'OFFENCE' as contemplated under clause third of section 141 of the Indian Penal Code, 1860.'

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Sections 141 to 149 of the Indian Penal Code,1860 deal with offences and punishments in respect of unlawful assembly. Being member of unlawful assembly [section 142], Joining unlawful assembly armed with deadly weapon [section 144], Joining or continuing in unlawful assembly, knowing it has been commanded to disperse [section 145], Rioting [section 146], Rioting, armed with deadly weapon [section 148] are different offences covered by the provisions. Besides, as per section 149, every member of unlawful assembly is guilty of offence committed in prosecution of common object.

As per section 141, an assembly of five or more persons is designated as “unlawful assembly”, if the common object of the persons composing that assembly is either of the five clauses given in the section. Clauses first, second, forth and fifth are worded properly and sufficiently. In this article, I am restricting myself to clause 'third.' It runs as under-

“Third- To commit any mischief or criminal trespass, or other offence;”

Mischief is defined in section 425 of the I.P.C.. Criminal trespass is defined in section 441 of the I.P.C..

There cannot be any dispute as to the meanings of these two words. Now, I would further restrict myself to phrase “or other offence” used in the said clause. Unfortunately, it is assumed that said phrase is wide enough to include anything which is an offence under any law including the I.P.C.. It is even said that the clause is worded in haphazard manner. Is it so? Before looking into it, it is necessary to see some principles of statutory interpretation.

Statutory Interpretation:-

Statutory interpretation is the procedure of rendering and enforcing legislation. Some amount of interpretation is always essential when case involves statute. Sometimes the words of a statute have a plain and straightforward meaning. However, sometimes there can be some ambiguity or vagueness in the words of the statute that must be resolved to give proper meaning. We often observe the courts and lawyers busy in unfolding the meaning of ambiguous words and expressions and resolving inconsistencies.

Intention of the Legislature:-

“By interpretation or construction is meant”, says SALMOND, “the process by which the court seeks to ascertain the meaning of Legislatures through the medium of authoritative forms in which it is expressed”.[1]

A statute is an edict of the Legislature[2] and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed according "to the intent of them that make it"[3] and "the duty of the judicature is to discover and act upon the true intention of the Legislature – the mens or sentential legis".[4] The expression 'intention of the Legislature' is shorthand reference to the meaning of the words used by the legislature objectively determined with the guidance furnished by the accepted principle of interpretation. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the Legislature, in other words, the 'legal meaning'[5] or the 'true meaning' of the statutory provision.

Therefore, the court must try to determine how a statute should be enforced. This requires statutory construction. It is a tenet of statutory construction that the legislature is supreme (assuming constitutionality) when creating law and that the court is merely an interpreter of the law. In practice, by performing the construction the court can make sweeping changes in the operation of the law. The different interpretations result mainly because of the spirit in which each judge applies the rules and how far he can go to make the words promote the object and policy which the statute was designed to achieve.[6] For that purpose, statute must be read as a whole in its context.

Statue must be Read as a whole in its Context:-

"A statute is construed so as to make it effective and operative." This means, that the intention of the legislature must be found by reading the statute as a whole, the purpose of the statute is to make the law accomplish a purpose and produce a desired effect. This may only be accomplished if the statute is read and construed as a whole and not in parts. This rule or principle has been referred to as "elementary rule", "compelling rule" and also as "settled rule".

It has been stated by Hon'ble Supreme Court : "The court must ascertain the intention of the Legislature by directing its attention not merely to the clause to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."[7]

When a clause is inclosed in a statute in plain or simple terms, it may be interpreted in different ways. It may bear one meaning in one context and another in a different context. The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole.[8]

SIR JOHN NICHOL has observed that: "The key to opening of every law is the reason and the spirit of the law – it is animus imponentis, the intention of the law makers, expressed in

the law itself, taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from the context".

Thus it may be noted that words, phrases and clauses occurring in a statute are not to be taken in isolation or in a separate or detached manner. It has to be read together and construed in the light of purpose and object of an Act itself and as a whole.[9]

Internal and external consistency:-

It is presumed that a statute will be interpreted so as to be internally consistent. A particular section of the statute shall not be divorced from the rest of the act. The *ejusdem generis* (or *eiusdem generis*, Latin for "of the same kinds, class or nature") rule applies to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear. The rule results that where "general words follow enumerations of particular classes or persons or things, the general words shall be construed as applicable only to persons or things of the same general nature or kind as those enumerated." When a list of two or more specific descriptors is followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them. For example, where "cars, motor bikes, motor powered vehicles" are

mentioned, the word "vehicles" would be interpreted in a limited sense (therefore vehicles cannot be interpreted as including airplanes).

Hon'ble Supreme Court has examined and explained the meaning of 'Ejusdem Generis' as a rule of interpretation of statutes in our legal system [10]. While examining the doctrine, it is held as under;

“26. The Latin expression “ejusdem generis” which means “of the same kind or nature” is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises “from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context.” It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (See Glanville Williams, ‘The Origins and Logical Implications of the Ejusdem Generis Rule’ 7 Conv (NS) 119).

27. This ejusdem generis principle is a facet of the principle of Noscitur a sociis. The Latin maxim Noscitur a sociis contemplates that a statutory term is recognised by its associated

words. The Latin word ‘sociis’ means ‘society’. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context [See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover, (1957) AC 436 at 461 of the report]”

I will consider in later part of this article whether the principle of ejusdem generis can be applied to interpret the phrase 'or other offence' used in clause third of S. 141 of the I.P.C..

If Meaning is Plain, Effect must be given to it Irrespective of Consequences:-

When the words of a statute are clear, plain and/or unambiguous, i.e., they are reasonably susceptible to only one meaning; the courts are bound to give effect to that meaning irrespective of consequences. 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 lawmaker.

On this backdrop, I revert back to the topic. Offences were defined and punishment regulated earlier by the society, later on by the representative of the society. At present these are coined

and controlled by the Sovereign power of a country.

Now, dictionary meaning of the word “offence” is to be seen.

Oxford dictionary defines offence as :-

'A breach of a law or rule; an illegal act: the new offence of obtaining property by deception.'

'A thing that constitutes a violation of what is judged to be right or natural: the outcome is an offence to basic justice.'

As per Wikipedia, Offence may refer to :-

'Offence or Crime, a violation of penal law.'

In this Article, I confined myself only to the meaning of a word “offence” used in S. 141 of the I.P.C.. For that purpose, the chapter II of the I.P.C. is to be seen. It is in respect of General Explanations. Sections 40 to 42 of the I.P.C. are material. They run as under:-

40. "Offence"

Except in the [Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, [Chapter VA] and in the following sections, namely, sections [64, 65, 66, [67], 71], 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222,

223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the words "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

41. "Special law"

A "special law" is a law applicable to a particular subject.

The N.D.P.S. Act, 1985, The S.C.S.T. (Prevention of Attrocities) Act, 1988 are the examples of Special laws.

42. "Local law"

A "local law" is a law applicable only to a particular part of [India].

Bombay Village Panchayat Act, 1958 is example of local law.

Every word used in a statute is used purposely. Had the intention of the lawmakers been to include any offence under the I.P.C. in definition of 'or other offence', the previous words viz. mischief and criminal trespass would not have been specifically used by them. In fact, 'any thing punishable under this Code, or under any special or local law' are the words which could have been

used by them. However, intentionally the lawmakers have restricted the scope of 'or other offence'. Here, I pause and consider whether principle of *ejusdem generis* can be applied to conclude that the offences similar to preceding offences given in third clause were intended for the phrase' or other offences'. I think like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear. Here, a contrary intention is clearly indicated in as much as the definition of 'offence' under Section 40 of the I.P.C., as pointed out above, which is in two parts, is considered. The first part deals with enumerated categories and covers offences under the I.P.C., or special law or local law but the second part, though includes offences under special law or local law it does not include offences under the I.P.C.. So, while construing such a definition the principle of ejusdem generis cannot be applied.

Hon'ble Supreme Court has observed as follows:-

"…The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent." [11]

As noted above, in the instant topic, there is a statutory indication to the contrary. Therefore, where there is statutory indication to the contrary the definition of offence under Section 40 cannot be read on the basis of ejusdem generis nor can the definition be extended to include any offence under the I.P.C. in the phrase 'or other offence' as used in clause third of S. 141 of the I.P.C.. If that is done, then a substantial part of the definition under Section 40 would become redundant. That is against the very essence of the doctrine of ejusdem generis. The purpose of this doctrine is to reconcile any incompatibility between specific and general words so that all words in a Statute can be given effect and no word becomes superfluous (See Sutherland: Statutory Construction, 5th Edition, page 189, Volume 2A). It is also one of the cardinal canons of construction that no Statute can be interpreted in such a way as to render a part of it otiose.

It is, therefore, clear where there is a different legislative intent, as in this case, the principle of ejusdem generis cannot be applied to make a part of the definition completely redundant. Therefore, the word 'offence' used in clause third does not mean any offence under any law including the I.P.C. except those given in definition of offence in S. 40 of the I.P.C.. Thus, the 'offence' as used in clause third of section 141 can be said to be committed if the thing is punishable under special law or local law with imprisonment for a term of six months or upwards with or without

fine, not otherwise. Thus, if we read the I.P.C. as a whole in its context, we get only restricted meaning to the phrase 'or other offence.' The meaning being plain, effect must be given to it irrespective of consequences of its effect on pending cases.

It is practice that when offences punishable under sections 323, 324, 325, 326, 504, 506 etc. which are not covered by clause first, second, fourth or fifth or even by first two words of clause third of section 141 are committed by five or more persons then Sections 143, 147 or 148 and 149 are added by the Investigating agency taking advantage of the phrase “or other offence”. The Courts, too, took its cognizance and charge is being framed for the offences assuming that word 'offence' in clause third is wide enough to cover any offence. From the above discussion, it appears to be incorrect.

There are en-number of cases decided by Hon'ble Supreme Court and Hon'ble High Courts in which various sections of the I.P.C. alongwith sections 143, 147, 148 or 149 were alleged to have been committed. However, in none of the case, scope of section 40 of the I.P.C. was argued and decided. Thus, it appears that the words “or other offence” in clause third were never came before any of those Hon'ble Courts for interpretation. Therefore, the practice of adding those sections if number of offenders are five or

more continued till today in spite of there being clear unambiguous definition of word 'offence' used in clause third of section 141 of the I.P.C.. If such practice is stopped, we may find that many cases can be disposed off allowing compounding which is not allowed at present as offences punishable under sections 143, 147, 148 and 149 are not compoundable. Thus, the valuable time of Courts in conducting those compromised cases can be saved.

[1] SALMOND: "Jurisprudence" 12th Edition,(Indian Economy Reprint) p. 132.

[2] Vishnu Pratap Sugar Works (private) Ltd. v. Chief Inspector of Stamp, U.P., AIR 1968 SC 102, p. 104: 1967(3) SCR 920.

[3] RMD Chamarbaugwala v. Union of India, AIR 1957 SC 628, p. 631: 1957 SCR 930.

[4] SALMOND: "Jurisprudence" 11th Edition, p. 152.

[5] BENNION: "Statutory Interpretation", (3rd Edition) pp. 14, 303, 343.

[6] LORD REID: Jones v. Secretary of State, (1972) 1 All ER 145 (HL)

[7] State of W.B. v. Union of India, AIR 1963 SC 1241, p. 1265: 1964(1) SCR 371.

[8] Attorney – General v. HRH Prince Ernest Augustus of Hanover, (1957) 1 All ER 49, p. 55(HL); Union of India v. Sankalchand, AIR 1977 SC 2328, p. 2336: (1977) 4 SCC 193: 1977 SCC (Lab) 435.

{2 to 5, 6, 8 are excerpts from Principles of Statutory Interpretation : Justice G.P. Singh 13 th edition }

[9] Darshan Singh Balwant Singh v. State of Punjab, AIR 1953 SC 83 : 1953 SCR 319.

[10] Maharashtra University of Health and others v. Satchikitsa Prasarak Mandal and others, AIR 2010 SC 1325 : MANU/SC/0136/2010.

[11] Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala and others, AIR 1972 SC 1863.