

Unit IV

I. Interpretation of Penal Statutes

II. Interpretation of Tax Statutes

Interpretation of Penal Statutes

The general rule governing the interpretation of penal statute is that it must be strictly construed. Strict interpretation in the words of Crawford connotes:

“If a statute is to be strictly construed, nothing should be included within its scope that does not come clearly within the meaning of the language used. Its language must be given exact and technical meaning with no extension on account of implications or equitable considerations; or has been aptly asserted, its operation must be confined to cases coming clearly within the letter of the statute as well as within its spirit and reason. Or stated perhaps more concisely, it is close and conservative adherence to the literal or textual interpretation”

According to Sutherland by the rule of strict construction it is not meant that the statute shall be stringently or narrowly construed but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used.

In *Sohan Lal v. Col.Prem Singh* AIR 1989 (P&H) 316 the Punjab HC laid down that a strict construction is one which limits the application of the statute by the words used.

When it is said that all penal statutes are to be construed strictly, it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words.

Two reasonable interpretations and Doubt regarding the meaning

If a penal statute is open to two interpretations the court must adopt that interpretation which leans in favour of the accused. Secondly in case of any doubt regarding the meaning ,the benefit of doubt is given to the accused.

In *Tuck & Sons v. Priester* (1887) 19 QBD 629 it was laid down that if there are two reasonable constructions we must give effect to the most lenient one. That is the settled rule for the construction of penal sections.

Tolaram v. State of Bombay AIR 1954 SC 496.

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 the penalty.

In *Director of Public Prosecutions v. Good Child* (1978) 2 All ER 161, it was laid down that a man should not be gaoled on an ambiguity.

State of West Bengal v. S.K. Guha AIR 1982 SC 949.

It is recognized rule of construction of the penal statutes that where the equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of doubt should be given to the subject and against the legislature which has failed to explain itself.

Wide and Comprehensive language

If the language used in the statute is comprehensive enough, it can't be subjected to a strict meaning on the pretext that a penal statute is to be construed strictly. In *Elderton v. Kingdom Totalistor Co. Ltd.* (1945) 2 All ER 624, it was observed that a wide and comprehensive language is used to cover a particular operation in question can't be restricted.

Suman Sethi v. Ajay K. Churiwal AIR 2000 SC 828.

While referring to the Prevention of Corruption Act 1947, the court laid down that the Act was brought in to purify public administration. When the legislature used comprehensive terminology to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used therein.

Iqbal Singh Marwah v. Meenakshi Marwah AIR 2005 SC 2119, the SC said that the rule of strict construction is not of universal applicability. Penal statutes should be construed in a manner as shall suppress the mischief and advance the remedy.

Badshah v. Urmila Badshah AIR 2014 SC 869

The court opined that the purposive construction needs to be given to the provisions of sec.125 of CrPC. The purpose is to achieve social justice. While dealing with the application of destitute wife or hapless children or parents under this provision, the court is dealing with the marginalized sections of the society. The purpose is to achieve the social justice which is the Constitutional vision, enshrined in the preamble of the Constitution.

Scientific advancements and current meaning

The rule of strict construction does not also prevent the court in interpreting a statute according to its current meaning and applying the language to cover the developments in science and technology not known at the time of passing the statute.

Further see Rv. Ireland and R v.Fellow

Loopholes

It is a well settled rule of penal jurisprudence that a loophole in the statute can't be supplied by the court. In Spicer v. Holt (1976) 3 All ER 71 ,the HL made it clear that if in a penal statute a loophole is found, it is not for the judges to cure it, for it is dangerous to derogate from the principle that a citizen has a right to claim that howsoever much his conduct may seem to deserve punishment, he should not be convicted unless that conduct falls fairly within the definition of crime of which he is charged.

Presumption of innocence

Under civilized penal jurisprudence an accused is always presumed to be innocent unless his guilt is proved beyond any reasonable point of doubt. Infact what is meant by this is that the burden of proving the guilt of an accused is upon the prosecution. However, more and more laws are being passed in UK and India where the burden of proving innocence seems to have been shifted to the accused. There may be some issues on which it is not possible for the prosecution to give evidence from its own hand and , in these circumstances it would not be a serious departure from the traditional principle of presumption of innocence to require the accused to give evidence on such issues. Sections 105 and 106 of the Evidence Act,cover such situations.

Over stretching of presumption of innocence

The principle of presumption of innocence has sometimes taken to absurd length. The Romans laid down that it would be better for an accused person to go unpunished than for an innocent man to be condemned. Fortesque raised the ratio to 20:1, Hale 5:1 and Blackstone 10:1.According to Viscount Simond a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of an innocent .Allen is of the opinion that some sentimentalists would assent to the proposition that it is better that a thousand or even a million guilty should escape than that one innocent person should suffer. But no responsible practical person would accept such a view . For it is obvious that if a ratio is extended indefinitely, there comes a point when the whole system of justice breaks down and the society is in a state of chaos.

Interpretation of Taxing Statutes

A taxing statute is one which imposes taxes on income or certain other kinds of transactions. It may be in the form of income tax, wealth tax, sales tax, gift tax etc. A tax is imposed for public purpose raising general revenue of the state. Both center and the state are entitled to Levi tax. The general rule is that a taxing statute should be construed strictly, i.e., a person should not be taxed unless the words of the statute unambiguously imposes tax on him.

Lord Simonds in Russel V. Scott (1948) 2All ER 1observed:

It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties. The subject cannot be taxed unless the language of the statute clearly imposes the obligation.

Lord Cairns in *Partington V. Attorney Gen.* (1869) LR 4HL100 observed:

As I understand the principle of all fiscal legislation, it is... If the person sought to be taxed comes within the letter of the law, he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of law, the subject is free, however, apparently within the spirit of the law the cases might otherwise appear to be

In construing a tax statute one has to look merely at what is clearly said. There is no room for implications and equitable considerations. No presumptions work, it is simply strict adherence to the words of the statutes.

In *Commr. Of Wealth, Gujarat v. Ellis Bridge Gymkhana* AIR 1998 SC 120, the SC observed that a club is not taxable under section 3 of Wealth Tax Act which levies the tax only on individual, Hindu undivided family and company but not on association of persons.

Two interpretations and benefit of doubt

If a tax statute is open to two interpretations the benefit of doubt is given to the assessee. An authority to impose a tax cannot be deduced from provisions of doubtful import .

In *Express Mill v. Municipal Committee* AIR 1958 SC 341, the SC laid down that if the words of the statute are ambiguous and reasonably open to two interpretations benefit is given to the subject and not the one that imposes burden on him.

Double Taxation

As a rule generally double taxation is to be avoided. In *IRC v. F.S. Securities Ltd.* (1964) 2 All ER 691, the HL observed that the principle applied is that if the words of an Act in one construction result in double taxation of the same income, that result be avoided by adopting another construction which may reasonably be open.

In *Laxmipat v. CIT* AIR 1969 SC 501, it was observed that unless otherwise expressly provided an income can't be taxed twice.

Jain Brothers v. UI AIR 1970 SC 778, it was held that an express provision can't be held invalid on the ground that it results in double taxation. Section 23(5) of IT Act, 1922 which made provision for assessment and payment of tax by a registered firm and also for inclusion of the share of income of a partner in his total income was not invalid.

Qualifications of the rule of the Strict Construction / Fair Interpretation / Reasonable interpretation

It is true that a tax statute must receive a strict construction by the court and if there is any ambiguity, the benefit of the ambiguity must be given to the assessee. But that is not the same thing as saying that a taxing provision should not receive a reasonable construction. In *Rajputana Agencies Ltd. v. CIT* AIR 1959 SC 265, the SC observed that the tendency of modern decisions upon the whole is to narrow down materially the difference between what is called a strict and beneficial construction.

In *Murrailal v. B. R. Vad* AIR 1976 SC 313, it was laid down that the rule of strict construction is often misunderstood. It is not the same thing as saying that a taxing statute should not receive reasonable construction.

In *CIT v. J. H. Gotla Yadgiri* (1985) 4 SCC 343, the court observed that though equity and taxation are often strangers, attempts should be made that they should not always remain so and if a construction results in equity rather than injustice then such construction should be preferred to literal construction.

In *M.C.T. Bank v. CIT* (1963) ILR Mad.222, it was observed that the fair rule of construction of a tax statute, thus, appears to be to adopt a reasonable construction of the words used in the Act without leaning to one side or other, neither as the guardian of revenue nor as protector of the taxed subject to resist tax aggression.

Tax Evasion

The word 'evade' is used in two senses. According to Grove, J., in *A.G. v. Noyes* (1881) 8QBD 125, it may mean an evasion of the Act by something which, while it evades the Act, is within the sense of it, or it may mean an evading of the Act by doing something to which the Act does not apply.

Lord Chancellor in *Edward v. Hall* (1885) 25 LJ Ch.84 said:

"I never understood what is meant by an evasion of an Act of Parliament; either you are within the Act or you are not within it; if you are not within it you have a right to avoid it, to keep out of prohibition.

In *Ghatge and Patil Concern's Employees Union v. Ghatge and Patil Transports* AIR 1968 SC 503, it was laid down that a citizen is free to so arrange his business that he is able to avoid a law and its evil consequences so long as he does not break that or any other law.

In CIT v. S. M. Exporting Co. AIR 1964 SC 1813, it was made clear by the court that when a genuine transaction not prohibited by law reduces tax liability, it is not an attempt to evade tax but only a legal device to reduce tax liability to which every tax payer is entitled.

In UI v. Play World Electronics Pvt. Ltd. AIR 1990 SC 202, it was laid down that tax planning is legitimate provided it is within the frame work of law ; but colourable devices can't be part of tax planning.

United States v. Stowell 33 L ED 555, it was observed that statute to prevent fraud upon revenue are considered as enacted for public good and to suppress public wrong, and therefore, although they impose penalties or forfeiture not to be construed like penal statutes generally, strictly in favour of the assessee, but they are to be reasonably and fairly construed, so as to carry out the intention of the legislature.

C. A. Abraham v. ITO, Kottayam AIR 1961 SC 609, it was laid down that in construing provisions to prevent tax evasion, if the legislature uses words of comprehensive import, the courts can't proceed on an assumption that the words used in a restricted sense so as to defeat the avowed object of the legislature.

Mc Dowell & Co. Ltd. v. Commercial Tax Officer AIR 1986 SC 649, Chinnapa Reddy, J., observed:

We know we live in a welfare state whose financial needs, if backed by the law, have to be respected and met. We must recognize that there is behind taxation laws as much moral sanction as behind any other welfare legislation and it is a pretence to say avoidance of taxation is not unethical. In our view the proper way of construing a taxing statute while considering a device to avoid tax , is not to ask whether the provisions should be construed literally or liberally, but whether transaction is a device to avoid tax, and whether the transaction is such that judicial process may accord its approval to it. It is neither fair nor desirable to except the legislature to intervene and take care of every device and scheme to avoid taxation.

Commr. Of W.T. Gujarat v .A. Noratam AIR 1988 SC 1824,Mukerje, J., observed:

It is true that the tax avoidance in an under developed devolping economy should not be encouraged on practical as well as ideological grounds. One would wish, that one could get the enthusiasm of justice Holmes that taxes are the prices of civilization and one would like to pay that price to buy civilization. Unless wastes and ostentiousness ingovernment's spending are avoided or eschewed, no amount of moral sermons would change people's attitude to tax avoidance.

Unit V

I. Interpretation of the Constitution

II. Repeal

III. Repugnance

IV. Retrospective Doctrine

Interpretation of the Constitution

The Constitution is the very framework of the body policy: its life and soul; it is fountain-head of all its authority, the main spring of all its strength and power. The executive, the legislature and judiciary are all its creation and derive their sustenance from it.

The Constitutional law differs profoundly from ordinary law. It is unlike ordinary law which can be at anytime altered or repealed. The Constitution is not built for present nor it reflects past only it is built for the future. It is the mechanism under which laws are to be made and not merely an Act to declare what the law is to be. It is well settled that a Constitution must not be interpreted in a narrow sense and the construction which is most beneficial to the widest possible amplitude of its power must be adopted. In *Chicago R Co v. Swanger* 137 Fed 783 it was laid down:

A written Constitution is to be interpreted and effect given to it as a paramount law to which all other laws must yield. It is equally obligatory on individual citizens and on all departments of government, including the legislature and judiciary.

In *Fatehchand Himatlal v. State of Maharashtra* 1977 Mah LJ 205, Krihna Iyer, J. laid down:

A Constitution is a documentation of the founding faiths of a nation and the fundamental directions for their fulfillment. So much so, an organic, not pedantic, approach to interpretation, must guide the judicial process. The healing art of harmonious construction, not the tempting game of hairsplitting promotes the rhythm of the law.

According to Rascoe Pound, the Constitution is not a glorified police manual; Constitutional provisions lay down great principles to be applied as starting points for legal and political reasoning in the progress of society. The principles established by the Constitution are not to be interpreted strictly according to the literal meaning of the words used by the framers of the Constitution as if they lay down rules. Interpretation of Constitutional principles is a matter of reasoned application of rational precepts of conditions of time and place.

Justice Holmes in *Gompers v. US* 233 US (1914) observed:

“..... the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions.... Their significance is vital

and not formal ; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and line of their growth”.

John Marshall, in *Dartmouth College v. Woodward* (1819) 4L ED 629, laid down that without doing violence to the language a Constitutional provision should be given a fair, liberal and progressive construction so that its true object might be promoted. In *re, C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938* AIR 1939 FC 1, Gwyer, C.J., observed that a Constitution must not be construed in a narrow or pedantic sense and construction most beneficial to the widest possible amplitude of its powers must be adopted. Chief Justice emphasized that a broad and liberal spirit should inspire those whose duty is to interpret the Constitution.

In *Special Reference No.1 of 2002* (2002) 8 SCC 237, it was observed that liberal and visional interpretation is necessary to interpret the provisions of the Constitution. The reason given was that the old articles of the supreme lex meet new challenges of life, the old pillars suffer new stresses so the court has to adopt the law and develop its latent capabilities if novel situations are encountered.

Please note refer to cases:

Airport Authority case;

E.P. Royappa;

Maneka Gandhi, etc.

Some Broad Principles of Constitutional Interpretation

I. Too much verbalism to be avoided

The judicial mind must rise above verbalism and explore the meaning of meanings and adopt that construction which goes to the root of the matter. Plainly stated that the judge should endeavour to interpret the words in such a manner that even though the words belong to the old order, the sense must radiate the new order. This is because the world of yesterday is not same as of today and the words grow with the world.

II. Special purpose to be the aim of Constitutional Interpretation

In Constitution, there is a bill of rights guaranteeing citizens the enjoyment of certain fundamental rights subject only to reasonable restrictions. It is the courts function to secure justice to citizens against any social or economic injustice committed by an individual or by the government itself. The court should in fulfillment of the Constitutional obligation, extend protection to the weaker sections against all sorts of exploitation.

III. Judges to play a creative role

A Constitution is a living organism and should be viewed upon by the judges as such. In *Sunil Batra v. Delhi Adm.* AIR 1978 SC 1675, Krishna Iyer, j., has said that the judges should change their stance in relation to changes that come upon the society with the change of times. They should feel the throb of the pulsating life of their society and to interpret the law to meet the challenge of the changing time.

Please note also refer to Doctrine of pith and substance, Harmonious construction, Colourable Legislation and Severability.