

## SENTENTIAL LEGIS; AND ITS IMPACT ON INTERPRETATION OF STATUTORY LAW

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A statute is the creature of the sovereign legislature; a primary law making body in India. It is a purposeful design of the legislature with a definite intention to achieve a definite object. The intention or the object of the legislature is expressed through the language of the statute and in many cases the statutory language is sufficiently determinative to resolve a given case. However experience of all those who have to bear and share the task of application of the law has been different; there are gaps to be filled, ambiguities to be resolved, doubts to be cleared; with a purpose to discover the legal meaning of a word or a term expressed in the statute.

Words are not scientific symbols with a definite and precise meaning. One word may have different meanings, necessitating interpretation to find out the true sense in which the legislature employed the word in the statute. Legislation is drawn by the drafts-man and a drafts-men's capacity to anticipate the future is limited. He may not foresee some future possibility or overlook a possible misinterpretation of the original intentions of the legislation. And many a times a law which is enacted with one particular situation in mind may be called in operation in quite a different situations.

Thus there may be many occasions on which the judiciary may be called upon to interpret the words, phrases and expressions used in a statute. In the course of such interpretation the courts have laid down certain guidelines known as "Rules of Interpretation of a Statute"

In India there is no Statute law for Statutory Interpretation for an act of the Parliament. The rules of interpretation evolved by the courts in process adjudication form an important aid for drawing the intention /purpose of the legislator in enacting the law. Some of the rules interpretation which have assumed legitimacy due to continuous application by the courts are; Sententia Legis, Statute to be read as a whole, language of the statute to be read as it is, plain meaning rule, mischief rule and literal rule of interpretation.

The judges have to interpret and apply the statute. It is a freedom to search for the spirit or purpose of the act; it is a rare opportunity though never to be misused. It is a challenge for the judges to adopt and give meaning to the act, articulate and inarticulate and thus translate the intention of the Parliament and fulfil the object of the act.<sup>2</sup>

The judge cannot have a prior determination and is bound to act on the intent of the legislature and give effect to the same which is expressed in the maxim "Sententia Legis." In fact the whole interpretative process aims to discover the "Sententia Legis" i.e. the purpose or the object of the legislature for enacting the law.

One principle which has dominated statutory interpretation is "Sententia Legis" a often cited principle. It is a common assumption that the courts must make every attempt to discover it. The principle Sententia Legis focuses on the meaning that a legislature intended to give to the statute. The principle states that the meaning of the statute must be the same at the time the law was enacted.

The purpose of this paper is to analyse through case laws the application of the principle "Sententia Legis" in context of section 125 of the Criminal Procedure Code 1973.

The legislature enacted Section 125 of CrPC with a novel purpose; to prevent vagrancy and destitution. It provides a speedy remedy for supply of food, clothing, and shelter to the deserted wife,

children and parents. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents. It is in consonance with the concept of social justice embodied in Article 21 of the Constitution.<sup>3</sup>

The section 125 CrPC provides for categories of persons who are entitled to receive maintenance; subject to a condition that any person having sufficient means refuses or neglects to maintain his wife, children or parents who are unable to maintain her /himself. The section also provides an explanation as to who is a wife for the purposes of maintenance under section 125 of CrPC. In terms of the section 125 of CrPC a wife includes a woman who has been divorced by or has obtained divorce from her husband and has not remarried.

The *Yamunabai Adhav*<sup>4</sup> case decided by the Apex Court in 1988 reveal the socio-economic vulnerability of women in India who are duped into polygamous marriages, driven out of home and hoping for a remedy in terms of maintenance from the law and courts.

The appellant Yamunabai was factually married to the respondent Anantrao Adhav by observance of rites under the Hindu Marriage Act in 1974. Anantrao had earlier married one Smt. Lilabai who was alive and the marriage was subsisting in 1974. The appellant lived with the respondent for a week and then left the home alleging ill-treatment. She preferred an application for maintenance under section 125 of Criminal Procedure Code 1973 the same was dismissed by the District Court as well as by the Bombay High Court.

In the Supreme Court Justice Sharma dismissed the appeal and held that,

*“marriage of a woman in accordance with the Hindu Rites with a man having a living spouse is a complete nullity in the eyes of law and is not entitled to the benefit of section 125 of CrPC”*

The Apex Court interpreted the term ‘wife’ appended as an explanation to section 125 of CrPC. The court observed that the legislature has enacted section 125 of CrPC with a definite Sententia Legis. It was enacted in the interest of wife and one who intends to take benefit under sub section (1)(a) has to establish the necessary condition namely that she is a wife of the person concerned. The word wife has not been defined in the code except indicating in the explanation its inclusive character so as to cover a divorcee. And a woman cannot be a divorcee unless there was a marriage in the eyes of law preceding that status.

Thus in the opinion of the court where a woman marries according to Hindu rites a man who has a wife living cannot be brought within the sweep of section 125 by giving an extended meaning. The Parliament specifically included a divorced wife and an illegitimate child but has not done so with respect to a woman not lawfully married.

Once again in 1999<sup>5</sup> the Apex Court was encountered with a similar question as was posed in Yamunabai case.

The facts of *Dwarika Sathpathy v Bidyut Dixit*<sup>6</sup> case are disquieting. It is about a young woman who falls prey to false promise to marriage and submits herself only to conceive before marriage. However with the intervention of various authorities and persuasion the marriage between the appellant and the respondent was performed in a temple. Subsequently the appellant refused to take her to the matrimonial home and the parties continued to live separately.

In an application for maintenance under section 125 of CrPC by the respondent the appellant disputed the validity of the marriage. He contended that that he was forced to marry on knife point and that he had not given his consent to the same.

The Apex Court refuted the contention of the appellant and held that,

*“the validity of marriage for the purposes of summary proceedings under section 125 of Criminal Procedure Code 1973 is to be decided on the basis of evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under section 494 of IPC. If the claimant in a proceedings under section 125 succeeds in showing that she and the respondent lived together as husband and wife the court can presume that they are legally wedded spouses and in such a situation the party who denies the marital status can rebut the presumption. An order in an application under section 125 of CrPC does not finally determine the rights and obligations of the parties, It is a summary remedy for providing remedy to the wife ,children and parents. The provision under section 125 is not to be utilized in defeating the rights conferred by the legislature on destitute women ,children and parents who are victims of social environment.”*

Once again in 2005<sup>7</sup> the Supreme Court was faced with a similar issue regarding application of section 125 of CrPC. In *Savitaben Bahtiya*<sup>8</sup> the appellant claimed to be married to the respondent according to customary rites and ceremonies of their caste. Out of the cohabitation a son was born. Subsequently the respondent started ill treating the appellant and subjected her to mental cruelty and neglect. In an application for maintenance the respondent contended that the appellant was not his legally wedded wife.

Dismissing the application for maintenance the Apex Court held that the term wife under section 125 refers only to a legally married wife. The court observed that the law operates harshly against women who unwittingly get into a relationship with a married man. However the scope of the section cannot be extended beyond the purpose intended by the Legislature. The court was of the opinion that this is an inadequacy in law which only the legislature can undo

The cases discussed above revolve around the interpretation and application of section 125 of CrPC. In *Yamunabai and Savitaben Bhatia* section 125 was interpreted by the courts pedantically and hyper technically with no amount of realism. The courts in their adherence to the principle of separation of powers overlooked their constitutional empowerment to lay down law through interpretation. Legal niceties destroy the purpose of the provision. The courts should have adopted a sociologically more realistic policy of giving maintenance to a Hindu woman, who was duped into a polygamous marriage because of various compulsions including her own ignorance about the law? Since there are no registers of marriages available for easy inspection and many marriages are not registered, how is a woman or her relations to know that the man whom she is marrying is not already married? Since such information is not readily available or chances of misinformation are great, why should she suffer because of such marriage? On one hand, such marriage is not a marriage so as to make the husband liable under Criminal Law and on the other hand, it is also no marriage for the purpose of her entitlement to maintenance. The man benefits both ways

The *Sententia Legis* approach to statutory interpretation assumes that the legislature fixes the meaning of the statute on the day it is enacted. Impliedly this means a judge interpreting the statute fifty years later should put the same interpretation as intended by the legislature. True the Constitution vests the Parliament with the exclusive power to create law or policy leaving courts with no role but to carry out the *Sententia legis* as intended by the Legislature. But such a approach puts unrealistic burdens on the judges. The judge should interpret the statute in terms of needs and goals of the present

day society. Interpretation should not be static but must be in consonance with current web of beliefs and policies surrounding the statute.

In contrast Dwarika Sathpathy is a more appropriate judgment. The courts have travelled beyond the text of the statute by taking note of current social patterns in the society.

Putting the same interpretation on the statute as intended by the legislature is not an acceptable argument. It would make the law static. What is required a dynamic interpretation of the statutes in accordance with the changing times and needs of the society.

True the courts must pay due deference to the intent of the legislature, after all it represents the will of the people. But statutes enacted with definite public policy in mind should be given purposive interpretation and should not be interpreted technically. Too much of adherence to the principle of *Sententia Legis* will only perpetuate injustice.

### (Endnotes)

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- 2 (1990)1 SCC 613 Para 101
- 3 (2005) 3 SCC 636
- 4 (1988) 1SCC 530
- 5 (1999) 7 SCC 675
- 6 *ibid*
- 7 (2005) 3SCC 636
- 8 *ibid*