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TOPIC: LITERAL RULE OF INTERPRETATION AS AN EXCEPTION TO GOLDEN RULE AND MISCHIEF RULE OF INTERPRETATION

INTRODUCTION

The duty of the judicature is to discover and to act upon the true intention of the Legislature-. the *mens* or *sententia legis.* The essence of law, it is said, lies in its spirit, nevertheless, in all ordinary cases, as observed by Salmond, the courts must be content to accept' the *litera legis. Ita scripta est* is the first principle of interpretation. Judges are not at liberty to add or take from or modify the letter of the law, simply because they have reason to believe that the true *sententia legis* is not completely or correctly expressed by it.[1]

In order to ascertain the true intention of the Legislature, the Courts have evolved various rules of interpretation, the first and primary being the doctrine of literalness, that is, the literal interpretation of statutes. If the language of a statute is plain and unambiguous, then there is no reason why the court should depart from the normal rule of literal interpretation. When the meaning is clear from the plain and grammatical construction that is what the Court would adopt.[2]

The courts are warned not to assume ambiguity where there is none. The argument of hardship or inconvenience should not lead, to the conclusion that the words used in a statute are meaningless and ambiguous. Ambiguity can only be inferred if the word or a phrase in a statute is capable of more than one meaning in that particular context. In such a situation, a court will be entitled, to ascertain the intention of the legislature by construing the provisions

[1] K.P. Chakwarthy, Interpretation of statutes, 2nd edition,Central law agency pg.53
[2] ibid

of the statute as a whole and taking into consideration other matters the circumstances which led to the enactment of the statute[3]

The doctrine of literalness does not limit the judicial enquiry to mere mechanical interpretation of words. The purpose of interpretation is always to find out what the statute stands for, what is the defect it intends to remove and what is the remedy it seeks to advance. It is, therefore, apparent that etymological dissection of the parts of a statute, is likely to lead to an erroneous results, it is, therefore, reasonable and acclaimed as a settled rule of interpretation that a statute is to be construed ·as a whole, and a particular Word or phrase should not be taken as isolated from the context in which it is used.

A consequence that follows from the doctrine of literal construction is that effect must be given, if possible to ever words, clause and sentence of a statute. It is an elementary principle of construction that a statute should be so construed as to give effect to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another, unless the provision is the result of an obvious mistake or error.[4]

The function of the court is "not to scan wisdom and policy, where the Language of a statute is clear, and it is the duty of the court to give full effect to the same.

[3] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 28
[4] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg.12

PRIMARY OR LITERAL RULE

Meaning and Scope of the Rule

1. The Literal or Grammatical Interpretation

The first principle of interpretation is the literal or grammatical interpretation which means, that the words of an enactment are to be give 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 the consequences. The meaning of the expression 'literal rule of interpretation', according to various authors as the words, if precisely plain and unambiguous should be given their natural or ordinary meaning.

This view has been particularly endorsed by the learned editor of Maxwell's 12th edition of the Interpretation of Statutes[5].This has been called the safest rule because the legislature's intention can be deduced only from the language which it has expressed itself. If the language of a statute .The only duty of the court is to give effect to it and the court has no business to look into the consequences of such interpretation. The court is under an obligation to expound the law as it exists and leave the remedy to the legislature if harsh conclusions result from such proposition . Similarly, the court should give technical meaning to a technical word. The words of a statute first understood in their natural, ordinary or popular sense and phrases an sentences are construed according to their grammatical meaning, unless this leads to some absurdity or unless there is something in the context or in

[5] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg.54

the object of the statute to suggest the contrary. The epithets 'natural', 'ordinary 'literal', 'grammatical', and 'popular' are employed almost interchangeable their indiscriminate use leads to some confusion, and probably, the term 'primary is preferable to any of them, if it be' remembered that the primary meaning e.g. a word varies with its setting and with the subject-matter to which it is applied; for reference to the abstnad meaning of words, if there be any such thing, is of little value in interpreting statutes. The cardinal rule for the construction of Act of Parliament is that they should be construed according to the intention expressed' in the themselves.[6]

According to the Maxwell, the first and most elementary rule of the construction is that it is to be assumed that the words and phrases of technical legislation are used in the technical meaning if they have acquired one, and Otherwise in their ordinary meaning, and the second *is* that the phrases and sentences are to be construed according to the rules of grammar."The length and detail of modern legislation," wrote Lord Evershed M.R., "has undoubtedly reinforced the claim of literal construction as the only safe rule. " If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences.·"The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.[7]

The court must proceed on the assumption that the legislature meant what is said, however, unjust *or incontinent* the meaning conveyed, may be. It is not within the province of the court

[6]Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg.12
[7] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 28

to .depart from the plain meaning of the expressions used in the statute and. to interpose contrary views of its own. Its duty is not to make the law reasonable but to interpret it according to the real sense of the word Lord Herschell made this point clear in *Cox* v. *Hakes* when he submitted before the House of Lords in the following words: "Nevertheless, it must be admitted that if the language of the legislature, interpreted according to the recognized canons of construction, involves this result *(i.e.,* that discharge from custody by a court of competent jurisdiction does not protect from further proceedings, your Lordships must frankly yield to it even if you should be satisfied that it was not in the contemplation of the legislature. The rule has thus been put in a New Zealand case by Williams J.-(pitches v. Kenny,1903(22) NZLR)

It is an elementary principle of interpretation. that. the plain intention of the legislature as expressed by the language employed is to be accepted and given effect to.[8]

ILLUSTRATIVE CASES

English decisions:-

Richards v. *McBride* (1881) 8 Q.B.D. 119; *Cf R.* v. *Lamb* [1968] 2 Q.B. 829[9]

The Sunday Closing (Wales) Act 188l,'being fixed to come into operation on the day "next appointee" for the annual licensing meeting, was by a literal construction postponed for a year later than was, in all probability, intended; but the court refused to avert this result by any departure from the primary meaning of the words.

[8] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg.54

[9] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 30

ReS. (an infant) [1965] 1 W.L.R. 94[10]

The tense used in a statutory provision may have a decisive effect. A section which empowered a Minister to make a certain order if he was satisfied that a school "is being administered" in contravention of the Act only allows him to consider the present conduct of the school, and not the past conduct, when making the order. And section 1 (3) of the Children Act 1948, providing that "nothing in this section shall authorize a local authority to keep a child in their care ... if any parent or guardian desires to take over the care of the child," was held by Pennycuick J. to apply only where the parent or guardian expressed a wish to have the immediate care of the child.

In *Northern Finance* v. *Ashley*, [1963] 1 Q.B. 476.[11]

By article 2 of Schedule 2 to the Hire-Purchase and Credit-Sale Agreements (Control) Order 1960, dealing)with the:"actual payment" to be made before an agreement was entered into, "in computing for the purposes of this paragraph the total amount to be paid before any agreement is entered into account may be taken of any allowance

for any goods taken in part exchange for any goods comprised in that agreement." the Court of Appeal held that these words covered goods of which the hirer was in possession under an existing hire-purchase agreement, and which were exchanged in part payment for the goods under the new agreement: it would be "too narrow" a construction to restrict it to goods actually owned by the hirer.

Purser v. *Bailey* [1967] 2 Q.B. *500*[12]

[10] ibid

[11] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 31

Section 1 (2) of the Agricultural Holdings Act 1948 defines "agricultural land" as "land used for agriculture which is so used for the purposes of a trade or business." The words "trade or business" are not restricted to an agricultural trade or business, and so have been held to include the keeping of a riding scooter. Section 25 (1) (d) of the same statute, as amended, provides that one of the grounds on which the Agricultural Lands Tribunal can consent to the operation of a notice to quit is where the Tribunal is satisfied that "greater hardship would be caused by withholding than by giving consent." In applying this provision, the Tribunal is not limited to considering the hardship which would be caused to the landlord, but may take into account all those concerned on the landlord's side, such as the widow of a deceased landlord who was living on national assistance.

Jones v. *Powell* [1965] 2 Q.B. 216.[13]

A provision which makes it an offence to drive a motor vehicle "without reasonable consideration for other persons using the road" was held by a Divisional Court to cover, on its literal construction,

the conduct of a bus driver who drove *in* such a way as to alarm some of his passengers. The argument that the intention of the Enactment was to prohibit misconduct in the management of a vehicle towards the public outside on the highway was unsuccessfully. Just as the literal rule prevents the undue restriction of wide language, so also it precludes the undue extension of narrow language. So a provision in the Rules of the Supreme Court which referred to "an agreement (whether in writing or not) for the sale or, purchase of property" was had inapplicable to a contract for the grant of a lease. And a provision that the period of any

[12] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 31
[13] ibid

disqualification imposed on a conviction for the offence of driving while disqualified "shall be *in addition* to any other period of disqualification

imposed" was held not to' permit the imposition of periods of disqualification other than consecutive ones.

Indian decisions

In *Rananjaya Singh* v. *Baijnatli Singh,*[14] AIR 1954 SC 749

the Election Tribunal set aside the election of the appellant under section 123(7) of Representation of the People Act, 1951 on the grounds that. the appellant had employed more persons than prescribed for electioning purpose and that the salary of this persons exceeded the maximum election expenditure permissible under the law. The contention of the appellant was that all those· persons who had campaigned for him in the election were· in the· employment of his father and· were thereby receiving salaries from his father by virtue-of their employment. As far as he was concerned, he had not made payments to; them exceeding the permissible limit. The Supreme Court, following the grammatical interpretation said that the meaning of section 123 (7) of the Act of 1951 was quite clear and, therefore, as far as these campaigners were concerned they were merely volunteers campaigning· for the appellant.

In *Motipur Zanzindary Company Private Limited* v. state *of Bihar,*[15] AIR 1962 sc 660

[14] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 11
[15] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 12

The question was whether. sugarcane fell within the term *green vegetables* in. Entry 6 of the Schedule and as such no sales tax could be levied under the Bihar Sales Tax Act, 1947 on its sale. The Supreme Court held that while dealing with a taxing statute the natural and ordinary meaning Of a word should be the 'correct meaning. In the present instance the word *vegetables* should be interpreted in its natural and popular-sense and that dictionary meaning is not of such help here. *Vegetables* as the normal people mean by it are those which can-be grown in a kitchen garden to be used for the table, that is to say, to be eaten during lunch or dinner. Sugarcane definitely does not fall under this category.

In *Ranjit Udeshi* v. *State 'Of Maharashtra,*[16] *AIR 1965 SC 881*

the appellant was convicted under Section 292, Indian Penal Code by the High Court for selling an obscene book titled *Lady Chatterley's Lover* the sale of which was banned by the Government of India. the appellant c0ntended before the Supreme Court that *mens rea* of the accused had always to *:be* proved to maintain conviction under criminal. law. Since the prosecution had failed to prove *mens rea,* that is to say, that the appellant sold ·or kept for selling the obscene book with the knowledge that the book was obscene, the conviction was unjustified. He further argued :that there are such a large number 0f books these days in bookstalls and their contents so different from each other that a book seller cannot possibly know and is not expected to know the contents of each book and cannot, therefore, be convicted. in the absence ,of a guilty mind. The Supreme Court held that knowledge of obscenity was not an essential element of the offence under Section 292, Indian Penal Code. The section is plain and its meaning unambiguous. The Court must give natural meaning to the words used in the section and on this count the contention of the appellant held no water.

[16] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 14

Literal Rule: A safe guide to interpretation

To go beyond the plain meaning of the words is to invite complications, and, in the words of Lord Cranworth, to launch into a sea of difficulties which it is not easy to fathom. The safer and more correct course of dealing with a question of construction, said Lord Warrington of Clyffe, is to take the words themselves and arrive, if possible, at their meaning without, in. the first place, reference to the cases. The meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation: The primary duty of a court is to find the natural meaning of the words used in the context in which they occur.[17]

Although it is sometimes desirable for a court which is called upon to interpret a statute to acquaint itself with the history of the statute and of the circumstances under which it was passed and even to compare statutes of similar scope, still it must be borne in mind; as Pollock C. B. has pointed out in ***Attorney general*. v. *Sillem,*** that "if a. statute in terms reasonably plain and clear, makes what the defendants have done a punishable offence within the statute, we want not the assistance which may be derived from what eminent statesmen have said or learned jurists have written. we want not the decisions of .American Courts to see whether the 'base before us is within the statute."[18]

Where, therefore, the language of an Act is clear and explicit, we must give effect to it. whatever may be the consequences, for in that case the words of the statute speak the

[17] K.P. Chakwarthy, Interpretation of statutes, 2nd edition,Central law agency pg.54
[18] ibid

intention of the legislature. The sponsors of this theory hold that (a) there is something unreal in ascribing to the legislature an intention to enact absurdities or injustices, and (b) what the legislature intended to be done or not to be done can only, be legitimately ascertained from what it has chosen to enact either in express words or by reasonable.[19]

In construing Section 6 of the Prevention of Corruption Act, 1947, it was observed by the Supreme Court that Section 6 must be construed with reference to the 'words used therein independent of any construction which may have been placed by the decision on the words· used in Section 197 (2) of the Criminal Procedure Code in construing the provisions of a statute, it is essential for a court to give in the first instance the natural. meaning to the word used therein if those words are enough. It is only in the case of ambiguity that a court is entitled to ascertain the intention of the legislature by construing the statute as a whole.[20]

The fundamental rule of construction is to find out the intention of the Legislature from the words used in the statute. The Courts are not competent to proceed on the footing that the legislature has committed mistakes.' In interpreting statutes, the Courts are not to question the wisdom or policy underlying the· legislative Act. The statute must be taken as it stands without any judicial addition or abstraction. More than often our highest judicial authority has reiterated the principle that a statute is to be read literally, that is, by giving to the words their ordinary natural and .grammatical meaning. If the literal construction leads to no

[19] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 55
[20] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 55

apparent absurdity, there can be no compelling reason for departing from that golden rule of construction.[21]

It is, therefore, obvious, that if. the wording in an Act are not ambiguous and admit of only one meaning, the court is bound to give effect to that meaning, however harsh the result may be. If the intention of the legislature is plain and clear, the court must not adopt only hypothetical construction on the ground that it is more consistent with the alleged object of the Act.[22]

If, however, the language is plain, unambiguous and uncontrolled by other parts of the Act or other Acts on the same subject, the court cannot give it a different meaning. The rule has thus been summarized by the Supreme Court of Rhode Island in the following words:-

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"It is an elementary proposition that courts only determine by construction the scope and intent of the law when the law itself is ambiguous or doubtful. If a law is plain, and within the legislative power it declares itself and nothing is left for interpretation. It is as binding upon the court as upon every citizen. To allow a court, in such a case, to say that the law must mean something different from the collusion import of the language, because the court may think that its penalties are unwise or harsh, would make the judicial superior to the legislative branch of the Government, and practically invest it with the lawmaking power. The remedy for a harsh law is not in interpretation, but in amendment or repeal".[23]

[21] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 56
[22] ibid
[23] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 57

Consequences of the Literal rule

From this 'rule, as pointed out by Craies, several consequences follow:-

First, no statutory enactment may be: treated as null and void or unconstitutional.

Where under the authority conferred by the Written Constitution, the Judiciary can declare a legislative Act void on adequate grounds.[24]

There is always a presumption against the unconstitutionality of a statute. The courts lean towards such a presumption on the ground that the enactment has been made by the elected representatives of the people, the Supreme Court in *Vrajlaf Manilal* v. *State of M.P*. held that a legislature would not deliberately flout a constitutional safeguard or right.[25]

It is an accepted rule of interpretation that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law and, therefore, the motive of the legislature in enacting the law is no concern of the court to declare the law as unreasonable or unjustified.[26]

[24] ibid
[25] ibid
[26] K.P. Chakwarthy, Interpretation of statutes, 2nd edition,Central law agency pg.58

Secondly, statute must not be extended to meet a case for which provisions has clearly and undoubtedly not been made.

"We are not entitled, said Lord. Loreburn L.C., "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. The Judicial Committee also said in *Craword v Spooner* held that we cannot aid the legislature's defective phrasing of an Act. We cannot add or amend, and by construction make up deficiencies which are left there. In the same vein Lord Brougham said, "If we depart from the plain and obvious meaning on account of such views as those expressed in argument on the impugned, we do not in truth construe the Act, but alter it ".[27]

In other words, the language of the Acts of Parliament, and more specially of modem Act, must neither be extended beyond its natural and proper limits in order to supply omissions or defects, nor strained to meet justice of individual case.[28]

It is now well-settled that the language of Acts of Parliament and more specially of modern Acts must neither be extended beyond its natural "and " proper limits in order to supply omissions, or defects.[29]

The same principles may apply as well to subordinate legislation. In order, therefore, to meet a situation, no attempt should be made either by the administrative authority or by the court to read something in the rules which is not there. Thus in construing Rule 14 (8) of the

[27] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 58
[28] ibid
[29] Interpretation of statutes Prof. T. Bhattacharya,7th edition pg.15

Central Civil Services (Classification, Control and Appeal), Rules 1965, the Kerala High Court has correctly held that administrative interpretation of the rule by holding that an accused officer is not entitled to have the assistance of another suspended officer in a departmental enquiry is erroneous, since the rule does not say that a person under suspension is not entitled to assist another Government servant in enquiry proceedings. On the other hand, the rule provides that "the Government servant may take the assistance of any other Government servant to present the case on his behalf .....” On a plain interpretation of the rule in question it is evident, therefore, that denial of the assistance of a Government servant of his choice, would amount to the denial of reasonable opportunity to the concerned Government servant to defend his case properly.[30]

Thirdly, Casus Omissus is not to be created or supplied.

It is but a natural consequence of the literal rule of interpretation that the Matter which should have been provided, but has not been provided *for* in a statute, cannot be to do so will be legislation and not construction. The supplied courts, as Rule has thus been explained by Lord Wright in *Kamalaranjan Roy* v. *Secretary of State* in the following words "It may be that there is a *casus omissus*, but if so that omission can only be supplied by the statute or statutory action. The court cannot put into the Act words which are not expressed and which cannot reasonably be implied on any recognized principles of construction. That would be a work of legislation, not of construction and outside the province of the Court." If the legislature, in enacting a statute, has omitted anything , it is certainly not the duty of the court to add such words or reasonable words into it, which are not there. The authorities on the

[30] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 58,59

subject are numerous and almost unanimous. The general rule, as pointed out by Blackburn, is that if the legislature has omitted something which was known to it at the time when the Act was passed, it must be supposed to have been omitted intentionally.[31]

The Patna High Court has held that "we cannot aid the Legislature's defective phrasing of the Act, we cannot add and amend and by construction make up the deficiencies which are left there A Court is not allowed to produce a *casus omissus.*To do so would be entrenching upon the preserves of the legislature, the primary function of law being *jus. dicere* and not *jus dare.*[32]

Even when there is *casus omissus* it is, as said by Lord Russel of Killowen, for others than the courts to remedy the defect. In discussing a British statute, namely, Agricultural Holdings Act, 1948, Devlin L.J. pointed out in *Gladstone* v. *Bower*, that the "Court will always allow the intention of a statute to override the defects of wording but the Court's ability to do so is limited by recognized canons of interpretation. We cannot legislate for *casus omissus.* But if this rule were to be relaxed sooner or later the Court would be saying what Parliament meant and might get it wrong and thus usurp the law making function" "It was also held by the House of Lords in 1951 *in"Magor and St .Me lions R. D* C *v Newport Corporation* that a court has no power to fill at gaps in an *act*, and to do so would be to usurp the function of the legislature.[33]

[31] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg59
[32] ibid
[33] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 59

In other words, as stated by Lord Denham, the language of an Act of Parliament and more specially of modern Acts neither be extended beyond its natural and proper limits, in order to supply omissions or defects. It would be wrong to strain words to meet the justice of the particular case, because it might make a precedent, and lead to dangerous consequences in other cases. To supply a defect which the legislature could have easily supplied is not to interpret the law, but to make it, and this becomes peculiarly improper in dealing with a modern statute, because the proximity of the modern statute is so very remarkable, that it affords no grounds to justify such sort of interpretation.[34]

It would be interesting to consider the matter in the light of the spirit in which judges approach legislation. The difference may be illustrated by views of the Court of Appeal and the House of Lords in the same case.

"We sit here", said Denning L.J., in the Court of Appeal, 'to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."[35]

According to Denning L.J., (as per his observations in another case), a Judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament and then he must supplement the written words so as to give 'life and force to the intention' of the legislature. This also came up for sharp criticism in the House of Lords:

[34] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 60
[35] ibid

"If the view of Lord Denning were accepted, then", as observed by Lord Tucker, "their Lordships would be acting in a legislative rather than in a judicial capacity". Even though this was the majority view of their Lordships in this case, this had no statutory effect on Lord Denning, who in a latter case reiterated his old (liberal) view. To quote his. own language, "I have said before and I repeat it now that we should so construe an act of Parliament as to effectuate the intention of makers of it and not to defeat it. If they have by mistake overlooked something, we should do our best to smooth it out. We construe it so as to avoid absurdities and incongruities and to produce a consistent and just results."

Of course, it is an established rule of construction that the Courts are not competent to remove a defect, if any. interpretation". In other words, an act which is curable by the legislature, when making the law, cannot be cured by a Court when interpreting it. It is a legislative function to amend or alter the law. "We are not entitled" says Lord Loteburn to read words into an Act of Parliament, unless clear reason for it is to be found within the four corners of the Act itself. As observed by the High Court of Punjab, "It is not the function of the Court to rewrite a section or to amend a statutory provision with a view to translate to supposedly real intention of the framers of the Act and on the ground of inadvertence of legislature. It is not permissible to a Court to insert by implication any matter thought to be erroneously left out by the legislature as that would not be construing an Act, but altering and amending it.[36]

In construing Section 167 (8) .of the Sea Customs Act, 1878 the Supreme Court held that the clause must be construed strictly and it .is not open to the Court to strain the language in

[36] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 60,61

order to read a *casus* omissus. The Court cannot fill up a lacuna, which is the province of the Legislature.[37]

Although it is not permissible to read words in a statute which are not there, the Courts are not totally debarred from adopting a construction which may give an effective meaning to the provisions by supplying words which appears that by reading additional words, e.g., "subject to" or "notwithstanding anything", it will serve the object of the statute, the Courts may do so. However, as has been laid down by the Apex Court in *Sangeeta Sinrh* v. *Union of India* legislative *casus omissus* cannot be supplied by judicial interpretative process except in case of clear necessity and when reason for it is found in the statute itself. The common defect in draftsmanship, *i.e.*, omission to make references as may be required to reconcile two textually inconsistent provisions can be removed by reading such cross references as may be required for the meaningful construction of the provisions. Again, there where textual defect makes it apparent that adherence to literal constructions is likely to defeat the purpose of the statute, or one part of the statute is so repugnant to another part as to make that part void where the words occur,. *casus omissus* can be supplied on the words read in an extended sense. Where the main object and purpose of the statute are clear, it must not be reduced to a nullity by the draftsman's un skillfulness or ignorance of the law, except in the case of necessity, or the absolute intractability of the language used.[38]

[37] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 61
[38] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 61,62

Fourthly, Statutory provisions are not to be circumvented to give relief to a party.

A statute must be given effect to whether a Court likes the result or not. A Court has no power to modify the provisions of law even if the provisions are not as convinent and reasonable as the courts themselves could have devised. In any case, the Courts have no power to circumvent the provisions of a statute, for whatever is prohibited by law to be done directly cannot legally be effected by an indirect or circuitous contrivance. Nor the Court has power to nullify, destroy or defeat the intention of the legislature by adopting a wrong construction or to shelter behind the comforting thought that Courts of law have been established and ordained for the purpose of promoting substantial justice between the parties and that a technicality should not be permitted to override justice.

The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Act and the rules made under it. It has been said, as observed by the. Privy Council in the case of *Lachme. Buksh Roy* v. *RimJeet Ram Pandey,* that this case ought to be decided upon an suitable constrain and not on the strict worse, .but their lordships think that the statutes of Limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. The principles as laid down in this case have been followed by the Full Bench of the Bombay High Court in *Subash Ganapat Rao Buty* v. *Maroti.*[39]

[39] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 62

Fifthly, no Court of law is to interfere with mere evasion of an Act, if it does not involve a positive breach of law or fraud upon the statute.

A Court Of law cannot interfere to prevent a mere evasion of an Act of Parliament. No illegality is involved if a person can manage his own affairs in such a way that he may fall outside the scope of the taxing statutes. If the State cannot bring the subject within the letter of the law, the subject is free; however, much within the spirit of the law a case might otherwise be the language of taxing should not be strained to hold a subject liable to tax, for a person cannot be taxed without express permission of the legislature. We may, therefore, mean by evasion, of an Act of Parliament, "something that does not amount to a positive breach of, or fraud upon the Act." There must be marginal cases in every law . which may come very near the point at which the statute may be avoided and such a mode of avoiding the effect of a statute as stated by Grove, L in *Ramsden* v. *Lupton,* as getting away from the remedial operation of the statute while complying with the words of the statute.

A person is entitled to arrange his affairs in such a way as to keep outside the arms of law. No person should be made liable to suffer by stretching the "arms of law, if he is already outside of it. It would rather be a travesty of justice if a Court goes beyond its limit to convict a person charged with an offence under a particular section of any Penal Act, when the section does not apply to the offence committed by him.[40]

On a general principle, therefore, it has been held by Lord Esher, M.R., 'any construction would be rejected, if rejected, if escape from it were possible, Which enabled a person to

[40] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 63

defeat a statute or to impair the obligations of his contract by his own act or otherwise to profit by its own wrong' ;

"It is no function of the Judge" Lord Diplock (speaking for the House of - Lords) observes in this connection, "to add to the means which· Parliament has enacted in derogation of rights which citizens previously enjoyed at common law, because he thinks that the particular case in which he has to apply the Act demonstrates that those means are not adequate to achieve what he conceives to be the policy of the Act." But fraud upon a statute is not to be tolerated. It ·should not be evaded by shift or contrivance. As or Coleridge said in ,*Wright* v. *Davics* if a contract is framed so as entirely to defeat the object of an Act of Parliament such a contract though not within its express prohibition might very well be held to be impliedly forbidden by it. As held in an Indian case; an agreement will be void not only it is forbidden by law, but also when if permitted it would defeat the provisions of law. The Court while construing a statute so as to give effect to its object or policy will be slow to adopt such a construction which would defeat its purpose.

If a law is passed for some particular purpose, a Court will not countenance any attempt which may be made to extend the operation of the Act to something else· which is quite foreign to its object and beyond its scope, and in the language of Lord Cairns, it would amount to "adopting a course for the purpose of doing what may be described as evading an Act of Parliament and which their Lordships would not be prepared to sanction, but would discountenance and prevent, the exercise of a power so used."[41]

[41] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 63,64

Sixthly, wide language of a statute is to be given a wide construction

As pointed out by Maxwell, one consequence of the rule of literal construction is that wide language should be given a wide construction however, restricted the scope of previous legislation dealing with the same matter may have been.

Ordinarily the word "instrument" would refer to documents executed by the parties. But if the context otherwise indicates that the "word instrument" is used in a much larger sense, that context must be taken into account and a comprehensive interpretation must be placed upon the words.

The word, 'house' used in Section 89 of the Bombay Village Panchayat Act 1933, as interpreted by the Supreme Court, should not be restricted to dwelling house; it includes factory buildings.[42]

The word 'control' as used in Article 235 of the Constitution, has received a wide interpretation, having regard to the context in which it is used. The word as, interpreted, by the Supreme Court must have a different content with reference to the context. It includes something in addition to mere superintendence. Thus, it shows that the High Court has control over the conduct and discipline of the Judges. The word 'control' is useless if it .is not accompanied by disciplinary powers. It is not to be expected that the High, Court would run to the Government or the Governor in every case of indiscipline, however, small and which may not even require punishment of dismissal or removal.[43]

[42] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 18
[43] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 64

But in construing Section 6 of the Probation of Offenders. Act, 1955, the crucial date on which the age of the offender has to be determined was held to be the date on which the sentence was pronounced by the Trial Court, and not the date the offence was committed,. thus, an accused who was on the date of commission of the offence was below 21 years of age, but on the date on which judgment was to be pronounced was about 21 years, was not entitled to the . benefit of the section. And "any person" appearing in the definition of the industrial dispute in Section 2 (k) in the Industrial Disputes Act, 1947, was construed having regard to two crucial limitations i.e., "(l) The dispute must be a real dispute between the parties to the dispute-.so as to be capable of settlement or adjudication by one party the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour-the parties to the dispute have a direct, or substantial interest" [44].

Seventhly, every word of a statute is to be given a meaning.

As further pointed out by Maxwell, every word in a statute is to be given a meaning and accordingly, a construction which would leave without effect any part of the language of a statute will normally be rejected. It is an. accepted principle that full justice must be done to the words of a . statutory enactment. A statute ought to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous or void or insignificant. It must be borne in mind that the legislature is deemed not to waste its words or to say anything in vain.

[44] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 65

It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they, can have appropriate application in circumstances conceivably within the contemplation of the statute.

The rule that a meaning should, if possible, be given to every word in the statute implies that Unless there is good reason to the contrary, the words add something which would not be there if the words were left out.[45]

Illustrative Cases :

(I) English Decisions ·

(a) Section l (3) of the Children Act, 1948, which provides that "nothing in this section shall authorize a local authority to keep a child in their care ..... .if any parent or guardian desire to take over the care of the child" was held to apply only where the parent or guardian expressed a wish to have the immediate care of the child.[46]

(b) Section 2 (1) of the Limitation Act, 1963 provides that "any application for the leave of the court or the purposes of the preceding section shall be made *ex' parte* has been literally construed, thereby preventing the defendant in an action applying to the judge to discharge an order granting leave."[47]

(c) The tense used in a statutory provision ·may have a decisive effect. A section of an Act which empowered a Minister to make a certain order if he was satisfied that "a school. is

[45] ibid
[46] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 66
[47] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg66,67

being administered" in contravention of the Act only allows him to consider the present conduct of the school, and not the past conduct when making the order[48].

***(II) Indian decisions* :**

(a) According to Section 3 of U.P .. (Temporary) Control and Eviction Act, 1947, no suit can be filed without the permission of the District Magistrate in any civil court against a tenant for his eviction from any accommodation except on the grounds set out in the clauses (a) to (g) of that section. It is a common ground that if the demised premises in the present case fall within the meaning of "accommodation" as defined by Section 2 (a), the permission of the District Magistrate was necessary and the suit could not have been filed for eviction of the appellant without obtaining such permission which admittedly was not done. But in the present case if plain meaning is given to the clause, it is quite evident, as held by the Supreme Court, the appellant ·was merely a tenant. of the land and no accommodation was rented out to him, (a-accommodation being a roofed structure under the definition) and :as· such the provisions of Section 3 would not be attracted in this case.[49]

In *High Court of Judicature* v. *P.P. Singh* interpretation of the word ‘consult' used in Rule 5 of the Rules of High Court of Judicature for Rajasthan was involved. This rule deals with matters on which all 'judges shall be consulted. The Supreme Court approved the meaning of this word as given in "words and phrases' and opined that the word 'consult' means 'to discuss something together or to deliberate'. By giving an opportunity to consultation or deliberation the purpose thereof is to enable the judges to make their respective points of view known to

[48] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 67
[49] ibid

the others and discuss and examine the relative merits of their view. It is neither in doubt nor in dispute that the judges present in the meeting of the full court were supplied with all the requisite documents and had full opportunity to deliberate upon the agenda in question. For all intents and purport the report of the two judges committee had been approved by the Full Court and once approved, it terminated into a decision of the full Bench itself as required by law. [50]

(b) It is further stressed by the Supreme Court that the operative words of the proviso to the rule are "the services of any such Government servant may be terminated forthwith by payment". To put the matter in nutshell, to be effective, the' termination of service has to be simultaneous with the payment to the employee of whatever is due to him. The precise words used are ' plain and we are bound to construe them in their ordinary sense, and not to limit the plain words in an Act of Parliament by consideration of policy, if it be the' policy, as · to which minds may differ and as to which decisions may differ.[51]

Appraisal of the Rule

The plain meaning rule is not always plain. "The cases in which there is real difficulty', said Lord Blackburn, "are; those in .which there is a controversy as to what the grammatical and ordinary sense of the Words, used with the reference to the subject'-matter, is. thus, in the case of *Liversidge* v. *Anderson* the words "if the Secretary of State has reasonable cause to believe" have been held by the majority of the House of Lords to be ambiguous and interpreted to mean that the Secretary of' State thinks that he has reasonable cause to

[50] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 67
[51] ibid

believe." The dissenting view expressed by Lord Atkin who was of the opinion that there was no ambiguity about the expression,' and, 'therefore no scope for giving it any ·meaning other than what the expression ordinarily meant.[52]

The plain meaning of 'words' in a statute is not so plain, even though there may be no ambiguity about them. Judicial opinions may differ even on the plain meaning of the words. It is because of the fact that no word has got a definite meaning. "a word may bear (a) the meaning put upon by the user, (b) that put upon by the recipient, or (c) the usual meaning The latest is a compromise between (a) and (b), but it is complicated by the fact that although most ordinary words do have an area of agreed application ,they, are also surrounded by a borderland of uncertainty.

While it is generally agreed that the cases in which the meaning is plain present no difficulty, but cases may occur where the application of it yields so strange a result, that the judges even hesitate to enforce it. Judicial opinions thus often differ even on the plain meaning of a word or words in a statute.[53]

It must be remembered .that words undergo shifts in meaning in Course of, time. Particularly, therefore, in dealing with ancient statutes such meaning should be given as that prevailed when the statute was passed. As stated by Coke "the ancient Acts must be construed and taken as the law was held at the time when they were made. The 'plain meaning rule' cannot go beyond a certain limit. It has its merits no doubt. It leads to certainty of the law from the

[52] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 68
[53] Dias,on Jurisprudence,2nd edition,butterworth,p.104

layman's point of view. No person who Wants to acquaint himself with law would like to' investigate the legislative history, or resort to any extraneous aid to find out what was in the minds of the lawmakers when the statute was passed. The length and detail of modern statutes leave little room for doubting as to effective meaning of the words used therein. Still the rule has its weakness. So some modern jurist has advised that the literal rule needs to be understood subject to five explanatory riders.[54]

[54] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 69

GOLDEN RULE OF CONSTRUCTION

(i) Meaning of the Term

The golden rule is a modification of the principle of grammatical interpretation. It says that ordinarily the court must find out the Intention of the legislature from the words used in the statute by giving them their natural meaning but if this leads to absurdity repugnance, inconvenience, hardship, injustice or evasion, the Court must modify the meaning to such an extent and no further as would prevent such a consequence. On the face of it, this rule solves the problems and is, therefore, known as the golden rule. Further, since the literal meaning is modified to some extent; this approach is called the modifying method of interpretation. This rule, therefore, suggests that consequences or effects of an interpretation deserve a lot more importance because these are clues to the true meaning of a legislation. There is a presumption that the legislature does not intend certain objects and any construction leading to any of such .objects deserves to be rejected. The court when faced with more than one possible interpretation· of an enactment is entitled to take into consideration the result of each interpretation in a bid to arrive at the true intention of the legislature.[55]

There may be cases where even though literal interpretation may include certain consequences not intended by the, legislature, the court shall not so interpret because some lawful justification is available for doing so. Similarly, an Act may be construed within a limited scope even though the language does not specifically so provide that certain other situations, a statute may be given a restricted interpretation on the basis of the object of it

[55] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 32

although the grammatical construction would carry its operation for beyond. Whenever, more than one construction' responsible, that which seems reasonable will be given effect to. The Court will try to avoid unreasonable, Inconvenient and anomalous results. When the consequence of an interpretation is manifest injustice the court will generally hesitate to give effect to it. Similarly, a construction leading to an absurd conclusion will be rejected. The duty of the court is to suppress all evasions for the continuance of the mischief which the statute is supposed to control.[56]

According to Maxwell, The so-called "golden rule" is really a modification of *the* literal rule. It was stated in this way by Parke B.: "It is a very useful rule, in the construction of a statute, to adhere to *the* ordinary meaning. of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."If," said Brett L.J., "the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in *its* ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning. "The application of this rule, and its limits, will be seen in the parts of this work devoted to construction with reference to the consequences," and construction to avoid inconvenience and injustice and to prevent evasion. Here, a few recent examples of the application of the golden rule will be given.[57]

[56] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 32
[57] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 43

The so cal1ed golden rule of construction, as described by Maxwell, is a modification of the literal rule of interpretation. As stated already, the primary rule of law u on the construction of all statutes is to construe them according the literal and grammatical meaning of the words, but as Grove, J., has said in *Lyons* v. *Tuckre* the language of a statute is not always that which a rigid grammatical would used.[58]

The language is merely the body of the law. The essence of the law has in its spirit; not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it. Plowden also says that "it is not the words of the law, but the internal- sense of it that makes the law, and our law like all other .consists of two parts *viz.,* body and soul; the letter of The law is the body of the law, and the sense and the reason of the law is the soul, of the law. *quia ratio legis est anima legis.* The 'golden rule' is not a particular rule of construction. This was, in fact, enunciated by Lord Wensleydale for construing all written engagement. He stated the rule Very clearly and accurately in *Grey v. Pears* in the following words:

"I have been long and deeply impressed with the wisdom of the- -rule, now, I. believe, universally adopted-at least in the courts of law in West-Minster' Hall-that in construing wills, and indeed statutes and all written instruments, (the grammatical and ordinary sense of the words is to be adhered to, unless that would. lead to some absurdity, or some repugnance or inconsistency with-the rest *of* the instrument, in which case the grammatical and ordinary

[58] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 76

sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further".[59]

while agreeing in that completely, Lord Blackburn elucidates the point further in the following words :

"I agree in that completely but in the cases in which there is a real difficulty, this does not help us much, because the cases .in which ·there is a real difficulty, are those in which there is a controversy as to what the grammatical and ordinary sense of the words used with reference to the subject matter, is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the other side, and that 'the inconsistency and repugnancy is very great, that you should make a great stretch to avoid 'such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it. may appear that the words are perfectly clear-that they can bear· no. other meaning at all and to substitute any other meaning would be not to interpret the words used, but to make an instrument for · the parties-and that the supposed inconsistency or repugnancy is perhaps a hardship-a thing which perhaps it would have been better to have avoided, but which we have no power to deal with".[60]

(ii) Departure from grammatical rule-When permissible.-

The canon as to departure from the grammatical meaning was further stated by Lindley, L.J., in the following words : "You are not so to construe the Act of Parliament as to reduce it to

[59] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 76
[60] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 76,77

rank absurdity. You are not to attribute to general language used· by the legislature in this case, any more than in any other case, a meaning which would not carry out its object, but produce consequences which, to the ordinary intelligence, are absurd. You must give it such a meaning. as will carry out its objects.

As observed by Jervis,C.J., in *Abley v.Dale* "words may be modified or varied where their import is doubtful or obscure, but we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning.[61]

These observations were made in 1850, and 100 years later, Finnermore, J., has said, "The mere fact that the results of a statute may be unjust or absurd does not entitle this court to refuse to give it effect, 'but if there are two different -interpretations of · the words ill an Act, the court will adopt that "which is just, reasonable and sensible rather than that which is none of these· things."[62]

Lee v. *Knapp* {l961] 2 Q.B. 442, at pp. 447, 448.

Section 77 (1) of the Road Traffic Act 1960 requires the driver of a motor vehicle to "stop" after an accident. Winn L.J., in the Divisional Court, said that he would not wish to give the impression that a momentary pause after an accident would exempt the driver of a car from the necessity of stopping to give particulars. "The phrase 'the driver of the motor vehicle shall stop' is properly to be construed as meaning the driver of the motor vehicle shall stop it and

[61] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 77
[62] ibid

remain where he has stopped it for such a period of time as in the prevailing circumstances, having regard in particular to the character of the road or place in which the accident happened, will provide a sufficient period to enable persons who have a right so to do, and reasonable ground for so doing, to require of him direct and personally the information which may be required under the section."[63]

In *M. Pentiah* v. *Veeramallappa,*[64] *AIR 1961 SC 115*

the respondents was elected members of a municipal : committee under the Hyderabad Municipal' and Town Committee Act, 1951 which was repealed by the Hyderabad District Municipalities Act, 1956. The Act of 1956, however, provided that the Committee constituted under the Act ·of 1951 would continue till the first meeting of the Committee elected under the Act of 1956 was called. Since no elections were held the old Committee continued in office for more than three years, the maximum period provided for a Committee to hold office under the Act of 1951. The appellant prayed for a writ of *quo warranto.* The Supreme Court, agreeing with the prayer, held that if more than one construction were possible the one which was narrower and failed to achieve the object of the . Act should fail. The Act should be so interpreted as to avoid absurdity. In the present case since the Act of 1956 continued with the Committee constituted under the Act of 1951 till elections took place and the first meeting of the newly elected members held, it is reasonable to hold that the revision of maximum period of tenure of the Committee under the old Act should also stand under the new Act. Therefore, if no elections are held, the members of the Committee automatically cease to be members after the expiry of the three year period.

[63] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 44
[64] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 33

'In *State of Uttar Pradesh* v. *Synthetics and Chemicals Limited*, [65]AIR 1980 SC 614.

rule 17of the Uttar Pradesh Excise Manual passed 'by the State Legislature under the Uttar Pradesh Excise (Amendment) Act, 1972 levying vend fee on denatured sprit, was challenged on the ground that such power belonged to the Union Parliament only. It was held by the Supreme Court that the word *liquor* in Entry 8 of List II of the Seventh Schedule of the Constitution will not only cover alcoholic liquor which is generally used for beverage ·purposes and produces intoxication but also will include liquids containing alcohol. The power to legislate under Entry 8 of List II relating to intoxicating liquor comprise of liquor which contains alcohol. Thus, the State has exclusive power to make law relating to manufacture or sale of intoxicating liquor which includes liquor containing alcohol.

(iii) Consequences to be considered

Before adopting any proposed construction of a passage susceptible of more than one meaning as pointed out by Maxwell, it is important to consider the effect or consequences which would result from it, for they often point out the real meaning of the words. There are certain · objects which the legislature is presumed not to intend, and a construction which would lead to any of them is, therefore, to be avoided. It is not infrequently necessary, therefore, to limit the effect of the words contained in an enactment (especially general words), and sometimes to depart, not only; from their primary and literal meaning, but also from the rules of grammatical construction in cases where it seems highly improbable that

[65] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 34

the words in their wide primary· or grammatical meaning actually express the real intention of the legislature. It is regarded as more reasonable to hold that the legislature expressed its intention in slovenly manner, than that a meaning should be given to them which could not have been intended. Maxwell's observations, as cited in the above passage, have a support of the modern authorities. Although the literal rule of interpretation is acclaimed as a safe guide, more often, it is found that a construction is arrived at with reference to the consequences that follow from it. A bare mechanical interpretation, if it leads to a strange result which to all intents and purposes cannot be the intention of the legislature, may not serve as a safe guide. So Lord Reid has said in *Gill* v. *Donald Humberstone Co. Ltd.*, that "if the language is Capable of more than one interpretation, we ought to discard the more natural meaning that it leads-to an unreasonable results, and adopt that interpretation which leads. to a *reasonably* practicable result. In a subsequent case he has stressed the necessity of construing-an ambiguous word or phrase ·in the light of the mischief will the provision is designed to prevent, and in the light of the reasonableness of the consequences which follow from giving it a particular construction. [66]

As cited by Maxwell, in several old cases a statute which made an act' criminal in unqualified terms was understood as not applying where the act done was excusable or justifiable on grounds generally recognized by law: a literal interpretation would have given rise to consequences which the legislature could not possibly have intended. Thus, a statute which imposed three months' imprisonment and the forfeiture of wages on a · servant who "absented himself from his service" before his term of service was completed was understood

[66] Maxwell on interpretation of statutes,twelth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 105

as confined to cases where there was no lawful excuse for the absence vide *Re Turner*, (1846) 9 QB 80.[67]

Illustrations.----A few instances may be cited from the decided Indian cases:

(a) *Valuswami* v. *Raja Nainer* construction of Section 100 (1) (G) of the Representation of the Peoples Act, 1951 was involved. It was held by the supreme Court that even if the Returning Officer had rejected a Nomination Paper of a candidate on one disqualification it was open to the Election Tribunal to reject the application on some other ground of disqualification which may not have been submitted before the Returning Officer. If such a construction is not put upon the aforesaid section of the Act, the result would be anomalous.[68]

(b) In construing the words 'when the proper officer has reason to believe' in Section 105 of the Customs Act, 1962, the High Court of Calcutta observed ·that the statutory requirement of *reasonable belief rooted* in the information in possession of the Custom Officer, is to safeguard the citizen from vexatious proceedings. 'Belief' is a mental operation of accepting a fact as true, so without any fact, no belief can be formed. It is not necessary for the Assistant Collector of Customs to state reasons for his belief, but if challenged, he must disclose the materials upon which his belief was founded, so that the court can examine the materials to find out whether an honest and reasonable person can base his reasonable believe upon such material although the sufficiency of the reasons for the belief cannot be investigated by the court. The words-"when the proper officer has reasons to believe" occurring in Section 105

[67] ibid

[68] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 79

of the Act suggests that the believe must be that of an honest and reasonable person based upon relevant materials and circumstances. If, therefore, the information is such as leads the Customs Officer to believe that articles of search are secreted in a place, he ·may thereby have reasons to believe as contemplated under Section 105 of the Act and issue a warrant even if he does not know the name of the person who is in possession of the articles of search.[69]

(iv) The Golden rule of construction-Where can be applied

The object of .the golden rule of construction is to avoid absurd and anomalous results. If a too literal adherence to the words of the enactment appears to produce an absurdity or an injustice it will be the duty of a court of construction to consider the state of the law at the time the Act was passed with a view ascertaining whether the language is capable of any other flair interpretation, or whether or not it would be desirable to adopt a construction not quite strictly grammatical. But where. the language is plain and admits of no other construction, the court will give effect to the intention of the legislature as expressed by the plain words, irrespective of whatever consequence may follow, otherwise any alteration in the language may lead to injustice.[70]

The golden rule of interpretation or in other words, deviation from the literal rule has to be-applied with great care,'remembering, as Lord Green, M.R., has said, "that judges may be fallible on the question of an absurdity, and in any event must not be applied so as to result in twisting language into a meaning which it cannot bear : it is a doctrine which must not be

[69] ibid
[70] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 80

relied upon and must not be used to re-write the language in a way different from that in which it was originally framed." But when the language of a statute is mere directory and it is impossible to follow the direction, the court would give effect to the doctrine of *cy-pres*, and say that the direction should be carried out as nearly as possible.[71]

(v) The Gist of the rule to avoid anomalous results

It is the duty of the court while construing a provision of a statute to avoid anomalous results. In a case decided a few years ago, the Supreme Court observed that if on true construction of a statute, anomalous results could not be avoided, the court would have no option but to give effect to it and leave it to the legislature to amend and alter the law.[72]

[71] ibid
[72] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 81

MISCHIEF RULE OR THE RULE IN HEYDON'S CASE

The most firmly established rule for construing an obscure enactment are those laid down by the Barons of the Exchequer in Heydon's case which have been continuously cited with approval and acted upon.[73]

(i) Meaning and scope of the rule

The rule laid down in ***Heydons case*** is known as Mischief Rule. The intention of the rule is always to make such construction as\shall suppress the mischief and advance the remedy. It is now acclaimed as of the relation that statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the legislature.[74]

The rules laid down by the Barons of the Exchequer are that *f*or The sure and true interpretation of all statutes in general (be the penal or beneficial or restrictive or enlarging the common law, four things are to be ascertained and considered.(i) what was the common law before making of the Act; (ii) What was the Mischief and defects for which the common law did cure the disease of the Commonwealth; (iii) what remedy the Parliament has resolved and appointed to cure the disease of the Commonwealth; (iv) The true reason of the remedy and that the office of all the judges is always to make such, constriction as shall suppress the mischief and advance the remedy, and to suppress the subtle inventions and evasions for the continuance of the mischief, and *pro private commode,* and to add force· and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico."*[75]

[73] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 86
[74] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 87
[75] ibid

(ii) Applicability of the rule of modern cases

This rule is still as good as when it was. first reported in 1584 with the addition that regard must now be had, not only to the common law, but also to prior legislation and to the judicial interpretation thereof. Almost 300 years later, Lindely, M.R., reiterated the utility of the rule in the following words" In order properly to interpret 'any statute, it is as necessary now as it was when Lord Coke reported *Heydon's* case to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief'. The courts will, therefore, be .bound to look to the state of the law at the time of the passing of the Act,·- not only the common law, but the law as it then stood under previous statutes.[76]

In case of ambiguity it will be always proper, as propounded by Lord Reid, to construe that ambiguous word or phrase in the light of the mischief. Which the provision is obviously designed to prevent and in, the light of the reasonableness of the consequences which follow from giving it a particular construction. The scope of the rule in *Heydon's* case has been explained by Das, J., in ***S.C. Prashar* v. *Vasantsen Dwarkadas****;* in the following words·:

"In construing an enactment and determining its true scope it is permissible to have regard to all such factors as can be legitimately be taken into account to ascertain the intention of the legislature such as history of the Act, the reasons which led to its being passed, the mischief which had to be cured as well as the cure as also the other provisions of the statute. That is

[76] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 87

the rule in *Heydon's* case which was accepted *in R.M.D. Chamarbaughwalla* v. *Union of India.*

The principles as laid down in *Heydon's* case, and subsequently supplemented by subsidiary, rules as noted above clearly contemplate a wide enquiry into the policy and purpose behind the statute. The principles in modified form have been followed in several other judgments.[77]

In the famous *Bengal Immunity* case, the principle was applied to the construction of Article 286 of the Constitution. After referring to the state of law prevailing in the provinces prior to the coming into force of the Constitution and also -to the chaos and confusion created by indiscriminate exercise of the taxing power by different Legislatures founded on the theory of territorial nexus, S.R. Das, C.J., observed that it was to cure the mischief of multiple taxation and to preserve the free flow of the inter-State trade or commence in the Union of India regarded as one economic unit without any provincial barrier that the Constitution-makers adopted Article 286 in the Constitution.[78]

For the purpose of .construction, this rule is conveniently applied to cases where it is obvious that ·the intention of legislature is to remedy the ascertained evils to which -the former law had given rise. It is, therefore, quite legitimate to refer to the former as well as to the later Act which provides the remedy.

It is well-recognized principle that subsequent legislation may be looked into in order to see what is the proper interpretation to be put upon the earlier . Act where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation. This principle as

[77] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 88
[78] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 88

laid down in *Ormond Investment Co. Ltd.* v. *Betts6* was applied by the Supreme Court in construing the expanded definition of the words "coal mine" in Section_2 (b) of the Coal Mines Provident Fund and Bonus Scheme (Amendment) Act, 1965. It was held that "the change in the language of Section 2 (b) of the earlier Act, namely, the Coal Mines P.F. and Bonus Schemes, 1948, was not meant to bring about a change of law in this respect, but was meant to fix proper interpretation in the earlier *Act.*[79]

In *Brown* v. *Brown*, [1967] P. 105;[80]

Sir Jocelyn Simon P. said that the disadvantage of the old law on condonation of adultery was that, though a resumption of cohabitation might actually promote a reconciliation

which had not yet taken place, a wronged spouse might be reluctant to resume cohabitation in case it did not succeed and he or she would then have lost the right to complain of the matrimonial offence. ·The provision in section 2 (I) of the Matrimonial Causes Act 1963 (now contained in section 42 of the Matrimonial Causes Act 1965) that

adultery shall not be deemed to be condoned by reason of a continuation or resumption of cohabitation between the parties for a period of up to three months was, therefore, limited to cases within this "mischief"- where the cohabitation was *with a view to* effecting a reconciliation, and did not extend to cases where it was in consequence of reconciliation.

Kanwar Singh v. *Delhi Administration,*[81] AIR 1965 SC 871.

the officers of the · respondents, while rounding up stray cattle, were beaten up by the appellants the owners of the cattle. When prosecuted for an offence under Section 332 Indian

[79] ibid

[80] Maxwell on interpretation of statutes,twelfth edition by P.St. J. Langan, lexis Nexis Butterworth,pg 80

[81] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 27

Penal Code the appellants pleaded right of private .defense of property. They also contended that the cattle were not *abandoned.* Within the meaning of Section 418, Delhi Municipal Corporation Act, 1957 in that *abandoned* means completely leaving a thing as a final rejection of one's responsibilities so that it becomes *ownerless* as have been described in the dictionaries. The Supreme Court, while rejecting this argument, held that it is not necessary that the dictionary meaning of a word is to be always adhered to, even if the context of an enactment does not so warrant. In the present instance, to know the mind of the legislature, it is expedient t see what mischief was intended to be suppressed and what remedy advanced. So interpreted, the word *abandoned* must means let loose or left unattended.

In *State of Maharashtra* v. *Natwarlal*,[82] *AIR 1980 SC 593*

it was observe by the Supreme Court that Rule 126 (P} (2) (ii) of the Defense of India Rules, 1962, penalizes a person who has in his possession or under his control any_ quantity of gold in contravention of any provision of this part, and the court cannot cut back on the width of the language used bearing in mind the purpose of plenary control the State wanted to impose on gold, and exempt smuggled gold from the expression *any quantity of gold* in that sub-rule. These provisions have, therefore, to be specially construed in a manner which will suppress the mischief and advance the object which the legislature had in view. The High Court committed an error in holding that these rules do not apply because the accused had not acquired possession of these gold biscuits by purchase or otherwise within the meaning of those rules. Such . a narrow construction of this expression will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling.

[82] Prof. T. Bhattacharya, Interpretation of statutes,7th edition, Central Law Agency, pg 29

(iii) Types of cases where this rule has been adopted by the Courts

Dias in his *Jurisprudence* points out the types of cases in which the courts have adopted an approach more akin to the 'mischief ·rule' than to any other.

(i) The question whether or not a person is entitled to compensation for 'harm sustained as the result of breach of a statutory duty depends upon whether the mischief which the statute was designed to eradicate contemplated damage to him or to the class of which he was member.[83]

(ii) the importation of *mens rea* as an ingredient in the commission of a statutory offence seems to rest upon whether the object and policy of the statute would thereby the defeated.[84]

(iii) Where statutory penalties are imposed on certain kinds of behaviour, the courts regard the policy behind the statute in question to decide whether or not contracts contemplating such behaviour are void. The contract is void if the penalty is imposed in the interests of the public, but not, if the penalty is imposed in the interests of revenue.[85]

(iv) The approach to statutes of a predominantly "social" nature has been anything but consistent. There, have, however, been cases in which the judges have taken a broad view of the background and policy of the statutes in question.[86]

[83] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency 89
[84] ibid
[85] ibid
[86] ibid

(iv) Mischief Rule not applicable when words are capable of one meaning only

Unless there is any ambiguity in the words to be construed, the application of the mischief rule is uncalled for. Gajendragadkar, J., in *Kanailal* v. *Paramanidhi* has stated that "the recourse to the policy and object of the Act or consideration of the mischief and defect which the Act purports to remedy is only permissible when the language is capable of two interpretations". In, the well-known English case, *Smzth* v. *Hughes, (1928 AC 143(156))*-for example, the question was whether the prostitutes who attracted . the attention of the passersby from balconies or windows could be held as "soliciting in a street" within..Section 1 (1) of the Street Offences Act, 1959. So far as the language of

the section is concerned there is no ambiguity about the words 'soliciting in a street', 'since' everybody knows that this is an Act intended to clean up the streets, to enable people to walk along the streets without being molested or solicited by, common prostitutes." Viewed in that way, as stated by Lord Parker, the precise place from which a prostitute addresses her solicitations to somebody walking in the street becomes irrelevant. The matter should be decided by considering the mischief aimed at by this Act.[87]

(v) Alternative construction-when can be applied

In selecting, however, the true meaning, regard must be had to the consequences which may result. from adopting the alternative construction. Where alternative constructions are equally open, that alternative is to be chosen 'which will be consistent with the smooth¢ working of the system which the statute purports to regulate.

[87] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency pg 89,90

As construction that results in hardship, absurd inconvenience and manifest injustice, etc. has to be avoided and preference given to such alternative construction that furthers the intention of the legislature. "If the choice .is between two interpretations" said Viscount Simon, L.C., in *Noakes* v. *Doncaster Amalgamated Collieries Ltd.*, "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 futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of brining about an effective result."[88]

It follows, therefore, that a more reasonable construction is to be adopted if it is a apparent that the natural meaning of the languages is likely to produce an unnatural result: Lord Reid states the rule thus, "If the language is capable of more than one interpretation, one ought to discard the more natural meaning if it leads to an unreasonable result and adopt the interpretation .which leads to a reasonably practical results."[89]

[88] K.P. Chakwarthy, Interpretation of statutes, 2nd edition, Central law agency, pg 90
[89] ibid

CONCLUSION

The difference between the above is the generally the courts are abound to take the literal rule approach to the legislation, but it is possible to do so to depart from this approach, where significant reason why they should, where they can use the Golden Approach and Mischief rile. Overall the difference is that the literal approach is the interpretation of legislation applies the general rule that a court is bound by the words within the statute, but as where the two others are concerned they are the Golden Rule approach comes in when the Judge reluctant to use this approach by using phrases of the interpretation and where the Mischief approach is where the courts use words and phrases are ambiguous or are uncertain for some other reasons, this rule come in where there is uncertainty in a case.

Statutes are no longer the minor departures from common law that they used to be. They now inaugurate new policies and social experiments. It is not possible to give these sympathetic consideration without some appreciation of their background. Of course some statutes may have no single or readily discoverable policy; yet the rigid exclusion of all extrinsic material does seem to be undesirable, however hard is might to be define the limits of the kind of material that should be admitted.