11
UHA AND *BADHA*

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11.1 *UHA* (Adaptation)

Uha literally means sound reasoning. In *Mimansa*, it has come to mean adaptation. Adaptation in this context, covers not only (i)verbal adaptation (substitution of words or grammatical declension), but also(ii) the supplying of ellipses. According to Sarkar, *Uha* corresponds to the modern approach of adopting a construction most consonant to justice and reason[1]

11.2 *Badha* (Exclusion by repugnancy)

Badha is the technique adopted in the *Mimansa* system for the reconciliation of conflict when two texts are contradictory and the conflict cannot be otherwise reconciled. When *Badha* applies, one text is taken as overriding the other. There are elaborate rules as to the situations in which such "exclusion by repugnancy" can be resorted to. The best treatment of the subject is by Sree Bhatta Sankara [2].

The doctrine is called "*Badha*" (obstruction or bar), because in such cases the superior text is taken as overriding the inferior text.

11.3 Examples of *Badhas*

Some interesting examples of *Badha,* drawn from Sree Sankara Bhatta's work on the subject, may be mentioned at this place.

(a) That which precedes, is barred by that which follows (provided neither of the texts is considered fundamental) पूर्वम् परेण बाध्यते ।

(b) That which occurs slightly, is barred by that which occurs amply अल्पम् भूयसा बाध्यते ।

(c) That which is not opportune is barred by that which is opportune निरवकाशम् सावकाशेन बाध्यते ।

(d) That which is in the nature of a part, is barred by that which is in the nature of a whole अंगम् प्रधानेन बाध्यते ।

(e) That which is obtainable only by reference, is barred by that which is directly taught.

11.4 *Badhas* as to superiority of various sources of rules

There are, according to Sree Bhatta Sankara, several *Badhas* which determine the relative superiority of various sources of rules. Following are some important examples:-

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1. Sarkar, pages 207-213.
2. See Bhatta Sankara, *Mimansa Valaprakasha*; pages 131-133 (Mukund Shastri's edition), Sarkar Pages 213-222.

(a) A *Sruti* bars a *Smriti.* श्रुत्या स्मृतिर्बाध्यते ।

(b) A *Sruti* bars an *Achara.* श्रुत्या आचार: बाध्यते ।[1]

(c) A *Sruti* of doubtful character is barred by a *Sruti* free from doubt. सन्दिग्धम् असन्दिग्धेन बाध्यते ।

(d) That which has multifarious meanings, is barred by that which has a single meaning. अनेकार्थत्वम् एकार्थत्वेन बाध्यते ।

(e) An unapproved usage is barred by an approved usage. आप्ताचारेण अनाप्ताचारो बाध्यते ।

(f) A manifest sense is barred by the context.

(g) A secondary sense is barred by primary sense.

(h) If you can supply an ellipsis from the express words, you cannot go beyond them. अनुषंगेण अध्याहारो बाध्यते ।

11.5 Modern counterparts of *Badhas*

Some of the *Badhas* (bars) mentioned above, have modern counterparts. Thus, the hierarchy of *Sruti, Sm~iti* and *Achara*[2] laid down by the *Badha* is paralleled by the accepted position in modern law, under which legislation can, in general, override (i) case law, and (ii) custom. Again, as per well-established modern rules, legislation can definitely claim superiority over statutory instruments. But the *Mimansa* rules as to a text which is a 'part' being overridden by the 'whole'[3] is useful.

11.6 Maxim as to subsequent law

Modern legal theory is familiar with the maxim *Leges posteriores priores contrarias abrogant* (Later laws abrogate earlier contrary laws). The maxim is found in Coke, 1st. 25b. Of course, this maxim has to be read with another maxim which may, at times, counter-balance the former. The counter-balancing maxim is -*generalia specialibus non derogant.*

11.7 Conflict between various sources

An elaborate statement of the position resulting from conflict between various sources of law is to be found in an English work on ecclesiastical law.[4] The author first explains that the ecclesiastical law consists of the following:-

(a) civil law (i.e. Roman law);
(b) canon law;
(c) common law; and
(d) statute law.

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1. Jaimini, I.3,8,9.See details in Jha (1964), pages 207,209,210.
2. Para 10.7(a) and (b), *supra.*
3. Para 10.7 (c), *supra.*
4. R. Burn, The Ecclesiastical Law, cited by Bennion,Statutory Interpretation (1984), page 95.

The author then goes on to say as under:-

> "When these laws do interfere and cross each other, the order of preference is this: the civil law submitteth to the canon law; both of these (submit) to the common law; and all three (submit) to the statute law."

11.8 Doctrine of what is "opportune"

Reference has been made above[1] to the *Mimansa* rule that prefers what is opportune, to what is not opportune. In this context, mention may be made of the modern rule that in interpreting statutes, the courts try to avoid a construction that is absurd. The word "absurd" is derived from the Latin word "surdus", which means 'deaf". It means "deaf to reason"[2]. Claudius told Hamlet that excessive mourning for a dead father was "To reason, most absurd".[3] A judge in modern times avoids a construction that would lead to absurdity.[4]

11.9 Custom and statute

As regards custom being overridden by statutory text,[5] it is well-established in modern law that a statutory provision overrides rules derived from custom[6],. This is because, in general, a statute can have abrogative effect.[7]For example, in England, when the common law crimes of maintenance, challenging to fight and "eavesdropping" came to be considered as obsolete, it was possible to enact the Criminal Law Act, 1967, section 13 of which abolished these offences. The following observations of Mr. Justice Ungoed Thomas are apposite[8]:-

> "What the statute itself enacts cannot be unlawful because what the statute says and provides is itself the law, and that the highest form of law that is known to this country. It is the law which prevails over every other form of law, and it is not for the court to say that a parliamentary enactment, the highest of this country, is illegal".

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1. Para 11.3(c), *supra.*
2. Bennion, Statutory Construction (1984), page 386.
3. Hamlet, I.ii,103.
4. Erven Warnink BV v. J. Townsend and Sons (Hull) Ltd., (1982) 3 All E.R. 312.
5. Para 10.8 (b), *supra*
6. Cairnplace Ltd. v. CBL (Property) Investment Co. Ltd., (1984) 1 All E.R. 315.
7. *Cf.* Paton,Textbook of Jurisprudence (1972), page 243.
8. Chenny v. Cann, (1968) 1 All E.R. 779, 782.