



**UNCERTAINTY IN APPLICATION OF  
DOCTRINE OF EJUSDEM GENERIS  
IN CIVIL SUITS WITH SPECIAL  
REFERENCE TO THE SARFAESI ACT**

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**ABSTRACT**

The principle of *ejusdem generis* is a part of a wider principle – *noscitur a sociis* which is a principle used in the interpretation of statutes. This means that when two or more words have a similar meaning and can be put in the same category, they are understood in a correlated sense. This rule is used to reconcile the incongruous relationship between a specific word and a general word to which category the specific word belongs. The general word must be confined to the things of the same kind as those specified.

This rule has certain essentials that will be highlighted in this paper. It is also supported by many other rules such as the whole act rule. However, it is still unclear as to when it is applicable as it comes in conflict with other rules of interpretation such as analysing the legislative intent behind the provision and the context rule. In order to apply the rule for restricting the broad meaning, the word in question must accompany more than one species of same genus for application of the rule.

The study is purely doctrinal and seeks to analyse the effects of this doctrine through various national and international judgements and legislations with special reference to the Securitisation and Reconstruction of Financial Assets and

Enforcement of Securities Interest Act, 2002. It will be seen that the application of this rule can also lead to miscarriage of justice and deviation from the purpose of the statute thus impacting the framework of civil law.

**KEYWORDS:** *Civil, Ejusdem Generis, Interpretation, Justice, Legislature, Noscitur a sociis, Socio-legal.*

**INTRODUCTION**

*Ejusdem Generis* is a Latin term which means “of the same kind”. Where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. For example: if a law refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, “vehicles” would not include airplanes, since the list was of land-based transportation. The term ‘*Ejusdem Generis*’ in other words means words of a similar class. The rule is that where particular words have a common characteristic (i.e. of a class) any general words that follow should be construed as referring generally to that class; no wider construction should be afforded.

The Supreme Court has laid down the following five essential elements of this rule<sup>1</sup>:

1. The statute contains an enumeration of specific words
2. The subjects of enumeration constitute a class or category
3. That class or category is not exhausted by the enumeration
4. The general terms follow the enumeration

<sup>1</sup> Amar Chandra v. Collector of Excise, 1972 AIR 1863.



5. There is no indication of a different legislative intent

There has been misuse and incorrect interpretation of this principle as many times courts do not ensure that there is a basic relation or genus running through the words in a statute. For example, in the case of *Rajasthan State Electricity Board v. Mohanlal and Ors.*,<sup>2</sup> it was seen that the High Courts had erred in interpreting the terms “other authorities” under Article 12 of the Constitution. They held that this body fall under the ambit of the state and The mere fact that the board is a body corporate and is autonomous within certain limits or that it has to work out its own finances can hardly be accepted as a valid argument for holding that it does not fall within the ambit of the expression “state” as defined in Art. 12 of the Constitution.

Dismissing the appeal, the Supreme Court held:

*“In our opinion the High Court [in these cases] fell into an error in applying the principle of Ejusdem Generis when interpreting the expression 'other authorities' in Article 12 of the Constitution, as they overlooked the basic principle of interpretation that, to invoke the application of Ejusdem Generis rule, there must be a distinct genus or category running through the bodies already named.”*

<sup>2</sup> *Rajasthan State Electricity Board v. Mohanlal and Ors*, AIR 1967 SC 1857.

<sup>3</sup> *State of Bombay v. Hospital Mazdoor Sabha*, AIR 1960 SC 610.

<sup>4</sup> Maxwell, *Interpretation of Statutes*, (12<sup>th</sup> Ed. 2010).

ORIGIN OF THE DOCTRINE FROM NOSCITUR A SOCIIS

The principle of *ejusdem generis* is a part of a wider principle – *noscitur a sociis* which is a principle used in the interpretation of statutes.<sup>3</sup> According to Maxwell,<sup>4</sup> this means that when two or more words have a similar meaning and can be put in the same category, they are understood in a correlated sense. This rule is used to reconcile the incongruous relationship between a specific word and a general word to which category the specific word belongs.<sup>5</sup> The general word must be confined to the things of the same kind as those specified.<sup>6</sup>

This maxim contemplates that a statutory phrase recognized by the words that surround it. This can clearly be inferred by the word ‘sociis’ which means ‘society.’ Thus, when general terms are juxtaposed with specific terms, they cannot be read in isolation and derive their colour from the context. This rule will apply unless it is seen that there is contrary legislative intent.

DIFFERENCE BETWEEN EJUSDEM GENERIS AND NOSCITUR A SOCIIS

Basis	Ejusdem Generis	Noscitur a Sociis
Meaning	Of the same kind	It is known by the company it keeps
Usage	It is used by courts to decide the	It is used by the court to interpret

<sup>5</sup> *Assistant collector of central excise Guntur v. Ramdev tobacco company*, AIR 1991 SC 506.

<sup>6</sup> *Kavalappara Kottarathil Kochunni v. State of Madras*, AIR 1959 SC 725.



	classification that falls under a particular definition.	legislations and statutes.
Objective	To interpret loosely written statutes and legislations	To interpret questionable words in a statute or legislation

when there is a distinct genus can this doctrine be put into play. Article 12 reads as:

*“Unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India”*

EJUSDEM GENERIS IN THE CONSTITUTION

The constitution of India is the supreme law of the land and lays down the framework for enacting legislations regarding policies, laws, procedures, structures, directive principles, powers etc. of government authorities and also sets out the basic fundamental rights and duties of every individual.<sup>7</sup>

The judiciary is the final arbiter and guardian of the constitution. Its duty is laid down in the constitution which mandates it to prevent any legislative or executive action from infringing any legal, constitutional or fundamental rights of individuals.<sup>8</sup> The courts are expected to be unbiased and must always based their decisions and judgements on sound principles of law, justice, equity and good conscience. An independent judiciary is a part of the basic structure of the constitution.<sup>9</sup>

- Article 12

Before using the doctrine to interpret article 12, we must ascertain whether it can be used in the first place. As mentioned earlier, only

the genus constituted under this Article can be identified through the words “government,” “Parliament” of India,” “legislature of each State,” and “local authorities.” These words give meaning to the word “other authorities” which must be interpreted in relation to these phrases.

The doctrine of ejusdem generis is mainly applied under article 12. This article gives the definition of “state” i.e. what bodies or authorities come under the purview of the government and can be termed as organs of the state. This has led to a lot of debate and has been shaped by various interpretations by using the doctrine of Ejusdem Generis. The most problematic expression under Article 12 is “other authorities” as this expression is not defined in the Constitution. Thus, it is for the courts to interpret this term, and it is clear that the wider this term is interpreted, the wider the ambit of fundamental rights would be.

This latin phrase was actually first used by Justice VS Ayyar Rajmannar in the case of *University of Madras v. Shanta Bai*<sup>10</sup> where he said that those bodies that carry out

<sup>7</sup> National portal of India, <https://www.india.gov.in/>.

<sup>8</sup> National Commission to Review the Working of the Constitution, A Consultation Paper on the Financial Autonomy of the Indian Judiciary, (26 September 2001).

<sup>9</sup> *Id.*

<sup>10</sup> *University of Madras v. Shanta Bai*, AIR 1954 Mad. 67.



government functions will come under the term “state.” This means that any authority carrying out the sovereign functions of the state is a functionary of the state and is

With regard to the application of the doctrine of *ejusdem generis* to interpret the term “other authorities,” there are many opinions that have evolved through various case laws and doctrines.

The most followed belief is that the words preceding “other authorities” are all related to those that carry out functions of the central or state government. This means that any authority that carries out state functions comes within this phrase on application of this doctrine. In the case of *Sukhdev Singh v. Bhagat Ram*, the court held that corporations like ONGC, IFC and LIC are instrumentalities of the state as they have all been constituted by statutes and carry out state functions. Justice Matthew also stated that any action carried out by these instrumentalities would amount to state action. His concurring opinion led the courts to lay down a framework for deciding the same in the case of *RD Shetty v. International Airport Authority*.<sup>11</sup> The test that was laid down has certain factors that must be considered<sup>12</sup>:

1. Entire share capital must be owned and managed by the state
2. The company must enjoy monopoly status
3. The governmental department is transferred to the corporation

4. Functional character must be governmental in nature
5. There must be deep and pervasive state control
6. The aims and objectives of the authority must be considered.
7. If the financial assistance of the state is so much as to meet almost entire expenditure of the corporation.

This test however is not exhaustive but is only inclusive.<sup>13</sup>

In many cases, the court uses the above test to determine whether a body comes under article 12. The principle of *ejusdem generis* may also be used. For example, in the case of *Zee Telefilms Ltd. v. Union of India*,<sup>14</sup> the word “the Board of Control for Cricket in India (BCCI)” was said not to come within the ambit of “state” because the words that preceded other authorities only included governmental bodies which constituted a genus. The BCCI did not fit in as a specie of that genus and was therefore excluded from being a part of the state as the government only regulates its functioning and exercises no control over it. A similar view was also taken in the case of *Lt. Governor of Delhi v V.K. Sodhi*,<sup>15</sup> where the State Council of Education, Research and Training (SCERT) did not come within the ambit of the state as it was not a governmental authority.

Application of this doctrine leads to easy determination as to whether a body falls within the ambit of the state. For example, it was an issue of great debate that the judiciary must also be a part of the state. But on reading

<sup>11</sup> *RD Shetty v. International Airport Authority*, 1979 SCR (3)1014.

<sup>12</sup> *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487.

<sup>13</sup> *Pradeep Kumar Biswas v Indian Institute of Chemical Biology & Ors*, (2002) 5 SCC 111.

<sup>14</sup> *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.

<sup>15</sup> *Lt. Governor of Delhi v. V.K. Sodhi*, AIR 2007 SC 2885.



article 12 it can be seen that only government organs can be a part of the state. The judiciary being an independent organ does not fall under the umbrella of “government” that constitutes a distinct genus. This view was further upheld in the case of *Naresh Shridhar Mirajkar V State of Maharashtra*,<sup>16</sup> where it was said that only administrative functions of the court can be called state action and not the judicial functions.

The courts have also pointed out that “instrumentalities of the state” is different from “state government” but they both come within the ambit of article 12.<sup>17</sup> This kind of interpretation led to a contrary opinion that rejected the application of *ejusdem generis*. The courts have also held that even if a body passes all of the tests, it may not come within the purview of “state government.” This phrase ordinarily does not encompass local or state authorities. In the case of *State of Assam v. Barak Upatyaka*,<sup>18</sup> it was held that even though a cooperative society fulfils the criteria of “state,” it will not ensue that the state government must pay their salaries. This shows how the courts have applied the doctrine of *ejusdem generis* strictly and have come to the conclusion that since the preceding words do not have any relation to the body in question, it will not come under the state government.

However, the supreme court in the case of *Indian Medical Association v. Union of India*,<sup>19</sup> where the rights of non-minority educational institutions to admit students of their choice was in issue, the court only

departed from this doctrine because education plays a very important role in society and anybody carrying out this function can be considered as state action so that fundamental rights of individuals are protected. Thus, it can be said that the doctrine of *ejusdem generis* operates with some exceptions that are important for public order and morality.

Another important question that crops up is whether private institutions that pass some aspects of the above-mentioned tests will also fall under the bracket of the state. Since there is vast privatization and globalization, more and more companies are being set up. These companies have a high possibility of infringing fundamental rights of citizens and therefore, the courts have encouraged the hypothesis of widening the ambit of article 12 to include them as well.<sup>20</sup> Through this upcoming school of thought we can see how the ideal of horizontal application of Fundamental rights is being popularized (Horizontal rights are applied against private actors while the vertical rights are right can be applied only against public authorities). However, In *Tashi Delek Gaming Solutions Ltd. and Anr. V. State of Karnataka*<sup>21</sup> the Supreme Court held that the enlarged definition of “State” under Article 12 would not extend to Article 131 of the Constitution.

The national commission to review the working of the constitution in 2002 recommended the following addition to

<sup>16</sup> *Naresh Shridhar Mirajkar v. State of Maharashtra*, 1967 AIR 1.

<sup>17</sup> *Srikant v. Vasant Rao*, AIR 2006 SC 918.

<sup>18</sup> *State of Assam v. Barak Upatyaka*, AIR 2009 SC 2249.

<sup>19</sup> *Indian Medical Association v. Union of India*, AIR 2011 SC 2365.

<sup>20</sup> *M.C. Mehta v. Sri Ram Fertilizers Ltd*, 1987 SCR 819.

<sup>21</sup> *Tashi Delek Gaming Solutions Ltd. and Anr. v State of Karnataka*, AIR 2005 Kant 261.



article 12, to make it clearer and unambiguous:

*“Explanation: – In this Article, the expression “other authorities” shall include any person in relation to such as it functions which are of a public nature.”*

However, this change was never made.

Therefore, the safest and surest way to understand this article is by using the principle of *ejusdem generis* so that this rights and duties that fall within the ambit of this article are not arbitrarily exercised. There can be easy misuse of this article by the courts in proceedings and to curb this, the basic jurisprudence on the application of this doctrine must be clearly understood and implemented.

- Article 31 A

This article relates to acquisition of estates and clause 2 consists of enumeration of words relation to the meaning of the term “estate.” Article 31A (2)(i) reads as:

*(2) The expression “estate”, shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-*

*(i) any jagir, inam or muafi or other similar grant and in the States of [Tamil Nadu] and Kerala, any janmam right;*

Here, the words “jagir,” “inam,” “muafi” form a genus according to which the term “similar grant” must be understood. An example of this can be seen in the case before the Supreme Court,<sup>22</sup> where the validity of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952<sup>23</sup> was impugned. It was contended that land holders were not *jagirdars*. The court agreed with his contention however, they did not base this conclusion on the ground put forward that the word 'Jagir' in Article 31-A of the Constitution<sup>24</sup> should be read *Ejusdem Generis* with 'other similar grants', because, the true scope of the rule of *Ejusdem Generis* is that words of a general nature following specific and particular words should be limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow.

#### EJUSDEM GENERIS IN CIVIL LAWS

- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, also known as the SARFAESI Act, is an Act that was made to allow banks and financial institutions to action properties of defaulters to recover loans.<sup>25</sup> In order to do this, Asset Reconstruction Companies (ARC) are set up Section 5(4) of the Act states that if on the date of acquisition of the financial asset, any suit, appeal or other proceeding of whatever nature relating to the said financial asset is

<sup>22</sup> Thakur Amar Singhji v. State of Rajasthan, AIR 1955 SC 504.

<sup>23</sup> Rajasthan Land Reforms and Resumption of Jagirs Act, 1952.

<sup>24</sup> Constitution of India, 1949, Art. 31-A.

<sup>25</sup> Masoom Gupte, What is the Sarfaesi Act?, (11 February, 2013), Business Standard, [https://www.business-standard.com/article/pf/what-is-the-sarfaesi-act-111061600108\\_1.html](https://www.business-standard.com/article/pf/what-is-the-sarfaesi-act-111061600108_1.html)



pending by or against the financial institution, the same shall not be discontinued or affected by reason of the acquisition of the financial asset by the ARC. The expression “other proceedings of whatsoever nature” used in section 5(4) must be read *ejusdem generis* with the words preceding it i.e. “suit” and “appeal.” If this is not followed, the entire provision would go against the spirit of the SARFAESI Act. The act was made so as to cater to actions that arose that are civil in nature. This section is a usual provision found in most laws on continuation of legal proceedings. They must be related to the financial assets and must not have anything to do with offences of any kind committed by the transferor.<sup>26</sup>

Furthermore, the SARFAESI Act is a Civil Act and caters only to those cases that are civil in nature. Therefore, all questions and cause of actions arising from the SARFAESI Act will be heard as civil proceedings. “Civil proceedings may be defined as judicial process to enforce a civil right and includes any remedy employed to vindicate that right.”<sup>27</sup> It is a process for the recovery of an individual right or redress of individual wrong and is opposed to criminal proceedings.<sup>28</sup> According to Black's Law Dictionary,<sup>29</sup> the term “proceedings” may be used synonymously with action or suit to describe the entire course of an action at law or suit in enquiry from the issuance of the writ or filing of the complaint until the entry of a final judgment. The proceedings of a suit

embrace all matters that occur in its progress judicially.

The term “suit” is also widely debated upon, the question with relation to this is whether a suit can mean civil and criminal proceedings or only civil proceedings. The two views are considered below:

The first view suggests that the word 'suit' is capable of having a very wide connotation which may include any legal proceedings concerned by one person against another in order to enforce a civil right.<sup>30</sup> In its narrower sense, a suit means a civil proceeding which is initiated by presenting a plaint in the court and in its wider sense embraces within it exhaustively all proceedings of civil nature, which as noticed above, means all proceedings that relate to private rights and remedies given to individuals or corporations as members of community and not those that are public and relate to Government for the purpose either of preventing the commission of crime or for fixing the guilt of a crime already committed and punishing the offender, properly discussed as criminal proceedings.<sup>32</sup>

As stated in the case of *Amar Chandra Chakraborty v. The Collector of Excise, Government of Tripura and Ors.*, the expression “other legal proceedings” must be read *ejusdem generis* with the word ‘suit’. The usage of the expression “suit” in its wider sense means all proceedings that are civil in nature only. Using the principle *ejusdem*

<sup>26</sup> Taxmann, Guide to SARFAESI Act 2002 & Recovery of Debts and Bankruptcy Act 1993, (Gen. Ed. 2016).

<sup>27</sup> Brijlal Suri v. State of Uttar Pradesh, AIR 1958 All 621.

<sup>28</sup> Bradlaugh v. Clarke, 52 LJ AB 505.

<sup>29</sup> Black's Law Dictionary, (2<sup>nd</sup> Edn. 1910).

<sup>30</sup> Hayatkhan v. Mangilal, AIR 1971 MP 140.

<sup>31</sup> GSL (India) Limited v. Bayer ABS Limited., (2000)1 GLR 651.

<sup>32</sup> *Id.*



*generis* we can prove this as the provision was formed to cater to civil proceedings and only relates to remedies given to individuals or corporations and not for the prevention of a crime or punishing an offender etc. which are all discussed as criminal proceedings.<sup>33</sup>

Another factor that must be considered is basic structure and aim of the statute in question. In *Kochadai Naidu v. Nagaswami Naidu*,<sup>34</sup> where the court was considering the petition for a transfer of a criminal proceeding to a civil court, the court stated that the meaning of the word 'Proceeding' would depend upon the meaning governed by the statute thus, since the SARFAESI act is a Civil statute, the word would be understood to be limited to civil proceedings only and not criminal proceedings.

There is an easy mechanism to determine whether the rule of *ejusdem generis* applies in a particular case. We must always look at the prefix of the sentence and not the suffix. It is the prefix that limits the ambit of the expression.<sup>35</sup> A series of examples can be given in this regard:

In an American case,<sup>36</sup> a tax provision that advantaged "income resulting from exploration, discovery, or prospecting" was held not to apply to income derived from patented cameras and pharmaceuticals that the taxpayers had "discovered." "Discovery," is the prefix and was used as a conjunction with "exploration" and "prospecting".

Similarly, the Court inferred that "defalcation" in a bankruptcy code provision required the element of intentional wrongdoing based on its placement in the phrase "fraud, defalcation, embezzlement or larceny." Because "fraud," "embezzlement," and "larceny" act as a prefix and require intentional wrongdoing, "defalcation" presumably is similarly intended.<sup>37</sup>

It is also opined that the term "whatsoever nature" cannot refer to legal action that includes criminal as well as civil proceedings. This cannot be allowed as the words of any statutory provision must first be read in the context provided by the statute as a whole<sup>38</sup>. In the case of *Metropolitan Gas Co. v. Federated Gas Employees' Industrial Union*,<sup>39</sup> it was stated that,

*"If, when so read, the meaning of the section is literally clear and unambiguous, nothing remains but to give effect to the unqualified words."*

The second view suggests that this doctrine does not show a distinction between civil proceedings and criminal proceedings and embraces all actions under the law.<sup>40</sup> Thus, the word "proceedings" is a very general one and it is not limited to proceedings other than the criminal proceedings and civil proceedings other than suits<sup>41</sup>

The rule of *ejusdem generis* was explained in the case of *State of Bombay v. Hind Mazdoor*

<sup>33</sup> Amar Chandra Chakraborty v. The Collector of Excise, Government of Tripura and Ors., AIR 1972 SC 1863.

<sup>34</sup> Kochadai Naidu v. Nagaswami Naidu, AIR 1961 Mad. 247.

<sup>35</sup> Kehar Singh Nihar Singh v. Custodian General, Evacuee Property, AIR 1959 Punj 58.

<sup>36</sup> Jarecki v. G.D. Searle & Co, 367 U.S. 303, 307.

<sup>37</sup> Bullock v. Bank Champaign, 569 U.S.

<sup>38</sup> Attorney general v. Prince Earnest Augustus of Hanover, (1957) AC 436.

<sup>39</sup> Metropolitan Gas Co. v. Federated Gas Employees' Industrial Union, 1925 HCA 5.

<sup>40</sup> GSL (India) Limited v. Bayer ABS Limited, (2000) 1 GLR 651.

<sup>41</sup> Deb Narain Dutt v. Narendra Krishna, ILR 16 Cal 267.



*Sabha*<sup>42</sup>, Gajendragadk Qar, J., speaking for the court said –

*"The maxim is only an illustration or specific application of the broader maxim 'noscitur a sociis.' It must be borne in mind that noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined, word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear, that the present rule of construction can be usefully applied."*

In order to apply the rule for restricting the broad meaning, the words "other legal proceedings" must accompany more than one species of same genus for application of the rule.<sup>43</sup> The enumerated words before the general one must constitute a category or a genus or a family of which there must be a number of species or members. If this is not followed, then the expression of *ejusdem generis* cannot be invoked<sup>44</sup>

In the Supreme Court case of *Western India Theatres Ltd. v. Municipal Corporation of the City of Poona*<sup>45</sup>, the respondent would levy tax amounting to rupees 2 per day as a license fee under Section 59 (1) (xi) District Municipal Act, 1901,<sup>46</sup> which provides that

the municipality could levy 'any other tax to the nature and object of which the approval of the Governor shall have been obtained' of the Bombay on the appellants who were lessees of the cinema hall. This was contended to be unconstitutional. Although the principle of *Ejusdem Generis* cannot be invoked in this case, for items (i) to (x) do not, belong to the same genus, they do indicate that the kind and nature of tax which the municipalities are authorized to impose. Similarly, the words other legal proceedings do not belong to the same genus – civil proceedings.

British jurists and lords also shared the same opinion. For example, Lord Thankerton did not approve of the usage of the *ejusdem generis* rule.<sup>47</sup> He stated that-

*"There is no room for the application of the principle of ejusdem generis in the absence of any mention of a genus, since the mention of a single species - for example, water rates - does not constitute a genus by itself."*

In a case before the Supreme Court of India,<sup>48</sup> through the Fruit Products Order, 1955,<sup>49</sup> issued under Section 3 of the Essential Commodities Act, 1955,<sup>50</sup> it was made obligatory that the peonage of fruit juice in fruit syrup should be twenty-five. The appellant argued that the order did not apply to his product, *Rooh Afza* even though it contained fruit juices because clause 2 (d) (v)

<sup>42</sup> State of Bombay v. Hind Mazdoor Sabha, AIR 1960 SC 610.

<sup>43</sup> Rajasthan State Electricity Board, Jaipur v. Mohan Lal and Ors, AIR 1967 SC 1857.

<sup>44</sup> State of Bombay v. Ali Gulshan, AIR 1955 SC 810.

<sup>45</sup> Western India Theatres Ltd. v. Municipal Corporation of the City of Poona, AIR 1959 SC 586.

<sup>46</sup> District Municipal Act, 1901, Sec. 59 Cl. 1 Sub Cl. 11.

<sup>47</sup> United Towns Electric Co. Limited v. Attorney General for Newfoundland, 2 All ER 423.

<sup>48</sup> Hamdard Dawakhana v. Union of India, AIR 1960 SC 554.

<sup>49</sup> Fruit Products Order, 1955, Sec. 2 Cl. 4 Sub Cl. 5.

<sup>50</sup> Essential Commodities Act, 1955, Sec. 69.



of the Order includes squashes, crushes, cordials, barley water, barrelled juice and ready-to-serve beverages or any other beverages containing fruit juices or fruit pulp and that the expression any other beverages containing fruit juices or fruit pulp should be construed *Ejusdem Generis*. The Supreme Court rejected the contention and held that the rule had no application here because the things mentioned before the general expression any other beverages containing fruit juices or fruit pulp did not fall under a determinable genus.

Another case of a similar kind is the case of *Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.*,<sup>51</sup> interpretation of the words "or other proceeding" in the phrase 'a claim of set off or other proceeding to enforce a right arising from contract' appearing in Section 69 of the Partnership Act, 1932 was involved. The Supreme Court did not apply the principle of *Ejusdem Generis* because the preceding words a claim of set off did not constitute a genus. It was also observed that interpretation *ejusdem generis* or *noctitur a sociis* need not always be made when words showing particular classes are followed by general words. Before the general words can be interpreted, there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted.

In the Old English case of *Evans v. Cross*<sup>52</sup> the words 'other devices' in Section 48 (9) of the Road Traffic Act, 1930<sup>53</sup> which defined a 'traffic sign' to include 'all signals, warning

sign posts, direction posts, signs, or other devices' had to be interpreted. Applying the rule of *Ejusdem Generis* the court held that a painted white line on a road could not be called a traffic sign because a painted line on the road is not a device.

### FACTORS TO BE CONSIDERED WHILE INTERPRETING THIS PHRASE

#### 1. Intent of the legislature

The true legislative intent must be retained and not misinterpreted.<sup>54</sup> It is said that a statute is best interpreted when we know why it was enacted. It must be read, first as a whole, and then section by section, clause by clause, phrase by phrase and word by word. When this is done, the context of the provision clears all ambiguity.<sup>55</sup>

#### 2. Whole act rule

Another way of interpreting the term "whatever nature" would be by using the whole act rule which a tool for the interpretation of statutes. It states that the term or phrase in question should be interpreted in a consistent manner if used multiple times in a statute. They are drafted in a way that is "internally consistent in its use of language and in the way its provisions work together".

The entire act is based on civil proceedings only and if criminal proceedings are allowed, this would render many provisions in the act as superfluous. It is also observed that the context of the other words give meaning to the word in question. In a British case,<sup>56</sup> a ring at a racecourse was held not to fall within

<sup>51</sup> *Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd*, AIR 1964 SC 1882.

<sup>52</sup> *Evans v. Cross*, US SC 138.

<sup>53</sup> Road Traffic Act, 1930. Sec. 48 Cl. 9.

<sup>54</sup> *SV. RM. AR. Ramanathan Chettiar v. Murugappa Chettiar And Anr.*, AIR 1942 Mad. 390.

<sup>55</sup> *Consortium Self Financing v. State of Tamil Nadu*, INTNHC 2130.

<sup>56</sup> *Powell v Kempton*, AC 143.



the terms “house, office, room or other place” because the list of words indicated that “other place” should be construed as an indoor place.

### 3. Surplusage must be avoided

A construction which renders any expression of legislature as mere surplusage must also be avoided.<sup>57</sup> If one expression is exhaustive of the meaning falling in its broader sense, there will not be any requirement of another expression to widen or limit the scope of the first expression and the latter expression would be mere surplusage.<sup>58</sup> A statute should be construed so that all its provisions are in consonance with each other, so that no part will be inoperative or superfluous or void.<sup>59</sup> For example, the Securities Act of 1933<sup>60</sup> defines the term “prospectus” as “any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security.” If the term “communication” was interpreted to include any type of written communication, the words “notice, circular, advertisement, letter” would serve no independent purpose in the statute. However, if “communication” were interpreted to include oral statements made through radio or television, then all the words in this section of the statute would contribute something to its meaning, and none would consider “surplusage.”

Similarly, if the term “whatsoever nature” were interpreted to include criminal proceedings, then the entire Act would be

superfluous as it was constituted only for civil proceedings.

It was also stated in the case of *Man Singh Tusaria vs. J.M. Financial Asset Reconstruction Co. Pvt. Ltd.*,<sup>61</sup> that Section 5(4) was framed to validate the lawful rights that banks possess, and these rights cannot be taken away or altered when the assignment deed is signed. This is a civil proceeding whereas the proceedings under section 138 of the negotiable instruments act is criminal in nature. This is supported by the case of *Port Rico Railway, Light & Power Co. v. Mor:*<sup>62</sup> there was a provision of the Federal Criminal Code<sup>63</sup> which mandates restitution for the full amount of the victim's losses, which are defined to include five specific types of loss (e.g., medical costs, lost income) and “any other losses suffered by the victim as a proximate result of the offense.” Thus, it was said that When several words are followed by another word which is applicable as much to the first and other words as the last, the natural construction of the language demands that the word be read as applicable to all.”

### CONCLUSION

The doctrine of Ejusdem Generis is only part of a wider principle of construction, namely, that, where reasonably possible, some significance and meaning should be attributed to each and every word and phrase in a written document. That being the object of the doctrine, it is difficult to see what difference it can make whether the word 'other' is or is not used, provided and this is

<sup>57</sup> *Montclair v. Ramsdell*, 107 U.S. 147, 152.

<sup>58</sup> *State of Bombay v. Ali Gulshan*, AIR 1955 SC 810.

<sup>59</sup> *Hibbs v. Winn*, 542 U.S. 88, 101.

<sup>60</sup> Securities Act, 1933.

<sup>61</sup> *Man Singh Tusaria v. J.M. Financial Asset Reconstruction Co. Pvt. Ltd.*, 2015 ALL MR(Cri) 120.

<sup>62</sup> *Port Rico Railway, Light & Power Co. v. Mor*, 253 U.S. 345, 348.

<sup>63</sup> Crimes and Criminal Procedure, Title 18.



essential that the examples which have been given are attributed to a clearly ascertainable genus.

- Taxmann.
- Manupatra
- SCC Online

From the above study, it can be noticed that this rule of interpretation is very flexible which makes it less of a rule. There is no set guideline or pattern of applicability and differs from statute to statute. The rule of ejusdem generis was constructed to help courts interpret ambiguous provisions in statutes. But instead, it is being used as per the discretion of the judges. Although this doctrine is subjective in nature, a framework must be devised and must be used in all cases to set clear precedents and avoid miscarriage of justice.

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