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**WHEN WORDS FAIL THE VICTIM - A CRITICAL INQUIRY INTO
STATUTORY INTERPRETATION IN ATTORNEY GENERAL FOR
INDIA V. SATISH**

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BRIEF BACKGROUND OF THE JUDGMENT

*Attorney General for India v Satish and Anr*² is a decision of a three-Judge Bench of the Supreme Court of India that arose out of a controversy popularly, and notoriously, known as the “skin-to-skin” case. The judgment was delivered on 18 November 2021 in five connected appeals arising from two judgments of the Bombay High Court, Nagpur Bench, dated 19 January 2021 and 15 January 2021, both authored by Ganediwala J.³ In each of the two connected matters, the High Court had held that the offence of “sexual assault” under Section 7 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”) required proof of direct, unmediated, “skin-to-skin” contact between the accused and the sexual parts of the child’s body, and that touching over clothing, without more, would fall short of the statutory definition and would, at best, amount to the lesser offence of outraging modesty under Section 354 of the Indian Penal Code, 1860 (“IPC”).

The ruling was met with immediate and widespread public and professional criticism, being seen as textually strained and substantively regressive from the standpoint of child protection.⁴ The Attorney General for India mentioned the matter before the Supreme Court within days of the first judgment, apprehending that it would set “a dangerous precedent”,⁵ and the Court stayed the

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² *Attorney General for India v Satish and Anr*, 2021 INSC 762; 2021 SCC OnLine SC 1076.

³ *Satish v State of Maharashtra*, 2021 SCC OnLine Bom 72 (Criminal Appeal No 161 of 2020, decided 19 January 2021); *State of Maharashtra v Libnus* (Criminal Appeal No 445 of 2020, decided 15 January 2021).

⁴ *Attorney General for India v Satish and Anr*, 2021 INSC 762, paras 1–6 (Trivedi J).

⁵ *Attorney General for India v Satish* (Mentioning Order), 2021 SCC OnLine SC 800.

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operation of the High Court's acquittal pending appeal. The final decision, authored by Trivedi J. for herself and Lalit J., with a separate but concurring opinion by Bhat J., unanimously reversed the High Court and restored the convictions recorded by the respective Special Courts.

The judgment is significant not merely for its result but for the interpretive method by which that result was reached. It represents a full-throated endorsement of purposive construction in a beneficial-cum-penal statute, an explicit rejection of a narrow, literalist reading of the words "touch" and "physical contact", and a considered (if occasionally under-examined) treatment of the tension between the presumption of innocence and the "rule of lenity" on the one hand, and the protective object of a child-welfare statute on the other. It has since been consistently followed and cited with approval by the High Courts as the authoritative statement on the scope of Section 7 of the POCSO Act.

COMPOSITION OF THE BENCH

The appeals were heard and decided by a Bench of three Judges of the Supreme Court of India comprising Justice Uday Umesh Lalit, Justice S. Ravindra Bhat and Justice Bela M. Trivedi.

The principal and more elaborate judgment was authored by **Justice Bela M. Trivedi**, with **Justice Uday Umesh Lalit** concurring without a separate opinion. **Justice S. Ravindra Bhat** delivered a short but doctrinally significant concurring opinion, agreeing entirely with the conclusions of Trivedi J. but supplementing her reasoning with an explicit invocation of the "mischief rule" and a historical account of the legislative background that produced the POCSO Act.

NAME OF PARTIES

Five connected criminal appeals were disposed of by the common judgment. The appellants were the **Attorney General for India** (Criminal Appeal No. 1410 of 2021), the **National Commission for Women** (Criminal Appeal No. 1411 of 2021), the **State of Maharashtra** (Criminal Appeal Nos. 1412 and 1413 of 2021, arising out of the two connected

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High Court judgments), and the accused **Satish** himself (Criminal Appeal No. 1414 of 2021), who cross-appealed against his conviction for the lesser IPC offences.

The respondents were **Satish** (in the appeals filed by the Attorney General, the National Commission for Women and the State) and **Libnus** (son of Fransis Kujur), the accused in the second connected matter, together with the **State of Maharashtra** as respondent in Satish's own appeal.

Mr Siddharth Dave, learned Senior Advocate, was appointed **amicus curiae** to assist the Court. Mr Siddharth Luthra, learned Senior Advocate, appeared for both accused through the Supreme Court Legal Services Committee. Ms Geeta Luthra, learned Senior Advocate, appeared for the National Commission for Women, and Mr K.K. Venugopal, the then Attorney General for India, appeared in person.

MATERIAL FACTS

The judgment disposes of two factually distinct but legally identical controversies.

A. The case of the accused Satish

1. The informant was the mother of a twelve-year-old victim residing in Deepak Nagar, Nagpur, in the same locality as the accused.
2. On 14 December 2016, at about 11.30 a.m., the victim went out to fetch a guava and did not return. On enquiry, the informant learnt from a neighbour that the accused had taken her daughter to his house.
3. On going to the accused's house, the informant was initially told that the child was not there, but on hearing cries from the first floor she forced her way in, found the door of a room bolted from outside, opened it, and found her daughter crying inside.
4. The child narrated that the accused had lured her with the promise of a guava, taken her to his house, pressed her breast, attempted to remove her salwar, and pressed her mouth when she tried to shout, before leaving the room and bolting the door from outside.

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5. When the police arrived, the accused was found attempting to hang himself and was sent for medical treatment. The child's statement was recorded under Section 164 of the Code of Criminal Procedure, 1973.
6. The Special Court, Nagpur, convicted the accused under Sections 342, 354 and 363 IPC and Section 8 of the POCSO Act. In appeal, the High Court acquitted him of the POCSO offence, holding that since there was no evidence that the accused had removed the child's top or inserted his hand beneath it, there was no direct "skin-to-skin" contact and hence no "sexual assault" within the meaning of Section 7; it maintained his conviction only under Sections 342 and 354 IPC, reducing his sentence to one year's rigorous imprisonment.

B. The case of the accused Libnus

7. The informant was the mother of a five-year-old victim in Gadchiroli. On 11 February 2018, having left her two daughters at home while she went out for domestic work, she returned to find the accused, Libnus Fransis Kujur, a neighbour, holding her elder daughter's hand while the child pulled up her pant; on being confronted, the accused fled, but the informant noticed that the zip of his trousers was open.
8. On enquiry, the child stated that the accused had entered the house on the pretext of looking for her father, caught her hands, raised her frock, lowered her pant, unzipped his own trousers, exposed his penis to her, and asked her to lie down on a cot, before being disturbed and fleeing.
9. The Special Court, Gadchiroli, convicted the accused under Sections 448 and 354-A(1)(i) IPC and Sections 8 and 10 read with Sections 9(m) and 12 of the POCSO Act. The High Court maintained the IPC convictions but set aside the conviction under Sections 8 and 10 of the POCSO Act, holding that "holding the hands" of the child and "opening the zip of the pant" did not amount to "sexual assault" as understood under Section 7, applying the principle of *ejusdem generis* to restrict the residuary phrase "any other act ... which involves physical contact" to acts of the same genus as touching the enumerated body parts, and reducing the sentence to the period already undergone.

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10. Aggrieved by the two High Court judgments, the Attorney General for India, the National Commission for Women, the State of Maharashtra and the accused Satish preferred the five connected appeals before the Supreme Court.

ISSUES RAISED

The central question that the Court framed for its determination, common to all five appeals, was:

1. Whether “physical contact with sexual intent” and, more particularly, the act of “touching” the sexual parts of a child’s body under Section 7 of the POCSO Act necessarily requires direct, unmediated, “skin-to-skin” contact between the offender and the victim, or whether an act done with sexual intent involving contact through clothing, or otherwise indirectly, is sufficient to constitute the offence of “sexual assault”.

Ancillary to this were the following questions -

- a) whether the principle of *ejusdem generis* was correctly applied by the High Court to cut down the residuary limb of Section 7;
- b) whether the “Rule of Lenity” required the provision to be construed strictly in favour of the accused; and
- c) whether, on the facts, the acts attributed to the two accused persons fell within Section 7 read with the statutory presumptions under Sections 29 and 30 of the POCSO Act.

SCOPE

This comment confines itself to the reasoning of the Supreme Court on the interpretation and construction of Section 7 of the POCSO Act, and, in particular, to the canons of statutory interpretation deployed by the majority and the concurring opinion to arrive at their common conclusion. It does not undertake an independent appraisal of the sufficiency of the evidence in either case, both of which turned substantially on undisputed testimony, nor does it examine in detail the sentencing discretion exercised by the Court under Section 8 and Section 10 of the

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POCSO Act. The concluding observations of the Court regarding the manner of certification of judgments by the Registry of the Bombay High Court, though noted in the material facts, are administrative in character and fall outside the interpretive focus of this comment. The project also does not extend to a comparative survey of “sexual assault” legislation beyond the extent to which the Court itself drew upon United Kingdom, United States and Indian High Court authority in aid of construction.

ARGUMENTS

ARGUMENTS ON BEHALF OF THE APPELLANTS

1. The learned Attorney General for India, Mr K.K. Venugopal, submitted that the High Court’s interpretation, requiring “skin-to-skin” contact, was not warranted by the text of Section 7 and would have a “devastating effect in the society at large” if allowed to stand.⁶ He argued that the acts of taking the victim to his house, attempting to remove her salwar, pressing her breast, and pressing her mouth to silence her, together amounted to “sexual assault” within Section 7, punishable under Section 8.
2. Ms Geeta Luthra, learned Senior Advocate for the National Commission for Women, relied on the Statement of Objects and Reasons of the POCSO Act and on the report of the Parliamentary Standing Committee to submit that the words “touch” and “physical contact” had been used interchangeably by the legislature, and that confining “physical contact” to “skin-to-skin contact” would be an unduly narrow construction defeating the very object of the Act. She further submitted that the High Court had erred in invoking *ejusdem generis*, a principle which ought not to be applied where doing so would defeat the object of the enactment, and that the “Rule of Lenity” had no application in the absence of any genuine ambiguity in the statute.

⁶ Attorney General for India v Satish and Anr, 2021 INSC 762, para 12 (Trivedi J).

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3. Mr Siddharth Dave, the learned amicus curiae, dissected Section 7 into its two constituent limbs and submitted that “sexual intent” was the operative *mens rea* common to both limbs; relying on Sections 29 and 30 of the POCSO Act, he submitted that the Special Court was obliged to presume the existence of the requisite culpable mental state once the foundational facts were proved, the burden then shifting to the accused to rebut that presumption.
4. Mr Rahul Chitnis, for the State of Maharashtra, adopted these submissions and contended that acceptance of the High Court’s interpretation would negate the very object of the Act.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

1. Mr Siddharth Luthra, learned Senior Advocate appearing for the accused through the Supreme Court Legal Services Committee, submitted that while the first limb of Section 7 (touching the enumerated body parts) did not require “skin-to-skin” contact, the second, residuary limb “any other act ... which involves physical contact without penetration” did require such direct contact, since the terms “assault” and “criminal force” as used in the analogous IPC provisions could not be imported wholesale but nevertheless coloured the meaning of “physical contact”.
2. He relied on the decision of the Bombay High Court in *Bandu Vithalrao Borwar v State of Maharashtra*⁷ for the proposition that “sexual intent” could not be confined to any predetermined format and was a pure question of fact.
3. Invoking the statutory presumptions under Sections 29 and 30, he argued, by analogy with decisions on the Narcotic Drugs and Psychotropic Substances Act, 1985, that a reverse burden of proof made it correspondingly more difficult for an accused to establish innocence and, therefore, mandated a strict construction of the offence-creating

⁷ *Bandu Vithalrao Borwar v State of Maharashtra*, Criminal Appeal No 50 of 2016 (Bombay HC, decided 17 October 2016).

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provision, relying on *Noor Aga v State of Punjab*,⁸ *Sakshi v Union of India*⁹ and *R Kalyani v Janak C Mehta*.¹⁰

4. He further invoked the American “Rule of Lenity”, relying on *United States v Wiltberger*,¹¹ *Connally v General Construction Co*¹² and *United States v Kozminski*,¹³ to submit that statutory ambiguity in a penal enactment must be resolved in favour of the accused.
5. Finally, he pointed to alleged contradictions in the evidence of the prosecution witnesses and submitted that it would be unsafe to convict on such evidence.

PROVISIONS AND JUDICIAL PRECEDENTS REFERRED BY THE COURT

PROVISIONS

1. **Section 7, POCSO Act** — defines “sexual assault” as touching, with sexual intent, the vagina, penis, anus or breast of the child, or making the child touch the same parts of the accused or any other person, “or does any other act with sexual intent which involves physical contact without penetration”.
2. **Section 8, POCSO Act** — prescribes punishment for sexual assault of imprisonment of either description for a term of not less than three years, extendable to five years, with fine.

⁸ *Noor Aga v State of Punjab* (2008) 16 SCC 528.

⁹ *Sakshi v Union of India* (2004) 5 SCC 518.

¹⁰ *R Kalyani v Janak C Mehta* (2009) 1 SCC 516.

¹¹ *United States v Wiltberger*, 18 US 76 (1820).

¹² *Connally v General Construction Co*, 269 US 385 (1926).

¹³ *United States v Kozminski*, 487 US 931 (1988).

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3. **Section 9(m) and Section 10, POCSO Act** — “aggravated sexual assault” where the victim is below twelve years, punishable with imprisonment of not less than five years, extendable to seven years, with fine.
4. **Section 11, POCSO Act** — defines “sexual harassment”, with an Explanation stipulating that any question involving “sexual intent” shall be treated as a question of fact.
5. **Sections 29 and 30, POCSO Act** — statutory presumptions: Section 29 presumes, once prosecution is initiated under Sections 3, 5, 7 or 9, that the accused has committed the offence unless the contrary is proved; Section 30 presumes the existence of the requisite culpable mental state, subject to the accused’s opportunity to prove otherwise, to the standard of proof beyond reasonable doubt.
6. **Sections 342, 354 and 363, IPC** — wrongful confinement, assault or criminal force to a woman with intent to outrage her modesty, and kidnapping, respectively; and **Section 349, IPC**, defining “force” to include contact with anything a person is “wearing or carrying”.

JUDICIAL PRECEDENTS

1. *J.P. Bansal v State of Rajasthan*¹⁴

Cited by Trivedi J. for the foundational proposition that the elementary object of statutory interpretation is to discover the *mens* or *sententia legis* that is the true intention of the legislature and that where language is clear, the intention must be gathered from the language itself, without addition or substitution of words, save where the result would otherwise be absurd or unworkable. The Court used this decision to anchor its general approach before turning to the specific provisions of the POCSO Act.

2. *Balaram Kumawat v Union of India*¹⁵

¹⁴ J.P. Bansal v State of Rajasthan, AIR 2003 SC 1405.

¹⁵ Balaram Kumawat v Union of India (2003) 7 SCC 628.

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Relied upon extensively for the principle of contextual, purposive reading: that a statute must be construed *ex visceribus actus* that is from within its four corners while having regard to the subject-matter of the offence and the object that the law seeks to achieve, and that even in relation to a penal statute, “narrow and pedantic, literal and lexical construction may not always be given effect to”. The Court reiterated an earlier decision and noted that “the purpose of the law is not to allow the offender to sneak out of the meshes of law” to reject the High Court’s literalism.

3. ***Sakshi v Union of India***,¹⁶ ***R Kalyani v Janak C Mehta***¹⁷ and ***State of Punjab v Gurmeet Singh***¹⁸

The decision harped on the equally settled proposition that a penal statute creating an offence or imposing a penalty must ordinarily be construed strictly. Trivedi, J. accepted this principle as a matter of general law, but qualified its application by emphasizing that the provision must nevertheless be construed in its proper statutory context and harmoniously with the scheme and object of the enactment. The judgment, therefore, does not treat strict construction as an absolute or freestanding rule capable of displacing a purposive and contextual interpretation.

FOREIGN DECISIONS AND BOOKS

FOREIGN DECISIONS

1. ***Regina v H***¹⁹ — The England and Wales Court of Appeal, interpreting the word “touching” in Section 3 of the (UK) Sexual Offences Act, 2003, held that touching a victim’s clothing constitutes “touching” for the purposes of that provision, since

¹⁶ *Sakshi v Union of India* (2004) 5 SCC 518.

¹⁷ *R Kalyani v Janak C Mehta* (2009) 1 SCC 516.

¹⁸ *State of Punjab v Gurmeet Singh* (2014) 9 SCC 632.

¹⁹ *Regina v H* [2005] 1 WLR 2005 (CA).

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Parliament could not have intended that touching what a victim was wearing at the material time should fall outside the definition of sexual touching.

2. ***State of Iowa v Walter James Phipps***²⁰ and ***State of Iowa v Kris Kanon Pearson***²¹ —

The Iowa Court of Appeals held that the absence of skin-to-skin contact does not, as a matter of law, take conduct outside the definition of a “sex act” or “sexual activity”; contact through an intervening material amounts to prohibited contact provided the participants can, viewed objectively, perceive that they have touched.

3. ***The People v Reid***²² — The California Court of Appeal’s articulation of the “Rule of Lenity” as a doctrine of last resort, triggered only by “egregious ambiguity”, was relied upon by Trivedi J. to hold that the rule had no application to Section 7 of the POCSO Act.

4. ***United States v Wiltberger***,²³ ***Connally v General Construction Co***²⁴ and ***United States v Kozminski***²⁵

The American authorities relied upon by the respondents for the “Rule of Lenity”. The Court, relying on *The People v Reid*,²⁶ held that the touchstone of the Rule of Lenity is genuine statutory ambiguity, that the rule applies only where the court can do no better than guess at legislative intent, and that it cannot be invoked to manufacture an ambiguity where none exists or to defeat a plainly discernible legislative purpose.

5. ***IRC v Rossminster Ltd***²⁷

The decision reiterates the settled principle that where the language of a statutory provision is clear, plain and unambiguous, the Court must give effect to the words used

²⁰ *State of Iowa v Walter James Phipps*, 442 NW 2d 611 (Iowa App 1989).

²¹ *State of Iowa v Kris Kanon Pearson*, 514 NW 2d 452 (Iowa 1994).

²² *The People v Reid*, 246 Cal App 4th 822 (2016).

²³ *United States v Wiltberger*, 18 US 76 (1820).

²⁴ *Connally v General Construction Co*, 269 US 385 (1926).

²⁵ *United States v Kozminski*, 487 US 931 (1988).

²⁶ *The People v Reid*, 246 Cal App 4th 822 (2016).

²⁷ *IRC v Rossminster Ltd* [1980] 1 All ER 80.

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by the legislature in their ordinary and natural meaning. The Court cannot add to, subtract from, substitute, or otherwise rewrite the statutory language under the guise of interpretation. Where the language of the enactment unequivocally points in one direction, effect must be given to that meaning, and the Court cannot resort to interpretative devices to arrive at a different construction. As the English principle succinctly puts it, a Court ought not to be “overzealous in searching for ambiguities or obscurities in words which are plain”.

These foreign decisions, while acknowledged by the Court not to be strictly *pari materia* with Section 7 of the POCSO Act, were relied upon as persuasive, comparative material illuminating the ordinary and natural meaning of “touch” and “sexual assault” across analogous protective legislation, and, in the case of *Reid* and *Rossminster*, the proper threshold for departing from plain statutory language.

CONCRETE JUDGMENT (JUDGMENT IN PERSONAM)

The Supreme Court allowed the appeals of the Attorney General for India, the National Commission for Women and the State of Maharashtra, and dismissed the appeal of the accused Satish. It set aside both impugned judgments of the Bombay High Court and restored the judgments of the two Special Courts.

- The accused Satish was convicted under Section 8 of the POCSO Act and Sections 342, 354 and 363 IPC, and sentenced to three years’ rigorous imprisonment with a fine of Rs 500 (in default, one month’s simple imprisonment) for the POCSO offence, no separate sentence being imposed for the IPC offences.
- The accused Libnus was convicted under Section 10 of the POCSO Act (read with Sections 9(m) and 12) and Sections 354-A(1)(i) and 448 IPC, and sentenced to five years’ rigorous imprisonment with a fine of Rs 25,000 (in default, six months’ simple imprisonment), no separate sentence being imposed for the other offences.

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- Both accused were directed to surrender before the respective Special Courts within four weeks.
- The Court additionally directed the Registrar General of the Bombay High Court to look into an irregularity in the manner in which certified copies of judgments were being issued by the Nagpur Bench Registry.

RATIO DECIDENDI (JUDGMENT IN REM)

The following principles of general application emerge from the judgment:

- **“Physical contact” under Section 7 of the POCSO Act does not require direct, unmediated, skin-to-skin contact.** The presence or absence of an intervening medium such as clothing is legally irrelevant; what matters is whether the touch or contact was accompanied by “sexual intent”.
- **Sexual intent, not the mode, manner or medium of contact, is the essential ingredient of the offence of “sexual assault” under Section 7.** Being undefined in the Act, “sexual intent” remains a question of fact, to be gathered from the circumstances, including the nature of the relationship, the conduct of the accused before and after the act, and the purposefulness of the contact.
- **A narrow, pedantic or literal construction that defeats the protective object of a beneficial penal statute must be rejected in favour of a purposive construction that advances the remedy that the Parliament intended.** Courts must read the provision *ex visceribus actus*, having regard to the statute as a whole and its declared objects and reasons.
- ***Ejusdem generis*** is a rule of construction, not a rule of law, and cannot be pressed into service to cut down the ordinary meaning of general words where doing so would frustrate the very legislative intent the general words were designed to capture.
- The “Rule of Lenity” and the principle that penal statutes are to be strictly construed apply only where a genuine, irreducible ambiguity subsists after all other tools of

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construction have been exhausted; they cannot be invoked to manufacture ambiguity or to defeat a plain and discoverable legislative purpose.

- The statutory presumptions under Sections 29 and 30 of the POCSO Act, once the foundational facts constituting the *actus reus* are proved by the prosecution, cast an evidentiary burden on the accused to disprove the existence of “sexual intent” or other culpable mental state; failure to discharge that burden entitles the Special Court to raise the presumption against the accused.

ANALYSIS: STATUTORY INTERPRETATION AND CONSTRUCTION — A CRITICAL APPRAISAL

A. DOCTRINAL FOUNDATIONS: THE CANONS OF CONSTRUCTION INVOKED

Before the majority’s specific reasoning in *Satish* can be fairly assessed, it is necessary to set out, in slightly greater detail than the judgment itself does, the four interpretive doctrines on which the Court actually draws: purposive interpretation, golden rule, *ut res magis valeat quam pereat*, and the mischief rule. Each is a distinct tool with its own history and its own limiting principle, and the rigor of the Court’s ultimate conclusion depends on how faithfully each was applied.

I. PURPOSIVE INTERPRETATION

Purposive interpretation is the method by which a court, faced with a provision capable of more than one meaning, chooses the meaning that best advances the object or purpose the legislature sought to achieve, rather than mechanically applying the literal or grammatical sense of the words in isolation. It proceeds from the premise that the “first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself”²⁸, but that where those words are reasonably capable of bearing two or more constructions, the

²⁸ Kanailal Sur v Paramnidhi Sadhu Khan, AIR 1957 SC 907.

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choice between them must be made in light of the object and purpose of the enactment. In such a case, the construction must, in Aharon Barak's formulation, be "illuminated by the goal, though guided by the word."²⁹ Purposive construction of a subordinate provision must additionally remain consistent with, and be read within the four corners of its parent Act, since a subordinate provision cannot travel beyond the policy of the statute under which it is made.³⁰

The Supreme Court's most recent and most fully reasoned elaboration of this doctrine is found in *X v Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi*.³¹ Interpreting the expression "change of marital status" in Rule 3B(c) of the Medical Termination of Pregnancy Rules, 2003, Chandrachud J. held that the "*cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment*", that intention being derived from the words of the statute read in light of "*the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualise*."³² The judgment expressly bases its approach upon the test enunciated in *Heydon's Case* and, significantly, cautions against permitting purposive interpretation to transgress the permissible limits of judicial construction. It makes clear that the Court's power to adopt a purposive interpretation of a statutory provision does not extend to substituting the legislative intent with the judge's own conception of what the law ought to provide. Any alternative construction adopted by the Court must, therefore, remain within the confines of the statutory language and scheme, and must advance and give effect to the purpose and object of the enactment, rather than supplant them.³³ When viewed in light of this principle, Trivedi J.'s interpretation of Section 7 of the POCSO Act, particularly in determining the scope of "physical contact" by reference to the protective purpose of the enactment, falls within the

²⁹ Kanta Goel v BP Pathak, 1977 SCR (3) 412; Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2007) 306.

³⁰ Kedarnath Jute Manufacturing Co v Commercial Tax Officer, AIR 1966 SC 12; Union of India v Tulsiram Patel, (1986) 3 SCC 398.

³¹ X v Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi & Anr, Civil Appeal No 5802 of 2022 (arising out of SLP (C) No 12612 of 2022), decided 29 September 2022; (2023) 9 SCC 433; 2022 INSC 1035 (Chandrachud J, for Bopanna and Pardiwala JJ).

³² *ibid* para 31, citing Justice G.P. Singh, *Principles of Statutory Interpretation* (LexisNexis, 2016) 12; State of Himachal Pradesh v Kailash Chand Mahajan, 1992 Supp (2) SCC 351; Union of India v Elphinstone Spinning and Weaving Co Ltd, (2001) 4 SCC 139.

³³ *ibid* para 31 (final lines).

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permissible bounds of purposive interpretation recognised in *X v Principal Secretary*. The conclusion that the presence of clothing does not, by itself, take the act outside the meaning of “touch” is not founded upon a judicially preferred conception of the offence. Rather, it gives effect to the statutory language in a manner consistent with the object and scheme of the Act, while remaining within the confines of the words employed by Parliament.

II. THE GOLDEN RULE AND THE AVOIDANCE OF ABSURDITY

The golden rule of statutory interpretation permits the Court to depart from the ordinary and literal meaning of statutory words where adherence to such meaning would lead to an absurd, unreasonable, anomalous, or otherwise unintended result. Ordinarily, the literal rule is to be preferred, and the words of a statute are to be given their plain, grammatical and natural meaning. However, where the application of the literal meaning produces an anomaly, absurdity, inconsistency, or a result manifestly contrary to the scheme and purpose of the enactment, the Court may invoke the golden rule and adopt a construction that avoids such consequences while remaining faithful to the legislative intent. Where more than one construction is reasonably possible, the construction to be preferred is the one that avoids inconvenient and anomalous consequences, since manifest injustice or absurdity flowing from an interpretation is itself strong evidence that the interpretation is wrong.

The leading Indian illustration of the golden rule operating specifically to avert absurdity is *Nyadar Singh v Union of India*.³⁴ There, the Supreme Court was called upon to construe Rule 11(vi) of the Central Civil Services (Classification, Appeal and Control) Rules, 1965, which empowered the imposition of the penalty of “reduction to a lower time-scale of pay, grade, post or service” upon a government servant. A literal, unrestricted reading would have permitted an authority to reduce an officer who had been directly recruited to a senior post to *any* lower post whatsoever including a post the officer had never held before and for which he may never even have possessed the requisite qualifications. The term “reduction” is textually broader than the term “reversion”. As explained by the Court, “reversion” refers to the restoration of an officer to

³⁴ *Nyadar Singh v Union of India*, AIR 1988 SC 1979; (1988) 4 SCC 170.

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a post which he had previously held in fact. The expression “reduction”, by contrast, is not necessarily confined to a post previously held by the officer and, on its plain terms, may extend to a rank or post which the officer had not previously occupied.

The Court held that such a construction would produce an absurd and unworkable result, capable of disrupting the entire recruitment policy applicable to the post, and therefore restricted the rule to permit reduction only to a post, grade, or time-scale that the officer concerned had actually held, or to which he could properly have been appointed, thereby averting the absurdity latent in an unqualified literal reading. The case in essence, fortifies that the departure from a literal construction is restricted only to instances where literal construction would defeat rational administration of the very scheme that the provision designed to serve.

A literal “skin-to-skin” reading of “physical contact” would exclude from the scope of the offence instances where a child’s sexual organs are touched through gloves, condoms, sheets, or clothing. Such a consequence would be manifestly inconsistent with the protective object of the POCSO Act. The reasoning therefore accords with the principle underlying *Nyadar Singh*: where a literal construction leads to an absurd or unintended consequence, the Court may depart from it to give effect to the legislative intent.

III. *UT RES MAGIS VALEAT QUAM PEREAT*

The maxim *ut res magis valeat quam pereat*, embodies the principle that, where a statutory provision is capable of more than one interpretation, the Court should prefer the construction that preserves its validity, efficacy, and practical operation. A construction that would render the provision inoperative, ineffective, or self-defeating should, as far as possible, be avoided. The maxim is closely related to, but distinct from, purposive construction. While purposive construction seeks to identify the interpretation that best advances the legislative purpose, *ut res magis* is concerned with preserving the operative force of the provision and ensuring that it continues to have meaningful effect.

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A classical illustration of the application of the maxim *ut res magis valeat quam pereat* is found in *Corporation of Calcutta v. Liberty Cinema*.³⁵ Section 443 of the Calcutta Municipal Act, 1951 prohibited the operation of a cinema house without a licence granted by the Corporation, while Section 548(2) provided that “for every licence under the Act, a fee may be charged at such rate as may from time to time be provided.” The respondent contended that, in accordance with settled constitutional and fiscal principles, a “fee” necessarily involved a levy bearing a reasonable correlation to services rendered. It was argued that, since Section 548(2) neither identified the services to be rendered nor prescribed any guidance for determining the rate, the provision amounted to an impermissible delegation of legislative power and was consequently invalid.

The Supreme Court rejected this contention and applied the principle that a statutory provision should, wherever reasonably possible, be construed so as to preserve its validity rather than render it void. Where two constructions are reasonably open on the language of the enactment, the Court should prefer the construction that sustains the provision and gives it effective operation. Applying this principle, the majority held that the expression “fee” in Section 548(2) could not be confined to its narrow or technical meaning of a charge imposed in consideration of services rendered. Read in the context of the Act as a whole, particularly in light of other provisions in which the expression was employed in relation to exactions that were, in substance, taxes, the term was capable of bearing a wider meaning. On that construction, the provision operated as a valid authorisation for the imposition of a licence tax and did not suffer from the alleged defect of unguided delegation.

Liberty Cinema thus illustrates two related principles of statutory construction. First, where competing constructions are reasonably available, the Court should ordinarily adopt the construction that preserves the validity and efficacy of the provision rather than one that would render it invalid. Secondly, a statutory expression which appears to bear a settled or technical meaning may, where the statutory context so warrants, be understood in a broader sense if such construction is necessary to preserve the operation of the enactment.

³⁵ *Corporation of Calcutta v Liberty Cinema*, AIR 1965 SC 1107; (1965) 2 SCR 477.

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The reasoning adopted by Trivedi J. in *Satish* may be understood as engaging with the same principle, although the maxim itself was not expressly invoked. If “physical contact” under Section 7 were confined to contact with the bare skin, significant forms of sexual abuse involving contact through clothing or other intervening material would fall outside the scope of the provision. Such an interpretation would substantially impair the operation of the residuary limb of Section 7 and frustrate the protective function it is intended to serve. The Court instead adopted a broader understanding of “physical contact”, thereby preserving the provision’s practical efficacy and ensuring that the residuary limb operates across the range of conduct falling within the statutory scheme. The maxim *ut res magis valeat quam pereat* therefore provides a distinct, though complementary, basis for supporting the interpretive outcome reached in *Satish*, alongside purposive construction and the golden rule.

IV. THE MISCHIEF RULE AND THE FOUR QUESTIONS IN *HEYDON’S CASE*

The mischief rule derives from the resolution of the Barons of the Exchequer in *Heydon’s Case*,³⁶ which held that for the “*sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered*”:

1. What was the common law before the making of the Act?
2. What was the mischief and defect for which the common law did not provide?
3. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth?
4. What is the true reason of the remedy?

and that the office of every judge is thereafter “*to make such construction as shall suppress the mischief and advance the remedy*”, suppressing “*subtle inventions and evasions for continuance*

³⁶ *Heydon’s Case* (1584) 3 Co Rep 7a; 76 ER 637; [1584] EWHC Exch J36.

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of the mischief” and giving “force and life to the cure and remedy, according to the true intent of the makers of the Act.”

Applied to *Satish*, the four questions map with unusual precision onto Bhat J.’s concurring opinion. *First*, prior to the enactment of the POCSO Act, Section 354 of the IPC constituted the principal provision addressing sexual assault against women. It criminalised an assault or use of criminal force against a woman with the intent to outrage her modesty. The provision was thus framed around historically gendered and socially constructed notions of feminine “modesty” and was confined to female victims. Its application further depended upon the constituent elements of “assault” and “criminal force” as defined in Sections 350 and 351 of the IPC.³⁷ *Second*, the pre-existing legal framework was deficient in several respects, particularly in its inability to adequately protect children from sexual abuse. Section 354 of the IPC did not extend its protection to male child victims, and its application was premised upon the comparatively narrow and indeterminate concepts of “modesty” and “assault”, resulting in several forms of sexually motivated, non-penetrative conduct against children either falling outside the scope of criminal liability or attracting inadequate penal consequences. These deficiencies are borne out by the Law Commission’s 146th, 156th and 172nd Reports, which identified the limitations of the existing legal framework and the need for more comprehensive protection against sexual offences involving children, a concern further reinforced by India’s ratification of the United Nations Convention on the Rights of the Child in 1992, which underscored the obligation to adopt a child-specific regime against sexual exploitation and abuse, thereby prompting the enactment of the POCSO Act as a comprehensive framework addressing gaps left unaddressed by the IPC.³⁸ *Third*, Parliament addressed these deficiencies by enacting the POCSO Act as a “self-contained comprehensive legislation” specifically intended to provide an effective and comprehensive legal framework for the protection of children against sexual offences. Section 7 forms a central component of this framework by defining “sexual assault” to include not only the touching of specified sexual organs, but also “any other act” involving physical contact carried out with sexual intent. The provision is thus framed in gender-neutral terms and deliberately

³⁷ Attorney General for India v Satish and Anr, 2021 INSC 762, paras 5, 9 (Bhat J, concurring).

³⁸ *ibid* paras 10–12 (Bhat J, concurring).

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operates independently of the concepts of “modesty” and “criminal force” inherited from the IPC.³⁹ *Fourth*, the underlying rationale for the legislative remedy, as recognised in both opinions in *Satish* and articulated expressly by Bhat J., was the protection of the “dignity and autonomy” of children against unwanted sexual intrusion in substance, rather than merely in the narrow technical form that a “skin-to-skin” interpretation would preserve. Viewed through the fourth question formulated in *Heydon’s Case*, namely, the “true reason of the remedy”, it would be difficult to sustain an interpretation that excludes sexual touching through clothing merely because Parliament did not expressly enumerate every possible intervening medium. The legislative purpose was to remedy the broader mischief of sexual intrusion against children, and the interpretation of Section 7 must therefore be informed by that underlying rationale.

It is this fourth limb of the *Heydon’s Case* test that assumes particular significance in *Satish*. Bhat J.’s concurrence identifies and applies this consideration expressly, thereby providing a more transparent account of the interpretive basis for the conclusion ultimately reached. In this respect, the concurrence offers a more structured and enduring justification for the outcome than the reasoning adopted by the majority, which reaches the same conclusion through interpretive considerations that are less explicitly situated within the framework of the mischief rule.

B. THE INTERPRETIVE PATH OF THE MAJORITY

Trivedi J.’s judgment is, at its core, an exercise in **purposive construction**, openly preferring the “spirit” over the “letter” of Section 7 where the two appeared, on the High Court’s reading, to diverge. Three interpretive moves carry the reasoning.

First, the Court treated the *object* of the POCSO Act, discernible from its long title and Statement of Objects and Reasons, as an independent and controlling interpretive resource, rather than as a mere aid to be consulted only in case of textual doubt.⁴⁰ Having found that Parliament enacted the statute because “a large number of such offences were neither specifically provided

³⁹ *ibid* para 12, extracting the Statement of Objects and Reasons of the POCSO Act (Bhat J, concurring).

⁴⁰ *Attorney General for India v Satish and Anr*, 2021 INSC 762, paras 30–31 (Trivedi J).

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for nor were they adequately penalized”,⁴¹ the Court reasoned backwards from that protective purpose to reject any construction of Section 7 that would “*sneak the offender out of the meshes of law*”, invoking *Balaram Kumawat*.⁴²

Second, the Court applied the maxim *ut res magis valeat quam pereat* to hold that requiring “skin-to-skin” contact would produce an “absurd” result, since it would exempt from the definition of sexual assault the touching of a child’s sexual organs through gloves, condoms, sheets or clothing, however predatory the intent.⁴³ This is, in substance, an application of the **golden rule** of interpretation.

Third, having found the dictionary meanings of “touch” and “physical contact” to overlap substantially,⁴⁴ the Court held that the two expressions were used interchangeably in Section 7, so that the touching of the four enumerated organs need not be direct, and rejected the High Court’s application of *ejusdem generis* to the residuary limb on the footing that the rule of construction is subordinate to, and cannot defeat, the discernible legislative object.⁴⁵ The Court’s treatment of the Rule of Lenity followed the same logic: agreeing in principle that ambiguity in a penal statute must be resolved in the accused’s favour, the Court held that no such ambiguity in fact existed, relying on the Californian decision in *The People v Reid* for the proposition that the rule is a tool of last resort, triggered only by “*egregious ambiguity*”, and is not to be deployed to manufacture doubt where the legislative design is “*tolerably plain*”.⁴⁶

BHAT J.’S CONCURRING OPINION: AN EXPRESS APPLICATION OF THE MISCHIEF RULE

Where the main judgment reasons primarily from text, dictionary meaning and object, Bhat J.’s concurrence supplies what is, from the standpoint of statutory interpretation theory, the more

⁴¹ *ibid* para 30, extracting the Statement of Objects and Reasons of the POCSO Act.

⁴² *Balaram Kumawat v Union of India* (2003) 7 SCC 628, para 23; *Attorney General for India v Satish and Anr*, 2021 INSC 762, paras 29, 35 (Trivedi J).

⁴³ *Attorney General for India v Satish and Anr*, 2021 INSC 762, para 33 (Trivedi J).

⁴⁴ *ibid* paras 32–33.

⁴⁵ *ibid* para 41.

⁴⁶ *ibid* paras 38–39, extracting *The People v Reid*, 246 Cal App 4th 822 (2016).

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disciplined and historically grounded justification for the same result. He begins by expressly invoking the four-part formula in *Heydon's Case*⁴⁷ as reformulated in *Kanwar Singh v Delhi Administration*⁴⁸ and *Swantraj v State of Maharashtra*.⁴⁹ He locates the “mischief” not merely in the inadequacy of Section 354 IPC as such, but in that provision’s colonial, gendered and outdated conception of “modesty” and “criminal force”,⁵⁰ traces the legislative history through the Law Commission’s 146th, 156th and 172nd Reports, India’s ratification of the UN Convention on the Rights of the Child, and the contemporaneous 2013 amendments to the IPC introducing Sections 354A–354D, and concludes that Section 7 of the POCSO Act was Parliament’s considered, autonomous response to a mischief that the criminal law of assault had never adequately addressed.⁵¹

Bhat J. also provides a more precise account of the statutory distinction between “touch” and “physical contact”, which remains comparatively underdeveloped in the principal judgment. Rather than treating the two expressions as synonymous, he recognises “physical contact” as a broader concept capable of encompassing conduct that may not, in ordinary usage, constitute the accused’s direct “touch” of the child. This broader understanding permits the residuary limb of Section 7 to extend, for instance, to situations involving the use of an object or the coercion of a child to touch herself. Such conduct may fall within the statutory conception of “physical contact” even though it cannot naturally be characterised as the accused personally touching the child.

This approach offers a more rigorous analysis of the statutory language than the “interchangeable use” approach adopted by Trivedi J. As discussed below, it is submitted that Bhat J.’s construction is also the more doctrinally sound interpretation of the provision.

D. PURPOSIVE INTERPRETATION VERSUS THE RULE OF LENITY

⁴⁷ *Heydon's Case*, 76 ER 637.

⁴⁸ *Kanwar Singh v Delhi Administration*, 1965 (1) SCR 7.

⁴⁹ *Swantraj v State of Maharashtra* (1975) 3 SCC 322.

⁵⁰ *Attorney General for India v Satish and Anr*, 2021 INSC 762, paras 9–10 (Bhat J, concurring).

⁵¹ *ibid* paras 11–13 (Bhat J, concurring).

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The most important interpretive fault-line in the judgment, and the one meriting the closest critical scrutiny, is the relationship between purposive construction of a beneficial statute and the principle, equally endorsed by the Court, that penal provisions are to be strictly construed in favour of the accused.

The Court cites, with approval, both lines of authority — *Balaram Kumawat*'s injunction against “narrow and pedantic” construction of penal statutes,⁵² and *Sakshi, R Kalyani and Gurmeet Singh*'s equally emphatic restatement of strict construction⁵³ without ever squarely confronting the fact that these are, in a hard case, competing rather than complementary canons. The Court's resolution is essentially sequential rather than substantive: strict construction and the Rule of Lenity are acknowledged as valid principles *in the abstract*, but are then held inapplicable *in this case* because there was, in the Court's assessment, no “ambiguity or obscurity” in Section 7 to begin with.⁵⁴ This move is logically available, but it is also somewhat question-begging, since the very fact that two experienced High Court judges, a Bench of the Bombay High Court sitting in appeal, and Senior Counsel of the standing of Mr Siddharth Luthra had all read the residuary limb of Section 7 as importing a “skin-to-skin” or direct-contact requirement is itself some evidence that the provision was not, in the relevant sense, “tolerably plain” prior to the Supreme Court's own clarificatory exercise. A more intellectually honest path would have been to acknowledge a degree of genuine textual openness in the phrase “physical contact”, and to resolve that openness in favour of the protective construction by squarely invoking the *purpose* of the statute as the tie-breaker, rather than by denying the existence of ambiguity altogether. The Court's approach in *Eera v State (NCT of Delhi)*,⁵⁵ cited by Bhat J. himself, in fact demonstrates that the mischief rule can operate as a legitimate purposive tie-breaker without requiring the Court to first disclaim any ambiguity in the text.

⁵² *Balaram Kumawat v Union of India* (2003) 7 SCC 628, para 23.

⁵³ *Attorney General for India v Satish and Anr*, 2021 INSC 762, para 37 (Trivedi J), citing *Sakshi v Union of India* (2004) 5 SCC 518; *R Kalyani v Janak C Mehta* (2009) 1 SCC 516; *State of Punjab v Gurmeet Singh* (2014) 9 SCC 632.

⁵⁴ *Attorney General for India v Satish and Anr*, 2021 INSC 762, para 39 (Trivedi J).

⁵⁵ *Eera v State (NCT of Delhi)* (2017) 15 SCC 133, discussed in *Attorney General for India v Satish and Anr*, 2021 INSC 762, para 8 (Bhat J, concurring).

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This is not merely an academic quibble. The doctrine of strict construction of penal statutes, and the Rule of Lenity, exist to serve the constitutional value of **legality**, fair notice to a citizen of what conduct the criminal law forbids, and a check against ad hoc judicial expansion of criminal liability. Declining to concede any ambiguity, rather than candidly weighing the competing canons and explaining why the protective purpose of a child-welfare statute should, in the particular circumstances of a beneficial penal enactment, be permitted to prevail, leaves the judgment's treatment of the strict-construction principle looking more like a rhetorical bow than a reasoned accommodation. It would have strengthened the judgment considerably had the Court articulated, as a matter of general principle, when and why the protective purpose of a "hybrid" statute should be permitted to inform the resolution of textual ambiguity, rather than treating the two canons as if they could never genuinely collide.

E. *EJUSDEM GENERIS* AND THE LIMITS OF INTERPRETIVE CANONS

The Court's rejection of the High Court's application of *ejusdem generis* is, on balance, correct, but the reasoning again invites closer scrutiny. *Ejusdem generis* restricts general words following an enumeration of specific things to matters of the same kind or genus as those specifically enumerated. The High Court, in the Libnus matter, had reasoned that since the first limb of Section 7 specified four organs, vagina, penis, anus and breast, the residuary "any other act" involving "physical contact" must be confined to acts of a similarly grave, organ-specific character, and that "holding the hands" or "opening the zip of the pant" fell outside that genus.

Trivedi J. held that this reversed the correct application of the canon: since the first limb already "exhausts" the class of specifically named acts, the residuary limb must, by definition, extend the offence *beyond* that class, to a general category of acts sharing only the common thread of "sexual intent" and "physical contact without penetration", not a narrower category defined by reference to the same organs.⁵⁶ This is a defensible, indeed persuasive, application of the established qualification that *ejusdem generis* applies only where the specific words exhaust the

⁵⁶ Attorney General for India v Satish and Anr, 2021 INSC 762, para 41 (Trivedi J).

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genus and does not operate to restrict a residuary clause where the legislative intent was plainly to extend, rather than merely to particularise, the scope of the provision.

What is less satisfactory is the brevity with which the Court dispatches the issue, given that the correct scope of a residuary or “sweep-up” clause in a penal statute is a recurring and difficult problem of statutory construction, and the Court might usefully have engaged more fully with the competing English and Indian authority on when *ejusdem generis* yields to a contrary legislative purpose, rather than resting content with the bare assertion that the canon “should not be applied where it would defeat the very legislative intent”.⁵⁷ Simply asserting that a canon must give way to “legislative intent” risks converting every canon of construction into an entirely defeasible presumption, collapsible whenever a court is independently persuaded of what the “true” intent must have been precisely the kind of interpretive discretion that canons of construction exist to constrain.

F. STATUTORY PRESUMPTIONS (SECTIONS 29 AND 30) AS AN INTERPRETIVE AND NOT MERELY AN EVIDENTIARY DEVICE

A further, comparatively underexamined aspect of the judgment concerns the relationship between the Court’s interpretation of Section 7 and the statutory presumptions contained in Sections 29 and 30 of the POCSO Act. The Court held that, once the prosecution establishes the foundational facts constituting the *actus reus*, namely, that the accused had lured the child, taken her to an isolated location, and engaged in the alleged physical acts, the Special Court is “entitled to raise the statutory presumption about the culpable mental state of the accused”. In the absence of any successful rebuttal of that presumption, the Court held that the requirement of “sexual intent” stood established.⁵⁸

This reasoning, although consistent with the plain language of Section 30, warrants consideration from an interpretive perspective. The reverse burden contemplated by Section 30 was, in fact, central to the respondents’ submission, which drew an analogy with narcotics jurisprudence to

⁵⁷ *ibid* para 41.

⁵⁸ *ibid* para 42.

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contend that the existence of such a burden warranted a correspondingly strict construction of the offence-creating provision. The underlying submission was that, where the law places an enhanced evidentiary burden upon the accused, the boundaries of the substantive offence should be defined with greater precision, so as to ensure that an accused subject to a statutory presumption has fair notice of the conduct in respect of which that presumption operates.

Against this backdrop, the Court's adoption of a broad and purposive interpretation of "physical contact", coupled with its reliance upon the presumptions under Sections 29 and 30 to establish the element of "sexual intent", has the cumulative effect of reducing the prosecution's burden at both the definitional and evidentiary stages. This approach is defensible as a matter of legislative policy, since both the broad definition and the reverse burden reflect the protective objectives underlying the POCSO Act. Nevertheless, their combined operation warranted express consideration by the Court. In particular, given that the respondents had specifically sought to connect the breadth of the offence with the operation of the reverse burden, treating the two issues as separate and unrelated aspects of the analysis leaves an important interpretive concern insufficiently addressed. A more explicit acknowledgment of this interaction, together with a reasoned justification for reconciling the two features of the statutory scheme, would have rendered the Court's reasoning more complete.

G. CERTAINTY, LEGALITY AND THE LIMITS OF PURPOSIVISM IN A "HYBRID" STATUTE

Standing back from the specific canons deployed, the judgment illustrates a broader and continuing difficulty in the interpretation of child-protection statutes that are, by their nature, both *remedial* (protecting children, a vulnerable class deserving beneficial construction) and *penal* (creating criminal offences attracting the ordinary safeguards owed to an accused). English and Indian authority has long recognised that beneficial statutes are to be liberally construed in favour of the class they are intended to protect, while penal statutes are to be construed strictly against the State. POCSO is squarely both, and the *Satish* judgment is, in truth, an implicit ruling that where the two canons collide, the *protective* character of the statute is to prevail over its *penal* character in resolving genuine interpretive doubt as to the *actus reus* of the offence, so

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long as the *mens rea* requirement of “sexual intent” is retained as an independent safeguard against overreach.

That is, it is submitted, a defensible policy choice, and one consistent with the gravity of the mischief Bhat J. identifies. But it is a choice, and the judgment would have been strengthened by naming it as such, rather than presenting the outcome as the product of “plain” language admitting of only one possible meaning. The risk of the Court’s rhetorical insistence that no real interpretive difficulty existed is that it understates the genuine work being done by purposive construction in this case, and may, in a future case involving a less obviously protective policy objective, be cited for the proposition that a court may always resolve doubt in a penal statute simply by declaring, *ex post*, that the statute was “plain” all along, a move that risks eroding, rather than illuminating, the discipline that strict construction and the Rule of Lenity are meant to impose upon that very process of purposive reasoning.

H. COMPARATIVE AND PRECEDENTIAL NOTE

The Court’s reliance upon comparative jurisprudence, including *Regina v H* concerning the interpretation of “touching” through clothing under the UK Sexual Offences Act, 2003, and the Iowa decisions in *Phipps* and *Pearson* concerning the expressions “sex act” and “sexual activity”, is measured and methodologically sound. The Court expressly cautioned that those decisions were based upon the statutory language and definitions contained in the respective enactments and that the foreign provisions were not *pari materia* with Section 7 of the POCSO Act.⁵⁹ The foreign authorities were therefore employed only as persuasive material, demonstrating that a “skin-to-skin” interpretation of analogous provisions concerning “touching” had been rejected elsewhere on the basis of ordinary language and statutory context. They were not treated as binding, or even presumptively applicable, precedents.

This approach reflects the proper role of comparative jurisprudence in statutory interpretation. Foreign decisions may assist the Court where they illuminate a question of language or interpretation, but their persuasive value must necessarily be assessed in light of the statutory and

⁵⁹ *ibid* para 34 (Trivedi J).

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constitutional framework within which they were rendered. The Court's restrained reliance upon foreign authorities is particularly significant when contrasted with the respondents' reliance upon American authorities concerning the Rule of Lenity. The latter doctrine developed within a materially different common-law and constitutional setting, particularly in relation to federal criminal, sentencing, and jurisdictional statutes in the United States, and therefore provides a substantially less proximate basis for interpreting an Indian child-protection statute.

The construction adopted in *Attorney General for India v Satish* has subsequently been followed by the Delhi and Tripura High Courts in cases involving similar factual circumstance.⁶⁰ These subsequent applications reinforce the position that the interpretation adopted by the Supreme Court has become the settled judicial construction of Section 7 of the POCSO Act.

CONCLUSION

Attorney General for India v Satish is, on balance, correctly decided and constitutes a necessary corrective to an interpretation of Section 7 of the POCSO Act that would have produced consequences manifestly inconsistent with the protective purpose of the legislation. A narrow, "skin-to-skin" interpretation would have excluded from the ambit of sexual assault forms of sexual abuse of considerable gravity merely because the offender's hand did not come into direct contact with the child's skin. The Court's conclusion is supported not by the application of a single interpretive principle, but by the cumulative operation of several established canons of statutory construction.

First, the Court adopts a purposive construction grounded in the object and scheme of the POCSO Act. Secondly, the golden rule justifies departing from a literal "skin-to-skin" interpretation where such a construction would produce the manifestly anomalous consequence of excluding contact through gloves, condoms, sheets, clothing, or other intervening material. Thirdly, the maxim *ut res magis valeat quam pereat* supports an interpretation that preserves the

⁶⁰ See eg *Jitender v State*, Criminal Appeal No 564/2019 (Delhi HC, decided 19 March 2020); *Rakesh v State* (GNCTD), 2018 SCC OnLine Del 1179; *Tushar Singha v State of Tripura*, Criminal Appeal No J/2/2020 (Tripura HC, decided 4 May 2021); *Dulal Dhar v State of Tripura*, 2015 SCC OnLine Trip 188 — all cited in *Attorney General for India v Satish and Anr*, 2021 INSC 762, paras 30–31 (Bhat J, concurring).

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efficacy of the residuary limb of Section 7 and prevents it from being rendered substantially ineffective through an unduly narrow construction of “physical contact”. Fourthly, the Court appropriately confines the operation of *ejusdem generis*, declining to employ the canon in a manner that would defeat the function of a residuary clause intended to broaden the scope of the provision. Finally, the mischief rule provides a structured account of the legislative history, identifying the deficiencies in the pre-POCSO framework, the remedy adopted by Parliament, and the mischief that the enactment was intended to address.

The Court’s reasoning is further supported by its measured use of comparative jurisprudence, particularly *Regina v H* and the Iowa decisions, which are employed as persuasive illustrations rather than as binding authorities. The statutory presumptions contained in Sections 29 and 30 of the POCSO Act also form part of the broader statutory context within which the protective interpretation of Section 7 is situated. Considered cumulatively, these interpretive considerations provide substantial justification for the conclusion reached by the Court.

However, a closer examination reveals that the reasoning is not without doctrinal difficulties. The principal judgment acknowledges, in general terms, the rule of strict construction applicable to penal statutes and the Rule of Lenity, but proceeds to hold them inapplicable without fully explaining how the penal character of Section 7 is to be reconciled with a purposive approach that resolves textual uncertainty in favour of the protective object of the statute. This leaves a degree of tension within the Court’s interpretive methodology. Similarly, the proposition that “touch” and “physical contact” are used interchangeably is not entirely satisfactory when considered against the distinct linguistic structure of Section 7. Bhat J.’s approach, which treats “physical contact” as the broader expression capable of encompassing conduct beyond the accused’s direct touching of the child, offers a more precise account of the statutory language. The treatment of *ejusdem generis*, while substantively sound, is comparatively brief, particularly given the significance of the canon to the interpretation of the residuary limb. Likewise, the principle embodied in *ut res magis valeat quam pereat* operates implicitly in the Court’s reasoning, but its express articulation would have provided an additional and conceptually distinct foundation for preserving the efficacy of Section 7.

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These limitations do not undermine the correctness or necessity of the result reached in *Satish*. They do, however, distinguish the strength of the outcome from the completeness of the reasoning supporting it. The more compelling and durable justification for the Court's conclusion emerges from Bhat J.'s concurrence, which brings together the relevant interpretive principles within a more coherent framework and expressly applies the four-part test in *Heydon's Case*. It therefore offers a more structured methodology for future courts when interpreting the protective provisions of the POCSO Act, particularly where a narrowly literal construction would undermine the very mischief that the legislation was enacted to remedy.

In the end, this case is a reminder that interpretation is craft as much as doctrine, that a court can reach the right destination by several roads, and that naming the road matters almost as much as reaching the destination. Where the majority chose brevity, Bhat J. chose candour; both served the child. For a statute written to protect the most vulnerable, perhaps that is the truest canon of construction: read the words, but never lose sight of the child standing behind them.

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