Lesson 3
Interpretation of Statutes

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LEARNING OBJECTIVES

A statute is a will of legislature conveyed in the form of text. Interpretation or construction of a statute is an age-old process and as old as language. It is well settled principle of law that as the statute is an edict of the Legislature, the conventional way of interpreting or construing a statute is to seek the intention of legislature. The intention of legislature assimilates two aspects; one aspect carries the concept of 'meaning', and another aspect conveys the concept of 'purpose' and 'object' or the 'reason' or 'spirit' pervading through the statute. The process of construction, therefore, combines both the literal and purposive approaches.

Necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. If the language is clear and unambiguous, no need of interpretation would arise. For the purpose of construction or interpretation, the Court obviously has to take recourse to various internal and external aids. These internal aids include long title, preamble, headings, marginal notes, illustrations, punctuation, proviso, schedule, transitory provisions, etc. When internal aids are not adequate, Court has to take recourse to external aids. It may be parliamentary material, historical background, reports of a committee or a commission, official statement, dictionary meanings, foreign decisions, etc.

The complexity of modern legislation demands a clear understanding of the principles of construction applicable to it. The students will understand the general principles of interpretation as well as internal and external aids in interpretation of the statutes.

"Interpretation or construction is the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed."

– Salmond

INTRODUCTION

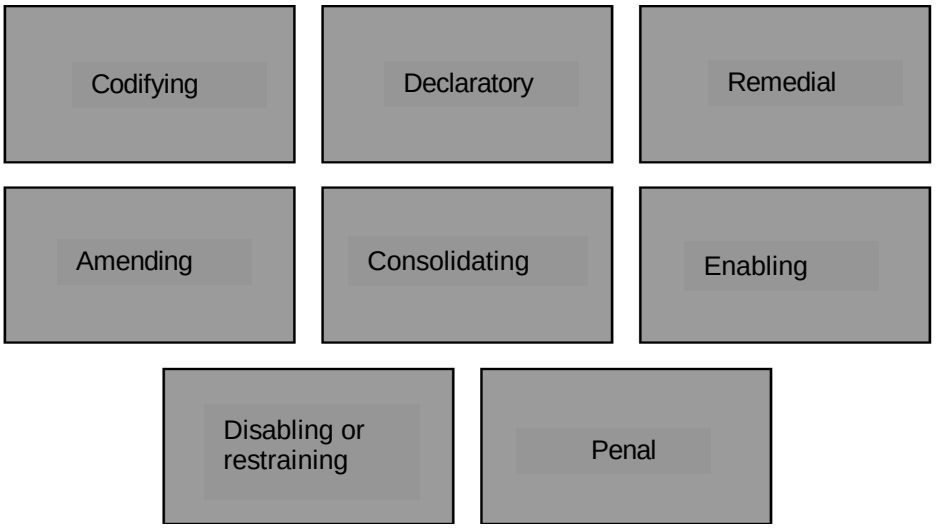
A statute has been defined as "the will of the legislature" (*Maxwell, Interpretation of Statutes*, 11th ed. p. 1). Normally, it denotes the Act enacted by the legislature.

A statute is thus a written "will" of the legislature expressed according to the form necessary to constitute it as a law of the State, and rendered authentic by certain prescribed forms and solemnities. (*Crawford,* p. 1)

According to *Bouvier's Law Dictionary*, a statute is "a law established by the act of the legislative power i.e. an Act of the legislature. The written will of the legislature. The term 'statute' is generally applied to laws and regulations of every sort law which ordains, permits or prohibits anything which is designated as a statute, without considering from what source it arises".

The Constitution of India does not use the term 'statute' but it employs the term "law" to describe an exercise of legislative power.

Statutes are commonly divided into following classes:



(1) *codifying,* when they codify the unwritten law on a subject; (2) *declaratory,* when they do not profess to make any alteration in the existing law, but merely declare or explain what it is; (3) *remedial,* when they alter the common law, or the judge made (non-statutory) law; (4) *amending*, when they alter the statute law; (5) *consolidating*, when they consolidate several previous statutes relating to the same subject matter, with or without alternations of substance; (6) *enabling*, when they remove a restriction or disability; (7) *disabling or restraining*, when they restrain the alienation of property; (8) *penal*, when they impose a penalty or forfeiture.

NEED FOR AND OBJECT OF INTERPRETATION

The following observation of Denning L.J. in *Seaford Court Estates Ltd.* v. *Asher,* (1949) 2 K.B. 481 (498), on the need for statutory interpretation is instructive: "It is not within human powers to forsee the manifold sets of facts which may arise; and that; even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judge's trouble if Acts of Parliament were drafted with divine prescience and perfect

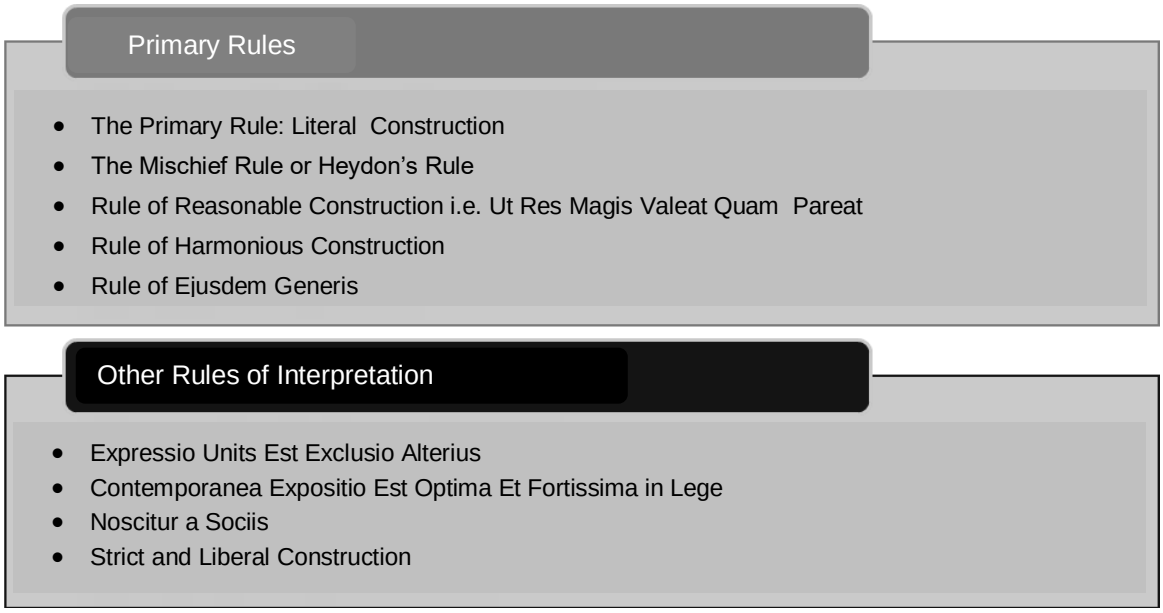
clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. To put into other words : A judge should ask himself the question : If the makers of the Act had themselves come across this luck in the texture of it, how would they have straight ended it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

The object of interpretation has been explained in *Halsbury's Laws of England* 3rd Ed., vol. 2, p. 381 in the following words: "The object of all interpretation of a 'Written Document' is to discover the intention of the author, the written declaration of whose mind the document is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as possible, and as the law will permit. The function of the court is to ascertain what the parties meant by the words which they have used; to declare the meaning of what is written in the instrument, and not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent of the intention. It is not possible to guess at the intention of the parties and substitute the presumed for the expressed intention. The ordinary rules of construction must be applied, although by doing so the real intention of the parties may, in some instances be defeated. Such a course tends to establish a greater degree of certainty in the administration of the law". The object of interpretation, thus, in all cases is to see what is the intention expressed by the words used. The words of the statute are to be interpreted so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used.

According to *Salmond*, interpretation or construction is the process by which the Court's seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed.

GENERAL PRINCIPLES OF INTERPRETATION

At the outset, it must be clarified that, it is only when the intention of the legislature as expressed in the statute is not clear, that the Court in interpreting it will have any need for the rules of interpretation of statutes. It may also be pointed out here that since our legal system is, by and large, modelled on Common Law system, our rules of interpretation are also same as that of the system. It is further to be noted, that the so called rules of interpretation are really guidelines.



(i) Primary Rules

(a) The Primary Rule: Literal Construction

According to this rule, the words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meaning unless such a construction leads to an absurdity or the content or object of the statute suggests a different meaning. The objectives 'natural', 'ordinary' and 'popular' are used interchangeably.

Interpretation should not be given which would make other provisions redundant (*Nand Prakash Vohra* v. *State of H.P*., AIR 2000 HP 65).

If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed according to the ordinary and natural meaning of the words. "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive, if possible, at their meaning without, in the first instance, reference to cases."

"Whenever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used". (Brett M.R.)

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express.

A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions of another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated.

Similarly, the main part of the section must not be construed in such a way as to render a proviso to the section redundant.

Some of the other basic principles of literal construction are:

(i) Every word in the law should be given meaning as no word is unnecessarily used.

(ii) One should not presume any omissions and if a word is not there in the Statute, it shall not be given any meaning.

While discussing rules of literal construction the Supreme Court in State of H.P v. Pawan Kumar (2005) 4 SCALE, P.1, held: One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words.

— If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended, abridged, so far as to avoid such an inconvenience, but no further.

— The onus of showing that the words do not mean what they say lies heavily on the party who alleges it.

— He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.

(b) The Mischief Rule or Heydon's Rule

In *Heydon's Case*, in [1584] [76 ER 637 360 REP 7a], it was resolved 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: (1) What was the Common Law before the making of the Act; (2) What was the mischief and defect for which the Common Law did not provide; (3) What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth; and (4) The true reason of the remedy.

Although judges are unlikely to propound formally in their judgments the four questions in Heydon's Case, consideration of the "mischief" or "object" of the enactment is common and will often provide the solution to a problem of interpretation. Therefore, when the material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words is the rule laid down in Heydon's case which has "now attained the status of a classic". The rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur. (See *Umed Singh* v. *Raj Singh,* A.I.R. 1975 S.C. 43)

The Supreme Court in Sodra Devi's case, AIR 1957 S.C. 832 has expressed the view that the rule in Heydon's case is applicable only when the words in question are ambiguous and are reasonably capable of more than one meaning.

The correct principle is that after the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule.

(c) Rule of Reasonable Construction i.e. Ut Res Magis Valeat Quam Pareat

Normally, the words used in a statute have to be construed in their ordinary meaning, but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words, does not meet the ends as a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words' may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough interpreting the provision, it becomes necessary to have regard to the subject matter of the statute and the object which it is intended to achieve.

According to this rule, the words of a statute must be construed *ut res magis valeat quam pareat*, so as to give a sensible meaning to them. A provision of law cannot be so interpreted as to divorce it entirely from common sense; every word or expression used in an Act should receive a natural and fair meaning.

It is the duty of a Court in constructing a statute to give effect to the intention of the legislature. If, therefore, giving of literal meaning to a word used by the draftsman particularly in penal statute would defeat the object of the legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning which will advance the remedy and suppress the mischief.

It is only when 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 of 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 (*Tirath Singh* v. *Bachittar Singh*, A.I.R. 1955 S.C. 830).

Courts can depart from dictionary meaning of a word and give it a meaning which will advance the remedy and suppress the mischief provided the Court does not have to conjecture or surmise. A construction will be adopted in accordance with the policy and object of the statute (*Kanwar Singh* v. *Delhi Administration*, AIR 1965 S.C. 871). To make the discovered intention fit the words used in the statute, actual expression used in it may be modified (*Newman Manufacturing Co. Ltd*. v. *Marrables*, (1931) 2 KB 297, *Williams* v. *Ellis*, 1880 49

L.J.M.C.). If the Court considers that the litera legis is not clear, it, must interpret according to the purpose, policy or spirit of the statute (ratio-legis). It is, thus, evident that no invariable rule can be established for literal interpretation.

In *RBI* v. *Peerless General Finance and Investment Co. Ltd.* (1987) 1 SCC 424. The Supreme Court stated that if a statute is looked at in the context of its enactment, with the glasses of the statute makers provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clauses each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act.(See also Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd., AIR 2007 SC 2458).

(d) Rule of Harmonious Construction

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid “a head on clash” between two sections of the same Act and, “whenever it is possible to do so, to construct provisions which appear to conflict so that they harmonise” (*Raj Krishna* v. *Pinod Kanungo*, A.I.R. 1954 S.C. 202 at 203).

Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This is what is known as the “rule of harmonius construction”.

The Supreme Court applied this rule in resolving a conflict between Articles 25(2)(b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Article 25(2)(b)]. (*Venkataramana Devaru* v. *State of Mysore*, A.I.R. 1958 S.C. 255).

(e) Rule of Ejusdem Generis

Ejusdem Generis, literally means “of the same kind or species”. The rule can be stated thus:

(a) In an enumeration of different subjects in an Act, general words following specific words may be construed with reference to the antecedent matters, and the construction may be narrowed down by treating them as applying to things of the same kind as those previously mentioned, unless of course, there is something to show that a wide sense was intended; (b) If the particular words exhaust the whole genus, then the general words are construed as embracing a larger genus.

In other words, the *ejusdem generis* rule is that, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose. It is merely a rule of construction to aid the Courts to find out the true intention of the Legislature (*Jage Ram* v. *State of Haryana,* A.I.R. 1971 S.C. 1033). To apply the rule the following conditions must exist:

(1) The statute contains an enumeration by specific words,

(2) The members of the enumeration constitute a class,

(3) The class is not exhausted by the enumeration,

(4) A general term follows the enumeration,

(5) There is a distinct genus which comprises more than one species, and

(6) There is no clearly manifested intent that the general term be given a broader meaning that the doctrine requires. (See *Thakura Singh* v. *Revenue Minister,* AIR 1965 J & K 102)

The rule of *ejusdem generis* must be applied with great caution because, it implies a departure from the natural meaning of words, in order to give them a meaning or supposed intention of the legislature. The rule must be controlled by the fundamental rule that statutes must be construed so as to carry out the object sought to be accomplished. The rule requires that specific words are all of one genus, in which case, the general words may be presumed to be restricted to that genus.

Whether the rule of *ejusdem generis* should be applied or not to a particular provision depends upon the purpose and object of the provision which is intended to be achieved.

(ii) Other Rules of Interpretation

(a) Expressio Unis Est Exclusio Alterius

The rule means that express mention of one thing implies the exclusion of another.

At the same time, general words in a statute must receive a general construction, unless there is in the statute some ground for limiting and restraining their meaning by reasonable construction; because many things are put into a statute *ex abundanti cautela,* and it is not to be assumed that anything not specifically included is for that reason alone excluded from the protection of the statute. The method of construction according to this maxim must be carefully watched. The failure to make the 'expressio' complete may arise from accident. Similarly, the 'exclusio' is often the result of inadvertence or accident because it never struck the draftsman that the thing supposed to be excluded requires specific mention. The maxim ought not to be applied when its application leads to inconsistency or injustice.

Similarly, it cannot be applied when the language of the Statute is plain with clear meaning *(Parbhani Transport Co-operative Society ltd v Regional Transport Authority, AIR 1960 SC 801)*

(b) Contemporanea Expositio Est Optima Et Fortissima in Lege

The maxim means that a contemporaneous exposition is the best and strongest in law. Where the words used in a statute have undergone alteration in meaning in course of time, the words will be construed to bear the same *meaning as they had when the statute was passed on* the principle expressed in the maxim. In simple words, old statutes should be interpreted as they would have been at the date when they were passed and prior usage and interpretation by those who have an interest or duty in enforcing the Act, and the legal profession of the time, are presumptive evidence of their meaning when the meaning is doubtful.

But if the statute appears to be capable of only interpretation, the fact that a wrong meaning had been attached to it for many years, will be immaterial and the correct meaning will be given by the Courts except when title to property may be affected or when every day transactions have been entered into on such wrong interpretation.

(c) Noscitur a Sociis

The *'Noscitur a Sociis'* i.e. "It is known by its associates". In other words, meaning of a word should be known from its accompanying or associating words. It is not a sound principle in interpretation of statutes, to lay emphasis on one word disjuncted from its preceding and succeeding words. A word in a statutory provision is to be read in collocation with its companion words. The pristine principle based on the maxim 'noscitur a socitis' has much relevance in understanding the import of words in a statutory provision (*K. Bhagirathi G. Shenoy* v. *K.P. Ballakuraya*, AIR 1999 SC 2143).

The rule states that where two or more words which are susceptible of analogous meaning are coupled together, they are understood in their cognate sense. It is only where the intention of the legislature in

associating wider words with words of narrower significance, is doubtful that the present rule of construction can be usefully applied.

The *same words bear the same meaning in the same* statute. But this rule will not apply:

(i) when the context excluded that principle.

(ii) if sufficient reason can be assigned, it is proper to construe a word in one part of an Act in a different sense from that which it bears in another part of the Act.

(iii) where it would cause injustice or absurdity.

(iv) where different circumstances are being dealt with.

(v) where the words are used in a different context. Many do not distinguish between this rule and the *ejusdem generis* doctrine. But there is a subtle distinction as pointed out in the case of *State of Bombay* v. *Hospital Mazdoor Sabha,* (1960) 2 SCR 866.

(d) Strict and Liberal Construction

In *Wiberforce on Statute Law*, it is said that what is meant by 'strict construction' is that "Acts, are not to be regarded as including anything which is not within their letter as well as their spirit, which is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended", while by 'liberal construction' is meant that "everything is to be done in advancement of the remedy that can be done consistently with any construction of the statute". Beneficial construction to suppress the mischief and advance the remedy is generally preferred.

A Court invokes the rule which produces a result that satisfies its sense of justice in the case before it. "Although the literal rule is the one most frequently referred to in express terms, the Courts treat all three (viz., the literal rule, the golden rule and the mischief rule) as valid and refer to them as occasion demands, but do not assign any reasons for choosing one rather than another. Sometimes a Court discusses all the three approaches. Sometimes it expressly rejects the 'mischief rule' in favour of the 'literal rule'. Sometimes it prefers, although never expressly, the 'mischief rule' to the 'literal rule'.

PRESUMPTIONS

Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are number of presumptions. These are:

(a) that the words in a statute are used precisely and not loosely.

(b) that *vested rights*, i.e., rights which a person possessed at the time the statute was passed, *are not taken away without express words, or necessary implication or without compensation.*

(c) *that "mens rea", i.e., guilty mind is required for a criminal act.* There is a very strong presumption that a statute creating a criminal offence does not intend to attach liability without a guilty intent.

The general rule applicable to criminal cases *is "actus non facit reum nisi mens sit rea" (The act itself does not constitute guilt unless done with a guilty intent).*

(d) that the *state is not affected* by a statute unless it is expressly mentioned as being so affected.

(e) that a statute *is not intended to be inconsistent with* the *principles of International Law.* Although the judges cannot declare a statute void as being repugnant to International Law, yet if two possible alternatives present themselves, the judges will choose that which is not at variance with it.

(f) that the *legislature knows* the state of the law.

(g) that the *legislature does not make any alteration* in the existing law unless by express enactment.

(h) that the legislature *knows the practice of the executive and the judiciary.*

(i) *legislature confers powers necessary to carry out duties imposed by it*.

(j) that the *legislature does not make mistake*. The Court will not even alter an obvious one, unless it be to correct faulty language where the intention is clear.

(jj) *the law compels no man to do that which is futile or fruitless.*

(k) *legal fictions* may be said to be statements or suppositions which are known, to be untrue, but which are not allowed to be denied in order that some difficulty may be overcome, and substantial justice secured. It is a well settled rule of interpretation that in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate.

(l) where powers and duties are inter-connected and it is not possible to separate one from the other in such a way that powers may be delegated while duties are retained and *vice versa*, the *delegation of powers takes with it the duties.*

(m) *the doctrine of natural justice* is really a doctrine for the interpretation of statutes, under which the Court will presume that the legislature while granting a drastic power must intend that it should be fairly exercised.

INTERNAL AND EXTERNAL AIDS IN INTERPRETATION