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# “Mischief” Rule of Interpretation: Beginning of a New Jurisprudence

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## ABSTRACT

*Interpretation of statute is an integral part of the ever evolving legal jurisprudence. Purposive interpretation or the Mischief rule of interpretation of statute has always been a tricky one and more often than not has proved to be quite a challenge to apply. This project aims to understand the applicability of the mischief rule of interpretation and its extent. After understanding the applicability and extent of mischief rule the author will further deal with the interpretation of the word “wife” by the Indian Judiciary in connection with section 498A of Indian Penal Code and section 125 of CrPC with relevant case laws.*

**Keywords:** Purposive Interpretation, Default Rule, Legislative Intent, Hayden

## I. INTRODUCTION

Interpretation in its most general sense can be understood as synonymous with explanation. That being said one has to understand why interpretation is necessary in the legal realm and the legal meaning attached to the word “interpretation”.

It is to note that irrespective of the fact that the law can be codified or un-codified, the intention behind interpretation of such law remains the same that is to bring uniformity and the responsibility of doing so falls to the judiciary. Application of judicial mind is of utmost importance in this regard but then again question of to what extent such application of judicial mind is desirable or permissible needs to be scrutinized carefully.

Answering the second question of what is the legal meaning attached to the word “interpretation”, it is to assert that there isn’t a single exhaustive definition which will truly encompass the true essence of interpretation in the legal realm.

Renowned Jurist Salmond aptly said that: “by interpretation or construction is meant, the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed.”<sup>2</sup> This definition by Salmond

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<sup>2</sup>Mayank Shekhar, *Introduction, Meaning and Nature of Interpretation*, Legal Bites (16<sup>th</sup> November, 2020, 5:00

essentially draws out two of the most important characteristics of interpretation:

- A. It is the tool to ascertain, clarify, and explain the legislative intent behind a particular law.
- B. The nature of interpretation has a binding element to it which flows from the court's authority in this juncture.

There are a plethora of rules that the courts are entitled to follow while interpreting law and mischief rule is one of the trickiest if not the trickiest among them all.

## **II. WHAT IS “MISCHIEF” RULE OF INTERPRETATION?**

Before analyzing, understanding the “mischief” rule let us first deal with the question of under what circumstances can mischief rule be applied by the courts as a means of interpreting the law or in other words the applicability and extent of mischief rule. To answer such question one has to clearly realize one of the very basic principles of “interpretation”. In this regard let us stress upon the principle of separation of power which essentially compartmentalizes the three wings of government, i.e., executive, legislation and judiciary. Thus, it is quite evident that legislation is supposed to make the law and the judiciary is supposed to ensure the due process of law. This might be confusing as judiciary is not supposed to make laws and therefore prima-facie the rationale of entrusting them to interpret the law made by the legislation which the legislation is supposed to do at the first place will seem dicey if not essentially vague.

The author will like to remind the readers that it is indeed not the work of the judiciary to make laws and even interpret them but sometimes certain situations arise where it becomes unavoidable to not interfere with the activities of legislation. This kind of situation arises when a particular law is ambiguous, vague or has failed to keep up with time and therefore needs the judicial intervention to remain contemporary and it is in this backdrop that the courts are bestowed with the sacrosanct duty of interpreting laws and as a consequence of such make new laws as and when required.

The Hon'ble courts while discharging its primary objective of ensuring due process of law merely reassert and confirm the legislative intent; this bare reading of laws is known as literal interpretation and is considered to be the “grundnorm” or the default rule. Therefore it is conclusive that the applicability of mischief rule of interpretation only arises in those cases where legislation has failed to duly discharge their duties. Mischief rule of interpretation is a

discretionary power that the courts enjoy and use to intervene in the jurisdiction of legislation as a last resort to clarify and mold the legislative intent to bring out the true essence of such legislation and thereby to meet the ends of justice and thus must not be mistaken as a default rule of interpretation or a mandate on the court's part. In the case of *Re Sussex Peerage it was held that* the mischief rule should only be applied where there is ambiguity in the statute.<sup>3</sup>

After having a basic understanding of the applicability of mischief rule of interpretation, now let us understand the extent of application of such rule. In this regard the Hayden case (1584) acts as the supreme authority. The *Hayden's* case reported by Lord Coke and adjudicated by the Barons of the Exchequer laid down the four following rules which the Hon'ble courts are needed to take into consideration before applying the mischief rule of interpretation:

“That for the sure and true interpretation of all statutes in general, be they penal or beneficial, restrictive or enlarging of the common law; four things are to be considered –

- 1) What was the common law before the passing of the Act?
- 2) What was the mischief and defect for which the common law did not provide?
- 3) What remedy the Parliament hath resolved and appointed to cure the “disease of the Commonwealth”.
- 4) The true reasons for the remedy.”<sup>4</sup>

### III. INDIAN COURTS AND APPLICATION OF “MISCHIEF” RULE OF INTERPRETATION

Examples of application of “Mischief” rule of interpretation by the Indian Judiciary in all honestly are abundant. The Hon'ble Indian courts in a plethora of cases while dealing with several aspects of law have relied on the mischief rule of interpretation. To understand the jurisprudence involving the mischief rule developed by the Indian courts in a better way the author will like to observe, analyze and comment on the interpretation of the word “wife” in reference to Sec 498A IPC and Sec 125 Crpc.

#### Interpretation of “wife”

The question of who is a “wife” under section 498A of IPC has sparked much debate and as a matter of fact has divided our judiciary. In this regard it is important to understand both the contrary views of the Hon'ble apex court. The first view came in the case of *Shivcharan Lal*

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<sup>3</sup>Subhyanka Rao, *Mischief Rule of Statutory Interpretation*, Academike (16<sup>th</sup> November, 2020, 6:15 P.M.), <https://www.lawctopus.com/academike/mischief-rule-statutory-interpretation/>

<sup>4</sup>*Id.* At 2

*Verma And Anr. vs State Of Madhya Pradesh*<sup>5</sup>(2002) where the three judge bench of the Hon'ble Supreme court comprising Ld. Justices G Pattanaik, S Phukan, S Variava concluded that the second marriage of a Hindu male while his first marriage is still subsisting, is null and void and thus the statuses of "wife" and "husband" can't be attributed to such marriage and thus a case of cruelty which is in connection to the second marriage, under sec 498 of IPC must fail.

In this context it is important to realize the nature of marriage under the Hindu law. Hindu Jurisprudence views marriage as a sacrosanct, an eternal bond which can't be dissolved at all cost. I am of the opinion that this institutional approach towards marriage influenced the Hon'ble Supreme court's judgment in the *Shivcharan Lal Verma's* case. But one has to remember that even with this much strong institutionalized beliefs towards marriage the Hindu jurisprudence also provided us with certain grounds for dissolution of marriage, such as incident of desertion which later on got enlarged with the enactment of Hindu Marriage Act, 1955. Without going into the depth of Hindu marriage Act and the statutory provision for divorce under such act I will like to argue that this diluted the institutionalized, sacrosanct nature of marriage and this premise is important for the next part of discussion.

The next part of the discussion will focus on the legislative intent behind the incorporation of sec 498A in the IPC. The legislative intent was to protect married women from getting physically, mentally harassed, tortured, and tormented by their husband or relative of their husband. The provision intended to prevent the horrific abuses that a woman has to face in her matrimonial house and thereby prosecute the abusers as domestic violence against women in India was rising in an exponential rate. This coupled with the fact that the concept of marriage as an institution has been diluted with the advent of Hindu Marriage Act, 1955 which effectively consolidated, codified the common law jurisprudence of the Hindu's called for a more rational, radical change. The Hon'ble supreme court answered such call in the case of *Reema Agarwal V Anupam*<sup>6</sup> (2004) opining that: "If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship

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<sup>5</sup> *Shivcharan Lal Verma and Anr. vs. State Of Madhya Pradesh*, (2002) JT (2) SC 641 (India)

<sup>6</sup> *Reema Agarwal v. Anupam*, (2004) SCC 3 199 (India)

and under the color of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B Indian Penal Code.” Such an interpretation, known and recognized as purposive construction has to come into play in. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A Indian Penal Code, viewed in the context of the very object and aim of the legislations introducing those provisions.<sup>7</sup>

I am of the opinion that this rationale is a beautiful example of the application of the mischief rule to analyze and mold the legislative intent to deal with the contemporary societal issues and therefore even being a division bench judgment, must carry higher importance value than that of the precedent laid down by the larger bench in the case of Shivcharan Lal Verma.

The Hon’ble courts of India once again stumbled upon this very question of who is a wife while dealing with sec 125 of CrPC. Similar to that of the debate sparked by the same question in connection of sec 498A of IPC but unlike that of the apparent contradicting interpretations of Sec 498A by the Hon’ble supreme court, the development of liberal jurisprudence revolving sec 125 of Crpc has been rocky yet a steady one.

The groundbreaking step of applying mischief rule of interpretation began with the case of *Mohd. Ahmed Khan v Shah Bano Begum & ors*<sup>8</sup> (1985). Ld. justice Y.V. Chandrchud observed in this case that: “Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. What difference would it then make as to what is the religion professed by the neglected wife, child or parent? Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of section 125. Such provisions, which are essentially of a prophylactic nature, cut across the barriers of religion. The liability imposed by section 125 to maintain close relatives who are indigent is founded upon the individual’s obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion.”<sup>9</sup>. This rationale again satisfies and qualifies the ground rules laid down by the *Hayden’s* case. The court clarified the legislative intent behind sec 125 of CrPC which is to ensure the survival of

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<sup>7</sup> Reema Aggarwal vs Anupam And Others, (2013), CRR-2424-2002 (India)

<sup>8</sup> Mohd. Ahmed Khan v Shah Bano Begum & ors, (1985) AIR 945 (India)

<sup>9</sup> *What is Shah Bano Case?*, The Indian Express (18<sup>th</sup> November, 2020, 7:00 P.M.), <https://indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/>

such persons who are unable to maintain themselves. The socio-economic condition of that period would indicate a strong patriarchal society. Further the author will vehemently argue that the common law jurisprudence attributable to the Muslims indeed didn't provide any such remedy to a divorced woman to claim for maintenance and thus the court's stand to acknowledge the absence of any remedy in the common law and to extend the remedy given by the parliament to all women irrespective of their religion must be appreciated.

The Hon'ble apex court further in the case of *Pyla v. Pyla Suri* (2011) held that "marriage" for the purpose of sec 125 of CrPC need not be a "de-jure marriage" rather a "de-facto marriage" will vest a woman with the status of "wife" and thereby enabling her to seek maintenance from her husband. This was meant to protect women from 'false denial of marriage' by husbands with a view to wriggle out of liability to pay maintenance.<sup>10</sup> In the same line of thinking the Hon'ble Supreme court once again asserted and reaffirmed that the interpretation of the word "wife" under sec 125 of Crpc must and does encompass such cases where there is concealment of fact of first marriage from the second wife and she has been deceived into believing that she is the first wife.<sup>11</sup>

#### IV. CONCLUSION

It will not be an exaggeration to claim that mischief rule of interpretation helps to gap the bridge between judiciary and legislation, if any. While this rule of interpretation has immense potential, the courts have to honour its limitation more than its applicability as to ensure that they don't over-step. The author will further like to remind the readers that this rule of interpretation must be acknowledged as a preventive, defensive measure to certain justice to the aggrieved party; upon legislation's failure to discharge its duty. To sum up and to conclude two premises need to be realized extensively:

1. Mischief rule is not the default rule on interpretation rather one of the discretionary powers of the courts.
2. That the courts have a legal duty to apply mischief rule of interpretation to suppress any "mischief" for which common law hasn't given a remedy and thereby extending the remedy given the parliament for such purpose.

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<sup>10</sup>Bharat Chugh, *Who is a "Wife" for the purposes of sec 125 of the CrPC?*, Rahul's IAS-The official Blog (20<sup>th</sup> November, 2020, 8:30 P.M.), <https://rahulsiasblog.com/2016/11/13/who-is-a-wife-for-the-purposes-of-section-125-of-the-crpc/>

<sup>11</sup> *Id.* at 7