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# Jurisprudential Aspects and Significance of Rule of Purposive Interpretation

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## ABSTRACT

*The phrase “purposive interpretation” occurs often in court decisions and legal literature alike. The common thread running through most references to purposive interpretation is the understanding that “purpose” is a subjective term. It reflects, at various levels of abstraction, but mostly at the highest levels of abstraction, the intention of the text’s creator. Bennion, who devotes a lengthy chapter to purposive interpretation notes that the historical source of purposive interpretation is the mischief rule established in Heydon’s Case. The purposive approach has gained support in recent years. In 1969 the Law Commission urged the courts to implement this approach. It has been the long-established approach of the courts in European jurisdictions. The statutes in these countries are articulated in broad general principles and the courts “fill the gaps” by interpreting them in the context of their legislative purpose.*

*In relation to statutory interpretation and the purposive approach, ‘what is at stake is the separation of powers and respect by the judicial branch of government for the powers of the legislative branch.’ It is clear that although the purposive approach may result in some benefits, its application brings with it significant difficulties and problems. The Purposive Approach to statutory interpretation can be seen as an extension of the Mischief Rule. Instead of confining itself simply to the mischief which the statute was intended to correct, the court resolves ambiguities by reference to the statute’s overall purpose. Indeed, many modern statutes are not simply intended to correct mischief’s in the common law but have a wider social agenda. Under the purposive approach the courts should try to give effect to this wider statutory purpose in interpreting ambiguous provisions in statutes.*

## I. INTRODUCTION

The phrase “purposive interpretation” occurs often in court decisions and legal literature alike. The common thread running through most references to purposive interpretation is the understanding that “purpose” is a subjective term. It reflects, at various levels of abstraction,

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but mostly at the highest levels of abstraction, the intention of the text's creator. Bennion, who devotes a lengthy chapter to purposive interpretation notes that the historical source of purposive interpretation is the mischief rule established in *Heydon's Case*.<sup>2</sup>

The purposive approach has gained support in recent years. In 1969 the Law Commission urged the courts to implement this approach. It has been the long-established approach of the courts in European jurisdictions. The statutes in these countries are articulated in broad general principles and the courts "fill the gaps" by interpreting them in the context of their legislative purpose. English courts increasingly have to adopt this approach when interpreting European Community legislation and there is also a trend towards a more purposive approach when interpreting domestic legislation.<sup>3</sup>

### **Purposive interpretation has at least four unique characteristics.**

The first portion of its uniqueness relates to the very concept of understanding. Few scholars who deal with legal understanding have defined the concept. It delimits the field in which the a mixture of systems of interpretation function, and it delimits the non-interpretive fields of non-interpretive doctrines, such as the doctrine of filling in a gap (lacuna) in a legal text, the doctrine of correcting a mistake, or the doctrine of altering a text to avoid an absurdity.

The second aspect of the system's inimitability is its interpretive perspective. Purposive interpretation is holistic. It views each text being interpreted as part of the legal system as a whole. Whoever interprets one text, interprets all texts.

The third aspect of purposive interpretation's uniqueness is the composition of its interpretive "laws." Most of the laws of purposive interpretation are based on neither rules nor canons, but rather on presumptions that apply immediately and always.

Indeed, the fourth unique aspect of purposive interpretation is its open acknowledgment of the role of judicial discretion.

This purpose has two components: subjective and objective. The subjective component is the goals, interests, and values at various levels of construct that the author of the text sought to actualize. It is the intent of the testator; the joint intent of the parties to a contract; the intent of the members of a legislative body; and the intent of the founders and amenders of a constitution. This subjective aspect reflects what the author or authors of the text actually intended its purpose to be, at the time they created it. Purposive interpretation translates that

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<sup>2</sup> Aharan Barak, *Purposive Interpretation in Law*, 107(Princeton University Press, New Jersey, 2005).

<sup>3</sup> Statutory Interpretation, India, available at:

<http://www.lawlectures.co.uk/law1/Documents-Law1/Statutory-Interpretation%28Study-Paper%29.pdf> (Visited on September 24, 2013)

aspect into presumptions about the purpose of the legal text. The interpreter learns about subjective purpose from the text itself and from the circumstances surrounding its creation. The association from text to the circumstances of its creation is free and free of technical restrictions. The interpreter need not determine that the text is unclear in order to justify consulting its context.

The objective component of purpose is the goals, interests, and values at various levels of abstraction that a text of the type being interpreted is designed to actualize. It is not related to the actual intent of the author. Rather, the author's hypothetical intent determines objective purpose. It reflects the social values prevalent at the time the text is interpreted, including values of morality and justice, social goals (like the public interest), proper modes of behavior (like reasonableness and fairness), and human rights. These values appear before the interpreter in the form of presumptions of purpose. The interpreter gets information about this purpose from the text itself and from the legal system's values. Comparative law assists in this process.<sup>4</sup>

## **II. PURPOSIVE INTERPRETATION**

It reflects, at various levels of thought, but particularly at the uppermost levels of abstraction, the intention of the text's creator. Eskridge analyzes purposivism in the context of "archaeological" systems of interpretation that are based on the will of the legislature. Hart and Sachs also appear to treat "purpose" as a subjective concept. It "appear" because, even though Hart and Sachs claim that the interpreter should envision himself or herself in the legislature's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably. In other places, literature on the common law formulates purpose in objective terms. The addition of an "objective intent" arising from the language of the text creates uncertainty.<sup>5</sup>

## **III. PURPOSIVE APPROACH**

This approach has emerged in more recent times. Here the court is not just looking to see what the gap was in the old law, it is making a decision as to what they felt Parliament meant

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<sup>4</sup> Aharon Barak, *Purposive Interpretation in Law*, 14 (Princeton University Press, New Jersey, 2005).

<sup>5</sup> Aharon Barak, *Purposive Interpretation in Law*, 108 (Princeton University Press, New Jersey, 2005).

to achieve. Lord Denning in the Court of Appeal stated in *Magor and St. Mellons Rural District Council v Newport Corporation* (1950), 'we sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment by opening it up to destructive analysis'.

This approach was criticized on appeal by the House of Lords. Lord Simmons called this approach 'a naked usurpation of the legislative function under the thin disguise of interpretation'. He went on to say that 'if a gap is disclosed, the remedy lies in an amending Act'.

These comments highlight one issue with the purposive approach. How Parliament's intentions can be determined and whether judges should really be refusing to follow the clear words of Parliament. The purposive approach is one used by most continental European countries when interpreting their own legislation. It is also the approach which is taken by the European Court of Justice in interpreting EU law.<sup>6</sup>

Lord Griffiths on the purposive approach:

*"The days have passed when the courts adopted a literal approach. The courts use a purposive approach, which seeks to give effect to the purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."*<sup>7</sup>

#### **THE PURPOSIVE APPROACH TO STATUTORY INTERPRETATION AND THE LIMITS TO THIS APPROACH**

Historically, the favored approach to statutory interpretation was to look for a statutes' literal meaning. However, over the last three decades, the courts have accepted that the literal approach can be unsatisfactory. Instead, the judges have been increasingly influenced by the European approach to statutory interpretation which focuses on giving effect to the purpose of the legislation.

Although the purposive approach is an important tool of interpretation it is generally accepted that its application is limited. In theory there are two limits. First, the purposive approach should only be useful where there is uncertainty in the words of the statute. Secondly, it should only be used to employ a meaning that the words of the statute are reasonably capable

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<sup>6</sup> The Rules of Statutory Interpretation India, *available at*: <http://labspace.open.ac.uk/mod/resource/view.php?id=415855> (Visited on September 24, 2013)

<sup>7</sup> Purposive approach, India, *available at*: <http://www.e-lawresources.co.uk/Purposive-approach.php> (Visited on September 24, 2013).

of bearing. The courts should not use the purposive approach to make a law consistent with Parliamentary intent if Parliament has failed to effectively state that intent in the statute.

The two limits on the application of the purposive approach are required in order to retain certainty in the law and to ensure that judges do not contravene the principle of the separation of powers by shifting from interpreting and applying the law to creating the law.<sup>8</sup>

#### **PURPOSIVE INTERPRETATION AND THE FUNDAMENTAL PROBLEM IN LEGAL INTERPRETATION**

The fundamental problem in legal interpretation is the relationship between text and context, form and substance. Purposive interpretation views purpose as the context in whose light the text should be given meaning. Purpose is the substance that gives meaning to the form. Purposive interpretation takes a stand on each of the three secondary questions at the core of interpretation. First, purposive interpretation takes an integrative stance on the dichotomy between the intent of the author and the intent of the legal system. It gives expression to both authorial intent and the “intention” of the legal system by presuming that the purpose of the norm is to realize both kinds of intent. When there is an internal conflict between the two, purposive interpretation establishes criteria for resolving it. These criteria are based on constitutional considerations. In some cases, there is room for discretion.

The second secondary question focuses on the intention of the text’s author. It asks whether to focus on the “true” intention or the “expressed” intention. Purposive interpretation requires attention to be given to the true intention of the text’s author, and not just his or her expressed intention. The interpreter can learn about the subjective purpose from any credible source, not just from the language of the text. Having said that, the subjective purpose arising from the language of the text is generally more credible than the subjective purpose derived from sources external to the text. Purposive interpretation expresses this principle as a rebuttable presumption in favor of the intention arising from the text. Furthermore, once the interpreter determines the “true” intention of the author, he or she may only carry it out if the language used by the author allows it.

The third secondary question focuses on objective purpose. This purpose reveals the “objective substance” of the text. It is the intention of the legal system, expressed in purposive presumptions that reflect the objective purpose of the system’s various features and elements. The interpreter resolves internal conflicts among these presumptions by balancing

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<sup>8</sup> Statutory Interpretation, India, *available at*: [http://catalogue.pearsoned.co.uk/assets/hip/gb/hip\\_gb\\_pearsonhighered/samplechapter/ELS\\_C%20and%20M\\_Chap%203.pdf](http://catalogue.pearsoned.co.uk/assets/hip/gb/hip_gb_pearsonhighered/samplechapter/ELS_C%20and%20M_Chap%203.pdf) (Visited on September 24, 2013)

them according to their relative significance.<sup>9</sup>

#### IV. THE SCOPE OF PURPOSIVE INTERPRETATION

Despite the vast literature on interpreting the various legal texts, few scholars have attempted a general interpretive theory that applies to all types of legal texts. Purposive interpretation aspires to that goal. It assumes that there are common elements in the interpretation of all legal texts (constitution, statute, contract, will) while recognizing the individuality of each type of text. It gives each legal text the “breathing room” it needs to convey its individuality, usually expressed in the balance between the text’s subjective and objective purpose. Secondary distinctions, tailored to the particular type of text, then shape that balance. These distinctions consider the age of the text (treating old and new texts differently); the scope of the issues that the text regulates (interpreting a code differently from a specific text); the regime and its essence (treating a text created in a totalitarian regime differently than its democratic counterpart); and content-based factors of each text that affect the relationship between the author’s intention and the intention of the legal system in constructing the purpose.

Generally subject to the relevant secondary distinctions in constitutional interpretation, objective purpose is the determining factor, while subjective purpose (the founders’ intent) plays a secondary role. In the interpretation of contracts and wills, subjective purpose is primary. Objective purpose plays a secondary and supplementary role, but it becomes more significant when there is no credible information about the intent of the testator or the joint intent of the parties. In interpreting some kinds of contracts—an adhesion contract, a consumer contract, or a collective agreement, for example—judges should give more weight to objective purpose. In statutory interpretation, the balance between subjective (legislative intent) and objective (the intent of the reasonable legislator or of the legal system) purpose depends on the type of statute. The interpreter of an old statute gives more weight to objective purpose, while subjective purpose is weightier for a new statute; the interpreter of a generally applicable statute (like a code) emphasizes objective purpose, while the interpreter of specific administrative legislation favors subjective purpose. These distinctions allow purposive interpretation to retain its interpretive consistency while preserving the individuality of each text.<sup>10</sup>

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<sup>9</sup> Aharon Barak, *Purposive Interpretation in Law*, 114 (Princeton University Press, New Jersey, 2005).

<sup>10</sup> Aharon Barak, *Purposive Interpretation in Law*, 115 (Princeton University Press, New Jersey, 2005).

## **V. JURISPRUDENTIAL SUPPORT FOR PURPOSIVE INTERPRETATION**

### **Philosophical Theories Regarding Purpose**

A theoretical examination of a few theories of law suggests that, in the main, they accept the purpose of the text as a critical component of a proper system of interpretation. They do not dispute the importance of the purpose at the core of the text as a criterion for understanding it. They differ, however, over the essence of that purpose whether it is subjective purpose (authorial intent), objective purpose (intent of the reasonable author or of the system), or some combination of the two and how to discover it. I will briefly discuss a few of these philosophical theories. These philosophical theories provide one important layer in the foundation of a theory of interpretation the recognition that the purpose of a text affects its interpretation. Some of these theories also take a position on the content of the purpose at the core of the text.

## **VI. DEMOCRACY AND PURPOSIVE STATUTORY INTERPRETATION**

The sovereignty of the people is the starting point for a discussion of constitutional democracy. It is the source of authority for the founding of the constitution, based on separation of powers. The principle has a double meaning:

First, it means distinguishing among different branches of government, giving each branch a central and primary function. Second, it means that the different branches have a reciprocal relationship in which each check and balances the other branches. The powers are separated not to maximize efficiency but rather to maximize freedom. On this view of separation of powers, the primary and central function of the legislative branch is to create general legal norms that are “laws” in the functional sense. These laws are subordinate to the constitution. They are binding on everyone. A court may not void them if it doesn’t like them. Its job is to interpret.

Second, in their interpretive work, judges should give weight to a statute’s subjective purpose as an expression of legislative supremacy. The legislature enacts a statute in order to achieve a certain purpose. The goal of interpretation is to achieve this purpose. True, the subjective purpose is not part of the statute, but it is the goal that the statute is designed to achieve, and thus it should serve as a criterion for understanding the statute. The legislative branch uses legislation to establish social policy, allocate national resources, and set the national agenda. The statute is a tool for achieving policy goals.

Third, in statutory interpretation, objective purpose should be considered in addition to

subjective purpose. This conclusion is also inherent to democracy. Democracy is not just about legislative supremacy it requires actualizing the values and principles at its core. There can be no true democracy without protecting human rights, rule of law, and the independence of the judiciary. Democracy is not just rule by the majority. It is also rule by fundamental values, in general, and human rights, in particular. Democracy is not just formal democracy concerned with the electoral process governed by the majority and expressed in legislative supremacy). Democracy is also substantive democracy concerned with fundamental values and human rights.<sup>11</sup>

## VII. ADVANTAGES AND DISADVANTAGES OF THE PURPOSIVE APPROACH

### Advantages:

- It is a flexible approach which allows judges to develop the law in line with Parliament's intention (eg *Maunsell v Olins*)
- It allows judges to cope with situations unforeseen by Parliament (eg *Quintavalle*)
- It allows the law to develop to cover advances in medical science (eg *Quintavalle*)
- It allows the courts to give effect to EU Directives (*Pickstone v Freemans*)
- Allowing reference to Hansard makes it easier for the courts to discover Parliament's intention (*Pepper v Hart*)
- The rule is useful when dealing with older acts, especially when a new technology emerges.
- The purposive rule allows judges to adapt the law to deal with relevant issues.
- By using a broader approach, you can allow the law to cover more situations than if you applied the words literally.
- This rule can lead you justice.

### Disadvantages:

- Judges are given too much power to develop the law and usurping the power of Parliament
- Judges become law makers infringing the **Separation of Powers (Montesquieu)**
- There is scope for judicial bias in deciding what Parliament intended
- It assumes Parliament has one intention and ignores the fact that Parliament is divided on party lines

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<sup>11</sup> Aharan Barak, *Purposive Interpretation in Law*, 259 (Princeton University Press, New Jersey, 2005).

- Allowing reference to Hansard may lead to prolonged examination of irrelevant material by lawyers which adds to the cost and length of litigation (See Lord Mackay in *Pepper v Hart*)
- Make the law less certain.
- Judges may give a meaning to the law that parliament did not intend.
- Judges aren't elected, therefore why should they add to laws?
- Makes it difficult for lawyers to advise their clients as they don't know what meaning the law is going to have.<sup>12</sup>

### VIII. CONCLUSION

We have experienced significant changes over the interpretation of statutes. This change from literal to purposive approaches has had significant effect on our legal system. So much that the powers of the legislative and judicial arms are beginning to converge. Parliament has enacted laws telling the judicial branch how they must interpret legislation, and the judicial arm can read words into legislation to promote what they believe is the apparent purpose of the legislature, when, in fact, unrestrained by obedience to the specific words of the statute, they could be promoting their own policy agenda. In relation to statutory interpretation and the purposive approach, 'what is at stake is the separation of powers and respect by the judicial branch of government for the powers of the legislative branch.' It is clear that although the purposive approach may result in some benefits, its application brings with it significant difficulties and problems. The Purposive Approach to statutory interpretation can be seen as an extension of the Mischief Rule. Instead of confining itself simply to the mischief which the statute was intended to correct, the court resolves ambiguities by reference to the statute's overall purpose. Indeed, many modern statutes are not simply intended to correct mischief's in the common law but have a wider social agenda. Under the purposive approach the courts should try to give effect to this wider statutory purpose in interpreting ambiguous provisions in statutes.

To conclude that the legislature, as a collective body, does have a subjective will. It is the goals, social changes, and aims to which the members of the legislative body have agreed. An interpreter learn this intent from the language of the statute and the circumstances surrounding its passage.

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<sup>12</sup> Rule of Purposive Interpretation, India, *available at*:  
<http://www.sociologyblog.co.uk/laws-> (Visited on September 22, 2013).