
BEYOND BOUNDARIES: ANALYSING THE SIGNIFICANCE OF FOREIGN DECISIONS IN LEGAL INTERPRETATION

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ABSTRACT

“Interpretation”, according to Salmond, is the process by which courts attempt to determine the meaning of the legislature via the use of authoritative forms that it stated.¹ Court may seek help to the external aids in the case of repugnancy or inconsistency in the statutory provision. Foreign Judgements act as an external aid of interpretations, judges may refer to foreign laws and decision under certain circumstances. It has been observed that legal system in several countries especially common law countries, have routinely been borrowing doctrines and precedents from each other. India itself has borrowed many provisions from other countries in the constitution. This article is an attempt to evaluate the persuasive role of foreign judgements on the Indian Judicial. And it will focus on the different judgments given by the Supreme Court which relied on the foreign decisions while exploring the role played by foreign precedents in legal interpretations.

¹ JUSTICE G.P SINGH, INTERPRETATION OF STATUTES 1(2016).

Introduction

A statute is an essence of the legislature and the conventional way of interpreting or constructing a statute to determine the intention of the maker. Statute is made according to the intent of those who make it and it is the duty of the judicature to act upon the true intention of the legislature. To discover or construct the will, discretion, words, intention of legislature is known as interpretation of statutes. Several rules of interpretation were evolved even at the early stage of Hindu Civilization and Culture. The rules and regulations given by the “Jaimini” the author of Mimamsat Sutras, were employed for the interpretation of Smritis also. There are two aspects of intention of legislatures; one aspect carries the concept of “meaning” what the words given in the legislature means and another aspect conveys the concept of objective or aim of the statute. However, necessity of interpretation arises when the language of statutory provisions is ambiguous, not clear, or where two different meanings of the provisions are possible. If the language is clear and unambiguous then there is no need of interpretations. In the case *R.S. Nayak v A.R. Antulay*² it was held that duty of court is to give effect to the literal meaning of the words used in the provisions if the words of the Statutes are clear and unambiguous. Later, Supreme Court in *Grasim Industries Ltd. v. Collector of Customs, Bombay*³, it was held that there is no scope for court to amend or alter the statutory provisions if the words are clear and there is no obscurity and if the intention of legislature is clearly conveyed.

For interpreting the statutes courts use several rules and judges play an important role in it. This research paper will focus on the external aids of the interpretation which are not available inside the statute but outside statute. The court may seek help to the external aids in case of repugnancy or inconsistency in the statutory provisions. Foreign Decisions which are one of the external aid of interpretations can be referred by the judges in certain cases. Though different judgements this research paper will discuss the role of foreign decisions in Indian Judiciary.

Admissibility of External Aid of Interpretation

There are external and internal aid to construction. We must keep in mind that if there is a

² *R.S. NAYAK v A.R. ANTULAY*, AIR 1984 SC 684

³ *GRASIM INDUSTRIES LTD. v. COLLECTOR OF CUSTOMS, BOMBAY*, 2002 4 SCC 297

presence of Internal Aids to Construction then the External Aids cannot be used. If the interpretation can be done with the help of internal aids than there is no need of using external aids to construct statute. In case, if internal aid doesn't help in solving the issue, then the external aid plays its role.

Internal Aids includes Title, Preamble, Headings, Marginal Notes, Punctuation, Illustrations, Definition Clauses, Proviso, Explanation, Schedules, Transitional Provisions, Articles, Exceptions. All the mentioned internal aids are a part of a Statute and it is seen in the law itself.

As discussed earlier, when internal aids don't help much then external aids come into play. External Aids are not available within the statute itself. External Aids includes, Dictionaries, Foreign Decisions, Parliamentary History, Historical Facts and Surrounding Circumstances, Textbooks, Reference to other Statutes, *Contemporanea Expositio Est Fortissima in Lege*, Website. External aids are necessary for the interpretation of statutory provisions, accepted by the Supreme Court in the case *B.Prabhakar Rao and others v State of A.P. and others*⁴, Justice O. Chennappa Reddy has observed that "when the internal aids are not imminent enough or not sufficient to discover the object of the legislation than external aids are used for interpreting statutes." In the case of *District Mining Officer and others v. Tata Iron and Steel Co. and another*, Supreme Court has observed that It is a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in *Pari Materia* and the mischief which the statute was intended to remedy explain in simple language.

Admissibility and utility of these external aids are concerned to the fact that law is almost settled in our country now and in the Supreme Court *K.P. Varghese v Income Tax Officer Ernakulam*⁵, that everything which is logically relevant should be admissible during interpreting any statute

Persuasive Role of Foreign Decisions

Indian Legal System often appreciated for the importance it gives to the enforcement of foreign decrees and judgements. Countries belonging to common law traditions, have been borrowing doctrine and precedents from each other. In the years early years of United Nation System, a

⁴ B. PRABHAKAR RAO AND OTHERS V. STATE OF A.P. AND OTHERS, AIR 1986 SC 120

⁵ COURT K.P. VARGHESE V INCOME TAX OFFICER ERNAKULAM, AIR 1981 SC 1922

period which saw decolonization in most parts of Asia and Africa, many new Constitutions incorporated similar provisions by taking reference such as United Nation Charter and Universal Declaration of Human Rights. In later years the provisions of the International Covenant on Economic, Social and Cultural Rights have also acted as reference for such constitutional borrowings. Most of the provisions of the Indian Constitution is taken by the distinct feature of United States Constitution such as Bill of Rights, Judicial Review, equal protection before the law and substantive due process. This transplantation of constitutional doctrines was predominant in the case of most liberated countries in Asia, Africa, Soviet- led bloc followed a different path by prioritizing collective social-economic objective over basic individual rights.

Significant changes were adopted in the Constitution in 1950, our framers included 'bill of rights under Part III of the Indian Constitution and made judicial review enforceable under Article 13 and right to seek remedies for violation of Fundamental Rights under Article 32. Article 253 which states that parliament of India can make laws in accordance with international conventions, treaty, obligations. In "recognition" of foreign judgement Civil Procedure Code, 1908 lays down a procedure to apply foreign decisions and decrees in India under Section 2(6). All these fact of borrowing doctrines and precedents from other countries help the courts in the construction of Indian Statutes, by referring to the decisions of foreign courts of the countries which has similarities with the Indian Jurisprudence, for example, U.S, Canada, England etc and rendered on statutes in *pari materia* has been permitted by the practice in Indian Courts. Foreign Decision acts as a assistance, their use is done under certain circumstances, primary importance is always given to relevant intention of the Indian Statute. In the case of *State of West Bengal v. B.K. Mondal and Sons*⁶ Supreme Court of India held that assistance of such foreign decisions is subject to the qualification that is, prime importance is always given to the language of the relevant Indian Statute, the circumstances, and the setting in which it is enacted.

But borrowing foreign jurisprudence without due consideration and condition of Indian Statutes might be risky. In other words, "statutory construction must be home-spun even if hospitable to alien thinking". But when guidance is available from binding Indian decisions, reference to foreign decisions may become unnecessary. Knowledge of English laws has acted

⁶ STATE OF WEST BENGAL V. B.K. MONDAL AND SONS, AIR 1962 SC 779

as a valuable assistance if the language of Indian is often ambiguous and difficult to understand. Reference from Foreign decision was taken from pre- constitutional era. According to Shri M.C. Setvald that “When the language of the Code is clear and applicable no question of relying on English authority would arise. However, the general rule in the Indian Code was frequently.

derived from an English principle, and Indian courts regularly looked to English decisions for help when making decisions in these situations. Because some of the illustrations provided to clarify the general rules were based on English decisions, they were unable to act in any other way in addition to the general principles included in the Codes.⁷ These foreign decisions have persuasive value only they are not binding on Indian courts it only acts as a guidance or opinion for courts held in the case of *Forasol v ONGC*⁸ and *General Electric Co. v. Renuagar Power Co*⁹ While interpreting provisions related to Part III of the Indian Constitution which is fundamental rights Supreme Court too assistance from American precedents. We cannot deny the fact that our court takes assistance from foreign precedents. In the case where International Convention is involved such foreign decisions are more useful for guiding courts, so it is obvious that decisions in different jurisdiction across the world so far as possible be kept in line with each other. In the case of *Vishaka v. State of Rajasthan*¹⁰ court took help of the International Convention for the construction of domestic laws.

As Indian Acts is bases on a prior English Act, judgements constructed on the provisions of English Act are used as a guide by courts for constructing provisions of the Indian Acts. As the court referred to the *M’Naughten’s case*¹¹ for interpreting the defence of insanity given under section 84 of Indian Penal Code.¹² Apart from the similarities between jurisprudence and political thoughts of common law countries, the use of English language as authoritative text of Indian Statutes in another factor which helps Indian Courts to make foreign precedent as a guide. In the case of *Ram Avatar Badhai Prasad v. Assistant Sales Tax Officer, Akola*,¹³ even in constructing words such as ‘vegetable’ in a taxing statutes reference was taken from Canadian decisions while interpreting the similar word in similar statute. Supreme Court of

⁷ MC SETALVAD, THE COMMON LAW IN INDIA 61(1960)

⁸ FORASOL V ONGC, AIR 1984 SC 241

⁹ GENERAL ELECTRIC CO. V. RENUAGAR POWER CO., (1987) 4 SCC

¹⁰ VISHAKA V. STATE OF RAJASTHAN, AIR 1997 SC 301.

¹¹ R V M’NAGHTEN, (1843) 8 E.R. 718

¹² B SUDHAKARAN V STATE OF KERALA, (2010) 10 SCC 582

¹³ RAM AVATAR BADHAIPRASAD V. ASSISTANT SALES TAX OFFICER, AIR 1961 SC

India most often relies on foreign judgements, but court has taken into consideration that foreign precedents in every case should only be assigned as a persuasive value and cannot be binding on the Indian Courts.

Reliance on Foreign Decisions in Some Landmark Cases

Indian Courts have relied on decisions from other common law jurisdictions, opinions of foreign precedents have been cited by Indian Courts in some landmark judgements, which will be discussed below:

In *Menka Gandhi v. Union of India*¹⁴ this decision was constructed based on U.S decisions. This case was concerned with the restrictions on the issue of passport. Supreme Court read the ‘substantive due process guarantee’ into the language of Article 21. Court relied on U.S decision and laid down the position that governmental action is subject to scrutiny on multiple grounds such as fairness, reasonableness, and non-arbitrariness. The enumeration of the "interrelationship between rights" idea paved the way for innovative extensions of Article 21's scope.

In the case of *MV Elisabeth v Harwan Investment & Trading Pvt Ltd*¹⁵ Supreme Court refereeing from English Decisions interpreted the words “damage caused by a ship” in section 443 of the Merchant Shipping Act, 1958. Wide interpretation was given to the words for a reason that there is no other Act in India covering claims for damage to cargo carried in a ship but in England the subject is covered by a different Act.

In the case *Indian Express Newspaper v. Union of India*¹⁶ and *Rangarajan v. Jagjivan Ram and Union of India*¹⁷ these cases were in the extent of “freedom of speech and expression” and Indian Court has cited the decisions related to the First Amendment to the U.S Constitution. As in the case *Rangarajan v. Jagjivan Ram and Union of India* court took the reference of the case *Schenck v. United States*¹⁸ in which ‘clear and present danger’ test for placing restraints on speech was developed. Also, in the case *R. Rajagopal v. State of Tamil Nadu*¹⁹ court cited

¹⁴ MENKA GANDHI V. UNION OF INDIA, IBID. AT 8

¹⁵ MV ELISABETH V HARWAN INVESTMENT & TRADING PVT LTD, AIR 1993 SCC 1014

¹⁶ INDIAN EXPRESS NEWSPAPER V. UNION OF INDIA, AIR 1986 SC 515

¹⁷ RANGARAJAN V. JAGJIVAN RAM AND UNION OF INDIA, (1989) 2 SCC 57

¹⁸ SCHENCK V. UNITED STATES, 247 U.S. 4 (1919)

¹⁹ R. RAJAGOPAL V. STATE OF TAMIL NADU, 1994 SCC (6) 632

American cases and rejected the validity of ‘prior restraints’ placed on publication of a convict’s biography which detailed relations between some politicians and criminals.

In the recent case of *Aruna Ramchandra Shaunbag v. Union of India* 2011 in which court allowed passive euthanasia, court relied on the judgements of the foreign courts as there was no law in India related to issue concerned in this case. The Court said, “There is a plethora of case law about the courts all over the world relating to both active and passive euthanasia. It is not necessary to refer in detail to all the decisions of the Courts in the world about euthanasia or physically assisted death, However, we believe it is appropriate to discuss in detail a few significant rulings that have established the relevant legal framework. Further, they cited a case that was resolved by the House of Lords and is referred to as THE AIREDALE CASE: *Airedale NHS Trust v. Bland*²⁰ in opinion and been ruled that in the case of incompetent patients, if the doctors act on the basis of informed medical opinion, and withdraw the artificial life support system if it is in the patient’s best interest, the said act cannot be regarded as a crime. However, the Court didn’t clarify several issues in the instant case, say for example the question as to “who would give the consent”. Court in different judgements have relied on the opinions of the foreign courts on certain questions or issue courts are dealing with such as in the case of *Kharak Singh v. State of Uttar Pradesh*²¹ in which question was in the ambit of right to privacy, in the case *Bennett and Coleman v. Union of India*²² question was Freedom of Press and also in the case of *Bachan Singh v. Union of India*²³ where issue was in the constitutionality of the death penalty. The Indian higher judiciary has developed two overarching methods to increase access to justice and provide practical remedies since the late 1970s, in response to the country's pervasive poverty, illiteracy, and ingrained societal inequality. Public interest litigation and the imaginative interpretation of the "protection of life and personal liberty" specified in Article 21 of the Indian Constitution are the two techniques under question. The development of both of these activist strategies required reliance on foreign law, even though some aspects of them—the dilution of "locus standi" and the granting of novel remedies like a "continuing mandamus"—were initially developed by Indian judges.

Invoking the international legal materials, court has expanded the “right to healthy environment” as an extension of “right to life and personal liberty”. In the case of *Subhash*

²⁰ AIREDALE NHS TRUST V. BLAND, (1993) ALL E.R. 82 (H.L.)

²¹ KHARAK SINGH V. STATE OF UTTAR PRADESH, AIR 1963 SC 1295

²² BENNETT AND COLEMAN V. UNION OF INDIA, AIR 1973 SC 106

²³ BACHAN SINGH V. UNION OF INDIA, AIR 1980 SC 898

Kumar v. State of Bihar²⁴ severe pollutions lead to violation of right to life under Article 21 and in case Virender Gaur v. State of Haryana²⁵ court stated that right to clean environment is included under Article 21. In M.C Mehta v. Union of India²⁶ court itself discussed the provisions of United Nations Stockholm Conference on Human Environment 1972, even though it did not impose any domestic obligations.

In all these cases courts has relied on the opinions of the foreign courts though the foreign precedents are not binding but it plays as persuasive role in Indian Courts.

Conclusion

There are several examples in the Indian Jurisprudence that could serve as a model for the use of foreign judgement in Indian Legal System. Though there is no principal of law that constraints courts from referring to these judgements as foreign judgements are not binding but it plays persuasive role, and before applying the ruling of a foreign court to a domestic issue, this procedure must be carried out cautiously and with thorough examination of structural similarities. Hence, domestic courts are called on to engage with foreign precedents in fields where a conflict of laws arises. Furthermore, courts are also required to investigate the text and interpretations of international instruments (i.e. treaties, conventions, declarations) if their respective countries are similar. In the recent years courts has relied on the foreign decisions for the evolution of domestic cases. But none of the decisions are binding upon the courts but they are authorities of high persuasive value to which court may turn it into assistance. However, Indian laws must be prevailed always.

²⁴ SUBHASH KUMAR V. STATE OF BIHAR, AIR 1991 SC 420

²⁵ VIRENDER GAUR V. STATE OF HARYANA, (1995) 2 SCC 377

²⁶ M.C MEHTA V. UNION OF INDIA, (1987) 2 SCR 530

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