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The Principle of Harmonious Interpretation: The Approach of Indian Courts

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ABSTRACT

The Constitution is the Supreme law of the land in India, anything that is not in consonance with its provisions is considered as ultravires. When conflicts arise between the provisions of the Constitution certain rules of interpretation are used to resolve the problem. This paper focuses on one such rule known as 'Principle of Harmonious Interpretation'. The rule is of extreme significance as it seeks to justify the very intention of the framers of the constitution while making the provisions and it harmonizes conflicting provisions to arrive at a solution. The main objective of the paper is to understand the approach of Indian courts towards the harmonious rule, before and after independence with the help of some case laws and the challenges of the same.

Keywords: *Constitution, Rules of interpretation, Harmonious interpretation, Indian courts.*

I. INTRODUCTION

This rule is one of the important principles for the interpretation of the constitutional provisions. While making the constitutional provisions certain gaps are left behind, which leads to conflicts between different provisions, so courts evolve their own interpretations with the help of such doctrines so that the general public can understand the same. Article 367(1) is the clause that enables the use of rules of interpretation in the constitution. The harmonious rule aims to achieve harmony within the provisions of the constitution. This is a concept which has been evolved by the courts after going through the intention of the constitution makers. Therefore, harmonious construction is applied to avoid any kind of conflict between the provisions or between statutes and harmony is maintained within those provisions or statutes. Thus, it can be inferred that the rule of harmonious construction is applied by the courts to fulfil two aspects

a) to maintain consistency within the enactments.

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b) to avoid any type of inconsistency or repugnancy between the various provisions and statutes.²

(A) Research Questions

1. What is the approach of Indian courts towards the ‘Principle of Harmonious Interpretation’?
2. What are the important aspects of the ‘Principle of Harmonious Construction’?

(B) Hypothesis

Indian courts are making significant efforts to protect and maintain the objective of each and every provision of the constitution and the rule of harmonious construction is one of the tools used by the Indian courts in order to do so.

(C) Research Objective

1. To understand the approach of the court regarding the Principle of Harmonious Construction.
2. To understand and recognise the important aspects of the rule.

(D) Scope of the Study

The doctrine of harmonious construction has helped judges to interpret the two confronting laws easily and helped in providing justice to society at large without compromising the original objectives of the provisions. It is one of the most important tools in hands of the judiciary while interpreting the statutes. Therefore, it is important to understand the approach of Indian courts towards the same and analyse its challenges in order to understand limits and application of the rule better.

II. CONCEPT OF PRINCIPLE OF HARMONIOUS CONSTRUCTION

This rule evolved from the case *Shankari Prasad v. Union of India*³ where there was a conflict between part III and part IV of the constitution. The Supreme Court used the principle of Harmonious construction and held that fundamental rights are the rights provided against the state whereas the directive principles for the state policy are provided to the state to meet social and economic development of the country. In this case, the rule of harmonious construction was used by giving preferences to both fundamental rights and directive principles, as they both are important for public wellbeing.

² Aditya Mishra, The Doctrine of Harmonious Construction: Court Approach

³ AIR (1951) SC 455

When there is a conflict between two or more statutes or two or more parts of a statute then the rule of harmonious construction needs to be adopted. Every statute has a purpose and intent as per law and should be read as a whole. While using the harmonious rule the interpretation should be consistent with all the provisions of the statute. In the case in which it shall be impossible to harmonize both the provisions, the court's decision regarding the provision shall prevail. The basis of principle of harmonious construction probably is that the legislature must not have intended to contradict itself.

The intention of legislature is that every provision should remain operative. But when two provisions are contradictory, it may not be possible to effectuate both of them and in result, one will be rendered futile as against the settled basic principle of *ut res magis valeat quam pereat*. Therefore, such a construction should be allowed to prevail by which existing inconsistency is removed and both the provisions remain in force, in harmony with each other. It brings harmony among the various lists referred to in Indian constitution schedule 7. It is a cardinal rule of construction that when there are two provisions of the same law are conflict with each other that both of them cannot stand together they should possibly being so interpreted that effect can be given to both and that a constructions which renders any of them inoperative and useless should not be adopted except in the last resort.

III. RELEVANT LEGAL PROVISIONS

Article 367(1): Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

Article 372(1): Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

IV. CASE LAWS

CIT v. Hindustan bulk carriers⁴: The Supreme Court of India has given five principles of Harmonious Construction.

⁴ AIR (2003) SC 3942

- a. The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.
- b. The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences.
- c. When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.
- d. Courts must also keep in mind that interpretation that reduces one provision to a useless number, is not harmonious construction.
- e. To harmonize is not to destroy any statutory provision or to render it loose.

In Venkatraman Devaru v. State of Mysore⁵: the court applied harmonious construction where it has tried to resolve such dispute by giving its interpretation to these two Articles of the Constitution. Thus, the court has observed that the right of a religious denomination to manage its own affairs under Art. 26(b) is subject to the law made by the state for providing social welfare as well as subject to Art. 25(2) (b).

M.S.M. Sharma v. Krishna Sinha (Searchlight case)⁶: the Supreme Court has made the application of the rule of harmonious construction by making the reference to the English situation where Parliament is supreme but in India, Constitution is the Supreme law, therefore, in this case, a person can be expunged from publishing the official records of the House and such this does not amount to complete prohibition of that person.

East India hotels ltd. V. Union of India (2001)⁷: It was held that an Act is to be read as a whole, the different provisions have to be harmonized and the effect should be given to all of them.

Qureshi v. State of Bihar⁸: In this case Supreme Court held that the state should implement directive principle in a way so as that it will not interfere fundamental right.

Bhatia international v. bulk trading (2003)⁹: It was held that if more than one interpretation is possible for a statute than the court has to choose the interpretation which shows the intention of the legislature.

⁵ AIR (1958) SC 255

⁶ AIR (1959) SC 395

⁷ AIR 2005 Delhi 182

⁸ 1958 AIR 731

⁹ (2003) 5 SCC

In P.S Sattappan v. Andhra bank ltd. (2004)¹⁰: The supreme court held observed that one cannot interpret a section in a manner which would lead to a conflict between two sub sections of the same sections.

In Sarabjit Rick Singh v. Union of India (2008)¹¹: The apex court observed that a construction giving effect to all provisions of the statute should be adopted.

In S. Nagraj v. B.R. Vasudeva Murthy (2010)¹²: The apex court held that statutes opposing provisions but with same subject matter have to be read together.

SBEC Sugar Ltd v. Union of India (2011)¹³: It was held that a cardinal principle of construction is that the provisions of the notification have to be harmoniously construed as to prevent any conflict with the provisions of the statute.

In Union of India v. Dileep Kumar Singh¹⁴: the apex court held that the provisions of statute must be read harmoniously together. Where this is not possible and there is irreconcilable conflict between two sections, it must be determined which provision is leading provision and which provision is subordinate provision and that which one must give way to the other.

Raj Krishna vs Binod¹⁵: In this case, two provisions of Representation of People Act, 1951, which were inapparent conflict, were brought forth. Section 33 (2) says that a Government Servant can nominate or second a person in election but section 123(8) says that a Government Servant cannot assist any candidate in election except by casting his vote. The Supreme Court observed that both these provisions should be harmoniously interpreted and held that a Government Servant was entitled to nominate or second a candidate seeking election in State Legislative assembly. This harmony can only be achieved if Section 123(8) is interpreted as giving the govt. servant the right to vote as well as to nominate or second a candidate and forbidding him to assist the candidate in any other manner.

Calcutta gas company pvt. ltd. V. State of West Bengal¹⁶: validity of Oriental Gas Company Act was passed in 1960 was challenged by the appellant on the ground of invalidity of the Act as state legislature had no power to enact such law under the Entries 24 and 25 of State list and this power lies with the Parliament under Entry 51. Since, these Entries are in conflict with each other, they need to be harmonized by the court in order to avoid any conflict among them

¹⁰ 2004 11 SCC 672

¹¹ 2008(2)SCC 417

¹² (2010) 3 SCC 353

¹³ (2011) 4 SCC 668

¹⁴ CIVIL APPEAL NOS.2466-2467 OF 2015

¹⁵ 1954 AIR(SC) 202

¹⁶ AIR (1962) SC 1044

and all these Entries are to be given effect. With the help of rule of harmonious construction, it can be said that gas industry is a part of State list under Entry 25 and thus, state has full control over it.

Gujarat University v. Krishna Ranganath Mudholka¹⁷: According to the Supreme Court separating education in two lists under the head of medium of instruction to Parliament and education de hors to state, is not reasonable. The medium of instruction related to specific Universities is also provided under the Union list, Entry 66 and that Entry has enabled Parliament to make laws to improve standards of education and provide financial assistance to backward Universities but under Entry 11 of State law, state can make law for imparting education. Therefore, the harmonious construction was invoked and it was found that parliament has specific competence over the subject and state has the general competence.²² Therefore, it was held that Parliamentary law should prevail and the University did not confer the power to impose any language as medium of instruction and examination.

V. ANALYSIS

- The Indian courts are credited for their efforts for wonderfully bringing harmonisation between different provisions of the statute by applying the harmonious rule of interpretation and with this they have tried to explain the intention or objective of the framers of the constitution for framing those provisions of the constitution as well as of different statutes.
- The main objective of the court in applying such interpretation to fill the gaps that have been left by the makers of the provision of the Constitutions.
- Given above are famous Indian cases where Indian courts have made an attempt to interpret certain provisions of the Constitutions with the help of applying the rule of harmonious construction.
- The rule of harmonious interpretation brings in much needed consistency between different conflicting provisions so that none of them gets affected as all the provisions satisfy the requirements that might have arose in the past or possible in the future.
- The Indian Court has also made an important observation for the subject matters of different Lists under schedule VII of the Indian Constitution, whether it is the question of making laws relating to education lies with the state list or with the union list.
- The Indian courts have a positive approach towards the rule of harmonious construction and uses it whenever it is necessary.

¹⁷ 1963 AIR 703

- Therefore, it can be inferred that the Court are making every possible effort to protect the objective of each and every law which has been framed for the country and rule of harmonious construction is the tool in the hands of the Courts to protect so.
- The important aspects of the rule have been mainly found in the ***CIT v. Hindustan bulk carrier's case.***

VI. CONCLUSION

There are concrete efforts by the Indian courts to use the harmonious rule of interpretation in order to bring harmony between conflicting provisions so as to retain the objective of the provision as decided by the markers or framers of the constitution. Through the analysis of the different cases given above we come to the conclusion that the principle of harmonious construction or interpretation is an affective tool of interpretation used by the Indian courts to not only resolve conflicts but make important decisions on subject matters of different lists.
