LAW COMMISSION OF INDIA

SIXTIETH REPORT

ON

THE GENERAL CLAUSES ACT, 1897

MAY, 1974

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS

CONTENTS

D.O. No. F. 1(1)/73-L.C.

P. B. Gajendragadkar

LAW COMMISSION OF INDIA

'A' Wing, Shastri Bhavan,
New Delhi-1.

May 21, 1974.

I have great pleasure in forwarding herewith the 60th Report of the Commission on the General Clauses Act.

As the Commission has pointed out in the first Chapter of the Report, a draft Report on the subject, containing tentative proposals, had been prepared by the previous Commission and circulated for comments to State Governments, High Courts, Bar Associations and other interested persons and bodies. Replies had been received in response to the said draft; but, no further action was taken by the previous Commission and no report submitted in that behalf.

As you are aware, after the present Commission was constituted, it was engaged in dealing with more urgent work and when that work was completed, it decided to take up the present subject for study. A fresh draft Report on the subject was then prepared by the Member-Secretary, Mr. Bakshi for discussion. This draft was fully considered by the Commission and in the light of the discussion, it was revised and ultimately finalised. While doing so, the comments received on the earlier draft have been duly taken into account.

The Commission hopes that the recommendations made in the present Report would help rationalise some of its important sections and clarify the law by removing ambiguities where they existed and recommending the addition of certain new sections.

Yours

Sd/-
P. B. GAJENDRAGADKAR

Hon'ble Mr. H. R. Gokhale,

Minister of Law, Justice & Co. Affairs,

Government of India,

New Delhi.

CHAPTER 1

PRELIMINARY

Subject-matter of the Report.

1.1. This Report deals with an enactment which is not confined to a particular branch of the law, but applies to all its branches. It is concerned with the General Clauses Act, 1897.

Reference to the Commission.

1.2. Revision of the General Clauses Act was referred to a previous Law Commission in 1959 by the Ministry of Law[1] (Legislative Department). The Commission commenced a study of the subject, and had to consider one important preliminary question[2] relating to the effect of revision of the Act on the operation of article 367(1) of the Constitution. This question was, after considerable discussion, settled, and the way was cleared for proceeding with a revision of the Act. In due course, a draft Report containing tentative proposals on the subject was prepared, and approved for circulation, and circulated by the previous Commission for comments to State Governments, High Courts, Bar Associations and other interested persons and bodies.

But the work of finalising the draft Report was not concluded and so, the report on this subject was not forwarded by the Commission to the Government.

Since this problem has remained with the Commission for quite some time, we thought that we should now take up the task, as the more urgent matters, which claimed our attention during the last two years or more, have now been dealt with, and our Reports in respect of them have been forwarded to the Government.

The Member-Secretary to the Commission prepared for our consideration a fresh draft Report, after a study of the Act and also after taking into account the comments received on the proposals of the earlier Commission. This draft Report was treated by us as a working paper for our discussion.

We ought to add that we have examined the Act section by section, and have considered the question whether any section requires to be amended or revised, or any new provision requires to be added.

Objects of the Act.

1.3. The objects of the Act are several, namely, (1) to shorten the language of Central Acts; (2) to provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use; (3) to state explicity certain convenient rules for the construction and interpretation of Central Acts; and (4) to guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted expressly in every Central Act. Of course, in the above statement, when we refer to Central Acts, we also include Regulations and Ordinances, and statutory instruments made under Central Acts, Regulations and Ordinances.

Importance of the General Clauses Act.

1.4. The General Clauses Act, thus, makes provisions as to the construction of General Acts and other laws of all-India application. Its importance, therefore, in point of the number of enactments to which it applies, is obvious.

---

1. 28th September, 1959.

2. Para 1.27 to 1.31, *infra*.

Much more, however, can be said about the importance of an interpretation Act, which has been called the "Law of all laws". In so far as certainty in the application of the law is a desideratum itself, an interpretation Act seeks to introduce that certainty, in the limited sphere in which it operates.

Importance of uniformity.

1.5. One of the objects of the Act, as already pointed out above, is to shorten the language of statutes and to achieve, as far as possible, uniformity of expression in such language. Its importance is evident from what Bentham said[1]:

> "The language of error is always obscure and indefinite. An abundance of words serves to cover a paucity and a falsity of ideas. The oftner terms are changed, the easier it is to delude the reader. The language of truth is uniform and simple. The same ideas are always expressed by the same terms."

But for the control exercised by the General Clauses Act over statutory language, it would have been a "free for all" affair so far as the use, meaning and interpretation of words and language in our statute law are concerned.

Importance of statute law today.

1.6. It is desirable, in this context, to emphasise the importance of statute law today. It was towards the end of the last century, that the present General Clauses Act was enacted; statute law did not then possess, in its volume and range, the importance which it now possesses, though, of course, much of the lawyer's law had been codified in India by that time. Since 1897, the number of statutes and statutory instruments has multiplied every year. As the position stood towards the end of 1971, there were about 700 Central Acts of permanent duration, and the number of statutory instruments issued under these Acts would run literally into thousands. Litigation involving questions of statutory construction, constitute now the bulk of the total litigation in India. It is, therefore, obvious that an enactment which is intended to deal with the process of interpretation of statutes, is now of much greater importance than it could have been in the last century.

Legislation as principal means of growth.

1.7. Pound has called attention to the fact that legislation is the principal characteristic and means of growth in mature legal systems[2]. As has been observed[3] National development, as we understand it in the world today, involves a vast amount of governmental planning "and programming, not only to expedite the process of development, but to direct their course along desired lines. A great volume of legislative enactments is required to validate plans and programmes and the actions necessary for their implementation. For these reasons, enacted or statutory law has acquired predominant importance in modern developing nations."

"Taken by itself, statutory law, that is, law consciously and purposely adopted to meet social needs as they arise, is certainly a higher stage of legal development than customary law. ....Not a few of us may look forward to a time when with us, as with most other Western Nations, practically all law shall be statutory[4]."

The importance of increase in the tempo of legislative activity was stressed, in the United States, by the late Justice Felix Frankfurter. He pointed out that the proportion of cases coming before the United States Supreme Court which did not involve statutory issues had fallen from 40 per cent in 1875 to 5 per cent in 1925, and almost to zero in 1947[5].

---

1. Bentham Theory of Legislation (Hildreth's Edition), 1904, page 87.
2. Pound, "Sources and Forms of Law", (1946) 22 Notre Dame Lawyer 1, cited in Sands, "Statutory Construction and National Development," (1969) 18 I.C.L.Q. 206.
3. Sands, "Statutory Construction & National Development", (1969) 18 I.C.L.Q. 206, 210.
4. Ernest Bruncken, "The Common Law and Statutes", (1920) 29 Yale L.J. 516, 522.
5. Frankfurter, "Some Reflections on the Reading of Statutes", Sixth Annual Benjamin N. Cardozo Lecture delivered before the Association of the Bar of the City of New York, March 18, 1947; (1947) 2 Record of the Assn. of the Bar of the City of New York, No 6 (1947) ; 47 Columbia L. Rev. 527 ; quoted by Sands, "Statutory Construction and National Development" (1969) 18 I.C.L.Q. 206, 210.

1.8. It should be pointed out that legislation has not been regarded always as a mere supplement to, or taking out of common law or customary law. On the contrary, an older view was that enacted law was the normal type, and customary law a mere makeshift to which men resorted, for want of enactment, to prevent a failure of justice. Roman law after Justinian was a body of enactments, and this idea is very prominent from the sixth century to the rise of the school at Bologna in the twelfth century.[1]

The Roman Jurist Gaius[2] classified statutes as one form of "law", and Justinian's Corpus Juris was, as legislation of the Emperor, regarded as binding statute law for centuries on the continent. For some time, even a view prevailed that the rules of the common law had their origin in forgotten statutes.[3] It was the rise and development of vigorous body of judge-made law in the King's courts, and the paucity of legislation from the time of Henry the 2nd until Henry the 8th, which rendered legislation unimportant in the growing period of the English legal system.[4]

1.9. The tide has now turned again. In any modern society with an aspiration for the improvement of the conditions of the life of the people, legislation is par excellence the source of law. Therefore, importance of the General Clauses Act, having regard to the growing importance of legislation in society, is obvious.

Maine put the matter lucidly when he stated[5] :

"The capital fact in the mechanism of modern states is the energy of legislatures." As the development of law goes on, the function of the judges is confined within growing limits; the main source of modifications in legal relation comes to be more and more exclusively the legislature.[6]

We are making these observations in order to emphasise the importance of the General Clauses Act.

Act not intended to codify rules of interpretation.

1.10. It is not, of course, implied that the General Clauses Act, or, for that matter, the Interpretation Act of any other country, codifies all the 'rules' of statutory interpreation. The so-called rules of interpretation are really in the nature of guide-lines,[7] and are not to be treated as mathematical formula. In fact, even the definitions contained in the General Clauses Act (and many of the general rules of construction which are incorporated in it) apply only where the context does not otherwise require. This shows that the Act itself does not purport to treat rules of construction as categorical imperatives.

Shortening the language.

1.11. Even so, the value and utility of the General Clauses Act is considerable, because it not only constitutes the reference book of the judge when dealing with statutes, but serves as the draftsman's labour-saving device. It lays down rules which would have been tedious to repeat in every statute, thus shortening the language of legislative enactments.

The aspect of shortening the language has been emphasised again and again in the speeches relating to the General Clauses Act, 1868 and General Clauses Act, 1897, in the course of the legislative proceedings. It has also been referred to by the Supreme Court.[8]

---

1. Pound, "Common Law and Legislation" (1907-1908) 21 Harvard Law Review 383, 388.
2. Gaius I. 2.
3. Janka, Law and Politics in the Middle Ages, p. 1.
4. See Pound, "Common Law and Legislation", (1907-1908) 21 Harvard Law Review 383, 389.
5. Maine, Early History of Institutions, Lect. xiii, cited by Pound, Common Law & Legislation (1907-1908) 21 Harvard Law Rev. v. 383, 402.
6. Sidgwick, Elements of Politics, 2 ed.
7. See also para 2.8, *infra*.
8. *Subramaniam* v. *Official Receiver*, A.I.R. 1953 S. C. 1.

implifica-
on in
anguage-
nportance
f.

1.12. The importance of simplification in language should not be under-estimated. As has been observed by the Canadian Law Commission:[1-2]

> "A part of the task (of Law reform) involves making the laws more understandable and more meaningful to the average citizen. Thus, a specific effort must be made, not only to improve law in its substance, but to reduce legal complexity and technicality. This will require a study of topics that, on the surface, may appear technical, but that, in fact, affect, in telling ways, the realisation through law of the aspirations of the average man and woman for fair treatment for themselves and for others."

istory.

1.13. A few other points of a general nature may now be dealt with. It may be convenient to begin with the history of the Act. It would appear that the idea of having a device for shortening statutes could be traced to Bentham and to those who took up the criticism of the legal system made by Bentham.[3]

Historical
background-
English
Act.

1.14. In England, the first interpretation Act, known as Lord Brougham's Act, was passed as far back as 1850. In 1889, the Act was replaced by the Interpretation Act. This Act is the source of subsequent Interpretation Acts, not only in England, but also in other countries of the Commonwealth.

Historical
background
—Indian
Act
of 1868.

1.15. The provisions of Lord Brougham's Act,[4] with a few additions, were adopted in India, and enacted as the General Clauses Act, 1868 (1 of 1868). A Bill on the subject had been conceived of much earlier, but it could not be prepared for various reasons, chief among them being the impression that such a Bill might possibly be suggested by the Indian Law Commissioners.[5] Ultimately, the Bill leading to the Act of 1868 was drafted by Whitley Stokes. In drafting the Bill, Stokes drew not only upon the earlier English statutes on the subject, but also upon the illustrations of rules of construction prepared by Arthur Symonds.[6]

The Act of 1868 was of a measure of a limited character. It was incomplete; but, in so far as the ground covered was concerned, it worked "fairly well". It considerably shortened the language of subsequent Central Acts. Its utility made the legislative Department think of making useful additions to it. A supplementary General Clauses Act was later enacted as the General Clauses Act, 1887 (1 of 1887). This Act was drafted by Sir C. Ilbert. Ilbert described the process by which he arrived at the list of additions proposed, in the following words.[7]

> "The additions which I propose to make are based on personal experience during the last few years. I have had a list prepared of the special definitions inserted in Acts of Council and I find on examination of this list that there are some dozen or so of these definitions which might with advantage be generalised and added to the list contained in the Act of 1868.
>
> I also propose to generalize certain provisions which have so frequently recurred in recent Acts as to have become what conveyancers call 'common form' ".

Act of 1889
and Act
of 1897
Present
Act).

1.16. In 1889, a comprehensive and consolidating Act on the subject was enacted in England. Our General Clauses Act, 1897, is largely modelled on that Act. It consolidates the two earlier enactments of 1868 and 1887, and includes a few new provisions taken from the (English) Interpretation Act, 1889.

---

1. Law Reform Commission of Canada, Research Program 1, (March 1972) page 7.
2. See also para 2.6, *infra*.
3. Carr, "The Mechanics of Law-making", (1951) Current Legal Problems , page 122.
4. Para 1.14, *Supra*.
5. Gazette of India, August 24,1867, page 1220.
6. whitley Stokes Anglo Indian Code (1887) Vol 1, page 485
7. Legislative proceedings (1886), page 305

State Acts.

1.17. Every State has its own General Clauses Act,[1] which applies to State Acts. The lead in this matter was taken by the former Presidencies of Bombay, Bengal and Madras. The earliest Act on the subject was Bombay Act 10 of 1866. The first General Clauses Act in Madras and Bengal was enacted in 1867 (Madras Act 1 of 1867 and Bengal Act 5 of 1867).

Utility of the present Act.

1.18. The Central Act of 1897 has stood the test of time. Its value in avoiding superfluity of language in statutes has been commended by courts. There can be no better testimony of its utility than the fact that courts have, on considerations of equity, justice and good conscience, thought fit to extend its principles not only to subordinate legislation,[2] but also to private documents.[3] The Act has also served as a model for all States General Clauses Acts. Lastly, the Act has been expressly applied to the interpretation of the Constitution[4] by article 367 of the Constitution.

Need for change.

1.19. Since the passing of the Act, however, far-reaching changes have taken place in this country. The constitutional set-up has altered completely after the attainment of independence, and the volume of legislation has increased considerably. The range and variety of the new legislation has given rise to substantial changes in legislative practice. The quantity of subordinate legislation has also assumed large proportions. Some provisions of the Act of 1897 have come up for judicial consideration. A few of them have given rise to conflict of views.

No large-scale revision of the General Clauses Act has so far been undertaken. Certain minor amendments were made by the amending Acts of 1903 and 1936. In addition, by various Adaptation Orders, the Act was, from time to time, amended to bring it in conformity with Government of India Act, 1935 and with the Constitution. But the scope of such amendments was necessarily limited. Time has come when the Act should be completely reviewed, so as to bring it in line with the fundamental constitutional changes and the new trends in legislative practice.

Whether there should be one Act or two Acts.

1.20. Before making our detailed recommendations for revision of the Act, we consider it necessary to examine a few preliminary questions. One such question relates to the form which the proposed changes should take. The basic question is whether there should be one interpretation Act, or whether there should be two Interpretation Acts. Need for making a choice in this respect arises because a view has been put-fourth that the present General Clauses Act should continue for the interpretation of the existing Central Acts etc. and a new full-fleged interpretation Act should be proposed for the interpretation of Central Acts etc. to be enacted hereafter.

In this connection, we may note that in the proposals for revision of the Act, circulated by the earlier Commission,[5] one suggestion was that there should be two-Acts.—the present Act may be preserved for existing Central Acts etc. and a new Interpretation Act may be enacted to apply to new enactments. But it should be added that the Commission had no opportunity of taking a final decision in the matter; and, in fact, because of its pre-occupation with urgent work, the matter remained undisposed of when the term of the Commission came to a close.

One Act preferred.

1.21. We have carefully considered the matter in all its aspects, and are inclined to take the view that the simultaneous existance of two interpretation Acts is likely to create unnecessary complications. Citizens as well as lawyers will be required to make themselves familiar with both the Acts, for a considerable time to come, because it is unlikely that all the existing Central Acts will be removed from the Statute Book within a reasonably foreseeable future. Diversity of judicial interpretation in respect of two sets of identical provisions may also create problems, and

---

1. See para 1.33, *infra* also.
2. Para 12.22 to 12.26, *infra*.
3. Para 6.21 A and 6.22, *infra*.
4. Article 367 of the Constitution, para 1.27, *infra*.
5. Para 1.2, *supra*.

such diversity will harm the uniformity of the law. It would, thus, be a serious anomaly if the Statute Book were to have two General Clauses Acts for the interpretation of Central Acts.

No doubt, the initiation of a totally new interpretation Act (with only prospective effect) has an advantage inasmuch as the redical changes will not apply to existing Acts. But the same object could, in a fair measure, be achieved by suggesting new provisions for incorpration in the present Act, at the same time making those new provisions prospective[1]. The proposals for having two Acts does not, in this respect, have any peculiar merit.

Homo-geneity of Central Acts passed since 1868.

1.22. It may be stated that though, during the period since 1868, there were different Constitution Acts in force at different times, yet Central Acts passed since 1868 have a certain amount of homogeneity. Hence, it is logical to have one Act for their interpretation. As regards the new provisions to be inserted in the Act, care is being taken to ensure that such of them as are likely to create any difficulty will be prospective only. For all these reasons, we think that the alternative of having one Act, is not likely to create any serious practical difficulty. In any case, the advantage of having one Interpretation Act for all Central Acts far outweighs the slight disadvantage that certain difficulties may possibly arise in a few odd cases in discerning which provisions apply to which Central Act.

Form of the proposed legislation.

1.23. There is another preliminary question to be considered. Assuming that there is to be one Interpretation Act[2] what should be the form which the proposed legislation should take?

The new legislation can possibly take one of the following forms :—

(i) An amending Act; or

(ii) A new Act which will apply to all Central Acts, whether passed before or after the commencement of the new Act.

Amending Act referred.

1.24. We prefer the first course, namely, an amending Act. The General Clauses Act, 1897, already makes a distinction between (a) Central Acts made after the 3rd January, 1868 (the date of commencement of the General Clauses Act, 1867); (b) Central Acts and Regulations made after the 14th January, 1887; and (c) Central Acts made after the 11th March, 1897 (the date of commencement of the Act of 1897). To these categories will be added one more category, namely, Central Acts and Regulations made after the commencement of the amending Act. This may appear to be complicated; but it cannot be avoided. The complicated structure is already there in the existing Act. What the amending Act will do is only to add one more category.

Broad considerations borne in mind when revising the Act.

1.25. This disposes of the preliminary questions. So far as the revision of individual sections of the Act is concerned, we have borne in mind a few broad considerations which we may now mention. In the first place, where a particular section of the Act has led to a conflict of decisions, or other difficulties of interpretation, we have tried to settle the law. Secondly, apart from such conflict or difficulties, where the particular provision was found to be juristically wrong[3], we have tried to set right. Thirdly, we have recommended the addition of new provisions[4] where the gap in the existing law was found to cause difficulties in practice.

1.26. It will be apparent from the following Chapters of this report that the recommendations that we have made are not numerous or radical. This is a tribute to the draftsmanship of the present Act, which has stood the test of time for three quarters of a century. On the whole, the provisions of the Act have caused no serious difficulty[5]. No doubt, a

---

1. See para. 1.22, *infra*.
2. Para 1.22, *supra*.
3. *E. g.*, section 3—"affidavit".
4. *E. g.*, the proposed provision as to temporary Acts, Chapter 7, *infra*.
5. See para. 1.18, *supra*.

certain amount of technical language is bound to recur in an Interpretation Act, as the subject-matter deals with abstractions familiar to lawyers but not to laymen. One cannot, therefore, expect here the excellence of limpid language found in, say, continental Codes, and in some of our own laws.

However, at some places, the legislative style was tortured[1] and left scope for improvement. We hope that in the recommendations made by us, we have been able to arrive at a statement of law which, on the whole, can be described as clear, simple and precise

Interpretation of the Constitution.

1.27. There is a constitutional question which we would like to dispose of at the outset. It concerns the interpretation of the Constitution, and can be appropriately mentioned in connection with the revision of this Act. The question[2] arises, mainly, from the language of article 367 of the Constitution, which reads as follows :—

> "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."

Since this article refers to "an Act of the Legislature of the Dominion of India", the query may be raised if it is permissible to modify or revise the General Clauses Act, lest such modification or revision should introduce complications in the literal application of article 367. In other words, the question is whether amendments concerning the existing General Clauses Act, in so far as the Act applies to Central Acts, would, in any manner, dislocate the operation of that Act in relation to the Constitution. That is the question to which we address ourselves.

No difficulty likely.

1.28. It appears to us that there should be no such difficulty. Any amendments, additions or deletions which may be made in the General Clauses Act, 1897, would not affect the Constitution. Interpretation of the Constitution will continue to be governed by the General Clauses Act, *as in force immediately before the Constitution*[3]. The Act cannot be so repealed or modified as to affect the interpretation of the Constitution.

Debates in the Constituent Assembly.

1.29. It may be stated that the concluding words in article 367—"as it applies for the interpretation of an Act of the Legislature of the Dominion of India",—were added in the Constituent Assembly, by an amendment moved by Dr. Ambedkar, who thus explained their utility[4]:

> "The point is this, that the General Clauses Act applies to Acts, Regulations and Ordinances. It is, therefore, necessary to say to which class of these laws this will apply. That is the reason why the amendment is proposed."

Shri T. T. Krishnamachari made the position clear :

> ".....what we want is that only those *particular portions which refer to Acts* should apply, so far as this particular clause is concerned."

The concluding words of article 367 do not, therefore, mean that the General Clauses Act should be preserved for all times in its pre-1950 form. The Act can be revised or modified; but the unmodified Act will continue to govern the interpretation of the Constitution.

Effect of section 8 on article 367.

1.30. Will section 8 of the General Clauses Act, which provides that when an enactment is repealed and re-enacted, references to the old enactment will be construed as references to the re-enacted one, make any difference ? We do not think so. It should be noted that the words

---

1. *E. g.* section 6A, para 6.10, *infra*.
2. At a very early stage of consideration of this Act before a previous Law Commission, this query was dealt with.
3. Subject to adaptations made under article 372 of the Constitution.
4. Constituent Assembly Debates, Vol. IX, Part III, pages 1641-1642, discussion relating to article 303(2).

"unless the context otherwise requires" (in article 367)[1] mean that the General Clauses Act, section 8, is to be excluded. Even by its terms, section 8 of the General Clauses Act will not apply to the Constitution, because expression "enactment" (which occurs in section 8) would not take in the Constitution, which is not an "enactment". The Constitution is supreme and is, in fact, the foundation of all enactments.

Conclusion.

1.31. Our conclusion, therefore, is that the revision or amendment of the General Clauses Act, 1897, will not, in any way, affect the operation of article 367; and the General Clauses Act, 1897 as it stood immediately before 26 January, 1950 (subject to adaptations made under the Constitution) will continue to apply.

Title of the Act.

1.32. In many countries, Acts similar to the General Clauses Act are called Interpretation Acts. But, as the provisions of the General Clauses Act (whether relating to definitions and meanings of words and terms or dealing with construction and interpretation) are, so far as may be necessary, common to every Central Act, the title "General Clauses Act" is not less appropriate than the title "Interpretation Act". For this reason, and also because this title has been in vogue for more than a century, we do not recommend any change therein. The Supreme Court had perhaps, this in mind when it observed in the case of *Chief Inspector of Mines* v. K. C. Thapar[1]:

> "Whatever the General Clauses Act says, whether as regards the meanings of words or as regards legal principles, has to be read into every Act to which it applies."

State laws.

1.33. It may also be noted that though Act does not, in terms apply to State laws, it is evident that the State General Clauses Acts should conform to the General Clauses Act of 1897, for, otherwise, divergent rules of construction and interpretation would apply, and. as a result, great confusion might ensue. Thus, excepting a few provisions in the Central Act, such as those contained in section 5, nearly all its remaining provisions are as appropriate for State Act and Ordinances as for the Central Acts and Ordinances and. have, in fact, been adopted in all the State General Clauses Acts. The result has been that a certain amount of uniformity has been achieved in the language of the entire body of statute law of this country.

---

1. Para 1.27, *supra*.

2. *Chief Inspector of Mines* v. *K.C. thapar*, (1961) 2 S.C.A. 86, 89; AIR 1961, SC 838, 843 (Das Gupta).

CHAPTER 2

STATUTORY INTERPRETATION

Introductory.

2.1. In this Chapter, we propose to refer to certain general aspects of statutory interpretation.

Interpretation as old as language.

2.2. Interpretation is as old as language. Elaborate rules of interpretation were evolved even at a very early stage of the Hindu civilisation and culture. The rules given by Jaimini, the author of the Mimansat Sutras, originally meant for the Srutis, were employed for the interpretation of the Smritis also. All the commentators and writers of Nibandhas invariably adopted these canons of interpretation for their own purposes, so much so that these interpretations or comments sometimes became more difficult and abstruse than the original texts commented upon[1]. K.A. Nilkanta Sastry, a distinguished scholar, has observed[2]:

> "With reference to the system of Jaimini (Mimansa) it has for its main object, the determination of doubtful points in the elaborate rituals enjoined by the Vedas by discussion and interpretation. It raises and answers, incidentally, some questions of great interest."

The importance of avoiding literal interpretation has also been stressed in one of the ancient text books[3] :

> "Merely following the texts of the law, decisions are not to be rendered, for, if such decisions are wanting in Equity, a gross failure of Dharma is caused[4]."

The Bhavishya Purana[5] has an apt verse dealing with the rule to be followed for the resolution of conflict between Smriti and Artha as well as for the resolution of inconsistency between the rules of the Smritis themselves.

And Kalidas has described, in ringing words which have become immortal, the indissoluble link between "word" and "meaning[6]".

According to Narada[7], when Smritis and Artha Sastra are inconsistent, the presumption of Arthasastra is superseded by Smritis[8]. In case of mutual inconsistency, however, that rule is authentic which is in accord with equity[9].

Interpretation of statutes-Importance of.

2.3. Interpretation, thus, is a familiar process of considerable significance. In relation to statute law, interpretation is of importance because of the inherent nature of legislation as a source of law. The process of statute making and the process of interpretation of statutes take place separately from each other, and two different agencies are concerned. An interpretation Act serves as the bridge of understanding between the two.

---

1. U.C. Sarkar, Epoche in Hindu Legal History (1958), page 167.
2. K.A. Nilakanta Sastry, "Mimamsa Doctrine of Works" (1921) Indian Antiquary p. 211.
3. Brihaspati.
4. केवलम् शास्त्रमाश्रित्य न कर्तव्यो हि निर्णयः यूक्तिहीने विचारेतु धर्मज्ञानिः प्रजयते
5 स्मृत्यर्थयो विरोधेतु अर्थशास्त्रस्य बन्धनम् परस्हर विरोधेतु युक्तियुक्तो विधिः स्मृतः भविष्यपुरा
6 बागर्थाविवः संपक्पौ वागर्थप्रतिप्रतपे जगतः पितरौ वन्दे पार्भतीपरमे श्वरौ
7. Narada Ch. 1, verse 40.
8. Translation by Dr. Ludo Rocher, Vyavahar Chintameni of Vachaspati (Chent.1956).
9. धर्मशास्त्र विरोधे तु युक्तियुक्तो विधिः स्मृनः

Judicial determination of questions of law requires the use of materials of various types, depending on the nature of the question. In the interpretation of statutory provisions the material used will naturally have a sharply legal character, as distinct from the application of a general common law doctrine where it may have a more diffused character. In statutes, greater precision is, therefore, required. The process of interpretation is more legalistic and makes more intensive use of the legal technique in statutory interpretation, as contrasted with the application of common law rules.

A process of finding out.

2.4. No idea is exactly what it appears in the linguistic form in which it is expressed[1]. There is always something which is behind the linguistic form, and which goes deeper: and it is the function of interpretation to see that this is made explicit. In this process (which is a process of finding out), we come to grips with the subject in all its wealth of inter-relations, and with particular aspects which, perhaps, we never suspected to exist, though they are closely bound up with the ideas.

Aids to interpretation.

2.5. In this process of interpretation, several aids are used. They may be statutory or non-statutory. The former category (statutory aids) is illustrated by the General Clauses Act, and by specific definitions contained in individual Acts, as also by certain provisions of a general nature which are, for example, contained in the Indian Penal Code[2], and are relevant to the construction of penal enactments. The latter is illustrated by common law rules of interpretation (including certain presumptions relating to interpretation), and also by case-law relating to the interpretation of statutes.

Holland[3] has dealt with the function of interpretation at length. For the present purpose, it is sufficient to mention that he has drawn a clear distinction between "authentic" interpretation on the one hand and other aids to interpretation, on the other hand.

Object of Interpretation Act to standardise the interpretation.

2.6. An interpretation Act is, thus[4], one of the aids to interpretation. The primary purpose of an interpretation Act is to standardise the interpretation. The importance and utility of this aspect should not be under-rated. The avoidance of uncertainty as to the meaning of statute law helps the average citizen, by reducing the scope for ingenious argument. It is, therefore, an effort to simplify and "demystify" the substantive law[5].

Not possible to codify rules—Acharya's suggestion not accepted.

2.7. It is obvious that all "rules of interpretation" cannot be codified. Some rules are only guidelines, as we have already stated[6]. A suggestion was made by the later Professor Acharya in his Tagore Law Lectures on Codification in British India[7], that the scope of the General Clauses Act should be extended so as to make it a comprehensive code on the interpretation of statutes. This suggestion is, no doubt, attractive at first sight; but a close scrutiny will reveal its impracticability. It is not possible to incorporate, in an Interpretation Act, the rules of interpretation enunciated in the text books on the subject. One of the main reasons for having an Interpretation Act is to facilitate the task of the draftsman in preparing parliamentary legislation. The courts also have recourse to Interpretation Acts to interpret statutes; but they do not confine themselves to these Acts. They certainly take the aid of accepted rules of interpretation as laid down in decided cases.

Moreover, a certain degree of elasticity is necessary in this branch of the law. Rules of construction of statutes are not static. Aims and objects of legislation will be better served by appropriate judicial interpretation of the law, rather than by rigid provisions in the laws themselves. At present, Judges have a certain amount of latitude in the matter, which enables

---

1. Paule Preire's article in 1970 Seminar "Tomorrow began yesterday" (Educ. International).
2. Chapters 2 to 4, Indian Penal Code.
3. Holland on Jurisprudence.
4. Para 2.5, *supra*.
5. See also para 1.8, *supra*.
6. Chapter 1, *supra*.
7. Acharya, Codification in British India, pages 189, 191.

them to do justice, after taking into consideration the nature and character of each statute. If the rules of construction are given a statutory form, the consequential rigidity in this branch of the law is likely to do more harm than good.

2.8. For example, the maxin—"*Expressio unius exclusio alterius*"—has been thus commented upon by Max Radin[1] :

"So far from being logical, as some courts have called it, it illustrates one of the most fatuously simple of logical fallacies, the 'illicit major', long the pons asinorum of school-boys[2]. And yet, in a widely used cyclopaedia[3] there are at least seven hundred cases cited in which the maxim has been applied or explained.

"It has been called an axiom by the House of Lords, and it has been said of it that no maxim is of more general and uniform application.[4] Yet, in the same case in which the House of Lords called it axiomatic[5], it was disregarded ; and the first case of its 'application' cited in the *Corpus juris* is a case in the United States Supreme Court in which it was rejected."[6]

How various and variable such considerations are is graphically illustrated by a collection of the various canons of construction by Karl Llewellyn and Charles Driscoll[7]. Each rule of construction of statutes, it is stated, is answered by a counter-rule. Each thrust is met by a parry.

Some rules of law can be fixed and certain, but it is clear, as Aristotle realised[8], that there is a "whole class of matters which cannot be decided....properly by rules of law". To meet this difficulty[9], "Law trains the holders of office expressly in its sprit, and then sets them to decide and settle those residuary issues 'as justly as in them lies'[10]".

Statutes to be adopted to facts of life.

2.9. Statutes are the expressions of the will of an authority constituted by society to announce general obligatory legal rules. The binding force of statute law attaches to the *formula in which* the law is expressed[11]. The task of interpretation of a statute is of extracting, *from the formula,* all that it contains of legal rules, with a view to adapting it, as perfectly as possible, to the facts of life[12]. Therefore, the insertion of rigid rules may go against the very concept of interpretation.

Moreover, with the passage of time, there may be changes in the meaning of words. As has been stated[13], "some words are confined to their history, while some are starting points for history."

To quote Lord Reid[14],

> "All these canons of construction give a lot of material for people who like dealing with them, but I do not think they are more than guides, and guides which take you a very short way."

Specific conflicts to be set right.

2.10. However, where there is a conflict of judicial opinion on a specific question, it is both proper and necessary to resolve the conflict. In suggesting the incorporation of new rules of construction, we have followed this principle.

---

1. Max Radin, "Statutory Interpretation", (1929-1930) 43 Harv. L. Rev. 863, 875.
2. *c. f.* Jevons, Elementary Lessons in Logic (1918), 132.
3. (1921) 25 Corpus Juris, 220.
4. See *Saunders* v. *Evans,* (1861) 8 H.L. Cas. 721, 727.
5. *Saunders* v. *Evans,* (1861) 8 H. L. Cas. 721.
6. *United States* v. *Barnes.* (1912) 222 U.S. 513.
7. K.N. Llewellyn, "Better Theory of Legal Interpretation", (1950), 3 Vend. L. Rev. 395, 401-406.
8. Aristotle, Politics, III, XV, S. 6.
9. B. E. King, Review of Levi's Introduction to Legal Reasoning, (1953) Cam. L. J. 126.
10. Aristotle, Politics III, XVI, S. 5.
11. Geny, Methode, Part III, C.I., cited in Stone, Legal System, (1964), page 216.
12. Stone, Legal System, (1964) p. 216.
13. Frankfurter, "Reading of Statutes", cited in Stone, Legal System, (1964), page 351, footnote 29.
14. Lord Reid in (1955) Australian Law Journal 221.

Interpretation Acts and the common law.

2.11. Provisions in interpretation Acts can, in respect of their relationship with the Common Law, be analysed thus. First, there are provisions which declare the law. In many instances, such provisions simply state the rule of law announced by the courts in their decisions,[1] with the result that the general principles of the construction of statutes are, in effect, codified. In other words, the statute will simply state the rules of law already declared and applied by the courts. Where this is the case, obviously, the statute has very little, if any, effect upon the judicial attitude.

Secondly, there are various statutory rules of construction which embody efforts of the legislature to correct constructions which it has deemed erroneous. Such rules seek to substitute new rules of construction for existing ones, and thereby alter the common law.

Thirdly, there are statutory rules of construction which add to the common law. We have not referred to the above aspect merely as one of academic interest. It helps to elucidate one possible channel in which the reform of the law could be directed,—the confirmation or modification of rules of interpretation laid down by courts, or the addition of rules on matters which have not so far come up before the courts.

Interpretation may partake of the character of law-making.

2.12. It is, of course, well-recognised that interpretation is not merely a process of spelling out the meaning by set guidelines. Sometimes, it has to partake of the character of law-making.

While the judiciary would not have much scope for law-making where the language is clear and the purpose of the statute is definite, its scope for law-making is undisputed when the statute itself consciously delegates the creation of the norm of the judiciary.

Interpretation is not pure mathematics, where the answers given by every person to the particular mathematical problem must tally with each other if the answers are correct. As we shall show later,[2] a certain amount of latitude is left to those who have to interpret and, to this extent, interpretaion resembles law-making.

Morris Cohen pointed out, "You cannot construct a building out of the rules of architecture".[3] As Judge Learned Hand[4] said,—

> "Of course, it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing : be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary."

Judicial "law-making in three situations".

2.13. Julius Cohen[5] has distinguished three main situations covered by the loose term "judicial law-making" relating to statutes—(i) One is very rare, namely, the usurpatory kind, where the clear 'language and purpose' of the statute are subverted and replaced by the court's own policy. (ii) a second (non-unsurpatory) kind is where, for some reason, the legislator has (in effect) consciously delegated norm-creation to the judiciary, whether because flexibility of administration is required as in the Sherman Anti-Trust Law), or because conflicting views and interests within the legislature prevent agreement on anything but vague expression (iii) The third is where there is neither clarity of language and purpose, nor a conscious delegation, but single vagueness or ambiguity, or internal inconsistency of language, affecting the statutory words. In this, as distinct from the first two kinds, the judicial search is for *legislative* meaning, and, thus, for *legislative* policy. The judicial task, in cases of this third kind, is to

---

1. See Crawford, Statutory construction, (1940) pages 751-752.
2. Para 2.13, *infra*.
3. M. R. Cohen, Social Order, 173.
4. *Cabell v. Markhans*, 148 F 2d 737 (2nd Cir 1945) cited in Friedmann, Legal Theory, (1967), page 458.
5. J. Cohen, "Judicial Legislation", (1961) 36 Indiana L.J. 414, 419, 423, cited in Stone, Legal System (1964), 353.

mend the legislative expression so as to yield a solution that can reasonably be attributed to the legislature, whether by surface search of the syntax, by reading in the context of the whole statute, by probing for a principle which the statute expresses, or for hints of the legislator's purpose, consciously or unconsciously held by him.

2.14. Thus, it will not be sufficient merely to define the concept as a matter of semantics, or to describe or explain it by taking its implications, as a *given-fact*. The interpreter has to adopt a position of commitment towards the Act which he is to interpret. **Duty of interpreter to position to be taken.**

This is not to say that the interpreter should start with pre-conceived attitudes. Julius Stone has observed, that[1] in most questions of statutory interpretation which are likely to come before an appellate court, there is involved an important element of evaluation, of deciding what is the more desirable result which can be brought within the verbal framework of the legislator's expression. If the Court is not engaged in legislation, it is, at any rate, as Professor Cohen has suggested,[2] engaged in "legisputation."

2.15. The central aim in the "administration of a statute is to discover or formulate, as well as give effect to, principles or formulas for elaborating the purposes bearing upon the statute". And in this view, the principles when discovered are thereafter to be applied as integral principles of the law. Judicial interpretation of statutes, and judicial law-making by statutory analogy, are in other words, to be seen as one process, and not as contrasted.[3] **Administration of statutes- central aim.**

We have made these observations to define the scope of interpretation in general. We shall now proceed to specific topics arising out of the General Clauses Act.

---

1. Julius Stone, Legal System (1964), page 352 and footnote 35.
2. Cohen, "Judicial Legisputation and the Dimensions of Legislative meaning", (1961) 36 Indiana L.J. 414, 423, esp. 414 and 419.
3. J. P. Witherson, The Essential Focus of Interpretation" referred to in Stone, Legal System (1964), page 352, footnote 35.

CHAPTER 3

DEFINITIONS

Introductory.

3.1. Three sections of the General Clauses Act,—sections 3, 4 and 4A,—contain general definitions. Not many general observations as to these definitions are required, since most of the points which we have to deal with, concern matters of detail pertaining to particular words and expressions defined in the various clauses of these sections. In general, however, it may be observed that when a particular word or expression which has not been defined in the General Clauses Act, comes to be used with increasing frequency so as to become the current coin of the legislature, opportunity should be taken to consider whether it should not be defined in the Interpretation Act, so as to ensure uniformity,—provided, of course, it is first assured that the expression is used in a broadly uniform sense and has thus become a term of art. We have, in suggesting amendments in these sections, kept this consideration in mind.

Section 3—opening line—amendment regarding.

3.1A. It may be noted that section 3, which is the principal section containing definitions, applies to the General Clauses Act itself and to post-1897 Central Acts and Regulations.

Now, we are recommending the insertion, in the section, of a few new definitions, and some of them may not be appropriate for applying to existing Central Acts and Regulations. These will be enumerated in a separate section,[1] and it is desirable to make it clear that section 3 will be subject to that section. Accordingly, we recommend an amendment of the opening line of section 3, as follows :—

Section 3 (opening lines)

In section 3, before the words, "In this Act," the words, figure and letter "*subject to the provisions of section 3A.*" shall be inserted.[2]

Section 3(1)—"abet".

3.2 Section 3(1) defines the expression "abet". It needs no change. We have taken into account the decisions on abetment under the Penal Code, but they do not necessitate any change here.

Section 3(2)—"act".

3.3. Section 3(2) defines the expression "act". It needs no change.

Section 3(3) "affidavit"

3.4. Section 3(3) reads thus:

> "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The definition is inaccurate, because it seems to equate "affidavit" and "oath", as the word "oath" is defined also[3] in the same terms. What an "affidavit" really means is the written statement made on oath (or on a solemn affirmation etc.), and not the affirmation or oath itself.

Etymologically, the root of the word "affidavit" is the medieval Latin "fidus", which means trust. From this root, the word "affidare" was derived in medieval Latin, and it meant "has stated on oath". From that, the word "affidavit" is derived. Hence, the dictionary meaning of "affidavit" is a written statement confirmed by oath, to be used as judicial proof[4]. According to Wharton[5], "affidavit" is a written statement sworn before a person having authority to administer an oath.

---

1. See section 3A (proposed), Para 3.96, *infra*.
2. See new section 3A.
3. Section 3(37).
4. Concise Oxford Dictionary (1964), under "affidavit" page 27.
5. Wharton, Law Lexicon (1953), page 38.

3.5. It may be noted that in England, the practice of taking evidence by affidavits originated in the Court of Chancery. Following the practice of the civil law, the Court of Chancery, for many centuries, decided causes upon affidavit evidence, with only occasional oral cross-examination.[1] For example, the rule in force in Chancery[2], in 1861, provided that "it shall not be competent for the plaintiff or any defendant to require, by notice or otherwise, that the evidence to be adduced shall be taken orally". As regards *oral evidence,* for some time, English law allowed only oaths. The position was later altered by statutes, which allowed affirmations[3]. Origin of English practice.

Even recent English practice indicates that the word "affidavit" is generally used to denote a statement in writing on oath (or on affirmation). Thus, the rules of the Supreme Court[4] provide that every affidavit shall be instituted in the cause or matter in which it is sworn, and that affidavits must be confined to such facts as the witness is able of his own knowledge to prove. These rules also speak of the affidavits being "filed" (in the Registry), prohibit alteration in affidavits except under certain conditions and so on.

Similarly, the County Court Rules[5] provide that affidavits shall be expressed in the first person, drawn up in paragraphs and numbered, and made by some person who has knowledge of the facts etc. These provisions are, unfortunately, not noticed by text-book writers on the interpretation of statutes when they discuss the meaning of affidavit. The Bankruptcy Rules have similar provisions[6]. The important point to be made is that "affirmation" and "declaration" primarily denote a substitute for the formality of oath.

3.6. Indian legislative practice also regards "affidavit" as referring to the *written statement* "on oath" etc., and not to the *oath or affirmation.* In our procedural codes,—for example, in the Code of Civil Procedure[7]—"affidavit" means not the process or ceremony (oath or affirmation) but the document which is on oath or affirmation. In the Code of Criminal Procedure, 1898, section 539, both the words "affidavit" and "affirmation" were used, but in the new Code[8], only the word "affidavit" is used, in conformity with the draft suggested in the Law Commission's Report[9]. Indian practice.

3.7. In the Oaths Act, in the provision[10] conferring power to Oaths Act administer oaths or affirmation for the purpose of affidavit, the language used (so far as is material), is as follows:—

> "...any court, Judge, magistrate or person may administer oaths and affirmations *for the purpose* of affidavits, if empowered in this behalf—
>
> (*a*) by the High Court, in respect of affidavits, for the purpose of judicial proceedings ; or
>
> (*b*) by the State Government, in respect of other affidavits."

Under the same Act[11], a witness, interpreter or juror may, instead of making an oath, make an affirmation. Forms of oath and affirmation are also given in the Schedule to the Act, read with section 6. This discussion is intended to show that the word "affirmation", in the majority of Indian statutes refers usually to the formality substituted for the word "oath". Hence, the word "affirmation" is not appropriate to denote *the writing.*

---

1. Best, Law of Evidence (1922), page 102, paragraph 118.
2. Chancery Consolidated Orders, 1861, Order 19, rule 3, quoted in Best, Law of Evidence (1922), page 102, footnote.
3. The principal Acts relevant to affirmations are the Oaths Acts, 1888 and 1961. Eng.
4. Order 38, rules 2 and 3, R.S.C. (Eng.)
5. Order 20, rule 19, County Court Rules (Eng.)
6. Bankruptcy Rules, 1952, Rules 55-60 (Eng.)
7. Order 19, rule 1, Code of Civil Procedure, 1908.
8. Section 297, Cr. P.C., 1974.
9. Law Commission, 41st Report, Vol. I, page 355, para. 46.4.
10. Section 3(2), Oaths Act, 1969.
11. Section 5, Oaths Act, 1969 (Central Act 44 of 1969).

Recommendation

3.8. We accordingly recommend a re-draft of the definition to indicate the meaning accurately, on the following lines :—

REVISED SECTION 3(3)

(3) *"affidavit" shall mean a statement in writing purporting to be a statement of facts, signed by the person making it and confirmed by him by oath."*

Section 3(3A)— definition of 'aircraft' (New).

3.9. The Act does not define the expression "aircraft", which is now frequently used in Central Acts. It is necessary to define it in the General Clauses Act.

Section 2(*1*) of the Indian Aircraft Act, 1934, provides that "aircraft" means "any machine which can derive support in the atmosphere from reactions of the air, and includes balloons, whether fixed or free, airships, kites, gliders and flying machines." Section 2(i) of the Air Corporations Act, 1953, is in the same terms. The Indian Carriage by Air Act, 1934 does not contain any definition of "aircraft". Section 4(ii) of the Air Force Act, 1950, defines "aircraft" as including "aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying."

We recommend that on the lines of the definition in the Indian Aircraft Act, 1934, a definition of 'aircraft' should be inserted in the General Clauses Act. It will be as follows:—

(**3A**) *"aircraft" shall mean any machine which can derive support in the atmosphere from reactions of the air, and shall include balloons, whether fixed or free, airships, kites, gliders and flying machines.*

Section 3(4)— 'barrister'.

3.10. Section 3(4) defines the expression "barrister". It needs no change.

Section 3(5) "British India."

3.11. Section 3(*5*) defines the expression "British India". It needs no change.

Section 3(6) "British possession".

3.12. Section 3(*6*) defines the expression "British possession". It needs no change.

Section 3(7) "Central Act".

3.13. Section 3(*7*) defines the expression "Central Act". It needs no change.

Section 3(8) Definition of "Central Government".

3.14. In the definition of "Central Government", in section 3(*8*), we propose no change.

Section 3(9) "Chapter."

3.15. Section 3(*9*) defines the expression "Chapter". It needs no change.

Section 3(10) "Chief Controlling Revenue Authority".

3.16. Section 3(*10*) defines the expression "Chief Controlling Revenue Authority". It needs no change.

Section 3(10A) Definition of "Clause" (new).

3.17. A new definition of the expression "clause" is proposed to be added. Just as the expression "section" and "sub-section" have been defined in the existing Act[1], it would be convenient to define the expression "clause" as well. This will standardise the use, of these devices also. It will be as follows :—

Section 3(**10A**) *New*

"(**10A**) *'clause' shall mean—*

(*a*) a sub-division of the sub-section in which the word occurs, or

(*b*) where there is no sub-section in the section, a sub-division of the section in which the word occurs."

---

1. Section 3(54) and 3(61).

3.18. In section 3(11), which contains the definition of "Collector", the expression "Presidency Towns" should be replaced by a specific mention of the three cities (Bombay, Madras and Calcutta). An amendment is recommended for the purpose. The revised clause should be as follows : Section 3(11) "Collector".

Revised section 3(11)

3(11) "Collector" shall mean...the chief officer-in-charge of the revenue administration of a district, *and shall include the Collector of Calcutta, Madras or Bombay* :

3.19. Section 3(12) defines the expression "Colony". It needs no change. Section 3(12) "Colony".

3.20. Section 3(*13*) defines the expression "commencement". It needs no change. Certain points as to the date of commencement are discussed later.[1] Section 3(13) "Commencement".

3.21. Section 3(*14*) defines the expression "Commissioner". It needs no change. Section 3(14) "Commisioner".

3.22. Section 3(*15*) defines the expression "Constitution". It needs no change. Section 3(15) "Commissioner".

3.23. Section 3(*16*) defines the expression "Consular Officer". There has been an international Convention on the subject. In the light of the provisions of the relevant convention[2], we recommend that the expression 'consular officer' should be re-defined as follows[3] : Section 3(16) "Consular Officer".

"Consular Officer" shall mean any person entrusted with the exercise of consular functions, irrespective of his designation, and shall include Consul-General, Consul, Vice-Consul and Consular Agent."

3.24. A definition of the expression "daughter" is proposed to be added, as a useful provision, on the lines of the existing definition of 'son'. The adoption of daughters is permitted in certain cases.[4] It is felt that section 13(*1*), under which words of the masculine gender are taken as including the faminine gender, may not necessarily have the effect of extending the definition of 'son' to the construction of the word 'daughter'. We, therefore, recommend insertion of the following new definition. Section 3(16A) Definition of "daughter" (new)

Section 3(16A) (New)

(16A) *"daughter", in the case of any one whose personal law permits adoption, shall include an adopted daughter*:[5]

3.25. A definition of the expression "day" is proposed to be added. Such a definition will be similar to the existing definition of "month". The proposed definition follows the existing statutory precedents[6], and will be as follows : Section 3(16B) Definition of "day".

Section 3(16B) (New)

(16B) *"day" shall mean a period of twenty-four hours beginning at mid-night.*

3.26. A definition of the expression "diplomatic officer" is desirable, on the pattern of the definition of "consular officer" in section 3(16), as proposed to be amended. It may be noted Section 3(16C) "Diplomatic Officer".

1. See discussion under section 5 in Chapter 4, *infra*.
2. Vienna convention on Consular Relations, 1963, Article 1(1) (d).
3. The draft is based on the Ministry of External Affairs' letter (S. No. 207) No. D-2319/L&T/63 (No. 4/451(2) 63 dated 6-3-1963, to the Law Commission.
4. See sections 7 and 8, Hindu Adoptions and Maintenance Act, 1956, (76 of 1956).
5. This amendment should not apply to existing Acts. See section 3A (proposed).
6. (a) Section 2, Factories Act, 1948 (63 of 1948).
   (b) Section 2, Weekly Holidays Act, 1942, (18 of 1942).
   (c) Section 2, Plantations Labour Act, 1951 (69 of 1952).
   (d) Section 2, Mines Act, 1952 (35 of 1952).

that there is an international Convention[1] on the subject. In the light of the relevant convention,[2] we recommend that the expression 'diplomatic officer' should be defined as follows:

Section **3**(*16C*) (*New*)

(16C) "diplomatic officer" shall mean a member of the staff of a diplomatic mission having diplomatic rank, and includes an ambassador, high commissioner, envoy, minister and charge d'affaires ;

Section 3(17) District Judge.

3.27. The definition of "District Judge", in section 3(*17*), is as follows :—

"District Judge" shall mean the Judge of a principal Civil Court of Original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extra-ordinary original civil jurisdiction."

This definition uses the words "shall mean", and not the words "includes" or the words "shall include". Therefore, if the definition, as it is worded, is taken literally, no one except "the judge of a principal Civil Court of original jurisdiction" can come within it. The use of the article "the" before the word "Judge" (in the definition) is significant. It has a specifying or particularising effect, as opposed to the indefinite and generalising force of "a", and denotes that it is not any Judge of a principal Civil Court of original jurisdiction that can be termed as a District Judge, but that only the sole presiding Judge of a principal Civil Court of original jurisdiction can be called a District Judge. This was the view taken in a Madhya Bharat case.[3]

Case-law as to the "District Judge".

3.28. The contrary view has, however, been taken in an Assam case,[4] holding that "District Judge" in section 7(3)(b) of the Industrial Disputes Act includes an Additional District Judge by virtue of this clause.[5]

Of course, the definition of the term "District Judge" cannot be used for finding out the meaning of the term "District court."[6] But, where the term "district judge" is used, difficulty is created by the conflict of views referred to above.

Question of *persona designata*, in relation to District Judge.

3.29. The question, therefore, usually arises whether a statutory provision which confers powers on a "District Judge" refers to the District Judge as a *persona designata,* or, whether it refers to him as the presiding officer of the *court*. In the latter case, the usual provisions applicable to the district court apply. According to Osborn's Concise Law Dictionary[7], [8] a *persona designata* is "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character." When a special or local law provides for an adjudication to be made by a *constituted* Court— that is, by a Court not created by a special or local law, but to an existing Court—the special or local law, in fact generally enlarges the ordinary jurisdiction of such a court.[9] Thus, where a special or local statute refers to a constituted court *as a court,* and does not refer to the presiding officer of that court, then the reference cannot be said to be a *persona designata*. But the reverse proposition,[10] that where the reference is to the presiding officer of a court, it is intended to be taken as referring to him as a *persona designata* and not as a court, may or may not be true.

---

1. Contrast the definition in the Diplomatic Officers (Oaths and Fees) etc. Act, 1948 (41 of 1948) and section 2 of the Special Marriage Act, 1954 (43 of 1954).
2. Vienna Convention on Consular Relations, 1963, Article 1(1)(d).
3. *Mangharam* v. *K. B. Kher*, A.I.R. 1956 M.B. 183, 187.
4. *G. C. Bezbarna* v. *State*, A.I.R. 1954 Assam 161, 165, para 9.
5. For the recommendation relvant to the definition, see *infra* para 3.30.
6. *D.C.S. Bureau* v. *United Concern*, A.I.R. 1967 Mad. 381, 384, para 6 (reviews cases) (Case under section 62(1), Copyright Act)
7. Osborn, Concise Law Dictionary, 4th Ed.
8. *Ram Chandra Aggarwal* v. *State of U.P.*, A.I.R. 1966 S.C. 1888.
9. *Ram Chandra Aggarwal* v. *State of U.P.*, A.I.R. 1966 S.C. 1888.
10. See *Bimla Rani V. B.M. Finance*, AIR 1972 All. 242, 245.

3.30. In order to avoid doubts[1] on the points discussed above, and to resolve the conflict of views, it is desirable to provide that the expression "district judge" does not include an additional judge of the district court. We recommend an amendment as follows :— Recommendation

Revised Section 3(17)

(17) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include—

(a) *An Additional Judge of such Court, or*

(b) the High Court in the exercise of its ordinary or extra-ordinary civil jurisdiction.

3.31. We now come to the definition of "document". The definition of "document" will be better understood if four elements are studied separately. The first is the concept indicated by the word "matter", which may be described as the "mental element". The matter recorded on the document here means an idea,—what is regarded in Copyright law as the proper subject-matter of copyright. The second element of the definition is indicated by the words "written etc.". This may be called the manual (or mechanical) element; and coupled with this is the third element of symbols, indicated by letters, figures or marks. These symbols have meaning only because they are intended to be used, or may be used, for the purpose of recording the idea represented by the first element. Finally, there is the substance upon which these processes are brought to bear, i.e., upon which the mental element is recorded (by mechanical means) through symbols. This last one is the material—a purely physical object. Section 3(18) definition of "document".

It is a defect in the present definition that it defines a "document" in terms of what has been described above as the mental element. The ordinary meaning of the expression "document" is the material or substance upon which (as explained above) the other processes operate. Notwithstanding the fact that a similar defect is found to exist in the definition in the Indian Penal Code, and in the Evidence Act, and notwithstanding also the fact that the present definition has been there for almost a century, we consider it proper to modify it so as to bring it nearer to the reality. The starting point for the definition should be the substance.

3.32. With reference to some of the processes enumerated above,[2] certain observations are in order. So far as the word "matter" denoting the intellectual or mental element, is concerned, nothing further need be said. Four processes.

So far as the manual process of recording the matter is concerned, the present wording is somewhat narrow, inasmuch as it does not cover the act of inscribing. It is considered that when a matter is inscribed on metal or stone or even on paper, the process can better be called "inscribed" rather than "written" etc., though, perhaps, the word "expressed" might cover it. The illustrations to the definition in the Indian Evidence Act show that such inscriptions are "documents". The word "written" does not occur in the Evidence Act or in the Penal Code; it can, however, be retained here, as useful. The word was added in the General Clauses Act at the Select Committee stage. The definition of "writing" may also be seen.

In addition to the process of writing, describing etc. specifically enumerated, the definition should, in our opinion, be widened to include such new processes as may, or may have already, come into existence for the purpose of recording an idea.

These processes could be divided into two classes—(a) processes analogous to writing,[3] etc., and (b) processes not analogous to writing etc. We think that all such other processes should be brought within the fold of the definition.

3.33. We next come to the third element of a "document", namely, the symbols. Here, the present definition is confined (at least on one view) to the specific types of symbols enumerated therein. We are of the view that this part of the definition should be widened so as to

1. Para 3.27 and 3.28, *supra*.
2. Para 3.31, *supra*.
3. See definition of "writing."

include (a) symbols analogous to those which are already mentioned, and (b) methods which are not analogous to symbols, but which can come into existence later or may have come into existence already. No doubt, this last mentioned category is wide, but we have particularly in mind Cinematography films and tape-records[1] (these are merely examples).

Incidentally, we may mention that both the words "figure" and "marks", used in the present definition, are ambiguous. If only the numerical figures are intended, then paintings would be left out. If, again, only visible marks conveying the idea *by themselves* (and without further efford) are intended, then mechanical recordings are left out. What the Penal Code describes as "visible representations"[2] should be covered.[3] as also what may be called acoustic representations.

Finally, the substance upon which all these processes take place should, as we have already indicated,[4] be the starting point for the definition.

Stephen's definition.

3.34. Stephen's difinition in his Digest of Evidence[5] is simpler. He definies "document" as any substance having any matter expressed or described upon it by marks capable of being read. The definition is useful as making it clear that *the substance* constitutes the document.

The definition by Stephen is, however, narrow, in one respect. It lays emphasis on ***what can be read.*** Stephen was, perhaps, thinking of the conventional method of writing, which is the normal device adopted by literate persons to communicate their ideas—including, of course, printing.

The words "which is intended etc." examined.

3.35. So much as regards the principal elements of the definition of document. Now, a verbal point may be mentioned. The words "which is intended to be used or which may be used for the purpose of recording that matter", in the existing definition raise one question.

Are these words to be read with—

(i) 'matter', or

(ii) 'letters, figures or marks', or

(iii) 'means'.

(iv) 'substance' ?

The first interpretation would involve repetition of 'matter', which makes it meaningless. The second interpretation is a plausible one, but the, the plural "letters" etc. goes ill with the singular "which is". The third also suffers from the same defect, as "means" has been used in the plural in the definition. The fourth is in harmony with the singular. Since it is the expression "which is" which has caused difficulty, it is proposed to make it plural, and to link it up with "means". The means could be used, or are intended to be used, for recording the idea.

3.36. The (Indian) Official Secrets Act, 1923, defines "document" as including a part of document. But such a clarification appears to be unnecessary in this Act.

Admissibility of tape-recordings.

3.37. As regards tape-recording,[6] we may note that they have now been in commercial use for many years, and they have been held by the Supreme Court to be admissible in evidence[7] in several cases. The question whether they are "documents" was not at issue in those cases.[8]

---

1. As to tape-record", see para 3.37, *infra.*
2. Sections 124A, 153A, 499, I.P.C.
3. See also para 3.38 *infra.*
4. Para 3.31, *supra.*
5. Stephen's Digest of Evidence, Article 1.
6. Para 3.33, *supra.*
7. (a) *Pratap Sinh* v. *State of Punjab*, (1964) 2 S.C.R. 733 A.I.R. 1964 S.C. 72, 86, para 15.
   (b) *R.M. Malkani* v. *State of Maharashtra*, A.I.R. 1973 S.C. 157 (reviews cases).
8. (a) *Yusuffalli* v. *State of Maharashtra*, A.I.R. 1968 S.C. 147 (V. 55) ; (1967) 3 S.C.R. 720.
   (b) *Manindra Nath* v. *Biswanath*, 67 Cal. W.N. 191.
   (c) *Rup Chand* v. *Mahabir Prasad*, A.I.R. 1956 Punj. 173.

In Australia, the problem was exhaustively argued in R. v. Travers,[1] and the New South Court[2] of Criminal Appeal there held that a record of a conversation (or of any other event) was just as admissible as an *accousttc reproduction,* and that the rules which related to the supplementing of the senses by the use of scientific instruments should be applied to recordings of the type in question. From this decision, the High Court refused special leave to appeal.[3]

3.38. In England, section 6(1), Evidence Act, 1938 provides that "document" includes books, maps, plans, drawings and photographs. Although the definition is plainly not exhaustive, a view has been expressed that it is doubtful whether a tape-recording, or a computer print-out, would be held to be a document within the Act. The Criminal Evidence Act, 1965, under which "document" includes "any device by means of which information is recorded or stored", is more up to date.

In India, in the Press Emergency Powers Act,[4] it is expressly stated that "document" includes also any painting, drawing or photograph or other visible representation.

3.39. Finally, it may also be useful to add an Explanation that the means employed for forming the letters etc. should be immaterial.

Recommendation.

3.40. In the light of the above discussion, the following re-draft of the definition of "document" is recommended:—

> 'document' shall include any substance having any matter written, expressed, *inscribed,* described or *otherwise recorded* upon it by means of letters, figures or marks or *by any other means,* or by more than one of these means *which are* intended to be used or which may be used for the purpose of recording that matter.
>
> *Explanation.—It is immaterial by what means the letters, figures or marks are formed."*

Section 3(19)- "enactment".

3.41. Section 3(19) defines an "enactment". The decided cases on this expression, which occurs in several sections of the Act,[5] are fairly numerous. For example, 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.[6] Again, since "enactment" is defined to include also *any provision of an Act,* section 6 would apply to a case where not only the entire Act is repealed, but also where any provision of an Act is repealed.[7]

Sections containing the expression "enactment".

3.41A. The expression "enactment" occurs at several places in the General Clauses Act. Some of the important sections[8] using the expression are as follows:—

Section 6—Repeal of an enactment—effect of.

Section 8—Construction of references to repealed enactments.

Section 12—Duty to be taken *pro rata* in enactments.

Section 26—Provision as to offence punishable under two or more enactments.

---

1. *R.* v. *Travers* (1958) S.R. (N.S.W.) 85.
2. See—(a) 31 Aust. L.J. 895 ;
   (b) 37 Aust. L.J. 145.
3. See (1957) 98 C.L.R. 674.
4. Section 2(6), Press Emergency Powers Act, 1931 (repealed).
5. See, *infra,* para 3.41A.
6. *State of Punjab Sukh Deo Sarup Gupta* A.I.R. 1970 SC 1661, 1942, para 3, affirming A.I.R. 1965 Punj. 399.
7. *Godhra Electricity Co.* v. *Somalal,* A.I.R. 1967 Guj. 772, 776, para 6.
8. The list is illustrative only.

Questions of the application of the definition of "enactment" in section 3(19) can arise in relation to all these section. A discussion of such questions in relation to two important sections--sections 6 and 8—is offered below.

Section 3(19)- "enactment" (application to repeal).

3.42. The operation of the definition of "enactment" in relation to the repeal of a law (section 6 of the Act) may be illustrated by analysing certain frequently recurring situations concerning repeal.

(a) A Central Act may, for example, repeal a State Act.[1] It may repeal or have the effect of repealing, (because of the generality of the words employed), a law in a Native State which was not described as an "Act". This situation arose, for example, when the Special Marriage Act, 1954, repealed not only the Special Marriage Act, 1872, but also "any law corresponding to the Special Marriage Act, 1872, in force in any Part B State" etc.[2]

(b) A Central Act may, similarly, have the effect of repealing a Portuguese or French law because of the generality of the words employed.

(c) Again, a Central Act may repeal a British Statute applicable to India. Many of these were repealed in 1960, on the recommendations of the Law Commission.[3] A few still survive.

(d) Then, a Central Act may repeal a State Act as in force in a Union Territory by virtue of the notification made by the competent authority under the relevant law.

These cases do not exhaust all the situations. But the point intended to be made is that in most of them, the law repealed is one which does not find specific mention in the definition of "enactment" in the General Clauses Act.

3.43. The approach adopted by the draftsman with reference to repeal (and savings requisite on repeal) can also be usefully illustrated. Sometimes, for example, the draftsman may assume that the repeal section (section 6) applies to the situation.[4] Sometimes, the draftsman provides that the provisions of section 6 "shall also apply to the repeal of the corresponding law as if such corresponding law had been an enactment".[5] Sometimes, where section 6 would not definitely apply, because the language used is not "repeal", but the formula used is, "cease to be in force", the draftsman merely introduces a brief saving as respects "anything done or any action taken" under the law which is to cease to have effect.[6] Sometimes, the draftsman provides not merely for the application of section 6, but also for the application of the *whole General Clauses* Act, by providing that "the provisions of the General Clauses Act, 1897, shall apply to the repeal of the said Act as if the said Act were a *Central* Act."[7]

Sometimes, the draftsman reproduces almost the entire substance of section 6, General Clauses Act.[8]

Section 8 and "Enactment".

3.44. The matter can also be considered in relation to section 8. Section 8 provides that where an enactment is repealed and re-enacted, references to the repealed enactment in other instruments shall be construed as references to the re-enacted one. The expression "enactment" in section 8 came up for consideration before the Supreme Court.[9] The material facts were these: Under the East Punjab General Sales Tax Act, 1948, section 6 read with Schedule B, entry 37, the following goods were exempt from tax:—

"All goods on which duty is, or may be, levied under the Punjab Excise Act, 1914."

---

1. For example, see section 25(1), Prevention of Food Adulteration Act, 1954 (37 of 1964).
2. Section 51(1), Special Marriage Act, 1954.
3. Fifth Report of the Law Commission.
4. For example, section 25(1), Prevention of Food Adulteration Act, 1954 (37 of 1954).
5. Section 51(3), Special Marriage Act, 1954.
6. Section 26, Comptroller & Auditor General, etc. Act, 1971 (56 of 1971).
7. Section 45(2), Haryana and Punjab Agricultural University Act, 1970 (16 of 1970) [repealing a Punjab Act.]
8. For example, section 87, Andaman and Nicobar Co-operative Societies Regulation, 1973 (3 of 1973), [repealing the Co-operative Societies Act, 1912 in relation to Andaman and Nicobar].
9. *State of Punjab* v. *Sukh Dev Sarup Gupta*, A.I.R. 1970 S.C. 1641, 1642, para 3.

In 1955, Parliament enacted the Medicinal and Toilet Preparations (Excise Duties) Act. Section 21 of the Act repealed any State law corresponding to the Act, in force in any State. The question arose whether the exemption from sales tax could be claimed in respect of goods on which duty was levied under the Central Act of 1955. The argument of the State was that since the exemption in Punjab Act of 1948 referred to the "Punjab Excise Act, 1914", which had now been repealed, no exemption could be claimed. The State further argued that section 8 of the General Clauses Act (relating to construction of references to re-enacted Act) did not apply, because the Act repealed was not a Central Act and, therefore, was not an "enactment". The Supreme Court rejected this argument and held that section 3(19) of the General Clauses Act did not contain any limitation that it would apply only to Central Acts.

Ordinances as falling Within "enactment".

3.45. Since an Ordinance is "promulgated" and not "enacted", the Rangoon High Court observed[1] that an Ordinance is not an "enactment", and the High Court felt "considerable hesitation" in holding that the repeal of an Ordinance would attract the usual provisions regarding repeal of enactments.

It has now been held that the expression "enactment" includes an Ordinance, so that section 8 applies where a Central Act repeals and re-enacts an Ordinance made by the President.[2]

Recommendation as to definition of "enactment".

3.46. In order that the definition of "enactment" may indicate more accurately what its true scope is, it needs to be re-drafted. The definition should be framed in wide terms, so as to include (i) Central Acts, as well as all (ii) State and Provincial[3] Acts, and (iii) Acts of former Indian[4] States, and also (iv) All Regulations and Ordinances, whether made after or before the Constitution.[5] It should also cover laws of French etc. possessions,[6] which were passed when those possessions were not part of India.

Specific mention of Regulations of the Bombay etc. Code should be omitted, as unnecessary at the present day. We, therefore, recommend a re-draft of the definition of "enactment" as follows :—

Revised section 3(19)

3(19) *"enactment" shall include any law passed or made by any legislature or other authority acting in a legislative capacity,* and shall also include any provision contained in any such law, *but shall not include a statutory instrument.*

Section 3(20) "father".

3.47. Section 3(20) defines the expression "father", and needs no change.

Section 3(21) "financial year".

3.48. Section 3(21) defines the expression "financial year". It needs no change.

Section 3(22) "good faith".

3.49. Section 3(22) defines the expression "good faith". It needs no change.[7]

Section 3(23) "Government".

3.50. Section 3(23) defines the expression "Government". It needs no change.

Section 3(24) "Government securities".

3.51. Section 3(24) defines the expression "Government securities". It needs no change.

Section 3(25) "High Court".

3.52. (*a*) The existing definition of "High Court" does not cover criminal proceedings. It may be noted that the General Clauses Bill of 1897 (as introduced) contained a separate clause for criminal proceedings also. But the Select Committee rejected[8] this change, stating that

1. *S. K. Roy Chowdhury* v. *The King*, A.I.R. 1941 Rangoon 1, 4 (Roberts C.J.).
2. *Hareobhai* v. *State*, A.I.R. 1967 Guj. 227, 245, para 29.
3. *Cf.* para.3.42(a) *supra.*
4. *Cf.* para. 3.42(b) *supra.*
5. *Cf.* para. 3.45 *supra.*
6. *Cf.* para. 3.42(c) and (d) *supra.*
7. For a full discussion as to good faith' See A.I.R. 1969 Bom. 127.
8. Gazette of India, 6th March, 1897 Part V, page 77 (Report of the Select Committee).

the arrangements relating to the Recorder of Rangoon and Criminal Courts in Burma were complicated. This reason does not hold good now.

(*b*) The definition in section 4 of the Code of Criminal Procedure, 1898, provided that where, with reference to criminal proceedings, no High Court is established in any part of India, the expression "High Court" means such officer as the State Government may appoint him in that behalf. This provision, however was obsolete.

We think that there is no need to exclude criminal proceedings from the definition at this stage. Also, instead of defining a "High Court" as the highest court of appeal etc. and then excluding the Supreme Court by express words, it is preferable to re-draft the definition so as to include the court of Judicial Commissioners wherever they exist.

(*c*) In the light of the above points, a revised definition of the expression "High Court" is recommended as below:

Revised section 3(25)

3(25) "High Court", used with reference to civil or criminal proceedings, shall mean the *High Court or the Court of Judicial Commissioner having jurisdiction* over the part of India which the Act or Regulation containing the expression operates;

Section 3(26) "Immovable property:

3.53. Section 3(26) defines the expression "immovable property." It needs no change.

Section 3(27) "Imprisonment."

3.54. Section 3(27) defines the expression "imprisonment". It needs no change.

Section 3(28) "India".

3.55. Section 3(28) defines the expression "India". It needs no change.

Section 3(29) "Indian law".

3.56. Regarding section 3(29), which defines "Indian Law", there is a suggestion[1] to be considered.

Sub-section (1) of section 4A of the General Clauses Act, 1897, makes applicable to "Indian laws" certain definitions contained in the General Clauses Act. The term "Indian law" is defined in clause (29) of section 3 of the Act as follows—

> " 'Indian law' shall mean any Act, Ordinance, Regulation, Rule, order, byelaw 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 State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or Order in Council, rule or other instrument made under such Act."

It will be apparent from the above definition (of the expression "Indian law") that it will apply only to laws in force in any area which immediately before 1st November was included in a part A State or Part C State, but not to laws in force in any area which, immediately before that date, was comprised, in a Part B State. Now, in almost all Madras Acts, expressions such as "Central Government", "State Government", "Official Gazette", "High Court" etc. are used without specifically defining them in the respective Madras Acts, and these expressions will, by virtue of sub-section (1) of section 4A, have the meanings assigned to them in the General Clauses Act. The question arises whether the definitions of various expressions enumerated in section 4A(1) will apply to a Madras Act extended to the Kanyakumari district and the Shencottah taluk of the Tirunelveli district (which district and taluk were immediately before the 1st November, 1956, comprised in a Part B State, namely, Travancore-Cochin.) As the position in this respect is not very clear, the suggestion is that the position should be clarified.

3.57. We have given thought to the suggestion,[2] but we think that the better course, at this stage, would be for each State Legislature concerned to deal with the matter and to make

1. Suggestion of the Government of the (erstwhile) State of Madras.
2. Para 3.56, *supra*.

a suitable provision for the interpretation of laws of a (former) Part A State extended to the area of a (former) Part B State. In so far as these laws relate to matters within the State List, an amendment to be made in the General Clauses Act cannot apply to those laws. As regards matters in the Concurrent List, not many State laws would have been extended to those areas, because, on most matters included in the Concurrent List (e.g. registration, succession, procedure and the like), the position is that under the Part B States Laws Act or similar other laws, the relevant Central Acts on various subjects now extend to those areas, and the General Clauses Act, 1897 applies to those Central Acts for interpreting those Central Acts. Even as regards other maters in the Concurrent List, where the relevant Central Acts are not extended, no serious difficulty should arise because the analogy of the General Clauses Act can be invoked.

3.58. Section 3(30) defines the expresion "Indian State". It needs no change. **Section 3(30) "Indian State".**

3.59. Several points require discussion regarding the definition of "local authority" in section 3(31). **Section 3(31) "local authority".**

(1) Specific mention of Cantonment Board should be made.

(2) "Municipal Corporations" should be added.

But it appears unnecessary to add specifically "municipality" or "local Board" and other authorities etc. referred to in the Bombay General Clauses Act or in the Constitution, Seventh Schedule, State List, item 5. These may be left to be covered by the residuary words.

Even though a municipal committee may have a corporate personality, ordinarily the two (corporation and the committee) are understood to be distinct from each other, and their respective structure, powers and other matters indicate the difference in status. The distinction between "corporation" and "committee" corresponds to actual reality.

(3) The words referring to "body of Port Commissioners" may be retained. In some places (e.g. Bombay), there are Port Trustees. But it is considered unnecessary to mention them[1] specifically.

(4) Regarding the words "other authority" .....", in the definition, it has been held that[2] a body of Port Commissioners is a local authority, irrespective of whether it controls or is entrusted with "the control and management of a municipal" etc. fund or not. It was observed that it is only in the case of *other authorities* that the requirement expressed by these words is to be satisfied.

(5) This part of the definition should be re-drafted, by taking in all authorities entrusted with local self-government or village administration.

(6) It has been suggested that the definition should include "any authority declared to be a local authority under any enactment". But this does not appear to be necessary. Such declarations are not frequent, at least in Central Acts.

(7) It may be noted that village Panchayats have been held to be local authorities.

We recommend a re-draft incorporating the above points on the following lines :—

Revised section 3(31)

3(31) "local authority" shall mean a *municipal corporation* or committee, a district board, a cantonment board or a body of port commissioners, or any other authority *constituted for the purpose of local self-government or village administration ;*

3.60. Section 3(32) defines the expression "Magistrate". It needs no change. **Section 3(32)— "Magistrate".**

1. Contrast section 3(27) of the Bombay General Clauses Act, 1904.
2. *Official Assignee v. Trustees of the Port Trust*, Madras, A.I.R. 1936 Mad. 789, 791.

Section 3(33)—"master".

3.61. Section 3(*33*) defines the expression "master". It needs no change.

Section 3(34)—"merged territories".

3.62. Section 3(*34*) defines the expression "merged territories". It needs no change.

Section 3(35)—"month".

3.63. The Act defines a "month" as a month reckoned according to the British calendar. The definition is inaccurate. The word "British" should, in this definition, be replaced by the word "Gregorian".[1] "British" is not an accurate description.[2]

The English, Australian and Canadian Act define a "month" simply as a calendar month. But it may be noted that there are no other calendars in vogue in these countries.

It may be noted that the calendar now used for civil purposes throughout the world is called the Gregorian Calendar,[3] after Pope Gregory XIII, who introduced it in the 16th century.

The immediate predecessor of the Gregorian calendar was the Julian calendar (called after Julius Caesar). That calendar itself has a history, and can be traced ultimately to Egypt.

Throughout the Republican period, in Rome, the year normally contained 355 days, the months being 29 or 30 days in length. An additional month, consisting sometimes of 27 days and sometimes of 28 days, was inserted, when considered necessary, after 23 February, the five last days of February being then omitted. The additional month was generally inserted in alternate years, but the decision as to when it should be inserted lay with the pontifices, The pontifices often used to manipulate unscrupulously the lunar calendar to their own advantage: if it was desired to prolong or shorten the term of office of a magistrate or to arrange an election some time that appeared favourable, the calendar was adjusted to suit. It was to end such abuses that Julius Caesar decided upon a reform of the calendar ; at the time of his pontificate, the seasons had shifted about two months from their proper positions. He called in the assistance of the Greek astronomer, Sosigenes of Alexandria ; and the calendar was modified into what is very much like its present form. (Sosigenes himself took the idea of a solar calendar from Egypt). The lunar month was thrown over completely. The normal year was to contain 365 days, an additional day being inserted every fourth year, thus giving an average length of the year of 365¼ days, in close agreement with the length of the tropical year.

The calendar year now became, for the first time, purely solar, and there was no tendency for the seasons to drift about.

3.64. The Julian method provided a calendar whose length closely approximated to the tropical year. Its device of 'intercalation' was also convenient. But the basic defect was that, in taking a period of 365¼days as the length of the tropical year, it over-estimated this length by a little more than 11 minutes 15 seconds or, more exactly, by 0.0073 days. Thus, although the error amounted only to one whole day in 128 years, it was constantly increasing, and over a long time became troublesome. This deficiency showed up in due course, so that further reform became imperative because of criticism by astronomers.

The Vatican made several unsuccessful efforts to reform the calendar. In the 16th century, after further criticism, the Vatican again made an effort to reform matters, and this time it was successful. Pope Gregory XIII approached the governments of the principal states of the Holy Roman empire, and all agreed to accept his alterations. He then promulgated a new calendar, known as the Gregorian (or New Style) calendar, in a brief issued in March, 1582. It was adopted, in due course, in several other countries.

3.65. Great Britain took a long time to make the change. It was in 1751 that a Calendar (New Style) Act was passed,[4] and the Gregorian calendar was thereforth ordered[5] to be used for all legal and public business.

---

1. Compare section 25 of the Limitation Act.
2. Compare also the definition in the Jammu and Kashmir General Clauses Act, 1877 (20 of 1877), which uses the word "Gregorian."
3. Encyclopaedia Britaunica, Vol. 4, page 611.
4. The Calendar (New Style) Act, 1751.
5. C. R. Cheuey (Ed.), Handbook of Dates for students of English History (1945.)

In order to substitute "Gregorian", we recommend as follows :—

Section 3(35)*—definition of 'month'*

In section 3(35), for the word "British", the word "*Gregorian*" shall be substituted.

Section 3(36)—'movable property'.

3.66. Section 3(36) defines "movable property", and needs no change.

Section 3(37)—"oath".

3.67. Section 3(37) defines "oath" as including a solemn affirmation or declaration in case of persons by law allowed to do so. But it does not provide that the oath should be taken before a competent authority. We recommend that the definition should be re-drafted as follows so as to bring out this idea :

"(37). *"Oath" shall mean an oath taken before a competent authority with reference to the Oaths Act,* 1969, *or any other law for the time being in force,* and shall, in the case of persons by law allowed to affirm or declare instead of swearing, include affirmation or declaration *made before a competent authority with reference to that Act or law".*

Section 3(38)—"Offence".

3.68. Section 3(38) defines the expression "offence". It needs no change.

Section 3(39)—"Official Gazette".

3.69. and 3.70. Section 3(39) defines the expression "Official Gazette". It needs no change.

Section 3(40)—"Part".

3.71. Section 3(40) defines the expression "Part". It needs no change.

Section 3(41)—"Part A State".

3.72. Section 3(41) defines the expression "Part A State". It needs no change . It is useful only for existing Central Acts and Regulations.

Section 3(42)—"person".

3.73. Section 3(42) defines the expression "person". It needs no change.

Section 3(43)—"Political Agent".

3.74. Section 3(43) defines the expression "Political Agent". It needs no change.

Section 3(43A)—Definition of "prescribed" (New)

3.75. A definition of the expression "prescribed" is proposed to be added. It is the usual practice to insert a definition in each Central Act to the effect that (in that Act), the word "prescribed" means prescribed by rules made under that Act. It will be convenient to insert this definition in the General Clauses Act, so as to shorten the language of Central Acts.

Section 3(43*A*) *(New)*

3(43A) *"prescribed" shall mean prescribed by rules made under the Central Act or Regulation in which the word occurs ;*

Section 3(44)—"Presidency town".

3.76. Section 3(44) defines the expression "Presidency town". It needs no change.

Section 3(45)—"Province".

3.77. Section 3(45) defines the expression "Province". It needs no change.

Section 3(46)—"Provincial Act".

3.78. Section 3(46) defines the expression "Provincial Act". It needs no change.

Section 3(47)—"Provincial Government".

3.79. Section 3(47) defines the expression "Provincial Government". It needs no change.

Section 3(47A)—"public" (New)

3.80. A new definition of the expression "public" is proposed to be added. It follows section 12 of the Indian Penal Code, and section 3(26) of the Madras General Clauses Act, 1891, but the words "or section" (of the public) have been added in order to make it comprehensive. The new definition should be as follows :

Section 3(47A) (New)

3(47A) *"public" shall include any class or section of the public ;*

Section 3(48)—"public nuisance".

3.81. Section 3(48) defines "public nuisance", and needs no change.

Section 3(49)—"registered".

3.82. Section 3 (49) defines the expression "Registered", and needs no change.

Section 3(50)—"Regulation".

3.83. Section 3(50) defines the expression "Regulation". It needs no change.

Section 3(51)—"rule".

3.84. Section 3(51) defines the expression "rule". It needs no change.

Section 3(52)—"schedule".

3.85. Section 3(52) defines the expression "schedule". It needs no change.

Section 3(53)—"Scheduled District".

3.86. Section 3(53) defines the expression "Scheduled District". It needs no change.

Section 3(54)—"section".

3.87. Section 3(54) defines the expression "section". It needs no change.

Section 3(55)—"ship".

3.88. Section 3(55) defines the expression "ship". It needs no change.

Section 3(56)—"sign".

3.88A. Section 3(56) defines the expression "sign". It needs no change.

Section 3(57)—"son".

3.88B. Section 3(57) defines the expression "son". It needs no change.

Section 3(58)—"State".

3.88C. Section 3(58) defines the expression "State". It needs no change.

Section 3(59)—"State Act".

3.88D. Section 3(59) defines the expression "State Act". It needs no change.

Section 3(60)—"State Government".

3.88E. No changes are proposed in the definition of "State Government", in section 3(60).

Section 3(60A)—"statutory instrument" (New).

3.88F. A definition of "statutory instrument" is proposed to be inserted[1], as a useful provision. The new definition should be as follows :

Section 3(60A) (New)

3(60A) *"statutory instrument" shall mean a rule, notification, bye-law, order, scheme, form or other instrument made under an enactment ;*

Section 3(61)—"sub-section".

3.89. Section 3(61) defines the expression "sub-section". It needs no change.

Section 3(62)—"swear".

3.90. Section 3(62) defines the expression 'swear". It needs no change.

Section 3(62A)—"Temporary Act" or "Temporary Regulation".

3.91. The expression "temporary Act" or "temporary Regulation" has been used in a few proposed sections,[2] and it is proposed to insert a definition of that expression in section 3. The new definition should be as follows :

Section 3 (62A) (New)

3(62A) *"Temporary Act" or temporary Regulation" shall mean a Central Act or Regulation, whether made before or after the commencement of the Constitution, which is to cease to have effect or cease to operate on a particular day or on the expiration of a particular period or on the happening of a particular event ;*

[Existing section 3(62A) to be renumbered as section 3(62)]

---

1. See also Para 12.2 *infra*.

2. e. g., section relating to the expiry of temporary Acts (proposed), Chapter 7, *infra*.

3.92. Section 3(62A) defines the expression "Union Territory". It needs no change, except renumbering. The renumbering is required because of the insertion of a new definition of "temporary Act". Section 3(62A)—renumbered as Section 3(62B)—"Union Territory".

3.93. Section 3(63) defines the expression "vessel". It needs no change. Section 3(63)—"vessel".

3.94. Section 3(64) defines the expression "will". It needs no change. Section 3(64)—"will".

3.95. Section 3(65) defines the expression "writing". It needs no change. Section 3(65)—"writing".

3.96. In section 3(66)—definition of the expression "year"—the existing word "British" should be replaced by the word "Gregorian", which is the accurate word. The revised definition should be as follows :— Section 3(66)—"year"—amendment recommended.

Revised section 3(66)

3(66) "year" shall mean a year reckoned according to the *Gregorian* calendar.

3.96A. We have finished discussion of section 3, which contains the principal definitions. The section applies to the General Clauses Act, 1897, and to Central Acts passed thereafter. We are recommending the insertion of certain new definitions.[1] Some of them may not be appropriate for existing laws.[2] Hence, in respect of them, *an exception* is required to the general provision in section 3. For that purpose, we recommend a new section as follows :— Section 3A—(New)—Non-application of section 3—

Section 3A (new)

3A. The definitions in section 3 of the following words and expressions, that is to say,

. . . . . .

(i) "daughter",

do not apply to—

(a) this Act so far as it relates to the period before the day[4] of . . . . . , or

(b) to any Central Act or Regulation made before the . . . . . day[5] of . . . . . , 1974.

3.97. No changes are required in sections 4 and 4A. Section 4 and 4A.

3.98. A new section dealing with grammatical variations and cognate expressions is proposed to be added. Section 4B—Grammatical Variations and exclusion of definitions by context (New).

3.99. It will also be useful to provide that definitions are subject to a different intention in the context. Such a provision will shorten the language of Central Acts. Henceforth, it will not be necessary to insert, in the definition clause in each Act, any words excluding a contrary intention in the context. The new section should be as follows :

Section 4B (New)

"4B. *In every Central Act or Regulation, made on or after the . . . . . day of . . . . . .*[6], *where a word is defined.*

(a) *the word shall have the meaning assigned by the definition, unless the context otherwise requires ;*

(b) *grammatical variations of that word and its cognate expressions shall have corresponding meanings, unless the context otherwise requires.*"

1. Section 3(62A) is to be added. See para 3.91, *supra*.
2. See para 3.1A, *supra*.
3. *Cf.* discussion as to section 3(35)—"month", para 3.63, *supra*.
4. Date of commencement of amended Act.
5. Date of commencement of amending Act to be entered.
6. Date of commencement of amending Act to be entered.

CHAPTER 4

COMMENCEMENT

Introductory.

4.1. Sections 5 to 13 of the Act contain—as the heading above these sections shows—general rules of construction, other than definitions. These sections fall under two broad groups. First, there are sections[1] dealing with the commencement and repeal of enactments. Secondly, there are sections[2] which provide for other general rules of construction. The first group is the more important of the two, in point of quality, because it deals with the life of enactments. The second deals with certain matters of detail, such as, time, distance, rate of duty, gender and number, and the like.

We shall first deal with the sections in the first group, and then proceed to the second group. Certain new matters, not dealt with in the present Act, will then be dealt with. In the present Chapter, we concentrate on the commencement of Acts, Regulations and Ordinances.

Commencement

Section 5—Commencement of Acts.

4.1A. Section 5(1) of the Act provides that where any Act of Parliament is not expressed to come into "operation" on a particular day, it shall come into operation on the day on which it receives the assent of the President. The section also deals with pre-Constitution Acts, but we are primarily concerned with Acts of Parliament.

Position in England.

4.2 In England, before 1793, by a legal fiction an Act of Parliament took effect from the first day of the session. But, in order to abolish a fiction "so flatly absurd and unjust",[3] the Acts of Parliament (Commencement) Act, 1793 (c. 13), enacted that the Clerk of Parliament should endorse, on every Act, immediately after its title, the date of its passing and receiving the Royal assent. This endorsement is part of the Act, and is the date of its commencement, when on other time is provided.[4]

Before the Act of 1793, the rule was this: When no date was fixed, an Act came into force on the first day of the session in which it was passed, and consequently, all Acts passed in the same session were considered to have received the royal assent on the same day. This was based upon a legal fiction, according to which the whole of a session of Parliament was regarded as having been held on its first day. This meant that if a statute passed on the last day of the session made a previously innocent act criminal or even capital, all persons who had been doing it during the session, while the act was still innocent, would be liable to suffer the punishment imposed.[5] This rule was obviously inconvenient by reason of its retrospective operation, and was often found to work injustice; where two Acts passed in the same session were repugnant, it was, as Lord Tenterden pointed out,[6] impossible to know which of the two ought to be held to repeal the other. This rule was abolished by the Acts of Parliament (Commencement) Act, 1793, as already stated.

In England, unless a contrary intention clearly appears, the expression "the passing of this Act," in a statute, means the date of royal assent, and not the date fixed by the Act at which all or certain parts of it are to come into operation.[7]

---

1. Sections 5 to 8.
2. Sections 9 to 13.
3. 1 Bl. Comm. 70 n.
4. *Tomlinson* v. *Bullock*, (1879) 4 Q.B.D. 230, 232 (Lush and Mellor JJ.).
5. See the case of *Attorney General* v. *Panter* (1772) 6 Bro. P.C. 486.
6. *R.* v. *Middlesex*, (1831) 2 B&Ad. 818, 821. 36 RR 758.
7. See *Ex D. Rashleigh, In re Dalzell*, (1875) 2 Ch. D. 9, followed in *R.* v. *Smith* (1910) 1 K.B. 1725.

4.3. The Canadian Interpretation Act has a provision similar[1] to the English Act of 1973 quoted below[2] :— Provision in Canada.

"The Clerk of the Parliaments shall endorse on every Act, immediately after the title thereof, the day, month and year when the Act was assented to in Her Majesty's name ; such endorsement shall be taken to be a part of the Act, and the date of such assent shall be the date of the commencement of the Act, if no other date of commencement is therein provided."[3]

4.3.A. As already stated[4], the present rule in England concerning the commencement of statutes is, that in the absence of a specially appointed day, statutes commence their operation upon receipt of the Royal assent. Unless a new statute provides otherwise, the old law remains applicable to all events occurring before the commencement of the new statute. Present rules in England.

4.3B. The Indian provision in section 4 follows the English law. But it should be pointed out that the date of assent is not the only alternative in regard to commencement of an Act. Sir Cocil Car[5] has expressed the view that "in the rush of modern law—making, many laws tumble out of the oven half-baked ;"—not only in the sense that the country may not be ready for them, but also in the sense that administrative preparations and the making of delegated legislation may be necessary to bring statute into force. It may be noted that such special cases are dealt with by postponing the commencement of the Act to a date to be fixed later. Several alternatives as to commencement.

As already stated, there are several alternatives as to commencement.

(a) *In the first place,* a specific future or past date may be mentioned in the Act itself as the date on which the Act shall come into force or shall be deemed to have come into force. In the former case (future date), the Act is prospective in its operation ; in the latter case (past date), it is retrospective in its operation. Thus, the recent Code of Criminal Procedure[6] received the assent of the President on the 25th January, 1974, but section 1(3) of the Act specifically lays down that it shall come into force on the 1st day of April, 1974.

(b) *In the second place,* no specific date may be mentioned in the Act, the date may be left to the Central Government to be appointed[7] by notification in the Official Gazette. This device has been called by Sir Cocil T. Carr[1] as the "appointed day" clause device. This device is resorted to when postponement of the commencement of an Act is necessitated by reason of appointments to be made under the Act, or rules to be framed thereunder and other preliminary arrangements to be carried out for the proper and effective functioning of the Act, or by reason of any change being made by the Act in status or rights the effect of which it is desirable to delay, or by reason of new conditions being imposed on a section of the public which makes it desirable, that they should have time to adjust themselves to the new law. In this connection, Sir Cocil Carr remarks[8] "When Parliament makes big constitutional or administrative changes, it is convenient to take time over the various stages rather than to bring them into force immediately on the passing of the Act or upon any hard and fast date. Such a device is particularly useful and appropriate to the introduction of—

(a) constitutional changes, for example, those made by the Acts which respectively created the Dominion of Canada in 1867, the Commonwealth of Australia in 1900 the Union of South Africa in 1909 and those made by the Government of India Act 1919 and the Government of Ireland Act of 1920 ; and

1. Para 4.2, *supra.*
2. Section 5(1), Canadian Interpretation Act.
3. See also para 4.15, *infra.*
4. Para 4.2 *supra*
5. Carr, Concerning English Administrative Law (1941), pages 42, 43.
6. The Code of Criminal Procedure, 1974 (2 of 1974).
7. Carr, Delegated Legislation.
8. Carr, Delegated Legislation.

(b) administrative changes, such as, those occasioned in England by the local Government Acts of 1888 and 1894, the Education Acts of 1902, 1903 and 1918, the Patents and Designs Act of 1919, the establishment of a Public "Trustee (see 6 Ed. VII, Ch. 55) or the inter-departmental transfer of powers under the 1919 Acts which created the Ministry of Health, the Scottish Board of Health and the Ministry of Transport . . . . ."

(c) Then, in the third place, the "appointed day" device can be quite frequently elaborated by providing that different days may be appointed (a) for different purposes and for different provisions of the Act, or (b) for different areas, or (c) for different persons or classes of persons. For example, part of the Government of India Act, 1919 came into force on January 1st, 1920 ; other parts came into force on successive dates during April, July and December of that year, while the remainder was finally brought into force by the beginning of 1921, on one date for Madras and the Central Provinces, on another date for Bihar and Orissa, on a third date for Bombay and the rest of India. Provision for a similar gradual enforcement of the Government of India Act, 1935 was made in that Act.[1] In this fashion, in the majority of the post-independence Central Acts, the "appointed day" device has been adopted. A mere look at the Statute Book will show this.

Provision in State General Clauses Acts.

4.4. We may note that some of the State General Clauses Acts provide that an Act shall come into force on the day on which the assent of the Governor thereto is *published* in the Official Gazette.

Practice in Rome and France.

4.5. In ancient Rome, a *Senatus Consultum* had no force till deposited in the Temple of Saturn.[2]

4.6. In France, the President of the Republic promulgates laws, within the fortnight following their final adoption, and transmission to the Government.[3] The act of promulgation is definitely part of the legislative process. A statute is made known to the public by publication in the "Bulletin Des Lois" or "Journal Official". The Code Napoleon,[4] declared that laws were binding from the moment their promulgation could be known, and laid down various dates when promulgation was to be deemed to have taken place.

English theory.

4.7. The English theory, however, is different. "Every man in England", says Blackstone, "is, in judgment of law, party to the making of an Act of Parliament, being present there at by his representatives."

Question whether date of publication should be substituted—considered.

4.8. Keeping in mind the position as discussed above, we have examined the question whether the provisions[6] in section 5(1) should be modified so as to provide that Central Acts shall come into force on the date of publication[7] in the Official Gazette. In fact, that was the provision proposed in the draft Report which had been circulated for comments by the previous Commission.

Change in section 5(1) not recommended as to date of commencement.

4.9. Having regard to various important considerations, and after careful examination of all aspects of the matter, we have come to the conclusion that the present position as laid down in section 5(1) should not be disturbed. In fact, because of the present practice, no hardship is caused. There is no statutory obligation to publish Central Acts in the Official Gazette, except that gazette copies of Acts are *prima facie* evidence of the correctness of the texts thereof.[8] But, in practice, Central Acts are always published in the Official Gazette without

1. Section 320, Government of India, Act, 1935.
2. Levy 394, Sec. Suet Aug. 94.
3. Article 10, French Constitution, 1958.
4. Article 1, Code Napoleon.
5. Bl. Comm. (F) 183.
6. Para 4.1A, *supra*.
7. cf., Para 4.4, *Supra*
8. Sections 81 and 84 of the Indian Evidence Act, 187.

delay, and generally on the same day on which the assent of the President to these Acts is received. Publication in the gazette is the most authentic form of publication. As Macaulay,[1] the first Law Member to the Government of India, observed in one of his Minutes—

> "And what does promulgation mean ? It means, if I understand its sense, the publication of a law in an authentic form. The publication of a law in the gazette will henceforth be a publication in an authentic form and will therefore be a promulgation."

Verbal changes in section 5—words "come into operation" to be modified.

4.10. This finishes the point of substance concerning section 5(1). Certain verbal changes are, however, needed in section 5(1). For the words "come into operation", the words "come into force" should be used, in conformity with the phraseology generally adopted in Central Acts.[2]

"coming into force", "coming into effect" and "at once".

4.11. Sometimes,[3] a distinction is sought to be made between "coming into force" and "coming into effect", but such a distinction is not usually observed in practice. As to the expression "at once" which is occasionally used in commencement clauses (in State Laws), the under-mentioned case may be seen.[4]

Regulations and Ordinances—Commencement of.

4.12. To make section 5(1) comprehensive in relation to the date of commencement of *Regulations* and *Ordinances*, we recommend the insertion of a sub-section to the effect that (i) Ordinances shall come into force on their promulgation ; and (ii) Regulations shall come into force on their making.

Section-5(3)-time-of commencement.

4.12A. We now come to section 5(3) which deals with the time of commencement. This sub-section has a history. It had been held in England[5] that an Act which comes into operation on a given day becomes law as soon as the day commences, and every event which occurred during the day would be an event which took place after the passing of the Act. If the Act received the Royal assent on the 10th August, the passing of the Act would, in contemplation of law, take place immediately on the beginning of the day. That is what the court held, and, to emphasise the point, it stated that the Act commenced as soon as the clock had struck twelve on the night of the 9th August.[6] This later proposition was adopted in England in the Interpretation Act, and is to be found in section 5(3) of our Act.

In a Madras case[7], the question to be considered was whether an arrest made at 4.30 or 5 A.M. in the morning of the 23rd January, 1947 in pursuance of Madras Ordinance 1 of 1947, was legal, and it was held that although the Ordinance was published in the Official Gazette late in the day on the 23rd January, it must be deemed to have had effect from midnight of the night between 22nd and 23rd January. This, in substance, is an explanation of section 5(3).

Section 5 and time of commencement—article 20(1) considered

4.12B. In one of the comments received on the draft Report circulated by the previous Commission, a point has been made[8] that the clause as to the time of commencement of an Act may offend article 20(1) of the Constitution, so far as penal Acts are concerned. The

---

1. Macaulay, Minute No. 5 of the 14th June, 1835.
2. Also see sections 6(a), 12, 22, 24, General Clauses Act.
3. See *Adarsh Bhandar* v. *Sales Tax Officer*, A.I.R. 1957 All. 475, 483, para 62, second sub-paragraph.
4. *In re Veerabhadrayya*, A.I.R. 1950 Mad. 243, 246.
5. *Tomlson* v. *Bullock*, (1878) 4 Q.B. 230, 232.
6. *Tomlson* v. *Bullock*, (1878) 4 Q.B. 230, 233.
7. *Chenchiah* v. *Commissioner of Police*, A.I.R. 1948 Mad. 258.
8. Commend of Shri R.L. Narasimham, as Chief Justice of the Orissa High Court.

point made is as follows : Suppose an act which is otherwise lawful is made an offence by a particular statute of the legislature, and that statute comes into force say, at 10 A.M. Under the clause, it is deemed to have come into force from the midnight of the previous day. Suppose the act, which has now become an offence, was committed at, say, 6 A.M. on that day. Then, by virtue of the proposed clause, that act will become an offence, though article 20(1) of the Constitution prohibits retrospective penal legislation. This is the point made in the comment. It is emphasised that in article 20(1), the words used are "at the *time* of the commission of the Act," and not "at the *date* of the commission". The suggestion is that in the proposed clause, it may be made clear that it does not apply to statutes or statutory provisions relating to the creation of offences for the first crime.

4.12BB. We have considered the suggestion carefully. While we appreciate that article 20(1) of the Constitution has to be borne in mind, we do not think that it is necessary, for that reason, to *exclude*, from the proposed clause, statutory provisions creating an offence for the first time. The clause has the advantage of laying down a general rule as to the time of commencement, and it would be a convenient rule. In so far as a particular statute creates an offence, it will be read as subject to article 20(1) of the Constitution. The contitutional provision is paramount to the statutory provision in section 5(1). An express exception is not required. From the point of view of drafting, a specific exception will make the provision very cumbersome.

4.12C. Some difficulty may arise where an Act is to have extra-territorial application, in a place where the standard time is different from the time of the country where the Act is passed. The crucial test is the *date prevailing* in such place.[1] Such extra-ordinary and rare situations also need not come in the way of the proposed provision as to the time of commencement.

Time of commencement of provisions of an Act.

4.13. So much as regards the time of commencement of *an Act*. We are of the view that the time of commencement *of a provision* of an Act should also be defined. Such a provision will be useful for cases where the different provisions of an Act come into force on different dates.[2] We are recommending an amendment of section 5 accordingly.

Printed date of assent Presumption.

4.14. A presumption as to the printed date of assent (in respect of Acts) would also be useful.

Provision as to commencement of Ordinances and Regulations.

4.14A. A provision as to the commencement of Ordinances and Regulations is also proposed, as it would be useful.

Mandatory provision to print date of assent not suggested.

4.15. A further provision requiring the Government to print the date of assent to each Act was suggested during our discussion. We are, however, of the view that such a provision may not be appropriate in the General Clauses Act. Provisions on the subject contained in the Canadian Act, section 5(1), and the Australian Act, section 6, were considered by us. The English statute of 1793, and its history[3] were also borne in mind. We, however, feel that the suggested provision may create complications, and are not inclined to recommend its insertion.

Recommendation regarding section 5.

4.16. In the result, we recommend that section 5 should be amended to carry out the points discussed above.[4] The revised section should be as follows.

---

1. *Rex.* v. *Legan*, (1957) All. E.R. 688 (Court Martial Appeal Court).
2. *Cf.* para. 4.36 *supra*.
3. Para 4.2, *supra*.
4. Para 4.4 to 4.16, *supra*.

Revised section 5[1]

"5. (1) Where any Central Act is not expressed to *come into force* on a particular day, then it shall *come into force*— Coming into force of enactments.

(*i*) *in the case of a Central Act made before the commencement of the Constitution,* on the day on which it receives the assent of the Governor-General ; and

(*ii*) *in the case of an Act of Parliament,* on the day on which it receives the assent of the President.

(*2*) *Where an Ordinance promulgated or Regulation made by the President on or after the.....day of.....,*[2] *is not expressed to come into force on a particular day, then it shall come into force on the day on which the Ordinance is promulgated or the Regulation is made, as the case may be.*

(*3*) Unless the contrary intention is expressed, every Central Act, Ordinance, or Regulation or provision thereof shall be construed as coming into *force* immediately on expiration of the day preceding the beginning of the day *on which it comes into force.*

(*4*) *The date appearing on the copy of a Central Act printed by or under the authority of the Central Government immediately after its title shall be evidence that such date is the date on which the Governor-General or the President, as the case may be, gave his assent.*"

---

1. The revised sub-section (1) will apply to existing Acts also.
2. Date of commencement of amendment Act to be entered.

CHAPTER 5

PART OF STATUTES

Marginal notes

Introduction.

5.1. The Act does not contain any detailed provisions relating to the use in interpretation of marginal notes, headings, punctuation and the like. In view of the obscurity of the position as regards some of these matters, we propose to devote this chapter to a consideration of the question whether specific provisions on the subject are needed.

Section-5A (new) Marginal notes.

5.2. From time to time, controversies arise as to how far a marginal note (or side note) can be used in interpreting a section.

In 1904, Lord Mc Naghten, sitting in the Judicial Committee hearing an appeal from India, stated,[1] "It is well-settled that the marginal notes cannot be referred to for the purpose of construing the Act." He regarded the contrary opinion as "having originated in mistake." Nevertheless, the contrary opinion seems to have persisted amongst lawyers, and resort is often sought to be made to the side note in construing the section.

Qualified view.

From time to time, legal journals in India and elsewhere have also discussed this question.[2]

5.3. There exists also a qualified view, namely, that where the text of the statute is, in any respect, ambiguous, help can be sought from the marginal note. According to this view, while marginal notes could not be used for interpreting or curtailing the provisions of a section where its meaning is plain, those notes could be used to clear an ambiguity,[3] or to furnish some clue as to the meaning and purpose of the section.[4]

5.4. For example, in a Gujarat Case,[5] it was stated that the marginal note to a section supported the construction placed by the court. The court observed, "No doubt, the marginal note cannot be referred to for the purpose of construing a section, but it certainly furnishes some clue as to the meaning and purpose of the section. The marginal note to section 89 clearly indicates that the object and purpose of the section is to effect termination of disproportionately excessive voting right in existing companies. There are no words in the marginal note limiting the object and purpose of the section to termination of disproportionately excessive voting rights only in respect of preference shares. The marginal note also thus indicates that section 89(*1*) applies to all existing shares whether they be preference shares or equity shares."

Opposite view.

5.5. As against this, there are cases holding that a marginal note cannot be referred to for the purpose of construing a statute,[6] or that they cannot control the meaning of a section[7]

1. *Thakurni Balraj Kunwar* v. *Rao Jagat Pal Singh*, (1904) 31 I.A. 132, 141 (P.C.).
2. See for example, comments as to marginal notes in
   (a) (1934) 149 I.C.6;
   (b) (1934) Bom. L.R. 100.
   (c) (1934) 67 Mad. L.J. 35,
   (d) (1934) 4 All. W.R. 25.
3. *Model Electric Oil Mill* v. *Corporation of Calcutta*, A.I.R. 1960 Cal. 338, 389.
4. *Saraf Shah* v. *State of Andhra Pradesh*, A.I.R. 1963 A.P. 314.
5. *Juvan Singh* v. *Balbhadra Singh*, A.I.R. 1963 Guj. 209, 219 (P.N. Bhagwati J.).
6. *Commissioner of Income-tax* v. *Ahmedbhai Umarbhai & Co.*, (1950) S.C.R. 335, 353; A.I.R. 1950 S.C. 134, 141.
7. *Nallnakhya Bysack* v. *Shyamsunder Haldar*, (1953) S.C.R. 533, 538; A.I.R. 1953 S.C. 148, 150.

5.6. In general, courts in England and Australia held that the marginal notes cannot be used as a means of finding the true meaning of a section when the meaning of that section is in doubt.[1] Indeed, in some cases, Parliaments have passed Acts which seem designed to make sure that the marginal notes will not be used to find the meaning of the section. For example, the Victorian Parliament has passed an Act,[2] stating that : Position in England and in Australia.

> "Neither the marginal notes nor the foot-notes to any such Act other than any annual appropriation Act shall be a part thereof."[3]

In India, the Speaker of the Lok Sabha has also ruled[4] that marginal notes do not form part of the Act.

5.6A. In an earlier English case,[5] Phillimore, L. J. had observed, "I am aware of the general rule of law as to marginal notes, at any rate in public general Acts of Parliament, but that rule is founded, as well be seen on reference to the cases, upon the principle that these notes are inserted not by Parliament nor under the authority of Parliament but by irresponsible persons. Where, however,.....the marginal notes are mentioned as already existing and established, it may well be that they form part of an Act of Parliament."

5.7. But, in a fairly recent English case,[6] Harman L. J. said, "I have always been brought up to believe that to interpret an Act of Parliament by the side notes to the sections is quite inadmissible, although there are judicial pronouncements seeming to show that judges have not always refrained, as in my judgment they should, from giving some weight to them." In a latter case,[7] it was held that the marginal note is not to be regarded as a legitimate aid to construction. Recent English cases.

Contrary decision,[8] therefore, appear to be out of tune with well-settled principle.

5.8. In fact, in a judgment of the House of Lords,[9] Lord Reid specifically rejected the admissibility of side notes as an aid to construction.

5.9. On principle, the rule that a marginal note is not relevant for the interpretation of a legal provision applies as much to the constitution as to an ordinary law.

5.9. But, so far as ordinary Acts of Parliament are concerned, it is desirable to settle the law—or, if one prefers that expression—to re-settle the law.[10] The reason given usually for not treating marginal notes as part of the Act and as not admissible in interpretation is that the Legislature does not discuss them when discussing the Bill, and that they are never put to vote and can be amended under the authority of Government without reference to Parliament. Need to re-settle the law.

---

1. See, for example, *Nixon* v. *Attorney-General*, (1930) 1 Ch. 566, 593, (per Lard Hanworth M.R.); *Sunderson* v. *Fotheringham*, (1885) 11 V.L.R. 190; *Darke* v. *Thornton*, (1883) 1 Q.L.R. 159.

2. Ats Interpretation Act, 1958, section 11(2), (Victoria).

3. See also section 13(3) of the Austrian Act.

4. See the rulings given by the Speaker on the 7th February 1950 and 10th February 1960 (Lok Sabha Debates—Part II, dated 7th February 1950, pages 409-419) (during discussion on the Delhi Road Transport Authority Bill and the Undesirable Immigrants (Expulsion from Assam) Bill respectively.

5. Re. *Working Urban Council Act*, (1914) 1 Ch. 300, 322.

6. *Parsons* v. *Laboratories* (B.H.N.) Ltd., (1963) 2 All E.R. 658, 674.

7. *Uddin* v. *Associated Portland Cement*, (1965) 1 All. E.R. 347, 349.

8. *Stephens* v. *Cuckfield Rural District Council* (1960) 2 Q.B. 373.

9. *Chandler* v. *Director of Public Prosecutions*, (1962) 3 W.L.R. 694, 705(H.L.) See also para 5.10, *infra*.

10. Para 5.2, *supra*.

We would, however, like to point out that apart from this, there is a more substantial reason. The reason is that the marginal note is intended merely to give a brief indication of the matters dealt with in the provision against which it appears, and is not intended to give an exhaustive picture of the section. In fact, logically, it is difficult to see how a marginal not (even if it purports to give a complete picture of the section) can be taken into account in construing the section, because, then we would have not one but two parallel provisions on the same subject at the same place. However careful the draftsman may be in framing the marginal note, it is impossible for him to put everthing in it. By its very nature, it is a compressed gist of the section. It is not intended to have a legal effect. It is an extra-legal aid inserted for convenience.

5.10. Judicial evolution has itself failed to yield any reasonably certain test. In addition to the cases already cited,[1] we may refer to a fairly recent decision of the House of Lords,[2] where Lord Reid and Lord Upjohn have, as to the proper use of marginal notes, expressed views which, to some extent, run on divergent lines. It may incidentally be noted that in India, Central Act 1 of 1854 was the first Act[3] introduced and passed in Council which contained marginal notes.

Recommendation as-to-marginal notes.

5.11. We are, therefore, of the opinion that a specific and categorical provision to the effect that marginal notes do not form part of the Act is required, for the reasons stated above. We recommend accordingly. We also recommend a provision to the effect that marginal notes may be corrected or amended under the authority of Government. The new section to be inserted will be as follows :—

Section 5-A (New)

Marginal note not part of enactments.

5-A. *The marginal note appended to any provision of any Central Act or Regulation, and the reference to the number and year of any former law in the margin against any such provision,—*

(a) *shall form no part of the said Central Act or Regulation, as the case may* be ;

(b) *shall be deemed to have been inserted for the sake of convenience only ; and*

(c) *may be corrected or amended under the authority of Government.*

Headings

Section 5B(new) Headings.

5.11A. We think that opportunity should also be taken of making it clear that the headings of the Parts or Chapters into which any Central Act or Regulation is divided shall be deemed to be part of the Act or Regulation. Since[4] a controversy has arisen in England on the point, this clarification is desirable.

Lord Reid said,[5] in the House of Lords :

"A cross-heading out to indicate the scope of the sections which follow it, but there is always a possibility that the scope of one of these sections may have been widened by amendment. But a side-note is a poor guide to the scope of sections, for it can do no more than indicate the main subject with which the section deals."

---

1. See para 5.2, *supra*.
2. *D.P.P.* v. *Schnieder*, (1969) 3 All Eng. Report 1649, 1651, 1657.
3. Central Act 1 of 1854 related to acquisition of land.
4. Sec. *D.P.P.* v. *Schnieder*, (1969) 3 All E.R. 1640, 1641, 1657 (H.L.).
5. *D.P.P.* v. *Schnieder*, (1969) 3 All E.R. 1640, 1647, 1643, 1644, 1650 (House of Lords).

Lord Hodson said, "...although there are no cross-headings in the Act of 1928 whereas[1] the corresponding section of the Act of 1948, section 322, appears under the cross-heading "offences antecedent to or in the course of winding up" the construction of the relevant section ought not to be governed ultimately by a consideration of cross-headings even though some attention may be paid to them.....

Viscount Dilhorne said :

"I do not consider that it is proper to infer from the title to a part of the Act and from this cross-heading that the scope of the subject is limited as the respondent contends..... while I would not suggest that, when one is considering an Act of Parliament, one is not entitled to look at the title given to a part of the Act and to cross-headings, the weight to be attached to them is, in my opinion, every slight and less than that which should be given to a preamble. In *Chandler* v. *Director of Public Prosecution*,[2] Lord Reid said that side note to a section cannot be used as an aid to construction. I agree. A marginal or side-note is inserted by the draftsman as an indication, but not as a definition, of the contants of the section.

"Similarly, in my view, the title given to a part of an Act and the cross-heading to a modern Act, which are inserted by the draftsman and not subject to amendment by the members of either House, are no more than guides to the contents of the part or of the sections which follow. They are not meant to control the operation of the enacting words and it would be wrong to permit them to do so."

Lord Upjohn said :

"It must always be remembered that cross-headings, punctuations and marginal notes are not part of the Bill passing through Parliament in this sense that they cannot be debated and amended as the Bill passes its various stages, in marked contract to the preamble and the long title. These cross-headings and marginal notes are put there in the first place by the Parliamentary draftsman, but as the Bill proceeds may be altered (probably in consultation with the draftsman) by the officials of Parliament to accord with amendments made to the body of the Bill as it progresses.

".....what role do cross-headings play in the construction of the Act ? In my opinion, it is wrong to confine their role to the resolution of ambiguities in the body of the Act when the Court construing the Act is reading it, though to understand it, it must read the cross-headings as well as the body of the Act and that will always be a useful pointer as to the intention of Parliament in enacting the immediately following sections. Whether the cross-heading is no more than a pointer or label or is helpful in assisting to construe or even in some cases to control the meaning or ambit of these sections must necessarily depend on the circumstances of each case, and I do not think it is possible to lay down any rules."

Recommendation as to headings.

5.12. Similar controversy is likely to arise, in our courts and a specific provision is desirable. We, therefore, recommend insertion of the following new section :—

Section 5B (New)

Headings part of enactments.

The headings of the Parts or Chapters into which any Central Act or Regulation is divided shall be deemed to be part of the Act or Regulation, as the case may be.

Punctuation.

5.13. Another allied question is regarding punctuation. Broadly speaking, the accepted view is that in modern times, punctuation forms part of an enactment, and regard should accordingly be had to it in construing the enactment. It is not, however, possible to be very

1. The Companies Act, 1928.
2. *Chandler* v. *D.P.P.* (1962) 3 All E.R. 140.

precise or dogmatic in this regard. The fact that punctuation has, for some time past, been a part of the statute as enacted by the Legislature, is important as indicative of the value of punctuation marks as an aid in construction. Its use, however, seems to be limited to an obscure or doubtful provision of law, and, of course, the assistance to be derived from punctuation marks in interpretation will depend much on the accuracy and correctness with which they have been used. Until 1849, in England, statutes,—i.e., the Bills engrossed on parchment, were not punctuated,[1] but the position is different now.

5.14. It is often stated that good drafting should eliminate the need for punctuation. But perfect draftsmanship is an ideal which is rarely realised. Though not often used, punctuation is a guide in interpretation, but has to be resorted to cautiously. It is a minor element in the construction of a statute.[2]

Karl N. Lewellyn[3] has given illustrations with regard to canons of construction. One of them is—punctuation marks will not control the plain and evident meaning of language.[4] This is all that can be said on the subject with confidence.

5.15. In one of the comments[5] on the draft Report which was circulated by the previous Commission, it was stated that it is desirable to insert a separate provision dealing with the principles of construction of punctuation in statutes. The old rule that punctuations are made by the printer and should not be taken notice of during construction,[6] (it was stated) seems no longer in force. Since punctuations in the statutes are put by the draftsmen, and are passed by the legislatures and in some recent decisions, the Supreme Court also has taken note of punctuations while construing the statutory provisions, the suggestion is that "it is better to clarify the law on the subject."

We have already stated the position above[7] and we do not think that any specific provision in this regard would be appropriate.

---

1. (a) *Burrow* v. *Wadkin* (1858) 116 R.R. 1.
   (b) R. v. *Olehem* (1852) 21 L.T.M.C. 134.
2. (a) *Ashwini Kumar* v. *Arabindo Bose*, (1953) S.C.R. 1, 41, A.I.R. 1952 S.C. 369, 383.
   (b) *Shambhu Raddy* v. *Chalamma*, A.I.R. 1966, Mys. 311.
3. Lewellyn, 'Remarks on the theory of Appellate Decision and the Rules or canons about how statutes are to be construed" (1950) 3 Vanderbilt Law Rev. 395.
4. Comment of Shri R.L. Narasimhan, as Chief Justice of the Orissa High Court.
5. *Inland Revenue Commissioner* v. *Hinchy*, (1960) A.C. 748, 765.
6. Note in (1959) L.Q.R. referred to.
7. Para 5.14, *supra*.

CHAPTER 6

REPEAL AND AMENDMENT

Repeal

Repeal

6.1. In the last chapter we have dealt with rules relating to certain parts of statutes. We now come to more important questions concerning repeal and amendment.

Section 6-effect of repeal.

6.2. Section 6 of the Act deals with repeal. Its main object is to reverse the common law rule that a repeal obliterates the statute for all purposes for the future. Though this section is one of the most important sections in the code, and contains a provision of frequent application a study of the decided cases up-to-date shows that the problems that have arisen as to repeal are (i) either outside the section,[1] or (ii) concern the application of the provisions of the section, or (iii) concern the effect of a separate repeal clause in a *particular Central Act*. These problems cannot be avoided or minimised by an amendment of section 6, because their solution does not lie in any general rule.

Problems arising in relation to repeal, outside section 6.

6.3. The question that arise (in relation to repeal) outside section 6 relate usually to the effect of a particular enactment as attracting the provisions of section 6.

Legislative-intent.

6.4. The entire problem of determining the extent to which existing legistlation is repealed by subsequent statutes ultimately resolves itself into one of legislative intent.[2]

As Mr. Justice Story said,[3] it is not sufficient "to establish that subsequent laws cover some or even all of the case provided for (by the prior Act), for, they may be merely affirmative, or cumulative or auxiliary." The intention of the legislature to repeal "must be clear and manifest". Questions concerning this legislative intent to repeal and the extent of the repeal are obviously incapable of being solved by a general rule.

Applicability of section 6 in case of re-enactment.

6.5. It may be noted that section 6 would apply to a case of repeal even if there is a simultaneous new enactment, unless a contrary intention appears from the new enactment.[4] The consequences laid down in section 6 of the General Clauses Act will follow, unless as the section itelf says—a different intention appears. In the case of a simple repeal, there is scarcely any room for the expression of a contrary intention. Of course, when repeal is followed by fresh legislation on the same subject, one would undoubtedly have to look to the provisions of the new Act—but only for the purpose of determining whether they indicate a different intention. It cannot, therefore, be said, as a broad proposition, that section 6 of the General Clauses Act is ruled out whenever there is a repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also, unless the new legislation manifests an intention incompatible with or contrary to the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law, and the mere absence of a saving clause is, by itself, not material.

Section 6 and implied repeals.

6.6. There is one important matter concerning implied repeals, which needs to be mentioned. By its terms, section 6 does not state that it applies also to implied repeals, and, for some time, the Supreme Court also kept the question open.[5] In 1964, the question came

1. Para 6.3, *infra*.
2. *Wood* v. *U.S.*, 10 L. ed. 987, 253.
3. *Red Rock* v. *Henary*, 27 L. ed. 251, 253.
4. *M/s Munshilal Bemram* v. *S.P. Jain* (1971) 2 S.C.J. 307.
5. *Trust Mai Lachhmi Sialkot Bradri* v. *Amritsar Improvement Trust*, A.I.R. 1963 S.C. 976.

up before the Supreme Court in these circumstances.[1] The Orissa Mining Areas Development Fund Act, 1952 (an Act of the Orissa State Legislature) was, by reason of the passing of the (Central) Mines & Minerals (Regulation and Development) Act, 1957, superseded. The latter Act had no express repeal clause, but since the regulation of mines and the development of the minerals to the extent provided in the Act was taken under its control by the Union by a declaration in [2] section 2 thereof, this consequence necessarily followed.

6.7. Posing the question whether the expression "repeal" in section 6 was of sufficient amplitude to cover implied repeal, and noting the absence of direct authority on the point in England or in the United States, the Supreme Court took the view that the principle underlying section 6 was that every latter enactment which supersedes an earlier one or puts an end to the earlier state of the law, is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment, unless there are sufficient indications express or implied in the later enactment, designed to completely obliterate the earlier state of the law.

6.8. The Court then examined the question whether this principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed, and made the following pertinent observations :—

> "The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting, but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded, could there be any incongruity in attributing to the later legislation the same intent which section 6 presumes where the word 'repeal' is expressly used ? So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even by reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation."

6.8. Before we conclude our discussion of this section, we may point out that the concluding words of this section "as if the repealing Act or Regulation had not been passed" are its key words. As the Supreme Court observed,[3] "The last nine words.....are the key words, and mean that in respect of rights, obligations and liabilities acquired, accrued or incurred under the earlier Act, the repealing Act need not be read and legal proceedings and remedies are to continue under the repealed Act according to its tenor."

As the section is quite comprehensive in its scope and content, we do not think that any change is called for in it.

Amendment

6.9. We now come to amendment of Acts. Section 6A is as follows :—

Section 6A.

> "6A. 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

1. *State of Orissa* v. *M.A. Tooloch & Co.*, A.I.R. 1964 S.C. 1284, 1294, paragraph 21.
2. The declaration was with reference to the Constitution, Union List, entry 54.
3. *A.N. Channiah* v. *A. Batchachanian Sahib* (decided in January 1963).

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."

Verbal-changes.

6.10. Slight verbal changes in this section (section 6A) are proposed, in order to describe more precisely the enactment to what the section applies.

Exception-recommended for temporary Acts (in section 6A)

6.11. (a) We also recommend an exception regarding temporary Acts. A temporary amending Act, which amends a permanent Act, should die on its repeal: that is to say, the amendment should come to an end with the repeal of the amending Act.

(b) Where a temporary Act amends a temporary Act, and the amending Act is repealed, the principle of section 6A may apply. But it is unnecessary to encumber the section with any elaborate provision on that point.

Ordinance-amending Acts.

6.12. While on the subject of temporary amending laws, we may refer to the situation of an Ordinance amending a temporary Act, which arose in a Supreme Court case.[1] In that case, the enactments involved were—

(i) the Defence of India Act, 1939 (a temporary Act), (ii) the amendments thereto by Ordinance No. 12 of 1946, and (iii) the Repealing and Amending Act No. 2 of 1948 (which repealed the Ordinance and repealed the Defence of India Act also). On the repeal of the amending Ordinance, the amendments made thereby (in the nature of savings for rights, liabilities etc.) were held to have died. The non-applicability or otherwise of section 6A was not considered, perhaps because the section does not find a mention in section 30 dealing with Ordinances.

We have considered the question whether it is necessary to make a provision on the subject. If the effect of the formal repeal of a law amending a temporary law is to destroy the amendments made by the amending law, some practical difficulties could arise, and one way to solve them would be to provide (in the clause under discussion) that it applies also to an Ordinance amending a temporary Act, when the Ordinance is repealed. We have, however, after careful consideration, decided not to encumber the section with such complications.

6.13. Amendments made by Ordinance would not, therefore, fall within the purview of this clause.

Temporary amending Acts-Expiry of.

6.14. The topic of temporary amending Acts, in relation to their *expiry* (as distinguished from their repeal), is one which will be referred to later.[2]

Meaning of the word "text" in section 6A.

6.15. The word "text" in section 6A has been construed by the Supreme Court in *Jethanand's case*[3] as meaning "subject or theme". The argument there advanced was that this word related to the phraseology and the terminology used in the Act, but not to the content of that Act. This argument was negatived. (The case related to the amendment made in the Wireless Telegraph Act, 1933, by the amending Act of 1949, which was repealed in 1952).

Expiry of temporary amending Acts.

6.15A. In another Supreme Court case, *Om Prakash* v. *State of U.P.*,[4] relating to the Prevention of Corruption Act, it was held that section 409 of the Indian Penal Code was not repealed by section 5 of the Prevention etc. Act, even impliedly. The question was, thus, one of repeal. But the following observations made by the Court are of interest with reference to temporary amending Acts:

1. *State of U.P.* v. *Jagamandar Das*, A.I.R. 1954 S.C. 683, 685, para. 8.
2. Para 6.15A *infra*.
3. *Jethanand* v. *State of Delhi*, A.I.R. 1960 S.C. 89, 92; 1 S.C.R. 755, 761.
4. *Om Prakash* v. *State of U.P.*, A.I.R. 1957 S.C. 458, 463, (1957) S.C.R. 423, 424 (Govinda Menon J.).

"Before we advert to the Indian cases, the first thing that has to be remembered in this connection is that, the Prevention of Corruption Act being a temporary one, the Legislature would not have intended in the normal course of things that a temporary statute like the one in question should supersede an enactment of antiquity, even if the matter covered the same field. Under section 6(a)[1] of the General Clauses Act, if by efflux of time, the period of a temporary statute, which had repealed an earlier statute, expires, there will not be a revival of the earlier one by the expiry of the temporary statute."

Recommendation.

6.16. In the light of the above discussion, we recommend that section 6A should be revised as follows.

Revised section 6A

Repeal of law making textual amendments in other laws.

Where any Central Act or Regulation (*other than a temporary Act or Regulation*) amends the text of any Central Act or Regulation by the express omission, insertion or substitution of any matter, and *the amending Central Act or Regulation is subsequently repealed,* then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the Central Act or Regulation so repealed and in operation at the time of such repeal.

Section 6B (new)— Reference to Acts etc. with title amended.

6.17. to **6.20.** We propose a new section to provide that where the title of any Central Act or Regulation is amended, then reference to that Central Act or Regulation by its old title, in any other enactment Act or Statutory instrument, shall be construed as references to it with its new title. The utility of such a provision is obvious.

The new section should be as follows :—

Section 6B(New).

Reference to Act etc. with short title amended.

"6B. *Where the short title of any enactment, being a Central Act or Regulation, is amended, then, references to that Central Act or Regulation by its old title in any other enactment or any statutory instrument shall, unless a different intention appears, be construed as reference to it with its new title.*"

Revival of repealed Acts.

Section 7— Revival of repealed Act.

6.21. Under section 7, 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, expressly to state that purpose.

The section seems to need no change.

Reference to repealed Acts

Section 8— Introductory.

6.21A. We now come to section 8, sub-section (1) which is as follows :—

"Where this Act, or any 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 provisions so re-enacted.

This section, though simple in its main principles, has given rise to a number of questions. Some of them do not necessitate any change, but all of them illustrate its importance.

1. Perhaps the court had section 6A in mind.

6.21B. Section 8(1), it should be pointed out,[1] deals with the reference or citation of one enactment is another *without incorporation*. The meaning and effect of incorporation by reference of one statute into another has been examined in several cases, which point out this limitation of section 8. Distinction between incorporation and mere reference.

6.22 Even so, the scope of section 8 is wide. For example when an Act passed by the Union Parliament repeals[2] a State Act, then also section 8 applies; there is nothing in section 8 to indicate that "former enactment" means only a Central Act. Wide scope of section 8. (State Act).

6.23. It may also be noted that section 8 does not require that the later Act repealing and re-enacting an earlier Act should be a repealing and amending Act.[3] It does not matter that the new Act is not a repealing and amending Act, but an Act to define and amend the law relating to the particular subject. All that the section required is that a Central Act should repeal and re-enact a former enactment, either with modification or without it. Section 8 not confined to repealing Acts.

6.24. The expression "instrument" in the section has also given rise to a few interesting cases. Meaning of "instrument" in section 8.

6.25. In a Bombay case,[4] it was stated that the word "instrument", in its ordinary meaning means a document of a formal legal kind, which creates some right or liability. It is usually used in the sense of a document executed by or between the parties. An order of a Court cannot be said to be an instrument.[5]

In an earlier Bombay case,[6] the High Court was not satisfied that an order of delegation can be deemed to be an "instrument" within the meaning of section 8; and it was conceded that it cannot be regarded as an enactment.

6.26. But the Supreme Court has now held[7] that the word "instrument" (in section 8) includes the President's order under article 359(1) of the Constitution. The Supreme Court, while so holding, noted that the word "instrument" is some-times taken as meaning a formal document creating a right or liability *inter partes*. The Supreme Court added: Supreme Court's view.

> ".....But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority. We have no doubt in our mind that the expression "instrument" in section 8 was meant to include reference to the Order made by the President in exercise of his constitutional powers."

6.27. In a Delhi case,[8] an important point concerning section 8 arose. A notification issued by the State Government of Maharashtra had recorded the consent of the Maharashtra State to the investigation by the Delhi Special Police Establishment of offences specified in a notification of the Government of India (issued under section 3 of the Delhi Special Police Establishment Act). The notification of the Government of India was later repealed, and a new one in supersession of it issued. But the Maharashtra State did not issue a fresh order notifying its consent with reference to the revised notification of the Central Government. Consent of the State Government was, nevertheless, held to continue to be valid for purposes of the revised notification also. Reference in one statutory instrument to another statutory instrument.

---

1. *Collector of Customs, Madras* v. *Nathella Sampathu Chetty* (1962) 3 S.C.R. 786; A.I.R. 1962 S.C. 316.
2. *State of Punjab* v. *S.D.S. Gupta*, A.I.R. 1970 S.C. 1641-1642, para 4.
3. See *Narayan* v. *Surandranath*, A.I.R. 1972 Orissa 115, 117.
4. *Bombay Chronicle* v. *V.B.Poldar*, (1961) 63 Bom. L.R. 812, 814 (Chainani C.J., Chandrachud J.).
5. *Jodrell* v. *Jodrell*, (1869) L.R. 7 Eq. 461, 463.
6. *Emperor* v. *Rayangonda Kingangonda*, A.I.R. 1944 Bom. 259, 263; 46 Bom. L.R. 495.
7. *Mohan Chowdhury* v. *Chief Commissioner, Union Territory of Tripura*, A.I.R. 1964, S.C. 173, 178, 179, para 11.
8. *Advance Insurance Co.* v. *Gurdasmal*, A.I.R. 1969 Delhi 330, 347, para. 33 (DB.).

6.28. The High Court observed :—

> "Learned counsel for the petitioner further argued that the said Notification issued under section 3 has since then been repealed and superseded by another Notification though in the New Notification also all the offences which are being investigated in the present case are included. Learned counsel, however, argues that the repeal of the Notification under section 3 which was referred to in the consent letter prevents the Special Police from investigating this case. We see no force in this argument. *The principle of section 8 of the General Clause Act would apply here.*[1] The letter of consent referred to the Notification under section 3 which was in force when the consent letter was issued. The repeal of the said Notification and the issue of a new one in supersession of it would be like the repeal and re-enactment of a statute. Under section 8, the reference to the repealed enactment thereafter is to be construed as a reference to the re-enacted provisions. For the same reason, the reference in the consent letter would have to be construed as a reference to the Notification which has repealed the Notification referred to in the consent letter. It would be contrary to all principle to take the view that the State Government has to go on issuing new letters of consent merely because the Central Government chose to issue new Notification under section 3.
>
> In fact, the State Government may refuse to issue a new letter of consent on the ground that it wanted the consent to be restricted to the offences mentioned in the Notification referred to in the consent letter. The superseding Notification may contain additional offences to the investigation of which the State Government may not wish the consent. In our opinion, therefore, the letter of consent continues to be valid, and it is so valid in the present case."

Need to make the language explicit.

6.29. We agree with the conclusion reached by the High Court.[2] But we think that it would be better to make the language of the section explicit on this point.

Need to confine the amendment to statutory instruments.

6.30. At the same time, it is desirable to confine the proposed amendment to *statutory instruments*.[3] The General Clauses Act is not concerned with documents other than statutes and statutory instruments.

Successive repeals

Section 8 and Successive repeals.

6.31. We may, at this stage, deal with successive repeals. In the Allahabad case,[4] *Chandra Bhushan v. Gayatri Devi*, the question arose whether section 8 of the General Clauses Act could be pressed into service in construing section 13, Court Fees Act, which refers to section 351 of the Civil Procedure Code, 1859. The Code of Civil Procedure, 1908 has repealed and re-enacted (in Order 41, Rule 23), the provisions of section 562 of the Code of 1882. The Code of 1908 did not itself repeal the Code of 1859. It repealed the Code of 1882, which had repealed the Code of 1877, which, in turn, had repealed the Code of 1859. The High Court held that section 8 of the General Clauses Act was of no assistance in such a situation.

It would be desirable to cover such a situation by making an explicit provision on the subject.

Recommendation as to section 8.

Recommendation to amend section 8.

6.32. & 6.33. In the light of the above discussion,[5] we recommend that section 8(1) should be revised, and section 8(1-A) inserted, as follows:—

---

1. Emphasis supplied.
2. Para 6.28, *supra*.
3. See *supra* para 6.24.
4. *Chandra Bhushan* v. *Gayatri Devi*, A.I.R. 1969 All. 142, 152.
5. Para 6.28 to 6.31, *supra*.

"8(*1*) Where this Act, or any 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 statutory instrument to the provision so repealed,* or to the *provision of any former enactment repealed and re-enacted by the provision so repealed, shall, unless a different* intention appears, be construed as references to the provision so re-enacted."

"(1-A) *Where any statutory instrument rescinds and re-incorporates, with or without modification, any provision of a former statutory instrument, then references in any enactment or in any other statutory instrument to the provision so rescinded, or to the provision of any former statutory instrument rescinded and re-incorporated by the provision so rescinded, shall, unless a different intention appears, be construed references to the provision so re-enacted."*

CHAPTER 7

TEMPORARY ACTS

INTRODUCTORY

Section 8A (new)— Expiry of Temporary Acts.

7.1. We now proceed to discuss a subject which is not dealt with in the present Act, the expiry of temporary Acts. We propose a new section on the subject.[1] It would be desirable to explain the background of the new section in some detail.

At present, in the absence of provisions as to the expiry of temporary Acts, considerable difficulty arises. No doubt, in each particular Act which is intended to be temporary, usually a saving clause is inserted; but, there might be cases where the draftsman omits to do so through inadvertence.[2] Since the situation is a recurring one, it would be convenient if the General Clauses Act contains a suitable provision.

The matter requires a detailed discussion of several aspects.

Perpetual and temporary Acts.

7.2. "Every statute for which no time is limited is called a perpetual Act," as the Supreme Court observed;[3] A perpetual Act continues in force until it is repealed. It is, however, to be noted that no statute can be literally perpetual, that is to say, incapable of being repealed.

Temporary Acts are those on the duration of which some limit is put by the Legislature. They continue in force (unless sooner repealed) until the expiration of the time fixed for their duration. The *Corpus Juris Secundum*[4] defines a temporary statute as one which is limited merely in its duration, or which is limited in its operation for a particular period of time after its enactment.

Repeal and expiry compared

English law, as to repeal.

7.3. Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of a repealing statute was to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of these actions which were commenced, prosecuted and concluded while it was an existing law.[5]

To obviate the results which would follow a repeal without more, a practice came into existence in England of inserting a saving clause in the repealing statute with a "view to preserving rights and liabilities already accrued or incurred under the repealed enactment. Later on, to dispense with the necessity of having to insert a saving clause on each occasion, section 38(2) was inserted in the Interpretation Act, 1889."[6] Section of our Act corresponds to section 38 of the English Act, dealing with repeal.

Effect of repeal and effect of expiry.

7.4. If the effect of the repeal of a statute (without a savings clause) was to obliterate the repealed statute as completely from the records of Parliament as if it had never been passed,[7] the effect of expiry of a temporary statute also could not, in principle, be in any way different. The decided authorities[8] show that the general rule in regard to the expiration of a temporary

1. Section 8A(new).
2. Para 7.11, *infra*.
3. *Hansraj Moolji* v. *State of Bombay*, AIR 1957 SC 497, 500, Para. 14.
4. Corpus Juris Secundum, Vol. 82, p. 980.
5. See A.I.R. 1955 S.C. 84, 87.
6. A.I.R. 1955 S.C. 84, 87.
7. Para 7.3, *supra*.
8. (a) A.I.R. 1947 F.C. 38, 44.
   (b) A.I.R. 1959 S.C. 609, 610.

statute is that (unless the statute contains some special provision to the contrary), after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires, any proceedings which are being taken against a person will *ipso facto* terminate.

In one judgment[1] of the Supreme Court, the repeal of a perpetual statute is almost equated with the expiry of a temporary statute. It is observed, "when a statute is repealed or comes to an end by efflux of time, no prosecution for acts done during the continuance of the repealed or expiried Act can be commenced after the date of its repeal or expiry, because that would amount to the enforcement of a repealed or dead Act.".

Advice of Lord Thring.

7.4A. It may, in this connection, be stated that Lord Thring[2] called attention to the advisability of including, in any temporary Act which imposes penalties, a provision that offences and obligations incurred before the expiration of the Act might be punished or enforced afterwords. Perhaps, in pursuance of this advice, British and Indian statutes have used, in relation to the expiration of a temporary Act, the expression 'except as respects things done or omitted to be done', so that offences and obligations incurred under a temporary Act might be punished or enforced even after its expiry. Even the Constitution of India, in articles 249(3), 250(2), 357(2) and 358, has used this expression. The Government of India Act, 1935, used this expression in section 102(4). It is on the basis of this expression that the House of Lords held in *Wicks* v. *Director of Public Prosecutions*,[3] that the expiration of the Emergency Powers (Defence) Act, 1939 did not affect the lability to punishment under the statute or the prosecution of legal proceedings for the purpose of inflicting that punishment. There are two Supreme Court cases explaining the meaning of the expression 'thing done'.[4-5]

The above discussion is intended to show the need for a savings provision as to the effect of expiry of a temporary Act.

Present position—Need for amendment

No statutory provision in U.K. as to expiry.

7.6. In the United Kingdom, there is no statutory provision concerning the effect of expiry. At common law, the effect of expiry of a temporary statute is, in each case, a matter of construction.[6-7] The savings provision applicable by section 33(2) of the Interpretation Act, 1889 (U.K.) in case of repeal[8] does not apply on the expiry of an Act, of its own force.

Current English legislative practice is to apply the repeal clause. The following is one example :[9]

> "(2) Upon the expiry of this Act, section 38(2) of the Interpretation Act shall apply as if this Act had been repealed by another Act."

The correct position in relation to temporary Acts was stated by Spens C.J. in *J. K. Gas Plant* v. *King Emperor*,[10] in which he cited with approval the following passage from Craies on Statute Law.[11]

---

1. A.I.R. 1954 S.C. 683, 685.
2. Thring, Practical Legislation, page 100.
3. *Wicks* v. *Director of Public Prosecutions*, (1947) A.C. 362 (H.L.).
4. *Universal Imports Agency* v. *Chief Controller*, A.I.R. 1961 S.C. 41.
5. *French India Importing Corporation* v. *Chief Controller*, A.I.R. 1961 S.C. 1752.
6. See.—
   (a) *Stevenson* v. *Oliver*, (1841) 8 M & W 234, 240, 241;
   (b) *Spencar* v. *Hooton* (1920) 37 T.L.R. 280, 282;
   (c) *Wicks* v. *Director of Public Prosecutions* (1947) A.C. 362.
7. As to the general rule, see para 7.4, *supra*.
8. Para 7.3, *supra*.
9. Section 9, Control of Liquid Fuel Act, 1967 (Eng.).
10. *J.K. Gas Plant* v. *King Emperor*, (1947) 52 C.W.N. (F.R.) 25.
11. Craies, Statute Law (Fourth Edn. p. 347; Sixth Edn. p. 408).

> ".....unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceeding which are being taken against a person will ipso facto terminate."

Repeal of perpetual Act and expiry of temporary Act-Similarity between.

7.6. Thus, a perpetual Act and a temporary Act stand on the same footing, first, when they are in force, and secondly, when a permament Act is repealed or a temporary Act expires by efflux of time, as the case may be. Then, the question arises whether we should have a general saving clause to deal with the expiry of a temporary Act more or less like the one which has already been provided for in section 6 in relation to repeal. As in the case of repeal without a saving clause,[1] so in the case of expiry[2] of a temporary Act without a saving clause, it is not difficult to conceive how, such an expiry might result in defeating the object for which the temporary Act was enacted. Regard being had to the fact that the legislative power in the exercise of which a temporary Act is enacted is the same as in the case of a perpetual Act, there cannot by any insuperable or inherent difficulty in a temporary Act creating rights surviving beyond the actual expiry.

Provision in Bill of 1897.

7.7. It may be mentioned here that a provision on this subject was made in the General Clauses Bill, 1897, as originally introduced,[3] but it was dropped at the Select Committee stage.[4]

In deleting the provision, the Select Committee observed :--

> "It may be that without any provision it would be held that the effect is the same when an enactment expires as and when it is repealed; but, on the other hand, it is conceivable that there might be cases in which, for example, it would be better not to allow a person to be proceeded against after the expiry of a temporary and possibly very stringent enactment, although he acted in contravention of it during the period for which it was expressed to endure."

With respect, we do not think that the reasons given by the Select Committee of 1897, quoted above for the deletion of the provision, are sound.

The first assumption in the Committee's observations, equating the repeal of an enactment with its expiry, has not been accepted either in Indian[5] or in English[6] law. The second proposition, referring to some 'very stringent' enactments, seeks to make an exceptional case the basis for a general rule. We find it difficult to conceive of cases where the legislation would intend and provide that an offence committed against the temporary law may cease to be punishable on its expiry. On principle, even if a law is stringent, an offence committed during its operation should be punished even after its expiry.

Position as to expiry of temporary Acts in India.

7.8. The position in Indian law as to the effect of the expiry of temporary Acts, which we have already discussed,[7] is thus understood :[8]

---

1. Para 7.4, *supra*.
2. Para 7.5, *supra*.
3. See Clause 6(2), General Clauses Bill, 1897, Gazette of India, Part V, pages 25.37, dated 6th Feb., 1897 and Notes at pages 38.40.
4. Report of the Select Committee, Gazette of India, Part V, pages 77.78, dated 6th March, 1897.
5. See para 7.8, *infra*.
6. See para 7.9, *infra*.
7. Para 7.3 and 7.4, *supra*.
8. See—
   (a) *Krishnan* v. *State of Madras*, A.I.R. 1951 S.C. 301, 304 (1951) S.C.R. 621; (per Patanjali Sastri J.).
   (b) *State* v. *Jagamandar Das*, A.I.R. 1954 S.C. 683; (1955) SC A539.
   (c) *State of Punjab* v. *Mohar Singh*, (1955) S.C.R. 85;
   (d) *Gopichand* v. *Delhi Administration*, A.I.R. 1959 S.C. 609.

Unless the temporary Act contains some special provision to the contrary, no proceeding can be taken upon a temporary Act after its expiry, and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires, any proceedings which may have been taken against a person will *ipso facto* terminate.

7.9. The position in England is the same.[1-2]

Care to be taken while drafting.

7.10. In drafting an Act which is to expire after a certain period, care must, therefore, be taken, as the law stands at present, to provide that any right, obligation or penalty accrued or incurred during the period of the operation of the Act shall not be affected, and that any investigation, legal proceeding or remedy in respect thereof may be instituted, continued or enforced, and such penalty imposed, as if the Act had not expired.

Failure to insert saving clause-effect of.

7.11. The failure to insert a proper saving clause has sometimes resulted in a serious offence going unpunished. An instance in point is the case reported *in State of Uttar Pradesh* v. *Jagamander Das*.[3] It is true that there was considerable delay on the part of the investigating agency in that case; but, if there had been a general saving provision in the General Clauses Act, the serious offence in that case would not have gone unpunished.

Specific provision needed.

7.12. The usual practice of inserting a saving clause in temporary Acts,[4] and the serious consequences which result where such a saving provision is either not inserted or is inadequate,[5] would, in our opinion, justify the inclusion in the General Clauses Act of a general provision dealing with the effect of expiry of temporary Acts. We are conscious that we are recommending a radical change; but we are satisfied that the ends of just require it.

Outlines of amendments

Outlines of new provision relating to expiry of temporary Acts.

7.13. Having discussed the need for a provision dealing with the expiry of temporary Acts, we now proceed to consider the lines on which it should run.

Principles applicable to repeal generally applicable.

7.14. We have a precedent in section 6, which deals with repeal. In general, principles which apply in the case of repeal of a permanent Act should, on so far as the nature of a temporary Act permits apply to its expiry.

There are two ways of utilising section 6 for the purpose:

(i) a section applying section 6 (which deals with repeal) to temporary Acts on the lines of current English procedure,[6] or

(ii) a self-contained section which will reproduce the contents of section 6 in relation to temporary Acts.

Of course, whichever course is adopted, it will have to be borne in mind that some parts of section 6 cannot be applied to temporary Acts. Thus, clause (a) of section 6, regarding non-revival of a repealed Act, should not apply in the case of expiry of temporary Acts. If section 6(a) is applied, the result might be that where a temporary Act repeals any provision of a permanent Act, the repealed provision will not revive on the expiry of the temporary Act,—a situation which may be, and usually is, contrary to the intention of the legislature. But there is no difficulty in applying the other clauses of section 6 to the expiry of temporary Acts.

---

1. *Wicks* v. *Director of Public Prosecutions*, (1947) A.C. 362 (H.L.).
2. See also para 7.5, *supra*.
3. *State of U.P.* v. *Jagmandar Das*, A.I.R. 1954 S.C. 683; (1955) S.C.A. 539.
4. Para 7.4, *supra*.
5. Para 7.11, *supra*.
6. Para 7.5, *supra*.

Form of amendment considered.

7.15. The question, then, is whether section 6 should be applied by reference—[alternative (i) above[1]]—or whether the new section should be self-contained—[alternative (ii) above.]

Self-contained section preferred.

7.16. We think[2] that it would be more convenient to have a self-contained section as to the effect of the expiry of temporary Acts, instead of applying, by reference, the section relating to repeal,—though the latter was the course proposed in the General Clauses Bill, 1897.[3-4] Referential legislation leads to unforeseen difficulties, and we think that in the case of an important provision like the one under consideration, such a position should be avoided. We may observe that the provision which we recommend will be the converse of the constitutional provision[5] *barring* a prosecution for an offence under a law *not in force at the time when the offence* was committed notwithstanding the later *enactment* of such a law. Under the proposed section it will be permissible to prosecute a person for an offence committed while the law was in force, notwithstanding the later *expiry* of that law.

Express provision to the contrary provided for.

7.17. We have made the proposed new section subject to an express provision to the contrary. No doubt, as we have already stated,[6] it is difficult to conceive of cases where the legislature would intend that an offence against a temporary law should, after its expiry, cease to be punishable. Normally, the expiry of an Act should not prevent prosecutions thereunder. However, since the scheme of the Act is to leave scope for a different intention in every provision, it appeared to us that an exception should, in the new section, be made at least for *express* provision to the contrary.

Expiry of Ordinances.

7.18. While we have thought fit to apply, with modifications, the provisions of section 6 of the General Clauses Act, 1897, to the expiry of temporary Acts,[7] we have not extended this principle to the expiry of Ordinances. Under article 123(2) of the Constitution an Ordinance ceases to operate on the expiry of six weeks from the re-assembly of Parliament. To a layman, an Ordinance shares the same character as a temporary Act. The words "cease to operate" in article 123(2) have not been judicially interpreted. But it seems that at the expiry of six weeks, an Ordinance is completely obliterated from the Statute Book, except for the saving expressly made by the Constitution. It may be pointed out that article 123(2) does not use the words "except as regards things done" etc. The Supreme Court in *State of Orissa* v. *Bhupendra Kumar*,[8] made the following pertinent observations .

> "It is true that the provisions of section 6 of the General Clauses Act in relation to the effect of repeal do not apply to a temporary Act. As observed by Patanjali Sastri, J. as he then was, in *S. Krishan* v. *State of Madras*,[9] the general rule in regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will *ipso facto* terminate as soon as the statute expires. That is why the Legislatures can, and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision the effect of which is in some respects similar to that of section 6 of the General Clauses Act. Incidentally, we ought to add that, it may not be open to the Ordinance making authority to adopt such a course because of the obvious limitation imposed on the said authority by Article 213(2)(a)."

In this position, we think that it will not be safe to apply the provisions of section 6 of the General Clauses Act to the expiry of Ordinance, and it is doubtful if the proposed section (as the effect of expiry) can be legally made applicable, in view of the provisions of the Constitution.

---

1. Para 7.12, *supra*.
2. See also para 7.20, *infra*.
3. Section 6(2) of the General Clauses Bill, Gazette of India, 1897 (6th Feb. 1897), Part V, pages 25-37.
4. See also para 7.7, *supra*.
5. Article 20 of the Constitution.
6. Para 7.7, *supra*.
7. Para 7.13 to 7.17, *supra*.
8. *State of Orissa* v. *Bhupendra Kumar*, A.I.R. 1962 S.C. 952.
9. *S. Krishnan* v. *State of Madras* (1951) S.C.R. 621; A.I.R. 1951 S.C. 301.

Qualitatively, an Ordinance ceasing to operate *under the Constitution* differs from a temporary Act which expires by afflux of time. Parliament never applied its mind to the Ordinance which ceased to operate under the Constitution.

Recommendation

7.19. In the light of the above discussion, the new section what we recommend will deal with the effect of expiry of temporary Acts only. Salient points of the recommendation.

Some of the noteworthy points in connection with the proposed section may be repeated, for convenience:

(i) The proposed section will not apply to the expiry of Ordinances.[1]

(ii) Assistance has been taken in drafting the section from section 6. But clause (a) of section 6 (regarding non-revival) has not been adopted, since it should not apply[2] in cases of expiry.[3]

(iii) Instead of merely providing that section 6 will apply in relation to expiry, the proposed section re-states the provisions intended to be applicable on expiry.[4]

It may again to pointed[5] out that the mere application of section 6 of the General Clauses Act to a temporary Act (without reproducing, with adjustments, the detailed savings), would create difficulties, and may not produce the desired result. As was observed in a Calcutta case,[6] where a temporary Act is repealed and replaced by a new Act, section 8 of the Bengal General Clauses Act (which corresponds to section 6 of the General Clauses Act, 1897) may not achieve the object of saving the operation of the temporary Act, because the expression "as if the repealed Act had not been passed" can be construed in a rather norrow manner. It would save the life of the Act only for the period upto the date of expiry, in the sense that its subsequent expiry is not to be taken as having wiped it off completely as if it had never been born. Whatever was done during its duration will not be re-opened, and that would be the only effect of the expression; once the date of expiry is gone, the temporary Act would have expired, and the words "as if the repealed Act etc." would not authorise any *action after its expiry*, because of the ordinary principles applicable as to the effect of expiry of temporary Acts.

7.20. Accordingly, we recommend the insertion of the following new section:— Recommendation.

Section 6-A (New)

8-A. Where a temporary Central Act or a temporary Regulation made on or after the.. .....day of.....expires,[7] then, in the absence of an express provision to the contrary, the expiry shall not effect— Effect of expiry of temporary Act.

(a) the previous operation of, or anything duly done or suffered under, the temporary Act or Regulation;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the temporary Act or Regulation;

(c) any penalty, forfeiture or punishment incurred under the temporary Act or Regulation;

1. See para 7.18, *Supra.*
2. See discussion in para 7.14, *supra.*
3. Hence section 30 will not mention the new section.
4. See discussion in para 7.16, *supra.*
5. See also para 7.16, *supra.*
6. *Tarak Chandra Mukherjee and others* v. *Ratan Lal Ghosal and others,* A.I.R. 1957 Cal 257.
7. Date of commencement of amending Act to be inserted.

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the temporary Act or Regulation had not expired.

Time of Expiry

Section 8-3 (New) Time of expiry etc.

7.21. As regards temporary Acts, there is another point to be considered. Just as the exact time of the commencement of an enactment is dealt with in section 5, it is desirable that the exact time of the *expiry* of a temporary Act should also be laid down. A new section on the subject is, therefore, recommended.

7.22. The new section will be confined to new Acts, as the formula embodied in it may not fit in with some of the temporary Acts already passed.[1] The section should be as follows:—

Section 8-S (New)

Time of expiry of temporary Acts etc.

8-0. Where a Central Act or Regulation made on or after the .....day of .....is expressed[2] to expire, lapse or otherwise cease to have effect on a particular day, then it shall, unless the contrary intention is expressed, be construed as ceasing to have effect immediately on the expiration of the day immediately preceding that day.

7.23. Section 4(2) of the Canadian Uniform Interpretation[3] Act provides that "where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall cease to have effect immediately on the commencement of the following day." The section which we proposed will express the same idea but will adopt the language used in section 9(*3*).

Position as to expiry of Ordinance.

7.24. The new section will not be applicable to Ordinance promulgated by the President under article 123 of the Constitution. Such Ordinance either (i) lapse on the expiry of six weeks from re-assembly of Parliament, or (ii) come to an end by virtue of disapproval by Parliament, or (iii) terminate on withdrawal.

7.25. First, when the Ordinance ceases to operate on the expiry of six weeks, article 123(*2*)(*a*) of the Constitution comes into play, under which the Ordinance "shall cease to operate" at the expiration of six weeks from the re-assembly of the Parliament.

[The Rangoon High Court has held,[4] after discussion of the case-law, that as the law does not take into account fractions of a day, an Ordinance promulgated under section 41(*2*)(*a*) of the Government of Burma Act, 1935 (25 Gec. 5, ch. 22) (which provided that an Ordinance shall cease to operate at the expiration of six weeks from the reassembly of the Legislature) expired on the mid-night of 28-29th March, 1940, (which is six weeks from mid-night of 15-16th February, 1940, the Legislature having re-assembled on 15th February, 1940). The Court negatived the contention that, as the House had re-assembled at 11.00 A.M. on the 15th February, 1940, therefore, the Ordinance expired at 11.00 A.M. on the 28th March].

7.26. Secondly, if the Ordinance comes to an end because of disapproval by both Houses, then under article 123(*2*)(*a*), last portion, is ceased to operate "upon the passing of the second of those resolutions".

7.27. Thirdly, regarding withdrawal of an Ordinance under article 123(*2*)(*b*), the withdrawal can be made "at any time" by the President.

---

1. E.C. See Delhi Control of Building Operations Act, 1967.
2. Date of commencement of amending Act to be inserted.
3. Driadger, Composition of Legislation (1956), page 256.
4. *U. Lun* v. *U Chit hlaing* A.I.R. 1941 Rangoon 5, 14, expressly approved on this point in A.I.R. 1941, Rangoon, 49, 50.

CHAPTER 8

OTHER GENERAL RULES OF CONSTRUCTION

Expressions connected with time

Introductory.

8.1. We have so far discussed some important general rules of construction. In this Chapter, we shall deal with other general rules of construction. We first take up expressions connected with time.

Section 9—particular expressions "from" and "to".

8.2. Section 9, deals with the commencement and termination of time, is really confined to only two expressions, namely, "from" and "to". Stated in a simplified form, the proposition enacted in the section is that if the legislature uses the expression "from" a series of days (or any other period of time), the first day in that series (or period) is to be excluded; and similarly, if it uses the expressions "to" a series of days or any other period of time, the last day in that series is excluded.

The expression "from"—various applications analysed.

8.2A. It should be noted that the preposition "from" used in connection with an event may have various meanings. These are three *possible* points of time on and from which the change in law (indicated by the substantive words which are preceded by this preposition) could take effect[1] in such cases. The first is that *moment of time when the event takes place.* The second is the *commencement of the day* on which the event takes place. The third is *the end* of that day, (or the beginning of the next day which describes precisely the same point of time).

Barwick C. J. has dealt with the matter elaborately, in the Australian case of *Associated Beauty Aids Private Ltd* v. *Commissioner of Taxation*[2] and stated the position in these words :

> "There is no general rule as to the consequence of the use of the preposition 'from', whether it be in the computation of the period of time, or in any other connection. In general, in computing a period of time from a date, the period will commence at the end of the day of that date, but there is no universally operating rule to that effect, see, for example, the illustration given in the note at p. 1068 of the report of *R.* v. *Stevens and Agnew*[3] (1804), 102 E.R. 1063, and *Wilkinson* v. *Gaston.*[4]
>
> When, as here, a change is to take place from a stated time, the general "rule" as to the computation of a period of time is not of direct significance, though it is illustrative of the separating effect of the preposition "from". In my opinion, it does not usually have an inclusive but rather an exclusive or separatist quality. But unquestionably it may have either. Thus, the preposition derives its relevant quality from the context in which it is found, which includes the purpose which the document in which it is found is evidently designed to effect."

Two aspects of the matter.

8.2B. Two aspects of the matter should be noted at this stage. For the specific situation dealt with in section 9, the rule enacted in that section prevails, and the first day is excluded. In situations not dealt with in section 9, however, the question is to be decided as one of construction as the positive provision in section 9 is not, in terms applicable.

---

1. *cf.* analysis in *Associated Beauty Aids Pvt. Ltd.* v. *Commissioner of Taxation,* (1965-66) 39 A.L.J.R. 20, 21 (Barwick C.J.).
2. *Associated Beauty Aids Pvt. Ltd.* v. *Commissioner of Taxation,* (1965-66) 39 A.L.J.R. 20, 21.
3. R. v. *Stevens and Agnew,* (1804), 102 E.R. 1063, 1068.
4. *Wilkinson* v. *Gaston,* (1846) 9 Q.B. 137; 115 E.R. 1227.

Para. 8.2B contd.

A Madras case—*In re Court fees*[1],—illustrates the position. In that case, a question arose as to the interpretation of a notification of the Provincial Government, published in the Gazette of May 5th, which contained rules imposing higher court fees on plaints. Did the new scales apply to suits instituted on that day? That was the precise question. The words of the notification were, "that the amendments do come into force from the date of publication in the Gazette". Did those words mean 'on and after that date",—thus *including the 5th May*—or did they mean "after that date",—thus excluding May, the 5th. The majority took the former view. Schwabo C.J. said, "In every case, the word "from" preceding a date may have one of two meanings, namely, on and after, that is, including the named date, or merely after, that is, excluding the named date ; it is necessary to look at the context and the circumstances of each case to arrive at the true construction. But I think further that, unless there are valid reasons to the contrary, certain rules may be stated thus : (a) that, if the named date is the "beginning of a *definite limited period*"[2] that is, when there is a *terminus ad quem* as well as a *terminus a quo*, then *prima facie* the first day is excluded ; (b) that, if the named date is the beginning of an indefinite period, then, *prima facie*, the first day is included. "I am of opinion that in ordinary plan English, unless there is anything indicating the contrary intention in the context, "from a named date" means "on and after that day".

In the same case[3], Courts Trotter J. elaborated the position thus :—

> "Where a statute fixes only *the terminus a quo of a state* of things which is envisaged as to last indefinitely, the common law rule obtains that you ought to include fractions of a day and that statute or order or regulation takes effect from the first moment of the day on which it is enacted or passed, that is to say, from the mid-night "of the day preceding the day on which it is promulgated" ; on the other hand, where a statute delimits the period marked both by *a terminus a quo and a terminus ad quem*, the former is to be excluded and the latter to be "included in the reckoning."[4]

Krishnaswami Aiyar J., however, took the view that the notification took effect only on the next day, i.e. on the 6th May.

We are referring to this case for its discussion of the principles,—though the case fell outside the terms of section 9, because there was no "series of days or other period of time" as is contemplated by section 9.

Layman's understanding different

8.3. We have considered at some length section 9 in so far as it deals with the expression "from", which, under the section, excludes the first day. This is also the rule in England, laid down judicially, and we do not wish to disturb it, as it has been in operation for almost a century. Nevertheless, we would like to point out that this is not the layman's understanding of the word. In ordinary usage—whether in conversation or in correspondence or even in formal documents—one regards the day mentioned as included in the period which begins *from* a particular day, and the object of using "from" is to link the period with that day. The dominant idea, in section 9, on the other hand, is of detaching the period from that day.

Other expressions relating to time.

8.4. Besides the expressions provided for in section 9, modern legislative phraseology has occasion to use many other expressions dealing with the commencement or termination of periods of time ; and it appears to be desirable,—in so far as it is practicable—to lay down certain rules as to the effect of those words and expressions, so as to have a uniformity of interpretation, which is one of the objects of the Act. Acting on this principle, we shall deal with a few words and expressions, such as, "clear days", "within" etc.

---

1. *In re Court fees*, A.I.R. 1924 Mad. 257.
2. Emphasis supplied.
3. *In re Court fees*, A.I.R. 1924 Mad. 257.
4. See also Halsbury, 3rd Ed., Vol. 32, page 138.

8.5. (*a*) As regards the phrase "clear days", which is often employed in statutes, it is well settled that where this phrase is used, the time is to be reckoned exclusive of both the first and the last day.[1] "clear days".

(*b*) Where, however, the expression used is something else than "clear days" (or "at least" or "not less" so many days), the general rule obtaining at present seems to be that the first day is included, and the last day excluded.[2]

8.6. As to the expression "within.....of", reference may be made to the Allahabad case of *K. N. Pandey* v. *S. L. Saxena*.[3] In that case, an application for substitution under section 110(3)(c) of the Representation of the People Act was required to be filed "within 14 days" *of* the publication of the notice of withdrawal of candidature. On this statutory language the first day was held to be excluded. It was noted that section 9 of the General Clauses Act could not apply, as the word "of" was used But the court placed reliance on the principle of section 12(*1*), Limitation Act. "Within.....of"

8.7. (a) The expression "within.....after" came up for consideration in a Bombay case.[4] The words used were "within 15 days 'after' the date of declaration of the election result". The date of declaration was held to be excluded, because 15 days contemplated are *after that* day. "Within after" and within from"

(b) The words 'within 15 days *from the* due date of payment", occurring in section 12-A(1) of the Bihar and Orissa Motor Vehicles Act, 1930, were held, in an Orissa case,[5] to mean 15 clear days excluding the day on which the tax become due. In another decision[6], it was held that the words "within a month" should ordinarily be construed as excluding the date on which the order was passed, and would mean an interval of *one clear month*.

8.8. It is only when the word "from" is used (with reference to the computation of a particular period) that the date from which the computation is to begin is excluded from the computation.[7] But, if the expression in such context is either "beginning with" or "ending with", then those dates are not required to be omitted from the computation.[8] "From" and "ending with".

8.9. It may, incidentally, be noted that section 9 of the General Clauses Act has been applied for computing the period of limitation also.[9] Section 9 applied for computing limitation.

8.10. While it is not our intention to codify all the numerous points summarised above, we think it proper to give statutory recognition to some of them. The amendments which we recommend in section 9 will be apparent from the draft.[10-11] We may also mention that we propose to extend the section to statutory instruments. Amendments recommended.

8.11. Recent legislative usage occasionally employs the verbal device "both days inclusive" It would, we think, be convenient if, in order to recognise this device, the General Clauses Act suitably spells out the consequences of using it. Where a period from a specified day to a specified day is referred to and the formula "both days inclusive" is used, the period should include both the days. This is the proposition to be enacted. We recommend the insertion in section 9 of a suitable provision in this behalf. "Expression "both days inclusive."

1. Stroud, Judicial Dictionary (1952), Vol. I, page 500, item No. 16.
2. *Radcliffe* v. *Bartholomaew* (1892) 1 K.B. 161.
3. *K.N. Pandey* v. *S.L. Saxena*, A.I.R. 1959 All. 54, (1958) A.L.J. 678, 680.
4. *Manjuli* v. *Civil Judge*, A.I.R. 1970 Bom. 1, 8, para 18.
5. *Padmacharan* v. *S.C. Pobe*, A.I.R. 1965 Orissa 71, 72, Para 2 (Narasimhan C.J. and Barman J.).
6. *Ma[illegible]da Sahu* v. *Lal Sadananda Singh*, A.I.R. 1952 Orissa 279.
7. Para 8.2, *supra*.
8. *Natha* v. *Sital Prasad*, A.I.R. 1969 Pat. 310.
9. *Bhogilal Pandya* v. *Maharawal Laxman Singh*, A.I.R. 1968, Raj. 145.
10. See draft Bill, at the end of this Report, and also para 8.12, *infra*.
11. Also see part 8.11, *infra*.

Recommendation for revising section 9.

8.12. In the light of the above discussion, section 9 should be revised as under :—

Revised section 9

Expressions of time.

9(1). In any Central Act or Regulation made on or after the commencement of this Act, *or in any statutory instrument made thereunder,* it shall be sufficient—

(a) to use the word "from" *or the word 'after'* for the purpose of excluding the first in a series of days ;.....

(b) to use the word "to" for the purpose of including the last in a series of days.....

(1A) *In any Central Act or Regulation made on* after the .....day of .....197 ,[1] *or in any statutory instrument made thereunder, it* shall be sufficient—

(a) *to use the word "on" for the purpose of including the day on which a period is expressed to begin ;..*

(b) *to use the word "with" for the purpose of including the day on which a period is expressed to end ;..*

(c) *in relation to the interval between two events—*

(i) to use the words "clear days" or the words "at least" or "not less than" a specified number of days, *for the purpose of excluding the days on which the events happen ; and*

(ii) *merely to specify the number of days for the purpose of excluding the day on which the first event happens and including the day on which the second event happens.*

(1B). *Where in any Central Act or Regulation made on or after the.....* day of.....[2] *or in any statutory instrument made under any such Central Act or Regulation, a period from a specified day to a specified day is referred to, followed by the words "both days inclusive", the period shall include both the days.*

(2) Sub-section (1) applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the forteenth day of January, 1887, and to *statutory instruments made under such Central Acts or Regulations.*

Section 10.

8.13. This disposes of section 9. Section 10 provides that where 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, and the court or office is closed on that day or on the last day of the period, the act or proceeding can be done or taken on the next day afterwards on which the court or office is open.

Section 10 applicable where expression "not later than" used.

8.14. It may be noted that the section has been applied to a provision where the period was described as "not later than". A similar provision in the U.P. General Clauses Act was applied to the time-limit fixed for pronouncing the award of an industrial tribunal.[3]

---

1. Date of commencement of the amending Act to be entered.
2. Date of commencement of the amending Act to be inserted.
3. *Vishwamitra Press* v. *Workers of Vishwamitra Press*, A.I.R. 1953 S.C. 41.

8.15. It may also be noted that the expression "office" in this section does not mean the office of a court.[1] Meaning of "office" in Section 10.

8.16. We propose to extend section 10 to statutory instruments. It has been pointed out in a Full Bench decision of the Allahabad High Court[2] that section 4, Limitation Act, and s. 10, General Clauses Act, give expression to the general principles of law enunciated by the maxims *"lex non cogit ad impossibilia"*—the law does not compel a man to do that which he cannot possibly perform,—and *"actus curiae nominem gravabit"*—an act of the court shall prejudice no man. "These sections do not in any way extend the period of limitation, nor do they furnish any data for computation of time; they merely embody a rule of *elementary justice* that if the time allowed by statute to do an act or to take a proceeding expires on a day when the court is closed, it may be done on the next sitting of the court." Extension to statutory instruments recommended.

In a number of other cases,[3] it has been pointed out that section 4, Limitation Act, and section 10, General Clauses Act embody the general principles enshrined in the two maxims *"lex non cogit ad impossibilia and Actus curiae nominem gravabit."* Even if section 4, Limitation Act is not applicable as contended by the appellant, the respondents can invoke section 10 of the General Clauses Act. If neither of the provisions can assist the respondents, they can still invoke the *general principles* embodied in the two provisions."

8.16A. In a Supreme Court case,[4] section 10 was applied to statutory rules. Section 81(1) of the Representation of the People Act, 1951, enacts that the election petition may be presented *"within such time as may be prescribed."* Rule 119 of the rules under the Act provided a time limit, but used the words *"not later than* 14 *days."* The Court observed—

> "It is obvious that the rule-making authority could not have intended to go further than what the section itself had enacted, and if the language of the rule is construed in conjunction with and under the coverage of the section under which it is framed, the words "not later than fourteen days", must be held to mean the same thing as 'within a period of fourteen days'. We entertain no doubt that the Legislature used both the expressions as meaning the same thing, and there are, accordingly, no grounds for holding that section 10 is not applicable to petitions falling within rule 119."

Later, the Court described section 10 as "a beneficient enactment."

8.17. We also propose to substitute the word "specified" for the word "prescribed" in section 10, since the word "prescribed" will now have a special meaning.[5]

8.18. In the light of the above discussion, we recommend that section 10 should be revised as follows :— Recommendation as to section 10.

Revised section 10

10(1). Where, by any Central Act or Regulation made after the commencement of this Act, *or by any statutory instrument made under any such Central Act 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 specified period, then, if the Court or office is closed on that day or on the last day of the specified period, the act or proceeding shall be considered as done or taken in due time if it is done or taken in the next day afterwards on which the Court or office is open.

1. *Lachchmieyar Prasad* v. *Giridhari Lal*, A.I.R. 1939 Pat. 667 (F.B.).
2. *Raja Pande* v. *Sheepugan Pande*, A.I.R. 1942 All 422, (F.B.) (per Dar J.).
3. *Balkrishna* v. *Tina* (1911) 7 Nag. L.R. 176; 12 I.C. 810; and *Dhanusingh* v. *Keshoprasad*, A.I.R. 1923 Nag. 246, referred to in *Rambir* v. *Prabhakar*, A.I.R. 1955 Nag. 300, 301.
4. *Harinder Singh* v. *Karnail Singh*, A.I.R. 1957 S.C. 271, 273 (Venkatarama Aiyer J.).
5. See section 3—"prescribed".

Provided that nothing in this section shall apply to any act or proceeding to which the Limitation Act, 1963, applies.

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

Section 10A (new) Standard Time.

8.19. Section 10A is a new section which we propose to add.[1] It is a provision as to standard time, which would be a useful provision.[2] The following section is recommended.

Section 10A (New)

Reference to time.

10A. *Where in any Central Act or Regulation made on or after the..... day of .....197 ,[3] any reference to a specified time of the day occurs, then such time shall, unless it is otherwise specifically stated, mean the Indian Standard Time."*

Distance and rates of duty

8.20. Section 11 is as follows :—

Section 11—Distance and Rate.

"11. In the measurement of any distance, for the purpose 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 place."

It needs no change.

Section 12.

8.21. Section 12 provides that duty shall be taken as *pro rata* in enactments. This section, which is based on section 4 of the General Clauses Act of 1868, is ultimately derived from an Act of 1849,[4] which contained a similar provision. It needs no change.

Number and gender

Section 13—Gender and number.

8.23. Two rules of interest to grammarians—both subject to the context—are incorporated in section 13. The first says that words imposting the masculine gender include females. The second provides that words in the singular include the plural, and *vice versa*. The object of both is to facilitate shortening of the language of enactments, by enabling the draftsman to avoid the tortuous process of mentioning the female of the species whenever he frames a provision applicable to living beings, or of mentioning the plural whenever he uses a word in the singular and *vice versa*.

Merit of the provision.

8.24. The merit of these two provisions is obvious. Of course, the resultant brevity is purchased at a price, because, as is shown by the fairly large number of reported cases on the section, it is often not easy to decide whether, in a particular statutory provision, the context should be taken as indicating a contrary intention. Some of these cases have even gone to the Supreme Court.[5]

---

1. Compare section 37 of the Australian Act.
2. Compare also section 3 of the Factories Act, 1948.
3. Date of commencement of the amending Act to be entered.
4. Central Act 5 of 1849.
5. (a) *The Regional Settlement Commissioner, Jaipur and others* v. *Sunder Das Bhasin*, A.I.R. 1963 S.C. 181; (1963) 2 S.C.R. 534.
   (b) *The Management of Indian Cable Co. Ltd., Calcutta* v. Its workmen (1962) Suppl. 3 S.C.R. 589, 601, 620.
   (c) *M/s. Dhandnia Kedia & Co.*, v. *The Commissioner of Income-tax*, A.I.R. 1959 S.C. 219, 222.
   (d) *Newspapers Ltd.* v. *State Industrial Tribunal & Others*, A.I.R. 1957 S.C. 532, 536.

And, there have been recent decisions[1] of the High Courts also. But this cannot be avoided. For this reason, no substantial change is suggested in the section.

Section 13. and rules.

8.25. In one of the cases before the Supreme Court,—*Regional Settlement Commissioner* v. *Sunderdas*[2]—relating to rules made under the Displaced Persons (Compensation and Rehabilitation) Act (49 of 1954), section 13 (of the General Clauses Act) was held not to apply to the particular rules, in view of the context. But the general question whether the General Clauses Act applied at all to subordinate legislation was not considered.

Verbal changes recommended in section 13.

8.26. Certain verbal changes are, however, proposed in section 13, which should be revised as follows :—

Revised section 13

Gender and Number.

(1) In every Central Act or Regulation, unless the context otherwise requires, words importing the masculine gender shall include females.

(2) In every Central Act or Regulation, unless the context otherwise requires, words in the singular shall include the plural, *and words in the plural shall include the singular.*

---

1. E.g. (a) A.I.R. 1964 Punj. 87, 89;
   (b) A.I.R. 1970 Punj. 81, 84.
2. *Regional Settlement Commissioner, Jaipur* v. ***Sunderdas Bhasin***, A.I.R. 1963 S.C. 181-(1963) 2 S.C.R. 534.

CHAPTER 9

CORPORATIONS

Incorporation.

9.1. In this Chapter, we deal with certain matters relating to corporations.

Section 13A (New)—Effect of incorporation—Recommendation.

9.2. Whenever an enactment has to incorporate a body of persons, it has to expressly provide, in a separate section, for many matters dealing with the effect of incorporation. Since enactments incorporating bodies are now increasing in number, it is considered that a provision in the General Clauses Act on the subject would serve a useful purpose. A new provision as to the effect of incorporation is, therefore, recommended as follows :—

Section 13A (New)

"13A. *Where by or under any Central Act or Regulation made on or after the..... .....day of.....,*[1] *any association or body of persons is constituted a body corporate, then, unless a different intention appears, that body corporate—*

(a) *shall have perpetual succession, and a common seal with power to alter or change the seal ;*

(b) *may sue and be sued by its corporate name ;*

(c) *shall have power—*

(i) *to contract by its corporate name ;*

(ii) *to acquire, hold or dispose of property, whether movable or immovable.*"

Offences by companies.

9.3. There is another matter relating to corporations which may be considered. In Acts of Parliament containing penal provisions, there is often to be found a section relating to offiences by companies. The section is usually in the following terms (slight variations are sometimes found).

"*Offences by companies :* (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Where an offence under this Act has been committed by a company, any director, manager, secretary or other officer of the company, not being a person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence, shall, if it is proved that the offence has been committed with his consent or connivance or that the commission of the offence is attributable to any neglect on his part, also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

1. Date of commencement of amendment Act to be inserted.

Explanation.—For the purpose of this section,—

(a) "company" means any body corporate and includes a firm or other association of persons, and

(b) "director", in relation to a firm means a partner in the firm."

9.4. We have considered the desirability of including such a section in the General Clauses Act, and have come to the conclusion that it would be proper to do so. We have made a similar recommendation in our Report[1] on 'Social and Economic Offiences'. We recommend accordingly that the following section should be inserted in the Act :— **Recommendation.**

Section 13AA (New)

(1) If the person committing an offence under any Central Act or Regulation made on or after the .....day of.....[2] is a company, then, unless a different intention appears, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: **Offences by companies.**

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Where an offence under any such Act or Regulation has been committed by a company, then, unless a different intention appears, any director, manager, secretary or other officer of the company, not being a person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence, shall if it is proved that the offence has been committed with his consent or connivance or that the commission of the offence is attributable to any neglect on his part, also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) "company" means any body corporate and includes a firm or other association of persons, and

(b) "director", in relation to a firm, means a partner in the firm.

---

1. 47th Report.

2. Date of commencement of amending Act to be inserted.

CHAPTER 10

PROVISIONS CONCERNING THE GOVERNMENT

Introductory.

10.1. We now proceed to consider certain topics relating to the position of the Government.

Statutes in derogation of sovereignty.

10.2. One of the most interesting problems which have arisen in Constitutional Law concerns the effect of statutes in derogation of sovereignty. How far does a statute bind the Government? For some time, a view prevailed that the sovereign remains unaffected by the general words or language of a statute.[1] The rule had, perhaps, its origin in the English Common law immunity of the Crown; this immunity had first attached to the personal character of the King as the sovereign, and later extended to other sources of the law-making and law enforcing power.[2] The conflicting theories of sovereignty affecting this problem need not detain us. What needs to be noted is that the doctrine that the state is not bound by statute except in certain cases is, speaking historically, associated with the institution of monarchy.

Effect of growth of democracy.

10.3. With the growth of democratic institutions and the realisation of the need to give adequate protection to the citizen even against governmental activities, a movement for giving more adequate and better defined remedies against the State gained ground in various countries. The Crown Proceedings Act, 1947, in England, and the Federal Tort Claims Act, in the United States of America, illustrate the growing trend to make the Government liable for various kinds of illegal acts. Reference may also be made to the Law Commission's Report[3] on State liability in Tort. These developments are not to be viewed in isolation, but as a part of the process of the gradual erosion of the prerogative of the executive. Because of the growing number of welfare activities of the State, the matter has assumed great practical importance.

The question of the position of the State in regard to statutes, is a fact of the above subject, and is one of steadily increasing importance. As is often pointed out, the problem is one of a determining how far the prerogative of the State, is consistent with the need for full liability of the State, particularly because every day the State engages in activities comparable with those of the citizens. The common law presumption, that the State is not bound by a statute except by express mention or by necessary implication, is no longer justifiable. It may be that this presumption is supported by the old positivist theory which regarded law as a command issued by superior to an inferior. If so, it is out of date now.

Distinction between Governmental and other functions.

10.4. Sometimes, a distinction is sought to be made between functions which are "necessarily and inalienably"[4] governmental functions (on the one hand) and other functions, and it is emphasised that in the case of the former, the special position of the State should continue. But our experience of the working of the similar distinction which was observed (for some time) with reference to governmental liability in tort, shows that such a distinction, even if theoratically justified, would not be workable, because it lacks precision. In fact, even in other countries, such distinctions have been criticised by the academic world.[5]

---

1. See para. 10.7, *infra*.
2. Borchard, "Government responsibility in Tort" (1926) 36 Yale Law Journal 1, 17.
3. 1st Report of the Law Commission (State liability in tort), page 37.
4. See First Report of the Law Commission (State liability in tort), page 37.
5. (a) Friedmann, "Legal Status of Incorporated Public Authorities", (1948) 22 Australian Law Journal 7, 12;
   (b) Friedmann, "Shield of the Crown", (1950) 24 Australian Law Journal.

View of Holmes that there can be no enforceable right against the State.

10.5. In the United States, one of the well-known supporters of the doctrine of "irresponsibility" of the State was Justice Holmes, who stated that there could be no legal "right" against the State, which itself made the law on which the right depended.[1] In one of his letters to Laski[2] Holmes stated that he could not understand how an instrumentality established by the United States to carry out *its will*, should undertake to enforce something that is *against its will*. "It seems to me like shaking one's fist at the sky, when the sky furnishes the energy that enables one to raise the fist."

Rule of law sufficient answer to the argument.

10.6. But, if this argument is accepted, and carried to its logical conclusion, the comprehensive and positive rule of law cannot survive. "If you just make one exception to the principle of legality, you cannot tell where it may lead you."[3] The matter, therefore, requires a fresh look.

Rule in England and in India.

10.7. So much as regards the justification for considering the subject. We may now discuss the present position. The rule in England is that in the absence of an express provision to the contrary or of necessary intendment to the contrary, the Crown is not bound by a statute. This rule prevailed in India also for a long time.

But the Supreme Court of India has now held[4-5] that this rule of the common law of England does not apply to India after it became a Republic. We think that this view of the Supreme Court should be codified.[6] We would, moreover, state that where there is no express provision, in the particular statute as to whether it binds the Government but reliance is placed on "necessary implication", the Court has to go through the entire Act, in order to determine whether the Act is binding on the Government. Until the matter has been examined by a Court, no one can say with certainty whether an Act (which does not make an express provision on the subject) binds the Government. This position is obviously unsatisfactory. In the modern welfare State, the activities of Government have increased considerably. A member of the public dealing with the Government is, therefore, entitled to know, without going to a court of law, whether a particular Act binds the Government or not. Hence the only exception should be for cases where there is an *express provision* in a statute to the effect that it does not bind the State.

10.8. We need not refer to all the cases of the High Courts. Some are mentioned in the foot-note.[7]

We, therefore, recommend that a section should be inserted in the General Clauses Act to the effect that, in the absence of a contrary express provision, every Act of Parliament shall be binding on the Government. Accordingly, we recommend the insertion of a new section as follows :

Section 13*B* (New)

Government to be bound.

"13B. *In the absence of an express provision to the contrary, every Central Act or Regulation made on or after the.....day of.....*197 ,[8] *shall be binding on the government.*"

Position in ancient India.

10.9. It may be interesting at this stage, to refer to the ancient Indian theory on this point. According to some scholars, support can be found in some ancient Indian texts for the theory

---

1. *Kawananakoa* v. *Polyblank*, (1907), 205 U.S. 349, 353.
2. Holmes Laski letters, (Howe Ed. 1953), Vol. 2, page 822.
3. Duguit, as quoted in Schwarts, Introduction to American Administrative Law (1958), page 215.
4. *State of West Bengal* v. *Corp. of Calcutta*, A.I.R. 1967 S.C. 997.
5. *Union of India* v. *Jubb*, A.I.R. 1968 S.C. 360.
6. For High Court decisions see para 10.7A, *infra*.
7. (a) *Baxi Amrik Singh* v. *Union of India*, (1973) 75 Punj. LR. 1 (F.B.).
   (b) *M.V. Industries (P) Ltd.* v. *State of Kerala*, (1971) K.L.R. 128.
   (c) *State of Mysore* v. *R.G. Kulkarni* (1971) 73 Bom. L.R. 723, A.I.R. 1972 Bom. 93.
   (d) *Union of India* v. *Sugrabai*, A.I.R. 1969 Bom. 13.
   (e) *Collector South Arcot* v. *Vedanthachartar*, A.I.R. 1972 Mad. 148.
8. Date of commencement of amendment Act to be entered.

that the law, being of divine origin, bound the king and the subjects alike.[1] However, we do not propose, to express any opinion in this matter, because, before we do so, an examination of the problem involving further study in depth will be required, and we think that such examination is not necessary for the purposes of this Report.

Section 13-C (New)—Priority debts due to the Government.

10.10. We have already dealt with one question concerning[2] the Government. Another question relevant to the position of the Government concerns the priority of debts due to the Government. In general, the Government has preference in respect of the payment of debts due to it. As early as 1868, in a judgment discussing the entire history of the Royal prerogative in this respect, the High Court of Bombay[3] laid down that a judgment debt due to the Crown is entitled to the same precedence in execution as a judgment debt in England due to the Crown, provided there is no special legislative provision affecting that right in the particular case.

But there are certain refinements and limitations as to this doctrine, which require to be considered.

Position as to taxes—Supreme Court judgment.

10.11. So far as income-tax arrears are concerned, it has been held by the Supreme Court[4] that the Government of India is entitled to claim priority over debts due from the citizen to unsecured creditors.

The basic justification for the claim for such priority, according to the Supreme Court, rests on the well-recognised principle that the State is entitled to raise money by taxation, because, unless adequate revenue is received by the State, it would not be able to function as a sovereign Government at all.

Limitations indicated by Supreme Court.

10.12. Nevertheless, while laying down his principle, the Supreme Court[5] was careful to indicate the possible limitations of the doctrine. Briefly, these limitations were : first, that the judgment (of the Supreme Court) was limited to arrears of income-tax; secondly, that the question whether the same common law doctrine applied to those parts of India which were previously comprised in the former Indian States may need separate consideration, and thirdly, that a particular statute may affect the prerogative right of the State.

Debts other than taxes.

10.13. The question whether the priority applies to debts other than taxes has been the subject-matter of some controversy[6] amongst the High Courts. The Bombay High Court has answered it in the affirmative[7], while the Calcutta High Court has taken a different view.[8]

Areas not forming part of British India.

10.14. It may be noted that there is no proof that the doctrine of priority of Crown debts was given judicial recognition in the territory of the Hyderabad State period to January 26,1950.[9]

Relevance of doctrine that Crown is not bound.

10.15. Another aspect of the matter which requires consideration is, whether the well-known decision of the Supreme Court,[10] holding that the common-law doctrine that the Crown is not bound by the statute is not the law in force in India, has any bearing on the operation of the doctrine of priority of Crown debts. The Bombay High Court[11] has held that there is no warrant for treating the two principles on the same footing. The High Court took the view that the doctrine that Crown is not bound by statute is archaic and undemocratic, while the principle of the priority of Crown debts is "based on equity and justice, and serves an important public purpose."

---

1. (a) P.N. Sen, Hindu Jurisprudence, page 31.
   (b) Dr. S. K. Ayangar, Introduction to Dikshitar, Hindu Administrative Institutions, pages 32, 33.
   (c) N.N. Law Studies in Ancient Indian Polity, page 135.
2. Para 10.1 to 10.9, *supra*.
3. *Secretary of State for India* v. *Bombay Landing and Shipping Company*, (1868) 5 B.H.C.R. 23.
4. Para 10.12, *infra*.
5. *Builders Supply Corporation* v. *Union of India*, (1965) 56 I.T.R. 91, 96 to 98 (S.C.).
6. See *Union of India* v. *Official Assignee*, (1970) 73 Bom. Law Reporter 623, 628, 632.
7. See *Union of India* v. *Official Assignee*, (1970)73 Bom. Law Reporter 623, 628, 632.
8. *Murli* v. *Asoomul & Co.*, A.I.R. 1955 Cal. 423.
9. *Collector, Aurangabad* v. *Central Bank*, A.I.R. 1967 S.C. 1831.
10. *State of West Bengal* v. *Corporation of Calcutta*, A.I.R. 1967 S.C. 997. Para 10.7, *supra*.
11. *Union of India* v. *Official Assignee*, (1970) 73 Bom. L.R. 623.

10.16. The above discussion will show that there is need to settle the law on the subject of the priority of the debts due to Government, for several reasons. — **Need for settling the law.**

(i) the possible limitations on the doctrine, referred to even in the judgment of the Supreme Court[1];

(ii) the practical importance of one of the possible limitations, namely, the operation of the doctrine in relation to debts other than taxes ;

(iii) the conflict of decisions between the Bombay and Calcutta High Court on the last-mentioned point[2];

(iv) the question of effect of the Supreme Court judgment relating to the binding effect of statutes on the Government on the doctrine of priority[3]; and

(v) the uncertain position as to how far the doctrine of priority of debts due to the Government is applicable to territories not formerly comprised in British India[4].

10.17. Before a conclusion can be reached as to the proper rule to be enacted in this respect, it is essential to go into the possible justifications for the rule of priority. **Possible justification for the rule of priority considered—Discharge of governmental functions.**

The first general justification is that the State should be able to discharge its primary governmental functions, and funds are needed for this purpose.

As the Supreme Court has observed[5] :—

> "It is essential that as a Sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds, and this consideration emphasises the necessity and the wisdom of conceding to the State the right to claim priority in respect of its tax dues".

In a Bombay case,[6] it was observed, "Even in a democracy and even under socialism the State must have certain rights and privileges. The State has to govern, the State has to find money to be used for socialistic principles and Courts have always given every facility to the State to realise money which are not collected for any private purpose but are intended for the public coffer and which are ultimately intended for the public need. This principle, which has been accepted by our Courts, is not a principle which is peculiar to British jurisprudence".

10.18. The second justification for the rule of priority is the doctrine that where the title of the King and the title of a subject concur, the King's title must be preferred. **Paramountcy of title of the State.**

The following statement, to be found in Coke's Commentary on Litigation, which was quoted in a Bombay case,[7] may be referred to in this context :—

> ".....The King, by his prerogative, regularly is to be preferred, in payment of his duty or debt, before any subject, although the King's debt or duty be the latter; and the reason hereof is: for that *the soarus rigis est fundamentum belli et firmamentum pacis.*"

---

1. *Builders Supply Corporation* v. *Union of India*, (1965) 56 I.T.R. 91, 96 to 98, Para 10.12, *supra*.
2. Para 10.12 and 10.13, *supra*.
3. Para 10.15, *supra*.
4. Para 10.12, and 10.14, *supra*.
5. *Builders Supply Corporation* v. *Union of India*, (1965) 56 I.T.R. 91, 103 (S.C.).
6. *Bank of India* v. *Bowman*, (1954) 57 Bom. L.R. 345, 364 (Chagla C.J.).
7. *Secretary of State* v. *Bombay Landing and Shipping Co.*, (1853) 5 B.H.C.R. 23, 48.

Coke pointed out this right is based upon the Latin maxim *Quando jus domini regis et subditi concurrent, jus regis preferferri debet.* (Where the title of the King and the title of a subject concur, the King's title must be preferred).

Public welfare.

10.19. The third justification for priority of Government's debts is the aspect of public welfare.

A full Bench of the Madras High Court[1] has pointed out that the rule is based upon an important doctrine of public welfare.

"This rule may be said to be the outcome of the maxim *salus populi suprema lex* (regard for the public welfare is the highest law). It is but natural that a debt at large, should be preferred to the debt of a single creditor."

Priority justified at present day only for taxes.

10.20. As against these possible justifications, it must be remembered that every rule of priority created inequality and in a democratic country, provisions creating inequality can be permitted only within reasonable and justifiable limits. Having regard to these considerations, it appears to us that the principle of priority can, in modern times, be justified only to the extent to which it can be said to serve a public purpose.[2] Such a public purpose can be predicated in respect of taxes and fees due to the State. So far as taxes and fees are concerned, it is undeniable that the principle is necessary for the working of the governmental machinery. For that reason, the claims of the unsecured creditors have to yield to those of the State. At the same time, there is a basis for treating debts other than taxes and fees on a footing different from taxes. It is an accident that the particular debt accrues to the State. The general rule that none should have special privileges should be allowed to operate in the case of such debts.

Recommendation.

10.21. Accordingly, we recommend the insertion of the following section.

Section 13C (New)

"13C. *In the absence of an express provision to the contrary, a debt due to the Government under any Central Act or Regulation made on or after the.....day of....197.....*[3] *shall have priority over other debts not secured by a mortgage or charge, if the debt is in the nature of a tax or fee, but not otherwise.*".

---

1. *Collector of Tiruchirapalli* v. *Trinity Bank Ltd.*, (1962) 44 I.T.R. 189, 195 (Mad) (F.B.).
2. *Cf.* para 10.19, *supra*.
3. Date of commencement of amending Act to be entered.

CHAPTER 11

POWERS AND FUNCTIONARIES

Introductory.

11.1. Provisions as to powers and functionaries are contained in sections 14 to 19 of the Act, and we deal with them in this Chapter.

Section 14—Application to statutory instruments recommended.

11.2. Section 14 provides that 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 arises.

The section does not mention statutory instruments, but it has been held[1] to apply to them.[2] We think that it will be useful to codify this interpretation, by including statutory instruments expressly in section 14, and we recommend its extension accordingly.

Recommendation to extend section 14 to duties.

11.3. There is another point concerning section 14. While the section provides that *powers* conferred by statute are exercisable from time to time (unless a different intention appears from the context), it is obvious that the position regarding *duties* imposed by statute should not be dissimilar. Accordingly, we recommend that the section should be extended to duties also and revised as follows.

Revised section 14

14. (1) Where, by any Central Act or Regulation made after the commencement of this Act ***or by any statutory instrument made*** thereunder, any power is conferred or ***any duty imposed,*** then unless a different intention appears, that power may be exercised, ***and that duty shall be performed,*** from time to time as occasion requires.

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

Section 15—Recommendation to extend to statutory instruments.

11.4. Section 15 provides that where, by any Central Act, 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 (if it is made after the commencement of this Act) may be made either by name, or by virtue of office. Some of the more recent decisions[3] on the section have brought out a few aspects of the application of the section. We propose to extend this section also to statutory instruments. The section should be revised as under —

Revised section 15

15. Where, by any Central Act or Regulation, ***or by any statutory instrument made thereunder,*** 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, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

---

1. *Shanmughani Transport* v. *Kunju Chettiar*, A.I.R. 1971 Mad. 37, 39. para. 4 (Alagiriswami J.).
2. *State of U.P.* v. *Baburam*, A.I.R. 1961 S.C. 751, 761, relied on.
3. (a) *Abdul Hussain* v. *State of Gujarat*, A.I.R. 1968 S.C. 432 ;
   (b) *P.P.* v. *Shri Rambhadray*, A.I.R. 1960 A.P. 282.
   (c) *P.P.* v. *Shaik Sheriff*, A.I.R. 1965 A.P. 372.
   (d) *Jayantilal* v. *Union of India*, A.I.R. 1970 Guj. 103, 117.
   (e) *State* v. *Salu*, A.I.R. 1970 Tripura 1.

Section 16.

11.5. Section 16 provides that power to appoint includes power to suspend or dismiss. It needs no change.

11.6. Section 17(1) reads as follows :—

Section 17(1)

"17. (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purposes 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.".

The words "at present" are not very happy. We, therefore, propose a small verbal change and recommend that section 17(1) should be revised as follows :—

Revised section 17(1)

"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 executing the functions, *at the time when the Central Act or Regulation is made*, or that of the officer, by whom the functions are commonly executed.".

Section 18.

11.7. Section 18 deals with the powers of a successor to an office. It needs no change.

Section 18—Recommendation.

11.8. The Act is silent as to the exercise of powers by delegates. We think it desirable to make it clear that where a power is delegated and the exercise of the power is dependent on the opinion of the authority on whom the power is conferred, the opinion to be formed (as a condition precedent) will be that *of the delegate*. We recommend the insertion of a new section for the above purpose on the following lines:—

Section 18*A* (*new*)

18A. *Where, under any Central Act or Regulation made on or after the*..... day of .....[1], or under any statutory instrument made thereunder, :—

(a) the exercise of a power or discharge of a function by a person or authority is dependent upon the opinion, belief or state of mind of that person or authority in relation to any matter, and

(b) that power or function has been delegated in pursuance of such Act or Regulation or statutory instrument, then, save as is otherwise expressly provided by such Act or Regulation or statutory instrument, the power or function may be exercised or discharged by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

It may be noted that a similar point arose in *Hazrat Syed Shah* v. *Commissioner of Wakfs*[2] where the Supreme Court approved the observations made by Lord Benning in *Mungoni's case*[3] and stated that where powers and duties were inter-connected and it was not possible to separate one from the other in such a way that powers might be delegated while duties were retained and *vice versa*, the delegation of powers took with it the duties.

---

1. Date of Amendment Act to be entered.

2. *Hazrat Syed Shah.* v. *Commissioner of Wakfs*, A.I.R. 1962 S.C. 1086.

3. *Edward Mungoni* v. *A.G. of Northern Rhodesia* (1960) A.C. 336; (1960) 1 All E.R. 446 (H.L.).

11.9. Section 19 deals with the powers of official chiefs and subordinates. It needs no change. **Section 19.**

Section 19A (New)—Deviation from form)—Recommendation.

11.10. When matters of form prescribed by a statute are departed from, nice questions as to the effect of such departure arise. In general, courts take a common sense view, and disregard minor deviations not affecting the substance. It is time that statutory recognition is given to what the courts do in practice, by a suitable provision in the General Clauses Act. The procedural Codes already contain provisions achieving the same result[1]. A new provision[2] as the effect of deviation from form is, therefore,[3] recommended as follows[4]:—

Section 19A (New)

"19A. *Whenever a form is prescribed for or specified for any act by any Central Act or Regulation, or by any statutory instrument made thereunder, then, save as is otherwise expressly provided by such Central Act or Regulation or by such statutory instrument, any deviations therefrom neither affecting the substance nor calculated to mislead,* shall not render the act or form invalid.[5].

Ancillary powers.

11.11. We considered the question of inserting a provision as to ancillary powers, on the following lines :—

> "Where, by any Central Act or Regulation, made after the .....day of .... power is conferred on a person, officer of functionary to do or enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing."

We have, after careful consideration, come to the conclusion that it is not unlikely that such a provision may be abused, and so we are against its insertion.

---

1. (a) Sections 533 to 537, Code of Criminal Procedure, 1898: (b) Section 99, Code of Civil Procedure, 1908.
2. *Cf.* Russel, Legislative Drafting and Forms, (1938), page 585, Model Interpretation Act, Clause 29.
3. Compare section 19(g), Uniform Interpretation Act, (1956), page 269.
4. See also section 30 of the *Travancore-Cochin* General Clauses Act, 1125 (7 of 1125).
5. New section 19A can apply to existing Acts also.

CHAPTER 12

STATUTORY INSTRUMENTS

Introductory

Introductory.

12.1. Sections 20 to 24 of the Act contain provisions as to statutory instruments (**subordinate legislation**).

Various questions Concerning Subordinate legislation.

12.2. Various questions have occupied the attention of academic writers and of the judiciary in regard to delegated legislation. Of these questions, the following are relevant with reference to the General Clauses Act :—

(a) *Various forms of statutory instruments and questions of nomenclature*—

(i) rules[1] of general application ;

(ii) orders, (usually issued by the Government on particular matters) ;

(iii) by-laws (usually applicable to limited local areas) ;

(iv) schemes (usually containing elaborated provisions) ;

(v) forms ;

(vi) notifications.

A convenient name covering all these, would be obviously desirable, and we are suggesting the expression "statutory instrument[2]".

(b) *Procedure for making subordinate legislation*

(i) Antecedent publicity ;

(ii) Consultation ;

(iii) Subsequent publication.

(c) *Control of Parliament over statutory instruments*—
Laying before Parliament[3].

(d) *Construction of statutory instruments*—

(i) Construction[4] ;

(ii) Power to issue rules etc. to include power to add etc.[5] ;

(iii) Construction of provision in the parent Act for publication[6] ;

(e) *Inter-relationship between the parent Act and the statutory instrument*—

(i) Making of rules etc. between passing and commencement[7] of the parent Act ;

(ii) Continuation of orders etc. under a repealed law[8].

we are mentioning these topics here, to show the importance of the subject.

1. Rules generally to carry out the purposes are dealt with in *Utah Construction*, 39 A.L.J.R. and in *Jacob* 40 A.L.J.R. 300.
2. See recommendation relating to the expression "Statutory instrument" in Chapter 3.
3. No provision at present.
4. Section 20.
5. Section 21.
6. Section 23.
7. Section 22.
8. Section 24.

Law not standardised as to safeguards

12.3. The law relating to subordinate legislation in India has not yet been standardised in all its aspects. A cursory survey of the various Central Acts conferring power to make rules, regulations etc. reveals that until recently, the Legislature did not follow any particular pattern, with reference to various matters concerning subordinate legislation. This itself indicates the desirability of having standard and uniform safeguards. **Law relating to subordinate legislation not standardised.**

12.4. It may also be noted that during recent times the discussion has centred more round *safeguards* in regard to delegation than round the standards laid down by the legislature while delegating its powers. It was observed by the distinguished American Writer[1] Davis, in 1958 :— **Importance of safeguards.**

> "The protection of advance legislative guidance is of little or no consequence as compared with the protection that can and should be provided through adequate procedural safeguards, appropriate legislative supervision or re-examination, and the accustomed scope of judicial review."

With this, we may compare the following comment made by the same writer in[2] 1965 :—

> "The impact of the Treatise has been rather substantial in its recommendation to state courts that the test of validity of delegation ought to have more to do with safeguards than with standards. The cases reviewed in this Supplement show that the standards test is on the way out, and the safeguards test is in the accendancy."

12.5. Having regard to what is stated above, it appears desirable that the General Clauses Act should contain certain safeguards in respect of subordinate legislation. Different safeguards are provided in different Central Acts. It would therefore, be advisable to standardise some of the indispensable safeguards, and to incorporate them in the General Clauses Act. This will not only lead to uniformity, but will also shorten the language of individual Acts, and save cases of any inadvertent omission of the draftsman to provide such safeguards in a particular Act. Where it is felt that such safeguards are not necessary, an express exemption can be given in the Act. **Need to standardise safeguards.**

Two important safeguards in respect of subordinate legislation

12.6. The two safeguards that appear to be essential in respect of subordinate legislation are :— **Two important safeguards.**

(a) publication of statutory instruments[3], and

(b) legislative scrutiny of statutory instruments[4].

The first refers to the immediate stage. The second relates to a later stage. We shall now proceed to deal with these safeguards.

Publication and commencement

12.7. First, as regards publication of statutory instruments[5], some of the Acts conferring a power to make rules are silent with regard to publication[6]. The rest of the Acts do require some sort of publication. A large majority of them require publication in the Official Gazette. Here again, no uniform formula is adopted. In some Acts, all that is stated is that the rules shall be **Safeguard of publication.**

1. Davis, Administrative Law Treatise, (1958), Vol. I, page 98.
2. Davis, Administrative Law Treatise, (1965) pocket Part, page 55, para. 2.17, cited in Jaffe and Nathanson, Administrative Law, Cases and Materials (1968), page 93.
3. Para 12.7 *et seq, infra.*
4. Para 12.19, *et seq, infra.*
5. Para 12.6, *supra.*
6. E.g. (a) Section 18(1), Census Act, 1948 (37 of 1948).
   (b) Section 13(3), Central Sales Tax Act, 1956 (74 of 1956).

published in the Official Gazette.[1] In some other Acts, rules are required to be made by notification in the Official Gazette.[2] There is another category under which rules are not to have effect until they are published in the Official Gazette.[3]

There is yet another variation of the formula, which provides that the rules shall be published in the Official Gazette and shall thereupon have effect 'as if enacted in the Act'. [e.g., see section 59(5), Mines Act (35 of 1952)]. It is, thus, clear that the present law relating to publication of subordinate legislation is unsatisfactory. It will be instructive in this connecion to consider the position in some Commonwealth countries and in the U.S.A.

Position in England as to publication.

12.8. In England, before 1893, subordinate legislation was required to be published in the London Gazette; and (as Carr had observed) was 'buried rather than revealed,[4], in the voluminous miscellaneous contents of the Gazette. The Rules Publication Act, 1893, provided for publication of statutory rules by the Queen's Printer. Under this Act, the rules and orders, with some exceptions, were to be sent to the Queen's Printer and to be numbered by him and, subject to regulations, printed and put on sale. It is true that not all rules and regulations were printed, but every instrument which was officially numbered was mentioned in a classified list at the end of the annual volume of the Statutory Instruments printed by the Queen's Printer. The Committee on Ministers' Powers, while reviewing the working of the 1893 Act, recommended that the publication should be made a condition precedent for the coming into force of all instruments except those that have been published in draft under the pre-publication rules and subsequently issued in substantially the same form as in the draft. In such cases the Committee recommended that the public notification of the enforcement would be sufficient. Nothing came out of these recommendations till the end of the second world war. In 1946, and Act was passed, called the Statutory Instruments Act, which repealed and replaced the 1893 Act. This Act repeated the provisions of section 3 of the 1893 Act as to publication, and provided[5] further that "it shall be a defence to prove that the instrument had not been issued by his Majesty's Stationery Office at the date of the alleged contravention....." A serious drawback of the English system is that publication is not made a condition precedent to *the operation of the* statutory instruments.[6]

Position in Australia as to publication.

12.9. In Australia, section 5 of the Rules Publication Act, 1903-1939, provided that an instrument of subordinate legislation should be numbered, printed and made available for sale by the Government Printer. The same section also provided for publication, in the Australian Gazette of a notice that a rule has been made and that copies, thereof would be available for purchase at specified places. It may be noted in this connection,[7] that the provisions of section 5 of the (Australian) Rules Publication Act, 1903-1939, have to be read with section 48 of the Acts Interpretation Act, 1901-1966, which makes a general provision for compulsory notification in the Gazette of the making of all regulations. Thus, in Australia publication of delegated legislation is compulsory, unless there is a specific exemption in any Particular Act. In fact, publication is not only compulsory, but also a condition precedent for the coming into force of subordinate legislation. Until 1937, no regulation could take effect unless it had been published but in 1937 some exceptions based on administrative convenience, and, broadly speaking, not involving the rights of individual citizens, were provided for under this rule.[8] The Australian system has, for obvious reasons, won universal acclaim.

Position in New Zealand as to publication.

12.10. In New Zealand, until as late as 1936, there was no provision requiring the separate publication of delegated legislation. Whenever provision was made for publication of regulations made under a particular enactment, they were published generally in the New Zealand Gazette,

1. See section 38, Central Excises etc. Act, 1944 (1 of 1944).
2. See section 41, Warehousing Corporations Act, 1962 (58 of 1962).
3. Section 36(1), Cantonments (House Accommodation) Act, 1923 (6 of 1923).
4. Carr : Concerning English Administrative Law, (1941), page 57.
5. Section 3-Statutory Instruments Act 1946 (English)
6. Kersell : Parliamentary Supervision of Delegated Legislation, (1960), page 8.
7. Kersell: Parliamentary Supervision of Delegated Legislation, (1960), page 9.
8. Benjafield and Whitmore, Australian Administration Law (1971), page 106.

and in a manner not very much different from that which obtained in England prior to 1893. For the first time in 1936, an enactment of a limited character was passed, dealing with publication of subordinate legislation. Section 3 of the Regulations Act, 1936, provided that all regulations, except those exempted by the Attorney-General, should be published.

Position in Canada, as to publication.

12.11. In Canada, until the passing of the Regulations Act, 1947, there was no legislative provision requiring systematic publication of delegated legislation. It was only after the furore which the notorious Ottawa Espionage Investigation of 1946 created, that the question of systematic publication of rules came to be considered seriously. A Royal Commission was appointed to go into the matter, and ultimately the Statutory Orders and Regulations Order, 1947, was passed. Most of the provisions of this Order were enacted in the Regulations Act of 1947. This Act applies only to instruments made in the exercise of the legislative power or to regulations for the contravention of which a penalty of fine or imprisonment is prescribed by or under an Act of Parliament. Certain exceptions are made even to this rule, but generally speaking, the Act covers all instruments likely to prejudice the rights of individuals and personal freedom. The Act provides for a system of revision, recording, numbering and publication of the various regulations. It is not necessary to go into details of the Act. A significant provision of the Act[1] is to the effect that no person shall be convicted for an offence consisting of a contravention of any regulation that was not published in the Gazette of Canada except where the regulation was one which was exempted from the operation of the rule as to publication or where it is proved that on the date of the alleged contravention reasonable steps had been taken for the purpose of bringing the purport of the regulation to the notice of the public or the person charged. This provision is similar to that embodied in section 3 of the (English) Statutory Instruments Act[2] of 1946. Thus, in Canada, as in England, publication is not a condition precedent to the coming into force of subordinate legislation, but non-publication, is a defence.

Position in U.S.A. as to publication.

12.12. In the United States of America, Congress enacted, in 1935, the Federal Register Act,[3] which was an aftermath of the judgment of the Supreme Court in *Panama Refining Co.* v. Ryan.[4-5] It provides for a system of publication of all Federal Regulations, Rules and Orders of a general application, and for their legal effect. Under the Act, all Federal subordinate legislation should be published in an official publication called the Federal Register. This Act anticipated the English and the Canadian Acts, on the subject of publication and specifically provided that a "document", *i.e.* Rules and Regulations and Orders required to be published under the Act "shall not be valid as against any person who has not had actual knowledge thereof" until it had been filed for publication.[6]

Desirability of publication.

12.13. Taking all the circumstances into consideration, we are of the view that the safe-guard regarding publication is required; though, in our view, it should apply to statutory rules and bye-laws and general orders of the Government only, and should not extend to other forms of subordinate legislation. Rules and bye-laws and general orders are the most common form of subordinate legislation which affect citizens in the same way as an Act of Parliament. This is, however, not true of other forms of subordinate legislation, such as, orders, which are inconsequential from the point of view of the public, and relate to individuals only. A general extension of the safeguard of publication to all forms of subordinate legislation is not, therefore, necessary it may, in certain cases, even give rise to practical difficulties. We have no doubt that where any subordinate legislation other than rules or bye-laws or general orders affects the public, the particular enactment which permits the making of such legislation will make special provision for its publication in the most suitable manner.

---

1. Section 6.3 (Canada) Regulations Act, 1947.
2. Para 12.8, supra.
3. The Federal Register Act, 1935.
4. *Panama Refining Co.* v. *Ryan.* (1935) 293 U.S. 388.
5. See, now, the Administrative Procedure Act, (1966) 5 U.S.C. sections 552 and 553.
6. Newman, "Government and Ignorance" (1950) 63 Harv. L. Rev. 929.

Importance of proper publication.

12.14. As observed by Kersell,[1] "if a legislature realistically expects such legislation made under its authority to be effective and also controllable, it must make minimal provisions for publicity and for 'laying' so that it may know what has been done under the powers delegated to it." The importance of proper publication of subordinate legislation cannot, therefore, be over-emphasised. If, as is well recognised, subordinate legislation has the full effect of law, it is only elementary justice that those who are sought to be affected by it should become aware of its existence. As Carr, in his evidence before the Committee on the Minister's Powers observed forcefully,[2] "it would be undesirable if it could be said that obscure Clerks in Whitehall poured forth streams of departmental legislation which nobody had any means of knowing. This would be the method attributed to Calligula of writing his laws in very small characters and hanging them up on high pillars the more effectively to ensnare the people." These observations apply with equal force in the context of subordinate legislation.

Importance stressed by the Supreme Court.

12.15. In *Harla* v. *State of Rajasthan*, the Supreme Court had occasion to draw attention to the basic need for due publicity of laws.[3] Bose J. observed :—

> ".....we are of opinion that it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they have no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognizable way so that all men may know what it is ; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man."

Bose J. also made a passing reference to the Code Nepoleon of France, the first article of which provides that law are executory by virtue of the promulgation thereof and that they shall come into effect from the moment at which their promulgation can become known.

Recommendation as to publication.

12.16. In the light of the above discussion, we recommend[4] that the commencement of statutory rules, bye laws and general orders should not take place before their publication.

Amendment will fill up gap in the law.

12.17. It may, incidentally, be pointed out that such an amendment will fill in a gap in the present law as regards orders. According to the Allahabad High Court,[5] where a statutory order does not indicate its date of commencement, it does not become effective. The only consequence of the order being published in the official gazette is that it comes into being as a piece of subordinate legislation on the statute Book. From this, it would not follow that it becames law with immediate effect. The High Court pointed out that Acts of the Central Legislature come into force on assent, *because the General Clauses Act says so.* This judgment justifies what we have stated above.

Copies of subordinate legislation to be made available.

12.18. While on the subject of publication, we should also refer to another improvement needed in regard to access to subordinate legislation. Difficulty is often experienced in obtaining printed copies of subordinate legislation. In England, and in some other commonwealth countries, there is a statutory provision that printed copies of *subordinate legislation* should be

1. Kerseel : Parliamentary Supervision of Delegated Legislation (1960), page 6.
2. Sir Cecil Carr's Evidence, cited in Schwartz: Introduction to American Administrative Law, (1958), page 71.
3. *Harla* v. *State of Rajasthan*, A.I.R. 1951 S.C. 467.
4. See proposed section as to the commencement of rules etc. (Para 12.44 B, *infra*).
5. (a) *State* v. *Bansidhar*, A.I.R. 1969 All. 184, 186 ; (D.C. Uniyal J.)
   (b) *State* v. *Ram Chand*, A.I.R. 1966 All. 526 (D.B).

available for sale to the public. Such a statutory provision can, at best, be directory only. We think that adequate steps should be taken for ensuring that printed copies of subordinate legislation are available to the public at all times.

Parliamentary Control

Recommendation Parliamentary control.

12.19. We now come to another safeguard pertaining to subordinate legislation, namely, parliamentary control over subordinate legislation.

as to legislative scrutiny of rules by Central Government.

12.20. In all democratic countries, Parliament exercises control over subordinate legislation. In England, there are elaborate provisions on this subject in the statutory Instruments Act, 1946. In India, the Ministry of Law in consultation with the Committee of Lok Sabha on subordinate Legislation[1] had evolved a model clause on this subject, which is inserted in every Act of Parliament that permits the making of subordinate legislation. We recommend[2] that this clause (with some slight variations) should be included in the General Clauses Act.

Rules by State Governments.

12.21. In this connection a difficult question which arises is as to the propriety of providing for laying on the table of Parliament of rules framed by a *State Government* under a Central Act.

The problem has been considered in detail by the Committee of the Lok Sbha on subordinate Legislation ; and in the light of the discussions with the relevant authorities, the Committee came to the conclusion that the best course would be to request the state Governments to have laws enacted, by their legislatures, to provide for laying of the rules framed by them before their respective legislatures.

We do not express any view on this matter, because we think that so far as Acts of Parliament are concerned, no satisfactory provision can, for the reasons mentioned by the Committee on subordinate legislation, be made in such Acts regarding rules made by a State Government.

Application of the General Clauses Act to subordinate legislation

Application of the General Clauses Act to statutory instruments.

12.22. We now consider the question of application of the General Clauses Act to subordinate legislation.

Application of whole Act to subordinate legislation.

12.23. We have given careful consideration to the question whether the whole Act should apply to subordinate legislation and we have come to the conclusion that the Act should not, *in terms*,[3] apply to such legislation. The practice in the Government of India is that subordinate legislation is first prepared in the administrative Ministry. It is then sent to the Legislative Department (of the Ministry of Law) for scrutiny only. At the stage of scrutiny, it is difficult for the Draftsman in the Legislative Department to recast the original draft in the light of the General Clauses Act. Moreover, subordinate legislation is of various kinds. Rules made under a statute constitute only one form of such legislation. Such rules may, for convenience, be called "subordinate legislation of the first degree".

Sometimes, orders are made *under a rule,* and, further, there are orders made under such orders. These may be called "subordinate legislation of the second" and of the "third" degrees, respectively. A common illustration of such subordinate legislation may be found in the various orders made under the Defence of India Rules. Subordinate legislation of the second and third degrees is not always sent to the Legislative Department for scrutiny.

It is also to be borne in mind that subordinate legislation is not expected to be drafted with that care which is bestowed on the drafting of statute of Parliament. A rigid application of the General Clauses Act to subordinate legislation, is, therefore, likely to create some unforeseen complications. Moreover, no practical difficulty has arisen in the interpretation of subordinate legislation.

---

1. See para 12.45, *infra.*
2. See also para 12.47 *infra.*
3. See also para 12.26 *infra.*

Principles of the Act applied to subordinate legislation.

12.24. While the courts have refused to apply the General Clauses Act to subordinate legislation,—In terms, they have resorted to the principles of the Act in construing such legislation. The Madras High Court expressed itself[1] in favour of the view that on principles of justice, equity and good conscience courts have to apply the principles underlying the provisions of General Clauses Act to the construction of statutory rules. In a Calcutta case,[2] a similar view was taken.

Supreme Court's approach.

12.25. The Supreme Court had occasion to consider[3] the question whether the provisions of section 38 of the (English) Interpretation Act, corresponding to section 8 of the General Clauses Act, could be applied to construe a Charter constituting a High Court. Marajan J. (as he then was) observed:—

> "Assuming, however, but not conceeding that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not, for any reason apply, we see no justification for holding that the principles of construction enunciated in these provisions have no application for construing these charters."

Change not suggested.

12.26. In view, however of the nature of subordinate legislation and the legislative practice followed in drafting such legislation, as mentioned in the above discussion,[4] it is desirable that there should be a certain amount of flexibility in applying the rules of interpretation to such legislation. Hence, no categorical provision as to the application, to subordinate legislation, of all the rules in the General Clauses Act, is recommended. Wherever necessary, we have considered the desirability of extending individual sections to statutory instruments.

Individual sections relating to subordinate legislation

Points concerning sections dealing with subordinate legislation.

12.27. We shall now deal with the amendments required in individual sections of the General Clauses Act, relating to subordinate legislation.

Section 20—Recommendation.

12.28. Section 20 deals with the construction of orders etc. issued under enactments. In this section, instead of the existing expressions referring to notification, order, rule and bye-laws etc. the comprehensive expression "statutory instrument"[5] is proposed to be used. We therefore recommend that section 20 should be revised as follows:

Revised section 20

Construction of statutory instruments.

20. *Expressions used in a statutory instrument made under a Central Act or Regulation shall, unless the context of the statutory instrument otherwise requires, have the same respective meanings as in the Act or Regulation.*

Section 21.

12.29. Section 21 provides that power to issue notifications, orders, rules or bye-laws includes power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. This section sometimes gives rise to problems in its application to orders issued under statutes. Where the making of orders is circumscribed by conditions, the question arises how far orders amending the original order have to comply with these conditions.

A Supreme Court case.

12.30. The difficulty is illustrated by a judgment of the Supreme Court.[6] The facts in that case were these. In exercise of a statutory power, Government took over the management of an undertaking, and vested its control in 'X'. One of the conditions for the exercise of the power was that the management was not previously being carried out properly. This condition

1. *In re. Chockalingam*, A.I.R. 1945 Mad. 521.
2. *Benaori Lal* v. *Emperor*, A.I.R. 1943 Cal. 285.
3. *N.S. Thread Co.* v. *James Chaick*, A.I.R. 1953 S.C. 357, 360.
4. Para 12.22, *supra*.
5. *cf.* para 12.2, *supra*.
6. *K. P. Khaitan* v. *Union of India*, A.I.R. 1957 S.C. 676, 685, (1957) S.C.R. 1052, 1073.

was present when the original order was passed. Subsequently, it was decided to transfer the management from X to Y, and an amending order was issued accordingly. The question arose whether, *at the time of the amending order,* the condition that the management was not previously being conducted properly should have been complied with.

The Supreme Court upheld the legality of the order; but the reasons given revealed a conflicting interpretation of the section. S. K. Das J. adhered to the strictly literal construction of the words "subject to the like.....conditions," and maintained that these words applied in all situations and had been complied with in the case before the court. Sarkar J. put a limited construtions upon them, and observed that these words meant that *after the amending* order is issued, all the provisions which would have governed the original order would govern the amending order also; for example, provisions limiting the duration of the original order.

Such difficulties will be avoided if the section is made subject to a different intention.

The application *of the whole section* may be excluded by a context. For example, where a municipal corporation is superseded for a particular period, the supersession cannot be extended, because the enactment concerned does not contemplate an amendement in such a case.[1]

It is also desirable to substitute the expression statutory instrument in this section.[2]

12.31. In the light of the above discussion we recommend that section 21 should be revised as follows:— Recommendation.

Revised section 21

21. Where, by any Central Act or Regulation, a power to make a *statutory instrument* is conferred, then, *unless the context otherwise requires,* that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind *the statutory instrument so made.* Power to amend statutory instrument.

12.32. Section 22 provides for the making of rules or bye-laws and issuing of orders between the passing and commencement of an enactment. Secton 22.

12.33. Some verbal changes are proposed in section 22.[3] In an Allahabad case,[4] a similar provision was relied upon to support a notification which was issued on the 31st March, 1956, but which said that the amendment would 'come into effect' on 1st April, 1956. The actual decision in that case was, that the corresponding section of the U.P. General Clauses Act did not apply to the facts of the case, as the whole Ordinance (according to the majority judgment) came into force immediately on 31st March, 1956, but no action could be taken under the provisions amended by the Ordinance before the next day. Allahabad case.

12.34. Incidentally, it may be noted that section 22 of the U.P. General Clausese Act, 1904, as amended by section 22 of Schedule II of the U.P. Repealing and Amending (Second) Act, 1956, (passed as Act 5 of 1957), has added certain words. U. P. Amendment referred to.

After the words "application of the Act", the words "or in the exercise of any power exercisable thereunder or under any enactment thereby amended", have been added. But, in the Allahabad case cited above,[5] these words, though referred to, were not apparently relied upon by the Counsel for the State. After this judgment was pronounced, a validating Act was passed by the U.P. Legislature, but it was held to be futile.[6].

1. *Gopal Jaya Ram* v. *State of Madhya Pradesh.* A.I.R. 1951 Nagpur 181, 183, para 6.
2. *cf.* para 12.2, *supra.*
3. Para 12.35, *infra.*
4. *Adarsh Bhandar* v. *Sales Tax Officer,* A.I.R. 1957 All. 475, 483, para 52.
5. *Adarsh Bhandar* v. *Sales Tax Officer,* A.I.R. 1957 All 475, 482, para 36.
6. *Bengali Mal v. Sales Tax Officer,* A.I.R. 1958 All. 478.

The Supreme Court upheld a later validating Act[1] on the subject.

The point of interpretation of the U.P. General Clauses Act was not, however in issue before the Supreme Court.

12.34A. Orders of a substantive nature are not governed by the section, and, on this reasoning, it has been held[2] that a detention order under Act 61 of 1962, made prior to the commencement of that Act, could not be justified under this section.

12.34B. Where a particular part of an Act comes into force at once, and authorises the making of the rules, then obviously, the rules can come into force though the other parts do not come into force[3].

Recommendation.

12.35. We recommend only verbal changes in section 22, which should be revised as follows:—

Revised section 22

Making of rules or bye-laws and issuing of orders between passing and commencement of Act.

"22. Where, by any Central Act or Regulation which is not to come into force immediately on the passing or *making* thereof, a power is conferred—

(a) to make a *statutory instrument*, or

(b) to issue orders with respect to—

(i) the application of the Act, or Regulation....., or

(ii) the establishment of any court or office, or

(iii) the appointment of any Judge or officer thereunder, or

(iv) 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 the passing of the Act or making of the Regulation, but *statutory instruments or orders* so made or issued shall not take effect till the commencement of the Act or Regulation, or, *where all provisions of the Act or Regulation do not come into force at the same time, then till the commencement of the relevant provision.*

Section 23 to be extended to all statutory instruments.

12.36. As regards section 23, we propose to extend it to all statutory instruments, and also to cases where a *provision of an Act* is not to come into force immediately.

Section 23 (5).

12.37. Sub-sections (1), (2), (3) and (4) of section 23 lay down details as to the manner of complying with the requirement for pre-publication, and have not raised any serious controversy. Sub-section (5), however, has given rise to some difficulty. This sub-section provides as follows:—

"(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-law has been duly made."

Gujarat Case.

12.38. In a Gujarat case,[4] it was held with reference to section 23(5) that the rule-making authority must purport to make rules after previous publication, and the words "purporting to have been made", must go with the expression "after previous publication". It was stated that,

1. *J. K. Jute Mills* v. *U. P.* (1962) 2 S.C.R. 1.
2. *Venkateswarlu* v. *Superintendent, Central Jail, Hyderabad*, A.I.R. 1953 S.C. 49, 50.
3. *Kandaswami* v. *Emperor*, (1918) I.L.R. 42 Madras 69, 73, Napier J.
4. See *C. J. Shah* v. *Chhabalal*, (1968) Cr. L.J. 253, 254, para 1. (Gujarat).

since section 23 prescribes the lengthy procedure of previous publication, sub-section (5) dispenses with proof that such procedure has been followed, only in cases where the rules purport to be made after previous publication. The actual decision in this case was over-ruled by a later decision of the same High Court ;[1] but the construction placed on sub-section (5) was not discussed in the later case.

Presumption as to *"duly made"* limited effect of.

12.39. It is, of course, obvious that the presumption as to the rules or bye-laws having been "duly made" does not mean that the rules cannot be assailed if they are in excess of, or repugnant to, the parent Act, or if the rules are otherwise invalid.

Meaning of "conclusive proof".

12.40. Also, the words "conclusive proof" do not exclude the power of judicial review by the High Court.

In fact, the view taken appears to be[2] that even apart from the power of the High Court, the order can be challenged for want of notice.

Other changes recommended in section 23.

12.41. The existing section is confined to rules and bye-laws. We propose use of the words "statutory instruments", to cover all such instruments.

Certain other verbal changes are also proposed in the section, in order to simplify it.[3]

Position in England as to pre-publication.

12.42. It may be noted that section 1 of the Rules Publication Act, 1893, in England, combined a provision for compulsory pre-publication in respect of those statutory rules to which the section applied. That Act has, however, been repealed by section 12 of the Statutory Instruments Act, 1946. Section 4 of the latter Act does not appear to contemplate compulsory pre-publication.

Recommendation.

12.43. Accordingly we recommend that section 23 should be revised as follows:—

Revised section 23

Making of statutory instruments after previous publication.

23. Where.....any Central Act or Regulation confers *on any authority* power to make a *statutory instrument* subject to the condition of the statutory instrument being made after previous publication, then the following provisions shall apply, namely:—

(a) the authority..... shall *first* publish a draft of the proposed *instrument* for the information of persons likely to be affected thereby, *together with* a notice specifying the date on or after which the draft will be taken into consideration; [s. 23(1) and s. 23(3)]

(b) the publication shall be made in such manner as *the* authority deems to be sufficient, or, *if the empowering provision in the Act or Regulation* so requires, in such manner as the Goverment concerned directs ; [s. 23(2)]

(c) ..... any objection or suggestion ..... received by *the* authority .....from any person with respect to the draft before the date specified *in the notice shall be considered by it, and, where the statutory instrument is to be made* with the sanction, approval or *concurrence of another authority, also* by that authority, *before the instrument is finally made* : [s. 23(4)]

(d) the publication in the official gazette of a statutory instrument *purporting to have been made after previous publication in exercise of a power to make such statutory instrument* shall be conclusive proof that the statutory instrument has been made in compliance with the provisions of this section.

1. *M. R. Pandya* v. *Chimanlal*, A.I.R. 1968 Guj. 80, paras. 13 and 14.
2. *Automobile Transport Rajasthan Ltd.*, v. *The State of Rajasthan*, A.I.R. 1962 Raj. 24.
3. See para 12.43, *infra*.

Section 23-A Commencement and publication of Statutory Rules (New).

12.44. As to statutory rules, and bye-laws as already stated[1] we propose a new provision, providing for (i) publication of rules, and (ii) the date of commencement in relation to rules and bye laws. Attention may be drawn, in this connection, to the recommendation made in an earlier Report[2] of the Law Commission, where a reference is made to the (English) Statutory Instruments Act of 1946, and to the necessity of ensuring proper publication of statutory instruments and other connected matters.[3]

Retrospective operation.

12.44A. We also think it desirbale to provide that retrospective operation cannot be given to such rules and bye-laws without express authority.

Recommendation to insert section regarding publication and commencement of rules, bye-laws and general orders of the Central Government.

12.44B. We therefore recommend that regarding publication and commencement[4] of rules, bye-laws and general orders of the Central Government and their respective effect,[5] the following new section may be inserted:—

"23A. (1) *Every rule made or bye-law approved or general order issued by the Central Government on or after the ..... day of .....*[6] *under any Central Act or Regulation—*

(a) *shall be published in the official gazette, and*

(b) *shall, in the absence of an express provision to the contrary either in the rule or bye-law or general order or in the Central Act or Regulation under which it is made or approved or issued, come into force on the day on which it is published in the official gazette.*

(2) *No such rule or bye-law or general order shall come into force from a date earlier than the date on which it is made or approved or issued by the Central Government, unless the Central Act or Regulation under which it is made or approved or issued expressly confers a power to give it such effect.*

"Explanation.—In this section, the expression —'general order" means an order which affects the public."

Laying of rules—Provision proposed

12.45. We also propose a new provision as to the laying of rules before Parliament as already stated.[7]

It may be noted that the existing formula (found in most recent Acts) was evolved after a series of discussion in the Lok Sabha Committee[8] on subordinate legislation.

The proposed new section will apply only to rules made by the Central Government.

We are adding that annulment or modification made in the rule so laid should be published in the gazette.

---

1. Para 12.16 *supra*.
2. 14th Report, Vol. 2, page 707, para 25.
3. Also see para 12.14 *supra*.
4. Para 12.44, *supra*.
5. Para 12.44A, *supra*.
6. Date of commencement of the amendment Act to be entered.
7. Para 12.20, *supra*.
8. See the following Reports of that Committee:—
   (i) First Report (First Lok Sabha) 1954, page 3, Para 11.
   (ii) Third Report (1st Lok Sabha), May, 1955, page 7. para 36.
   (iii) Sixth Report (1st Lok Sabha) 22nd December, 1956, pages 13 and 14, para 77 to 80.
   (iv) Fifth Report (2nd Lok Sabha) 5th May, 1959, pages 8 and 9, para 41 to 44 and page 26.
   (v) Seventh Report (2nd Lok Sabha), pages 7 and 8, para. 42 to 45.

12.46. It may also be of interest to note here that Madhya Pradesh General Clauses Act[1] makes specific provision for standardising the procedure to be followed, when any Madhya Pradesh Act directs that a rule be laid on the table of the Legislative Assembly. **Recommendation.**

12.47. We recommend that the new section should be as follows:—

Section 23B

Rules to be laid before Parliament.

23B. (1) *Every rule made under any Central Act by the Central Government on or after the.. .....day of.....*[2] *shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions; and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.*

Modification.

(2) *Every such modification or annulment shall be published in the official gazette.*

12.48. In section 24, which provides for the continuance of notifications etc. issued under a repealed law, certain verbal changes are recommended, namely, the substitution of the comprehensive expression 'statutory instrument' in place of rules, etc. Our recommendation, therefore, is as follows:— **Section 24—Continuation of appointments, etc.**

Section 24

In section 24, for the words "notification, order scheme, rule, form or bye-law", wherever they occur, the words "or statutory instrument" shall be substituted.

12.49. In section 25, reference to the new Code of Criminal Procedure should be substituted. Our recommendation, therefore, is as follows:— **Section 25.**

Section 25

In section 25, for the words[3] "the Code of Criminal Procedure for the time being in force", the words, and figures and comma "the Code of Criminal Prooedure, 1974" shall be substituted.

1. Section 24A, Madhya Pradesh General Clauses Act.
2. Insert date of commencement of amending Act.
3. This can apply to existing Acts also.

CHAPTER 13

SEVERABILITY

Introductory.

13.1. We now deal with a matter of constitutional significance, relevant to the General Clauses Act.

Severability—the problem

Question of severability of invalid statutes.

13.2. The question relates to "severability". In countries having a rigid constitution, the possibility of a statute being declared void is, in general, implicit. Now, a statute may be partially valid (being in part in conformity with the Constitution), and partially invalid (being in part in conflict with the Constitution). Judicial determination of invalidity of the whole Act is rare, but not so rare is the judicial determination of invalidity of a part of the Act. In such cases, the question arises whether the invalidity of a part of the Act affects the entire Act, so that the Act falls as a whole, or whether the valid portion survives. The broad principle, that the valid portion can so survive, is now recognised in almost all countries which have a rigid Constitution.

Position under article 13(2) of the Constitution.

13.3. In India, the possibility of partial invalidity is implicit, at least in respect of a conflict with fundamental rights, because, under article 13(2), a law inconsistent with fundamental rights is void *"to the extent of the inconsistency"*. The question that arises is how far a law can be severed into portions which are void and those which are not.

Summary in Supreme Court judgment.

13.4. *In R. M. D. Chamarbaugwalla* v. *Union of India*,[1] the Supreme Court discussed the question of severability at length. The Court also summarised certain rules of construction laid down by the American Courts, in regard to the question of severability of a statute (for the purpose of determining the question of its constitutional validity). It is not necessary to quote here the discussion in full. It is sufficient to state that judicial decisions in India, have, in general, followed his judgment. Broadly speaking, if a part of an Act is void, the rest is not affected, if it can be separated.

Position in Canada.

13.5. In Canada, a similar principle is recognised. The doctrine was stated as follows[2] :

"Thus sort of question arises not infrequently and is often raised (as in the present instance) by asking whether the legislation is *intra vires* 'either in whole or in part,' but this does not mean that when Part II is declared invalid, what remains of the "Act is to be examined bit by bit in order to determine whether the Legislature would be acting within its powers if it passed what remains. The real question is whether what remains in is *so inextricably bound up with the part declared invalid* that what remains cannot independently survive, or, as it has sometimes been put, whether on a fair review of the whole matter, it can be assumed that the Legislature would have enacted what survives without enacting the part that is *ultra vires* at all."

General principle.

13.6. The general principle, thus, is that as far as possible, total invalidity of an Act should be avoided. The observation of Cardozo (sitting in the New York Court of Appeals[3]) — "laws are not to be sacrificed by courts on the assumption that legislation is the play of whim and fancy ..... Our right to destroy is bound by (the) limits of necessity. Our duty is to save unless in saving we pervert."—is true of the approach of courts in relation to partial invalidity also.

---

1. *R.M.D. Chamarbaughwalla* v. *Union of India*, A.I.R. 1957 S.C. 628, 636, 637 ; (1957) S.C.R. 930.
2. Reference re-Alberta Bill of Rights (1947), A.C. 503 (P.C.).
3. *People* v. *Knapp*, (1920) 230 N.Y. 48, referred to in Stern, "Separability and separability clauses" (1937-38) 51 Harvard Law Review 76, 100, footnote 110.

13.7. In the U. S. A., the broad principles as to divisibility or indivisibility were at first referred to only in Mr. Justice Sutherland's opinion[1] in an early case, and these have gradually come to be accepted by the entire Court. Mr. Justice Butler mentioned them in *Champlin Refining Co.* v. *Corporation Commission*,[2] Mr. Justice Roberts relied upon them in *the Railroad Retirement* case,[3] and in the *Carter case*,[4] even the dissenting Justices seemed to approve of them. **Broad Principles referred to in U.S.A.**

13.8. But the contours of this broad principle are not so well defined, and its practical application is not very easy. Primarily, this question belongs to the domain of constitutional law; but justification for adverting to this subject in a discussion of the law of interpretation arises by reason of the fact that in some countries, there have come to be inserted what are known as "separability" or "severability" clauses. **Difficulty of application.**

13.9. Before proceeding to discuss the form and content of such clauses, it would be desirable to mention that the problem of separability arises in three types of situations, namely :— **Three situations.**

(i) Part of the Act is invalid as to all possible applications of the Act,—i.e. as to all possible areas.

(ii) Whole Act is invalid, but the invalidity is confined to a part of all possible "applications"; and

(iii) Part of the Act is invalid, and that too in relation to only a part of the possible "applications".

13.10. "Severability" clauses, broadly speaking, provide that if any part of the Act is found to be invalid, the remainder of the Act should nevertheless be upheld. As has been pointed out, the authority of a court to eliminate the invalid elements and yet to sustain the valid elements, are not really derived from the Legislature, but from powers inherent in the judiciary. The utility of the severability clause lies in its replacing the presumption which would be otherwise applicable—that the statute was meant to be indivisible. This presumption is replaced by a presumption in favour of severability.[5] As Justice Brandeis stated, in case often cited, such a clause provides a rule of construction, which may aid in determining the legislative intent, "but it is an aid merely; not an inexorable command".[6] **Function of separability clauses.**

13.11. A severability clause may be general in form, in the sense that it merely provides that the invalidity of one part of the Act shall not affect the rest. Or, the clause could be specific. The separability clause would, then, refer to the particular sections of the Act or to those applications of the Act which the legislature really intended to stand alone (in case of a declaration of invalidity of the remainder). **Forms of severability clauses—General and Special.**

13.12. A few hypothetical examples will illustrate what is stated above. One possible form for a severability clause could be as follows :— **Examples.**

"The provisions of Chapter ... are severable, and if any of its provisions or their applications are held unconstitutional or invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions or applications of the Article." **Special forms.**

1. *Williams* v. *Standard Oil Co.* (1929) 278 U.S. 235.
2. *Champlin Refining Co.* v. *Corporation Commission*, (1932) 286 U.S. 210, 234.
3. *Railroad Retirement Board* v. *Alton R.R.* (1935) 295 U.S. 330, 369.
4. *Carter* v. *Carter Coal Co.* (1936) 298 U.S. 238, 312, 321, 334.
5. *William* v. *Standard Oil Co.*, (1929) 73 Lawyers Ed. 287.
6. *Dorchy* v. *State of Kansas*, (1924) 68 Lawyers Ed. 686.

Another possible form is the following :—

General forms.

> "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect to without the invalid provision or application, and, to this end, the provisions of this Act are severable."

Another form would be :

Special forms.

> "If any part, section, sentence, or clause of this ordinance shall be adjudged void and of no effect, such decision shall not affect the validity of the remaining portions of this ordinance. For the purposes of this section, sections..... are expressly considered to be separable."

There is yet another form suggested by a writer[1] :—

General form.

> "If a part of this Act is invalid, all valid parts which are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Provision in Australia.

13.13. The Australian interpretation Act has this provision[2]. "Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this Section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is an act in excess of that power."

History of Australian provision.

13.13A. This section was first inserted in the (Australian) Acts Interpretation Act in 1930. The provision was described at the time as being one "mainly directed against the doctrine of inseverability".

It was explained, in the course of the second reading speech in the Senate, as follows :—

> "Where a measure deals with a subject as to which legislative power is divided between the Commonwealth and the States, and the line of demarcation between the respective powers of the Commonwealth and the States has not been completely laid down, it has been found necessary, in certain cases such as the Navigation Act, to make provision, in terms similar to those appearing in clause 23 of this Bill, to declare the intention of the legislature not to exceed its powers and to secure the application of the Bill up to the limit of those powers and no further. Such a provision, it is considered, protects the Act in which it appears from being declared wholly invalid where any portion of it would, but for this provision, have been capable of an unconstitutional construction."

"The High Court (of Australia) held in 1910 that where the valid and invalid provisions of an Act are inseparable or 'wrapped up in the same word or expression', the whole must fall[3].

"The argument of inseparability was in 1921 used against the Navigation Act in *Newcastle and Hunter River Steamship Co. Ltd., and others* v. *"the Attorney-General for the Commonwealth and another*[4]. The fact that the Act contained a provision which is now proposed to be made common to Commonwealth legislation was the reason given why the argument failed, and, accordingly, certain sections of the Act were declared to remain effective to the constitutional limit decided by the court."

---

1. Dickerson, Legislative Drafting (1954), Page 110.
2. Section 15A, (Australian) Acts Interpretation Acts, 1901-1957.
3. (a) *Bootmakers Case*, 11 C.L.R. 1, 54, 55 ;
   (b) *Owners of S.S. Kalibia* v. *Wilson*, 11 C.L.R. 689, 713.
4. *Newcastle* etc. v. *A.G. for the Commonwealth* 29 C.L.R. 357.

13.14. Where a general form[1] of severability clause is adopted, there is a practical difficulty, inasmuch as it will be necessary for the court to consider whether the severability clause itself applies or not to a particular provision. **Difficulty of general form of severability clause.**

It would appear that the utility of such a clause would be very limited ; and however careful the drafting may be, it may not be easy of application.

13.15. The form could be more specific. But the use of the specific separability clause[2] may be open to objection, as it would call the attention of critical lawyers to those provisions of a new law which are deemed by the legislature itself to be most susceptible to constitutional attack. Also, it might conceivably make judicial approach more inclined to hold invalid the particular provisions referred to. At the same time, it may be more useful than a general severability clause. **Comments as to special form of severability clause.**

13.16. In the United States, one writer has remarked[3] that separability provisions are now significant only because of their absence. "Like articles of clothing, if they are present, little attention is paid to them, but if they are absent, they may be missed."

Conclusion

13.17. We have, on a consideration of various aspects of the matter as discussed above, come to the conclusion that there is no need to insert such a clause in our General Clauses Act. **Conclusion.**

---

1. Para 13. 12, *supra.*
2. Para 13. 12, *supra.*
3. Robert Stern, "separability and separability clauses" (1937-38) 51 Harvard Law Review 76, 122.

CHAPTER 14

OFFENCES UNDER SEVERAL ENACTMENTS

Section 26.

14.1. In this Chapter we deal with acts or omissions constituting offences under enactments,—a matter dealt with in section 26 of the Act, which reads as follows :—

> "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 these enactments, but shall not be liable to be punished twice for the same offence.

The latter part of the section is important, concerned as it is with several interesting doctrines of criminal jurisprudence, including, in particular, *autrefois convict* and *autrefois acquit* and the protection against double jeopardy. The protection against double jeopardy is recognised in our Constitution[1], in Article 20(2), which reads as follows:—

> "No person shall be prosecuted and punished for the same offence more than once."

English law.

14.1A. The fundamental principle of the plea of *autrefois acquit* as laid down by the judges of England in 1796[2] and as stated by writers earlier than that date, has been consistently followed. It was thus stated in 1848 in BROOM'S LEGAL MAXIMS (2nd Edn.) p. 257;

> "and this plea is clearly founded on the principle, that no man shall be placed in peril of legal penalties more than once upon the same accusation—*nemo debet bis puniri pro uno delicto.*"

The general principle that a man must put twice in peril for the same offence has been held by the English Courts to be applicable even where the previous acquittal or conviction was in a foreign country[3]. In 1918, this principle was applied[4] by the Court of Criminal Appeal in a case where the accused, a Belgian Army Officer, had been acquitted by a Belgian Court Martial in a trial held in Calai.

It may be noted that this principle of the common law was extended by section 33 of the English Interpretation Act to statutory offences[5].

There are similar statutory provisions on the subject in section 30 of the (Australian) Acts Interpretation Act, 1901 to 1957 and in the Canadian Law[6].

History.

14.1B. Historically, the famous conflict between Henry II and Archibishop Becket[7] constitutes a debate regarding double jeopardy. In the Constitution of Clarendon issued by Henry II in 1164, in Clause III, Henry II proposed that an ecclesiastical clerk who was accused of felony was first to be brought into the King's courts to plead to the charge and establish that he was a clerk; then, without a trial in the King's courts, he was to be taken by a royal officer to the

---

1. Article 20(2).
2. *R.* v. *Vandercomb and Abbott*, (1796), 2 Leach at p. 720, cited in *D.P.P.* v. *Connelly* (1964) 2 All E.R. at p. 416.
3. *R.* v. *Roche* (1775) 1 Leach 134, 164 English Reports 169 (Acquittal by a Dutch Court in South Africa).
4. *R.* v. *Aughet*, (1918) 13 Criminal Appeal Reports 101.
5. *R.* v. *Thomas*, (1950) 1 King's Bench 26.
6. Section 11, Criminal Code (Canada).
7. See generally—
   (a) Pollock and Maitland, History of English Law, Vol. 1, page 439 ff ;
   (b) Holdsworth, History of English Law, 7th Edn. (1956), Vol. 1, pp. 615 ff.

ecclesiastical courts for trial, and, if convicted and *degraded there*[1], he was to be returned to the King's courts *to be sentenced* according to law[2]. Becket had a fundamental objection to this scheme.

Becket opposed the proposal on the ground that *further punishment* in the King's Courts would violate the maxim *Nemo bis in idipsum*—no man ought to be punished twice for the same offence.

In continental law[3], the concept is referred to as *Non Bis in Idem*, and has been traced to its adoption by Justinian.[4]

Autrefois Acquit and autrefois convict and Article 20(2).

14.2. In India the rules of criminal process, known to lawyers as *autrefois acquis* and *autrefois convict*, find expression in the Code of Criminal Procedure, and are considered so important that a separate Chapter was assigned to them in the Code of 1898. The principle on which the rules rest is—a 'man may not be put twice in jeopardy for the same offence'[5].

The provision in the Code of Criminal Procedure[6] is very elaborate. For our present purpose, section 300(1) is of great importance. It reads as follows :—

> "3000(1) a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."

The provision in section 26 of the General Clauses Act is based on the same principle. But it is not confined to the situation where there has been a *prior proceeding*, and would appear to be wide enough to bar simultaneous double prosecution also.

Section 71, I.P.C.

14.2A. A provision analogous to the latter part of section 26 is to be found in section 71 of the Indian Penal Code also[7]. We need not discuss it in detail.

Two parts of section 26-positive and negative.

14.2B. Of course, it should be pointed out that section 26 has a positive as well as a negative content. The positive or permissive content is in the earlier part, where there *is a* liability to be prosecuted and punished under either of the two enactments, or any of more than two enactments The negative or prohibitive part is in the latter part of the section, under which there is *non-liability* to be punished twice for the same offence. We shall discuss the principle of this part of the section.

The principle firmly established.

14.3. The principle that no person shall be vexed twice for the same crime was described by Lord Hodson in Connelly v. D.P.P.,[8] "as one which is firmly established in our law, but, as the authorities show, is not easy of consistent application". What is meant or involved in the words "the same crime"? It is in answer to this question that so much difficulty has arisen; and, to quote Lord Hodson again, "so much argument has been entertained down to the present day not only in this country, but in other countries where the common law prevails".

---

1. Degradation was a punishment.
2. See Richardson and Sayles, The Governance of Medieval England from the Conquest to Magna Carta [Edinburgh, (1963), pp. 289, 306.]
3. See *Bartkus* v. *Illinoie*, (1959) 359 U.S. 121, 154, note (Black J.).
4. (a) Justinian, D. 48, 27.2 and c. 9, 2.9, quoted in Harward Researches in International Law (1935) 29 American Journal of International Law, Supplement p. 437, 602;
   (b) Jolowics, Roman Foundations of Modern Law (1957), p. 81, 94.
5. See Archbold, Criminal Pleadings, etc., (1966) page 122, paragraph 436 and page 130, paragraph 453.
6. Section 300, Code of Criminal Procedure, 1974.
7. See section 71, 2nd para., I.P.C.
8. *Connelly* v. *D.P.P.* (1964) 2 All E.R. 401, 428 (H.L.).

The classic statement of the principle is to be found in Hawkins[2] Peas of the Crown[1], and is as follows :

> "that a man shall not be brought into danger of his life for one and the same offence, more than once."

"From whence it is generally taken, by all the books, as an undoubted consequence, that where a man is once found 'not guilty' on an indictment or appeal free from error, and well commenced before "any court which hath jurisdiction of the cause, he may, by the common law, in all cases whatsoever, plead such acquittal in bar of any subsequent indictment or appeal for the same crime". This lucid statement by Hawkins, has never excelled, though it is often elaborated[2].

Essential ingredients required to be the same.

14.4. In order to constitute the "same crime", the essential ingredients should be the same. In *E.* v. *Kupferberg*[3], for example, an acquittal on a charge of conspiring to contravene a regulation was held not to found a plea of autrefois acquit on a charge of aiding and abetting the contravention. A. T. Lawrence, J. said :

> "For a plea of autrefois acquit to be maintainable, the offence of which the accused has been acquitted and that with which he is charged must be the same in the sense that each *must have the same essential ingredients*[4]. The facts which constitute the one must be sufficient to justify a conviction for the other."

14.5. The statement of the law by Hawkins[5] was approved in *D.P.P.* v. *Connelly*[6], with this comment :

> "The phrases 'the same essential ingredients' and 'the facts which constitute' are to be noted. They denote and, in my view, correctly denote an entirely different situation from that which merely involves that the same facts may be relevant in support of two charges, or that some evidence which is given in one case may again be given as being relevant in another."

A conviction or acquittal, then, bars punishment for the "same offence".

Provision in the Code of Criminal Procedure.

14.6. The Constitution, Article 20(2)[7], does not, in terms, mention a previous acquittal, but the Code of Criminal Procedure does[8], and the Code goes on to explain in detail the implications of the expression 'same offence'. Six illustrations form part of this section, explaining, in concrete form, the different situations which the Courts may have to deal with.

Three ambiguities in section 26.

14.6A. Going back to section 26, we may note that the section presents a number of ambiguities. Is it, for example, permissible to prosecute a person under all the enactments—that is to say—to frame a charge for each of the offences? It is usually understood that the charge can be framed for each of the offences,—subject to the provision regarding maximum punishment. However ambiguity in this regard is caused by the words "either or any" in the earlier part of the section[9]. The second ambiguity—though a slight one—arises as to whether the limit regarding punishment applies at the same prosecution, or whether it applies to successive prosecutions, or whether it applies to both. The word 'twice' is ambiguous

1. Hawkins, Pleas of the Crown [18th Edn. (1824) Vol. 2, p. 515] cited in *Connelly* v. *D.P.P.* (1964) 2 All E.R. 401, 428 (H.L.).
2. E.g. *Miles* (1890) 24 Q.B.D. 423, 431; (Hawkins J.).
3. *E.* v. *Kupferberg*, (1918) 13 cr. App. Rsp. 166, 168 quoted in *Connelly* v. *D.P.P.* (1964) 2 All E.R. 401, 424.
4. Emphasis supplied.
5. Para. 14, 3, *supra.*
6. *D.P.P.* v. *Connelly*, (1964) 2 All W.R. 401, 428 (H.L.).
7. Para. 14.2, *supra.*
8. Section 300, Code of Criminal Procedure, 1974 (and corresponding provision in the 1898 Code—s. 403).
9. The section is quoted in para. 14.1, *supra.*

whether multiple punishment is possible. Ambiguity in this regard is created by the phrase "furnished twice". In one of the Andhra Pradesh cases—*In re Bapaniah*[1] decided under the section, it has been stated :

"It is left to the prosecutor or the authority concerned to choose under which enactment or enactments an offender shall be prosecuted when the act or, omission alleged against him constitutes an offence under two or more enactments. But in the event of the prosecution being launched under two or more enactments, the punishment *should be under one alone of those enactments.*" The point was also adverted to in a judgment of the Supreme Court—*Balish* v. *Bangachari*[2]. A consideration of the section in some detail would, therefore, be useful with reference to the problems that have arisen.

Two situations to be considered (i) Actually constituting the same offence.

14.7. It may be stated that these three ambiguities[3] are really facets of the obscurity which exists on the major question whether prosecution and punishment under *both the enactments* are permissible.

In this context, two situations have to be considered separately[4]. The first situation is where an act made by two more statutory provisions ("enactments"), really constitutes the "same offence",—Here, though the legal labels given to the offences are different, the ingredients thereof are indentical[5]. It is by reason of the accidents of legislation that the act happens to fall under two or more enactments[6]. Such cases, though infrequent, can arise because of the fact that one aspect of the act is dealt with more prominently in one enactment, while another aspect is given prominence by another enactment. Essentially, there is only one culpable act; and, though different legal labels lead to two or more "offences", the offender should not receive punishment for more than one of them. They are not distinct.

(ii) Acts constituting distinct ces by reason of difference in ingredients.

14.8. The second situation[7] is where acts made penal by two or more statutory provisions ("enactments") constitute really distinct offences. Some of the ingredients are common, but they are not altogether identical[8]. The offences being distinct, it is logical to permit separate punishments. At the same time, to avoid oppressiveness[9], the aggregate of such punishments should not exceed the maximum prescribed for the most serious of the offences of which the offender is convicted.

If a provision could be framed on the above lines, it would be just in its substance, and more clear in its form than the present section. We shall make our recommendation on this basis at the appropriate place[10]. But we would like to explain in some detail the significance of the two situations referred to above.

Separate sub-sections desirable.

14.9. At this stage, we may state that in order to make the provision in section 26 more clear, it is desirable to deal in separate sub-sections with the general rule and the rule applicable to a special situation. The general principle should be that where an act or omission is made punishable under two or more enactments, the offender shall be liable to be punished under

---

1. *In re Bapaniah*, A.I.R. 1970 A.P. 47, 55, paragraph 18 (Venkateswara Rao J.).
2. *Baliah* v. *Rangachari*, A.I.R. 1969 S.C. 701; para. 14.15, *infra*.
3. Para 14.6, *supra*.
4. *Cf.* 42nd Report (Penal Code), page 75, para 3.72, (discussing section 71, Penal Code).
5. (a) *Cf. Emp.* v. *Bhogilal*, A.I.R. 1931 Bom. 499 ;
   (b) *Durga Charan* v. *Issmussin*, A.I.R. 1948 Cal. 6, 7, (Wrongful confinement for purpose of extortion—sections 347 and 384, I.P.C.).
6. See also (a) *Baliah* v. *Rangachari*, A.I.R. 1969 S.C. 701 ;
   (b) *Hari* v. *State of Maharashtra*, 73 Bom. L.R. 891.
7. See 42nd Report, page 76, para. 3.73, and also page 422, proposed section 36.
8. See illustrative case in para. 14.10, *infra*.
9. See, in particular, para. 14.12, *infra*.
10. Para. 14.18 *infra*.

any one, but not under more than one, of those enactments[1], if *the ingredients are identical.* As regards the special situation, namely, where the same act or omission constituting an offence under any other enactment or enactments, *in conjunction with any ingredient* or ingredients the rule should be that prosecution and punishment for each of such offences is permissible, but the aggregate of the punishments is not to exceed the punishment awardable for the most serious of the offences.

In practice, most cases would fall under the special situation, and the object of making the position clear as regards this special situation is that if cumulative punishments were allowed without any limitation as to the quantum in the aggregate, there will be hardship and oppression.

The matter could be illustrated from a few decided cases.

Illustrative case-law.

14.10. Under the Opium Act, for example, possession of opium and transport of opium (contrary to the provisions of the Act or any other enactment relating to opium or contrary to rules framed under the Act), are two separate offences. Mere possession of opium may not, on the proved facts of a particular case, involve any question of transporting it. If so, there is only one offence. Similarly, the transport of opium may not include the element of possession in every case. A person may transport opium through various agencies, and yet not be in possession of it at the time it was transported. In such a case, there is only one offence. But a person may transport opium, and also be in possession of it. In such a case, that person would be guilty of two offences,—transporting opium, and being in possession of it[2]. But justice requires that the punishment for the two offences should not exceed that prescribed for the higher of the two offences, because the offences are nearly the same, *though not identical,* and it would be oppressive if the aggregate punishment exceeds the maximum punishment for them.

Supreme Court case & Section 405, Penal Code & section 105, Insurance Act.

14.11. In this connection, we may also refer to the important Supreme Court case of *State of Bombay* v. *S. L. Apte*[3]. The charge in that case was under section 405, I.P.C.[4] and s. 105, Insurance Act. The Court regarded the two offences as distinct. The analysis by the Court may be quoted—

> "(1) Whereas under section 405 of the Indian Penal Code the accused must be 'entrusted' with property or with "dominion over that property", under section 105 of the Insurance Act the entrustment of dominion over property is unnecessary; it is sufficient if the manager, director etc. "obtains possession" of the property.
>
> (2) The offence of criminal breach of trust (section 405 of the Indian Penal Code) is not committed unless the act of misappropriation or conversion or "the disposition in violation of the law or contract", is done with a dishonest intention; but section 105 of the Insurance Act postulates no intention, and punishes as an offence the more withholding of the property—whatever be the intent with which the same is done; and the act of application of the property of an insurer to purposes other than those authorised by the Act is similarly punishable without reference to any intent with which application or misapplication is made. In these circumstances, it does not seem possible to say that the offence of criminal breach of trust under the Indian Penal Code is the "same offence" for which the respondents were prosecuted on the complaint of the company charging them with an offence under section 105 of the Insurance Act."

---

1. This does not rule out separate heads of charges, for clarity.
2. See discussion in *Puranmal* v. *State of Orissa,* A.I.R. 1958 S.C. 336.
3. *State of Bombay* v. *S.L. Apte,* A.I.R. 1961 S.C. 578, 581, para. 13.
4. Section 405, I.P.C.—Criminal breach of trust.

14.12. There is another Supreme Court case, *Roshan Lal* v. *State of Punjab*,[1] which is relevant to this point. When a person causes the evidence of the two offences under sections 330 and 348, Penal Code to disappear, by burning the body of a person alleged to have been tortured, does he commit two separate offences under section 201 of that Code? This was the question dealt with by the Supreme Court, which held :

Another Supreme Court case—Sections 330 and 345, I.P.C. and section 201, I.P.C.

> "Now, by the same act, namely burning of the dead body of Raja Ram, the appellant causes the evidence of two offences to disappear.
>
> "Taking a strict view of the matter, it must be said that by the same act the appellants committed the offences under section 201. The case is not covered either by section 71 of the Indian Penal Code or by section 26 of the General Clauses sections. But, normally, no court should award two separate punishments for Act, and the punishment for the two offences cannot be limited under those the same act constituting two offences under section 201. The appropriate sentence under section 201 for causing the evidence of the offences under section 330 to disappear should be passed, and no separate sentence need be passed under section 201 for causing the evidence of the offence under section 348 to disappear."

This case emphasises the aspect of oppression.

14.13. The absence of the requirement of "same offence" is illustrated by a Mysore case, *Gandhi* v. *State of Mysore*.[2] The appellant in both the appeals was the same person. He had been convicted under section 161, Indian Penal Code of having accepted a bribe of Rs. 250/- and sentenced to fine and imprisonment. He was also (at a subsequent trial) tried for the offence of criminal misconduct as defined in section 5 of the Prevention of Corruption Act, 1947 and convicted under section 5 of the Act, and sentenced to fine and imprisonment. The Special Judge had ordered that the sentence of imprisonment on the second conviction should run concurrently with the earlier. This was an appeal against this conviction and sentence.

Mysore case, section 161, I.P.C. and section 5, Penal Code.

It was urged by counsel for the appellant that since the accused was convicted under section 161, I.P.C. for the acceptance of the bribe of Rs. 250/-, he could not again be convicted under section 5 of the Prevention of Corruption Act. Reliance was placed in support of this argument on section 26 of the General Clauses Act and on Article 20(2) of the Constitution. The argument was rejected, and it was held by the Mysore High Court that the "prohibition is not against punishment more than once, for different offences". In that connection, the court added :

"The offence punishable under section 161 of the Indian Penal Code is different from the offence of criminal misconduct punishable under section 5(2) of Prevention of Corruption Act, though it may be that *some of the ingredients of these two offences are common*".

Following a Supreme Court case,[3] the High Court held that the offence created by section 5 of the Prevention of Corruption Act was "an offence unknown to any of the provisions of the Indian Penal Code dealing with bribery or corruption." Therefore, the offence under section 5(1)(d) was quite distinct from the offence under section 161, I.P.C. And, since they were distinct offences, section 26 of the General Clauses Act, was held not to apply.

On this reasoning, conviction under s. 5 was upheld.

---

1. *Roshan Lal* v. *State of Punjab*, A.I.R. 1965 S.C. 1413, para. 15.

2. *Gandhi* v. *State of Mysore*, A.I.R. 1960 Mys. 111 (D.B.).

3. *Venkataraman* v. *The State*, A.I.R. 1959 S.C. 107.

14.14. It may be pointed out that this Mysore case would fall within the second category[1] of offences which, being *not the same* but being distinct, could be punished *separately*. In this case, for the conviction under section 161, I.P.C. (which provides for imprisonment of either description upto 3 years or fine or both), the accused had been sentenced to one year's rigorous imprisonment and a fine of Rs. 5,000/-. On the conviction under section 5(2) of the Prevention of Corruption Act (which provides for imprisonment of upto 7 years and fine), he had been sentenced to one year's rigorous imprisonment and a fine of Rs. 75,000/-. Therefore, the aggregate did not exceed the punishment that could be awarded for any one of such offences.

A case of simultaneous prosecution.

14.15. In *Baliah* v. *Rangachari*[2] the Supreme Court was concerned with simultaneous prosecution. The precise question was whether the appellant could be prosecuted both under section 177, Indian Penal Code (False information to public servant) and section 52 of the Income Tax Act,[3] 1922 (which was in force at the material time) *at the same time*. It was argued on behalf of the appellant that in view of the provisions of section 26 of the General Clauses Act, the appellant could be prosecuted *either* under section 52 of the 1922 Act, or under section 177, Indian Penal Code, *but not under both the sections at the same time*. The court was unable to accept this argument as correct. After quoting section 26, the Court observed :

> "A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both 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. We accordingly reject the argument of the appellant on this aspect of the case."

Object of amendment.

14.16. The amendment which we propose to recommend in section 26 is intended to clarify the position on the important points discussed above. As already stated,[4] it is desirable to deal separately with two situations—first where the ingredients of the two offences are the same, and secondly where the ingredients are not identical.

Conclusion and recommendation.

14.17. In conclusion, we wish to add that we have given serious consideration to the problems posed by the present form and language of section 26, and have decided to recommend an amendment with a view to avoiding ambiguity or obscurity and making the position clear in respect of offences falling under the two situations to which we have referred. The amendment will, we hope, advance the cause of justice by ensuring that even if the case falls under the second situation, there will be a safeguard against oppression.

In the light of the above discussion, we recommend that section 26 should be revised as under :

Revised section 26

(1) Where an act or omission is made punishable under two or more enactments,[5] the offender shall, subject to the provisions of sub-section (2), be liable to be punished under any one, but not under more than one, of those enactments.

---

1. Para. 14.7 and 14.8 *supra*.
2. *Baliah* v. *Rangachari*, A.I.R. 1969 S.C. 701, 706, para. 6.
3. Section 52, Income Tax Act, 1922—False verification in a statement of income.
4. Paras. 14.7 to 14.9 *supra*.
5. In the alternative, the words "and the offences are not distinct" could be used in sub-section (1) instead of the words "subject to the provisions of sub-section (2)".

(2) Where

(a) an act or omission constitutes an offence under one enactment, and

(b) the same act or omission, *in conjunction with any other ingredient or ingredients,* constitutes an offence under any other enactment or enactments, then the offender may be prosecuted and punished for each of such offences, *but the aggregate of the punishments shall not exceed the punishment which could have been awarded for the most serious of the offences.*

CHAPTER 15

MISCELLANEOUS

Introductory

15.1 The last 6 sections of the Act,—Sections 25 to 30—contain miscellaneous provisions. Some of these—e.g. sections 26 and 27—are, however, of frequent application, and therefore, of sufficient practical interest.

Section 25.

15.2. Section 25 provides for the recovery of fines. The section refers, *inter alia*, to sections 63-70 of the Indian Penal Code. The Law Commission, in its Report on the Indian Penal Code,[1] considered these sections of the Code. The recommendations of the Law Commission regarding these sections do not, however, require any substantial change in section 25 of the General Clauses Act.

Provisions in the Cr.P.C.

15.3. The procedure for the recovery of fines is dealt with in section 386 of the[2] Criminal Procedure Code of 1898. The Law Commission, in its Report on the Criminal Procedure Code[3], has dealt with this section. But the recommendations made in that Report also do not necessitate any change in the General Clauses Act.

Recommendation as to section 25.

15.4. The only change required in this section is verbal, namely, in place of reference to the old Code of Criminal Procedure, the reference to the current Code should be substituted.

15.5. Section 26 has already been dealt with[4].

Two limbs of section 27.

15.6. Section 27, which relates to service by post, consists of two limbs, dealing respectively with the mode of service and with the time of service. Under the first limb of the section, for the purposes of an Act authorising or requiring a document to be served by post, service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post a letter containing the document. This deeming provision, of course, applied unless a different intention appears. But there is **no express saving for cases** where the contrary is proved.[5]

Under the second limb of the section, the service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post. This deeming provision applies, **unless the contrary is proved**, and unless a different intention appears from the context.

Section 114 Evidence Act.

15.7. Although the presumption under section 27, General Clauses Act,[6] can arise only when the notice is sent by registered post, there may arise a presumption under section 114, Evidence Act, when notice is sent by ordinary post.[7] But the presumption so arising is rebuttable.

---

1. 42nd Report, pages 66-68.
2. See now the corresponding provision in the Code of 1974.
3. 41st Report, Vol. 1, pages 243-246.
4. Chapter 14, *supra*.
5. See para 15.9 *infra*.
6. para 15.6, *supra*.
7. Section 114, illustration Cf. Evidence Act.

15.8. Reference should also be made to section 106 of the Transfer of Property Act. Under that section, the lessor can determine the lease by a notice to quit, and one of the modes of service of such notice is sending it by post to the party intended to be bound by it. There are similar provisions in certain other Central Act. Other analogous provisions—section 106, T.P.A.

15.9. Now, it is obvious that though the first limb of section 27 of the General Clauses Act is not expressed to be subject to proof to the contrary,[1] it is intended to be so. It is not as if evidence in rebuttal of the presumption given in the section could be given only as to the second limb (the time at which the letter is deemed to have been delivered), and not as to the main presumption of service. Unfortunately, however, the section does not say so; and though it seems to have been assumed in a decided case,[2] it is desirable to make the section, in its first limb, subject to proof to the contrary.

15.10. If (as is suggested above), the deeming provision in section 27 is subject to evidence to the contrary in both cases,[3] it would also be desirable to replace the words "deemed" by the usual formula "shall be presumed"[4]. That formula is more appropriate for indicating that the presumption is rebuttable. (ii) Recommendation to use the words "shall be presumed."

15.11. Controversies also arise as to whether proof of this or that fact is sufficient to rebut the presumption under section 27. Some of the cases relating to the rebuttal of the presumption are noted in the footnote.[5] It may not, however, be convenient to lay down any detailed rules in this regard. Case law as to what proof needed.

15.12. It seems to have assumed that section 27 applies to statutory instruments. This should be expressly provided for. (ii) Recommendation to cover all statutory instruments.

15.13. When a registered letter is refused by the addressee, is it permissible to draw the presumption referred to in section 27 of the General Clauses Act or in section 114, illustration (f), Evidence Act, or both? On this point, there seems to be a conflict of decisions. (iv) Refusal—effect of.

One view is that the presumption under section 114, Evidence Act can be drawn,[6] in case of refusal by the addressee.

Another view that even section 27, General Clauses Act, applies in such case.[7] The third view is that neither section 114 nor section 27 applies.[8] The case-law is reviewed in a Madras case,[9] and in a Calcutta case.[10]

---

1. See, para 15.6, *supra*.
2. *Jankiram Naidu* v. *Arunugha* (1970) 2 M.L.J. 535, 538.
3. See, para 15.9, *supra*.
4. *Cf.* sections 3 and 4, Evidence Act.
5. (a) *Sarkar Estates Pvt. Ltd.* v. *V.K. Iron works Ltd.* A.I.R. 1961 Cal. 439, 442, para 3-4 (Refusal to accept)
   (b) *Sukumar* v. *Naresh Chandra*, A.I.R. 1968 Cal. 49;
   (c) (1970) All L.J. 455.
6. *Gona Ram* v. *Dhulwati*, A.I.R. 1970 All. 446, 450, 451, para 23-25 (and the Calcutta, Punjab and Madras cases cited therein).
7. (a) *Dwarka Singh* v. *Ratan Singh* (1969) All L.J. 849;
   (b) *Bachalal* v. *Lachman*, A.I.R. 1938 All. 338.
8. (a) *Vaman Vithal* v. *Khanderao*, A.I.R. 1935 Bom. 247;
   (b) *Jankiram* v. *Damodar*, A.I.R. 1956 Nag. 266.
9. *Bappayya* V. *Venkatarahan*, A.I.R. 1953 Mad. 884, 887, para 9 to 13 (Rajamannar C.J. and Venkatarama Aiyar J.)
10. *Nirmal Bala* v. *Provot Kumar*, (1948) 52 C.W.N. 619

Recommendation to remove conflict.

15.14. It is obviously desirable that this conflict should be resolved. The presumption under section 114, Evidence Act, should, in our view, continue to be permissible; but, section 27, General Clauses Act, should not apply in case of refusal by the addressee. It is better to leave the court free to draw or not to draw the presumption, where the letter has been refused.

For the above purpose we recommend an amendment of section 27 as follows :—

Revised section 27

27(1). Where any Central Act or Regulation made after *the commencement of this Act or any statutory instrument* made thereunder authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, *and unless the contrary is proved,* the service shall be deemed—

(a) to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and

(b) to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(2) *"Nothing in sub-section* (1) *shall apply to a letter, which the addressee has refused to accept but in such cases it shall be open to the Court to draw or not to draw any such presumption as it may think fit to draw under section* 114 *of the Indian Evidence Act,* 1872, having regard to the circumstances of the case."

Section 28(1).

15.15. Under section 28(1), "in any Central Act or Regulation, and in any rule, bye-law, instrument or document, made under, or with reference to, any such Act or Regulation", any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof. There is also a provision as to citation of a provision of an enactment.

The sub-section can be usefully extended to statutory instruments.

For the above purpose, we recommend that section 28(1) should be revised as below.

Revised section 28(1)

"(1) In any Central Act or Regulation, and in any *statutory instrument,* or document, made under, or with reference to, any such Act or Regulation—

(a) any enactment may be cited by reference to the title or short title (if any) conferred threon or by reference to the number and year thereof, and

(b) any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained."

Section 29.

15.16. Section 29 contains savings for previous enactments, rules and bye-laws. It needs no change.

15.17. We recommend the insertion of a new section to provide that the provisions of this Act (as amended respecting the construction of new Central Acts etc.) shall not affect the construction of existing Central Acts. It will be on the following lines :— Section 29A (New)—Savings for enactments made in proposed amendment.

Section 29A (New)

29A. *The provisions of this Act respecting the construction of Central Acts or Regulation made on or after the.....day of.....*[1] *shall not affect the construction of any Central Act or Regulation made before that date, although the Central Act or Regulation is continued or amended by any Central Act or Regulation made on or after that date.* Saving for enactments made before amendment.

15.18. Section 30 provides that the expression "Central Act", wherever it occurs in this Act, shall be deemed to include an Ordinance made and promulgated by the President. Section 30.

An exception is made in respect of section 5 of the Act (which deals with commencement). In addition to this, an exception for the new section which we are recommending[2] regarding the expiry of temporary Acts, is required[3].

Section 30 also provides that the word "Act" in certain specified provisions, includes the Ordinances referred to above. No change appears to be required in this part of the section.

In the light of the above discussion we recommend that section 30 should be amended as under[4]:—

Section 30

In section 30 of the principal Act, after the word and figure "section 5", the words, figure and letter *"and section 8A"* shall be inserted.[5]

We would like to place on record our warm appreciation of the valuable assistance we have received from Mr. Bakshi, Member-Secretary of the Commission in the preparation of this Report.

P. B. Gajendragadkar	Chairman
P. K. Tripathi	Member
S. S. Dhavan	Member
S. P. Sen-Varma	Member
P. M. Bakshi	Member-Secretary

Dated: New Delhi
the 20th May, 1974.

---

1. Date of commencement of amendment Act to be entered.
2. Section 8A (new).
3. See discussion relating to section 8A, Chapter 7 *supra*.
4. This is consequential on new section 8A.
5. Section reference in this amendment (referring to effect of expiry) should be checked up if, there is a change in numbering.

APPENDIX

Proposals as shown in the form of draft amendments to the existing Act[1-2].

Note : This is a tentative draft only.

Section 3, opening lines

[ch. 3] In section 3, before the words, "In this Act", the words, figure and letter *"Subject to the provisions of section* 3A", shall be inserted[3].

Revised section 3(3)

[ch. 3] (3) *"affidavit" shall mean a statement in writing purporting to be a statement of facts, signed by the person marking it and confirmed by him by oath."*

(3A) *"aircraft" shall mean any machine which can derive support in the atmosphere from reactions of the air, and shall include balloons, whether fixed or free, airships, kites, gliders and flying machines.*

Section 3(10A) (New)

[ch. 3] After clause (10), the following sub-section shall be inserted, namely :—.

"(10A) *'clause' shall mean—*

(a) a sub-division of the sub-section in which the word occurs, or

(b) where there is no sub-section in the section, a sub-division of the section in which the word occurs.

Revised section 3(11)

[ch. 3] 3(11) "Collector" shall mean.....the chief officer-in-charge of the revenue administration of a district, *and shall include the Collector of Calcutta, Madras or Bombay* :

Revised section 3(16)

[ch. 3] 3(16) "Consular Officer" shall mean any *person entrusted with the exercise of consular functions, irrespective of his designation and shall include Consul General, Consul, Vice Consul and Consular Agent* :

Section 3(16A) (New)

[ch. 3] (16A) *"daughter", in the case of any one whose personal law permits adoption, shall include an adopted daughter*[4]:

Section 3(16B) (New)

(16B) *"day" shall mean a period of twenty-four hours beginning at mid-night* :

---

1. (a) The amendments regarding definitions will apply to existing Acts, unless otherwise indicated. In the case of a few definitions intended to be prospective only, it is necessary to insert a suitable new section to indicate that they are prospective. See proposed section 3A.

   (b) As regards amendments in provisions, other than definitions, the amendments will apply to existing Acts, unless othersise indicated.

2. The reference in the margin in rectangular brackets indicate the relevant chapter in the Report.
3. See new section 3A.
4. This amendment should not apply to existing Acts. See section 3A (proposed).

Section 3(16C) (New)

(16C) *"diplomatic officer" shall mean a member of the staff of a diplomatic mission having diplomatic rank, and includes an ambassador, high commissioner, envoy, minister and charg-d'affairs* :

Revised section 3(17)

(17) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, [ch. 3] but shall not include —

(a) *an Additional Judge of such court*, or

(b) the High Court in the exercise of its ordinary or extra-ordinary civil jurisdiction.

Revised section 3(18)

"document" shall include any *substance* having any matter written, expressed, *inscribed ;* [ch. 3] described or *otherwise recorded upon* it by means of letters, figures or marks or *by any other means*, or by more than one of these means, *which are* intended to be used or which may be used for the purpose of recording that matter.

Explanation.—It is immaterial by what means the letters, figures or marks are formed."

Revised section 3(19)

3(19) *"enactment" shall include any law passed or made by any legislature or other authority acting in a legislative capacity,* and shall also include any provision contained in any such law, *but shall not include a statutory instrument* : [ch. 3]

Revised section 3(25)

3(25) "High Court", used with reference to civil or *criminal* proceedings, shall mean the [ch. 3] *High Court or the Court of Judicial Commisioner having jurisdiction* over the part of India in which the Act or Regulation containing the expression operates ;"

Revised section 3(31)

3(31) "local authority" shall mean a *municipal corporation* or committee, a district board, [ch. 3] a cantonment board or a body of port commissioners, or any other authority *constituted for the purpose of local self-government or village administration ;*

Section 3(35)—*definition of 'month'*

In section 3(35), for the word "British", the word "*Gregorian*" shall be substituted. [ch. 3]

Revised section 3(37)

"(37) *'oath' shall mean an oath taken before a competent authority with reference to the Oaths Act,* 1969, *or any other law for the time being in force,* and shall, in the case of persons by law allowed to affirm or declare instead of swearing, include affirmation or declaration *made before a competent authority with reference to that Act or law.* [ch. 3]

Section 3(43A) (New)

3(43A) *"prescribed" shall mean prescribed by rules made under the Central Act or Regulation in which the word occurs ;* [ch. 3]

Section 3(47A) (New)

3(47A) *"public" shall include any class or section of the public ;* [ch. 3]

Section 3(60A) (New)

[ch. 3] 3(60A) *"statutory instrument" shall mean a rule, notification, bye-law, order, scheme, form or other instrument made under an enactment ;*

Section 3(62A) (New)

[ch. 3] 3(62A) *"temporary Act" or "temporary Regulation" shall mean a Central Act or Regulation, whether made before or after the commencement of the Constitution, which is to cease to have effect or cease to operate on a particular day or on the expiration of a particular period or on the happening of a particular event;*

[Existing section 3(62A) to be renumbered as section 3(62)]

Revised section 3(66)

[ch. 3] 3(66) "year" shall mean a year reckoned according to the *Gregorian* calendar.

Section 3A (New)

3A. The definitions in section 3 of the following words and expressions, that is to say,[1]

.....

(i) "daughter",

do not apply to—

(a) this Act so far as it relates to the period before the.....day[2] of..... or

(b) to any Central Act or Regulation made before the .....day[3] of..... ....., 1974.

Section 4B (New)

[ch. 3] After section 4A, the following section shall be inserted, namely :—

"4B. *In every Central Act or Regulation, made on or after..... .....day of.....*[4], *where a word is defined,*

(a) *the word shall have the meaning assigned by the definition, unless the context otherwise requires ;*

(b) *grammatical variations of that word and its cognate expressions shall have corresponding meanings, unless the context otherwise requires.*

Revised section 5[5]

[ch. 3] Coming into force of enactments. "5. (1) Where any Central Act is not expressed to *come into force* on a particular day, then it shall *come into force*—

(i) *In the case of a Central Act made before the commencement of the Constitution,* on the day on which it receives the assent of the Governor-General : and

(ii) *in the case of an Act of Parliament,* on the day on which it receives the assent of the President.

---

1. List to be given.
2. Date of commencement of amended Act to be entered.
3. Date of commencement of amending Act to be entered.
4. Date of commencement of amending Act.
5. The revised sub-section (1) will apply to existing Act also.

"(2) *Where an Ordinance promulgated or Regulation made by the President on or after the.....day of.....,*[1] *is not expressed to come into force on a particular day, then it shall come into force on the day on which the Ordinance is promulgated or the Regulation is made, as the case may be.*

(3) Unless the contrary intention is expressed, every Central Act, Ordinance, or Regulation *or provision thereof* shall be construed as coming into *force* immediately on expiration of the day preceding the beginning of the day *on which it comes into force.*

(4) *The date appearing on the copy of a Central Act printed by or under the authority of the Central Government immediately after its title shall be evidence that such date is the date on which the Governor-General or the President, as the case may be, gave his assent.*"

Section 5-A (New)

[Ch. 5] Marginal note not part of enactments.

5-A. *The marginal note appended to any provision of any Central Act or Regulation, and reference to the number and year of any former law in the margin against any such provision,—*

(a) *shall form no part of the said Central Act or Regulation, as the case may be;*

(b) *shall be deemed to have been inserted for the sake of convenience only; and*

(c) *may be corrected or amended under the authority of Government.*

Section 5B (New)

[ch. 5] Headings part of enactments.

The headings of the Parts or Chapters into which any Central Act or Regulation is divided shall be deemed to be part of the Act or Regulation, as the case may be.

Revised Section 6A

[Ch. 6] Repeal of law making textual amendments in other laws.

Where any Central Act or Regulation (*other than a temporary Act or Regulation*) amends the text of any Central Act or Regulation by the express omission, insertion or substitution of any matter, and *the amending Central Act or Regulation is subsequently repealed*, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the Central Act or Regulation so repealed and in operation at the time of such repeal.

Section 6B (New)

[ch. 6]

After section 6A of the principal Act, the following section shall be inserted, namely,[2]—

Reference to Act etc, with short title amended.

"6B. *Where the short title of any enactment, being a Central Act or Regulation, is amended, then, reference to that Central Act or Regulation by its old title in any other enactment or any statutory instrument shall, unless a different intention appears, be construed as references to it with its new title.*"

Section 8(1) should be revised, and section 8(1-A) inserted, as follows :—

"8(1) Where this Act, or any 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 statutory instrument to the provision*

1. Date of commencement of amendment Act to be entered.
2. This new section can apply to existing Acts.

so repealed, or to the *provision of any former enactment repealed and re-enacted by the provision so repealed,* shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(1-A) *Where any statutory instrument rescinds and re-incorporates, with or without modification, any provision of a former statutory instrument, then references in any enactment or in any other statutory instrument to the provision so rescinded, or to the provision of any former statutory instrument rescinded and re-incorporated by the provision so rescinded, shall, unless a different intention appears, be construed as references to the provision so re-incorporated."*

Section 8-*A* (New)

[Ch. 7] Effect of expiry of temporary Act.

8-A. Where a temporary Central Act or a temporary Regulation made on or after the .....day of.....expires,[1] then, in the absence of an express provision to the contrary, the expiry shall not affect—

(a) the previous operation of, or anything duly done or suffered, under the temporary Act or Regulation ;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the temporary Act or Regulation ;

(c) any penalty, forfeiture or punishment incurred under the temporary Act or Regulation ; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the temporary Act or Regulation had not expired.

Section 8-*B* (New)

[Ch. 7] Time of expiry of temporary Acts etc.

8B. Where a Central Act or Regulation made on or after the..... day of.....is expressed[2] to expire, lapse or otherwise cease to have effect on a particular day, then it shall, unless the contrary intention is expressed, be construed as ceasing to have effect immediately on the expiration of the day immediately preceding that day.

Revised Section 9

[Ch. 8] Expressions of time.

9(1) In any Central Act or Regulation made on or after the commencement of this Act, or *in any statutory instrument made thereunder,* it shall be sufficient—

(a) to use the word "from" *or the word "after"* for the purpose of excluding the first in a series of days ; . . .

(b) to use the word "to" for the purpose of including the last in a series of days . . .

---

1. Date of commencement of amending Act to be inserted.

2. Date of commencement of amending Act to be inserted.

(1A) In any Central Act or Regulation made on or after the..... day of.....197 ,[1] *or in any statutory instrument made thereunder, it shall be sufficient—*

(a) *to use the word "on" for the purpose of including the day on which a period is expressed to begin;*

(b) *to use the word "with" for the purpose of including the day on which a period is expressed to end;*

(c) *in relation to the interval between two events—*

(i) *to use the words "clear days" or* the words "at least" or "not less than" a specified number of days, *for the purpose of excluding the days on which the events happen;* and

(ii) *merely to specify the number of days for the purpose of excluding the day on which the first event happens and including the day on which the second event happens.*

(1B). *Where in any Central Act or Regulation made on or after the.....* day of [2] or in any statutory instrument made under any such *Central Act or Regulation, a period from a specified day to a specified day is referred to, followed by the words "both days inclusive", the period shall include both the days.*

(2) Sub-section (1) 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, and to *statutory instruments made under such Central Acts or Regulation.*

Revised section 10

10(1). Where, by any Central Act or Regulation made after the commencement of this [Ch. 8] *Act, or by any statutory instrument made under any such Central Act 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 *specified* period, then, if the Court or office is closed on that day or on the last day of the specified 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 :

Provided that nothing in this section shall apply to any act or proceeding to which the *Limitation Act,* 1963, *applies.*

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

1. Date of commencement of the amending Act to be entered.
2. Date of commencement of amending Act to be inserted.

Section 10*A* (New)

After section 10 of the principal Act, the following section shall be inserted, namely :—

[Ch. 8]. Reference to time.

"10A. *Where in any Central Act or Regulation made on or after the..... day of.....197 ,*[1] *any reference to a specified time of the day occurs, then such time shall, unless it is otherwise specifically stated, mean the Indian Standard Time.*"

Revised section 13

[Ch. 8]. Gender and Number.

(1) In every Central Act or Regulation, unless the context otherwise requires, words importing the masculine gender shall include females.

(2) In every Central Act or Regulation, unless the context otherwise requires, words in the singular shall include the plural, *and words in the plural shall include the singular.*

Section 13*A* (New)

Incorporation.

"13A. *Where, by or under any Central Act or Regulation made on or after the..... ..... day of .....,*[2] *any association or body of persons is constituted a body corporate, then, unless a different intention appears, that body corporate—*

(a) *shall have perpetual succession, and a common seal with power to alter or change the seal ;*

(b) *may sue and be sued by its corporate name ;*

(c) *shall have power—*

(i) *to contract by its corporate name ;*

(ii) to acquire, hold or dispose of property, whether movable or immovable."

Section 13*AA* (New)

[Ch. 9]. Offences by companies.

(1) If the person committing an offence under any Central Act or Regulation made on or after the .....day of.....[3] is a company, then, unless a different intention appears, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Where an offence under such Act or Regulation has been committed by a company, then, unless a different intention appears, any director, manager, secretary or other officer of the company, not being a person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall, if it is proved that the offence has been committed with his consent or connivance or that the commission of the offence is attributable to any neglect on his part, also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

---

1. Date of commencement of the amending Act to be entered.

2. Date of commencement of amendment A ct to be entered.

3. Date of commencement of amending Act to be inserted.

Section 13AA *(New) Contd.*

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of persons, and

(b) "director", in relation to a firm, means a partner in the firm.

Section 13B (New)

"13B. *In the absence of an express provision to the contrary, every Central Act or Regulation made on or after the.....day of.....*197 [1], *shall be binding on the Government.*" [Ch. 10]. Government to be bound.

Section 13C (New)

13C. *In the absence of an express provision to the contrary, a debt due to the Government under any Central Act or Regulation made on or after the.....day of*[2]*..... ....., shall have priority over other debts not secured by a mortgage or charge, if the debt is in the nature of a tax or free, but not otherwise.*" [Ch. 10].

Revised section 14.

14. (1) Where, by any Central Act or Regulation made after the commencement of this Act *or by any statutory instrument made* thereunder, any power is conferred or any duty imposed, then, unless a different intention appears, that power may be exercise, *and that duty shall be performed* from time to time as occasion requires. [ch. 11]

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

Revised section 15

15. Where, by any Central Act or Regulation, *or by any statutory instrument made thereunder,* 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, if it is made after the commencement of this Act, may be made either by name or by virtue of office. [ch. 11]

Revised section 17(1).

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 executing the functions, *at the time when the Central Act or Regulation is made,* or that of the officer by whom the functions are commonly executed. [ch. 11]

Section 18A (New)

18A. *Where, under any Central Act or Regulation made on or after the ..... day of.....*[3]*, or under any statutory instrument made thereunder,—* [ch. 11]

(a) *the exercise of a power or discharge of a function by a person or authority is dependent upon the opinion, belief or state of mind of that person or authority in relation to any matter, and*

1. Date of commencement of amendment Act to be entred.
2. Date of commencement of amending Act to be entered.
3. Date of Amendment Act to be entered.

(b) *that power or function has been delegated in pursuance of such Act or Regulation or statutory instrument, then, save as is otherwise expressly provided by such Act or Regulation or statutory instrument, the power or function may be exercised or discharged by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.*

Section 19A (New)

[ch. 11] Deviation from form (New).

"19A. *Whenever a form is prescribed or specified for any act by any Central Act or Regulation, or by any statutory instrument made thereunder, then, save as is otherwise expressly provided by such Central Act or Regulation or by such statutory instrument, any deviations therefrom neither affecting the substance nor calculated to mislead, shall not render the act or form invalid.*[1]

Revised section 20

[ch. 12] Construction of statutory instruments.

20. *Expressions used in a statutory instrument made under a Central Act or Regulation shall, unless the context of the statutory instrument otherwise requires, have the same respective meanings as in the Act or Regulation.*

Revised section 21

[ch. 12] Power to amend statutory instruments.

21. Where, by any Central Act or Regulation, a power to make a *statutory instrument* is conferred, then, *unless the context otherwise requires,* that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind *the statutory instrument so made.*

Revised section 22

[ch. 12] Making of rules or bye-laws and issuing of orders between passing and commencement of Act.

"22. Where, by any Central Act or Regulation which is not to come into force immediately on the passing or *making* thereof, a power is conferred—

(a) to make a *statutory instrument,* or

(b) to issue orders with respect to—

(i) the application of the Act, or Regulation . . . .,

(ii) the establishment of any court or office, or

(iii) the appointment of any Judge or officer thereunder, or

(iv) 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 the passing of the Act or making of the Regulation, but statutory instruments or orders so made or issued shall not take effect till the commencement of the Act or Regulation, or, *where all provisions of the Act or Regulation do not come into force at the same time, then till the commencement of the relevant provision.*

Revised section 23

[ch. 12] Making of statutory instruments after previous publication.

(s. 23(1) and s. 23(3)).

23. Where . . . . . any Central Act or Regulation confers *on any authority* power to make a *statutory instrument* subject to the condition of the statutory instrument being made after previous publication, then the following provisions shall apply, namely :—

(a) the authority . . . . . shall *first* publish a draft of the proposed *instrument* for the information of persons likely to be affected thereby, *together with* a notice specifying the date on or after which the draft will be taken into consideration ;

---

1. New section 19A can apply to existing Acts also.

(b) the publication shall be made in such manner as *the* authority deems to be sufficient, (s. 23(2)).
or, *if the empowering provision in the Act or Regulation* so requires, in such manner as the Government concerned *directs ;*

(c) ..... any objection or suggestion ....., received by *the* authority .... from any (s. 23(4)).
person with respect to the draft before the date specified *in the notice shall be considered by it, and, where the statutory instrument is to be made with the* sanction, approval or *concurrence of another authority, also* by that authority, *before the instrument is finally made;*

(d) the publication in the official gazette of a statutory instrument *purporting to have been made after previous publication in exercise of a power to make such statutory instrument* shall be conclusive proof that the statutory instrument has been made in compliance with the provisions of this section.

Section 23A (New)

Publication and commencement of rules, bye-laws and general orders

[ch. 12] *23A. (1) Every rule made or bye-law approved or general order issued by the Central Government on or after the ..... day of .....*[1] *under any Central Act or Regulation—*

(a) *shall be published in the official gazette, and*

(b) *shall, in the absence of an express provision to the contrary either in the rule or bye-law or general order or in the Central Act or Regulation under which it is made or approved or issued, come into force on the day on which it is published in the official gazette.*

(2) No such rule or bye-law or general order shall come into force from a date earlier than the date on which it is made or approved or issued by the Central Government, unless the Central Act or Regulation under which it is made or approved or issued expressly confers a power to give in such effect.

Explanation.—In this section, the expresion "general order" means an order which affects the public.

Section 23B

[ch. 12] Rules to be laid before Parliament. *23B. (1) Every rule made under any Central Act by the Central Government on or after the .....day.....of.....*[2] *shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions; and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.*

Modification. (2) Every such modification or annulment shall be published in the official gazette.

Section 24

[ch. 12] In section 24, for the words "notification, order, scheme, rule, form or bye-law", wherever they occur, the words "or statutory instrument" shall be substituted.

---

1. Date of commencement of the amendment Act to be entered.
2. Insert date of commencement of amending Act.

Section 25

[ch. 14] In section 25, for the words[1] "the Code or Criminal Procedure for the time being in force", the words, and figures and comma "the Code of Criminal Procedure, 1974" shall be substituted.

Revised section 26

[ch. 14] "(1) Where an act or omission *is made punishable* under two or more enactments, the offender shall, *subject to the provisions of* sub-section (2)[2], be liable to be *punished under* any one, *but not* under *more than one*, of those enactments.

(2) Where—

(a) an act or omission constitutes an offence under one enactment, and

(b) the same act or omission, in conjunction with any other ingredient or ingredients, constitutes an offence under any other enactment or enactments, then the offender may be prosecuted and punished for each of such offences, but the aggregate of the punishments shall not exceed the punishment which could have been awarded for the most serious of the offences."

Revised section 27

[ch. 15] 27(1) "Where any Central Act or Regulation made after *the commencement of this Act or any statutory instrument made* thereunder authorises or requires any document to be served by post, whether the expression "serve" or either of the expression "give" or "send" or any other expression is used, then, unless a different intention appears, *and unless the contrary is proved*, the service shall be deemed—

(a) to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and

(b) to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(2) *Nothing in sub-section* (1) *shall apply to a letter, which the addressee has refused to accept but in such cases it shall be open to the Court to draw or not to draw any such presumption as it may think fit to draw under section* 114 *of the Indian Evidence Act*, 1872, having regard to the circumstances of the case."

Revised section 28(1)

[ch. 15] "(1) In any Central Act or Regulation, and in any *statutory instrument*, or document made under, or with reference to, any such Act or Regulation ;

(a) any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and

(b) any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained."

---

1. This can apply to existing Acts also.
2. In the alternative, the words "and the offences are not distinct" could be used in sub-section (1) instead of the words "subject to the provisions of sub-section (2)."

Section 29A (New)

[ch. 15] Saving for enactments made before amendment.

"29. *The provisions of this Act respecting the construction of Central Acts or Regulations made on or after the ..... day of .....*[1] *shall not affect the construction of any Central Act or Regulation made before that date, although the Central Act or Regulation is continued or amended by any Central Act or Regulation made on or after that date.*"

Section 30

In section 30 of the principal Act, after the word and figure "section 5", the words, figure and letter *"and section 8A" shall be inserted.*[2,3]

---

1. Date of commencement of amendment Act to be entered.
2. This is consequential on New section 8 A.
3. Section reference in this amendment (referring to effect of expiry) should be checked up if, there is a change in numbering.

MGIPRRND— 15 M of Law/74—Sec III(Day)—15—11—74—2,000