USE OF LEGISLATIVE HISTORY IN STATUTORY INTERPRETATION

THE OBJECTIVE of statutory interpretation is to determine the intent of the legislature. It can be found by determining the meaning of the statutory language. Thus, the question, "how do courts determine the meaning of the statutes?" is inevitable.[1] For centuries the legal fraternity has been arguing about the use of legislative history in statutory interpretation, and the elements of what constitutes legislative history may differ depending on the jurisdiction and the statute involved.[2] Historically, the use of legislative history was employed to ascertain legislative intent underlying the meaning of a statute[3] and it plays an important role in finding the purpose or the intent of a statute.[4]

The common law systems are reluctant to use legislative history and there is some amount of mistrust and caution in relying on legislative history. This comes from the historical derogation of the common law which led to the strict interpretation of statutes. The civil law practice leans towards construing a statute in accordance with its spirit but under common law the trend is to interpret according to the letter of the law.[5]

Even though the scholarly writers are not always in favour of using legislative history, at present there is a great deal of interest in it.[6] François Gény, an authority on statutory interpretation proposed a new method of interpretation. His question is why worry about consulting legislative history in order to trace the will of a legislator who is no more. Gény believes that when a judge is faced with interpretation of an obscure term, the judge should take note of the social needs and the ideals which are prevalent at that point of time, comparative law and

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1. William S. Jordan, "Legislative History and Statutory Interpretation: The Relevance of English Practice" 29 *USFL Rev* 1, 4, 1-42.

2. Robert J. Araujo, S.J., "The Use of Legislative History in Statutory Interpretation: A Look at *Administrative Tribunal Regents* v. *Bakke*" 16 *Seton Hall Legis J* 57, 124, 57-176.

3. *Id.* at 126.

4. Fritz Snyder, "Legislative History and Statutory Interpretation: The Supreme Court and the Tenth Circuit" 49 *Okla L Rev* 573, 576, 573-624.

5. Claire M. Germain, "Approaches to Statutory Interpretation and Legislative History in France" 13 *Duke J Comp & Int'l L* 195, 206, 195-206.

6. *Id.* at 205.

history which will indicate the evolution of the institute. Starting as an interpreter the judge will become a legislator.[7] It is for the judge to decide in accordance with the rule he would establish as a legislator.[8]

What is legislative history?

Simply speaking legislative history is the history with regard to the passage of a particular legislation. It includes: (a) the government's statement of reasons for a bill and the legislative antecedents of the statutory provision under consideration, *i.e.*, corresponding provisions in the previous enactments since repealed and re-enacted with or without modification; (b) pre parliamentary materials relating to the provision or the statute in which it is contained, such as reports of committees and commissions reviewing the existing law and recommending changes; and (c) parliamentary materials such as the floor debates in the legislature, the reports of successive examinations, with amendments proposed and rejected, by the parliamentary committees,[9] explanatory memoranda proceedings in committees and parliamentary debates.

All these items have claims to be regarded as part of the context of a statute but special rules apply to the use of legislative history which a judge may make of them when giving reasons for his decision.[10] In the first place, as defined by Viscount Simonds in *A-G* v. *Prince Ernest Augustus of Hanover*[11] reference to legislative history is permissible only when he is in doubt about the meaning of the provision under consideration after considering it in its general context. Secondly, a distinction has to be drawn between situations in which judges ought to have regard to legislative history which may then provide reasons for the interpretation adopted, and situations in which judges receive such information to confirm an interpretation justified by the meaning of the words read in context. In the latter case, legislative history plays a supportive role similar to that played by dictionaries in relation to matters which are the subject of judicial notice.[12]

7. This view of François Gény moved into other countries such as Germany and Switzerland. His view had such an impact that the Swiss Civil Code of 1907 expressly gives large powers to the judge when neither the law nor custom resolve the question which has arisen in the litigation.

8. *Supra* note 5 at 198.

9. *Id.* at 204.

10. John Bell & Sir George Engle, *Statutory Interpretation* 152 (1995).

11. [1957] AC 436 at 461.

12. *Supra* note 10.

According to Richard Danner who specifically looks at the history of printing and distribution of legislative documents, the greater availability of legislative information and documents generated during the legislative process has led to increased use of legislative history in the early twentieth century.[13] However, the principle underlying the dominant contemporary judicial approach on the use of legislative history as an aid to interpretation was clearly stated by Lord Diplock in *Fothergill* v. *Monarch Airlines Ltd.*:[14]

> [T]he constitutional function performed by courts of justice as interpreters of the written law laid down in Acts of Parliament is often described as ascertaining 'the intention of parliament'; but what this metaphor, though convenient, omits to take into account is that the court, when acting in its interpretive role,…is doing so as mediator between the state in the exercise of its legislative power and the private citizen for whom the law is made by parliament constitutes a rule binding upon him and enforceable by the executive power of the state. Elementary justice or, to use the concept often cited by the European Court, the need for legal certainty demands that the rules by which the citizen is to be bound should be ascertainable by him (or more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible. The source to which parliament must have intended the citizen to refer is the language of the Act itself. These are the words the parliament has itself approved as accurately expressing its intentions. If the meaning of those words is clear and unambiguous and does not lead to a result that is manifestly absurd or unreasonable, it would be a confidence trick by parliament and destructive of all legal certainty if the private citizen could not rely upon that meaning but was required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred that parliament's real intention had not been accurately expressed by the actual words that parliament had adopted to communicate it to those affected by the legislation.

This principle must, however, be qualified as stated by Lord Griffiths in *Pepper* v. *Hart*:[15]

13. *Supra* note 5 at 205.
14. [1981] AC 251 at 287-280 as cited in *supra* note 10.
15. [1993] 1 All ER 42 at 50.

> [T]he courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.

Generally, legislative history of a statute is not admissible to explain its meaning[16] but it may be referred for ascertaining the intent of the legislators and not for construction of a statute.[17] Judges do not consider legislative history to be authoritative in the same way as a statute itself. At best, it is evidence of what the statute means.[18]

Basis for restricted use of legislative history in English courts

English courts have historically refused to consider much of legislative history and the basis for this rigid view has been laid down by the Privy Council.[19] According to the traditional English view the intention with which the Parliament passed an Act is not to be gathered from the parliamentary history of the statute. The bill in its original form, or the amendments considered during its progress in the legislature are not admissible aids to construction. The language of a minister which eventually becomes law, reports of the debates and resolutions passed in either house of the Parliament are also inadmissible.[20] But, the courts are entitled to consider such external or historical facts as may be necessary to understand the subject matter to which the statute relates, or have regard to the mischief which the statute is intended to remedy, the exclusionary rule was relaxed to admit the reports of the commissions preceding a statutory measure as evidence of the surrounding circumstances with reference to which the words in the statute are used.[21]

The supposed English practice of refusing to consider legislative history is frequently traced to the 1769 decision of *Millar* v. *Taylor*[22] in which the king's bench stated, "the sense and meaning of

16. Roy Wilson & Brian Galpin, *Maxwell on Interpretation of Statutes* 26 (11th Edn, 1962).

17. Vepa P. Sarathi, *Interpretation of Statutes* 427 (4th Edn., 2005).

18. *Supra* note 5.

19. In England statements or materials from the minister introducing a bill, from a standing committee, from a committee chair, or from an individual member of the House of Commons, legislative committee reports and statements made on the floor the legislature are termed parliamentary materials. See, *supra* note 1 at 9.

20. G. P. Singh, *Principles of Statutory Interpretation* 200 (9th Edn., 2004).

21. *Ibid.*

22. 98 Eng. Rep. 201 (1769) as cited in *supra* note 1 at 8.

an Act of Parliament must be collected from what it says when passed into a law; and not from the history of changes it underwent in the house where it took its rise." Modern decisions in the House of Lords have generally reflected this "plain meaning" principle of interpretation, as have a vast array of writings on the subject of statutory interpretation in England. Consistent with this textualist approach, the English courts have, until recently, consistently refused to consider what are called "parliamentary materials," which are the working documents and debates of Parliament,[23] and therefore, legislative history.

Lord Halsbury was of the view that the worst person to construe a statute is the person who is responsible for its drafting, for he is much disposed to confuse what he intended to do with the effect of the language which in fact he has employed.[24]

A report on the interpretation of statutes was issued by the law commissions in 1979. It recognized that the record of parliamentary consideration of a statute may frequently be relevant to the meaning of statutory intent. But it emphasized concerns about the reliability and availability of parliamentary material in recommending that the courts should continue to prohibit consideration of *Hansard*. The law commissions expressed two specific concerns regarding reliability. Firstly, the purpose of debate is not to elucidate meaning, but to secure enactment. Secondly, existing parliamentary procedures do not produce materials that are well suited to facilitating statutory interpretation. With regard to availability, the concern was that *Hansard* is not widely available to lawyers, either from libraries or other sources. The law commissions also expressed concern that it is often difficult to isolate useful information within the parliamentary record.[25] However, the English courts in a number of cases have held that it is legitimate to look at the report of a committee leading to legislation so as to see the mischief which the Act tried to curb.[26] Thus, the English courts may now consider such reports and other permitted extrinsic material in order to assist in determining the intention of Parliament.[27]

In *R.* v. *Bishop of London*[28] it was held that it is not necessary to look at the history of the enactment where the words of the enactment

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23. *Supra* note 1 at 8.

24. *Supra* note 17 at 25.

25. *Supra* note 1 at 11.

26. *Letang* v. *Cooper*, (1964) 2 All ER 929 at 933 (CA); *Comdel Commodities Ltd*. v. *Siporex Trade., S.A.* (1990) 2 All ER 552 at 557 (HL) as cited in *supra* note 20 at 201.

27. *Supra* note 1 at 15.

28. (1890) 24 Q.B.D. 213 (224) as cited in Jagdish Swarup, *Legislation and Interpretation* 290 (4th Edn., 1989).

are clear. But the court has recognised that it may be material to do so where the words are capable of two meanings. In *Emperor* v. *Kempton Park Race Course Co*.[29] it has been observed that even where the history of the legislation, and the facts which give rise to the enactments, may usefully be employed in the interpretation of the meaning of a statute, but they do not afford any conclusive argument.

In *Black-Clawsan International Ltd.,* v. *Papierwerke Waldhof-Aschaffenburg, A.G.*[30] the majority held that a report of a committee presented to Parliament preceding the legislation could not be looked at for the purpose of finding the intention of the Parliament, *i.e.,* for a direct statement of what the proposed enactment meant even though the report set out a draft bill which was enacted without any alteration.[31]

In November 1993, after years of criticism and debate, deciding *Pepper* v. *Hart,* the House of Lords ruled that the English courts may consider parliamentary materials where: (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied on consists of one or more statements by a minister or other promoter of the bill together if necessary with such other parliamentary material as is necessary to understand such statements and their effect; and (c) the statements relied on are clear.[32]

Prior to *Pepper* v. *Hart* the courts excluded all such materials from judicial consideration for the purpose of statutory interpretation and many of these materials are compiled in *Hansard*. But, until *Pepper* v. *Hart*, references were "rigidly excluded."[33] Prior to *Pepper* v. *Hart*, the leading case of the modern era on this issue was the 1967 decision in *Beswick* v. *Beswick*[34] in which the House of Lords considered the language of prior relevant statutes, but refused to consider *Hansard*. According to Lord Reid, allowing reference to *Hansard* would greatly increase the time and expense involved in litigation, frequently make it impracticable for counsel to gain access to older legislative reports. Additionally, reference to the legislative materials would generally be of little help in interpreting the statute.[35]

In the decision of *Pepper* the court discussed the objection that legislative history is not readily available and pointed out that the

29. 1899 A.C. 143.
30. (1975) 1 All ER 810 (HL).
31. *Supra* note 20 at 201.
32. *Supra* note 1 at 8.
33. *Id.* at 9.
34. [1967] 2 All E.R. 1197 (H.L.).
35. *Supra* note 1 at 9.

experience in Australia and New Zealand where the strict rule of statutory interpretation has been relaxed for some time has not shown that the non-availability of materials has raised any problem in practice. Another objection was that the recourse to legislative history and especially parliamentary material will be questioning the freedom of speech and debates in the legislature. Rejecting this objection the court stated that "far from questioning the independence of parliament and its debates, the courts would be giving effect to what is said and done there." In *R.* v. *Secretary of State for the Environment Exparte Spath Holme*[36] it has been emphasised that reference to parliamentary materials can be made only where the legislation is ambiguous, obscure or its literal meaning leads to an absurdity.

However, the modern trend in English law is that there should be limited but open use of legislative history in interpreting statutes. Thus, modern English practice, while somewhat restrictive, does not support a refusal to consider legislative history in statutory construction.[37] So the rules adopted by the courts represent a compromise between the requirements of the rule of law and legal certainty on the one hand, and of fidelity to the intention of the Parliament on the other.[38]

Justice Scalia and opposition to use of legislative history in America

Judges interpret laws rather than reconstruct legislators' intentions. Where the language of those laws is clear, we are not free to replace it with an unenacted legislative intent. Scalia J in *INS* v. *Cardoza-Fonseca*[39]

In the US, it is generally accepted that "debates in congress are not appropriate or even reliable guides to the meaning of the language of an enactment."[40] In the US, one element of the argument against the use of legislative history in the federal courts has been reliance upon what is often described as the English practice of refusing to consider legislative history. Professor Mayton, an opponent of the use of legislative

36. (2001) 1 All ER 195 (HL).

37. *Supra* note 1 at 3.

38. *Supra* note 10 at 153.

39. 480 U.S. 421 (1987) as cited in Stephanie Wald, "The Use of Legislative History in Statutory Interpretation Cases in the 1992 US Supreme Court Term; Scalia Rails but Legislative History Remains on Track", 23 *SU L Rev* 47, 60, 47-70.

40. *United States* v. *St. Paul, M. & M. Rly. Co.*, 62 Law Ed 1130, p. 1134, where reference is made to *United States* v. *Trans- Missouri Freight Association*, 41 Law

history, asks "if a tradition of Anglo-American jurisprudence is not much of a justification for our own use of legislative history, what is?"[41] Professor Kay has noted that, "support for the view that text alone creates legal rules might be drawn from the English practice of statutory interpretation."[42] Those who object to the use of legislative history in interpreting statute argue that recourse to legislative history is a badly overdone practice which is of dubious help to true interpretation of a statute.[43] In speeches delivered in 1985 and 1986, Scalia J an opponent of use of legislative history cited an English authority in arguing for a limitation on the use of legislative history.[44] He has been relentless in his criticism of the court's use of legislative history. He has opined as follows:[45]

> As anyone familiar with modern-day drafting of congressional committee reports is well aware, the references to the cases were inserted, at best by a committee staff member on his or her own initiative, and at worst by a committee staff member at the suggestion of a lawyer-lobbyist; and the purpose of those references was not primarily to inform the Members of Congress what the Bill meant ... but rather to influence judicial construction. What a heady feeling it must be for a young staffer to know that his or her citation of obscure district court cases can transform them into the law of the land, thereafter dutifully to be observed by the Supreme Court itself

According to Scalia J, legislative history converts "a system of judicial construction into a system of committee-staff prescription." He believes that committee reports are unreliable, "not only as a genuine indicator of congressional intent but as a safe predictor of judicial construction." In the view of Scalia J all that is known for certain is that the legislature has adopted the law stated in the statute as a whole. Thus, the courts should not be confused by relying on the committee reports as well.[46] He says "the Court's reliance on legislative history is not merely a waste of research time and ink; it is a false and disruptive lesson in the law. It says to the bar that even an 'unambiguous and

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41. *Supra* note 1 at 2.

42. *Ibid.*

43. Jackson "The Meaning of Statutes: What Congress Says or What the Court Says', (1948) 34 *ABAJ* 535, collected in Horrack, *Cases and Materials on Legislation* at 1029-30.

44. *Supra* note 1 at 2.

45. *Blanchard* v. *Bergeron*, 489 U.S. 87 (1989) as cited in Stephanie Wald, *supra* note 39 at 47.

46. *Supra* note 4 at 580.

unequivocal' statute can never be dispositive; that, presumably under penalty of malpractice liability, the oracles of legislative history, far into the dimmy past, must always be consulted. This undermines the clarity of law, and condemns litigants who must pay for it out of their own pockets to subsidizing historical research by lawyers."[47]

In the view of Kozinski J who is another opponent of use of legislative history in interpretation of statutes, usually, committee reports are written by staff or lobbyists, not legislators, and only few legislators read the reports. He further observes that the reports are not voted on by the committee whose views they supposedly represent and they cannot be amended on the floor by legislators who disagree with their content. Therefore, relying on such language can adversely impact the legislative process and bring forth results which were never intended by the legislature or the president.[48]

Some argue that it is the custom of remaking statutes in a manner which fits their histories and it has also been opined that the practice of relying on legislative history poses serious practical problems for many of the practitioners of law because lawyers cannot rely on an Act and advice their clients, but they have to go through all the committee reports on a particular bill, and all its antecedents as well as all that the supporters as well as opponents said in debate and then finally predict what part of the conflicting views will most likely appeal to the majority of the court.[49] Another belief is that resorting to legislative history leads to introducing the policy controversies that generated the Act into the deliberations of the court. According to Prof Reed Dickerson who has analysed the uses and abuses of legislative history "the more realistic approach to legislative history would be to end or severely limit its judicial use."[50]

Restricted use of legislative history in India

Similar to the English courts the Indian Supreme Court also enunciated the rule of exclusion of parliamentary history. However, in a number of occasions the court used this aid to resolve questions of construction. The apex court is now of the view that legislative history within circumspect limits may be consulted by courts in resolving

47. Stephanie Wald, *supra* note 39.

48. *Supra* note 4 at 581.

49. *Supra* note 43.

50. Reed Dickerson "The Interpretation and Application of Statutes" as cited in *supra* note 20 at 210.

ambiguities. Nevertheless, the court sometimes, similar to English courts makes a distinction between use of a material for finding the mischief dealt with by the Act and its use for finding the meaning of the Act. However, this distinction has now been abandoned by the House of Lords.[51]

In the case *Administer General* v. *Prem Lal Mullick*[52] the issue was whether a Hindu executor was a 'private executor' within the meaning of section 31 of the Administer General's Act, 1874. Reversing the high court decision the Privy Council held that he was a private executor within the meaning of section 31 of the above mention Act. The Privy Council observed as follows;

> [T]he two learned judges who constituted the majority in the Appellate Court, although they do not base their judgments upon them, refer to the proceedings of the legislature which resulted in the passing of the Act of 1874 as legitimate aids to the construction of Section 31. Their lordships think it right to express their dissent from that proposition. The same reasons which exclude these considerations when the clauses of an Act of the British legislature are under construction are equally cogent in the case of an Indian statute.

According to the court in *Chiranjit Lal Chowdhuri* v. *UOI:*[53]

> [L]egislative proceedings cannot be referred to for the purpose of construing an Act or any of its provisions…but they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated it.

The Supreme Court was of the view that the speeches made by the members of the Constituent Assembly in the course of the debates on the draft constitution is unwarranted. The reason behind the rule was explained in *Gopalan* v. *State of Madras*[54] thus:

> A speech made in the course of the debate on a bill would at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental process lying behind the majority vote which carried the bill. Nor is it reasonable to assume that the minds of all the legislators were in accord.

51. *Supra* note 20 at 210.
52. (1895) ILR 22 Cal 788 (PC) as cited in *supra* note 17.
53. AIR 1951 SC 41 as cited in *supra* note 17.
54. AIR 1950 SC 27.

Or as it is more tersely put in *United States* v. *Transmissouri Freight Assn*.:[55]

> Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other.

The Supreme Court has held that legislative history of an enactment is not admissible to construe its meaning. In *Sanghvri Jeevraj* v. *M.C.C.G. & K.M.W. Union*[56] the court held that the court can look into the history of an Act and the background and the circumstances in which the Act was passed. The court has further held that this is permissible for the limited purpose of appreciating the mischief the legislature had in mind to remedy and it is not for the purpose of aiding themselves in construing the provisions of the Act.[57]

In *Aswini Kumar Ghose* v. *Arabinda Bose*[58] it was held that statements of objects and reasons are not admissible in evidence for construing the statute. It was argued that the history of legislation would be admissible for ascertaining the legislative intent when the question is one of severability. But the statement of objects and reasons is not a part of the history of the legislation. It is merely an expression of what according to the mover of the bill is the scope and purpose of the legislation. The question of severability has to be judged on the intention of the legislation and to ascertain the intention of the legislature the statement of the mover of the bill is no more admissible than a speech made on the floor of the house.

In *Thangal Kunju Musaliar* v. *M. Venkatachalam Potti*[59] the court observed that:

> [I]t has been said that although the statements of the objects and reasons appended to a Bill is not admissible as an aid to the construction of the Act as passed, yet it may be referred to only for the limited purpose of ascertaining the conditions prevailing at the time which necessitated the making of the law.

Similarly in *K.K.Kochuni* v. *States of Madras & Kerala*[60] the court observed:

> [T]his court has held that the statement of objects and reasons is not admissible as an aid to the construction of a statute. But

55. (1897) 169 US 290.
56. 1969 SC 530.
57. Jagdish Swarup, *Legislation and Interpretation* 289 (4th Edn., 1989).
58. AIR 1952 SC 369 as cited in *supra* note 17 at 430.
59. AIR 1956 SC 246 as cited in *id.* at 429.
60. AIR 1960 SC 1080 as cited in *id*. at 430.

> we are referring to it only for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced and the purpose for which the amendment was made.

In *S.C. Prashar, ITO* v. *Vasantsen Dwarkadas*[61] the court observed that the statement of objects and reasons for introducing legislation cannot be used for interpreting the legislation if the words used therein are clear enough. But the statement can be referred to for the purposes of ascertaining the circumstances which lead to the legislation in order to find out what was the mischief that the legislation aimed at.

In *Kesavananda Bharti* v. *State of Kerala*[62] H.R. Khanna J observed that the speeches in the Constituent Assembly can be referred to for ascertaining the history of the constitutional provision and the background against which the said provision was drafted. The speeches can also shed light so as to show the mischief that was sought to be remedied and the object that was sought to be attained in drafting the provision. But the speeches, according to the judge, cannot form the basis for construing the provisions of the Constitution.

In *Anandji Haridas & Co.,* v. *Engineering Mazdoor Sangh*[63] the court stated:

> As a general principle in interpretation where the words of a statute are plain, precise and unambiguous the intention of the legislature is to be gathered from the language of the statute itself and no external evidence such as parliamentary debates, reports of the committees of the legislature or even the statement made by the minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where the statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning that external evidence as to the evils, if any, which the statute was intended to remedy or the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the legislature had in view in using the words in question.

In *Lok Sikshana Trust* v. *CIT*[64] legislative history was made use of where the real meaning and the purpose of the words could not be

61. AIR 1963 SC 1356 as cited in *id.* at 431.
62. (1973) 4 SCC 225.
63. (1975)3 SCC 862.
64. (1976) 1 SCC 254.

understood at all satisfactorily without referring to the past history of legislation on the subject and the speech of the mover of the amendment who was, undoubtedly in the best position to explain what the defect in the law the amendment had sought to remove.

In *re Gujarat Assembly Election* case[65] the court observed that Constitution Assembly Debates are permissible aids in construction to ascertain the intention of the Constitution and stated that one of the known methods of discerning the intention behind enacting a provision of the Constitution and to interpret the same is to look into the historical legislative developments, Constitutional Assembly Debates or any enactment preceding the enactment of the constitutional provision.

Theoretical objections to use of legislative history

The argument against legislative history is not an argument against the use of history in interpreting statutes. As said by Taney J "when any ambiguity exists" a court may look "to the public history of the times in which the statute was passed."[66] Where the court is in doubt regarding the intention of the legislature, the court may consider the general history of a statute as well as its derivation according to the weight of its authority. Derivation of a statute means the various steps leading up to and attending its enactment as shown by the legislative journals.

Generally, the legislative history cannot be considered where the meaning of the statute is plain and clear.[67] Where the meaning of a legislature is not clear, amendments or other modifications of a bill, and the legislature's actions thereon, messages from the chief executive, reports of legislative committees, testimony produced before a committee, debates in the legislature can be relied on for the purpose of determining the intent of the legislature.[68] Where the meaning of the words used in a statute is doubtful, it is possible to rely on the legislative history of a statute. But the court should not use the aid of some other Act which has been passed some years after the statute in question.[69]

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65. *Gujarat Assembly Election Matter*, (2002) 8 SCC 237.

66. William T. Mayton, "Law Among the Pleonasms: The Futility and Unconstitutionality of Legislative History in Statutory Interpretation", 41 *Emory LJ* 113, 158, 113-158.

67. Earl T. Crawford, *The Construction of Statutes* 383 (1998).

68. *Ibid*.

69. *Penn Mutual Life Ins.co*. v. *Ephraim Lederer*, 64 L ed. 698 (794).

Usually, statements or views of the legislators are not relied on in the course of interpretation of legislations. But there are instances when the rule is departed from and the views and statements of legislators are relied on. However, there are considerable differences in opinion with regard to this. These may be resorted as part of the history of the times when the statute was enacted even in instances where the rule prevails that legislative debate may not be used as a means for interpreting a statute. They can be used by the court to confirm a construction reached by the court without the assistance of these views. They can be used to ascertain the evil the statute originally aimed to remedy or which necessitated the enactment of the statute.[70]

However, when the literal meaning of the words of a statute produces extraordinary results, it has to be determined whether such a meaning is confirmed in the legislative history of the statute. Legislative history is only persuasive evidence. In interpretation of an enactment the court should have regard not only to the literal meaning of the words used but it also has to take into consideration the antecedent history of the legislation, the purpose of the legislation and the mischief it purports to remedy.[71]

Interestingly, important legislations have a history, not merely prior to the enactment but also post enactment, and even at the stage of legislative bill. Often, pre legislative agitation has extended for a considerably long period of time and often the idea which sparked the enactment is not known, though legislations come into place as a result. However, these pre legislative circumstances can be considered by the court in its effort to ascertain the legislative intent if not for any other stronger reason.[72]

Generally, prior to the enactment of a law it will have made a several appearances in the legislature, sometimes in many forms. In such cases it will shed light on the meaning of the law enacted through the legislation. In case the law is a result of an amendment, a consideration of the old law with the new will definitely indicate the legislative intent or purpose. When each and every step in the history of a statute is taken into consideration at least the legislative purpose may be found and it will point to the legislative meaning.[73]

There are, however, four main objections to the use of legislative history for the purpose of interpretation of statutes. Firstly, reliance on

70. *Supra* note 67 at 385.
71. *Supra* note 57 at 291.
72. *Supra* note 67 at 385.
73. *Id* at 386.

legislative history may substitute the will of committees or individual legislators for that of the entire body. Secondly, it is not signed by the President and represents, at best, the will of only one of the three branches of government. Thirdly, it is not available to the average practitioner. Fourthly it is not possible to know the intent of the legislature with respect to a specific word, phrase, or section in a statute.[74]

Henri Capitant, a famous French law professor has argued against the use of legislative history in statutory interpretation and he advocates the English position of not allowing legislative history. Capitant believes that parliamentary discussions lead to the expression of personal views, rather than a general sense of the spirit of the law.[75] The debates in the legislature which are expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body.[76]

The history will often contain a wealth of detail and illustrations because the history is not law, the staffers who produce it are not burdened by the same standards of precision that is required for a statute. Thus, the producers of legislative history can be freer with words. In a case brought under the statute, lawyers will pore over these words, this legislative history, looking for points that favor their side.[77]

Another objection for the use of legislative history in statutory interpretation is legislative history research is simply impractical for most attorneys because it requires extraordinary amounts of research. Legislative history consists of committee reports, conference reports, records of committee hearings, floor statements, Presidential signing statements and all the previous legislations or documents which have been referred to as well as the amendments etc. For most of the lawyers it is virtually impossible to access all these materials because only the largest law libraries have all these materials and sometimes even the biggest law libraries do not carry all these materials. Thus, they are practically unavailable to the majority of the lawyers. If a lawyer is to rely on this legislative history all these material has to be read, as there is no way of knowing where one will find some relevant material.[78] Thus, if a lawyer were to be conversant with the legislative

74. *Supra* note 4 at 577.
75. *Supra* note 5 at 200.
76. *Supra* note 39 at 58.
77. *Supra* note 67 at 122.
78. *Supra* note 4 at 577.

history of a statute it would be practically impossible because of the limited availability of material and the large number of lawyers who want to make use of them.

Most of the governments such as the French government make special efforts to disseminate parliamentary documents including simultaneous publication of documents and debates relative to a particular law.[79] Yet the reality is that they are not accessible to the majority of the lawyers let alone public.

As discussed above, in the decision of *Pepper* the court discussed the objection that legislative history is not readily available and pointed out the experience in Australia and New Zealand. Another objection that was raised was that the recourse to legislative history and especially parliamentary material will be questioning the freedom of speech and debates in the legislature. Rejecting this objection the court stated that "far from questioning the independence of parliament and its debates, the courts would be giving effect to what is said and done there."

In the view of Professor Peter Strauss "statutes ought to be interpreted on the basis of what they say, not what their legislative history might appear to reveal." Legislative history tends to distort the statute. There are no good reasons for abiding these distortions. Moreover, it seems that courts and scholars have always known this, and that the best justification for legislative history has been simply the fact of the practice. It exists as a product of evolution and is, therefore, not to be disregarded. Evolutionary turns are not, however, inevitably good turns. This argument against legislative history is offered in the context of a general theory of statutory interpretation, the courts' duty of mediation between the universals that are statutes and the particulars that are the cases brought under the statute. This is a textualist theory of interpretation. Holmes' epigram that "We do not inquire what the legislature meant, we ask only what the statute means" fits this theory perfectly.[80]

It is well accepted that "legislative history can be cited to support almost any proposition, and frequently is." [81] Another factor against the use of legislative history is that it is hard to find statistical evidence of whether legislative history is used to interpret statutes from the texts of decisions themselves.[82] Legislative history is bound to be comparatively inferior evidence of the legislature's intent or purpose or

79. *Supra* note 5 at 205.
80. *Supra* note 67 at 156.
81. *Id* at 136.
82. *Supra* note 5 at 202.

anything. The main problem is that legislative history swamps and muddies some important functions of legislatures and courts and statutes. It does this by disrupting the associated language game, making it difficult to know "what correctly represents what" and smothering the chances of enlightment and "useful answers" about that which is not yet clearly signified in a statute.[83]

Conclusion

Like all histories, legislative history is written by people, some of whom take great care to be objective and some of whom manipulate the account of what has occurred. Legislative history is evidence used to reach legal conclusions. Like any evidence used in a legal proceeding, it must be tested for integrity, veracity, and reliability. As with all other evidence, it must be examined carefully to determine its probative value, if any. The simplest and one of the more common limitations on the use of legislative history is that it does not guarantee clarification of the statutory text under interpretation. It can actually confuse the meaning of the statute it is supposed to explicate. This problem affects many components of legislative history.[84]

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83. *Supra* note 67 at 116.
84. *Supra* note 2 at 137.
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