

"Travaux Preparatoires" : As An External Aid To Interpretation Of Statutes.

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INTRODUCTION

Today, one of the most important step for the growth and advancement of legal atmosphere is the development of judicial and administrative functions for interpreting a particular piece of legislation.¹ The subject of statutory interpretation is turning out to critical since a vast growth in the number of cases involving statutory interpretation has been evidenced² with enormous growth in the field of literature for statutory interpretation.³ In simple words, it can be stated that statutory interpretation is an art of interpreting the statutes by analyzing the statute and to ascertain the true meaning and intention of the legislature.⁴ However, certain question often comes into consideration as to how stable is the “interpretative doctrine”- the set of rules, governing principles, norms that the Courts uses while interpreting a statute? How often the Court deviates from its traditional and most entrenched formulation while deciding cases? Why does the interpretative doctrine display this degree of instability? Amongst all these, Justice Frankfurter questioned as to what extent external circumstances and travaux preparatoires may be used in order to give recognition to it under judicial eye.⁵

Travaux Preparatoires is a french term meaning preparatory works. It includes all the materials used in the preparation of a statute. It constitutes legislative history, reports of committees, debates at the time of drafting. It acts as a secondary form of interpretation which can be used to clarify the intention of the makers.⁶ Simply put, it is the consists of records of negotiations before the conclusion of a treaty.⁷ It has been suggested that it can be used in every case of interpretation.⁸

While there are several internal aids and mechanism for interpretation of a statute available, but the need of external aid; *Travaux Preparatoires* comes into play in certain strenuous circumstances, when internal aids breaks down. External aids are useful for finding the true

¹ Frederick J. de Sloovere, *Extrinsic Aids in the Interpretation of Statutes*, 88 U. PA. L. REV. 527-555 (1940).

² Glendon M. Jr. Fisher, William J. Harbison, *Trends in the Use of Extrinsic Aids in Statutory Interpretation*, 3 VAND. L. REV. 586 (1950).

³ Sanders and Wade, *Legal Writings on Statutory Construction*, 3 VAND. L. REV. 569 (1950).

⁴ *Woodroof v. Nashville*, 183 Tenn. 483, 489, 192 S.W.2d 1013, 1015 (1946);

⁵ Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COL. L. REV. 527, 529 (1947).

⁶ *Travaux Preparatoires Law and Legal Definition*, US Legal, <https://definitions.uslegal.com/t/travaux-preparatoires/>

⁷ SIR ROBERT JENNINGS AND SIR ARTHUR WATTS, *OPPENHEIM'S INTERNATIONAL LAW*, 1277 (Harlow, Essex: Longman, 9th ed. 1992).

⁸ Julian Davis Mortenson, *The travaux of travaux: Is the Vienna convention hostile to drafting history?* 107 THE AMERICAN JOURNAL OF INTERNATIONAL LAW, 780–822.

object, meaning and character of the provision or a phrase or a word. Travaux Preparatoires majorly comprises of the Parliamentary History, official records of negotiations, reports of selection committee, speeches and surrounding circumstances, speeches made in the course of debate on the bill etc.

BACKGROUND: LOOKING BEYOND THE WORDS OF THE STATUTE

TRADITIONAL APPROACH- THE DARK DAYS OF LITERALISM

The traditional approach for the interpretation of the statute was simply to look up at the plain meaning of the statute with the belief that statute is the best guide for the interpretation of intent of the legislature. The court, on this premise, went on interpreting the statute as this prevented the judiciary from blatant law making in its reading of statute.⁹ But slowly, the judiciary felt the need for aids to interpretation of statutes; internal aids and external aids because of the unavoidable problems of legislative drafting.

But unfortunately, the external aids to interpretation was considered as irrelevant and inadmissible since the very statute was considered as sufficient source of interpretation¹⁰ of the true intent and object of the legislation, and thus external aids were regarded as unnecessary. It was believed that external aid might come in conflict with the plain meaning of the statute.¹¹ However, slowly such reasoning overlooked the necessity of bringing out new mechanisms for interpretation in cases when the internal aid fails¹² and the need for arriving at the most satisfactory meaning of the legislation might get defeated.¹³ It is therefore erroneous to assume that extrinsic factual aids have no value in shedding new light upon language that only appears to be plain.¹⁴ Also, in addition to this, it would be completely fictitious and illogical that external aid would contradict the statute “since such an argument would find its basis in a rule that

⁹ Frank, *Words and Music: Some Remarks on Statutory Interpretation*, 47 COLUM. L. REV. 1259, 1270 (1947); Jones, *Statutory Doubts and Legislative Intention*, 40 COLUM. L. REV. 957, 973 (1940).

¹⁰ Hamilton v. Rathbone, 175 U. S. 414 (1899); Caminetti v. United States, 242 U. S. 470 (1917), especially the dissenting opinion of McKenna, J., at 496.

¹¹ Frederick J. de Sloovere, *Extrinsic Aids in the Interpretation of Statutes*, 88 U. PA. L. REV. 527-555 (1940).

¹² *Id* at 11(Frederick).

¹³ Freund, *Interpretation of Statutes*, 65 U. PA. L. REV. 207(1907); Pound, *Spurious Interpretation*, 7 COL. L. REV. 379 (1907); Pound, *Common Law and Legislation* 21 HARV. L. REV. 383 (1908); Beutel, *The Necessity of a New Technique of Interpreting the N. I. L.-The Civil Law Analogy*, 6 TULANE L. REV. 6 (1931).

¹⁴ Wilbur v. United States ex rel. Vindicator Consolidated Gold Mining Co., 284 U. S. 231 (1931) United States v. Shreveport Grain & Elevator Co., 287 U. S. 77 (1932).

evidence may be admitted to explain but not to contradict a writing which ignores the fact "that no logical distinctions can be drawn between 'explanation' and 'contradiction.'"¹⁵

Hence, the need for a broader contextual interpretation¹⁶ was required when the scope of deriving at the true intent has a limited scope and along with this, the need for more reformatory aids was taken into consideration to curb the erroneous application of the statute.¹⁷

183RD LAW COMMISSION OF INDIA REPORT

The commission reviewed certain case laws such as *B. Prabhakar Rao and others v State of A.P. and others*,¹⁸ where Justice O.Chennappa Reddy observed that in cases where internal aids are not sufficient to discover the object of legislation, then external aids can always be used in such matters. In *District Mining Officer and others v. Tata Iron & Steel Co. and another*¹⁹ SC has observed that external aids can be resorted to in order to ascertain the true meaning and intent of legislature.

PEPPER V. HART- THE DAWN OF A NEW ERA OF INTERPRETATION

The dilemma of acceptance of extrinsic aid of construction changed radically with the judgment of *Pepper v. Hart*²⁰ where Lord Brown Wilkinson abolished the exclusionary rule and replaced it with the inclusionary rule of accepting parliamentary materials as an external aid to construction in order to overcome the lacunae of statutory interpretation.²¹ Purposive Approach means courts while interpreting a statute can make use of a much wider range of materials in order to arrive at the most authentic and true meaning of the legislation.²² In the present case, Lord Wilkinson regarded Parliament's intention as "crock of gold".²³

¹⁵ SMITH, INTERPRETATION IN ENGLISH AND CONTINENTAL LAW 153, 158(3d Ser. 1927).

¹⁶ Davies, *The Interpretation of Statutes in the Light of Their Policy by the English Courts*, 35 COL. L. REV. 519, 527 (1935).

¹⁷ Lee, *Book Review*, 24 COL. L. REV. 214, 215 (1924).

¹⁸ AIR 1986 SC 120.

¹⁹ (2001) 7 SCC 358.

²⁰ [1992] UKHL 3.

²¹ SC Styles, *The Rule of Parliament: Statutory Interpretation After Pepper v. Hart*, 14 OXFORD JOURNAL OF LEGAL STUD. 151-158 (1994).

²² *Pepper v. Hart*, [1992] UKHL 3.

²³ *Id.*(At 1059B).

Thus, it could be aptly said that after this case, the courts have more willfully accepted the principle of Extrinsic aids for interpretation of statutes and have tried developing a cordial relationship between courts and parliament.

EXTERNAL AIDS TO INTERPRETATION IN INDIA: STERN OPPOSITION TO GRADUAL ACCEPTANCE

Before the admissibility of the 183rd law commission report, various questions were raised as to the credibility of external aids. Doubts were raised as to the reliability of external aids of interpretation while construing any statute. In cases such as *A.K Gopalan v. State of Madras*,²⁴ it was pointed out that external aids are not permissible unless statute was vague or ambiguous. It was settled that proceedings or discussions in assembly, reports, and debates are to be used with great caution and only when latent ambiguity are to be resolved. The basic premise was that the intention of the legislature is to be gathered from the language of the statute itself and no external evidences is admissible to construe those words.²⁵

After the 183rd Law Commission Report²⁶ and the historic landmark judgment of *Pepper v. Hart*²⁷, external aids became admissible for the interpretation of statutes. Thus, whenever literal construction leads to absurdity, external aid of construction can be resorted to. However recourse to extrinsic aid in interpreting a statutory provision would be justified only within well recognized limits and primarily the effect of statutory provision must be judged on a fair and reasonable construction of the words used by the statute itself.²⁸ Thus where the words of the statute are clear, unambiguous, and explicit, there is no scope to have recourse to external aid for their construction.²⁹ The courts would not be justified in putting up external aid in such cases as it would lead to violence of the plain language of the provision.³⁰

Henceforth, where the language is vague and ambiguous, or does not clearly spell out the object and spirit of the act, external aids in the nature of parliamentary debates, reports of drafting or

²⁴ *A.K..Gopalan v. Union of India*, [1950] S.C.R. 88.

²⁵ *S.P Gupta v. UOI*, AIR 1982SC 149.

²⁶ Law Commission of India *A continuum on the General Clauses Act, 1897 with special reference to the admissibility and codification of external aids to interpretation of statutes*, Report No. 183(2002)

²⁷ *Id* at 24.

²⁸ *State of Punjab v. Sodhi Sukhdev singh*, AIR 1961 SC 1413.

²⁹ *P.K Unni v. Nirmila Industries*, AIR 1990 SXC 933.

³⁰ *Ashok Kumar Alias Golu v. UOI*, AIR 1991 SC 1792.

select committees may be permissible to determine and locate the real intention of the legislature. Thus, external aids are used when a statute is not clear, cloudy, uncertain or susceptible to one or more meanings or shades of meaning.³¹

TRAVAUX PREPARATORIES- AN ANALYTICAL FRAMEWORK FOR ITS STATIC AND DYNAMIC USES

A. PARLIAMENTARY HISTORY

Earlier in England, parliamentary history were inadmissible as part of interpretation of statutes, however, the position drifted after the house of Lords in *Pepper v. Hart*³² decided for the inclusionary rule. Subsequently, the change in India's position with respect to admissibility of Travaux preparatoires could be viewed through a series of judicial pronouncements.

Before the birth of any statute, it has to primarily pass through various stages such as drafting of a bill, debates over such bills, inserting necessary amendments to it, parliamentary speeches and only then it becomes a statute. Now, these proposals of bills, debates, speeches, amendments helps us read the actual mind of the framers of the statute and the prevailing necessities for the enactment of such statutes. Hence, these could be used as an aid whenever the courts are in dilemma as to ascertain the true meaning and intent of the legislature.

Before the approval of parliamentary history as an aid to interpretation, two objections were made³³:

1. Parliamentary materials are not readily available.
2. Recourse to Parliamentary material will amount to questioning the freedom of speech and debates in Parliament³⁴.

However, such objections were set aside as non availability of parliamentary history does not creates any practical problems and that this does not violates the freedom of speech and expression as the courts only take into consideration whatever has been said or done there.

³¹ *Anandji Hari Das And Co. Pvt Ltd. v. Engg. Majdoor Sangh*, AIR 1975SC 946.

³² *Pepper v. Hart*, [1992] UKHL 3.

³³ Stephane, *Parliamentary Debates in Statutory Interpretation: A Question of Admissibility or of Weight?* 43 REVUE DE DROIT DE MCGILL 287-324 (1998).

³⁴ *Id.*

The interpretation of a statute depends upon the intention of the parliament while it was drafting the statute, and undoubtedly the intention is gathered from the words of the statute³⁵ for it is well accepted that beliefs and assumptions of those who frame acts of parliament cannot make law³⁶. Thus, the legitimate recourse to sought the evil is to look upon the history as to why the statute was enacted and this also gives a fair idea as to why the statute was constructed.³⁷

B. EVIDENTIARY VALUE OF PARLIAMENTARY DEBATES AND SPEECHES

I. IT CANNOT BE USED TO CUT DOWN GENERALITY OF ENACTMENT: EARLIER VIEW

The evidentiary value of the speeches in interpreting statutes has increased significantly by leaps and bounds. Earlier, the courts posited the view that such speeches are completely inadmissible³⁸ and it only indicates the subjective intent of the speaker.³⁹ Debates might be very subjective and are actually the personal individual opinions of the framers and such statement of opinion and beliefs cannot be admissible.⁴⁰ The courts in various judicial pronouncements have refrained from using debates as a means for interpretation of statutes.⁴¹ Also, individual opinion of members of convention cannot be referred as a purpose for construction of statutes.⁴²

Later on, in *Shyamlal Mohanlal v. State of Gujarat*⁴³, J. Shah in his dissenting opinion relied on such speeches for finding out the historical background of the statute. The judicial trend found impetus when in *B. Banerjee v. Anita Pan*⁴⁴, J. Krishna Iyer held that we cannot ignore the concerns voiced during parliamentary debates and it becomes important to lend an ear to what the legislative draftsmen have to say.

³⁵ *Capper v. Baldwin*, (1965) 2 QB 53.

³⁶ *Davies Jenkins and Co. Ltd v. Davies*, (1968) AC 1097.

³⁷ *State of West Bengal v. Nipendra Nath Bagchi*, AIR 1966 SC 447.

³⁸ *Ashwini Kumar Ghose v. Arabinda Bose*, AIR 1953 SC 75.

³⁹ *State of West Bengal v. Union of India* (1964) 1 SCR 371.

⁴⁰ *R. v. West Riding of Yorkshire County Council*, (1906)2 KB 676.

⁴¹ *Golaknath v. state of Punjab*, (1967) 2 SCR 762.

⁴² *A.K..Gopalan v. Union of India*, [1950] S.C.R. 88.

⁴³ AIR 1965 SC 1251.

⁴⁴ (1975) 1 SCC 166.

II. IT CAN BE USED TO GATHER TRUE INTENTION OF LEGISLATIVE AUTHORS

However, as per the needs and necessity, debates are taken into consideration such as the case of *Milton v DPP*⁴⁵, in order to interpreting the term „prosecution“ under Income Tax Act, a minister“ s speech at the time of introduction of Bill has been taken into consideration. Recently, in 2017 of *Abhiram Singh v. C.D. Commachen*⁴⁶, the court had to interpret Section 123(3) of the Representation of People Act, 1951. The question was whether the word "his" used in the section refers to the religion of candidate or voters? To resolve this, speech given by then Law Minister A.K. Sen was considered to find out the mischief intended to be remedied. In this manner, statute was constructed to conclude that it refers to candidate's religion.

Sometimes the mischief made in the act could only be curbed by the means of external aids by recalling the history in order to make out the actual intent of the legislature. These may be used as an external aid to interpretation however, the usage of such an aid is very limited in scope.

B. BILLS: WHETHER A LEGITIMATE TOOL FOR CONSTRUCTION OF STATUTE?

JUDICIAL TRENDS REFLECTING NARROW AND RIGID VIEW

The prevalent view in those times was that the court is not concerned with the state of affairs or what went on in the legislative council and as such where the meaning is clear, such bills are not legitimate source for construction.⁴⁷ Even if the words can be construed in more than one sense, one cannot take recourse to its bill for interpretation.⁴⁸

Earlier, the notion was that debates on bills in the parliament were not held admissible as an external aid to interpretation since these debates were considered as subjective approach and thus not reliable.⁴⁹ but slowly the circumstances changed and the courts started recognizing the debates on bills as legitimate source of interpretation.

In the case of *Chiranjit Lal Chowdhary v Union of India*,⁵⁰ the apex court observed that during the introduction of a bill in parliament, debates and speeches are encouraged in order to arrive at the most authentic form of statute. Hence, the court opined it as an admissible source of

⁴⁵ [2007] All ER (D) 285.

⁴⁶ (2017) 2 SCC 629.

⁴⁷ *RP Kapur v. Pratap Singh Kairon*, AIR 1964 SC 295.

⁴⁸ *Dina Nath v. Raja Sati*, AIR 1923 Cal. 74.

⁴⁹ *State of Travancore v Bombay Co Ltd*, 1952 SCR 1112.

⁵⁰ AIR 1951 SC 41.

interpretation. Subsequently, the Supreme Court had time and again referred to Dr. Ambedkar's speech to aid interpretation by observing „that the debates in the Constituent Assembly could be relied upon as an aid to interpretation of a constitutional provision is borne out by a series of decisions of the Court.“⁵¹

Finally, in the case of *K.S.Paripoornan v State of Kerala*⁵² the apex court conclusively held that although there might be subjectivity in the speeches of the mover of bills and that it cannot be conclusively taken as a source of interpretation of statute, yet, it can be used to find out the object and intent of the mover of the bill and thus, can be used in a limited and cautious sense.

Moreover, the debate on such bills provides court with the most practical aspects which helps in determining the actual intent of the legislature.

C. STATEMENT OF OBJECTS AND REASONS

I. EARLIER POSITION: APPLICABILITY OF EXCLUSIONARY PRINCIPLE

It was excluded as a rule for interpretation because of extremely limited scope and thus cannot be relied upon.⁵³ The rationale being that it may or may not correspond to the objective which the majority of the house had in mind at the time of passing of the bill. There is a considerable time gap between the introduction where such statement is provided and ultimate passage of the bill, thereby making it unreliable.

The statement of objects and reasons of an act help us find the lacunae in the act and the mischief could be easily remedied for.⁵⁴ Although it is accepted that these might not help up in attaining the actual intent of the legislature⁵⁵, but these certainly aids in interpreting the statute when other remedies are not available and helps us sought the evil. In the case of *State of H.P v. K.C.Mahanjan*,⁵⁶ the apex court observed that statement of objects and reasons can be looked into for the purpose of interpretation for a limited purpose in order to understand the background of the affairs. This is because sometimes words of the statute might be mysterious, cloudy and

⁵¹ *Indira Sawhney v Union of India*, AIR 1993 SC 477.

⁵² AIR 1992 SC 1488.

⁵³ *Ashwini Kumar Ghose v. Arabinda Bose*, AIR 1953 SC 75.

⁵⁴ *Shree Siddheshwar Sahakari v. State of Maharashtra*, AIR 1984 Bom 81.

⁵⁵ VEPA P. SARATHI, INTERPRETATION OF STATUTES 307 (EBC Lucknow, 5th edn., 2013).

⁵⁶ AIR 1992 SC 1277.

unintelligible and therefore, statement of objects and reasons may not conclusively help aiding interpretation but may assist the court in determining the object of the statute.⁵⁷

II. EXPANSION OF ROLE AND UTILITY AS A MEANS OF INTERPRETATION

Thus, ultimately its scope was restricted for analyzing the background, legal affairs, surrounding circumstances prevailing before the enactment of statute. However, the most recent trends show us that courts are inclined in accepting the objects and reasons of the statute as part of interpretation. In the case of CIT, MP v Sodra Devi⁵⁸, Justice Bhagwati construed the meaning of the word “any individual” as “males” on the basis of the object and reasons of the bills. Similarly, inclination towards acceptance could be visibly seen in the case of Babu Ram v State of U.P.⁵⁹ where the court upheld the validity of statement of objects and reasons and that can be used to sought the evil in the statute.

The statement and objects which is supplemented in the bill is not a conclusive piece of evidence for the interpretation of statutes, however, as already mentioned, it can definitely be used for a limited purpose in order to ascertain the background and the conditions prevalent during those times which facilitated the making of law and to sought the remedy.⁶⁰ Thus, taking into consideration the above, the object and reasons of any statute speaks up about the core reasons for the upcoming of such enactment and also guides us towards the true intention of the legislature⁶¹ however, these are looked up only when the provisions are ambiguous and uncertain.⁶²

For a very limited purpose, cases where language of the statute are unclear or ambiguous, the statement of object and reasons can be used as a legitimate source of interpretative tool.

⁵⁷ S.P Gupta v. UOI, AIR 1982 SC 149.

⁵⁸ 1957 AIR 832.

⁵⁹ AIR 1959 All 672.

⁶⁰ Tata Power Company Ltd. v. Reliance Energy Ltd. & Ors., (2009) 16 SCC 659.; Kavalappara Kottarathil Kochuni @ Moopil Nayar v. The States of Madras and Kerala & Ors., AIR 1960 SC 1080.

⁶¹ State Of T.Nadu & Ors v. K Shyam Sunder & Ors, (2011) 8 SCC 737.

⁶² In Gurudevudatta VKSSS Maryadit v. State of Maharashtra [(2001) 4 SCC 534]

D. REPORTS OF COMMISSIONS AND COMMITTEES

No reference was permissible as regards the report the committee which brought out the legislation.⁶³ One of the reasons was that the intention of the parliament as manifested in the statute expressly cannot be curtailed down by referring to such materials.⁶⁴ In the case of CIT, AP, v Jayalakshmi Rice and Oil Mills Contractor Co⁶⁵; a special committee was appointed to look into the provisions of Partnership Act, however the report was not admitted as an aid for interpretation.

AN IMPORTANT TOOL WHEN MEANING OF STATUTE IS DOUBTFUL

The parliament while enacting a statute seeks recommendation by the committee in order to check for any kind of ambiguity or uncertainty in the act. Similarly, the courts in order to ascertain the intention behind the provisions might look up into such reports of the commission.⁶⁶ In 1986, the courts acquiesced for collecting information regarding enactment to be utilised as external aids to construction.⁶⁷ However, if the words used are plain and clear without any ambiguity, then courts refrain themselves into looking up for commission or inquiry committee.

The inquiry committee or commission looks into the historical facts or travaux preparatoires and tries remedying the mischief. Judicial trends show us that many a times, reports are referred by the courts in order to arrive at the most apt intention of the legislature.

⁶³ State of Maharashtra v. Dattatraya Balwant Upadhyay (1976) Mah LJ 550.

⁶⁴ State of Uttar Pradesh v. Bar Council, AIR 1976 All 186.

⁶⁵ 1971 AIR 1015.

⁶⁶ Davis v. Johnson (1978) 1 All. E.R. 1132.

⁶⁷ Himachal Road TPT Corp. v. Sushila Devi, AIR 1986 HP 78.

CONCLUSION

Keeping in view the most fundamental rule of interpretation, where the intention of the legislature is to be found from the language employed in the statute itself and only when it is obscure or ambiguous, we can resort to external aids of interpretation. It is a settled principle that in these cases only, even extraneous considerations such as those of surrounding circumstances or *travaux preparatoires* comes to our aid. *Travaux Preparatoires* comprises of everything that goes into the framing of the statute and we have critically examined its detailed application by the courts in order to find the scope and objective of the statutes. Upon inspection of all the relevant documents consisting of parliamentary history, debates if it is clear that there was no definite viewpoint on a subject matter, then the common intention of the whole group which voted and passed on the bill may be taken into consideration. However, it is admitted that where there is a strong contesting view, recourse must be taken to the object and purpose of the treaty. Most often, it has been suggested that *travaux preparatoires* tends to indicate only the subjective intent of the speaker and not the underlying reason. However, through its application in successive cases ever since *Pepper v. Hart* emerged and relaxed the exclusionary rule, it became abundantly clear that it is an important tool to cull out the intention of the legislature. *Travaux preparatoires*, in fact should be the starting point from which any enquiry or examination about the intention of legislature should commence since it provides all the materials relevant to the enactment. Judiciary should first carefully examine the object and purpose of the statute and then interpret the words and phrases accordingly in that particular setting and which serves the interest of justice. The current trend is to look into object only where there is an ambiguity, however the author posits the view that opposite procedure must be adopted if we want law to be integral, producing shorter judgments with no dissenting opinion on a particular issue.