



## BAND-AID INTERPRETATION: HEYDON'S RULE

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*The words of a statute are so precise as the law must be construed with precise endeavor. Lawmakers in order to cover the fallacies or mischiefs in existing laws enact new laws. When an issue as to the interpretation of such laws comes before the courts, they apply the well-settled rules of interpretations. The courts while paying heed to the context over the text, try and examine the literal meaning of the relevant act and thereby construe the need for such legislation by referring to secondary sources. Court examines the wound created by the previous law which gave rise to the present law and thereby produce an understanding of the statute which is closest to what was intended by the legislature. This sixteenth century rule of interpretation is known as Heydon's rule or as contemplated by the author, the Band-Aid Interpretation.*

### 1. INTRODUCTION

Under the common law there are three recognised principles of statutory interpretation, namely, literal rule, golden rule and mischief rule. Heydon's rule<sup>1</sup> or the Mischief rule guides the court to interpret a

statute in light of the 'mischief' or 'wound' that inspired the statute. Since an act enacted by Parliament is not like reading a book rather it requires a certain degree of skill to understand its true meaning. Thereby, at times of ambiguity in the law, the courts are required to read the statute by applying the abovementioned rules and consequently, construe the true and accurate meaning of the enacted law. The mischief rule is an amalgam of Blackstone's appeal to a statute's 'reason and spirit' and Hart and Sacks style 'purposivism'. The rule helps in preventing clever evasions of the law by guiding the court to a stopping point for legal language and subsequently, giving the law a broader or a narrower scope. It gives rise to a fundamental question of relation between text and context; and offers useful guidance to both schools i.e., textualists and purposivists.<sup>2</sup>

To understand mischief rule, think of it as being corollary to band-aid. Just like a band-aid is applied over the wound, likewise new law is enacted to cover the wound (mischiefs) which the previous law did not cover. Subsequently, to provide treatment, the doctor removes the band-aid and inspects the wound, correspondingly, the judges remove the band-aid to inspect the wound (mischief), it is there to cover. Consequently, the courts are able to examine the wound (mischief), understand it and thus, provide remedies for its recovery. The rule comes to aid when

<sup>1</sup>Though it is widely suggested that the Heydon's rule was propounded by Lord Coke, but he, at the time of this case, was a lawyer and 22 years away from becoming a member of the judiciary. Chief Baron Manwood had propounded the judgement of the Court of Exchequer in Sir John Heydon's Case. Lord Coke's manuscript report is apparently much shorter, and in it, the main contention of Chief Baron Manwood's was that the judges should consider the

mischief instead of considering whether the statute enlarged or restricted the common law. (Footnote 58 at page 19, Bray, Samuel L., "The Mischief Rule" 109 Georgetown Law Journal, Notre Dame Legal Studies Paper No. 19912

<sup>2</sup>Bray, Samuel L., "The Mischief Rule", 109 Georgetown Law Journal (Forthcoming 2021), Notre Dame Legal Studies Paper No. 19912



there exists an issue with literal interpretation of the statute. As for instance, in *CIT v. Sodra Devi*<sup>3</sup>, the Income Tax Act, 1922 (Act 11 of 1922), Section 16(3), provides for including the income of the wife or a minor child or the income generated by a minor child in case of partnership, to form part of total income of the individual. The assessee contended that as per language of the act, ‘individual’ refers only to the males, and it does not extend to the females of the species. The court applied the mischief rule and referred to the Income Tax Enquiry Report, 1936<sup>4</sup> and the majority held that the law was enacted to remove the mischief upon the enquiry committee’s recommendations regarding mounting increase in tax evasion instances wherein the husbands were entering into nominal partnerships with their wives or fathers admitting their minor children to the benefits of partnership of which they were members. As a result, the word ‘individual’ used under the said section included only males and excluded females in order to disallow and discontinue the tax evasions i.e., the mischief in the previous law.

Thus, the rule allows the court to escape this deadlock in law. It guides the judge to consider the defect to which the statute was addressed, and the way it is the cure for that defect. Therefore, in light of this paper we shall reconsider the mischief rule, its application in India and its standing after almost 437 years of its birth.

## 2. MISCHIEF RULE

Mischief Rule is also popularly known as Heydon’s Rule since it was propounded by

the Court of Exchequer in Sir John Heydon’s Case<sup>5</sup> in 1584. This landmark decision is applied for interpreting the statutes by the Courts across the common law jurisdictions. The mischief rule is very simple in nature- the intention of the legislature while enacting a new law is to remove the mischiefs which the previous or prevailing law does not cover and thereby a new law is enacted to remove that mischief, in other words, the purpose of the statute is to remove the mischief created by the defect persisting in the previous or existing law. When the law is required to be interpreted by the courts, they try and understand the intent of the Legislature which can be comprehended from secondary sources like committee reports, law review and other corresponding statutes. The Courts look for the wound i.e., the mischief which the statute is intending to cure, and interpret the law considering the same. Accordingly, the courts are required to make such construction which shall subjugate the mischief, and advance the remedy, and “to suppress subtle inventions and evasions for persistence of mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the legislature, *pro bono publico*.”<sup>6</sup>

The rule propounded by the Court of Exchequer in Heydon’s case describes assessment of the law considering four issues:<sup>7</sup>

1. “What was the common law before the making of the Act?”
2. What was the mischief and defect for which the common law did not provide;

<sup>3</sup>*CIT v. Sodra Devi*, AIR 1957 SC 832

<sup>4</sup>Government of India, “Income Tax Enquiry Report 1936” (1937)

<sup>5</sup>*Sir John Heydon’s case*, (1584) 76 ER 637

<sup>6</sup>*Macmillan v. Dent*, 1907 1 Ch 107

<sup>7</sup>*Sir John Heydon’s case*, (1584) 76 ER 637 (The Law Commission and the Scottish Law Commission (Law COM. No.21)



3. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and,
4. The true reason of the remedy?"

Having resolved or answered these issues, the court is further casted with a duty to construe the statute so as to (a) subdue the mischief, (b) foster a remedy, (c) repress anything that would lead to the protraction of the mischief, and (d) forge ahead with the cure and the remedy according to the true intent of the legislature for the public benefit. These points (issues) urge that the statutes are not to be read "in abstract, in vacuo."<sup>8</sup> The judges are required to read the statute in light of the mischief and as a remedy of that mischief.<sup>9</sup> "It is a well-established rule of interpretation that in order to understand the true nature and scope of an act it is necessary to ascertain what the evils were which were intended to be redressed by it."<sup>10</sup>

In comparison, the mischief rule is more flexible but narrower than other rules of interpretation, namely, the golden or literal rule, as for former, the mischief rule requires the court to look over four different issues in order to affirm that the gaps/ fallacies within the law are covered and whereas it is said to be narrower than other rules as it can be applied only in cases where the statute came into force for removing the defect or a mischief in any previous or existing law. Thus, mischief rule can be applied where the statute was enacted to remove the defect in common law or where the literal rule has not been able to resolve the ambiguities. The literal or golden rules are concerned with

finding out what the legislature 'said', whereas mischief rule is applied to find out what the legislature actually 'meant'.

### 3. APPLICATION OF THE HEYDON'S RULE

One of the greatest applications of the Heydon's rule can be witnessed in case of *Smith v. Hughes*,<sup>11</sup> wherein the word 'street' under Section 1(1)<sup>12</sup> of the Street Offences Act, 1959 (1959 Chapter 57 7 and 8 Eliz 2) came for interpretation before the court. The defendant was a common prostitute and was luring passer-by's by banging a metal object on the railing of her balcony located on the street. After being charged under the abovesaid provision, she contended that she was not on street per se while luring or soliciting men, rather she was in the balcony of her house and the law only contemplates that the offence be committed on the streets and thus, no solicitation has been committed. While interpreting the word 'street' the court referred to the intention behind such legislation. The court held that in order to be charged under the said provision the law does not require the physical presence of the defendant on the streets but only that the solicitation be committed on the streets. And since the defendant was, in fact, luring men walking on the street by banging a metal object or by hissing from her balcony, which is 15 feet above the street, was in fact, soliciting, projecting and addressing people on the street, thus, she was held guilty to have committed the said offence.

Thus, in the instant case the court went and ascertained the mischief this law was there to

<sup>8</sup>S. E. Thorne, *The Equity of a Statute and Heydon's Case*, 31 ILL. L. REV. 202, 215 (1936)

<sup>9</sup>Sir Edward Coke while explaining the Mischief Rule in his manuscript.

<sup>10</sup>*M.P.V. Sundararamier & Co. v. State of A.P.*, 1958 SCR 1422 : AIR 1958 SC 468 : (1958) 9 STC 298

<sup>11</sup>*Smith v. Hughes*, [1960] 1 WLR 830

<sup>12</sup>"It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution."



correct. And they contemplated that the statute came into force because of the disturbance created by the prostitutes on the streets and thereby hindering the passer-by's walking through the streets. Henceforth, it was enough to understand the true intent of the legislature behind the law and held that act of the defendant was one punishable under the law.

Another authoritative application of the principle can be seen to be done by the Supreme Court while interpreting the Prize Competition Act, 1955 (Act 42 of 1955), s. 2(d), wherein the issue involved was whether 'prize competition' includes instances where substantial skill is required?<sup>13</sup>

The court resorted to the history of legislation, the object of the act and the wording of the statute, which was to control and regulate prize competition including gambling, wherein no substantial skill is required. The court while applying the mischief rule provided that at first the literal rule must be given primacy, but if its literal interpretation leads to a different meaning intended by the statute then the mischief rule must be applied. As stated by Lord Coke while explaining the Heydon's rule that "to know the previous law, the mischief, the law propounded to remove that mischief and the reasons for the that remedy, have to be considered." Thus, the court held that the act was enacted with an avowed object of regulating and controlling prize competitions

in which outcome is not the dependable on the application of substantial degree of skill but rather based on only luck. Another contention raised by Mr. Nani Palkhiwala, for the petitioners, was negated by the court with regards to the impugned section encroaching the fundamental right under art. 19(1)(g)<sup>14</sup>. The Hon'ble court held that art. 19(1)(g) only covers activities which are lawful trading activities and gambling cannot be regarded as trade but *res extra commercium* and thereby falling outside the ambit of the said fundamental right.

The question of interpretation arose yet again in case of *Yates v. United States*<sup>15</sup> before the US Supreme Court. The Sarbanes-Oxley Act<sup>16</sup> made it a federal crime to "destroy, conceal, or falsify any record, document or tangible object."<sup>17</sup> The act was a response to cover loopholes in the previous law which led to various corporate and accounting scandals.<sup>18</sup> In the impugned case, the court was required to assess the applicability of the act over commercial fisherman who was caught catching undersized grouper and tried to evade the prosecution by having undersized fishes thrown into the water. Upon examination of the objective of the Act the court held that the Act did not apply to 'fishes' as fish cannot be pondered as a "tangible object" within the meaning of the statute. Justice Ginsberg opinions were heavily depended on the mischief rule even though she had mentioned that she is

<sup>13</sup> R.M.D. Chamarbaugwalla v. Union of India, 1957 SCR 930 : AIR 1957 SC 628

<sup>14</sup> Constitution of India, art. 19(1)(g)

<sup>15</sup> *Yates v. United States*, 574 U.S. 528 (2015)

<sup>16</sup> Sarbanes-Oxley Act of 2002 (Pub.L. 107-204, 116 Stat. 745) also known as the "Public Company Accounting Reform and Investor Protection Act" (in the Senate) and "Corporate and Auditing Accountability, Responsibility, and Transparency Act" (in the House)

<sup>17</sup> *Ala. Dep't of Revenue v. CSX Transp., Inc.*, 135 S. Ct. 1136 (2015) at pg. 1074-1078 (quoting and analysing 18 U.S.C. § 1519 (2012))

<sup>18</sup> *Ibid*, at page 1079 and 1081, The US Congress had gathered its attention to financial frauds and corporate and accounting deception and cover ups, which were prompted by the exposure of Enron's Accounting fraud. Thereby, describing § 1519 as "curing a conspicuous omission" and that it targets corporate frauds.



“mindful of the problem preceding the statute.”<sup>19</sup>

But sometimes the mischief rule creates more doubt than solving them. In case of *Elliot v. Grey*<sup>20</sup> the car of the defendant was raised by using jacks, its battery was removed and was parked on the road. The defendant was charged under Road Traffic Act, 1930 (20 & 21 GEO. 5. Ch. 43), s. 35(1), wherein it is illegal to use an uninsured vehicle on the road. The rightful contention raised by the defendant, which was negated by the court, that he was not using the vehicle nor was it in a condition to be used and merely being parked on the side of the street does not amount to being used on the road. The court after applying the mischief rule held that car was being used on the road as it is creating a hazard and thus, insurance is an inevitable essentiality in case an accident may ensue. It was that the statute aimed for ensuring compensation to the victim where the accident is caused due to hazard created by others. In my opinion, this principle will render anything and everything capable of moving on road to be liable under the law. The correct interpretation would have been that any vehicle ‘capable’ of being moved on the road should be insured. The action should be on interpretation of the word ‘car’, which is a vehicle capable of being moved due to its autonomous engine or motor and not due to its sheer car design (structure like a car), since under the same law a cycle or a cart is not required to be insured. Any vehicle parked on the road cannot be said to be a hazard, correct offence in this case would have been disruption of normal passage.

However, in another case,<sup>21</sup> a cycle was considered to be a carriage on the road (highway) wherein the driver was heavily intoxicated and was held to be cycling under the influence of alcohol and thus, charged under section 12 of the Licensing Act, (1872 Chapter 94 35 and 36 Vict.), which states that it is an offence to be drunk in charge of a ‘carriage’ on the highway. The court upon successful application of the Heydon’s rule held that the word ‘carriage’ included cycle within its ambit as the cyclist created danger to himself and others on the road.

### *Relevance Of Mischief Rule in Modern Day Laws of India*

It will not be wrong to suggest that the 437-year-old rule which is the creation of the British courts is still prevalent in modern day laws of India and common law countries. A recent application of this rule of interpretation can be seen to be done by the Supreme Court in case of interpreting the statutory bar on filing CIRP against enterprises where default is less than Rs. 1 Crore (Ordinance was notified in March 2020). The court commented that “the embargo contained in Section 10-A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision.”<sup>22</sup>

The Supreme Court again in *Swedish Match AB v. SEBI*,<sup>23</sup> held that the mischief rule must be applied to interpret regulation 10, 11 and 12, as amended in 1997, since they came into force to cover the loopholes created by 1994 Regulations. The reasoning for

<sup>19</sup>Anita S. Krishnakumar, “*Passive Avoidance*”, 71 STAN. L. REV. (2019) at 538–40 (concluding that Justice Ginsburg’s opinion “relied heavily” on the mischief rule).

<sup>20</sup>*Elliot v Grey*, [1960] 1 QB 367

<sup>21</sup>*Corkery v Carpenter* [1951] 1 KB 102

<sup>22</sup>*Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd.*, (2021) 3 SCC 224 : (2021) 2 SCC (Civ) 65 : 2021 SCC OnLine SC 72, para 32 at page 236

<sup>23</sup>*Swedish Match AB v. SEBI*, (2004) 11 SCC 641



applying the rule was given that the amendment came to cover the mischiefs created by the 1994 Regulations and had the literal rule been applied, the mischief would have come to the surface and suppression of mischief would not have been possible and thereby the objective of the amendments could never have been achieved.

Here again the court refused to apply the literal rule since it would have created more mischiefs than rectifying any of them. The court weighed the importance of the amendment in light of its necessity of enactment. It can clearly be construed that the amendments came into force to immediately rectify the loopholes or fallacies in the previous law.

“The best way to interpret a law is to be thorough with why’s and how’s of the law? Why the law is what it actually is or how did it arrive at its current form?”<sup>24</sup> The Hon’ble Supreme Court while interpreting the patent laws highlighted the importance of indulging into the legislative history of the law to correctly understand it, while adding that “the adage of it is more true in case of patent laws than perhaps any other law.”<sup>25</sup> Hence, the mischief rule is the best way is to understand the reason behind the legislation. As rightly propounded by Justice Chinnappa Reddy<sup>26</sup>, “that a law is best understood if we know the reasons for it. The reasons for the statute are the safest guide for its interpretation.”

Again, in *RBI v. Peerless General Finance and Investment Co. Ltd.*,<sup>27</sup> Justice Reddy, said:

*“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place, and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression ‘Prize Chit’ in *Srinivasa [Srinivasa Enterprises v. Union of India,**

<sup>24</sup>*Novartis AG v. Union of India*, (2013) 6 SCC 1 : (2013) 3 SCC (Civ) 227 : 2013 SCC Online SC 271 at page 128

<sup>25</sup>*Ibid*

<sup>26</sup>*Utkal Contractors and Joinery (P) Ltd. v. State of Orissa* [(1987) 3 SCC 279] (SCC pp. 288-89, para 9),

mentioned in *Novartis AG v. Union of India*, (2013) 6 SCC 1 : (2013) 3 SCC (Civ) 227 : 2013 SCC Online SC 271 at page 127 (para 26)

<sup>27</sup> *RBI v. Peerless General Finance and Investment Co. Ltd.* [(1987) 1 SCC 424] (SCC p. 450, para 33)



*(1980) 4 SCC 507] and we find no reason to depart from the Court's construction.”*

#### 4. CONCLUSION

Hence, mischief rule is like a band-aid. Just like a band-aid is applied over a wound in order to cover and cure it and then removed by the doctor to inspect the wound it is covering, similarly, a new law is enacted to cover the mischiefs of the existing or the previous law. But in case of ambiguities, the context of the law is understood by removing its band-aid and inspecting the wound it covers. By that we can construe and examine the requirement behind such rectification and thereby supporting the courts to interpret the law in the same context and intention as it was enacted by the legislature.

Nevertheless, it can be said that some rules make the basis of law, and some make the basis of interpreting it. Even after four centuries the rule seems to be highly prevalent and pervasive throughout the jurisdictions. However, its application has become somewhat restrictive, but it will be wrong to suggest that its relevance has depleted over years. Though there are imminent jurists advocating against the use of the rule as it garnishes the mind of the unelected judiciary rather than the elected legislature but, in my opinion, the Heydon's rule helps in achieving the subjective goal of the enactment rather than mere words on the page constituting the law. The words might not always be able to advocate the correct connotation but by understanding the underlying object and aim of the law, we construe what is 'meant' by the act as a whole.

One of the major fallacies in the mischief rule is its age and the ancient rule is somewhat getting rotten. Apparently, age is more than just a number. The rule in its strictest sense will not be of much use today, where the majority of statutes are codified. There is a necessity to modify the rule according to today's dynamic requirements. The rule in itself does not offer any mathematical formula or equation for interpretation, rather only guidance, but such guidance is very crucial for interpretation. Sometimes the text or words are not able to do justice to the context in which they were used or intended to be used. In order to properly understand something, it is essential to start from its origin, followed by its need or requirement which shall answer its purpose. Once the purpose is crystal clear, the text of the statute will showcase it, profoundly and evidently.

As for instance, with the advent of Covid-19 pandemic, the government in order to stimulate support to small businesses deferred the filing of CIRP for debts below Rs. 1 crore, owed by corporates. Now, the question arose as to the retrospective application of the impugned notification. The NCLAT<sup>28</sup> held the notification to be prospective in nature as the intention behind such notification was to help businesses facing financial stress due to the pandemic and not a support mechanism for defaults which had occurred prior to the impugned notification. Here, the tribunal- though, did not signify- but applied the mischief rule and literal rule jointly in a conspicuous manner.

Since every person has their unique perception and interpretation about different things, therefore, it is likely to have distinct

<sup>28</sup>Madhusudan Tantia v. Amit Choraria and Another, 2020 SCC OnLine NCLAT 713 (para 58)



meanings of the same law when interpreted by different jurists. Thus, the need of the hour, is, firstly, to redefine the mischief rule considering Indian statutes and precedents. Provide a defined formula to be applied for such interpretations. Secondly, every new law must be accompanied with explanation to define the intention of the legislature. With clarity being showcased from the beginning and within the act itself, the probability of misinterpretation will decline sharply. Such explanation shall be based upon the parliamentary debate of the bill and be attached as the explanatory note in the statute itself. This will ensure the correct meaning of the law within the law. Since it is very difficult to have an account of the shortfalls in the law that may ensue in the future, therefore, it is imperative to provide an expanded explanatory note under each provision, which will help in curbing wrongful application of the law and in turn reducing the burden of the courts and helping the jurists to interpret the law, considering the explanatory notes, simply by applying common sense.

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