
CRITICAL ANALYSIS OF MISCHIEF RULE OF INTERPRETATION

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ABSTRACT

Mischief rule in interpreting a statute is a rule that asks what the law was before the Act and what were the defects that are resolved by the legislation under construction. This rule of interpretation is favours and remedies the problem or the mischief.

The mischief rule is a rule that aimed at suppressing the mischief and to advance the remedy. Sometimes the mischief rule may not be a good tool like when new circumstances emerge, with cases which are unforeseen by the legislator and is beyond the reach of the statute. This statute addressed a particular mischief but then when a new mischief emerges, a new statute may be needed.

In this article the author mentioned about what is the mischief rule of interpretation and further the advantages as well as disadvantages of the mischief rule have been discussed. The various cases and the practical application of this rule of interpretation in various English as well as Indian cases has been discussed.

Key Words: Interpretation, Ambiguous, Old/common law, New-law, Remedy, Mischief.

1. Introduction

The mischief rule is a rule that aimed at suppressing the mischief and to advance the remedy. Sometimes the mischief rule may not be a good tool like when new circumstances emerge, with cases which are unforeseen by the legislator and is beyond the reach of the statute. This statute addressed a particular mischief but then when a new mischief emerges, a new statute may be needed.¹

Key words:

Interpretation: The term interpretation means to give a meaning which is free from all ambiguities. It is about explanation by the Judges of the meaning of the words or phrases contained which are contained in a statute.

Ambiguous: when there is more than one interpretation possible of a statute and where there is no one obvious meaning.

Old /Common law: old law means the law which is already existing is considered as old-law when a subsequent law/act is made on similar subject-matter and further in this context, the law which has failed to provide the remedy for the mischief occurred.

New law: The law which is made subsequent to an act when there is already an act existing before this act on a particular subject matter. In this context, the new law is brought to remedy the mischief.

Remedy: It is away available to cure the mischief and the way a right is enforced when there is any harm or injury or wrongful act has been imposed on another.

Mischief: The activity which causes some difficulty and make us consider it as evil or causing harm or annoyance, etc and which is required to be cured from the society.

This Mischief rule requires that while interpreting a statute, the court shall determine the mischief which was intended to be corrected by the legislature in the legislation by going into a voyage of discovery in order to determine the history of that legislation. The point to be noted

¹ Shrikant P Thombre."General principles of statutory interpretation with special reference to golden rule & mischief rule". International Journal of Law ISSN: 2455-2194; Impact Factor: RJIF 5.12, November 2019, www.lawjournals.org

is that every legislation is not essentially made to correct a mischief. Further it will be difficult if the particular judge is not well versed in history.

Hart and Sacks describe the technique for interpretation by beginning with the interpreter's goal of trying to put itself in imagination in the position of the legislature which has enacted the measure with an assumption that the legislature has been made up of the reasonable persons who are pursuing reasonable purposes reasonably.

Edward Coke said as following that "Faced with options and ambiguities, judges have guidance on how to resolve them and to read the statute in light of the mischief, and as a remedy for the mischief".

2. Case Laws:

i. Heydon's Case²

Heydon's case is one of the landmark case which had laid down the mischief rule of interpretation of statutes.

Facts: The Ottery college which is one of the religious college that gave the tenancy in a manor to a man who is named Ware and his son. The tenancy has been given in accordance with the copyhold and a copyhold was a certain form of landholding where the land was said to be held in accordance to the will of the lord as well as the customs of the manor, further the copyhold which was given to the Wares was part of a parcel. Then the parcel was leased to a man who is named Heydon.

Then that, less than a year later, the college was dissolved along with all the other religious colleges due to a law that parliament has enacted. Then the law which the parliament has enacted had a provision which kept in force the lease that was granted more than a year before the enactment of the Act.³

Decision: the lease that was granted to the Wares has been held as valid but the lease granted to Heydon was held to be void as the result of the provision.

² Heydon's Case [1584] EWHC Exch J36

³ Rai, Diva. "Statute Interpretation : Overview and Analysis." IPleaders, 28 Nov. 2019, blog.ipleaders.in/statute-interpretation-overview-and-analysis/.

Basis for Judgement: While making the decision, the court laid down the mischief rule and it was stated that in this case the statute shall be constructed by seeking the true intent of the Act makers.

The judges stated that while interpreting such statutes there are four essential considerations which should be kept in mind

That what was the existing common law before the Act.

That what all were the flaws for which the existing common law has not provided for..

That what is the remedy that parliament has come up with in order to resolve as well as cure the distress of the commonwealth Act.

That what is the true reason behind the remedy?

ii. Royal College Nursing vs. Department of Health and social security.⁴

Old statute- offences against the Persons Act, 1861

Mischief- It says that abortion as an offence

New statute-The Abortion Act 1967 (UK).

Remedy- If the doctors carry out abortions under certain situations, it is not an offence.

Issue: Whether nurses can administer hormonal Abortion (abortion within 9 weeks by use of medicine only without surgery) -This is very safe

Applying the mischief rule court held that it was legal for nurses to do so. The action of nurses was outside the mischief in old statute and within the scope of remedy in new statute.⁵

iii. Elliot vs Grey⁶

In this case the defendant's car was parked on the road which was jacked up as well as had its battery removed. Subsequently he has been charged for an offence for using an uninsured vehicle on the road, under the Road Traffic Act 1930. The defence made by defendant includes that his act does fall under 'using of car' as it was not driveable. But the Court has applied the

⁴ Royal College of Nursing v DHSS [1981] 2 WLR 279

⁵ "The Mischief Rule of Statutory Interpretation." Mischief Rule of Statutory Interpretation, www.e-lawresources.co.uk/Mischief-rule.php.

⁶ Elliot v Grey [1960] 1 QB 367

mischievous rule and further held that the car was being used on road which represented a hazard and that is why insurance requirement may arise in case of incident. The court clearly stated that the aim of the act was to ensure that people are compensated when they are injured due to the hazards that are created by others.

iv. **Corkery vs. Carpenter**⁷

In this case the defendant was caught when he was riding his bicycle while he was under the influence of alcohol. The S.12 of the Licensing Act 1872 has made it an offence to be 'drunk in charge of a 'carriage' on the highway'.

Here, the court has applied the mischief rule stating that bicycle riding falls within the mischief of the Act as by his action the defendant had represented a danger to himself as well as other road users. According to S.12 of the Licensing Act 1872, 'a person who is found drunk and is in charge of a carriage on the highway can be arrested without a warrant'. So, in this case a man was arrested who was drunk in charge of a bicycle. When you apply literal rule of interpretation then the bike is not a carriage but under the Mischief rule the bicycle could be constituted as a carriage. Here the mischief which the act intends to remedy is that of people while are drunk being on the road on transport. And that is why it was held that a bicycle could be classified as a carriage.⁸

v. **DPP v Bull**⁹

It is an offence for a 'common prostitute to loiter or solicit in a public street or public place for the purposes of prostitution' as per s.1(1) of the Street Offences Act 1959 and a man was charged under this section. The magistrates has held that he was not guilty on the grounds that 'common prostitute' only related to females and not to males. Then the prosecution has appealed by way of case stated.

Then the court has held that the Act only applies to females. The word prostitute was ambiguous and therefore the mischief rule has been applied. It has been held that the Street Offences Act was introduced as a result of the work of the Wolfenden Report into homosexuality and prostitution. The Report only referred to female prostitution and there is no

⁷ Corkery v Carpenter [1951] 1 KB 102

⁸ Agrawal, Subham. "Mischief Rule." SlideShare, 8 Sept. 2018, www.slideshare.net/mobile/SUBHAMAGRAWAL6/mischief-rule.

⁹ DPP v Bull [1995] QB 88

mention about male prostitutes.¹⁰ The QBD, therefore, has held that the mischief which the Act has aimed to achieve was to control the behavior of only the female prostitutes.

vi. Brown v. Brown¹¹

In this case Sir Jocelyn Simon P has said that the disadvantage of the old law regarding condonation of adultery was that, even though when a resumption of cohabitation would have actually promote the reconciliation which had yet taken place but a spouse who was wronged might be reluctant for resuming cohabitation, so then in case it did not succeed and then they would have lost the right to complain regarding matrimonial offense. The provision in sec 2(1) of the Matrimonial Causes Act 1963 (which is now contained in s 42 of the Matrimonial Causes Act 1965) that the adultery shall not be deemed to be condoned by reason that the continuation or resumption of such cohabitation between the parties for a period of up to 3 months was therefore limited to cases within this Mischief- where the cohabitation was with the view of that of effecting a reconciliation and it did not extend to the cases where that was in consequence of reconciliation.

vii. Smith v Hughes¹²

Under the Street Offences Act 1959 it an offence to solicit in a public place and the defendants in this case were charged for offence as prostitutes. The prostitutes had solicited from private premises in windows or on balconies so that it could be seen by the public.

Held: Here, the court applied the mischief rule saying that the defendants activities were within the mischief which the Act has aimed at even though under the literal meaning they would be in a private place.¹³

viii. Sodra Devi v. Commr. Of Income Tax¹⁴

In this case while computing the total income of any individual for the purpose of assessment where there shall be included so much of the income of a wife or of the minor child of such individual as arises indirectly or directly in accordance with section 16(3) of the Indian

¹⁰ Rao, Subhyanka. "Mischief Rule of Statutory Interpretation." Academike, Lawoctopus, 14 Mar. 2019, www.lawctopus.com/academike/mischief-rule-statutory-interpretation/.

¹¹ Brown v Brown (1967) p 105

¹² Smith v Hughes [1960] 1 WLR 830.

¹³ Agrawal, Subham. "Mischief Rule." SlideShare, 8 Sept. 2018, www.slideshare.net/mobile/SUBHAMAGRAWAL6/mischief-rule.

¹⁴ Sodra Devi v. Commr. Of Income Tax 1957 AIR 832, 1958 SCR 1

Income Tax Act 1922. Then in case of CIT v Sodra Devi the court has held that the legislature was guilty to have been using an ambiguous term. So it is clear that there is no certainty regarding whether the legislature was meant to enact these provisions with reference only to the male of the species by using the words any individual or such individual in its narrower sense of its term as it has been indicated above or is it intended to include the female of the species as well within the connotation of the words "any individual or such individual". So while holding the two words any individual and such individual as it is restricted in the connotation of it to mean only the male species, so the court has held that the mischief that was intended to be remedied by it and that which was the only resulting from the practice widespread where the husbands entering into the nominal partnerships with their wives and the fathers who are admitting their children and who are minors to the benefits of partnerships in which they were the members. Then, With the help of the Income-tax Act this evil has been sought to be remedied and the only intention of the legislature behind doing that was to include the income derived by the wife or the minor child in the computation of the total income of male assessee and the husband or the father as the case may be for the purpose of assessment.

ix. **RMDC v. UOI¹⁵**

under s 2(d) of the Prize competition act 1955, which provides definition of 'prize competition' was held to be inclusive of only those instances which has no substantive skill involved and that is why those prize competitions in which some skill was required had been exempted from the definition of 'prize competition' under s 2(d) of this Act. Hence, in this case, the Supreme Court has used the Heydon's Rule to suppress the mischief and advance the remedy, which is against the literal rule which could have covered prize competitions but where no substantial degree of skill was required for the success.

x. **Bengal immunity co. v State of Bihar¹⁶**

In this case the appellant company is an incorporated company which is carrying on business of manufacturing as well as selling various sera, vaccines, biological products and medicines. The registered head office of which is at Calcutta and the laboratory and factory are at Baranagar in the district of 24 – Perganas in West Bengal. It was registered as a dealer under the Bengal Finance Sales Tax Act whose registered number is S.L. 683A and that its products

¹⁵ RMDC v. UOI AIR 1957 SC 628

¹⁶ Bengal immunity co. v State of Bihar AIR 1955 SC 661

are having extensive sales throughout Union of India as well as abroad. The goods are dispatched from Calcutta by rail, steamer or air against the orders which were accepted by the appellant's company and this company has neither any agent or manager in Bihar nor it had any office, godown or laboratory within that State. Then the Assistant Superintendent of Commercial Taxes, ¹⁷Bihar wrote a letter to the appellant company on 24th october, 1951 which has concluded as follows :-

Therefore the necessary action may be required to be taken to get the firm registered under the Bihar Sales Tax Act. However the Steps which may be required to be taken to deposit Bihar Sales Tax dues in any Bihar Treasury at an early date with the intimation to that Department regarding it.

The principal question is that whether the tax that is threatened to be levied on the sales which were made by the appellant company and which has been implemented by delivery in the circumstances and in the manner in which it is mentioned in the petition is leviable by the Bihar state. By construing article 286 this has been done and the interpretation of which came into question and the meaning granted under this case to it is of *The State of Bombay v. The United Motors (India) Ltd* which has been overruled. This raises a question of construction of article 286 of the Constitution and then it was held that the Bihar Sales Tax Act, 1947 which in so far as it purports to tax sales or purchases that take place in the course of inter-State trade or commerce, is unconstitutional as well as illegal and void.

This Act also imposes tax on subjects divisible in their nature but does not exclude in express terms subjects which are exempted by the Constitution. And in such a situation the Act need not be declared wholly as ultra vires or void and then Until Parliament by law provides otherwise, for the State of Bihar to do forbear and then abstain from imposing the sales tax on out-of-state in respect of sales or the purchases which were taken place in the course of the inter-State trade or commerce, then even when the goods were delivered as a direct result of such sales or purchases for the purpose of consumption in Bihar and so the State has to pay the costs of the appellant in this Court as well as the court below.

¹⁷ Agrawal, Subham. "Mischief Rule." SlideShare, 8 Sept. 2018, www.slideshare.net/mobile/SUBHAMAGRAWAL6/mischief-rule

It is a principle used for interpreting a statute which states that the court should first examine the intention of the legislature. In this, the judges first find the defect in the statute and then apply the remedy for fixing the defect.

3. Advantages and Disadvantages of rule of mischief.¹⁸

Advantages:

1. It focuses on the intention of parliament behind making the laws.
2. It allows the judges to apply their minds.
3. The social and technological changes are considered by judges under this rule.
4. It allows for the sovereignty of parliament.
5. It helps in avoiding the unjust results.

Disadvantages:

1. It is difficult to decipher the intention of parliament.
2. It is considered to be an outdated rule of interpretation.
3. This rule makes the law uncertain.
4. It is said to be undemocratic as that gives too much power to the judiciary which is the unelected branch of the government.

4. Critical Analysis and conclusion:

This mischief rule of construction has narrower application than that of the golden rule or the literal rule and in that it can only be used in order to interpret a statute and then strictly speaking only when the statute was passed in order to remedy a defect in the common law. Legislative intent is generally determined by examining the secondary sources such as the committee reports, treatises, the law review articles and the corresponding statutes. Further this rule has often been used in order to resolve the ambiguities in cases in which the literal rule could not be applied.

¹⁸ Rai, Diva. "Statute Interpretation : Overview and Analysis." IPleaders, 28 Nov. 2019, blog.ipleaders.in/statute-interpretation-overview-and-analysis/.