
A CRITICAL ANALYSIS OF OVERLAPPING OFFENCES IN SPECIAL AND GENERAL LEGISLATION: DETERMINING PREVALENCE AND HIERARCHY

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ABSTRACT

The primary aim of this study, “A Critical Analysis of Overlapping Offenses in Special and General Legislation: Determining Prevalence and Hierarchy,” is to analyse the special legislations in India, namely the new Bharatiya Nyaya Sanhita (BNS), 2023, and other pertinent laws. Significant changes and difficulties are introduced by the Bharatiya Nyaya Sanhita as it attempts to modernize the criminal justice system and replace the Indian Penal Code, especially where it intersects with current special legislation. The essay, therefore, focuses on the issue of how different legislations coexist and conflict while, in the process, examining the problems created by the overlaps mentioned above and their legal implications. The research work consequently looks into recent legal developments and their operational impacts with the objective of giving a broad comprehensively clear overview concerning the hierarchy and prevalence of special over general laws vis-à-vis evolving judicial areas in India.

The central legal question addressed in this paper is how a special statute can override a general law, even when the general law has been in existence before the special statute and has been enacted after thorough legislative consideration, solely because of the legal maxim *Generalia Specialibus Non Derogant* (“general laws do not derogate from special laws”)¹. This is a fundamental matter that raises basic concerns as to the thinking behind granting precedence to special legislation over general laws, when the latter are more representative and created through a specific and often elaborate process of legislation². In order to ensure that special laws have their intended emphasis and relevance even in the context of pre-existing general laws, the paper examines how this principle is utilized in legislative interpretation and judicial practice.

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¹ Devenish, George. “The application of the *generalia specialibus non derogant* maxim in the interpretation of statutes.” *South African Law Journal* 122.1 (2005): 72-75.

² Borelli, Silvia. “The (mis)-use of general principles of law: *lex specialis* and the relationship between international human rights law and the laws of armed conflict.” *General Principles of Law-The Role of the Judiciary*. Cham: Springer International Publishing, 2015. 265-293.

The article will address this legal matter by concentrating on how a special statute, created to address particular situations, might supersede or replace a general law, even if the general law has been established for a long time or adopted after careful consideration. In order to iron out this kind of contradiction, the legal principle that should be applied is “Generalia Specialibus Non Derogant,” which means special provisions do not derogate from the general law. This construction is necessary to uphold the spirit of the legislature in framing special legislation, because in most such cases, the essence is to deal with specific issues at specific points.

Certain laws, such as the Protection of Children from Sexual Offences Act, 2012 (POCSO), the Prevention of Corruption Act, 1988 (PCA), and others, offer particular frameworks and deal with particular issues. Because of these laws, there may be disputes when identifying which act applies because of overlapping requirements in both general and special laws. The Present paper “A critical analysis of over lapping offences in the special and general Legislation” — A Study on Adverting Prevalence & Hierarchy is intended mainly to analyse how such overlaps come into existence, what are the legal principles applied in sorting out such overlaps and finally gives a brief snapshot about effect of overlap provisions on Indian judicial machinery. If general and specific provisions were to come in conflicts, this article explore what the way out of such ambiguity can be done so that legislative intent should meet justice but will not create unnecessary ambiguity in legal framework. It will do so through the use of case studies as well as principles for interpreting statutes.

Introduction:

Legal reform in India, therefore, walks hand in hand with developments, more crucially with the recently proposed Bharatiya Nyaya Sanhita, 2023, which replaces the Indian Penal Code and overhauls the entire idea of criminal justice administration³. But being a reform, it also has its kind of problems. While section BNS makes an honest attempt to usher in more streamlined and updated legal jurisprudence in order to deal with criminal offences, its interaction with special laws raises some fundamental questions of coexistence and conflict between these legal frameworks.

The BNS, while trying to supplant the IPC and create a new legal framework for criminal law, would logically have a wide set of offenses. India has, however, relied for long upon special laws devised with a view to dealing with specified offenses more precisely. These special

³ Sullivan, Christopher J., et al. “Detecting specialization in offending: comparing analytic approaches.” *Journal of Quantitative Criminology* 25 (2009): 419-441.

legislations, such as the Prevention of Corruption Act⁴, 1988 (PCA), the Protection of Children from Sexual Offences Act⁵, 2012 (POCSO), and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act⁶, 1989 (SC/ST Act), cater to targeted societal issues, setting up specific frameworks to tackle the unique challenges posed by such crimes. The resulting overlap between general laws like the BNS and special laws raises legal challenges about which law should take precedence, especially when both laws govern the same subject matter.

The primary legal question this paper seeks to address is how a special statute can override a general law, even when the general law has been in existence before the special statute, and has been enacted after thorough legislative consideration. This conflict finds its resolution in the application of the legal maxim *Generalia Specialibus Non Derogant*, which asserts that “general laws do not derogate from special laws.” This maxim provides as a guiding principle in determining whether a special law takes precedence over a general one, even when the latter was enacted with greater legislative deliberation⁷. The paper shall discuss how such a principle is applied in statutory interpretation, the judicial reasoning for such decisions, and how courts manage these conflicts so as to retain the relevance and focus of special laws.

The Necessity of Special Laws in a Complex Legal System:

The criminal justice system in a country as diverse as India has to take into account a wide range of social, economic, and cultural conditions that call for more specialized legal responses. Special legislation are enacted to fight against some social evil, to provide more protection to deprived or underrepresented class, or to ensure that certain types of crime are punished more adequately and selectively. These laws generally establish more stringent punishments, procedural protections, or intricate definitions which address unique social maladies that justify the creation of them.

For instance, the PCA was enacted in response to general concerns over the increase of graft within public institutions, especially where public officers are concerned. Although bribery and other forms of corruption are addressed by provisions in the IPC (and now the BNS), the PCA provides a more targeted legal framework with more stringent procedural requirements and a

⁴ Prevention of Corruption Act, 1988

⁵ Protection of Children from Sexual Offences Act, 2012

⁶ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁷ Brennan, Tim “Classification: An overview of selected methodological issues.” *Crime and Justice* 9 (1987): 201-248.

more limited definition set⁸. Similar to this, POCSO was passed in response to the rise in child sexual offenses. It provides stronger criteria for sentencing as well as extra protection for victims who are minors.

This degree of specificity in special laws is essential for tackling particular societal issues that fall outside the purview of normal criminal laws. But this also leads to situations where particular legislation and general laws (like the BNS) overlap, creating confusion about which law should be applied when both frameworks may conceivably cover the same offense.

The Role of Generalia Specialibus Non Derogant in Legal Interpretation:

The legal adage The interpretation of statutory conflicts between general and special laws relies heavily on Generalia Specialibus Non Derogant. This axiom makes sure that unique laws stay true to their original intent and don't be absorbed into general laws with broader wording. This idea has long been used by courts to settle disputes where the same issue is covered by both special and general laws. The reasoning behind this is that special laws should not be superseded by the more expansive application of general laws since they are adopted with a more concentrated goal and handle specific difficulties with greater accuracy⁹.

Perhaps one of the more salient dynamics in this principle is the fact that special laws are usually enacted to provide against certain ills which general legislation cannot thoroughly or effectively reach. Courts uphold the legislative intent behind these statutes and guarantee the particular protections and provisions offered by these laws by ensuring that special laws prevail on conflict¹⁰.

In *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey*¹¹ (1966), the Supreme Court reinforced the primacy of special legislation over general laws, holding that unless there is a clear legislative intent to the contrary, special laws should prevail in cases of conflict. The case is instructive for an appreciation of how the courts balance the application of the law evenly against the upholding of the particular purposes of special statutes.

⁸ Campbell, Liz. *Organised crime and the law: a comparative analysis*. Bloomsbury Publishing, 2013.

⁹ Broom, Herbert. *A Selection of Legal Maxims: Classified and Illustrated*. W. Maxwell & son, 1870.

¹⁰ Prud'homme, Nancie. "Lex specialis: oversimplifying a more complex and multifaceted relationship?." *Israel Law Review* 40.2 (2007): 356-395.

¹¹ *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey*, (1966) AIR 1966 SC 1931

Legislative Intent and the Judicial Resolution of Conflicts:

When the special law should apply rather than the general, consideration of legislative intent in respect of the statute often proves to be one of the most important factors. In situations when two statutes contradict, courts usually consider the intent behind the enactment of each legislation. The purpose of special laws is to provide a more targeted legal solution to particular societal challenges. These legislation are frequently created to address particular difficulties. On the other hand, general laws like the BNS are intended to provide a broad framework in handling various forms of criminal offenses.

Among the major issues in conflict resolution between general and special laws, one is determining the legislative intention for each statute.

There may be a tendency to apply the general law even in situations where a particular statute is in place if the legislative aim behind the general law is to offer a complete legal foundation¹². Nonetheless, unless the general law expressly specifies otherwise, courts have repeatedly found that special statutes should take precedence due to their specificity.

In the case of *State of West Bengal v. Anwar Ali Sarkar*¹³ (1952), the Supreme Court dealt with the constitutionality of provisions in the West Bengal Special Courts Act, 1950, which allowed the government to arbitrarily decide which cases would be tried by special courts. The Court ruled that such discretion, without clear legislative guidelines, was unconstitutional. The case is significant because it outlined the importance of having legislative intent and elucidated what would follow from arbitrary discretion in the application of special statutes. The Court's decision would bring out that even in those cases where special laws grant discretionary powers, there must be definite standards and limits concerning the way such powers are exercised.

Overlapping Offences and Their Practical Implications:

Overlapping offenses under both general and particular legislation present serious practical difficulties. When there are two laws that apply to a specific offense—one general, one special—law enforcement, prosecutors, and courts have to choose which law to follow. This

¹² Berg, Mark T., and Carrie F. Mulford. "Reappraising and redirecting research on the victim–offender overlap." *Trauma, Violence, & Abuse* 21.1 (2020): 16-30.

¹³ *State of West Bengal v. Anwar Ali Sarkar*, (1952) AIR SC 75

choice is not always simple and necessitates a thorough examination of the particular facts of each case in addition to the legislative intent underlying each statute¹⁴.

There is a lot of overlap in situations related to corruption. While the BNS has more general rules addressing bribery and other forms of corruption, the PCA offers a comprehensive framework for the prosecution of public officials who commit acts of misconduct. Law enforcement organizations must choose whether to charge an accused person under the PCA or the BNS in such circumstances. This could have very serious and far-reaching implications, seeing as the penalties and procedural procedures in both the BNS and PCA may differ. Because of its specificity-meaning that it has more stringent definitions and resultant punishments-the PCA generally overrides the general provisions under the BNS.

Overlapping is also found in cases relating to the commission of sexual offenses against children. Both POCSO and the BNS deal with such cases, but POCSO contains more specialized law, with more stringent sentencing parameters and special handling for the child victims. Even in situations where the broad provisions in the BNS would theoretically cover the offense, POCSO is frequently applied in circumstances involving kids. This is justified by the fact that POCSO was created expressly to shield minors from sexual offenses, and its rules are designed to explicitly address the vulnerabilities that young victims present.

Another area where general and specific laws overlap is cybercrime. Cybercrimes are covered by provisions in both the BNS and the Information Technology Act¹⁵, 2000 (IT Act). However, although the IT Act focuses exclusively on offenses relating to the internet, the BNS provides a more complete framework for treating offenses like fraud and defamation, which can also occur online. Selecting the right and appropriate legislation to apply in a situation where a crime involves both traditional and cyber components may be challenging. The final conclusion is always depending on the specifics of each case and the meaning found in the legislative intent of each act; nonetheless, the IT Act's emphasis on cybercrime typically makes it more applicable than the more broad provisions of the BNS.

Precedents Shaping the Principle of *Generalia Specialibus Non Derogant*:

Courts have repeatedly maintained the idea that special laws should take precedence over

¹⁴ Walters, Mark, Abenaa Owusu-Bempah, and Susann Wiedlitzka. "Hate crime and the "Justice Gap": The case for law reform." (2019).

¹⁵ Information Technology Act , 2000

general laws in situations where they contradict, which serves as the foundation for the implementation of *Generalia Specialibus Non Derogant*¹⁶. This idea makes sure that even when more comprehensive general laws are in place, special legislation still have application, remain relevant, and fulfill the original intent behind their enactment¹⁷.

In *Maharaja Pratap Singh Bahadur vs. Thakur Manmohan Dey*¹⁸ (1966), the Court held that in cases where both a general and a special statute apply, the special statute should take precedence unless there is clear legislative intent to the contrary. This decision reaffirmed the importance of legislative intent in determining which law should apply in cases of conflict. The Court's reasoning was based on the ideology that special statutes are enacted to address specific societal issues, and their provisions are often more precise and tailored to the needs of those issues.

Similarly, in the case of *State of West Bengal v. Anwar Ali Sarkar*¹⁹ (1952), the Court struck down provisions of the West Bengal Special Courts Act, which allowed the state government to arbitrarily decide which cases would be tried by special courts. The Court held that such discretion, without proper legislative guidelines, and a violation of the principle of equality before the law. This decision shows the need for clarity in legislative intention and the harms of allowing arbitrary discretion in the application of special laws.

These precedents showcases that while special statutes should take precedence over general laws in cases of conflict, there must be clear legislative intent and guidelines governing their application²⁰. Courts must carefully balance the need to uphold the specificity of special laws with the need to ensure that justice is administered in a fair manner and consistently across all cases.

Conclusion: Balancing Special and General Laws in India's Legal Framework:

In conclusion, the resolution of conflicts between special and general laws in India's criminal justice system requires careful statutory interpretation and a nuanced understanding of

¹⁶ Halkerston, Peter. A Collection of Latin Maxims & Rules, in Law and Equity: Selected from the Most Eminent Authors, on the Civil, Canon, Feudal, English and Scots Law, with an English Translation, and an Appendix of Reference to the Authorities from which the Maxims are Selected. J. Anderson and Company, 1823.

¹⁷ Horvath, Miranda Angel Helena, and Liz Kelly. "Multiple perpetrator rape: Naming an offence and initial research findings." *Journal of Sexual Aggression* 15.1 (2009): 83-96.

¹⁸ Supra Note 11

¹⁹ Supra Note 13

²⁰ Khaitan, Tarunabh, and Sandy Steel. "Areas of Law: Three Questions in Special Jurisprudence." *Oxford journal of legal studies* 43.1 (2023): 76-96.

legislative intent. The principle of *Generalia Specialibus Non Derogant* plays a crucial role in ensuring that special statutes, which are designed to address particular societal issues, are not inadvertently overridden by more broadly written general laws.

Even though the BNS provides a thorough and contemporary legal framework, it must coexist with additional laws that more precisely handle certain situations. Ensuring that these legal frameworks are enforced in a way that actually preserves the integrity of both general and particular laws while offering precise guidance for resolving conflicts is a challenge for legislators, courts, and law enforcement organizations. The ability of courts to interpret and administer the law in a way that promotes justice and the clarity of legislative intent ultimately determine how general and specific laws should be balanced.