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The Jurisprudential Approach to Statutory Interpretation

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1. Introduction

Jurisprudence is the general part of adjudication. Jurisprudence as a discipline provides guidance to judges on how to carry out the function of interpreting statutes so as to foster the common good of the community. Statutory Interpretation is an important task of the courts. The basic rules of interpretation are the Literal rule the Golden rule and the Mischief rule.

Statutory Interpretation has assumed a wide pre-occupation among jurist and scholars. The debate is over the proper way to interpret statutes. The views of the Naturalist, Positivist, Sociologist, Realist, Purpositivist and Textualist theories to the debate are the focus of this study.

2. Theories of Statutory Interpretation

2.1 Naturalist Theory/Approach

The Naturalist believed that the Natural law, which depend on the nature of the universe and which can be discovered by reason should be adopted to interpret statutes whose effect is plain and clear except when the plain meaning is absorbed. The Naturalists' argument is that a meaning leading to an absurd result should not be imputed to the legislation.

The Naturalist theory as propounded by Aristotle who believed in the principles of equity to statutory interpretation. Aristotle argued that as a law is made up of general rules it is necessarily imperfect, for it is impossible to foresee and provide in advance for all the different combinations of circumstances, which may arise. Therefore in order to do justice in the exceptional cases, which had been taken into account when the general rules were framed, it will be necessary that the judges be given a power to depart from the general rules when these exceptional cases arise.

Rostov is very clear in his opinion that there is no objective natural law; therefore it should play no role in the decisions of a judge. He stated that the judge's duty, surely, is to interpret and apply the merging moral code of the community that is, to identify the common moral convictions on which the community is coming to agree and apply them in deciding controversial cases.

2.2 Positivist Theory/Approach

Like the Naturalist, the Positivist favoured plain meaning to interpretation of statutes. Legal Positivism is a formalist theory of statutory interpretation. Legislative positivism postulated that courts should follow the plain meaning of the statutes, except where the plain meaning is absurd. The positivists approach to statutory interpretation reflects Fidelity to enacted law, which defined law as a system of legal and accepted legal concepts that have been handed down over the ages and which have not been weakened into variation and uncertainty. To the positivists, a judge must not fill in gaps in the statutes, assume or surmise the intention of the legislature.

Judges must have recourse to ethnical principles in reaching their decisions. Judges have to determine whether a certain course of action is just or unjust, fair or unfair, simple; in order to be able to apply the law. As Finnis has put it:

The arguments and counter-arguments which it is proposed to expel from jurisprudence are in fact…. to be found on the lips of lawyers in the court and of judges giving judgment.
The Positivist believed that statutes are to be interpreted so as to avoid inconsistency, absurdity or 'injustice'. As it was held in Erisi v. Idiaka that a Superior Court of Records has inherent powers to enable it to make such order or take such actions as will protect or enhance the dignity of the court or promote the speedy or fair dispensation of justice. The positivist theory viewed law as what is decreed by the ruler for the obedience of the subject. The positivist idea according to Aguda is not suitable in the modern democracy. He said: "No third World country especially in Africa can afford the luxury of the thesis that whatever is decreed by the ruler must be law to be administered by the lawyers and judges regardless of the barbarity of what law and the lawyers as his savior from the land of emerging dictators in Africa. We cannot afford to fail him".

The crux of a grid adherence to positivist postulation is how the courts, in giving a meaning to statute, can ensure that a rule, which is made with the best of intentions, does not prove to be the instrument of injustice inefficiency and confusion.

2.3 Socialist Theory/Approach

The socialist approach is that law making interpretation and application must take into account social factors. The socialist believed that the proper method of statutory interpretation was an imaginative reconstruction of the legislature's specific intent. The role of a judge, according to the pragmatic sociological jurisprudence of Rosco Pound; is to discover what the lawmaker meant by assuming his position, in the surroundings in which he acted and endeavoring to gather from the mischief with respect to the particular point in controversy.
Socialist theory tried to study systematically what the judges actually do and to discover the real influences on their behaviour. For instance the socialist theory studies the influence on judicial decisions of factors like the Judge's education, opinions and interests.

A major problem of the sociological theory is that some judges or lawyers lack the essential training in the area of statutory interpretation. As Dworkin has put it:
Some lawyers, like Jerome Frank and Pound himself, attempted to carry out this sort of study, but they discovered that lawyers (judges) do not have the training or statistical equipment necessary to describe complex institutions than an introspective and limited way.

2.4 Realist' Theory/Approach

The Realist' approach to the nature of the law is one of functional jurisprudences. It states that the law should be found out not in books, but in the courts, through the agencies enforcing laws. As Max Radin puts it: *There is no law until the statute has been interpreted and so the sovereign rules are the results of the judicial and not the legislative process.*

According to Gray "it is only words that the legislature alters, it is for the courts to say what those words mean, that is, it is for them to interpret legislative act"

The Realist' approach affords the opportunity to study not only the court room procedure, but also temperament of the judicial process especially the man interpreting the laws. Like Positivist theory, the Realist accepts the tenets that the law is the command of the sovereign for the obedience of the subject. Pound views the main function of the judge as one of social engineering, that is, of satisfying as many interests as possible with the least friction and waste. According to Pound, 'Judges must take the interest of all the members of the society as given. His task is merely one of devising ways and means of satisfying as many of them as possible; the role of the judge was conceived to be one of pure deductive application of the relevant rule to the case before him.
Realism was a reaction against this conception of legal reasoning. Realists' started by asserting that in many cases, the existing legal rules are not definite enough and that in these cases, the judge has a measure of discretion in reaching his decision, later, some of them radicalized their positions and came to say that judges are never

constrained by rules to decide in one way or another notwithstanding what the judges themselves may state in their judgment that their decisions are not necessary consequence of the application of the existing legal rules. Radical realists believe that judges have always a choice between possible alternative meanings of the words of a statute or between either following or distinguishing a line of precedents. These radical realists distinguish sharply between the motives, which really move a judge to decide a case in a certain way and the reasons, which he gives in his judgment for reaching that decision among which the existence of some legal rules will often feature prominently. Frank went far as to say that the reasons offered by judges were simply rationalization and nothing more.

Gray asserts that law is only what the judges decide. Everything else (including statutes) is only sources of law interpreted by a court and Liywellyn says what these officials (mainly judges) do about disputes, is to my mind, the law itself. Realists also advocated that judges should pay much more attention to the study of the social sciences. Having rejected the doctrine, which presented law as a value free discipline in which the correct decision in a case can be reached by a process of inevitable logical deduction from some legal rules or principles, they called upon judges to base their decision on scientific knowledge about the impact, which their rulings were likely to have on society.

The Realists certainly corrected the excesses of conceptualism in showing how the decisions of the judge in many cases could not be seen as a pure exercise in logical deduction. They also rightly emphasize that, 'once judges are bound to use in many cases their connections of justice and social policy; they should do so in an open manner so that their reasons could be identified, discussed, and, if necessary criticized by other lawyers.' Besides, they greatly stimulated interest in the sociological study of the factors, which influence judicial decisions and the way in which law actually works in the society.

The basic problem with Realists was that they correctly came to realize that judges are influenced by many factors besides the rule of law and that there can be a great distance between law in the books (or paper rules) and law in action (or real rules, the rules, which are actually applied in the courts). The conclusion of extreme Realists is that if rules are not useful for predicting the decisions of courts, they are good for nothing and jurists rescind them.

2.5 Purposivist Theory/Approach

The Purposivist theory postulated that law is purposive generally. The theory stated that the court should in order to interpret the statute, follow the plain meaning of the words, but when such meaning is absorbed, the court should look beyond the words to the purpose of the act. The theory stated further that even if the plain meaning does not produce absorbed results but merely an unreasonable one at variance with the policy of the legislation as a whole, the court should follow the purpose rather than the literal words of the statute.

According to Hart and Sacks "*every statute has some kind of purpose or objective. Ambiguities can be intelligently resolved first, by identifying that purpose and the policy or principles it embodies, and then by deducing the results of most consonant with that principle or policy".*

The Purposivist theory suggested knowledge of legislative history. It has been argued the study of legislative history by the interpreter creates a comprehensive and detailed …contextual setting that protect against idiosyncratic interpretation by judges. Under the purposivist theory, statutory interpretation could be dynamic and legitimate, equitable as well as law like. That general purpose is more easily determinable than specific intent. However, the purposive interpretation is judicial lawmaking. The theory is consistent with legislative supremacy and its corollary 'obligation of the judiciary to enforce faithfully the written law. Another constraint of the purposivists theory is in respect of a statute that has more than one purpose. For example, the criminal code and the penal code have the purposes, other than to deter wrong doing, to ensure retribution and rehabilitation. What purpose would be adopted when the purposes of statute are disputed? The legislators might have had different purposes: political, economic, social and so on. It is too easy to determine,

yielding a plethora of purposes, cross-cutting purposes, and purposes set at such a general level that could support several different interpretations. This might make the theory even less determinate than mere traditional approaches inquiries based upon incoherent or analytical impossible. Thus; the theory is not more objective or determinate than the plain meaning and imaginative construction approaches.

2.6 Textualist Theory/Approach

The Textualist argued that there should be plain meaning approaches to statutory interpretation. They postulated that statutory interpretation should not aspire to reach results that are good ex post facto but should instead subserve extant goals, such as providing congress with clear interpretative rules so that it can know the effect of the language it adopts. The approach, they argued, stimulates congress and not the courts to make important policy decisions. Miller, G.C in response to the Textualist views stated that the democratic process can foster itself, and that the democratic process has delegated to courts and agencies the lawmaking responsibilities and the duty to do justice exposit when it enacts broad statutes.

The Textualist theory missed the point that ambiguity of language is more of a headache created by communication pitfall than the legislature itself creates; in the process of law making.

3. Conclusion

Where a court has to decide a case, in which some difficult problems of statutory interpretation arise and on which there are conflicting precedents, a clear understanding of the social objectives is essential in order to be able to discharge the task in a competent way. The Nigeria judicial approach takes cognizance of the policy and object of statutes in so far as it helps to detect the intention of the legislature. According to Max Radin, legislation has an aim being a ground design, it is an instruction to administrators and courts to accomplish a definite result; usually the securing or maintaining of recognized social, political, or economic values.

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