

THE IMPACT OF LEGISLATIVE DRAFTING ON STATUTORY INTERPRETATION

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Chapter I

1. Introduction:

Legislative drafting is a specialized skill that involves the formulation and preparation of laws and regulations by legislative bodies. It is a crucial process in the development of legal frameworks that govern societies, providing the foundation for orderly governance and the protection of individual rights.¹¹⁴⁵ The art of legislative drafting requires precision, clarity, and foresight to ensure that laws are effective, enforceable, and stand up to legal scrutiny.

At its core, legislative drafting involves translating policy objectives and principles into clear and unambiguous legal language. This process requires a deep understanding of legal principles, the legislative context, and the socio-economic landscape in which the laws will operate. The drafter must navigate intricate legal concepts, consider potential loopholes, and anticipate how the law will be interpreted and applied in practice.¹¹⁴⁶

The resulting legislative texts can take various forms, including statutes, regulations, ordinances, and other legal instruments. Effective legislative drafting not only articulates the intentions of lawmakers but also provides a stable and adaptable framework that can stand the test of time.¹¹⁴⁷ Moreover, it plays a pivotal role in fostering transparency, accountability, and the rule of law within a society.

Legislative drafters often collaborate with policymakers, legal experts, and stakeholders to ensure that the proposed laws align with societal needs and values. This collaborative approach helps in crafting legislation that is not only legally sound but also responsive to the dynamic challenges of the contemporary world.¹¹⁴⁸

GRASP - EDUCATE - EVOLVE

¹¹⁴⁵ DraftingPrinciples_August2013.pdf | last seen on 13/02/2024

¹¹⁴⁶ *ibid*

¹¹⁴⁷ The role of legislative drafters in determining the content of norms justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/norm/index.html | last seen on 13/02/2024

¹¹⁴⁸ *ibid*

2. Rational and Significance:

This research holds significant implications for both theoretical and practical aspects of legal scholarship and practice:

1. Theoretical Significance: By exploring the historical evolution of Legislative drafting and the mechanisms of statutory interpretation, this research contributes to the theoretical underpinnings of legal scholarship. It offers insights into how legal principles have evolved over time and how statutory interpretation shapes the theoretical framework of Legislative drafting¹¹⁴⁹.

2. Practical Significance: Understanding the impact of statutory interpretation on Legislative drafting has practical implications for citizens, lawmakers, legal practitioners, and State. It provides a roadmap for navigating legal ambiguities, improving legislative drafting, and ensuring that legislative drafting is justly and coherently upheld in an ever-changing legal landscape.

3. Policy Implications: The findings of this research can inform legislative reforms and policy decisions related to legislative drafting. By identifying challenges and proposing solutions, the research contributes to the development of legal frameworks that are clear, fair, and reflective of societal values.

3. Literature Review:

These books and articles collectively contribute to the understanding of the impact of legislative drafting on statutory interpretation. The insights from these works inform the theoretical foundations, practical considerations, and evolving dynamics of this critical relationship within legal frameworks¹¹⁵⁰.

A. Books

1. Vepa P. Sarathi's Interpretation of Statutes: This book delves into the distinctive and multifaceted aspects of statutory interpretation within the Indian legal context. It comprehensively explores the principles,

techniques, and challenges involved in interpreting statutes in India.¹¹⁵¹

2. Interpretation of Statutes by B.M. Gandhi: This small book is humble effort to introduce the students and to acquaint them with the basic principles of interpretation of enacted law.¹¹⁵²

3. Principles of Statutory Interpretation by Justice G. P Singh: This Book gives the expectations and suggestions of the community emerging in the legal system are to be considered and implemented by Judiciary bodies as a statutory body¹¹⁵³

4. N. S Bindra's Interpretation of Statutes: A standard Indian treaties throwing light on the settled principles of Interpretation applicable to laws generally and in particular, to the statutes made by the Indian legislature framed to suit Indian Conditions is, it can hardly be doubted, a prime need.

B. Journals and Articles

1. Drafting Statutes and Statutory Interpretation: Express or Assumed Rules?¹¹⁵⁴

2. The role of legislative drafters in determining the content of norms by Paul Delnoy¹¹⁵⁵

3. The Law Reform Commission's Consultation Paper On Statutory Drafting And Interpretation: Plain Languages and the law¹¹⁵⁶

C. Websites

1. casemine.com
2. blogileaders.com
3. AIROnline.in
4. SCCOnline.com

4. Research Problem:

To what extent does the complexity and clarity of legislative drafting influence statutory interpretation by the judiciary, and what reforms can be proposed to enhance the

¹¹⁴⁹ Interpretation of Statutes, [https://www.tndalu.ac.in/econtent/29 Interpretation of Statutes.pdf](https://www.tndalu.ac.in/econtent/29%20Interpretation%20of%20Statutes.pdf), last seen 12/2/2024.

¹¹⁵⁰ Ibid

¹¹⁵¹ Interpretation of Statutes by Vepa P. Sarathi

¹¹⁵² Interpretation of Statutes by B.M. Gandhi

¹¹⁵³ Principles of Statutory Interpretation by Justice G. P Singh | 11th Edition reprinted 2009

¹¹⁵⁴ Drafting Statutes and Statutory Interpretation: Express or Assumed Rules? | available at <https://www8.austlii.edu.au/au/journals/MonashULawRw/2019/13.pdf>

¹¹⁵⁵ The role of legislative drafters in determining the content of norms by Paul Delnoy | available at <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/norm/index.html>

¹¹⁵⁶ The Law Reform Commission's Consultation Paper On Statutory Drafting And Interpretation: Plain Languages and the law | available at <https://www.lawreform.ie/fileupload/consultation%20papers/cpPlainLanguage.htm>

effectiveness and fairness of statutory interpretation processes

5. **Aims And Objectives of Research:**

The aim of this research is to investigate the intricate relationship between legislative drafting quality and statutory interpretation by the judiciary, with the overarching goal of proposing reforms to enhance the effectiveness and fairness of statutory interpretation processes. This study seeks to understand how the clarity, precision, and complexity of legislative language influence judicial interpretation practices. By examining judicial approaches to interpreting statutes of varying drafting quality, this research aims to uncover the impacts on legal certainty and fairness in the application of the law.

6. **Hypothesis Of Research:**

The complexity and clarity of legislative drafting significantly influence statutory interpretation by the judiciary. It is proposed that statutes characterized by clear and precise language lead to more consistent and predictable interpretations, enhancing legal certainty, fairness, etc and implementing reforms to enhance the clarity and accessibility of legislative drafting, such as simplifying language and providing clearer definitions, will positively impact statutory interpretation processes.

7. **Research Methodology**

a) **Sources of Data Collection:**

The sources useful for primary data are constitution of India, Interpretation of Statutes for understanding various legislative drafting techniques and its interpretation.

b) **Tools of Data Collection:**

The data is collected mainly through Secondary Sources such as articles, journals, books, & data available on various website relating to Capital Punishments and its Constitutional validity.

c) **Research Models:**

While doing research the researcher will use the following models:¹¹⁵⁷

a. Explorative Model: This research model is used mainly for the purpose of formulating a problem more precise and structured investigation or of developing hypothesis. Also used for understanding the basis for clarifying concepts, establishing priorities for future research, Hence, the researcher will use this model to explore an in-depth analysis of legal frameworks, precedents, and societal factors shaping the interpretation of statutes related to Legislative drafting.

b. Explicative Model: This model is used to ascertain the nature, scope, source of law in order to explain what law is and also to spell out the several provisions, parts, facts of law and legal system. The Researcher will use this model to Identify and select specific statutes or laws relevant to legislative drafting that are subject to interpretation.

c. Evaluative Model: This model is used to find out how a legal fact came to be what it is. In it, the evolution of a legal fact is traced out by locating various supportive and casual phenomenon and events responsible for shaping the growth of legal fact under study.

d. Comparative Model: This method of research makes effort to examine different legal systems and tries to ascertain which system or set of rules are ideal for a given society. The Researcher will use this model to provide insights into the variations and commonalities in the impact of statutory interpretation on legislative drafting across different legal systems.

8. **Summary**

Legislative drafting, the art of crafting laws, directly impacts the interpretation of statutes by courts and legal practitioners. Clear, precise language is paramount to avoid ambiguity and ensure the intended legislative intent is

¹¹⁵⁷ Textbook on Legal Methods, Dr. S.R. Myneni, Legal Research Methodology, 179 (4th ed., 2009) , last seen 14/2/2024.

understood. Through skillful drafting, lawmakers aim to capture the purpose behind a law, minimizing potential misinterpretations. Drafters must consider the broader legal context, structure, and technical nuances to create laws that stand the test of time and evolving societal needs. By facilitating clarity and coherence, legislative drafting fosters consistency in legal interpretation and application, ultimately upholding the rule of law.¹¹⁵⁸ This research has explored the intricate relationship between the complexity and clarity of legislative drafting and its influence on statutory interpretation by the judiciary. Through the investigation of this relationship, it has been demonstrated that statutes characterized by clear and precise language tend to result in more consistent and predictable interpretations, thereby enhancing legal certainty and fairness in the application of the law.

Chapter II – Basic Principles

1. Introduction

The statute is defined as the will or order of legislature, which is expressed in the form of text. The traditional way to interpret or construe a statute is to understand the intention of the legislature. The intention of the legislature could incorporate the actual meaning and the object. The process of interpretation and construction assist the judiciary body in determining the meaning and purpose of the legislature. Interpretation helps in determining the real meaning and intention of the legislature. On the other hand, construction is used to ascertain the legal effect of the legal text.¹¹⁵⁹ The two terms are used interchangeably, but there exists a fine line of difference between interpretation and construction in their connotations.

Governmental power has been divided into three wings namely the legislature, the executive and the judiciary. Interpretation of statutes to render justice is the primary function

of the judiciary. It is the duty of the Court to interpret the Act and give meaning to each word of the Statute. The most common rule of interpretation is that every part of the statute must be understood in a harmonious manner by reading and construing every part of it together.¹¹⁶⁰

2. Interpretation and Construction

Interpretation is the method by which the true sense or the meaning of the word is understood. The meaning of an ordinary word of the English language is not a question of law. According to Gray, the process by which a judge constructs from the words of a statute book, a meaning which he either believes to be that of the legislature, or which, he proposes to attribute to it is interpretation. Salmond describes interpretation or construction as the process by which courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed.¹¹⁶¹ Truly and literally speaking, interpretation differs from construction. According to Cooley, interpretation differs from construction in that the former is the art of finding out the true sense of any form of words; construction on the other hand, is the drawing of conclusions respecting the subjects that are beyond the direct expression of the text. The term 'construction' has been explained in *CWT vs. Hashmatunnisa Begum*¹¹⁶² to mean that something more is being got out in the elucidation of the subject-matter than can be got by strict interpretation of the words used. Judges have set themselves in this branch of the law to try to frame the law as they would like to have it. The intention of the Legislature is primarily to be gathered from the language used which means that attention should be paid to what has been said.¹¹⁶³ As a

¹¹⁵⁸ Statutory drafting and interpretation: plain language and the law | lawreform.ie/_fileupload/consultation%20papers/cpPlainLanguage.htm. | last seen on 15/02/2024.

¹¹⁵⁹ Difference Between Interpretation and Construction | available on <https://keydifferences.com/difference-between-interpretation-and-construction.html> | Last seen on 29/03/2024

¹¹⁶⁰ Meaning of Interpretation of Statutes and The Intention of Legislature | available on <https://www.scribd.com/document/469147123/Meaning-of-Interpretation-of-Statutes-and-the-Intention-of-Legislature> | Last seen on 29/03/2024

¹¹⁶¹ Literally interpreting the law – A appraisal of the literal rule of interpretation in India | available on <https://www.manupatra.com/roundup/338/Articles/Literally%20interpreting%20the%20Law.pdf> | last seen on 30/03/2024

¹¹⁶² Commissioner Of Wealth-Tax vs Smt. Hashmatunnisa Begum on 17 January, 1989 AIR 1024 1989 SCR (1) 155 1989 SCC Supl.

¹¹⁶³ Literally interpreting the law – A appraisal of the literal rule of interpretation in India | available on

consequence, a construction which requires for its support addition or substitution of words or which result in rejection of words as meaningless has to be avoided.

3. Intention of the Legislature

A statute is an edict of the Legislature and the conventional way of interpreting or constructing a statute is to seek the 'intention' of its maker. A statute is to be construed according "to the intent of them that make it" and "the duty of judicature is to act upon the true intention true of the Legislature – the *mens* or *sententia legis*" The expression 'intention of the Legislature' is a shorthand reference to the meaning of the words used by the legislature objectively determined with the guidance furnished by the accepted principles of interpretation. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the Legislature, in other words the legal meaning' or 'true meaning' of the statutory provision. The task is often not an easy one and the difficulties arise because of various reasons. To mention a few of them: Words in any language are not scientific symbols having any precise or definite meaning, and language is but an imperfect medium to convey one's thought less of a large assembly consisting of persons of various shades of opinion. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for function of the courts only to expound and not to legislate. The numerous rules of interpretation or construction formulated by courts are expressed differently by different judges and support may be found in these formulations for apparently contradictory propositions.¹¹⁶⁴

The intention of the Legislature thus assimilates two aspects: In one aspect it carries the concept of meaning, i.e., what the words mean

and, in another aspect, it conveys the concept of purpose and object or the 'reason and spirit' pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words, the legislative intention, i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. This formulation later received the approval of the Supreme Court and was called the cardinal principle of construction

In all ordinary cases and primarily the language employed is the determinative factor of legislative intention. The first and primary rule of construction, said *GAJENDRAGADKAR, J.* "is that the intention of the Legislature must be found in the words used by the Legislature itself." The question is not what may be supposed to have been intended but what has been said. "I do not care what their intention was," said *Mr. JUSTICE HOLMES* in a letter: "I only want to know what the words mean." *LORD BROUGHAM* has more emphatically stated the importance of the text of the statute in the following words, "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 pretty nearly the opposite of what is said, it is not for judges to invent something which they do not meet within the words of the text (aiding their construction of the text always, of course, by the context). These and like opinions lay stress on one aspect of intention, i.e. what the words mean; and undoubtedly to the extent the 'referent' is clearly indicated and the words have a plain meaning, the courts are not too busy themselves with supposed intention or with the policy underlying the statute."¹¹⁶⁵

<https://www.manupatra.com/roundup/338/Articles/Literally%20interpret%20the%20law.pdf> | last seen on 30/03/2024

¹¹⁶⁴ Supra 9 | Page 3 and 4

¹¹⁶⁵ Ibid | Page 12 to 14

4. Basic Principles of Interpretation

i. Statute must be read as a whole in its context

The statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute, and the mischief it is to remedy, is the basic context of any statute. The elementary rule states that the intention of the Legislature must be found by reading the statute as a whole. Every clause needs to be construed with reference to the context and other clauses of the Act, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter. It is the most natural and genuine exposition of a statute. The conclusion that the language is plain or ambiguous can only be truly arrived at by studying the statute as a whole. How far and to what extent each component influences the meaning of the other, would be different in each given case. Each word, must however, be allowed to play its role, however significant or insignificant it may be, in achieving the legislative intent. Each section must be construed as a whole, whether or not one of the parts is a saving clause or a proviso. They may be interdependent, each portion throwing light, if need be on the rest. A question of construction only arises when one side submits that a particular provision of an Act covers the facts of the case and the other submits that it does not or it may be agreed it applies, but the difference arises to its application.¹¹⁶⁶

ii. Statute to be construed to make it effective and workable: However plain the meaning be

The interpretation should be construed to make the statute workable, which secures the object, unless crucial omissions or clear direction makes that end unattainable. The doctrine of purposive reconstruction may be taken recourse to for the purpose of giving it full effect to the statutory provisions. The meaning of the

statute must be considered rather than the rendering the statute a nullity.¹¹⁶⁷

iii. Appraisal of the principle of plain meaning

Plain words require no construction. This starts with the premise that the words are plain and that the conclusion can be arrived at after construing the words. This also means that once the conclusion has been arrived at, that the words/ sentence can bear only one meaning, the effect to that meaning is to be given. Language which on its construction results in absurdity, inconsistency, hardship or strange consequence is not readily accepted as unambiguous. Here unambiguous means 'unambiguous in its context. So, ambiguity need not necessarily be a grammatical ambiguity, but one of appropriateness of the meaning in a particular context. Also, difference of judicial opinion as to the true meaning of certain words need not necessarily lead to the conclusion that those words are ambiguous. In the case *Bhavnagar University v. Palitana Sugar Mill*¹¹⁶⁸, Suprem Court held that "Statutory enactment must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the test of the statute."

5. Summary

In this chapter the researcher has studied that the statute is defined as the will or order of legislature, which is expressed in the form of text. The traditional way to interpret or construe a statute is to understand the intention of the legislature. helps in determining the real meaning and intention of the legislature and construction is used to ascertain the legal effect of the legal text, further the statute is an edict of the Legislature and the conventional way of interpreting or constructing a statute is to seek the 'intention' of its maker. The researcher also

¹¹⁶⁶ Basic Principles of Statutory Interpretation of Law | available on <https://taxguru.in/corporate-law/basic-principles-of-statutory-interpretation-law.html> | Last seen on 30/03/2024

¹¹⁶⁷ Ibid

¹¹⁶⁸ *Bhavnagar University v. Palitana Sugar Mill (P.) Ltd.*, (2003) 2 SCC 111 : AIR 2003

studied the basic principles of the interpretation.

Chapter III – Aids to Construction

1. Introduction

An Aid, is a device that helps or assists. For the purpose of construction or interpretation, the court has to take recourse to various internal and external aids. Internal aids mean those materials which are available in the statute itself, though they may not be part of enactment. These internal aids include, long title, preamble, headings, marginal notes, illustrations, punctuation, proviso, schedule, transitory provisions, etc. When internal aids are not adequate, court has to take recourse to External aids. External Aids may be parliamentary material, historical background, reports of a committee or a commission, official statement, dictionary meanings, foreign decisions, etc. According to O. Chennappa, Reddy J. has observed : “Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction.” *District Mining Officer and others v Tata Iron & Steel Co. and another*, (2001) 7 SCC 358 ¹¹⁶⁹ Supreme Court has observed: “It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in pari materia and the mischief which the statute was intended to remedy.” *K.P. Varghese v Income Tax Officer Ernakulam*, AIR 1981 SC 1922 ¹¹⁷⁰ The Supreme Court has stated that interpretation of statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.

2. Rules of Interpretation

Since the judiciary has been entrusted with the responsibility of interpreting the law to

administer justice. It is very important that the interpretation is made according to some rules so that the decisions delivered by the judges are just and bring some coherence to the operational aspects of the law.¹¹⁷¹

There are two types of Rule they are Primary and Subsidiary Rules they are

i. Primary Rules

Literal Rule: This rule is the most basic rule in interpretation, which states that words, in a law should be given their ordinary and plain meaning unless it would lead to an absurd or unreasonable outcome.

Golden Rule: Another rule is golden rule which is departure from the literal rule, which allows courts to modify the meaning of a law in order to avoid absurd or unreasonable results. However this rule is only applied when the literal meaning of the law is clear and unambiguous.

Rule of Harmonious Construction: The rule suggests that laws should be interpreted in a way that aligns with laws to prevent conflicts between them.

Mischief Rule: It permits courts to consider the problem or issue that a law was meant to address when interpreting it. This helps ensure that the law remains true, to its purpose.

Purposive Approach: This rule focuses on understanding and interpreting laws based on their intended purpose.

ii. Subsidiary Rules

Ejusdem Generis Rule: It states that when general words follow a list of words they are limited to the category or class as those specific words.

Noscitur a Sociis Rule: This rule states that meaning of a word or phrase can be determined by the context provided by surrounding words or phrases.

¹¹⁶⁹ *District Mining Officer and others v Tata Iron & Steel Co. and another*, (2001) 7 SCC 358

¹¹⁷⁰ *K.P. Varghese v Income Tax Officer Ernakulam*, AIR 1981 SC 1922

¹¹⁷¹ Statute Interpretation : Overview and Analysis | available on https://blog.ipleaders.in/statute-interpretation-overview-and-analysis/#Aids_in_Interpretation | Last seen on 04/04/2024

Expressio Unius Est Exclusio Alterius Rule: This rule suggests that mentioning one thing implies excluding another.

Presumption of Consistency: The principle of consistency asserts that laws and legal documents are assumed to be, in agreement with each other. This assumption is made to prevent any contradictions between laws or different sections, within the law or document.¹¹⁷²

3. Internal Aids

Internal aids are aids which are first referred to for interpreting a statute. These are present in the statute itself and include¹¹⁷³:

Preamble of the Act: It has been decided that while preamble may not be a part of the Act. It can be referred to know the mischief for which the Act was enacted. The Supreme Court in *Kavalappara Kottarathil Kochuni v. the State Of Madras And Others*¹¹⁷⁴ stated that if an ambiguity arises in the construction of a statute, then the preamble can be referred.

Title of the Act: The title tells about the purpose of the Act in a concise way and often precedes the preamble of the Act.

Heading of the Chapter of the Act: An Act is divided into chapters, these chapters deal with different things. What kind of things the chapter deals with can be known by reading the heading of the specific chapter?

Marginal Notes in the Act: Supreme Court in *Sarabjit Rick Singh vs Union Of India*¹¹⁷⁵ stated that reference to marginal notes would be permissible only when the main provision is supposed to be interpreted differently.

The Punctuations in the Provisions of the Act: The punctuations play a very important role in the construction of the provision.

The Illustrations that supplements the provisions under the Act: Illustrations are valuable as long as they indicate the intent of the legislature.

Explanations provided of the provision of the Act: Explanations of provisions help in determining what the provision means.

Definitions provided in the Act: Every Act has an interpretation clause which contains important definitions. These definitions may be inclusive or exhaustive. This clause is very important for interpreting various words in a statute.

4. External Aids

External aids are used when internal aids are not sufficient to know the meaning of the statute. External aids include,

Statement of Objects and Reasons of the Bill: When a Bill is passed, its statement of objects and reasons describe the intent of the legislature.

The Commentaries on the Law by various Authors: Commentaries by various authors are very useful in interpreting a statute.

Dictionaries: In literal construction, the dictionary meaning of the words is referred to.

The Circumstances Surrounding the Enactment of the Act: In *Commissioner of Income Tax vs. Sodra Devi*,¹¹⁷⁶ the court stated that it was not necessary to refer to any external aid if the language of the statute is clear and unambiguous.

Reference to Reports of Committee: The reference to reports of Select Committee or Law Commission or any report of any other committee on the basis of which the Act was enacted can be made to interpret the statute.

Reference to other Statutes: Sometimes other statutes are referred for interpreting a statute.

¹¹⁷² A Comprehensive Guide to Interpretation of Statutes | available on <https://www.lexisnexis.in/blogs/interpretation-of-statutes/#~:text=RULES%20OF%20INTERPRETATION&text=Literal%20Rule%3A%20This%20rule%20is,an%20absurd%20or%20unreasonable%20outcome.> | Last seen on 04/04/2024

¹¹⁷³ Statute Interpretation : Overview and Analysis | available on https://blog.ipleaders.in/statute-interpretation-overview-and-analysis/#Aids_in_Interpretation | Last seen on 04/04/2024

¹¹⁷⁴ *Kavalappara Kottarathil Kochuni v. the State Of Madras And Others* 1960 AIR 1080, AIR 1960 SUPREME COURT 1080, 1960 KER LJ 1077, 1961 2 SCJ 443, 1960 3 SCR 887

¹¹⁷⁵ *Supreme Court in Sarabjit Rick Singh vs Union Of India* 2008 AIR SCW 390

¹¹⁷⁶ *Commissioner of Income Tax vs. Sodra Devi* 1957 AIR 832, 1958 SCR 1, AIR 1957 SUPREME COURT 832, 1958 SCJ 1, 1957 32 ITR 615, ILR 1957 PUNJ 1781

Parliamentary Debates: Before a Bill is passed it is debated in the parliament. The debates can be referred to know the intent behind a particular provision of the Act.

History of the Act: The history of the Act along with the surrounding circumstances are helpful in determining the meaning of the provisions of the Act.

Foreign Decisions: Decisions given by foreign courts can also be used to interpret the law provided that the country has the same system of jurisprudence as ours. The surrounding circumstances in which the Act was enacted and the Indian conditions to which the law applies are considered.

Political, Social and Economic Developments: Developments that affect the very structure of society also help in interpreting a statute.

5. Subsidiary Rules

Subsidiary rules of interpretation serve as supplementary guidelines when the literal meaning of a legal statute is unclear. Acting as secondary principles to the primary rules, which prioritise the plain and direct meaning of statutory language, subsidiary rules come into play when ambiguity arises. These secondary guidelines encompass considerations such as the preamble of a statute, subsequent agreements between parties, customary international law and the context and purpose of the law. By employing these subsidiary rules, legal interpreters aim to derive a more comprehensive understanding of statutes in situations where a straightforward application of the primary rules is insufficient or inconclusive.¹¹⁷⁷

This set of subsidiary rules of interpretation involves principles like “*generalia verba sunt generaliter intelligenda*,” understanding general words broadly; “*noscitur a sociis*,” interpreting words based on their context; “*ejusdem generis*,” understanding general terms in a list by reference to specific terms; “words of rank,”

considering the importance of words; and “*reddendo singulari singulis*,” attributing singular words to singular things. These principles guide the interpretation of statutes for a more accurate understanding.¹¹⁷⁸

generalia verba sunt generaliter intelligenda:- This principle of subsidiary rules of interpretation holds that general words should be interpreted broadly unless the legislative intent indicates a restrictive meaning. Commonly used general words like “business,” “family,” and “person” receive varied constructions based on the context in which they appear.

noscitur a sociis:- Translated as “to know the meaning by association,” *noscitur a sociis* suggests that the meaning of an ambiguous word can be clarified by considering the context or words associated with it. However, this rule doesn’t apply when the legislative intent is clear and unambiguous.

ejusdem generis:- Literally meaning “of the same class or kind,” this rule, also known as Lord Tenterden’s rule, resolves conflicts between general and specific words. When specific words are followed by general ones, the general words are limited to things of the same kind as those specified by the specific words.

Words of Rank:- Similar to other rules involving general words, the rule of words of rank stipulates in subsidiary rules of interpretation that when descriptive terms are arranged in descending order by rank, general words at the end of the list do not include persons or things of a higher rank than the highest named.¹¹⁷⁹

6. Summary

Interpretation is the process which is employed by the judiciary to ascertain or to determine the meaning of the statutes or legal provision. It is basically a process by which court seeks to ascertain the true meaning of the expression or word or phrase which is in question in any

¹¹⁷⁷ Subsidiary Rules of Interpretation | available on <https://lawbhoomi.com/subsidiary-rules-of-interpretation/> | Last seen on 04/04/2024

¹¹⁷⁸ Ibid

¹¹⁷⁹ Statute Interpretation : Overview and Analysis | available on https://blog.ipleaders.in/statute-interpretation-overview-and-analysis/#Aids_in_Interpretation | Last seen on 04/04/2024

statute before the court and determine the true intention of the legislature behind such statutory provision. A process of interpretation employed by the judiciary can be done through various tools or principles of statutory interpretation which include seeking help from internal or external aids to interpretation and applying primary or secondary rule of interpretation which has evolved over a period of time by the court.

Chapter IV

Strict Construction of Statute

1. Introduction

The interpretation of statutes is restrained to courts of law. Courts have developed a large and complicated set of rules to guide individuals in construing or interpreting laws. The majority of interpreting laws are contained in the books of interpretation of statutes, and it is helpful to the drafter to maintain these interpreting laws in consideration during drafting Acts. For example, when interpreting Canadian laws, the interpretation of statutes must strictly follow every Canadian Act that is remedial to its Act and acquire reasonable, broad, and liberal construction to ensure the achievement of the Act's purpose, which defines the Act's original objective, meaning, and character. It is the responsibility of the court to give effect to an Act in order to obtain its actual meaning, while the process of rules or principles is formed to interpret which is restricted to courts.¹¹⁸⁰

Interpretation is the process of finding the legal meaning of any legislation that means more than construction. The finding of the meaning of a parliamentary Act or a provision of a parliamentary Act is referred to as interpretation. The extraction of grammatical meaning is a major focus of construction.

"Strict construction" refers to the interpretation which is made strictly, that assures each word in legislation must be interpreted by letter and

that the interpretation should never go beyond the statute. A close or narrow reading of interpretation is known as a strict construction. In this approach, courts must follow the literal rule. The term "liberal construction" relates to interpretation that is applied freely with the goal of ensuring the purpose or advancing the aims of the legislation. In this construction, the courts will choose between the golden rule and the mischief rule.¹¹⁸¹

2. Understanding strict interpretation

The term "strict construction" refers to a statute that is strictly construed in legislation. Each word must be interpreted by letters, and the interpretation must not exceed the scope of the legislation. It is a legal theory that applies in a narrow manner or in a strict manner of interpretation to legal legislation such as the United States Constitution. The bench's ability to read a text in written form that is provided inside the four boundaries of a legal document must be evaluated. The constitution must be rigorously construed in its original meaning.

This form of construction is used in taxation and criminal legislation. In strict construction interpretation, the courts refer to the literal rule. The literal rule, alternatively known as the simple rule, is a traditional rule used by English courts. It is a guideline of law interpretation that in the first instance, the grammatical interpretation of words must be followed. This is the earliest construction rule to which judges refer when referring to strict construction. Even today, judges utilize it since they do not have the authority to make laws. In each and every system of interpretation, it is the primary and first interpretation of laws. In other words, it's just what the law says rather than what the law was meant to express.¹¹⁸²

The term "strict construction" refers to "a close or narrow reading and interpretation of a legislation or written document." In cases involving a dispute over terms of legal meaning, the bench is sometimes called upon to

¹¹⁸⁰ Liberal and strict construction of penal statutes | available on <https://blog.ipleaders.in/liberal-and-strict-construction-of-penal-statutes/> | last seen on 05/04/2024

¹¹⁸¹ Ibid

¹¹⁸² Interpretation of Statutes and its Rules | available on <https://blog.ipleaders.in/rules-interpretation-statutes/> | last seen on 05/04/2024

determine a construction or interpretation of an ambiguous or confusing phrase. The common law tradition has created a number of maxims and guidelines that help courts interpret legislation or agreements such as contracts. Strict construction occurs when ambiguous legal language is treated as an accurate and precise interpretation and no further fair evaluations or justifiable consequences are considered. When interpreting legislation affecting the subject's liberty, strict construction is recommended, but only after verifying that all conditions are met before the subject's liberty is restrained.¹¹⁸³

i. History of a strict interpretation of the law

Ancient Rome is where the idea of "strict construction" or "narrow interpretation" of legal documents originated. In his "Institutiones" the Roman jurist Gaius stressed the need of applying laws just to their express meanings and not interpreting them in a broader sense. Strict construction rules were essential to the common law's development in mediaeval England. Judges like Sir Edward Coke played a significant role in emphasizing the importance of adhering to the exact wording of legal texts.

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The concept of strict construction is one of the numerous ideas that the English common law left behind for the American legal system. Prominent individuals, such as Chief Justice John Marshall in *Marbury v. Madison* (1803),¹¹⁸⁵ emphasised the need to interpret the Constitution strictly. In the United Kingdom, detailed guidelines for constructing statutes were established by the Interpretation of Statutes Act, of 1850. It had clauses that encouraged interpreting criminal legislation strictly and individual-beneficial statutes more broadly. The benefits and drawbacks of tight construction have been examined by several legal researchers in contemporary legal studies,

and its use has changed throughout time. Debates frequently centre on how to strike a balance between a purposeful approach and rigorous interpretation.¹¹⁸⁶

ii. Principle of strict interpretation

According to the legal principle of strict construction, contracts and laws should be interpreted strictly and literally by their exact language. It emphasizes reading the language literally and narrowly, without considering the intent, spirit, or larger context of the law or contract, only the plain meaning of the text. Strict construction aims to preclude sweeping or imaginative interpretations by restricting the scope and applicability of laws or contracts to just that which is expressly and indisputably stated in the text. To prevent any overreach and guarantee that people are held to the precise provisions of the law or contract, this principle is frequently applied in legal situations. It's essential to remember, nevertheless, that rigid construction does not always take the legislative meaning or the practical effects of a given interpretation into account, which might result in unfair or unexpected results. To guarantee a fair and reasonable implementation of legal principles, it is frequently important to strike a balance between rigorous interpretation and consideration of the purpose and meaning of the law or contract.¹¹⁸⁷

3. How a strict construction enhances penal and tax provisions.

It is critical to criminal law that people are made aware of what is forbidden. Strict construction minimises ambiguity regarding the extent of forbidden behaviour by guaranteeing that criminal clauses are read exactly as worded. Penal provisions are only applicable to those things specifically mentioned in the law, according to strict interpretation. This avoids overcriminalization, which happens when laws are read too broadly and may make things

¹¹⁸³ Ibid

¹¹⁸⁴ Strict Construction of Penal and Taxing Laws: Balancing Legal Precision and Fairness | available on <https://lawbhoomi.com/strict-construction-of-penal-and-taxing-laws-balancing-legal-precision-and-fairness/> | last seen on 05/04/2024

¹¹⁸⁵ *Marbury v. Madison* (1803)

¹¹⁸⁶ Strict Construction of Penal and Taxing Laws: Balancing Legal Precision and Fairness | available on <https://lawbhoomi.com/strict-construction-of-penal-and-taxing-laws-balancing-legal-precision-and-fairness/> | last seen on 05/04/2024

¹¹⁸⁷ Ibid

unlawful that weren't meant to be prohibited. Criminal penalties frequently result in the denial of an individual's liberty under penal regulations. Strict construction shields people against arbitrary or too wide criminal prosecution by guaranteeing that they are only imprisoned when their conduct blatantly and indisputably breaks the law. Applying strict construction may force lawmakers to write more detailed and exact tax legislation. This may result in more precisely stated tax provisions, which would lessen the need for courts or tax authorities to interpret the intentions of legislators and improve the design of tax laws.¹¹⁸⁸

By defining the requirements of the law precisely, strict construction promotes voluntary compliance. Taxpayers are more inclined to abide by the law when they are aware of their responsibilities regarding taxes and the repercussions of breaking them. Strict construction predictability can act as a deterrent, lowering the possibility of tax avoidance. To arrive at a fairer interpretation, courts or tax authorities may need to take into account public policy considerations, the legislative purpose, and the larger context of the tax legislation. For tax rules to be both fair and successful, a balance between rigorous construction and flexibility is frequently required. Rigorous interpretation of tax laws improves their efficacy by fostering clarity, lowering the potential for tax evasion, minimising disagreements, boosting compliance, and assisting in the development of a just and equitable tax system. It should be used carefully though, to prevent unduly strict or unfair results. Strict enforcement of criminal legislation upholds the rule of law. The significance of equal treatment under the law is emphasised by this concept, and rigorous interpretation ensures that the law is enforced consistently and without making artificial differences. Strict construction encourages legislators to compose punitive legislation in clear, concise

language. This accuracy facilitates understanding and adherence to the law for citizens, law enforcement, and legal professionals.¹¹⁸⁹

In criminal cases, strict construction reduces the amount of judicial discretion since judges must adhere to the express wording of the law. This uniformity of interpretation contributes to the guarantee that people are treated equally and fairly in front of the law.

Strict interpretation of criminal legislation prevents prosecutors from abusing their power. This protects individuals from being charged with crimes that do not fall within the scope of the law. Therefore, in actuality, disliking the rule of lenity often comes off as supporting anti-lenity (or a rule of severity). Thus, even if, on paper, a neutral reading of criminal legislation would be preferable to a strict construction default, there is a strong argument for treating lenity seriously. People have more faith in the legal system when penal provisions are properly enforced because they know that they will only face criminal consequences for behaviours that break the law. Strict construction makes it less probable that someone would be convicted of a crime they did not commit, therefore lowering the possibility of false convictions. This shields the vulnerable from unfair punishment. Strict construction improves the clarity of punitive legislation by ensuring precision in writing, minimising overreach, and protecting individual rights. It fosters legal clarity, upholds the rule of law, and reduces the possibility of false convictions, all of which contribute to a fair and just criminal justice system.¹¹⁹⁰

i. The interpretation of Section 377 of the Indian penal Code¹¹⁹¹, which criminalises "unnatural offences," is one illustration of the strict construction of punitive legislation in India. In the past, homosexual activity was prohibited under this provision. If Section 377 were to be

¹¹⁸⁹ Ibid

¹¹⁹⁰ Liberal and strict construction of penal statutes | available on <https://blog.ipleaders.in/liberal-and-strict-construction-of-penal-statutes/> | last seen on 05/04/2024

¹¹⁹¹ Section 377 of the Indian penal Code

¹¹⁸⁸ Strict Construction of Penal and Taxing Statutes | available on <https://www.scribd.com/document/393448600/strict-construction-of-penal-and-taxing-statutes> | last seen on 05/04/2024

interpreted strictly, any sexual behaviour that the law's exact text deems to be "unnatural" may be prosecuted. The legislation did not take into account evolving social views or individual rights to privacy when interpreted so strictly. Nonetheless, Indian courts have adopted a more nuanced stance recently, taking individual rights, and changing social norms, and constitutional precepts into account. In the *Navtej Singh Johar v. Union of India*¹¹⁹² decision, the Supreme Court of India decriminalised consensual homosexual acts in 2018. This ruling invalidated Section 377 to the degree that it prohibited consenting homosexual conduct because it acknowledged that a strict interpretation of the law might have unfair and discriminatory effects. This demonstrates how courts may interpret and implement penal statutes in a way that strikes a balance between strict construction and more general concerns of fairness and individual rights.

ii. A further instance of the strict application of penal legislation in India is seen in the interpretation of Section 304B of the Indian penal Code¹¹⁹³, which addresses the offence of "dowry death." This clause addresses situations in which a woman dies under questionable circumstances within seven years of her marriage. It puts the onus of proof on the accused to demonstrate that harassment linked to the dowry was not the cause of the death. According to a strict interpretation of this clause, the prosecution cannot consider any other events or reasons that could have led to the woman's death; instead, it must demonstrate beyond a reasonable doubt that the harassment connected to the dowry was the primary cause of her death. Courts in India, however, frequently strike a compromise between strict interpretation and a more comprehensive comprehension of the background and circumstances of such situations. They could take into account the necessity to guard against possible legal abuse as well as the social and cultural facets of

dowry-related concerns. Maintaining this equilibrium is crucial to guarantee the administration of justice while averting any possible misuse of the punitive provision.¹¹⁹⁴

4. Preserving legislative intent

Statutes about taxes ought to be read narrowly. No explicit wording should be used to tax it, and each term in a parliamentary act should be interpreted by how the words naturally occur. If it becomes necessary to tax someone under the law, then that person must be taxed regardless of how unfair it may seem to the court. It is important to consider what the taxation code expressly states.¹¹⁹⁵ Tax does not have equity. One should avoid making assumptions about taxes. Nothing is indicated or read in, and one can only reasonably glance at the wording employed. Section 72-A of the Income Tax Act, of 1961¹¹⁹⁶ gives benefits only to companies, and it was held that this benefit will not extend to cooperative societies unless there is an express provision.

The central question raised in *Tata Sky Ltd. v. State of Madhya Pradesh*¹¹⁹⁷ whether or not DTH broadcasters are subject to taxes under the 1936 Madhya Pradesh Entertainments Duty and Advertisements Tax Act. The Supreme Court concluded after a review of sections 2(a), 2(b), 2(d), 3, and 4 that the Act's¹¹⁹⁸ tax would only be attracted if entertainment took place at a distinct physical location to which people were allowed in exchange for paying a fee to the entertainment's proprietor. Since DTH providers do not provide place-related entertainment and are not covered by Section 3 of the aforementioned Act, the State is not permitted to impose taxes on them. In *State of Gujarat v. Message Oil Ltd. & Anr.*¹¹⁹⁹, it was decided that an exception or exempting provision should be construed strictly, with the advantage of the

¹¹⁹⁴ Strict Construction of Penal and Taxing Statutes | available on <https://www.scribd.com/document/393448600/strict-construction-of-penal-and-taxing-statutes> | last seen on 05/04/2024

¹¹⁹⁵ Ibid

¹¹⁹⁶ Section 72-A of the Income Tax Act

¹¹⁹⁷ *Tata Sky Ltd. v. State of Madhya Pradesh* 2013 AIR SCW 2287

¹¹⁹⁸ sections 2(a), 2(b), 2(d), 3, and 4 of The Madhya Pradesh Entertainments Duty and Advertisements Tax Act.

¹¹⁹⁹ *State Of Gujarat & Ors vs Essar Oil Ltd. & Anr* AIR 2012 SUPREME COURT 1146

¹¹⁹² *Navtej Singh Johar vs Union Of India Ministry* AIR 2018

¹¹⁹³ Section 304B of the Indian penal Code

State being the greater consideration. This principle states that a taxing statute should be interpreted in favour of the assesses when ambiguity arises.

Strict interpretation of the penal clauses or statutes is required. If there is any uncertainty, the court can resolve it in the subject's favour and against the legislature (as the legislature has not been able to articulate itself effectively). This regulation was intended to lessen gruesome penalties for little infractions, and there is still a distinction between the way penal legislation and other statutes are approached. Make sure the offence charged in criminal legislation falls within the wording or spirit of the law. One must use the construction that avoids the penalty if one is aware of it. When there are two plausible readings, we have to adjust to the more liberal construction.¹²⁰⁰

According to the Bombay Rents, Hotels and Lodging Houses Rates (Control) Act 1947, a tenant is not allowed to request or accept compensation in exchange for ending his tenancy in any of the properties. A tenant who violates a requirement is subject to punishment under the clause. The SC applied a strict interpretation to the section, holding that giving up tenancy in favour of the lessor does not fall within the prohibition's bounds and that the tenant's assignment of tenancy to a third party for consideration does not fall within the strict interpretation of the section.¹²⁰¹

5. Summary

It's important to remember, though, that rigorous interpretation is not without critics. Critics contend that it sometimes fails to take into consideration shifting social and technical settings and can produce extremely literal and rigid results. In the legal system, striking a balance between rigorous interpretation and justice, changing norms, and pragmatism is a constant problem. Various legal systems and judges may employ distinct methods of interpretation, contingent upon the jurisdiction

and particular circumstances of the case in question. This article aims to shed light on the complex and often contentious issue of strict construction in penal and taxing laws, providing insights into its history, purpose, challenges, enhancement and prediction. It calls for a nuanced approach that acknowledges the need for legal precision while safeguarding the principles of justice and fairness in the interpretation of these crucial areas of the law.

Chapter V – Conclusion

the essence of law lies in the spirit, not its letter, for the letter is significant only as being the external manifestation of the intention that underlies it" – Salmond. Interpretation means the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning. It is the process of ascertaining the true meaning of the words used in a statute. The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts. These principles are sometimes called 'rules of interpretation'. The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. As stated by SALMOND, "by interpretation or construction is meant, the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed." Interpretation is as old as language. Elaborate rules of interpretation were evolved even at a very early stage of the Hindu civilization and culture. The importance of avoiding literal interpretation was also stressed in various ancient text books – "Merely following the texts of the law, decisions are not to be rendered, for, if such decisions are wanting in equity, a gross failure of Dharma is caused."¹²⁰²

Interpretation thus is a familiar process of considerable significance. In relation to statute

¹²⁰⁰ Liberal and strict construction of penal statutes | available on <https://blog.ipleaders.in/liberal-and-strict-construction-of-penal-statutes/> | last seen on 05/04/2024

¹²⁰¹ Ibid

¹²⁰² LLB Paper Code: 406 Subject: Interpretation of Statutes | available on <https://www.fimt-ggsipu.org/study/ballb406.pdf> | Last seen on 05/04/2024

law, interpretation is of importance because of the inherent nature of legislation as a source of law. The process of statute making and the process of interpretation of statutes are two distinct activities. In the process of interpretation, several aids are used. They may be statutory or non-statutory. Statutory aids may be illustrated by the General Clauses Act, 1897 and by specific definitions contained in individuals Acts whereas non-statutory aids is illustrated by common law rules of interpretation (including certain presumptions relating to interpretation) and also by case-laws relating to the interpretation of statutes. Lord Denning in *Seaford Court Estates Ltd. Vs Asher*, "English Knowledge is not an instrument of mathematical precision... It would certainly save the judges from the trouble if the acts of parliament were drafted with divine precision and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold hand and blame the draftsman..." It is not within the human powers to foresee the manifold permutations and combinations that may arise in the actual implementation of the act and also to provide for each one of them in terms free from all ambiguities. Hence interpretation of statutes becomes an ongoing exercise as newer facts and conditions continue to arise.¹²⁰³

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