(d) Intention of the legislature LA April 2010.

The expression 'intention of the legislature' is a shorthand reference to the meaning of the words used by the legislature objectively determined with the guidance furnished by accepted principles of interpretation. [*R. v. Secretary of state for the Environment exparte Spath Holme*, (2001) 1 All ER 195 p. 216 (HL)].

Admittedly, there is a conceptual link between intention and legislation. The expression intention of the legislature is not so much a description as a term used for linguistic convenience. Now the very idea of legislative intent postulates that collective bodies of persons such as legislatures have a mind which is a precondition for intent and since it has no mind it having any intention is a myth. Bennion dismisses this objection. According to him, "legislative intent is not a myth or fiction but a reality founded in the very nature of legislation." According to Brian Bix : "the term legislative intent might best be seen not as a naming thing, but as a shorthand reference for the process (and the result) of interpretation. Legislative intent...appears to stand for whatever aspect of legislative texts or the legislative record is used to clarify or settle the meaning and application of legislation". And *Lord Millet* uses the expression 'the legislative intent' or 'the intention of the legislation' in preference to the expression 'the intention of the legislature'.

Justice Holmes considers intention to be a residuary clause which gathers up the aids of interpretation.

Intention of legislature is not to be speculated on. In *Pitches v. Kenny* [(1903) 22 N.Z.L.R. 818, 819], it was said that, "the object of an Act and its intent, meaning and spirit can only be ascertained from the terms of the Act itself." And in *Re MacManaway* [(1951) A C 161, 169, P.C.], it was observed that 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 of law is to find the natural meaning of the words used in the context in which they occur, that context including any other phrases in the Act which may throw light on the sense in which the makers of the Act used the words in dispute.

The intention of the legislature is said to have two aspects it carries within it the concept of 'meaning' and the concept of 'purpose or object' or the 'reason and spirit' pervading through the statue. The process of construction therefore, combines both literal and purposive approaches. In other words, the legislative intent (i.e. the true or legal meaning of an enactment) is derived by considering the meaning of the words used in an enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. This formulation has now received approval of the Supreme Court in *Union of India v. Elphinstone Spinning and Weaving Co. Ltd.* [AIR (2001) SC 724], and it has been called the cardinal principle of construction."

Meaning - The first aspect 'concept of meaning' is concerned with what the words mean or the literal or primary meaning approach. In interpreting a statute the obvious method is to start with the literal interpretation.

Purpose and object - The second aspect is concerned with the concept of 'purpose of object' or the 'reason and spirit' pervading through the statute. If the Language. of the statute is ambiguous (open to more than one meaning) the intention or legal meaning is to be ascertained by reference to purpose or object of the statute. The purpose or object of the statute is to be derived from legitimate sources (by reading the statute as a whole in the light of permissible aids to interpretation) and the words are to be given an interpretation which they can reasonably bear. For, the correct interpretation in such cases, is the one that best harmonises the words with the purpose or object of the statute.

Ordinarily, language employed in the statute is the determining factor of intention and intention must be found in the words used in the text by reading the statute as a whole in its context. Interpretation of the text can always be aided by the context (the other provisions of the statute serve as intrinsic aids or context in interpretation), but it is not for judges to invent something which they do not meet within the words of the statute. *Casus omissus* cannot be created or supplied in the process of interpretation. It is therefore said that when words bear a plain meaning no further inquiry is necessary and the courts should not busy themselves with supposed intention or search for the policy underlying the statute.

In *Union of India v. Sankalchand Himatlal Sheth* [AIR (1977) S.C. 2328], The Supreme Court [*per V. R Krishna Iyer and S. Murtaza Fazal* All, JJ.] said - to set the record straight we must reiterate what Craies has stated with classical purity :

"If the words of the statute are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such cases best declare the intention of the law-giver.

When 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 intention of the legislature." [Statute law 6th edition p. 66].

Maxwell : The object of all interpretatio is to discover the intention of Parliament, but the intentron of Parliament must be deduced from the language used.... it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law [Maxwell on Interpretation of Statutes, p. 28].

However, words used by the legislature do not always bear a plain meaning. Moreover, there may among the judges be a difference of opinion whether certain words are plain or as to what the plain meaning of the word is. In case of any doubt the safe course is to have an eye on the object and purpose of the statute or reason and spirit behind it. For ascertaining the purpose one is not restricted to the internal aids alone which are furnished by the statute, but recourse can be had to the permissible external aids. These external aids are brought in by widening the concept of context.

The principle has been stated by Justice Holmes as follows : "You construe a particular clause or expression by construing the whole instrument and any dominant purposes that it may express. In fact, intention is a residuary clause intended to gather up whatever other aids there may be to interpretation besides the particular words and the dictionary [Reid Macdonald and Fordham : Cases and other materials on legislation, 2nd Edn. p. 1005].

According to Blackstone the most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, context, the subject-matter the effect and consequence, or the spirit and reason of the law.

In the words of Iyer, J. : "To be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the *deha* and *dehi* of the provision." [*Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee*, AIR (1977) SC 965, p. 968].

In *Organo Chemical Industries v. Union of India* [AIR (1979) SC 1803], the Supreme Court has observed as follows : "A bare mechanical interpretation of the words and application of a legislative intent devoid of the concept of purpose will reduce most of the remedial and beneficial legislation to futility."

According to Lord Watson, "Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in a positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, 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 and necessary implication." [*Salomon v. A. Salomon & Co. Ltd.* (1897)2 AC 38]. But since the whole of what is enacted by necessary implication cannot be determined unless the purpose and object of the statute is kept in view it is said that Lord Watson's formulation does not in effect altogether reject the concept of purpose but includes it within the import of the expression "necessary implication."

No language possesses the precision of mathematics therefore judge Learned Hand has said that "Statutes should not be construed as theorems of Euclid, but with some imagination of the purpose which lie behind them." [*Lehigh Valley Coal Co. v. Yensavage* 218 Fed 547]. And in the words of Krishna Iyer, J. the interpretive effort must be illumined by the goal though guided by the word. [*Kanta Goel v. B.D. Pathak,* AIR (1977) SC 1599]. The Supreme Court has said, that the law is a pragmatic instrument of social order and interpretive effort must be imbued with the statutory purpose [*Carew and Company Ltd. v. Union of India*, AIR (1975) SC 2260].

It would not be out of place to say that there is no dearth of literature on intention of the legislature (or intention of the legislation as some prefer to call it). Indeed much ink has been spilt in trying to explain the concept of intention. There is also much confusion at common law as to the meaning of intention. As Max Radin puts it - 'The Courts announced the doctrine that chief basis of statutory interpretation was the determination of 'the intent of the legislature' but it was an artificial intent just as the reason of the common law was an artificial reason." [There are some who have questioned how long can we sustain this fiction and put forth a new idea which frees the court from the handicaps of dealing with the fiction that the statute contains within it an answer to every question that might arise in its application. Harry Bloom states that Professor Hart and Sacks of Harvard University have expressed ideas on this which seem to be highly attractive. They argue that interpretation should not be regarded as a search for 'the purpose of the legislature or even the purpose of the statute, but as one of 'attribution of purpose'.

The court, by asking 'what purpose do we attribute to the statute ?' allows an inquiry into how best the statute can be interpreted and applied, or related to other legislation. The purpose to be attributed to the statute is not to be understood as the one that was or even could have been consciously formulated at the time the statute was enacted. This new idea is said to be the first systematically developed American theory of Dynamic statutory interpretation].

[D] Basic principles and some important considerations in interpretation

(a) Statute must be read as a whole in its context

(b) *Ut res magis valeat quam pereat*

(c) Language of the statute should be read as it is

(d) If meaning plain, effect must be given to it irrespective of consequences (plain meaning rule)

(e) Purposive construction

(f) Development of the rule from literal (or plain meaning) towards intention of legislature or purpose of statute

(g) Strict or liberal construction

(h) Harmonious construction

(i) Beneficial construction

(j) Legal maxims

(k) Presumptions

(a) Statute must be read as a whole in its context

There is a well settled and firmly established rule that the intention of the legislature must be gathered by reading the statute as a whole and in its context. (The term context is used here in its widest sense). The reason for the rule is that the conclusion as to whether the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole. Moreover, as words take colour from context the same word may mean one thing in one context and another in a different context, therefore, the same word used in different sections of a statute or even when used at different places in the same clause or section may bear different meaning. How far and to what extent each component part of the statute influences the meaning of the other part would be different in each given case.

It has been observed in the case of *Lincoln College* [(1595) 3 Co. Rep. 58 b. of p. 59 b.], that the good expositor of an Act of Parliament should "make construction on all the parts together and not of one part only by itself." And in the case of *Canada Sugar Refining Co. Ltd.* [(1898) A.C. 735], Lord Davey said : "every clause of a statute is to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute.'

The meaning to be given to a particular statutory language depends on the evaluation of a number of interpretive criteria Shorn of the context, the words by themselves are but "slippery customers". [*Nyadar Singh v. Union of India*, AIR (1988)SC 1979 at 1984].

Maxwell states that the expression 'reading words in their context' has *two* aspects :

(1) The external aspect - statutory language is not to be read in isolation, but in its context. Context is here used in a wide sense to cover external aspects such as the historical setting, parliamentary history, government publications (these are divided into two groups : the reports of commissions or committees which preceded the legislation to be interpreted, and other documents), international conventions, dictionaries and textbooks, practice-judicial, conveyancing, administrative and commercial.

(2) The statutory aspect - passing from the external aspects of the statute to its contents, it is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself.

(i) Individual words are not considered in isolation but may have their meaning determined by other words in the section in which they occur.

(ii) The meaning of a section may be controlled by other individual sections of the same Act and the apparently general language of a schedule may be restricted by the more specific provision of a section of the statute.

(iii) Lastly, the meaning of a section may be determined, not so much by reference to other individual provisions of the statute, as by the scheme of the Act regarded in general.

The intention of the legislature has to be gathered by reading the statute as a whole [*Osmania University Association v. State of Andhra Pradesh*, AIR (1987) SC 2034 at 2042].

A statute has to be construed in the light of the mischief it was designed to remedy [*State of U.P. v. Delhi Cloth Mills*, AIR (1991) SC 735 at 742].

It is an elementary rule that construction of a statute is to be made of all parts together. It is not permissible to omit any part of it. For the principle that the statute must be read as a whole is equally applicable to different parts of the same section. [*The Balasinor Nagrik Co-op. Bank Ltd. v. Babubhai S. Pandya and others*, AIR (1987) SC 849].

In matters of interpretation one should not concentrate too much on one word and pay too little attention to the other words. No provision in the statute and no word in the section may be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used [*Syed Hasan v. Union of India*, AIR (1991) SC 711 at 714].

No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word was attempted to be construed. The setting and pattern are important, [*Utkal Contractors & Joinery (Pvt.) Ltd. v. State of Orissa*, AIR (1987) SC 1454 at 1459].

In a case before the House of Lords the question was whether the Restrictive Practices Court's jurisdiction was limited to subsisting agreements (as per the conclusion arrived at by reading sec. 20 and 21) or whether it had jurisdiction to entertain a reference in regard to an agreement which has been terminated before the reference is begun. Lord Evershed observed : "But in truth it is not, as I conceive, Legitimate to read sec. 20 and sec. 21, bereft of their context - more particularly without having first read the nineteen secs. of the Act. There is indeed, solid and respectable authority for the rule that you should begin at the beginning and go on till you come to the end; then stop." [*Associated Newspapers Ltd. v. Registrar of Restrictive Trading Agreements*, (1964) 1 All ER 55 (HL)]

The principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso [*Jennings v. Kelly* (1939) 4 All ER 464 HL].

In order to decide whether certain words are clear and unambiguous, they must be studied in their context. Viscount Simonds calls it an elementary rule : "No one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so, he is not entitled to say that it, or anv part of it is clear and unambiguous." [*A.G. v. Prince Ernest Augustus of Hanover*, (1957) 1 All ER 49 (HL)]. Unambiguous here means unambiguous in context. So ambiguity need not necessarily be a grammatical ambiguity, but one of appropriateness of the meaning in a particular context [*Nyadar Singh v. Union of India*, AIR (1988) SC 1979]. The term context in this connection is used in its widest sense to take in all internal and external aids.

(b) Ut Res Magis Valeat Quam Pereat

The maxim *'ut res magis valeat quam pereat'* means that it is better to validate a thing than to invalidate it, better that the Act prevails than perish, lest intention of the Legislature may go in vain and also that a statute need not be extended to meet a case for which there is no provision. There is another related maxim *'ut res valeat potius pereat'* which connotes that the court would avoid that construction which would fail to relieve the manifest purpose of the legislation on the presumption that the Legislature would enact only for the purpose of bringing about an effective result.

Based on the view that a statute should be so interpreted that it may rather become operative than null since, Parliament would legislate only for the purpose of bringing about an effective result and the courts comity with the legislature, judges consider it their duty to make what they can of statutes or any enacting provision therein so as to make it effective and operative. Even though there be some inexactitude in the language used Or the enactment is so worded as to be mind twisting or an enigma, the courts will strive hard to give some meaning to it rather than readily conceding that no meaning can be given to it.

The importance of the principle is evident from the fact that there is hardly any reported decision, where a statute may have been declared void for sheer vagueness, although theoretically it may be possible to reach such a conclusion in case of absolute intractability of the language used or an impossibility to resolve the ambiguity when the language used is absolutely meaningless.

The views expressed by some leading authorities need mention here. In the words of Farewell, J., "unless the words were so absolutely senseless that I could do nothing at all with them I should be bound to find some meaning, and not to declare them void for uncertainty "[In re *Manchester Ship Canal Co.* (1904) 2 Ch 352]. Approving Farewell, J's Statement Lord Denning stated the principle thus, "But when a statute has some meaning even though obscure, or several meanings even though it is little to choose between them the courts have to say what meaning the statute is to bear rather than reject it as a nullity." [*Fawcett Properties v. Buckingham County Council* (1960) 2 Ch 352]. And Lord Dunedin has observed "It is our duty to make what we can of statutes knowing that they are made to be operative and not inept, and nothing short of impossibility should in my judgement allow a judge to declare a statute unworkable" [*Murray v. I.R.C.* (1918) AC 541]. And in a later case Lord Dunedin has said, "A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." [*Whitney v. IRC* (1926) AC 37].

In *C.S.T. v. Mangal Sen Sham Lal* [AIR (1975) SC 1106] the court observed, "A statute is supposed to be an authentic repository of the Legislative will and the function of a court is to interpret it according to the intent of them that made it. From that function the court is not to resile. It has to abide by the Maxim *ut res magis valeat quam pereat*, lest the intention of the legislature may go in vain or be left to evaporate into thin air."

The rule is equally applicable to Constitution of a state. A Constitution is a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be. Constitution is not to be construed in any narrow and pedantic sense. A federal court may rightly reflect that a Constitution of Government is a living and organic thing, which

of all instruments has the greatest claim to be construed *ut res magis valeat quam pereat*. [In *Re C.P. and Berar Sales of Motor Spirit and Lubri.*, Taxation Act, AIR (1939) FC1 : 1939 FCR 18].

This maxim and the rule based on it postulate that the thing may rather have effect than be destroyed in order that the thing may be valid rather than invalid (where anything is granted that is also granted without which the thing itself is, not able to exist). But it must be noted that before the doctrine can apply the court must be left in a state of real and persistent uncertainty of mind [*IRC v. william* (1969) 3 All E R 614].

The Supreme Court has held that courts would lean in favour of the constitutionality of the statutory provisions where two meanings are possible [*Githa Hariharan v. Reserve Bank of India*, AIR (1999) SC 1149].

It is an application of the above principle that courts while pronouncing upon the constitutionality of a statute start with a presumption in favour of constitutionality and prefer a construction which keeps the statute within competence of the legislature. The courts tend to strongly lean against a construction which reduces a statute to futility. And whenever alternative or diverse constructions are possible the court must choose the one which will ensure smooth working of the system for which the statute has been enacted and not that which will create hindrances or obstacles in its smooth functioning. In *Nokes v. Doncaster Amalgamated Collieries*, [(1940) 3 All ER 549 HL], Viscount Simon, L.C., said : "If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the Legislation we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

The courts strongly lean against a construction which reduces the statute to a futility. But if a statute is absolutely vague and its language is wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. *Tinsukia Electric Supply Company Ltd. v. State of Assam* [AIR (1990) SC 123, 1989] is a case in point wherein the Tinsukia and Dibrugarh Electric Supply Undertakings (Acquisition) Act, 1973 were held to be not workable.

There may sometimes be carelessness in drafting as a result of which the legislature may wholly or partially fail to achieve the object. For example, a validation Act which declares certain area to be included in a municipality that was not validly included in that municipality would be ineffective unless the law is amended retrospectively curing the defect in the inclusion of the area. Thus, in *Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan* [AIR (1996) SC 2930], it was held that a validating Act cannot be valid and effective if it simply deems a legal consequence without amending the law from which the said legal consequence could follow.

(h) Harmonious Construction

The idea underlying the principle of harmonious construction is that the legislature never intends to contradict itself by providing two repugnant provisions in the same statute. This rule postulates that when two or more provisions of the same statute are repugnant, the court tries to construe them in such a manner, if possible, so as to give effect to both by harmonising them with each other. Maxwell states that : one way in which repugnancy can be avoided is by regarding two apparently conflicting provisions as dealing with distinct matters or situations. Collision may be avoided by holding that one section, which is *ex facie* in conflict with another, merely provides for an exception from the general rule contained in that section. Although sometimes it may be very difficult to decide whether the separate provisions of the same statute are overlapping or mutually exclusive the court tries to harmoniously construe them so as to avoid collision. By doing so the court avoids application of the known rule (applicable to documents and statutes) that the last must prevail, *Legis posteriores priores contrarias abrogant.*

The rule of harmonious construction is applicable to subordinate legislation also [*Ajeet Singh Singhvi v. State of Rajasthan* 1991 SCC (L & S) 1026; (1991) 16 ATC 935].

Where there is an apparent inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what the Parliament hath given with one hand, it took away with the other. The provisions

of one section cannot be used to defeat those of another unless it is impossible to reconcile them [*Krishna Kumar v. State of Rajasthan* (1991) 4 SCC 258, 267].

The essence of the rule is explained in Bindra's Interpretation of Statutes [on page 354] as follows :

(i) It is the duty of the courts to avoid a head-on-clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(ii) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(iii) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both.

(iv) The courts have also to keep in mind that an interpretation which reduces one of the provisions to "a dead letter" or "useless lumber" is not harmonious construction.

(v) To harmonise is not to destroy any statutory provision or to render it otiose : *Sultana Begum v. Prem Chand Jain* (1997) 1 SCC 373; *Anwar Hasan Khan v. Mohd. Shafi & Ors.* (2001) 8 SCC 540.

In *Ishwari Khetan Sugar Mills v. State of U.P.* [AIR (1980) SC 1955], the State Governments proposed acquisition of sugar industry in the State under the U.P. Sugar undertaking (Acquisition) Act, 1971 was challenged on the ground that sugar industry had been declared a controlled industry by the Union under the Industries (Development and Regulation) Act, 1951 and, therefore the State Government did not have the power of acquisition or requisition of property with respect to declared or controlled industries. The Supreme Court held that the field of acquision is not occupied by the Industries (D & R) Act, 1951 and that the State's power to acquire declared industries was an independent power under entry 42 of the concurrent list.

In *Calcutta Gas Company Pvt. Ltd. v. State of W. Bengal* [AIR (1962) SC 1044], the Supreme Court observed that there are so many subjects in the three lists in the Constitution that there is bound to be some overlapping and the duty of the court in such a situation is to try to harmonise them, if possible, so that effect can be given to each of them.

The facts in this case were, the appellant (Calcutta Gas Co.) challenged the validity of a 1960 State Act (Oriental Gas Company Act, 1960) under which the State sought to takeover the management of Calcutta Gas Co. on the ground that the State Legislative Assembly had no power to pass that Act under Entries 24 and 25 of the State list because the Parliament had already enacted the I (D & R) Act 1951 under entry 52 of the Central list dealing with Industries. The Court took

the view that entry 24 of list II (State list) covers entire industry in the state whereas entry 25 of list II is limited to only the gas industry. Therefore, entry 24 covers all industries except gas industry which is specifically covered by entry 25. Entry 24 in list II corresponds to Entry 52 in list I (Union List). Adopting a harmonius construction it became clear that gas industry was exclusively covered by Entry 25 of list II (State list) over which the state has full control. The State was therefore fully competent to make laws in respect of this field.

THE PRINCIPAL RULES OF INTERPRETATION

There are three principal rules of interpretation of statutes. These are as follows :

[A] The Primary rule

[B] The Golden rule

[C] The Mischief rule

[A] The Primary Rule : Literal Construction

The rule of literal construction is considered to be the first and most elementary rule of construction. This rule (as per its classic traditional version) postulates that it is the duty of the court to expound the law as it stands and not to modify, alter or qualify its language. In *Cartledge v. Japling* (E.) & Sons [1963 AC 758 : 1963 1 All ER 341], it was stated thus : 'where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be'.

The literal rule of statutory interpretation requires that if the meaning of the statutory provision is plain the court must apply it regardless of the result. [The duty of the court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others per Lord Birkenhead L.C. in *Sutters v. Biggs* (1922) 1 A.C. 1 at p. 8 : Maxwell on the Interpretation of Statutes 12th edn. p. 29]

A classic statement of the rule can be found in the *Sussex Peerage case* [(1884) 8ER 1034] wherein Lord Tindal C.J. put it thus : "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such cases best declare the intention of the law giver."

Francis J. McCaffrey has used the term Doctrine of literalness" for the rule of literal interpretation. He says, that, "The doctrine of literalness demands that plain, unambiguous statutory language expressing a single sensible meaning be interpreted to mean exactly what it says such language expresses the meaning, purpose and policy of the statute and forecloses any consideration of extrinsic evidence [*People v. Schoonmaker*, 63 Barg. 44]. The interpreter must assume that words are used in their natural and ordinary meaning. Conceding its imperfections literalness, in its full sense, is the most reliable guide to the legislative intent. This

appraisal must be considered with the thought that statutory interpretation is not an exact science... . It needs no supporting argument to sustain the statement that adherence to the doctrine is essential to predictability and certainty in statutory law."

In *R. v. Bombay* [(1834) 1 A&E 136, 142], it was said, the rule of construction is to intend the legislature to have meant what they have actually expressed. It is a safe guide to adhere to the *litera legis* than to try to discover the *sententia legis*.

In *Wilma E. Addison v Holly Hill Fruit Products*, [322 US 607, 618], the rule that the words are to be understood in their natural plain meaning or ordinary or popular sense has been justified by Justice Frank Furter in these words, "After all legislation when not expressed in technical terms is addressed to common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed."

In *Abbey v. Dale* [(1850) 10 CB 62], Jervis C. J. had expressed it in the following words, "if the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense even though it does lead, in our view of the case to an absurdity or manifest injustice."

The observations made by Dias in this regard are pertinent here. According to him, there is, in the first place an unfortunate tendency to imagine that the courts are thereby giving effect to the intention of Parliament on the hypothesis that "the words themselves do in such cases, best declare the intention of the law-giver : "But it would seem that whenever the literal rule is applied any reference to the intention of Parliament is better avoided. Secondly the "plain meaning rule" suffers from the inherent weakness that it is not always easy to say whether a word is "plain" or not. Therefore, he is of the view that the literal or plain meaning rule needs to be understood subject to the following *five* explanatory riders :

(1) The statute may itself provide a special meaning for a term, which is usually to be found in the interpretation section.
(2) Technical words are given their ordinary technical meaning if the statute has not specified any other.
(3) Words will not be inserted by implication.
(4) Words undergo shifts in meaning in the course of time.
(5) Finally, and by no means least, it should always be remembered that words acquire significance from their context [R.M.W. Dias Jurisprudence, 2nd Edn. pp. 112-115].

In *Crawford v Spooner* [(1846) 4 MIA 179] : it was said, the construction of the Act must be taken from the bare words of the Act... it is not for judges to invent something which they do not meet within the words of the text (aiding their construction of the text always of course

by the context.); it is not for them to supply a meaning, for, in reality, it would be supplying it; the true way in these cases is, to take the words as the legislature have given them, and to take the meaning which the words given naturally imply unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered; and therefore, if any other meaning was intended than that which the words plainly purport to import, then let another Act supply that meaning and supply the defect in the previous Act.

In *State of U.P. v. Vijay Anand* [AIR (1963) SC 946], the Supreme Court held : obviously a petition under Article 226 of the Constitution is a proceeding under the Constitution it cannot be a proceeding under the U.P. Act of 1956, by giving an extended meaning to the words as contended by relying upon certain passages in Maxwell on Interpretation of Statutes at p. 68 and in Crawford on Statutory Construction at p. 492. The Supreme Court said that both Maxwell and Crawford administered a caution in resorting to such construction. Maxwell says at p. 68 of his book : 'The construction must not, of course, be stressed to include cases plainly omitted from the natural meaning of the words'. Crawford says that a literal construction does not justify an extension of the statute's scope beyond the contemplation of the legislature. The fundamental and elementary rule of construction is that the words and phrases used by the legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognised rule of construction that the meaning must be collected from the expressed intention of the legislature. So construed there cannot be two possible views on the interpretation of the section.

In *Suthendran v. Immigration Appeal Tribunal* [(1976) 3 All ER 611, p. 616 HL], Lord Simon of Glaisdale had in his speech given a modern statement of the rule wherein he said. "Parliament is *prima facie* to be credited with meaning of what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule of construction' that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited wtih good sense, so that when such an approach produces injustice, absurdity contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further."

The primary rule of literal construction can be discussd with the help of the following propositions :

(A) – Plain and natural meaning

(B) – Meaning to be ascertained by reference to context

(C) – Exact meaning preferred to loose meaning

(D) – Construction of ordinary words in popular sense

(E) – Technical terms in technical sense

(1) – Words having special meaning in trade, business etc. should receive an interpretation in conformity with the practice in the trade or business etc.

(2) – Words having special connotation in law in legal sense.

(A) *Plain and natural meaning* :–

Plain and natural meaning means the ordinary literal or grammatical meaning and in the case of words having a legal or technical meaning their legal or technical meaning. It is not the same as popular meaning though there may be some cases in which the plain and ordinary meaning of a term may coincide with the popular meaning *Prima facie* the 'natural sense' of any word ought to be adopted. But the natural sense of any word depends on the subject matter in connection with which it is used and on its collocation. Every word must be understood in its natural sense. Natural sense of any expression may be its legal or technical sense unless it appears from the context that it has been used in a popular or more enlarged sense. The meaning of particular words is to be found in the subject or occasion on which they are used, the meaning is always subject to context and other admissible considerations. General terms in a statute may have their meaning restrained and limited by specific words with which they are associated.

In *Municipal Board v. State Transport Authority, Rajasthan* [AIR (1965) SC 458], the location of a bus stand was changed by the Regional Transport Authority. Anyone wanting to move an application against this order was (under the provisions of sec. 64-A of the Motor Vehicles Act, 1939) required to do so within thirty days from the date of the order. It was argued that application could be made within thirty days of knowledge of order passed by Regional Transport Authority. The Court held that since language of statute is plain and unambiguous equitable considerations are out of place and clear grammatical meaning of the enactment should stand.

(B) *Meaning to be ascertained by reference to context*

The literal rule requires that words are to be understood first in their plain, natural, ordinary or popular meaning which they have in relation to the subject matter and the context in which they are used : Meaning is to be arrived at by reading words in their context.

Words take colour and content from context. They derive force from the sentences and settings in which they appear and cannot be effectively construed without reference to their context. Every word may, apart from having a primary meaning (which may be its natural, ordinary or popular meaning) also have a secondary or less common meaning (which may be either its technical or scientific meaning). But once it is accepted

that the natural, ordinary or popular meaning is to be derived from its context the distinction drawn between the different meanings becomes irrelevant. So the first step in determining the meaning of any word or phrase in a statute is to inquire - what is the plain, natural and ordinary meaning of that word or phrase in its context in the statute ? And it must be ascribed the plain, natural, ordinary or popular meaning which it has in relation to the subject matter with reference to which and the context in which it is used in the statute . (Shorn of context words are but slippery customers).

For instance the term 'coal' when used in the context of Sales Tax Act refers to coal as an item of fuel as understood in commercial circles by dealers and consumers and covers within its scope charcoal as well as mineral coal. But the same term when used in the context of Collieries Control Order will include only coal which is a mineral product [*Commissioner of Sales Tax, M.P. Indore v. Jaswant Singh Charan Singh,* AIR (1967) SC 1454].

But before the court can arrive at a conclusion that the words of a statute bear a plain meaning (i.e. they are susceptible to only one meaning) the words have to be studied in their context and setting and construed. In *Hutton v. Phillips* [45 Del 156, 70A 2nd 15 1949], Judge Pearson of the Supreme Court of Delaware has said : "That seems to me a plain clear meaning of the statutory language in its context. Of course, in so concluding I have necessarily construed or interpreted the language It would obviously be impossible to decide that language is 'plain' (more accurately that a particular meaning seems plain) without first construing it. This involves far more than picking out dictionary definitions of words or expressions used. Consideration of the context and setting is indispensable properly to ascertain a meaning. In saying that a verbal expression is plain or unambiguous, we mean little more than that we are convinced that virtually anyone competent to understand it and desiring fairly and impartially to ascertain its significance would attribute to the expression in its context a meaning such as the one we derive, rather than any other; and would consider any different meaning by comparison, strained, or far-fetched or unusual or unlikely... Implicit in the finding of a plain, clear meaning of an expression in its context, is a finding that such meaning is rational and 'makes sense' in that context."

Exact meaning preferred to loose meaning

In *Re Spillers Ltd.* [(1931) 2 KB 21], Lord Hewart CJ said : "It ought to be the rule and we are glad to think that it is the rule that words are used in an Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that the rule has been broken, the burden of establishing their proposition lies heavily, and they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred." In this case the word 'contiguous' was ascribed its exact meaning i.e. 'touching'

in preference to its loose meaning i.e. neighbouring. This principle was approved and followed by the Privy Council in *Mayor, Councillors and Burgesses v. Taranaki Electric Power Board,* [AIR (1933) PC 216], wherein the exact meaning of the word 'adjoining' i.e. 'conterminous' was preferred to its loose meaning of 'near' or 'neighbouring'.

In *Re Prithipal Singh* [AIR (1982) SC 1413], the Supreme Court had observed that, "there is a presumption that words used in an Act of Parliament are used correctly and exactly and not loosely and inexactly." Therefore, in selecting the ordinary or popular meaning of a word preference should be given to its exact meaning unless the context clearly directs otherwise.

Construction of ordinary words in popular sense

The words used in a statute should be construed in their popular sense. 'Popular sense' means that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. [Pollock B. *in Re Grenfell* (1876) 1 Ex.D. 242, 248]. The rule regarding construction of ordinary words according to their popular sense was stated by Lord Tenterden in *Att.-Gen. v. Winstanley* [(1831) 2D and Cl. 302, 310], in these words, the words of an Act of Parliament which are not applied to any particular science or art are to be construed "as they are understood in common language." As Craies puts it, in other words the construction of words is to be adapted to the fitness of the matter of the statute : [Craies on Statute Law p. 163].

Where a word is construed according to its strict or technical sense (this may mean the etymological or scientific as well as the legal or technical sense) its popular signification must also be looked into.

Statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances [*Maunsell v. Olins* (1975) 1 All ER 16, p. 26 HL per Lord Simon].

A word which is not defined, but which is a word of every day use, must be construed in its popular sense [*Ramabai v. Dinesh,* (1976) Mah LJ 565].

Maxwell : In dealing with matters relating to the general public, statutes are presumed to use words in their popular, rather than their narrowly legal or technical sense.

Popular meaning is the meaning which would attach to a word in the common or ordinary use of language or according to the common understanding and acceptation of the term.

In *Robertson v. Day* [(1879) 5 App Cas 63] the expression "five miles square" was taken in its popular or commercial, rather than strictly mathematical sense as an area of twenty-five square miles irrespective of whether it forms a geometrical figure five miles square. [In strict mathematical sense it is an area of twenty-five square miles which forms a precise square].

Popular sense of a word is normally preferred as against its scientific or technical meaning in construing entries of goods in fiscal statutes [such as statutes dealing with excise, customs, octroi and sales tax]. Popular meaning is that meaning which is popular in commercial circles for such Acts essentially, in their working are concerned with dealers who are commercial men. In *Mukesh kumar Aggarwal & Co. v. State of M.P.* [AIR (1988) SC 563 p. 564], the Supreme Court had observed, "the common commercial sense of the words and not their scientific or technical sense is to be adopted for our merchants are not supposed to be naturalists, geologists or botanists". And in *Kisan Trimbuk Kothul v. State of Maharashtra* [AIR (1977) SC 435, p. 440] it was said that "consumers" understanding of the expressions used in legislation relating to them is also an input in judicial construction.

In *Ramavtar v. Asst. Sales Tax Officer*, [AIR (1961) SC 1325], sales of betel leaves were subjected to sales tax and it was contended that they were not so liable as they constituted 'vegetables' which were exempt from such tax. It was held that it being a word of everyday use it must be construed in its popular sense meaning 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it.It is to be understood in common language and not in a technical or, botanical sense.

Similarly it has been held sugarcane does not fall in the category of green vegetables for the purpose of Bihar Sales Tax Act, 1947 [*Motipur Zamindari Co. Ltd. v. State of Bihar,* AIR (1962) SC 660], while coconut is neither 'fresh fruit' nor 'vegetables' [*P.A. Thillai Chidambara Nadar v. Additional Appellate Asst. Commr.,* AIR (1985) SC 1678] and watery coconut is neither green fruit nor dried fruit [*Shri Bharauch Coconut Trading Co. v. Municipal Corpn. Ahmedabad,* AIR (1991) SC 494]. But it has been held that chillies and lemons [*Mongulu Sahu v S.T.O., Gunjan,* AIR (1974) SC 390] and green ginger [*State of West Bengal v. Washi Ahmed,* AIR (1977) SC 1638] are vegetables.

Applying the test of popular meaning while construing the Uttar Pradesh Sales Tax Act, 1948, it was held that Oil Seeds will include groundnut [*Avadh Sugar Mills Ltd. v. Sales Tax Officer, Sitapur,* AIR (1973)SC 2440] "Dyes and colours" will not include "food colours" and "Scents and perfumes" will not include "syrup essences" [*Commr. of Sales Tax, U.P. v. S.N.Bros., Kanpur,* AIR (1973) SC 78 p. 80]. By applying the same test Rice and paddy were held to be different commodities for the purposes of the Punjab Sales Tax Act, 1969 [*Ganesh Trading Co., Karnul v. State of Haryana,* AIR (1974) SC 1362].

Technical words in technical sense

If a word is of a technical or scientific character, it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning [*Holt & Co. v. Collyer* (1881) 16 Ch. D. 718, 720].

The term technical says Craies can only mean terms of the particular art or subject-matter to which they relate [*Craies* on Statute Law seventh edn p. 165].

The first and elementary rule of construction is that it is to be assumed that words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise, in their ordinary meaning, and secondly, that the phrases and sentences are to be construed according to the rules of grammar, and it is not allowable to depart where the language admits of no other meaning [*Maxwell*, 12th edn. p. 28].

It is the sense in which those concerned with it understand it (the term or expression which has acquired a special meaning in a particular trade, business, profession, art or science) which constitutes a definitive index of legislative intention [*Indian Aluminium Cables Ltd. v. Union of India*, AIR (1985) SC 1201]. Words having *special meaning in trade, business etc.* should receive an interpretation in conformity with the practice in the trade or business etc.

In *Unwin v. Hanson* [(1891) 2 Q.B. 115 (CA) p. 119], Lord Esher MR. observed that if the Act is one passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular [or special] meaning.

Such a special meaning is called the technical meaning in order to distinguish it from the more common meaning that the word may have [*Union of India v. Garware Nylons Ltd.*, AIR (1996) SC 3509].

The special or technical meaning acquired by a word becomes the popular meaning in the context of the concerned trade, business, profession, transaction, art or science, and therefore, that meaning should normally be accepted. It is the sense in which those concerned understand a term that constitutes the definitive index of legislative intention.

There are, however, certain limitations to the rule which must be kept in view while applying it. The general understanding and acceptation of a special meaning contended for a particular word :

- must have been understood as such by the class as a whole and not, by a portion only of the trade, business or industry concerned;

- it must have been in vogue at the time of the passing of the Act using the particular word for which that meaning is contended.

Evidence to show that a word has acquired a special meaning in the business or industry concerned is admissible [*Union of India v. Delhi Cloth & General Mills Ltd.* AIR (1963) SC 791].

In *Aswini Kumar Ghose v. Arbinda Bose* [AIR (1952) SC 369 p. 373; 1953 SCR 1], the word 'practice' in Supreme Court Advocates (Practice in High Court) Act, 1951 came up for consideration before the Court. Patanjali Shastri, C.J. Said : 'The practice of law in this country generally

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involves the exercise of both the functions of acting and pleading on behalf of a litigant party; accordingly when the legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorising him to appear and plead as well as act on behalf of suitors in that court."

When construing revenue statutes utilising trade or technical terms, the law generally favours interpretation of the terms (by identifying the product by its functional character - i.e. as it would be identified by dealers and consumers) as they are understood in the trade to which the statute applies. A few illustrative cases are examined below.

In the context of hotel business preparation of foodstuffs by cooking or by other process does not result in manufacture [*Indian Hotels Co. Ltd. v. ITO*, AIR (2000) SC 2645].

Separation of asbestos fibre from the rock in which it is embedded by manual and mechanical means, does not result in manufacture [*Hyderabad Industries Ltd. v Union of India* (1995) 5 SCC 338].

Grey fabric after bleaching dyeing, printing sizing, shrink proofing etc. becomes a different commodity [*Ujagar Prints v. Union of India,* AIR (1989) SC 516].

'Glass mirrors' is a different article from 'glass and glass ware' [*Atul Glass Industries (P) Ltd. v. Collector of Central Excise,* AIR (1986) SC 1730].

A general merchant dealing in glass or table-ware cannot be regarded as dealing in goods used for making spectacles [*Real Optical Co. v. Appellate Collector of Customs & Anr.* (2001) 9 SCC 391].

Words having special connotation in Law in legal sense

It is a well settled principle of interpretation of statutes that where the legislature has used an expression bearing a wellknown legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood [*Barras v. Aherdin Steel Trolley & Fishing Co.* (1933) AC 402].

Craies in his book on Statute Law, however, points out that the rule, as to words judicially interpreted also applies to words with wellknown legal meaning even though they had not been the subject of judicial interpretation.

In *Diwan Bros. v. Central Bank of India* [(1976) 3 SCC 800], the Supreme Court held that the word 'decree' has a wellknown legal significance or meaning, when the Court Fees Act uses this word then the legislature must be presumed to have used the term in the sense in which it has been understood, namely, as defined in the Code of Civil Procedure and it cannot apply to orders of Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951. [The facts in this case were D claimed refund of a large sum of money by way of security deposits and commission. The Tribunal under the above 1951 Act dismissed the

claim. D appealed to High Court with a nominal court fee of Rs. 5. But the High Court took the view that the appellant should pay ad valorem court fee hence this appeal was filed before the Supreme Court].

In her *highness Rukmaboye v. Lallbhoy* [(1851-52) 5 MIA 234 : 8 MOO PC 4] it was said the words 'beyond the seas' are of legal import and effect and are synonymous with the words 'out of the territories' and 'out of the realm'. They have long been adopted by the legislature in a (legal) sense which may not improperly be called technical... the rule of construction of statutes requires that these words should be construed accordingly although that (i.e. legal) sense may vary from its strict literal meaning.

When words acquire a technical meaning because of their consistent use by the legislature in a particualr sense or because of their authoritative construction by superior courts, they are understood in that sense when used in a similar context in subsequent legislation [Rukmaboye's case (5 MIA 234)]. Dictionaries cease to be helpful in interpreting that word. The rule that legal words must be interpreted in legal sense is subject to context. Context may indicate that legislature intended to use the word in its literal and not legal sense. [*Rukmaboye's case was referred by the Supreme Court in Keshavji Ravji and Co. v. C.I.T.* AIR (1991) SC 1806, 1813].

In *Commissioner for Special purpose of Income Tax v. John Frederick Pamsel* [(1891-94) All ER Rep. 28, P. 54 HL], Lord Macnaughten said "In construing Acts of Parliament, it is a general rule that words must be taken in legal sense unless the contrary intention appears."

Words of legal import are those words which have, in law, acquired a definite and precise sense. Therefore, in interpreting an expression used in a legal sense, we have only to ascertain the precise connotation which it possesses in law. (per Venkatarama Aiyar, J in *State of Madras v. Gannon Dunkerley & Co.* AIR (1958) SC 560, 573].

It has been held that since the expression 'undischarged insolvent' has acquired a special meaning under the law of insolvency, court must understand that that is the meaning which is sought to be attributed to the expression used in Article 191(1)(c) of the Constitution [*Thampanor Ravi v. Charipara Ravi & Ors.* (1999) 8 SCC 74].

In *workmen of National and Grindlays Bank Ltd. v. National and Grindlays Bank Ltd.* [AIR (1976) SC 611), it was held that the words 'working funds' when used in the context of a banking company must be understood in a technical sense which they have acquired in that context. These words were therefore construed to mean paid up capital, reserves and average of the deposits for 52 weeks of each year for which weekly returns of deposits are submitted to the RBI.

A word or expression which has acquired a technical or legal meaning may be used by the legislature in its natural or literal sense. *Jones v. Tower Boot Co. Ltd.* [(1997) 2 All ER 406 CA] is a case in point where

the words 'in the course of employment' which have a technical or legal meaning relating to vicarious liability in the law of torts were given their natural everyday meaning in interpreting sec. 32 of the Race Relations Act, 1976 (U.K.) because the technical meaning would have severely restricted its operation and largely frustrated the object of the Act which was to prevent racial discrimination.

[B] Golden Rule

Parke B. had in Becke v. Smith formulated the rule as follows: "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." [*Becke v. Smith* (1836) 2 M & W 191 at p. 195].

In *R. v. Tonbridge Overseas* [(1884) 13 Q.B.D. 339], Brett L.J. said : if 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 meaning.

In *Warburton v. Loveland* [(1928) 1 H & BIR 623], Justice Burton had observed : I apprehend it is a rule in the construction of statutes, that in the first instance, the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with any expressed intention or declared purpose of the statute or if it would involve any absurdity repugnance or inconsistency, the grammatical sense must then be modified, extended, or abridged so far as to avoid such inconvenience, but no further.

In Matteson's case (1854) Jervis CJ described Burton J's above rule as "the" Golden Rule and said, "We must give to the words used by the legislature their plain and natural meaning unless it is manifest, from the general scope and intention of the statute, injustice and obsurdity would result from so construing them. [per Jervis CJ in *Matteson v. Hart* (1854) 23 LJ CP 108].

According to Maxwell, "the so-called 'golden rule' is really a modification of the literal rule." This rule is also known as the modifying method of interpretation.

It would be interesting to note at this juncture that Lord Wensleydale had in [*Abbot v. Middleton* (1858) 28 LJ Ch. 110, p. 114 (HL)], himself pointed out that the (Golden) rule was in substance laid down by Mr. Justice Burton in *Warburton v. Loveland* [(1828) 1 Hud & Brook 623]. It was described by Lord Ellenborough [in *Doe v. Jessep* (1810) 12 East 288, 292] as "a rule of common sense as strong as can be", Lord

Cranworth referred to it as "a cardinal rule [in *Grundy v. Pinnigar* (1852) 21 LJ Ch 404, p. 406], Jervis CJ had termed it as 'the golden rule' [in *Mattison v. Hart* (1854)]. Parke, B (before he became Lord Wensleydale) had [in *Becke v. Smith* (1836)] also referred to this rule and called it a very useful rule in the construction of a statute.

Lord Wensleydale regards it as not just a particular rule for construction of statutes, but a rule for construing all written engagements. He adopted it in *Grey v. Pearson* [(1857) 6HL Cas 61] and thereafter the version enunciated by him is usually known as Lord Wensleydale's Golden Rule. He expressed it in these 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 Westminister 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 sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further."

Bannerjee is of the view Lord Wensleydale's Golden Rule has been universally accepted as a correct enunciation of the law. He goes on to say : 'In laying down that the ordinary and grammatical sense of the words must be adhered to in the first instance, what is meant is this : Most words have a primary meaning, that is, a meaning in which they are generally used, and a secondary meaning, that is a particular meaning in which they are used in a particular context [Interpretation of Deeds, Wills and Statutes in British India', Tagore law lectures, lecture I, P. 21].

The golden rule permits the plain meaning to be departed from if a strict adherence to it would result in an absurdity. (Odgers, Construction of Deeds and Statutes, 2nd edn. 1946, p. 294). This rule is particularly useful where literal or ordinary meaning leads to plain and clear contradiction of the apparent purpose of the Act or to some palpable and evident absurdity or where the legislature has expressed its intention in a slovenly manner.

The golden rule of interpretation of statutes is that a construction which creates anomalous situations, should, if possible, be avoided (*Re. D. K. Gupta* 1971, ALJ p. 998, 1003). It may be summarised as follows:

(i) When there is some obvious logical defect in the *litera legis*; or

(ii) the text leads to a result that it is evident that the legislature could not have said what it meant, or

(iii) there is an obvious clerical error which leads to some repugnancy, ambiguity, inconsistency, incongruity or manifest absurdity;

the courts may import 'savings clauses' in order to avoid such repugnancy, ambiguity or inconsistency. In such cases the courts are not obliged to adhere to a strict literal construction. Such saving clauses are implied to preserve the previous principles of the common law.

In *Luke v. IRC* [(1963) AC 557], Lord Reid while explaining the rule said, "to apply the words literally is to defeat the obvious intention of the legislature and to produce a wholly unreasonable result. To achieve the obvious intention and to produce a reasonable result we must do some violence to the words."

The golden rule recognises that a statute consists of two parts the letter and the sense. "It is not the words of the law," said Plowden, "but the internal sense of it that makes the law, and our law (like all other) consists of two parts - viz., of body and soul; the letter of the law is the body of the law, and the sense and reason of the law is the soul of the law - *quia ratio legis est anima legis.*" [Craies, Statute Law 7th edn. p. 83].

The golden rule tries to give effect to the true spirit of the law and not merely its language. The language is just an external manifestation of the intention that underlies it and a mere mechanical and literal interpretation is not always sufficient to give effect to the true intention of the statute where it is not clearly expressed with sufficient precision. In the words of Iyer, J., "To be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the *deha* and *dehi* of the provision." [*Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee*, AIR (1977) SC 965 p. 968 1977 SCC (lab.) 226].

For the purposes of analysis the golden rule may be divided into two parts.

(1) The first part of this rule postulates that when grammatical construction is clear, the grammatical and ordinary sense of the words is to be adhered to.

In *Nokes v. Doncaster Amalgamated Collieries* [(1940) AC 1014], it was observed : The golden rule is that words of a statute must *prima facie* be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law; for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or conversely, to prohibit results which would otherwise follow...

In *Rananjaya Singh v. Baijnath Singh* [AIR (1954) SC 749], Das J., observed : "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 section of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage, the appeal must be to Parliament and not to this court."

In *New Piece Goods Bazar Co. Ltd. v. Commr. of Income Tax, Bombay* [AIR (1950) SC 165], the Supreme Court has held : it is an elementary

duty of a court to give effect to the intention of the legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention.

In *Crawford v Spooner* [18 ER 667], Lord Brougham made some important observations regarding the respect of the judges for the words of the statute which seem pertinent here. His Lordship said, "The construction of an Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the legislature. We cannot aid the legislature's defective phrasing of the statute. We cannot add and mend and by construction make up the deficiencies which are left there.. The true way is to take the words as the legislature has given them...."

In *Nagendra Nath v. Suresh* [AIR (1932) PC 165], Sir Dinshaw Mulla had observed, "the strict grammatical meaning of the words is the only safe guide."

(2) The second part of the golden rule postulates that when grammatical construction leads to absurdity or repugnance or inconsistency with the rest of the statute or instrument the grammatical and ordinary sense of words may be modified so as to avoid the absurdity and inconsistency, but no further.

In *Surajmull Nagarmull v. CIT,* [AIR (1961) Cal 578, 613], Mookherjee J. had observed, where the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience, or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence.

The Supreme Court has held that the court should as far as possible avoid any decision on the interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice [*Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth,* 1984 GOC (SC) 57].

Judges have expressed misgivings and warned that the latter part of the golden rule must be applied with much caution. In *Woodward v. Watts* [(1853) 118 ER 836], Crompton J had observed, 'I do not understand it to go so far as to authorise us, where the legislature have enacted something which leads to an absurdity, to repeal that enactment and make another for them if there are no words to express that intention." And in *Hill v. East and West India Dock Co.* [(1884) 9 AC 448], Lord Bramwell had said,... that last sentence (unless grammatical meaning would lead to some absurdity) opens a very wide door. I would like to have a good definition of what is such an absurdity that you are to disregard the plain words of an Act of Parliament. It is to be remembered that what seems absurd to one man does not seem absurd to another."

Lord Greene MR considered absurdity to be a very unruly horse and cautioned that it is a doctrine which has to be applied with great care. In *Grundt v. Great Bolder Gold Mines Ltd.* [1948, 1 All ER 21, 29-30], Lord Greene MR had observed :

"Absurdity, I cannot help thinking, like public policy, is a very unruly horse... that although the absurdity or the non-absurdity of one conclusion as compared with another may be, very often is of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with very great care remembering that judges may be fallible in this question of an absurdity, and in any event it 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 used to rewrite the language in a way different from that in which it was originally framed."

Where the situation demands application of the golden rule it is applied for construction with reference to consequences to avoid inconvenience and injustice or to prevent evasion and arrive at a correct interpretation which would bring out the true meaning of the language in the process of giving effect to the real intention of the legislature.

The short coming of the golden rule is that it does not lay down any objective criterion by which one can say that a particular interpretation is absurd. It is submitted that in this regard it would be safe to take valuable guidance from the view taken by Willes J. in Christopher's case. In *Christopher v. Lotinga* [(1864) 33 LJC 121, 123], Willes J., subscribed to every word of the 'golden rule' assuming the word 'absurdity' to mean no more than 'repugnance'. He had said, "with that modification, it seems to me that the rule thus laid down is perfectly consistent with good sense and law."

[C] Mischief rule

The rule laid down by Lord Coke in Heydon's case is called the Mischief Rule. [Heydon's case (1584) 76 ER 637 : (1584) 3 Co. Rep. 7a].

The *facts* of the case were : certain lands were the copyholds of a college. The warden and canons of the college granted a part of the land to W and his son for their lives and the rest to S and G at the will of the warden and canons in the time of King Henry VIII. While so, the warden and canons granted all the lands to Heydon on lease for 80 years. Thereafter, the warden and canons surrendered their college to the King. The Attorney General filed an information, on behalf of the Crown, for obtaining satisfaction in damages for the wrong committed in the lands, against Heydon, as an intruder on the lands.

The statute, 31 Henry VIII, provided that if a religious or ecclesiastical house has made a lease for a term of years, of lands in which there was an estate and not determined at the time of the lease, such lease shall be void.

It was decided by the Barons of the Exchequer that for the sure and true interpretation of all statutes in general be they penal, or beneficial restrictive or enlarging of the common law, *four* things are to be discerned and considered,

(a) what was the common law before the making of the Act,

(b) what was the mischief and defect for which the common law did not provide.

(c) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth and

(d) the true reason of the remedy,

and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to supress subtle inventions and evasions for continuance of the mischief and *pro-privato commodo,* and to add force and life to the cure and the remedy, according to the true intent of the makers of the Act, *pro bono publico.*

In this case the common law was that religious and ecclestial persons might have leases for as many years as they pleased.

The mischief was that when they perceived their houses would be dissolved they made long and unreasonable leases.

The remedy for this mischief was provided by statute 31 Henry VIII, the intent of this Act was to avoid doubling of estates, and to have but one single estate in being at a time; for doubling of estates implies (in itself) deceit, and private respect, to prevent the intention of Parliament.

Their reason was that it was not necessary to make a new lease so long as the former lease was subsisting.

Held : If the copy-hold estate for two lives and the lease for 80 years shall stand together, there will be doubling of estates. *Simul* and *Semal* (at one and the same time) which will be against the true meaning of the Act.

Consideration of the mischief aimed may lead to a wider or restricted interpretation of a statute. In a broader sense the mischief rule may be understood as the purposive construction of statutes.

In *Maunsel v. Olins* [(1975) 1 All ER 16, 29 (HL)], Lord Simon said, that "the rule in Heydon's case is available at two stages; first before ascertaining the plain and primary meaning of the statute and secondly at the stage when the court reaches the conclusion that there is no such plain meaning."

In *Kanailal Sur v. Paramnidhi Sadhu Khan* [AIR (1957) SC 907], it was observed that "this rule is most helpful in the interpretation of statutes, when the language of the statute is capable of more than one meaning."

In *Anderton v. Ryan* [(1985) 2 All ER 355, p. 359, HL], Lord Roskill has given a more brief statement of the rule in the following words :

Statutes should be given what has become known as a purposive construction, that is to say that the courts should identify the 'mischief' which existed before the passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified.

Dias is of the view that the propositions in Heydon's case were probably adequate to deal with the limited kind of legislation that then existed, but today on account of statutes putting into effect new social experiments and their altogether operation on a scale much larger than before, Heydon's case itself is somewhat inadequate and it should be broadened and adopted to meet the conditions.

Though it sounds very reasonable, the mischief rule has not received much favour in English Courts which lean more towards a literal interpretation. Salmond has stated that, judges vary, in the extent to which they make use of this rule, which allows a more functional approach to legislation. On the whole comparatively little use has been made of it. Moreover, this usefulness is limited by the fact that in seeking the intention underlying a statute, English Courts do not permit themselves to consider the preliminary discussions (called on the continent *travaux preparatoires*) that took place before the enactment was made law. [Salmond, Jurisprudence 12th edn., p. 140].

A few instances of application of mischief rule are examined below:

In the well-known case of *Smith v. Hughes* [(1960) 1 WLR 830], it was held that prostitutes who attracted the attention of passers by from balconies or windows were soliciting "in a street' within the meaning of sec. 1(1) of the Street Offences Act, 1959. Lord Parker took into consideration the mischief aimed at by this Act namely, to clean up the streets to enable people to walk without being molested or solicited by common prostitutes in view of which the precise place from which the solicitations were addressed to somebody walking in the street became irrelevant.

In *Gorris v. Scott* [(1874) LR 9 Ex. 125], the court was concerned with interpreting a statute providing that animals carried on board a ship should be kept in pens. The action was for breach of statutory duty against a shipping company by whose neglect some of the sheep of the plaintiff had been washed overboard during a storm. The defendant ship owner (company) had undertaken to carry the plaintiff's sheep from a foreign port to England and if he had penned them the mishap would not have occurred. The object of the Act was to prevent the spread of infection among animals and not to protect them against the perils of the sea. It was held that a loss of that kind caused by the shipowners neglect cannot give a cause of action. Where a statute (i.e. the Privy Council Order made under the Authority of the contagious Diseases (Animals) Act, 1869 Sec. 75) has been clearly enacted to suppress mischief of one sort this (i.e. mischief) rule will not allow it to be so interpreted as to suppress mischief of a different sort which was quite outside the intention of the legislature.

In Re *Newspaper Proprietor's Agreement* [(1962) LR 3 RP 360], it was held that the duty of the Registrar under sec. 1(2) of the (English) Restrictive Trade Practices Act, 1956 to maintain a Register of Agreements covered even those agreements which have expired or have been terminated by the parties. The court, in arriving at this decision took into consideration the mischief the Act was intended to remedy and the remedy which it had provided (by restraining agreements [in the future] to the like effect).

In *CIT, MP & Bhopal v. Sodra Devi* [AIR (1957) SC 832], the Supreme Court applied this rule for construing the word 'individual' in the context of sec. 16(3) of the Indian Income-Tax Act, 1922 after it came to the conclusion that the said word in its setting was ambiguous. Bhagwati J. pointed out that the evil which was sought to be remedied was the one resulting from the wide spread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. If this background of the enactment of sec. 16(3) is kept in view there is no room for any doubt that the words "any individual" in this provision is restricted to males and it was so construed accordingly.

In *RMD Chamarbaugwalla v. Union of India,* [AIR (1957) SC 628], the mischief rule was applied in construing the definition of 'prize competition' under sec.2(d) of the Prize Competitions Act, 1955. The question before the court was whether the Act applies to competitions which involve substantial skill and are not in the nature of gambling. It was held that the definition was inclusive of only those competitions in which success does not depend upon any substantial degree of skill. Thus, those prize competitions in which some skill was required, were exempt from the definition of prize competition under sec. 2(d) [In the instant case, the Supreme Court applied the rule in Heydon's case in order to suppress the mischief which was intended to be remedied, as against the literal rule which would have covered prize competitions in which no substantial degree of skill was required for success].