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CLASS NOTES

INTERPRETATION OF STATUTES

UNIT-III - Maxims of Statutory Interpretation

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LL.B. - 3 yrs. II Sem. & B.A. LL.B. - 5 yrs. IV Sem. Course Module

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Course Content:

A. Maxims of Statutory Interpretation:

(i) Delegatus non potest delegare;

(ii) Expressio unius est exclusio alterius;

(iii) Generalia specialibus non derogant;

(iv) In pari delicto potior est conditio possidentis;

(v) Ut res magis valeat quam pareat;

(vi) Expressum facit cessare tacitum;

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INTRODUCTION:

These class notes are aimed at providing students the understanding and knowledge of some of the most popular maxims of statutory interpretation and to explain their usage and application in advocacy and in the construction of statutes carried out by various High Courts and the Supreme Court of India and the foreign courts as well.

Unit - III is dedicated towards the present relevance and importance of Legal Maxims in the Light of Interpretation of Statutes. Legal Maxims are a very important tool of interpretation. However, with increasing codification of laws, they have become somewhat obsolete. Yet in times of legal uncertainty and ambiguous legal outputs of laws these are still an important source of authenticity.

Before proceeding further and understanding the significance of the Legal Maxims one should first understand what exactly Legal Maxims are. To quote **James Fitzjames Stephen** from ***'History of Criminal Law of England', (1883),*** one of the great 19th Century scholars, in this regard -

> *"It seems to me that legal maxims in general are little more than pert headings of chapters. They are rather minims than maxims, for they give not a particularly great but a particularly small amount of information. As often as not, the exceptions and disqualifications to them are more important than the so called rules"*

According to **Hawkins on Wills,** Maxims relating to the interpretation of written instruments occupy (with the comments upon them) a lot of space in books relating to statutory interpretation. Yet these maxims, standing alone and taken as absolute statements, are liable to gross misuse. Most of them are, at the utmost, only prima facie rules; "good servants, but bad masters." A rule of construction should always be understood as containing the saving clause, "unless a contrary intention appears by the instrument."

But, there is reason to believe that the maxims are making something of a comeback. In the past, the U.S. Supreme Court in ***United States v. Ron Pair Enters., 109 S. Ct. 1026, 1030 (1989)*** per Justice Scalia, has edged steadily away from reliance on legislative history in favour of plain meaning. Moreover, as seen in ***Green v. Bock Laundry Mach. Co., 109 S. Ct. 1981 (1989)***, the Court increasingly is willing to defer to statutory language even when the results appear misguided as a matter of social policy, thus undermining, although not entirely repudiating, the doctrine that a matter may be within the letter of a statute yet not be within its spirit. All this enhanced attention to text creates a potentially fertile ground for a revival of the maxims.

Indian Courts too have been increasingly proactive in using the principles of Noscitur a Sociis and Ejusdem Generis; which has earlier been discussed at length in Unit -II of this paper.

There is a very interesting paragraph from a recent judgment of ***R. K. Rim Private Limited v. Commissioner of Sales Tax, Mumbai and another, Bombay High Court, 6th May 2010,*** which I would like to quote. It provides a lot of insight on the contemporary significance of Legal Maxims. The case in the immediate matter was related to E- Bicycles and imposition of duty on it. The court heard the contentions from both the parties regarding this. While giving the final decision, the court took assistance of legal maxims and decided the case.

> *"... It would not be out of place to mention that the maxims in law are said to be somewhat like axioms in geometry. They are principles and authorities and part of general customs and common law of land. These are sorts of legal capsules useful in dispensing justice. In other word, maxims can be defined as established principle or of interpretation of statutes. With this understanding, let us turn to the maxim NOSCITUR A SOCIIS."*

(i) Delegatus non potest delegare:

Delegata potestas non potest delegari is a principle in constitutional and administrative law that means in Latin that "no delegated powers can be further delegated." Alternatively, it can be stated as delegatus non potest delegare i.e., "one to whom power is delegated cannot himself further delegate that power".

In the United States, one of the earliest mentions of the principle occurred when it was cited by counsel for one of the litigants before the Supreme Court of Pennsylvania in 1794, in ***M'Intire v. Cunningham, 1 Yeates 363 (Pa. 1794).*** The summary of the case reports, "Mr. Wilson had given no power to Noarth to transact his business; but if he even had, it is a maxim, that delegata potestas non potest delegari."

The maxim was first cited by the Supreme Court of the United States in ***United States v. Sav. Bank, 104 U.S. 728 (1881)*** in which, the case summary reports that one of the litigants argued that the duty imposed by statute on the commissioner cannot be delegated to a collector according to the rule of delegata potestas non potest delegari.

In India, the law was first stated in the case of ***A K ROY v. State of Punjab, (1986) 4 SCC 326,*** where it was held that sub-delegation of delegated power is *ultra vires* to the Enabling Act.

The Supreme Court of India stated in ***Sahni Silk Mills (P) Ltd. and Anr. vs Employees' State Insurance Corporation, (1994) 5 SCC 346***

> *"4. The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes,*

delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim ***delegatus non potest delegare*** *is not being applied specially when there is question of exercise of administrative discretionary power."*

Further the Court cited,

"6. In Halsbury's Laws of England, 4th edition, volume-I in respect of sub-delegation of powers it has been said:

In accordance with the maxim ***delegatus non potest delegare****, a statutory power must be exercised only by the body or officer in whom it has been confided ... unless sub-delegation of the power is authorised by express words or necessary implication... There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind..."*

The Supreme Court assessed the statutory provisions of Section 85-B(i) of the Employees' State Insurance Act, 1948, which provides as follows:

"85B. Power to recover damages -

(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover 2[from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations]: Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard: 3[Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an estab-lishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick

Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations."

The Supreme Court opined thus,

> *"10. It has to be born in mind that the exercise of the power under Section 85-B(i) is quasi Judicial in nature, because there is always a scope for controversy and dispute and that is why the section itself requires that before recovering any such damages, a reasonable opportunity of being heard shall be given to the employer. The employer is entitled to raise any objection consistent with the provisions of the Act. Those objections have to be considered. After consideration of objections, if any, an order for recovery of damages has to be passed. The maxim delegatus non potest delegare was originally invoked in the context of delegation of judicial powers saying that in the entire process of adjudication a Judge must act personally except in so far as he is expressly absolved from his duty by a statute. The basic principle behind the aforesaid maxim is that "a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negatived by any contrary indications found in the language, scope or object of the statute."*

Because of various reasons, there is a fast development of authoritative enactment. A pattern especially in vogue today in every majority rule nation is that a decent arrangement of enactment happens in government division outside the House of Legislature. This sort of action is really called 'Delegated Legislation'. The present Maxim tries to curb this power of delegated legislation. Therefore, the legal maxim ***'Delegatus Non-Potest Delegare'*** does not lay down a rule of law. It merely states a rule of construction of a statute. Generally, sub-delegation of legislative power is impermissible, yet it can be

permitted either when such power is expressly conferred under the statute or can be inferred by necessary implication. This is so because there is a well-established principle that a sub-delegate cannot act beyond the scope of power delegated to him.

(ii) *Expressio unius est exclusio alterius*:

Expressio unius est exclusio alterius means "the express mention of one thing excludes all others." Items not on the list are impliedly assumed not to be covered by the statute or a contract term. However, sometimes a list in a statute is illustrative, not exclusionary. This is usually indicated by a word such as "includes" or "such as."

According to ***Prabhani Transport Co-operative Society Ltd. v. Regional Transport Authority, Aurangabad and Others, 1960 SCR (3) 177***

> *"...this maxim is given to gauge the intent of the legislature... ...the maxim expressio unius est exclusio alterius be of any help to the petitioner. That maxim has its utility in ascertaining the intention of the legislature. Since S.42 (3) (a) of the Motor Vehicles Act leaves no manner of doubt as to that intention by its clear indication that the Government cannot run buses as a commercial enterprise without first obtaining permits under S. 42(1) of the Act, that maxim cannot operate so as to imply a prohibition against applying under Ch. IV of the Act. There was therefore, no reason for holding that Ch. IVA of the Act contained the only provision under which the Government could be allowed to ply stage carriages."*

If the words of the Statute are plain and its meaning is clear then there is no scope for applying this rule. Through various situations given hereinafter, true nature of this rule has been explained:

(1) This rule applies when a provision is clearly set out which is in contrast with the other provision which is not clearly set out in the statute. Where both the provisions are clearly set out in the statute then harmonious construction has to be applied. To elaborate further on this, look into ***Harish Chandra Bajpai v. Triloki Singh, 1957 SCR 370***. In this judgment, question before the Supreme Court was whether the Tribunal could allow an amendment to the original petition whereby a new charge could be

introduced. S.83(3) provided for amending the petition to include the particulars while a general provision was laid out in Order VI Rule 17 of the Code of Civil Procedure, 1908. When the question arose whether this rule is applicable in that case or not, the Court held that this provision operates only when the subject matter is common for the plausible applicability of this rule which isn't the case here and further observed:

"This limitation cannot operate, when the subject-matter of the two provisions is not the same. Section 83(3) relates only to amendment of particulars, and when the amendment sought is one of particulars, that section will apply to the exclusion of any rule of the Civil Procedure Code which might conflict with it, though it does not appear that there is any such rule. But where the amendment relates not to the particulars but to other matters, which are not occupied by S. 83(3), then Order VI Rule 17 will apply. The fallacy in the argument of the appellants lies in the assumption that S. 83(3) is a comprehensive enactment on the whole subject of amendment, which it clearly is not. In this view there is no scope for the application of the maxim, expressio unius est exclusio alterius, on which the appellants rely. Both the provisions were specically laid out in the above case, i.e. S. 83(3) and O. VI R.17. Also, lex specialis is applicable in the above case only with respect to 'amending the particulars' as we had seen for lex specialis to be applicable, subject matter of both the laws should be common. Thus to the extent to which 'amending the subject matter' of the original petition is concerned, lex specialis is applicable otherwise the general law shall prevail i.e. Code of Civil Procedure."

(2) Both the provisions, express and implied should operate on the same subject matter. If the subject matter of both the provisions is different this rule has no application. (See ***Harish Chandra Bajpai v. Triloki Singh, 1957 SCR 370.***)

(3) Limitation of this rule is that if the alternative provision is clearly set out then this rule is not applied. As stated above, this rule is employed to gauge the intention of the Parliament which if, is clear from the words used should be applied. Part IV of the Motor Vehicles Act provided for obtaining 'permit' by the government to enter into a commercial practice with the other private players. Later Part IVA was inserted into the Motor Vehicles Act whereby through a 'scheme' only government could obtain the permit to ply vehicles, which could be claimed as a matter of right. To this, petitioners used the said doctrine and contested – Since the provision for scheme is clearly set out in Part IVA, it by virtue of Expressio Unius Est Exclusio Alterius excludes the 'permit' under Part IV of the Act. Negating this contention Court observed: It is a maxim for ascertaining the intention of the legislature. Where the statutory language is plain and the meaning clear, there is no scope for applying the rule. Section 42(3) (a) of the Motor Vehicles Act, is plain in its terms. It contemplates that the Government has to apply for permits under Section 42(1) to run buses as a commercial enterprise. That being so, the maxim cannot be resorted to for ascertaining the intention of the legislature and implying a prohibition against the Government applying for permits under Chapter IV.

(iii) Generalia specialibus non derogant:

This Latin maxim of interpretation means that the provisions of a general statute must yield to those of a special one. In ***Rogers v United States, 340 U.S. 367 (1951),*** Justice Brewers held as follows:

> *"The rule is generalia specialibus non derogant. The general principle to be applied... to the construction of acts of Parliament is that a general act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together. And the reason is... that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do....*
>
> *As a corollary from the doctrine that implied repeals are not favoured, it has come to be an established rule in the construction of statutes that a subsequent act, treating a subject in general terms and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all....*
>
> *The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms or treating the subject in a general manner and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."*

As seen in several Foreign Court Judgements the courts have profoundly used this maxim. For example, in ***Doré v. Verdun (City), [1997] 2 S.C.R. 862,*** Justice Gonthier of Canada's Supreme Court used these words:

> *"... the rule of interpretation that subsequent general legislation is deemed not to derogate from a prior special Act (generalia specialibus non derogant)."*

Similarly in a previous Supreme Court of Canada decision, ***Lalonde v. Sun Life Assurance Co. of Canada, [1992] 3 S.C.R. 261***, Justice Gonthier had used these words in his opinion:

> *"This is an appropriate case in which to apply the maxim generalia specialibus non derogant and give precedence to the special Act.... The principle is, therefore, that where there are provisions in a special Act and in a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception to the subject-matter of the rule from the general Act."*

Justice Locke also wrote, in ***Greenshields et al. v. The Queen, [1958] S.C.R. 216*** -

> *"In the case of conflict between an earlier and a later statute, a repeal by implication is never to be favoured and is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together… Special Acts are not repealed by general Acts unless there be some express reference to the previous legislation or a necessary inconsistency in the two Acts standing together which prevents the maxim generalia specialibus non derogant being applied."*

The Indian Scenario:

Generalia Specialibus Non Derogant is a legal maxim, used in India as well, with the well settled meaning, as seen in ***Maharaja Pratap Singh Bahadur v. Man Mohan Dev AIR 1966 SC 1931***,

> *"...where there are general words in a later Act capable of reasonable and sensible application without extending to subjects specially dealt with by the earlier legislation, you are not to hold that earlier or special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of particular intention to do so."*

The literal meaning of this expression is that general words or things do not derogate from special. This expression was explained in ***CIT v. Shahzada Nand & Sons[1966] 60 ITR 392 (SC)*** and ***Union of India v. India Fisheries (P.) Ltd. AIR 1966 SC 35*** to mean that when there is conflict between a general and special provision, the latter shall prevail, or the general provisions must yield to the special provisions.

Similarly in ***State of Gujarat v. Patel Ramjibhai AIR 1979 SC 1098*** it was held that the maxim is regarded as a **'cardinal principle of interpretation'** and is characterised as a well recognised principle. The general provision, however, controls cases where the special provision does not apply as the special provision is given effect to the extent of its scope. Thus, the Supreme Court held in ***Bengal Immunity Co. v. State of Bihar AIR 1955 SC 661,*** that a particular or a special provision controls or cuts down the general rule.

Further in ***Paradip Port Trust v. Their Workmen, AIR 1977 SC 36,*** the Supreme Court was called upon to decide whether representation by a legal practitioner was permissible in an industrial dispute before adjudicatory authorities contemplated by the Industrial Disputes Act. By applying this maxim, the Supreme Court held -

> *"...the special provision in the Industrial Disputes Act, 1947 would prevail in that regard over the Advocates Act, 1961 which was held to*

be a general piece of legislation relating to subject-matter of appearance of lawyers before all courts, tribunals and other authorities, whereas Industrial Disputes Act, 1947 was concerned with the representation by legal practitioners."

This maxim was again applied in ***Dharam Pal Sat Dev v. CIT, [1974] 97 ITR 302 (P&H)*** and ***Nandlal Sohanlal v. CIT, [1977] 110 ITR 170 (P&H) (FB)*** when the questions relating to assessments of a firm and its partners arose under the Income-tax Act, 1961 where the dissolution of the firm and its succession are held to be governed by the Special Act viz., the Income-tax Act and not the Partnership Act. The technical view of the nature of a partnership cannot be taken in applying the law of income-tax. Where a special provision is made in derogation of the provisions of the Indian Partnership Act, the effect is given to it. Where the provisions of the Indian Income-tax Act are clear, resort cannot be had to the provisions of another statute. When the Legislature has deliberately made a specific provision to cover a particular situation, for the purpose of making an assessment of a firm under the Income-tax Act, there is no scope for importing the concept and the provisions of the Partnership Act. The legal position of a firm under the income-tax law is different from that under the general law of partnership in several respects: "In case of conflict between the two statutes, the general rule to be followed is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

(i) The two are inconsistent with each other;

(ii) There is some express reference in the later to the earlier enactment.

In determining whether a statute is special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and distinction cannot be blurred when finer points of law are dealt with.

The Supreme Court in ***LIC of India v. D.J. Bahadur, AIR 1980 SC 2181,*** held -

> *"…vis-á-vis 'industrial disputes' at the termination of the settlement as between the workmen and the Corporation, the Industrial Disputes Act is a special legislation and the LIC Act is a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the maxim as expounded by English textbooks and decisions leaves us in no doubt that the I.D. Act being special law prevails over the LIC Act which is but general law."*

(iv) In pari delicto potior est conditio possidentis:

The Latin Maxim “in pari delicto potior est conditio possidentis”, means "in equal fault better is the condition of the possessor". It is a legal term used to refer to two persons or entities who are equally at fault, whether the malfeasance in question is a crime or tort. The doctrine is subject to a number of exceptions, including that the plaintiff must be an active, voluntary participant in the wrongful conduct, the plaintiff's wrongdoing must be at least substantially equal to that of the defendant, the "adverse interest" exception, and the "innocent insider" exception. The phrase is most commonly used by courts when relief is being denied to both parties in a civil action because of equal wrongdoing by both parties. The phrase means, in essence, that if both parties are equally at fault, the court will not involve itself in resolving one side's claim over the other, and whoever possesses whatever is in dispute may continue to do so in the absence of a superior claim. It is an equitable defence.

The ***‘doctrine of comparative fault’*** (a doctrine of the law of torts that compares the fault of each party in a lawsuit for a single injury) and ***‘doctrine of contributory negligence’*** (applicable when plaintiffs/claimants have, through their own negligence, contributed to the harm they suffered) are not the same as in pari delicto, though all of these doctrines have related policy rationale underpinnings. This maxim has much relevance to the money paid by mistake and the refusal to refund resulting in the unjust enrichment. Therefore, the Court held in ***Mahabir Kishore v. State of MP [1989] 2 CLA 228 (SC)*** that the money may not be recoverable if in paying and receiving it the parties were in pari delicto..

Regarding the question whether a tax paid under mistake of law is refundable the Court held in ***STO v. Kanhaiyalal [1959] SCR 1350,*** that

> *“a person is entitled to recover money paid by mistake or under coercion, and if it is established that the payment, even though it be*

tax, has been made by the person labouring under a mistake of law, the party receiving the money is bound to repay or return it though it might have been paid voluntarily, subject, however, to questions of estoppel, waiver, limitation or the like. The person and the Government in paying and receiving are not in pari delicto; and, therefore, the aforesaid person is entitled to recover the amount."

The amount does not become recoverable if in paying and receiving both the payer and the recipient are in fault, i.e., they are in pari delicto.

Therefore in the famous case of ***Immani Appa Rao v. Collapalli Ramalingamurthi [1962] 3 SCR 739*** the Supreme Court opined that where each party is equally in fraud, the law favours him who is actually in possession, or where both parties are equally guilty, the estate will lie where it was.

(v) Ut Res Magis Valeat Quam Pereat:

The maxim "Ut Res Magis Valeat Quam Pereat" is a rule of construction which literally means the construction of a rule should give effect to the rule rather than destroying it .i.e., when there are two constructions possible from a provision, of which one gives effect to the provision and the other renders the provision inoperative, the former which gives effect to the provision is adopted and the latter is discarded. It generally starts with a presumption in favour of constitutionality and prefer a construction which embarks the statute within the competency of the legislature. But it is to be noted that when the presumption of constitutionality fails, then the statutes cannot be rendered valid or operative accordingly. The landmark case of Indra Sawhney (2000), where the Supreme Court struck down the state legislation as it was violative of the Constitution and *ultra-vires* of the legislative competency.

The proposition laid down by the above maxim states the following prominent rules:

(a) Unless and until a provision is in flagrant violation of the Constitution, constitutionality of a provision shall be presumed. Thus, there might be a situation wherein, two possible interpretations of a certain provision is possible: First, which suggests that the provision is so blatantly violating the Constitution that no effect could be given to it while secondly, if by offering a restrictive interpretation to the provision, legal validity of the provision could be preserved then a restrictive interpretation should be offered to the provision. In ***Mark Netto v. State of Kerela, (1979) 1 SCC 23*** the appellant was the manager of the School who on assertion by the Christian Community admitted girls to a boys' school. When this matter was taken up with the District Administration they denied the admissions claiming refuge under Rule 12(3) of Chapter VI of the Kerala Education Rules, 1959. The rule provided:

"Girls may be admitted into Secondary Schools for boys in areas and in towns where there are no Girls' Schools and in such cases adequate arrangements should be made for the necessary convenience. The admissions will be subject to general permission of the Director, in particular of the Boys' School which will be specified by him."

A wider application of the aforesaid provision would have led the inclusion of minorities within the said rule which would have led the above rule nugatory as it would have been in violation of rights conferred upon minorities under Article 30 of the Constitution. Moving under the shadow of *Ut Res Magis Valeat Quam Pereat*, if by offering a restrictive interpretation to Rule 12(3) of the Education Rules, the said rule could be saved from hitting the vires of Article 30 then by all the means restrictive interpretation should be given to it. That is exactly what Supreme Court did in this case; and observed:

"In that view of the matter the Rule in question in its wide amplitude sanctioning the with-holding of permission for admission of girl students in the boy's minority school is violative of Article 30. If so widely interpreted it crosses the barrier of regulatory measures and comes in the region of interference with the administration of the institution, a right which is guaranteed to the minorities under Article 30. The Rule, therefore, must be interpreted narrowly and is held to be inapplicable to a minority educational institution in a situation of the kind with which we are concerned in this case. We do not think it necessary or advisable to strike down the Rule as a whole but do restrict its operation and make it inapplicable to a minority educational institution in a situation like the one which arose in this case."

Thus, while resorting to a narrow interpretation the above set of facts skipped the operation of Rule 12(3) of the Kerala Education Rules and girls were allowed to be admitted in the school run for boys by Diocese.

(b) While interpreting any provision/law if there are two interpretations possible: one which is intra vires while another which is ultra vires, then former interpretations shall always prevail over the latter. This rule was upheld in ***Corporation of Calcutta v. Liberty Cinemas AIR 1965 SC 1107***.

(c) While presuming the constitutionality of any provision, unnecessary extension should not be given to the words of the provision. Since, this rule has been established to gauge intention of the legislature when it couldn't be gauged from the words which are employed by it, therefore, reading this aspect of this rule essentially furthers a claim for 'textualist' interpretation or could also be viewed as imposing a rider on the 'contextual' interpretation. In ***Dhoom Singh v. Prakash Chandra Sethi, AIR 1975 SC 1012,*** an election petition was led by Mr. C against Mr. A, who won the elections of Legislative Assembly from Ujjain North Assembly Constituency. Mr. A raised an objection that the election petition save the annexure was not signed by the petitioner i.e. Mr. C, therefore, the petition fails to comply with the mandate set out in S. 81(3) of the Representation of People's Act and hence is liable to be dismissed under S. 86(1) of the same Act. One Mr. B who later made an intervening application while the hearing of the petition claiming that Mr. C has colluded with Mr. A and therefore to he should be allowed to be impleaded in the proceedings. The High Court dismissed his claims stating that the provision only speaks of 'withdrawal or abatement' but doesn't provide for 'intervention' by a third party. Sensing defect in the scheme of the Statute, the Apex court held:

"The argument that in such a situation 'the intention of the legislature that a petition should not fail by reason of any bargain or collusion between the election petitioner and the successful candidate would be frustrated' was repelled on the ground 'there is undoubtedly a lacuna in the Act, because it makes provision when an election petitioner is allowed to withdraw, but makes no such provision if he just refuses to prosecute."

Refusing to apply the Golden Rule, the Court further observed:

"But that reason would not, as pointed out by Grover J. in ***Jugal Kishore's Case, AIR 1956 Punj 152*** be a sufficient reason to construe the provisions beyond the purview of their language. This is another type of contingency, where if thought necessary: It is for the Legislature to intervene."

(vi) Expressum facit cessare tacitum:

Expressum facit cessare tacitum is a legal maxim that means "what is expressed makes what is implied silent." This form of construction is used while interpreting statutes, contracts and deeds. When a matter is clearly provided in a document, the clear and precise meaning is to be adopted. The implied meaning need not be adopted when a clear meaning is provided. For example, when a condition is provided that a contract should be fulfilled on a certain date, the tactic construction that the contract should be fulfilled within a reasonable time need not be adopted. When an express date is provided for repayment of a debt, the creditor cannot demand payment before that date.

The maxim 'expressum facit cessare tacitum' that is what is expressed makes what is silent cease, would also clearly be applicable in the present case. This maxim is indeed a principle of logic and common sense and not merely a technical rule of construction. It was applied in the construction of a constitutional provision in Shankara Rao Badami v. State of Mysore, (1969) 3 SCR 1 = (AIR 1969 SC 453). The argument which was advanced in that case was that the existence of public purpose and the obligation to pay compensation were necessary concomitants of compulsory acquisition of private property and so the term 'acquisition' in Entry 36 of List II of the Seventh Schedule to the Constitution must be construed as importing by necessary implication the two conditions of public purpose and payment of adequate compensation, and consequently, the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1955, which provided for acquisition of the rights of the inamdars in inam estates in Mysore State without payment of just and adequate compensation was beyond the legislative competence of the State Legislature. This argument was rejected on the ground that the limitations of public purpose and payment of compensation being expressly provided for as conditions on acquisition in Article 31 (2), there was no room for implying either of these

limitations in the interpretation of the term 'acquisition' in Entry 36 of List II. Ramaswamy, J., speaking on behalf of the Court observed:

> *"It is true that under the common law of eminent domain as recognised in Anglo-Saxon jurisprudence the State cannot take the property of its subject unless such property is required for a public purpose and without compensating the owner for its loss. But, when these limitations are expressly provided for in Article 31 (2) and it is further enacted that no law shall be made which takes away or abridges these safeguards, and any such law, if made, shall be void, there can be no room for implication and the words 'acquisition of property'. in Entry 36 must be understood in their natural sense of the act of acquiring property, without importing into the phrase an obligation to pay compensation or a condition as to the existence of a public purpose. In other words, it is not correct to treat the obligation to pay compensation as implicit in the legislative Entry 33 of List I or legislative Entry 36 of List II of it is separately and expressly provided for in Article 31 (2). The well known maxim expressum facit cessare tacitum is indeed a principle of logic and commonsense and not merely a technical rule of construction. The express provision in Article 31 (2) that a Law of acquisition in order to be valid must provide for compensation will, therefore, necessarily exclude all suggestion of an implied obligation to provide for compensation sought to be imported into the meaning of the word "acquisition" in Entry 36 of List II. In face of the express provision of Article 31 (2), there remains no room for reading any such implication in the legislative heads."*

Similarly, in the present case, on an application of the maxim expressum facit cessare tacitum, the express provision in Article 21 that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law will necessarily exclude a provision to the same effect to be

gathered or implied from the provisions of the Constitution. The principle that no one shall be deprived of his life or personal liberty save by authority of law having been expressly enacted as a fundamental right in Article 21, there is no scope for reading it by way of implication from the other provisions of the Constitution. It is recognised and embodied as a constitutional principle in Article 21 and it cannot have any distinct and separate existence apart from that article.

(vii) In bonam partem:

The term ‘Bonam Partem’ is known to mean the interpretation of words in their least aggravated sense. Diametrically opposite to this are the premises of ‘Malam Partem’ and ‘Malo Sensu’, which are known to mean the acceptance of words in their most aggravated comprehension. In actions of slander, it was formerly the rule that, if the words alleged would admit of two constructions, then they must be taken in the less injurious and defamatory sense. The core premise of this principle is the acceptation of ambiguity as a ground for the presumption of innocence. It is also in accordance with the judiciary's traditional reluctance to label a statement as being defamatory or derogatory when it can have a plausible innocent intention. It gives effect to the adage – “Interpretationem in Bonam partem faciendum esse” which means that things must be interpreted in their better sense. Tracing the etymology of the term would bring us to the conclusion that ***'Bonam Partem'*** would literally mean **‘the good side or part'**, but that would only restrict the scope of a term that has a cosmopolitan application in today's world. Therefore, a visible pattern of the usage of this principle in defamation cases and in the interpretation of statutes is evidently seen.

From the mid-sixteenth to the mid-seventeenth century, English defamation law operated with the hermeneutic rule of Bonam partem. The rule stipulated that if a statement can be construed both in a defamatory and an innocent sense, the latter must be considered as the true meaning. Further, as Coke explains,

> *"Where the words are general or ambiguous, the more favourable reading must take precedence”.*

Thus, to take up a standard textbook case, to accuse someone of having the French pox (Syphilis) would be actionable, but since 'pox' taken alone, could refer either to French-Pox or Small-Pox, if a person was charged with defamation for having called someone a 'poxy knave', the court would dismiss

the charge by interpreting 'poxy' in Bonam partem as a reference to Small pox, which was not an actionable insult.

Therefore, it should be noted that interpretation of law depends on distinction between malice and good will, truth and deceit; words uttered in bonam partem and malam partem, but is wholly incapable of generating the rules of distinction between the same. Interpretation in words is decided by general or particular social context, by accompanying signs such as laughter or gestures, by the application of jurisprudential norms (like the prior presumption of innocence or guilt). The office of all judges is always to make such construction as shall suppress subtle inventions and evasions for the continuance of mischief, and to add cure and remedy, according to the true intent of the makers of the Act. Bennion, inhis book 'Statutory Interpretation', states that construction in Bonam Partem is related to three specific legal principles:

(1) The first is that a person should never benefit from his own wrong.

(2) The second principle precludes from succeeding if he has to prove an unlawful act to claim the statutory benefit, and

(3) The third principle is that where a grant is in general terms, there is always an implied provision that it shall not include anything that is unlawful or immoral.

It is said that words must be taken in a lawful and rightful sense. When an Act, for instance, gives a certain efficacy to a fine levied on a land, it only means a fine lawfully levied. So, an Act which requires the payment of rates as a condition precedent to the exercise of a franchise would not be construed as excluding from it a person who refused to pay a rate which was illegal, though so far valid that it had not been quashed or appealed against. Similarly, a covenant by a tenant to pay all parliamentary taxes is construed to include such, as he may lawfully pay, but not the landlord's property tax, which it would be illegal for him to engage to pay. Where words of a statute have each

a separate and distinct meaning, its exact sense, ought, prima facie, to be given to each. But the use of tautologies is not uncommon in statutes. Thus, an Act which makes it Felony 'to falsely make, alter, forge, or counterfeit a bill of exchange', gains little in strength or precision by using four words where one would have sufficed. It cannot be doubted that he who falsely makes, or alters, or counterfeits a bill, is guilty of forging it.

In India, the interpretation of words in Bonam partem is to mean the interpretation of the words of a statute are to be interpreted in their rightful and lawful sense, with the provisions of Income Tax Act, 1961 being filled out as an exception. In order to prevent profiteers from escaping liability, illegal profits need to come under the purview of the Income Tax Act, 1961, and therefore, a visible non-applicability of the rule of Bonam partem is seen in this realm. A Queen's Bench decision in the 19th century in ***R. v. Hulme, (1870) L R 5QB 377***, involved the interpretation of words in Bonam Partem. In this case the statute provided that "Where any witness shall answer every question relating to the matters aforesaid, the Commissioners appointed to inquire into corrupt election practices should issue him with a certificate which would entire him to certain immunities."

The case turned on the meaning of the words, "shall answer every question";

> *"Does that mean", asked Blackburn J., "If he shall give an answer in fact, thought it may be false to his knowledge; though it may be a matter of ridicule, and turning the whole commission and inquiry into contempt, can it be intended that if the witness gives an answer which is transparently false, he should get the immunity?"*

It was held that it was not so intended.

> *"Whenever the legislature in this Act requires a person to answer question the meaning is that he shall answer them truly, to the best of his knowledge and belief, only then would he be entitled to the statutory certificate."*

The principle, that where an Act refers to a thing being done, it is to be taken as referring to the thing being lawfully done, has been applied in several recent cases, and hence revolves around the spirit of Bonam Partem. A similar Indian case which holds relevance here is ***Birla Group Holdings Ltd , Mumbai vs Assessee (decided on 2 January, 2009).*** This involved the words of the legislature "tax payable on the basis of any returns", in the Indian Income Tax Act, 1961. Construing the words in their least aggravated sense, i.e., in Bonam partem, it was deemed to have meant the tax payable on the basis of all legal returns and revenue, in the sense disclosing correct income. Consequentially, the Income Tax eventually came to be excepted to the rule of Bonam partem, in lieu of money laundering.