

Interpretation of Judiciary Destroys the Essence of the Definition of the Statutes

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1. Introduction

The definition of interpretation says that it is an act to explain something for example if we see the bucket half filled with water some people may say the bucket is half empty and the other group might say it is half filled, this is interpretation of common things but when we come to the interpretation of law then the definition states that finding the true sense of the enactments which differs from the laymen to break the ice in the interpretation of the enactment in comparison to lawmen. The lawmen play the vital role in establishing the essence of the enactments and the judgments before the courts, the wrong interpretation and misinterpretations of the law enactments dilutes the right of an individual and may grant excessive right to an individual in the country which is not the motive of the legislature, executive and the judiciary the reason why the interpretation of law is the crucial affair for the legal fraternity. The author's tries to bring out the essence how the interpretation aspects by the judiciary destroy the essence of the domestic violence act 2005 with the critical analysis of Anamika srivastava case.

2. Anamika srivastava case in relation to Article 21 of Indian constitution

The Bombay high court in this case said that right to choose ones personal identity is a fundamental right under Article 21. The authors would like to comment that the high court has adopted the method of golden rule for the interpretation. The literal rule of interpretation should be adopted for this case and crucially examined. In the case of Keshvananda Bharti vs. State of Kerala in its obiter dicta clearly stated that the fundamental rights are the basic structure of the Indian constitution and hence this fundamental right cannot be curtailed but in certain cases in the country it can be waived off by the procedure established by law in the case of AK Gopalan vs. Union of India Keshavananda bharti vs. State of Kerala (1973)4 SCC225; AIR 1973 SC1461 AK Gopalan vs. Union of India 1966 AIR 816 SCR(2)427 The authors agree that the Bombay High court had correctly stated that the person has the fundamental right to choose the gender identity as per their choice. In the case of **Anamika srivastava case** the high court has granted the right to the petitioner but it curtailed the right of the respondent. In this case the Hon'ble high court is dealing in a matter where it is granting a fundamental right to a person who is not naturally of that identity but the person has undergone a sexual surgery to transform from transgender to female. The author states that when fundamental rights are granted to all the citizens, then the Hon'ble High court cannot exercise its judicial power to grant fundamental right to its one citizen and curtail the same of other. The authors agree that the petitioner of the case has the fundamental right but her fundamental right cannot curtail the fundamental right of the respondent. The Hon'ble High Court of Bombay is nowhere concerned with the legislation which is silent on the aspects of sexual surgery for gender transformation, either Hindu law, Muslim law has nowhere used the word gender transformation but the words used are men and women even in Special marriage act The

Bombay high court has granted maintenance of rupees 12000/- to the petitioner of the case. The authors would like to comment in absence of the substantive law the decision cannot be enforced. **In Abhay Dang's case** the petitioner suggested the Hon'ble Supreme Court to replace the word man and women with spouse but the Hon'ble Supreme Court commented that the constitution does not grant the power to make laws rather than they are the interpreter and the guardian of the constitution. The Hon'ble Supreme court commented that this replacement of word "man" and "women" with "spouse" will suppress the right of hetero sexual community. The authors are curious to know whether the Hon'ble High Court of Bombay has followed the same procedure followed by Hon'ble Supreme court. If it is not followed it might serve as an opportunity to suppress the rights of the natural gender persons which is not the motive of our country as our country follows the ideology of the equal protection of law under Article 14 of Indian constitution. Abhay dang case on Jan 6 2023, High Court judicature at Bombay

2.2) Obiter dicta for the basis of judgment in Anamika srivastava case

The Hon'ble High Court of Bombay has followed the obiter dicta of Hon'ble Supreme court judgment of 2014 where the first time the Supreme Court had used the word transgender, when it comes to choose personal sexual identity the closer view of man and woman in purview of transgender. The authors appreciate that the Bombay high court has followed the obiter dicta of the Hon'ble Supreme court at the same time the authors are also concerned whether the fact in issue involved in the 2014 judgment of the Hon'ble Supreme court. In the present case the fact in issue is matrimonial disputes between the petitioner and the respondent. The author agrees that above obiter dicta has to be followed in case of personal gender choice but same can't be utilized in deciding the maintenance to the petitioner.

The author comments that there is a conflict between two laws that is supreme law of the land and the substantive law of the land.

After the historical judgment given by the Hon'ble Supreme court granted maintenance to a living partner on the ground of Domestic violence act 2005 under the definition of Sec 2(a) of Domestic violence act 2005.

The author agrees that the lower court and the High court were only concerned with Hindu Marriage Act establishing matrimonial relationship between the petitioner and the respondent as the basis of granting maintenance whereas supreme court clearly stated that minor acts cannot be ignored to preserve the essence of the major acts so Supreme court made domestic relationship as the base for granting maintenance to the petitioner hence the authors comment that the single word cannot be ignored while delivering judgments as it may hamper the justice.

There is a common saying "**Justice hurried is justice buried**" and "**Justice delayed is justice denied**" the above Hon'ble Supreme court judgment established the above phrase.

3) Anamika srivastava case and Domestic violence act 2005

The Hon'ble High Court of Bombay stated that the right to choose ones gender identity is the personal liberty of an individual so they brought the petitioner under the definition of Sec2 (a) of the Domestic violence act 2005, In this section the definition states that "A woman means a woman who shares a domestic relationship and subjected to domestic violence will come under the ambit of this definition. The authors would like to comment the substantive law is no where clear in the word used as a woman whether she is a natural woman or converted to a woman by adopting any special procedures or medical procedures. Therefore the Hon'ble High Court of Bombay should analyze this and should legislate the

laws instead it should deny the maintenance and ask the petitioners to seek the writ of Mandamus before the Hon'ble Supreme court to order the parliament either to amend or add on phrases and bring it to the notice of Hon'ble Supreme court for the final interpretation so that limited rights should not be granted to the people like the petitioners who are not natural woman and find the wider scope to protect their right in a wider manner. The authors would also comment that this decision of the Hon'ble high court has created a conflict with the term of "natural guardian" which will also affect the guardianship laws, marriage laws. This judgment of the Hon'ble High court affects the criminal procedure code under Sec 125 where it is nowhere discussed about this type of special cases which again laid down an opportunity to misuse the definitional aspect of the statutory laws which will again hamper to maintain peace and regulations in the society which defeats the actual purpose of law. The authors would comment the judgment has very limited scope ignoring the other crucial aspects stated above. The authors nowhere criticize the judiciary but the interpretational aspect of the authors varies from the Hon'ble High court.

4) Conclusion

The authors would like to conclude with some suggestions and conclusions Suggestions To critically examine the word woman and does not defeat the object of the substantive law. The crucial laws should be made when such type of surgeries are performed and team of experts should be appointed for crucially examining these aspects. The author would like to conclude that the matter is listed for hearing before the Hon'ble Supreme court and the crucial aspects could be examined by the Hon'ble Supreme court. The authors would appreciate the Hon'ble Supreme court comes with minute observations and newer concepts like personification and span of earlier existence in the Ram mandir judgment.