THE IMPORTANCE OF THE LITERAL RULE OF STATUTORY INTERPRETATION IN THE READING OF THE INDIAN CONTRACT ACT, 1872

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ABSTRACT

Before the enactment of the Indian Contract Act (hereinafter referred to as the Act), there was no single, systematic set of rules that governed contract-making in colonial India. A mixture of indigenous and English laws of the contract was being practiced in the mofussils and Presidency towns, giving rise to widespread uncertainty and confusion in the law. Eventually, the codification of contract law in India led to the passing of the Act in 1872. The Act contains several provisions that have been adopted from English Common Law. However, there are several concepts in which the drafters have evidently deviated from the position in English Law. Some of these are the moment of contract formation, consideration, privity, and damages. Through a discussion of these concepts, this paper highlights the significance of statutory interpretation in reading the Act. The paper argues that Indian courts have not stuck to the 'plain meaning' of the Act while dealing with the above-mentioned concepts, which has resulted in complications in the interpretation and practice of contract law in India. These could have been avoided by sticking to the literal rule which considers only the plain or literal meaning of the words the lawmakers chose to employ to draft the provisions of the Act, instead of imposing Common Law provisions upon the same.

Keywords: Literal Rule, Purposive Approach, Plain Meaning, Wider Context, Statutory Interpretation.

INTRODUCTION

There are two legal systems in the world – the civil and the common law system. Codes and statutes are predominant sources of law in the former, while stare decisis or binding precedent plays a significant role in the latter. Doctrinal guidance leaves little room for individual discretion in the civil law system as a result of which judges have a primarily interpretative role.[1] On the other hand, common law systems are more flexible and judges

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[1] Margaret Fordham, 'Comparative Legal Traditions - Introducing the Common Law to Civil Lawyers in Asia' (2006) 1 Asian Journal of Comparative Law

play a pivotal role in the development of the law on a case-by-case basis.[2] Indian law is a combination of the civil and common law systems. The Indian Contract Act was a statute (code) constructed between 1863 and 1866 by the Third Law Commission in England.[3] The primary aim of interpreting a statute is to give effect to the intention of the Legislature. As defined by Black's Law Dictionary, a statute is a law passed by a legislative body or is legislation enacted by any lawmaking body, including legislatures, administrative boards, and municipal courts. In simple terms, it can be understood as the will of the legislature.[4] A statute can be understood either by its plain meaning or by giving the words a larger context. There are four rules or methods of interpretation known as the 'canons of statutory interpretation.'

The Canons of Statutory Interpretation:

The four rules or approaches of statutory interpretation are – the literal rule, the purposive approach, the golden rule, and the mischief rule.

The literal rule focuses on the primary or most obvious meaning of an Act on the assumption that the words used in the Act clearly show the Parliament's intention in passing it.[5] In Smitha Subhash Sawant v. Jagdeeshwari Jagdish Amin,[6] it was held that if the language of a statute is plain, clear, and unambiguous, then the words of the statute have to be interpreted by giving them the natural meaning and the Court cannot read any words which are not mentioned in the Section nor can substitute any words in place of those mentioned in the Section and at the same time cannot ignore the words mentioned in the Section.[7]

However, where the plain interpretation of the provision produces an unjust or absurd result that could never have been intended by the legislature, the court might modify the language used by the legislature to ascertain its intention and produce a rational result. This is aided by the purposive approach which considers the widest context which brought the Act into being – its purpose.[8]

[2]ibid
[3] Aubrey L. Diamond, 'Codification of the Law of Contract' (1968) 31 Mod L Rev 361
[4] Justice P.S. Narayana and Dr. Sukhwinder Singh Dari, *Statutory Interpretation*, (2nd edn, Asia Law House 2019) 5
[5] James Holland and Julian Webb, 'Interpreting Statutes,' *Learning Legal Rules: A Student's Guide to Legal Method and Reasoning*, (8th edn, Oxford University Press 2013) 262
[6]2013 (6) SCC 278
[7]Narayana and Dari (n4) 155
[8]Holland and Webb (n5) 265

The golden rule, espoused in River Wear Commissioners v. Adamson,[9] is a bridge between the literal and purposive approaches, acting as a backup in case the literal rule fails to give a coherent and logical result. It does so by probing into the purpose of the Act which may involve examining the wider legal, or even social setting of the Act.[10]

The mischief rule was first introduced in Heydon's case,[11] where the Court concluded that the purpose of a statute was to cure a mischief resulting from a defect in the common law. The court considered the common law before the Act, the 'defect or mischief' for which the common law did not provide, the remedy that the legislature intended to provide, and the true reason for the remedy.[12]

Initially, even though statutory interpretation comprised four rules, one can say that these rules are now encompassed under the broad ambit of literal and purposive interpretation.

Ignoring the Plain Meaning of the Act:

Common observations of judicial interpretation and decision-making lead to the conclusion that merely sticking to the plain meaning or internal context of a statute can provide an unjust result. Therefore, judges often consider the wider purpose or external context of a statute. This can be explained by taking the example of the batch of petitions seeking legal recognition of same-sex marriages that were filed before the Supreme Court of India in May 2023. Arguing on behalf of the Centre, Solicitor General Tushar Mehta stated that the words used by the lawmakers in the Special Marriage Act, 1854 (SMA) clearly show that they intended to include only heterosexual marriages under the Act.[13] However, this method of reading the SMA will result in injustice to the entire queer community in India. On the other hand, senior advocate AM Singhvi, representing the petitioners, argued that the rule of purposive interpretation must be used to interpret the SMA as when the laws were first enacted, homosexuals were not considered.[14] Therefore, ideally, the statute should be interpreted as including all special marriages, not just those inter-faith or inter-religion.

[9] (1876–77) 2 App Cas 743
[10] Holland and Webb (n5) 266
[11] (1584) 76 ER 637
[12] Holland and Webb (n5) 268
[13] Khadija Khan, 'SC Reserves Verdict on Same-Sex Marriage: Here Are the Arguments Made over 10 Days' (The Indian Express, 15 May 2023) & lt; <https://indianexpress.com/article/explained/explained-law/sc-same-sex-marriage-here-are-the-arguments-over-10-days-8609177/>> accessed 18 June 2023
[14] ibid

However, what is different about the interpretation of the Indian Contract Act is that deviating from the literal or plain meaning of the Act while interpreting certain sections has led to absurd, illogical, and sometimes unjust results. It can be observed that despite the obvious intention of the drafters to differ from pre-code contract law, there is a tendency of Indian courts to relapse to these orthodox provisions.

1. Moment of Contract Formation:

The English law of contract is largely influenced by Robert Joseph Pothier's Will Theory. The Will Theory says that the completion of a contract or the moment of contract formation is based on the doctrine of consensus ad idem which means that there has been a meeting of minds of the parties involved. Therefore, according to English law, the moment of formation of the contract is when the offeree or acceptor dispatches the acceptance. There is no need for the intimation of acceptance to the offeror as the sending of acceptance shows that there has been a meeting of minds or concurring of wills between the two parties to the contract.[15] This is known as the dispatch rule and was supported in Adams v. Lindsell,[16] further gaining judicial recognition in Household Fire and Carriage Accident Insurance Co. Ltd v. Grant.[17] This led to a major anomaly as an unfair consequence of an acceptance resulting in a contract would be that the acceptor is unable to revoke the acceptance. Further, the contract would be binding irrespective of whether or not acceptance reached the offeror.

Eventually, the dispatch rule began to be restricted to cases of the post alone and began to be known as the postal rule.[18] The need for the communication of acceptance to the offeror was recognized in Entores v. Miles Far East Trading Corporation[19] and thus, a separate rule was formed that applied to modes of instantaneous communication such as those over the telephone.

The drafters of the Indian Contract Act recognized these anomalies and sought to prevent the same. This can be understood by a plain reading of Sections 4 and 5 of the Act. Section 4 clearly states that the acceptance of a proposal is complete as against the proposer when it is

[15] Shivprasad Swaminathan, 'The Will Theorist's Mailbox: Misunderstanding the Moment of Contract Formation in the Indian Contract Act, 1872' (2016) 39 Statute Law Review 14
[16] (1818) 1 B &Ald 681
[17] (1879) 4 Ex D 216
[18] Swaminathan (n15) 17
[19] (1955) EWCA Civ 3

dispatched by the acceptor.[20] Additionally, it is complete as against the acceptor only when it comes to the knowledge of the proposer.[21] Section 5 states that revocation of a proposal by the proposer or acceptor can be done before it comes to the knowledge against whom it is made.[22] This gave the acceptor sufficient time to revoke the acceptance if necessary and ensured that the proposer could not revoke the proposal after acceptance had been dispatched. However, Indian courts have misinterpreted Sections 4 and 5 as supporting the dispatch rule or postal rule in cases such as Baroda Oil Cakes v. Purshottam[23] and BhagwandasGoverdhandasKedia v. GirdharilalParshottamdas.[24]Thus, by deviating from the literal meaning and providing a different context to the sections of the Act, the courts have brought back the defects that existed in the English law of contracts.

2. Consideration:

Courts in England looked at consideration as something that had value in the eyes of the law. Ideally, it was supposed to be a monetary exchange between two parties that accrued a 'benefit' to the promisor while simultaneously resulting in a 'detriment' to the promisee. However, Indian legislators wanted to differ from this exchange model of consideration.[25] They did so by widening the scope of consideration under Section 2(d) of the Act.[26] The Section states that 'consideration can move from the promisee or any other person at the desire of the promisor.'[27] Had the courts stuck to the plain meaning of the section, the result would have been that consideration would now be measured at the desire of the parties alone, as opposed to an external standard.[28] Further, there would be no requirement of a benefit or detriment. English law also contained several rules of consideration such as Pinnel's Rule (an agreement to accept a lesser amount of money in settlement of a larger debt is not enforceable because there is no consideration), pre-existing duty rule (a promise to pay for an act that the promisee is already under a pre-existing duty to perform is unenforceable as the second agreement is without consideration), and past consideration rule (a promise to compensate someone for a past voluntary action is without consideration and cannot be enforced).

[20]Indian Contract Act, 1872 s.4
[21]Indian Contract Act, 1872 s.4
[22]Indian Contract Act, 1872 s.5
[23] (1954) 57 ILR Bom 1137 (Bombay High Court)
[24]AIR 1966 SC 543 (Supreme Court of India)
[25]RN Gooderson, 'English Contract Problems in Indian Code and Case Law' (1958) 16 The Cambridge Law Journal 71
[26] Shivprasad Swaminathan, 'Eclipsed by Orthodoxy: The Vanishing Point of Consideration and the Forgotten Ingenuity of the Indian Contract Act 1872' (2017) 12 Asian Journal of Comparative Law 141
[27]Indian Contract Act, 1872 s. 2(d)
[28]Swaminathan (n26) 141

Additionally, consideration could not be illusory. Through Section 2(d), the drafters intended to dismantle the rule that stated that consideration could not be illusory. Section 63 dispensed with Pinnel's rule and Section 25 provided for moral consideration through natural love and affection.[29]The Act also does not provide for the pre-existing duty or past consideration rules.

However, the disregard of these sections by courts in India has resulted in an ingenious piece of draftsmanship becoming eclipsed by orthodoxy.[30] Further, the doctrine of promissory estoppel has also been imported from English Law. This would not have been necessary if the courts had stuck to the literal meaning of 2(d). The words 'promises to do or to abstain from doing, something'[31] implies that the promisee can rely on a promise and perform an act, as a result of which the offeror would be bound to the offer. Thus, the correct interpretation of 2(d) would have provided the same result as the Common Law doctrine of Promissory estoppel.[32] Thus, the imposition of the provisions of English Law on the Act has resulted in a rigid and inflexible definition of consideration, causing difficulties for parties who want to enter into a contract.

3. Privity:

The doctrine of privity comprises two rules – the privity of consideration and the privity of contract. At the time the Act was drafted, the only rule that existed in England was the privity of consideration which stated that a person from whom consideration does not move cannot sue upon the contract.[33] This rule has distinctly been dismantled by the drafters of the Act through the wide scope of consideration under Section 2(d) which states that consideration can move from the promisee or any other person.[34]Therefore, keeping in mind the intention of the drafters, the doctrine of privity should not have existed in Indian Contract Law.

However, due to the influence of prominent editors Frederick Pollock and Dinshah Mulla, Indian courts have ignored the plain meaning of 2(d) and interpreted the definitions of promisor and promisee under 2(c) as implying that these are the only ones who can sue upon a contract.[35]This gave rise to the privity of contract rule in India which states that a person not

[29]ibid
[30]ibid
[31]Indian Contract Act, 1872 s.2(d)
[32]Swaminathan (n26) 161
[33] Shivprasad Swaminathan, 'The Great Indian Privity Trick: Hundred Years of Misunderstanding Nineteenth Century English Contract Law' (2016) 16 Oxford University Commonwealth Law Journal 160
[34]Indian Contract Act, 1872 s.2(d)
[35]Swaminathan (n33) 179

a party to the contract cannot sue upon it. This interpretation of the Act has been upheld by the Calcutta High Court in Krishnalal Sadhu v. Pramila Bala Dassi[36] and the Supreme Court in M. C. Chacko v. State Bank of Travancore.[37] This is another instance of complicating the law by trying to bring objectivity in a place where the parties' subjective intention was of great importance. Despite the clear words used in the Section, a different context or perspective has been given to it during interpretation by courts.

4. Damages:

The Common Law provided for a separation between liquidated damages and penalties under the ambit of damages, first introduced in Dunlop Pneumatic Tyre Co. Ltd. v. New Garage and Motor Co. Ltd.[38] If the clause in the contract contained a stipulated sum that was a genuine pre-estimate of damages, it would be considered a liquidated damages clause and could be enforced. On the other hand, if it was not a genuine pre-estimate but rather an extravagant sum, it would be considered a penalty and could not be enforced.[39]

The framers of the Act wanted to do away with the ambiguity resulting from this dichotomy and hence stated in Section 74 that reasonable compensation would be granted by the Court in case of a breach, irrespective of the sum named in the contract.[40] There was no question of liquidated damages or penalties. However, an amendment to Section 74 in 1899 introduced the term 'stipulation by way of penalty' to expand the section to cover acceleration clauses and payments in specie.[41] The courts incorrectly interpreted the word 'penalty' as referring to the Common law concepts of liquidated damages and penalties. Thus, despite the difference in the plain meaning of the Section, this dichotomy is now firmly established in Indian law, upheld in Fateh Chand v. Balkishan Das,[42] Maula Bux v. Union of India,[43] and other cases. In ONGC v. Saw Pipes, the respondent Saw Pipes entered into a contract with the appellant ONGC for the former to supply the latter with casing pipes along with a liquidated damages clause that provided 1% of the price per week of delay upto a limit of 10%. Here, the Supreme Court of India ruled that in this situation, no proof of loss needs to be shown as the

[36] 32 CWN 634 (Calcutta High Court)
[37] (1970) AIR 500 (Supreme Court of India)
[38] (1915) AC 79
[39] Shivprasad Swaminathan, 'De-Inventing the Wheel: Liquidated Damages, Penalties, and the Indian Contract Act, 1872' (2018) 6 The Chinese Journal of Comparative Law 103
[40] ibid
[41] ibid
[42] (1964) 1 SCR 515 (Supreme Court of India)
[43] (1969) 2 SCC 554 (Supreme Court of India)

amount in the clause was a genuine pre-estimate of damages.[44] This causes several difficulties in the formation of commercial contracts as there is a lot of ambiguity over how the proof of a genuine pre-estimate of damages must be established. In what manner must the proof be shown and how do we determine what is 'genuine' in a particular scenario?

CONCLUSION

The aforementioned complications could have been avoided by simply sticking to the plain meaning of the Act, instead of considering them from a different context or purpose. The provisions of the Act had great reformatory potential and would have been very effective in mitigating several problems that people face today concerning contract-making. However, this potential has been suppressed by the courts as they have blindly resorted to English Law, which has resulted in an inaccurate and ineffective interpretation of the Act. Therefore, it is important to conform to the reforms introduced by the drafters by interpreting the Act through its ordinary meaning, giving due effect to its well-drafted provisions. This can be achieved by following the literal rule of statutory interpretation. Thus, the literal rule of statutory interpretation plays a significant role in the reading of the Indian Contract Act, 1872.

[44] Oil and Natural Gas Corporation Ltd v Saw Pipes Ltd (2003) 5 SCC 705 (Supreme Court of India) (ONGC)