Subject: Interpretation of Statute

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Study Material of Unit-II(B)

Topic: Intrinsic or Internal Aid to Interpretation or Construction

Intrinsic or Internal Aid to Interpretation or Construction

Various parts of the same statute pressed into service by the courts for construing anyone of its provisions are called internal aid to construction. Whenever difficulty arises as to meaning of a statutory provision due to ambiguity of words and the true intention of legislature can not be inferred from the language, in such an event it is necessary to read the statuteas a whole in its context following the principle of ex visceribus actus and every part of the statute may be called in aid.

In *Doyapack Systems Pvt. Ltd. V Union of India*(1988) the SC held that noting in files of various officials do not fall under category of internal aid.

Internal aids mean those aids which are available in the statute itself, though they may not be part of enactment.

Kinds of Internal Aid are as under:

1. ***Title***

Title is an important part of the statute. It is given on the top of the statute book. Earlier, title was not considered to be a part of enactment and as such it was not utilized for the purposes of interpretation, but now the situation has changed. Justice S.R. Das observed, that it is now well settled law that the title of statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of an enactment. Like other books or documents, the title of a statute gives a fairly good idea as to what subject matter the statute deals with or what is contained in the enactment. Yet, the true nature of law is to be determined by its substance and

not alone by the name or title given to it. In construing a statute, guidance may be taken from its title but it can neither be used to narrow down or restrict the plain meaning nor can be granted overriding effect on clear meaning of an enactment.

In *Vacher v. London Society of Compositors* (1913), Lord Moulton said: "The title is part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope."

The very important part of a statute is its title, without which there can be neither identity nor existence of any statute. Almost, all modern statutes have two kinds of titles namely:-Short title and Long title.

Short Title

Short title may be considered to be a nick name. According to LORD every Act of Parliament should have a short title ending with the year in which it has been passed. For example, "The Code of Criminal Procedure, 1973" and "The Code of Civil Procedure, 1908 are short titles of these Acts. The short title is always given on the top of the statute book. An Act or Regulation may be cited by reference to its short title. The object of short title in identification and not description. Like from the short title of "The Consumer Protection Act, 1986", one can identify that this is an Act relating to protection of consumer rights. Similarly, Indian Contract Act, 1872" reveals that this is an Indian Act relating to contract.

Though the object of the Short Title 'is identification and not description', but it could be use to assist in the interpretation of the Act. It is used to obviate the necessity of having to refer to the full and descriptive title of the Act. In modern Act the short title is usually given by the Act itself. Short title is very useful as an Act is continued to be cited by the short title authorized to it. If an act is amended in such a way as to make the short title misleading then the latter may be amended. Short title does not mean that the title is very brief. Short title is meant to be merely a convenient label. It is not convenient if too lengthy.

In *re the Vexatious Actions Act 1886-in re Bernard Boaler [1915]* Scrutton J said:

"…the short title being label, accuracy may be sacrificed to brevity; but I do ot understand on what principle of construction I am not to look at the words of the Act itself to help me

understand its scope in order to interpret the words Parliament has used in the circumstances in which they were legislating."

Long Title

It is now settled that Long Title of an Act is a part of the Act and is admissible as an aid to its construction. The long title which often precedes the preamble must be distinguished with the short title; the former taken along with the preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act, whereas the latter being only an abbreviation for purposes of reference is not a useful aid to construction.

In Fielden v. Morley Corporation (1899), Lindley MR referred to the Long Title and said:

"I read the title advisedly because now and for some years past the title of an Act of Parliament has been part of the Act. In old days it used not to be so, and in the old law books we were told not to regard it; but now the title is an important part of the Act, and is so treated in both Houses of Parliament."

The Long Title indicates the nature of the legislative measure. It contains the main theme or themes of the Act, and can thus be used in order to determine the scope of the Act and the proper construction to be adopted in order to resolve a doubt or an ambiguity. Long Title of a statute appears at the head and it very often preceeds the preamble of the Act. It contains in brief, the general description relating to object of the Act. The main object of the long title is to facilitate citation of Act in future enactments and other instruments. The long title of a Statute normally begins with the words "An Act to."

For instance- the long title of the Code of Criminal Procedure, 1973 begins with "An Act to consolidate and amend the law relating to criminal procedure."

The Supreme Court Advocates (Practice in High Courts) Act, 1951 bears long title "An Act to authorize Advocates of Supreme Court to practice as of right in any High Court". The long title of Consumer Protection Act, 1986 is "An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected

therewith". The long title of the Code of Civil Procedure, 1908 is "An Act to consolidate and amend law relating to the procedure of courts of civil judicature".

As may be seen from above examples, the long title gives a general description of the object of the Act and as such, the policy and purpose of a given Act may be derived from its long title. Therefore the long title may be legitimately pressed into service for effective guidance in resolving the ambiguity in a statute.

In the past, long title was not considered to be a part of statute and therefore was not put in category of internal aids to construction but now it is a part of Act and admissible as an aid to its construction. Long title alone or in combination with preamble is a good guide regarding objects, scope or purpose of the Act. According to Donovan, J.,

"The long title is a legitimate and to construction. Where something is doubtful or ambiguous, long title may be looked into to resolve that ambiguity or doubt but in absence of doubt or ambiguity, the meaning of a statute cannot be narrowed down or restricted by reference to long title".

Poppatlal Shah v. State of Madras, (1953), in this case the title of the Madras General Sales Tax, 1939, was utilized to indicate that the object of the Act is to impose taxes on sales that take place within the province.

In *Kedarnath y. State of West Bengal (1953),* Section 4 of West Bengal Criminal Law Amendment (Special Courts) Act, 1949 was in question which gave power to the State Government to decide which particular case should go for reference to special courts and be tried by special procedure. This Act was challenged before the Supreme Court on the ground that it violated Article 14 of Constitution of India. The long title of the Act stated "An Act to provide for a more speedy trial and more effective punishment of certain offences". In view of the long title, Supreme Court held that the Act was meant to give discretion to the State Government as to which offence deserve to tried by special courts under special procedure and therefore contention that Act was violative of Article 14 was rejected.

In *M.P.V. Sundararamier & Co. v. State of A.P.,* (1958) the Supreme Court was considering whether the impugned enactment was a Validation Act in the true sense. This Court held that

although the short title as also the marginal note described the Act to be a Validation Act, the substance of the legislation did not answer that description. The Supreme Court observed:

". ... It is argued that to validate is to confirm or ratify, and that can be only in respect of acts which one could have himself performed, and that if Parliament cannot enact a law relating to sales tax, it cannot validate such a law either, and that such a law is accordingly unauthorised and void. They only basis for this contention in the Act is its description in the short title as the 'Sales Tax Laws Validation Act' and the marginal note to Section 2, which is similarly worded. But the true nature of a law has to be determined not on the label given to it in the statute but on its substance. Section 2 of the impugned Act which is the only substantive enactment therein makes no mention of any validation. It only provides that no law of a State imposing tax on sales shall be deemed to be invalid merely because such sales are in the course of inter-State trade or commerce. The effect of this provision is merely to liberate the State laws from the fetter placed on then by Article 286(2) and to enable such laws to operate on their own terms."

Manoharlal v. State of Punjab (1961) the court held the long title of the Act on which learned counsel placed considerable reliance as a guide for the determination of the scope of the Act and the policy underlying the legislation, no doubt, indicates the main purposes of the enactment but cannot, obviously, control the express operative provisions of the Act.

In the case of *Amarendra Kumar Mohapatra & Ors. v. State of Orissa & Ors.,* (2014) the Supreme Court has held that:

"The title of a statute is no doubt an important part of an 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 on the basis of the given to it but on the basis of its substance."

Limitations of Title as Internal Aid to Construction

(a) Title has no role to play where the words employed in the language are plain and precise and bear only one meaning.

(b) Title can be called in aid only when there is an ambiguity in the language giving rise to alternative constructions,

(c) Title cannot be used to narrow down or restrict the plain meaning of the language of the statute

(d) Title cannot prevail over the clear meaning of an enactment.

(e) True nature of mandate of law has to be determined by its substance and not by title.

2. Preamble

Preamble is a statement given in the statutes in the beginning. It is a part of the Act and sets out its scope, object and purpose. It provides a summary of the statute. It reflects the gist of law. It is an expression of intention of Legislature in bringing out the enactment. It conveys the main objectives which the legislation is intended to achieve. It is a sort of introduction to the statute. For example, the preamble to Constitution of India declares "We the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular democratic, republic, and to secure to all its citizens Justice-social, economic and political, Liberty of thought, expression, belief, faith and worship, Equality of status and opportunity and to promote among them all Fraternity assuring dignity of the individual and the unity and integrity of the nation. This preamble itself reveals what the Constitution is directed to, what is the target to be achieved, and what is the goal strived for.

Preamble is said to be a key to open the mind of Legislature and as such, it is admissible aid to construction of an ambiguous provision However, Supreme Court has brought out the some principle in regard to use of preamble as internal aid to construction. It says that when the language of an Act is clear, the preamble must be disregarded but where object or meaning of the enactment is not clear, the preamble may be resorted to explain it. In view of this, one cannot start with preamble for construing the provisions of the Act but one can always refer to the preamble to explain the ambiguous language of the Act.

According to Lord Normand, there may be no exact correspondence between preamble and enactment and the enactment may go beyond or it may fall short of, it is the indications that may be gathered from preamble.

Preamble is a good means to find out the meaning of words used in an enactment. The Act starts with a preamble and is generally small. It is general statement of Purpose of statute. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it. It expresses the scope and object of the Act more comprehensively than the long title. The preamble like the Long title can legitimately be used for construing an Act. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the statute, the evils sought to be remedied or the doubts which may be intended to be settled.

In *Brett v. Brett*, (1826) Sir John Nicholl : "It is to the preamble more specifically that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself.

Preamble to Constitution

The Preamble of the Constitution like the Preamble of any statute furnishes the key to open the mind of the makers of the Constitution more so because the Constituent Assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the Constitution. The Preamble is a part of the Constitution. The Preamble embodies the fundamentals underlining the structure of the Constitution. It was adopted by the Constituent Assembly after the entire Constitution has been adopted. The true functions of the Preamble is to expound the nature and extend and application of the powers actually confirmed by the Constitution and not substantially to create them.

The Constitution, including the Preamble, must be read as a whole and in case of doubt interpreted consistent with its basic structure to promote the great objectives stated in the preamble. But the Preamble can neither be regarded as the source of any substantive power nor as a source of any prohibition or limitation. The Preamble of a Constitution Amendment Act can be used to understand the object of the amendment.

In *Kashi Prasad v. State (1950*), the court held that even though the preamble cannot be used to defeat the enacting clauses of a statute, it can be treated as a key for the interpretation of the statute.

Therefore, in case of any ambiguity or uncertainty, the preamble can be used by the courts to interpret any provision of that statute. But there is a caution here. The apex court has held in *Maharishi Mahesh Yogi Vedic Vishwavidyalaya v. State of M.P. (2013***) –** the court cannot have resort to preamble when the language of the statute is clear and unambiguous.

Similarly in *Burrakar Coal Company v. Union of India (1961***)** it has been held that help from preamble could not be taken to distort clear intention of the legislature.

In *re Kerala Education Bill, (1957),* it was observed that the policy and purpose of the Act can be legitimately derived from its preamble.

In Global Energy Ltd. v. Central Electricity Regulatory Commission(2009)– it was held that the object of legislation should be read in the context of the Preamble.

In *Maharashtra Land Development Corporation v. State of Maharashtra (2010),* it was held that Preamble of the Act is a guiding Light to its interpretation.

Another important example is found in *Kesavananda Bharati v. State of Kerala, (1973)* wherein the apex court strongly relied on the Preamble to the Constitution of India in reaching a conclusion that the power of the Parliament to amend the constitution under Article 368 was not unlimited and did not enable the Parliament to alter the Basic Structure of the Constitution.

In *A.C. Sharma v. Delhi Administration (1973)*

- In this case, the appellant challenged his conviction under Section 5 of the Prevention of Corruption Act, 1947.
- His main ground was that after the establishment of the Delhi Special Police Establishment, the anti-corruption department of the Delhi Police has ceased to have power of investigating bribery cases because the preamble of the Delhi Special Police Establishment Act, 1946 pointed out to this effect.

- The court, however, held that no preamble can interfere with clear and unambiguous words of a statue.
- Section 3 of the Delhi Special Police Establishment, 1946 empowered the Delhi Special Police also to investigate such cases.

In *Rashtriya Mill Mazdoor Sangh v. NTC (South Maharashtra),(*1992) the Supreme Court while interpreting certain provisions of the Textile Undertakings (Take over of Management) Act, 1983 held that when the language of the Act is clear, preamble cannot be invoked to curtail or restrict the scope of an enactment.

In *Arnit Das v. State of Bihar (2000*), the Supreme Court laid down that- "The preamble suggests what the Act intended to deal with." The preamble must be read as a whole to ascertain, whether any provision in the enactment is clear or ambiguous.

Limitations of Preamble as Internal Aid to Construction

- Preamble can be resorted to only when the language of a provision is reasonably capable of alternative construction.
- Preamble cannot either restrict or extend the meaning and scope of the words used in the enacting part.
- In case of conflict between Preamble and a section, the preamble would succumb and section shall prevail.
- Preamble cannot be regarded as source of any substantive power or of any prohibition or limitation.

3. ***Headings***

Headings constitute an important part of the Act and affords key to the construction of sections that follow. It is a short hand reference tool, which provides a quick and brief idea about the contents of the general subject matter involved. There are two kinds of headings in a Statute namely

1) those, which are prefixed to a section and

2) Those, which are prefixed to a group or set of sections.

These headings serve as preamble to the respective sections. The headings may be in Roman letters or in Italic letters. If the heading is in Roman letters, it is regarded as a part of the Act. If the heading is in Italic letters, it indicates subdivision of the part.

In all modern statutes, generally headings are attached to almost each section, just preceding the provisions. For example, the heading of Section 437 of the Code of Criminal Procedure, 1973 is "When bail may be taken in case of non- bailable offence".

Headings are not passed by the Legislature but they are subsequently inserted after the Bill has become law.

Naturally, the rules applicable to the preamble are followed in case of headings also while interpreting an enactment. Therefore, if the plain meaning of enactment is clear, help from headings cannot be taken by the courts. However, if more than one conclusion are possible while interpreting a particular provision, the courts may seek guidance from the headings to arrive at the true meaning.

But conflicting opinions have been expressed on the question as to what weight should be attached to the headings. A Heading, according to one view, is to be regarded as giving the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation; and so the headings might be treated as preambles to the provisions following them.

M/s. Frick India Ltd. v. Union of India, (1990) SC observed:

"It is well settled that the headings prefixed to sections or entries (of a Tariff Schedule) cannot control the plain words of the provisions; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision."

In *Bhinka v. Charan Singh, (1959*) SC held that "The heading prefixed to sections or sets or sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words."

In *Krishnaiah v. State of A.P. and Ors (2005)* it was held that headings prefixed to sections cannot control the plain words of the provisions. Only in the case of ambiguity or doubt, heading or sub-heading may be referred to as an aid in construing provision.

In *Durga Thathera v. Narain Thathera and Anr* (1931) the court held that the headings are like a preamble which helps as a key to the mind of the legislature but do not control the substantive section of the enactment.

*In Shelly v. London County Council, (1949***)** it was held that A heading to one set of sections cannot act as an aid to interpret another set of sections.

In *Sarah Mathew v. Institute of Cardio Vascular Diseases (2013***),** it was held that sectional headings have a limited role to play in the construction of statutes. The heading of Ch. XXXVI, Cr.P.C. is not an indicator that the date of taking cognizance is the date on which limitation period commences.

In *Novartis Ag. v. Union of India (2013),* it was held that the sectional headings were relied on while interpreting Section 5, 3(d), 2(1) (j) and (ja) and 83 of the Patents Act, 1970.

In *Union of India v. ABN Amro Bank* (2013) It was held :

- that the heading of a section can be regarded as key to interpretation of the operative portion of said section.
- If there is no ambiguity in the language of the provision or if it is plain and clear, then heading used in said section strengthens that meaning.

In N.*C. Dhoundial v. Union of India (2003),* it was held that "Heading" can be relied upon to clear the doubt or ambiguity in the interpretation of the provision and to discern the legislative intent.

Limitations of Headings as Internal Aid to Construction

- Headings can neither cut down nor extend the plain meaning and scope of the words used in the enacting part.
- Headings cannot control the clear and plain meaning of the words of an enactment.

4. Marginal Notes

In the older statutes marginal notes were not inserted by the legislature and hence were not part of the statute and could not be referred to for the purpose of construing the statute. If they are also enacted by the legislature they can be referred to for the purpose of interpretation. In the case of the Indian Constitution, the marginal notes have been enacted by the Constituent Assembly and hence they may be referred to for interpreting the Articles of the Constitution. If the words used in the enactment are clear and unambiguous, the marginal note cannot control the meaning, but in case of ambiguity or doubt, the marginal note may be referred to.

Notes or captions or headings, which appear at one side of a section of an Act is called Marginal Notes or Marginal headings. It is a key to the mind of the legislature. It is also known as side notes. It is a brief precise of the section and forms a more unsure guide to the construction of the enacting section. They were inserted in the Act by the draftsmen, not by the legislators or not as per the instructions of the legislators. Earlier marginal notes were considered to be useful as they were referred for the purpose of resolving ambiguity.

Marginal notes are not parts of a statute because they are not inserted by the legislators nor are they printed in margin under the instructions or authority of the legislature. These notes are inserted by the drafters and many times they may be inaccurate too.

However, there may be exceptional circumstances where marginal notes are inserted by the legislatures and, therefore, while interpreting such an enactment help can be taken from such marginal notes. The Constitution of India is such a case. The marginal notes were inserted by the Constituent Assembly and, therefore, while interpreting the Indian Constitution, it is always permissible to seek guidance and help from the marginal notes.

In *Bengal Immunity Company v. State of Bihar (1955),* the Supreme Court held that the marginal notes to Article 286 of the Constitution was a part of the Constitution and therefore, it could be relied on for the interpretation of that Article.

In Western India Theaters Ltd. v. Municipal Corporation Puna, (1959) it was held that The marginal heading cannot control the interpretation of the words of the section particularly when the language of the section is clear and unambiguous.

*Charan Lal Sahu v. Nand Kishor Bhatt, (*1973) it was held that where the language is clear and can admit of no other meaning, the marginal note cannot be read to control the provisions of the statute.

In *Tara Prasad Singh v. Union of India (1980),* it was held that marginal notes to a section of the statute cannot take away the effect of the provisions.

In *Union of India v. Dileep Kumar Singh (2015)* – the apex court held that marginal note appended to Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 makes it clear that idea of section 47 was not to discriminate against employees who acquire disability during service.

In *S.P. Gupta v. Union of India* (1981) the Supreme Court held that

- if the relevant provisions in the body of a 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 statute, the marginal note may be looked into as an aid to construction.

Limitations of Marginal Notes as Internal Aid to Construction

- Marginal notes are very rarely used for interpretation as they are not considered to be a good aid to construction.
- Only those marginal notes can be used for construing a provision which have been inserted with assent of the legislature.
- Marginal notes can be called in aid only when language suffers from ambiguity and more than one construction is possible.
- Marginal notes cannot frustrate the effect of a clear provision.

4. Punctuation

'Punctuation' means to mark with points and to make points with usual stops. It is the art of dividing sentences by point or mark. .In ancient times, statutes were passed without punctuation and naturally, therefore, the courts were not concerned with looking at punctuation.

But in modern times statutes contain punctuation. Therefore, whenever a matter comes before the courts for interpretation, the courts first look at the provision as they are punctuated and if they feel that there is no ambiguity while interpreting the punctuated provision, they shall so interpret it.

However, while interpreting the provision in the punctuated form if the court feels repugnancy or ambiguity, the court shall read the whole provision without any punctuation and if the meaning is clear will so interpret it without attaching any importance whatsoever to the punctuation. If a statute in question is found to be carefully punctuated, punctuation may be resorted for the purpose of construction.

In *Mohd. Shabbir v. State of Maharashtra*,(1979) while interpreting Section 27 of the Drugs and Cosmetics Act, 1940, the Supreme Court pointed out that the presence of 'comma' after 'manufactures for sale' and 'sells', and absence of any 'comma' after 'stocks' would indicate that only stocking for sale could amount to offence and that mere stocking cannot be treated as an offence for the purpose of the Drugs and Cosmetics Act. Another important internal aid is the schedule or schedules appended to a statute. It forms part of the statute and it can be interpreted independently as well as with the aids of interpretation of statutory provision.

B. K. Mukherjee, J., in *Aswini Kumar Ghose v. Arabinda Bose* (1952) expressed himself as follows: "Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English Courts-. It seems, however, that in the vellum copies printed since 1850, there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporancea expositio-. When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text."

In *A. K. Gopalan v. State of Madras*, (1950) KANIA, C.J., in construing Art. 22(7)(a) of the Constitution, referred to the punctuation and derived assistance from it in reaching his conclusion that Parliament was not obliged to prescribe both the circumstances under which, the class or classes of cases, in which a person may be detained for a period longer than three months, without obtaining the opinion of the Advisory Board and that Parliament on a true construction of the clauses could prescribe either or both. It would appear, with respect to modern statutes, that if the statute in question is found to be carefully punctuated, punctuation, though a minor element, may be resorted to for purposes of construction.

In *Dr. M. K. Salpekar v. Sunil Kumar Shamsunder Chaudhari*,(1988) the court construed clause 13 (3) v of the C.P. and Berar Letting of Houses and Rent Control Order. This provision permits ejectment of a tenant on the ground that "the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house." In holding that the requirement that the tenant 'does not reasonably need the house' has no application when he 'has secured alternative accommodation' the court referred and relied upon the punctuation comma after the words alternative accommodation. However, if a statute is revised and re-enacted but the section under construction in the revised statute is brought in identical terms as in the old statute except as to variation of some punctuation, that in itself will not be indicative of any intention on the part of the Legislature to change the law as understood under the old section.

Therefore, in *Shambhu Nath Sarkar v. State of West Bengal (1973),* the Supreme court held that the word ‘which’ used twice in Article 22(7) of the Constitution, followed by a comma after each, was to be read conjunctively because the context so required.

In *Dadaji v. Sukhdeobabu (1979),* the Supreme Court held that the punctuation marks by themselves do not control the meaning of a statute where its meaning is otherwise obvious.

In the English case of *I.R.C. v. Hinchy (1960),* it was held that it is very doubtful if punctuation marks can be looked at for the purposes of construction.

In *Bihar State Eelectricity Board vs M/S.Pulak Enterprises & Ors (2009),* it was held that punctuation mark (comma) is a minor element in the interpretation of statute, especially in case of subordinate legislation.

In *Director of Public Prosecution v. Schildkamp (1971),* LORD REID agreed that punctuation can be of some assistance in construction.

Limitations of Punctuation Marks as Internal Aid to Construction

- Some jurists have opined that punctuation marks are of no use as internal aids to construction and it is an error to rely on punctuation marks in construing the Acts of Legislature.
- Presence of comma or absence of comma must be disregarded if it is contrary to plain intention of the statute.

5. Illustrations

Illustrations appended to a section from part of the statute and although forming no part of the section, are of relevance and value in the construction of the text of the section and they should not be readily rejected as repugnant to the section. It would be the very last resort of construction to make this assumption. They being the show of mind of the legislature are a good guide to find out the intention of the farmers. But an enactment otherwise clear cannot be given an extended or a restricted meaning on the basis of illustrations appended therein. Illustrations help to explain the latent content of a given section. It neither stands independently nor stand opposite to the section. They are appended to a particular section for the purpose of explaining a provision of law in a statute. For Example- 16 illustrations (a) to (p) have been appended to section 378 of the IPC, 1860, which illustrate various aspects of the offence of theft. Therefore, it is said that sections and illustrations move hand in glove with each other.

In *Sopher v. Administrator General of Bengal, (1944*) in interpreting section 113 of the Indian Succession Act, 1925 and in deciding that 'later' bequest to be valid must comprise of all the testator's remaining interest, if the legatee to the later bequest is not in existence at the time of testator's death, and that a conferment of a life estate under such a bequest is not valid, the Privy Council took the aid of Illustrations appended to that section. VISCOUNT MAUGHAM pointed

out: "Illustrations 2 and 3 would seem to show - What is not clear from the language of the section - that however complete may the disposition of the will, gift after the prior bequest may not be a life interest to an unborn person for that would be a bequest to a person not in existence at the time of testator's death of something less than the remaining interest of the testator."

In *Jumma Masjid v. Kodimaniandra Deviah, (1962*) in this case the Supreme Court took the aid of Illustration appended to section 43, Transfer of Property Act, 1882 for the conclusion that the said provision applies to transfers of spes successionis and enables the transferee to claim the property, provided other conditions of the section are satisfied. Venkatarama Aiyar, J., observed: *"It is not to be readily assumed that an Illustration to a section is repugnant to it and rejected".*

Mention must also be made of Illustration (b) to section 114, Indian Evidence Act, which reads: 'The court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.' The impact of this Illustation on the construction of section 133 of the Evidence Act - 'An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorrobotated testimony of an accomplice' - is too well known. The rule evolved on the basis of the Illustration is that "it is almost always unsafe", to convict an accused on the uncorroborated testimony of an accomplice, and that the corroboration required to sustain a conviction must be independent and must relate to the participation of the accused in the offence.

In *Shambhu Nath Mehra v. State of Ajmer* (1956) which involved the interpretation of section 106 of the Indian Evidence Act, 1872, the Court held that the said provision was not intended to relieve the prosecution of the burden of proff and was designed to meet certain exceptional cases and had no application to those cases where the information was as much within the knowledge of the prosecution as of accused. Referring to the Illustration to section 106, BOSE J., observed:

"We recognize that an Illustration does not exhaust the full content of the section which it illustrates but it can neither curtail nor expand its ambit."

The Supreme Court in *Mahesh Chand Sharma v. Raj Kumari Sharma (1996)* observed that illustration is a part of the section and it helps to elucidate the principle of the section.

However, illustrations cannot be used to defeat the provision or to modify the language of the section. This is reflected by a legal maxim "*Exampla illustrant, non-restringent legem"* which means examples only illustrate but do not narrow the scope of rule of a law.

In Mudliyar Chatterjee v. International Film Co (1944)., it was observed that in construing a section, an illustration cannot be ignored or brushed aside.

In *Mohommed Sydeol Ariffin v. Yeah Ooi Gark (1916),* it was held that the illustrations are of relevance and value in the construction of the text of the section, although they donot form part of the section. Therefore, they should not be readily rejected as repugnant to the sections.

6. Definition Section

These do not take away the ordinary and natural meaning of the words, but as used:

(i) to extend the meaning of a word to include or cover something, which would not normally be covered or included; and

(ii) to interpret ambiguous words and words which are not plain or clear

The definition must ordinarily determine the application of the word or phrase defined; but the definition itself must first be interpreted before it is applied. When the definition of a word gives it an extended meaning, the word is not to be interpreted by its extended meaning every time it is used, for the meaning ultimately depends on the context; and a definition clause does not, ordinarily enlarge the scope of the Act. A court should not lay down a rigid definition and crystallize the law, when the legislature, in its wisdom has not done so. It is ordinarily unsafe to seek the meaning of words used in an Act, in the definition clause of other statutes even when enacted by the same legislature; but where a word or phrase used in an Act, is used in another Act which is in pari material and the word is not defined in that other Act, then the word may be given the meaning given in the first Act.

Definitions in an Act are to be applied only when there is nothing repugnant in the subject or context, and this is so even if such a qualifying provisions is not expressly stated by the legislature. The words 'that is to say' are not words of restriction. They are words of illustration, and the instances that follow operate as a guide for interpretation. An interpretation clause may used the very 'includes' or 'means' or 'means and includes', or 'denotes' or 'deemed to be'. The

words ‘includes’ is generally used in the interpretation clause to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, those words and phrases must be considered as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

If the words ‘means’ or ‘means and includes’ are used it affords a exhaustive explanation of the meaning which, for the purposes of the Act, must inevitably be attached to those words or expressions. If the word ‘denotes’ is used it has the same significance as ‘includes’. If the word ‘deemed to be’ is used it creates a fiction and a thing is treated to be that which in fact it is not. If a special definition of a word or phrase is set out in an Act, the meaning of this word or phrase as given in such definition should normally be adopted in the interpretation of the statute. In the absence of such a definition, the General Clauses Act of the particular legislature which enacted the statute should be referred to. If the word is not defined there also, the rules of interpretation would come into play.

In *Vanguard Fire & General Insurance Co. Ltd. v. Fraser & Ross,(1960)* one of the questions that fell for determination before the Supreme Court was whether the definition of the word “insurer” included a person intending to carry on a business or a person who has ceased to carry on a business. It was contended that the definition started with the words “insurer means” and, therefore, is exhaustive. The Supreme Court, repelling that contention held, that statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words “unless there is anything repugnant in the subject or context.”

The expression “include” is used as a word of extension and expansion to the meaning and import of the preceding words or expressions. The following observations of Lord Watson in *Dilworth v. Stamps Commissioners,(*1899) in the context of use of “include” as a word of extension has guided this Court in numerous cases:

"... But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

The word "include" is generally used to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. That is to say that when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise.

In *Mohan Singh v. International Airport Authority of India, (*1997) the Supreme Court was considering the question whether the use of the word 'shall' is not decisive in construing whether a provision is mandatory or directory. It was observed as under:

"..... The word 'shall', though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word 'shall' is construed as having mandatory character, the mischief that would ensure by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory. If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be

ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice."

Therefore, we can say that Definition or interpretation clauses are generally included in a statute with the purpose of extending the natural meaning of some words as per the definition given or to interpret such words, the meanings of which are not clear, by assigning them the meaning given in the definition clause.

Generally, the meaning given to a particular word in the interpretation clause will be given to that word wherever it is used in that statute.

The only exception to this rule is that if the court feels that in the context of a particular provision the definition clause, if applied will result in an absurdity, the court will not apply the definition clause while interpreting that provision.

Similarly, the definition clause of one Act cannot be used to explain the same word used in another statute. However, if both the statutes are in pari materia and the word has been defined in one Act, the same meaning may be assigned to the word in the other Act also.

Whenever the words *means* or *means and includes* are used in the definition clause, they afford an exhaustive explanation of the word in the statute.

The language in which both words 'includes and shall not include' are used, such definitions are inclusive and exclusive.

The word includes is generally used in the definition clause to enlarge the ordinary and natural meaning of that particular word.

In *M/s. Hamdard (Wakf) Laboratories v. Deputy Labour Commissioner (2007***)**, the Supreme Court observed that when an interpretation clause uses the word 'includes', it is prima facie extensive.

When it uses the words 'means and includes', it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression.

In Ramanlal Bhailal Patel v. State of Gujarat, (2008) the Supreme Court observed that the use of the word 'includes' indicates an intention to enlarge the meaning of the word used in the statute.

The use of the word *denotes* in the interpretation clause shows that the expressions denoted therein are covered within the ambit of that particular word.

The expression *deemed* to be in the interpretation clause creates a fiction. The use of the phrase that is to say in the definition clause is illustrative of the meaning and not restrictive.

In *State of Bombay v. Hospital Mazdoor Sabha (1956),* the JJ Group of Hospitals was held by the Supreme Court an industry within the meaning of the Industrial Disputes Act, 1947. The court observed that Section 2 (J) of the Act of 1947 is an inclusive definition clause and is, therefore, liable to be interpreted in an extended way and not in a restrictive way.

In *State of Madhya Pradesh v. Saith and Skelton Private Limited (1972),* the Supreme Court, while interpreting the word 'Court' in Section 14 (2) of the Arbitration Act, 1940, held that its meaning given in Section 2 (c) of the Act that it means a Court which would entertain a suit on the subject-matter, cannot be accepted in the light of the context, and that 'Court' in the present instance must mean a court which appoints the arbitrator.

The Supreme Court in *Jagir Singh v. State of Bihar* (2011)

- Was seized of the question of interpreting the word 'owner' in the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 which defined it as the owner and includes bailee of a public carrier vehicle or any manager acting on the owners behalf.
- The Court held that the use of the word *includes* gives a wider concept to the word and so it means the actual owner as well as the others included in the definition.

In *Commissioner of Income-Tax, Madras, v. G.R. Karthikeyan* (1979)

- The question was whether prize money received by a participant in a motor rally was 'income' within the premise of Section 2 (24) of the Income-tax Act, 1961.

- The Supreme Court held that several clauses in Section 2 (24) were not exhaustive in nature and, therefore, money received under any new head not covered under the provision is income and so subject to income-tax under the law.

In *Lucknow Development Authority v. M.K. Gupta (1993***)**, the Supreme Court ruled that:

- 'Housing construction' comes within the meaning of 'service' as defined in section 2(o) of the Consumer Protection Act, 1986, even though the provision gives an inclusive definition of the word 'service.
- In the aftermath of the case, the Parliament amended the section and expressly included 'housing construction' in 'service'.

In *Delhi Judicial Service Association v. State of Gujarat* (1992)

- The words "including the power to punish for contempt of itself" occurring in Article 129 of the Constitution of India were construed by the Supreme Court.
- This Article declares the Supreme Court to be a Court of Record.
- It was held that these words do not limit the inherent power of the Supreme Court to punish for contempt of itself as also of subordinate courts.

7. Provisio

The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso 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. Normally, a proviso does not travel beyond the provision to which it is a proviso. It craves out an exception to the main provision to which it has been enacted as a proviso and to no other.

In some sections of a statute, after the main provision is spelled out, a clause is added, with the opening words "provided that…". The part of the section commencing with the words "Provided that…" is called Proviso. A proviso is a clause which is added to the statute to accept something

from enacting clause or to limit its applicability. As such, the function of a proviso is to qualify something or to exclude, something from what is provided in the enactment which, but for proviso, would be within the purview of enactment.

The general rule about the interpretation of a proviso is that proviso is not to be taken absolutely in its strict literal sense but is of necessity limited to the ambition of the section which it qualifies. The court is not entitled to add words to a proviso with a view to enlarge its scope. The proviso must reasonably be conveyed by the words used therein. Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the later intention of the makers. When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one. However, where the section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

The proviso is subordinate to the main section. A proviso does not enlarge an enactment except for compelling reasons. Sometimes an unnecessary proviso is inserted by way of abundant caution. A proviso may sometimes contain a substantive provision.

Supreme Court in *S. Sundaram Pillai v. V.R. Pattabiraman.(1985*) After exhaustively referring to the earlier case law on scope and interpretation of a proviso as well as explanation to a section, the Supreme Court laid down as under:

“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 in order 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.

In Union of India v. Sanjay Kumar Jain(2004), the function of proviso was declared that it qualifies or carves out an exception to the main provision.

In *Vishesh Kumar v. Shanti Prasad(1980),* the Supreme Court held that a proviso cannot be permitted by construction to defeat the basic intent expressed in the substantive provision.

In Union of India v. Dileep Kumar Singh,(2015) it has been held that though a proviso does not travel beyond the provision to which it is appended, golden rule is to read the whole Section, inclusive of the proviso in such manner that they mutually throw light on each other and result in a harmonious construction.

It has been held in *R. v. Leeds Prison (Governor***)**, (1964) that the main part of an enactment cannot be so interpreted as to render its proviso unnecessary and ineffective.

In *Commissioner of Income-tax, Bhopal v. M/s. Shelly Products*, (2003) the Supreme Court:

- While interpreting the proviso to Section 240 of the Income-tax Act, 1961 clarified that where a proviso consists of two parts, one part may be declaratory but the other part may not be so.
- Therefore, merely because one part of the proviso has been held to the declaratory, it does not follow that the second part of it is also declaratory.
- Since proviso (b) to Section 240 of the Act is declaratory, it was held to be retrospective in operation.

In *Shimbhu v. State of Haryana (2013),* the Apex Court held that a proviso should be construed in relation to the main provision.

But, in *Sree Balaji Nagar Residential Assn. V. State of Tamil Nadu(2014),* the apex court clarified that where the main provision is clear and unambiguous, recourse to the proviso cannot be taken to interpret it.

In *State of Punjab v. Kailash Nath(1988),* the Supreme Court held that the proviso has to read as an exception to the main provision of a section.

Sometimes more than one provisos are attached with the section. If there is any repugnancy between the two provisos, the latter shall prevail.

A proviso may serve four different purposes:

- qualifying or excepting certain provisions from the main enactment;
- it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- 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
- it may be used merely to act as an option addenda to the enactment with the sole object of explaining the real intentions of the statutory provision.

Limitations of Proviso as Internal Aid to Construction

- Proviso is constructed in relation to the section to which it is appended.
- The ambition and scope of enacting sections cannot be widened or curtailed by the proviso.

8. Explanation

The object of an Explanation is to understand the Act in the light of the Explanation. The object of an Explanation to a statutory provision is-

(a) to explanation the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems 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 clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute.

Explanations are inserted with the purpose of explaining the meaning of a particular provision and to remove doubts which might creep up if the explanation had not been inserted. It does not expand the meaning of the provision to which it is added but only ties to remove confusion, if any, in the understanding of the true meaning of the enactment.

A large number of Indian Acts have explanations attached to various sections. For instance, Section 108 of the Indian Penal Code which defines the word ‘abettor’ has five explanations attached to it. Sometimes, explanations are inserted not at the time of enactment of a statute but at a later stage. For instance, the two explanations to Section 405 of the Indian Penal Code, which defines the crime of ‘Criminal breach of trust’, were inserted in 1973 and 1975 respectively.

In *Bengal Immunity Company v. State of Bihar(1955)*, the Supreme Court has observed that an explanation is a part of the section to which it is appended and the whole lot should be read together to know the true meaning of the provision.

In *Bihta Co-operative Development Cane Marketing Union v. State of Bihar(1966),* the Supreme Court said that in case of a conflict between the main provision and the explanation attached to it, the general duty of the court is to try to harmonise the two.

In *S. Sundaram v. V.R. Pattabhiraman(1985),* the Supreme Court observed that it is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

An explanation cannot in any way interfere with or change the enactment of 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 it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of the Act by becoming an hindrance in the interpretation of the same.

In *M.K. Salpekar v. Sunil Kumar Shamsunder Chaudhari(1988),* the Supreme Court observed that where a provision is related to two kinds of accommodation—residential and non-residential, and the explanation attached to it refers to only residential accommodation, it cannot control non-residential accommodation and, therefore, cannot be looked into in matters connected with the latter.

Limitation of Explanation as Internal Aid to Construction

- Explanation cannot have the effect of modifying the language of section.
- Explanation cannot control the plain meaning of words of the section.

9. ***Schedules***

It form the part of the statute and must be read together with it for all purposes of construction. The expressions in the Schedule cannot override the provisions of the express enactment. They often contain details and prescribed forms for working out the policy underlying the sections of the statute. Schedules may also contain transitory provisions, which remain in force till the main provision of the statute are brought into operation. Some Statutes/enactments/Acts comprise of

two parts. The first part called body contains various sections/articles. While the letter part called schedules contains various model formats, tables etc. For example- The Indian Constitution comprises of two parts. The first part, the body of the enactment contains nearly 500 articles divided into 25 parts and the second part comprises of 12 schedules.

Schedules are parts of the Statute itself and may be looked into by the courts for the purpose of interpreting the main body of the statute. Similarly, while interpreting the schedules help may always be taken from the main body of the Act to find out the true spirit of the Act. Sometimes, a schedule may contain transitory provisions also to enable an Act to remain in existence till the main provisions of the Act begin to operate, such as the Ninth Schedule of the Government of India Act, 1935.

In *M/s. Aphali Pharmaceuticals Limited v. State of Maharashtra (1989),* the Supreme Court held that in case of a clash between the schedule and the main body of an Act, the main body prevails and the schedule has to be rejected.

In *Jagdish Prasad v. State of Rajasthan and others (2011),* the Supreme Court ruled that the purpose of a schedule is to advance the object of the main provision and deletion of schedule cannot wipe out provisions of an Act in effect and spirit.

10. **Exceptions And Saving Clauses-**

An exception may be referred for the purpose of constructing the enacting portion. Exceptions must be construed strictly and strongly against the partly trying to take the benefit. If an exception is repugnant to the operative part of the section, it must be ignored. If an exception is given an enactment, it is supposed that the provisions of the enactment will apply to all other cases, which are not covered by the exception.

Exceptions are generally added to an enactment with the purpose of exempting something which would otherwise fall within the ambit of the main provision. For instance, there are ten exceptions attached to section 499, IPC which defines ‘Defamation’. These ten exceptions are the cases which do not amount to defamation.

Similarly there are five exceptions attached to section 300 of the Indian Penal Code which defines ‘murder’. These five exceptions are the cases which are not murders but culpable

homicide not amounting to murder. An exception affirms that the things not exempted are covered under the main provision.

In case a repugnancy between an operative part and an exception, the operative part must be relied on. Some decisions have, however, been given on the principle that an exception, being the latter will of the legislature, must prevail over the substantive portion of the enactment.

In *Director of Secondary Education v. Pushpendra Kumar(1998),* the Supreme Court held that a provision in the nature of an exception cannot be so interpreted as to subserve the main enactment and thereby nullify, the right conferred by the main enactment.

In *Collector of Customs v. M/s. Modi Rubber Limited(1999),* the Supreme Court held that whenever there is a provision in the nature of an exception to the principal clause thereof; it must be construed with regard to that principal clause.

Saving clauses are generally appended in cases of repeal and re-enactment of a statute.

By this the rights already created under repealed enactment are not disturbed nor are new rights created by it. A saving clause is normally inserted in the repealing statute. In case of a clash between the main part of statute and a saving clause, the saving clause has to be rejected.

In *Shah Bhojraj Kuverji Oil Mills v. Subhash Chandra Yograj Sinha(1961),* the Supreme Court did not allow the use of a saving clause, which was enacted like a proviso, to determine whether a section in an Act was retrospective in operation.

In *Agricultural and Processed Food Products v. Union of India (1996),* the Supreme Court while interpreting the saving clause in the Export Control Order, 1988 held that the clause only saved the rights which were in existence before the order was issued and it did not confer any new rights which were not in existence at that time.

11. Non Obstante Clause

A section sometimes begins with the phrase ‘notwithstanding anything contained etc.’ Such a clause is called a non obstante clause and its general purpose is to give the provision contained in the non obstante clause an overriding effect in the event of a conflict between it and the rest of the section. Thus, there is generally a close relation between the non obstante clause and the

main section and in case of ambiguity the non obstante clause may throw light on the scope and ambit of the rest of the section. If, however, the enacting part is clear and unambiguous, its scope cannot be whittled down by the use of the non obstante clause.

This phrase i.e. 'notwithstanding anything in' is in contradiction to the phrase 'subject to'.

In *Aswini Kumar v. Arabinda Bose*,(1953) the petitioner was an Advocate of the Calcutta High Court and also of the Supreme Court of India. The Supreme Court Advocates (Practice in High Courts) Act, 1951 is an Act to atuthorise Advocates of Supreme Court to practice as of right in any High Court. When he filed in the Registry on the original side of the Calcutta High Court a warrant of authority executed in his favour to appear for a client, it was returned, because under the High Court Rules and Orders, Original side, an Advocate could only plead and not act. The Advocate contended that as an Advocate of the Supreme Court he had a right to practice which right included the right to act as well as to appear and plead without being instructed by an attorney. The contention was accepted by the majority. The Supreme Court observed 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. The enacting part of a statue must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such a clause, a later law abrogates earlier laws clearly inconsistent with it. While it may be true that the non obstante clause need not necessarily be co-extensive with the operative part, there can be no doubt that ordinarily there should be a close approximation between the two."

In *Kanwar Raj v. Pramod*,(1955) the Custodian of Evacuee Property cancelled a lease granted by him, under Section 12 of the Administration of Evacuee Property Act, 1950. Section 12 enacts : Notwithstanding anything contained in any other law for the time being in force the Custodian may terminate any lease, etc. It was contended that the power of the Custodian to cancel leases could be exercised only so as to override a bar imposed by any law but not the contract under which the lease is held, because, the non obstante clause is limited to 'anything contained in any other law for the time being in force'. It was held: The operative portion of the section which confers power on the Custodian to cancel a lease or vary the terms thereof is unqualified and

absolute, and that power cannot be abridged by reference to the provision that it could be exercised 'notwithstanding anything contained in any other law for the time being in force.' This provision is obviously intended to repel statutes conferring rights or leases, and cannot prevail as against them and has been inserted 'ex abundant cautela'. It cannot be construed as cutting down the plain meaning of the operative portion of the section.

In *Sarwan Singh v. Kasturi lal*,(1977) the question arises that when two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, imulating and incisive problems of interpretation arise. The court observed that: "Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it.

Probable Questions

1. Explain the relevance of title as an aid to interpretation and construction.
2. What are kinds of intrinsic aid to interpretation and construction? Explain in detail.
3. Define intrinsic/internal aid to interpretation and construction. Discuss its kind.
4. Explain the relevance as an aid to interpretation and construction of following:
    i. Illustration
    ii. Provisio
    iii. Explanation
    iv. Schedule
5. Explain the relevance of preamble as an aid to interpretation and construction