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.

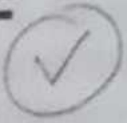
In *Ishwari Khetan Sugar Mills v. State of U.P.*, [AIR (1980) SC 1955], the State Governments proposed acquisition of sugar industry in the State under the U.P. Sugar undertaking (Acquisition) Act, 1971 was challenged on the ground that sugar industry had been declared a controlled industry by the Union 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