



## Mimansa Rules of Interpretation

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**ABSTRACT**

*When any ambiguity prevails in any act or statute, the court has to interpret the same. Our attitudes for the interpretation purpose have always been towards Western Philosophers. We have forgotten that the Hindu Jurisprudence is also the means of construction for the interpretation. The Srutti, Smrutti and Puranas are the best examples. The concept and concepts of Hindu Law help the interpreter or a jurist to meet the end of the justice. Mimansa Rules is one of the examples of them. We can use Hindu Saastras for this purpose.*

**KEYWORDS: Hindu Jurisprudence – Smrutti – Puranas – Mimansa Rules for Interpretation- Supreme Court of India – Construction**

**1.Introduction :**

"It is deeply regrettable that in our Courts of law, lawyers quote Maxwell and Craies but nobody refers to The Mimansa Principles of Interpretation"- These words are mentioned in Para 7 in Vijay Narayan Thattai & ors. Vs. State of Maharashtra & ors. ( 2009(3) G.L.H. 221 S.C.) on 18th August 2009 by Supreme Court of India. The fact of the case is that a notification under section 4 of the Land Acquisition Act, 1894 was issued in respect of the land of question on 29/8/2002. Then a notification under sec.6 of the Act was issued on 18/6/2003. But the Notification under sec.6 was challenged by a writ and it was allowed on 20/1/2004 and the Notification under sec.6 of the Act dated 18/06/2003 was quashed. Then a second Notification under sec.6 dated 30/10/2006 was issued by the State Government. And hence, the question was arisen whether the second Notification can be issued after the expiry of one year from the date of publication of the Notification or not?

**2. External Aid to construction:**

H'ble Supreme Court in this case has solved the question by external aid. And the external aid was none other than our ancient Hindu Jurisprudence. By this way, a new branch of external aid of interpretation has been invented by our eminent Jurists named MIMANSA RULES OF INTERPRETATION.

**3. The Mimansa Rules of Interpretation :**

The Mimansa Rules of Interpretation has been taught to us in this case. And it begins from Para 7 of the case. Shri K.L.Sarkar's MIMANSA RULES OF INTERPRETATION is a collection of Tagore Law Lectures delivered in 1905. The Mimansa Rules of Interpretation has been laid down by H'ble LORD JAIMINI. In our ancient Hindu Rules, whenever there was any conflict between two smritis, e.g.Manusmriti and Yajnavalkya Smriti, or ambiguity in any smriti, these principles were utilized. Formerly and originally, they were created for interpreting religious texts pertaining to YAGNA, but thereafter they came to be utilized for interpreting legal texts also. These Rules have been in our country for over 2500 years. While Maxwell's book was published in 1875 (!)

**4. The bird eye view on some quotations made by our H'ble eminent Jurists in this case:**

Most lawyers would not have even heard of their existence. ( Para 7 )

Today our So-called educated people are largely ignorant about the great intellectual achievements of our ancestors. (Para 7)

The Mimansa Principles of Interpretation is part of that great intellectual treasury. (Para 7)

These show how deep our ancestors went into the subject of interpretation.( Para 9)

The western writers on the subject of interpretation (like Maxwell, Craies, etc.) only say that ordinarily negative words are mandatory, but there is no deeper discussion on the subject, no classification of the kinds of negative injunctions and their effects. (Para 12)

**5. Maxims used in this case :**

One is not to eat KALANJAM or fermented/stale food. ( Para 10 & 16)

Dura Lex Sed Lex means THE LAW IS HARD BUT IT IS THE LAW. (Para 19)

When there is a conflict between the law and equity it is the law which must prevail(Para 19)

**6. Application of the rules:**

There are two kinds of prohibitions under the ancient theory. (1) Prohibitions against the whole world means PRATISHEDHA (2) Prohibitions against particular persons only means PARYUDASA.

Judgements or rights in rem = PRATISHEDHA , Judgements or rights in persona = PARYUDASA.

Pratishedhas are divided into two sub-clauses, (1) Without any exception (2) With some exception.

Pratishedhas is also of two kinds, with some exceptions and without any exceptions. And there are four classes of negative clauses in the Paryudasa. In the Mimansa system illustrations of many Principles of interpretation are given in the form of maxims (nyayas). The negative injunction is illustrated by the KALANJA NYAYA OR KALANJA MAXIM. So the concept and concepts of Mimansa Jurisprudence has been expounded by our H'ble Jurists in this case.

**7. NA KALANJAM BHAKSHAYET :**

Na Kalanjam Bhakshayet is known as the Kalanja Maxim. It states that a general condemnatory text is to be understood not only as prohibiting an act, but also the tendency, including the intention and attempt to do it. It is thus mandatory. By this way at Para 15 it has been promulgated that the proviso to section 6 of the Land Acquisition Act shows that it is a general ( without any exceptions) prohibition against the whole world and not against a particular person. Hence, the Kalanja Maxim of the Mimansa rules applies to sec.6. of the Land Acquisition Act. Hence, the Second Notification had been declared as void and the appeal was allowed in the case.

**8.Vews on the application of the Rules in this case :**

Had any other views been taken by any Judge, it would be begin from the theory of Prof.Hart or Prof.Bentham or Prof.Kelson to those of Prof. Salmond or Prof. Stone(!). But in this case, our learned and honorable Jurists have taken a different way from the others. So I would like to pay a salute to our H'ble Judges Of this case by way of this writing. A new door of research has been opened by this case. Even Mimansa Rules of Interpretation can be judged by western theories. Suppose We ask a follower of Prof. Bentham about the validity of the rules, the answer can be different than that of Prof. Hart theory or Prof. Kelson's Theory. The follower of the Kelson theory may ask a question about the GRUND NORM. Or the follower of the Hart theory may ask a question about the external morality or internal morality of the KALANJ MAXIM. Or the follower of the Bentham or Austin theory may ask a question about

the punishment or penalty provisions in breach of such maxim (rule).

### 9. Conclusion:

I think we have to go back to that century to understand the maxim. At that time in India, Hindu religion prevailed. All the kings had to follow smritis. And there were some differences between one smriti and other smriti. At that time to make solution, Mimansa rules of Interpretation were the true silver line for the learned Jurists of that time. So it was accepted by the Courts of Hindu Kings and hence any follower of Austin theory can say that it had the sovereign power and it was a set of promulgated rules. In ignorance of this rule would be resulted into loss of the case or misinterpretation of the rule could be resulted into injustice to the party. Hence, it can be accepted by the follower of the theory of Austin or Bentham. There may be some questions regarding the theory of Hart. Whether the Kalanja Maxim is Preliminary rule or Secondary Rule as per the theory of Prof. Hart? To me, it must be secondary rule. Had it been a preliminary rule, it would not be mentioned in 2009 by

these H'ble Jurists of our H'ble Supreme Court. That is why I believe it to be the secondary rules as per the theory of Prof. Hart.

It means the Mimansa rules of Interpretation were the GENERAL CLAUSES ACT of that era.

So I think and believe that the different way of interpretation taken by H'ble Markandey Katju And H'ble Asok Kumar Ganguly in this case are truly appreciated because they have opened a new door of research and method of interpretation in India. It can be treated as the gift to the research fellow in 21st century by these H'ble Judges. We cannot ignore the feedback presented by the H'ble Lawyers of this case. The Kalanja Maxim can be used to understand the mandatory provisions. It has been four years of this judgment. Though we can hope that the new method of interpretation will be proved more useful than those of present Western styles. And the days are not far when such types of method would be part of our syllabus of legal education!

## REFERENCES

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