

AIDS TO THE INTERPRETATION OF LEGISLATION

Memorandum by
THE GOVERNMENT OF SRI LANKA

A. Explanatory Memoranda

In Sri Lanka there are two types of explanatory memoranda (a) Statements of objects and reasons appended to Bills and (b) Statements of legal effect appended to amending Bills. The former are prepared by the Ministry sponsoring the Bill and the latter, by the Legal Draftsman's Department. There is no strict practice in regard to statements of objects and reasons. Some Ministries like the Ministry of Finance always ensure that Bills sponsored by it are accompanied by statements of objects and reasons. The practice of attaching statements of legal effect to amending Bills has been strictly adhered to. The object of both statements is to give members of Parliament, in summary form, in the case of a new Bill, the policy underlying the Bill, and in the case of an amending Bill, the effect of the amendment. When a Bill is passed by Parliament and printed as an Act of Parliament, the statements do not form part of the printed Act. They are prepared essentially for the use of Parliament.

2. There is no general provision in our Interpretation Act authorising the use of statements of objects and reasons or statements of legal effect as aids to interpreting Acts of Parliament, nor has there been an instance of provision being made in an Act authorising the use of those statements as a guide to interpreting that Act.

3. However, a practice appears to have arisen in so far as statements of legal effect are concerned, of using them as aids to interpretation. Recently, the Court of Appeal had to decide whether a provision in the Inland Revenue Act, No. 4 of 1963, requiring an assessor to give reasons for rejecting a return furnished by a tax-payer, was mandatory or directory. This provision was inserted by way of an amendment in 1978. The Court referred to the statement of legal effect which was attached to the amending Bill and said that the statement confirmed its conclusion that the provision was intended to be mandatory.

B. Parliamentary Debates

Courts in Sri Lanka have on occasion referred to Parliamentary debates for the purpose of ascertaining the mischief which a statute seeks to remedy but not for the purpose of interpreting the statute.

4. There are cogent arguments against the use of Parliamentary debates for the purpose of interpretation:-

- (a) the mass of the material available: When a Bill is debated in Parliament, speeches are made for or on behalf of the Bill or sections of the Bill. There is a real difficulty therefore, in deciding whether a particular speech correctly reflects the intention of Parliament on the particular provision under review;
- (b) the unreliability of the material: Lawyers will tend to choose those speeches which support the interpretation which they are contending for. Members of Parliament will be encouraged to make speeches with a view to influencing the interpretation of the Act after it is passed. Even if resort is had only to those speeches in favour of the Bill, it is by no means certain that they represent the views of the majority voting for the Bill.

5. Most Bills in Parliament are sponsored by the Government and the speech of the Minister moving the Bill generally refers to the policy underlying the Bill. It may not be wrong therefore, to assume that the Minister's second reading speech correctly reflects the intention of Parliament. There may be a case therefore, for permitting reference to this speech for the purpose of interpreting the Bill after it has become an Act of Parliament. However, even the uses of second reading speeches has its limitations. It does not take into account, for example, amendments and alterations made to the Bill during its passage through Parliament.