

## Recent trends in Interpretation

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### Abstract

*Statutory Interpretation can be defined as a method of understanding and enforcing statutory laws, where judges try to determine the true purpose of parliament at the time of passing the law. It can also be defines as ‘give meaning to’. It is considered as the duty of the Court to interpret the statute and provide meaning to each and every word of the Statute to avoid any type of ambiguity. The whole statue must be understood by reading it wholly and not in parts to construe the true purpose of legislature behind every part. The maxim “a verbis legis non est recedendum” means that there must not be shown any type of discrepancy in the words of the statute while construing its true purpose. The blend of ideas of numerous drafters and other legal and technical terminology might result in incoherence, ambiguous and vague language. To avoid it interpretation is necessary so that true purpose of drafters can be established. One more objective of interpretation is the complicated nature of language. We can consider language, words and phrases as vague forms of communication. At the same time one word can have various definitions and meanings.*

## Introduction to Interpretation of Statutes

### Statutory Interpretation

Statutory Interpretation can be defined as a method of understanding and enforcing statutory laws, where judges try to determine the true purpose of parliament at the time of passing the law. It can also be defines as ‘give meaning to’. Interpretation of statues to render justice is the primary function of the judiciary. It is considered as the duty of the Court to interpret the statute and provide meaning to each and every word of the Statute to avoid any type of ambiguity. The whole statue must be understood by reading it wholly and not in parts to construe the true purpose of legislature behind every part. The maxim “a verbis legis non est

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*recedendum*” means that there must not be shown any type of discrepancy in the words of the statute while construing its true purpose.<sup>2</sup>

### **Need For Interpretation**

Basic objective for the interpretation of statute has been given as follows:

1. Interpretation is essential to do away with the complexity of statutes. The blend of ideas of numerous drafters and other legal and technical terminology might result in incoherence, ambiguous and vague language. To avoid it interpretation is necessary so that true purpose of drafters can be established.<sup>3</sup>
2. Most of the times, basic problem is the applicability of law in future regarding unforeseen scenarios. To avoid it, drafters try to anticipate the same and incorporate the use of new terms. It is not possible for legislature to anticipate every type of situation and that leads to the ambiguous use of these words. Therefore, judiciary has to interfere to fill up the gaps created by legislature. Judiciary does this task by interpreting the statutes according to the prevalent circumstance to give the meaning to the statute or particular provision.<sup>4</sup>
3. One more objective of interpretation is the complicated nature of language. We can consider language, words and phrases as vague forms of communication. At the same time one word can have various definitions and meanings. In court, parties try their best to utilize the definition and meaning of the language which will favour their welfare. So it becomes important to state the meanings of these words so that true purpose can be established.<sup>5</sup>

### **Analysis of Rules of Interpretation**

The issue with interpreting and giving true purpose to statutes is that the intention of the parliament in a particular piece of legislation will have to be decided by the judiciary. Most of the times, judges do correctly find the intention of the legislature at the time of passing that legislation. At the same time, they make mistakes too in giving different or wrong meaning to the legislation. This problem cannot be solved forever but chances of establishing true

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<sup>2</sup> *Dr. Lokendra Malik*, JUDICIAL ACTIVISM IN INDIA, 106 (2012).

<sup>3</sup> F. A. R. Bennion, STATUTE LAW, 49 (1980).

<sup>4</sup> *Id.*

<sup>5</sup> *Supra* note 2, at 50.

meanings can be raised. As with all methods there are advantages and disadvantages. Judges interpret the statutes based on certain rules which were established in judicial decisions and scholarly works.<sup>6</sup> In this chapter the main focus is to analyse the rules and make the point that how these rules became redundant with time that leads to recent trends in next chapter. The rules are as follows:

### **Literal Rule**

The literal rule is defined as the rule which demands from the judge to provide the word or phrase its natural, ordinary or dictionary meaning irrespective of the fact that it might be contrary to the intentions of parliament at the time of passing the legislation.<sup>7</sup>

In understanding a statutory provision the primary and fundamental rule of construction is that of literal rule of interpretation.<sup>8</sup> There is no need of aid of other rules of interpretation if the meaning of provision is clear and legislative intent is established without any ambiguity. They can be used only when the legislative intention is ambiguous. But as new types of ambiguities occurred, new problems of interpretation came into picture which leads to the inapplicability of this rule. Subsequently golden rule was given by the judiciary.<sup>9</sup>

### **Golden Rule**

Golden rule is the rule which empowers court to look at the literal meaning of a phrase or word, but then it does not use the literal interpretation which will result to absurdity. There are two ways in which golden rule can be applied, named as the narrow approach and the broad approach. So as per principles of golden rule, judiciary looks at the literal meaning only if it is not resulting in absurdity and inconsistency. Then it modifies the meaning as per the context of the statute so that absurdity can be avoided. But this result also had some disadvantages which lead to the emergence of Mischief rule.<sup>10</sup>

### **Mischief Rule**

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<sup>6</sup> Earl T. Crawford, *THE CONSTRUCTION OF STATUTE*, 158 (1998).

<sup>7</sup> *Id.*

<sup>8</sup> *Pinner v. Everett*, HL 1969.

<sup>9</sup> H. R. Saviprasad, *Evasion of Statutes: Changing Attitudes of Statutory Interpretation*, 27(02) INDIAN BAR REVIEW 181, 182 (2000).

<sup>10</sup> *Id.*

Mischief rule becomes important when the question of interpretation of legislation arises. It says that court has the duty to ascertain '*the intent of them that make it*', and that can be collected from the words and phrases used in the legislation. It does not mean that the judiciary's decision should be based on a principle of literal interpretation by neglecting all the other materials.<sup>11</sup> Hence, it is necessary that to gather the true meaning, it is essential to have an accurate idea of the aim, scope and object of the whole statute to consider<sup>12</sup>:

1. What was law before the legislation was passed?
2. What was the mischief and flaw for which the measure under law had not provided?
3. What remedy Legislature has determined and chosen to treat the disease?
4. What was the true reason of the remedy? And
5. What was the core principle the Act was based on?

Then the court will have to construct the meaning in such way that mischief can be suppressed and remedy can be advanced. Further they will have to restrain the subtle innovations and escapes so that mischief can be continued.<sup>13</sup>

### **Purposive Approach**

This is the rule which is also known as purposive interpretation or construction. This is one of the rules which are also included in the category of recent trends of interpretation as it authorises the common law courts to interpret the statute in light of the purpose for it was enacted. It is efficient rule to deal with present issues regarding interpretation of statute. This rule has origin in the mischief rule when it was pronounced in *Heydon's Case*<sup>14</sup>. It was introduced by the courts to replace the plain meaning rule, the golden rule and the mischief rule to determine the true purpose of any statute.<sup>15</sup>

### **Subsidiary Rules of Interpretation**

1. Conjunctive or Disjunctive: this rule says that "or" is generally considered as disjunctive and "and" is conjunctive. Hence, there cannot be any departure from above stated rule unless the contrary intention appears or purpose of the statute demands so.<sup>16</sup>

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<sup>11</sup> G. P. Singh, PRINCIPLES OF STATUTORY INTERPRETATION, 85 (8th edn., 2002).

<sup>12</sup> *Id.*

<sup>13</sup> *Supra* note 10, at 95.

<sup>14</sup> *Heydon's Case*, (1584) 76 ER 637.

<sup>15</sup> Saviprasad, *supra* note 10, at 185.

<sup>16</sup> Saviprasad, *supra* note 10, at 186.

2. Same Word Same Meaning: The rule is based on the general presumption of consistency in the Statute i.e. among various clauses and various provisions of the statute. This principle works very well with the statutes in *pari materia*.<sup>17</sup>
3. *Non Obstante* Clause: this is the rule which empowers legislature to use it as a device to give overruling effect to specific provisions over contrary provisions which might be present in the same statute or some other enactment.<sup>18</sup> It is primarily used to avoid the operation of all the contrary provisions which might create the ambiguity in interpretation.<sup>19</sup>
4. *Casus Omissus*: *Casus Omissus*, literally means case omitted. It is used when the solution to deal with particular situation was not given in the statute or contract. Therefore, this rule give power to court to use precedents and new judge made laws to decide the issue which arose in present scenario.<sup>20</sup>
5. Presumptions regarding interpretation of Statutes<sup>21</sup>:
  - *Ejusdem generis*: this rule means ‘of the same kind’. So general words of the same class will be considered in same category.
  - *Noscitur a sociis*: this is also called ‘known by the company it keeps’. This rule says that the meaning of words can be drawn from the other surrounding words. It gives importance to read the statute in its entirety and not separately.
  - *Expressio unius est exclusio alterius*: The maxim means “*the expression of one thing is the exclusion of another*”. Under this rule one member of a class who has been expressly referred can remove the other member of the same class who has not been expressed.

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<sup>17</sup> *Supra* note 10, at 66.

<sup>18</sup> William N. Eskridge, Jr., DYNAMIC STATUTORY INTERPRETATION, 228 (2009).

<sup>19</sup> *Id.*

<sup>20</sup> K. R. Chandratre, *Supreme Court on Statutory Interpretation-5: The Proper Function of a Provision*, 41(01) TAX AND CORPORATE REFERENCE 28, 29 (2007).

<sup>21</sup> *Id.*

## Recent Trends in Statutory Interpretation

In the previous two chapters, researcher has analysed the interpretation of statutes and other fundamental principles which emerged from time to time to deal with ambiguities related to interpretation. Subsequently, those rules became redundant as they cannot be applied to present situations, but at the same time other rules came into picture to deal with issues of interpretation in recent time.<sup>22</sup> They are named as recent trends of interpretation which are analysed in this chapter in detail.

### Compensation as a Remedy

This trend was introduced by SC as they interpreted the statutes to provide compensation to redress the issues regarding violation of fundamental rights. Indian judiciary has come up with the idea of considering compensation as a remedy for the protection of the right to life and personal liberty. This doctrine of 'compensatory jurisprudence' has emerged as a positive signal in interpretation of statutes. More important thing is that judiciary introduced it in the absence of provision under constitution and precedents. Article 32 empowers the Supreme Court to come up with any new procedure for the better enforcement of fundamental rights. Therefore, SC introduced compensation as remedy in case of violation of fundamental rights wherever it felt necessary to do so.<sup>23</sup>

The question of awarding monetary compensation came before the SC for the first time in case of in *Khatri (II) v. State of Bihar*<sup>24</sup>. Subsequently questions were asked about awarding monetary compensation in case violation of Article 21, where court replied that without compensation the basic intent behind the provision will not be achieved. In case of *Sant Bir v. State of Bihar*<sup>25</sup>, the question of awarding compensation for infringement of fundamental rights was asked. Later in case of *Veena Sethi v. State of Bihar*<sup>26</sup>, the same question was asked but SC was still not clear whether to provide the compensation for infringement of fundamental right under Art 21. In both these cases, court accepted the contention of violation of fundamental rights but still did not award the compensation as a remedy.

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<sup>22</sup> S. P. Sathe, JUDICIAL ACTIVISM IN INDIA, 145 (2002).

<sup>23</sup> S. A. R. Azad, *Judicial Activism (Indian Judiciary- A Saviour of life and Personal Liberty)*, 87(02) ALL INDIA REPORTER 17, 21 (2000).

<sup>24</sup> *Khatri (II) v. State of Bihar*, 1981 SCC (1) 627.

<sup>25</sup> *Sant Bir v. State of Bihar*, AIR 1982 SC 1470.

<sup>26</sup> *Veena Sethi v. State of Bihar*, AIR 1983 SC 339.

It can be said that in *Khatri, Sant Bir* and *Veena Sethi*, the seed of compensation was sowed which later sprouted vigorously and changed the mind of court to provide the compensation in case of violation of Art 21. Finally, SC awarded the compensation for the first time in case of *Rudul Sah v. State of Bihar*<sup>27</sup>, where the personal liberty of victim was violated. This gave the interpretation of statutes new turn which was later became one of the most important step taken by the judiciary. He was given compensation as he was kept in jail for 14 years which was illegal detention for murder charge.

This step of SC established the faith of people again in its judiciary. Although there is no specific provision which deals with the compensation under Art 32 of the Constitution of India, judiciary interpreted the intention of constituent assembly and gave the true purpose to Art 32.<sup>28</sup>

SC establish its authority regarding compensation under Art 32 through one more case, *Nilabati Behera v. State of Orissa*<sup>29</sup>, in this case SC awarded monetary compensation as damages to the mother of young man who died in police custody as he was beaten by the police. The Court said that it is empowered to come up with new tools to deal with different circumstances and hence they introduced compensation as a mode to redress the grief of victim.

Earlier laws were interpreted by court to provide remedies as mentioned under different statutes which was limiting the role of judiciary and purpose of the statute i.e. to redress the grief of victim. Hence, court's step to introduce compensation by interpreting the intention of the legislature when the laws were made, was a good step. Court has recognized that the rationale of public law is not only to advance public power but also to guarantee the people that they breathe under a legal system, which intends to protect their welfare and protect their constitutional rights.<sup>30</sup>

Later, the Court in *Bandhua Mukti Morcha v. Union of India*<sup>31</sup> stressed that when Art 32 is interpreted the approach must be led not by any oral or formalistic ways of construction but by the principle object and purpose fundamental to the article and its understanding must

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<sup>27</sup> Rudul Sah v. State of Bihar, 1983 SCR (3) 508.

<sup>28</sup> D. K. Basu v. State of West Bengal, 1999 (1) SCALE 465.

<sup>29</sup> Nilabati Behera v. State of Orissa, 1993 SCR (2) 581.

<sup>30</sup> Y. Vishnupriya, *Judicial Review of Legislation in India*, 33(01 & 02) INDIAN SOCIO-LEGAL JOURNAL 121, 125 (2007).

<sup>31</sup> Bandhua Mukti Morcha v. Union of India, 1984 SCR (2) 67.

receive clarification from the provisions which infuse and stimulate the entire Constitution *viz.* the Preamble, Fundamental Rights and Directive Principles of State policy. In recent times due to the increase of the incidents of State lawlessness, police lawlessness, custodial violence, violence in jails, unlawful detentions and other violations, the compensatory jurisprudence brought in by the Supreme Court of India by invoking powers under Article 32 earned enormous importance. This advance made by the Supreme Court is not only reducing the numbers of litigation but also helping the courts to provide speedy justice to victims of the violation of right to life and personal liberty. SC has started giving compensation in criminal cases also by interpreting the penal statutes and giving them their true purpose as to redress the problems of victim.

### **Role of Judicial Review and Decisions in Statutory Interpretation**

Judiciary also became important in interpreting statutes through judicial reviews and decisions, where it started giving interpretation to statutes and in some cases guidelines too. There is always a certain amount of judicial prudence in interpreting statutes. It is said that there will always be an interaction between the judiciary as reader of the statute and the statute as a text, where judiciary gives the meaning to the text by establishing the intention of legislature.<sup>32</sup>

The courts and legislatures are always interrelated to each other due to their lawmaking functions. There will be less scope for judiciary to interpret if the legislature has passed the statute clearly and in detail. There will be less opportunity with the court for development of common law, if the law will be codified mostly. Similarly there will be fewer chances for the enactment of new statute, if the legislature will be satisfied with the judge made law. This is an important issue that legislature has the power to decide that how much law they are going to enact and how much they will allow the courts to make. So far as legislators and judges are encouraged by the aspiration to have the best feasible laws, they should be anxious about the capabilities of both legislatures and courts as lawmakers.<sup>33</sup>

When we talk about discretion that judges have to make law, it suggests that a certain amount of creativity or judicial activism will be drawn in. Sometimes, judiciary justifies its encroachment into the sphere of legislature by saying that it is exercising the judicial review and interpreting the intention of legislature behind the statute. Subsequently it results in

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<sup>32</sup> Vepa P. Sarathy, Interpretation of Statutes, 79 (5th edn., 2010).

<sup>33</sup> *Id.*

judicial activism. The introduction of Public Interest Litigation, also known as PIL, has raised the judicial activism unexceptionably. Since 1979, the judiciary in India became an active participant in dispensing social justice in the name of interpreting or giving true purpose to statutes.<sup>34</sup>

In the name of PIL to protect the rights of socially and economically disempowered people, SC developed a new regime of rights of citizens and obligations of the State and also introduced new methods for its responsibility.<sup>35</sup>

This unique judicial activism was contributing in interpretation of statutes. As in *Vishaka & Ors v. State of Rajasthan & Ors.*<sup>36</sup>, SC gave the direction regarding sexual harassment at work place under CEDAW provisions. All these actions taken by judiciary are in doubt due to encroachment over others' jurisdiction as judiciary said that its actions are to protect the rights under Art 32 of Constitution of India. Whereas in reality, there is no involvement of issues of violation of fundamental rights of individuals or any legal issues in such cases. The court is doing this by saying that it has power to interpret the statute as legislators had intended which is not a proper judicial function.<sup>37</sup>

In the name of judicial review and interpretation of statutes, the Supreme Court has even made orders regarding military operations and proceedings of Legislatures.<sup>38</sup> The justification often provided by the judiciary to this type of behaviour where it exceeds the limits is that it is obliged to take upon this duty as the legislature and executive have failed in their duties. This is a dubious justification as other branches of government can also give the same logic and encroach upon the powers of judiciary with the same logic. Judiciary has also failed in lots of areas and giving wrong interpretation to statutes which can become justification for other branches to take over its powers. Hence, it can be concluded that this is one of the recent trends of interpretation where statutes are given meaning by the judiciary through judicial reviews. It has its own disadvantages as explained above but efficient enough to deal with present circumstances where there is difficulty in giving true purpose to the intention of legislators.<sup>39</sup>

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<sup>34</sup> A. S. Anand, *Judicial Review- Judicial Activism- Need for Caution*, 42(2-4) JOURNAL OF INDIAN LAW INSTITUTE 149, 153 (2000).

<sup>35</sup> *Maxwell on the Interpretation of the Statutes*, 168 (P. St. J. Langon ed., 12th edn., 1997).

<sup>36</sup> *Vishaka & Ors. v. State of Rajasthan & Ors.*, AIR 1997 SC 3011.

<sup>37</sup> *Supra* note 34, at 170.

<sup>38</sup> *Supra* note 34, at 171.

<sup>39</sup> Ram Kumar Mishra, *Judicial Activism a Pilgrim of Judiciary*, Issue 02 ALL INDIA REPORTER 17, 21 (2011).

## Transition from Literal Rule to Purposive rule of interpretation

This is the last recent trend which establishes that literal rule may not be efficient enough and hence interpretation should be based on purpose.<sup>40</sup> There are certain defects of the literal rule of interpretation which lead the interpreters to choose purposive approach over literal rule.<sup>41</sup> The defects may be of two types<sup>42</sup>, Logical defect which constitutes of ambiguity<sup>43</sup>, inconsistency<sup>44</sup> and incompleteness<sup>45</sup> and the second type is absurdity<sup>46</sup> or irrationality<sup>47</sup>. Subsequently, literal rule of interpretation was taken over by purposive approach as it has its unique features of interpretation which is more efficient for practical purpose.<sup>48</sup> The problems with literal rule of interpretation were cured by purposive interpretation. The benefit of the purposive interpretation is that it heads to justice in individual cases. It can be said that it is broad in its applicability which grants the law to cover up more situations than enforcing words literally. It can be said that it fills in the gaps in the law. The purposive approach is mainly constructive as it can deal with any unknown circumstance also as it is applied based on the purpose of statute at that point of time. Hence, purposive approach also became one of the important part recent trends of interpretation.<sup>49</sup>

## Conclusion

The law of statutory construction and interpretation can never function with mathematical accuracy. One of the problems in this ground has been that the set of laws and principles of interpretation of statutes have been worded too precisely and have been awaited to operate too specifically. This resulted in lots of confusion and uncertainty. In addition, the intrinsically vague nature of language to a great extent limits the amount of accuracy possible.<sup>50</sup>

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<sup>40</sup> K. R. Chandratre, *Supreme Court on Statutory Interpretation-9: The Proper Function of a Provision*, 41(06) TAX AND CORPORATE REFERENCE 238, 239 (2007).

<sup>41</sup> *Id.*

<sup>42</sup> Chandratre, *supra* note 39, at 239.

<sup>43</sup> Rupert Cross, *STATUTORY INTERPRETATION*, 244 (1995).

<sup>44</sup> *Id.*

<sup>45</sup> *Supra* note 42, at 245.

<sup>46</sup> Thinini Khandawaarachi, *Use of Legislative History in Statutory Interpretation*, 49(02) JOURNAL OF THE INDIAN LAW INSTITUTE 223, 239 (2007).

<sup>47</sup> *Id.*

<sup>48</sup> Khandawaarachi, *supra* note 47, at 225.

<sup>49</sup> Khandawaarachi, *supra* note 45, at 226.

<sup>50</sup> *Supra* note 31, at 80, 92, 108 and 110.

Although statutory interpretation can never turn out to be a simple but at the same time there are certain changes that can be brought in the rules of law and the practices of legal institutions to more wholly accomplish its fundamental objectives. Hence, after analysing all the rules and statutory interpretation, researcher would like to conclude that recent trends are effective and better than established fundamental principles of interpretation of statute. They are wider and efficient in their applicability.

They can be applied to recent circumstances as fundamental principles of interpretation were created to deal with situations which arose in past. There are certain disadvantages of recent trends also such as applying compensatory jurisdiction where it was not necessary, judicial activism and interpreting wrong purpose, but all these defects overruled by their better implementation. Hence, it can be said that recent trends of interpretation should be followed to establish true intention of legislature which they had when they enacted that particular statute.

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