
LOKI'S ANSWER TO A JUDGE'S DILEMMA: APPLICATION OF THE MISCHIEF RULE BY THE SUPREME COURT IN KANWAR SINGH & ORS. V. DELHI ADMINISTRATION

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As a process, interpretation is simply how the courts of law determine the connotation of a statute or a provision of a statute to apply it to adjudicate a particular case.¹ Salmond understood it as the process that the courts of law utilize to understand the meaning of a legislature by using authoritative forms in which it is expressed.²

Essentially considered one of the three rules of interpretation of statutes, the other two being 'literal rule' and 'golden rule'³, the 'mischief rule' focusses essentially on understanding and interpreting a statute based on the evil (mischief), that is, the problem that the statute aimed to solve.⁴ It is essentially believed that the rule is considered to be corresponding to purposive construction or 'purposivism', as both these approaches to interpreting statutes is based on the determination of the purpose of the statute. The first case that established the mischief rule was the landmark Heydon's Case⁵. The case was regarding a copyhold tenancy given by a religious college. The college leased the same parcel, under which the copyhold was a part, to a man by the name of Heydon for 80 years. Owing to the passage of a new statute⁶, while the initial grant was held protected by the statute's exemptions, the Heydon lease became void. Lord Coke laid out that the true interpretation of all statutes must be considering the status of the common law surrounding the statute before the statute itself, the mischief and defect the common law failed to address, the remedy resolved by the statute and the ultimate reason of the remedy, thus interpreting the statute in a way that would continue to handle the mischief.⁷

The statutory intent could be established by committee reports, treatises and other secondary sources. In many cases, the 'mischief rule' was better suited for statutory interpretation than

¹ RUPERT CROSS, STATUTORY INTERPRETATION, 34 (3rd ed. 1995).

² SALMOND, JURISPRUDENCE, 152 (11th ed. 1916).

³ ELMER DRIEDGER, CONSTRUCTION OF STATUTES, 1 (2nd ed. 1983).

⁴ Samuel L. Bray, *The Mischief Rule* 109 GEORGETOWN L.J. 109 (2020).

⁵ Heydon's Case, (1584) 76 ER 637.

⁶ Suppression of Religious Houses Act, 1535 (UK).

⁷ LAW COMMISSION & SCOTTISH LAW COMMISSION, THE INTERPRETATION OF STATUTES (London: Her Majesty's Stationery Office 1974).

the literal rule. For example, in a case regarding a statute⁸ banning the prostitutes from soliciting “in the street”, the prostitutes started soliciting from balconies and by tapping on windows. The interpretation utilized the mischief rule to understand that the mischief that was tried to be resolved was the soliciting, and therefore where the literal understanding would’ve allowed this loophole to exist, but the judge applied the mischief rule and plugged these activities at the time.⁹

In India as well, the mischief rule has been of great significance. In a landmark judgement interpreting the words of Article 286 of the Constitution of India, understanding that under the same, a sale or purchase outside the State is beyond taxation would also mean that sale or purchase inside the State may be taxed as it would fall outside the mischief of the given exclusion under Section 286.¹⁰ In another case regarding the ambiguity of Section 16(3) of the Income Tax Act, 1922, the court sought to resolve the ambiguity by the 4 considerations as pondered upon in the Heydon’s case, essentially utilizing the mischief rule.¹¹

On 16th September 1961, Mukhtiar Singh, who was the Licensing Inspector of the Delhi Municipal Corporation, conducted stray cattle raiding party under their jurisdiction. They caught about 25 to 30 stray cattle consisting of buffaloes and cows and while taking them, they were interrupted and threatened by three people with sticks to leave the cattle. The cattle-catchers informed them who they are, their duty and even provided identity cards. The cattle-catchers also informed the three people of the procedure to get their cattle back. The three people still assaulted the cattle-catchers and they sustained injuries. The Commissioner of the Delhi Municipal Corporation was granted the power to seize or impound “*abandoned and roaming or tethered*” horses, cattle or other four-footed animals or birds on premises belonging to the Municipal Corporation. The relevant proviso also provided that anyone “*claiming*” such animal or bird may get them released by paying expenses incurred by the Commissioner in the entire activity of their seizure, impounding and feeding, along with producing a license for keeping these animals, within 7 days of their seizure.¹² An order from the Commissioner delegated these powers to certain Municipal employees “*in respect of stray cattle only*”.

⁸ Street Offences Act, 1959 (UK).

⁹ Smith v. Hughes, [1960] 2 All E.R. 859.

¹⁰ Bengal Immunity Company Ltd. v. State of Bihar & Ors., AIR 1955 SC 661.

¹¹ CIT v. Sodra Devi, AIR 1957 SC 832.

¹² Delhi Municipal Corporation Act, 1957, Section 418(1).

The issue of interpretation was that the Municipal members were only granted the power to impound cattle that were “abandoned” which was to be understood under the Wharton’s Law Lexicon as “*a thing banned or denounced as forfeited or lost, whence to abandon, desert, or forsake as lost and gone*” and under the Oxford English Dictionary (Volume I) as “*to let go, give up, renounce, leave off; to cease to hold, use or practice*”.¹³ Essentially, the word “abandoned” as used in the statute could refer to the cattle being “ownerless”, which, in this case, was contended that the same was not the case. The cattle were not ownerless and did have owners. However, the Court interpreted the same as used in the statute to refer to being “let loose” or essentially “left unattended” and not “left ownerless”¹⁴, thus ruling that the Municipal employees had authority under the statute to impound the cattle, thus ruling out private defence for the three attackers, as the employees attacked were under the legal protection of the statute to impound the cattle.¹⁵

The Court essentially applied the mischief rule to solve the issue of interpretation in the case at hand. The Court recognized that it is the responsibility of the Court while interpreting the statute to consider the original intention of the legislature. The court recognized that if the application of the literal rule, especially in a penal statute, defeats the purpose of the statute, which is to fix the mischief, then the Court can avoid or expand from the literal or the prevalent meaning of the words used in the statute and give it meaning as per the mischief rule, which is a meaning which will suppress the mischief and advance the remedy.¹⁶

In this interpretation, the Court also rationally laid out that the interpretation of “abandoned” as “ownerless” is also incorrect owing to the procedure for getting an impounded animal released requires the person claiming the animal to fulfil the required conditions within 7 days. Such a claim could only be made by the owner of the animal impounded and hence, the animal impounded could not be “ownerless”.¹⁷ Essentially, one can compare the outcome of this case from the literal rule perspective as well as the mischief rule perspective. While even with the literal rule interpretation, that may or may not allow the cows to not be included under the definition of “abandoned”, that would still not pose a threat of death or grievous injury to the

¹³ Kanwar Singh & Ors. v. Delhi Administration, AIR 1965 SC 871, Para 11.

¹⁴ *ibid* Para 12.

¹⁵ *ibid* Para 13.

¹⁶ P.B. MAXWELL, ON THE INTERPRETATION OF STATUTES, 221-224, 266 (11th ed. 2010).

¹⁷ Kanwar Singh & Ors. v. Delhi Administration, AIR 1965 SC 871, Para 12.

accused and hence, not allow them the defence of private defence.¹⁸ But it is still important to interpret the statute in this case from the mischief rule perspective to set the correct precedent.

Thus, the Court understood the statute in the fairest manner possible and set the right guidelines for future cases that come across the same or a similar dilemma. Statutory interpretation is important because no legislator can completely predict future situations that would require the application of any statute and hence, words in any statute have more weight than their literal meaning. If a statute is the will of the legislature, the intent of the statute should be the prime indicator for the interpretation of that statute. While the literal rule concerns itself with the verbal expression of the statute, the mischief rule rises above the words on paper to approach the basis of the statute. The issue with the mischief rule, however, is that it goes against the idea that law must be completely certain, predictable and known. Literal Rule allows predictability of the statute as the written word is deemed as final and binding and the statute is all that is on paper and nothing more. Another issue that the mischief rule has is that it blurs the lines between the Legislature and the Judiciary, providing essentially law-making powers to the Court and diluting the separation of power. This is not the case with the literal rule, where the statute and the interpretation are not contestable. However, as Lord Reid stated, it is practically impossible to expect a statute to not be ambiguous and thus, not create issues of interpretation beyond the literal rule. Hence, if one were to interpret the ambiguous literature of a statute in any manner, it must be done in a manner that is not detrimental to the original intention of the statute. In that essence, the judicial mind can be considered to be the best equipped to understand which rule would most benefit justice, equity and good conscience.

¹⁸ Indian Penal Code, 1860, Section 99.