

THE DOCTRINE OF HARMONIOUS CONSTRUCTION IN THE INTERPRETATION AND CONSTRUCTION OF STATUTES

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Abstract:

Even when the legislature drafts laws with utmost care and precision, keeping in mind all the present situations and the future scenarios that might arise, often there are times when an unexpected situation might come up. But sometimes, the legislature purposely leaves lacunae in the law, either because of lack of common consensus in the Parliament or because it feels that the legal policy can be implemented better if decided on a case by case basis. Because of these reasons, a need for interpretation and construction of statutes and their provisions arises. There are many rules for the judiciary to adhere to during the interpretation and construction of statutes and the doctrine of the rule of harmonious construction is one of them. This essay attempts to explain the concept and principles of the doctrine of harmonious construction and illustrate its use with many examples.

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Introduction:

“No law or ordinance is mightier than understanding.”

- Plato

Every individual living in a society understands the value of law. Law may be understood as a tool to keep the society peaceful and problem free and to prevent conflicts between people by regulating their behavior. The laws enacted to regulate the society are drafted by legal experts and it can very well be anticipated that many of the laws enacted will not be specific and will contain ambiguous words and expressions. Quite often we find that the courts and lawyers are busy in unfolding the meaning of such words and expressions and in resolving inconsistencies. All this has led to the formulation of certain rules of interpretation of statutes.

We are all aware that the government has three wings, namely, the legislature, the executive and the judiciary. The role of interpretation of statutes comes into play and is of utmost importance for the judiciary to render justice correctly by interpreting the statutes in the way the situation demands.

This article will focus on the rule of doctrine of harmonious construction in the interpretation and construction of statutes.

Doctrine of Harmonious Construction explained:

According to this rule, a statute should be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such an interpretation is beneficial in avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. The five main principles of this rule are:

- 1) The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.²

² *CIT v. Hindustan Bulk Carriers*, (2003) 3 SCC 57, p. 74.

- 2) 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.³
- 3) 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.⁴
- 4) Courts must also keep in mind that interpretation that reduces one provision to a useless number or dead is not harmonious construction.⁵
- 5) To harmonize is not to destroy any statutory provision or to render it fruitless.⁶

A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one so as to exclude the more specific.⁷ The question as to the relative nature of the provisions, general or special, has to be determined with reference to the area and extent of their application either generally or specially in particular situations.⁸ This principle is expressed in the maxims *Generalia specialibus non derogant*, and *Generalia specialibus derogant*. The former means that general things do not derogate from special things and the latter means that special things derogate from general things.⁹ The rule of harmonious construction can also be used for resolving a conflict between a provision in the Act and a rule made under the Act.¹⁰ Further this principle is also used to resolve a conflict between two different Acts¹¹ and in the making of

³ *Ibid.*

⁴ *Sultana Begum v. Premchand Jain*, AIR 1997 SC 1006, pp. 1009, 1010.

⁵ *CIT v. Hindustan Bulk Carriers*, (2003) 3 SCC 57, p. 74.

⁶ *Ibid.*

⁷ *State of U.P. v. Renusagar Power Co.*, AIR 1988 SC 1737, p. 1751.

⁸ *Collector of Central Excise Jaipur v. Raghavar (India) Ltd.*, JT 2000 (7) SC 99, p. 111.

⁹ OSBORN'S Law Dictionary.

¹⁰ *Collector of Central Excise Jaipur v. Raghavar (India) Ltd.*, JT 2000 (7) SC 99, p. 111 (Section 11A of the Central Excise Act and Rule 57-I of the Rules).

¹¹ *Iridium India Telecom Ltd. v. Motorola Inc.*, (2005) 2 SCC 145, pp. 163, 164 (Letters Patent and rules made under it constitute special law for the High Court concerned and are not displaced by the general provisions of the Civil Procedure Code.)

statutory rules¹² and statutory orders¹³. But in case there are two remedies for a situation, one general and one specific, and both are inconsistent with each other, they continue to hold good for the concerned person to choose from, until he elects one of them.¹⁴

Examples from case laws:

In *Venkataramana Devaru v. State of Mysore*¹⁵, the Supreme Court applied the rule of harmonious construction in resolving a conflict between Articles 25(2)(b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Article 25(2)(b)].

In *M.S.M. Sharma v. Krishna Sinha*¹⁶, the same rule was applied to resolve the conflict between Articles 19(1)(a) and 194(3) of the Constitution and it was held that the right of freedom of speech guaranteed under Article 19(1)(a) is the read as subject to powers, privileges and immunities of a House of the Legislature which are those of the House of Commons of the United Kingdom as declared by the latter part of Article 194(3).

But, with regard to the above judgment, in *Special Reference No. 1 of 1964*¹⁷, it was decided that Article 194(3) is subordinate to Articles 21, 32, 211 and 226. This conclusion was also reached by recourse to the rule of harmonious construction.

The principle of harmonious construction has been applied in a vast number of cases in the construction of apparently conflicting legislative entries in Schedule VII of the Government of India Act, 1935 and the Constitution.¹⁸

¹² *Jagdish Singh v. Lt. Governor, Delhi*, AIR 1997 SC 2239, p. 2242.

¹³ *J.K. Cotton Spinning and Weaving Mills Ltd. v. State of U.P.*, AIR 1961 SC 1170.

¹⁴ *Bihar State Co-operative Marketing Union Ltd. v. Uma Shankar Saran*, AIR 1993 SC 1222, p. 1224.

¹⁵ AIR 1958 SC 255.

¹⁶ AIR 1959 SC 395, p. 410.

¹⁷ AIR 1965 SC 745, p. 761 (para 36).

An important question as to the power of courts to decide a question of privilege concerning documents relating to affairs of State was answered by the Supreme Court by harmonizing Sections 123 and 162 of the Indian Evidence Act, 1872.¹⁹ The affidavit of the Head of the Department or the Minister is not conclusive that a particular document relates to the affairs of the State. The opinion of the Head of the Department or the Minister is open to judicial review and if necessary the court can inspect the document. In deciding upon the question of privilege the court has to balance the public interest which demands the withholding of the document against the public interest in the administration of justice that the courts should have fullest possible access to all relevant materials²⁰ and in the citizen's right of information under Article 19(1)(a) of the Constitution.²¹

The principle of harmonious construction is also applicable in case of construction of provisions of subordinate legislation.

An interesting question arose in the case of *Sirsilk Ltd. v. Govt. of Andhra Pradesh*²². Certain disputes between the employer and the workmen were referred to an industrial tribunal. After adjudication, the tribunal sent its award to the government for publication. However, before the award was published, the parties to the dispute came to a settlement and accordingly, wrote a letter to the government jointly, intimating the fact that the dispute had been settled; hence the award shall not be published.

On the government's refusal to withhold the publication, the employer approached the High Court for a writ or direction to the government to withhold the publication.

¹⁸ *In re, C.P. & Berar Motor Spirit and Lubricants Taxation Act*, AIR 1939 FC 1, p. 5; *G.G. in Council v. Province of Madras*, AIR 1945 PC 98, pp. 100, 101; *Calcutta Gas (Proprietary) Ltd. v. State of W.B.*, AIR 1962 SC 1044, p. 1050; *Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (Pvt.) Ltd.*, AIR 1963 SC 90, p. 95.

¹⁹ *State of U.P. v. Raj Narain*, AIR 1975 SC 865; *S.P. Gupta v. President of India*, AIR 1982 SC 149; *Doypack Systems Pvt. Ltd. v. Union of India*, AIR 1988 SC 782, pp. 797, 798; *R.K. Jain v. U.O.I.*, AIR 1993 SC 1769, pp. 1774, 1788.

²⁰ *Ibid.*

²¹ *Peoples Union for Civil Liberties v. U.O.I.*, AIR 2004 SC 1442. (Government order for non- disclosure of the report of the Atomic Energy Regulatory Board Privilege was held justified).

²² AIR 1964 SC 160.

The High Court rejected the writ petition as well as the writ arising therefrom.

The parties then appealed by special leave to the Supreme Court.

The main contention of the appellants was that Section 17 of the Industrial Disputes Act, 1947 is directory in nature and not mandatory.

A mandatory statute or statutory provision is one which must be followed in order that the proceeding to which it relates may be valid.²³ A directory statute or provision is one which need not be complied with in order that the proceeding to which it partakes may be valid.²⁴ It is not always easy to determine whether a particular statute is mandatory or directory. If the provision involved relates to some immaterial matter, where compliance is a matter of convenience rather than substance, or directs certain actions with a view to the proper, orderly, and prompt conduct of public business, the provision may be regarded as directory, but where it directs, acts or the proceedings are required to be done in a certain way and indicates that a compliance of such provision is essential to the validity of the act of proceeding, or requires some antecedent and prerequisite conditions to exist prior to the exercise of the power, or be performed before certain other powers can be exercised, the statute may be regarded as mandatory.²⁵

Ordinarily the words ‘shall’ and ‘must’ are mandatory, and the word ‘may’ is directory, although they are often used interchangeably in legislation.²⁶

The language of Section 17 was observed by the court. Section 17(1) states, ‘Every award *shall* within a period of thirty days from the date of its receipt by the appropriate government be published in such manner as the appropriate government thinks fit’.

The use of the word ‘shall’, the court observed, is a pointer to Section 17(1) being mandatory in nature.

Section 17(2) states, ‘Award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever.

²³ *Kavanaugh v. Flash*, 74 Fed. (2435).

²⁴ *Jones v. Steele*, 210 K.Y. 205, 275 S.W. 790.

²⁵ *Hurford v. Omaha*, 4 Neb. 336; *Crawford's Statutory Construction*, Section 261, p. 515.

²⁶ *Manufacturers' Exhibition Building Co. v. Landay*, 219 III. 168, 76 N.E. 146.

Section 17A, of the Industrial Disputes Act, provides that the award under Section 17 becomes enforceable after thirty days of publication, though the government may declare certain contingencies in which it may not be enforceable.

The court read Section 17 and Section 17A together and declared that the intention behind Section 17 is that the duty cast on the government to publish the award is mandatory and not directory. And hence, the contention of the appellants did not hold good.

But on further observation, the court directed its attention to Section 18 of the Industrial Disputes Act. Section 18 (1) provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Section 18 (2) provides that an award which has become enforceable shall be binding on all parties to the industrial dispute and others.

The second contention of the appellant was that the main purpose of the Industrial Disputes Act is to maintain peace between the parties in an industrial concern. Therefore in the present case, since the parties have already come to a settlement under Section 18 (1), the dispute between them comes to an end. Thus, the settlement arrived at should be respected and industrial peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement.

The court then referred to the case of *State of Bihar v. D.N. Ganguly*²⁷ where a settlement had been arrived at between the parties and the industrial dispute was pending before the tribunal. The only remedy for giving effect to such a settlement would be to cancel the reference. The decision given in this case directed the tribunal to make the award in accordance with the settlement arrived at between the parties.

The Supreme Court observed that in the present case, there is a conflict between settlement under Section 18 and the duty of the government under Section 17 of the Industrial Disputes Act, 1947. The reference to the tribunal is for the purpose of resolving the dispute that may have arisen between the employers and the workmen. Where a settlement is arrived at between the parties to the dispute before the tribunal, after the award has been submitted to the government but before

²⁷ 1958 AIR 1018.

its publication, there is no dispute left to be resolved by publication. So the government should refrain from publishing the award.

Wanchoo J. observed, ‘It is clear, therefore, reading Section 17 and Section 17A together that the intention behind Section 17 (1) is that a duty is cast on the government to publish the award within 30 days of its receipt and the provision for publication is mandatory and not merely directory.’

Though the Supreme Court maintained that Section 17 (1) is mandatory, and ordinarily the government has to publish an award sent to it by the tribunal, in special circumstances of the case and with a view to avoid a conflict between a settlement binding under Section 18 (1) and an award binding under Section 18 (3) on publication, it held that the only solution is to withhold the publication of the award as this would not in any way affect the mandatory provision of Section 17 of the Industrial Disputes Act, 1947.

Thus, in the above case, the principle of harmonious construction was employed. The Supreme Court’s decision is a fine example of how the provisions of one section can be enforced without rendering the provision of another section of the statute dead or useless. Under labour law, settlement between the parties is given more importance than an award announced by a tribunal. In the present case, since it was an exceptional circumstance, the publication of the award was withheld. The restrain on the government to not publish the award ensured that the objective of the Industrial Disputes Act, 1947 *i.e.* to maintain peace between the parties, was not defeated and the mandatory nature of Section 17 of the Act was also not destroyed. This case is an example of the use of the principle of harmonious construction in a situation where two provisions in the same statute are in conflict with each other.

A further example can be found in *Cantonment Board, Mhow v. M.P. State Road Transport Corporation*²⁸, where Section 6 of the Madhya Pradesh Motor Vehicles Taxation Act, 1947 was interpreted. Section 6 prohibits a local authority to impose “a tax toll or license fee in respect of a motor vehicle”. Section 3(1) of the Taxation Act authorizes imposition of a tax on “motor vehicles used or kept for use” at the specified rates. Section 127(1)(iii) of the Madhya Pradesh Municipalities Act, 1961 authorizes imposition of tax on “vehicles entering the limits of the

²⁸ AIR 1997 SC 2013, p. 2019.

municipality". On a comparison of the two Acts, the Supreme Court held that on harmonious construction of the two Acts, the prohibition in Section 6 of the Taxation Act related to a tax on vehicles used or kept for use which could be levied under Section 3(1) and not the entry tax which could be imposed by a municipality under Section 127(1)(iii) of the Municipalities Act.

Steps for employing the doctrine of harmonious construction:

From the above illustrations we can see that the principle of harmonious construction for its application requires the following four steps:

- (i) That both the provisions which are conflicting or are repugnant to each other must be read as a whole with reference to the entire enactment in question.
- (ii) Give full effect to both of them and then reduce the conflict.
- (iii) Out of the two conflicting provisions choose wider and narrower scope of these two separately and,
- (iv) From the wider provision, subtract the narrow and see the consequence. If the consequence is as reasonable as to harmonize both the provisions and it gives their full effect separately, no further inquiry is required. While doing such harmonization one thing must be kept in mind that the entire enactment is the product of the same author, *i.e.*, the legislature and it is certainly supposed that the legislature while enacting the provisions of a statute was fully alert about the situation which entered to cover and therefore all provisions enacted require to be given their full effect in scope.

When one section of an Act takes away what another confers, a *non- obstante clause* must be used.²⁹ In the absence of a non- obstante clause in such a case, a head on clash will occur. It is the duty of the court to avoid such situations and whenever it is possible to do so, the conflicting provisions should be construed in such a manner so that they harmonize. The Court must try to find out the extent to which the legislature had intended to give one provision an overriding

²⁹ *A.G. Varadarajulu v. State of Tamil Nadu*, AIR 1998 SC 1388.

effect over another provision. In some English cases³⁰, it has been suggested that if two contradictory sections of an Act cannot be reconciled, then the last section must prevail, but this is not a widely accepted rule of the principle of harmonious construction.

Conclusion:

Statutes are drafted by the legislature and there is every possibility of situations of ambiguity, conflicts, anomalies, absurdities, hardships, repugnancy, redundancy etc. In such situations, the rules of interpretation of statutes come into play and the provisions are construed so as to give maximum effect to them and to render justice to the situation at hand. The principle of harmonious construction plays a very important role in interpreting statutes and is used in abundance of cases. It helps in simplifying complicated issues and makes delivering judgments much easier. Therefore, like the many rules of interpretation of statutes, the importance of the rule of harmonious construction is also understood and felt by the judiciary.

It was rightly said by George Washington, ‘The administration of justice is the firmest pillar of the government.’ Thus, in keeping with this thought, the judiciary should interpret the statutes properly and intelligently apply the rules for interpretation of statutes to render quick justice to the citizens of the country.

³⁰ *Castrige v. Page*, (1853) 138 ER 1278; *Eastbourne Corporation v. Fortes Ltd.*, (1959) 2 All ER 102 CA; *King v. Dominion Engineering Co. Ltd.*, AIR 1947 PV 94.

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