

READING LAW: THE INTERPRETATION OF LEGAL TEXTS

by

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Synopsis

1.1) Overview

Reading Law is a book consisting of a description of Textualism and an argument in favor of a strong Textualist approach. The authors say that initially all interpreters of legal texts begin with the text. They believe that the correct approach towards interpretation maintains a disciplined focus on the text. Scalia and Garner explain, “We look for meaning in the governing text, ascribe to that text the meaning that it has borne from its inception, and reject judicial speculation”. Textualism is thus distinguished from approaches that consider the purpose of the text (“purposivism”).

Much of the book is of descriptions of textualist canons which are based from the fundamental (such as the supremacy-of-text principle) to the semantic (such as the fixed-meaning canon: “Words must be given the meaning they had when the text was adopted”) to the contextual (such as the presumption of consistent usage canon).

This research paper will focus on the Indian application of Textualism in statutory interpretation. This paper will try to identify some of the canon which are seen to be promoting textualist approach, from the book “*Reading Law*” and discuss these canons with reference to Indian judgements to show the presence of textualist approach in the Indian statutory interpretation. This paper will try to make the case that textualism is the only rational approach to interpreting legal texts and statutory interpretation.

1.2) Research Problem

The book “*Reading Law*” by justice Scalia and Garner, speaks in favor of the textualist approach with the help of various illustrations and principles. But there is also claim by other approaches of the statutory interpretation that textualism ignore the purpose of the statute and intention of the framers. But the book also defends textualism against such claim. Indian judiciary follows various theories, principles, approaches in interpretation. But all these are just rules and not laws. Hence there is an in depth analysis required to identify the approach used in interpretation.

1.3) Research Question

Whether Indian judiciary follows any form of textualist interpretation ?

1.4) Hypothesis

Indian judiciary does follow the textualist approach of interpretation along with the other approaches. As literal rule of construction in statutory interpretation is in the same lines of textualism, Indian judiciary in cases of applying various canons of literal interpretation, it does follow textualism.

1.5) Scope and Objectives

The scope of the research is to make stance that the indian judiciary actually follows the textualist approach of statutory along with other approaches.

The important objectives of the research include

- To study the discuss the approach of textualism
- To understand the different rules of construction followed in statutory interpretation.
- To discuss the criticisms put forth by other theories of statutory interpretation.
- To enumerate the canons in the book, that is based on textualism with reference to Indian case laws.
- To study the manner of such construction and interpretation used in those judgments delivered.

1.6) Methodology of the Study

The research will follow the doctrinal method as it is mostly influx of data from various places. The sources are mostly secondary. We have consulted as many sources of books and Journals and also different articles and lectures of leading legal thinkers around India. Original articles and books by leading thinkers on the respective ideologies are the most important all the sources. The following methods will be relied upon to fulfil the objectives of the study and collection of necessary data. In addition various case laws both Indian and Foreign are referred which involves this construction.

1. Study of the existing books.
2. Primary and secondary source of books and journals.
3. Internet surfing.
4. Visiting the different libraries.
5. Listening to the lectures of leading jurists.

1.7) Literature Review

This research paper appreciates the work of many eminent legal thinkers around the world. The research paper in accordance with its topic to cover up all the relevant information relied on some suitable books the authors being both Indian and foreigners . This research paper

has its major sources from the works many jurists and legal thinkers who have deep insight about Indian jurisprudence and interpretation of statutes. This research paper elaborates about these thinkers' views on textualism in the process of statutory interpretation.

READING LAW: Interpretation of legal text, the book is authored by justice scalia and garner, who in this book speaks about the need for textualism in the interpretation world and they have also discussed about the general principles involved in statutory interpretation.

1) Introduction

The term 'Interpretation' is derived from Latin term "*interpretari*" which means to explain or to understand or to translate. Salmond defines interpretation as "*Interpretation or construction is the process by which the courts seek to ascertain the meaning of legislation through the medium of the authoritative form in which it is expressed.*"

Statutory interpretation is process involving courts interpreting the statutes concerning the cases. All the legal texts, acts and legislation, created by our fore fathers have stood the test of time and remained the same. When construing a statute, one engages in *statutory construction*, which has long been used interchangeably with the phrase *statutory interpretation*.¹ Over the years the definition of statutes have had very specific words but still the courts were required for statutory interpretation in their normal functioning. The reason of this is that, even though the words in the statutes are specific, sometimes the words contained ambiguity and vagueness in its meaning. Hence the judiciary, in order to decide the case, had to clear the ambiguity by interpreting the concerned provisions. Without the statutory interpretation, the courts would have been in immense uncertainty in deciding the case. Article 132 and 141 of Indian constitution indicates the role assigned to the supreme court in interpreting the statutes.

2) Theories and rules of interpretation

There are different systems of interpretation of statutes and the courts are in the liberty to apply any form of interpretation which it deems fit. The principles of Interpretations are not the principles of the law but only the methodology for explaining the meaning of the words used in the text.² However there are various theories of interpretation are textualism,

¹ Antonin Scalia & Bryan A. Garner, Reading Law: THE INTERPRETATION OF LEGAL TEXTS, at 34

² B. Premchand v Mohan Koikal (2011) 4 SCC 708

purposivism, structuralism etc, which are totally different from one another. Hence there exists confusion among the judiciary concerning the right approach to the interpretation process. Also there are different rules of construction which may be employed overrule, modify or extend the existing meanings of the current laws of the statutes in the force. Sometimes these rules may be used to create entirely new laws as well. Three major rules of construction are the literal rule, mischief rule and the golden rule of construction.

3) Textualism

Textualism is an approach to interpreting legal documents that looks for meaning in the governing text itself. Textualism, in its purest form, begins and ends with what the text says and fairly implies.³ In short, textualists advocate that interpretation should focus upon what the text would reasonably be understood to mean, rather than upon what it was intended to mean. As Justinian's *Digest* put it: *A verbis legis non est recedendum*, which means "Do not depart from the words of the law". Certainly, the textualist theory of interpretation is the one with the least scope for imagination, thereby curtailing judicial discretion.

There is claim that textualism never considers the purpose and intention of the statute. But Of course, words are given meaning by their context, and context includes the purpose of the text. The difference between textualist interpretation and other theories of interpretation is not that the former never considers purpose, it does try to discover the intent of the legislature, but limits this inquiry to the text of the statute itself. The textualist routinely takes purpose into account, but in its concrete manifestations as deduced from close reading of the text.⁴ The subject matter of the document is the context that helps to give words meaning, purpose etc. It is when an abstract purpose is allowed to supersede text that the result in what Justice Felix Frankfurter cautioned against: "interpretations by judicial libertines"⁵ who "draw prodigally upon unformulated purposes or directions.

Textualism also does not take into account of the legislative history, which is said to be used in finding the intention of the framers of the law, in the process of interpretation. This is

³ Antonin Scalia & Bryan A. Garner, *Reading Law: THE INTERPRETATION OF LEGAL TEXTS*, at 26

⁴ *Ibid*, at 39

⁵ Felix Frankfurter, *Some Reflections on the Reading of Statutes*, at 4

because textualists argue that it is difficult to deduce the reason and intention of the framers from legislative history. The Given the undeniable complexity of the legislative process, interpreters simply cannot know if a requisite majority of enactors knew of or assented to the contents of any particular piece of legislative history.⁶

Textualism promotes the principle of “supremacy of the text”. This principle says that The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.⁷ Of all the rules of construction, literal rule of construction is in the same lines of textualism. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language⁸. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life

The literal rule aligns with textualism in accepting supremacy of the Parliament: the right to make laws, even though sometimes, they seem absurd. In the literal rule, the intention of the parliament while framing the statute, is the ordinary meaning of the words used. Justice Jervis, has described the meaning of literal rule in *Abley v Gale*. Lord Diplock observed in *Duport Steel Ltd v Sirs* that:

“Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral”.

Indian judiciary has also used the literal interpretation time and time again over the years. In *A.K. Gopalan*,⁹ the Supreme Court gave a narrow and literal interpretation to Article 21 of the Indian Constitution and refused to infuse the concept of “procedure established by law” with the principles of natural justice. However this was overruled by the judgement of “*Maneka Gandhi vs Union of India*”.

4) Textual canons

⁶ *John F. Manning*, TEXTUALISM AND LEGISLATIVE INTENT, at 420

⁷ SCALIA & GARNER, *supra* note 1, at 66

⁸ *B. Premanand and Ors. v. Mohan Koikal and Ors.*, (2011)4 SCC 266

⁹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27

Constitutional interpreters often use tools known as canons of construction, for the process of interpreting the statute in question of ambiguity, vagueness or dispute in its meaning. In the book, *Reading Law*, scalia and garner have discussed about various canons of construction for general interpretation. The authors of this book also discusses about how textualism should be adhered in the statutory interpretation. Hence of all those canons grouped together and discussed, there several textualist canons such as semantic canons various other canons, which promotes textualism.

5.1) Ordinary-Meaning Canon

According to this canon, Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense¹⁰. Courts generally assume that the words of a statute mean what an “ordinary” or “reasonable” person would understand them to mean. Moreover, some courts adhere to the principle that if the words of a statute are plain, clear and unambiguous, the court need not inquire any further into the meaning of the statute. The Supreme court of India said that, ‘The plain meaning rule’ suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation.¹¹ In the case of **Tata Consultancy Services vs State Of Andhra Pradesh**, the issue was whether an intellectual property contained in floppies, disks or CD- ROMs would be 'goods' within the meaning of Andhra Pradesh General Sales Tax Act, 1957. The court held that , “*court should not be over zealous in searching ambiguities or obscurities in words which are plain*”.

5.2) Ejusdem Generis Canon

It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. Normally, general words should be given their natural meaning like all other words unless the context requires otherwise. According to scalia and garner, When general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned.¹²

¹⁰ SCALIA & GARNER, *supra* note 1, at 74

¹¹ Commnr. Of Customs (Import), mumbai vs M/S. Dilip Kumar And Company,
CIVIL APPEAL NO. 3327 OF 2007

¹² SCALIA & GARNER, *supra* note 1, at 169

The rule of "ejusdem generis" has its application in section **364-A of IPC**¹³, because the words "any other person" as mentioned in the section should be interpreted only in light of its preceding words i.e. government, foreign government so on.

5.3) Omitted-Case Canon

Nothing is to be added to what the text states or reasonably implies (*casusvomisus pro omisso habendus est*). That is, a matter not covered is to be treated as not covered.¹⁴ In the process of interpretation there are instances where judges tend to widen the scope of the statute, to make it applicable to the cases. But this canon says that if the area of applicability is not specifically stated or implied in the statute then it should be treated as not covered. Essentially, this means that even though legal texts can sometimes be incomplete because they fail to address certain situations, courts should not fill in these gaps with rules of their own. The court is not obliged to supply what is not there in the statute and to do so will amount to legislation and not construction¹⁵.

5.4) Negative-Implication Canon

This canon can be explained by the latin maxim "*expressio unius est exclusio alterius*", which means 'The expression of one thing implies the exclusion of others'.¹⁶ When something is mentioned expressly in a statute it leads to the presumption that the things not mentioned are excluded. This is an aid to construction of statutes, in a textualist way. This canon was seemed to be used by the Supreme court of India for interpretation in the case of **M/S Swastik Gases P.Ltd vs Indian Oil Corp.Ltd**, in this case the appellant and the company came into an agreement for appointing the appellant as the company's consignment agent for marketing lubricants at jaipur. As there was not enough sale, the appellant requested for either liquidation of the stock or for repayment. As the company did not do either. The appellant decided for legal proceeding in jaipur court. But the company contended that the agreement was signed in kolkata and clause 18 of the agreement says that the jurisdiction is only with the kolkata courts. The courts said that, "*clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to*

¹³ section 364-A of IPC

¹⁴ SCALIA & GARNER, *supra* note 1, at 90

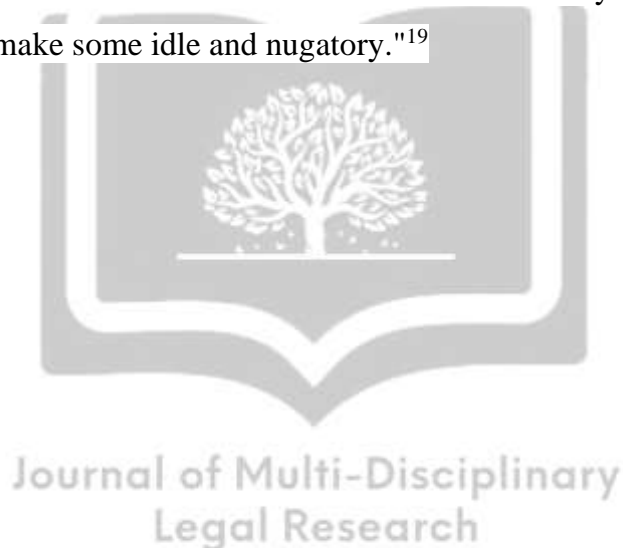
¹⁵ CIT v. K.S. Vaidyanathan (1985) 153 ITR 11 (Mad)

¹⁶ SCALIA & GARNER, *supra* note 1, at 99

the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts"¹⁷. This canon can also be seen to be exercised in the case of *rajesh vs state of kerala*, regarding the provisions of IPC and CRPC.

5.5) Surplusage Canon

If possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*). None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.¹⁸ The surplusage canon holds that it is no more the court's function to revise by subtraction than by addition. "The courts must lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory."¹⁹



5) Conclusion

¹⁷ M/S Swastik Gases P.Ltd vs Indian Oil Corp.Ltd, CIVIL APPEAL NO. 5086 OF 2013

¹⁸ SCALIA & GARNER, *supra* note 1, at 150

¹⁹ The Principal vs Fee Regulatory Committee, WP(C).No. 24792 of 2016 (Y)

“Textualism” is just one of many approaches to the theory of legal interpretation, but it is an especially good place to begin thinking about issues of interpretation in law. One of the very best ways to become a sophisticated thinker about these issues is to take a really good course in statutory interpretation. From the explanation textualism and literal rule of construction, it is evident that both share a common principle which is supremacy of the text. Both intend in interpreting legal documents that looks for meaning in the governing text itself.

Although there are a lot of criticisms surrounding the application of the textualism this research based on the book *Reading Law*, defends the approach of textualism against the criticisms such as ignorance of the purpose and intention of the law. Also the canons of interpretation discussed in the books, as they are explained with reference to the Indian judgments shows that the Indian judiciary follows textualism along with other approaches.



6) Bibliography

Books

- Scalia and garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS
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Cases

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