

“ANALYSING THE GOLDEN RULE OF INTERPRETATION IN THE CONTEXT OF THE SHAH BANO CASE”

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INTRODUCTION

The legal language with its many statutory wordings, is more often than not, an elaborate description of the law. It is however, an irrefutable fact that any language, most specifically, the language of the law; is laced with dynamism and ambiguity. It is likely that this complexity of the legal language could actually tarnish the quality of judgements passed, thus leaving the judges to interpret its intended meaning on their own. Thus, judges resort to certain rules and techniques of interpreting such laws to lead to an unambiguous path to unhindered justice.¹ In furtherance of this, the legal arena surrounding the Interpretation of Statutes, is composed of three primary rules of Statutory Interpretation: The Literal Rule of Interpretation, The Golden Rule of Interpretation and the Mischief Rule of Interpretation.² A brief expansion of these concepts is herewith mentioned:

THE LITERAL RULE

Preserving Judicial Discipline: Does not allow for the twisting or distortion of language in any form even if it may lead to absurd consequences.³

THE GOLDEN RULE

Recognising Legal Dynamism: When a statute is to be interpreted, the literal rule must be used first. If such an interpretation leads to an absurd or irrational consequence, the golden rule steps in and tries to avoid the absurdity resulting from the literal rule of interpretation. Within this ambit, the judges are permitted to divert from the path of a statute's literal interpretation in order to accord an alternative meaning to the statute that could lead to a more acceptable judgement. This is what the Golden Rule entails as it gives due importance to the context and consequence

¹ Jeffrey Goldsworthy, *Judicial Power, Democracy And Legal Positivism* 77 (Ashgate, 2000).

² Mrunal Shikhavat, *Rules of Interpretation*, Legal Bites (August 18, 2019), <https://www.legalbites.in/law-notes-interpretation-rules-of-interpretation/>

³ CIT v. T.V. Sundaram Iyengar (P) Ltd., (1976) 1 SCC 77.

of an interpretation. It allows the court to individually interpret the intent of a statute so as to result in a socially acceptable answer that promotes and protects societal wellbeing and justice.⁴

THE MISCHIEF RULE

Eliminating Legal Defects: This Rule endeavours to determine the existence of loopholes traced and remedy or suppress such “loopholes” or “mischief” in the law to provide for a fair means of justice.⁵ In pursuance of this, the current paper will address one such landmark case law that called for the need to adopt one of the aforementioned rules of interpretation: *The Golden Rule of Interpretation in the Shah Bano Begum Case*⁶.

BASIC FACTS AND ISSUE OF INTERPRETATION IN THE LEGAL CASE

A 62-year-old Muslim woman, Shah Bano, in April 1978, approached the legal court with a petition demanding for maintenance from Mohammed Khan, her divorced husband. Shah Bano resorted to Section 123 of the Criminal Procedure Code⁷ (which legally mandates a man to provide for his wife if she cannot sustain or provide for herself after the divorce). In response to this however, Khan claimed that the Muslim Personal Law restricts the provision of maintenance to the wife only for the *iddat* period after a dissolution of marriage.⁸ This was the main issue of interpretation that the case brought to light. In this context, *iddat* essentially refers to the observation of a waiting period by a woman in an instance of either the demise of her husband or a divorce, before she is legally permitted to marry another man.⁹

PROBLEM OF INTERPRETATION

Therefore, this judgement recognised its potential to cause a destruction of womens’ rights after divorce through its interpretation of the period of *iddat* required after maintenance in this particular case. In this instance, the court interpreted the meaning of ‘maintenance within the *iddat* period’, as it appears under Section 3(a) of the Protection of Rights Divorce Act; to mean ‘maintenance beyond the *iddat* period as well’ through the Golden Rule of Interpretation.

⁴ Luke v. IRC, 1966 AC pp. 557.

⁵ Ibid 4.

⁶ Ibid 2.

⁷ Code of Criminal Procedure, 1973, § 123, (India).

⁸ Ram Nayyar, *What is Shah Bano Case?*, The Indian Express, November 22, 2018

⁹ R. Kulkarni, *Unmasking the Shah Bano Case*, Manupatra (May 22, 2020)

ANALYSIS: GOLDEN RULE, THE HARBINGER OF JUDICIAL ACTIVISM

One of the most intriguing and interesting facets that an intricate analysis of the Shah Bano Case brings out, is the undeniable impact it brought about not only in the arena of interpreting the law by judicial forces; but also, the complexities of personal laws when they overlap with national statutes and legislations. The legal system in India has often characterised the Indian Constitution as a ‘lawyer’s paradise.’¹⁰ This is more so in the sphere of personal law. India is a country accentuated by its inherent diversity. This has repeatedly reiterated the need to simplify law in order to promote a more effective pathway to and administration of justice. The present case in discussion, involved the question of one such aspect of personal law that happened to coincide with national law- Maintenance. The court was entrusted here, with an extremely important duty of devising a solution that was fair, justiciable, equitable and promoted societal welfare- especially of the divorced Muslim woman. While a literal interpretation of the words of the Muslim Women (Protection of Rights on Divorce) Act, 1986¹¹ would yield the judgement that a Muslim woman was entitled to maintenance only ‘within’ the *iddat* period¹²; this judgement resorted to the Golden Rule of Interpretation to bring about a much-needed clarification in this regard. The court, in this instance; took into consideration the fact that a divorced woman might have had to endure many sufferings- like being thrown out of her house, robbed of all her money and property and thus rendered helpless and extremely vulnerable. The court thus endeavoured to interpret the true intention behind the provision of maintenances to a divorced woman- and that was to provide monetary or financial aid to a woman rendered helpless after a divorce. In this way, the court altered and deviated from its path from a literal interpretation of the Muslim Law and delved into understanding the intention of the concept of maintenance, to come to a judgement that was rational, socially-acceptable and promoted the well-being of the divorced Muslim woman. This case clarified that if a woman was rendered to be dependent on someone else and was still not in a condition to take care of herself after the completion of the *iddat* period, she would be allowed to receive maintenance till required. This case not only brought to light the undeniable opportunities and changes a ruling could bring about by interpreting the law in accordance with societal needs; but also highlighted the indispensability of judicial activism in such instances. The concept of judicial activism surrounds itself around the legal word’s nature of dynamism. It promotes a form of social engineering that judges are allowed to exercise in order to amalgamate and integrate new social policies that may deter from

¹⁰ Dr. Rakesh Srivastava, *A Guide to India’s Legal System*, NYU Global Law Program, (August 17,2019), https://www.nyulawglobal.org/globalex/India_Legal_Research.html.

¹¹ Muslim Women (Protection of Rights on Divorce) Act, 1986, § 3(1)(a), (India).

¹² Muslim Women (Protection of Rights on Divorce) Act, 1986, § 2(b), (India).

the pre-existing legislations to promote societal welfare and good.¹³ Thus, an intricate analysis of the judgement meted out in this case, by utilising the rule of Golden interpretation and its power of judicial activism, yields the observation that the court's power to interpret law paved the path to recognising the rights of women and voicing their needs, thus preventing the written word of the law from obstructing the due course of justice in society.

SUGGESTIONS AND CONCLUSION

The Shah Bano judgement case played a key role in putting into perspective the interpreting powers of the courts while they exercised the concept of judicial activism. It yielded the analysis that a vigilant and socially conscious court that took into consideration the dynamic nature of law, could use its interpretation powers to bring out egalitarianism and justness in society. The author does agree with the rule of interpretation used in this case, however, does feel a wave of caution that courts must exercise while meting out judgements using the Golden Rule. In order to ensure the prevention of misuse of this provision; the court must ascertain that the divorced woman is indeed and truly unable to provide for herself despite earnest attempts. The intention behind 'maintenance' is, after all, to provide support to a divorced woman as long as she requires it. Though it is extremely important for courts to protect the needs of women, it must also ensure that it does not overlook the needs of men. As society evolves, it becomes important to take into consideration all the parties involved in a legal suit and devise a solution that is beneficial to all while meeting the neds of justice and equality. This is the key to an egalitarian and idealistic society. It is also vital, that the court does not take law into its own hands and change the whole objective of the impugned statutes by modifying its words. Though judges must not alter the essence of a legal text, it is their duty to interpret the true intention behind a legal provision- in this case maintenance- and work towards fulfilling the requirements of the same in an honourable and exemplary manner- an inspiration for future generations to emulate.

¹³ Susant Chatterji , *'For Public Administration': Is Judicial Activism Really Deterrent to Legislative Anarchy and Executive Tyranny?*, The Administrator, Vol. XLII, April-June 1997,pp 9-24
