4

MODERN RULES OF STATUTORY INTERPRETATION

MODERN RULES OF STATUTORY INTERPRETATION

4.1 Scope of the Chapter

It is intended in this Chapter to deal in brief with some of the important rules of interpretation of statutes as they are generally accepted in modern legal thinking.

4.2 Three rules in modern law

Apart from certain presumptions or maxims dealing with specific aspects of interpretation, modern law envisages three alternative approaches to statutory interpretation, namely, the literal rule, the mischief rule and the golden rule.

(a) To state the gist of these rules in brief for the present, the "literal rule" emphasizes the text of the statutory provision. The role of the judiciary is "confined to ascertaining, from the words that Parliament has approved as expressing its intention, what that intention was, and to giving effect to it." It is not for the Judge to invent "fancied ambiguities[1] ".

(b) In the "mischief" rule, known as the rule in Heydon's case,[2] the Judge is expected (i) to look at the legal position before the Act under interpretation and the mischief that the Act was intended to remedy and then (ii) to construe the Act so as to suppress the mischief and advance the remedy.

(c) In the "golden" rule, the court is permitted to depart from the literal meaning, in order to avoid an absurdity.[3]

"Where a statutory provision, on one interpretation brings about a startling and inequitable result, this may lead the court to seek another possible interpretation which will do better justice" (Lord Reid).[4]

Lord Blackburn's enunciation of the rule is generally taken as classic.[5]

4.3 The literal rule and its rationale

The three rules may now be considered in some detail. The literal rule means that the court can neither extend the statute to a case not within its terms, nor curtail the statute by not applying it to a case where, by its words, it applies.[6] Lord Diplock has linked this rule[7] with the doctrine of Separation of Powers.

"Parliament makes the law, the judiciary interprets them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by

---

1. Duport Steels Ltd. v Sirs, (1980) 1 All E.R. 527, 541 (Lord Diplock)
2. Heydon's case, (1584) 3 Co. Rep. at page 7b: 76 E.R. at page 368.
3. Mattison v. Hart, (1854) 14 C.B. at page 385: 139 E.R. at page 159.
4. Coutts & Co. v. I.R.C. (1953) A.C. at page 281.
5. River Water Commissioner v. Adamson, (1887) 2 App. Cas. 743, 764, 765.
6. Glanville Williams, Learning the Law (1982) page 93.
7. Duport Steels Ltd. v. Sirs, (1980) 1 All E.R. 529.

existing statutes or the unwritten common law as it has been expounded by the judges in decided cases, the role of the judiciary is confined to ascertaining, from the words that Parliament has approved, as expressing its intention, what that intention was, and (confined) to giving effect to it." Lord Diplock had emphasised that now, more and more cases involve the application of legislation that gives effect to policies that are the subject of public and Parliamentary controversy. The literal rule does not seek to totally exclude the mischief rule, but would confine the latter to cases where the statute is ambiguous.

In the same case,[1] Lord Scarman observed:-

"In this field (of statute law), Parliament makes and unmakes the law (and) the Judge's duty is to interpret and to apply the law."

Lord Simon has advanced the further reason[2] in support of the rule, that many statutes are passed by political bargaining and snap judgments of expediency and the courts can rarely be sure that Parliament would have altered the meaning if it had foreseen the situation (that is now creating controversy). Lord Simon further adds the reason that if courts habitually re-wrote statutes to effect supposed improvements, this might cause statutes to become more complex in order to exclude judicial re-writing in a way that was politically unacceptable.

4.4 The mischief rule

One result of applying the "mischief" rule (which permits history of the legislation to be taken into account for ascertaining the "mischief" that was intended to be remedied) is, that the courts have started noting the reports of Committees (outside Parliament) on whose report the statute under construction may have been based.[3]

4.5 The golden rule

The golden rule of interpretation allows the court to construe a statute in such a way that a reasonable result is produced, even though this involves departing from the *prima facie* meaning of the words[4]. When a statutory provision, on one interpretation, brings about a startling and inequitable result, this result may lead the court to seek another possible interpretation which will do better justice, because "there is some presumption that Parliament does not intend its legislation to produce highly inequitable results".[5]

The absurdity of the situation thus becomes a ground for raising a question of ambiguity - thereby bringing into existence a justification for not applying the literal rule. Another aspect of the golden principle has been thus stated[6]:-

1. Duport Steels Ltd. v. Sirs, (1980) 1 All E.R. 529, 551.
2. Stock v. Frank Gones (Tipton) Ltd., (1978) 1 All E.R. 948, 953, 954.
3. Cf. Black-Clawson International Ltd. v. Papierwerke etc., (1975) A.C. 591: (1975) 1 All E.R. 810, 814, 843, (H.L.).
4. Glanville Williams, Learning the Law (1982), page 106.
5. Coutts & Co. v. I.R.C., (1953) A.C. 267, 281: (1953) 1 All E.R. 418 (Lord Reid).
6. Cross, Statutory Interpretation (1976), pages 84-98.

> "The judge may read in words which he considered to be necessarily implied by words which are already in the statute, and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible or absurd or totally unworkable or totally irreconcilable with the rest of the statute."

4.6 Presumptions

Besides the so-called "rules" of interpretation mentioned above, there are also certain well recognised presumptions relevant to the field of statutory interpretation. Some of the important ones will be mentioned presently. Most of them are the outcome of judicial decisions and have been evolved after years of judicial experience. Judges themselves had to evolve such presumptions because they found that in the absence of such guiding lights, serious injustice might result. Such presumptions should not be viewed as judicial encroachment on the field of legislation, assigned exclusively to Parliament. Rather, these presumptions should be viewed as *prima facie* assumptions about legislative intent itself. The presumptions can be displaced by a contrary legislative intent. They are not "sacred cows". They merely reflect judicial anxiety to ensure that certain principles of justice are *not unintendedly* violated in the process of application of legislation. They rest on the premise that, in general, a statute is not intended to be a self-contained measure, but is intended to operate within certain principles of justice. The legislature assumes that the courts will follow these principles while applying the enactments passed by it from time to time. The courts are really giving effect to that legislative intention although the courts may appear to be making an addition of their own to what the legislature has enacted.

4.7 Presumption against action based on one's own wrong

Generally, a person will not be allowed to take advantage of his own wrong. Statutes relating to succession usually do not contain any provision excluding from their benefit one who has killed the person to whose property succession is claimed. But courts in most countries have "read" such an exception into such statutes[1]. They will not allow the statute to be so applied as to enable the killer to succeed to the estate of the person killed. The courts presume that the legislature had impliedly assumed that certain rules of morality will be applied. The Latin maxim ex turpi causa non oritur actio [an action (suit) cannot be founded on an immoral act] is thus applied to statutory interpretation, as it is applied in relation to matters governed by uncodified law. A famous American case[2] (*see* Dworkin, *Taking Rights Seriously*, page 22) holds that a grandson cannot succeed under a will of his grandfather murdered by the grandson. "No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong or to found any claim upon his

---

1. Cf.Re Sigsworth, (1935) Ch. 89; Cleaver v. Mutual Reserve Fund Life Association, (1892) 1 Q.B. 147, 156: R. v. National Insurance Commissioners, (1981) 1 All E.R. 769.
2. Riggs v. Palmer, (1899) 115 N.Y. 506: 22 N.E. 188.

own inequity or to acquire property by his own crime."

4.8 International law

There is a presumption that the legislature did not wish to violate established rules of international law. Applied to the field of interpretation of statutes relating to matters on which there is, in operation, a treaty to which the country whose statute is being interpreted is a party, it means[1] that there is a presumption that legislative enactments are not intended to derogate from the provisions of such treaties. The legislature should be presumed to have legislated with the treaty in mind, even though it has not said it in so many words.

4.9 Taxation by statutory instrument

In modern times, it is a usual legislative practice to delegate rule-making power to the executive. But it is well established that the power to make rules on a particular subject does not (in the absence of express words) confer a power to levy a tax, a licence fee or for that matter, any monetary charge by any other name. In England,[2] this approach of the courts is based on the fact that the prerogative power of the Crown to levy a tax (if ever it existed) came to an end with the Bill of Rights, 1689. In India, Article 265 of the Constitution yields a similar result. Lord Justice Atkin's dicta in *Attorney General* v. *Wilts United Diaries*, (1922) 91 L.J.K.B. 897 are as much applicable (in their substance) to India, as they are to U.K. After referring to the constitutional struggle where the legislature secured for itself the sole power to levy money upon the subject, Lord Atkin said, "the circumstances would be remarkable indeed which would enable the court to believe that the legislature had sacrificed all the well-known checks and precautions and, not in express words, *but merely by implication,* had entrusted a Minister of the Crown with undefined and unlimited powers of imposing charges upon the subject for purpose connected with his department.

1. Miah, (1974) 2 All E.R. at page 379 (H.L.)
2. Attorney General v. Wilts United Diaries, (1922) 91 L.J.K.B. 897: (1922) 38 T.L.R. 781 (H.L.) affirming the Court of Appeal; Congreve v. Home Office, (1976) Q.B. 629: (1976) 1 All E.R. 697 (C.A.).