

BOOK REVIEWS

MODERN STATUTORY INTERPRETATION (2022). By K.N.Chaturvedi (Eastern Law House, Kolkata, 2022), pp. 387+44. Price 975/-.

INTERPRETATION IS an integral aspect of the working of law, more so in modern times and in common law countries where judges play a pivotal role in the process of making and unmaking of law through judicial pronouncements. According to Owen Fish, “Interpretation, whether it be in the law or literary domains, is neither a wholly discretionary nor a wholly mechanical activity. It is a dynamic interaction between reader and text, and meaning the product of that interaction. It is an activity that affords a proper recognition of both the subjective and objective dimensions of human experience; and for that reason, has emerged in recent decades as an attractive method for studying all social activity.”¹

Interpretation is a rational process.² An interpreter is not free to give any meaning to the text that he so wishes. He is disciplined by the context and certain rules that serve as guidepost for a meaningful reading of a given text. Therefore, interpreting a legal text is akin to walking a tight rope. It requires both discipline and fidelity — discipline as to the craft of interpretation and fidelity as to the confines, textual or conceptual, within which text is to be interpreted.³ As regards statutory interpretation,⁴ late Sir Rupert Cross recounted thus:⁵

When teaching law at Oxford in the 1950s and 1960s, I treated my pupils as I had been treated and told them to write essays criticising the English rules governing the subject....each and every pupil told me that *there were three rules—the literal rule, the golden rule, and the mischief rule, and that the Courts invoke whichever is believed to do justice in the particular case.* I had, and still have, my doubts, but what was most disconcerting was the fact that whatever question I put to pupils or examinees elicited the same reply. Even if the question was What is meant by the intention of

1 Owen M Fish, “Objectivity and Interpretation” 34 *Stan. L. Rev.* 739(1982). Also see, William Baude & Stephen E. Sachs, “The Law of Interpretation” 130 *Harr. L Rev* 1079 (2017); NS Bindra, *Interpretation of Statutes* 6 (2007); Randy E. Barnett, “Interpretation and Construction”, 34 *Harr. J.L. and Pub. Pol’y* 65 (2011); Patrick Devlin, *Samples of Law Making*,70-71 (Oxford University Press, 1962); Upendra Baxi, “On the Problematic Distinction Between “Legislation” and “Adjudication”: A Forgotten Aspect of Dominance” 12 *D L R* 3 (1990).

2 “The requirement of rationality is key—a coin toss is not interpretive activity.” See, Aharon Barak, *Purposive Interpretation of Law* 3 (2007). Also see, Kent Greenawalt, *Legal Interpretation: Perspectives from Other Disciplines and Private Texts* (Oxford University Press, 2010)

3 Rabindra Kr. Pathak, *Judicial Process* 63(Thomson Reuters, 2019).

4 See generally, Max Radin, “Statutory Interpretation” 43 *Harr L Rev.* 863, 868(1930).

5 Rupert Cross, *Statutory Interpretation* vii(1976). Emphasis added.

the parliament? Or What are the principal extrinsic aids to interpretation? back came the answers as of yore: “There are three rules of interpretation—the literal rule, golden rule and the mischief rule.

Much water has flown under the Ganges since then and as the matter stands now, due to incessant flow of judicial precedents. On statutory interpretation, many new tools, techniques, methods and perspectives have found their way into the growing body of jurisprudence on the subject. There is, therefore, a constant need for the revision and amplification of existing works or publication of new works and articles covering aspects of statutory interpretation.⁶ Accordingly, the arrival of a new book on statutory interpretation in India⁷ by an academic turned a top official of the Indian legal service (former Law Secretary, Legislation and Justice), Government of India, and a former member Secretary, Law Commission of India) and now a Supreme Court advocate⁸ is a welcome addition to existing literature on the subject.

What distinguishes the book under review from other books of Indian authors is its commendable objective to provide a holistic view of modern statutory interpretation by aligning the process of interpretation of legislation with law-making process.⁹ Here, the author inspired by Krishnan Iyer’s J., observation that ‘one cannot, these days, approach the problem of statutory interpretation in isolation from legislative processes.’¹⁰ Author’s year-long engagement with drafting of statutes in the central government and experience of handling of challenging matters of legal interpretation as an advisor might also have motivated him to author a book of this kind.

6 Jagdish Swarup, *Legislation and Interpretation* (Dandewal Publishing House, 1968); William Feilden Craies, et al, Craies on Legislation: *A Practitioners’ Guide to the Nature, Process, Effect and Interpretation of Legislation* (Sweet & Maxwell, 2004); W F Craies, *Treatise on Statute Law* (1963); P. St. J. Langan, *Maxwell on Interpretation of Statute* (Lexis Nexis, 2018); G P Singh, *Principles of Statutory Interpretation*(Lexis Nexis, 2016); John Bell, George Engle, *Cross on Statutory Interpretation* (Oxford University Press, 1995); Amit Dhanda, *Bindra on Interpretation of Statute*(Lexis Nexis, 2022); John Bell, *Bennion on Statutory Interpretation* (Oxford University Press, 1968); Daniel Greenberg (ed.), *Craies on Legislation*, (Sweet and Maxwell, 11th ed. 2016). It includes Chaturvedi’s Appendix titled ‘Legislation and Interpretation in India’; Andrew Burrows, *Thinking about Statutes: Interpretation, Interaction, Improvement* (The Hamlyn Burrows Lectures, Paperback 2018); David Lowe, Charlie Potter *Understanding Legislation: A Practical Guide to Statutory Interpretation* (Hart Publishing 2018); Christopher Hutton, *Word Meaning and Legal Interpretation* (Palgrave, Macmillan 2018); and Christopher Hutton, *Language, Meaning and the Law*, (Edinburg University, 2009)

7 K. N. Chaturvedi, *Modern Statutory Interpretation* (2022, Eastern Law House, Kolkata)

8 Served as faculty at Allahabad, Kurukshetra and Poona Universities and joined Indian Legal Services in 1988. His major publications are *Interpretation of Statutes* (2008, Taxman), and articles in *Statute Law Review*.

9 Jagdish Swarup, *Legislation and Interpretation* (Dandewal Publishing) also adopts the same approach.

10 *Carew and Company Ltd. v. Union of India* AIR 1975 SC 2260.

The book is organized into two parts, while Part I with six chapters deals with law and legislative process, Part II discusses and examines the principles of statutory interpretation in remaining eleven chapters. In chapter 1, the discussion focusses on pre-independence legislation in general and codification in particular and offers useful reflections on continuance and relevance of some of these legislations despite their apparently being archaic and antiquated given the recent advances in the fields of science and technology. In chapter 2, the book moves forward and compliments and consolidates the discussion of the preceding chapter by providing an overview of legislations enacted by the Parliament in four phases and by giving the summary of some of the landmark legislations of recent years. It is followed by a criticized account of judicial review and shows that mostly economic and national security legislation have been held constitutional. Chapters four, five, and six deal with legislative process of a principal legislation, making of subordinate legislation and structure of an Act. These well researched, well written and well-presented chapters bear the imprints of the professional experience, and expertise of the author and thereby provide rare insights into the legislative process here may save as a practical guide to drafting of statutes useful for both students and officials engaged with legislative drafting in the central and state governments.

Chapters seven, eight, nine, and ten cover all the relevant aspects of principles of statutory interpretation viz. meaning of interpretation and construction, basic and subsidiary rules of statutory interpretations, presumptions, reorganized canons of construction and maxims of statutory interpretation. The discussions in these chapters are complimented and consolidated in chapters 12 and 13 which deal with intrinsic aids and external aids to interpretation.

As aptly pointed by the author the general trend of increasing delegation is a necessity of modern democracy. Rules and regulations are formed by the executive. Here, delegation of non-essential legislative power is alone permissible. For being constitutional delegated legislation must observe the limitations enshrined in the Constitution of India. To give a glimpse of this aspect Chapter 14 provides an interesting account of landmark decisions on it and provides an overview of parliamentary control and recommendations of committee on subordinate legislation.

Built on the foundations of ‘mischief rule’, purposive interpretations and its variants such as social context adjudication, common sense interpretation, constructive intuition approach, creative interpretation and practical interpretation have over the years gained so much importance that some of the countries (Australia and Singapore) have thought it expedient to explicitly recognize the importance of purposive interpretation in their codified laws on statutory interpretation. In view of this, the author has aptly devoted one chapter to provide an exclusive treatment on this tool of interpretation. In doing this, he is inspired, rather mesmerised by Aharon Barak’s

seminal work *Purposive Interpretation in Law*¹¹ which in a great detail elucidated the use and relevance of this approach. The principle of “purposive interpretation” or “purposive construction” is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the “purpose” behind such a provision.¹² The approach has been relied upon and discussed in a number of judicial pronouncements by the Supreme Court and the high courts, more so while dealing with constitutional matters and statutory interpretation.¹³ Given the importance that the constitution carries, it has to be expounded keeping in view the purposes that underlie its text, and this makes purposive approach an important interpretive tool to deal with constitutional questions that demand reflection in terms of the preceding past and the ensuing future. A constitution is not only about the past or the present; it is also about the posterity. It is this nature of constitutional text that makes purposive approach a suitable approach. In nutshell, the principle of purposive construction of a statute is a well-recognised principle which has been incorporated in our jurisprudence.¹⁴

11 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2007). According to Barak, “Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language.” *Ibid.* Also see, Arvind P. Datar and Rahul Unnikrishnan, “Interpretation of Constitutions” 29 *National Law School of India Review*, 136-148 (2017).

12 See, *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*, (2016) 3 SCC 619 at 641. Bennion, “45. Francis Bennion in his book *Statutory Interpretation* described “purposive interpretation” as under:

“A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.” Quoted in *Securities and Exchange Board of India v. National Stock Exchange Members Association*, 2022 SCC OnLine SC 1392.

13 *R.D. Jain and Co. v. Capital First Ltd.*, (2023) 1 SCC 675 at 681, where the Supreme Court invoked the purposive approach to interpret the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

14 *D.A.V. College Trust & Management Society v. Director of Public Instructions* (2019) 9 SCC 185 at 196. Also see, *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850.

At the same time, criticism of purposive interpretation also needs attention. According to critics, purposive fails to separate the powers between the legislator and the judiciary as it allows more freedom in interpretation by way of extraneous materials in interpreting the law. Amy E. Fortray, note *United States v. O’Hagan: The Supreme Court Abandons Textualism to Adopt the Misappropriation Theory*, 25 *Fordham Urb. L.J.* 507, 534 (1998).

As a follow up of the discussion on purposive interpretation, chapter 16 discusses and distinguishes statutory and constitutional interpretation and provides a critical account of doctrines and approaches adopted by Supreme Court judges for the constitutional interpretation under the following sub heads- Articles 14 and 21, Money Bill, office of profit, parliamentary privileges, exercise of legislative power, redundancy of laws, scope of power of the Lt. Governor, and the scope of the amending power of the Parliament. The author aptly notes that the theory of originalism in constitutionalised interpretation has been rejected recently by the Supreme Court. Besides the doctrine of textualism was always doubted. Again, in *K.S. Puttaswamy v. Union of India*,¹⁵ Chelameswar J., advised the living constitutionalist approach while Chandrachud J., (as he then was) enunciated the doctrine of implications for the purpose of constitutional interpretation.

The book ends with a brief discussion of constitutional morality and constitutional renaissance. The book concludes with chapter 17 which gives a conspectus of the General Clauses Act, 1897, a statute which lays down rules, for the interpretation of the Constitution of India, all the central enactments rules and regulations made there under. There is undoubtedly a need to review and reform this statute. As a matter of fact, the Law Commission of India in 1974 is a report made suggestions for amendments to definitions of ‘affidavits’, ‘oath’, and ‘month’ but this recommendation has not been accepted and implemented by the government.

Unlike a text book or a commentary, which are generally informative and descriptive, the book under review is critical, evaluative and prescriptive in its approach too. To illustrate, the book makes following suggestions; creation of a constitutional division within the Supreme Court¹⁶; codification of parliamentary privileges;¹⁷ codification of rules of statutory interpretation to give prominence to the principle of purposive interpretation;¹⁸ need for simplification of the General Clauses Act, 1897, and need for reform of delegated legislation albeit by referring to Supreme Court’s observations.¹⁹ Besides, the author has endorsed the dissent of D.Y. Chandrachud J., (As he then was) that treating the Aadhar Bill as a Money Bill was in violation of article 110 of the Constitution.²⁰

The organization and structure of the book is by and large sound and sensible. But given the fact that the book has exclusive focus on Indian material ‘modern statutory interpretation in India’ could have been the apt title for the book). The book also

15 AIR 2017SC461

16 Chaturvedi, *supra* note 7 at. 304-5.

17 *Id* at 339.

18 *Id* at 300.

19 *Id* at 277.

20 *Id* at 322.

suffers from the lack of uniform pattern with regard to inclusion of scheme of chapter and reflections in its chapters.

In conclusion, the book under review provides an insider's insight into the law-making process, and presents an incisive analysis of rules of statutory interpretation. Those interested in reading and appreciating the nuances of interpretation of statutes will find the book immensely useful. The book deserves to be on the shelf of every law library. It is a valuable contribution to the existing literature on statutory interpretation, and will be of great interests to judges, academicians, lawyers and students. It is also useful to the officials engaged with legislative process at the centre and the state; officials working with committees of Parliament and state legislators and members of Parliament and state legislatures.

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BOOKS RECEIVED FOR REVIEW¹

AALIYA WAZIRI, *In the Body of a Woman*, Simon & Schuster India, 818, Induraprakash Building, 21, Barakhamba Road, New Delhi-110 001, Pp. xi+220. Price Rs.499/-.

SUKUMAR RAY, *The Indian Succession Act*, Eastern Law House Private Ltd. 54 Ganesh Chunder Avenue, Kolkata – 700 013, Pp.872. Price Rs.2495/-.

S.K.PATHAK, *Criminal Investigation Law and Practice*, Eastern Law House Private Ltd. 54 Ganesh Chunder Avenue, Kolkata – 700 013, Pp. 517. Price Rs.1695/-.

B.SANDEEPA BHAT, *Reflections on Medical Law and Ethics in India*, Eastern Law House Private Ltd. 54 Ganesh Chunder Avenue, Kolkata – 700 013, Pp. 319, Price Rs. 1495/-.

R.K.BAG, *Wills Law and Practice*, Eastern Law House Private Ltd. 54 Ganesh Chunder Avenue, Kolkata – 700 013, Pp.402, Price Rs.1495/-.

1 The *Journal* reserves the right to be selective in reviewing the books.