



General principles of statutory interpretation with special reference to golden rule & mischief rule

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Abstract

Legislature makes the law and court interprets it at the time of delivering justice. Interpretation is the primary function of a court. Whenever dispute comes before the court and there is a ambiguity about the true meaning of the law, court interprets the law. Interpretation means giving best single meaning of the words or phrases used in the law, The Golden Rule was defined by Lord Wens leydale in the Grey v Pearson case (1857) as: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther." The Mischief Rule gives the most discretion to judges and is suited to specific, often ambiguous cases. The rule allows statutes to be refined and developed. However, the increased role of the judge means that his views and prejudices can influence the final decision. The rule is intended to rectify 'MISCHIEF' in the statute and interpret the statute justly. The mischief Rule uses common law to determine how the statute is interpreted.

Keywords: interpretation, golden rule, mischief rule

1. Introduction

Legislature makes the law and court interprets it at the time of delivering justice. Interpretation is the primary function of a court. Whenever dispute comes before the court and there is a ambiguity about the true meaning of the law, court interprets the law. Interpretation means giving best single meaning of the words or phrases used in the law. Since the will of legislature is expressed in form of statute. Statute is the starting point in interpretation. Statute includes particulars such as short title, long title, preamble, marginal notes, headings of a group of sections or individual sections, definition of interpretation clauses, provisos, illustrations explanations, schedules, punctuations etc. Each and every part expressed in the statute is important base for interpretation. To interpret, court has to read statute as a whole.

The court is not expected to interpret arbitrarily. And have to follow certain principles those are mentioned as general principles that is literal meaning, golden rule and mischief rule. Besides this court has to consider Harmonious Rule and the statute should be read as a whole. There are internal and external aids for making interpretation properly that is as per the intention of law makers at the time of making of law.

Rules of interpretation provide strong base for the super structure of judicial reasoning. Reasoned judgments very often need the logical support of certain well settled principles generally applied by judges to arrive at convincing decisions. The survey of the Supreme Court judgments during the year 2013 proved this fact. The presumption of constitutionality of statute is elaborately analyzed, discussed and applied in various decisions. Resort

to literary and purposive interpretation has also helped the court at appropriate occasions. Internal aids of preamble, titles, object clause, proviso etc., are also beneficially utilized. External aids for example maxim, books, reports, etc., are also found useful. Out of various decisions which were discussed in last survey two were referred for higher bench as the judges of division bench had difference of opinion. It is a natural curiosity as to the final outcome of these two judgments.

The Supreme Court of India in the search of 'legislative intent' had discussed almost all settled "rules of thumb". Due to presence of huge number of cases the present survey has avoided surveying high court judgments and confined only to some important decisions of the Supreme Court.

In view of the legislative explosion and a responsive judiciary in India, challenges regarding interpretation need no special explanation. A very work correctly reiterates that "one point should be uncontroversial: interpretation is relative to the document being interpreted." Divergent interpretation of the court, therefore, is some time natural. The Supreme Court, in the case of State of Gujarat v. Hon' Ble Mr. Justice R.A. Mehta (Retd) however, started with reiterating the warning which it gave fifty years back in a seven judges bench judgment. It extracted from The Keshav Mills Co. Ltd., Petlad v. The Commissioner of Income tax, Bombay North, Ahmedabad, where this court held: "When this Court decides questions of law, its decisions are, under Art. 141, binding on all Courts within the territory of India, and so, it must be the constant endeavor and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its

earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. [Emphasis added]

It has been rightly said that 'words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts.'

2. Interpreting the statutes

The term statutory interpretation refers to the action of a court in trying to understand and explaining the meaning of a piece of legislation. Many cases go to appeal on a point of interpretation.

First, laws must be drafted in general terms and must deal with both present and future situations. Often, a law which was drafted with one particular situation in mind will eventually be applied to quite different situations.

Legislation is drawn up by draftsmen, and a draftsman's capacity to anticipate the future is limited. He may not foresee some future possibility, or overlook a possible misinterpretation of the original intentions of the legislation. Another problem is legislation often tries to deal with problems that involve different and conflicting interests.

Both legal and general English contain many words with more than one meaning.

With this being the case, even the best drafted legislation can include many ambiguities. This is not the fault of the draftsman, simply a reflection of the fact that where people look at a text from different points of view they will naturally find different meanings in the language used.

Judges in England generally apply three basic rules of statutory interpretation, and similar rules are also used in other common law jurisdictions. The literal rule, the golden rule and the mischief rule. Although judges are not bound to apply these rules, they generally take one of the following three approaches, and the approach taken by any one particular judge is often a reflection of that judge's own philosophy.

Need For Interpretation

In his *The Law-Making Process*, Michael Zander gives three reasons why statutory interpretation is necessary:

1. Complexity of statutes in regards to the nature of the subject, numerous draftsmen and the blend of legal and technical language can result in incoherence, vague and ambiguous language.
2. Anticipation of future events leads to the use of indeterminate terms. The impossible task of anticipating every possible scenario also leads to the use of indeterminate language. Judges therefore have to interpret statutes because of the gaps in law. Examples of indeterminate language include words such as "reasonable". In this case the courts are responsible for determining what constitutes the word "reasonable".
3. The multifaceted nature of language. Language, words

and phrases are an imprecise form of communication. Words can have multiple definitions and meanings. Each party in court will utilize the definition and meaning of the language most advantageous to their particular need. It is up to the courts to decide the most correct use of the language employed.

3. Rules of interpretation

I. Golden Rule of Interpretation

Meaning & Origin of Golden Rule

The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver."

The golden rule (also: the British rule) is an exception to the literal rule and will be used where the literal rule produces the result where Parliament's intention would be circumvented rather than applied.

The Golden Rule is First time Propounded in *Grey v Pealson* (1857), Lord Wensleydale said: "The literal rule should be used first, but if it results in absurdity, the grammatical and ordinary sense of the words may be modified, so as to avoid absurdity and inconsistency, but no further."

Some judges have suggested that a court may depart from the ordinary meaning where that would lead to absurdity.

In *Grey v Pearson* (1857) 6 HL Cas 61, Lord Wensleydale said: the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther."

This became known as "Lord Wensleydale's golden rule". It only applies where the words are ambiguous. An interpretation that is not absurd is to be preferred to one that is. An example is:

R v Allen (1872) LR 1 CCR 367

The Law Commission (1969) noted that

- The rule provided no clear means to test the existence of the characteristics of absurdity, inconsistency or inconvenience, or to measure their quality or extent.
- As it seemed that "absurdity" was in practice judged by reference to whether a particular interpretation was irreconcilable with the general policy of the legislature "the golden rule turns out to be a less explicit form of the mischief rule".

Application of Golden Rule

This system of relying on external sources such as the common law in determining the true intention of the parliament is now seen as part of the purposive approach,

although the literal approach has been dominant in common law systems for over a century, judges now appear to be less bound by the black letter of the law and are more willing to try to determine the true intention of the Parliament. The task of the judge is now seen as being give effect to the legislative purpose of the statute in question. As well as these three rules of interpretation, there are a number of rules that are held to apply when determining the meaning of a statute:

1. The statute is presumed not to bind the Crown
2. . Statutes do not operate retrospectively in respect to substantive law (as opposed to procedural law)
3. They do not interfere with legal rights already vested
4. They do not oust the jurisdiction of the courts
5. They do not detract from constitutional law or international law

Importance of Golden Rule of Interpretation

The golden rule is a modification of the literal rule and is used when the literal interpretation of words would lead to a 'manifest absurdity'.

One example of the application of the golden rule is the case of *R v Allen* – Defendant is charged with bigamy, an offence prohibited in Offences Against Persons Act 1861 which reads "whoever is married, marries another commits bigamy." The court held that the word "marries" need not mean a contract of marriage as it was impossible for a person who is already married to enter into another valid contract of marriage. Hence, the court interpreted it as "going through marriage ceremony".

The rule can be used in more than one way. It has two particular applications: a narrow approach and a wide approach.

The narrow approach is used where the meaning of the word which is being interpreted is ambiguous i.e. has more than one meaning. The judge then applies the meaning which best suits the context in which the word is being interpreted. The leading cases of *R v Allen* (1872) and *Adler v George* (1964) can probably best illustrate the use and application of the golden rule.

The term 'narrow approach' is a reflection on some judges views on how the golden rule should be used. It suggests that it is more limited and restricted than other rules such as the mischief rule or purposive approach. It was Lord Reid in *Jones v DPP* (1962) who reminded us of the importance of not trying to give a meaning to a word used in a statute which goes beyond what is reasonable.

Another example of the court's willingness to modify a word or provision to avoid an absurd result is the case of *Sigsworth* (1935). A son had murdered his mother and as the mother had not made a will the estate was to be distributed to her nearest next of kin under the Administration of Estates Act 1925.

This meant that her son would have inherited as her 'issue'. The court had a problem with this on public policy grounds, in that it was repugnant for a murderer to benefit from the

killing. The court applied the golden rule in preference to the literal rule and interpreted the word 'issue' so as to exclude someone who had killed the deceased.

Case *M. Pentiah Vs Veeramallappa*: - The respondent were elected member of municipal committee under Hyderabad municipal and town committee act 1951 which was repealed by the Hyderabad District Municipality Act 1956. The act of 1956, however provided that the committee constituted under the act of 1951 would continue till the first meeting of the committee elected under the act of 1956 was called. Since no elections were held the old committee continue in office for more than three years, the maximum period provided for a committee to hold office under the Act of 1951. The appellant prayed for a writ of quo warranto. The SC held if more than one construction were possible the one which was narrower and failed to achieve the object of the Act should fail. The Act should be so interpreted as to avoid absurdity. In the present case since the Act of 1956 continue with the committee constituted under the Act of 1951 till election took place and the first meeting of new elected members held, it is reasonable to hold the provision of maximum period of tenure of the committee under old Act should also stand under new Act. Therefore, if no elections are held, the members of the committee automatically ceased to be member after the expiry of three year period.

2. The Mischief Rule

The mischief rule is a rule of statutory interpretation that attempts to determine the legislator's intention. Originating from a 16th century case (*Heydon's case*) in the United Kingdom, its main aim is to determine the "mischief and defect" that the statute in question has set out to remedy, and what ruling would effectively implement this remedy. When the material words are capable of bearing two or more constructions the most firmly established rule or construction of such words "of all statutes in general be they penal or beneficial, restrictive or enlarging of the common law is the rule of *Heydon's case*. The rules laid down in this case are also known as Purposive Construction or Mischief Rule.

The final rule of statutory interpretation is the mischief rule, under which a judge attempts to determine the legislator's intention; what is the "mischief and defect" that the statute in question has set out to remedy, and what ruling would effectively implement this remedy? The classic statement of the mischief rule is that given by the Barons of the Court of Exchequer in *Heydon's Case* (1854): for the sure and true interpretation of all statutes in general, four things are to be discerned and considered:

1. What was the common law before the making of the Act?
2. What was the mischief and defect for which the common law did not provide?
3. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth?
4. The true reason of the remedy; and then the office of all

the judge is always to make such construction or shall suppress subtle inventions and evasions for continuance of the mischief and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

The mischief rule is a certain rule that judges can apply in statutory interpretation in order to discover Parliament's intention. It essentially asks the question: By creating an Act of Parliament what was the "mischief" that the previous law did not cover?

Use of this Rule

This rule of construction is of narrower application than the golden rule or the plain meaning rule, in that it can only be used to interpret a statute and, strictly speaking, only when the statute was passed to remedy a defect in the common law. Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and corresponding statutes. This rule has often been used to resolve ambiguities in cases in which the literal rule cannot be applied.

In the case of *Thomson vs. Lord Clan Morris*, Lord Lindley M.R. stated that in interpreting any statutory enactment regard must be had not only to the words used, but also to the history of the Act and the reasons which lead to its being passed.

In the case of *CIT vs. Sundaradevi (1957) (32 ITR 615) (SC)*, it was held by the Apex Court that unless there is an ambiguity, it would not be open to the Court to depart from the normal rule of construction which is that the intention of the legislature should be primarily to gather from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and considered on surrounding circumstances and constitutionally proposed practices.

The Supreme Court in *Bengal Immunity Co. V. State of Bihar, (AIR 1995 SC 661)* applied the mischief rule in construction of Article 286 of the Constitution of India. After referring to the state of law prevailing in the province prior to the constitution as also to the chaos and confusion that was brought about in inter-state trade and commerce by indiscriminate exercise of taxing powers by the different Provincial Legislatures founded on the theory of territorial nexus, Chief Justice S.R.Das, stated "It was to cure this mischief of multiple taxation and to preserve the free flow of interstate trade or commerce in the Union of India regarded as one economic unit without any provincial barrier that the constitution maker adopted Article 286 in the constitution".

In various Supreme Court cases it has been held that, 'legislation both statutory and constitutional is enacted, it is true, from experience of evils. But its general language should not, therefore, necessarily be confined to the form that evil had taken. Time works changes, brings into existence new conditions and purposes and new awareness

of limitations. A principle to be valued must be capable of wider application than the mischief which gave it existence. These are designed to approach immortality as nearly as human institutions can approach it'.

Mischief Rule is applicable where language is capable of more than one meaning. It is the duty of the Court to make such construction of a statute which shall suppress the mischief and advance the remedy.

Advantages and Disadvantages of Mischief Rule

Advantages

1. The Law Commission sees it as a far more satisfactory way of interpreting acts as opposed to the Golden or Literal rules.
2. It usually avoids unjust or absurd results in sentencing.
3. Closes loopholes
4. Allows the law to develop and adapt to changing needs example *Royal College of Nursing v DHSS*

Disadvantages

1. It is seen to be out of date as it has been in use since the 16th century, when common law was the primary source of law and parliamentary supremacy was not established.
2. It gives too much power to the unelected judiciary which is argued to be undemocratic.
3. Creates a crime after the event example *Smith v Hughes, Elliot v Grey* thus infringing the rule of law.
4. Gives judges a law making role infringing the separation of powers and Judges can bring their own views, sense of morality and prejudices to a case example *Smith v Hughes, DPP v Bull*.
5. It is considered to be out of date as it has been in use since the 16th century, when common law was the primary source of law and parliamentary supremacy was not established.
6. It gives too much power to the unelected judiciary which is argued to be undemocratic.
7. In the 16th century, the judiciary would often draft acts on behalf of the king and were therefore well qualified in what mischief the act was meant to remedy.
8. It can make the law uncertain.

4. Critical analyses of golden rule and mischief rule

The interpretation of statutes is very essential to the administration of justice. They are the tools that judges use to read meaning to provisions of the law in order to justify Their decisions. Interpretation of statutes is a very important issue which is not made easy due to varying factors.

One of them is that words do not usually have static meanings. The usage of some words change with time. *Beck vs Smith 1996* This then makes the interpretation of statutes not as simple as one would think. Also, there could be cases where the direct interpretation of words could lead to absurdity. Or there could also be situations where the intention of the legislature is not well expressed in the

interpretation of statutes.

The Golden Rule

The golden rule was formulated in the case of where it was provided that the literal interpretation of a statute should be used only to the extent that it would not produce absurdity or negate from the intention of the legislature. If the literal interpretation of the statute were to produce absurdity, then the intention of the legislature should be applied.

The golden rule was applied in the case of Council of University of Ibadan vs Adamolekun where the court had to interpret the provision of S.3 (4) of the constitution (suspension and modification decree) of 1966 which states that where an edict is in conflict with a decree, the edict is to become void to the extent of its inconsistency with the decree. However, in S.6 it was provided that no question as to the validity of a decree or edict was to be entertained in a court. The court ruled that it would lead to absurdity to literally interpret the provision of S.6 due to the fact that if it did, how then would it be able to enforce the provisions of S.3 (4). Thus, the edict was held to be voided by the provisions of S.3 (4).

Problems with the golden rule

- Judges are able to add or change the meaning of statutes and thereby become law makers infringing the separation of powers.
- Judges have no power to intervene for pure injustice where there is no absurdity Advantages of the golden rule
- Errors in drafting can be corrected immediately eg:
- R v Allen (1872) LR 1 CCR 367 Case summary
- Decisions are generally more in line with Parliament's intention
- Closes loopholes
- Often gives a more just result
- Brings common sense to the law

The Mischief Rule

This rule means that in the interpretation of statute, the court should determine the mischief which the legislature intended to correct in the legislation by going into a voyage of discovery to determine the history of the legislation. However, it should be noted that not every legislation is made to correct a mischief. Also, how deep should the judges go in making a voyage of discovery? It would be difficult if the particular judge is not well versed in history.

In Akerele vs Inspector general of police, the court was faced with the interpretation of the meaning of the word "accuse" in S.210 (b) of the criminal code 1948. It rejected the argument per Ademola J (as he then was) that the word meant swearing under oath. He said that by going into a short history of that section, its intention was to prohibit the practice of indiscriminate accusations of witchcraft and trial by ordeal.

Need For Interpretation

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1. Complexity of statutes in regards to the nature of the subject, numerous draftsmen and the blend of legal and technical language can result in incoherence, vague and ambiguous language.
2. Anticipation of future events leads to the use of indeterminate terms. The impossible task of anticipating every possible scenario also leads to the use of indeterminate language. Judges therefore have to interpret statutes because of the gaps in law. Examples of indeterminate language include words such as "reasonable". In this case the courts are responsible for determining what constitutes the word "reasonable".
3. The multifaceted nature of language. Language, words and phrases are an imprecise form of communication. Words can have multiple definitions and meanings. Each party in court will utilize the definition and meaning of the language most advantageous to their particular need. It is up to the courts to decide the most correct use of the language employed.
4. General Rules of Interpretation, Internal Aids to Interpretation, External Aids to Interpretation, Literal Rule, Golden Rule, Mischief Rule, Subsidiary Rules and Harmonious Construction are some of the most important rules.

5. Conclusion

Interpretation of statutes is prime function of court. Legislature enacts the law and it gives in the hands of court to interpret it whenever there is dispute. Since the will of legislature is expressed in form of statute. Statute is the starting point of interpretation. Court has to give meaning to the statute as per the intention of law maker which was at the time of making law. Courts are not supposed to interpret law arbitrary. They have to follow certain rules such as literal meaning, golden rule and mischief rule. It also needs to follow harmonious rules and read statute as a whole while doing interpreting law.

Mischief rule is oldest rule of interpretation which evolved in 1584 in Heydon's case. Object of mischief rule is to suppress the defect of law and advance the remedy provided for. In case of ambiguity and defect in law, court need to consider four things that is what was the law before existing law, what is defect which is not suppose to be in the law, for what purpose remedy is provided in the law and what is true reason of remedy.

The intention of the Legislature is primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation. 'The golden rule is that the words of a statute must prima facie be given their ordinary meaning'. Natural and ordinary meaning of words.

The 'Golden rule' is really a modification of the literal rule. It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further. The golden rule is most often applied so as to resolve ambiguity in statutory language in favour of that meaning which will best achieve the intention of the legislature revealed by the statute as a whole.

As it can be seen from the case, mischief rule can be applied differently by different judges. It is mainly about the discretion and understanding of the person applying it. Though, it is a far more satisfactory way of interpreting acts as opposed to the Golden or Literal rules. It usually avoids unjust or absurd results in sentencing but it also seems to be out of date as it has been in use since the 16th century, when common law was the primary source of law and parliamentary supremacy was not established. It gives too much power to the unelected judiciary which is argued to be undemocratic. In the 16th century, the judiciary would often draft acts on behalf of the king and were therefore well qualified in what mischief the act was meant to remedy. This is not often the case in modern legal systems. The rule can make the law uncertain, susceptible to the slippery slope. Therefore Purposive interpretation was introduced as a form of replacement for the mischief rule, the plain meaning rule and the golden rule to determine cases. The purposive approach is an approach to statutory and constitutional interpretation under which common law courts interpret an enactment (that is, a statute, a part of a statute, or a clause of a constitution) in light of the purpose for which it was enacted.

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