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Relevance of Applicability of Exclusionary Rule in Interpretation of Statutes

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ABSTRACT

In the words of various jurist it says that the true way to construe any statue is take word as the legislature has given them and the meaning of the word would be taken as naturally or generally implies. While interpreting a statute there will be two situations when meaning of the statute is very clear but the main problem arose where legislature has left some areas ambiguous or when the provision is not clear due to some surrounding circumstances. The jurist has to tackle the second situation when the author and jurist tends to apply things which are silent or not clearly mentioned and this is a common problem while dealing with interpretation of statutes. Many statutory provision are not clear means there are always some hidden fact rather than expressed. Therefore while reading any statute the reader has to interfere and for this there are certain methods are laid down in law. The maxim expressum facit cessare tacitum embodies the principle that no inference is proper if it goes against the express words Parliament has used. The chief application of this principle lies in another maxim of 'expressio unius est exclusio alterius.'

Principles of statutory interpretation are not as simple as it seems like but while applying such construction extreme caution has to be taken. The point is that sometimes the exclusion by the legislature maybe an accident and therefore it is not right to apply the principle without getting the wholesome idea of the statute or the intention to made this statute, the idea of these principles is to help interpretation of statute and not to cause injustice to anyone and defeat the purpose of law. Thus while applying the principle it must be kept in mind that aids of internal construction though are to help interpretation of statutes, yet Courts in applying these aids must be cautious and must not make it a formal application as this might cause grave injustice and therefore the duty of Courts is to offer justice and to not create further confusion in ambiguous statutes.

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I. INTRODUCTION

Theory of interpretation of statutes divides the aid of construction into two parts which are internal aid of construction and external aid of construction and this maxims fall under the ambit of internal aid of construction means while reading such statute any doubt arises or any ambiguous situation arises in various statute or in a section then this aid of internal construction may be applied.

The whole idea of such construction is based on the principles of interpretation that what is left unexpressed was in all probability not expected at all. And this enunciates the very first principle applicable to the construction of written legislature.

While dealing with such situation of statutory construction one thing must be cleared that this principle is one of the product of common sense and no legal backing, therefore while using this there must be great caution. Therefore the court has many limitations adhered to maintain justice and equity.

II. USAGE OF PRINCIPLE OF STATUTORY CONSTRUCTION

(A) Application of the maxim

This maxim is based on the intention of the legislature while making a statute. The maxim has received mention in legalistic thinking, there is no legal origin, but it is a product of 'logic and customary sense.' In *Shankara Rao Badami v. State of Mysore*[2], the appellants challenged the validity of the Mysore (Personal and Miscellaneous Inams) Abolition Act, 1954, on rock bottom that it does not provide any compensation as a 'just equivalent'. The contention was that the State has power to make a law under Entry 36 of List II of the Constitution as regards acquisition of property, read with Entry 42, List III (as it stood then) could be exercised subject to the condition that it should be for public purpose and can provide for compensation. The apex Court in this case held that such an argument to be untenable within the ambit of the actual fact that both these conditions had been expressly provided in Article 31(2) of the Constitution and it's further enacted that no law shall be made which takes away or abridges these safeguards, and any such law, if made, shall be void. Hence the question of these conditions being read implicitly into Entry 36 of List II or Entry 43 of List III didn't arise within the least. The maxim *expressio unius* could also be a principal of logic and customary sense and not merely a technical rule of construction. Therefore, where a specific stipulation is expressly laid down during a specific provision it

[2] (1969) 1 SCC 1

isn't correct to treat the need as arising implicitly from another provision.

Historically, it had been first applied to legislation where the statute designated a specific remedy for enforcing a right or power which does not exists previously. The use of such construction was gradually extended to suit into all kinds of statutes, including those on taxation, administrative bodies, corporation's contracts, marriage, liens, crimes, exemptions, etc.

However this maxim can't be used as an easy application. The rule of interpretation of statute says that the expression of one's is that the exclusion of another, it shows contrast to the habits of speech of most persons. For this reason, the rule must be applied with extreme caution. Therefore the maxim properly applies only 'in the natural association of ideas within the mind of the reader which is expressed is so set over by way of strong contrast thereto which is omitted that the contrast enforces the affirmative inference. And which is omitted must be intended to possess conflicting and contradictory treatment.' A statute is to be construed, as far as possible, giving significance to every part.

(B) Relevance of Words of designation:

The *expressio unius* principle applies where some possible series of substantives or other items are expressly designated. To make the problem very clear let's take an illustration. An Act authorized an organization to make bridges 'of the particular heights and spans' shown on the deposited plan. The plan also showed inclinations. While conforming to the mentioned heights and spans, the company departed from the inclination. The corporate was however not held to be infringement of the Act. This is often because there was no obligation beyond the heights and spans of the bridges as shown in the plan. These heights however, were specified within the enactment and there was no specification on the rates of the inclination of the road and thus the appliance of the maxim *expressio unius est exclusio alteriu* In the case of *R v. Caledonian Rly*,[3]

(C) Specific words in statute providing remedies:

Where an Act provide specific remedies, penalties or procedures it is always presumed that other remedies, penalties or procedures which may be applicable by excluding implication. While referring to a statute purporting to impose a charge, I such situation the rule to be applied is that the intention to impose a charge on the topic must be shown by clear interpretation and unambiguous language. If there is a situation when language leaves place for coming to the conclusion that only penalties laid out in the Central Act are enforceable by

[3] (1850) 16 QB 19

the machinery for enforcement of liability under the overall nuisance tax law of the State, then the legislative intent can safely be presumed to confine penalties mentioned within the Central Act to only those as are mentioned specifically within the Central Act, thus once more bringing within the application of the principle that 'mention of things of a specific class could also be considered silently excluding all other members of the category' .

(D) Impact of word in extension:

The foremost way of extending the undisputable meaning of a term is by the using of an enlarging definition. Now here is a doubt that whether a term includes a particular class and words of extension are added thereto which covers just some of the members of the category, then it becomes implied that the remaining members of the category are excluded. For instance under one specific Act it stated that the word 'parent' includes the mother of a bastard. This extension relates to the specific category which is that the parents of a bastard. Therefore, using the rule of *expressio unius* during this case, the express mention of the mother implies that there is an exclusion of bastard's father.

III. MAXIM MUST BE APPLIED WITH CAUTION

(A) Where maxim does not apply:

While applying *expressio unius* maxim there are certain limitations. Where the intention clearly shows that the legislature did not mean that express mentioning of a thing should use to exclude all others, the maxim cannot apply. Further, where the statutory language is common /simple and the meaning is clear there can be no implied exclusion.

This was repeated in *Parbhani Transport v. R.T.A*.[4] during this case permits to ply buses were granted to the State of Bombay under Chapter IV of the automobiles Act, 1939. it was contended by the petitioner that since the Act by Chapter IV-A as long as the government would be entitled to run buses under a specific scheme, it indirectly prohibited the service of buses by the government otherwise and to support this argument the *expressio unius* principle was relied upon. In this case court held that the maxim was meant for ascertaining the intent of the legislature. Where the statute has clear intention that there is no scope for applying this maxim. S.43(3)(a) of the Motor Vehicles Act was seen to be simple in its term. It is observe that the government has got to apply for permits under S.42(1) to run buses as a billboard enterprise. For this reason there maxim couldn't be used for ascertaining the intention of the legislature and implying a prohibition where none exists.

[4] AIR 1960 SC 801

Therefore maxim is only applicable where there is a doubt in the language of the statute or provision and should not be used with intent to defeat the intention of a legislature.

With reference to aforementioned text, whenever there is an application of a principle of construction, it must be noted that such application is subservient to the fact that the court must aspire to establish the legislative intent and purpose, and only then adopt a rule of construction which makes this intent. Therefore the thought that where a mode of performing a requirement is laid down by the law it must be performed in specified way or none in the least and it should not be adopted blindly under the maxim of *expressio unius est exclusio alterius*, without reading it in light of the aim of the specific provision within the statutes.

Now the question arose that, what is the reason for such limitation? It is often argued that a failing to make an expression complete may arise from the serendipity of legislative procedure and it is common to find provisions put into statutes ex *abundanti cautela* and at the instance of parties interested.

In the case of *State of Karnataka v. Union of India*,[5] an argument was put forward for the appellants wherein they contended that the Commission of Enquiry set up by the Central Government against the Chief Minister and other Ministers of the State was said to be unconstitutional because Section 3 of the Commission of Inquiry Act, 1952 was in derogation of the federal structure of the Constitution. In essence the argument suggests was that since List I of Schedule VII didn't expressly provide for such a legislative enactment it had been necessary to deem the same as beyond the scope of the legislative power of Parliament through the appliance of the *expressio unius est exclusio alterius* rule. The Supreme Court was in sighting in its dismissal of this futuristic argument. It held that the remaining powers vested in Parliament through Article 248 and Entry 97 of List I of Schedule VII was designed to cover such necessities of public importance all of which could not be narcissistic at the time of drafting of the Constitution. Hence an enactment such as Section 3 of the disputed legislation fell analogously within such remaining power of Parliament since the same was not present, either in List II or List III. In such a situation, the apex Court held, that it would constitute grave injustice to construe limitations on the legislative power of Parliament on a mere theory of restriction of the same when the Constitution itself provided a methodology expressly to fill the lacuna caused by an unanticipated situation.

(B) Not of universal application:

"The maxim *expressio unius est exclusio alterius* isn't one among universal application, and

[5] (1997) 4 SCC 608

it's inconceivable that the framers of the Constitution could have intended to deny to the Indian Legislatures, an influence which, as we've seen, has been recognized on all hands as a desirable, if not, as a necessary concomitant of legislative activity in Modern States."

This were findings of Patanjali Sastri.J, in In Re, The Delhi Laws Act, 1912. In this case the question that arose was whether the delegation of a discretionary power to select and choose laws made by other legislatures to work elsewhere and to apply to certain territories was within the ambit of the Central Legislature. In this case the argument put forth was that there existed a hidden prohibition against deputation on the strength of Art. 357(1)(a) which provides specifically for deputation by the President of the law-making authority conferred on him by Parliament in case any threat to the constitutional machinery in States. While contending this it was said, that the provision which is expressly mentioned above shows that whenever the drafters of the constitution wanted to provide delegation of legislative powers, in this regard they have made a specific provision and, in the absence of any such provision in other cases, no delegation of such power is permissible.

While dealing with the relevance of applicability of exclusionary principle we saw that such an argument won't hold good. It was not intended to prohibit the delegation of powers in all cases and there will be no reseaonabilty when we consider one rare instance of an express provision authorizing the President to delegate to a different the law-making powers conferred on him by Parliament within the Constitution. There is no specific aid to construction because it works on one of general application and varies from a case to case basis, keeping in mind the purpose of the legislature and intent of the provision or the statute.

(C) Superfluous provisions:

While making a statute the framer means The Legislature sometimes uses superfluous words or provision mainly as a matter of abundant caution. Finding a special exemptions covered by general exemptions is very common in this situation. These freedoms are often introduced *ex majori cautela* to conciliate persons whose interests are affianced or sympathies aroused in favor of some particular institution, and who are apprehensive that it may not be interpreted so on fall within the overall exemption. Such provisions don't attract the *expressio unius* principle and therefore the final conclusion of such superfluous provisions is that the legislature was either airheaded or imprudent of the important state of the law or that it acted under the influence of excessive caution.

It was contended in the case of *Harish Chandra v. Triloki singh*[6], during this case the

[6] AIR 1957 SC 444

appellant was charged for doing some corrupt practices in furtherance of his election prospects. It was claimed that within the election petition the appellant had not furnished certain particulars.

Also the court said that it must be noted that when additional powers or responsibilities are conferred in the statute or when a replacement option is given within the statute, this doesn't close out previous powers and options.

(D) Principle of caution:

Expressio unius est exclusio alterius is the principle of interpretation of statute which is not a rule of law but it is one of an internal construction. It is a product of common sense and it always be applied with great caution in order in order to produce a rational interpretation. Therefore, if the reader feels that the use of maxim can be rejected to serve the intention that the statute was enacted or will accomplish beneficiary results, the maxim must be disproved *Lowe v. Dorling & Son*.[7] If one can conclude that the interpretation of provision or a provision itself has been added with abundant caution then there is no need of application of the maxim. In many situation there is an uncertainty of a concerned person on whether this things comes under the ambit of the statute or a specific provision, to make assured this persons the framer of the statute may add an exception. Thus there's already an inbuilt caution and thus the maxim won't apply because the intention of legislature while making this statute was very clear and obvious.

Furthermore, Lopez L.J. observed in the case of *Colquohoun v. Brooks*,[8]

"This maxim could even be a valuable servant but a dangerous master to follow within the event of statutes or documents. The exclusio is usually the results of inadvertence or accident, and therefore the maxim ought to not be applied, when its application, having reference to subject- interest which it is to be applied, results in inconsistency or injustice…"

Considering the above judgment it is observed that, it's not enough that the express and therefore the implied are merely incongruous but it must be clear that they can't reasonably be intended to coexist.

(E) Miscellaneous situations:

Thinking beyond the principle and theories mentioned above, this principle of internal construction has not specific application where the statute merely rely upon the prevailing law. And it does not applies to matters omitted by oversight, or where it clearly shows that

[7] (1906) 2 KB 772, 784
[8] (1887)19 QBD 400

something was expressly mentioned for an additional reason or merely due to caution. Further, this maxim has no application to the title of an Act.

IV. CONCLUSION

In every Statutes there is a chance of mistake or statute has a lack of clarity because it is made by human being. In fact sometimes the Legislature deliberately expresses certain things and excludes certain things with a specific intention and now it is the duty of statute reader to know this intention.

Mainly the purpose of forming that maxims like *expressio unius est exclusio alterius*, was to assist the statute reader to return to a consensus or a dicta laid down while making the statute, where certain things were expressly implied to exclude other things. And this is very clear by referring various case laws that this principle helps avoid the mischief of some contenders who attempt to twist the statute to their advantage.

However these principles of statutory interpretation are not as simple as it seems like but while applying such construction extreme caution has to be taken. The point is that sometimes the exclusion by the legislature maybe an accident and therefore it is not right to apply the principle without getting the wholesome idea of the statute or the intention to made this statute, the idea of these principles is to help interpretation of statute and not to cause injustice to anyone and defeat the purpose of law. Thus while applying the principle it must be kept in mind that aids of internal construction though are to help interpretation of statutes, yet Courts in applying these aids must be cautious and must not make it a formal application as this might cause grave injustice and therefore the duty of Courts is to offer justice and to not create further confusion in ambiguous statutes.

Thus reiterating once more that the *expressio unius* principle may be a helpful master but a dangerous servant, and thus in using this principle one must exercise abundant caution.

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