



Date: 21 March 2021

**VIRTUAL COACHING CLASSES  
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL  
PAPER 2: CORPORATE AND OTHER LAWS**

**Faculty: Ms. Sonali Shah**

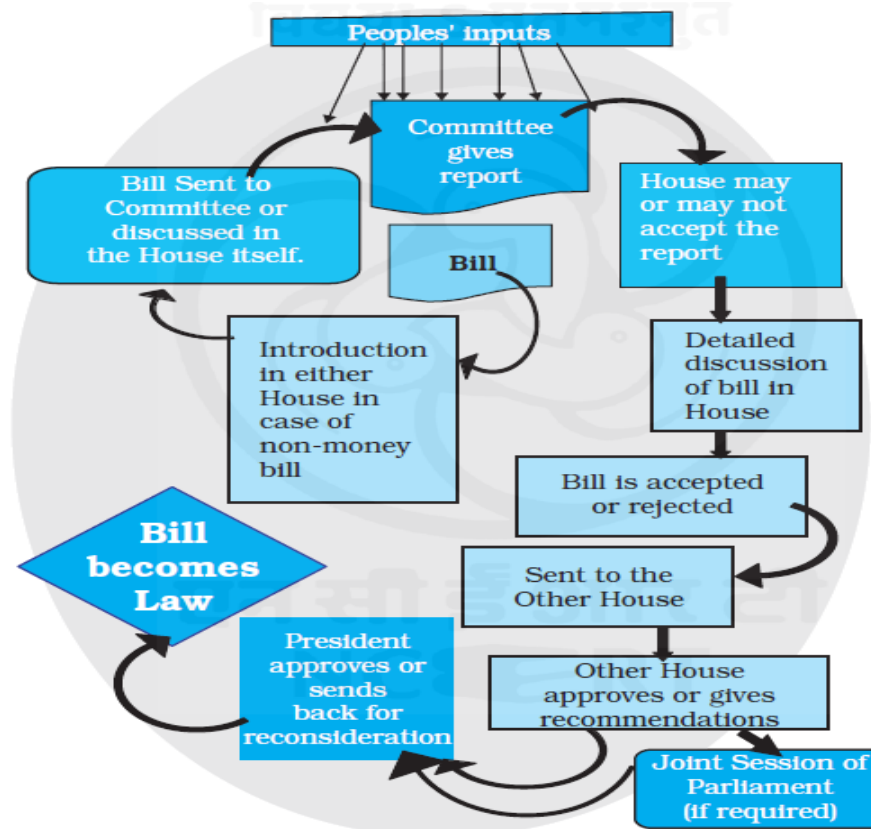
# What is an Act?

---

## An Act is a bill

- Passed by both houses of the parliament (upper house and the Lower house)
- Assented by the president
- Once approved by the President of India it is notified in the official gazette of India
- A bill is the draft of a legislative proposal.

# How does a bill become an Act in India



# BASIC UNDERSTANDING OF LEGISLATION

---

**“Preamble”** : Every Act has a preamble which **expresses the scope, object and purpose of the Act.**

It is the main source for understanding the intention of lawmaker behind the Act. Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act but if the enactment is clear and unambiguous in itself the n o preamble can vary its meaning.

Example : (1) Preamble of the Negotiable Instruments Act, 1881 states - “An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.”(2) Preamble of the Companies Act, 2013 states – “An Act to consolidate and amend the law relating to companies.”

# BASIC UNDERSTANDING OF LEGISLATION

---

“**Definitions**”: Every Act contains definition part for the purpose of that particular Act and are usually mentioned in the Section 2 of that Act or in Section 3 or in other initial sections.

The object of the definition clause is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply

Words are defined in the respective Act. Sometimes, definitions are referred in another statutes. If words are not defined in the respective Acts, such words are to be taken from General Clauses Act.

# EXAMPLE

---

Example (1) : The word 'Company' used in the Companies Act, is defined in section 2(20) of the respective Act.

Example (2) : Word 'Security' used in the Companies Act, not defined in the respective Act. It has been defined under section 2(h) of the Securities Contracts (Regulations) Act, 1956. This word is equivalent applicable on the Companies Act, 2013. Similarly, the word 'Digital signature' used in the Companies Act, shall be construed as per the section 2(1)(p) of the Information Technology Act, 2000.

# BASIC UNDERSTANDING OF LEGISLATION

---

**“Means”** : Some definitions use the word “means”. Such definitions are exhaustive definitions and exactly define the term.

Definition of ‘Company’ as given in section 2(20) of the Companies Act, 2013. It states, “Company” means a company incorporated under this Act or under any previous company law. :

Section 2(34) of the Companies Act, 2013 defines the term director as “director” means a director appointed to the Board of a company

# BASIC UNDERSTANDING OF LEGISLATION

---

**“Include”**- Some definitions use the word “include”. Such definitions do not define the word but are inclusive in nature. Where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive. The word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section

Example (1): Word ‘debenture’ defined in section 2(30) of the Companies Act, 2013 states that “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not”. This is a definition of inclusive nature.

Example (2) : “Body Corporate” or “Corporation” includes a company incorporated outside India.



# BASIC UNDERSTANDING OF LEGISLATION

---

**“Shall” and “May”** : The word ‘shall’ is used to raise a presumption of something which is mandatory or imperative while the word ‘may’ is used to connote something which is not mandatory but is only directory or enabling.

However, this prima facie inference about the provision being imperative may be rebutted by other consideration such as object and scope of enactment and the consequences flowing from such construction. There are numerous cases where the word “shall” has, therefore, been used as merely directory

Example 1 : Section 3 of the Companies Act, 2013 states that “A company may be formed for any lawful purpose by.....” . Here the word used “may” shall be read as “shall”. Usage of word ‘may’ here makes it mandatory’ for a company for the compliance of section 3 for its formation.

# BASIC UNDERSTANDING OF LEGISLATION

---

**Example 2:** Section 21 of the Companies Act, 2013, provides that documents/proceeding requiring authentication or the contracts made by or on behalf of the company, may be signed by any Key Managerial Personnel or an officer of the company duly authorised by the Board in this behalf. Usage of the ‘may’ shall be read as ‘may’.

The use of word ‘shall’ with respect to one matter and use of word ‘may’ with respect to another matter in the same section of a statute, will normally lead to the conclusion that the word ‘shall’ imposes an obligation, whereas word ‘may’ confers a discretionary power ( Labour Commr., M.P.V. Burhanpur Tapti Mill, AIR, 1964 SC1687). In *Sainik Motors v State of Rajasthan* **J. Hidayatullah** observed “*the word Shall is ordinarily mandatory but it is sometimes not so interpreted if the context or the intention otherwise demands*”

# INTRODUCTION

---

The General Clauses Act 1897 belongs to the class of Acts which may be called as interpretation Acts. It functions as one of the statutory aids of interpretation.

It was **enacted on March 11, 1897** & consolidated the two earlier enactments of 1868 and 1887. It is largely modelled on the (English) Interpretation Act 1889.

Every state has its own general clause Act (modelled on general clause act 1897), which is applicable to state Acts- eg. Karnataka General Clause Act, 1899.

# WHY WE STUDY GENERAL CLAUSES ACT

---

The General Clauses Act, 1897 contains 'definitions' of some words and also some general principles of interpretation

This is an Act intends **to provide general definitions** which shall be applicable to all Central Acts and Regulations **where there is no definition** in those Acts or regulations that emerge with the provisions of the Central Acts or regulations, unless there is anything repugnant in the subject or context.

The General Clauses Act is very effective in the absence of clear definition in the specific enactments and where there is a conflict between the pre-constitutional laws and post- constitutional laws.

# OBJECTIVE / PURPOSE OF GENERAL CLAUSE ACT

---

The objects of the Act are several, namely:

- to shorten the language of Central Acts;
- to provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common
- To state explicitly certain convenient rules for the construction and interpretation of central laws.
- To guard against slips and oversights by importing into every act certain common form clauses, which otherwise ought to be inserted in every central act

# OBJECTIVE / PURPOSE OF GENERAL CLAUSE ACT

---

The purpose of the Act has been stated by the Supreme Court in the case of *The Chief Inspector of Mines v. Karam Chand Thapar*. It stated that the purpose of this Act is to place in one single Statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and regulations. The purpose of the Act is to avoid superfluity of language in statutes wherever it is possible to do so

# Example

---

A claim of the right to catch fish came under the consideration of the court in ***Ananda Behera v. State of Orissa***. The court tended to decide whether the right to catch or carry fish is a movable or immovable property. It was observed

*Section 3(26) of the General Clauses Act, 1897 reads as under:- “Immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;” The S.3 Transfer of Property Act does not define the term except to say that immovable property does not include standing timber, growing crops or grass. As fish do not come under that category the definition in the General Clauses Act applies and as a profit a prendre is regarded as a benefit arising out of land it follows that it is immovable property within the meaning of the Transfer of Property Act.”*

Thus the court construed “right to catch or carry fish” as an immovable property

# APPLICATION OF THE GENERAL CLAUSE ACT

---

The Central Acts to which this Act applies are: —

- (a) Acts of the Indian Parliament (central act) along with the rules and regulations made under the central act ;
- (b) Acts of the Dominion Legislature passed between the 15th August, 1947 and the 26th January, 1950;
- (c) Acts passed before the commencement of the Constitution by the Governor-General in Council or the Governor-General acting in a legislative capacity. The Act not defines any “territorial extent” clause.

If a central act is extended to any territory, the General clauses Act would also be deemed the title “General Clauses Act” is not less appropriate than the title “Interpretation Act”.

Article 367 of the Constitution of India authorises use of General Clause Act for the interpretation of constitution. Section 372 states that

***“ Unless the context otherwise requires, the General Clauses Act, 1897 , shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India”***



# APPLICATION OF THE GENERAL CLAUSE ACT

---

Section 3 of the General Clauses Act, which deals with the definitional clause, applies to the General Clauses Act itself and to all Central Acts and Regulations made after the commencement of the General Clauses Act in 1897.

Section 4 of the General Clauses Act which deals with the application of foregoing definitions to previous enactment, applies to Central Acts and after January 3, 1868 and to regulations made after January 14, 1887.

# CHAPTERS

---

**Preliminary – Section 1**

**General Definitions- Sections 3 to 4A**

**General Rules of Construction – Section 5 to Section 13**

**Power & Functionaries- Sections 14 to Section 19**

**Provisions as to orders, rules etc. made under enactments - Section 20 to 24**

**Miscellaneous – Section 25 to 30**

# SECTION 1

---

**SHORT TITLE-** This act may be called the General Clauses Act, 1897

The title although the part of the Act is in itself not an enacting provision. Every Act is given a title to carve out its own identity just like men are given their names to identify them.

**LONG TITLE:** “ An act to consolidate and extend the General clauses Act 1868 and 1887”

# SECTION 3 - DEFINITIONS

---

Three sections of the General Clauses Act, :

- Section 3 - Definitions
- Section 4- application of foregoing definitions to previous enactment and
- Section 4A - Application of certain definitions to Indian laws, -

Section 3, which is the principal section containing definitions, applies to the General Clauses Act itself and to post-1897 Central Acts and Regulations unless those laws contain separate definitions of their own or there is something repugnant in the subject or context and hence definition given in section 3 cannot be applied.

Section 3 seeks to define 67 phrases and terms commonly used in enactments and is intended to serve as a dictionary for the phrases.

# ACT & AFFIDAVIT [S.3(2) & 3(3)]

---

In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context

**“act”** [Section 3(2)] : ‘act’, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;

**“Affidavit”** [Section 3(3)] : ‘Affidavit’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

- In common parlance, Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

# CENTRAL ACT [S. 3(7)]

---

“Central Act” [Section 3(7)] : ‘Central Act’ shall mean an Act of Parliament, and shall include-

(a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution\*,

(b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;

# COMMENCEMENT [S.3[13]]

---

Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force;

A Law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being “in operation in a constitutional sense” though it is not in fact in operation, has no validity. [State of Orissa Vs. Chandrasekhar Singh Bhoi, Air 1970 SC 398]

# “DOCUMENT” [SECTION 3(18)]

---

‘Document’ shall include

- any matter written, expressed or described upon any substance
- by means of letters, figures or marks or by more than one of those means
- which is intended to be used or which may be used,
- for the purpose or recording that matter.

However, it does not include Indian currency notes



# “ENACTMENT” [SECTION 3(19)]

---

‘Enactment’ **shall include** a **Regulation** (as hereinafter defined) and any Regulation of Bengal, Madras or Bombay Code, and **shall also include** any provision contained in any Act or in any such Regulation as aforesaid;

Rules and regulation are nothing but a species of legislation. The legislature instead of enacting the same itself delegates the power to other person. Whatever is enacted by the delegate of legislature is also enactment

It has been held that an “enactment” would include any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.

# “FINANCIAL YEAR” [SECTION 3(21)]

---

Financial year shall mean **the year commencing on the first day of April.**

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar.

Thus as per General Clauses Act, Year means calendar year which starts from January to December

# “GOOD FAITH” [SECTION 3(22)]

---

A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.

Whether a thing has been done honestly is a question of fact to be determined with reference to the circumstances of a particular case.

Thus, anything done with due care and attention, which is not malaise is presumed to have been done in good faith

For eg: An authority is not acting honestly where it had a suspicion that there was something wrong and did not make further enquiries.

# “IMMOVABLE PROPERTY” [SECTION 3(26)]

---

‘Immovable Property’ shall include:

- i) Land,
- ii) Benefits to arise out of land, and- profit a prendre
- iii) Things attached to the earth, or
- iv) Permanently fastened to anything attached to the earth

It is an inclusive definition.

Apart from the General Clauses Act, the expression "immovable property" finds a place in the Sale of Goods Act, the Transfer of Property Act and the Registration Act. But it is nowhere precisely defined since the definitions in all those Acts do not say what exactly immovable property means. They only specify what is included or not included therein

Whether trees are immovable property?

# Contd..

---

In **Shantabai v. State of Bombay, 46** the Supreme Court pointed out that trees must be regarded as immovable property because they are attached to or rooted in the earth.

An agreement to convey forest produce like tendu leaves, timber bamboos etc., the soil for making bricks, the right to build on and occupy the land for business purposes and the right to grow new trees and to get leaves from trees that grow in further are all included in the term immovable property

# MOVABLE PROPERTY” [SECTION 3(36)]

---

‘Movable Property’ shall mean property of every description, except immovable property

Debts, share , electricity are moveable property

# “IMPRISONMENT” [SECTION 3(27)]

---

‘Imprisonment’ shall mean imprisonment of either description as defined in the Indian Penal Code .

By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment which is of two descriptions, namely, rigorous, that is with hard labour and simple. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple

# INDIAN LAW” [SECTION 3(29)]

---

‘Indian law’ shall mean any **Act, Ordinance, Regulation, rule, order, bye law or other instrument** ,which before the commencement of the Constitution, had the force of law in any Province of India or part thereof or thereafter has the force of law in any Part A or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act



# Month” [Section 3(35)]

---

‘Month’ shall mean a month reckoned according to the British Calendar

The word "month occurring in s.271 (l)(a)(i) of the Income-tax Act, 1961, was construed to mean a period of thirty days and not a month as defined in the General Clauses Act;

As to how a calendar month is to be counted from a date which is not the first month has been described in the Halsbury's law of England

“When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts; save that, if the period starts at the end **of** a calendar month which contains more days than the next succeeding month the period expires at the end **of** the letter month”.

# Month” [Section 3(35)]

---

In a case before Full bench <sup>299</sup> of Calcutta High Court the question was whether a suit instituted on April 15, 1907 claiming a sum <sup>of</sup> money under an insurance policy because <sup>of</sup> a fire occurring in the night <sup>of</sup> October 14/15, 1906 was within limitation, when the period <sup>of</sup> limitation was six months as specified in the insurance policy. The Full Bench held that the suit was not brought within that period. Maclean C.J., <sup>300</sup> held that the word “month” in the <sup>clause</sup> must mean calendar month and that if it be taken as it appeared from the evidence, that the fire occurred before the midnight <sup>of</sup> October 14, 1906, the suit was not instituted until April 15, 1907, one day after the expiration <sup>of</sup> six months. It was held that it was apparent that the computation can be explained only on the basis that excluding the day on which the fire occurred, the first calendar month commenced from October 15, 1906, and the period <sup>of</sup> six months expired, therefore on April 14, 1907.

# PERSON” [SECTION 3(42)]

---

“Person” shall include:

- (i) any company, or
- (ii) association, or
- (iii) body of individuals, whether incorporated or not

# APPLICATION OF THE FOREGOING DEFINITIONS TO THE PREVIOUS ENACTMENTS SECTION 4

---

There are **certain definitions in section 3** of the General Clauses Act, 1897 which **would also apply to the Acts and Regulations made prior to 1987** i.e., on the previous enactments of 1868 and 1887. This provision is divided into two parts-

**(1) Application of terms/expressions to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the 14th January, 1887-**

Here the given relevant definitions in section 3 of the following words and expressions, that is to say, 'affidavit', 'immovable property', 'imprisonment', 'month', 'movable property', 'oath', 'person', 'section', 'and 'year' apply also, unless there is anything repugnant in the subject or context, to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the 14th January, 1887

# SECTION 4

---

## **(2) Application of terms/expressions to all Central Acts and Regulations made on or after the fourteenth day of January, 1887-**

The relevant given definitions in the section 3 of the following words and expressions, that is to say, 'commencement', 'financial year', 'offence', 'registered', 'schedule', 'sub-section' and 'writing' apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887

# SECTION 4A

---

Applications of certain definitions to **Indian laws** The definitions in section 3 of the expressions ‘Central Act’, ‘Central Government’, ‘Gazette’, ‘Government’, ‘Government Securities’, ‘Indian Law’, and ‘Official Gazette’, **shall apply, unless there is anything repugnant in the subject or context, to all Indian law**

In any Indian law, references, by whatever form of words, to **revenues of the Central Government** or of any State Government shall, on and from the first day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.

# GENERAL RULES OF CONSTRUCTION

---

SECTION 5 TO SECTION 13 , GENERAL CLAUSES ACT 1897

# General rules of construction

---

**“Coming into operation of enactment” [Section 5] :** Where any Central Act has **not specifically mentioned a particular date to come into force**, it shall be implemented on **the day on which it receives the assent** of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or , of **the President in case of an Act of Parliament.**

**Example:** The Companies Act, 2013 received assent of President of India on 29th August, 2013 and was notified in Official Gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.



# General rules of construction

---

Where, if **any specific date** of enforcement is **prescribed** in the official gazette , **Act shall come into enforcement from such date.**

**Provision is also at times made for appointment of different dates for coming into force of different parts of the same act.**

Example : SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Here, this regulation shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette

---

Also, law takes no cognizance of fraction of day , thus where an Act provides that it is to come into force on the first day January, it will come into force on as soon as the clock has struck 12 on the night of 31<sup>st</sup> Dec.

### **PRESUMPTION AGAINST RETROSPECTIVITY**

All laws which affect substantive vested rights generally operate prospectively and there is a presumption against their retrospectively till there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence, the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched.

# REPEAL

---

As per Halsbury's Laws of England, the term repeal stands for revoking and abolishing an act and all its effects which cause it to cease to be a part of statutes of books or body of law.

According to the Black's law dictionary, the term repeal means a legislative act which abrogates or obliterates an existing statute

The power to repeal a statute is conferred to the legislature is similar to the powers it has for the enactment of a statute. For example, the Companies Act, 2013 repealed the Companies Act 1956. Both the union and the state legislature are empowered with such power however they are restricted to delegate the power of repealing.

# SECTION 6: EFFECT OF REPEAL

---

Where any **Central legislation or any regulation** made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislations so repealed or;

# SECTION 6: EFFECT OF REPEAL

---

- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

# SECTION 6: EFFECT OF REPEAL

---

In **State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305**, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act

In **Kolhapur Cane sugar Works Ltd. V , Union of India, AIR 2000, SC 811**, Supreme Court held that Section 6 only applies to repeals and not to omissions and applies when the repeal is of a Central Act or Regulation and not of a Rule.

# SECTION 6: EFFECT OF REPEAL

---

**In Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj 75:** ‘Repeal’ of provision is in distinction from ‘deletion’ of provision. ‘Repeal’ ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the ‘repealed’ provision while ‘deletion’ ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed. For the purpose of this section, the above distinction between the two is essential.

# SECTION 6A

---

## Repeal of Act making textual amendment in Act or Regulation

Where any **Central Act or Regulation** made **after** the commencement of this **Act** **repeals any enactment** by which the **text** of any Central Act or Regulation was **amended** by the express omission, insertion or substitution of any matter , then unless a different intention appears, the **repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.**



# “REVIVAL OF REPEALED ENACTMENTS”

## [SECTION 7]

---

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressed to state that purpose.

(2) This section applies also to all Central Acts made after the third day of January, 1968 and to all Regulations made on or after the fourteenth day of January, 1887.

In other words, to revive a repealed statute, it is necessary to state an intention to do so.

# CONSTRUCTION OF REFERENCES TO REPEALED ENACTMENTS- SECTION 8

---

(1) Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

---

In ***Gauri Shankar Gaur v. State of U.P ., AIR 1994 SC 169***, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

Example : In section 115 JB of the Income tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made made in section 115 JB of the Income tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.

# COMMENCEMENT AND TERMINATION OF TIME- S. 9

---

In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

**Example** : If a company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e.30/10/2016will be included.

# COMPUTATION OF TIME” [SECTION 10]

---

Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In ***K. Soosalrathnam v. Div. Engineer , N.H.C. Tirunelveli***, it was held by Madras High Court that since the last date of the prescribed period was subsequent to the date of notification, declared to be a holiday on the basis of the principles laid down in this section the last date of prescribed period for obtaining the tender schedules was extended to the next working day

# “MEASUREMENT OF DISTANCES [SECTION 11]

---

In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

# “DUTY TO BE TAKEN PRO RATA IN ENACTMENTS” [SECTION 12]

---

Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

# GENDER AND NUMBER” [SECTION 13]

---

In all legislations and regulations, unless there is anything repugnant in the subject or context

- (1) Words importing the masculine gender shall be taken to include females, and
- (2) Words in singular shall include the plural and vice versa.

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun ‘he’ and its derivatives may be construed to refer to any person whether male or female. So the words ‘his father and mother’ as they occur in S.125(1) (d) of the CrPC, 1973 have been construed to include ‘her father and mother’ and a daughter has been held to be liable to maintain her father unable to maintain himself.



# GENDER AND NUMBER” [SECTION 13]

---

But the general rule in S. 13(1) has to be applied with circumspection of interpreting laws dealing with matters of succession. Thus, the words “male descendants” occurring in S.7 and S.8 of the Chota Nagpur Tenancy Act, 1908 were not interpreted to include female descendants.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of GC Act do not apply. Thus the word ‘bullocks’ could not be interpreted to include ‘cows’

Similarly, to construe previous year in S. 2(11) of the Income Tax Act to include previous years would nullify the very definition of ‘previous years’ enacted therein.

# POWER AND FUNCTIONARIES

---

[SECTION 14 TO SECTION 19]- GENERAL CLAUSES ACT, 1897

# POWER CONFERRED TO BE EXERCISABLE FROM TIME TO TIME” [SECTION 14]

---

(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.

(2) This section applies to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

Relying on S.14, the SC has held that the power under S.51(3) of the States Reorganisation Act, 1956 can be exercised by the Chief Justice as and when the occasion arose for its exercise.

# “POWER TO APPOINT TO INCLUDE POWER TO APPOINT EX-OFFICIO” [SECTION 15]

---

Where by any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, may be made either by name or by virtue of office. Ex-officio is a Latin word which means by virtue of one's position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing ex-officio as well.

# “POWER TO APPOINT TO INCLUDE POWER TO SUSPEND OR DISMISS” [SECTION 16]

---

The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

O.40, Rule 1(a) of the CPC, 1908, which authorises a court to appoint a receiver, has been construed to embrace a power of removing a receiver.

A.229(1) of the Constitution which empowers the Chief Justice to make appointment of officers and servants of a High Court has been interpreted to include a power to suspend or dismiss.

# “SUBSTITUTION OF FUNCTIONARIES”

## [SECTION 17]

---

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887

# “SUCCESSORS” [SECTION 18]

---

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section shall also applies to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887.

# “OFFICIAL CHIEFS AND SUBORDINATES” [SECTION 19]

---

A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

This section also applies to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January 1887.

In **K.G. Krishnaya v. State, AIR 1959** it was held that it is not essential that same statutory authority that initiated a scheme under the Road Transport Corporation Act 1950, should also implement it. It is open to the successor authority to implement or continue the same.

Similarly, in case under the Preventive Detention Act, where there is a change in the advisory board after service of the detention order, the new Advisory Board can consider the case pending before the earlier board.



# PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS

---

[SECTION 20 TO SECTION 24]- GENERAL CLAUSES ACT 1897.

# “CONSTRUCTION OF ORDERS, ETC., ISSUED UNDER ENACTMENTS” [SECTION 20]

---

Where by any legislation or regulation, a power to issue any notification, order, scheme, rule form, or bylaw is conferred, then expression used in the notification, order, scheme, rule, form or byelaw, shall, unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or regulation conferring power.

In ***Subhash Ram Kumar v. State of Maharashtra, AIR 2003 SC 269***, it was held that ‘Notification’ in common English acceptation mean and imply a formal announcement of a legally relevant fact and “notification publish in Official Gazette” means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Notification cannot be substituted by administrative instructions.

“POWER TO ISSUE, TO INCLUDE POWER TO ADD TO, AMEND, VARY OR RESCIND NOTIFICATIONS, ORDERS, RULES OR BYE-LAWS” [SECTION 21]

---

Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye laws so issued

In **Rasid Javed v. State of Uttar Pradesh, AIR 2010 SC 2275**, Supreme Court held that under Section 21 of the Act, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in the like manner

---

In *Shreesidhballi Steels Ltd. V . State of Uttar Pradesh, AIR 2011* SC 1175, Supreme Court held that power under section 21 of the Act is not so limited as to be exercised only once power can be exercised from time to time having regard to exigency of time.

# “MAKING OF RULES OR BYE-LAWS AND ISSUING OF ORDERS BETWEEN PASSING AND COMMENCEMENT OF ENACTMENT” [SECTION 22]

---

Where, by any **Central Act or Regulation** which is **not to come into force immediately**, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder , or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, **then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.**

# Contd..

---

It is an enabling provision, its content and purpose being to facilitate the making of rules, bye laws and orders before the commencement of the enactment in anticipation of its coming into force. In other words, it validates rules, bye laws and orders made before the coming into force of the enactment, provided they are made after its passing and as preparatory to the enactment coming into force.

# “PROVISIONS APPLICABLE TO MAKING OF RULES OR BYE-LAWS AFTER PREVIOUS PUBLICATIONS” [SECTION 23]

---

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:

(1) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

---

(3) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) The authority having power to make the rules or bye-laws, and, where the rules or byelaws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws has been duly made



---

Section 23(5) raises a conclusive presumption that after the publication of the rules in the official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned

It is also open to the authority publishing the draft and entitled to make the rules to make suitable changes in the draft before finally publishing them. It is not necessary for that authority to re-publish the rules in the amended form before their final issue so long as the changes made are ancillary to the earlier draft and cannot be regarded as foreign to the subject matter thereof

## “CONTINUATION OF ORDERS ETC., ISSUED UNDER ENACTMENTS REPEALED AND RE-ENACTED” [SECTION 24]

---

Where **any Central Act or Regulation**, is, after , the commencement of this Act, **repealed and re-enacted with or without modification**, then unless it is otherwise expressly provided any appointment notification, order , scheme, rule, form or bye-law, made or issued under the repealed Act, continue in force, and be deemed to have been made or issued under the notification, order , scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled District Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section

---

This section accords statutory recognition to the general principle that if a statute is repealed and re-enacted in the same or substantially the same terms, the re-enactment neutralizes the previous repeal and the provisions of the repealed Act which are re-enacted, continue in force without interruption. If however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by and are repugnant to the repealing Act

In **State of Punjab v. Harnek Singh, AIR 2002 SC 1074**, It was held that investigation conducted by Inspectors of Police, under the authorization of notification issued under Prevention of Corruption Act, of 1947 will be proper and will not be quashed under new notification taking the above power , till the aforesaid notification is specifically superseded or withdrawn or modified under the new notification

---

The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until superseded.

Where an Act is repealed and re-enacted, the fact that the repealed Act stated that rules made under that Act shall have effect as if enacted in the Act does not mean that the rules automatically disappear with the repeal of the Act under which they are made and that there is no room for the application of this section.

# MISCELLANEOUS

---

SECTION 25 TO SECTION 30- GENERAL CLAUSES ACT 1897

# “RECOVERY OF FINES” [SECTION 25]

---

Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

# PROVISION AS TO OFFENCE PUNISHABLE UNDER TWO OR MORE ENACTMENTS” [SECTION 26]

---

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 punished twice for the same offence.

**Article 20(2) of the Constitution** states that no person shall be prosecuted and punished for the same offence more than once.

According to the Supreme Court, a plain reading of section 26 shows that there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.

---

In **State of M.P. v. V.R. Agnihotri, AIR 1957 SC 592** it was held that when there are two alternative charges in the same trial, e.g., section 409 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act, the fact that the accused is acquitted of one of the charges will not bar his conviction on the other

Provisions of section 26 and Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution are the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply



# MEANING OF SERVICE BY POST”

## [SECTION 27]

---

Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing
- (ii) pre-paying, and
- (iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

---

In **United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181** : A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

In **Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604**, it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In **Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh**, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice

# QUESTIONS

---

A word.....raise a presumption of something which is not mandatory.

- a. Shall
- b. May
- c. Could
- d. Can

Where legislation has not specifically mentioned date to come into force on a prescribed date, it shall be implemented on.....

- a. Day that receives the assent of prime minister
- b. Day that receives the assent of president
- c. Both of them
- d. None of the above

# QUESTIONS

---

. The preamble is most important in any legislation, it.....

- a. Provides definitions in the act
- b. Expresses scope, object and purpose of act
- c. Provides summary of entire act
- d. None of the above

. Some definitions used.....such as definitions are exhaustive definitions and exactly define the term.

- a. Imply
- b. Include
- c. Points
- d. Means

# QUESTIONS

---

Service by post shall be deemed to be effected when

- a. Properly addressed
- b. Pre- paid
- c. Post by registered post
- d. All of the above

Which of the following is not an object of General clauses act?

- a. To shorten the language the central act
- b. To provide as far as possible for uniformity of expression in central act, by giving definitions of a series of terms In common use
- c. To elaborate language of the act
- d. None of the above :

# QUESTIONS

---

Calendar year starts from.....

- a. January
- b. March
- c. April
- d. None of the above

Power to appoint includes.....

- a. Power to appoint ex-officio
- b. Power to suspend or dismiss
- c. Both of them
- d. None of the above



---

**THANK YOU**