intention of the Legislature, and to carry out what appears to be the general policy of the law, it cannot, by construction, cure a *casus omissus*, however just and desirable it may be to supply the omitted provision; and it will make no difference if it appears that the omission on the part of the Legislature was a mere oversight, and that, without doubt, the Act would have been drawn otherwise, if the attention of the Legislature had been drawn to the oversight at the time the Act was under discussion." "The courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a co-ordinate branch of the Government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers."[4] In no case are courts justified in stretching the language for filling up *gaps* or omissions or for the purpose of doing justice in individual cases.[5]

It is not permissible to create a *casus omissus* by interpretation save in some cases of strong necessity.[6]

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1. *Crawford* v. *Spooner*, 4 MIA 179, 187, 188, *per* Lord Brougham; *Multan Municipality* v. *Bhal Kishan Chand*, AIR 1927 Lah 176; *Sharfuddin* v. *R.P. Singh*, AIR 1957 Pat 235 at p. 239; *Radheshyam Agrawal* v. *Harrison Trading Co.*, AIR 1992 MP 168 : 1992 JLR 43; *State of Kerala* v. *Mathai Verghese*, AIR 1987 SC 33 : 1987 Cri LJ 308.
2. *Roshan Lal* v. *Gobind Raj*, AIR 1963 Punj 532 at p. 537 (Tek Chand, J.); *Prem Nath* v. *Prem Nath*, AIR 1963 Punj, 62 at p. 65 (Tek Chand, J.); *Ebert* v. *Poston*, 69 L Ed 435 (Brandeis, J.); A *casus omissus* does not justify judicial legislation; *United States* v. *Weitzei*, 62 L Ed 872, 874 : 246 US 533, 543.
3. 1967 All 168 quoted by Crawford : *Statutory Construction*, at p. 272; *United States* v. *Hood*, 96 L Ed 846, 850 : 343 US 148 (dissenting judgment.).
4. *Railroad Commission of Indiana* v. *Grand Trunk Western Ry. Co.*, (1913)179 Ind 255 : 100 NE 852 quoted by Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4942 at pp. 454-455; *see* also *Ex parte* Sharpe, (1864)5 B and S 322.
5. *Mohan Lal* v. *Grain Chamber, Ltd.*, AIR 1959 All 276 at p. 287.
6. *Emperor* v. *Rustomji*, 5 Cr LJ 338, 340 : 9 Bom LR 363, quoting *Mersey Docks and Harbour Board* v. *Henderson Brothers*, (1888)13 AC 595, 607. See *Sagoon Jayaidee Dhoud* v. *Sociedade etc.*, AIR 1966 Goa 38 (FB). *Casus omissus* cannot be supplied or created by court by interpretation, much less by wrong intepretation.

(i) Court cannot supply casus omissus.[1]—"A *casus omissus* can in no case be supplied by a court of law, for that would be to make laws," says Bullar, J., in *Jones* v. *Smart*.[2] Whether the omission is intentional or inadvertent is no concern of the court and a *casus omissus* cannot be supplied by a court of law.[3] The omission can only be supplied by statute or statutory action. The court cannot put into the Act words which are not expressed, and which cannot reasonably be implied on any recognized principles of construction. That would be a work of legislation, not of construction, and outside the province of the court.[4] A court of law can have no warrant for interpreting a statute on the basis of certain words which are not to be found there.[5] Nor is it permissible for the court to legislate and provided for the alleged contingency in the garb of interpreting the provisions of the Act.[6] "After All", says Earl Loreburn[7] : "It is not our function to repair the blunders that are to be found in legislation. They must be corrected by the Legislature." A court cannot reach a *casus omissus* and no canon of construction permits the court to supply a lacuna in a statute; nor can courts of law fill up the lacuna in an ill-drafted and hasty legislation.[8] In dealing with an Act, Tamil Nadu Buildings (Lease and Rent Control) Act, which is restrictive of the rights of the owners of properties, the court has to strike a balance between public convenience and enforcement of individual rights by making a proper interpretation in the light of the specific language used in the statute, and if taking this view creates a lacuna, then the Court cannot fill it by supplying a provision.[9] Omissions are not to be lightly inferred or provided for. The Court, it is a firmly established rule, is not at liberty to read words in a statute unless clear reason for it is found within the four corners of the Act itself or unless it is necessary to do so to give the language sense and meaning in its context. While the court will not wrest with the language of a statute and will not create or supply a *casus omissus* it must at the same time see that,

> "the true meaning of any passage is to be found not merely in the words of that passage but in comparing it with other parts of the law, ascertaining also what were the circumstances with reference to which the words were used and what was the object appearing from those circumstances which the Legislature had in view."[10]

It is not permissible for the court to fill up this gap by a process of judicial interpretation.[11] A court must interpret the law as it stands and should not try to supply further facts or add to

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1. *Rashidkhan Osmankhan* v. *Maltibai*, 1980 Mh LJ 428; *Puranmal Fatehchand Saraoji* v. *Sushila Devi Kaushal Chand Baldar*, 1979 MPLJ 58.
2. (1785)1 TR 44 at p. 52; *see* also *Cobb* v. *Mid Wales Railway Co.*, LR 1 QB 342; *Lane* v. *Bennet*, (1836)5 LJ (Ex) 98 ; Wilberforce : *Statute Law*, at p. 24; Broom : *Legal Maxims*, at p. 301 (10th Ed); *Rachagowda Gurusiddappa Patil* v. *Kamabai*, AIR 1963 Mys 21; *United States* v. *Monia*, 87 L Ed 376, 381 : 317 US 424 (Roberts, J.); *see* also *Rashidkhan Osmankhan* v. *Maltibai*, 1980 Mh LJ 428; *Sachidananda Banerjee* v. *Sita Ram Agarwala*, AIR 1966 SC 955.
3. *Hemdan* v. *State of Rajasthan*, AIR 1966 Raj 5, 6 (C.S. Bhargava, J.).
4. *Kamalaranjan* v. *Secretary of State*, AIR 1938 PC 281, 283 : 66 IA 1, 10; *Piare Singh* v. *Mula Singh*, ILR 4 Lah 323, 326 : It may be a *casus omissus*, but it is obviously for the Legislature and not for the court to remedy the defect.
5. *Gulabchand* v. *Govind Sahai*, AIR 1964 Raj 155 at p. 160 (Modi, J.).
6. *Khas Karanpura Colliery, Ltd.* v. *Union of India*, AIR 1965 Pat 305 at p. 309 (Untivalia, J.).
7. *Bristol Guardians* v. *Bristol Waterworks Co.*, 1914 AC 379 at p. 388; *Foulkes* v. *Suppan Chettiar*, AIR 1951 Mad 296, 305.
8. *Shyam Narain Khanna* v. *Prescribed Authority, Dehra Dun*, 1976 All LR 489.
9. *P. Balakrishna Reddy* v. *Accommodation Controller, Madras*, 88 LW 109.
10. *Jana* v. *Parvati*, AIR 1958 Bom 346, 347-48.
11. *Rajah of Venkatagiri* v. *Rami Reddi*, AIR 1950 Mad 347, 350; *Ahmad* v. *Ghulam Mohd.*, 94 PR 1904 (FB); *Chief Inspector of Stamps* v. *Rameshchandra Ghatak*, AIR 1966 All 189 (DS Mathur, J.) : (cannot add words, unless necesssary to carry out intention of Legislature. Court cannot fill up gaps); *Vidyavati* v. *State of Punjab*, AIR 1968 SC 519; *Ayyub Khan Jabar Khan* v. *Pundilal Baxilal*, AIR 1968 Madh Pra 57.

the meanings conveyed by the language of the section.[1] It is an accepted proposition that no rule of interpretation can be invoked for the purpose of including cases plainly omitted from the natural meaning of the words. It is not for the Court to supply the omission; it can only point out the omission. It is for the Legislature to consider and decide whether the omission should be supplied.[2] Law is an objective thing and stands where the Legislature has made it stand. Court of law can take a reasonable view of its provision in such a manner as will not make the very purpose of the Act infructuous. But it is none of the functions of a court of law to fill up or rectify legislative gaps and lacunas[3] where under the terms of the Statute some difficulties or hardship may ensue. So, where a municipal Statute fixes an outside limit for the terms of Commissioners once elected but fails to make provision as to what will happen if the successor body does not come into existence before the expiry of the life fixed for the Commissioners previously elected, courts have no power to extend the life of the old body if the law makes no provision therefor.[4] Maxwell[5] quotes the case of *Ex parte* Abbott,[6] referring to the (English) Bankruptcy Act, 1869 (c. 71), Section 87, which provided for securing for the general body of creditors the proceeds of goods of a debtor sold in execution, but made no express provision for dealing with his goods when seized under an elegit (by which the judgment-debtor's goods and chattels are appraised and delivered to the creditor in satisfaction of his debt. If they should prove insufficient, the Sheriff was empowered to deliver execution of all the debtor's lands as provided later on by Statutes 1 and 2 (Vict. c. 10, Section 11). It was held that the omission, however fatal to the whole policy of the Act, could not be supplied by any stretch of judicial interpretation. The defect was cured by Bankruptcy Act, 1883 (c. 52), Section 146.

When two provisions of law can apply either cumulatively or alternatively to a given state of facts, there is no presumption that they are to be applied cumulatively any more than that they are to be applied alternatively. If the statute does not lay down that they are to be applied alternatively, they cannot be applied cumulatively. Even if the court finds that the intention of the Legislature was to apply them cumulatively, but it has not expressed its intention in words capable of being construed to indicate it, it is not for the court to supply the missing words and hold that it has applied them cumulatively. A court can construe or interpret existing words but cannot supply missing words.[7]

If an Act is so drafted as to allow a loophole for malefactors, it is a circumstance more relevant to the amendment of the Act than to the interpretation of its terms.[8] But the fact that the enactment has been amended cannot be decisive of any omission in its unamended condition.[9] " A statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made.... When an Act contains special saving of another Act, and omits all allusion to a third Act *in pari materia*, it is safer to presume that the omission is deliberate than that it is due to forgetfulness, or made *per incuriam*. Even if the omission flows from forgetfulness, those who claim the benefit of the Act, the reservation of which is omitted, cannot succeed."[10] Under

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1. *Razdan* v. *State*, AIR 1966 J & K 9, 11 (Murtuza Fazl Ali, J.).
2. *Raghavan Nair* v. *Narayana Panickar*, 1976 Ker LT 369.
3. *New Saran Sugar and Gur Refining Co. Ltd.* v. *C.I.T.*, AIR 1969 SC 1062; *Janapada Sabha, Chhindwara* v. *Central Provinces Syndicate Ltd.*, AIR 1971 SC 57.
4. *Kamalcharan Bhattacharya* v. *Om Prakash Gupta*, 1965 Cal LJ 78.
5. Maxwell : *Interpretation of Statutes*, at p. 15 of 11th Ed.
6. (1880)50 LJ Ch 80 : 15 Ch D 447.
7. *L. Raymond (Dr.)* v. *Florence B. Yokehee*, AIR 1957 All 207, 212, *per* Desai, J.
8. *Chandu Kutti* v. *Mahadevi*, AIR 1928 Mad 534, 535.
9. *Shantabai Vishnumal* v. *Ganpat Ladha*, 1976 Mh LJ 332 (DB).
10. Craies : *Statute Law*, 4th Ed. at p. 71 (5th Ed. at p. 68, quoting *inter alia*, *Re* Williams, (1887)36 Ch D 573, 582.

the guise of effectuating the policy and intent of the Legislature, courts cannot unduly enlarge the scope of the statutory provision, especially when it has the effect of curtailing the right or the freedom of a person to stand for election.[1] Words may not be supplied in a statute where the statute is intelligible, without the addition of the alleged omission, or where the omission is left to provide for exigencies which may arise or where the Court simply would think it wise to do so, or where the omission is not plainly indicated, or where words are purposely omitted, or where addition of words could partially defeat the purpose of the statute, or simply because hardship will result, or where the addition will make the statute unconstitutional.[2]

(ii) Even by implication or analogy.—It is a well-established principle of construction of statutes that the court cannot supply omissions by implication and analogy, unless the existing provisions of a statute by necessary intendment so compel the court.[3] We ought not to create a *casus omissus* by interpretation save in some cases of strong necessity.[4] "I think, however," said Lord Westbury, L.C., in *In re* St. Sepulchre Vicar and Church Wardens,[5] "that the words of the Act to which I have referred must be taken in conjunction with their context, and that considerations of abstract justice cannot be brought in a matter of positive law to supply a *casus omissus* by a departure from the established rules of construction." Even if the words used in an Act of Parliament are so wide as to include cases which were probably not meant to be included, or so narrow as to exclude cases which were probably not meant to be excluded, the Court must give effect to those words according to the ordinarily rules of construction.[6]

In *Mohd. Buhadoor Khan* v. *Collector of Bareilly*,[7] their Lordships of the Privy Council observed :

> *Omission not to be supplied by equitable construction.*—"Another contention, which seems to have been the only one urged in the High Court, as far as it appears from the judgment is, that a saving with respect to parties under disabilities must be taken to be by equitable construction implied in this clause. Their Lordships however think it is impossible that any court can add to the statute that which the Legislature has not done. The limitation is enacted in plain and absolute terms. The Legislature has not thought fit to extend the period which it has prescribed to persons under disability. Where such enlargements have been intended, they are found in the Acts containing the limitation, as in the General Act. This Act contains no such saving, and their Lordships would be legislating and not interpreting the statute if they were to introduce it."

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1. *Dantu Bhaskararao* v. *C.V.K. Rao*, AIR 1964 Andh Pra 77, 83 (Chandra Reddy, C.J.).
2. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4924 at pp. 457-458.
3. *Rajammal* v. *Chief Justice*, AIR 1950 Mad 185; *R.* v. *Dodds*, (1905)2 KB 40, 49, Collins, M.R., refused to introduce by implication only a provision directly contradictory of an unambiguous enactment addressed to the very point itself. *See* also *West Derby Union* v. *Metropolitan Life Assurance*, 1897 AC 647; *Syed Yusuf Ali* v. *Abbas Ali Joona Bhai Saheb*, (1963)2 Andh WR 194 : (1963)2 Andh LT 513.
4. *Mersey Docks and Harbour Board* v. *Henderson Bros.*, (1888)13 AC 595 at p. 607, *per* Lord Fitzgerald : "It seldom happens that the framer of an Act of Parliament of the Legislature has in contemplation all the cases which are likely to arise, and the language, therefore, seldom fits every possible case. Whenever, the case is clearly within the mischief, the words must be read so as to cover the case if by any reasonable construction they can be read so as to cover it though the words may point more exactly to another case; they must be done rather than make such a case a *casus omissus* under the statute; *Scott* v. *Legg.*, (1876)2 Ex D 39, 42-43.
5. (1864)38 LJ Ch 372, 375.
6. Wilberforce : *Statute Law*, at p. 24, quoting *Notley* v. *Buck*, 8 B and C at p. 164; *Nixon* v. *Philips*, 7 Ex at p. 192.
7. 1 IA 167, 176.

No rule of interpretation can be invoked for the purpose of including cases plainly omitted from the natural meaning of the words.[1] The courts are to construe the provisions of law according to their plain meaning and not to supply the deficiencies of the Legislature. Whether the omission flowed from forgetfulness of the draftsman or was intentional, is no concern of the courts, and a *casus omissus* cannot be supplied by a court of law 'for that would be to make laws'.[2] "Now it is one thing to introduce terms into an Act of Parliament", said Earl Loreburn in *Bristol Guardians* v. *Bristol Waterworks Co.*,[3] "in order to give effect to its clear intention by remedying mere defects of language. It is quite another thing to imply a provision which is not in the statute in order to remedy an omission, without any ground for thinking that you are carrying out what Parliament intended.... To insert such provision would be simply making, not interpreting, the law." If there is a gap in a statute it is not for the court to fill it in, but for the Legislature.[4]

(iii) Effect.—Where, however, a *casus omissus* does really occur, either through the inadvertence of the Legislature, or on the principle *quod semel aut bis existit practereunt Legislatores*,[5] the rule is that the particular case that was left unprovided for, must be disposed of according to the law as it existed before such statute.[6] In *Munnalal* v. *Nazim, Ecclesiastical Department*,[7] Siddiqi, J., observed :

> "The Act purposely and expressly confers no authority on the department to carry out the possession and ejectment directly by its own officers, in the case of unrecognised persons and we are unable to read into the Act the existence of authority to eject its tenants directly merely on account of absence of provision to that effect. If there is no provision the ordinary law of the land will apply, even in case of Government Departments. The omission (if any) in the Act will not justify a rule in excess of the law in general. It was certainly obvious that these cases will arise, but instead of providing for the case of tenancy in the Act, the matter was left out and the omission there (intentional or accidental) was covered by the rules. *Casus omissus* ought not to be created by interpretation except in some cases of strong necessity. Where, however, a *casus omissus* does really occur, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute."

(iv) Casus omissus to be avoided.—"It seldom happens," says Cleasby, B., in *Scott* v. *Legg*,[8] "that the framer of an Act of Parliament or the Legislature has, in contemplation of all the

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1. *Piara Singh* v. *Mula Singh*, ILR 4 Lah 323, 326, relying upon Maxwell's *Intepretation of Statutes*, 12th Ed. at p. 233 : A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted and the omission appears consequently to have been unintentional. *See* also *Deputy Commissioner Jhang* v. *Budhu Ram*, AIR 1937 Lah 38, 40 (FB) *per* Din Mohd. J.; *Byai Cotton Mills, Ltd.* v. *Rastriya Mill Mazdoor Sangh*, AIR 1965 Raj 213, 216 (Dave, C.J.).
2. *Municipal Committee, Multan* v. *Bhai Kishan Chand*, AIR 1927 Lah 276, 277, *per* Tek Chand, J.; *Punjab Distilling Industries, Ltd.* v. *Commissioner of I.T.*, AIR 1962 Punj 337 : ILR (1962)2 Punj 170 (FB).
3. 1914 AC 379 at p. 388, followed in *Foulkes* v. *Suppan Chettiar*, AIR 1951 Mad 296, 305.
4. *Ajit Kumar Roy* v. *Surendra Nath Ghose*, AIR 1953 Cal 733 (FB).
5. The Legislature takes no notice of that which is only of occasional occurrence. Iyer : *Law Lexicon*, at p. 1070.
6. Broom's *Legal Maxims*, 10th Ed at p. 360, quoting R. v. *Denton*, 34 LJ (MC) 13 : 11 LT 371; *Cobb* v. *Mid Wales, Ry. Co.*, LR 1 QB 342 at pp. 348, 349.
7. AIR 1950 Hyd 5, 8-9; *see* also *R.* v. *Clewerth*, (1864)4 B and S 927, 934, if it appears that the class or thing which it is sought to bring within the Act, was known to the Legislature at the time of its enactment, and that class or thing is omitted, "it must be supposed to have been omitted intentionally" : *per* Blackburn, J.
8. (1876)2 Ex D 89; *Gopalaswami* v. *Secretary of State*, ILR 57 Mad 237 : AIR 1933 Mad 748, 750.

cases which are likely to arise, and the language therefore seldom fits every possible case. Whenever the case is clearly within the mischief, the words must be read so as to cover the case, if by any reasonable construction they can be read so as to cover it, though the words may point more exactly to another case; this must be done rather than make such a case a *casus omissus* under the statute."

(v) Remedy.—But, inasmuch as it is the intention of the Legislature which constitutes the law of any statute and since the primary purpose of construction is to ascertain that intention, such intention should be given effect, even if it necessitates the supplying of omissions, provided, of course, that this effectuates the legislative intention.[1] It would seem that the only time the omitted case might be included within the statute's operation, would be when the Legislature intended to include it but actually failed to use language which would, on its face, cover the omitted case. The inclusion would then be justified, if from the various intrinsic and extrinsic aids, the intent of the Legislature to incorporate the omitted case, could be ascertained with a reasonable degree of certainty.[2] Where the alternative lies between either supplying by implication words 'which appear to have been accidentally omitted' or adopting a construction which deprives certain existing words of all meaning, it is usual to supply the words.[3] Words may be supplied in a statute in order to give it effect, or to avoid repugnancy or inconsistency with the legislative intention, or where omission is due to inadvertence, mistake, accident, or clerical error, or where omission makes the statute absurd, meaningless, irrational, or unreasonable, or where legislative intent is clearly indicated by the context or other parts of the statute, or omissions may be supplied where it is necessary to prevent unconstitutionality, or where the omitted words were incorporated in the original Act as shown by the enrolled bill, or where the omitted words are indicated by the caption or title of the statute, or where words are obviously or manifestly omitted.[4] No doubt there is a canon of construction that if a statute is ambiguous and no meaning could be given then the words could be imported to give life and meaning.[5]

It is a rule of construction of statutes that an omission in which the context shows with reasonable certainty to have been unintended or inadvertent may be supplied at least in enactments which are construed beneficially as distinct from strictly,[6] though as a matter of fact lacuna cannot be easily assumed in an Act.[7]

In *O.S. Singh* v. *Union of India*,[8] the Supreme Court referred to *Hira Devi* v. *District Board, Shahjahanpur*[9] and *Nilinkkaya Bysack* v. *Shyamsundar*,[10] were it was held "The court cannot so interpret a statute to produce a *causus omissus* where there is none, referring to *(i) The*

1. Crawford : *Statutory Construction*, at pp. 269, 270; *Bhadramma* v. *Kotum Raj*, AIR 1955 Hyd 140.
2. Crawford : *Statutory Construction*, at p. 271.
3. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 265, *see* also *Emperor* v. *Noor Mohomed*, AIR 1928 Sind 1 at p. 9, *per* Lobo, AJC; *Sachindra Nath* v. *State of W.B.*, 76 CWN 33, 36 (A.K. Sinha, J.); *A.J. Patel* v. *State of Gujarat*, AIR 1965 Guj 23, 59 (Bhagwati, J.).
4. Sutherland : *Statutory Construction*, 3rd Ed., Vol. 2, Article 4924 at pp. 455-457.
5. *Shipping and Clearing Agents (P.), Ltd.* v. *Corporation of Calcutta*, AIR 1967 Cal 110, 113 (P.B. Mukherji, J.); *State of Karnataka* v. *Hansa Corporation*, (1980)4 SCC 697 : 1981(1) SCR 833.
6. *India General Investment Trust* v. *Raja Shri Ramchandra Mandaraj Deo*, ILR 1963 Cut 114.
7. *Central Distillery and Chemical Works* v. *State of U.P.*, AIR 1964 All 156. *See* also *A.J. Patel* v. *State of Gujarat*, AIR 1965 Guj 23 (FB).
8. 1995(7) JT (SC) 664.
9. 1952 SCR 1122 (1131).
10. 1953 SCR 533 (545).

Mersacy Docks and Harbour Board v. *Penbusan Brothers*,[1] and *(ii) State of Karnataka* v. *Union of India*,[2] and it further expressed that the other view has been thus put forward forcefully by Denning, L.J. in *Seaford Court Estates Ltd.* v. *Asher*[3] :

> "Where a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to word on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give a 'force and life' to the intention of the Legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven but he can and should iron out the creases."

Again in *Magor & St. Mellons Rural District Council* v. *Newport Corporation*,[4] the learned Judge has said "We sit here to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

It is to be noted that the other view was approved by the Supreme Court in *State of Bihar* v. *A.K. Mukerji*,[5] and *State of Karnataka* v. *(M/s.) Hansa Corporation*,[6] and that the observations of Viscount Simonds in the House of Lords disapproving the observations of Denning L.J. referred to above, have also been referred to with approval in *Punjab Land Development Corporation* v. *Presiding Officer, Labour Court*.[7]

It is submitted that extraordinary caution has to be observed before resorting to the principle of interpretation propounded by Lord Denning. It is not without merit to State that judicial activism gaining momentum in recent times in public interest litigations is but a different form of Lord Denning's dictum.

Thus in the case of religious and charitable endowments, if an Act is enacted for the purpose of enabling some action to be taken, but the Act omits to mention expressly some important detail essential for the proper and effectual performance of the work, it is open to the court to supply the *casus omissus* and

hold that the Act by implication empowers the details to be carried out.[8]

Casus omissus cannot be readily inferred. Nor can it be supplied unless it is clearly necessary to do so. When necessary, for that purpose, the whole statute is to be clearly read in order to maintain consistency.[9]

In a taxing statute it can be provided by Legislature only, not through judicial interpretation.[10]

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1. (1888)13 AL 595 (602).
2. 1978(2) SCR 1 (65).
3. 1949(2) All ER 155.
4. 1951(2) All ER 1226.
5. 1975(2) SCR 894 (902).
6. 1981(1) SCR 833.
7. 1990(3) SCR 111 at pp. 153-154.
8. *Rebati Ranjan* v. *State of Bihar*, AIR 1953 Pat 121; *Swarnavar Nashar* v. *State of Mysore*, AIR 1963 Mys 49; *see* also *Banwari Lal Nagpal* v. *State of Rajasthan*, 1982 Raj LW 663.
9. *T.O. Calcutta* v. *National Taj Traders*, AIR 1980 SC 487.
10. *Tarulata* v. *C.I.T.*, (1977)3 SCC 305. *See* also *Vikram* v. *Eknath*, AIR 1978 Bom 71, case under Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958; *S. Gyan Singh* v. *State*, AIR 1975 Pat 69.

10. Subject-matter.—The tribunal that has to construe an Act of a Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand those words it is material to enquire what is the subject-matter with respect to which they are used, and the object in view.[1] The best test in the construction of statutes is to see the subject-matter or the purpose for which a provision of law is enacted. One should always get at its real object and purpose; the importance of the provision of law enacted and its relation to or effect on the general object intended to be secured by its enactment. The surroundings, the purpose of enactment, the end to be accomplished and the consequences that may result by adopting one meaning rather than the other are important factors which must be taken into account while interpreting law.[2] It is not because the words of a statute or the words of any document read in one sense will cover the case that that is the right sense. Grammatically they may cover it; but whenever you have to construe a statute or document, you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which obliges you to read them in a sense which is not their ordinary sense in the English language as so applied. "That, I take it, is the cardinal rule".[3] Lord Blackburn in the same year expressed himself thus in *Bradlaugh* v. *Clarke*[4] : "All statutes are to be construed by the courts so as to give effect to the intention which is expressed by the words used in the statute. But that is not to be discovered by considering those words in the abstract, but by inquiring what is the intention expressed by those words used in a statute with reference to the subject-matter and for the object with which that statute was made; it being a question to be determined by the court, and a very important one, what was the object for which it appears that the statute was made." The meaning of the words is to be found not so much in strict etymological propriety of language, or even in popular use, as in the subject or occasion on which they are used and the object that is intended to be attained.[5] The subject-matter with which the Legislature was dealing, and the facts existing at the time with respect to which the Legislature was legislating, are legitimate topics to consider in ascertaining what was the object and purpose of the Legislature in passing the Act.[6]

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1. *Direct United States Cable Co.* v. *Anglo-American Telegraph Co.*, (1877)2 AC 394, 412, *per* Lord Blackburn; *London and India Dock Co.* v. *Thames Steam Tug. etc.*, 1909 AC 15, 23, *per* Lord Atkinson; *(Captain) Subash Kumar* v. *The Principal Officer, Mercantile Marine Dept., Madras*, AIR 1991 SC 1632 : 1991 Cri LJ 2000 : (1991)1 LT 658 : (1991)2 SCC 449.
2. *Dev Nath* v. *Ram Chand*, AIR 1961 Punj 73, 76 : ILR 1961 Punj 162; [Displaced Persons (Debt Adjustment) Act 70 of 1951]. *See* also *State of Bihar* v. *Raghunandan Singh*, AIR 1960 Pat 530; *U.P. Bhoodan Yagna Samiti* v. *Brij Kishore*, AIR 1988 SC 2239 : (1988)3 JT (SC) 640; *M. Nathuji Patil* v. *Surjabai*, 1994 Mah LJ 1145.
3. *Shidlingappa* v. *Karisabasapa*, ILR 11 Bom 599, 602; quoting *Lion Insurance Association* v. *Tuker*, LR (1883)12 QBD 176, 186, *per* Sir J. Brett, M.R.
4. (1883)8 AC 354, 372; *Smeed Dean & Co.* v. *Port of London Authority*, (1913)1 KB 226, *per* Vaughan Williams, L.J.
5. *R.* v. *Hall*, 1 LJOSKB 241 : 107 ER 47 *per* Abbott, C.J.; *Clerical Medical, etc. Society* v. *Carter*, (1889)22 QBD 441, 449, *per* Lord Esher, M.R.
6. *Herron* v. *Rathmines, etc., Commissioners*, 1892 AC 498, *per* Lord Halsbury; In *Nairn* v. *University of St. Andrews*, 1909 AC 147, 165. The appellant (Lady Graduates of the University of Edinburgh) claimed that the word 'person' in Representation of the People (Scotland) Act, 1868, included 'women'. Lord Robertson observed : "If we turn to the University (Scotland) Act, 1858, which set up the University Councils (the bodies which constitute the constituencies), we find that the word used is 'person'. Now this is exactly what Parliament would naturally do, minded to give votes to the member of the general councils, it turns to the description of them in the Act which established those councils and adopts the term there used. This is the *genesis* of the enfranchising section : what is its effect? Now the 'persons' so described were, in fact, solely men, for in 1858 and 1868 the Universities did not receive women as students, and did not confer on them degrees. It is obvious, therefore, that the persons

One must read the statute as a whole and ask himself the question : "In this statute, in this context, relating to this subject-matter, what is the true meaning of that word?"[1]

11. Object of statute.— The first and cardinal rule of construction is to give effect to the clear and unambiguous words of the statute and no recourse to be made to the statement of object and reasons for the purpose of construing a statutory provision is permissible.[2] It is only in exceptional cases where there is any doubt or difficulty as to the interpretation of the statute or any word thereof that the court can legitimately look to the object of the enactment or to the purpose for which it was made.[3] No reason for the enactment of a law may be imputed to the Legislature which is not supported by the face of the law itself.[4] Now in the first place Courts of Justice are not concerned with the objects with which the Legislature enacts any particular law unless in the particular enactment the object is stated as a guiding principle to be followed in interpretation. It may well be that the promoters of any particular Bill in the Legislature may have particular objects in view, but any section as ultimately enacted may well be the result of compromise and it may be that the words ultimately agreed upon have been passed by the Legislature in such a form that one or all of the objects of the promoters is or are defeated. In cases therefore where the Legislature has not thought fit to express its intention otherwise than by the use of the words of the section those words must be followed.[5] "I am satisfied", said Huddleston, B., in *Crofts* v. *Taylor*,[6] "that we have nothing to do with the general object of the enactment if the words used are clear; they are clear here, and we ought not to enter upon a refined consideration of the question whether they carry out the object of the statute."

In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law and to its object and policy.[7]

It is not competent for a court to introduce provisions into a statute which are not there at all for the purpose of furthering, what it conceives to be the purpose of the statute.[8]

In interpreting a section in an Act or a rule framed under it, it is not the function of the court to enquire into the reasonableness of the object of the Act.[9]

(i) Purpose of statute.—The object of a section has to be gathered as far as possible from the language.[10] Court has to give such a construction to the language of a statute so that the object

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contemplated in the enfranchisement of the Scotch graduates were men. As the case of the appellants is entirely one of words, it may be added that in 1858, as in 1868, the avail of the words 'male persons' as distinguished from 'persons' had been greatly reduced by Lord Brougham's Act, so that the choice of the word 'person' had of itself the smaller significance in the direction of including women. The one expression, like the other needs to be read in the light of the subject-matter."

1. *In re* Bidie, (1948)2 All ER 995, 998 : 1949 Ch 121; *see* also *Tej Singh* v. *Emperor*, AIR 1952 Punj 45, 46.
2. See *M/s. Govind Saran Ganga Saran* v. *Commissioner of Sales Tax*, AIR 1985 SC 1041, *Hameeda Hardware Stores* v. *B. Mohanlal Sowcar*, AIR 1988 SC 1060 : (1988)1 JT (SC) 644.
3. *State* v. *Girdharilal Bajaj*, AIR 1962 Bom 130, 131; *Sonepet Co. Sugar Mills Ltd.* v. *Presiding Officer, Labour Court, Rohtak*, AIR 1986 P & H 386 : 1986 Lab IC 1916 (FB); *ITC Ltd.* v. *Union of India*, AIR 1989 Cal 294 : (1988)1 Cal LJ 109 : (1988)25 Reports 179 : (1988)34 ELT 473 : (1988)17 ECR 148 : (1988)92 Cal WN 1035 : (1988)1 Bank CLR 563 (DB).
4. *Mackenzie* v. *Hare*, (1915)239 US 299 : 60 L Ed 297; *Firm Hazarimal Kuthalia* v. *Income-tax Officer, Ambala*, AIR 1957 Punj 5, 9.
5. *Radha Kishan Marwari* v. *Emperor*, ILR 12 Pat 46 : AIR 1932 Pat 293, 295 (SB), *per* Courtney Terrel, C.J.
6. (1887)19 QB 524, 528; *All India Reporter Karamchari Sangh* v. *AIR Ltd.*, AIR 1988 SC 1325 : (1988)2 JT (SC) 244.
7. *National Labour Relations Board* v. *Lion Oil Co.*, 352 US 282, 288 : 1 L Ed, 2d 331, 337; *United States* v. *Boisdore's Heirs*, 350 US at p. 285 : 8 How 113, 122; *Bansidhar Mohanty* v. *Gourgopal Das*, (1982)53 Cut LT 564 (DB).
8. *Janaki* v. *Raghava Panicker*, AIR 1957 Ker 94.
9. *Jairam Parmar* v. *S.T.O., Nagpur Circle*, 64 Bom LR 476 : 1962 Nag LJ 312 : 13 STC 477.
10. *In re* Muniswami Chetti, AIR 1958 Andh Pra 66, 70 (Krishna Rao, J.).

and purpose for which it was enacted must be achieved.[1] It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but nothing can justify it except necessity or the absolute intractability of the language used.[2] Statutes, including penal enactments, are not inert exercises in literary composition. They are instruments of government, and in construing them 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.'[3] Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness. The mere mention even of a wrong section or provision of law is not a deciding factor and courts always look to the substance and not the form of the matter. A notification of the Mysore Government, dated the 22nd July, 1948, recited that in exercise of the powers conferred on him under Rule IX*(b)* of the Kerosene Control Order, 1948, the Deputy Commissioner notifies that with immediate effect the wholesale and retail selling prices in Bangalore City are revised and fixed as in that notification. The power of fixing wholesale selling prices was given under Rule IX*(b)* and of fixing the retail selling prices was given under Rule XV. It was held that the mere omission to mention Rule XV in the notification was not material.[4] Lord Halsbury in *Cox* v. *Hakes*,[5] observed :

> "I do not deny that the words of Section 19 literally construed are sufficient to comprehend the case of an order of discharge made upon an application for discharge upon a writ of *habeas corpus*, but it is impossible to contend that the mere fact of a general word being used in a statute precludes all enquiry into the object of a statute or the mischief it was intended to remedy."

Thus the fact that incidents unthought of at the time the legislation is passed are not, for that reason, to be excluded if they come within the natural meaning of the Act construed with reference to its purpose.[6]

In construing a statute it is permissible to look for the purpose of the enactment, the mischief or defect to be prevented, the remedy and the reason of the remedy which the Legislature intended[7]; and the scheme of the Act.[8] A statute should be so construed as to prevent the mischief and advance the remedy according to the true intention of the makers of the statute. In construing a section of the Act and in determining its true scope, it is permissible to have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the Legislature, such as the history of the statute, the reason which led to its being

1. *Dwijamani Dev* v. *Chief Commissioner*, AIR 1960 Manipur 25, 29 (Tirumalpad, J.C.); *Bhopal Tanneries and Glue Works* v. *Bhopal Tanneries and Glue Workers' Union*, 1979 MPLJ 289 (DB); *Vatan Mal* v. *Kailashnath*, AIR 1989 SC 1534 : (1989)2 JT (SC) 196 : (1989)22 ECR 488 : (1989)1 Ren CR 500 : 1989 MP RCJ 198 : (1989)3 SCC 79; *C. Narayanan* v. *Gangadharan*, AIR 1989 Ker 256 : (1988)2 Ker LJ 230 : (1988)2 Ker LT 307 : (1988)2 Civil LJ 568 : ILR (1989)1 Ker 648.
2. *Salmon* v. *Duncombe*, (1886)11 AC 627, 634 (*per* Lord Hobhouse).
3. *United States* v. *Shirey*, 359 US 255 : 8 L Ed 2d 789, 793; *United States* v. *Whitridge*, 197 US 135, 143 : 49 L Ed, 695, 698. This is so because the purpose of an enactment is embedded in its words even though it is not always pedantically expressed in its words; *see* also *United States* v. *Warzlach*, 280 US 396, 399 : 74 L Ed 508, 510. Statutory meaning, it is to be remembered, is more to be felt than demonstrated; *United States* v. *Johnson*, 221 US 488, 496 : 55 L Ed 823, 826; *Piara Singh* v. *State*, AIR 1960 Punj 538; *Jal Kaur* v. *Pala Singh*, AIR 1961 Punj 391, 394.
4. *State of Mysore* v. *Sampangiramiah*, AIR 1953 Mys 80.
5. (1890)15 AC 506; 517 : Construction of Section 19 of Judicature Act.
6. *Federated Municipal and Shire Council Employees' Union of Australia* v. *Melbourne Corporation*, 26 CLR 508, 551.
7. *Shidramappa* v. *Neelavabai*, ILR 57 Bom 377 : AIR 1933 Bom 272, 274.
8. *Municipality, Jamna* v. *Glacier Cold Storage Co.*, 1980 Crand LR (J & K) 39 (DB).

passed, the mischief which it intended to suppress and the remedy provided by the statute for curing the mischief.[1] In order to understand the true nature and scope of an Act it is necessary to ascertain what the evil were which were intended to be redressed by it.[2] In interpreting a law the motives which must have operated with the Legislature in passing it are proper to be considered.[3] But it would be wrong to adopt a construction, not warranted by the word of the law, merely on some speculative view as to the object of the Legislature.[4]

The true nature of a law has to be determined not on the label given to it in the statute but on its substance.[5] In *Heydon's* case,[6] it was unanimously resolved by Sir Roger Manwood, Chief Baron, and the other Barons of the Exchequer : "that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered :

(1) what was the common law before the making of the Act;
(2) what was the mischief and defect for which the common law did not provide;
(3) what remedy the Parliament both resolved and appointed to cure the disease of the Commonwealth; and
(4) the true reason of the remedy;

and then the office of all Judges is always to make such construction as shall suppress the mischief, and advance the remedy and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico.*"[7]

It is well settled by now that it is legitimate to take into consideration for the purposes of interpretation of a statute the evil which was sought to be remedied.[8]

To ascertain the purpose or object of the legislation it is permissible to consider the circumstances that prevailed at the time when the law was passed; so too for limited purpose of understanding the background and the antecedent factual matrix leading to the legislation it is permissible to look into the statement of objects and reasons of the Bill which actuated the step to provide a remedy for the then existing malady.[9]

Strict construction leading to unjust result and hardship and defeating legislative object should be avoided.[10]

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1. *Shiv Narayan Kabra* v. *State of Madras*, AIR 1967 SC 986; *Shashikant Laxman Kale* v. *Union of India*, AIR 1990 SC 2114 : 1990 Tax LR 877 : (1990)3 JT (SC) 267; *(M/s.) Oswal Agro Mills Ltd.* v. *Collector of Central Excise*, AIR 1993 SC 2228.
2. *Sundararamier & Co.* v. *State of Andhra Pradesh*, AIR 1958 SC 468, 484.
3. *Ex parte*, Milligan, 18 L Ed 281, 293 (Davis, J.).
4. *Raymon & Co. (India), Ltd.* v. *Khardal Co., Ltd.*, AIR 1960 Cal 86, 88 (Chakravarti, C.J.).
5. *Sundararamier & Co.* v. *State of Andhra Pradesh*, AIR 1958 SC 468, 485.
6. (1584)3 Co Rep 7a at 7b : 76 ER 637.
7. *Bengal Immunity Co* v. *State of Bihar*, (1955)2 SCR 603, 632, where the passage is quoted; *R. M. D. C.* v. *Union of India*, 1957 SCR 930, 936; *Commissioner of Income-tax, M.P.* v. *Sodra Devi*, 1958 SCR 1, 8; *Narayanan* v. *Annamalai*, AIR 1961 Mad 313; *Sanghvi Jivraj Ghewar Chand* v. *Secretary, Madras Chillies, Grains and Kirana Merchants Workers' Union*, AIR 1969 SC 530; *Jagrup Singh* v. *State of Rajasthan*, (1993)2 Recent Cri R 695 (Raj).
8. *Commissioner of Income Tax* v. *Ram Sarup*, AIR 1962 Punj 318, 320 (FB).
9. *Shashi Kant Laxman Kale* v. *Union of India*, AIR 1990 SC 2114 : 1990 Tax LR 877 : (1990)3 JT (SC) 267 (referred to in *(M/s.) Oswal Agro Mills Ltd* v. *Collector of Central Excise*, AIR 1993 SC 2288, *Rib Tapes (India) Pvt. Ltd.* v. *Union of India*, AIR 1986 SC 2014 : 1986 Tax LR 2103 : 1986 JT (SC) 312 : (1986)8 ECR 731 : (1986)26 ELT 193 : (1986)4 SCC 185 : 1986 SCC (Cri) 421 : (1986)3 Supreme 450 : (1986)2 Cur CC 906 : (1986)19 STL 137 : 1986 SC Cri R 332 : 1986 All Cri R C 482.
10. Vide *Assistant Commissioner, Gadag Subdivision* v. *Mathapathi Basavanneswara*, (1995)6 SCC 355.

In construing the Truck Act, Goddard, L.J., observed in *Pratt* v. *Cook*[1] : "I approach the construction of the Act, bearing in mind that in the words of Lord Lindley regard must be had not only to the words used, but to the history of the Act, and reasons which led to its being passed." In all cases the intention of the Legislature must depend to a great extent upon the particular object of the statute that had to be construed.[2] In order to come to a decision as to the true meaning of a word used in a statute one has to enquire as to the subject-matter of the enactment and the object which the Legislature had in view.[3]

"To interpret words of this kind", observed Lindley, L.J., in *Nutton* v. *Wilson*,[4] "which have no very definite meaning, and which perhaps were purposely employed for that reason, we must look at the object to be attained". In order to determine the effect of legislation one must look at the object which it had in view.[5] General words and phrases, however wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act.[6] General accepted limitation (on the rule) of interpretation is that the purpose of an Act cannot extend the meaning of a statute beyond what the language of the statute is capable of bearing.[7] In determining either the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with the convenience, reason, justice or legal principles, should in all cases of doubtful significance be presumed to be the true one.[8]

Before adopting any proposed construction of any passage it is important to consider the effects or consequences which would result from it, for they often point out the real intention of the Legislature.[9]

Where two interpretations are possible, one wide and the other limited, it is open to the court to consider what was the object of the Legislature and what was the mischief aimed at. The court will adopt that construction which will be consistent with the suppression of the mischief rather than the mischief being allowed to continue uncontrolled.[10]

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1. (1939)1 KB 364, 382, following Lord Lindley in *Thomson* v. *Clanmorris*, (1900)1 Ch 718, 725.
2. *Reg.* v. *Justices of Surrey*, (1869) LR 5 QB 87, 93 (*per* Hannen, J.).
3. *State of U.P.* v. *Tobit*, 1958 SCR 1275, 1279 : "The words of a statute when there is doubt about their meaning are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained." Maxwell's *Interpretation of Statutes*, 11th Ed. at p. 51; *Workmen of Dimakuchi Tea Estate* v. *Management*, AIR 1958 SC 353, 356 : 1958 SCR 1156, 1163; *see*, however, *State* v. *Girdharilal Bajaj*, AIR 1962 Bom 130, 131. It is an exception and not the general rule. *See* also *State* v. *Nathumal Dhanmal*, AIR 1962 Bom 21 : ILR 1961 Bom 735 : 63 Bom LR 362 : 1961 Nag LJ 271; *Hiranand Tejumal* v. *Commissioner of Sales Tax, M.P.*, 1962 MPLJ 61 : 1961 Jab LJ 1407; *Deputy Commissioner of Commercial Taxes, Madras* v. *Devar & Co.*, (1963)14 STC 904; *Ramesh Metal Works* v. *State*, AIR 1962 All 227 (FB) : ILR (1962)1 All 436 : 1961 All LJ 985 : 1961 All WR (HC) 765; *Kalyan Singh* v. *Govind Kunwar*, ILR (1960)10 Raj 1559 : 1961 Raj LW 143 (rules should not be interpreted so as to make them fruitless).
4. (1889)22 QBD 744, 748; *see* also *Barnacle* v. *Clark*, (1900)1 QB 279, 283.
5. *Baumwoll, etc.* v. *Furness*, 1893 AC 8, 20 *per* (Lord Herschell); *see* also *Smelting Company of Australia* v. *Commissioner of Inland Revenue*, (1896)2 QB 179, 184, *per* Pollock, B.
6. *Empress Mills* v. *Municipal Committee, Wardha*, AIR 1958 SC 341, 348 : 1958 SCR 1102, 1118.
7. *Sana Ullah* v. *Ashok Kapil*, (1979)5 All LR 113.
8. Maxwell : *Interpretation of Statutes*, 11th Ed. at p. 183, quoted in *Aidal Singh* v. *Karam Singh*, AIR 1957 All 414, 432 (FB).
9. *Shondro Lyngkhoi* v. *Ka Phiwer Ripner*, AIR 1971 A & N 89, 90 (S.K. Dutta, C.J.).
10. *Walchandnagar Industries, Ltd.* v. *Ratanchand Khimchand*, 55 Bom LR 226. "Statute should be so construed as to prevent the mischief and advance the remedy according to the true intention of the makers of the Statute"; *Sewantilal Manecklal Seth* v. *Commissioner of Income-tax*, AIR 1968 SC 697.

The courts must advance the object of the legislation whose provisions are clearly in public interest.[1]

"It is well settled that wherever possible, without unreasonable stretching or straining the language of such a statute should be construed in manner which would suppress the mischief, advance the remedy, promote its object, prevents its subtle evasion and foil its artful circumvention.[2]

(ii) Scope of statute.—Where a section of an Act is capable of two renderings it is said to mean less, or more, than it says; it is a maxim of interpretation that one must look at the scope and object of the enactment.[3] In order to understand the true nature and scope of the Act, it is necessary to ascertain what the evils were which were intended to be redressed by it.[4] Where a word is used in an Act which is capable of various shades of meaning, the particular meaning to be attached must be arrived at by reference to the scheme of the Act or of the section in particular taken as a whole.[5] "When a word has two meanings, one of a restrictive nature and the other of a comprehensive character", observed Shah, J., in *E.I.Ry. Co.* v. *Dayabhai*,[6] "and when we have to decide which of the two meanings would be appropriate, it seems to me that it is necessary to turn not only to the context in relation to which the word is used but also to the scope and object of the section.... and to the reason of the rule contained therein". In construing an Act of the Legislature, the wording of which is open to two possible constructions, the court must look at what appears to have been the real object of the Act in order to determine which of the two rival constructions should be adopted.[7] In *Brown* v. *National Provident Institution*,[8] Lord Cave observed :

> "It is no doubt that if on the true construction of a statute, not excluding a taxing statute, a lacuna or defect appears, it is no part of the duty of the court to supply the deficiency; but in choosing between two competing constructions, each of them possible, it is not irrelevant to consider that one of them is consistent with the obvious purpose of the Act, while the other would render the statute capricious or abortive."

> "The only alternative construction offered to us would lead to this result", says Bowen, L.J , in *Curtis* v. *Stovin*,[9] "that the plain intention of the Legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt that construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect."

When two alternative constructions are open that construction should be adopted which will be consistent with the smooth working of the system which the statute purports to

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1. *Union of India* v. *B.N. Prasad*, AIR 1978 SC 411, case under Railways Act.
2. Vide *Municipal Corporation* v. *Kacheroo Mal*, (1976)2 SCR 1 : AIR 1976 SC 394 quoted in *Dineshchandra Tamnadas Gandhi* v. *State of Gujarat*, AIR 1989 SC 1011 : (1989) Cri LJ 889 : (1989) All Cri C 126 : 1989 SCC (Cri) 194 : (1989)1 JT (SC) 83 : (1989)1 FAC 273 : (1989)95 Punj LR 364 : (1989)40 ELT 230 : (1989)1 SCC 420 : (1989)30 Guj LR 483 : (1989) Cri LR (SC) 212 : 1989 All Cri R 139 : 1989 All WC 123 : 1989 APLJ (Cri) 179.
3. *Mubarak Hussain* v. *Ahmed*, AIR 1924 All 328, 336 : ILR 46 All 489 (FB), *per* Walsh, J., "For this purpose it is helpful to recall the history."
4. *M.P.V. Sundararamier & Co.* v. *State of A.P.*, AIR 1958 SC 468.
5. *Nihal Singh* v. *Sri Ram*, AIR 1939 Lah 388 (FB); *Manohar Lal* v. *Emperor*, AIR 1943 Lah 1; *Hazara Singh* v. *State of Punjab*, AIR 1961 Punj 34, 39 (FB).
6. AIR 1922 Bom 416, 419 : ILR 47 Bom 18. Whether a word is used in a restricted sense is a point of law.
7. *Emperor* v. *Bastiao*, AIR 1934 Bom 213, *per* Beaumont, C.J.
8. (1921)2 AC 222, 241; *Mudaliar* v. *Maymyo Municipal Committee*, AIR 1933 Rang 68.
9. (1889)22 QBD 513, 519.

regulate.[1]

(iii) Act construed as workable.—If possible that construction of a statute should be avoided whereby the object of the Act is defeated.[2] A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object,[3] unless crucial omission or clear direction makes that end unattainable.[4] Any interpretation which would defeat the specific purpose of the special provision should be avoided, and an interpretation which effectuates the purpose should be accepted and preferred.[5] In other words, in interpreting a statute the court cannot and should not ignore its aim and object, but should endeavour to effectuate the object of the Legislature.[6]

To sum up in the words of V. Ramasamy, J. in *Union of India* v. *Devki Nandan Agarwal*,[7] the power to legislate has not been conferred on the courts. The court cannot rewrite, recast or reframe the legislation for the very good that it has no power to legislate.

The court cannot add word to a statute or read words into it which are not there. Assuming there is defect or an omission in the words used by the legislature the court cannot go to its aid to correct or to make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the Legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgement is subversive of the constitutional harmony and comity of instrumentalities.[8]

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1. *Prabhudas Mulji Doshi* v. *Governor-General of India-in-Council*, ILR (1951)1 Cal 443.
2. *Balabdas Hulaschand* v. *State of Orissa*, AIR 1976 SC 1016.
3. *Shyam Kishori Devi* v. *Patna Municipal Corporation*, AIR 1966 SC 1678.
4. *Commissioner of Income-tax, Delhi* v. *Teja Singh*, AIR 1959 SC 352, 356, following *Whitney* v. *Commissioner of Inland Revenue*, (1925)10 Tax Cas 88, 110; *Curtis* v. *Stovin*, (1889)22 QBD 513, 519; Craies on *Statute Law*, p. 90; Maxwell on *Interpretation of Statutes*, 11th Ed. at p. 228; *Govindarajulu Chetty* v. *Govindraja Mudaliar*, AIR 1966 M 332, 340 (Ramamurti, J.); *Saraswathi Ammal* v. *Anantha Shenai*, AIR 1966 Ker 66, 70 (Madhavan Nair, J.).
5. *Govindrajulu Chetty* v. *Govindraja Mudaliar*, AIR 1966 M. 332.
6. *New India Sugar Mills* v. *Commissioner of Income-tax*, AIR 1963 SC 1207.
7. AIR 1992 SC 96 : 1992 All LJ 258 : (1991)3 JT (SC) 608 : (1991)3 SCR 873 : 1991 AIR SCW 2754 : (1992)1 SCC Supp. 323.
8. Vide *P.K. Unni* v. *Nirmala Industries*, (1990)1 SCR 482 (488) : AIR 1990 SC 933 (936); *Mangilal* v. *Sugamchand Rathi*, (1965)5 SCR 239 : AIR 1966 SC 101; *Sri Ram Ram Narain Medhi* v. *State of Bombay*, 1959 Supp (1) SCR 489 : AIR 1959 SC 459; *(Smt.) Hira Devi* v. *District Board, Shahjahanpur*, 1952 SCR 1122 at p. 1131 : AIR 1952 SC 362 at p. 365; *Nabinakhya Byasck* v. *Shyam Sundar Haldar*, 1953 SCR 533 (545) : AIR 1953 SC 148 at p. 152; *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Mazdoor Sabha*, (1980)2 SCR 146 : AIR 1980 SC 1896; *S. Narayanaswami* v. *G. Pannerselvam*, (1973)1 SCR 172 at p. 182 : AIR 1972 SC 2284 at p. 2289; *N.S. Varadachariar* v. *G. Vasant Pai*, (1973)1 SCR 886 : AIR 1973 SC 38; *Union of India* v. *Samkal Chand Himattal Sheth*, 1978 SCR 423 : AIR 1977 SC 2328 and *Commr. of Sales Tax* v. *M/s. Auriaya Chamber of Commerce, Allahabad*, (1986)2 SCR 430 at p. 438 : AIR 1986 SC 1556 at pp. 1559-60.

CHAPTER VIII

EXTERNAL AIDS TO INTERPRETATION

SYNOPSIS

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1. Preliminary.—Recourse to extrinsic aid in interpreting a statutory provision would be justified only within well-recognised limits; primarily the effect of the statutory provision must be judged on a fair and reasonable construction of the words used by the statute itself.[1] If the words of the statutes are explicit and unambiguous there can be no resort to external aid for their construction. [2] Language which is plain and easily understood should be looked at without extensive aid for the meaning intended.[3]

The external aids are the notings in the files of various officials, Dictionaries, earlier Acts, history of Legislation, parliamentary proceedings, state of law as it existed when the Act was passed, the mischief sought to be suppressed and the remedy sought to be advanced by the Act.[4] Even Law Commission report is regarded as an external aid.[5]

In *Shashikant Laxman Kale* v. *Union of India*,[6] the Supreme Court has cautioned that a catch-phrase possibly used as a populist measure to describe some provisions in the Finance bill in the explanatory memorandum while introducing the bill in the Parliament can neither be determinative of nor can it camouflage the true object of the legislation.

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1 *State of Punjab* v. *Sodhi Sukhdeo Singh*, AIR 1961 SC 493, 501; *Abdul Kalam* v. *Govt. of Tamil Nadu*, (1992)1 MLJ 317 (DB); *P.K. Unni* v. *Nirmala Industries*, AIR 1990 SC 933 : (1990)1 JT 423 : (1990)1 MLJ 36 (SC) : (1987)2 MLJ 3 (reversed) : AIR 1981 Mad 254 and AIR 1981 SC 53 (overruled).

2. Vide *P.K. Unni* v. *Nirmala Industries*, AIR 1990 SC 933 : (1990)1 JT 423 (The Supreme Court held time for making the deposit in terms of Rule 89 of Order XXI is 30 days and the decision to the contrary in (1987)2 MLJ 3 reversed, while those in AIR 1981 Mad 254 & AIR 1987 SC 53 overruled); *Ashok Kumar Alias Golbu* v. *Union of India*, AIR 1991 SC 1792 : 1991 Cri LJ 2483 (1991)3 JT 46 : 1991 SCC (Cri) 845 : 1991 AIR SCW 1826; *Indian Association of Lawyers* v. *Principal Secretary*, 1994 Cr LJ 533 (AP) (FB).

3. *Jacobson* v. *Manucharetts*, 197 US 11 : 49 L Ed 643; *Smt. Piryambada Singh* v. *State of U.P.*, 1989 JIC 262 [relying on *D.D. Joshi* v. *Union of India*, AIR 1983 SC 420; *Shutters* v. *Briggs*, (1922) AC 1; *Cartledge* v. *E. Jopling & Sons Ltd.*, (1963) AC 758]; *Om Prakash* v. *Dig Nijendra Pal*, 1982 ALJ 376 (SC) : AIR 1982 SC 1230.

4. Vide *(M/s.) Doypack Systems Pvt. Ltd.* v. *Union of India*, AIR 1988 SC 782 : (1988)1 JT (SC) 304.

5. See *Mithilesh Kumari* v. *Prem Behari Khare*, AIR 1989 SC 1247 : (1989)1 JT (SC) 275 : (1989)1 Ker LJ 424 : 1989 MPLJ 156 : (1989)2 MLJ 1 (SC) : (1989)1 APLJ (SC) 31 : 1989 BBCJ (SC) 54 : (1989)76 CTR 27 : (1989)40 ELT 267 : (1989)177 ITR 97 : (1988)2 Cur CC 33 : (1989)2 SCC 95 : (1989) Mah LJ 210 : (1989)92 Taxation 23 : (1989)1 Civ LJ 635 : (1989)2 Land LR 97 : (1989)103 Mad LW 430.

6. AIR 1990 SC 2114 : 1990 Tax LR 877 : (1990)3 JT (SC) 267.

In *Baburam* v. *State of U.P.*,[1] the Supreme Court applied external aid of interpretation quoting Maxwell's *Interpretation of Statutes*;[2] Craies' *Statute Law*;[3] Bennion's *Statutory Interpretation*;[4] *Statutory Interpretation* by Cross;[5] Crawford's *Interpretation of Law*,[6] and also referring its decisions reported in *Union of India* v. *Raghubir Singh*;[7] *Nyador Singh* v. *Union of India*;[8] *Maharashtra State Financial Corporation* v. *Jaycee Drugs and Pharmaceuticals (P.) Ltd.*;[9] *State of Orissa* v. *Sukanti Mohapatra*;[10] *D.S. Nakara* v. *Union of India*;[11] *Delhi Cloth and General Mills Co. Ltd.* v. *Union of India*;[12] and *K.S. Paripurnan* v. *State of Kerala*.[13]

2. Reports of Commissions and Committees.—*(i) Select Committee Report.*—Reference is not permissible to the Report of the Select Committee preceding a legislation on that subject,[14] nor to the dispatch of the Secretary of State, which accompanied the Letters Patent of Bombay High Court of 1862, nor to the Report of the Commissioners who were appointed in 1853 to consider the question of the amalgamation of the Supreme Court and the Company's Courts and the draft rules which they prepared.[15] A statute may be based upon the Report of a committee, or of many committees, or upon Cabinet Memoranda, or upon a resolution of a political party or of a public meeting or upon an article in a newspaper. The intention of Parliament as expressed in the statute cannot be modified or controlled in a Court by reference to any such material.[16] Even though the proceedings of the Joint Committee cannot be relied upon for the purpose of construing the order, they may be looked into to ascertain the circumstances in which the several communities were grouped under one entry or the other.[17]

The reports of the committee which preceded the enactment of a legislation, report of Joint Parliamentary committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction.[18]

(ii) White paper.—When there is no ambiguity in a statute or the Schedule annexed thereto which would justify an admission of extraneous evidence, the White Paper

1. (1995)2 SCC 689 : 1995 All LJ 324.
2. 11th Ed. at p. 79.
3. 7th Ed. at p. 177.
4. At p. 385.
5. At pp. 145 and 146.
6. At p. 277.
7. (1989)2 SCC 754 : AIR 1989 SC 1933.
8. 1988 SCC (L & S) 934.
9. (1991)2 SCC 637.
10. (1993)2 SCC 486.
11. (1983)1 SCC 305.
12. (1983)4 SCC 166, 193.
13. (1994)5 SCC 593.
14. *Dina Nath* v. *Raja Sati*, AIR 1923 Cal 74, 77; *Mahalakshmi* v. *Sharangini*, ILR (1942)1 Cal 499 : AIR 1941 Cal 673, 675; *Sarat Sundari Barmani* v. *Uma Prasad Roy Chowdhury*, ILR 31 Cal 628, 640; *Thiraj* v. *Emperor*, ILR 11 Lah 55, 64 (Bhide, J.); *Mst. Tamijannessa* v. *Puran Chandra Chakravarti*, AIR 1927 Cal 821; *Gurdial Singh* v. *The Central Board, etc., Amritsar*, ILR 9 Lah 609, 699; *Ashutosh* v. *Watson*, ILR 53 Cal 929 : AIR 1927 Cal 149, 153; *Madho Singh* v. *State of Rajasthan*, AIR 1954 Raj 198; *State of Maharashtra* v. *Dattatraya Balwant Upadhyaya*, 1976 Mah LJ 550; but *see Kamalammal* v. *Krishnan Nair*, 88 LW 308, where report was looked into.
15. *Hatimbhai* v. *Framroy*, AIR 1927 Bom 278, 296 : ILR 51 Bom 516 (FB).
16. *South Australia* v. *Commonwealth*, (1942)65 CLR 373, 409 (Latham, C.J.); *Srikrishan* v. *State*, AIR 1957 Andh Pra 734, 735 (Subba Rao, C.J.); *see* also *State of U.P.* v. *Bar Council*, AIR 1971 All 186, 188 (Dwivedi, J.); (Report of Joint Committee); *see* Contra., *Mohd. Mustaqueem* v. *Aftab Ahmad*, AIR 1983 All 368 (K.C. Agarwal, J.).
17. *Dadaji* v. *Sukhdeobabu*, AIR 1980 SC 150 (155-56).
18. *Himachal Road Transport Corpn.* v. *Sushila Devi*, AIR 1986 HP 78.

appertaining to the subject-matter of the statute or the Schedule is not admissible in evidence.[1]

Report of the Indian Law Commissioners may be valuable as a matter of history, but it cannot be a legitimate guide for the construction of a section of the statute. That construction must be based on the meaning of the words used, to be gathered according to the ordinary rules of interpretation and in consonance with the generally accepted principles of jurisprudence.[2]

While adverting to the provisions of I.P.C. the Supreme Court[3] held that unless specifically prohibited or otherwise not permissible, the court should interpret the law taking note of the circumstances prevailing in the society at the time of interpretation and not at the time of legislation.

(iii) Report of Commissioners appointed by State.—Where an Act of Parliament is supposed to have been founded on report of Commissioners, appointed by the State, that report ought not to be referred to in a Court of Justice as a guide in construing the statute.[4] "We shall not", observed Pollock, C.B., delivering the judgment of the Court in *Selkeld* v. *Johnson*,[5] "therefore, refer to the report of the Real Property Commissioners, published shortly before the passing of this Act, and to which it is supposed to have owed its origin, in order to explain its meaning; not conceiving that we can legitimately do so, however strongly we may believe that it was introduced in order to carry into effect their recommendations to establish a new statute of limitations or titles." Nor was the report of a Royal Commission admitted, to show the intention of the Act in *Assam Railways and Trading Co.* v. *I.R. Commissioner*,[6] Craies on *Statute Law* (4th Ed. at p. 123) writes, however, "It is now generally agreed that reference may be made to reports on the effect and defects of previous statutes *in pari materia*. In *Eastman Photographic Materials Co.* v. *Comptroller-General of Patents*,[7] it was held that for the purpose of construing the Patents Act, 1888, reference could be made to the report of a commission appointed in 1887 to enquire into the duties, arrangements, etc., of the Patent Office under the Patents, etc., Act of 1883. Before this there had been an indisposition on the part of the Judges, with some exception to permit reference to such reports, which were considered 'scarcely legitimate guides to the construction of the statute which is the outcome of' a report. In *A.G.*

1. *Katikiro of Buganda* v. *Attorney-General*, (1960)3 All ER 849, 855-56 (PC).
2. *Mobarak Ali* v. *State of Bombay*, AIR 1957 SC 857, 871; *State of Bihar* v. *Mohd. Ismail*, AIR 1966 Orissa 1, 5 (FB) (U.N. Sinha, J.); *Raj Kumar Behai* v. *Food Corporation of India*, AIR 1990 Raj 64, relying on *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857.
3. *Mobarak Ali* v. *State of Bombay*, AIR 1957 SC 857, 871; *State of Bihar* v. *Mohd. Ismail*, AIR 1966 Orissa 1, 5 (FB) (U.N. Sinha, J.); *Raj Kumar Behai* v. *Food Corporation of India*, AIR 1990 Raj 64, relying on *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 859.
4. *Martin* v. *Hemming*, (1854)24 LJ Ex 3; *Ewart* v. *Williams*, 61 ER 808; *Selkeld* v. *Johnson*, (1848)2 Exch 256 (*per* Tyndal, C.J.). The report was admitted in *Eastman Photographic Materials Co.* v. *Comptroller-General of Patents*, 1898 AC 571 : 67 LJ Ch 628, 631; In *Assam Ry. and Trading Co.* v. *I.R. Commissioner*, 1935 AC 445, Lord Wright explained at pp. 458-59 that in the former (Eastman's) case resort was had to the report for the purpose of ascertaining the evil that the statute was designed to remedy within the principle of *Heydon's* case. *Aswini Kumar Ghose* v. *Arabinda Bose*, 1953 SCR 1, 78; *Firm Hazarimal Kuthalia* v. *Income-tax Officer, Ambala*, AIR 1957 Punj 5, 9.
5. (1848)2 Ex 256, 273.
6. 1935 AC 445, 458 : "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the report of Commissioner is even more removed from value as evidence of intention because it does not follow that their recommendations were accepted," *per* Lord Wright in *Ellerman Lines, Ltd.* v. *Murray*, 1931 AC 126; *Transport and General Credit Corporation* v. *Morgan*, (1929) Ch 531 at pp. 551-552.
7. 1898 AC 571 : 67 LJ Ch 628.

British Columbia v. *A.G., Canada*,[1] counsel for New Brunswick (one of the respondents) called the attention of the Judicial Committee to the report of the Royal Commission on Price spreads which was referred to in the order of reference. Whereupon the Board, speaking through Lord Atkin, observed : "It would not be contended that the statement of the Minister in the order of reference that the section was enacted to give effect to the recommendations of the Royal Commission bound the Provinces or must necessarily be treated as conclusive by the Board. But when the suggestion is made that the legislation was not in truth criminal legislation, but was in substance merely an encroachment on the provincial field, that existence of the report appears to be a material circumstance."

Crawford (in *Statutory Construction*, at p. 382) writes :

"A number of cases, however, make a distinction between legislative debates and the reports of Legislative Committees and it must be admitted that the latter undoubtedly do possess a more reliable or satisfactory source of assistance. This distinction is pointed out in *Imhoff-Berk Silk Dying Co.* v. *U.S.*[2] : 'While legislative debates, partaking of necessity very largely of impromptu statements and opinions, cannot be resorted to, with any confidence as showing the true intent of Congress in the enactment of statutes, a somewhat different standard obtains with reference to the pronouncement of committees having in charge the preparation of such proposed laws'. These committee announcements do not, of course, carry the weight of a judicial opinion, but are rightfully regarded as possessing very considerable value of an explanatory nature regarding the legislative intent where the meaning of a statute is obscure."

A similar pronouncement will be found in *Commonwealth* v. *West Philadelphia Mannerchor*[3] :

"By repeated decisions of this Court, it has come to be well established that the debates of Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body..... But reports of committees of House or Senate stand upon a more solid

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1. AIR 1937 PC 91, 93; *see* also *Re* Carter Medicine Co.'s Trade Mark, (1892)3 Ch 472; in *A.G.* v. *McDonald Murphy Lumber Co.*, AIR 1930 PC 173, 175, their Lordships of the Privy Council, while determining the nature of the tax upon timber cut in the province, noticed that the tax had come to be known as 'the timber tax on export, and was so described in the Final Report of the Royal Commission of Enquiry on Timber and Forestry, 1909-10 extracts from which were among the exhibits in the case. Francois Geny insists that "the only way to arrive at the intention of the legislator is put onself in the place of the legislator at the moment the law was formulated and as a logical consequence, it becomes permissible, according to him, to examine the work of preparatory commissions and Parliamentary proceedings in order to ascertain that will. Sometimes it will appear that the verbal formula employed by the legislator is too wide, sometimes indeed, it will appear too narrow, according to the felicity with which the law has been expressed; but in general, this method will be found to be a safe way of preventing any fictitious extension of the legislator's intention and to restrict the scope of enactment to circumstances foreseen by the legislator. In this way, the Judge will be able to recognise and to deal with case not provided for by the written law....." B.A. Wortley writing about Geny proceeds to observe : "From this method of interpretation it follows, says Geny that once the express conditions of fact settled by the Legislature as being necessary before statute may operate, are no longer in existence, the statute becomes merely inapplicable. Geny pushes his point further, and suggests that written law becomes equally inapplicble when the conditions of fact which the Legislature implied as necessary for the operation of the statute are no longer in existence, that is, when the social conditions implied in the statute have changed, the statute should fall into *desuetude*. This, from an English lawyer's point of view, will probably seem to be a less acceptable assumption than the first mentioned conclusion."
2. 43 Fed (2), 830, 836, 837.
3. 115 Pa Super 175, 241, Articles 434, 436.

footing, and may be regarded as an exposition of the meaning in a case where otherwise the meaning of a statute is obscure."

In the *Petrol Tax* Case, namely, *In re* the Central Provisions and Berar Act XIV of 1938,[1] Gwyer, C.J., considering the proposals for Indian Constitutional Reform, commonly known as the White Paper (Cmd. 4268, 1933), and the Report of the Joint Select Committee thereon,[2] as historical facts, their relation to the Constitution Act (1935) being a matter of common knowledge, held that the Court was entitled to refer to them. Jayakar, J., in the same case considered it permissible to refer to them as the same formed a part of the history of the legislation.[3] But Sulaiman, J., in the said case doubted the legitimacy to refer to them.[4] In the *Estate Duty* case (namely, *In re* Levy of Estate Duty),[5] the report of the Percy Committee (the Federal Finance Committee of 1932) and the White Paper on Constitutional Reforms were referred to in argument and were noticed in the opinion of the majority, read by Chief Justice Spens. In *Gopalan's* case[6] attention of the Hon'ble Judges of the Supreme Court of India was drawn to the debates and reports of the Drafting Committee of the Constituent Assembly in respect of the wording of Clause 15 (the basis for Art. 21 of the Constitution). Chief Justice Kania opined that the report may be read not to control the meaning of the Article, but may be seen in a case of ambiguity.[7]

In the case of *Deena* v. *Union of India*[8] the Supreme Court referred to several reports of commissions and opinions of experts and relied upon them while discussing the death by hanging as being violative of Article 21 of the Constitution and held that it was not violative of Article 21.

(iv) May be considered where meaning of statute is doubtful.—Reports of legislative committees having in charge the preparation of proposed laws may be consulted, as a source of information in the endeavour to ascertain the legislative intent, in a situation where the meaning of the statute is doubtful.[9] A message of the executive, relative to the subject-matter of the legislation under consideration, may be examined with a view to a determination of the evils sought to be remedied by the statute.[10] Amendments or modifications of a Bill, and the action of the Legislature thereon, may serve as guides to the meaning of doubtful law.[11]

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1. 1939 FCR 18, 46.
2. HL 6 and HC 5, 1934.
3. 1939 FCR 18.
4. 1939 FCR 18 at p. 77.
5. 1944 FCR 317, 325.
6. AIR 1950 SC 27, 38 : 1950 SCR 88 at pp. 110, 111.
7. But compare the "rigid British canon (not followed in the United States or on the Continent) that *trabaux* preparatories, however, clear and decisive on the point at issue are never to be consulted in aid of interpretation—a-canon recently applied by the Australian High Court." The Uniform Tax Case, *S. Australia* v. *Commonwealth*, (1924)65 CLR 373, esp. Latham, C.J., at pp 409-410 on a constitutional issue of major importance. *See* Julius Stone : *The province and Function of Law*, at p. 200, *vide* Lord Macmillan's observation : "At least they must not be refererred to in Court"; *State of Bombay* v. *Chamarbaugwalla*, AIR 1956 Bom 1, 20 (Report of the Indian Taxation Committee, 1924-25 held could not be relied upon in construing the Bombay Lotteries and Prize Competition Control and Tax Act, 54 of 1948); *see* also *Sri Visalam Chit Fund Ltd., Banglore* v. *Union of India, New Delhi*, AIR 1989 Kant 125 : ILR 1988 Kant 1518.
8. (1983)4 SCC 645 : 1983 SCC (Cr) 879.
9. *in re* Hamlin, 226 NY 407; *Colgate-Palmolive Co., and others* v. *Dr. K.V. Swaminathan, Controller of Patents, Bombay*, (1990)3 Bom CR 452, relying on *R.S. Nayak* v. *A.R. Antulay*, AIR 1984 SC 684.
10. *State Ex-rel Blue* v. *Stiles*, 212 Ala 468.
11. *In re* Hamlin, 226 NY 407

3. Proceedings in Parliaments.—*(i) Debates.*—No doubt it used to be the practice in the Calcutta High Court to refer to the proceedings in the Legislature which resulted in the passing of an Act. Similar was the practice in Bombay High Court.[1] In Madras too the proceedings of the Legislative Council were looked into in the case of *Kamalammal* v. *Krishnan Nair*.[2] But this was strongly dissented from and the practice was condemned by Sir John Edge in *Kadir Baksh* v. *Bhawani Prasad*.[3] His Lordship observed :

> "On that subject it is hardly necessary to say for the understanding of lawyers that that point has been concluded by the House of Lords. No doubt debates in the House of Commons or the House of Lords or reports of Special Committees, whether of one or other of these Legislative Assemblies or of Legislative Councils of India, are instructive historically if one has to consider, not what the statute says, but what may have been the motives of one or other party in promoting the legislation. If one were to refer to such debates and reports in order to ascertain the true construction in law of a statute finally passed by the Legislature, it would be necessary to see whether any alteration took place between the time of the debate or the report and the final passing of the Bill into statute law, and one would be construing the language of the report or the debate and not that of the statute. It is within one's own experience that parties to legislation sometimes fail so to express themselves in the statute as to carry out the intention they had in passing the statute, and that subsequent legislation is necessary in order by an amendment of the original statute to express in a statute language the meaning of the Legislature. Another objection may be made that of two parties, members of the Legislature, who may approve of a Bill as drafted, neither of them may attach the same meaning to the wording of the Bill. In such a case what possible light could a reference to their opinions, when the Bill was passing into an Act, throw upon the true construction of Bill as passed into statute law? In my humble judgment, if Judges were to allow their minds to be influenced in the construing of a statute by debates in Parliament or reports of Select Committees or other bodies on the Bill, statute law would be reduced to confusion and instead of there being one principle of construction of statutes well understood by lawyers, the construction of statutes would be reduced to no principle at all."

Their Lordships of the Privy Council deprecated the use of proceedings of the Legislature as legitimate aids to the construction of a statute and observed in *Administrator-General of Bengal* v. *Premlal Mullick*[4] : "The same reasons which exclude these considerations when the clauses of an Act of the British Legislature are under construction, are equally cogent in the case of Indian Statute." Farwell. L.J., in *Rex* v. *West Riding of Yorkshire County Council*,[5] in construing Education Act, 1902 (2 Edw. 7) expressed himself thus :

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1. *Shanthanand* v. *Basudevanand*, AIR 1930 All 225 at p. 239 : ILR 52 All 619 (FB); *see* in this connection *Queen-Empress* v. *Kartik Chander Das*, ILR 14 Cal 721, 728 (FB); *Sheikh Moosa* v. *Shaikh Essa*, ILR 8 Bom 241, 246, *Fader Jhala* v. *Gom Mohim Jhala*, ILR 19 Cal 544, 567-568 (FB).
2. 88 LW 308.
3. ILR 14 All 145, 149-50.
4. ILR 22 Cal 788, 799-800 , *per* Lord Watson. *See* also, *J. Lyons & Sons*, v. *Walkins*, (1899)1 Ch 255, 264; *Australasian United Steam Navigation Co., Ltd.* v. *Hiskens*, 18 CLR 646, 672.
5. (1906)2 KB 676, 716-717. (Both sides sought to refer to what passed in Parliament as supporting their respective contentions as to the meaning of the enactment, but such evidence was, of course, not admitted) : On appeal (1907) AC 29; see also *Gurdial Singh* v. *The Central Board and Local Committee Sri Darbar Sahib, Amritsar*, ILR 9 Lah 689, 699; *Dina Nath* v. *Raja Sati*, AIR 1923 Cal 73, 77; *In re* Lala Harkishan Lal, ILR 1937 Lah 69 : AIR 1937 Lah 497, 499.

"It was suggested that the view taken by us of the Act is not in accordance with the intention of the House of Commons or with public understanding of the effect of the Act; and reference was attempted to be made to the debates and to passive resisters; but we have only to deal with construction of the Act as printed and published. That is the final word of the Legislature as a whole, and the antecedent debates and subsequent statements of opinion or belief are not admissible. But they would be quite untrusworthy in any case. In the case of an Act dealing with a controversial subject ambiguous phrases are often used designedly, each side hoping to have thereby expressed its own view, and the belief of each that it has succeeded is more often due to the wish than to any effort of reason. The generality of public understanding is quite incapable of proof, and is beside the mark unless as an appeal to timidity : *'securus judicat orbis terrorum'*. The principles of construction applicable to Act of Parliament are well settled, and will be found stated in *Strodling* v. *Morgan*,[1] which has received the approval of Turner, L.J., in *Hawkins* v. *Gathercole*,[2] and of Lord Halsbury in *Eastman Photographic Materials Co.* v. *Comptroller-General of Patents*,[3] and do not admit of any such considerations. The Court must, of course, in construing an Act of Parliament, as in construing a deed or will, do its best to put itself in the position of the authors of the words to be interpreted at the time when such words were written or otherwise became effectual; but this will no more justify us in admitting, as evidence on the construction of an Act, speeches in either House or subsequent statements in the public papers, or elsewhere of the effect of an Act than it would justify us in admitting on the construction of a will the advice given to a testator by his solicitor before, or the statements of himself or his expectant legatees of the effect of his will, after he had made it. This mischief sought to be cured by the Act and the aim and object of the Act must be sought in the Act itself. Although it may, perhaps, be legitimate to call history in aid to show what facts existed to bring a statute, the inferences to be drawn therefrom are extremely slight, as is pointed out by Bramwell, B., in *Attorney-General* v. *Sillem*.[4] I think, that the true rule is expressed with accuracy by Lord Langdale in giving the judgment of the Privy Council in *Gorham* case, in Moore, in 1952 edition, p. 462 : 'We must endeavour to attain for ourselves the true meaning of the language employed (in the Articles and Liturgy), assisted only by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject-matter to which the instruments relate, and the meaning of the words employed'."

It is well established that in a Court of law the motives which influenced the Legislature in passing particular enactment or the purposes or objects it desired to effect can only be legitimately obtained from the language of the enactment itself viewed through the light of circumstances in reference to which that language was used. The reports of the debate leading up to the passing of it cannot be looked at.[5] The same principle has been followed by the Supreme Court.[6] The debate upon the Bill, the fate of amendments proposed and dealt with in committee of either House cannot be referred to, to assist in construing the language of the Act.[7]

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1. Plowd 198b at 205a.
2. 24 LJ Ch 322.
3. 1898 AC 571 : 67 LJ Ch 628 (631).
4. 33 LJ Ex 93.
5. *Hollinshed* v. *Hazleton*, (1916)1 AC 428, *per* Lord Atkinson; *Public Prosecutor* v. *T. Amraoth Rao*, AIR 1960 AP 176; *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27.
6. *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369; 1952 SCJ 568.
7. *Viscountess Rhondda's* claim, (1922)2 AC 339, *per* Lord Wrenbury. See *Ram Partap* v. *State of Punjab*, AIR 1963 Punj 354.

The acceptance or rejection of amendments to a Bill in the course of parliamentary proceedings cannot be resorted to as extrinsic aid to construction of the words of the statute.[1]

The same principles have been held to be applicable to the interpretation of the Constitution.[2]

"The reason is that it is impossible to determine with certainty what construction was put upon an Act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other, the result being that the only proper way to construe a legislative act is from the language used in the Act, and upon occasion, by a resort to the history of the times when it was passed.[3]

Reference accordingly cannot be made to debates in Parliament as aid to the construction of statutes.[4] In *Municipal Council of Sydney* v. *Commonwealth*,[5] it was thought that individual opinion of members of the convention expressed in the debate cannot be referred to for the purpose of construing the Constitution. The same opinion was expressed in *United States* v. *Wong Kim Ark*.[6] "The result appears to be", observed Kania, C.J., in *Gopalan* v. *State of Madras*,[7] "that while it is not proper to take into consideration the individual opinions of members of Parliament or convention to construe the meaning of the particular clause, when a question is raised whether a certain phrase or expression was up for consideration at all or not, a reference to the debates may be permitted." Fazal Ali and Mukherjee, JJ., considered it to be a doubtful proposition. Sastri, J., attached no importance to the speeches made by some of the members of the Constituent Assembly in the course of the debate on Art. 15 (now Art. 21 of the Constitution). Das, J., expressed no opinion as to admissibility of even the Drafting Committee's Report.

Whether or not it is permissible to have recourse to the debates in the Legislature for the purpose of understanding a statute, it is certainly permissible to look into the legislative history of the enactment.[8] Mathew, J., observed in *Kesavananda Bharati* v. *State of Kerala*[9]: "If the purpose of construction is the ascertainment of meaning, nothing that is logically

1. *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369 : 1952 SCJ 568.
2. *State of Travancore-Cochin* v. *Bombay Co., Ltd.*, AIR 1952 SC 366 : 1952 SCJ 527; reference to speeches made by members of the Constituent Assmebly in the course of debates on the draft Constitution in interpreting an Article of the Constitution is unwarranted). But *see* observations of Reddy and Mathew, JJ. in *Kesvananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461 : (1972)2 SCR 53, 55-61 (Sikri, C.J.).
3. *U.S.* v. *Trans-Missouri Freight Association*, 166 US 290.
4. *Debendra Narain Roy* v. *Jogenedra Narain Deb*, AIR 1936 Cal 593, 619; *Shidramappa* v. *Neelevala*, ILR 57 Bom 377 : AIR 1933 Bom 272, 274; *Ghulam Muhammad* v. *Panna Ram*, AIR 1924 Lah 374, 376; *Hem Raj* v. *Krishan Lal*, ILR 10 Lah 106, 111, referring order of Bhide, J.; *Gopal Krishna Parachure* v. *Sakhojirav*, ILR 18 Bom 133, 136; *Sarat Sundari Barmani* v. *Uma Prasad Roy Chawdhry*, ILR 31 Cal 628, 640; *Hiralal* v. *Parasramrav*, ILR 1942 Nag 581 : AIR 1942 Nag 5, 7; *"In re* 'New Sind', AIR 1942 Sind 65, 69 : ILR 1942 Karachi 127 (FB); *Ratan Chand* v. *Sahiram*, AIR 1919 Sind 80 (FB) does not appear to be good law; *Anandi Haridas & Co. (Pvt.) Ltd.* v. *Engineering Mazdoor Sangh*, 1975 UJ (SC) 231.
5. (1904)1 Com LR 208.
6. 169 US at p. 699.
7. AIR 1950 SC 27, 38, 53, 73, 101 : 1950 SCJ 174 : 1950 SCR 88, 110; *Julius* v. *Bishop of Oxford*, (1880)5 AC 214; Lord Cairn and Lord Selborne disapproving *R.* v. *Bishop of Oxford*, (1879)4 QBD 525; Bramwell and Baggallay, JJ.; *see* also opinion of Willies, J., in *Millar* v. *Taylor*, (1769)4 Burr 2303 at p. 2332 and *R.* v. *Herlford College*, (1878)3 QBD 693, 707; *Ram Nandan* v. *State*, AIR 1959 All 101, 123 (FB).
8. *R. Sankar* v. *State*, AIR 1959 Ker 100, 106; what was passed by Lok Sabha and how it was modified in Rajya Sabha.
9. AIR 1973 SC 1461 at p. 1918.

relevant should, as a matter of theory, be excluded. The rigidity of English Courts in interpreting language merely by reading it, disregard the fact that enactments are, as it were, organisms which exist in their environment. It is, of course, difficult to say that Judges who profess to exclude from their consideration all extrinsic sources are confined psychologically as they purport to be legally. A Judge who deems himself limited to reading the provisions of the Constitution without the awareness of the history of their adoption in it would be taking a mechanical view of the task of construction."

(ii) Reference in case of ambiguity.—It is no doubt that proceedings of the Legislature cannot ordinarily be looked into in making judicial construction of a statute, and the plain meaning of the language used must be adopted.[1] When, however, there is any *difficulty or ambiguity as to the interpretation of any section*, there is no reason why assistance should not be obtained from discussions in the Legislature as to the scope and intention of the Legislature[2]; including reports of the Select Committee or its Chairman. Statement of Objects and Reasons of the statute or statement made by the sponsor of the statute. However, such aids may neither be decisive nor conclusive but they would certainly assist the courts in interpreting the statute in order to determine the avowed object of the Act or the Constitution as the case may be Except in the aforesaid cases, a mere speech of any member made in the floor of the House during the course of a Parliamentary or legislative debate would not be admissible at all.[3]

Legislative proceedings cannot be referred to for the purpose of constructing an Act or any of its provisions, but they may be relevant for the proper understanding of the circumstances under which it was passed and the reason which necessitated it.[4] In a recent case in Bombay,[5] it has been held that speeches made in Parliament by the sponsor of a Bill may be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor to introduce it and the extent and the urgency of the evil sought to be remedied. Where the Court is concerned with the rules promulgated by the Central Government and there is no speech by the sponsor at the time of introducing it in the Parliament, but the Minister concerned made a broadcast on the eve of the promulgation of the rules, it was also held, that the broadcast may as well be equated with the speech of the sponsor as explaining the position which necessitated the introduction.

It may further be noted that a statement made in any debate in Parliament, whether relevant or not for interpreting a word or phrase used in a statute, is not conclusive as to the meaning.[6] In England it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law.[7] In Australia Chief Justice Griffith did not allow the

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1. *R. L. Narasimhan* v. *Union of India*, AIR 1972 SC 2405.
2. *Deorajini Devi* v. *Satyadhyan*, AIR 1954 Cal 119, 121, (*per* Sen, J.).
3. *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149, Para 271 at p. 314.
4. *Charanjit Lal* v. *Union of India*, AIR 1951 SC 41; *Prativa Sasmal* v. *Agricultural Income-tax Officer*, AIR 1958 Cal 585; *Amarendra Nath* v. *Bikash Chandra*, AIR 1957 Cal 534; *Jayalakshmi Rice and Oil Mill Contractors Co.* v. *Commissioner of Income-tax*, AIR 1967 Andh Pra 99.
5. *Amichand Valanji* v. *Katak*, AIR 1966 Bom 70 : 72 Bom LR 234. *See* also *Prativa Sasmal* v. *Agricultural Income-tax Officer*, AIR 1958 Cal 585, 588 (D.N. Sinha, J.) : "I am merely ascertaining the background, that is to say, the reasons which impelled the Legislature to divide it into two classifications."
6. *Harnam Singh* v. *State of M.P.*, AIR 1952 Nag 172 : ILR 1952 Nag 118.
7. *Davies Jenkins & Co. Ltd.* v. *Davis*, (1967)1 All ER 913 (Lord Morris). *See* also *Ealing London Borough Council* v. *Race Relations Board*, 1972 AC 342 (Lord Simon) : "An individual legislator may indicate his assent on an assumption that the legislation means so and so, and the Courts may have no way of knowing how far his assumption is shared by his colleagues, even those present."

Counsel for the State of Tasmania[1] to refer to expressions of opinion of members of the Convention. Later on, Latham Chief Justice observed in *South Australia* v. *Commonwealth*[2] :

> Reports of speeches in Parliament are also irrelevant and inadmissible. There are two Houses of Parliament in the Commonwealth. They consist of 110 voting members belonging to different parties or to no parties. Members of Parliament frequently have differing opinions, not only as to the merits and real objects of Bills presented, but as to their meaning. Neither the validity nor the interpretation of a statute passed by Parliament can be allowed to depend upon what members, whether Ministers or not, chose to say in Parliamentary debates. The court takes the words of Parliament itself, formally enacted in the statute, as expressing the intention of the Parliament."

Moreover, any statement made by an individual, *albeit* a Minister, of the intention and object of the Act cannot be used to cut down the generality of the words used in the statute.[3]

If it is relevant to consider the circumstances under which an Act was passed and the reasons which necessitated it, the Court may, with caution, look at the debate in Parliament or in the Legislature. But this principle would only apply where a question arises as to the decision of the Court *de hors* the Act or the Statute, for example, if the Court is considering Art. 19 of the Constitution and the question is whether the restriction imposed by the Legislature is reasonable restriction or not, the Act passed by the Legislature can throw no light on the question.[4]

In this regard the observations of Francis, J. McCaffery in his *Statutory Construction* (pp. 176-77) do, however, deserve to be noted : Neverthless the statements and opinions of legislators, uttered in debates attending the adopting of a statute, have oftentimes been deemed admissible as evidence of the evil which the statute intended to correct.[5] Some cases permit their use as indicative of the meaning and intention of the Legislature.[6] The distinction in thought between the two views, though thinly drawn, is to be found in the method of use in interpretation of legislative debates. In limiting their use to a means of a understanding of the mischief sought to be corrected by the statute, we are confining them to a sphere of indirect aids, indirect in the sense that they must be operative though another aid to construction, rather than directly on the language of the Act.

In U.S.A.—"Legislative debates have been frequently asserted to be of little worth in the interpretative process. This conclusion finds some support in the reasoning that the view expressed by a few members of the Legislature may or may not have been entertained by others who gave no expression. It would appear that the force of this conclusion is lessened and the value of such an aid increased in instances where statements in debate are made by chairman of standing committees by which the Bill in question had been considered, or by the floor leaders of either House in matters of party legislation. To one who understands the legislative process, the statement in debate of the chairman of the committee that had charge of the Bill may be highly significant in understanding the law enacted. Legislative bodies place great reliance

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1. *State of Tasmania* v. *Commonwealth of Australia*, 1 CLR 329, 337.
2. 65 CLR 373, 410. *See* also *Arthur Yates Co., Ltd.* v. *Vegetable Seeds Co.*, 72 CLR 37, 72 (Rich, J.)
3. *State of West Bengal* v. *Union of India*, AIR 1963 SC 1241; *Public Prosecutor* v. *Amrath Rao*, AIR 1960 Andh Pra 176, 178. (Krishna Rao, J.) *See Amichand Valanji* v. *Kotak*, AIR 1966 B 70, 87 (Tambe, J.) (Broadcast by Minister on the eve of Promulgation of Rules equated with speech of sponsor at the introduction of the Bill explaining position prevalent necessitating the Bill.).
4. *Commissioner of Labour* v. *Associated Cement Companies, Ltd.*, AIR 1955 Bom 363.
5. *Moran* v. *Bowley*, 374 III 148 : 179 NE 526.
6. *People* v. *Dalton*, 158 NY 175. *See* also *State of Maharashtra* v. *Dattatraya Balwant Upadhyaya*, 1876 Mah LJ 550.

upon the work and judgment of their committee; a very high percentage of all Bills enacted into law are passed in the identical form in which they are reported out of committees. The Courts have excepted from the operation of the general rule with respect to statements of legislators made in debates the statements of the members of the committee that had charge of the Bill.[1]

"In instances of laws of great public importance many legislators may participate in debates attending their passage. This may afford the opportunity of drawing inference as to the meaning of the enactment from the general tenor and course of debate.[2] In examining transcripts of legislative debates it should be ascertained if those legislators who participated agreed as to the meaning of the language under consideration. Such an agreement assumes importance if the number who expressed opinions was large and if the concurrence in thought as to meaning was shared by proponents and opponents of the particular Bill. It would appear that more attention should be directed to these officially recorded statements of legislators in solving question of construction."

4. Notes on clauses.—Reference cannot be made to the notes on clauses as aids to the construction of a statute.[3] The view has been consistently maintained that the Court cannot look at the history of a clause or of the introduction of a proviso.[4] We have to interpret the section as it stands irrespective of what might have been thought by any individual member of the Legislative Council.[5] In *Gosselin* v. *King*,[6] referring to the debate in Parliament it was stated :

> "I would only say, that among the authorities upon which I rely I do not count the speech of the Lord Chancellor in the House of Lords. I was a party to the decision under which it was allowed to be quoted to us, and the ground upon which I thought it admissible was that it had, on the occasion upon which it was spoken and the position of the speaker, at least as great sanction as the text-books of living judges which have upon many occasions been admitted as authorities. But upon further consideration of the matter, I have been led to doubt very much whether the principle upon which such text-books have been treated as authorities is a sound one; and even if it were a sound one, I cannot but think the extension of it to speeches in a House of Parliament, sitting in a legislative capacity, however eminent

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1. *United States* v. *America Trucking Associations*, 310 US 534. *See* also *Aldridge* v. *Williams*, 11 L Ed 469, 476 (Taney, C.J.); *Standard Oil Co.* v. *United States*, 55 L Ed 619, 641 (White, C.J.) : Environment at the time of the enactment; *Mclean* v. *United States*, 57 L Ed 260, 263 (McKenna, J.) : Reports of Committees of House of Representatives and that of *the Senate of Pennsylvania*, *R. Co.* v. *International Coal Mining Co.*, 57 L Ed 1446, 1452 (Lamar, J.) : to explain doubtful expressions, but not contrary to its plain terms; *Omaha & Cornel etc. R. Co.* v. *Interstate Commerce Commission*, 57 L Ed 1501, 1505 (Lamer, J.); *Helvering* v. *City Bank Farmers' Trust Co.*, 80 L Ed 62, 66 : 296 US 85 (Roberts, J.); *Schwegmann Bros.* v. *Culvert Distillers, Corpn*, 95 L Ed 1035; 1050-51; *contra* : dissenting judgment of Frankforter, J., 100 L Ed 1209 : 351 US 395 : Statement of senator not in charge of the Bill, nor a member of any Committee that had considered it. *Woodwork Manufacturers' Association* v. *National Labour Relations Board*, 18 L Ed 2d 357 (Breman, J.) : Views of legislative opponents, silence of sponsors of amendment. *U.S.* v. *O'Brien*, 20 L Ed 672-684 : 391 US 367 (Warren, C.J.); *Allen* v. *State Board of Electors*, 22 L Ed 2d 1, 19 : 393 US 544 (Warred, C.J.) : Voluminous debates, no single statement or excerpt of testimony can be conclusive.
2. *People* v. *Dalton*, 158 NY 175.
3. *Chundy Churn Law* v. *Rohini Kumar Sarkar*, AIR 1934 Cal 119, 120, *per* Mitter, J.; *Ramireddi* v. *Sreeramullu*, AIR 1933 Mad 120, 121 *per* Pandalai, J.
4. *Barbat* v. *Allen*, (1852)7 Ex 616; *Dina Nath* v. *Raja Sati*, AIR 1923 Cal 73, 77.
5. *Abdul Khan* v. *Shakira Bibi*, AIR 1928 All 124 : ILR 50 All 348 even though the individual happens to be a Minister; *State of West Bengal* v. *Union of India*, AIR 1963 SC 1241.
6. 33 Can Sup Court 255, 269, *per* Davies, J. and Taschereau, J.

may be the speakers, however solemn the occasion on which they speak, inexpedient in a very high degree. It is true that in many instances, and perhaps this particular one is conspicuous example, the speech, looking to the circumstance under which it was made, the previous consideration which the speaker has given to the subject, and the character in which he speaks, may be entitled to far more weight than the hasty utterances of a Judge at *nisi prius* or even the *obiter dicta* of a Judge in *bonco;* but the Judge in the latter cases, has the safeguard of a judicial proceeding cast round him; his mind is not likely to be influenced by a consideration beyond those which the law enforces upon him; while, when the scene is removed to the area of Parliament, political considerations may enter, as they have before now entered, into the opinions of lawyers upon legal subjects, and may insensibly affect the judgment of even the greatest and wisest of our Judges. The sanction and safeguard of judicial procedure are removed, and even the conditions which give the text-book its weight, the exclusive devotion to the legal subject of which it treats, and the calmness with which it is necessarily prepared may, in many instances, not exist."

5. Bills.—*(i) Speech at introducing Bill.*—The Court is not concerned with what transpired in the Legislative Council.[1] The Bill, the alteration made in the Bill during its passage during the Committee stage, the Statement of Objects and Reasons and the Report of the Select Committee cannot be legitimately taken into account in construing a provision where it is absolutely clear.[2] Even when words in a statute are so ambiguous that they may be construed in more than one sense, regard may not be had to the Bill by which it was introduced.[3] No statement made on the introduction of the measure or its discussion can be looked at affording any guidance as to meaning of the words.[4] A speech made by His Excellency the Governor of the Punjab in the Council, outlining the principles on which the Gurdwara legislation was to proceed and the assurances given thereat was not relied upon by Tek Chand, J., in *Gurdial Singh* v. *Central Board, etc., Amritsar,*[5] in construing the Sikh Gurdwara Act, 1925. Nor is the interpretation of a section by the Minister-in-charge admissible.[6] Counsel for respondent in *Queen Empress* v. *Balgangadhar Tilak,*[7] was however, allowed to read passages from Sir James Stephen's speech as part of his address, and as stating his own arrangement in words he adopted as his own, but he was not permitted to cite them as Sir James Stephen's opinion as authority showing the construction to be put upon the section.

(ii) Assurance on behalf of Government.

In *Nepra* v. *Sajer,*[8] Mitter, J., observed :

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1. *Sobhanadri Apparao* v. *Appana Sastri,* AIR 1943 Mad 29 at p. 30, *per* Leach, C.J.; *Hari Mahton* v. *Jamal Hossain,* AIR 1942 Pat 304 (2), *per* Fazl Ali, J.; *Baliram Shivappa* v. *Narayan,* ILR 1940 Nag 517 : AIR 1938 Nag 144, *per* Pollock, J.; *Sudarshan Maharaj Nandram* v. *E.I.R. Co.,* ILR 42 All 76; *Parmeswara Ayyar* v. *Kittuni Valia Mannadiar,* AIR 1918 Mad 381; *Q.* v. *Capel,* 9 LJ MC 65.
2. *Kapur, R.P.* v. *Pratap Singh Kairon,* AIR 1964 SC 295.
3. *Dina Nath* v. *Raja Sati,* AIR 1923 Cal 74, 77; *Herron* v. *Rathmines Co.,* 1892 AC 498; *Debendra Narain Roy* v. *Jogendra Narain Deb,* AIR 1936 Cal 593, 603; *Lumsden* v. *Inland Revenue Commissioners,* 1914 AC 877, 922, *per* Lord Moulton.
4. *South-Eastern Ry.* v. *Ry. Commissioners,* (1880)5 QBD 217, 236, Cockburn, C.J., *contra.*
5. ILR 9 Lah 689; *R.S. Ruikar* v. *Emperor,* AIR 1935 Nag 149, 152, *per* Grille, J. (statements made in the Legislative Assembly or elsewhere on behalf of Government); *Ram Ranbijoy* v. *Ramgirhi,* ILR 14 Pat 720 : AIR 1935 Pat 346, 348 (SB), *per* Mohammad Noor, J. (Speech of Sir Stuart Bayley).
6. *Joti Prasad* v. *Amba Prasad,* ILR 55 All 406 : AIR 1933 All 358, 362, *per* Iqbal Ahmad, J.; *State of West Bengal* v. *Union of India,* AIR 1963 SC 1241.
7. ILR 2 Bom 112, 128.
8. AIR 1927 Cal 763, 766 : ILR 55 Cal 67.

"Mr. Gupta drew our attention to the fact that a Bill has been introduced in the Council of State to make it clear that the Act of 1926 was intended to have retrospective operation in view of the decision to the contrary of the Allahabad High Court referred to above. But it is not permissible for us to refer to a Bill which is not passed into law for the purpose of construing what an earlier Act meant."

6. Statement of objects and reasons.—It is of immense use to refer the following quotation from *M/s. Doy Back Systems Pvt. Ltd.* v. *Union of India.*[1] Francis Bennion in *Statutory Interpretation*, 1984 Ed. at p. 526, para 238 states that Hansard's reports and other reports of Parliamentary proceedings on the bill which become the Act in question, are of obvious relevance to its meaning. They are often of doubtful reliability however... As the ultimate decision is taken by the cabinet the notings by officers of several grade cannot be, and are not guides as what decision the cabinet took; the production of such documents are not relevant.[2]

In *Dr. (Mrs.) Sushma Sharma* v. *State of Rajasthan*[3] quoted with approval. The objects and purposes of the person who initiated the bill are not admissible as aids to construction since it is impossible to contend that such purposes in the minds of some officials of the Govt. before the matter is discussed by the cabinet would at all be relevant.

In *State of W.B.* v. *Union of India*[4] this court reiterated that the *statement of objects and reasons* accompanying when introduced in the Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. Such statement cannot be used to show that the legislature did not intend to take over any particular property.[5]

It has to be reiterated, however, that the objects and reasons of the Act should be taken into consideration in interpreting the provisions of the statute in case of doubt.[6]

Blackstone in his *Commentaries on the Laws of England*[7] suggests : "The fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs most natural and probable. And these signs are the words, and content, the subject-matter the effect and consequence or the spirit and reason of the law." The Statement of Objects and Reasons is not admissible, however, for construing the section; far less can it control the actual words used,[8] on the plain and obvious meaning which the enacted sections obviously convey.[9] They cannot be used to determine the true meaning and effect of the substantive provisions of the statute or as an aid to the construction of the enactment. They cannot be used to cut down the generality of the words used in the statute.[10] Unlike the preamble, the headings and the marginal notes, the Statement of Objects and Reasons which accompanies the draft Bill when it is first introduced in the legislative body, is no part of the

1. AIR 1988 SC 782 : (1988)1 JT 304.
2. *National Textile Corpn, Ltd.* v. *Sitaram Mills Ltd.*, AIR 1986 SC 1234, quoted with approval.
3. AIR 1985 SC 1367
4. AIR 1963 SC 1241.
5. *See* also *Central Bank of India* v. *Their Workmen*, AIR 1960 SC 12.
6. See *K.P. Verghese* v. *The Income Tax Officer, Ernakulam*, (1982)1 SCR 629 : AIR 1981 SC 1922; *Cheren Taong Shang* v. *Commander S.D. Baijal*, (1988)1 JT 202 : AIR 1988 SC 603.
7. Vol. I at p 59, Facsimile of 1st Ed. 1765, *University of Chickago Press*, 1979.
8. *Central Bank of India* v. *Workmen*, AIR 1960 SC 12, 21.
9. *New Swadeshi Mills* v. *S. Sen*, (1976)17 Guj LR 382 (DB); *Workmen of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd.* v. *Management*, AIR 1973 SC 1227.
10. *M/s. Atma Ram Ratan Lal* v. *State of U.P.*, 1979 All LJ 126 DB.

Act as passed by the Legislature.[1] All High Courts are agreed that the Statement of Objects and Reasons must be excluded from consideration when construing an Act of the Legislature.[2] The Supreme Court has also recently held to the same effect[3], where the words of the statute are quite clear and unambiguous, the objects and reasons are not admissible as aid in the construction of the statute.[4] The Statement of Objects and Reasons may not be used for the purpose of construing the meaning of a particular word in an enactment, yet it can be referred to, for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which is sought to be remedied.[5] While the statements and objects cannot be used as aids to construction they can be used for the limited purpose of understanding the background and antecedent state of affairs

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1. *In re* Lala Harkishan Lal, AIR 1937 Lah 497,499 : ILR 1937 Lah 69 (SB), following *Shantanand* v. *Basudevanand*, ILR 52 All 619 : AIR 1930 All 225, 238, 239; *Ratansi Hirji* v. *Emperor*, ILR 53 Bom 627 : AIR 1929 Bom 274, 276; *Parasram Girdardas* v. *Tarachand Amardevamal*, AIR 1936 Sind 209, 210; *Lakshmibai* v. *Lakshmichand Shaw*, AIR 1968 Bom 332; *Bega Begum* v. *Abdul Ahmed Khan*, AIR 1968 JK 59.

2. *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 619; *Mahalakshmi* v. *Shamrangini*, ILR 1941 Cal 499 : AIR 1941 Cal 673, 675; *Midnapore Zamindari Co.* v. *Kumar Chandra*, ILR 1943 Cal 215 : AIR 1943 Cal 544, 551 (reference was made to *Petrol Tax* case, 1939 FCR 18); *Ratansi Hirji* v. *Emperor*, ILR 53 Bom 627 : AIR 1929 Bom 274, 276; *Zamindar of Ettiyapuram* v. *Chidambaram Chetty*, ILR 43 Mad 675, 687; *Ramireddi* v. *Sreeramulu*, AIR 1933 Mad 120, 121; *Rup Kishore* v. *Bhagat Govind Das*, AIR 1922 Lah 211; *Raj Mal* v. *Harnam Singh*, ILR 9 Lah 260, 268; *In re* Lala Harkishan Lal, ILR 1937 Lah 69 : AIR 1937 Lah 497, 498; *Shantanand* v. *Basudevanand*, ILR 52 All 619 : AIR 1930 A-225, 238, 239; *Parsram Girdardas* v. *Tarachand Amardevamal*, AIR 1936 Sind 209, 210; *In re* Hormusji Jamshedji, AIR 1935 Sind 134, 135; *Dil Jan* v. *Municipal Committee, Peshawar*, AIR 1939 Pesh 40; *Raisee & Co.* v. *Joseph Bros.*, AIR 1920 LB 132, 133; *A.K.R. M.C.T. Chetty Firm* v. *Maung Aung Bwint*, AIR 1923 Rang 21. The decisions prior to *Prem Lal Mullick's* case. ILR 22 Cal 788, 799, 800 (PC) and *Krishan Ayyangar's* case, ILR 43 Mad 550, 565 (PC), such as, *Meothora Kand Shaw* v. *India General Steam Navigation Co.*, ILR 10 Cal 160 (FB); *Fadu Jalla's* case, ILR 19 Cal 544 (FB); *Sheocharan* v. *Piare Lal*, 12 IC 799 (Nag), etc., which permit reference to Objects and Reasons in case of doubt, do not appear to be good law; *see* also *Supdt. of Legal Affiars* v. *Tarak Nath*, ILR 1935 Cal 304 to the same effect; *Sundara Rama Raju* v. *Ramchandriah*, 1955 Andhra WR 66.

3. *Workmen Firestone Tyre and Rubber Co.* v. *Management*, (1973)1 SCC 813, 829 (Vaidialingam, J.) : Indication as to what Legislature wanted to achieve. *Aswini Kumar Ghose* v. *Arabinda Bose*, 1952 SCJ 568 : AIR 1952 SC 369 : 1953 SCR 1; *Ranganatham* v. *Govt of Madras*, AIR 1955 SC 604; *Kavalapra* v. *States of Madras and Kerala*, AIR 1960 SC 1080; *see* also *Bhagat Govind Singh* v. *Punjab State*, AIR 1963 Punj 316.

4. *Radhey Shyam* v. *Chief Commissioner, Ajmer*, AIR 1956 Ajmer 25; *Shanker Rao* v. *State of Madras*, (1955)2 MLJ 106 : AIR 1955 Mad 498; *(Mrs.) Govind Saran Ganga Saran* v. *Sales Tax Commissioner*, AIR 1985 SC 1041 : (1985)13 STL 111.

5. *State of West Bengal* v. *Subodh Gopal*, AIR 1954 SC 92, 104; *M.K. Ranganatham* v. *Government of Madras*, AIR 1955 SC 604, 608; *Commissioner of Income-tax, Madhya Pradesh* v. *Mst. Sodra Devi*, AIR 1957 SC 832, 839; *Satrughna Sahu* v. *State of Orissa*, AIR 1958 Orissa 187, 189; *Anant Kumar Datta* v. *Land Revenue Officer*, AIR 1958 Cal 143; *Manik Chand Choudhury* v. *State*, 62 CWN 94; *Surendra Nath Jana* v. *State of West Bengal*, 62 CWN 14; *Musaliar* v. *Venkatachalam*, AIR 1956 SC 246; *Aswini Kumar Ghose* v. *Arbinda Bose*, 1953 SCR 1; *Kochuni* v. *State of Madras*, (1960)3 SCR 887, 899 : AIR 1960 SC 1080, 1086; *In re* Oriental Gas Co., Ltd., AIR 1961 Cal 267; *Kangra Valley State Co* v. *Kedarnath*, AIR 1961 Punj 540 (FB); *Rahiman* v. *Rao*, AIR 1960 Bom 271 (FB); *Gour Nitay Tea Co.* v. *State of Assam*, AIR 1966 Assam 58 (FB); *Radhacharandas* v. *Bhima Patra*, AIR 1966 Orissa 1, 4 (Ahmad, C.J.); *Rameshwarlal* v. *Excise Taxation Officer*, AIR 1964 Punjab 1, 9 (D.K. Mahajan, J.) *Dr. Dasanna, M.N.* v. *Government of Andhra Pradesh*, (1968)2 Andh LT 251 : (1968)2 Andh WR 413; *see* also *Patil, R.A.* v. *Redekar*, AIR 1969 Bom 205, *Kailas Sizing Works* v. *Municipality of Bhiwandi*, AIR 1969 Bom 127; *Narain Singh* v. *Financial Commissioner, Punjab*, 1968 Punj LJ 321; *Zaibunissa* v. *Divisional Supreintendent, Southern Ry., Hubli*, AIR 1965 Mys 306; *Kunju Govindan* v. *Parakat Kunhilakshmi Amma*, AIR 1966 Ker 244 (FB) : 1966 Ker LT 261; *Sundari* v. *Ranka Behara*, AIR 1968 Ori 134, 137-8 (S.K. Ray, J.) : *Raj Kumarsinghji* v. *Commissioner, Expenditure Tax*, AIR 1968 MP 107, 112 (Bhave, J.); *State of Bihar* v. *Mohd. Ismail*, AIR 1966 Pat 1, 5 (UN Sinha, J.)

leading up to the legislation,[1] of finding the object of the Legislature in enacting the statute where all other methods of interpretation fail,[2] and also in order to find out what was the mischief which the legislation aimed at.[3] Such statement can legitimately be referred to for correct appreciation of—

(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 the Legislature had appointed; and

(iv) the reasons for the remedy.[4]

They might also be admissible in order to ascertain the conditions prevailing at the time the legislation was undertaken.[5] No doubt certain immediate circumstances might furnish the reason for the particular piece of legislation. But on that ground it is wrong to construe the actual language used in the enactment in a restricted manner so as to confine it to those special circumstances. Hence the contention cannot be upheld that Clause *(vi)* of Section 3 of the Press (Objectionable Matters) Act, 1951, does not cover matter which may ordinarily be held to fall within the categories mentioned therein, *viz.*, indecent, obscene, etc., but that the clause refers only to one particular type of objectionable matter which concerns, and is directed against persons in public life, especially holding reasonable positions in the Government, because the Statement of Objects and Reasons for the Bill says that provision was intended to enable the Government to deal with abuse of persons in authority.[6] It is not open to the court to consider the Statement of Objects and Reasons in the case of an ordinance any more than in case of an Act.[7]

The objects and reasons of an enactment and also the report of the legislative proceeding can be used for a restricted purpose, and not to lay down the scope of an enactment duly passed by the Legislature. The intention of the Legislature is invariably determined from the wording of the enactment itself, and not from the speeches made at the floor of the house, or the opinion that the Legislature may have otherwise expressed.[8]

Courts of Justice are not concerned with the objects with which the Legislature enacts any particular law unless in the particular enactment the object is stated as a guiding principle to be followed in interpretation. It may well be that the promoters of any particular Bill in the Legislature may have particular objects in view but any section as ultimately enacted may well be the result of compromise and it may be that the words ultimately agreed upon have been

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1. *State of West Bengal* v. *Union of India*, AIR 1963 SC 1241; *Kannailal* v. *Nikhil Chand*, AIR 1969 Cal 267; *Pracchand Nathmal Kothari* v. *Kisanlal Bachraj Vyas*, 1975 Mah LJ 497; *State of Maharastra* v. *Kusum*, 1981 Mah LJ 93 (DB); *Kumar Jagadish Chandra Sinha* v. *(Mrs.) Eileen K. Patricio D'Rozarie*, AIR 1995 SC 515; *Bihar Chamber of Commerce* v. *State of Bihar*, AIR 1995 Pat 184 (DB).
2. *Tata Engineering and Locomotive Co. Ltd.* v. *Gram Panchayat, Pimpri Waghere*, (1976)4 SCC 177.
3. *Parashar, S.C.* v. *Vasantasen Dwarakadas*, AIR 1963 SC 1356; *Jamuna Prasad* v. *Kishori Lal*, AIR 1973 Cal 204, 209 (A.K. Mukherjea, J.).
4. *Smt. Ratnamala* v. *State of Mysore*, AIR 1968 Mys 216, 224-5 (Chandrasekhar, J.); *Ranoji Rao* v. *State of Madhya Pradesh*, AIR 1965 MP 77, 83 (Dixit, C.J.). To find out the object of the enactment; *G.T.R. Co. (P.) Ltd.* v. *Certificate Officer*, AIR 1964 C 285 (D.N. Sinha, J.); *M.P. Mineral Industries* v. *Regional Provident Fund Commissioner*, AIR 1959 B-60, 61.
5. *Jai Lal* v. *Delhi Administration*, AIR 1962 SC 1781; *Durga Rice Mills* v. *State of Andhra Pradesh*, AIR 1964 Andh Pra 266, 271; *Suraj Prakash* v. *State*, AIR 1964 All 95, 99 (Jagdish Sahi, J.). *Pharangadhra Chemical Works* v. *Thoke*, AIR 1963 Guj 283, 289 (K.T. Desai, C.J.).
6. *Shankar & Co.* v. *State of Madras*, AIR 1955 Mad 498, 500.
7. *Emperor* v. *Sakinabai Lukmani*, AIR 1931 Bom 70, 72; *Jugal Kishore* v. *Emperor*, AIR 1931 Cal 633.
8. *Joti Prasad* v. *Kalka Prasad*, AIR 1962 All 128, 129; *Rustam Khan* v. *Ahmad Bux*, AIR 1966 All 163 : 1965 All LJ 588.

passed by the Legislature in such a form that one or all of the objects of the promoters is or are defeated. In cases, therefore, where the Legislature has not thought fit to express its intention otherwise than by the use of the words of the section those words must be followed.[1]

Reference to Statement of Objects and Reasons attached to a Bill at its introduction in the Rajya Sabha (or Lok Sabha) or the circumstances under which a word or expression came to be deleted are not aids to the construction of the terms of a statute which have of course to be given their plain and grammatical meaning. It is only when the term of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the Legislature.[2] In other words, a back drop that could highlight ambiguous expressions in the Act.[3]

Though the objects and reasons for the enactment of a statute may not be looked into when the wording of the statute is clear[4] it is not unusual to rely on the objects and reasons for its enactment when the meaning of the words of the section is open to more than one interpretation.[5]

Very often in interpreting a statutory provision, it becomes essential to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is the reason why in dealing with the true scope and effect of the relevant words, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute become relevant and material.[6] Although, strictly speaking, whatever has been stated in the Statement of Objects and Reasons may not be used in interpreting the provision of the amendment, the purpose and foundation of the amendment could be ascertained and to that limited extent the statement could be looked at.[7]

The Statement of Objects and Reasons is certainly not admissible as an aid to construction of a statute, but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil, which he sought to remedy.[8] It is permissible for a court to look to the Statement of Objects and Reasons to find out what is the objective of any given statute passed by the Legislature.[9]

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1. *Radha Kishan Marwari* v. *Emperor*, 1932 Cr Cas 765 (SB) (Pat).
2. *Express Newspapers, Ltd.* v. *Union of India*, AIR 1958 SC 578, 622; *Ashwini Kumar Ghosh* v. *Arabinda Bose*, 1953 SCR 1 : 1952 SCJ 568 : AIR 1952 SC 369; *Provat Kumar Kar* v. *William Trevelyan Curties Parker*, AIR 1950 Cal 116; *Satya Prakash* v. *Bashir Ahmad*, AIR 1963 MP 316, 321 (Dixit, J.); *Rashidkhan Osmankhan* v. *Maltibai*, 1980 Mah LJ 428.
3. *Subramanian Golden Transport* v. *Raman Raman Transport*, AIR 1967 Mad 232, 237 (Natesan, J.).
4. *Subhash Ganpatrao Buty* v. *Maroji Krishnaji Dorlikar*, 1975 Mah LJ 244 (FB).
5. *City Tobacco Mart, Avenue Road, Bangolore* v. *I.T. Officer, Urban Circle, Bangalore*, AIR 1955 Mys 49. *See* also Tarachand Poddar, *In the matter of*, AIR 1968 Cal 310.
6. *Sheikh Gulfan* v. *Sant Kumar Ganguli*, AIR 1965 SC 1839; *Burmah-Shell Oil Storage and Distribution Co. of India, Ltd.* v. *State of Madras*, (1968)21 STC 227 (Mad); *Smt. Ratnamala* v. *State of Mysore*, AIR 1968 Mys 216.
7. *Gaur Nitay Tea Co.* v. *State of Assam*, AIR 1966 A & N 58, 71 (FB) (Mehrotra, C.J.); *Rustam Khan* v. *Ahmad Bux*, AIR 1966 All 163, 164 (Jagdish Sahai, J.).
8. *Narain Khamman* v. *Praduman Kumar Jain*, AIR 1985 SC 4; *(Mrs.) Vinifred Ross* v. *(Mrs.) Ivy Fonseca*, AIR 1984 SC 458; *Brijraj Singh* v. *(Smt) Bitto Devi*, 1993 JLJ 467 (DB); *Bijli Cotton Mills (P) Ltd.* v. *VIth Addl. Distt. Judge, Aligarh*, 1983 ALJ 1320 (DB); *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369; *State of West Bengal* v. *Subodh Gopal Bose*, AIR 1954 SC 92; *M.K. Ranganathan* v. *Government of Madras*, AIR 1955 SC 604, 608 [the amendment of Section 232(1) inserted by the Companies Amendment Act 22 of 1936, was designed to prevent such sales as were upheld by the decision in 1921 All 149]; *Ramachandra* v. *Janardhan*, ILR 1955 Nag 378 : AIR 1955 Nag 225 (FB) (construction of Berar Land Revenue Act).
9. *Amina Uma* v. *I.T. Officer*, AIR 1954 Mad 1120; *Shankar Rao* v. *State of Madras*, (1955)2 MLJ 106 : AIR 1955 Mad 498; *Chhotabhai P. Patel, Beedi Manufacturers* v. *The State of Maharashtra*, AIR 1971 B-244, 248-9 (Deshmukh, J.).

It may be referred to for the purpose of determining the reasonableness of the restriction imposed by it on the fundamental right.[1] When an Act is challenged as infringing Article 14 of the Constitution, it is, however, not proper to look to the Statement of Objects and Reasons for the purpose of determining whether there is a reasonable basis for classification.[2]

Summary of Supreme Court view.—The Statement of Objects and Reasons seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve.[3] The objects and reasons do not form part of the Bill and are not voted upon by the members. The Bill may have undergone radical changes during its passage through the House or Houses and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature. Those objects and reasons may or may not correspond to the objective which the majority of members had in view when this passed into law. Hence the Statement of Objects and Reasons should be ruled out as an aid to the construction of a statute or of ascertaining the meaning of any word used in the Act,[4] or for the construction of the provisions of the Constitution.[5] Nor can it control the actual words used in the Act.[6] In other words, it cannot be used to determine the true meaning and effect of the substantive provisions of the statute. A statute as passed by the Parliament is the expression of the collective intention of the Legislature as a whole and any statement made by an individual, *albeit* a minister of the intention and object of the Act cannot be used to cut down the generality of the words used in the statute.[7]

The Statement of Objects and Reasons is not a part of the history of the legislation. It is merely an expression of what according to the mover of the Bill are the scope and purpose of the legislation. It is accordingly not admissible to ascertain the intention of the Legislature. Thus it cannot be used for the purpose of showing that the Legislature would not have enacted the law without the protection afforded by another provision of the Act.[8]

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1. *Sher Singh* v. *State of Rajasthan*, AIR 1954 Raj 65.
2. *Madho Singh* v. *State of Rajasthan*, AIR 1954 Raj 188.
3. Vide *B. Vilasini* v. *S.R.T.C.*, AIR 1989 Ker 95 : (1988)1 Ker LJ 762 : (1988)1 Ker LT 915 : (1988)27 Reports 295 : (1988)2 TAC 331 : 1988 ACJ 755 : (1988)2 ACC 584 : ILR (1989)1 Ker 116 : 1989 SC Cri R 36 (FB).
4. *Aswini Kumar* v. *Arabinda Bose*, 1953 SCR 1, 28 (Sastri, C.J.); *State of W.B.* v. *Subodh Gopal*, 1954 SCR 587, 628 (S.R. Das, J.); *Ranganathan* v. *Govt. of Madras*, (1955)2 SCR 374, 385 (Bhagwati, J.); *Chamarbaugwala* v. *Union of India*, 1957 SCR 930, 939 (Aiyar, J.). Both Mr. Palkiwala for petitioners and Mr. Seervai for opposite party disclaimed the use of Statement of Objects and Reasons to explain Section 2*(d)* of Prize Competition Act, 42 of 1955, although according to the learned Judge : "If we could legitimately rely on this, that would be conclusive against the petitioners." *Commissioner of Income-tax, M.P.* v. *Sodra Devi*, 1958 SCR 1, 17 (Bhagwati, J.); *Express Newspapers* v. *Union of India*, 1959 SCR 12, 141 (Bhagwati, J.); *Central Bank of India* v. *Their Workmen*, (1960)1 SCR 200, 217 (SK Das, J.); *Kochuni* v. *State of Madras*, (1960)3 SCR 887, 899 (Subbarao, J.); *Prashar* v. *Vasantsen*, (1964)1 SCR 29, 54 (SK Das, J.); *Ghewar Chand* v. *Workers' Union*. (1969)1 SCR 366, 372 (Shelat, J.) : though it can legitimately be used for ascertaining the object which the Legislature had in mind. But see *Siv Kirpal Singh* v. *Shri V.V. Giri*, (1971)2 SCR 197, 226 (Sikri, J.) : support for the view arrived at from the Statement of Objects and Reasons. *See* also *Hadibandhudas* v. *Distt. Magistrate*, AIR 1968 Orissa 148, 159 (Barman, C.J.); *Jadumani Biswal* v. *Narayan Chander Biswal*, (1982)54 Cut LT 584 (DB).
5. *P. Vajravelu Mudaliar* v. *Special Deputy Collector*, AIR 1965 SC 1017.
6. *Central Bank of India* v. *Their Workmen*, (1960)1 SCR 200, 217 (SK Das, J.); *Ghewar Chand* v. *Workers' Union* (1969)1 SCR 366, 371 (Shelat, J.).
7. *State of West Bengal* v. *Union of India*, (1964)1 SCR 374, 382 (Sinha, C.J.).
8. *Jia Lal* v. *Delhi Administration*, (1963)2 SCR 864, 878 (Aiyar, J.); *Laxmibai* v. *Laxmichand*, AIR 1968 B 332, 335 (Chandrachud, J.).

But the Statement of Objects and Reasons may be referred to for the limited purpose of ascertaining the conditions prevalent at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy,[1] that is, to find out what was the mischief which the legislature aimed at.[2] Such a statement may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a statute, but as already observed in interpreting the statute they must be ignored.[3]

Thus, the statement of Objects and Reasons may be evidence of surrounding circumstances and is not a direct evidence of parliamentary intent.[4]

It is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the Legislature.[5]

It is not a part of the statute and so where the operative part of the statute is clear beyond doubts, it cannot be used to determine the intention of the Legislature.[6]

Where necessary, it can be used for ascertaining the true scope of a statutory provision.[7]

In some cases the courts have relied upon the Law Commission's Reports relating to the Act which they were called upon to construe.[8]

Legislative debates relating to an Act can also be looked into as an external aid to construction, where necessary.[9]

All these are, however, external aids to be used only where either a statute is not exhaustive or its language is vague, uncertain or open to plural interpretations.[10]

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1. *State of West Bengal* v. *Subodh Gopal*, 1954 SCR 587, 628 (S.R. Das, J.); *Ranganathan* v. *Govt. of Madras*, (1955)2 SCR 374, 385 (Bhagwati, J.); *Thangal Kunju Mussaliar* v. *Venkatachlam*, (1955)2 SCR 1196, 1237, (Bhagwati, J.); *Commissioner of Income-tax, M.P.* v. *Sodra Devi*, 1958 SCR 1, 17 Bhagwati, J.; *Kochuni* v. *State of Madras*, (1960)3 SCR 887, 899 (Subba Rao, J.); *Prasher* v. *Vasantsen*, (1964)1 SCR 29, 54 (SK Das J.); *(M/s.) Atma Ram Ratanlal* v. *State of U.P.*, 1979 All LJ 126 (DB); *Sri Kunj Behari* v. *Sri Krishna Dutt*, AIR 1994 All 198.
2. *Prasher* v. *Vasantsen*, (1964)1 SCR 29, 54 (S.K. Das, J.); *Ghewar Chand* v. *Workers' Union*, (1969)1 SCR 366, 371-372 (Shelat, J.); *see* also *Theranalpad* v. *Krishnan Nair*, AIR 1958 M 117, 121 (Ramaswami, J.); *Passarilal* v. *Chuttanbai*, AIR 1958 MP 417, 421 (Chaturvedi, J.); *Chern Taong Shang* v. *Commander S.D. Baijlal*, (1988)1 SCC 507, [relying on *K.P. Varghese* v. *I.T.O.*, (1981)4 SCC 173 : 1981 SCC (Tax) 293 : (1982)1 SCR 629; *R.B. Shreeram Religious and Charitable Trust* v. *Commissioner of Income Tax*, (1988)172 ITR 373 (Bom)].
3. *Gujarat University* v. *Mudholkar*, (1963) Suppl 1 SCR 112, 113 (Shah, J.); "But if the Legislature has made no provision in that behalf, a mere proposal by the Government, which is incorporated in the Statement of Objects and Reasons will not justify the court in assuming that the proposal was carried out."
4. *Mittra Nand* v. *State*, AIR 1982 All 451 (DB).
5. *Express Newspapers* v. *Union of India*, 1959 SCR 12, 141 (Bhagwati, J.); *see* also *Moti Ram* v. *Bakhwant Singh*, AIR 1968 P & H 141, 150 (Shamsher Bahadur, J.); *Luxmibai* v. *Laxmichand*, AIR 1968 B 332, 335 (Chandrachud, J.); *Pathumma* v. *State of Kerala*, (1978)2 SCC 1 (23).
6. *State of Haryana* v. *Chanan Mal*, AIR 1976 SC 1654.
7. *State of Bihar* v. *K.K. Collieries Ltd.*, AIR 1976 SC 1978
8. *Mithilesh Kumari* v. *Prem Behari Khare*, AIR 1989 SC 1247; *Ratanlal Bansilal* v. *Kishorilal Goenka*, AIR 1993 Cal 144 (FB of 5J), *Indian Chamber of Commerce* v. *CIT*, AIR 1976 SC 348 : (1975)101 ITR 796; *Addl C.I.T.* v. *Surat Art Silk Manufacturer's Association*, (1980)121 ITR 1 : AIR 1980 SC 387; *K.P. Verghese* v. *I.T.O.*, (1981)131 ITR 597 : AIR 198 SC 1922; *Moideen Kutty Haji* v. *Kunhikoya*, AIR 1987 Ker 184 : 1987 Ker LJ 492 : (1987)1 Ker LT 492 : (1987)2 Rec Cri R 485 : ILR (1987)2 Ker 123 : 1987 APLJ (Cri) 237 (FB); *Joginder Singh* v. *Punjab State*, (1979)1 SCC 345; *Santa Singh* v. *State of Punjab*, AIR 1976 SC 2386; *Balchand* v. *State of M.P.*, AIR 1977 SC 366.
9. *Amarnath* v. *State of Haryana*, AIR 1977 SC 2185.
10. *Anandji and Co.* v. *Engineering Mazdoor Sangh*, AIR 1975 SC 946; *Bank of Baroda* v. *Mysore Chip Boards Ltd.*, (1991)2 Kar LJ 310.

Ministerial statements in the Legislature can also be used as an external aid to construction, especially in the case of provision amending a statute.[1]

The "best guide" to the true intention of the Legislature in the language actually used by them.[2]

7. Judicial construction.—*Presumption as to 'state of law', 'Judicial construction'.*—The Legislature is presumed to know not only the general principle of law, but also the construction which the courts have put upon particular statutes.[3] "We ought in general, in construing an Act of Parliament, to assume that the Legislature knows the existing state of law".[4] When particular words in a statute have received judicial interpretation, and the statute is subsequently repealed and re-enacted in identical terms, the words in the new enactment should be construed in the sense previously attributed to them by the judiciary.[5] The application of this rule, it may be noted, is not limited to statutes of the same Legislature.[6]

The rule did not apply when it did not appear that the legislators intended to apply their minds to the subject in question, when the Act was a mere consolidation of existing statutory provisions.[7] The rule cannot also have any application where the scope of the two enactments is different and they are not *in pari materia*.[8] When the statutes are not *in pari materia*, and different in object and context, it is generally regarded as dangerous to construe the language of one Act having regard to the construction placed by the court on somewhat similar language of another Act.[9]

The rule is further affected by the nature of the decision and the circumstances under which the Act was passed as well as its literal terms unless those terms are in themselves explicit.[10] In

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1. *Lok Sikshana Trust* v. *C.I.T.*, AIR 1976 SC 10 cf. *Satpal & Co.* v. *Lt. Governor*, (1979)2 SCC 232.
2. *Annapurna Carbon Co.* v. *State of A.P.*, AIR 1976 SC 418; see also *S.V.P. Cement Co.* v. *General Mining Syndicate*, (1976)3 SCC 852; *Chandra Kumar* v. *D.J.*, AIR 1976 All 328 (FB); *Gangadhar* v. *State*, AIR 1976 Bom 13; *H.D. & G. Mills* v. *State*, AIR 1976 P & H 1.
3. *Mohammad Mozaharal Ahad* v. *Mahamed Azimaddin*, AIR 1923 Cal 507, 511, *per* Mookerjee, J.; *Bipul Bihari* v. *Nikhil Chandra*, AIR 1929 Cal 566; *Kayastha Co.* v. *Sita Ram*, AIR 1929 All 625, 630 (FB), *per* Sulaiman, J. (presumed to know the current of judicial pronouncement); Balmukand Dube, *In the goods of*, AIR 1930 All 82, 84 (must be cognisant of decisions on a particular section of an enactment); *Queen-Empress* v. *Babu Lal*, ILR 6 All 509, 518 (FB) (keep themselves acquainted with the rulings of the High Courts); *R.* v. *Walford*, (1846)9 QB 626, *per* Lord Denman, C.J. (state of the law); *Jones* v. *Brown*, (1843)2 Exch 329, 333; *M. Manus* v. *Lancashire and Yorkshire Ry. Co.*, (1859)28 LJ Exch 353; *Kurtz* v. *Spence*, (1886)35 Ch D 579; *per* Chitty, J., *Re* Demerara Rubber Co., Ltd., (1913)1 Ch 331, *per* Swinfeu-Eady, J., (judicial construction); *Ex parte* Kent County Council and Dove Council, (1891)1 QB 725, on appeal 65 LT 213; see *Jagat Ram Hamir Chand* v. *Shanti Sarup*, AIR 1964 Punj 175 : ILR (1965)1 Punj 516 : 67 Punj LR 45 : *Rukmini Bai Rathor* v. *Commisioner of Wealth-tax*, AIR 1964 Orissa 274 : ILR 1964 Cut 339.
4. *Young & Co.* v. *Mayor, etc. of Royal Leamington Spa*, (1883)8 AC 517, 526, (per Lord Blackburn); *East India Hotels* v. *State*, 1983 Kash LJ 56 : 1983 Sri LJ (J & K) 56 (DB).
5. *Ex parte* Campbell : *In re* Calthcart, LR 5 Ch 703, 706; *Barlow* v. *Teal*, 15 QBD 403, 404; *Greaves* v. *Tofield*, 14 Ch D 563, 571; *Clark* v. *Wallond*, 52 LJQB 321, 322; *North British Railway Co.* v. *Budhill Coal and Sandstone Co.*, 1910 AC 116; *Young* v. *Gentle*, (1915)2 KB 668; *Saunders* v. *Borhistle*, 1 CLR 379, 390; *Chantler* v. *Chantler*, 4 CLR 585; *Williams* v. *Dunn's Assignee*, 6 CLR 425, 441; *Sargood Bros.* v. *The Commonwealth*, (1910)11 CLR 258, 267-68; *Townswillee Harbour Board* v. *Scottish Shire Line, Ltd.*, 18 CLR 306, 321; *Bridge* v. *Bowen*, (1916)21 CLR 582; *Melborne Corporation* v. *Barry*, 31 CLR 174, 181, *Sana Ullah* v. *Ashok Kapil*, (1979)5 All LR 113.
6. See *National Mutual Life Association of Australia, Ltd.* v. *Godriah*, (1909)10 CLR 1, 13.
7. *Williams* v. *Dunn's Assignee*, 6 CLR 425; *Bridge* v. *Bowen*, (1916)21 CLR 582, 629.
8. *State of Punjab* v. *Okara Grain Buyers Syndicate*, AIR 1964 SC 669 : (1964)2 SCA 451.
9. *Municipality, Jammu* v. *(M/s.) Glacier Cold Storage*, (1980)8 Chandi LR (J & K) 39 (DB).
10. *Ex parte* Vogal, (1818)2 Barn & Ald 219; *Ex parte* Campbell, (1870) LR 5 Ch 106; *Mande* v. *Lowley*, (1874) LR 9 CR 165; *Greaves* v. *Tofield*, (1880)14 Ch D 563, 567; *Dales'* case, (1881)6 QBD 453; *Clark* v. *Wallond*, (1883)52 LJQB 322; *Clarkson* v. *Misgrave*, (1882)9 QBD 386; *Michell* v. *Simpson*, (1890)25 QBD 183; *Bank of England* v. *Vagliano*, 1891 AC 107, 144; *Smith* v. *Baker*, 1891 AC 325, 349; In re *Smith Hand* v. *Andrews*, (1898)2 Ch 1; *Jay* v. *Johnstone*, (1893)1 QB 25.

Melbourne Corporation v. *Parry*,[1] Isaacs, J., said : "The result of these cases, in my opinion, is that, when Parliament is considering *de novo* that the law shall be on any given subject, and it finds in a previous Act words which have received by the judicial interpretation a well-settled meaning or effect, and introduces those words *verbatim* or without any appreciable difference, merely accommodating them to their new surroundings, they are generally presumed by a court to have been adopted in the accepted sense. But even then, there is no rigid rule of law on the subject. It is a judicial rule of construction founded on the well-known principle that, when words have generally acquired a meaning other than their primary meaning in a certain collocation, that is their natural meaning in that collocation, and they would be so understood by those to whom they are addressed. A court must in every case have regard to the whole position, and determine upon a construction of the whole Act whether Parliament has in the particular provision adopted that other meaning judicially affixed instead of what must be assumed to be the primary meaning of the words it uses which a court unfettered might otherwise act upon." In the same case the observations of Higgins, J., also deserve reproduction : "The rule as most deliberately and naturally stated by James, L.J., appears in *Greaves* v. *Tofield*[2] : The safe and well-known rule of construction is to assume that the Legislature when using well-known words upon which there have been well-known decisions, uses those words in the sense which the decisions have attached to them. One difficulty in applying this rule is that we cannot say what decisions are 'well-known', that there is no evidence how far *Ridder* v. *Phillips*,[3] was 'well-known' and that evidence on the subject would not be admissible... Whatever be the limits of this rule of construction on which the appellant relies (it is a mere rule of construction and must yield to circumstances), it is obvious that it must be applied with the greatest caution; and that the court should not be forced to treat as good law that which they see to be bad law, unless it is absolutely clear that the Legislature in its subsequent Act must have been faced by a judicial pronouncement which is clear, definite and unmistakable as to the same point in the previous Act. Most, if not all, of the cases cited to us on the subject of the rule are cases in which a definite meaning had been given to some word or words. Perhaps the same rules apply also to definite principles laid down."

The rule, however, applies to cases of considered decisions upon the meaning of particular words in statutes. If there are a succession of decisions arrived at upon full argument and consideration upon the exact point, it may be assumed that Parliament has acted upon the basis of those decisions and adopted them. But if the decisions are not of that kind, and are doubtful in themselves, it cannot be assumed that Parliament paid attention to them at all. Because, upon the discovery of the slender basis upon which the original decision, which was afterwards followed, rests, and especially on finding that a court of superior authority has in the interim given a different decision, the expectation would be that Parliament, in using the words again, would not use them in the sense attributed to them by decision found to be weak in their authrority, and not founded upon sufficient discussion.[4]

It may be observed that courts are generally speaking inclined to regard new legislation as being governed and restricted by the general pre-existing law. It is also permissible to impute to the Legislature a probable intent to establish a uniform and logical system of law on a given subject.[5]

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1. 31 CLR 174, 210, 211.
2. (1880)14 Ch D 571; *see* also *Bajirao Baghoba Tambare* v. *Tolanbai Bhagwan Tonge*, 1979 Mah LJ 693 (DB); *East India Hotels* v. *State*, 1983 Kash LJ 56 : 1983 Sri LJ (J & K) 56 (DB).
3. (1884) VLR (L) 147: 6 ALT 37.
4. *Williams* v. *Dunn's Assignee*, 6 CLR 425, 445-446.
5. *Sardha Ram* v. *Paras Ram*, ILR (1961)2 Punj 279 : 63 Punj LR 769.

It is worthwhile to notice the principle laid down by the Supreme Court in *State of Tamil Nadu* v. *Nellai Cotton Mills Ltd*,[1] when the Act has been judicially interpreted, courts may study the subsequent action or inaction of the legislature for clues as to legislative approval or disapproval of judicial interpretation. After the statute has been judicially interpreted in a certain way and if the legislature by taking note of the judgment amended the statute appropriately so as to give it a different meaning from the one asserted by the courts or not giving any different meaning from the view taken by the courts, it may be argued with some justification that the legislature has expressly or by implication ratified the judicial interpretation. Yet when no provision was inserted to rewrite and validate the portion which was struck down by the High Court, it could reasonably be held that the legislature has accepted the judgment of the High Court to the extent indicated.[2]

8. Practice under laws relating to different subjects.—In considering the subsequent Act of Parliament we must attribute to the Legislature the knowledge of the difference between the existing course of practice in Bankruptcy and in Chancery.[3] It is very hazardous to decide cases in which proprietary rights arise for determination on the basis of decisions under taxation laws which have their own peculiarities.[4]

In construing the provisions of a statute it is essential for a court, in the first instance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a court is entitled to ascertain the intention of the Legislature by construing the provisions of the statute as a whole and take up into consideration other matters and the circumstances which led to the enactment of statute.[5] It is always open to courts of law while construing provisions of an enactment to take into consideration the circumstances in which that enactment came to be passed.[6]

9. Surrounding circumstances.—Contemporaneous events may constitute an important extraneous aid to the construction of a statute. The concept of such events embraces the history of the period when the statute was enacted, including the history of the statute itself, the previous state of the law, and the mischief or evil against which the statute was aimed as a remedy. In an over-all sense, contemporaneous events are the relevant conditions existing at the time of adoption of the law. As such, they may be consulted for the purpose of removing ambiguities in the language of an obscure Act. To know the mischief to be remedied or the course or necessity of a law, is to accomplish much of the task of knowing the true meaning. As Blackstone said, "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislators to enact it."[7] "The court cannot impute to the Legislature, in passing statutes confirming titles created by means of Parliamentary powers, ignorance of the transactions which had taken place in exercise of such powers."[8]

It is clear that unless there is any ambiguity it would not be open to the court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are

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1. (1990)2 MLJ 5 (SC).
2. See also *Mariaprakasam* v. *Maria Mathapasal*, (1992)2 MLJ 611.
3. *Re* Barned's Banking Co., etc., (1868)3 Ch A 769, *per* Selwyn, L.J.
4. *Bhikoba Shankar Dhumal* v. *Mohanlal Punamchand*, 1982 Mah LJ 329 (SC).
5. *S.A. Venkataraman* v. *State*, AIR 1958 SC 107, 109.
6. *Maharaj Weaving Mills* v. *State of Punjab*, AIR 1958 Punj 210, 211.
7. 1 Bl. Comm 61.
8. *Beaden* v. *King*, (1852)22 LJ Ch 111 : 68 ER 608; *Hunt* v. *Wimbledon Local Board*, (1878)48 LJQB 207, *per* Brett, L.J.

ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice.[1]

"..... When law-makers take too long for social patience to suffer..... courts have to make do with interpretation", said V.R. Krishna Iyer, J., in *Sunil Batra* v. *Delhi Administration*.[2]

In *River Wear Commissioner* v. *Adamson*,[3] Lord Blackburn, referring to the principles of interpretation of statue observed *intra alia* :

> "It is of great importance that those principles should be ascertained; and I shall, therefore, state, as precisely as I can, what I understand from the decided cases to be the principles on which the courts of law act in construing instruments in writing; and a statute is an instrument in writing. In all cases the object is to see what is intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without enquiring further, and seeing what the circumstances were with reference to which the words were used and what was the object appearing from those circumstances, which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they were used."

In the construction of a statute it is, of course, at all times, and under all circumstances, permissible to have regard to the state of things existing at the time the statute was passed and to the evils which, as appears from it, provisions, it was designed to remedy.[4]

> "I apprehend that", observed Wood, V.C., in *Att.-Gen.* v. *Earl of Powis*,[5] "in construing an Act of Parliament, a deed, will, or whatever other instrument may have to be construed by the court, I have a right to look at all the circumstances which the parties to the instrument, whether a testator, a donor, or the Legislature, who are executing a solemn act, had before them at the time, and were themselves contemplating, as proved not of course by any extrinsic evidence, but by evidence afforded by the instruments themselves, and also such matters can be proved by extrinsic evidence to have been the circumstances which surrounded them and which they have arrived. Such a mode of construing an Act of Parliament have been not unfrequently resorted to. It is customary to consider what was the exact state of the law and other matters of the kind at the time when a particular Act was passed."

Five years later Wood, V.C., again reiterated in *Cope* v. *Doherty*[6] :

> "In construing any Act of the Legislature, the verbal construction of the particular section in question, if it be plain and simple, must govern the court in arriving at its conclusion. If there be any degree of doubt or difficulty upon the wording of the particular section in question, the court is entitled to look, first at the circumstances attending the passing of the Act, next, at the preamble, for as it affords any indication which may serve as a key to the interpretation of the Act, and then, I may add, to the whole purport and

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1. *Commissioner of Income-tax, Madhya Pradesh* v. *Sodra Devi*, AIR 1957 SC 832, 835; *Nairn* v. *University of St. Andrews*, 1909 AC 147.
2. AIR 1980 SC 1579.
3. (1876-77)2 AC 743, 763. (His Lordship quoted *Heydon's* case (9 Exch 709) and cautioned against legislation by Judges; *see* also *Taff Vale Ry. Co.* v. *Davis & Sons, Ltd.*, (1894)1 QB 43, on appeal, 1895 AC 542 (HL).
4. *Mahadeo Nethuji Patel* v. *Surjabai*, 1994 Mah LJ 1145; *D.N. Bannerji* v. *P.R. Mukherji*, AIR 1953 SC 58. *See* also *Keats* v. *Lewis Merthyr Consolidated Collieries, Ltd.*, 1911 AC 641, *per* Lord Atkinson; *Abrahams* v. *Mac-Fisheries, Ltd.*, (1925)2 KB 18, *per* Fraser, J., *Hollinshed* v. *Hazleton*, (1916)1 AC 428, 438.
5. (1853)24 LJ Ch 218.
6. (1858)27 LJ Ch 600, 601; *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 620.

scope of the Act, to be collected from its various clauses, other than the particular clauses the meaning of which is in dispute."

No doubt one is entitled to put oneself in the position of the Legislature at the time the Act was passed in order to see what was the state of knowledge, what were the circumstances brought before the Legislature, and what it was the Legislature was aiming at.[1] In interpreting an Act of Parliament you are entitled and in many cases bound, to look to the state of the law at the date of passing of the Act—not only the common law but the law as it then stood under previous statutes—in order properly to interpret the statute in question. These may be considered to form part of the surrounding circumstances under which the Legislature passed it, and in the case of a statute, just as in the case of every other document, you are entitled to look at the surrounding circumstances at the date of its coming into existence though the extent to which you are allowed to use them in the construction of the document is a wholly different question.[2] The subject-matter with which the Legislature was dealing, and the facts existing at the time with respect to which the Legislature was legislating, are legitimate topics to consider in ascertaining what was the object and purpose of the Legislature in passing the Act.[3] Section 4-A of the Bombay Agricultural Produce Markets Act confers on the Government the power to declare, any enclosure, building or locality in any market area to be a principal market yard for the area, and other enclosures, building, or localities to be one or more sub-market yards for the area, subject to the proviso that if there were any market yards in existence before the commencement of the Amending Act of 1954, then one of those market yards had to be declared the principal market yard and the others, if any, had to be declared sub-market yards. It was argued that inasmuch as Vakar Baug was the only one market yard in existence before the Amending Act of 1954, it was properly declared as the principal market yard through Notification, dated the 8th October, 1954, but the subsequent Notification of Government, dated 13th October, 1954 declaring another area as market yard (for which preparations were under way), was in contravention of the mandatory provisions of the proviso to Section 4-A(2). But the contention was not accepted, the Court holding that in construing a section or a proviso the object of the Act and in certain cases the circumstances which led to the passing of the particular legislation must be taken into consideration.[4]

10. Public sentiment.—In the construction of ancient statutes it is proper also to consider the general state of contemporary public sentiment, and in the construction of remedial statutes to consider the evils they were proposed to redress. For this purpose recourse may be had to annals or histories of the period and to antiquarian researches.[5]

Or agitation.—"Circumstances concerning which the legislators have no knowledge may, and undoubtedly do, play an important role in the history of any important piece of legislation. Usually, laws of great general importance come about as the result of long periods of agitation.... The question naturally arises : why should contemporaneous circumstances shed any light upon the legislative intent? The answer is obvious. These circumstances constitute the reasons why the statute was enacted. They are part of the *res gestae*. Moreover, it must be assumed that the Legislature intended to correct the evil which led to the law's enactment. It is logical to assume, in a democracy, that the needs and the desires of the people will find expression in the enactments of the Legislatures consisting of representatives of the people. If

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1. *A.G.* v. *Metropolitan Electric Supply Co., Ltd.*, (1905)1 Ch 24, 31, *per* Farwell, J.
2. *Macmillan & Co.* v. *Dent*, (1907)1 Ch 107, 120, *per* Flether Moultion, L.J.
3. *Herron* v. *Rathmines, etc. Commissioners*, 1892 AC 498, *per* Lord Halsbury; *Hanrietta* v. *A.G., Canada*, AIR 1930 PC 106.
4. *Bapubhai* v. *State of Bombay*, AIR 1956 Bom 21, 27. See *Amirchand Valanji* v. *Kotak*, AIR 1966 Bom 70 : 67 Bom LR 234.
5. Halsbury's *Laws of England*, 4th Ed., Vol. 44, para 899.

this were not so, then there would be little, if any, justification for resorting to the circumstances surrounding the enactment of a law in an effort to ascertain the legislative intent."[1]

11. State of law.—In *Salkeld* v. *Johnson*,[2] the court said : "We propose to construe the Act, according to the legal rules for the interpretation of statutes, principally by the words of the statute itself which we are to read in their ordinary sense, and only to modify or alter so far as it may be necessary to avoid some manifest absurdity or incongruity, but no further. It is proper also to consider (1) the state of the law which it proposes or purports to alter; (2) the mischief which existed and which it was intended to remedy; and (3) the nature of the remedy provided, and then to look at the statutes *in pari materia* as a means of explaining this statute. These are the proper modes of ascertaining the intention of Legislature"[3] The words of a statute should generally be understood in the sense which they bore when it was passed. Every Act of Parliament must be construed with reference to the state of the law subsisting when it came into operation, and when it is to be applied : it cannot otherwise be rationally construed. Every Act is made, either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactments.[4] "Three canons of construction," remarked Bret, J., in *Cover's* case,[5] "seem applicable in this case. *Firstly*,that the statute is to be construed, if possible, according to the ordinary grammatical construction of the phraseology used in it. *Secondly*, if there be doubt as to the construction, or if a construction according to strict grammar would lead to a manifestly unreasonable or absurd conclusion, the statute must be considered with regard to the state of the law at the time when it was enacted." A few years later, in *Yorkshire Insurance Co.* v. *Clayton*,[6] Brett, L.J., affirmed :

> "It is a well-known rule of construction that in construing an Act of Parliament one ought to take into account the state of the law and of judicial decision at the time the Act is passed."

"One assumes", said Lord Reid in *Rookes and Barnard*,[7] "that the Parliament knows the law, but if the law is notoriously uncertain, we must not attribute to Parliament prescience of what the law will ultimately be held to be."

(i) Mischief and History.—In order to construe an enactment rightly, it is necessary to bear in mind how the law stood at the time it was passed.[8] And it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise and to the latter Act which provided the remedy.[9] We must read it by the light which the state of law at the time throw upon it.[10] "In construing Section 3 of the Civil Procedure Act, 1833 (C. 42)," opined Lindley, M.R. in *Thomson* v. *Lord*

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1. Crawford : *Statutory Construction* at pp. 368, 369.
2. (1848)2 Ex 256, 272.
3. *Ramchandra Deb* v. *Bhalu Patnaik*, AIR 1950 Orissa 125, 129, *per* Narsimham, J., quoting Maxwell's *Interpretation of Statutes*, 12th Ed. at pp. 66-69, 71-72; *Immigration Board* v. *Govindswamy*, AIR 1920 PC 114.
4. *Dean, etc. of Ely* v. *Bliss*, (1842)11 LJ Ch 351, 354, *per* Lord Langdale, M.R.
5. (1875)1 Ch D 182, 198.
6. (1881)8 QBD 421, 426.
7. (1964)1 All ER 367, 378; *see* also *per* Lord Evershed at pp. 402, 403.
8. *Phillips* v. *Rees*, (1889)24 QBD 17, *per* Lindley, L.J., *per* Lord Esher, M.R. at p. 20.
9. *Eastman Photographic Materials Co.* v. *Comptroller-General of Patents*, 1898 AC 571, *per* Lord Halsbury; *Pellton Brothers* v. *Harison*, (1891)2 QB 422, 424; *In re* Mayfair Property Co., (1898)2 Ch 28, 35, *per* Lindley, M.R.
10. *South Eastern Rly Co.* v. *Rly Commissioners*, (1880)5 QBD 217, 240, *per* Lush, J.; Craies on *Statute Law*, p. 140, 1971 Ed. and Maxwell on *The Interpretation of Statutes*, 1976 Ed. at p. 66; *Sirsilk Ltd.* v. *Textile Committee*, AIR 1989 SC 317 : (1988)27 STL 53 : (1988)4 JT (SC) 592.

Clanmorris,[1] "as indeed in construing any other statute, regard must be had not only to the words used, but to the history of the Act, and the reasons which led to its being passed. You must look at the time mischief which had to be cured as well as to the cure provided." The mischief intended to be redressed has also to be taken into account when construing an Act which is ambiguous. In the *Sussex Peerage* case,[2] Lord Chief Justice Tindall said : "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, best declare the intention of the law-giver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to Chief Justice, Dyer, is a 'key to open minds of the makers of the Act', and the mischief which they intended to redress."[3]

It is always permissible to take into consideration the state of things existing at the time the statute was passed and the evils which it was designed to remedy as appearing from the provisions of the Act itself. The state of the law as it was before the passing of the Act can be taken as a guide to ascertain the mischief which the Legislature sought to remedy or secure.[4] But the mischief sought to be cured by an Act of Parliament must be sought in the Act itself. Although it may perhaps be legitimate to call history in aid to show what facts existed to bring about a statute, the inferences to be drawn therefrom are exceedingly slight.[5] "Before I come to Act itself by which the section was introduced", observed B.K. Mukerjee, J., in *Mohamed Hussen* v. *Jamini Nath*,[6] "it may be useful to enquire as to whether the state of law at the time when the amending Act was passed, and the object which the Legislature had in view in introducing the section could throw any light upon its interpretation. This is a permissible matter to look into for the purpose of construing a statute, provided it is taken with the warning that we must not strain the language of statute unduly by attempting to bring it within the supposed intention of the Legislature." In construing a statute, the court is entitled to look at the history of prior legislation, especially look at the statutes which are *in pari materia* and which deal with the same subject.[7] However, it has been held by the Supreme Court that, while considering a particular statute, a comparison of its language with that in other similar statutes is not commendable, though sometimes instructive. Similarity or variation in the different laws is not necessarily indicative of a kindred or changed intention. Enactments drafted by different hands at different times and to satisfy different requirements seldom afford tangible or sure aid in construction.[8] On the other hand, statutes not *in pari materia* in the absence of specific provision to that effect, cannot be treated precisely in the same way as if they were

1. (1900)1 Ch 718, 725; *State of U.P.* v. *(M/s.) Delhi Cloth Mills*, AIR 1991 SC 735 : (1991)1 SCC 454.
2. 11 C & F at p. 143; *Ratnakar Tanbaji Itankar* v. *Union of India*, 1994 Mah LJ 634.
3. *See* also *Dixon* v. *Todd*, (1904)1 CLR 320, 326.
4. *Mohd Bin Salem* v. *Umaji*, AIR 1955 Hyd 113, 125 (FB), *per* Jaganmohan Reddy, J.
5. *R.* v. *West Riding County Council*, (1906) KB 670, *per* Farwell, J.
6. AIR 1938 Cal 97, 101, 102; *Dwarka Mahton* v. *Patna City Municipality*, ILR 15 Pat 36 : AIR 1936 Pat 282, 284.
7. *Emperor* v. *Ranchhodlal Hirabhai*, AIR 1948 Bom 370 (FB), *per* Chagla, C.J.; *see* also *Gopal Panday* v. *Parshotam Das*, ILR 5 All 121, 135, *per* Mahmud, J. (dissenting) : "We are no doubt at liberty to consider the general state of the law which prevailed *in pari materia* prior to the enactment of any statute under consideration; *Syamapada Banerjee* v. *Asstt. Registrar, Co-operative Societies*, AIR 1964 Cal 190.
8. *Nathia Agarwala* v. *Jahanara Begum*, AIR 1967 SC 92 : (1966)2 SCJ 531.

merely parts of one Act.[1]

(ii) Statute 'in pari materia'.—In case of doubt or uncertainty statute *in pari materia* are to be construed together; each legislative Act is to be interpreted with reference to other Acts relating to the same subject, the same person or thing, or the same class of persons or things. The concept of grouping of statutes relating to the same subject-matter and their comparison in aid to construction, was affirmed and recommended by Blackstone. In his rules of Interpretation he directed "the comparison of a law with other laws, that are made by the same legislator, that have some affinity with the subject, or that expressly relate to the same point."[2]

Statute which relate to the same subject, the same person or thing, or the same class of persons or things, are deemed to constitute one system of law; they are considered as one statute, subsequent laws are regarded as supplementary or complementary to the earlier enactments. When enacting a new law the Legislature is presumed to have had in contemplation the existing statutes on the same subject, and to have framed its enactment with reference thereto. This is the real basis for the rule *in pari materia;* and it is conducive to judicial discipline to interpret identical provisions in two Acts which are *in pari materia,* in a similar manner.[3] Dwarris observes : "It is to be inferred, that a code of statutes relating to one subject was governed by one spirit and policy and intended to be consistent and harmonious in its several parts and provisions. It is, therefore, an established rule of law, that all Acts *in pari materia* are to be taken together, as if they were one law; and they are directed to be compared in the construction of statutes, because they are considered as framed upon one system, and having one object in view."[4] The rule is thus an extension of the principle that the whole statute is not to be viewed and compared in all its parts, in order to ascertain the meaning of any of its parts. All laws relating to a particular matter or subject, that is law *in pari materia,* bear the same relation to any law within the group or system as the whole statute bears to any of its several parts.

In New York the rule has been broadened to include the consideration of contemporaneous legislation, although not precisely *in pari materia.*[5] This is sound in principle because it is within the reason of the rule. Repealed and expired laws bearing upon the same subject are deemed to be of assistance in the construction of a given statute. On the same principle a vetoed Bill[6] and even an unconstitutional law may be considered.[7]

Where there are different statutes *in pari materia* though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other[8]; but not when they are not *in pari materia.*[9]

Even if the same expression is used in two Acts which are *in pari materia* it does not lead necessarily to the conclusion that this expression means exactly the same thing in both these enactments. The rule *in pari materia* is not applicable when the object to which the words are

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1. *Ranga Rao* v. *Srinivasa Swamy,* (1962)1 Andh LT 356 : (1962)1 Andh WR 349; *Regional Provident Fund Commissioner* v. *Lakshmi Ratten Engineering Works,* AIR 1962 Punj 507 : ILR (1962)2 Punj 456.
2. 1 Bl. Comm 60.
3. *Harcharan Singh* v. *Smt. Shivrani,* 1981 All WC 273 (SC).
4. Dwarris on *Statutes,* Potter, p. 189.
5. *Chase* v. *Lord,* 17 NY 1.
6. *Board of Commissioners, Hamilton Co.* v. *State Excrel, Baker,* 184 Ind 418, 420.
7. *Sales* v. *Barber Asphalt Paving Co.,* 166 Mo 671.
8. *Mohindra Supply Co.* v. *Governor-General-in-Council,* AIR 1954 Punj 211.
9. *Devassy* v. *Asstt. Labour Officer,* 1978 Ker LT 209.

applied or the intention with which the measure is enacted requires the expression to be differently understood in the two statutes, or where the expressions used in the latter statute are not re-enacted with the same limitation as in the earlier statute, or where a contrary intention is manifested by other qualifying or explanatory terms. Nor can the help of this rule be invoked when the terms of the statute to be construed make it quite clear that the expressions used therein were intended to convey a different meaning. Statutes *in pari materia* may not be resorted to control the clear language of the statute.[1]

In construing a provision of an earlier Act, the provision of a later Act cannot be taken into account except in a limited class of case, and this rule applies although the later Act contains a provision that it is to be read as one with the earlier Act. Of course this rule does not apply where the later Act amends the earlier Act or purports to declare its meaning; in such cases the later Act operates directly by its own force. But, where the provisions of the later Act could only operate indirectly as an aid to the construction of words in the earlier Act, those provisions can only be used for that purpose, if certain conditions apply to the earlier Act when it is considered by itself.[2]

A statute should be interpreted in the light of cognate statutory provisions, as in the case of Section 488(3), Criminal Procedure Code and the Hindu Adoptions and Maintenance Act, 1956.[3]

A reference to the state of law before an amendment and the evil which a legislation was intended to overcome as a legitimate guide to the interpretation of a statute, is wholly inapposite in a case where the contention is not that a change was made in the law in order to overcome a difficulty but that the intention was to continue the law as it was always understood to be.[4]

(iii) Construction of an earlier Act by a subsequent Act.—If the Legislature in one Act has used language which is ambiguous, and in a subsequent Act has used language which proceeds upon the hypothesis that a particular interpretation is to be placed upon the earlier Act, the Judges have no choice but to read the two Acts together, and to say that the Legislature have acted as their own interpreters of the earlier Act.[5] The later Act sometimes furnishes a legislative interpretation of the earlier one,[6] if it is *in pari materia* and the provisions of the earlier Act are ambiguous.[7] Subsequent legislation which declares the intent of an earlier law

1. *Firm Hazarimal Kuthalia* v. *Income-tax Officer, Ambala*, AIR 1957 Punj 5 at pp. 8, 9.
2. *Kirkness* v. *John Hudsen & Co.*, (1955)2 All ER 345, 365-66 (HL).
3. *Ram* v. *Nathu Singh*, (1962)1 CLJ 75; *Rattan Amol Singh* v. *Kamaljit Kaur*, AIR 1961 Punj 51.
4. *Kapur, R.P.* v. *Pratap Singh Kairon*, AIR 1964 SC 295.
5. *Attorney-General* v. *Clarkson*, (1900)1 QB 156; *see* also *Attorney-General for Victoria* v. *Melbourne Corporation*, (1907) AC 469, 474; *Archibald* v. *Commissioner of Stamps*, (1909)8 CLR 739, 759; *Hedderwick* v. *Federal Commissioner of Land Tax*, 16 CLR 27, 45.
6. See *Rolle* v. *White*, (1868) LR 3 QB 286; *Leconfield* v. *Lonsdale*, (1870)39 LJCP 305; *Bottomley* v. *W. Durbey Assessment Committee*, (1932)1 KB 40; *Ormond Investment Co.* v. *Betts*, (1928) AC 143; *Sher Khan* v. *State*, AIR 1958 All 733 (FB); *Chandris* v. *Isbrandstsen Moller Co.*, (1950)2 All ER 618; but *see* A.L. Smith, J., in *Ward* v. *Folkston Waterworks Co.*, (1890)62 LT 325 : "I must protest against an attempt to be construed statute by the light of an Act passed 30 years after its date." *Kashi Nath Misra* v. *Chancellor, Allahabad University*, AIR 1967 All 101; *State of Bihar* v. *S.K. Roy*, AIR 1966 SC 1995; *Raghavendra* v. *Bangalore University*, 10 Law Rep 627; but see *Income-tax Officer, Kanpur* v. *Mani Ram*, AIR 1969 SC 543, where reference to earlier Act was misleading unless both are on the same subject. *See* also *Nalinikanta Ambal* v. *A.L. Narayana Rao*, AIR 1967 SC 193, where such reference to the later Act was considered unnecessary as there was no ambiguity in the earlier Act."
7. See *Re* Macmanaway, 1951 AC 161, where the considerations to be applied are discussed. *See* also *G. Srinivasa Reddy* v. *Commissioner of Excise*, AIR 1973 Andh Pra 178, 182 (Ekbote, C.J.); *Municipal Corporation of Greater Bombay* v. *Bombay Electric Workers' Union*, 1982 Mah LJ 675.

is not, of course, conclusive in determining what the previous Legislature meant. But the later law is entitled to weight when it comes to the problem of construction,[1] and this principle has to be followed where a particular construction of an earlier Act will render the later incorporated Act ineffectual, *otiose* or *inept*. The subsequent legislation may be looked at to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous.[2]

(iv) Incorporating an Act not yet in existence.—In *Osborne* v. *Commonwealth*,[3] Griffith, C.J., said : "In construing any Act, the duty of the Courts is to ascertain what the Legislature meant. Now what did they mean when they spoke of the Land Assessment Act, 1910? As a matter of commonsense they meant to refer to an Act of that name which was in the process of enactment. As soon as it became law, the Act, although before ineffective, became effective."

The provisions of a statute may be interpreted in the light of the *rules* framed under an analogous statute.[4]

12. Policy.—It is needless for a Court to scan the wisdom or policy of the statute, where the meaning of the words used admit of no ambiguity.[5] Policies of statutes are relevant for their proper construction. But within the broad framework of the main purpose and policy of the statute construction is largely, fundamentally and primarily, a matter of interpretation of the words used in the statutes. Ideas of policy gathered from extraneous sources, extraneous to the text of the statute and its preamble are neither conclusive nor convincing, if the actual language subject to interpretation leaves no room for doubt.[6] "I do not understand what right a Court of Justice has to entertain an opinion of a positive law, upon any ground of political expediency. I have always been at a loss to conceive upon what ground a Court of Justice was entitled so to act. The Legislature is to decide upon political expediency; and if it has made a law which is not politically expedient, the proper way of disposing of that law is by an Act of the Legislature and not by the decision of a Court of Justice."[7]

The draftsman must be presumed to have used the clearest language to express the legislative intention. When the meaning is plain, Courts cannot scan its wisdom or policy,[8] and clear language cannot be allowed to be controlled by considerations of legislative policy.[9]

Whatever may be the policy on which the relevant provisions of the Code of Criminal Procedure are based, any consideration based on the said policy would not be of any assistance in construing the provisions of the Court Fees Act. In other words, in the construction of the provisions of the Court Fees Act, any hypothetical considerations about the policy of the Code of Criminal Procedure would hardly be of any assistance.[10] Again it would be idle to rely on the

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1. *F.H.A.* v. *Darlington*, 358 US 84 : 3 L Ed 2d 132, 137 (Doglous, J.).
2. *Sone Valley Portland Cement Co. Ltd* v. *General Mining Syndicate*, (1976)3 SCC 852; *Income-tax Officer* v. *Moni Ram*, AIR 1969 SC 543; *Bishundas Mehta* v. *State of Bihar*, 1982 BLJR 242 (FB).
3. 12 CLR 321, 334.
4. *Burrakur Coal Co.* v. *Union of India*, AIR 1961 SC 954 at p. 958.
5. *Lahore Enamelling and Stamping Co., Ltd.* v. *A.K. Bhalla*, AIR 1958 Punj 341 at p. 344, following *Barrell* v. *Fordree*, 1932 AC 676 (without, in the first instance with reference to cases); *King* v. *Ramsgate (Inhabitants)*, (1827)6 B & C 712 : 108 ER 613, 614 (sense which is their natural import in the order in which they are placed); *Srinivasamurthy* v. *State of Mysore*, AIR 1949 SC 894, 896; *Venkatappa* v. *Nagappa*, AIR 1960 Mys 323.
6. *Co-operative Milk Societies Union, Ltd.* v. *State of West Bengal*, 62 CWN 405.
7. Queensberry Leases, (1819)1 Bligh 339, 497, *per* Lord Redsdale. *Australian Communist Party* v. *Commonwealth*, 83 CLRJ 153 (whether Legislature goes too far, too drastic or not reasonably recessary).
8. *Nayak* v. *Union of India*, (1971)1 SCC 332 at p. 364 (Dua, J.).
9. *Lakshmanan* v. *Arayayi*, 1979 Ker LT 126 (FB).
10. *Bibhuti Bhusan Chatterji* v. *State of Bihar*, AIR 1960 SC 128.

principle of liberal construction of a provision of Court Fees Act unless it is shown that the said provision is capable of two constructions. But if the words used in the said provision are reasonably capable of only one construction, the doctrine of liberal construction would be wholly out of place.[1] Although a deed would have been contrary to public policy and therefore void, if it had purported to oust the jurisdiction of the English Courts, it is not contrary to public policy to allow the wife to sue on it merely because it purported to oust the jurisdiction of a foreign Court.[2]

It must, however, be remembered that it is only when the words used in the material provisions of the statute interpreted in their plain grammatical meaning are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. In such circumstances the Courts would prefer the construction likely to assist the achievement of the said policy to the construction likely to defeat or impair that policy.[3]

It is for the Legislature to make enactments and for the Courts to enforce such enactments. Courts are not concerned with its policy.[4] Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of an Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the Court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is as unwise as it is unprofitable to cavil at the policy of an Act of Parliament or to pass a covert censure on the Legislature.[5] The Court has no concern with the wisdom of the Legislature and that it would be dangerous precedent to allow the views of the members of the Court as to the serious consequences of excessive taxation to lead to a conclusion that the law is *ultra vires*.[6] When one has on the one side what is said to be the general policy of the Act and, on the other, the express words of section dealing with a specific matter, I think that the express words ought to prevail.[7] If the general policy of the Act is defeated by a construction according to its plain meaning, the remedy lies with the Legislature which must intervene to remove it.[8]

> ".....Where doubt exists regarding the meaning of a statute, rather than to allow a miscarriage of the intention of the Legislature when that intention is in fact ascertainable, it would seem proper for the Court to give the general policy of the State some consideration. Nevertheless, if the Legislature reveals an intent to depart from existing public policy, that intent must be made effective; the Court should not

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1. *Bibhuti Bhusan Chatterji* v. *State of Bihar*, AIR 1960 SC 128; *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149 at p. 271.
2. *Addison* v. *Brown*, (1954)2 All ER 213.
3. *Kanai Lal Sur* v. *Paramnidhi Sadhukhan*, AIR 1957 SC 907; *Krishna Chandra Sarma* v. *State of U.P.*, 1962 All LJ 426; *Lalta Pande* v. *Mahendranath Pande*, 1963 All LJ 190 : 1963 AWR (HC) 849; *Charam Chalmi Ahir* v. *Pyari Baboo*, 1963 Jab LJ 355.
4. *Sohan Lal* v. *Atal Nath*, ILR 56 All 172 : AIR 1933 All 846, 849; *Australian Alliance Assurance Co.* v. *A.G., Queensland*, AIR 1918 PC 352, 354; *Miller* v. *Solomans*, (1852)7 Ex 475, 560, *per* Pollock, C.B.; *Firm Amarnath Basheshar Dass* v. *Tek Chand*, (1972)1 SCC 893.
5. *Vacher & Sons. Ltd.* v. *London Society of Compositors*, 1913 AC 107, 118, *per* Lord Macnaghten, J.; *Cabbet* v. *Hudson*, (1852)22 LJQB 11, 13, *per* Lord Campbell, C.J.; *Folley* v. *Fletcher*, 28 LJ Ex 103, 106. *per* Bramwell, B.; *Coxhead* v. *Mullis*, (1878)3 CPD 439, 442 : 47 LJCP 761; 762, *per* Lord Coleridge, C.J.; *Municipal Building Society* v. *Kent*, (1884)9 AC 260, 273, *per* Earl of Selborne, L.C.; *Subba Rao* v. *Secretary, Andhra Co-operative C.L.M. Bank*, AIR 1957 Andhra 919.
6. *Srinivasamurthy* v. *State of Mysore*, AIR 1959 SC 894 at p. 896.
7. *Abdul Khadir* v. *Ahmad Shiwa*, ILR 38 Mad 419, 422, *per* White, C.J.
8. *Hem Raj* v. *Krishna Lal*, ILR 10 Lah 106, 126, *per* Tek Chand, J.

ignore or override it."[1]

So far as possible the Court should adopt that interpretation, which will promote and further the object and policy of the legislation and suppress the mischief which the statute was enacted to prevent.[2]

Policy-oriented interpretation.—A policy-oriented interpretation, when a welfare legislation falls for determination, is sanctioned by the principle contained in Article 37 of the Constitution.[3]

"The context controls the text and the purpose and scheme project a particular semantic shade or nuance of meaning"—said the Supreme Court in a case under U.P. Zamindari Abolition and Land Reforms Act, 1951.[4]

"A policy-oriented understanding of a legal provision which does not do violence to text or the context gain preference as against a narrow reading of the words used", the same Court said in another case (involving a Municipal election).[5]

13. Contemporanea expositio.—The rule is that the words of a statute will, generally, be understood in the sense which they bore when it was passed or in other words they are to be understood as used with reference to the subject-matter in the mind of the Legislature, and limited to it.[6] It is well settled that the meaning ascribed by the authority issuing the Notification is a good guide of a contemporaneous exposition of the position of law and reference may be made to the observations of the Supreme Court in *K.P. Verghese* v. *Income Tax Officer, Ernakulam*[7]. The rule as contemporaneous exposition was first laid down by Lord Coke in speaking of the Magna Carta, in the following words : "This and the like were the forms of ancient Acts and graunts, and the ancient Acts and graunts must be construed and taken as the law was holden at that time when they were made."[8] The earlier statutes were in the form of charters, and no difference was at first made between the construction of a statute and that of any other instrument. In *Montrose Peerage* case,[9] Lord Cranworth, L.C., observed :-"It has often been held, and not unwisely or improperly, that the construction of very ancient statutes may be

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1. Crawford : *Statutory Construction*, at p. 372. "But when the court is certain of the legislative policy, no real reason can be urged against its use as an aid in the interpretative process. Indeed, if the court should refuse or fail to utilize this aid under these circumstances, to that extent it fails to exhaust every possible source of assistance" (page 375). It is the duty of the court to give effect to the intent of the Legislature. Primarily this intent is to be ascertained by giving the words their natural significance, but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole we must examine the matter further. We may then look to the reason of the enactment and enquire into its antecedent and give effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail; *Ozawa* v. *U.S.*, 260 US 178 : 67 L Ed 199, 207.
2. *Sadashiv* v. *State*, AIR 1960 Bom 243 at p. 244 (FB); *see* also *State of U.P.* v. *Tobit*, AIR 1958 SC 414.
3. *Organo Chemicals* v. *Union of India*, (1979)4 SCC 573; *see* also *Assessing Authority* v. *Patiala Biscuits*, AIR 1977 SC 1339.
4. *Maharaj Singh* v. *State of U.P.*, AIR 1976 SC 2602.
5. *Manohar N. Samarath* v. *Moratrao*, AIR 1979 SC 1084; *see* also *Punjab Beverages* v. *Suresh Chand*, AIR 1978 SC 995, case under Industrial Disputes Act, 1947, Section 33(2)(*b*); *R. Dalmia* v. *C.I.T.*, AIR 1977 SC 988, case under Income-tax Act, 1961, Section 2(6-c); *Mohanlal* v. *Sirikrishan*, AIR 1978 Delhi 93, case under Delhi Rent Control Act, 1958; *Maggibai* v. *Sitarani*, AIR 1978 Raj 1.
6. *Munsha Singh* v. *State of Punjab*, AIR 1960 Punj 317, 318.
7. (1982)1 SCR 629 : AIR 1981 SC 1922; *see* also *Collector of Central Excise, Guntur* v. *Andhra Sugar Ltd.*, AIR 1989 SC 625 : (1988)4 JT (SC) 410 : (1988)19 ECR 575 : (1988)38 ELT 564 : (1988)27 STL 205 : (1989)19 E C C 46 : (1988)25 reports 578 : 1989 Cri LR (SC) 122 : (1989)73 STC 216 : 1989 ATJ 271 : 1989 UPTC 21 : (1989)1 Sim IC 349.
8. 2 Inst ed Thomas, at p. 2, Note (1).
9. (1853)1 Macq HL Cas 401, 406.

elucidated by what, in the language of the Courts, is called *contemporanea expositio*, that is seeing how they were understood at the time." Lord Esher in *Sharpe* v. *Wakefield*,[1] directed that "the words, of statute must be construed as they would have been the day after the statute was passed, unless some subsequent Act has declared that some other construction is to be adopted or has altered the previous statute." The maxim which is so often quoted : *Contemporanea expositio est optima et fortissima in lege* (a contemporaneous exposition is the best and most powerful in law) is a very useful aid in construing old statutes. Contemporaneous interpretation is the best and strongest in law.[2] "In construing old statutes", said Martin, B., in *Morgan* v. *Cransbay*,[3] "it has been usual to pay great regard to the construction put upon them by the Judges who lived at or soon after the time when they were made, because they were best able to be judge of the intention of the makers at the time". "The meaning of the ancient statute is to be discovered," as observed by Burke, C.J., in delivering the considered judgment of the Exchequer Chamber of Ireland, in *Attorney-General* v. *Primate*,[4] "from what appears to have been done, or not done, upon the statute, and how it appears to have been understood and dealt with, shortly after the Act had been passed, by the members of the legal profession who lived at or near the time." The maxim *contemporanea expositio* as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning, the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them.[5] The maxim hardly applies where the Courts are called upon for the first time to interpret a law or soon after its enactment. It applies to a case where the meaning of a statute is in doubt and for removing it assistance is taken of the construction placed upon it by the contemporary Courts at the time of its enactment or soon thereafter.[6] Where the words of an Act are obscure, and where the sense of the Legislature cannot, with certainty, be collected

1. (1888)22 QBD 239, 241-242; *see* also *Gaslight and Coke Co.* v. *Hardy*, 17 QBD 619, 621; *Attorney-General for NSW* v. *Brewery Employees' Union of NSW*, 6 CLR 469.
2. *Padam Prasad* v. *Emperor*, AIR 1929 Cal 617, 631 (SB), *per* Jack, J.; *see* also *Kesavananda Bharati* v. *State of Kerala*, W.P., 135 of 1970, dated 24-4-73 by SC (*per* A.N. Roy, J.).
3. (1871) LR 5 HL 304, 315.
4. 1 Jebb & Symes at p. 317.
5. *Senior Electric Inspector* v. *Laxminarayan Chopra*, AIR 1962 SC 159 at p. 163; *Laxmi Video Theatres* v. *State of Haryana*, (1993)3 SCC 715 : (1993)4 JT (SC) 218; *C.E.S.C. Ltd.* v. *Subhash Chandra Bose*, (1992)1 SCC 441; *In the matter of* Patrik Marten, AIR 1989 Mad 231 : (1989)1 MLJ 27 (DB), takes a different view relying on Maxwell on *the Interpretation of Statutes*, 12th Ed. (may not be good law in view of SC decisions.)
6. *Umashankar* v. *Manaklal*, AIR 1959 MP 144 following Crawford : *Statutory Construction of Statutes*, 1940 Ed., Note 216.

by interpreting the language according to grammatical correctness, considerable stress is laid upon the light in which it was received and held by the contemporary lawyers of repute.[1] "Great regard," said Coke, "ought in construing a statute, to be paid to the construction which the sages of the law, who lived about the time or soon after it was made, put upon it, because they were best able to judge of the intention of the makers at the time when the law was made."[2] In *Attorney-General for Queensland* v. *Holland*,[3] Griffith, C.J. observed : "The Act which we are called upon to construe, although called the Matrimonial Causes Act, 1864, was passed in March, 1865, and we must construe it according to the intention of the Legislature of that day so far as we can discover it. Whatever the Act meant then it still means, notwithstanding that the general point of view as to the Crown's liability for costs has greatly changed in the interval. It is, indeed, not always easy to project oneself mentally backward through a period of transition. Surely, the meaning given to the language of an Act by its contemporaries is more likely to reveal its true meaning than a construction given of it by men of another day or generation.[4] The best evidence to show what was the construction adopted at the time when an Act was passed must necessarily be found in the decisions of the Court, or in works of writers of authority. But a very strong inference may also be drawn from long uninterrupted usage, which is presumed to have commenced with the passing of the Act in absence of proof to the contrary.[5]

But it would not be correct to say that every change in the phraseology introduced by way of amendment implies a change in the content of the provision or in its meaning, for it entirely depends upon whether the words used are merely meant to clarify or alter the true existing meaning. A contemporaneous exposition has a value only when such views or actions could be tested in Courts, and there has been a general acquiescence in the course adopted or the action taken by the executive authority.[6]

In *Australian Tramway Employees' Association* v. *Prahan and Malvern Tramway Trust*,[7] Issacs and Rich, JJ., dealing with the question of what elements an industrial dispute is composed of, observed that "we have to determine it by our notion of what in fact in 1900 was the general sense of the community as to the essential characteristics of such a dispute : We may, and indeed should in accordance with universal practice, aid our general knowledge on this point by reference to dictionaries, histories, statutes, reports and other trustworthy guides to the contemporary use of the term." Their Lordships went on to observe : "On questions of that nature, the import of terms of daily life..... Parliament is so constituted as to be very likely to understand correctly the meaning of popular language as applied to current events.....The respondents, however, ask us to say that the connotation as understood by Parliament of an English untechnical expression used by businessmen and trade employees apart from all legal definitions, and in what Lord Westbury, L.C., calls 'the vocabulary of ordinary life'[8] is wrong—that is to say is wrong if the words used in the statute and quoted by us are to have their full primary and natural meaning. In support of their objection, learned counsel for the respondents have not referred us to any single instance where at any time approximate to 1900, or indeed at

1. Broom's *Legal Maxims*, 10th Ed. at pp. 463-464.
2. 2 Inst 11, 136, 181.
3. 1 CLR 46, 49; *see* also *Attorney-General for NSW* v. *Brewery Employees' Union of NSW*, 6 CLR 469, 521.
4. *R.* v. *Casement*, (1917)1 KB 98, 139.
5. Wilberforce : *Statutes Law*, at p. 143.
6. *Kapur, R.P.* v. *Pratap Singh Kairon*, AIR 1964 SC 295.
7. (1913)17 CLR 680, 695-96.
8. *Young* v. *Robertson*, 4 Macq HL Cas 314 at p. 325.

any time whatever, a more limited significance has been attached to the expression 'industrial dispute', or its substantial equivalent 'trade dispute'."

(i) Terms to be read in their English meaning at date of passing of Act.—The language used by the Legislature must be construed in the sense which the words as applied to the subject-matter ordinarily bear in the country where the statute was enacted[1] and the words must further be construed according to the meaning which the words bear at the time when the statute was passed.

(ii) Different rules as to statutes and contracts.—With reference to contracts, it appears to be established that *communis error facit jus*. Lord Herschell so held in *Tancred* v. *Steel Co. of Scotland*,[2] saying : "I think that doctrine having been laid down so long ago, whether it rests upon any sound basis or not, it would be most improper to depart from it now, because one would be really altering the law between the parties." This rule of interpretation is not of recent origin. In *Amhurst* v. *Skynner*, [3] which turned on the meaning of the Annuity Act, 17 Geo. 3, C. 26, S. 8, Lord Ellenborough, L.J., said : "The case of *Sharpnel* v. *Vernon*,[4] establishes that there is no difference between legal and equitable estates in the construction of the clause of the Act. If that case were well decided it makes an end of this question. Now, upon the only occasion pointed out where it has been drawn under consideration, which was before this Court, is *Halsey* v. *Hales*,[5] it seems to be affirmed by the judgement of Lord Kenyon : 'That then, is an authority sufficient to govern this case; and after so many years have elapsed since, and when many other annuitants may have acted on the faith of it, we ought to see very clearly that it was a wrong construction of the Act before we overturn it." And Le Blanc, J., said : "When therefore a construction has been put upon a modern Act of Parliament within eleven years of the passing of it, and persons have acted upon faith of it and when that decision has been recognised ten years afterwards, we must now consider ourselves bound by it'."[6]

(iii) Limitation to the rule.—There are, however, two limitations to the application of this rule. *First*, it must always be borne in mind that contemporaneous interpretation can be called in aid only where the statute is obscure or ambiguous and its true meaning cannot be ascertained by resort to intrinsic aids to construction.[7] "In all cases of ambiguity in an enactment, the contemporaneous construction, not only of the Courts but for the Department, and even of the officials whose duty it is to carry the law into effect, is controlling."[8] This accords with the views expressed by Lord Macnaghten in *Income-tax Commissioners* v. *Pemsel*.[9] But a construction of a doubtful or ambiguous statute by the executive department charged with its execution, in order to be binding on the Courts, must be long, continued and unbroken.[10] And where a statute is free from all ambiguity, its letter is not to be disregarded in favour of a

1. See *Bell* v. *Master in Equity*, (1877)2 AC 565, many terms are used in the United States and Colonial Statutes in a sense different from that attached to them in England.
2. (1889)15 AC 141.
3. (1810)12 East 263.
4. (1787)2 Bro Ch Cas 268.
5. (1797)7 TR 194.
6. *Cf.* The observations of Vaugham Williams, L.J., in *Dorking Union* v. *St. Saviours*, (1898)1 QB 594, 602.
7. See *Gorhan* v. *Bishop of Exeter*, (1850)15 QBD 52 at p. 73, *per* Lord Campbell : "Where the language is obscure instead of being clear, we should not be justified in differing from the construction put upon it by contemporaneous and long continued usage."
8. *Schell's Exors* v. *Panche*, (1890)183 US 562, 572, *per* Brown, J.
9. (1891) AC 531, 590.
10. *Merrit* v. *Cameron*, 137 US 542, 552, Cf. *U.S.* v. *Alabama G.S.R. Co.*, 142 US 615.

presumption as to the policy of the Government even on proof of the settled practice of the department of State charged with its administration. *Secondly*, the rule does not apply to the construction of modern statutes. In the year 1883, Lord Watson refused to apply it to a statute of the year 1858. *Thirdly*, if an ancient error is clearly proved, it acquires no prescription to pass as right in the construction of statutes. In *Hamilton* v. *Baker*,[1] Lord Macnaghten said : "The respondent contends that the decision was right, but, whether it was right or not, he contends that it was too late even for this House to interfere. I am sensible of the inconvenience of disturbing a course of practice which has continued unchallenged for such a length of time (since 1865) and which has been sanctioned by such high authority. But if it is really founded upon an erroneous construction of an Act of Parliament there is no principle which precludes your Lordship from correcting the error." This constitutes a judicial approval of Sir Howard Elphinstone's view that "if the words of a statute are clear, an interpretation which contradicts them cannot be supported on the ground of usage." In *Trustees of Clyde Navigation* v. *Laird*,[2] where a question arose as to the liability of merchants to pay navigation dues on timber floated up the river Clyde in logs chained together levied under Clyde Navigation Consolidation Act, 1858, when it was shown that such dues had been paid without resistance since 1858, Lord Blackburn observed : "I think that raises a strong *prima facie* ground for thinking that there must exist some legal ground on which they (the merchants) could not resist. And I think a Court should be cautious, and not decide unnecessarily that there is no such ground. If the Lord President means no more than this when he calls it *'contemporanea expositio* of the statutes which is almost irresistible', I agree with him. I do not think that he means that enjoyment at least for any period short of that which gives rise to prescription, if founded on a mistaken construction of a statute, binds the Court so as to prevent it from giving the true construction. If he did, I should not agree with him, for I know of no authority and I am not aware of any principle, for so saying."[3] But Lord Watson demurred to this proposition and observed : "I have only to add that in my opinion such usage as has in this case been termed *contemporanea expositio* is of no value whatever in construing a British statute of the year 1858. When there are ambiguous expressions in an Act passed two or three centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years by the unanimous consent of all parties interested as evidence of what must presumably have been the intention of the Legislature at that remote period. But I feel bound to construe a recent statute according to its own terms when these are brought into controversy, and not according to the views which interested parties may have hitherto taken." Farwell, L.J., adopted this view in *Sadler* v. *Whiteman*.[4] The rule, however, was applied to a statute passed 150 years ago.[5]

However, the maxim, according to the Supreme Court, should be applied only in the construction of ancient statutes, but not to comparatively modern statutes.[6] Indeed, the rule of construction to be applied to a statute, ancient or modern, is the same, and, that is, to ascertain the intention of the Legislature. Cock's maxim cannot therefore be applied in construing the

1. (1889)14 App Cas at p. 221.
2. (1883)8 AC 658, 670.
3. (1883)8 AC 658.
4. (1910)1 KB 868, 892; *see* also *Asshetton Smith* v. *Owen*, (1906)1 Ch 179, 212. Court declined to apply the rule to the statutes of 1793 and 1800; *Goldsmith Co.* v. *Wyatt*, (1907)1 KB 95, 107; *see* however, *R.* v. *Commissioner of Inland Revenue*, (1891)1 QB 485, 489.
5. *Smith* v. *Lindo*, (1858)27 LJCP 200, *per* Byles, J.
6. *Senior Electrical Inspector* v. *Lakshmi Narain Chopra*, AIR 1962 SC 159.

language used in Section 25 of the Evidence Act.[1]

14. Executive construction.—*(i) Legislation repeating the very words on which practice founded.*—It is a well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it, although such interpretation has not by any means a controlling effect upon the Courts and may be disregarded for cogent and persuasive reasons.[2] There is no reason why the Court should not accord to the administrator's interpretation of its own regulation and governing statute that respect which is customarily given to practical administrative construction of a disputed provision, particularly in this respect due when the administrative practice at stake "involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts works efficiently and smoothly while they are yet untried and new."[3] Such constructions have their basis in the necessary practice of executive, administrative and departmental officers construing statutes for their own guidance in advance of judicial construction. With the increased number of laws affecting the conduct and sphere of activity of such officers, their practical constructions assume a larger role in the interpretation of laws. The inherent value of practical construction is based on the reasoning that if such construction had not been in conformity with the legislative meaning the error would have been corrected by the action of the Legislature. Government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and a quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation.[4] Lord Macnaghten[5] made the following pertinent observations in connection with the departmental view adopted by those who were concerned with Section 61 of Income Tax Act, 1842 with respect to 'Charitable purposes' :

> "I cannot help reminding Your Lordships, in conclusion, that the Income-tax Act is not a statute which was passed once for all. It has expired, and been revived, and re-enacted over and over again; every revival and re-enactment is a new Act. It is impossible to suppose that on every occasion the Legislature can have been ignorant of the manner in which the tax was being administered by a department of the State under the guidance of their legal

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1. *Raja Rao* v. *State of Bihar*, AIR 1964 SC 828.
2. *Baleshwar Bagarti* v. *Bhagirathi Dass*, ILR 35 Cal 701, 713; *Mathura Mohan Saha* v. *Ram Kumar Saha*, ILR 43 Cal 790, 810; *Mst. Ishro* v. *Om Prakash*, ILR 1953 Patiala 214. In United States, Brown, J., has stated in *Shell's Executor* v. *Fanche*, (1890)138 US 562, 572 : "In all cases of ambiguity in an enactment, the contemporaneous construction, not only of the courts, but of the departments, and even of the officials whose duty it is to carry the law into effect is controlling." See *Bishumber Nath Agarwal* v. *Ganesh Narain Kelkar*, AIR 1963 Madh Pra 255.
3. *Prover Reactor Development Co* v. *International Union of Electrical, etc. Workers*, 367 US 396 : 6 L Ed 2d 924, 932; *Norwegion Nitrogen Products Co.* v. *United States*, 288 US 294, 315 : 77 L Ed 796, 807.
4. *Udall* v. *Tallman*, 13 L Ed 2d 616, 626 : 380 US 1 (Warren, C.J.); *see* also *United States* v. *Farrer*, 74 L Ed 1078 : 281 US 624 (Sutherland, J.); *Armstrong Paint and Varnish Works* v. *Nu Enamel Corporation*, 83 L Ed 195, 204 : 305 US 315 (Reed, J.) : when choice is nicely balanced. *Poe* v. *Seaborn*, 75 L Ed 239, 246 : 282 US 101 (Roberts, J.) : words, so construed, which the legislature repeatedly re-employed in Act passed subsequent to such executive construction. *United States* v. *Dakota Montana Oil Co.*, 77 L Ed 893 : 288 US 459 (Stone, J.).
5. *Commissioners of Income-tax* v. *Pemsel*, 1891 AC 531, 590-591; *see* also *Madras Provincial Co-operative Bank* v. *Commissioners of Income tax*, ILR 56 Mad 837 : AIR 1933 Mad 489 (FB).

advisers, especially when the practice was fully laid before Parliament in the correspondence to which I have referred. It seems to me that an agreement in favour of the respondent might have been founded on this view of the case. The point, of course, is not that a continuous practice following legislation interprets the mind of the Legislature; but that when you find legislation following a continuous practice repeating the very words on which that practice was founded, it may perhaps fairly be inferred that the Legislature in re-enacting the statute intended those words to be understood in their received meaning; and perhaps it might be argued that the inference grows stronger with each successive re-enactment."

The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons. The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret.[1]

(ii) Practice notes.—Practice notes being notes on development charges, provided by the authority for the assistance of its officials, are wholly inadmissible for the purpose of construing the statute.[2] An executive interpretation cannot override the true meaning underlying a statutory provision.[3]

Reliability of official advice cannot alter the construction of the statutes and the Rules made thereunder. There can be no estoppel against the Government on a point of law and construction of statute. Neither the Government not the Court will be bound by the interpretation of the Act and the Rules made by an Administrative Officer. The law of the country is what the statute and Rules thereunder say and how the Courts of the land interpret them and not what a particular Government or Administrative Officer says : "If the Government officer's interpretation is wrong, the party acting on it takes the risk."[4]

Consistent administrative construction loses weight when the latest dictum thereon expressed grave doubts about its soundness.[5]

(iii) Departmental Manual.—Sometimes the executive issues a Manual containing departmental instructions for administering an Act. Such a Manual is, however, not an authoritative interpretation of the statute which is binding on Courts.[6] Departmental directions cannot in any sense control the meaning or construction of a statutory provision.[7] Views of an official or institutional committee on its indepth study of legislation reports shall not be taken into consideration by the Court.[8] In *(Smt.) Shashi Gupta* v. *LIC of India,*[9] it is held that interpretation of any circular issued by Life Insurance Corporation of India should be beneficial to the policy-holder.

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1. *United States* v. *Moore,* 24 L Ed 588, 589 (Swayne, J.).
2. *London County Council* v. *Central Land Board,* (1958)3 All ER 676, 677-678.
3. *Gopal Krishna Gupta* v. *State of UP,* ILR (1960)2All 806; *Bishambar Nath Agarwal* v. *Ganesh Narain Kelkar,* AIR 1963 MP 255, 256 (P.R. Sharma, J.); *Ganga Nath* v. *Dharamarth Department,* AIR 1958 J & K 41, 42 (Jia Lal Kilam, J.).
4. *P. H. Avari* v. *State of West Bengal,* AIR 1958 Cal 203 at p. 205; *Federal Crops Insurance Corporation* v. *A. A. Merrel,* (1947)332 US 380 : 92 L Ed 10.
5. *Civil Aeronautics* v. *Delta Air Lines,* 367 US 316 : 6 L Ed 2d 869.
6. *Chunna Mal* v. *Commissioner of Income-tax,* AIR 1931 Lah 320 (2), 331 (FB), *per* Tek Chand, J.; *see* also *Sheikh Intaz* v. *Dina Nath,* ILR 53 Cal 615 : AIR 1926 Cal 856, 866 (not admissible).
7. *Sardar Sara Singh* v. *Commissioner of Income-tax, Madhya Pradesh,* 1962 MPLJ 672 : 1962 Jab LJ 657 : 1962 MPC 186.
8. Vide *Surveyors Welfare Association (Regd)* v. *Union of India,* AIR 1995 Del 382.
9. AIR 1995 SC 1367.

(iv) Departmental Rules.—Whenever the rules issued by executive authority are in furtherance of the provisions of an Act, in order to better enable the officers of Government to carry out the requirements of law, the same may be admissible for the purpose of reference, and when acted upon would be evidence of *bona fides* of the officer acting thereon.[1]

(v) Time factors.—While the authorities differ as to the length of time essential to meet the test of long duration, a practice of four years[2] was not considered of such long duration as would attract the rule abovementioned. In U.S.A. a period as short as five years seems to have been sufficient.[3]

(vi) Limitation to the Rule.—To justify recourse to such an interpretation, the ambiguity or obscurity on the fact of the law must not be merely captious, but should be of such nature as to raise a reasonable doubt in a fair mind reflecting honestly upon the subject.[4]

(vii) Value pursuasive.—Where a statute uses language of doubtful import, the action taken under it, if continued for a long course of years, may reduce uncertainty to a fixed rule.[5] Such a construction commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight. It is highly persuasive. Similarly to interpret the words of an Ordinance is a function reserved to the Courts which are established for that purpose; any exposition which may be proposed by the Executive Government of a province has the weight which must always belong to the considered opinion of enlightened experience but it cannot be quoted or received as an authority by a Court of law.[6] The rulings, interpretations and opinions of the particular agency while not controlling upon the Courts by reason of their authority, do constitute a body of experience and informed judgment to which Courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consistency, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.[7]

(viii) Creation of vested rights.—Where vested rights have grown up under the departmental construction, the Courts are justified in being more reluctant than in ordinary cases in adopting a construction will destroy or disturb such rights.

(ix) Entering into contracts with Government.—Where contracts have been entered into with the Government in reliance on the departmental construction or where a departure from

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1. *Ezra* v. *Secretary of State*, ILR 30 Cal 36, 83.
2. *Chunna Mal* v. *Commissioner of Income-tax*, AIR 1931 Lah 320 (2), 331 (FB) (*per* Tek Chand, J.).
3. Crawford : *Statutory Construction*, at p. 389; *CIT Punjab* v. *Dr. Sham Lal Narula*, AIR 1963 Punj 411.
4. *New York* v. *New York City Rly.*, 193 NY 543, quoted by McCaffrey in his *Statutory Construction*, at p. 78.
5. *See* Halsbury : *Laws of England*, 4th Ed., Vol. 44, para 843; *see* also *Wenlock Baroness* v. *River Dee Co.*, (1833)36 Ch D 675, (*per* Bowen, L.J.); *see* also Crawford : *Statutory Construction*, at pp. 393, 394 : "As a general rule executive and administrative officers will be called to interpret certain statutes long before the Courts may have an occasion to construe them. Inasmuch as the interpretation of statutes is a judicial function naturally the construction placed upon a statute by an executive or an administrative official will not be binding upon the Court, yet where a certain contemporaneous construction has been placed upon an ambiguous statute by the executive or administrative officers who are charged with executing the statute, and specially if such construction has been observed and acted upon for a long period of time, and generally or uniformly acquiesced in, it will not be disregarded by the Courts, except for the most satisfactory, cogent or impelling reasons. In other words, the administrative construction generally should be clearly wrong before it is overturned." (This passage has been quoted with approval by Cornelius, J., in *Ram Lakhaya* v. *Dhani Ram*, AIR 1947 Lah 296, 297.)
6. *Jethmal Parasram* v. *Emperor*, AIR 1952 Sind 107, 110 *per* Frerers, J.C.
7. *Skidmore* v. *Swift & Co.*, 323 US 134, 140 : 89 L Ed 124, 129; *Federal Maritime Board* v. *Isbrandtsen Co.*, 356 US 481, 499-500 : 2 L Ed 2d 926, 938.

the executive interpretation would result in justice, a similar reluctancy is proper.[1]

While the interpretation given by a statute by those charged with its application and enforcement is entitled to considerable weight, it is hardly conclusive.[2] Whatever the Government may understand by the language of any enactment is not of much consequence if the language used does not bear the construction. The Courts will not be guided by any opinion of the Government as to the interpretation of a legislative enactment according to the light that it receives from its legal advisers.[3]

If the words of an Act are unambiguous they must be construed without regard to the length of time during which they have been before the world.[4] The rule amounts to no more than this, that if the Act be susceptible of the interpretation which has been put upon it by long usage, the Courts will not disturb that construction.[5]

15. Practice of conveyancers.—The uniform opinion and practice of eminent conveyancers has always had great regard paid to it in all Courts of Justice.[6] It is to be looked upon as a part of the Common Law.[7] When a construction in conveyancing law has become locally settled, *e.g.*, in Scotland[8] or a British possession,[9] the House of Lords and the Judicial Committee will not reject it by reference to ideas and conceptions prevailing in England and alien to and subversive of the foreign interpretation.[10]

16. Usage.—*(i) Optima legum interpres consuetudo,*[11] says Coke[12].—The principle has been laid down in *Sheppard* v. *Gosnold,*[13] by Vaughan, C.J. , in the following terms : "where the penning of a statute is dubious, long usage is just a medium to expound it by; for *jue et norma loquondi* is governed by usage, and the meaning of things spoken or written must be as it hath constantly been received to be by common acceptation." General usage under a statute may make for a practical construction of it which will be accorded great consideration by the Courts. General usage, of long duration theretofore unquestioned, will frequently be of great assistance

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1. Crawford : *Statutory Construction*, at pp. 394-95.
2. *County of Marin* v. *United States*, 356 US 412, 420 : 2 L Ed 2d 879, 885.
3. *Sadaria* v. *Rajasthan Board of Revenue*, AIR 1954 Raj 224.
4. *Gwyn* v. *Hardwicke*, (1856)25 LJMC 97 : 108 RR 448, (*per* Pollock, C.B.).
5. *Pochin* v. *Duncombe*, 1 H & N at pp. 856, 857, (*per* Pollock, C.B.).
6. *Basset* v. *Basset*, (1744)3 Atk 203.
7. Re Ford and Hill, (1879)10 Ch D 365, 370.
8. *Kirkpatrick's Trustees* v. *Kirkpatrick*, (1874)1 Rettie HL (D SC) 37, 42.
9. *Natal Bank* v. *Rood*, 1910 AC 570, (*per* Lord Shaw).
10. *Natal Bank* v. *Rood*, 1910 AC 570, 588, (*per* Lord Shaw).
11. Custom is the best interpreter of law. In *Narain* v. *University of St. Andrews*, 1909 AC 147, 160, the appellants (lady graduates of the University of Edinburgh) claimed a right to vote in the election of the Parliamentary representative of the University of Edinburgh under the Representation of the People of (Scotland) Act, 1868. Lord Loreburn, in the course of his speech observed: "It is incomprehensible to me that anyone acquainted with our laws or the methods by which they are ascertained can think if indeed, anyone does think, there is room for argument on such a point. It is notorious that this right of voting has, in fact, been confined to men. Not only has it been the constant tradition alike of all three kingdoms, but it has also been the constant practice, so far as we have knowledge of what has happened from the earliest times to this day. Only the clearest proof that a different state of things prevailed in ancient times could be entertained in a Court of law in probing the origin of so inveterate an usage. I need not remind your Lordships that numberless rights rest upon a similar basis. Indeed, the whole body of the common law has no other foundation."
12. 2 Co Rep 81.
13. (1672) Vaugham, 159 at p. 169.

in the search of legislative meaning.[1] The meaning publicly given by contemporary or long professional usage, is presumed to be true one, even when the language has etymologically or popularly a different meaning. It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or near the time when it was passed, may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions.[2]

"As to usage," says Grose, J, in *Rex* v. *Hogg*,[3] "I am clearly of opinion that it ought not to be attended to in considering an Act of Parliament, which cannot admit of different interpretations; where the words of the Act are doubtful, usage may be called in to explain them. Lord Brougham in the case of *Duchess of Roxburghe*,[4] maintained:

(ii) Plain statute.—"I cannot go along with his Lordship (Lord Justice Clerk) when for this reason he denied that usage, however long and inveterate, could be binding and operative on the parties. It can be binding and operative on the parties, only as it is the interpreter of a doubtful law as affording a contemporary interpretation, but it is quite plain that as against a plain statutory law no usage is of any avail. But this undeniable proposition supposes the statute to speak language plainly and indubitably differing from the purport of the usage.

(iii) Statute silent.—Where the statute speaking on some points is silent as to others, usage may well supply the defect especially if it is not inconsistent with the statutory directions, where any are given; or where the statute uses a language of doubtful import, the acting under it for a long course of years may well give an interpretation to that obscure meaning, and reduce that uncertainty to a fixed rule : *optimus legis interpres consuctudo*, which is sometimes termed *contemporanea expositio*'; and where you can carry back the usage for a century and have no proof of a contrary usage before that time, you fairly reach the period of *contemporanea expositio*."

Ambiguous statute.—Tindal, C.J., very emphatically observed in *K.* v. *Frost*, [5] : We really are called upon after a construction has been put upon this Act of a Parliament from the very period when it was passed in the 33rd of Edward-I down to the present time, to put a construction different from that which prevailed at the time when the statute was enacted, and different from that which all our predecessors have put. Where would be the certainty of the law of England? What safety would there be for prisoners as well as for the public execution of justice, if Judges acting according to their own discretion, neglecting those rules of interpretation which wisemen before them have laid down and which have been sanctioned by time, were to do that for the first time which we are now called upon to do, namely, to put a construction different from that which has been put by all who have gone before them?" "Were the language of Statute 25 Henry VIII, c. 19, obscure instead of clear," says Lord Campbell, C.J., in *Gorham* v. *Bishop of Exeter*,[6] "We should not be justified in differing from the construction put upon it by contemporaneous and long continued usage. There would be no safety for property or liberty if it could be successfully contended that all lawyers and statesmen have been mistaken for centuries as to the true meaning of an old Act of Parliament." Pollock, C. B. in *Fermoy*

1. *Easton* v. *Pickersgill*, 55 NY 310, quoted by Francis, J., McCaffrey in his *Statutory Interpretation*, p. 77.
2. Maxwell : *Interpretation of Statutes*, 11th Ed. at p 296.
3. (1887) IRR 375.
4. *Dunbar Magistrates* v. *Raxburghe (Duchess)*, (1835)6 ER 1462.
5. (1839) Gurney's Rep at p. 49.
6. (1850)15 QB 69, 73, 74.

Peerage case,[1] put the rule succinctly thus : "The rule amounts to no more than this, that of the Act be susceptible of the interpretation which has been put upon it by long usage, the Courts will not disturb that construction."

> "Where indeed" said Channell, J. in *Goldsmiths Company* v. *Wyatt*,[2] "the Court is called upon to construe an Act of Parliament expressed in unambiguous language, it ought to put its own construction upon it regardless of the construction that has been commonly put upon it by other persons less skilled in the law. The fact that a mistaken interpretation has been generally put upon it cannot alter the law. But where the question is as to the meaning of ambiguous terms of common use, the fact that it has for a long period of years been understood in a particular sense by persons who have an interest or duty in enforcing the Act becomes very material."

A continued usage of over 500 years,[3] of 300 years,[4] of 200 years,[5] of 160 years,[6] of 100 years,[7] has been held sufficient for the application of this rule.

Indeed it would appear that if Legislature has stood by and thereby impliedly sanctioned by its non-interposition the construction put upon its own language by long and notorious usage, of an authoritative and public character, courts have hesitated to differ from that interpretation, if the language used is susceptible of it.[8]

(iv) Limits to the rule.—Usage does not aid interpretation unless there be ambiguity.[9] If usage has been against the obvious meaning of an Act of Parliament by the vulgar and common acceptation of the words, then it is rather an oppression of those concerned than an exposition of the Act.[10] Against a plain statutory law no usage is of any avail, however long that usage has been before the world.[11] The fact that a mistaken interpretation has been generally put upon it cannot alter the law.[12] Lord Loreburn in *West Ham Union* v. *Edmonton Union*, [13] observed : "Great importance is to be attached to these authorities (those by which the court below had considered itself bound) on the strength of which many transactions may have been adjusted and rights determined. But where they are plainly wrong, especially where the subsequent course of judicial decisions has disclosed the weakness of the reasoning on which they are based, and the practical injustice in the consequences which must flow from them, I consider it is the duty of this House to overrule them, if it has not lost the right to do so by itself expressly

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1. *Pachin* v. *Duncombe*, (1857)1 H and N 842, 856-57; *see* also *Shepherd* v. *Hills*, (1855)11 Ex 55, 67, *per* Parke, B., "it is, therefore, important to ascertain what the facts have been as to the receipt of duties from vessels trading to the Channel Islands and what has been the practice of the Custom House as to treating or not such vessels as coasting vessels." *Morgan* v. *Crawshay*, (1871) LR 5 HL 304, 320.
2. (1905)2 KB 586, 596 : (1907)1 KB 95, 107.
3. *Mausell* v. *Queen*, (1851)27 LJMC 1412.
4. *Gotham* v. *Bishop of Exeter*, 15 QB 69, 73, 74.
5. *Garland* v. *Carlisle*, 2 Cr & M at p. 39, *per* Gurney, B., quoted by Willberforce : *Statute Law*, at p. 144.
6. *Cox* v. *Leigh*, (1874) LR 9 QB 333, 340; *see* also *Gauseen* v. *Lower Bann Navigation Trustees*, 1929 N Ir 11.
7. *Clyde Navigation* v. *Laird*, (1883)8 AC 658, 673; Lord Watson : Practice of Judges for forty years was taken into consideration in *R.* v. *Cutbush*, (1867) LR 2 QB 379; "*National and Grindlays Bank Ltd.* v. *Municipal Corporation*, AIR 1969 SC 1048 where the rule in *Clyde Navigation Trustees* v. *Laird and Sons*, (1883)8 App Cas 658 was followed."
8. *See* Maxwell : *Interpretation of Statutes*, IIth Ed at p. 297.
9. *N. E. Ry. Co.* v. *Hastings*, 1900 AC 260.
10. *Shepperd* v. *Gosnold*, (1672) Vaughan, 159, 169 (*per* Vaughan, C.J.).
11. *Gwyn* v. *Hardwick*, 1 H & N at p. 53 *per* Pollock, CB; *Magistrates of Dunbar* v. *Duchess of Roxburgh*, 6 ER 1462.
12. *Goldsmiths Co.* v. *Wyatt*, (1905)2 KB 586, 596 (*per* Channell, J.).
13. 1903 AC 1, 4 ; *see* also *Lord Advocate* v. *Walker Trustees*, 1912 AC 95.

affirming them." The rule does not apply when the earlier decisions have not been uniform and unvarying.[1] Casual admission of liability under a statute cannot be called in aid.[2] Repeated violations of the express terms of a modern statute passed in the public interest does not confer rights on the wrong-doer.[3] When the usage has not been uniform, the court has to determine which current of authority should prevail and construe the statute accordingly.[4]

Besides being uniform and unvarying, usage must be general unless, indeed, the Act which is sought to be explained is itself a special Act relating to one particular place or business.[5] "We are", said Grose, J., in *R.* v. *Hogg*,[6], "Interpreting a universal law, which cannot receive different constructions in different towns. It is the general law that this kind of property should be rated, and we cannot explain the law differently by the usage of this or that particular place".

17. Precedents.—A decision has momentum of its own, and it is nothing new that legal doctrines have the faculty of self-generating extension.[7] Jurisdiction to decide is jurisdiction to make a wrong as well as a right decision.[8] When a statutory provision is interpreted as to its precise ambit and effect, it will have effect from the inception of the statutory provision.[9] The interpretation approved by the Supreme Court becomes an integral part of the statute. It should be accepted and followed.[10] In order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts of the case and what was the point which had to be decided.[11] But assuming that there may be a vested right under an erroneous decision, it is carrying the doctrine to an unwarrantable extent to say that the construction placed by the court upon one statute implies an obligation on its part to put the same construction upon a different statute, though the language of the two may be similar.[12]

"A precedent is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often the *ratio decidendi*. The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law as regards the world at large. 'The only use of authorities or decided cases', says Sir George Jessel, 'is the establishment of some principle, which the Judge can follow out in deciding the case before him.' 'The only thing', says the same distinguished Judge in another case, 'in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided'. The only judicial principles which are authoritative are those which are thus relevant in their subject-matter and limited in their scope. All others, at the best are of merely persuasive efficacy. They are not true *ratios decidendi*, and are distinguished from them, under the name of *dicta* or *obiter dicta*, things said by the way. The prerogative of Judges is not to make law by formulating and declaring it—this pertains to the Legislature—but to make law by applying it. Judicial declaration, unaccompanied by judicial application, is not

1. Craies : *Statute Law*, 5th Ed. at p. 147 : Wilberforce on *Statute Law*, at p. 147.
2. *Northam Bridge Co.* v. *R.*, (1886)55 LT 759.
3. Maxwell: *Interpretation of Statutes*, 11th Ed. at p. 301; *George Legge Sons* v. *Wenlock Corporation*, 1938 AC 204, 224.
4. Craies : *Statute Law*, 5th Ed. at p. 147.
5. Wilberforce on *Statute Law*, at p. 147.
6. (1877)1 TR 728 approved in *Income-tax Commissioner* v. *Pemsel*, 1891 AC 531, 548.
7. *Connecticut Mutual Life Insurance Co.* v. *Moore*, 92 L Ed 863, 874 : 333 US 541 (Frankfurter, J. dissenting.).
8. *Pope* v. *U. S.*, 89 L Ed 3, 12 : 323 US I (*per* Stone, C.J.).
9. *Appellate Asstt. Commissioner, Commercial Taxes* v. *N. Kupanna Gounder*, 88 L W 436 (DB).
10. *Gulf Colorado, etc. Rly. Co.* v. *Moser*, 72 L Ed 200, 202 (Mc Reyholds, J.).
11. *Kandeaker* v. *Deshpande*, (1971)1 SCC 438, 448 (Dua, J.).
12. *Wood* v. *Brady*, 37 L Ed 981, 983 (Brown, J.)

of binding authority."[1] All persons within a State are bound to follow the decisions of the High Court for that State until they are subsequently overruled either by a larger Bench of that court or by a decision of the Supreme Court or by an enactment passed by the Legislature.[2] It is, however, a statutory rule that a Judge is not to be assumed to have intended to overrule or disapprove of an authority which has not been cited to him and which he does not even mention.[3] And it is not open to the Legislature to overrule or set aside a decision of the court. It is open to the Legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the court. The Legislature could not say that that declaration of law was either erroneous, invalid or ineffective either as a precedent or between the parties.[4]

A principle of law means a rule or axiom of law, while a question of law is one which arises when a conclusion is reached on the application of the rules and principles of law to certain proved facts and circumstances.[5] Decisions of learned Judges are, of course, of the greatest value in assisting Judges, before whom similar points subsequently arise for decision, to construe the meaning of statutory provisions, and are frequently of binding authority.

(i) Ratio decidendi.—"The only use of authorities or decided cases." said Sir George Jessel in *In re* Hallet's Estate,[6] "is the establishment of some principle which the Judge can follow out in deciding the case before him". The same distinguished Judge observed a few months later in *Osborne* v. *Rowlett*[7] : "I have often said and I repeat it, that the only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided; but it is not sufficient that the case should have been decided on a principle if that principle is not a right principle, or one not applicable to the case; and it is for a subsequent Judge to say whether or not it is a right principle, and, if not, he may himself lay down the true principle". It is novel to suggest that merely because there was no occasion for a court to follow the precedent of the same court for some time, those decisions should be treated with no respect and should be disregarded.[8] A decision of a court does not depend for its validity on the number of years it has been in force, and the number of decisions in favour of the particular point.[9] "A precedent, therefore,"· writes Salmond,[10] "is a judicial decision which contains in itself a principle". The underlying principle which thus forms its authoritative element is often termed the *ratio decidendi*. The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law as regards the world at large. Any judgment of any court is authoritative only as to that part of it, called the *ratio decidendi*,

1. Salmond : *Jurisprudence*, 11th Ed. at pp. 223, 224; *Sheikh Dawood* v. *Collector of Central Excise*, AIR 1961 Mad 1, 5 (FB).
2. *Harihar* v. *Laxmi Jena*, AIR 1959 Orissa 116, 117.
3. *Ridge* v. *Baldwin*, 1940 AC 40, 79, *per* Lord Reid.
4. *Janapada Sabha* v. *Central Provinces Syndicate, Ltd.*, (1970)3 SCR 745, 751 (Shah, J.)
5. *Gulabchand* v. *Kudilal*, AIR 1959 MP 151, 157.
6. (1879)13 Ch D 695 at p. 712.
7. (1880)13 Ch D 774, 785.
8. *Sangavarapu Anjaneyulu* v. *Parankusam Rangacharyulu*, AIR 1958 Andh Pra 705, 706.
9. *Bank of Jaipur, Ltd.* v. *Davey*, AIR 1957 Mad 353 : a room kept dark for a hundred years does not require another hundred years for light to be let in. The moment light is let in the darkness automatically disappears. So too the moment a valid and binding decision of a High Court is given, the days of non-decision disappear automatically and the decision takes its place till it is displaced or overruled.
10. *Jurisprudence*, 10th Ed. at p. 191.

which is considered to have been necessary to the decision of the actual issue between the litigants. It is for the court, of whatever degree, which is called upon to consider the precedent, to determine what the true *ratio decidendi* was.[1] It is the reason and spirit of cases that make law, not the letter of particular precedents.[2] It may be laid down as a general rule that that part alone of a court of law is binding upon courts of co-ordinate jurisdiction and inferior court which consists of the enunciation of the reasons or principles upon which the question before the Court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed the *ratio decidendi*.[3]

During the British regime in India, the Judicial Committee of the Privy Council exercised the highest appellate judicial authority in India. Their Lordships of the Privy Council thought it desirable to point out in *Mata Prasad* v. *Nageshar Sahai*,[4] "that it is not open to the courts in India to question any principle enunciated by this Board, although they have a right of examining the facts of any case before them to see whether and how far the principle on which stress is laid applies to the facts of the particular case." If a Privy Council judgment is explained by a Full Bench of a High Court in India, and it is contended that there is a conflict between the two, a Division Bench of that court is bound to follow the Full Bench case of that Court which in terms purports to explain and limit the effect of the Privy Council decision.[5]

In *Secretary of State for India* v. *Jyoti Prasad Singh*,[6] their Lordships of the Privy Council made the following pertinent observations : "In a case which came before this Board several years ago, the *Imperial Japanese Government* v. *P. and O. Steam Navigation Co.*,[7] two points of great public importance were raised by the decision of the court under appeal, and their Lordships having come to the conclusion that they must advise His Majesty to reverse the decision of the court below on the first ground, abstained from expressing any opinion on the second ground, while they carefully explained that in so doing they were not to be held to have given any authority thereby to that part of the decision which did not touch. Their Lordships would desire to be understood to be acting in the same way in the present case."

(ii) Divergent views.—A judgment given by a single Judge is nevertheless a judgment of the High Court, and unless there are strong grounds for differing from that conclusion, another Bench of the High Court would be bound to follow that decision even if it be a decision of a single Judge.[8] Sometimes it is not easy to discover the true reasons which led to the superior court to its conclusion. When Judges in the highest court give divergent reasons for the same conclusion, it becomes very difficult to ascertain the *ratio decidendi* which shall bind the subsequent and subordinate judiciary. In this aspect of the matter nothing remains except the actual judgment and a number of weighty opinions.[9] It is essentially from this feature of 'House of Lords' decisions that these derive their wide freedom of action, despite the rule that it is bound by its prior decisions. For since no sanctity attaches to one set of concurring reasons as against another, one may be preferred to another, or even used merely to neutralize it, leaving

1. *See* Allen : *Law in the Making*, 4th Ed. at p. 227.
2. *Manjuri* v. *Akel*, 19 IC 793, 813 quoting Lord Mansfield in *Fisher* v. *Prince*, 97 ER 876.
3. *State of Orissa* v. *Sudhansu Sekhar*, AIR 1968 SC 647 (where the rule has been explained.).
4. 5 IA 398, 417.
5. *Ram Narain* v. *Municipal Board, Muttra*, AIR 1938 All 540, 542 : ILR 1938 All 823.
6. 53 IA 100, 122.
7. 1895 AC 644.
8. *Harshadrai R. Desai* v. *Balubhai M. Batliwala*, AIR 1958 Bom 62, 65; *Madhavan Nair* v. *Gopala Panikar*, 1968 Ker LR 454; *Rameshmy Roy* v. *Pashupati Kumar Pathak*, AIR 1968 SC 372.
9. *See* Allen : *Law in the Making*, 4th Ed. at pp. 248, 249.

the field clear. This technique of distinguishing is often regarded as in the nature of an evasion of the system of precedent. It is respectfully submitted that, on the contrary, it affords a deep insight into its essential nature."[1]

'Precedents' as observed by Lord Macmillan in *Birch Bros., Ltd.* v. *Brown*,[2] "should be stepping-stones and not halting places." "A good Judge" writes Lord Wright, "is one who is the master, not the slave of cases." Unfortunately the form is very often confused with the substance. "Precedents become rather pegs", says Julius Stone,[3] on which to hang judgment than an explanation of the process of reaching it. While this is not itself an evil, it is likely to become one at the point when the peg chosen for hanging the present decision was manufactured in a different factual context and with a different purpose from the instant case." But when authorities have laid down a rule it is not always necessary to try to discover the original basis of it.[4]

A precedent is a precedent for the case it decides, and the jurisprudence which believes in law being made by precedents does not accept the proposition that there should necessarily be a logical extension of a particular decision given by the courts.[5] When a general rule of construction has once been laid down by authority, a decision arising from its application to a particular set of facts cannot operate as a precedent, for the very remote chance of any two sets of facts being absolutely similar may be excluded. No Judge can be fettered by an attempt by another Judge to lay down any rule of construction based on his opinion on the facts of the case before him.[6] A finding of fact based upon the evidence before the Judicial Committee in another case cannot have been intended to be binding in all future cases whatever the evidence.[7] Judgments of the Supreme Court and the High Courts cannot be read out of context, even though propositions of law appear to be laid down in general terms. In deciding a *lis* primarily, the court is considering the set up of facts, the nature of the dispute and the legal conclusions which ought to flow from the facts found.[8] We ought in applying the statute to particular facts," observed Lord Haldane in *Charles R. Davidson & Co.* v. *M. Roble*,[9] "to direct our efforts rather to giving effect to broad principles with freedom in applying them to individual circumstances than to searching for guidance from mere apparent analogies with the particular facts of previous cases, analogies which rarely embody the full truth." It will be manifest abuse of judicial precedents to apply isolated *dicta* from a judgment to a case where the facts are in essential particulars different.[10]

Precedents may be compared to wine which 'improves with age' up to a certain point, and

1. Julius Stone : *Province and Function of Law*, at p. 180.
2. 1931 AC 605 at p. 631; *Lala Bihari Lal* v. *Beni Madhava*, AIR 1949 Pat 293, 296; In spite of the rule of *stare decisis*, statutes to be construed progressively.
3. *Province and Function of Law*, at p. 193.
4. *Jagdish Prasad* v. *Hoshyar Singh*, ILR 51 All 136 : AIR 1928 All 596 (FB).
5. *Narayan* v. *Ramchandra*, AIR 1957 Bom 146 (FB).
6. *Govind Laxman* v. *Hirachand Mansharam*, AIR 1919 Bom 40, 41 ("Authorities are useful only so far as they lay down the law, but they are usually not safe guides when questions of facts are involved"); *In re*, Jaunpur Sugar Factory, Ltd., AIR 1925 All 658, 660, *per* Mukerjee, J.; *see* also *Khilawan* v. *Emperor*, AIR 1928 Oudh 430, 435.
7. *Hiralal* v. *Matukdhari Singh*, ILR 7 Pat 275 : AIR 1928 Pat 316, 317; *Maung Saw* v. *Maung Bin Byu*, ILR 4 Rang 18 : AIR 1926 Rang 109 (discretion).
8. *J. N. Bagga* v. *All India Reporter, Ltd.*, AIR 1969 Bom 302, 306 (Deshmukh, J.).
9. 1918 AC 304, 316; *see* also *Mst. Anupabai* v. *Bhagwant Singh*, AIR 1938 Nag 470, 473 : ILR 1938 Nag 535.
10. *Shiv Shankar* v. *Kali Ojha*, ILR 8 Pat 471 : AIR 1929 Pat 392, 395.

then begins to "go off."[1] If two decisions by the United States Supreme Court are to any extent inconsistent with each other, it is only the later one which survives.[2]

It is trite proposition that each case is authority for itself and no more, unless a case lays down a broad proposition of law it cannot have even a persuasive value.[3]

(iii) Authoritative or persuasive.—Precedents are either authoritative or persuasive. An authoritative precedent is one which the court, before whom it is cited, is bound to follow whether it approves of the principle or not. A persuasive precedent is one which stands on its own merits and which the judges are not bound to follow.

Every court is under an obligation to follow the precedent laid down by a court superior to itself. A Magistrate is bound to follow the authority of the High Court and it is his duty to keep himself informed of its decisions. Failure to do so is a dereliction of duty on a par with his failure to refer to the sections of the statute.[4] The law laid down by the Supreme Court shall be binding on all courts within the territory of India.[5] When the Supreme Court has delivered its opinion on a point, it is unnecessary for a Division Bench of a High Court as it would be an idle ceremony, to refer the same point to a Full Bench, even though the resulting decision thereby, following the opinion of the Supreme Court, might be in conflict with a prior Division Bench decision of that High Court.[6] The latter decision is usually preferred as denoting alteration of the former opinion.[7] In *Noor Mohamed* v. *King*,[8] their Lordships of the Privy Council observed with respect to the opinion of Lord Chief Justice in *Rex* v. *Sims*,[9] running counter to the principles enunciated on the same point in *Makin's* case.[10] "The Court of Criminal Appeal would thus appear to have rejected altogether the opinion of Lord Sumner which, although, as their Lordships have said, they believe that it must in one respect be somewhat qualified, has hitherto been generally accepted as a governing principle. Recent *dicta* of the Court of Criminal Appeal, though carrying great weight, do not necessarily outweigh earlier *dicta* in the House of Lords or the Court of Crown cases Reserved, or in the Court of Criminal Appeal itself, and if their Lordships have correctly understood those which they have quoted, they can only regard them as in some degree inconsistent with settled principle."

(iv) Sub-silento.—Where a particular question though involved in the case was not argued or considered, the decision (called a precedent *sub-silento)* is merely of persuasive authority. In Halsbury's Edition of Laws of England by Lord Hailsham at p. 252 of Vol. 19, it is said that when previous case has not laid down a new principle, but has merely decided that a particular set of facts illustrates an existing rule, there are few more fertile sources of fallacy than to erect a previous decision into a governing precedent merely because it contains what is simply resemblance of circumstances.[11]

(v) On concession.—An observation made by Supreme Court merely on a concession made by counsel at the Bar would not have the sanctity of approval of a particular legal position by

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1. Allen : *Law in the Making*, 4th Ed. at p. 219.
2. *United States* v. *Rands*, 19 L Ed 2d 329.
3. *Sheo Kumar* v. *Thakurji Maharaj*, AIR 1959 All 463.
4. *Dow Lath* v. *Dey*, (1953)2 MLJ 28.
5. Article 141, Constitution of India.
6. *S. N. Mukerji* v. *State*, AIR 1958 Cal 510, 516.
7. *Ayyaswami* v. *Manavikrama*, AIR 1930 Mad 430 (2), 431, *per* Beasly, C.J.
8. AIR 1919 SC 161, 165.
9. (1946)1 KB 531.
10. 1894 AC 57.
11. See *Narotam Chand* v. *Durga Devi*, AIR 1949 EP 109, 116-117 (FB), quoting Salmond : *Jurisprudence*, (1947 Ed.) at p. 180 (5).

their Lordships of the Supreme Court.[1] In order that a decision of a court on a concession should be considered to be a binding decision and a decision which should bind Courts of co-ordinate jurisdiction, two conditions are necessary. The first in that the concession must be necessary for the decision of the case. The other condition is that the court must accept that concession and put its own imprimature upon that concession and must accept that concession as the true statement of the law."[2]

(vi) Supreme Court may depart from its previous decision.—Once a principle is well established and is laid down by the highest court of the land, it is the law and can only be displaced by legislation.[3] In a proper case it is permissible for the Supreme Court to go back upon its previous decision. There is nothing in the construction which prevents the Supreme Court from departing from a previous decision, if it is convinced of its error and its lawful effects on the general interests of the public. Article 141 which lays down that the law declared by the Supreme Court shall be binding on all courts within the territory of India quite obviously refers to courts other than the Supreme Court.[4]

Accepting that the Supreme Court is not bound by its own decisions and may reverse a previous decision especially on a constitutional question, the court will surely be slow to do so unless such previous decision appears to be obviously erroneous.[5]

In *R.* v. *National Insurance Commissioner,* Ex parte *Hudson,*[6] their Lordships quoted the Resolution of Lords of Appeal in Ordinary[7] :

> "Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.
>
> Their Lordships nevertheless recognised that too rigid observance to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears rightly to do so.
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> In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have to be entered

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1. *Venkat Rao* v. *Hanmant Rao,* ILR 1958 Andh Pra 516 : (1958)2 Andh Pra WR 534.
2. *Pramod Bhat* v. *Kanwar Raj,* AIR 1954 Bom 518.
3. *In re* Bejjanki Rajani, (1959)1 Andh Pra WR 16.
4. *Bengal Immunity Co.* v. *State of Bihar,* AIR 1955 SC 661, *per* Majority S. R. Das, Ag. C.J. Bose, Bhagwati and Imam, JJ. (Jagannadha Das. Venkatarama Ayyar and Sinha. JJ., dissented, Jagannadha Das J., held that correctness of the prior decision cannot be straightaway canvassed before the Supreme Court. It is only after the Court came at least to a *prima facie* conclusion that there are circumstances to justify a reconsideration that re-argument on the merits of that decision should have been permitted. Venkatarama Ayyar, J. held that the Supreme Court cannot differ from a previous decision of the Court because a view contrary to the one taken therein appears to be preferable, and Sinha, J., observed that "the question we have to determine at the outset is whether or not we should follow the previous decision of this Court. We are all agreed that in a proper case it is permissible for this Court to go back upon its previous decision; but we are again divided as to whether this is a fit occasion for reviewing its previous decision").
5. *Dwarkadas Shrinivas* v. *Sholapur Sp. and Wg. Co.,* AIR 1954 SC 119, 137, *per* Das, J.
6. (1972)2 WLR 210, 215; The doctrine of 'prospective overruling' was considered as an 'after-thought' by Lord Simon of Glaisdale, Lord Diplock postponed its consideration.
7. (1966)1 WLR 1234.

into and also the special need for certainty as to the criminal law.

The announcement is not intended to effect the use of precedent else-where than in this House."

Lord Reid observed : "But I would venture the opinion that the typical case for re-considering an old decision is where some broad issue is involved, and that it should only be in rare cases that we should reconsider question of statutes or other documents. In very many cases it cannot be said positively that one construction is right and the other wrong. Construction so often depends on weighing one consideration against another. Much may depend on one's approach. If more attention is paid to meticulous examination of the language used in the statute the result may be different from that reached by paying more attention to the apparent object of the statute so as to adopt that meaning of the words under consideration which best accord with it."

Lord Reid further observed in *Reg* . v. *Knuller (Publishers, etc.) Ltd.*[1] :

> "I have said more than once in recent case that our change of practice is no longer regarding previous decisions of this House as absolutely binding does not mean that whenever we think that a previous decision was wrong we should reverse it. In the general interest of certainty in the law we must be sure that there must be some very good reason before we so act."

(vii) Supreme Court not bound by Privy Council decisions.—Decisions of the Privy Council are not binding on the Supreme Court, and the Supreme Court can declare a decision of the Privy Council as not sound.[2] The position after 1950, so far as the Privy Council is concerned, is different from the position which it occupied before 1950. Before 1950 the law laid down by the Privy Council was the law of the country. After 1950 the decisions of the Privy Council are only of the persuasive authority. The only final tribunal which can lay down the law in this country is the Supreme Court, and if the Supreme Court has not laid down the law, then the final authority in a State is the High Court for that State. It is not open to any inferior Court or tribunal in a State to consider the decision of the Privy Council if it was at variance with the decision of the High Court but to follow that decision till the Supreme Court laid down the correct principle.[3]

(viii) Decision of High Court on local statute.—In the matter of interpretation of enactments which are in force in a particular State, the Supreme Court generally attaches a good deal of value to the views of the High Court of that State particularly when they have been fully considered by it, because that court is expected to be sufficiently conversant with the provisions of the various local enactments.[4]

(ix) Privy Council decisions how far binding on present High Courts.—Section 8 of the Abolition of Privy Council Jurisdiction Act, 1949, attached the binding value only to the decree and order of the Privy Council and to nothing more. The reasoning and the rules laid down in the decision appear to have been deliberately excluded from such effect. The rules laid down by

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1. (1972)3 WLR 143, 147, see also, *Lt.-Col. Khajoor Singh* v. *Union of India*, (1961)2 SCR 828, 845 (Sinha, C.J.).
2. *Shrinivas Krishan Rao Kango* v. *Narayan Devji Kango*, AIR 1954 SC 379; *State of Bihar* v. *Abdul Majid*, AIR 1954 SC 245; *State of Bombay* v. *Gajanan Mahadev*, 56 Bom LR 172. *See* also *Nair Service Society, Ltd.* v. *K. C. Alexander*, AIR 1968 SC 1165.
3. *Jubilee Mills, Ltd.* v. *Commissioner of Income-tax, Bombay*, AIR 1959 Bom 51, 53.
4. *State of Gujarat* v. *Zinabhai Ranchodji Darji*, (1972)1 SCC 233, 239-240 (Grover, J.); Supreme Court of USA. See *Oklahoma Tax Commissioner* v. *Texas Co.*, 93 L Ed 721, 731 : 336 US 342 (Rutledge, J.) : Notes. *Vishnu Avatar* v. *Shiv Avtar*, 1980 UJ (SC) 619.

the previous Privy Council decisions are not continued as "existing Indian law" under Article 372 of the Constitution or under Section 18(1), Indian Independence Act, 1947, as that term does not include the declaration of a law by the Courts. The reasoning and conclusions in the Privy Council decisions, therefore, now do not have the binding force which they had before 26th January, 1950. They are, however, entitled to great respect and while they are no longer binding on the courts in this country, they still retain, like the decisions of any other country, whatever persuasive value they may intrinsically have.[1]

The final authority as far as the Government of India Act was concerned in constitutional matters was not the Federal Court, but if an appeal was entertained by the Privy Council, it was the Privy Council that was the ultimate authority. It was only when no leave was granted by the Federal Court and no special leave was granted by the Privy Council that the decision of the Federal Court became final and effect was given to it under Section 212. Where the Federal Court took a particular view in a case, and that very point came up before the Privy Council, and the Privy Council took a contrary view, it is that contrary view which must prevail under Section 212 and not the view of the Federal Court. The decision of the Privy Council was a declaration of law within the meaning of Section 212 of the Government of India Act, 1935, and was binding on all courts in India. Under Section 372(1) of the Constitution the law in force on 25-1-1950 continued in force until altered or repealed or amended by a competent Legislature or authority. Accordingly the decision of a High Court which was reversed or overruled by the Privy Council prior to 26-1-1950 ceased to be binding on the Division Bench of that High Court not only prior to 26-1-1950 but after that date as well, even though the Privy Council decision might have ceased to be binding after 26-1-1950.[2]

The judgments and orders of the Federal Court referred to in Article 374(2) of the Constitution are judgments and orders which were delivered by the Federal Court in those suits, appeals and proceedings which were transferred to the Supreme Court. The provision does not mean that all judgments of the Federal Court delivered before the Constitution have been given the same efficacy and the same binding authority as the judgment of the Supreme Court delivered after the Constitution came into force.[3]

In some cases it has, however, been held that so long as the Supreme Court does not take a different view from the view taken by the Privy Council, the decisions of the Privy Council are still binding upon the High Courts.[4]

The pronouncement of the Judicial Committee which, even if not completely binding on the High Court, is still entitled to all respect and attention which it deserves and which it has, on its own merits *ex proprio vigore*, always commanded.[5]

When a Full Bench decides a case in a particular way every previous decision which had answered the same question on a different way cannot but be held to have been wrongly decided. It is a well recognised judicial practice that when a Division Bench differs from the decision of a previous decision of another Division Bench, the matter should be referred to a larger Bench for final decision. If considerations of judicial decorum and legal propriety require that

1. *Corporation of Calcutta* v. *Director of Rationing*, AIR 1955 Cal 282. *See* also *P. Krishnamurti* v. *A. Bapanayya*, 1955 Andh Pra WR 308; *Subbareddi* v. *Govindreddi*, AIR 1949 Andhra 49.
2. *Kishen Chand* v. *Ram Bala*, AIR 1965 All 65, 68 (FB) (Desai, C.J.). Cf *Legal Remembrancer, State of West Bengal* v. *Corporation of Calcutta*, (1967)2 SCR 170 (Subba Rao, C.J.).
3. *State of Bombay* v. *Gajanan Mahadev*, 56 Bom LR 172 (DB).
4. *State of Bombay* v. *Chhagan Lal*, AIR 1955 Bom 1 : ILR 1955 Bom 203 (FB).
5. *Onkarmul Jawala Prasad* v. *Commissioner of Taxes, Assam*, AIR 1953 Assam 139.

Division Benches should not pronounce decisions of other Division Benches to be wrong, such considerations should stand even more firmly in the way of Division Benches disagreeing with a previous decision of the Full Bench of the same court.[1]

A Division Bench, to whom the case is referred back for decision in the light of answers given by the Full Bench cannot sit in judgment, as it were, over the reasonings adopted by the Full Bench in arriving at those answers. The Division Bench cannot enter into the merits of the said answers.[2]

When a Bench of the High Court gives a decision on a question of law, it should in general be followed by other Benches unless they have reasons to differ from it, in which case the proper course to adopt would be to refer the question for the decision of a Full Bench. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question and a contrary decision is given without reference to the earlier decision. The expedient course would, in such circumstances, be for the Bench hearing the case in which the same point of law is involved, to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other.[3]

(x) Court of co-ordinate jurisdiction.—Sitting as a Court of co-ordinate jurisdiction, a Court may follow any one of the two conflicting decisions given by Courts of co-ordinate jurisdiction.[4]

One of the *exceptions* to the rule, that a decision of a court of co-ordinate jurisdiction should be followed by another court similarly constituted, is that a judgment delivered, *'per incuriam'* is not binding on a Court of co-ordinate jurisdiction.

In its primary sense *'per incuriam'* means something determined through want of care. The Law Lexicon points out that the expression connotes an order obviously made through some mistake or under some misapprehension a decision or a dictum of a Judge which clearly is the result of some material oversight.

Lord Denning, M.R., made the following observations in *Broome* v. *Cassell & Co. Ltd.*[5] :

> All this leads me to the conclusion that, if ever there was decision of the House of Lords given *per incuriam*, this was it. The explanation is that the House, as a matter of legal theory, thought that exemplary damages had no place in the Civil Code, and ought to be eliminated from it; but as they could not be eliminated all together, they ought to be confined within the strictest possible limits, no matter how illogical those limits were. Yet I am conscious that, in all that I have said I may myself be at fault. Some will say that it is our duty to follow the House of Lords and not to question their decision. We are not to reason why. Ours is but to do and die. If this be so, then I turn to consider the case on the footing that we are bound by *Rookes* v. *Barnard*.[6]

In the House of Lords,[7] Lord Diplock observed :

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1. *Jai Kaur* v *Sher Singh*, AIR 1960 SC 1118, 1122-23.
2. *Abdul Shakur* v. *Kolwaleshwar Singh*, AIR 1953 All 54, 58.
3. *Jaisri Sahu* v. *Rajdewan Dubey*, AIR 1962 SC 83, 88; *Jaswant Rao* v. *State of Rajasthan*, AIR 1961 Raj 250 (FB); *Venkateshwara Rice, etc., Co.* v. *State of Andhra Pradesh*, (1972)1 SCR 346, 350 (Hegde, J.).
4. *Tatoba Ganu* v. *Tarabai*, AIR 1957 Bom 280, 284.
5. (1971)2 All ER 187, 200 (CA).
6. (1961)2 All ER 825.
7. (1972)1 WLR 645 , 724.

"It is inevitable in a hierarchical system of Courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in the Court of Appeal I sometimes thought that the House of Lords was wrong in overruling me. Eversince that time there have been occasions, of which the instant appeal itself is one, when, alone or in company, I have dissented from a decision of the majority of this House. But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted. The Court of Appeal found themselves able to disregard the decision of this House in *Rookes* v. *Barnard* [1] by applying to it the label *per incuriam*. That label is relevant only to the right of an appellate court to decline to follow one of its own decisions, not to its right to disregard a decision of a higher appellate court or to the right of a Judge of the High Court to disregard a decision of the Court of Appeal. Even if the jurisdiction of the Court of Appeal had been co-ordinate with the jurisdiction of the House and not inferior to it the label *per incuriam* would have been misused."

The doctrine of binding precedent of a co-ordinate Court is not absolute in its applicability. It does not require a Court to abdicate wholly its own judgment. It does, however, rest strongly on the principle of comity which requires uniformity of decisions of Courts and certainty about the law. Moreover the sound principle that confusion and uncertainty should, as far as possible, be avoided also requires that precedents of the nature under consideration should be respected and followed unless there is strong permissible reason for not doing so, for instance, in case of a decision delivered *per incuriam*. If contrary view expressed in earlier cases is not noticed, the decision is *per incuriam* and has no value as a precedent.[2] It is not, however, every relevant consideration or aspect or facet of a question or point for determination, about which there may have some mistake or misapprehension or which might have been overlooked by the Court which decided the question or point that can be regarded as adequate ground for treating this decision as *per incuriam*.[3] The appellate judgment, right or wrong, must be obeyed by the single Judge. He should not issue a clarificatory order suggesting that appellate Court was wrong in the construction it had placed on his judgment.[4]

(xi) Decisions of High Courts reconstituted after Constitution.—The Simla High Court is a successor and a continuation of the High Court at Lahore and the decisions of that Court ought to be followed in the application of the principle of *stare decisis* unless those decisions are manifestly erroneous.[5] With regard to the Andhra High Court, it has, however, been held that the decisions of the High Courts including the Madras High Court have only persuasive effect and will be referred to with respect in arriving at the correct principles, but they are not binding upon the Andhra High Court.[6] A decision of Division Bench of the Madras High Court delivered before 5th July, 1954, is, however, binding on the High Court of Andhra.[7]

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1. (1961)2 All ER 825.
2. *Ramarao* v. *Shantibai*, 1957 Jab LJ 147 (FB).
3. *Indian Extractions (Private), Ltd.* v. *Vyas*, AIR 1961 Guj 22, 26; *Beni Ram* v. *Ganga Sah*, AIR 1968 Pat 284; *see* also *Tribhuvandas Pursottamdas* v. *Ratilal Motilal*, AIR 1968 SC 372.
4. *Management of Oriental Mercantile Agency* v. *Presiding Officer*, (1973)26 FLR 14 (SC), *per* Chandrachud, J.
5. *Municipal Committee, Delhi* v. *Janki Das*, AIR 1954 Punj 173.
6. *Venkayya* v. *Seshayya*, AIR 1954 Andhra 29; *Subbarayudu* v. *State*, AIR 1955 Andhra 87; *Subbareddi* v. *Guntur Govindreddi*, AIR 1955 Andhra 49; *see* also *Ahammathunni* v. *Subramania Iyer*, AIR 1953 TC 283. (Decisions of former T. C. High Court are only of persuasive value for the post-Constitution High Court of T.C.).
7. *Satyanaryanamurthi* v. *Income-tax Appellate Tribunal*, AIR 1958 Andh Pra 143; *see* also *Vidyamba* v. *Lakshmi Venkayamma*, (1958)1 Andh WR 40.

The Gujarat High Court is a successor to the Bombay High Court. The Gujarat High Court is a Court of equal rank and status with the Bombay High Court prior to the appointed day (1st May, 1960) and even as a matter of sound practice, in order to avoid conflict of authority and to secure certainty, uniformity and continuity in the administration of justice the principles applicable to decisions of Courts of co-ordinate jurisdiction must be extended to the decisions of the Bombay High Court given prior to 1st May, 1960. The decisions of the High Court of Bombay given prior to 1st May, 1960, have as much binding force and effect as if they were the decisions given by the Gujarat High Court itself. A decision of a single Judge of the Bombay High Court given prior to 1st May, 1960, would have the same binding force and effect as a decision of a single Judge of the Gujarat High Court; a decision of a Division Bench of the Bombay High Court given prior to 1st May, 1960, would have the same binding force and effect as a decision of a Division Bench of the Gujarat High Court and a decision of a Full Bench of the Bombay High Court given prior to 1st May, 1960, would have the same binding force and effect as a decision of a Full Bench of the Gujarat High Court.[1]

The High Court of Mysore is not bound by the decisions of the Chief Court of Mysore and of the High Court of Mysore delivered prior to 1st November, 1956.[2]

Thd decision of a single Judge is only a persuasive and not a compelling authority.[3]

(xii) Tribunals how far bound ?—An Income-tax Tribunal cannot disregard the decision in a case. Its clear duty was to follow it irrespective of what views it might itself hold and leave it to the Commissioner to bring up the matter on a reference to the High Court, if he was so advised.[4] The decision of the superior Courts has the effect of nullifying the contrary views taken by courts or tribunals over which it has superintendence for the whole of the period that the particular law which is up for interpretation is in operation.[5]

(xiii) Quasi-judicial bodies how far bound by their own precedents?—The High Court cannot take upon itself the burden of directing the Board of Revenue as to what rulings they are bound to follow and what they are not. It is for them to decide for themselves as to what shall be the *"cursus curiae"* of that tribunal. When the Board has not followed its previous ruling it cannot be said that the order impugned had gone beyond the powers conferred on the Board of Revenue.[6]

(xiv) Application of precedents.—To understand and apply the decision of a Court, it is necessary to see what were the facts of the case which the decision was given and what was the point which had to be decided.[7]

(xv) Finding out the principle.—Prof. Goodhart reached at the following conclusion in respect of the rules propounded by him for finding the principle of a case :

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1. *State of Gujarat* v. *Gordhandas* , AIR 1962 Guj 128, 138-9 (FB).
2. *Basappa* v. *State*, AIR 1959 Mys 1 (FB) : How far Travancore High Court is bound in similar circumstances; see *Lakshmikuty Amma* v. *Madhavan Pillai*, AIR 1958 Ker 111 : ILR 1958 Ker 1.
3. *Shib Kumar* v. *Rasul Bux*, AIR 1959 Cal 302, 305; but see *Suresh Chandra Khasnabis* v. *Bank of Calcutta, Ltd.*, 54 Cal WN 832 : it is not right for any other single Judge of that Court to depart from it whatever his own views may be. The Judge may express his own views about that matter but his decision must be in accordance with the previous decision; *Kundan* v. *Sardara Ramji Lal*, AIR 1959 Punj 206 : a Judge ought in the interest of consistency to follow a decision of Court of co-ordinate jurisdiction as to the construction of an Act of the Legislature.
4. *Benoy Kumar* v. *I.T. Commissioner, West Bengal*, AIR 1954 Cal 225.
5. *Deep Chand* v. *Board of Revenue*, AIR 1966 All 412, 414 (Satish Chandra, J.).
6. *Maroti Raibhan* v. *Board of Revenue, M. P.*, AIR 1954 Nag 91.
7. *Hari Baksh* v. *Babu Lal*, 51 IA 163, 168, *per* Sir John Edge; *Nirankar Prasad* v. *Mst. Bechai*, AIR 1926 Oudh 517.

(1) The principle of a case is not found in the reasons given in the opinion.

(2) The principle is not found in the rule of law set forth in the opinion.

(3) The principle is not necessarily found by a consideration of all the ascertainable facts of the case, and the Judge's decision.

(4) The principle of the case is found by taking into account—

(a) the facts treated by the Judge as material, and

(b) his decision as based on them.

(5) In finding the principle it is also necessary to establish what facts were held to be immaterial by the Judge; for the principle may depend as much on exclusion as it does on inclusion.

Prof. Goodhart also enunciated the following rules for finding what facts are material and what facts are immaterial as seen by the Judge :

(1) All facts of person, time, place, kind and amount are immaterial unless stated to be material.

(2) If there is no opinion, or the opinion gives no facts, then all other facts in the record must be treated as material.

(3) If there is an opinion, then the facts as stated in the opinion are conclusive and cannot be contradicted from the record.

(4) If the opinion omits a fact which appears in the record, this may be due either to—

(a) oversight, or

(b) an implied finding that the fact is immaterial.

The second will be assumed to be the case in the absence of other evidence.

(5) All facts which the Judge specifically states as immaterial must be considered immaterial.

(6) All facts which the Judge impliedly treats as immaterial must be considered immaterial.

(7) All facts which the Judge specifically states as material must be considered material.

(8) If the opinion does not distinguish between material and immaterial facts then all the facts set forth must be considered material.

(9) If in a case there are several opinions which agree as to the result but differ as to material facts, then the principle of the case is limited so as to fit the sum of all the facts held material by the various Judges.

(10) A conclusion based on a hypothetical fact is a *dictum*. By hypothetical fact is meant any fact, the existence of which has not been determined or accepted by the Judge.[1]

The language of a judicial pronouncement must be understood as spoken in reference to the facts under consideration and limited in the meaning by those facts.[2] In appreciating decisions of Courts, it is necessary to remember that a case is only an authority, for the *ratio decidendi*. This principle is in constant exercise when dealing with the decisions of courts wherein a Judge gives or may give his individual opinion,[3] "Every judgment must be read as applicable to the

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1. "The *ratio decidendi* of a case" by Professor Arthur L. Goodhart of Oxford University incorporated in "Essays in Jurisprudence and the Common Law." 12—6, Cambridge University Press (1931).

2. *Brooks* v. *Marbury*, 24 US 423 : 5 Law Ed 423, *per* Marshall, C.J.; *United States* v. *Burr*., 58 US 604 quoted in *Syedunnessa Khatoon v. Amiruddin*, 41 IC 353, 357 (Cal) : ILR 45 Cal 294, 299.

3. *Sabur Bibi* v. *Ismail Shaik*, ILR 51 Cal 124 : AIR 1924 Cal 503.

particular facts proved," says Lord Halsbury in *Quin* v. *Leatham*.[1] "or assumed to be proved since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.....A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it; such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

A judicial pronouncement rendered subsequent to the ordinance of another Act cannot control the meaning of legislation passed earlier in another State.[2]

A Judgment which is rendered without considering the statutory provisions passes *sub-silentio;* it is equally well settled that a decision of the question not argued cannot be recognised as a precedent.[3]

(xvi) Decision on question of fact.—Decisions even of the highest Court on questions which are essentially questions of fact, cannot be cited as precedents governing the decision of other cases which must rest in the ultimate analysis upon their own particular facts. The general principles governing appreciation of circumstantial evidence are well established and beyond doubt or controversy. The more difficult question is one of applying those principles to the facts and circumstances of a particular case coming before the Court. That question has to be determined by the Court as and when it arises with reference to the particular facts and circumstances of that individual case. It is no use, therefore, appealing to precedents in such

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1. 1901 AC 495, 506; *see* also *Punjab Co-operative Bank* v. *Commr, I.T., Lahore*, AIR 1940 PC 230, 234, *per* Viscount Manghani; *Durga Prasad Sahu* v. *Tameshar Prasad Naik*, ILR 46 All 754 : AIR 1924 All 897, 899 (Registration : a case is an authority only for what it decided and is no authority for what it may seem to follow from the reasonings adopted in the case); *Kayastha Co.* v. *Sita Ram*, AIR 1929 All 225, 630 (execution of law); *Anand Prakash* v. *Narain Das*, ILR 53 All 239 (FB) : AIR 1931 All 162, 172 (Insolvency); *Kamta* v. *Jaduraj Kunwari*, AIR 1931 All 398 (Limitation); *Paras Ram* v. *Rex*, AIR 1949 All 274 (Penal Code); *Bagas Umariji* v. *Nathabai Uttamram*, ILR 36 Bom 146, 149 (Limitation : mortgage); *Shivasappa* v. *Nilawa*, ILR 47 Bom 110 : AIR 1923 Bom 17, 21 (Hindu Law : Adoption); *Commissioner of Income-tax, Bombay* v. *Piroj Bai*, AIR 1937 Bom 214 (Income-tax); *Khanderao Gackwar* v. *Commissioner of Income-tax, Bombay City*, AIR 1949 Bom 17, 19 [a case is only an authority for what it decides and nothing beyond that. In Hira Lal, *In re*, (1945)13 ITR 512 (Lah), the *ratio decidendi* which the Court laid down did not strictly arise out of the facts before them and was of very wide application. The so-called *ratio decidendi* was therefore merely an *obiter*]; *Raja Monindra Narain* v. *Executors*, AIR 1926 Cal 913 (Hindu Law : Shebait); *Rahumaddi* v. *Naimaddi*, AIR 1927 Cal 565, 572 (accretion to revenue estate); *Satyendra Nath* v. *Charu Chandra Majumdar*, AIR 1927 Cal 657, 658; *Shyama Charan* v. *Sricharan*, ILR 56 Cal 1135 : AIR 1929 Cal 337 (Hindu Law : Adoption); *Punjab Akhbarat and Press Co.* v. *Ogilvie*, ILR 7 Lah 179, 192 (Appeal); *Venkatsubbiah* v. *Venkatsubbamma*, AIR 1925 Mad 1032 (Appeal); *Municipal Council, Trichinopoly* v. *Venkatarama*, AIR 1931 Mad 55, 57 (Municipal Act); *Kisanlal* v. *Nathu*, AIR 1920 Nag 150 (Hindu Law : Alienation); *Abdul Ghani* v. *Mustafa Hussain*, AIR 1926 Oudh 316 (Adverse Possession); *Raj Bahadur Singh* v. *Kanhaiya Baksh Singh*, AIR 1927 Oudh 138 (Hindu widow : adverse possession); *Mohammad Azim Khan* v. *Muhammad Saadat Ali*, AIR 1931 Oudh 177, 236 (Trust : *mutawalli*); *Deo Nath Sahay* v *Lekha Singh*, AIR 1946 Pat 419 (Hindu Law : Partition); *Abdul Rahman* v. *King-Emperor*, AIR 1926 Rang 35 (Cr charges); *State of Rajasthan* v. *Shamlal*, ILR (1960)10 Raj 652 : AIR 1960 Raj 286 (SC) equally applies to Supreme Court.

   The fact that every possible argument, including the argument which is put up in the (latter) case, was, for reasons best known to those engaged in the case not advanced does not detract in any way from the authority of the decision on the specific point; *Nrisingha Charan* v. *Rajniti Prasad*, AIR 1934 Pat 292, 297.

2. *Kewal Kumar* v. *Lakshmi Narain Bansal*, AIR 1985 Del 472 (DB).

3. *Durga Prasad Banerjee* v. *Sushmita Banerjee*, (1991)2 Pat LJR 215 (Pat), referring to *A.R. Antulay* v. *R.S. Nayak*, (1988)2 SCC 602; *Municipal Corporation of Delhi* v. *Gurnam Kaur*, (1989)1 SCC 101; *Union of India* v. *Raghubir Singh*, (1989)2 SCC 754; *M/s. Good Year India Ltd.* v. *State of Haryana*, (1990)2 SCC 72 and *Md. Zainul Ansari* v. *Md. Khalil*, 1990 BLT 371 : (1990)2 PLJR 378.

matters. No case on facts can be on all fours with those of another. Therefore it serves no useful purpose to decide a case with reference to the decisions of the Court in previous cases.[1] It is not proper to rely upon one or two sentences in a judgment without reference to the facts of the case.[2] It must be remembered that it will be a manifest abuse of judicial precedents to apply isolated *dicta* from a judgment to a case where the facts are in essential particulars different.[3]

Reports of cases can be referred to as precedents but if an order is meant to be operative in a particular case, that order must be produced and filed in the record of that case.[4]

Mere precedents are not by themselves a sufficient guide. The wordings of the sections must be examined and if on a reasonable construction a more desirable and equitable view can be taken, it should be taken. Mere technicalities ought not to prevail.[5]

A decision under an Act is not a safe guide to the decision of a question under another statute not *in pari materia* therewith.[6] Observations made with reference to the construction of one statute cannot be applied with reference to the provisions of another statute[7] which is not *in pari materia* with the statute which forms the subject-matter of the previous decision.[8] If a statute creates new circumstances which render the earlier decision inapplicable, the effect must be to evade the earlier decision of the Court. The earlier decision then cannot operate because the new statute alters the circumstances to which the old decision applied, and as the cause of action is different, the earlier decision ceases to play a part.[9]

In election cases the parties are not agitating a common law right nor *iatio decidendi* and are distinguished from them under the name of *dicta* or *obiter dicta*, things said by the way."[10] "I am extremely reluctant to decide anything" said Bowen, L.J., in *Cooke* v. *New River Company*,[11] "except what is necessary for the special case, because I believe by long experience the judgements come with far more weight and gravity when they come upon points which the Judges are bound to decide, and I think that *obiter dicta*, like proverbial chickens of destiny, come home to roost sooner or later in a very uncomfortable way to the Judges who have uttered them, and are a great source of embarrassment in future cases." It is, of course, a perfectly familiar doctrine that *obiter dicta*, though they may have great weight as such, are not conclusive authority, *obiter dicta* in this context mean what the words literally signify, namely, statements by the way. If a Judge thinks it desirable to give his opinion on some point

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1. *Prakash Chandra* v. *State of U. P.*, AIR 1960 SC 195, 197-8; *Mood* v. *Dumond*, 93 L Ed 865, 892 : 336 US 525 (Frankfurter, J. dissenting); *H. R. Gokhale* v. *Bharucha Noshir*, AIR 1969 Bom 177, 186 (Vimadalal, J.).
2. *Krishnaswami* v. *Thirumalai*, AIR 1926 Mad 101, 104; *Kannan* v. *Avvulla Haji*, ILR 50 Mad 403 : AIR 1927 Mad 288, 289; *Prem Chand Roy Chand & Son* v. *Moti Lal*, AIR 1951 Bom 249.
3. *Shiv Shankar* v. *Kali Ojha*, AIR 1929 Pat 392, 395 : ILR 8 Pat 471.
4. *Girendra Nath* v. *Kedar*, AIR 1925 Cal 966, 969; *Sourindra Mohun Tagore* v. *Siromoni Debi*, ILR 28 Cal 171, 176 : No cognizance could be taken of such an order is said to have been passed in the report of the *Calcutta Weekly Notes*.
5. *State* v. *Mangilal*, AIR 1952 MB 161.
6. *M.P.M. Industry* v. *Regional Labour Commissioner*, AIR 1958 Bom 332.
7. *Ahmedabad Manufacturing and Calico Printing Co. Ltd.* v. *S. G. Mehta*, AIR 1963 SC 1436.
8. *Lilavati Bai* v. *Bombay State*, AIR 1957 SC 521, 527 : 1957 SCR 721; *S. N. Mukerji* v. *State of West Bengal*, AIR 1958 Cal 510, 516.
9. *Anwar Khan Mehboob & Co.* v. *State of Madhya Pradesh*, (1966)2 SCR 40, 50 (Hidayatullah, J.).
10. Salmond : *Jurisprudence*, 10th Ed. at p. 192, also *see* at p. 180 : "Judicial *Dicta*, that is to say, statements of law which go beyond the occasion, and lay down a rule that is irrelevant to the purpose in hand, or is stated by way of analogy merely, or is regarded by a later Court as being unduly wide."
11. (1888)38 Ch D 56, 70-71. "An opinion given in Court, if not necessary to the judgment given of record, but that it might have been as well given if no such, or a contrary opinion had been broached, is no judicial opinion, nor more than a *gratis dictum*"; *Bole* v. *Horton*, 1673 Vaughan's Reports at p. 382, quoted by Allen : *Law in the Making*, 6th Ed. at p. 205.

which is not necessary for the decision of the case, that, of courses it an action in equity. The rights of the parties are those conferred by the concerned statutes, nothing more or nothing less. Hence cases arising under somewhat different statutes will not be substantial assistance unless the relevant provisions are *in pari materia* with the provisions in question.[1] Uttar Pradesh High Court (Amalgamation) Order and Presidential Order under Section 51(2) of the States Reorganisation Act are *pari materia* and interpretation by the Supreme Court in *Nasiruddin* v. *State Transport Appellate Tribunal*,[2] is applicable to the Presidential Order.[3]

(xvii) Obiter dicta.—*Dictum* is an observation as to the law made by a Judge in the course of a case, but not necessary to its decision and is often called *obiter dictum*, *'a* remark by the way'.[4] The Court, as a rule, does not decide questions which are not necessary for determining or resolving the actual controversy arising in the case. Such opinions partake of the nature of *obiter*.[5] "In the course of the argument and decision of a case many incidental considerations arise which are (or should be) all parts of the logical process, but which necessarily have different degrees of relevance to the central issue. Judicial opinions upon such matters, whether they be merely casual, or wholly gratuitous, or (as is far more usual) of what may be called collateral relevance, are known as *obiter dicta*, or simply *dicta*."[6] "Although it is the duty of Courts of Justice to decide questions on principle if they can, they must take care in the formulation of principles to limit themselves to the requirements of the case in hand. That is to say, they must not lay down principles which are not required for the due decision of the particular case, or which are wider than is necessary for this purpose. The only judicial principles which are authoritative are those which are thus relevant in their subject-matter and limited in their scope. All others, at the best, are of merely persuasive efficacy. They are not true *r*, has not the binding weight of the decision of the case and the reasons for the decision.[7] *Obiter dicta* may be respected but ought not to control the judgment in a subsequent suit when the very point is presented for decision.[8]

(xviii) Modern and old dicta.—"I never allow my construction," observed Jessel, M. R., in *Ex parte* Willey, *In re* Wright,[9] "of a plain enactment to be biased in the slightest degree by any

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1. *S. B. Javare Gowda* v. *Lakki Gowda*, AIR 1958 Mys 73, 76.
2. AIR 1976 SC 331.
3. *Abdul Taiyab Abbas Bhai* v. *Union of India*, 1976 Jab LJ 706 (FB).
4. *See* Wharton : *Law Lexicon*, 14th Ed. at p. 328. *Obiter dictum* is described as a 'dictum of a Judge on a point not directly relevant to the case before him' in West and Neave, *Law Dictionary*, 3rd Ed. at p. 228. It is an expression of opinion (formed) by a Judge on a question immaterial to the *ratio decidendi* and unnecessary for the decision of the particular case; *Law Lexicon* by Iyer at p. 892.
5. *Kunjukutty* v. *State of Kerala*, (1972)2 SCC 364, 382 (Dua, J.).
6. Allen : *Law in the Making*, 4th Ed. at p . 227.
7. *Flower* v. *Ebbio Wale Steel Iron and Coal Co.*, (1934)2 KB 132, 154; *Sheikh Dawood* v. *Collector of Central Excise*, AIR 1961 Mad 1 (FB); *Kundan Singh* v. *Suraj Prakash*, AIR 1968 All 94; see *Sheikh Abdul Rehman* v. *Jagat Ram Aryan*, AIR 1969 J & K 16 (*Obiter dicta* of the Supreme Court are binding on the High Court under the Constitution of India (Article 141). *See* also *Hiranandani, K. G.* v. *Bharat*, AIR 1969 Bom 373 (must be accepted unless they are mere passing observations). Full Bench decision always binding until overruled; *Pannain Chand* v. *Subhakaran*, AIR 1969 Cal 547. Courts lay down only law with reference to the facts of each case. Any observation made in the course of the judgment must be read along with the facts; *Kundan Singh* v. *Suraj Prakash*, AIR 1968 All 94.
8. *Williams* v. *U. S.*, 77 L Ed 1372, 1378 : 289 US 553 (Sutherland, J.), following C. J. Marshall in *Cohen* v. *Virginia*, 5 L Ed 257, 299.
9. (1883)23 Ch D 118, 127, 128, Sir George Jessel has pointed out in *Quilter* v. *Heatly* and in *Ex parte Willey*, "what I think everyone must agree in the inexpediency of deciding any case upon the authority of the *dicta* of modern Judges. There are old *dicta* of great Judges, which have been followed by many decisions and have become maxim of the law, but modern *dicta* are but attempts to embody, in a short form, the results of decisions on statutes which any lawyer can examine for himself"; *per* Kay, L.J. in *Dashwood* v. *Magniac*, (1891)2 Ch 306, 376.

number of judicial decisions or *dicta* as to its meaning, when those decisions or *dicta* are not actually binding upon me. I read the Act for myself. If I think it clear I express my opinion about its meaning as I consider I am bound to do. Of course, if other Judges have expressed different views as to the construction, and their decisions are binding on this Court, this Court has simply to bow and submit, whatever its own opinion may be. But when there is no such binding decision, in my view a Judge ought not to allow himself to be biased in construction of a plain Act of Parliament (for it appears to me to be plain) by any number of *dicta* or decisions which are not binding on him. The Judge ought, with all due respect, to examine into them, but he must not allow any number of *dicta* or even decisions which are not binding on him, to affect his judgment except in one peculiar case. That case is peculiar, and, therefore, I will mention it. Where a series of decisions of inferior courts have put a construction on an Act of Parliament, and have thus made a law which men follow in their daily dealings, it has been held, even by the House of Lords, that it is better to adhere to the course of the decisions than to reverse them, because of the mischiefs which would result from such a proceeding. Of course that requires two things, antiqutiy of decision and the practice of mankind in conducting their affairs."

Decision though on a point not in issue but necessary for points in issue is not *obiter*.[1]

(xix) Obiter dicta and ratio decidendi.—An *obiter dictum* is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and a point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the tribunal. Two questions may arise before a Court for its determination. The Court may determine both although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for the determination of the case would be the *'ratio decidendi,'* and the opinion of the tribunal on the question which was not necessary to decide the case would be only an *obiter dictum*.[2]

(xx) Decision of two or more co-ordinate and decisive points.—It frequently happens that the contentions raised by the plaintiff require two or more separate decisions in the same judgment. Thus a plaintiff may allege—

(a) that he is the duly elected mayor of a town;

(b) that by virtue of that office he is entitled to possession of certain property; and

(c) that the defendant is in fact in possession of the property claimed; and he may ask for a decree for possession.

The Court may decide all the three points, holding—

(a) that the plaintiff is not the mayor of the town,

(b) that the holding of the mayorship would not entitle him to the property claimed, and

(c) that the defendant is not in possession.

The legal decision of the rights of the mayor (if decided after argument) does not become *obiter dictum* merely because the decision on the other two points was sufficient to decide the case.[3] In *Annamalai* v. *Lakshmanan*,[4] the counsel for the respondent characterised the opinion expressed in the case quoted by the appellant's counsel as an *obiter dictum*. Wadsworth, J.,

1. *Dila Ram* v. *Bidhya Ram*, AIR 1927 Lah 259.
2. *Mohandas Issardas* v. *A. N. Sattanathan*, AIR 1955 Bom 113, 115.
3. *Ram Khelawan Sahu* v. *Bir Surendra Sahi*, ILR 16 Pat 766 : AIR 1938 Pat 22, 24 (FB).
4. AIR 1939 Mad 433,'434. Where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*; *Woods* v. *Intestate Realty Co.*, 337 US 535 : 93 L Ed 1524 ; *U. S.* v. *Title Ins. and T. Co.*, 265 US 472, 486 : 68 L Ed 1110, 1114; *Massachusetts* v. *U.S.*, 333 US 611, 623 : 92 Ed. 968, 977.

observed thereupon : "I doubt whether this description is legitimate regarding a decision on one of the two points decided in a case, merely because the other point, which was taken up first, was itself sufficient to dispose of the case. The learned Judges discuss both the contentions and, in spite of having given a decision on the first contention which makes it unnecessary to decide the second contention, they do definitely give a decision on the question in which we are now interested, which was a question which arose for decision and would have been sufficient to dispose of the case if the decision on the first point had been otherwise. Such a decision cannot, in my opinion, be correctly described as an *obiter dictum*." Referring to *Cotton* v. *Reg.*,[1] on the objection that the *dictum* was not necessary for the decision, Lord Phillimore observed in *Burland* v. *The King*[2] : "The decision that the statute was *ultra vires* was in no sense a wayside *dictum* ; it was just as complete and fundamental as the decision that bore on the construction of the statute; the words used in the judgment itself make this clear. After stating the nature of the two questions in these words : 'These are the two questions which this Board has to resolve, and though it may well be that the decision of one of these questions in favour of the appellants might render it unnecessary to decide the other, their Lordships are of opinion that they are of co-ordinate importance in the case and that they should have their judgment equally on the answers to be given to the one and to the other'." Of course, where there are two grounds upon either of which the judgment of the trial Court can be rested, and the appellate Court sustains both, the ruling in neither is *obiter*, but each is the judgment of the Court, and of equal validity with the other . Whenever a question fairly arises in the course of a trial, and there is a distinct decision of that question, the ruling of the Court with respect thereto can, in no just sense, be called mere *dictum*.[3] But where a case is decided by the High Court on the ground of want of jurisdiction in the High Court, the remarks of the High Court in the judgment are no better than *obiter dicta*.[4]

(xxi) Dicta of various kinds.—"*Dicta* are of different kinds and of varying degrees of weight. Sometimes they may be called almost casual expressions of opinion upon a point which has not been raised in the case, and is not really present to the Judge's mind. Such *dicta*, though entitled to the respect due to the speaker, may fairly be disregarded by Judges before whom the point has been raised and argued in a way to bring it under much fuller consideration. Some *dicta*, however, are of a different kind ; they are, although not necessary for the decision of the case, deliberate expressions of opinion given after consideration upon a point clearly brought and argued before the court. It is open, no doubt, to other Judges to give decisions contrary to such *dicta*, but much greater weight attaches to them than to the former class."[5] The doctrine of *obiter dicta* cannot be so far extended as to make the Courts bound by any and every expression of

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1. 1914 AC 176. In *Jacobs* v. *London County Council*, (1950)1 All ER 737, 741, Lord Simonds, after referring to *Folkes* v. *Kings*, (1923)1 KB 282, quoted the observations of Greer, L.J., in *London Jewellers. Ltd.* v. *Attenborough*, (1934)2 KB 206, 222 : "In that case two reasons were given by all the members of the Court of Appeal for their decision and we are not entitled to pick out the first reason as the *ratio decidendi* and neglect the second or to pick out the second reason as the *ratio decidendi* and neglect the first; we must take both as forming the grounds of the judgment.
2. (1922)1 AC 215 at p. 225 (PC).
3. *Union Pacific Railroad Co.* v. *Mason City, etc. Co.*, 50 L Ed 134, 137 (Brewer, J.); *Florida C. R. Co.* v. *Schutte*, 103 US 118 : 26 L Ed 327 in which US Supreme Court said :
   "It cannot be said that a case is not authority on one point, because although that point was properly presented and decided in the regular course of the consideration of the cause, something else was found in the end which disposed off the whole matter.
4. *Ram Nath* v. *King-Emperor*, AIR 1925 All 230, 232 : ILR 47 All 268 : If a Judge states two grounds for his judgment and bases his decision upon both, neither of those grounds is a *dictum*; *Cheater* v. *Cator*, 1918 KB 247, 252.
5. Lord Sterndale, M.R. in *Slack* v. *Leeds Industrial Co-operative Society*, (1923)1 Ch 431, 451, reversed in (1942)2 Ch 475 and 1924 AC 851.

opinion either of the Privy Council or of the Supreme Court whether the question did or did not arise for the determination of the higher judicial authority.[1] There is a real distinction between an *obiter dictum* of a Superior Court and a *prima facie* view taken by the Superior Court. A *prima facie* view expressed on any question of law by a Judge is only his tentative view based on first impression whereas his *obiter dictum* is an expression of his definite opinion, though it was not necessary for the decision of the case before him.[2] "*Dicta* by Judges", observed Lord Haldane, in *Carnelius* v. *Phillips*,[3] "however eminent, ought not to be cited as establishing authoritatively propositions of law unless these *dicta* really form integral parts of the train of reasoning directed to the real question decided. They may, if they occur merely at large, be valuable for edification, but they are not binding." The Courts in India must not depart from a long consistent course of decision simply on the basis a *dictum* or a supposed *dictum* of their Lordships themselves on a matter which was not directly necessary for their Lordships to decide in the case.[4] Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand have no binding authority on another Court though they may have some merely persuasive efficacy.[5] The general observations of their Lordships of the Supreme Court too are entitled to great weight.[6]

(xxii) Of Privy Council.

In *Mata Prasad* v. *Nageshar Sahai*,[7] their Lordships of the Privy Council observed : "In view of the peculiar course adopted by the Subordinate Judge in dealing with this case, and in order to prevent other courts in India from falling into the same error, their Lordships think it desirable to point out that it is not open to the Courts in India to question any principle enunciated by this Board, although they have a right of examining the facts of any case before them to see, whether and how far the principle on which stress is laid applies to the facts of the particular case." It is a moot point now as to whether the *obiter dicta* of the Privy Council should be as binding as before on the Courts in India, as the latter cease now to be subordinate to the Privy Council.

It was held in *Atma Ram* v. *Pandu*,[8] that where different views of a point of law were possible, that expressed by the Privy Council, even *obiter*, must undoubtedly be accepted. In *Ramparikha Pande* v. *Mst. Ramjhari Kuer*,[9] Wort, J., observed in respect of a decision of the Privy Council : "Apart from the bare statement that it was an action for the recovery of the balance of an unpaid consideration, we have no details regarding this point and quite clearly it

1. *Mohan Das Issardas* v. *A.N. Sattanathan*, AIR 1955 Bom 113, 116.
2. *Smt. Haramani and another* v. *Dinabandhu Misra*, AIR 1954 Orissa 54.
3. 1918 AC 199, 211 followed in *Arimugham Chetty* v. *Muthu Koundan*, ILR 42 Mad 711, 734 (FB); *see* also *Sheonarain* v. *Nathu*, AIR 1922 Nag 1, 7. Their Lordships of the Privy Council approved the Madras case cited above in *Brij Narain* v. *Mangla Prasad*, AIR 1924 PC 50, 53.
4. *Anand Prakash* v. *Narain Das*, ILR 53 All 239 : AIR 1931 All 162, 172 (FB), *per* Mukerji, J.
5. *In re* Mahaliram Ramjeedas, AIR 1938 Cal 557, 560.
6. *Brij Sunder* v. *Election Tribunal*, AIR 1951 Raj 189, 197.
7. AIR 1925 PC 272, 279; *see* in this connection *Jokhu* v. *Mata Prasad*, AIR 1925 Oudh 94, 95; *Yamuna Bai* v. *Jamuna Bai*, AIR 1929 Nag 211, 212; *In re* Tushar Kanti Ghosh, AIR 1935 Cal 419, 442 (FB), *per* Mukerji, J. *Surendra Nath Basu* v. *Radharani Debi*, ILR (1940)2 Cal 41 : AIR 1940 Cal 317, 320; *In re* Benaras Bank, Ltd., AIR 1940 All 544, 550 (FB); *Hoshide* v. *Emperor*, AIR (1940)1 Cal 231 : AIR 1940 Cal 97, 101; *Kalidas Rakshit* v. *Saraswati Dasi*, ILR (1942)2 Cal 268 : AIR 1943 Cal 1, 9; *Shiva Prasad Singh* v. *Shrichandra*, ILR 22 Pat 220 : AIR 1943 Pat 327, 334; *Rama Appa* v. *Tippaya Appaya*, AIR 1943 Bom 95, 97, following *Shrinivas Sarjerav* v. *Balwant Venkatesh*, ILR 37 Bom 513; *Narmadabai* v. *Hidayatalli*, AIR 1949 Bom 115, 118; *Mahadeo* v. *Ranbir Singh*, AIR 1944 Lah 220, 237 (FB). [The majority decision appears to be wrong, *vide* 47 PLR 1 (Journal)]; *S.C. Das Gupta* v. *Burma Railways Co.*, AIR 1921 LB 37, 41.
8. AIR 1926 Nag 154, *per* Hallifax, A.J.C.
9. ILR 15 Pat 753 : AIR 1937 Pat 44, 46.

is not open to us to hold that a decision which was expressly directed to one point and one point only, could be considered as decision for a point which, as I have already stated, was not discussed."

(xxiii) Of the Supreme Court.—The Supreme Court is the highest judicial tribunal in India today and it is as much necessary in the interest of judicial uniformity and judicial discipline that all the High Courts must accept as binding the *obiter dicta* of the Supreme Court in the same spirit as the High Court accepted the *obiter dicta* of the Privy Council.[1] The *obiter dicta* of the Supreme Court are entitled to considerable weight.[2] "Every observation of this Court" observed, Hegde, J. in *Madhav Rao* v. *Union of India*,[3] "is no doubt, entitled to weigh but an *obiter* cannot take the place of the ratio. Judges are not oracles. In the very nature of things, it is not possible to give the same attention to incidental matters as is given to the actual issues arising for decision. Further much depends on the way the case is presented to them."

An *obiter dictum* of their Lordships of the Supreme Court is entitled to the highest respect and is binding on all the Courts of the country.[4] Such *obiter dicta* even in a dissenting judgment are entitled to high respect, especially if there is no direct decision to conclude the question at issue.[5]

In the absence of a contrary decision by the Supreme Court, even *obiter dicta* of the Privy Council are binding on the Indian Courts.[6] They deserve, in any case, our careful consideration.[7]

Where there is a conflict in judicial construction or interpretation in two decisions of the Supreme Court, the later decision should be followed.[8]

(xxiv) Of Federal Court.—*Obiter dicta* of the Federal Court are binding on the High Court unless they make it clear by appropriate expression that the view is a tentative one.[9]

(xxv) Of Full Bench.—The opinion of the Full Bench of a High Court even though not strictly necessary for the decision of the case must carry great weight.[10] *Obiter dicta*, however, are to be read in the context in which they occur,[11] and if the reasoning is cogent and convincing

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1. *Mohandas Issardas* v. *A.N. Sattanathan*, AIR 1955 Bom 113, 115.
2. *Commissioner of Income-tax, Hyderabad,v. Vazir Sultan & Son*, AIR 1959 SC 814, 821; *Hiranandani* v. *Bharat Barrel, etc., Ltd.*, AIR 1969 Bom 373, 378 (Vimadalal, J.), unless they are in the nature of mere passing observations.
3. (1971)3 SCR 9, 193.
4. *Mahendra Pal Singh* v. *U.P. State*, AIR 1959 All 313, 314; *Veerappa Chettiar* v. *Commissioner of Income-tax*, AIR 1959 Mad 56; *Kalinath Chatterjee* v. *Nagendra Nath Chatterjee*, 62 CWN 790; *K. C. Venkatachalamayya* v. *Madras State*, AIR 1958 Andh Pra 173, 181 (FB) (but it has, in the first instance, to be an *obiter dictum*); *Basanta Kumar Pal* v. *Chief Electrical Engineer*, 62 CWN 765.
5. *Ashok Leyland, Ltd.* v. *State of Madras*, AIR 1957 Mad 263, 266.
6. *Jogindra Kumar* v. *Revenue Commissioner*, AIR 1953 Orissa 117 : ILR 1953 Cut 12.
7. *Keswananda Bharati* v. *State of Kerala, WP.*, 135 of 1970, decided on 24-4-73 (*per* Sikri, C.J.).
8. *S. P. Kackar* v. *Addl. Distt. Judge, Meerut*, 1978 All LJ 332, relying on *U. P. State Transport Corporation, Meerut* v. *State Transport Appellate Tribunal*, 1976 All LJ 683 (FB).
9. *Tayi Visalamma* v. *Tayi Jagannatha Rao*, AIR 1955 Orissa 160; *Province of Madras* v. *Paidana*, ILR 1941 Mad 784 : AIR 1941 Mad 913 , 916.
10. *Bijoy Singh Dudhurai* v. *Krishna Behari Biswas*, ILR 45 Cal 259, 268; *Sripal Singh* v. *Jagdish Narayan*, AIR 1921 Oudh 217, 219; *Peoples Bank* v. *Wahid Bux*, ILR 1943 Lah 646 : AIR 1943 Lah 170, 172 [the decision appears to be wrong otherwise, *vide* 47 PLR 3 (Journal), *Sankaralingam* v. *Velucharmi*, ILR 43 Mad 309 : AIR 1943 Mad 43, 45 [statement of a learned Chief Justice delivering the judgment of a Full Bench is entitled to a great weight); *Dhanukdhari* v. *Ramadhikari*, ILR 12 Pat 138 : AIR 1933 Pat 81, 83 (*obiter dictum* of a Division Bench must be treated with respect)].
11. *Municipal Board, Mathura* v. *Dr. Radha Ballabh*, AIR 1949 All 301, 303.

it must be followed.[1] Where a Full Bench of say three Judges is inclined to differ from the opinion expressed previously by another Full Bench of three Judges, the better course would have been to constitute a larger Bench. Such a course becomes necessary in view of the fact that otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another, both equally binding upon them.[2]

(xxvi) Of other High Courts.—The Courts should ordinarily follow a decision of another High Court in matters such as income-tax where it is desirable to lay down a common policy. But where the wording of the section is not clearly in favour of a decision against the tax-payer and it is, to say the least, a case of doubt, the statute has to be interpreted in favour of the subject when the Court is dealing with a case of fiscal enactment.[3]

(xxvii) Of other countries.—It would be unwise to refer to decisions of courts of countries other than India in order to interpret the section, say of Industrial Disputes Act, unless of course the provisions are shown to be exactly the same.[4] Cases in the English Courts of chancery have no application to the law of India as laid down in the Evidence Act.[5]

(xxviii) Reports of cases and their binding effect.—A certified true copy of the decision of the High Court is binding on the Court inferior thereto.[6] Where a Subordinate Judge considered that he was bound to follow without question a view expressed in a judgment of Nagpur Judicial Commissioner's Court which had been officially published in the *Nagpur Law Reports*, Hallifax, A.J.C. of that Court in *Muralidhar* v. *Anand Rao*,[7] observed : "That is not so. An opinion so expressed even without reasons is entitled to respect, and any examination of it ought to start with the assumption that it is correct and has good reasons behind it. But it is not to be followed blindly, like one that is officially published, though good reasons must be found for not following it." Judges of the subordinate Courts should only fall back on unofficially reported cases when they can find no officially reported ruling on the point in issue.[8] If there is conflict between the rulings of the same High Court, and one of them is reported in the authorized reports, whilst the other is not, the subordinate Courts ought to follow the former which is reported in the authorized Law Reports.[9]

(xxix) Change of judicial construction.—The true rule is to give a change of judicial construction, in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment, that is to say, make it prospective. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is, to all intents and purposes, the same in its effect on contracts

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1. *Emperor* v. *Kalu*, AIR 1933 Lah 159, 160; *see* also *Sheikh Abdul Rehman* v. *Jagat Ram Aryan*, AIR 1969 J & K 16; *Karim Bux* v. *State of Jammu and Kashmir*, AIR 1969 J & K 77.
2. *Atma Ram* v. *State of Punjab*, AIR 1959 SC 519, 527.
3. *City Tobacco Mart* v. *I. T. Officer*, AIR 1955 Mys 49.
4. *State of Bihar* v. *Deodar Jha*, AIR 1958 Pat 51, 56 (Banerji, J.); *Babhut Mal* v. *Laxmibai*, 1972 Mah LJ 382, 387 (Bhasme, J.); Rent Control, *see* also *Dominion of India* v. *Preety Kumar*, AIR 1958 Pat 203, 209 (C. P. Sinha, J.): English cases, having no reference to any principles of English Law.
5. *Belapur Co., Ltd.* v. *Maharashtra State Farming Corporation*, AIR 1969 Bom 231 (Vimadalal, J.)
6. *State* v. *Ramjee Vithal*, AIR 1958 Bom 381 : ILR 1958 Bom 505.
7. AIR 1925 Nag 414 : 8 NLJ 153; *Lachmi Narayan* v. *Dharamchand*, AIR 1926 Nag 396, 398; *Secretary of State* v. *Nandlal*, AIR 1928 Nag 52; *Nur Mohammad* v. *Rehman*, 28 NLR 116 : AIR 1932 Nag 137 (2); *Maung Chit Tun* v. *Ma Pwa Sein*, AIR 1934 Rang 39.
8. *Bandeally Jaffar* v. *S. M. Peer Mohammad*, AIR 1933 Rang 75, 76.
9. *M. S. M. M. Chettyar Firm* v. *Maung Chit*, AIR 1931 Rang 279; *see*, however *Cathrineholm* v. *Nor Equipment Trading Co.*, (1972)2 WLR 1242, unreported case followed in preference to reported one.

as an amendment by means of a legislative amendment.[1]

(xxx) Effect precedent when overruled.—A precedent overruled is definitely and formally deprived of all authority. It becomes null and void, like a repealed statute, and a new principle is authoritatively substituted for the old.[2]

(xxxi) Question of fact.—Reference to reported case can only be by way of illustration, as each case has its own peculiar facts and it is always risky to appeal to precedents on questions of fact.[3]

18. Stare decisis.—People in arranging their affairs are entitled to rely on a decision of the highest Court which appears to have prevailed for considerable length of time and it would require some exceptional reason to justify its reversal when such reversal is likely to create serious embarrassment for those who had acted on the faith of what seemed to be the settled law. Where the meaning to the statute is ambiguous and capable of more interpretations than one, and one view accepted by the highest Court has stood for a long period during which many transactions, such as dealings in property and making of contracts, have taken place on the faith of that interpretation, the Court would ordinarily be reluctant to put upon it a different interpretation which would materially affect those transactions. It is relevant to consider also when the Act has been amended in some other respects.[4] When the Supreme Court decides question of law, its decisions are, under Article 141 of the Constitution, binding on all Courts within the territory of India, and so, it must be constant endeavour and concern of the Supreme Court to introduce and maintain an element of the certainty and continuity in the interpretation of law in the country. Frequent exercise by the Supreme Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. This is not to say that, if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error, but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity among its members that a revision of the said view is fully justified. So too where public interest demands that the previous decision should be reviewed and reconsidered, the doctrine of *'stare decisis'* shall be no fetter to the Supreme Court to overrule an earlier decision, if it is found that such decision is manifestly wrong or proceeds on a mistaken assumption in regard to the existence or continuance of a statutory provision or contrary to another decision of the Supreme Court.[5] Among other considerations, the following considerations are to be borne in mind :

> "On the earlier occasion did some patent aspect of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of the Court bearing on the point not noticed?"[6]

In *Corpus Juris Secundum* (at p. 302, para 187) :

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1. *Douglas* v. *Pike County*, 25 L Ed 968, 971 (Waite, C.J.).
2. Salmond : *Jurisprudence*, 10th Ed. at p. 189, quoted in *Gangappa* v. *State of Madras*, AIR 1957 Andh Pra 447, 449.
3. *Gurcharan Singh* v. *State of Punjab*, AIR 1956 SC 460; *Shivajirao* v. *Bapurao*, AIR 1957 MP 174, 175.
4. *Gajanan* v. *Brindaban*, (1971)1 SCR 657, 669 (Dua, J.); *Nirshi Dhobin* v. *Sudhir Kumar*, (1969)1 SCR 469, 471 (Hegde, J.).
5. Vide *C.B. Distributors (Baroda) Pvt. Ltd.* v. *Union of India*, AIR 1985, SC 1585, overruling AIR 1979 SC 1691.
6. *Keshav Mills* v. *Commissioner of Income-tax, Bombay*, (1965)2 SCR 908, 921 (Gajendragadkar, C.J.), followed in *Pilani Investment Corporation, Ltd.* v. *I.T.O., Calcutta*, (1972)1 SCC 122, 124 (Sikri, C.J.); *see* also *Bengal Immunity Co.* v. *State of Bihar*, (1955)2 SCR 603 (Das, Acting C.J.); *Legal Remembrancer, West Bengal* v. *Corporation of Calcutta*, (1967) 2 SCR 170, 176 (Subba Rao, C.J.); *Shambhu Nath Sarkar* v. *State of West Bengal*, (1973)1 SCC 856, 872 (Shelat, Acting C.J.).

"Under the *stare decisis* rule, a principle of law which has become settled by a series of decisions generally is binding on the Courts and should be followed in similar cases. This rule is based on expediency and public policy, and although generally it should be strictly adhered to by the Courts, it is not universally applicable."

The *Corpus Juris Secundum*, however, adds a rider (at p. 322, para 198) that :

"Previous decisions should not be followed to the extent that grievous wrong may result, and accordingly the Courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of *stare decisis* is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the Court and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result."[1]

"It is better the law should be certain," said Lord Eldon, in *Sheddon* v. *Goodrich*,[2] "than that every Judge should speculate upon improvements in it." "It is extremely dangerous to shake the authority of decided cases," opined Lord Ellenborough, C.J., in *Moorson* v. *Kymer*.[3] When an old decided case has made the law on a particular subject, the Court of appeal ought not to interfere with it, because people have considered it as establishing the law and have acted upon it.[4] Jessel, M. R. observed in *In re* Bethlehem Hospital[5] :

"Assuming that a Judge thinks the construction to be clear one way, but a series of authorities is produced, being decisions of Judges of co-ordinate jurisdiction, the other way, there must be a time at which the Judge is bound by them. If one authority were produced to me, and may own opinion were the other way, I would not follow that authority : but if the authorities were numerous, I admit that I must be bound." Thesiger, L.J. delivering the opinion of the Court (James, Cotton and Thesiger, L. JJ.), in *Pugh* v. *Golden Valley Rail Co.*,[6] remarked : "Viewed simply as the decision of a Court of first instance, the authority of this case, notwithstanding the respect due to the Judges who decided it, is not binding upon us; but viewed in its character and practical results, it is one of a class of decisions which acquire a weight and effect beyond that which attaches to the relative position of the

1. Quoted in *Maktul* v. *Manbhari*, 1959 SCR 1099, 1108-09 : AIR 1958 SC 918, 922-23 (doctrine held inapplicable in the custom case in question).
2. 32 ER 441.
3. (1814)2 M. & S. 303, 312.
4. *Smith* v. *Keal*, (1882)9 QBD 340, 352.
5. (1875) LR 19 Eq 457, 459 460, "There is another consideration which always has weight with me. When the law is settled it gets into the text-books, which are a very considerable guide to practitioners"; *Wallis* v. *Smith*, (1882)21 Ch D 243, 265, "Where a series of decisions of inferior Courts have put a construction on an Act of Parliament, and have thus made a law which men follow in their daily dealings, it has been held even by the House of Lords, that it is better to adhere to the course of decisions than to reverse them, because of the mischief which would result from such a proceeding. Of course that requires two things, antiquity of decision and the practice of mankind in conducting their affairs." Jessel, M.R., in *Ex parte* Willey, *In re* Wright, (1883)23 Ch D 118, 127, 128.
6. (1880)15 Ch D 330, 334. "When there is a decision which has stood for more than two hundred years in respect of a subject-matter constantly arising in practice, the court does not overrule it unless absolutely obliged to do so; more specially, when the law as laid down by that decision has been handed down for long period through a series of text-books by careful writers, and the general principle on which the decision was founded has often been recognised by eminent Judges. In such a case even if the Court did not agree with the decision, it would not overrule it." *Hadder* v. *Williams*, (1895)2 QBD 663 at p. 665, *per* Lord Esher, M.R.; *see* also *Lewin* v. *Civil Service Supply Association Ltd.*, (1905)1 KB 669, 676, *per* Romer, L.J. (sixty years).

Court from which they proceed. It constitutes an authority which, after it has stood for so long a period unchallenged, should not, in the interests of public convenience, and having regard to the protection of private rights, be overruled by this Court except upon very special considerations. For twelve years and upwards the case has continued unshaken by any judicial decision or criticism as an authoritative exposition of the meaning of Section 16 of the Railways Clauses Consolidation Act, 1845, in respect of the matter here in dispute. During such period hundreds of special Acts of Parliament have been passed sanctioning the construction of lines of railways and the consequent interference with private rights, and incorporating for that purpose the provisions of the general Act. Promoters must have sought their powers, landowners must have regulated their course of action, and parliamentary committees must have given their sanction to the projects submitted to them upon the faith and footing of a limit to the powers sought and conceded being found in the provisions of the general Act as interpreted from time to time by judicial decisions.....To put the matter in another shape, the Courts should be careful not to overrule decisions which, not being manifestly erroneous and mischievous, have stood for some time unchallenged, and from their nature and the effect which they may reasonably be supposed to have produced upon the conduct of a large portion of the community, as well as of Parliament itself, in matters affecting the rights of property, may fairly be treated as having passed into the category of established and recognised law."

This principle of abiding by authorities or cases already adjudicated upon otherwise known as *stare decisis* was not, and indeed could not be, settled until the nineteenth century in England. Being a salutary principle it has been applied in India.[1]

(i) Communis error facit jus.—The same principle is justified on the basis of the *maxim communis error facit jus* (common error sometimes passes current as law). Where a decision of the Courts, originally wrong, or an erroneous conception of the law, especially of real property, has been made, for a length of time, the basis upon which rights have been regulated and arrangement as to property made, the maxim *communis error facit jus* may be applied.[2] Indeed, this is strictly in accordance with the view of Lord Ellenborough..... and it will be found that, where the Courts of Justice have declined to correct misconceptions of longstanding, the reluctance has been due to a wholesome fear of interference with rights based upon them.[3] In *Bourne* v. *Keane*,[4] Lord Buckmaster observed: "From these authorities I collect the following principles as applicable to such a question. *Firstly*, the construction of a statute of doubtful meaning, once laid down and accepted for a long period of time, ought not to be altered unless your Lordships could say positively that it was wrong and productive of inconvenience. *Secondly*, that decisions upon which title to property depends, or which by establishing

1. *Brij Narain* v. *Mangla Prasad*, 51 IA 129 : AIR 1924 PC 50, 55; *Mst. Attar Kuar* v. *Nikkoo*, ILR 4 Lah 356 : AIR 1924 Lah 538 (FB), *per* Shadi Lal, C.J.; *Allah Baksh* v. *Chet Ram*, ILR 45 Lah 273 : AIR 1945 Lah 123, 125 (FB). [But see *Narotam Chand* v. *Durga Devi*, AIR 1949 Lah 94, 119 (FB) (Limitation) : *cf.* AIR 1927 Mad 283 (Limitation)]; *Risal Singh* v. *Balwant Singh*, ILR 37 All 496, 509 (affirmed in 40 All 593 PC); *Abdul Razak* v. *Mohammad Ibrahim*, 14 PLR 1903; *I. T. Commissioner* v. *Kamaksha Narain*, ILR 20 Pat 13 : AIR 1940 Pat 633, 638 (SB) (Income-tax).

2. Broom's *Legal Maxims*, 10th Ed. at p. 8.

3. Broom's *Legal Maxims*, 10th Ed. at p. 87; *see* also *Palmer* v. *Johnson*, (1884)53 LJQB 348 at p. 351, *per* Fry, L.J., ".....Having regard to the high authority of the learned Judge who decided that case, and to the long period during which that decision has stood unimpeached, I think that we ought not to overrule it. Still, speaking myself, I must say, with the greatest respect, that if the question had been free from decision I am not satisfied that I should have decided it in the same way"; In re *Ravensworth* v. *Tindale*, (1905)2 Ch 1 at p. 6, *per* Sterling, L.J.

4. 1919 AC 815, 874, followed in *Re Warden and Hotchkis Ltd.*, (1945)1 AER 507, 509-510.

principles of construction or otherwise form the basis of contracts, ought to receive the same protection. *Thirdly*, decisions that affect the general conduct of affairs, so that their alteration would mean that taxes had been unlawfully imposed, or exemption unlawfully obtained, payments needlessly made, or the position of the public materially affected, ought in the same way to continue."

It is often more important that the law should be certain than that it should be ideally perfect. These two requirements are to a great extent inconsistent with each other, and we must often choose between them. Whenever a decision is departed from, the certainty of the law is sacrificed to its rational development, and the evils of the uncertainty thus produced may far outweigh the very trifling benefit to be derived from the correction of the erroneous doctrine. The precedent, while it stood unreversed, may have been counted on the numerous cases as definitely establishing the law. Valuable property may have been dealt with in reliance on it; important contracts may have been made on the strength of it, it may have become to a great extent a basis of expectation and the ground of mutual dealings. Justice may, therefore, imperatively require that the decision, though founded in error, shall stand inviolate nonetheless.[1]

(ii) Application of the doctrine.—The Court should be reluctant to dissent from the view expressed in long established decided cases and thereby not only to unsettle the law but to endanger the security of property and title, dangers which are not associated with changes brought about by legislative intervention.[2] The rule of *stare decisis* is specially important in cases of contracts relating to land.[3] Lord Loreburn dealt with the matter shortly in *Murphy* v. *Deichler*[4], "I think this case falls within the rule that it is not necessary or advisable to disturb a fixed practice which has been long observed in regard to the disposition of property, even though it may have been disapproved at times by individual Judges, where no real point of principle has been violated."

A law of limitation, which had been settled for over a decade by a Full Bench of the Industrial Court, and confined by the highest Labour Appellate Tribunal, and was just and carried out the policy of the Act, and was not departed from by the legislature when it amended the Act subsequently, should never be unsettled, even if there was some reason to accept another view judicially recognised as that would frustrate the whole policy of the Act.[5]

Where security of title will not be affected nor will injustice result, the rule does not apply.[6] "It appears to me that the principle of *stare decisis* does not come into operation where the result of departing from an incorrect view of the law and following the correct view of the law is merely this, that in dispute on subjects to which that law applies a new set of defences will be put forward in Courts. That principle is applicable only where the effect of departing from an established rule of decision will be to unsettle transactions which have been previously

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1. Salmond's *Jurisprudnce*, 10th Ed. at p. 184.
2. *Isan Chandra* v. *Saftulla Sikdar*, AIR 1922 Cal 331, 334; *Young* v. *Robertson*, (1862)4 Macqueen HC 314, 345; *Kreglinger* v. *New Patagonia Meat Co.*, 1914 AC 25; *Mecltana* v. *Comet*, 1900 AC 113; *Narasimhaswami* v. *Venktalingam*, ILR 50 Mad 687 : AIR 1927 Mad 636, 639 (FB) (gift to an idol).
3. *Dina Nath* v. *Malvi & Co.*, AIR 1930 Bom 213; *Bhola Umar* v. *Kausila*, ILR 55 All 24 : AIR 1932 All 617, 620 (FB).
4. 1909 AC 446; see also *Armugham Chetty* v. *Muthu Koundan*, ILR 42 Mad 711, 736; *Babu Sakha Ram* v. *Lahoo Sambhaji*, ILR 1936 Bom 508 : AIR 1937 Bom 279, 286; see, however, *Anant* v. *Shankar*, AIR 1943 PC 196, where Ranganekar, J.'s view is disapproved; *Tej Pal* v. *Rup Chand*, 1968 All LJ 1043.
5. *Textile Labour Association* v. *Ashok Mills Ltd.*, (1977)18 Guj LR 241 (FB).
6. *Ram Dayal* v. *Sheo Dayal*, ILR 1939 Nag 250 : AIR 1939 Nag 186 (FB); see also *Ramadhar Rai* v. *Subedar Pathak*, ILR 11 Pat 237, 239 : AIR 1932 Pat 205.

supposed to be finally settled."[1] Or if the decision cannot affect many titles and there is uniform authority of jurists contrary thereto, a wrong decision even though half a century old will be overruled.[2] Thus Mahajan, J., in *Narotam Chand* v. *Durga Devi*,[3] in considering whether by reversing the decision in *Lehna* v. *Mst. Thakri*,[4] and in holding that the property of a maternal grandfather in the hands of grandsons was not ancestral *qua* sons any right in property that might have come into existence would be affected or, in other words, any title in immovable property would be disturbed or any expectations on the basis of which certain contracts might have been entered into would be affected, observed : "It seems to me that by reversing this decision none of these consequences would follow. The only effect of the decision is that it confers a power of control on the son of the maternal grandson in respect of alienations made by his father. This power of control entitles him to bring a suit to challenge such an alienation. Such a power of control is not right in property. It is only an option to avoid an alienation, and the right to bring a suit to safeguard the reversionary rights being not an interest in immovable property if the right is taken away, it would not disturb any title in immovable property. At best the reversal of the decision will only affect some pending suits and suits that may in future be brought by such persons to control the alienations made by their fathers. The titles of the alienees in such properties, on the other hand, become secure. Instead of disturbing their titles the overruling of this decision would confirm those titles and make them absolute." Nor can an unconscious application of wrong law form the basis for setting up a principle of *stare decisis* merely because it has been left unchallenged for a few years owing to the ignorance of the people affected by it.[5]

The rule of *stare decisis*, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to reconsider a question once decided.[6] Where a decision, though followed, has been frequently questioned and doubted, the rule of *stare decisis* may not be applied.[7] And where the course of practice is founded upon an erroneous construction of an enactment, there is no principle which precludes a superior Court from correcting the error.[8] Where the terms of a statute or ordinance are clear, their Lordships have decided that even a long and uniform course of judicial interpretation of it may be overruled if it is contrary to the meaning of the enactment.[9] The argument that in accordance with the current authority of the different Courts of India, a different interpretation should not be placed on the words of the section, is of little avail in a case where the decision has not been acquiesced in for long or the authorities are not absolutely unanimous. Moreover, when it is not a case of

1. *Mohd. Yasin* v. *Rahmat Ilahi*, AIR 1947 All 201, 206 (FB).
2. *Enatullah* v. *Sheikh Kowsher Ali*, ILR 54 Cal 266 : AIR 1926 Cal 1153, 1158 (FB); *see* also *Hanjonal* v. *Motilal*, (1968)1 Andh LT 341; *Ishwarlal Girdhar Lal Joshi* v. *State of Gujarat*, AIR 1968 SC 870; *Balani Oreo, Ltd.* v. *State of Orissa*, AIR 1968 Orissa 1; *Godhra Borough Municipality* v. *Godhra Electric Co.*, AIR 1968 SC 1504.
3. AIR 1949 EP 109,118.
4. 39 PR 1895 (FB).
5. *Mst. Ujiyara* v. *Tilochan Gond*, AIR 1918 Nag 7, 15.
6. *Hertz* v. *Woodman*, 54 L Ed 1001, 1005 (Linton, J.).
7. *Pirji Safdar Ali* v. *Ideal Bank, Ltd.*, AIR 1949 EP 94, 105 (FB) (conflict of decisions). *See* also *Ohio* v. *Price*, 4 L Ed 2 d 1708, 1712 (single decision of a closely divided court).
8. *Muradally Shauji* v. *B.N. Lang*, AIR 1919 Bom 419, 422; *Daily Gazette Press, Ltd.* v. *Karachi Municipality*, AIR 1930 Sind 287, 293.
9. *Tricomdas Cooverjee Bhoja* v. *Gopinath Jia Thakar*, ILR 49 Cal 749, 768 (PC); *Ratnasabapathy* v. *Devasigamony*, ILR 52 Mad 105 : AIR 1929 Mad 53 (FB); *Lallu Singh* v. *Gur Narain*, ILR 45 All 115 : AIR 1922 All 467, 469; *Bohra Tula Ram* v. *Bohra Dwarkadas*, ILR 50 All 610 : AIR 1928 All 248, 250; *Hamilton* v. *Baker*, 14 AC 209, 221.

disturbing the course of construction which has continued unchallenged for such a length of time as to acquire the sanction of continued decisions over a very long period there is, therefore, no principle which will preclude the superior Court from correcting the error.[1]

(iii) Duty of highest Court in the realm.—In *Chandra Binode Kundu* v. *Ala Bax Dewan*,[2] Mookerjee, A.C.J., when pressed to adhere to the rule enunciated in *Bhiram Ali Shaik* v. *Gopi Kanth*,[3] even though it should be held erroneous in principle, as it was decided more than twenty years ago, observed : "We are sensible of the importance of maintaining, wherever possible, the authority of long-established decided cases ; but this doctrine is manifestly not of universal application. Lord Cranworth observed as follows in *Young* v. *Robertson*.[4] "There is another duty incumbent on all Courts, and pre-eminently upon a Court of ultimate appeal, and which has been invariably observed, namely, that as regards those rules which regulate the settlement and devolution of property, those Courts which have to interpret instruments and acts of parties must take care to be very guarded against letting any supposed notions as to the inaccuracy of any rule which has in fact been acted upon, induce them to alter it so as to endanger the security of property and titles." Lord Chelmsford considered the matter from the point of the duty of a Court of ultimate appeal when he observed as follows in *Mersey Docks* v. *Cameron*[5] : "The Courts rightly abstain from overruling cases which have been long established, because if they did so, they would only disturb, without finally settling the law. But when an appeal from any of their judgments is made to this House, however, they may be warranted by previous authorities, the very object of the appeal being to bring those authorities under review for final determination, the House cannot, upon the principle of *stare decisis*, refuse to examine the foundation upon which they rest." Equally explicit is the pronouncement of Lord Loreburn in *West Ham Union* v. *Edmonton Union*[6] : "Great importance is to be attached to old authorities, on the strength of which many transactions may have been adjusted and rights determined. But where they are plainly wrong, and specially where the subsequent course of judicial decisions had disclosed weakness in the reasoning on which they were based, and practical injustice the consequences that must flow from them, I consider it is the duty of this House (of Lords) to overrule them, if it has not lost the right to do so by itself expressly affirming them." The same principle has been followed in this court and cases are not wholly unknown where Full Bench decisions have been overruled by special Benches; *see*, for an instance, *Jogodanund Singh* v. *Amrita Lal Sirkar*,[7] which overruled the three Full Bench cases of *Lal Mohan Mukerjee* v. *Jogendra Chandra Roy*,[8] *Uzir Ali* v. *Ram Komal Shaha*,[9] and *Girish Chandra Basu* v. *Apurba Krishna Dass*.[10] The Judicial Committee have also not hesitated to overrule long standing decisions of Indian High Courts; *Balusu Gurulinagaswami* v. *Balusu Ramalakshamma*[11] and *Vasudeva Mudaliar* v. *Srinivasa Pillai*.[12] In the present case, there are, moreover, three special features which cannot be entirely overlooked. In the first place,

1. *Empress Mills* v. *Municipal Committee, Wardha*, AIR 1958 SC 341, 346.
2. ILR 48 Cal 184, 256 : AIR 1921 Cal 15 (SB).
3. ILR 24 Cal 355.
4. (1862)4 Macqueen HLC 314, 345.
5. (1865)11 HLC 443, 510.
6. 1908 AC 1, 4.
7. ILR 22 Cal 767.
8. ILR 14 Cal 636.
9. ILR 15 Cal 383.
10. ILR 21 Cal 940.
11. ILR 22 Mad 398 : 26 IA 113.
12. ILR 30 Mad 426 : 34 IA 186.

the decision in *Bhiram Ali Shaik* v. *Gopi Kanth*,[1] departed from what had been the law for over sixty years. In the second place, the current of decisions since then has not been absolutely uniform. In the third place, we are called upon only to remove what has hitherto been erroneously regarded as a fetter upon the right of an execution creditor to realize his dues by the sale of an occupancy holding. The case, therefore, falls within the principle recognised by the Court of Appeal in *Andrews* v. *Gas Meter Co.*,[2] by the Judicial Committee in *Balusu Gurulinagaswami* v. *Balusu Ramalakshamma*,[3] and by the House of Lords in *West Ham Union* v. *Edmonton Union*.[4] Our decisions will not embarrass trade or commerce, nor will it affect transactions which may have been adjusted, rights which may have been determined, titles which may have been obtained or personal status which may have been acquired. Decree-holders will find that they possess a power which has hitherto been denied to them. No doubt judgment-debtors like the respondent before us (who, as was found by the trial Court, can easily pay up to the decree if he will, but is unwilling to pay it up) will no longer be able to escape payment of their just liabilities. That surely is a result which need not make us hesitate to lay down the law correctly. Lord Wright in *Admiralty Commissioners* v. *Valverda (owners)*[5] laid down : 'This House has, no doubt, power to overrule even a long-established course of decisions of the courts, provided it has not itself determined the question. It is impossible to lay down precise rules according to which this power will be exercised. But in general this House will adopt this course only in plain cases where serious inconvenience or injustice would follow from perpetuating an erroneous construction or ruling of law.' The Supreme Appellate Court will not shrink from overruling a decision, or series of decisions, which establishes or establish a doctrine plainly outside a statute and outside the common law, when no title and contract will be shaken, no person can complain and no general course of dealing be altered by the remedy of a mistake.[6] When there is a sharp conflict of opinion on a point and it can be stated generally that in almost all the High Courts different views have been expressed at one time or the other, it would be singularly inappropriate to invoke the doctrine of *stare decisis* in such a case where High Courts have differed and the matter has been brought to the Supreme Court for resolving this difference of opinion. In such a case it is open to the Supreme Court, and indeed it is its duty to construe the relevant provisions and decide which of the two conflicting views should hereafter prevail. The argument based on the practice prevailing in the majority of the High Courts in this country is not of much assistance herein."[7]

(iv) Matrimonial cases and doubtful cases.—The principle of *stare decisis* ought to apply to a doubtful question of law, if it is so regarded, the decisions on which may have affected the marital relations of many persons and the legitimacy of their offsprings.[8] A long series of decisions based upon a construction not free from doubt should not be disregarded.[9] Uniformity is of great practical importance and when a practice has been established it should not be

1. ILR 24 Cal 355.
2. (1897)1 Ch 361, 371.
3. ILR 22 Mad 398 : 26 IA 113.
4. (1909) AC 1, 4, 5, *per* Lord Loreburn, at p. 6, *per* Earl of Halsbury; *see* also *Pate* v. *Pate*, 1915 IAC 1100, 1108.
5. 1938 AC 173, 194.
6. *Bourne* v. *Keane*, 1919 AC 815.
7. *Tirumalachetti Rajaram* v. *Radhakrishnayya*, AIR 1961 SC 1795, 1801.
8. *Sardar Ali* v. *Sreemati Abeda Bibi*, AIR 1928 Cal 549, 550; *see* also *Anis Begam* v. *Istafa*, ILR 55 All 24 : AIR 1933 All 634, 637. *Obitur dictum* of Mahmood, J. (followed).
9. *Isap Ahmad* v. *Abhramji Ahmadji*, ILR 41 Bom 588, 614; *see* also *Muttu Krishnan* v. *Viraraghava Iyer*, 16 IC 601, 608 (Mad).

departed from even if there may be some doubt as to its strict soundness.[1]

(v) Decisions per incuriam.—The doctrine of *stare decisis* does not apply or preclude consideration of an interpretation which started as an unexamined assumption where Hindi version of the Act was ignored in giving a decision, the doctrine of *stare decisis*, cannot be invoked. The doctrine is invoked when reversal of a decision, which has prevented for a considerable length of time is likely to create serious embarassment to those who relying upon a particular interpretation have entered into contracts or other transactions, would find themselves frustrated if a different interpretation is put on that statute.[2]

(vi) Labour law.— In a fast developing branch of Industrial and Labour Law it may not be prudent to rigidly adhere to a precedent. If the very basis of legislation is changed, departure from a precedent is permissible.[3]

(vii) Penal provision.—Different considerations would arise if the disputed interpretation relates to a penal provision or the same is detrimental to public interest or causes public inconvenience.[4]

(viii) Law of procedure.—The principle of *stare decisis* has far less applicability to the law of procedure than to that of substantive law.[5] In *Narottam Chand* v. *Durga Debi*,[6] it was observed : "Moreover the law of limitation is a law of procedure and the rule of *stare decisis* has no application to a wrong decision given on such a matter." Dealing with the provisions of Order XXI, Rule 2 of the Civil Procedure Code, Sulaiman, A.C.J., in *Jyoti Prasad* v. *Srichand*,[7] observed : "The principle of *stare decisis* does not apply to such decisions as they cannot be considered to have affected any rights in property or title, or to have affected contracts and other dealings."

The ordinary principles of *stare decisis* do not apply with their usual force where the questions involve no possibility of disturbance of titles, but is a fiscal matter between Government and the litigant.[8]

(ix) Cursus curiae.—In *Abdul Ghani* v. *Raja Ram*,[9] Chamier, C.J., of the Patna High Court, noticing the conflict of opinion in the different High Courts on the question

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1. *Girindra Nath* v. *Kedar*, AIR 1925 Cal 966, 969.
2. *Mangi Lal* v. *Board of Revenue*, AIR 1983 MP 134.
3. *Punjab Land Development and Redamation Corporation Ltd., Chandigarh* v. *Presiding Officer, Labour Court, Chandigarh*, (1990)3 SCC 682 (5 Judges); the following passage from *Reg.* v. *Home Secretary, Exparte* Khawaja, 1984 AC 74 (H.L) was quoted by the Supreme Court : "The House will depart from a previous decision where it is right to do so and where adherence to a previous decision may lead to injustice in a particular case. Constitutional and administrative law are not fields where it is of particular importance to adhere to a precedent. A recent precedent may be more readily departed from than the one which is of long standing. A precedent may be departed from where the issue is one of statutory construction."
4. *Nirshi Dhobin* v. *Sudhir Kumar*, (1969)1 SCR 469, 471 (Hedge, J.); *R.* v. *Gould*, (1968)1 All ER 849 (Diplock, L.J.).
5. *Chidambaram* v. *N.A. Chettiyar Firm*, AIR, 1929 Rang 41, 43 : ILR 6 Rang 703 (FB); *see*, however, *Narayanan* v. *Theva Amma*, ILR 51 Mad 46 : AIR 1927 Mad 1043, 1051, *per* Phillips, (Offg. C.J.); *Abdul Karim* v. *Lakshmanaswami*, AIR 1928 Mad 440, 441, (*per* Wallace, J.) (Limitation Act); *Annamalai* v. *Ramaswami*, ILR 1941 Mad 438 : AIR 1941 Mad 161, 171 (FB); (*per* Patanjali Sastri) following Leach, C.J. in *Krishna Iyer* v. *Subramania Iyer*, ILR 39 Mad 151 : AIR 1939 Mad 371 (FB) (Section 47, CPC); *Palia* v. *Mathura Prasad*, ILR 38 All 280, 284; *Brij Inder Singh* v. *Kanshi Ram*, ILR 45 Cal 94, 106 (PC).
6. AIR 1949 EP 109, 119 (FB). Cf. *Allah Rakha* v. *Chet Ram*, ILR 45 Lah 373 (FB).
7. ILR 51 All 237: AIR 1928 All 629, 630 (FB).
8. *Shankar Maruti* v. *Bhagwant Gunaji*, AIR 1947 Bom 259, 260 (FB), *per* Weston, J.; but see *Moti Singh* v. *Harbhajan Singh*, AIR 1927 Lah 635, where the question was in doubt, the rule of *stare decisis* was applied by Dalip Singh, J.; In *Nauratan Lal* v. *Stephenson*, AIR 1922 Pat 359, old established practice since 1882 was not departed from.
9. 354 IC 468, 469 (FB)

of maintainability of appeal against an order passed under Order XXI, Rule 95, C.P.C., observed : "I am strongly of opinion that this court should not without very good reason depart from a long course of decisions in the Calcutta High Court. I consider that the cases which I have referred to show that the balance of opinion in the Calcutta Court has been since 1883 so strongly in favour of the view that an appeal does not lie in such a case that we ought to follow it as if it were a settled *cursus curiae*. To do otherwise would cause great and unnecessary confusion." His Lordship in *Kam Asray Singh* v. *Sheonandan Singh*,[1] further observed referring to another decision of the Calcutta High Court on a point of limitation : "That decision has not been followed by all the other High Courts, but the practice is so well established in the territories over which this Court has jurisdiction that we think we ought to follow it." The Division Bench consisting of Dawson-Miller, C.J., and Mullick, J., of the Patna High Court in 1918, in *Krishna Lal* v. *Nandeshwar*,[2] after referring to conflicting decisions of Calcutta and Allahabad High Courts on a point concerning partition under Hindu Law, observed : "The decisions of the Calcutta High Court which until recently exercised jurisdiction in this Province, although they do not prevent this Court from exercising an independent judgment, are entitled to the great respect and should not be departed from without cogent reasons."

(x) Practice in Patna High Court.

(xi) Practice in Sind Court.—As regards the practice in the Sind Court, Davis, C.J., in *Emperor* v. *Dholaram Holaram*,[3] observed as follows :

> "It is true that it has been the practice of this Court, when a Judicial Commissioner's Court, to follow, as a rule, the rulings of the Bombay High Court in preference to the rulings of other High Courts, and clearly it was desirable that for the one province, for the Bombay Presidency then included Sind, the law on the same questions should be the same, and that in the absence of any ruling of its own the highest Court in Sind should follow the rulings of the Bombay High Court. This view had found expression in judgments of this Court from time to time; see *G.P. Gunnies and Co., Ltd.* v. *Amanmal Tulsidas*,[4] *Govind Singh* v. *Emperor*,[5] *Tirathdas Dharamdas* v. *Jethanand*,[6] and this view has again found expression in the judgment of Lobo, J., in *In re* L.T. Pinto,[7] given after this province has become a separate province and this Court had become a High Court under Section 219, Government of India Act, and a Chief Court. But we do not think it was ever the intention of the Judges of the Judicial Commissioner's Court to say that they would always and necessarily follow the rulings of the Bombay High Court ; that when, for instance, a Full Bench of the Bombay High Court overruled the judgment of a Divisional Court, the Judicial

1. 35 IC 868, 869 (FB); *see* also *Asman Singh* v. *Tulsi Singh*, 391 IC 173, 174 : "I am of opinion that this court, for reasons that have been stated more than once, should ordinarily follow a settled course of decisions in the Calcutta High Court prior to the establishment of this court," *per* Chamier, C.J.
2. AIR 1918 Pat 91; *see* also *Khoda Bakhsh* v. *Bahadur Ali*, 45 IC 203 (bound by Calcutta view); *Sheobaran Mahto* v. *Mst. Bhogea*, AIR 1918 Pat 590 (1); *Bhubaneshwar Kuer* v. *Munir Khan*, ILR 7 Pat 613 : AIR 1928 Pat 641, 649 (will not ordinarily depart from a long course of decisions in the Calcutta High Court); *Nirmal Kumar* v. *Surjan Dusadh*, AIR 1929 Pat 433,435; *Darbhanga Municipality* v. *Jyotindra Nath*, ILR 23 Pat 862 : AIR 1945 Pat 153, 154; *Deonandan Singh* v. *Thakur Singh*, AIR 1949 Pat 58, 59, 60 (even if contrary view has been expressed by any of the other High Courts, we ought to follow these decisions of the Calcutta High Court and our own High Court).
3. AIR 1941 Sind 221, 223 : ILR 1941 Kar 431.
4. AIR 1924 Sind 75 (FB) : 17 SLR 133, 140.
5. AIR 1929 Sind 30 : 22 SLR 404, 407.
6. AIR 1937 Sind 68 : 31 SLR 123, 135.
7. AIR 1941 Sind 193 : ILR 1941 Kar 50.

Commissioner's Court if it had followed the decision of the Divisional Court, must necessarily overrule its own previous decision, and follow the judgment of the Full Bench of the Bombay High Court. I do not think that the Judge of this Court ever intended to say they would not exercise their own individual judgment and discretion and only follow the decisions of the Bombay High Court, whether they thought them right or wrong. What the Judges of this Court meant to say, I think, was no more than this, that they, in the case of a difference of opinion between High Courts, always give to the decisions of the Bombay High Court a respectful preference. If I may use the term, and that they would, in considering their own decisions, give to the decisions of the Bombay High Court that great respect to which the status, traditions and judgments of that Court entitle it; but I do not think that there is any authority for the statement by the learned Sessions Judge, that in the absence of a decision by the Chief Court, the subordinate Courts of the province are bound by the decisions of the Bombay High Court."

His Lordship then referred *inter alia* to Act V of 1872 which declared judicial independence of the Province of Sind from Bombay as well as to the Indian Law Reports Act, XVIII of 1875 and proceeded to observe :

"We are informed that there is a practice in the Bombay Presidency for the subordinate courts, in the absence of a ruling of the Bombay High Court, to follow the rulings of another High Court reported in the authorised law reports. We have been given no judicial pronouncement in support of this alleged practice, nor were we told what the subordinate courts in the Bombay Presidency are to do if decisions of other High Courts reported in the authorised law reports differ on the same question. As a rule it would appear wise and prudent for subordinate Courts in this Province, in the absence of a ruling of the Chief Court, to follow a duly reported ruling of the Bombay High Court, if there be such a ruling on the same point, or in the absence of such a ruling of the Bombay High Court, to follow the duly reported ruling of another High Court, and, where the rulings of other High Courts on the same question differ, to follow that ruling which in their own judgment appears the better ruling, but it does not follow that they are bound to follow a ruling of the Bombay High Court, or of any other High Court, even if there be no ruling of this Court, if in the exercise of their own reason and judgment they come to a different conclusion. Such cases would probably be rare, and it may be said that as a rule in the absence of a decision of this court, it would be prudent and wise and in the interest of the uniformity of judicial decisions for the subordinate courts of this Province to follow the decisions of the Bombay High Court, but we know of no statutory provision whereby they are bound to do so. They are, as courts, subordinate to this court, bound by the decisions of this court. They are not so bound by the decisions of another High Court."

19. English and other foreign decisions.—*(i) Good guide.*—"In considering the construction of a section in an Indian Act which in professedly based on an English enactment, which, in fact, reproduces almost word for word the language of the English enactment," said White, C.J., in *Lovelock and Lewis* v. *Malabar Timber and Saw Mills*,[1] "and which relates to a branch of the law which is entirely English law, we are, in my opinion, in practice, if not in theory, bound by the decisions of the English Court of Appeal." Where the Indian statute practically reproduces

1. 18 IC 997, 1001 (Companies Act); *Premsukhdas Asaram* v. *Udairam Gungabux*, ILR 45 Cal 138, 149 (Order XII, Rule 6, CPC); *Piara Singh* v. *Peshawar Bank, Ltd.*, (in liquidation), 54 PR 1915 (Companies Act *in pari materia* with English law, *per* Shadilal, J.); *Thakar Ganesh Baksh* v. *Thakar Harihar Baksh*, 31 IA 116, 120 (Interests Act, 1839); *Saunadanappa* v *Shivabasawwa*, ILR 31 Bom 354, 358; *Bhimji Bhitumal* v. *Chunilal Javerchand*, ILR 57 Bom 623 : AIR 1932 Bom 344, 350, following *Trimble* v. *Hill*, (1879)5 AC 342; *Dost Mohd.* v. *Mukand Lal*, AIR 1931 Lah 756 (Court of Wards).

the English enactment, it would not be proper to neglect the judicial decisions in England which have decided the proper construction of the section to be one thing and not another.[1] As the law of Trade Marks adopted in the Indian Trade Marks Act merely reproduces the English law with only slight modifications, a reference to the judicial decisions on the corresponding section of the English Act is apposite and helpful.[2] "English decisions are not precedents which govern us," said Sankaran Nair, J. in *Annapurnamma* v. *Akkayya*[3] "but are only referred to for the purpose of finding out the principal underlying those decisions and to explain the Indian statutes which are usually framed with reference to those decisions." "Where the law of British India," opined Dunkley, J., in *Emperor* v. *U. Damapala*,[4] appears on examination to be the same as the law of England on any subject, the decisions of English Courts on that subject from a most valuable guide to the courts in India, and a decision of the House of Lords on such a subject must be considered to be of paramount authority in India."

Where the wording of the relevant section in the English enactment has been freely and in more cases bodily adopted in the Indian statute (Estate Duty Act), with respect to such analogous provisions of the Indian law unaffected by the specialities of the English law and on fundamental concepts and on broad general principles, decisions of Court in England can be useful and of considerable guidance if utilised with due care and caution. However, the provisions of the Indian statute must be understood in their background and setting and in interpreting them regard must be had to the conditions, customs and religious beliefs of those affected by the provisions. In a branch of the law, rules of which are inspired by the broad general principles of the English law on the subject and have so adopted as to be in *pari materia*, reference to the decisions under that law can be of great assistance.[5]

"I have always thought it a great advantage," said Trevelyan, J., in *Pershad Singh* v. *Ram Pertab Roy*,[6] where one can find an English statute resembling in its purpose and phraseology the Indian statute under discussion to get the assistance offered by the decisions of the courts in England, but, of course, it is always necessary to see that these statutes are really resembling one another in their purposes and not only have an accidental resemblance in a portion of the section, which for convenience of drafting has been adopted by the draftsman of the Indian Act." Even though the decisions of the English Courts are not binding they are of weight, especially because the questions as to whether piece of legislation provides merely for a matter of procedure or allows vested rights are obviously questions of general principle in regard to which the law could not possibly be different in England or in India.[7] Such decisions are powerful peruasive precedents.[8]

The judgments of the superior courts of England and United States of America are only persuasive precedents. The Judges of India are under no obligation to follow them but, in many

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1. *Gurunna Saheb* v. *Appala Naidu*, AIR 1928 Mad 834, 835, quoting *Trimble* v. *Hill*, (1879)5 AC 342. As regards legislation like Municipal Acts, see *Mohd. Raza Khan* v. *Mohd. Askari Khan*, AIR 1924 All 599, 601 (Highway); *Rai Bajrang Bahadur Singh* v. *Badri Nath Bhargava*, AIR 1923 Oudh 26 (Insolvency); *Mercantile Bank of India* v. *Official Assignee*, ILR 39 Mad 250, 262; *Devishab Hukumchand* v. *Official Assignee*, AIR 1931 Sind 44: *In re* the firm of Gianchand Lilaram, AIR 1941 Sind 70, 71.
2. *Registrar of Trade Marks* v. *Ashok Chandra Rakhit, Ltd.*, AIR 1955 SC 558 : 1955 SCA 1043.
3. ILR 36 Mad 544, 549.
4. AIR 1937 Rang 83, 87: ILR 14 Rang 606 (FB).
5. *Khatizabai* v. *Controller of Estate Duty*, AIR 1960 Bom 61, 65.
6. ILR 22 Cal 77, 81.
7. *Kulkarni* v. *State of Bombay*, AIR 1951 Bom 105, 110.
8. *Bajranglal Laduram* v. *Ganesh Corporation Co.*, AIR 1951 Cal 78, 82.

cases, they have followed it, though they have not hesitated to differ from them when they conflicted with the statutory provisions contained in Indian Act and Civil Procedure Code.[1] Although decisions of American Supreme Court and the comments of well-known commentators like Willoughby and Cooly have great pursuasive force, the Supreme Court need not interpret the construction by too much reliance on them.[2]

The aid of American concept and laws as precedent in the interpretation of our laws is not always without dangers and they have therefore to be followed, if at all with caution, if not without hesitation because of difference in the nature of those laws and in the complexion of its society and of the institutions to which they apply.[3] Similarly, in the construction of a specific statutory provision, it is unreasonable to invoke the assistance of English decisions dealing with statutory provisions contained in English Law.[4]

Though the English cases may be of some help in an indirect way by focussing one's attention on what is to be regarded as relevant and what rejected, they cannot be regarded in any sense as precedents to follow.[5] There is no 'due process' clause in the Constitution and hence the considerations, which govern the interpretation of the 'due process' clause in the United States Constitution as reported in the American decisions need not be imported by the Courts when dealing with Article 14.[6] It would be better to confine to English precedents on questions of rules of natural justice because the American 'due process' clause has not been adopted in India.[7]

(ii) Recourse to principles not permissible where law codified.—When the law relating to a topic has been codified into statute as in the Evidence Act, the duty of the Court is merely to interpret the statute. A recourse to decisions in the jurisdictions laying down principles applicable there, though they might be of the highest tribunals, is not very profitable. Of course, if there had been legislation in those jurisdictions using the same or similar expressions as in the Indian enactment, the guidance afforded by such decisions would indeed be valuable.[8] Codification has its own advantages and disadvantages, but it is a well-settled rule of interpretation of the Indian law, that we must primarily look to our own enacted law and its terms, and refer to the background of the English common law and precedents, only where there is no repugnancy, or in order to throw further light upon the principle taken from that source, in order to make it part of the codified law of this country. Decisions on common law in England cannot be of much help in interpretation of Indian statutes.[9] An imperfect realisation of this consideration, or, neglect of this vital consideration, does lead, and has perhaps led in the past,

1. *Krishnaswamy* v. *Thangavelu*, AIR 1955 Mad 430; *see* also *Nakshed Bhagat* v. *Jire Khan Sab*, AIR 1955 Pat 118 (citing an English case is always dangerous unless one is definitely sure of all the facts and circumstances and the law concerning that case).
2. *Jagannath* v. *Authorised Officer*, (1971)2 SCC 893.
3. *Joseph Kuruvilla* v. *Reserve Bank of India*, 1962 (Supp) SCR 632 : 1962 Ker LT 69 (SC); *Sodan Singh* v. *New Delhi Municipal Committee*, (1989)4 SCC 155 referring to and distinguishing from *Saghir Ahmed* v. *State of U.P.*, AIR 1954 SC 728 : (1955)1 SCR 707.
4. *State of West Bengal* v. *B.K. Mondal & Sons*, AIR 1962 SC 779, 786; *Thangaswami Chettiar* v. *Commissioner of I.T.*, AIR 1966 Mad 103 : ILR (1966)1 Mad 243.
5. *Senairam* v. *Commissioner of Income-tax, Assam*, AIR 1961 SC 1579, 1582.
6. *Raj Sahiban Sher Singh* v. *State of Rajasthan*, AIR 1954 Raj 65 (FB).
7. *East Punjab University* v. *Tarloki Nath*, AIR 1953 Punj 3.
8. *State of Madras* v. *Sayed Abdurahiman Baffaki Thangal*, AIR 1954 Mad 926; *Yusuf Sk.* v. *State*, AIR 1954 Cal 258.
9. *Bakshish Singh* v. *State of Punjab*, AIR 1967 SC 752.

to confusion and ambiguity.[1]

(iii) Justice, equity and good conscience.—When a court is entitled to apply principles of justice, equity and good conscience, it is entitled to look for such principles to English authorities.[2] Lord Hobhouse in *Whaghela Rajsan Ji* v. *Masludin*,[3] pointed out that a direction to decide by equity and good conscience was generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances. English law may, no doubt, be very useful for guidance in some cases, *e.g.* with respect to corresponding provisions of the English Act,[4] but as pointed out by their Lordships in the above case, it can properly be invoked only when it is found applicable to the circumstances of this country.[5] Moreover, a decision of a Court of law as opposed to a Court of Equity, which the common law lawyers recognise as being inequitable, is not decision which ought to be followed in this country.[6]

(iv) Caution necessary.—Valuable guidance may no doubt be obtained from English decisions, but the difference in the language of the relevant statutes and in the conditions in which they are to be applied makes it dangerous to rely on them as authorities in the Courts in India.[7] If the words used in the Indian statute are obscure or ambiguous perhaps it may be permissible in interpreting them to examine the background of the law or to derive assistance from English decisions bearing on the point, but where the words are clear and unambiguous, it would be unreasonable to interpret them in the light of the alleged background of the statute and to attempt to see that their interpretation conform to the said background.[8] It is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meanings of words and expressions used in an Act must take their colour from the context in which they appear.[9] In proposing to apply the juristic rules of a distant time or country to the conditions of a particular place at the present day, regard must be had to the physical, social and historical conditions to which that rule is to be adopted.[10] "Their Lordships", remarked Mr. Ameer Ali in *Imam Bandi* v. *Mutsaddi*,[11] "cannot help deprecating the practice which seems to be growing in some of the Indian High Courts of referring largely to

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1. *Mohana Krishnan* v. *Chamanlal Desai & Co.*, AIR 1960 Mad 452, 455.
2. *Kalyan Das* v. *Brij Kishore*, AIR 1941 All 9, 13; *see* also *Aziz Bano* v. *Mohd Ibrahim Hussain*, ILR 47 All 823: AIR 1925 All 720, 728.
3. 14 IA 89, 96; *Khan Bahadur* v. *Makhna*, AIR 1930 PC 142, 143. [the terms of Section 60, T.P. Act, are an indication that the rules of English law relating to mortgagor's right to redeem are applicable to Indian society and circumstances, (*per* Lord Tomlin)].
4. *Sachidananda Banerjee* v. *Sita Ram Agarwala*, AIR 1966 SC 955.
5. *Ralli Brothers* v. *Punjab National Bank, Ltd.*, ILR 11 Lah 564, 584, *per* Bhide, J.
6. *Muthu Karuppan* v. *Annamalai*, AIR 1936 Rang 141, 142.
7. *Governor-General-in-Council* v. *Madura Municipality*, AIR 1964 PC 39, 43, see also *Lasa Din* v. *Mst. Gulab Kunwar*, AIR 1932 PC 207 (Limitation); *Raghunath Prasad* v. *Sarju Prasad*, AIR 1924 PC 60, 61 65 (Moneylending); *Pondicherry Railway Co., Ltd.* v. *Commissioner of Income-tax*, AIR 1931 PC 165, 170 (Income-tax); *Panchananda* v. *Rajani Kanta*, AIR 1931 Cal 463, 466 (Specific Performance); *Joseph* v. *Joseph*, AIR 1929 Rang 71, 72 (Mortgage Suit); *Maung Ba Tun* v. *Maung Obm Khin*, AIR 1938 Rang 289 (Workmen's Compensation Act); *Hansraj* v. *Bejoy Lal Seal*, AIR 1930 PC 59 (Landlord and Tenant); *Madho Prasad* v. *Gauri Dutt*, AIR 1939 Pat 323, 329 (Partnership); *Firm Gokaldas* v. *Lachmandas*, AIR 1927 Sind 130, 141 (FB).
8. *State of West Bengal* v. *B.K. Mondal & Sons*, AIR 1962 SC 779, 786.
9. *Ram Narain* v. *State of U.P.*, AIR 1957 SC 18, 23.
10. *Srinath Roy* v. *Dinbandhu Sen*, ILR 42 Cal 489, 581 (PC), (*per* Lord Sumner); *Secretary of State* v. *Venkatanarsimhha*, AIR 1920 Mad 295, 297; *Subbarayudu* v. *Secretary of State*, AIR 1927 Mad 988, 990.
11. 45 IA 73, 93. But the decisions in question were American decisions and were correctly described as foreign, an adjective which is inapplicable and would certainly not have been applied by the Privy Council to the decision of the English Course; *Chief Commissioner of Income-tax* v. *North Ananatpur Gold Mining, Ltd.*, ILR 44 Mad 718, 728, (*per* Wallis, C.J.); *see*, however, *Seeni Nandan* v. *Muthuswami Pillai*, ILR 42 Mad 821, 832 (FB).

foreign decisions. However useful in the scientific study of comparative jurisprudence, reference to judgments of foreign courts to which Indian practitioners cannot be expected to have access, based often of considerations and conditions totally different from those applicable to or prevailing in India, is only likely to confuse the administration of justice."

It will be undesirable, and, in fact, wrong to base the decision on the *Indian Stamp Act* and its exemption merely on the words of the English statute and on the English cases. It will be so, because a question of construction of a statute must depend on the language of that particular statute which is being construed but also because the English Stamp Act and the English case-law are significantly different from the provisions of the law in India.[1] English decisions decided under a different system of *taxation* must be read with the understood case.[2]

(v) When Indian law silent.—Where the Indian statute is silent on the subject and when the point for decision is not affected by principles which are peculiar to English law alone, the English decisions are a valuable source of elucidation on the problems arising on such a subject,[3] although Indian Courts are not bound by them.[4]

(vi) Fundamental Principles basis of the rule.—The views expressed in the judgments of English Courts are referred to and adopted by the Courts in India only when it appears that those views are fundamentally sound and are based on immutable principles.[5]....."Blind following of English precedents according to the letter can only have the effect of reducing the estimation of the common law by intelligent Indians to the level of its more technical and less fruitful portions making those portions appear if possible more inscrutable to Indian than they do to English law suitors."[6]

Where the provisions are *in pari materia* between the English Act and the Indian Act and where local conditions do not materially differ from the conditions in U.K., one may, keeping in view the condition in our country look at the view taken by the English Courts and if consistent with our jurisprudence, our social conditions, our chalked out path in which the law must move, one can profitably take help of the decision. There would be nothing wrong in referring to the same. But ignoring all the relevant considerations, one cannot bodily import English decisions in our systems to develop a hybrid legal system and one cannot be so hypnotised by English decisions to overlook legislative changes introduced in Indian Law.[7]

In *Superintendent and Remembrancer of Legal Affairs, W.B.* v. *Corporation of Calcutta*,[8] the Supreme Court held that rule of English law that Crown is not bound by statutes is no more applicable in India.[9]

(vii) When not good guide.—It is fruitless to endeavour to interpret the rules relating to procedure under the Indian Act by reference to what has been decided with regard to another statute in England on different considerations, even if the language of the two statutes had been

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1. *National Security Assurance Co.* v. *Ratilal*, AIR 1961 Cal 48, 50.
2. *Senairam* v. *Commissioner of Income-tax, Assam*, AIR 1961 SC 1579, 1582.
3. *In re* Imperial Bank of India, AIR 1940 Cal 429, 432; *Maung Sen Sone* v. *Ma Pau Nyun*, AIR 1932 PC 161, 164.
4. *Chhedi Lal* v. *Babu Nandan*, AIR 1944 All 204, 206; *Bajranglal* v. *Ganesh etc. Co.*, AIR 1951 Cal 78, 82; *see* also *Kedar Nath* v. *Gayavati*, AIR 1930 Cal 731, 734.
5. *Basdevanand* v. *Shantanand*, AIR 1942 All 302, 307.
6. Sir Fredrick Pollock on the *Genius of the Common Law*, p. 92, quoted by Mookerjee, J. in *Manjuri* v. *Akel*, 19 IC 793, 813.
7. *Cotton Corporation of India* v. *United Industrial Bank*, AIR 1983 SC 1272; *see* also *Anna Basu Mullick* v *(Mrs.) Daroteha Mittra*, AIR 1983 SC 916, where English decision have been referred to.
8. AIR 1967 SC 977, overruling AIR 1947 PC 34 and AIR 1960 SC 1355.
9. *See* also *Union of India* v. *Jubbi*, AIR 1968 SC 360.

the same.[1] It is dangerous to apply English decisions to the construction of an Indian enactment.[2] When the words of a section clearly express the intention of the Legislature, English decisions are not of any assistance.[3] It is notoriously difficult to apply to one jurisdiction legal ideas foreign to that jurisdiction and derived from the history of another jurisdiction.[4] *A fortiori*, cases bearing upon the construction of a somewhat similar provision of an English Act different in language can be of little or no assistance.[5] Unless the English statute and the Act of the Indian Legislature are *pari materia*, instead of affording any help, they only tend to confuse the consideration of the matter in issue.[6] The Industrial Disputes Act has aimed at blending the rights and liabilities of the employers and the employees as best as possible to suit the conditions of this country and has, therefore, enacted provisions which are not parallel with those obtaining in other countries. Accordingly, it would be unwise to refer to decision of courts of countries other than India in order to interpret the sections in this Act, unless, of course, the provisions are shown to be exactly the same.[7] The object of all labour legislation was firstly to ensure fair terms to the workmen, and secondly, to prevent disputes between employer and employees so that production might not be adversely affected and the larger interests of the public might not suffer.[8] The statute law in India is no doubt based on the principles of English law but in its application, we should follow the opinion of Indian Courts acquainted with Indian ways of life and thought and not of English Courts which deal with people widely different from Indians in their social habits and intellectual development.[9] English common

1. *Brojolal* v. *Sharadajubala*, ILR 51 Cal 745 : AIR 1924 Cal 864, 867; *Ranchhoddas Krishen Das* v. *Bapu Narhar*, ILR 10 Bom 439, 442 (Evidence Act is not a servile copy of English Law of Evidence); *Hem Raj* v. *Krishen Lal*, ILR 10 Lah 106, 111 (FB) (Insolvency Act in India is a departure from law in England in several particulars); *Rajib Panda* v. *Lakhan Sendh Mahapatra*, ILR 27 Cal 11, 14; *Aung Hla* v. *Emperor*, ILR 9 Rang 404: AIR 1931 Rang 235, 243: "Our attention has also been drawn to a number of decisions in India which lay down that the law in India and in England on this subject is the same, and if we do not criticize those authorities in detail it is not out of want of respect for the learned Judges who decided them, but because, with all due deference, it appears to us that they all suffer from the same inherent vice, namely, that the learned Judges, in construing the relevant sections of the Indian Evidence Act, approached their task from the wrong point of view, for, instead of taking sections from the Indian Evidence Act and construing them according to their terms the learned Judges appear first to have considered the English authorities and then to have construed the section of the Indian Act in the light of the English law on the subject. For this reason we venture to think that many of the Indian decisions are based on fallacious reasoning, and lay down the law in a sense that is inconsistent with the express provisions of the Act," (*per* Page, C.J.).
2. *Municipal Board, Gonda* v. *Bachhu*, AIR 1951 All 736; *Shamshir Ali* v. *Ratanji*, AIR 1952 Hyd 58 (FB); *Gajanan* v. *Seth Brindaban*, AIR 1970 SC 200; *C.I.T., Madras* v. *A. Gajapati Naidu*, AIR 1964 SC 1653.
3. *Veerappa* v. *Emperor*, AIR 1930 Mad 441, 442.
4. *Darya Singh* v. *Krishnarao*, AIR 1939 Nag 91, 92.
5. *Collector of Dinajpur* v. *Girjanath Roy*, ILR 25 Cal 346, 352; *Commissioner for the Port of Calcutta* v. *Corporation of Calcutta*, AIR 1937 PC 306; *Tarachand Pribhdas* v. *Emperor*, AIR 1938 Sind 116; *Ram Dial* v. *Sant Lal*, 1959 (Supp) 2 SCR 748, 758.
6. *Ezra* v. *Secretary of State*, ILR 30 Cal 36, 76, affirmed in appeal to Privy Council, in ILR 32 Cal 605; *Pershad Singh* v. *Ram Pertab Ray*, ILR 22 Cal 77, 85. Owing to difference in the language of the relevant statutes and in the conditions in which they are to be applied, it is dangerous to rely on English decisions as authorities though valuable guidance may be obtained therefrom; *G-G-in-Council* v. *Madina Muncipality*, AIR 1919 PC 39, 113, *per* Lord Simonds.
7. *State of Bihar* v. *Deodar Jha*, AIR 1958 Pat 51, 56.
8. *Hariprasad* v. *Divelkar*, AIR 1957 SC 121, 127; *Burn & Co., Ltd.* v. *Workmen*, AIR 1957 SC 38 (the objects mentioned above can have their fulfilment only in an existing and not a dead industry); *Piparaich Sugar Mills* v. *P.S.M. Mazdoor Union*, AIR 1957 SC 95.
9. *Mohammad Hassan* v. *Ali Haider*, AIR 1925 Oudh 337, 346.

law may not necessarily fit into the scheme and words of Indian statute.[1] Where the Indian statute is clear and sufficient, nothing is to be gained by a reference to English case-law.[2] An Indian Act does not fall to be construed in the light of statutes enacted by another Legislature.[3]

Rule in *McIntyre* v. *Hardcastle*[4] is 'abhorrent to the Indian conception' and is not applicable in this country said the Supreme Court in a case under Section 13(1)*(f)* of the W.B. Premises Tenancy Act, 1956.[5]

In the context of the Contract Act, 1872, A.P.Sen, J. said that it is not permissible to import the principles of English law *'de hors* the statutory provisions', unless a provision is such that it cannot be understood without the aid of English law.[6]

20. Dictionaries.—One of the main objects of every dictionary of the English language is to give an adequate and comprehensive definition of every word contained in it, which involves setting forth all the different meanings which can properly be given to the particular words.[7] As held by the Privy Council in *Coca Cola Co. of Canada, Ltd.* v. *Pepsi Cola Company of Canada*, Ltd.[8] dictionaries can always be referred to in order to ascertain not only the meaning of a word but also the general use of it.[9] The court takes judicial notice of the ordinary meaning of all words in our tongue and the dictionaries are admitted, not as evidence, but only as aids to the memory and understanding of the court.[10] In the absence of any definition dictionaries may be of some assistance to resolve an ambiguity. The ordinary dictionary meaning cannot be discarded because it is given in a dictionary. To do that would be to destroy the literal rule of interpretation.[11] The courts have to ascertain the meaning of terms with reference to the context in which they occur. Even so, the meaning that an expression bears according to dictionaries may afford guidance and assistance in ascertaining the import and connotation of the expression, the meaning of which is in dispute.[12] When a word is not defined in the Act, it must be taken to have been used in its ordinary meaning.[13] If the word is not defined in the enactment itself, assistance may also be taken for the use of that word in other parts of the Act to discover in what sense it has been used therein.[14] When considering the meaning of a word one often goes

1. *Bhagwandas Goverdhandas Kedia* v. *M/s. Girdharlal Parshottamdas*, AIR 1966 SC 543.
2. *Ramchandra Aiyar* v. *Sankara Aiyar*, AIR 1926 Mad 357, 358.
3. *Iswarayya* v. *Iswarayya*, AIR 1931 PC 234, 239, *per* Lord Russell of Killowen; *Indian General Navigation and Railway Co., Ltd.* v. *Dekhari Tea Co., Ltd.*, AIR 1924 PC 41, *per* Lord Shaw; *Bejoy Singh* v. *Commissioner of Income-tax*, AIR 1933 PC 145, 147 (Income-tax Act) : "Invocation of the Imperial Income-tax Code and of decisions pronounced upon it is apt to be very misleading in the interpretation of Indian Income Tax Legislation", *per* Lord Macmillan); *Lee* v. *Lee*, ILR 5 Lah 147, 166 167 (FB).
4. (1948)1 All ER 696.
5. *Sri Ram Pasricha* v. *Jagannath*, AIR 1976 SC 2335.
6. *Superintendence Co. of India* v. *Krishna Murgai*, AIR 1980 SC 1717; *Controller of Estate Duty* v. *Kantilal*, (1976)4 SCC 643; *Bolani Ores Ltd.* v. *State of Orissa*, AIR 1979 SC 17.
7. *Mills* v. *Cannon Brewery Co.*, (1920)2 Ch 38-44; see *Thangaswami Chettiar* v. *Income-tax Commissioner*, AIR 1966 Mad 103 : (1965)57 ITR 546 (a case under Income Tax Act); *Sri Kittappa Dress Manufacturing, etc. Works* v. *State of Madras*, ILR 1962 Mad 399 : (1962)2 MLJ 1 : 75 Mad LW 48.
8. AIR 1942 PC 40 : 202 IC 203 : 15 RPC 23.
9. *State of Bihar* v. *Radpa Krishan Singh*, (1983)3 SCC 118.
10. 149 US 304.
11. *Commissioner of Wealth Tax, A.P.* v. *Officer Incharge, Court of Wards, Paigah*, (1976)3 SCC 864.
12. *Sarbeswar Bardoloi* v. *U.K. Gohain, Judge, Industrial Tribunal*, AIR 1955 Assam 148; *Vasantarao Lakshmanarao* v. *I. T. A.*, ILR 1966 Guj 784; see also *Taj Mahal Hotel, Secunderabad* v. *C.I.T., Hyderabad*, AIR 1969 Andh Pra 84, 87 (Venkatesan, J.).
13. *Karnani Properties, Ltd.* v. *Augustine*, AIR 1957 SC 309, 312 : 1957 SCR 20.
14. *Bhogilal Chunilal* v. *State of Bombay*, AIR 1959 SC 356, 357 : The word should be interpreted ordinarily in its primary meaning, unless there is something in the Act to compel the Court to depart from its primary meaning.

to a dictionary. There one finds other words set out. And if one wants to pursue the matter and find the meaning of those other words the dictionary will give the meaning of those other words in still further words which often include the word for whose meaning one is searching. No doubt the court could act as a dictionary. It could direct the tribunal to take some word or phrase other than the word in the statute and consider whether that word or phrase applied to or covered the facts proved. But one has been warned time and again not to substitute other words for the words of the statute. And there is very good reason for that. Few words have exact synonyms, the overtones are almost always different.[1] Lord Coleridge observed in *R.* v. *Peters*[2] : "Dictionaries can hardly be taken as authoritative exponents of the meanings of the words used in legislative enactments, for the plainest words may be controlled by a reference to the context. Similarly, *Lexicons* would only define an expression in terms of a decision given by a court of law, and unless this decision was given under the Act in which the expression is used 'it involves a dangerous method of interpretation.'[3] I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are, therefore, sent for instruction to these books." A statute is not to be interpreted merely from the lexicographer's angle. The court must give effect to the will and in-built policy of the Legislature as discernible from the object and scheme of the enactment and the language employed therein.[4] But Lord Macnaghten preferred the opinion of eminent Judges to the meaning given in the dictionaries. His Lordship observed in *Midland Railway* v. *Robinson*[5] : "I continue to think that the word (mine) was used both in the heading and in the section in the sense in which, if I am not mistaken, every English Judge who had occasion to consider the meaning of the word before *Farie's* case[6] was decided, took to be its ordinary signification. It seems to me that on such a point the opinion of such Judges as Kindersley, V.C., Turner, L.J., and Sir George Jesse are probably a safer guide than any definitions or illustrations to be found in dictionaries." In *Camden (Marquis)* v. *I.R.C.*,[7] Phillimore, L.J., remarked : "In construing a modern statute, not dealing with the particular customs of a particular locality, or the practice of a particular trade, but of general application, evidence (to inform the court as the meaning of words) is inadmissible." In the same case, however, at p. 647, Cozens Hardy, M.R., opined : "It is for the court to interpret the statute as best as it may. In so doing the courts may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries."

It is a rule of presumption in the interpretation of statutes that the words used in a statute are to be regarded as strictly and correctly used by the Legislature. Although it has often been recognised that ordinary dictionaries can but be imperfect guides to the construction of statutory terms which have to be interpreted to accord with the underlying and disclosed intention of the

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1. *Brutus* v. *Cozens*, (1972)3 WLR 521, 525 (*per* Lord Reid)
2. (1886)16 QBD 636, 641; *Lakshmi Kutty* v. *Mohandas*, (1989)2 KLT 539.
3. *Piara Singh* v. *State*, AIR 1960 Punj 538, 541, quoting *Ruplal Mehra* v. *Emperor*, AIR 1945 Lah 158; *Karam Narain* v. *Volkart Bros.*, AIR 1946 Lah 116, 128.
4. *Supdt. and Legal Remembrancer, West Bengal* v. *Abani Maity*, 1979 Mad LJ (Cri) 557 (SC).
5. (1890)15 AC 1934.
6. (1888)13 AC 657.
7. (1914)1 KB 641, 650; *see* also *Australian Tramways Employees' Association* v. *Prahran, etc., Trust*, (1913)17 CLR 680, 695, 696 : "We may, and indeed should, in accordance with universal practice aid our general knowledge on this point by reference to dictionaries, histories, statutes reports and other trustworthy guides to the contemporary use of the term."

Legislature, reference to standard dictionaries has often been held to afford almost a sure guide to the meaning of the terms used in a particular statute.[1]

When any word is statutorily defined or judicially interpreted, there is no scope for looking at the dictionary meaning; however in the absence of such definition or interpretation, the court may seek the aid of dictionaries to ascertain the meaning of word in common parlance, bearing in mind that for a word there are more than one meaning in the dictionaries and that therefore the duty of the court is to select such meaning which is relevant to the context.[2]

According to Hardcastle,[3] "dictionaries are sometimes delusive guides and the best dictionary.... can never be an absolute authority on so varied and fluctuating subject as language." "Definitions in dictionaries have been deprecated," says Maxwell.[4] "They are not generally resorted to as a means, of elucidating the construction of statutes, and their use has sometimes been deprecated," says Sir Charles E. Odgeres in *Construction of Deeds and Statutes*.[5] According to the *same* author as editor of Craies on *Statutes Law*.[6] "Ordinary dictionaries are somewhat delusive guides in the construction of statutory terms." After referring to the view of Lord Macnaghten quoted above, the learned editor proceeds to observe : "No doubt reference to the better dictionaries does afford, either by definition or illustration, some guide to the use of a term in a statute." But it is necessary to remember that exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which those words occur.[7] Referring to Article 291 of the Constitution of India, Hidayatullah, C.J. observed in *Madhav Rao* v. *Union of India*,[8] "I do not propose to refer to dictionaries at all. The words of the article are plain enough to me and I have only to discover its dominant and immediate purpose or theme to say whether it is a provision relating to Covenants and Agreements."

In Ripon Housing Order, *Re*,[9] the definition of 'park' in the Oxford English Dictionary was approved and adopted by the Court. Morton, L.J., adopted the meaning of 'rubbish' given in the same work.[10] In *Narine* v. *Stephen Smith and the Pharmaceutical Society of Great Britain*,[11]

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1. *P. Orr & Sons (P) Ltd.* v. *Collector of Customs*, AIR 1965 M 312, 313.
2. See *State of Orissa* v. *Titaghur Paper Mills Co. Ltd.*, AIR 1985 SC 1293.
3. *Statutory Law*, 3rd Ed. at p. 165; *see* also *Rex* v. *Hall*, (1822)1 B & C 123, quoted in *Ruplal Mehra* v. *Emperor*, AIR 1945 Lah 158, 162; *Attorney-General for New South Wales* v. *Brewery Employees' Union of New South Wales*, 6 CLR 469, 606.
4. Maxwell : *Interpretation of Statutes*, 9th Ed., p. 34. But it is now stated therein that in more modern times they have increasingly been taken into account, Maxwell : *Interpretation of Statutes*, 11th Ed., p. 34.
5. 2nd Ed. at p. 217.
6. 1952 Ed. at pp. 151-152.
7. *Shaikh Gulfan* v. *Sant Kumar Ganguli*, AIR 1965 SC 1839 : (1965)2 SCA 156; *Nar Singh* v. *State*, AIR 1967 Punj 111 (FB); *see* also *Ishwarlal Girdharlal Joshi* v. *State of Gujarat*, AIR 1968 SC 870; *Shitab Khan* v. *Bar Council of India*, AIR 1969 Raj 136; *Manmammal* v. *Seha Mudaliar*, ILR (1968)2 Mad 616 : (1968)1 MLJ 94.
8. (1971)3 SCR 9, 67.
9. (1939)2 KB 838 (CA).
10. *McVittlie* v. *Bolton Corporation*, (1945)1 KB 281.
11. (1943)1 KB 17; *see* also *H.E Greene & Sons* v. *Minister of Health*, (1948)1 KB 34, 38; *Kerr* v. *Kennedy*, (1942)1 AER 412; *Spillers, Ltd.* v. *Cardoff, etc., Committee*, (1931)2 KB 21, 42; *Attorney-General of British Columbia* v. *McDonald Murphy Lumber Co.*, AIR 1930 PC 172, 175 (Lord Macmillan); *A.K. Gopalan* v. *State*, 1950 SCR 407. But see *State of West Bengal* v. *Anwar Ali*, 1952 SCR 284, 358. In *Gompers* v. *U. S.*, 58 L Ed 1115, 1120, Holmes, J., deprecated the use of dictionary for the purpose of interpreting the Constitution of USA Vinson, C.J. followed it in *American Communications Association* v. *Dounds*, 94 L Ed 925, 941. In the following cases reference was freely made to dictionaries for ascertaining the meaning of words used in statutes; *Harish Chandra* v. *Rex*, AIR 1949 All 15, 17; *Emperor* v. *Ranchodlal*, ILR 41 Bom 563, 564; *Nisha Kanto* v. *Saroj Bashini*, AIR 1948 Cal 294, 295; *Sunder Das* v. *Collector*

the Court referred for definitions to Webster and counsel to the Oxford English Dictionary.

The courts are not supposed to act under the dictatorship of Dictionaries, but have to construe the words having regard to the objects which a provision seeks to achieve and the setting in which the particular word has been used.[1] Where there is nothing better to rely upon dictionaries may be used to find out the general sense in which any particular word is understood at common parlance. As stated by the Supreme Court in *W.T. Commissioner, A. P.* v. *Court of Wards.*[2] The ordinary dictionary meaning cannot be discarded simply because it is contained in a dictionary. To do that would be to destroy the literal rule of interpretation. This is a basic rule relying upon the ordinary dictionary meaning which, in the absence of some overriding or special reasons to justify a departure must prevail.[3] However, the use of a dictionary *ad lib* without an analysis of the entire Act, its purpose and intent, for ascertaining the meaning in which the Legislature could have used the word or expression may not lead the court to right conclusion.[4] Though according to ordinary dictionary meaning an establishment must have a separate identifiable existence, yet it is no useful guide to decide the type of dispute touching the establishment of a co-operative society required to be referred to the arbitration of the Registrar for decision under the Act.[5]

Context also relevant.—Neither etymology nor dictionary is a self-sufficient guide for a true interpretation and construction of statutes. The set-up and context are also relevant for ascertaining what exactly was meant by the terminology employed.[6] When the context makes the meaning of word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers.[7]

To ascertain the meaning of technical terms, reference may be made to authoritative works on the subject. Thus 'direct taxation' in the Canadian Constitution passed by the British Parliament was defined in accordance with Mill's definition thereof, though Lord Hobhouse observed in *Bank of Toranto* v. *Lambe.*[8] "Their Lordships then take Mill's definition above quoted as a fair basis for testing the character of the tax in question, not only because it is chosen by the appellant's counsel, nor only because it is that of an eminent writer, nor with the intention that it should be considered a binding legal definition, but because it seems to them to embody with sufficient accuracy for this purpose an understanding of the most obvious *indicia* of

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of Gujarat, ILR 3 Lah 349 at 355 (FB); *Waman Rao* v. *Shrikumar*, ILR 1945 Nag 719 : AIR 1946 Nag 42, 44; *Beohar Singh* v. *C. I. T.*, ILR 1947 Nag 425 : AIR 1948 Nag 228, 230; *Emperor* v. *Turab Khan*, ILR 17 Luck 52 : AIR 1942 Oudh 39, 44; Huddleston B., observed in *Crofts* v. *Taylor*, (1887)19 QBD 524 at 528, 529 : "The real question here is the meaning of the words 'dilute', and giving its ordinary dictionary meaning of. ' to thin, weaken, reduce the strength of.' "I think the appellant clearly diluted Barclay's beer. There is no manifest incongruity in giving this meaning to the word, and the context clearly shows that this construction is right." *Taj Mahal Hotel* v. *Commissioner of Income-tax*, AIR 1969 Andh Pra 84, where reference to dictionaries and standard authors was held permissible; *Awadh Sugar Mills* v. *Sales Tax Officer*, (1968)21 STC 295.

1. *Commissioner of Wealth-tax, M.P., Bhopal* v. *Tarabai Kanakmal, Indore*, 1982 MPLJ 640 (FB).
2. AIR 1977 SC 113.
3. *Commissioner, W. T.* v. *Tarabai Kanakmal*, 1983 Jab LJ 10 (FB).
4. *Balani Ores Ltd.* v. *State of Orissa*, (1975)41 Cut LT 1 (SC) : (1974)2 SCC 777.
5. Vide *Sonepet Co-operative Sugar Mills Ltd.* v. *Presiding Officer, Labour Court, Rohtak*, AIR 1986 P & H 386 : 1986 Lab IC 1916 (FB).
6. *Dunderdele* v. *Mukherjee*, 62 CWN 484.
7. *Mangoo Singh* v. *Election Tribunal*, AIR 1957 SC 871, 875; *H. Raghavendrachar* v. *The Registrar, Karnataka University, Dharward*, AIR 1995 Kant 91.
8. (1887)12 AC 575, 581.

direct and indirect taxation, which is a common understanding, and is likely to have been present to the minds of those who passed the Federation Act." Thus 'political crime' was defined after consulting Mill's and also Stephen *History of Criminal Law* in *Re* Castrone.[1]

The dictionary meaning of words can, however, be departed from, if the departure leads to the proper interpretation of the will of the Legislature.[2]

The dictionary meaning is no yardstick, where the provisions are ambiguous and leave a scope of unchecked, unguided and arbitrary assumptions of jurisdiction. then the court has no alternative but to strike down those provisions.[3]

Reference to dictionaries is hardly of any avail, particularly in the case of words of ordinary parlance with variety of well-known meanings. Such words take colour from the context.[4]

In *C.W.T.* v. *Court of Wards*,[5] the Supreme Court confirmed the rule that though dictionaries are not authorities on the meaning of words used by the Legislature, ordinary meaning of a word in an enactment cannot be discarded merely because it is written in the dictionary.

Of course, a statute is not to be interpreted merely from 'lexicographer's angle'; 'in built policy of the Legislature as discernible from the object and scheme of the Act' must be given effect to.[6] Where the court referred to a number of dictionaries while determining the meaning of the word 'apprentice' in Employees' State Insurance Act, 1948.

Dictionaries were also referred to and relied on in the of *Shri Janki Sugar Mills* v. *Commissioner*,[7] while interpreting certain expressions under the U.P. Sugarcane Order, 1954, and *Gestetner* v. *C.I.T.*[8] While interpreting the expression 'salary' in Income Tax Act, 1961, Schedule IV, Part A, Rule 2*(b)*.[9]

21. Analogy.—Arguments by analogy may be misleading.[10] It has been repeatedly said by the Supreme Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in *pari materia*. One cannot imagine anything more dangerous than to attempt to construe an Act of Parliament directed to a totally different subject-matter by having regard to the very special, very obscure and artificial language of the Act in question (such as Rent Act) which is directed to a totally different subject-matter and actuated and governed by a completely different policy.[11] It is not right to refer to or rely on the provisions of one statute in construing those of another,[12] particularly

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1. (1891)1 QB 149, 165; Stephen, J. was a member of the Bench.
2. *Nihal Singh* v. *The Board of Revenue*, 1962 All LJ 782 : 1962 All WR (HC) 700.
3. *Sonepat Co-operative Sugar Mills Ltd.* v. *P.O. Labour Court*, AIR 1986 P&H 386 (FB).
4. *Gramophone Co. of India Ltd.* v. *Birendar Bahadur Pandey*, AIR 1984 SC 667 : (1984)2 SCC 534 : (1984)2 ECC 142 : 1984 UJ (SC) 475 : 1984 Cur Civ LJ 292 : 1984 SCC (Cr) 313 : (1984)1 Com LJ 362.
5. AIR 1977 SC 113.
6. *S.R. of Legal Affairs, W.B.* v. *Abani Maity*, (1979)4 SCC 85; *see* also *E.S.I. Corporation* v. *TELCO*, (1975)2 SCC 835.
7. (1979)1 SCC 524.
8. AIR 1979 SC 607.
9. AIR 1979 SC 607; *K.B. Rohmare* v. *Shankar Bao*, (1975)1 SCC 252; *Sant Ram* v. *Union of India*, AIR 1976 Delhi 90.
10. *Hari* v. *Deputy Commissioner of Police*, AIR 1956 SC 559, 568 : 1956 SCR 506, 524; *Anglo-French Drug Co.* v. *Tinaikar*, AIR 1959 Bom 21, 23. Reasons based on analogy are scarcely applicable; *Nathu* v. *Delbande Hussain*, AIR 1967 Madh Pra 14.
11. *Somershield* v. *Robin*, (1946)1 All ER 218, 221 (CA).
12. *The Board of Muslim Wakfs, Rajasthan* v. *Radha Kishan*, AIR 1979 SC 289 (295); *S. Mohan Lal* v. *R. Kondiah*, 1979 UJ (SC) 338 (339-40).

when they are not *in pari materia*.[1] Courts decline to consider other statutes proceeding on different lines and including different provisions or judicial decisions thereon.[2] Merely because in an entirely different context and according to the scheme of a different enactment particular words were construed by a court to mean a certain thing, it will be idle to urge that similar words occurring in another context and in a dissimilar enactment should be given the same construction.[3] In the construction of statutory provision reasons founded upon analogies are scarcely applicable.[4] The provisions of law, however, have to be interpreted as they stand and the language of one law cannot be imported into the other.[5]

A court cannot, particularly, in the case of an exproprietary measure like the Madras Agriculturists' Relief Act, 1938, rely upon the supposed policy of the Legislature and extend the scope of the relief to agriculturists by analogy.[6]

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1. *Damodar* v. *Bonwari Lal*, AIR 1960 Cal 469, 472; *Loknath* v. *State of M.P.*, AIR 1960 MP 181, 183; *Ram Narain* v. *State of U.P.*, 1956 SCR 664, 673: *P. Mariappa* v. *State of Tamil Nadu*, (1990)2 MLW 655 (DB).
2. *Panjumal Daulatram* v. *Sakhi Gopal Thakurdin Agrawal*, 1977 MPLJ 762.
3. *Begum Shah Hussain* v. *Attar Singh*, AIR 1960 J & K 110, 112.
4. *Nathu* v. *Dilbande Hussain*, AIR 1967 MP 14, 17.
5. *Daulat Ram* v. *State of Rajasthan*, AIR 1960 Raj 86, 89 (*per* D.S.Dove, J.).
6. *K. Hutchi Gowder* v. *Ricobdas Fathaimul & Co.*, AIR 1965 SC 577.

CHAPTER IX
HISTORY OF LEGISLATION

SYNOPSIS

1. *General* ---- 408
2. *When history not a proper guide : Leading case* ---- 410
3. *Reference to history when justified—Limit thereof—Operation should not be carried too far* ---- 410
4. *When meaning of statute is clear* ---- 412
5. *When meaning is doubtful* ---- 414
   —Historical facts ---- 414
6. *When statute has been amended* ---- 416

1. General.—Frequently the legislative history of a statute is the most fruitful source of instruction as to its proper interpretation.[1] It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.[2] In construing a statute the Court is not bound to forget its history or the background against which it was enacted.[3] Historical background (Law Commission recommendations, etc.) may sometimes have to be looked in to discover the 'real intent' of Legislature, while 'keeping the diction of the statute intact', said the Supreme Court in *Udayam* v. *R.C. Bali*.[4] For interpreting unamended provision, historical background of the amendment may be relevant.[5] In the matter of interpretation of a statute the history of the legislation and the surrounding circumstances, which existed at the time and demanded a change of law or the enactment of new one can all be taken into consideration. Legislative debates can be cited before the Court "at least for the purpose of finding out the historical background and the environmental circumstances in which the law was made", said the Punjab High Court in a case under Punjab Gram Panchayat Act, 1953.[6] The version in the regional language in which the Act was passed should be taken into consideration in trying to interpret the authoritative English version.[7] The history of the legislation is also an important aid. By history of the legislation the Courts mean the prior statutes on the same subject—the legal history of the statute.[8] "In coming to a determination as to the meaning of a particular word in a particular Act of Parliament", observed Lord Sankey in *Henrietta* v. *Attorney-General of Canada*,[9] "it is permissible to consider two points, *viz* :

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1. *Flora* v. *United States*, 362 US 145 : 4 L Ed 2d 623, 627; *Benoy Krishna* v. *State of West Bengal*, AIR 1966 Cal 429, 434 (Basu, J.); *Monnalige Gowda* v. *State of Mysore*, AIR 1964 Mys 84, 89 (Somnath Iyer, J.).
2. *Kedar Nath* v. *State of Bihar*, AIR 1962 SC 955, 972; *Sugauli Sugar Works* v. *Asst. Registrar, Co-operative Societies*, 1962 (Supp) 3 SCR 804, 807 (Sinha, C.J.).
3. *Manickam Pillai* v. *Asst. Registrar, High Court*, AIR 1958 Ker 188, 192.
4. AIR 1977 SC 2319; *see* also *Umed* v. *Raj Singh*, AIR 1975 SC 43.
5. *Lok Sikshana* v. *C.I.T.*, (1976)1 SCC 254.
6. *Duli Chand* v. *State*, AIR 1979 P & H 81 (FB).
7. *Murli Manohar* v. *State of U.P.*, AIR 1957 All 159, 170; *Pt. Mata Badal Pandey* v. *Board of Revenue*, 1976 All LR 393 (FB).
8. Sutherland: *Statutory Construction*, Vol. 2, Article 5002 at pp. 483, 484.
9. AIR 1930 PC 120, 121, Sankey, J. (as he then was) made use of general history in *Attorney-General* v. *Brown*, (1920)1 KB 773, 793; *Devi Sharan* v. *S.D.O., Kichha*, 1988 All LJ 1127.

(*i*) the external evidence derived from extraneous circumstances such as previous legislation and decided cases,

(*ii*) internal evidence derived from the Act itself."

"Previous legislation may be relevant to the interpretation of later statutes in two ways :

(1) The course which legislation on a particular point has followed often provides an indication as to how the Act at present in force should be interpreted; and

(2) light may be thrown on the meaning of a phrase in statute by reference to specific phrase in an earlier statute dealing with the same subject-matter."[1]

In interpreting words and phrases, it is permissible to refer to the previous history and decided cases as also to external evidence such as extraneous circumstances.[2]

Where there is, however, a positive enactment of the Indian Legislature the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law—or of the English law upon which it may be founded.[3] Accordingly it is a sound rule of interpretation to take the words of a statute as they stand to interpret them ordinarily without any reference to the previous state of the law on the subject or the English law upon which it may be founded; but when it is contended that the Legislature intended by any particular amendment to make substantial changes in the pre-existing law, it is impossible to arrive at a conclusion without considering what the law was previously to the particular enactment and to see whether the words used in the statute can be taken to effect the change that is suggested as intended.[4] The Legislature is to be presumed to know the state of the law at the time the Act or Regulation was passed and the change it sought to effect; in other words, the state of the law as it was before the passing of the Act can be taken as a guide to ascertain the mischief which the Legislature sought to remedy or secure.[5] If there is any doubt as to the proper construction of the language of a statute, it will undoubtedly be legitimate to consider the previous law which it is consolidating and amending.[6] And for this purpose it is legitimate and proper to take into account the state of things prior to the enactment and the matters intended to be provided for by the new enactment.[7] The general language, however, must be read in the light of central purpose of the Act, as derived from the legislative history of the Act and the surrounding circumstances of its enactment.[8]

Although it is useful to keep in mind the historical background, it does not necessarily help to determine the true meaning to be attached to the language employed in the statute.[9]

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1. *Laxmibai Hareshwar Joshi* v. *State of Maharashtra*, 1977 Mah LJ 752 (DB).
2. *Mohindra Supply Co* v. *G.G.-in-Council*, AIR 1954 Punj 211.
3. *Mst. Ramanandi Kuer* v. *Mst. Kalawati Kuer*, AIR 1928 PC 2, 4, (*per* Lord Sinha, J.) (a case under Indian Succession Act); *Sherfuzzaman* v. *Hunter*, AIR 1930 Oudh 20; *Bahadur Singh* v. *Ram Phall*, AIR 1930 Oudh 148, 159 (FB); *Neogy* v. *Neogy*, AIR 1936 Rang 105; *Hem Raj* v. *Krishen Lal*, ILR 10 Lah 106, 126 (FB); *Madan Lal* v. *Changdeo Sugar Mills*, AIR 1958 Bom 491, 494 (Companies Act, 1956 differing from English Act).
4. *Abdur Rahim* v. *Ab. Mohamed Barkat Ali Shah*, AIR. 1928 PC 16, 18, *per* Lord Sinha (Civil Procedure Code, Section 92); *Diwan Singh* v. *Emperor*, AIR 1936 Nag 55.
5. *Mohd. Salem* v. *Umaji*, AIR 1955 Hyd 113 : ILR 1955 Hyd 169 (FB), (*per* Jagan Mohan Reddy, J.).
6. *Secretary of State* v. *Mask & Co.*, AIR 1940 PC 105, 109.
7. *Zehirbhai Habibbhai* v. *Ambalal Harilal Shaw*, ILR 1966 Guj 963.
8. *Johansen* v. *United States*, 96 L Ed 1051, 1056: 351 US 427 (*per* Read, J.); *see* also *Chamarbaugwala* v. *Union of India*, 1957 SC 628, 930, 936-7 (Venkatarama Aiyar, J.); *Bipat Beni* v. *P.D. Savarkar*, AIR 1962 Bom 167,168 (Patel, J.).
9. *J.K. Trust, Bombay* v. *Commissioner of Income-tax, Bombay*, AIR 1958 Bom 191, 192; *Cherry Hosiery Mills, Ltd.* v. *Ghose*, AIR 1959 Cal 397, 399 (Sinha, J.).

There can be no legislative history for the provisions of an Act [or, say Article 16(4) of the Constitution] which have found a place in the enactment (or the Constitution) for the first time.[1]

2. When history not a proper guide : Leading case.—Lord Herschell indicated the correct approach in *Bank of England* v.*Vagliano*,[2] thus :

> "I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not start with enquiring, how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see, if the words of the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a Code a particular branch of law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object, with which it was enacted, will be frustrated. The purpose of such a statute surely was that on any point, specially dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the decision."

Whether the statute codifies or amends the law, if its provisions are expressed in clear and unambiguous terms resort should not be had to the pre-existing law, although such reference may be useful and legitimate where the provisions are of *doubtful* import or are couched in language which had previously acquired a technical meaning, for as Lord Watson said in *Robinson* v.*Canada Pacific Railway Co.*,[3] an appeal to earlier law and decisions for the purpose of interpreting a statute can only be justified upon some such special grounds.[4] The plain words and meaning of a statute cannot be overridden by legislative history,[5] which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious basis for inference in every direction.[6] Interpretation should primarily be grammatical and liberal. Words should be given their ordinary meanings. The context in which they are used should be kept in view. The statute as a whole should be considered, but extrinsic circumstances, like the history of the statute may not be resorted to, unless the true import is not evident from the statute itself.[7] No legislative history can justify judicial emasculation of the language.[8]

3. Reference to history when justified—Limit thereof—Operation should not be carried too far.—Resort to the history of the legislation to construe the meaning of any provision therein is more often than not taken exception to. At the same time it is common knowledge that when the

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1. *General Manager, Southern Railway* v. *Rangachari*, (1962)2 SCR 586, 600 (Gajendragadkar, J.).
2. 1891 AC 107, 144; *Subba Rao* v. *Commissioner of Income-tax, Madras*, AIR 1956 SC 604, 610; *see* also *Ganpat* v. *Sopana*, ILR 52 Bom 88 : AIR 1928 Bom 35; *Wilkinson* v. *Wilkinson*, ILR 47 Bom 843: AIR 1928 Bom 321, 351; *Satish Chandra* v. *Ram Doyal De*, ILR 48 Cal 388, 405 (SB); *King-Emperor* v. *Barendra Kumar Ghosh*, AIR 1924 Cal 259, 272; *Khandelwal* v. *Official Assignee*, AIR 1924 Cal 424; *Rahim Bux* v. *Central Bank*, ILR 56 Cal 367: AIR 1929 Cal 497; *Neogi* v. *Neogi*, AIR 1936 Rang 105; *Suraj Prasad* v. *Gulab Chand*, ILR 28 Cal 517, 528; *Norendra Nath Sircar* v. *Kamal Basini Dasi*, ILR 23 Cal 563, 572 (PC).
3. 1892 AC 481, 487.
4. *Nilmani Kar* v. *Sati Prasad Garg*, ILR 48 Cal 556, 566 (FB), (*per* Mookerjee, A.C.J.).
5. *C.I.T., Madras* v. *Madurai Mills Co., Ltd.*, (1973)1 SCWR 574.
6. *Gams Co.* v. *Walling*, 89 L Ed 921, 933: 324 US 244 (*per* Rutledge, J.); *Commissioner of Income-tax, Gujarat* v. *R.M. Amin*, 1977 UJ (SC) 31 (35).
7. *Budhulal* v. *Deccan Banking Co.*, ILR 1955 Hyd 101: AIR 1955 Hyd 69 (FB).
8. *Maryland Casualty Co.* v. *Cushing*, 97 L Ed 806, 825.

words of a statute are ambiguous, attempts are not infrequently made to ascertain their true meaning by reference to the statute of the law at the time the statute was passed, the mischief sought to be avoided and the stages through which the concerned legislation passed.[1]

Legislative history of a provision though not directly germane for the purpose of construing statute may, however, be used in exceptional cases to denote the beginning of the legislative process which results in the logical end and the final of the statutory provision but in no case can the legislative history take the place of or be a substitute for an interpretation which is in direct contravention of the statutory provision concerned.[2] "We have cautioned against a literal reading of congressional labour legislation," says Brennan, J.[3]: "such legislation is often the product of conflict and compromise between strongly held and opposed views, and its proper construction frequently requires consideration of its wording against the background of its legislative history and in the light of the general objectives Congress sought to achieve." The Court will consider the legislative history of an enactment where its language is ambiguous.[4] While interpreting Section 499 of the Indian Penal Code, Acting Chief Justice Mookerjee was not unmindful in *Satish Chandra Chakrawarti* v. *Ram Dayal De*,[5] that such reference to the history of legislation could only be legitimately made, as was done by the Judicial Committee in *Ishuree Persad Narain Singh* v. *Lal Chutterput Singh*,[6] and *Brown* v. *Melachlan*,[7] when reasonable doubt was entertained as to the construction of a statute; but his Lordship felt bound to observe : "The operation may, however, be easily carried too far, and may, in the case of codification of Acts, lead to results which have been emphatically condemned in decisions of the highest authority." It is well known that when a particular branch of law is codified it is intended and the object essentially is that on any matter specially dealt with by that law it should be sought for in the codified enactment alone when any question arises relating to that matter. The court is not at liberty to look to any other law. The previous history of the law cannot be allowed to affect the interpretation if the construction does not require the previous history to be taken into account.[8] The mere omission in a later statute of negative provision contained in an earlier one cannot by itself have the result of effecting a substantive affirmation.[9] It is not open to the Court to go behind what has been enacted by the Legislature, and to enquire how the enactment come to be made, whether it arose out of incorrect information, or indeed on actual deception by someone on whom reliance was placed by it. The Court must accept the enactment as the law unless and until the Legislature itself alter such enactment, on being persuaded of its error.[10] Lord Hannen in delivering the judgment of the Board in *Labrador Company* v. *Queen*,[11] observed :

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1. *State v. Govindan Thampi*, AIR 1957 TC 20; *Prashar* v. *Vasantaram Dwarkadas*, AIR 1963 SC 1356: (1963)1 SCJ 687; see also *Shivnayan Kabra* v. *State of Madras*, AIR 1967 SC 986 : (1967)1 MLJ (SC) 159 : (1967)1 Andh WR (SC) 159: (1967)1 SCJ 825; *Inder Singh* v. *Gulzara Singh*, AIR 1969 Delhi 154, 156 (FB) (S.K. Kapur, J.). *See* also *Dr. Hari Singh* v. *E.F. Deboo*, AIR 1969 Goa 349; *Sanghri Jeevaraj Ghewarchand* v. *Madras Chillies, Grains, Kirana Merchants Workers Union*, AIR 1969 SC 530; *D.K.Trivedi & Sons* v. *State of Gujarat*, AIR 1986 SC 1323.
2. *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149 at p. 314.
3. 19 L Ed 2d 705, 711.
4. *Junius I Scales* v. *United States*, 367 US 203 : 6 L Ed 2d 782.
5. ILR 48 Cal 388, 405 (SB); see also *K.E.* v. *Barendra Kumar Ghosh*, AIR 1924 Cal 257, 272 (FB).
6. (1842)3 MIA 100, 130.
7. (1872) LR 4 PC 543, 550.
8. *Rohini Kumar* v. *Narendra Singh*, (1972)1 SCC 1, 6 (*per* Grover, J.); *Patturi Veeranna* v. *Seethamma*, AIR 1969 Andh Pra 15, 18 (*per* Ekbote, J.); *Bai Dahi* v. *Bai Sada*, AIR 1961 Guj 105, 108 (*per* Miabhoy, J.).
9. *Union Steamship Co.* v. *Mary Robin*, AIR 1920 PC 140, 142.
10. *Tilkino* v. *Aotea Dist. Maroi Land Board*, AIR 1941 PC 109, 112.
11. 1893 AC 104.

"This is an absolute statement by the Legislature that there was a *seigneurie* of Mingan. Even if it could be proved that the Legislature was deceived, it would be competent for a Court of law to disregard its enactment. If a mistake has been made, the Legislature alone can correct it. The Act of Parliament has declared that there was a *seigneurie* of Mingan, and that thenceforward its tenure shall be changed into that of *francea leu roturier*. The Courts of law cannot sit in judgment on the Legislature, but must obey and give effect to its determination."

There is no better key to a difficult problem of statutory construction than the law from which the challenged statute emerged. Remedial laws are to be interpreted in the light of previous experience and prior enactments.[1] Harlan, J., observed in *United States* v. *Lousiana*[2]: "Because the statute on its face is inconclusive as to these issues, we turn to the legislative history."

With regard to permissible limits of reference to legislative history, the Supreme Court in *Union of India* v. *S.H. Seth*,[3] said that legislative history may be consulted by Courts to resolve ambiguities warning themselves that easy abuses of legislative history and the like matrix material may lead to the vice of occult uncertainty and wresting of legislative power from where it belongs. The history of events transpiring during the process of enacting has generally been the first extrinsic aid to which the courts have turned in attempting to construe an ambiguous Act. An attempt to be exhaustive about canons of interpretation and application of statutes is a journey through a jungle. Nevertheless while understanding and interpreting a statute, *a fortiori* a constitutional Code, the roots of the past, the foliage of the present and the seed of the future must be within the ken of the activist Judge. While it is true that Judicial interpretation should not be imprisoned in verbalism and words lose their thrust when read *in vacuo*, the Court must search for a reliable scientific method of discovery rather than the speculative quest for the spirit of the statute, and the cross-thoughts from the legislator's lips, or Law Commissioner's pens.

4. When meaning of statute is clear.—There is no need to resort to the legislative history of the Act, if the Court comes to conclusion that the provisions of the Act are clear and unequivocal.[4] A recent statute must be construed according to its own terms when these are bought into controversy and not according to its historical origin or otherwise.[5] In construing the provisions of an Act in force, which in themselves are perfectly clear, reference should not be made to the language of a former Act on the subject which the Act in force superseded.[6] The rulings under the earlier Codes were not considered to be of much assistance in elucidating the meaning of Section 197 of Criminal Procedure Code[7] as it stood after the amendment of 1923.[8] A

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1. *United States* v. *Congress of Industrial Organisations*, 92 L Ed 1849, 1856 : 335 US 106 (*per* Reed, J.) : Nor where doubt exists, should we disregard informed congressional discussion.
2. 4 L Ed 2d 1025, 1036 : 363 US 1.
3. (1977)4 SCC 193; *Mohanlal Tripathi* v. *District Magistrate, Rai Bareilly*, (1992)4 SCC 80 : (1992)4 JT (SC) 363.
4. *United States* v. *Oregon*, 366 US 643 : 6 L Ed 2d 575, 579.
5. *Dewarkhand Cement Co.* v. *Secretary of State*, ILR 1939 Bom 320 : AIR 1939 Bom 215, 218. Reference to previous state of the law would be permissible for the purpose of aiding in the construction of a new statute if any provision therein is of doubtful import; *Rogers Pratt Co.* v. *Secretary of State*, AIR 1925 Cal 34, 41; *Corporation of Calcutta* v. *Union of India*, AIR 1957 Cal 548, 549 (*per* P.N. Mookerjee, J.).
6. *Rudra Pratap Singh* v. *Sikander Khan*, 39 IC 598 (Oudh); *Nalinikant Ambalal* v. *A.L. Narayan Rao*, AIR 1967 SC 193 : (1966)2 SCJ 401 : (1966)2 SCWR 75 (later and subsequent Income Tax Acts).
7. Now *see* Section 197 of 1973 Code.
8. *Rai Bajrang Bahadur* v. *Emperor*, AIR 1932 Oudh 308, 310.

Bench of the Calcutta High Court in *Amanat Ali* v. *Emperor*,[1] said : "The proper method of approaching the matter is to take the language of the section as it now stands without reference to changes in the wording or comparison with corresponding sections in previous statutes and then to see what the application of it would be in the present case, taking the language in the ordinary and natural meaning." In construing Section *7(iv)(c)* of the Court Fees Act, Rattigan, J., observed in *Barru* v. *Lachhman*[2] "We cannot agree with the doctrine that the interpretation of a section of an Act, when the meaning of the words of that section is perfectly clear, is to be arrived at only after a consideration of 'the history' of the law relating thereto. This may be a legitimate canon of construction when the meaning of a particular provision of law is open to doubt, but it is out of place when that provision is expressed in terms which can of themselves admit of no doubt as to their meaning." It is useless to enter into an enquiry with regard to the history of an enactment and any supposed defect in the former legislation on the subject, which it was intended to cure, in cases where the words of the enactment are clear.[3] Vaughan Williams, L.J., observed in *Hertfordshire County Council* v. *Barnet Rural Council*[4] : "It is said that, if we construe this section, according to its plain meaning, we shall be imputing to the Legislature that by this section they passed a law which is not entirely consistent with previous legislation and with the legal history of this matter. That is not, in my opinion, a sufficient reason for not giving to this section the plain meaning of the words used. It is not a sufficient reason to compel or justify us in refusing to give to this section that which appears to be the manifest meaning of the Legislature." "We do not construe Acts of Parliament by reference to history," observed Alderson, B., in *Gorhaun* v. *Bishop of Exeter*.[5] It is a cardinal principle of the interpretation of statutes that the Court should look first to the words of the statute itself and if these words are plain it is not permissible to consider what was the intention of the statute or the previous history of the law.[6] In interpreting the provisions of Section 20*(c)*, C.P.C., it is unnecessary to consider the previous history of these provisions, because the Court's duty in such a case would clearly be to interpret the words as they occur in Section 20*(c)* wholly uninfluenced by any considerations arising from the previous legislative history of the section.[7] "The mischief sought to be cured by an Act of Parliament must be sought in the Act itself. Although it may perhaps be legitimate to call history in aid to show what facts existed to bring about a statute, the inferences to be drawn therefrom are exceedingly slight."[8]

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1. AIR 1929 Cal 724. In the absence of ambiguity in a statute the Courts will not resort to legislative history in determining its meaning; *Packard Motor Co.* v. *National Labour Relations Board*, 330 US 485 : 91 L Ed 1040. The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious basis for inference in every direction; *Gams Co.* v. *Walling*, 324 US 244 : 89 L Ed 931.
2. 111 PR 1913 at p. 417; *see* also *Official Receiver, Moradabad* v. *Murtaza Ali*, ILR 54 All 616 : AIR 1932 All 434; *Irfan Ali* v. *Official Receiver, Agra*, ILR 52 All 748 : AIR 1930 All 837, 839 (Waqf Act).
3. *R.*v. *London*, (1889)24 QBD 213, affirmed in *Allcroft* v. *London*, 1891 AC 666; *Kothandarama* v. *Annamalai*, ILR 48 Mad 488 : AIR 1925 Mad 589.
4. (1902)2 KB 48; *Rogers Pratt Co.* v. *Secretary of State*, AIR 1925 Cal 34, 41 : "The Act (Income Tax) professes to be a consolidating and amending statute : on any point specifically dealt with in the Act the law is to be ascertained by interpreting the language used in the statute in its natural meaning, uninfluenced by considerations derived from the previous state of the law."
5. (1922)2 AC 339.
6. *Subramanya* v. *Sheikh Channu*, AIR 1935 Mad 928.
7. *Baroda Oil Cakes Traders* v. *Parshottam*, AIR 1954 Bom 491.
8. *R.* v. *West Riding*, C.C., (1906)2 KB 670.

A restrictive meaning for what appear to be plain words may be indicated by the Act as a whole, by the gloss of legislative history if a broader meaning would generate constitutional doubts.[1]

5. When meaning is doubtful.—If the words are really and fairly doubtful, then, according to the well-known legal principles, and principles of commonsense, historical investigation may be used for the purpose of clearing away the doubt which the phraseology of the statute creates.[2] To determine the legislative intent in case of ambiguity, resort may be had to the history of the statute.[3] It is only material to enter into such an inquiry where the words of an enactment are ambiguous and capable of two meanings in order to determine which of the two meanings was intended. We have not to do with history of the words unless the words are doubtful and require historical investigation to explain them.[4] In construing a statute it is permissible to look at the history of the legislation if any question of ambiguity arises.[5] But if the words are clear and unambiguous it would be unreasonable to interpret them in the light of the alleged background of the statute and attempt to see that their interpretation conforms to the said background.[6]

Historical facts.—Jessel, M.R., made the following pertinent observations in *Holme* v. *Guy*[7] : "The Court is not to be oblivious of the history of law and legislation. Although the court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and legislation tells the court, and prior judgments tell this present Court what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what it means, and not with a view to extending it to something that was not intended." In *Morisetty Bhadriah* v. *Sales Tax Appellate Tribunal, Hyderabad,*[8] the Andhra High Court has expressed similar views where it said that although the motives of the Legislature have no relevancy in the interpretation of a statute, yet when the history of a provision of law tells the court what the object of the Legislature was in changing the provision, the court has to see whether the terms of the section are such as would fairly carry out that object and no other, and is entitled to read the section with a view to finding out what it means, and not with a view to extending it to something that was expressly intended not to apply. Craies on *Statute Law,*[9] refers to the *Claim of Viscountess Rhondda,*[10] before the Committee of Privileges of the House of Lords, where Lord Birkenhead referred to the history of the movement for the enfranchisement of women and in referring to earlier cases he expressly

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1. *United States* v. *Wilkovich*, 353 US 194, 199 : 1 L Ed 2d 765, 769.
2. *Queen* v. *Most.*, (1881)7 QBD 244, 251, (*per* Lord Coleridge, C.J.).
3. *Prussian* v. *U.S.*, 282 US 675 : 74 L Ed 610; Crawford : *Statutory Construction*, Article 216 at p. 383; *United States* v. *Great Northern Railway Co.*, 77 L Ed 224, 230 (Cardozo, J.); *National Labour Relations Board* v. *Allis-clabeners Mfg. Co.*, 18 L Ed 1123, 1130 (Brennan, J.).
4. *Debendra Narain Roy* v. *Jogendra Narain Deb*, AIR 1936 Cal 593, 608.
5. *Venkateswara* v. *Venkatesa*, AIR 1941 Mad 449 (FB); *Mubarak Hussain* v. *Ahmad*, ILR 46 All 489 : AIR 1924 All 328 (FB); *see* also *Secretary of State* v. *Fahamidunnisa*, 17 IA 40, 51; *Mahadeo Ram* v. *Mohan Vikram*, AIR 1933 Pat 435 (Special Bench) (whether the Legislature intended to make any change); *Ma Tin Tin* v. *Maung Aye*, AIR 1941 Rang 135 (frequently the law was defective and one can infer that the legislature intended to remedy the defect); *Prem Lall Sein* v. *Radha Bullav Kenkra*, AIR 1931 Cal 140; *Bhikaji Maneckji* v. *Maneckji Mancherji*, 9 Bom LR 359.
6. *State of West Bengal* v. *B.K. Mandal*, AIR 1962 SC 779 : (1962)2 SCA 374.
7. (1877)5 Ch D 901.
8. 1964 Andh WR 367.
9. 5th Ed. at p. 120.
10. (1922)2 AC 339.

stated that he referred to them not for the purpose of exemplifying the legal view of the status of women, but as instances of the application of the doctrines of *Stradling* v. *Morgan*,[1] *i.e.*, as instances in which the Courts admitted extraneous circumstances as an aid to interpretation. In the same case Lord Dunedin in interpreting Section 1 of the Sex Disqualification (Removal) Act, 1919, which provided that a person should not be disqualified by sex or marriage from the exercise of any public function or from being appointed to or holding any civil or judicial office or post, observed at p. 390 of the report : "On the other hand, the words are doubtless of great generality and, on the mere interpretation of language it is easy to say that to sit in the House of Lords is to exercise a public function. Had the matter remained there I do not quite know to what result I should have ultimately come. But the matter does not remain there. It is certain that the words of the Act only remove a disability; they do not create a right. Now we find that historically no one has ever been held to have a right to demand, *ex debito justitial*, a writ of summons to sit as a Lord of Parliament, except a male Peer." His Lordship further observed at page 391 : "It is not as if a Peeress had been in use to demand a writ and had been refused on the ground of sex. This historical fact in my view turns the scale in the balanced question of construction."

Mr. Justice, H.R. Khanna, quoted the following passage from Maxwell on *Interpretation*,[2] in his separate judgment in *Kesvananda Bharati* v. *State of Kerala*[3] :

> "In the interpretation of statutes the interpreter may call to his aid all those external or historical facts which are necessary for comprehension of the subject-matter, and may also consider whether a statute was intended to alter the law or to leave it exactly where it stood before. But although 'we can have in mind the circumstances when the Act was passed and the mischief which then existed so far as these are common knowledge. . . . . we can only use these matters as an aid to the construction of the words which Parliament has used. We cannot encroach on its legislative function by reading in some limitation which we may think was probably intended but which cannot be inferred from the words of the Act'."

A statutory provision should always be construed on its own merits if that be possible and if there is no scope for ambiguity, and in such an event appeal to history and to reasons for the introduction of the statute is not very helpful because the question would remain whether such history or reason has been clearly put into the language of the section of the statute which is under consideration. It is, however, not infrequent that there was a reason to provide a remedy for a particular situation, but the remedy was put in such language that it ceases to be an answer to the situation intended to be remedied. In the latter case appeal to his history and to reasons for the introduction of the statute may be relevant.[4] And, it seems legitimate that in order to find out the meaning of a law recourse may be had to the prior state of the law, the evil sought to be remedied and the process by which the law has evolved.[5] On the other hand, where the language of the statute is unambiguous and unqualified and requires no attempt to give it life and meaning, it cannot be qualified by adding new words so as to enlarge its scope.[6]

The question of construction of Article 311 must be decided upon a historical approach, that is, regard must be had to historical facts, to the surrounding circumstances and the state of the

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1. 1 Plowd 201.
2. Pp. 47-48, 12th Ed.
3. AIR 1973 SC 1461 at 1879.
4. *Ramballav* v. *Gangadhar*, AIR 1956 Cal 275.
5. *State of West Bengal* v. *Nripendra Nath Bagchi*, AIR 1966 SC 447 : (1966)2 SCWR 169.
6. *Shipping & Clearing Agents (P) Ltd.* v. *Corporation of Calcutta*, AIR 1967 Cal 110.

law at the time of the Constitution. The expressions 'removal' and 'dismissal' in the Article must be given the same meaning which was given in the statutory rules and regulations which were existent at the time the Constitution was enacted. In this view of the matter an order of compulsory retirement under Rule 75*(d)*, Bihar and Orissa Service Code passed against a police officer in subordinate service does not fall within the purview of Article 311.[1]

When a question for consideration is whether a statute is *retrospective* so as to effect existing rights, it is impossible to determine the question without considering the prior state of the law.[2]

6. When statute has been amended.—When the statute has undergone changes by way of amendments or otherwise, it is not only permissible but of great assistance in the matter of interpretation, to examine the legislative history of the provisions.[3]

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1. *Ram Adhar Singh* v. *State of Bihar*, AIR 1954 Pat 187.
2. *Gulabchand* v. *Kudilal*, AIR 1951 MB 1, 7 (FB).
3. *Abdul Shukoor* v. *Mohd. Ibrahim*, AIR 1962 Mys 239, 244.