CRITICAL STUDY OF THE DOCTRINE OF HARMONIOUS CONSTRUCTION

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ABSTRACT

The legislature draws up laws with the greatest care and detail, bearing in mind both the current circumstances and possible situations that may occur, yet there are plenty occurrences when an unforeseen event may occur. But often, either because of a scarcity of collective agreement in Parliament or because it suggests that legal regulation can be best enforced if resolved on a case-by-case basis, the legislature deliberately leaves lacunae in the statutes. There seems to be, for these factors, a need to interpret and create laws and their provisions. During the creation and implementation of statute, there are many principles for the judiciary to adhere to and one of them is the principle of the law of harmonious construction.

The intent of this paper is to scrutinize and understand the applicability of the rule of Harmonious Construction so as to understand its existence and its relevance in the legal system. The ideal way to illuminate the theory of any rule of interpretation of law is to adhere to the success and failure of the rule through any case law, and understand the key takeaways of the rule to establish a crisp understanding of how the provisos that were in ambiguity of law were resolved.

In this paper we will take a walk down the basics of this doctrine, understand its objective and refer to some important landmark case laws to derive to a methodology about the rule and finally draw an analysis about the principle at the end.

Keywords: Harmonious Construction, Methodology, ambiguity.

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INTRODUCTION

Every person living in a community knows the importance of the law. Law can be understood as a way of keeping society stable and free of problems and is known to control their actions to avoid disputes between people. Legal scholars draw up the laws passed to govern society and it can very well be expected that many of the laws enacted will not be precise and will include uncertain terms and phrases. Very frequently, we find that the courts and lawyers are busy unfolding the definition and addressing contradictions of those terms and phrases. Much of this has contributed to some rules of interpretation of laws being created. We are all aware that there are three wings of the government, namely, the legislature, the executive and the judiciary. The role of interpretation of statutes comes into play and is of utmost importance to the judiciary in correctly rendering justice by interpreting the statutes in the manner needed by the situation.

In the interpretation and design of laws, this article will focus on the concept of the doctrine of harmonious construction.

BREAKING DOWN THE DOCTRINE

The term harmonious construction refers to such a construction by which harmony or unity is achieved between different provisions of an enactment. If there is more than one interpretation in the words of the statutory provision, and there is doubt as to what interpretation should prevail, then the meaning by which the words better harmonize with the subject-matter and subject-matter of the enactment should be adopted. The Doctrine of Harmonious Construction is one of the primary rules or principles of statutory interpretation in the Indian Legal System. The doctrine lays down that "every effort should be made to give effect to all the provisions of an Act by harmonizing any apparent conflict between two or more of its provisions".[2]

It is known that a statute is passed with a legislative intent by the legislature. It is often presumed that the legislature used precise terms to open their eyes and left the vocabulary of the enactment with no uncertainty. Moreover, since the legislature is not expected to contradict itself by presenting contradictory clauses, it is believed that all the clauses of a statute are well composed and compatible with each other. In order to prevent any

[2] A.K. JAIN, Constitutional Law of India [Part-I] 44.

repugnance, the law should also be construed in such a way. This mean that, neither an anomaly should be generated nor easily inferred. Where all alternative constructions are feasible, the construction by which consistency is achieved should be accepted and the constructions leading to inconsistency should be refused.

The object of the legislature is for each provision to remain operational. However, if two provisions are contradictory, both of them cannot be followed and, as a result, one must be reduced to futility in the light of the known fundamental principle of *ut res magis valeat qauam pereat*. (It is easier for a thing to have an impact than to be considered empty, which means that the best way is to validate it rather than holding it inactive.)

Such a construction, under which existing contradictions are eliminated and all clauses remain in effect in accordance with each other, should therefore be permitted to prevail. It brings peace between the different lists referred to in Schedule 7 of the Indian constitution. It is a standard rule of construction that when two clauses of the same law are in dispute with each other, that both of them should not stand combined, they should probably be interpreted so that both can be affected and that, even in the last resort, an understanding that makes either of them inoperative and obsolete should not be adopted.

OBJECTIVES

The Supreme Court set out five principles of the law of harmonious construction in the landmark case of ***CIT v. Hindustan Bulk Carriers***[3]**-**

1. A head-on collision with possibly conflicting provisions must be avoided by the courts and the conflicting provisions must be sorted out.

2. The provision of one section cannot be used to circumvent the provision of another section unless, in spite of all its efforts, the court is unable to find a way to resolve its differences.

3. In the absence of a full resolution between the gaps in the conflicting clauses, the courts must interpret them in such a way as to give the two clauses as much effect as possible.

[3] CIT v. Hindustan Bulk Carriers 2003 TAXLR 102.

4. Courts must also bear in mind that harmonious construction is not an understanding that reduces one clause to useless numbers or dead.

5. Harmonization is not the dissolution or making of any constitutional provision fruitless.

Cantonment Board, Mhow v. M.P. State Road Transport Corporation[4]**-**

A business wherein Section 6 of the Motor Vehicles Taxation Act of Madhya Pradesh, 1947 was translated, and interpreted. Section 6 forbids a municipal authority from implementing "a tax or license charge in respect of a tax or license charge."

The motor car under Section 3(1) of the Taxation Act authorizes the levying of a tax on an 'engine' Vehicles used or retained for service at the rates specified in Madhya Pradesh. Section 127(1) (iii) of the Municipal Act of 1961 authorizes the taxation of "vehicles approaching the limits of Municipality".

The Supreme Court held, on the basis of a comparison of the two Acts, that harmonious Construction of the two Acts, the prohibition relating to a levy on taxes in Section 6 of the Taxation Act Vehicles that could be levied pursuant to Section 3(1) and not the entry fee, used or retained for use which, under Section 127(1)(iii) of the Municipalities Act, could be levied by a municipality.

Sirsilk vs. Government of Andhra Pradesh[5]**-**

The Sirsilk Company had a dispute with the government and their employees. The issue was also referred to an Industrial Tribunal. After adjudicating it, the authority issued its award in September. 1956 and it was to be published in the Official Gazette of the government (Andhra Pradesh). In October of 1956, the corporation and the employees jointly asked the government that since they had come to an amicable resolution to resolve their disagreement, requesting the government to not to publish the award. The authority declined to consider the appeal of the parties, against whom the parties jointly lodged a writ application with the High Court, to issue an order to the government to not issue the award in a publication. The High Court held that it was obligatory for Section 17 and was not open to the government to

[4] Cantonment Board, Mhow v. M.P. State Road Transport Corporation AIR 1997 SC 2013.
[5] Sirsilk vs. Government of Andhra Pradesh AIR 1964 SC 160.

withhold the publication by the Industrial Tribunal of an award submitted to it. Therefore, the writ appeal was rejected by the High Court. This appeal was then filed in the Supreme Court by the parties.

The corporation and the workers argued that, because the parties signed a resolution that is binding under Section 18(1) of the Industrial Dispute Act, the government's award under section 17(1), has an imposing nature on the group, and should not be released. The resolution reached by the parties should be adhered to and industrial peace preserved. The Government on the other hand, said that, section 17(1) of the Industrial Dispute Act makes it obligatory for the government. Therefore, the award should be issued within 30 days of receipt of the award.

The object of the reference to the Tribunal is to settle disputes. Where a settlement is reached between the parties then the question of the award for publication that has been issued by the Tribunal appears to be absurd and, there is, in essence, no conflict left to be resolved by publication. Government should then exempt from granting such an award as there is no conflict to be settled by it. The Supreme Court found that there is a difference of opinion between sections 17 and 18 of the Act and it is vital to discover a remedy that preserves the primary spectrum of the Industrial Dispute Act.

The Supreme Court has held that the situation that exists in the present case is of an exceptional nature and raises questions between sections 17 & 18 and the only way to resolve the two contradictory clauses of such a case is to allow the Government to rescind the publication of the award and to permit the parties to continue with their arrangement. The reason provided by the supreme court was that while Sections 17 & 18 are mandatory in their element, despite the fact that the parties have already established their dispute by agreement in the present case, no dispute remains to be resolved by the issuance of the award. The Supreme Court instructed the government not to publish the award in compliance with Act 17(1). On the basis of the Welfare of the parties through legislation and, the Court took a progressive stance. And this appeal was approved.

The decision of the Supreme Court is a perfect example of how one section's rules can be applied without rendering meaningless or obsolete to provision of another section of the law. Settlement between the parties is granted higher priority under labour law than an award granted by a tribunal. In the present situation, the publication of the award was withdrawn

because it was an extenuating circumstance. The government's failure to publish the award ensured that the intent of the 1947 Industrial Disputes Act, i.e. to preserve cooperation between the parties, was not compromised and that the natural existence of Section 17 of the Act was not destroyed either. This case is an example of the implementation of the concept of harmonious construction in a situation where there is ambiguity between two provisions of the same statute.

Kesavananda Bharati Sripadagalvaru versus State of Kerala[6]**-**

The controversy as to whether fundamental rights triumph over the values of the Directive Principle of State Policies or vice versa and was also overcome by the Hon'ble Supreme Court by the application of the principle of harmonious construction. The Directive Standards are not law-enforceable. They are just state rules or directives, and when the state attempts to enforce them, a conflict can arise. The court struck down both the Constitutional Rights and the Directive Principles in this case, because the main object of the harmonious construction rule is that no clause or entry should lose its significance. The goal of the court was to strike a careful balance between an individual's interests and society's considerable needs or welfare. Subsequently, the scope of the very first clause of Article 31C was expanded in the 42nd amendment of the Constitution of India to include, inside its own competence, any legislation enforcing any of the DPSPs referred to in Part IV of the Constitution, and not just in Article 39[21](b) or (c).

MSM Sharma v Shri Krishna Sinha[7]**-**

The question before the Supreme Court was whether the constitutional right referred to in Article 19(1)[8] would triumph over Article 194(3)[9] of the Constitution, which emboldens the Legislative Assembly of the State to prohibit the freedom of speech and publication in the light of the powers, privileges and immunities of the Legislature of a State. Using the doctrine of harmonious construction, the Court decided that Article 19(1) must take precedence over Article 194(3), because the former is a general provision and the latter is a special provision. It used method of structuring the general provision and removing the particular provision.

[6] AIR 1973 SC 1461.
[7] MSM Sharma v Shri Krishna Sinha, AIR 1959 SC 395 (India).
[8] INDIA CONST. art. 19, cl. 1.
[9] INDIA CONST. art. 194, cl. 3.

METHODOLOGY

We can see from the above examples that the theory of harmonious construction includes the following four steps for its application:

1. That all the clauses which are inconsistent with each other or which are repugnant to each other must be in reference to the whole enactment in question, read as a whole.

2. Give both of them full impact and then decrease the dispute.

3. Select a broader and narrower scope of these two clauses from the two opposing clauses independently, and, deduct from the larger clause the limited and see the consequences.

4. If the outcome is as fair as harmonizing the two clauses and it gives its full effect separately, no further investigation is appropriate. When doing harmonization of this kind one thing to keep in mind is that the whole enactment is the product of the same body, i.e. the enactment and it is undoubtedly assumed alike with the legislature.

The legislature is aware of the enactment of the provisions of a statute entered into situationally to protect the parties and so, all the provisions enacted demand that their full effect be provided in scope.

CRITICAL ANALYSES AND CONCLUSION

The enactments created by the legislature lead to circumstances of uncertainty and are unforeseeable in nature. The law of interpretation of laws comes into play in such cases, and the regulations are designed to give them full effect. The doctrine of harmonious construction has allowed judges to easily understand the two argumentative laws and allowed to provide society at large with justice. It is also one of the most critical instruments in the hands of the judiciary when some reading of the laws is being performed. Since every provision of a statute has its own importance, the doctrine contributes enormously to the protection of the sense of those provisions, thus preserving the rights and interests of society as a whole. In conclusion, the sanctity of laws or all other provisions is covered by this doctrine. Any time there is a need for interpretation of a provision or legislation, the Judges cannot return to the parliament for consideration; thus, it becomes important for the judiciary to interpret them. In

addition, it is difficult for the parliament to draft a law that is fully correct or covers any element that is conceivable. Owing to human frailty, there is expected to be uncertainty, repugnance and redundancy. This calls for interpretation of the laws to be necessary. The Harmonious Construction Theory simplifies complicated problems and thereby accelerates the justice delivery process because "justice delayed is justice denied."

JUS corpus