



JUDICIAL APPROACH TOWARDS THE RULE OF HARMONIOUS CONSTRUCTION IN INDIA

By *Upasana Kalgotra*
Advocate

INTRODUCTION

“Laws are made for men of ordinary understanding and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties which may make anything mean everything or nothing is pleasure.”

Thomas Jefferson.

A society runs through certain rules and regulations which are followed by the people living there. These rules and regulations in the society forms the law. It is very important that society and law must work together as law is for the society and society works through the law. At present, every country in this world has framed laws for them through which they govern their subject and maintain harmony and peace within them. Thus, law has become an important aspect of life.

In today's era, it has been seen that we have laws with regard to everything whether it is for constructing any house or building or whether it is for food. Everything is regulated through law because absence of law would lead to disharmony and conflict as everyone thinks about its own selfish interest. This can be well explained through the theories of law which has led to the evolution of law where thinkers have propounded that in order to have a welfare state we have surrender ourselves to the state, to some extent for own

protection (*Social Contract theory*) or it can also be related to the concept of self-preservation. These were the few instances which led everyone to abide laws. So, now we see law everywhere.

Need for peace and harmony has led to the framing of legal documents at different levels, whether it is national or international, according to which the countries are governed. We have domestic laws at national levels which are prescribed for a particular country and at international level, we have international laws to which different countries of the world are made party to it and they are made to follow those international laws. These laws are framed by the body known as legislature and there are different names for it in different countries. Legislature frames the law according to the demand of the situation. But one of the important legal document that every country has enacted is the Constitution which is considered as the source of others laws through which different bodies of the government derives its powers. This document contains certain principles according to which states are government. This may be written or unwritten but it is very important for a country to frame the Constitution for itself according to different bodies of the government are made bound to work for the welfare of its people and to provide for respect and dignity to them.

Likewise, in India, we also have Constitution which is considered as the supreme law of land. The preamble of the Constitution provides for the basic objectives of the Constitution. Unlike UK, the Indian Constitution is supreme and anything which is not in consonance with the provisions of the Constitution is considered as ultravires. So, everyone is bound by the Constitution.



This Constitution is the lengthiest Constitution in the world as it has adopted the best features of different Constitutions of the world. As mentioned earlier, Constitution is a written legal document which provides for principles or framework for the government to implement laws in various fields. Under this, every person is guaranteed certain fundamental rights which can be enforced against the state but these rights are not absolute and apart from this, certain powers have been entrusted upon the states for forming a welfare state by adopting directive principles of state policy. Three organs of the government have been assigned their own field of works where they can exercise the powers in compliance with the Constitution of India.

Thus, it has framed rules for every authority which has formed an important part of the government. It contains Preamble, 22 parts and 12 schedules covering every aspect under which a country is governed. Preamble talks about the objective behind the framing of the Constitution, *Part 1 of the Indian Constitution deals with the Union and its territories, Part 2 deals with the Citizenship, Part 3 with Fundamental Rights, Part 4 with Directive Principles of State Policy* and likewise all Parts are provided with certain heading dealing with different authorities who are bound by this Constitution. Provisions are enumerated with regard to the powers of the states and their statuses, their competence for making laws on specified subject matters. Moreover, the Constitution has also provided for the powers for judicial review of the laws enacted by the law making bodies and there is a particular procedure which has to be followed for making laws. So, anything which is not done according to what has been provided by the Constitution is considered as unconstitutional and is struck

down. This power to check the validation of any Act is also provided by the Constitution and such power is vested in Judiciary

Despite of these well-defined powers and extent, there are certain gaps left by the framers of the Constitution which could not be foreseen by them and at present these gaps are giving rise to conflict within the provisions. In some provisions, these gaps have been intentionally made where it can be expressed from the text of a particular provision and thus, the power to fulfil those gaps have been given to Courts which can give out its observations regarding that particular provision according to the need of the situation. This is mainly done through interpretations which courts make out from the text of those conflicting provisions and there are certain rules and doctrines which have been propounded by the courts to apply at the time of making any interpretation of the provisions.

We have a separate set of principles according to which interpretations are done. Even Constitution also provides that in case of any conflict between the provisions of the Constitution, they are to be interpreted according to the rule and principles which have been evolved by the courts. So, therefore, there are different rules and in this research paper, the researcher has focused on one of such rules which could be invoked by anyone in the court to resolve any dispute of provisions. This rule is *The Rule of Harmonious Construction*. This rule has played an important rule is resolving the dispute with regard to overlapping of Constitutional provisions by harmonizing the conflicting provisions to the last resort without affecting the very objective of those provisions.



So, under this paper, the researcher has made an attempt to explain the concept of this rule by following the doctrinal research. This paper mainly focuses on the basic concept of the rule of Harmonious Construction with the help of landmark judgements. Moreover, this paper also mentions the use of this doctrine before independence in Federal Courts and after independence, for the very first time it was invoked in maintain harmony between fundamental rights and directive principles. The main theme of this paper is based on the judicial approach towards this doctrine where different observations of the Courts have been discussed. Harmonious Construction has played a crucial role with regard to provisions of the Constitutional matters by justifying the very objective of the framers of the Constitution. Courts have applied this doctrine in many cases to maintain consistency within the provisions, therefore the cases have been discussed under this paper.

THE RULE OF HARMONIOUS CONSTRUCTION

This rule is one of the important principles for the interpretation of the constitutional provisions. Since there are certain situations that at the time of framing of constitutional provisions, certain gaps are left behind, which leads to conflicts between different provisions, so courts come up with their own interpretations with the help of applying these doctrines to make it understand to the public. Thus, harmonious construction plays such role. This doctrine

has been formulated by the court with the aim of achieving harmony within the provisions of the constitution. This is a concept which has been evolved by the courts with the need of time after going through the intention of the constitution makers.

This intention can be generated from the *general principles of interpretation under Article 367(1) of Indian Constitution*. Even it is provided that the general principles of statutory interpretation are to be applied for the interpretation of the constitutional provisions.¹ Thus doctrine of harmonious construction is also one of rule used by the courts in interpreting the constitutional provisions. This doctrine is mainly applied when there is a conflict between two or more statutes or between two or more provisions of the Constitution. So, 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 with the help of judicial interpretations. Thus, it can be inferred that the rule of harmonious construction is applied by the courts to fulfil two aims and these are: to maintain consistency within the enactments and to avoid any type of inconsistency or repugnancy between the various provisions and statutes.²

The rule of harmonious construction can be termed as purposive approach and this rule has been explained by one of the thinkers that "*Constitutional provisions should not be construed in isolation from all other parts of the Constitution, but should be construed as to harmonize with those other parts.*"³ Thus

¹ *Seth Jugmendar Das and Or. V State*, AIR (1951) All 703, para 18

² Aditya Mishra, *The Doctrine of Harmonious Construction: Court Approach*, 3rd June, 2016

<http://lawmantra.co.in/the-doctrine-of-harmonious-construction-court-approach/> Accessed on 25th July, 2019

³ Ibid



it can be discussed that where there is a conflict between two provisions in a statute, they should be interpreted in the sense that those should be in harmony with each other to the last resort. Courts have to look that the provisions which are in conflict with each other should be interpreted to avoid inconsistency or repugnancy. Thus, the Supreme Court has explained that when two provisions of an enactment are not reconciled with each other, they should be interpreted to give the possible effects to both.⁴ It can also be said that this approach is used for harmonizing the different approaches of the constitution. These provisions should be construed in such a manner that their meanings may not lead to conflict with other Articles of the constitution and they should be in confirmation with the scheme of the constitution.

HISTORICAL PERSPECTIVES OF THIS RULE

The evolution of this rule under the Indian constitution can be analysed from the very first amendment of Indian constitution under the case of *Shankari Prasad v. Union of India*⁵ where there was the conflict between part III and part IV of the constitution. Fundamental Rights and Directive Principles of State Policy are two different parts of the constitution but they form the basic features of the constitution. The Supreme Court decided the issue with the help of doctrine of Harmonious construction and in applying so held that fundamental rights are the rights provided

against the state where as the directive principles for the state policy are provided to the state to meet social and economical development of the country. So, as far as fundamental rights are concerned they can be taken away by the state in certain circumstances and in order to bring them in conformity, Parliament has the power to amend these rights. So the rule of harmonious construction was involved by giving preferences to both as they were considered as the two different sides of the same coin. They need to work together for the public welfare.⁶

If we go more back for the history of this rule in the case of *re C.P. and Bera Act*⁷, the rule of reconciliation was propounded. Under this rule, courts have read the Entries of two list together so as to avoid any inconsistency by determining the extent of the subjects. Moreover, courts can interpret and modify the language of one Entry with the help of another. By applying this rule, court interpreted the Entry 24 and 25 of State list and observed that the court has the duty to reconcile and bring consistency between the Entries which are in direct conflict and may overlap with each other. Therefore, Supreme Court held that 'gas and gas works' of Entry 25 are different from 'Industry' under Entry 24. Thus, under this case, it was also observed that emphasise should be made on the language of the Entries and where there is direct conflict of Entries or where these Entries overlap with each other, the courts have the duty bring consistency between those Entries and reconcile them.

⁴ Arjun Gupta, *Harmonious and Beneficial Construction*, 8th December, 2015 <<http://www.legalservicesindia.com/article/article/harmonious-and-beneficial-construction-1941-1.html>>

Accessed on 26th July, 2019

⁵ AIR (1951) SC 455

⁶ Aditya Mishra, *Rule of Harmonious Construction: DPSP and Fundamental Rights*, 4th June, 2016 <<http://lawmantra.co.in/rule-of-harmonious-constructiondpdp-and-fundamental-rights/>> Accessed on 26th July, 2019

⁷ AIR (1939) FC 1



After this case, there are number of cases which were resolved on the basis of this doctrine and they are very well interpreted by the courts. This doctrine can be well explained with the help of studying the judicial approach of the courts towards this doctrine.

JUDICIAL APPROACH TOWARDS THIS DOCTRINE

The courts have made a wonderful efforts in bringing harmonisation between different provisions of the statute by applying the rules of interpretation and with this they have tried to explain the intention of law makers for framing those provisions of the constitution as well as of different statutes. This can be illustrated with the help of number of cases.

The Supreme Court of India has given five principles of Harmonious Construction in the case of *CIT v. Hindustan bulk carriers*⁸ where three judges bench held by majority that “*where, upon the order of the settlement commission under section 245d(4), there arises a deficit in the payment of advance tax under section 208, the end point or the terminus of the period for which interest has to be paid under section 234B on the deficit is the date on which the settlement commission passes the order under section 245D(4).*” Thus, while delivering the Supreme Court gave five principles and they are:⁹

1. The courts have to harmonize the contradictory provisions by avoiding a head on clash of these provisions.

2. The courts have to make every effort to see that the provisions of one section may not defeat the provisions of other, till its last resort.
 3. In case where there is no chance of reconciling those contradictory provisions, then courts must interpret those provisions so that both should be given the effect.
 4. Courts have to remember that the interpretation which make one provision less effect or makes it useless than it would be not considered as harmonious construction.
 5. Moreover, it must be kept in mind that harmonizing must not lead to destroying of any statutory provisions.
- Thus, by studying these principles we can easily infer the basic explanation of this rule which need to be applied while interpreting any provision of any statute or constitution.

In *Venkataramana Devaru v. State of Mysore*¹⁰, trustees of an ancient and renowned temple of Sri Venkataramana of Moolky Petta made an appeal in a suit under s. 92 of C.P.C. against the removal of disability of harijans from entering into Hindu temples under particular Act. They made the contention that the temple was not defined under s. 2(2) of that Act and sec. 3 of the Act was void as it was repugnant to Art. 26(b) of the constitution. Thus, appeal was made to the trial court whose decision was against appellants. But High Court passed a limited decree in their favour. Further the appeal was made to the Supreme Court for resolving the dispute of two Articles. The issue before the court was “*whether the rights*

⁸ AIR (2003) SC 3942

⁹ Ishani Acharya and Rahul Das, *The Doctrine of Harmonious Construction in the Interpretation and Construction of Statutes* < [http://ijlljs.in/wp-](http://ijlljs.in/wp-content/uploads/2014/06/Harmonious-Construction.pdf)

[content/uploads/2014/06/Harmonious-Construction.pdf](http://www.supremoamicus.org/content/uploads/2014/06/Harmonious-Construction.pdf) > Accessed on 26th July, 2019

¹⁰ AIR (1958) SC 255



of a religious denomination to manage its own affairs under Art. 26(b) are subjected to Art. 25(2) (b)".¹¹ Under this case, 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).¹²

In the case of *M.S.M. Sharma v. Krishna Sinha*¹³, also known as Searchlight case, petitioner was called before the Committee of Privileges of the Assembly to issue a show cause notice for why an appropriate action should not be taken against him. It was alleged that he has breached the privileges of speaker for publishing a speech which was delivered by the member. Therefore, he was called upon by the Secretary of Patna Legislative Assembly. However, the petitioner contended that such action as well as the notice is in violation of his fundamental rights under Article 19(1) (a) and Art. 21 of the Constitution. But the respondent relied on Art. 194(3) of the Constitution. So the question for determination was "whether the privileges under Art. 194(3) prevail over the fundamental right under Art. 19(1) (a)"?¹⁴ The High Court held that judgement in favour of the Speaker. Therefore, petitioner made an appeal in the Supreme Court under Article 32 of the Constitution for violation of his

fundamental right whereby a statement was issued by the Supreme Court that the law of Speaker is to be obeyed as he is the law in the House. But the part where 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 doesnot amount to complete prohibition of that person.¹⁵ But with regard to this judgement, a reference was made to the Supreme Court under *Special Reference No. 1 of 1964*¹⁶ wherein, with the help of application of rule of harmonious construction, it was decided that Art. 194(3) is subordinate to Articles 21, 32, 211 and 226.¹⁷

Another case where rule of harmonious construction has been applied by the court is *Calcutta gas company pvt. ltd. V. State of West Bengal*¹⁸. In an instant case, Oriental Gas Company Act was passed in 1960 by the state legislative assembly wherein the respondent sought to take over the management of the company. Therefore, the validity of the Act 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 wherein the centre has already passed the Industries (Development and Regulation) Act, 1951 and thus, union has

¹¹ Ibid

¹² Supra 9

¹³ AIR (1959) SC 395

¹⁴ Ibid

¹⁵ Aditya Mishra, *Milestone judgement on Parliamentary Privileges involving "Harmonious Construction"*, 4th June, 2016 <

lawmantra.co.in/milestone-judgement-on-parliamentary-privileges-involving-harmonious-construction/> Accessed on 27th July, 2019

¹⁶ AIR (1965) SC 745, p. 761 (para 36)

¹⁷ Supra 9

¹⁸ AIR (1962) SC 1044



power to deal with industries. Therefore, the Supreme Court made an interpretation of these Entries by applying the rule of harmonious construction and thus, observed that there are certain subjects in three lists which may overlap with each other under the Constitution and there is a need to interpret those Entries by the court with the help of certain rules. 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 and all these Entries are to be given effect. As far as Entries 24 and 25 of State List are concerned, Entry 24 covers every industry excluding gas industry and gas industry is covered under Entry 25. Entry 52 of Union list is corresponding to Entry 24 of State list. Therefore, with regard to gas industry, 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.¹⁹

In the case of *Gujarat University v. Krishna Ranganath Mudholkar*²⁰ court has taken different approach towards this doctrine. Here, one of the respondents had joined the St. Xaviers's College in First Year Arts Class and the college was affiliated to the Gujarat University and medium of instruction was English but later on, when he was preparing for the Intermediate examination, according to the framed provisions of the Gujarat University Act, 1949 and statutes 207, 208 and 209, the Principal of the college informed the he was refused admission without the sanction to the college. Thus, father of the boy moved to the Vice-Chancellor for granting sanction but it was refused and further he filed the writ

petition in the High Court under Art. 226 to stop the authorities to not to enforce the sections 4 (27), 18(1) (XIV) and 38 A of the Gujarat University Act along with the Statutes. The Court allowed the petition but the State and University filed separate appeals to the Court by contending that under sec. 4 of the Act, the University had the power to impose Gujarati or Hindi as the medium of instruction. Therefore, the issues before the court were that whether the University has power to prescribe for such medium of instruction and examination and the other issue was with regard such legislation imposing such medium of instruction and examination is valid under Entry 66 of Union list of the Constitution.²¹

So, here the High Court by studying the clause (27) of sec. 4 of the Act, decided that the University was not conferred with the power to impose Gujarati or Hindi as a medium of the instruction and examination under the Act because that clause did not indicate any such power of the legislature. Thus, appeal was made to the Supreme Court by the University and the State against the order of the High Court. With this, the Supreme Court has looked into Entry 11 of List II and Entry 66 of List I and observed the entire field of education entrusted to the state legislature. According to the Supreme Court separating education in two lists under the head of medium of instruction to Parliament and education dehors 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

¹⁹ Arjun Gupta, *Harmonious and Beneficial Construction*, 8th December, 2015 <<http://www.legalservicesindia.com/article/article/har>

[monious-and-beneficial-construction-1941-1.html](http://www.supremoamicus.org/monious-and-beneficial-construction-1941-1.html)>

Accessed on 26th July, 2019

²⁰ 1963 AIR 703

²¹ Ibid, para 52



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.²³

In *D.A.V College Bhatinda, etc. v. State of Punjab and Ors.*²⁴, petitioners were the educational institutions founded by D.A.V College Trust and registered society. These institutions were affiliated to the Punjab University. Later, the state government issued a notification wherein under section 5(1) and (3) of Reorganization Act, certain districts were specified as the areas where University exercised its power and with the effect of this notification, petitioners were ceased to be associated with the privileges of the University. It was also mentioned that the central govt. under section 72 of that particular Act has directed that Punjab University would cease to function and operate in those areas as mentioned in the notification. Moreover, a circular was issued by the University to the colleges to declare Punjabi as the medium of instruction and examination including science group with effect from session 1970-71. Meanwhile many resolutions were passed to give effect to this and as a result of these notifications and resolutions it was purposed that the colleges have to teach all the subjects in Punjabi and even students have to write their exams in Gurmukhi scripts.

Therefore, the petitioners challenged such action of the University under Section 4(2) of that Act and contented that State legislature has no power regarding that matter under Entry 11 of State list and such power lies with Union under Entry 66 of Union list. They also offended the Articles 26(1), 29(1) and 30(1) of the Constitution. Therefore, Supreme Court while applying the rule of harmonious construction observed that such act by the University has violated the Arya Samajists to use their own medium for examination and teaching. Further, it was held that the compulsory affiliation of minority colleges by the University and forcing them to use Punjabi as their medium of teaching which is not their mother tongue, is violation to the fundamental rights of minorities. However, it must be remembered that even linguistic minorities cannot expect that University must conduct examinations in their language, similarly, University cannot force these institutions to affiliated themselves with the University and use their language as the medium of teaching. Therefore, as far as the act of State is concerned, the powers of the state are to be harmonized with regard to the use of language as a medium for teaching in the college. They can prescribe power to these institutions for the medium of instructions of their own choice or they can even allow these colleges to affiliate themselves to other Universities who have same medium as them, outside the state.²⁵

One of the recent judgements related to this rule is *Prof. Yashpal and Anr. V. State*

²² Ibid, para 23-24

²³ Ibid, para 62

²⁴ AIR (1971) SC 1731

²⁵ Sandesh Niranjana, *The Rule of Harmonious Construction* <
http://www.academia.edu/8741055/harmonious_construction > Accessed on 26th July, 2019



of *Chhattisgarh*²⁶. In an instant case, petitioner, who was an eminent scientist and former chairman of University Grant Commission, filed a writ petition under Art. 32 of the Constitution and challenged the validity of certain provisions of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002. Under section 5 of this Act, a notification was issued where State was empowered to incorporate and establish a university and such universities had power to affiliate any institution or college with the prior approval of state government as provided under sec. 6 of the Act. The main contention of the petitioner was that after commencement of this Act, within one year, about 112 universities had been established by the State government by issuing notifications in the official gazette without any concern regarding the infrastructure, teaching facility or financial resources. The legislation was not in compliance with the UGC guidelines. Moreover, these private Universities were conducting professional courses without any prior permission of from regulatory bodies Medical Council of India or All India Council of Technical Education and such powers are provided under Entry 63- 66 of Union list.²⁷ The state government filed its counter affidavits under Entry 32 of State list. This would lead to huge loss to students as without such permission, their degrees and certificates would not be recognized by any professional organizations and such degrees would not be considered under UGC. Such institutions were not even

inspected by the State government to check whether these institutions were complying with any norms laid down by the statutory bodies. Thus, here Supreme Court felt the need to protect the interest of the students studying in those institutions and rule of harmonious construction was applied to harmonize the UGC Act with Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002. However, the provisions of sections 5 and 6 were held to be invalid and were struck down by the court²⁸ and directed the State to take certain measures to affiliate those institutions with the state universities and make the Act according to the UGC norms.²⁹

These are some of the famous cases where the Supreme Court of India has made an attempt to interpret certain provisions of the Constitutions as well as the Entries provided under the schedule VII of the Constitution of India with the help of applying the rule of harmonious construction. The main objective of the court in applying such interpretation to fulfil the gaps that have been made the framers of the constitution while making provisions of the Constitutions. This rule would bring consistency among different provisions which are in conflict with each other so that none of them get effected as all the provisions have been made to meet the necessities that might have arose in the past or in future.

CONCLUSION

We have been provided with certain provisions under statutes which need to be followed for the proper functioning of the

²⁶ AIR (2005) SC 2026

²⁷ Ibid, para 20, 21, 24, 46

²⁸ Ibid, para 29

²⁹ Aditya Mishra, *The Doctrine of Harmonious Construction: Case Analysis: Prof. Yashpal and Anr. V. State of Chhattisgarh* (AIR (2005) SC 2026), 6th

June, 2016 <
[googleweblight.com/i?u=http://lawmantra.co.in/the-doctrine-of-harmonious-constructioncase-analysis-prof-yashpal-and-anr-v-state-of-chhattisgarh-air-2005-sc-2026/&grqid=PWsW9GO&hl=en-IN&geid=24](http://lawmantra.co.in/the-doctrine-of-harmonious-constructioncase-analysis-prof-yashpal-and-anr-v-state-of-chhattisgarh-air-2005-sc-2026/&grqid=PWsW9GO&hl=en-IN&geid=24) > Accessed on 28th July, 2019



administration as well as for the development of a nation. Similarly, we have Constitution which is considered as a supreme law of the land which guarantees rights and freedoms to its citizen and for the proper implementation of such rights and freedoms, it has assigned certain powers and functions to the different organs of the government. Thus, the Constitution covers the every aspect that country deals with and accordingly the framers of the framers of the Constitution enacted the provisions which forms a part of the administration of the government in different fields as well as for the meeting the objectives of the preamble which is considered as the main reason for the framing of the Constitution for a welfare state in order to attain uniformity in the country.

Since, the Constitution covers every aspect of the Country, it provides for provisions with this regard. So, if a document contains different provisions for different fields or bodies there are chances that such provisions may get into conflict with each other. Each provision is complete in itself with regard to its aim and object but if that particular provision is used in others field for which it is not meant, that would give rise to a conflict. These are due to the gaps left by the framers of the Constitution. So, it is very important to understand the true meaning of these provisions. So courts play very important role giving out the meanings of these provisions. This can be done with the help of applying certain rule and guidelines that are framed under the Constitution as mentioned above, the Constitution itself provides for the general principles of interpretation in one of its Articles. The rule of harmonious construction is one of the way for interpreting the Constitutional provisions.

This rule can be explained as the rule which brings harmony between the different provisions of the Constitution which are in conflict with each other or which are inconsistent to each other. This harmony can be maintained by giving importance to both the provisions without effecting anyone of them. Thus, the courts by giving their interpretation with the help of application of this rule resolves the dispute between different provisions or within subject matters of different lists of the Constitution. The Supreme Court of India has provided for the principles which are to be taken into consideration while making any interpretation of the provisions which are in conflict and while making interpretation, it is very important to note that the Court has to make every effort to maintain the harmony between those conflicting provisions. There are five principles which are to be followed for making those interpretations and these principles are very explained by the researcher in the explanation the rule of harmonious construction.

Further, if we go through the historical perspective of this rule, we can see that this doctrine has been evolved since the 1st amendment of the Constitution as discussed above where the court resolved the issue, with regard to the conflict between fundamental rights and directive principles, with the application of harmonious construction. Thus, harmonious construction made that fundamental rights and directive principles are in conformity with each other and while maintaining consistency between both of them, they both are considered as the part of the basic feature of the constitution. But this rule was not new rule to the court, it was very much in application in Federal Courts. The researcher has made an effort to study this rule with the view of Federal Court



in one of the above mentioned cases. The rule of reconciliation was propounded by the Court to bring conciliation between conflicting Entries of the same list under different subject matters.

Thus, the court has made its interpretation with the help of rule so that both the Entries must be read in consonance with each other. This can be inferred that the application of such rule was in existence since the time of British rule and it was further followed by the Indian courts after independence and it was made part of the Indian Constitution. Similarly, the Indian courts also started to interpret the provisions to give importance to the intention of the Constitution makers as all the provisions of the Constitution were enacted to meet the needs of the people of India. Therefore, the Constitution was framed as a legal document and was considered as the supreme law of the land which has to be followed by the people of India. But we must note that this document was not complete in itself it was amended many times in order to fulfil the gaps that were present in it. Such gaps are also overcome by the courts through their interpretations. So, the roots of this rule can be generated from the case where the Federal court has propounded the rule of reconciliation and at present, this rule can be termed as the rule of harmonious construction, in India.

The rule of harmonious construction can be well explained with the help of case studies where the Courts have played an important role in interpreting the various provisions of the Constitution which were in conflict. This can be seen from the time of commencement of the Constitution as mentioned above. In this research paper, the researcher has traced a list cases where the Supreme Court of India has made its

observations and interpreted the conflicting provisions by applying this rule. The basic aim of the Court for applying this rule to maintain the importance of each and every provisions of the Constitution which has been enumerated by the Constitution makers as they have framed these provisions covering all the aspects and issues which a particular nation or a government deals. This could be only done though this rule and court has to make every possible effort to maintain such harmony within those conflicting provisions. The researcher has discussed the judgements of various cases with regard to the application of rule of harmonious construction and views of Supreme Court over it.

The Constitution has guaranteed us six fundamental rights for achieving justice, equality and liberty but these rights are not absolute and thus, even Constitution provides for certain provisions where the state has the power to take away such rights but the state must exercise such power reasonably, as provided by the constitution. So in one of the above mentioned case with regard to "*freedom of Religion, Article 25 (2) (b) and Article 26(b) of Indian Constitution*", the Supreme Court has held that these two Articles are subject to each other. In harmonising both these Articles, state has the power to make law for opening such institutions for all classes and all the temples are part of it for social welfare of the state. Thus, the rule of harmonious construction has been applied in case of fundamental rights and the powers of the state to reasonably curtail those rights for certain welfare of the state. Another instance where the Supreme Court had felt the need of use of this rule is with regard to the "*Freedom of speech and expression under Article 19(1) (a) and Parliamentary Privileges under Article 194(3) of Indian Constitution*" and the



consistency between these two Articles was maintained. It was harmoniously interpreted that Article 194(3) must be exercised with regard to the official records and freedom of speech and expression must be exercised with certain limitations.

Harmonious construction has been a considered has a tool to bring consistency within the different provisions of the Constitutions in order to protect the aim and intention of the framers of the Constitution. Court have made every possible method to maintain such harmony with regard to every aspect. This can be inferred from the above mentioned cases where the Courts have made an approach towards this rule. Not only in case of harmonizing the provisions of fundamental rights but the Supreme Court has also made an important observations 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 researcher has discussed few cases related to the issues of subject matter that forma the part of state list to some extent and to other extent it forma the part of union list. So, here also court has made an attempt to harmonize the extent of powers on particular subject matter under different lists. After these cases, the researcher has also discussed an important case where the Court has invalidated Act which was passed by the state legislature for establishing private Universities but in order to protect the interest of the students studying in those Universities, the Court has applied the rule of harmonious construction and directed the state legislature to amend the law. Thus with this, 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.

