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### **The Tiff between Intention of the Legislature and Judicial Interpretation in the Interpretation of Statutes.**

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#### **Abstract:**

The term legislation or statute is commonly defined as the will of the legislature that is backed by sanction and enacted by a competent authority. Interpretation of a statute is the process by which the meaning behind the legislature is sought. In countries that follow the doctrine of separation of powers, the rule of thumb is that the legislature makes the law and the judiciary administers the law and in doing so interprets the law. Over time, the Courts have devised various rules to guide the process of interpretation of legislations. The rule of giving effect to the intention of the legislature holds a significant position in the principles of interpretation of statutes. This rule entails that the interpretation should be such that it achieves the intention of the makers of the legislation. It is expected of the courts to enforce the intention with which the legislature was enacted.

This paper aims to examine the principle of interpretation regarding the intention of the legislature. The paper seeks to highlight the defects of the principle of legislative intent and the need to eliminate the defects for efficient interpretation of statutes. Furthermore, the paper also aims to analyse the power of the principle of legislative intent in overriding the power of the judiciary to interpret laws.

#### **Introduction:**

The principle of separation of powers requires that the functions of the state are strictly divided between the three organs of the state, i.e. the legislature, the executive and the judiciary. One organ must not interfere with the working of the other and one person should not be a member of more than one organ. In a State, the legislature makes laws and the judiciary administers the laws. One organ is not superior to the other. The power in the hands of the legislature to declare the law is checked by the power of the judiciary to ensure that the law enacted by the legislature does not violate the rights of the people.

In the process of administering the laws, the courts have to interpret or understand the meaning of the laws. To guide the process of interpretation, the courts have developed various principles of interpretation of legislations. One such principle is the principle of legislative intent. An inference of the intention of the legislature can be derived from the language of the legislature. A significant issue that arises in the inference of intent is the recognition of the fact that the legislature, although composed of several individuals, is not a living, breathing organism capable of forming its own intent. This leads to the question of what can actually be considered as the intention behind enacting the legislature.

The principle of legislative intent holds an influential position in the interpretation of statutes but it is accompanied by various issues with regard to its implementation. It is the duty of the judiciary to administer the plain meaning of the statute and in case of an ambiguity regarding the plain meaning, the courts are expected to interpret the statute keeping in mind the intention of the legislature. This paper aims to elucidate on the principle of legislative intent as a guide to the interpretation of statutes. The paper also aims to elaborate on the defects that arise in the implementation of the principle of legislative intent. Additionally,

the paper also aims to analyse the power of legislative intent to override the power of the judiciary in interpreting the law.

### Analysis:

#### I. The Application of The Legislative Intent Principle in The Interpretation of Statutes:

It was for the first time in 1584<sup>569</sup> that the principle of legislative intent was used by Courts in England to interpret a statute. After this, the doctrine rapidly grew to become one of the prominent principles that aids the process of interpretation of legislations by the courts.

If the Courts only referred to the literal interpretation of a statute, only the grammatical meaning of the statute would be implemented and the objective behind enacting the statute or the intention of law makers behind enacting the law would be disregarded.

It is the duty of the court to administer the law and apply the principle derived from the law to a particular situation. In this process, the court can either stick to the '*litera legis*'<sup>570</sup> or interpret the law with reference to the intention of the legislature behind enacting the law. When the language used in the legislation is intelligible and without any ambiguity, the court administers the grammatical meaning of the legislation. Here, the court recognises that the language of the statute can be applied to the issues of the case. On the other hand, when the court finds that adopting the literal meaning would lead to the contravention of the intended aim of the legislature, the court must turn to other methods of interpreting the enacted law. In situations where the case before the court could not be reasonably foreseen by the legislature while making the law, the court must interpret the statute in accordance with the

intended objectives that the legislation seeks to achieve.

There are various opinions with the accessibility of the intention of the legislation and its merits in the process of interpretation of statutes. Professor Radin argues that the legislative intent cannot be found with ease and is inefficacious in the interpretation of the laws. On the contrary, James Landis<sup>571</sup> argues that the intention of the legislature is generally found in the discussions held in the legislature. He opined that there is a difference between the intended meaning of the language of the legislature and the purpose behind enacting the legislature.

Payne refers to legislative intent as the meaning that the legislature expects the courts and the public to infer from the language employed in the legislation. He describes that, indubitably, the intention of the legislature should be associated with the legislators who voted in support of the enactment of the bill. It is the intention that is shared by those members of the legislative body with respect to the passing of the bill.

It has also been recognised by various scholars that a legislature, being a body composed of hundreds of people with different thoughts and opinions, it is difficult to ascertain a single, homogenous legislative intent. In this sense, the intention of the legislature should be inferred in consonance with the intended purpose and objectives of the enactment. It is the duty of the courts to balance the interpretation that can be deduced from the literal meaning and the intention of the statute. In case of any conflict, significance should be attached to the legislative intent.

The intention of the legislature is the objective with which it enacts the law in question. As any sort of communication, the intention of the speaker/writer is deduced from the words that are used in the communication. Therefore, the

<sup>569</sup> Richardson, James R. "Judicial Law Making: Intent of Legislature vs. Literal Interpretation," 39 KENTUCKY LAW JOURNAL, (1950)

<sup>570</sup> *Litera legis* is a maxim that refers to the ordinary and grammatically natural meaning given to the words of a statute when the rule of literal interpretation is followed.

<sup>571</sup> Gerald C. Mac Callum, Jr., *Legislative Intent*, 75 YALE LAW JOURNAL, 1966.



intention of the legislature in passing a particular law is to be gathered from the words used the legislature<sup>572</sup>. In *Jane Straford Boyse v. John T. Rassborough*<sup>573</sup>, it was held that, a legislation is the instrument from which social order is affected. Although the objective of the legislation is not explicitly mentioned in the statute, it should be deduced from the language of the legislation so that the purpose of the statute is fulfilled.

Thus, the principle of legislative intent is one among the principles of interpretation that has been devised by the courts to administer laws efficiently and to interpret the laws in such a manner that there is harmony between the purpose of the legislation and the language of the statute.

## II. The Defects with the Principle of Legislative Intent:

It is the responsibility of the judiciary to interpret the laws enacted by the legislator and administer them to ensure a stable and efficient legal system. When a literal interpretation of the statute is not possible due to ambiguity from the language used in the legislation, it is believed that the court should infer the meaning of legislation to achieve the intended results and objectives of the legislature in enacting the legislation. This section of the paper aims to analyse the issues that arise in the implementation of the aforementioned principle.

One of the significant issues in utilising the principle of legislative intent arises from the recognition of the fact that principle gives the quality possessed by a living, breathing human to the legislature. The legislature which is made up of several individuals is personified to possess the quality of desiring intended results from the law that it enacts. The objectives of the law are communicated by the legislature in

the language used to frame the legislation. But the hurdle that arises here is that the legislative body cannot always be entirely effective in communicating its ideas through the language used by it. This is commonly experienced by humans all and sundry in everyday conversations and a legislation drafted by the same humans would be no exception to the problem.

Ambiguities in everyday conversations are solved by 'common sense'<sup>574</sup>. But to what extent can 'common sense' be depended upon to infer the matters of legislative interpretation? A matter as grave as legislative interpretation cannot be referred to experiences relating to subjective perception which is not the same for everyone.

Furthermore, it has been noticed that the predicament with relying on the principle of legislative intent is that a single legislator cannot be identified for the law such that the intention behind the legislation can be extracted from them to ease the process of interpretation. Similarly, it is also erroneous to infer that the legislative intent consists of the collective, homogenous intent of the legislative body. Realistically, the legislation could have been drafted by a handful of the legislators, with a few legislators disagreeing with the bill and voting against it and a few voting for the bill but having different opinions in mind. It cannot be substantially deduced that the legislation was enacted with a homogenous intent possessed by all legislators without explicit statements by the legislators that they all possessed the same beliefs and opinions. If there were a method to accurately know the intention of the legislators in enacting the law, it would have no binding value on the judiciary because a legislator's duty is to enact laws in general interest and not to force their opinions on the public. Additionally, legislations are enacted to be generally applicable. The

<sup>572</sup> The abovementioned principle was upheld by the Court in *J P Bansal v State of Rajasthan* 5 SCC 134.

<sup>573</sup> [1857] EngR 299.

<sup>574</sup> Reed Dickerson, *Statutory Interpretation: A Peek into the Mind and Will of a Legislature*, 50 INDIANA LAW JOURNAL, (1975).

legislature cannot control the interpretation of the law by the judiciary to a particular situation citing that it did not adhere to the intention of the legislature when there was no possibility that the legislature could have foreseen the situation while enacting the law.

'Intent' in the sense of interpretation or communication refers to the ideas that the speaker/writer desires to convey to the reader and the meaning that they expect the reader to deduce. It is the particular idea that they wish to communicate to the reader. Owing to the fact that the language used by the speaker/writer could have an independent meaning outside the intended meaning, the interpretation of the reader would differ from the one that the former intended. This issue also arises in the cases of interpretation of legislations.

Professor MacCallum is of the opinion that a lawmaker can have multiple intentions behind enacting a law. These include, the intention to enact the legislation, the intention to enact the legislation with certain terminology, the intention to enact the legislation with a certain desired interpretation, the intention to have the enactment of a legislation as a laurel to their name and other motives of benefit to them<sup>575</sup>.

Professor Radin discusses the various issues that arise with using the principle of legislative intent in the interpretation of enacted laws. It has been pointed out that a legislation does not have a single maker and thus it is difficult to extract the intention of the person behind the legislation. This contention states that unlike a private communication, there is no single communicator of a legislation. It does not deny the existence of legislative intent. Additionally, Professor Radin points out that it is unviable to look for intention in a legislative body because it consists of people with mixed and heterogenous opinions such as legislators who voted against the passing of the bill and

legislators who supported the passing of the bill but with varied interpretations or intentions. It can also include legislators who participated in the process of enactment without actually reading the provisions of the bill. The question of whose intention to actually seek also arises. Should the intention of the drafting committee or legislators enacting the bill by voting in support or legislature as a whole or the chief executive who assented to the legislation be considered? Should the intention of the legislature as a body be considered, the issue of considering an intention that consists of the differing opinions of the law makers and not a composite, homogenous intention shared by all also comes into the picture.

Radin also brings to notice the improbability of gathering the legislative intent from the multiple minds that worked on the enactment of the law. Furthermore, Radin states that it is mandatory for the Court to take cognizance of the language used in the statute while interpreting but the intention of the legislature need not be strictly followed.

Radin also argues that the principle of legislative intent is defeated by the rule of literal interpretation that the judiciary must abide by<sup>576</sup>. The courts need only look at the language of the legislature and need not go beyond it for the process of interpretation. The fact that seems to go unnoticed by Radin is that the legislature can be grammatically framed to give effect to the legislative intent. The language need not stand independent of the intention of the legislature. The intention of the legislature need not be adversarial to the literal construct of the statute.

An additional issue with the usage of legislative intent has been pointed out by Marvin Minsky, who opines that often even the author is not possessed with the knowledge of the intention of his writing.

<sup>575</sup> Reed Dickerson, *Statutory Interpretation: A Peek into the Mind and Will of a Legislature*, 50 INDIANA LAW JOURNAL, (1975).

<sup>576</sup> Reed Dickerson, *Statutory Interpretation: A Peek into the Mind and Will of a Legislature*, 50 INDIANA LAW JOURNAL, (1975).

Therefore it has been argued that when it is not permitted to go beyond the text of the legislature to infer the intention behind the legislation, it is indeed futile to consider the intent of the lawmaker behind a law. Thus, various issues spring up with the usage of the principle of legislative intent.

### III. Can Legislative Intent Override the Judicial Interpretation of a Statute?

In everyday conversations, the language used by the speaker/writer points towards their intention and thus is simple to infer. This is not the case for statutory interpretation. In reality, the legislation generally takes the meaning that is given to it by the courts in particular cases according to the circumstances of that case, because unless the legislation is construed according to a specific situation there is no method to know how the statute covers that situation. This function of interpretation by the courts has to be performed within the ambit of the restrictions placed by the supreme law in that country.

In various cases, the interpretation of a duty that is created by the legislation in question is modified at different points of time by the judiciary according to their understanding of the changing needs of the society and various aspects of public interest. It is now widely believed that it is futile to stick to the interpretation of the statute that is in consonance with the intention of the law makers. Seeking the intention of the legislature leads to the ignorance of the fact that the language used in the legislation has a meaning that stands independent of the legislative intent. Julius Stone has opined that the courts must infer the words of a legislation as they would be interpreted in the modern times and not according to the intention of the makers of the law. It should also be noticed that in spite of believing the contrary, lawyers and judges eventually have to refer to the intention of the legislature to understand the meaning of the provisions of the legislature.

The statement of Justice Holmes<sup>577</sup> that he cares very little about the intention of the legislature and is only concerned with what the language of the statute represents the attitude of the judiciary towards the principle of legislative intent which can only be described as sceptical. C P Curtis had once stated that the legislature that had made the legislation in question had adjourned and its members had returned to other activities, thus there is no purpose in seeking their intention behind the law or what would be their action when the law is called into question.

Various scholars are of the opinion that it is entirely futile to refer to the intention of the legislature while interpreting the provisions of a legislature. They detest the concept to such an extent that they consider the term 'legislative intent' as a phrase that must not be used. They prefer to use a more objective sense of the phrase that is termed as 'legislative purpose'. This refers to the objective that is sought to be achieved by the legislature when it enacts the legislature<sup>578</sup>. To these scholars it is disagreeable and unbelievable that a term as subjective and unknowable as the intention of the legislature is being discussed when there is no apparent merit to it.

One of the criticisms of the principle of legislative intent is that there is a possibility of the function of the legislature being overtaken by the judiciary. But this is hardly possible in a state that follows the principle of separation of powers where all the organs of the government are allowed to function in an independent sphere. If the decision pronounced by the judiciary is not in accordance with the intention of the legislature, the legislature may subsequently amend or repeal or reenact the law to give effect to its intention. But it is also pointed out that the judiciary cannot stick to the grammatical interpretation of the statute alone,

<sup>577</sup> Cynduja Crushanan, *The judge : Intention, Statutory interpretation & Judicial Review*, International Journal of Law and Legal Jurisprudence Studies.

<sup>578</sup> Reed Dickerson, *Statutory Interpretation: A Peek into the Mind and Will of a Legislature*, 50 INDIANA LAW JOURNAL, (1975).

because the language employed in a statute does not stand away from the intended meaning to be conveyed. It has been held that the judiciary need not hold a legislation to be unenforceable only on the grounds that the intention of the legislature cannot be inferred. The judiciary can apply the 'test of reasonableness'<sup>579</sup>, where the objective of the ambiguous legislation is to be decided on the grounds of what a reasonable legislation would aim to achieve in similar cases.

It is pertinent to notice that every interpretation of a legislation by the courts is with the objective of administering the objectives of the legislature. The principle of intention of the legislature has been developed to ensure that the judicial interpretation of enacted laws are away from morality. The principle of legislative intent is but one of the principles that has been developed to aid the courts in exercising their functions. It is not absolutely binding on the courts. In *Caminetti v United States*<sup>580</sup>, where the Supreme Court was tasked with interpreting the "White Slave Traffic Act", the Court held that the term 'immoral purposes' used in the Act, could be applied to the act of the perpetrator taking the girl across the state border to be his mistress. The Court held that when the language used by the legislature is unambiguous and definite, the courts should strictly enforce the literal meaning.

In *State v. Goyette*<sup>581</sup>, it was held that when the adoption of the literal meaning of the legislature creates an undesirable and absurd interpretation of the legislature, it is the duty of the courts to apply other principles of interpretation of status to create a sensible interpretation of the legislature.

Thus, the principle of legislative intent is not absolutely binding on the courts. The Courts can develop other principles of interpretation to

sensibly interpret the statutes. Rather than applying the doctrine of intention of legislation as an absolute rule, the court shall administer the meaning of the legislature which is in consonance with the objective sought to be fulfilled by the legislation. The interpretation of the courts should be consistent with other enforceable legal doctrines.

### Conclusion:

The principle of separation of powers demarcates the powers and functions of each of the organs of the government. According to the principle, the legislative organ makes the laws and the judicial organ enforces and interprets the laws. To perform their function of enforcing the laws, the courts have devised multiple rules and principles of interpretation of legislations. One such principle is that of the intention of the legislature. This principle involves that when the language used in the legislature is plain and without any ambiguity, the literal meaning should be applied to the statute such that the intention of the legislature expressed in the words of the law is enforced. Only when the literal interpretation contravenes the intention of the law makers, other rules of interpretation should be consulted.

The principle of legislative intent has been evolved by the courts to protect the purpose for which the law was enacted. This does not mean that the principle comes with no demerits. The issues of the application of this rule have been elaborately discussed by Radin, the significant one being that the legislature cannot be claimed to have a single, homogenous intention in enacting the law. The principle is also criticised on the grounds that the legislature, although composed of humans, cannot be personified to have the quality of possessing the mental element such as intent. Furthermore, the principle of intention of the legislature cannot constrain the ability of the judicial bodies to interpret the laws in the interest of the public. The principle of legislative intent is but one of the many rules devised for the

<sup>579</sup> Richardson, James R. "Judicial Law Making: Intent of Legislature vs. Literal Interpretation," 39 KENTUCKY LAW JOURNAL, (1950)

<sup>580</sup> 242 U.S. 470 (1917).

<sup>581</sup> 11 R.I. 592.



interpretation of laws. The principle was evolved to prevent morality from creeping into the judicial decisions. It cannot restrain the powers of the judiciary.

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