

RULE OF REASONABLE CONSTRUCTION

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ABSTRACT

The forefathers of our nation have done a monumental work on creating the unparalleled document of the Constitution of the Republic of India in the written form. Although this document of the Constitution can be positioned to be at the status of near flawlessness, due to the passage of time there arises certain ambiguities or mischiefs which can be attributed to the changing conditions and purposes. The constitution of India being a written constitution, the Indian Judiciary faces a consequential obstacle when it comes to the interpretation of certain parts of Constitution and certain statutes due the ambiguities and mischiefs arising out of the rationales mentioned above. This also is the case of the other executive and administrative bodies which also face complications in the interpretation of these mischiefs in the statutes and laws.

This obstacle is addressed by the Indian judiciary by the help of a distinctive type of construction which is the Reasonable Construction. This construction is also known as the mischief rule as it is particularly involved in the rectification of the mischiefs emerging out of the interpretation of statutes. But it is sometimes argued that the Indian constitution being a written constitution have no place for this kind of interpretation. Thus in the research paper we will ponder deep into this concept with the assistance of various case laws and address this question.

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1) Synopsis

1.1) Research Problem

It is seen that the statutes through to the passage of time give rise to a lot of ambiguities which impose significant difficulties in the interpretation of the same. This leads to the inefficiency of the Judicial System as these mischiefs does not allows to do complete justice in many cases.

1.2) Research Question

Whether is it necessary to adhere to the interpretation of the Constitution or the statutes strictly while giving judgements?

1.3) Hypothesis

It is the spirit of the democracy to do complete justice and one of the pillars that ensure the peaceful existence of the society. Thus in order to do justice and remove the ambiguities which exists it can be justified not to adhere to the interpretation of the constitution strictly.

1.4) Scope and Objectives

The scope of the research is to make stance that the judiciary can actually move away from the strict interpretation of the statutes or the Constitution and use the doctrine of reasonable construction in order to do complete justice.

The important objectives of the research include

- To study the intention of creation of Statutes and courts duty on interpretation of those statutes.
- To understand the concepts of Literal, Golden and Reasonable Construction.
- To discuss the steps involved and the application of this type of Construction in detail.
- To discuss the criticisms put forth in the use of the doctrine of reasonable construction.
- To enumerate the major cases involving the use of reasonable construction.
- To study the manner of such construction and interpretation used in those judgments delivered.

1.5) Methodology of the Study

The research will follow the doctrinal method as it is mostly influx of data from various places. The sources are mostly secondary. We have consulted as many sources of books and Journals and also different articles and lectures of leading legal thinkers around India. Original articles and books by leading thinkers on the respective ideologies are the most important all the sources. The following methods will be relied upon to fulfil the objectives of the study and collection of necessary data. In addition various case laws both Indian and Foreign are referred which involves this construction.

1. Study of the existing books.
2. Primary and secondary source of books and journals.
3. Internet surfing.
4. Visiting the different libraries.
5. Listening to the lectures of leading jurists.

1.6) Literature Review

This research paper appreciates the work of many eminent legal thinkers around the world. The research paper in accordance with its topic to cover up all the relevant information relied on some suitable books the authors being both Indian. This research paper has its major sources from the works many jurists and legal thinkers who have deep insight about Indian jurisprudence and interpretation of statutes. This research paper elaborates about these thinkers' views on Doctrine of Reasonable Construction and its impact on Interpretation of the Indian Constitution and various statutes.

Introduction to Interpretation of Statutes by Avtar Singh and Harpreet Kaur This book illustrates the Doctrine of Reasonable Construction with lot of cases as examples which are described in a very comprehensive and elaborate manner that helps in giving a good insight of the doctrine.

The Construction of Statutes by Earl T Crawford This book is written by Earl T Crawford who played an important role in making the statutes and laws in Pre-colonial India. This book explains the construction and interpretation of laws and statutes as done by the law makers in the pre colonial era which also includes lot of foundational subjects.

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2) Intention of Legislature

2.1) Introduction

It is the primary duty of the judiciary of any democratic country in the world to interpret the laws so that it gives effect to the intentions of the legislature of the country. This might seem to be a very straight forward task imposed on the judiciary of the state but in reality the means of actuating the task is diverse and intricate. The medium of expression through which the Legislation articulate its intent that is the statutes cannot always be deemed to be perfect idol of communication to the exact point of accuracy which might be the result of unfixed nature and the possibility of the possibility of gaining uncertain meaning depending on usage. Also, the case might also come into being where an unforeseen circumstance may develop due socio-political reasons which may warrant a contextual analysis of Statutes to discover the intent of the legislature. For the above reasons the courts may find itself in a arduous position when comes to interpretation. To overcome these situation the courts employs certain constructions to interpret these statutes.

2.2) Principles of Interpretation

In India, the interpretation of statutes is an exclusive privilege enjoyed only by the constitutional courts.¹ The interpretative function of the court is to find the true legislative intent with which a statute is drafted.² It is the obligation of the judiciary to promote the intentions of the legislation.³ There are different systems of interpretation of statutes and the courts are in the liberty to apply any form of interpretation which it deems fit. The principles of Interpretations are not the principles of the law but only the methodology for explaining the meaning of the words used in the text.⁴

¹ State of West Bengal v Kesoram Industries Ltd, (2004) 10 SCC 201

² Nathi Devi v Radha Devi Gupta (2005) 2 SCC 271

³ Land Acquisition officier v. Karigowda (2010) 5 SCC 266

⁴ B. Premchand v Mohan Koikal (2011) 4 SCC 708

The settled principles of interpretation of statutes are listed below:-

- (i) The courts must start with the presumption that the legislation did not make a mistake.
- (ii) The court must adopt the construction which will carry out the obvious intention of the legislation.
- (iii) If there is a defect or omission in the words used by the legislature the court would not go beyond its aid to correct the deficiency. The court could not add words to the statute or read words which are not there especially when literal reading produces an intelligible result.⁵ Only when it becomes necessary to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute, words may be added, altered or modified.⁶

2.3) Meaning, Purpose and Object

It is widely acknowledged that the intention of the legislation comprises of two aspects:-

- (i) Meaning – The first aspect is the meaning which delivers the straight forward meaning of the words which is used to construct the statute.
- (ii) Purpose and Object – Second aspect is the purpose and object which confers the purpose and object with which a particular statute is enacted.⁷

Therefore, from the above two aspects given we can understand that true or legal interpretation of the enactment can be derived only by considering the meaning of the individual words of the enactment read along with any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed.⁸ This above statement can also be simplified to mean that the process of construction combines both and purposive approaches.

⁵ Dadi Jagannadham v Jammulu Ramulu (2001) 7 SCC 71

⁶ Bav Nagar University v Palitana Sugar Mill (P) Ltd AIR 2003 SC 511

⁷ Thakker Shipping (P) Ltd v Commissioner of Customs (General), (2012) 12 SCC 189

⁸ State of Himachal Pradesh v Kailash Chand Mahajan AIR 1992 SC 1277

3) Rules of Construction

Through the above arguments we clearly found that sometimes the statutes are bound to hard to interpret and it is the duty of the judiciary to rightly interpret it. To achieve the intention of the legislature the judiciary uses a wide array of construction. And the most of these are the Literal rule, Golden rule and the Reasonable Rule or the Mischief Rule of Construction. These rules of construction may be employed overrule, modify or extend the existing meanings of the current laws of the statutes in the force. Sometimes these rules may be used to create entirely new laws as well.

3.1) Literal Rule of Construction

The Literal Rule of Construction is just the literal application of the meaning of the statute law for the case in its exact wordings. According to the words of Lord Diplock “Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse failing to give effect to its plain meaning because they consider the consequences for doing so would be inexpedient or even unjust and immoral”⁹ is the justification for the usage of the literal rule of construction in interpreting the statutes. This is true as when the judges deviate from Literal meaning of the statutes they create their own version of how the case should be interpreted and the will of the legislature will be contradicted.

3.2) Golden Rule of Construction

The Golden rule is a slight modification to the Literal Rule of Construction. Lord Wensleydale defines this rule as follows “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 avoid the absurdity and inconsistency, but no further.”¹⁰ This construction is usually applied to avoid absurdity.

⁹ Duport Steel Ltd v Sirs HL 3 Jan 1980

¹⁰ Grey v Pearson (1857) 6 HLC 61

3.3) Reasonable Rule of Construction

The mischief rule is applied when there is a mischief or defect in a statute which it provides remedy for and as a result the application of the statute will create an ambiguity if taken in literal sense. This rule enables consideration for four matters in construing an act:-

- (i) What was the law before the enabling of the act
- (ii) What was the mischief or defect for which the law did not provide
- (iii) What is the remedy the act has provided
- (iv) What is the reason for such remedy

After the consideration of those factors, the court may employ this construction to suppress the mischief and advance the remedy.

The following case law is a very relevant example on the employment of the reasonable construction in a precedent. Section 16(3) of the Income tax Act, 1922 was constructed in the case of *CIT, MP v Sodra Devi*¹¹. It reads as follows ‘In computing the total income of the individual for the purpose of assessment there shall included so much of the income of the wife or minor child of such individual as arises indirectly or directly’. The question aroused whether the word individual included the female as well. The observation of Chief Justice Bhagwati is as follows:-

‘In order to resolve this ambiguity, therefore we must of necessity have resort to the state of the law before the enactment of the provisions, the mischief for which the law did not provide, the remedy which the legislature resolved and appointed to cure the defect, and the true reason of the remedy.’

Accordingly the mischief was identified accounting to the intention of legislature and with proper reasoning the mischief was rectified and thus the income of the wife or the minor child was included under the ambit of the piece of law. Here the application of literal or golden rule would essentially have stopped the judiciary from doing justice in this case.

¹¹ Commissioner of Income Tax, MP v Sodra Devi AIR 1957 SC 832

3.3.1) Application of Reasonable Construction

The Mischief rule is applicable when the language is capable of being interpreted into more than one meaning.¹² Legislative intent which is to be determined should be done by examining the statute as whole and the secondary sources such as committee reports, treaties, the previous state of law and other statutes *pari materia* to the statute in question.¹³ The range of application of this construction is very narrow when compared to the literal and golden rule of construction. This rule can only be applied when the statute was passed to remedy a defect in common law and mischief comes in existence in interpreting the statute. This is also true for the case of Constitution as well. In the *Bengal Immunity Co* case¹⁴, an ambiguity was identified with regard to the construction of Article 286 of Constitution in laws involving inter-state trade and commerce where the traders were subjected to multiple tax regimes. This mischief was rectified by the application of this construction where the learned Chief Justice SR Das stated “It was to cure this mischief of multiple taxation and to preserve the free flow of internal trade or commerce in the Union of India regarded as one economic unit without any provincial barrier that the constitution makers adopted the Article 286 in the Constitution.”

3.3.2) Advantages of Reasonable Construction

- (i) The rule of reasonable construction avoids sentencing which are absurd and incoherent with common practices of justice
- (ii) In common law jurisdiction, the existence of precedent and knock on effects of construing a statute prevent misuse of the rule.
- (iii) The mischief rule is far more flexible when compared to literal and golden rule of construction.

¹² Parayan Kandityal Eravanth kanpravan kalliani Amma v K Devi AIR 1996 SC 1963

¹³ Union of India v Elphinstone Spg & Wvg Co Ltd AIR 2001 SC 724

¹⁴ Bengal Immunity Co v State of Bihar AIR 1955 SC 661

3.3.3) Criticisms on Reasonable Construction

- (i) This rule can sometimes make a piece of legislation uncertain.
- (ii) It is said to give too much power to the unelected judiciary which is arguably against the principles of democracy.
- (iii) It gives way judges to make prejudices and apply their opinions which can be contended as an infringement of the doctrine of separation of powers.

This can be illustrated with example of a particular case such as *Smith v Hughes*¹⁵. The law in question here comes under the Street Offences Act [1959], it was crime for a 'prostitute to loiter or solicit in street for the purpose of prostitution'. In this case defendants were calling men in the streets from balconies and tapping windows and claimed that they were not on the street essentially. The judges identified the defect and traced to the intention of the legislation and applied the rule of reasonable construction to rectify the mischief with proper reasoning.

In the other side of the argument some criticisms came out as that it is the opinion of the judges and their prejudices over the prostitutes that led to them to give such kind of judgements. They argue that the prostitute were not at fault and only the judges usurp power by the usage of the rule of reasonable restriction. But it is commonly agreed that the courts only merely satisfied the intention of the legislation which is to restrict prostitution in public places.

¹⁵ *Smith v Hughes*[1960] 2 All E.R. 859

4) Conclusion

We have witnessed and studied that the judiciary employs various kinds of constructions in the interpretation of statutes. And among the most usually employed construction the literal and golden rule does not deviate from the exact text used in a statute and strictly adhere to the wordings. But the mischief rule is different. It gives freedom to the courts and enables them to interpret the laws by the actual intentions of the law makers as given in the *Shyam Sunder case*¹⁶ ‘All rules of interpretation are meant to assist the courts in advancing the ends of justice’.

Although there are a lot of criticisms surrounding the application of the rule of reasonable construction such as the noncompliance to the statute or constitution strictly, usurpation power by the judiciary, it is totally just in the part of the courts as they follow this construction only to do complete justice. In *District Mining Officer v Tat Iron & Steel Co*¹⁷ the court delivered its opinion which is as follows:-

‘It is the cardinal principle of the construction that external aids are brought in by widening the concept of the 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.’

Thus the judiciary can read between the lines of law and apply the Rule of Reasonable Construction in interpreting statutes in order to achieve a higher purpose which is to uphold equity and justice.

¹⁶ *Shyam Sunder v Ram Kumar* AIR 201 SC 2472

¹⁷ *District Mining Officer v Tata Iron & Steel Co* (2001) 7 SCC 358

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