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# **JUDICIAL CREATIVITY UNDER THE GOLDEN RULE**

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## **ABSTRACT**

The golden rule has traditionally been understood as a narrow judicial device permitting deviation from the ordinary meaning of statutory language in order to avoid outcomes that are absurd. Yet, contemporary judicial reasoning demonstrates that this rule operates far beyond its classical formulation. Rather than functioning as a limited corrective, it increasingly serves as a mechanism through which courts reshape the meaning in light of perceived fairness, coherence, or policy considerations.

This paper examines the extent to which such judicial engagement can be characterized as interpretation or whether it more accurately reflects a form of implicit law-making. By analyzing doctrinal foundations alongside judicial practice, particularly in decisions of the Supreme Court of India, the paper argues that the concept of “absurdity” lacks a stable or objective threshold, thereby enabling a wide ambit of discretion. This indeterminacy allows judges to move beyond textual constraints while maintaining the formal language of the interpretive fidelity. While such flexibility may prevent outcomes that are manifestly unjust, it simultaneously raises concerns regarding institutional legitimacy and the proper limits of judicial power.

The paper ultimately contends that without clearer constraints, the golden rule risks collapsing the discussion between applying the law and creating it.

## **KEY WORDS**

Golden Rule, Absurdity Doctrine, Judicial Creativity, Textual Modification, Normative Adjudication, Legislative Supremacy

## **I. INTRODUCTION**

The golden rule is conventionally described as a limited judicial device that permits departure from the ordinary meaning of statutory language in order to avoid absurd results. Its classical articulation, most notably in *Grey v. Pearson*, suggests a restrained function: courts may modify meaning only where a literal reading produces an outcome so irrational that it could not have

been intended.<sup>1</sup> This formulation, on its face, preserves a delicate balance—respecting legislative text while allowing minimal flexibility to avert manifest injustice.

However, the contemporary operation of the golden rule reveals a more expansive and less disciplined practice. Courts increasingly invoke “absurdity” not merely to correct obvious linguistic anomalies but to address outcomes perceived as unjust, inconvenient, or inconsistent with the broader normative expectations. In doing so, the threshold of the absurdity appears to shift from an objective standard to context-sensitive and value-laden determination. The result is a form of judicial reasoning in which modification of statutory meaning is justified not by textual necessity but by evaluative judgment.

This development further raises a fundamental question: when courts alter the effect of statutory language under the banner of avoiding absurdity, are they still applying the law, or are they, in substance, creating it? The distinction is not merely semantic. It implicates foundational constitutional principles, particularly the allocation of authority between the legislature and the judiciary. While some degree of flexibility is indispensable in addressing unforeseen situations, an unstructured reliance on the golden rule risks transforming a narrow exception into a general license for judicial intervention.

The jurisprudence of the Supreme Court of India illustrates this tension with particular clarity. In several decisions, the Court has moved beyond resolving clear absurdities to engage in substantive modification of statutory outcomes, often guided by considerations of fairness or policy. Such instances demonstrate that the golden rule, far from being a marginal doctrine, operates as a significant site of judicial creativity.

This paper proceeds on the premise that the central issue is not whether judicial creativity is desirable, but whether it can be exercised within principled limits. By interrogating the conceptual indeterminacy of “absurdity” and examining the deployment in judicial reasoning, the paper seeks to evaluate whether the golden rule remains a legitimate interpretive tool or whether it has evolved into a vehicle for implicit judicial legislation.

## II. THE LITERAL RULE AND ITS STRUCTURAL LIMITS

The literal rule has long been treated as the primary mode of judicial reasoning, premised on the idea that the statutory language should be applied in its ordinary and natural sense. Its normative appeal lies in its apparent objectivity: by adhering strictly to the text, courts

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<sup>1</sup> Grey v. Pearson, (1857) 6 H.L. Cas. 61 (HL)

minimize the risk of subjective interpretation and preserve the primacy of legislative intent as expressed through the enacted words. In this sense, the rule operates as safeguard of institutional boundaries, ensuring that judges do not substitute their own preferences for those of the legislature.<sup>2</sup>

However, the structural limitations of the literal rule become evident when statutory language produces outcomes that are internally inconsistent, irrational, or disconnected from the broader purpose of the provision. Language, by nature, is inherently limited; it cannot anticipate every factual contingency or contextual variation. Consequently, a strictly literal application may generate results that defeat the very objective the statute sought to achieve.

Judicial recognition of this problem is not recent. In *R v Judge of the City of London Court*, the court acknowledged that adherence to the literal meaning must give way where it leads to an outcome that is plainly unreasonable or anomalous.<sup>3</sup> This acknowledgment reflects a deeper tension within the literal rule: while it aspires to certainty, its rigid application may undermine coherence and fairness in adjudication.

The difficulty is compounded by the absence of truly “plain” meaning in many cases. Words often carry multiple interpretations, and the selection of one meaning over the another inevitably involves an element of judgment. What appears as literal interpretation may, in practice, conceal a prior evaluative choice. Thus, the supposed objectivity of the literal rule, is, to some extent, illusory.<sup>4</sup>

These structural constraints create the conditions for the emergence of the corrective mechanisms. Where the literal rule fails to produce a rational or workable outcome, courts are compelled to look beyond strict textual adherence. It is within this space that the golden rule operates—not as an alternative method, but as a necessary qualification. The transition from the literal application to modification is therefore not merely doctrinal but functional, reflecting the limits of language itself.

### **III. THE GOLDEN RULE: CONCEPTUAL FOUNDATION AND SCOPE**

The golden rule merged as a judicial response to the limitations inherent in the strict textual application. It authorizes courts to depart from the ordinary meaning of the statutory language

<sup>2</sup> See Aharon Barak, *Purposive Interpretation in Law* 87-90 (2005)

<sup>3</sup> *R v Judge of the City of London Court*, (1892) 1 QB 272 (DC).

<sup>4</sup> Rupert Cross, *Statutory Interpretation* 51-55 (3d ed. 1995).

where such a reading would lead to an absurd result. In its classical formulation, the rule is presented as a narrow qualification: words are to be given their plain meaning unless that meaning produces an outcome so unreasonable that it must be modified.<sup>5</sup>

Doctrinally, the golden rule has developed along two distinct lines. The **narrow approach** is invoked where statutory language is ambiguous or capable of multiple meanings. In such cases, the court selects the interpretation that avoids inconsistency or irrationality. This version of the rule operates within the boundaries of linguistic plausibility and is generally regarded as a legitimate extension of textual reasoning.

The **broad approach**, however, marks a significant expansion. It permits the courts to depart from the clear and unambiguous meaning of the words where their application would result in injustice, hardship, or outcomes deemed contrary to common sense. Here, the focus shifts from resolving ambiguity to correcting perceived defects in the statutory outcome.

The difficulty lies in deciding what counts as “absurd.” In theory, it should refer to outcomes that are logically impossible or clearly unintended. In practice, however, courts often treat outcomes as absurd simply because they seem unfair or undesirable.

This makes the rule much more flexible than it appears. Instead, of being a strict exception, it becomes a tool that judges can use in a variety of situations. As a result, its boundaries are not clearly defined.

#### IV. JUDICIAL CREATIVITY UNDER THE GOLDEN RULE

The golden rule operates as a site of judicial creativity, enabling courts to shape statutory meaning in three key ways. In practice, the golden rule allows judges to play a more active role in shaping legal outcomes.

First, courts engage in interpretive modification, effectively altering statutory language. In *Adler v George*, the phrase “in the vicinity of” was extended to include a contract within a prohibited area, demonstrating how textual meaning may be adjusted to avoid anomaly.<sup>6</sup>

Second, there is a noticeable expansion in the conception of absurdity. Traditionally, absurdity referred to outcomes that were logically incoherent or internally contradictory. However, judicial reasoning increasingly treats outcomes as “absurd” when they are merely undesirable,

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<sup>5</sup> *Grey v. Pearson*, (1857) 6 H.L. Cas. 61 (HL).

<sup>6</sup> *Adler v. George*, (1964) 2 QB 7 (DC)

unjust, or inconsistent with broader policy considerations. In *Re Sigsworth*, the court prevented a son who murdered his mother from inheriting under the statute, despite the absence of any express prohibition.<sup>7</sup>

Third, the operation of the golden rule in Indian jurisprudence demonstrates a particularly flexible and context-sensitive approach. The Supreme Court of India has, in multiple instances, moved beyond the strict textual constraints to avoid outcomes considered inequitable or inconsistent with the legislative purpose.

The cumulative effect of these developments is that the golden rule operates less as a narrowly confined exception and more as a discretionary interpretive technique. Its invocation frequently reflects an underlying evaluative choice, where judges determine what outcomes are acceptable within the legal framework. While such creativity may enhance fairness and coherence, it simultaneously raises concerns regarding doctrinal certainty.

Thus, judicial creativity under the golden rule is characterized not by overt departure from the legal principles, but by the subtle reconfiguration of them. The rule retains its formal identity as a mechanism of interpretation, yet in practice, it enables the courts to influence the substantive content of the law. This dual character lies at the heart of the ongoing tension between interpretation and legislation.

## **V. INTERPRETATION OR LEGISLATION: LOCATING THE DOCTRINAL BOUNDARY**

The expansion of the judicial creativity under the golden rule necessitates a closer examination of the boundary between interpretation and legislation. At a conceptual level, interpretation involves ascertaining the meaning of enacted words, whereas legislation entails the creation or modification of the terms. But in practice, this line becomes difficult to maintain, especially when courts move away from the plain meaning of the statutory language to avoid what they see as an absurd result.

If applied carefully, the golden rule stays within the limits of interpretation. For instance, when a provision is unclear or leads to an obvious inconsistency, courts can choose a meaning that makes the statute workable. In such situations, judges are still engaging with the text—they are not rewriting it, but selecting from within its possible meanings.

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<sup>7</sup> *Re Sigsworth*, (1935) Ch 89 (CA).

The difficulty arises when courts go further. When the language is clear but the outcome appears unfair or undesirable, judges sometimes rely on the golden rule to modify the effect of the provision. At this point, the exercise starts to look less like interpretation and more like intervention. The shift may not be obvious, but it is important: the court is no longer simply finding meaning in the text, it is reshaping it.

A major reason for this problem is the lack of a clear standard for what counts as “absurd.” There is no fixed test, and much depends on how a judge views outcomes. What seems unacceptable to one judge might appear perfectly consistent with then statutory scheme to another.<sup>8</sup> Because of this, decisions often seem to be driven by the result the court wants to reach, with reasoning built around it afterwards. In effect, the usual order is reversed—outcomes come first, and the interpretation follows.

This becomes particularly important when viewed from a constitutional perspective. The idea of separation of powers requires that law-making remains with the legislature, while courts are expected to apply the law. When courts use the golden rule to significantly alter how a provision operates, there is a risk that they move into the legislative space. The approach of the Supreme Court of India shows how this tension plays out in practiced. In some cases, the court has adopted interpretations that go well beyond the text in order to reach fair or reasonable outcomes.

Of course, some level of flexibility is necessary. Laws cannot anticipate may sometimes produce results that are clearly unjust. The real issue, therefore, is not whether judges should have discretion, but how far that discretion should go. If the golden rule can be used whenever court finds an outcome undesirable, then the line between interpretation and legislation loses its meaning.

For this reason, the boundary cannot be maintained simply by calling something “interpretation.” What matters is the basis of the decision. Departure from the ordinary meaning should only be justified where the problem is clearly rooted in the statutory text itself—such as a logical contradiction or an outcome that makes the provision unworkable. If courts rely instead on broader ideas of fairness and policy, the risk of judicial law making becomes much harder to avoid.

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<sup>8</sup> H.L.A. Hart, *The Concept of Law* 135-37

## VI. RETHINKING THE GOLDEN RULE: BALANCING FLEXIBILITY AND CONTROL

The golden rule, as it is used today, sits in a slightly uncomfortable position. On one hand, it plays an important role in preventing outcomes that seem unreasonable or unfair. On the other, its growing use raises concerns about the consistency and the limits of judicial power. The real issue is not that the judges have discretion—it's that there are no clear boundaries on how the discretion should be used.

A major concern is the uncertainty around what counts as “absurd.” In theory, absurdity sounds like something obvious. In practice, it often depends on how a judge views a situation. What one judge considers unacceptable might seem perfectly valid to another.<sup>9</sup> This makes the application of the golden rule unpredictable and can lead to similar cases being decided differently. Over time, this weakens consistency in legal reasoning.

Another concern is the risk of judicial overreach. When courts move away from clear statutory language to reach outcomes they think are fair, they may be stepping into the role of the legislature. In such cases, the golden rule is not really limiting judicial power—it is being used to justify it. The decision in *Re Sigsworth* is a good example, where the court relied on moral reasoning to prevent an outcome that the statute itself did not explicitly address.<sup>10</sup> While the result may seem right, it raises questions about whether courts are going beyond their proper role.

At the same time, it would be unrealistic to expect courts to apply laws strictly in every situation. Legislatures cannot predict every possible scenario, and rigid interpretation can sometimes lead to clearly unjust results. In this sense, judicial flexibility is not just useful but also necessary.

The challenge, then, is to find a balance. The golden rule should not become so broad that it allows judges to reach any outcome they consider desirable. At the same time, it should not be so restricted that it cannot correct obvious problems. A sensible middle ground would be to limit its use to situations where the issue is clearly rooted in the statutory text, such as contradictions, gaps, or the outcomes that make the provision unworkable.

In the end, the legitimacy of the golden rule depends on how carefully it is used. When courts clearly explain why they are departing from the ordinary meaning and tie their reasoning to the

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<sup>9</sup> Rupert Cross, *Statutory Interpretation* 60-63

<sup>10</sup> *Re Sigsworth*, 91935) Ch 89 (CA).

text, their decisions remain within the bounds of interpretation. But when that discipline is missing, the rule risks becoming a tool for unchecked discretion, making it harder to distinguish between applying the law and effectively rewriting it.

## VII. CONCLUSION

The golden rule was originally meant to be a small safety valve, a way for the courts to step in when strict application of the text would lead to results that simply do not make sense. That purpose still matters. Laws are written in language, and the language has limits. It cannot cover every situation, and sometimes a purely literal reading can produce outcomes that feel clearly wrong. In that sense, the golden rule continues to serve an important function.

But the way it is used today shows a noticeable shift. Courts are not only correcting obvious drafting problems; they are also using the rule to reach outcomes that seem fair, reasonable, or aligned with broader legal values. This is where the difficulty begins. The idea of “absurdity” is not fixed, it depends on how a judge sees the case. What looks absurd in one situation may not appear so in another.

This becomes clear in cases like *Re Sigsworth*, where the court relied on moral reasoning to avoid an outcome that statute itself did not explicitly prevent. Similarly, the approach of the Supreme Court of India shows how the golden rule can be used more flexibly to shape outcomes in the name of fairness or purpose. These examples highlight how easily the rule can move beyond fixing textual problems and start influencing the substance of the law.

That does not mean the golden rule should be rejected. On the contrary, removing it would leave the courts with very little room to deal with genuinely problematic situations. The real issue is how it is used. If courts rely on it too freely, simply because they dislike the outcome, the line between interpretation and the legislation becomes blurred.

What is needed, therefore, is not less flexibility, but better control. The golden rule should be used where the problem is clearly rooted in the statute itself, such as contradiction or an outcome that makes the provision unworkable. Where the courts go beyond this and rely on broader ideas of fairness or policy, they risk stepping into the role of the legislature.

The future of the golden rule, therefore lies not in its abandonment but in its disciplining. Courts must articulate clearer standards for identifying absurdity and ensure that any modification of meaning is anchored in the structure and language of the statute itself. Without such discipline, the rule risks eroding the distinction between applying and creating the law, thereby unsettling the balance between judicial function and legislative authority.