

Subject: Interpretation of statutes.

Unit I

Topics:

1. Introduction
2. Classification of statutes.

INTRODUCTION

Interpretation

Literally speaking, the word interpretation means to interpret and the word interpret means either to find meaning or to express meaning.

Find Meaning : to decide what the intended meaning of something is?

Express Meaning : To express your own ideas about what the intended meaning of something is?

According to Subba Rao J. (State of Jammu and Kashmir V. Thakur Ganga Singh, 1960 2SCR 346) Interpretation is the method by which the true sense or the meaning of the word is understood.

According to Gray : The process by which a Judge (or indeed any person, lawyer or layman who has occasion to search for the meaning of a statute) constructs from the words of Statute book a meaning which he either believes to be that of a legislature or which he proposes to attribute to it, is called interpretation.

Interpretation and construction have been used interchangeably. Salmonds describes Interpretation and construction as the process by which courts seek to ascertain the meanings of the legislature through the medium of the authoritative form in which it is expressed.

But according to Cooley interpretation differs from construction.

To him, Interpretation is the art of finding out the true sense of any form of the words; that is, the sense which their author intended to convey; and of enabling others to derive from them the same idea which the author intended to convey.

Construction on the other hand is the drawing of conclusion respecting subjects that are beyond the direct expression of the text; conclusion which are in spirit, through not within the letter of the Law.

According to Eugene Wambaugh the two expressions are in practice synonymous.

Lords Wrenbury in Viscountess Rhonda's claim (1922) AC said that distinction, however between the two is of no great consequence as the dominant purpose in each case is to ascertain the intent of the legislative.

Intention of the legislative.

When confronted with the task of interpreting a statute judges say their task is to ascertain the intention of the legislature [Parliament].

How to determine the intention of the legislative?

Primarily in all cases, says Austin the intention of the legislature is to be sought in the actual words used by him which are to be interpreted in ordinary and natural meaning

1. In *Sussex Peerage Case* (1844) 8ER1034, it was laid down that the only rule for the construction of the Acts of Parliament is, that they should be construed according to the intention of the Parliament.
2. *Crawford V. Spooner* 1846 6MOO.PC1 :
The intention and the meaning of the statute is to be sought in the words used.
3. *New Piece Goods Bazar Co.V.CIT* AIR 1950 SC165.
The Apex court laid down:
“It is elementary that the primarily duty of a court is to give effect to the intention of the legislature as expressed by the words used by it and no outside consideration can be called in to find that intention.”
4. *State of Gujarat V. Salim bhai Abdul Gaffar Sheikh* AIR 2003 SC 3224.
It is the duty of the court to find out the true intention of the legislative and in order to find out the intention of the legislature, the statute must be read as a whole.
5. *Chandrashekariah V. Janekare C. Krishna* AIR 2013 SC 726.
First and primarily rule of construction is that the intention of the legislative must be found in the words used by the legislature itself.

The same view has been expressed in a large number of cases. However, doubts have been raised that the words of the statute can't always reflect the true intention of the legislature.

According to Radin – The Phrase 'intention of the legislature is a futile bit of fiction'. A legislature has no intention whatever in connection with the words which two or three drafted, which a considerable number rejected, and in regard to which many of the approving majority might have had, after demonstrably did have different ideas and beliefs.

Lord Watson in *Salomon v. Salomon and co. Ltd.*(1897)AC 22, Observed that the intention of the legislature is a very slippery phrase and is difficult of being comprehended in a straightjacket formula.

Some important questions about intention

Whose Intention?

Sometimes where apparently there seems to be a conflict between the intention of different shades of opinion in the legislature. Some legislatures may not expressly manifest their intention. Some may not attend voting, some may go only by the party dictates. Sometimes legislation is passed or defeated by a margin of few votes only. Can it be called strictly or even loosely the intention of the legislature? Whose intention? Party's intention or Parliament's intention.

Laws are drafted by draftsmen. Whose intention? Reforms or measures are suggested by Reform's Committee, Law Commissions etc. Whose intention? Sometimes the language used in the statute conveys different meanings. In such situation the role of the judiciary to gather the intention increases .

Accordingly in *Coro Craft Ltd. V. Pan American Airways* (1968)3 WLR 714, it was observed that the duty of the judges is to expound and not to legislate is a fundamental rule, but this is now and has ever been merely an aspiration. There is a marginal area in which the courts "mould or creatively interpret legislation" and they are thus "finishers ,refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing".

Krishna Iyer J. followed the judgment in *State of Haryana V. Sampuran Singh* AIR 1975 SC 1952.

Earlier in 1974 in *State of Punjab V. Amar Singh* AIR 1974 SC 994, the court observed that the major premise of statutory construction is that the rule of law must run close to the rule of life.

In *Bhatia International V. Bulk Trading* AIR2002 SC 1432, it was observed that the conventional way of interpreting a statute is to seek the intention of the legislature. If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the legislature. This task is not as easy one and further difficulties arise on account of variety of reasons, but at the same time, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively the situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation that the courts duty to expound arises with a caution that the court should not try to legislate. The court relied on the decisions given in *Coro Craft Ltd.* and *State of Haryana v.Sampuran Singh* and laid down that:

In seeking out of different interpretations the court will adopt that which is just, reasonable and sensible rather than which none of these things as it may be presumed that the legislature should have used word in that interpretation which least offends our sense of justice.

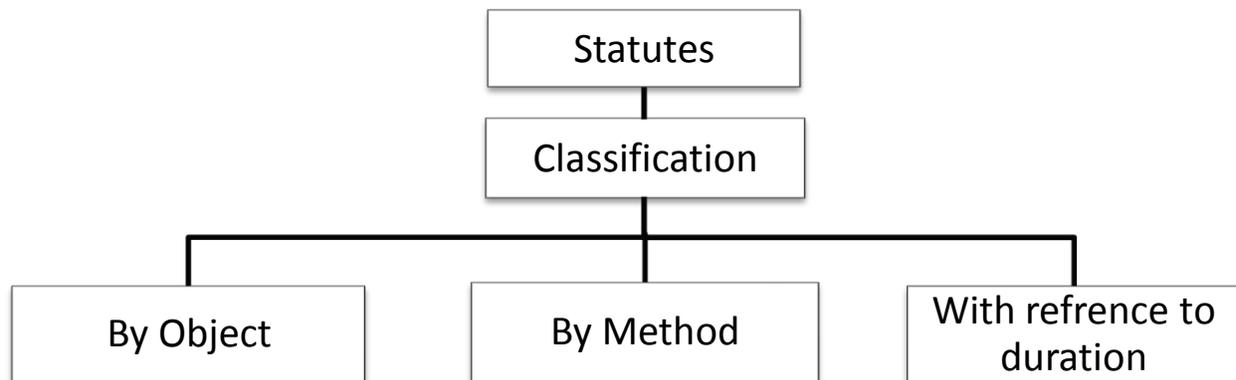
Adjudication of disputes undoubtedly is the function of the judiciary. But that does not mean that judges have no creative function at all. They have a creative role, they apply law to new conditions which would have been unknown to the framers.

In the words of Gray, judges customarily make law and that the rules laid down in their decisions are not only the sources of law but the law itself.

CLASSIFICATION OF STATUTES

Why Classification?

Classification have no other significance than as an indication as to the way they [statutes] are to be interpreted.



1. Classification by object.

- Declaratory Statutes

When there is doubt regarding the correct meaning of any statute or Act and the same is removed by passing on Act, such Act is called a Declaratory Act or Declaratory Statute. This may happen for, instance, where the courts have been interpreting a particular expression as connoting a specific meaning which in the opinion of the legislature is a wrong notion of the expression. In such case, the legislature may pass a declaratory statute declaring the correct meaning of that expression thereby setting aside the controversy regarding the correct meaning of the expression.

Craies says, that a declaration Act is an Act to remove doubts existing as to the meaning or effect of statutes, and it is also stated that the usual reason for passing a declaration Act is to set aside what parliament deems to have been a judicial error.

The Apex Court adopted the Craies definition of declaratory statute in *Central Bank of India V. Their Workmen* AIR 1960 SC12. The court said that the usual reason for passing a declaratory Act is to set aside what parliament deems to have been a judicial error.

The court also said that the declaratory Acts must be presumed to be retrospective in its operation, it doesn't reopen decided cases, but an appealable decree, and one against which an appeal has been preferred can't be regarded as a decided case.

In *Mt. Fazal Begum V. Hakim Ali*, AIR 1941Lah.22, the appellant had sued for the dissolution of her Muslim marriage on the ground of her conversion to Christian faith and suit was decreed.

During the pendency of the appeal, the dissolution of Muslim Marriages Act, 1939 came into force declaring that no Muslim marriage would stand dissolved by virtue of one of the partners of the marriage having espoused another religion. The HC decided that the appeal should be decided on the basis of new amending Act because,

inter alia it was declaratory. As soon as the enactment was passed, it amounted to a declaration that all the interpretations put by the courts upon the Mohammedan law in regard to the effect of apostasy on a subsisting marriage that apostasy ipso facto cancelled the marriage were wrong.

Commissioner of IT, Bombay V. Padar Cement Pvt. Ltd. AIR1997SC2523, the apex court observed that the amendments introduced by the finance Act, 1987 in so far as they related to section 27(iii)(iii a) and (iii b) which redefined the expression 'owner of house property', in respect of which there was a sharp divergence of opinion amongst the High Courts, was clarifactory and declaratory in nature and consequently retrospective.

- Codifying and Consolidating statutes.

According to Craies Codifying Acts codify the existing law. The object is not merely to declare the law upon some particular subject but to declare it in the form of code.

Examples: The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956.

The principles applicable to the interpretation of codifying statute were explained by Lord Hershell in Bank of England V. Vagliano, 1891 AC 107:

I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of law, and not to start with the inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with the view. If a statute intended to embody in a code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed and the very object with which it was enacted will be disturbed. Recourse may never be had to previous state of law for the purpose of aiding in the construction of provisions of the code. If provision would be of doubtful import such resort would be perfectly legitimate.

In Joseph Peter V. State of Goa, Daman and Diu AIR 1977 SC 1812, the court laid down that a code is self contained and complete and that marks a distinction between a code and ordinary law.

It is only in exceptional situations like to remove some doubt or where the code is silent recourse to the [previous law may be justified. Where the language is clear no recourse to the previous law can be taken.

In W.T. Commissioner v. Chander Sen AIR 1986 SC 1753, Section 8 of the Hindu Succession Act was in question. Section 8 of the Act includes son and excludes grandson as a legal heir but includes son of a predeceased son as legal

heir. The court laid down that the express words of section 8 can't be ignored and must prevail. With that the express language which excludes son's son but includes son of predeceased son can't be ignored.

- Consolidating Statute

According to Craies consolidation is the reduction into a systematic form of the whole of the statute law relating to a given subject. The purpose of the consolidating statute is to present the whole body of statutory law on a subject in complete form repealing the former statutes.

Examples:

- (1) Arbitration and Conciliation Act, 1996 – An Act to consolidate the law on Arbitration in India - Arbitration Act 1940, Arbitration (Protocol and Convention) Act, 1937, Foreign Awards (Recognition and Enforcement) Act 1961.
- (2) The Code of Criminal Procedure 1973. Entire law relating to criminal procedure as found in different statutes has been consolidated.

In *Mac Connell v. Prill (E) and co. Ltd.* (1916) 2 Ch. 57, it was laid down that the rule enunciated by Lord Herschell with reference to codifying statutes can be usefully applied to a Consolidating and Amending statutes.

In *Sundaram Finance Ltd. v. NEPC India Ltd.* AIR 1999 SC 565, the Apex Court laid down that the Arbitration and Conciliation Act 1996 is very different from the Arbitration Act 1940. The provisions of this Act have therefore to be interpreted and construed independently and in fact reference to 1940 Act may actually lead to misconstruction.

- Remedial Statute

The term remedial means opposite to penal. It is a statute which provides a remedy. The object of remedial statute is either to redress some existing grievances or introduce some new regulation or proceeding conducive to the public good.

Remedial statutes are also known as Welfare, Beneficent or Social justice oriented legislations. These statutes keep the system of jurisprudence up to date and in harmony with new ideas or new conceptions of what Constitutes just and proper human conduct. Their legitimate purpose is to advance human rights and relationships.

In *Central Railway Workshop Jhansi v. Vishwanath* AIR 1970 SC 988, Dua J. observed:

It is probably true that all legislation in a welfare state is enacted with the object of promoting general welfare, but certain types of legislations are more responsive to some urgent social demands and also have more immediate and visible impact on social vices by operating more directly to achieve social reforms.

Examples Workmen's Compensation Act 1923, Maternity Benefit's Act, 1961. etc.

A remedial Statute receives liberal interpretation and in case of any doubt it is resolved in favour of the person for whose favour statute is enacted.

Associated Cement Companies Ltd. v. Workmen AIR 1960 SC 56.

Where the right is based on grounds of humane public policy and the statute which gives such right should be liberally construed and when there are disqualifying provisions, the later should be construed strictly with reference to the words used there in.

Liberal construction must flow from the language. In *Employees State Insurance Corporation v. M/s M.M.Suri and Associates (P) Ltd.* 1988 5 SCALE 694, it was laid down that the liberal construction does not permit extension of statutory benefit of a beneficial legislation beyond its scheme.

- Enabling Statutes.

An enabling statute enables something to be done. It basically gives power to do something. According to Craies many statutes have been passed to enable something to be done which was previously forbidden by law, with or without prescribing the way it is to be done.

He further says one of the principles of law with regard to the effect of an enabling Act is that if legislature enables something to be done, it gives power at the same time, by necessary implication to do everything which is indispensable for the purpose of carrying out the purpose in view.

For example under an Essential Commodities Act, power is given to the delegate to fix up the rates for various essential commodities like rice, sugar etc. In exercise of this power the delegate makes a rule for fixing rates of wheat

falling in the same category. Mention of rice and sugar by way of particularization or illustration would not limit the general power to fix up the price of any essential commodity.

- Curative or Validating Statute.

Sutherland says that a curative or validating statute is one which is passed to cure the defects in prior law or to validate legal proceedings, instruments or acts of public and private administrative authorities which in the absence of such Act would be void for want of conformity with existing legal requirements, but which would have been valid if the statute had so provided at the time of enacting.

Retrospective effect is given to the validating or curative statute.

- Amending Statute.

Amendment means a change in the existing law. A law is amended when it is in whole or in part permitted to remain and something is added to or taken away from it or it is some way changed or altered to make it more complete or perfect or make it suitable to accomplish the purpose for which it was made.

In construing an amending statute, Crawford says that the courts have followed the principles of construction applicable to original enactments.

- Repealing Statute

Repealing statute repeals an earlier statute. The Code of Criminal Procedure, 1973 repealed and reenacted Criminal Procedure Code 1898. [for details see lecture on repeal].

- Taxing Statute.

[for details see lecture on Taxing Statute]

- Penal Statute.

[for details see chapter on Penal Statute]

2. Classification by method.

- Mandatory and Directory Statutes.

According to Crawford a mandatory statute may be defined as one whose provisions or requirements, if not complied with, will render the proceedings to which it relates illegal and void. While a directory statute is one where non-compliance will not invalidate the proceedings to which it relates.

The classification of statutes as mandatory and directory is useful in analyzing and solving the problem of what effect should be given to their directions. Mandatory or directory are both used with reference to enabling statutes or statutes creating duties.

In *Chandrika Prasad Yadav v. State of Bihar* AIR 2004 SC 2037, it was laid down that the question as to whether a statute is mandatory or directory wouldn't depend upon the phraseology used therein. The principles as regard the nature of statute must be determined having regard to the purpose and object the statute seeks to achieve.

3. Classification by duration.

- Temporary and Permanent Statute.

When the period of operation is fixed by the statute itself, the statute is temporary in nature and when no time period is fixed the statute is permanent in nature.