

THE INTERPRETATION OF STATUTES (1985). By. T. Bhattacharyya.
Lata Publications, Jaipur. Pp. x+226+xxxviii. Price Rs. 90.

IN THE course of performing their age-old task of applying the enacted law to specific case situations, the courts have evolved certain well established principles and techniques of statutory interpretation and construction. Of course, they do not always adhere to these principles and techniques religiously nor does such adherence always assure a satisfactory application of the codified law. Yet the same are invariably invoked by the courts lest they are charged of being unprincipled and arbitrary in the exercise of their function of ascertaining the legislative will and giving effect to it.

The book¹ under review states these principles and techniques in 13 chapters. In addition, it introduces the reader to the various parts of a statute in the first chapter and gives a classification of statutes in the second. Since the General Clauses Act 1897 is the basic and sole legislative guide on the interpretative technique, it has also been included as an appendix. The treatment of the subject by the author is simple, lucid and straight. After stating each principle or technique in brief, he has illustrated its concrete application through more than one court decisions. This helps the reader, particularly a beginner, in understanding and grasping these complicated principles with a great ease. Of course, a little indication by the author as to how one decision is an improvement over another or supports or deviates from the existing position would have further enhanced the quality of the presentation.

One of the remarkable aspects of the book is that the author, instead of relying on the illustrations from other jurisdictions, as is usually done, has primarily selected the decisions of our own courts though references to the British and American decisions are not totally avoided. This technique helps the understanding of, and gives an insight into, our judicial process even if ultimately our courts follow the British and American precedents. The need of studying our law through our sources is the need of the hour which this book satisfies in a great measure.

The author has deliberately deviated from the usual practice of giving a separate treatment to constitutional interpretation in the books on interpretation of statutes. This he has done because to his mind "there are no separate principles of interpretation of constitutional law."² While the author must have reached this conclusion after a

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1. T. Bhattacharyya, *The Interpretation of Statutes* (1985).
 2. *Id.*, preface.

careful thought and analysis, many would not agree with him. Some prominent jurists have convincingly advocated that not only to the constitution which is *sui generis* but also to different types of statutes, different techniques of interpretation and construction must be applied.³ Strictly speaking, a constitution is not a legislation, even though it is expressed in the form of a legislation. It is the source of all legislation and provides the framework for, and determines the competence of, the legislatures to make laws for unforeseen and indeterminate future during which social, economic and political policies will change many shades. These changes cannot be ignored by judges even when they are asked to be guided by "neutral principles".⁴ Of course, the Constitution itself says that unless the context otherwise requires, the General Clauses Act shall apply to its interpretation as it does to the interpretation of an Act,⁵ and the Supreme Court has also occasionally reminded it directly or indirectly.⁶ But ever since Chief Justice Marshall spoke in the beginning of the last century that "we must never forget that it is a *constitution* we are expounding",⁷ the courts in other jurisdictions as well as our own have repeatedly cautioned that "a Constitution must not be construed in any narrow and pedantic sense."⁸ and its provisions must be given a widest possible construction because "a Constitution of government is a living and organic thing."⁹ Certainly a constitution cannot be interpreted and construed like a penal or tax statute.¹⁰

This general consideration apart, even in matters of details there are principles of interpretation and construction which have application only to a constitution and not to an ordinary statute, such as the doctrines of immunity of instrumentalities, implied powers and implied prohibitions in the U.S. Constitution, or principles applicable to interpretation of legislative lists in our Constitution are peculiar principles applicable to a federal or quasi-federal constitution. Moreover, the interpretation of fundamental rights or directive principles of state policy will require a

3. See W. Friedmann, "Statute Law and Its Interpretation in the Modern State", 26 *Can. B. Rev.* 1277 (1948); *Law in a Changing Society* 44 (Indian reprint, 1970). See also G.W. Paton, *A Text-Book of Jurisprudence* 219 (3rd ed. 1964).

4. Cf. Herbert Wechsler, "Toward Neutral Principles of Constitutional Law," 73 *Harv. L. Rev.* 1 (1959).

5. Art. 367.

6. See, e.g., *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27 at 42; *Keshavan Madhava Menon v. State of Bombay*, A.I.R. 1951 S.C. 128 at 129; *In re, Sea Customs Act (1878)*, S. 20(2), A.I.R. 1963 S.C. 1760 at 1780.

7. *McCulloch v. State of Maryland*, 4 L. Ed. 579 at 602 (1819). (Emphasis added).

8. *James v. Commonwealth of Australia*, [1936] A.C. 578 at 614.

9. *In re The Central Provinces and Berar Act No. XIV of 1938*, [1939] F.C.R. 18 at 37. See, for reliance on these observations by the Supreme Court, *Gopalan, supra* note 5 at 91 and *Union of India v. H.S. Dhillon*, (1971) 2 S.C. 779 at 794, 812-13.

10. "A constitution and a criminal code may both be statutes, but it is dangerous not to take account of the difference between them." Paton, *supra* note 3.

constant touch with the existing facts and changing social policies.¹¹

These are some of the considerations which require at least emphasis if not discussion in detail. An author may rightly choose to confine his work to the interpretation of statutes and exclude the constitutional interpretation from its purview. But to say that there are no separate principles of constitutional interpretation is likely to create a wrong impression, particularly on the young minds which are just being initiated into the study of law and constitution.

To conclude, a personal remark may be made though it is no reflection on the book under review. Presentation of the existing law and practice is in itself a great service to community. But a little critical appraisal with a view to giving direction for the future is also necessary. How far have the existing principles of statutory interpretation and construction met our social needs effectively and what more do they require to achieve greater effectiveness? Perhaps a reflection on the working of legal systems different from ours could give some food for thought to our drafters as well as judges.

M.P. Singh*

11. Consider in the light of the discussion in *Law in a Changing Society*, *supra* note 3 at 46, the corresponding developments in the interpretation of our Constitution particularly since 1975. See also Upendra Baxi, "Pre-Marxist Socialism and the Supreme Court of India", (1983) 4 *S.C.C. (Journal)* 3.

*Professor of Law, University of Delhi, Delhi.

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