

A comparative analysis on the relevance of intent based statutory interpretation

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Sri Lanka's colonial history and legal developments have brought numerous legislations to the country. This includes the form of regulations, proclamations and ordinances passed before independence and the Acts and statutes passed after independence. Even though these laws were enacted during different times, the legislation enacted before independence are also valid through Article 168 of the 1978 Constitution of Sri Lanka. Some of the legislation like the Penal Code (Ordinance No. 2 of 1883) of Sri Lanka were enacted around 100 years ago and still in function. Application of these old legislations to present day issues requires an active involvement of the judiciary. The interpretation of a statute involves different theories to bring about justice to the case before the court. This paper mainly focuses on the intent based interpretation which comprises the theories of intentionalism and purposivism. The main objective of this paper is to compare the relevance of these intent based theories in interpreting the laws enacted during different periods in Sri Lanka and to analyse the prospects and challenges of these theories. An effective interpretation of legislation is of crucial importance to meet the changing needs of the society. This is mainly qualitative research carried out by reference to legislation, case laws, text books and data collected from the internet. The judges are expected to interpret a statute to reach the conclusion of a case based on the actual legislative intent under the intentionalism theory. The intentionalism theory has a restrictive approach to interpretation whereas purposivism gives considerable flexibility to a judge to interpret a statute in order to find out the purposes at different levels in a particular case. Therefore, this paper argues that judicial activism would be possible for the Sri Lankan judiciary through the application of the purposivism theory to bring justice despite the age of a statute.

Keywords: judicial activism, intentionalism, purposivism, legislative intent

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