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THE DOCTRINE OF CASUS OMISSUS: AN ANALYSIS

By Lakshya Kaushish

CHAPTER I

INTRODUCTION

"Interpretation is the process by which courts strive to ascertain the meaning of the Legislature through the channel of authoritative forms in which it is presented"- SALMOND.

Statutory Interpretation

The statutory laws, comprising of various Acts and Rules, are drafted by legal specialists. Therefore, the language used in those Acts and rules is unlikely to allow much opportunity in general for their interpretation or construction.[1] Nevertheless, they are conveyed through the medium of language. It would not be an overstatement that no language is perfect enough to be expressed in a manner that avoids ambiguity. As a result, the age-old process of applying the legislated provisions has resulted in the formation of particular interpretation and construction principles.

Questions of statutory construction are renowned for yielding contradictory responses, none of which is unquestionably correct.[2] Very often, we find that the Courts and attorneys are frequently engaged in deciphering the meaning of ambiguous words or expressions and resolving the contradictions created thereby. The legislative, the executive branch, and the judiciary are the three branches of government. The basic purpose of the courts is to interpret statutes in order to provide justice. It is the Court's responsibility to interpret the Act and give meaning to each word of the statute.

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[1] Singh, G.P., *Principles of Statutory Interpretation,* Lexis Nexis Butterworths Wadhwa Nagpur, Haryana. 12th Edition, 2011, p. 1

[2] *Al-Kateb v Godwin* (2004) 291 CLR 562 at 630 [191], citing *News Limited v South Sydney District Rugby League Football Club Ltd.*(2003) 215 CLR 563 at 580 [42].

The word "interpretation" literally means "to give meaning to." Cooley defines interpretation as *"the art of making real understanding of words."* A statute must be interpreted "in accordance with the intent of those who enact it." In the majority of cases, the legislative purpose is a fiction that represents the attitude of the judges toward finding a solution by striking a balance between the letter and spirit of the statute, without admitting that they have supplemented the act in any way. This is done in order to avoid the appearance that the judges have added anything to the act.

Purpose of Interpretation

A statute is a legislative decree.[3] Each Legislation has a purpose. Different statutory Acts and rules may have different aims such as - to prevent harm, to correct a deficiency, to modify policy or to develop a government plan. That goal, that policy, is not conjured out of thin air like nitrogen; it is enshrined in the statute's language, as interpreted in the context of other exterior indications of intent.[4] The legislation is, for the most part, centred on the topics that are currently being debated in the legislature, and it is founded on the knowledge that was acquired from prior and current experience. It's also possible that it will be expressed in more generic language in order to address future issues that may be similar to these. However, due to the very nature of the laws in question, it is impossible to foresee all of the possible future scenarios in which they will be required, and the words that have been selected to communicate such indefinite "referents" are bound to be, in many instances, ambiguous and imprecise, which results in construction disputes.[5]

The conventional method of interpreting or construing something involves looking for the author's intended meaning in the text. Although it is a fundamental rule, the role of judges to explain rather than legislate is one that is currently and has always been treated as merely a "aspiration." The judicial system has the ability to "form or creatively interpret legislation," and

[3] *Visnhu Pratap Sagar Works (Private) Ltd.* V. *Chief Inspector of Stamp, U.P.*, AIR 1968 SC 102, p. 104; *Institute of Chartered Accountants of India* v. *Proce Waterhouse*, AIR 1998 SC 74, p. 90. [8] Quoted by JAGANNATHA RAO J. in *United Bank of India v. Abhijit Tea Co. Pvt. Ltd.,* AIR 2000 SC 2957, p. 2962.

[4] *American Cyamid Co. v. Upjohn Co.,* (1970) 3 All ER 785, p. 789 (LORD REID).

[5] *Commissioner of Customs & Excise* v. *Top Ten Promotions Ltd.,* (1969) 3 All ER 39, pp. 93, 95.

as a result, the courts are the "finishers, refiners, and polishers of legislation that arrives to them in a state that requires different degrees of further processing."[6] Having discussed the fundamentals of literal rules of interpretation in reference with the Common Law countries including India, England, and Australia, now we intend to examine the doctrine of *'Casus Omissus'* in the context of English law.

CHAPTER-II

THE DOCTRINE OF *'CASUS OMISSUS'*

'Casus Omissus' basically translates to "**case omitted**." Therefore, in general, the term "Casus Omissus" refers to a situation that is not provided for by common law or statute, which consequently results in a gap in the law. It is stated to be a *'Casus Omissus'* when a statute or a piece of writing commits to foreseeing and providing for specific scenarios, yet a case goes unaccounted for due to a mistake or some other reason[7]. *'Casus Omissus'* can be defined as a void in the law.[8] It is referred to as a construction canon and it mandates that the court create statutory construction standards. These standards will be followed by subsequent judges when they make judicial decisions. It is essentially a situation that is not covered by a statute or a contract, and as a result, it is governed by caselaw or newly-formed law that was made by judges.

Because it is the job of the courts to decide the law, it is customary for there to be a regulation that says they will not fill in gaps in legislation. When there is a gap of this kind in a statute, particularly one that is of a penal nature, it is not the judge's responsibility to fill it in.

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[6] *Corocraft Ltd.* v. *Pan American Airways Inc.* , (1968) 3 WLR 714, p. 732; *State of Haryana* v. *Sampuran Singh*, AIR 1975 SC 1952, p. 1957.

[7] *Hansraj Gupta* v. *Dehra Dun Mussorie Electric Tramway Co. Ltd.,* AIR 1933 PC 63, p. 65; *Karnataka State Financial Corporation* v. *N. Narsihmahaiah,* AIR 2008 SC 1797.

[8] Singh, G.P., *Principles of Statutory Interpretation,* Lexis Nexis Butterworths Wadhwa Nagpur, Haryana. 12th Edition, 2011, p. 68.

It is an application of the concept that a matter that should have been covered by a statute but cannot be covered by the courts since that would be legislation rather than construction. It is an application of the concept that a matter that should have been covered by a statute but cannot be covered by the courts. However, there is no presumption that there is a "Casus Omissus," and language that would allow the court to create one where there isn't already one should be avoided.

Abel v. Lee[9], is the first known case of correct use of *'Casus Omissus'* wherein Justice Willes utterly rebutted the notion that, *"It is within a judge's authority to propose amendments to the language of an act of parliament in order to bring it into conformity with his views on what should be appropriate or reasonable...*".

It had been held in various cases such as *London & India Docks Co. v. Thames Steam Tug and Lighterage Co. Ltd.*[10], *Thomson v. Goold & Co.*[11], *McDermott v. Owners of the SS Tintoretto*[12], *Astor v. Perry*[13], and others that "a legislation could not be extended to fill a Casus Omissus, even if the Act had major and evident faults." Others believed that "a statute could not be extended to fill a Casus Omissus."

Views of Lord Denning

In *Seaford Court Estates v. Asher*[14], ignoring a string of authority on the matter Lord Denning is quoted as saying, "When an error is made, a judge cannot simply fold his hands and blame the draughtsman." He has to get his creative juices flowing by figuring out what the purpose of Parliament is, and then he has to improve the written word in order to give the intention of the legislative more power and vitality.

"*A judge cannot change the fabric of the Act, but he can and should smooth out the wrinkles.*" "*We have gathered here to find out the aim of the Parliament and of ministers to*

[9] (1870-71) LR 6 CP 365 at 371.
[10] [1909] AC 15.
[11] [1910] AC 409.
[12] [1911] AC 35
[13] [1935] AC 398.
[14] [1949] 2 KB 481

carry it out, and we may do this task more effectively by filling in gaps and making sense of enactment as opposed to leaving it exposed to damaging criticism.," he said in a later case.

Criticism of Lord Denning by Lord Simonds

However, the House of Lords strongly disagreed with both of Lord Denning's points of view and found them to be unacceptable. The methodology utilised by Lord Denning was severely criticised by Lord Simonds, who referred to it as "a flagrant invasion of the legislative role disguised as interpretation.... If a gap is exposed, the cure lies in an amending Act." Lord Denning was reprimanded for acting in a legislative rather than judicial capacity, and it was said to him, "These heroics are out of place."

Lord Devlin (for the first time after Lord Denning) found a *'Casus Omissus'* in *Gladstone v. Bower*, observing that *"Although the court will always allow the intent of a statute to supersede any ambiguities in the text, it may favour an alternative reading that is less appropriate to the words but more appropriate to the Act's objective despite the fact that this formulation is less suited to the terms." On the other hand, he said that "the Court cannot legislate a casus omissus," and that "if a Court were 'once permitted' to fix a faulty Act of Parliament, it would be in this case." [Casus omissus] is a legal term that means "case of the missing object.""*. However, following Lord Simonds' advice, they did not do so. In case after case, Lord Denning's viewpoint was soundly rejected.

CHAPTER III

ACCEPTANCE OF DOCTRINE OF *'CASUS OMISSUS'*

Inco Europe Ltd. & Ors V. First Choice distribution & Ors.[15]

Lord Denning's position was finally accepted in the case of *Jones v. Wrotham Park Settled Estates*[16], and was later fully acknowledged in the case of *Inco Europe v. First Choice Distribution*[17]. The decision reached by the House of Lords in this matter illustrates how the application of the principle of "Casus Omissus" in English law has evolved over time, shifting from a strict interpretation to a more flexible interpretation. One scholar has referred to it as the "undignified demise of the 'Casus Omissus' rule." Other authors have used similar language. The detailed analysis of the case is as follows:-

Facts of the case

On June 24, 1997, the Plaintiffs submitted a writ to the Manchester District Registry of the High Court demanding compensation for the loss of a cargo of nickel cathodes that was in transit from Rotterdam to Hereford. The consignment was headed from Rotterdam to Hereford.

One of the defendants, Steinweg (Handelsveem B.V.), submitted an application for an order staying the legal proceedings under Section 9 of the Arbitration Act 1996. The applicant claimed that the proceedings were brought in relation to a matter that the parties had agreed to refer to arbitration in the Netherlands under their contract. The applicant requested that the order stay the legal proceedings.

However, the High Court decided not to hear the application and rejected it. The arbitration agreement was deemed to be "null and void, or inoperative," according to the findings of the investigation.

In order for Steinweg to appeal against this interlocutory order, he need permission. In order to accomplish this, he submitted a request for authority to the High Court, which was ultimately rejected by Judge Hegarty. The second appeal that Steinweg lodged was with the Court of Appeals. The High Court's verdict was subject to an appeal, which was granted permission by the Court of Appeal.

After evaluating the substantive grounds of appeal, the Court of Appeal decided in favour of the appeal and halted further proceedings in the plaintiffs' case that Steinweg had been

[15] [2000] 2 All ER 109.
[16] [1980] AC 74
[17] [2000] 1 WLR 586; [2000] BLR 259

involved in. In response to this judgement, the plaintiffs appealed it to the House of Lords on the grounds that it lacked jurisdiction in the matter.

Issues

The primary issue that required the attention of the House of Lords was determining whether or not the Court of Case possessed the authority to hear Steinweg's appeal.

Law on the subject

The House of Lords' argument can be better appreciated after understanding the following: -

In its original form, Section 18(1)(g) of the Supreme Court Act of 1981 stated that "*There should be no right of appeal from any decision of the High Court to the Court of Appeal, with the exception of appeals provided for under the Arbitration Act of 1979.*" effectively limiting the right to appeal. The term 'furnished' meant 'envisioned' or 'permitted' in this context.

The Arbitration Act of 1996 just carried forward *'Restrictions on the rights of appeal that were already stipulated in relevant sections of the Act of 1979'*, and 'did not impose any restrictions on the right to appeal from decisions of the High Court to the Court of Appeal'.

When taken in its literal sense, the new paragraph (g) introduced a significant change to the law, but it had no impact whatsoever on any of the provisions of the Act of 1996. By including every court decision made under Part I within its scope, the new paragraph made it so that an appeal from any court decision made under the Act's Part I could no longer be taken to the Court of Appeal, with the exception of judgments made under sections that imposed restrictions on the ability to take such an appeal.

In addition, this abolition was accomplished through the use of a confusing drafting method: when the draughtsman intended to limit the right of appeal, he did so directly; however, when he took the more far-reaching step of completely eliminating the right of

appeal, he stated nothing about it in the section. This was done to achieve the desired result of abolition of the right of appeal.

Lord Nicholls of Birkenhead was of the opinion that the authors had "committed an error." The replacement of the original paragraph (g) in section 18(1)(g) with a new paragraph (g) that would serve the same purpose for the Act of 1996 as the original paragraph (g) had served for the Act of 1979 was the sole intention of the paragraph 37(2) in Schedule 3 (of the 1996 Act), which was enacted to fulfil the requirements of the Act of 1996. However, this consequence was not very conducive to the terminology that was employed. The sentence should be interpreted in such a way that it contributes to the achievement of the parliamentary goal. The phrase "*from any decision of the High Court under that Part*" should be interpreted as "*from any decision of the High Court under a section of that Part that provides for an appeal from such decision."*

Judgment

The House of Lords observed that, "*Something was done incorrectly during the drafting of item 37(2) on schedule 3.*" The amendment that was made to subsection (g) of section 18(1) of the Supreme Court Act of 1981 is detailed in subparagraph (g) of paragraph 37 of the Arbitration Act of 1996. The House of Lords was able to reach the conclusion that the manner in which the Act was written and the approach that it took pointed to an unusual pattern. If a provision says nothing concerning the ability to appeal a judgement from a court, then there were no restrictions intended. The draughtsman must have intended for parties to court rulings issued under the various sections to be able to use any rights of appeal they have available to them from sources other than the 1996 Act itself, unless an appeal is specifically limited. This is the case even if an appeal is specifically limited.[18]

Analysis

The Inco Europe decision does, however, include some exceptions. Lord Nicholls believed that before reading a statute in this fashion, the court needed to be absolutely certain of three things:

[18] *Chapter Three, Stay of legal proceedings to arbitration, The Arbitration Act 1996, Part I.* Available

- The Court is in a position to definitively establish what language the draughtsman would have used if he had been made aware of the potential outcome in question at an earlier time.;
- Accidentally, both the draughtsman and the legislature failed to give the measure the effect it needed to fulfil its intended goal.;
- The Court is in a position to definitively determine the legislative language that would have been used if the legislature's attention had been brought to the potential outcome in question..

At the same time, even if the three elements laid forth are met, the Court will not fill the *'Casus Omissus'* if the change is too *"far-reaching," "large,"* or *"at conflict with the language employed by the legislature."*

CHAPTER IV

INDIAN PERSPECTIVE ON DOCTRINE OF *'CASUS OMISSUS'*: CASE LAWS

In *Hansraj Gupta v. DMET Co. Ltd.*[19], it was held that "The courts cannot provide for a topic that should have been given in a statute but was not, because doing so would be legislation rather than construction."

In *S.P. Gupta v. President of India*, The words used by the statute speak for themselves, and it is not the responsibility of the court to add words or expressions to fit what the court believes to be the legislature's alleged intention. This is according to a ruling made by the

[19] AIR 1933 P.C. 63

Supreme Court, which stated that when a statute's language is clear and unambiguous, there is no room for applying the Casus Omissus doctrine or enlisting external assistance.

In *Raghunath Rai Bareja v. Punjab National Bank*, The Supreme Court has ruled that even if the language used by the Legislature contains an error or omission, the Court cannot alter or make up for it, especially where a literal reading of the words leads to a conclusion that is understandable. This was stated in a recent decision.

Despite the fact that the Supreme Court is unable to produce a casus omissus, it is abundantly clear that it should not interpret a statute in such a way as to produce a casus omissus where none already exists..

In *Hiradevi v. District Board,* In the case of Shahjahanpur, challenges were brought against sections 71 and 90 of the Uttar Pradesh District Board Act of 1922, as well as the Amendment Act of 1933. After being amended in 1933, Section 71 made it possible for a Board to get rid of its Secretary by passing a special resolution. Despite this, Section 90 of the previous Act was not amended, and it continues to permit the Secretary to be terminated pending an investigation. As a direct consequence of this, only Section 71 was altered, and Section 90 remained unchanged. In this particular case, Justice Bhagwati voiced their disappointment that, following the revision of Section 71, Section 90 was not changed to reflect the changes that were made to Section 71. Nevertheless, even the most liberal of constructions won't be able to completely cover this hole. Without a shadow of a doubt, it is the role of the court to make an effort to reconcile the many different components of a legislative act. It is not the job of the court to broaden the definition of a term that was formed by legislation in order to fill up loopholes or make up for deficiencies in the provisions of an act.

Presiding Officer, School Tribunal, Aurangabad, the Supreme Court ruled in the case Secretary, Shiorai Education Society, Wani v. Presiding Officer, School Tribunal, Aurangabad that when a linguistic defect is of such a nature that the statute cannot function or the true

objective of the legislature cannot be determined without the missing word, the courts have replaced the missing word to ensure that the law is not rendered null and void. This decision was made in the case Secretary, Shiorai Education

In the case of *Jacob Mathew v. State of Punjab*, the Supreme Court of India provided a casus omissus and construed Section 304-A of the Indian Penal Code. In spite of the fact that the word "gross" is not included in Section 304-A, it is a commonly held belief that in order for criminal law violations to be regarded "gross," the level of negligence or recklessness must be extremely high. In order to meet the requirements of Section 304-A, the phrase "reckless or negligent act" needs to be qualified by the adjective "gross."

The decision that "the court can interpret the law but cannot legislate" was made by the Supreme Judiciary in the case of Padma Sundara Rao v. State of Tamil Nadu and Others.

CHAPTER V

CONCLUSION

After debating and analysing the idea of *'Casus Omissus*' in light of English and Indian cases, we have come to the logical conclusion that the doctrine of *'Casus Omissus*' cannot be provided by the Court through judicial interpretation unless there is a demonstrable need for it and justification can be found within the four bends of the statute itself. This is the conclusion we reach after having discussed and analysed the idea of *'Casus Omissus*' in light of English

The wording of the statute is the only thing that may be utilised to determine the legislative intent. The very first and most essential tenet of construction is that the objective of the legislative body must be ascertained from the language that is used by the legislative body itself. What is important is not what has been indicated or intended but rather what has been said directly. The Supreme Court is only able to interpret the law; it cannot create new laws.

Casus Omissus is a term that refers to a case that is omitted from the text of a legislation but falls within its general scope and appears to have been omitted due to inadvertence or oversight. According to Francis J. Mc. Coffery, it is a rule of statutory construction that the court cannot supply *Casus Omissus*. *Casus Omissus* refers to a case that falls within its general scope and appears to have been omitted due to inadequate reasons.

When it comes to the Denning method, one may argue that it allows for greater flexibility in terms of filling in gaps in the information. The definition of "industry" in the Industrial Disputes Act, 1947 was the subject of the case Bangalore Water Supply v. A. Rajappa, which was heard by the Supreme Court and in which Lord Denning delivered his judgement of construction. CJI Beg commented that the scenario required "some judicial heroics to deal with the challenges generated" because the term was so imprecise and confusing. Even though J. K. Iyer, who delivered the leading majority judgement, made reference to Lord Denning's position in Seaford Court Estates v. Asher, he also highlighted Lord Simonds' conclusion regarding the court's power and obligation to go beyond the language of the Legislature. Lord Simonds' conclusion was that the court has both the power and the obligation to go beyond the language of the statute.

It is possible to say that the position taken by the Indian Courts has been to allow reading of words into statutes only in extreme cases where the phrases are so imprecise and unclear that the courts are required to literally interpret the statute. This position has been in place for quite some time.

The landmark decision that was handed down by the Supreme Court said that the Court is only allowed to grant a "Casus Omissus" in instances when doing so is manifestly required and if the justification for doing so can be located within the four corners of the statute itself.

Nevertheless, the court must be careful not to interpret a statute in such a way as to produce a 'Casus Omissus' where none previously existed.

"When the terms of a law extend not to an inconvenience rarely occurring, but to those which occur frequently," a constitution bench stated, "there is strong reason not to strain the words farther than they reach, by stating it is a 'Casus Omissus.'" [Casus Omissus] is a Latin phrase that means "case of the omissus.".

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