

PREDOMINANCE OF LEGISLATIVE INTENT

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INTRODUCTION

Max Radin-

“A statute is neither a literary text nor a divine revelation. Its effect is therefore neither an expression laid on immutable emotional overtones nor a permanent creation of infallible wisdom. It is a statement of situation or rather a group of possible events within a situation and as such, it is essentially ambiguous”².

There has been a contention regarding the suitability of outward guides in development of the arrangements of the rules. The outward guides to understand a rule may remember banter for Parliament, report of the parliamentary Committees, Commissions, Statement of Objects and Reasons, Notes on Clauses, any worldwide settlement or peaceful accord which is alluded to in the rule, some other archive applicable to the topic of the rule. It has additionally been felt that our courts have not been following uniform way to deal with standards of legal development particularly in regards to instruments identifying with outside guides. Simultaneously our courts have regularly been alluding to course books, choice of the unfamiliar courts instead of the judgment of our Supreme Court. In these conditions, it needs to be considered whether there ought to be free enactment or arrangements which might be important for the General Clauses Act, unmistakably giving whether outward guides or different guides might be conceded for development of a rule. The guidelines of understanding are attracted to recognize the expectations, extent of the arrangements and the idea of the rights and obligations. These guidelines are interpreted warmth that the thing may preferably remain over fall. It is needed to discover the sense which is planned to pass on by the Legislature by which the significance of

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² G.P. Singh, Principles of Statutory Interpretation, Lexis Nexis Butterworths Wadhwa, 11th Edn., 2008.

the language is found out, where the language is plain and clearly pass on the importance, resort of understanding is never called. So far as the understanding of a deed or archive is concerned, it is intended to learn what goals the essayist expected to pass on to the peruser by it, or to utilize different words, what aims are communicated in it. As it were, the way toward learning the importance of an offered book to discover the recognition is a translation. Translation of a resolution implies presentation of components which are essentially outward to the words in the rule.

The errand of translation of a sanctioning is definitely not a mechanical assignment. It is in excess of a simple perusing of a numerical equation, since scarcely any words have the accuracy of numerical images. It is an endeavor to find the aims of the assembly from the language utilized by it and it should consistently be recalled that the language is, best case scenario a defective medium to communicate human idea. The object of the translation of a resolution is to find the goals of the assembly as communicated in the Act. The predominant reason for development is to find out the expectation as communicated in the rule, thinking about it overall and in its specific circumstance. That expectation and accordingly the significance of the resolution are fundamentally to be looked for in the words utilized in the rule itself which must, on the off chance that they are plain and unambiguous, be applied as they stand.

PRINCIPLES OF LEGISLATIVE INTENT

A rule is a will of lawmaking body passed on as text. Understanding or development of a resolution is a well-established cycle and as old as language. Expand rules of translation were developed even at a beginning phase of Hindu human advancement and culture.

The rules given by ‘Jaimini’, the author of Mimamsat Sutras, originally meant for srutis were employed for the interpretation of Smritis also. It is well settled principle of law that as the statute is an edict of the Legislature, the conventional way of interpreting or construing a statute is to seek the intention of legislature. The intention of legislature assimilates two aspects; one aspect carries the concept of ‘meaning’, i.e., what the word means and another aspect conveys the concept of ‘purpose’ and ‘object’ or the ‘reason’ or ‘spirit’ pervading through the statute. The process of construction, therefore, combines both the literal and purposive approaches. However,

necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. A statute is to be construed according "the intent of them that make it"³ and "the duty of judicature is to act upon the true intention of the Legislature- the *mens or sentential legis*."⁴ The expression 'intention of the Legislature' is a shorthand reference to the meaning of the words used by the legislature objectively determined with the guidance furnished by the accepted principles of interpretation. The articulation 'goal of the Legislature' is a shorthand reference to the importance of the words utilized by the assembly equitably decided with the direction outfitted by the acknowledged standards of translation.

SOURCES OF LEGISLATIVE INTENT

Reports of Commissions including Law Commission or Committees including Parliamentary Committees going before the presentation of a Bill can likewise be alluded to in the Court as proof of authentic realities or of encompassing conditions or of wickedness or abhorrent planned to be cured.

Though, the Supreme Court refused to take recourse to the Report of the special Committee which had been appointed by the Government of India to examine the provision of the Partnership Bill for construing the provisions of the Partnership Act, 1932 in *CIT, A.P. v Jaylakshmi Rice and Oil Mills Contractor Co.*⁵, yet in another case *Haldiram Bhujawala and another v Anand Kumar Deepak Kumar and another*⁶, the Supreme Court took recourse to the very same report of the Special Committee (1930-31) for construing the provisions of section 69 of the Partnership Act, 1932. The Supreme Court in the above case held that decision in *CIT v. Jaylakshmi Rice & Oil Mills* (supra) in this respect is no longer good law. Law Commission's Reports can also be referred to where a particular enactment or amendment is the result of recommendations of Law Commission Report. (see *Mithilesh Kumari v Prem Behari Khare*⁷).

³ *RMD Chamarbaghwala v. Union of India*, AIR 1957 SC 628

⁴ SALMOND: "Jurisprudence", 11th Edition, p.152. "The object of interpreting a statute is to ascertain the intention of the Legislature enacting it:"

⁵ AIR 1971 SC 1015

⁶ (2000) 3 SCC 250

⁷ AIR 1989 SC 1247

Similarly, the Supreme Court in *Rosy and another v State of Kerala and others*⁸ considered Law Commission of India, 41st Report for interpretation of section 200 (2) of the Code of Criminal Procedure, 1898.

It is a settled principle that for the purpose of interpretation or construction of a statutory provision, courts can refer to or can take help of other statutes. It is also known as statutory aids. The General Clauses Act, 1897 is an example of statutory aid. Apart from this, Court can take recourse to other statutes which are in pari materia i.e. statute dealing with the same subject matter or forming part of the same system. Supreme Court in *Common Cause, A Registered Society v Union of India*⁹, took recourse to section 13A and 139 (4B) of the Income Tax Act 1961 for the purpose of interpretation of Explanation I to section 77 (1) of the Representation of the People Act, 1951.

The use of this standard of development has the value of maintaining a strategic distance from any logical inconsistency between a progression of rules managing a similar subject, it permits the utilization of a prior rule to illuminate the importance of an expression utilized in a later rule in a similar setting. On similar rationale when words in a prior rule have gotten a definitive article by a prevalent court, utilization of same words in comparative setting in a later resolution will offer ascent to an assumption that the lawmaking body means that a similar translation ought to be followed for development of those words in the later rule. Be that as it may, a later resolution is typically not utilized as a guide to development of a prior rule, yet when a previous sculpture is genuinely vague; a later rule may in specific conditions fill in as a parliamentary work of the previous.

Utilizations and practice created under a rule is demonstrative of the importance attributed to its words by contemporary assessment and in the event of an old rule, such reference to use and practice is an allowable outside guide to its development. Be that as it may, this standard isn't relevant to an advanced resolution and it is restricted to the development of uncertain language utilized in old rule. This principle of 'contemporanea exposito' was applied by the Supreme Court in *National and Grindlays Bank v Municipal Corporation for Greater Bombay*¹⁰, while construing Bombay Municipal Corporation Act, 1888. The apex court also referred to the actual

⁸ (2000) 2 SCC 230

⁹ AIR 1996 SC 3081

¹⁰ AIR 1969 SC 1048

practice in the matter of appointment of judges of Supreme Court and High Court in the context of interpreting Articles 74 and 124 of the Constitution and observed that the practice being in conformity with the constitutional scheme should be accorded legal sanction by permissible constitutional interpretation¹¹.

Law is almost settled in our country on the issue as to which external aids are admissible and what weight age should be given to each such aid. There is no uncertainty about the admissibility of these aids. Courts are following uniform process in this respect. But it does not necessarily mean that in every case, court should take recourse to each admissible external aid. Each case contains different facts and circumstances. Court has to apply the appropriate law to the facts and circumstances of the case. So, when the court refuses to take recourse to a particular external aid in a specific case rather than to another external aid because of the special facts, circumstances and context of the case, it does not mean that courts are not following uniform process or the law is uncertain. It is obvious that all ‘rules of interpretation’ cannot be codified. Some rules are only guidelines, as we have already stated. A suggestion was made later by Professor Acharya in his Tagore Law Lectures on codification in British India, that the scope of the General Clauses Act should be extended so as to make it a comprehensive code on the interpretation of statutes. This suggestion is, no doubt, attractive at first sight; but a close scrutiny will reveal its impracticability. It is not possible to incorporate, in an Interpretation Act, the rules of interpretation enunciated in the text books on the subject. One of the main reasons for having an Interpretation Act is to facilitate the task of the draftsman in preparing parliamentary legislation. The courts also have recourse to Interpretation Acts to interpret statutes; but they do not confine themselves to these Acts. They certainly take the aid of accepted rules of interpretation as laid down in decided cases. Moreover, a certain degree of elasticity is necessary in this branch of the law. Rules of construction of statutes are not static. Aims and objects of legislation will be better served by appropriate judicial interpretation of the law, rather than by rigid provisions in the law themselves. At present, Judges have a certain amount of latitude in the matter, which enables them to do justice, after taking into consideration the nature and character of each statute. If the rules of construction are given a statutory form, the consequential rigidity in this branch of the law is likely to do more harm than good.

¹¹ Supreme Court Advocates on Record Association v Union of India, AIR 1994 SC 268

JUDICIAL INTERPRETATION OF LEGISLATIVE INTENT

Understanding requires certain measure of attentiveness and adaptability and judges must have tact. In the event that the guidelines with respect to utilization of outer guides are systematized, at that point judges would free the watchfulness which they are having in the current framework. Without caution and adaptability, courts may not be in a situation to do equity.

In Bhatia International v Bulk Trading S.A., (2002) 4 SCC 105, the apex court observed:

“Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the courts would adopt, particularly in areas such as constitutional adjudication dealing with social and defuse (sic) rights. Courts are therefore, held as ‘finishers, refiners and polishers of legislation...’ (para 15)

Therefore, when the interpretation requires discretion and choice, it is not advisable to codify the rules for interpretation especially those regarding use of external aids.

One of the primary reasons which requires giving extensive scope to courts in the matter of translation of legal arrangement is that the Legislature can't anticipate thoroughly all the circumstances and conditions that may develop subsequent to sanctioning legal arrangements where their applications might be called for. It is impossible even for the most imaginative Legislature to foresee all the future circumstances. In this regard, Supreme Court in Ratanchand Hirachand v Askar Nawaz Jung – (dead) by L.Rs., (1991) 3 SCC 67 has observed:

“The legislature often fails to keep pace with the changing needs and values, nor it is realistic to expect that it will have provided all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the court to step in to fill the lacuna.”

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If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the Supreme Court in R.S. Nayak v A.R. Antulay, AIR 1984 SC 684 has held: "... If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating."

Recently, again Supreme Court in Grasim Industries Ltd. v Collector of Customs, Bombay, (2002)4 SCC 297 has followed the same principle and observed: "Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions." With the end goal of development or understanding, the court clearly needs to take response to different inner and outside guides. "Inner guides" mean those materials which are accessible in the resolution itself, however they may not be important for institution. These inward guides incorporate, long title, preface, headings, minimal notes, delineations, accentuation, stipulation, plan, short lived arrangements, and so on. At the point when interior guides are not satisfactory, court needs to take plan of action to outside guides. It might be parliamentary material, authentic foundation, reports of a board of trustees or a commission, official articulation, word reference implications, unfamiliar choices, and so forth.

The Supreme Court has accepted the necessity of external aids in interpretation of statutory provision. O.Chennappa Reddy J. in B. Prabhakar Rao and others v State of A.P. and others , AIR 1986 SC 120 has observed : "Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction."

Recently, in District Mining Officer and others v Tata Iron & Steel Co. and another , (2001) 7 SCC 358, Supreme Court has observed: "It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in pari materia and the mischief which the statute was intended to remedy."

So far as admissibility and utility of these external aids are concerned, law is almost settled in our country now. The Supreme Court in K.P. Varghese v Income Tax Officer Ernakulam, AIR 1981 SC 1922 has stated that interpretation of statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be ascertainable.

For this reason, where vital, the courts may even leave from the standard that plain words ought to be deciphered by their plain importance. There need be no easy going accommodation to the conventionality of the language. To maintain a strategic distance from patent shamefulness, peculiarity or craziness or to evade nullification of law, the courts would be very much defended in withdrawing from the purported brilliant principle of development to offer impact to the article and motivation behind establishment by enhancing the composed words, if vital . A development which crushes the very article tried to be accomplished by the council, must if conceivable, be stayed away from and likewise, the court may alter the language utilized by the assembly or even do so some viciousness to it, so as to achieve the obvious intention of the legislature and produce a rational construction.¹² In the event that a language utilized is fit for bearing more than one development, in choosing the genuine significance, respect must be had to the outcomes, coming about because of embracing the elective developments. A development that bring about difficulty, genuine bother, foul play, idiocy or peculiarity or which prompts

¹² K.P. VARGHESE Vs.ITO (1981) 131 ITR 597 (SC)

irregularity or vulnerability and erosion in the framework which the resolution indicates to direct must be dismissed and inclination ought to be given to that development which dodges such outcomes.¹³

CONCLUSION

Hence, in summarize, while choosing the genuine degree and impact of the significant arrangements for example the aim of a rule, respect must be paid to the setting in which they happen. On the off chance that the language is plain and concedes just one importance, the undertaking of understanding isn't needed. What's more, to discover the authoritative plan, all the constituent pieces of a resolution are to be taken together and each words, expression or sentence is to be considered in the light of the broadly useful and object of the Act, itself. In the event of irregularity or strife between two arrangements of a rule, endeavor ought to be made to accommodate them to keep away from repugnancy yet it isn't sensibly conceivable, the last should win. Also, if there should be an occurrence of any irregularity or ridiculous outcomes and so forth for example just for restricted purposes, the Courts have a capacity to add to, adjust or overlook legal words with thinking about the unique circumstance. At the end of the day, where the council clearly communicates its aim in the plan and language of a rule, it is the obligation of the court to give full impact to the equivalent without examining its astuteness or strategy and without engrafting, including or inferring anything which is suitable to or steady with such communicated expectation of the law-supplier; all the more along these lines, if the rule is a burdening resolution. A development that bring about difficulty, genuine burden, equity, idiocy or abnormality or which prompts irregularity or vulnerability and rubbing in the framework which the rule implies to manage must be dismissed and inclination ought to be given to that development which maintains a strategic distance from such outcomes. The guideline to give the advantage of any vagueness to the assessee is likewise not appropriate while deciding the extent of an exclusion or advantage conceded by any warning or rule to the assessee. It calls exacting development and in the event of any uncertainty it settle for the income. Be that as it may, once, any uncertainty or equivocalness is left, it requires liberal translation and its full play must be given.

¹³ Johson v. Moreton (1978) 3 ALL ER 37; and Stock v. Frank Jones (Tripton) Ltd. [1978] 1 ALL ER 984