ANALYSIS OF LEGAL MAXIM: LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT

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ABSTRACT

Legal maxims are generally a species of aphorism and the general maxim that is used in law and are mostly in the Latin language. This paper deals with the analysis of one such legal maxim- Leges Posteriores Priores Contrarias Abrogant. An in-depth study has been done on what the legal maxim is about, its definition, meaning, its historical context and usage in different acts and laws, discussing and analysing it from a contemporary perspective, what value it hols now in current times, its impact, effect and also different case laws related to it.

Keywords: Legal maxim, Law, Act, Statutes, Contrary, Similar, Latter.

INTRODUCTION

A legal maxim is generally a species of aphorism and general maxim, which is also called a legal phrase. It is an established legal principle or a policy, proposition, or concept of law that is elucidated and expounded, usually stated in Latin form. One of the legal maxims is Leges Posteriores Priores Contrarias Abrogant, which means when "the provision of the later statute are opposed to those of an earlier, the earlier statute is considered as repealed."[1] Clarifying it further Sedgwick described it as "If two inconsistent acts can be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give away."[2] Whereas Caleb Nelson states that leges posteriores priores contrarias abrogant is "where words are repugnant in two laws, the later law takes place of the elder."

The maxim falls under the category of interpretation of statutes and written documents and one such similar maxim is lexed posterior derogant (legi) prori; it has the same meaning as the

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[1] HERBERT BROOM, *A SELECTION OF LEGAL MAXIMS, CLASSIFIED AND ILLUSTRATED* (A. Maxwell & Son, 1848).

[2] SCRIBD, 'LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT', <https://www.scribd.com/document/398182484/Leges-Posteriores-Priores-Contrarias-Abrogant> accessed 15 Jan 2022.

above maxim. The maxim Leges Posteriores Priores Contrarias Abrogant says that when a conflict arises between two laws or statutes on the same subject matter, the earlier law or statutes can be repealed or derogated by a later law or statutes when the provisions are contrary to prior document. The prior laws or statutes become abrogate during any inconsistency with a latter similar law, only on the condition that the later document has some reference with the earlier law or the prior enactment, which is much better, precise, and up to the current needs for the working of the society. The following subject is illustrated by this maxim-" Perpetua lex est nuam legem humanam ac positivam per- petuam esse, et clausula quae abrogationem excludit ab initio non-valet" which means that- "it is an eternal law which says that no human positive law shall be perpetual, and a clause excluding abrogation is bad from the commencement."[3]

It is based on the doctrine of implied repeal, in which the constitution during a conflict between the two different laws or statutes, the later act takes place of the precedence and makes the prior legally inoperable. However, the principle has an exception to it which is by the maxim- Generalia Specialibus Non-Derogant which means a general provision does not derogate from a special one. When two different laws defining the offence are inconsistent or any variation is observed between the two, earlier statute is repealed by implication but certain provisions are applied when the offence done is same under two different statute- "Section 26 of The General Clauses Act, 1897" defines that-"Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence." "The Constitution of India under Article 20 (2)" defines the same-"No person shall be prosecuted and punished for the same offence more than once."[4]

HISTORICAL CONTEXT AND USAGE

There are many different theories or beliefs for the origin of this maxim- Leges Posteriores Priores Contrarias Abrogant. Some resources say it originated in Latin as the words are in the Latin language whereas in other resources it says that it is related to English constitutional theory since it is based on the doctrine of implied repeal. Mainly it is believed that it was laid

[3] George Frederick Wharton, Legal maxims with observations and cases (Baker, Voorhis & co., 1878), <http://rodscontracts.com/docs/legal/LegalMaximsWithCaseCites.pdf > accessed 15 Jan 2022.

[4] ACADEMIKE , PRESUMPTION AGAINST REPEAL BY IMPLICATION <https://www.lawctopus.com/academike/presumption-against-repeal-by-implication/> accessed 15 Jan 2022.

down by a law of the twelve tales at Eome as mentioned in a book by W. Blackstone, "Qoud Populus Postremum Jussit, Id Jus Ratum Esto" which means what people have last enacted, let that be the settled law.[5] But only when the latter statute was phrased in negative terms, or was so manifestly repulsive as to imply a negative, was this to be understood. As an instance, if a previous Act said that a jury on such a trial should be paid twenty pounds a year, and a subsequent statute stated that he should be paid twenty marks, the latter statute effectively invalidated the old, even though it did not express, but implied, a negative. However, if both legislation were only affirmative, and their substance was such that they could stand alone, the latter would not repeal the former, and they should be read together. So, if an offence is made indictable at the quarter sessions by law, and a subsequent statute makes the same offence indictable at the assizes, the sessions' jurisdiction is not taken away, and both have concurrent jurisdiction; unless the new statute expressly states that the offence is indictable only at the assizes. This maxim was the first time ever expressed clearly or in definite terms was by Whitney V. Robertson and the Chinese exclusion case in which they said that the last expression of the sovereign will control and can affect or nullify any previous law or statutes. They also stated that effort will be taken to try to give effect to both but in case of conflict or inconsistency; the maxim will come into the effect.

Also since it is based on the doctrine of Implied Repeal, the theory emerged in England's seventeenth century; the very first case cited by Sir Edward Coke in Dr. Foster in 1614 was based on it. In this case, considerations were given by Coke to the relationship between "Elizabethan statute and Jacobean statute", as they provided different punishments to recusants for conviction. In this case, analysis on the maxim- Leges Posteriores Priores Contrarias Abrogant was acknowledged by coke. Late 19th century the approach changed, Coke's description was borrowed by Americans with some altercations and then towards the end of the 19th century convenience was willingly weighed more against presumption, when choosing between the two conflicting statutes. Later it was decided to rule it only in the cases involving repugnancy or inconsistency between two laws, the statute rule will be implied. In the late 19th century, many cases were seen where conflict arises between two statutes or laws. The case of Morton vs. Mancari in 1973 was one such example of this.

[5] WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND 1769* (Oxford University Press, 2016) vol. 1.

DISCUSSION AND ANALYSIS FROM A CONTEMPORARY PERSPECTIVE

Since the legislature or the parliament are believed as the supreme power in the state and posses all the rights to change, modify and abrogate the existing law, there consists a clause which in technical terms is called 'Clausula Derogatoria' which says that it is not lawful to contradict it in a duration of seven years as this was in accordance with "the common rule of law" which says that, " Nihil tam conveniens est natural! sequitati quam unumquodque dissolvi eo ligamine quo ligatum est "—"Nothing is so consonant to natural equity as that the same thing is dissolved by the same means as that by which it was created"[6] which means an Act of Parliament can only be amended, altered, suspended, dispensed with, or repealed in the same form and by the same power of Parliament that it was made by because it takes the same strength to dissolve as it does to create this, or any other, legal duty but now it is considered as the void in the universal application. Now an act can be altered, repealed, or amended in the same session in which it was passed and has to lead to this maxim- Leges Posteriores Priores Contrarias Abrogant with the elementary rule being prior act must give place to the new one if the two cannot be reconciled.

In recent cases like in US Brand v. S. Smith, the difficulty seen with the modern law to deal with this maxim is the question arising on the courts' treatment of implied repeal. They highlighted many problems like a conflict that arose not only in between constitution and statute but also in between the laws of the different legislature. The conflict was between state and federal laws. The maxim is only enacted when there is a necessity to bring a change in the current working system of law because of the earlier law becoming obsolete and should be obliterated or abolished by the new one. It is never favoured or imputed without reason or a necessity. It comes in effect when there is inconsistency in the provision of two acts or the later enactment is repugnant to earlier and they cannot stand together, thus replacement is required with a reasonable cause. Both cannot come into effect at the same time.

There is a need to keep pace with the changing times and to make laws that reflect the growing needs of our socio-economic and cultural norms of the country. The present government is trying to create or provide a constructive platform for the purpose of weeding out obsolete laws as they have lost their relevancy in the legal system. Currently, about 3000 central statutes have been obsolete, repetitive, or redundant but are still operating in the legal machinery.

[6] *Supra* note 3.

On 27 July 2015, the Repealing and Amending Bill was introduced in the parliament which is left with no relevancy in the present context application and also to lower the burden of citizens on the redundant law. Nowadays, the usage of the maxim is similar to making amendments as the sole purpose remains to modify the outdated matter from the body of law and bring new laws which are according to the current working and needs of the society.

DISCUSSION AND ANALYSIS OF CASE LAWS

There are many Indian cases available under the maxim- Leges Posteriores Priores Contrarias Abrogant. Some of them are listed below-

1) **Harshad Mehta VS. State of Maharashtra (2001)** –

The case was based on the large scale malpractises and irregularities happening in "The Reserve Bank of India", related to both the government and other securities transactions, in which some brokers were indulged in collusion with the bank and other financial institutions. This case comes under the stated maxim as it is based on the doctrine of implied repeal. Conflict or inconsistency was seen in this case between certain acts-

- The Special Court Act, 1979
- The Code of Criminal Procedure Act, 1898
- The Court of Criminal Procedure Act, 1973 [7]

In respect to section 9(4), the matter was concluded but the question arises on the interpretation of section 9(2) of the act, which excludes the application of section 306 and section 307 in making the provisions of this code. Mr. Jethmalani stated that the special court cannot be counted as a court under sub section (1) of section 306 nor section 307 and thus the court does not have any power to tender pardon. Another deviation seen was in section (7), which says any prosecution related to securities transaction will be instituted in the special court.

In the case of Antulay, the constitution bench gave the decision that there will be no doubt from now onwards that special court under the act will enjoy all the powers which an original criminal court has. Many such conflicts and inconsistencies were seen in different laws and

[7] Harshad S. Mehta and others v. State of. Maharashtra, [2001] 8 SCC 257.

statutes which brought difficulties in providing the judgement and thus the stated maxim was used and was mentioned in the case.

Judgement - They did not accept the contention that there was implied repeal. They noted that the jurisdiction, in any case of the special court should not work by committal but by the established statute of the court.

2) **Nola Jonathan Ranbhise V. Union of India, 14 Feb 2014 Bombay High Court**

The case is related to the issues arising in the validity of different acts as certain sections or parts of the different acts were contradicting each other. Special references are made to the "Indian Succession Act, 1865" and the "Probate and Administration Act, 1881" under Section 28A (1) of the Bombay Civil Court Act, 1869. But under the 'Indian Succession Act, 1925' the stated section cannot be employed for investing civil judges with the power of District judges as the act holds distinct legislation. So, since the 'Indian Succession Act, 1925' repealed the "Indian Succession Act, 1865" and the "Probate and Administration Act, 1881", it leads to the entire provision in 28A(1) of the Bombay Civil Court Act,1869 becoming void, inoperable, otiose and redundant. Two distinctive laws contradict each other but since the Indian Succession Act, 1925 is a later enactment as compared to the Bombay Civil Courts Act, 1869.[8] Therefore the stated maxim comes into the role and is applied in the opinion that the provisions of sub-section (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869 stand impliedly repealed.

Judgement - the provisions contained therein will prevail over the provisions contained in sub-section (2) and (3) of the Section 28A of the Bombay Civil Courts Act, 1869, which is a general enactment upon the subject.

3) **Municipal Committee, Malerkotla vs Mohd. Mushtaq, 20 July 1959**.

The case was based on the residence of any person who practices prostitution. The Punjab and Haryana High Court held that "An earlier Act must give place to a later if the two cannot be reconciled and one Act may repeal another by words express or implied. It is also an equally

[8] SMT. NOLA JONATHAN RANBHISE V. THE UNION OF INDIA, [2014] 4 ALL MR 181.

well-known maxim of law which constitutes that the later laws prevail over those which preceded them."[9]

4) **Raja Ram Verma vs State Of U.P. And Ors., 24 May 1968**

"Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, in which case the maxim, **leges posteriores priores contrarias abrog**ant, applies. Unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied". [10]

5) **The Commissioner, Bangalore vs State Of Karnataka And Anr.,25 November 2005**

"One such principle of statutory interpretation which is applied is contained in the Latin Maxim **leges posteriores priores contrarias abrogant** (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non-derogant (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers an occupation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one."[11]

[9] Municipal Committee, Malerkotla vs Mohd. Mushtaq, [1959] AIR 1960 P H 18.
[10] Raja Ram Verma vs State Of U.P. And Ors., [1968] AIR 1968 All 369.
[11] The Commissioner, Bangalore vs State Of Karnataka And Anr.[2005] ILR 2006 KAR 318.