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THE *MIMANSA* PROCESS OF INTERPRETATION: METHODOLOGY AND STRUCTURE

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3.1 The Methodology

In any intellectual exercise, the methodology is as important as the content of the doctrines resorted to. Interpretation is an intellectual exercise. Whether one resorts to the literal construction, or the "mischief" rule, or the "functional" interpretation, one has to follow (expressly or impliedly) certain steps of reasoning. A look at the process resorted to by writers on *Mimansa* would therefore be useful.

3.2 The *Mimansa* method: *Adhikarana*

The classical statement of the *Mimansa* method in this regard is that of Kumarila Bhatta.[1] "The text under consideration, the doubt concerning it, the first side, the other side or answer and the conclusion, all these constitute an *Adhikarana* (a complete theme).

विषयो विशयश्चैव पूर्वपक्ष:
तथोत्तरम्
निर्णयस्येति पंचागं, शास्त्रेऽ धिकरणम्
स्मृतम ।

Colebrooke[2] explains "*Adhikarana*" (the five steps of reasoning) as under:-

I. The subject or matter to be explained.

II. The doubt or question arising out of that matter.

III. The first side or *prima facie* argument.

IV. The answer or demonstrated conclusion *(Siddhanta)*.

V. The pertinence or relevance.

Maxmueller[3] sets out the five members of an *Adhikarana* as under:-

1. The subject to be explained *(Vishaya)*.
2. The doubt *(Samsaya)*.
3. The first side or the *prima facie* view *(Purvapaksha)*.
4. The demonstrated conclusion *(Siddhanta)*.
5. The connection *(Sangati)*.

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1. Kumarila Bhatta, cited by Sarkar, page 62.
2. Colebrooke, Miscellaneous Essays, page 326
3. Maxmueller, cited by Sarkar, pages 263, 265.

3.3 Modern analogues

At the first sight, the ancient Indian method described above may appear to be crude or pedantic. But, in fact, that is substantially the procedure contemplated by the Code of Civil Procedure 1908 in regard to the trial of a civil suit.[1] The parties are required to file pleadings, setting out their cases. On the basis of the pleadings, the "issues" are framed, setting out the points in controversy. Besides this, the judge, when he writes his judgment, is required to state the facts of the case, the points for decision, the decision on those points and the reasons for the decision. The chronology so laid down in the Code bears a striking resemblance to the Indian method.

3.4 An example from case relating to statutory interpretation

In modern law, an example of such an approach, adopted while discussing a point of statutory interpretation, can be found in a Privy Council judgment.[2] The question at issue was, whether tractors mounted on four wheels (each weighing 18000 lbs) and trailers mounted on two wheels (each weighing 17000 lbs) were "carriages" within the meaning of Schedule A to the Jamaica Wharfage Law of 1895. That law referred to "carriages, four wheels" and "carts and carriages of two wheels". The Privy Council held that they were not "carriages". The legislature could not have intended articles of the weight and complexity of these tractors to be included. Mr. L.M. de Silva (on behalf of the Privy Council) said:

> "Their Lordships find it difficult to imagine that in however wide a sense the word 'carriage' was used in the Law of 1895, the legislature could have intended articles of the weight and complexity of the tractors and trailers under consideration to be covered by the term.... The Court of Appeal (in Jamaica) came to the conclusion that the intention of the legislature was that carriages included cars and that the word 'carriages' was used as a generic term. As against this, an argument of great force arises, namely, that if the word 'carriages' included cars, there was no need to use the word 'carts' at all and that its use in 1895 would be unintelligible except upon the basis that the word carriage was not used as a generic term including carts."

It will be seen that in the above passage, the portion referring to the view taken by the Jamaica Court of Appeal corresponds to the *Purvapaksha* of the *Mimansa* writers, while the portion beginning with the words "As against this", corresponds to the *Uttarpaksha.*

3.5 The structure in *Mimansa:* rules classified

Jaimini, the leading writer in the *Mimansa* School, has in his *Sutras* (aphorims) dealt with rules of interpretation which have been thus classified[3]:-

1. Order 20, Rule 1, Code of Civil Procedure, 1908.
2. Kingston Wharves Ltd. v. Reynolds Jamaica Mines Ltd., (1959) A.C. 187, 195, 198, (P.C.): (1958) 2 All E.R. 533.
3. Sarkar, pages 68, 69.

I. Certain elementary principles which may be called the axioms of interpretation.
II. Certain broad and general principles as regards the interpretation of words and texts.
III. Certain broad and general principles as regards the application of texts.
IV. A large number of specific rules and settled points, called *Nyayas* (maxims), each applying to a particular case.
V. Certain rules specially bearing upon the character and interpretation of *Smriti* texts and usages.

3.6 *Mimans* a rule against superfluity

It may be useful at this stage to take up an example to each of the classes of rules mentioned above[2] and to take note of the corresponding rules in the modern law.

As an example of an *axiom* of interpretation in the *Mimansa* system, we may cite the rule "Every word and sentence must have some meaning and purpose"[3].

This can be called the rule against redundancy. Obviously, such rules are based upon several premises.

(i) The legislature would not like to waste its time by enacting a redundant provision.
(ii) It must be presumed that the legislature uses its words with some purpose. Irrationality cannot be attributed.

3.7 Parallel in modern law

We have a close parallel to the above *axiom* in modern legal systems. It has been laid down[4] - "A statute ought to be so construed that no clause, word or sentence shall be superfluous, void or insignificant, as far as possible". This is sometimes known as the rule against redundancy. A construction that leaves without effect any part of the language of a statute will normally be rejected. Where an Act contained words plainly giving an appeal from one quarter session to another (i.e. from one court to another court of equal level), such a provision cannot be disregarded even if it is exceptional.[5]

3.8 *Sruti* rule and the plain meaning rule

As an example of a general rule of interpretation, one can cite the *Mimansa* rule relating to *Sruti.* Literally, it means that when a verb and its subject are in harmony with each other,[6] the plain meaning should not be twisted or limited. According to Jaimini,[7] "When there is an (express) text, considerations of reason are of no avail" वचने हि हेत्वसामर्थ्यम् । Popular version of this maxim is -यथावचनम् हि वाचनिकम् । (as the expression, so the thing expressed). When an expression is capable of application on the "bare hearing" of it, it is a *Sruti.*[8] (This is not to be

1. Sarkar, pages68, 69.
2. Paragraph 3.5, supra.
3. Sarkar, pages 69, 78, 82.
4. Rag. v.Bishop of Oxford. L.R. 42 Q.B.D. 245.
5. R.v.West Riding of Yorkshire etc., (1841) 1 Q.B. 325.
6. Cf. Sarkar, pages 99-102.
7. Jaimini, Book IV , Ch. i, sutra 41; Sarkar, page 120.
8. Partha Sarathi Mishra, Shastradipika (Banaras ed.), page 299

confused with *"Sruti"* as meaning the Vedas etc.).

Legal Latin has a comparable maxim - Absolute sententia expositore not eget. When the language is plain and admits of only one meaning, the task of interpretation hardly arises.[1]

3.9 Literal construction

In modern works on statute law, it is stated that the primary rule is the rule of literal construction. The intention of Parliament must be ordinarily deduced from the language used.[2] Lord Morris of Borth-y-Gest stressed the need for "full and fair application of particular statutory language to particular facts as found".[3] Lord Evershed, in a foreword to an edition of one of the leading books on statutory interpretation, wrote[4] - "The length and detail of modern legislation has undoubtedly reinforced the claim of literal construction as the only safe rule." Broom refers to the maxim *index animi sermo.* (Language conveys the intention of the mind).[5]

The matter has been put in a different form, by stating that words are not to be construed contrary to their meaning, as embracing or excluding certain cases merely because no good reason appears why those cases should not be embraced or excluded[6] - language very much reminiscent of Jaimini.[7]

3.10 Modern form of rule of literal construction

In its modern form, the rule of literal construction is qualified and elaborated as under:-

(i) Words and phrases which have acquired a technical meaning are presumed to have been used in their technical sense.[8]

(ii) Words and phrases which have not acquired a technical meaning are presumed to have been used in their ordinary meaning.[9]

3.11 Enactments relating to limitation

The most striking application of this rule is to be seen in judicial attitude towards the application of enactments prescribing periods of limitation[10]. Such statutes are regarded as barring the filing of a suit beyond the prescribed period of

1. Cf. Sabarabhasya, III. iii, 14.
2. Capper v. Baldwin, (1965) 2. Q.B. 53, 61: (1965) 1 All E.R. 787 (Lord Parker, C.J.).
3. Shop and Store Developments Ltd. v. Inland Revenue Commissioners, (1967) 1 A.C. 472, 493.
4. Maxwell, 11th ed., page vi.
5. Broom, Legal Maxims, 1st ed (1845), page 266, cited by Bennon, Statutory Interpretation (1984) page 326..
6. Whitehead v. James Scott Ltd., (1949) 1 K.B. 358: (1949) 1 All E.R. 245.
7. Jaimini, Book IV, i, sutra 41.
8. Victoria City Corporation v. Bishop of Vancouver Island, (1921) 2 A.C. 384 (P.C.); The Dunelm, (1884), 9 P.D. 164, 171 (Brett, M.R.).
9. Bradlaugh v. Clarke, (1883) 8 App. Cas. 354: 2 L.J.Q.B. 505. Cf. L.N.E. Rly. v. Berriman (1946) AII ER. 255 (HL)
10. Short v. McCarthy, (1820), 3 B & Ald 626.

limitation even though the plaintiff came to know of the cause of action only after the expiry of the period.

3.12 *Atidesa* and extension by analogy

As regards *Mimansa* rules under the category of rules relating to application of texts, the *mimansa* principle of *Atidesa* offers a highly interesting instance[1] Under this principle, a rule applicable to one matter may be made applicable to another matter. Connected with this is the doctrine of *Uha,* whereunder, while applying a rule to another matter by way of *Atidesa* (as above), appropriate adaptations can be made.[2] It is explained by Jaimini in these words:-

> "If what is prescribed as a duty with regard to one object applies to another object, this is called *Atidesa.*"

Jaimini applies this to the monthly *Agnihotra,* so that ceremonies prescribed for the daily *Agnihotra* are held applicable to monthly *Agnihotra* also.

Sabraswami has lucidly explained the doctrine as under[3]:-

> "Atidesa takes place when a duty prescribed in one place is taken out of that place and is applied elsewhere; as for instance, when, having laid down that Devadatta is to be entertained with rice, meat, soap and pudding, one says that Yajnadatta is to be similarly entertained."

3.13 Tagore v. Tagore: Gifts and wills

Modern legal rules offer very close parallels to the *Mimansa* doctrine of *Atidesa.* Thus, in the well known case of *Tagore* v. *Tagore,*[4] the rule that a gift cannot be made in favour of an unborn son, was extended to bequests by will in favour of an unborn son. Again, many provisions applicable to natural born sons are regarded as applicable to adopted sons. In fact, in India, the principal Central Act[5] for the construction of all Central Acts expressly provides that in Central Acts (unless the context otherwise requires), "son" includes an adopted son. And now that, by statute, daughters can be adopted amongst Hindus, similar interpretation will presumably follow regarding daughters also.

3.14 Central Acts with referential clauses

In connection with the doctrine of *Atidesa,* it would be of interest to note that very often, Central Acts extend, to proceedings thereunder, the provisions of the

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1. Sarkar, page 73, items (4) and (5) and pages 200-202.
2. Jaimini, Chapters 7 and 8 (Atidesa), Chapter 9 (*Uha*).
3. Sarkar, page 201.
4. Tagore v. Tagore, (1872) 9 B.L.R. 377, 402 (P.C.); Mayne, Hindu Law (1991), page 1132.
5. Section 3, General Clauses Act, 1897.

Code of Civil Procedure. The result is the same as that which ensues from the application of *Atidesa* though, in such a case, the result is achieved by a statutory mandate and not by judicial construction.

Incidentally, where (as in the case stated above), the provisions of one Act are adopted by another Act, the question often arises whether the adoption should be treated as wholesale, or whether while borrowing the provisions of the incorporated Act, any modifications should be considered necessary or desirable. It is in this context that the *Mimansa* maxim of "*Uha*" is relevant, because that doctrine is to be read as a qualification of *Atidesa* and permits modifications in the incorporated text.

3.15 *Nyayas* (maxims) and rules of identical sense

As regards *Mimansa* rules under category IV above - maxims or *Nyayas* - it would be of interest to refer to a significant rule found in Jaimini.[1]

शास्त्र प्रसिद्ध पदार्थ प्राबल्या धिकरणम्।

Where a word is used in the *Shastra* in a particular sense, that word should be taken to have been used in that sense. Modern rules of interpretation are, in substance, almost identical. Illustrations given below will help.

(i) The expression "fraud", when used in the context of civil proceedings, is a precise term of art which will not be widened.

(ii) In the Customs Acts which impose duties on imported commodities, the expression "spirits" will be taken in the commercial sense.[2] It does not cover sweet spirits of nitre, which is a known article of commerce not ordinarily described as "spirits".[3]

(iii) The expression "charitable institution" has acquired a precise meaning in law and will be construed in that sense in enactments.[4]

The words of Lord Esher, M.R. are apposite in this context:-[5]

"If the Act is one passed with reference to a particular trade, business or transaction and words are used (in the Act) which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words".

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1. Jaimini, I.iii, 5 (Sarkar, page 275).
2. Barclays Bank Ltd. v. Cole, (1967) 2 Q.B. 738: (1966) 3 All E.R. 348.
3. A.G. v. Bailey, (1847) 1 Ex 281: 17 L.J. Ex.9.
4. Melbourne and Metropolitan Board of Works, (1929) A.C. 142 (P.C.).
5. Unwin v. Hanson, (1891) 2 Q.B. 115, 119: 60 L.J.Q.B. 531.

3.16 Words conveying gender

Another maxim or *Nyaya* of the *Mimansa* system is the rule, that where the context shows that the word laid down is to carry a general sense, then a word in the masculine gender includes the feminine gender and the neuter gender also.[1] Very close to this, is the provision in the interpretation of statute - the General Clauses Act, 1897 - to the effect that (unless the context otherwise requires) in a Central Act, words in the masculine gender include the females.[2]

1. Sarkar page 279.
2. Section 13, General Clauses Act, 1897