

AN ANALYSIS ON LITERAL RULE AND GOLDEN RULE OF INTERPRETATION

PRIYESH MAYANK

ABSTRACT

A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid internal contradiction. In this paper the author will critically analyze the literal rule and golden rule of Interpretation. The paper is divided into three parts. In Part I the author give a brief introduction to the rules of interpretation. Part II proceeds with the application of the literal rule and the golden rule of interpretation through courts. In part III throws light on the relationship between these rules of interpretation examining how the golden rule acts as a modification to the literal rule of interpretation.

PART I

INTRODUCTION

The basic principles of statutory interpretation are not to be found in any statute. They have developed from the decisions of the courts. The principles which have thus evolved are sometimes called “rules”, but it would be more accurate to describe them as different approaches to interpretation; on which at different periods of legal history greater or lesser emphasis has been placed.¹ Generally, there are two schools of thoughts in relation to the interpretation of any statute – the literal and purposive, however the exact origins of each is difficult to determine.² The ostensible purpose of every rule is to clarify statutory meaning. Most rules of statutory

¹ The Law Commission and the Scottish Law Commission, the Interpretation of Statute, LAW COM. No. 21, SCOT. LAW COM. No. 11, June 9, 1969 at 256. Available at, <http://www.official-documents.gov.uk/document/hc6869/hc02/0256/0256.pdf>

²QuintinJohnstone, An Evaluation of the Rules of Statutory Interpretation, Kansas L. Rev. (1954), available at, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2967&context=fss_papers

interpretation can be classified in one of two ways: those concerned with relations between the words of a statute; and those concerned with the relation of the words in a statute to outside materials.³ The Intention of the Legislature can be said to have 2 aspects:

- (i) 'Meaning'- First aspect is that of 'meaning' which tells what word mean.
- (ii) Purpose and Object- Second aspect includes concept of 'purpose and object' which means the purpose and the object of enacting the statues. Therefore it can be said that the purpose of construction combines both literal and purposive approaches.⁴

A. THE PRIMARY RULE: LITERAL CONSTRUCTION

The First and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one , and otherwise in their ordinary meaning,⁵ and the second is that the phrases and sentences are to be construed according to the rules of grammar.⁶ Lord Evershed, M.R., "has undoubtedly reinforced the claim of literal construction as the only safe rule."⁷ If there is nothing to modify, alter or qualify the language which the statue contains, it must be construed in the ordinary and natural meaning of the words and sentences.⁸ "The safer and the more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases."⁹

Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. Where, by the use of clear and unequivocal language capable of only one meaning, is enacted by the legislature, it must be enforced however harsh or absurd or contrary

³QuintinJohnstone, *An Evaluation of the Rules of Statutory Interpretation*, Kansas L. Rev. (1954), available at, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2967&context=fss_papers

⁴ Introduction to Interpretation of statutes 3rd Edition 2009, Dr. AvtarSinghDr. HarshpreetKaur , Lexis Nexis, ButterWorthsWadhore P.5

⁵R.v.Commrns.of Income Tax(1888) 22 296 (Q.B.D); Victoria City Corporation v. Bishop of Vancouver Island [1921] 2 384 (A.C).

⁶ "It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed": R.v.Ramsgate (1827) 6 712 (B.&C.), per Bayley J. at p.715.

⁷ Maxwell vi (11th ed.)

⁸ See Att-Gen. v. Mutual Tontine Westminster Chambers Association Ltd., (1876) 1 469 (Ex. D.)

⁹ Barrel v. Fordree, (1932)676 (A.C.), per Lord Warrington of Clyffe at p. 682

to common sense the result may be.¹⁰ The duty of the court is to expound the law as it stands, and to “leave the remedy (if one be resolved upon) to others.”¹¹

To interpret, once we depart from the literal rule, then any number of interpretation can be part to a statutory provision, each judge having a free play to put his own interpretation as he sites. This would not only create confusion, it would also be destructive of Judicial discipline and also the basic principle in a democracy that it is not for Judge to legislate as that is the task of the elected representatives of the people.¹²

‘If...’ remarks Jervis, C.J., “ The precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it do lead in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied, where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words use, merely, because we see or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning.”¹³ A three judge bench in *UOI v. Dharmendra*¹⁴ has relied on the above view.

The literal rule of interpretation is not followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says “this is a pencil”, then he means that it is not that when he says that the object is a pencil , he means that it is a rubber, scale or a eraser. Therefore literal rule of interpretation simply means that we mean what we say and we say what we mean.

In Mimansa, the literal rule of interpretation is known as the ‘*Shruti*’ or ‘*Abhida*’ Principle. According to Mimansa Principle, the Sruti Principle or literal rule of interpretation will prevail over all other principles, e.g., Linga, Samakhya, Vakya, etc...¹⁵

The ‘Literal meaning’ of an enactment is:¹⁶

A) Where the enactment is clear (that it is with one grammatical meaning only), is the grammatical meaning.

¹⁰Cartledge v. E.Jopling&Sons, Ltd., [1963] 758 (A.C.)

¹¹Sutters v. Briggs [1922] 1 1 (A.C.), per Lord Birkenhead L.C. at p.8

¹²Justice A.K. Yog, INTERPRETATION OF STATUTES, (Modern Law Publication, Allahabad 2010) pg 54

¹³Abley v. Dale 138 ER 519 at p. 525

¹⁴(2008) 13 SCC 369

¹⁵Justice MarkandeyKatju K.L Sarkar’sMimansa Rules of Interpretation Jagme Law Lecture 8 & 9 (3rded.)

¹⁶Oliver Jones, Bennion on Statutory Interpretation 456 (Lexis Nexis – ButterwordsWadhwa, 5thed.)

- B) Where the enactment is ambiguous (i.e. grammatically capable of two or more meanings), is any of the grammatical meaning
- C) Where the enactment is semantically obscure (i.e. without any straight forward grammatical meaning), is the grammatical meaning of the corrected version or, where the corrected version is grammatically capable of two or more meanings is any of those meanings.

B. THE GOLDEN RULE

The Golden Rule says that if there is anything absurd, etc., one can rely on the connotation of the crucial words; but what happens if the judge says 'I don't find anything absurd in the literal meaning.'¹⁷ Since interpretation focuses on the objective meaning of statutory provisions it is important to analyze what is meant by the key phrases which are used to describe that meaning. Judges talk about the 'ordinary meaning' or the 'grammatical meaning' of words and about the 'purpose' of an enactment and this books adopts that usage. In essence, the central question is how far the phrases denote real constrains on the freedom of the judge to decide a case as he thinks fair and just.¹⁸

The Golden rule of construction of statues was recognized as a very useful rule and applied in the interpretation of statue. Since last one hundred 50 yrs. Grammar certainly renders assistance to leave by helping to the construction and thereby to the meaning of a word, phrase, or sentences, but grammar may sometimes become difficult in understanding the law and may create uncertainty.¹⁹

The rule of statutory construction must be certain and universal. Therefore grammatical sense of law or the language used by the legislature may require some modification when it is contrary to, or consistent with the declared purpose of the statue²⁰. This rule allows the court to look at the literal meaning of the word or phrase, but then avoid using a literal Interpretation which would lead to absurd result. There are two approaches taken while applying the golden rule, these being the narrow approach and the broad approach. So, under the golden rule, the court takes the literal approach unless it results in great absurdity, inconvenience, or inconsistency, and then it

¹⁷Vepa .P Sarti, Interpretation of Statute 14 (Eastern Book Company., 4thed.)

¹⁸ John Bell & George Engle, Cross statutory interpretation 31 (Lexis Nexis – ButterwordsWadhwa, 3rded.)

¹⁹A.B Kafaltiya, Interpretation of Statues41 (Universal Law Publishing Co.)

²⁰Warburtun v. Loveland, (1828) 1 B (Irish Cases), 623,648.

modifies the meaning, within the context of the statute, just as far as in necessary to avoid absurdity.

PART II

A. APPLICATION OF LITERAL RULE OF INTERPRETATION THROUGH COURTS

In a recent decision *B.Premanand v. Mohan Koikal*²¹ the Supreme Court has explained the literal rule of interpretation of statutes. Governing the interpretation of statutes, the literal rule is the often invoked rule pressed into action to ascertain the legislative intention behind the framing of the enactment. The rule governs and regulates the meaning of the law in as much as the rule provides that the meaning has to be ascertained from the text of law itself.

In *M/s. HiralalRatanlal v. STO*,²² this Court Observed:

“In construing a statutory provision the first and foremost rule of construction is the literally construction. All that the court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.”

In *GurudevdattoVKSSS Maryadit&Ors.vs.Respondent:State of Maharashtra & Ors*,²³ the court observed that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. 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

²¹ (2011) 4 SCC 266

²² AIR (1973) SC 1034

²³ AIR 2001 SC 1980

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 given. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.

In Dr.R. Venkatchalam and ors etc. v. Dy. Transport Commissioner and ors. ²⁴

It was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

As observed by **Lord Granworth in Grundy v. Pnniger.**²⁵

“To adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which is not easy to fathom”

“The court cannot legislate under the grab of interpretation.”²⁶

RULES TO BE FOLLOWED

1. Rule of Ejusdem Generis

When a particular word forming part of the same class or *samecategory* are followed by general words then the general words must be construed in the context of particular words. The basic rule is that if the legislature intended general words to be used in unrestricted sense, then it need not have used particular words at all.²⁷

2. Rule of Casus Omissus

²⁴ AIR 1977 SC 842

²⁵ (1852) 1 LJ Ch 405

²⁶ Jiniakeotin v. K.S.Manjhi, (2003) (1) SCC 730

²⁷ Workmen of Dimakuchi v. Dimakuchi Tea Estate, (1958) 1 LLJ 500 (S.C)

The *Casus Omissus* rule provides that omissions in a statute cannot be supplied by judicial construction.²⁸ In *Padma SundaraRao v State of Tamil Nadu* it was held that the *casus omissus* cannot be supplied by the court except in the case of a clear necessity and when reason for it is found within the four corners of the statute itself.

B. APPLICATION OF THE GOLDEN RULE OF INTERPRETATION THROUGH COURTS

In *Sutters v. Briggs*,²⁹ the Privy Council held:

“There is indeed no reason for limiting the natural and ordinary meaning of the words used. The term “holders” or indorsees” means any holder and any indorsee, whether the holder be the original payee or a mere agent for him, and the rights of the drawer must be construed accordingly. The circumstance that the law apart from the section in question was repealed in 1845, without any repeal of the section itself may lead to anomalies, but cannot have weight in construing the section.”

In *Dental Council of India and Anr. v. HariPrakash and Ors*,³⁰ It was held:

“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.”

In *Navinchandra Mafatlal v. CIT Bombay*,³¹ it was observed by Hon’ble Supreme Court that:

“The Golden rule of Interpretation is that words should be read in their ordinary, natural and grammatical meaning subject to the rider that in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude.”

²⁸Ujjambai v. State of Uttar Pradesh, AIR 1962 SC 1621.

²⁹ [1922] (1) Appeal Cases 1

³⁰2001(8)SCC 61

³¹ (1955) 1 SCR 829; Baldev Singh Bajwa v. Monish Saini, (2005) (12) SCC 778,

In *River Wear Commissioner v. Anderson* (1877)³²

“we are to take the whole of the statute together and construe it altogether and construe it altogether, giving the words their ordinary significance, unless when so applied they produce an inconsistency, or an absurdity, or inconvenience, so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks the word will bear.’

An example of narrow approach can be seen in the case of *R v. Allen*(1872)³³. In this case the defendant married for the second time. He was charged under the offences against the person act 1861, which states it is an offence to marry again without the previous marriage being ended by a divorce. Allen argued that was not possible to be legally married twice, so he could not have committed an offence. The interpretation of the word ‘Marry’ would mean that the offence is impossible to commit. The court had to decide whether ‘marry’ means to become legally married to another person, or whether it means to go through a ceremony of marriage. To avoid an absurd result the court adopted the second meaning and held Allen was guilty under the Act.

PART III

RELATIONSHIP BETWEEN LITERAL RULE AND GOLDEN RULE OF INTERPRETATION

The fundamental rules generally followed are:

Firstly, the literal rule that if the meaning of section is plain, it is to be applied whatever the result. The Second is “Golden rule” that the words should be given their ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the instrument.³⁴

There are certain defects of the literal rule of Interpretation. The defects may be of two types- Logical defects which constitute ambiguity, inconsistency and incompleteness and the second type is irrationality and absurdity. The strict adherence to this principle may cause injustice and

³²(1876-77) 2 L.R. 743 (App Cas)

³³(1872) 1 LR 367 (CCR)

³⁴ G.W. Paton, Jurisprudence 294 (1946)

sometimes it might give results which are quite contrary to general intension of the statue.³⁵ One of the problems of literal rule is that it breeds absurdity Sometimes the court might ascertain a certain meaning to the statue which was never the intension of the legislature. According to the Black's Law Dictionary, "The type of instructor treats statutory and contractual words with highly restrictive readings."³⁶

"Golden-Rule" is really a modification of the literal rule. It was stated in this way by Parke B.: "It is a very useful rule, in the construction of a statue, 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 statue itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."³⁷ "If," said Brett L.J., "the inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning."³⁸ The application of this rule, and its limits, will be seen in the parts of this work devoted to construction with reference to the consequences, and construction to avoid inconvenience and injustice and to prevent evasion.³⁹ The application of the golden rule can be explained from the given example- Section 77 of the Road Traffic Act 1960 requires the driver of a motor vehicle to "stop" after an accident. Winn L.J., in the divisional court, said that he would not wish to give the impression that a momentary pause after an accident would exempt the driver of a car from the necessity of stopping to give particulars. "The phrase 'the driver of the motor vehicle shall stop' is properly to be construed as meaning the driver of the motor vehicle shall stop it and remain where he has stopped it for such a period of time as in the prevailing circumstances, having regard in particular to the character of the road or place in which the accident happened, will provide a sufficient period to enable persons who have right to do so, and reasonable ground for so doing, to require him direct and personally the information which may be required under the section."⁴⁰

³⁵ Aiyer P. Ramnathan, 254 (Law Lexicon, Wadhwa & Co., 2nd ed., 2002)

³⁶ Black Law Dictionary 308, (17th ed.)

³⁷ Becke v. Smith (1836) 2 191 (M.&W.), at p. 195

³⁸ R. v. Tonbridge Overseers, (1884) 13 339 Q.B.D., at p.342.

³⁹ P. St. J. Langon, Maxwell on the Interpretation of Statutes 44 (Lexis Nexis Butterworths Wadhwa Wagpur, 12th ed)

⁴⁰ Lee v. Knapp, [1967] 2 442 (Q.B), at pp.447,448

CONCLUSION

As long as there is no ambiguity in the statutory language, resort to any interpretation process to unfold the legislature intend becomes impermissible.⁴¹The Traditional rule of literal interpretation forbids the court to attach any meaning other than ordinary one. It closes the door for any type of judicial innovation with a change in policies and legislation, the statues cannot still be interpreted in accordance with the ordinary meaning of the words made long ago. Thus, making it unsuitable for the present times.

BIBLIOGRAPHY

Books:

1. P.St .J Langon, Maxwell on the Interpretation of Statues 28, 29, 43, 44 (Lexis NexisButterworthsWadhwaWagpur, 12thed)
2. Justice MarkandeyKatju K.L Sarkar'sMimansa Rules of Interpretation Jagme Law Lecture 8 & 9 (3rded.)
3. Biswas and Sengupta, Principles of Interpretation of Statues 4 & 41 (Kamal law House , Kolkata)
4. Oliver Jones, Bennion on Statutory Interpretation 445 & 864 (Lexis Nexis – ButterwordsWadhwa, 5thed.)
5. John Bell & George Engle, Cross statutory interpretation (Lexis Nexis – ButterwordsWadhwa, 3rded.)

⁴¹KeshavjiRavji& Co. v. C.I.T, [1990] 49 Taxman 87 (SC)

6. Prof M.P Jain, Indian Constitutional Law 87 (Lexis Nexis – ButterwordsWadhwa, 5th ed. 2007)
7. Vepa .P Sarti, Interpretation of Statute 7-14 (Eastern Book Company., 4thed.)
8. Justice G P Singh, Principles of Statutory Interpretation 85 (Lexis Nexis – ButterwordsWadhwa., 12th ed. 2011)
9. Justice A.K. Yog, INTERPRETATION OF STATUTES, (Modern Law Publication, Allahabad 2010)
10. A.B Kafaltiya, Interpretation of Statues, 41 (Universal Law Publishing Co.)
11. Aiyer P. Ramnathan, 254 (Law Lexicon Wadhwa& Co., 2nd ed., 2002)
12. Dr. Avtar Singh & Dr. HarshpreetKaur, Introduction to Interpretation of Statues 5 (Lexis Nexis, ButterWorthsWadhore, 3rd ed., 2009)

ONLINE JOURNALS:

1. Tobias Lonquist, *the Trend towards Purposive Statutory Interpretation: Human Rights at Stake*, 13 Revenue L.J. Issue 1 Article 3, (2003), available at, <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1138&context=rlj>
2. QuintinJohnstone, *An Evaluation of the Rules of Statutory Interpretation*, Kansas L. Rev. (1954), available at, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2967&context=fss_papers
3. The Law Commission and the Scottish Law Commission, *the Interpretation of Statute*, LAW COM. No. 21, SCOT. LAW COM. No. 11, June 9, 1969 at 256. Available at, <http://www.official-documents.gov.uk/document/hc6869/hc02/0256/0256.pdf>

WEBSITES

1. www.manupatra.com
2. www.scconline.co.in

