

Use of *pari materia* as an external aid of interpretation

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Abstract

The basic rule of interpretation is to give effect to the plain meaning of the statute. If it is not clear and ambiguous, then the court can take recourse of different aids of interpretation. There are two types of aids of interpretation- internal aid and external aid. Internal aids means the aid are within the statutes, e.g. - long title, short title, preamble, schedule, and any other provisions of the same Act. If the ambiguity is still not clear, then the court can use external aids to interpret a particular provision. Examples of external aid are dictionary, parliamentary debate, foreign judgment, provisions of other Acts. In this research paper the researcher will concentrate only with one external aid- provisions of other statutes or *pari materia*. *Pari materia* means when two provisions of two different statutes deal with the same subject matter and form part of the same subject matter. In this article the author will aim to discuss the need for *pari materia*. It will also deal with situations where it is applicable and where the acts are not in *pari materia* with reference to India and United Kingdom Legislations and appropriate case laws.

Key Words: [*pari materia*, statutes, subject- matter, legislation]

1. Introduction

The basic rule of interpretation is to give effect to the plain meaning of the statute. If it is not clear and ambiguous, then the court can take recourse of different aids of interpretation. There are two types of aids of interpretation- internal aid and external aid. Internal aids means the aid are within the statutes, e.g. - long title, short title, preamble, schedule, and any other provisions of the same Act. If the ambiguity is still not clear, then the court can use external aids to interpret a particular provision. Examples of external aid are dictionary, parliamentary debate, foreign

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judgment, provisions of other Acts. In this research paper the researcher will concentrate only with one external aid- provisions of other statutes or *pari materia*.

Pari materia means when two provisions of two different statutes deal with the same subject matter and form part of the same subject matter. It is a latin word. Use of *pari materia* is well established by the Judiciary. In *District Mining Officer and others v Tata Iron & Steel Co. and another*², it was established that *pari materia* can be used as an external aid of interpretation. There is no authoritative definition of the expression *pari materia*. It is said to be not enough that the statutes should deal with the same subject matter, but a lot depends on how narrowly the later term is defined. It is not very helpful to say that they must form part of a “system”. An American judge, made as long as 1829, that statutes are in *pari materia* if they relate to the same person or thing, or to the same class of persons or things³. The General clauses Act 1897 is an example of it. Section 3 of Transfer of Property Act 1882 read with General clauses Act 1897 gives interpretation for the phrase “immovable property”. *Pari materia* will be used only when the subject matter of the statutes is similar. The principle underlying the treatment of Acts which are in *pari materia* is based on the idea that there is continuity of legislative approach in such Acts, and common terminology.⁴ All statutes on the same subject must be taken in *pari materia*, and read together as one law. Statutes in *pari materia* are to be taken as one system to suppress the mischief.⁵ This article is an analysis on the application of *pari materia* in India and United Kingdom with reference to cases.

2. Need for *pari materia*

It is important to know the need of *pari materia*. The reason behind Judiciary to use this principle is to avoid contradiction or conflict between/ among statutes dealing with the same subject matter. It helps to interpret the words of the later statute in the light of earlier statutes in the same context. If the words of a statute has been recognized and interpreted by the Judiciary in a

² District Mining Officer and others v Tata Iron & Steel Co. and another, (2001)7 SCC 358, p 3

³ Cross, Statutory Interpretation, 3rd Ed, p 171

⁴ Francis Bennion, Bennion on Statutory Interpretation, 5th Ed, Indian Reprint, 2008, p 708

⁵ Timmins v Rowllison, 96 ER 309 ,p309

particular way and it has already gained an authoritative value, then it is obvious that the statute(s) having similar words/ context will be dealt in the same manner.

3. Situations where *pari materia* is applicable

3.1. Different Acts having same subject matter

Similar language in statutes with common purpose is interpreted in the same way.⁶ Different Acts having same subject matter has to be read together. In *Board of trustees of the Port of Bombay v Sriyanesh Knitters*⁷ the Supreme Court read the Major Port Trust Act, 1963 along with the Indian Contract Act, 1872 are held to be in *pari materia* with each other. Different socio-economic plans are need to be read together so that they do not create any contradiction while opening in the same field. The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 has to be read with other labour law in force i.e. Industrial Dispute Act 1947 and Contract (Regulation and Abolition) Act 1970.

In *Phillips v Parnaby*⁸ Weight and Measures Act 1889 was read with the Sale of Food (Weights and Measures) Act 1929.

It is generally applicable to public statutes or general statutes made at different times and in reference to the same subject matter.

When parliament uses same words in different statutes, it generally intends to mean the same thing only.

3.2. Assistance of an earlier statute

It is a well established principle that the later statutes are constructed in the light of earlier statutes. When same words are used in similar context in a later statute, it is presumed that they

⁶ <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1669&context=facpub>, last visited on 20.9.13

⁷ Board of Trustees of the Port of Bombay v Sriyanesh Knitters, AIR 1999 SC 2947, p 2952

⁸ Phillips v Parnaby, (1934)2 KB 299

have same meaning as in the earlier statute. When the words of an earlier statute has got an authoritative exposition by a superior court, use of same words in similar context in a later Act gives rise to a presumption that Parliament intends that the same interpretation should also be followed for construction of those words in later statutes.⁹

Court while interpreting Article 245(1) and 246 of the Constitution of *India in Bengal Immunity Co Ltd v State of Bihar*¹⁰ referred to sec 99(1) and 100 of the Government of India Act 1935.

In *Re C and anor* (minors) (parent: residence order), the Court referred to the provisions of the Adoption Act 1976 on the status of natural parent after an adoption order had been made in order to assist the interpretation of the word “parent” in the Children Act 1989.

3.3. Different statutes are in *pari materia*

Where there are different statutes are in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and constructed together, as one system, and as explanatory of each other.¹¹

3.4. Statutes having not exactly same subject matter

It is not necessary that the referring statute and the referred statute will have exactly same subject matter for calling them as *pari materia* with each other. Subject matter of the two Acts should not be identical for application of this rule. In *State of Madras v A Vaidyanath Aiyer*¹², section 4 of Prevention of Corruption Act 1947 was held *pari materia* with the Indian Evidence Act 1872. The phrase “shall presume” of Indian Evidence Act was utilized to construe the meaning of “it shall be presumed” of section 4 of Prevention of Corruption Act 1947. Both the phrases were given same meaning.

⁹ Justice G P Singh, Principles of Statutory Interpretation, 12th Ed, Reprint, 2012, p 302

¹⁰ Bengal Immunity Co Ltd v State of Bihar, AIR 1955 SC 661 at p 749

¹¹ R v Loxdale, (1758)1 Burr. 445 ,p 447

¹² State of Madras v A Vaidyanath Aiyer, AIR 1958 SC 61,p 65

In *Kusum Ingots & Alloys Ltd v Union of India*¹³ Sec 20(c) of Code of Civil Procedure and Article 226(2) of Constitution of India are held to be in *pari materia* with each other. Decisions interpreting the former have been held to apply in the later.

3.5. Later statutes in *pari materia* with earlier Acts

Subsequent laws are regarded as supplementary or complimentary to the earlier enactments¹⁴. Generally an earlier Act which is in *pari materia* with the later Act is used to interpret the later statute. While interpreting the provisions of an earlier Act, the provisions of the later Act are normally not taken into consideration except in few exceptional cases. This kind of interpretation will not be allowed if the later Act is made to amend the earlier Act, then the later Act operates on its own. Later Act will become relevant only when there is some ambiguity or confusion with the meaning of the earlier Act. It can also be used if the provisions of the earlier Act are giving diverse meaning. The subsequent legislation cannot obviously alter the previous legislation, but if there is any ambiguity in the earlier statute, the later statute can clear the ambiguity by giving a proper interpretation. Even if the later Act contains a provision that it is to be read as one with the earlier Act, this rule will still be applicable. A later Act may in certain circumstances serve as parliamentary exposition of an earlier Act if that Act is truly ambiguous. This is done not to construe the earlier statute but to check the intention of the Legislature, but to see the meaning given by the Legislature in a similar context¹⁵.

In *Smaje v Balme*¹⁶- to construe the phrase “any dangerous or offensive weapon or instrument” of section 28(1) of the Larceny Act 1916 reference was made to the Prevention of Crimes Act 1953 and section 23(5) of the Firearms Act 1937.

*State of Bihar v S. K. Roy*¹⁷- In this case confusion arose regarding the definition of “coal mine” under the Coal Mines Provident Fund and Bonus Scheme Act 1948 before its 1948 amendment. Court took the assistance of the amendment Act 1948 to define “coal mine”. The change in the

¹³ *Kusum Ingots & Alloys Ltd. V. Union of India*, (2004)6 SCC 254 ,p 259

¹⁴ http://heinonline.org/HOL/Page?handle=hein.journals/lwyrlnwo3&div=21&g_sent=1&collection=journals, last visited on 3.9.13

¹⁵ Maxwell, on *The Interpretation of Statutes*, 12th Ed, 9th Impression, 2012, p 70

¹⁶ *Smaje v Balme*, (1965)2 All E. R. 248 at p 249

¹⁷ *State of Bihar v S.K. Roy*, AIR 1966 SC 1995,p 1998

language of s. 2(b) of the earlier Act brought about by the amending Act (Act 45 of 1965) was not meant to bring about a change of law in this respect but was meant to fix a proper interpretation upon the earlier Act. It is a well- recognised principle in dealing with matters of construction that subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier Act where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation.

In both the cases subsequent legislations were taken to interpret the ambiguity of the earlier legislation. India and UK follow the same rule. Later Act is only used to interpret the earlier Act if there is any ambiguity or confusion in the earlier Act.

3.6. Statute is in *pari materia* with delegated legislation

Not only statutes are used to construct statutes which are in *pari materia* with other statutes , but also delegated legislations are referred.

4. Situations where Acts are not in *pari materia*

- When a new statutory provision is used in the text of existing statute, it should be read as one. But problem may arise when terminology used are not identical with the original Act.
- When the new legislation although re-enacting many provisions from earlier statutes, contains a good deal of fresh *materia* and deals with a subject on which social views have drastically changed, it may not be proper to rely on the earlier authorities for construing the new legislation.¹⁸ Change of interpretation should be seen as the changed intention of the Legislature.
- Use of one state legislation to construe another state legislation on the same subject matter is not commendable because there can be variation in the language.
- When the two Acts are not in *pari materia*, then decision rendered with reference to one Act cannot be applied with reference to the provisions of another Act.

¹⁸ Supra note 8

5. Conclusion

Application of *pari materi* is same for both India and UK. Though it has a wide application still there is no standard rule to decide whether a statute is in *pari materia* with other statutes in both the States .The way in which a particular term has been interpreted in several statutes does not show any direction in which that term has be understood. Sometimes it becomes difficult to understand and to implement. Statutes having same subject matter are not the only criteria to determine the factors of it. There are a lot of things upon which it depends. It is also said that the Acts must be a part of a system. But there can be situation where the Judiciary had to look into the other aspects to determine the factors of *pari materia*. It is high time the Legislature should think to codify the law on *pari materia* , so that it becomes easy for the Judiciary to interpret it properly.

Bibliography

Books

- Cross, Statutory Interpretation, 3rd Ed
- Francis Bennion, Bennion on Statutory Interpretation, 5th Ed, Indian Reprint, 2008
- Justice G P Singh, Principles of Statutory Interpretation, 11th Edition 2008
- Maxwell, on The Interpretation of Statutes, 12th Ed, 9th Impression, 2012
- Vepa. P. Sarathi, Interpretation of Statutes, 5th Edition 2010

Cases

- Bengal Immunity Co Ltd v State of Bihar, AIR 1955 SC 661
- Board of Trustees of the Port of Bombay v Sriyanesh Knitters, AIR 1999 SC 2947
- District Mining Officer and others v Tata Iron & Steel Co. and another, (2001) 7 SCC 358
- Kusum Ingots & Alloys Ltd. V. Union of India, (2004)6 SCC 254
- Phillips v Parnaby, (1934)2 KB 299
- R v Loxdale [1758] 97 ER 394
- Smaje v Balme, (1965)2 All E. R. 248
- State of Bihar v S.K. Roy, AIR 1966 SC 1995
- State of Madras v A Vaidyanath Aiyer, AIR 1958 SC 61
- Timmins v Rowilson, 96 ER 309

Online Articles

- http://heinonline.org/HOL/Page?handle=hein.journals/lwyrlnwo3&div=21&g_sent=1&collection=journals, last visited on 3.9.13
- <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1669&context=facpub>, last visited on 20.9.13
- <http://lawcommissionofindia.nic.in/reports/183rpt.pdf> (last visited on 3.9.13)
- http://www.law.virginia.edu/pdf/faculty/hein/nelson/74u_chi_1_rev329_2007.pdf(last visited on 3.9.13)
- http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2967&context=fss_papers(last visited on 3.9.13)

- <http://www.utexas.edu/law/journals/tlr/sources/Volume%2091/Issue%207/Metzger/CU%20Adds/Metzger.fn128.Eskridge.ContinuumofDeference.pdf> (last visited on 3.9.13)
- <http://repository.law.ttu.edu/bitstream/handle/10601/58/fortney2.pdf?sequence=1> (last visited on 3.9.13)