

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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A CRITICAL ANALYSIS OF **PRINCIPLES APPLIED BY COURTS** **FOR THE INTERPRETATION OF** **LEGISLATIVE LISTS**

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Abstract

This paper lays down and analyses the various principles that are used by courts to interpret legislative lists and give meaning to the laws enacted by legislative bodies. The approach used by the court may vary depending on the facts and circumstances of each case, and the court may apply one or more of these principles in determining the meaning and intent of a law. Forgive effect to the various items in the different lists the Courts have applied mainly the following principles - Plenary Powers, Harmonious Construction, Pith and Substance Rule, Colourable Legislation, Literal Rule, Golden Rule, Mischief Rule, Purposive Approach and Ejusdem Generis. These principles have been widely discussed in the Indian legal literature, and the Indian courts have consistently applied these principles in their interpretations of legislative lists. These are just few guiding principles which the Courts have evolved, to resolve the disputes which may arise about the competence of law passed by Parliament or by any State Legislature. The interpretation of these lists is crucial to ensure the proper functioning of the federal system. The Union List should not be interpreted so narrowly as to prevent the Union government from effectively carrying out its responsibilities, nor should the State List be interpreted so broadly as to give the state governments undue authority. The Concurrent List should be interpreted in a manner that allows both levels of government to effectively address the subject in question, while avoiding conflicts between their laws. The interpretation of legislative lists is influenced by various factors, including judicial decisions, constitutional amendments, and changing societal needs. The courts have a key role in interpreting the lists, as they are often called upon to resolve disputes between the Union and state governments. The courts must balance the need to maintain the integrity of the federal system with

the need to address changing societal needs and provide effective governance. In conclusion, the interpretation of legislative lists is a crucial aspect of the functioning of a federal system of government. It determines the extent of the powers of the central and state governments, and must be performed in a manner that balances the need for effective governance with the need to maintain the integrity of the federal system. The courts have a key role in this interpretation, as they are often called upon to resolve disputes between the levels of government.

Key Words: Interpretation, Principles, Legislative Lists, Plenary, Harmonious Construction, Pitch and Substance, Colourable Legislation, Literal, Golden, Mischief, Purposive, Ejusdem Generis.

Research Problem

The interpretation of legislative lists in India can be a complex and challenging research problem due to the conflicting interpretations of provisions within the Constitution of India. The legislative lists, also known as the Union List, State List and Concurrent List, determine the powers and responsibilities of the central government and state governments in India. This research problem involves exploring the ambiguities and lacunae in the constitutional provisions regarding the interpretation of the legislative lists. It also involves examining the judicial pronouncements on the matter, and their impact on the distribution of powers and responsibilities between the central and state governments. Moreover, this research problem involves exploring the practical implications of the interpretation of legislative lists on policy-making, implementation and enforcement at both the central and state levels. It also involves analysing the role of the judiciary in resolving disputes arising from the interpretation of the legislative lists. Overall, the research problem of interpretation of legislative lists in India is a crucial aspect of the constitutional law and federalism in India, and requires in-depth analysis and understanding to ensure an effective and efficient governance system.

Literature Review

Constitution of India mentions the legislative lists in the Seventh Schedule of the Constitution of India. It provides a detailed interpretation of the powers of the central and state governments to make laws in the country. The legislative lists are further explained in various Central and State acts and

rules, which give a clear understanding of the scope of the laws made by the respective governments. The interpretation of the legislative lists has been a subject of several landmark judgments by the Supreme Court of India and High Courts, which provide guidance on the distribution of legislative powers between the central and state governments. There are several commentaries and textbooks available on the Constitution of India, which provide an in-depth analysis of the legislative lists and their interpretation. Some of the textbooks referred to by the author of this paper include – Indian Constitutional Law (MP Jain), Constitutional Law of India (JN Pandey) and Comparative Constitutional Law (DD Basu). Legal databases like Manupatra and SCC Online, as well as websites like Mondaq, provide access to relevant laws and judicial decisions on the interpretation of the legislative lists in India.

Research Paper

Introduction

The term 'legislation' has been derived from the Latin words 'legis' meaning 'law' and 'latum' meaning to 'make'. Therefore, etymologically, legislation means to make the law. Legislation is considered one of the most important sources of law. It is very crucial in a democratic society, especially where there is a federal type of government or a very highly complicated form of government. Legislation when used as a source of law is denoted to be a law made by defined persons or bodies and not by any type of customary or conventional laws or judicial decisions, it is rather termed as an enacted law. There is a difference of opinion regarding the importance of legislation as a source of law. Analytical jurists emphasize the importance of legislation on the other hand historical jurists attach no importance to legislation. There are three types of legislative lists: Union, State and Concurrent List. These three lists form an important part of the functioning of a federal government. It also enhances legal sovereignty among the government. Article 246¹ deals with the distribution of legislative powers between the central government and the state governments. Overall, Article 246 provides a framework for the distribution of legislative powers between the central government and state governments, ensuring that both have the power to make laws on subjects of importance to them, while also ensuring that there is no overlap or conflict between their respective laws.

¹ Article 246, Constitution of India, 1950.

Union List²

The Seventh Schedule of the Indian Constitution talks about the lists. List I of Article 246 states the Union List. The Union List consists of various subjects like a defence of India, naval, military, air, armed forces, CBI, industries declared by Parliament necessary for defence, foreign affairs, diplomatic, consular, trade relations, UNO, war, peace, extradition, railways, citizenships, currency, RBI, etc. The List contains 97 numbered items. Entry 33 was deleted and Entry 2-A, 92-A, 92-B, and 92-C have been added by amendments. In a simpler language, it can be stated that the List contains all those subjects which are of utter national importance. In this List, the Central Government enjoys supreme power.

State List³

The State List is also contained in the Seventh Schedule of the Constitution. List II of Article 246 states the State List. The State List consists of various subjects like public order excluding naval military or air forces, High Courts, revenue courts, district courts, prisons, reformatories, borstal institutions, local governments, public health sanitation, hospital, burial grounds, pilgrimage, disabled and unemployed peoples, agriculture, water, roads, highways, etc. The List contains approximately 66 items. Entries 19, 20, 29 and 36 have been deleted by amendments. The State List contains all those subjects which are solely dedicated to the state level. The State Government has jurisdiction over this List.

Concurrent List⁴

The Concurrent List is also contained in the Seventh Schedule. List III of Article 246 states the Concurrent List. The Concurrent List contains subjects like criminal law, a criminal procedure including Codes for Criminal Procedure, marriage, divorce, adoptions, wills, successions, moving prisoners from one reform to another, contracts, partnerships, bankruptcy, insolvency, trust & trustees, contempt of court, migratory tribes, prevention of cruelty to animals, protection of wildlife

² List I, Schedule VII, Constitution of India, 1950.

³ List II, Schedule VII, Constitution of India, 1950.

⁴ List III, Schedule VII, Constitution of India, 1950

and forests, population control, etc. The List contains approximately 47 items. New Entries 11-A, 17-A, 17-B, 20-A and 33-A have been added by amendment. Concurrent List mostly comprises those subjects which are of equal importance to both Centre and the State, therefore in such cases both the Union and the State have jurisdiction. The main purpose of this list was to avoid excessive rigidity to two list distribution.

Residual powers

The Constitution⁵ vests residuary powers in the Parliament. It is to be noted that certain subjects are neither mentioned in the State List nor the Concurrent List. These subjects are also not exclusively mentioned in the Union List. However, during the time of need regarding those subjects, the Union will have sole jurisdiction over those subjects.

Principles Applied

- 1. Plenary Powers:** The first and foremost rule is that if legislative power is granted with respect to a subject and there are no limitations imposed on the power, then it is to be given the widest scope that its words are capable of, without, rendering another item nugatory. In the words of C.J. Gajenderagadkar, "It is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. A general word used in an entry must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonably be held to be included in it"⁶. Thus, a legislature to which a power is granted over a particular subject may make law on any aspect or on all aspects of it; it can make a retrospective law or a prospective law and it can also make law on all matters ancillary to that matter. For example, if power to collect taxes is granted to a legislature, the power not to collect taxes or the power to remit taxes shall be presumed to be included within the power to collect taxes.
- 2. Harmonious Construction:** Different entries in the different lists are to be interpreted in such a way that a conflict between them is avoided and each of them is given effect. It must be accepted that the Constitution does not want to create conflict and make any entry nugatory.

⁵ Article 248, Constitution of India, 1950.

⁶ Jagannath Baksh Singh v. State of U.P., AIR 1962 SC 1563.

Therefore, when there appears a conflict between two entries in the two different lists the two entries should be so interpreted, that each of them is given effect and, for that purpose the scope and meaning of one may be restricted so as to give meaning to the other also.

- 3. Pith and Substance Rule:** The rule of pith and substance means that where a law in reality and substance falls within an item on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature. In a federal Constitution, as was observed by C.J. Gwyer “it must inevitably happen from time to time that legislation though purporting to deal with a subject in one list touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere”⁷. Therefore, where such overlapping occurs, the question must be asked, what is, “pith and substance” of the enactment in question and in which list its true nature and character is to be found. For this purpose, the enactment as a whole with its object and effect must be considered. By way of illustration, acting on entry 6 of List II which reads “Public Health and Sanitation”. Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it dealt with a matter which fell in entry 31 of List I which reads: “Post and telegraphs, telephones, wireless broadcasting and other like forms of communication”, and, therefore, the State Legislature was not competent to pass it. The Supreme Court rejected this argument on the ground that the object of the law was to prohibit unnecessary noise affecting the health of public and not to make a law on broadcasting, etc. Therefore, the pith and substance of the law was “public health” and not “broadcasting”⁸.
- 4. Colourable Legislation:** It is, in a way, a rule of interpretation almost opposite to the Pith and Substance Rule. The Constitution does not allow any transgression of power by any legislature, either directly or indirectly. However, a legislature may pass a law in such a way that it gives it a colour of constitutionality while, in reality, that law aims at achieving something which the legislature could not do. Such legislation is called colourable piece of legislation and is invalid.

⁷ Prafulla Kumar v. Bank of Khulna, AIR 1947 PC 60.

⁸ G. Chawla v. State of Rajasthan, AIR 1959 SC 544.

In the case of *Kameshwar Singh v. State of Bihar*, The Bihar Land Reforms Act, 1950 provided that the unpaid rents by the tenants shall vest in the state and one half of them shall be paid back by the State to the landlord or zamindar as compensation for acquisition of unpaid rents⁹. According to the provision in the State List under which the above law was passed, no property should be acquired without payment of compensation. The question was whether the taking of the whole unpaid rents and then returning half of them back to them who were entitled to claim, (i.e., the landlords) is a law which provides for compensation. The Supreme Court found that this was a colourable exercise of power of acquisition by the State legislature, because “the taking of the whole and returning a half means nothing more or less than taking off without any return and this is naked confiscation, no matter in whatever specious form it may be clothed or disguised.” The motive of the legislature is, however, irrelevant for the application of this doctrine. Therefore, if a legislature is authorised to do a particular thing directly or indirectly, then it is totally irrelevant as to with what motives – good or bad – it did that.

5. **Literal Rule:** This principle holds that the words of a statute should be given their plain and literal meaning, regardless of the consequences. This approach is used when the wording of the law is clear and unambiguous. The literal rule means that a judge has to consider what the statute says ‘literally,’ i.e., its simple plain meaning without any ambiguity. It is said that the words themselves best declare the intention of the law-givers¹⁰.
6. **Golden Rule:** This principle allows for a departure from the literal rule in cases where the plain meaning of the statute leads to absurdity or injustice. The court may choose to look at the purpose of the statute and the intention of the legislature to give a more sensible interpretation. In *Ramji Missar v. State of Bihar* in construing section 6 of the Probation of Offenders Act, 1958, the Supreme Court laid down that the crucial date on which the age of the offender had to be determined is not the date of offence, but the date on which the sentence is pronounced by the trial court. An accused who on the date of offence was below 21 years of age but on the date on which the judgment pronounced, if he was above 21 years, he is not entitled to the benefit of the statute¹¹.

⁹ *Kameshwar Singh v. State of Bihar*, A.I.R. 1952 S.C. 252.

¹⁰ *Special Deputy Collector, LA Unit v. Dasari Ramulu* 2001 AIHC 387 (AP).

¹¹ *Ramji Missar v. State of Bihar*, AIR 1963 SC 1088.

7. Mischief Rule: This principle states that a court should interpret a statute so as to remedy the mischief it was enacted to address, while at the same time preserving its spirit and intention. The mischief rule was established in Heydon's Case in 1584¹². It was held that the mischief rule should only be applied where there is ambiguity in the statute. Under the mischief rule the Court's role is to suppress the mischief and advance the remedy. The Courts while applying the principle tries to find out the real intention behind the enactment. This rule thus assists the court in identifying the proper construction of statutory wording according to the original intention of the legislators. As per this rule, for true interpretation of a statute, four things have to be considered:

- What was the common law before the making of the Act?
- What was the mischief and defect for which the common law did not provide?
- What remedy Parliament had resolved and appointed to cure the disease of the Commonwealth?
- What is the true reason of the remedy?

The mischief rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy." But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur¹³.

In Sodra Devi's case, the Supreme Court has expressed the view that the rule in Heydon's case is applicable only when the words in question are ambiguous and are reasonably capable of more than one meaning¹⁴.

8. Purposive Approach: This principle is based on the idea that a court should look beyond the literal words of a statute to determine its purpose and the intention of the legislature. This approach takes into account the context and circumstances surrounding the creation of the law.

¹² Heydon's Case, (1584) 76 ER 637.

¹³ Umed Singh v. Raj Singh, 1975 AIR 43, 1975 SCR (1) 918.

¹⁴ The Commissioner of Income Tax, Madhya Pradesh v. Sodra Devi, 1957 AIR 832, 1958 SCR 1

In the case of *Rananjaya Singh v. Baijnath Singh*¹⁵, the Hon'ble Court observed that "the spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect in opposition to the plain language of the sections of the Act and the Rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to the Court."

- 9. Ejusdem Generis:** This principle holds that when a general word follows a list of specific words, the general word should be interpreted as referring to things of the same kind as the specific words listed. In *Lilavati Bai v. Bombay State*¹⁶, the petitioner was the widow of a tenant of certain premises and she had vacated from such premises. Finding the premises vacant, the respondent requisitioned the premises under Section 6(4)(a) of the Bombay Land Requisition Act, 1948, for the public purpose of housing a government servant. One of the contentions of the petitioner was that under the Explanation to the sub-section there would be deemed to be a vacancy when the tenant 'ceases to be in occupation upon termination of his tenancy, eviction or assignment or transfer in any other manner of his interest in the premises or otherwise', and that the words 'or otherwise' should be construed as *Ejusdem Generis* with the words immediately preceding them. It was held: the rule *Ejusdem Generis* sought to be expressed in aid of the petitioner can possibly have no application.

¹⁵ *Rananjaya Singh v. Baijnath Singh*, 1954 AIR 749, 1955 SCR 671.

¹⁶ *Lilavati Bai v. Bombay State*, 1957 AIR 521 1957 SCR 721.