THE GOLDEN-RULE-OF-INTERPRETATION

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The interpretation of statutes is a complicated process, and ambiguities plague legal interpretations.[1] However, if one were to start from the basics, it would become apparent that the natural and grammatical meaning of the text within a statute is one of the methods used for interpretation. The meaning that the words given, naturally imply, is the foremost method of interpretation. [2]

The passage quoted most often to describe this form of interpretation is: *"In constructing …statutes …the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency from the rest of the instrument in which case the grammatical and ordinary sense of the word may be modified, so as to avoid the absurdity, and the inconsistency, but no further."* [3]

This rule of interpretation was eventually re-characterized as the golden rule of interpretation.[4] The golden rule is usually justified through the following logic – statutes are constructed by the parliament, which ought to be credited with good sense, and the rule of law ought to prevail through the ordinary construction of statutes thus enacted.[5] Thus using the golden rule could be looked at as a furthering of the ideals of democracy, wherein the parliament ought to pronounce the law and not the judiciary. The US and UK courts have generally qualified the "golden rule" that intent governs the meaning of a statute, by saying that it must be the intent "as expressed in the statute.[6] *"If the doctrine means anything, it means that, once the expression is before the court, the intent becomes irrelevant".*[7]

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[1] *"It is general judicial experience that in matters of law involving questions of constructing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision making is often very difficult and delicate."* ***Keshav Mills Co. Ltd. v. CIT,*** AIR 1965 SC 1636

[2] ***Crawford v. Spooner*** 1846 4 MIA 179, p.181; See generally G. P. SINGH, PRINCIPLES OF STATUTORY INTERPRETATIONS (12th ed. Lexis Nexis 2013)

[3] ***Grey v. Pearson*** (1857) 6 HLC 61,p.106; See also: ***Union of India v. Rajivkumar*** AIR 2003 SC 2917

[4] SIR PETER BENSON MAXWELL, ON THE INTERPRETATION OF STATUTES (P. St. J. Langan ed., 12th ed. Lexis Nexis Butterworths Wadhwa 2006).

[5] ***Lalu Prasad v. State of Bihar*** (2007) 1 SCC 49 (Para 8); ***Suthendran v. Immigration Appeal Tribunal*** (1973) 1 All ER 226, pp235, 238 (HL)

[6] MAX RADIN, NO. 6, 43 STATUTORY INTERPRETATION (Harvard Law Review 1930).

[7] Id.

The Indian Supreme Court has approved of and used this rule in many instances.[8] A few examples ought to be quoted. The Supreme Court has interpreted Order XXI Rule 16 of the Civil Procedure Code, 1908 (CPC) using the literal rule of interpretation.[9] They concluded that the rule only refers to an actual transfer of a decree through an assignment in writing, after such a decree is passed. The pronouncement of the court acknowledged the fact that an absurd meaning might cause them to depart from the ordinary grammatical meaning of the text; however the lack of absurdity in the present case led them to ascribe the ordinary meaning to the said statutory rule.

According to the Supreme Court a departure from the literal rule should occur in extremely rare cases, and ordinarily *"there should be judicial restraint in this connection"*[10] However digression from the literal rule becomes necessary very often.[11] The question that remains to be answered now is how and to what extent the judiciary can modify a said statute, upon a finding that the ordinary grammatical meaning leads to an absurd conclusion. This was contemplated and answered in a number of ways wherein various aspects of an interpretation were looked into before adopting the same, for instance the consequentialist approach, the purposive approach etc.[12] However these interpretations can be wide ranging. Consider an example of Euthanasia. The legislature or the framers of our constitution under Article 21 provided the people of India with a Right to Life. The said provision in itself is absolutely clear and is not ambiguous. However certain Supreme Court Justices has held that it would be incongruous to not include the Right to Die within the purview of Article 21.[13] Therefore, Judges are masters in creating ambiguity even where there exists none.

[8] See generally: ***Harbhajan Singh v. Press Council of India***, AIR 2002 SC 1351; ***Guru Jambheshwar University v. Dharam Pal***, AIR 2007 SC 1040
[9] ***Jugalkishaore Saraf v. Raw Cotton Co. Ltd.*** AIR 1955 SC 376 p.381
[10] ***Raghunath Rai Bareja v. Punjab National Bank*** (2007) 2 SCC 230 (43) See Generally: G.P. Singh Supra n.2 at 91
[11] ***Keshav Mills Co. Ltd. v. CIT***, Supra n.1
[12] MAXWELL, Supra n. 4
[13] ***P. Rathinam/Nabhusan Patnaik v. Union of India and another,*** 1995-1-LW(Crl)209

After exploring this nuance, an important detail remains to be explored. This is the first level of criticism of the golden rule. The question is – when does absurdity arise? When does one know that the literal interpretation will lead to an absurd conclusion? The Indian Supreme Court while interpreting the existence of an absurdity concluded that absurdity should be understood in the same context as repugnance such that it is incongruent with other words within the statute.[14]

Lord Atkin in ***Liversidge v. Anderson***[15] has discussed this aspect of the Golden Rule. The crux is that there are no real objective criteria to determine when an interpretation is absurd. This allows judges to decide when the interpretation is leading to an absurd conclusion and thus causing them to have full discretion in the matter to interpret a law according to what they deem to be its context.[16] It is true that while interpretation judges do make law, however the golden rule might allow them to step into the shoes of the parliament and construct law, which will definitely produce a much-dreaded anomaly. An illustration of the same could be the case of ***P Rathinam***[17], wherein the meaning of "right to life" within article 21 of the Constitution of India was interpreted to incorporate the right to die in context of Euthanasia. Here the judges interpreted absurdity even where none existed. Thus, though the golden rule gives one a lot of scope, it ought to be employed with caution.

The second layer of criticism arises after the determination of absurdity. Even if an objective absurdity exists, in a said statute, how does one proceed then? The Mischief Rule and others of the like are not set in stone and are not rules in the literal sense of the word. The room for discretion is extremely wide. [18]

The flip side of the coin is many criticize the golden rule for emphasizing on a literal interpretation as completely ignoring all other aspects related to the statute. The Law Commission of UK commented on the same in its report – *"There is a tendency in our systems, less evident in some recent decisions of the courts but still perceptible, to*

[14] ***State Bank of India v. Sri N. Sundara Money,*** [1976] 3 SCR 160
[15] 1942 AC 206, p.299
[16] VEPA P. SARATHI, INTERPRETATION OF STATUTES (E. Book 2010).
[17] Supra n.13
[1818] ZANDER, THE LAW MAKING PROCESS (4th Ed. 1994), p.130

over emphasize the literal meaning of a provision (i.e. meaning in the light of its immediate context) at the expense of the meaning to be derived from other possible contexts; the latter include the 'mischief' or general legislative purpose, as well as any international obligation of the United Kingdom, which underline the provision."[19] This presses us to assume "unattainable perfection in draftsmanship", which is impossible and improbable at the same time. This view clearly digresses from the views held by the proponents of the golden rule. A counter argument to the same can be that no one limits the natural meaning of a word, thereby allowing the golden rule to tacitly incorporate other available contexts. This can be seen from the following passage - A good illustration of this could be found in the case ***Sutters v. Briggs***[20], wherein the Privy Council held: *"There is indeed no reason for limiting the natural and ordinary meaning of the words used. The term "holders or endorsees" means any holder and any endorsee, whether the holder be the original payee or a mere agent for him, and the rights of the drawer must be construed accordingly. The circumstance that the law apart from the section in question was repealed in 1845, without any repeal of the section itself may lead to anomalies, but cannot have weight in construing the section."* To illustrate more clearly the following can be considered. Furthermore, it is often seen that statutes are interpreted, keeping in tune with the alleged objectives and policy of the said act.[21] Nevertheless these interpretations can encompass vast possibilities. For instance if the author had to decide upon an appeal to read euthanasia outside the definition of "suicide", his view would be shaped by the school of thought he belongs to. If the author were an economist like Richard Posner, his view would be that the narrow domain of euthanasia – that is voluntary termination of life wherein the person volunteering for the same derives more utility from death than a life where he suffers. This is a negative utility, which minimizes the maximum utility one can derive from the life he lives. "Physician-assisted suicide lowers the cost not only of suicide but also of interventions that can avoid suicide."[22] It can be concluded that the allowing a terminal patient to depart peacefully increases the utility of life, reduces the incidence of suicide and also allows the value of life to

[19] The Interpretation of Statutes, (Law Com No. 21) (Scot Law Com No. 11), Report No. 21 para 80 (1969)
[20] [1922 (1) Appeal Cases 1]
[21] Id.
[22] Richard A. Posner, Euthanasia and Health Care: Two Essays on the Policy Dilemmas of Aging and Old Age, in JOHN KEOWN, EUTHANASIA, ETHICS AND PUBLIC POLICY (Cambridge Univ. Press 2002).

increase in the society. Thus the word "suicide" being criminal would not encompass euthanasia, as it leads to an absurd conclusion. However if he were a naturalist he would most probably conclude that Euthanasia is subject matter revolves around normative principles defining the sanctity of life and the State power of protecting the same even against the will of the individual himself. The "inner morality" of Article 21: Right to life and personal liberty of the Indian Constitution can be described with the help of the theorist Lon Fuller, a critique of Harts' positive law theory.[23] The inner morality not only provides the purpose for which the constitutional article was supposed to work but also question the upholding of "outer morality" that the courts have so far protected by following the precedents. Thus the Naturalist would not read Euthanasia in the definition of suicide. A realist like Oliver Wendell Holmes, who in his work, "The Path of Law"[24] said that "The life of the law has not been logic; it has been experience." Holmes was influenced greatly by moral skepticism and opposed the fact that natural laws became relevant where the positive laws ended. He strongly believed and advocated that "Legal adjudication has no natural or even constitutional basis; instead it comes down to weighing questions of social advantage according to the exigencies of the age". The author here, keeping in mind various factors and mainly the public opinion, would direct this appeal to be dismissed. Thus in wake of absurdity it is imperative to note that many pathways to interpretation are wide open, and the path chosen is further justified through other rules of interpretation. However from the above one can clearly garner the two basic criticisms against the golden rule – the overemphasis on a literal construction, the lack of criteria to determine the existence of an absurdity and a clear pathway post such determination. Nonetheless the rule has been widely used as a tool for interpretation and holds great importance in the field of statutory interpretation.

[23] Murphy, C. (2005). Lon Fuller and the moral value of the rule of law. Law and Philosophy, 24(3), pp.239--262.
[24] Reed, T. (1993). Holmes and the Paths of the Law. The American Journal of Legal History, pp.273--306.