

BENEFICIAL CONSTRUCTION

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Any member introducing a dog into society's premises shall be liable to fine \$ 1. Any animal leading a blind person shall be deemed to be a cat. (Rule- 46 Oxford Union Society.)

The object of every legislation is to advance public welfare. Justice and reason constituted the great general legislative Intent In every piece of legislation.¹

Golden Rule of interpretation is that the grammatical ordinary sense of the words is to be adhered unless that would lead to absurdity or inconsistency. Where the words in question are ambiguous and are reasonably capable of more than one meaning, courts must adopt the construction which may suppress the mischief and advance the remedy.

Individual cases of hardship or Injustice have no bearing. It is only when natural construction leads to general hardship or Injustice that general construction may be departed from. However, Interpretation must depend on the text and the context. They are the bases of Interpretation. "One may well say if the text is the texture, context is what gives the colour."²

Art. 41 of the Constitution of India ordains that the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work etc. But courts have refused to issue mandamus to. Union of India to provide food, cloth and shelter because petitioner is poor, penniless unemployed citizen as the GRIEVANCE CALLS FOR A POLITICAL SOLUTION.³

Apex Court has held that statutory provisions be construed according to the ordinary, grammatical and natural meaning of their language. If they work injustice by placing the poorer candidates at a disadvantage, THE APPEAL MUST BE TO PARLIAMENT AND NOT TO THIS COURT.⁴ The duty of making and altering the law is the function of Parliament and not the privilege of Judges.

Yet, JUSTICE IS ABOVE ALL, has been the basic theme in majority of judicial pronouncements, Whenever strict Interpretation resulted In unjust situation, judges used their judicial sense to remedy It.

In Feb. 1966 a collision took place between a motorcar and a goods-truck as a result of which driver of the car was killed and Mr. J.K. Modi another occupant of car was injured. The truck was Insured against 3rd party risk with motor owner's Insurance Co. Ltd. Heirs of driver and Mr. J. K. Modi filed separate applications for compensation U/S

¹ Budhan Vs. Nabi Bux AIR 1970 S.C. 1980 (Para-9)

² Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. AIR 1987 S.C. 1023 (Para-33)

³ 1992 (1) UPLBEC (15), Thomas Jacob v. Union of India.

⁴ AIR 1954 S.C. 749. Rananjaya Singh v. Balj Nath Singh

95 (2) Motor Vehicles Act as it stood in the year 1966. Section 95 provided covering of liability in respect of anyone accident up to any limits. Regarding expression, . 'anyone accident'. Hon'ble Chief Justice Mr. Y.V. Chandrachud observed-

"A consideration of preponderating importance in a matter of this nature is not whether there was anyone transaction which resulted in injuries to many but whether more than one person was Injured, giving rise to more than one claim or cause of action, even if the Injuries were caused In the course of one single transaction. If more than one person is injured during the course of the same transaction each one of the persons has met with an accident.

"Considering the matter that way we are of the opinion that it is appropriate to hold that the word "accident" is used in the expression "anyone accident" from the point of view of the various claimants, each of whom Is entitled to make a separate claim for the accident suffered by him and not from the pointof view of the insurer." ⁵

Regarding the construction of penal statutes the Supreme Court of India has observed as follows:-

"It is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty." ⁶

This view has been consistently followed in subsequent cases.⁷

It is said that in a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. However while construing the provisions of a taxing statute, if two views are possible the view which is favourable to assessee must be accepted. ⁸

Rules of procedure are said to be handmaid of justice. It is settled law, that procedural provisions should not be used as traps to catch litigants unaware, they should be construed so as to advance the cause of justice.⁹

The power to dismiss in default by a tribunal includes power of setting aside dismissal for default.¹⁰

Expression "date of the award" for the purpose of limitation has been held to be the date when the award was communicated to party or is known to him either actually or constructively. ¹¹

⁵ AIR 1981 S.C. 2059, Motor Owners Association Vs. J.K. Modi.

⁶ AIR 1954 S.C. 496, Tola Ram v. State of Bombay.

⁷ AIR 1961 S.C. 1494 M.V. Joshi v. M.V. Shimpi

⁸ 1970 (2) S.C.C. 192, Commissioner of income Tax Punjab v K.V. Trans Co. (P) Ltd.

⁹ 1981 Alld. Civil Journal (25), Munni Devi v. Hem Prakash.

¹⁰ 1964 AJJ 155 (D.B.), B.P. Maurya v. Election Tribunal.

¹¹ AIR 1961 SC. 1500, Harish Chand v. Dy. L.A. Officer

Interpreting sec. 5 Limitation Act, it has been held that the words "sufficient cause" should receive a liberal construction so as to advance substantial Justice. ¹²

In the opinion of the Rt. Hon'ble LORD DENNING Master of the Roll 9- "Whenever a statute comes up for consideration It must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. It would certainly save the judge's trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must sit to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social condition which gave to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question, If the makers of the Act had themselves come across this rock in the texture of It, how would they have straightened it out? He must then do as they would have done. A JUDGE MUST NOT ALTER THE MATERIAL OF WHICH IT IS WOVEN, BUT HE CAN AND SHOULD IRON OUT THE CREASES. ¹³

Age after age new controversies have arisen, yet the judicial remedies have made the healing presence of Rule of law live up to its reputation. In the year 1950 the Supreme Court rejected the argument that expression "law" in Art. 21 of the Constitution is used in the sense 'jus' or 'lex' and that It means principle of natural justice on the analogy of "due process of law". Soon after the emergency and elections held in the year 1977, the interpretation made in the year 1950 was changed. Justice P.N. Bhagwati delivering majority opinion in the MANEKA GANDHI's case had observed that prescribing procedure for depriving personal liberty of a person should be JUST, FAIR AND REASONABLE.¹⁴

Later human rights were declared to apply on Jail prisoners as well. Whether inside prison or outside a person shall not be deprived of his guaranteed freedom save by methods "right, just and fair". Hon'ble Justice Krishna Iyer declared that "Supreme Court will be functional futility as a constitutional instrumentality IF ITS GUNS DO NOT GO INTO ACTION UNTIL THE WRONG IS RIGHTED. THE FINEST HOUR OF JUSTICE COMES WHEN COURT AND COUNSEL COLLECTIVELY COLLABORATE TO FASHION. A RELIEF IN THE INDIVIDUAL CASE AND FATHOM DEEPER TO CURE THE INSTITUTIONAL PATHALOGY WHICH BREEDS WRONGS AND DEFIES RIGHT. ¹⁵

¹² AIR 1954 S.C. 411, Dinabandhu v. Jadumoni.

¹³ 1949 (2) K.B. 481, Seaford Court Estates Ltd. v. Asher.

¹⁴ 1978 (1) SCC 248. Maneka Gandhi v. Union of India.

¹⁵ 1980 (3) SCC 488, Sunil Batra (II) v. Delhi Admn.

It is no doubt correct that "right to education" has not been guaranteed as fundamental right under the Constitution of India. Supreme Court of India has observed that Indian civilization recognises education as one of the pious obligations of the human society and held that every citizen has a "right to education" under the Constitution. The State is under obligation to establish educational Institutions to enable the citizen to enjoy the said right. ¹⁶

The Supreme Court of India elaborating Art. 21 of the Constitution of India has held that right to life is not limited to protection of limb or faculty, the right to life includes the right to live with human dignity. ¹⁷

The Preamble promises and the Directive Principles are mandate to the State to eradicate poverty so that the poor of the country can enjoy the "life" guaranteed under the Constitution. ¹⁸

In the hoary past, Plato has observed that knowledge without Justice ought to be called cunning rather than wisdom. Justice was always considered to be the end of law.

However, some great judges have been cautious. Ex C.J. Mr. Desai in his fare well address observed "In my judicial career I have followed the doctrine that judge's business is not only to do justice but also to administer law. "Hon'ble Justice Mr. A.N. Ray opined that courts interpret the Constitution and law in accordance with law and judicial conscience and not emotion. Justice M.H. Beg has observed, " Judicial justice can be only justice according to law. It tends more often to accord with legal Justice rather than moral justice". Justice Mathews- an ordinary law can not be declared invalid for reasons that it goes against vague concepts of democracy, justice- political-economic- social, and liberty of thought etc. ¹⁹

It is true that there is no jurisdiction to do justice by altering plain and simple meaning of law. Yet, if temple of justice is to remain as most permanent of all the temples on earth, its foundation should appear to be laid on the bedrock of sense of justice.

Fundamental instincts of humanity are flowing in the words of Hon'ble Justice C.B. Agarwal- "In other words my approach has been emotional on the first instance to see what is just and then to discover, how logically the letter of law really bears the meaning which justice requires should be its meaning."

Human mind argues, among new controversies new questions, whether strict reasoning should win or loose. Quite recently again Apex Court reassured that -JUSTICE IS VIRTUE WHICH TRANSCENDS ALL BARRIERS neither the rule of procedure nor technicality of law can stand in its way.

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¹⁶ AIR 1992 SC 1858 : 1992 Vol-II SVLR (43), Miss. Mohini Jain v. State of Karnataka.

¹⁷ 1981 (2) SCR 516, F.C. Mullin v. The A.D.M. Union Territory of Delhi.) & 1984 (2) SCR 67. B.M. Morcha v. Union of India.

¹⁸ AIR 1992 SC 1858 : 1992 Vol.-II SVLR (43), Miss Mohini Jain v. State of Karnataka

¹⁹ AIR 1975 S.C. 2299, Smt. Indira Nehru Gandhi v. Raj Narain. (Paras 348-349)

