LANGUAGE OF LAW – AMBIGUITIES AND INTERPRETATION

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Abstract - The paper is a detailed analysis of ambiguities that arise in the interpretation of legal language. It first talks about ambiguity that exists in English language and then goes on to discuss how the ambiguity in language results in making the law ambiguous. Various examples and case laws have been used to explain how the language makes the law ambiguous. It then discusses the need for removal of such ambiguity and talks about how the purposive rule of interpretation helps in correct interpretation of law, thus avoiding wrong decision making in courts. In finem the paper talks about the difficulties faced by not only layman but also law persons in understanding the legal language.

Keywords: ambiguity, ambiguous, interpretation, legal language, purposive rule.

I. INTRODUCTION

The law is a profession of words. [4]And when the application of words decides the whole mechanism of the profession, ambiguity is bound to crop up. Ambiguity implies confusion as to the meaning of the language employed. It can be of various types and forms. In spite of all good intentions and numerous efforts made by the lawyers and the judges, to keep the legal language free from the shackles of ambiguity, so that the common man is capable of understanding and analysing it, the meanings of the words found in legal documents are not always clear and unequivocal. They may be capable of being understood in more than one way, they may be doubtful or uncertain or sometimes both and they may lend themselves to various interpretations by different individuals. This leads to ambiguous law that defeats the purpose for which it is meant. But the law must be unambiguous because it is pertinent to day to day life of every individual and everyone must understand it well in order to adhere to it.

This paper explores the techniques for solving this problem of ambiguity in law. It can be solved by employing certain techniques and methods while interpreting the law such as using the purposive rule of interpretation instead of strict literal interpretation, which is described in detail in the paper. Such means help in removal of ambiguity that crops up in the language of law and make it more effective and appropriate.

II. AMBIGUITY IN LANGUAGE

The meaning of the word ‘Ambiguous’ as given in the ‘Merriam Webster Online Edition’ is –“Doubtful or uncertain due to indistinctness or something which can be interpreted in various ways.”[19] Coming to the legal aspect of the world, Black’s law dictionary defines ambiguity as- ‘Doubtfulness, doubleness of meaning: indistinctness or uncertainty of meaning of an expression used in a written instrument.’[2] Whereas, Lectric law library says that-“When an expression has been used in an instrument of writing which may be understood in more than one sense, it is said that there is an ambiguity.”[17] Thus, Ambiguous language can be defined as a language that is difficult to understand mostly because of its doubtful and uncertain nature. [9] The lack of clarity and definiteness also adds to the difficulty in the interpretation of the said type of language. Sometimes language may be ambiguous due to existence of words having more than one meaning or open to interpretations. [5]

Ambiguity can arise due to various reasons. It may arise as a result of lack of understanding between the writer and the reader; what the reader was able to interpret from a certain text, may not be the same as what the writer wanted to convey through it. Take for example the case of sale in a particular shop; there is a remarkably huge
difference between ‘flat 50% sale’ and ‘up to 50% sale’; however, the ordinary crowd mistakes the two statements as one and the same. On the other hand, ambiguous meanings can also be derived due to a statement not being self-explanatory or specific – an ambiguity caused due to poor choice of words.

The major reason for the existence of ambiguity in the English language is as stated by the Oxford dictionary – “The existence of as many as 23 different meanings on an average for the 500 most used words in the language.”[25] Also, language can sometimes become ambiguous due to the use of homonyms, i.e. words that have same spelling and pronunciation but different meanings. For instance the statement ‘I don’t like flying planes’ resembles an ambiguous statement. The various reasons being-

a) The lack of any context whatsoever.

b) No specific meaning derivable.

c) The use of the word ‘planes’ which can either refer to an airplane or a plane surface.

Ambiguity may be either latent or patent. It is the former where the language employed is clear and intangible and suggests but a single meaning, but some external factor or extraneous choice among two or more creates a necessity for interpretation or a choice among two or more possible meanings. But a patent ambiguity is that which appears on the face of the instrument, and arises from the defective, obscure, or insensible language used. [13]

III. AMBIGUITY IN LANGUAGE OF LAW

Various illustrations of ambiguity can be seen in law. An example of latent ambiguity can as follows: In India, the punishment of death penalty can be exercised only if the concerned case qualifies the ‘rarest of rare case’ principle. This principle was given forward in the Indian landmark case of Bacchan Singh v. State of Punjab’ [1] and further given approval in the case of Macchi Singh v. State of Punjab’ [18]. However, the phrase ‘rarest of rare’ is open to different interpretations by different judges as there are no set parameters to define it. Again, because of this unspecific nature, there is considerable confusion as to what case can come under the ambit of this principle. Due to this confusion, it mostly becomes a matter of opinion of the judge and his interpretation of the phrase as to whether the particular case falls under the ambit of the principle. Another example of ambiguity in law can be – the use of the word ‘child’. There is no specific definition of child given anywhere in law. Different provisions of law define a child differently. This gives rise to confusion in the minds of people as to who exactly can be called as a child.

The presence of ambiguity that leads to different interpretations can be related largely with a concept that exists in the field of Law of Contracts which specifically deals with absence of understanding between the two parties to the contract. It is called – ‘consensus ad idem’ which if interpreted literally means meeting of minds.[8] When the parties to a contract do not agree on the same thing in same sense because of the object in question being ambiguous or uncertain or unspecified at the time of making of the contract, there is said to be absence of consensus between the parties; the absence of consensus ad idem renders a contract void ab initio (which literally means void from the beginning, in the field of contract law it means that the contract was void from beginning or to simplify- didn’t exist in the eyes of law. [15] ) This is essentially what happens when the law is ambiguous – there two different interpretations to it; while one party adheres to the first meaning, the second party understands it according to the second meaning; thus leading to a situation where there is no meeting of minds.

I shall further discuss the concept of ambiguity in law with the help of following three cases and analyse how misunderstandings can play a major role in deciding how a particular case will be decided.

The first case is that of the ‘FrigalimentImporting co. v. B.N.S. International sales Corp.’ [6], this case is the case of latent ambiguity. In this case, the definition of the word – ‘chicken’ turned out to be ambiguous, which brought about confusion in the minds of the seller and the buyer. The case belongs to the category of contracts in which there is no consensus ad idem. In this case the plaintiff was a Swiss Company that had ordered frozen eviscerated chicken from a New York wholesaler of poultry. The order called for chicken of two sizes: 1½ - 2 pounds and 2 ½ - 3 pounds. When the defendants supplied the required chicken and the shipment arrived in Europe, the plaintiff discovered that the larger birds were all stewing chickens. Since he was expecting broilers and fryers, the plaintiff cried foul and brought a suit against the seller for breach of contract. The issue that came up before the court was: what is a chicken? The plaintiff contended that “chicken” means a young chicken, suitable for broiling and frying. The defendant, however, insisted that a chicken is “any bird of the genus that meets the contract, satisfying the specifications of weight and quality, including what it calls ‘stewing chicken.’ The judge Friendly, who heard the case, decided that both meanings were possible. Consequently he declared
that the word ‘chicken’ standing alone is ambiguous, and he decided to look into the contract to see if it offered any aid to the interpretation of such ambiguous word.

The second case is that of the case of – “Raffles v. Wichelhaus” [20]. It is again a case where there are no consenting minds of the parties on the same thing, in same sense. However, it is the case of patent ambiguity. This case is particularly notorious among law students. The bizarre events of this English Case took place in 1864, before the advent of modern technologies such as telephone, e-mail or even telegraphs. In this case, the buyer purchased bales of cotton that were to be sent from Bombay, India to Liverpool, England on a ship called “Peerless.” While the parties were discussing the terms of the contract, it was unknown to both the parties that there were in fact two different ships by the name of “Peerless.” One of them was to leave Bombay in October, while the other was to leave in December. The buyer expected the goods to be sent in October, by the ship that left in October; the seller on the other hand planned to send the goods in December, by the ship that left in December. Neither of them was aware of the other person’s intent. When the October Peerless arrived in England, naturally there were no bales of cotton on it for the buyer. Due to the lack of communication facilities, the buyer could not enquire about the shipment from the seller, and naturally accepted the contract to be broken and cease to exist. When the seller sent the shipment in December via the December Peerless, the buyer refused acceptance. The seller then brought a suit against the buyer for breach of contract. It was contended by the counsel of the defendant that there was nothing in the contract to show that the shipment was to be sent by ship in any particular month. What was there was in the terms was that the shipment was to be sent by a ship named peerless. Only the name of the ship was sufficient specification as only one ship of such name existed best to the knowledge of the parties. (This was the case, with both the buyer and the seller, as they were aware of only one ship by the name of Peerless) But since two ships of such names existed, which were to sail in different months of the year; and the buyer and the seller of the shipment, each had a different ship in their mind, it can be concluded that there was no consensus in the minds of the buyer and the seller. The word “Peerless” becomes ambiguous and it renders the contract void ab initio. The same plea was accepted by the judiciary and the contract was held to be void.

The third case is the case of – “Interstate Commerce Commission v. Allen E. Kroblin, Inc.” [16] This case deals with eviscerated chickens. However, in this case, the words that turned out to be ambiguous are – ‘agricultural product’ and ‘manufactured product’. The facts of this case show that there existed a heated dispute over whether dressed and eviscerated chicken are manufactured products or agricultural products. One of the roles of ICC (Interstate Commerce Commission) was to certify trucking companies engaged in interstate commerce. Since most goods were transported between states, so they must be carried by these certified or regulated carriers. However, there was an exemption for certain agricultural commodities, such as fruits and vegetables, fish, ordinary livestock, and agricultural commodities that were not manufactured products. Due to this exemption for non-manufactured products, farmers were able to use the certified conveyances for most of their agricultural products except eviscerated poultry, for which they forced to use non-certified conveyance which was more costly. The ICC claimed that dressed and eviscerated poultry was a manufactured product, whereas the department of agriculture claimed that it was an agricultural commodity. The court noted that the words – ‘agricultural commodities’ and ‘manufactured products’ thereof used in the agricultural exemption were ambiguous words and other specifications of the goods should be taken into account in order to decide the case instead of interpreting these ambiguous words.

Thus, the three cases mentioned and discussed above are clear illustrations of how ambiguity can crop up in law.

IV. NEED FOR REMOVAL OF AMBIGUITY – MOVING TO PURPOSEFUL RULE OF INTERPRETATION

From the play ‘The Merchant of Venice’, it can be easily inferred that at the time when the play was written, lawyers did not pay much attention to the language they used while crafting the agreements or statements of law. Had this not been the case, Shylock’s lawyer would have been much more careful while crafting the bond between Shylock and Antonio, and would have crafted it in such a manner that the clause of giving one pound of flesh would have included giving away of the accompanying blood present in the muscles as well.

Such discrepancies may arise in the field of law every now and then. And the need is to remove these types of discrepancies and ambiguities which may mould the decision of the decision maker unjustly, when the intention behind enacting of the law or the clause in the law is entirely different. In cases containing such discrepancies, one needs to withdraw from interpreting a statute or law literally and move to purposive rule of interpretation.
Purposive rule of interpretation or interpreting a statute purposively implies that a statute or law should be interpreted in the light of the intention or purpose of the legislature behind enacting of such statute or law; instead of drawing the meaning out of it literally only. Such interpretation becomes highly important in cases where interpreting a statute literally gives it such a meaning that could not have been the purpose of the legislature at all, behind enacting the said statute. In such cases, it is directed to ignore the strict literal meaning and pay attention to the intention of the legislature or its purpose behind enacting of such law. This strategy solves the problem of most of the uncertainties and ambiguities that arise in law. The application and importance of purposive rule of interpretation is explained with the help of the following two cases:

The first case is the case of “UP BhoodanYagyaSamiti v. Brij Kishore” [24]. In this case, the meaning of the word – ‘landless’ was in conflict. Under the scheme initiated by UP BhoodanYagyaSamiti, in tandem with the UP BhodddanYagyaSamiti Act, 1953, all those who were landless were benefitted by giving of certain amount of agricultural land by the government. ‘Landless’ here was defined as somebody who does not possess agricultural land. In this case, the purpose behind initiating such scheme was to provide agricultural land to poor, destitute, unemployed people of rural areas, so that they can get engaged in agricultural sector and make a living for themselves. However, if one literally interprets the word landless, a landless person can also be a person, living in an urban area, employed in a well reputed job, earning a good salary per month and having a sound financial status but not possessing any agricultural land in rural areas. He will also come under the ambit of landless and be entitled to the land provided by the government. But the intention of the government was contrary to this; through this scheme, it only intended to lend a helping hand to the ones in need of it and not anyone who does not possess land. In this case, the judiciary moved from the literal rule of interpretation and interpreted the word landless to mean not only someone who did not possess land, but also, someone who was poor, unemployed and did not have any other means of income. The purposive rule of interpretation was applied here justly and aptly.

Another case is that of the case of – “Santa Singh v. State of Punjab” [23]. In this case, the use of the word ‘hear’ came into question. Section 253(2) of CrPC1973 states that, ‘If the accused is convicted, then the judge shall hear the accused on the question of sentence and then pass sentence on him according to law.’ This means that post-conviction and pre – sentence period, an accused is given a chance to present before the judiciary any evidence which may help in reducing his sentence. However, in the present case, it was argued by the advocate of the petitioner that the word – ‘hear’, literally interpreted, provides for presenting of oral testimony only. However, the purpose behind insertion of such a clause in CrPC was to let the accused provide any form of testimony which may help in lowering down the sentence. The judiciary chose to interpret the word ‘hear’ in the section purposively and not strictly or literally. The accused was allowed to present before the court testimony other than oral testimony. This case too, is a perfect example of showing the shift from literal rule of interpretation to the purposive rule. Here also, the application of purposive rule helped in rendering of fair, just and reasonable decision in the case.

Thus, the two examples presented via the abovementioned cases perfectly present the picture of how incorrigibly wrong decision could have been taken had it not been for the purposive rule of interpretation. The aforementioned two cases are clear examples indicating the importance of purposive rule and its efficient use in removal of ambiguity from law.

V. DIFFICULTY IN UNDERSTANDING LANGUAGE OF LAW

Language of law is meant to be crystal clear in order to leave no room for any ambiguity and for proper understanding of the people. However, years of refining and the efforts of lawyers and judges to make the language of law clear has left it all the more difficult to understand. It has often been joked upon lawyers that the minute you read something which you can’t understand, you can almost be sure that it was drawn up by a lawyer. Take the following case crafted by an English critic for example: When an ordinary man wants to give an orange to another he would merely say: “I give you this orange, you may do with it whatever you may please!” but when a lawyer has to do the same, he says it this way: ‘Know all men by these present that I hereby give, grant, bargain, sell, release, convey, transfer and quitclaim all my right, title, interest, benefit and use whatsoever in, of and concerning this chattel otherwise known as an orange, or citrus orantium, together with all the appurtenances thereto of skin, pulp, pip rind, seeds and juice for his own benefit, to himself and heirs in fee simple forever, free from all liens, encumbrances, easements, limitations, restraints or conditions whatsoever, any and all prior deeds, transfers or other documents whatsoever, now or anywhere made to the contrary notwithstanding, with full power to bite, cut, suck or otherwise eat the said orange or give away the same, with or without its skin, pulp, pip, rind, seeds or juice.” [14]
If one is asked to find out the difference between the two statements, one may not be able to find any, for the intention of the ones stating it, is same: to give an orange to the other! Then what is the purpose behind stating such a simple thing in such a complex manner? This is the key question, the answer to which is most sought after by law students, academicians and of course, most of all – by a common man! The answer is this: If one looks closely at the two statements, one CAN draw a fine difference between the two, after all! When the common man gives the orange, he gives it with an intention to give it away and let the user use it in ‘whatever manner he pleases.’ The phrase – whatever manner, confers widest possible meaning to the intention of the giver regarding what is to be done with the orange; the statement is stated in a manner to reflect that the giver does not care what use the orange is made of after he gives it away, whether legal or illegal. For the same reason, the taker may use the orange for ‘whatsoever’ purpose he wishes to. He may eat it or throw it at someone – whatever he desires; he may even do that which may not have been the intention of the giver at all, while giving away the orange! The lawyer however, leaves no scope for such mishap. He makes sure that the orange is used only for the purpose for which it is meant i.e. to eat. The specifics mentioned in his statement: i.e. ‘full power to bite, cut, suck, or eat or to give away the orange to someone, to bite, cut, suck or eat…’ does not include the clause under which the taker may throw the orange at someone, or hit somebody with it!

The example is a clear illustration of how much explanatory the language has to be, in order to make the law as clear as possible. However, at the same time, it is also visible from the same example, how difficult it can become for a common man to understand the text of the law and to interpret it and draw correct inference out of it. At the same time, it is also clear, again from the same example, that such difficulty is sometimes necessary to arise.

VI. CONCLUSION

Thus it can be said that ambiguity can arise in language partly due to the limitations of the English language when it comes to the usage of words. The existence of homonyms, homographs, homophones etc. further add to the ambiguity that may be caused in versatile usage of the language. Existence of such ambiguity is prevalent in language, however, when this type of ambiguity arises in the field of law, it becomes a matter of serious concern, as it gives rise to the possibility of overturning the decisions of the courts in cases of key importance, or affect the process of rendering of justice in such a manner that may result in unfair, unjust and unreasonable decisions by the court. Therefore a need to remove such ambiguity from the field of law arises. Although, in an effort to make law unambiguous and confusion free, the language of law may become excessively complex and difficult to understand for the general masses or even for law academicians, scholars, for lawyers and judges; however, unless another more suitable method to remove ambiguity is found, increasing the complexity seems the only if somewhat unreasonable but plausible choice.

VII. REFERENCES

[7]. Hand v. Hoffmann, 8 N.J. Law, 71.
[8]. Household Fire and Carriage Accident Insurance co. Ltd. v Grant (1879) 4 Ex D 216;
[23]. Santa Singh v State of Punjab, AIR 1976 SCC 2386
[24]. U P BhoadanyagyaSamiti v Brj Kishore, AIR 1988 SCC 2239