

CRITICAL STUDY OF THE DOCTRINE OF HARMONIOUS CONSTRUCTION

Ipsita Rout¹

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 of occurrences when an unforeseen event may occur. But often, because of a scarcity of collective agreement in the decision-making house, it suggests that regulations through lawful ways can be best enforced if resolved on a scenario 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 the statute, the Courts of our country need to keep in mind basic positions for doing balanced justice.

This paper intends to scrutinize and understand the applicability of the rule of Harmonious Construction to understand its existence and its relevance in the legal system. The ideal way to illuminate the theory of any rule of interpretation of the 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 the 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 a methodology about the rule, and finally draw an analysis about the principle at the end.

Keywords: Harmonious Construction, Methodology, Ambiguity.

¹BA LLB, FOURTH YEAR, KIIT UNIVERSITY, BHUBANESWAR.

INTRODUCTION

Every person who lives in a community knows how important is the legal stand. It can be known 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 people living in groups and it is easily evident that they may get uncertain in terms and phrases. Very frequently, we observe the judiciary and its bearers busy unearthing the definition and addressing contradictions of those terms and phrases. Much of this has contributed to some features of understanding these legal provisions being created. We know there are the legislature, the executive, and the judiciary, and all three need to work in cohesion to get results that are required and aspired and needed to take the country forward. The role of interpretation of statutes comes into play and is of utmost importance to the judiciary incorrectly 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 this doctrine.

BREAKING DOWN THE DOCTRINE

The term harmonious construction is something which when constructed needs harmony or unity is achieved between different provisions of an enactment. If the terms of the contractual obligation contain 1 or more explanations and there is confusion about what understanding must dominate, then it is necessary to follow the sense under which the definitions best integrate with the given topic and purpose of the statute. The Theory is among the principal laws or concepts of India's legislative intent. It "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. To prevent any repugnance, the law should also be construed in such a way. This means that neither an anomaly should be

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

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 qauampereat*.

Such a construction, under which existing contradictions are eliminated and all clauses remain in effect by 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 SC gave 5 main considerations of the law of harmonious construction in *CIT v. H.B. 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. Parts of law should not be utilized to circumvent the needs of other law until, despite all its efforts, the court cant navigate a path to resolve its problems.
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.
4. Courts must also bear in mind that harmonious construction is not an understanding which annuls a clause or puts an end to their usage.

³CIT v. Hindustan Bulk Carriers 2003 TAXLR 102.

5. Harmonization isn't the dissolution or making of any constitutional provision fruitless.

Cantonment Board, Mhow v. M.P. State Road Transport Corporation⁴-

A business wherein Sec. 6 of the MVTA of Madhya Pradesh, 1947 forbids a municipal authority from implementing "a tax or license charge in respect of a tax or license charge."

The motor car under Sec. 3(1) of the Act gives the power of levying taxes on 'engine' Vehicles utilized or kept for service at the rates specified in Madhya Pradesh. Sec. 127(1) (iii) of the Municipal Act of 1961 authorizes the taxation of "vehicles approaching the limits of Municipality".

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

Sirsilk vs. Government of Andhra Pradesh⁵-

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 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 withhold the publication by the Industrial Tribunal of an award submitted to it. Therefore, the writ appeal was rejected by the High Court. After this, SC was approached.

The corp. and those who worked there argued because they signed a resolution that binds them under Sec. 18(1) of the Industrial Dispute Act, the government's award under section

⁴Cantonment Board, Mhow v. M.P. State Road Transport Corporation AIR 1997 SC 2013.

⁵Sirsilk vs. Government of Andhra Pradesh AIR 1964 SC 160.

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 said that, sec. 17(1) of the Act makes it obligatory for the government. Therefore, the award should be issued within thirty days.

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. The government should then exempt from granting such an award as there is no conflict to be settled by it. The SC got results 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 SC has held that the situation that exists in the present case is exceptional and raises questions between sec.s 17 & 18 and the only way to resolve the two contradictory clauses of such a case is to allow the Government to rescind the showing of the award and to permit the parties to continue with their arrangement. The reasoning provided by the supreme court was that while Sections 17 & 18 are compulsory in their element, even though those included having established their problems by agreement in the present case, no dispute remains to be solved by the issuance of getting something awarded. The SC instructed the government not to post the award in compliance with Act 17(1). Based on 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 eg. of how one provision of a certain law can be applied without rendering meaningless or obsolete to the provision of another section of the law. The settlement between the parties is granted higher priority under labour law than an award granted by a tribunal. In prevailing circumstances, the publication of the award was withdrawn because it was an extenuating circumstance. The government's failure to post the award ensures that the mindset of the 1947 I.D. Act, i.e to preserve cooperation b/w the people involved, was not compromised, and that the natural existence of Sec. 17 of it was not destroyed either. This is one that kind of sets a precedent for the implementation of the concept of harmonious construction in conditions where there is ambiguity between two provisions of the same statute.

Kesavananda Bharati v. the State of Kerala⁶-

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 competence, any legislation enforcing any of the DPSPs, and not just in Article 39[21](b) or (c).

MSM Sharma v Shri Krishna Sinha⁷-

Something that had to be answered immediately by the sc in this particular judgement was whether the constitutional right referred to in Article 19(1)⁸ would triumph over Article 194(3)⁹, which emboldens the L.A. of the State to stop the progress of the words and keeping them from spreading, in the light of the powers, privileges, and immunities of the Legislature of a State. Using the doctrine of harmonious construction, it was decided that Art. 19(1) must take precedence over Art. 194(3), because the former is a general provision and the latter is a special provision. It used a method of structuring the general provision and removing the particular provision.

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 about the whole enactment in question, read as a whole.
2. Give both of them full impact and then decrease the dispute.

⁶AIR 1973 SC 1461.

⁷MSM Sharma v Shri Krishna Sinha, AIR 1959 SC 395 (India).

⁸INDIA CONST. art. 19, cl. 1.

⁹INDIA CONST. art. 194, cl. 3.

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 while granting full separation then doing no continuous investigation is appropriate. 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. 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 gives freedom to properly know 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. With one and all facets of a statute is imp., the doctrine contributes enormously to the protection of these. In conclusion, the sanctity of laws or all other provisions is covered by this doctrine. Whatever the condition, whatever the scenario, this golden thing helps in resolving and maintain a balance and especially because the Judges, sometimes, cannot return some docs. to the parliament for consideration; thus, it becomes important for the judiciary to have an understanding of it. Also, it is difficult to accommodate or even make a law that is fully correct or folds within itself, any conceivable element. 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."