

1. Explain the internal aids to construction

- Interpretation means it is an explanation, expotison, translation, and meaning. It means if any controversies/inconvenience are arises in the statute or in enacted laws or in provisions or any difficulties are there in the words of the statute, through interpretation interpreter remove the such difficulties and controversies from the statute it is called interpretation. Internal Aids to Construction are
 - 1. Long Title
 - 2. Preamble
 - 3. Headings
 - 4. Marginal notes
 - 5. illustrations
 - 6. Definition clause
 - 7. Provisions
 - 8. Explanation
 - 9. Schedules

1. **Title** means the name of the statute, book, composition, or other creative work.

It can be divided into two types

(1) Short title

(2) Long title

(1) Short title: means an abbreviated form of a title of statute, book or document. For example RTI Act-2005, IPC-1860, TP Act- 1870.

Long title: long title to an act is a part of the act and is admissible as an aid to its construction.

Long title alone or along with the preamble is a good guide regarding the object, scope or purpose of the act.

Short title: it can be said to be the nick name of the act. It is only an abbreviation for the purposes of reference and it is not a use ful aid to construction.

2. Preamble: Like the long title of a statute, the preamble of a statute is also a part of the act and is an admissible aid to construction. It is not an enacting part but it is expected to express the scope, object and purpose of the act more comprehensively than the long title.

Sita Devi v. State of Bihar 1995

- The role of preamble in interpretation cannot be curtailed or restricted. Preamble can be an aid in construing a provision when the provision is ambiguous.

LDA V. Gupta (1995)

- SC held that it (preamble) can afford useful assistance to ascertain legislative intension but cannot control otherwise the plain meaning of a provision.

Golak Nath v. State of Punjab

- In this case Chief justice Subba Rao had held that “The preamble to an act sets out the main objectives which the legislation is intended to achieve”.

Kesavananda Bharathi Case

- The SC attached much importance to the preamble. In this case SC held that Preamble is a basic structure of the Constitution. We can ascertain the object of legislation and to discover the intention of legislature.

- 3. Headings:** The headings in a statute or in Regulations can be taken into consideration in determining the meaning of a provision where that provision is ambiguous, and may sometimes be of service in determining the scope of a provision. 'But where the enacting words are clear and unambiguous, the title, or headings, must give way, and full effect must be given to the enactment.'

Headings are of two kinds, they are

Those prefixed to a section

Those prefixed to a group or set of sections

Frink India Ltd v. UOI AIR 1990 SC 689

- the SC observed that it is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; 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.
- **4. Marginal notes:** Notes which are inserted at the side of the sections in an act and express the effect of sections are called marginal notes. In the interpretation of a statute, marginal notes are not used because most of these notes are inserted by the draftsmen and not by the legislators and not even under the instruction of legislators. In past it was taken into considered when the meaning of the words could not be given clear but now they are not considered to be helpful.
- **5. Illustrations:** (an illustration is also one of the internal elements of the statute) In order to explain the provision of law contained in a statute, illustrations are appended (added) to a section of statute. Therefore illustrations are considered as a part of the statute. With the help of illustrations a interpreter can interpret the statute or find out the true meaning of the ambiguous word or understand the provisions.

Mahesh chander Sharma v. Raj Kumari Sharma AIR 1996 SC 869

- In this case SC held that illustrations to the sections are part of the section and help to elucidate (explain) the principle of the section.
- **6. Definition Clause:** In any statute definitions of certain words and expression used elsewhere in the body of the statute are commonly found. The object of such a definition is to avoid the necessity of frequent repetitions in describing all the subject- matter to which the word or expression so defined is intended to apply.

Generally, the meaning given to a particular word in the clause will be given to the word when ever it is used in that statute. Because legislature used particular word in different places of the Statute. To understand that word and avoid the repetitions of the meaning of such word, legislature define the word in the statute. Through that word interpreter can understand the word and remove the ambiguity.

- Definition means statement that explains the meaning of a word. It means analysis of word and find out the exact meaning of the word. In statute if legislator used means or includes in particular word, its shows that legislature define the word.

Types of definition

- Sometimes a Definition can be divided into two types. they are
 - (a) Explanatory definition
 - (b) Expandatory definition
- (a) Explanatory definition: giving information about something or describing how something works, in order to make it easier to understand. **Explanatory** statements theories are intended to make people understand something by describing it or giving the reasons for it.
- (b) Expandatory definition: where a word or an expression is defined by the legislature, courts have to look to that definition; the general understanding of it cannot be determinative.
- **7. Proviso:** Proviso refers to a condition, stipulation or limitation inserted in a document upon whose compliance the document's validity or application may depend. In short, it is a clause in a Statute, contract or the like, by which a condition is introduced. It generally begins with the word "provided" and supplies a condition, exception, or addition. In a deed, lease, mortgage or contract the performance or nonperformance of the proviso clause affects the validity of the instrument. a proviso clause in a statute excepts something from statutory requirements, qualifies the statute or excludes some potential area of misinterpretation.
- **8. Explanation:** Sometimes an explanation is added to a section to explain the meaning of words contained in the section. Explanations are normally inserted with the purpose of explaining the meaning of a particular provision and remove doubts which might creep up if the explanation had not been inserted. It becomes part and parcel of the enactment. An explanation is added to a section to elaborate upon and explain the meaning of the words appearing in the section. The purpose is not to limit the scope of the main section but to explain, clarify, subtract or include something by elaboration.

Object of the explanation to a statutory provision

- ✓ To explain the meaning and intendment of the act itself.
 - ✓ Where there is any obscurity/ vagueness in the main enactment, to clarify the same so as to make it consistent with the main object which it seems any part thereof may serve to sub serve.
 - ✓ To provide an additional support to main object of the act in order to make it meaningful and purposeful.
 - ✓ To explanation cannot in any way interference with or change the enactment.
- **9. Schedules:** Schedules is also a part of the statute. It helps to the interpreter to remove the difficulties from the statute. The division of a statute into sections and schedules is done only for convenience and thereof, a schedule may contain substantive enactment which may even go beyond the scope of a section to which the schedule may appear to be connected by its headings. The expression in the schedules however cannot override the provisions of the express enactment.
 - **10. Punctuation:** Punctuation is a minor element and weight is given to it only when a statute is carefully punctuated and there is no doubt about its meaning.

2. Discuss the external aids to construction

Interpretation means it is an explanation, expotison, translation, and meaning. It means if any controversies/inconvenience are arises in the statute or in enacted laws or in provisions or any difficulties are there in the words of the statute, through interpretation interpreter remove the such difficulties and controversies from the statute it is called interpretation. External aids to constructions are

1. Dictionaries
2. Foreign Decisions
3. Parliamentary History
 - (a) English Practice
 - (b) British Practice
4. Historical facts and surrounding circumstances
5. Later social, political and economic developments and scientific inventions
6. Text books
7. Reference to other statutes.

- **1. Dictionaries:** when a word is not defined in the act itself, it is permissible to refer to dictionaries to find out the general meaning/sense in which that word is understood in common parlance or, in other words, dictionary meaning or common parlance meaning has to be restored to.

Nagulapathi Lakshamma v. Mupparaju subbaiah (1998)

In this case court held that dictionary meaning cannot be relied upon when there is an express statutory provision in regard to that matter. It means if statute gives clear, perfect and proper definition then it is not necessary to see the dictionaries. Because there is no ambiguity in the statute.

New Chelur Manufacturers (p) Ltd v. CCE (1997)

In this case court held that sometimes when the word is not defined in the act, dictionaries may be helpful, for example, to determine the meaning of “furniture” dictionaries meaning was relied on.

SBI v.Sundara Money

Justice Krishna Aiyar said dictionaries are not dictators of Statutory construction where the benignant mood of law, more emphatically, the definition clause furnishes a different denotation.

United Bank of India v. Debts Recovery Tribunal

In this case SC held that where an expression in any act has been defined, the said expression will have the same meaning and it is not necessary to find out what is the general meaning of the expression. The definition given in the Statute is the determinative or perfect factor.

2. Foreign Decisions:

Indian courts have permitted in the interpretation of Indian statutes sobered use of those foreign decisions of the countries which follow the same system of jurisprudence as the Indian jurisprudence and which are rendered on statutes in pari materia. In pre-constitution period, reference to English decisions was a common practice but when Privy Council warning regarding this, this practice was not given up. There is no doubt that when the language of Indian act was not clear or express, knowledge of English law and precedents has been of valuable assistance.

Following are the factors which oblige the Indian courts in taking recourse to foreign precedents of English speaking countries.

- 1. Link of the English common law and jurisprudence.
 - 2. similarly of political thought
 - 3. The use of English language as authoritative text of Indian statutes.
3. **Parliamentary history:** Peter Hogg consider legislative history to include the following (it means Parliamentary or legislative history includes what)
- 1) The report of royal commission or law reform commission or parliamentary committee recommending that a statute enacted;
 - 2) a Government policy paper (whether called a white paper, green paper, budget paper or whatever) recommending that a statute be enacted; (green paper is a preliminary report of Government proposals that is published in order to provoke discussion) (white paper means it is a government report giving information or proposals on an issue.) (green paper is a preliminary report of Government proposals that is published in order to provoke discussion) (white paper means it is a government report giving information or proposals on an issue.)
 - 3) a report or study produced outside government which existed at the time of the enactment of the statute and was relied upon by the government that introduced the legislation;
 - 4) earlier versions of the statute, either before or after its introduction into parliament or the legislature;

- 5) statements by ministers or members of parliament and testimony of expert witness before a parliamentary committee charged with studying the bill; and
- 6) Speeches in the parliament or legislature when the bill is being debated.
- House Members commentary on the bill during the three readings is recorded in Hansard, (official record of debates in British) the official reporter of parliamentary debates. It is important that speeches in parliament on a statute made subsequent to its enactment- such as parliamentary statements during the debate on an unsuccessful amendment to the statute cannot be considered part of its legislative history.

Parliamentary history can be divided in to 2 types

- **1. English practice**
- **2. Indian practice**
- **English practice** can be discussed under three sub-headings.
 - 1. Traditional view
 - 2. Criticism of the traditional view
 - 3. Modern Trend.
- **Traditional view:** English traditional view is that “the intent of the parliament which passed the Act” is not to be gathered from the parliamentary history of the statute. The bill in its original form or the amendments considered during its progress in the legislature is not admissible as aids to construction.

Recommendations contained in the report of a royal commission which may have led to the introduction of the measure in parliament cannot be used as evidence for the purpose of showing the intention or purpose or object of the Act.

A.G. V. HRH Prince Ernest Augustus of Hanover (1957)

in this case English court held that, English traditional view is that “ the intent of the parliament which passed the Act” is not to be gathered from the parliamentary history of the statute.

Courts are entitled to consider such external facts as may be necessary to understand the subject matter to which the statutes relates or they can also have regard to the mischief which the statute is intended to remedy.

Criticism of the Traditional View: the English practice continued to make the distinction drawn between the refusal to admit the report of a committee for purpose of finding out the intention of parliament and its relevance as evidence of surrounding circumstances or as aid to understand the subject matter to which the statute relates or indicative of the evil or defect which the Act was intended to remedy, is somewhat obscure

R. v. Shivpuri (1986)

- In this case court held that reports of law commissions preceding (previous) a legislation constitute an important material for understanding the legislation and it has been acknowledged (approved) that a careful reading of such a report would have avoided an erroneous construction which was very soon overruled.
- **Modern Trend:** in construing statutes, the school of thought that open use should be made of parliamentary history has been gaining ground. According to this rule, it is for courts to consider what weight is to give to the materials that emerge from scrutiny of legislative history rather than automatically to exclude such materials from all considerations as an aid to interpretation.

There were two objections to this view.

1. Parliamentary materials are not readily available but it was said that experience has shown that non-availability of materials has not raised any practical problems.
2. Another objection raised was that recourse to parliamentary material will amount to questioning the freedom of speech and debates in parliament. But this objection was rejected and it was held that far from questioning the independence of parliament and its debates, the courts would be giving effect to what is said and done here.

Indian practice:

- Indian practice can be discussed under three sub-headings.
- 1. Bill
- 2. Statement of objects and Reasons
- 3. Commissions/Inquiry Committees.

in chiranjit lal chowdery v. UOI

In this case Judge Fazal Ali admitted parliamentary history including the speech of the minister introducing the bill as evidence of the circumstances which necessitated the passing of the act, a course apparently approved in later decisions.

- **Statement of objects and reasons:** The statement of objects and reasons accompanying a legislative bill cannot be used to ascertain the true meaning and effect of the substantive (basic) provisions of the legislation, but it can certainly be pressed into service for the limited purpose of understanding the background and the object that the legislation sought to achieve.

In Ashwin Kumar's case

- In this case SC held that the statements objects and reasons were ruled out as an aid to the construction of a statute.

Commissions/Inquiry Committees: Reports of commissions or inquiry committees earlier the introduction of a bill have also been referred to as evidence of historical facts or of surrounding circumstances or of mischief or evil intended to be remedied and at times for interpreting the act.

4. **Historical facts and surrounding circumstances:** The court is entitled to take into account such external or historical facts as may be necessary to understand the subject-matter of the statute or have regard to the surrounding circumstances which existed at the time of passing of the statute.

Keates v. Lewis Merthys Consolidated Collieries Ltd (1911)

- In this case Lord Atkinson said that in the construction of statutes to understand the subject matter, should consider the historical facts and to remove the evils what provisions was inserted and what is the remedy for such evils. Where it is important to ascertain ancient facts of public nature recourse to historical works, picture, engravings and documents may be taken. Reference may also be made to contemporary treaties which may have influenced the law-makers in using a particular phrase in the statute.

Auckland Jute Co. Ltd v. Tulsi Chandra Goswamy

In this case Judge Mukarjee said for the purpose of appreciating the scope and objects of an Statute and avoid the different meanings in a statute it may helpful or useful to remember the well-known historical fact which led to the enactment.

- The function of the court is to find out the intention of the law-makers, there fore, the court has to discover that particular meaning of a given word in an enactment which the law-maker intended it to be given. In case of older statutes a knowledge of the historical

facts relating to them becomes essential for understanding the meaning of ambiguous words and expressions used in them.

5. **Subsequent social, political and Economic developments and scientific inventions:**

This topic can be taken up under two heads.

1. General
2. Constitution

1. **General:** a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of the enactment of the statute.

R V. Ireland (1997)

In this case court held that generally statutes are of always speaking variety and the court is free to apply the current meaning of the statute to present day conditions.

Sr. Electronic Inspector V. Laxminarayan Chopra AIR 1962 SC159

Court held that a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of the enactment of the statute.

2. **Constitutional Acts:** Language of a constitution is given a liberal construction so as to include within its ambit the future developments in various fields of human activity than in restricting the language to the state of things existing at the time of the passing of the constitution.

S.P.Guptha v. UOI (AIR 1982 SC 149)

- In this case SC held that by majority that the power of appointment and transfer of judges is an executive function and the opinion of chief justice of india, expressed in the process of consultation, though of great weight has no primacy and is not binding on the president but the order of appointment or transfer is open to judicial review. This decision was given by a seven judge-bench of the sc.

An important example is to be found in interpretation of Art 368 of the constitution which confers powers on parliament to amend the constitution and provide procedure for the same. In earlier case **Shankar Prasad Singh v. UOI**, and **Sajjan Singh v. State of Rajasthan** the SC conceded full amending power to parliament. But later on in **Kesavananda Bharathi v. State of Kerala** it was held that written constitution like ours has certain undefined essential elements of its basic structure which are sacrosanct and cannot be amended.

Keshavananda bharathi v. State of Kerala

- In this case SC identified the essential elements of the basic structure of our constitution. They are

- Supremacy of the constitution
- democratic form of govt.
- Secular and federal character of the constitution
- Unity and integrity of the country
- Demarcation (separation) of powers b/w the legislature, the executive and the judiciary.
- Rule of law and judicial review
- Liberty of thought, expression, faith, belief and worship
- Equality of status and opportunity
- Mandate to build a welfare state and
- Limitation on the amending power so that it is not used to alter or damage the essential elements of the basic structure of the construction.

6. **Text books:** In arriving at the true meaning of an enactment the court may refer to the text books also. It is in the discretion of the courts to accept or reject the views given in a text books which was referred to by the court. There are many instances of both rejection and acceptance of the views expressed in textbooks. Manu, yajnvalkya, vijneshwara, jimuthavahana and kautilya have been frequently quoted by the courts with approval.

7. **Reference to other statutes:**

Statutes in pari materia

Help from earlier statutes

Help from Later Statutes

Incorporation of earlier act into later; reference of earlier act into later

- **Statutes in pari materia:** Statutes in pari materia means statutes dealing with the same subject matter or forming part of the same system. The rule of context which says that a statute must be read as words is to be understood in their context, permits reference to other status in pari materia.

In an American case, pari materia was explained as statutes are in pari materia which relates to the same person or thing, or to the same class of persons or things.

This rule has following merits

- it avoids contradiction between a series of statutes dealing with the same subject.
- the application of this rule allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context.

- it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute.

3. Explain the basic principles of interpretation.

- **Introduction:** Interpretation means it is an explanation, expotison, translation and meaning, It means if any controversies/inconvenience are arises in the statute or in enacted laws or in provisions or any difficulties are there in the words of the statute, through interpretation interpreter remove the difficulties and controversies from the statute it is called interpretation.

Basic Principles of interpretations are

- 1) Intention of the legislature
 - 2) Statute must be read as a whole in its context
 - 3) Ut Res Magis Valeat Quam Pereat
 - 4) Plain or Ordinary meaning
 - 5) Rule of Literal Construction
 - 6) Strict Construction
 - 7) Harmonious construction
 - 8) Beneficent Construction
 - 9) Mischief Rule
- **1) Intention of the legislature:** According to Salmond, the duty of the judicature is to discover and to act upon the true intention of the legislature. It means at the time of interpretation interpreter should consider the sententia legis which means intention of legislature.

Vishnu prathap sugar works pvt ltd

v/s

chief inspector of stamp, UP (AIR1986 SC 74)

- In this case SC held that A statute is an established rule, formal regulation or ordinance, enacted by the legislature and A statute is an announcement of the legislature.

RMD Chamarbaugwala v/s UOI (AIR 1957 SC 628)

- SC held that the conventional way of interpreting or construing a statute is to know the intention of the maker of the statute. It has to be construed in the manner similar to “the intent of them who make it”.

United states v/s F.W. Keitel

- In this case U.S. court held that when more than one interpretation can be made of a statutory provision, the court has to be very careful in choosing that interpretation

which represents the true intention of the legislature and which can also be referred to as the legal meaning of the statutory provision.

- **The intention of legislature can be said to have two aspects.**
- Meaning
- Purpose and object
- **Meaning:** first aspect is that of 'meaning' which tells what the words mean
Purpose and object: second aspect includes concept of purpose and object which means the purpose and object of enacting the statute.

Kanailal Sur v/s Paramanidhi Sadhukhan, AIR 1957 S.C.907

- In this case justice Gajendragadkar said that "the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself.

Even when the words gives plain meaning, then it is not necessary to interpret because the words itself gives the plain/ordinary meaning then why judges themselves are busy to interpret.

- **Reserve Bank of India v/s Pearless general Finance and investment co 1987 SC 424**
- In this case SC held that the interpretation must depend on the context and the text. These are the basis of interpretation. Neither can be ignored. Both are important.

- **2. Statute must be read as a whole in its context:** Whenever the question arises as to the meaning of a certain provision in a statute, it is proper and legitimate to read that provision in its context. What was the previous state of the law, study of other statute in pari materia (on the same matter), what is the general scope of the statute and what is the mischief which it wanted to remedy, all these questions are to be considered here.

Canada Sugar Refining Co v/s R.(1898)

- In this case justice Lord Davey said that "Every clause of a statute should be construed with reference to the context and other clauses of the Act, So as, as far as possible, to make a consistent enactment of the statute or series of statutes relating to the subject matter.

- **Re,Bidie case 1948**

In this case lord Greene M.R. said that " To ascertain the meaning of a clause in a statute the courts must look at the whole statute, at what precedes(follows) and at what succeeds and not merely at the clause itself and the method of construing statutes that I prefer, is to read the statute as a whole. He said when we read the whole statute then only we can find out the true meaning of that word.

Charles Robert Leader v/s George F. Diffey (1888)

- In this case Lord Halsbury said that “ when there is inaccuracy (error) and inconsistency in the statute, interpreter should read the whole statute. It is now firmly established as a rule that the intention of the legislature must be found by reading the statute as a whole.

Jennings v/s Kelly (1939)

- The court held that the principle that the statute must be read as a whole is equally applicable to different parts of the same section.

• Attar Singh v/s Inder Kumar AIR 1967 SC 773

- Facts of the case the Punjab Rent Restriction Act 1949 provided by
- Section 13(a)(ii) that a landlord could obtain possession in the case of rented land if
- (a) he requires it for his own use
- (b) he is not occupying in the urban area for the purpose of his business any other such rented land. And
- He has not vacated such rented land without sufficient cause after the commencement of the act in the urban area concerned.
- The high court of Punjab held that the words for his own use permitted the landlord to claim eviction for his own use, whatever may be the nature of use. But Supreme Court reversed or rejected the high court decision and held that for his own use means should consider the other clause.
- **3. Ut Res Magis Valeat Quam Pereat:** Ut Res Magis Valeat Quam Pereat is a legal maxim, used in India. It means It is better for a thing to have effect than to be made void. it is better to validate a thing than to invalidate it. A statute is supposed to be a true source of the legislative will and the function of a court is to interpret it “according to the intent of them that made it.”

Manchester ship canal Co v/s Manchester Race course co. 1904

- In this case the judge Farewell said “unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not declare them void for uncertainty.
- **Fawcett properties v. Buckingham country council (1960)**
- Lord denning said when a statute has some meaning even though it is obscure or several meanings, even though it is little to choose between them, the courts have to say what meaning the statute is to be bear, rather than reject it as a nullity.

Murray v/s IRC 1918

- Lord Dunedin observed that it is our duty to make what we can of statutes, knowing that they are meant to be operative and not inept (null) and nothing short of impossibility should in my judgment allow a judge to declare a statute unworkable.

- **Nokes v/s Doncaster Amalgamated Collieries(1940)**

- Judge Simon L.C. if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to ineffectiveness and should rather accept the bolder construction, based on the view that parliament would legislate only for the purpose of bringing about an effective result.

- **Tinsukia Electric supply co Ltd v/s State of Assam. AIR 1990 SC 123**

- In this case SC held that a statute or enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim. If a statute is absolutely vague and its language is wholly intractable and absolutely meaningless, the statute could be declared void for vagueness.

4. **Plain or Ordinary meaning:** When the language of a statute is plain, words are clear and unambiguous and give only one meaning, then effect should be given to that plain meaning only and one should not go in for the construction of the statute.

State of Uttar Pradesh v/s vijay Anand Maharaj, AIR 1963,SC 946

- “in this case SC has held that when the language of a statute is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the act speaks for itself”.

Nelson Motis v/s Union of India AIR 1992 SC 1981.

- SC held that when the words of a statute are clear, plain or unambiguous, they are reasonably liable to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences.

Sussex peerage case,

- The rule was stated by Tindal in this case. He said if the words of the statute are in themselves precise(exact) and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver.

Delhi Transport corpn v/s D.T.C Mazdoor Congress,1991.

- While interpreting a statute the plain meaning of words must first be ascertained and in case there is any doubt, the object and preamble of the statute can also be seen.

- **H.H. Sri Rama Verma v/s CIT 1991.**

- In this case court held that when language of the provision is plain and clear court cannot enlarge the scope of the provision by interpretative process.

5. **Rule of Literal Construction:** The rule of literal construction is considered to be the first principle of interpretation. According to this rule, the words of an enactment are to be given their ordinary and natural meaning and if such meaning is clear and unambiguous, effect should be given to a provision of a statute whatever may be the consequences. The literal rule of statutory interpretation should be the first rule applied by judges. Under the literal rule, the words of the statute are given their natural or ordinary meaning and applied without the judge seeking to put a shine on the words or seek to make sense of the statute.

Literal rule is a **rule** used to interpreting statutes. In **literal rule**, the words in a statute are given its plain, ordinary, and **literal meaning**. While applying the **literal rule**, the law is read word by word and without diverting from its true **meaning**.

This rule can be easily understood under the four headings.

1. **Natural and Grammatical meaning**

2. **Explanation**

3. **Exact meaning, preferred to Loose meaning**

4. **Technical words in Technical sense.**

- **1. Natural and Grammatical meaning:** the words of a statute are first understood in their natural, ordinary or popular sense and phrase and sentences are construed according to their meaning, unless that leads to some meaninglessness or unless there is something in the context, or in the object of the statute to suggest the contrary.

Corpn. Of the City Victoria v/s Bishop of Vancouver of Island AIR 1921 PC 240

- In this case lord Atkinson said “ in the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary meaning.

Municipal Board v/s State Transport Authority, Rajasthan AIR 1965 SC 458

- The regional transport authority had changed the location of a bus stand. If anyone wanted to move an application against this order, he could do so within 30 days from

the date of order to the Regional Transport Authority under section 64-A of the motor vehicles Act 1939. But in this case the application was moved after expiry of the period. The argument was made by the applicant that an application could be moved within 30 days from the knowledge of the order passed by the regional transport authority.

- **2. Explanation:** when it is said that words are to be understood first in their natural, ordinary or popular sense, it is meant that the words must be recognized that natural, ordinary or popular meaning which they have in relation to the subject matter with reference to which and the context in which they have been used in the statute. In the statement of the rule “the epithets (describes) natural, ordinary, literal, grammatical and popular are employed almost interchangeable to convey the same idea.

- **Forest Range Officer v/s Khushboo Enterprise AIR 1994 SC120**

- The question was whether sandal wood oil is wood oil as used in the definition of forest produce in section 2(f) of the Kerala Forest Act, 1961 which defines Forest produce to include timber, charcoal, wood oil whether found in or brought from a forest. Sandal wood is produced at a factory level by mechanized process utilizing the hard wood and roots of sandal wood trees removed from forest as a raw material. It was argued before SC that wood oil is a natural produce of the forest derived as an exudation from living trees in the forest belonging to the family of dipterocarp trees and it will not include sandal wood oil which is a by-product from sandal wood by industrial process. But this argument was rejected by the Supreme Court and it was pointed out that the object of the Act was to conserve forest wealth and there was no indication in the act to exclude what ordinary and in common parlance spoken of as wood oil. Therefore, it was held that the sandal wood oil was within the definition of forest produce.
- **3. Exact meaning preferred to loose meaning:** the third important point regarding the rule of literal construction is that exact meaning is preferred to loose meaning in act of parliament. **In Prithipal Singh v/s union of India (AIR 1982 SC 1413)** SC was held that there is a presumption that the words are used in an Act of Parliament correctly and exactly and not loosely and inexactly.
- **4. Technical words in Technical sense:** the fourth important point regarding the rule of literal construction is that technical words are understood in the technical sense only. Few relevant points regarding this are following.
 1. Special meaning in trade, business etc.-
 2. Legal sense of words

- **1. Special meaning in trade, business etc.-** regarding this in **Union of india v/s garware nylons Ltd AIR 1996 SC 3509**. Supreme court was held that as a necessary consequences of the principle that words are understood in their ordinary or natural meaning in relation to the subject-matter in legislation relating a particular trade, business, profession art or science, words having a special meaning in that context are understood in that sense, such a special meaning is called the technical meaning in order to distinguish it from the more common meaning that the word may have.

2. **Legal sense of words:** By legal sense of words we mean that when words acquire a technical meaning because of their use by the legislature in a particular sense or because of their authoritative construction by superior courts, they are understood in that sense When used in a similar context in subsequent legislation

6. **Strict Construction:** Strict construction must be applied to criminal statutes, penal statutes and Taxing statutes. This means all these Statutes may not be enlarged by implication or intent beyond the fair meaning of the language used or the meaning that is reasonably justified by its terms. Strict Construction is the opposite of liberal construction, which permits a term to be reasonably and fairly evaluated so as to implement the object and purpose of the document.

Strict Construction happens when ambiguous language is given its exact and technical meaning, and no other equitable considerations or reasonable implications are made. A judge may make a construction only if the language is ambiguous or unclear. If the language is plain and clear, a judge must apply the plain meaning of the language and cannot consider other evidence that would change the meaning.

Harshad Mehta v/s Custodian AIR 1998 SC 2291

- In this case SC held that there are three stages in the imposition of a Tax. They are
- 1. Declaration of liability in respect of persons or Property.
- 2. Calculation of tax that qualifies the sum which the person liable has to pay.
- 3. Methods of recovery if the person taxed does not voluntarily pay.
-
- 7. **Beneficent Construction:** Statutes is enacted by the legislature for benefit for the public or class of people. Where the statute is not convey the object or intention of legislature, then it is the duty of interpreter should interpret infavour the public and according to intention of legislature.

Mahadeo Lal v/s Admn. General of W.Bengal, AIR 1960 SC 936

- SC held that if in a legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one of

which would preserve the benefit and another would take it away, the meanings which preserves it should be adopted.

Aslam Babalal Desai v/s State of Maharashtra (1992) 4 SC 272

- In this case judge Ramaswamy said “the purpose of interpretation is to sustain the law. The court must interpret the words or language of the statute to promote public good and to interdict (prohibition) misuse of power”.

- **Manohar Lal v/s State of Punjab AIR 1961 SC 418**

- In this case section 7 of the Punjab trade employees act 1949 directing that the shops and establishments which come under the purview of this act shall remain closed one day in a week was held not to violate of Art 19(1)(g) of the constitution as it was a reasonable restriction on the fundamental right because it was necessary for ensuring health and efficiency of workers. Even when business is being conducted by the owner and his family members, the provisions would apply to them also in the same manner and for the same reason.

Dahiben v/s VasANJI Kevalbhai AIR 1995 SC 1215.

- Bombay Tenancy and Agriculture lands Act, 1948 as amended by Bombay tenancy Act 1952. it was held to be a legislation beneficial to tenants. Therefore, it was to be given liberal interpretation. That’s why it was held that the amendments would apply to suits which were pending when the amendment had come into force.
8. **Harmonious construction:** The basis of the harmonious construction is that the legislature never intends to contradict itself by providing two repugnant provisions in the same statute. The rule of harmonious construction says that when two or more provisions in such a manner, if possible, as to give effect to both by harmonizing them with each other.

Keshava Chandra joshi v/s UOI

- SC held that Harmonious construction should be applied to statutory rules and courts should avoid absurd (silly) or unintended results.

Sultana Begum v/s Prem chand Jain 1997(1) SC 373

- In this case SC held that following 5 principles were considered
- 1. it is the duty of the courts to avoid a head-on- clash between two sections of the act and to interpret the provisions which appears to be in conflict with each other in such a manner as to harmonise them.

- 2.the provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.
- 3. it has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an act, they should be interpreted that , if possible, effect should be given to both.
- 4. the courts have also to keep in mind that an interpretation which reduces one of the provisions to a dead letter or useless lumber(timber) is not harmonious construction.
- 5. To harmonise is not to destroy any statutory provision or to render it otiose (useless).

9. Mischief Rule: It is a sound rule of construction of a statute firmly established in England as far back as 1854 when Haydon's case. In this case was decided that for the sure and true interpretation of all statutes four things are to be considered. They are

1. What was the law before the making of the Act.
2. What was the mischief or defect for which the law did not provide.
3. What is the remedy that Act has provided.
4. What is the reason of the remedy.

Mischief rule directs that the courts must adopt that construction which shall suppress the mischief and advance the remedy.

Parayan Kandiyal Eravath Kanapavan Kalliani Amma v/s K devi(1996)4 SC76

- In this case SC held that Mischief Rule is applicable there where languages is capable of more than one meaning.
- **10. Purposive construction:** A purposive construction promoting the object of the enactment. It is the duty of the courts to accept a construction which promotes the object of the legislation and also prevents the ambiguity.

4. Describe the subsidiary rules of Interpretation.

Ans: Subsidiary rules of Interpretation are

- ▣ Conjunctive or Disjunctive
- ▣ Same words and same meaning
- ▣ Use of Different words
- ▣ Rule of last antecedent
- ▣ Non obstante clause (“notwithstanding)
- ▣ Legal Fictions
- ▣ Mandatory and Directory Provision
- ▣ Construction of general words
- ▣ Causes Omissus
- ▣ Expressio unius est exclusio alterius
- ▣ Expressum facit cessary tacitum
- ▣ Generalia specialibus non derogant
- ▣ Reading down a provision
- ▣ Anomaly, Absurdity, Hardship, Redundancy & Repugnancy
- ▣ Presumption of Constitutionality
- ▣ Construction in favour of advancement of object of the statute

1. **Conjunctive or Disjunctive (options or choice):**

Meaning of Conjunctive: it means it is a linking word or expressing a link between two things that are both true. The word “and” is normally conjunctive. Disjunctive means expressing a choice between two mutually exclusive possibilities, for example *or* in *she asked if he was going or staying*. The word “or” is normally disjunctive.

The word “or” is normally disjunctive and “and “ is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the legislature as disclosed from the context.

Ishwar Singh Bindra v. State of A.P. AIR 1968 SC 1540.

Sec-3(b)(i) of the drugs Act,1940 defined the drugs before its amendments as: All medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals other than medicines and substances exclusively used or prepared for use in accordance with the ayurvedic or unani systems of medicine. The words or context showed that it was the clear intention of the legislature.

State of Bombay v. RMD Chamar Baugwala AIR 1957 SC 699

While dealing with section 2(d)(i) of the Bombay lotteries and prize competition control and tax act 1948 the supreme court read “or” as “and” to give effect to the clear intention of the legislature as expressed in the Act read as whole.

2. **Same words and same meaning:** When the legislature uses same word in different parts of the same section or statute, there is a presumption that the word is used in the same sense throughout but this presumption is a weak presumption and is readily displaced by the context.

Parrell v. Alexander (1976)

In this case the court gives more correct statement of the rule is stated thus “where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning”.

CIT V. Venkateshwara Hatcheries(p) Ltd. (1999)

In this case court has been held that the rule of same word same meaning may not apply under different provisions of the same statute.

CIT V. Venkatachalam (1993)

In this case court held that it does not necessarily follow that same words used in two provisions must carry the same meaning.

3. **Use of Different words:** When in relation to the same subject-matter different words are used in the same statute, there is presumption that they are not used in the same sense. Example in one provision legislature used the word rendered illegal and used held illegal. Both words will not give the same meaning, it gives different words.
4. **Rule of last antecedent:** Legal Definition of *Last Antecedent Rule* : a doctrine in the interpretation of statutes: qualifying words or phrases refer only to the last antecedent word or phrase unless the context or entire act clearly requires otherwise — called also *last antecedent doctrine*.

The last antecedent rule is a doctrine of interpretation of a [statute](#), by which "Referential and qualifying phrases, where no contrary intention appears, refer solely to the last antecedent.

As a corollary to the rule that phrases and sentences in a statute are interpreted according to the grammatical meaning, relative and qualifying words, phrases and clauses are applied to the antecedent immediately preceding. Qualifying words to be considered according to the context.

5. **Non-Obstante Clause:** A Non-Obstante Clause is usually used in a provision to indicate that, that provision should prevail despite anything to the contrary in the provision mentioned in such Non Obstante Clause. The expression non – obstante means “notwithstanding”. A clause beginning with notwithstanding anything contained in this act or in some particular provision in the act or in some particular act or in any law for the time being in force, is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or act mentioned in the non-obstante clause.

The very purpose of non-obstante clause is that the prevention shall prevail over any other provision and that other provision shall be of no consequences.

Lallu Prasad and others v. state of Bihar and other AIR 1996 Patna 137.

In this case high court of Bihar observed that on any discrepancy between non-obstante clause and other provisions, non obstante clause would prevail over the other clauses. Even by dictionary sense, the expression “notwithstanding “implies that other provisions shall not prevail over the main provisions.

6. **Legal Fiction:** A legal fiction is one which is not an actual reality and which the law recognizes and the court accepts as a reality. Therefore, in case of a legal fiction the courts believe something to exist which in reality does not exist.

UOI V. Sampat Raj Dugar AIR 1992 SC 1423

In this case court held that A legal fiction is one which is not an actual reality and which the law recognizes and the court accepts as a reality but legal fiction should not be extended beyond its purpose.

Lokmat Newspapers (p). Ltd V. Shankar Prasad AIR 1999 SC 275

In this case court was held that while giving effect to the legal fiction for the purpose for which it is created by the legislature, it has to be given full play for fructifying (make useful the said legislative intention.

7. **Mandatory and Directory Provision:** Generally A Mandatory provision in a statute is one which if not followed renders the proceeding to which it relates illegal and void. Mandatory statutes are those that require, as opposed to permit, a particular course of action.

Ashok Kumar Sharma v. Chandrasekhar (1993)

In this case court held that in legal terminology where something is required to be done and the consequences of failure to do so are also provided then it is known as mandatory.

Directory provision: Directory provision means a provision in a statute, rule of procedure, or the like, that is a mere direction or instruction of no obligatory force and involves no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed.

Directory provision means A provision in a statute, rule of procedure, or the like, that is a mere direction or instruction of no obligatory force and involves no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed.

Lila Gupta v. Laxmi Narain, AIR 1978 SC 1351

The SC approved that “the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed”.

UOI V. Tulasiram Patel 1985 SC 398

In this SC held that if a provision is mandatory an act done in its breach will be invalid whereas if it is directory the act will be valid although the non-compliance may give rise to some other penalty if provided by the statute.

Differences b/w mandatory and directory provision

A mandatory provision is one that must be observed, whereas a directory provision is optional.

The distinction between a provision which is mandatory and one which is 'directory' is that when it 'mandatory', it must be strictly observed with, when it is 'directory', it would be sufficient that it substantially observed with.

Non-observance of mandatory provisions involves the consequences invalidating. But non-observance of directory provision does not involve the consequence of invalidating, whatever other consequences may occur.

No general rule can be laid down for deciding whether any particular provision on a statute is mandatory or directory. In each case the court has to consider not only the actual word used, but has to decide the legislatures intent.

Consequences provided by statute.

When on failure to comply with a prescribed requirement nullification as a consequences is provided by the statute itself, there is no doubt that such statutory requirement must be interpreted as mandatory.

Maqbool Ahmed V. Onkar Prathap Narain Singh, AIR 1935 PC 85

In this case SC has held that the periods prescribed in the schedules to the Indian limitation Act, 1963, for bringing a legal proceeding are mandatory because the consequences of the expiry of the period of limitation is provided by section 4 of the Act in that the court is enjoined to dismiss a legal proceeding instituted after expiry of the prescribed period.

Lachmi Narain v. UOI AIR 1976 SC 714

In this case court has held that a provision requiring not less than three months' notice was held to be mandatory.

Bombay union of journalists v. State of Bombay, AIR 1964, SC1614

In this case court has held that the general rule that negative words are usually mandatory is subordinate to the context, and the object intended to be achieved by the particular requirement.

Statutes conferring power:

Haridwar Sigh V. Begum Sumbru AIR 1972 SC 1242

It has been held that in statutes conferring a power to be exercised on certain conditions, prescribed are normally held to be mandatory and a power inconsistent with those conditions is impliedly negative.

8. **Use of 'shall' or 'shall and May'; 'Must' and 'Should':** If the legislature use the word shall, should and must we thought that it is mandatory but it depends upon the context. If legislature use the word may, its not mandatory but it is directory because it gives choice.

9. **General words: Construction of general words shall be discussed under following sub-headings.**

General

Noscitur A Sociis

Rule of Ejusdem generis

Words of Rank

Reddendo Singula Singulis

- **General:** Since the general words in a statute have ordinarily a general meaning, the first task in construing such words, as in construing any word, is to give the words their plain and ordinary meaning and then to see whether the context or some principle of construction requires that some qualified meaning should be placed on those words.

S.N. Sudalaimuthu chettiyar V. palaniyandavan

In this case SC has held that the word 'family' has been variably construed according to its context. The primary meaning of the word family is children. But a single person living alone or a master and servant living together have been regarded as family. Similarly, a son-in-law may also be regarded member of the family of his mother-in-law and his wife.

Nairn V. St. Andrews University

In this case SC has held that similarly the words 'person' has at times been construed as meaning only males,

Henrietta Muir Edwards V. A.G. of Canada AIR 1930 PC 120

SC has held that sometimes including both males and females.

Motipur Zamindari Co.ltd V. State of Bihar AIR 1953 SC 320

In this case SC has held that sometimes as also a company or a corporation.

- ▣ **Noscitur A Sociis:** In ascertaining the meaning of the word or a clause or sentence in the statute in its interpretation, everything which is legally relevant should be admissible. The philosophy behind it is that meaning of the doubtful words may be ascertained by reference to the meaning of words associated with it. According to Maxwell "this rule means that when two or more words which are susceptible of analogous (Similar) meaning are coupled together, they are understood to be used in their cognate (related) sense.

Lokmat Newspapers (p) Ltd v. shankariprasad

It has been held that for the applicability of this rule two words in the statute should have analogous meaning. Since in this case, the words discharge and dismissal (remove) used in a statutory provision did not have the same analogous, this rule did not apply.

- **Rule of Ejusdem Generis:** of or as the same kind. Denoting a rule for interpreting statutes and other writings by assuming that a general term describing a list of specific terms denotes other things that are like the specific elements.

K.k. kuchuni v. state of madras

According to the rule of Ejusdem generis, when particular words pertaining to a class, category or genus (kind) are followed by general words, they are construed as limited to the things of the same kind as those specified.

Amar Chandra v. Collector of exercise, Tripura

In this case SC has held that this rule applies to following 5 situations.

- ▣ 1. When the statute contains an enumeration (list)(Patti) of specific words.
- ▣ 2. the subjects of enumeration constitute a class or category.
- ▣ 3. that class or category is not exhausted(Shattered) by the enumeration
- ▣ 4. the general terms follow the enumeration.
- ▣ 5. There is no indication of a different legislative intent.

State of Karnataka v. Kempaiah

It was held that the rule of Eiusdem generis which is an exception to the rule of construction that general words should be given their full and natural meaning was enunciated.

Words of Rank: Rule of words of rank is a principle of statutory construction according to which a statute dealing with things or persons of an inferior rank cannot by any general words be extended to things or persons of a superior rank.

Casher v. Holmes

In this case court has held that according to this rule of words of rank, the statutes which deal with persons or things of inferior rank are not extended to those of superior degree by introduction of general words and the general words following particular words will not cover anything of a class superior to those to which the particular words relate.

EXAMPLES: a duty imposed on copper, brass, pewter and tin and all other metals not enumerated did not cover silver or gold as these are metals of a superior kind to the particular metals enumerated.

● **Casus Omissus:**

Legal Definition of Casus Omissus: a situation omitted from or not provided for by statute or regulation and therefore governed by the common law. According to Francies J. McCaffrey “it is a rule of statutory construction that a causes Omissus cannot be supplied by the courts”.

● **Reddendo Singula Singulis:** Reddendo singula singulis is a Latin term that means by referring each to each; referring each phrase or expression to its corresponding object. It is a rule of construction used typically in distributing property.

Where there are general words of description, following an enumeration of particular things such general words are to be construed distributively, Reddendo singula singulis; and if the general words will apply to some things and not others, the general words are to be applied to those things to which will, and not to those to which they will not apply; that rule behind all controversy.

Hansaraj Gupta v. Dehra Dun Mussoorie Electronic Tram Way Co.ltd

In this case SC has held that “ this principle says that a matter which should have been provided, but has not been provided for in a statute cannot be supplied by courts, as to do so will be legislation and not construction.

10. **Generalia specialibus non derogant:** It means general things do not derogate from special things. Latin maxim of interpretation: the provisions of a general statute must yield (Produce)to those of a special one.

S. Prakash v. K.M. Kurian

The SC held that if the language of general provision is clear, it prevails over special provision and special provision must give way to a general provision if legislative intent was establish a rule of universal application.

11. **Generalia specialibus derogant:** Means that special thing derogate from general things.
12. **Expressio unius est exclusio alterius:** Expressio unius est exclusio alterius . [New Latin, the explicit mention of one (thing) is the exclusion of another] : a principle in statutory construction: when one or more things of a class are expressly mentioned others of the same class are excluded.
13. **Expressum facit cessary tacitum:** This maxim says that when there is express mention of certain things, then anything not mentioned is excluded.

B. Shankara Rao Badami v. state of Mysore,

in this case SC has held that this maxim is a principle of logic and common sense and not merely a technical rule of construction.

14. **Reading down a provision:** In order to suppress(destroy)the mischief and effectuate the object of the legislation, the provision may be read down, if necessary.

Pannalal Bansi Lal Pitti v. State of A.P.

In this case SC has held that Reading down a provision is accepted principle of interpretation so as to sustain the provision as well as to effectuate the purpose of the statute.

C.B.Gautam v. UOI

In this case SC has held that this provision cannot be invoked (appealed) where express provision itself negates(contradict) the same.

15. **Anomaly, Absurdity, Hardship, Redundancy and Repugnancy:**

Repugnancy (differences) arises when the conflict between competing legislations cannot be reconciled and it is not possible to give effect to both. Repugnancy may also arise, even in the absence of direct conflict, when the superior legislation evinces an intention to cover the entire field leaving no room for the rival legislation to operate in that field.

16. **Presumption of constitutionality:**

Madan mohan v. k.k.Sood

SC has held that an interpretation which renders a provision unconstitutional should be avoided. (rule of law) Art-13.

5. What are the general principles governing the retrospective operation of a statute.

Ans: Statute is a written law enacted by the competitive legislative body. Operation of statute can be divided into two types. They are

(a) Retrospective operation of statute

(b) Prospective operation of statute

Sec-3(13) of the general clause act 1897 provides that Commencement of an act means the day on which the act comes into force. Sec- 5 of the general act provides that unless otherwise provided, a central act comes into operation on the day it receives the presidential Assent and is construed as coming into operation immediately on the expiration of the day preceding its commencement.

Sec6 of the Bengal act 1899, Sec- 5 Of the Bombay act 1904, Sec- 5 Of the U.P.Act 1904, Sec-3 of the Punjab act 1898, Sec-5 of the Assam act 1915, Sec- 6 of the Bihar & Orissa act 1917, Sec-3 of the M.P. Act 1958 and Sec-5 of the Madras Act 1891 provides that “ A State Act Comes into force on the day when the assent of the governor or the President, as the case may be, is first published in the official gazette of the state.

Retrospective operation: Retrospective means looking back on or dealing with past events or situations. Retrospective generally means to take a look back at events that already have taken place. Retrospective operation of law implies to the application of law to facts or actions which existed prior to the enactment of the said law. Such laws change or alter the legal consequences of acts which took place prior to its enactment.

A retrospective law is one that is to take effect, in point of time, before it was passed. This word is usually applied to those acts of the legislature, which are made to operate upon some subject, contract crime which existed before the passage of the acts, and they are therefore called retrospective laws.

• a) General principles:

- 1. power to make Retrospective laws
- 2. statutes dealing with substantive (Fundamental) rights
- 3. statutes dealing with procedure
- 4. Recent statements of the rule against Retrospectivity
- 5. language not always Decisive
- **1. Power to make Retrospective laws:** The union parliament and state legislatures have complete of legislation within the fields assigned to them. These two can, subject to certain constitutional restrictions, legislate prospectively (nirikshitha or bhavi) as well as retrospectively.

Parliament and legislatures competence to make a law for a past period on a subject depends upon their present competence to legislate on that subject.

State of Tamilnadu. V. Arroan sugars Ltd

- In this case SC held that the power to make retrospective legislation allows the legislature to eradicate an amending act completely and restore the law as it existed before the amending act.

P. Kannadasan v. state of Tamil Nadu

- The legislature may make a law by retrospective legislation which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.

Delhi cloth mills and general co.ltd v. CIT,Delhi

- in this case lord Blanesburg observed that “ provisions which touch a right in existence at the passing of the statute are not be applied retrospectively in the absence of express enactment or necessary intendment.

Keshavan v. state of Bombay

- SC held that it is a cardial principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective.
- **Statutes dealing with procedure:** In the words of lord denning “ the rule that an act of parliament is not to be given retrospective effect applies only to statutes which affect vested rights. It does not apply to statutes which only alter the form of procedure or the admissibility of evidence or the effect which the courts give to evidence. (no one has the vested rights in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being or for the court in which the case is pending.)
- **Recent statements of the rule against Retrospectivity:** In recent years the rule against retrospective operation has been stated avoiding classification of statutes into substantive and procedural and avoiding use of words like existing or vested.
- **Language not always decisive:** Although the language used is the most important factor in question on applicability of a particular statute to past events but it cannot be said that use of present tense or present perfect tense is deceive of the matter that the statute does not draw upon past events for its operation.
- **B) Statutes relating to Succession:** When any statute regulates the order of succession, it applies only to those successions which open after the coming into force of law that alters the order of succession. Those statutes which regulate the succession are not applicable to already opened successions because the effect of its application will be to divest the estate from persons in whom it had become vested prior to coming into force of the new statute.

Eramma v. veerupana

- Section 8 of the Hindu succession Act 1956 enacts that the property of a male Hindu dying (at the time of death) intestate shall devolve according to the provisions of the act. It was held that where succession opened before the act, it will not apply.

Kotturuswami v. veerava

- Section 14 of the Hindu succession act 1956 was considered which enacts that “ any property possessed by a female Hindu, whether acquired before or after the commencement of this act, shall be held by her as full owner thereof and not as a limited owner.
- **Statutes relating to transfers and contracts:** Those statutes which prescribe formalities for effecting a transfer are not applicable to transfer made prior to their enforcement.

• Ram Kristo v. Dhankisto

- in this case court was held that when transfer is made in contravention of a statutory prohibition it is invalid and it is not validated by repeal of the statute containing the prohibition.
- **Statutes of limitation:** Statutes of limitation do not create any right but prescribe periods within which legal proceedings may be instituted for enforcement of rights which exist under substantive law and when these prescribed periods expire the right of suit comes to an end.

New india insurance co ltd v. Smt Shanti misra

- Court held that similarly, when any later act provides for a shorter period of limitation than that provided by the earlier act, if later act is not clear regarding this right of a suit is subsisting according to the earlier act on the date when the later act comes into force, it will not be taken to be extinguished.

- **Penal statutes:** Penal statutes are generally considered prospective

• W. Ramnad Electric Distribution co. ltd v. state of Madras

- In this case SC was held that those penal statutes which create offences or which have the effect of increasing penalties for existing offences will only be prospective by reason of the constitutional restriction imposed by Article 20 of the constitution.
- **Remedial statutes:** Similarly the fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective.

• Sukhribai v. Pohkal Singh,

- in this case sec-2(4) of the Hindu women’s right to separate residence and maintenance act,1946 was considered. This section entitled a Hindu married women to claim separate

residence and maintenance from her husband if he marries a again'. It was held that this would only apply to cases where the husband married again after the date on which the act came into force.

- **Statutes relating to appeals:** The right of appeal has been recognized by judicial decisions as a right which vests in a suitor at the time of institution of original proceedings. An appeal is defined as the right of entering a superior court and invoking its aid and interposition to redress an error an error below. After the institution of original proceedings if any change in the law relating to appeal occurs which adversely affects this vested right of appeal is presumed not to be retrospective.

- **Pending proceedings: 1. Alterations in matter of procedure:-**

As a litigant has no vested right in any matter of procedure, alterations in procedural law are generally held to be retrospective in the sense that they apply to future as well as to pending actions.

- Sec-342-A of the crpc,1898, introduced amending act 26 of 1954 was construed in **Ananth Gopal Sheorey v. State of Bombay**. This section enacted that any accused person shall be a competent witness and made give evidence on oath in disproof of the charges. It was held to be applicable to a prosecution which was pending at the time the amending act came into force.
- **Alteration of substantive Rights:** Procedural Amendments Affecting Vested Substantive Right of a Litigant are Prospective In Application Unless Specifically Made Applicable Retrospectively.
- The Hon'ble Supreme Court in **Keshvan v. State of Bombay**. held that it is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation.
- Substantive rights are basic human rights possessed by people in an ordered society and include rights granted by natural law as well as the substantive law.

- **Gorikapathi v. N.S.Choudary**

- **Presumption against exceeding constitutional powers**

- A) Legislative powers
- B) Presumption of Constitutionality
- C) Rule of construction
- **A) Legislative powers:** Article 246 and lists I,II & III in the 7th schedule of the constitution confer legislative powers on parliament and state legislatures. Parliament has exclusive power to make laws with respect to any of the matters in List-I. while state legislature have exclusive power to make laws with respect to matters in List-II. Whereas both the parliament and state legislatures have power to make laws with respect to

matters in list III. List-1 is known as Union List, List II as the state List and list III is called the concurrent List.

- **Naga Peoples movement of human rights v. UOI**

- It was said that parliament has the power to make the laws and it is required to see whether the subject matter falls in list-1. Because parliament does not have the power to make the law if subject matter falls in List-II. It means subject matter is not outside the legislative competence of the parliament.
- **Presumption of constitutionality:** there is a presumption of constitutionality of the rule. The court ought not to interpret the statutory provisions, unless compelled by their language, in such a manner as would involve its unconstitutionality, since the legislature or the rule making authority is presumed to enact a law which does not contravene or violate the constitutional provisions. (Art-13 explain)
- **Rule of Construction:** At the time of interpretation, what the interpretation made by the interpreter, it should not exceed the jurisdiction. Gwyer justice observed that “ there is a general presumption that a legislature does not intend to exceed its jurisdiction, and there is ample(full) authority for the proposition that general words in a statute are to be construed with reference to the powers of the legislature which enacts it.
- As the general words are construed in a limited sense to avoid the statute becoming unconstitutional, in the same way the words may be construed in the wider sense when the narrow construction renders the law unconstitutional and that result can be avoided by giving the words a wider meaning.

6. Explain what are the effects of expiry of temporary statute and Consequences of Repeal of statute.

- Introduction: Statute means a written law passed by a legislative body. A **statute** is a formal written enactment of a [legislative](#) authority that governs a [city](#), [state](#), or [country](#).^[1] Typically, statutes command or prohibit something, or declare [policy](#). Statutes are rules made by legislative bodies; they are distinguished from [case law](#) or [precedent](#), which is decided by [courts](#), and [regulations](#) issued by [government agencies](#).

Statutes can be divided into Two types

1. Perpetual Statutes
 2. Temporary Statutes.
- A **perpetual statute** refers to a **statute** without limitation as to time. The continuance of a **perpetual statute** is not limited, although it is not expressly declared to be so. A statute may be perpetual or temporary. A statute becomes perpetual when no time is fixed for its duration and such a statute remains in force until it is repealed either by express provision or by implication. A perpetual statute is not perpetual in the sense that it cannot be repealed but it is perpetual because it is not abrogated by efflux of time or by non user.
 - A statute is Temporary when its duration is for a specified time and it expires on the expiry of the specified time unless it is repealed earlier. A **temporary statute** refers to a **statute**, the duration of which is limited at the time when it was enacted. It continues in force until the time of its limitation has expired, unless sooner repealed.
 - After a temporary statute expires, it cannot be made effective by merely amending the same. Revival of the expired statute can be done only by re-enacting a statute in similar terms or by enacting a statute expressly saying that the expired Act is herewith revived.
 - **Effect of Expiry of Temporary Statutes:**
 1. **legal proceedings under expired statute.**
 2. **Notifications, orders, rules made under temporary statute.**
 3. **Expiry does not make the statute dead for all purposes.**
 4. **Repeal by a temporary Statute.**
 - **1. Legal proceedings under expired statute:** a question often arises whether the legal proceedings under the expired statutes can be initiated or continued after the act expired. Generally we presumed that we cannot initiate or taken against the proceedings under expired statutes. Because when statute expires automatically proceedings also terminated or comes to an end.

Very often the legislature itself enacts a saving provision in the temporary act which is similar in effect to section 6 of the general clauses act 1897. It means if any saving provision is there in the temporary act regarding continue the proceedings even after expire a statute.

- **Krishnan v. State of Madras**

- In this case SC was held that if such a saving provision is not present the normal rule is that proceedings taken against a person under a temporary statute ipso facto terminate as soon as the statute expires.

- **Royal Corporation v. Director of Enforcement**

- In this case SC was held that proceedings will not terminated if statute were expired and through by the new act can continue or initiating the proceedings.
- **2. Notifications, orders, rules made under temporary statute:** The normal rule is that when a temporary act expires, any notification, appointment, order, scheme, rule, bye-laws made or issued under the statute will also come to an end with the expiry of the act and will not be continued even if the provisions of the expired act are Re-enacted.
- **3. Expiry does not make the statute dead for all purposes:** Expiry does not make the statute dead for all purposes even in the absence of a saving clause. The nature of the right and obligation resulting from the provisions of the temporary act and their character may have to be regarded in determining whether the said right or obligation is enduring or not.

- **State of Orissa v. Bhupendra Kumar**

- In this case SC was held that a person who has been prosecuted and sentenced during the continuance of a temporary act for violating its provisions cannot be released before he serves out his sentence, even if the temporary act expires before the expiry of full period of the sentence.
- **4. Repeal by a Temporary Statute:** When a temporary statute affects a repeal of an existing statute, a question arises whether the repealed statute revives on the expiry of the repealing statute. In this regard a statute which is repealed by a temporary statute will revive or not on the expiry of the repealing statute will depend upon the construction of the repealing statute.

- **Repeal may be express or implied**

- The general rule is that “the power of a legislative body to repeal a law is co-extensive with its power to enact such a law. A **repeal** may either be **express** or implied. An **express repeal** is one where it literally states that it **repeals** a certain provision. or section of a law or the whole statute itself. On the other hand, an implied **repeal** is one. where a subsequent law is irreconcilable with a first law.

- **Ramakrishna v. Janpad Sabha**

- In this case SC was held that if legislative body has no power to enact a law on particular subject-matter has also no power to repeal the same.

- **Hukumdev v. Lalitnarain**

- In this case SC was held that when a general act says that its provisions shall apply unless 'expressly excluded' by any special law it does not mean that the exclusion must be by express words only, it may be by necessary implication also.
- **Express Repeal:** Any particular form of words is not necessary to bring about an express repeal. The most common words for express repeals include is or are hereby repealed shall cease to have effect and shall be omitted. When a new provision is substituted in place of an existing provision or a new provision is made in supersession of an existing, then the declaration of invalidity of new provision on the ground of want of competence will also invalidate the repeal.
- **Express or implied repeal.** The **repeal** of a statute may be either **express** or implied. **Express repeal** occurs where **express** words are used in a statute to repeal an earlier statute. They are now usually included in a table in a schedule to the statute, for reasons of convenience.

- **What is the process to repeal law**

- The repeal of a law must be approved by both the House and the Senate and signed into law by the president. If a Constitutional Amendment is to be repealed, it requires the same process that was required to make it law. The doctrine of implied repeal is a concept in constitutional theory which states that where an Act of Parliament or an Act of Congress (or of some other legislature) conflicts with an earlier one, the later Act takes precedence and the conflicting parts of the earlier Act becomes legally inoperable.

- **Municipal Council, Palai v. T.J. Joseph**

- In this case SC has indicated that the test for determining repugnancy under 254 of the constitution may be applied for solving a question of implied repeal and that it should be seen.
- A. whether there is direct conflict between the two provisions.
- B. whether the legislature intended to lay down an exhaustive code in respect of the subject-matter replacing the earlier law.
- Whether the two laws occupy the same field

- The doctrine of implied repeal is based on the theory that the legislature which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions.

Consequences of Repeal:

- 1. a statute its repeal is as completely eradicated as if it had never been enacted. Except the proceedings which were commenced, prosecuted and brought to a finality before the repeal, no other proceeding under the repealed statute can be commenced or continued after the repeal.
- 2. if one act repealed by a second act which is again repealed by a third act, the first act is not recovered unless the third act makes an express provision to that effect.
- 3. saving rights acquired
- 4. it will not affect right, privilege, obligation or liability acquired under the repealed enactment.
- 5. it will not affect any investigation, legal proceedings or remedy.
- 6. it does not affect any penalty, forfeiture and punishment .

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7. Explain the principles of interpretation of statutes affecting jurisdiction of courts.

Statutes affecting jurisdiction of courts can be discussed under three heads.

1. general principles

2. the extent of exclusion

3. Exclusion of jurisdiction of superior courts.

- **1. General principles:** General Principles regarding statutes affecting jurisdiction of courts will be discussed under four sub-headings.
- A. Exclusion must be openly expressed or clearly implied.
- B. Three classes of cases
- C. Cases of breach of statutory duty
- D. Omission to exercise statutory power
- **A. Exclusion must be openly expressed or clearly implied:** The provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities other than civil courts are strictly construed. There is strong presumption that civil courts have jurisdiction to decide all questions of civil nature. Therefore, the exclusion of jurisdiction of civil courts is not to be voluntarily indirect and such exclusion must either be openly expressed or clearly implied.
 - **Ramayya v. Laxminarayan**
- In this case privy council held that the existence jurisdiction in civil courts to decide questions of civil nature is the general rule and exclusion is an exception of this rule. Therefore, the burden of proof to show that jurisdiction is excluded in any particular case is on the party who raises such a contention or argument.
- **B. Three classes of cases:** wolver Hampton New Waterworks Co. v. Hawkesford in this case justice Willes stated that there are three classes of cases in which a liability might be established, founded upon statute.
- **1. in first class case** where there was a existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary

implication exclude the common law remedy, the party suing has his choice to pursue either common law or the statutory remedy.

- **2. The second class of case** is, where the statute gives the right to sue merely, but provides no particular form of remedy; the party only proceeds by action at common law.
- **3. In third class cases**, where a liability not existing at common law, at the same time gives a special and particular remedy for enforcing it. the remedy provided by the statute must be followed.
- **C. Cases of breach of statutory duty**: the Supreme Court accepted this principle in Premier Automobiles Ltd.'s case. In this case SC was held that when statute creating the duty provides for the penalty of fine or imprisonment for breach of the duty it is regarded as the only manner of enforcing the duty.
- **D. Omission to exercise statutory power**: subject to exceptional cases, the normal rule is that an omission by a public authority to exercise a statutory power conferred for the benefit of the public does not give rise to breach of duty sounding in damages. There are two exceptions regarding this
 - 1. that in the circumstances it would have been unreasonable for the authority not to have exercised the power, so that in effect there was a public law duty to act.
 - 2. that there were exceptional grounds to hold that policy of the statute conferred a right to compensation on persons who suffered loss if the power was not exercised.
 - **Union of india v. United insurance Co. Ltd**
- In this case SC was also accepted these exceptions. In this case, an express train had collided with a passenger bus at unmanned level crossing and the union of india maintaining the railway was held guilty of negligence being in breach of its common law duty for failing to convert the unmanned level crossing into a manned level crossing having regard to the volume of traffic and in providing proper signboard for warning the road traffic. The union of india was also held liable for omission to exercise the power under section 13 of the railways act which provides that the central government may require a railway administration to erect fences, screen gates.

- **2. the extent of exclusion:** The extent of exclusion can be discussed under two heads.
 - 1. construction of exclusionary classes
 - 2. cases of nullity.
- **1. construction of exclusionary clauses:** There is strong presumption that civil courts have jurisdiction to decide all questions of civil nature. Therefore, the exclusion of jurisdiction of civil courts must either be expressed or clearly implied.
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- **2. cases of nullity:** question is when can order passed by a tribunal or authority of limited jurisdiction be held to be a nullity.

Ujjam Bai v. State of U.P.

- SC was held that an adjudication (decision) by a tribunal of limited jurisdiction is void. When
 - 1. action is taken under an ultra vires statute (beyond the power).
 - 2. the subject matter of adjudication is beyond its competence
 - 3. the order passed is such which it has no authority to pass.
 - 4. the adjudication is procedurally ultra vires being in violation of fundamental principles of judicial procedure and
 - 5. jurisdiction is assumed by wrongly deciding jurisdictional questions of law or Fact.
- 3. Exclusion of jurisdiction of superior courts:** The jurisdiction conferred by the constitution can be taken away only by amending the constitution and not by statutory enactments

8. Explain why penal statutes should be construed in a strict sense.

- Introduction: **Remedial statute** means A law enacted for the purpose of correcting a defect in a prior law, or in order to provide a remedy where nothing previously existed. A remedial statute refers to a statute enacted to cure a defect in a prior law.
- **Penal Statute** Means **Penal statute** is a **statute** that defines a criminal offence and prescribes its corresponding fine, penalty, or punishment. **PENAL STATUTES** those which inflict a penalty for the violation of some of their provisions. **Penal statute** is also known as penal laws.

Differences between Remedial and Penal statute

- 1. Remedial statutes are also known as welfare, beneficent or social justice oriented legislation. Penal statutes are those which provide for penalties for disobedience of the law and are directed against the offender in relation to the state by making him liable to imprisonment, fine, forfeiture or other penalty.
- 2. A remedial statute receives a liberal construction in favour of the class of persons for whose benefit the statute was enacted while penal statutes is strictly construed in favour of the alleged offender.
- 3. Remedial statute can remove the mistakes and errors in earlier statute but penal statute punish the offender who violates the provisions of law.
- **Liberal Construction of Remedial Statutes:** The labour and welfare legislations should be broadly construed and while construing them due regard to the directive principles of state policy and to any international convention on the subject must be given by the courts.

• M.C. Mehta v. State of Tamilnadu

- The child labour act was construed. The court, having regard to the directive principles of state policy and fundamental rights in the constitution, international convention on the right of the child, not only directed a survey of child labour and its prohibition but also directed payment of Rs 25,000/- as contribution by the employer to the child labour-Rehabilitation-cum-welfare fund or alternative employment to parent/guardian of the child to better poverty and lacks funds for welfare of the child which is the main cause of child labour.

• Lucknow development authority v. M.K. Gupta

- In this case SC was held that in case of a social benefit oriented legislation like the consumer protection act, 1986 the provisions of the act have to be construed(interpretation) in favour of the consumer to achieve the purpose of the enactment but without doing violence to the language.

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- **Alembic Chemical Works v. workmen**

- If a section of remedial statute is capable of two constructions, that construction should be preferred which further the policy of the act and is more beneficial to those in whose interest the act may have been passed.

- **Sadhoo v. Haji Lal Mohd. Bidi works**

- In this case SC interpreted section 31(2)(a) of the Beedi and cigar workers act, 1966. This section 31(2)(a) provides that the employees discharged, dismissed or retrenched may appeal to the prescribed authority. It was held that by the liberal construction of the section there need to be no written order of termination to enable the employee to appeal and that an employee who was terminated by stopping him to enter the place of work could appeal to the prescribed authority.

- **Kuldip kaur v. surinder Singh**

- In this case the SC dealt with sec-125 (3) of the Cr.P.C. This section provides for recovery of maintenance granted in favour of a wife or minor child by issue of a warrant if the order for maintenance is not complied with or without sufficient cause and empowers the magistrate, if the amount still remains unpaid to sentence the person against whom the order is made to imprisonment for a period of one month.

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- **Strict Construction of Penal Statutes:** The principle that a statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case. It is now only of limited application and it serves in the selection of one when two or more constructions are reasonably open. The rule was originally evolved to mitigate the rigour of immoral sentences for minor offences and although that necessity and that strictness has now almost vanished, the difference in approach made to a penal statute as against any other statute still persists.

- According to Lord Esher, the settled rule of construction of penal sections is that 'if there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient or merciful one.'

- **Tolaram v. State of Bombay**

- The rule stated by Chief Justice Mahajan is also relevant here. "If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature."

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- **R V/s. HUNT**

- Sec-105 of the Indian evidence Act 1872 says that the burden to prove that the case of the accused falls within an exception to a statutory offence lies on him . But the question whether the defence set up by an accused is really a defence of an exception or a defence setting up non- existence of a fact which is an ingredient of the offence to be proved by the prosecution depends upon the construction of the particular statute

Sunjay Dutt v. State, through CBI, Bombay.

- In this case Section 5 of the Terrorist and Disruptive Activities Act, 1987 was construed. This section provided that where any person, in possession of any arms and ammunition specified in columns 2&3 of the category I or III (A) of schedule I to the Arms Rules, 1962 or bombs, dynamite or other explosive substances unauthorized in a notified area, he shall notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall be liable to fine.
- Section 5 of the Act required 3 ingredients to be proved for an offence falling under that section.
 - 1. possession of any of the specified arms and ammunitions (bullets).
 - 2. unauthorisedly
 - 3. in a notified area.
- **Men's rea in statutory offences:** The principle related to men's rea is expressed in the maxim “Actus non facit reum nisi mens sit rea” which means that the existence of a guilty intent is an essential ingredient of a crime at common law. Men’s rea is the state of mind stigmatized as wrongful by the criminal law which when compounded with the relevant prohibited conduct constitutes a particular crime.
- Crimes involving mens rea are of two types.
 - 1. Crimes of basic intent
 - 2. Crimes of Specific intent
- in crimes of basic intent, the mens rea does not go behind the actus reus. While in crimes of specific intent, mens rea goes beyond the contemplation (observation) of the prohibited act and foresight of its consequences and has a purposive element.

- **Kalp Nath Rai v. State**

- In this case, the SC considered sec-3(4) of the Terrorist and Disruptive Activities Act 1987. This provided that ‘whoever harbours any terrorist’ shall be punishable with

imprisonment which shall not be less than 5 years but which may extend to imprisonment for life. It was held by the court that the section provided for severe punishment and could not be held to have excluded men's rea and a person giving shelter to a terrorist without knowing that he was a terrorist could not be punished under the section.

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- **Vicarious liability in Statutory Offences:** Vicarious liability is one of those liabilities that is imposed on one person for the wrongful actions of another person. Such a liability arises usually because of some or the other legal relationship between the two. The important point to be noted to impose such a liability on some other person is that an act on which such a liability is imposed should have happened in the course of employment.
- A person can be criminally liable for the acts of another if they are a party to the offense. PC makes a departure from the general rule in few cases, on the principle of respondent superior. In such a case a master is held liable under various sections of the IPC for acts committed by his agents or servants.
- Section 149 provides for vicarious liability, it states that if an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed.

9. Explain different kinds of pleasures and pains

- **Introduction:** Pleasure & Pain: Two Sovereign Masters. Bentham in enunciating his concept of utility, speaks to the tendency of a thing to secure some good and to shield from evil. Evil means pain ; Good means pleasure. Hence, pleasure and pain become the starting point the first link in the chain-to define utility. A comparative estimate or calculus of pains or pleasures should be made in every process of providing orderly reasoning.
- Bentham's theory is clear. We owe all our ideas, and, we refer all our decisions to the two sovereign masters, namely, pleasure & pain. To seek pleasure, and, to avoid pain is the sole aim of mankind. Every moralist and every legislator must study mainly this naked truth of life - an unmistakable reality of life. Every aspect of utility is subject to these two motives of human being i.e., seeking pleasure and shunning pain
- The concept of sanction (legal force) is also based on pleasures and pains covered under the heads: Physical, Moral, Political & Religious. These four sanctions have different impacts on individuals.
- The measure of pleasure & pain is ably done by Bentham by referring to the value of pleasure. He finds four circumstances as to
 - i) its intensity (strength)
 - ii) its duration
 - iii) its certainty &
 - iv) its proximity(closeness)
- **Kinds of Pleasure**
 - **The pleasures of sense**
 - **The pleasures of wealth**
 - **The pleasures of skill**
 - **The pleasures of amity**
 - **The pleasures of good name**
 - **The pleasures of power**

- **The pleasures of piety**
- **The pleasures of benevolence**
- **The pleasures of malevolence (ill will)**
- **The pleasures of memory**
- **The pleasures of imagination**
- **The pleasures of expectation**
- **The pleasures of relief**

- **Kinds of Pain**

- **1. Pain of disappointment piety goodness**
- **2. Pains of sense**
- **3. Pains of Bad Reputation**
- **4. Pains of' Benevolence : When others are suffering, we experience some pain**
- **5. Pains of Malevolence: When a person whom we hate gets happiness or becomes prosperous, we get this pain**
- **6. Pains of memory**
- **7) Pains of imagination**
- **8) Pains of fear.**
- **Principle of Sympathy & Antipathy.(virodhi) (Arbitrary Principle)** The principle of Sympathy and Antipathy is also called the Arbitrary principle. According to this, certain actions are approved or disapproved, without giving any reason for the decision, except the decision itself. An action is good or bad according to the whims and fancies of an individual.
- **Causes of Antipathy:** Bentham observes that Antipathy has its tremendous influence on morals and legislation. What factors give birth to Antipathy?
 - i) Repugnance (dislike of sense) of sense: something which the senses do not agree, to accept. Animals are killed as they are brought of as ugly.
 - ii) 'Wounded Pride(hemme): When a person does not accept but shows disregard there is wounded pride. Contempt grows.

- iii) Power Controlled: We find our power is limited and bounded. This is a secret pain.
- iv) Confidence in the future weakened or destroyed. Falsehood makes us doubt and we do not rely upon such a person.
- v) The desire of unity : Unanimity is very pleasing to us. There would be mutual confidence and increase of pleasure.
- vi) Envy: When certain advantages are given to some, others envy. With envy person may become an ascetic. Envy leads to reducing the pleasure.

10. Doctrine of Utility:

- Bentham's book 'The Theory of Legislation' is a masterpiece in the field of law. Bentham's objective is to educate the legislators and to provide them with a sound philosophy broad-based on the theory of Utilitarianism. Legislation is a science and an art. It is a science as it contains certain basic principles to do good to the community and it is an art when it provides for the various means to achieve the good.

The objective of the legislator must be to do public good. He may base his reasons on general utility. Utility is the basis of Bentham's theory. The principles of utility form the basis of his reasoning (intellectual), On an analysis of the principles of utility, we find that all our ideas, judgments and determinations spring from certain motives: pleasure and pain. It is the duty of the moralists and the legislators to make a great study of these two concepts pleasure and pain.

- Utility is an abstract term. It expresses some propensity (olavu) or tendency of a thing to prevent some evil or to do some good. Evil is pain or the cause of pain. Good is pleasure or the cause of pleasure. Hence, anything which conforms to this utility, brings happiness to the individual. The legislator must have the objective to enlarge the total sum of the happiness of the individuals that form the community.
- Utility is the first principle-the first link in the chain. The legislators reasoning for making a particular law, must be based on this principle. Utility has a commendable logic behind it.
- In making law, the legislator must calculate or compare the pleasure or the pain that it brings about. Here pleasure & pain are used in the ordinary meaning i.e., what everybody feels when put in a situation it is the experience of the farmer and the prince, the unlearned and the philosopher. Utility as a principle has its essence in the virtue and the vice. Virtue is good as it brings pleasures, vice is bad as it brings evil. Moral good is good as it brings pleasure to the man, Moral evil is bad as it brings pain to the man.
- The legislator who believes in the theory of utility, finds, in the process of law-making, a number of these merits and evils, that the proposed law may bring about. His objective must be to bring more benefit, He must also distinguish pretended merits and evils from the real merits and evils

These are the sides of the concept of utility and based on this exposition Bentham develops his philosophy of utilitarianism. His works 'the theory of legislation' and 'Introduction to the principles of Morals and Legislation', form a manual of instructions to a legislator. A knowledge of these, makes the legislator appreciate the moral and legal philosophies of Bentham and also to get an insight into the sociology of law.

- His principle of utility, based on pleasure & pain-is applied by him, to explain the basis of political obligations; it is the end objective of Govt. and legislation. Man obeys the law and lives in a politically organised society for it is the best way of securing his interests and happiness.

- In fact, political life is based on the principles of utility. Hence, Laws, the measures of the Government, political institutions and rights are to be judged and justified according to the principles of utility. The greatest happiness of the greatest number is the basic of utility.

Objections

- Though this theory is sound and practicable some objections have been raised.
- i) Some unimportant objections may be raised based on unwritten difficulties. These are not substantial, but still require careful attention.
- ii) The language used to explain the result of utility is advantage.
- iii) It is commented that the principle of utility is only a revival of epicureanism.
- iv) What is utility is judged by each person and hence, it is objected that it loses its force.
- v) The next objection is put on the basis of the religious principle; the will of God; it is universal, sovereign and decides the good and evil. Hence, it is the only rule.
- vi) The next objection is that when utility is to be followed in politics, there would be a difference. The aim of good morals is different from the aim of politics. Bentham answers saying that the ultimate aim of both is securing happiness.
- vii) The next objection is, that which is useful may not be just and honest. This is not so. The collective idea is important.
- viii) Lastly it may promote opportunism in people because under a contract a person can commit a breach for his own advantage. This is also not true Bentham says. It is the utility of contract which is the force to it, not the agreement itself.

11. Explain the statutes affecting the crown of the State

Statutes affecting the crown or the state can be discussed under two heads. They are

1. the rule of common law
2. the rule in India.

discussed the rule of common law under two sub-heads

A. General principles

B. Extent of the Rule

- A. General Principles: in the words of plowden “it is to be intended that when the king gives his assent he does not mean to bias himself or to bar himself of his liberty and his privileges, but assents that it be a law among his subject. The rule of English law is that no statute binds the crown unless the crown is named therein either expressly or by necessary implication because a statute is presumed to be enacted for the subjects and not for the king. There is one exception to the rule which is that the crown may be bound by ‘necessary implication’.

- **Bombay province v. Bombay Municipal Corporation.**

- In this case SC was held that the common law rule that the crown was not bound by a statute unless named expressly or by necessary implication was applied by the Privy Council before the constitution was adopted. But it is continued to apply to india even after the constitution in the form that the state is not bound by a statute unless it is so provided in the express terms or by necessary implication.

- **State of west Bengal v. corporation of Calcutta**

- in this case SC was over ruled its view. As a result of this decision, the rule that applies in india is, that a “general act applies to citizens as well as to state unless it expressly or by necessary implication exempts the state from its operation.

- **Lucknow development authority v. M.K.Gupta**

- It was held that the new rule applies to government bodies and corporations constituted under special acts.

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- **state of Bihar v. Sonabati Kumari**

- SC was held that if a state disobeys a temporary injunction, its property is liable to be attached under order 39, Rule 2(3) of the civil procedure code, 1908. The state is bound by the code of civil procedure, the scheme of the code being that subject to any special provision made in that regard as respects the government, it occupies the same position as any other party to a proceeding before the court.

- **LDA V. M.K. GUPTA**

- It was held that the consumer protection act 1986 applied to a statutory authority and a government or semi-government body or a local authority in the same way as it applies to private bodies for the act does not either expressly or impliedly indicate that these bodies are excluded from the purview of the act.

- **Western coal fields Ltd v. special area devp, authority**

- In this case SC was held that when a company is registered under the companies act, it does not become a government department even if its share capital be wholly subscribed by the government.

- **State of west Bengal v. corporation of Calcutta**

- In this case justice Bhagawati observed that “particular care should be taken in scrutinizing provisions of a taxing or penal Act. If the application of the act leads to some absurdity, that may be a ground for holding that the state is excluded from its operation by necessary implication. If the only penalty for an offence is imprisonment, the state cannot be convicted of the offence, for the state cannot be locked up in prison. If the penalty for offence is fine and the fine goes to the penal provision does not bind the state. And what matters state is not liable related that issue state is not liable.

- **Lord Advocate v. Dumbarton Distt. Council**

- in the words of Lord Keith, “the crown is not bound by any statutory provision unless there can somehow be gathered from the terms of the relevant Act an intention to that effect. The crown can be bound only by express words or necessary implication”.

Lord COKE indicated three kinds of statutes which bound the king without specially naming him. They are

1. Statutes for maintenance of religion, learning and the poor;
2. Statutes for suppression of wrong;

3. Statutes that tend to perform the will of a founder or doner.

In Bacons Abridgement it is stated that “where an Act of parliament is made for the public good, the advance of religion and justice, and to prevent injury and wrong, the king shall be bound by such act, though not particularly named therein”.

- B. Extent of the Rule:

the protection of the rule of presumption that the crown is not bound by statutes extends to three classes of persons.

1. the sovereign personally
2. his servants or agents acting as such
3. persons, who though not strictly servants or agents.

Mersey Docks & Harbour Board v. Cameron

- In which a nonprofit earning statutory corporation, not under control of crown or a minister and whose revenue were not crown revenues claimed immunity from local rates and the question arose before the house of lords whether such a corporation could claim crown privileges were not accorded to the corporation.
- in this case court held that if it is not property of crown, ministers, servants and agents they are held liable and could not get the immunity from local rates.
- **Rule in India:** The rule in India ‘A statute applies to State as much as it does to a citizen unless it expressly or by necessary implication exempts the State from its operation.
- If it is express in the Statutes
- Necessary Implication

