J.T.R.I.

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OUR CHIEF JUSTICE

Hon'ble Mr. Justice Shyamal Kumar Sen Chief Justice, High Court of Judicature, at Allahabad, U.P.

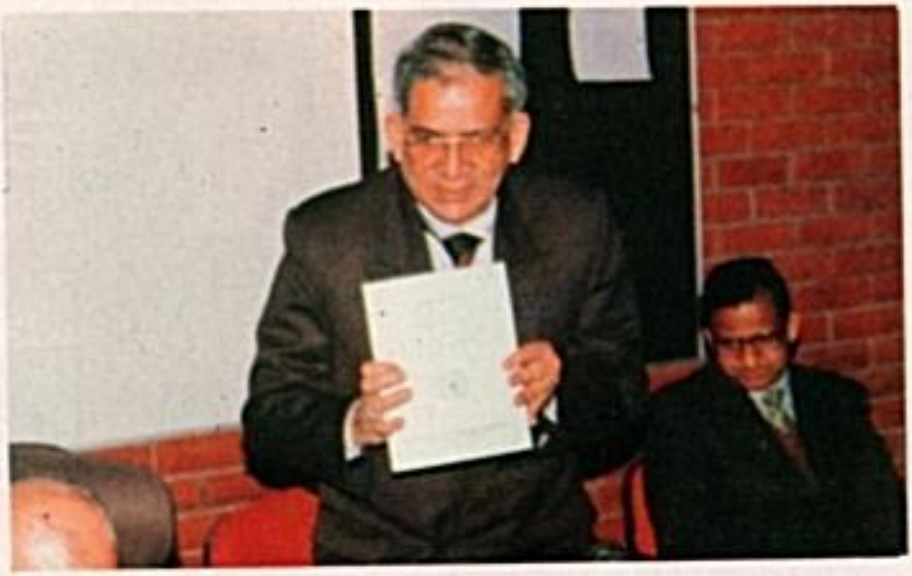
Born on 25 November, 1940, His Lordship hails from a family of legal lumanaries of Calcutta. Sworn in as Chief Justice of Allahabad High Court on 18th July, 2000. His Lordship became Acting Chief Justice of Allahabad High Court on 8 May, 2000.

His Lordship was appointed as permanent Judge of Calcutta High Court on 17 Jan, 1986. On 19th April, 1999 His Lordship became the Acting Chief Justice of Calcutta High Court. His Lordship was the Governor of West Bengal between 18th May, 1999 to 4th December, 1999.

Hon'ble Mr. Justice D.S. Sinha, Acting Chief Justice, Allahabad High Court (Left) accompanied by Hon'ble Mr. Justice A.N. Gupta (Right) Chairman JTRI arriving at JTRI for inauguration of Refresher Training Programme for Additional District & Sessions Judges of U.P. on 5.5.2000.

Hon'ble Mr. Justice D.S. Sinha, Acting Chief Justice, Allahabad High Court (in the middle) lighting the lamp in inaugural session of Refresher Training Programme for Additional District & Sessions Judges, of U.P. on 6.5.2000, accompanied by Hon'ble Mr. Justice A.N. Gupta, Chairman and other Faculty Members.

Hon'ble Mr. Justice A.A. Desai, Senior Judge Allahabad High Court (in the Middle) delivering lecture to Additional District & Sessions Judges of U.P. in Refresher Training Programme. Mr. D.P. Gupta, Director (Right) and Mr. N.V. Gupta, Addl. Director (Left) during discussions.



Hon'ble Mr. Justice S.H.A. Raza, Senior Judge, Allahabad High Court, Lucknow Bench, releasing reading material for Civil Judges (Junior Division) at Foundation Training Programme on 11.1.2000, accompanied by Mr. D.P. Gupta, Director JTRI (Right)

Hon'ble Sri Keshri Nath Tripathi, Speaker Vidhan Sabha, Lucknow accepting bouquet from Mr. D.P. Gupta, Director, JTRI on his visit to Institute.

Hon'ble Mr. Justice H.N. Tilahari, Judge, Karnataka High Court (in the Middle) accompanied by Hon'ble Mr. Justice A.N. Gupta, Chairman, JTRI (Right) and Mr. A.N. Mittal Addl. Director, JTRI (Left).

Hon'ble Mr. Radhey Shyam Gupta, Law Minister, Govt. of U.P. (Middle) accepting bouquet from Mr. D.P. Gupta, Director, JTRI in the valediction Session of Training Programme for A.I.G./D.I.G. Stamps. Seen in the Left, Hon'ble Mr. Justice A.N. Gupta, Chairman, and on the right Mr. A.N. Mittal, Addl. Director. On the podium, Mr. Raghvendra Kumar, Addl. Director, Comparing the session.

Hon'ble Mr. Shakeel Ahmad Khan, Law Minister, Government of Bihar accepting bouquet from Mr. D.P. Gupta, Director, JRTI on the occassion of Valediction Session of Training Programme on Computer Application and Information Technology on 20.5.2000.

Hon'ble Mr. Shakeel Ahmad Khan, Law Minister Government of Bihar, on visit to Library of JTRI accompanied by Hon'ble Mr. Justice A.N. Gupta, Chairman (Right) and Mr. D.P. Gupta, Director and Mr. Nirvikar Gupta, Addl. Director (Left).

न्यायालयों में हिन्दी प्रयोग शताब्दी समारोह में विख्यात व्यंगकार पद्म विभूषण श्री के०पी० सक्सैना (बीच में खड़े हुए) श्री डी०पी० गुप्ता, निदेशक से पुष्प भेट स्वीकार करते हुए। माननीय न्यायमूर्ति श्री हैदर अब्बास रजा, वरिष्ठ न्यायमूर्ति, लखनऊ पीठ (बाए) एवं डा० मोती बाबू (दायें) एवं श्री निर्विकार गुप्ता अपर निदेशक, कार्यक्रम का संचालन करते हुए।

Hon'ble Mr. Justice A.N. Gupta, Chairman (Second from Left), alongwith Mr. D.P. Gupta, Director (Left), Mr. P.C. Sharma (Second from Right) Principal Secretary (Jail) and Mr. S.S. Pundhir Deputy Inspector General (Prisons) (Right) in the Inaugural Session of Training Programme of Jail Officers on 5.6.2000.

Hon'ble Mr. Justice A.N. Gupta, Chairman, (on Middle chair), Mr. D.P. Gupta, Director (Left Chair) and Mr. Nirvikar Gupta, Addl. Director (Right Chair) with batch of Addl. District & Sessions Judges of U.P. in Refresher Training Programme.

Batch of Newly Recruited Civil Judges (Junior Division) in Foundation Training Programme. (11.1.2000 to 11.4.2000)

Batch of Jail Officers of U.P. and other States in Legal Training Programme for Jail Officers.

STRUCTURE OF OUR JUDICIAL SYSTEM

Justice D. S. Sinha

Hon'ble Mr. Justice A.N. Gupta, Chairman, Mr. D.P. Gupta, Director of the Institute. Mr. N.K. Mehrotra, Principal Secretary (Judicial) & L.R., U.P. Government, Faculty Members and all the loving brethren of Judicial fraternity.

I am delighted to be here with you on this occasion of inauguration of Refresher Training Programme for Additional District Judges conducted by the Institute of Judicial Training and Research, Uttar Pradesh, Lucknow. I thank the authorities of the Institute immensely for giving me this opportunity. Mr. U.C. Dhyani, Mr. Justice Gupta, Mr. Mehrotra and other speakers have described courts as temple of justice. It is customary to describe courts as temples of justice, with the Judge as presiding deity. Such a comparison suggests, to my mind, the purity of thought and deed and transcendence of the duality leading to unison in a noble purpose i.e. dispensation of justice, according to law, not rough justice, at various levels, including the foundation level at which you are.

In the organic structure of our judicial system, the level held by you occupies the place of eyes, ears, hands and legs, without which the higher levels cannot function. To be precise, the subordinate judiciary holds a pivotal position in the body of our judicial system. Subordinate judiciary is the root from which stem and on which stand all other higher levels of judiciary.

Exactly, what I mean to say is that the subordinate judiciary directly hears the parties to a dispute, considers their pleadings of woes and makes attempts at resolution of the conflicting claims of the rival parties, directly at the inception. With the effective assistance of the lawyers, not the pseudo one merely donning the Lawyers'-robes, horoscope of the case, i.e. pleading is charted at the subordinate judiciary. The intricate job of meaningful reading and interpretation of the horoscope is at subordinate judiciary. In the process, it undertakes the fine job of sifting truth which is, more often than not, found inextricably mixed with falsehood and perjury. Thus, the

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Inaugural Address by the Chief Guest Hon'ble Mr. Justice D.S. Sinha the Acting Chief Justice of the High Court of Judicature at Allahabad at the Refresher Training Programme of Additional District Judges on Saturday, the 6th May, 2000 at Institute of Judicial Training & Research, Uttar Pradesh, Lucknow.

distinguished advantage that the subordinate judiciary enjoys is indisputably superior. It is through the critical view of subordinate judiciary and the dispassionate value of its functioning that the true picture of the Indian Judiciary, as a whole, presents itself to the nation.

The mind of the Indian Judiciary can be known to the millions only through the actions of subordinate judiciary. For an overwhelming majority of the litigants what is real and existing is the subordinate judiciary only. Without a healthy subordinate judiciary, there cannot be a healthy judiciary. Nothing is, therefore, more important for us all than to preserve, protect and defend the independence and integrity of the subordinate judiciary.

Only an independent subordinate judiciary will prove to be an asset to the nation. It is, therefore, essential for the successful functioning of the judiciary as a whole that the subordinate judiciary is encouraged to think independently and to act justly and decide fairly between the parties. In a heterogeneous society such as ours where caste loyalties are still strong and in poverty ridden and illiterate country such as ours where political power is feared and money is worshipped, the threat to the independence of judiciary arises as much from the society as from the State. Only a well trained and well informed subordinate judiciary can be trusted to be independent and equal to its task of rendering justice.

Let us remind ourselves of what Lord Bacon said in his essay on Judicature "The principal duty of a judge is to suppress force and fraud". Elaborating these golden words of Lord Bacon observed Lord Denning, M.R. "As a part of this it is the duty of a judge to denounce wrong doing when it is established before him. He speaks for all law abiding citizens. His words uphold the opinion of good. And shake confidence of the wicked. By condemning wrong doing, he re-inforces the moral sanction on which law and order so much depend".

In the millennium year, the first thing we in the judiciary shall have to take care of, is to see that the arrears of court cases which have mounted till now get eradicated at the earliest. This cannot be possible without the full and unstinted co-operation of the members of the Bar and the presiding judges, as partners in the great task of administration of justice. Human hope has its limits and waiting endlessly is not possible in the current life style. The consumer of justice wants unpolluted, expeditious and inexpensive justice. In absence of it, instead of taking recourse to law, he may be tempted to take law in his own hands. This is what the judicial

system shall have to guard against so that people do not take recourse to extra judicial methods to settle scores and seek redress of their grievance. If this tendency proliferates it would be a sad day for the constitutional democracy to which we are all wedded. The lack of a speedy dispute resolution mechanism has a direct impact on the level of lawlessness in our society. A peaceful society is a necessary precondition for any kind of development. Let me, however, hasten to add that the over-flowing dockets of the Courts all over the country should not be taken as a sign of failure of the system but a sign of faith in the administration of justice by those who are involved in litigation. Public resort to Court to suppress public mischief is a tribute to the justice delivery system. Though it is a fact that arrears have mounted and the judiciary cannot escape criticism yet it cannot be denied that the Executive as well as the Legislature are also partly responsible therefor. Besides taking their own time to fill up the vacancies, the Executive has invariably failed to provide necessary infrastructure to enable the judiciary to function normally. The financial control being with the Executive, many courts have to function without the requisite infrastructure, specially furniture or library, and adequate efficient staff. Inspite of all odds against us, we are functioning to the satisfaction of the majority of the people.

One of the causes of delay in the disposal of cases is "Judge made". Lack of punctuality, laxity, lack of control over the case file and court proceedings contribute in no small measure to the delay in disposal of cases. The grant of unnecessary adjournments, on the mere asking or on account of "strike call", add to the problem. Court time is sacrosanct and no Judge or the member of the Bar has any right to waste it. The Judges at all levels must always respect the court time and remain punctual. No laxity in that behalf is permissible. Not adhering strictly to court timings is serious aberration. It must be avoided at all costs. The delay in pronouncing judgements is yet another aspect on which we, the judges, at all levels must address ourselves. It causes anguish to the litigant and can become a cause of "suspicion". The inordinate delay in delivering judgements is almost inexcusable. Let us on this occasion resolve not to become parties to slow motion justice.

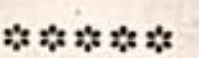
It is well known that Rule of Law sustains democracy and it is equally true that to a bold and independent judiciary is assigned the task of maintaining Rule of Law. The impartiality and independence of the judiciary, however, depends on the high standards of conduct followed by judges.

Only if the highest possible standards are adhered to, can the faith of the common man in the judiciary be maintained. The judiciary cannot afford to adopt an uncritical attitude towards itself. We Judges, at all levels, must make ourselves accountable and ensure that our actions are transparent and are within the parameters set by the Constitution. The judiciary must follow those standards of morality and behaviour which it sets for others, and as a matter of fact before laying down standards of behaviour for others the judiciary must demonstrate that the same standards apply to it and are being followed by it. Constant evaluation of the functioning of the institution needs, therefore, to be encouraged. The greatest threat to the independence of judiciary is the erosion of credibility of the judiciary in the mind of public, for whatever reasons. Lord Denning once said : "Justice is rooted in confidence, and confidence is destroyed when right minded go away thinking that 'the Judge is biased."

It cannot be gainsaid that if a Judge decides wrongly, out of motives of self-promotion, he is no less guilty of corruption than a Judge who decides wrongly out of motives of financial gain. In either case the incumbent of the office cannot be said to be worthy of being a Judge. His conduct affects the credibility of the Institution. Constant vigil by the Judges is, therefore, absolutely necessary. There must be proper balancing of judicial independence on the one hand and the behaviour and conduct of Judges who operate the justice delivery system on the other. "Cerberus must not be seduced from vigilance by a sop". The greatest asset and the strongest weapon in the armory of the judiciary, said Justice H.R. Khanna in his Tagore Law Lectures in 1985 is "the confidence it commands and the faith it inspires in the minds of the people in its capacity to do even handed justice and keep the scales in balance in any dispute". By and large the Uttar Pradesh Judiciary has enjoyed immense public confidence. The common man considers the judiciary as 'the ultimate guardian of his rights and liberties'. This institution has stood the test of time, and we owe it to the great institution to which we belong that we maintain the confidence of the common man in the judiciary by giving even handed justice in all cases. No institution can take, for granted, the respect of the community, which has high expectations and constantly demands proof of utility of the institution.

I wish all the success.

Thanks again.



INTERPRETATION OF STATUTES

Justice D. K. Seth

Prelude

Interpretation of Statutes is a concept that eludes the Judges and the minds of the court. It is a concept, which is required at every point of time in interpreting the Statutes applicable in a particular case in the context in which the case is required to be decided.

It is a function from which the court cannot resile, however ambiguous or difficult of application the word of an Act of parliament may be the court is bound to endeavour to place some meaning upon them [1]. In doing so, it gives effect to the intention of the parliament. It only elicits that intention from the actual words of the Statute [2].

Interpretation and Construction :

While interpreting a Statute court either may interpret it or may construct it. The difference between the interpretation and construction is very thin.

Difference between Interpretation & Construction

Interpretation differs from construction in that the former is the art of finding out the true sense of any form of words; construction on that other hand is the drawing of conclusions respecting subjects that are beyond the direct expression of the text; conclusions which are in spirit though not within the letter of the law. Interpretation is the act of making intelligible what was before not understood, ambiguous or not obvious. It is the method by which the meaning of the language is ascertained. Construction on the other hand means to determine from its known limits its true meaning or the interest of its framers and the people who have adopted it, in the application of its provisions to cases or emergencies arising and not specifically provided for in the text of the instrument, by drawing conclusions beyond direct expressions used in the text. When the Court goes beyond the language of the Statute and seeks the assistance of extrinsic aids in order to determine whether a given case falls within the Statute, it resorts to construction [3]. Construction therefore is the means of the interpretation and interpretation is the end [4]. However, the distinction between the two process is of no great consequence as the dominant purpose in each case is to ascertain the intent of the legislature [5]. However, this distinction according to Suther Land, [6], is erroneous.

Preliminary

Before we embark upon the rules of construction, it would be beneficial to refer to the different parts of the Statutes. Normally the Statutes are numbered with the year and are generally cited by the short title. However, a Statute has a long title set out at the head of the Statutes and gives fairly every description of the general purpose of the Act; for instance, an act to make fresh provision with respect to investment by trustees and persons having the investment powers of trustees and by local authorities and for the purpose connected therewith. But it also has a short title which is given in the Act itself by which the Statute may be called, such as Trustees' Investments Act, 1961. Initially in England the title was not considered to be part of the law, though occasionally it used to be referred to as aid in the construction and, therefore, ought not to be taken into consideration [7]. But the modern view as gradually developed is different. It is now settled law that the title of the Statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope [8], and for throwing light upon its construction [9]. Old Statutes used to have preambles in which the main objects of the Act were set out, which were legitimate aids in construing the enactment [10].

But modern Statutes hardly have preambles. Marginal notes are ministerial Acts and are not Acts of the parliament and as such has no relevance in interpreting of a Statute. Headings are some times referred to in order to find aid to interpretation. But that cannot control the plain words of the Statute [11]. They may explain ambiguous words [12]. Though the court may look into the headings to resolve any doubts but the law is quite clear that headings cannot be used to give a different effect to clear words where there cannot be any doubts as to their ordinary meaning [13]. A Schedules to Statutes are as much part of an Act as any other and may be used in construing provisions in the body of the Act [14]. Punctuation is described in the construction of the Statutes since there was generally no punctuation in old Statutes. Even in modern days, many of the Statutes are not punctuated. Though punctuation can be looked into for interpretation of a modern Act but no regard could be had to punctuation in older Act [15].

In England, we had had the Interpretation Act,1889 while in India, we do not have any similar Act except the General Clauses Act which can be resorted to as an aid to construction or interpretation.

STATUTE AND ITS PARTS

Statute

Maxwell had defined Statutes as "the Will of the legislature"[16]. A document which is presented to the legislature as a Statute in an authentic expression of the legislative Will. The function of a court is to interpret that document "according to the intent of them that made it."[17].

A statute is the formal expression in writing of the Will of the legislative organ in a State. [18]. Statute is a declaration of law as it exists or as it shall be from the time at which such Statute is to take affect [19]. It is usually called the Act of the Legislature. The text of a Statute as published in the official gazette must be taken to be the authorised text of the Act [20].

Hindi & English preference:

If the original Act is in Hindi, in case of doubt and principally for the purpose of properly interpreting any provision of such an enactment, the, the proper course is to look at the original Act as published in Hindi [21]. If there is a conflict between the Act in English, and the Act in Hindi, the former must prevail, in that, the Act was passed by the Legislature in English, when there is nothing to show that the Act was passed by the Legislature in Hindi, and not in English, or in both [22] . Where Hindi was adopted as a language by the Legislature of a State, Hindi and English are both authorised versions, and it is permissible to rely on the Hindi version in case of doubt, [23]. But in case of a conflict between the two versions the English version prevails, [24]. But when the Act was originally passed by the Legislature in Hindi, then the Hindi version must prevail and not the authorised English translation [25].

When the Act is in English and it uses English words, the recognised meaning of the expression which it carries in English speaking world may alone be attributed to it. No extended meaning may be given to it even when used by the Indian Legislature [26].

Parts of Statutes

A Statute consists of several parts:

(i) Title.

(ii) Title of Chapter.

(iii) Preamble.

(iv) Interpretation clause.

(v) Headings.
(vi) Marginal Notes.
(vii) Sections.
(viii) Punctuation and brackets.
(ix) Illustrations.
(x) Proviso, exception and saving clause.
(xi) Explanation.
(xii) Schedules and Forms.
(xiii) Erratum.

Long Title:

As pointed out earlier the old conception that long title was not part of the Statute is no longer tenable owing to the changes in parliamentary procedure for dealing with titles. It now forms part of the Act and a very important part of it. The policy and purpose of a given measure can be deduced from the long title and preamble thereof has been recognised in many decisions of the Supreme Court [27]. The long title no doubt indicates the main purpose of the enactment but it cannot control the express operative portion of the Act [28]. It will not limit the plain meaning of the text [29]. Nonethelss it is a useful guide in resolving an ambiguity[30].

Short Title

The short title is given to the Act in order to facilitate reference. Lord Moulton describes short title as the statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title. Section 28 of the General Clauses Act, 1897 lays down that an Act or Regulation may be cited by reference to the title or short title conferred thereon. The title of the Act being part of the Act, it could be used for the purpose of interpreting of the Act as a whole and ascertaining its scope [31]. Though, however, the long title may be beneficially used for such purpose but the short title being chosen for the sake of convenience, its object being identification and not description [32].It is not legitimate to give any weight to the title. However, the title is not conclusive of the intent of the Legislature but constitutes only one of the numerous sources from which assistance may be obtained. It is only indication of the legislative intent [33]. If the Statute is clear the construction cannot be limited by its title and no aid is necessary to be sought from the title. Only when Statute is ambiguous, the title becomes useful.

Title of Chapter

Title of a Chapter in a Statute is not a determining factor regarding interpretation [34]. Privy Council considered it to be immaterial in the construction of the Act. It does not restrict the plain terms of the enactment [35].

Preamble

Though preamble can be referred to for seeking aid in construction but preamble alone cannot be held to be conclusive of the intent and purpose of the Legislature. The object, purpose and intent of the legislation is to be gathered from the various provisions of the Statute itself and not merely form an isolated case of the preamble. Though preamble is a part of the Act, it is not an operating part [36]. Where the enactment part is explicit and not unambiguous, the preamble cannot be resorted to control or restrict it [37]. Where the enacting words are clear, the Preamble cannot operate to restrict the meaning [38].

Interpretation Clause

Words as used in statue are defined in the statute itself. The are valuable aid in resolving questions of statutory meaning. It is a common practice to provide interpretation or definition clause in every statute, When a word or phrase is defined as having a particular meaning, it is that meaning and that meaning alone which must be given to it, in interpreting a section of the Act, unless there be anything repugnant in the context [39]. Such definition given in the statute is binding upon the Court though the definition does not coincide with the ordinary meaning of the word used [40]. It is not for the Court to ignore the statutory definition and proceed to try and extract the true meaning of the expression independently of it. [41]. If the Legislature's intention is clear and unambiguous, it is obviously outside the jurisdiction of the Court to correct or amend the definition in the interpretation clause [42]. Such definition applies wherever that expression occurs in the statute [43]. Where a particular word is defined in the Act, which narrows and restricts its ordinary meaning, the meaning given in the definition must be applied to the word wherever it appears in the Act, unless the contrary is clearly indicated [44].

If the same word is defined differently and there is nothing in the context to show that it is a definition so intended the court will apply wider definition. Craies on Statute Law [45]. pointed out that where an interpretation clause defines a world to mean a particular thing, the definition is explanatory and prima facie restrictive and where an interpretation clause defines a term to include something, the definition is extensive. While an explanatory interpretation

and restrictive clause confines the meaning of the word defined to what is stated in the interpretation clause so that wherever the word as defined and it will bear only that meaning unless where, as is usually provided, the subject or context otherwise requires. Whereas an extensive definition expands or extends the meaning of the word defined to include within it what would otherwise not have been comprehended in it when the word defined is used in its ordinary sense. One such example may be found in Article 12 of the Constitution using the word 'includes' extending the meaning of the expression 'the state' so as to include within ordinary legal sense otherwise may not have been comprehended by that expression when used in its ordinary legal sense [46].

When the word 'means' is used the legislature wants to exhaust the significance of the term defined. When the legislature uses the word 'include it intends to retain its ordinary meaning leaving the scope of widening it by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative but not exhaustive [47]. The words 'that is to say' when used in definition are really not words of restriction but words of illustration indicating instances which may furnish guidance and clue in particular cases [48]. Some times the word 'deemed' is used in modern legislation. It means to impose for the purpose of a statue an artificial construction of a word or phrase that would not otherwise prevail. It is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible [49].

Headings

Headings may not be clubbed with marginal notes but still then it cannot be looked into for the purpose of constructing the provision when words used in the provision are clear or unambiguous nor they can be used for cutting down the wide application of the clear word used in the provision [50]. If all the section is clear, the headings are not to be taken into consideration [51].

Marginal Notes

When marginal notes are not inserted by or under the authority of the legislature it does not form part of the Act nor it receives the ascent of the legislature. In such cases marginal notes are of no role since these are inserted by executives, only to attract the eye to give idea as to the contents of the provision. But the case would be different if the marginal note is inserted by or under the authority of legislature. Inasmuch as then it forms part of the Act and as such like headings it can be regarded as giving a contemporanea expositio

of the meaning of a section when the language of the section is obscure or ambiguous [52].

Initially there used to be divergence of opinion with regard to the marginal notes which appears to have been settled by the Hon'ble Supreme Court in S.P.Gupta Vs. Union of India [53] in the following words:

"Whether the marginal notes would be used to interpret the provisions and if so to what extent depend upon the circumstances of each case. No settled principles applicable to all cases can be laid down in this fluctuating state of the law as to the degree of importance to be attached to a marginal note in a statute. If the relevant provisions in the body of the statute firmly point towards a construction, which would conflict with the marginal note, the marginal note has to yield. If there is any ambiguity in the meaning of the provisions in the body of the statutes, the marginal note may be looked into as an aid to construction."

Sections

Sections constitute the principal or enacting part of a statute. Every section of a statute is substantive enactment in itself. One section may contain more than one enactment. Each section in each Act must, for its true meaning and effect, depend on its own language context and setting [54].

Sub-Section

All sub sections of a section must be read as a 'parts of an integral whole' interdependent. Repugnancy between them must be avoided and they must be reconciled to the possible extent [55].

Punctuation and brackets

Prior to 1849 no punctuation normally appeared in the Acts on the Rolls of Parliament in England. But since 1849 punctuation has been inserted. The English view was that punctuation maybe a useful guide to a hasty enquirer, but it not ought to have been relied upon in construing an Act of Parliament [56] . The American view is that punctuation is a most fallible standard by which to interpret a writing; it may be resorted to when all other means fail. The Indian view about old enactment is that punctuation cannot be discarded wholly yet it would be unsafe to allow it to govern the construction [57].

Maxwell had opined that punctuation was not a very safe guide in the interpretation of a legislative enactment but His Lordship Hon'ble Krishnaswami

Ayyar, J in Veerraraghavulu Vs. President Corporation of Madras [58] considered the punctuation in the old Madras Act of 1884, as furnishing a clue to the interpretation of a corresponding section of Madras Act, III of 1904.

The modern view is that while marks of punctuation contained in a statute will not generally be wholly ignored by the court in interpreting a statutory provision, it may not always be safe to rely on punctuation as a deciding factor. Great importance will be attached by the Court to the language employed by the legislature and if it is found that the word used in the section when read as a whole, clearly furnish a clue to the legislative intent underlying the section and they admit of an interpretation consistent with the said legislative intent, any punctuation mark, which is inconsistent with such construction will be disregarded and the punctuation will not be allowed to control the plain meaning of text [59].

Illustrations

An illustration to a statutory provision merely illustrates a principle and ex-hypothesi it cannot be exhaustive [60]. The statement of law in the illustrations used in an Act cannot be taken as laying down substantive law [61], and does not bind the court to place a meaning on the section which is inconsistent with its language [62]. If there be any conflict between the illustration and the main enactment, the illustration must give way to the latter [63].

Provisio, exception, saving clause

A proviso is something engrafted on a preceding enactment [64]. The provisio follows the enacting part of a section and is in a way independent of it [65]. Normally, it does not enlarge the section, and in most cases it cuts down or makes an exception from the ambit of the main provision [66]. Provisions are often inserted to ally fears on misapprehension. It assumes the tenor and colour of the substantive enactment [67].

Exception exempts something, which would otherwise fall within the purview of the general words of the statute.

Saving clause reserves something, which would be other wise, included in the words of the enacting part [68].

Explanation

The purpose of explanation is often to explain some concept or expression or phrase occurring in the main provision.

The object of explanation

(a) To explain the meaning and intendment of the Act itself.

(b) Where there is any obscurity or vagueness in the main enactment, to classify the same so as to make it consistent with the dominant object, which it seeks to subserve.

(c) To provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

(d) An explanation cannot in any way interfere with or change the enactment or any part thereof, but where some gap is left which is relevant for the purpose of the explanation in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment and

(e) It cannot however take away a statutory right with which any person under a statute has been clothe, or set at naught the working of an Act by becoming a hindrance in the interpretation of the same [69].

Schedule

The schedule is as much a part of the statute, and is as much an enactment as any other part, and maybe used in construing provisions in the body of the Act [70].

Forms of Schedules

Forms appended to Schedules are inserted merely as examples and are only to be followed implicitly. But the same cannot be relied upon for interpreting the provision. However, it may be referred to for the purpose of throwing light on the construction of the statute [71].

Schedule forms are always dangerous guides to the meaning of a statute [72]. But Courts can derive support by a reference to the statutory forms and rules with a view to show that they are not alone in the view, which they have taken of the section [73].

Rules

Rules made under the Act must be consistent with the Act and construed harmoniously with provisions contained in it [74].

PRINCIPLE OF INTERPRETATION

After the above preliminary which are conceptually fundamental to the interpretation of Statute, now we may refer to the various Rules or Principles of Interpretation.

Primary Rule : Literal Construction (Golden Rule)

The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one and otherwise in their ordinary meaning [75] and the second is that the phrases and sentences are to be construed according to the rules of grammar [76]. This rule of interpretation is generally known as Golden Rule, namely, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further [77].

Lord Wensleydale called it the 'golden rule' and adopted it in Grey v. Pearson [78].

Maxwell in Interpretation of Statutes [79] quotes the following passage from Nokes V. Doncaster Amalgamated Collieries [80].

"The golden rule is that words of a statue must prima facie be given their ordinary meaning, We must not shrink from an interpretation which will reverse the previous law; for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of a statutory words but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

The Supreme court in Jugal Kishore Vs. Raw cotton Co. Ltd [81] had laid down that "the cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the Legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of liberal interpretation."

Their Lordships of the Privy Council in Corporation of the City of Victoria V. Bishop of Vancouver Island [82], speaking through Lord Atkinson observed that:

" In the construction of statutes, their words must be interpreted in their ordinary grammatical sense, unless there be something in their context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense."

The Allahabad view expressed by His Lordship Malik C.J in Mahmud Hasan Khan Vs. Narain [83] that the courts have to interpret the language used by Legislature in the plain, grammatical sense This view was further enunciated by Hon."ble Malik C.J. in Jadu Rai V. Kanizak Husain [84]. The same view has been repeated by the Allahabad High Court all along, which is consistent with the view taken by other High Courts.

Every word in the statute would give a meaning

A construction which would leave without effect any part of the language of statute will normally be rejected. [85]. No word used in the statute is redundant.

In order to apply this rule of Interpretation, two rules are followed. One is mischief rule and the other Golden Rule. In Heydon's Case [86], it was resolved by Barons of the Exchequer "that for the sure and true interpretation of all statues in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered (1st). What was the common law before the making of the Act (2nd). What was the mischief and defect for which the common law did not provide(3rd) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And, (4th), The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and

evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

The golden rule is really modification of the literal rule.

PRESUMPTIONS IN INTERPRETATION:-

In order to interpret statutes certain presumptions are to be taken into consideration. There is a presumption in favour of the validity of a statute. Courts of Law have to presume that the particular law is intra vires not ultra vires Unless any statutory provision or executive action contravenes any specific Article of Constitution, the court should be reluctant to hold it unconstitutional. A statute may be found invalid in some of its parts but valid in others. It may be valid at one time and not another. It may be valid under one set of facts but not another. It may be valid as to one class of persons and invalid to others.

Legislature does not commit a mistake

Ordinary principle of construction is that statutes are territorial in operation since legislature deals with the subject matter situate within its own territorial jurisdiction. It is also presumed that the legislature does not commit a mistake. It is not competent for the court to proceed on the assumption that the Legislature knows not what it says, or that it has made a mistake [87] It may be presumed as a rule that exact and correct words are used in the statute [88]. However, the mistake may creep into legislation due to various circumstances and causes. They may be caused by the printer making an incorrect reproduction of the draftsman's manuscript, or they may be due to the draftsman's unskilfulness. They may also creep into a Bill during its passage through the Legislature.

A court of law is no doubt not authorised to supply a casus omissus or to alter the language of a statute for the purpose of supplying a meaning even though they may be of the opinion that a mistake has occurred in drawing up the Act, but it is an equally recognised principle of interpretation that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsmen's unskilfulness or ignorance of the law except in case of necessity or the absolute intractability of the language used [89]. On this principle words in a statute may be added, altered or even rejected according to the requirements of the case [90].

Legislature does not waste its words

Legislature is deemed not to waste its words or to say anything in vain [91].

The presumption is always against superfluity in a statue. An Act should be construed as to avoid redundancy or surplusage. [92]. It is no doubt true that as a general rule legislatures may be presumed not to make a superfluous provision. But this presumption is not a strong presumption and it is not uncommon to find the legislature inserting superfluous provision under the influence of what may be abundant caution. It is well a well settled principle of construction that no part of a statute shall be so construed as to convict the Legislature of having engrafted a statutory clause which would be of no purpose or avail to anyone [93]. In short, a court should not be prompt to ascribe, and should not without necessity or sound reason, impute to the language of a statute tautology or superfluity [94].

Every part of a statute should be given as far as possible its full meaning and effect and no word or clause should ordinarily be rejected as superfluous. An interpretation which makes a provision of law completely nugatory cannot be correct [95].

Repetition and surplusage

In interpreting Acts of Legislatures although it is necessary if possible to give every word of a particular clause some meaning, it is not always possible to do so. Acts of Legislatures are no more exempt than any other documents from looseness of language or inaccuracy of expression, and it is sometimes impossible, doing the best one can, to give full and accurate meaning to every word [96].

The general rule of interpretation, no doubt, is that a meaning must be given if possible to every word of a statute, for a statute is never supposed to use words without a meaning (97). All the words used must be taken into consideration, and no word should be considered as redundant, and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage [98].

Words interpreted in ordinary sense unless technical

It is to be presumed that the Legislature has used the words in their known and ordinary signification, particularly, when they are themselves precise and unambiguous [99].

The rule is that words used by the Legislature should be given their plain and natural meaning, by plain and natural meaning being meant the literal and popular as opposed to a figurative or technical meaning [100].

The general terms and expressions in a statute are to receive a general construction, that is, they are to be accorded their full and natural meaning, unless the context, or some other admissible consideration indicates that the Legislature intended them to be taken in a more limited sense. General terms in a statute may be restrained and limited by specific words with which they are associated. They may be taken in a limited and restricted sense when the construction of them according to their widest meaning would lead to unjust, oppressive or absurd consequences.

Where a word used by the Legislature has a fixed technical meaning it is to be taken in that sense, unless the context or other evidence of meaning indicates a contrary legislative intent. The technical words and phrases of the law are presumed to have been used in their proper technical signification when used in statutes, unless it plainly appears that a different meaning was intended by the Legislature [101].

Legislature presumed to know the rules of grammar

Crawford in his Statutory construction (p.337) says: "Since one may assume that the Legislature knew and understood the rules of grammar such rules should be considered by the court in their efforts to ascertain the meaning of a statutory enactment on the theory that they will reveal or tend to reveal the correct sense or meaning thereof."

Legislature presumed to know the law, judicial decisions and general principles of law

The legislative language will be interpreted on the assumption that the Legislature was aware of existing statutes, the rules of statutory construction, and the judicial decisions and that if a change occurs in legislative language a change was intended in legislative result [102].

The legislature must be presumed to know the course of the legislation, [103], as well as the course of judicial decisions in the country [104], a fortiori of the superior courts of the country [105].

It is well settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them in the repealed Act, because the Legislature is presumed to be acquainted with the construction which the courts have put upon the words, and when they repeat the same words, they must be taken to have accepted the

interpretation put on them by the court as correctly reflecting the legislative mind [106].

Legislature is fair

It is presumed that legislature never intends to do a palpable injustice. Where there are two constructions, the one of which will do great and unnecessary injustice, and the other, which will avoid that injustice, and will keep exactly within the purpose for which the statute was passed, it is the bounden duty of the court to adopt the second and not to adopt the first of those constructions [107].

The underlying purpose of all legislation is to promote justice among men. The object and effect of the statute should be of primary concern in the interpretation of statutes. The equities of the controversy should be the tilting factor.

A construction which permits one to take advantage of one's own wrong or to impair one's obligations under a current statute should be discarded [108].

If a benevolent interpretation is possible without violation to the spirit of the enactment, the courts are bound to resort to it in order to obviate inconvenient or unjust consequences [109]. No statute should be construed as destructive of or prejudicially affecting any existing right unless such a result is brought about by express words or by necessary implication [110].

Vested rights are preserved

There is a presumption against the taking away of a vested right by any fresh legislation, and a construction which involves the taking away of vested rights ought not to be adopted if the words of the enactment are open to any other construction [111]. It has been consistently held that repeal of an Act followed by re-enactment does not automatically wash away the right accrued and the liabilities incurred under the repealed law unless a contrary intention appears in the repealing law [112].

SOME IMPORTANT CONSIDERATIONS IN INTERPRETATION

Some important basic rules of interpretation are precisely set out in two decisions of the Supreme Court: (I) Balasinor Nagrik Co-op. Bank Ltd Vs. Babuthai Shankarlal Pundya (1) and Lt. Colonel Prithvi Pal Singh Bedi V. Union of India [113].

Absurdity

If the words of an Act are clear the court must follow them even though they lead to a manifest absurdity. The Court has nothing to do with the question whether the legislature has committed an absurdity [114].

The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the Legislature, their ordinary, natural and grammatical meaning; if, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same; but if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation [115]. It matters not in such a case what the consequence may be. When by the use of clear and unequivocal language capable of only one meaning anything is enacted by the Legislature, it must be enforced, even though it is absurd or mischievous [116].

It is well known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly [117].

Where the language of law is clear, it is not necessary to see whether the interpretation put on the law is likely to lead or not to hardships and to absurdities. But the test may be applied to see whether the interpretation is a sound one or not [118].

If the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an absurdity, and the other does not, the Court will conclude that the Legislature did not intend to lead to an absurdity and will adopt the other interpretation [119].

If the language employed admits of two constructions one of which renders the meaning absurd and mischievous and the other reasonable and wholesome the latter ought undoubtedly to be preferred [120].

When two constructions are equally open, that alternative construction is to be chosen which will be consistent with smooth working of the system which the statute purports to regulate and that alternative construction is to be rejected which will introduce absurdity, uncertainty, friction or confusion in the working of the system [121]. The courts will not lightly impugn the wisdom of the Legislature.

Futility:

The provisions of a statute must be construed fairly so as reasonably to

effect the object which the Legislature may be presumed to have had in view. If the choice is between two interpretations, the narrower of which will fail to achieve the manifest purpose of the legislation, the Court should avoid the construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that the Legislature would legislate only for the purpose of bringing about an effective result [122].

It is well settled that in construing the provisions of a statute Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute [123].

Reasonableness

The canons of construction of statute do not permit the Court to take the reasonableness or unreasonableness of the consequences of a particular interpretation, as it is in substance a question of expedience for the Legislature [124].

The first rule of construing any enactment is to give the words their natural meaning and it is only if no reasonable results can be arrived at by giving the words their natural meaning that some other interpretation is permissible [125].

When the language of a statute is clear and unambiguous it must be interpreted in the ordinary sense. A reasonable interpretation is to be preferred to one that leads to unreasonable result [126].

It is not the duty of the Court to make the law reasonable but it is its duty to expound it as it stands according to the real sense of the words and leave the remedy to others [127].

Where no meaning can be given to certain words of a statute without rejecting some of those used in it, or where a statute would become a nullity were all the words retained, the court has power to read a section as though the words which would make it meaningless or nullify it, were not there [128].

It is quite true that in interpreting statute, to meet the obvious intention of the Legislature, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence [129].

Hardship

When the language of a section of an Act is not ambiguous, in

interpreting the plain words of such a positive enactment any suggestion of hardship is out of place[130].

But where it is not incompatible with a construction that avoids hardship and injustice, the Courts are at liberty to adopt that construction[131]. When the words of an enactment are clear and imperative, considerations of inconvenience or hardship have no place in its application to circumstances falling within the words. But where there is no express indication in an enactment as to whether the powers given by it were meant to be used in particular circumstances, the fact that great hardship and inconvenience would result thereby is a reason for so construing the words as to meet all attempts to abuse the power either by exercising them in cases not intended by the statute or by refusing to exercise them when the occasion for their exercise has arisen[132].

Inconvenience

The argumentum ab inconvenienti is only admissible in construction where the meaning of the statute is obscure. When the language is explicit, its consequences are for Parliament, and not for the Courts, to consider. In such a case the suffering citizen must appeal for relief to the law-giver, and not the lawyer[133].

It is not for the Court to extend scope of the Act on the ground of convenience when the language of the law is clear beyond doubt. Even when the argumentum ab inconvenienti is used it is to be used with caution.

It is at the same time a maxim of law that an argument drawn from inconvenience is forcible in law[134]. The way to interpret a section is not to interpret it in such a way that inconveniences and lawlessness may be caused unless it is absolutely necessary to do so[135].

Court will not interpret the Act in a manner which will lead to multiplicity of litigation or offend against well-established principles of jurisprudence. A rule of law should be interpreted in such a manner as to avoid multiplicity of suits

Anomaly

Courts are bound to construe a section of an Act, according to the meaning of the language unless either in the section itself, or in any part of the Act anything is found to modify, qualify or alter the statutory language even if absurdity or anomaly be the result of such interpretation.[136]. Where the text is clear and the anomalous interpretation is irresistible, the Court has to accept it leaving it to the Legislature to remove the anomalies.

Consequences

If the language employed is plain and unambiguous, the same must be given effect to irrespective of the consequences that may arise [137]. But if the language employed is reasonably capable of more meanings than one then the court will have to call into aid various well settled rules of construction and, in particular, the history of the legislation, to find out the evil that was sought to be remedied and also in some cases the underlying purpose of the legislation – the legislative scheme, and the consequences that may possibly flow from accepting one or the other of the interpretations because no legislative body is presumed to confer a power which is capable of misuse [138].

INTERNAL AIDS TO INTERPRETATION

In interpreting the statute, certain aids may be obtained from the Act itself, which are known as internal aids: such as; definitions, exceptions, explanations, fictions, deeming provisions, headings, marginal notes, preamble, provisos, punctuation's, saving clauses, non obstinate clauses etc.

All parts of statute to be taken together

It is a fundamental principle in the construction of statutes that the whole and every part of the statute must be considered in the determination of the meaning of any of its parts [139].

In construing a statute as a whole the Courts seek to achieve two principal results: one - to clear up obscurities and ambiguities in the law and the other : to make the whole of the law and every part of it harmonious and effective. It is presumed that the Legislature intended that the whole of the statute should be significant and effective. Different sections, amendments and provisions relating to the same subject must be construed together and read in the light of each other [140].

Section to be read as s whole

The Court is not justified in interpreting a paragraph of single section, which is capable of more than one construction by the light only of the words employed in it and without reference to other parts of the enactment [141].

It is no doubt true that if the words used in a criminal statute are reasonably capable of two constructions, the construction which is favourable to the accused should be preferred, but in construing the relevant words, it is obviously necessary to have due regard to the context in which they have been used.

But the words of a statute may be given an extended meaning of which they are reasonably susceptible rather than interpret their meaning as restricted by context when such restriction would reduce them to mere surplusage [142].

Same words have same meaning

Words are generally used in the same sense throughout in a statute unless there is something repugnant in the context [143]. So too the same expressions if it appears more than once in the same statute or for that matter in the same provision should receive the same meaning unless, the context suggests otherwise [144]. Same word in a section should bear the same meaning in both places unless there is something in the context to the contrary [145] i.e. unless there is a clear indication in the statute itself to show that the Legislature has used the words and phrases will lead to absurd conclusions and results [146].

The obligation of interpreting the word in the same sense everywhere in the statute does not exist when the word has not been defined by the Legislature. Ordinarily the same meaning should be given to the word in the different sections of an enactment. The presumption that the same meaning is implied by the use of the same expression is not of much weight. If the context justifies it, the same word may be interpreted differently in the same statute and even in the same section. But there must be good reason for doing so.

When the legislature uses different language in the same connection, in different parts of the statute, it is presumed that a different meaning and effect was intended, [147] and if different language is used in contiguous provisions, it must be presumed to have done so designedly [148].

It is no sound principle of construction to interpret the expressions used in one Act with reference to their use in another Act [149].

Technical meaning

The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning [150].

Surplusage

A statute ought to be so construed that no part of it shall be superfluous, void or nugatory [151].

Noscitur a sociis

Another well known rule of interpretation which also lays stress on the

context is, 'Noscitur a sociis'. Where two or more words, which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take their colour from each other, and the more general is restricted to a sense analogues to the less general[152].

Reddendo singula singulis

This phrase indicates that different words in one part of a section or statute are to be applied respectively to the other portions or sentence to which we can say they respectively relate, even if strict grammatical construction should demand otherwise. Where several words importing power, authority and obligation are found at the commencement of a clause containing several branches, it is not necessary that each of those words should be applied to each of the different branches of the clause; it may be construed reddendo singula singulis, the word giving power and authority may be applicable to some branches, those of obligation to others [153].

Ejusdem generis

The word ejusdem generis means of the same kind or nature[154]. The rule of ejusdem generis is that where particular words are followed by general, the general words should not be construed in their widest sense but should be held as applying to objects, persons or things of the same general nature or class as those specifically enumerated[155] unless of course there is a clear manifestation of a contrary purpose. Or to put in a slightly different language where general and special words which are capable of analogous meaning are associated together, they take colour from each other and the general words are restrained and limited to a sense analogous to the less general[156].

The principle underlying this approach to statutory construction is that the subsequent general words were only internal to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind.

But if the intention of Legislature is clear, the occasion for the introduction of the ejusdem generis rule of interpretation would not arise [157].

The rule of ejusdem generis that words are to be interpreted by the association in which they are found, is applied as an aid in ascertaining the intent of the Legislature and not to subvert it when ascertained and gives no warrant of narrowing alternative provisions which the Legislature has adopted with the purpose of affording added safeguards [158].

The doctrine applies when the following conditions exist:

(i) The statute contains an enumeration by specific words

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

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

(iv) A general term follows the enumeration;

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

(vi) There is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires [159].

This doctrine will not apply

(i) if the specific words do not come under a genus or category; [160] or

(ii) Where the context of the whole scheme of the enactment and the object and mischief of the enactment do not require such a restricted meaning to be attached to words of general import(4) [161].

Casus omissus

Casus omissus is point or case unprovided for [162]. When a given state of affairs does not come within the obvious meaning of the words of the statute, that is, when certain contingencies are not provided for, or when the words do not embrace the particular question in hand, it is a case of casus omissus [163]. We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself [164]. A casus omissus should not be readily inferred [165]. In trying to solve a difficulty, Courts must not proceed as mere grammarians of the written law but must search for the true intention of the Legislature. But the intention of the Legislature is not to be judged by what is in its mind but by its expression of that mind in the relevant statute itself.

The only repository of a Legislature's intention is the language it has used and in examining that language, it must be presumed that the Legislature know the accepted vocabulary of Legislative bodies and so know what words are required and considered apt to effect a particular result. If it has not made a provisions or used words from which a particular result can properly be found, courts will not be justified in finding it, simply because a contrary decision would cause hardship to public. It is true that one must not expect in a statute

the completeness and elaboration of a deed and where the minimum required to make a particular meaning which is obviously intended is found effect must be given to such meaning. But Courts cannot dispense with even the minimum. Where even such minimum is absent Court must declare the deficiency and let it have its effect rather than strain themselves to make it good. Thereby, not only will the Courts prevent themselves from taking up the functions of the Legislature but the Legislature may also profit because it may take care to avoid such deficiencies in future [166].

Court cannot aid the Legislature's defective phrasing of the statute: Court cannot add, and mend, and, by construction, make up deficiencies, which are left there. If the Legislature did intend that which it has not expressed clearly; much more, if the Legislature intended something very different; if the Legislature intended something pretty nearly the opposite of what is said, it is not for Judges to invent something which they do not meet with in the words of the text, it is not for them so to supply a meaning, for, in reality, it would be supplying it: The true way in these cases is, to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered; words is, either by preamble or by the context of the words in question, controlled or altered; and therefore, if any other meaning was intended than that which the words purport plainly to import, then let another Act supply that meaning, and supply the defect in the previous Act. The Courts cannot say to themselves that through oversight the Legislature has failed to provide for a particular situation, and therefore, what was not done by the Legislature may be done by the Court. This does not lie within the judicial field.

It is well established principle of construction of statutes that the court cannot supply omissions by implication and analogy, unless the existing provisions of a statute by necessary intendment so compel the court [167].

Intention of the Legislature should be given effect to. If it necessitates supplying of omission may be necessary to give effect to such intention [168].

Object of Statute

The first and cardinal rule of construction is to give effect to the clear and unambiguous words of the statute and no recourse to be made to the statement of object and reasons for the purpose of construing a statutory provision is permissible[169].

It is only in exceptional cases where there is any doubt or difficulty as to the interpretation of the statute or any word thereof that the court can legitimately look to the object of the enactment or to the purpose for which it was made

The object of a section has to be gathered as far as possible from the language. Court has to give such a construction to the language of a statute so that the object and purpose for which it was enacted must be achieved.

EXTERNAL AIDS TO INTERPRETATION

Some times the external aids are also used to interpret the statute. Recourse to extrinsic aid in interpreting a statutory provision would be justified only within well-recognised limits; primarily the effect of the statutory provision must be judged on a fair and reasonable construction of the words used by the statute itself. If the words of the statutes are explicit and unambiguous there can be no resort to external aid for their construction.

The external aids are the noting in the files of various officials, dictionaries, earlier Acts, history of Legislation, parliamentary proceedings, state of law as it existed when the Act was passed, the mischief sought to be suppressed and the remedy sought to be advanced by the Act. Even Law Commission report is regarded as an external aid. Precedents and judicial decision may also be regarded as external aid.

Reports of Commissions and Committees

Reference is not permissible to the Report of the Select Committee preceding the legislation. The intention of Parliament as expressed in the statute cannot be modified or controlled in a Court by reference to any such material [170].

Even though the proceedings of the Joint Committee cannot be relied upon for the purpose of construing the order, they may be looked into to ascertain the circumstances in which the several communities were grouped under one entry or the other[171].

Similarly the report of the Commissioners, appointed by the State on which Act is founded, ought not to be referred to in Court of Justice as a guide in construing the Statute.

Reports of legislative committees having in charge the preparation of proposed laws may be consulted, as a source of information in the endeavour to ascertain the legislative intent, in a situation where the meaning of the statute is doubtful [172].

Proceedings in Parliaments

No doubt it is used to be the practice in High Courts at Calcutta, Bombay and Madras to refer to the proceedings in the Legislature which resulted in the passing of an Act. But this practice was deprecated by the Privy Council [173]. The same principle has been followed by the Supreme Court [174]. The report of the debate leading up to the passing of it cannot be looked at [175].

Legislative proceedings cannot be referred to for the purpose of constructing an Act or any of its provisions, but they may be relevant for the proper understanding of the circumstances under which it was passed and the reason which necessitated it. [176]

Statement of objects and reasons

The Statement of Objects and Reasons maybe used for the purpose of construing the meaning of a particular word in an enactment, yet it can be referred to, for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which is sought to be remedied [177]. While the statements and objects cannot be used as aids to construction they can be used for the limited purpose of understanding the background and antecedent state of affairs leading up to the legislation of finding the object of the Legislature in enacting the statute where all other methods of interpretation fail [178].

Judicial construction

When a particular words in a statute have received judicial interpretation, and the statute is subsequently repealed and re-enacted in identical terms, the words in the new enactment should be construed in the sense previously attributed to them by the judiciary [179]. This rule does not apply when the scope of two enactment is different and they are not in pari materia. [180]

Surrounding circumstances

Contemporaneous events may constitute an important extraneous aid to the construction of a statute. The concept of such events embraces the history of the period when the statute was enacted, including the history of the statute itself, the previous state of the law, and the mischief or evil against which the statute was aimed as a remedy.

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

the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice.[181]

Policy

It is needless for a Court to scan the wisdom or policy of the statute, where the meaning of the words used admit of no ambiguity[182]. Policies of statutes are relevant for their proper construction. But within the broad framework of the main purpose and policy of the statute construction is largely, fundamentally and primarily, a matter of interpretation of the words used in the statutes.

Contemporanea expositio

The rule is that the words of a statute will, generally, be understood in the sense which they bore when it was passed or in other words they are to be understood as used with reference to the subject-matter in the mind of the Legislature, and limited to it[183].

There are however two limitations to the application of this rule. First, it must always be borne in mind that contemporaneous interpretation can be called in aid only where the statute is obscure or ambiguous and its true meaning cannot be ascertained by resort to intrinsic aids to construction[184]. Secondly the rule does not apply to the construction of modern statute. According to the Supreme Court the maxim should be applied in the construction of ancient statutes, but not to comparatively modern statutes.

Precedents and Judicial Decisions

Reference can be made to precedent or judicial decisions to seek aid for construction.

The Supreme Court may depart from its own previous decision. It is not bound by the decision of the Privy Council. The Supreme Court attaches a good deal of value to the views of the High Court in the interpretation of enactment on local statute.

In view of section 8 of the Abolition of Privy Council Jurisdiction Act, 1949, the binding value of those decision is restricted to the decree and order of the Privy Council and to nothing more, though it might have persuasive value.

Dictionaries

One of the main objects of every dictionary of the English language is to given an adequate and comprehensive definition of every word contained in it which involves setting forth all the different meanings which can properly be given to the particular words. The Courts may take judicial notice of the ordinary meaning of all words in our tongue and the dictionaries are admitted, not as evidence, but only as aids to the memory and understanding of the court. In the absence of any definition dictionaries may be of some assistance to resolve an ambiguity. The courts have to ascertain the meaning of terms with reference to the context in which they occur.

Analogy

Arguments by analogy maybe misleading. It has been repeatedly said by the Supreme Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia.

INTENTION OF LEGISLATURE

Intention of the legislature is a slippery phrase. It is indicated expressly or by implication in the form of written instrument known as a statute. Where the language is plain, only the meaning is to be adhered to and no interest for interpretation arrives and all consequences are to be disregarded. Ordinary and natural meaning in such cases cannot be controlled by supposed intention and words are to be given their natural meaning even if not in consonance with the legislative intent or by the spirit of legislation or by consideration of public policy or by equitable construction. Nor it is to be affected by consideration of reasonableness or by consideration of hardship and inconvenience etc. The Courts cannot modify so as to bring it into accord with its own views or expediency, justice and reasonableness. Nor can it introduce legal fictions. Nor supply casus omissus.

Departure from plain meaning is permissible where language is not plain and intra or extra aids may be resorted to depending on each case.

Conflicting provisions

In case of conflicting provision certain tests are to be adopted such as whether there is any direct conflict between the two provisions or whether parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature and whether law made by

Parliament and the law made by State Legislature occupy the same field. Efforts must be given to reconcile different parts of a statute. Statute is to be construed so far as its different parts are concerned so as to reconcile in order to present one complete picture. Statute should be construed so that there may not be any repugnancy or inconsistency between its different portions. When two provisions are mutually contradictory they should be interpreted to read together so as to obviate too apparent inconsistency. It is well settled that all provisions have to be read together and construed harmoniously, and even when there are apparent inconsistency between a section of the Act and the rules framed thereunder, there should be a harmonious construction, so as to give effect to the intention of the Legislature and to achieve the object of the Act [185].

Conflict of General Act and Special Statute

In case there is a conflict between general Acts and special statutes and the same cannot be reconciled in that event it is to be read in such a way as give to give full meaning to each consistently with the other, then one must give way, and the one to give way will be the general provisions [186].

Special statute does not derogate from another special statute without express words of abrogation. Special provisions made under the workmen's Compensation Act do not abrogate the rights arising under the Fatal Accidental Act. The workman may claim remedy under both the Act alternatively

Conflict of Statutes and Rules

In case conflict between statute and rules made thereunder, the rule being subordinate legislation must give way to the Act. No rule can be so framed as to be in conflict with or in derogation to the statute under which it is framed.

Conflict of Law and Practice

If there is a conflict between law and practice, the Court is bound to follow the law.

Conflict of Natural Justice

Where there is a conflict between a basic natural right born out of natural justice and a provision of law, general or special, it is also settled that the former should prevail, even though the right is not specially mentioned in the list of rights guaranteed under the Constitution.

CONSTRUCTION MAY BE STRICT OR LIBERAL

Liberal construction may be extended to matters which come within the spirit or reason of the law or within the evils which the law seeks to suppress or correct. However, in no circumstances, the statute can be given meaning inconsistent with or contrary to the language used by legislators.

A strict construction is one which limits the application of the statute by the words used. Strict construction refuses to extend the import of words used in a statute so as to embrace cases or acts which the words do not clearly describe.

Whether the construction would be liberal or strict is dependent on the constitution. That interpretation shall make the legislative intent effective and the construction will not defeat the intent of legislature. The question of liberal or strict arises only when the language is not clear and conclusive of the legislative intent.

Beneficial Legislation

A statute purpose to confer a benefit on individuals or a class of persons, by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individual with whom they stand in certain relations, is called a beneficial legislation. In interpreting such a statute, the principle established is that there is no room for taking a narrow view. The court is entitled to be generous towards persons on whom the benefit has been conferred. In construing the provision of beneficient enactments, the court should adopt that construction which advances, fulfills and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory. This rule of liberal construction can only be resorted to without doing any violence to the language of he statute.

Remedial statute

Remedial statute is one which remedies defect in the pre-existing law, statutory or otherwise. Their purpose is to keep pace with the views of society. They serve to keep our system of jurisprudence up to date and in harmony with new ideals or conceptions of what constitute just and proper human conduct.

DUTY POWER AND PRACTICE OF COURTS

The duty of the court is to interpret the law as it stands. A Judge should not allow himself to be swayed by his own personal wishes, desires or predilections , for rights of the parties to a litigation are not regulated by the

whim or caprices of the presiding officer but by the law as applied to the fact of the particular case.

The function of the court is to interpret the language of a statute. It is for the Legislature to make enactments and for the Courts to enforce such enactments. It must be born in mind that the Courts are not legislators, they have to carry out loyally the directions of the Legislature. Courts must resist the temptation to change the law under cover of interpretation of law. If courts of law use their power to interpret law, to alter laws which they may not like, and to make a new laws which, they think, should be made, that would be a corrupt use of their power. Courts have to observe constant vigilance against such corrupt use of power by themselves. If and when the ground on which a law is enacted, ceases to exist, it is the province of the proper legislative authority to consider the matter of repealing the same, but the courts cannot arrogate to themselves the functions of the Legislature. Courts cannot add words which are expressed in the Act. It is undesirable to import words into statute.

When two constructions possible, the court must adopt that which will implement and ensure smooth and harmonious working of Constitution.

The court should not decide questions which are unnecessary. And decide the questions which are directly arise from the facts of the particular case.

When the facts are fully set and admitted, a party's opinion about the legal effect of those facts is of no consequence in construing the section. There can be no waiver of compliance with statutory provisions enacted in the public interest, nor estoppel against statute nor setting up non- compliance with them even when the provisions relate to the form of contracts between individuals and public bodies created by or under a statute.

SUBSTANTIVE AND ADJECTIVE LAW

Law defines the rights which it will aid and specifies the way in which it will aid them. So far as it defines, thereby creating, it is 'Substantive Law'. So far as it provides a method of aiding and protecting, it is 'Adjective Law'.

There is a difference in the rule of construction between a law dealing with substantive rights which are already vested and on relating to procedure. There is no vested right in procedure but the case of vested rights is different.

Rules of procedure are not by themselves an end but the means to achieve the ends of justice Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct path way to justice.

Construction of the rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of permissible construction must be preferred to that which is rigid and negatives the ends of justice.

FISCAL STATUTES

Fiscal statutes are to be interpreted strictly Since fiscal statutes imposes liability on a person, such liabilities cannot be imposed unless it is possible to impose by the clear words used in the statute

If the person sought to be taxed comes within the letter of the law, he must be taxed, however, great the hardship may appear to the judicial mind .

PENAL STATUTES

Penal statutes must be strictly construed and in the manner in which fiscal statutes are constructed such as there cannot be any application by implication and where two interpretation is possible, the interpretation beneficial to the accused should be preferred.

EMERGENCY LEGISLATION

To be construed liberally in favour of the State (War time measures) than peace-time legislation [187] but are to be strictly construed. These are normally temporary law to meet certain emergency. It can not be allowed to out last the emergency[188].

LEGISLATION – DELEGATED

Legislation are two fold - One by the legislature i.e. Parliament or the State Legislature which is called legislation – Two delegated legislation – By authorities other than the legislature/Parliament, authorised to legislate under the provisions of legislation or the Act. Regulations, Rules, By laws, Orders, Schemes, Notifications or other instruments - are sub ordinate or delegated legislation.

There is a difference in the power to legislate by the delegated authority. Parliament is supreme. Its power to legislate is unlimited/. Whereas delegated legislation is to conform to the legislation that delegated the power. It cannot override the legislation. However, they may be conntemporanea exposito of an ambiguous provision of the Act. [189].

Scope

Courts are to take a cautious approach to interpret delegated legislation

i.e. the same approach under which Acts are interpreted [190].

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

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

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

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

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

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

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

Forms of subordinate legislation

The chief forms of subordinate legislation, according to Salmond [191], are five in numbers :

(1) Colonial ... ...

(2) Executive: The essential function of the executive is to conduct the executive departments of State, but it combines with this certain subordinate legislative powers which have been expressly delegated to it by Parliament, or pertain to it by the common law. Statute, for example, frequently entrust to some department of the executive government the duty of supplementing the statutory provisions by the issue of more detailed regulations bearing on the same matter. So it is part of the prerogative of the Crown at common law to make laws for the government of territories acquired by conquest or cession,

and not yet possessed of representative local Legislatures.

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

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

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

RETROSPECTIVE OPERATION OF A STATUTE

Retrospective means to work back. It is a kind of effectiveness or operation of the Act from a date antecedent to the passing of the legislation. In order to construe whether an Act is retrospective in operation it has to be found out from the express provision used in the Act or necessary implication from the language employed. Legislation being one of the actions of the sovereign it is competent to legislate Act with retrospective operation. Except in matters of procedure existing rights or obligations can not be curtailed or imposed by retrospective operation.

REPEAL

Parliament has the same power to repeal as that to legislate – It may either by express or by necessary implication.

INTERPRETATION OF CONSTITUTION

The Constitution is unlike most of the statutes that we came across and has to be judged from somewhat different standards. The Constitution is the very framework of the body policy; its life and soul; it is the fountain-head of all its authority, the main spring of all its strength and power. The Executive, the Legislature, and the Judiciary are all its creation, and derive their sustenance from it. It is unlike other statues which can be at any time altered, modified or repealed. Therefore, the language of the Constitution should be interpreted as if it were a living organism capable of growth and development if interpreted in the broad and liberal spirit, and not in a narrow and pedantic sense. The need for this caution is greater when the court is called upon to interpret the Constitution of the great democratic Republic of India, devised by the people of the land who were anxious to insure for themselves a government of the people, by the people and for the people. The Constitution was not merely concerned with the present and the past; but also built for the future. It would be small credit to the makers of the Constitution, if we start with the erroneous assumption that they failed to visualise the problems with which we are at present confronted, and that in the Constitution they did not provide for them. While the Constitution is the direct mandate of the people themselves the statute is an expression of the swill of the Legislature only, though the Legislature is also the representative of the people. A Constitution is but a higher form of statutory law. The Constitution, viewed as a continuously operative charter of Government is not to be interpreted as demanding the impossible or the impracticable.

Constitution the paramount law

The Constitution is written to be understood by the voters; its words and phrases are used in their normal and ordinary sense as distinguished from technical meaning. The simplest and most obvious interpretation of a constitution; if in itself sensible, is the most likely to be that meant by the people in its adoption [192]. There is no war between Constitution and commonsense [193]. A written constitution is to be interpreted and effect given to it as a paramount law to which all other laws must yield.

Applicability of rules of statutory construction:

The Constitution being essentially in the nature of a statute, the general rules governing the construction of statutes in the main apply to the constructions of Constitution also. [194] The fundamental rule of interpretation is the same

whether it is the provisions of the Constitution or an Act of Parliament, namely, that the Court will have to ascertain the intention gathered from the words in the constitution or the Act as the case may be. And where two constructions are possible that one should be adopted which would a smooth and harmonious working of the Constitution and eschew that which would lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory [195] .The fundamental principal of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it.[196] That is according to the intent that made it. Normally such intent is gathered from the language of the provision. But if words used in the provision are imprecise, protean or evocative or can reasonably bear meaning more than one, then it is legitimate for the Court to go beyond and call in aid other well-recognised canons of constructions [197].

Dhavan J, stated in Monuddin v. State of U.P. [198]: "The choice between two alternative constructions should be made in accordance with well-recognised cannons of interpretation –

"Firstly, if two constructions are possible the court must adopt the one which will ensure smooth and harmonious working of the Constitution andeschew the other which will lead to absurdity or gives rise to practical inconvenience or make well-established provisions of existing law nugatory. [199].

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

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

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

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

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

of the Constitution."

In construing a Constitution. Resort may be had to the well-recognised rule of construction contained in the maxim "expressio unius est exclusio altertius" , and the expression of one thing in a Constitution may necessarily involve the exclusion of other things not expressed [200].

In construing a Constitution we cannot look beyond the letter of the Constitution to adopt something which would commend itself to our minds as being a principle of abstract justice, e.g., principles of international or inter-State ethics and, if possible, to read the Constitution, in conformity with that principle.

Special Rules of Construction of a Constitution

A democratic constitution cannot be interpreted in a narrow and pedantic (in the sense of strictly literal) sense. Constitutional provision is to be interpreted in the light of basic structure of the Constitution. [201]. It lays down basic norms of community life which must find on judicial interpretation, their rule reflection in every aspect of human life, individual and collective. Therefore, any constitutional interpretation which subverts the free social order is anti-constitutional [202]. It is the basic and cardinal principle of interpretation of a democratic constitution that it is interpreted to foster, develop and enrich democratic institutions. To interpret a democratic constitution so as to squeeze the democratic institutions of their life giving essence is to deny to the people or a section thereof the full benefit of the institutions which they have established for their benefit [203]. The function of a Constitution is to establish the frame work and general principles of Government, and hence, merely technical rules of construction of statutes are not to be applied so as to defeat the principles of the Government or the objects of its establishment [204]. Being a paramount law there are certain rules which are specially applicable to the construction of a Constitution, rules which are not applicable to the construction of statutes. Even though the language may seem to be clear in its meaning, many questions arise where a word which would otherwise be unambiguous has two or more separate and distinct meanings or connotations. In such a situation a question of construction exists, for it must be determined which of the possible meaning of the term is intended. Words or terms used in a Constitution, being dependent upon ratification by the people voting upon it, must be understood in the sense most obvious to the common understanding at the time of its adoption although a different rule might be applied in interpreting Statutes and Acts of the

Legislature [205]. Even though court of law has to gather the spirit of the Constitution from its language [206]. That spirit cannot limit the general powers of legislation when the Constitution itself has not done so by its terms or necessary implication [207]. Many times the objects of a constitutional provisions are expressed in the instrument itself, and a statement of such objects may be given great weight in its interpretation [208]. It may also be noted that some rules of statutory interpretation have special significance with reference to the construction of Constitution, e.g., the doctrine of ultres magis valeat quam paret; the doctrine of liberal interpretation, the doctrine of implied powers and restraints, etc. The said rules though equally applicable to interpretation of statutes have a special significance with reference to the construction of a Constitution. Fundamental constitutional principles are of equal dignity and none must be so enforced as to nullify or substantially impair the other. [209] The rule is well established that no Court is authorised so to construe any clause of the constitution as to defeat its obvious ends where another constitution equally accordant with the words and sense thereof will enforce and protect it. [210]

Liberal Interpretation

One must never forget that a Constitution is always being expounded. Provisions of a Constitution should not be interpreted in a narrow and pedantic sense [211]. The words of the constitution must be naturally and liberally construed, and no narrow or restricted interpretation should be put upon the words unless such interpretation is forced by the context in which they occur.

Progressive interpretation

Constitution is intended to meet and be applied to new conditions and circumstances as they may arise in the Courts of the progress of the community [212].

Basic Views

The constitution has certain basic features, which are fundamental. The interpretation of the constitution has to be made in consonance with the basic feature. An interpretation, which offends the basic feature, is impermissible.

CONCLUSION

The rules of interpretation of the statute, as we have discussed above, indicates that a very cautious approach is to be undertaken when interpreting a statute.

The first and foremost principle is to interpret literally balancing with the mischief rule if form of expression is clear and unambiguous and makes out only one possible interpretation or meaning. But where more than one meaning is possible, the various guiding principles enumerated above are to be applied depending on the situation.

Proper application of the different principles is the main function of the court.

It has to be borne in its mind that the interoperation does not encroach upon the domain of legislation and that it advances the object and purpose and reconcile the entire statute and is harmonise in itself and that it results in smooth application of the law in order to achieve the purpose and object and to remove the ills and evils and support the remedy.

The Court has to give meaning and effect to every word used in the statute and avoid adding, altering or amending the same and reading something, which is not in it.

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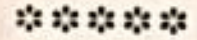

CITIZEN'S VIGILANCE IN FORMATION OF GOVERNMENT

Justice Kamleshwar Nath (Retd)

India is a Democracy, vide Preamble to the Constitution of India. It is said : "In a democracy, people get a Government which they deserve". The classic definition holds the key : 'a Govt. of the people, by the people, for the people'. Since, in our Democracy, the Govt. is formed by the representatives of the people returned by them at an Election held in accordance with the provisions of Part XV of the Constitution & connected provisions of the Representation of People Act, 1951, it is but natural that the quality of the Govt. must depend upon the qualities of the elected representatives. If the representatives are men of integrity, honesty, justice, broad vision, having a National spirit, they will produce a good Govt. greatly to be desired. If they are corrupt, dishonest, self-seekers, anti-social, or criminally inclined, they will produce a bad Govt. which will be corrupt, biased individually or collectively through favouritism or nepotism on communal or caste lines, will be prone to encourage violence, and lead to communal/caste/class conflicts, which is bound to undermine the unity and strength of the Nation and retard its progress. It is the duty of the people, therefore, to ensure that they vote for such candidates only as are men of integrity & honesty, devoted to self-less service, and fired with a patriotic zeal to bring about an atmosphere of love & mutual understanding so that the Nation continues to rise in every way. Indeed, a Fundamental Duty envisaged in Art. 51A (i) of the Constitution is for every Citizen to strive towards excellence in all spheres of activity so that 'the Nation constantly rises to higher levels of endeavour and achievement'. The experience, unfortunately, has been otherwise. It is now time to look back and examine how things went wrong in the past so that mistakes may be avoided and the people usher in a better future.

2. When India became free in 1947, and the people adopted the Constitution in 1950, great personalities, of national and international stature, adorned the political scene. Apart from their erudite learning and expertise in various fields of nation-building, they were men of high moral character, comitted to the cause of nation building which was the greatest asset of the Nation. Laws alone do not build a Nation, because laws operate only in a specified limited field which can never be wide enough to cover all aspects of a person's daily life. You do not love, look after, & serve your child or family because of any legal or statutory compulsion; you do

so because you have a moral inner urge to do so-an urge created within you by Mother Nature. This is recognised as the Moral Law. Our great men of the post-independence era, were enthused with the urge of the moral law to bring good to every person inhabiting this beautiful country. An unwritten code of Ethics, so to say, informed their functions. Unfortunately, that was rather short-lived as Mahatma Gandhi's influence abated; even so, till Jawahar Lal Nehru's life-time political morality/ethics did carry some weight in the activities of the individuals who ran the Government. Although corruption had started raising its head, political crime had not surfaced.

3. With the passing of Nehru, decline became obvious. The Administrative Reforms Commission, constituted in January 1966 under the Chairmanship of Morarji Desai, recommended in October same year to establish authorities at the Centre (known as Lokpal) and in each of the States (known as Lokayuktas) to operate as a check on the abuse of power and corrupt practices at the highest political and administrative levels. Commencing from the first Lokpal Bill of 1968, however, it has seen seven reincarnations till the Bill of 1998, but it has not yet been enacted! The Bill of 1998 was introduced in the 12th Lok Sabha by the Prime Minster, Sri Atal Behari Vajpayee himself; but it was referred to a select committee of some MPs (some of whom, significantly, have voiced their disapproval to bring the MPs within the ambit of the Lokpal!), and ultimately it lapsed with the dissolution of the Lok Sabha! So much for the MPs probity in public life. Some of the important States like West Bengal, Tamilnadu have not established a Lokayukta; most of the others, like UP have established an apology for the Institution. Of course, some other States like Karnataka, Andhra Pradesh, Madhya Pradesh, Rajasthan have established worthwhile and effective Lokayukta institutions; the record of fighting corruption in those States is certainly praise-worthy. But considered at the national level, corruption has increased in this country by leaps and bounds over the recent past years. The Times of India dated 4.10.96 (Bangalore) reported that according to a survey by Transparency International of Washington, India was the 9th most corrupt country in the World! The latest position is 3rd as per World Economic Forum report of 1999 regarding Asian countries, reported in Hindustan Times (Lucknow) dt. 17.5.99. What a progress indeed!

4. Political corruption, compounded with criminal activities, has crossed

all limits. The personalities involved in scams, corruption and crime cases include Prime Ministers, Ministers, MPs, MLAs along with bureaucrats in the line. All this even as Art. 51A (i) of our Constitution mandated a duty of every citizen 'to safeguard public property and to abjure violence'. Moral values such as rectitude in public figures, austerity, poverty-sensitive political sensibility, gradually got eroded. Even Jayaprakash Narains's intervention in '70s had a transitory positive effect so that the malaise revived shortly after in an aggravated form. Nirija Gopal Jayal writes in "Changing Conceptions of Political Morality" (published in Vol XLI - 1995 - of the Indian Journal of Public Administration's Special Number on Ethics in Public Life) as follows :-

> "Jayaprakash Narain's intervention in the crisis of the 1970s was commonly interpreted as the application of a moral corrective to a political process that was becoming dangerously corrupt. The self-serving declaration of emergency was seen to be countered by the selfless moral force injected into politics by JP. This was the phase when Indian politics lost its moral innocence, and political skulduggery in various forms came to be recognised. The fall in standards of probity, lack of transparency, and expression of these in terms of de-institutionalisation, became more apparent than before. The outcome of 1977 elections was greeted with jubilation not least because it was seen to be enthroning principles of accountable government once again. The failure of this promise was registered in the electoral rejection of the Janata regime in 1979 as much a moral rejection of betrayal as a political one."

5. As time passed, political corruption compounded by Mafia/Criminal nexus with bureaucrats continued to gather momentum at the cost of the citizen & the Nation; what was apparent to the common man, received authentic confirmation from the famous Home Ministry's Vohra Committee Report of 1993 published only partially, i.e., the portion which was made officially public. The Vohra Committee collected material from its constituents of which that furnished by the Director CBI, and Director IB are material for the purposes of this write-up.

6. According to the Director CBI, the money power acquired by organised crime Syndicate/Mafia is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the

politicians during elections. It was further stated that all over India, crime syndicates have become a law unto themselves, and that the nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country.

7. The Director IB, reported that due to progressive decline in the values of public life in the country, warning signals of sinister linkage between the underworld politicians and the bureaucracy have been evident with disturbing regularity.

8. Having agreed with the views expressed by the CBI & IB, and also by other Departments, all that the Vohra Committee could recommend was to constitute a Nodal Cell under the Home Ministry where all the intelligence information regarding the anti-social activities of the crime Syndicates/Mafia/ Politicians/Bureaucrats could be collected and could be passed on to the concerned Departments for suitable action! That was hardly a recipe for the ills of 'criminalisation of politics and politicisation of crime'. The Vohra Committee, I am afraid, expressed itself more like a 'bureaucratic machine' than as a beacon light for showing a way to the Government to lead the Nation out of the malaise. The result was obvious : the Govt. did precious little about it. Even so, the message is loud and clear to the Common Man.

9. The 11th Lok Sabha gave birth to the United Front Coalition Government with H.D. Deve Gowda as the Prime Minister. They issued a Common Minimum Programme in June 1996. The CMP recorded that "the people of the country are greatly exercised by growing emergence of a nexus between politicians, civil servants, businessmen, and criminal elements which has been eloquently illustrated by the report of the Vohra Committee". The Programme promised to take some steps, but failed to incorporate a resolve that no person with a criminal background will be allowed to be elected or, if elected, to retain a seat in the Parliament or the Legislatures. That Lok Sabha had a few wholly illiterate MPs who could not even read the oath; some were facing charges for heinous criminal offences.

10. The 12th Lok Sabha of March 1998 had 17 MPs who had been charge sheeted for criminal offences (vide Hindustan Times Lucknow dt. 27.3.98). The writer of the article captioned "Politics of Perversity" mentioned that they were put up by political parties by way of a universal and regular practice bidding good-bye to all canons of morality and probity. Dealing with the so called communal card, the writer remarked : 'The fact

is that the party which actually allowed the country to be divided was the Congress, that all so called secular parties have wooed Muslims as Muslims, OBCs as OBCs, and Dalits as Dalits, that V.P. Singh (JD) inflamed casteist divisions by unleashing the Mandal monster, and behind the secular veneer of such rabble rousers as the Yadavs duo lies inverted communalism and disastrous sub-casteism'. The true position in this regard is voiced by Mr. Justice H.R. Khanna in his article 'Ethics in Public Life - Issues and Remedy' (published in the Indian Journal of Public Administration - Vol XLI Sept. 95) in these words : "One of the basic postulates of democracy is that the 'minority' would reconcile itself to the verdict of the electorate, and thus accept the rule of the 'majority'. The majority on its part would show due deference to the minority and not rule too oppressively".

11. Coupled with this picture of the members of the Lok Sabha, has been lack of interest in serious business of the House. Hindu (Bangalore) dt. 24.12.95 pointed out in the article entitled "Parliament at Discount", that in the 9th Lok Sabha (1989-91) only 16% of the time was devoted to Legislative business, whereas 31% time was devoted to non-serious matters! We still remember the Special Session of the Parliament called by the Speaker, P.A. Sangma, to discuss parliamentary ethics in the wake of noisy scenes, interruptions, swarming into the well of the House. The behaviour of the members of the House was debated for 5 days, and excellent/laudable resolutions were passed for the members to maintain decorum and abide by the ethics of parliamentary behaviour; but, perhaps, on the very opening day of the immediately following Session there were the same kind of obnoxious scenes for preventing of which the Special Session was called! The Times of India (Lucknow) dt. 25.12.97 carried an interview of Atal Behari Vajpayee to Kanchan Gupta. Vajpayee ji said: "As I see it, good government is possible only when a Govt. has an ethical base. Tragically, morality and ethics are at a discount in politics today.....Competitive politics is increasingly relying upon the strength of money, more so with the waning of ideology. Corruption cannot be just wished away; it needs to be fought at every level, beginning with the cleansing of politics of the influence of money power."

12. Defections present another sordid picture of the behaviour of our MPs/MLAs etc.; it is rank cheating of the Electorate, if also not prompted by corruption. Justice H.R. Khanna has observed (in the above-mentioned article) as follows :

"There are stories of sordid activities behind many of the defections and it is said that money, power or lure of office play a significant part in inducing such defections. Defections, there can be no doubt, pollute the political life of the country and create an atmosphere of uncertainty and instability. They also bring the system of parliamentary democracy into disrepute and create a feeling of bitter disenchantment in the people."

13. Linked with 'defections' is the story of de-stablising governments. Three Governments were pulled down in 3 years! The most naked and preposterous de-stabilsation of a Government has been the fall of Atal Behari Vajpayee's Govt. last April. The Economy swung like a pendulum as the prospects/professions of 'supports' or 'withdrawls' figured in the Media on the basis of the debates on the Confidence Motion! The Govt., in a Lok Sabha of 543, fell by 1 (one) vote only! Why : Because Mayawati of BSP, having stated on the floor of the House that her party would abstain, voted against the confidence motion for no better reason than to take "revenge" from the BJP for her own failures in UP; because Jayalalitha of AIDMK notorious for her involvement in corruption & criminal assault cases, and crying for the moon from her senior alliance partner, withdrew support in frustration; because those in 'league' with communal & casteist forces swore to pull down the Govt. on the pretext of its being communal!

14. Citizens will please pause and ponder over the situation. Plainly, the situation is extremely depressing. Do the people of this great country, which produced a galaxy of matchless great men from times immemorial to the recent times (Gandhi, Vinoba, Aurobindo, Nehru, Patel, Ambedkar, Radhakrishnan, Rajendrababu - and scores like them), deserve their representation in the highest policy-making & Legislative body by the current type of MPs? How is it that we came to this pass? What remedial measures the people should adopt?

15. The only answer in one word is : **CITIZENS VIGILANCE.** Soli J Sorabjee, an eminent jurist, has cited a remark of the American jurist, Joseph Story, laid by Dr. Sachchidanand Sinha, the pro-tem Chairman of the Constituent Assembly, at the opening Session of the Assembly. The article is entitled 'The First Hour of Freedom', published by the Indian Express (Banglore) dt. 9.12.96 The remark was :

"Republics are created by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public

councils, because they dare to be honest, and the profligate are rewarded because they flatter the people in order to betray them."

16. Niraja Gopal Jayal has stated in the article 'Changing conceptions of political morality' (see above) as follows :

> "If, therefore, we require that our political leaders and administrators not be greedy, corrupt, treacherous, dishonest and self-serving, we must also require that the citizen body be vigilant and capable of holding such leadership accountable for its actions. But a successful politics of the common good requires a more demanding ideal of citizenship. In addition to constant vigilance in respect of political leadership, this would also require the qualities of public spiritedness, a commitment to the common good, and a firm opposition to the achievement of individual self-interest if it clashed with the common interest or with values that are cherished by them collectively. Underlying this requirement is a specific understanding of what it means to be a citizen, viz., the idea that the citizen is not merely a passive recipient of rights and entitlements, but rather a responsible member of a closely bound up citizen body inspired by shared purposes and common ends."

17. An extremely important failure on the part of the Citizens qua elections is a failure of substantial numbers to caste their votes. In the General Elections of 1980, only 20 Crore out of 35 Crores (in round figures) voters cast their votes (vide "Democracy at stake" at page 6 of the Times of India, Lko., dt. 25.12.97). This means that out of every 100 voters, as many as 43 did not cast their vote at all! I am not aware of the abstaining percentage in the last election; but I guess that the figure could as well lie between 35% & 40%. Perhaps this 'silent majority' could have had the most enlightened ones among them and therefore the most crucial for the Nation; but they have allowed the Governments to be formed by default! The result is that the 'people get the Govt. they deserve'.

18. We are in the present state even 50 years after freedom from foreign yoke. The time is to act now or never. The citizens must cast a decisive vote for a firm and good Govt. formed by men of integrity, free from criminal or corrupt background, men of merit who are true to their word, men whose firm motto is to give a Govt. of justice & fairness for all, a govt. which cares for all, not merely for a community or caste or a political party. If we cannot do it now, the country will be plunged into chaos which,

heaven forbid, may lead to torturous civil turmoil within the next 5 years! 'Who lives, if the country dies'?

19. It is the call of the hour for every adult of this country to -

(i) cast a positive vote - let there be no 'abstention'; every one must vote;

(ii) vote only for a man of integrity, truth, who is free from any background of crime, corruption or deception;

(iii) take note of candidates who have 'defected' or have 'destabilised' governments in the past - throw them out;

(iv) vote for stability - give a collective and overwhelming mandate, not a truncated one;

(v) mark those who have played the communal and caste card in the past, and refuse to vote for them;

(vi) not allow money or muscle power to overshadow a fair choice for candidates in the fray.

20. Last but not least is the responsibility of the Election Commission under Art. 324 of our Constitution to ensure 'free and fair election'. 'Free' means free from money & muscle power. 'Fair' means full education of the electorate about the quality of the candidates in the fray within a particular Constituency, so that the people can judge and make a conscious choice of their representative and be not deceived by false election propaganda and campaigns. In Mohinder Singh Gill's case - (1978) 1 SCC 405 - a Constitution Bench of the Supreme Court said that 'fairness does import an obligation to see that no wrong-doer candidate benefits from his own wrong'. Article 324 confers plenary powers on the Election Commission; it 'is reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition'. 'The heart of Parliamentary system is a free & fair election periodically held'. The only limitation on the power of the Election Commission is that it may not act in contravention of any subsisting statutory provision; it can certainly fill up the gaps found in the Statute. Dealing with the constitutional validity of Election Symbols (Reservation & Allotment) Order 1968 issued by the Election Commission, the Supreme Court held in Kanhya Lal Omar's case - (1985) 4 SCC 628 - that even if any of the provisions contained in

the Order are not traceable to the Representation of Peoples Act, the power of the Commission under Art. 324 (1), which is plenary in character, can encompass all such orders. It is therefore certainly open to the Election Commission to make a provision by an Order that in addition to the information contained in the Nomination Form 2A to 2E under Rule 4 of Conduct of Election Rules 1961, read with Section 33 (1) of the Representation of Peoples Act, every candidate must also declare whether he was charge-sheeted or convicted for any of the offences described in Section 8 of the Representation of Peoples Act or for an offence under the Prevention of Corruption Act, and further to provide that a substance of such charge or conviction be published in appropriate newspapers for the knowledge of the electorate of the concerned Constituency. Almost equally at par is the need for a minimum educational qualification for MPs. It is a pity that while a peon in any official establishment needs to be Junior High School pass, our MPs & Legislators need none. The Election Commission can help the electorate by requiring the candidates also to declare their educational qualifications, and publish that too along with the statement regarding criminal/corrupt background as mentioned above. These will go a long way in enabling the citizens to appreciate for whom they may or may not vote. The Election Commission's estimated expenditure on the forthcoming elections is Rs. 1000 Crores; it should be possible for the Commission to spare, say, Rs. 1 (one) Crore on publicity in these respects.

21. As in the matter of control on corruption so also in the matter of Election Reforms, necessity for enacting or amending laws has been voiced in all responsible for a since years; but nothing worthwhile has been done. Remember the fiasco regarding Identity Cards! Sub-sections (1) to (3) of Section 8 of the Representation of People Act, 1951, provide for disqualification of persons to be elected to Parliament or Legislatures on account of conviction for a number of specified offences; they all involve moral turpitude. But the practical application of all these disqualifications is instantly done away with by sub-section (4) inasmuch as it provides that the disqualification shall not apply to a Member of any of the Houses for a period of three months; and if an Appeal or Revision is filed in the meantime, the disqualification will not operate further till the decision of the Appeal or Revision. On top of all this, Sections 11 & 11B of the Representation of People Act confer powers on the Election Commission to remove any disqualification, or reduce the period of disqualification. These and some

other provisions of the Act call for appropriate Amendments for sake of probity, commitment, and fairness in public life; but that has not been done. The present Govt. may have powers to act through Ordinances in these respects, but it may not like to do so for reasons of propriety. That is why the need has arisen for the people themselves to rise now, in default of which things will never be set right. If the current citizenry fails, the posterity will only look upon it with contempt; in failing to act, the citizens will ensure the formation of a Govt. which will fall far short of the expectations of the people and of the Constitution.

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"Faith and belief cannot be judged through any Judicial Scrutiny. It is a fact accomplished and accepted by it's follower".

Hon'ble Mr. Justice A.P. Mishra in Shiromani Gurudwara Prabandhak Committee v. Som Nath Dass, (2000) 4 SCC 146

"BAR TO WRIT PETITION ALTERNATIVE REMEDY AND LAW"

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Before adverting to the bar of alternative remedies, it is important to place some basics relating to the issuance of writs.

Under our Constitution, the writs are issued by the Supreme Court under Art. 32 and by the High Court under Art. 226/227 of the Constitution of India. It is appropriate that before proceeding with the subject matter of the talk we have before us relevant parts of these Articles. They read as follows :

"Art. 32 **Remedies for enforcement of rights conferred by this Part -**

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by this part.

(3) .....

(4) ....."

"Art. 226 : Power of High Courts to issue certain writs -

(1) Not withstanding any thing in Article 32 : every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in any appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) .....

(3) .....

(4) ....."

Art. 227 Power of Superintendence over all courts by the High Court -

(1) Every High Court shall have superintendence over all courts and

tribunals through out the territories in relation to which it exercises Jurisdiction.

(2) .....

(3) .....

(4) ....."

The five writs specified in Articles 32 and 226 are known in English law as prerogative writs, for they had originated in King's prerogative power of superintendence over the due observance of law by his officers and tribunals. They have been borrowed in our Constitution from English law. The reasons which led the framers of the Constitution to confer power on the High Court to issue prerogative writs have been summarized by the Supreme Court in the following words :

> "The makers of the Constitution, having decided for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the courts in England had developed and used whenever urgent necessity demanded immediate and decisive inter-position, were peculiarly suited for that purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders or writs primarily for the enforcement of fundamental rights, the power to issue such direction, etc. 'For any other purpose' being also included with a view apparently to place all the High Courts in this country in some what the same position as the court of King's Bench in England". (Election Commission v. Saka Venkata Subba Rao AIR 1953 S.C. 210 at 212).

But, in view of the express provisions for issuance of these writs in our constitution we do not now have to look back to early history or procedural technicalities of these writs in England law; nor the power to issue writs is confined to the five writs of English law which have been specified in Article 226. In the case of Dwarka Nath v. I.T. Officer AIR 1966 S.C. 81 the Supreme Court observed : "The High Courts can issue writs in the nature of prerogative writs as understood in England, but the scope of those writs is also widened by the use of the expression 'nature' which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High

Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country." Today we look upon judicial review of administrative action and enforcement of rule of law by prerogative writs as in important part of administrative law in our country. This has been achieved by the Supreme Court and the High Courts by issuing appropriate orders, directions and writs under Articles 32 and 226 of the Constitution without being inhibited by the limitations that are known to English law.

Writs of various kinds under these Articles are issued by the Supreme Court and the High Courts in the exercise of their constitutional power of judicial review; and this power is in the nature of sovereign judicial power. After undergoing through the vicissitudes of several judicial pronouncement it has recently been firmly held by the Supreme Court by its judgment of a bench of seven judges in the case of L. Chandra Kumar v. Union of India reported in (1997) 3 S.C.C. 261 (Para 78) that "the power of judicial review over legislative action vested in the High Court under 226 and in this court (Supreme Court) under Art. 32 of the Constitution of India is an integral and essential feature of the Constitution constituting part of its basic structure." Again in (Para99) the Supreme Court concluded "the jurisdiction conferred upon the High Court under Articles 226/227 and upon the Supreme Court under Art. 32 of the Constitution is a part of the inviolable basic structure of our Constituion. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Arts. 226/227 and 32 of the Constitution."

The constitutional supremacy and inviolable basic feature of writs under Articles 32 and 226/227 of the Constitution can be best appreciated by briefly referring to the controversy in the case of L. Candra Kumar. By the Constitution (Forty-second Amendment) Act, 1976, Articles 323A and 323B were inserted in the Constitution. Art. 323A empowered the Parliament and Art. 323B empowered the appropriate legislature to consitute tribunals for settlement of disputes in respect of the matters mentioned in those Articles. Clause 2(d) of Art. 323A empowered the Parliament and Clause 3(d) of Art. 323B empowered the appropriate legislature to make laws to exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Art. 136 with respect to all or any

of the matters within the jurisdiction of the Tribunals constituted under these Articles. These clauses, therefore, empowered making of laws which could exclude the jurisdiction of the Supreme Court under Art. 32 and of the High Court under Art. 226/227 of the Constitution to issue writs under their power of judicial review. The Parliament enacted the Administrative Tribunals Act, 1985. it excluded the jurisdiction of the Supreme Court under Art. 32 and of the High Courts under Art. 226/227 of the Constitution. This exclusion of jurisdiction was challenged before the Supreme Court by S.P. Sampath Kumar by a petition under Art. 32 of the Constitution. Pending the petition before the Supreme Court the Act was modified to restore the jurisdiction of the Supreme Court under Art. 32 of the Constitution; but the exclusion of jurisdiction of the High Court under Art. 226/227 remained. In delivering the judgment in the case of S.P. Sampath Kumar - (1987) 1 S.C.C. 124 while the Supreme Court agreed with its earlier pronouncement in the case of Minerva Mills Ltd. v. Union of India, (1980) 3 S.C.C. 625, that the power of judicial review is a basic an essential feature of the Constitution, it rested its oars on some observation made by Bhagwati J. in that judgment to uphold the validity of the exclusion of the jurisdiction of the High Court under Art. 226/227 of the Constitution. The Supreme Court held in that case : "if any constitutional amendment made by Parliament takes away from the High Court, the power of judicial review in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, namely, that the alternative institutional mechanism or authority set up by the parliamentary amendment is no less effective than the High Court".

The gravity and far reaching effect of the judgment of the Supreme Court in the case of L. Chandra Kumar can be appreciated in the context of the aforesaid view in the judgment of the supreme Court in the case of S. P. Sampath Kumar. The Supreme Court, while observing the judicial propriety in commenting upon and explaining the earlier judgment in the case of the S. P. Sampath Kumar, in substance and effect disagreed and reversed that judgment-though in terms it was not over-ruled. The Supreme Court clearly held in Para 79 of its judgment; "we also hold that the power vested in the High Court to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdiction is also part of the basic feature of the Constitution. This is because a situation

where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided." Tracing the gravity and importance of Art. 32 of the Constitution from the speech of Dr. B.R. Ambedkar that it "is very soul of the Constitution and the very heart of it", the Supreme Court did not find any distinction between the functional role of the High Courts in exercise of its power of judicial review under Art. 226/227 of the Constitution and that of the Supreme Court under Art. 32 of the Constitution. The judgment in the case of L. Chandra Kumar is a big step in the growth of constitutionalism in our country. After all, the common people of our country, limited in their means and resources as they are, can afford to approach only upto the High Courts.

The Purpose of inviting attention to this inviolable aspect of the jurisdiction of the Supreme Court and the High Courts to issue writs is that even the laws made by the Parliament or the State Legislatures do not, and cannot, bar the jurisdiction and authority of the Supreme Court and the High Courts to issue writs in the exercise of their powers of judicial review under Art. 32 and 226/227 of the Constitution. Such a law, if made, would be unconstitutional and void. Even the Supreme Court or High Courts cannot make a rule for their our working which will inhibit the exercise of jurisdiction under Articles 32 and 226/227. Limitations on the power under Art. 32 and Articles 226/227 of the Constitution are to be found only in the Constituion itself. Reference can be made in this regard to the judgment of the Supreme Court in the case of Hari Vishnu Kamath v. Ahmad Ishaq AIR 1955 S.C. 233, in that case the Supreme Court observed : "If we are to recognize and admit any limitation on this power (Power of the High Courts to issue writs) that must be founded on some provision in the Constitution itself." In that case the Supreme Court was dealing with Article 329 of the Constitution which bars the jurisdiction of all courts, including the High Court under Art. 226/227 of the Constitution, in matter of disputes relating to elections. However, this bar too can be lifted in some situations indicated by the Supreme Court in the Case of M.S. Gill (AIR 1978) S.C. 851. It is not very relevant to refer to them in this talk. Articles 243O and 243ZG, which relate to the election disputes in the formation of Panchayats and Municipalities under Chapters IX and IXA of the Constitution, also exclude jurisdiction of all courts like Article 329. Similarly, Art. 131 excludes the in jurisdiction of all courts, including the High Courts under Art. 226/227, in the disputes between Government of India and States or between two or more States. Under Art. 32 of the Constitution itself the

remedy of writs is restricted only to the infringement of fundamental rights under the Constitution. The jurisdiction of the High Court under Art. 226/ 227 of the Constitution is not so restricted. It is not confined to the breach of the fundamental rights alone.

With the above complexion of remedial jurisdiction and power of the High Court under Articles 226 and 227 it is well established that there is no absolute bar in the exercise of that power. Infact, it has been held by the Constitution Bench of the Supreme Court in the case of Than Singh v. Superintendent of Taxes (AIR 1964 S.C. 1419) that "the jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restriction which are expressly provided in the Articles. But the exercise of that jurisdiction is discretionary; it is not exercised merely because it is lawful to do. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self imposed limitations. Resort to the extraordinary jurisdiction is not intended as an alternative remedy for relief which may be obtained in an ordinary civil suit or by means of any other mode or remedy prescribed by a statute. Ordinarily, the court will not entertain a petition for writ under Art. 226, where the petitioner has an alternative remedy which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right and to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon a alternative remedy provided by statute for obtaing relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redressal in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Art. 226 of the Constitution the machinery created under the statute to be by passed, and will leave the party applying to it to seek resort to the machinery so set up".

These principles relating to the self imposed restriction on the exercise of the power to issue writs under Art. 226/227 of the Constitution has been reiterated in several cases earlier to the above case and even later and are now well-established. Briefly speaking, it is now well settled that

the power to issue writs under Articles 226 and 227 is constitutional; and it cannot be whittled or taken away by Legislature; and any alternative statutory remedy, even if it is adequate and equally efficacious, does not create an absolute bar on the exercise of the jurisdiction under Articles 226/227 of the Constitution to issue writs; but it does provide a situation or a circumstance whereunder the High Court may refuse to exercise its discretion to entertain a writ petition. It is a rule of convenience and discretion and not rule of law.

There are innumerable illustrations of application of this rule in decided and reported cases of Supreme Court and High Courts. It is not necessary to refer to all of them but it should be noted that the alternative remedy which bars the remedy of issuance of writ must be effective and adequate. Reference in this regard may be made to the decision of the Supreme Court in the case of Ram & Shyam v. State of Haryana (AIR 1985) S.C. 1147 Para 9. In that case an auction was held for granting lease for winning mine minerals. The highest bid of Rs. 3,87,000/- was of the appellant. Respondent No. 4 complained to the Chief Minister against the persons who had participated in the auction and offered a sum of Rs. 4,50,000/- to take the lease. The Chief Minister did not give any chance to the appellant to either equalise the bid or to raise the bid. He accepted the offer of the respondent No. 4. The appellant challenged the acceptance of the Chief Minister by a writ petition under Art. 226 of the Constitution. A single judge as well as the division bench of the High Court rejected the petition on the ground that the appellant should first exhaust the remedy of statutory appeal. The events that followed and occurred in the Supreme Court, in the wake of an appeal in which the bid was raised upto Rs. 25 lacs by the appellant, are not relevant for the subject matter of discussion. Before the Supreme Court on behalf of the respondents preliminary objection of bar of alternative remedy was raised. The Supreme Court rejected the objection in the following words :

"Ordinarily, it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court.....Look at the fact situation in this case. Power was exercised

formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The cliche of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore, this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy." Another instance of the alternative remedy being inadequate is that the remedy may be onerous and of burden some character. For example, the Supreme Court held in the case of Himmat Lal v. State of M.P. (AIR 1954 S.C. 403), where an assessee had to deposit the whole amount of tax, that such a provision can hardly be described as an adequate alternative remedy. Similar observations are to be found in the case of Custom Collector v. Shanti Lal Company (AIR 1966 S.C. 197). Ultimately, the answer to the question of inadequate and ineffective alternative statutory remedy will lie on the facts of each case.

But there are judicially evolved exceptions to the above bar of alternative remedy even when it is adequate. Illustratively, but not exhaustively, such exceptions are :

I In a writ of prohibition, which is issued when other proceedings or actions are totally without jurisdiction, that is the want of jurisdiction is apparent on the face of it as in the case of Calcutta Discount Co. v. I.T.O. (AIR 1961 S.C. 372) or when the action is patently in violation of statutory provision or has no statutory basis (as was in the case of East India Commercial Co. v. Collector of Custom, AIR 1962 S.C. 1893), the writ goes as a matter of right and is not a matter of discretion. In this regard the cases of Kuntesh Gupta (1987) 4 SCC 525 and Whirlpool Corporation v. Reg. of Trade Marks (1998) 8 SCC 1 are particularly noteworthy.

II Similarly, if it is established that the detention of a person is unlawful, the writ of habeas corpus goes as a matter of right and Court has no discretion to refuse it. Even where the court has to investigate facts, the area of discretion to refuse is minimal.

III Where there is a well founded allegation that fundamental right has been infringed alternative remedy is no bar for entertaining

the writ petition and granting relief (State of Bombay v. United Motors AIR 1953 S.C. 252; K.K. Kochunni v. State of Madras AIR 1959 S.C. 725). In the case Kharak Singh v. State of U.P. (AIR 1963 S.C. 1295) the Supreme Court observed that "it is wholly erroneous to assume that before the jurisdiction of the Supreme Court under Art. 32 could be invoked, the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as the law affords and has not yet obtained proper redress, for when once it is proved to the satisfaction of the Supreme Court that by State action the fundamental right of a petitioner has been infringed, it is not only the right but the duty of the Supreme Court to afford to him remedy by passing appropriate order in that behalf.

IV Alternative remedy is no bar where an allegation is that the petitioner's right has been, or is being threatened to be, infringed by a law which is ultra-vires the Legislature which enacted it and as such void (Bengal Immunity Co. v. State of Bihar AIR 1955 S.C. 661). Or, where the Tribunal, before which the remedy lies, has been constituted under law which is ultra vires (Carl Steel v. State of Bihar AIR 1961 S.C. 1615).

V In the case of State of U.P. v. Mohd. Nooh (AIR 1958 S.C. 86), which has been referred to and relied upon in many subsequent judgment of the Supreme Court, the following exceptions to the rule of bar of alternative remedy were carved out. "If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the Superior Court's sense of fair play the Superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or, if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals hearing the appeal or revision were merely

departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice." (Para 11).

VI Remedies which are discretionary in nature and cannot be claimed as of right cannot be said to be adequate alternative remedies eg. Departmental request or representation (Mehnga Ram AIR 1956 All. 644).

VII Recurrent cause of action is also a situation in which the bar of the alternative remedy has been lifted. In the case of Engineering Traders v. State of U.P. & another, (1973) 31 S.T.C. 456 the situation was that the assessee had been assessed to sales tax on pumping sets treating them to be machinery. The assessee contended that pumping sets were agricultural implements and were exempt as such. There were already two Division Bench decisions against the assessee. Assessee had filed an appeal against the assessment order. He, however, also filed a writ petition against the assessment order pending appeal. Objection was taken that the assessee had already availed the alternative remedy of appeal and the petition was not maintainable. The Full Bench held that so long as the two decisions of the High Court stand "no sale tax authority is likely to take a contrary view. Even if the matter comes before this court by way of a reference, the same is bound to be decided against the assessee unless a Full Bench is constituted to reconsider the aforesaid two decisions. All this is bound to take a long time and tax being recurring one, the petitioner is likely to be subjected to a huge liability, which might impair his business. In these circumstances, we are of the opinion that the alternative remedy under that Act is not efficacious and speedy. Moreover, the petitioner has challenged the vires of section 3-AB of the Act, Such a question cannot be decided by the authorities under the Sales Tax Act. We, accordingly, reject the preliminary objection".

VIII When a writ petition, having been admitted and having remained pending for a long time, has come up for final adjudication by the High Court, the bar of alternative remedy is often not applied (Hirday Narain v. I.T.O. AIR 1971 S.C. 33; Dr. Balkrishna

Agrawal v. State of U.P. (1995) 1 S.C.C. 614)

The above exceptions to the general rule of bar of alternative remedy are not exhaustive. Referring to the observations of the Supreme Court in the case of Mohd. Nooh (Supra) the Supreme Court observed in its judgment in the case of A.V. Venkateswaran v. R.S. Wadhwani AIR 1961 S.C. 1506 Pr. 10) that the passages in that judgment "indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable, to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

However, there is one class of disputes, namely, title disputes or property disputes, that is to say, disputes of an outright civil nature between private parties inter se or even between private parties on the one hand and the State on the other hand, where the Supreme Court has always frowned upon the entertainment of any writ petition under Articles 226/227. In this regard, the cases of Ghanshyam Das Gupta v. Anant Kumar Sinha (1991) 4 S.C.C. 379 and Smt. Parvatibai v. Anwar Ali (1992) 1 S.C.C. 414 are noteworthy. According to the Supreme Court, the appropriate remedy in all such cases should only be a civil suit in the Civil Court.

Though the above exceptions to the bar of alternative remedy (which are not exhaustive) have been judicially evolved but in practice they are fading away. The judicial discretion is being gradually substituted by individual discretion of the judges. One of the easy justification to refuse the remedy of writ, even when the case is covered by one of the aforesaid exceptions, is the mounting pressure of the arrears in the High Courts. But we should not forget the important and valuable role, which the writs issued by the Supreme Court and the High Courts, played in the enforcement of constitutional rights and establishment of Rule of Law. With the enforcement

of the Constitution and fast growing Administrative Law people got new rights. Consciousness and assertion of those rights against the State, which was still functioning in a feudal style, increased. Consequentially, people rushed to the High Courts to get their rights upheld. The result was that the work load in the High Courts increased. If, instead of withholding the remedy, the High Courts had more pointedly and vigorously interfered and granted relief without getting inhibited by the bar of alternative remedy, instances of repetition of the mistakes in the working of the State and its instrumentalities and resulting grievances would have greatly reduced. This was not, by and large, the approach and attitude in the functioning of the High Courts. Any one who practices in the Supreme Court and the High Court on the constitutional side experiences that the bar of alternative remedy is put against a petitioner with the rigour of constitutional bar. The remedy has become a matter of chance, or individual discretion of a judge, even when the case falls within the judicially evolved exceptions to the bar of alternative remedy. There is no predictability. Today, heavy responsibility falls on those who have to exercise this sovereign power of judicial review in future to see that this most effective method of government according to Rule of Law is not eroded from the working of our constitutional system. People should know with a reasonable degree of certainty when they can resort to the remedy even when there is an alternate remedy.

I have to point out that all the illustrative exceptions to the bar of alternative remedy, howsoever broadly they may have been stated, were mere manifestations of discretion. A standardized norm of workable method of entertaining or refusing to entertain a petition under Articles 32 or 226, founded on some fundamental and basic principle, has yet to be laid down by the Supreme Court. This principle should be such that if the case of a petitioner satisfies the test of that principle, he should feel that he is entitled to the remedy of writ as a matter of right. For this, it has to be realised that the power to issue writs under Articles 32 and 226/227 is constitutional power of judicial review. It is not a statutory power of appeal or revision. On this aspect of the matter Sir William Wade in his book 'Administrative Law' (7th Edition) at page 721 has written as follows :

"In principle there ought to be no categorical rule requiring the exhaustion of alternative remedies before judicial review can be granted. A vital aspect of the rule of law is that illegal administrative action can be challenged in the court as soon as it is taken or threatened. There should

be no need first to pursue any administrative procedure or appeal in order to see whether the action will in the end be taken or not. An administrative appeal on the merits of the case is something quite different from judicial determination of the legality of the whole matter. This merely to restate the essential difference between and appeal....." Referring to some decisions of Court of Appeals and House of Lord, he further writes "These decisions confirm what was said on one of the classic cases : 'A party is concluded by not appealing against a nullity'. If the order is one which the applicant is entitled for any reason to have quashed as a matter of law, it is pointless to require him first to pursue an administrative appeal on the merits." Again, referring to the judgment of the House of Lords in the case of Ridge v. Baldwin, he writes that "Administrative remedies are highly desirable and people should be encouraged to use them. But to allow unlawful action to stand, merely because it has been appealed against on its merits, is indefensible".

In the end, I have to say that on the wide open judicial field of judicial remedies there are judge-made enclosures and openings. The constitutional remedy of writs is for the benefit of the aggrieved persons to get quick and easy justice. And, it is necessary that those who are genuinely aggrieved should know with predictability and confidence when can they have unrestricted access to these remedies i.e. when the judicial barrier of discretion will not come in their way. In the sphere of constitutional judicial remedies uncertainty in seeking judicial redressal of grievances will result in gradual erosion of faith of people in the role of our sacrosanct judicial system on which alone rests the entire responsibility to establish rule of law and protect individual rights.

* * * * *

"Precedent which enunciate rule of law form the foundation of administration of justice under our system. Consistency in interpretation of law alone can lead to public confidence in our judicial system."

Hon'ble Mr. Justice N. Santosh Hegde,
in Sub-Inspector Roop Lal v. Lt. Governor,
(2000) 1 SCC 644

JUDGMENT IN CIVIL SUITS

R. K. Rastogi
District Judge

'Judgment' means the statement given by the Judge on the grounds of a decree or order.[1] Now, what is a 'decree' or 'order'. A 'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.[2] An 'order' means the formal expression of any decision of the Civil Court which is not a 'decree'.[3] Thus, the judgment is the statement given by the Judge of the grounds on the basis of which a decree or order is passed by him.

Sec. 33 C.P.C. provides that the Court, after the case has been heard, shall pronounce judgment, and on such judgment, a decree shall follow.

Thus the first and foremost procedural requirement of a valid judgment is that it is to be delivered after the case has been heard. Sufficient opportunity must be given to both the parties to put up their case and none should have a grievance that he was not given sufficient opportunity of hearing and putting one's case. The Audi Alteram Partem rule enshrined in the principles of natural justice must be followed and justice must not only be done but must be seen to have been done. Where no opprtunity of hearing is provided, the judgment would be vitiated. In Nirankar Nath v. v.A.D.J., Moradabad, AIR 1984 SC 1268, a part-heard appeal was listed for hearing of further arguments on 20.5.1983. The landlord/appellant sought an adjournment on the ground of illness of his senior counsel, which was allowed and 23.5.1983 was fixed for hearing of further arguments with a condition that in the event of failure to urge arguments on that date, the judgment will be pronounced. On 23.5.1983, the appellant again sought adjournment on the ground that his senior counsel was still ill and that he could not engage any other counsel during this short span of time. The application was rejected and the judgment was delivered then and there with a note on the ordersheet that the judgment is ready and so it is being delivered. It was laid down by the Hon'ble Supreme Court that no reasonable opportunity of hearing was provided to the appellant/landlord and the judgment was vitiated.

Thus the first requirement of a valid judgment is that it should be delivered after providing a reasonable opportunity to the parties to put up

their case. The next point is what should be the contents of a judgment. Order 20 Rule 4 C.P.C. provides that a judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and reasons for such decision. However, an exception has been provided in the same rule in respect of the judgment of the Court of Small Causes which need not contain more than the points for determination and the decision thereon. Thus, a judgment of the Court of Small Causes need not contain a concise statement of the case. It is also not necessary for the J.S.C.C. to discuss the evidence of each and every witness in his findings on the points, and the only requirement is that he should discuss the evidence of that witness only which he considers relevant for determination of the point in controversy.[4]

Even if a suit has been heard exparte, the mere statement in the judgment that the plaintiff examined himself and deposed to the facts stated in the plaint and that the plaintiff is entitled to an exparte decree is not sufficient compliance of Order 20 Rule 4 C.P.C., and judgment must contain the necessary facts relating to the controversy, the points for determination and the findings on those points.[5]

As required by Rule 4 of Order 20 C.P.C. the Judge is duty bound to mention in the judgment the points for determination. If on the pleadings of the parties certain points arise for determination, they must be mentioned by the Judge unless some or any of them have been given up by the parties. If any point has been given up, this fact must be mentioned in the ordersheet, and the signatures of the parties or their counsel must be obtained.[6]

It may also be mentioned that the final order which the Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement, and the practice of pronouncing the final order without a reasoned judgment should not be adopted.[7]

Trial of a Civil dispute in Court is intended to achieve, according to law and procedure of the Court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial the

Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted by the practice of the Court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached only if it be supported by the most cogent reasons that suggest themselves to the Judge; a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of the decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest : it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the Court has decided against him, and more so, when the judgment is subject to appeal. The appellate Court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just.[8]

Another point which is to be kept in mind is that the judge should take care in making disparaging remarks against a person or authority whose conduct comes in for consideration before him in the case to be decided by him. Making an uncalled for remark against the said person or authority would be violation of judicial discipline. The use of intemperate language may, in some case, tend to show either a lack of experience in judicial matters or an absence of judicial poise and balance. In the objective discharge of judicial functions there is little justification, may, none at all to assume any attitude other than of judicial restraint or to use a language other than that which has been hitherto adopted by long usage. Judge should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice.[9]

Dispensation of justice is a divine duty and we must endeavour to discharge this duty in a devoted manner without fear or favour.

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1. Sec. 2 (9) C.P.C.
2. Sec. 2 (2) C.P.C.

3. Sec. 2 (14) C.P.C.
4. Reserve Bank of India v. Ram Kumar, AIR 1963 All. 574, at page 578.
5. M/s Krishna Fine Art Printers v. Ram Chandra, 1979 ALJ 615
6. Vashishth Mani Tripathi v. State of U.P., 1979 ALJ 1049 at page 1050.
7. State of Punjab v. Jagdeo Singh, AIR 1984 SC 444, at page 452.
8. Swaran Lata v. Harendra Kumar, AIR 1969 SC 1167 at page 1169 and 1170.
9. V. Sujatha v. State of Kerala, 1994 Suppl. (3) SCC 436 at page 447 to 448.

"The Promise of free land, at the tax payer's cost, in place of a jhuggi, is a proposal which attracts more landgrabbers. Rewarding an encroacher on public land with a free alternative site is like giving a reward to a pick pocket".

Hon'ble Mr. Justice B.N. Kirpal
in Almitra H. Patel v. Union of India,
(2000) 2 SCC 679

GIRL CHILD : RIGH TO EDUCATION, STILL A FAR CRY IN INDIA

T. B. Singh
Dy. Director, JTRI

Victories are gained, peace is preserved, progress is achieved, civilization is built up and history is made not on the battlefields where ghastly murders are committed in the name of patriotism, not in the Counsel Chambers where insipid speeches are spun out in the name of debate, not even in factories where are manufactured novel instruments to strangle life, but in educational institutions which are the seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land.

Education is the basic requirement of a civilised society. It is worth noting that a large number of children who belong to a downtrodden and illiterate family, are far-far away from the education. To them education has no meaning.

The importance of education was emphasised in the 'Neethishatakam' by Bhartrtuhari (First Century B.C.) in the following words :

TRANSLATION

"Education is the special manifestation of man;

Education is the treasure which can be preserved without the fear of loss;

Education secures material pleasure, happiness and fame;

Education is the teacher of the teacher;

Education is God incarnate;

Education secures honour at the hands of the State, not money.

A man without education is equal to animal.""[1]

Universal Declaration of Human Rights, 1948 under Article 26 says that every one has the right to education. Education shall be free, at least in the elementary and fundamental stages. Education shall be compulsory....."[2]

Article 28 of the United Nations Convention on the Rights of the Child, 1989, makes primary education compulsory and available free to all."[3]

Illiteracy is one of the main factors which accelerates the child labour exploitation.

According to the 1991 census the literacy rate in the country (excluding Jammu & Kashmir) is 52.21 percent (64.13 for males and 39.29 for females).

Kerala is on top with a 89.91 percent literacy rate in the country. Bihar stood at the bottom with a literacy rate of 38.48 percent.

The same source reveals that the literacy rate in U.P. is 41.60 percent (55.73 for males and 25.31 for females).

Thus, it can be said that literacy rate in India is not upto the mark.

This illiteracy leads to the following main consequences -

1. Being illiterate Children are unable to know the goodness and badness of employment.

2. Being unknown with the importance of education, most of the parents in villages never think to send their Children to School, instead, they prefer to send them to get employment in order to supplement their income.

In order to curb Child Labour Exploitation it is necessary to bring awareness among the children and it is possible only by literacy.

TABLE SHOWING LITERACY RATE : 1951-1991

Year	Persons	Males	Females
1951 *1	18.33	27.16	8.86
1961 *2	28.31	40.40	15.34
1971 *3	34.45	45.95	21.97
1981 *4	43.56	56.37	29.75
	(41.42)	(53.45)	(28.46)
1991 *5	52.21	64.13	39.29

*1. Excluding the population of J & K, Pondicherry and NEFA, D.N. Haveli and G.D. and Diu.

*2. Excluding Goa, Daman & Diu, NEFA.

*3 Paper 2 of 1983 Series I.

*4 Excluding Assam

*5 Excluding J & K

Notes :

Literacy rates for 1951, 1961 and 1971 relate to population aged five years and above. The rates for the years 1981 and 1991 relate to the population aged seven years and above. The literacy rates for the population aged five years and above in 1981 have been shown in brackets.

The 1981 rates exclude Assam where the 1981 census could not be conducted. The 1991 census rates exclude Jammu and Kashmir where the 1991 census could not be taken. (See India 1999).

NHRC'S Fourth Annual Report

The NHRC's fourth annual report, 1996-97 is remarkable, not because of the coverage it gives to violations of human rights by the state and its agencies, but because of its commitment "to protect those who are the most vulnerable; the Dalits and Scheduled Tribes; Women and children, especially the girl Child; the disabled; those victimised for reasons of religion or language, and those weighed down by economic and social traditions, or, ironically, marginalised by 'growth' and change (apropos of construction of big dams) so that some may cease to be less equal than others."

Another area which has been neglected by successive governments, and even by social activities, relates to the treatment of the child and illiteracy. India has the largest illiterate population in the world, exceeding the population of the U.S., Canada and Japan. 35 million children in the six to 10 age group do not attend primary school. While the all India figure of female literacy is 43 percent. It is 25 percent in Rajasthan, 29 percent in Bihar, 32 percent in U.P. and 34 percent in M.P. (NHRC's Fourth Annual Report).

Education is enlightenment. It is the one that lends dignity to a man as was rightly observed by Justice Gajendragadkar in University of Delhi v. Ram Nath (AIR 1963 SC 1873 at p. 1875, para 6); (1964) 2 SCR 703 at p. 710) as follows :

"Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development."

In absence of education the dignity of a person loses its importance. Therefore in order to maintain the dignity of a person, at least primary education is very necessary.

In Mohini Jain v. State of Karnataka and others, AIR 1992 SC 1858 at p. 1863 Justice Kuldip Singh held :

"The diginity of man is inviolable. It is the duty of the state to respect and protect the same. It is primarily the education which brings forth the diginity of a man. The framers the Constitution were aware that more than seventy percent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Arts 41 and 45 were brought in chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him."

Justice B.P. Jeevan Reddy (Mohan, J. concurring) (L.M. Sharma, C.J. not expressing any opinion) observed :

"The citizens have a fundamental right to education. The said right flows FROM Art. 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Arts. 45 and 41. In other words every child/Citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the state. The right to education which is implicit in the right to life and personal liberty guaranteed by Art. 21 must be construed in the light of the directive principles in part IV of the Constitution. So far as the right to education is concerned there are several articles in part IV which expressly speak of it".[4]

Article 41 says "that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want."

Art 45 says that "State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Art 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. "A true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves. The three Arts. 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Arts. 45 and 41, means : (a) every Child Citizen of this country has right to free education until he completes the age of fourteen years, and (b) after a Child/Citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development."[5]

Expressing certain differences with the proposition laid down in Mohini Jain case Hon'ble Justice B.P. Reddy (S. Mohan J. Concurring) said :

"It would not be correct to contend that Mohini Jain (1992 AIR SCW 2100) was wrong in so far as it declared that "the right to education flows directly from right to life." But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the state provide adequate number of medical colleges, enginering colleges and other educational institutions to satisfy all their educational needs? Mohini Jain seems to say, yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in part IV of the Constitution...."[6]

State should honour the command of Article 45. It must be made a reality at least now. Indeed, the 'National Education Policy-1986' says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 years.

Thus, it is evident that right to education occurs in many Articles of our Constitution viz, Article 41, 45 and 46 (Directive Principles of State

Policy). Articles 29 and 30 in part-III (Fundamental Rights) also speak of right to education. Among these Articles, Article 45 is the only article which speaks of a time limit. This Article promises to provide within a period of ten years from the commencement of the Constitution for free compulsory education for all children to the age of fourteen years.

But inspite of the fact that fifty years have passed these constitutional mandates to provide free and compulsory education for all children up to the age of fourteen years could not be implemented. It still remains as far cry to them. Now, it is duty of Government to translate these Constitutional Mandates into a meaningful reality.

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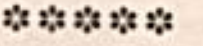
1. Quoted in Unni Krishnan J.P. v. State of A.P., AIR 1993 SC 2178 (2230)
2. For detail provisions see Universal Declaration of Human Rights, 1948.
3. See the United Nations Convention on the Rights of the Child, 1989.
4. Unni Krishnan v. State of Andhra Pradesh AIR 1993 SC 2178 (Paras 145, 180) State of H.P. v. H.P. State Recongnised & Aided Schools managing Committees and others (1995) 4 SCC 507.
5. Ibid P. 2232.
6. Ibid P. 2231.



"Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties."

Hon'ble Mr. Justice R.P. Sethi
in B.K. Narayan Pillai v. Parameswaram Pillai, (2000) 1 SCC 711

RIGHT TO LIBERTY-IN THE CONTEXT OF BAIL AND REMAND

Akhilesh Kumar Tiwari
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The liberty of an individual is a matter of great constitutional importance in our system of governance. Moreover the liberty of the citizen is a priceless freedom sedulously secured by the Constitution. Even so during times of emergency in compliance with the provisions of the Constitution the said freedom may be curtailed but only in strict compliance with statutory formalities which are the vigilant concern of the courts to enforce.

Three articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21.

Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The underlying object of Article 14 is undoubtedly to secure to all persons; citizens or non-citizens, the equality of status and of opportunity referred to in the glorious preamble of our constitution. It combines the English doctrine of the rule of law and the equal protection clause of the 14th amendment to the American Federal Constitution which enjoins that no state shall "Deny to any person within its jurisdiction the equal protection of the laws". There can, therefore, be no doubt or dispute that this article is founded on a sound public policy recognized and valued in all civilised States.

The Article 19 gives seven rights to every citizen of India. This article protects some of the important attributes of personal liberty as independent rights and the expression personal liberty has been used in Article 21 as compendious term including within its meaning all the varieties of rights which go to make up the personal liberties of men.

Article 21 of the Constitution runs thus "No person shall be deprived of his life or personal liberty except according to procedure established by Law".

Article 22 of the Constitution of India and sections 50 (person arrested to be informed of grounds of arrest and of right to bail), 54 (Examination of arrested person by medical practitioner at the request of the arrested

person) 56 (person arrested to be taken before Magistrate or officer in-charge of police station), 57 (person arrested not to be detained more than twenty four hours) and 167 (procedure when investigation can not be completed in twenty four hours) of the code of Criminal Procedure, 1973 provide safeguards against unlawful arrest.

It is the duty of the court as the custodian and sentinel on the ever vigilant guard of the freedom of an individual to scrutinize with due care and anxiety, that this precious right which he has under the Constituion is not in any way taken away capriciously, arbitrarily or without legal justification.

For the purpose of police rules detention means detention in police custody, in a police lock-up or otherwise and remand to custody in a Magisterial Lock-up or to a Magistrate's camp guard, or under bail or recognizances, during a postponement or adjournment of an inquiry or trial.

Detention of the accused by the police after the expiry of the twenty four hours after his arrest is illegal but it does not affect the power of the Magistrate to remand the accused under section 167 of the Code of Criminal Procedure.

It may be noticed that the word "Remand" as such is not used in section 167 and what is authorised by the Magistrate for making an order uder that section is the detention of the accused in police or judicial custody.

The word "remand" means sending back (prisoner) into custody to allow of further enquiry, that is to say, recommitting the prisoner to custody.

The provisions inhibiting detention without remand is a very healthy provision which enabled the Magistrate to check over the police investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed come down heavily upon the police.

The object of the section 57 (person arrested not to be detained more than twenty-four hours) is two fold, one that the law does not favour detention in police custody except in special cases and that also for reasons to be stated by the Magistrate in writing and secondly to enable such a person to make a representation before a Magistrate.

Its object is to prevent abuses by the police.

The dominant idea of Bail is that the liberty of a person cannot be lightly interferred with except in due course of law. It is a correction of the abuses of authority. The whole object of arrest and detention of an accused is, obviously to secure his appearance to abide the sentence of law. That being so, except where a statute specifically requires the principles which should guide the courts in the exercise of their discreation to grant bail or not is the probability of the accused appearing to take the trial, and not his supposed guilt or innocence. Considerations such as the nature of indictment, the nature of evidence and the severity of punishment awardable, have their relevance only because they affect the livelihood of the prisoners failing to appear for his trial. Every trial begins with the innocence of the accused. But a fair trial does not mean the employment of methods which end in the acquittal of the guilty.

It is well settled that bail is not to be punitive and will not be with held merely as punishment. The requirement as to bail is merely to secure the attendance of the accused person at the trial. In case Dr. Vinod Narain v. State of U.P. and others Hon'ble High Court Allahabad vide 1995 S.C. Cri. Rulings page 555 has laid down some guide lines to Presiding Officers -

Para-55 ,, ,,

Para-62 ,, ,,

Para-55 : Here we may point out that the bail is not merely a procedural right but is also a substantive right involving liberty of the person, therefore, it is excepts of the Courts to dispose of bail petitions without any loss of time and when entire material is placed by the prosecution before the Court, the bail application must be disposed of on the same day giving priority, to it."

Para-62 : "For this purpose while construing any provision, the statement, object and reasons of the same be considered ignoring the mechanical approach. (see B. Prabhakar Rao v. State of A.P. AIR 1986 SC 210, State of Himanchal Pradesh v. K.C. Mahajan, 1992 Sppl. 2 SCC 351 and Administrator Municipal Corporation, Bilaspur v. Dattatraya Dhankar, AIR 1992 SC 1846). Thus in our opinion if entire material collectes against the accused or even sufficient material is available so as

to adjudicate upon the bail application on the same day, then the Courts are expected to dispose of bail application expeditiously, if not impossible, the same day and this discretion is to be applied by the concerning courts. To this effect there is no difficulty."

Generally it is the rule to allow bail rather than to refuse bail and bail ought not to be held as punishment. Since the law presumes an accused to be innocent till his guilt is proved, he must be allowed opportunity to look after his own case unless the circumstances are such that he should not be released on bail.

* * * * *

The important thing in life is to have a great aim.

.....Goethe

* * * * *

He who is most slow in making a promise is most faithful in the performance of it.

.....Anonymous

THE LAW, JUDGES AND CYBERSPACE

Aditya Nath Mittal
Addl. Director, JTRI

The world now has been converted into a global village due to information Technology. The information and communication revolution, now underway throughout the world. It is challenging established institutions and practices in a manner difficult even to comprehend for ordinary folks. The system of socio-economic organisation and political governance are undergoing unprecedented changes compelling Governments to review the laws relating to management of knowledge in society.

The paper based regime of "writing", "Signature" and "original" do not satisfy the paper less regime of electronic trade. The paper documents are available for future reference and use, authenticated by signature and are in the form acceptable to public authorities and courts. But the new law of Information Technology provides that where the law requires information to be in writing, the requirement is met by the electronic data message if the information contained therein is accessible so as to be usable for subsequent reference.

Cyber law refers to all the legal and regulatory aspects of Internet and worldwide web. It covers any activity in cyber space. The law of Information Technology governs information storage, processing and communication. It deals with the new facts relating to Computer system and the means by which information is transmitted and also with the recognition of electronic document and electronic signature. In this era of e-commerce, it is not required to go to a shop physically for making a purchase, but the purchase or service contract can be entered throughout the world through internet. Our present law of contract, law of evidence, law of torts and law of crimes remain the same. A need was high lighted for specific legislation to cover the field of electronic commerce at the international level.

The United Nations Organisation (UNO) in its resolution 2205(XX1) of 17 December, 1966, had created the United Nations Commission on International Trade law with a mandate to further the progressive harmonisation and Unification of the law of international trade and in that respect to bear in mind the interests of all people, in particular those of developing countries in the extensive development of international trade. The U.N. General Assembly noted that an increasing number of transactions

in international trade are carried out by means of electronic data interchanges and other means of communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information. The U.N. General Assembly has recommended on the legal value of Computer records which was adopted by the U.N. Commission on International Trade law at its eighteenth session in 1985 in which the U.N. Assembly called upon Governments and international organisations to take action, when appropriate, in conformity with the recommendation of the commission so as to ensure legal security in the context of the widest possible use of automated data processing in international trade and the U.N. General Assembly was convinced that the establishment of a model law facilitating the use of electronic commerce that is acceptable to States with different legal, social and economic systems could contribute significantly to the development of harmonious international economic relations. The Model law on E-Commerce was adopted by the commission at it s twenty-ninth session after consideration of the observations of Governments and interested organisations. The U.N. General Assembly believed that the adoption of the Model law on E-Commerce by the Commission would assist all States significantly in enhancing their legislation governing the use of alternatives to paper-based methods of communication and in formulating such legislation where none currently existed.

The U.N. General Assembly in its 85th plenary meeting of 16 December, 1996 recommended that all States shall give favourable consideration to the Model law when they enact or revise their law, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information.

Accordingly in the fifty-first session of U.N. General Assembly, dated 30 January 1997, a resolution A/RES/51/162 was adopted on the report of the sixth committee (A/51/628) regarding Model Law on E-commerce.

The Indian Parliament considered it necessary to give effect to the said resolution of U.N. General Assembly, and to promote efficient delivery of Government services by means of reliable electronic records, and enacted the Information Technology Act, 2000 which received assent of the President on 9th June, 2000. This Act extends to the whole of India and it applies also to any offence or contravention Committed outside India by any person.

The Information Technology Act, 2000 provides legal recognition of electronic records and electronic signatures, their use, retention, attribution and

security etc. Penalties have been provided for :-

1- Tampering with Computer source documents.

2- Hacking with Computer system

3- Publishing of information, which is obscene in electronic form.

4- Misrepresentation

5- Breach of confidentiality and privacy.

6- Publishing digital signature certificate false in certain particulars.

7- Publication for Fraudulent purpose.

Recently some criminal elements of cyber-society reminded the world of their existence by laying siege to several online Information Technology Corporation, hacking into sensitive Computer sites, fraudulent manipulations of Bank Accounts and Credit Cards, peddling of pornographic material, unauthorized access to Defence secrets. The "Cyber terrorism" is on the anvil. All these factors necessitated our legal system to enact Information Technology Act.

INFORMATION TECHNOLOGY ACT, 2000 : AN OVERVIEW

The Information Technology Act is divided into 13 chapters. Consequential amendments to various existing legislations are dealt with separately. Chapter I contain preliminary provisions and consists of two sections. Section 1 states short title, extent, and mentions about the commencement and the application the Act. The Act does not apply to a "negotiable instrument, "power of attorney", "trust", "will", any contract for the sale or conveyance of immovable property or any interest therein, and any such document or transaction as may be notified by the Central Government. Section 2 is the definition section. Various expressions used in the Act have been defined which will have the meaning so defined, unless the context otherwise requires.

Chapter II deals with digital signatures (section3). Chapter III deals with legal recognition of electronic records and digital signatures and contains sections 4 to 10. Section 4 provides legal recognition to electronic

records, and section 5, to digital signatures. Section 4 embodies the fundamental principles that in law there should be no disparity of treatment between the electronic records and the paper documents. Such record is legally recognised, despite the statutory requirement of "writing". Similarly, digital signatures are to be legally recognised, despite any statutory requirement of authenticating information by affixing signature or signing of a document. Section 6 recognises the use of the electronic records and digital signature while dealing with Government departments. The statutory requirement is deemed satisfied if filing, creation, retention, preservation, issue, grant, receipt or payment is effected by means of such of electronic form. Section 7 provides for the retention of the documents, records or information in electronic form and section 8, for the publication of rules, regulations etc. Section 9 provides that legal recognition to electronic records and digital signature does not confer a right upon any person to insist that the Government should accept, issue, create, retain, preserve, any document in the form of electronic records or effect any monetary transaction in the electronic form. Section 10 empowers the Central Government make rules relating digital signature.

Chapter IV relates to electronic records and communication of data message. It contains a set of rules of the kind that would typically be founds in the agreements between the parties. These are to be used as a basis of concluding agreements by electronic means. It consists of section 11 to 13.

Section 11 deals with the attribution of electronic records. It provides a legal presumption that under certain circumstances any electronic records would be considered as a message form the originator. Section 12 deals with acknowledgement of receipt. It provides that the receipt of the electronic records shall be acknowledged where the originator has so requested the addressee before signing the electronic record and that where the originator has not so requested, acknowledgement by any communication or conduct of the addressee gets validated. Section 13 deals with time and place of dispatch and receipt of electronic records. It provides that dispatch of electronic records occurs when it enters an information system outside the control of the originator. Its receipt the presumed to be simultaneous when the dispatch the occurs, with certain prescribed exceptions.

Chapter V deals with secure electronic records and digital signature.

It contains section 14 to 16. An electronic record is deemed to be secure when the security procedure has been applied to it (section 14). Digital signature is deemed to be secure if it could be verified by the application of the security procedure that such signature is unique to, capable of identifying, or created in a manner or using means under the exclusive control of, the person (section15). Section 16 deals with security procedure.

Chapter VI deals with appointment and powers of the controllers, and regulations for, the certifying authorities. It consists of section 17 to 34. Section 17 contains provisions for the appointment of the controller & other officer for the purpose of exercising supervision over the activities of certifying authorities, whose functions have been laid down in section 18. Section 19 contains provisions for the recognition by the controller any certifying authority authorized to issue a digital signature certificate in a country outside India. He acts as a repository of all the issued digital certificates (section 20). He is empowered to grant a license for the issue for digital signature (section 21) on an application with prescribed requirements (section 22). Section 23,24 & 25 contain respectively provisions relating to renewal, rejection, and suspension of license. Section 26 deals with notice of suspension of revocation of license. The controller of empowered to delegate his power (section 27), investigate contraventions (section 28), have access to any Computer system for the purpose or causing a search to be made for obtaining any information if any contravention of the provisions of the Act is suspected (section 29).

Regulations for the certifying authorities are contained in sections 30 to 34. They will have to follow certain specified procedure (section 30), ensure compliance of the Act (section 31), display license (section 32), surrender license to the Controller immediately on its suspension or revocation (section 33), disclose its digital signature certificate and other prescribed facts (section 34).

Chapter VII deals with the issue, suspension, and, revocation of digital certificates. It consists of sections 35 to 39. Section 35 provides for making an application to the certifying authority for the issue of digital signature certificate in such form as may be prescribed by the Central Government. Section 36 provides that while issuing, the authority will certify that it has complied with the provisions of the Act, the subscriber has accepted it, the subscriber holds the private key corresponding to the public key listed

in the digital signature certificate and both constitute a functioning key pair and so on. The certifying authority has the power to suspend (section 37) or revoke a digital certificate (section 38). Section 39 requires that notice for such suspension or revocation is to be published in the repository specified in the digital certificate for publication of such notices.

Chapter VIII deals with duties of subscribers. It consists of sections 40 to 42. Section 40 provides that the subscriber may generate the key pair using a secure system if he accepts the listing of the public key in a digital certificate to be issued by the certifying authority. Section 41 provides that a subscriber is deemed to have accepted a digital signature certificate if he publishes or authorizes its publication. Section 42 provides that the subscriber shall exercise reasonable care to retain control of the private key and to take steps to prevent its disclosure to an unauthorized person.

Chapter IX deals with penalties and adjudication. It consists of sections 43 to 47. Section 43 provides for compensation for Computer crimes. The intruder is liable to pay damages by way of compensation to the affected person, not exceeding one crore rupees. Section 44 provides penalty of failure to furnish information or return, which is not to exceed five thousand rupees for every day of default. The contravention of any regulation under the Act entails compensation, which would not exceed twenty-five thousand rupees (section 45). For adjudicating, the Central Government may appoint an officer not below the rank of Director to the Government of India. He would hold an enquiry in the prescribed manner after giving the person a reasonable opportunity (section 46). Section 47 provides that while adjudicating the quantum of compensation, he will have due regard to the amount of gain or unfair advantage made as a result of default, the amount of loss caused to the affected person, and the repetitive nature of the default.

Chapter X deals with establishment of Cyber Regulations Appellate Tribunal (section 48), its composition (section 49), qualifications of persons to be appointed as its members (section 50), terms of their office (section 51), their salary allowances etc., (section 52), filling up of the vacancies (section 53), their resignation and removal (section 54), appointment of the staff (section 56), provisions about the finality of its orders (section 55). It will hear disputes between the parties. Provisions regarding filing an appeal against the order of an Adjudicating Officer or the Controller

are contained in section 57. Section 58 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 and has to be guided by the principles of natural justice. Provision for legal representation is contained in section 59 limitations, in section 60, and barring jurisdiction of the civil court, in section 61. Any person aggrieved by the decision of the Tribunal can file an appeal to the High Court (section 62). Section 63 contains provision for compounding of contraventions. Section 64 provides for recovery of penalty.

Chapter XI deals with offences and computer crimes. It consists of sections 65 to 78. Offences defined are tampering with Computer source documents (section 65), hacking with Computer system (section 66), publishing of information which is obscene in electronic form (section 67), failure to take measures or cease carrying such activities as specified by the Controller (section 68): failure to assist decrypt information when called upon to do so (section 69) unauthorized access to a protected Computer system which an appropriate Government has so declared (section 70), misrepresentation (section 72), breach of confidentiality (section 72), publishing digital signature certificates false in certain particulars (section 73), publication of digital signature certificates for fraudulent purposes (section 74). Punishment is provided in the respective section. Offences committed outside India are also covered (section 75). Section 76 provides for the confiscation any Computer, Computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of the Act or regulations made thereunder has been or is being contravened. Section 77 provides that award of any compensation will not absolve the offence. Police Officer not below the rank of Deputy Superintendent of Police has the power to investigate offences (section 78).

Chapter XII (section 79) provides that a Net Service Provider will not be liable for any offence or contravention if he proves that the said offence or contravention is committed without his knowledge or that he had exercised all due diligence to prevent such commission.

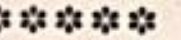
Chapter XIII contains miscellaneous provisions. Section 80 provides for search of any place and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing any defined offence, by a police officer. Section 81 is an overriding provision. Section 82 provides that the Controller, Deputy Controller and Assistant

Controllers are to be deemed as public servants. Section 83 provides that the Central Government may give directions to State Government as to the carrying into exemption of the provisions of the Act. Section 84 provides that no suit, prosecution or other legal proceedings shall lie against the Government or the Controller or any other person acting on his behalf, the members of the Tribunal or its staff for any thing which is in good faith done under the Act. Section 85 deals with offences by companies. Section 86 contains provision for the removal of difficulties. Section 87 empowers the Central Government to make rules. Section 88 empowers the Central Government to constitute a Committee called the Cyber Regulations Advisory Committee to advise it generally as regards any rule or for any other purposes, or the Controller in framing regulations. Section 89 empowers the Controller to make regulations under the Act. Section 90 empowers the State Government to make rules to carry out the provisions of the Act. Section 91to 94 amend certain enactments as specified in the Schedule i.e., the Indian Penal Code, 1860, Indian Evidence Act, 1872, Banker's Book Evidence Act, 1891, Reserve Bank of India Act, 1934.

For the purpose of adjudging under chapter IX, whether any person has committed a contravention of any of the provisions of this Act, or of any rule, regulation, direction or order, the adjudicating officer, who shall be not below the rank of a Director to the Government of India or an equivalent officer of a State Government has been empowered to hold an enquiry. The basic qualification of an adjudicating officer is that he should possess experience in the field of Information Technology and legal or judicial experience. The presiding officer of a Cyber Appellate Tribunal should be or qualified to be a judge of a High Court or should be a member of Indian Legal Service holding a post in Grade I for at least three years.

But the offences provided under chapter XI are to be tried by the regular courts. For these purposes, the special courts may be nominated because the judges trying such offences must also have the knowledge of Information Technology apart from legal and judicial experience. Certainly, a special training in the Cyber laws and Cyber regulations is required for such judges because our present legal arena does not really know how to react to this new complex law.

The Judicial Training & Research Institute, U.P. has on its agenda both teaching and research activities regarding legal aspects of Information Technology.



FROM THE PEN OF DIRECTOR

Every civilised society and country has its own laws and institutions for dispensation of justice to its citizens and people. Law is said to be the common will of the people that gives them free, fearless voice and living, which is necessary for all round development. Courts are established for dispensation of justice. Justice in modern terms has a wider meaning. Justice is perceived not just as a scheme based on a set of rights and duties. It is some thing more. It is an inter related experience to be structured according to societal values and to be measured in terms of willing obedience to law and respect for human rights.

Under our democratic setup there are three wings of the State i.e. legislature, executive and judiciary. Courts are covered under the wing of judiciary. All the three wings though appears to be separated but are interwoven and complementary to each other. For the proper and smooth development and establishment of a civilised society transparency, not nakedness, is the nerve and lifeline of the existence and development of the democracy. Courts in their functioning are more transparent than other wings of the State yet courts are being criticized being not transparent up to desired level.

All blame the courts for the delay in disposal of the cases. It is a hard fact that the courts are overburdened with the cases and forcing people for thinking to resort to other short-cut undesirable methods which a civilised and democratic society may not afford. But people in general are not aware or are not made aware with the limitations and difficulties, which the courts in U.P. are facing.

Mainly, Articles 233 to 237 of the Constitution deals with the judiciary. These Articles also lay emphasis on the independence of subordinate judiciary. Independence of judiciary is the basic structure of our constitution on which rests the edifice of our democratic polity.

The fact remains that inspite of the efforts of presiding officers of the courts, the judiciary has not been able to provide speedy and effective justice. There are many-many reasons and much can be argued by executive, politicians, police and other people concerned with courts. I may mention few reasons for docket explosion and delay in disposal of cases :-

1. There is considerable expansion of education, information and

awareness about the rights, which has resulted in rise in litigation.

2. There is steep down fall in the moral values in the society as a whole, which has resulted in the high rise of criminal and civil litigation.
3. There is a sharp break-up of families and diminition in mutual tolerance, which has given rise to matrimonial and other family disputes.
4. Increasing charm for attractive jobs particularly in government, semi government and corporation with the desire to be quick wealthy without caring for the way and means which has resulted in rise in crimes.
5. Mal administration, executive arbitrariness, in sensitivity and in action has given Philip to the crime and litigation.
6. Unscrupulas nexus between, polititians, criminals and sometimes law and order maintaining agencies has also resulted in glaring increase in the crime.
7. Eroding respect for law, a law institution is very dangerous to the existence of civilised society.
8. Lack of application of modern information technology and computer for efficient court management is also responsible for delay in disposal.
9. Insufficient number of courts in comparison to the rise in litigation is a material factor for increase in pendency.
10. Lack of proper training to presiding officers of the Courts and the ministerial staff.
11. Unmanageable increase in the members of the Bar every year is also a factor for rise in litigation.
12. Lack of incentive, zeal, courage and motivation of the presiding officers and staff, which has resulted in decreasing dedication to duty.
13. Polluted vision and value pollution amongst members of bar, litigants and presiding officers, staff and public in general.
14. Non-co-operation of Bar and day to day strikes are also responsible for the delay in disposal of cases.

The list may go very long and it is not possible to mention all the

reasons here. These problems require serious thinking and honest efforts to overcome the problems.

This Institute is making all efforts for providing training at all levels, may it be induction, in service or other special areas of law.

Necessity for training of the judicial officers had also been felt for a long time having been voiced on record by Rankin Committee about seventy years back and reiterated by Fourteenth Law Commission. Since then its need has been pointed out in a number of reports, books, conferences and even in the judgments of the Apex Court. Recently, the First National Judicial Pay Commission has also emphasized the training to judicial officers.

The training input consists of knowledge, skills and attitudes, which are the three main components of expertise needed for performance of any job. It is usual to over emphasis the information segment at the cost of the other two in training institutions engaged in training the judicial officers. Information, especially about laws is one part of the equipment. New entraints to the judiciary are possessed of this in some measure, having passed at least law examination, also having studied the subject for the competition and have practiced for sometime. It is the skills and the right attitude that they need the most and which, so far are not a part of any law school curriculum nor are likely to be so in near future.

For effective judicial functioning it is essential to have conceptual skills also to be able to see beyond the matter immediately before the judge and to realize the impact of the decision and also to examine whether it would harmonise with the fabric of the society visualized by the Constitution. Even at lower levels the impact of the decision in context of the legislative intent has to be seen. Such a skill is necessary component of the expertise needed to interpret a law where the impact of the contending interpretations has to be visualized beyond the parameters of the case before the court.

The main thrust of the training is to infuse positive thinking amongst officers, equipping them with expertise and to do work with devotion, zeal and courage, quick disposal of cases with just and sound decision. Emphasis is also given to respect the human rights and moral values. Emphasis is also laid on learning and knowledge, which are must for a Judge - Knowledge not only of laws but also social environmental and other subjects. Thus, the efforts at the Institute are to encourage the judges to learn and for equipping them with expertise necessary for performance of tasks in a befitting manner as per the need of the modern and complex society to which they owe a duty and obligation.

The Institute of Judicial Training and Research, U.P., with a view to impart effective and skillful training to judges and other officers of Government departments, has conducted following training programmes during this Millennium year :-

Sl. No.	Details of Training	Duration	No. of Trainees Participated in the Training Programme
1.	Foundation Training Programme for Newly Appointed Civil Judges (J.D.)	11.01.2000 to 11.04.2000	47
2.	Training Programme on "Child Rights & U.N. Convention" for Presiding Officers of Juvenile Court/Probation Officers and A.P.Os.	18.01.2000 to 22.01.2000	24
3.	Computer Training Programme for Judicial Officers.	24.01.2000 to 29.01.2000	13
4.	Computer Training Programme for Judicial Officers.	31.01.2000 to 05.02.2000	18
5.	Computer Training Programme for Judicial Officers.	07.02.2000 to 12.02.2000	20
6.	Computer Training Programme for Judicial Officers.	21.02.2000 to 26.02.2000	23
7.	Computer Training Programme for Judicial Officers.	28.02.2000 to 03.03.2000	23
8.	Computer Training Programme for Judicial Officers.	06.03.2000 to 11.03.2000	20
9.	Training Programme for Deputy/ Assistant Inspector General of Stamp and Registration	22.03.2000 to 28.03.2000	29
10.	Computer Training Programme for Judicial Officers.	17.04.2000 to 22.04.2000	14
11.	Computer Training Programme for Judicial Officers.	24.04.2000 to 29.04.2000	21
12.	Training Programme for D.I.G./A.I.G. Registration	24.04.2000 to 29.04.2000	31
13.	Computer Training Programme for Judicial Officers.	01.05.2000 to 06.05.2000	17
14.	Refresher Training Programme for Addl. Distt. Judges	05.05.2000 to 17.05.2000	24
15.	Computer Training Programme for Judicial Officers.	08.05.2000 to 12.05.2000	15
16.	Computer Training Programme for Judicial Officers.	5.05.2000 to 1 20.05.2000	13
17.	Training Programme for Jail Officers.	05.06.2000 to 09.06.2000	44
18.	Training Programme on "Child Rights & U.N. Convention" for Presiding Officer of Juvenile Courts.	03.07.2000 to 07.07.2000	19
19.	Refresher Training Programme for Civil Judges (Senior Division)	15.07.2000 to 29.07.2000	23
20.	Computer Training Programme for Judicial Officers	17.07.2000 to 22.07.2000	18
21.	Seminar on Dowry and Dowry Deaths.	22.07.2000	150

The activities of the Institute are many fold. Apart from imparting training to judges and other Government officers, the following thematic programmes were also organized: -

1. Programme on legislative drafting.
2. Use of standard Hindi in Courts.
3. Juvenile Justice.
4. Environmental Laws
5. Land acquisition and compensation laws.
6. Criminal Laws
7. Familial laws for the presiding officers of family court.

The Institute has also organized programmes of legal training for the officers of the following departments : -

1. Legal advisors of the U.P. State Road Transport corporation.
2. Executive engineers of P.W.D.
3. Govt. Advocates / Standing Counsel
4. A.P.Os. Induction training programme
5. Officers of Indian Defence Accounts Department
6. Officers of the Jail Department, U.P.,
7. Officers of the Tax and Registration Department, U.P.

On July 6, 2000, the Government of U.P. has decided to impart legal training to the Nodal Officers of 54 Government Departments at this Institute.

The Institute has also undertaken research work on the causes of delay in disposal of civil and criminal cases, Research projects on comprehensive bill on "Land Use", "Deregulation for good governance" and "Simplification and Rationalisation of Court Fees and Suit Valuation Act in U.P." are currently in hand.

Under the orders of the State Govt. and the Hon'ble High Court, the Institute is working on a programme for "Improving Governance in U.P. – its legal aspects." In this connection the Institute is also organizing one-day conferences at Agra, Varanasi and Lucknow on 12th August, 19th

August and 23rd September, 2000 respectively. Problems are many and we would resolve to deal with them with firm determination, vision and might. We should not loose heart. We should sing the lines of famous Poet Clay Harrion -

Don't start the day with doubts and fears,
For where they live, faith disappears.
Love won't grow in gloomy hearts,
Where sorrows live and teardrops start.
Don't give up before you have begun,
You still have time to get things done.
Don't be quitter, you are not alone,
We all must crawl, before we are grown.
There are no rainbows without rain,
There are no victories without pain."

With warm regards!

D.P. GUPTA
Director