

# Chapter 10:

# Interpretation of Statute

## Introduction

This study relates to **'Interpretation of Statutes, Deeds and Documents'**. So, first of all we must understand what these terms are and some other terms denote. It would, therefore, be important for us at this stage itself to understand the terms **'Statute'**, **'Document'**, **'Instrument'**, **'Deed'** and **'Interpretation'**.

### 'Statute'

1. To the common man the **'Statute'** generally means the laws and regulations of every type, whatever may be the source.
2. However, the term **'Statute'** is written will of the legislature. Normally, the term denotes an Act enacted by the legislative authority (e.g. Parliament of India).
3. The Constitution does not use the term **'statute'** though one finds the term **'law'** used at many places. The term **'law'** is defined as including any ordinance, order, bye-law, rule, regulation, notification, and the like. In short **'statute'** signifies written law in contradiction to unwritten law.

### 'Document'

1. A document is a paper or other material thing giving information, proof or evidence of anything.
2. The Law defines **'document'** in a more technical form. For example, Section 3 of the Indian Evidence Act, 1872 states that **'document'** means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.
3. Section 3(18) of the General Clauses Act, 1897 states that the term **'document'** shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more by than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter.

### 'Instrument'

1. **'instrument'** means a formal legal document which creates or confirms a right or records a fact.
2. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form.
3. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it.
4. Section 2(14) of the Indian Stamp Act, 1899 states that **'instrument'** includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

### 'Deed'

1. 'deed' means instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition.
2. Simply stated deeds are instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and deeds.

### 'Interpretation'

By interpretation is meant the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed. Simply stated, 'interpretation' is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained. 'Interpretation' signifies expounding the meaning of abstruse words, writings, etc., making out of their meaning, explaining, understanding them in a specified manner. A person is there by aided in arguing, contesting and interpreting the proper significance of a section, a proviso, explanation or schedule to an Act or any document, deed or instrument.

### Rules of Interpretation/Construction

Over a period, certain rules of interpretation/construction have come to be well recognized. However, these rules are considered as guides only and are not inflexible. These rules can be broadly classified as (a) **Primary Rules** and (b) **Other (Secondary) Rules**. **Primary Rules** can be further sub-divided into.

- (1) Rule of Literal Construction
- (2) Rule of Reasonable Construction
- (3) Rule of Harmonious Construction
- (4) Rule of Beneficial Construction
- (5) Rule of Exceptional Construction
- (6) Rule of Ejusdem Generis.

### Rule of Literal Construction / Grammatical Construction / Construction as it is / Word to Word Construction

#### Questions

**M12:** Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard.

#### Concept

1. It is the primary rule of interpretation. It can be also called as entry gate of interpretation because without this rule no further interpretation can be derived.
2. Every reader of law knowingly or unknowingly / intentionally or unintentionally uses this rule as the first time reader of law.
3. In this rule words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect up to maximum of its width.
4. Also it has to be borne in mind that words and phrases of technical nature are '*prima facie*' used in their technical meaning, if they have any, and otherwise in their ordinary popular meaning.
5. Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one. **For example**, when we talk of disclosure of **the nature of the**

**concern or interest'** of a director or the manager of a company in the subject-matter of a proposed motion we cannot confine the words to **Pecuniary Concern or Interest** alone but we have to include any concern or interest whatever. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

6. It is the general rule that **omissions** are not likely to be inferred. From this springs another rule that nothing is to be added to or taken away from a statute unless there are some adequate grounds to justify the inference that the legislature intended something which it omitted to express. "It is a wrong thing to add into an Act of Parliament words which are not there and, in the absence of clear necessity, it is a wrong thing to do." If a case has not been provided for in a statute. It is not to be dealt with merely because there seems to be no good reason why it should have been omitted, and the omission appears to be consequentially unintentional.
7. Here it is assumed that the draftsman is perfect.

<p><b>S.S. Railway Company vs. Workers Union (AIR 1969 S.C. at 518)</b></p>	<p>The phrase and sentences are to be construed according to the rules of grammar. the courts should give a literal meaning to the language used by the legislature unless the language is ambiguous or its literal sense gives rise to any anomaly or results in something which may defeat the purpose of the Act. It is the duty of the court to give effect to the intent of the legislature and in doing so, its first reference is to the literal meaning of the words employed. Where the language is plain and admits of only one meaning, there is no room for interpretation and only that meaning is to be enforced even though it is absurd or mischievous, the maxim being '<b>absoluta sententia expositor non indiget</b>' (which means that when you have plain words capable of only one interpretation, no explanation to them is required).</p>
<p><b>Arora vs. State of U.P., AIR 1964 S.C. 1230</b></p>	<p>However, sometimes the courts may look at the setting or the context in which the words are used and the circumstances in which the law has come to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. If there are two possible constructions of a clause, one a mere mechanical and literal construction based on the rules of grammar and the other which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also from the words used therein, the courts may prefer the second construction which, though may not be literal, may be a better one.</p>

**Rule of Reasonable Construction / Logical Construction / Golden Rule**

Questions

**N08:** Explain the 'Rule of reasonable construction' as may be applied in determining whether a particular act of a director of a company is 'ultra vires' or 'intra vires' of the objects of the company.

**PM:** Explain the Rule of "Reasonable construction under the interpretation of Statute, Deeds etc"

Concept

1. It is secondary rule of interpretation.

2. Where literal construction fails to achieve the purpose of the law or provision and fails to give it the intended meaning then this rule is used.
3. According to this Rule, the words of a statute must be construed '**ut res magis valeat quam pareat**' meaning thereby that words of statute must be construed so as to lead to a sensible meaning. Generally the words or phrases of a statute are to be given their ordinary meaning.
4. Here it is assumed that draftsman is faulty.

<b>Dr. A.L. Mudaliar vs. LIC of India (1963) 33 Comp Cas. 420 (SC)</b>	it was held that the Memorandum of Association of a company must be read fairly and its import derived from a reasonable interpretation of the language which it employs.
<b>Waman Lal Chotanlal Parekh vs. Scindia Steam Navigation Co. Ltd. (1944) 14 Comp. Cas. 69 (Bom.)</b>	in order to determine whether a transaction is intra vires the objects of a company, the objects clause should be reasonably construed: neither with rigidity nor with laxity.

Thus, if the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief provided the Court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute.

### Rule of Harmonious Construction:

#### Questions

**N12:** Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes.

#### Concept

1. It is secondary rule of interpretation.
2. When there is dispute between two provisions or two laws then this rule is used to resolve the ambiguity which literal construction cannot solve.
3. When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had 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.
4. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them.
5. The provisions can be reconciled as per following priority:
  - a. **Priority 1:** Try to uphold both the provisions / Laws. E.g. Indian Contract Act, 1872 & Cyber Law, 2000 shall be read simultaneously to validate the electronic contracts.
  - b. **Priority 2:** The specific will prevail over General provision. E.g. Banking Regulation Act, 1949 will prevail over Companies Act, 2013 for applicability of provisions to banking companies like HDFC Bank Ltd.; ICICI Bank Ltd; Etc...
  - c. **Priority 3:** The later provision or law will prevail over earlier provision or law.
6. It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent.

7. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it.
8. When rigid adherence to the general rule would require disregard of clear indications to the contrary, this rule must be applied.
9. The sections and sub-sections must be read as parts of an integral whole and being inter-dependent. Therefore, importance should not be attached to a single clause in one section overlooking the provisions of another section.
10. If it is impossible to avoid inconsistency, the provision which was enacted or amended later in point of time must prevail.
11. Here it is assumed that draftsman is faulty.

## Rule of Beneficial Construction / the Heydon's Rule / mischief rule / purposive construction

### Questions

**J09:** Explain the principles of "Rule of Beneficial Interpretation".

**PM:** Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example

### Concept

1. It is secondary rule of interpretation.
2. Where language used in statute have more than one interpretation and the real required meaning is to be derived then this rule will be used.
3. The rule is defined in *Heydon's case (1584) 3 Co. Rep 7a 76 ER 637*.
4. The rule which is also known as 'purposive construction' or mischief rule, enables consideration of four matters in construing an Act:
  - a. what was the law before the making of the Act;
  - b. what was the mischief or defect for which the law did not provide;
  - c. what is the remedy that the Act has provided; and
  - d. what is the reason for the remedy.
5. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.
6. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.
7. If, however, the circumstances show that the phraseology in the Act is used in a larger sense than its ordinary meaning then that sense may be given to it.
8. If the object of a statute is public safety then its working must be interpreted widely to give effect to that object.
9. Where a statute requires something to be done by a person, it would generally be sufficient compliance with it if the thing is done by another person on his behalf and by his authority, for it would be presumed that the statute does not intend to prevent the application of the general principle of law: '**quo facit per alium facit per se**' (he who acts though another is deemed to act in person).
10. This would be so unless there is something in either the language or the object of the statute which shows that personal act alone was intended.
11. Here it is assumed that draftsman is faulty.

## Rule of Exceptional Construction:

Questions

**J09:** The word "May" doesn't mean "Shall". Yet the word 'May' under certain circumstances means "Shall". Discuss the statement in the context of interpretation of statutes and the importance of distinction between mandatory and directory provisions.

Concept

1. This is secondary rule of interpretation.
2. Where existing language and words of the statute are not enough to give required coverage or meaning or absoluteness to the statute then this rule shall be used.
3. This rule has several aspects, viz.:
  - (a) **The Common Sense Rule:** Despite the general rule that full effect must be given to every word, if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated. The words of a statute must be so construed as to give a sensible meaning to them, if at all possible. They ought to be construed '**utres magis valeat quam pereat**' meaning thereby that it is better for a thing to have effect than to be made void.
  - (b) **Conjunctive and Disjunctive Words 'or' 'and':** The word '**or**' is normally disjunctive and '**and**' is normally conjunctive. However, at times they are read as *vice versa* to give effect to the manifest intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result: in such a case 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject, provided that the intention of the legislature is otherwise quite clear.
  - (c) **'May', 'must' and 'shall':** Before discussing this aspect, it would be worth while to note the terms '**mandatory**' and '**directory**'. Practically speaking, the distinction between a provision which is '**mandatory**' and one which is '**directory**' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form: an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:
    - the nature of the thing empowered to be done,
    - the object for which it is done, and
    - the person for whose benefit the power is to be exercised

**'May':** Where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to the general class of subjects, or where a remedy would be advanced and a mischief suppressed, or where giving the word a directory significance would defeat the very object of the Act then word 'may' should be interpreted to convey a mandatory force. The word 'may' is often read as 'shall' or 'must' when there is something in the nature of the thing to be done, which makes it the duty of the person on whom the power is conferred to exercise the power. The use of the expression 'shall' or 'may' is not decisive. Having regard to the context, the expression 'may' has varying significance. In one context, it may be purely permissive, while in another context it may confer a power and make it obligatory upon the person invested with the power to exercise it as laid down. Therefore, while undoubtedly the word 'may' generally does not mean 'must' or 'shall' yet the same word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which it occurs.

Coming to the word **shall**: the use of the word **shall** would not of itself make a provision of the act mandatory. It has to be construed with reference to the context in which it is used. Thus, as against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest. Hence, a provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessarily to be taken as against the Government to direct prosecution under that provision rather than under some other applicable statute.

Therefore, generally speaking when a statute uses the word 'shall' *prima facie* it is mandatory but it is sometimes not so interpreted if the context or intention of the legislature otherwise demands. Thus, under certain circumstances the expression 'shall' is construed as 'may'. Yet, it has to be emphasized that the term 'shall' in its ordinary significance, is mandatory and the Court shall ordinarily give that interpretation to the term, unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature to be collected from other parts of the Act. For ascertaining the real intention of the legislature, the Court may consider amongst other things:

- i. the nature and design of the statute,
- ii. the consequence which would flow from construing it one way or the other,
- iii. the impact of other provisions by resorting to which the necessity of complying with the provision in question can be avoided,
- iv. whether or not the statute provides any penalty if the provision in question is not complied with,
- v. if the provision in question is not complied with, whether the consequences would be trivial or serious, and
- vi. most important of all, whether the object of the legislation will be defeated or furthered.

Where a specific penalty is provided in statute itself for non compliance with the particular provision of the Act, no discretion is left to the Court to determine whether such provision is directory or mandatory – it has to be taken as mandatory.

### **Past Exam Questions (PE) / Practice Manual Questions (PM)**

**N04: Explain briefly the distinction between "Mandatory" and "Directory" provisions in a statute. How the Court deals with them differently.**

**Ans :**

**Relevant Rule :** [Rule of Exceptional Construction]

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form. An enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised

**Explanation & Answer :**

Thus, no general rule can be laid down for deciding whether any particular provision on a stat-

ue is mandatory or directory. In each case the court has to consider not only the actual word used, but has to decide the legislatures intent.

### Rule of Eiusdem Generis:

#### Questions

**M05,N09:** Explain the rule of 'ejusdem generis' with regard to interpretation of statutes.

**N10:** Explain the rule of "Ejusdem Generis" with reference to the interpretation of statutes. State the cases in which this rule is not applicable.

#### Provisions

The term '**ejusdem generis**' means '**of the same kind or species**'. Simply stated, the rule means:

(i) Where any Act enumerates different subjects, general words following specific words are to be construed (and understood) with reference to the words that precede them. Those general words are to be taken as applying to things of the same kind as the specific words previously mentioned, unless there is something to show that a wider sense was intended.

Thus the rule of **ejusdem generis** means that where specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier. For instance 'in the expression in consequence of war, disturbance or any other cause', the words 'any other cause' would take colour from the earlier words 'war, disturbance' and therefore, would be limited to causes of the same kind as the two named instances. Similarly, where an Act permits keeping of dogs, cats, cows, buffaloes and **other animals**, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc.

Where there was prohibition on importation of 'arms, ammunition, or gun power or any other goods' the words 'any other goods' were construed as referring to goods similar to 'arms, ammunition or gun powder' (*AG vs. Brown (1920), 1 KB 773*).

(ii) If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.

(iii) We must note, however, that the general principle of 'ejusdem generis' applies only where the specific words are all the same nature. When they are of different categories, then the meaning of the general words following those specific words remains unaffected-those general words then would not take colour from the earlier specific words.

It is also to be noted that the courts have a discretion whether to apply the 'ejusdem generis' doctrine in particular case or not. For example, the 'just and equitable' clause in the winding up powers of the Courts is held to be not restricted by the first five situations in which the Court may wind up a company.

### Secondary Rules of Interpretation

#### Effect of usage / Optima Legum interpretest consuetudo / Contemporanea expositoest optima et fortissima in lege

In this connection, we have to bear in mind two Latin maxims:

- (i) '*Optima Legum interpretest consuetudo*' (the custom is the best interpreter of the law); and
- (ii) '*Contemporanea expositoest optima et fortissima in lege*' (the best way to interpret a document is to read it as it would have been read when made). Therefore, the best interpretation/construction of a statute or any other document is that which has been



made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

## Associated Words to be Understood in Common Sense Manner / Noscitur A Sociis

### Questions

**M11:** "Associate words should be understood in common sense manner". Explain the statement in the light of rules of interpretation of statutes.

### Concept

When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of '**Noscitur A Sociis**' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. (*Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67*).

The term 'entertainment' would have a different meaning when used in the expression 'houses for public refreshment, resort and entertainment' than its generally understood meaning of theatrical, musical or similar performance. Similarly, the expression 'place of public resort' would have one meaning when coupled with the expression 'roads and streets' and the same express 'place of public resort' would have quite a different meaning when coupled with the word 'houses'.

## Internal Aids to Interpretation/Construction

### Questions

**N03:** Explain the usefulness of 'Heading and Title of a chapter in an Act and marginal notes of a Section' as internal aids in interpreting the provisions of a Statute.

**M04:** Explain the effects of a proviso to a section in a statute.

**M06:** What are the Internal and External aids to interpretation of statutes ? Give five examples each of Internal and External aids.

**N09:** Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso while carrying out the interpretation ?

**M10:** In what way are the following terms considered as 'internal aid' in the interpretation of statutes :

- a. Illustrations
- b. Explanation

**N11:** Explain the importance of "Preamble" and "Proviso" being internal aids to interpretation.

**PM:** How far are (i) title, (ii) preamble and (iii) marginal notes in an enactment helpful in interpreting any of the parts of an enactment?

**Concept**

Every enactment has its Title, Preamble, Heading, Marginal Notes, Definitional Sections/ Clauses, Illustrations etc. They are known as 'internal aids to construction' and can be of immense help in interpreting/construing the enactment or any of its parts.

**(a) Long Title:** An enactment would have what is known as a '**Short Title**' and also a '**Long Title**'. The '**Short Title**' merely **identifies** the enactment and is chosen merely for convenience, the '**Long Title**' on the other hand, **describes** the enactment and does not merely identify it. It is now settled that the Long Title of an Act is a part of the Act. We can, therefore, refer to it to ascertain the object, scope and purpose of the Act.

**(b) Preamble:** The **Preamble** expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.

Like the Long Title, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, e.g., where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

**(c) Heading and Title of a Chapter:** If we glance through any Act, we would generally find that a number of its sections applicable to any particular object are grouped together, sometimes in the form of Chapters, prefixed by Heading and/or Titles. These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts. However, there is a conflict of opinion about the weightage to be given to them. While one section of opinion considers that a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it and might be treated as 'preambles to the provisions following it', the other section of opinion is emphatic that resort to the heading can only be taken when the enacting words are ambiguous. According to this view headings or titles prefixed to sections or group of sections may be referred to as to construction of doubtful expressions, but can not be used to restrict the plain terms of an enactment. We must, however, note that the heading to one group of sections cannot be used to interpret another group of sections.

**(d) Marginal Notes:** Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section can not be used for construing the Section. In *C.I.T. vs. Ahmedbhai Umarbhai & Co.* (AIR 1950 SC 134 at 141), Patanjali Shastri, J., had declared:

"Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute", and the same view has been taken in many other cases. However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.

**(e) Definitional Sections/Clauses:** The legislature has the power to embody in a statute itself the definitions of its language and it is quite common to find in the statutes 'definitions' of certain words and expressions used in the body of the statute. When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context. The Court cannot ignore the statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.

The purpose of a definition clause is two-fold: (i) to provide a key to the proper interpretation of the enactment, and (ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.

The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same. When a word is defined to '**mean**' such and such, the definition is '*prima facie*' restrictive and exhaustive we must restrict the meaning of the word to that given in the definition section. But where the word is defined to '**include**' such and such, the definition is '*prima facie*' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section. We may also find a word being defined as '**means and includes**' such and such: here again the definition would be exhaustive.

It has been a universally accepted principle that where an expression is defined in an Act, it must be taken to have, throughout the Act, the meaning assigned to it by the definition, unless by doing so any repugnancy is created in the subject or context.

**(f) Illustrations:** We would find that many, though not all, sections have illustrations appended to them. These illustrations follow the text of the Sections and, therefore, do not form a part of the Sections. However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections. However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

**(g) Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment: ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

**(h) Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

**(i) Schedules:** The Schedules form part of an Act. Therefore, they must be read together with the Act **for all purposes of construction**. However, the expressions in the Schedule cannot con-

control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

**(j) 'Read the Statute as a Whole':** It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. Lord Waston, speaking with regard to **deeds** had stated thus: The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

### External Aids to Interpretation/Construction:

Society does not function in a void. Everything done has its reasons, its background, the particular circumstances prevailing at the time, and so on. These factors apply to any enactment as well. These factors are of great help in interpreting/construing an Act and have been given the convenient nomenclature of '**External Aids to Interpretation**'. Some of these factors are enumerated below:

**(a) Historical Setting:** The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act. We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.

**(b) Consolidating Statutes & Previous Law:** The Preambles to many statutes contain expressions such as "An Act to consolidate" the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law. They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.

**(c) Usage:** Usage is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the language in a statute is doubtful, **usage** – how that language has been interpreted and acted upon over a long period – may determine its true meaning. It has been emphasized that when a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.

**(d) Earlier & Later Acts and Analogous Acts:** Exposition of One Act by Language of Another: The general principle is that where there are different statutes in '*pari materia*' (i.e. in an analogous case), 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. If two Acts are to be read together then every part of each Act has to be construed as if contained in one composite Act. But if there is some clear discrepancy then such a discrepancy may ren-

der it necessary to hold the later Act (in point of time) had modified the earlier one. However, this does not mean that every word in the later Act is to be interpreted in the same way as in the earlier Act.

Where the later of the two Acts provides that the earlier Act should, so far as consistent, be construed as one with it then an enactment in the later statute that nothing therein should include debentures was held to exclude debentures from the earlier statute as well.

Where a single section of one Act (say, Act 'A') is incorporated into another statute (say Act 'B'), it must be read in the sense which it bore in the original Act from which it is taken consequently, it would be legitimate to refer to all the rest of Act 'A' to ascertain what that Section means, though one Section alone is incorporated in the new Act (Act 'B').

Suppose the earlier bye-law limited the appointment of the chairman of an organisation to a person possessed of certain qualifications and the later bye-law authorises the election of any person to be the chairman of the organisation. In such a case, the later bye-law would be so construed as to harmonise and not to conflict with the earlier bye-law: the expression 'any person' used in the later bye-law would be understood to mean only **any eligible person** who has the requisite qualifications as provided in the earlier bye-law.

◆ **Earlier Act Explained by the Later Act:** Not only may the later Act be construed in the light of the earlier Act but it (the later Act) sometimes furnishes a legislative interpretation of the earlier one, if it is 'pari materia' and if, **but only if**, the provisions of the earlier Act are ambiguous.

Where the earlier statute contained a negative provision but the later one merely omits that negative provision: this cannot by itself have the result of substantive affirmation. In such a situation, it would be necessary to see how the law would have stood without the original provision and the terms in which the repealed sections are re-enacted.

The general rules and forms framed under an Act which enacted that they should have the same force as if they had been included in it any may also be referred to for the purposes of interpretation of the Act.

◆ **Reference to Repealed Act:** Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the unrepealed part. This is so because it is part of the history of the new Act.

**(e) Dictionary Definitions:** First we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

**(f) Use of Foreign Decisions:** Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

## Rules of Interpretation/Construction of Deeds and Documents

### Questions

**N09:** Discuss the rules of interpretation of deeds and documents.

### Concept

The first and foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule. The Golden Rule is to ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words had been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense. It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one. Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

### Past Exam Questions (PE) / Practice Manual Questions (PM)

**M10:** Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so.

**Ans :**

**Relevant Rule :** [Rule of Interpretation of Deeds and Documents]

The first and foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words had been used have also to be taken into account.

Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense.

It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.