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INTRODUCTION

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1.1 Genesis and Scope of the study

The present study has been undertaken in pursuance of a project assigned to the Indian Law Institute by the Government of India. Broadly speaking, this study attempts an examination of the rules of interpretation as they were formulated in some of the works of ancient India and a comparison of the same with modern rules of interpretation in the sphere of law.

The examination of the ancient and the modern rules for the purpose mentioned above has involved a study of fairly vast material on the subject. At the same time, because of limitations of time, space and resources, such examination had to be a selective one. The next paragraph explains the choice of the *Mimansa* rules as the nucleus for comparison.

1.2 Choice of *Mimansa*

Interpretation is a concept having several meanings and a variety of applications. One may have to interpret facts; one may have to interpret non-verbal communications; and, finally, one may have to interpret verbal communications (usually, those reduced to writing). In this, process, language, logic and law intermingle with one another. Indian classical literature on law, logic and language is vast; and modern writings thereon are also numerous. From this vast literature it became necessary, for the purpose of the present study, to make a selection. In regard to the classical literature of India, *Mimansa* offered the most appropriate choice, for more reasons than one. It was a well-developed system; its methodology has considerable resemblance to legal arguments as addressed in the context of interpretation; and many of its doctrines, rules and maxims had found practical application in legal texts, both in the *Dharmasastras* (and the commentaries thereon) and in judicial decisions pronounced in India in the administration of Anglo-Hindu law. For this reason, the *Mimansa* system appeared to be both suitable and useful for a comparison with modern rules of interpretation.

1.3 Methodology

In order to enable a fruitful comparison of the ancient and the modern, it appeared convenient to set out first the major doctrines of the ancient system and then to examine the corresponding modern rules, if any. However, for the sake of maintaining a certain amount of freshness in the discussion, at some places it appeared desirable to refer to the relevant modern rules at the very place where the ancient rules were being dealt with. This course has therefore been adopted at some places, in order to elucidate the scope and operation of the ancient rules on the

subject. It may be mentioned that some of the ancient rules of interpretation were found to have close or substantial similarity to modern rules of interpretation. Hence a juxtaposition of both appeared to be a convenient course, so as to bring out clearly the similarities between the ancient and the modern rules.

1.4 Resolution of conflicts: rules as to

We can take one example (selected at random) of such ancient and modern maxims. One of the maxims in the *Mimansa* system is that - "What follows, supersedes what has gone before"*(Poorvam Parena)*.[1]. This is an example of rules evolved for resolving conflict between two or more apparently contradictory texts.

Now, method of resolving a conflict between statutes which are apparently inconsistent with each other, is well known in modern interpretation also. We have at least three guidelines evolved in comparatively recent years to solve such conflicts:

1. The rule of posteriority: 'Lex Posterior derogat legi priori'.
2. The rule of speciality: 'lex specialis derogat legi generali'.
3. The rule of superiority: 'lex superior derogat legi inferiori'.

1.5 Broom's view as to lex posterior

Broom, in his classical work[2] on legal maxims, has explained the rationale underlying the maxim "Later laws repeal earlier laws (which are) inconsistent therewith". He states *(inter-alia)* that the legislature which possesses the supreme power in the State, possesses, as incidental thereto, the right to change, modify and abrogate the existing laws. Broom further states it to be an "elementary" rule, that an earlier Act must give place to a later one, if the two cannot be reconciled. Lex Posterior derogat priori.

The principle mentioned above applies within a particular Act also. Thus, where a proviso in an Act is directly repugnant to the enacting part, the proviso is held to repeal (pro tanto) the substantive enactment, as it is the proviso that speaks of the last intention of the parties.[3]

Similarly, if there is an absolute contradiction between two sections of an Act, then the later section prevails.[4] "Lex posterior". The maxim was recognised in England as early as 1615 in Foster's case,[5] though it was not applied in that case because of evidence of a contrary intention.[6] If the later Act is a precise negative of whatever authority existed under an earlier Act, then a repeal of the earlier Act is to be inferred.

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1. Sarkar, Mimansa rules of interpretation as applied to Hindu Law (1909) page 470, citing Bhatta Sankara's Mimansa Bal Prakash, page 181. (hereinafter referred to as Sarkar)
2. Broom, Legal Maxims (1939), pages 347, 348.
3. Cf. Cooper v Wilson, (1937) 2 K.B. 309, 315.
4. K.M. Nanavati v State of Bombay, A.I.R. 1961 S.C. 112.
5. Foster's case, (1615) 77 E.R. 1222.
6. Suntharalingam v. Inspector of Police, (1971) 3 W.L.R. 896, 901 (P.C.)