

THE NEED FOR HARMONIOUS INTERPRETATION OF THE CONSTITUTION IN PAKISTAN: ENSURING COHERENCE AND UNITY IN LEGAL FRAMEWORK

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ABSTRACT

The Constitution of Pakistan, as the supreme law of the land, lays down the framework for governance, fundamental rights, and the division of powers among the state organs. However, given its complex structure and the evolving socio-political landscape, there is an urgent need for harmonious interpretation of its provisions. Harmonious interpretation seeks to ensure that all constitutional provisions are read in coherence with one another, avoiding conflicts and redundancies. This approach not only preserves the integrity and unity of the Constitution but also enhances the functionality of governance and the protection of fundamental rights. By reconciling apparent contradictions and aligning provisions with the overarching objectives of the Constitution, harmonious interpretation promotes a balanced and effective legal system. This paper argues that adopting a harmonious interpretative approach is essential for addressing the current challenges faced by Pakistan's judiciary and legislative bodies, thereby fostering a more stable and just society.

Keywords: Constitution, Harmonious Interpretation, Organic Whole, Supreme Court, Current Challenges.

INTRODUCTION

The Constitution of Pakistan stands as the paramount legal document, serving not only to define the framework of governance but also to safeguard the rights and liberties of its citizens. It establishes the fundamental principles upon which the state operates, delineates the powers and responsibilities of different branches of government, and provides a legal foundation for the protection of individual rights and liberties. As the supreme law of the land, it holds sway over all other laws and actions within Pakistan, ensuring that all governmental activities adhere to its provisions.

Pakistan's Constitution is a product of its historical evolution and reflects the complexities of its socio-political landscape. Adopted in 1973, it has been shaped by various amendments and judicial interpretations, accommodating the diverse interests and concerns of a multi-ethnic and pluralistic society. The Constitution comprises detailed provisions governing federalism, fundamental rights, the distribution of

powers between the federal and provincial governments, and the separation of powers among the executive, legislature, and judiciary.

The complexity arises not only from its detailed provisions but also from the challenges inherent in balancing competing interests, resolving regional disparities, and accommodating diverse cultural and religious identities within a unified legal framework. Moreover, Pakistan's constitutional history has been marked by periods of military rule and democratic transitions, influencing both the content and interpretation of its constitutional provisions.

Effective governance and the protection of rights in Pakistan hinge upon interpreting the Constitution in a manner that ensures consistency, coherence, and unity among its provisions. The concept of harmonious interpretation is essential to achieving these goals, as it seeks to reconcile potentially conflicting provisions and align them with the broader objectives and principles embedded

within the Constitution. By adopting a harmonious interpretative approach, Pakistan can mitigate ambiguities, prevent constitutional crises, and enhance legal certainty. This approach not only fosters stability within the legal framework but also strengthens the rule of law by ensuring that the rights and duties of individuals and institutions are clearly defined and upheld.

In essence, harmonious interpretation is crucial for resolving constitutional ambiguities, promoting effective governance, and safeguarding the fundamental rights enshrined in Pakistan's Constitution. It serves as a vital tool for maintaining the integrity of the legal system and upholding the principles of justice and equality upon which the Constitution is founded. Therefore, this paper will explore the necessity of harmonious interpretation in Pakistan's constitutional framework, examining its benefits, challenges, and implications for ensuring coherence and unity in the legal system.

Objective of Harmonious Interpretation of the Constitution.

A constitution should be interpreted not through narrow or technical principles, but in a liberal and broad manner, so that it can fulfill the purposes for which it was established and uphold the fundamental principles of government. (Black, H. C. et al., 1927).

In *Morrison v. Bachert* (1886), the court ruled on this issue that narrow and technical reasoning, is inappropriate when applied to an instrument created by the people for their own use, designed as a guide where anyone, regardless of their level of education, can discern the fundamental principles of government. The constitution was meant to benefit the people and must be construed liberally. It should not be interpreted technically like a common-law document or statute. Instead, it should be understood in a way that upholds the fundamental principles of government, not undermines them.

It is said in *Houseman v. Commonwealth ex rel. Tener* (1882), that constitutions declare the organic law of a state; they deal with larger topics and are couched in broader phrase than legislative acts or private muniments. They do not undertake to define with minute precision in the manner of the latter, and hence their just interpretation is not always to be reached

by the application of similar methods. In *Western Union Tel. Co. v. Railroad Commission of Louisiana* (1908) it was observed that a constitution of government, by its nature, cannot rely heavily on mere verbal criticism or the meaning of individual words. While such analysis may sometimes help clarify or reveal appropriate meanings, it must always be considered in the context of the overall document and its purpose. Thus, although examining individual words can aid our understanding, we must remember that we are interpreting a governing instrument. The most accurate interpretation will be the one that best aligns with the constitution's design, objectives, and overall structure. The court notes that while statutes are occasionally drafted hastily and require interpretation to be effective, the language of a constitution is presumed to be chosen with the highest degree of care and precision. (*Constitutional law*, Deo. Dig. Key No. §S U-21). Deo. Dig. (Key No. §S U-21). Lord Ried in *Westminster Bank Ltd. v. Zang*, 1966 AC 182 observed that "no principle of interpretation of statutes is more firmly settled than the rule that the Court must deduce the intention of Parliament from the words used in Act."

The rule of harmonious interpretation in case of conflict was stated by the Supreme Court of India in the case of *M. Pentiah v. Veeramallappa* AIR 1961 SC 1107. The Supreme Court observed that where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. Similarly, in the case of *Union of India v. Sankalchand* AIR 1977 SC 2328, the Supreme Court stated that 'the normal rule of interpretation is that the words used by the Legislature are generally a safe guide to its intention. The Court observed in *S. Narayanaswaini v. G. Panneerselvam*, AIR 1972 SC 2284 at p. 2290 that 'here the statute's meaning is clear and explicit, words cannot be interpolated. What is true of the interpretation of an ordinary statute is not any the less true in the case of Constitutional provisions, and the same rule applies equally to both. But if the words of an instrument are ambiguous in the sense that

they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the Court would be justified in construing the words in a manner which will make the particular provision purposeful. That, in essence is the rule of harmonious construction.’

The primary objective of harmonious interpretation of the Constitution is to ensure that all constitutional provisions are understood and applied in a manner that maintains their coherence and unity. This interpretive approach seeks to reconcile any apparent contradictions between different sections of the Constitution, thereby preserving the integrity of the document as a whole (Fuller et al., 1964). By aligning provisions with the overarching principles and goals of the Constitution, harmonious interpretation promotes consistency and stability in legal and judicial processes. This method not only facilitates a comprehensive understanding of constitutional norms but also enhances the effectiveness of governance by ensuring that laws and policies are implemented in a way that reflects the Constitution’s fundamental values and objectives (Cardozo et al., 1921). Additionally, harmonious interpretation supports the protection of fundamental rights and the rule of law by preventing the fragmentation of constitutional principles, thus fostering a more stable and just legal system.

Constitution is an organic whole.

The Constitution of Pakistan, like many modern constitutions, is often referred to as an "organic whole," implying that its provisions are interconnected and interdependent. This concept suggests that the Constitution should be interpreted holistically, considering its overall structure, principles, and objectives, rather than treating each provision in isolation.

1. Interconnected Provisions:

The notion of the constitution as an organic whole underscores the idea that its various provisions are interconnected. This means that the rights and duties of citizens, the powers and functions of different branches of government, and the relationship between federal and provincial entities are all designed to work together

harmoniously. For instance, the distribution of powers between the federal government and the provinces is a carefully crafted balance intended to maintain unity while respecting regional autonomy.

2. Unity of Purpose:

Beyond its textual provisions, the Constitution embodies a unity of purpose in order to establish a just and equitable society, uphold the rule of law, protect fundamental rights, and promote the welfare of all citizens. This overarching purpose guides the interpretation of individual provisions in a manner that advances these broader constitutional goals. For example, the fundamental rights guaranteed in the constitution are not just isolated freedoms but are interconnected principles that collectively ensure the dignity and freedom of individuals.

3. Avoiding Conflicts and Redundancies:

Viewing the constitution as an organic whole helps to avoid conflicts and redundancies within its framework. Conflicting provisions may arise when different parts of the constitution appear to prescribe conflicting courses of action. By interpreting the constitution harmoniously, courts and legal scholars can reconcile these apparent conflicts by identifying underlying principles that unify seemingly divergent provisions. This approach ensures that the constitution operates as a coherent and consistent legal framework.

4. Evolutionary Interpretation:

The organic view of the constitution also recognizes its capacity for evolution over time. As societies change and new challenges emerge, the constitution must be capable of adapting while preserving its core principles and values. This dynamic interpretation allows for the constitution to remain relevant and effective in addressing contemporary issues, while still maintaining its fundamental integrity.

5. Judicial Role and Interpretation:

In practice, the judiciary particularly Supreme Court of Pakistan plays a critical role in interpreting the constitution as an organic whole. Supreme Courts works on harmonizing conflicting provisions, interpreting constitutional principles in light of evolving societal norms, and

ensuring that constitutional rights are upheld consistently. Supreme Court decisions that embrace the organic view of the constitution contribute to the stability and legitimacy of the legal system. Some significant rulings of the Supreme Court of Pakistan in this context are as follows.

Hamza Rasheed versus Election Appellate Tribunal, PLD 2024 Supreme Court 256.

The Supreme Court of Pakistan while overruling the judgement in Samiullah Baloch v. Federation reported as PLD 2018 Supreme Court 405, held that the interpretation of Article 62(1)(f) of the Constitution in imposing a lifetime disqualification upon a person through an implied declaration of a court of civil jurisdiction while adjudicating upon some civil rights and obligations of the parties is beyond the scope of the said Article and amounts to reading into the Constitution. Such reading into the Constitution is also against the principle of harmonious interpretation of the provisions of the Constitution as it abridges the Fundamental Right of citizens to contest elections and vote for a candidate of their choice enshrined in Article 17 of the Constitution, in the absence of reasonable restrictions imposed by law.

REFERENCE NO. 1 OF 2020, PLD 2021 Supreme Court 825.

The Supreme Court of Pakistan observed that "It is true that general principle of interpretation of the Constitution is that no specific provision of the Constitution has to be read in isolation. The Constitution is an organic whole. It is true that no provision of the Constitution could be interpreted in isolation, rather the Constitution has to be read organically and holistically, and articles and clauses of the Constitution, if read in isolation from the rest of the Constitution, may mislead the readers because the meaning of the Constitution has to be gathered from the Constitution as an integrated whole, not as a mechanical deduction but based on reasons."

Messrs Khurshid Soap and Chemical Industries (PVT.) LTD Versus Federation of Pakistan through Ministry of Petroleum and Natural Resources and others, PLD 2020

Supreme Court 641.

The Constitution is organic and a living testament of the aspirations of the people it governs. The "living tree" doctrine allows the Constitution to change and evolve over time while still acknowledging its original intentions. The doctrine achieves a balance between two seemingly contradictory goals: predictability and flexibility. To be effective, the Constitution must consist of a predictable set of rules. On the other hand, flexible interpretation accommodates the realities of changing modern life. If the Constitution could not be interpreted this way, it would be frozen in time and become more obsolete than useful. Therefore, contemporary interpreters must focus on what the originators intended it to accomplish rather than what the text actually states before allowing the Constitution to evolve or remain unchanged. I know that stability without change is degeneration. Change without stability is anarchy. The role of a judge is to help bridge the gap between the needs of the society and the law without allowing the legal system to degenerate or collapse into anarchy. The judge must ensure stability with change, and change with stability. Like the eagle in the sky, which maintains its stability only when it is moving, so too is the law stable only when it is moving. The life of law is complex. It is not mere logic. It is not mere experience. It is both logic and experience together. As Roscoe Pound said "the law must be stable, yet it cannot stand still." Progressive interpretation is to preserve the vitality of the constitution: unless interpreted in this way, it would be frozen in time and become more obsolete than useful. Our courts have repeatedly underlined that our Constitution is a living document and encouraged its progressive interpretation.

The concept of the constitution as an "organic whole" emphasizes that it should be viewed and interpreted as a cohesive and integrated document rather than a collection of isolated provisions. In the Collector of Customs v. Messrs New Electronics (Pvt.) reported as PLD 1994 Supreme Court 363, the matter involving the holding of election after the lapse of ninety days of Parliament, the Supreme Court of Pakistan observed that the Constitution is to be construed

as an organic whole and its various provisions are to be read as a part of one integrated scheme. The widest possible interpretation is to be given to the provisions of the Constitution with the object to meet all eventualities. The efforts should be made to construe constitutional provisions in such a way, that it may avert chaos and uncertainty in the country and may foster the smooth functioning. Similarly in *Zahur Textile Mills Ltd v. Federation of Pakistan and others*, PLD 1999 Supreme Court 880, the Supreme Court while interpreting Clauses 4-A and 4-B of Article 199 of the Constitution with respect to an interim order of the High Court, observed that the Constitution being an organic document, it is to be read as a whole and all efforts should be made to harmonize and to reconcile its various provisions with the object to make them more functional and effective.

In *M. A Khaki v. Muhammad Hashim* reported as PLD 2000 Supreme Court 225, it was held by the Supreme Court that interpretation of Constitution being an organic whole, all its Articles have to be interpreted in a manner that its soul or spirit is given effect to by harmonizing various provisions. Constitution was the supreme and organic law of the State, therefore, none of its provision should be construed and interpreted without having regard to the other relevant provisions or the entire scheme of the Constitution, was laid down by the Supreme Court of Pakistan in *District Bar Association, Rawalpindi v. Federation of Pakistan*, PLD 2015 SC 401. It was further observed that no provision of the Constitution could be interpreted in isolation. Constitution had to be read organically and holistically. Individual Articles or clauses of the Constitution, if read in isolation from the rest of the Constitution, may mislead the reader because the meaning of the Constitution was to be gathered from the Constitution as an integrated whole, not as a mechanical deduction, but based on reason. Constitution had to be read as an 'organic whole'.

The concept of the constitution as an organic whole underscores its holistic nature and the nexus of its provisions (Barnett et al., 2003). By interpreting the constitution in this manner, Pakistan can ensure that its legal framework remains coherent, adaptable, and reflective of the principles and values upon which the nation is

founded (Tushnet et al., 2004). This approach not only enhances the rule of law but also strengthens democratic governance and protects the rights and freedoms of all citizens (Ely et al, 1980). Thus, recognizing the constitution as an organic whole is essential for fostering a just and stable society underpinned by the principles of constitutionalism and the rule of law. Barnett, R. (2003).

The idea of the constitution as an organic whole highlights the nexus of its various provisions and underscores the necessity of interpreting the document as an integrated entity. This perspective acknowledges that the constitution operates as a cohesive system, where each section is related and contributes to the overall framework of governance (Kramer et al, 2004). Viewing the Constitution in this integrated manner ensures that legal interpretations are consistent and aligned with the core principles of the document. It allows for a more flexible and comprehensive application of constitutional provisions, making sure they remain relevant to both the original intent and current values of the nation (Sunstein et al., 2001). Furthermore, such an interpretative approach reinforces democratic governance by fostering coherence and stability in legal decisions, which in turn protects citizens' rights and upholds the rule of law (Dworkin et al., 1986). Adopting this viewpoint is essential for sustaining a fair and effective legal system that can adeptly address the changing demands of society.

Constitution As A Living Document.

The concept of the "Constitution as a Living Document" posits that a Constitution should be seen as adaptable and responsive to the evolving needs of society. This perspective argues that while the language of the Constitution provides a foundational framework, its interpretation should be flexible enough to address contemporary issues and reflect modern values (Ely, et al., 1980). Unlike a rigid or original approach that confines interpretation to the framers' intent or the document's historical context, viewing the constitution as a living document allows it to evolve in response to new challenges and changing societal conditions (Dworkin et al., 1985). This dynamic approach ensures that the Constitution remains relevant and effective in

guiding the legal and political landscape for both current and future generations.

In *Aam Log Itihad v. The Election Commission of Pakistan* reported as PLD 2022 Supreme Court 39, the Supreme Court ruled that the Constitution was a living document, which must be given a dynamic and progressive meaning and interpretation. That the Constitution evolved and developed not just by way of textual changes (i.e., constitutional amendments) but also in a continually maturing understanding of the constitutional provisions, and this meant not just the very words of the constitution but also the concepts and aspirations that laid behind and underpinned those words. Constitution must be interpreted with an eye to the future, as the future may throw up issues which required legislative intervention was laid down by the Supreme Court in the case of *Lahore Development Authority v. Ms. Imrana Tiwana* reported as 2015 SCMR 1739.

Moreover in the case of *Federation of Pakistan through Secretary M/o Petroleum and Natural Resources v. Durrani Ceramics* reported as 2014 SCMR 1630, it was observed by the apex court that the Constitution was a living document which catered for future development and progress. In Reference No 1 of 2012, reported as PLD 2013 Supreme Court 279, the Supreme Court observed that Constitution being a living organ for all times was to be interpreted dynamically, as a whole, to give harmonious meaning to every Article of the Constitution; it being an organic document had been conceived in a manner so as to apply to the situations and conditions which might arise in the future. Therefore, the words and expressions used in the Constitution, in such sense, had no fixed meaning and must receive interpretation based on the experience of the people in the course of working of the Constitution.

In, *Rana Aamer Raza Asfaq v. Dr. Minhaj Ahmad Khan* reported as 2012 SCMR 6, the principle was settled that Supreme Court has to give a purposive interpretation to make Constitution a living document. One may imagine the consequences on affected institutions if legislative intent is not given effect to. Similar principles were given in the case of *Al-Raham Travels and Tours (Pvt) Ltd. v.*

Ministry of Religious Affairs , Hajj, Zakat and Ushr, reported as 2011 SCMR 1621 that Constitution is a living organism and has to be interpreted to keep alive the traditions of past blended in the happening of present and keeping an eye on the' future as well. Constitution must be interpreted keeping in view the entire canvas of national fabric, be it political, social, economic or religious. Constitution is to be interpreted liberally and saved from cosmetic circumscription and construction. Constitution is not a document of past or present, so it is to be interpreted in a manner to meet the changing conditions of socio-religious and economic dynamics of the State.

The Supreme Court envisaged in *Arshad Mehmood v. Government of Punjab through Secretary, Transport Civil Secretariat, Lahore* reported as PLD 2005 Supreme Court 193 that the Constitution is a living document which portrays the aspiration and genius of the people and aims at creating progress, peace, welfare, amity among the citizens and the nations abroad; it is the basic structure on which the entire edifice is built, therefore, it has to be interpreted in a manner which may keep it alive and blossom under all circumstances and in every situation. In *Sindh Revenue Board v. Civil Aviation Authority Pakistan* Reported as 2017 SCMR 1344, it was observed that the Constitution was a living and organic thing, and it should not be interpreted narrowly or restrictively, and a pedantic interpretive approach should be avoided.

Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and others reported as PLD 1997 Supreme Court 32, the Supreme Court formulated that

the rule of harmonious interpretation provides that the Court while literally interpreting a provision of the constitution notices apparent inconsistency as a result of such construction with another provision of the Constitution on the same subject; it may not follow the grammatical and literal construction of the words and adopt a construction which would harmonize the two apparently conflicting provisions and make their working purposeful and in accordance with the intention of Legislature.

The idea of the Constitution as a living document is grounded in the belief that the Constitution must be interpreted in a manner that allows it to remain relevant amid societal changes. This view holds that the framers' intent, while important, should not constrain the document's application to contemporary issues (Ackerman, et al., 1991). According to Ackerman (1991), this flexible approach ensures that constitutional principles can be adapted to modern contexts without losing their core values. Such an interpretation acknowledges that legal and social environments evolve, and thus, the Constitution must be understood in light of current realities rather than strictly historical circumstances (Sunstein et al., 2001). This perspective supports the idea that a Constitution's enduring principles can guide new challenges and developments in society effectively.

Conclusion:

In conclusion, the necessity for a harmonious interpretation of the Constitution in Pakistan cannot be overstated. As the nation's foundational legal document, the Constitution must be applied in a manner that ensures coherence and unity across its diverse provisions. By adopting a harmonious interpretive approach, the judiciary and legislative bodies can mitigate conflicts, avoid redundancies, and enhance the functionality of the legal system. This approach not only upholds the Constitution's integrity but also ensures that governance and fundamental rights are effectively protected in a rapidly evolving socio-political landscape. Embracing harmonious interpretation will enable Pakistan to navigate current legal challenges with greater stability and justice, ultimately contributing to the creation of a more equitable and resilient society.

By prioritizing harmonious interpretation, Pakistan can address legal ambiguities and contradictions in a way that aligns with the Constitution's core principles and objectives. This method facilitates a more dynamic and responsive legal framework, capable of adapting to societal changes and emerging challenges while preserving the fundamental values enshrined in the Constitution. It promotes a legal culture where judicial decisions and legislative

actions are consistent and coherent, thus reinforcing public trust and institutional stability. In adopting this approach, Pakistan can better ensure that its constitutional governance remains effective and just, supporting the development of a stable and progressive society that upholds the rule of law and protects the rights of its citizens. Moreover, a commitment to harmonious interpretation fosters greater collaboration among Pakistan's legal institutions by creating a shared understanding of constitutional principles. This approach encourages the judiciary, legislature, and executive to work together more effectively in crafting and implementing laws that are consistent with the Constitution's broader objectives. It also helps in bridging gaps between different legal interpretations and policy approaches, leading to more cohesive and informed decision-making. As a result, the legal system becomes more capable of addressing complex issues and responding to the needs of a diverse and evolving society, ultimately strengthening the foundation of Pakistan's democracy and legal order.

The Supreme Court of Pakistan plays a pivotal role in ensuring the harmonious interpretation of the Constitution, serving as the guardian of its principles and the ultimate arbiter of constitutional disputes. By providing authoritative interpretations of constitutional provisions, the Supreme Court helps to resolve ambiguities and reconcile conflicting provisions, thereby maintaining the coherence and unity of the legal framework. Its decisions set important precedents that guide lower courts, legislators, and government institutions in applying constitutional principles consistently. The Supreme Court's commitment to a harmonious interpretive approach not only upholds the Constitution's integrity but also enhances the effectiveness of governance and the protection of fundamental rights. In this capacity, the Court acts as a crucial stabilizing force, ensuring that constitutional values are upheld and that the legal system remains aligned with the evolving needs of society.

Embracing a harmonious interpretive approach is crucial for the Supreme Court of Pakistan in addressing the complex challenges faced by the judiciary and legislative bodies. As the highest

court, it is tasked with ensuring that constitutional provisions are applied consistently and in harmony with one another. This approach helps the Court navigate and resolve intricate legal issues, thereby preventing fragmentation in the interpretation of the law. By fostering coherence and alignment among various constitutional provisions, the Supreme Court can effectively address contemporary legal and societal issues, enhance the stability of legal precedents, and promote fairness in governance. This proactive stance not only strengthens the judiciary's role in upholding constitutional values but also contributes to a more stable and equitable society by ensuring that laws are applied in a manner that reflects both the Constitution's enduring principles and the evolving needs of the nation.

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