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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUDICIAL PROCESS -DOCTRINE OF HARMONIOUS CONSTRUCTION

AUTHORED BY - ARRTHI M¹

Abstract

The Indian judicial system operates within a complex framework of laws, statutes, and precedents, often presenting challenges in interpretation and application. One of the fundamental principles guiding the judiciary is the pursuit of harmonious construction, wherein laws are interpreted and applied in a manner that ensures consistency, coherence, and fairness. This abstract explores the concept of harmonious construction within the Indian judicial process, examining its significance, challenges, and implications.

Keywords

Harmonious construction, Indian judicial system, Legal interpretation, Judicial discretion, Legal consistency

1. Introduction

In the context of India's vast and diverse legal landscape, the concept of harmonious construction holds immense significance. Given the multifaceted nature of Indian society, laws often intersect, presenting judges with the challenge of reconciling conflicting provisions while upholding the principles of justice, equity, and constitutional validity. Consequently, the application of harmonious construction becomes indispensable in fostering legal certainty, stability, and the rule of law.

This research analysis delves into the intricacies of harmonious construction within the Indian judicial process. It aims to explore the theoretical underpinnings of harmonious construction, its historical evolution, and its practical application in resolving legal disputes. By examining landmark cases, legislative enactments, and judicial pronouncements, this study seeks to unravel the nuanced methods

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employed by Indian courts to harmonize conflicting legal provisions while preserving the integrity of the legal system.

Objective

The primary objective of this study is to analyze the concept of harmonious construction within the framework of the judicial process. The study aims to explore how courts interpret statutes and legal provisions in a manner that promotes coherence, consistency, and legislative intent. It seeks to understand the significance of harmonious construction in maintaining the integrity of the legal system and ensuring just outcomes.

Scope

The scope of this study encompasses an examination of the theoretical foundations of harmonious construction, its historical development, and its application in judicial decisions across different jurisdictions. It will explore various principles and methods employed by courts in achieving harmonization of conflicting provisions within statutes. The study will also delve into case law examples, comparative analyses, and scholarly discussions to elucidate the practical implications and limitations of harmonious construction in the judicial process.

Research question

1. How does harmonious construction contribute to maintaining consistency and coherence in legal decisions within the Indian judicial system?
2. What role do judges play in applying harmonious construction principles to reconcile conflicting legal provisions?
3. What are the important Principles of Harmonious Construction?

Hypothesis

Does the consistent application of harmonious construction lead to more predictable and equitable judicial outcomes?

Can harmonious construction serve as a tool for enhancing access to justice and promoting legal certainty?

Literature review

1) Title: The Doctrine of Harmonious Construction in the Interpretation and Construction of Statutes by Ishani Acharya and Rahul Das²

The article begins by delineating the historical evolution of the Doctrine of Harmonious Construction, tracing its roots back to ancient legal systems and its subsequent refinement in modern legal jurisprudence. The authors adeptly illustrate how this principle has been embraced across various legal jurisdictions globally, underscoring its universal applicability and enduring relevance. Furthermore, Acharya and Das meticulously examine the theoretical underpinnings of the doctrine, delving into its conceptual framework and rationale. They expound upon the inherent tension between statutory provisions and the imperative to construe them harmoniously to advance the legislative intent. Through lucid exposition, they elucidate the balancing act courts undertake in navigating statutory ambiguities while upholding the legislative purpose. The article also offers a nuanced discussion on the practical application of the Doctrine of Harmonious Construction, elucidating its operation in diverse legal contexts.

2) Title: Interpretation of Statutes Harmonious Construction - A Critical Analysis by Devvrath Anand³

The article begins by contextualizing the importance of statutory interpretation within the broader framework of legal jurisprudence. Anand adeptly navigates through the historical evolution of statutory interpretation, tracing its development from antiquity to the modern legal landscape. By grounding the discussion in historical context, Anand lays a solid foundation for his subsequent analysis of the Doctrine of Harmonious Construction.

Anand's critical analysis delves into the theoretical underpinnings of the doctrine, interrogating its conceptual framework and underlying principles. He rigorously examines the tension between textual fidelity and legislative intent, highlighting the inherent challenges in reconciling conflicting statutory provisions. Through meticulous scholarship, Anand elucidates the intricate dynamics at play in statutory interpretation, offering readers a deeper appreciation of the doctrinal complexities.

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2. Background and Context

The concept of harmonious construction, also known as "*ut res magis valeat quam pereat*" (let the thing be more effective rather than perish), is a fundamental principle of statutory interpretation in Indian jurisprudence. It is rooted in the Indian legal system's aim to uphold legislative intent and promote coherence in law.

While there isn't a specific case credited with the origin of harmonious construction in India, the principle has been consistently applied by Indian courts across various judgments. Court interpretations of a variety of cases are where the Doctrine of Harmonious Construction first emerged in the case involving the C. P. and Berar Act (1939)⁴, the court addressed a conflict between an entry from List I and an entry from List II of the Indian Constitution and interpreted them in a harmonious manner. The issue at hand was whether a provincial legislature's tax on the sale of oil by the manufacturer should be classified as an excise duty. If so, only the union legislature would have the authority to impose such a tax, whereas a sales tax could be levied by the provincial legislature.

The Supreme Court held that it would be odd for the Union to have exclusive authority to tax retail sales when the province had the power to legislate on trade, commerce, production, supply, and distribution of goods within its jurisdiction. The court concluded that the tax was a sales tax and not an excise duty, and therefore, the Act was not beyond the provincial legislature's authority. Furthermore, the court found no conflict or overlap between the two entries that would necessitate the use of a non-obstante clause. Its inception can be linked to the Indian Constitution's first amendment, namely to the famous case of *Sri Shankari Prasad Singh Deo v. Union of India*⁵. The Indian Constitution's Part IV (Directive Principles of State Policy) and Part III (Fundamental Rights) came into conflict at the core of this case.

In 1954 Supreme Court case of *State of Bombay v. F.N. Balsara*⁶, the Supreme Court emphasized the importance of interpreting statutes in a manner that avoids absurd or unjust results and promotes the object and purpose of the legislation.

⁴ The Central Provinces and Berar Vidya Mandir Act, 1939

⁵ AIR 1951 SC 458

⁶ AIR 1951 SC 318

To settle the dispute in this instance, the court used the Harmonious Construction Rule. It came to the conclusion that Fundamental Rights, which are protections against the State, might be restricted in some situations and changed by Parliament to conform to the terms of the Constitution.

Since then, harmonious construction has been repeatedly invoked and applied in numerous Indian judicial decisions, serving as a guiding principle for statutory interpretation. It continues to be a cornerstone of Indian legal reasoning, ensuring consistency and coherence in the interpretation of laws.

The case of *Kesavananda Bharati v State of Kerala*⁷ addressed the debate regarding whether fundamental rights or Directive Principles of State Policy should take precedence. The Supreme Court resolved the issue by applying the principle of harmonious construction, which aims to maintain a balance between the two. Directive Principles are not legally enforceable but serve as guiding principles for the state; however, conflicts may arise when the state enforces them. In this case, the court struck down elements from both constitutional rights and Directive Principles, emphasizing the importance of preserving the significance of each clause or provision.

The court aimed to balance individual rights with the broader welfare of society. Following this case, the scope of Article 31C was expanded in the 42nd Amendment of the Indian Constitution to encompass any law aimed at implementing the Directive Principles of State Policy in Part IV, not just those in Article 39(b) or (c).

3. Definition of Harmonious Construction

According to this principle, when interpreting a statute, its provisions should not be considered individually but as a cohesive whole to eliminate any conflicts or contradictions. Courts should strive to prevent clashes between provisions and interpret them in a way that harmonizes their meanings. If there are irreconcilable differences, courts should interpret the provisions to give effect to both as much as feasible

⁷ (1973) 4 SCC 225

4. Principles that Govern the Doctrine of Harmonious Construction

In the landmark case of *Commissioner of Income Tax v. M/S Hindustan Bulk Carriers*⁸, the Supreme Court established five fundamental principles governing the rule of harmonious construction:

1. Avoidance of Conflicts: Courts should exert every effort to prevent conflicts between provisions and endeavor to interpret them in a manner that harmonizes their meaning. This principle emphasizes the importance of coherence and consistency in statutory interpretation, promoting a holistic understanding of legislative intent.
2. Presumption against Nullification: A provision in one section of the law should not be used to nullify or render ineffective a provision found in another section unless reconciliation is genuinely impossible despite diligent effort. This principle underscores the presumption of validity and effectiveness accorded to legislative provisions, urging courts to prioritize reconciliation over nullification.
3. Maximization of Effectiveness: In instances where complete reconciliation of inconsistencies between provisions is unattainable, courts must strive to interpret them in a manner that gives effect to both provisions to the greatest extent possible. This principle reflects the overarching goal of statutory interpretation to give effect to legislative intent while minimizing conflicts and redundancies.
4. Avoidance of Redundancy: Courts must be vigilant to avoid interpretations that render any provision redundant or meaningless. This principle highlights the imperative to preserve the substantive content of statutory provisions and to avoid interpretations that diminish their efficacy or significance.
5. Preservation of Statutory Integrity: Harmonizing contradictory provisions entails preserving and not destroying any statutory provision or rendering it ineffective. This principle underscores the importance of maintaining the integrity and coherence of the statutory framework, ensuring that each provision retains its intended significance and purpose.

5. Steps to Implementing the Doctrine of Harmonious Construction

The steps to apply the principle of harmonious construction are as follows:

1. Comprehensive Reading: Examine both conflicting provisions in the context of the entire enactment, considering the document as a whole.

⁸ (2003) 3 SCC 57

2. Maximize Effectiveness: Strive to give full effect to both provisions, aiming to minimize any conflict.
3. Determine Scope: Assess the scope of each provision, determining which has a broader application and which has a narrower application.
4. Narrowing the Broader Provision: Subtract the narrower provision from the broader one to analyze the consequences. If the outcome maintains the integrity of both provisions, no further analysis is required.

When one section of a law contradicts another, a non-obstante clause may be necessary to resolve the conflict.⁹ Without such a clause, a direct clash can occur, which the court should seek to avoid. Instead, the court should interpret conflicting provisions in a way that aligns them. The court should also consider the legislature's intent in determining whether one provision should take precedence over another.

In English legal cases¹⁰, there is a suggestion that if two contradictory sections cannot be harmonized, the most recent section should take priority. However, this is not a broadly accepted approach within the principle of harmonious construction.

7. Methods and Approaches to Harmonious Construction

Harmonious construction, also known as reconciliatory interpretation, involves reconciling conflicting provisions within statutes to give effect to the legislative intent as a whole. Several methods and approaches are employed by courts to achieve harmonious construction. Here are some of them:

1. Literal Interpretation: Courts may begin with a literal interpretation of the statutory language, giving effect to the plain meaning of the words used by the legislature. This approach is the starting point for statutory interpretation and helps establish the foundation for harmonizing conflicting provisions.
2. Contextual Analysis: Courts examine the context surrounding the statute, including its purpose, objectives, and legislative history, to discern the broader intent behind the enactment.

⁹ *A.G. Varadarajulu v. State of Tamil Nadu*, AIR 1998 SC 1388.

¹⁰ *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.

Understanding the legislative context allows courts to interpret conflicting provisions in a manner that advances the overarching legislative purpose.

3. Doctrine of *Ejusdem Generis*: Under this doctrine, when specific words in a statute are followed by general words, the general words are construed to be limited to the same kind or class as the specific words. This approach helps harmonize provisions by ensuring that general terms are not interpreted in a manner inconsistent with specific terms.
4. Doctrine of *Noscitur a Sociis*: This doctrine, meaning "it is known by its associates," suggests that the meaning of a word or phrase is determined by the context in which it is used. By considering the surrounding words and phrases in a statute, courts can interpret ambiguous provisions in a manner consistent with the overall statutory scheme.
5. Harmonizing Presumptions: Courts may apply presumptions such as the presumption against redundancy or the presumption against absurdity to harmonize conflicting provisions. These presumptions guide courts in interpreting statutes in a manner that avoids rendering any provision meaningless or leading to unreasonable results.
6. Maxim *Ut Res Magis Valeat Quam Pereat*: This Latin maxim translates to "let the thing be more effective than perish." It emphasizes the importance of interpreting statutes in a manner that gives effect to the legislative intent rather than rendering the statute ineffective. Courts may apply this maxim to harmonize conflicting provisions and prevent the nullification of legislative purpose.
7. Severability Doctrine: When a statute contains conflicting provisions that cannot be reconciled through harmonious construction, courts may employ the severability doctrine. This doctrine allows courts to sever or invalidate the conflicting provision while preserving the remainder of the statute to the extent possible.
8. Purpose-driven Interpretation: Courts may adopt a purpose-driven approach, focusing on the underlying objectives and policy considerations behind the statute. By identifying and prioritizing the legislative purpose, courts can interpret conflicting provisions in a manner that advances the overall legislative intent.

8. Concordia Legum: Latin Maxims in Harmonious Construction

The Latin maxim "*Generalia specialibus non derogant*" signifies that specific provisions take precedence over general provisions when they conflict. Essentially, in cases where two statutes clash, the later one supersedes the earlier one. It's insufficient to assume that a previous or specific law is

indirectly repealed or altered solely because of the presence of general words in a later law. The later, more general law prevails over the earlier, more specific one if two conditions are met: first, if the provisions are contradictory, and second, if the later law explicitly refers to the earlier enactment.

On the other hand, "*Generalibus specialia derogant*" means that specific provisions outweigh general ones. If a specific provision exists on a particular matter, it takes precedence over any general provisions concerning the same matter. For instance, in the case of *Vinay Kumar Singh v. Bihar State Electricity Board* (2003)¹¹, the Patna High Court held that Article 351 of the Constitution, which deals with the development of Hindi, is a general provision. In contrast, Article 348 specifically addresses the language to be used in the Supreme Court and high courts. Therefore, the specific provision of Article 348 takes precedence, rendering Article 351 inapplicable.

9. 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.

10. Harmonizing International Law

The Supreme Court of India has incorporated international law into domestic law¹² primarily through its judgments, using the doctrine of harmonious construction to align international and domestic legal frameworks. In the landmark case *A.D.M. Jabalpur*¹³, the court acknowledged the dominance of domestic law while emphasizing that it should be interpreted to harmonize with the state's

¹¹ 2003 (2) BLJR972

¹² The Constitution of India, art. 253

¹³ *ADM Jabalpur vs Shivkant Shukla* (1976) 2 SCC 521

international obligations. Similarly, in *Maganbhai*¹⁴, the court aimed to rectify constitutional gaps and equip the state with international law tools through a balanced interpretation of both legal systems.

In the *Gramophone Company case*¹⁵, the court asserted that international law could be integrated into domestic law without explicit enabling legislation if it does not conflict with domestic laws. In the absence of such conflict, international law is deemed effective in India. The court also highlighted the importance of jointly interpreting international conventions like the ICCPR with domestic laws, promoting progressive jurisprudence.

In cases such as *Visakha*¹⁶ and *Safai Karamchhari Andolan*¹⁷, the Supreme Court affirmed that conventions like CEDAW and CERD would be part of Indian domestic law unless conflicting domestic laws are present. In *Puttaswamy*¹⁸, the court stressed the presumption of compatibility between international and domestic laws, with domestic law prevailing in cases of irreconcilable conflict.

In *Shayara Bano*¹⁹, the court ruled that domestic laws, including Muslim personal laws, would take precedence over conflicting international treaties such as ICESCR. The Supreme Court applied the doctrine of harmonious construction not only to international treaty law but also to customary international law. In *Ram Jethmalani v. Union of India*²⁰, the court recognized the VCLT as a guiding principle for interpretation and acknowledged that customary international law could be incorporated into India, even if India is not a party to it.

The court has generally avoided the monist-dualist debate in its judgments, preferring to accept international law principles and interpret domestic law in a way that aligns with these principles. For instance, in *Vellore Citizens*²¹, the court integrated sustainable development principles such as the

¹⁴ *Maganbhai Ishwarbhai Patel Vs. Union of India & ANR* (1969) INSC 4

¹⁵ *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey and Ors* 1984 AIR 667

¹⁶ *Vishakha and others v State of Rajasthan* AIR 1997 SC 3011

¹⁷ *Safai Karmachari Andolan v. Union of India* 2014 LAB IC 1949

¹⁸ *Justice K. S. Puttaswamy (Retd.) vs. Union of India* (2017) 10 SCC 1

¹⁹ *Shayara bano vs Union of India* AIR 2017 9 SCC 1 (SC)

²⁰ (1984) 2 SCALE 214

²¹ *Vellore Citizens Welfare Forum vs Union of India & Ors* (1996) 5 SCC 647

"precautionary principle" and the "polluter pays principle" into domestic law. However, when international law conflicts with Indian municipal law without scope for harmonization, the court may reject its application, as seen in *Mohamad Salimullah*²² concerning the principle of non-refoulment. This is how the Supreme Court of India has applied the doctrine of harmonious construction to international law in India.

10.1 The Impact of Integrating International Law into Domestic Frameworks

The Supreme Court of India has used the doctrine of harmonious construction in the context of international law despite Article 253 establishing a dualist system where international law only becomes part of domestic law through enabling legislation. This approach is typically employed when there is a conflict between Union and State laws, and the Court appears to have likened such conflicts to those between domestic and international law, using similar interpretative methods.

While this application of the doctrine can expand the range of fundamental rights available to citizens, it may also diminish the strength of constitutional provisions and established judicial practices. Historically, both the Supreme Court and the Legislature have followed the dualist approach, where international law is incorporated through enabling legislation. However, the Court's recent shift towards a monist approach and the incorporation principle signifies a departure from traditional practice.

This shift towards monism raises various concerns, including potential opacity in the international law decision-making process, imbalances in negotiating power among parties, and the risk of internalizing international law without adequate parliamentary scrutiny and executive accountability. These issues may have significant implications for the application of international law in India.

11. Conclusion

Harmonious construction plays a pivotal role in maintaining consistency and coherence within the Indian judicial system by ensuring that different legal provisions are interpreted in a manner that aligns them with one another. By resolving apparent contradictions between laws, the judiciary can preserve the integrity of the legal system and uphold the fundamental principles enshrined in the

²² *Mohammad Salimullah vs Union of India* AIR 2021 SC 1789

Constitution. This approach helps maintain a stable and predictable legal environment. Judges play a central role in applying harmonious construction principles by interpreting laws in a manner that reconciles conflicting provisions. Their responsibility involves analyzing the intent and context of various legal texts to find common ground, thereby ensuring that the different laws work together cohesively. By employing this interpretative approach, judges can uphold the values and objectives of the legal system, balancing individual rights with societal needs. The consistent application of harmonious construction can lead to more predictable and equitable judicial outcomes by providing a clear interpretative framework for legal decision-making. This approach helps establish precedents and legal standards that guide future decisions, ensuring that similar cases are treated alike. As a result, it contributes to fairness and uniformity in the application of the law. Harmonious construction can enhance access to justice and promote legal certainty by clarifying the meaning and application of laws. By interpreting legal provisions in a way that resolves conflicts and aligns them with constitutional principles, the judiciary can provide clearer guidance to individuals and legal practitioners. This, in turn, can reduce ambiguity and disputes, making the legal system more accessible and reliable for all parties involved.

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