

SPECIAL LAWS PREVAIL OVER GENERAL LAWS

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ABSTRACT

Humans are curious and creative creatures. We explore and discover new things, and we adapt and improvise through and throughout that journey. This practice, since time immemorial, has led to the creation of almost everything we see around us today, whether they be civilizations, religions, governments, or laws. And with the evolution of humans, these creations have also evolved to adhere to and attend to the ever-changing needs and demands correspondingly. And one such creation, the Law, has been no exception to this.

Keywords: General, Special, Laws, Crimes, Jurisdiction.

INTRODUCTION

Humans have been drawn to both the good and the bad as far back as history has been seen. Hence, ever since the earliest of civilizations, the law has been an intrinsic part of society, but so have been crimes. It has rightfully been said that with every right, comes a remedy^[1], and similarly, with every crime, comes a recourse. For that purpose and its due implementation, the legal system reviews and recreates itself, with the changes and growth in the civilization and crimes, at its time and again. When there had been simple crimes, simple laws had been created to deal with them. As crimes started to expand and diversify themselves, special laws were made to handle these special crimes.

GENERAL LAWS AND SPECIAL LAWS

In view of the above, laws can be classified into two types, based on the range of their purpose and relevance, i.e., General Laws and Special Laws. General Laws are the provisions and the statutes that deal with the basic types of crimes. It can be said that these laws apply to generic crimes that include actions and circumstances similar to a broad number of offences and do not have many specific attributes to set them apart. But, with the development of society, crimes have also advanced and now cause injury in specialised forms and arenas. Accordingly, the

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¹ Latin maxim 'ubi jus ibi remedium'

lawmakers have also introduced newer and updated Special Laws to keep up with such special crimes, having special actions and circumstances distinguishing them from other offences.

In India, the examples of the General Laws are the Indian Penal Code, the Indian Contract Act, the Indian Evidence Act, the Code of Criminal Procedure, etc. whereas some of the Special Laws are the Information Technology Act, the LIC Act, etc. More often than not, the Special Laws are more recently made and have a narrower scope of jurisdiction as compared to the General Laws.

HOW ARE THESE LAWS APPLIED?

Often times when crime happens, its features and facts fall under the ambit of more than one provision of law. Such coincidence may result in conflict among the forms and quantum of measures to be taken to provide appropriate remedy and punishment respectively. In these situations, the Latin maxim of '*generalia specialibus non-derogant*' shall be applied. It is a well-recognized principle of interpretation which means that 'the general does not derogate from the special' or that 'the special shall prevail over the general', as had been declared by Justice Griffiths, in the case of *R v Greenwood*^[2] that, "The maxim '*generalia specialibus non derogant*' means that for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one."

This had further been clarified by Justice Locke, in the judgement of *Greenshield v The Queen*^[3] that, "In the case of conflict between an earlier and a later statute, a repeal by implication is never to be favoured and is only achieved where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together. Special Acts are not annulled by General Acts unless there is some express reference to the previous legislation or an essential inconsistency in the two Acts standing together which prevents the maxim '*generalia specialibus non-derogant*' being applied."

CASE LAWS IN INDIA

Since the major framework of the Indian laws has been derived from the English, this maxim is mandated here as well. One major judgement that had upheld its importance had been that

² *R v Greenwood* [1992] 7 O.R. (3d) 1

³ *Greenshield v The Queen* [1958] SCR 216

of *State of Gujarat v Patel Ramjibhai*^[4] that had deemed *generalalia specialibus non derogant* as a “cardinal principle of interpretation”. In this case, the Supreme Court had held that the issue regarding a special class of unregistered dealers shall be assessed under the special Section of 33(6) specifically dealing with that class, even if its features may align with those mentioned in the general Section 35.

Another prominent case on this maxim had been that of *Maharaja Pratap Singh Bahadur v Man Mohan Dev*^[5] had explained that “where there are general words in a later Act capable of reasonable and sensible application without extending to subjects specially dealt with by the earlier legislation, you are not to hold that earlier or special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of particular intention to do so.” The case had been pertaining to the lease of estate lands in West Bengal, facts thereof falling under both the general Court of Wards Act, 1870, and the special Bengal Ghatwali Lands Act, 1859. The Court had held that the special act shall apply instead of the general as it tackled the problem in a more personalised manner. Here, it shall be noted that the special Act, Act V of 1859, had been made before the general Act, Act IV of 1870, but this exception had not affected its interpretation or judgement.

Similarly, in the case of *Paradip Port Trust v Their Workmen*^[6], there had been conflicting about whether the issues pertaining to an advocate employed by a port shall be adjudicated under the criteria of a legal practitioner appointed by the client as per the general legislation of the Advocates Act, 1961 or as that of an employee of the port falling under the special provisions of the Industrial Disputes Act, 1947. The Supreme Court had held that while the general Act dealt with all the matters of a lawyer before all the authorities, the special Act was only concerned with the cases of legal practitioners, hence the Industrial Disputes Act shall be more suitable to provide the course of action here.

In the case of *M/S. Lord Chloro Alkalies Ltd. v Director-General of Income Tax (Admn.) and Anr.*^[7], the Board for Industrial and Financial Reconstruction (BIRF) had remitted all the penalties and related charges regarding the income tax dues, which had been objected to as per the Sick Industrial Companies (Special Provisions) Act (SICA), 1985, which provides for only

⁴ *State of Gujarat v Patel Ramjibhai*, 1979 AIR 1098, 1979 SCR (3) 788

⁵ *Maharaja Pratap Singh Bahadur v Man Mohan Dev*, AIR 1966 SC 1931

⁶ *Paradip Port Trust v Their Workmen*, AIR 1977 SC 36

⁷ *M/S. Lord Chloro Alkalies Ltd. v DGIT (Admn.) and Anr.*, 2013 6 AD (DELHI) 595

the Board of the company the authority to do such. However, upon perusing the statute books, the Court had observed that the provisions of the special act shall prevail but only to the extent it encompasses. Section 32 of the SICA had explicitly mentioned that its application shall be exempted in some exceptions, including, as per Section 32(1), the enactments under the Income Tax Act, 1961.

CONCLUSION

With the lightning-fast changes in society, like globalisation, capitalism, technocracy, and so on, it is a sine qua non for the law to match their pace or it may be rendered obsolete amidst the contemporary dynamism of the upcoming crimes. Hence, the law needs to keep updating itself to maintain its relevancy and effectiveness for the implementation of true justice and order. Furthering that view, it can be stated that the Special laws are arguably better than the General laws as they are more inclusive of the newer circumstances, thus, more capable of reviewing the facts and giving tailor-made recourses of action. However, it shall be pertinent to note that the usage of *generalia specialibus non derogant* as the prima facie choice every time waives off the right of a person, especially the concerned or the aggrieved, to decide among the various remedies available under different provisions and statutes. The mechanical application of this maxim may just lead to dissatisfactory or unjust judgements. Hence, the Court should peruse the statute books and thereupon adjudge, considering the facts of the case as to what laws shall apply were to give the best available solution each time.