



Interpretation of Legislation and Need For Carrying Out Reforms in Judicial System

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Interpretation , Legislation, judiciary, Evidence , justice, constitution

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ABSTRACT

Our country has a very good constitution which gives complete guidelines to run the country . The constitution has three pillars namely legislature, judiciary and executive. All three are independent of each other and have distinct role to play . The Supreme Court of India is perhaps one of the most powerful courts in the world. It has the power to undo what parliament does. However the court could not be developed into forums for delivering justice because there was the delay in final resolution of cases. The huge back log of cases in the courts of our country is almost like an inheritance passed on to future generation .The codes of civil and criminal procedure have remained unchanged ,putting procedure over substance and ignoring call for justice. The interpretation of law by the court varied from one court to other . Extremely long time is taking for final justice to be delivered . People are losing faith because of the delays as it is said that " justice delayed is justice denied ". Against this backdrop it is considered worth while to study the system , find out how the law is interpreted , what are the difficulties and find out the causes of the delay At the end give some suggestion to improve the system.

Introduction

Interpretation of the law by the court has far reaching consequences on the life of the individual and in a greater sense on the entire society. Each word, phrase or sentence is to be construed in the light of the general purpose of the Act itself. The judiciary is duty bound to act upon the true intension of the legislation. The objective of this article is to explain the meaning of interpretation of legislation; basic principles, rules of interpretation and highlight some of the outdated provisions of Indian Panel Code adopted from Victorian Era and their application still today. Also why there is undue delay in the final resolution of the cases. Why the general public is slowly losing faith in this important pillars of the democracy. There is huge back log of pending cases. Can something be done ? Can the system be improved?. At the end some suggestions have been made.

What is Interpretation of Legislation?

Interpretation is the judicial process of determining in accordance with certain rules and presumptions, the true meaning of the Acts of Parliament. The terms "interpretation" and "constructions" are generally treated as the same, however construction more literally, refers to the drawing of conclusions which are in the spirit, though not within the letters of the law. Therefore, it is not necessary to look into each and every word of the statute. The interpretation may be liberal or strict. The "Process of Interpretation" has some limitations, in as much as it does not give unlimited powers to the courts. A court cannot go beyond the central rules of "Interpretation" and cannot rewrite or recast the legislation

Basic Principles and rules of Interpretation

The principal rules of statutory interpretation are as follows-

- The act must be construed as a whole. The words of one section of an Act cannot be read in isolation from the rest of the act.
- The words which are reasonably capable of only one meaning must be given that meaning, whatever be the

result, this is called the literal rule.

- Ordinary words must be given their ordinary meaning and technical words should be given their technical meaning unless absurdity would result. This is the golden rule.
- When an act aims at curing a defect in the law an ambiguity is to be resolved in such a way as to favor that aim. This is the mischief of rule.
- The generic rule (i.e. of the same kind) means that when a list of specific items belonging to the same class is followed by general words, the general words are treated as continued to other items of the same class.

Indian Police Act and Colonial legislation

It would seem unfair, unreasonable and outright cruel if the tribal villagers of the Chhatisgarh, already caught in the crossfire between the state-sponsored Salwa Judum and underground Maoists, were asked to pay for additional police forces deployed as part of the ongoing Operation green hunt. Though, mercifully, no democratically elected govt in independent India has ever dared to involve Section-15 of the Indian Police Act, the Centre insists on clinging to this utterly outdated law even after the supreme court, in its landmark verdict on police reforms in 2006, directed both the union and state governments to adopt systems that were more accountable and oriented to modern notions of community policing.

Out Dated Provisions of IPC

There are many outdated provisions in IPC made during British Raj that needs to be either scrapped completely or amended drastically to suit the present situations. Some of them are discussed in following paragraph in brief.

Anti-Gay Provision IPC: Section 377

Interestingly, the biggest legal controversy of 2009 was over a little-used but hugely symbolic provision of the IPC: Section 377. The reading down of this section by the Delhi high court to decriminalize consensual sex among adults of the same sex has been widely welcomed for at least two reasons. However, notwithstanding the above ,

the matter was taken up in the Supreme Court and the final judgment given is that the provision of Section 377 is to continue.

Anti- Women IPC Section 497

Section 497 IPC, which makes adultery punishable with imprisonment up to five years, betrays a blatantly patriarchal view of the wife's status. It seems to regard adultery as the theft of the wife as she is, in the perspective of that provisions, no individual in her own right but rather chattel (or movable property) of the husband. This is evident from the fact that section 497 deals only with situations where the wife commits adultery. The cuckolded husband can then invoke Section 497 against his wife's sexual partner. **But if the husband commits adultery, the wife cannot take any such criminal action against him or his sexual partner.** He faces criminal liability only if the other woman happens to be married: her husband in that case can claim to be an aggrieved party. Thus, for the offence of adultery, the remedy as well as the liability is for men alone.

Peculiar provision of Section 309 IPC

IPC is also outdated in its attitude to those found to have attempted suicide. Rather than seeing them as Victims, section 309 IPC treats them as culprits liable to be punished with imprisonment up to one year. There was an abortive attempt 30 years ago to repeal; this illiberal provision. The Rajya Sabha passed a Bill in this regard in 1978. Unfortunately, before it could be passed by the Lok Sabha, The Bill lapsed as that House was dissolved prematurely the following year.

Case Lets on Interpretation

Case let-1 TV Interview cannot be used as evidence :-

A 23 year old girl Nirbhaya was brutally gangraped and assaulted by six persons in moving bus in Delhi on 16 Dec12. The victim died in Singapore hospital on 16Dec12. The 5 accused are facing trial and the sixth accused in the gang rape case is a juvenile and is facing proceedings before a juvenile Justice Bench. In the above case the Supreme Court interrupted that gang rape victim's friends cannot be sued as evidence in the trial proceedings. The apex court set aside the Delhi High court order which had allowed interview CD as an evidence.

Third Gender

Recently the Supreme court gave a historic judgment gave hijras and trans gender s the right to opt for "third gender" as their identity giving constitutional cloak to their right to freedom of sexual expression

Attack on Red Fort : SC stays execution -

The SC on 28 April 2014 stayed the execution of Red Fort terror attack convict after he pleaded that the execution would be double punishment for him as he has already in jail for 13 long years which was equivalent to life term. The bench has referred the matter to five judge constitution bench.

PIL Can't deal with Interstate Row -

In April 2014 the SC expressed surprise that water sharing dispute between two state Delhi and Haryana came up for resolving through a PIL. It said that PIL can't be used for resolving the interstate matter. There are separate machinery for solving such things between two state.

A Well Paid wife can't seek maintenance -

In a recent judgment the court said that in era of equality of gender, bias can't be shown to one gender and the

relief of financial assistance cannot be granted to wife despite their capability to earn as much as their husband.

Justice Delayed is Justice Denied.

Grant of liberal Adjournments by Trial Court:-

The criminal Justice System can not be left to the whims and fancies of the parties and their counsel" The trial judge has primary duty to monitor the trial and such monitoring has to be in consonance with the CrPC.

Justice Delayed

Today people are getting impatient with Judicial delays. The trial court judges are giving adjournments one after another and that is why justice is being delayed. As per the Section 309 of CrPC, once the case reaches the stage of examination of witness, the law says that it should be continued from day to day basis until all the witness have examined.

Justices Denied

There has been many cases where the under trials are in jail for years. Chand and his son were arrested in 2005 in connection with a murder case. It has been 9 years, they are in tihar jail as under trial. There are many such cases. Recently a lawyer wrote a letter to the chief justice of Delhi High Court providing the details of 47 such under trials in Jail no 4 of Tihar jail who have been there for 5 to 10 years as there case remains pending in trial courts. The case pertains to that of murder and drugs. Considering the facts that the punishment of life imprisonment is generally up to 14 years unless specified by the court.

Alarming Figures

Cases pending in Trial Court = 2.68 Cr., Sanction No of Judges = 17866, Judges Post Vacant = 3732, Average time taken = 15 Years, Criminal Case = 5-7 years.

Delay by President in Consideration of Mercy Plea

Recently there have been many cases where there has been inordinate delay in consideration of mercy plea by the President of India. This year the SC in recent judgment commuted the death penalty of 20 condemned prisoners to life term. This included the in the Raiv Gandhi assassination case. The court found that there has been inexplicably long delay on the part of the president ranging from 2 to 12 years in deciding mercy petition and ruled that delay in disposal of mercy petition could be a ground for to approach court for commutation of capital punishment to life term.

Death Penalty : Law Panel Seeks Views

The Supreme Court has averted at least 19 imminent execution in the recent past. In this regard the law commission has taken a study whether capital punishment should be retained in certain categories like terror incident or should be abolished altogether. The law panel has already floated a consultation paper in May 2014 inviting comments before finalizing its suggestions. India is one of the 59 countries which still retains the capital punishment.

Suggestions

In view of the foregoing, some basic suggestions are made to streamline the system and restore the faith of the public on the judiciary. Following are some of the suggestions :-

* **Modernize the court and Use technology.**- This will increase the efficiency

* **We need more number of judges** – Will help in clear-

ing the back log.

* **.Remove Delays in Final Resolution of Case-** Procedure needs to be simplified

* **Role of the Government** -The government need to fund the functioning of courts to modernize them. If we wish to be a society governed by the rule of the law, the laws must not only be just but also capable of delivering justice in timely manner.

* **There is Urgent Need of Judicial reforms and look more critically at the system-**

We need to look at the entire legal system and ask to what extent it is capable of facilitating justice for those who need it most

* **Need to look into the Pendency Problem -**

This indeed is a very serious problem which needs consideration at all levels. If this problem is sorted out then other minor issues will get sorted out . Recently a very good suggestion has been put forward by India's present Chief Justice R M Lodha The Pendency problem can be brought down through Chief Justice R M Lodha's radical proposal of keeping the court open for 365 days a year.

* **Judicial Appointment-** To be done on priority

* **Age of consent-** The retrograde step of increasing the age of consent from 16 to 18 should be undone

* **Setting of RTI Machinery to respond to Queries-** will reduce the load on the court

*. **Amend Section 377 of IPC-** This is the old outdated law

*. **Timely decision on the part of the President on cases referred to him for Mercy plea**

* **Need of Revision of IPC-** There are many provisions in IPC made during British Raj which are not suitable able today .

* **Setting of the Lokpal**

* **. Setting of courts to deal with fast track cases**

Conclusion-

In the light of the foregoing, it is evident that there is urgent need to reform not only the IPC but to some extent our Judicial system. For a democratic country like ours, the laws must be for the benefit of the individual and society rather than the reverse. Therefore Central Government must introduce the process of reform of the entire machinery. It would be worth pointing out that the police reform is required to be carried out along with this other wise the fruits of reforms of the judiciary and IPC would not reach the average citizen of our country. However, to do the above task a strong result oriented central government is needed. In this regard a right step would be to start the thinking process and discussion on the reforms of IPC, judicial reforms and side by side the highly needed police reforms.

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