
AN ANALYTICAL STUDY OF HARMONIOUS CONSTRUCTION W.R.T INDIAN JUSTICE SYSTEM

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ABSTRACT

The comprehensive analysis explores the doctrine of harmonious construction within the Indian legal framework. Beginning with an introduction defining the rule and emphasising its importance in resolving conflicts and ambiguities in laws, the examination delves into the origin of this doctrine. The evolution of the rule through constitutional amendments and subsequent cases is highlighted. The doctrine's application in interpreting statutes is discussed, underscoring its role in maintaining legislative intent and coherence within legal frameworks. The section on the importance of this doctrine in the Indian legal system emphasises its pivotal role in adjudicating disputes arising from conflicting laws, with illustrative cases providing context. The analysis extends to the harmonisation of international law within the Indian legal system. The implications of harmonising international law, including the role of Article 253 and the dualistic system, are examined, emphasising the courts' use of interpretive tools to reconcile conflicting legal provisions. The examination concludes by underscoring the importance of the rule in fostering harmony among diverse societies and religious beliefs, particularly in a multicultural nation like India. It emphasises the judiciary's crucial role in interpreting laws and delivering justice by effectively applying the doctrine of harmonious construction.

Keywords: *Amendments, Conflict, Harmony, Harmonious Construction and Interpretation of Statute.*

1. INTRODUCTION

“No law or ordinance is mightier than understanding”

-Plato

Harmonious construction is a very important rule of interpretation. As we can see from a long time, there are conflicts between the laws that cannot be resolved. The conflict is regarding the ambiguity of the laws, and a law that is ambiguous is a major drawback for a nation to remove these conflicts. The rule of harmonious construction is to be applied. The conflict can be between two statutes or between two laws of the same statute. Now the question that arises is: What is the meaning of the rule of harmonious construction?

As the name suggests, harmonious construction means constructing harmony between the laws. The “rule of harmonious construction” is a legal doctrine that is applied to the interpretation of statutes. In this doctrine, the laws and statutes are interpreted in such a way that the conflicting provisions can be potentially reconciled to give effect to the overall legislative intent. This doctrine is used to avoid any contradictions between the laws, so that any part of the statute should not be rendered meaningless. The principle of harmonious construction should be used when there is a disagreement between two or more statutes or sections of a statute. According to this rule, each statute should be studied in its entirety, with consideration given to the purpose and intent of each individual section.

Its inception can be found in the famous *Shankari Prasad v. Union of India*¹ case and the first amendment of the Indian constitution. The case deals with the disagreement between the Directive Principles (Part 4) and the Fundamental Rights (Part 3) contained in the Indian Constitution. The rule of harmonious construction was used in this instance, and it was decided that both were distinct aspects of the same thing that needed to cooperate for the good of the general public.

¹ *Shankari Prasad v. Union of India*, 1952 SCR 89

The rule is a rule of interpretation, which says that the interpretation should be made in such a way that harmony can be bought between the two conflicting provisions. The main aim of the doctrine is to maintain harmony between the conflicting provisions.

As seen, when special legislation is available for any issue, the special law will prevail over the general rule, but the scope of the doctrine of harmonious construction is very wide; it makes harmony between the provisions. Where there is no special or general legislation, there are just two laws that deal with a single issue, and it is impossible to apply both of them, so the rule of harmonious construction is applied so that no law should be rendered meaningless.

2. ORIGIN OF THE DOCTRINE OF HARMONIUS CONSTRUCTION IN INDIA

The court's interpretation of numerous decisions gave rise to the principle of harmonious construction. The first amendment of the constitution contains the doctrine's origins, as demonstrated by the pivotal ruling in *Shankari Prasad v. Union of India*², whereby the conflict among the state's directive principles and fundamental rights became an issue.

In this instance, the court applied the harmonious construction rule to determine that fundamental rights may be withdrawn in specific situations and may also be changed by the parliament to bring them into compliance with the terms of the constitution. Both were deemed to be more important than the other, with the argument being made that fundamental rights and the DPSP are complementary yet interdependent.

3. DOCTRINE OF HARMONIOUS CONSTRUCTION IN THE INTERPRETATION OF STATUTE

Laws serve as a tool to maintain social harmony and deter crime by dictating acceptable behaviour. The laws are written by legal professionals, and it is evident that many of them lack specificity and contain confusing or contradictory language. The notion of harmonious

² *Id.*

construction is one of the norms of interpretation that were developed in response to this ambiguity.

The principle of harmonious construction applies or must be followed where there is a disagreement between two or more statutes or sections of statutes. According to the harmonious construction rule, interpretation must be compatible with every aspect of the statute; if this is not possible, the court's decision will be followed.

The foundation of the harmonious construction rule is the idea that the legislature intends for every provision of the statute to be implemented and that it cannot contradict itself while enacting laws. However, in cases where two provisions conflict with one another, a construction that eliminates the discrepancy and keeps both laws in effect while maintaining their harmony should be used.

4. IMPORTANCE OF THE DOCTRINE OF HARMONIOUS CONSTRUCTION IN THE INDIAN LEGAL SYSTEM

This doctrine plays a very important role in the adjudication of disputes by the judiciary in India. In the Indian legal system, there are a number of laws, and due to this vast number of disputes among the different laws, the doctrine is of huge importance in India. Though the doctrine is defined in the case of *CIT v. Hindu Bulk Carriers*³, it was also applied in various other cases during the pre-independence and post-independence eras. Several judgements have applied this principle, and it can be seen in the interpretations made by them.

*Venkataramana Devaru v. State of Mysore*⁴: The case deals with the conflict between Article 25(2)(b) and Article 26(b) of the Constitution.

Article 25(2)(b) states, “*Nothing in this article shall affect the operation of any existing law or prevent the state from making any law providing for social welfare and reform or the throwing*

³ *Commissioner Of Income Tax v. Hindustan Bulk Carriers*, (2003) 3 SCC 57

⁴ *Sri Venkataramana Devaru v. The State of Mysore*, 255 SCR 895.

*open of Hindu religious institutions of a public character to all the classes and sections of Hindus”.*⁵

Article 26(b) says, “*Subject to public order, morality, and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion*”.⁶

The question in this case concerned whether a particular Hindu temple in Madras might restrict access to its ceremonial hall to members of specific Hindu sects and bar others from attending at all. The Supreme Court ruled that the provisions were incompatible and that none of the articles would be upheld. The application of article 25(2)(b) was governed by the provisions of article 26(b), and the temple was free to establish its own rules and forbid outsiders from participating in certain rituals with the Hindu sect. The temple was permitted to impose these limitations since they were limited to a particular kind of devotion.

The harmonious construction concept was applied in this case by the bench. There are directly competing clauses in this case, and the judiciary has partially sustained one of the laws over the other.

M.S.M Sharma v. Krishan Sinha, 1958⁷ : In this case, a dispute arose between Articles 19(1)(a) and 194(3) of the Indian Constitution.

Article 19(1)(a) gives the fundamental right of freedom of speech and expression to all the citizens of India.⁸

Article 194(3) speaks about the special powers, privileges, and immunities of the House of State Legislature and its members.⁹

The dispute started when the speaker of the Bihar legislative assembly made some disparaging remarks against the chief minister. His remark was removed from the record, but the hate speech he said was published by a journalist for the daily "Searchlight."

⁵ INDIA CONST. art. 25(2)(b)

⁶ INDIA CONST. art. 26(b)

⁷ M S M Sharma v. Krishna Sinha, 1959 Supp (1) SCR 806.

⁸ INDIA CONST. art. 19(1)(a)

⁹ INDIA CONST. art. 194(3)

The speaker contended that his right, which he got indirectly from Article 194(3), was violated, but the journalist responded that he was exercising his right to free speech and expression granted under Article 19(1)(a) of the Constitution.

In this case, the bench of the Supreme Court applied the doctrine of *Generalibus Specialia Derogant* and contended that the specific provision of Article 194(3) suppressed the general provision of Article 19(1)(a). This rule is the application of the doctrine of harmonious construction, and the judiciary applied the doctrine to uphold the special provision over the general provision.

Sirsilk Ltd. v. Govt. of Andhra Pradesh, 1964¹⁰: In this case the Dispute arose between section 17 and 18 of Industrial Dispute Act, 1947.

Section 17 states that the ruling of the industrial tribunal shall be published within 30 days of such decisions.¹¹

Section 18 discusses the parties to the dispute reaching a settlement and declares that the employer and the employees must abide by the terms of the settlement.¹²

The industrial tribunal in this case resolved the matter and forwarded it for publication, but the parties reached a mutual settlement before publication. Thus, the three-judge Supreme Court bench ruled that the settlement reached by the parties themselves settles the disagreement that gave rise to the lawsuit and that Section 18 of the Industrial Dispute Act permits and upholds this type of settlement. As a result, the bench decided that applying Section 18 did not conflict with Section 17's requirements.

5. HARMONIZATION OF INTERNATIONAL LAW

The Supreme Court of India, through its various judgements, has incorporated international law in India. This is done by harmonising international law with domestic law.

¹⁰ The *Sirsilk Ltd. and Ors v. Govt. of Andhra Pradesh*, AIR 1964 SC 160.

¹¹ Industrial Dispute Act, 1947, § 17, No. 14, Acts of Parliament, 1947 (India)

¹² Industrial Dispute Act, 1947, § 18, No. 14, Acts of Parliament, 1947 (India)

The Supreme Court first applied the doctrine of harmonious construction in the A.D.M. Jabalpur case¹³.

In this case, the Supreme Court accepted the primacy of domestic laws and said that municipal law should be constructed in a way that it will harmonise with the international law obligations of the states.

In another case of Gramophone Company¹⁴, the Supreme Court held that-

International law can be incorporated into domestic laws even in the absence of enabling legislation. It was decided that international law would be interpreted as being in effect in India if it did not conflict with domestic law and that the rule of harmonious construction would be applied by the Supreme Court in order to make both laws operative.

In another instance of NALSA¹⁵ with respect to ICCPR¹⁶, the Supreme Court stated that when there is no conflict between domestic and international laws, then international laws can be incorporated into domestic laws. The Supreme Court held that international conventions such as ICCPR should be read as existing laws as they are articles on fundamental rights, and both the laws should be given joint meaning to support 'progressive jurisprudence'.

ICCPR has also been referred to by the Supreme Court in Jolly George Vergese¹⁷, Nilabati Behera¹⁸ and DK Basu¹⁹.

Many other conventions, such as CEDAW²⁰ and CERD²¹ have been made part of domestic laws by the Supreme Court in the cases of Visakha²² and Safai Karamchari Andolan²³.

¹³ ADM Jabalpur v. Shrikant Shukla, AIR 1976 SC 1207

¹⁴ Gramophone Company of India v. Birendra Bahadur Pandey & Ors. 1984 AIR 667

¹⁵ National Legal Service Authority

¹⁶ International Covenant on Civil and Political Rights

¹⁷ Jolly George Vergese & Anr v. The Bank of Cochin, 1980 AIR 470.

¹⁸ Smt. Nilabati Behera Alias Lalit v. State of Orissa and Ors, 1960 SCR (2) 581.

¹⁹ D.K. Basu v. West Bengal 1997 (1) SCC 416.

²⁰ Convention on the Elimination of All Forms of Discrimination against Women.

²¹ Committee on the Elimination of Racial Discrimination.

²² Vishakha & Ors. v. State of Rajasthan & Ors. (1977) 6 SCC 241.

²³ Safai Karamchari Andolan and Ors v. Union of India and Ors (2014) 11 SCC 244

In another case of *Puttaswamy*²⁴, the Supreme Court clarified that the assumption has not to be followed by the courts that domestic law and international law would be in conflict with each other; rather, they have to make the efforts to harmonise them with each other, which is known as 'presumption of compatibility'. But if the laws cannot be harmonised, then the domestic laws will prevail over the international laws, which can also be seen in the case when there is a conflict between the union law and the state law, which is the subject of the concurrent list, then the union law will prevail over the state law.

International customary law cases have also been handled using the harmonious construction principle. The Supreme Court held in the case of *Ram Jethmalani v. Union of India*²⁵ that the VCLT act, which is a general principle of interpretation and customary international law, can be incorporated into Indian law even if India is not a party to it.

In order to ensure that the principles of international law and domestic law can coexist peacefully, the Supreme Court has attempted to uphold the concept of international law in a number of cases.

The "precautionary principle" and the "polluter pay principle" were acknowledged by the Supreme Court as components of international law in the case of *Vellore Citizens*²⁶, which addresses sustainable development. Since these ideas contradict Indian law, the Supreme Court dismissed their application without attempting to harmonise them.

6. IMPLICATION OF HARMONIZING INTERNATIONAL LAW

Article 253 is the foundation of the dualistic system and provides that international law only becomes part of domestic law through legislation. According to union and state law, the Supreme Court has decided to apply the rule of harmonious construction and its interpretive tools between domestic and international laws²⁷.

²⁴ K.S. Puttaswamy and Anr. v. Union of India (2017) 10 SCC 1

²⁵ Ram Jethmalani & Ors vs Union of India & Ors, Writ Petition (Civil) No.176 of 2009

²⁶ Vellore Citizens Welfare Forum vs Union of India & Ors, 1996 5 SCR 241

²⁷ INDIA CONST. art. 253

7. PRINCIPLES OF THE DOCTRINE OF HARMONIOUS CONSTRUCTION

The Supreme Court laid down five principles of harmonious construction in the landmark case of *CIT v. Hindustan Bulk Carriers*.

1. The courts have to interpret obviously incompatible laws in a way that harmonises them rather than allowing them to conflict head-on.
2. Unless the court, after all due diligence, is unable to identify a means to reconcile their disparities, the provision of one section cannot be used to invalidate the provision contained in another.
3. The court must interpret the conflicting provisions in a way that gives each as much weight as practicable when it is difficult to fully reconcile the differences between them.
4. Courts should also be aware that a construction that renders a provision meaningless or dead is not a harmonious one.
5. To harmonise is not to negate or make ineffective any provision.

8. CONCLUSION

“If a harmonious relationship is established amongst societies and religious beliefs in today’s multi-ethnic, multi religious and multi-cultural world, then it will surely set a very good example for others”

-Dalai Lama

The quote defines the importance of rule of harmonious construction that how the rule of harmonious construction will be beneficial for secular states like India to regulate the behavior of different religions, as we can see that when there are different religions in a single state then they also have different believes and behaviors due to which the conflict can arise between them, so the law should be made in a way so that there should be no conflict between the provisions, the main work is of the judiciary that how they interpret the laws so that they can work with each

other, while interpreting the laws the judiciary should apply the rule of harmonious construction so that there should be no conflict between the two provisions of law.

By applying the idea of harmonious construction, the Indian court is striving to defend and uphold the intent behind each and every section of the Indian constitution, as well as to ensure that it remains enforceable. It is possible to conclude that the doctrine of harmonious construction is a useful tool for court interpretation by looking at the various cases discussed in the article. Thus, the rule of harmonious construction states that if there is a repugnancy between two provisions, then they must be read entirely, and the provision that has a broader application amongst the two contradictory provisions should be considered and applied.

The laws of interpretation of statutes, including the doctrine of harmonious construction, play a very important role in guiding the judiciary to interpret the laws and deliver justice to all the people.

As said by George Washington, “*the administration of justice is the firmest pillar of the government*”. The legislature only drafts the statute, so there are chances of ambiguity and conflicts in the statute. Here comes the rule of harmonious construction, which is to be applied by the judiciary so that justice can be served to all by the administration and the principles of equality, justice, and good conscience can be achieved.