CHAPTER 1
INTRODUCTION

1. Language as a Divine Gift

Language occupies an important place in the lives of human beings. Language is perhaps the most interesting entity that mankind has ever come across. It is inextricably tied up with the social and cultural evolution of mankind. Language is the very medium of expression. It is a tool of communication between human beings. Language is an invaluable possession of the human race. It is specifically human activity. Man is clearly distinguished from other species by his capacity of using language. In this context, it is apt to quote the opinion of the Biologist Lewis Thomas in his Lives of a Cell:

“The gift of the language is the single human trait that marks us all genetically, setting us apart from the rest of life. Language is like nest-building or hive making, the universal and biologically specific activity of human beings. We engage in it communally, compulsively, and automatically. We cannot be human without it; if we were to be separated from it our minds would die, as surely as bees lost from the hive.”

1.1. Definition of Language

It is not an easy task to give a proper definition of the term ‘language’. Many linguists have tried to define language. Language is the expression of human personality in words whether written or spoken. It is the universal medium alike for conveying the common facts and feelings of everyday life and the

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philosopher searching after truth and all that lies between.\textsuperscript{3} Most linguistics\textsuperscript{4} agrees that human language has the following features:

1. “Language is a means of communication and self-expression: it is a form of social behavior that enables the individual to cooperate with others in a group.
2. Language is arbitrary and vocal.
3. It is non-instinctive, conventional, symbolic, and systematic.
4. It is human, open-ended, extendable and modifiable.
5. It is multilayered and structurally complex.”

1.1.1. The Importance of English Language

The ancient languages like Greek, Latin, and Sanskrit have influenced and enriched many modern languages in the world. No language, ancient or modern, can be compared to English in respect of the international status. English, being the native language of England, has attained the international status in the modern world.

It is the second largest language in use next to Chinese. English is now the widespread language in the world and second only to Mandarin, the putong hua or ‘common speech’ of North China, in the number of people who speak it.\textsuperscript{5} It is a remarkable phenomenon that English has become the medium of communication throughout the world. One half of mankind has chosen English to communicate with those who do not speak their own language. No one would have ever dreamt two or three centuries age, that English could have become a world language. Scholars, in the past had given a low estimation of the English language. In the

\textsuperscript{3} C.L.Wrenn, \textit{The English Language}, (New Print India Pvt Ltd, Sahibabad, 1989) p1.
year 1582 Richard Mulcaster\(^6\) High Master of St Paul’s School observed “The English tongue is of small reach, stretching no further than this island, of ours, nay not there over all.” In one of Florio’s\(^7\) Anglo-Italian dialogues, an Italian in England, asked to give his opinion of the language, replied that ‘it was worthless beyond Dover’. In 1714, Veneroni\(^8\) published an Imperial dictionary of the four chief languages of Europe that is, Italian, French, German and Latin. From this publication, it can be understood that English was not considered to be a prominent language.

In the midst of such scholars, mention may be made of prophetic vision of a poet Samuel Daniel. In his poem “Musophilus”,\(^9\) he gave expression to a glorious dream of the expansion of the English language among unknown and unknowing nations. He stated:

“And who, in time, knows whither we may vent
The treasure of our tongue, to what strang shores
This gain of our best glory shall be sent
T’ enrich unknowing nations with our stores?
What worlds in th’yet uniformed Occident
May cone refin’d with th’accents that areours?”

The prophecy of the poet has come true. The languages of unknown nations are enriched with English words. It is really very remarkable that the English language has changed from being the speech of a few small tribes to be the major language of the earth. After a statistical study regarding the English speaking communities, L. Mencken\(^10\) stated:

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\(^6\) *ibid*, p161.
\(^8\) *ibid*.
\(^9\) *Supra* note 5, p161.
\(^10\) *Supra* note 7, p 232.
“Thus English is far ahead of any competitor. Moreover, it promises to increase its lead hereafter, for no other language is spreading so fast or into such remote area. Altogether, it is probable that English is now spoken as a second language by at least 20,000,000 persons throughout the world—very often, to be sure, badly, but nevertheless understandably.”

1.1.2. English as a Global Language

British has colonized almost one third of the world by the end of the 19th century. The people of the colonized countries were educated in English because the British rulers introduced English for administrative purpose. The primary cause for the propagation of the English language is its political ascendancy. Importance can also be given to the inherent features of the language for its current exalted status. The foremost characteristic feature is its copious, heterogeneous and varied vocabulary. The first and most important is its extraordinary receptive and adaptable heterogeneousness - the varied ease and readiness with which it has taken to itself material from almost everywhere in the world and has made the new elements of English it own. The other characteristic features are fixed word-order, simplicity of inflexion, and variety of intonation. The cause for its international status is its richness in thought, elegance in style and for its dignity in use. English is an unending source of better international relations. It helps in the integration of ideas on all aspects of human life-political, social, educational, cultural and economic. Being a language of diplomacy, elegance, culture, art and refinement, it is a language of international importance par excellence.

11 Supra note 3, p 6.
It is employed as a connecting language for the international business and diplomacy. It is the international language of the airlines, of the sea and shipping, of computer technology, of science and indeed of communication generally. It is evident that English has conquered all fields of human activity. In this regard, knowledge of English is very vital in exploring and exploiting opportunities in other countries.

1.1.3. English in India

In the early 1600 AD British came to India as traders. Owing to the weak political condition, they gradually brought the whole country under their rule. They changed the whole administration of the country especially the law and justice. Along with them, they also brought their language and religion. At the initial stages, the Christian missionaries had built primary schools and used the local language as the medium of instruction. Later they introduced English as the language of instruction in high schools. In the mean time, the British felt the need for English educated Indian employees and took necessary measures for it. In 1835 Lord Macaulay, the law member of the Council of Governor General and President of the Board of Education, presented his celebrated minutes in favor of English education. In his speech, he stated:

“To sum up what I have said. I think it clear that we are not fettered by the Act of Parliament of 1813, that we are not fettered by any pledge expressed or implied, that we are free to employ our funds as we choose, that we ought to employ them in teaching what is best worth knowing, that English is better worth knowing than Sanscrit or Arabic, that the natives are desirous to be taught English, and are

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12 Supra note 2, p199.
not desirous to be taught Sanscrit or Arabic, that neither as the languages of law nor as the languages of religion have the Sanscrit and Arabic any peculiar claim to our encouragement, that it is possible to make natives of this country thoroughly good English scholars, and that to this end our efforts ought to be directed ....We must at present do our best to form a class who may be interpreters between us and the millions whom we govern, -- a class of persons Indian in blood and colour, but English in tastes, in opinions, in morals and in intellect. To that class we may leave it to refine the vernacular dialects of the country, to enrich those dialects with terms of science borrowed from the Western nomenclature, and to render them by degrees fit vehicles for conveying knowledge to the great mass of the population."

1.1.4. Status of English Language after Independence

The framers of the Indian Constitution wanted to bring Hindi as the official language. It became a bone of contention between the Hindi speaking and non-Hindi speaking States. Hence they decided to retain the English language for a period of fifteen years. It is very pertinent to record the remarks of the great Indian leaders regarding the English Language. Pt. Nehru\textsuperscript{14} has aptly stated that “English is our major window on the modern world”. It is only through this language that we have distilled essence of modern knowledge in all fields of human activity. Similarly, C. Rajagopalachari\textsuperscript{15} favouring the retention of the English language observed that “We in an anger of the hatred against the British people should not throw away the baby (English) with the bath water (English people)”. Mahatma Gandhi\textsuperscript{16} made the following statement in his Thoughts of National Languages:

\textsuperscript{14} cf Saket Raman Tiwari, Teaching of English, (APH Publishing House, Delhi, 2008) p3.
\textsuperscript{15} cf M.E.S. Elizabeth, Disumarti Bhaskarao, Methods of Teaching English, ( Discovery Publishing House, Delhi, Rep 2007) p29.
\textsuperscript{16} Supra note 15.
“I hold its knowledge as a second language to be indispensable for the specified Indians who have to represent the country’s interest in the international domain. I regard the English language as open windows for peeping into western thoughts and science.”

The timeframe of fifteen years for the replacement of the English language by Hindi did not materialize. English continues to be the official language of India. In fact, it serves as the connecting language between the people of different States of India. The young Indians have assimilated the English language in order to progress in life. It is an established fact that India cannot wield its power in the international political arena without English.

1.1.5. Indian Law and English

All the Acts, Codes of India are in English language. The Indian Constitution drafted after the Independence was written in English. There is an Article 348(1) of the Constitution of India, 1950 stating that Acts, Bills etc shall be in English. Article 348(1) in the Constitution of India 1950 reads,

(1) “Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides.

(a) all proceedings in the Supreme Court and in every High Court,

(b) The authoritative texts

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and
In India, in all the States and in the Central Government, English is the universally accepted language for its legislative business and legislations passed in English language are accepted as the authentic form for its interpretation and application by the justice delivery organs of the State.\textsuperscript{17} Hence there is a relationship between the English language and the Indian law. The Law of India refers to the system of law which presently operates in India.

\section{1.2. The Concept of Law}

It is very essential to know the reason for framing of law. Regard must be given to the observation of two great eminent jurists. Lord Macaulay\textsuperscript{18} observed:

\begin{quote}
\“when good system of law and police is established, when justice is administrated cheaply firmly when idle technicalities and reasonable rules of evidence no longer obstruct search for truly, a great change of the better may be expected which shall produce a great effect on the national character.\”
\end{quote}

According to Ihering\textsuperscript{19}, law is a means to an end. He laid down the following general principles of legislation:

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\item \textit{\textbf{``Laws should be known to be obeyed.}}}
\item \textit{\textbf{Laws should answer expectations.}}
\item \textit{\textbf{Laws should be consistent with one another.}}
\item \textit{\textbf{Laws should serve the principle of utility.}}
\item \textit{\textbf{Laws should be methodical.}}
\end{enumerate}

\textsuperscript{17} A. Sirajudeen, \textit{Judging Statutes}, (Chennai Council of Indian Jurisprudence, Chennai, 2010) p 47.
\textsuperscript{19} \textit{Supra} note 18, p 8.
6. Laws must be certain to be obeyed, must not become a dead letter.
7. Laws are necessary to ward off the danger of the operation of egoism or self-interest, the ordinary motives of human action.
8. Laws and legislation must aim at justice which is that which suits all.
9. Laws are inter-connected ‘laws like human beings lean on one another.’

Law is a set of rules made and enforced by a State that regulates the conduct of the people within society and maintain social order. Law normally connotes a rule or norm which is of general application. Before it takes a form of law, it has to pass through a long process. The outcome of the process is called the enacted law or statute law.

1.2.1. Definition of Statute

According to the Black’s Law Dictionary, Statute is defined as:

“An act of the legislature declaring, commanding or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the State. Such may be public or private, declaratory, mandatory, directory, or enabling in nature ....Depending upon its context in usage, a statute may mean a single act of a legislature or a body of acts which are collected and arranged according to a scheme or for as a session of a legislature or parliament This word is used to designate the legislatively created laws in contradiction to Court decided or unwritten laws.”

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20 Supra note 17, p 6.
21 Legislation, first introduced in Parliament or State legislature in the form of a Bill. After passed by Parliament or State legislature, it is sent to the President (in case of Central Bill) or Governor (in the case of State Legislation) for assent. The bill becomes an Act after attaining the assent of the President or Governor.
At this juncture, it is very essential to note the classification of the Law. There are four main divisions of law: 1) Municipal Law and International Law 2) Private Law and Public Law 3) Criminal Law and Civil Law 4) Substantive Law and Procedural Law.  

The Municipal Law is the law applied within a State whereas the International Law can be explained only in terms of definitions given by the eminent jurists. In fact, the term ‘International Law’ was coined by Jeremy Bentham. He explained that the new term ‘International Law’ is calculated to express, in a more significant way, the branch of law which goes commonly under the name of the law of nations: an appellation so uncharacteristic, that, were it not for the force of custom, it would seem rather to refer to internal jurisprudence. According to Wheaton:

> “International law may be defined as consisting of those rules of conduct which reason deduces, as constant to justice, from the nature of the society existing among the independent nations with such definitions and modifications as may be established by general consent.”

The Public Law and Private Law are the two main divisions of the Municipal law. The Public Law can be divided into three parts: (i) Constitutional Law (ii) Administrative Law, and (iii) Criminal Law. The Criminal Law defines offences and prescribes punishments for them. The Indian Penal Code is a Criminal Law. The Private Law deals with the matters concerning the individual more than the public. In democratic countries, the Private Law regulates the major part of the social life. The Civil Law is concerned with the rights and duties of individuals towards one another. Some of the Laws,

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24 http://muse.jhu.edu (last visited on 1/9/2015).
25 Supra note 23, p 185.
which fall within the domain of Civil Law, are law of property, Law of Torts, Law of Contracts and Family Law.

Substantive law is concerned with the determination of rights, duties, liberties and legal powers. It includes the rules of law, civil or criminal, defining a civil wrong or a criminal offence. Some of the substantive laws are Indian Contract Act, 1872, the Transfer of property Act, 1882, the Hindu Law, the Mohammedan Law, the Indian Penal Code, 1860. The Procedural Law deals with the mode in which a process of law may be set in motion. It deals with the procedure and evidence by which substantive remedies given under the law can be enforced. The Law of Evidence is considered as both substantive and procedural law.

In the event of a dispute, the judiciary adjudicates the issue in the light of the appropriate enacted law. When a Court applies a statute, it first ascertains the meaning of particular provision and then applies that meaning to a particular set of facts. Thus, the judge expounds the law. In this context, reference may be made to the words of a great English essayist Sir Francis Bacon. In his essay “On Judicature”, he said:

“Judges ought to remember that their office is jus dicere and not jus dare; to interpret law, and not to make law, or give law. Else it will be like the authority claimed by the Church of Rome, which under pretext of exposition of scripture doth not stick to add and alter; and to pronounce that which they do not find : and by shew of antiquity to introduce novelty .... Judges must beware of hard constructions and strained inferences.”

26 The law of property deals with the rights and interests which may be employed in respect of property.
27 The Tort is concerned with the civil wrongs such as negligence, nuisance defamation etc.
28 The Contract law determines whether an agreement made by parties is valid or not.
29 Family law defines the rights, duties and status of the husband and wife, parent and child and other members of household.
As the enacted law i.e. Acts and Rules are drafted by the experts, there could be expected that the language used by these experts would leave little room for interpretation. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or altering the statutory provisions. However, the experience of those who deal with these authoritative formulations: the Courts, who apply them to facts of the case before, has been different. This gives rise to a need for the interpretation.

1.2.2. Need for the Interpretation

Interpretation plays a vital role in the discharge of the judicial function. It is a dynamic and creative process. It is the method by which the true sense of the word or the meaning of the word is understood. Regarding the meaning of the interpretation of a provision, the learned judge in State of Jammu and Kashmir v. Thakur Gnade Singh, expounded:

“The question of interpretation can arise only if two or more possible constructions are sought to be placed on a provision-one party suggesting one construction and the other a different one. But where the parties agree on the true interpretation of a provision or do not raise any question in respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution.”

According to Salmond, Interpretation is the process by which the Courts seek to ascertain the meaning of the legislation through the medium of authoritative forms in which it is expressed. The legislators have communicated

33 AIR 1960 SC 356.
their intention through the medium of words in an enacted Statute. It is appropriate to quote the words of the learned judge in *Pannalal Bansilal Pitti v. State of A.P.* He observed:

“Words are the skin of the language. The language opens up the bay of the maker’s mind. The legislations give its own meaning and interpretation of the law. It does so by employing appropriate phraseology to attain the object of legislative policy which it seeks to can achieve.”

Similarly, Gajendragadkar.J in *Kanailal Sur v. Paramnidhi Sadukan* emphasized that the first and primary rule of construction is that the intention of the legislature must be found the words used by the Legislature itself.

**1.2.3. Object of Interpretation**

It can be stated that the object of the interpretation is to ascertain the intention of the legislature or the authority enacting it. No act can convey expressly the fullness of its intended legal effect. Indeed only a small proportion of this can be conveyed by the express words of the Act. For the rest, Parliament assumes that interpreters will draw necessary influences. Crawford, quoting from the series of decisions, stated:

“The basic principle has been announced time after time if the statute is plain, certain and free from ambiguity, a bare reading suffices and interpretation is unnecessary. It is only when the statute is ambiguous or its meaning is uncertain that interpretation is required in order to ascertain what the legislature meant.”

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36 AIR 1957 SC 907.
37 Supra note 17, p 12.
38 Supra note 34, p 21.
1.3. The Rules of Interpretation

There are three main rules of interpretation which have been formulated in judicial decisions in regard to determining the legislative intent. They are as follows: (a) The literal rule (b) the golden rule (c) the mischief rule.

1.3.1. Literal Rule of Interpretation

The cardinal rule of interpretation of a statute is to give the literal meaning of the words. Literal meaning is the ordinary, plain meaning of the word. If the meaning is clear and unambiguous, effect should be given to the provision of a statute whatever may be the consequences. The legislative intent of the statute is gathered from the words employed therein. In this regard, a reference may be made to the observation of Tindal, C.J. in Sussex Peerage case. He stated:

“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 do alone in such cases best declare the intent of the lawyer.”

It is a well settled principle that the literal meaning is to be preferred when it is clear. But it should be avoided if it defeats the manifest object and purpose of the Act. A classic and interesting example of literal interpretation is found in Shakespeare’s the Merchant of Venice. The conversation between Portia and Shylock illustrates the absurdity the plain reading of a bond. It is as follows:

Portia : “Why, this bond is forfeit; And lawfully this the Jew may claim A pound of flesh, to be by him cut off Nearest the merchant’s heart. Be merciful: Take thrice thy money; bid me tear the bond

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39 Supra note 32, p 7.
41 Supra note 17, p 229.
Shylock: When it is paid according to the tenor.

Portia: Have by some surgeon, Shylock, on your charge,
To stop his wounds, lest he do bleed to death.

Shylock: Is it so nominated in the bond?
I cannot find it; it’s not in the bond.

Portia: This bond doth give thee here no jot of blood;
The words expressly are a pound of flesh;
Take then thy bond, take thou thy pound of flesh;
But, in cutting it, if thou dost shed
One drop of Christian blood, thy lands and goods
Are, by the laws of Venice, confiscate
Unto the State of Venice.
Therefore prepare thee to cut off the flesh.
Shed thou no blood, nor cut thou less nor more
But just a pound of flesh; if thou cut’st more
Or less than just a pound, be it but so much
As makes it light or heavy in the substance,
Or the division of the twentieth part
Of one poor scruple, nay, if the scale do turn
But in the estimation of a hair,
Thou diest and all thy goods are confiscate.”

A literal meaning should be avoided if it results in absurdity. Thus there is a departure from the literal rule of interpretation when (1) there is ambiguity or contradiction in the statute, or (2) even if there is no ambiguity, the plain and literal meaning is unintelligible, or (3) it results in some absurdity, or (4) even if it is intelligible and not absurdity, the plain meaning is totally opposed to the very object of the legislation. In such occasions, the Court has adopted “the Golden Rule”.

1.3.2. The Golden Rule of Interpretation

Golden Rule is the modified form of the principle of literal or grammatical interpretation. In Grey v. Pearson, Lord Wensleydale observed:

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43 Nandkishore Ganesh Joshi v. Commissioner Municipal Corporation of Kalyan and Dombivali AIR 2008 SC 34.
44 Supra note 34, p 162.
45 Supra note 42, p 12.
“In construing statutes, as in construing all other written instrument, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency, but not further.”

This came to be known as “Lord Wensleydale’s Golden rule”. It is used in two ways. It is mostly used to modify the literal rule in order to avoid an absurdity. In its narrow applications, the golden rule lays down that if the words used are ambiguous, the Court should adopt an interpretation which avoids an absurd result.46 There is a drawback in this interpretation also. On its application to concrete situations, it has produced undesirable results. This is due to the want of an objective criterion by which one can say a particular interpretation is absurd.47 On the one hand, the judges are either free to add or change the meaning of statutes and thereby become law makers infringing the separation of powers. On the other hand, they have no power to intervene for pure injustice where there is no absurdity.

1.3.3. Mischief Rule

When the words of a statute are capable of bearing two constructions, the mischief rule is applied. The mischief rule of interpretation has originated in

Heydon’s case. In the instant case,48 Lord Coke has observed:

“That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered (a) what was the common law before the making of the Act (b) what was the mischief and defect for which the common law did not provide (c) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth and (d) the true reason of the remedy.”

46 Adler v. George (1964)2 QB 7.
47 Supra note 42, p16.
48 ibid, p17.
It is applicable where the language is capable of more than one meaning.\textsuperscript{49} This rule is a firmly established rule. If two constructions are possible, that construction which advances the intention of the legislation and remedies the mischief should be accepted.\textsuperscript{50} This rule is also known as “Purposive Construction rule”. It has to be mentioned that the Law Commission in United Kingdom disapproved of the letters “Mischief” and preferred a “purposive” approach to construction.\textsuperscript{51} In this regard, mention may be made to the views of Francis Bennion. He has stated:

“A purposive-and-literal construction is one which follows the literal meaning of the enactment where that meaning is in accordance with the legislative purpose.”\textsuperscript{52}

“A purpose-and strained construction is one which applies to strained meaning where the literal meaning is not in accordance with the legislative purpose.”\textsuperscript{53}

The literal approach focuses on the plain meaning of the words in the legislative text, whereas the purposive approach attempts go beyond the literal meaning and to discern the purpose and interprets the provisions in such a way to enable the objective to be realized.\textsuperscript{54} Regarding the two methods of interpretation, the Supreme Court has made reference to the judgment of Inland Revenue Commissioner case in \textit{Tata Consultancy Service v. State of A.P}\textsuperscript{55} and observed:

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\item \textsuperscript{49} cf Dr. Avartar Singh, Introduction to Interpretation of Statute, 2\textsuperscript{nd} Edn. (Lexis Nexis, New Delhi, Rep 2009) p51.
\item \textsuperscript{50} \textit{ibid}, p 53.
\item \textsuperscript{51} \textit{Supra note} 32, p 55.
\item \textsuperscript{52} Francis Bennion, Bennion on Statutory Interpretation, 5\textsuperscript{th} Edn. (Lexis Nexis, Wadhwa, Ind Rep 2010) p 951.
\item \textsuperscript{53} \textit{Supra note} 52, p 955.
\item \textsuperscript{54} \textit{Supra note} 17, p 273.
\item \textsuperscript{55} AIR 2005 SC 371.
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“Two methods of statutory interpretation have at times been adopted by the Court. One, sometimes called literalist, is to make a meticulous examination of the precise words used. The other sometimes called purposive, is to consider the object of the relevant provision in the light of the other provisions of the Act-the general intendment of the provisions. They are not mutually exclusive and both have the part to play even in the interpretation of the taxing Statute.”

At present day, the Courts tend to adopt a purpose approach while interpreting the statute which repeals the old law and for that purpose to take into account the objects and reasoned which led to the enacting of the new Act.56

1.3.4. Beneficial Interpretation

Beneficial interpretation is one to promote public good and prevent misuse of power.57 It is a well-settled canon of construction that in construing the provisions of beneficent enactment, the Court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory.58 Ordinarily, the rule of beneficent construction has been applied while construing welfare legislations or provisions relating to weaker and stronger contracting parties.59 Regarding the interpretation of Remedial and Penal statute, S.26 (9) of the General clauses Act,1897 lays down:60

“A remedial statute should be construed liberally, that is, when there is a doubt about the meaning, it is resolved in favour of the class of persons who were intended to be benefited by that statute. But a penal statute is construed strictly, that is, in a case of doubt, the doubt is resolved in favour of the accused.”

56 Thyssen Stahl Union GMBH v. Steel Authority of India Ltd AIR 1999 SC 3923.
58 Chinnamarkathian alias Muthu v. Ayyavoo alias Periana Gounder AIR 1982 SC 137.
60 Supra note 42, p 537.
1.3.5. Strict Interpretation

It is a settled rule of interpretation that where the statute is penal in character, it must be strictly construed and followed.\textsuperscript{61} In a penal statute, if there are two possible and reasonable interpretations, that one which exempts the person from a penalty should adopted.\textsuperscript{62} The rule of strict interpretation is illustrated by means of citation of two judgments of the Supreme Court. In S. Gopal Reddy v. State of A.P. \textsuperscript{63} the Supreme Court, in a case relating to the Dowry Prohibition Act, 1960 held:

“One of the cardinal rules of interpretation is that a penal statute must be strictly construed. The Courts have, thus, to be watchful to see that emotions or sentiments are not allowed to influence their judgment, one way or the other and they do not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent till proved guilty and that the guilt of an accused must be established beyond a reasonable doubt. They must carefully assess the evidence and not allow either suspicion or surmise or conjectures to take the place of proof in their zeal to stamp out the evil from society while at the same time not adopting the easy course of letting technicalities or minor discrepancies in the evidence resulting in acquitting an accused. They must critically analyse the evidence and decide the case in a realistic manner.”

In M.V. Joshi v. M.U. Shimpu,\textsuperscript{64} on the question whether it was butter within the meaning of the rules made under the Prevention of Food Adulteration Act, 1954, or “Butter meant butter prepared only from milk, it was held:

“When it is said that all penal statutes are to be construed strictly it only means that Court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the

\textsuperscript{61} India Agencies (Reg.), Bangalore v. M/s Velliappa Textiles Ltd. AIR 2004 SC 86  
\textsuperscript{62} Tolaram v. State of Bombay AIR 1954 SC 496.  
\textsuperscript{63} (1996) 4 SCC 596.  
\textsuperscript{64} AIR 1961 SC 1494.
words. To put it other words, the rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fulfill within it which does not come within the reasonable interpretation of the statute. It has also been held that in construing a penal statute it is a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred. But these rules do not in any way affect the fundamental principles of interpretation, namely, that the primary test is the language employed in the Act and when the words are clear and plain the Court is bound to accept the expressed intention of the legislature.”

1.3.6. Liberal Construction

The Liberal construction must flow from the language used in the statute without placing an unnatural interpretation on those words. The rule of liberal interpretation expects that the judges should go beyond the letter of the statute in order to ascertain the true intention of the ratio legis or statute. The Supreme Court favors a pragmatic approach. It adopts such interpretation which would bring about the ideals set down in the preamble of the Constitution aided by Part III and IV-a truisms, meaningful and a living reality to all sections of the society as a whole by making available and rights to social justice and economic empowerment of the weaker sections and by preventing injustice to them. This rule of interpretation takes into account historical facts, the needs of the society and the necessity of the statute.

1.4. Aids to Construction

The trend of academic opinion and the practice in the European system suggest that interpretation of a statute being an exercise in the ascertainment of

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65 Supra note 32, p 46.
meaning, everything which is logically relevant should be admissible.\textsuperscript{67} While interpreting a statute the Court takes recourse to various internal and external aids. “Internal aids” means those materials which are available in the statute itself, though they may not be part of enactment.\textsuperscript{68} Internal Aids include preamble, title, headings, marginal notes, punctuation and brackets, illustrations, definitions, interpretation clauses and the General Clauses Act, proviso, exception and saving clauses, rules, use in interpretation, fictions (A legal fiction has to be strictly confined to the areas in which it operates) explanation and schedule. When the words of the statutes are clear, explicit and unambiguous, there is no cope to have recourse to external aid for their construction.\textsuperscript{69} If literal construction leads to an absurdity, external aids to construction can be resorted to. External aids include dictionaries, translations, \textit{transvaux preparatoires} or surrounding circumstances, State of Law and Parliamentary history, earlier and later Acts, English Law or American Law, \textit{Stare Decisis}.\textsuperscript{70} In this regard, mention must be made of Mimansa rules of interpretation. The rules for interpretation in the form of a scientific system were developed since very early times known as Mimansa Principles of Interpretation. Mimansa Principles of Interpretation were first laid down by Jaimini in his sutras about 500 B.C. in the introduction to K.L Sarkar’s \textit{Mimansa Rules of Interpretation}, Justice Markandanya Katchu has stated:\textsuperscript{71}

\begin{quote}
“Our great jurists like Vijnaneshwar (author of Mitakshara) Jimutvahan (author of the Dayabhag), Nanda Pandit (author of Dattak Mimansa) etc regularly used the Mimansa principles in their commentaries whenever faced with any difficulty in interpreting Smriti texts.”
\end{quote}

\textsuperscript{67} \textit{Assam Railways and Trading Co. Ltd v. I.RC.} 1934 ALL ER (Rep).
\textsuperscript{68} Law Commission of India 18\textsuperscript{th} Report on A continuum in the General Clauses Act, 1897 with special reference to the admissibility and codification of external aids to interpretation of statutes.
\textsuperscript{69} \textit{P.K.Unni v. Nirmala Industries} AIR 1990 SC 933;
\textsuperscript{70} To stand by decisions and not to disturb what is settled- this rule was framed by Sir Edward Coke C.J.
\textsuperscript{71} L.Sarkar, \textit{Mimansa Rules of Interpretation} 3\textsuperscript{rd} Edn.( Modern Law Publications, New Delhi, 2008) p7
These principles of interpretation were initially laid down for interpreting religious texts pertaining to ‘Yagna’ (sacrifice), but gradually the same principles came to be used for interpreting legal texts also, particularly since in smritis the religious texts and legal texts are mixed in the same treatise.

1.5. Interpretation and Semantics

Semantics determines the totality of meanings that a text may have in its language (Public and Private) for various potential fact patterns. Linguists examine the range of semantic possibilities for texts. Legal interpreters build on the work of the linguists who determine linguistic range. Interpreters translate the language into law by pinpointing or extricating a single, unique legal meaning.\(^{72}\)

Words and phrases of the English language have an extraordinary range of meaning. This has been a rich resource in English poetry but it has been a concomitant disadvantage in English law.\(^{73}\) Every word of a language is impregnated with and is flexible to connote different meaning, when used in different context. That is why it is said words are not static but dynamic and Court must uphold the validity of any provision.\(^{74}\)

1.5.1. Power of Words

Words are not crystal, transparent, and unchanged; they are the skin of living thoughts, and may vary greatly in color and content according to the circumstances and time in which they are used.\(^{75}\) Words do not have fixed meaning. It has the power of assimilation. It is capable of redefining itself in the light of the changing circumstances. It is possible to coin new words or acquire

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\(^{72}\) Supra note 17, p 33.
\(^{73}\) Stock v. Frank Jones (Tipton) Ltd. (1978) 1 WLR 231.
\(^{75}\) Supra note 4, p 100.
new meaning into the existing words. But such a choice is not available for the judges. They can only add the new meaning to the enacted words. Hence a positive approach should be adopted by the judges to face the new challenges. They simply cannot avoid saying that they do not have sufficient laws to tackle the problem. They have to make use of the enacted laws to solve the problems. Lord Denning stated that the Act should be interpreted according to the mischief that Parliament was attempting to remedy, with consideration of the social conditions that prevailed at the time. In *Seaford Court Estates Ltd v. Asher*,76 he made the following observation:

> “Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, 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 criticized. 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 Judges 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.”

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76 *Supra* note 18, p 39
1.5.2. Law Has to Meet the Changing Situations

Modern era is an era of science and technology. Consequently, rapid changes are taking place in all spheres of life. These scientific and technological developments have enhanced the quality of people’s life. At the same time, it has brought with it attendant evils. It is the outcome of the perverted human mind which has resulted in social destruction. The transformations have taken place in personal sphere of human beings. Modern Era is witnessing the crumbling down of the age-old values and beliefs. New emerging trends in all walks of life are only making the governance of law difficult. Hence law has to combat the new challenges enforced by the modern progressive society. It is highly impossible and impracticable to enact new laws for each and every problem. Only in case of necessity, new enactments are made by the governing body. Therefore existing enactments are to be administered to the new challenges. Law is never static and must respond to the challenges of change.77 As was observed by L.J. Denning: 78

“Law does not stand still. It moves continually. Once this is recognized, then the task of the Judge is put on higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick without thought to the overall design he must be pan architect- thinking of the structure as a whole – building for society of law which is strong, durable and just. It is on his work that civilized society itself depends.”

1.5.3. Progressive Construction

The judicial art of interpretation and appraisal is imbued with creativity and realism.79 Legal Darwinism, adapting the rule of law to new societal

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77 Maharao Saheb Shri Bim Singhji v. UOI AIR 1981 SCC 234.
78 Supra note 17, p 24.
79 ibid, p152.
developments, so as to survive and serve the social order is necessary.\textsuperscript{80} A legislature while legislating cannot foresee and provide for all future contingencies.\textsuperscript{81} In a modern progressive society, it would be unreasonable to confine the intention of the legislature to the meaning attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them.\textsuperscript{82}

1.6. \textit{Aim and Objective}

The aim and objective of this research is to study relationship between the Indian law and English language. An attempt is made to demonstrate that there is an intimate relationship between the English language and administration of justice through the interpretation of statute.

1.7. \textit{Hypothesis}

The researcher has framed the following hypothesis for the purpose of realizing the aim and objective of the present research.

“\textit{Common words and phrases acquire new legal meanings in the light of changing scenario}”

To test this hypothesis, the following questions have been framed.

- To trace the growth and development of English vocabulary
- To emphasize the power of words
- To study the impact of English language on the world.
- To trace the entry of English language into India

\textsuperscript{80} ibid.
\textsuperscript{81} ibid.
\textsuperscript{82} ibid.
• The role of English language after independence
• To ascertain relationship between language and law
• To examine the development of science and technology and its impact on
  the English language.
• To study the changing pattern of thought process and lifestyle of the
  people
• To ascertain the role of law in the socio-economic transformation

1.8. Limitations

The subjects of Law and English are like ocean. The study of this research
is thus limited to the specific English words and phrases in the statutes. The select
words and phrases do not have precise definitions.

Certain phrases of the Constitution, which belongs to the domain of public
law, have been given liberal interpretation. The Indian Penal Code, 1860, being
penal statute, is construed strictly. Certain words of the Hindu Marriage Act,
1955, which belongs to domain of personal law, have been given beneficial
interpretation. Select words of the General Clauses Act, 1897, which covers
undefined words of Central and State Acts, have been interpreted.

1.9. Research Methodology

The present research is a doctrinal work. As part of the doctrinal research
the researcher collected data from various sources i.e. Primary and Secondary.
Accordingly, the researcher has adopted various research methods such as
Historical, Comparative and Analytical method. Historical method is employed to
trace the origin, development of English words and phrases. Comparative method
is employed to study the concept of obscenity and negligence in England.
Analytical method is used to analyze the grounds for divorce. The decisions of the Court are analyzed in depth to illustrate active judiciary.

1.10. Sources of Legal Research

The researcher has used both primary and secondary sources for the purpose of the study. The study of select provisions of the Indian Penal Code, 1860, the Hindu Marriage Act, 1955, the General Clauses Act, 1897, and the Constitution of India, 1950, form the primary sources. The secondary sources used by the researcher include books, articles, law reports, dictionaries, encyclopedias, reviews, thesaurus and websites.

1.11. Scheme of Study and Chapterisation

Chapter I examines the relationship between English language and Indian law. An attempt is made to understand how the statutes are interpreted to meet the new challenges in life. Rules and methods of interpretation are also discussed.

Chapter II presents the origin and development of English language. An attempt is made to study the change of meanings in the light of the social, cultural and scientific background of the changing times. Illustrative studies of English words which have acquired extended meanings are enumerated.

Chapter III deals with the interpretation of the ‘Right to Freedom of Speech and Expression’ of Article 19(1) (a) and ‘Right to Life’ and ‘Personal Liberty’ of Article 21. It highlights how the term right to life has acquired new legal meaning such as right to livelihood, right to health, right to shelter and right to education etc. In depth study of case laws are examined.

Chapter IV focuses on the interpretation of select grounds of divorce of Section 13(1) Hindu Marriage Act, 1955. A study of the changing pattern in
human thought and attitude in the sphere of personal life of the individuals is undertaken. It reflects the beneficial interpretations made by the Court for the welfare of concerned aggrieved spouse.

Chapter V discusses the concept of criminal medical negligence under Section 304A and the concept of obscenity under Section 292 of Indian Penal code 1860. It traces the development of law of obscenity through judicial decisions. It makes a pioneering study of evolving concept of criminal medical negligence in India. It highlights the strict interpretation undertaken by the judiciary while dealing with these offences.

Chapter VI deals with the General Clauses Act, 1897. It outlines the aim and object of this Act. The study highlights the fact that it is an important piece of legislation in the current judicial world. Consequently, emphasis is laid on knowledge of the Act while interpreting the laws. Select words such as moveable, immoveable, son, month, mother from the definition section of the Act are taken up for an in-depth study in this chapter.

Chapter VII is the concluding chapter. New emerging trends in the social life and the active role of judiciary are discussed. The significance of the English language is emphasized. Effective implementation of laws is suggested for the welfare of the society at large.

The thesis also contains useful Bibliography at the end wherein all materials used for the research is given.