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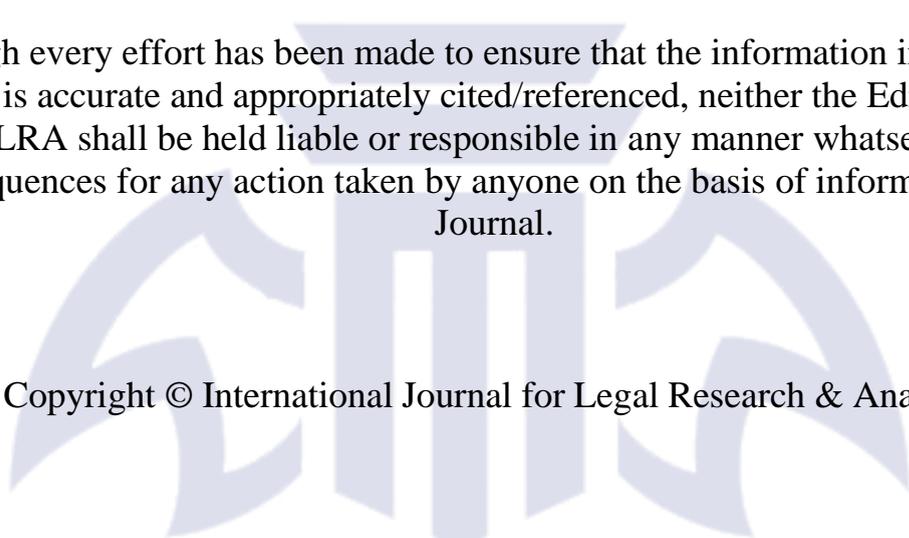
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ROLE OF GOLDEN AND MISCHIEF RULE IN PROMOTION OF JUDICIAL ACTIVISM

Authored By- Gayatri Suraj Chawla

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ABSTRACT

Interpretation of statute plays a very important role in the delivery of justice in the modern world. We are well aware that each and every word can bear more than one meaning, so as to understand the true intention of the law making body, it is necessary for the monitoring and law interpreting body to interpret the statute, keeping in mind the real intention of the law makers and, delivery justice accordingly. There are 4 main rules of statutory interpretation which is accepted globally. They are: 1) Literal rule, 2) Golden rule, 3) Mischief rule & 4) purposive approach.

In India, we are well aware that by the constitution, there has been distribution of powers between the legislative, executive and judicial body and they are to exercise their powers in limitations to the potentiality allotted. So as to deliver justice, there had been instances where judicial body has gone beyond their extended powers, which in a way is necessary to protect the innocent. Such an act wherein the judicial body goes beyond the applicable law, so as for the protection of the interest of the society and the innocent, is called as 'judicial activism'.

Golden and mischief rule due to its nature given scope for the judges to interpret law of which in a way motivates or supports the revolutions of judicial activism. In this research paper, the researcher intends to explain how the golden and mischief rule of interpretation of statutes, aids and promotes the revolution of judicial activism.

CHAPTER 1: INTRODUCTION

'Statute Law' is law which made by the legislative body in written form. For the delivery of justice it is very necessary for the judicial body to adhere the statute laid down by the parliamentary body. But at times there are circumstances where any particular word or any phrase defined in the statutes denotes more than one meaning, here it is the duty of the judicial body to interpret the statute keeping in mind the intentions of the legislative body. But wherein the statute defines the true intentions of the law makers without any ambiguous, the judicial body is bound to adhere the same¹. Lord Diplock² defined '*Rule*' stating that, where the meaning of the word mentioned in a written statute is plain and unambiguous, here the judges to invent fancied ambiguity as an excuse so as for falling to giving meaning would be unjust. Basically, judges should not deviate from the literal meaning of the words even if the outcome is unjust. In today's modern world, there is a wave of '*Judicial Activism*' which was first introduced by Arthur Schlesinger Jr.³ which basically meant using the courts power to promote liberal social causes. There are 4 main rules of interpretations which are globally accepted which are as follows 1) literal rule- here the statute are to be read as it is by the judges, 2) Golden rule- this rule is modification of the literal rule which is used to avoid absurd out-comes. 3) Mischief rule- here in the judges are given discretionary power to refine and frame the statute in such a way that aids to fair and reasonability. 4) Purposive approach- This rule is used for as for to ensure the law is effective as it would have intended by the law making body. Out of all 4 rules, Golden Rule & Mischief Rule due to its very nature gives the judges scope for reviewing and going beyond the statute defined so as for pertaining social justice.

¹ Literal Rule of interpretation

² Duport Steel v Sirs 1980

³ Fortune magazine 1947

Type Of Methodology Used

DOCTRINAL AND ANALYTICAL RESEARCH

Statement Of Problem.

Role of golden rule and mischief rule in promotion of judicial activism

Literature Review

Judicial Activism

‘Judicial Activism’ is an approach of a judicial body for the exercise of judicial review.⁴ The term ‘activism’ is used in relation to political as well as academic researches. In relation to academic research, activism usually is referred only with the context where the willingness of the judicial body is to strike down a particular rule of code, laid by the law making body. Whereas in political approach, ‘activism’ is used in context wherein the judicial body implies their own policy rather than interpreting the statute provided. The concept of judicial activism in India could be traced backed to the English concept where ‘equity’ and ‘natural rights’. The seed of judicial activism can be traced in the year 1893 when justice Mehmood , honorable judge of Allahabad High Court delivered a dissenting judgment where, there was a case of an under trial who could not afford to engage a lawyer, to the bench had the question if the court could decide his case merely by his papers. Here Justice Mehmood held that the statute defined “heard” which could also be interpreted if someone could speak.⁵ In the historic case Mumbai Kamgar Sabha V. Abdul Bhai, Justice Krishna Iyer explained, legislation was the best solution, but where the law making body take it long, the society is ultimately suffering. Here the duty of courts is to interpret, carve and sculpt the statute.

CHAPTER 2: METHODS OF JUDIAL ACTIVISM

- **Judicial Review**

If there is any particular law made by the law making body or the Executive body, which is in conflict with the constitution here the judicial bodies have power to interpret the statute and declare such law or order void. In the case of State of Uttar Pradesh vs. Raj Narain, HC held that the PM Indira Gandhi was guilty of electoral Malpractice, which further is believed to be resulted in Emergency in India of year 1975

- **Public Interest Litigation**

PIL is filed in the court of law for the interest of public at large. Basically any conduct of the government body or any institution by which creates scope of violation of right even if it’s lawful by nature, here the people together can file a single petition together for demanding justice. In the case of Hussainara Khatoon vs. State of Bihar⁶ here SC had ruled that the A

⁴ ‘Conflict of law’ by Prof. Kermit Roosevelt.

⁵ ‘concept of judicial activism’ by Vaibhavi Batra of Amity Law School, Noida

⁶ AIR 1979 SCR (3) 169

nd trials in Bihar had already served time for more period that for hey could have convicted.
This case is also known as the ‘mother case’ in the history of Indian Public Interest Litigation

- **Constitutional Interpretation.**

Since the very beginning, the courts have read the constitution and interpret every article in many ways. For instance, art 21 has been one of the article which has been interpreted the most of all other articles. Now right to life is not only limited to life but also limited for having quality life, right to clean environment right to privacy and much more. For instance in the case of Kesavananda Bharti Vs. State of Kerala⁷ SC held that the basic structure of constitution cannot be amended. Also in case of Golaknath vs. State of Punjab⁸ SC held that Fundamental rights cannot be amended by the parliament as stated in Art.13 and for amendment of any fundamental rights new constituent assembly has to be formed.

CHAPTER 3: GOLDEN RULE

‘Golden rule’ is said to be the modification of ‘literal rule’. This rule is one of the bases of English Law used for statutory construction applied by English Courts. In ‘literal rule the statute is to be read as it is as defined by the lawmakers without any prejudice interpretation, whereas the golden rule gives the law interpreting bodies to modify the statute in such a way so as to, to avoid an absurd outcome. But for golden rule to be applicable, there should be some kind of absurdity in the statute⁹ this was observed when the court held that the widow could not claim the due compensation as the wording of the statute didn’t allow for this circumstance. One of the main advantages of the golden rule is that the drafting errors can be rectified at very initial stage. One of the most remarking case where golden rule was implemented while interpreting was in R V. Allen¹⁰ here the defendant was charged with the offence of bigamy which in the statute stated that “*whosoever being married shall marry any other person during the lifetime of the former husband or wife should be held guilty of offence.*”. here if the court would have followed the strict rule of Literal rule, then bigamy would not have found any base as it was impossible as civil courts did not recognize second marriage, hence golden rule was applied to determine that the word ‘marry’ should be deemed to go through ceremony and the convict was upheld. There are two different approach of this rule-

- **Narrow Approach**

This rule can be applied in narrow approach when there is scope of ambiguity or absurdity the words held in statute itself

- **Wider Approach**

In this approach the rule is used to avoid obnoxious of principles in interest of public policy, wherein even where words may *prima facie* could carry a single meaning

⁷ 1973 4 SCC 255

⁸ 1967 AIR 1643, 1967 SCR (2) 762

⁹ London and North Eastern Railway v. Berriman 1946

¹⁰ 1872

Lord Wensleydale's Golden Rule

Lord Wensleydale was the first one to come up with the 'Golden Rule of Interpretation of Statute' in the landmark case of *Grey v. Pearson*¹¹ here it was held that the grammatical and ordinary sense of words is to be adhered to unless there is scope of such words to lead to absurdity or inconsistency with the rest of the statute where the grammar would ordinarily sense the word may be modified.

CHAPTER 4: MISCHIEF RULE

'Mischief rule' is one of the 4 rules used for interpretation of statute which is accepted globally. This rule has been a significant part of English court practice and has played an important role in determining and interpreting the intentions of the law makers defined in statute. It basically defines the scope of "mischief" that the statute in question has set out for proclamation of remedy. The main motive of this rule is to suppress the mischief caused by the statute and promote the remedy. This rule takes into consideration the words in statute as well as the true intentions of the law making / legislative body. In *Conway vs. Rimmer* the court held that the judges can use the mischief rule of interpretation in order to denote the true intentions of the law making body. Mischief rule was introduced in *heydon's case*¹² back in late 15th century. This case was related to construction of leases, life estate and statute. Here, there was a religious college named Ottery College which gave tenancy to a person named Mr. Ware & his son. This tenancy was secure by the way of 'copyhold' which basically was a form of custom used for land common laws in England during the Middle Ages. This copyhold was allotted to Mr. Ware and his son for their life. Thus copyhold was also part of parcel occupied by some other tenants at will. Later the college leased the same parcel to another man named 'Heydon' for the tenure of 80 years. Later, the parliament enacted the Suppression of Religious House Act 1535¹³. The enforcement of this act resulted in dissolving Ottery College which led to loss of land. The court here had held that the grant to wares was protected by the provision, but lease to Heydon was held to be void. The significance of this case created a heavy impact that the ruling was based on an essential discussion of inter-relation of a statute to pre-existing common law. This case was concluded by determining the purpose of the statute was to cure a mischief resulting from defect in element of common law. It was essential for the judges to determine and conclude the issue keeping in mind the pro bono public which means intent for public welfare.

In the case of *Ranjit Odesiey vs. State of Maharashtra*¹⁴ the accused was tried and charged under sec 292 of Indian Penal Code. The accused had a book stall and he was found selling obscene literature book named 'Lady Chatterley's Lover' in his defense he pleaded that being a book shop owner does not mean that he will have idea about each and every book and that he had no idea that such book was deemed to be an obscene book. Supreme Court rejected the arguments of the accused on the basis of mischief rule. After complete analysis of mischief rule, the following elements should exist in order for the judges to use this rule-

- There should be an element in statute which is causing mischief.
- Such an element is surprising the true intention of the legislative body.
- Here for providing justice, such mischief should be suppressed.
- And remedy should be provided.

¹¹ 1857 6 HL Cas 61

¹² 1584 76 ER 637

¹³ Act for dissolution

¹⁴ AIR 1965 S.C 881

CHAPTER 5: ELEMENTS OF GOLDEN AND MISCHIEF RULE WHICH PROMOTES JUDICIAL ACTIVISM

Golden and mischief rule both due to its element give support and uplift the promotion of judicial activism. In golden rule, no doubt there comparatively less scope than mischief rule, but then too it provides a little gap wherein the judges can play active role and go beyond the typical rule of literal and define the true intentions of the statute. For example, if courts would have stuck to the literal rule, then there would have no scope interpretation of Art 21 of Constitution of India. This rule of interpretation is used totally on the discretion of the judges. For example s. 125 of Cr.PC which deals with 'maintenance' for women. Here while the courts interpret the term 'wife' also includes women who have entered into Bigamy or *talakshuda* & divorced women. During many cases, the courts have stated that, even if a woman wills to relinquish her rights over divorce, she still has rights to claim maintenance u/s 125. Justice Holmes had mentioned that "A word is not crystal transparent and unchanged. It is the skin of the living thought and it may vary greatly in colour and content according to the circumstances and the time in which the word is used". In the case of *Kartar Singh v. SO.*¹⁵ Punjab, the bench was observed to use the golden rule of interpretation herein the judge mentioned that, the landlord requires his land for his bona fide use, here his is not only limited to the use of landlord but also the use of his family member.

In the context of mischief rule with judicial activism, here if there is a particular phrase or any particular term in a statute which promotes mischief and defame the actual cause of the statute, here judges have the power to remove such mischief cause from the statute and promote remedy. Due to the very nature of the mischief rule, the judges get ground to interpret and up bring their views by eliminating the mischief caused and promoting. In the case of *Alamgir v. State of Bihar*¹⁶ the court had used mischief rule while pronouncing the judgment. Here the appellant was charged under sec 498 of Indian Penal Code, 1860. A married woman was willfully living with the appellant. The woman had charged the appellant that curtly, whereas the appellant argued that he does not fall within the limits of sec 498. Supreme Court rejected the arguments mentioning that, the word 'taking' or 'enticing' or 'concealment' or 'detained' are the elements of sec 498 and the applicant falls under the head of 'detained'. Basically, while interpreting, the court should try and provide some remedy by removing the mischief.¹⁷ It is an established rule of interpretation that the words used in statute should be in such way that it should prevent mischief and define the true intentions behind the statute.

CONCLUSION

The concept of judicial activism is one of the most highly debated concepts in the modern world. From criticizing the rule of separation of power to actually providing justice to society, judicial activism has taken striking role in the modern world. If literal rule of interpretation in strict way was to be followed in modern world, the judges would act just as a robot without pertaining its own intellects. Due to the nature and scope of Golden and Mischief rule, there comes a gap which the judges have been allotted to fill in. The ultimate concern of authority should be social welfare and protection of innocence.

¹⁵ 1956 AIR 541

¹⁶ AIR 1953 SC 436

¹⁷ *Rex v. Ramdayal* (I.L.R 1950 Allahabad 395)