



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Aids to Interpretation: Internal and External

Shashank Rai^a

^aKIIT University, Bhubaneswar, India

Received 06 November 2021; *Accepted* 24 November 2021; *Published* 02 December 2021

Legislature forms statutes and Judiciary uses those statutes for the purpose of delivery of justice. Judiciary performs the act of interpretation of statutes to ascertain the true intention of the Legislature. There are certain cases when the enactments might have an ambiguous nature and interpretation of the same becomes difficult. In these cases, the Judiciary takes help from the various aids of interpretation to try and ascertain the real intention of the legislature behind the concerned enactment. These aids are Internal and External aids to/of interpretation. In this paper, we look into the various kinds of aids interpretation, and circumstances under which they can be employed.

Keywords: *external aid, interpretation, legislature.*

INTRODUCTION

Interpretation refers to the method adopted by the judiciary to ascertain the meaning of the statutes or legal provisions. It is primarily a procedure vide which a judicial court seeks to determine the actual meaning of a word or phrase or expression which is in dispute in any statute before the said judicial court and ascertain the true intention of the legislature for the introduction of the concerned statutory provision in the form of law. Interpretation of statutes by the judiciary can be performed vide multiple tools or principles of statutory interpretation

which includes deriving help from the internal and external aids to interpretation and application of the primary and secondary rule of interpretation which has evolved and developed over time by the courts. Salmond described Interpretation and Construction of statutes as, "Interpretation and construction is the process by which the court seeks to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed".

AIDS TO INTERPRETATION

An Aid refers to a tool or device which provides guidance and help in the process of interpretation of a statute, the courts can seek help from internal/intrinsic aids to interpretation (Present within statutes) or external/extrinsic aids to interpretation (Present outside the statutes).

INTERNAL AIDS TO INTERPRETATION

The internal aids include title, preamble, headings, marginal notes, illustrations, punctuations, proviso, definition or interpretation clauses, explanations, schedules, and punctuation.

Title:

- Statutes can usually be classified into two types: the Short Title and the Long Title.
- Short Title is nothing more than just a short form of the full statute which is used for the presentation of the statute in a concise form.
- The Long Title in addition to the preamble chalks out or puts forth the objectives and purpose of the statute.
- A statute, when referred to, is always known by its short title.
- A Short Title possesses no interpretive value.
- It is allowed and is permissible to use the Long Title of a concerned Act to shed some light on a doubtful meaning.

In the case of *Amarendra Kumar Mohapatra & Ors. vs State of Orissa & Ors.*¹ It was held that “The title of a statute is no doubt an important part of enactment and can be referred to for determining the general scope of the legislation. But the true nature of any such enactment has always to be determined not based on the Title given to it but on the basis of its substance.”²

Preamble:

- Preamble serves as an introductory statement which is followed by the title and preceded by the enacting clause.
- Preamble puts forth the scope, object, and purpose of a statutory Act in a more elaborate manner in comparison to the Long Title.
- The preamble is not regarded as a part of the enactment. However, the Preamble of the Constitution of India has been declared to be a part of the Constitution.
- During the application stage of interpretive rules, Preamble provides a good clue for discovering what that object was.
- It is a key to open the mind of the legislature but cannot be applied to control or qualify the precise and unambiguous language of the statute in question.

In the case of *Arnit Das vs State of Bihar*,³ it was stated that, “The preamble suggests what the Act was intended to deal with. If the language used by parliament is ambiguous the court is permitted to look into the preamble for construing the provisions of an Act. The Preamble is a key to unlocking the legislative intent. If the words employed in an enactment may spell a doubt as to their meaning it would be useful to so interpret the enactment as to harmonise it with the object which the legislature had in its view.”⁴

Headings:

- It is known that the Headings prefixed to a section or group of sections can be used to construe enactments.

¹ *Amarendra Kumar Mohapatra v State of Orissa* (2014) 4 SCC 583

² *Ibid*

³ *Arnit Das v State of Bihar* (2001) 2 SCC (Jour) 9

⁴ *Ibid*

- The headings prefixed to a section or group of sections, as is the case in some modern statutes is considered as the preamble to those sections.
- In a scenario where the language of a particular section of an Act is plain, it is not mandatory to have recourse to the general heading.
- The heading is incapable of cutting down the express meanings of the words.

In *Frick India Ltd. vs Union of India*,⁵ it was stated that “Only in the case of ambiguity or doubt the heading or the sub-heading may be referred to as an aid for construing the provision but even in such a case aid could not be used for cutting down the wide application of the clear words used in the provision”⁶

Marginal Notes:

Under the general circumstances, Marginal Notes are not to be referred for construction or interpretation unless they have been inserted in the Act/Statute with the permission and consent of the legislature. When an ambiguous situation arises, Marginal Notes can be treated as an aid to Interpretation and can be referred to. However, it cannot impose limitations on the meaning of the enacted clauses.⁷

Punctuation:

- Punctuation refers to a mark, such as a full stop, comma, etc. which are used in the process of writing for separation of sentences and elements and to clarify their meaning.
- As per the traditional approach, punctuation cannot be used for the interpretation of an Act.
- In a similar manner to the aforementioned aids, they can also be put to use only in those cases where the meaning is ambiguous.

⁵ *Frick India Ltd v Union of India* AIR 1990 SC 689

⁶ *Ibid*

⁷ *Ibid*

- In the case of *Maharani of Burdwan vs Murtunjoy Singh*⁸, Privy Council observed that it was erroneous to rely on punctuation in the process of construing or interpreting the Act of Legislature.⁹

In the case of *Ashwini Kumar vs Arbinda Bose*,¹⁰ it was stated that, “.....When a statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation. Punctuation may have its uses in some cases but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of the statute.”¹¹

Illustrations:

- Illustrations appended or added to a particular section form part of the statute although they form no part of the section.
- They have high relevance and value when it comes to the construction or interpretation of the text of the section.
- An Illustration cannot breach the scope of the section.
- An Illustration cannot limit or extend the scope of the text.
- An Illustration can be rejected if it is repugnant to the section itself.

In the case of *Shambhu Nath Mehra vs State of Ajmer*,¹² it was observed by the Court that, “An illustration does not exhaust the full content of the section which it illustrates but it can neither curtail nor expand its ambit.”¹³

Interpretation Clause:

Interpretation Clause is also known as ‘Definition section’. It acts as a vital aid to ascertain the intention of the legislature. Legislature often provides certain definitions to remove

⁸ *Maharani of Burdwan v Murtunjoy Singh* (1887) 14 Cal 365

⁹ *Ibid*

¹⁰ *Aswini Kumar v Arbinda Bose* AIR 1952 SC 369

¹¹ *Ibid*

¹² *Shambhu Nath Mehra v State of Ajmer* AIR 1956 SC 404

¹³ *Ibid*

ambiguity/confusion and to extend the general meaning of the words, phrases, or sentences in question. It means a statement that serves the purpose of explaining the meaning, nature, and content of something which is being defined/described by a person, in a precise and articulate way. Justice Khanna, in the landmark case of Indira Nehru Gandhi vs Raj Narain,¹⁴ stated that “the connotation is that normally it is the definition given in the section which should be applied and given effect to. This normal rule may, however, be departed from, if there be something in the context to show that the definition should not be applied.”¹⁵

The definition may be of the following types: -

- i. **Exhaustive Definition** - It is a restrictive definition which means there is nothing that can be included in the meaning beyond what has been stated. The words ‘means’ and ‘means and includes’ indicate such a definition.¹⁶
- ii. **Inclusive Definition** - Here, the definition of the word has the scope and ambit to go beyond what has been stated. The words ‘include’, ‘to apply to and include’ and ‘so deemed to include’ indicate such definition.¹⁷
- iii. **Exclusive Definition** - When a definition excludes certain things from its ambit, it is the exclusive definition.¹⁸

A definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give precision and certainty to a word or a phrase which would otherwise be vague and uncertain but not to contradict or supplement it all together.”¹⁹ “When a word is defined to bear a number of inclusive meanings, the sense in

¹⁴ *Indira Nehru Gandhi v Shri Raj Narain & Anr* 1975 AIR 2299

¹⁵ *Ibid*

¹⁶ Jurisprudence, ‘Interpretation and General Laws’ (*ICSI Module*)

<https://www.icsi.edu/media/webmodules/FINAL_JIGL_BOOK_10022020.pdf> accessed 3 November 2021

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language, the provision, and the object intended to be served thereby.²⁰

Proviso:

The proviso is a qualification of the just preceding enactment which is made or expressed in terms that are pretty general to be quite accurate. It is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. It does not exceed beyond the boundaries of the provision to which it is a proviso. In a case where the proviso is directly repugnant to a particular section, the proviso shall stand and will be held as a repeal of the section as the proviso represents the latter intention of the legislators. The proviso is considered subordinate to the primary section. A proviso does not go on to enlarge the enactment except in case of compelling reasons. In the case of *State of Punjab & Anr. vs Ashwani Kumar & Ors* it was held that “If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso”.

In the case of *S. Sundaram Pillai vs VR. Pattabiraman*²¹ it was held that “A proviso may serve four different purposes:

- (1) qualifying or excepting certain provisions from the main enactment;
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled to make the enactment workable;
- (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) it may be used merely to act as an options addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”²²

²⁰ *Ibid*

²¹ *S Sundaram Pillai v VR Pattabiraman* 1985 AIR 582

²² *Ibid*

Exception and Saving Clauses:

An exception exempts something which will otherwise fall within the purview of the general words of a statute. It is different from proviso because it has general application and it is a restriction.

- An exception that is repugnant to the operative part may be ignored.
- It must be construed and interpreted strictly and strongly against the party trying to take the benefit.
- The mention of certain exceptions to the general rule implies that no other exceptions were contemplated.
- The Saving clause is usually appended or added where there is a case of repeal and re-enactment.

In *Attorney general vs Bushopp*,²³ it was held that “a saving clause repugnant to the body of the Act is void.”²⁴ In *Arnold vs Mayor and Corporation of Gravesend*,²⁵ it was held that the “saving clause cannot give any further right than that a party already had.”²⁶ In the case of *Punjab Province vs Daulat Singh*,²⁷ it was held that “...a saving clause cannot be used to extend the scope of the prohibition contained in the main clause.”²⁸

Explanation:

It forms part of the enactment and it serves the purpose of explaining the meanings of the words and phrases present in the enacting clauses. It also provides clarity to the meaning beyond any dispute. In the case, *S. Sundaram Pillai vs V.R. Pattabiraman*²⁹ objects of explanations was laid down and they were,

The object of explanations -

²³ *Attorney general v Bushopp* 76 All ER 89

²⁴ *Ibid*

²⁵ *Arnold v Mayor & Corporation of Gravesend* 69 All ER 911

²⁶ *Ibid*

²⁷ *Punjab Province v Daulat Singh* (1946) 48 BOMLR 443

²⁸ *Ibid*

²⁹ *S Sundaram Pillai* (n 21)

- a. to explain the meaning and intendment of the Act itself;
- b. where there is any obscurity or vagueness in the main enactment, to clarify the same to make it consistent with the dominant object which it seems to subserve;
- c. to provide additional support to the dominant object of the Act to make it meaningful and purposeful;
- d. an Explanation cannot in any way interfere with or change the enactment or any part thereof.³⁰

Non Obstante Clause:

A section sometimes begins with the phrase “notwithstanding anything contained”, this is nothing but an example of the Non Obstante Clause. The Non Obstante Clause provides or gives the provision to which it is attached an overriding effect in case of a conflict.

In the case of *Aswini Kumar vs Arabinda Bose*³¹ it was held that, “the non obstante clause can reasonably be read as overriding ‘anything contained’ in any relevant existing law which is inconsistent with the new enactment, although the draftsman had primarily in his mind a particular type of law as conflicting with the new Act.”³² In the case of *Shri Ram Narain vs Simla Banking & Industrial Co. Ltd.*³³ it was held that, “when two law operates on the same subject matter and also have a non-obstante clause then purposive interpretation has to be applied.”³⁴ In the case of *Sarwan Singh vs Kasturi Lal*³⁵ it was held that “in addition to the purposive test, another test is that the later enactment must prevail over the earlier one.”³⁶

Schedule:

³⁰ *Ibid*

³¹ *Aswini Kumar v Arabinda Bose* AIR 1952 SC 369

³² *Ibid*

³³ *Shri Ram Narain v The Simla Banking & Industrial Co Ltd* [1956] INSC 40

³⁴ *Ibid*

³⁵ *Sarwan Singh v Kasturi Lal* 1977 AIR 265, 1977 SCR (2) 421

³⁶ *Ibid*

It provides help in working on an enactment properly and it is a part of the enactment. When the meaning of an enactment is ambiguous help can be taken from the schedule to ascertain or determine the meaning. In *Ellerman Lines Ltd. vs Murray*³⁷, it was laid down that, “a schedule can’t be referred to on the construction of an enacting part of the statute unless the language of the enacting part is ambiguous.”³⁸ In the case of *Kallu vs Munna*,³⁹ it was held that “in case of an ambiguous enactment schedule is a legitimate aid to construction.”⁴⁰ In *Aphali Pharmaceuticals Ltd. vs State of Maharashtra*⁴¹ it was held that “in case of a conflict between the body of the Act and the schedule, the former prevails.”⁴²

EXTERNAL AIDS TO INTERPRETATION

External aids come into play when the internal aids fail to deliver about the interpretation of a certain enactment. These are not as valuable as internal aids when it comes to usage for interpretation. Unlike the internal aids, they do not form part of the enactment. In the case of *B. Prabhakar Rao vs State of Andhra Pradesh*⁴³ it was held and observed that “where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction.”⁴⁴

SOME IMPORTANT EXTERNAL AIDS TO INTERPRETATION

Dictionaries:

Whenever the meaning of a certain word is unclear, help can be sought from the dictionaries by the judicial court to ascertain and determine the meaning of the word. No stringent approach is used in ascertaining or determining the meaning.

³⁷ *Ellerman Lines Ltd v Murray* [1930] UKHL J1209-1

³⁸ *Ibid*

³⁹ *Kallu v Munna* 1968 ALJ 223

⁴⁰ *Ibid*

⁴¹ *Aphali Pharmaceuticals Ltd v State of Maharashtra* 1989 AIR 2227

⁴² *Ibid*

⁴³ *B Prabhakar Rao v State of Andhra Pradesh* AIR 1986 SC 210

⁴⁴ *Ibid*

Parliamentary History:

Parliamentary history may include:

- i. The bill in its original form or the amendments considered during its progress in the Legislature;
- ii. Statements of Objects and Reasons (Speech of the minister);
- iii. Parliamentary debates;
- iv. Reports submitted by different Committees and commissions.

These were not used as an aid to interpretation initially. However, in pretty rare cases the courts have adhered to using them to ascertain the true meaning of the legislation. In the case of *Pepper vs Hart*,⁴⁵ it was held that “the reference to Parliamentary material should be permitted as an aid to the construction of legislation which is the ambiguous or obscure or literal meaning of which leads to absurdity.”⁴⁶

Foreign Judgments:

Reference to decisions and orders passed by the English Courts was a common practice in the process of administration of justice in pre-independent India. However, in recent times Indian courts have also referred to American decisions and orders, especially in cases when the matter in question is with regards to Fundamental Rights. These judgments have no binding nature and only carry persuasive value when there is no law on point. In the case of *General Electric Company vs Renusagar Power Company*⁴⁷ it was held that “when guidance is available from Indian decisions, reference to foreign decisions may become unnecessary.”⁴⁸

Reference to other Statutes:

⁴⁵ *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3

⁴⁶ *Ibid*

⁴⁷ *General Electric Company v Renusagar Power Company* 1987 SCR (3) 858, 1987 SCC (4) 137

⁴⁸ *Ibid*

This form of external aid may include referring to statutes in *pari materia* and earlier statutes. Statutes that relate to the same subject, the same person or thing, or the same class of persons or things are deemed to constitute one system of law, they are considered as one statute. In the case of *R vs Loxdale*⁴⁹ it was held that “where there are different statutes in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.”⁵⁰

Textbooks:

Sometimes, courts, while interpreting a statute or enactment may refer to textbooks authored by distinguished jurists and eminent scholars, to arrive at a true meaning of an enactment. However, it is not necessary that the meaning of the words given in the textbooks should correspond to the views/opinions of the Courts. In certain cases, Vedas are quoted with approval by the courts. For example- *Manu Smriti*, *Agna Valkya Smriti*, *Jimutavahana*, *Vignaneswara*, *Kanitilya*, etc. There are a few other external aids as well but these are the primary external aids of/to interpretation.

CONCLUSION

To conclude we can say that the need for interpretation arises only when there is some sort of ambiguity in a provision and not otherwise. During the process of interpretation, we try and determine the intention of the legislature behind the formulation of the concerned enactment. After carefully reading and understanding all the aids to interpretation we can convincingly conclude that internal aids of interpretation are more reliable and a more valuable source of interpretation in comparison to the external aids to interpretation. Internal aid forms the part of the enactment whereas external aid doesn't and is separate from the provision. Internal aids are regarded as the first option for interpretation and when they fail to deliver, only then do the external aids come into play.

⁴⁹ *R v Loxdale* (1758) 97 All ER 394

⁵⁰ *Ibid*