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## Analysis of External Aids to Construction of Statutes

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*Law is the supreme power of a country. Statutes are enacted only with the purpose of the legislature. It is very important to understand the purpose of the statute and implement them as same in reality. Courts being the Judiciary has to understand the statute and implement them in the correct way in which they were enacted. To understand the statute courts can interpret them. The duty of courts is to interpret and implement the law and not to legislate them. In order to interpret and construct the law, internal aids and external aids are taken into consideration. Internal Aids are those which are present within the statute itself. External Aids are those which are not present within the statute itself. In this article, an attempt is made to analyse each of the external aids to the construction of the statute in detail.*

**Keywords:** *statute, interpretation, construction, external aids, intention, legislation.*

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### INTRODUCTION

India is a democratic and Federal Country. In this era, we need something to regulate the behaviour of all Human beings. Something represents the Law here. Law is meant to regulate the behaviour of a person in this common society. Usually law focus on what not to be done and the penalties in case of a breach. Therefore the law has to be understood and applied in such a way that exactly matches the intention of the legislation. There is a presumption that a particular law or an act is created only to serve some purpose. The courts should exactly bring

out the purpose and serve it to the public. In case the words found in the statute are not clear then some help is required to clear the issue. Such help can be considered as an aid to interpret a statute. They can be both internal aid and external aid to the construction of statutes. In this article we will be discussing more external aids to construction and when it has to be used.

### **HOW TO UNDERSTAND THE LAW?**

There exists three branches of Government in India. They are The Legislative, The Judiciary, and The Executive. The purpose of the Legislature is to make and enact laws. The purpose of the Judiciary is to interpret the law and the purpose of the Executive is to execute the final orders. Here the courts come under the branch of the Judiciary whose work is to mainly interpret the law. Lawmakers always frame a statute with an intention. There is a presumption that the legislature always works with an intention. The words present in a statute are only the representation of such intention. The purpose of the Judiciary which interprets the law is to bring out the true purpose of the lawmakers. Therefore it is important to understand the words present in a statute as according to the intention of the legislature. For interpretation, there exist two aids namely Internal Aids to Interpretation of Statute and also the External Aids to Interpretation of Statute.

### **WHAT HAPPENS WHEN THE LAW IS NOT INTERPRETED PROPERLY?**

Obviously, it leads to injustice. Another name for Law is Justice. The only purpose of having a law is to render justice to the victims. Usually, all the legal systems follow a similar motto as "no victim should be harmed". Therefore it is very important to understand laws as per the intention of the lawmakers, if not it leads to injustice.

### **WHEN TO INTERPRET A STATUTE?**

When the words of a Statute are leading to confusion, not direct or certain words may contain more than one meaning in such circumstances it is very important to interpret the word or the law which is in confusion using the aids of interpretation.

## **DIFFERENCE BETWEEN INTERPRETATION AND THE CONSTRUCTION OF STATUTE**

Without clarifying what is Interpretation and what is Construction, it is difficult to under the full content in detail.

### ***Interpretation of Statute***

Interpretation means giving an explanation, meaning, or translation of a word or a sentence to pull out the real intention of the legislature.<sup>1</sup> In the case of *Anurag Mittal v Shaily Mishra Mittal*<sup>2</sup>, it was observed that Interpretation is a process by which the court determines the meaning of a statutory provision for the purpose of applying it.

### ***Construction of Statute***

Construction of Statute means drawing out the conclusion from the words of the Statute. In most cases, when interpretation doesn't solve the issue then the construction comes into play. Lord Simon says that there are primary and secondary cannons of Construction. The primary rule of construction is to consider the plain meaning. If there is no plain meaning, the mischief rule is the most important rule among all other secondary cannons of construction.<sup>3</sup>

## **AIDS TO INTERPRETATION OR CONSTRUCTION OF THE STATUTE**

A very important element before using the External Aids to Construction is that when there is a presence of Internal Aids to Construction then the External Aids cannot be used. That is to say, when the interpretation can be done with the internal aids then there is no need of using the external aids to construct of Statute. In case, if internal aid doesn't help in solving the issue then obviously external aid plays its role.

Therefore coming to the difference between Internal Aids and External Aids.

### ***Internal Aids to Construction***<sup>4</sup>

Internal Aids are those which are available within the Statute itself.

- Title

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<sup>1</sup> Dr Avtar Singh, *Introduction to Interpretation of Statutes* (5<sup>th</sup> Edition, LexisNexis 2020) 1

<sup>2</sup> *Anurag Mittal v Shaily Mishra Mittal* (2018) 9 SCC 691

<sup>3</sup> Dr Avtar Singh (n 1) 11

<sup>4</sup> *Ibid* at 71

- Preamble
- Headings
- Marginal Notes
- Punctuation
- Illustrations
- Definition Clauses
- Proviso
- Explanation
- Schedules
- Transitional Provisions
- Articles
- Exceptions

It is well clear that all the mentioned are a part of a Statute and it is seen in the law itself.

### *External Aids to Construction*

As discussed earlier, when internal aids don't help much then external aids come into play. External Aids are not available within the statute itself. That is to say, taking into consideration of other elements that are relatable to the Statute in the issue. A statute is comprised of text for which the meaning can be understood from other sources also. Therefore such other sources are termed as external aids to the construction of the Statute.

External Aids are:-<sup>5</sup>

- Dictionaries
- Foreign Decisions
- Parliamentary History
- Historical Facts and Surrounding Circumstances
- Text Books
- Reference to other Statutes

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<sup>5</sup> *Ibid* at 97

- Contemporanea Expositio Est Fortissima in Lege
- Website.

## DICTIONARIES

Dictionaries can be referred to when a word in a statute is not defined in itself. In such cases to pull out the general meaning of certain words dictionaries can be referred and it can also be referred to know the real purpose of the statute in the issue. But there exists another issue in understanding the general meaning of a word from dictionaries. To avoid such issues, it is always mandatory to choose the meaning which is more related to the words of the statute when the statute is read as a whole. This was also observed in the case of *Ram Narain v State of U.P.*<sup>6</sup> that in case of choosing a word out of many matching words, regard must always be had to the context as it is a fundamental rule that “*the meaning of words and expressions used in an Act must take their colour from the context in which they appear.*”

Dictionary meaning cannot be referred to if the plain meaning of the statute is possible. When the words of a statute make the meaning clear, then even the dictionary meaning becomes irrelevant. Dictionary meaning cannot be relied upon when there is an express Statutory provision in regard to that matter. But sometimes, when the word is not defined in the Act, then the dictionaries can be referred to. For example, to take out the meaning of “furniture” dictionary meaning was relied on in the case of *New Chelur Manufacturers Pvt Ltd v CCE*.

## ENCYCLOPAEDIA

In the case of *Commissioner of Customs v Acer India Pvt. Ltd.*<sup>7</sup>, it was held that Wikipedia is an online encyclopedia where inputs could be made by anyone as invalid.

## FOREIGN DECISIONS

In India, foreign judgments can also be referred to in cases that contain a foreign element. Even under the Criminal Procedure Code 1974, a separate definition has been provided for Foreign Courts and Foreign Judgements. Indian courts have also permitted the interpretation of Indian Statutes with the use of those foreign decisions of the countries which follow the same system

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<sup>6</sup> *Ram Narain v State of UP* (1957), AIR 18

<sup>7</sup> *Commissioner of Customs v Acer India Pvt. Ltd.*, (2008) 1 SCC 382

of jurisprudence as the Indian jurisprudence and which are rendered on Statutes in *pari materia*.<sup>8</sup> Supreme Court of India is not bound by foreign decisions, they only have a persuasive value. Before the enactment of the Indian, Constitution referring to Foreign Law and Foreign Decisions was a common practice but after the enactment of the Constitution of India, no courts are bound to apply foreign decisions inside India. There is also no doubt that when the language of Indian Law is not clear or expressed, knowledge of English Law and precedents can be given value. Principles of International Law whenever applicable operate as a statutory implication. Contextual meaning to a statute is to be given considering both the international law and also the constitutional aspects.

### **PARLIAMENTARY HISTORY**

History is generally looking back at the things that have happened. History is also the basement of the law which is in force today. Therefore parliamentary history helps us to know the reason why a particular Act or law has been enacted. History serves the purpose of an Act. To enact a law there are various stages to be followed by the legislature and the parliament. Therefore it is always important to refer to parliamentary history if a law is in issue today. There is a general presumption that an act has been enacted only with a purpose therefore we cannot deny the purpose while executing them in reality. The Bill in its original form or the amendments considered during the progress in the Legislature are not considered as an aid to interpreting a statute. Legislative History comes into play only when the language of the statute is not clear. If the plain reading of a statute is clear, then there is no need of referring to the history of a statute. In a few cases, it has been held that Legislative History within circumspect limits may be consulted by the courts in resolving ambiguities. The statement of object and reasons is also taken into account while constructing a statute but that by itself cannot be interpreted. Statement of Object and Reasons can be given limited importance when the validity of the statute comes into question.<sup>9</sup> It also serves as a source to get out the real intention of the legislation through which the act was passed.

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<sup>8</sup> Dr Avtar Singh (n 1) at 100

<sup>9</sup> Dr Avtar Singh (n 1) at 107

## **HISTORICAL FACTS AND SURROUNDING CIRCUMSTANCES**

Initially, to understand the subject matter of the statute, historical background and the situations can be given importance. It is because they tell us the real purpose of the particular Act. In the case of older Statutes, knowledge of the historical facts relating to them becomes indispensable for understanding the meaning of ambiguous words.

## **TEXTBOOKS**

To learn something usually we refer to books. Such books also help in interpreting a statute. Textbooks are usually written by various authors and they carry the views of various authors. Few authors can have negative views on law and few may also have positive views. Text Books contain both rejection and acceptance of laws. They are no standard rules to express the views in textbooks. Therefore to know what a statute is, then a textbook can also be referred to and given importance. They also serve us with the meaning of the law. An example may be taken from *Kesavanand Bharati v State of Kerala*,<sup>10</sup> where a large number of textbooks were quoted in arriving at the decision.

## **REFERENCE TO OTHER STATUTES**

The statute other than the statute which is in issue is called as other statutes and referring to them is a reference to other statutes. The initial condition to refer to other statutes is that both the statute in issue and the referring statute may be of similar nature. If they have the same nature then they can be matched while interpreting. It has been held in a case that in order to determine the scope of the tax imposed vide notification issued under UP Entertainment and Betting Tax Act, 1979, definition of a corresponding expression defined in sister legislation namely, UP Cinemas (Regulations) Act of 1955 can be applied.<sup>11</sup> Help from Earlier Statutes can also be given importance. Repetition of words in older statutes and also in present statutes gives a presumption that they both carry the same meaning. This application doesn't apply if the language or the decision on the earlier act is not consistent.

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<sup>10</sup> *Kesavanand Bharati v State of Kerala* (1973), AIR 1461

<sup>11</sup> *DM, Haridwar v Harish Malhotra* (2015) 11 SCC 513

## CONTEMPORANEA EXPOSITIO EST FORTISSIMA IN LEGE

*Contemporanea Expositio Est Fortissima in Lege* means the effect of usage and practice means that words of a statute will generally be understood in the sense which they bore when it was passed. It is also believed that *Contemporanea Expositio Est Fortissima in Lege* is the best in law but this doesn't apply to modern statutes. That is because it can be used only when interpreting the words of an old language that is present in older statutes.<sup>12</sup> Earlier the Supreme Court of India was not using this principle in the Telegraph Act of 1885<sup>13</sup>, and the Evidence Act of 1872<sup>14</sup>. But it was referred to in the case of *RS Nayak v AR Antuley*<sup>15</sup>, in constructing the 21<sup>st</sup> Section of the Indian Penal Code of 1860 and it was held that an MLA is not a "public servant", as this expression is defined therein.

## WEBSITE

Usually, certain organization has their own website to give out information regarding their organisation therefore the information available on such a website can also be considered as an aid during interpretation. Supreme Court of India while interpreting whether the Government Companies fall under public sector undertakings, relied on the material information that is available on the Government website regarding the functioning of PSUs.<sup>16</sup>

## CONCLUSION

All the external aids to construction have been discussed and it is clear from the above discussion that they help only to bring out the true intention of the legislature. Both internal aids to construction and external aids to construction help only to bring out the intention of the legislation. Only when the intention is known clearly then the law becomes successful in practical. If they are implemented in the wrong way then they will be rejected by the general public. Therefore to attain the success of a statute they have to be interpreted and understood in a correct way. Said external aids also serve the same purpose.

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<sup>12</sup> Dr Avtar Singh (n 1) at 131

<sup>13</sup> *Sr Electronic Inspector v Laxminarayan Chopra* (1962), AIR 159

<sup>14</sup> *Raja Ram Jaiswal v State of Bihar* (1964), AIR 828

<sup>15</sup> *RS Nayak v AR Antuley* (1984), AIR 684

<sup>16</sup> *Leelabai Gajanan Pansare v Oriental Insurance Co Ltd.*, (2008) 9 SCC 724