General Rules of Construction

Section 5. Coming into Operation of Enactments—(1)Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent—

(a) in the case of a Central Act, made before the commencement of the Constitution, of the Governor-General; and

(b) in the case of an Act of Parliament, of the President;

(2) [1][****]

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

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1. APPLICABILITY

As regards the words 'come into operation', occurring in s 5(1), it has been observed by PM Bakshi,[2] that the expression 'come into force' is better than 'come into operation'. The law, however, is that enactments do not always come into operation as soon as they are enacted; nor can a law be said to be in force, unless brought into force, either by legislative enactment or by exercise of authority by a delegate empowered to bring it into force.[3] The date of coming into operation of an enactment is usually postponed either because of a constitutional requirement or in terms of general law or by virtue of its own provisions.[4] Where the notification issued under s 1(c) of the Madhya Bharat Foodgrains Control Order 1948, had not specified any time and area where the order has to be in force, it was held that the order not having come into force, no conviction can be based on it.[5] In case of central enactments which do not specify any date for their coming into force but require a notification to be issued for the purpose, the date of coming into force may be set in the notification, and in case the notification has also omitted to specify such date, the enactment will come into force from the date of publication of the notification.[6]

All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving

2 *AIR Commentary on General Clauses Act*, first edn, p 162; with reference to *State of Rajasthan v Mewar Sugar Mills Ltd* AIR 1969 SC 880, 882–83, (1969) 2 SCJ 270 (Rajasthan Sales-tax Act 1954, having received assent of President on 22 December 1954, though coming into force on 1 April 1955—Rules thereunder, though framed on 28 March 1955, held to be operative as from 1 April 1955) and ss 3(13), 6–10, 12, 22 and 24 which have used the expression 'commencement' and 'in force' refer to the day on which the Act came into force.

3 *State of Orissa v Chandrasekhar Singh* AIR 1970 SC 398, 401, (1970) 1 SCJ 375; reversing *Chandrasekhar Singh v State of Orissa* (1967) ILR Cut 333, (1967) 33 Cut LT 263.

4 *Boboo Lal v State* AIR 1952 MB 143–44, 1952 Cr LJ 1216.

5 Ibid.

6 *Ramji Lal v Municipal Committee, Piparia* AIR 1959 MP 82, 1958 MPLJ 529 (FD) (CP & Berar Municipalities Act 1922, brings into effect its proposal for tax from date of publication of notification under s 67(7) of the Act); *Hem Chand v State of Vindhya Pradesh* AIR 1951 VP 39, (1951) 2 STC 147 (Vindhya Pradesh Ordinance 2 of 1949, imposing sales-tax could come into effect by ordinance, issued by chief commissioner).

retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence, the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous, effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the court has to decide whether, in the light of the surrounding circumstances, retrospective effect should be given to it or not.[7]

The Madhya Bharat Vikram University Act 1955, had conferred power on the government to appoint a day when the Act would come into force. It was held that the Act becomes a law and at least, the provisions relating to commencement of the Act and the existence of the chancellor's office become operative from the date of passing of the Act.[8]

The Supreme Court[9] holds that the Uttar Pradesh Sales-tax (Second Amendment) Act 1964, comes into force by virtue of the Uttar Pradesh General Clauses Act 1904, on 1 February 1964, ie the day on which it was published in the *Official Gazette*, and not on 25 January 1964, ie when it received the assent of the President. This is on the principle that cl (1) of this section does not apply to state Acts.

An Act may commence without having been applied.[10] The day of application of an Act to a particular area is the day of the birth of that Act in relation to that area, and the parties become entitled to its benefits when it becomes extended to that area even if such benefits be in relation to a pending appeal.[11]

The Himachal Pradesh (Transferred Territory) Tenants Protection of Rights Act 1968, being a state Act and not a central Act, the provisions of this section are not applicable to it, and the Act should be taken to have commenced from the date of its publication in the *Government Gazette*.[12] The Arbitration (Orissa Amendment) Act 1982 held to be commenced from midnight between 25 March 1983 and 26 March 1983.[13]

7 *Punjab Tin Supply Co v Central Government* AIR 1984 SC 87, 93–94, (1984) 1 SCC 206, 1984 (1) RCR 168, (1984) 1 All RC 80, (1983) 2 RLR 681, (1983) 2 RCJ 658 (SC).

8 *Rajendra Kumar Chandanmal v Government of State of Madhya Pradesh* AIR 1957 MP 60, 1957 Jab LJ 170.

9 *HLM Biri Works v State of Uttar Pradesh* AIR 1973 SC 2226, (1973) 1 SCWR 776, 1973 Tax LR 2417.

10 *State of Bombay v Salet Pragji Karami* AIR 1957 SC 517, 521, 1957 Cr LJ 884, (1957) All LJ 662 (Bombay Prevention of Gambling Act 1887 made applicable to Kutch by cl 3 of Kutch (Application of Laws) Order 1949, though it could come into force only when the notification for that purpose was issued by the chief commissioner.

11 *Kedar Nath v Kishan Lal* AIR 1952 All 500–01, 1952 All LJ 157, 1957 All WR 204 (HC) (DB) (benefit of s 15 of Uttar Pradesh Act 3 of 1943, made applicable to parties to make supplementary pleadings).

12 *Jugi Devi v Mangat Ram* 1982 Sim LC 125.

13 *BN Agarwalla v State of Orissa* (1995) 6 SCC 509.

2. PUBLICATION

In England the rule is that Acts of Parliament become law from the day on which they receive the Royal assent, and royal proclamations when they are actually published in the *Official Gazette*. However, even there it was necessary to enact a special Act of Parliament to enable such proclamations to become law by publication in the *Gazette*, though a royal proclamation is the highest kind of law, other than an Act of Parliament, known to the British Constitution; and even publication in the *London Gazette* will not make the proclamation valid in Scotland, nor will publication in the *Edinburgh Gazette* make it valid for England. It is clear, therefore, that the mere enacting or signing of a royal proclamation is not enough. That must be published before it can become law; and in England the nature of the publication has to be prescribed by an Act of Parliament. The Act of Parliament regulating this matter is the Crown Office Act of 1877.[14] That Act, in addition to making provision for publication in certain *Official Gazettes*, also provides for making rules by orders in council for the best means of making proclamations known to the public. The British Parliament has, therefore, insisted in the Crown Office Act, that the Act must be published not only in the Gazette but in certain other publications as well, if an order in council so directs, so that the people at large may know what these special laws are. The Crown Office Act directs His Majesty in Council to carefully consider the best mode of making these laws known to the public and empowers that body to draw up rules for the same and embody them in an order in council.[15]

In *Etikoppaka Co-operative Agricultural Industrial Society Ltd v Secretary Agricultural Market Committee, Narsipatnam*,[16] the government orders in question were not only issued by the government by following the procedure in vogue but also duly published in the *Official Gazette* which is deemed to be a public document. When once the government order is published in a public document, the presumption under law is that such government order is put to the notice of the general public and the public does have knowledge about the said order. Merely because the petitioners missed to notice the publication in the *Official Gazette*, it cannot be said that Government Order Ms No 416 or 412 were never issued or published by the government at any time.

In the absence of any special law or custom, it would be against the principles of natural justice to permit the subjects of a state to be punished or penalised by any law of which they had 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,

14 40 and 41 Vict, Ch 41.

15 *Harla v State of Rajasthan* [1952] SCR 110, 113, 144.

16 AIR 1999 AP 114 (DB).

it must be promulgated or published.[17] It was held in *State of Madhya Pradesh v Abdul Khalil*[18] that since the Madhya Pradesh Commodities Price Display Order 1971, as had been issued in view of the Defence of India Rules 1971, had not mentioned any date of its commencement, it came into force on the date of its publication in the *State Gazette*, ie, on 9 December 1971.

In Jaipur, during the minority of the present Maharaja, a council of ministers was brought into being by the Crown Representative. On 11 December 1923, this council passed a resolution which purported to enact the Jaipur Opium Act, but it was published neither in the *Official Gazette* nor was it made known otherwise to the public. Their lordships of the Supreme Court, speaking through Bose J, observed in *Harla v State of Rajasthan*[19] as follows:

> We are entitled, therefore, to import into this matter consideration of the principles and notions of natural justice which underlie the British Constitution, for it is inconceivable that a representative of His Britannic Majesty could have contemplated the creation of a body which could wield powers so abhorrent to the fundamental principles of natural justice, which all freedom-loving peoples share. We hold that, in the absence of any specific law or custom to the contrary, a mere resolution of a council of ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative.

An Act will come into force on the date that is fixed by the notification as provided in the Act and not at any time prior to it.[20] With regard to a notification including *masoor* as a foodgrain to which the order of 1942 applied, it was held that the said order became effective from 30 December 1942, and the publication of the order in the gazette was enough.[21] This is so on the principle that if the statute does not specify any date from which it is to commence, the omission to mention the date does not invalidate the notification and the effect of the omission would be to bring into operation the provisions thereof from the date of the publication of the notification. If, however, it requires any authority to specify a date for its commencement, the law will not come into effect until that date is fixed.[22]

17 *Harla v State of Rajasthan* [1952] SCR 110; in view of this decision, the decision in *State v Birdhi Chand* AIR 1951 Raj 25, is not good law; *Gwalior Sugar Co v State of Madhya Bharat* AIR 1954 MB 196, ('law, whether it is civil, criminal or for the matter of revenue, before it becomes effective, must be published').

18 1974 Cr LJ 1113, 1974 MPLJ 312.

19 [1952] SCR 110.

20 *State of Bombay v Norottom Jithoban* AIR 1951 SC 69.

21 *Baboo Lal Rajoo Lal Jain v Emperor* AIR 1945 Nag 218, 1945 Nag LJ 321.

22 *Ramjilal v Municipal Committee, Piparia* AIR 1959 MP 82 (FB); *State of Uttar Pradesh v Mahavir Prasad* 1966 All LJ 796, 1966 All Cr R 173; *State of Uttar Pradesh v Ratan Chand* AIR 1966 All 526 (absence of date fixed for commencement of Essential Articles (Price Control) Order 1963, rendered its provision inoperative).

When a post was vacant, the proceedings cannot be held invalid for want of attendance by the officer to the post because *lex non cogit ad impossibilia* ie, the law does not expect the impossible to be performed.[23]

3. ASSENT

The rule as to assent in cl (1)(a) applies to central Acts, ie, Acts of the Indian legislature, such as the Indian Limitation Act 1908 (since repealed by Act 36 of 1963),[24] and even to an amending Act, such as the Administration of Evacuee Property (Amendment) Act 1954,[25] and to all such Acts wherein the date of commencement is not mentioned,[26] but it has no application to state Acts. Where, by an Act of a state legislature, power is vested in the government to appoint a date from which the Act has to come into force, the Act becomes a law, and the provisions, atleast with regard to the commencement of that Act, come into force immediately on its passing.[27]

A state Act, where it has adopted the General Clauses Act 1897, for its interpretation, comes into force on the date of assent by the governor,[28] but not so when the state Act has not adopted the General Clauses Act 1897.[29]

A central Act having come into operation in terms of s 5(1)(a), need not be published in the *State Gazette* for its application to the state.[30]

There is no illegality in giving assent on a Sunday as the Sunday Observance Act[31] is not applicable to India.

The Uttar Pradesh Sales-tax (Second Amendment) Act 1964 came into force on 1 February 1964, being the date of its publication in the *Official Gazette*, and not on 25 January 1964, which was the day when it received the President's assent.[32]

23 *RK Gupta v Union of India* 1988 LIC 1126, 1153.

24 *Sonba v Muniruddin* (1913) 9 NLR 49, 53, 19 IC 518.

25 *Begum Noor Banoo v Custodian* AIR 1956 Hyd 56–57, (1955) ILR Hyd 818.

26 *Sanat Kumar Gupta v Union of India* (1974) 78 CWN 706, 709–10, (1974) 1 Cal HCN 255.

27 *Rajendra Kumar Chandan Mal v Government of Madhya Pradesh* AIR 1957 MP 60, 1957 Jab LJ 170; with reference to Madhya Bharat Vikram University Act 1955, ss 1(2) and 45; relying on *A Thangal Kunju Musaliar v M Venkatachalam Potti* AIR 1956 SC 246.

28 *Atma Ram v Madan Lal Rathi* AIR 1953 Raj 123, 1953 Raj LW 181 (DB) (s 4 of Rajasthan Premises (Control of Rent and Eviction) Act 1950 read with s 5(1) of General Clauses Act 1897).

29 *Chhajya v Board of Revenue, Rajasthan* 1954 Raj LW 550–51, AIR 1955 Raj 4073 (NUC) (DB) (Rajasthan Revenue Courts (Procedure and Jurisdiction) Act 1951, came into operation not on date of assent, but on 30 January 1951).

30 *Chunnilal Rajendra Kumar v State of Manipur* AIR 1956 Mani 25–26, 1956 Cr LJ 1008 (Essential Commodities Act 1955 came into force in Manipur, on 1 April 1955, being date of its assent by the President).

31 29 Car 2, Ch 7.

32 *Haji Lal Mahammad v State of Uttar Pradesh* (1974) 3 SCC 137, 1973 SCC (Tax) 479.

4. ASSENT COPIES

The assent copy of every central Act, signed by the Governor-General before the commencement of the Constitution, and in case of an Act of Parliament, signed by the President, is kept in the legislative department of the Government of India and constitutes the authentic text of the Act.

5. LAWS COME INTO OPERATION ON DATE OF PUBLICATION

The provisions of an Act apply from the date on which it comes into force, and unless so provided expressly by the Act, they are not retrospective.[33] When no provision is made as to when an enactment is to come into operation, the law, whether civil, criminal or revenue,[34] comes into operation on the date it is published in the *Official Gazette*.[35] However, when an ordinance itself speaks that it shall come into force 'at once' the same shall come into force on the date of its promulgation, rather than on the date of its publication in the gazette.[36]

In *Garware Nylons Ltd v Collector of Customs and Central Excise, Pune*, the letter in question issued by the Assistant Collector (Periodicals) dtd 2 January 1986, indicated that the copy of the *Gazette* containing the notification dtd 30 September 1985, after printing, became available to the public only on 1 November 1985. Therefore the effective date of the said notification was held to be 1 November 1985. Accordingly, the appellant-company was held liable to pay differential duty with effect from 1 November 1985.[37]

With regard to the Bombay or Maharashtra Acts, publication by the State of Bombay has been held to be sufficient.[38]

The notification under s 28 of the Madras Civil Courts Act, published on 2 September 1954, was held to have been made on the date of its publication though, in fact, it was made earlier.

33 *Kishori Lal v Debi Prasad* AIR 1954 Pat 70–71, 1953 BLJR 501.

34 *Gwalior Sugar Co Ltd v State of Madhya Pradesh* AIR 1954 MB 196, 205, 1954 MBLJ 1413 (HCR) (DB).

35 *Munnalal v Manak Chand* AIR 1650 MB 113; *Bandhan Singh v Mst Daulata Kaur* AIR 1933 All 152; *Hordiwari Lal v GD Tapase* AIR 1982 P&H 439, (1982) ILR 1 P&H 223, (1982) 1 SLJ 339.

36 *Girija Shankar v Lalu* AIR 1955 Raj 151, 153, 1955 Raj LW 381 (FB); but see *Kalyanam v Veerabhadrayya* AIR 1950 Mad 243, 246, 51 Cr LJ 615, (1949) 2 Mad LJ 663 (DB) (no date fixed for commencement—Act comes into force not at once but on date when assent is published).

37 AIR 1999 SC 844, 945, (1998) 8 SCC 282.

38 *Mani Lal v Chiman Lal* 8 Guj LR 1030.

6. PRINTING MISTAKE IN DATE OF PUBLICATION

The first impugned notification, under the Punjab Excise Act 1 of 1914, as in force in Delhi, declaring all spirituous preparations with more than 20 per cent pure alcohol content to be liquor for the purposes of that Act, was issued under s 3(14) on 7 December 1961. There was no specific statement on the date from which it was to come into force. Apparently, it comes into force if nothing else is said, on the date of its own publication. Controversy arose because a second notification of 13 December 1961, was issued stating that the first notification shall come into force with effect from 13 December 1961. A copy of the *Gazette* that had been produced bore the date Saturday, 9 December 1961. In that *Gazette*, was published the second notification under the date of 13 December 1961. It was, hence, contended on behalf of the petitioner, that the notification of 13 December 1961, could not come into operation as it was published five days earlier in the *Gazette* of 9 December 1961. The contention further was that the second notification was no notification and the *Gazette* in which it appeared was just a scrap of paper which lends itself to no meaning. It was sought to conclude on this basis that the first notification had never come into operation.

This discrepancy was sought to be explained from the respondent's side by stating that there had occurred a printing mistake in the press whereby the *Gazette* came to be dated 9 December 1961, whereas it should have been dated 13 December 1961, and, therefore, all this was a case of genuine printing mistake not having the result of invalidating the second notification. The petitioner pointed out that the public acts on the faith of what is stated in the government gazette, and when the petitioner read the *Gazette* of 9 December 1961, and found in it the second notification bearing the date 13 December 1961, he was entitled to treat the *Gazette* notification stating an impossible fact as irrelevant and a mere scrap of paper.

It was held that since the first notification had been issued on 7 December, and since on 13 December the rules of 1961 were also promulgated, if the petitioner had applied himself, there could be no occasion for any mistake as to the true state of affairs. The petitioner could not possibly have reached any other conclusion but that the first notification and the rule of 1961 are operative from 13 December, even with the mistake in the second notification. However, if he reads the three together, there would be no room for any mistake. This printing mistake, in the circumstances, does not invalidate the second notification or the first.[39]

39 *Pritpal Singh v Chief Commr of Delhi* AIR 1966 Punj 4, (1965) ILR 1 Punj 775, 1965 Punj LR 183 (Supp) (FB).

7. EXTENSION OF ACTS AND ORDINANCES TO NEW AREAS

Section 3 of the Pt B State Laws Act 3 of 1951 amends the Acts and ordinances specified in the schedule to that Act. The extension of such an Act or ordinance to a new area necessarily implies that such Act or ordinance has been brought into force in the area to which the Act has been extended, without the necessity of a fresh notification.[40] There is, however, a difference between the extension of a law subject to its being brought into force later, and its coming into force on a later date.[41]

The Trade Marks Act 1940, was brought into force in the whole of Mysore on and from 1 July 1948, by notification, dated 13 May 1948. Civil Areas, Bangalore, retroceded to Mysore in August 1948, and the Act was made applicable to Civil Areas from August 1948, by Retroceded Areas (Application of Laws) Act 1948. No fresh notification under s 68 of the Trade Marks Act was required.[42]

The words 'commencement of the Act' in ss 14 and 15 of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act 1947, with reference to an area to which the Act was extended by notification, must be interpreted to mean the date on which the Act becomes applicable to that area.[43]

8. LAWS COME INTO OPERATION IMMEDIATELY ON EXPIRATION OF DAY PRECEDING COMMENCEMENT

Sub-section (3) is taken from s 36(2) of the Interpretation Act 1889[44] which is based on the principle that law takes no cognisance of fractions of a day. Thus in *Commr of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh v RB Sodha Mal Kuthiala*,[45] it was held that the Income-tax (Amendment) Act 4 of 1939, came into operation at a point of time immediately on expiration of 31 March 1939, that is from 12 midnight of 31 March–1 April 1939, and the Act, which came into operation from 1 April 1939 became applicable immediately from that time. The assessee is entitled to the benefit of sub-s (4) introduced by the Income-tax (Amendment) Act 7 of 1933 as the Amendment Act came into operation at a point of time immediately on the expiration of 31 March 1939, by virtue of s 5(3) of the General Clauses Act.[46]

In *State of Uttar Pradesh & Ors v Shri Laxman Rice Mills & Ors etc*,[47] the controversy was whether the existing stock of rice on the intervening night

40 *Mahendra Bahadur Singh v State of Madhya Pradesh* AIR 1953 MB 236.
41 *Bhaiyalal Shukla v State of Madhya Pradesh* AIR 1962 SC 981, 88.
42 *Brâhmiah v Narayanaswami* AIR 1953 Mys 110.
43 *Hazarilal v Kanhaiyalal* 1953 All LJ 228.
44 52 and 53 Vict, Ch 63.
45 AIR 1966 SC 1433, (1966) 1 SCJ 607.
46 Ibid.
47 AIR 1997 SC 1020–21, (1997) 9 SCC 765.

of 30 September and 1 October 1995 was liable to levy under the Uttar Pradesh Rice and Paddy (Levy and Regulation of Trade) Order 1985. That order was issued under s 3 of the Essential Commodities Act with the concurrence of the Central Government. Clause 24 of the said order gives exemption from such levy. The rice stock existing with the rice millers as on 30 September 1995 up to that date stood exempted. While issuing the levy order, the exemption clause was not withdrawn. Therefore, the levy order was held not legal for the said limited stock on hand with the rice millers as on the intervening night of 30 September 1995 and 1 October 1995. However, the levy order was held to have become effective in respect of all purchases made and the rice procured as and from the day break of 1 October 1995.

The Kerala Agriculturists Debt Relief Act 1958, as published in the *Gazette* on 14 July 1958, commenced on the midnight of 13 July 1958.[48]

Where an ordinance, having been promulgated on 21 June 1949, had provided that it was to come into force at once, it was held to have come into force right on 21 June 1949 and not from the date when it was published in the *Gazette*.[49]

An interesting question of the applicability of s 5, Central General Clauses Act and s 22, Uttar Pradesh General Clauses Act was raised in *Adarsh Bhandar v Sales-tax Officer*,[50] in connection with a notification under the Uttar Pradesh Sales-tax Act 1948, as amended from time to time. The following are the observations of Mootham CJ, in his judgment:

> In my opinion no question of the application of section 22 of the UP General Clauses Act, for the purpose of establishing the validity of the notification issued by the governor on 31 March 1956, arises. That notification was issued in exercise of the powers 'conferred by section 3A of the UP Sales-tax Act 1948, as amended from time to time'. This can mean only that the notification was issued by the governor in exercise of the power conferred on him under the unamended section 3A. The notification was issued, in other words, under section 3A prior to its amendment by section 4 of the ordinance. In my opinion, recourse can be had to s 22 of the UP General Clauses Act, only if a notification is issued under an Act or ordinance which had been published but had not then come into force. Had the notification been issued under section 3A as in force on 1 April 1956, the position might well have been different, but it was not so issued and, as it is common ground that under the unamended section 3A, the governor had no powers to issue the notification, I am of opinion that the notification is invalid.

48 *Varkey v Catholic Union Bank Ltd* 1960 KLT 1070, 1959 Ker LJ 1155.

49 *Shanker v Lalu* AIR 1955 Raj 151, 1955 Raj LW 381.

When no Date Specified for Commencement

The prohibition envisaged in cl 3 and the direction given in cl 4 of the Essential Articles (Price Control) Order 1963, had stated that it has to come into force 'with effect from the commencement of that order'. The order as such did not give any date on which it was to come into force. Even then cl 3 had provided that the provisions were to be applicable only with effect from the commencement of the order. This had envisaged that a date had to be fixed for such commencement of the order, otherwise it would have been mentioned in the order itself that it would come into force at once or from a notified date. There was, however, nothing on the record to show that the order had come into force on 25 March 1963. There was no government notification mentioning the date from which the order was to come into force. It was held, in these circumstances, that on 25 March 1963, when the premises of the respondent were searched, it was not possible to hold that he had contravened any provision of the relevant order, since there was nothing on record to show that the order had come into force on 25 March 1963. The court rejected the contention that, as the order did not give any date on which it was to come into force, s 5(3) of the General Clauses Act applied and that it came into operation immediately on the expiration of the date preceding its commencement.[51]

In *State v Banshidhar*,[52] s 5 was not held applicable to an administrative order,[53] provided such administrative order does not affect the rights of any person. It was noticed that in the impugned Essential Articles (Price Control) Order 1963, made in pursuance of r 125 of the Defence of India Rules 1962, there was nothing to suggest that the order made by the Central Government was to come into force immediately on the publication of the said order in the government *Gazette*. Rule 141 of the Defence of India Rules provides for publication of the order in such manner as may appear to the authority, officer or person to be best adapted for informing persons likely to be affected by the order. It merely gives a discretion to the authority making the order to publish the same in the manner best suited for informing the concerned persons. Whether the mode adopted is by publication in the government *Gazette* or by beat of drums or by effecting personal service of the notice on the individuals concerned, is a matter left to the discretion of the authority making the order. The rule does not say that the order shall become effective and come into operation immediately on its publication in the *Gazette*. It was held that the only consequence of the impugned order being published in the *Official Gazette* was that it came into being as a subordinate legislation in the statute book, but it would not follow that it became law with immediate

51 *State of Uttar Pradesh v Ratan Chand* AIR 1966 All 526, 1966 All LJ 89, 1966 Cr LJ 1120.

52 AIR 1969 All 184, 1968 All WR 204 (HC), 1968 All Cr R 134, 1968 All LJ 476, 1969 (2) Cr LJ 456.

53 *S Ramachandran v Secretary to Government, Ministry of Tourism* 1974 Serv LJ 117, 121 (Del).

effect. Indeed, there are no words, express or implied, in the order itself that it was intended to enforce its provisions from the date of its publication.

In India, Acts of Central Legislature become law from the moment they are published, and the precise moment on which a statute, or a particular provision of a statute, takes effect is the moment of expiry of the day immediately preceding that on which it comes into operation, and where a statute or provision has extra-territorial effect the moment is determined for any particular territory by reference to local time.

In the case of *State v Banshidhar*,[54] it was, therefore, observed that how, when and where an order issued under the Defence of India Rules, will take effect, cannot be left to conjectures; it must appear clearly on the face of it that it is to operate with immediate effect or from some future date. Where there is no such indication in the order itself it does not become effective and cannot come into operation. It is not permissible to hold by analogy with regard to the construction of statutes that orders of this kind take effect immediately on publication in the *Official Gazette*. Such a construction, the court observed, would be nothing short of legislating by courts.[55]

9. ORDERS OF PRESIDENT COME INTO FORCE ONLY AFTER SUBSCRIBING TO OATH

An Act which comes into force on a particular day, is deemed to have come into force on the first moment of the day.[56] That is to say, the day begins directly after midnight of the preceding day.[57] However, in *Rameshwar Prasad v Ganga Prasad*,[58] the word 'date', in O 21, r 54(3) of the Civil Procedure Code, has been interpreted to mean time.

Where the Vindhya Pradesh Act 3 of 1943, expired simultaneously with the coming into force of the Amending Act of 1952, on the midnight of 30 September 1952, there was no question of revival of any dead Act by coming into force of the Amending Act of 1952.[59]

In *Brahmeshwar Prasad v State of Bihar*,[60] the question to be determined was whether Bihar Maintenance of Public Order Act 3 of 1950, was valid after the

54 AIR 1969 All 184, 1968 All WR 204, 1968 All CrR 134, 1968 All LJ 476, 1969 Cr LJ 456.

55 Section 30 of the General Clauses Act has specifically provided that the expresssion 'Central Act' or 'Act' does not include 'ordinances' for the purposes of s 5. Section 5 as an exception to s 30 has, therefore, been dealt with in a separate heading under note 3 to s 30 which may be referred to in this context.

56 *D Chenchiah v Commr of Police, Madras* AIR 1948 Mad 288, (1947) 1 Mad LJ 190.

57 *Commr of Income-tax, J&K and HP v Jodha Mal Kuthiala* AIR 1966 SC 1433.

58 AIR 1939 All 154, 1939 All LJ 89.

59 *Sarojini Devi v Rent Control and Eviction Officer* AIR 1956 All 100; *Mohd Sami v State* AIR 1960 All 218.

60 AIR 1950 Pat 265; *Sunil Kumar v West Bengal Government* AIR 1950 Cal 274, 283–84; *Anand Behari v Ram Sahai* AIR 1952 MB 31, 35–36; overruled on another point in *MSM Sharma v Sri Krishna Sinha* AIR 1959 SC 398; *Harpal Singh v State* AIR 1950 All 562, 573.

Constitution came into force on 26 January 1950. Meredith CJ, observed as follows:

> Under article 60, the President must make and subscribe an oath before entering upon his office. The same thing is apparent from the Constitution (Removal of Difficulties) Order 1, published with notification No COI in Gazette of India (Extraordinary) of 7 January 1950, which prescribes that such person as the Constituent Assembly shall have elected as President shall, before entering upon his office, make and subscribe the oath or affirmation prescribed in article 60. Notification No F 35/4/49–Public, published in the Gazette of India (Extraordinary) on 26 January 1950, shows that the Governor-General proclaimed the new Constitution at 10.15 am on 26 January. After that the President took the oath, and took his seat as President of India and assumed the office. Quite clearly the President could make no valid order until after 10.15 am on 26 January, whereas those provisions in Act 3 of 1950, repugnant to the Constitution, became void directly after midnight on 25th. It is quite apparent that the subsequent order of the President could not restore an Act which had already become void and ceased to exist.

In *Showkat-un-nissa v State of Hyderabad*,[61] Naik CJ, referred to the case of *Prahlad Jena v State*[62] of the Orissa High Court, and dissenting therefrom, observed:

> I have gone through the Orissa judgment and say with great respect to the learned judges that though by virtue of section 5, sub-section (3) read with section 3, sub-section (12), General Clauses Act, the President's order should be deemed to have come into force from the midnight of 25 and 26 January 1950, it cannot be said that under the General Clauses Act the author of the Act also is considered to have the power to make the law. The fiction applies to the law or the signature but not to the author. The exact time of signing of the order by the President may be immaterial but the exact time of the President having the power to make an enforceable law becomes material. The oath-taking ceremony may be a mere ceremony for ceremonial and administrative purposes, but for promulgating a law, the oath has an importance of its own and without oath, the President has no power to make an order which will be recognised by a court of law. A High Court judge cannot do any judicial work merely on the strength of the order of his appointment. He has to take oath of his office before he can discharge any of his judicial functions. By a legal fiction, one can consider the law as having been passed at the earliest moment of the day but it cannot be held by the same fiction, that the President had the capacity to

61 AIR 1950 Hyd 20 (FB).
62 AIR 1950 Ori 157 (FB).

make the law when the President was not the President at that time.... Coming into operation of an enactment is one thing and coming into existence of the authority to make an enactment is another thing.

10. SUB-SECTION (3): APPLICABILITY

(a) General

Sub-section (3) applies to amending Acts. Applying the same to the Income-tax (Amendment) Act 7 of 1939, it was held that the Act came into force immediately after expiration of 31 March 1939.[63]

(b) Inapplicability to Notifications and Presidential Orders

Section 5(3) of the General Clauses Act deals with enactments and the commencement of their operation as such. It does not aid in the interpretation of the provisions of law as in sub-r (3) of r 54 of O 21 of the Code of Civil Procedure.[64]

In the case of *Har Pal Singh v State of Uttar Pradesh*,[65] a Division Bench of the Allahabad High Court held that the Preventive Detention (Extension of Duration) Order passed by the President under art 22(7), read with art 373, of the Constitution does not amount to an Act of Parliament and does not come within the definition of central Act or regulation and, as such, s 5(3) of the General Clauses Act can have no application in determining the time from which the order has to come into effect. Similarly, s 5(3) would not apply to the Essential Articles (Price Control) Order 1963, promulgated under the Defence of India Rules.[66] There is a fundamental difference between an Act of Parliament and an order made under the Defence of India Rules. The Acts of Parliament are passed after a public debate in which the accredited representatives of the people have the opportunity of free discussions of the issues involved. This is not so in the case of orders issued by the executive, where decisions are made in the secret recesses of chambers to which the public has no access, and it would be shocking, if such orders were allowed to operate from the date of their publication in the *Gazette*.[67]

On the same principle, s 5(3) applies to the construction of statutes and not to any notifications made under them.[68] The Essential Articles (Price Control) Order 1963, is not a Central Act and hence, the provisions of ss 5 and 3(7) of the General Clauses Act cannot be invoked.[69] There is a

63 *Income-tax Commr of Punjab v RB Jodha Lal Kuthiala* AIR 1966 SC 1433, 1435, (1966) 1 SCJ 607.

64 *Rameshwar Prasad v Ganga Prasad* AIR 1939 All 154.

65 AIR 1950 All 562.

66 *State of Uttar Pradesh v Ratan Chand* AIR 1966 All 526, 1966 All LJ 89, 1966 Cr LJ 1120.

67 *State v Banshidhar* AIR 1969 All 184, 186.

68 *Malojirao v Matkar* AIR 1953 MB 245 (FB).

69 *State of Uttar Pradesh v Mahavir Prasad* 1966 All Cr R 173, 1966 All WR 316 (HC).

fundamental difference between an Act of Parliament and an order made under rules framed by the executive. There is no analogy between the two. The Essential Articles (Price Control) Order 1963, passed under sub-r (2) of r 125 of the Defence of India Rules 1962, does not specifically mention the time of its operation, and so it cannot be said to have come into force immediately on its publication. The only consequence of its being published in the *Official Gazette* was that it came into being as a piece of subordinate legislation in the statute book. The Acts of the Central Legislature become law from the moment they are published because the General Clauses Act says so. An order made by a subordinate authority cannot be placed on the same footing as a law passed by the Central Legislature.[70]

Retrospective operation is not to be given to the provisions of an Act unless it is so specifically provided by that Act.[71] In view of s 5 of the General Clauses Act, it was held that the Andhra Pradesh General Sales-tax Act came into force from 1 August 1963, and not from 26 September 1963, when it was published, since it has retrospective effect, because the legislature wanted it to be so.[72]

(c) Inapplicability of Time of Passing of Order by Court

Section 5(3) of General Clauses Act deals with Acts of Parliament or the Governor-General in Council and lays down that, unless the contrary is expressed, such Acts shall be construed as coming into operation immediately on the expiration of the day preceding their commencement. However, this section cannot be applied to interpret the date and time of passing, the order by a court. A transferee taking a transfer before the order of attachment passed on the same day is entitled to priority.[73]

11. POWER TO EXTEND THE ACT

When an Act has contemplated only one notification for its being brought into force in the area in which it is intended to be brought into force, the power of the government to issue any notification in that respect is exhausted by the issue of that notification, and when the same Act is intended by another Act to be brought into force in a new area, that another Act has itself to provide for that mode. Explaining this position, it has observed in *Akhtar Abbas v Assistant Collector, Central Excise, Bhopal*,[74] that the power to bring an Act into force is only a delegated power, and in case the Act is intended to be

70 *State v Banshidhar* 1968 All WR 204 (HC), 1968 All Cr R 134, 1968 All LJ 476, 1969 Cr LJ 456 (2), AIR 1969 All 184.

71 *Kishori Lal v Debi Prasad* AIR 1954 Pat 70.

72 *Guntur District Co-op Mktg Society Ltd v State of Andhra Pradesh* (1967) 20 STC 476 (AP).

73 *Rameshwar Prassad v Ganga Prasad* AIR 1939 All 154, 1939 All LJ 7.

74 AIR 1961 MP 353, 356, 1961 MPLJ 1244 (DB).

brought into force in a new area immediately, the subsequent enactment for that purpose takes away by necessary implication, the delegated power.

Approving the decision in *Agaria Osman v Kutch State*,[75] and reversing the decision of the Kutch High Court in *Salat Pragji Karamshi v State of Kutch*,[76] it has been held in *State of Bombay v Salat Pragji Karamshi*,[77] by the Supreme Court, that the contention that the Bombay Act became operative and came into force in the whole of Kutch by its mere application suffers from the infirmity, that in its application to Kutch, s 1 of the Bombay Act would have to be excluded (which would be an incorrect way of looking at the question) and that the true position is that the whole Act, including the amended s 1, became applicable to Kutch and that, therefore, a notification was necessary before it could be brought into force in any part of Kutch. It was thus held that it applied to Kutch but that its provisions were not in operation before the notification.

Where the whole of the Trade Marks Act 1940, was brought into force in the entire state of Mysore, as from 1 July 1948, but in August 1948, the Civil Area, Bangalore, had come to be retroceded to Mysore by virtue of the Retroceded Areas (Application of Laws) Act 1948, which had made the said Trade Marks Act applicable to the City Area of Bangalore, also, it was held that a fresh notification for bringing into force that Act in the Civil Area was not necessary.[78]

12. UNLESS CONTRARY IS EXPRESSED

In a case under s 261 of the Madhya Pradesh Land Revenue Code 1955, which contains provisions similar to ss 5 and 6 of the General Clauses Act, it has been held that pre-existing disputes are to be governed by the appropriate law in force at that time unless indicated to the contrary in the Code.[79]

13. POSTPONEMENT OF COMMENCEMENT OF THE ACT

Mere existence in a statute of a postponement clause affecting vested rights is not indicative of the intention of the legislature for its retrospective operation. There must be express words in the statute to that effect.[80] But in a case

75 AIR 1951 Kutch 9.

76 AIR 1954 Kutch 42.

77 AIR 1957 SC 617.

78 *CN Brahmia v Narayanswami* AIR 1953 Mys 110–11, 1953 Cr LJ 1277, 33 Mys LJ 54 (DB).

79 *Raghunath Singh v Gangabai* 1960 Jab LJ 998; *Bharat Singh Goverdhan Singh v Addl Commr, Nagpur* 1961 Nag LJ 46, 48 (rules framed under CP Land Revenue Code, although the Code repealed the Act and eventually, right of second appeal was available to the concerned person).

80 *Av PL Ct Ramanathon Chettiar v NLP Lakshman Chettiar* AIR 1963 Mad 175, (1963) 1 Mad LJ 46.

under s 13 of the Madras Civil Courts Act (as amended), a full bench of the Madras High Court held that the object of the amending Act in enlarging the appellate jurisdiction of the district court was to reduce the arrears in the High Court, and that object could be achieved only if retrospective operation was given to the amendment. The postponement of the commencement of the amending Act to a date to be notified by the state government was held to be an indication of the intention of the legislature that the operation of the amendment is retrospective.[81]

The laying down of a particular date, by virtue of the power, under s 1(3) of the Arms Act 1959, as the date of commencement of that Act, is not unconstitutional.[82] The provision in s 1(3) of the Orissa Land Reforms Act 15 of 1960, that it shall come into force on such date as the government may, from time to time, by notification appoint, by itself brings into operation the provision to postpone the commencement of the rest of the enactment. In that limited or constitutional sense the enactment comes into operation from the date on which the assent of the President was first published in the *Official Gazette*. The meaning of the expression 'in force', in art 31A(i), second proviso, and 'shall continue in force, in art 31B, has been explained with reference to s 1(13) of the Orissa Land Reforms Act and s 2(8) and (1)(ii) of the Orissa General Clauses Act. The provision in an enactment that 'it shall come into force on such date as the government may, from time to time, specify' means and implies that the Orissa Land Reforms Act was in force in a constitutional sense before its incorporation in Sch 9 as provided in s 3(1)(ii) of the Orissa General Clauses Act. Once an Act or regulation comes into force it can be struck down.[83]

14. COMING INTO OPERATION OF RULES, ORDERS ETC

In the case of Reserved Posts (ICS) Rules 1928 which are rules framed by an employer with respect to conditions of service of his employees, it was held that such rules came into force on the date on which they were framed and not on the date on which they were published in the *Official Gazette*.[84]

The Foodgrains Control Order 1942, when issued on 21 May 1942, did not include *masoor* as a foodgrain. The government, by a subsequent notification, declared *masoor* as a foodgrain. The publication of the said

81 *Ramanathan Chettiar v Lakshman Chettiar* AIR 1963 Mad 175 (FB).

82 *Atar Singh v State* AIR 1964 All 339, (1964) 2 Cr LJ 124.

83 *Chandrasekhar Singh Bhoi v State of Orissa* (1967) 33 Cut LT 263, (1967) ILR Cut 333, 9 Ori JD 41.

84 *Banarsi Das Kankan v Uttar Pradesh Government* AIR 1959 All 393; *Administrator, Howrah Municipality v Byron & Co* 1958 (2) Cr LJ 169 (Cal) (amended rule deemed to have been in existence from the original making as well as publication of the Rules, cf r 1(3) of the Prevention of Food Adulteration Rules as amended by SRO 1202 of

notification was brought for making the order effective as regards *masoor* from the date the of its publication.[85]

15. COMMENCEMENT OF ACT DISTINGUISHED FROM COMING INTO OPERATION OF THE ACT

Sub-section.3 of s 5 is indicative of the distinction between an Act coming into operation and the commencement of the Act.[86] The Supreme Court distinguished the aspect of commencement of an Act, as defined under s 3(13) of the General Clauses Act, from that of coming into operation of enactments[87] dealt with under s 5 of the General Clauses Act. Speaking for the court V Bhargava J, held:

> Obviously, an Act can only commence in a particular area on the date on which that Act comes into force in that area. The mere fact that it was in operation in other areas will not result in the Act having commenced in the area where it had not yet been applied. In this connection, notice may be taken of the language of sub-section (3) of section 5 of the General Clauses Act, where it is laid down that 'unless the contrary is expressed, a Central Act or regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement'. This sub-section clearly indicates that there is a distinction between an Act coming into operation and the commencement of the Act. The date of coming into operation is not necessarily the date of commencement. In interpreting section 2(3)(b) and (c) of the Act, we are concerned with the expression 'commencement of the Act' and not with 'coming into operation of the Act'. In view of the definition of 'commencement' given in section 3(13) of the General Clauses Act which applies to this expression as used in the Act, it has to be held that the commencement of the Act, for the purposes of the present suit, must be held to be the date on which the Act came into force in Bangalore Civil and Military Station and, consequently, only on 1 April 1937, and not earlier. The document of 1933, treated either as an agreement or a security for purposes of clauses (b) and (c) of sub-section (3) of section 2 of the Act, was made or given before the commencement of the Act and, consequently, the present suit is not a suit to which the Act can be held to be applicable under either of those clauses.[88]

85 *Babu Lal Rajoo Lal v Emperor* AIR 1945 Nag 218, 1945 Nag LJ 321.

86 *K Manickchand v Elias Saleh Mahomed Sait* AIR 1969 SC 751, 761, (1969) 1 SCC 206, (1969) 2 SCJ 147, (1969) 2 SCWR 318; *Ram Prashad v State of Punjab* AIR 1966 SC 1607, 1610 (Bank of Patiala Regulation and Management Order 1954, came into operation, on 27 February 1954, though published at later date).

87 *Abhilakh Ram v Uma Shankar* pointing out distinction between two terms respectively, in s 4(10) and s 5 of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act 1947.

88 *K Manickchand v Elias Saleh Mohd Sait* AIR 1969 SC 751.

It may be noted that the Usurious Loans Act 1918, when enacted, did not apply in the area of the Bangalore Civil and Military Station. On 11 June 1902, the Governor-General-in-Council, in exercise of the powers conferred on him, issued the Indian (Foreign Jurisdiction) Order in Council, laying down inter alia that the Governor-General may make such rules and orders for applying all or any of the provisions of any enactment in force elsewhere or otherwise. The order in Council, dated 11 June 1902, was amended by the Civil and Military Station of Bangalore (Application of Laws) Order 1937, and it was under this order that the provisions of the Act were applied to the area of Bangalore civil and military station with a minor modification of omission of sub-s (2) of s 1 of the Act.

16. SUBSEQUENT AMENDMENTS

In *Administrator, Howrah Municipality v M/s Byron & Co,*[89] it has been held that where a rule is subsequently amended, the rule must be deemed to have been in existence from the date of original making and publication of the rules.

Section 5A. Coming into Operation of Governor-General's Act— *(Repealed by the AO 1947).*

Section 6. Effect of Repeal—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made, or hereafter to be made then, unless a different intention appears, the repeal shall not:

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect 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 repealing Act or Regulation had not been passed.

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1. HISTORY

This section has been taken almost word by word from s 38(2), (English) Interpretation Act 1889.[90]

2. SCOPE AND APPLICABILITY

With regard to the precise scope of s 6, it has been observed in *PN Balasubramanian v Union of India*,[91] that the section does not save the provisions of a repealed Act, but saves only the rights and liabilities which have accrued under the repealed provisions, since such rights as have been acquired under a statute, are not necessarily taken away by repeal thereof.[92] A saving provision in a repealing statute is not exhaustive of the rights and duties so saved or the rights that survive the repeal.[93]

In the case of companies, the application of s 6 is subject to the provisions of ss 645–57 of the Companies Act 1956.[94]

In cases where a repeal is followed by a fresh legislation on the subject, s 6 of the General Clauses Act would apply generally in the absence of a special saving clause in the repealing statute, for when there is a saving clause in the repealing statute itself, then a different intention is indicated.[95] The section will apply to a case of repeal, even if there is simultaneous re-enactment, unless a contrary intention can be gathered from the new statute.[96]

90 *Karim Shah v Zinat Bibi* AIR 1941 Lah 175, (1941) 1 ILR Lah 773; *B Bansgopal v Emperor* AIR 1933 All 669, 1933 All LJ 875.

91 AIR 1975 Del 258, 262–63, (1976) ILR 1 Del 506 (DB); s 33(2) of the Foreign Exchange Regulation Act 1973.

92 *Harska Trust v State of Kerala* 1960 KLT 378, 1960 KLJ 112, 115 (DB).

93 *Bansidhar v State of Rajasthan* AIR 1989 SC 1614, 1621, (1989) 2 SCC 557.

94 *Narayan Lal Bansi Lal Raja v Maneck Phiroz Mistry* AIR 1961 SC 29, (1961) 1 SCJ 353.

95 *Qudarat Ullah v Bareilly Municipality* (1974) 1 SCC 202, AIR 1974 SC 396, 402.

96 *Tapan Chandra Deb Barma v Dulal Chandra Deb Barma* AIR 1980 Gau 3.

The High Court of Allahabad had taken a contrary view,[97] which, in view of the Supreme Court decisions,[98] is no longer good law.[99] The provisions of this section, in relation to the effect of repeal, do not ordinarily apply to a temporary Act.[1] The principle is that the rights of the parties that had accrued under the superseded enactment cannot be taken away.[2]

Section 6 does not apply to temporary enactments dying their natural death by efflux of time, and the repeal of such enactments is immaterial.[3] The scope of s 6 is limited to repeal of enactments and Regulations, but not to repeal of a State Act,[4] nor to an order issued under the Essential Supplies (Temporary Powers) Act 1946.[5] Since the right acquired and penalty incurred under a repealed provision is not affected in the absence of a contrary intention, s 6 will apply to the fresh enactment.[6] Where there has been no repeal, s 6 would have no operation. Again, s 6 will not apply when the position is governed by specific provisions of the relevant enactments themselves,[7] as for example, the adaptations made under s 293 of the Government of India Act 1935, the object whereof was not to alter the law but to bring the laws in line with the circumstances and nomenclature necessitated by constitutional changes.[8] Nor will s 6 apply to omissions, for example,

97 *Benaras Bank v Prakash Bhagwan Das* AIR 1946 All 269, 276, 1946 All WR, 21 (HC) (DB); *Danmal, Firm v Babu Ram Chhote Lal, Firm* AIR 1936 All 3, 7, 1935 All LJ 1245 (DB).

98 *Jayanti Lal v Union of India* AIR 1971 SC 1193, 1195–96, 1971 UJ 384 (SC); *Munshi Lal Beniram Jain Glass Works v SP Singh* (1971) 2 SCJ 307, 1971 Lab IC (N) 6; *TS Balaiah v TS Rangachari, Income-tax Officer Central Circle VI* AIR 1969 SC 701, 704–05, (1969) 1 SCJ 890; *State of Punjab v Mehara Singh* AIR 1955 SC 84, 88, 1955 Cr LJ 254, (1955) SCJ 25; overruling *Dan Mal v Babu Ram* AIR 1936 All 3; *Oriental Insurance Co Ltd v Sheela Ratnam* 1997 Civ CR 32 (Ker).

99 *Kashi Ram v Union of India* 1979 Cr LJ 382, 384, 1978 BLJR 854; which, to the extent of holding is no longer good law the view in *Abdul Majid v RR Nayak* AIR 1951 Bom 440, 445–59, (1951) 53 Bom LR 621 (DB); *Jayanti Lal v Union of India* AIR 1971 SC 1193; *Abdul Majid v PR Nayak* AIR 1951 Bom 440.

1 *Qudarat Ullah v Bareilly Municipality* AIR 1974 SC 396, 404; *State of Orissa v Bhupendra Kumar Bose* AIR 1962 SC 945; *S Krishnan v State of Madras* [1951] SCR 621, AIR 1951 SC 301; *Banswara Syntex Ltd v State of Rajasthan* 1995 Cr LJ 2969 (Raj); *Mohammad Iqbal Madar Sheikh v State of Maharashtra* 1996 (1) East Cr C 516 (SC).

2 *Mehboob Raza v Mohd Shah* 1979 Cr LJ 228, 234, 1978 All Cr R 394 (DB).

3 *Tenton Charles Aubrey v Kathleen May Aubrey* AIR 1947 Lah 414–15 (with reference to Indian Courts (Burma Jurisdiction) Act 1943).

4 *Bolani Ores Ltd v State of Orissa* AIR 1975 SC 17, 31, 1975 Tax LR 1208, (1975) 1 SCJ 320; reversing *Bolani Ores Ltd v State of Orissa* AIR 1968 Ori 1 (with reference to Bihar and Orissa Motor Vehicles Taxation Act 1930).

5 *Rakshya Singh v State of Bihar* AIR 1957 Pat 66–67, 1957 Cr LJ 222 (with reference to Bihar Coal Control Order).

6 *Sulemanji Gomibhai v Commr of Income-tax, Bhopal, Madhya Pradesh* 1979 MPLJ 416.

7 *Sain Ditta Mal v Union of India* AIR 1982 Del 509 (action of authorities in issuing notice on 5 August 1967, saved already by specific provisions of s 117(2) of the Gold Control Ordinance 1968 and by s 116(2) of Gold Control Act of 1968).

8 *RP Kapur v S Pratap Singh Kairon* AIR 1964 SC 295, 311.

where a particular rule has been deleted without provision for continuance of proceedings under the deleted provision.[9] Initiation of proceedings for recovery of special contribution arrears falling due when chapter 5A of Employees' State Insurance Act, was in force, subsequent to repeal of chapter 5A of Act, is permissible.[10]

Further, s 6 has no application to amendments brought about otherwise than by 'enactments.'[11]

Section 6 has no application to the repeal of statute made by Parliament in England, and the repeal of which has been brought about by the Constitution of India.[12] Provisions made under s 6 of Act would be applicable unless a different intention appears.[13]

Application by a corporation for reimbursement after repeal of s 66 of the Employees State Insurance Act 1948, but before coming into force of s 43 of the Employees State Insurance (Amendment) Act 1966 is made maintainable by virtue of the said s 43, which, read with this section, kept alive the right of the corporation to receive payment.[14]

Since s 45O of the Banking Companies Act 1949, does not repeal but only amends art 182 of the Limitation Act 1908, the same was held beyond the application of s 6.[15] An acknowledgement, not being an act done in pursuance of the legislature, is not governed by s 6.[16]

The principal question raised in a writ petition in *MM Sales and Exports (India) Pvt Ltd v State of Uttar Pradesh*,[17] was whether the Criminal Law Amendment Ordinance No 38 of 1944 was in force on 27 July 1973 when the district judge, Kanpur, passed an ex parte order attaching the petitioner's bank account under the provisions of the said ordinance. The petitioners had urged that it ceased to have effect or force after 15 August 1947 because of the operation of the India (Provisional Constitution) Order 1947 as well as the India (Adaptation of Existing Indian Laws) Order 1947. It was also urged in the alternative that the India (Provisional Constitution) Order 1947, had

9 *M/s Ajanta Paper Products v Collector* 1982 Tax LR 2966.

10 *Nogammai Cotton Mills v Regional Director Employees' State Insurance Corpn* 1994 SCC (L&S) 812.

11 *Badruddin Abdul Rahim v Sita Ram* AIR 1928 Bom 371–72, 30 Bom LR 942 (DB) (amendment brought into Bombay High Court Letters Patent not governed by s 6).

12 *State of Uttar Pradesh v Jagamander Das* AIR 1954 SC 683, 686, 1954 Cr LJ 1736, 1955 SCA 539 (FB); *Bhairabendra Narayan Bhup v State of Assam* (1956) ILR 8 Assam 379, 392 (FB).

13 *Ramesh Singh v Chinta Devi* AIR 1994 Pat 44.

14 *Century Spg & Mfg Co Ltd v Employees State Insurance Corpn, Bombay* 1979 Mah LJ 144, (1979) 1 Lab LN 273, 54 FJR 352, 1979 Lab IC 615; dissenting from: 1972 LIC 1626 (P&H); 1974 LIC 409 (Kant); and 1976 LIC 716 (Raj); *ESI Corpn v Dalmia Dadri Cement Ltd* 43 FJR 385, 1973 RLR 198.

15 *Sarkar Dutt Roy & Co v Shree Bank Ltd* AIR 1960 Cal 243, 30 Com Cas 416.

16 *Shiv Shankar Lal v Soni Ram* ILR 32 All 33, 6 All LJ 931.

17 AIR 1974 All 263, 1973 All LJ 910, 1973 All WR 586 (HC).

repealed the Ninth Schedule to the Government of India Act, including s 72 thereof, which conferred on the Governor-General the power to make ordinances in cases of emergency, which, if made during the period specified in s 3 of the India and Burma (Emergency Provisions) Act 1940, passed by the British Parliament, were to have effect as if the words 'for the space of not more than six months from its promulgation' were omitted. Hence, with the repeal of the Ninth Schedule, the ordinance in question had also lapsed. It was held:

> It is true that section 3 of the India (Provisional Constitution) Order 1947 read with the schedule attached to it shows that inter alia, the Ninth Schedule of the Government of India Act 1935 was repealed; but sub-section (2) of section 2 of this order provided that the Interpretation Act 1889 applied for the interpretation of this Order as for the interpretation of an Act of Parliament. Section 38(2)(b) of the Interpretation Act is similar in terms to section 6(b) of the General Clauses Act 1897. It provides that the repeal shall not affect the operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed. In the present case, the Governor-General, in the exercise of his powers under section 72, promulgated the Criminal Law (Amendment) Ordinance. Its continued operation will not be affected by the repeal of the Ninth Schedule aforesaid. For the petitioners, reliance was placed on the *State of Uttar Pradesh v Jagmandar Das*.[18] That case is distinguishable. There the Ordinance 12 of 1946 itself was repealed by Act 2 of 1948. It was held that after the repeal of the ordinance, no prosecution could be commenced for contravention of the provisions of the ordinance. It was also held that section 6 of the General Clauses Act will have no application to the cases where the law had been repealed or had suffered a natural death. In the present case, the ordinance had not been repealed by any subsequent enactment. Since it had not suffered a natural death, section 38(2)(b) saves the continued operation of the ordinance.

It was observed further that the ordinance was an 'existing law' as defined under art 366(10), and was continued in force under art 372 of the Constitution of India.[19]

Section 6 applies in case of express repeal also, even if the repealing Act has contained no specific provision.[20]

18 AIR 1954 SC 683, 1954 Cr LJ 1736.

19 The ordinance in question has not been repealed even by enactment of the new Code of Criminal Procedure 1973, which came into force on 1 April 1974. Section 484 of the new Code has repealed only the Code of Criminal Procedure (5 of 1898), but the High Court has made no observation on this point.

20 *Commr of Income-tax, Punjab v Bipan Lal Kathuria* 1971 Tax LR 303, 305, 83 ITR 182 (DB); *C Doroiswami v Tax Recovery Officer, Coimbatore* 1975 Tax LR 797, 799, 99 ITR

continued on the next page

The operation of s 6 of the General Clauses Act, in making pending proceedings continued to be regulated by the old procedure, is limited to cases in which the change in the law is the result of repeal of the old enactment and does not extend to cases in which it is due merely to an addition to it.[21] The general rule is well established that an amendment of an Act of the legislature during the currency of a suit is irrelevant, and the rights of the parties are governed by the Act as it existed at the time when the suit was started.[22] Accordingly, it has been held in *Union of India v Dr Maqsood Ahmad*[23] that where an application for review had been made prior to the repeal of the relevant provision dealing with the power of review, and it was pending when the repealing legislation was enacted, that application was saved and could not be affected by the repeal. In the absence of any special provision being made in respect of pending matters, the ordinary rule contained in this section must necessarily apply. Similarly, where an order for eviction was made under cl 9 of the Travancore-Cochin Buildings (Lease and Rent Control) Order which was subsequently repealed by the Kerala Buildings (Lease and Rent Control) Act, it was held that the repeal effected by the Act would not affect the order for eviction obtained under the repealed order.[24]

Santhal Parganas Justice Amendment and Miscellaneous Provisions Regulation 1974, has been held to be a Bihar and Orissa Act for purposes of s 8(c) of the Bihar and Orissa General Clauses Act 1917, corresponding to s 6(c) of the General Clauses Act 1897.[25]

The omission of a provision has the same effect as the repeal of that provision.[26] But the expression 'unless a different intention appears' is the key to attract the provisions of that section. There is no presumption in favour of the legislature to have intended to make any substantial alteration in any existing law beyond what that law has expressly declared.[27] It is only in the absence of a contrary intendment in the repealing Act that s 6

494 (FB); with reference to s 280T of Income-tax Act 1961 involving applicability of s 6 to recovery proceedings for liability incurred before 1 April 1967: *Nazir Mohammed v Jamila Bibi* 1971 Tax LR 1327, 1329, 85 ITR 342 (Ori) ban on disclosure of information confined only to banking companies in consequence of omission of s 137 and substitution of s 138 in Income-tax Act 1961, vide Finance Act 1964.

21 *Mohinder Singh v Mst Harbhajan Kaur* AIR 1955 Punj 141.

22 *Bakor Moti v Ishvar Moti* AIR 1935 Bom 257, 259; *Rama Krishna v Sithai Ammal* ILR 48 Mad 620, AIR 1925 Mad 911; following *Bhagabai v Narayan Gopal* ILR 31 Bom 552; but not following *Dhan Ram Ragho v Ganpat Sadashiv* ILR 27 Bom 96; *Life Insurance Corporation v M/s Narsingh Dass Surajmal* 1969 RCJ 993 (Del) (new Act modifying old and modification creating new rights—pending cases to be governed by old Act).

23 AIR 1963 Bom 110.

24 *Narayana Shenoi v Subordinate Judge of Cochin* (1963) ILR 1 Ker 402, 1963 Ker LJ 170; *KS Shafeeq v Mohammadi Begum* AIR 1964 AP 398.

25 *Peshan Shaikh v Emperor* AIR 1948 Pat 234, 49 Cr LJ 318.

26 *Ram Chandra v State of Rajasthan* 1972 Cr LJ 1386–87, 1972 Raj LW 272.

27 *AC Sharma v Delhi Administration* AIR 1973 SC 913, 917, 1973 Cr LJ 902, (1973) 2 SCJ 269.

can step in.[28] However, the silence of the repealing Act cannot be taken to be an indication of a contrary intention.[29]

The provisions of s 49(1) of the Orissa Estates Abolition Act being supplementary to s 5 of the Orissa General Clauses Act 1897, the latter was held to apply on repeal of the Madras Estates Land Act in a particular area in south Orissa.[30]

Property in sandalwood trees was reserved to the sovereign of the State of Sandur under the Sandur Forest Act of 1943. On the merger of the state in the Dominion of India the territory of Sandur became part of Bellary District and the Sandur Forest Act was accordingly repealed and the law applicable to the territory of Sandur was the Madras Forest Act of 1882. In 1953, the District of Bellary, inclusive of the territory of the former State of Sandur, became part of the State of Mysore whereafter the Mysore Forest Act 1900 was extended to Bellary District. Neither the Madras Forest Act nor the Mysore Forest Act had contained any provisions similar to those in the Sandur Forest Act reserving the property in the sandal trees in the sovereign. It was held that there was a contrary intention in the Madras and Mysore Forest Acts, and the rights under the Sandur Forest Act were not saved and hence s 6 did not apply.[31]

Section 6 of the General Clauses Act only refers to that Act, or a central Act or regulation as repealing that enactment. Rules have been made by the President in exercise of the powers conferred by the proviso to art 309 of the Constitution. They are statutory rules but do not constitute 'central Act', 'enactment' or 'regulation' within the meaning of ss 3(7), (19) and (50) of the Act.[32] 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 words 'repeal' in the later statute.[33]

There is no reason to apply s 6 only to art 395 of the Constitution where the word 'repeal' is used and not to other articles where different expressions have been used, when the substance and connotation of the expressions are the same.[34]

28 *Chironjilal Ramjibhai & Co v Chunarmal Motiram & Co* 1976 MPLJ 33.

29 *Gopal Krishna Nair v R Sarasamma* AIR 1980 Ker 109, 1979 KLT 810.

30 *Ram Krishna Deo v Collector, Koraput* AIR 1957 Ori 263, (1956) ILR Cut 721.

31 *State of Mysore v Madanappa* (1976) 2 Kant LJ 297.

32 *Raj Bahadur Mathur v Union of India* (1972) 1 Cut WR 543, *Kalyani Industries Ltd v State of Bombay* (1962) 3 Guj LR 36, 39 (s 6 not applicable to government orders).

33 *Cantonment Board, Mhow v Madhya Pradesh State Road Transport Corpn* AIR 1997 SC 2013, (1997) 2 JLJ 70 (SC); *State of Orissa v MA Tuloch & Co*, AIR 1964 SC 1284, (1964) 4 SCR 461.

34 *Re Keshav Madhav Menon* AIR 1951 Bom 188, 190 (FB).

Since the saving clause in the Central Civil Services (Conduct) Rules of 1954, did not contain any saving with regard to the continuation of proceedings for violation of rules of the Central Civil Services (Conduct) Rules of 1955, it was held that s 6 did not apply to the 1955 rules after their repeal. Such rules as being framed under art 309 of the Constitution were not Central Acts or regulation.[35]

A rule of limitation is not a rule of substantive law, and the same is, therefore, not preserved by s 6.[36] Treaty between rulers to establish new sovereign is an act of state and it is not capable of enforcement in courts of new sovereign.[37]

Section 6, it is said,[38] does not cover various sections of the Displaced Persons (Compensation and Rehabilitation) Act 1954.

3. REPEAL

(a) Object and Effect of Repealing or Amending Act

A repealing and amending Act is in the nature of a legislative scavenger. Its sole object is to get rid of a certain quantity of obsolete matter.[39] The word 'repeal' connotes the abrogation of one Act by another,[40] which is the same thing as omission of certain provisions of an Act by a subsequent Act,[41] there being no difference between 'repeal' and 'cancellation'.[42] A special saving clause dealing with the effect of repeal serves as an exception to the general rule that the normal effect of repeal is to obliterate the repealed Act from the statute book as if it had never been passed.[43] The normal effect of repealing a statute is to obliterate it from the statute-book as completely as if it had never been passed—it must be considered as a law that never existed.[44] This principle is equally valid in case of implied repeal of a statute or a section.[45] Section 6 of

35 *Raj Bahadur Mathur v Union of India* 1972 Lab IC 1206, (1972) 1 Cut WR 543.

36 *Arayikali Amma v Palappakkara Manakal Sankaran Nambudripad* (1911) ILR 34 Mad 292–93, 20 Mad LJ 347.

37 *State of Haryana v Amar Nath Bansal* AIR 1997 SC 718.

38 *Banarasi Dass v Om Prakash* AIR 1957 Punj 300–01, 59 Punj LR 40 (DB).

39 *Mohinder Singh v Mst Harbhajan Kaur* AIR 1955 Punj 141.

40 *Showkat Unnisa Begum v State of Hyderabad* AIR 1950 Hyd 20, (1951) ILR Hyd 237 (FB).

41 *KK Angappan v Income-tax Officer* [1974] 94 ITR 397, (1973) ILR 3 Mad 606.

42 *Devanagar Subbamma v Government of Mysore* (1948) 53 Mys HCR 32 (DB); but see *Habibullah v Crown* AIR 1955 NUC 5449 (Lah) (s 6 does not save effect of cancellation).

43 *Sadasheo Jagannath Barapatre v Hemaji Hiraman Bakde* AIR 1958 Bom 507, 509, 61 Bom LR 1141.

44 *Kamakhya Narain Singh v State of Bihar* AIR 1981 Pat 236.

45 *Indian Tobacco Co Ltd v Commercial-tax Officer* AIR 1975 SC 155, 1975 Tax LR 90, 35 STC 95, (1975) SCC (Tax) 49, (1975) 3 SCC 512; relied on in *DC Jain v University of Jodhpur* AIR 1977 Raj 89, 1976 WLN 820; *Gajraj Singh v State Transport Appellate Tribunal* AIR 1997 SC 412.

the General Clauses Act provides an exception to this rule.[46] It is also to be understood that the repeal of an Act means revocation or abrogation of the Act and s 6 of the General Clauses Act applies even in the case of a partial repeal or repeal of part of an Act.[47]

The provision of sub-s (3) of s 97 of the amending Act of CPC is subject to the provision contained in sub-s (2) thereof, which is a saving provision. It saves certain suits, appeals, proceedings etc, as mentioned therein, from the application of the provision of the amending Act of 1976, and such proceedings have to be disposed of and the matter enumerated therein has to be dealt with in accordance with the pre-amendment provision. It further provides that the saving shall be without prejudice to the generality of the provisions contained in s 6 of the General Clauses Act. If any right is saved even after the repeal under s 6 of the General Clauses Act, with regard to that also the amended provision will not apply. The provision of sub-s (2) of s 97 of the amending Act or the provision of s 6 of the General Clauses Act is not attracted in a case where an objection or claim filed prior to coming into force of the amending Act was disposed of subsequent to the enforcement of the amendment provision.[48]

A repeal is definitely not the same thing as the transfer of an item from one place to another in the same statute.[49]

'Repeal' and 'amendment' are not mutually exclusive[50] because substitution by legislative enactment of a provision naturally involves repeal of the old provision.[51]When the legislature has amended an Act by deleting something from it, such deletion ought to be construed as deliberate.[52]

A repealing enactment which imposes an impossible condition on pain of forfeiture of a vested right cannot be given retrospective effect.[53]

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46 *Sadasheo Jagannath Barapatre v Hemaji Hiraman Bakde* AIR 1958 Bom 507.

47 *Ekambarappa v Excess Profits-tax Officer* AIR 1967 SC 1541.

48 *Dulhin Sundarpati Devi v Ram Surat Koeri and Ors* AIR 2000 Pat 1, 8–9 (FB).

49 *Union of India v Alok Exports* AIR 1980 Bom 280 (Item 77(ii), Pt B, Sch 1 to Export (Control) Order 1977, transferred to Pt A of that schedule by amending order).

50 *Allied Exports and Imports, Gudur, Nellore v State of Andhra Pradesh* AIR 1971 AP 218, 226, 1971 Tax LR 750, (1971) 2 Andh LT 163 (FB).

51 *C Rajalakshmi v Assistant Controller, Estate Duty, Hyderabad* (1972) ILR AP 480, 491.

52 *Mangla Prasad Jaiswal v District Magistrate* AIR 1971 All 77, 1970 All LJ 1122; *Dandapani Patnaik v State of Orissa* AIR 1962 Ori 17, (1961) 3 OJD 238 (DB) (Orissa Municipal Act 1950, as amended by Orissa Act 19 of 1951—power to adapt to notified area in the context of s 417B—expression 'adapt to notified area' held limited to making formal or verbal alterations in Act in order to apply same in new set-up in the notified area); *Hari Vishnu Kamath v Election Tribunal, Jabalpur* AIR 1958 MP 168, 1958 MPLJ 426 (DB); *Janardan v Hira Lal* 1957 MPLJ 170; *Amar Nath v Deputy Custodian General, Punjab* AIR 1963 Punj 225, 227, (1962) ILR 1 Punj 524 (DB); *JK Industries Pvt Ltd v Ganges Mfg Co Ltd* (1968) 72 CWN 618, 620 (Companies Act 1956, as amended in 1960, making change in language of s 349(4)(1)).

53 *Vishanji v State of Bihar* 1960 BLJR 693, (1961) 2 STC 226, 229 (DB).

Repeal has been held to be a matter not of form but of substance.[54]

A case from Orissa,[55] relating to Orissa Tenancy Relief Act 1955, repealed by Orissa Land Reforms Act 1960, holds that the 1955 Act operated beyond its temporary life with a view to giving effect to matters covered in cll (a)–(e) of s 5 of the Orissa General Clauses Act 1937.[56]

There may be amendments in order to make a doubtful point clear,[57] and the legislature may add or delete expressions in order to make the position clear.[58] Moreover, there can be amendment in order to create an independent cause of action. For example, when the expression 'non-delivery' has been omitted in s 77B of the Railways Act 1890,[59] the result, since amendment of s 77B in 1961, is to make non-delivery a distinct cause of action from loss of goods.[60]

A rule inadvertently continued after the amendment of a substantive provision is of no use and it is thereafter the amendment and not the rule which prevails.[61]

In case of repugnancy between the amending statute and the central theme in the original Act, the latter alone shall prevail.[62] A general repealing clause stating in terms that all inconsistent enactments shall stand repealed, does not mean repeal of all enactments in conflict with the Act containing such repealing clause but means that the latter Act shall have predominance over the earlier ones.[63]

The repeal of an enactment does not have the effect of creating a new provision in or altering the interpretation of another law.[64] The repealed Act does not have the effect of reviving its predecessor rules.[65]

If the actual payment was made after coming into force of the new Motor Vehicles Act 1988, the mere fact that the accident was before the new Motor Vehicles Act does not matter.[66]

54 *State v Dakarapu Ramaswami* 1958 Andh WR 79, (1958) ILR AP 383, 394 (DB).

55 *Chaitan Sahu v Dwijahar Pradhan* (1972) 38 Cut LT 1250, (1972) 2 Cut WR 1746, 1758–61.

56 The above case has followed the ratio in *Tarak Chandra Mukherjee v Ratan Lal Ghosal* AIR 1957 Cal 257; *Brihan Maharashtra Sugar Syndicate Ltd v Janardan Ram Chandra Kulkarni* AIR 1960 SC 794; *State v Dhanraj Mills Ltd* AIR 1960 Bom 453; *TS Balaiah v TS Rangachari, Income-tax Officer Central Circle VI* AIR 1969 SC 701; *Gujarat Electricity Board v Shanti Lal R Desai* AIR 1969 SC 239.

57 *Kalipada Banerjee v Sree Bank Ltd* AIR 1960 Cal 285, 64 CWN 207 (DB).

58 *Pothula Subba Rao v State of Andhra Pradesh* (1972) ILR AP 548, 30 STC 69 (DB).

59 Now Railways Act 1989.

60 *Union of India v Jetmall Sukanraj* AIR 1972 Mad 134, (1971) 2 Mad LJ 257.

61 *V Sharoop Sunder v Regional Transport Authority* AIR 1973 Mad 245, (1972) 2 Mad LJ 28.

62 *Commr of Sales-tax, Bihar v Basta Colla Colliery Co Ltd* 1966 BLJR 438, 441 (DB).

63 *Cochin Devaswom Board v Vijayan* 1967 KLT 254, 1967 Ker LJ 277, 279 (wrt s 132 of Kerala Land Reforms Act 1964).

64 *Shyam Lal Tulsiram v IG Municipalities* 1961 MPLJ 1011, 1961 Jab LJ 1327.

65 *Ravi Paul v Union of India* (1995) 3 SCC 560.

66 *New India Assurance Co Ltd v Thankam* 1995 (2) TAC 97 (Ker).

By repeal of the Act, previous operation of said Act would not be affected. Such repeal will not affect anything duly done or suffered thereunder.[67]

Unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes place or affects the previous operation of any enactment so repealed, or anything duly done or suffered thereunder, or affects any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.[68]

(b) Repeal of State Act by Central Act: Essential Features

In *Custodian of Evacuee Property v Abdul Shakoor*[69] the Supreme Court has pointed out that where the repealed state Act provided substantially for all matters contained in the central Act affecting the repeal, there is a correspondence between the two Acts, and the earlier Act would thus stand repealed, and that it is not necessary that there should be complete identity between the repealing Act and the Act repealed in every respect. Following the above decision, the Supreme Court, in *Abdul Kadir v State of Kerala*[70] laid down that all that we have to see is whether the repealed law substantially provided for the same matters as the central Act even though they may not be identical in all respects. The same view was reaffirmed by the Supreme Court in *Anant Prasad v State of Andhra Pradesh.*[71]

In the latter case, there were two Acts, namely, the Charitable Endowments Act 6 of 1890 and the Charitable and Religious Trusts Act 16 of 1920. It was contended that because of the application of these two Acts to the then Pt B state of Hyderabad, the regulations must be deemed to have been repealed in view of s 6 of the Pt B States (Laws) Act. The Supreme Court rejected that contention, holding that Act 6 of 1890, definitely excluded religious public trusts from it. The regulations dealt with two kinds of trusts, namely, public religious trusts and trusts for purposes of charity and public utility. In that case, they were concerned with a public religious trust which was specifically excluded from the purview of Act 6 of 1890 and that therefore whatever might be the effect of Act 6 of 1890 on that part of the regulations which dealt with public trusts other than religious trusts, there was no doubt that the regulations insofar as they applied to religious trusts, could not be held to have been repealed by the application of Act 6 of 1890 to the then Pt B state of Hyderabad, for the regulations, when they dealt with religious trusts, would not be a law corresponding to Act 6 of 1890. The Supreme Court therefore

67 *Parayankandiyal Eravath Kanapravan Kallini Amma v K Devi* AIR 1996 SC 1963, (1996) 4 SCC 76.

68 *Kamlakant D Naik v Collector of North Goa* 1996 (3) Bom CR 131.

69 AIR 1961 SC 1087.

70 AIR 1962 SC 922, 925.

71 AIR 1963 SC 853.

held that the application of Act 14 of 1920 to the then Pt B state of Hyderabad could not be said to have repealed the regulations by virtue of s 6 of the Pt B States (Laws) Act 1951. The Supreme Court took this view, as a perusal of s 6 of Act 14 of 1920 showed that it was confined to a very limited purpose, whereas the regulations were a much wider enactment and Act 14 of 1920 did not cover the entire field.

The decisions of the Supreme Court make it clear that the law repealed should substantially provide for the same matter as the central Act even though it may not be identical in all respects, and that it must cover the entire field which was covered by the law sought to be repealed. Applying the principle laid down in the three decisions of the Supreme Court, it is clear that unless the entire field is covered by the Central Act, there will be no repeal under the Pt B States (Laws) Act. The Indian Succession Act 1925, as it stands, does not purport to legislate so far as Indian Christians in the State of Travancore are concerned, and does not, therefore repeal the Christian Succession Act (Regulation 2 of 1092 of Travancore).[72] Similarly in the absence of notification under s 1(3) of Chit Fund Act 40 of 1982 the UP Chit Fund Act cannot be said to have been repealed by s 90 of aforesaid Act 40 of 1982.[73]

(c) Effect of Repeal on Subordinate Legislation

When a statute, under which bye-laws are made, is repealed, those bye-laws also stand repealed and cease to have validity, unless preserved by the repealing statute itself.[74] Same is the fate of an order made under an enactment lapsing by efflux of time.[75]

But, the general rule of repeal, that when a parent Act is repealed all laws made thereunder also stand repealed, cannot be applied to laws made under a Constitution Act. Such a law has to be expressly repealed if it has to be effaced. In the case of subordinate legislation, the emanating law dies unless saved, but a law made under a Constitution Act survives till expressly repealed.[76]

It was held in *Ramesh Chander v Supt of Customs*,[77] that s 116(2) of the Gold (Control) Act 1968, had contained nothing as to have saved the liabilities incurred under the Defence of India Rules 1962, which had been repealed by the Gold (Control) Rules 1962 which, in turn, was repealed by the Gold

72 *D Chelliah Nadar v G Lalita Bai* AIR 1978 Mad 66.

73 *M/s Jupiter Chit Fund Pvt Ltd v State of Uttar Pradesh* 1986 All LJ 710.

74 *Harish Chandra v State of Madhya Pradesh* AIR 1965 SC 932, (1965) 2 Cr LJ 24, (1965) 2 SCJ 649; *Government of Andhra Pradesh v East India Commercial Co Ltd* AIR 1957 AP 83, 87, (1957) 1 Andh WR 144 (FB); *Union of Burma v Maung Maung* 1949 Bur LR 1, 8 (HC) (FB).

75 *Alapathi Ramamurthi Gelli Krishnamurthi & Co v Maddi Seetharamayya* AIR 1958 AP 427, (1957) 2 Andh WR 503 (DB).

76 *Mohan Agarwal v Union of India* AIR 1979 All 170, 172, 1979 All LJ 304; *Atiqua Begum v Abdul Magni* AIR 1940 All 272, 1940 All LJ 274.

77 1975 Cr LJ 739, 743–44 (DB).

(Control) Ordinance of 1968. The result was that no action under r 126M of Defence of India Rules 1962, as amended in 1969 or r 176(16) of the Gold (Control) Rules 1962, could be taken against a person in 1969.

Where the control order itself was for a short period, the trial court cannot be expected to complete the trial within that period and can continue the trial despite the expiry of such period.[78]

(d) Repeal: When it Takes Effect

It is obvious that when an old Act is repealed by a new Act, there is always a period of changing over, and almost invariably a saving clause is added in the new statute in order to ensure a smooth change-over. It would be preposterous to believe that the legislature wanted to break the continuity in the enforcement of the procedural steps. It is open to the legislature to frame the saving clause in such a manner as to keep the old Act in force till the demarcation of the local areas and the appointment of the local authorities, but the faults of draftsmanship cannot be permitted to reduce the provisions of an Act to an absurdity. It is a settled law that repeal of an old statute does not repeal such portions of the statute as have been incorporated into another statute. Even if the original Act is repealed, the incorporated section or sections still operate in the later Act.[79] When an Act is repealed by another, whether in part or whole, or when some provisions of an Act are substituted by those in another, the repealed Act or provisions thereof, as the case may be, remain in force until the new Act or the substituted provisions therein are brought into operation.[80] When an Act provides that the provisions thereof, except certain specified provisions, would come into operation in any specified area by a notification of the appropriate government extending such provisions to that area, then those provisions shall not so come into operation in that area, until such notification has been issued.[81] When a subsequent notification supersedes an earlier one, the supersession can become effective from the date of the subsequent notification which cannot abrogate the earlier notification retrospectively as from the very date of its commencement.[82] When a claim petition was filed after the Motor Vehicles Act 1988 came into force, the period of limitation shall

78 *Isher Das v State of Haryana* AIR 1992 SC 1595.

79 *Municipal Board, Lucknow v Ram Autar* AIR 1960 All 119, 121–22, 1960 Cr LJ 199.

80 *Ram Dayal v Shankar Lal* AIR 1951 Hyd 140, 151, (1951) ILR Hyd 689 (FB).

81 *G Rajgopalachar v Government of Mysore* AIR 1952 Mys 103, (1951) ILR Mys 532 (s 41 of Legal Practitioners Act 1879 and ss 3–16 of the Bar Councils Act 1926, could not apply in Mysore in the absence of a notification contemplated under Pt B States (Laws) Act 1951).

82 *RS Anand Behari Lal v United Provinces Government* AIR 1955 NUC 2769 (All) (DB) (s 3 of Works of Defence Act 1903); *Atar Singh v State* AIR 1964 All 339, (1964) 2 Cr LJ 124, 1963 All LJ 1108 (ss 1(3) and 46 of the Arms Act 1959, repealing Arms Act 1878–59 Act came into operation not earlier than 1 October 1962–78 Act stood repealed only on 1 October 1962 and not earlier).

apply as provided in the said Act and not under the old repealed Act, even though the date of accident is prior to the coming into force of the new Motor Vehicles Act 1988.[83] Any legal proceeding which was pending under any repealed law may be continued or enforced.[84]

Repeal of provision is distinguished from deletion of provision.[85]

If amendment does not state that deletion will have a retrospective effect, then that deletion does not take effect from a certain earlier date.[86]

(e) Repeal of Subordinate Legislation

Section 6 does not deal with repeal of subordinate legislation. However, s 6 has been applied to r 126P of the Defence of India (Amendment) Rules 1963, so as to continue proceedings against a person under that rule notwithstanding the repeal of the said Rules.[87]

(f) Amendment and Repeal

Repealing or amending Acts have the object of legislative spring-cleaning.[88] They are passed in order to excise dead wood from the statute books and to bring about minor amendments mostly of a verbal nature,[89] not necessarily to remove lacunae but often *ex majori cautelo*.[90] The purpose may even be clarificatory,[91] though its effect, in construction, is that the amended statute has to be understood in the sense as amended, as if the amendment were read from the beginning of the statute so amended.[92]

A statute repealing and re-enacting the provisions as have been there, prior to such enactment, often uses in its preamble the words 'to consolidate and amend',[93] implying thereby a twofold effect to repeal and enact.[94]

An amendment may sometimes be necessitated by the decision of a High Court.[95] The validity of each of the amending Act and the parent Act has to

83 *Vinod Gurudas Raiker v National Insurance Co* 1992 (2) BLJR 816.
84 *Kamil v State of Uttar Pradesh* 1994 Cr LJ 1491 (All).
85 *Navrangpura Gam Dharmada Milkat Trust v Ramtuji Ramaji* AIR 1994 Guj 75.
86 *National Oxygen Ltd, Madras v Tamil Nadu Electricity Board* AIR 1996 Mad 229.
87 *Assistant Collector, Central Excise and Customs v Namdev Jayaram Jadhav* 1973 Cr LJ 371, 30 Bom LR 942 (DB).
88 *Shalulameedu v Sufaida Beevi* 1969 Ker LR 1975, 1082.
89 *Khuda Bux v Manager, Caledonian Press* AIR 1954 Cal 484–85, 58 CWN 560.
90 *State of Bombay v Devalbhai Narayanbhai* (1959) 61 Bom LR 1247, 1258.
91 *Jaisee Ram v Deputy Director of Consolidation* (1970) ILR 2 All 540, 542.
92 *Management of Burhanpur Tapti Mills Ltd v Industrial Court, Madhya Pradesh* AIR 1965 MP 43, 47, 1964 MPLJ 304 (DB).
93 *KP Condayi v Sales-tax Officer* AIR 1967 Ker 47–48, 1966 KLT 309.
94 *Prabhu Dayal v State* 1968 All WR 207 (HC), 1068 All Cr R 139.
95 *Ganpat v Sashikant* AIR 1978 SC 955, 959, 1978 (1) RCJ 511, 1978 UJ (SC) 218, (1978) 19 Guj LR 502, (1978) 1 RLR 655, (1978) 2 SCC 573, 1978 Mah LJ 550, 1978 (2) RCR 187; reversing *Shantabai Vishnumal v Ganpat Lodha* AIR 1976 Bom 288; Bombay Rents,

continued on the next page

be judged independently. In case the amending statute is a complete code, it is not rendered invalid merely because the parent Act has been rendered invalid.[96]

(g) Repeal and Re-enactment

Cases of repeal followed by simultaneous re-enactment fall within the purview of s 6,[97] unless there is an intention to the contrary[98] and unless the new legislation has a manifest intention incompatible with the application of a particular section. Such incompatibility is not to be determined by mere absence of a saving clause but from a consideration of all the relevant provisions of the new law.[99]

The repealing and re-enacting statute may contain certain saving clauses with a view to maintain certain existing arrangements or essential provisions in the repealed enactments either specifically or by necessary implication,[1] either for a short or a long term. Where certain tribunals had been set up under the Criminal Law Amendment Ordinance 29 of 1943, as amended by Ordinance 52 of 1944, such tribunals, by a further Ordinance 22 of 1945, were invested with the power to try offences under the Defence of India Rules Ordinance 52 of 1944, repealed by Ordinance 1 of 1946 that contained, in s 3 thereof, a saving clause. It was held,[2] that the tribunal created under the 1944 ordinance, did not cease to exist.[3] Section 6 would apply in the absence of express saving clause because it deals with the effect of repeal and extends its principle to apply to amendments of prior enactments also.[4]

In repealing and re-enacting statutes, the salutary principle of construction, as stressed in *Mutha Manickchand v Commercial-tax Officer*,[5] is

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Hotel and Lodging House Rates Control Act 1947, as amended in Gujarat, substituting s 11(c)(i) thereof in view of Gujarat High Court decision in *Parubai Manilal Brahmin v Baldev Das Zaverbhai Tapodhan* (1964) 5 Guj LR 563 in order to make the substituted provision applicable to residential premises and not to business premises; overruling *Danji Mohan Lal Lavji v Muktabai Shamji* (1971) 12 Guj LR 272.

96 *Daru Khan v Mohan Bhagat* AIR 1966 Pat 425, 429, 1966 BLJR 723 (DB).

97 *Tapan Chandra Deb Barma v Dulal Chandra Deb Barma* AIR 1980 Gau 3–5.

98 *State of Punjab v Mohar Singh Prasad Singh* AIR 1955 SC 84, 89, 1955 Cr LJ 254, 1955 SCA 609; *R Balkrishna Pillai v State* 1996 Cr LJ 757 (Ker).

99 *Munshi Lal Beniram Jain Glass Works v SP Singh* (1971) 2 SCJ 307, 1971 Lab IC (N) (6); *Bhavaraju Venkatsubba Rao v Ganapati China* 1955 Andh WR 204, 207, AIR 1955 AP (NUC) 1769.

1 *Commercial and Industrial Bank Ltd v MS Ali Khan* AIR 1956 Hyd 65, 68, (1956) ILR Hyd 79 (FB).

2 *JK Gas Mfg Co v Emperor* AIR 1947 FC 38, 43–44, 48 Cr LJ 886, (1947) 2 Mad LJ 402.

3 *Nagar Mahapalika, Lucknow v Ram Dhani* AIR 1971 All 53, 1971 Cr LJ 203, 1970 All LJ 634 (DB) (food inspectors and public analysts appointed under Prevention of Food Adulteration Act 1954, not to become *functus officio* upon amendment of the Act by the Amending Act 49 of 1964).

4 *Varadaraj Pillai v Salem Municipal Council* (1972) 85 Mad LW 760, 772; relying on *New Singhal Dal Mill v Sheo Prasad Jainti Prasad Firm* AIR 1958 All 404.

5 (1967) 10 LR 483, 488.

that a construction that would invalidate a law or impute to the legislature an intent to contravene the Constitution is avoided.

In such cases of repeal and re-enactment the judicial interpretation put on the expressions used in the repealed statute has to be followed when the re-enacting statute has reproduced the same expression on the assumption that the legislature has accepted such interpretation.[6] This rule is a rule of presumption which holds good when there has been a series of well-known decisions by important courts,[7] putting a consistent construction on identical provisions.[8]

In a repealing and re-enacting statute, the repealing provision may be severable from the re-enacted provisions, and this possibility of severence may save the repealing provisions in case the re-enacting provisions are found to be invalid. In the absence of such possibility of severence, the whole of the re-enacting statute will fall.[9]

The Indian Income-tax Act 1922, was extended bodily to Nadgaon in 1942. The said Income-tax Act 1922, was repealed and replaced by the subsequent Indian Income-tax Act. Section 34, in both these Acts, was identical. Section 34 should be deemed to be continuously in force on the principle that when an existing statute is re-enacted by a later statute in substantially the same terms, a repeal by implication is effectuated only of those provisions which are omitted from re-enactment while the unchanged provisions which are reiterated in the new enactment are construed as having been continuously in force.[10]

When, in an amending Act, the old provision has been re-enacted as sub-sections of the new provision and other sub-sections are added afresh, the intention of the legislature is not to repeal but to replace the old

6 *Bengal Immunity Co Ltd v State of Bihar* AIR 1955 SC 661, 749, 1955 SCA 1140; *Corpn of Madras v Kothandapani Naidu* AIR 1955 Mad 82; *AJ Faridi v Chairman, Uttar Pradesh Legislative Council* AIR 1963 All 75, 82, (1963) ILR 2 All 151 (DB) (on the point of interpretation); *Pandurang Sawalaram Dhuret v CP Godse* (1975) 77 Bom LR 13, 23–24, two different words in a single rule or single section to be normally assumed to have different connotations; relying on *Member, Board of Revenue v Arthur Paul, Benthall* AIR 1956 SC 35, [1955] 2 SCR 842; *Gyan Prakash Bedi v Gurdit Singh* 1972 RCR 324, 327 (Del), statutory right becomes known right from moment of enactment of statute and not after interpretation thereof by court.

7 *Ghayar Ali Khan v Keshav Gupta* AIR 1959 All 264, 275, 1958 All LJ 780 (DB).

8 *Purushottam Dalmiya v State of West Bengal* AIR 1961 SC 1589, 1595, 1961 SCD 739.

9 *Indore Iron and Steel Registered Stockholders Assn Ltd v State of Madhya Bharat* AIR 1957 MB 83, 89, 1956 MB BLJ 1575 (DB); for vice versa ie, when the repealing provisions are invalid but the re-enacting provisions are valid: *Bhagat Singh v State of Patiala* AIR 1954 Pepsu 174, 177; with reference to the repealing section of Pepsu Land Acquisition Act 4 of 2006 Bk vis-a-vis Patiala Land Acquisition Act 1995 Bk.

10 *Harjibhai Tribhuvan Das v Income-tax Officer, Rajnandgaon* AIR 1957 MP 171, 173, 1957 MPLJ 629; *Sutherland's Statutory Construction*, para 2035.

provision.[11] An application pertaining to an attachment made under r 54 of O 21 of Civil Procedure Code prior to 1 February 1977, ie before the amendment Act of 1976 came into force, shall continue to be disposed of summarily even after the amendment of rr 58 and 63 of the Code comes into force.[12]

When some immunity has survived the repeal and the re-enactment, it cannot be extinguished by any notification of the government.[13]

Amendment is different from adaptation. In the guise of adaptation, no essential changes can be effected in the adapted Act, nor does the amendment in the adapted Act become part of the adapting Act.[14]

(h) No Future Operation of Repealed Enactment

Since a repealed enactment has no application in future, the things, left incomplete before an Act is repealed, must, on repeal thereof, be left in status quo,[15] and such enactment, excepting, of course, such parts thereof as have been saved by the repealing Act, has to be considered as to have never existed.[16] Any proceeding started after repeal of an enactment is null and void.[17]

(i) Repealing Act as Void

Acts repealed by a repealing Act that is itself void are not revived.[18] The Allahabad High Court view that an act done under a void Act is invalid and unconstitutional,[19] has been held by the High Court of Andhra Pradesh[20] to be not good law in view of the Supreme Court decision in *Jaora Sugar Mills v State of Madhya Pradesh*.[21]

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11 *Central Provinces Manganese Ore Co Ltd, Nagpur v State of Maharashtra* 1971 Tax LR 1044, 1050, 29 STC 74 (FB) (Bom); *Kikabhoy Chandbhoy v Commr of Income-tax* AIR 1950 Bom 6, 9, 51 Bom LR 677 (adding or deleting, within competence of the legislature).

12 *Laxmi Devi v Prakash & Co* 1985 (2) Kant LJ 449.

13 *Sami v State of Kerala* 1961 Ker LJ 1284, 1287 (DB).

14 *KA Ramudu Chettiar v State of Madras* (1967) 2 Mad LJ 315, 317 (DB); reversed on another point in *State of Tamil Nadu v KA Ramudu Chettiar* AIR 1973 SC 2230.

15 *Thakur Damji Raghavji v Jamiyadram* AIR 1954 Sau 77, 79, 6 Sau LR 240.

16 *Waheed Hasan Khan v State of Hyderabad* AIR 1954 Hyd 204, 207, 1954 Cr LJ 1397 (FB); *Ram Vallabh Nagar v Public Service Commission* 1955 MBLJ 236 (HCR), AIR 1955 NUC 3348 (MB) (DB).

17 *Nageshwar v State of Madhya Pradesh* 1972 MPLJ 264, 270–71; relying on *Rameshwar Bhartiya v State of Assam* AIR 1952 SC 405; *M Homi v Deputy Commr of Singhbhum* AIR 1953 Pat 302; *Re Hubert Crawford* AIR 1918 Bom 226; *Dhannu Lal v State* AIR 1953 MB 94 followed.

18 *C Rudre Gowda v Angadi Chikkamma* AIR 1972 Mys 199, 202, (1972) 1 Mys LJ 310 (DB) (repealed Act at once goes off the statute book).

19 *Lakshmi Kant Jhunjhunwala v State of Uttar Pradesh* AIR 1965 All 420.

20 *Venkatarangam v State of Andhra Pradesh* (1969) ILR AP 548, 576 (DB).

21 AIR 1966 SC 416, 421, 429, (1967) 1 SCJ 98.

(j) Repeal of Ordinance

Ordinance is 'law' and, therefore, even if an ordinance has not been validly continued by the corresponding Act, a prosecution under the ordinance would be good.[22] Thus, repeal of s 7 of the War Risks (Goods) Insurance Ordinance 9 of 1940, did not extinguish the right of the Crown to initiate prosecutions for an offence committed when the section was in force.[23]

Section 6 does not in terms apply to an overridden enactment, though an overriding provision in an enactment plays the same role as played by s 6 in relation to a repeal and can save certain proceedings as enumerated therein from its overriding effect.[24]

(k) Qualified Repeal

The doctrine of qualified repeal refers to the continuity of such provisions of the repealed Act as are compatible with the repealing Act. However, if the saving clause in the repealing Act is clear in its intention, such as s 484(2)(a) of the Code of Criminal Procedure 1973 (2 of 1974), containing the doctrine of qualified repeal, then, that doctrine has no application. It means, for matters covered by the saving clause, the repealed code is the only effective law.[25]

(l) Repeal and Addition

The operation of s 6 is limited to cases in which change in law has been brought about by repeal of an old statute. The effect of s 6 does not extend to cases where change in law has been brought about by addition.[26]

4. ACT WHICH IS REPEALED AND ACT WHICH BECOMES VOID

There is a difference between repeal of an enactment and an enactment declared void by a judgment. If an enactment is void it must be held that it never came into being and is still-born. On the other hand, an enactment repealed dies on repealment.[27] Section 6 has no application in reviving, for any purpose whatsoever, the Acts which have ceased to have effect because of their expiry by efflux of time,[28] or to Acts which become void.[29]

22 *Romani Mohan v Emperor* AIR 1948 Cal 247–48, 49 Cr LJ 410.
23 *Public Prosecutor v Ramalinga Swaraswami* AIR 1949 Mad 271, 50 Cr LJ 326, (1948) 2 Mad LJ 351.
24 *Ayyappa Kurup Krishna Pillai v Parukutty Amma Subhadra Amma* AIR 1971 Ker 44–45, 1970 KLT 442 (FB).
25 *State of Maharashtra v Chandrashekhar* 1975 Mah LJ 607, 612–15.
26 *Heman Das Bamrakhiomal v Chellaram* 13 IC 264, 5 SLR 168.
27 *Shital Rai v State of Bihar* AIR 1991 Pat 110 (FB).
28 *Pattwan Abdul Khader v State of Mysore* AIR 1951 Mys 72, 52 Cr LJ 992.
29 *Showkat-un-nissa Begum v State of Hyderabad* AIR 1950 Hyd 20–23, (1951) ILR Hyd 237 (DB).

Whether the word 'void' used in art 13 of the Constitution has the same effect as the word 'repeal' in s 6, General Clauses Act, was considered by Chagla CJ in *Re Keshaw Madhav Menon*[30] and it was opined that in substance and effect there was no difference between an Act which was repealed and an Act which was declared void. On appeal to the Supreme Court,[31] Das J, speaking for the majority view, did not adopt that line of argument in arriving at the conclusion that the appeal should be dismissed. Chakarvarti J, however, expressly dissented from the Bombay High Court's view in *Edward Ezra v State*.[32] Since art 13 of the Constitution has no retrospective effect, anything done or action taken under a statute having become void under art 13, will not be affected.[33] The effect of an amendment declaring a law void is to repeal that law as from the date on which the declaration is made. It does not render the law void from the date of its inception as happens when the law is ultra vires of the authority which enacted it.[34]

Therefore, prosecution and conviction under s 17 of the Criminal Law Amendment Act 1908, cannot be rendered void on grounds that s 16 of that Act had been declared void after the Constitution came into force.[35]

Where the invalidity extends not merely to a provision as has been newly substituted but also to the ordering of such substitution, there can be no question of considering the effect of the word 'substituted' with regard to such substituted provision.[36]

A pre-Constitution order, if violative of fundamental rights, cannot be saved by virtue of s 6, after the Constitution comes into force.[37]

According to the Supreme Court, the result of striking down of the Andhra Pradesh (Telangana Area) Abolition of Inams Act 1967, whereby the Hyderabad Inam's Abolition Act 1955 was repealed, was to revive the said Act of 1955.[38]

5. SUPERSEDED OR OVERRIDDEN

There is an essential distinction between an Act or order which is repealed and one which is superseded, though the word 'supersession' has been held

30 AIR 1951 Bom 183, 189, 52 Cr LJ 30 (FB); *Amritlal v Government of Mysore* AIR 1951 Mys 26; *Jugmandar Das v State* AIR 1951 All 703.

31 *Keshavan Madhava Menon v State of Bombay* [1951] SCR 228; *Showkat-un-nissa v State of Hyderabad* AIR 1950 Hyd 20, 23.

32 AIR 1953 Cal 263, 275.

33 *Ram Saran Dass v Sunder Singh* AIR 1952 Punj 417–18.

34 *Rajeshwari Devi v State of Uttar Pradesh* AIR 1954 All 608; following *Janardhan Reddy v State of Hyderabad* AIR 1951 SC 217.

35 *Narendra Gopal Das v State* AIR 1951 Cal 505–06, 52 Cr LJ 1087.

36 *Central Provinces Manganese Ore Co Ltd v State of Maharashtra* 1971 Tax LR 1044, 29 STC 74 (Bom).

37 *Jesinghbhai Ishwar Lal v Emperor* AIR 1950 Bom 363, 52 Bom 544.

38 *Mohd Shaukat Hussain Khan v State of Andhra Pradesh* (1974) 2 SCC 376.

to be included in the wider connotation of the word 'repeal'.[39] In *Nand Kishore v Emperor*,[40] Kaul J, observed as follows:

> The effect of an Act or order which is superseded is not to obliterate it altogether. An Act or order is said to be superseded where a later enactment or order effects the same purpose as an earlier one by repetition of its terms or otherwise.

The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law. If either of the two following conditions is satisfied:

(i) the two are inconsistent with each other;
(ii) there is some express reference in the later to the earlier enactment;

the later law, even though general, would prevail.[41]

In *Syed Mustafa Mohamed Ghouse v State of Mysore*,[42] the Sugar (Movement Control) Order 1959 of 6 November 1959 was passed in supersession of the Sugar (Movement Control) Order 1959, dated 27 July 1959. It was held that in law supersession has not the same effect as repeal, and proceedings in respect of a superseded order can be commenced.

Where entirely new rights and new liabilities have been created, the new provisions must not be allowed to override the provisions of the old Act.[43]

In case of supersession of a notification, the obligations and liabilities accrued and incurred under the earlier notification remain unaffected, since the supersession will be effectual from the date of the second notification and not retrospectively so as to abrogate the earlier notification from the date of its commencement.[44]

6. REPEAL FOLLOWED BY FRESH LEGISLATION

Section 6 is not confined in its application to only repeals but applies to repeals followed by fresh enactments as well,[45] unless the new legislation

39 *Special Tehsildar for Land Acquisition v F Shamsuddin & Bros* AIR 1970 Ker 301, 304, 1970 KLT 376; relying on *Kamalakshmi Amma v Bhaskara Menon* AIR 1961 Ker 514; *State of Orissa v MA Tulloch & Co* AIR 1964 SC 1284; *Narain Lal v Seth Sunder Lal Tholia John* AIR 1967 SC 1541.

40 AIR 1945 Oudh 214.

41 *Ajay Kumar Banerji v Union of India* 1984 LIC 691 (705); *Umed Singh v Union of India* (1984) 1 LLJ 368.

42 (1913) 1 Cr LJ 372 (Mys).

43 *Karam Singh Sobti v Pratap Chand* AIR 1964 SC 1305, [1964] 4 SCR 647.

44 *RS Anand Behari Lal v Government of Uttar Pradesh* AIR 1955 NUC 2769 (All).

45 *State of Andhra Pradesh v Ramaswami* (1958) 2 Andh WR 79, 81.

has manifested an incompatible intention.[46] When the repeal is followed by fresh legislation on the same subject, we 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. Although it was held in a case from Vindhya Pradesh,[47] that where an enactment is not merely repealed but replaced by a fresh legislation, the provisions of s 6(e) would not apply, yet, in view of the judicial opinion in other cases, it cannot be said as a broad proposition that s 6 of the General Clauses Act is not applicable 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 provisions of 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 not by itself material.[48]

It has been made clear by judicial decisions,[49] that unless the later enactment superseding an earlier one expressly or impliedly puts an end to an earlier state of law, the rights of the parties accruing under the superseded enactments cannot be taken away.

Section 658 of the Companies Act 1913, makes s 6 of the General Clauses Act 1897 applicable. But, in applying s 6 and the saving sections of any special enactment, the line of inquiry should not be whether the new Act expressly keeps alive the old rights and liabilities, but whether it manifests an intention to destroy them. Section 648 specifically saves the prosecution by the Liquidator or court and no other. In view of the additional saving provision in s 648 a contrary intention appears in respect of savings of any legal liability not resulting in prosecutions. The general principle of s 6 of the General Clauses Act is qualified by the expression 'unless a different intention appears'. Therefore, neither s 648 of the Companies Act 1956, nor s 6 of the General Clauses Act saves the prosecution instituted

46 *Bhavraju Venkata Subbarao v Ganapati China Kanakayya* 1955 Andh WR 204, 208, AIR 1955 NUC (AP) 1769; following *Syed Unnisa v Rahimat Unnissa* AIR 1953 Mad 445.

47 *Abadijan v Ctermal* AIR 1952 VP 39, 41 (Rewa State Rent Control Act 1946, in place of which the CP and Berar Regulation of Letting of Accomodation Act 1946, was extended to the concerned area).

48 *M/s Munshilal Beniram Jain Glass Works v SP Singh* (1971) 2 SCJ 307; *Mahabir Sugar Mills v Union of India* AIR 1975 All 239; *Allahabad Theatres v Kusum* AIR 1974 All 73, 1974 All LJ 196; *State of Punjab v Mohar Singh Prasad Singh* AIR 1955 SC 84, 88, (1955) SCJ 25; *Indira Soban Lal v Custodian, Evacuee Property* AIR 1956 SC 77, 83; *Palitana Nagarpalika v Arisa Bhuwan Jain Dharmshala* AIR 1979 Guj 140, (1979) 20 Guj LR 24; *Kandiah Thevar v Income-tax Officer* [1963] 49 ITR 665 made as to the retrospective effect of the Income-tax Act 1961, s 137(3), (XXI); 137(1) and (2).

49 *Dayawati v Inderjit* AIR 1966 SC 1423; *Ajit Kumar v State* AIR 1961 Cal 560, (1961) 2 Cr LJ 617; *Inderjit Singh v Savitri* AIR 1966 All 234, 1965 All LJ 651; *State of Orissa v MA Tulloch & Co* AIR 1964 SC 1284; *NP Agarwalla v SK Azad* 1973 All LJ 954; all relied on in *Mahboob Raza Khan v Mohd Shah Khan* 1979 Cr LJ 228, 234, 1978 All Cr R 394, 1978 All WC 750, 1979 All Cr Cas 24 (All).

for offences under ss 208D, 208E and 244(1) of the Companies Act 1913, which was not in force on the dates of the contraventions complained of.[50]

Action taken under rr 126(1) and (10) of the rules made under the Gold (Control) Act 1968, must be deemed to be continuing in view of s 6 of the General Clauses Act 1897. Though the Gold (Control) Act 1968 does not purport to incorporate into that Act the provisions of s 6 of the General Clauses Act, in order to see whether the rights and liabilities under the repealed law have been put to an end by the new enactment, the proper approach is not to enquire if the new enactment has, by its new provisions, kept alive the rights and liabilities under the re-pealed law, but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment, preserving the rights and liabilities under the repealed law, is neither material nor decisive of the question.[51] The principle, as stated by the Supreme Court, on which the saving clause in s 6 is based, is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuation of rights acquired or liabilities incurred under the superseded enactment unless there is sufficient intention express or implied in the later enactment designed to completely obliterate the earlier state of the law.[52]

When violation of provisions of Foreign Exchange Regulation Act 1947 had taken place before coming into force of Foreign Exchange Regulation Act of 1973, s 6 of the General Clauses Act could sustain a show-cause notice based on the violation of the provisions of the old Act.[53]

Where a notice was issued to purchase the undertaking of the licensee by the State Electricity Board prior to the amendment of s 71 of the Electricity

50 *Public Prosecutor v Abdul Aziz Khan* (1970) 2 Comp LJ 292, 1969 Mad LW 126 (Cr), AIR 1970 Mad 311.

51 *Jayanthilal Amrathlal v Union of India* (1971) 1 SCWR 424; relied on in *Kashi Ram Dhandhania v Union of India* 1979 Cr LJ 382, 384 (Pat), 1978 Pat LJR 610, 1978 BLJ 732, 1978 BLJR 854 (cognisance of offence under Gold Control Ordinance—Ordinance promulgated on 26 October 1962—Defence of India Rules 1962, framed in consequence—Ordinance replaced by Defence of India Act 1962, which came in force on 12 December 1962—Rules continued and amended by incorporating therein the Gold Control Rules 1963—Gold Control Rules repealed on 29 June 1968, on commencement of Gold Control Ordinance of 1968—Repeal made subject to s 6, General Clauses Act—Offence committed on 26 February 1968, during the period of void D Gold Control Rules, held continuing in view of s 6, General Clauses Act.)); *Ram Sewak Raghunath Shukla v City of Nagpur Corpn* 1957 Nag LJ 54, 56 (resolution under s 135 of the CP & Berar Municipalities Act 1922, not to be operative after repeal of that Act).

52 *State of Orissa v MA Tulloch & Co* AIR 1964 SC 1284; *Gujarat Electricity Board v Shanti Lal R Desai* AIR 1969 SC 239.

53 *AKL Labhai Thambi Maraicar v Government of India* AIR 1983 Mad 102, (1982) 2 Mad LJ 59.

(Supply) Act of 1948, and the licence period expired after the amendment and repeal of those provisions, s 6 of the General Clauses Act could come to the aid of the Electricity Board and it could purchase the undertaking when the new law has not either expressly or impliedly taken away the right acquired earlier.[54]

In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles, should, in all cases of doubtful significance, be presumed to be the true one.[55]

Where the repealed Act itself contains a provision which continued the penal provisions even after the Act lapsed, it was held that the prosecution under the Act could be commenced and continued notwithstanding its repeal.[56]

When the repeal is followed by fresh legislation on the same subject and a contrary intention does not appear therein, the repeal does not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Assessment proceedings for the period when the repealed Act had been in force continue to be governed by the repealed Act.[57] Where a dealer was taxed on the first purchase under the Madras Act 9 of 1939 and the Madras Act was subsequently repealed and a change of taxable point was brought about by the Kerala Act, it was held that the right of the dealer not to be taxed again is not affected by the repeal and the fresh enactment.[58] So also, where the individual assessment of a partner in a firm was completed prior to the passing of the Income-tax Act 1961, which repealed the Act of 1922, no fresh assessment proceedings can be taken under the repealing Act so as to include the income from the share of a minor son of the assessee who was also a partner for the previous assessment period in the absence of a provision giving retrospective effect, since the proceedings for re-assessment affect vested rights of persons and are not merely matters of procedure.[59] Where a suit was instituted in a civil court for a decision regarding the plaintiff's *sirdari* rights, and s 332B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950, barring the civil court's jurisdiction, was deleted by the amending Act 37 of 1958 by the time the suit came to be decided, it was held that the decree passed by the civil court is not without jurisdiction.[60]

54 *Gujarat Electricity Board v Shantilal R Desai* 10 Guj LJ 349, (1969) 1 Um NNP 185, (1969) 1 SCA 288, AIR 1969 SC 239.

55 *Parmanand v Kalyan Dass* AIR 1959 Punj 610.

56 *State v Dhanraj Mills Ltd* AIR 1960 Bom 453.

57 *Amar Nath v CST* AIR 1969 MP 207.

58 *N Sami Iyer v State of Kerala* 1961 Ker LJ 1284.

59 *First Addl Income-tax Officer v Uppala Peda Venkataramanayya* (1966) 2 Andh LT 92, [1967] 64 ITR 93.

The Bombay Hindu Divorce Act 1947, was repealed in view of s 30 of the Hindu Marriage Act 1955, but the mere fact that desertion had continued for a period of four years did not confer any right on the party, and the right to obtain divorce on this ground was not held to survive after the repeal of that Act.[61]

The protection given by this section in respect of rights accrued under an old Act is not unqualified. Such rights and privileges are saved only when no contrary intention appears in the new enactment which repeals the old one.[62] It is only such matters as are pending at the commencement of a repealing Act which are saved by s 6, and the section is excluded by a different intention express or implied.[63] The effect of repeal of the Income-tax Act of 1922 as clarified by cl 4(1) of the Income-tax (Removal of Difficulties) Order 1962, is that only matters pending on commencement of Act 1 of 1961 were saved and the operation of the General Clauses Act was excluded by reason of a different intention appearing in s 297.[64]

It may, however, be noted that the mere absence of a provision in the repealing Act similar to that contained in the repealed Act is not suggestive of the intention of the legislature to extinguish the liabilities that were incurred under the old Act or terminate the proceedings that were initiated before the law was altered or deprived of all its precedent effects. Where the new statute does not show any intention either expressly or by necessary implication to put an end to that action, s 6 will have no application.[65] When the legislature has not evinced an intention directly or indirectly destroying or disturbing the existing rights, the rights of the parties are governed by the law which was in force at the time when the judgment was delivered and not by the statute subsequently enacted which gives, modifies, or takes away the existing rights.[66] Where the assessee is a company within s 2 of the Public Companies (Limitation of Dividends) Ordinance 29 of 1948, the order that the income-tax officer is empowered to make under s 23A of the Income-tax Act is that the undistributed income shall be deemed to have been distributed among the shareholders as at the date of the annual general meeting. There is a manifest repugnancy between the provisions of the said ordinance and s 23A of the Income-tax Act. The contention that the ordinance is repealed by the Public Companies (Limitation of Dividends) Act 30 of 1949, is not tenable since the notional distribution

61 *Sitabai v Ram Chandra* AIR 1958 Bom 116, 59 Bom LR 885 (FB); overruling *Hirabai Ram Chandra v Ram Chandra Rawoo* AIR 1958 Bom 26.

62 *Income-tax Officer v Ramaratnam* AIR 1966 Mad 164.

63 *Commr of Income-tax v Bibhu Bhusan Sarcar* [1966] 59 ITR 590 (Cal).

64 Ibid.

65 *State of Andhra Pradesh v D Ramaswamy* (1958) 2 Andh WR 79, (1958) ILR AP 383, 1958 Andh LT 605.

66 *Kartar Singh Hira Singh v Haripal Singh* AIR 1960 Punj 29; *Commr of Income-tax, Bombay City v Godavari Sugar Mills Ltd* AIR 1967 SC 556 (no contrary intention could be found in passing s 23A of the Indian Income-tax Act 1922).

contemplated by s 23A of the Income-tax Act is deemed to have taken place on the date of the annual general meeting when the ordinance was in force. The provisions of s 6(c), (d) and (e) of the General Clauses Act will be applicable as there is no contrary intention appearing in the repealing statute.[67]

Section 6 preserves the rights and liabilities created by s 153C of the Indian Companies Act 1913, and a continuance of the proceeding in respect thereof would be competent in spite of the repeal of the Act of 1913, inasmuch as a contrary intention is not indicated in the latter.[68]

Section 297 of the Income-tax Act of 1961, provides, as far as possible, for all contingencies which may arise out of the repeal of the Income-tax Act of 1922. Therefore, s 297(2)(a) of the 1961 Act includes within its scope a proceeding under s 33B of the 1922 Act. Section 6 of the General Clauses Act would not apply to the repeal of the Income-tax Act of 1922 because in s 297(2) a contrary intention is evinced.[69] Section 6 of the General Clauses Act is not applicable to the Income-tax Act 1961 because s 297(2) of the Income-tax Act 1961, provides for all contingencies arising on account of the repeal of the Income-tax Act 1922.[70]

7. REPEAL OR EXPIRY OF TEMPORARY STATUTE

A perpetual and a temporary Act differ in the sense that whereas there is no time limit as to the former,[71] the latter expires by efflux of time.[72] However, the fact that certain acts contemplated by a certain Act have to be accomplished within a certain period, does not make the Act any less permanent an Act.[73]

Section 6 of the General Clauses Act was held inapplicable to a case of expiry of a temporary statute on the grounds that that section is attracted wherever there is a repeal and that the case of expiry of a statute by efflux of time is not a case of repeal.[74]

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67 *Commr of Income-tax, Bombay City I v Godavari Sugar Mills Ltd* (1967) 1 Com LJ 51, (1967) 37 Com Cas 68, (1967) 1 ITJ 182, [1967] 63 ITR 310, (1967) 1 SCJ 329, (1967) 2 SCWR 45, (1967) 11 Law Rep 567, [1967] 1 SCR 798, AIR 1967 SC 556.

68 *Brihan Maharashtra Sugar Syndicate Ltd v Janardan Ramchandra Kulkarni* AIR 1960 SC 794.

69 *Kalavati Devi v Commr of Income-tax, West Bengal* [1967] 3 SCR 833, 15 Law Rep 673, (1967) 2 ITJ 703, (1967) 2 SCA 499, [1967] 66 ITR 680, (1967) 2 SCJ 764, AIR 1968 SC 162.

70 *Commr of Income-tax, Assam v Tezpur Automobiles, Tezpur* 1969 Assam LR 70, AIR 1969 Assam 122.

71 *Hansraj Moolji v State of Bombay* AIR 1957 SC 301, 304, 52 Cr LJ 1103, (1951) SCJ 453 (High Denomination Bank Notes (Denomination) Ordinance 1946 promulgated during 27 June 1940–1 April 1946, held to be in perpetual force until repealed).

72 *State v Bhanka* AIR 1951 Sau 67–68, 52 Cr LJ 1032 (DB).

73 *Parappa Pavappa Desai v State of Mysore* AIR 1968 Mys 305, 308, (1968) 1 Mys LJ 146.

Where a temporary statute is made permanent by a subsequent Act, the former becomes perpetual ab initio rather than from the date of the latter.[75] It follows that the expiry of a temporary Act depends on the construction of that Act itself.[76]

In considering the effect of an expiration of a temporary Act, it would be unsafe to lay down any inflexible rule. It certainly requires very clear and unmistakable language in a subsequent Act to revive or recreate an expired right. If, however, the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. In order to ascertain whether the rights and liabilities under the repealed ordinance have been put an end to by the Act, the line of inquiry would not be whether the new Act expressly keeps alive the old rights and liabilities under the repealed ordinance but whether it manifests an intention to destroy them.[77] Another line of approach may be to see how far the new Act is retrospective in operation. It is settled, on both principle and authority, that mere right existing under the repealed ordinance is not a right accrued.[78]

In any case, the temporary statute is not different from a permanent one with regard to the rights, privileges and obligations created or incurred thereunder,[79] and the rule as to a temporary statute is that as soon as it expires, the proceedings taken under it also terminate ipso facto,[80] and no

75 *State of Bombay v Hemon Sant Lal Alreja* AIR 1952 Bom 16, 22, 53 Bom LR 837 (DB).

76 *Union of India v Sitaramajaneyulu* AIR 1971 AP 145, 149, 1974 Lab IC 651, (1970) 2 Andh WR 196 (DB).

77 In the words of Mukherjea J, in *State of Punjab v Mohar Singh Prasad Singh* [1955] 1 SCR 893, AIR 1955 SC 84.

78 *MS Shivananda v KSRT Corpn* AIR 1980 SC 77, 80–81, (1979) 2 Serv LR 774, (1979) 2 SCWR 361, (1979) UJ 893 (SC), (1980) 1 SCC 149, 39 Fac LR 452, 56 FJR 16, (1980) 1 LLJ 77, 1980 SCC (Lab) 134, [1980] 1 SCR 684, (1980) 1 Lab LN 289, (1980) 12 Lawyers 15.

79 *Commr of Income-tax v Kerala Nut Food Co* 1976 KLT 164, (1976) ILR 2 Ker 32, 42; *Haran Chandra Dutt v State of West Bengal* AIR 1952 Cal 907, 909–10 (dissolution of old district Board, prior to expiry of ordinance issued under s 88(1) of the Government of India Act 1935, could not be nullified so as to revive that district Board on expiry of the ordinance); *Ram Pal Singh v Emperor* AIR 1948 Pat 229, 231, 49 Cr LJ 251 (person punished during continuance of Act cannot be punished after its expiry); *Surjan Singh v East Punjab Government* AIR 1957 Punj 265, 268, (1957) ILR Punj 1476 (DB) (nature of transaction alone determines whether it is deemed as past and closed).

80 *S Krishnan v State of Madras* AIR 1951 SC 301, 304, 52 Cr LJ 1103, (1951) SCJ 453; *Kalyan Das v Emperor* AIR 1935 Lah 188–89, 36 Cr LJ 735, 37 Punj LR 19; following *Bansgopal v Emperor* AIR 1933 All 669 (conviction for offence, ordered on a date when ordinance no longer remains in force, held *ultra vires*); but see *Radhe Shiam v State* AIR 1955 NUC 4432 (All) (prosecution for offence under r 81(4), Defence of India Rules, 1939 for breach of Uttar Pradesh Oil Seeds Oil Products Control Order 1945, launched before expiry of Defence of India Act can continue even after expiry of that Act); *Shanti Prasad Jain v State* (1972) ILR

continued on the next page

proceedings thereafter can be taken upon its basis[81] though the restraint imposed thereunder in relation to the duration of its provisions are simple matters of construction.[82]

It is indisputable that s 6 of the General Clauses Act cannot be invoked in regard to expiring statues[83] which are of a temporary nature.[84] Reiterating this proposition, VR Krishna Iyer J has stated in *Qudarat Ullah v Bareilly Municipality*;[85] that provisions of this section in relation to the effect of repeal do not ordinarily apply to a temporary Act. As early as in 1951, it was stated by Patanjali Sastri J (as he then was), in *S Krishnan v State of Madras*,[86] that the general rule in regard to a temporary statute is that the absence of a special provision to the contrary proceedings taken against a person under it will *ipso facto* terminate as soon as the statute expires. That is why the legislature can and often does avoid such anomalous consequences by enacting in the temporary statute a saving provision[87] the effect of which is in some respects similar to that of s 6 of the General Clauses Act. Such saving clauses may begin with the expression 'without prejudice to the generality'. The words 'without prejudice to the generality of the provisions of s 6' do not restrict the general application of the provisions of s 6 to the matters enumerated, because these words have the effect of preserving the full effect of the general provision and also because the rule of ejusdem generis has no inverse application.[88] An example of such a saving clause may be found in s 97(2) of the Civil Procedure (Amendment) Act 1976. Conversely, in case a temporary Act has not

1 Del 536–37 (prosecution for contravention of r 94A, Defence of India Rules 1939 could be commenced even after expiry of said rules by virtue of s 6 made applicable to expiry of Defence of India Act 1939); *State of Madhya Pradesh v Hira Lal* AIR 1959 MP 93–95, 1959 Cr LJ 325, 1959 MPLJ 65 (prosecution started on 29 May 1949 for offence under Essential Supplies (Temporary Powers) Act 1946, read with cl 3 of Cotton Textiles (Control of Movement) Order 1948, could be continued even if charges were framed on 19 January 1957 when the 1946 Act had ceased to be law).

81 *Jogesh Prasad Chaudhary v Munni Devi* AIR 1955 NUC 5616 (Cal).

82 *Re Thiagarajan Chettiar* AIR 1947 Mad 325, 328–29, 48 Cr LJ 403, (1947) 1 Mad LJ 98 (DB).

83 *Re ET Palaniappa Chettiar & Co* AIR 1957 Mad 660–61, 1957 Cr LJ 1149, (1957) 1 Mad LJ 194 (Cr); *MR Pratap v Director of Enforcement, New Delhi* 1969 Cr LJ 1582, 1590 (Mad) (s 6 not to apply to Defence of India Act 1962, the Act being a temporary statute); *State v Shiv Prasad* AIR 1956 All 583–85, 1956 Cr LJ 1149 (DB) (s 6 not to apply to Defence of India Act 1939 so as to continue the prosecutions under it, when the Government of India Act 1935 which had kept alive the said 1939 Act came to be itself repealed by the Constitution of India).

84 *Kuruvilla Cheriyan v Kuruvilla Chandy* AIR 1958 Ker 229; *State of Orissa v Bhupendra Kumar Bose* AIR 1962 SC 945.

85 (1974) 1 SCC 202, (1974) ILR SC 396, 404.

86 AIR 1951 SC 301, [1951] SCR 621.

87 *State of Orissa v Bhupendra Kumar Bose* AIR 1962 SC 945, 954, 1962 SCD 389.

88 *SK Singh v VV Giri* AIR 1970 SC 2097, 2112.

expressly repealed an earlier Act permanently, the original provisions of the earlier Act are revived after the subsequent temporary Act has expired.[89] It is only a statute which expires by efflux of time or on the happening of a contingency without recourse to fresh legislation that would come within the category of temporary measures.[90] The general rule in regard to a temporary statute is that, in the absence of a 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.[91]

There is a difference in the matter of the continuity of their effect on expiry between statutes which are limited in their duration to a specified period and expire by efflux of time to which they are limited, and perpetual statutes which have to be repealed by legislation. Section 6 applies only to the latter.[92]

As a general rule, after a temporary Act has expired, no proceedings can be taken up under it and it ceases to have further effect. If any action has been taken under the expired Act with respect to any matter arising under it during its continuance, the question whether such action would lie or not would depend upon any special provision to the contrary in the temporary Act itself, and its construction. Section 6 of the General Clauses Act would obviously not apply to a case of 'expiry' as distinguished from 'repeal'.[93]

The repeal of Hindu Women's Right to Property Act 1937, effected by s 31 of Act 30 of 1956, does not in any way impair the rights conferred on the widows by the Act of 1937 even though the widows had not asserted their rights by claiming a share.[94] The interest of a widow under s 3(2) of the Hindu Women's Right to Property Act 1937, is property and the act of her becoming entitled to that interest by operation of that statutory provision is in effect an acquisition by or accrual to her of the right within the meaning of s 6 of the General Clauses Act. On that view the rights acquired by the widow stand entirely unaffected by and survive the repeal of the Act.[95]

Section 6 applies only to a case of repeal, even if there be a repeal of a temporary Act by another temporary Act.[96] The moment a statute is repealed, no matter whether it is a temporary or a permanent statute, the provisions

89 *V Govindaswami Naidu v Addl Commercial-tax Officer* (1966) 1 Mad LJ 166, (1965) ILR 2 Mad 294, 300 (DB).

90 *State of Andhra Pradesh v Dr Ramaswamy* (1958) ILR AP 383.

91 *Gopichand v Delhi Administration* AIR 1959 SC 609.

92 *Ram Prasad v Government of West Bengal* AIR 1955 Cal 374, per Guha Ray J.

93 *Yusuf Begum v Waheeda Banu Begum* AIR 1957 Hyd 6.

94 *Kuppathammal v Sakthi* AIR 1957 Mad 695; *Ranganayakamma v Raja Rajeswari* AIR 1964 AP 380.

95 *Govindammal v Ramaswami* (1968) 81 Mad LW 655, (1969) ILR 2 Mad 684.

96 *Lila Dhar Daulatram v State* AIR 1951 Nag 353, 355 (repeal of Essential Supplies (Temporary Powers) Ordinance 1946 by the Essential Supplies (Temporary Powers) Act 1946).

of this section are attracted.[97] The East Punjab Refugees (Registration of Land Claims) Ordinance 1948, was undoubtedly a temporary measure, but the period during which it was to continue had not expired when the Repealing Act 12 of 1948 was passed. The repeal, therefore, was an effective one which would normally attract the operation of s 6. The provisions of ss 4, 7 and 8 of the Repealing Act, made it apparent that it was not the intention of the legislature that the rights and liabilities in respect of claims filed under the ordinance shall be extinguished on the passing of the Act, and this was sufficient for holding that s 6 of the General Clauses Act was attracted.[98]

In s 3(2) of the General Clauses Act, the expression 'acts done' also includes illegal omissions. Therefore, the expression 'anything done' shall also include anything omitted to be done. The scope of the expression 'anything done or omitted to be done' had come up for judicial consideration by the courts in England and India, and the same are relevant here in order to consider the effect of the acts done or omitted to be done or liabilities incurred in relation to a statute which was enacted as a temporary measure and thereafter repealed.

In *R v Wicks*[99] things previously done or omitted to be done were held wide enough to make the provisions of the statute operate in respect of any act done before its expiration and therefore expiration did not affect the liability incurred under the statute. In *Wicks v Director of Public Prosecutions*,[1] the House of Lords, affirming the decision of the court of criminal appeal in *R v Wicks*,[2] and speaking through Viscount Simon, Lord Chancellor, observed in relation to s 11(3) of the Emergency Powers Act that Parliament did not intend sub-s (3) to expire with the rest of the Act and that its presence in the statute preserves the right to prosecute after the date of expiry. The principle of the above decision of the House of Lords was accepted by the Federal Court of India in *JK Gas Plant Mfg Co Ltd v Emperor*.[3] The Supreme Court of India had occasion to consider and interpret these expressions, namely acts done or omitted to be done, in *Gopi Chand v Delhi Administration*,[4]

97 *State v Fateh Chand* AIR 1955 MB 82 (Madhya Bharat Essential Supplies (Temporary Powers) Act 1948, despite being termed temporary is not a temporary statute, because it does not say when it will cease to have effect. Having been repealed by the Essential Supplies (Temporary Powers) Act of 1946, provisions of s 6, General Clauses Act are attracted); *Pannalal Lahoti v State of Hyderabad* AIR 1954 Hyd 129 (Defence of Hyderabad Regulation held to be a temporary statute).

98 *State of Punjab v Mohar Singh Prasad Singh* AIR 1955 SC 84, (1955) SCJ 25.

99 [1946] 2 All ER 529.

1 [1947] 1 All ER 205, [1947] AC 362, relied on in *Public Prosecutor v Bondeda Ramalingeshwaraswamy* AIR 1949 Mad 271, (1948) 2 Mad LJ 351 (prosecution under War Risks (Goods) Insurance Ordinance 1940 after its repeal held valid).

2 [1946] 2 All ER 529.

3 AIR 1947 FC 38, 48 Cr LJ 886.

4 AIR 1959 SC 609, 1959 Cr LJ 782.

and again in the *State of Orissa v Bhupendra Kumar Bose*.[5] The matter was again considered in *Rayala Corpn Pvt Ltd v Director of Enforcement, New Delhi*,[6] wherein it was observed that the thing done or omitted to be done can comprise only action already taken while the statutory provision was in force, but cannot justify the initiation of fresh proceedings which will not be covered by the said expression.

The above observations would be of profuse help in determining whether the liability to pay premia which had accrued during the operation of the Emergency Risks (Goods) Insurance Act 62 of 1962 and Emergency Risks (Factories) Insurance Act 63 of 1962 could be enforced after the expiry of the said Acts which were enacted as emergency measures on account of the Chinese aggression and the consequent proclamation of emergency under art 352 of the Constitution which endured since 26 October 1962 till 1 October 1968. Insurance under the said two Acts was compulsory to the full extent of the insurable value and failure to do so including under-insurance was made an offence. Besides the punishment therefor as an offence, provisions were also made for the recovery of relative premia.

After noticing most of the above decisions, a Division Bench of the Madras High Court in *Stoneware Pipes (Madras) Ltd v Union of India*[7] took the view that the liability to pay premium evaded arises only on its determination and a demand being made on the defaulter and it cannot be said that the deemed repeal contemplated by s 1(3) of the Emergency Risks (Factories) Insurance Act had saved the proceedings. Where the impugned proceedings started after 10 January 1968 when the emergency was revoked and the Act had ceased to operate, it cannot be regarded, as the Division Bench observed, as anything done or omitted to be done before the expiry of the Act; nor could any proceedings be regarded as any right acquired or liability incurred before that date; nor could a supplementary policy be issued after the expiry of the Act. The Division Bench, had, therefore, quashed the orders and proceedings impugned in the case before it.

The ruling in the above Madras case should be held to be no longer good law, because the same has been dissented from in three decisions of the Kerala High Court in: (a) *Mariker Motors Ltd v Chief Enforcement Officer*,[8]

5 AIR 1962 SC 945, 1962 Supp (2) SCR 380.

6 AIR 1970 SC 494, 1970 Cr LJ 588.

7 AIR 1971 Mad 442, 84 Mad LW 389.

8 AIR 1973 Ker 2, 1972 Ker LR 482; *Gwalior Rayon Silk Mfg (Wvg) Co Ltd v Union of India* AIR 1975 Ker 178; *Gwalior Rayon Silk Mfg (Wvg) Co Ltd v Union of India* AIR 1976 Ker 68, (1975) ILR 2 Ker 444, 1975 KLT 887; affirming *M/s Gwalior Rayon Silk Mfg (Wvg) Co Ltd v Unioin of India* AIR 1975 Ker 178; following *M/s Marikar Motors Ltd v Chief Enforcement Officer, Emergency Risks Insurance Scheme, Madras* AIR 1973 Ker 2; but dissenting from *Director of School Education, Government of Tamil Nadu v Rev Brother G Arogiasamy* AIR 1971 Mad 440.

(b) a Division Bench of the Patna High Court in the case of *Eastern Bihar Divisional Chamber of Commerce*,[9] and (c) the Andhra Pradesh High Court in *Union of India v Thammana Sitaramanjaneyulu*.[10] The Allahabad High Court in *Raja Ram Om Prakash v Union of India*,[11] has also taken a view contrary to the one expressed in the Madras case. The view expressed by the High Courts of Patna, Andhra Pradesh, Allahabad and Kerala taken respectively in the above cases is now the correct law since it has by now been settled by the Supreme Court in *Amadalavalasa Co-op Agricultural and Industrial Society v Union of India*,[12] holding that while the liability to pay the premia on the full insurable value was incurred before the expiry of the said two Acts, s 6 of the General Clauses Act would enable the ascertainment of the extent of liability for the evaded premia, even after the expiry of the Acts, by an officer who was authorised when the Acts had been in force.[13]

8. CANCELLATION IS NOT REPEAL

Withdrawal of a temporary Act by issue of a notification or cancellation of a previous notification cannot be regarded as being in any sense a repeal.[14] Nor can the grant of exemption to certain areas from the operation of the Act be equivalent to repeal of the Act.[15]

Where the object is merely to bypass some earlier provisions found inconsistent with those of a later enactment, the earlier enactment cannot be said to have either been repealed or abrogated.[16]

9. 'CEASING TO APPLY' IS NOT REPEAL

The provision of the Displaced Persons (Legal Proceedings) Act 1949 ceased to apply to the displaced persons as a result of s 59 of the Debts

9 AIR 1972 Pat 314, 42 Com Cas 371.

10 AIR 1971 AP 145, 1971 Lab IC 651.

11 1971 All LJ 231.

12 AIR 1976 SC 958, 32 Fac LR 1, 1976 LIC 628, (1976) 2 SCC 934, 36 Com Cas 264, [1976] 2 SCR 731.

13 For a detailed discussion, please refer to the heading 'Enforcement of Liabilities after Repeal' under s 6.

14 *Crown v Haveli* AIR 1949 Lah 191, 195 (FB); but see *Ram Singh v Crown* AIR 1950 EP 25 (FB) in which the same result was achieved by another process of reasoning.

15 *Bhikusa Yamasa Kshatriya v Sangamner Akola Taluka Bidi Kamgar Union* AIR 1960 Bom 299.

16 *Hari Shankar Bagla v State of Madhya Pradesh* AIR 1954 SC 465, 469, 1954 Cr LJ 1322, 1954 SCA 824 (s 6 of the Essential Supplies (Temporary Powers) Act does not repeal but merely bypasses inconsistent provisions of earlier law); *Narayanan Namboo Kannavan v Appukutty Nair* AIR 1969 Ker 38, 54, 1968 KLT 390 (FB) (Kerala Price and Paddy (Procurement by Levy) Order 1966, does not lose validity merely because of supersession of GSR No 906 by GSR 1111 on 24 July 1967).

Adjustment Act. Since the provisions only ceased to apply, the same cannot be said to be totally repealed and hence the provisions of s 6 of the General Clauses Act could not possibly be attracted.[17]

10. REPEAL OF A REPEALING STATUTE

Under the English Common Law when a repealing enactment was repealed by another statute, the repeal of the second statute revived the former Act ab intio. But this rule does not apply to repealing Acts passed since 1850. So now, if an Act, repealing a former Act is itself repealed, the last repeal does not revive such former Act unless words are added reviving it. The present, rule, however, is based on the statutory provisions introduced by the Interpretation Act. The Supreme Court is not bound by the provisions of the said statute, but it can still apply the English Law rule if it appears to be reasonable and proper. According to the common law doctrine, the repeal of the repealing enactment would not revive the original Act if the second repealing enactment manifests an intention to the contrary.[18]

11. DIFFERENT INTENTION: TEST OF INCONSISTENCY OR REPUGNANCY

In the case of a simple repeal, that is, when repeal is not followed by a fresh enactment, there is scarcely any room for expression of a contrary intention.[19]

Section 6 ordinarily applies when there is no saving clause[20] in the repealing statute or 'unless a different intention appears'. In case the repealing Act has made a special provision regarding past or pending transactions, the fact whether liabilities incurred under the repealing enactment survive or become extinguished will be determined by such special provision.[21] Unless a different intention appeared in the repealing Act, the amendments made in the original Act continue to be operative.[22]

17 *Parmanand v Kalyan Dass* AIR 1959 Punj 610.

18 *Ameerunnissa Begum v Mahboob Begum* AIR 1955 SC 352; *Bhagat Singh v State of Patiala* AIR 1954 Pepsu 174; for a manifestation of different intention as contemplated by the section: *Arya Vaidya Pharmacy v State* 1967 Ker LR 848.

19 *TS Baliah v Income-tax Officer, Madras* AIR 1969 SC 701.

20 *Laiman Ram v State* AIR 1955 Patiala 128, AIR 1955 NUC (Pepsu) 2509 (section does not apply when there is a saving clause).

21 *Chakkobhai Ghelabhai v State of Orissa* AIR 1976 Ori 7; reversed on another point in *State of Orissa v Chakkobhai Ghelabhai* AIR 1961 SC 284.

22 *Damodar Ganesh v State* AIR 1951 Bom 459, 461, 1952 Cr LJ 37, 53 Bom LR 739 (DB); relying on *Re Swami Arunagirinatha* (1939) ILR Mad 87, AIR 1939 Mad 21; *Palitana Nagarpalika v Arisa Bhuwan Jain Dharmshala* AIR 1979 Guj 140, 147, (1979) 20 Guj LR 24 (things done under the repealed enactment not to be

Section 6 does not apply to such matters as have been provided for specially by making detailed provisions for similar matters,[23] but the section would apply where no specific provision has been made in the repealing Act.[24] When repeal is followed by a fresh legislation on the same subject, the provisions of the new Act have to be looked into only for the purpose of determining whether there is any different intention.[25]

A different intention may follow from an express saving clause. It has been held in *Raja Narayan Lal Bansi Lal v Maneck Phiroz Mistry*,[26] that an inspector appointed under s 138 of the Companies Act 1913 can issue a notice under s 240 of the new Act of 1956.

When the saving clause states 'shall have regard to the provisions of this Act', the meaning is that the new Act has slightly modified or clarified the previous provisions and that clarification and modification should be applied.[27]

The relevant saving clause may however be inserted in a repealing Act *ex abundanti cautela* in order to place the matter beyond any controversy, or the applicability of s 6 of the General Clauses Act may be specifically asserted as in the Repealing Ordinance 6 of 1947 that repealed the earlier ordinance of 1944, but continued the life of the latter, which was a permanent one, with regard to past transactions, with the result that the expiry of the repealing ordinance of 1947 had no effect on the law expressly saved by it.[28] Therefore, in order to gather a different intention, something more than mere repeal is essential,[29] for example, when a special statute has itself made a special provision with regard to effect of repeal.[30]

When the provision of the repealing Act is, in material respects, in identical terms with that of the repealed Act, the interpretation placed on the provision of the latter must apply equally to the corresponding provision of the former.[31]

The Supreme Court,[32] holds that s 297(2)(a) of the Income-tax Act 1961, expresses a contrary intention in relation to proceedings under s

23 *Income-tax Officer v M Damodar* AIR 1969 SC 408, 412–13, (1969) 1 SCJ 659 (s 226(3) and s 156 of Income-tax Act 1961, empowering issue of notice with respect to liability of assessee under the 1922 Act); *Commr of Income-tax v Bidhu Bhushan Sarkar* [1966] 59 ITR 590, 596 (DB) (Cal) (wrt s 297(2) of Income-tax Act 1961, having a saving clause indicative of different intentions).

24 Commr of *Income-tax v Tezpur Automobiles* AIR 1969 Assam 122, 128, 1969 Assam LR 70.

25 *State of Punjab v Mohar Singh* AIR 1955 SC 84, 88, 1955 Cr LJ 254, (1955) SCJ 25.

26 AIR 1961 SC 29, 34–35, (1961) 1 SCJ 354.

27 *Karam Singh Sobti v Pratap Singh* AIR 1964 SC 1305, 1309, 1963 Cur LJ (SC) 174.

28 *RC Jall v Union of India* AIR 1962 SC 1281, 1285; *RC Jail v Union of India*, 1972 Tax LR 2240, 2242, (1972) 2 SCA 80.

29 *Daulat Ram v Som Nath* (1967) 69 Punj LR (D) 222, 226–27.

30 *Nityananda Panigrahi v Basudeb Patra* AIR 1971 Ori 80, (1970) ILR Cut 607.

31 *Rajapalayam Mills Ltd v Commr of Income-tax* AIR 1979 SC 117, 119, 121, (1979) 1 SCJ 492.

32 *Kalawati Devi v Commr of Income-tax* AIR 1968 SC 162, 168, (1967) 2 SCJ 764.

33B of the Income-tax Act 1922. Section 6, it was said, did not, therefore, apply to the said s 297(2).[33]

The effect of the saving clause contained in s 59B of the Advocates Act 1961 was not to prevent an application for review under s 12 of the Bar Councils Act 1926 from being entertained even after repeal of that Act by the Advocates Act, since a case falling outside the narrow limits of the said saving clause would still be governed by the provisions of s 6(c) and (e) of the General Clauses Act.[34]

Where transfer of a suit had been lawfully made under s 29 of the Calcutta Thika Tenancy Act 1949, it was held that the deletion of that section by amending Act 6 of 1957 did not prevent the controller, to whom the suit was transferred, from proceeding with that suit, there being no different intention in the said amending Act.[35]

The words 'anything done' in cl (b) of s 6 are very often used by the legislature in saving clauses. The object of such saving clauses is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the thing done before a particular date from which the repeal of such a pre-existing law takes effect.[36]

Where s 6 of India and Hyderabad Exchange of Enclaves Order 1950 provided that all laws in force in the enclave immediately before the appointed day were to cease to be in force and that all laws in force in the absorbing state from that day were to be extended in that enclave, it was held that no contrary intention had appeared therein with the result that the pending cases at the time of repeal would continue as if there was no repeal.[37]

It was held in *Padmanabhan Mahadevan v Ramaswami*[38] that the provisions in the Part B States (Laws) Act 1951 are in themselves self-contained, and this is a clear indication of the intention to exclude application of s 6 of the General Clauses Act.

There is no different intention anywhere in s 297(2) of the Income-tax Act 1961, and, consequently, the criminal liability incurred under s 52 of the 1922 Act would remain unaffected, so that it would not be proper to take recourse to make the liability under s 52 of the 1922 Act an offence under s 297 of the 1961 Act and make the person liable to greater penalty.[39]

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33 Ibid; *Kalawati Devi Harlalka v Commr of Income-tax* AIR 1964 Cal 76 impliedly overruled.

34 *Re VP Chakravarthi* AIR 1965 Mad 166–67, (1965) 1 Mad LJ 177 (FB).

35 *Manujendra v Urnendu* AIR 1967 SC 1419, 1442, (1967) 1 SCJ 503; overruled on another point in *V Dhanpal Chettiar v Yesodai Ammal* AIR 1979 SC 1745.

36 *Hasan Nurani Malak v Assistant Charity Commr, Nagpur* AIR 1967 SC 1742.

37 *Hyderabad State v Chander* AIR 1950 Hyd 71–72, 92 Cr LJ 1398 (DB).

38 AIR 1959 Ker 5–6, 1958 KLT 441 (DB).

39 *Tiwari Kanhaiya Lal v Commr of Income-tax* AIR 1975 SC 902, 1975 Cr LJ 781, 1975

There being no different intention expressed in s 297(2) of the Income-tax Act 1961, the assessment proceedings, started on 16 June 1961, upon a notice under s 22(2) of the old Act of 1922, could be completed to its end under s 23(4) of that Act even after 1 April 1962 when the new Act of 1961 had come into force.[40]

There can be no question of any different intention when a rule has stated itself to be retrospective, for example, r 2 of the revised Leave Rules of 1933, applicable to employees of the Central Excise Department.[41]

There being no different intention in s 7(e) of the Maharashtra Municipalities Act 1965, it would save the right of a party to file a suit for declaration and injunction under the provisions of the Bombay Municipal Boroughs Act 1925, only with regard to a levy in respect of years 1965-66, but not in respect of the year 1966–67.[42]

There being no contrary intention in sub-cll (a)–(m) of s 297(2) of the Income-tax Act 1961, the power with regard to the levy of penalty under s 18A of the Act of 1922 is saved.[43] There is, similarly, no intention in s 18 of Madras Act 15 of 1946 other than to continue, so far as possible, all pending proceedings.[44] There being no contrary intention in the Finance Act of 1964, having omitted s 137 of the Income-tax Act 1961, the prohibition existing under s 137 of the 1961 Act against the income-tax officer giving evidence had continued.[45]

The Second Schedule in the Travancore-Cochin General Sales-tax Act repealing, in Malabar, the Madras General Sales-tax Act, showed that the intention was to preserve the old rights, such as registration and the licence issued under the old Act. Hence, if the legislature had the intention to override the right attached to the liability under s 3(5) of the Madras General Sales-tax Act, it would have used more clear and precise words.[46]

The amendment to s 8(3) of the Orissa Estates Abolition Act 1952 authorised applications to be made in respect of trust estates, but there can be no question of any different intention merely because the President's Act had introduced a definition of 'Trust Estate' by including the estates of the deity by name.[47]

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40 *Commr of Income-tax v Surajmull Nagarmal* 1981 Tax LR 171 (NUC) (DB); following *TS Baliah v TS Rangachari* AIR 1969 SC 701.

41 *Anil Nath De v Collector, Central Excise, Calcutta* AIR 1958 Cal 407.

42 *Barsi Municipality v Shankar* AIR 1979 Bom 125.

43 *HG Misra & Co v Appellate Assistant Commr of Income-tax* AIR 1969 All 566, 72 ITR 489.

44 *SA Seshadri Aiyangar v Narayana Nair* AIR 1950 Mad 106, (1949) 2 Mad LJ 396.

45 *SV Ramkrishna Mudaliar v Rajabu Tathima Bukari* AIR 1966 Mad 187, (1965) 2 Mad LJ 338.

46 *State of Kerala v Nisami Iyer* AIR 1966 SC 1415, (1966) 2 SCJ 467.

47 *Lord Jagannath v State* AIR 1981 Ori 106.

When the Gujarat Education Cess Amendment Act 1970, does not disclose a contrary intention, the liability to pay education cess having accrued for the period prior to 1April 1970 is saved.[48]

If a contrary intention is expressed in the repealing statute, the rights under the repealed statute are certainly affected.[49] When a different intention is so expressed by the legislature, s 6 of the General Clauses Act is not to be applied. It becomes necessary to look to the different intention by looking into the provisions of the new Act in cases where the repeal is followed by fresh enactment.[50] The inconsistency or repugnancy may arise between the provisions of the old and new statutes if they cannot be reconciled and made to stand together,[51] or it may be apparent in various provisions of the same statute, Displaced Persons (Compensation and Rehabilitation) Act 1954.[52] The repugnancy or inconsistency need not be between other provisions of the two Acts, as implied repeal may operate on the part of the statute as well as on its entirety. If the repugnancy relates to a part of the statute that part of the statute will stand repealed only to the extent of such repugnancy. An implied repeal may of course not take place unless the two statutes or part thereof are inconsistent and irreconcilable. The inconsistency may, though, be presumed to be intended by the legislature when it makes a complete substitute for the old one.[53] But the bare repeal of an enactment does not in itself give an indication, and the manifest intention has to be ascertained from the next provision.[54]

Where a statute provides by express terms that its enactment will repeal an earlier Act by reason of its inconsistency with such an earlier Act, the latter may be treated as repealed even where the later Act does not contain such express words. The criteria is that if the co-existence of the two sets of provisions is destructive to the objects with which the later Act was passed, the court would treat the earlier provision as impliedly repealed.[55] But if the two enactments are identical and run parallel to each other, there would be no presumption of any implied repeal.[56]

The test of two legislations containing contradictory provisions is not the only criteria of repugnancy. If a competent legislature with a superior efficacy expressly or impliedly evinces an intention to cover the whole

48 *Umaji Bhuwar Dharmshala Trust v State of Gujarat* AIR 1981 Guj 223, 225.
49 *G Jayamma v G Kanniah Pd* 1970 RCR 857; *Union of India v TR Rao* 1970 RCR 475; *Vishram v VV Kamath* 1970 RCR 229.
50 *Shantabai v Bombay Municipal Corpn* (1961) 63 Bom LR 667, 674 (DB).
51 *TMLS Bradari v Improvement Trust* AIR 1963 SC 976, [1963] 1 SCR 242; *Mathra Prasad v State of Punjab* AIR 1962 SC 745, 1962 Supp (1) SCR 913.
52 *Bal Mukund v State of Punjab* AIR 1957 Punj 300–01, 59 Punj LR 40.
53 *DC Jain v University of Jodhpur* AIR 1977 Raj 89, 1976 WLN 820; relying on *India Tobacco Co Ltd v Commercial-tax Officer* AIR 1975 SC 155.
54 *TV Narayanan v K Pochinayaki* (1974) 87 LW 444, 447.
55 *Northern India Caterers Pvt Ltd v State of Punjab* AIR 1967 SC 1581, [1967] 3 SCR 399.

field, the enactment of the other legislature, whether passed before or after, would be overrun on the ground of repugnancy.[57]

The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act 12 of 1972, had effected the repeal in toto of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act 3 of 1947 and the repealing Act, vide its s 43(2)(h) stated that:

> Notwithstanding the repeal of the earlier Act, any court before which any suit or other proceeding relating to the...eviction from any building is pending immediately before the commencement of this Act may, on application being made to it within 60 days from such commencement, grant leave to any party to amend its pleading in consequence of the provisions of this Act.

This provision is an obvious illustration of a different intention. It was, therefore, stated by VR Krishna Iyer J in *Qudarat Ullah v Bareilly Municipality*[58] that even if the statute for recovery of possession be one under the earlier rent control law, the later Act will apply and the necessary amendments in the pleadings can be made and this was definite indication that it was the later Act which had to govern the pending proceedings for recovery of possession or recovery of fixation of rent.

In repealing s 137 of the Income-tax Act 1961, it was the intention of the section to take away the protection of treating documents in income-tax inquiry as confidential and to exclude s 6 of the General Clauses Act.[59] In *Manohar Lal v Sadika Begum*[60] an ex parte mortgage decree was passed in favour of the mortgagee on 20 August 1908. On 1 May 1914, the heirs of the mortgagor applied for setting aside the ex parte decree. The question arose whether the old Limitation Act of 1877 applied to the case or the case was governed by the new Limitation Act of 1908. It was contended that the right to make an application to set aside the ex parte decree accrued under the repealed Act and was not affected by the provisions of the new Limitation Act, by virtue of the applicability of s 5 of the General Clauses Act. The contention was rejected. It was observed:

> We doubt very much whether the alleged right to make an application of this nature can be deemed to be a 'right' or 'privilege' within the purview of section 6 of the General Clauses Act. However that may be, we are clear that the right, if any, was acquired not under the Limitation

57 *State of Orissa v MA Tulloch & Co* AIR 1964 SC 1284, [1964] 4 SCR 461.
58 (1974) 1 SCC 202, AIR 1974 SC 396, 402.
59 *Amalgamated Commercial Traders Pvt Ltd v ACK Krishnaswami* (1965) 2 Com LJ 128, (1965) 2 MLJ 275, (1965) 2 ITJ 585, AIR 1967 Mad 337.
60 37 IC 292, 101 PR 1916.

Act which merely regulates the period within which the remedy must be sought, but under the Civil Procedure Code. Further, section 6, General Clauses Act, provides in explicit terms that the rule laid down therein is to be enforced if an intention to the contrary is not expressed by the legislature. As pointed out by the Madras High Court in *Chidambaram Chetty v Kamppan Chetty*,[61] the intention of the legislature is manifested in more places than one. We find that section 3 of the new Act provides that subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the First Schedule shall be dismissed, although limitation has not been set up as a defence. Now, there is nothing in the aforesaid sections to save the limitation in respect of an application to set aside an ex parte decree, and under article 164 of the First Schedule, the court is bound to reject the application, if it is made after the expiry of 30 days from the date mentioned therein. A further indication of the intention is to be found in section 30 of the Indian Limitation Act of 1908, which provides a period of two years after the enforcement of the Act for the institution of those suits, the limitation for which has been curtailed by the new law. It will be observed that the section makes no reference to applications, and the obvious inference, therefore, is that the legislature intended to apply the provisions of the Act to all the applications, even where the limitation prescribed thereby is shorter than that prescribed by the old Act. It is noteworthy that the Act of 1908, though passed in August 1908, did not come into force until the 1 January 1909, and the intervening period of five months was ample time within which the persons concerned could become acquainted with its provisions and take steps to enforce their remedy.

On the other hand, s 297(2) of the Income-tax Act 1961, is an instance of a saving provision. Thus, by virtue of s 297(2) of the 1961 Act, proceedings for including the minor son's share in the assessee's total income are proceedings which have to be decided on the basis of the Income-tax Act 1922.[62]

Section 6, General Clauses Act 1897, cannot serve to keep alive the liability to pay tax on the income of the year 1949–50, assuming it to have accrued under the repealed law, for a different intention clearly appears in ss 2 and 13 of the Finance Act read together.[63] The rate of tax

61 8 IC 43.

62 *Venkataramanaiah v First Income-tax Officer* (1963) 2 Andh WR 427, (1963) 2 ITJ 432, 435.

63 *Union of India v Madan Gopal Kabra* AIR 1954 SC 158, 162; reversing *Madan Gopal Kabra v Union of India* AIR 1951 Raj 94 (2); *Commr of Income-tax, Bihar v Pratap Singh*

for the year of assessment may be fixed after the close of that year and assessment will have to be necessarily made after the close of that year,[64] but taxes levied by the statutory bodies under the repealed Act cannot continue to remain in force under the new Act.[65] The power to levy penalty under s 18A of the old Income-tax Act is saved by cll (c) and (e) of s 6 of the General Clauses Act, there being no intention to the contrary in the repealing Act, because levy of advance tax under s 18A is not a matter relating to assessment of income-tax. Assessment proceedings commence after the previous year has closed and the assessment year has started. In the case of advance tax the proceedings for levy commence during the previous year itself. Therefore none of the sub-cll (a)–(m) in s 297(2) apply to save the liability for penalty for non-payment of advance tax already incurred under the old Act.[66] Where the legislature did not intend to repeal a former statute, except upon the supposition that the subsequent statute would take the place of the former, the former statute is revived if the subsequent statute were unconstitutional.[67]

By the first part of s 58(3) of the Administration of Evacuee Property Act, repeal of the statutes mentioned therein did not operate to vacate things done or actions taken under those Acts. This rule was altered by s 6 of the General Clauses Act which applies only if a different intention does not appear. But by enacting s 58(3), Parliament has expressed a different intention. The effect of the expression 'subject to' is that though the previous law stands repealed, all things done and actions taken under the repealed statute are deemed to have been done or taken in exercise of the powers conferred by or under the repealing enactment as if that Act were in force.[68]

When proceedings under s 34(1A) of the Income-tax Act of 1922, were time-barred at the commencement of the Income-tax Act of 1961, s 297(2)(a)(ii) of the 1961 Act indicates a different intention to exclude the application of s 6 of the General Clauses Act. The proceedings can be re-opened under s 147 of the Income-tax Act of 1961.[69]

The privilege of non-production of documents claimed under s 137 of the Income-tax Act 1961, since repealed by the Finance Act 1964, is not saved by s 6 of the General Clauses Act because of a contrary intention

64 *Wallace Brothers v Commr of Income-tax* [1948] 16 ITR 240, AIR 1948 PC 118.

65 *Kandoi Velji v Chief Officer of the Bhuj Borough Municipality* AIR 1954 Kutch 50.

66 *HC Misra & Co v Appellate Assistant Commr of Income-tax* 72 ITR 489, (1969) 2 ITJ 143, AIR 1969 All 566.

67 *Bhagat Singh v State of Patiala* AIR 1954 Pepsu 174 (Pepsu Land Acquisition Act 1995 BK, held revived because of the unconstitutionality of the Pepsu Land Acquisition Act 4 of 2006 BK).

68 *Bishambher Nath Kohli v State of Uttar Pradesh* (1966) 2 SCJ 337, AIR 1966 SC 573.

69 *Balchand v Income-tax Officer* 1965 Jab LJ 1078, 1965 MPLJ 975.

expressed by introducing a modified restriction of privilege under s 138(2) as inserted by the Finance Act 1964.[70]

In *Delhi Cloth and General Mills Co v Income-tax Commr, Delhi*,[71] Lord Blanesburgh observed as follows:

> The principle which their lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the *Colonial Sugar Refining Co v Irving*,[72] where it is in effect laid down that while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.

Following the above observations of their lordships of the Privy Council, Achhru Ram J, applied the same in *Ram Singh v Crown*,[73] where the offence was committed on 31 July 1948, when the district of Ludhiana, in the Province of Punjab, was declared a 'dangerously disturbed area' involving certain changes in the procedure for the trial of criminal cases under the Punjab Public Safety Act. The accused was committed on 10 September 1948, for trial, not under the procedure laid down in Criminal Procedure Code but under the amended procedure, but the sessions judge commenced the trial after the district ceased to be a 'dangerously disturbed area'. The question arose whether the trial under the amended provisions was legal in the circumstances of the case. The learned judge enunciated the principle that where the provisions of a statute dealing with matters of procedure are inapplicable to a certain proceeding pending at the time the statute came into force, they must be regarded as textually inadmissible so far as those proceedings are concerned. He observed:

> The provisions of the Code of Criminal Procedure which were in a state of suspended animation in Ludhiana District at the time the learned sessions judge of that district became seized of the present case, and which were resuscitated as a result of the cancellation of the notification declaring Ludhiana District to be a 'dangerously

70 *Income-tax Officer, Central Circle, Madras v Rama Ratnam* (1965) 2 Mad LJ 336, (1965) 2 ITJ 412, 1965 Mad LJ 733 (Cr), [1965] 58 ITR 297, 1966 Cr LJ 549, AIR 1966 Mad 161

disturbed area', do not contain any provision in accordance with which the learned sessions judge could deal with or dispose of the case. It cannot be seriously contended that it was not his duty to dispose of the case of which he was seized and that he could allow it to remain pending and undisposed of for an indefinite period. If he were to try the case in accordance with the procedure laid down in Ch XXIII for the trial of sessions cases, the accused had to be arraigned before him under s 271. No trial in a sessions case can commence before a sessions judge without compliance with the provisions of the aforesaid section which requires that when the court is ready to commence the trial, the accused shall appear or be brought before it and the charge shall be read out in court and explained to him and he shall be asked whether he is guilty of the offence charged or claims to be tried. No charge having been framed against the accused in the present case, s 271 could not be complied with, and as a result the procedure prescribed in the following sections could not be followed... . Section 226 presupposes a commitment for trial without a charge or with an imperfect or erroneous charge. In the absence of any commitment the section does not become applicable.

12. AMENDMENTS AND APPLICABILITY OF SECTION 6

The general rule is that the amendment of an Act during the currency of a suit is irrelevant and the rights of the parties are governed by the Act as it existed when the suit was commenced.[74] Again, the repeal of an amending Act does not affect the amendments which have already been planted into the main Act.[75] Speaking generally, therefore, where the amendment to an Act has to be applied subsequent to the date of amendment, the unamended provisions have to be read along with the amended ones as if they are a part of it, though it does not mean that the amendment itself must be taken to have been in existence from the date of the main Act itself.[76] Section 6 does not deal expressly with the effect of amendment of an Act, but there is no other law which lays down the effect of such amendment. As a matter of fact, a majority of repealing Acts are those which re-enact the law and in essence there is no distinction between such laws and laws which merely profess to amend. If the amendment of the existing law is small, the Act professes to amend it. If it is extensive, it repeals the law and re-enacts it. Therefore s 6 applies to amendments as

74 *Kondahji Bagaji v Dagadu Gajabha* AIR 1935 Bom 257, 259.
75 *Raman Sahdevan v R Kesavan Nair* AIR 1973 Ker 136, 1973 KLT 37.
76 *Ram Narain v Simla Banking and Industrial Co Ltd* AIR 1956 SC 614, 621.

much as it applies when an Act is repealed and another Act is re-enacted.[77] However, when an amendment has declared a law to be void the effect is to repeal the latter so that it is rendered void from the date of repeal and not from the date of its inception, as would be the case with an ultra vires law which is void from the date of its inception.[78] In *Deep Chand v State of Uttar Pradesh*,[79] where the Uttar Pradesh Transport Service (Development) Act was amended by the Motor Vehicles (Amendment) Act, it was held that the scheme framed under the Uttar Pradesh Act was saved by s 6 of the General Clauses Act. Under s 6, the previous operation of the old enactment and the actions taken thereunder always survive unless a contrary intention is expressed or necessarily implied in the new amended provision. Such a result can be achieved by a deeming provision giving a retrospective operation to the new provision.[80] For example, the proviso added to sub-s (1) of s 145 of Jammu & Kashmir Criminal Procedure Code, as added by the amending Act 2 of 1974, is retrospective since it has expressly taken away the jurisdiction of judicial magistrate to try proceedings under J&K Agrarian Reforms Act 1972 and vested the same in the executive magistrate.[81] Where the legislature repeals a particular provision the natural presumption is that the repeal must have been with a particular intention.[82]

Amendment is infact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If an amendment in an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it.[83]

In respect of the Kerala Service Rules 1959, Pt I, r 60(a) (as re-amended in 1967) it was held that the court cannot go into the question of adequacy of the reason which prompted the re-amended rule.[84]

The proceedings initiated under the Prevention of Food Adulteration Act 1954, as amended by the central amendment Act of 1973 and pending on the date when the said Act as amended by the central amendment Act of 1976 came into force, were held to be governed by the Prevention of Food Adulteration Act 1954, as amended by the central amendment Act of 1976.[85]

77 *New Singhal Dal Mill v Sheo Prasad Jainti Prasad, Firm* AIR 1958 All 404; followed in *Nagar Mahapalika, Agra v Prabhu Dayal* 1968 All WR 514 (HC).

78 *Rani Raj Rajeshwari Devi v State of Uttar Pradesh* AIR 1954 All 608.

79 AIR 1959 SC 648.

80 *Godhra Electric Co v Somalab Nathji* AIR 1967 Guj 172.

81 *Mst Fazi v Mohammad Bhat* AIR 1979 J&K 69.

82 *Nasib Singh v Bajo Ram* AIR 1969 J&K 9 (FB), 1968 Kash LJ 127; overruled on another point in *State of Jammu & Kashmir v Isher Dass Charak* AIR 1973 J&K 17 (FB).

83 *Bhagat Ram v Union of India* AIR 1988 SC 740.

84 *Addl District and Sessions Judge, Quilon v State of Kerala* (1967) ILR 2 Ker 355, 1967 KLT 653, 1967 Ker LJ 791, AIR 1968 Ker 158, 1968 LLJ 233 (FB).

85 *Henry Ah Hoe v State* 83 CWN 731; overruling *Debicharan Basu v Sudhindranath Dutta* 1977 CWN 745.

Section 66 of the Employees State Insurance Act, which entitled the Employees State Insurance Corporation to claim reimbursement, remains unaffected by the amendment of that section by the amending Act 44 of 1966; in respect of the claims of reimbursement having arisen prior to that amendment, the proceedings could be instituted as if the amending Act had not come into force.[86] No right to file a suit in respect of an undisposed claim petition could remain after the amendment of Act.[87]

13. RETROSPECTIVITY

(a) General

The object of any particular legislation may be to eradicate some evil or to introduce some social reform, but this fact alone will not imply any sufficient or clear indication of that legislation being retrospective, and the courts have to judge the intention from the provision of the statute itself and the language used therein.[88] The remedial nature of a statute is not a test of its retrospectivity.[89] An enactment with the object of preventing loss of revenue which would, otherwise, have occurred, can reasonably be given retrospective effect.[90] A new remedy given by legislature for enforcing the rights may, of course, extend to the rights which had accrued even before provision being made for such new remedy,[91] but whether any vested right has been taken away or impaired, must appear in express terms or follow by necessary implication,[92] it being not necessary to expressly state the same.[93]

When a partition suit is pending at the time of commencement of an Act, and the decree therein is passed subsequent to the commencement of that

86 *Indore Malwa United Mills Ltd v Employees State Insurance Corpn* 1982 Lab IC 600, 602 (MP).

87 *Pallamreddy Masthan Reddy v Nellore Finance Corpn* 1994 Bank J 391 (AP).

88 *Ram Prahlad v Mukhtiar Chand* (1958) 60 Punj LR 332, 337 (DB); *Custodian, Evacuee Property, Rajasthan v Dr Mohammad Saeed* AIR 1958 Raj 93, 95, 1957 Raj LW 513 (DB).

89 *Central Bank of India v Workmen* AIR 1960 SC 12, (1960) SCJ 842 (remedial Act may be enlarging or restraining—Retrospectivity to be judged from its express terms or from its necessary intendment); *Abdul Hamid v Bara Tatya* AIR 1951 Ori 153, 156, (1950) ILR Cut 617 (a remedial statute not prima facie retrospective irrespective of language).

90 *Moti Bhai Lalloo Bhai & Co v Union of India* AIR 1957 All 84, 86, 1956 All LJ 820.

91 *Hiranmoy Bhattacharjee v State of Assam* AIR 1954 Assam 224 (FB).

92 *Harsukh v Mashu Lal* AIR 1957 Assam 22, (1957) ILR 9 Assam 25 (DB).

93 *SM Palaniappa Devar v Commercial-tax Officer, Tirupathi* 1973 Tax LR 1917, 31 STC 34 (AP); *P Karimtharuvi Tea Estate Ltd v State of Kerala* AIR 1966 SC 1385; *Dila Ram v Atma Ram* AIR 1949 All 225, relied on.

Act, the rights of the decree-holder shall prevail over any other right acquired under that Act on its commencement.[94]

In exercise of its plenary powers, it is competent for the legislature to enact a law prospective or retrospective.[95] The normal principle however, is that vested rights are respected,[96] and not taken away,[97] nor disturbed, and that the jurisdiction of the civil courts, in pending cases, is not taken away by the creation of a new tribunal for the determination of a particular question.[98] Therefore, the provisions of a statute, which intend manifestly to do away with old rights so as to affect the existing rights[99] or liabilities already accrued,[1]

94 *Ningappa v Abash Khan* AIR 1956 Bom 345 (Bombay Tenancy and Agricultural Lands Act 1948).

95 *JK Jute Mills Co v State of Uttar Pradesh* AIR 1961 SC 1534, (1963) 1 SCJ 127; referring to *MPV Sundararamiar & Co v State of Andhra Pradesh* AIR 1958 SC 468, (1958) SCJ 459.

96 *Amireddi Raja Gopal Rao v Amireddi Sitharamamma* AIR 1965 SC 1970, 1973, (1966) 2 SCJ 179; *J Raman Lal & Co v Kirchand Sunderji of Morbi* (1960) 1 Guj LR 208, 211.

97 *Amar Chand v Dogarmal* AIR 1954 Pepsu 62, 64, (1953) ILR Patiala 368 (DB); *Garikapati Veerayya v N Subbiah Choudhary* AIR 1957 SC 540, (1957) SCJ 439 (art 133 of the Constitution not impliedly taking away right of appeal).

98 *Abida Khatoon v State of Uttar Pradesh* AIR 1963 All 260, 263, (1963) 1 Cr LJ 724.

99 *Anadi Kumar Chatterji v State* (1955) 59 CWN 306, AIR 1955 NUC (Cal) 2876; *Bindu Basini Dasi v Hem Chandra Dutta* (1955) 95 Cal LJ 191, AIR 1955 NUC (Cal) 3848; *Madho Prasad Sukul v Gangaram Saraogi* (1968) ILR 2 Cal 183, 185 (DB); *Managing Committee, Taibik Vaishya High School v District Appeal Committee* 1974 BLJR 696, 700; *K Eapan Chako v Provident Investment Co Pvt Ltd* AIR 1976 SC 2610, 2617, 1977 KLT 1; *Raja Kulkarni v State of Bombay* AIR 1951 Bom 105, 108, 52 Cr LJ 779, 53 Bom LR 833 (DB); *Commr of Income-tax, West Bengal v PM Bagchi & Co* [1951] 20 ITR 3 (DB) (Cal); *Municipal Commr of Bhadreshwar Municipality v Sannagar Jute Factory Co Ltd* (1955) 59 CWN 735, AIR 1955 NUC (Cal) 2328 (DB) (no effect on vested rights except by express words).

1 *Gulab Chand v Rukmani Devi* AIR 1971 MP 40, 1970 MPWR 765 (FB) (every statute is prima facie prospective); *Kishori Lal v Debi Prasad* AIR 1950 Pat 50, 31 Pat LT 14 (FB); *SB Gur Bux Singh v Union of India* 1975 Tax LR 2123, 37 STC 300; *River Valley Tea Co Pvt Ltd, Gauhati v Agricultural Income-tax Officer* 1974 Tax LR 805, 1974 Assam LR 278; *Mohan Lal v Ram Prasad* 1972 Raj LW 458; *Daniraiji Vraj Lal v Vahuji Maharaj Chandra Prabha* AIR 1971 Guj 188; *Swarup v Deputy Director, Consolidation, Uttar Pradesh* 1970 All WR 376 (HC); *Kirloskar Pneumatic Co Ltd v Municipal Corpn for City of Poona* (1969) 71 Bom LR 611, (1969) Mah LJ 832; *Management National Productivity Council v SN Kaul* (1969) 19 Fac LR 1, (1969) 2 Lab LJ 186; *Commr of Income-tax, Madras v Sundaram Industries Pvt Ltd* (1969) 1 Comp LJ 307 (Mad); *Govind Gopal Shenvi v Revenue Secretary to Govt of Goa, Daman, Diu* AIR 1968 Goa 36; *Jiwandhar Kumar v Punjab University* 1968 Cur LJ 505 (DB); *Nanuram v Vishwamitra* 1968 Raj LW 358; *FY Khambhaty v LD Bhatt, Income-tax Officer* (1966) 2 ITJ 367(Guj) (DB); *VCK Bus Service Pvt Ltd v HB Sethna* AIR 1965 Mad 149, (1965) 1 Mad LJ 203; *S Ganesan v AK Joseelyne* AIR 1957 Cal 33, (1957) 27 Com Cas 144 (DB); *Kamalappa Thanjirayar v Revenue Court, Mannargudi* (1955) 1 Mad LJ 165, AIR 1955 NUC (Mad) 1570; *Ram Swarup Santuka v Mul Chand* AIR 1955 NUC (Ori) 1241 (DB); *Noor Mohammad v Sed Mal* AIR 1953 Hyd 177 (DB); *Vinayak Damodar Padhye v Dewaji Govind Mahar* 1955 Nag LJ 522, AIR 1955 NUC (Nag) 959 (DB); *Mewar*

continued on the next page

or which aim at creating or taking away substantive rights, are prospective, unless by express words, or by necessary implication, they have been made retrospective by the legislature,[2] in which case, the retrospective operation will be limited to the extent of their being made retrospective by such express words or by necessary implication.[3] The legislature is undoubtedly competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is competent to make laws which override and materially affect the terms of contract, but the principle is unexceptionable that, unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that direction, no provision of a statute should be given retrospective operation, if by such operation vested rights are likely to be affected. Retrospective operation of a statutory provision can be inferred even in cases where such retrospective operation appears to be clearly implicit in the provision construed in the context where it occurs,[4] and such inference can be gathered from its language and the object and intent of the legislature in enacting it.[5]

A statute can be said to be retrospective if it—

> takes away or impairs any vested right acquired under existing law or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past.[6]

But, each such statute must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation.[7]

Textile Mills Ltd v Union of India AIR 1955 Raj 114 (DB); *Kothari Roadways v Regional Transport Authority* 1969 Raj LW 74 (State Transport Authority, Rajasthan Resolution of 4 February 1965 held to operate prospectively); *Gohd Singh v Teja Singh* AIR 1965 Punj 224–25 (court-fee on memorandum of appeal would be payable as in old law, unless specifically stated in the altered law).

2 *Panchanan Chakraverti v Hari Satya Bhattacharya* AIR 1950 Cal 529, 54 CWN 610 (DB) (no retrospectivity without special provision).

3 *Mahadeo Lal Kanodia v Administrator of West Bengal* AIR 1960 SC 936, 939, (1961) 1 SCJ 15; *Allied Exports and Imports, Gudur, Nellore v State of Andhra Pradesh* AIR 1971 AP 218, 221–22, 1971 Tax LR 750, (1971) 2 Andh LT 163 (FB); *Commr of Income-tax, Madras v Ramkrishna Mills, Coimbatore* [1974] 93 ITR 49, 54 (Mad) (DB); *Durga Das v Kanhaiya Lal* 1971 Raj LW 50, 55 (DB); *Mustafa Ismail v Manishankar* (1967) 8 Guj LR 641, (1967) ILR Guj 589, 603; *Income-tax Officer v Uppala Peda Venkataramayya* (1966) 2 Andh LT 92, 99; *Sri Krishna Coconut Co v State of Andhra Pradesh* AIR 1962 AP 375, 378, (1962) 13 STC 193 (DB); *Vanguard Fire and Insurance Co Ltd, II Line Beach, Madrás v Annamalai & Co Ltd, Madras* (1961) 1 Mad LJ 441; *Mst Mohri v Mst Chukli* AIR 1960 Raj 82–83, 1960 Raj LW 95.

4 *Rafiquennessa v Lal Bahadur Chetri* AIR 1964 SC 1511, 1514, (1964) 2 SCJ 562.

5 *Aswini Kumar Dey v Angur Bala Kundu* AIR 1970 Cal 285.

6 *Syndicate Bank v Rallies India Ltd* AIR 1979 Del 40, 1978 Rajdhani LR 552.

7 *Gooda Seethamma v Desham Balakistiah* (1962) 2 Andh WR 258; *Virendra Kapur v University of Jodhpur* AIR 1964 Raj 161, 1964 Raj LW 328 (examination taken by candidate on faith of existing regulations—Regulation not to be substituted with retrospective operation).

In case of an amendment in a statute, for example, the amended ss 28 and 35 of J&K Land Acquisition Act of svt 1990, if the bare perusal of the amendment clearly shows that it does not contain any word or phrase to indicate that the amendment should run retrospectively, then it is not to apply to pending proceedings.[8] Retrospectivity, in *MK Kunhiraman v Purameri Service Co-op Bank Ltd*,[9] is said to be a matter of presumption depending on the circumstances in an enactment, and has to be given effect irrespective of the fact that it takes away vested rights, though the retrospective effect to be given cannot be greater than what its language has deemed necessary.[10] Though, generally, a retrospective operation is not to be given to a statute so as to impair an existing right or obligation excepting matters of procedure,[11] that is to say, whereas there is a presumption against retrospectivity, such a presumption has no application to statutes which affect only the procedure and practice of courts, even if disadvantageous to either party,[12] the concept worthy of

8 *Collector v Habibullah Din* AIR 1967 J&K 44, 1967 Kash LJ 83 (FB).

9 1970 KLT 1057, 1970 Ker LJ 757.

10 *State v Kanhaiya Lal* AIR 1953 MB 56, 1953 Cr LJ 55.

11 *Dev Raj Bawa v Om Prakash Gupta* (1975) 77 Punj LR 648, 1975 RCJ 666, 670.

12 *EM Narayanswami v TV Chunnathambi* (1969) 1 Mad LJ 601 (DB) (s 25(1) of Madras Village Panchayats Act 1958); *Kandaswami Madaliar v Madurai TS Naina Mohammad Rowther Chetty* (1977) 1 Mad LJ 244, 252 (right of appeal or revision held a vested right); *Valliammal Ammal v Periaswami Udayar* AIR 1959 Mad 510, (1959) 2 Mad LJ 152 (appeal against decree of subordinate court from petition under ss 28 and 3(b) of Hindu Marriage Act 1955, after 17 December 1956 to be entertained by High Court); *Doongarmal v Roop Singh* AIR 1957 Raj 336, 1957 Raj LW 468; *Bhogiram v Manohar* 1955 MBLJ (HCR) 3, AIR 1956 NUC (MB) 4888; *Govinda v Vaidyanath* AIR 1952 Hyd 22; *PC Guha v BA Basu* AIR 1951 Cal 554, 55 CWN 611; *Radhavallabh v Raman Lal* AIR 1951 MB 165; *Ganpatrai v Hira Lal* AIR 1952 SC 409, (1952) SCJ 564; reversing *Ganpat Rai v Aggarwal Chamber of Commerce, Narnaul* AIR 1951 Pepsu 39 (right of appeal under Patiala States Judicature Farman 1999 Svt not divested by Pepsu Ordinance 10 of 2005); *Superintendent and Remembrancer of Legal Affairs, West Bengal v Samthu Hela* (1973) 77 CWN 887 (no vested right of accused in procedure); *Chhabildas Mangaldas v Luhar Khan Arja* AIR 1967 Guj 7, (1965) 6 Guj LR 893 (s 102, CPC, as amended by amending Act 66 of 1956, not retrospective and does not affect second appeal from suit instituted prior to amendment); *Lal Chand Agarwal v Keshaorao Jamthe* AIR 1958 MP 197, 1957 MPLJ 652 (s 20 of CP & Berar Courts Act 1917 as amended by Madhya Pradesh Courts (Amendment) Act 2 of 1956); *Jairamdas v Regional Transport* AIR 1957 Raj 312, 1957 Raj LW 477 (s 74(b) of Motor Vehicles Act 1939); *Kali Chand Deo Chand & Co v Commr of Sales-tax, Madhya Pradesh* (1956) 7 STC 823 (appeal with regard to returns filed before amendment of s 22 of CP & Berar Sales-tax Act 1947 by Act 57 of 1949, to be governed by unamended section even if orders on such assessment are made after amendment); *Cyril Austin Spencer v M I Spencer* 1955 All LJ 307, AIR 1955 NUC (All) 3546 (s 3 of Uttar Pradesh Civil Laws (Reforms & Amendment) Act 1954, requiring appeals of value up to Rs 10, to be preferred in the district judges court instead of in the High Court, does not apply to decrees in suits filed prior to enforcement of that Act); *Prabirendra Mohan v Berhampore Bank Ltd* AIR 1954 Cal 289, 57 CWN 933 (DB) (Constitution of India, art 133 not retrospective so as appeal to Supreme Court by leave under art 133 with regard to suit instituted prior to commencement of Constitution, except as provided in art 133 itself)

notice is that in the absence of express enactment,[13] an Act or amendment dealing with substantive rights prima facie operates only prospectively, without affecting past transactions.[14]

In the case of a statute which creates new rights, the consideration that ought to be kept in mind is whether it takes away any existing right,[15] because when any substantive law is altered during pendency of an action, the rights involved therein have to be determined according to the law as had then existed, unless the new statute carries a clear intention to vary those rights.[16]

In the field of taxing statutes, it is within the competence of the legislature to impose a tax retrospectively. Similarly, the rules framed under a statute, can, if so expressed, be made to validly operate retrospectively.[17] From the principle of supremacy of Parliament and the state legislatures within their allotted fields, it follows that in the absence of express provisions to the contrary, the Parliament and any state legislature can give to their laws, otherwise valid, retrospective or prospective operation.

There is, in the Constitution, a limitation on power of the legislature to make retroactive criminal legislation. These limitations are stated in art 20. But except for this article, there is no other provision in the Constitution which points to any limitation of the plenary powers of the Parliament and the state legislatures so long as they keep within the ambit of the subjects of the legislation specifically assigned to them.[18]

However, when a statute tends to affect pending proceedings, the same should be confined to its precise limit and extent so as to go no more than prescribed by the statute,[19] nor to have wider amplitude than a prospective statute,[20] nor to affect vested rights,[21] unless it be the legislature's clear intention, which has to be gathered from the language actually employed in the enactment,[22] nor to give a larger retrospectivity than what meant by the legislature,[23] nor to extend its retrospect beyond

13 *Abdul Munim Khan v State of Hyderabad* AIR 1955 NUC (Hyd) 2084.

14 *Mukhtar Singh v State of Uttar Pradesh* AIR 1957 All 297, 1956 All LJ 878 (DB).

15 *State of Rajasthan v Rao Raja Sardar Singh* 1969 Raj LW 92, (1968) ILR 18 Raj 1088, 1098 (considerations stated).

16 *KG Dora v G Annamanaidu* AIR 1974 SC 1069, 1079.

17 *Garuviah Naidu v State of Madras* AIR 1958 Mad 249, (1958) 1 Mad LJ 132.

18 *Shanta Devi v Custodian Evacuee Property* AIR 1952 MB 181, 188 (DB).

19 *Manicklal Dutt v S Dabiruddin Ahmed* AIR 1951 Cal 936, 54 CWN 572; *Suresh Kumar v Union of India* AIR 1969 Punj 257, 1969 LIC 958.

20 *Kuppammal v Vellingiri Gounder* AIR 1957 Mad 641, (1957) 1 Mad LT 293; *Jyotirindra Narain Singh Chaudhary v Purna Chandra Saha* AIR 1961 Cal 181, 183, (1961) 1 Cr LJ 334 (DB).

21 *Ajit Kumar Pal v Sadhan Chandra Pal* AIR 1956 Cal 654, 60 CWN 567.

22 *AF Ferguson & Co v Lalit Mohan Ghosh* AIR 1954 Pat 596, (1955) 25 Com Cas 33 (Ins) (DB).

23 *Katikara Chintamani Dora v Gantreddi Annamalaidu* AIR 1974 SC 1069, (1974) 1 SCC 567.

its own time of commencement.[24] Hardship, inconvenience or equity, are no considerations for an Act operating otherwise on its own force,[25] to effect vested rights, unless there are express words to that effect.[26] Since a retrospective operation cannot be readily inferred,[27] it automatically follows that the same should not be unduly extended.[28] Where the question was to be extended or retrospectivity given to words or expressions in a later

24 *Mahendra Raut v Darsan Raut* AIR 1952 Pat 341 (maxim *nova constitutio futuris formam imponere debeat et non praeteritis*); *Arjan Singh v State of Punjab* AIR 1970 SC 703, (1970) 1 SCJ 537; *Ahmedabad Mfg and Calico Printing Co Ltd v SG Mehta, Income-tax Officer* AIR 1963 SC 1436, (1963) 1 SCJ 491; *Thakore Lal Amratlal Vadiya v Gujarat Revenue Tribunal* AIR 1964 Guj 183, (1963) 4 Guj LR 841; *Mohammad Idris v Sat Narain* AIR 1966 SC 1499, 1509, (1967) 1 SCJ 755 (Uttar Pradesh Agriculturists Relief Act—Repeal of—not to have further retrospectivity from before its date).

25 *Bhanji Bhagwan Das v Commr of Income-tax, Madras* [1971] 80 ITR 155, 162.

26 *Ahmedabad Mfg and Calico Printing Co Ltd v SG Mehta* AIR 1963 SC 1436, (1963) 1 SCJ 491.

27 *Sri Thiagaraja Swamy Devasthanam v Singaravalu Thevar* (1969) 2 Mad LJ 439 (DB); *Thureka Onnuramma v Tahsildar* AIR 1980 AP 267, 273, (1980) 2 Andh WR 257 (meaning of legislation to be ascertained by language unambiguously expressed therein without reference to supposition or unexpressed intention); *Manakarani v Mohinder Singh* AIR 1968 Ori 113, 120, 34 Cut LT 277 (that part of the requisities for action of a statute is drawn from a point of time prior to its passing is no ground to apply it retrospectively); *Dhani Ram v Raghubir Singh* 1965 Cur LJ 701, 705 (DB) (retrospectivity to be upheld only when expressly ordained or follows by necessary intendment); *Bhaskar Narayan Deshmukh v Mohammad Nurulla Khan* AIR 1953 Nag 40, 50, 1953 Nag LJ 199 (DB) (court not competent to question legislative judgment in applying law retrospectively).

28 *Chintapalli Venkataraman v Merla Seshamma* AIR 1952 Mad 591, 592–93, (1952) 1 Mad LJ 264 (FB); *SS Gadgil v Lal & Co* AIR 1965 SC 171, 177, (1964) 2 SCJ 499 (retrospectivity of Proviso (iii) of s 34(i)(b) of Income-tax Act 1922, as amended by Finance Act 1956, not to go beyond that as expressly mentioned); *Income-tax Officer, V, Madras v HK Habibullah* AIR 1962 SC 918, 922, (1963) 1 SCJ 535 (s 35(5) of Income-tax Act 1922, as amended by Amendment Act 25 of 1953, not to extend its retrospectivity greater than what has been expressly given to it); *Kashi Nath Pal v State* (1974) ILR 1 Cal 391, 394 (no greater retrospectivity than rendered necessary in language); *Lakshman Kumar Kar v Mst Basanta Kumari* AIR 1970 Ori 43, 46, 36 Cut LT 72 (retrospectivity of amendment not to extend to date of commencement of main Act); *Shakuntala v Bhagwan Das* AIR 1967 Del 12, 14, 69 Punj LR 130 (D) (no retrospectivity than what is clearly expressed or impliedly present in language); *Sita Ram Marwari v Bihar Subai Sunni Majlis-e-Awqaf* 1965 BLJR 295 (No more retrospectivity than what can be reasonably inferred from the language); *Syed Yousuf Ali v Abbas Ali Joomá Bhai Saheb* (1963) 2 Andh WR 194 (retrospectivity not greater than what is rendered necessary by language); *Mst Kalawati v Devi Ram* AIR 1961 HP 1 (2) (retrospectivity to be accorded to such provisions of s 5 as have been mentioned in s 12 of the Hindu Marriage Act 1955, but to no others); *Shrikrishna Agarwal v Satya Dev* AIR 1959 Punj 501, 503, 61 Punj LR 574 (extent of retrospectivity of proviso 1 to s 57(2) of Delhi Rent Control Act 1958 indicated); *Digambar Gopal v Vithoba Joga* AIR 1954 Bom 450–51, 56 Bom LR 232 (no greater retrospectivity than is compelled by language); *Inder Singh v State of Rajasthan* AIR 1957 SC 510, 513, 1957 SCJ 376 (question of extending life of a dead ordinance by statute—(*Quaere*).

statute following the repeal of the earlier, it was held[29] that retrospectivity with regard to such words or expressions can be assumed to be no more than was given to them in the repealed statute. In no case can the retrospective operation of any statute be carried beyond the meaning of the terms therein used and as strictly construed,[30] and the same has to be confined strictly to the extent declared expressly or implied necessarily.[31] Retrospective effect can be given to any word by a statute.[32]

In the matter of fixing liability or conferring any benefit on any person, it is competent even for a prospective statute to place reliance on past acts.[33] The test to determine such intention is not whether the law is a law of procedure or substantive law, but whether the law affects or impairs existing rights, including rights of action which are substantive rights.[34] It is not necessary that the legislative intent to vary the rights even during pendency of already instituted actions, should appear in the law in so many words.[35] However, when the statute is a codifying statute, there can be no liability to go outside the Code,[36] for example, when the statute itself uses the expression as 'shall be deemed always to have', the retrospective effect of the statute,[37] flows from the expression itself.

A statute passed with a view to supplying some omission, or explaining any matter in a former statute, will of course, relate back to the time when the former statute was passed.[38] Every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation.[39]

On the analogy of retrospective validation of an illegal tax, it has been held[40] that the power of ordinance-making can also extend to the creation of a retrospective legal fiction.

(b) Retrospectivity of Amendments

The principles underlying s 6 are, firstly, in the absence of necessary provisions in the amending Act, the provisions modifying the penalty

29 *Daulat Singh Bher Singh v State* AIR 1950 MB 112, 118, (1949) 1 MB 229 (FB).
30 *Ram Parshad v Mukhtiar Chand* (1958) 60 Punj LR 332.
31 *Madurai Municipality v R Kamakshisundaram Chettiar* AIR 1956 Mad 49, 51, (1955) 2 Mad LJ 369; overruled on another point in *Corpn of Calcutta v Padma Debi* AIR 1962 SC 151.
32 *Narinder Kumar v Ramesh Kumar* AIR 1995 HP 87.
33 *State of Madhya Pradesh v Poonam Chand* 1967 MPLJ 891, 1968 Jab LJ 116.
34 *Nand Kishore v Maheshwari Mills* AIR 1953 MB 42.
35 *Gopal Krishna Nair v Padmarathi Amma* 1970 Ker LJ 888 (DB).
36 *Gulab Chand Gambhirmal v Kudi Lal* AIR 1951 MB 1, (1952) ILR MB 15 (FB).
37 *Indubai v Vyankati Vithoba Sawadha* AIR 1966 Bom 64, 67 Bom LR 612.
38 *Bal Mukund v Pirthiraj Ganesh Das* AIR 1951 Pat 333 (DB).
39 *Sarat Chandra Nanda & Ors v Union of India* AIR 1997 MP 70.
40 *Goenka Mica v State of Bihar* 1975 Tax LR 1227, 1284, 1974 BLJR 817.

will not be applicable to earlier defaults;[41] and secondly, because a statute which affects substantive rights is presumed to be prospective unless made retrospective, either expressly or by necessary intendment. A statute that merely affects procedure, unless such construction is textually impossible, is presumed to be retrospective,[42] so that even pending cases are governed by the amended law of procedure.[43] To spell retrospectivity in a section there must be something in the intent from which retrospective operation can be necessarily inferred.[44]

The construction of an amending provision has to be construed from the point of view of the law as it existed prior to amendment, the mischief which the amending provision seeks to remedy, and the manner in which the mischief is to be remedied.[45] The aim of construing the amending statute should be to add force and life to the cure and remedy in conformity with true intention of the legislature.[46] Although it is legitimate to refer to the pre-existing law and the defects or lacuna found therein for the rectification of which the amendment has been brought about, it is unnecessary to refer to the rules of construction laid down by authorities.[47]

The Civil Procedure (Amendment) Act 1976, which came into force on and from 9 September 1976, and which has repealed all the amendments in the Code made by the appropriate legislature or the High Courts before the commencement of the Act, except to the extent that such amendments or provisions are consistent with the provisions of the Code, as amended by the Act, has been made applicable to all suits, proceedings, appeals or applications pending at the commencement of the Act in terms of s 97(3), except as provided in respect of matters enumerated in s 92(2) of the said amendment Act of 1976 where the provisions of the Code as amended by the said Act, would not apply.

41 *Commr of Wealth-tax v Suresh Seth* AIR 1981 SC 1106, 1113, (1981) 6 Taxman 35 (SC), 1981 Tax LR 786, 129 ITR 328, (1981) 10 Tax LR 329, 61 Taxation 53, (1981) SCC (Tax) 162, (1981) 1 SCWR 363, (1981) 2 SCC 790, 1981 UPTJ 941, 1981 UJ 555 (SC); *Ajit Kumar Roy v Surendra Nath Ghose* AIR 1953 Cal 733, 57 CWN 627 (FB) (s 18(5) and proviso to s 14(3) of West Bengal Premises Rent Control (Temporary Provisions) Act 1950, as amended by West Bengal Act 57 of 1950 applied to defaults committed after date of Act); *Balai Lal Das v Manick Chandra Pramanik* AIR 1952 Cal 898 overruled; *United Commercial Press Ltd v Satya Narain Chamaria* AIR 1953 Cal 136 overruled in part.

42 *Mst Fazi v Mohammad Bhat* AIR 1979 J&K 69 (FB), 1979 Chand LR (Cr) 32 (J&K).

43 *Ajit Kumar v State* AIR 1961 Cal 560, (1961) 2 Cr LJ 617, 65 CWN 977 (FB).

44 *Controller of Estate Duty, Ahmedabad v MA Merchant* AIR 1989 SC 1710.

45 *Nagar Swasthya Adhikari, Nagar Mahapalika v Jawahar Singh* 1969 All LJ 795, 1969 All WR 625 (HC); *SB Adityam v SK Kandaswami* AIR 1958 Mad 171, (1953) 1 Mad LJ 61 (DB).

46 *Morisetty Bhadraih v Sales-tax Appellate Tribunal of Hyderabad* (1964) 1 WR 361.

47 *Dharma Mudali v Abdullah* (1963) 2 Mad LJ 211, (1963) 76 Mad LW 406.

The underlying principles behind the incorporation of s 100A to the Code, by s 38 of the amending Act of 1976, is for the purpose of minimising the delay in the finalisation of adjudications. In fact, by such incorporation of the said s 100A, further appeals under cl 15 of the Letters Patent, against the decision of the single judge in second appeal, have been barred, notwithstanding anything contained in any Letters Patent for any High Court or any other instrument having the force of law or any other law for the time being in force. If any appeal is admitted under the Letters Patent, before the coming into force of the said s 100A, the same shall be disposed of as if the said s 38 introducing s 100A of the Act had not come into force.[48]

Procedure mentioned by an amending Act cannot be made applicable to transactions already concluded,[49] because procedural laws apply on the date a suit or proceeding comes up for trial or disposal.[50]

48 *Anusua Dhiraj Lal Kanakiya v Promod Kumar Banerjee* AIR 1978 Cal 249, 251–52, (1977) 2 Cal LJ 305, 82 CWN 313.

49 *Kusum Kumari Devi v Custodian of Evacuee Property* (wrt effect of ss 40 and 41 of Act 31 of 1950 as amended in 1953, it was held that procedure in the 1953 Act not to apply to sales confirmed, prior to 15 August 1947, by Deputy Custodian under s 38 of Administration of Evacuee Property Ordinance 27 of 1949).

50 *Memon Abdul Karim Haji Tayab, Central Cutlery Stores v Deputy Custodian General, New Delhi* AIR 1964 SC 1256, 1258, (1964) 2 SCJ 220 (procedural amendments apply to actions after they have come into force); *Calcutta Discount Co Ltd v Income-tax Officer, Companies, District 1* AIR 1952 Cal 606, 609, [1952] 21 ITR 579 (retrospectivity will affect vested rights only when retrospectivity of procedure would have the effect of defeating some vested right); *Neyazuddin v Surya Dev Narain Verma* 1964 BLJR 701, 706 (DB); *Jawahar Lal v Ram Krishna* 1962 MPLJ 461, 1962 Jab LJ 969, 972; *St Mariammal Roman Catholic Church v Lakshmanan Nadar* AIR 1959 Ker 297, 1958 KLT 899; *Maroti Raibhan Patel v Board of Revenue, Madhya Pradesh* AIR 1954 Nag 191–92, 1954 Nag LJ 345 (review being a matter of procedure, the amended rule applies to it with retrospective effect); *Puran Chand Burman v Mohd Latif* AIR 1953 Cal 566, 89 Cal LJ 122; *Eknath v Jivraj* AIR 1951 Hyd 122–23, 52 Cr LJ 1358; *Shiva Bhagwan v Onkarmal* AIR 1952 Bom 365, 373, 54 Bom LR 330; *Venkatasubbasetty v Sahukar MS Rasavanna Devaru* AIR 1951 Mys 5–6, 28 Mys LJ 307; *Narayanan Nambeesan v State of Maharashtra* (1974) 76 Bom LR 690, 702 (DB) (convict prior to 1 April 1974, held entitled to benefit of set off under s 428 of the Code of Criminal Procedure 1973, which came into force on 1 April 1974); *Maharaja Dharmendra Prasad Singh v State of Uttar Pradesh* AIR 1973 All 174, 177 (with reference to s 322 of Uttar Pradesh Zamindari Abolition and Land Reforms Act 1951; *Delhi Development Authority v Mohan Lal* (1973) ILR 2 Del 644, 656–57 (recovery of amount due held to be matter of procedure); *Narayan v Maharashtra Revenue Tribunal* 1970 Mah LJ (Notes) 30; *Mohd Haider Mujawar v Jamal Haider Mujawar* AIR 1969 Bom 328, 332, 71 Bom LR 38 (DB) (with reference to s 70A of Bombay Public Trusts Act 1950, inserted by Bombay Act 59 of 1954); *S Manomani v Labour Court, Quilon* 1969 Lab IC 1448, 1450, 1969 Ker LJ 515 (amendment of s 33C(2) of Industrial Disputes Act 1947 by Act 36 of 1964, does not govern pending proceedings); *Yadav Motor Transport*

continued on the next page

A declaratory provision meant to explain or clarify any existing legal position is presumed to be retrospective.[51] Retrospective operation can more rightly be ascribed to a curative statute,[52] but not to a remedial statute.[53]

However, the use of the words 'it is declared' cannot be taken as conclusive in considering a statute to be merely declaratory and, therefore, retrospective.[54] There is a presumption in favour of prospectivity of statutes other than those which are merely declaratory or involving matters of procedure or evidence,[55] but it does not mean that all efforts should be made so as not to give a statute a retrospective operation, whatever its language be. The rule does not require of courts an 'obdurate persistence' in refusing to give a statute retrospective operation.[56] An expressly fair language, capable of interpretation either way, ought to be construed prospectively.[57]

A power conferred by the Legislature upon a subordinate authority to issue any notification cannot be exercised retrospectively, unless it is so stated expressly.[58]

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v Jagdish Prasad AIR 1969 Raj 316, 319 (wrt s 110E, Motor Vehicles Act 1939); *Shivaramakarnath v Rokkana Venkatesh Shregar* (1965) 2 Mys LJ 1, 6 (suit filed before enactment of Mysore Land Reforms Act 1962, not affected by s 40 so as to oust civil court's jurisdiction in pending suits); *District Board v Upper India Sugar Mills Ltd* AIR 1957 All 527, 530 (DB) (Professions (Tax Limitation Amendment and Validation) Act applied to pending proceedings and pending appeals); *Mohammadi Begum Sahiba v Abdul Majid Khan* 1963 MPLJ 157, 161 (s 49 of Bhopal CPC never created vested rights); *Narayan Singh Jugraj Singh v Board of Revenue, Madhya Pradesh* AIR 1962 MP 280, 284, 1962 MPLJ 281 (power of review under s 9 of CP & Berar Board of Revenue Act 1949, not taken away by repeal of said Act); *Kartar Singh v Revenue Secretary* AIR 1955 NUC (Pepsu) 2504 (suitor having his suit instituted prior to Pepsu General Provisions (Administration) Ordinance 16 of 2005, not entitled to right of Letters Patent Appeal created by ordinance); *Narayana Panicker v Sankaranarayana Panicker* AIR 1953 Tr & Coch 53, 57–58, 1952 KLT 339 (DB) (statute dealing merely with matters of procedure applies to pending as well as future proceedings, provided it does not affect substantive rights).

51 *Narayana Patter v State of Kerala* AIR 1979 Ker 139, 146–49, 1977 KLT 64 (FB) (wrt s 84(3) of Kerala Land Reforms Act 1964).

52 *Channan Singh v Jai Kaur* AIR 1970 SC 349, 357, (1970) 1 SCJ 328.

53 *Sukhram Singh v Harbhaji* AIR 1969 SC 1114, 1117–18, (1969) 2 SCJ 773 (wrt s 157 of Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950).

54 *Oomuien Poonnoote v Kuruthu Karuthu* AIR 1951 Tr & Coch 118, 121, 1951 KLT 223 (FB).

55 *Income-tax Officer v TS Devinatha Nadar* AIR 1968 SC 623, 628, (1968) 1 SCJ 733; *Commr of Income-tax v Bejoy Kumar Almel* (1976) 1 Cal Tax C 25, [1977] 106 ITR 743, 746; *Pear Hassan-ud-Din v State of Jammu & Kashmir* AIR 1959 J&K 1, 4 (DB); *Varalakshmi v Viramulu* AIR 1956 Hyd 75, 77 (DB) (s 2(4) of Hindu Womens' Right to Separate Maintenance and Residence Act 1946, held remedial); *Tabarak Khan v Province of Bihar* AIR 1950 Pat 228, 235, 51 Cr LJ 936 (DB).

56 *Gulab Chand v Kudi Lal* AIR 1958 SC 554, 558, 1959 SCJ 173.

57 *Shankar v Anjani Co-op Society* 1951 Nag LJ (Notes) 175; following (1949) ILR Nag 363.

58 *India Sugars and Refineries Ltd, Hospet v State of Mysore* AIR 1969 Mys 326.

Article 246 of the Constitution, distributing the legislative powers between Parliament and the state legislature, has nothing to do with laws already made and if such laws are not contrary to any provision of the Constitution, it cannot be said that those laws are not valid. Any change made in the distribution of powers or extinction of powers could only be prospective and cannot affect the existing laws.[59]

Where a third party claim for a decretal debt against an evacuee is registered with the custodian prior to the coming into force of the Administration of Evacuee Property (Amendment) Act, the decree-holder's right to have the decree debt paid out to him is not affected in any way by such amendment and he would be entitled to have his claim considered on the merits by the custodian under the unamended Act.[60] But in the case under r 46 of the Fishery Rules where the rule was amended after the issue of sale notice, it was held that the tenderer, who had submitted his tender prior to the amendment, had done nothing under the repealed rules by virtue of which he acquired any right of having his tender considered. Since the tenders were considered by the authorities after the amended rule came into force, it would be only the new set of rules that would govern the settlement and not the old ones at the time of inviting tenders.[61]

If a different phraseology from what is contained in the old enactment is used in the amending Act, the inference that the old law is intended to be changed is natural.[62] In the absence of such apparent intention to change, the law as made before prevails as good.[63]

But the prima facie intention to change can be construed to no greater extent than what the express words or their necessary intendment requires.[64]

From the manner in which the amendment in s 2(2) of the Civil Procedure Code, by force of s 97(2)(a) of the Civil Procedure (Amendment) Act 1976, excluding an order passed on an objection filed under s 47, from the definition of 'decree', was made, the irresistible conclusion is that the intention of the legislature was to affect the vested right retrospectively.[65] But, it cannot, however, be construed to take away a vested right of appeal in pending executions.[66] So, where an application made by a person other than the

59 *Sagar Mal v State* AIR 1951 All 816; *Sheo Shankar v State of Madhya Pradesh* AIR 1951 Nag 58 (FB).

60 *Vadapalli Sattaiah v Custodian, Evacuee Property, Government of Andhra Pradesh* AIR 1961 AP 477.

61 *Raghunath v Sub-Divisional Officer* AIR 1962 Assam 1.

62 *SV Natesa Mudaliar v Dhanpal Bus Service Pvt Ltd* AIR 1964 Mad 136, (1964) 2 Mad LJ 23 (FB).

63 *Anumolu Tirupatirayolu v Kaluri Venkata Subba Rao* AIR 1950 Mad 287, (1949) 2 Mad LJ 768 (DB).

64 *Manicka Gounder v Arunachala Gounder* AIR 1965 Mad 1, 7, (1964) 2 Mad LJ 519 (FB).

65 *Pratap Narain Agrawal v Ram Narain Agrawal* AIR 1980 All 42, 1979 All LJ 1325, 1979 All WC 711.

66 *Chuluram v Bhagatram* AIR 1980 MP 16, 1979 Jab LJ 730, 1980 MPLJ 37.

judgment-debtor for the restoration of possession under the old r 101 of O 21 of the Civil Procedure Code was rejected, a right to challenge that order under the old r 103 was held to continue to be operative by force of s 6(c) of the General Clauses Act, even after the coming into force of s 97 of the Civil Procedure (Amendment) Act 1976.[67]

It is competent for the legislature to give more retrospectivity to a provision affecting substantial rights than what its commencement clause has given to that provision,[68] though the extent of the effect of any particular statute has to be determined by the language employed therein, keeping in view the purpose sought to be achieved thereby.[69]

Though the legislature can give retrospective effect to a legislation, the executive government, in exercise of subordinate or delegated legislation, is not empowered to make rules with retrospective effect unless that power has been expressly conferred.[70]

(c) Acts Partly Procedural and Partly Substantive

Where the statute would affect the substantive rights of parties as well as the procedure for their enforcement, the rule is that old rights and old obligations have to be determined by the old procedure whereas the new rights and new obligations have to be determined in accordance with the new procedure.[71] For example, s 14 of the Hindu Succession Act 1956, wherein the phrase 'any property' possessed by a Hindu female is prospective whereas the phrase 'whether acquired before or after the commencement of the Act' is retrospective,[72] has to be read as a whole, and it is not permissible to dissect it so as to let its procedural part have retrospective and the substantive part prospective effect.[73] Where part of a deleting section in a statute is prospective but the other parts are merely silent as to their prospective or retrospective effect, the silent portions are to be treated as prospective.[74]

When the procedural part of an alteration is linked closely and inextricably to the alterations made in another part of that statute involving

67 *Shesh Kumar Pradhan Sheshdeo v Keshbo* AIR 1980 MP 166, 1980 Jab LJ 330, 1980 MPLJ 335.

68 *Govind Narayan Tilve v Government of Goa, Daman and Diu* AIR 1969 Goa 6, 12.

69 *Bengali Mal Satish Chandra Jain v Sales-tax Officer, Agra* AIR 1958 All 478, 481, 1958 All LJ 228 (FB); *Deo Sharma v Income-tax Officer* (1964) 1 LLJ 410, 413 (All) (legislature can affect substantive rights by enabling the laws expressly to have retrospective effect).

70 *Binoy Kumar Mohanty v State of Orissa* AIR 1981 Ori 13, 15.

71 *M Abdul Khader v Mysore Revenue Appellate Tribunal* AIR 1967 Mys 6, 10, (1965) 2 Mys LJ 450; *Sardar v State* AIR 1961 Cal 181, 183, (1961) 1 Cr LJ 374 (DB); *Ramani Ranjan Bose v Corpn of Calcutta* AIR 1955 Cal 410–11, 1955 Cr LJ 1063, 19 CWN 599.

72 *Anandibai v Sunderabai* AIR 1965 MP 85, 89, 1965 Jab LJ 582.

73 *Roshan Singh v State of West Bengal* 1978 Cr LJ 842, ILR 82 Cal 583.

74 *RPGT Pvt Ltd v Shaik Ahmed Bhasha* (1974) 2 APLJ 47 (DB).

substantive rights and liabilities, the retrospective operation of the procedural part can be given effect to only by force of express words or their necessary implication.[75] The mere application of an Act to pending proceedings does not mean that each provision of that Act will have retrospective operation.[76] It is a settled principle of law that the right of appeal accrues to the parties to the suit on the date of institution of the suit according to the law in force and, therefore, there is a presumption that a subsequent change in law, restricting the grounds of appeal, will not apply to appeals arising from the suits instituted earlier.[77]

Since no person has a vested right in procedure, the rule is that an enactment, altering merely the procedure without altering the substantive rights of the parties, would operate retrospectively as regards such procedure and would not, therefore, extend to rights that had accrued before the alteration had been made.[78]

Where the period of notice terminating a tenancy expired on 31 August 1951, and the suit thereon for ejectment of tenant was instituted on 10 January 1952 culminating in a decree on 12 August 1953, and the Delhi and Ajmer Rent Control Act 1952 had come into force on 9 June 1952, it was held that the Act not having been given retrospective effect, the subtenants could not take advantage of s 20 of the Act.[79]

(d) Express Words for Retrospectivity

Section 6 has no scope for its application when the legislature passes an enactment giving it retrospective effect in express words,[80] the exception to this being provided for only in art 20 of the Constitution,[81] discussing retrospective applicability of three types of enactments, namely:

75 *Hajee K Assainar v Commr of Income-tax* [1971] 81 ITR 423 (Ker).

76 *SK Chaudhari v Joy Kumar Sarkar* AIR 1950 Cal 515, 517, 55 CWN 75.

77 *Laksmichand v Mithu* AIR 1984 MP 112, 114.

78 *Vansh Bahadur Singh v Kamla Singh* 1969 MPLJ 204; *Babu Dhirendra Nath Roy v Ijjet Ali Miah* AIR 1940 Cal 423, 44 CWN 729; *Indra Singh & Sons Pvt Ltd v Union of India* AIR 1967 Cal 14, 64 ITR 501; *Punam Chandra Reva Shankar Joshi v Ramjibhai Magan Lal* (1966) 7 Guj LR 807; *Maram Raj Trimalachari v AK Noor Yelluga* AIR 1955 Hyd 56 (DB) (Hyderabad Tenancy & Agricultural Lands Act operates retrospectively as regards its procedure without making any change in vested rights); *Kochupennu Kochikka v Kunjipennu* AIR 1961 Ker 226, (1960) ILR Ker 734, 1961 KLT 275 (FB) (rules to operate retrospectively to the extent they do not affect any vested or substantive right); *KP Mohammad v Madhavi Amma* 1963 KLT 688 (DB) (s 12 of the Madras Buildings (Lease & Rent Control) Act 1949, as amended by Act 26 of 1961, fixing minimum period of four weeks for deposit of rent).

79 *Babu Lal v Pindi Dass* (1959) 61 Punj LR 921.

80 *Union of India v Mohim Chandra Dutta* AIR 1952 Assam 159, 162–63, (1952) ILR 4 Assam 275 (DB).

81 *Justiniano Augustoda P Baretto v Antonia Vicentede Fonseca* AIR 1969 Goa 124, 127; *Corpn of City of Jabalpur v Krishnarao Shevde* AIR 1955 NUC 1577 (Nag), paras 5–10.

(i) peacetime legislation intended to regulate and govern the rights and liabilities between individual subjects;

(ii) emergency legislation, eg, in time of war, intended to secure safety of the realm; and

(iii) special legislation intended for protection of public interest, though there is an exception also to the principle as enunciated in art 20, that an *ex post facto* law which only modifies the rigour of a criminal law is not affected by the prohibition of art 20.[82]

There is no prohibition on a retrospective legislation affecting the right to acquire property and validating the actions with regard to that right.[83]

If the legislature has the power over the subject matter and competence to make a valid law, it cannot only make a valid law, but make it retrospectively and bind even past transactions.[84]

In the absence of any constitutional prohibition, the legislature is competent to enact prospective as well as retrospective legislation, so as to deprive an order of finality which it would have otherwise possessed,[85] or even to cover such taxes as had already been levied, notwithstanding any judicial decisions to the contrary.[86] But any legislation in the absence of clear words to the contrary is presumed to be prospective.[87]

A prospective amendment has no power to revalidate an unconstitutional law, nor to validate the things invalid when such amendment was passed.[88]

In case the intention of the legislature is apparent, so many enactments, though in form prospective, have to be given retrospective effect.[89] For example, where a reference under the Industrial Disputes Act 1947, had included facts giving rise to a dispute covered by s 2A of the Act, though such facts had arisen prior to coming into force of that section, it was held that a reference

82 *Rattan Lal v State of Punjab* AIR 1965 SC 444, (1965) 1 Cr LJ 360, 1964 SCD 914.

83 *Rustom Cavasji Cooper v Union of India* AIR 1970 SC 564, 619, (1970) 1 SCJ 564, (1970) 1 SCC 248, 1970 Mer LR 42, 40 Com Cas 325, (1970) 1 Com LJ 244, (1970) 2 SCA 37.

84 *Shri Prithvi Cotton Mills Ltd v Broach Borough Municipality* (1970) 1 SCJ 288, AIR 1970 SC 192.

85 *Balwant Singh Bhim Singh v Inspector General of Police* (1966) 7 Guj LR 1101, (1966) 2 Lab LJ 517, 527 (DB).

86 *Government of Andhra Pradesh v Hindustan Machine Tools* AIR 1975 SC 2037, 2042, 1975 Tax LR 2013, (1975) 1 APLJ 741; following *United Provinces v Atiqua Begum* 1940 FCR 110, AIR 1941 FC 16; *KG Dora v G Annamanaidu* AIR 1974 SC 1069, 1087 (judicial decision no longer binding when its bases are so fundamentally altered as to make that decision impossible in the altered circumstances); *Nandkishore Naik v Sukti Dibiya* AIR 1953 Ori 240, 248, 19 Cut LT 44 (DB) (subordinate court not to canvass or import any implication of superior court's judgment, holding any legislation as prospective); *Meerut Development Authority v Satbir Singh* AIR 1997 SC 1467.

87 *P Ganesh Nayak v Commercial-tax Officer* AIR 1964 Mys 240, 1963 Kant LJ 270.

88 *Mukhtar Singh v State of Uttar Pradesh* AIR 1957 All 297, 304, 1953 All LJ 878 (DB).

89 *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v Subhaschandra Yograj Sinha* AIR 1961 SC 1596, 1601, (1962) 1 SCJ 377.

covering those facts was not invalid.[90] A widow, having succeeded to her husband's estate in 1933, herself died after coming into force of the Hindu Succession Act 1956. It was held that s 8 of the Act applied in the matter of succession to her estate.[91] It, thus, follows that a statute may have retrospective effect even when it has not been so enacted in express words.[92]

An enactment changing or taking away any right cannot be construed as retrospective unless the words to that effect are expressly used, though such enactment, so far as matters of procedure are concerned, would be made applicable to further actions.[93] And, unless such intention is manifested clearly or by necessary implication, there can be no presumption to take away, impair or imperil any vested right.[94]

When the enactment uses the words 'shall not be done', the expression is itself indicative of the prospective operation of the enactment.[95]

A court of appeal has been held to be competent in giving effect to remedies brought into force during pendency of appeals.[96]

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90 *Rustom and Hornsby Pvt Ltd v TB Kadam* AIR 1975 SC 2025, 2028, 1975 Lab IC 1455, 1975 UJ 590 (SC); overruling *P Janardan Shetty v Union of India* AIR 1970 Mys 171.

91 *Daya Singh v Dhan Kaur* AIR 1974 SC 665, 1974 SCD 292; approving *Banso v Charan Singh* AIR 1961 Punj 45; *S Kuldip Singh v Karnail Singh, Bakhshish Singh* AIR 1961 Punj 573; but overruling *Kempiah v Girizamma* AIR 1966 Mys 189.

92 *Kamla Bala Devi v Ojha Bro Ltd* (1962) ILR 41 Pat 412, 418 (DB); overruled on another point in *Gulzari Lal Agarwalla v Onkarmal Agarwalla* AIR 1971 Pat 83.

93 *Allied Exports and Imports, Gudur, Nellore v State of Andhra Pradesh* AIR 1971 AP 218, 221–22, 1971 Tax LR 750, (1971) 2 Andh LT 163 (FB); *Commr of Income-tax v Dhadi Sahu* (1976) 42 Cut LT 89, (1976) 1 Cut WR 132, 136; *Chand Bai v Phool Chand* 1966 MPLJ 1080, 1966 Jab LJ 312, 314; *Jwala Sahai, Firm v Durgarsi Lal Har Lal, Firm* AIR 1952 Pepsu 44 (enactment affecting procedure); *Tirath Ram v Malwa Ram* AIR 1954 Pepsu 18–19 (DB) (with reference to Pepsu Urban Rent Restriction Ordinance 8 of 2006; *Sarwan Singh v Dewinder Singh* AIR 1952 Pepsu 8, 3 Pepsu LR 566 (DB); *Chhote Lal Nandkishore Nath Shah Deo v Tula Singh* AIR 1926 Pat 561, 563, 97 IC 608 (DB); *Syed Sirajul-Din v Karim Dar* AIR 1969 J&K 62, 1968 Kash LJ 311 (FB); *Kopperthi Satyanarayana v Kopparti Seetharamamma* AIR 1963 AP 270, 273, (1963) 1 Andh WR 1 (FB); relying on *Central Bank of India v Workmen* AIR 1960 SC 12, 27; *Samdu Khan v Madan Lal* AIR 1958 Raj 62, 1957 Raj LW 461 (FB).

94 *Vishanji v State of Bihar* 1960 BLJR 693, (1961) 12 STC 226, 229 (DB); *Jaiwanti Mafat Lal Gajalbhai v Arvind Navin Chandra Mafat Lal* AIR 1968 Bom 314–15, 70 Bom LR 67 (wrt s 20 of the Hindu Adoptions and Maintenance Act 1956); *Gopeshwar Prasad Sahi v State of Bihar* AIR 1951 Pat 570, 574, 1951 BLR 319 (wrt s 7 of Bihar and Orissa Court of Wards Act 1879); *Lakhmir Singh v Commr of Income-tax* AIR 1957 Pat 538, 540, [1958] 33 ITR 856 (DB)(wrt proviso 2 to s 134(3) of Income-tax Act 1922, as amended by Act 25 of 1953); however, overruled on another point in *Commr of Income-tax v Sardar Lakhmir Singh* AIR 1963 SC 1394.

95 *Gajani Devi v Purushottam Giri* 1975 Rajdhani LR 481, 484 (Del); *Tirukutholanathaswami Devasthanam v Township Committee* (1960) 2 Mad LJ 332, (1960) 73 Mad LW 145, 149 (matter of fiscal enactment); *Govindrajaswami Temple v Rukmani Ammal* (1954) 67 Mad LW 767, 769 (wrt s 93 of Endowments Act 1951); overruled on another point in *Ganapathi Raja Valia Raja of Edapally, Sivaroopam v Commr for Hindu Religious and Charitable Endowments, Madras* AIR 1955 Mad 378.

96 *Re Tripura Modern Bank Ltd* AIR 1950 Cal 240, 243, 54 CWN 262 (DB).

The rule that statutes cannot be held to be operative retrospectively in the absence of express words used therein to lead to that conclusion is applicable also to amending statutes which operate retrospectively only when it leads to that conclusion either expressly or by necessary intendment.[97] In deciding the true legal effect of the retrospective operation of an amending enactment, the intention of the legislature is not to be ignored.[98] The Supreme Court[99] held that where the primary concern is not the meaning of any particular phrase or provision in a statute after its amendment, but the effect of the amending provision on or in relation to other statutory provisions outside that statute, there can be no imputation of retrospectivity to such amendment. Despite the general rule that a retroactive statute cannot interfere with or divest vested rights, the legislature is not divested of its power to enact retrospectively to take away vested rights either expressly or in a way that the necessary effect thereof is to take away or affect vested rights.[1] When the power is vested in the Parliament to enact a taxing statute retrospectively, the imposition of a tax with retrospective effect cannot mean to deprive it of its true character as an item liable to excise duty.[2]

Power granted to the provincial government to alter the method of taxation, directing certain goods to be taxed at a single point and thereafter at a higher rate, not being exercised retrospectively, should only be exercised as to apply to sales subsequent to the notification granting such power.[3]

14. ILLUSTRATIVE CASES

(a) General

The provisions of this section will not directly apply when a temporary Act expires by efflux of time. In *Bansgopal v Emperor*[4] the learned judges of the Allahabad High Court held that the provisions of s 6 of the General Clauses Act were not applicable to a temporary statute, which

97 *Mustafa Ismail v Manishankar* (1967) 8 Guj LR 641, (1967) ILR Guj, 589, 603; *Vaidapalli Sattiah v Custodian, East Punjab* AIR 1961 AP 477, 479, (1961) ILR 2 AP 565 (DB); *Mani Das v State of Orissa* (1959) 1 OJD 263, (1959) ILR Cut 421, 423 (wrt s 9 of Orissa Estates Abolition Act 1952, as amended by Orissa Act 15 of 1956); *State v Pyarey Mohan Lal* AIR 1953 All 614, 695, 1953 Cr LJ 1546, 1953 All LJ 339 (DB).

98 *Deputy Commr of Commercial-taxes, Tiruchirapalli v Dhanlakshmi Trading Co* 1973 Tax LR 2027–28, 31 STC 113 (DB).

99 *Ram Narain v Simla Banking and Industrial Co Ltd* AIR 1956 SC 614, 620–22, 1956 SCJ 579.

1 *Laxmaiah v Baji Reddy* (1970) 1 Andh LT 51.

2 *Mewar Textile Mills Ltd v Union of India* AIR 1955 Raj 114, 118–19, (1955) ILR 5 Raj 832 (DB).

3 *Modi Food Products Ltd v Commr of Sales-tax, Uttar Pradesh* AIR 1956 All 35, 6 STC 287.

4 AIR 1933 All 669 (FB); followed in *Kalyan Das v Crown* ILR 15 Lah 782, 784, AIR 1933 All 669 (FB); *Karim Shah v Zinat Bibi* (1941) ILR Lah 773, AIR 1941 Lah 175; *Haqiqat Ullah Khan v State* AIR 1951 Raj 69, 73.

expired automatically on a given date, but only to statutes which were 'repealed' by another enactment. The fact that the temporary statute was repealed by a subsequent enactment is not material.[5]

When a statute comes to an automatic end by efflux of time, no prosecution for acts done during the continuance of the expired Act can be commenced after the date of its expiry because that would amount to the enforcement of a dead Act. In cases of repeal of statutes this rule stands modified by s 6 of the General Clauses Act.[6] For example, after the expiry of the Essential Supplies (Temporary Powers) Act 1946, on 26 January 1955, a vacuum prevailed in the legislative field, until 22 February 1955. Entry No 33 of List III of the Seventh Schedule of the Constitution was amended by the Constitution (Third Amendment) Act 1954 which empowered the Parliament to make laws with respect to foodstuffs and various other commodities. The intention of the Parliament, that Ordinance 1 of 1955 and Act 10 of 1955 (Essential Commodities Act) were issued under the authority derived by it after the amendment of Entry No 33, was obvious. In that view of the matter, it was held in *Hem Raj Jhunjhunwala v State of Bihar*,[7] that the notification dated 20 December 1954, issued under s 3(2) of the 1946 Act, prohibiting export of salt from any place in the State of Bihar to any place outside thereof without obtaining permit from the authorities mentioned therein ceased to be operative on 26 January 1955 by the provisions contained in art 369 of the Constitution of India, and, therefore, the said notification could not be deemed to have been saved by the repeal, and the saving provisions contained in s 16 of the ordinance or of the Act of 1955. Since no provision of the nature of the notification, dated 20 December 1954, had been issued after the 1955 Act came into force, no person could be said to have violated any law in force by dispatching salt from inside the territory of Bihar to places outside thereof.

The Defence of India Act was introduced in exercise of the powers granted under s 102, Government of India Act 1935. The life of the Act having expired on 30 September 1946, in the absence of a saving clause, no prosecution for infringement of its provisions could be commenced after the expiry of the life of the Act, s 6 of the General Clauses Act not being applicable to such cases. Such a saving clause was, however, provided by the ordinance 12 of 1946. The ordinance itself was repealed by Act 2 of 1948, which came into force on 5 January 1948. Where nothing was done before that date to commence a prosecution under the Defence of India Act and the Defence of India Rules for violation of the

5 *Spencer v Hooton* (1920) 37 TLR 280-81; *Baldeo Singh v State* AIR 1951 MB 149, 153.

6 *Union of India v Sitaramanjaneyulu* AIR 1971 AP 145, 149, 1971 Lab IC 651, (1970) 2 Andh WR 196 (DB) (s 6 limited in application only to repeals).

7 1982 Cr LJ 1206, 1212, 1980 BLJR 361, 1980 BLJ 526, 1981 B Cr Cas (HC) 27, 1980 Pat LJR 383.

provisions of s 2 of the Non-Ferrous Metals Control Order 1942, issued under the Defence of India Act, no fresh proceeding could be commenced after that date for that violation under the Defence of India Act. Moreover, s 102(4) of the Government of India Act 1935, under the provisions of which possibly the prosecution so commenced could have been justified and continued, was also repealed by the Constitution on 26 January 1950. Section 6, General Clauses Act, has no application to the repeal of a statute made by the Parliament of England, the repeal of which has been brought about by the Constitution of India. It was for this reason that art 32 provided for the continuance in the territory of India, notwithstanding the repeal of the enactments referred to in art 395, of the laws in force immediately before the commencement of the Constitution until altered, amended or repealed by a competent legislation or authority. But the article has no application to the laws that had previously been repealed or which had died a natural death.[8]

The Defence of India Rules are not a Central Act or regulation within the meaning of s 6 of the General Clauses Act and nothing in that Act nor r 3(1) of the Defence of India Rules, which applies to the General Clauses Act, to the interpretation of the Defence of India Rules, can extend the scope of s 6 of the General Clauses Act.[9] Rule 3 cannot be deemed to provide for the interpretation of orders passed under the rules as distinct from the interpretation of the rules themselves. In *Emperor v Rayangonda Lingangonda*,[10] Mackling J, observed:

> In the present instance what is being attacked is the basis of the order to the accused to present themselves before the District Superintendent of Police. But when the basis of an order is attacked and the basis of the order is a rule, then in effect what is to be interpreted is the rule rather than the order itself and in such a case rule 3 provides that the General Clauses Act must be the guide for the purposes of interpretation. In the present case, however, the basis of the district magistrate's order of 6 September 1942, though in terms it refers to sub-rule 5B, is really the order of delegation, since it is only by the virtue of the powers delegated to the district magistrate by the order of delegation that he is able to pass any order at all. Ultimately, then, the question for consideration is the extent of the delegation. In other words, what is to be interpreted is the order of delegation. The rule under which the powers were delegated are clear, and there is no question of any interpretation of the rules which themselves were the

8 *State of Uttar Pradesh v Jagmandar Das* AIR 1954 SC 683.

9 *Madho Singh v Emperor* AIR 1944 Pat 217, 219; *Re Chockalingam* AIR 1945 Mad 521 (the word 'enactment' as defined in General Clauses Act includes not only an entire law but any section or provision thereof); *Kashmiri Lal v Kishen Dev* AIR 1924 All 563.

10 AIR 1944 Bom 259, 262.

basis of the order of delegation. What we are being asked to interpret is the order of delegation, and we are satisfied that rule 3 neither compels nor permits us to adopt the artificial provisions of the General Clauses Act for the purposes of the interpretation of that order. We cannot ignore the obvious distinction between the rules, and orders passed under the rules.

The Essential Services Maintenance Ordinance being a temporary enactment which expires automatically by efflux of time, the provisions of s 6 of the General Clauses Act cannot be resorted to in respect of the ordinance. Therefore, proceedings, which were started under the ordinance for contravention of s 4 thereof and which ended in invalid conviction, cannot be continued by ordering a re-trial after the expiry of the ordinance by efflux of time.[11] But the proceedings, which terminate on expiration of a temporary statute, are proceedings in the nature of prosecution for an offence under such temporary statute and not the departmental proceedings which are not proceedings independent of that temporary statute.[12]

The general rules with regard to a temporary statute is that in the absence of a special provision to the contrary, proceedings that are taken under it will ipso facto terminate as soon as the statute expires. However, in interpreting the provisions of s 1, sub-s (3) of the Emergency Risks (Factories) Insurance Act 1962, the statute, in specific terms, provides that the expiry of the temporary statute shall not affect anything done or omitted to be done before such expiry and also provides that s 6 of the General Clauses Act 1897, shall apply upon the expiry of this Act as if it had been repealed by a central Act. In this case, the proceedings were taken against the petitioner when the emergency was in force. The statute in question not only keeps alive the provisions for proceedings taken while the Act was in operation but, by reference, brings, into effect s 6 of the General Clauses Act in a temporary statute. Section 1, sub-s (3) of the Emergency Risks (Factories) Insurance Act 1962 does not violate the provisions of arts 352 and 358 of the Constitution of India.[13]

Where a suit for eviction was filed when the rent control legislation was not applicable to the Cantonment Board of Mhow, but the Madhya Pradesh Accommodation Control Act was applied to the area subsequently and expired by efflux of time and was again applied, it was held that neither

11 *State of Kerala v Raman Nair* AIR 1962 Ker 78.

12 *S Vasudevan v SD Mital* AIR 1962 Bom 53, 68, 63 Bom LR 774 (DB); reversed on another point in *OK Ghose v EX Joseph* AIR 1963 SC 812, (1962) 2 LLJ 615, (1962) 5 Fac LR 511, (1963-64) 24 FJR 115, (1963) 2 SCA 117, 66 Bom LR 93; *Tilokchand v State* AIR 1952 Ajm 14(1), 1952 Cr LJ 232 (prosecution under s 19 of Punjab Public Safety Act 1947, terminate on expiry of that Act).

13 *Nandy & Co v Union of India* 78 CWN 952.

the Indian General Clauses Act nor the Madhya Pradesh General Clauses Act applied as the Madhya Pradesh Accommodation Control Act came to an end not by repeal but by efflux of time.[14]

The Defence of India Act is a temporary enactment. Section 1(3) of the Act states that the Act shall remain in force during the period of operation of the emergency proclaimed on 26 October 1962 and for a period of six months thereafter. Under sub-cll (a), (b), (c) and (d) of s 1(3) of the Act, savings are provided that are analogous to s 6 of the General Clauses Act with the omission of cl (a) of s 6. The Proclamation of Emergency was revoked on 10 January 1968. The Defence of India Act expired by efflux of time six months thereafter on 9 July 1968. Section 6 of the General Clauses Act will not apply to the Defence of India Act as it is a temporary Act and its expiry is by efflux of time. Therefore, the savings are provided under s 1(3) of the Defence of India Act itself.[15]

Section 6 was held attracted to a matter where employment injury was sustained by workman prior to repeal of s 66 of the Employees State Insurance Act 1948, though the Insurance Corporation had filed its application after repeal of that section and even before s 43 of the amending Act 44 of 1966 was brought into force.[16]

A right, for example, of exclusion of time in computing limitation, acquired under a temporary statute, also expires with the expiry of that statute.[17]

Section 6 applies only to valid Acts which are subsequently repealed. But where the Act is unconstitutional and has been declared unconstitutional, it shall have to be presumed as if the Act had never been passed and was never in force. Section 6 cannot apply to its repeal by subsequent enactment.[18] However, when an Act has been declared invalid by a High Court, the invalidity of that prevails so long as that judgment is not overruled. But, there can be no objection to an amending and validating Act on the ground that it has validated an invalid thing and, if that amending and validating Act is itself valid, the same shall be enforced.[19]

Section 6 of the General Clauses Act has no application to the repeal of a statute made by the Parliament in England and the repeal of which has been brought about by the Constitution of India. Thus with the repeal of the Government of India Act 1935, by art 395 of the Constitution,

14 *Mangilal Dhannalal v Shivprasad Bholaram* 1965 Jab LJ 786, AIR 1966 MP 171.
15 *R Pratap v Director of Enforcement, New Delhi* 1969 Cr LJ 1582 (Mad).
16 *Madhya Pradesh Electricity Board v Employees State Insurance Corpn* 1981 Lab IC 1254 (MP), 1981 MPLJ 490 (DB).
17 *Kunhamppu v Chintan* 1958 KLT 804, 1958 KLJ 733, 736 (wrt s 3 of Madras Indebted Agriculturists (Temporary Relief) Ordinance 5 of 1953).
18 *Jairam Singh v State of Uttar Pradesh* AIR 1962 All 350.
19 *Gurdial Kaur v State* AIR 1952 Punj 55, 56–57, 54 Punj LR 11 (DB).

s 76 of the 1935 Act also vanished, and a Bill pending before the Governor-General could not survive the repeal.[20]

Section 6 is applicable to express repeals and not where a statute is repealed by implication.[21]

Where, on 30 June 1942, a regulation was promulgated for bringing into force in Chhotanagpur, the Finance Act of 1939 retrospectively, it was held that the income of the assessee for the year 1939–40 was liable to tax, in that year.[22]

Section 297(2) of the Income-tax Act of 1961 provides for the operation of the old Act in part in negative terms, and in part in positive terms. It is, therefore, an indication of the intention to exclude the application of s 6 of the General Clauses Act.[23]

The Industrial Disputes Act 1947 is not repealed by the Minimum Wages Act 1948, for there are vital differences between the two Acts both as regards their purpose and their scope.[24]

In *Parsiddhan Singh v Gaya Prasad*[25] the question was whether the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Ordinance 1954 was a 'repealing Act' within the meaning of s 6 of the Uttar Pradesh General Clauses Act. It was held that the ordinance was not a repealing ordinance but was an amending ordinance. It was further held that whether a suit should be tried in a revenue court or civil court is a matter which does not give any right or privilege or obligation but is purely a matter of procedure and, therefore, even if it be a repealing Act, s 6 of the General Clauses Act will not apply.

(b) Cases of Prospective Effect

The following are some cases illustrating prospective effects of statutes or provisions of statutes:

(i) Section 5(1)(e) of the Prevention of Corruption Act 1947, as introduced by the Anti-Corruption Laws (Amendment) Act No 16 of 1967.[26]

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20 *Raja Bhairabendra Narayan Bhup v State of Assam* (1956) ILR 8 Assam 379 (FB).

21 *British Medical Stores v Bhagirath Mal* AIR 1955 Punj 5; (reversed on another point in *Roshan Lal Mehra v Ishwar Das* AIR 1962 SC 646; applying *KM Menon v State of Bombay* AIR 1951 SC 128); *Nembu Govinda Sinai Curvelcar v Union of India* AIR 1969 Goa 30 (when repeal by implication arises).

22 *Chatturam Horiram Ltd v Commr of Income-tax, Bihar and Orissa* [955] 27 ITR 709, AIR 1955 SC 619; *Kalwa Devadattam v Union of India* [1963] 49 ITR 165 (SC), AIR 1964 SC 880.

(ii) Poona Municipal Corporation Octroi Rule 5(8) deleted with proviso that concession already granted in octroi duty, under that rule, would not be affected.[27]

(iii) Section 171(6) of the Income-tax Act 1961.[28]

(iv) Bombay Rents, Hotel and Lodging House Rates Control Act 1947, as amended by Gujarat Act 18 of 1965, does not apply to revisions, under s 115, Civil Procedure Code, pending at the time of amendment of s 29(2) and such revisions have to be decided as if s 29(2) were not amended. Amendment of Section 29(2) was held prospective.[29]

(v) Proviso inserted in s 10 of the Estate Duty Act, by the Finance Act of 1965. Amended proviso operates only from 1 April 1965 and is not retrospective.[30]

(vi) Section 47A of the Stamp Act 1899, as inserted by Madhya Pradesh Act 8 of 1975 has no retrospective effect and does not affect instruments registered prior to coming into force of the said amendment.[31]

(vii) Notification under s 49 of the Electricity (Supply) Act 1948, altering surcharge with effect from August in view of the agreement providing for such alteration with effect from the date of such notification, is not retrospective. Altered rate of surcharge would apply only from August.[32]

(viii) Proviso to s 5(1) of the Andhra Pradesh General Sales-Tax Act 1957, as amended in 1963, with effect from 1 August 1963, is prospective with regard to the matter of giving certain concession in tax on hoteliers.[33]

(ix) Section 2(4) of the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, is prospective giving right to the wife to avail of the Act even if the marriage had taken place prior to the commencement of that Act.[34]

(x) Article 261(3) of the Constitution of India is prospective.[35]

(xi) Section 9 of Hyderabad Money Lenders Act 1349F, as amended in 1355F, affecting substantive rights by providing for dismissal of suits, applies to future transactions alone.[36]

27 *Municipal Corpn for the City of Poona v Bijali Products (India) Ltd* AIR 1979 SC 304, (1979) 1 SCJ 268.

28 *Govinddas v Income-tax Officer* AIR 1977 SC 552, (1976) 2 SCJ 185, 1977 Tax LR 149.

29 *Kashav Lal Jetha Lal Shah v Mohan Lal Bhagwan Das* AIR 1968 SC 1336, (1968) 1 SCJ 147.

30 *George Da Costa v Controller of Estate Duty, Mysore* AIR 1967 SC 849, (1967) 1 SCJ 493.

31 *Sita Ram v State of Madhya Pradesh* AIR 1980 MP 4, 1979 MPLJ 817.

32 *Aditya Mills Ltd v State Electricity Board* AIR 1969 Raj 254, 1969 Raj LW 147.

33 *State of Andhra Pradesh v Murli Cafe* 1971 Tax LR 493, (1972) 1 APLJ 28 (FB).

34 *Ram Prakash v Savitri Devi* AIR 1958 Punj 87, 59 Punj LR 549.

35 *Radhe Sham Roshan Lal v Kundan Lal Mohan Lal* AIR 1956 Punj 193, 58 Punj LR 270.

36 *Mohammad Bin Salem v Umaji* AIR 1955 Hyd 113.

(xii) Notification of 1355F amending the Schedule of 'Protected Tribes' in the Hyderabad Land Alienation Restraint Act, so as to include the Lingayats in that schedule does not affect the transactions prior to commencement of the notification.[37]

(xiii) Rule 1 in Ch 3B of Volume V of Punjab High Court Rules and Orders, as amended, providing for appeals, hearable earlier by a Bench of two judges, now to be heard by a single judge, thereby affecting the right of further appeal to the Supreme Court, has only a prospective effect.[38]

(xiv) Sections 38 and 97(2)(n) and 97(3) of the Civil Procedure Code (Amendment) Act 1976, affecting leave applications against appeals decided by a single judge is not retrospective.[39]

(xv) Section 14 of the Rajasthan Premises (Control of Rent and Eviction) Act 1950 as added by amending Act 17 of 1950 has prospective operation.[40]

(xvi) Fixation of fair rent under the Himachal Pradesh Urban Rent Control Act 1971, will operate prospectively.[41]

(xvii) Section 39 of the Orissa Hindu Religious Endowment Act 1952, is prospective in operation.[42]

(xviii) Rule 107 of the Karnataka Cinemas (Regulation) Rules 1917, as amended in 1974, would not affect the 'No Objection Certificate' granted prior to the amendment of the Rule.[43]

(xix) Proviso to clause 14(2) of the Bihar Rice and Paddy Procurement Order 1974, is prospective.[44]

(xx) Section 36(1)(3) of the Motor Vehicles Act 1939 as amended by Act 36 of 1969 read with Rule 24 of Bihar Motor Vehicles Rules 1940 as amended in 1970, giving power to the registering authority to alter registered laden weight without owner's consent does not affect the transport before such amendment.[45]

(xxi) Clause 22 of the Haryana Control of Bricks Supplies Order 1972.[46]

37 *Ram Chander v Ramappa* AIR 1954 Hyd 58.

38 *Gordhan Das Baldev Das v Governor-General in Council* AIR 1952 Punj 103, 54 Punj LR 1 (FB).

39 *Sonya Dagdu v Mandhu Dagadu* AIR 1980 Bom 62, 1980 Mah LJ 17; dissenting from *State of West Bengal v Fakir Mohammad* AIR 1977 Cal 285; *Anusua Dhiraj Lal Kanakia v Pramode Kumar Banerji* AIR 1978 Cal 249.

40 *Kishan Pyari v Shanti Devi* AIR 1978 Raj 9, 1977 Raj LW 77.

41 *Lakshmi Chand Sood v Shankar Lal Pal* AIR 1976 HP 69, 1976 RCR 606 (DB).

42 *Krishna Chandra v Commr of Endowments* AIR 1976 Ori 52.

43 *Laxmi Touring Talkies v State* AIR 1975 Kant 37, (1975) 1 Kant LJ 419.

44 *Krishna Das v State of Bihar* AIR 1975 Pat 262, 1976 BLJ 92 (DB).

45 *Binod Kumar v Supdt of Police* AIR 1975 Pat 227, 1976 BLJR 350.

[illegible] AIR 1974 Punj 223, 1974 Rev LR 151 (DB)

(xxii) Rule 42A of the Uttar Pradesh Poppy Heads Rules 1961, imposing duty.[47]

(xxiii) Rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules 1955, as amended with effect from 4 September 1956.[48]

(xxiv) Section 52A of the Bombay Public Trusts Act 1950, as added by Act 23 of 1955.[49]

(xxv) Schedule 4 of the Workmen's Compensation Act 1923, as amended by Act 64 of 1962.[50]

(xxvi) Section 3(b) of the Uttar Pradesh Industrial Disputes Act 1947 and Order 4032 CTD 36A, 64TD 1969, dated 13 July 1970.[51]

(xxvii) Section 5(2) of the Minimum Wages Act 1948, notification fixing minimum wages thereunder.[52]

(xxviii) Section 29 of the Industrial Disputes Act 1947, as amended on 19 November 1965.[53]

(xxix) J&K Houses and Shops Rent Control Act 1966.[54]

(xxx) Section 5(2) of the Minimum Wages Act 1948, fixing minimum wage by a notification made under the section.[55]

(xxxi) Madras Building (Lease and Rent Control) Rules 1965.[56]

(xxxii) Clause (2) of Rajasthan Gram and Barley (Prohibition of Export) Order 1965.[57]

(xxxiii) Section 209 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, as amended in 1952.[58]

47 *Rameshwar Prasad Kishan Gopal v State of Uttar Pradesh* 1973 Tax LR 2503, 1973 All LJ 739.

48 *Viranwali v Union of India* 1973 Rajdhani LR 165 (Del).

49 *Kamaruddin Haji Abdul Hamid v Hussen Shah Jamal Shah* (1973) 13 Guj LR 599 (DB) (section held not applicable in pending cases).

50 *Oriental Fire and General Insurance Co Ltd v Bibi* 1973 Lab IC 17, 1972 ACJ 187 (unamended schedule to apply in case of death prior to amendment).

51 *Hindustan Industries and Machine Mfg Co Pvt Ltd v State of Uttar Pradesh* 1974 Lab IC 1154, (1971) ILR 2 All 449 (DB) (All) (wage structure with regard to engineering industries).

52 *Mahendra Chandra Dev v Government of India* AIR 1971 Tri 32 (notification to be effective only from the subsequent date).

53 *DC Chhowala v Gujarat Paper Mills Ltd* 1969 Lab IC 295, 1969 Cr LJ 322, 9 Guj LR 890 (provision being penal cannot be given retrospective effect).

54 *Mulk Raj v Kapur Chand* 1970 J&K LR 54, 1969 RCR 656 (Act not being merely procedural but affecting substantive vested rights of landlords to file suit for eviction, cannot operate retrospectively).

55 *TP Sokkalal Ram Sait Factory Pvt Ltd v Government of Madras* (1969) 2 Mad LJ 366, 369 (date of operation of notification is the date of its publication, indicating its prospective operation).

56 *CY Anjaneyalu Chetty v Seth Sheonarain & Sons* (1969) 82 Mad LW 556 (rules being not merely procedural cannot have retrospective operation).

57 *Kripa Ram Ganesh Lal v State of Rajasthan* AIR 1967 Raj 90, (1966) ILR 16 Raj 697.

58 *Indraj Singh v Savitri Kunwar* AIR 1966 All 234, 1965 All LJ 651 (provision for impleadment of state in suits does not invalidate suits filed before amendment and brought up in appeal).

(xxxiv) Section 164 of the Madhya Pradesh Land Revenue Code 1958, as amended in 1961.[59]

(xxxv) Section 6 of the East Punjab General Sales-tax Act (Amendment) Act 1963, inserting s 18 in the relevant Act.[60]

(xxxvi) Section 18 of the Uttar Pradesh Consolidation of Holdings (Amendment) Act 1957.[61]

(xxxvii) Section 110 of the Motor Vehicles Act 1939, as substituted by repealing and amending Act 58 of 1960, giving power to the claims tribunal to entertain compensation claims to the exclusion of the civil courts.[62]

(xxxviii) Order 21, r 22(a) and (b) of the Civil Procedure Code, as amended in Orissa.[63]

(xxxix) Section 40 of the Bombay Tenancy and Agricultural Lands Act 1948, as amended by Bombay Act 13 of 1956, making deemed tenancy heritable.[64]

(xl) Section 14 of the Bombay Rents Hotel and Lodging House Rates (Control) Act 1947, as amended in 1959.[65]

(xli) Sections 2(2)(ii) and 9 of the Madhya Pradesh Municipalities Act 1961, as amended by the Madhya Pradesh Act 31 of 1963.[66]

(xlii) Section 13 of the Punjab Village Common Lands (Regulation) Act 1961.[67]

(xliii) Section 202 (c) of the UP Zamindari Abolition & Land Reforms Act 1951.[68]

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59 *Shanti Bai v Bihari Lal* AIR 1966 MP 11, 1965 MPLJ 150 (DB) (no express words in amending statute or amended section in favour of retrospectivity).

60 *Madan Mohan v District Excise and Taxation Officer* (1966) 68 Punj LR 810, 1966 Cur LJ 590.

61 *Babu Ram v Sughar Singh* 1965 All LJ 741, 1965 All WR 374 (HC) (amendments affecting rights to operate only prospectively).

62 *Unique Motor and General Insurance Co Ltd v Kartar Singh* AIR 1965 Punj 102, 66 Punj LR 1083 (DB) (provision not to extend to ending cases in civil courts); *Iqbal Prakash v State* 1962 MPLJ 757, 1962 Jab LJ 156 (claims tribunal not in existence at time of institution of suit—suit maintainable in civil court).

63 *Padmalav v Misra* (1965) 31 Cut LT 632, (1964) ILR Cut 829 (amendment not to cover transactions concluded before amendment).

64 *Thakore Lal Amrat Lal Vaidya v Gujarat Revenue Tribunal* AIR 1964 Guj 183, (1963) 4 Guj LR 841 (DB) (amendment not retrospective).

65 *Hira Lal Vallabhram v Kasturbhai Lalbhai* (1969) 5 Guj LR 941 (DB) (words used clearly indicative of prospective nature of amendment).

66 *Hari Singh v State* 1964 Jab LJ 585 (amendment not invalidating action held under Act prior to amendment).

67 *Gram Panchayat Deh Mauza Charbi Brahman, Tehsil, Sonepat v Kesho Narain* AIR 1964 Punj 462, 66 Punj LR 518 (exclusion of jurisdiction of civil courts not being merely procedural, would operate only prospectively).

(xliv) Sections 2 and 4 of the East Punjab Displaced Persons (Land Resettlement) Act 1949.[69]

(xlv) Section 44(1) of the Hyderabad Tenancy and Agricultural Lands Act 1951 as amended during pendency of actions.[70]

(xlvi) Section 2(vi) of the Payment of Wages Act 1936, as amended by Act 68 of 1957 (amending definition of 'wages').[71]

(xlvii) Section 5 of the Madhya Pradesh Accommodation Control Act 1955, as applied to the Madhya Pradesh Region, from 1 January 1959.[72]

(xlviii) Rule 7 of the Uttar Pradesh State Law Officers Rules 1942, as substituted be new r 7, fixing 60 years as age of superannuation for government advocates.[73]

(xlix) Section 34 of the Income-tax Act 1922, as amended by Finance Act of 1956.[74]

(l) Section 3(g) of the Madhya Bharat Sthan Niyantran Vidhan 1950, extending interpretation of term 'tenant'.[75]

(li) Orissa Tenants Protection Act, as amended by Act 17 of 1951, as on 14 April 1951 when the Merged States (Laws) Act came into force.[76]

(lii) Industrial Disputes Amendment Act 36 of 1956.[77]

(liii) Article 261(3) of the Constitution of India.[78]

(liv) Section 10(4) of Industrial Disputes Act 1947, containing expression 'and matters incidental thereto'.[79]

69 *Sant Nihar Singh v Chief Settlement Commr* 1963 Cur LJ 308 (DB) (order issued under instructions of government remains valid without retrospective effect even if government withdraws instructions).

70 *Guda Sithamma v Desham Balakistiah* (1962) 2 Andh WR 195 (rights vested prior to amendment not affected).

71 *BN Elias & Co Pvt Ltd v Authority Appointed Under Payment of Wages Act* AIR 1960 Cal 603, 1961 2 LLJ 297 (amended definition not retrospective).

72 *Dharam Chand v Rajendra Kumar Todarmal* 1960 MPLJ 1136 (for suit instituted before 1 January 1959, s 5 requiring deposit of rent not applicable).

73 *Pirthwi Nath Chowdhary v State of Uttar Pradesh* AIR 1959 All 169, 1959 All LJ 323 (new rule not retrospective; termination of service of person appointed prior to coming into force of rule held illegal).

74 *Debi Dutta Moody v T Bellan* AIR 1959 Cal 567 (no revival of right already barred, except by force of express words or by necessary intendment).

75 *Banke Lal Ram Lal v Sant Sharan* 1959 MPLJ 589, 1959 Jab LJ 184 (extended interpretation of term 'tenant' does not cover termination of tenancy before commencement of Act).

76 *Uchhab Pradhan v Gokul Rout* (1959) 1 OJD 540 (Orissa Tenants Protection Act applied prospectively during period 3 March 1950 to 14 April 1951).

77 *Karnal Kaithal Co-op Transport Society, Ltd v State* AIR 1959 Punj 360, 61 Punj LR 250 (Act not retrospective).

78 *Raj Rajendra Sardar Maloji Narsing Rao v Shankar Saran* AIR 1958 All 775 (article prospective).

79 *Workmen of Bengal Electric Lamp Works Ltd v Bengal Electric Lamp Works Ltd* AIR 1958 Cal 663, 62 CWN 219 (in the absence of actual terms otherwise indicating, expression to be read prospectively).

(lv) Section 35 of the Income-tax Act 1922, as amended by Income-tax (Amendment) Act 1953.[80]

(lvi) Section 10(2)(ii)(a) of the Hyderabad Houses (Rent, Eviction and Lease Control) Act, requiring written permission for subletting.[81]

(lvii) Section 17 of Registration Act 1908, as amended by Transfer of Property (Amendment) Supplementary Act 1929.[82]

(lviii) Sections 57(a) and 213 of the Marwar Succession Act 1936, making probate of will necessary in view of s 213.[83]

(lix) Section 186 of the Rajasthan Tenancy Act 1955, coming into force during pendency of revision entertained under section 10(2) of the Rajasthan (Protection of Tenants) Ordinance.[84]

(lx) Section 87(2) of the Madras Court Fees Act 1955.[85]

(lxi) Section 2(a) of the CP and Berar Regulation of Letting of Accommodation Act 1946.[86]

(lxii) Article 286 of the Constitution of India.[87]

(lxiii) Uttar Pradesh Government Premises Rent Recovery and Eviction Act 1952.[88]

(lxiv) Section 6 of the Assam Urban Areas Rent Control Act 1949.[89]

(lxv) Article 286(1)(b) of the Constitution of India.[90]

80 *KL Chetty v Addl Income-tax Officer* AIR 1957 AP 159, 1956 Andh WR 243 (amendment to operate only prospectively).

81 *Jafer Ali v Choitram* (1957) 1 Andh WR 348 (subletting with oral permission prior to operation of Act not affected).

82 *Kavaleshwari Kuer v Surajnath Rai* AIR 1957 Pat 456, 1957 BLJR 319 (amendment not retrospective).

83 *Meghraj v Mst Soni* AIR 1957 Raj 384, 1958 Raj LW 117 (DB) (subsequent change in procedure introduced by Indian Act not to deprive legatee of rights established on 18 August 1949).

84 *Niroti v Board of Revenue* (1957) ILR 7 Raj 194 (provision in Tenancy Act for appeal not to convert pending revision into appeal).

85 *Ganga Naicken v Sundaram Ayyar* AIR 1956 Mad 597, (1956) 1 Mad LJ 63 (taxing statute to ordinarily operate prospectively in case of doubt admits construction beneficial to subject).

86 *Champalal v Hari* (1956) ILR Nag 576 (order determining fair rent not to be given retrospective effect).

87 *Tata Iron and Steel Co Ltd v State of Bihar* AIR 1956 Pat 92, (1956) 7 STC 158 (article having prospective operation does not upset concluded transactions prior to commencement of Constitution).

88 *Shripat Rai v DM, Banaras* 1955 All LJ 681, AIR 1955 NUC (All) 2676 (Act not to apply retrospectively).

89 *Bonamali Roy v Sailendra Chandra Naha* AIR 1955 NUC (Assam) 2794 (section not to have retrospective effect).

90 *Nem Kumar Kesrimal Porwal v Commr of Income-tax, Madhya Pradesh* AIR 1955 Nag

(lxvi) Section 3(5) of the Berar Regulation of Agricultural Leases Act 1951, as amended in 1953.[91]

(lxvii) Section 45O of the Banking Companies Act 1949.[92]

(lxviii) Sections 29 and 32 of the Travancore Cochin Revenue Recovery Act 1951.[93]

(lxix) Section 45N of the Banking Companies Amendment Act 1913.[94]

(lxx) Section 7(1) of theWest Bengal Bargaders Act 1956.[95]

(lxxi) Section 25(2) of the Bombay Money Lenders Act 1947.[96]

(lxxii) Article 133 of the Constitution of India.[97]

(lxxiii) Rule 14(4) of the Administration of Property (Control) Rules 1960.[98]

(lxxiv) Section 9(3)(ii) of the Cotton Buildings (Lease and Rent Control) Act 1924.[99]

(lxxv) Madras Validating Act 12 of 1949.[1]

(lxxvi) Section 292(2) of the Income-tax Act 1961.[2]

(lxxvii) Section 7(3) of Tamil Nadu Money Lenders Act 1957.[3]

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91 *Udaram Jayawant Rao v Thewara Chatru* 1955 Nag LJ 552, AIR 1955 NUC (Nag) 2137 (general rule of retrospectivity of statute excluded when statute covers all possible cases whether pending or to be instituted).

92 *Punjab Commerce Bank Ltd v Brij Lal Mahandi Ratta* AIR 1955 Punj 45, 57 Punj LR 99 (DB) (section not retrospective).

93 *BM Viswanathan v Tahsildar Pathamanthitta* AIR 1955 NUC (Tr & Coch) 2214 (DB) (antecedent engagements not annulled by scope of s 32—in the absence of express words or necessary implication, statute does not affect private rights).

94 *Nath Bank Ltd v Kshetra Nath Dalal* (1955) 59 CWN 111, AIR 1955 NUC (Cal) 3665 (order passed after the Amendment Act does not deny the right of appeal).

95 *Tirthabasini Dasi v Bilat Ali Mondal* (1954) 58 CWN 101, AIR 1955 NUC (Cal) 935 (Act to operate prospectively).

96 *Sujan Lal Jhaveri Lal & Co v Gulab Chand Keshri Chand* AIR 1953 Bom 125, 54 Bom LR 632 (section not retrospective).

97 *Bhagwant Rao Shiwaji v Visvarao Amritrao* AIR 1953 Nag 313, 1953 Nag LJ 531 (appeal against suit commenced prior to Constitution decided subsequent to Constitution—Right of appeal not governed by art 133); *Batala Engineering Co Ltd v Custodian, Evacuee Property East Punjab* AIR 1951 Punj 412, 53 Punj LJ 84 (art 133 and s 103, Civil Procedure Code, not retrospective).

98 *Soni Makan Kunji v Custodian of Evacuee Property* AIR 1953 Sau 20 (DB) (non-compliance with rule not fatal to order passed on date prior to operation of rule).

99 *PK Gopalan v Sipora* AIR 1951 Tr & Coch 91 (Act not having retrospective operation would not affect pending proceedings).

1 *Re Calicut Hosieries* AIR 1950 Mad 231, 51 Cr LJ 589 (reference involving ss 23, 24, 26(2) of the Industrial Disputes Act 1947, if illegal when made, cannot be validated by the validating Act, so as to convict and sentence persons charged with illegal lock-out, nor does validating Act convert prior legal lock-out into illegal lock out).

2 *Amolak Singh Jain v Commr of Income-tax* (1971) ILR 1 Del 562 (further proceedings of pending case to be governed by old Act).

3 *Navis Ammal Fernando v S Subbiah Iyer* (1974) 1 Mad LJ 344, 87 Mad LW 298 (section not applicable to advances made prior to that Act).

(lxxviii) Section 3(10) of the Madras Buildings (Lease and Rent Control) Act 1960.[4]

(c) Cases of Retrospective Effect

The following are cases of retrospective effect of statutes or provisions of statutes:

(i) Section 23 of the Foreign Exchange Regulation Act 1947 as substituted by Act 57 of 1957.[5]

(ii) Section 48(1) and (2) of the Administration of Evacuee Property Act, as amended by Act 91 of 1956.[6]

(iii) Notification under s 88(1)(d) of the Bombay Tenancy and Agricultural Lands Act 1948.[7]

(iv) Bye-law 52AA as published on 21 January 1956 under section 11 of Forward Contracts (Regulation) Act authorising making of bye-laws so as to operate retrospectively on existing contracts.[8]

(v) Section 8(2A) of the Administration of Evacuee Property Act 1950, as amended by Act 1 of 1960.[9]

(vi) Sections 145 and 146 of the J&K Criminal Procedure Code, Svt 1989, as amended by Act 2 of 1974.[10]

(vii) Section 33A of the Uttar Pradesh Municipalities Act 1916.[11]

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4 *SR Srinivasan v Accommodation Controller, Madras* (1965) 2 Mad LJ 201, 203 (tenancy of government under s 3(5) of the Madras Buildings (Lease and Rent Control) Act 1949, continues even after repeal of that Act).

5 *Union of India v Sukumar Pyne* AIR 1966 SC 1206, 1209, 1966 Cr LJ 946, (1966) 2 SCJ 227, (1966) 2 SCA 425; reversing *Sukumar Pyne v Union of India* AIR 1962 Cal 509 (subject matter of section being procedural does not act retrospectively).

6 *Memon Abdul Karim Haji Tayab, Central Cultery Stores v Deputy Custodian General, New Delhi* AIR 1964 SC 1256, (1964) 2 SCJ 220 (sub-sections being procedural would govern even pending proceedings).

7 *Mohan Lal Chunni Lal Kathori v Tribhovan Haribhai Tamboli* AIR 1963 SC 358, (1963) 2 SCJ 101; reversing *Tamboli Beghalal Chhotalal v Mohan Lal Chuni Lal Kothari* AIR 1957 Bom 130; modifying *Sakharam v Manick Chand Moti Lal Shah* AIR 1963 SC 354 (cl (d) held to operate retrospectively).

8 *Dr Indramani Pyarelal Gupta v WR Natu* AIR 1963 SC 274, (1963) 2 SCJ 59; impliedly overruling *Modi Food Products Ltd v Commr, Sales-tax, Uttar Pradesh* AIR 1956 All 35; and *Calicut Wynad Motor Service v State of Kerala* AIR 1959 Ker 347 (bye-law not invalid on ground of its retrospective operation).

9 *Azimunnisa v Deputy Custodian, Evacuee Properties, Deoria* 1962 SCJ 324, AIR 1961 SC 365 (Act retrospectively validating vesting of certain property).

10 *Fazl v Mohammad Bhat* AIR 1979 J&K 69 (amendment retrospective).

11 *Notified Area Committee v Sri Ram Singhasan Prasad Kalwar* AIR 1970 All 561.

(viii) Section 1(3) of the Civil Procedure Code 1908, as amended by Act 2 of 1951.[12]

(ix) Section 3(2) of the Hindu Women's Right to Property Act 1937.[13]

(x) Section 56 of the Civil Procedure Code, as amended in 1976.[14]

(xi) Section 14(2) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950, as amended in 1975.[15]

(xii) Section 15(1)(d) of the Orissa Land Reforms Act 1974.[16]

(xiii) Section 110A(3) of the Motor Vehicles Act 1939.[17]

(xiv) Sections 6(1)(a) and 7(4) of the Electricity Act 1910, as amended in 1959.[18]

(xv) Section 16 of the Madras University Act 1923, as amended in 1966.[19]

(xvi) Section 25 of the Mines and Minerals (Regulation and Development) Act 1957.[20]

(xvii) Section 23 of the East Punjab Consolidation of Holding Act 50 of 1948, as amended in 1962.[21]

(xviii) Section 3 of the J&K Government Servants Prevention of Corruption (Commission) Act 1962, as amended by Act 1 of 1964.[22]

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12 *Pappathi Ammal v Sivagannani Pillai* AIR 1954 Tr & Coch 526, 1954 KLT 827 (application for restoration having mere procedural implications will be governed by provisions as and when coming into force, unless otherwise provided for in the statute itself).

13 *Radhi Bewa v Bhagwan Sahu* AIR 1951 Ori 378; reversed on another point in *Moni Dei v Hadibandhu Patra* AIR 1955 Ori 73 (FB), retrospective effect not to be denied even if provision deprives coparceners of their privilege.

14 *Raja Reddy v Anasuyamma* AIR 1977 AP 342, (1978) 1 Andh WR 48 (DB) (amended section applies to pending proceedings).

15 *General Auto Agencies v Hazari Singh* AIR 1977 Raj 180, 1977 Raj LW 377 (DB) (amended section operates retrospectively).

16 *Shankar Kumar Bhattar v Tehsildar-cum-Revenue Officer* (provision of section retrospective).

17 *Devendra Kumar v Pilokhri Brick Kiln* AIR 1972 All 61, 1971 All LJ 998; overruling *New India Assurance Co v Shanti Misra* AIR 1970 All 408; dissenting from *VCK Bus Service Pvt Ltd v HB Sethna* AIR 1965 Mad 149, provision held applicable to claims on accidents occurring prior to constitution of claims tribunal.

18 *Dakor Umreth Electricity Co v State of Gujarat* (1972) 13 Guj LR 88 (provision though operates retrospectively, yet in relation to licences granted prior to amendment, a notice of less than two years vis-a-vis notice at least of two years as required by the amending provision, not invalid).

19 *A Sankernarayan v University of Madras* AIR 1971 Mad 322, (1970) 1 Mad LJ 551 (retrospective operation of power can be implied).

20 *Gwalior Red Chalk Corpn v Addl Tehsildar* AIR 1969 MP 48, 1968 MPLJ 919 (provision being merely procedural, can operate retrospectively).

21 *Boor Singh v State of Punjab* 1968 Cur LJ 911 (amended section applies to all pending proceedings).

22 *Sheikh Ghulam Rasul v State of Jammu & Kashmir* AIR 1965 J&K 78, (1965) 2 Cr LJ 359, 1965 Kash LJ 145 (Act held retrospective despite use of present tense in provision and despite penal nature of provision).

(xix) Explanation to s 47 of the Civil Procedure Code, as amended by Act 66 of 1956, commencing from 1 January 1957.[23]

(xx) Section 11(5) of the CP and Berar Sales Tax Act 1947, as amended by Madhya Pradesh Sales Tax (Amendment) Act 1953.[24]

(xxi) Section 165(7)(a) of the MP Land Revenue Code 1959, preventing sale of land attached at a time when attachment was not barred.[25]

(xxii) Section 45O(2) of the Banking Companies Act 1949 as amended in 1953, reviving barred claims against directors arising out of contracts.[26]

(xxiii) Article 226(1A) of the Constitution of India as added by Fifteenth Constitutional Amendment 1963.[27]

(xxiv) Proviso to section 3(11) of Madras Agriculturists Relief Act 1938, as amended by Madras Act 28 of 1958.[28]

(xxv) Section 9A of the Madras City Tenants Protection Act 1922, as amended by Act 3 of 1960.[29]

(xxvi) Clause (4) of the Uttar Pradesh Universities Ordinance.[30]

(xxvii) Section 44(3) of the Saurashtra Land Reforms Act 1951, read with Bombay Government Notification, dated 12 December 1958.[31]

(xviii) Section 35(10) of the Income-tax Act 1922.[32]

(xxix) Rules 2 and 6 of the Income-tax Rules, as amended in 1952.[33]

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23 *Sadhu Charan Patri v Sudershan Patri* AIR 1965 Ori 2 (provision involving mere procedural change, operates retrospectively).

24 *Ghanshyam Das Chhotalal v Sales-tax Officer* AIR 1964 MP 161, 1964 MPLJ 58 (amendment retrospective).

25 *Ithoba v Bhag Chand* 1964 Jab LJ 606; not following *Radha Sham Roshan Lal Firm v Kundan Lal Mohan Lal* AIR 1956 Punj 193.

26 *Re Vathakavardhini Bank Ltd* (1964) 34 Com Cas 225 (Mys).

27 *Anwar Mohammad v Managing Officer* AIR 1964 Raj 260, 1964 Raj LW 387 (DB) (amendment being procedural in character operates retrospectively).

28 *Sebastian Pillai v VEK Kadher Meena Rowther* (1962) 2 Mad LJ 530, (1962) 75 Mad LW 613 (amendment being declaratory would operate retrospectively).

29 *Gnanaprakaswam v Mehboob Bi* (1962) 1 Mad LJ 254 (amended provision applies to pending revisions).

30 *Prem Narain Tandon v State of Uttar Pradesh* AIR 1960 All 205 (in taking away vested rights, the ordinance operates retrospectively).

31 *Gandakala v Bombay State* (1960) 1 Guj LR 45, (1960) 1 Guj HCR 9 (notification held retrospective in operation).

32 *New Shorrock Spg & Mfg Co Ltd v NU Rawal, Income-tax Officer* AIR 1959 Bom 477, 61 Bom LR 618 (provision held to be *ex post facto* legislation of curative nature).

33 *Greenfields, Patna v Commr of Income-tax* AIR 1959 Pat 434, ILR 38 Pat 233 (provision concerned with limitation—nature of provision procedural—it acts retrospectively).

(xxx) Section 3 of the Madhya Bharat Interest Act 1956.[34]

(xxxi) Section 13 of the Madras Civil Courts Act 1973, as amended by Madras Act 17 of 1956.[35]

(xxxii) Section 4(w) of the Code of Criminal Procedure 1898, as amended by Act 26 of 1955.[36]

(xxxiii) Section 2 of the Government Grants Act 1895, using words 'or be deemed ever to have applied to any grant', etc.[37]

(xxxiv) Proviso to section 58(2) of the Motor Vehicles Act 1939, as amended by Orissa Motor Vehicles (Amendment) Act 1948.[38]

(xxxv) Second proviso to section 5(b) and section 13 of the Orissa House Rent Control Act 1947, as amended by Act 11 of 1951.[39]

(xxxvi) Rule 33 of the Sirhind Canal Rules, framed under Canal Act 1873.[40]

(xxxvii) Section 9 of the Saurashtra Ordinance 25 of 1948.[41]

(xxxviii) Section 22(g) of the Bengal Municipal Act 1932.[42]

(xxxix) Section 3 of the Hindu Women's Right to Property (Extention to Agricultural Land) Act 1947.[43]

(xl) Section 20(i) of Industrial Disputes (Appellate Tribunal) Act.[44]

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34 *Bhansar Lal Paramsukh v Naval Kishore* AIR 1958 MP 21, 1957 MPLJ 849 (provision held retrospective).

35 *Re Parthasarthi Naidu* AIR 1958 Mad 94, (1957) 2 Mad LJ 250 (DB) (amending Act by virtue of its impact on vested rights, held clearly retrospective).

36 *Amulya Kumar Dutta v State* AIR 1957 Cal 334, 1957 Cr LJ 631 (1) (offence triable as warrant case made triable as summons case by amendment—amendment has retrospective effect, so, pending warrant cases are to be tried as summons cases).

37 *Krishna Subala Bose v Dhanapatti Dutta* AIR 1957 Cal 59 (DB) (words indicate retrospectivity).

38 *New Orissa Transport Co v Regional Transport Authority, Cuttack* AIR 1957 Ori 121, 23 Cut LT 134 (amended provision would apply to applications for renewal of permit pending when amendment comes into force).

39 *Raghunath Ray v Nityanand Sahu* AIR 1956 Ori 175 (DB) (amendment coming into force during pendency of appeal—appellate court can take notice of amended law).

40 *Mukandi Ram Sant Ram v Executive Engineer* AIR 1956 Pepsu 40 (DB) (retrospectivity of rule not repugnant to art 20(4) of the Constitution).

41 *Hirjibhai Nowroji Wadia v State of Saurashtra* AIR 1956 Sau 35 (s 9 committed to the principle against retrospectivity—exception to the principle created by ordinance 13 of 1950—Ordinance 13 of 1950 shall prevail over ordinance 25 of 1948).

42 *Gaur Chandra Das v Joydeb Sadhukhan* (1955) ILR 2 Cal 85 (new rule of conduct and new qualification created for candidates at election would legitimately apply to pending elections).

43 *L Bappu Ayyar v Ranganayaki* AIR 1955 Mad 394, (1955) 2 Mad LJ 302 (statute held to be declaratory—s 3 operating as saving clause must have retrospective effect).

44 *Silk Cloth Products Association v Collector of Tanjore* AIR 1955 NUC (Mad) 3925 (new remedy for existing rights applies retrospectively).

(xli) Uttar Pradesh (Temporary) Control of the Rent and Eviction Act 1947.[45]

(xlii) Section 23 of the Bombay Money-Lenders Act 1947.[46]

(xliii) Rule 22A of the O 2, Civil Procedure Code 1908, as amended by Patna High Court.[47]

(xliv) Clause 2(4) of the Mysore House Rent Control Order 1941.[48]

(xlv) Section 34 of the Income-tax Act 1922 as amended in 1948.[849]

(xlvi) Section 69(1) of the Kerala Co-operative Societies Act 1969.[50]

(xlvii) Section 1(2) of the Income-tax Amendment Act 1963.[51]

(xlviii) Madras Agriculturists Relief Act 1938, as came into force in the territory of Pudukothai, on 1 January 1950.[52]

15. APPOINTMENTS UNDER STATUTE SUBSEQUENTLY REPEALED

At first the Allahabad High Court held that a person appointed as a public analyst under the Uttar Pradesh Pure Food Act 1950, which was subsequently repealed by s 25 of the Prevention of Food Adulteration Act 1954, must be deemed a public analyst for the purposes of the latter Act.[53] But this decision was later held erroneous by a Full Bench of the same High Court which held that the repeal of the Uttar Pradesh Pure Food Act 1950 had the necessary

45 *Raja Ram v Madho Prasad* AIR 1954 All 592, (1954) All LJ 195 (statute operates retrospectively—retrospectivity, though not express in words, to be gathered by necessary implication); *RN Seth v Girija Shankar Srivastava* AIR 1952 All 819 (DB) (s 10 of Act declaratory and hence, retrospective).

46 *Bansi Lal Ramgopal Bhattad v Haris Chandra Tatya Bhambhure* AIR 1953 Bom 420, 55 Bom LR 444 (retrospectivity of rule can be invoked in pending appeal).

47 *Mubarak Ali v Dinbandhu Sahu* AIR 1953 Ori 296, 19 Cut LT 484 (rule applies to sales effected prior to coming into force of rule).

48 *P Krishnanandgiri Goswami v GS Kuppuswami Setty* (1950) 28 Mys LJ 311 (DB) (term 'tenant' omitted from definition in the 1942 order but supplied in 1944—definition being declaratory operates retrospectively).

49 *Commr of Income-tax B and C v Maharaja Pratap Singh Bahadur* AIR 1961 SC 1026, (1961) 2 SCJ 176 (amended section providing for prior approval of commissioner applied to assessment completed on 26 August 1948).

50 *MK Kunhiraman v Purameri Service Co-op Bank Ltd* (1971) 1 LLJ 35, 1970 KLT 1057.

51 *MK Venkatachalam v Bombay Dyeing and Mfg Co Ltd* AIR 1958 SC 875, (1958) SCJ 1054.

52 *MPS Al Alagappa Chettiar v Nachiappa Chettiar* AIR 1953 Mad 810, (1953) 2 Mad LJ 298.

53 *Municipal Board, Lucknow v Shayam Behari* AIR 1960 All 117.

consequence of terminating the appointments of public analysts made under that Act and therefore a person appointed as a public analyst under the Uttar Pradesh Pure Food Act cannot be deemed a public analyst under the Prevention of Food Adulteration Act.[54]

16. INFRINGEMENT OF FUNDAMENTAL RIGHTS

Where the question of fundamental right is involved, the operation of an order passed prior to the coming into force of the Constitution of India is not saved by s 6 of the General Clauses Act, so as to deprive a person of his fundamental right which he can exercise after 26 January 1950.[55] However, the Constitution is entirely prospective in its operation and, as it was not intended to have any retrospective effect, there was no necessity at all for inserting in that article any such saving clause. The effect of art 13(1) is quite different from the effect of expiry of a temporary statute or the repeal of a statute by a subsequent statute. This article has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned, for, to say that it is, will be to give the law a retrospective effect. There is no fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights.[56]

In cases in which the action has been completed and has become final or there is a closed transaction, and in which the liability or penalty is imposed

54 *Municipal Board, Kanpur v Beharilal* AIR 1960 All 546 (FB).

55 *Jesinghbhai Ishwar Lal v Emperor* AIR 1950 Bom 363, 366 (FB); *Showkatunnisa v Hyderabad State* AIR 1950 Hyd 20 (FB); *Beharam Khurshid Peshikaka v State of Bombay* AIR 1955 SC 123, 1955 Cr LJ 215, 1955 SCA 1; *Balsara's* case [1951] SCR 682, declaring void s 13(b) of the Bombay Prohibition Act 1949, involving consumption of liquid medicinal or toilet preparations containing alcohol, does not mean to carve out any proviso to the said section, so as to cast any onus on the accused; *Jairam Singh v State of Uttar Pradesh* AIR 1962 All 350, 352 (Uttar Pradesh Government Land (Eviction and Rent Recovery) Act 1953, having been declared unconstitutional, is not saved either by s 16 of Ordinance 4 of 1959, nor by ss 6 and 24 of the Uttar Pradesh General Clauses Act 1904); *Sree Siddhi Budhi Vinayakagar Sundreswarar Devastanam v SV Maninuthu* AIR 1963 Mad 369, 375, 76 Mad LW 381 (later statute when found unconstitutional in the absence of contrary intention, revives the original enactment).

56 *Keshavan Madhava Menon v State of Bombay* [1951] SCR 228, 235–36, AIR 1951 SC 128.

or incurred once for all as a result of that action, the right to prosecute any legal proceedings for enforcement of the penalty or for obtaining the remedy continues even after the repeal of the enactment as if the repealing enactment had not been passed. In cases in which the penalty or liability or disability is, however, a continuing one and though it started before the Constitution came into operation, and though no completed action can be abrogated by reason of the repeal (or declaration that the Act is void), the disability imposed by the repealed Act (or the Act declared void) cannot continue after the repeal because it would be giving to the statute so declared void a prospective operation even after it has actually become void.[57]

In *Mohanlal Hargovinddas v Commr of Sales-tax, Madhya Pradesh*,[58] it has been held that the power to assess and collect tax on sales made before the commencement of the Constitution remains unaffected and the power of the state to tax concluded sales could be exercised even after the commencement of the Constitution.

17. PENDING PROCEEDINGS AND PROCEDURE THEREOF

The effect of repeal of an enactment on pending cases is that they continue as if the enactment had not been repealed, subject, however, to anything contrary expressed in the repealing enactment.[59] The rule as stated in *Aribam Tuleshwar Sharma v Irengban Yaima Singh*[60] is that the rights of the parties have to be governed by the law in force at the time when the action was commenced and a change in the law would not affect pending actions, unless the new enactment has, to that effect, a clear provision.[61] In *Lachaman Das Kewal Ram*

57 *Raj Rajeshwari Devi v State of Uttar Pradesh* AIR 1954 All 608.

58 1961 MPLJ 894; followed and applied in *Abdul Kayoom v Commr of Income-tax, Madras* AIR 1953 Mad 900.

59 *Ramesh Chandra v Nagendra* AIR 1951 Cal 435.

60 AIR 1965 Mani 39, 43.

61 *Nalagarh Dehati Co-op Transport Society Ltd v Suraj Mani* AIR 1977 HP 35, 36–37, (1976) ILR HP 319 (legal remedy already available to be carried on to its end); *Parmeswaran Pillai Vasudevan Pillai v Jacob Perumal* AIR 1956 Tr & Coch 236–37, 1956 KLT 333 (DB); *Kulamani Hota v Parbati Debi* AIR 1955 Ori 77, 79, 91 Cut LT 507; *Ninah Singh v Kalyan Singh* 1955 Raj LW 92, AIR 1955 NUC (Raj) 2196; *Mohammad Jamal Ahmed v Suraj Narain* AIR 1951 Pat 635, 637 (DB); *Dev Raj v Union of India* AIR 1974 Punj 65, 79, 75 Punj LR 270; *Kausalya Santhanam v Agricultural Income-tax Officer, Coimbatore* 1978 Tax LR 218, 220, (1978) 111 ITR 469 (Mad); *Meenakshi Amma v Madhavan Nair* 1968 KLT 744, 1968 Ker LR 475–76; *Musammat Mundrika Kuer v Ram Prasad Sharma* 1957 BLJR 296, 298; *Sham Lal v Om Prakash* AIR 1955 Punj 223–24, 57 Punj LR 171 (DB) (law in force at time of filing appeal as to court-fee shall apply); *Sudkya Ramji v Mohammad Issak* AIR 1950 Bom 236, 239, 52 Bom LR 123 (DB) (strong and distinct words alone can alter the rights as they vested at the commencement of action); *Dev Raj Vawa v Om Prakash Gupta* 1975 RCJ 666, 670 (no retrospective operation to impair existing rights except in matters of procedure).

v State of Bombay,[62] it was held that the post-Constitution procedure was held to apply to trial continued from before the commencement of the Constitution. What is to happen to the pending proceedings, when, for instance, a temporary Act expires by efflux of time, must depend upon the intention of the legislature; and where clear words are not used the intention must be inferred from the relevant circumstances. Thus, where a temporary Act sets up a special tribunal, and as a result of the expiration of the Act the special tribunal ceases to exist and no clear provision is made for continuing the pending proceedings, it will be reasonable to infer that the intention of the legislature was that such proceedings shall not be continued. The repeal of an enactment does not prima facie affect pending actions,[63] unless the law has been altered to create a rule of evidence or a rule of decision, in which case, it is for the party to show that pending actions are saved.[64] Where a right has become vested in a person and the authority through whom that right can be enforced continues to exist, the inference would be justified that there was no intention to deprive the person of that right.[65] The necessary pre-requisite for enforcement of such a right must also be deemed to exist after the expiry of the Act.[66] A person having acquired a right to a relief while an Act is in force, has right to continue his legal proceedings before the authority competent under that Act to grant him that relief.[67]

When the term 'Central Act or Regulation or Rule', is used in that Act, reference has to be made to the definition of that term in the statute. It is not possible or permissible to give a meaning to any of the terms different from the definition. It is manifest that each term has a distinct and separate meaning attributed to it for the purpose of the Act. Therefore, when the question to be considered is whether a particular provision of the Act applies to a case, the clear and unambiguous language of that provision has to be given its true meaning and import. When the legislature, by clear and unambiguous language, has extended the provision of s 6 to cases of repeal of a 'central Act' or 'regulation', it is not possible to apply the provision to a case of repeal of a 'Rule'. The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a 'rule' and takes its colour from the definition of the term in the Act.

It is not correct to say that, in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted, the court is not to look for a provision in

62 AIR 1952 SC 235.

63 *Raghuraj Singh v Sobhaman* AIR 1951 All 485, 1951 All LJ 56; *Ram Saran v Bir Sen* 1958 All WR 62, 64 (HC).

64 *Sonabai v Revenue Board* AIR 1958 MP 368, 371, 1958 MPLJ 452; *obiter* in *Kulwant Singh v Registrar, Co-op Societies* 1963 Cur LJ 324, 326.

65 *SA Seshadri Aiyangar v Narayana Nair* AIR 1950 Mad 106, 62 Mad LW 627; relying on *G Narayanswami Naidu v Inspector of Police* AIR 1949 Mad 307, (1949) 1 Mad LJ 1.

66 *Re Sundararajulu* AIR 1949 Mad 893.

67 *Ram Deo v State of Rajasthan* (1955) ILR 5 Raj 239, 253, AIR 1955 Raj 1356 (NUC).

the newly added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. In such a case the court is to look to the provisions in the rule which has been introduced after omission of the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceeding shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted, then such a proceeding will continue. If the case is covered by s 6 of the General Clauses Act or there is an *in pari materia* provision in the statute under which the rule has been framed, the pending proceeding will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule, the pending proceedings would lapse on the rule, under which the notice was issued or proceeding was initiated, being deleted or omitted.

Thus, the operation of repeal or deletion as to the future and the past largely depends on the saving applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.[68]

In *State of Maharashtra v Lalit Rajshi Shah & Ors*,[69] the sole question that arose for consideration was what is the effect of the provisions of s 161 of the Maharashtra Co-operative Societies Act in interpreting the provisions of s 21 of the Indian Penal Code. In the facts and circumstances of the case, the Supreme Court held, inter alia, as follows:

1. It is undoubtedly true that the Co-operative Societies Act has been enacted by the state legislature and the power to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the Constitution. The legislature no doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code but such reference would not make the officers concerned 'public servants' within the ambit of section 21. The state legislature had the powers to amend Section 21 of the Indian Penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2) of the Constitution as, otherwise, inclusion of the persons who are 'public' servants' under Section 161 of the Co-operative Societies Act would be repugnant to the definition of 'public servant' under Section 21 of the Indian Penal Code.

68 *Kolhapur Canesugar Works Ltd & Anor v Union of India & Ors* AIR 2000 SC 811, 820–21, (2000) 2 SCC 536 (Constitution Bench).

69 AIR 2000 SC 937, 940, (2000) 2 SCC 699.

2. The Indian Penal Code and the Maharashtra Co-operative Societies Act are not statutes in pari materia. The former Act is a completely self-contained statute with its own provisions and has created specific offences quite different from the offences in the latter Act. Both statutes have different objects and created offences with separate ingredients. In order to define the term 'public servant' the legislatures had incorporated the provisions of s 21 of the IPC into the Co-operative Societies Act. But 'public servants' can without sanction be prosecuted for having committed the offence under the IPC.
3. It is a well-known principle of construction that in interpreting a provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created, and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the section by which it is created.
4. When a person is 'deemed to be' something, the only meaning possible is that, whereas he is not in reality that something, the act of legislature requires him to be treated as that, obviously for the purposes of the said Act and not otherwise.

Section 3 of the Urban Land Ceiling (Repealing) Act 1999, shows that it is not applicable to s 21 of the Urban Land (Ceiling Regulations) Act 1976. Orders sanctioning schemes under s 21 of the latter Act have not been saved by s 3 of the former Act. In the instant case, the sanction of the scheme for construction of residential dwelling units was contrary to the prescribed land use in the master plan which had reserved the land for being used as open space. It could not be held, therefore, that any rights have accrued in favour of the plaintiff only on the execution of the agreement. Assuming that rights have accrued in favour of the plaintiff on passing the order, the said order would be viewed to have been passed erroneously. It was held that there is no substance in the contention that rights had accrued in favour of the plaintiff, which have the protection of s 6 of the General Clauses Act. A repealing Act was held not exhaustive and that it would not automatically extinguish the accrued rights unless taken away expressly.[70]

Admittedly, Portuguese Civil Code is a complete code in itself, giving details of various rights and liabilities of the citizens and obviously, the limitation in the enforcement of such rights cannot but, be said to arise from the civil code and not de hors the same. The Portugese Civil Code cannot be termed as a statute of limitation, and therefore, it cannot have its operations extended to prevent the enforcement of independently existing rights of action. Limitation being a mixed issue of law and fact under the Limitation Act, the

70 *HH Maharani Shantidevi P Gaikwad v Savjibhai Haribhai Patel & Ors* AIR 2001 SC 1462, 1474–75, (2001) 5 SCC 101 (three-judge Bench).

court in spite of a plea not being raised by the defence, can go into the same suo motu. But there is a specific bar under art 5615 of the Portugese Civil Code which records that the court cannot suo motu take cognizance of description unless it is specifically pleaded by the parties. While implied repeal is not to be readily inferred, but, in the contextual facts upon scrutiny, it can be held that on the Limitation Act coming into existence from 1 January, 1964, art 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed.[71]

In *Maitreyee Mahanta v State of Assam & Ors*, an ordinance was promulgated by the President of India declaring to the people of Koch Rajbhangshi in the State of Assam the benefit of 'other backward class community'. Successively, three more ordinances were issued to the same effect. However, the ordinance conferred the benefit only for a limited period of 6 weeks. Therefore, the matter was referred to a joint select committee of the Parliament, and it was pending before that committee when the ordinance came to be lapsed by efflux of time. A notification was issued by the department of health and family welfare. Applications were called for from the eligible candidates for selection to the MBBS/BDS course, 1997. Pursuant to the said notification the petitioners and others applied. Since the said ordinance had lapsed, the petitioners and others who were claiming the benefit of belonging to the Scheduled Tribes and Hill Tribes, they could not be considered under that category. They were considered under the general class. On the facts and in the circumstances of the case and in the context of the General Clauses Act, the Division Bench of the Gauhati High Court, speaking through Ramakrishna C J, (as he then was), held inter alia, as follows:

> ...since the Parliament failed to make an Act on the lines of the ordinance on the expiry of the period of ordinance, the ordinance lapsed. Unless and until the competent authority enacts such a law with a view to confer such benefits afresh on those sections of the people, it is not possible to hold that as a right has already accrued that right has to be saved.

In *Maharaja Chintamani Saran Nath Shahdeo v State of Bihar & Ors*, the Bihar Land Reforms (Validation and Amendment) Act 1974, had to come into force at once, ie, from the date of publication in the *Official Gazette*. There was no express or implied provision in the amending Act to indicate that the Act would have retrospective effect. Therefore the amending Act was held to be applicable prospectively.[72]

In *Commr of Income-tax, Bangalore v Venkateswara Hatcheries Pvt Ltd*[73] the Supreme Court held, inter alia, that it is a very well recognised rule of

71 *Syndicate Bank v Prabha D Naik & Anor v Prabha D Naik & Anor* AIR 2001 SC 1968, 1970, 1974-75, (2001) 4 SCC 713 (thee-member Bench).

72 AIR 1999 SC 3609, 3614, (1999) 8 SCC 16.

73 AIR 1999 SC 1225, (1999) 3 SCC 632.

interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modifications, such a re-enactment is to be regarded as having the continuous force, and the modifications or changes so made are to be treated as amendments coming into force with effect from the date of enforcement of the re-enacted provision. Viewed in this background, the effect of the re-enacted provision of s 80JJ of the Income-tax Act 1961 was held to be that the profit from the business of livestock and poultry, which enjoyed total exemption under s 10(27) of the Act for the assessment years 1964–65 to 1975–76, became partially exempt by way of deduction on fulfillment of certain conditions.

In *Rayala Corpn Pvt Ltd v Director of Enforcement, New Delhi*[74] while dealing with the provisions of r 132A of the Defence of India Rules 1962 the Supreme Court held that the provisions of s 6 of the General Clauses Act could not be made applicable to the repeal of the rules and that the said provisions are applicable only to the repeal of a central Act or regulation. The said decision in *Rayala Corporation* case has been considered and explained by various Benches in various High Courts. The said decisions are under challenge in the present group of matters. Having regard to the importance of the question, it was considered appropriate that the same shall be considered by a Constitution Bench. Directions were made accordingly, to place the matter before the Chief Justice of India.

In *Union of India & Ors v Commander Uday Date & Ors*[75] a Division Bench of the Bombay High Court held that by deletion of a s 80 of the Merchant Shipping Act 1958, the right to obtain a certificate of service prior to its amendment is not taken away by any statutory provision.

It was observed:

> The saving clause also nowhere provides that persons who have already attained the rank of lieutenant would not be entitled to get the said certificate of service after amendment of the Act. The effect of deletion of s 80 is that, after its deletion, if a person attains the rank of lieutenant in the executive branch of the *Indian* Navy, he will not be entitled to get the certificate of service without examination, but the right, which was crystallised prior to its amendment, is in no manner divested by any specific provision. There is no doubt that s 80 of the Act is deleted, but, at the same time, there is no express abrogation of the right conferred and hence those rights are saved under the provisions of s 6 of the General Clauses Act.

No doubt, s 3 of the Prevention of Corruption Act 1988, refers only to offences punishable under that Act and the special courts constituted under s 3 will have jurisdiction to try the offences punishable under that Act. But that section

74 AIR 1970 SC 494.

75 AIR 1998 Bom 157, 160–61 (DB).

cannot be read in isolation; it should be read along with other provisions of that Act so as to understand the scope thereof. Section 30(1) of that Act repeals the Acts of 1947 and 1952. That does not mean that any offence which was committed under the Act of 1947 would cease to be triable after the repeal of the that Act. Normally s 6 of the General Clauses Act would come into play and enable the continuation of the proceedings including investigation as if the repealing Act had not been passed. As per the provisions of s 6 of the General Clauses Act, the position will be as if the Act of 1947 continues to be in force for the purpose of trying the offence within the meaning of the said Act. Section 6 of the General Clauses Act makes it clear that the said position will not obtain legality if a different intention appears in the repealing Act. Therefore, applying the ratio laid down by the Constitution Bench of the Supreme Court in *BN Kohli*'s case,[76] it was concluded that the Special court constituted under s 3 of the Act of 1988 has competence to try the offences under the Act of 1947.[77]

In *Varun Seacon Ltd v Bharat Bijlee Ltd*,[78] a single judge of the Gujarat High Court, in the context of Arbitration and Conciliation Act 1996, held, inter alia, that the new Act of 1996 while repealing the old Act of 1940, intended to save the repealed Act only for the pending arbitral proceedings, as is evident from sub-s (2) of s 85 of the new Act. An intention, inconsistent with the provisions of s 6 of the General Clauses Act is clearly manifested insofar as the question of applicability of s 34 of the old Act to pending judicial proceedings is concerned. Therefore, applications under s 34 of the old Act which were pending in a civil court, on the date of commencement of the new Act, were governed by the new Act and not by the old Act. Even if one wants to apply the provisions of s 6 of the General Clauses Act what the said provisions save are rights, privileges, obligations and liabilities but not any procedural disabilities. The restriction contemplated in s 34 of the old Act, to the effect that the party should not have taken any other step in the proceedings, was a procedural disability on the part of the defendant rather than a right on the part of the plaintiff.

The provisions of the Jind State Civil Service Regulation 1945 were not continued after the establishment of PEPSU (Patiala and East Punjab States Union) on 20 August 1948. The repeal of the provisions of the laws of covenanting the State of Pepsu by s 3 of the Ordinance 1 of svt 2005 did not mean that but, for such repeal the said laws without anything more would have continued to be in force in the covenanting state. In the absence of any law, similar to that contained in the Ordinance 1 of 1948, promulgated by the *Raj Pramukh* in the case of *Bholanath J Thakur*[79] continuing the laws of

76 AIR 1996 SC 573.

77 *Nar Bahadur Bhandari v State of Sikkim & Ors* AIR 1998 SC 2203, 2205–07, (1998) 5 SCC 39.

78 AIR 1998 Guj 99, 102.

79 AIR 1954 SC 680.

the Jind State in the territory of that state, it could not be said that the Jind State Civil Service Regulation 1945 continued in force even after the taking over of administration of the Jind State by the *Raj Pramukh* of Pepsu on 20 August 1948. The expiry of Ordinance 1 of Svt 2005 could not have the effect of reviving the Jind State Civil Service Regulation 1945.[80]

When there is a repeal and simultaneous re-enactment, s 6 of the General Clauses Act would apply, unless a contrary intention could be gathered from the repealing Act or unless the new legislation manifests an intention inconsistent with or contrary to the application of that section. The object of repeal and re-enactment is to obliterate the repealed Act and to get rid of certain obsolete matters.[81]

Section 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act 1978, says that the government, after taking into account the cost of production of energy and such other matters, may amend the provisions of the schedule to the Act. Government of Tamil Nadu, while exercising its power under s 4 of the said Act, made amendments to the schedule.[82] Certain other changes were also introduced by way of amendment to the said schedule.[83] The Preamble of the latter order took note of the representation made to the government that it was not proper to deny concessions announced for a fixed period midway on the ground that the unit in question had started earning profits, which was the basis for deleting the offending clause from the schedule to the Act. The argument was that the said deletion had effect from the beginning and it was no longer open to apply the same even during the period from 30 April 1982 to 16 December 1988. According to the counsel for the petitioners the deletion must be read into in GO Ms No 861 supra. While rejecting that argument for the simple reason that neither the preamble to the said order, nor the amendments incorporated in the schedule to the Act provided that the deletion would have retrospective effect, and that in the absence of such a clause giving a retrospective effect, the court would not be justified in holding that the deletion took effect from 30 April 1982. A single judge of the Madras High Court held, inter alia, as follows:

> ...While section 3 says that the tariff rates will be prescribed in the schedule to the Act, section 4 makes it very clear that the state government can amend the provisions of the schedule from time to time. Therefore, if the schedule to the Act were a promise to the petitioner, equally the petitioners should have known about the power to amend the schedule from time to time. It is therefore, idle to contend that the petitioners believed that the

80 *State of Haryana & Ors v Amar Nath Bansal* AIR 1997 SC 718, (1997) 10 SCC 700.

81 *Gajraj Singh v State Transport Appellate Tribunal & Ors* AIR 1997 SC 412, 421, (1997) 1 SCC 650.

82 GO Ms No 861 PW (Electricity) dtd 30 April 1982.

83 GO Ms No 2043 PW (Electricity) dtd 16 December 1988.

concessional rates of supply were circumscribed by conditions which are relevant and reasonable...[84]

The new Motor Vehicles Act 1988 does not expressly or by necessary implication make the relevant provisions retrospective in character.[85]

In relation to the State of Uttar Pradesh it is now a settled law that the state can exercise the power of eminent domain, and in exercise of such power under s 17(4) of the Land Acquisition Act 1894, the state is entitled to have the notification under s 4(1) and the declaration under s 6 of the Act simultaneously published so as to take further steps as required under s 9 of the Land Acquisition Act 1984. Thereafter, the land stands vested in the state free from all encumbrances. Exercise of such a power in an emergency, like in the instant case, was held to be valid.[86]

As seen from r 29F of the Karnataka Entertainments Tax Act 1958, which had come into effect from 30 November 1976, the prescribed time within which the power under s 6B could be exercised 'shall be five years from the close of the period to which the assessment in question relates'. That means, the time relates backward to five years from the date on which the said rule had come into force. If the interpretation given by the High Court was given effect to, the said amended r 29F could come into effect from five years after the said date of coming into force. Therefore, the High Court was held to be in error by holding that the re-assessment of the escaped turnover of the preceding five years from 30 November 1976 was not correct.[87]

There is no objection, in principle, to apply the doctrine of desuetude to our statutes as well because a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the dead letter. Accepting the application of doctrine of desuetude in our country would advance the cause of justice. Indeed, there is a need for its implantation, because persons residing in free India, who are assured of the fundamental rights including those under art 21, must be protected from prosecution and punishment for violation of law which has become a dead letter. A new path is, therefore, required to be laid and trodden.[88]

Where, a reference was made to the Inspecting Assistant Commissioner in accordance with the law in force as on the date of such reference, and the Inspecting Assistant Commissioner was seized of the matter, such seizing thereof was not lost on account of the deletion of sub-s (2) of s 274 of the Income-tax

84 *National Oxygen Ltd, Madras v Tamil Nadu Electricity Board & Anor* AIR 1996 Mad 229, 234–35.

85 *Ramesh Singh & Anor v Cinta Devi & Ors* AIR 1996 SC 1560, (1996) 3 SCC 142.

86 *Meerut Development Authority v Satbir Singh & Ors* AIR 1997 SC 1467, 1475, (1996) 11 SCC 462 (three-judge Bench).

87 *Assistant Commercial-tax Officer-cum-Entertainment-tax Officer v Narasimhaiah & Ors* AIR 1997 SC 2601, (1997) 4 SCC 580.

88 *Municipal Corpn for City of Pune & Anor v Bharat Forge Co Ltd & Ors* AIR 1996 SC 2856, (1995) 3 SCC 434.

Act 1961. Such was also the principle underlying s 6 of the General Clauses Act. In other words, the Inspecting Assistant Commissioner did not lose the jurisdiction to continue with the proceeding pending before him as on 31 March 1976, by virtue of the deletion of sub-s (2) of s 274 by the Taxation Laws (Amendment) Act 1970, with effect from 1 April 1976. He can continue with those proceedings and pass appropriate orders in accordance with the law.[89]

Section 23 of the Gwalior Pre-emption Act svt 1992, was premised upon the assumption that the Act continues to be in force, except in a situation where the Act itself ceases to be in force. In respect of the first part of that section, it is possible to take two different views. First, to construe the words 'at the time of the decree' as referring to the decree in favour of the plaintiff against which the appeal is pending; and second, to construe the said words as referring to the final decree, ie, the appellate decree. Having regard to the fact that the right of pre-emption is a weak right, and is generally looked down upon with distaste, and that the High Court had taken a particular view of the matter on the interpretation of a local enactment, and also that the pre-emption Act was repealed as far back as 1968, the Supreme Court was not inclined to take a different view.[90]

The Karnataka Acquisition of Land for House Sites Act 1972 (Act 18 of 1973) comes within the exceptions stated in *M V Narasimhan's case*[91] for the following reasons:

(i) there being no detailed machinery whatsoever, as that Act cannot be treated as a self-contained or complete Code;

(ii) the Karnataka Act and the central Act 1984 (on land acquisition), as amended by the Karnataka Act 1961, are supplemental to each other for, unless the central Act supplements the Karnataka Act, the latter cannot function;

(iii) these two Acts are *in pari materia* because the Karnataka Act 1972, unlike the Calcutta Act 1911 and the Uttar Pradesh Act 1965, does not deal with any other subject but land acquisition which, otherwise, would have fallen within the ambit of the central Act 1894.

Therefore, the amendment made in 1984 to the Central Act of 1894 including s 11A have to be read into the Karnataka Act 1972, so far as inquiry, award, reference to court, appointment of amount, and the payment of amount of compensation in respect of the land acquired under the Act, are concerned. Section 11A of the 1894 Act should be read into the Karnataka Act 1972

89 *Commr of Income-tax, Bangalore v R Shanadamma* AIR 1996 SC 3199, 3201, (1996) 8 SCC 388.

90 *Krishna Dass Agarwal v Kanhaiyalal* AIR 1996 SC 3464, 3466, (1996) 6 SCC 488.

91 AIR 1975 SC 1835.

because there is no such provision in the Karnataka Act as amended by the Karnataka Act 1961.[92]

So far as the principles of interpretation of statutes are concerned, they are very clear. It is well-known that repeal is of two types: (a) express; and (b) implied. So far as express repeal is concerned, there is no difficulty since the legislature itself provides for repeal of a named statute or statutes. In the instant case, by s 19 the legislature expressly repealed the Bombay Government Premises (Eviction) Act 1955. This is express repeal. In view of the express repeal, it is not to the court now, to refer to, rely on, or base its decision on the Bombay Government Premises (Eviction) Act 1955. When the legislature in s 19 has stated that 'any other corresponding law providing for the eviction of the occupants from the public premises, is repealed' it cannot be said that there is express repeal but implied repeal. One has to consider the relevant provisions of both the statutes, namely, the provisions of the Public Premises Act and of the Housing Board Act and, relying upon the well established principles of interpretation of statutes, come to a conclusion whether the provisions of the Housing Board Act stood repealed or whether both the statutes stand together and can be given effect to by harmonious construction. If it is possible, 'corresponding law' cannot be treated as repealed, but must be given effect to. On the other hand, if one comes to the conclusion that 'corresponding law' cannot be given effect to without violating the provisions of the repealing statute by applying the doctrine of implied repeal, no effect can be given to that corresponding law.

The Housing Board Act cannot be said to be a corresponding law within the meaning of s 19 of the Public Premises Act and therefore, it did not stand repealed by the Public Premises Act. But that does not necessarily mean that the provisions of the Public Premises Act would not be applicable to the premises of the Gujarat Housing Board. The expression 'public premises' includes any premises belonging to or taken on 'lease by or on behalf of the corporation and government housing board'. Thus, looking to the provisions of the Public Premises Act, it cannot be contended that the premises of the government housing board cannot be said to be the public premises within the meaning of the Public Premises Act.

It also cannot be said that since the provisions of the Housing Board are applicable, provisions of the Public Premises Act cannot apply to the premises in question. The premises in question can be said to be not only the public premises within the meaning of the Housing Board Act, but also public premises within the meaning of the Public Premises Act, and the provisions of both the Acts can be applied.[93]

If something in the earlier law, custom or usage, is not inconsistent with the legislation in question, there is no need to save it. What is saved or what

92 *Mariyappa & Ors v State of Karnataka & Ors* AIR 1998 SC 1334, 1343–44, (1998) 3 SCC 276.

93 *Competent Officer, Gujarat Hsg Board v KB Parmar & Ors* AIR 1993 Guj 5.

requires to be saved is only what is inconsistent with the statute, which will not survive, but for the saving. Therefore, the question was whether, any of the grounds under s 6(a) of the Madras Marumakkathayam Act 1933 was saved. It was saved because, there was nothing else to be saved. If what was saved was only the right to obtain dissolution, there was no need to save it because, s 13 of the Hindu Marriage Act itself made provisions to obtain dissolution. Saving cannot be of something which needs no saving but which the repealing Act would otherwise destroy.[94]

In view of the express provisions in the Motor Vehicles Act 1988 the right to appeal that was unconditional before has been made conditional and the provisions for deposit of a part of the award money is attracted even though the claim petition was filed before the 1988 Act came into operation.

Having regard to the scope and objective of the relevant provisions of the 1939 and 1988 Acts relating to claim petitions, such right of appeal, which accrued when such claim petitions were filed under 1939 Act, was modified by way of introduction of such conditions, to the extent such right has been restricted and made conditional, ie, by way of providing for deposits, by necessary implication, even if it amounts to giving retrospective effect. So far as s 217(4) of the Act is concerned, the applicability of s 6 of 1897 Act must be viewed. Moreover, s 6 of the Act itself makes it clear that the provisions made thereunder, would be applicable unless, a contrary intention appears. There is, as such, a different intention in the 1988 Act for the reasons stated herein above.[95]

The effect of repealed Foreign Exchange Regulation Act 1947 by operation of cl (e) of s 6 of the General Clauses Act read with sub-s (2) of s 81 of the Foreign Exchange Regulation Act 1973 is that, though the Act obliterates the operation of Act 7 of 1947, despite its repeal, the penalty, liability, forfeiture or prosecution for acts done while the repealed Act was in force were kept alive, though no action thereunder was taken when the repealed Act was in force. The rights acquired or accrued or the liabilities incurred or any penalty, forfeiture or punishment incurred during its operation are kept alive. Investigations to be made or any remedy which may have been available before the repeal be enforced, are also preserved. Such rights, liabilities, penalty, forfeiture or punishment, due to repeal 'shall not lapse'. The saving clause, thus aims to preserve the legal effect and consequences of things done, as in s 81(2) of the FERA Act 1973 or s 6 of the General Clauses Act, or penalty or punishment incurred, would envisage that the things already done or liabilities, penalty, punishment, or forfeiture incurred, though happened before the Act came into force, s 81(2) of that Act empowers to effectuate such liabilities, penalties, etc, as if they had been in existence amenable to be pursued under the 1973 Act or under the repealed Act by

94 *M Saraswathy Amma v P Padmavathy Amma & Ors* AIR 1993 Ker 198, 200.
95 *Ramesh Singh & Anor v Chinta Devi & Ors* AIR 1994 Pat 44 (DB).

operation of s 6 of the General Clauses Act. What is unaffected by the repeal of Act 7 of 1947 is a right accrued.[96]

As per s 121 of the Gujarat Town Planning Act 1976, it is clear that the provisions of Bombay Tenancy and Agricultural Lands Act 1948 as was in force for the time being, shall not apply to any area included in a town planning scheme. Section 121 of the Town Planning Act was repealed. The subsequent deletion of s 121 was held to be suggestive of the fact that the legislature never intended to exclude the applicability of the provisions of Bombay Tenancy Act to the areas included in the town planning scheme. The Bombay Town Planning Act 1954 never contained any such provision.

It is true that there exists a distinction between 'repeal' of provisions and 'deletion' of provision. Deletion ordinarily takes effect from the date the legislature has effected the said deletion. A deletion has no effect of total effacing or wiping out a provision as if it never existed. A 'repeal' ordinarily brings about complete obliteration of the provisions as if it had never been enacted. The effect is to destroy all incoherent rights and all causes of action which may have arisen under the repealed provisions.

For such statutory purchases which have taken place prior to 1 February 1978, ie, the date on which the Town Planning Act came into force, the provisions of the Bombay Tenancy Act continue to operate and would always continue to operate and have continued to operate after the deletion of s 121 with effect from 12 June 1985.[97]

It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. There are no sufficient words in the statute to show the intention of the Parliament to affect the existing rights under s 123(b) of the Railways Act 1890. Therefore, the said section cannot be made applicable retrospectively. Since the rights are to be determined at the time of commencement of the *lis*, and Ch 13 of the Railways Act has not been made retrospectively applicable, either expressly or by implication, subsequent changes in the law could not be taken into consideration for holding the application for compensation filed under s 82C of the said Act, as maintainable.[98]

A distinction has to be noted while dealing with the effect of 'repealing the provisions of the Act' and 'ceasing of provisions from application'. In the former case, certain rights accrue and actions taken may be protected, and s 6 of the General Clauses Act may come to the aid. In the latter case, the authority, forum or court which could exercise power under a particular provision which cease to apply, lose their jurisdiction and authority for modification or cancellation of the scheme after the Tamil Nadu Hindu Religious and Charitable Endowments Act 1951 (since repealed) came into

96 *PV Mohammad Barmay & Sons v Director of Enforcement* AIR 1993 SC 1188, 1191–92.

97 *Navrangpura Das Dharmada Milkat Tust v Ramtuji Ramaji & Ors* AIR 1994 Guj 75, 85.

98 *Sarat Chandra Nanda & Ors v Union of India* AIR 1997 MP 70, 73–74 (DB).

force. This is because s 92, CPC, ceased to apply to such schemes from the date of commencement of that Act.[99]

In the 1971 Himachal Pradesh Urban Rent Control Act (since repealed) s 4 was amended by Act 22 of 1974, providing for tenancy rights to the widow/widower or the minor children of the tenant. That Act was repealed by the Act of 1987. In view of such repeal of 1971 Act, and for the disposal of all the suits, appeals, etc under the 1987 Act, the definition of the term 'tenancy' as given in the 1987 Act, was deemed to have come into force ever since the 1971 Act came into force ie, with effect from 17 November 1971.[1]

Wherever there is a repeal of an enactment, the consequence laid down in s 6 of the General Clauses Act 1987 (s 7 of the Orissa General Clauses Act) follows, unless a different intention appears. But, when there is a repeal of an enactment followed by a fresh legislation on the same subject, the court would have to look at the provisions of the new Act whether they indicate a different intention. The line of inquiry to that effect would be whether the new Act manifests an intention to destroy the old rights and liabilities. In such a case, s 6 of the General Clauses Act would have application unless the new legislation manifests an intention incompatible with or contrary to the provisions of that section.[2]

In the instant case, the second clause of r 33 of the Orissa Minor Minerals Concession Rules 1990, after declaring that any act, action, or orders taken done or passed under the 1983 rules shall be deemed to have been taken, done, or passed under the 1990 rules, further states: 'and shall be brought in conformity with the provisions' of the 1990 rules. The word 'and' has not been used without any purpose. Had the rule making authority intended to exclude the application of the rates of the 1990 rules to the existing leases made under the repealed rules, the same could have been indicated. In the absence of any such exclusion the full meaning of r 33 has to be given.[3]

Section 217(2)(a) of the new Motor Vehicles Act does not speak of any liability incurred under the 1939 Act and does not also deal with adjudication thereunder. It does not have the effect of imparting retrospective operation to s 147(2)(a) of the new Act so as to enlarge the scope of insurer's liability thereunder in regard to the accidents occurring and claims lodged and decided under the Act of 1939. It is not kept alive for adjudication under the new Act, the liability with respect to which, as per s 6 of the General Clauses Act, for legal proceeding or remedy contemplated under the Act of 1939, has

99 *T Lakshmi Kumara Thathe Chariar v Commr, Hindu Religious and Charitable Endowments (Admn) Dept & Ors* AIR 1997 Mad 346, 354.

1 *Narinder Kumar & Anor v Ramesh Kumar & Anor* AIR 1995 HP 87; s 7, Orissa General Clauses Act.

2 *State of Punjab v Mohar Singh Prasad Singh* AIR 1955 SC 84.

3 *Sadhu Meher v Rajkumar Patel* AIR 1994 Ori 26, 31.

to be continued or enforced. Clauses (b) and (c) of s 6 are clear and categorical in that regard. Such a view taken[4] was also held to be correct in a later case.[5]

In *Maharaja Chintamani Saran Nath Shahdeo v State of Bihar & Ors* the Bihar Land Reforms (Validation and Amendment) Act 1974 had to come into force at once, ie, from the date of publication in the *Official Gazette*. There was no express or implied provision in the amending Act to indicate that the Act would have retrospective effect. Therefore, the amending Act was held to be applicable prospectively.[6]

In relation to the Delhi Rent Control Act 1958 (as amended in 1988), ss 3(c), 14(1)(b), except where the provisions of s 6 of the General Clauses Act are applicable, the parties to the lease have to seek their rights and remedies under the common law, if the protection given to a tenant under the Delhi Rent Act is withdrawn. The ground of eviction based on illegal sub-letting under Proviso (b) to s 14 of the Rent Act would not constitute a vested right of the landlord. It would be only a right and privilege accrued within the meaning of s 6(c) of the General Clauses Act where the proceeding for eviction is pending. Where sub-cl (c) of s 6 of the General Clauses Act is applicable, and a tenant has no vested right under the Delhi Rent Act but was having only a protective right, withdrawal of such protection would not confer a vested right on the landlord to evict a tenant under the Rent Act.[7]

The Standards of Weights and Measures Enforcement Rules of 1986 have come into force with effect from 15 July 1989, whereas the Enforcement Act came into force with effect from 21 April 1988. During the interregnum between the commencement of the said Act and rules, the Andhra Pradesh Weights and Measures (Enforcement) Rules 1958 were in force. The said enforcement rules of 1958 were in force as on the date of coming into force of the Enforcement Act 1985. The instructions contained in the memorandum dtd 31 December 1988 were in conformity with the said rules of 1958. By virtue of s 75(2) of the Act of 19[illegible] the rules continue to be in force and have effect as if the same were made and issued under the Enforcement Act 1985. Section 75 of the Act itself declares expressly the application of s 6 of the General Clauses Act. Therefore, s 6 of the General Clauses Act shall apply. A combined reading of the rules of 1986 and the forms forming part of the said rules would disclose that a license may be granted for manufacture and repair of the weights and measures only on condition of the applicant specifying the employment of skilled workers required for that purpose. Since the rules are silent on how the test has to be conducted and allotment of marks and procedure thereof made, the controller, who is the supervising and controlling authority, thought it fit to issue administrative instructions for the guidance of its officers in conducting the

4 1990 ACJ 399 M (DB).

5 *Vimla Gangotia & Anor v National Insurance Co Ltd & Ors* AIR 1994 MP 2001 (DB).

6 AIR 1999 SC 3609, 3614, (1999) 8 SCC 16.

7 *Ambalal Sarabhai Enterprises Ltd v Amrit Laal & Co & Anor* 2001 (6) Supreme 505 (AP Misra and DP Mohapatra, JJ).

test and certifying the skilled workers. Admittedly, those instructions do not run counter to any of the provisions of the Act or the rules of 1986.[8]

Initiation of proceedings subsequent to repeal of Ch VA of the Employees State Insurance Act, for recovery of special contribution arrears falling due when the said Ch VA was in force, is permissible.[9]

The entire theory underlying the implied repeals is that there is no need for the latter 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 words 'repeal' in the latter statute.[10]

If the actual payment was made after the new Motor Vehicles Act 1988 came into force, the mere fact that the accident occurred before the new Motor Vehicles Act does not matter.[11]

By repeal of the Act, the previous operation of the said Act would not be affected. Such repeal will not effect anything duly done or suffered thereunder.[12]

Unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes place, or affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment.[13]

Any legal proceeding which was pending under any repealed law may be continued or enforced.[14]

No right to file a suit in respect of an undisposed claim petition could survive after the amendment of the Act.[15]

Section 6(b), (d), and (e) of the General Clauses Act clearly enjoins that if suits are pending wherein the plaintiffs have put forward claims under the then existing s 82 of the Indian Trust Act such proceedings are to be continued

8 *MV Krishnaiah & Anor v Government of Andhra Pradesh & Ors* (1999) 3 Andh LT 315.

9 *Nagammai Cotton Mills v Regional Director, Employees' State Insurance Corpn* 1994 SCC (L&S) 812.

10 *Cantonment Board, Mhow v Madhya Pradesh State Road Transport Corpn* AIR 1997 SC 2013, (1997) 2 Jab LJ 70 (SC); *State of Orissa v MA Tuloch & Co* AIR 1964 SC 1284, [1964] 4 SCR 461.

11 *New India Assurance Co Ltd v Thankam* 1995 (2) TAC 97 (Ker).

12 *Parayankandiyal Eravath Kanapravan Kallini Amma v K Devi* AIR 1996 SC 1963, (1996) 4 SCC 76.

13 *Kamlakant D Naik v Collector, North Goa* (1996) 3 Bom CR 131.

14 *Kamil v State of Uttar Pradesh* 1994 Cr LJ 1491 (All).

15 *Pallamreddy Masthan Reddy v Nellore Finance Corpn* 1994 Bank J 391 (AP).

by assuming that the repeal of s 82 of the Trust Act has not been effected in connection with such pending proceedings.[16]

If a statute deals merely with the procedure in an action but does not affect the rights of the parties, it will be held to apply to all actions, pending and future.[17] Section 6, though it does not apply to amendments, saves the proceedings already in progress under the repealed Act.[18] There is a distinction between substantive and procedural laws. For instance, s 5(1) and (2) of the Prevention of Corruption Act 1947 were held as substantive law whereas s 5(3) of the same Act as procedural law.[19] The normal rule is that pending proceedings are generally saved by virtue of s 6, unless a different intention is apparent in the repealing statute.[20] It is well to remember the advice of Lord Reid that the canons of construction are not so rigid as to prevent a realistic solution.[21] Procedural laws, as is said,[22] are meant to subserve the ends of justice and not to thwart it. It is true that the forum of appeal as also the limitation therefor, are matters of procedural law,[23] and that no person has a vested right in a course or procedure.[24] He has only a right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending and if by an Act, the mode of procedure is altered he has no other right than to proceed according to the altered mode.[25] In other words, s 6 will not apply to a matter of pure procedure and, therefore, when there is an ordinance repealing a purely procedural law, the right to have the suit tried in a particular forum is not saved.[26] When a new statute has created a particular right and has also prescribed a mode of its enforcement, that mode alone has to be followed,[27] and no presumption

16 *R Rajagopal Reddy v Padmini Chandra Shekharan* (1995) 2 SCC 639.

17 *K Kapen Chako v Provident Investment Co Pvt Ltd* (1977) 1 SCC 593, AIR 1976 SC 2610.

18 *Central Distillery and Chemical Works Ltd v State* AIR 1964 All 156.

19 *State (Delhi Admn) v GP Nayyar* 1974 Cr LJ 1363, 1368 (Del).

20 *Commr of Income-tax v Soorajmull Nagarmal* 1981 Tax LR 171 (NOC) (Cal) (DB).

21 *Connaught Fur Trimmings Ltd v Cranes Properties Ltd* [1965] 1 WLR 892, [1965] 2 All ER 382.

22 *Darshan Kumar v Raghunandan Sharma* (1978) 80 Punj LR 368, 370.

23 *MC De Souza Soddar v MZ Pereira Pinto* AIR 1979 SC 1352, 1354–55, 1978 UJ 718 (SC) (with reference to period of limitation for appeal in Portugese Civil Procedure Code, arts 145 and 146 of the Limitation Act 1963, enforced in Goa, during pendency of matter in trial court).

24 *KKK Muthukaruppan Chettiyar v ISI Sellami Achi* AIR 1938 Rang 385, 1938 Rang LR 355.

25 *Public Prosecutor v JP Sanghi* AIR 1964 AP 276, (1964) 1 Cr LJ 642.

26 *Parsiddhan v Gaya Prasad* 1957 All LJ 628 (overruled on other point); *Bank of Meenachi Ltd v Chacko Chacko Kalyokkathil* AIR 1962 Ker 333 (additional period of one year, under s 45F of Banking Companies Act 1949, cannot be availed in the proceedings for misfeasance committed long after repeal of said section by Ordinance 4 of 1953); dissenting from *Re Agricultural and Industrial Bank Ltd* AIR 1957 Mad 295.

27 *K Nagaratnammal v S Ibrahim Saheb* AIR 1955 Mad 305, (1955) 2 Mad LJ 49 (FB).

or assumption is permissible.[28] But the other important principle is as much there based on the theory and effect of repeal laid down in s 6 of the General Clauses Act, namely, that the previous operation of enactment so repealed, on cases pending at the time of repeal,[29] will not be affected, nor the new Act be so construed as to create new disabilities or obligations except as a matter of procedure,[30] and any legal remedy which is already there will have to be carried on under the enactment as if the same were not repealed.[31] Where s 176 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1951 had been repealed by s 47 of the amending Act 37 of 1958 coming into effect on 7 November 1958, and s 182 of the main Act had already been introduced by the amending Act 20 of 1954, the suits for partition, instituted between 10 October 1954 and 7 November 1958, had to be governed, as before, by s 54 read with O 20, r 18, of the Civil Procedure Code, leaving the actual division to be made by the Collector.[32] Where s 14 of the Madras Civil Courts Act had been incorporated in s 6 of the Suits Valuation Act 1887, but the Madras Civil Courts Act, in its application to ex-Madras area of Orissa was replaced by s 4 of the Orissa Laws Regulation, the position which obtained was that s 14 of the Civil Courts Act, as incorporated in the Suits Valuation Act, was not affected.[33]

28 *Mettur Beardsell Ltd v Employees' State Insurance Corpn of India* 1974 LIC 283, (1973) 2 Mad LJ 195; *G Vasantha Pai v S Ram Chandra Iyer* (1967) 2 Mad LJ 151 (when the 15th Constitutional Amendment by amending art 217(3) of the Constitution vested the jurisdiction to determine question of age of a High Court exclusively in the President, the jurisdiction of High Court, under art 226, became barred); *Surajsee v Sheonath Singh* 1959 Raj LW 250 (instalment decree under s 48 of the Marwar Civil Procedure Code 1913, was passed in 1934, but the period for execution of the decree was subsequently amended—execution with regard to such decree held maintainable only in respect of instalments becoming due after 24 April 1941).

29 *Piare Dusadh v Emperor* (1962) 64 Punj LR 1024, 1030; *Amar Nath Misra v Sreenarayan Mansingha* AIR 1951 Cal 442, 444, 54 CWN 617.

30 *Govinddas v Income-tax Officer* AIR 1977 SC 552, 557, 1977 Tax LR 148, (1976) 2 SCJ 105, *Amar Singh v RL Aggarwal* AIR 1960 Punj 312, 316, 62 Punj LR 115 (FB) (distinction between *jus in rem* and *jus ad rem* pointed out); *Karan Singh* AIR 1951 MB 118–19, 1955 MBLJ 332 (HCR) (FB); *Garapati China Kanakayya v West Godawari District Co-op Mktg Federation Ltd* (1969) ILR AP 910; *Panchal Mohan Lal Ishwar Das v Maheswari Mills Ltd* (1962) 3 Guj LR 574, 586; overruled on another point, by Supreme Court in *Manorama v Dhanlaxmi* AIR 1967 SC 1078; *Pandurang Ganpatrao Waleka[illegible] v Nurumiya Serumiya* (1960) 62 Bom LR 547, 550.

31 *Nalagarh Dehati Co-op Transport Society Ltd v Suraj Mani* AIR 1977 HP 35, (1976) ILR HP 319, (1977) 13 Co-op LJ 47; *Re A Debtor* [1936] Ch 237, 105 LJ Ch 129; *Re Vernazza* [1960] AC 965, [1960] 3 WLR 466; *NG Mitra v State of Bihar* AIR 1970 SC 1636, 1970 Cr LJ 1396, [1969] 2 SCR 411, 1970 BLJR 619, (1970) 2 SCJ 29, 1969 Mad LJ 419 (Cr).

32 *Munshi Raza v Kitabullah* 1969 All LJ 259, 1959 All WR 146 (HC).

33 *Gopala Padhano v Ganesh Padhey* AIR 1964 Ori 27, 29 Cut LT 268 (DB); *Indermull Loniya v Subordinate Judge, Secunderabad* AIR 1958 AP 779, (1957) 1 Andh WR 196 (para 10 of Hyderabad Houses Rent Control Order 1353F, amended in 1948—amendment to operate prospectively).

The Full Bench case reported in *Ram Singh v Crown*[34] has held that the validity or operation of any order validly passed or any act validly done by a judicial tribunal under the procedural law for the time being in force cannot be affected by any subsequent change in the said law. Although the amendments in the law of procedure operate with immediate effect so as to apply to the proceedings pending at the time of enforcement of such amendments,[35] if there are any proceedings which are not covered by the new rules or for which the new rule does not provide, it is obvious that the courts shall have to deal with those proceedings in accordance with the law in force at the time of initiation of those proceedings. It cannot at all be the purpose of any amendment to revive a right which has already become extinct,[36] but the rights of the parties to a litigation are to be governed in accordance with the law in force when the litigation was commenced.[37]

The retrospective operation given to a rule of adjective law cannot be taken to destroy the operation of another rule of the same law in relation to proceedings for which the new rule does not provide, which proceedings had been properly and legally initiated in accordance with that other rule and at a time when the said rule was actually in force. So, when the amended s 87 of the Himachal Pradesh Co-operative Societies Act 3 of 1969, abolishing execution of arbitration award as a decree of civil court had not provided any substitution in procedure for such execution as a decree of civil court it was held that the old procedure shall be deemed to exist, and the proceeding initiated under that procedure will be carried to the end.[38] Similarly, where a petition to scale down a debt, filed in 1953, under the Madras Agriculturists Relief Act 1938, had gone up in appeal, when the said Madras Act came to be repealed by the Kerala Agriculturists Debt Relief Act 1958, the right of the petitioner to have his petition adjudicated under the Madras Act, was not affected.[39]

In *Nani Gopal Mitra v State of Bihar*,[40] it was laid down that a change in procedural law during pendency of cases instituted under the old procedural law will not affect the old procedure insofar as the pending proceeding has been completed and made effective. The position is different in case of execution of decrees. Thus, a mortgage decree passed under the old Civil

34 AIR 1950 EP 25, 51 Cr LJ 459.

35 *Ram Das Murari v Binda Din* AIR 1952 All 274, 1952 All WR 203 (HC) (Uttar Pradesh Tenancy Amendment Act 1947).

36 *Manekbai v Chhajum Lal Kunverji* AIR 1953 Kutch 19, 21 (in a suit for recovery of debt, the plaintiff, having already become disentitled to interest under law then in force in Kutch, could not revive her right to interest after the Contract Act was made applicable to that area during pendency of plaintiffs' suit.

37 *Periyar Valley Rubber Estates v Ramanathan* AIR 1952 Tr & Coch 405 (DB) (with reference to repeal of Travancore Companies Act 9 of 1914 ME by Pt B States Laws Act 1951).

38 *Nalagarh Dehati Co-op Transport Society Ltd v Suraj Mani* AIR 1977 HP 65, (1976) II R HP 319, (1977) 13 Co-op LJ 47.

39 *Achmadkutty v Subramania Iyer* 1959 KLT 1253, (1960) ILR Ker 139.

40 AIR 1970 SC 1636, 1970 Cr LJ 1396.

Procedure Code, when put into execution, after more than twelve years from repeal of the old code, was held to have become barred under s 48 of the Civil Procedure Code 1908.[41]

This is embodied in the principle laid down in s 6 of the General Clauses Act whereunder the inquiry is not as to whether the new Act expressly keeps alive the old rights and liabilities, but whether it manifests an intention to destroy them. This is the view which has been expressed by the Supreme Court in its subsequent decision in *Jayantilal Amratlal v Union of India*.[42] An enactment dealing only with procedure, applies to all actions whether commenced before or after that enactment, which unless the contrary is expressed, does not take away an existing right of action.[43]

There is, however, a marked difference in the views of the Supreme Court—one expressed in *Nani Gopal Mitra v State of Bihar*,[44] and another expressed in *Jayantilal Amratlal v Union of India*[45]—and the latter seems to be a definite improvement on the former.

In *Nani Gopal*'s case, Ramaswami J, speaking for the court stated that the principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. What Ramaswami J, had meant was that a statute should not be so construed as to create new liabilities or obligations or impose new disabilities in respect of transactions which were complete at the time the amending Act came into force.[46]

41 *Krishna Dayal v Sakina Bibi* AIR 1917 Pat 485, 1 Pat LJ 214.

42 (1971) 1 SCWR 424, AIR 1971 SC 1193, (1971) 2 Civ Ap J 316 (SC).

43 *Re Hira Lal Naval Ram* (1910) 12 Bom LR 730, 736 (DB).

44 AIR 1970 SC 1636, 1970 Cr LJ 1396, [1969] 2 SCR 411, 1970 BLJR 619, (1970) 2 SCJ 29, 1969 Mad LJ 419 (Cr).

45 AIR 1971 SC 1193, 1971 UJ 384 (SC), (1971) 2 Civ Ap J 316 (SC), (1971) 1 SCWR 424.

46 *Sajjan Singh v State of Punjab* AIR 1964 SC 464, (1964) 1 Cr LJ 310, 1964 SCD 874 (s 5(3) of the Prevention of Corruption Act 1947 is not retrospective merely by providing for taking into consideration the property or pecuniary resources acquired on the date of coming into force of the Act, ie on 11 March 1947); *Akkamma v Sulochana* 1961 KLT 22 (suit for redemption of mortgage debt in view of debt exempted by Madras Agriculturists Debt Relief Act—Kerala Agriculturists Debt Relief Act 1958, repealing the Madras Act, coming into force during pendency of appeal from suit—Kerala Act alone held applicable); *State of Uttar Pradesh v Shah Mohammad* AIR 1969 SC 1234; (1969) SCJ 693; overruling *Abida Khatoon v State of Uttar Pradesh* AIR 1963 All 260 (ouster of civil courts' jurisdiction by s 9 of the Citizenship Act 1950, read with r 30 of the Citizenship Rules 1956, affects pending suits to the extent of questions falling within s 9(2) of the Act, which questions are to be determined by Central Government); *Raich Ali Chan v Haji Sadek Ali* AIR 1977 Cal 295, (1977) 2 Cal LJ 1 (new sub-s (3) of s 21 of the West Bengal Land Reforms Act 1956, applies to pending proceedings); *Commr, Sales-tax, Uttar Pradesh v Allied Chemicals* AIR 1970 All 201, 1969 All LJ 537 (FB) (cases under s 21(1)(a) and (1A) of the Bengal, Agra and Assam Civil Courts Act 1887, had to be transferred to district court, in view of s 3 of the Uttar Pradesh Civil Laws Amendment Act 35 of 1968, despite such

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Ramaswami J was of the definite view that as a general rule, alterations in the form of procedure are retrospective in character unless there is some good

cases being instituted earlier than the 1968 Act); *Ram Niwas v Mithan Lal* AIR 1979 Punj 262, 81 Punj LR 665 (appeal against order, dismissing objection under s 47 of the Civil Procedure Code, filed after operation of s 97(2) of the Civil Procedure (Amendment) Act 1976 held incompetent even if objection under s 47 had been filed earlier than the amending Act); *Management of French Motor Car Co Ltd v Chief Judicial Magistrate, Kamrup* 1978 Lab IC (NOC) 196 (Gau) (cancellation of earlier notification by subsequent one divests earlier authority of its jurisdiction to continue pending proceedings, under s 15, Payment of Wages Act 1936); *Damodar Panigrahi v Banchhanidhi Panigrahi* 1977 Cr LJ 142, (1976) 42 Cut LT 842 (pending revision under s 145 of Code of Criminal Procedure 1898, to be disposed of in accordance with said s 145 even after enforcement of Code of Criminal Procedure 1974); *Gulab Bai v Manphul Bai* AIR 1955 Raj 3 (DB), AIR 1955 Raj 3 (right of appeal created under art 133(1)(c) would accrue to decision given after Constitution in pre-Constitution suits); *All India Shia Conference v Taqi Hadi* AIR 1954 All 124, 1953 All LJ 504 (right in pending actions held defeasible by change of law brought about during pendency of actions); *Hublal v Mst Dulara* 1954 All LJ 763, AIR 1955 NUC (All) 2689 (amendment in procedure in s 180 of the Uttar Pradesh Tenancy Act 1939 brought about by Uttar Pradesh Act 10 of 1947, does not affect jurisdiction of courts in pending cases); *Union of India v Kedar Nath Agarwalla* AIR 1954 Assam 147 (notice under unamended s 80 of the Railways Act, not invalidated by section subsequently amended requiring notice to be addressed to general manager instead of secretary to government); *Hari Kishan Dass v Firm Kripa Ram Radha Kishan* AIR 1955 NUC (All) 2663 (subsequent amendment in law not to affect past transaction, decrees, pending litigations or rights of parties in view of amendment effected in s 2 of the Uttar Pradesh (Temporary, Control to Rent and Eviction) Act 1947 by Act 17 of 1954); *Suraj Kanti Basu v SC Singha Roy* (1955) 59 CWN 256, AIR 1955 NUC (Cal) 2948 (forum of appeal altered by amending r 83 of the Bengal Motor Vehicles Rules 1940, during pendency of appeal against order of state transport authority, does not affect pending appeals); *Dhanraj Pannalal v Ganesh Lal Amrut Lal* AIR 1955 Nag 46, 1954 Nag LJ 489 (enhanced court-fee on memorandum of appeals not chargeable on those filed after amendment brought about by Madhya Pradesh Court Fees (Amendment) Act 1953, in respect of suits instituted prior to such amendment); *Mohammad Ahmed Ali v Nagamma* 1958 Andh LT 132 (time for appeal against order of Rent Controller under Rent Control Order of 1353F, being 15 days raised to 30 days by s 30(c) of Hyderabad House (Rent, Eviction and Lease) Control Act 1954—appeal from proceedings instituted earlier but preferred after enforcement of Act to be governed by the Act); *Arjuna Govinda v Amrita Keshiba* AIR 1956 Nag 281, 1956 Nag LJ 382 (DB) (enhanced court-fee as imposed by Madhya Pradesh (Amendment) Act 1958, does not apply to pending cases); *Ram Parshad Nand Lal v Central Board of Revenue, New Delhi* AIR 1956 Punj 161, (1956) 30 ITR 428 (s 35(5) introduced in Income-tax Act 1922 by Act 25 of 1953 and brought into force on 1 April 1952 would come to rescue of assessee for mistake made even on 13 March 1953); *Bhola Ram v Manohar Lal* (1964) 66 Punj LR 1204, (1964) II R 2 Punj 930 (amendment of s 77 of Punjab Tenancy Act 1887, to the effect of ousting jurisdiction of civil court cannot affect the jurisdiction already exercised); *SK. Tazuddin v Zaibda Khanum* (1962) 66 CWN 849 (proceedings pending at the time of amendment of s 17(2) of the West Bengal Premises Tenancy Act 1956, brought about by West Bengal Amending Act 27 of 1954, to be governed in accordance with the unamended s 17(2)); *Kota Venkata Narasimhamma v Vidya Acharya* AIR 1958 AP 207, (1957) 2 Andh WR 374 (simple interest in excess of 6 per cent not chargeable in respect of decretal debt as

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reason why they should not be. In taking this view, Ramaswami J had quoted with approval the following passages from two decisions from England:

In *James Gardner v Edward A Lucas*,[47] Lord Blackburn stated:

from enforcement of s 59(3) of Madras Estates (Abolition and Conversion into Ryotwari) Act 1948); *Aribam Tuleshwar Sharma v Irengham Yaima Singh* AIR 1965 Mani 39 (the saving clause in s 170(2)(d) of the Manipur Land Revenue and Land Reforms Act 1960, enforced on 1 June 1961 protects the eviction proceedings started on 5 January 1961 under rr 18(4) and 20 of the Assam Land and Revenue Regulations 1866, as extended to the territory of Manipur); *Natwar Damodar Das v Padardi Vibhag Co-op Multipurpose Society Ltd* (1964) 5 Guj LR 221 (decision of board of arbitrators under ss 54A and 56 of the Bombay Co-operative Societies Act 1925, prior to repeal of s 54A, open to revision under that section even after its repeal); *Mambai v Raj Kumar Harpal Deo* AIR 1967 Bom 92, 68 Bom LR 181 (s 110F of the Motor Vehicles Act 1939, does not affect suits pending in civil courts prior to the constitution of claims tribunal); *Varuni Anthony v State of Kerala* (1966) ILR 2 Ker 631 (in the absence of any provision in the new statute for continuing the proceedings instituted under the old statute, the said proceedings would continue; cf, s 4, Kerala General Clauses Act 1125); *Velayandan Thankeyyan v Trowell* AIR 1966 Mad 32, (1965) 2 Mad LJ 123 (right to Letters Patent Appeal can accrue to parties by benefit of subsequent Act even though no such right existed at commencement of proceedings); *Sreenivasa Vadhyar v Krishnaswamy Naidu* 1975 KLT 494 (s 132(4) of the Kerala Land Reforms Act 1964, repealing Kerala Agrarian Relations Act 1961, does not save suits instituted under s 4 of the 1961 Act though it saves only such proceedings as are covered by s 132(4)(2) of the 1964 Act); *Munia v Board of Revenue* AIR 1973 All 400, 1973 All LJ 513 (DB) (s 209(2) of the Uttar Pradesh Zamindari Abolition and Land Laws (Amendment) Act 21 of 1962, does not affect pending suits); *Girdhar Das Anandji v Jivraj Madhavji Patel* 1971 BLJR 828 (principles of retrospective operation of statute should apply to pending proceedings); *Sazro Govind Godi v Malba Madevan Surja Rau Desai* AIR 1969 Goa 42 (contracts of leases executed prior to application of the Transfer of Property Act 1882, not affected even after application of that Act in Goa); *Chinna Kunjukunju v Neelakantan Kutty* AIR 1958 Ker 251, 256, 1957 KLT 980 (DB) (extension of new Act to the field of vested right amounts to annihilation of such right); *Sydna Tahr Saifuddin v Tyebbhai Moosajikoicha* AIR 1953 Bom 183, 185, 55 Bom LR 1; overruled on another point in *Syed Tehar v State of Bombay* AIR 1962 SC 853 (legislative intent to prevent a particular act or transaction can apply in future and not to past acts or transactions); *United Commercial Press Ltd v Satyanarain Chamariya* AIR 1953 Cal 136, 138, 56 CWN 346 (DB); overruled on another point in *Ajit Kumar v Surendra Nath Ghose* AIR 1953 Cal 733 (FB) (court to lean against giving retrospective effect to legislation); *Tikamdas Nathirmal v State of Madhya Pradesh* AIR 1965 MP 271, 273, 1965 MPLJ 423 (DB) (retrospective effect to fiscal statute not to be given in the absence of clear provision or necessary implication); *HM Wilayatullah v Civil Station Sub-Committee, Nagpur* AIR 1950 Nag 223, 1950 Nag LJ 271; *BP Andre v Superintendent, Central Jail, Tihar* AIR 1975 SC 164, 166, 1975 Cr LJ 182, (1975) 2 SCJ 523 (no retrospective effect unless the legislative intent is clear and compulsive); *Indremoni Nath v Loke Nath Barbhuiya* AIR 1957 Assam 83 (express enactment or necessary intendment necessary in order to make retrospective a statute touching a right in existence at time of passing that statute); *State of Gujarat v Patel Kalidas Naranbhai* (1966) 17 STC 245, 251 (Guj) (enactment fairly capable of either interpretation—ought to be construed only as prospective); *Hazari Lal v Makesh* 1961 MPLJ 590, 1961 Jab LJ 832, 835 (legislature never intends anything unjust); *Hazi Sheikh Faizulla v State of Vindhya Pradesh* AIR 1954 VP 5 (express enactment necessary in case litigant is required to pay more court-fee than what he could forsee at the time of institution of proceedings).

47 [1878] 3 AC 582, 603.

> Now the general rule, not merely of England and Scotland, but, I believe, of every civilised nation, is expressed in the maxim *nova constitutio futuris formam imponere debet, non practeritis*—prima facie, any new law that is made affects further transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think it is perfectly settled that if the legislature intended to frame a new procedure that instead of proceeding in this form or that, you should proceed in another and a different way, clearly there, bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal.

In *King v Chandra Dharma*,[48] Lord Alverstone CJ, observed as follows:

> The rule is clearly established that apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective. It has been held that a statute shortening the time within which proceedings can be taken is retrospective. (*The Ydun*, 1899 p 236), and it seems to me that it is impossible to give any good reason why a statute extending the time within which proceedings may be taken should not also be held to be retrospective. If the case could have been brought within the principle that unless the language is clear, a statute ought not to be construed so as to create new disabilities or obligations, or impose new duties in respect of transactions which were complete at the time when the Act came into force, Compton Smith would have been entitled to succeed; but when no new disability or obligation has been created by the statute, but it only alters the time within which proceedings may be taken, it may be held to apply to offences completed before the statute was passed. That is the case here.

The view of Ramaswami J, therefore, in a nutshell, was that the repealing statute does not nullify the procedure taken under a repealed statute till the date of its repeal.

In *Jayantilal Amretlal v Union of India*,[49] the question of application of s 6 of the General Clauses Act had emerged in the following context. On 9 January 1963, the rules known as Defence of India Rules (1962) were amended by incorporating therein Pt 12A, called as Gold Control Rules 1963. Rule 126(1)

48 [1905] 2 KB 335, 74 LJKB 450.

49 AIR 1971 SC 1193, 1971 UJ 384 (SC), (1971) 2 Civ Ap J 316 (SC), (1971) 1 SCWR 424.

of those rules required every person not being a dealer to make a declaration within 30 days from the commencement of Pt 12A of the rules or within such period as the Central Government would by notification specify, to the administrator in the prescribed form as to the quantity, description or other particulars of the gold owned by him. Sub-rule (11) of that rule laid down that any person in possession or control of gold, not being ornaments shall be presumed, until the contrary is proved, to be the owner thereof, under r 126(1). The declaration in question was required to be made before 28 February 1963. On 7 February 1963, the appellant made his declaration of a certain quantity of gold but on 18 November 1964, a squad of Income-tax officers, on search of the premises of the appellant, discovered huge amounts of gold kept burried in one of the rooms of the appellant. Show-cause notices against the appellant for confiscation of gold and for making him liable to penalty were accordingly issued respectively under r 126M, and under s 126L(16) of the said rules.

On 24 August 1968, the Parliament passed the Gold (Control) Act 1968, which repealed the Gold (Control) Ordinance 1968. Section 116(2) of the Act, however, provided:

> Notwithstanding such repeal, anything done or any action taken, including any notification, order, or appointment made, direction given, notice, licence, or certificate issued, permission, authorisation or exemption granted, confiscation adjudged, penalty or fine imposed, or forfeiture ordered, whether under the Gold (Control) Ordinance 1968 or Part 12A of the Defence of India Rules 1962, shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done taken, made, given, issued, granted, adjudged, imposed or ordered as the case may be, under the corresponding provision of this Act, as if this Act had commenced on the 29 June 1968.

In view of the above section, two contentions were raised on behalf of the appellant: one, that the notice issued on 5 June 1965 can, no more be operative, because under the Gold (Control) Act 1968, there are no provisions for making a declaration relating to the possession of primary gold; two, that the provisions in the rules requiring a declaration to be made in respect of the possession of primary gold are inconsistent with the provisions of the Gold (Control) Act and therefore, the notice issued under the rules cannot be considered as being continued under the provisions of the Gold (Control) Act 1968.

Repelling the contention, KS Hegde J, speaking for the court held:

> ...There are no provisions in the Gold (Control) Act 1968 which are inconsistent with rule 126(1)(10) of the rules. That being so, action taken under that rule must be deemed to be continuing in view of section 6 of the General Clauses Act 1897. It is true that Gold (Control) Act 1968 does not purport to incorporate into that Act the provisions of section 6 of the

General Clauses Act. But the provisions therein are not inconsistent with the provisions in section 6 of the General Clauses Act. Hence the provisions of section 6 of the General Clauses Act, are attracted in view of the repeal of the Gold (Control) Ordinance 1968. As the Gold (Control) Act does not exhibit a difference or contrary intention, proceedings, initiated under the repealed law must be held to continue...

Nani Gopal Mitra's case[50] was neither noticed nor referred in the above *Jayantilal Amratlal v Union of India*,[51] but the improvement made in the latter upon the view taken in the former is obvious from the following observation made by KS Hegde J, in *Jamatilal*'s case:[52]

In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question.

In interpreting s 6 of the General Clauses Act, the usual confusion gripping the courts arises in their attempt to ascertain whether the repealing Act has saved the procedure of the repealed enactment, but that confusion should no longer stay in view of the ruling of the Supreme Court in the above *Jayantilal Amratlal v Union of India*.[53]

If the legislature alters the mode of procedure[54] or the forum,[55] the party has no right other than to submit to the altered procedure or altered forum. The Bench decision of the High Court of Delhi in *Premier Tyres Ltd, Bombay v Monopolies and Restrictive Trade Practices Commission, New Delhi*,[56] stated that the normal rule is that a party has no vested right in procedure and, therefore, the procedure which is applicable at the relevant time will govern unless the application of the previous procedure is expressly saved. For example, if an application under O 21, r 97 of the Code of Civil Procedure was pending and had not been disposed of before the commencement of the Civil Procedure (Amendment) Act 1976, the order on that application would cause the accrual of any right of suit as was the position in r 103 of O 47 of the

50 AIR 1970 SC 1631.

51 AIR 1971 SC 1193.

52 Ibid; *State of Punjab v Mohar Singh* [1955] 1 SCR 893, AIR 1955 SC 84; *TS Balaiah v TS Rangachari, Income-tax Officer Central Circle VI* [1969] 72 ITR 787, AIR 1969 SC 701.

53 AIR 1971 SC 1193.

54 *Anant Gopal Shevorey v State of Bombay* AIR 1958 SC 915, 1958 Cr LJ 1429, 1958 SCJ 1231.

55 *VCK Bus Service Pvt Ltd v HB Sethna* AIR 1965 Mad 149, 151, (1965) Mad LJ 203.

56 AIR 1965 Del 204.

code prior to amendment but the said order would be appealable in view of s 92(2) of the Amendment Act of 1976 since the old right of suit is not preserved under s 97(3) of the Amendment Act or under s 6 of the General Clauses Act.[57]

Amendment in 1947 of s 180 of the Vindhya Pradesh Tenancy Act, has been held to apply to all pending as well as future actions.[58]

This decision of the Delhi High Court was succeeded by another decision of the same Bench sitting to decide the case in *PN Balasubramaniam v Union of India*.[59] Justice VS Deshpande speaking for the court, reiterated the same view:

> From before the enactment of the Interpretation Act 1889 in England, and the General Clauses Acts of 1868 and 1897 in India, the settled rule of interpretation of statutes was that a procedural statute or the procedural provisions of a statute would apply equally to transactions taking place before the enactment as also to those taking place after the enactment. The procedural enactment is retrospective in the sense that no one has a vested right in procedure. Therefore, when an existing statute is repealed by another statute, the proceedings which arise out of the acts committed when the repealed statute was in force is governed by the repealing statute. The effect of the enactment of section 6 of the General Clauses Act 1868 succeeded by section 6 of the General Clauses Act 1897 on this state of common law has, therefore, to be considered.

Reinforcing his reasoning Deshpande, held:

> ...the general rule is that the procedure laid down in the repealing Act is applicable to the proceedings which arise out of transactions which took place under the repealed Act. This general rule has not been rebutted by anything contained in section 6 of the General Clauses Act...

Earlier at one place in his judgment, Deshpande J, held that this is not borne out by the language of s 6 that the provisions of the repealed statute as such are continued in force even after the repeal and that the operation of the provisions of the repealing Act is barred. Justice Deshpande held:

> For section 6 does not save the provisions of the repealed Act as such. It only saves the rights and liabilities which have accrued thereunder. All it ensures is that these rights and liabilities would be enforced notwithstanding the repeal. For this limited purpose. It is not necessary to invoke the aid of the repealed Act as such. For, the rights and liabilities

57 *Dattatray v Mangal* AIR 1983 MP 82, 1983 MPLJ 23, 1983 Jab LJ 242.
58 *Soman v Kedar Nath* AIR 1953 All 254.
59 AIR 1975 Del 258.

> may be such that they can be enforced under the repealing Act itself. Even when the repealing Act is inconsistent with the enforcement of these rights and liabilities, section 6 would save the operation of only those parts of the repealed Act, the operation of which beyond the date of repeal is necessary to give effect to these rights and liabilities. In understanding section 6 of the General Clauses Act, therefore, the first distinction to be made is between the provisions of the repealed Act as such and the rights and liabilities which have accrued when the Act was in force...

It is submitted that the view of Deshpande J, that s 6 only saves the rights and liabilities which have accrued under the repealed Act is not the whole of the rule propounded under s 6. This is just what cl (c) of s 6 has only enunciated.

It is evident that the Supreme Court decisions in *TS Balaiah v TS Rangachari, Income-tax Officer Central Circle VI*[60] and in *Jayantilal*'s case[61] had not been noticed in the Bench decisions of the Delhi High Court in *Re Premier Tyres*,[62] and *Re PN Balasubramaniam*.[63]

Even the Supreme Court decisions in *Nani Gopal Mitra*'s case[64] had not noticed its earlier decision in *TS Balaiah v TS Rangachari, Income-tax Officer Central Circle VI*[65] and this is strikingly astonishing in the face of the fact that the judgments both, in *TS Baliah*'s case[66] as well as in *Nani Gopal Mitra*'s case,[67] had come from Ramaswami J, but this is evident from the judgment in *Nani Gopal Mitra*'s case,[68] that Ramaswami J had taken up for interpretation in that case only cll (b) and (c) of s 6 of the General Clauses Act and had in that context concluded that pending cases although instituted under the old Act but still pending, are governed by the new procedure under the amended law. But whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. It is submitted, that although such a course would be permissible under s 6, this is not what essentially follows from terms of s 6 of the General Clauses Act.

Although Ramaswami J, had also quoted[69] the following concluding part of section, ie:

> and any such investigation, legal proceeding or remedy may be instituted or continued or enforced, and any such penalty, forfeiture or

60 AIR 1969 SC 701.
61 AIR 1971 SC 1193.
62 AIR 1975 Del 204.
63 AIR 1975 Del 258.
64 AIR 1970 SC 1636.
65 AIR 1969 SC 701.
66 Ibid.
67 AIR 1970 SC 1636.
68 Ibid.
69 Vide para 5 of the judgment in *Nani Gopal Mitra*'s case AIR 1970 SC 1636, 1639.

> punishment may be imposed as if the repealing Act or regulation had not been passed,

he had no necessity or inclination to interpret the expression 'any such legal proceeding may be continued'.

Much as it is true that the expression in s 6 that 'any such legal proceeding may be continued as if the repealing Act had not been passed' is subject to the condition that unless a different intention appears from the repealing statute, it has to be all the more appreciated that the phenomenon of a right or liability accrued under the repealed statute is quite distinct from the phenomenon of the continuity of a legal proceeding under the repealed statute as if the repealing statute were not enacted, and the two need not be confused.

That judicial pronouncements are subject to such confusion is evident from the following passage in *PN Balasubramaniam v Union of India*:[70]

> Section 6 contains the expression 'unless a different intention appears'. The effect of those words is that the repealing Act can make a provision which would be contrary to section 6 and to that extent can modify the operation of section 6. Unless, therefore, the procedure laid down by the repealing Act is such that effect cannot be given thereunder to the rights and liabilities accrued under the repealed Act, the general rule that the new procedure would apply to the investigations and legal proceedings for the enforcement of old rights and liabilities would not be affected in any way by section 6.

In the final analysis, it is submitted that question, whether a legal proceeding commenced under the repeated Act will be governed in its continuity by the procedure in the repealed Act itself or by the one prescribed in the repealing Act, can be viewed and answered accordingly in three separate perspectives:

(i) Whether the repealing Act has saved the previous procedure. If so, it is only the previous procedure which shall govern the pending proceedings;

(ii) Whether the repealing Act has said nothing about the procedure to be made applicable to the pending proceeding.

In such a case, the pending proceeding may be continued under the previous procedure as if the repealing Act had not been passed, or the previous procedure may be validated till the date of repeal and the residue of the pending matter may be adapted to the new procedure under the repealing Act.

70 AIR 1975 Del 258, 263.

This is what naturally follows from the expression 'may be instituted or continued as if the repealing Act had not been passed' and this is also in line with the decision in *Nani Gopal Mitra*'s case.[71]

In such a case, both the courses would be open, ie, either to complete the whole of the pending proceeding under the previous procedure or to adapt into the new one as from the date of repeal of the former till its completion. But this shall in all cases be subject to the aspect in (iii) below:

(iii) Whether the repealing statute has enacted a provision contrary to section 6 of the General Clauses Act, or whether the new procedure is so inconsistent with the previous procedure that the two cannot stand together, or again, whether the new procedure has specifically or by implication barred the previous procedure. If so, this shall amount to a different intention appearing from the repealing statute and in such a case the provisions of s 6 of the General Clauses Act can neither be invoked nor made applicable.

The proposition stated in (i) above is that if the repealing Act has saved the previous procedure, it is only the previous procedure which shall govern the pending proceeding. This is because in such a case, there is no scope for the application of s 6 of the General Clauses Act.

In support of what has been stated in (i) above, reference may be made to the Supreme Court decision in *Qudarat Ullah v Bareilly Municipality*[72] wherein VR Krishna Iyer J, has held:

> Section 6 of the General Clauses Act applies generally in the absence of a special saving clause in the repealing statute, for when there is one then a different intention is indicated. In any case where a repeal is followed by a fresh legislation on the subject, the court has to look to the provisions of the new Act to see whether they indicate a different intention.

It is further stated that because of the effect of a saving clause it is in some respects the same as that of s 6 of the General Clauses Act.[73]

Even if the General Clauses Act does not apply in the interpretation of an enactment still it could be looked upto as a rule of prudence in the interpretation of the enactment. In the absence of any legislative provision, courts have to apply the principles of inquiry and good conscience, analogous to the principles of General Clauses Act.[74]

Whenever any Act repeals any enactment, unless a different intention appears, the repeal shall not, apart from any other matter, affect any legal

71 AIR 1970 SC 1636.

72 (1974) 1 SCC 202, AIR 1974 SC 396, 402.

73 Patanjali Sastri J (later on CJ) in *S Krishnan v State of Madras* AIR 1951 SC 301, [1951] SCR 621.

74 *Re Chockalingam* AIR 1945 Mad 521; *Sita Das v State* AIR 1952 Ajm 9.

proceedings or remedy in respect of any such right, privilege, obligation etc, and such legal proceedings or remedy may be continued as if the repealing Act had not been passed. Thus, when Pepsu Ordinance 13 of 2006 BK repealed Patiala Ordinance 9 of 2004 BK, in the absence of any different intention, all legal proceedings pending before the claims officer were held to have been saved.[75]

If during continuation of an appeal, the jurisdiction of the appellate authority in some particular respect has been taken away, then, after such jurisdiction has been taken away, the pronouncement of the authority in that respect is void.[76]

However, when the procedure under the repealed Act has been correctly followed by an authority it is not competent to re-open for the purpose of applying the procedure in the new Act.[77] Pending land acquisition proceedings can be taken up from the stage the central Act came into force which repealed the old Act.[78]

When assessment has been done under the Income-tax Act 1922, the recovery proceedings in respect of that assessment cannot be held under the Income-tax Act 1961.[79]

A revision arising from a proceeding under s 28 of the Calcutta Thika Tenancy Act 1949 had been pending when the said s 28 was omitted. It was held that the pending revision did not become incompetent.[80]

A decree for specific performance had enjoined upon the purchaser to deposit the purchase price but had not specified any time for making such deposit. The decree was one under the Specific Relief Act of 1877 which was repealed and replaced by the new Act of 1963. The vendor sought to apply for rescission of the contract on the ground of non-deposit under s 35(c) of the old Act. Since a default could have occurred only if a time were fixed but not otherwise, it was held that there was no default and there could be no right accrued to the vendor so as to entitle him to argue that his right to have the contract rescinded could be saved either under cl (c) or (e) of s 6 or under s 3 of the new Specific Relief Act 1963.[81]

This may, however, be differentiated from *Mahendra Nath Gupta v Moti Ram*,[82] where, a suit for specific performance was filed in June 1963 and was decided on 1 August 1968. During the pendency of the suit the new Specific Relief Act 1963 (47 of 1963) came into force on 1 March 1964. The suit having been decreed under the old Specific Relief Act 1877, the decree-holder made an

75 *Mandir Devi Dwala v Deputy Custodian-General* 64 Punj LR 1024.
76 *Trichy City Co-op Bank v Commr* (1957) 2 Mad LJ 185 (wrt s 41, Madras Shops and Establishments Act).
77 *Niranjan Prasad Agarwal v SK Azad* 1973 ALJ 954, 1973 AWR 644.
78 *Kanthimathy Plantation Pvt Ltd v State of Kerala* AIR 1990 SC 761, 763.
79 *M Damodar Bhat v III, ITO, Mangalore* AIR 1968 Mys 258, 9 Law Rep 812.
80 *Deorajan Debi v Satyadhyan Ghosal* AIR 1954 Cal 119.
81 *Hungerford Investment Trust v Haridas Mundhra* AIR 1971 Cal 182, 75 CWN 517.
82 AIR 1975 Del 155.

application for execution of the decree praying therein for delivery of possession of the plot of land which he had agreed to purchase from the judgment-debtor. The judgment-debtor filed an objection under s 47 of the Civil Procedure Code contending therein that the decree-holder was not entitled to get possession of the property as no such relief was granted to him by the court as none was asked for in the plaint in the suit. The executing court upheld the objection and dismissed the prayer for delivery of possession taking resort to s 22 of the new Specific Relief Act which had made it incumbent on the plaintiff to ask for possession of the property in addition to specific performance of the contract of sale. Sub-section (2) of s 22 of the new Act provides that if in a suit for specific performance, the plaintiff has omitted to ask for possession of the property in addition to specific performance, no relief shall be granted by the court. The effect is that in a suit for specific performance prayer for possession must be distinctly and specifically made. The courts below had taken the view that s 22 of the new Act applied to the suit and the plaintiff ought to have amended his plaint so as to bring it in line with the new section particularly in view of s 44 of the new Act which had expressly repealed the old Act.

The High Court of Delhi, speaking through AB Rohtagi J, then ultimately held that there is nothing in the new Act to show an intention of the legislature to destroy the old rights and liabilities of the party which had accrued under the old Act. The repeal of the old Specific Relief Act will not affect any right or liability acquired or incurred under the repealed enactment or any legal proceedings or remedy in respect of such right or liability etc, and such legal proceeding or remedy may be continued as if the repealing Act has not been passed.[83]

The view taken by the Delhi High Court in the above case is supported by the general principle enunciated by the Supreme Court in *State of Punjab v Mohar Singh Prasad Singh*,[84] that whenever there is a repeal of an enactment, the consequences laid down in s 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. Stated differently, the same general rule was laid down by a full bench of the High Court of Allahabad in *Adarsh Bhandar v Sales-tax Officer*[85] that under s 6 of the General Clauses Act, an enactment does not prima facie affect pending actions which are to be decided as if the repealed enactment was still in force.

It may be remembered, however, that when the repeal is followed by a new enactment covering the same field, the provisions of the new enactment have to be necessarily looked into in order to ascertain whether they have intended to carry a different intention.

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83 *G Ekambaiappa v Excess Profits-tax Officer* AIR 1967 SC 1541, (1967) 2 SCJ 633, 65 ITR 656, (1967) 2 ITJ 509, 12 Law Rep 641.

84 AIR 1955 SC 84, [1955] 1 SCR 893.

85 AIR 1957 All 475, 8 STC 666.

The Uttar Pradesh Act 13 of 1972, came into force when suits for eviction filed under a particular section of the old Act of 1947 were pending. It was held that the pending suits would be governed by the old Act and not by the new Act.[86]

When a summary execution suit was instituted prior to the date on which the Indian Court Fees Act was brought into force in Goa, the court-fee payable is according to the Portuguese law and is not affected by its repeal as per s 6 of the General Clauses Act.[87]

It was held in *Tilok Chand v Mer Chand*[88] that an application suit which had been duly commenced under s 4 of the Displaced Persons (Institution of Suits) Act 1948, is not affected by the provisions of s 59 of the Displaced Persons (Debts Adjustment) Act 1951.

Though the process of consultation with the High Court under art 234 of the Constitution, commenced in 1949 and was a pre-Constitution proceeding in respect of the Uttar Pradesh Civil Service (Judicial Branch) Rules 1951, it was held valid and of legal authority because of s 6 of the General Clauses Act read with art 367 of the Constitution. Moreover, the Government of India Act 1935, also required by s 255 similar consultations with the High Court.[89]

Where the Payment of Bonus Act 1965 had re-enacted s 10 of the Bonus Ordinance 1965, with some significant change, but since there was no action pending under s 33 of the ordinance when the Act came into force, it was held that there was no question of giving protection or continuing any action under s 33 of the ordinance by virtue of the express saving clause in the Act.[90]

Where an ordinance was promulgated by the competent authority under s 5 of the Jammu & Kashmir Constitution Act of Samvat 1996 and subsequently, s 5 was deleted by the Jammu & Kashmir Constitution Amendment Act, it was held that an act done under s 5 of Samvat 1996 Act will be saved by s 6 of the Jammu & Kashmir General Clauses Act.[91]

Where permits were granted under s 58A of the Motor Vehicles Act 1939 and subsequently the Act was amended by Motor Vehicles (Amendment) Act 100 of 1956, it was held that even assuming that the provisions of s 58A had been impliedly repealed, the permits already granted were not rendered invalid and would continue to be valid for the period for which they were granted.[92]

Similarly, where the cess was being collected to establish a fund called 'coal production fund' but was abolished by the Coal Production Fund (Repealing) Ordinance, it was held that the cess could be collected even after

86 *Bal Krishna Rastogi v Tribhuvan Das* 1978 All LJ 668.
87 *Joaquinna Santana Simplicioda Silva v Nicolan Gracius Caldeira* AIR 1968 Goa 58.
88 AIR 1957 All 547–48 (DB).
89 *Fergand v Mohan Singh* (1967) ILR 2 All 271, AIR 1968 All 67.
90 *Transport and Dock Labour Workers Union v New Dholera Steamship Ltd* (1967) 1 LLJ 434, 1968 (16) FLR 84, 88.
91 *Rehman Shagoo v State of Jammu & Kashmir* AIR 1958 J&K 29 (FB).
92 *Naib Transport Pvt Ltd v Regional Transport Authority, Calcutta* 65 CWN 1179.

the abolition of the fund by the repealing Ordinance inasmuch as the later ordinance provided that the Central Government may use the balance of the fund as it deemed fit and that balance would include not only the balance in hand but would include all that might be added to it thereafter by future recoveries.[93] Section 6(b), (d) and (e) of the General Clauses Act clearly enjoins that if suits are pending wherein the plaintiffs have put forth claims under the then existing s 82 of the Indian Trust Act, such proceedings are to be continued by assuming that the repealing of s 82 of the Trust Act has not been effected in connection with such pending proceedings.[94]

18. VESTED RIGHT

(a) General

A right to continue a duly instituted suit is in the nature of a vested right which cannot be taken away except by a clear indication of an intention to that effect.[95]

When a particular provision of an Act is in force when particular transaction was effected, then the subsequent repeal of the statute will not affect the merits, rights or liabilities of the parties on the date of that transaction.[96]

A right having been acquired under a repealed Act cannot be affected in the absence of a different intention in the repealing Act.[97] A statute affecting vested rights is prima facie prospective, unless it expressly or by necessary implication indicates to the contrary.[98]

Section 6 applies to specific rights given to a person upon the happening of one or other of the events specified therein, and it does not apply, therefore, to abstract rights.[99]

The right to have a suit entertained and tried by court, and to pursue it to its final stage,[1] including the right to appear in and defend it[2] is a substantive right, and a vested on. It follows that statutes effecting jurisdiction of courts enforcing a law, do not operate retrospectively, unless clearly expressed or implied by necessary intendment.[3] The retrospective character of a statute depriving a person of his right to sue or affecting such right,[4] or affecting the

93 *Union of India v RC Jall* AIR 1958 MP 425; partly reversed on another point in *RC Jall Parsi v Union of India* AIR 1962 SC 1281.
94 *R Rajagopal Ready v Padmini Chandra Shekharan* (1995) 2 SCC 630.
95 *Venugopala Reddiar v Krishnaswami Reddiar* AIR 1943 FC 24, (1943) ILR Ker 21.
96 *Sundra Bai v Manohar* AIR 1933 Bom 262.
97 *NJ Gor v MG Raval* AIR 1951 Bom 336.
98 *ITO v Uppala Peda Venkataramayya* [1967] 64 ITR 93, (1966) 2 Andh LT 92.
99 *MS Shivanadan v Karnataka State Road Transport Corpn* (1980) 1 SCC 149.
1 *Kamta Singh v Jageshwar* 1952 All LJ (Rev) 159, 162.
2 *Vazirboo v Keshav Lal Narshi Das* AIR 1970 Bom 242, 245, 71 Bom LR 745.
3 *Balwant Singh v Balwant Kaur* AIR 1957 Pepsu 1–3 (DB) (s 9 of the Hindu Marriage Act 1955).
4 *Gokul Das Pagaria v Permanand Chaurasia* AIR 1967 MP 265, 267, 1967 MP LJ 564.

power or jurisdiction of the court,[5] ought to be clearly expressed.[6] Right of appeal, being a substantive right, must be governed by the law in force both when the proceedings have started or the decision sought to be appealed from is made.[7]

Where the plaintiffs had got a right vested in them to institute their suit in civil court prior to coming into force of the Chhota Nagpur Tenancy Act 1920, it was held that the right was not affected by the Chhota Nagpur Tenancy Act 1908, as it stood prior to its amendment in 1920.[8]

The legislature has full power to make a law retrospective so as to destroy a right or a remedy altogether but this must be expressly laid down or this result must flow by necessary implication. For example, the repeal of Ch 13(A) of the Bengal Tenancy Act 1885 by the Bengal Act 6 of 1938, wipes out all decrees obtained by landlords prior to coming into operation of the said repealing Act of 1938.[9] But, where the vested rights are intended to be saved, the saving clause refers only to those vested rights which had been affected by the repeal of the concerned legislation.[10] Provisions of s 137(3)(21) of the Income-tax Act 1961, were thus held operative in respect of statements made in the assessment proceedings under the repealed Act of 1922. It was held that whatever right might have existed with the assessee in securing a non-disclosure of the statement made by him under the repealed Act, insofar as the statements of the nature mentioned in s 137(3)(21) are concerned, the

5 *Yankappa Timmappa Kolachi v Sharakka* AIR 1960 Mys 265–66, 38 Mys LJ 456.

6 *Ramniwas v Ratan Lal* 1955 Raj LW 270, AIR 1955 NUC (Raj) 4068 (s 73 of the Trade Marks Act 1940, not retrospective); but, see *Nagaraju v K Ramaraju* AIR 1971 Mys 261–62, (1971) 1 Mys LJ 412 (with reference to s 132(2)(a) of the Mysore Land Reforms Act 1962, as amended by Mysore Act 6 of 1970); *Shah Lalji Harshi v Shah Daroji Ratanshi Lala* AIR 1955 Kutch 18–19 (filing a suit at particular place held not to be vested right).

7 *Ramanathan Chettiar v Lakshmanan Chettiar* AIR 1963 Mad 175, 178, (1963) 1 Mad LJ 46 (FB); *Sarwan Singh v Devinder Singh* AIR 1952 Pepsu 8–9, 3 Pepsu LR 566 (DB); *Batala Engineering Co Ltd v Custodian, Evacuee Property, East Punjab* AIR 1951 Punj 412–13, 53 Punj LR 84 (DB) (art 133 of Constitution of India not retrospective); *Kalliani Amma v Vikramanickan* (1957) 70 Mad LW 310–11 (right to appeal to be governed by law prevailing on date of institution of proceedings under s 50 of Malabar Tenancy Act 1930, even after coming into force of the Madras Act 7 of 1954); *Chuluram v Bhagatram* AIR 1980 MP 16, 18, 1980 MPLJ 37 (DB) (vested right of appeal in pending proceedings not impaired by alteration of law relating to appeal); *Khem Chand Keshrimal v Commr of Sales-tax, Uttar Pradesh* (1967) 19 STC 71, 79 (All) (with reference to s 10(3) of the Uttar Pradesh Sales-tax Act 1948, as amended in 1953); *Desai Bhao v Kaniram Gonda* AIR 1952 Hyd 142, (1952) ILR Hyd 28; *Man Singh Suraj Singh Padvi v State of Maharashtra* (1968) 70 Bom LR 654, 669 (fiction of co-extensiveness of amending and parent statutes not always true).

8 *Chaudhary Guru Saran Das v Akhowi Parmeshwari Charan* AIR 1927 Pat 203, 8 Pat LT 841.

9 *Provakar Roy v Bibhuti Bhushan* AIR 1957 Cal 177.

10 *Bhagwan Shankar v Rajaram Bapu Vithal* AIR 1951 Bom 125, 127, 53 Bom LR 398 (FB) (wrt s 5 of the Merger Order, merging State of Akalkot into Union of India); approving *Chuni Lal Kasturchand v Dundappa* 52 Bom LR 660, AIR 1961 Bom 190.

legislature did liberate such statements from the prohibition against non-disclosure.[11]

Where, however, the penalty was in a case imposed with the old Act, but had to be recovered, under the provisions of the new Act the provisions of the new Act need not be applied literally, but may be suitably modified.[12]

In view of s 6, the repeal of s 66 of the Employees State Insurance Act 1948, brought about by the amending Act 44 of 1968, does not affect the right of reimbursement accrued to the Employees' State Insurance Corporation prior to such repeal.[13]

The liability in respect of escaped turnover survives repeat of the General Sales-tax Act (11 of 1925) by virtue of s 4 of the Interpretation and General Clauses Act 1125 and is capable of being enforced as if the repealing Act, ie, Act 15 of 1963 had not been passed. There is nothing in the proviso to s 61(1) of the Kerala General Clauses Act 1963, which can be construed as manifesting a different intention within the meaning of s 4 of the Interpretation and General Clauses Act 1125 (ME).[14]

Where a temple which continued to be an 'excepted temple', under the Madras Religious Endowments Act 1927, was deprived of the 'excepted' status when the Act was amended in 1930, it was held that no vested right was disturbed and there was no question of applying the rule against retrospective operation of the 1930 Act.[15]

Where the assessee was assessed under the Income-tax Act of 1922, which was repealed, recovery proceedings must be under the repealed Act and not under the new Act.[16]

The mode of execution of a sentence is a matter neither of substantive law nor of substantive rights.[17]

Where the land acquisition proceedings commenced before the amendment of s 34 by the Mysore Act 26 of 1961, the right of the claimant under the old section is a vested right saved by s 6 of the General Clauses Act. The claimant was entitled to interest at 6 per cent, and not at 5 per cent, under the amended section.[18]

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11 *P Kandiah Thevar v Third Income-tax Officer, Tirunelvei* [1963] 49 ITR 665 (Mad), AIR 1964 Mad 305.

12 *Income-tax Officer (III) v M Damodar Bhat* AIR 1969 SC 408, 71 ITR 806.

13 *Fedders Lloyed Corpn v Employees' State Insurance Corpn* (1975) 48 FJR 287, 293–94 (Del).

14 *Arya Vaidya Pharmacy Ltd, Palaghat v State* (1968) 21 STC 357, 1967 Ker LJ 781, 1967 Ker LR 848, 1967 Ker LT 964.

15 *Hindu Religious Endowments Board, Madras v PVR Ratnasami Pillai* AIR 1937 Mad 232, (1937) 1 Mad 105.

16 *M Damodar Bhat v Third Income-tax Officer, Mangalore* 9 Law Rep 812, AIR 1968 Mys 258.

17 *Janardhan Reddy v State of Hyderabad* AIR 1951 SC 217, 220, 52 Cr LJ 736, (1951) SCJ 320.

18 *Special Land Acquisition Officer, Shimoga v B Channaveerappa* (1967) 2 Mys LJ 296, 11 Law Rep 842, AIR 1968 Mys 13.

A right which had already been vested in a party under the Civil Procedure Code of 1882, is saved by s 6 of the General Clauses Act, when that Code had been replaced by the Code of 1908.[19] When the right to apply for sale of the property had become vested in the decree-holder, the application for making the preliminary decree absolute had already been made, and the notice of the application had already been served prior to the Civil Procedure (Amendment) Act 1976 coming into force, the proceedings for an order absolute was a pending proceeding, governed by the Transfer of Property Act and no final decree was necessary.[20]

Persons having filed applications under s 57(a) of the repealed Andhra Pradesh Act 19 of 1951, have a substantive right of appeal as also a right to regular suit and an appeal to the High Court under the provisions of the repealed Act, and these rights were held to be preserved.[21]

Civil Services Rules (Punjab) 1941 were abrogated by the rules of 1959. The rules of 1941 were subject to alteration. Accordingly, it was held that s 6 of the General Clauses Act does not extend to such rules and no vested right in the age of superannuation was created in the government servant by the rules of 1941.[22]

(b) Right of Appeal

It is well-settled, as has been made clear by the Privy Council[23] and the Supreme Court,[24] that the right of appeal is a substantive right[25] that gets vested in a litigant as soon as it is commenced in the court of the first instance conferring such right, unless such right has been taken away by the repealing statute. But, in case the repealing statute provides for a new forum, the right of appeal can be availed of at that forum, there being no vested right to a forum.[26]

The general proposition is also that an amending Act cannot impair the right of appeal unless such amendment provision makes an express provision or by necessary intendment makes the provision applicable to the present proceedings.[27]

The Supreme Court,[28] holds that all rights, at the commencement of a *lis*, get crystalised, and unless the law is made retrospective expressly or by

19 *Jageshar Singh v Raja Bhagwan Baksh Singh* 9 IC 337, 14 OC 10, 12.

20 *B Keshawasarindra Sahu v Debendra Bala Desai* AIR 1918 Pat 41, 45.

21 *SPT Swamuluvaru v HR & EC Commr* AIR 1971 AP 211.

22 *Dr Pratap Singh v State of Punjab* AIR 1963 Punj 298; *Venkata Rao v Secretary of State* AIR 1937 PC 31 (wrt 1941 rules under s 241 of Government of India Act 1935).

23 *Colonial Sugar Refining Co Ltd v Irving* 190 AC 369.

24 *Grikopatti Veerayya v N Subbiah Chowdhary* [1957] SCR 488.

25 *Bimla Prasad Roy v State of West Bengal* AIR 1951 Cal 258, 55 CWN 87.

26 *Purushottam Singh v Narain Singh and State of Rajasthan* AIR 1955 Raj 203; *Christina D'Souza Sodder v Amria Zurana Perelara Pinto* (1974) 1 SCC 92, 9[illegible]

27 *Oriental Insurance Co Ltd, Haldwani v Dharam Singh* AIR 1990 All 104, 107.

28 *HK Dada (India) Ltd v State of Madhya Pradesh* AIR 1953 SC 221, 224, (1953) SCJ 27[illegible]

necessary implication no clog can be put upon a likely appeal. This rule would not, therefore, apply when it is proved conclusively that the lis did not commence before the amendment of the law,[29] which is the same as saying that the pending proceedings can be governed by the modified or new law, if it is introduced during the pendency of a proceeding and enforced retrospectively by a specific provision introduced into it to that effect.[30] In *Panna Lal v Labh Chand*,[31] the point for consideration was the relevant date for applicability of s 53A of the Transfer of Property Act 1882, or s 54 of the Gwalior Transfer of Property Act. It was held that the relevant date would be the date of filing the suit, and not the date of agreement or contract. The above principle would not, however, apply when, either the right of appeal is expressly or impliedly taken away with retrospective effect, or when the court, to which an appeal could lie at the commencement of the suit, has been abolished.[32]

An appeal filed under the Agra Tenancy Act of 1901 should nevertheless be decided in terms of that Act, though by the date of hearing, the Agra Tenancy Act of 1926 had come into force.[33] Though by s 217 of the Motor Vehicles Act 1988, the old Act of 1939 was repealed, the right to appeal continued in respect of any award made under the old Act.[34]

The contention that enforcement of the Motor Vehicles Act 1988 in view of s 147(2)(a) which is corresponding to s 95(2) of the Act 1939, the liability of the insurer does not remain limited in view of s 217(2) of the Act of 1988 and s 6 of the General Clauses Act has no merit.[35]

Where an execution proceeding had been pending at the time of the commencement of the Civil Procedure Code Amendment Act 1976, restricting the right of appeal in execution proceedings, it was held,[36] that since right of appeal is saved only for pending appeals and execution of decrees passed prior to 1976, an appeal against an order in execution proceedings was not saved. Where a new rule has not conferred any right of appeal with regard to the orders passed prior to the commencement of an amending provision, a suit instituted under the old rule is maintainable.[37]

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29 *Vithalbhai v Commr of Sales-tax, Nagpur* AIR 1967 SC 344–45, (1961) 12 STC 219 (DB); *Ramesh Singh v Cinta Devi* AIR 1996 SC 1560.

30 *PM Tagore v Kusum Kumari* (1956) 60 Cal WN 551.

31 AIR 1955 MB 49, 52, 1955 MBLJ (HCR) 376.

32 *Jose Da Costa v Bascara* AIR 1975 SC 1843, 1849.

33 *Girwar Lal v Kallan* AIR 1927 All 509–10, 103 IC 286.

34 *Md Makibar Rahman v Md Islam Ali* AIR 1994 Gau 4, 6.

35 *Vimla Gangotia v National Insurance Co Ltd* AIR 1994 MP 201 (DB); *Prabhawati Sharma v Brijmohan Parihar* 1990 ALJ 399; *National Insurance Co Ltd v Roy George* 1993 ACJ 343 followed.

36 *Pratap Narain v Ram Narain* AIR 1980 All 42, 47, 50, 1979 All LJ 1335, 1979 All WC 711 (FB).

37 *Shish Kumar Pradhan Sheshdeo v Keshho* AIR 1980 MP 166, 169, 1980 MPLJ 335 (DB) (wrt old r 103 of O 21 of the Civil Procedure Code).

Imposition of a new restriction on an existing right of appeal is not a matter of procedure, and since it has the effect of impairing a substantive right, it cannot be given retrospective effect.[38]

On a combined reading of s 6 with s 81 of the Foreign Exchange Regulation Act 1973, the conclusion in *Usman Yusuf v Foreign Exchange Regulation Appellate Board, New Delhi*[39] was that the procedure prescribed under the 1973 Act alone would apply, and not the Foreign Exchange Regulation Act of 1947, to an appeal filed after the commencement of the New Act of 1973, and if an appeal is not filed within the time prescribed therein, the delay cannot be condoned.

If a change in law enlarging the right of appeal has taken place after an order has been passed, the enlarged right cannot be availed of unless the change of law has been expressed to be retrospective.[40]

19. VESTED RIGHT TO PERIOD OF LIMITATION

The selection of a forum and the period of limitation are, ordinarily, matters of procedure.[41] The law of limitation does not extinguish the right but operates only as a bar against the remedy.[42] Therefore, s 6 has no application so as to preserve the older period of limitation, which is not a rule of substantive law.[43] The law on the point can be stated in two broad propositions:

(i) that the new law of limitation would not revive a barred right; and
(ii) that the new law cannot be construed retrospectively so as to destroy altogether the remedy of a litigant to enforce his right in a court of law.

The law of limitation applicable to a suit or proceedings would be the law which was in force on date of institution of that suit or proceeding unless there be any provision to the contrary.[44] In *Government of Rajasthan v Sangram Singh*[45] it has been held that, in case the remedy to enforce a vested right is altogether barred on the date when the new law comes into force without providing any breathing time to the litigant, that remedy must be continued to be governed by the old law of limitation. But, there can be no vested right

38 *State of Bombay v Supreme General Films Exchange* AIR 1960 SC 980, 984, (1961) 1 SCJ 119.
39 1980 Mah LJ 316, 321.
40 *Moti Ram v Suraj Bhan* AIR 1960 SC 655, 657; *Keshav Lal v Mohan Lal* AIR 1968 SC 1336.
41 *Ram Karan Singh v Ram Das Singh* AIR 1931 All 635, 1931 All LJ 1018.
42 Ibid p 639.
43 *Arayil Kali Amma v Pelappakara Manakail Sankaran Nambudripad* ILR 34 Mad 292, 20 Mad LJ 347.
44 *Shib Shankar Lal v Soni Ram* (1910) ILR 32 All 33, 43, 6 All LJ 931 (DB).
45 AIR 1962 Raj 43 (FB).

in a litigant to wait for any particular period of limitation before commencing his proceedings.[46]

An ex parte decree passed on 15 November 1904, and sought to be executed on 3 September 1905, which could result in issuing a notice under O 21, r 22 of the Civil Procedure Code, was held to be governed by art 164 of the Limitation Act 1908, and it could not be contended that there had been any right to avail of the provisions of the Limitation Act for execution thereof contained in the Limitation Act of 1877.[47]

A right, merely to take advantage of the provisions of a statute, is not an accrued right.[48]

A vested right to the period of limitation with reference to s 6 of the General Clauses Act must be construed as 'a right acquired or accrued' which, in view of *Sivagami Achi v Ramanathan Chettiar*,[49] is not a right in the abstract[50] but a right that had already pertinently accrued to the suitor under the repealed enactment. Thus, art 182 of the Indian Limitation Act 1908, was made applicable to the State of Travancore, from 1 April 1951. It was held that the said article did not affect the limitation available for execution of the decree as had been registered and covered by s 15 of the Travancore Registration Act.[51] This is different from those cases in which the state of affairs at the time of the execution of the decree has to be looked into, for example, in case of transfer of decree, the decree ceasing at the time of execution to be a foreign decree, can be transferred for execution to the courts in India.[52] Conversely, a decree passed by a court which at the time of execution of decree has ceased to be Indian territory by its cession into another territory, cannot be transferred for execution in any Indian court. A person intending to enforce the judgment of a foreign court, must satisfy the requirements of s 13 of the Civil Procedure Code.[53] The Privy Council has also observed, in *Sree Lanka Insurance Co Ltd v Ranasingha*,[54] that the distinction between what is and what is not a right must often be one of great fitness, because if the subject had in trust a right, something more than a mere hope or expectation, the requirements of the section would be fully answered.

What s 6 intends is that a new law of limitation or an amendment in the law does not divest a person of a right or title that has vested in him under the former law of limitation.[55] The Supreme Court had occasion to consider

46 *Unique Motors and General Insurance Co Ltd v Kartar Singh* AIR 1965 Punj 102, 106, 66 Punj LJ 1083 (DB); relying on *Hazari Tiwari v Mst Maktula Chaubain* AIR 1932 All 30.

47 *Hope Mills Ltd v Vithal Das Pranjivandas* 7 IC 982, 12 Bom LR 730.

48 *Zohrabai v Arjuna* AIR 1980 SC 1010, 1012.

49 (1967) ILR 2 Mad 91, (1967) 1 ITJ 166.

50 *Free Lanka Insurance Co Ltd v Rana Singha* [1964] 1 All ER 457, 462 (PC).

51 *DC Joseph v John Jesayya* AIR 1955 Tr & Coch 186, 1955 KLT 602.

52 *Dalel Singh v Dhan Devi* AIR 1953 Punj 24.

53 *Dominion of India v Hira Lal Bothra* AIR 1950 Cal 12, 53 CWN 817.

54 [1964] 1 All ER 457, [1964] AC 541 (PC).

55 *Tej Bhadur Kothari v Radha Kishan Gopi Kishan* AIR 1936 All 858, 860, 1936 All LJ 1373.

how and from what perspective, s 6 of the General Clauses Act should be applied. In *State of Punjab v Mohan Singh*,[56] their lordships could not subscribe to the broad proposition that s 6 of the General Clauses Act is ruled out when 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 provisions of 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.

The law, extending a period of limitation in the absence of a contrary intention, operates only prospectively, so as not to affect the substantive rights, and this rule, it is said,[57] is one which arises independent of s 6 of the General Clauses Act.[58] It is by now a settled principle that the law of limitation is a procedural law, and unless a contrary is provided for,[59] it operates only retrospectively and governs the causes of action which arose prior to its enactment, with the exception that when a right to sue or make an application had become barred by law then in force, the coming into force of a new law of

56 AIR 1955 SC 84, 88, [1955] 1 SCR 893, 900.

57 *Sorkar Dutt Roy & Co v Shree Bank Ltd* AIR 1960 Cal 243, 248, (1960) 30 Com Cas 416 (DB); reversed on another point in *Shree Bank Ltd v Sorkar Dutt Roy* AIR 1966 SC 1953, holding s 45O(1) of the Banking Companies Act 1949 as retrospective.

58 *Unique Motor and General Insurance Co Ltd v Kartar Singh* AIR 1965 Punj 102, 106, 66 Punj LJ 1083 (DB); relying on *Hazari Tewari v Maktula Chaubain* AIR 1932 All 30, holding that there can be no vested right in litigant to wait for particular period of limitation to be fixed by law before institution by him of his proceedings; *Bansidhar Lal v Assistant Custodian, Evacuee Property, Sasaram* AIR 1960 Pat 306–07, (1959) BLJR 332 (DB) (law of limitation to operate prospectively, unless otherwise expressed, so as not to deprive party of vested right of action or to treat claim against, as barred); *Chinto v Narinjam Singh* AIR 1957 Punj 317, 319, 29 Punj LR 475 (limitation to be regulated by rule in force on original date of institution of proceedings); *Suburban Bank Ltd v Nistaran Chakrabarti* AIR 1955 Cal 172, 174, 68 CWN 676 (s 45O(1) of the Companies Act 1949, not retrospective so as to apply to pending proceedings); *Punjab State v Mst Ravikanta* AIR 1945 NUC (Punj) 5393 (no vested right to period of limitation); *Manager, PK Porwal v Labour Court, Nagpur* (1968) 70 Bom LR 104, 1968 Mah LJ 1, 8; overruled on another point in *Town Municipal Council, Athani v Presiding Officer, Labour Court, Hubli* AIR 1969 SC 1335; *Natver Lal Bhikualal Shah v Thakarda Khodaji Kalaji* (1967) 8 Guj LR 779, (1967) ILR Guj 495–97 (statute making enforcement of right of action having arisen prior to its enforcement, impossible to be construed as prospective); *Massilamony Thenkayya v Velayudhan Nadar* 1967 KLT 762–63 (statute of limitation being procedural generally operates retrospectively, and applies to pending proceedings as soon as it comes into force); *Chotmal Ganeshram Bharadiya v Ram Chand Tara Chand* AIR 1958 Bom 137–38, 1959 Bom LR 328 (Del) (law of limitation being procedural in nature, operates retrospectively); *AS Khader Ismail v Income-tax Officer, Salem* [1963] 47 ITR 16, 20 (DB) (Mad) (wrt second proviso to s 34(3) of the Income-tax Act 1922 re-enacted by Act 25 of 1953).

59 *Thackor Shivji Kunverji v Bhatia Thacker Kalyanji Ratanshi* AIR 1952 Kutch 48–50.

limitation has no effect of reviving those rights,[60] unless the contrary is expressed in words or by necessary implication.[61]

This simply means that the statute of limitation operates not with regard to the time when the cause of action arose but with regard to the point of time when the proceedings are instituted.[62]

The Limitation Act 1963 had been enacted as an amending and consolidating Act on the subject of the law relating to limitation of suits and other proceedings, and it has repealed the old Limitation Act of 1908. The question that bears examination on a consideration of the relevant provisions of the Indian Limitation Act 1908 (the old Act) as well as the Limitation Act of 1963 (the new Act), arose before a Bench of the High Court of Madras in *Roshan NMA Karim Oomar & Co v Kaka Mohammed Ghouse Saheb & Co.*[63] In that case, the question of period of limitation had involved an execution petition, the relevant dates wherein may be recapitulated in the following order. 25 March 1952 was the date of the decree sought to be executed; 2 April 1958 was the date on which the judgment-debtors had made their last payment under the decree. Between 28 February 1958 and 4 May 1962, the decree-holder was prevented from executing the decree by an injunction of the city civil court, the period covered by the injunction being five years two months and four days in all. 24 February 1972 was the date on which the decree holder had filed the execution petition involved in the above case, with reference to these dates. The date to be further noted is 1 January 1964 being the day on which the Limitation Act 1963 had come into force and the Indian Limitation Act 1908 had stood repealed.

Section 31 of the 1963 Act had stated that nothing in the new Act would enable any suit, appeal or application to be instituted for which the period of limitation prescribed by the old Act had expired before the commencement of the new Act, or affect any suit, appeal or application pending at the commencement of the new Act.

Under the terms of s 32 of the new Act, the repeal had operated without any savings. Nevertheless s 30(a) of the new Act provided that where the period of limitation under the new Act for a suit was shorter than the period provided by the old Act, then such a suit might be instituted within a period of seven years next after the commencement of the new Act or within the period prescribed for such suit by the old Act, whichever period would have expired earlier. Likewise, under s 30(b) of the new Act, any appeal or

60 *NKC Syed Mohammad Ravoothar v Deputy Commercial-tax Officer* AIR 1958 Mad 176, 179, (1958) 1 Mad LJ 30 (DB).

61 *Debi Dutta Moody v T Bellan* AIR 1959 Cal 567, 570–71.

62 *State of Bihar v Radha Krishna Kamala Prasad* (1957) 8 STC 440, 444 (Pat) (DB) (s 13(6) of the Bihar Sales-tax Act 1947, as amended by Act 6 of 1949 would govern proceedings instituted on 2 September 1950); *Hemandas Bamrakhimal v Chellaram* (1911) 5 SLR 184, 188 (retrospective operation of s 92(2) of the Civil Procedure Code 1980 operated retrospectively).

63 AIR 1977 Mad 175.

application, for which the period of limitation prescribed in the new Act was shorter than the period of limitation prescribed in the old Act, might be preferred within a period of ninety days next after the commencement of the new Act or within the period prescribed for such appeal or application by the old Act, whichever period would have expired earlier.

Legislature has made special provisions under s 31 of the new Act as regards pending proceedings and, under s 30, as regards proceedings for which the period of limitation under the new Act is shorter than that provided in the old Act. The new Act carries no provision in regard to matters where, although the period of limitation is the same both in the old and the new Acts, different results would inevitably follow by reason of the fact that the starting point of limitation is not the same under both.

The above case of *Roshan NMA Karim Oomar & Co v Kaka Mohamed Ghouse Saheb & Co*[64] had amply illustrated the omission of the legislature to make provision for covering the circumstance of the period of limitation being the same in both Acts but the starting point of limitation being different in the two.

Another curious feature of the above case was that it had involved the execution of a decree passed by the Chartered High Court of Madras. In contradistinction to arts 182 and 183 of the old Act providing respectively for period of limitation for execution of decrees made by the Chartered High Courts and for those of other courts, art 136 of the schedule to the new Act had made no such distinction. This difference in the old and the new Acts is material in view of the fact that the period of limitation of twelve years prescribed under the old Act for executing a decree of a Chartered High Court in any given case would depend on the fact whether there had been any payments by the judgment-debtor under the decree, and if there were, what was the day of the last of such payments, because the starting point of limitation in such cases would be determined, not on the date of the judgment, but would depend on the overt act of the parties to the decree in effecting the payment and obtaining receipt thereof.

The controversy before the Madras High Court in the above case was that on the one hand the acts of payment by the judgment-debtors under the decree might be viewed either as acts which conferred on the decree-holder a right to execute the decree within 12 years of the last of such payments or as self-imposed liabilities of the judgment-debtors themselves, under which they may be said to have rendered themselves liable to be proceeded against in execution of the decree for a period of 12 years from the date of such payment, whereas on the other hand, it might also be possible to view the payments made by the judgment-debtors as something 'done' under the decree, having relevance not only for the purposes of the proviso to art 183 of the Sch I to the old Act, but also for purposes of s 6(b) of the General Clauses Act.

64 AIR 1977 Mad 175.

Resolving the controversy by application of s 6 of the General Clauses Act and holding the execution petition to be well within time, Balasubrahmaniam J, speaking for the court, observed that:

> For what section 6 of the General Clauses Act requires is that at the moment the repealing Act is passed, the subject must possess the right which, but for the passing of that Act, he would have been at liberty to exercise. In this case, we have not the slightest doubt that when the judgment-debtors in this case made payments to the decree-holder towards the decree passed by this court, rights there and then had accrued to the decree-holder in regard to the period of time within which the decree in his favour was capable of being executed. In the first place, the decree-holder thereby became entitled to execute the decree within 12 years from the date of the last of such payments, which he would not have been entitled to do in the absence of such payment. Secondly, and by the same token, the rights that had accrued to the decree-holder, by virtue of the payments by the judgment-debtor, entitled him to institute, continue and enforce the execution of this court's decree against the judgment-debtor under the provisions of the old Act, notwithstanding its repeal by the new Act, and, indeed, as if the repealing Act had not been passed. It would follow from these considerations that the execution petition filed by the decree-holder has necessarily to be judged only in the context of the relevant provisions of the old Act.

Support for the above view was derived from a decision of the Division Bench of the Calcutta High Court in *Sudhodh v Kanni Lal*[65] observing that but for a fresh start of limitation by reason of acknowledgment and part payments made in 1962, the adjusted decree of 1951 would have become time-barred for execution in 1963 by reason of the provisions of s 31 of the new Limitation Act, which has no effect in such circumstances.

20. CLAUSE (a)

Unless there is a contrary intention either expressly or by necessary implication, a right already in existence is not affected by repeal or amendment of an Act.[66] Clause (a) of s 6 merely implies that the repealing Act is not supposed to bring into existence any earlier Act which had itself been repealed by the Act, in turn repealed by the present repealing Act.[67] It requires very clear and unmistakable language in a subsequent Act to revive or recreate an

65 AIR 1968 Cal 280.

66 *Chaudhary Gursaran Das v Akhori Parmeshwari Charan* AIR 1927 Pat 203, 205, 8 PLT 841.

67 *Official Receiver v Haji Murtaza Ali* AIR 1932 All 434, 436, 1932 All LJ 402.

expired right.[68] Thus, a right to pre-emption created by statute cannot survive after repeal thereof.[69] When an Act is repealed, it must be considered, except to transactions past and closed, as if it had never existed. Similarly, if an Act gives a right to do anything such as fixing of the standard rent by the *samiti*, the thing to be done, if not completed before the Act is repealed, must under the repeal of the Act be left in status quo.[70]

Similarly, where the doing of an act is illegal under a particular provision of an enactment and the provision is repealed by a subsequent enactment, it cannot be held that the act done under the repealed enactment became legal by virtue of the repeal of the provision which rendered the act illegal. Action could, thus, be taken in respect of contempt of court, under the Contempt of Courts Act 1926, committed prior to commencement of Contempt of Courts Act 1952.[71] The right and remedy are both lost when the repealing statute does not save a right or remedy available under the repealed statute.[72]

Where *raiyati* land situated in Santhal Parganas was exchanged for land situated outside it, the transaction becomes invalid under s 27(1) of the Santhal Parganas Regulation which was in force even though the Santhal Tenancy (Supplementary Provisions) Act 14 of 1949 subsequently repealed ss 27 and 28 of the above Act. The later Act cannot affect the invalidity of the transaction and render it valid and binding on the principle that s 6 does not save a transaction which was void when effected.[73]

21. CLAUSE (b)

This clause will preserve all the rights of the parties, provided the action on their behalf has been brought before the passing of the repealing statute. The same conclusion would follow when the proviso in the repealing statute states 'except as to acts done under it'.[74] This clause deals with the effect of

68 *Lauri v Renad* [1892] 3 Ch 420.

69 *Nirmala Devi v Anar Devi* AIR 1973 MP 120.

70 *Thakkur Damji v Jamiatram Kapoorchand Modi* AIR 1954 Sau 77.

71 *Ramniklal Nane Lal v Shah Pranlal Nan Chand* AIR 1952 Kutch 74, 76, 1952 Cr LJ 1482.

72 *RP Jain v State of Bihar* 1977 Cr LJ 1758; *Nathu Lal Chhote Lal Shellack Factory v Deputy Commr of Sales-tax* AIR 1962 MP 287, 289, 1962 MPLJ 653 (remedial rights as well as right to second appeal under CP and Berar Sales-tax Act 1947, held available after repeal thereof by s 52 of Madhya Pradesh General Sales-tax Act 1959).

73 *Ramkristo Mandal v Dhankisto Mandal* (1969) 1 SCJ 538, (1968) 2 Um NNP 1135, 1969 BLJR 270, AIR 1969 SC 204; *Bhagwati Devi v Union of India* (1975) ILR 2 Del 791 (DB); *Tara Chand Koyal v Maheshwar Choudury* 1973 Tax LR 1268, 96 ITR 133 (Ori); *SLA Officer v Channaveerappa* AIR 1968 Mys 13, (1967) 2 Mys LJ 296; *Mohan Kaur v Custodian, MEP, Patiala* AIR 1956 Pepsu 58, 61 (DB); *Naranbhai Chhaganbhai v Motibhai Ishwarbhai* AIR 1955 Bom 406, 57 Bom LR 509; *Ramanathan v Kandappa* AIR 1951 Mad 314, (1950) 2 Mad LJ 624 (DB); *Re Jewa Nathoo* AIR 1917 Cal 243, 18 Cr LJ 64, 20 CWN 1627.

74 *Krishna Chandra Misra v Sushil Mitra* AIR 1951 Ori 105, 118, 16 Cut LT 249 (FB).

repeal and says that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Thus, on change of sovereignty over an inhabitated territory, the pre-existing law continues to be in force until duly altered.[75] However, an acknowledgement of liability under the Limitation Act is not a 'thing done' so as to attract application of s 6.[76] A very important question considered in the context of this clause and the following s 6A, is whether the repeal of an amending Act shall affect the amendments which have already been brought into the main Act. TC Raghavan CJ in *Roman Sahdevan v R Kesavan Nair*[77] has answered this question in the negative, and in support of his conclusion, he has quoted a passage from the judgment of Chakravarti CJ, of the Calcutta High Court in *Khuda Bux v Manager, Caledonian Press*[78] as follows:

> Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only objects of such Acts which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care...

The above passage has been approved by the Supreme Court in *Jethanand Betab v State of Delhi*.[79]

The purpose of an amending Act, as is observed by TC Raghavan CJ, in *Raman Sahdevan v R Kesavan Nair*[80] is to plant the necessary amendments in the parent or the main Act, and once such planting has been effected, the planting Act (the amending Act), having served its purpose, need not any more remain there to tend the plant, as it were: the plant has taken root in the main Act, and thereafter, the amending Act has only to be repealed. If an amending Act is so repealed by a repealing Act, the repeal does not affect the plant, nor the rights acquired by virtue thereof,[81] the amendment being already planted in the main Act.

75 *Mayor of Lyons v East India Co* 1 MIA 175 (PC).

76 *Shib Shankar Lal v Soni Ram* (1910) 32 All 33, 6 All LJ 931; *Soni Ram v Kanhaiya Lal* (1913) 11 All LJ 389, (1913) ILR 35 All 227.

77 AIR 1973 Ker 136, 1972 Ker LJ 983, 1973 KLT 37, 1973 Ker LR 62, 1973 RCJ 180, 1973 RCR 401.

78 AIR 1954 Cal 484, 58 CWN 560.

79 AIR 1960 SC 89, 1960 Cr LJ 160; overruling *Mohinder Singh v Mst Harbhajan Kaur* AIR 1955 Punj 141; *Darbara Singh v Karnail Kaur* (1959) Punj LR 702 overruled.

80 AIR 1973 Ker 136, 1972 Ker LJ 983, 1973 KLT 37, 1973 Ker LR 62, 1973 RCJ 180, 1973 RCR 401.

81 *Ferozilal Jain v Man Mal* 1971 RCJ 373.

The Supreme Court, while approving in *Jethanand Betab v State of Delhi*,[82] the observations made by Chakravarti CJ in *Khuda Bux v Manager, Caledonian Press*,[83] has added saying that the main object of the repealing Act is only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of the ever increasing spate of legislation. To remove confusion from the public mind is only to expurgate the amending Act which had served its purpose. Of course, the repealing Act takes care to remove inconsistencies, if any.

The above decisions may well be taken to mean that the amendments already brought into the main Act are not affected by the repeal of the amending Act itself because the amendments so incorporated would amount to 'anything duly done' under the repealed amending Act. The care which the repealing Act takes in removing inconsistencies is to make it express that the repeal shall not affect the amendments already planted in the main Act, but even if it has not done that, the amendments so planted shall be saved by s 6(b) of the General Clauses Act.

An acknowledgement of liability only extends the period of limitation within which a suit must be brought and does not confer the title, and is not a 'thing done' within the meaning of s 6(b) of the General Clauses Act.[84] But when a decree has already been passed, before the repealing Act came into operation, it is open to a decree-holder to execute it after that Act had come into operation.[85] For the principle is well-established that if a right has once been acquired by virtue of some statute, it cannot be taken away again by the repeal of the statute under which it was acquired.[86] The appointment of a food inspector under the repealed Act is an act duly done under law within the meaning of cl (b) of this section. Until fresh appointments are made under the new Act, appointments under the previous Act hold good and are valid. Hence the act of taking samples by a food inspector appointed under the previous Act, is perfectly valid as having been done by a person competent to act.[87] It may, therefore, be stated that

82 AIR 1960 SC 89, 1960 Cr LJ 160; referring to *Bahadur Singh v Muni Subrat Das* (1969) RCJ 276 (decree of eviction could only be passed on one of the grounds mentioned in proviso added by amendment to s 13(1) of the Delhi and Ajmer Rent Control Act); *Kaushalya Devi v KL Bansal* 1969 RCJ 152 (no decree of eviction to be passed without considering one of the grounds mentioned in the proviso to s 13(1) of Delhi and Ajmer Rent Control Act). The point was that the right accrued under the proviso could not be taken away after repeal of the amending Act inserting the said proviso to the main Act.

83 AIR 1954 Cal 484, 58 CWN 560.

84 *Sani Ram v Kanhaiya Lal* ILR 35 All 277, 286 (PC); *R v Westriding of Yorkshire Justices* [1976] 1 QBD 220 (duly done).

85 *Mst Surja v Aziz Ullah* AIR 1945 All 305; *Abdul Khader v State of Mysore* AIR 1951 Mys 72, 86.

86 *Mahindra Nath v Rampada Pal* AIR 1950 Pat 505–06; *Surjan Singh v East Punjab Government* AIR 1957 Punj 265.

87 *Municipal Board, Lucknow v Shyam Behari* AIR 1960 All 117; *Universal Imports Agency v Chief Controller of Imports* [1961] SCR 305.

the object of such a saving clause is to save what has been done under the statute which has been repealed.[88]

The words 'anything done' in s 6(b) may include legal effects and consequences of things done prior to repeal. The publication of final rules under the Madras General Sales Tax Act 10 of 1939 is not a consequence following publication of draft rules.[89]

The repeal of s 5 of the Jammu & Kashmir Constitution (1996 S) does not affect the Hoarding and Profiteering Ordinance (2000 S) enacted under said s 5. The ordinance would remain unaffected by virtue of s 6(b) of the General Clauses Act.[90]

Section 6(000b) of the General Clauses Act, however, does not apply to preventive detention. Preventive detention as against punitive detention requires the existence of the law authorising the detention and the General Clauses Act can be invoked only when the law under which the detention has been ordered is repealed and the repealing Act makes a provision for its continuance.[91]

22. CLAUSE (c)

Section 6(c) states that the repeal of an Act shall not affect any right or privilege accrued or acquired under an enactment so repealed, unless a different intention appears.[92] Clause (c) does not purport to preserve an abstract right accrued under a repealed statute, but applies to specific rights given to a party consequent on happening of certain other event as specified in the statute. Clause (c) declares that rights acquired, liabilities incurred, and proceedings instituted or continued under any of them will remain intact as if the repealing Act had not been passed, because the general rule of construction is that if rights and procedures are both altered, but rights accrued under the repealed enactment are preserved, then, in the absence of an intention to the contrary expressed or necessarily implied in the new statute, it would be proper to interpret the intention of the legislature to be that the old procedure will subsist for enforcement of the old rights.[94]

88 *Hasan Nurani Malak v Assistant Taxes Commr* AIR 1967 SC 1742.

89 *United Motor Works, Madras v State of Madras* (1968) 2 ITJ 277, (1969) 23 STC 503, AIR 1969 Mad 322; (for a detailed discussion on the expression 'anything done or omitted to be done' please refer to headings: 'Repeal or Expriy of Temporary Statute' and 'Enforcement of Liabilities after Repeal').

90 *Sain Dass v Controller General, Jammu (Director Food and Supplies)*; following; *Rattanlal v State* AIR 1969 J&K 5; *Rehman Shagoo v State of Jammu and Kashmir* AIR 1960 SC 1.

91 *Showkat-un-Nissa v State of Hyderabad* AIR 1950 Hyd 20, 23.

92 *Lalji Raja v Hansraj Nathuram* AIR 1971 SC 974, 979, (1971) 2 SCWR 79 (question of right to resist decree).

93 *Tarak Chandra Mukherjee v Ratan Lal Ghosal* AIR 1957 Cal 257, 262, 61 CWN 263; *Ramesh Chandra v Nagendra* AIR 1951 Cal 435, 438, 85 CLJ 324.

94 *Jatindra Nath De v Jeta Mahto* AIR 1946 Cal 339, 50 CWN 502.

It is a fundamental rule of interpretation that while a rule or procedure may ordinarily have a retrospective effect attributed to it, the provisions in a statute, which affect existing rights, cannot be applied retrospectively[95] in the absence of an express enactment to that effect or necessary intendment. Anything done under a repealed Act is not affected by the repeal, is the normal rule.[96] However, when anything has been annulled and the same is validated by a validating Act, that thing ought to be done again.[97] This clause embodies the same principle that the liability once accrued can be enforced despite subsequent amendment.[98] The repeal or amendment of an Act does not affect a right 'acquired', 'accrued',[99] already in existence,[1] or alive on the date of repeal,[2] as if the repealing Act had not been passed,[3] unless a contrary intention is made out expressly or by implication. For example, s 97(3) of the Civil Procedure (Amendment) Act 1976, has expressly taken away the right of second appeal in certain cases. It is already indicated that the legislature was conscious of the principle that rights and causes of action vested prior to the coming into force of an amending enactment are saved unless taken away expressly or by necessary implication. In order to meet this situation, sub-s (3) of s 97 of the said amendment has been expressly enacted to take away the vested right. The contention that s 6 of the General Clauses Act shall preserve the right of appeal is not acceptable.[4] Same is the case with the amended s 66(1) of the Civil Procedure Code, precluding a defendant from putting forward a plea of benami, since s 97(2) of the Civil Procedure (Amendment) Act 1976 carries a mandate that the amended provision of s 66(1) of the Code will apply even to suits, or proceedings pending at the commencement of the Amending Act.[5]

The Income-tax Act 1922 had been repealed with effect from 1 April 1962 when the Income Tax Act 1961 had come into force. But, in view of s 6(c) of the

95 *Chote Lal Nand Kishore Math Shah Deo v Tula Singh* AIR 1926 Pat 561, 97 IC 608.

96 *Canara Bank v State of Kerala* AIR 1982 Ker 1 (FB), (1981) ILR 2 Ker 649.

97 *Konthala Audinarayan & Sons v Commercial-tax Officer, Ankapalli* (1977) 39 STC 547 (1) (AP) (DB) (assessment set aside but revived by validating Act must be followed by fresh assessment).

98 *Hemraj v Tax Recovery Officer, Jodhpur* [1979] 118 ITR 744, 746 (Raj) (DB).

99 *Suraj Bhan Kailash Chand v Hari Shankar Vashist* 1971 Sim LJ 120, 124–25 (HP) (DB).

1 *Gursarandas v Parmeshwary Charan* AIR 1927 Pat 203, 205, ILR 6 Pat 296; *Lewis v Hughes* [1916] 1 KB 831; *Hamiltan Gell v White* [1922] 2 KB 422; *Kuppathammal v Sakthi* AIR 1957 Mad 695; *Govindammal v Ramaswami* (1968) 81 Mad LW 655; *Jindas Oil Mills v Godra Electricity Co* AIR 1969 SC 1225; *Dila Ram v Atma Ram* AIR 1949 All 225, 227 (intention of retrospectivity need not be stated expressly but can be gathered from necessary implication).

2 *National Credit Bank Ltd v Elizabeth Pereria* 1963 LT 410, (1963) ILR 1 Ker 577, 582 (wrt repeal of s 45F of the Banking Companies Act 1949 by amending Act of 1953 which also introduced s 45O).

3 *Tarak Chandra Mukherjee v Ratan Lal Ghosal* AIR 1957 Cal 257, 262, 61 CWN 263.

4 *Hadibandhu Mohapatra v Bhaghan Bank* AIR 1982 Ori 150, (1982) 53 Cut LT 428.

5 *Aryamballi Kaipally Narayani Amma v AK Kunnhappa Kurup* AIR 1983 Ker 56.

General Clauses Act, the right, privilege, obligation or liability, acquired, incurred or accrued under s 54 of the 1922 Act continued to exist even after 1 April 1962.[6] Similarly, protection also continued to be available in respect of disclosure of information regarding returns filed during the period when s 54 of the Income Tax 1922 and s 137 of the Income-tax Act 1961 were in force, and this protection continued to be available even after enactment of the Finance Act of 1964.[7]

By virtue of s 8(a) of the Andhra Pradesh General Clauses Act 1891 a repealing Act will not affect the right of appeal to the commissioner vested on date of coming into force of the new Act.[8]

It is not necessary for an amending Act to state expressly what is the residue of the old Act to still continue.[9] However, it must be noted that what is unaffected by the repeal of a statute is a right acquired or accrued under it, as a right accrued to the landlord to recover possession when the tenant had sublet the premises during the currency of an Act prior to its repeal,[10] and not a mere hope or expectation of, or liberty to apply for, acquiring a right.[11] A repeal of a statute cannot revive a right already barred prior to the new Act.[12] A distinction has, thus, to be drawn between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of a right. The former is saved whereas the latter is not. Consequent upon the repeal and re-enactment of s 43 of the Code of Civil Procedure 1908, by the Civil Procedure (Amendment) Act 1951, the right of a decree-holder who had acquired his right to make application for execution was preserved by s 6(c).[13]

When a tender for consideration was submitted under the repealed rules, what has been acquired is a right to have the tender considered. But if the

6 *Trilok Chandra Jain v M/s Dagi Ram Pindi Lall* 1974 Tax LR 703, 716, 720, 95 ITR 34 (FB) (Del).

7 *Chandra Sekhara v Income-tax Officer* 1972 Tax LR 748, 750, 1972, KLT 282; dissenting from *Sivagami Achi v Ramanathan Chettiar* (1957) 80 Mad LW 119; relying on *Raghubir Saran v OP Jain, Addl Munsif* [1969] 73 ITR 72 (All); *Raghubir Saran v OP Sharma* [1968] 68 ITR 779 (Del); *Rikhab Chand v RU Subramanyam* (1972) 1 Mys LJ 619, 621; following *Sivagami Achi v Ramanathan Chettiar* [1967] 64 ITR 36 (Mad) (no corresponding obligation in favour of assessee as to disclosure of particulars by officers on repeal of s 137 of the Income-tax Act 1961 by the Finance Act of 1964).

8 *Satya Pramode Teertha Swamuluvaru v Commr of Hindu Religious and Charitable Endowments, Andhra Pradesh, Hyderabad* AIR 1971 AP 211, 218.

9 *Keshab Chandra v Loknath Jena* AIR 1951 Cut 186, 197, (1951) ILR Cut 1 (FB).

10 *Isha Vali Mohammad v Haji Gulam Mohammad and Haji Dada Trust* AIR 1974 SC 2061, 2066, 1974 UJ 521(SC) (possession under s 13(1) of Saurashtra Rent Control Act 1951, on the ground of subletting, could be recovered, and a suit for that purpose filed, after repeal of that Act by Bombay Rents Hotel and Lodging House Rates (Control) Act 1947, vide s 5(12), proviso thereof).

11 *Director of Public Works v Ho Po Sang* [1961] 2 All ER 721, 731.

12 *K Muhammad Ibrahim v Aryan Moosa* 1954 KLT 613, 615; *Gaya Prasad v Burhanpur Tapti Mills Ltd* 962 MP LJ 817, 1962 Jab LJ 440, 441 (dismissal under CP and Berar Act 1947, not to give rise to any right accrued on coming into force of new Madhya Pradesh Act 27 of 1960, when said right was not availed of under s 16 of the 1947 Act).

13 *Maloji Rao Narsingh Rao v Sankar Saran* AIR 1955 All 490, 493.

consideration of the tender or the consequent settlement had not come at any stage before the new set of rules came into force, such consideration of tender and the settlement will be governed by the new rules.[14]

That which is accrued or that which is being pursued has to be saved, but that which merely exists or that which can be pursued is not saved. An application for renewal of permit moved under s 5B of Motor Vehicles Act 1939 does not become extinct on the Motor Vehicles Act 1988 coming into force. The renewal of permit being a right under s 6(c) of General Clauses Act, the application survives for consideration despite the repeal of 1939 Act.[15] But it does not mean that permits beyond the limit of five in number to a single person shall continue to operate even after coming into force of new Act of 1988 as it contravenes the provisions of new Act.[16]

A plain reading of the s 6(c) shows that the repeal of any enactment, unless a different intention appears, shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment. In respect of the documents filed after the repeal of s 137 of the Income-tax Act 1961 relating to assessments for the period 1964–65 onwards, no right, privilege, obligation or liability can be said to have been acquired, accrued or incurred prior to the omission of said s 137. Therefore, the ban contained in the said provision, on the exercise of the powers of a civil court to call for the production of documents etc, could not be said to have continued to exist, in matters arising subsequent to the omission of s 137 Income-tax Act 1961.[17]

Thus, a saving clause in a repealing provision cannot save a right which has not accrued.[18] There can be no question of a vested right by repeal of any legislation in territories, the courts wherein had hithertofore been foreign courts, and have ceased to be foreign by virtue of a covenant among former rulers of the covenanting states.[19] The principle behind s 6(c) is that rights which have accrued are saved unless they are taken away expressly.[20]

Where, immediately before 15 August 1947, there were no proceedings for execution on transfer of a decree in the court of the subordinate judge at Delhi, and when the application for execution was made on 15 April 1948, the relevant court had ceased to have jurisdiction with regard to the decree because of the partition of India it was held that the Delhi court had no jurisdiction to execute that decree on transfer.[21]

14 *Raghunath Talukdar v SDO, Barpeta* AIR 1962 Assam 1.
15 *Gurucharan Singh v Yashwant Singh* AIR 1992 SC 180, 183.
16 *K Rajendran v KS Krishna Das* AIR 1992 Ker 5, 8.
17 *Dagi Ram Pindi Lall v Trilok Chand Jain* AIR 1992 SC 990, 997, (1992) 2 SCC 13.
18 *Liladhar v Pravin Chandra* 8 Guj LR 976.
19 *Kala Bechar v Mohan Bhagwan* AIR 1953 Sau 16, 20, 6 Sau LR 28 (FB).
20 *Commr of Income-tax v Shah Sadiq & Sons* AIR 1987 SC 1217, 1221.
21 *SS Said-ul-Hamid v Federal Indian Assurance Co Ltd, New Delhi* AIR 1951 Sim 255, 52 Punj LR 396.

The dictum of the Privy Council in *Abbot v Minister of Lands*,[22] that 'mere right to take advantage of an enactment without any act done by an individual towards availing himself of the right cannot properly be deemed a right accrued', was approved by the Supreme Court in *Sakharam v Manik Chand*.[23] Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The result is that all the proceedings pending at the time of the repeal must be rendered ineffective unless the repealing statute provides otherwise, because a mere right existing at the date of repeal of a statute, to take advantage of the provisions of a statute, is not a right accrued.[24]

The principle is amply illustrated in the decision of the High Court of Orissa in *Nand Kishore Moharana v Mahabir Prasad*.[25] The appellant, in that case, had preferred an objection under s 47 of the Civil Procedure Code in an execution case instituted by the respondent against the appellant. The objection was dismissed by the executing court and miscellaneous appeal preferred by the appellant against that order was also dismissed by the court of the district judge whereupon the appellant had preferred his appeal to the High Court against the appellate order. The respondent, on the outset, challenged the maintainability of the appeal on the ground that by the amendment of the Code of Civil Procedure in the year 1976, orders passed under s 47, CPC, would not be deemed to be a decree under the Civil Procedure Code, and so the appellant could not prefer any appeal against the order of the court below determining a question under s 47, CPC. The High Court found that the said contention was advanced without noticing the provisions of s 97(2) of the Civil Procedure (Amendment) Act 1976 (Act 104 of 1976) as well as s 6 of the General Clauses Act. Clause (a) of sub-s (2) of s 97 of the Amendment Act had provided as under:

> The amendment made to clause (2) of section 2 of the principal Act by section 3 of the Act shall not affect any appeal against the determination of any such question as is referred to in section 47 and every such appeal shall be dealt with as if the said section 3 had not come into force.

Justice S Acharya therefore, observed that the provisions of s 6(c) of the General Clauses Act are not in any way affected. Rather the said provisions are protected by s 97(2) of the Amendment Act. Undisputedly, the appellant's appeal in the court below was maintainable, as at that time the Amendment Act had not come into force. The appellant had a right of appeal against the order passed in the said appeal determining a question under s 47, CPC,

22 [1895] AC 425, 431.

23 AIR 1963 SC 354, [1962] 2 SCR 59.

24 *Dolumal v State of Madhya Pradesh* AIR 1971 MP 127, 1970 MPLJ 188, 1970 MPWR 157, 1970 Jab LJ 249.

25 AIR 1978 Ori 29.

agitated before that court. Hence, the right of appeal was not affected by the coming into force of the amendment Act, as is evident from the provisions of s 97(2)(a) of the Amendment Act and s 6 of the General Clauses Act. The objection as to non-maintainability of the appeal was accordingly overruled.

Similarly, the status of a non-occupancy *raiyat* was not affected by the passing of the Bengal Tenancy Amendment Act 1 of 1907.[26] Section 7(1), Himachal Pradesh (Application of laws) Order 1948, repeals the Mandi Land Revenue Regulation 8 of 1875 with effect from 25 December 1948. The result of such repeal is that succession to the *malguzari* rights are to the be governed by the personal law of the parties and not by s 19 of the regulations. But by virtue of the saving clause contained in s 7(1), the old law continues to apply to cases in which the right of succession has already vested before 25 December 1948. Where, therefore, on the death of a Hindu widow, her *malguzari* rights in a certain land are escheated by the state prior to 25 December 1948, but the plaintiff brings a suit after 25 December 1948, for declaration that he is entitled to succeed to the property as the collateral of the last male holder, the right of the parties would be governed by the old law despite its repeal and despite the fact that the Hindu law and not the said regulation was in force on the date of institution of the suit. The crucial date for determining the law applicable is not the date of the institution of the suit but the date when the right accrued.[27]

In a case under s 9(3A) of the Uttar Pradesh Sales-tax Act 1948 (as amended by Act 3 of 1971), it was held in *Gulshan Trading Co v State of Uttar Pradesh*,[28] that once a power to stay the recovery of taxes has been taken away by an amendment in law, the power of staying recovery cannot, thereafter, be exercised under the unamended provision.

A firm carrying on business at Bellary was charged with Excess Profits Tax for the chargeable accounting period 1943–44 in 1960. After merger of the district of Bellary with the State of Mysore in 1953, the Excess Profits Tax Act was not operative in the State of Mysore. The re-assessment was held to be valid because the liability to pay excess profits tax accrued immediately at the end of the chargeable accounting period and that liability was preserved under s 6(c) of the General Clauses Act even though the Excess Profits Tax Act stood repealed in Bellary in 1956.[29]

Section 29 of the amending Act of 1966, which repealed s 66 of the Employees State Insurance Act 1949 from 17 June 1967, did not affect the right of an employee to seek reimbursement from the employer, as had accrued before 17 June 1967, as result of an accident, since such right was saved by s 6(c).[30] In

26 *Shiba Kali Charan v Chupilal Chatterji* AIR 1927 Cal 248.

27 *Chanchal Ram v Union of India* AIR 1953 HP 79.

28 1971 Tax LR 974, 973–74, 1971 All LJ 643 (DB).

29 *Ekambarappa v Excess Profits-tax Officer* (1967) 2 ITJ 509, [1967] 65 ITR 656, (1967) 2 SCJ 633, (1967) 12 LR 641, AIR 1967 SC 1541.

30 *Employees' State Insurance Corpn v Dalmia Dadri Cement Ltd* (1973) 42 FJR 385, 390–91 (Punj) (DB).

Century Spg and Mfg Co Ltd v Employees', State Insurance Corpn, Bombay,[31] it was held that in cases of application filed by employees, after repeal of said s 66, but before s 43 of that Act came into force, the right of the corporation to receive payment, under that section had been kept alive.

The assessee was residing in Malabar where the Madras General Sales-tax Act applied. The Madras General Sales-tax Act was repealed in Malabar and a notification was issued under s 5(ii) of the Travancore-Cochin General Sales-tax Act 11 of 1125 as extended to Kerala including the district of Malabar as amended by Act 12 of 1957 making tobacco taxable at the point of first sale. It was held that the assessee had acquired the right to be taxed under the Madras General Sales Tax Act of 1939 as in force in Malabar and could not be taxed again at the point of first sale as per s 6(c) of the General Clauses Act.[32]

The effect of cl (c) is to declare that a right once acquired by force of some statute cannot again be taken away by the repeal of that statute.[33]

It has been stated in *Arun Kumar Sinha v Union of India*[34] that a confirmative statute giving new rights does not destroy, by itself, any pre-existing rights, eg, the right to invoke jurisdiction of a civil court. The operation of s 7(2) of the Uttar Pradesh Kshetra Samitis and Zila Parishad Act, is not amenable to the effect of s 6(c).[35]

Section 6(c) is not attracted to the repeal of s 137 of the Income-tax Act of 1961, so as to take away the protection and prohibition of disclosure of assessment records as afforded by that section.[36] The right, privilege or obligation in s 6(c) appears to be related to particular individuals and is not a right in gross. In considering the effect of repeal, the line of inquiry should be, not whether the new Act expressly keeps alive the old rights and liabilities but whether it manifests an intention to destroy them. The application of s 6 is not ruled out merely because the specific section in an Act has not been reproduced in the repealing Act in any form.[37]

Section 280C of the Income-tax Act 1961, is a charging section making it obligatory on persons concerned to make the annuity deposit at the prescribed rate. The liability being there, its practical enforcement is not affected by omission of s 280K, relating to the power to determine the deposit required to

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31 1979 Lab IC 615, 617, (1979) Mah LJ 144.

32 *State of Kerala v N Sami Iyer* 1965 KLT 1219, (1966) 1 SCWR 194, 1966 Ker LJ 58, (1966) 17 STC 338, (1966) 2 SCJ 467, AIR 1966 SC 1415.

33 *Manindra Nath v Ramapada Pal* AIR 1950 Pat 505–06, 29 Pat 647 (DB).

34 AIR 1964 Pat 338, 346 (DB).

35 *Harihar Prasad v State* 1965 All LJ 576.

36 *Ramakrishna v Rajabu Fathima* AIR 1966 Mad 187, (1965) 2 Mad LJ 338; *OP Agarwal, Income-tax Officer, Jullunder v State* [1966] 59 ITR 158 (Punj) (analogous provision in s 54 of Income-tax Act 1922, in respect of cases of assessment finalised before coming into force of the 1961 Act).

37 *Sivagami Achi v Ramanathan Chettiar* (1967) 80 Mad LW 419, [1967] 64 ITR 36 (Mad), (1967) ILR 2 Mad 91, (1967) 1 ITJ 166.

be made.[38] Similarly, documents filed or produced before the income-tax authorities, in assessment proceedings under the Income Tax Act of 1961, on or before 31 March 1964, ie, prior to the repeal of s 137 from that Act, received protection under s 6(c) of the General Clauses Act, so that the income-tax authorities cannot be asked by any court to produce them.[39]

On account of s 6, the rights already accrued to and acquired by a widow under the Hindu Women's Right to Property Act 1937, were preserved even after repeal of s 31 of the 1937 Act, by the Hindu Succession Act 1956.[40]

Appeals were pending under the Uttar Pradesh Debt Relief Act 1975, when the new Act of 1977, substituting the old, came into force. It was held that the decrees were disposable in terms of the old Act.[41]

Since s 50(2) of the Advocates Act 1961, as amended in 1964, repeals the provisions of the Legal Practitioners Act, and because there is an express provision in s 58(4) of Advocates Act debarring a *mukhtar* from getting fresh enrolment after the repeal of the Legal Practitioners Act, what is saved for such *mukhtars* is the right only to have their licence renewed. Therefore, s 6(c) of the General Clauses Act is not attracted to the repeal of the Legal Practitioners Act by operation of s 50(2) of the Advocates Act, because there is a different intention contained in s 58(4) of the Advocates Act.[42]

Where judgment-debtors, in a decree passed in 1945, claimed relief under the Pudukottai Agriculturists Relief Regulation of 1938, and the claim was disallowed and later they applied under s 20 of the Madras Agriculturists Relief Act on the ground that the said Act was in force in the territory of Pudukottai on the relevant date, it was held that the application under s 20 of that Act must have been granted.[43]

In *Karim Shah v Zinat Bibi*[44] the respondents presented on 26 August 1938, a petition under s 5, Muslim Personal Law (Shariat), in the court of district judge, Ludhiana, for dissolution of her marriage with the appellant. On 4 April 1939, the judge passed an order dissolving the marriage, though the Act was repealed prior to the date of the order. Justice Tek Chand referred to s 6(c) of the General Clauses Act and observed:

38 *K Sankaran v Commr of Income-tax, Kerala* [1980] 122 ITR 754.

39 *Subhash Chandra Majumdar v Pijush Kanti Majumdar* (1980) 1 ITJ 589, 122 ITR 552, 84 CWN 549.

40 *Kallakuri Ranganayakamma v Kallakuri Raja Rajeswaramma* AIR 1964 AP 380, (1963) 2 Andh LT 110.

41 *Sita Ram v Chandra Bhan Misra* 1978 All LJ 1152.

42 *Parmeshwar Prasad v Union of India* AIR 1971 Pat 316, 1970 BLJR 1080, 1970 Pat LJR 542 (FB).

43 *Alagappa Chettiar v Nachiappa Chettiar* AIR 1953 Mad 810; *Surja v Azizulla* AIR 1945 All 305–06, 1945 All LJ 160 (decree passed under s 33(4) of Uttar Pradesh Agriculturists Relief Act, but that section subsequently repealed by the Uttar Pradesh Debt Redemption Act, decree already passed could be executed).

44 AIR 1941 Lah 175.

This section is taken almost word for word fro section 38(2), English Interpretation Act 1889, and as pointed out by H sbury in para 761, Vol 31 (Halsham Edition) after the passing of tha Act the saving clause automatically attaches to a repeal, and unless he contrary intention appears, the repeal does not affect legal proce lings which had been properly instituted under the repealed Act and s h proceedings may be continued as if the repealing Act had not been r ed.

If a right to file a suit to obtain relief has accrued to a aintiff, that right is not lost if a subsequent enactment precludes the fili of such a suit.[45] If a petitioner has already acquired a vested right to r ve the government in revision, the repealing statute does not take awa hat right.[46] Clause (c) provides for the saving of vested rights upon the r eal of a statute. Thus, where a special right to file a suit within three year om the specified date was created by a statute which was subsequently r aled, it was held that such right was saved under s 6(c) of the General C ses Act.[47]

The object of s 6 is merely to leave the proceedin commenced under the old Act, unaffected by the repealing enactment the extent they have proceeded, leaving the rest to be governed by the rocedure in force after repeal.[48] In *National Planners v Contributories*,[49] it v observed:

> It is a well-settled rule of common la v that when a action is brought under a statute, which is afterwards repe led, the cou oses jurisdiction of the suit pending under the repealed A ct and is un le to deliver judgment therein. The effect of repealing a sta te is to oblit te it from the records of the Parliament as if it had never be passed, an t must be considered as a law that never existed except for t purpose of ose actions which were commenced, prosecuted and concluded whilst was an existing law. It follows as a corollary that if a statute unconditio ally repealed without a saving clause in favour of pending suits, all acti is must stop where the repeal finds them, and if final relief has not been anted before the repeal goes into effect, it cannot be granted afterwards.

45 *Tirumalaiswami Naidu v Subramanian Chettiar* ILR 40 M 1009; *Makar Ali v Sarfaddin* ILR 50 Cal 115, AIR 1923 Cal 85.

46 *Seshadri v Narayana* AIR 1950 Mad 106.

47 *Chatrabhuj v Khatau Motiram* AIR 1963 Guj 185.

48 *Jagodanund Singh v Amrit Lal Sircar* (1895) ILR 22 Ca 767, 781 (FB).

49 AIR 1958 Punj 230–31, 60 Punj LR 187 (FB); *Raj Rani S hari v Government of Uttar Pradesh* AIR 1954 All 493, 495, 1954 All LJ 265 (FB) (p dency of appeal from decree passed by civil court not affected by s 31 of the Uttar Pradesh Tenancy Amendment Act 1947 changing forum); *AV Ibrahim v Mande Panda Cariappa* AIR 1971 Mys 298, 300, (1971) 1 Mys LJ 453 (right to continue suit or appeal in court having jurisdiction at the time of its filing held to be vested right); *Udainath Misra v Mst Chhaya Misrani* AIR 1963 Ori 27–28, 28 Cut LT 353 (s 9 of Hindu Marriage Act 1955, not to oust jurisdiction of civil court from pending suit for restitution of conjugal rights).

This means that a change of law certainly operates retrospectively. In case the change in law has brought about a change in the forum, the party has to go to the new forum, even if his cause of action had accrued prior to the change in the forum.[50] In *Keshri Prasad v Bodhraj*,[51] the Jhalawar Municipal Rules were repealed with the consequence that the magistrate, First Class at Jhalawar had transferred the election proceedings pending before him to the district judge invested with the power to deal with them in view of the Uttar Pradesh Municipalities Act 1916, as applied to Rajasthan by the ordinance repealing the said municipal rules. It was held that the transfer could not be questioned since the magistrate had ceased to have jurisdiction to deal with those proceedings.

To mitigate the harsh rule of the common law, the legislature considers it from time to time to enact saving clauses which expressly provide that whenever a statute shall be repealed such repeal shall not affect pending actions founded thereon,[52] even if the effects or consequences thereof project into the future.[53] It simply means that, in the absence of a saving clause, the operation of the prior Act is not stopped by repeal, and the pending claims can yet be enforced.

A petition for release of a building under s 21 of the Uttar Pradesh Act 13 of 1972 was instituted when Expl (4) to s 21 had not come into existence. The said explanation was deleted while an appeal in that proceeding was pending. It was held that proceedings of an appeal had to be concluded as if the explanation were not repealed.[54]

Section 11 of the Orissa Tenants Protection Act as it stood prior to 20 January 1950, read with s 224 of the Government of India Act 1935, conferred a right of immunity from interference by the High Court in exercise of its powers of superintendence over inferior tribunals and that right is saved by s 6, General Clauses Act, in the absence of any express provision in the Constitution giving retrospective effect to art 227. Orders passed by the Collector under s 7 of the Orissa Tenancy Act 1948, which had become final by virtue of s 11 of the that Act before the coming into force of the Constitution, cannot, therefore, be interfered with under art 227.[55]

In *Ramkrishna Deo v Collector of Koraput*,[56] the question related to the liability of the landholder and tenants in South Orissa to pay the survey and settlement

50 *New India Insurance Co Ltd v Shanti Misra* AIR 1976 SC 237, 240, 242, (1976) 2 SCJ 309; overruling *Khatumal Ghanshamdas v Abdul Qadar* AIR 1961 MP 295; *Sushma Mehta v CP Transport Services Ltd* AIR 1964 MP 133; *Bihar Co-op Motor Vehicles Insurance Society Ltd v Rameshwar Raut* AIR 1970 Pat 172; approving *Shanti Misra v New India Insurance Co* 1972 All LJ 491.

51 AIR 1951 Raj 45, 47, 1950 Raj LW 123.

52 *Abdul Aziz v State of Bombay* AIR 1958 Bom 27.

53 *Narula Transport Service v State of Madhya Pradesh* 1978 MPLJ 654, AIR 1979 NOC 102.

54 *SP Kacher v Seventh Addl District Judge* 1978 All LJ 668.

55 *Jagabandhu Dass v Babaji Fena* (1953) ILR Cut 322.

56 AIR 1957 Ori 263.

expenses on an apportionment under s 180(1) of the Madras Estates Land Act. The liability would arise only after the state government had: (a) given a direction as to what proportion, if any, of the total expenses should be borne by the government, on the one hand, and the landholder and his *ryots*, on the other; and (b) determined the ratio of the respective liability of the landholder and the *ryots*.

The contention raised in the case was that the date on which the minister's order took effect was the date on which he passed the order on the file, namely, 21 May 1951, and not the date on which the authenticated order was issued under the signature of the additional under-secretary, namely, 27 April 1953. The order, it may be noted, has the effect of saddling landholders and *ryots* in large areas with liability to pay heavy expenses, and in such a case it cannot be contended that the liability arose as soon as the minister passed an order to that effect on the file. Any order passed by the minister, in order to take effect, must issue in an authenticated form and the order becomes effective only from the date on which it is made known to the persons affected thereby.[57]

Section 6 would apply to a case of repeal even if there is a simultaneous enactment unless a contrary intention appears from the new enactment. Whenever there is a repeal of an enactment, the consequences laid down in s 6 of the Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by a fresh legislation on the same subject we 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. The line of inquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. It was not therefore possible to subscribe to the broad proposition that s 6 of the 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 proposition of 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.[58]

The above proposition is well-founded on the strength of another Supreme Court decision in *Brihan Maharashtra Sugar Syndicate Ltd v Janardan Ram Chandra Kulkarni*,[59] which had to consider the effect of repeal of the Companies

57 *Johnson v Sargent & Sons* [1918] 1 KB 101; following *Shakoor Hassan v Emperor* AIR 1944 Nag 40; which itself relies on *Ashanullah Khan Bahadur v Trilochan Bagchi* AIR 1926 Cal 966, 30 CWN 713; *B Walvekar v Emperor* AIR 1926 Cal 966, 30 CWN 713; *Narendra Lal Khan v Jogi Hari* ILR 32 Cal 1107.

58 *Munshilal Beniram Jain Glass Works v SP Singh* (1971) 2 SCJ 307, 311; *State of Punjab v Mohar Singh* (1955) SCJ 25, [1955] 1 SCR 893.

59 AIR 1960 SC 794.

Act 1913 by the Companies Act 1956. On the date of the repeal (1 April 1956) of the Companies Act 1913, an application under s 153C of the said Act, as made against the appellant company and the directors thereof by a member of company's shareholders was pending disposal in the court of the district judge, Poona. On the repeal of the Companies Act 1913 and the simultaneous coming into force of the Companies Act 1956, the appellant company opposed the said application by desiring a dismissal thereof on the ground that consequent upon repeal of the 1913 Act, the court of the district judge has no longer been possessed with any jurisdiction to dispose of that application. The district judge had rejected this contention of the appellant and an appeal against the order of the district judge entailed a dismissal also by the High Court. The matter having ultimately reached the Supreme Court it was held by their lordships that it was within competence of the district judge concerned to deal with that application moved on behalf of the shareholders under s 153C of the repealed Act of 1913. The Supreme Court observed that the application had sought to enforce such rights, and liabilities as had been conferred and cast respectively on the shareholders and the directors or managing agents of the appellant company, and inasmuch as such rights and liabilities were preserved under s 6(c) of the General Clauses Act, the continuance of a proceeding in that respect was competent irrespective of the repeal of the 1913 Act, unless a different intention had appeared. But in the instant case, no different intention could be gathered. On the contrary, as their lordships held:

> The provisions of s 153C of the Act of 1913 have been substantially re-enacted by the Act of 1956 and this would indicate an intention not to destroy the rights created by s 153C.

The question for examination in any case of repeal of an existing statute or an existing provision of a statute, in its pure and simple form would only be whether any vested right of any person has been affected by the repealing enactment or whether the repealing enactment has itself sought to keep alive the rights available under the repealed statute. Thus, the right of appeal is a vested right, though it had been conferred by the provisions of a statute. If a law relating to procedure, which conferred a right of appeal, has been repealed, then, unless a contrary intention appears from the repealing statute itself, the mere fact of repeal shall not take away the right of appeal which had already become vested under the repealed statute. Even if the repealing statute only imposes certain onerous conditions on the availability of the right of appeal without totally annihilating it, that would not be operative retrospectively unless, of course the statute in question has expressly or by necessary implication indicated it.[60]

60 *Sainuddin v Pokkunhi* 1977 KLT 516.

Under s 56, Transfer of Property Act, before the amendment of 1929 the mortgagee had a right which accrued to him on the date of the mortgage itself on realising, if he chose, the entire amount due to him from any part of the mortgaged property. Such a right was not subject to any right of marshalling at the instance of the purchaser of a portion of the hypothec. Notwithstanding the amending Act which came into force by the time of the institution of the suit, the rights of the parties are governed by the original s 56.[61]

A decree passed on 29 March 1949 was registered under s 15 of the Travancore Reg 2 of 1087 (ME). There was no provision in the Indian Registration Act corresponding to s 15. It was held that the decree-holder was entitled to claim a period of six years for execution of the decree under either s 6, Pt B State Laws Act of 1951, or s 6 of the General Clauses Act.

After the passing of the Indian Independence Act 1947, Jessore went to East Bengal, in Pakistan. It was held that an appeal pending in the High Court of Calcutta against the decree of subordinate judge of Jessore could be continued and decided.[62]

Order of allotment of land, under Madhya Pradesh Land Revenue Code was held open to revision, review or appeal under the same code despite the repeal of that code.[63]

A money decree obtained on 15 September 1937 from a court in the State of Vala could be placed under execution on 3 March 1948, when the State of Vala had ceased to be a foreign court because of its merger into Kathiawar and later into the State of Saurashtra.[64]

In *Surajmal v State of Rajasthan*,[65] the applicant was the licensee of the power house at Pratapgarh. He increased the rates of supply of electricity for domestic and industrial consumers from 1 May 1951. The government served an order, dated 29 August 1951, on him under s 33 of the Rajasthan Public Security Ordinance 26 of 1949, whereby the applicant was directed to carry on the working of the power house at Pratapgarh until further orders, and to abstain from closing the same and from removing any machinery pertaining to the said power house. The applicant applied for a writ of mandamus or other appropriate writ on 6 September 1951, in the High Court. Before the case came up for hearing, the government took possession of the power house on 14 September 1951. The ordinance expired on 9 September 1951. Wanchoo CJ, repelled the contention of the State that the applicant incurred the liability or obligation of complying with the order under s 33(1)(a) coupled with the further liability of being divested of the control of the power house and the government could thus assume control under s 33(1)(b) of the ordinance. Their Lordships observed:

61 *Subbarama Reddiar v Raghava Reddi* AIR 1955 Mad 439.

62 *Naresh Chandra Bose v Sachindra Nath Deb* AIR 1950 Cal 8, 53 CWN 700.

63 *Onkar Lal Ganga Prasad v Sardar Khan Rasool Khan* AIR 1972 MP 52.

64 *Patel Kala Bechar v Patel Mohan Bhagwan* AIR 1953 Sau 16, 6 Sau LR 28.

65 AIR 1953 Raj 78.

We are, however, unable to agree with this argument. When the government passed an order under section 33(1)(a), the applicant was certainly under an obligation to obey that order. But the obligation to obey that order continued only so long as the ordinance was in force. It can hardly be contended that the obligation to obey an order under a particular law continues even after the law has come to an end. The obligation to obey an order is not something duly done or suffered which will not be affected by the repeal. The obligation to obey the order arises from day to day and so long as the law is in force, that obligation is there. But when the law has come to an end, the obligation also, in our opinion, comes to an end.

It has, however, been urged that along with the obligation to obey the order, there was a further liability that if the order was disobeyed, the state would assume control of the undertaking under section 33(1)(b) and that liability had been incurred on 29 August 1951, when that order was passed, and further the liability had been incurred before the ordinance came to an end. The repeal would not affect this liability and the government was entitled to assume control to enforce this liability. We cannot, however, agree that as soon as the order under section 33(1)(a) was passed, the liability which is incurred on its disobedience arose. In the very nature of things, the liability which is incurred on the disobedience of a certain order arises when the order is actually disobeyed and not before. In this case, it is no one's case that the order of 29 August was disobeyed before 9 September 1951, when at the latest the ordinance came to an end. Therefore, the liability which arises from disobedience did not arise till the ordinance came to an end. As the liability had not arisen, section 6(c) of the General Clauses Act has no application to this case. It would have been a different matter if disobedience had taken place, say on the 6 September. In that case, the liability would have arisen and the government could have assumed control of the undertaking, even though that act might have been done after 9 September as section 6(c) of the General Clauses Act would have come to the help of the government.

A right had accrued to a decree-holder under the Indian Independence (Legal Proceedings) Order 1947, which was passed under s 9 of the Indian Independence Act 1947. It was held that the right so accrued to the decree-holder was not lost because of the repeal of the Indian Independence Act 1947, on coming into force of the Constitution.[66]

The Indian Press (Emergency Powers) Act 1931, is repealed by the Press (Objectionable Matters) Act 1951, and is no longer in force. But the repeal does not affect the conviction of the applicant under the repealed Act.[67]

66 *Pratap Kumar Sen v Nagendra Nath Majumdar* AIR 1951 Cal 511–12, 55 CWN 624.

67 *Ramashanker Tewari v State* AIR 1954 All 562, 1954 All WR 334 (HC).

The absence of a provision saving the operation of the prior Act, in the Opium and Revenue Laws (Extension of Application) Act 1950, which extended the operation of the Central Revenue Recovery Act 1 of 1850, to Pt B states, is not fatal to the enforcement of claims that arose under the Cochin Revenue Recovery Act, which was repealed.[68]

The evidence of an income-tax officer relating to the initials which he is alleged to have affixed was not admissible in view of s 54 of the Income-tax Act of 1922 and s 137 of the Income-tax Act of 1961. It was further held that the inadmissibility will continue under s 6(c) of the General Clauses Act notwithstanding the omission of s 137 of the Income -taxAct from the Finance Act of 1964.[69]

The provisions of s 484 of the Code of Criminal Procedure 1973 enacts for application of the old Code of 1898 to all proceedings at the time of coming into force of the new Code of 1974, which means that the old Code is not saved for any proceedings to be instituted after commencement of the Code of 1974.[70]

In *Danmal Parshotamdas v Baburam*,[71] Sulaiman CJ, said:

> It seems to me that s 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right previously so acquired. But where there is a new law which not only repeals the old law but is substituted in place of the old law, s 6(e), General Clauses Act, is not applicable and we would have to fall back on the provisions of the new Act itself.

Dissenting from the view so expressed in *NS Dal Mills v Firm Sheo Prasad*,[72] Desai J, said:

> With great respect I cannot agree with this dictum. Section 6 speaks merely of repeal of an Act and it would be unjustifiable for us to say that it refers

68 *Krishna Rao v Municipal Sales-tax Officer* AIR 1954 Tr & Coch 518 (FB); but see *Danmal Parshotamdas v Baburam* AIR 1936 All 3; *Benares Bank v Prakasha Bhagwan Das* AIR 1946 All 269.

69 *Ramakrishna Mudaliar v Rajabu Fathima* (1965) 2 Mad LJ 338, (1965) 2 ITJ 415, 1965 Mad LJ 735 (Cr), [1965] 58 ITR 288, (1966) ILR 2 Mad 185, AIR 1966 Mad 187.

70 *Chiranji Lal Ramjibhai & Co v Chunarmal Motiram & Co* 1976 Cr LJ 437, 440, 1976 MPLJ 33.

71 AIR 1936 All 3; followed by Braund J, in *Benares Bank Ltd v Prakasha Bhagwan Das* AIR 1946 All 269, 276.

72 AIR 1958 All 404; dissenting from *Sankata Prasad v Ram Kushi Devi* (1947) ILR 22 Luck 207, AIR 1947 Oudh 232; *Danmal Parshotam Das v Baburam Chhote Lal* AIR 1936 All 3; *Public Prosecutor v JP Sanghi* AIR 1964 AP 276 (repealed law not to be availaed of for instituting proceeding after date of repeal even in respect of offences committed prior to that date).

to a particular repeal, ie, repeal not followed by re-enactment. The opening words of s 6 itself lay down that the provisions of the repealing Act will override the effect of repeal stated in the section. It is, therefore, not correct to say that when an Act is repealed and another Act is re-enacted, s 6 cannot apply and that the effect of the repeal must be found out from the provisions of the new Act.

The amendment brought about in the Indian Limitation Act 1908, by the Kutch Application of Laws Order had created a special right to file a suit within three years and the special right so created had been held as saved under s 6(c).[73]

The repeal of ss 92 and 93 of the Transfer of Property Act 1882, by the Civil Procedure Code 1908, had not taken away the right under a decree of redemption as had accrued under those sections.[74]

Sections 6 and 7 of the Legal Practitioners Act 1879, was extended to Rajasthan by Pt 'B' States (Laws) Act 1951. It was held that in view of ss 4 and 7 of the Rajasthan Adaptation of Central Laws Ordinance 4 of 1950, a permanent *sanad* acquired under ss 4 and 7 of the Legal Practitioners Act, has to be renewed every year.[75]

Section 9 of the Rajasthan Review and Validation of Rent Rates Act 1955 had reduced the rate of rent and such reduction was held to be effective even after the repeal of that Act.[76]

When on the date when the land acquisition proceedings commenced, s 34 of the Land Acquisition Act had not been amended, it was held that the claimant was entitled to interest at the rate of six per cent and not at the rate of five per cent as permissible under the section after its amendment.[77]

Court-fees on appeal filed after amendment of r 61 of the rules under the Uttar Pradesh Zamindari Abolition and Land Reforms Act has to be decided with reference to the amended rule.[78]

On the principle that anything done under a repealed Act is not affected by the repeal, the municipalities created under the repealed enactment continue to exist, because the repeal of the relevant enactment does not abolish them.[79]

The enactment of the Bengal Tenancy Amendment Act 1907 had been held to have not affected the status of a non-occupancy *raiyot*.[80]

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73 *Thacker Chatrabhuj Gokul Das v Thacker Khatau Motiram* AIR 1963 Guj 185.

74 *Ram Rup v Ghani Ahmad* AIR 1953 Oudh 156.

75 *Mahendra Prasad v State* (1952) ILR 2 Raj 655, 665, AIR 1955 NUC (Raj) 363 (DB).

76 *Rao Udai Singh v State of Rajasthan* 1958 Raj LW 197, (1958) ILR 8 Raj 202, 205 (DB).

77 *Special Land Acquisition Officer v B Channaveerappa* AIR 1968 Mys 13, (1967) 2 Mys LJ 296.

78 *Shamsul Hasan v State* AIR 1956 All 413.

79 *Canara Bank v State of Kerala* AIR 1982 Ker 1, 4.

80 *Jotiramkhan v Jonaki Nath Ghose* 33 IC 54, (1914) 20 CWN 258.

23. CLAUSE (d)

A trial on a complaint filed prior to the repeal of an enactment can be proceeded with till its end.[81] Where an offence was committed under the Bombay Prevention of Hindu Bigamous Marriage Act 1946, the fact that the complaint is filed after the repeal of that Act by the Hindu Marriage Act 1955, does not preclude the state from prosecuting the accused, or affect the jurisdiction of the court to convict him.[82] Penalties incurred under a statute, while it was in force, unless there be an intention to the contrary in the repealing Act, are not affected by the repeal or expiry of that statute.[83] If a person has been convicted and sentenced prior to the expiry or repeal of the Act,[84] and the conviction and sentence were legal at the time the trial court delivered its judgment, the continued detention of the appellant cannot become illegal by reason of the expiry of the Act or repeal thereof.[85] When the ingredients for offences under the old and the new Acts are the same, there is no question of the accused being prejudiced by the trial.[86] It must, in this connection, be noted that s 6 does not save such investigation or legal proceeding which is not in respect of a right but is meant to determine whether some right should or should not be given.[87]

The position in *Income-tax Officer v United Karanpur Colliery Pvt Ltd*,[88] was that a prosecution was launched in 1970 for an offence under s 276(d) of the Income-tax Act 1961, for default occurring under s 200 relating to the year prior to 1970. The contention was that since on the day the prosecution was launched, the reference in said cl (d) to Ch 17B, which contained s 200, was deleted, by the Finance Act of 1968, the alleged offence was not punishable, under s 276. It was held that punishment could be imposed in view of s 6 of the General Clauses Act, as if the words containing the said reference were not deleted. When the jurisdiction conferred on a court is

81 *'Babarao' Ganpatrao Kadu v Leelabai* 1957 Nag LJ 508, 510.

82 *State v Narayandas* AIR 1958 Bom 68 (FB); *Royal Corpn v Director of Enforcement, New Delhi* AIR 1970 SC 494 (legal proceedings can be instituted even after repeal of the Act in respect of offence committed during the time when the Act was in force).

83 *Jagendra Chandra Roy v Superintendent of the Dum Dum Special Jail* AIR 1933 Cal 280–81, 34 Cr LJ 291, 37 CWN 363 (DB); *Re Jayanti Lal Devi Chand* 1973 Mad LW 193 (Cr), 195, 1975 Mad LJ 272 (Cr) (contravention of Gold .Control Rules, held punishable even after repeal of Defence of India (Gold Control) Rules).

84 *Nityananda Saha v King* (1950) ILR 2 Cal 284, 287 (DB) (forfeiture, penalty or punishment incurred under repealed Act prior to its repeal).

85 *Jogendra Mohan Guha v Emperor* AIR 1933 Cal 516; *Devi Singh v State* 1964 All WR 727 (HC), 1965 All Cr R 1; *V Vembu Iyer v Union of India* 1974 Tax LR 1654, 1686, (1978) 1 Mys LJ 258 (penalty on offence under Sea Customs Act 1962); *Gonibhai v Commr of Income-tax, Madhya Pradesh, Bhopal* 1979 MPLJ 416 (right acquired and penalty incurred under repealed Act not affected in the absence of contrary intention).

86 *Ramakishan v Sithai Ammal* AIR 1925 Mad 521.

87 *Swastik Enterprises v District Magistrate* AIR 1976 Kant 129.

88 1977 BLJR 156, 159 (DB).

ousted by a subsequent Act instead of by an amending Act, and when subsequently that Act is itself repealed, the jurisdiction lost is regained by that court.[89]

Prosecution for offence under r 17 framed under Motor Vehicles Act of 1935 can competently proceed even after commencement of the Motor Vehicles Act 1939.[90]

If the accused is guilty, the mere fact that prosecution is launched after the repeal of the Act which constituted the offence, cannot affect the guilt of the accused.[91]

Though the Indian Press (Emergency Powers) Act 1931 was repealed by the Press (Objectionable Matters) Act 1951 and was thereafter no longer in force, the repeal did not affect the conviction of the person under the repealed Act.[92]

It was held in *Subbamma v Government of Mysore*[93] that proceedings taken under the repealed Silk Control Order against the accused were saved in spite of the repeal. This decision was followed in *Abdul Sattar v Government of Mysore*[94] and *Amrit Lal v Government of Mysore*.[95]

24. CLAUSE (e)

(a) General

In a case from Ajmer,[96] the principle of cl (e) was held applicable even in cases not governed by the General Clauses Act. By cl (e) of s 6, the repeal of any Act is not to affect any right or liability acquired or incurred under the repealed enactment or any legal proceeding or remedy in respect of such right or liability.[97] However, when a right has become barred under the repealed enactment, the same cannot be revived because of the new Act. Right to execute decree having become extinct in 1948 by virtue of the Punjab Debtor's Protection Act 1936, the period of limitation cannot be extended under s 48 of the Code of Civil Procedure.[98]

On a conjunctive reading of s 27 of the new Motor Vehicles Act 1988, and s 6 of the General Clauses Act, it will be clear that legal proceedings instituted before the repeal of the old Act were to be continued or enforced as if the repealing Act had not been passed at all, and the Parliament never intended

89 *Smith v Smith* AIR 1954 All 624, 1954 All WR 322 (HC).
90 *DR Chablani v Emperor* 43 Cr LJ 489, AIR 1942 Oudh 310.
91 *State v Naraindas Mangi Lal Dayame* AIR 1958 Bom 68, 70 (FB).
92 *Ramashankar Tewari v State* AIR 1954 All 562, 1954 All WR 334.
93 33 Mys HCR 32.
94 Cr RP No 17 of 1950–51 (Mys).
95 AIR 1951 Mys 26, 42 Cr LJ 251.
96 *Sua Das v State* AIR 1952 Ajm 9–10, 52 Cr LJ 221.
97 *Ram Rup v Ghani Ahmed* AIR 1928 Oudh 156, 90 LJ 624.
98 *Ram Saran Dass v Sunder Singh* AIR 1952 Punj 417.

that all the proceedings initiated prior to the new enactment would be governed by the new Act and not by the repealed Act.[99]

When an action is a legal proceeding, instituted in a court competent to hear it under the provisions of the statute under which it has been instituted, the subsequent repeal of the statute does not deprive that court of the jurisdiction to hear and complete it,[1] unless there appears an intention to the contrary in the repealing statute. Where there is no section in the later statute which purports to affect pending proceedings and the substantial provisions of both the statutes are practically identical, there is no reason why the repealing statute should be held to affect pending proceedings.[2]

A suit was decreed under the West Bengal Premises Rent Control (Temporary Provisions) Act 1948, though during pendency of the appeal from that decree, the said Act was repealed by and re-enacted in the Act of 1950 under the same name. In appeal, it was held[3] that the case had to be decided under the repealed Act.

The pre-existing French Civil Code which corresponds to the Indian Civil Procedure Code, was repealed by the Pondicherry (Extension of Laws) Act 1966, under s 4(1) of the latter. Section 3(1) of the latter had brought into force the Indian Civil Procedure Code in the Union Territory of Pondicherry (which was formerly a part of the Overseas Territories of France). Section 4(2) of the said Act contained saving provisions framed in terms closely analogous to s 6 of the General Clauses Act. Section 4(2)(d) of the said Extension of Laws Act was similar to s 6(e) of the General Clauses Act. In *MJ Delaflore v Amir Mohammad*,[4] it was urged that the provision in s 4(2)(d) of the Extension of Laws Act, which permits a pending legal proceeding, previously instituted, to be continued as if the later Act had not been passed, would give jurisdiction for dealing with the proceeding under the French Civil Code. Unless so permitted, the jurisdiction of the court, after its valid cession into another territory, can no longer be exercised under the former law, whatever be the stage of litigation at the time of cession.[5]

Where an execution of decree had become time barred already in 1948, under the Debtors Protection Act, it was held that the period of limitation could not be extended after the commencement of the Constitution, on the ground that the Act is inconsistent with art 13 of the Constitution, the said article being prospective in operation.[6]

99 *New India Assurance Co Ltd v Sulochana Bewa & Ors* AIR 1995 Ori 153.

1 *Srinivasa Chari v Queen* (1883) ILR 6 Mad 336, 338, 7 Ind J 301 (DB).

2 *Gondicalo Hypolito Constoncio Noronha v Danaji, Devji* PC Appeal No 24 of 1952, dtd 16 November 1953.

3 *Jagdish Chandra Das v Birendra Nath Basu* (1952) ILR 1 Cal 315, AIR 1955 NUC (Cal) 805.

4 AIR 1970 Mad 308, 310.

5 *Damodar Gordhan v Deoram Kanji* ILR 1 Bom 367.

6 *L Ram Saran Dass v Sunder Singh* AIR 1952 Punj 417.

It was held that the saving provision referred to, interpreted in the light of the general provisions governing the interpretation of statutes, would mean that the pending legal proceeding cannot be put to an end by reason of anything enacted in the later law and the party affected has a right to continue the legal proceeding under the repealed Act.[7] What is saved by the saving provision is only the right to continue the legal proceeding notwithstanding anything in the later enactment which may affect such continuance. But, if a particular procedure had to be followed under the pre-existing law in respect of that legal proceeding, but a different procedure is prescribed under the later enactment, the legal proceeding, insofar as its further continuation is concerned, has to follow the procedure indicated in the new law. If there is anything in the old procedure in the nature of a vested right, privilege, obligation or liability falling within the meaning of s 4(2)(d) of the Act and whether s 4(2)(d) seeks to preserve such right etc, wherever they are likely to be jeopardised by the application of the new procedural law, have to be determined first. What such rights or privileges etc are, cannot be stated straightway but has to be considered in the circumstances of individual cases and the law applicable to them.

The amendment of s 23A of the Foreign Exchange Regulation Act 1947 by Act 55 of 1964 whereby the provision, deeming the restriction imposed by sub-s (1) of s 12 to have been imposed by s 19 of the Sea Customs Act, has been repealed, does not affect the contravention of s 12(1) committed prior to the amendment. The contravention is still punishable under s 167(8) of the Customs Act by reason of the Foreign Exchange Regulation Act as it stood prior to the amendment. Unless a contrary intention appears, the repeal shall not affect any investigation or legal proceeding which may be instituted or continued as if the repealing Act had not been passed.[8]

The right of a party to have its pending proceeding disposed of by a competent court is a matter of right.[9] Therefore, pending litigation is not affected by any change of law except in procedural matters,[10] and substantive rights are not taken away unless they are expressly included. The general rule of construction of statutes is that where the intention of the legislature is not free from doubt, an enactment ought not be construed so as to affect the vested right of action. When the consideration of the enactment as a whole makes it apparent that the legislature intended to make the provisions of the enactment applicable to pending suits, the provisions will have to be so

7 *V Hallay Mathew v State of Kerala* 1971 Tax LR 277, 282, 79 ITR 72 (Ker) (prosecution under s 51 of Income-tax Act 1922, saved even after repeal of 1922 Act, by s 297(2) of the Income-tax Act 1961).

8 *Gangadhar Narsingdas Agarwal v Union of India* (1967) 1 Mad LJ 197, 80 Mad LW 84, (1967) 1 Mad LW 11 (Cr).

9 *Narayanswami v Inspector of Police* AIR 1949 Mad 307, 316, 50 Cr LJ 405, (1949) 1 Mad LJ 1 (SB).

10 *NP Agrawal v SK Azad* 1973 All LJ 954, 1973 All WR 644 (amended provision to ordinarily apply to proceedings validly instituted).

applied.[11] But where the law has been so altered as to create a rule of evidence or a rule of decision, the contrary rule would apply and the person claiming to be governed by the old law will have to show that pending litigation had been saved from the operation of the new law.[12] The relevant law has to be strictly construed and a strict construction involves the necessary presumption that the legislature did not intend to interfere retrospectively.[13]

When a vested right requires a suit to be tried in the forum in which it was commenced, the new enactment is not to be so construed as to take away that right.[14]

Irregularities involved in a past action can certainly be cured or validated by a fresh statute enacted for that purpose.[15]

Where leave to prosecute, under s 211 of the Indian Penal Code was given by the Magistrate under the old Criminal Procedure Code in Tanjore, it would not require the sanction to be revoked when the same was dispensed with on coming into force of the new Code in 1923 in Tanjore. It was held that the matter of sanction pertained not to a matter of procedure but to a matter of real right.[16]

Where the land acquisition proceedings commenced before the amendment of s 34 by the Mysore Act 17 of 1961, the right of the claimant under the old section is a vested right saved by s 6 of the General Clauses Act, and the claimant was entitled to interest at 6 per cent and not at 5 per cent under the amended section.[17] Where the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 had repealed the Uttar Pradesh (Temporary) Control of Rent and Eviction Act 1947, it was held that proceedings for eviction of tenants on grounds of default in payment of rent filed under the repealed Act prior to its repeal were saved.[18]

Where a suit was instituted under the Transfer of Property Act, and the landlord was entitled to certain privileges under the West Bengal Premises Rent Control (Temporary Provisions) Act 1950, it was held that the landlord could not, under the law, be prevented from seeking and obtaining those privileges granted to him under the Act of 1950.[19]

11 *Jagannath v Board of Revenue, Uttar Pradesh* AIR 1955 All 432, 433, 1955 All LJ 726.

12 *Sonabai v Board of Revenue* AIR 1958 MP 368.

13 *SM Abdul Jameel v Simon Machonochy Ltd* (1967) 1 Mad LJ 337.

14 *Ganpathy Rajavalia Raja v Commr for Hindu Religious and Charitable Endowments, Madras* AIR 1955 Mad 378, (1954) 2 Mad LJ 595.

15 *Syabuddin Sab Mohidisab Akki v Gadeg Betgiri Municipal Borough* AIR 1955 SC 314, 320, (1955) SCJ 316 (Bombay Municipal Boroughs (Amendment) Act 1954, s 3 validates elections to office of President and Vice-President by curing illegality or irregularity in the concerned election despite the fact that any election had been challenged in court).

16 *Ram Krishna Aiyer v Sithani Ammal* AIR 1925 Mad 911, 49 Mad LJ 223.

17 *Special Land Acquisition Officer, SVHEP, Sagar District, Shimoga v B Channaveerappa* (1967) 2 Mys LJ 296, 11 Law Rep 842, AIR 1968 Mys 13.

18 *Chhedi Lal v Haji Abdul Majid* AIR 1980 NOC 140 (All).

19 *Jyotindra Nath Mitra v Sourindranath Dutta* AIR 1951 Cal 422, 55 CWN 326.

The question whether an offence was committed or not depends on the state of the law when the offence was committed and not on the law as it is on the date on which the prosecution is started. In case of penal provisions, a person who commits an offence becomes liable the moment the offence is committed.[20] By virtue of art 367 of the Constitution read with s 6, General Clauses Act, when the President, exercising his power under art 372(2), repeals a law in force, the rights and privileges acquired by any person under the law repealed are preserved unless there is a provision to the contrary in the adaptation order. In repealing the Indian Naturalisation Act, the adaptation order has in no way taken away the rights already acquired and, as far as the Foreigners Act is concerned, far from the legislature intending to take away the rights of British subjects, it has retained s 2(a)(i) and (ii) of the Foreigners Act.[21] In *Kashmere Lal v Kishen Devi*,[22] the evidence alleged to be false had been given and the proceedings under s 195, Cr PC, had been commenced long before the amended code of 1923 came into force. The subordinate judge refused to give sanction for prosecution under the old Code of Criminal Procedure. The application to the appellate court (sessions judge) was pending when the new code came into force. Justice Daniels observed therein:

> The case is, therefore, governed by section 6(c) of the General Clauses Act. The applicants had incurred a liability to have their prosecution for false evidence sanctioned and the complainant on his application being dismissed by the subordinate judge acquired a right to apply to the appellate court under section 195 of the unamended code for the grant of the sanction which the lower court had refused. Under these circumstances, the repeal of section 195 as it then stood could not affect any pending investigation in respect of the right which had accrued to the complainant or the liability which had been incurred by the applicant.

Where the Calcutta Municipal Act 1923 was repealed and replaced by West Bengal Act 33 of 1951, the proceedings in a pending prosecution under the former Act do not lapse, but must be dealt with under the old Act even though the new Act has made changes in the procedure for prosecution.[23] In another Calcutta case,[24] which was a case of expiry though not of repeal, a proceeding instituted by a tenant under s 9B of the Calcutta House Rent Control Order 1943, as amended in 1946, prior to expiry of that order, was held competent

20 *Re Chockalingam* AIR 1945 Mad 521–22.

21 *Union of India v Hasanali Mohamed Husain Sharif* AIR 1950 Bom 505.

22 26 Cr LJ 90 (All); *Rama Krishna v Sithai Ammal* ILR 48 Mad 620, AIR 1925 Mad 911, 913 (FB); *Nishikanta Ghosh v Corpn of Calcutta* AIR 1953 Cal 401.

23 *Nishikanta Ghosh v Corpn of Calcutta* AIR 1953 Cal 401; *Misra & Co v Appellate Assistant Commr, Income-tax* (1969) 2 ITJ 143, AIR 1969 All 566.

24 *Dawoo Dayal Kothari v Giridhar Laha* AIR 1950 Cal 214, 216, 54 CWN 12.

to continue even after such expiry.[25] However, when there is a difference between the law in force and the earlier law now not in force, the former has to be followed.[26]

The right of instituting prosecution in respect of proceedings pending at the commencement of the new Income-tax Act 1961, is not taken away by the new Act. Though it is not a matter expressly saved by s 297(2), the provisions of s 6(e).of the General Clauses Act will apply.[27] The Public Companies (Limitation of Dividends) Act 1949 came to repeal the ordinance of 1948 of the same name, but the contention that the repeal had obliterated the ordinance from the statute book as if it had never existed was repealed in *Income-tax Commr, Bombay v Godavari Sugar Mills*,[28] in view of cll (c), (d) and (e) of s 6.

Section 6(c) has nothing to do with the forum where the investigation, legal proceeding or remedy has to be pursued. A jurisdiction once acquired, normally continues until the action is disposed of. Hence, the transfer of territory does not affect the jurisdiction of the magistrate in the territory transferred with regard to a case pending when such transfer takes place.[29] Thus, an offence committed at a place, then part of British India, can be tried in the courts in India even if the place where the offence was committed, ceases, by the time of trial, to be part of Indian territory.[30] The cession of territory subsequent to the commission of offence makes no difference.[31] If the repealing Act provides a new forum where a legal proceeding, continuing before the repealing Act came into force, can be pursued thereafter, the forum must be as provided in the repealing Act, and no party can insist that the forum of the repealed Act must continue.[32]

The right of further cross-examination given to an accused under s 267A, Hyderabad CrPC, is a mere qualified procedural right which cannot be preserved for a party after the law which conferred the right is amended or another procedural law substantially altering the mode by which the credibility of witnesses should be tested, is substituted in place of the repealed statute.[33]

25 *Deb Narain Dutt v Narendra Krishna* (1889) ILR 16 Cal 267, 279 (FB) (provision of Bengal Tenancy Act 1885, held applicable to execution proceedings commenced after 1885 in respect of decree obtained under Bengal Act 8 of 1869).

26 *MJ Delaflore v Amir Mohammad* AIR 1970 Mad 308, 310.

27 *TS Baliah v Rangachari, Income-tax Officer, Central Circle, 6, Madras* (1969) 1 ITJ 732, [1969] 72 ITR 787, (1969) 1 SCJ 890, (1969) 2 Mad LJ 9 (SC), (1969) 2 Andh WR 9 (SC), 1969 Mad LJ 547 (Cr), AIR 1969 SC 701.

28 AIR 1967 SC 536, 559, (1967) 1 SCJ 329.

29 *State of Hyderabad v Chander* AIR 1950 Hyd 71.

30 *Emperor v Ganga* ILR 34 All 451, 8 All LJ 696.

31 *Emperor v Mahabir* ILR 33 All 578, 8 All LJ 630; *Emperor v Ram Naresh Singh* ILR 34 All 118, 9 All LJ 51.

32 *Purshotam Singh v Narain Singh* AIR 1955 Raj 203.

33 *Waheed Hasan Khan v State of Hyderabad* AIR 1954 Hyd 204 (FB); *Rajmal Mishri Lal Jain v Collector, Jhabua* 1975 MPLJ 748.

Section 6(e) of the General Clauses Act 1897 does not, in any way, affect the applicability of art 225 of the Constitution to a suit which is previously instituted and which comes up for disposal after the coming into force of the Constitution. Article 225 only deals with jurisdiction which is a matter of procedure and, as no party has a vested right to a particular proceeding or to a particular forum, art 225 applies even though the Constitution had not come into force when the suit was instituted.[34]

It is a well-settled law that the Constitution is prospective and not retrospective and the general principle is that if a law is made by a competent authority it does not cease to exist because that authority loses its power.

In *Shiv Bahadur Singh v State of Vindhya Pradesh*[35] it was laid down that Rewa law' would continue to be in force in the Rewa portion of the United States of Vindhya Pradesh, on the principle that on change of sovereignty over an inhabited territory, the pre-existing laws continue to be in force until duly altered.[36]

The repeal of Motor Vehicles Act 1939 does not affect the pending schemes for modification because of s 217(4) Motor Vehicles Act 1988 read with s 6 of General Clauses Act. The notification issued in exercise of powers under s 68E read with 68C of Act of 1939 shall be treated as a notification issued under s 102 read with s 99 of Act of 1988 for there is no provision in the new Act which is inconsistent with the continuance of the said notification.[37]

(b) 'Legal Proceedings'

The expression 'legal proceedings' connotes proceedings authorised by law, whether or not such proceedings are judicial.[38]

The expression 'legal proceedings' includes pending appeals[39] or revisions.[40] Jurisdiction once acquired usually continues until the action is disposed of—mere transfer of territory does not affect the vested jurisdiction of the court.[41] A right to have a suit entertained or tried on the original jurisdiction of the High Court is more than a mere matter of procedure and it affects substantive and vested or existing rights.[42] It is well established that under the General Clauses Act 1896, for matters of procedure, the new Act

34 *Lalitabai Banwarilal v Dominion of India* AIR 1954 Bom 527.
35 AIR 1953 SC 394.
36 *Rehman Shagoo v State of Jammu and Kashmir* AIR 1958 J&K 29, 34.
37 *APSRTC v Government of India* AIR 1992 AP 109, 124.
38 *Abdul Aziz Ansari v State of Bombay* AIR 1958 Bom 279, 282, 59 Bom LR 1259 (DB).
39 *Meugens v Sutlej Flour Mills* 30 PR 1915.
40 *Seshadri v Narayana* AIR 1950 Mad 106, as to revisions under s 25, Provincial Small Cause Courts Act (now substituted by Uttar Pradesh Act 17 of 1957); *Om Prakash v Motilal* AIR 1958 All 409 (FB).
41 *State of Hyderabad v Chander* AIR 1950 Hyd 71; but see, *Keshari Prasad v Bodhraj* AIR 1951 Raj 45 (FB).
42 *Amar Nath v Sreenarain* AIR 1951 Cal 442.

must always be followed in 'legal proceeding or remedy' but any right which has accrued under the Act which has been repealed will remain subject to the qualification that the repealing Act contains no provision to the contrary.[43]

The saving provision in s 4(2) of the Pondicherry (Extension of Laws) Act of 1968 which is analogous to s 6 of the General Clauses Act, would mean that pending legal proceedings cannot be put an end to by reason of anything enacted in the later law if the party affected has a right to continue the proceedings under the repealed Act. What should be really determined is whether there is anything in the procedure in the nature of a vested right, privilege, obligation, or liability falling within the meaning of s 4(2)(d) of the Act, and to seek to preserve the same whenever they are likely to be jeopardised by the application of the new procedural law.[44]

It may be taken as established that a right of appeal, a right to be tried by jury, and even a right to get bail, are substantive rights.[45]

The penalty provided for offence under s 112(b)(ii) of the Customs Act 1962, being different from that provided by the provisions of s 167(8) of the Sea Customs Act 1878, it was held that the proceedings commenced against an accused under the Sea Customs Act 1878 must be allowed to continue in view of s 6(e) of the General Clauses Act.[46] Similarly, a prosecution initiated against the accused under the Gold (Control) Act 1968 for its violation shall continue despite subsequent repeal of the Act, as such proceedings are not affected by virtue of s 6 of General Clauses Act.[47] Where legal proceeding was commenced before the repeal of the 1939 Motor Vehicles Act, it was held to be continued or enforced as if the 1988 repealing Act (New Act) had not been passed at all.[48]

25. TEMPORARY ACTS AND ORDINANCES

As a general rule, and unless it contains some special provision to the contrary, after a temporary Act expires no proceeding can be taken upon it and it ceases to have further effect. It means that prosecutions for offences committed against temporary enactments have to be commenced and punishments inflicted before the Act expires, since, as soon as the Act expires, proceedings being taken against a person ipso facto terminate.[49] Unless it were so, it would amount to enforcement of a dead Act. In case of repeal this rule stands modified by s 6.[50]

A repeal effected by a temporary legislation is only a temporary repeal and with the expiration of the temporary repealing enactment the original

43 *Sham Sunder v Ram Das* AIR 1951 Punj 52, 56 (FB).
44 *MJ Delaflore v Amir Mohammad* AIR 1970 Mad 308.
45 *Shreekant Pandurang v Emperor* AIR 1943 Bom 169.
46 *V Vembu Iyer v Union of India* 1974 Tax LR 1684, (1973) 1 Mys LJ 258.
47 *Ismail Kutty v Asst Collector, Central Excise* 1992 (58) ELT 180–81 (Ker).
48 *New India Assurance Co Ltd v Sulochana Bewa* AIR 1995 Ori 153.
49 *Ram Chandra v State of Rajasthan* 1972 Cr LJ 1386, 1972 Raj LW 272.
50 *Re ET Palaniappa Chettiar & Co* AIR 1957 Mad 660, 1957 Cr LJ 1149.

legislation is automatically revived without the necessity for re-enactment.[51]

When a temporary statute is made perpetual by subsequent enactment, such temporary statute becomes permanent ab initio.[52] However, there is a difference between the effect of continuation of statutes limited in their duration to a specified period, expiring by efflux of time, and perpetual statutes which can be repealed only by legislation.[53] The provisions of s 6 of the General Clauses Act, in relation to the effect of repeal, do not apply to a temporary Act.[54] A temporary statute is a statute which expires by efflux of time or on the happening of a contingency without recourse to a fresh legislation.[55] But this proposition is subject to two exceptions:

(i) where the temporary Act is repealed before its expiry and repealing Act provides for application of s 6; and
(ii) when the temporary Act itself contains a provision similar to s 6.[56]

In considering the effect of expiration of a temporary Act it would be unsafe to lay down any inflexible rule. It certainly requires very clear and unmistakable language in a subsequent Act of the legislature to revive or recreate an expired right.[57]

It is well-settled that if a temporary statute has created an offence and that offence is committed while that Act remains in force, the mere expiry of that statute does not prevent a prosecution for such offence even if at the time of prosecution that statute is no longer in force.[58]

The Defence of India Act is a temporary enactment. Section 1(3) of the Act states that the Act shall remain in force during the period of operation of emergency proclaimed on 26 October 1962, and for a period of six months thereafter. Under sub-cll (a), (b), (c) and (d) of s 1(3) of the Act, savings are provided, analogous to s 6 of the General Clauses Act with the omission of cl (a) in s 6. The proclamation of emergency was revoked on 10 January 1968.

51 *Patel Kanta Kachra v Jadeja Bhikhubha Pathubha* AIR 1953 Sau 195.
52 *State of Bombay v Hemon Sant Lal Ahuja* AIR 1952 Bom 16, 22, 53 Bom LR 837 (DB); reversed on another point in *State of Bombay v Bhanji Munji* AIR 1955 SC 41.
53 *Ram Prasad Shaw v Chief Secretary, Government of West Bengal* AIR 1955 Cal 374, 56 Cr LJ 1055.
54 *State of Orissa v Bhupendra Kumar Bose* AIR 1962 SC 945, 953; *MR Pratap v Director of Enforcement, New Delhi* 1969 Cr LJ 1582; *K Cherian v K Chandy* 1958 KLT 105, AIR 1958 Ker 229 (Act 8 of 1950, a temporary Act—s 6 not applicable—proceedings under Act terminate when Act ceases to be law).
55 *State of Andhra Pradesh v Dakarapu Ramaswami* 1958 Andh LT 605, (1958) 2 Andh WR 79.
56 *Karam Chand v Bal Mukund* 1976 All LR 641 (FB).
57 *MS Shivananda v Karnataka State Road Transport Corpn* AIR 1980 SC 77, 80, (1979) 2 Serv LR 774, (1979) 2 SCWR 361, 1979 UJ 893 (SC), (1980) 1 SCC 149, 39 Fac LR 452, 56 FJR 16, (1980) 1 LLJ 77, 1980 SCC (L&S) 131, [1980] 1 SCR 634, (1980) 1 Lab LN 289, (1980) 12 Lawyers 15.
58 *Ramani Mohan Sarkar v Emperor* AIR 1933 Cal 516, 34 Cr LJ 879.

The Defence of India Act expired by efflux of time, six months thereafter, namely, on 9 July 1968. Section 6 of the General Clauses Act will not apply to the Defence of India Act as it is a temporary Act and its expiry is by efflux of time. Therefore, the savings are provided under s 1(3) of the Defence of India Act itself.[59]

It is true that the legislature can and often enough does avoid such an anomalous consequence by enacting in the temporary statute, a saving clause, the effect of which is in some respects similar to the effect of the provisions in s 6 of the General Clauses Act which deals with the effect of repeal of a permanent statute.[60] Yet, it is not correct to say that on expiry of a temporary Act all proceedings commenced during its time should automatically lapse.[61]

Where a repeal has been brought about by a temporary repealing Act, such repeal of such temporary repealing Act will have the effect of reviving the original legislation.[62]

What would the effect of the expiration of a temporary Act be must depend upon the nature of the right or obligation resulting from the provision of such temporary Act and upon their character whether the said right and liability are enduring or not. Take the case of a penalty imposed by a temporary statute for offences created by it. If a person is tried and convicted under the relevant provisions of a temporary statute and sentenced to undergo imprisonment, could it be said that as soon as the temporary statute expires by efflux of time, the detention of the offender in jail by virtue of the order of sentence imposed upon him would cease to be valid and legal? The answer to this question has to be in the negative. Therefore, in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty has been incurred under the statute and had been imposed upon a person, such the imposition of the penalty would survive the expiration of the statute,[63] unless there is a specific provision in the repealing enactment.[64]

Even if an ordinance is unconstitutional, the validity of anything done or any action taken thereunder could be justified with reference to the provisions of such ordinance.[65]

59 *MR Pratap v Director of Enforcement, New Delhi* 1969 Cr LJ 1582 (Mad).

60 *Gopi Chand v Delhi Administration* AIR 1959 SC 609; *State of Kerala v Raman Nair* AIR 1962 Ker 78 (Essential Services Maintenance Ordinance 1 of 1960).

61 *TSR Sarma v Nagendra Bala Devi* AIR 1952 Cal 879, 57 CWN 1.

62 *Patel Kanta Kachra v Jadeja BhikhubaPathubha* AIR 1953 Sau 195, 197, 6 Sau LR 272.

63 *State of Orissa v Bhupendra Kumar Bose* AIR 1962 SC 945, 953–54.

64 *State v Mithalal* AIR 1957 MB 52–53, 1957 Cr LJ 197, 1956 MBLJ 360 (DB); *Devaraja Naicker v Inspector, Police Food Cell* 1978 Mad LW (Cr) 132, 135 (prosecution under Tamil Nadu Paddy and Rice (Regulation and Disposal of Stocks) Order 1968 not to be continued after repeal of order by subsequent order in 1978).

65 *RK Garg v Union of India* (1981) 4 SCC 675.

(i) Prevention of Corruption Act and Penal Code—The Prevention of Corruption Act is a temporary one, and though it covers the same field as the Penal Code, the legislature would not have intended, in the normal course of things, that it should supersede an enactment of antiquity like the Penal Code[66] and save with the following:

The proposition that as long as s 5 of the Prevention of Corruption Act 1947 continues to be in force, the provisions of s 409 must be taken to be pro tanto repealed, is hence, no longer good law.

(ii) West Bengal Bargadars Act.[67]
(iii) West Bengal Premises Rent Control (Temporary Provisions) Act.[68]
(iv) Essential Supplies (Temporary Power) Act.[69]
(v) Jaipur Rent Control Order.[70]
(vi) Defence of India Act and Rules.[71]
(vii) Travancore Cochin Stay of Execution Act 1950.[72]
(viii) Repeal of Ordinance.[73]
(ix) Repeal of Independence Act—In *Dungarmull v Shambhu Charan*,[74] it was held that notwithstanding the repeal of the Independence Act and the consequent lapse of the India Independence (Legal Proceedings) Order 1947, the execution proceedings transferred before the repeal retained their validity and could continue in the transferee court, and that the rights and liabilities which had accrued were not affected by the repeal.

This decision follows *Ishwar Madan Gopal Jiu v Province of West Bengal*,[75] and is followed in *Ayub Ali v Harinarayan Kanu*.[76]

Section 6(e) of the Uttar Pradesh General Clauses Act 1904 applies even to a temporary Act. It was, thus, held in *Vidyawati Devi v Kamla Kant Shukla*[77] that the remedy under s 7A of the Uttar Pradesh (Temporary Control of Rent and Eviction) Act 1947, would be available for the purpose of enforcing an

66 *Om Parkash v State of Uttar Pradesh* AIR 1957 SC 461; *State v Gur Charan Singh* AIR 1952 Punj 89, 53 Punj LR 198.
67 *Rabindra Nath v Gour Mondal* AIR 1957 Cal 274.
68 *Tarak Chandra Mukherjee v Ratan Lal Ghosal* AIR 1957 Cal 257; *Bibhuti Bhushan Biswas v Puspalata Gil* AIR 1956 Cal 172, 175.
69 *State v Mithalal* AIR 1957 MB 52; *Re ET Palaniappa Chettiar* AIR 1957 Mad 669.
70 *Gaya Parshad v Basdeo* AIR 1957 Raj 220.
71 *Surjan Singh v Government of East Punjab* AIR 1957 Punj 265.
72 *Cheriyan v Chandy* AIR 1958 Ker 229.
73 *Kanvilal Ramlal v Udhamal* 1957 MPLJ 526; *Raksha Singh v State of Bihar* AIR 1957 Pat 66.
74 AIR 1951 Cal 55.
75 AIR 1950 Cal 463.
76 AIR 1957 Assam 155.
77 1978 All Ren Cas 530, 533.

order of the state government made under s 7A of that Act even after repeal of that Act.

26. REPEAL BY IMPLICATION

The principle underlying the theory of repeal by implication is that if the provisions of two enactments having the same purpose and object cannot work in the same field and it may lead to anomalies and absurdities, then, the former Act must give way to the subsequent Act. Whether the scheme of things in case of such implied repeal will be workable or not, is wholly irrelevant for consideration,[78] because the doctrine of implied repeal is based on the presumption that the legislature never intended to create confusion, and whether there was or was not an implied repeal has to be determined as a question of intent by scrutinising the scope and object of the earlier and the later enactments.[79] The court, in such a case, has to be satisfied, firstly that the new law is meant to substitute the old one; secondly, that the inconsistency between the two is irreconcilable;[80] and, finally, that in case of irreconcilability, the last expression of the will of the legislature shall prevail, but in case both the enactments are couched in negative terms, there can be no question of irreconcilability, since negative statutes do not contradict each other, and in such a case, the former enactment will be taken to have been merely amended and not repealed.[81] The point is that the repugnancy between the two enactments must be positive,[82] and that the capacity of the two to run parallel is not at all a repugnancy, because when the two enactments are wholly affirmative and identical, more particularly, when one of them is of temporary duration, there can be no question of inconsistency.[83] The later enactment, if worded in affirmative terms without any express or implied negativity,[84] will not repeal the earlier.[85] Conversely, a case of implied repeal arises when the later enactment is worded in negative terms,[86] or in the affirmative involving the negative.[87] It is sometimes by the language used in the statute that points to

78 *Kamakhya Narain Singh v State of Bihar* AIR 1981 Pat 236 (Bihar & Orissa Municipal Act deemed to have been repealed by the Bihar Municipal Act 1978).

79 *Municipal Council, Palai v TJ Joseph* AIR 1963 SC 1561, 1564, (1964) 1 SCA 442; *State v Judhabir Chetri* AIR 1953 Assam 35–36, 1953 Cr LJ 39 (FB).

80 *Hiral Lal Sutwala v State* AIR 1953 Nag 58, 60, 1953 Cr LJ 481.

81 *United Provinces v Atiqua Begum* AIR 1941 FC 16, 31, 1940 FCR 110.

82 *Banwari Lal v State* AIR 1956 All 385, 391, 1956 Cr LJ 841.

83 *Bradari v Improvement Trust* AIR 1963 SC 976, 979, 1962 SCD 1016.

84 *Northern India Caterers Pvt Ltd v State of Punjab* AIR 1967 SC 1581, 1584, (1968) 1 SCJ 475; overruled on another point in *Magan Lal Chagan Lal Pvt Ltd v Municipal Corpn of Greater Bombay* AIR 1974 SC 2009; *Director of Industries, Uttar Pradesh v Deep Chand Agarwal* AIR 1980 SC 801.

85 *Jit Singh Chandok v Naraindas Gokuldas* AIR 1970 Goa 73, 78.

86 *Nembu Govinda Sinai Cuvelcar v Union of India* AIR 1969 Goa 30, 33.

87 Ibid.

a repeal by implication,[88] though such repeal is seldom favoured,[89] when two Acts are on the same subject.[90] When the possibility of obedience to one statute exists without disobeying the other, there is no inconsistency.[91]

Repeal by implication follows as a consequence of contradictory or inconsistent enactments and this doctrine has no implication on the legislative or rule-making authority, unless one is led to do so.[92] It is said to be the duty of courts to adopt such interpretation as to reconcile the two statutes provided it is possible to do so on a fair and proper interpretation of the two.[93]

The court, in *M Reddanna v Revenue Divisional Officer*,[94] found on examination that there was no inconsistency between the Andhra Pradesh District Collectors Powers (Delegation) Act 1961 and s 3 of Madras Subordinate Collectors and Revenue Malversation (Amendment) Regulation 1828 as extended to Telangana by virtue of Andhra Pradesh Act 19 of 1958. In order to hold that any two enactments are inconsistent, it is essential to affirm that they cannot stand side by side,[95] and effect cannot be given to both at the same time.[96]

The absence or presence of repugnancy between two enactments leads respectively to a negative or positive conclusion. In the first case, when there is absence of repugnancy,[97] the doctrine of implied repeal has no application,[98] and in the second case, if there is presence of inconsistency, the former should be deemed to have been repealed by implication,[99] to the extent of repugnancy.[1]

88 *Jit Singh Chandok v Naraindas Gokuldas* AIR 1970 Goa 73, 78; *Bhuban Chandra Sadhukhan v Biswanath* AIR 1962 Cal 34, 36; *Jullundur Transport Co-op Society v Punjab State* AIR 1959 Punj 34, 36, (1959) ILR Punj 169 (DB).

89 *Kalpataru Das v Commr of Hindu Religious Endowments* AIR 1949 Ori 46–47, (1949) ILR 1 Cut 111.

90 *Ouseph Martha v State of Kerala* 1960 KLT 181–82.

91 *Rama Chandra v District Board, Ganjam* AIR 1951 Ori 1, 4, 52 Cr LJ 43, 17 Cut LT 10 (SB); *Ahmadjibhai Firm v State of Madhya Pradesh* AIR 1953 Nag 29–30, 1953 Nag LJ 118 (DB); *PK Gopalan v Avroni Sippova* 1951 KLT 337 (Tr & Coch).

92 *N Chinnakannu v NS Sundaram* AIR 1951 Mad 437–39, (1950) 2 Mad LJ 644.

93 *Bapauli Co-op Agricultural Service Society v State of Haryana* AIR 1976 Punj 283, 286, 78 Punj LR 671.

94 AIR 1978 AP 366, (1978) 1 AP LJ (HC) 407 (FB).

95 *Bapu Lal v State* 1951 Raj LW 403, 407.

96 *Karsandas Ramji v Karsanji Kalyanji* AIR 1953 Sau 113, 118 (DB).

97 *Kannu Neelakantan v Ramakrishna Pillai* AIR 1955 Tr & Coch 260, 262, 1955 KLT 280 (DB).

98 *Bhanu Dutta v State* AIR 1970 Cal 127, 129, 74 CWN 384.

99 *Watan Singh v State* 1965 Punj LR (Supp) 366–67; *Hind Iran Bank Ltd v Ishar Singh Narain Singh* AIR 1960 Punj 111, 114, (1960) 30 Com Cas 219; *Dintakurty Danamurthy v Sabbi Setty Balayya, Trustee of Seetaramaswamy Temple* (1959) 1 Andh WR 398; *Kashi Prasad v Raghunanadan Khagi* AIR 1948 All 344, 347, 1948 All LJ 449.

1 *Sobha Lal v Bhag Singh* 1954 Raj LW 382, AIR 1955 NUC (Raj) 1041; *State of Madras v Krishnan* AIR 1961 Mad 92, 101, (1961) 1 Cr LJ 382, (1961) 1 Mad LJ 65 (FB)

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In case of inconsistency between an earlier state Act and a later Act of the Parliament, the former, shall be void to the extent of its conflict with the later on the same subject,[2] provided the conflict is unavoidable.[3] For example, a former enactment impliedly giving jurisdiction to the civil court will be in conflict with a later one impliedly excluding such jurisdiction so as to imply repeal of the earlier.[4]

(implied prohibition in s 173(4) of the Criminal Procedure Code of 1898, for grant of copies of earlier statements by accused before filing of charge-sheet would repeal, in part, the right under s 76); *Delhi Municipality v Shiva Shanker* AIR 1971 SC 815, 822, 1971 Cr LJ 680, (1972) 1 SCA 288 (Prevention of Food Adulteration Act 1954, not impliedly repealed by the Essential Commodities Act 1955 or by the Fruit Products Order issued thereunder); *JA Trivedi Brothers v Union of India* 1975 Lab IC 629, 633, 1975 MPLJ 335 (DB) (additional remedies provided for in the Coal Mines (Taking over of Management) Act 1973 and the Coal Mines (Nationalisation) Act 1973, not operating as implied repeal of existing certificate procedure remedy in s 10A, Coal Mines Provident Fund and Bonus Schemes Act 1948); *Henry Ah Hoe v State* (1979) 83 CWN 731, 1978 Cal HCN 588 (s 6 applies to implied repeal as it applies to express repeal).

2 *Nagpur Hotel Owners' Assn v State of Maharashtra* AIR 1965 Bom 169, 171, 67 Bom LR 206 (DB) (wrt s 3(1)(a) of the Minimum Wages Act 1948, as amended by Maharashtra Amendment Act 3 of 1963).

3 *N Srinivasan v State of Kerala* AIR 1968 Ker 158, 165, 1967 KLT 853 (FB).

4 *Raja Ram Verma v State of Uttar Pradesh* AIR 1968 All 369, 374, 1968 All LJ 594 (FB); *Mohammed Jacco Saint v District Collector of Trichur* AIR 1962 Ker 343, 1962 KLT 1175, 1960 All LJ 376 (FB) (s 93 of the Civil Procedure Code not repealed impliedly by s 55(2) of the Waqf Act); *Kanpur Municipality v Behari Lal* AIR 1960 All 546, 1960 Cr LJ 1175, 1960 All LJ 376 (FB), Uttar Pradesh Pure Food Act 1950, repealed by Prevention of Food Adulteration Act 1954—public analyst appointed under former and not under latter; (*Municipal Board, Lucknow v Shyam Behari* AIR 1960 All 117 overruled; *Harinder Singh v State of Punjab* AIR 1957 Punj 209, 213, 59 Punj LR 386 (FB), Punjab Requisitioning and Acquisition of Immovable Property Act 1953, repeals East Punjab Requisitioning of Immovable Property (Temporary) Powers Act 1948; *Manick Sahna v State of West Bengal* AIR 1981 Cal 289, 294 (DB) (there being no inconsistency between s 6A (introduced by West Bengal Amendment Act 53 of 1974, but omitted with retrospective effect by West Bengal Amendment Act 25 of 1977) of the Rice Milling Industry (Regulation) Act 1958 and ss 5–8 of the said Act, no question of implied repeal could arise); *Dhunseri Tea and Industries Ltd v Hanuman Estates Pvt Ltd* AIR 1976 Cal 328, 332, (1976) 3 Cal HCN 67 (DB) (general provision in s 226 of the Income-tax Act 1961 not to repeal a special provision of s 17 of West Bengal Premises Tenancy Act 1956); *Bhavani Co-op Land Mortgage Bank Ltd v Addl Commr for Workmen's Compensation* (1971) 23 Fac LR 302, 304 (Mad) (state law to be interpreted harmoniously in order to give each positive provision its due effect in its own field); *TS Balia v TS Rangachari* AIR 1969 Mad 145, 152, (1968) 2 Mad LJ 451 (s 177, Penal Code, not repealed by s 52 of the Income-tax Act 1922); *Shakuntala Devi v Deputy Director of Consolidation, Uttar Pradesh* 1968 All WR 271, 277 (HC); (ss 209 and 210 of Uttar Pradesh Zamindari Abolition and Land Reforms Act 1951, repealed by notification issued under s 4 of Uttar Pradesh Consolidation of Holdings Act 1954 as amended by Act 38 of 1958); *Aribam Pishak Sharma v Aribam Tuleshwar Sharma* AIR 1968 Mani 74, 79, later order annuls earlier inconsistent orders, reversed on another

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Of the two articles in the Constitution of India, namely, arts 372(1) and 395, the former, by working as a saving clause to the latter, limits its operation to the Indian Independence Act 1947, and the Government of India Act 1935 as specifically mentioned therein with the result that such Acts or law under the said two Acts, as form part of the 'law in force' in India, have been saved from the usual effect of repeal of the said two Acts.[5]

In *Chhota Lal v Chhote Lal*,[6] inconsistency was detected between s 12A which was amended and s 14 left without amendment in Madhya Bharat Letting of Residential Accommodation Control Order 1944, holding that the amended s 12A had impliedly repealed s 14 thereof.

In *Thota Seshayya v Madabhushi Narsa Sinha Charyulu*,[7] it was held that there was not even an apparent inconsistency between provisions of s 6(1) of the Madras Estates Act 1908 as amended by Act 36 of 1936 read with its explanation and s 8(5) thereof as amended by Act 18 of 1936.

In *Dalip Singh v First National Bank Ltd*[8] it was held that s 38(1) of the Banking Companies Act 1949 did not repeal s 153 of the Companies Act 1913.

A general law does not repeal a particular law directed towards a special object or objects, provided two conditions are satisfied: (a) the two can stand together; (b) the latter of the two is couched in an affirmative language.[9] The

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point in *Aribam Tuleshwar Sharma v Aribam Pishak Sharma* AIR 1979 SC 1047; *Ramaswamy Gounder v Baghyammal* AIR 1967 Mad 457–59, (1969) 2 Mad LJ 579 (s 37 of the Transfer of Property Act 1882, not abrogated by s 28 of Hindu Adoption and Maintenance Act); *Misra Lal Jain v State of Orissa* AIR 1962 Ori 24, 28 Cut LT 66 (Orissa Mining Areas Development Funds Act 1952 impliedly repealed by Mines and Minerals (Regulation and Development) Act 1957; reversed on another point in *State of Orissa v MA Tulloch & Co* AIR 1964 SC 1284; *Khimji Poonja & Co v Raman Lal & Co* AIR 1960 Bom 532, 540, 62 Bom LR 277 (notification of Textile Commissioner of 16 July 1953, not to repeal s 8 of Bombay Forward Contracts Control Act 1947); *State of West Bengal v Basant Kumar Mondal* AIR 1959 Cal 168–69, 63 CWN 404 (liberal construction of Indian Independence (Rights, Property and Liabilities) Order 1947 emphasised); *Kanhaiya Lal Jagannath v Vilayat Khan* AIR 1958 MP 63–64, 1958 Jab LJ 142 (Jhabua State Agriculturists Relief Act not repealed by West Bengal Money-Lenders Act 1950; *Srinivas Ayyangar v Revenue Court, Tanjore* (1957) 2 Mad LJ 369 (neither Madras Cultivating Tenants Protection Act 1955, nor Tanjore Tenants & Pannaiyal Act 1952, could repeal ss 9 and 157 of the Malabar Estates Land Act 1908).

5 *Sylhet Co-op Central Bank v Dhirendra Nath* AIR 1956 Assam 166–67 (DB); *Janardhan Shridhar v Management of Hukum Chand Mills* AIR 1956 MB 199, 206, 1956 MBLJ 826 (cf arts 372 and 254 of the Constitution of India, ss 23 and 24 of the Industrial Disputes Act 1947, do not repeal by implication s 97 of the Bombay Industrial Relations Act 1947, as adapted in Madhya Bharat).

6 1955 MBLJ (HCR) 107, AIR 1955 NUC (MB) 2086.

7 AIR 1955 Mad 252, 256–57, (1955) 1 Mad LJ 439 (DB).

8 AIR 1952 Punj 158, 22 Com Cas 157.

9 *Gwalior Rayon Silk Mfg (Wvg) Co Ltd v Union of India* AIR 1960 MP 330, 344, 1960 MPLJ 789; reversed on another point in *Union of India v Gwalior Rayon Silk Mfg (Wvg) Co Ltd* AIR 1964 SC 1903; *State of Madhya Bharat v Mohan Lal Moti Lal* AIR 1957 MB 58, 61, 1957 Cr LJ 189, 1957 Jab LJ 101 (DB).

general law repeals the particular when the former, being later in time, would make it unlikely that an exception of the nature of the particular was intended.[10] There may be facts and circumstances indicating that the general law did intend to repeal the particular,[11] and such indication has been held to be necessary.[12] The fact, that the later enactment purports to have covered the entire field, may provide for such indication to repeal the previous enactment even in the absence of a repealing clause.[13] When the question to be determined is covered by both the enactments, one general and another special, it is the latter which prevails,[14] provided the special, when read as a whole, is found to be complete in itself.[15]

Whereas s 121(1) of the Delhi Municipal Corporation Act 1957, enabled the landlord to recover from the tenant the excess amount of tax with regard to the premises under tenancy, the latter part of the Delhi Rent Control Act 1948 had precluded the landlord to recover any tax. It was held that the 1957 Act prevails over the 1948 Act.[16]

Provisions relating to conditions of service continue to prevail even after repeal of the statute providing for such conditions.[17] There is a presumption against the intention of the legislature to repeal a legislation by mere implication. The presumption, however, is not irrebuttable and is overthrown if the new law is inconsistent with or repugnant to the old law, for such

10 *Kochunni Kartha v State* AIR 1961 Ker 210, 220–21, 1961 KLT 84 (FB).

11 *Maharaja Shree Umaid Mills Ltd v Union of India* AIR 1960 Raj 92, 98, 1960 Raj LW 44 (DB).

12 *EG Barsay (Major) v State* AIR 1958 Bom 354, 364, 1958 Cr LJ 1144, 60 Bom LR 150 (DB).

13 *Northern India Caterers Pvt Ltd v State of Punjab* AIR 1963 Punj 290, 295, 65 Punj LR 344 (FB); (reversed on another point in *Northern India Caterers v State of Punjab* AIR 1967 SC 1581); *Lilavati Naique v Sunderi Godecar* AIR 1968 Goa 101 (s 25 of Code of Usages and Customs of Hindus of Goa not impliedly repealed by subsequent Law of Protection of Children, Decree No 2 of 1910).

14 *State v Nanu* (1978) 80 Punj LR 17, 20; *Sham Lal v Union Territory, Chandigarh* (1977) 79 Punj LR 421, AIR 1977 NOC 307; *Jaibir Singh v Malkhan Singh* AIR 1958 All 364, 366, 1958 Cr LJ 591, 1958 All LJ 256; *Charan Singh v Majo* AIR 1976 Punj 310, 312–15, 78 Punj LR 726 (DB); (wrt s 4 of Punjab Redemption of Mortgages Act 1913); *Additional Commr of Income-tax v Tarun Commercial Mills Ltd* [1978] 113 ITR 745 (Guj) (wrt a taxing statute).

15 *State v Dina Nath* AIR 1956 Punj 85–86, 1956 Cr LJ 415, 58 Punj LR 79 (DB).

16 *Ganga Ram v Mohd Usman* AIR 1978 Del 107, 110–12, (1978) 80 Punj LR (D) 118 (FB); *RK Parikh v Uma Verma* AIR 1979 Del 17, 21, 1978 Rajdhani LR 592 (O 37, Civil Procedure Code 1908, held wider than (s 25B of the Delhi Rent Control Act 1958); *Ramran Vijay Prasad Sinha v State of Bihar* 1978 BLJR 339, AIR 1979 NOC 29 (DB) (wrt s 4(c) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1962, provision of special character would qualify one of general character in the same statute; *Carona Sahu Co Ltd v Vinod Kumar Goyal* AIR 1979 Raj 1, 4, 1978 Raj LW 419 (wrt s 13(3), (4) and (5) of the Rajasthan Premises (Control of Rent & Eviction) Act 1950, as amended by ordinance 26 of 1957 as replaced by amending Act 14 of 1976—special provision prevails over the general); *Panna Lal v Balbir Singh* 1969 WLN 284 (Raj); *Bhanwar Lal v Chandra Kanta* 1969 WLN 331 (Raj).

17 *Gur Bux Rai v Nagar Mahapalika, Lucknow* AIR 1966 All 552, 554 (Uttar Pradesh Nagar Mahapalika Adhiniyam 1959, s 581).

inconsistency or repugnancy reveals an intent to repeal the existing law. In *DC Jain v University of Jodhpur*[18] it was held that the effect of substitution of the new s 16 in Jodhpur University Act 1962, by Amendment Acts 1972 and 1975 had been an implied repeal of statute 4 of the University Statutes.

The State of West Bengal amended the Prevention of Food Adulteration Act 1954 in the application to that state by the West Bengal Amendment Act of 1973 making the offence under s 16(a) punishable with imprisonment for life. The Parliament stepped in and enacted the central amendment Act in 1976, providing for three years' imprisonment reduced from the earlier six years. The central enactment being a later law, the West Bengal Amendment Act stood impliedly repealed.[19]

A temporary Act may repeal a permanent Act either absolutely or partially; and it is only a question of intention to be gathered from the plain meaning of the repealing enactment, and it is not open to the question of what has been stated in the preamble.[20]

Where, however, the two enactments are identical and run parallel to each other, there would be scope for the application of the doctrine of implied repeal.[21] There is no inconsistency when it is possible to obey each without disobeying the other.[22] Unless the two Acts cannot stand together,[23] there can be no implied repeal.[24] When the subsequent legislation is by a legislation of superior efficacy, and has occupied the whole field, which intent may be evinced expressly or by implication by the legislation itself, the earlier must be deemed to be overrun.[25] If, after having made a general law, the legislature also enacts a special law, it is presumed that the legislature knew the conflict between the two.[26]

It was held in *Zaverbhai Amaidas v State of Bombay*[27] that s 2 of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) Enhancement of Penalties Act 1947 will not prevail as against s 7 of the Essential Supplies (Temporary Powers) Act 1946 as amended by Act 52 of 1950.

For test of inconsistency or repugnancy, see earlier heading: 'Different Intention'. For philosophy and background of the doctrine of implied repeal, see s 24.

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18 AIR 1977 Raj 89, 1976 WLN 820.

19 *T Barai v Henry Ah Hoe* 1983 Cr LJ 164 (SC), AIR 1983 SC 150; applying *Zaverbhai Amaidas v State of Bombay* AIR 1954 SC 752, [1955] 1 SCR 799.

20 *Bharat Singh v Emperor* ILR 12 Lah 280, AIR 1931 PC 111.

21 *TMLS Bradari v Improvement Trust* AIR 1963 SC 976, [1963] 1 SCR 242.

22 *Ram Chandra Misra v President, District Board, Ganjam* AIR 1951 Ori 1, 17 Cut LT 10.

23 *Nagendra Chandra Lahiri v Prabhat Chandra Deb* AIR 1942 Cal 607, 75 CLJ 414.

24 *Mathra Prasad v State of Punjab* AIR 1962 SC 745, 1962 Supp (1) SCR 913.

25 *State of Orissa v MA Tulloch & Co* AIR 1964 SC 1284.

26 *Corpn of Madras v Madras Electric Tramways Ltd* AIR 1931 Mad 152, 60 Mad LJ 551.

27 AIR 1954 SC 752, (1954) SCJ 851.

It is doubtful whether the provision of a statute can be said to repeal by implication another provision of the same statute.[28]

The test of repugnancy in India and the United Kingdom is same. Thus, s 46 of the Housing Act of 1925, so far as it was inconsistent with the Housing Act of 1919 has been held to have repealed the latter.[29]

When, after the expiry of an Act, a prosecution can be launched by application of s 6(d) and (e), the necessary condition, if any, of previous sanction must also be deemed to stay after the expiry of that Act.

Grant of such sanction even after expiry of the relevant Act is valid.[30]

27. ENFORCEMENT OF LIABILITIES AFTER REPEAL

The Emergency Risks (Goods) Insurance Act 62 of 1962 and Emergency Risks (Factories) Insurance Act 63 of 1962 had provided for compulsory insurance against emergency risks of every person carrying on business as a seller or supplier of goods in respect of the insurable goods, which were from time to time owned or deemed to have been owned by him in the course of such business, if the insurance value of such goods lying in one and the same city or district exceeded Rs 30,000, and of all factories falling within the purview of the Factories Act 1948. The Acts, which came into force from 1 January 1963, were enacted as an emergency measure on account of the Chinese aggression and the proclamation of emergency under art 352 of the Constitution and had lasted from 26 October 1962 till 10 January 1968. It was provided in s 1(3) of the aforesaid Emergency Risks (Factories) Insurance Act that the expiry of the Act shall not affect anything done or omitted to be done before such expiry and s 6 of the General Clauses Act 1879 shall apply upon the expiry of the Act as if it were repealed by a central Act.

In *Amadalavalase Co-op Agricultural and Industrial Society Ltd v Union of India*,[31] the contention was that until the liability of the insured was determined by the authorised officer by ascertaining the correct insurable value in accordance with the provisions of the Third Schedule of the relevant Act, no liability to pay the evaded premia arose and, therefore, no liability was incurred before the expiry of the Acts, which could be enforced under the provisions of s 6 of the General Clauses Act after their expiry.

The contention was repelled on the ground that if the owner of factory or goods had failed to take insurance policy at the time he ought to have taken

28 *Manick Sahna v State of West Bengal* AIR 1981 Cal 289, 85 CWN 1117, (1981) 2 Cal HCN 162.

29 *Ellen Street Estates v Minister of Health* [1934] 1 KB 590, 103 LJ KB 364.

30 *State v Jagamander* AIR 1954 SC 683, 685, 1954 Cr LJ 1736, 1955 SCA 539; *Viola Selvin v State of Tamil Nadu* (1996) 1 LW 138 (Cr) (Mad).

31 AIR 1976 SC 958, 32 Fac LR 1, 1976 Lab IC 628, (1976) 2 SCC 934, 46 Com Cas 264, [1976] 2 SCR 731; reversing *Stoneware Pipes Ltd v Union of India* AIR 1971 Mad 442.

it and paid the premia. The liability of the insured to pay the premia could be enforced under cl 13 or 14 respectively of the aforesaid two Acts. It was, therefore, held that if under s 5 or s 7 respectively of the Factories Act and the Goods Act, the liability to pay the premia on the full insurable value was incurred before the expiry of the said Acts, s 6 of the General Clauses Act would enable the ascertainment of the extent of liability for the evaded premia by an officer who was authorised when the Acts were in force even after the expiry of the Acts.[32] That principle behind s 6 of the General Clauses Act is that all the provisions of the Acts would continue to be in force for the purpose of enforcing the liability incurred when the Acts were in force and any investigation, legal proceeding or remedy, may be instituted, continued or enforced as if the Acts had not expired.[33]

Similar was the view expressed by Govind Nair CJ in *Gwalior Rayon Silk Mfg (Wvg) Co Ltd v Union of India*.[34]

32 Re Emergency Risks (Goods) Insurance Act 1962, the following cases lay down the same principle: *Marikar Motors Ltd v Chief Enforcement Officer* AIR 1973 Ker 2, 7, 1972 Ker LR 482 (DB); *Eastern Bihar Divisional Chamber of Commerce and Industry, Bhagalpur v Chief Enforcement Officer* AIR 1972 Pat 314, 319–26, (1972) ILR 51 Pat 978 (DB); *Tarunesswar Sarma v Enforcement Officer* 1974 Assam LR 245, 258 (Gau).

33 *Eastern Bihar Divisional Chamber of Commerce and Industry, Bhagalpur v Chief Enforcement Officer, Government of India* AIR 1972 Pat 314, 42 FJR 573.

34 AIR 1976 Ker 68, (1975) ILR Ker 444, 1975 KLT 887; relying on *Marikar Motors Ltd v Chief Enforcement Officer* AIR 1973 Ker 2, 1972 Ker LR 48. In both these cases, the decision of the Madras High Court in *Stoneware Pipes Ltd v Union of India* AIR 1971 Mad 442, 84 Mad LW 389 was dissented from. A view contrary to the Madras case in *Stoneware Pipes Ltd v Union of India* AIR 1971 Mad 442, 84 Mad LW 399, was taken in a Division Bench case of the Patna High Court in *Eastern Bihar Divisional Chamber of Commerce v Chief Enforcement Officer* AIR 1972 Pat 314, 42 Com Cas 371; and of the Andhra Pradesh High Court in *Union of India v Thammana Sitaramanjaneyulu* AIR 1971 AP 145, 1971 Lab IC 651 of the Allahabad High Court in *Raja Ram Om Prakash v Union of India* 1971 All LJ 231. The Kerala High Court had dissented from this Madras case also in *Gwalior Rayon Silk Mfg (Wvg) Co Ltd v Union of India* AIR 1975 Ker 178, which was earlier to that between same parties as reported in AIR 1976 Ker 68. The Madras case so dissented from by several High Courts had taken the view that the liability to pay premium evaded arises only on its determination, and a demand being made on the defaulter, where the proceedings for determination of premium and its recovery were taken under s 11 of the Act after its expiry, it was held, in the Madras case, that the said proceedings cannot be saved under s 1(3) of the Emergency Risks (Factories) Insurance Act as the proceedings are not in respect of a liability incurred or a right accrued prior to the repeal contemplated by s 6 of the General Clauses Act. The view of the Kerala High Court in its Division Bench decision in *Marikar Motor*'s case AIR 1973 Ker 2, dissenting from the Madras case was that if s 6 of the General Clauses Act is made applicable to the temporary Act, action taken before the expiry of the Act cannot only be continued but even fresh action can be initiated under the Act in respect of contraventions made while it was in force. This view was based in particular, on a passage in the Supreme Court in *Rayala Corpn Pvt Ltd v Director of Enforcement, New Delhi* AIR 1970 SC 494, (1970) 1 SCA 100, 1970 Cr

continued on the next page

In the earlier case of *Gwalior Rayon Silk Mfg (Wvg) Co v Union of India*[35] it was contended that the ascertainment of the premium payable or the premium evaded can only be for the purpose of enforcing the payment of the same and effecting an insurance of the goods or factories as contemplated by the Acts. While in a contract of insurance, the payment of premium is the consideration which must precede the contract, the ascertainment of premium subsequently in respect of an antecedent period expired, as was contended, fructifies in a contract of insurance. To do so, would be to reverse the order of things in a contract of insurance, as known to law, and if a contract of insurance cannot be constituted, ascertainment of premium, besides being purposeless and futile, would also become impossible. VP Gopalan Nambiar J found it difficult to appreciate this argument and held that even assuming that in the light of the investigation into the premium evaded or payable, a contract of insurance cannot come into existence, the court would not be justified in staying the hands of authorities from investigating what the Act permits them to investigate under the provisions of the Emergency Risks (Factories) Insurance Act (1962). Nambiar J while repelling this contention took support from the ruling in *Union of India v Thammana Sitaramanjaneyulu*,[36] holding that insurance may be either contractual or statutory, and nothing prevented a statutory insurance resulting, in respect of an antecedent period, in the determination of premium payable or evaded, ascertained subsequently, and that such a contract of insurance would not fall outside the Legislative Entry 47 of List 1 of the Seventh Schedule of the Constitution.

As to the argument that a contract of insurance cannot fructify and, therefore, ascertainment of premium is futile and illegal, Nambiar J answered that even assuming that premium is consideration for the insurance, there is no reason to hold why the same cannot be subsequently ascertained where the premium was only promised but not paid.

28. REMOVAL OF PREVIOUS DISABILITY

Section 6 of the General Clauses Act preserves only: (a) the previous operation of the repealed enactment; (b) rights, privileges, obligations and liabilities acquired, accrued or incurred under the enactment repealed; and (c) investigations, legal proceedings and remedies in respect of any such right, privilege, obligation, or liability.

The position is however, entirely different when a previous disability entailing under the repealed statute is removed by the repealing statute.

LJ 588, 1970 Mad LW (Cr) 75, [1970] 1 SCR 639; distinguishing the view of the Federal Court taken in *JK Gas Plant Mfg Co (Rampur), Ltd v King-Emperor* AIR 1947 FC 38, 1947 FCR 141, 84 Cr LJ 886.

35 AIR 1976 Ker 68.

36 AIR 1971 AP 145, 1971 Lab IC 651.

What s 6 seeks to preserve, continue, or save is confined to the rights, privileges, obligations and liabilities, but the application of this section can hardly be made to extend to continuing a previous disability which the repealing statute has sought to remove.

The saving of previous disability would amount, as it can best be put in the words of Jagannadhadas J, in *Indra Sohanlal v Custodian of Evacuee Property, Delhi*,[37] to the future operation of the previous law instead of previous operation of the repealed law.

The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act (Uttar Pradesh Act 13 of 1972) had effected the repeal in wholesale of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act 3 of 1947. But the repealing Act, vide its s 43(2)(h) stated that:

> notwithstanding the repeal of the earlier Act, any court before which any suit or other proceeding relating to the...eviction from any building is pending immediately before the commencement of this Act may on application being made to it within 60 days from such commencement, grant leave to any party to amend its pleadings in consequence of the provisions of this Act.

This definitely indicates that it is the later Act that must govern the pending proceedings for recovery of possession or recovery or fixation of rent. The different intention as contemplated under s 6 of the General Clauses Act is writ large on the face of the above provision and this evidently leaves no room for the application of s 6 of the General Clauses Act. Consequently, there was nothing to save the rights or privileges provided for under the repealed statute nor could anything be read in the above provision to have continued the disability created under s 3 of the repealed statute.

Section 3 of the above repealed statute had provided:

> No suit shall, without the permission of the district magistrate, be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds...

This was in the nature of a procedural disability and not a substantive cause of action that was created. The disability, which was imposed by the previous law having been removed, there was nothing that stood in the way.[38]

A ruling which lends support to the above position is in *Boddington v Wilson*[39] dealing with a case where the landlord of a holding served on the tenant a notice to quit without the consent in writing of the Minister of Agriculture and Fisheries, as required by Regulation 62(4A) of the Defence (General) Regulation 1939. Before the expiry of the period of notice, the Defence Regulation Order 1948, revoked the earlier regulation. Dealing with s 38 of

37 AIR 1956 SC 77, 84.

38 *Haripadapal Ghosh v Tofajaddi Ijardar* ILR 60 Cal 1438, AIR 1934 Cal 80.

39 [1951] 1 All ER 166, 169.

the Interpretation Act 1898, which corresponds to s 6 of the General Clauses Act, Evershed MR disposed of the contention that the repeal would not affect anything duly done under another statute, because the protection envisaged under the previous regulation could not be described as a 'right' or a 'privilege' of the tenant or the limitation of the landlord's right, nor could it be regarded as a penalty or punishment. The court concluded that the notice to quit was valid because of the repeal of the regulation requiring consent.

Relying upon the above authority, VR Krishna Iyer J, held in *Qudorat Ullah v Bareilly Municipality*,[40] that:

> Let us assume for argument's sake that section 3 of the Act has conferred a right on the tenant in which case it survives by virtue of section 6 of the General Clauses Act. What follows? The survival of the right or the continuation of the operation of the Act to the proceedings is all that is ensured, not the expansion or extension of that right. For the normal life of the Act ie, till 30 September 1972, the dispossession of the tenant is permissible only if the grounds in section 2 are satisfied by the landlord. This right is circumscribed in content to conditions set out and limited in duration to the period, beyond which the Act does not exist. To hold otherwise would be to give more quantum of right to the party than he would have enjoyed had the repeal not been made. Not to affect the previous operation cannot be converted into sanctioning subsequent operation. To read postmortem operation into a temporary Act because of a premature repeal of it is wrong.

29. *EX POST FACTO* LEGISLATION

Article 20(1) of the Constitution of India states:

> No person shall be convicted of any offence except for violation of a law in force at the time of the commission of that Act charged as offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

The Supreme Court pointed out in *GP Nayyar v State*[41] that:

> What is prohibited under the above article is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from that obtained at the time of the commission of the offence or by a court different from that which had competence at the time

40 (1974) 1 SCC 202, AIR 1974 SC 396, 403.

41 AIR 1979 SC 602, 603, (1979) 1 Serv LR 281, 1979 Cr LJ 587, 1979 Cr App Rep (SC) 88, 1979 Cr LR (SC) 41, (1979) 2 SCC 503, 1979 LS 41 (SC), 1978 Serv LC 154, 1978 SLWR 413, 1979 SC Cr R 218, (1979) SCC (Cr) 549, [1979] 2 SCR 816.

cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure except insofar as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved.

The effect of the Anti-Corruption Laws Amendment Act 16 of 1967 is that the old procedure is revived and no new procedure is given retrospective effect and the procedural law so given effect to is not of a nature as to result in creation of a new offence. The offence that was committed was when s 5(3) of the Prevention of Corruption Act 1947 was in force and that Act 16 of 1967 had only revived the procedure and it was not as if the procedure was brought into force for the first time. What was done was no more than reiterating the effect of s 6(a) of the General Clauses Act.

30. APPLICABILITY TO PREVENTIVE DETENTION

In case of preventive detention no offence is committed but the apprehended commission of offence is prevented. The very wording of s 6(d) and (e) is such that it makes clear that s 6 of General Clauses Act is not applicable to preventive detention. The preventive detention, as against punitive detention, requires existence of the law authorising the detention and the General Clauses Act can be invoked only when the law under which the detention has been ordered is repealed and repealing Act makes a provision of continuance. But when the law becomes void the detention becomes illegal. When s 6 of General Clauses Act expressly refers to the effect of a repeal of an Act it does not mean repeal of a void law.[42]

31. DOCTRINE OF IMPLIED REPEAL

The doctrine of implied repeal is based on the postulate that the legislature intends to remove confusion by retaining conflicting provisions. The intention of the legislature may be gathered by examining the object and scope of two enactments. But in a conceivable case, the very existence of the two provisions may by itself lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to a matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary.[43]

The ingredients for the offences under s 12 of Passports Act 1967 and for the offences under ss 419 and 420, Indian Penal Code, are not the same.

42 *Showkatunnissa v State of Hyderabad* AIR 1950 Hyd 20, 23, 35, (1951) ILR Hyd 237 (FB).
43 *Ratan Lal Adukia v Union of India* AIR 1990 SC 104, 110.

Hence there can be no inference of implied repeal of ss 419 and 420 of Indian Penal Code by s 12 of the Passports Act 1967.[44] Similarly, where an Act has an overriding effect, the rules framed under another Act does not make ineffective, the government order issued under the former on the ground of the principle of implied repeal.[45]

32. DOCTRINE OF DESUETUDE

The doctrine of desuetude was held applicable in India also.[46]

Section 6A. Repeal of Act Making Textual Amendment in Act or Regulation—Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion, or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

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1. SCOPE

In regard to the repeal of an amending Act under s 6A, the amendment already effected in the original Act is not repealed unless there is a contrary intention express or implied in the repealing Act.[47] The same principle has been held to be applicable to one statute incorporated by reference into a

44 *Rajendra K Sethia v State* (1988) 92 CWN 670.

45 *Amali English Medium High School & Anor v Government of Andhra Pradesh & Ors* AIR 1993 AP 338, 346.

46 *Municipal Corpn for City of Pune v Bharat Forge Co Ltd* (1995) 3 SCC 434

47 *Kariappa Bhargavathi v Devassy* 1969 KLT 633; *Bashir Miyan v Khatun Bibi* 1963 BLJR 719, 721 (proviso to s 488 of the Cr PC 1898; since repealed and added by the amending Act 9 of 1949; not removed by the amending Act 9 of 1949 being itself repealed by the amending Act of 1952; *Phagumal v Monnoomal* 1956 Raj LW 523, (1955) ILR 5 Raj 602, AIR 1955 NUC (Raj) 254 (s 59 of the Displaced Persons (Debts Adjustment) Act 1951, not intended to repeal Act 68 of 1950 but repeals only the Displaced Persons (Institution of Suits) Act 1948).

second statute so that when a third statute repeals the first, the second is kept intact.[48]

This section deals with the effect of repeal of amending Act, and means in terms that when the provisions of an amending Act have duly been incorporated in the amended Act by omission, insertion or substitution of any matter in the amended Act, then, even though the amending Act is repealed, the omissions, insertions or substitutions thereunder made already in the amended Act, shall not be unhinged but shall continue to be in operation. But this general statement is made subject to the condition 'unless a different intention appears' in the Act that has repealed an amending Act. Reference for exposition of this principle may be made to *Avril Alien Smith v Reginald Trank Smith*,[49] where it was observed that if the jurisdiction conferred on a court by a certain Act is sought to be taken away, not by amending that Act, but by passing a subsequent Act which is, later on, repealed. The ban so placed on jurisdiction by the subsequent Act is thereby renewed and the jurisdiction of the courts rebounds to its original size.

In the words of the Judicial Committee of the Privy Council 'this doctrine finds expression in a common form section which regularly appears in the Amending and Repealing Acts.[50] The Judicial Committee said:[51]

> The independent existence of the two Acts is, therefore, recognised; despite the death of the parent Act, its offspring survives in the incorporating Act...

The Supreme Court reiterated by observing that where a statute is incorporated by reference into a second statute, the repeal of the first does not affect the second.[52]

This, in other words, means that the amendments which have already been brought into the main Act are not affected by the repeal of the amending Act itself because the amendments so incorporated thereby would amount to 'anything duly done' under the repealed amending Act. Section 6A, therefore, states in specific terms, as regards the repeal of an amending Act, what was already stated in general terms in cl (b) of s 6. The care which the repealing Act takes in removing inconsistencies is to make it express that the repeal shall not affect the amendment already planted in the main Act but even if it has not done that, the amendment so planted could have otherwise been saved by s 6(b) as much as it shall be saved by enactment of s 6A of the General Clauses Act.

48 *RK Berry v State of Uttar Pradesh* 1974 All LJ 354, 357 (incorporation of Uttar Pradesh Act 3 of 1947 in Act 46 of 1954 not affected by repeal of Act 3 of 1947 by Uttar Pradesh Act 13 of 1972).

49 AIR 1954 All 624, 626, 1954 All WR 322 (HC).

50 *Secretary of State v Hindustan Co-op Insurance Society Ltd* AIR 1931 PC 149.

51 Ibid.

52 *Ram Sarup v Munshi* AIR 1963 SC 553, [1963] 3 SCR 858.

In the same way, the repeal of an Act does not repeal such portions thereof as have been incorporated into another Act. The incorporated portions stay even if the Act directing incorporation has itself been repealed.[53]

This section, read with s 6(a), has been held not to have revived the old s 36 of the Industrial Disputes Act 1947 merely because Act No 48 of 1950, which had substituted this section in place of the original, was itself repealed by Act 36 of 1956, amending also the said substituted s 36.[54]

The proviso to sub-s (1) of s 53 of the Madhya Pradesh Co-operative Societies Act, since it was in operation at commencement of the Madhya Pradesh Nirsan Adhiniyam 13 of 1979, was held to be intended to remain as part of the principal Act, and the amendment Act 8 of 1970 was removed as having become unnecessary.[55]

2. OBJECT OF REPEALING AN AMENDING ACT

A very important question considered in the context of this section is whether the repeal of an amending Act shall affect the amendments already brought into the main Act. This section has answered this question in the negative making this answer subject to the condition that there be nothing in the intendment of the repealing Act to the contrary.

TC Raghavan CJ in *Raman Sahdevan v R Kesavan Nair*[56] has, in elucidating the function of such temporary statutes, quoted a passage from the judgment of Chakravarti CJ of the Calcutta High Court in *Khuda Bux v Manager, Caledonian Press*,[57] as follows:

> Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts because, having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only objects of such Acts which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care...

The above passage has been approved by the Supreme Court in *Jethanand Betab v State of Delhi*.[58]

53 *Md Safi v State of West Bengal* AIR 1951 Cal 97, 99, 55 CWN 463.
54 *Pheroos & Co Pvt Ltd v Presiding Officer, Labour Court, Gauhati* 1972 Lab IC 113, 1971 Assam LR 337 (DB).
55 *Raghunath v State of Madhya Pradesh* 1982 Lab IC 275, 277.
56 AIR 1973 Ker 136, 1972 Ker LJ 983, 1973 KLT 37, 1973 Ker LR 62, 1973 RCJ 180, 1973 RCR 401.
57 AIR 1954 Cal 484, 58 CWN 560.
58 AIR 1960 SC 89, 1960 Cr LJ 160.

The purpose of an amending Act, as observed by TC Raghavan J in *Raman Sahdevan v R Kesavan Nair*,[59] is to plant the necessary amendments in the parent or the main Act, and once such planting has been effected, the planting Act (the amending Act) having served its purpose, need not remain any more to tend the plant, as it were; the plant has taken root in the main Act, and thereafter, the amending Act has only to be repealed: If an amending Act is so repealed by a repealing Act, the repeal does not affect the plant, the amendment having been already planted in the main Act.

The Supreme Court, while approving, in *Jethanand Betab*'s case,[60] the observations made by Chakravarti CJ in *Khuda Bux v Manager, Caledonian Press*,[61] has added by saying that the main object of the repealing Act is only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of the ever-increasing state of legislation; and to remove confusion from the public mind is only to expurgate the amending Act which had served its purpose. Of course, the repealing Act takes care to remove inconsistencies, if any.

3. MEANING OF 'TEXTUAL'

The word 'text' in its dictionary meaning means 'subject or theme'. When an enactment amends the text of another, it amends the subject or theme of it, though sometimes it may expunge unnecessary words without altering the subject. Therefore, the word 'text' is comprehensive enough to take in the subject as well as the terminology used in a statute.[62]

This section refers to textual amendments and clarifies the effect of repeal of amending statutes. It is a well-settled provision of law that repeal of a statute does not repeal such portions of the statute as have been incorporated into another statute. Even if the original Act is repealed the incorporated section or sections, still operate in the later Act. As the definition of 'local authority', so far as it related to a municipal board which existed in the Uttar Pradesh Pure Food Act 1950, was incorporated in the Prevention of Food Adulteration Act 1954, it was not repealed and this incorporated definition was, therefore, operative even after the Uttar Pradesh Pure Food Act was repealed.[63]

The rule is that when a subsequent Act amends an earlier Act in such a way as to incorporate itself, or a part of itself, into such earlier Act, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency, or absurdity) as if the altered words

59 AIR 1973 Ker 136.
60 AIR 1960 SC 89.
61 AIR 1954 Cal 484.
62 *Jethanand Betab v State of Delhi* AIR 1960 SC 89.
63 *Municipal Board, Lucknow v Ram Autar* AIR 1960 All 119; *Hukam Chand Mills Ltd v State* AIR 1956 MP 195.

had been written into the earlier Act with pen and ink and the old words scored out so that, there is no need thereafter to refer to the amending Act at all.[64] Textual amendments become part of the amended Act and even the repeal of the amending Act does not affect the textual amendments so incorporated into the principal Act.[65] Thus, where the Amendment Act 9 of 1949 inserted the words 'if a husband has contracted marriage with another or keeps a mistress, it shall be considered to be a good ground for his wife's refusal to live with him' in the First Proviso to sub-s (3) of s 488 of the Criminal Procedure Code 1898 and subsequently the amending Act was repealed, it was held that those words must continue in the section in spite of the repeal of the Act which had inserted them by virtue of s 6A.[66]

It is true that the textual amendments become part of the amended Act but this is not the same thing as saying that the amendment itself must be taken to have been in existence from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication.

Whenever an amended Act has to be applied subsequent to the date of the amendment, the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part.[67] As a result the repeal of an amending Act does not have the effect of destroying the amendment.[68]

Thus, in Himachal Pradesh the State Courts Act of 1943 provided for the hearing of the original cases (both civil and criminal), appeals and revision, the chief judicial officer's court being a court analogous to that of a High Court. This Act was replaced by the Himachal Pradesh (Courts) Orders 1948, which was promulgated by the Central Government thereby consolidating and amending the law relating to courts in that state. Subsequently, the dominion legislature passed the Merged States (Laws) Act 1949 whereunder certain laws were extended and enforced in chief commissioner's provinces

64 *Shamrao v District Magistrate, Thana* AIR 1962 SC 324; *State of Orissa v Gelli Dei* (1961) 27 Cut LT 59, (1960) 2 OJD 522; *Karunakaran v Deputy Superintendent of Central Excise* AIR 1961 Ker 93, 95, 1960 KLT 934 (DB) (word 'confiscation' in s 12 of Central Excise Act 1944, indicative of incorporation of rules regarding confiscation under the Sea Customs Act 1878); *State v Ardeshir Harmusji Bhiwandiwala* AIR 1956 Bom 219, 223, 1956 Cr LJ 488, 58 Bom LR 66 (DB) (incorporation of amendment not to be inconsistent or repugnant to the incorporating Act); *Hukam Chand Mills Ltd v State of Madhya Pradesh* AIR 1959 MP 195, 200; *Consumer Education and Research Society, Ahmedabad v Union of India & Ors* AIR 1995 Guj 133.

65 *Ram Narain v Simla Banking and Industrial Co Ltd* AIR 1956 SC 621.

66 *Bashir Mian v Khatoon Bibi* 1963 BLJR 719.

67 *Ram Narain v Simla Banking and Industrial Co Ltd* AIR 1956 SC 604, 621.

68 *Shree Gopal Paper Mills v Ram Labhaya* AIR 1960 Punj 375.

as mentioned in the schedule which included the Code of Civil Procedure. In *Kewal Ram v Bhagwan Dass*,[69] it was contended that the provisions relating to appeals and revisions contained in paras 31, 32, and 35 of the Himachal Pradesh (Courts) Orders 1948, being the law corresponding to the provisions in ss 96, 100, and 115, CPC, the provisions under the Himachal Pradesh (Courts) Orders stood repealed by those in the CPC. Now, even if it is supposed for argument's sake that by s 5 of the Merged States (Laws) Act 1949, the Himachal Pradesh (Courts) Orders 1948 was repealed, that repeal will not be deemed, in view of the provisions of s 6A, General Clauses Act 1897, to have affected the continuance of the aforesaid provisions of the Himachal Pradesh (Courts) Orders relating to appeal and revisions. Inserting the relevant provisions into s 6A, General Clauses Act, and making slight verbal changes for purposes of the present case, it will read as follows:

> The Merged States (Laws) Act 1949, made after the commencement of the General Clauses Act, having repealed the Himachal Pradesh (Courts) Orders 1948, by which the text of the State Courts Act 1943 was amended by substitution of paras 31, 32, and 35 of the said order for sections 31, 32, and 35 of the said 1943 Act, and a different intention not appearing in the said 1949 Act, the repeal does not affect the continuance of the said amendments in the State Courts Act 1943 made by the Himachal Pradesh (Courts) Orders 1948, so repealed and in operation at the time of such repeal ie, on 1 January 1950.

The repealing and amending Act of 1952 was designed to secure two ends, viz, to repeal certain enactments and to preserve certain others. It repealed the Criminal Procedure Code, Second Amendment Act of 1949 and obliterated it completely from the records of Parliament, but at the same time, it declared in s 4 that though the Act of 1949 had been repealed, the substantive portion of the Act of 1949, which was incorporated in CrPC, and which became a part and parcel of it, continues to remain intact.[70]

Section 7. Revival of Repealed Enactments—(1) In any [Central Act][71] 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.

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

69 AIR 1951 HP 61; *Re Arunagirinatha* AIR 1939 Mad 21; *Secretary of State v Hindustan Co-op Insurance Society* AIR 1931 PC 149; *Mohd Safi v State of West Bengal* AIR 1951 Cal 97.

70 *Mohd Habib v Mohd Usuf* AIR 1959 MP 105.

71 Substituted by AO 1937 for 'Acts of Governor-General-in-Council'.

SYNOPSIS

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1. SCOPE OF SECTION

Two successive repeals have been envisaged by s 7 and both should be repealing Acts. This has well been illustrated in *Queen Empress v Madasami*.[72] When, however, a provision repealing another has itself been held to be unconstitutional, that another is not thereby revived.[73] The law in India embodied in s 7 of this Act is the same as the law in England.[74] It recognises the competence of the legislature, in its plenary powers, to revive or to re-enact a legislation which had already expired by lapse of time, or to enact legislation retrospectively.[75] It lays down that if any enactment is repealed wholly or partially and if it is desired that any part of the repealed enactment be revived, then it shall be necessary to state that fact specifically.[76] So, where a substituted rule is held invalid, the old rule, unless so stated specifically, does not revive automatically.[77] In the absence of any specific provision, the general principle is that a law repealing another law does not revive the earlier repealed law.[78] In such a case, the nature of the validating Act will have to be determined neither by its name nor by its form but by its substance.[79] For example, when the Supreme Court,[80] had struck down the carry forward rule

72 (1889) ILR 12 Mad 94–96, 1 Weir 875 (FB).

73 *C Rudra Gowda v Angadi Chikkanna* AIR 1972 Mys 199, 201–02, (1972) 1 Mys LJ 310 (DB); overruling *Venkatappa v SN Venkateshaiah* AIR 1972 Mys 119; but approving *Rangaswami v Shah Krishnaji Valaji & Co* (1971) 1 Mys LJ 350.

74 *Deputy Legal Remembrancer v Ahmad Ali* ILR 25 Cal 333; *Baldeo Singh v State* AIR 1951 MB 149, 153; *Hari Mahadaji Savarkar v Balambhat* ILR 9 Bom 233.

75 *Kedar Nath Gupta v Nagindra Narayan Sinha* AIR 1954 Pat 97, 100, 1953 BLJR 550.

76 *Re Jewa Nathoo* AIR 1917 Cal 243, 245.

77 *ATB Mehtab Majid & Co, Firm v State of Madras* AIR 1963 SC 928, 932, (1964) 1 SCJ 355; *Vishwa Nath v State of Mysore* 1974 Lab IC 567, 570, (1973) 1 Mys LJ 284 (DB) (wrt r 6(4)(b) of Mysore State Civil Services (General Recruitment) Rules 1957, as it stood before amendment, not to revive amended clause since declared void); *Re General Clauses Act 1 of 1868* (1874) 7 Mad HCR Ap 8, 9, 1 Weir 781 (repeal of s 2 and the Sch 3 of General Stamp Act of 1869, by repealing Act 14 of 1870 not to revive portion of Stamp Duties Act of 1862, as earlier repealed by the 1869 Act)

78 *Ameerunnisa Begum v Mehboob Begum* AIR 1955 SC 352, 362; *Niranjan Lal v Govind Narain* (1961) ILR 11 Raj 93; *Dy Legal Remembrancer v Ahmad Ali* ILR 25 Cal 333, 2 CWN 11.

79 *Amalgamated Coalfields Ltd, Calcutta v State of Madhya Pradesh* AIR 1967 MP 56, 62, 74–75, 1966 MPLJ 824 (DB) (Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam 1964, s 3).

80 *Dev Dasan v Union of India* AIR 1964 SC 179.

as substituted by the Government of India, in 1955, in place of the carry forward rule of 1952, it cannot be said that the carry forward rule of 1952 was revived, though the judgment of the Supreme Court did not affect the year-to-year reservation of government posts for scheduled castes and schedule tribes candidates, including such reservations either in 1952 or in 1955.[81] Where the legislature expresses no intention of reinstating the original statute, the fact that the repealing provisions itself has been repealed, would not have the effect of restoring the original provision to the statute book—once repealed it is always repealed unless expressly restored or reinstated.[82] The same principle would apply even when the repealing Act has been held to be invalid. Thus, when a substituted rule has been held to be invalid, the old rule is not revived.[83] It is, however, well-settled that this rule of construction does not apply to temporary or expiring statutes which lapse at a certain date or on the happening of a certain contingency.[84]

Mistakes in subordinate legislation in referring to the parent Act have to be disregarded.[85]

Section 7 of the Bombay General Clauses Act 1904, as has been held in *Adambhai v Adam Malkha*,[86] applies to the repealing part of Gujarat Agricultural Lands Ceiling Act 1961.

2. CONSEQUENCES WHEN NO EXPRESS INTENTION TO REVIVE

By the Hindu Women's Right to Property Act 1937, the widow is given a share in the joint coparcenary property equal to that of her husband or son and she has a right to claim the said share. This Act was repealed by s 31 of the Hindu Succession Act 1956, and apparently she would lose her right to claim her share. Section 31 of the said Act was repealed by Act 58 of 1960. But there is nothing in Act 58 of 1960 showing that the Act which was specifically repealed by s 31 was to be revived. Under s 7 of the General Clauses Act, in the absence of any specific words stating that such an Act would be revived, the result would be that the Act which was repealed by s 31 cannot revive even when s 31 was repealed.[87] The Hyderabad Enfranchised Inams Act 1952 was repealed by Andhra

81 *BN Tewari v Union of India* AIR 1965 SC 1430, 1432.
82 *Syed Shamshuddin v Munira Begam* AIR 1963 AP 459.
83 *ATB Mehtab Majid & Co, Firm v State of Madras* AIR 1963 SC 928.
84 *Karim Saha v Mst Zinat Bibi* AIR 1941 Lah 175; *Surjan Singh v Government of East Punjab* AIR 1957 Punj 265, 270.
85 *State of Uttar Pradesh v M/s Dulichand* AIR 1967 All 349–50, (1967) ILR 1 All 68 (DB) (notification referring to Sales-tax Laws Validation Ordinance 3 of 1956, construed as referring to the Act of 1956 which repealed the ordinance).
86 AIR 1968 Guj 64, 8 Guj LR 577.
87 *Vidyaben v JN Bhatt* AIR 1974 Guj 23, 27, 29.

Pradesh (Telangana Area) Abolition of Inams Act 1955 whereof s 1(3) was amended by Act No 10 of 1956, but ultimately the Andhra Pradesh (Telangana Area) Abolition of Inams Act 1967 had repealed both the Acts of 1955 and 1956 without any saving clause. It was held that all this had no effect of reviving the 1952 Act.[88]

In *Kewal Chand Mimani (deceased) v SK Sen & Ors,*[89] it was held that the two concepts of acquisition and requisition cannot but be ascribed to be totally distinct and independent. While the concept of acquisition involves an element of permanence and finality involving a transfer of title, the concept of requisition is merely to take over the domain or control over the property without acquiring the rights of ownership and must be of temporary duration by its very nature. It was further held that:

> The Statute (West Bengal Land Acquisition and Requisition Act 1948) in the present context, invalidates itself by the reason of the expiry of period and as such none of the provisions could be invoked. Expiry by efflux of time will have its effect as if it stands repealed and the law is well-settled in regard thereto, since the true effect of the word 'repeal' connotes 'as if not there' in the statute book. The assessment of intention of legislature of a repealed statute does not and cannot arise, more so having regard to the fact of the matter under consideration.

In this case, the issue pertained to the state government's obligation to restore possession of the premises requisitioned after termination of the requisition proceedings, namely, to the owner or to the tenants or lessees from whom possession was taken on the date of the relevant order.

The same view has been taken in *Hari Singh v Suresh Kanwar.*[90] The view is based on the principle propounded in *Maxwell's Interpretation of Statutes,*[91] stating that:

> Where an Act repealing, in whole or in part, a former Act, is itself repealed, the last repeal does not now revive the Act or provisions before repealed, unless words be added reviving them.

The principle propounded by Maxwell had received an affirmation by the Supreme Court in *Ameer-un-Nissa v Mehboob Begum,*[92] observing that:

> It may indeed be said that the present rule is the result of the statutory provisions introduced by the Interpretation Act of 1889 and as we are not

88 *SV Jagannath Rao (Raja) v State of Andhra Pradesh* (1972) ILR AP 373, (1972) 1 Andh LT 270.

89 AIR 2001 SC 2569, 2573, 2575–76, (2001) 6 SCC 512.

90 AIR 1974 Raj 197, 1974 Raj LW 246.

91 10th edn, p 402.

92 AIR 1955 SC 352.

bound by the provisions of any English Statute, we can still apply the English Common Law rule if it appears to us to be reasonable and proper. But even according to the common law doctrine, the repeal of the repealing enactment would not revive the original Act if the second repealing enactment manifests an intention to the contrary.

3. CONSEQUENCES WHEN REPEALING ACT STRUCK DOWN

Once an old rule has been substituted by a new rule, the old one ceases to exist and it does not automatically revive up on the new rule becoming invalid,[93] or on being struck down.[94] In view of this decision, *Venkatappa v SN Venkateshaiah*[95] is deemed to be overruled.

By the operation of the Hyderabad Abolition of Inams Act (8 of 1955), the *inams* granted to the *inamdars* became vested in the government. The Act was thereafter amended by Act 10 of 1956. The 1955 Act as amended in 1956 was thereafter repealed by the Andhra Pradesh (Telangana Area) Abolition of Inams Act (9 of 1967). The Repealing Act of 1967 was ultimately struck down by the High Court. In *Mohd SH Khan v State of Andhra Pradesh*,[96] it was contended that the effect of striking down Act 9 of 1967 by the High Court was not to revive Act 8 of 1955 as amended by Act 10 of 1956. In fact, what the High Court did in declaring Act 9 of 1967 as void was that the Act was non est and that no such law could be passed in respect of a subject matter which had already vested in the government, and in doing that the High Court could not have intended to say that the Abolition Act of 1955 as amended in 1956 did not revive. In the light of what the High Court had done, the Supreme Court, speaking through Jaganmohan Reddy J, held that, in this case, the legislature had attempted to do something which it could not have done, namely, to have abolished *inams* which did not exist and which had already vested in the government and which the legislature could not abolish again. In these circumstances, the repeal of an enactment, which had already been given effect, was a device for depriving the *inamdars*, whose rights of compensation had been abolished, and it cannot have the effect as if it had repealed the previous Acts. On this analysis, the provisions of Act 8 of 1955 as amended by Act 10 of 1956 could not be held to have been repealed at all and, therefore, they are in existence.

The principle underlying the consequences of the unconstitutionality of a repealing Act, simply stated, is that it is only when a repealing statute is

93 *ATB Mehtab Majid & Co, Firm v State of Madras* AIR 1963 SC 928, (1964) 1 SCJ 355.

94 *DM Thippeswamy v State of Mysore* (1971) 1 Mys LJ 43 (wrt appeal of Mysore Agriculturists Relief Act 1928).

95 (1971) 2 Mys LJ 348, AIR 1972 Mys 119.

96 AIR 1974 SC 1480, (1974) 2 SCC 376.

validly made that the repealed statute will be superseded, but if the repealing statute is itself invalid for any reason, the repealed statute will not be superseded but will continue to be in force.

Though a similarly worded principle can be found in a bench decision of the Mysore High Court in *CM Gopal Setty v Channarayapatna Town Municipality*,[97] yet, with all deference to the honour of that High Court, it cannot be said that it has been possible for it to come out of its muddled thought, and it would be abundantly clear by the following discussion in relation to the various cases decided by the High Court that it has not yet been possible for it to come to the moorings of a correct line of thought on this point.

The above Bench decision of the Mysore High Court in *CM Gopal Setty*'s case[98] had relied upon the Supreme Court decision in *Mul Chand Odhavaji v Rajkot Borough Municipality*.[99]

The facts involved in the above Supreme Court decision were that in 1948, when several states of the then Kathiawar entered into a covenant and formed the State of Saurashtra, the Rajpramukh promulgated an ordinance adopting and applying the Bombay Municipal Boroughs Act 1925 to the State of Saurashtra and framed bye-laws and rules under that Act, to be in force until each municipality in that state could make its own bye-laws. The Rajkot Borough Municipality had made its own rules and bye-laws. This led the government to issue a notification deleting the name of that municipality from the schedule of those Municipalities in which the rules and bye-laws made by the government were in force, with the result that the rules and bye-laws framed by that Municipality, instead of those framed by the government, would operate in relation to the affairs of that Municipality. However, the rules and bye-laws framed by Rajkot Borough Municipality were held to be invalid. It was contended before the Supreme Court, that the rules and bye-laws made by the Municipality were invalid and that the rules and bye-laws made by the government under that ordinance no longer applied, and as such the municipality had no power to levy any octroi or other duty.

The Supreme Court repelled that contention and held that the government rules would cease to apply from the time the Rajkot Borough Municipality brought into force its own bye-laws and rules under which it could validly impose and recover octroi duty, and if the rules and bye-laws made by that municipality could not legally be in force for some reason or the other, the government rules would continue to operate as it could not be said that the municipality had 'put into force its independent bye-laws', with the result that the octroi rules framed by the municipality having been found to be

97 (1970) 1 Mys LJ 278.
98 Ibid.
99 AIR 1970 SC 685.

invalid, the old octroi rules framed by the government are not superseded but continue to operate.

In an earlier case of the Mysore High Court,[1] Venkataswami J, had taken the view that:

> On the Mysore Agricultural Debtors Relief Act 1966 being held to be unconstitutional by the High Court, the earlier Mysore Agriculturists Relief Act 1928, which was repealed by the 1966 Act, did not stand revived.

The above view could be deemed as overruled in view of the later Bench decision of the Mysore High Court in *CM Gopal Setty v Channarayapatna Town Municipality*,[2] as also the Supreme Court judgment in *Mul Chand Odhavji*'s case.[3] In *Venkatappa v SN Venkateshaiah*,[4] the correct principle of law was reiterated in the following words:

> If the provisions of the Mysore Agricultural Debtors Relief Act of 1966 are declared unconstitutional and struck down, there is no Act by which the provisions of the Mysore Agriculturists Relief Act 1928 have been repealed. In that view, there is no question of the 1928 Act being revived, but the Act which repealed the 1928 Act enactment being held to be unconstitutional, it has to be held that the provisions of the Mysore Agriculturists Relief Act 1928 has not been repealed at all.

However, surprisingly enough, when the same question, namely, where an Act of legislature, repealing an earlier Act on the same subject is struck down as unconstitutional by any High Court, whether the earlier repealed Act does or does not revive, was once again posed before a bench of the Mysore High Court in *C Rudre Gowda v Angadi Chikkanna*,[5] the decision given in that case by ES Venkataramiah and MS Nesargi JJ, had put a seal of approval on the decision given by Venkataswami J, in *PV Rangaswami v Shah Krishnaji Valaji & Co*,[6] and overruled the decision given by HB Datar J, in *Venkatappa v SN Venkteshaiah*.[7] And this the Hon'ble High Court did without noticing the previous bench decision given by the same High Court in *CM Gopal Setty v Channarayapatna Town Municipality*.[8] Since the bench in *C Rudra Gowdas* case[9] did not at all notice the earlier bench decision in *CM*

1 *PV Rangaswamy v Shah Krishnaji Valaji & Co* (1971) 1 Mys LJ 350.
2 (1970) 1 Mys LJ 278.
3 AIR 1970 SC 685.
4 AIR 1972 Mys 119, (1971) 2 Mys LJ 348.
5 AIR 1972 Mys 199, (1972) 1 Mys LJ 310.
6 (1971) 1 Mys LJ 350.
7 AIR 1972 Mys 119, (1971) 2 Mys LJ 348.
8 (1970) 1 Mys LJ 278.
9 AIR 1972 Mys 199.

Gopal Setty's case,[10] it cannot be said that the decision in *CM Gopal Setty*'s case,[11] has at all been affected; and a really baffling position has come to emerge that there now exist, in the annals of one and the same High Court two Division Bench decisions and two single bench decisions, each diametrically opposed to the other, that is to say, the one bench decision in *CM Gopal Setty v Channarayapatna Town Municipality*,[12] followed by a single bench in *Venkatappa v SN Venkteshaiah*,[13] and another Bench decision in *C Rudre Gowda v Angadi Chikkamma*,[14] approving the single bench decision in *PV Rangaswami*'s case,[15] each in conflict with the other, on one and the same question whether the Mysore Agricultural Debtors Relief Act 1928 was revived when the Mysore Agricultural Debtors Relief Act 1966, which came into force on 1 April 1969, and which had by its s 64 repealed the 1923 Act, was struck down as wholly unconstitutional in the case of *DM Thippeswamy v State of Mysore*.[16]

The Bench sitting in *CR Gowda*'s case[17] did have before it the Supreme Court decision in *Mul Chand Odhavji*'s case,[18] but the bench sitting in *CR Gowda*'s case[19] had attempted in its own way to distinguish the Supreme Court decision in *Mul Chand Odhavji*'s case,[20] by observing that:

> The facts of *Mul Chand*'s case were different from the facts of the present case. The case before the Supreme Court was not one where certain rules and bye-laws which had ceased to be operative were revived on account of a decision of the court holding that a law, by reason of which the said rules and bye-laws had become inoperative, was illegal or unconstitutional. It is clear from the observations of the Supreme Court in that decision which reads:
>
> > There was no question of the government rules being revived, as in the absence of valid rules of the respondent-municipality they continued to operate.
>
> It is, therefore, clear that in the above decision, the Supreme Court was not concerned with a case where an Act of legislature which contained a provision repealing an earlier Act was later on struck down by a court as unconstitutional. Hence, the above decision is clearly distinguishable from the facts of the present case.

10 (1970) 1 Mys LJ 278.
11 Ibid.
12 Ibid.
13 AIR 1972 Mys 119.
14 AIR 1972 Mys 199.
15 (1971) 1 Mys LJ 350.
16 (1970) 1 Mys LJ 43.
17 AIR 1972 Mys 199.
18 AIR 1970 SC 685.
19 AIR 1972 Mys 199.
20 AIR 1970 SC 685.

The Bench of the Mysore High Court in *CR Gowda*'s case[21] thus concluded:

> ...The Mysore Agriculturists Relief Act 1928, which was repealed by section 64(2) of the Act[22] did not revive when the Act was struck down by this court...

The Bench was of the view that an Act, which is repealed by a subsequent Act, is taken out of the statute book immediately the repealing provision comes into force. The repealing Act could, as the bench observed, thereafter be revived or brought into force again only by following the procedure prescribed for making a law.

When the Mysore High Court Bench was sitting to decide the case in *C Rudra Gowda v Angadi Chikkanna*,[23] there could not surely, have been, before the judges constituting that bench, the later decision of the Supreme Court, in *Mohd SH Khan v State of Andhra Pradesh*,[24] and the above High Court Bench simply but mechanically, relied on the two Supreme Court decisions in *BN Tewari v Union of India*,[25] and in *T Devadasan v Union of India*.[26] But the later Supreme Court decision in *Mohd SH Khan*'s case[27] had itself noticed its earlier decisions in *BN Tewari*'s case[28] and in *T Devadasan*'s case[29] and had distinguished these two decisions under an observation as follows:

> The decision cited by learned advocate for the appellant in *BN Tiwari v Union of India*,[30] is inapplicable. In that case the Ministry of Home Affairs by a resolution in 1950, had declared reservation in favour of scheduled castes and tribes and had made a rule in 1952 for carry-forward, whereby the unfilled reserved vacancies of a particular year would be carried forward, for one year. In 1955, the above rule was substituted by another rule providing that the unfilled vacancies of a particular year would be carried forward for two years. The court held that when the 1952 carry-forward rule was substituted by another rule in 1955, the former rule ceased to exist when 1955 rule was declared unconstitutional in *T Devadasan v Union of India*,[31] as such there was no carry-forward rule in existence in 1960. In these circumstances, the question that was considered

21 AIR 1972 Mys 199.
22 1966 Act on the same subject.
23 AIR 1972 Mys 199, (1972) 1 Mys LJ 310.
24 AIR 1974 SC 1480, (1974) 2 SCC 376.
25 AIR 1965 SC 1430, [1965] 2 SCR 421.
26 AIR 1964 SC 179, (1965) 2 LLJ 650.
27 AIR 1974 SC 1480.
28 AIR 1965 SC 1430.
29 AIR 1964 SC 179.
30 AIR 1965 SC 1430, [1965] 2 SCR 421.
31 AIR 1964 SC 179.

was whether the carry-forward rule of 1952 could still be said to exist. This court took the view that the carry-forward rule of 1952 having been substituted by the carry-forward rule of 1955, the former rule clearly ceased to exist because its place was taken by the carry-forward rule of 1955. Thus by promulgating the new carry-forward rule of 1955, the Government of India itself cancelled the carry-forward rule of 1952. Therefore, when this court struck down the carry-forward rule as modified in 1955 that did not mean that the carry-forward rule of 1952, which had already ceased to exist because the Government of India itself cancelled it and had substituted a modified rule in 1955 in its place, could revive. In the case before us it has attempted to do something which the legislature could not do, namely, to abolish *inams* which did not exist and which had already vested in the government and which the legislature could not abolish again. In these circumstances, the repeal of an enactment, which had already been given effect to was a device for depriving the *inamdars,* whose rights had been abolished, of their right of compensation, and was accordingly struck down as still-born, null and void and as such unconstitutional from its inception, and cannot have the effect as if it had repealed the previous Act. On this analysis, the provisions of Acts of 1955 as amended by Act 10 of 1956 could not be held to have been repealed at all and, therefore, they are in existence.

The distinction between *BN Tewari*'s case[32] being in sequel to *T Devadasan v Union of India*[33] and *Mohd SH Khan*'s case[34] is not far to seek. In *BN Tewari*'s case[35] the carry-forward rule as a measure or policy was itself declared to be unconstitutional, which means that the subject matter of carry-forward was itself held to be unconstitutional. What the government did in 1955 was to adopt a measure of carry-forward in a form different from what it had adopted in 1952, but the measure remained all the same a measure of carry-forward, and when the subject matter of carry-forward was itself declared to be unconstitutional, it could make no difference in what form it was adopted in 1952 and to what form it was altered in 1955. It would have made a world of difference in *Mohd SH Khan*'s case[36] if the subject matter of abolition of *inams* as such could have been declared as unconstitutional. If the subject matter of abolition of *inams* were unconstitutional, it could have made no difference whether it was enacted in 1955 or re-enacted in 1967. But what was discovered is that the subject matter of abolition of *inams* as such in 1955 was not unconstitutional, but its re-enactment in 1967 was, because if the re-enactment were allowed to

32 AIR 1965 SC 1430.
33 AIR 1964 SC 179.
34 AIR 1974 SC 1480.
35 AIR 1965 SC 1430.
36 AIR 1974 SC 1480.

exist, it could have, on the one hand, uprooted the vesting of *inams* which had once vested in the government and could also, on the other hand, deprive the *inamdars* of their right of compensation which had already accrued to them. The distinction is not only fine but vital, and it makes little difference whether this distinction is applied to two measures adopted by the legislature in the form of statutory enactments or to two measures adopted by the executive under its rule-making power. If there is a lack of inherent jurisdiction or vires over the subject matter of a legislative or executive measure, it makes no difference how many times and in what various forms it is adopted, and all the measures come to at nought without any question of the very first of them being revived or continued in operation. But, if there is no lack of inherent competence or *vires*, then out of so many measures on that subject, the one which is visited by the evil of unconstitutionality is gone whereas the other or others are not affected but continue to operate. In the latter case, there is hardly any question of the application of the doctrine of revival. It is only a matter of a continued operation without any repeal.

It is, hence submitted that the Bench decision of the Mysore High Court in *CM Gopal Setty v Channarayapatna Town Municipality*[37] followed by the single bench in *Venkatappa v SN Venkteshaiah*[38] is good law whereas the character of good law cannot be ascribed to the bench decision of that High Court in *C Rudre Gowda v Angadi Chikkamma*[39] approving the single bench decision in *PV Rangaswami*'s case[40] and this is what a juristic conclusion inescapably emerges by a close study of the Supreme Court decisions in *BN Tewari*'s case[41] connected with *T Devadasan*'s case[42] and in *Mohd SH Khan*'s case.[43]

Section 8. Construction of References to Repealed Enactments— (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 instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where, before the 15 August 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then references in any Central Act or in any regulation or instrument to the provision

37 (1970) 1 Mys LJ 278.
38 AIR 1972 Mys 119.
39 AIR 1972 Mys 199.
40 (1971) 1 Mys LJ 350.
41 AIR 1965 SC 1430.
42 AIR 1964 SC 179.
43 AIR 1974 SC 1480.

so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

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1. GENERAL NOTE

The whole object of the General Clauses Act appears to be to preserve and maintain the legality of things done under previous Acts when changes are made in the law.[44] If the provisions of one statute are incorporated by reference in a second statute and the earlier statute is repealed, the second statute would continue to be in force with the incorporated provisions of the repealed statute treated as being in force as a part of it.[45]

The canon of construction enunciated in s 8 is of general application which can be made use of in the construction of charters of different High Courts.[46]

According to *Maxwell's Interpretation of Statutes*,[47] where the provisions of one statute are, by reference, incorporated in another and the earlier statute is afterwards repealed, the provisions so incorporated continue in force so

44 *Virendra Kumar v Crown* AIR 1951 Sim 216, 221: if the previous Act did not give a right of suit, but during the pendency of such a suit, a subsequent Act gave such a right, the right acquired by the defendant, viz of an immunity from a civil suit, cannot be taken away by a change in the law; *Gosta Behari v Nawab of Murshidabad* AIR 1932 Cal 207; *Budge Budge Municipality v Mongru Mia* AIR 1953 Cal 433 (SB); Government of India Act in cl (15) of Letters Patent is now art 225 of the Constitution; *Advance Insurance v Superintendent of Police* AIR 1969 Del 330.

45 *Narottam Das v State of Madhya Pradesh* AIR 1964 SC 1667, 1670, (1965) 2 SCJ 395 (definition adopted in an Act from an earlier Act remains unaffected even after the earlier Act has ceased to be effective).

46 *National Sewing Thread Co Ltd v James Chadwick & Bros Ltd* AIR 1953 SC 357, 360, (1953) SCJ 509; overruling *India Electric Works Ltd v Registrar of Trademarks* AIR 1947 Cal 49.

47 11th edn, p 393.

far as they form part of the second enactment.[48] Sometimes an Act of Parliament, instead of expressly repealing the words of a section contained in a former Act merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case, it has been said by Craies, *Statute Law*,[49] that:

> The rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second.

Section 8 makes this principle subject only to one condition: unless a different intention appears.

The principle may be illustrated by perusal of the following facts:

By the State of Himachal Pradesh Act 1970, Himachal Pradesh became a state on and from 25 January 1971. Section 24 of the Act amended the Advocates Act 1961, thereby providing for a Bar Council of Himachal Pradesh. The first bar council was constituted shortly thereafter, and its first meeting was held on 7 November 1971. An election was held and the list of elected candidates was verified and published in the Gazette on 26 May 1973. What is relevant for this purpose is that by virtue of s 24(5)(a) of the State of Himachal Pradesh Act, the rules made or deemed to have been made by the Bar Council of Punjab and Haryana and enforced immediately before the date on which the first Bar Council of Himachal Pradesh was duly constituted were, subject to such modifications and adaptations as were made therein by the Chairman of the Bar Council of Himachal Pradesh, to be deemed to be rules made by the Bar Council of Himachal Pradesh and were to have effect accordingly. At that time the rules governing the Bar Council of Punjab and Haryana were the Bar Council of Punjab (Constitution and Conduct of Business) Rules 1963, and the Bar Council of Punjab and Haryana Election Rules 1968. The Chairman of the Bar Council of Himachal Pradesh adopted the two sets of rules with certain modifications and adaptations. As a consequence, the Bar Council of Himachal Pradesh came to be governed by the above two sets of rules as modified and adapted.

With this background, the contention in *Chhabil Daps v Inder Singh*,[50] was that the repeal of r 32 of the 1963 rules makes no difference to the operation of r 35(2) of the 1968 rules and for the purpose of applying r 35(2), reference has

48 Observations of Brett LJ, in Craies, Statute Law:

> There is a rule of construction that when a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second, as the incorporated provisions have become part of the second statute.

State of Madhya Pradesh v MV Narsimhan AIR 1975 SC 1835, 1838, 1975 Cr LJ 1639, 1975 SC Cr R 404.

49 Fifth edn, p 385.

50 AIR 1976 HP 6.

to be made to r 32 notwithstanding its repeal. So read, r 35(2) contemplates that a dispute relating to the election of the chairman should be entertained and decided by a committee of advocates constituted in accordance with r 32.

It may further be noticed that r 35(2) of the 1968 rules is an instance of legislation by reference or incorporation. It refers to r 32, and for the purpose of applying r 35(2) of 1968 rules it was necessary to incorporate r 32 of the 1963 rules, the two being provisions in two separate pieces of legislation, one earlier and the other later in point of time. Rule 32 of the 1963 rules was repealed and re-enacted as r 34(4) of the rules of 1968. In this scheme of things, the question was whether r 35(2) must be read to refer to r 32 or r 34(4).

It was held by RS Pathak CJ:

> If the case had been one of mere repeal, there could have been no hesitation in accepting the contention that rule 35(2) must be taken to refer to the Committee of Advocates mentioned in rule 32. But the position in the present case is different. It is a case where a piece of legislation, which was incorporated by reference in another piece of legislation, has been repealed and re-enacted. In a case such as this, the principle embodied in section 8 of the General Clauses Act will come into play...and reference, in rule 35(2), to rule 32 so repealed must, unless a different intention appears, be construed as reference to rule 34(4).

However, if the earlier statute is not merely repealed but repealed and re-enacted, it is the re-enacted provisions that will take the place of the corresponding provision in the repealed enactment insofar as the incorporation in the second statute is concerned,[51] because when an Act has been repealed and re-enacted, no one would refer to the repealed enactment.[52] This is subject, of course, to a contrary intention being statutorily expressed.[53]

The principle of implied repeal or any analogous principle, cannot be invoked (as in the present case) for the simple reason that the mandate of s 12 of the Andhra Pradesh Educational Institutions (Regularisation of Admissions and Prohibition of Capitation Fee) Act 5 of 1983 stands in its way. Section 12 of the Act declares that the said Act shall have an overriding effect in relation to other laws in force. The expression 'provisions of this

51 *Narayan Misra v Surendra Nath Das* AIR 1972 Ori 115, 117, 37 Cut LT 1052 (DB) (reference to s 56 of Specific Relief Act 1877, in O 1, r 39 of the Civil Procedure Code, as amended in Orissa, to be construed as s 41 of the Specific Relief Act 1963); *Moradhwaj v Bhudhar Das* AIR 1955 All 353, 359 (Arbitration Act 1940 which followed the repeal of Second Schedule of the Civil Procedure Code, does not affect the powers of the appellate court to refer the case to arbitration); *Abani Bhushan Chakravati v Hem Chandra Chakravarty* AIR 1947 Cal 93 dissented from; but *Munni Lal v Kishun* (1947) ILR All 629 approved.

52 *Orient Pharma Pvt Ltd v Government of Tamil Nadu* (1976) 1 Mad LJ 80, (1976) 37 STC 437.

53 *Syed Moosa Kazimi v KM Sheriff* AIR 1959 Mad 542; *State of Bihar v Ram Naresh Singh* 1975 Cr LJ 1000–01.

Act', will undoubtedly take within its fold, the rules or notifications issued under the Act. GOMs 379 issued by virtue of the power conferred on the state government under s 7 of the Act is one such provision. It is not and cannot be contended that s 12 has no application to subordinate legislation. That being so, notwithstanding the inconsistency between earlier notifications viz GOMs 379 issued under the Act 5 of 1983 and the later rules framed under the Education Act, the former shall prevail and should be given full effect until and unless the said notification is rescinded by the state government. Therefore, there was no reason to apply the principles of 'implied repeal'.[54]

Whenever the legislature intended to apply the specific procedure or the fetters in exercising the power as visualised by the Central Act, it did so specifically. After the Central Act 68 of 1984 came into force, no attempt was made by the state legislature to amend the Act introducing or incorporating s 11A of the central Act. The necessary conclusion would be that the legislature did not intend to apply the unspecified provisions of the central Act to the exercise of power under the state Act. It is to be remembered that there is a distinction between incorporation and adoption by reference. If the legislature would have merely adopted the central Act, subsequent amendment to that Act made under Act 68 of 1984 would have become applicable.[55]

Section 8 does not cover cases of successive repeals, is to say, where an enactment has made a reference to the Civil Procedure Code of 1859, the reference might be construed as reference to Civil Procedure Code of 1877 but not to the Code of 1882 or 1908.[56]

By force of s 8 of General Clauses Act, the old Criminal Procedure Code having been repealed by the new code, the reference to the provisions of s 562 (of old code) in s 19 of Probation of Offenders Act 1958 has to be construed as reference to the provisions so re-enacted, ie, s 360 of Code of 1973.[57]

In case of legislation by incorporation, incorporated provisions would become part and parcel of the latter statute as if it is written by pen in ink or printed bodily therein as part of the latter statute and has become an integral scheme of that Act. The legislature, while incorporating them, did not intend to speculate that any subsequent amendment to the previous Act or its repeal would alter the texture of the later Act, unless the former is supplemental to the latter, or both are in *pari materia* (in which case it would render the latter Act wholly unworkable and ineffectual) or if it by necessary intendment applies it.

Logically, when provisions in the former Act are repealed or amended, they shall not, unless expressly made applicable to the subsequent Act, be

54 *Amah English Medium High School & Anor v Government of Andhra Pradesh & Ors* AIR 1993 AP 338, 346-47(FB).

55 *State of Maharashtra & Anor v Sarat Joginder Singh Kishan Singh & Ors* AIR 1995 SC 2181.

56 *Chandra Bhushan Misra v Jwatri Devi* AIR 1969 All 142, 152, 1968 All LJ 243 (DB).

57 *BSM Gangamma v State of Karnataka* 1987 (1) Crimes 224, (1987) 1 Kant LJ 21, 1987 Cr I J 561; same view in *State of Himachal Pradesh v Lal Singh* 1990 Cr LJ 723 (FB).

deemed to be incorporated in it. The latter Act is totally unaffected by amendment or repeal subject to the given exceptions. The statutes being distinct and different, each is to be judged with reference to its own source that emerges from its scheme, language employed, and purpose it seeks to achieve.

If a later Act merely makes a reference to the earlier Act or an existing law, all amendments and repeals by the new law subsequently made will have effect unless their operation is saved by s 8(1) of the General Clauses Act or they are void under art 254 of the Constitution.

Section 55 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam 1965, read with the schedule, made an express incorporation of the provisions of ss 4(1) and 6 of the Land Acquisition Act as modified and incorporated in the schedule. The schedule affected necessary structural amendments to ss 4, 6, 17 and 23, incorporating therein the procedure and principles with necessary modifications. The legislature did not visualise that later amendment to the central Act 1 of 1894 ie, Land Acquisition Act, would be automatically extended. Therefore, it was held that s 55 and the schedule adapted only by incorporation of ss 4(1) and 6(1), and the subsequent amendments to s 6 did not become part of the Act and they have no effect on the operation of the provisions of the Act.[58]

Where the provisions of two or more Acts can co-exist and can be enforced or applied without abrogating or eroding the provisions of each other the non-obstante clause will have no effect. Thus, only where the provisions of the Uttar Pradesh Regulation of Building Operations Act 1958, cannot be read harmoniously with the provisions of any other law in force at the commencement of that Act, shall the provisions of that Act have an overriding effect. It was, therefore, held that there is no inconsistency both in the Uttar Pradesh Regulation of Building Operations Act and the Uttar Pradesh Town Areas Act 1914. Issuing a notification under the latter Act read with the General Clauses Act does not abrogate or erode any provision of the former Act, and the non-obstante clause is not attracted by the facts and circumstances of the present case.[59]

In *M/s Sikkim Subba Associates v State of Sikkim*, a three-judge bench of the Supreme Court held, inter alia, that:

1. Rules 149 and 150 of the Sikkim High Court (Practice and Procedure) Rules 1991, which governed the situation, were very much in force on the date when the Division Bench exercised its power, and the order of reference passed in the present case could not therefore, be said to be bad in law. A mere retrospective deletion could not per se have the

58 *Gauri Shankar Gaur & Ors v State of Uttar Pradesh & Ors* AIR 1994 SC 169, 179 , 183, (1994) 1 SCC 92.

59 *Dayalbagh Educational Institute, Agra v State of Uttar Pradesh & Ors* AIR 2001 All 290, 292, 294–95 (DB).

effect of nullifying or destroying the orders passed or acts already performed, when such powers were available, in the absence of any specific statutory provision enacted to destroy all such rights already acquired or obligations and liabilities already incurred. The words 'consisting of' shall mean, and is also considered to have relevance, only to the sanctioned strength. Therefore, taking into account the fact that for the time being, there were only two judges in position and that the judges, who constituted the Division Bench, expressed different views and at the same time thought it fit to refer the matter to the opinion of a third judge, the matter should wait till the arrival of the third judge. In the instant case, not only did such a contingency fructify, the matter also came to be actually posted before the third judge for hearing.

2. If there are two equally possible or plausible views or interpretations, it was considered to be legitimate for the arbitrator to accept one or the other of the available interpretations. It would be very difficult for the courts to either exhaustively define the word 'misconduct' or enumerate the line of cases in which a long interference either could or could not be made. Courts of law have a duty and obligation to maintain purity of standards and preserve full faith and credit as well as to inspire confidence in alternate dispute redressal methods of arbitration, when on the face of the award it is shown to be based upon a proposition of law which is unsound or the findings recorded are absurd or so unreasonable and irrational that no reasonable or right thinking person or authority could have reasonably come to such a conclusion. In the present case, the reference to the arbitrator was found to be a general reference to adjudicate upon the disputes relating to the alleged termination of the agreement by the state and not a specific reference on any particular question and consequently, if it was shown or substantiated to be erroneous on the face of it, the award must be set aside.[60]

When an Act is repealed and re-enacted, unless a different intention is expressed by the legislature, the reference to the repealed Act would be considered as a reference to the provision so re-enacted.[61]

In order to attract the application of s 8, it must be shown that a particular order has repealed and re-enacted a former order, and it is only in such cases that the reference to the repealed order is interpreted as reference to the new.[62] Section 8 of the General Clauses Act does not require that the latter Act repealing and re-enacting an earlier Act should be a repealing and amending Act. All that it requires is that a central Act

60 AIR 2001 SC 2062, 2067, 2070, (2001) 5 SCC 629.

61 *P Purusothaman v Integral Coach Factory Staff Council* 1994 Lab IC 2220 (Mad).

62 *Om Prakash v State* 1972 AWR 428.

should repeal and re-enact a former enactment either with or without modification.[63]

The expression 'former enactment' in s 8 refers to both the former central and state enactments.[64]

A notification authorising all medical officers of health, either to institute or give consent for instituting prosecutions would continue to govern all functionaries under the UP Nagar Mahapalika Act 1916, even after the Act of 1916, being repealed by the Uttar Pradesh Nagar Mahapalika Act 2 of 1959.[65]

The words 'former enactment' in s 8 of the General Clauses Act would include any Act or provision therein passed by the Union Parliament or state legislature. It could not have been intended that when an Act passed by the Union Parliament repeals a state Act the principle underlying s 8 of the General Clauses Act should never become applicable.[66] The principle would apply even to a constitutional order which does not though fall within the definition of 'enactment' in s 3(19) of the General Clauses Act.[67]

Reference in a state Act to a law repealed and re-enacted by another law,[68] for example, reference to the Criminal Procedure Code of 1898 in the Bihar Consolidation of Holdings and Prevention of Fragmentation Act 1956,[69] or reference to the Limitation Act of 1908 in the Punjab Pre-emption Act,[70] would be construed as reference to the respective corresponding re-enactments.

The Limitation Act 1963 is a case of repeal and re-enactment of the old Limitation Act with certain modifications. Hence, s 8 directly applies to substitute it in place of the old Act with regard to all incorporating statutes, by reference or otherwise.[71]

In the event of reference to any other enactment or provision it must be construed that the re-enactment or provisions pursuant to repeal or otherwise will apply, unless different intention can be spelt out from the provisions of the statute.[72]

The word 'modification' means variation and includes extension also although in ordinary parlance, this word may signify restrictions only.[73]

63 *Narayan Misra v Surendranath Das* (1971) 2 SCWR 363, 37 CLJ 1052.
64 *State of Punjab v Sukh Dev Sarup Gupta* 1966 Cur LJ 372, 68 Punj LR 767, 18 STC 426, (1967) ILR 1 Punj 396, 1966 CIS (IJ) 17, AIR 1967 Punj 416.
65 *Chaturbhuj v State* AIR 1967 All 31.
66 *State of Punjab v Sukh Dev Sarup Gupta* (1971) 1 SCJ 543, AIR 1970 SC 1641–42.
67 *Makunda Nayako v Suna Omanatya* (1972) 38 Cut LT 1213, (1972) 2 Cut WR 1670, 1679–80 (DB).
68 *Haroobhai M Mehta v State of Gujarat* AIR 1967 Guj 229, 245, 7 Guj LR 597 (DB).
69 *Hirdayanand Singh alias Bidya Singh v Ram Nagina Singh* 1980 BLJR 222, 1980 BBCJ 17, 21.
70 *Jagat Singh v Gurminder Singh* 1970 Punj LJ 534, 541.
71 *Ram Prosad Ramnarayan v Bejoy Kumar Sadhu Khan* AIR 1966 Cal 488, 69 CWN 921.
72 *Government of Andhra Pradesh v Durgaram Prasad* AIR 1984 AP 14, 21, (1983) 2 APLJ 83 (HC), (1983) 2 Andh LJ 172.
73 *Raj Kishan Jain v Tulsi Das* AIR 1959 Punj 291, 293.

'Ordinance' is an enactment within the meaning of s 8 of the General Clauses Act—Defence of India Ordinance 1962, Defence of India (Amendment) Ordinance 1962, and Defence of India Act 1962, s 48(2).[74] The Supreme Court,[75] had held that s 8 being of general application would apply also to charters.[76]

2. CLAUSE (1)

(a) Scope

If there is mere reference to a provision of one statute in another without incorporation then, unless a different intention clearly appears, s 8(1) would apply and the reference would be construed as reference to the provision as may be in force from time to time in the former statute.[77]

But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute,[78] and the effect of incorporation is as if the provisions incorporated were written out in the incorporating statute and were part of it.[79] When an Act is repealed and re-enacted, unless a different intention is expressed by the legislature, the reference to the repealed Act would be considered as a reference to the provision so re-enacted.[80]

Reference to a repealed statute would, hence, be construed as reference to the Act substituting the repealed statute, for example, the Sea Customs Act 1878 repealed and substituted by the Customs Act 1962.[81]

Clause (1) of s 8 usually contemplates at least three sets of legislation: one, which has been repealed, the other which has been re-enacted, and the third, which has made reference to the provisions of the repealed enactment. In these circumstances, the provisions of cl (1) have directed that references in the third statute to the provisions of the repealed statute shall be construed as reference to corresponding provisions in the re-enacted statute. A re-enacting statute, with a view to incorporating into the provisions of any

74 *Haroobhai M Mehta v State of Gujarat* 7 Guj LR 597, (1966) ILR Guj 701, AIR 1967 Guj 229.

75 *National Sewing Thread Co Ltd v James Chadwick & Bros Ltd* AIR 1953 SC 357, 360, (1953) SCJ 509.

76 *Benoari Lal Sarma v Emperor* 19 Cr LJ 673 (SB) (principle under s 38 of Interpretation Act 1889 (52 & 53 Vict Ch 63) held applicable to interpreting cl 44 of Letters Patent); *Chairman, Budge Budge Municipality v Mongru Mia* AIR 1953 Cal 433, 57 CWN 25 (with reference to art 225 of the Constitution of India).

77 *Beepathumma v Special Deputy Tehsildar* 1982 KLT 130.

78 *Mahindra and Mahindra Ltd v Union of India* AIR 1979 SC 798, 811, 1979 Tax LR 2064, (1979) 2 SCC 529, 49 Com Cas 419, [1979] 2 SCR 1038.

79 *Lekhraj v Fourth Addl District Judge* AIR 1982 All 265, 1982 All WC 235, 1982 All CJ 177, 1982 All Ren Cas 357, 1982 RCC 357 (UP).

80 *P Purusothaman v Integral Coach Factory Staff Council* 1994 Lab IC 2220 (Mad).

81 *M/s Chemitex, Panaji, Goa v Union of India* 1982 Tax LR 2877 (Goa).

other statute, may, instead of writing into it all the provisions of the latter, adopt a convenient short-hand method. In such a case, the interpretation of the referred provisions may look to the preamble of that statute whose provisions have been so incorporated by reference.[82] The true import and intent of the re-enacting statute may necessarily call for consideration as to what it was which the old law omitted to contain or what mischief the re-enacting statute wanted to avoid.[83]

Broadly speaking, legislation by referential incorporation falls in two categories: (a) where a statute by specific reference incorporates the provisions of another statute as at the time of adaptation;[84] (b) where a statute incorporates by general reference the law concerning a particular subject as a genus. In the case of the former, the subsequent amendment made in the referred statute cannot automatically be read into the adopting statute. In the case of the latter, it may be presumed that the legislative intention was to include all the subsequent amendments also, made from time to time, in the generic law on the subject adopted by general reference. Thus, in s 19 of the Probation of Offenders Act 1958, the words 'section 562 of the Code' shall, after repeal of the Code of Criminal Procedure 1898, be construed as s 360 of the Code of 1973.[85] Similarly, in the notification issued under s 10(1) and (2) of the Criminal Law (Amendment) Act 1932, reference to Cr PC 1898 should be read as 'Cr PC 1973'.[86]

This principle of construction of a reference statute has been summed up by Sutherland, thus:

> A statute, which refers to the law of a subject, generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted.[87]

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82 *Bhagban Roy v First Land Acquisition Officer* AIR 1981 Cal 67, 73, 85 CWN 59 (West Bengal Land (Requisition and Acquisition) Re-enacting Act 15 of 1977, being legislation by reference to the West Bengal Land (Requisition and Acquisition) Act 2 of 1948).

83 *LD Khanna v Chohan Huhtamaki (India) Pvt Ltd* 1977 Cr LJ 1530, 1532, 1977 Sim LC 845.

84 *Addl Commr of Income-tax, Mysore v ALN Rao Charitable Trust* 1976 Tax LR 72, (1976) 1 Kant LJ 455 (DB) (s 11 of the Income-tax Act 1961, amended by art 41 of 1975—s 11 to be construed as it stood before the amendment).

85 *Gurubachan Singh v State of Punjab* 1980 Cr LJ 417, (1980) ILR 2 P&H 319; *Bishnu Deo Shaw v State of West Bengal* AIR 1979 SC 964, 1979 Cr LJ 841, 1979 All Cr Cas 175, 1979 Cr LR 402 (SC), (1979) 3 SCC 714, (1979) 2 SCJ 216, 1979 Mad LJ 565 (Cr), (1979) SCC 817 (Cr), [1979] 3 SCR 355, 1979 SC Cr R 333, 1979 Cr App Rep 385 (SC).

86 *Vinod Rao v State of Gujarat* 1981 Cr LJ 232 (Guj), 1980 Cr LR 283 (Guj), (1980) 21 Guj LR 926; *Hridayanand Singh alias Bidya Singh v Ramnagina Singh* 1980 BLJR 222 (mention of Cr PC 1898, in the consolidation Act to mean reference to Cr PC of 1973).

87 *Sutherland's Statutory Construction*, third edn, art 5208–09.

Corpus Juris Secundum also enunciates the same principle in the terms:

> ...Where the reference in an adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof...the reference will be held to include the law as it stands at the time it is sought to be applied, with all the changes made from time to time, at least as far as the changes are consistent with the purpose of the adopting statute.

It is well-settled that if an earlier legislation is incorporated into a later legislation, the provisions of the earlier law, incorporated into the later law, become a part and parcel of the later law as if written in it with pen or printed therein, and the moment those clauses are so incorporated in the later Act, there is no occasion to refer to the earlier Act at all.[88]

Therefore, amendments made in the earlier law after the date of incorporation cannot, by their own force, be read into the later law.[89]

Construed in accordance with the above principle, the expression 'personal law' referred to in s 15 of the Madhya Pradesh Land Revenue Code comprehends the Hindu Succession Act of 1956, which will undoubtedly govern the inheritance of a deceased female tenure-holder who died on 6 November 1956 much after the coming into force of the Hindu Succession Act 1956.[90]

Clause (1) of s 8 has been held applicable to:

(i) Rule 184 of the Defence and Industrial Security of India Rules 1971.[91]
(ii) Calcutta City Civil Courts Act 1952.[92]
(iii) Notification under s 8(1) of the Foreign Exchange Regulation Act 1947.[93]

88 *Re Word's Estate* [1886] 31 Ch D 607, 55 LJ Ch 488; *Gopal Mills Co Ltd v Broach Borough Municipality* (1956) 58 Bom LR 300 (DB) (certain rules making provision for method of imposition of tax referred to in the resolution for imposition of tax rules to be deemed to be part of resolution).

89 *Western Coalfields Ltd v Special Area Development Authority* AIR 1982 SC 697, (1982) 1 SCC 125, (1982) 2 SCJ 1, (1982) 2 Comp LJ 793.

90 *Bajya v Gopikabai* AIR 1978 SC 793, 797; approving *Kumari Ram Lali v Mst Bhagamati Bai* AIR 1968 MP 247; *Narhar Hari Singh v Dukalhin* AIR 1974 MP 141 (FB); *Indubai v Vyankati Vithoba Sawadha* AIR 1966 Bom 64.

91 *State of Madhya Pradesh v Shanti Lal* 1976 Cr LJ 256, 260 DB (MP); overruled on another point in *Bal Chand Jain v State of Madhya Pradesh* AIR 1977 SC 366, 1977 Cr LJ 225 (reference to Cr PC 1898, to be construed as reference to Cr PC 1974).

92 *Ram Prosad Ramnarayan v Bejoy Kumar Sadhu Khan* AIR 1966 Cal 488, 492, (1965) 69 CWN 921 (Limitation Act 1908 to be construed as Limitation Act 1963).

93 *Barneido Steenholf Ultrich v Assistant Collector* AIR 1960 Ker 325, 329, 1960 Cr LJ 1455, 1960 KLT 488 (s 167 of the Sea Customs Act construed as applicable notwithstanding the fact that it was added subsequent to the addition of s 23A to the Foreign Exchange Regulation Act 1947.

(iv) Section 107 of the Civil Procedure Code 1908.[94]
(v) Employees Provident Funds Act 1952;[95]
(vi) Section 13(1) of the Finance Act 1950, extending Income-tax Act 1922 to Travancore and Cochin.[96]
(vii) Section 23A of Foreign Exchange Regulation Act 1947.[97]
(viii) Section 2(i) of the Payment of Wages Act 1936.[98]
(ix) Section 1 of the West Bengal Non-Agricultural Tenancy Act 1949.[99]

Clause (1) of s 8 has been held as inapplicable to arbitration in execution proceedings or to question of effect of repeal of the Arbitration Act 1899.[1] When provisions in the former Act are repealed or amended, they cannot, unless expressly made applicable to the subsequent Act, be deemed to be incorporated in it. The later Act is totally unaffected by any amendment or repeal.[2]

(b) Legislation by Referential Incorporation

The repeal of an Act does not mean to repeal the provisions incorporated in the subsequent Act.[3] In *Collector of Customs, Madras v Nathella Sampothu Chetty*,[4] the meaning and effect of incorporation by reference of one statute

94 *Moradhwaj v Bhudhar Das* AIR 1955 All 353, 359, 1955 All LJ 96 (FB); overruling *Shukrullah v Md Rahmat Bibi* AIR 1947 All 304, 1947 All LJ 445; dissenting from *Thakur Prasad v Baleshwar Ahir* AIR 1954 Pat 106; *Abani Bhushan v Hem Chandra* AIR 1947 Cal 93 dissented from; but *Murni Lal v Kishan Prasad* AIR (1948) ILR All 629, AIR 1948 All 443 approved (Second Schedule of Civil Procedure Code repealed and re-enacted in Arbitration Act—no effect on powers of appellate court to refer matters to arbitration); *Subramanya Bhatta v Dev Das Nayak* AIR 1955 Mad 693, (1955) 2 Mad LJ 625.

95 *KS Naik v Official Liquidator* (1964) 1 Mys LJ 35, 37 (reference to s 230 of the Companies Act 1913, to be construed as reference to s 530 of the Companies Act 1956).

96 *Isha Beevi v Tax Recovery Officer and Addl PA to Collector, Quilon* 1970 KLT 744, (1970) 2 ITJ 260, 268 (DB) (reference to Income-tax Act 1922 to be construed as reference to Income-tax Act 1961).

97 *Raj Bahadur Seth Sreeram Durga Prasad Pvt Ltd v Dy Collector, Customs Department, Visakhapatnam* AIR 1965 AP 294, 305, (1965) 2 Cr LJ 180 (DB) (reference to s 19 of Sea Customs Act 1878 to be construed as reference to s 11 of the Customs Act 1962).

98 *Moosa Kazim v KM Sheriff* AIR 1959 Mad 542, 544, 72 Mad LW 483 (definition of 'factory' in s 2(8) of the Factories Act 1948, incorporated in s 2(i) of Payment of Wages Act 1936, even prior to its amendment by Act 68 of 1957).

99 *Bhagat Ram v Prabirendra Mohan Tagore* AIR 1956 Cal 357, 60 CWN 1 (reference to Calcutta Municipal Act 1923 to be construed as reference to Calcutta Municipal Act 1951, as regards the proper noun 'Calcutta').

1 *Moradhwaj v Bhudhar Das* AIR 1955 All 353, 1955 All LJ 96 (FB); *Shukraullah v Rahmat Bibi* AIR 1947 All 304, overruled.

2 *State of Maharashtra v Sant Joginder Singh Kishan Singh* AIR 1995 SC 2181, 1995 AIR SCW 1560.

3 *Swarup v Munshi* AIR 1963 SC 553, 558, 1963 SCD 728.

4 [1962] 3 SCR 786, AIR 1962 SC 316, 1962 Cr LJ 364, (1962) 1 SCJ 534; reversing *Nathella Sampathu Chetty v Collector of Customs, Madras* AIR 1959 Mad 142; affirming *Pukhraj Champa Lal Jain v DR Kohli* (1959) 61 Bom LR 1230, (1959) ILR Bom 1771.

into another was examined and it was pointed out that s 8(1) of the General Clauses Act dealt with reference or citation of one enactment in another without incorporation. The usual or recognised formulae generally employed to effect incorporation were considered. For instance, the words used in s 20 of 53 and 54, Vict Ch 70—Housing of the Working Classes Act 1890, were:

> Shall, for that purpose be deemed to form part of this Act in the same manner as if they were enacted in the body thereof.

In 54 and 55, Vict Ch 19, s 1(3), the language employed was:

> The provisions of section 134 of the said Act (set out in the schedule) shall apply as if they were herein enacted.

Incorporation of a single section of one Act into another implies that the rest of the former Act may be relied upon to ascertain what the incorporated section would mean.[5] The Sea Customs Act 1878 having been repealed by s 160 of the Customs Act 1962, the reference to s 19 of the Sea Customs Act 1878, in s 23A of the Foreign Exchange Regulation Act 1947, has to be construed as reference to the corresponding provisions in s 11 of the Customs Act 1962.[6]

The repealed s 107 of Government of India Act 1915 corresponded to s 22 of the Government of India Act 1935, but s 224 of Government of India Act 1935 was repealed by art 395 of the Constitution of India and re-enacted therein with certain modifications as art 227. Reference to s 107 of the 1915 Act in cl 10 of the Letters Patent, would be construed as art 227 of the Constitution of India.[7] After repeal of the Succession Certificate Act 1889, the references to that Act in the Bombay Pleaders Act 1920, had to be construed as corresponding references to Indian Succession Act 1925.[8]

There is however, a distinction between referential incorporation and mere applicability of provisions of one enactment to another. This distinction may be illustrated by reference to s 12 of the Central Excises and Salt Act 1944, which provided that the Central Government may by notification in the *Official Gazette*, declare that any of the provisions of the Sea Customs Act 1878, relating to the levy on, and exemption from, customs duties, drawback of duty, warehousing offences and penalties, confiscation,

5 *Bhagwan Biswas v Bejoy Singh Nahar* AIR 1980 Cal 70, 73, (1979) 2 Cal HCN 378 (FB); *M/s Ganesh Das Ram Gopal v Munsif South, Lucknow* AIR 1976 All 111, 118, 1976 All LJ 312 (DB) (expression 'compensatory costs' in s 35A, Civil Procedure Code 1908, applied to the expression 'special costs' used in s 7B(11) of Uttar Pradesh Act 3 of 1947).

6 *Raj Bahadur Seth Sreeram Durga Prasad Pvt Ltd v Dy Collector, Customs, Visakhapatnam* AIR 1965 AP 294, (1965) 2 Cr LJ 180.

7 *Raj Kishan Jain v Tulsi Das* AIR 1959 Punj 291, 61 Punj LR 315.

8 *Raj Rajeshwarashram v Swarupanandtirtha* AIR 1927 Bom 499, 29 Bom LR 1031.

and procedure relating to offences and appeals,' shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by s 3.

The Supreme Court held that the above s 12 did not bodily lift certain provisions of the Sea Customs Act 1878 and incorporate them as an integral part of the Act but only empowered the Central Government to apply the provisions of the Sea Customs Act 1878, with such modifications and alterations as may be deemed desirable. Section 8 of the General Clauses Act is, therefore, not applicable to such a case of incorporation. Section 8 could apply if s 12 could be regarded as containing only a reference to the provisions of the Sea Customs Act.[9]

Since the Sea Customs Act 1978 has not been incorporated in the Excise Act 1944, it would not be correct to hold that since the former did not provide for seizure of documents, the Notification 68/63, under s 12 of the latter empowering excise officers to seize documents, is ultra vires.[10] The Supreme Court,[11] held that Pt II of Sch I of Reg 561 of the Indian Civil Services Regulations, as it stood before it was amended on 12 June 1956, is not incorporated by reference in the High Court Judges (Conditions of Service) Act 1954.

3. RULE OF CONSTRUCTION

The canon of construction of statutes enunciated in s 38 of the Interpretation Act and reiterated with some modifications in s 8 of the General Clauses Act is one of the general applications where statutes or Acts have to be construed and that rule can well be applied in construing the charters of the different High Courts. The General Clauses Act or the principles of construction enunciated in it do apply for construing these charters.

Unless one Act applying another to some territory has contained words to show that the former is deemed to have re-enacted the latter, the former cannot be taken to be incorporated in the latter.[12]

Assuming, however, but not conceding, that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not for

9 *New Central Jute Mills v Asst Collector of Central Excise* AIR 1971 SC 454, (1971) 1 SCJ 685, [1971] 2 SCR 92; *Prakash Cotton Mills Pvt Ltd v BN Rangani* (1971) 73 Bom LR 200; overruled on another point in *Nagpur Improvement Trust v Bithal Rao* AIR 1977 SC 869 (reference in Central Excise and Salt Act 1944, to provisions of Sea Customs Act 1878, to be construed as reference to corresponding provisions of Customs Act 1962); *Deshbandhu Co-op Powerloom Society Ltd v Collector of Central Excise* (1969) ILR 2 Cal 223, 227.

10 *Chemitex, Panaji, Goa v Union of India* 1982 Tax LR 2877, 2882.

11 *Union of India v VB Raju* AIR 1982 SC 1174, 1982 Lab IC 1487, 1982 UJ 312 (SC), (1982) 2 SCC 326, (1982) 1 Serv LJ 602, 1982 SCC (Lab) 247, 45 Fac LR 328, (1982) 2 Lab LN 40.

12 *Rajputana Mining Agencies Ltd v Union of India* AIR 1961 SC 56, (1961) 1 SCJ 611.

any reason apply, there is still no justification for holding that the principles of construction enunciated in those provisions have no application for construing these charters.[13] The principle embodied in s 8 of the General Clauses Act applies also to the construction of notifications issued under the various statutes.[14] The principle can be applied to a body of rules, even though they do not fall within the express terms of s 8.[15] The principle can well be applied to a subordinate legislation.[16] It has further been held that the general principle embodied in this section is applicable to statutory notifications, even though the wording of the section in force does not apply to such notifications.[17]

The provisions of the General Clauses Act, dealing with principles of statutory construction, though in terms applicable to construction of Acts of legislature only, are also applicable to the construction of statutory rules, notifications and even judicial orders and decrees.[18]

Though the presidential order may not be either an enactment or a regulation, the principle embodied in s 8(1) of the General Clauses Act cannot be applied. Even if without a complete repeal and complete re-enactment the same provision of the statute is repealed and replaced by a new enactment, such a situation would be covered by s 8(1) of the General Clauses Act.[19]

The rule of construction of statutes is that where a statute is incorporated by reference into a second statute the repeal of the first statute by a third does not affect the second. Once the incorporation is made, the provision incorporated becomes an integral part of the statute to which it is transferred and thereafter there remains no need to refer to the statute from which the incorporation was made, and the subsequent amendment therein does not affect the incorporating statute.[20] This rule of construction refers to the situation in which the first Act has been altogether repealed. But, where the Act repealed has been re-enacted with or without modification, reference, according to s 8 of the General Clauses Act, in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as a reference to the provision so re-enacted. Hence, the reference in the definition of the word 'employer' in s 2 of the Coal Mines Provident Fund and Bonus Schemes Act 1948 to cl (g) of s 3 of the Indian Mines Act 1923, should now be taken as a reference to the corresponding provisions in the Mines Act 1952, the same having taken the place of 1923 Act.[21]

13 *NS Thread Co v James Chadwick & Bros Ltd* AIR 1953 SC 357, (1953) SCJ 509.
14 *Advance Insurance Co Ltd v Gurudasmal* AIR 1969 Del 330.
15 *Chhabil Das v Inder Singh* AIR 1976 HP 6.
16 *NS Thread Co v James Chadwick & Bros Ltd* AIR 1953 SC 357, (1953) SCJ 509.
17 *Mistra Nand v State of Uttar Pradesh* AIR 1968 All 204.
18 *Ramanandan Singh v Ramadhar Singh* AIR 1966 Pat 297 (FB), 1966 BLJR 553.
19 *Makunda Nayako v Suna Omanatya* (1972) 2 Cut WR 1670.
20 *Mahindra and Mahindra Ltd v Union of India* (1979) 2 SCC 529.
21 *State of Bihar v GN Ojha* AIR 1963 Pat 303 (FB).

In regard to the reference of the word 'employer' in s 2(e) of the Coal Mines Provident Fund Act and in the Bonus Schemes Act 46 of 1948, the definition of 'owner' in cl 2 of s 3 of the Indian Mines Act 1923, must be considered, but the definition should be so construed, after taking into account the repeal of the Indian Mines Act 1923, with reference to the definition of 'owner' in cl (1) of s 2 of the Mines Act 1952, which repealed and re-enacted the Act of 1923.[22] Similarly, by virtue of this section, the reference to the Factories Act 1934, must be construed as a reference to the Factories Act of 1948 which repealed the earlier Act and re-enacted it. Hence, notwithstanding the repeal of the Factories Act 1934, the definition of 'commercial establishment' in s 2, cl (3) of the UP Shops and Commercial Establishments Act (22 of 1947) includes only clerical and other establishments of a factory to which the Factories Act 1948 does not apply.[23] Likewise, it has been held in the undermentioned case that although s 26(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 62 of 1947 refers to the Bombay Tenancy Act of 1939, it really refers to Bombay Tenancy and Agricultural Lands Act of 1948.[24]

The rule in this section and the principle underlying it applies to all cases of repeal and re-enactment with or without modifications and, therefore, any reference to the provisions of the repealed Act in the provisions of the incorporating Act has to be construed as a reference to the corresponding provisions of the re-enacted statute. Hence, the new Limitation Act 1963, must be deemed to have been substituted in place of the old Act in s 8(2)(b) of Calcutta City Civil Courts Act 1953.[25] Similarly, the reference to 'Code' in s 181 of the Limitation Act 1908, must be read as a reference to Arbitration Act 1940 by virtue of s 20 of that Act.[26]

The reference to s 107 of the Government of India Act 1915, in cl 10 of the Letters Patent of the Punjab High Court is merely a descriptive reference and is not intended to suggest that an appeal would be competent if the power of judicial superintendence has been exercised in circumstances not covered by s 170 of the 1915 Act. Reference to s 107 of 1915 Act must now be construed as a reference to art 227 of the Constitution.

Where a licence was issued before the commencement of the Electricity Amendment Act 1959 and a clause in the licence stated that the provisions of s 7 shall be read as expressly added to, or varied, to the extent set out in the

22 *State of Bihar v SK Roy* AIR 1966 SC 1995, (1966) 13 Fac LR 111, 1966 BLJR 873, (1966) Cr LJ 1538, 1966 LLJ 759, 31 FJR 108, ILR 45 Pat 1564, 1967 SCD 233, (1967) 2 SCJ 205, 1967 Mad LJ 618 (Cr), [1966] SCR Supp 259.

23 *State of Uttar Pradesh v MP Singh* AIR 1960 SC 569; *Sarkar Bakery v Authority under Payment of Wages, West Bengal* (1962) 1 LLJ 183 (Cal) (case under s 2(1), Payment of Wages Act 4 of 1936); *Radhakrishna Ramnath v State* (1959) ILR Bom 1070 (case under s 2(a), CP & Berar Maternity Benefit Act 6 of 1930); *Syed Moosa Kazimi v KM Sheriff* AIR 1959 Mad 542.

24 *Babu Laxman More v Narhar Mahadeo Apte* (1958) ILR Bom 268.

25 *Ram Prosad Ram Narain v Bejoy Kumar Sadhu Khan* AIR 1966 Cal 488, 69 CWN 921.

26 *Union of India v Md Usman* AIR 1965 All 269.

licence, the reference to s 7 in the licence would stand substituted by s 6(1) by virtue of s 8 of the General Clauses Act 1897. The clause cannot override s 6(1) and preserve s 7.[27]

Section 8 does not require that the later Act, repealing and re-enacting an earlier Act, should be a repealing and amending Act. All that it requires is that a central Act should repeal and re-enact a former enactment. The principle of law, derived from the repeal by s 120, Factories Act 1948, of the Act of 1934, that references in other Act to the Act of 1934 should be read as references to the Act of 1948, is not affected by the repealing and amending Act of 1950 which repealed the operative part of s 120 of the Act of 1948, because repealing and amending Acts have no legislative effect. Moreover, the repeal of the repealing section of the 1948 Act could not have the effect of reviving the Act of 1934 repealed thereby, and consequently, since the repeal of the Act of 1934, continued to subsist, s 8 of General Clauses Act continued to apply.[28]

In case a repealed legislation relates to a matter falling exclusively in List 2 of 7 Sch of the Constitution, interpretation thereof would be governed by the General Clauses Act of the concerned state. Otherwise, the repeal even of a state Act, would be governed by s 8 of the General Clauses Act 1897.[29]

4. UNLESS A DIFFERENT INTENTION APPEARS

Section 8 contains the expression 'unless a different intention appears'. Where there is nothing to show in the new Act that it applies to proceedings that have been closed and there is also nothing giving it expressly or impliedly a retrospective effect in respect of such proceedings so as to destroy rights and privileges acquired under the old Act governing such proceedings, it would amount to an expression of different intention.[30] Clause (1) of this section has nothing to do with arbitration in execution proceedings.[31]

27 *Bara Banki Electricity Supply v Uttar Pradesh State Electricity Board* 1969 All LJ 939.

28 *Khuda Bux v Manager, Caledonian Press* AIR 1954 Cal 484; *Hindustan Journals Ltd v Dinesh Awasthi* AIR 1957 MB 125 (reference in Punjab General Sales-tax Act 1948 to provisions of Punjab Excise Act 1914, must be read as reference to Medical and Toilet Preparations Act 1933, which repeals the earlier Act of 1914); *Sukh Dev Sarup v State of Punjab* AIR 1965 Punj 399; affirmed in *Punjab State v Sukh Dev Sarup* AIR 1970 SC 1641, 1970 SCD 849.

29 *Babu Laxman More v Narhar Mahadeo Apte* (1957) 59 Bom LR 1078, (1958) ILR Bom 268 (s 26(1) of Bombay Consolidation of Holdings Act 1947; referring to Bombay Tenancy Act 1939 to be construed, after its repeal; as referring to Bombay Tenancy Act 1948).

30 *First Addl Income-tax Officer v Uppala Peda Venkataramayya* (1966) 2 Andh LT 92, 64 ITR 93 (a case under s 292(2) of the Income-tax Act 1961, ss 8 and 20 of the Arbitration Act); *Mohamd Usman v Union of India* AIR 1959 SC 474 (applications under period of limitation prescribed in art 181 of the Limitation Act applicable—different intention).

31 *Moradhwaj v Bhudhar Das* AIR 1955 All 353, (1955) All LJ 96 (FB); overruling *Sukrullah v Mst Rahmat Bibi* AIR 1947 All 304, 1947 All LJ 445.

The government notification stated to have been issued under the Sales-tax Laws Validating Ordinance 1956 must be so construed as to give effect to the intention of the government disclosed by circumstances with the help of the maxim *ut res magis valeat quam pereat*. The notification must be held to have been issued under the Validation Act.[32] An application under ss 8 and 20 of the Arbitration Act is not governed by art 181 of the Limitation Act. The Limitation Act does not prescribe any period of limitation for such an application. It is not possible to construe the implied reference in art 181 of the Limitation Act to the Code of Civil Procedure as a reference to the Arbitration Act or to hold that art 181 applies to applications under that Act. The rule of construction given in s 8(1) of the General Clauses Act cannot be applied as the legislature appears to have had a different intention which is clear from the amendment of arts 158 and 178 of the Limitation Act.[33]

In *Rajarajeswarashram v Sarupanand Tirtha*,[34] the question arose whether the security to be furnished by the applicant should be a fixed sum of Rs 32 or on ad valorem basis, viz, Rs 264 in connection with the Bombay Pleaders Act read with the Indian Succession Act 1925 and s 8, General Clauses Act. Marten CJ, observed therein:

> For the present purposes the important words in that section are the words 'unless a different intention appears'. Now, taking the Succession Certificate Act as a test, it is clear that the Act has been repealed and re-enacted by the Act of 1925 with or without modification. Consequently, we must read the Act of 1925 into section 5 as well as into section 1 of schedule 3 of the Bombay Pleaders Act, in the absence of a contrary intention. But, having regard to the frame of schedule 3, there is in my judgment, a different intention shown by the Bombay Pleaders Act itself, namely, that as regards application under the Succession Certificate Act, a fixed fee shall be levied under section 5 as opposed to an ad valorem fee for applications under the Indian Succession Act 1865. Consequently, the corresponding applications under the consolidating Act must be treated in the same way, for, otherwise, section 1 would conflict with section 5. In other words, proceedings under the repealed and re-enacted Succession Certificate Act must be taxed exactly in the same way after as before the Act of 1925, for there is no substantial difference involved in the principle of the provisions. If a later Act merely makes a reference, all amendments,

32 *State of Uttar Pradesh v Debi Chand Kashi Prasad* AIR 1967 All 359.

33 *Mohd Usman v Union of India* AIR 1969 SC 474, (1969) 1 SCWR 70, 1969 All LJ 387, 1969 BLJR 385, 1969 MPWR 373, (1969) 1 SCA 417, (1969) 1 SCJ 780; reversing *Chief Inspector of Stamps v Ugger Sen* AIR 1965 All 299; *Mst Anguri Devi v Bal Ram Ganpat Rai* AIR 1960 Punj 204, 62 Punj LR 503.

34 AIR 1927 Bom 499.

repeals, and new laws subsequently made will have effect unless its operation is saved by s 8(1) of the General Clauses Act or is void under the provisions of the Constitution.[35]

5. INSTRUMENTS, RULES, ORDERS

Whether an order of delegation under which the district magistrate could pass an order, say under sub-s (5B)(b) of the Defence of India Rules, was an 'instrument' within the meaning of s 8 of the General Clauses Act, came up for consideration before their lordships of the Bombay High Court in *Emperor v Rayangonda Lingangonda*,[36] whereupon Macklin J, observed:

> We are not satisfied that the order of delegation can be deemed to be an instrument within the meaning of section 8 and it is conceded that it cannot be regarded as an enactment. We have looked into Stroud's Judicial Dictionary and Wharton's Law Lexicon for enlightenment on the point. We find, generally speaking, that an 'instrument' is a writing usually importing a document of a formal legal kind, but that it does not include Acts of Parliament unless there is a statutory definition to that effect in any Act; and in the absence of authority we are not prepared to hold that an order of government delegating its power to the district magistrate is an instrument within the meaning of section 8(1), General Clauses Act. It is certainly not an 'instrument' as ordinarily understood. We are, therefore, not prepared to say that the delegation could be deemed to cover the delegation of such powers as might hereinafter be brought into existence for the first time by re-enactment of the rules.

Similarly, an 'order of detention' is not regarded as an 'instrument' within the meaning of s 8 of General Clauses Act.[37]

The provision of s 8 of the General Clauses Act will apply in interpreting statutes as well as instruments like the licence given to an undertaking for supply of electricity.[38] By the application of this section, the Uttar Pradesh Khandsari Sugar Manufacturing Licensing Order 1960 will be construed in its corresponding provisions as if it

35 *Gauri Shanker Gaur v State of Uttar Pradesh* AIR 1994 SC 169, 182.

36 AIR 1944 Bom 259, 262–63; followed in *Kesu Pandu Yelwande v Indubai Ankush Khandgela* (1970) 72 Bom LR 471, 474 (DB), with reference to s 14, Hindu Succession Act.

37 *Verendra Kumar v Crown* AIR 1951 Sim 216, 221; *Amar Nath v Nathoo Ram* AIR 1951 Punj 329 (order of a rent controller).

38 *Nagpur Electric Light and Power Lamp Ltd, Nagpur v Maharashtra Electricity Board, Bombay* 1968 Mah LJ 185, 70 Bom LR 177; reversed on another point in *Maharashtra State Electricity Board v Nagpur Electric Light and Power Co* AIR 1972 SC 706.

referred to the Licensing Order of 1963 and thereafter to the Licensing Order of 1967.[39]

These decisions must be considered in the light of the later decision of the Supreme Court in *Mohan Chawdhury v Chief Commr, Tripura*.[40] In that case it was held that although the expression 'instrument' has not been defined in the General Clauses Act, and has to be taken to have been used as generally understood in legal parlance to signify a deed inter partes or a charter or record or other writing of a formal nature, it must, in the context of the General Clauses Act, be understood to include a reference to a formal legal writing like an order made under a statute or subordinate legislation or any other document of character under constitutional or statutory authority. So the expression 'instrument' must mean to include a reference to an order made by the President of India in exercise of his statutory and constitutional powers. So construed, the President's order would, even after the repeal of the ordinance, continue to govern cases of detention under r 30 of the Defence of India Rules 1962 made under the ordinance. A proper construction of s 48 of the Defence of India Act 1962, read in the light of the provisions of s 8 of the General Clauses Act, bears no doubt that the detention order passed against a person under r 30 made under the repealed ordinance was intended to be continued even after repeal of the ordinance which was incorporated in the later Act.

The General Clauses Act, which, in terms, applies to central Acts, has often been applied to statutory instruments.[41] There have been decisions which, for application of s 8 of the General Clauses Act or any provision of any state General Clauses Act analogous to s 8, have included within the scope of the expression 'instrument' certain statutory rules or orders of a non-statutory character, such as order of the rent controller 1947 as repealed and substituted by the East Punjab Urban Rent Restriction Act 1949, so as to construe the order made under the 1947 Act as one under the 1949 Act.[42] The same is with regard to consent accorded by the Government of Maharashtra authorising the Delhi Special Police Establishment to investigate certain offences as specified by the Government of India in its notification issued earlier under s 3 of the Delhi Special Police Establishment Act 1946, but subsequently repealed and replaced by a new notification of that government, with the effect to construe a reference to the former notification as reference to the subsequent one.[43] Same will be the case with regard to an order made by

39 *State of Uttar Pradesh v Om Prakash* 1972 All WR 812, 814 (HC) (DB).

40 AIR 1964 SC 173.

41 *PN Choudhary v State of Bihar* 1965 BLJ 918, 922 (old repealed resolution quoted by mistake to be construed as reference to new r 74(b) of Bihar Service Cases, in the matter of termination of services).

42 *Amar Nath v Nathoo Ram* AIR 1951 Punj 329.

43 *Management of the Advanced Insurance Co Ltd v Gurudasmal* AIR 1969 Del 330, 347 (DB).

the collector in his capacity as deputy custodian under the Jaipur Ordinance 1948 relating to administration of evacuee property, as replaced by Administration of Evacuee Property Act 1950 so as to make the order revisable under s 26 of the Act.[44]

An order passed by the controller in exercise of the powers conferred upon him by Punjab Urban Rent Restriction Act of 1947 has to be deemed to be an order passed by him under the same Act of 1949,[45] and such order has to be executed by the Civil Court, despite the fact that such order, as held in *Pitman's Shorthand Academy v Bhila Ram & Sons*,[46] is not a decree.

6. APPLICATION IN CASE OF DEVOLUTION OF OFFICE

This section is applicable even in cases where the duties of one functionary, made competent to act as such under the provisions of one enactment, are made to devolve upon another by reference to another enactment. For instance, the functionary designated as *peshkar* was made competent to act as recovery officer under s 66(3) of the Travancore Income-tax Act 1121 ME, but by reference to s 13 of the Finance Act 1950 read with ss 2(44) and 226 of the Income-tax Act 1961, the same duties of the *peshkar* had been made to devolve upon the collector or an additional collector or upon such other officer as might be empowered by the state government by a special or general notification in the *Official Gazette* for the purpose of effecting recovery of land revenue or any other public demand under the law relating to recovery of land revenue or other public demand. It was held in *Ishar Beevi v Tax Recovery Officer*,[47] that by virtue of s 8 of the General Clauses Act and the provisions of the Finance Act and the Income-tax Act aforesaid, the duties of the *peshkar* as recovery officer would automatically devolve upon the collector or additional collector or any other officer so empowered under provisions of the aforesaid Acts.

7. SAVING OF PAST ACTIONS PROJECTING IN FUTURE

A scheme was settled for the administration of a *math* by the Board of Commissioners for Hindu Religious and Charitable Endowments, Madras, and the same was later modified. The scheme was originally settled under the Madras Act 2 of 1927. After the passing of Act 21 of 1951, the scheme was deemed to be settled under this new Act by virtue of s 103(a) of the new Act, the position being that the scheme had to be taken as if framed under the 1951 Act. The 1951 Act was subsequently repealed and replaced by

44 *Ram Singh v Custodian Rajasthan, Alwar* AIR 1955 Raj 63–64, 1955 Raj LW 20.
45 *Amar Nath v Nathoo Ram* AIR 1951 Punj 329–31.
46 AIR 1950 EP 181 (FB).
47 AIR 1975 SC 2135, 1975 Tax LR 974.

Act 17 of 1966 which, however, did not contemplate the settlement of a scheme. It was, therefore, contended in *Sobhanadreswara Rice Mill Co v Brahmachari Bavaji Mutt, Vijayawada*[48] that the scheme settled under the 1927 Act and deemed to be settled under Act 21 of 1951 will cease to have any force on the passing of Act 17 of 1966 for the reason that the latter Act does not contemplate any settlement of a scheme. The 1966 Act had, under its s 109(3), expressly saved and provided for the applicability of s 8 of the General Clauses Act.

The contention in substance was that s 8 of the General Clauses Act did not have the effect of saving anything done if such thing projected into the future. It was held by Chinnappa Reddy J, that there was no substance in this contention. Justice Chinnappa Reddy, observed:

> 'A reading of section 8 clearly shows that most of the things which are saved by section 8 do project into the future.[49]

In *Mawubal Deo v APSRTC*,[50] a claim petition was filed after coming into force of the Motor Vehicles Act 1988 showing as if it is a petition under the old Act of 1939. The said claim was filed after a delay of six years and 10 months. Under the new Act 58 of 1988 there is total embargo for entertaining claim petition after one year from the date of accident while earlier there was no such limitation. The claimants sought protection of s 6 of the General Clauses Act 1897 which was rejected by the Andhra Pradesh High Court and it was held that in view of the indication given in s 8 of General Clauses Act it is not open for the claimants to rely on a pre-existing law as the law which governs an action is the law that is prevailing at the time of institution of the petition.

8. MEANING OF 'FORMER ENACTMENT'

In *State of Punjab v Sukhdeb Sarup Gupta*[51] the Supreme Court had an occasion to explain the meaning of the expression 'former enactment'. Speaking through AN Grover J, the court observed:

48 AIR 1973 AP 292, (1973) 1 Andh WR 255.

49 Although the view is correct, it is submitted that the language used in cl (1) of s 8 states, inter alia, and in substance, that a reference in any instrument to the provision of a repealed enactment, unless a different intention appears, be construed as reference to the re-enacted provisions, when the repeal is followed by re-enactment. The scheme in this case was an instrument which had a reference of the repealed Act and that reference to the old Act, by virtue of the provisions of s 8, could be construed as reference to the provisions of the new Act only when the provisions of the repealed Act were re-enacted, but the old provisions relating to a scheme were not re-enacted in the new Act. The scheme could, hence, be saved not under s 8 but under s 6(b) of the General Clauses Act as a thing duly done (per revising author).

50 AIR 1992 NOC 27 (AP).

51 AIR 1970 SC 1641, 26 STC 303, 1970 SCD 849.

According to section 3(19) of that Act—The General Clauses Act—'enactment' shall include any provision contained in any Act. On behalf of the state it has been argued that the words 'former enactment' in section 8 can refer only to a central Act or provisions contained therein and they cannot cover Acts passed by the state legislature. Such an argument cannot be entertained because it goes against the express language of section 3(19) which does not lay down any such limitation. The obvious meaning of that provision is that 'enactment' would include any Act or provision contained therein passed by the Union Parliament or the state legislature. The limited meaning sought to be attributed to the word 'enactment' cannot be given to it for another reason. It could never be intended that when an Act passed by the Union Parliament repeals a state Act, the principle underlying section 8 should never become applicable. The High Court,[52] in our opinion was right in saying that there was nothing in section 8 to indicate that the words 'former enactment' meant only a central enactment and not a state enactment and that the courts would not be justified to read in that section words which were not there and to place a narrow and limited construction on the words 'former enactment'...

9. REPEAL, RE-ENACTMENT AND AMENDMENT

Section 8 speaks of re-enactment with or without modification. The principle will apply even if the original provision is repealed and re-enacted with modification. The modification should be such as does not destroy the essential substance of the original provision. If in its essence the provision remains the same then, notwithstanding the substitution of a different form or the adoption of or variation in non-essential particulars, the re-enacted provision in principle is not affected.[53] In cases of repeal and re-enactment, the words in the old statute have to be interpreted in the same sense as had been judicially put on them under the repealed statute.[54]

The point to be clearly understood in this context is that mere reference to or citation of an earlier Act in a later Act is one thing but the bodily lifting of the provisions of a former Act into the latter is another. In the former case, if the Act cited or referred is re-enacted, the construction would go with the corresponding provisions of the re-enacted Act, but in the latter case, the repeal of the former will not affect the provisions bodily incorporated in the latter.[55]

52 *Sukh Dev Sarup Gupta v State of Punjab* AIR 1965 Punj 399.
53 *Chhabil Das v Inder Singh* AIR 1976 HP 6, 10.
54 *State of Maharashtra v Tukaram Shiva Patil* 1977 Cr LJ 394, 397, (1976) 78 Bom LR 411 (DB).
55 *Jameel & Co v Commercial-tax Officer, Cuddapah* 1973 Tax LR 2181, 2190, 30 STC 321 (DB).

Section 8(1) has no application to such cases where the re-enacted law has no provision corresponding to that in the repealed provision.[56]

The question of repeal and re-enactment does not arise where there is total non-existence of a corresponding provision in the repealed enactment.[57]

Once a subsequent Act incorporates, by reference, the provisions of an earlier Act, the amendment or addition in such provision does not become applicable to the incorporating Act, unless it is made expressly applicable.[58]

A definition incorporated in one Act from another does not cease to exist merely by the fact that the Act from which the definition has been taken ceases to exist.[59]

In *Guru Pratap v Government of Andhra Pradesh*[60] the question for consideration was the legal effect of r 35 of the Andhra Pradesh Subordinate Service Rules (Pt II, General Rules) to have put into it such part of r 21 of the Civil Services (Classification, Control and Appeal) Rules as it related to appellate authority. The appellate authority in the said r 21 was later abolished by way of an amendment to that rule. It was held that the authority to revise in r 35 of Subordinate Service Rules remained intact.

Section 9. Commencement and Termination of Time—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

56 *Chhagan Lal Rathi v Income-tax Officer, District III(i), Kanpur* (1965) ILR 1 All 193, 202–03 (DB) (provisions in s 226(3) of Income-tax Act 1961 not corresponding to s 46 of the Income-tax Act 1922, with the result that reference to s 26 of the 1922 Act in Excess Profits-tax Act 1940, cannot be construed in s 226(3) of the 1961 Act).

57 *Vino Chemical and Pharmaceutical Works v Sales-tax Officer, Raipur* AIR 1965 MP 115, 117, 1965 MPLJ 220 (DB) (no provision imposing duty in the repealed statute on medicinal preparations—no question of repeal and re-enactment in new statute imposing such duty).

58 *Bolani Ores Ltd v State of Orissa* AIR 1975 SC 17, 28, (1975) 1 SCJ 320; reversing *M/s Bolani Ores Ltd v State of Orissa* AIR 1968 Ori 1 (amendment of definition of Motor Vehicles Act 1939, s 2(18) not to affect same definition in s 2(c) of Bihar & Orissa Motor Vehicles Taxation Act 1930); *Dalmia Cement (Bharat) Ltd v Regional Transport Authority, Bellary* AIR 1970 Mys 49.

59 *Firoz Meharuddin v Sub-Divisional Officer* AIR 1961 MP 110, 114, (1961) 1 Cr LJ 516, 1963 MPLJ 1246 (DB) (repeal of British Nationality and Status of Alien Act 1914, does not affect definition in cl (1) of s 2(a) of the Foreigners Act 1946).

60 (1974) ILR AP 757, 764 (DB).

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

SYNOPSIS

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1. GENERAL

Where a statute fixes only the terminus a quo of a state of things which is envisaged to last indefinitely, the common law rule obtains that fractions of a day ought to be neglected. In such cases the statute or regulation or order takes effect from the first moment of the day on which it is enacted or passed, that is to say, from midnight of the day preceding the day on which it is promulgated. Where on the other hand, a statute delimits a 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.[61]

2. SCOPE

The General Clauses Act embodies a principle of equity which should be applied to decrees apart from statutes.[62] But in terms the section applies only to acts or regulations and not to documents inter partes. Nor can the principles of the section be applied to a document which expressly states that it would have retrospective effect from a particular day.[63]

Although the provisions of s 9 may be looked into only for the interpretation of the enactments referred to in that section, they afford valuable guidance as to the method to be adopted for the purpose of computation of time even in a

61 *Re Court Fees* AIR 1924 Mad 257; *Munna Lal v Manak Chand* AIR 1950 MB 119; *M Lal v G Pal Singh* AIR 1963 Punj 378.

62 *Puran Chand v Mohd Din* AIR 1935 Lah 291, 157 IC 149, 38 PLR 124; relying on *Sankaran Unni v Raman* AIR 1925 Mad 743, 48 Mad LJ 596; *Sashi Kumar v Hill* AIR 1951 Cal 316.

63 *Vishnu Bhatt v Domakhre* AIR 1958 Ker 326, (1957) ILR Ker 887.

notification issued by an authority in the exercise of the powers conferred upon it by law.[64]

3. ANALYSIS OF SECTION

Maxwell,[65] states:

> ...when so many 'clear days', or so many days 'at least', are given to do an act, or 'not less than' so many days are to intervene, both the terminal days are excluded from the computation.

Similar is a passage from *Halsbury's Laws of England*:[66]

> When a period is fixed before the expiration of which an act may not be done, the person for whose benefit the delay is prescribed has the benefit of the entire period and accordingly, in computing it, the delay from which it runs as well as the delay on which it expires must be excluded.

The section admits of a double construction, that is, whereas the computation to the benefit of the person affected has to be made with a view to give as much time as the language permits, the computation to his detriment should be construed as strictly as possible.[67]

In *Oriental Insurance Co Ltd v Naravath Najiram & Ors*,[68] a single judge of the Andhra Pradesh High Court, following the dicta laid down by the Supreme Court in AIR 1997 SC 2147 and AIR 1998 SC 588, held, inter alia, that when the specific time of operation of the policy was not mentioned in the policy, the policy operates from the previous midnight. In the instant case, though the accident occurred on 23 December 1989 at 7:30 AM, and as such the policy was in operation from the previous midnight and therefore, the appellant was held liable to indemnify the third parties under ss 147 and 149 of the Motor Vehicles Act 1988 read with s 9 of the General Clauses Act.

The word 'and' in the section only combines two sentences dealing with same subject but not depending on one another.[69]

On a plain reading of s 9, it is obvious that the word 'and' therein is used disjunctively[70] to indicate two things, viz, if the first day is to be excluded, it

64 *Srinivas Silk Mills v State of Mysore* AIR 1962 Mys 117.
65 *Interpretation of Statutes*, 11th edn, p 340.
66 Vol 32, second edn, pp 140, 205.
67 *Gopal Sahai v Bahorni* (1952) 15 Cal LJ 120–22, 13 IC 900 (DB).
68 (1999) 5 Andh LT 673, 678–79.
69 *Vidya Charan Shukla v Khub Chand Baghel* AIR 1964 SC 1099, (1964) 2 SCA 505; overruling *Sehat Ali v Abdul Qavi Khan* AIR 1956 All 273.
70 *Narayan Kandi v Bhima Prahara* (1970) 36 Cut LT 983, 988 (DB).

is sufficient to use the word 'from'[71] and if the last day is to be excluded, the word to be used is 'to'.[72] The well-established principle applicable to construction of statutes is that ordinarily in computing time, the rule observed is to exclude the first day and to include the last day.[73]

'Within three calendar months' in s 106 of the Factories Act, means within three calendar months after the date of offence.[74]

The expression 'within 15 days from this day' will require the first day to be excluded.[75] 'Six weeks of the receipt of notice' should mean exactly six weeks from date of receipt of notice.[76]

In *Hakim Ziaul Islam v Mohd Rafi and Rafi Ahmad*,[77] the notice terminating the tenancy with effect from the date of notice was held to be invalid, but a notice in terms similar to that terminating the tenancy on the expiry of 30 days was held as valid in *Ahmed Ali v Mohd Jamal Uddin*.[78] Such notice to quit, to be valid, must expire by the end of the month of tenancy.[79]

The expression 'by a certain date', makes available to the party the whole of that day. Notice to vacate by specified date does not exclude that date.[80] The word 'from' is akin to 'after' and if the word 'from' is used for the purpose of and in reference to the computation of time, as for example, from a stated date,[81] say from day of dispossession,[82] it is prima facie excluded from computation.

71 *Kashi Nath Pandey v Shibban Lal* AIR 1959 All 54, 56, 1958 All LJ 678 (word 'of' in s 110(3)(c) of Representation of the People Act 1951, held not different from the word 'from').

72 *Union Bank, Official Liquidator v N Padmarabha Menon* AIR 1955 NUC 1824, 1954 Mad WN 382, (1954) 2 Mad LJ 44; *Manjuli v Civil Judge, Senior Division, Wardha* AIR 1970 Bom 1.

73 *A Babu Rao v State of Karnataka* 1979 Kant LJ 82, 84–85; *Abdul Jalil v Haji Abdul Jalil* AIR 1974 All 402, 406 (notice under s 106 of Transfer of Property Act 1882, requiring tenant to quit after 30 days till midnight).

74 *Re VS Mehta* AIR 1970 AP 234, 236, 1970 Cr LJ 797, 1970 Lab IC 808, (1969) 2 Andh WR 2.

75 *Ram Chandra Govind Unnave v Laxman Savleram Roughe* AIR 1938 Bom 447, 40 Bom LR 892.

76 *EP Janu Amma v Revenue Divisional Oficer, Kozhikode* AIR 1980 Ker 175.

77 1971 AWR 121.

78 1963 All WR 190; *HZ Islam v Rauf* 1971 All WR 456 (HC).

79 *Bhagbandas Agarwalla v Bhagwandas Kamu* AIR 1977 SC 1120, 1122.

80 *Sheikh Nuroo v Meghraj Ram Karan Marwari* AIR 1937 Nag 139, 36 Cr LJ 867, 31 Nag LR 312.

81 *Srinivas Silk Mills v State of Mysore* AIR 1962 Mys 117; *EP Janu Amma v Revenue Divisional Officer, Kozhikode* AIR 1980 Ker 175, 1980 KLT 132 (day of receipt of notice from collector, in s 12(2) of the Kerala Land Acquisition Act 1962, to be excluded); *Onkar v Jagmohan Singh* AIR 1982 Raj 179 (while reckoning one month, date of receipt of notice of appeal to be excluded); *Haru Das Gupta v State of West Bengal* AIR 1972 SC 1293–94, 1972 Cr LJ 872, (1973) 2 SCJ 191; *TS Lakshmi Devi v State of Madras* AIR 1961 Tri 16–17 (in case of possession actual day of dispossession to be excluded).

82 *Krishna Bilash Chakrobarty v Sonadhan Namasudra* AIR 1961 Tri 16–17.

Rajajinagar Finance and Investments Pvt Ltd & Anor v Asst General [illegible] *Bank of India & Anor*[83] the first petitioner financial company [illegible] petitioner filed an [illegible] 1997. However, it was returned on the ground that a [illegible] party should have submitted it before 8 July 1997 and the same was not submitted by the petitioner within six months from the date of coming into force of the said Act. On the facts and circumstances of the case, a single judge of the Karnataka High Court while allowing the petition, held, inter alia, as follows:

> A reading of s 9(1) of the Act makes it clear that for the purpose of commencement of time, the first in a series of days or any other period of time must be excluded. Admittedly, in the instant case, the application was submitted by the petitioners on 9 July 1997. If the first day was excluded as contemplated under s 9 of the Act, the application would be in time.

In *Chandrika Singh & Ors v Addition J Member, Board of Revenue, Patna & Ors*, a single judge having reached the conclusion that the application under s 16(3) of the Bihar Land Reform (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1962, was filed on 27 October 1990, had to consider the question as to whether or not it was filed within the period of limitation. Section 16(3)(i) of the said Act provides for filing of such an application within three months of the date of registration of the document of transfer of land, when made to any person other than a co-sharer or *raiyat* of the adjoining land. In view of the provisions of s 12(1) of the Limitation Act 1963, and assuming that the said Limitation Act is inapplicable because of the provisions of s 29(2) thereof, and in view of the provisions of s 11 of the Bihar General Clauses Act 1917, which corresponds to s 9 of the Central General Clauses Act 1897, the first day of the series of days is to be excluded. In view of the law laid down by the authorities cited in the present judgment, the judge held, inter alia, that there can hardly be any doubt that the period of three months reckoned from 28 July 1990, after excluding 27 July 1990, being the first day of commencement of the limitation period, would expire on 27 October 1990. Since the application was filed on 27 October 1990, the same cannot be said to be filed beyond the period of limitation.[84]

Wherever the word 'from' occurs in any central enactment, the date on which the order is made has to be exduded by virtue of s 9.[85]

Where the Motor Vehicles Tribunal has recorded as a fact that the accident occurred on 25 October 1983 at 11:14 AM, and whereas the contract of

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83 AIR 1999 Kant 340.

84 AIR 1998 Pat 188, 120–21.

85 *Nalluri Brahmam (Manam Vera Narayana, LR) v Government of Andhra Pradesh, chief secretary* (1995) 1 Andh LT 169 (Cr) (DB) (AP); (1995) 1 Andh LT 44 (DB).

insurance had come into effect on the same day ie, on 25 October 1983 at 4 PM, the accident was held to have occurred when the renewal had not taken effect. Accordingly, the claimant was held not entitled to the coverage under the said insurance policy.[86]

The principle involved in s 9 is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. In order to apply s 9 of the General Clauses Act the first condition to be fulfilled is whether a prescribed period is fixed 'from' a particular point. When the period is marked by terminus a quo and terminus ad quem, the cannon of interpretation envisaged and in s 9 of the General Clauses Act read with 'within' used in s 81(1) of the Representation of the People Act 1951 does not express any contrary intention.

> Any petition presented on the date of election of the returned candidate would be certainly within the period of limitation as it is a presentation on the date of election of the returned candidate.[87]

In an election to be held within six months from date of nomination, the date of nomination has to be excluded.[88]

The expression 'by July 10' does not exclude but will include the 10th day of July.[89] In the absence of any specific time mentioned in that behalf, the contract would be operative from the midnight of the day by operation of provisions of the General Clauses Act.[90]

The courts are not expected to put any interpretation upon the provisions on limitation merely by implication or inference unless compelled by irresistible force of language.[91]

Taking the two parts of s 9(1) together 'the first in series of days' would mean 'the first day in a series of days' and the same would qualify 'any other period of time' ie, 'the first day in any other period'. In the same manner, 'the last in a series of days' would also apply to 'any other period of time' occurring in the latter half of the section. In both the contexts, the first day and the last

86 *National Insurance Co Ltd v Jijubhai Nathuji Dabhai & Ors* AIR 1997 SC 2147, (1997) 1 SCC 66.

87 *Tarun Prasad Chatterjee v Dinanath Sharma* AIR 2001 SC 36, 39 (2000) 8 SCC 649 (three-judge Bench).

88 *Mahendra Singh v Rajkumar Sinha* 1966 BLJR 379–81.

89 *Sheikh Nuroo v Meghraj Ram Karan Marwari* AIR 1937 Nag 139, 170 IC 790.

90 *National Insurance Co v Jijubhai Nathuji Dabhi* AIR 1997 SC 2147, 1997 AIR SCW 2001.

91 *Lala Balmukund v Lajwanti* AIR 1975 SC 1089, 1092, 1975 All LJ 256, 1975 UJ 357 (SC).

day are to be taken as applicable not only to the 'series of days' but also to 'any other period of time' referred to in the section.[92]

When the provision in an election rule uses both the expressions 'not less than' and 'not more than', the day of filing the nomination as well as the day of election, both, have to be excluded.[93]

A distinction between interpretation of language and interpretation of technical expressions, used in enactments has been pointed out in *Balvantrai v Purshotam Sidheshvar*,[94] holding that such expressions as have not been used in the technical sense, must receive their ordinary or popular meaning. In case of technical expressions, the same should be construed in the light of the meaning given to them in cognate or contemporary enactments.[95]

The day on which the copies are applied for and the day on which they are delivered, are both to be excluded, because the law takes no account of fractions of a day.[96]

Costs deposited on 8 December, in accordance with the order of 23 November, giving 15 days' time for such deposit, were deposited within time, the day of 23 November, being excluded.[97]

4. APPLICABILITY OF SECTION IN GENERAL

The principle of s 9, being equitable, would apply to orders.[98]

The term 'within three months of the date in s 106 of the Factories Act 1948' means within three calendar months after the commission of the offence has come to the knowledge of the inspector. This interpretation, based on common law as well as on the provisions of the Limitation Act, which calls for strict grammatical meaning of words,[99] and the provisions of the General Clauses Act, results in the exclusion of the day of the knowledge, ie, the date of inspection and the three months being calculated as three calendar months.[1]

In computing the period of five days, under s 8 of the Maintenance of Internal Security Act 1971, the first and not the second day has to be excluded.[2] An order setting aside the decree was made on 23 November 1967. It was mentioned therein that if the conditional costs of Rs 30 were not paid within

92 *Official Receiver of Malabar v NP Padmanabha Menon* (1954) 2 Mad LJ 44.

93 *IM Lal v Goj al Singh* AIR 1963 Punj 378, 380, (1963) ILR 2 Punj 571.

94 (1872) 9 Bom HCR 99, 112 (FB).

95 *Kalyanadappa v Chanbasappa* AIR 1924 PC 137, 142, 51 Ind App 220.

96 *Ram Krishna Bhan v Shrawan Kisan* AIR 1944 Nag 356.

97 *Jadav Chandra Banik v Jogesh Chandra Sukla* AIR 1970 Tri 71.

98 *Ram Chandra Govind Unnave v Laxman Savleram Roughe* AIR 1938 Bom 447, 40 Bom LR 892.

99 *Bootamal v Union of India* AIR 1962 SC 1716, 1718, 1962 SCD 749.

1 *Re VS Mehta & Ors* AIR 1970 AP 234, (1970) 1 Andh LT 98, 1970 Lah IC 808; SB *Tilakhe v NB Gholave* AIR 1973 Bom 147, 74 Bom LR 647; relying on *Jamarayan Bapu v Vithoba* AIR 1923 Nag 143.

2 *Gulam Sarwar v State of Bihar* 1974 Cr LJ 109, 1973 BLJR 38 (DB).

vacate the premises within the month of October 1962, they would be treated as trespassers from 1 November 1962, and not from any earlier date, clearly implying that they would lawfully continue as tenants up to the expiration of the month of October 1962. The tenancy was, therefore, sought to be determined on expiration of the month of October 1962 and not earlier and the notice to quit expired with the end of the month of tenancy as required by s 106 of the Transfer of Property Act. It was in the circumstances, a valid notice which effectively determined the tenancy of the respondents with effect from the midnight of 31 October 1962.

It is evident from the observations made in the above two Supreme Court decisions that the expression expiring with the end of a year or a month, as the case may be, of the tenancy, occurring in s 106 of the Transfer of Property Act 1882, must be taken to mean that the last day of the month or year of tenancy will not be taken in computation of the period of notice because the period of notice will expire in the midnight of such last day of the notice with the result that the last day of such period of notice will have to be excluded from computation. The view taken by the High Court of Patna in *Mst Natho v Sital Prasad*,[46] based on the reasoning that the expression 'ending with' indicates that the last day of the month of tenancy will be taken in computation of the period of notice cannot be held to be good law any longer. The expression 'ending with the month of tenancy' shall mean that the tenancy would end in the midnight of the day of the month of tenancy, and the liability to quit or the right to take possession would accrue only after midnight of the last day of tenancy.

7. WHERE INAPPLICABLE

Where the term of agreement states that any increase or reduction in taxes, duties etc within 45 days of the auction, inclusive of the day of auction, shall be shared by the parties to the contract (auction-purchasers and board). An increase or reduction in duty made on the day of auction, of which parties had no knowledge at the time of auction, is also sharable between the parties, and the period shall not be computed in the manner provided in General Clauses Act.[47]

Section 10. Computation of Time—(1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the court or office is closed on that day or the last day of the

46 AIR 1969 Pat 310.

47 *Ramesh Enterprises v Coffee Board* AIR 1991 SC 403.

prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act 1877 (15 of 1877) applies.

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

Synopsis

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1. OBJECT OF SECTION

Apart from this section and various provisions of other Acts, there is the general principle that a party prevented from doing an act by an act of the court, can do so at the first subsequent opportunity.[48] The principle underlying s 10 is one which has also been recognised by the High Courts apart from the statute.[49] Broadly stated, the object of the section is to enable a person to do what he could have done on a holiday, on the next working day.[50] Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period if it is done on the next day on which the court or office is open. The reason is that the law does not compel the performance of an impossibility.[51] For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.[52] There is a recognised principle of law under which parties who are prevented from doing a thing;

48 *Sundaraiva Chari v Ramasami Reddi* (1898) 8 Mad LJ 265, ILR 22 Mad 179.

49 Ibid; *Kannusami Pudayachi v Kuppuswami Ayyar* (1948) 2 Mad LJ 234; *Official Receiver of Malabar v N Padmanabha Menon* (1954) 2 Mad LJ 44, 46.

50 *Kaushalendra Prasad Narayan Singh v RP Singh* AIR 1958 Pat 196, 1958 BLJR 23.

51 *Hossein Ally v Donzelle* (1880) 6 Cal LR 239, ILR 5 Cal 906, 910–11.

52 *Harinder Singh v S Karnail Singh* AIR 1957 SC 271, 273; *Kaushalendra Prasad Narayan Singh v RP Singh* AIR 1958 Pat 196; *Rafiq Ahmad v Abdul Aziz & Ors* 1986 All WC 812.

The day on which the election results are declared has, therefore, to be excluded.[19]

Under s 9 of the General Clauses Act and under s 12 of the Limitation Act, the date of receipt of the communication has to be excluded in computing the three days as prescribed in s 47A of the UP Municipalities Act 1916.[20]

6. APPLICABILITY TO STATUTORY NOTICES

In computing the period of fifteen days fixed under s 106 of the Transfer of Property Act, the words 'ending with' indicate that the last day of the month of tenancy will be taken into computation. So also, the date on which the 'notice' is received or refused will be included, since neither s 106 nor any other provision had provided that the fifteen days will be 'from' the date of notice.[21]

It is certain that a tenant must get thirty days' clear notice as required under s 106 of the Transfer of Property Act, as amended in the State of Uttar Pradesh, which is otherwise fifteen days. If a tenant has to get thirty clear days, notice, then a date on which the notice is received cannot be included as a clear day and, therefore, this would mean that the tenant is not getting thirty days' clear notice. There may be a large number of cases where a notice is served on the tenant at the end of the day or in the evening at 6 PM. In that case, it cannot be said that the date on which the notice is served is a clear day to be included within the period of thirty days mentioned in s 106 of the Transfer of Property Act. There are other statutes interpreting the period of limitation. It has been held in a number of cases that when a statute gave a clear number of days, the date on which the notice is received or act is done is generally excluded.[22]

There are other cases where clear notice was required and the period of the notice or the act was included.

In the case of *Commr of Income-tax v Ekbal & Co*,[23] 30 days' time was allowed on the notice. It was observed that within 30 days and not less than 30 days are two quite different things. Within 30 days is within two points of time, one at which the period begins, and the other, at which it expires. On the other hand, not less than 30 days is outside these two points of time. There must be an interval of not less than 30 days and that means 30 clear days.[24] The period must continue beyond the expiration of the stated time, whereas 'within

19 *Bhogilal Pandya v Maharawal Laxman Singh* 1967 Raj LW 577, AIR 1968 Raj 145; relying on *TC Basappa v T Nagappa* AIR 1954 SC 440, (1954) SCJ 695; *Vidya Charan Shukla v Khub Chand Baghel* AIR 1964 SC 1099, [1964] 6 SCR 129.

20 *Ram Gopal Gupta v State of Uttar Pradesh* 1969 All LJ 231.

21 *Natho v Sital Prasad Sahu* AIR 1969 Pat 310.

22 *Shiva Narayan v Chandrika Prasad* AIR 1973 All 155, 1972 All WR 575 (HC).

23 AIR 1945 Bom 318, 47 Bom LR 181.

24 *Re Railway Sleepers Supply Co* [1885] 29 Ch D 204.

the stated period' must mean when it says something less than the moment of expiration. It has, therefore, been held that in order to give a party clear 60 days' time, under s 66(1) of the Income tax Act 1922, the date of receipt of an order by the party has to be excluded.[25]

In *Ram Bharose Lal Gahoi v State of Madhya Pradesh*,[26] 10 clear days were needed to expire between the notice of a resolution of no-confidence and the motion of no-confidence. It was, therefore, held that there should be 10 clear days, and the first day was excluded. Similar view was taken in *Anoklunal Bhuremal v Chief Panchyat Officer, Rajasthan*,[27] and in *Jai Bhagwan Sharma v Matu Ram Bhola Ram*.[28]

The Calcutta High Court has also taken the same view.[29] In taking this view, the Calcutta High Court had derived support from a number of English cases.[30] Where the plaintiff had served his notice on the defendants on 16 *Falgoon* and required them to quit the land on 30 of the same month, the defendants had only 14 clear days' notice which was bad in law.[31]

The contrary view taken by the High Court of Patna, in *Mst Natho v Sital Prasad*,[32] is based on the reasoning that the expression 'ending with' indicates that the last day of the month of tenancy will be taken in computation of the period of 15 days, and that 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 computation. But if the expression in such context is either 'beginning with' or 'ending with' then those dates are not required to be omitted from computation.

In *Shiva Narayan v Chandrika Prasad*,[33] the High Court of Allahabad did not expressly dissent from the view taken by the High Court of Patna in the above *Mst Natho*'s case,[34] but had simply observed that in the Patna case, the earlier decisions of the Calcutta High Court were not considered. However, the Allahabad High Court has dissented impliedly, if not expressly, from the view taken by the Patna High Court.

It becomes relevant in this context to examine a few decisions of the Allahabad High Court given earlier,[35] beyond that given in *Shiva Narayan*

25 *Commr of Income-tax, Bombay v New Citizens of India Ltd* (1956) 68 Bom LR 602, 606 (DB).
26 AIR 1955 Nag 35, 1955 Nag Lj 124.
27 AIR 1957 Raj 388, (1956) ILR 6 Raj 1044.
28 AIR 1964 Punj 135, 65 Punj LR 1090.
29 *Gobinda Chandra Saha v Dwaraka Nath Parita* AIR 1915 Cal 313, 19 CWN 489; *Subadini v Durgacharan Lal* (1901) ILR 28 Cal 118, 4 CWN 790.
30 *Glassington v Rawling* (1803) 3 East 406; *Castle v Barditt* (1970) D&E 628; *Migotti v Colvill* (1879) 4 CPD 233.
31 *Subadini v Durgacharan Lal* (1901) ILR 28 Cal 118, 4 CWN 790.
32 AIR 1969 Pat 310.
33 AIR 1973 All 155, 1972 All WR 575 (HC).
34 AIR 1969 Pat 310.
35 Earlier in point of time and not in the order of reporting (RG Chaturvedi J).

v Chandrika Prasad,[36] along with another case in *Abdul Jalil v Haji Abdul Jalil*,[37] decided after the case of *Shiva Narayan v Chandrika Prasad*.[38]

Notice of the type allowing the tenant to remain in possession for 30 days up to midnight after receipt of notice had come up for consideration before the Allahabad High Court in *MZ Islam v Rafi*,[39] *Phool Chand v Jagadish Prasad*,[40] *Suraj Prasad v Kusum Lata*,[41] and *Mewa Lal v Tara Rani*.[42] In all these, it was held that the use of the present tense in relation to termination of the tenancy refers to the present act of giving the notice by means of which the tenancy was sought to be terminated and it did not mean that the tenancy was sought to be terminated forthwith or with effect from the date of notice. On the other hand, the demand for possession combined in the notice requiring the respective lessees to vacate the premises on the expiry of 30 days clearly indicated that the tenancy was meant to be terminated on the expiry of that period which would also follow by operation of s 111(b) of the Transfer of Property Act. All these notices were held to be valid because the last or the thirtieth day was excluded from computation of time in the period of notice.

In the case of *Abdul Jalil v Haji Abdul Jalil*,[43] the notice in question had desired the tenant to quit or vacate the premises on the expiry of thirty days from the date of service thereof, and the same was held to be a valid notice because it had granted the tenant 30 clear days after the receipt of the notice. It was observed that:

> When the lessor terminates that lease with effect from the date of notice the grace allowed to the lessee to stay for thirty days before vacating the premises reduces him to the status of a licensee or a tenant on sufferance which is in contravention of the law.

The point now stands concluded in view of the two Supreme Court decisions that in order that a notice be held valid, the requisite period of 15 days must expire with the end of the month of the tenancy, which means that the last day of the month of tenancy shall be excluded.

The first case is that of *Dattonpant v Vithalrao*.[44] Speaking for the court, it was held by NL Untwalia J that:

> ...the notice purported to terminate the tenancy by the 8 December 1968 treating the month of tenancy as commencing from the 9th day of a month

36 AIR 1973 All 155.
37 AIR 1974 All 402.
38 AIR 1973 All 155.
39 AIR 1971 All 302, 1971 All WR 121 (HC).
40 1971 All WR 456 (HC), 1971 All LJ 905.
41 AIR 1973 All 198, 1973 RCR 137.
42 AIR 1973 All 165, 1972 All WR 801 (HC).
43 AIR 1974 All 402, 1974 All LJ 381.
44 AIR 1975 SC 1111, [1975] 1 SCR 440.

and ending on the 8th day of the month following. The requisite period of 15 days was given but the defect in the notice was that it did not expire with the end of the month of tenancy. The end of the month of the tenancy was the 9th and not the 8th day...

The second case is that of *Bhagabandas v Bhagwandas*.[45] The observations of the court, speaking through PN Bhagwati J, deserve to be quoted in extenso, so as to dispel from the point any shadow of doubt. It was held:

It is indisputable that under s 106 of the Transfer of Property Act, the notice to quit must expire with the end of tenancy, or in other words, it must terminate the tenancy with effect from the expiration of the month of the tenancy. If it terminates the tenancy with effect from an earlier date, it would be clearly invalid. Now, here the notice to quit required the respondents to vacate the premises 'within the month of October 1962' and intimate to them that otherwise they would be 'treated as trespassers from 1 November' in respect of the premises. The question is: what is the meaning and effect of the words 'within the month of October 1962' in the context in which they are used in the notice to quit. Do these words mean that the tenancy of the respondents was sought to be terminated at a date earlier than the expiration of the month of October 1962 and they were required to vacate the premises before such expiration? We do not think so. When the notice to quit required the respondents to vacate 'within the month of October 1962' what is meant was that the respondents could vacate at any time within the month of October 1962 but not later than the expiration of that month. The last moment up to which the respondents could, according to the notice to quit, lawfully continue to remain in possession of the premises was the midnight of 31 October 1962. We fail to see any difference between a notice asking a tenant to vacate 'within the month of October 1962' and a notice requiring a tenant to vacate latest by the midnight of 31 October 1962, because in both cases, the tenant would be entitled to occupy the premises up to the expiration of 31 October 1962 but not beyond it. This position would seem to follow logically and incontestably, as a matter of plain natural construction, from the use of the words 'within the month of October 1962' without anything more, but here it is placed beyond doubt or controversy by the notice to quit proceeding to add that otherwise the respondents would be treated as trespassers from 1 November 1962. This makes the intention of the authors of the notice clear that they are terminating the tenancy only with effect from the end of the month of October 1962 and not with effect from any earlier point of time during the currency of that month. If the respondents do not

45 AIR 1977 SC 1120, 1977 RCJ 592, 1977 Cur LJ (Civ) 209, 1977 UJ 194 (SC), 1977 RLR 770, 1977 RCR 754, (1977) 2 SCC 646, (1977) ILR 1 Kant 469, (1977) 2 SCJ 48, [1977] 3 SCR 75.

15 days of 23 November 1967, the application made under O 9, r 13, Civil Procedure Code, shall stand rejected. Costs were deposited on 8 December 1967. If 15 days are counted from the day following the date on which the order was passed, namely, 23 November 1967, then obviously the costs were paid within 15 days.[3] The words 'not being less than one month' shall, thus, mean the exclusion both of the first and the last day.[4]

Since s 18(1) of the Limitation Act provides that the fresh period of limitation shall be computed from the time the acknowledgement was signed, in view of the provisions of s 12(1) of the Limitation Act and s 9(1) of the General Clauses Act, it is clear that the day on which the acknowledgement is made will have to be excluded in computing the period of limitation of three years.[5] Any provision as to limitation has to be construed strictly.[6]

A cross-objection, for which the time allowed had expired during vacation filed on the reopening day of court after vacation, was held to be filed within time.[7]

Where the trial judge had ordered that if the court-fee was not paid within a month from 15 May 1953, the suit was to stand dismissed at the end of the time, it means that the suit was to stand dismissed on 15 June 1953. But the party was entitled to the whole of that day to make payment of the court-fees, and he had every right to make such a payment at the last minute before the rising of the court.[8]

Where a party is given time to do an act, that is to make a payment by a particular date, he is entitled to do that during the course of that whole day.[9] In other words, that date is not excluded. Even though the case was posted for disposal before the rent control officer, additional deputy commissioner's court, it is not necessary that the payment should have been made before the case was called. If the whole of that day was available to the party to make the payment, then he is free to do so till the expiry of that day. The court has no power, on that day, to grant permission to the landlord to terminate the tenancy.[10]

3 *Jaiav Chandra Banik v Jogesh Chandra Sukla* AIR 1970 Tri 71.

4 *Kuneer Motors Pvt Ltd v Municipal Council, Nagercoil* AIR 1967 SC 684, 687 (s 78 of the Travancore District Municipalities Act 23 of 1116 ME).

5 *Sopeshwar Bapurao v Nivratti Raburao* AIR 1973 Bom 147, 74 Bom LR 847, 1972 Mah LJ 916.

6 *Ramashray Roy v Pashupati Kumar Pathak* AIR 1968 Pat 1, 5, 1968 BLJR 359.

7 *Kashinath Nathugir Gosain v Prabhakar Bhaskar Gadhway* AIR 1955 Nag 300, 1956 Nag LJ 331

8 *Balbir Nath v State of Pepsu* AIR 1957 Pepsu 14; *Padma Charan Mohapatro v Superintendent of Police* AIR 1965 Ori 71.

9 *TA Jinakumara Nainar v Periaswamy Goundan* AIR 1949 Mad 376–77, (1948) 2 Mad LJ 368 (DB).

10 *Dhanamal v Addl Dy Commr* AIR 1957 Bom 154; relying on *Dewa Das v Sachha Mal* AIR 1935 Lah 291; *Sheikh Nuroo v Meghraj Ram Karan Marwari* AIR 1937 Nag 149, (1937) II R Nag 214; *TA Jinakumara Nainar v Periaswamy Goundan* AIR 1949 Mad 376, (1948) 2 Mad LJ 368; *Sudalayadum Perumal Nadan v Mst Sivanandji Nadachi* AIR 1916 Mad 840 (1), 18 Mad LT 199 (DB).

In computing a period of limitation as prescribed in s 12 of Bihar and Orissa Motor Vehicles Taxation Act 1930, the due date for payment of tax has to be excluded.[11]

Where the dispossession took place on 19 May 1957, the period of limitation for a suit under s 9 of the Specific Relief Act has to be counted from 20 May 1957, in the light of s 9(1).[12]

The expression 'within a certain period' used in various statutes means that the date from which the period has to be counted must be excluded,[13] though the last day has to be included.[14]

5. APPLICABILITY IN ELECTION MATTERS

This section has been held to be applicable to the trial of election petitions for computation of time,[15] and even though the Limitation Act of 1963 has no application to election petitions, ss 9 and 10 of the General Clauses Act, being in pari materia with ss 12(1) and 4 of the Limitation Act, would govern an election petition.[16] Where the limitation provided for presenting an election petition was 'within forty-five days from the date of election of the returned candidate' and the date of election was the date when the polling had taken place, ie, 26 November 1972 and the election petition was presented on 10 January 1973, it was held that in computing the period of limitation, 26 November 1972 had to be excluded and the petition filed was within time.[17]

In computing the period of 14 days under s 110(3)(c) of the Representation of the People Act 1951, the day of publication of the notice of withdrawal has to be excluded.[18] In the same way, the day on which the election results were to be announced should also be excluded. An election under the Representation of the People Act is an application within the schedule of the Limitation Act, and the provisions of s 12(1) read with s 29(2) of the Limitation Act will apply in computing the period of limitation.

11 *Bhagiram Singh v Superintendent of Police* AIR 1968 Ori 25.

12 *Krishna Bilash Chakraborty v Somadhan Namasudra* AIR 1961 Tri 16.

13 *Ram Nandan Singh v Ramadhar Singh* AIR 1966 Pat 297, 301–03 (FB); overruling *Chandra Shekher Prasad Singh v Jai Prakash Singh* AIR 1959 Pat 450 (DB).

14 *Suresh Chandra v Birdhi Chand* AIR 1955 Raj 229, 231, 1955 Raj LW 412 (DB); overruling *Ram Krishna v State of Rajasthan* 1964 Raj LW 121.

15 *KV Rao v BN Reddy* AIR 1969 SC 872, [1969] 1 SCR 179; *TC Basappa v T Nagappa* AIR 1954 SC 440, 445, (1954) SCJ 695 (date of publication of return of accounts excluded in computing 14 days under r 119 of Election Rules framed under Representation of the People Act 1951).

16 *K Venkateswara Rao v Bekhan Narsimha Reddi* AIR 1969 SC 872, 879, (1969) 2 SCJ 505.

17 *Ajit Prasad v Nandini Satpathy* AIR 1975 Ori 184, (1974) ILR Cut 64.

18 *Kashinath v Shibban Lal* AIR 1959 All 54; *Anokhmal Bhuremal v Chief Panchayat Officer, Rajasthan* AIR 1957 Raj 388.

in court on a particular day not by an act of their own but by the court itself, are entitled to do it at the first subsequent opportunity.[53]

Under the Mysore Insolvency Act, ss 13 and 9(1)(c) the application must be filed within three months from the date of the insolvency. The last date of limitation happened to fall during the vacation. Accordingly, the application under s 13 was filed on the re-opening day. It was held that the filing of an application under s 13 is an 'act' or at any rate a 'proceeding' contemplated by s 10 of the (Mysore) General Clauses Act and that being the case the section will apply to the application and it should be deemed as having been filed within the period prescribed.[54]

Under a consent decree the plaintiff was to pay the decretal amount on or before 31 May 1954. The civil courts were closed on 31 May 1954 on account of summer vacation and re-opened on 14 June 1954, on which date the plaintiff brought the decretal amount in court whereupon the judge sent a memo to the *nazir* to receive the amount. The *nazir* however told the plaintiff to bring the amount the following day because he had tendered it after the Treasury hours. The amount was then deposited on 15 June 1954. It was held that the plaintiff had tendered the amount in the court during the court hours on 14 June 1954, the day on which the court re-opened. It was through no fault of the plaintiff that the deposit was not accepted on the 14 June 1954, and hence, the deposit on 15 June 1954 was a valid deposit under this section which was applicable to the case.[55] But where the plaintiff has two courses open before him one of paying the amount directly to the defendant and the other of depositing the amount in court, he is not entitled to take advantage of this section, if the last date of the deposit happens to be a holiday.[56]

2. APPLICABILITY

This section was applied to a case of deposit in bank, where on account of rush at the Bank, the deposit made on the next day was held to have been made on the prescribed day.[57]

The section applies only where an act to be done within a particular time is allowed by an Act of Parliament.[58] In order to attract the application of the

53 *Muhammad Jan v Shiam Lal* AIR 1924 All 218, 22 All LJ 110, ILR 46 All 328.

54 *Subbaiah Gowda v State of Mysore* AIR 1962 Mys 197, 201; *Narayan Menon v Devassy* (1964) ILR 2 Ker 386, 1964 KLT 443, 1964 Ker LJ 650 (a case under Cochin Insolvency Act).

55 *Rakadoo Isso v Narayan* AIR 1959 MP 352; relying on *Mahbub Ali v B Bishen Singh* AIR 1944 Lah 470, 46 Punj LR 326; *Narayanaswami Naidu v Rangaswami Naidu* AIR 1926 Mad 749, 50 Mad LJ 547; *Prem Chand Bhikabhai v Ramdeo Sukhdeb* AIR 1949 Nag 141, ILR 1949 Nag 141, 1949 Nag LJ 303.

56 *Krishan Chandra v Union of India* AIR 1958 MP 295, 1958 MPC 40.

57 *Mahbub Ali v B Bishen Singh* AIR 1924 All 218–19, 22 All LJ 110.

58 *Krishna Chandra v Ramgulam* AIR 1958 MP 295, 297, 1958 MPLJ 121 (DB).

provisions of this section, all that is required is that there should be a period prescribed and that period should expire on a holiday. Where the prescribed period of retirement of a candidate expired on a holiday, the retirement on the next working day was held proper by virtue of s 10 of the General Clauses Act.[59] Under s 13(5) of Delhi and Ajmer Rent Control Act, the tenant has to make the deposit in court and it is for the court either to accept it in its office or to direct the deposit to be made under its order in the treasury. Where the court directs him to make the deposit in the treasury and the treasury is closed, the tenant has a right to avail of the provisions of s 10 of the General Clauses Act.[60]

Where the plaintiff has established by acceptable legal evidence that they have received disclaimer letter only on 28 September 1985 and the last date, namely 28 September 1986 being a Sunday and hence a holiday, the plaintiff was held entitled to file the suit on the next working day ie, 29 September 1986. When the contention that the said letter was received only on 28 September 1985 was accepted, then the plea that they ought to have filed the suit on 27 September 1986 (Saturday) was held liable to be rejected. In the instant case, the 12 months period was prescribed by only a contractual term, and therefore neither s 4 of the Limitation Act, nor s 10 of the General Clauses Act was held applicable. Therefore, the contention, that the suit which was filed on 29 September 1986 was within time, was sustained. The court held:[61]

> The Insurance Companies, when citizens make claim based on their policies, must act fairly and such technical plea should not ordinarily be taken up unless the claim is not well-founded.

As laid down in s 10(1) of the Act, computation of time applies to all central Acts and regulations in view of sub-s (2) of s 10. If the office is closed on the last day of the prescribed period, any act done on the next working day shall be deemed to have been done in due time.[62]

Both ss 9 and 10 have been held inapplicable to r 119 of the rules made under the Representation of the People Act 1951, because the rule uses the expression 'not later than' in contradistinction to the words 'from' and 'to' in s 9 and the words 'within the prescribed time' in s 10.[63]

But where no period of limitation is prescribed by the statute, the provisions of this section cannot have any application. Thus, the section

59 *Suraj Bhan v Randhir Singh* AIR 1958 Punj 483, 60 Punj LR 457.

60 *Sunder Lal Jain v Lajwanti Devi* 60 Punj LR 198; *Ladu Lal v Keshar Lal* AIR 1969 Raj 112 (last date for deposit being a holiday, deposit on next day held valid).

61 *Oriental Insurance Co Ltd v Karur Vysya Bank Ltd* AIR 2001 Mad 489, 495(DB).

62 *Nalluri Brahmam (Manam Veera Narayana, LR) v Chief Secretary, Government of Andhra Pradesh* (1995) 1 Andh LT (Cr) 169 (DB) (AP), (1995) 1 Andh LT 44 (DB).

63 *T Nagappa v TC Basappa* AIR 1954 Mys 102, 109, (1954) ILR Mys 47.

does not apply to a notice under s 80 of the Civil Procedure Code, there being nothing like proceeding in a court.[64] Thus the section has been held not to apply to a petition under s 12(1)(d) of the Hindu Marriage Act 1955, which does not prescribe a period of limitation for filing a petition by the plaintiff.[65]

Section 10 applies to proceedings in an election tribunal under the Representation of the People Act 1951.[66]

Courts being closed on 11 December 1927, a complaint under s 19, Cattle Trespass Act, was held to have been correctly entertained on 12 December 1927, by applying the principles of the General Clauses Act to the Cattle Trespass Act 1871, on the principle of justice and expediency, since the former virtually applied to Acts made on or after 14 January 1897.[67]

The period prescribed by s 9(1)(c), Provincial Insolvency Act, is a period of limitation to which s 4 of the Limitation Act as well as s 10 of the General Clauses Act should be made to apply.[68]

The Allahabad High Court has framed General Rules (Civil) 1957 for the civil courts in Uttar Pradesh. According to r 13 thereof the case fixed for disposal on a declared holiday can be disposed off on that day only with the consent of the parties.[69]

The High Courts of Kerala,[70] Allahabad,[71] and Mysore,[72] are of the view that s 10 would apply to an application filed by a creditor under s 9(1)(c) of the Provincial Insolvency Act 1920.

Section 10 has no application to a period of grace allowed under s 31(1) of the Limitation Act 1908.[73] However, where the court adjourned a case on the condition of payment of costs (assessed at Rs 500) within a period fixed by the court, by reason of the provision in s 148, CPC, it has the power to enlarge the period even though the period originally fixed had expired.[74] In an earlier case,[75] the same High Court had held that a certain day fixed for compliance with some order of court means the whole day.

This section will be attracted even when in doing an act within a certain time, an option is left with the doer. For example, when rent is to be deposited

64 *Province of Madras v Vikrama Deo* AIR 1943 Mad 284, 286, (1943) 1 Mad LJ 53.

65 *Sitaram v Yashodabai* AIR 1962 Bom 170; *Moreshwar Narayan Bhadke v Shashikant Balakrishna Malkar* AIR 1982 Bom 10 (proviso to s 11 of Bombay General Clauses Act 1904—excluding application of s 11 to proceedings to which the Indian Limitation Act applies).

66 *S Gurmej Singh v Election Tribunal, Chandigarh* (1964) 66 Punj LR 183–86; reversed on another point in *S Gurmej Singh v Election Tribunal* AIR 1964 Punj 357 (FB).

67 *Mahadeo Ganpati Patil v Nabha Vishwanath* AIR 1929 Nag 96, 30 Cr LJ 125.

68 *K Gopala Pillai v SP Shankar Iyer* AIR 1955 Tr & Coch 2 (FB).

69 *Rafiq Ahamad v Abdul Aziz* AIR 1987 All 117, 1986 All WC 812.

70 *K Gopala Pillai v SP Sankar Iyer* AIR 1955 Tr & Coch 2–3, 1954 KLT 535 (FB).

71 *Radhe Lal v Roop Ram* AIR 1942 All 429, 434, 1942 All LJ 592.

72 *GR Subbiah Gowda v Mohamed Alam* AIR 1962 Mys 197, 200, 40 Mys LJ 387 (DB).

73 *Shiv Das Daulat Ram v Narayan Asaji* (1911) 13 Bom LR 1153, ILR 36 Bom 268, 271.

74 *Madan Gopal v Kallis (India) Ltd* AIR 1957 Cal 598.

75 *Ramapat Chatterji v Sachinandan Naidu* AIR 1920 Cal 244, 43 IC 525.

by 15th of every month, and if on any 15th day the court, is closed, the deposit can be made on next day, despite the option that it could be made over direct to the landlord.[76]

But where a decree was passed providing that the judgment-debtor shall reconvey the suit property to the decree-holder on payment of Rs 10,000, and no time was fixed and the amount was tendered in time but could not be deposited as the presiding officer was not present, it was held that the right of the decreeholder was not lost.[77]

It is well established that, although the parties themselves cannot extend the time for doing an act in court, yet if the delay is caused, not by any act of their own but by some act of the court itself, such as the fact of the court being closed, they are entitled to do the act on the first opening day,[78] though taken in its ordinary sense, the word 'court' does not mean a registrar, under s 73 of the Indian Registration Act 1877.[79] Every consideration of justice and expediency would require that the accepted principle which underlies s 10, General Clauses Act, should be applied in cases where it does not otherwise in terms apply.[80]

A suit for which time, under the Punjab Act 3 of 1923, expired on Sunday the 14th could be filed on Monday the 15th.[81]

The 30 days' period prescribed by s 9, Preventive Detention Act,[82] as also the six months' period in s 75 of the Factories Act 1948[83] is governed by s 10, General Clauses Act, so that if the period expires on a holiday, the material can be placed before the board on the next day on which the office of the board or court is open.

Though an application under s 255, Companies Act, has to be made within three years from the date of the first appointment of the liquidator, yet in computing that period, the first day should be excluded as is made clear from the use of the word 'from'. If the last day in the prescribed period is a day on which the court is closed, the liquidator is entitled to file an application the next day on the principle underlying s 13, General Clauses Act.[84]

76 *Kailash Industrial Mills v Shanti Swarup* AIR 1981 Raj 61, 63.

77 *Gottubai v Jagdish Prasad* 1962 MPLJ (Notes) 294.

78 *Muhammad Jan v Shiam Lal* ILR 46 All 328, AIR 1924 All 218; overruling *Hirday Narain v Alam Singh* ILR 41 All 47 (pre-emption decree); *Pat Ram v Edwin Howard* AIR 1931 Lah 388 (pre-emption decree); *Dhannu Singh v Kesho Prasad* AIR 1923 Nag 247 (decree for possession); *Muthuvenkatapathy v Kuppu* AIR 1940 Mad 426 (FB) (O 21, r 92, CPC); *Raja Pande v Sheopujan Pande* AIR 1932 All 429 (FB) (s 6, Insolvency Act); *Balkisan v Bhanu Prasad* AIR 1938 Nag 444 (s 54, Insolvency Act).

79 *Queen-Empress v Ram Lal* ILR 15 All 141, 13 All WN 59.

80 *Mahadeo Ganpati Patil v Vishwanath Nabba* AIR 1929 Nag 96.

81 *Jai Dev Singh v Abdul Rahman* AIR 1930 Lah 127–28, 30 Punj LR 720.

82 *Hubbalal v State* AIR 1955 MB 36.

83 *State v EC Govindan* AIR 1952 Tr & Coch 188, 190, 1952 Cr LJ 901, 1952 Ker LT 211 (FB).

84 *Official Receiver of Malabar v N Padmanabha Menon* (1954) 2 Mad LJ 44.

Section 10 of the General Clauses Act was availed of in a suit for foreclosure or sale wherefor the period of limitation had expired on a holiday, even when s 4 of the Limitation Act 1908 was taken as not applicable.[85]

The expression 'court or office' came up for consideration before a Full Bench of Patna High Court in *Babu Lochhmeswar Prasad v Babu Girdhari Lal*,[86] Aggarwal J, observed therein:

> Here, I think an act directed or allowed to be done or taken in an office is used in this section in contradistinction to an act directed or allowed to be done or taken in a court, and that 'office' does not here include the office of a court, for when a litigant is required to do a particular act to further this suit or appeal it is really in court that he is required to do it although for the sake of convenience and to save the time of the judges it is in fact done in the office of the court. The office of the court is merely the hand with which the court performs some of its functions. If this be so, the fact that the office of a court remains open while the court itself is closed for judicial business will not deprive a litigant of the extended time for doing an act to which section 10, General Clauses Act, applies.[87] The rent controller and additional rent controller, appointed under Delhi Rent Control Act 1958 are 'courts' for purposes of calculating the period of limitation so as to attract applicability of section 10.[88]

Section 10 applies *ex proprio vigore* for the purpose of interpretation of s 97 of the Representation of the People Act in the absence of anything to the contrary in that Act or the rules made thereunder. Although the definition of public holiday in the explanation to s 30 in that Act is meant for the purposes of that section only, there is nothing in it to indicate an intention to the contrary to exclude the operation of s 10 of the General Clauses Act in construction of s 97 of the Representation of the People Act.[89]

When 9 September 1962 was Sunday, the election petition filed on 10 September 1962, was held to be within time.[90] Similarly, where in a case charge-sheet was submitted on 14 September 1989 happening to be the 91st day as 12 September was second Saturday and 13 September was a Sunday it shall be deemed to have been submitted within time and the

85 *Murugesa Mudali v Ramasami Chettiar* (1914) 26 Mad LJ 23, (1913) 21 IC 770–71 (DB); *Hira Singh v Musammat Amarti* (1912) 9 All LJ 439, ILR 34 All 375, 381–82 (DB).

86 AIR 1939 Pat 667, 677 (FB); but see *British India Steam Navigation Co v Mahomed Bhoy* AIR 1923 Mad 435.

87 *Krishna Dhan v Ummatul Bohra Begum* AIR 1949 All 209–10, 1949 All LJ 205 (DB) (when court is closed, ministerial staff cannot be said to be in office).

88 *Flowmore Pvt Ltd, New Delhi v Keshav Kumar Swarup* AIR 1983 Del 143, 1982 Rajdhani LR 742, (1983) 23 DLT 54.

89 *Kaushalendra Prasad Singh v RP Singh* AIR 1958 Pat 196; *S Gurmej Singh Hira Singh v Election Tribunal* AIR 1964 Punj 337.

90 *Ram Nandan Singh v Ramadhar Singh* AIR 1966 Pat 297, 1966 BLJR 553.

applicant cannot ask for bail for non-submission of charge-sheet within 90 days.[91]

This section clearly has no application to a notice under s 80, CPC, as it does not direct that any Act or proceeding should be done or taken in any court or office on a certain day or within a prescribed period.[92] Again, no question of due time arises in the case of a review application as no time is prescribed.for it. If the court is closed for vacation on the 90th day mentioned in Sch 1, art 5 of the Court Fees Act, the section does not say that an application presented after the vacation, is to be considered as presented at the beginning of the vacation, so that the period of vacation should not count at all.[93] But, this section can be taken advantage of in the matter of notice given to the railway administration by forwarding it by post in a prepaid letter, assumed as an 'act' within s 140(c) of the Railways Act 1890.[94]

Section 10 applies to a case in which an act is allowed or ordered to be done by the Act of legislature. It would not apply to a compromise decree, where, for instance, the decretal amount is payable in instalments. Although in such a case there is a superadded command of the judge in the sense that a decree has been passed, yet the decree is nonetheless an agreement between the parties, and time is of essence in that contract.[95]

See *Madura Co Pvt Ltd v Thangal Kunju Musaliar*,[96] where, relying on the maxims *lex non cogit ad impossibilia* and *actus curiae neminem gravabit*, the court applied the principle under this section to a case of contractual condition stipulating a period for filing a suit for damages.

If a subordinate judge is appointed election commissioner he can be deemed to be a court for the purposes of s 4, Limitation Act, and, therefore, if the time prescribed by s 20 expires on a day when the civil courts are closed, an election petition can be filed on the day the court reopens. At any rate s 10, General Clauses Act, will operate to save the petition from being barred by time.[97]

As to the applicability of s 10 to decrees and orders made by courts, the High Courts of Madras,[98] Nagpur,[99] and Bombay,[1] have an affirmative view

91 *Nirapat & Ors v State of Uttar Pradesh* 1988 All LJ 1146; however the Delhi High Court has expressed a different view in *Powell N Ogechi v State (Delhi Admn)* 1986 (3) Crimes 577.

92 *Province of Madras v Maharaja of Jeypore* AIR 1948 Mad 284.

93 *Trimbak v Narain* AIR 1935 Nag 164.

94 *Union of India v Ashrafi Devi* AIR 1957 MP 114, 117, 1957 MPLJ 294 (DB).

95 *Ram Kinkar Singh v Kamal Basini Devi* 17 Pat 191, AIR 1938 Pat 451; *Ilahi v Taiba Begum* AIR 1922 Oudh 145.

96 AIR 1964 Ker 190.

97 *Sidhiah v Rudrappa* AIR 1954 Mys 49.

98 *Sankaran Unni v Raman* AIR 1925 Mad 743, 48 Mad LJ 596; *Surya Prakash Rao v Venkataratnam* AIR 1938 Mad 523, (1938) 1 Mad LJ 342.

99 *Dhanu Singh v Keshoprasad* AIR 1923 Nag 246, 19 NLR 116; *Prem Chand Bhikabhai v Ramdeo Sukhdeb* AIR 1949 Nag 141, 1949 Nag LJ 303 (case of payment of instalment in terms of a compromise decree).

1 *Wana Marad Rajvi v Nathu Murha* (1910) 12 Bom LR 818, (1910) ILR 35 Bom 35.

on the point. But this view, to some extent, has been modified by the High Courts of Patna,[2] Allahabad,[3] and the chief court of Oudh,[4] holding that the section has no application to acts to be done voluntarily,[5] or in view of a consent decree or to acts not ordered to be done by any Act of legislature. Explaining the latter view, the Supreme Court,[6] observed that when there is an option to the judgment-debtor either to pay to the decree-holder or to deposit in court, he cannot choose one of them so as to prejudice the right of the decree-holder, that is to say, the judgment-debtor cannot choose the alternative to the prejudice of the other party, and that is so despite the provisions in r 1 of O 21 of the Civil Procedure Code.

The High Court of Calcutta,[7] in departure from its earlier view,[8] holds that s 10 is not applicable to orders of courts. Section 10(1) applies to acts and proceedings before courts or offices and for the purpose of applicability of s 10(1), the industrial tribunal has been held to be a court.[9]

Section 11 of the Bombay General Clauses Act 1904, corresponding to s 10 of the General Clauses Act 1897, applies to acts and proceedings directed or allowed to be done or taken by any Bombay Act after the said Bombay General Clauses Act 1904.[10]

3. PERIOD PRESCRIBED

The period of fourteen days provided in r 119(a) of the rules framed under s 81(1) of the Representation of the People Act 1951, is a period prescribed, and that is its true character, whether the words used are 'within fourteen days' or 'not later than fourteen days'.[11]

An award made under the Industrial Disputes (Appellate Tribunal) Act 1950 and required to be published within 30 days, can be published on the

2 *Ram Kinkar Singh v Kamal Basini Devi* AIR 1938 Pat 451, 19 PLT 825.

3 *Roshan Lal v Ganpat Lal* AIR 1938 All 199, 1938 All LJ 121; *Kunj Behari Singh v Bindeshri Prasad Singh* AIR 1929 All 207, 1929 All LJ 286; *Hirdey Narain v Alam Singh* AIR 1918 All 13, 16 All LJ 892 (s 10 not applicable to a condition incorporated in the decree itself).

4 *Indal v Chaudhary Ram Nidh Nidha* AIR 1946 Oudh 156, 1946 OWN 119; *Ilahi Raza Khan v Mst Taiba Begum* AIR 1922 Oudh 145, 9 OLJ 53.

5 *Balaji Gendhai v Registrar of Co-op Society, Madhya Pradesh, Nagpur* AIR 1954 Nag 203, 1954 Nag LJ 91 (payment of dues to Society).

6 *CF Angodi Angadi v Hirannayya* AIR 1972 SC 239, (1972) 1 SCJ 505, [1972] SCJD 347, (1972), SCA 278.

7 *Madan Gopal Daga Dagan v Rallies India Ltd* AIR 1957 Cal 598, 61 CWN 368.

8 *Rampat Chatterjee v Sachinandan Nandi* AIR 1920 Cal 244, 43 IC 525 (DB) (whole day can be availed when certain days fixed for compliance of a thing).

9 *Vishwamitra Press Karyalaya, Kanpur v Workers of Vishwamitra Press* AIR 1953 SC 41–42, (1953) SCJ 13.

10 *Ram Chandra v Jijaba Rangnath* AIR 1950 Bom 16.

11 *Harinder Singh v S Karnail Singh* AIR 1957 SC 271, 273.

day just following that period when the prescribed period expires on a Sunday.[12]

Rule 4 of the All India Bar Council (First Constitution) Rules 1961, requires that the letter, proposing a candidate's name, is to be delivered to the secretary 'not less than 10 and not more than 21 days before the date of election'. The phrases 'not less than' and 'not more than' came up for consideration in *M Lali v Gopal Singh*.[13] It was held that the words refer to clear complete or entire days, intervening the *terminus a quo* and the *terminus ad quem* and both the terminal days have to be excluded.

Under s 14(2) of the Rajasthan Municipalities Act, a notification was issued inviting objections against the proposed delimitation of wards within one month of the notification. It was held that where a thing is permitted to be done within a stated period while the first terminal day is excluded, the last terminal day has to be included. But where an act is to be done only after the expiry of a stated period both the terminal days of the period are to be excluded.[14]

In the computation of time for an order setting aside a decree made conditional on payment of costs within 15 days, the date of the order is not to be included in counting the 15 days' time.[15]

In computing the period of limitation of 15 days for filing an election petition under s 15(1) of the Bombay Village Panchayat Act 3 of 1959, the words 'within 15 days' do not exclude the 15th day as per s 11 of the Bombay General Clauses Act 1 of 1904.[16]

An application for a review should be considered as an 'act or proceeding to which the Limitation Act for the time being in force applies'. The proviso to s 10, General Clauses Act, makes it quite clear that in such cases s 10 itself has no application and it follows that the court-fee has to be appraised without reference thereto. Where, therefore, an application for review is presented on the 92nd day, the preceding three days being holidays the court-fee as provided by art 4 has to be paid and s 4, Limitation Act, will be of no avail.[17]

The election tribunal has no power to extend the limitation for filing an election petition. Amendment of petition long after limitation is without jurisdiction.[18]

12 *Upper Ganges Electric Employees' Union v State of Uttar Pradesh* AIR 1955 NUC (All) 4441.

13 AIR 1963 Punj 378; *Sureshchandra v Birdhichand* AIR 1965 Raj 229 (a case involving a notification calling for objection within 'one month' from date).

14 *Suresh Chandra v Birdhi Chand* 1965 Raj LW 412, (1965) ILR 15 Raj 793, AIR 1965 Raj 229.

15 *Jadu Chandra v Jogesh Chandra* AIR 1970 Tri 71.

16 *Manjuli v Civil Judge, Senior Division, Wardha* 1969 Mah LJ 435, 71 Bom LR 560, AIR 1970 Bom 1.

17 *Varkey Skaria v State* AIR 1955 Tr & Coch 185, 1955 KLT 304; *Ahmad Zaman v Phool Chand* (1960) ILR 10 Raj 218.

18 *T Nagappa v TC Basappa* AIR 1954 Mys 102 (presentation of election petition not later than 14 days from the date of publication of notice and computation of time).

Where the time fixed for filing objections expires on a day the court is closed, the objection filed on the day the court next reopens, shall be filed within time.[19]

Where the day on which a tax is to be deposited is a holiday, it can be validly deposited on the next day.[20]

In *Jai Dev Singh v Abdul Rahman*,[21] the view taken was that a suit which would have been within the time of two years if filed on 14 June 1925, could be validly instituted on 15 June 1925 when 14 June 1925 was Sunday. This view was, however, dissented from in *Sheodas v Narain Asaji*,[22] by referring to *Hira Singh v Amarti*[23] and *Murugesa Mudali v Ramaswami Chettiar*.[24]

Application to be filed within 21 days expiring on 27 April, could be filed on 28 April, 27 April being Sunday.[25]

A liquidator required, under s 235 of the Companies Act, to initiate proceedings within a period of three months, can file an application on the next day if the last day of the prescribed period is a day on which the court is closed.[26]

A petition of insolvency based on an act of insolvency committed on 16 February 1953 and presented on 18 May 1953, on the re-opening of the court after vacation, was held to be competent.[27]

When the last day for the deposit of monthly rent is a holiday, the deposit can be made on the next working day.[28] If the last date originally fixed becomes a holiday, the last date for obtaining the schedules should get extended to the next working day.[29]

The period for enforcing the agreement of sale on a day which was a closed holiday would stand extended up to the day next after such holiday.[30]

4. PERIOD NOT PRESCRIBED

Sub-section (2)(b)(ii) of s 12 of the Hindu Marriage Act 1955 carrying a provision that notwithstanding anything contained in sub-s (1) of that section,

19 *Baghelin v Mathura Prasad* 1882 All WN 71, ILR 4 All 430, 434 (time for objections under s 561, Cr PC 1877—since repealed).

20 *HW Automobiles v Excise Commr* 1975 ALR 382.

21 AIR 1930 Lah 127, 30 Punj LR 720.

22 ILR 36 Bom 268, 13 Bom LR 1153.

23 ILR 34 All 375, 9 All LJ 439.

24 21 IC 770, 26 MLT 23.

25 *Ma Than May v Township Court Bailiff, Kyaungton* AIR 1931 Rang 209, 134 IC 2233.

26 *Official Liquidator, Union Bank Ltd, Malabar v N Padmanabha Menon* AIR 1955 NUC 1824, 19 Mad WN 382.

27 *GR Subbiah Gowda v Mohd Alam* AIR 1962 Mys 197; relying on *Raja Pande v Sheopujan Pande* AIR 1942 All 429, 1942 All LJ 592.

28 *Rajinder Kumar v Ravel Singh* 1982 Rajdhani LR 806.

29 *K Soosalrathnam v Divisional Engineer, National Highway Circle, Tirunelveli* AIR 1995 Mad 90.

30 *Khawani v Munshi* 1994 Cr LJ 201 (All).

no petition for annulling a marriage on the ground specified in cl (a) of sub-s (1) of that section shall be entertained unless the court is satisfied—

> That proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of marriage

merely states that a petition for a decree of nullity on any of the four grounds specified in cll (a), (b), (c) and (d) of sub-s (1) of that section, shall not be entertained, unless the court is satisfied that the proceedings for the same have been taken out within one year from the date of the marriage in question. The High Court of Gujarat, in *Nanakaram v Drupadiben*,[31] has taken the view that the provision is mandatory and creates a bar on the entertainment of the petition under s 12(1)(d), unless the court is satisfied that the proceedings have been instituted within one year from the date of the marriage. This provision does not prescribe any period of limitation. Clearly, therefore, as BJ Divan J held in that case, s 10 of the General Clauses Act 1897 will have no applicability in such cases.

In the above case, Divan J, has derived support from a decision of the Bombay High Court in *Savla Ram v Yashodabai*,[32] taking the same view that the condition laid down in s 12(2)(b)(ii) of the Hindu Marriage Act does not prescribe a period of limitation for filing a petition by the plaintiff, it is in terms mandatory and prohibitory and provides that the court shall not entertain the petition, if the conditions laid down therein are not satisfied. These conditions are in absolute terms and they cannot be relaxed.

Divan J, while arriving at this decision in *Nanakram v Draupadiben*,[33] had to distinguish a Full Bench decision of the Allahabad High Court in *Raja Pande v Sheopujan Pande*,[34] which was a case dealing with s 9(1)(c) of the Provincial Insolvency Act (1920). The view of the Allahabad High Court in that case was that s 10 of the General Clauses Act applies to all creditors' applications filed under s 9 of the Provincial Insolvency Act and consequently if the period of three months from the act of insolvency expires on a day when the court is not sitting, a creditor's petition of insolvency can be validly presented on the next day when the court is sitting.

Distinguishing the above Allahabad view, Divan J observed:

> Now, section 9(1)(c) of the Provincial Insolvency Act 5 of 1920 provides that a creditor shall not be entitled to present an insolvency

31 AIR 1974 Guj 111, 14 Guj LR 620.
32 AIR 1962 Bom 190.
33 AIR 1974 Guj 111, 14 Guj LR 620.
34 AIR 1942 All 429.

> petition against a debtor 'unless the act of insolvency, on which the petition is grounded, has occurred within three months' before the presentation of the petition. The section thus provides not a condition precedent to the entertainment of the insolvency application, but prescribes the period within which the insolvency petition, has to be filed by a creditor. Section 12(b)(ii) with which I am concerned in this matter, 'does not prescribe a period of limitation'; but as aforesaid, 'it lays down a condition precedent' to the entertainment of the application for seeking a relief of nullity of marriage presented by some person other than the petitioner.[35]

The authors are constrained to express their respectful disagreement from the view taken by Divan J in the above Gujarat case.[36] The phenomenon of a condition precedent is not something peculiar to the provision in s 12(2)(b)(ii) of the Hindu Marriage Act. Some particular specified event or incident, whatever be its form, nature, type, or nomenclature, is in any case a condition precedent for the accrual of the cause of action for the relevant proceeding under the relevant statute, whether it be the taking of a loan or making of a mortgage, committing of a tort or an illegitimate pregnancy, the commission of an act of insolvency, or any other thing giving rise to a legal proceeding. So, where is the difference on the point touching the period within which the relevant proceeding has to be taken out?

Now the relevant phrase in s 9 of the Insolvency Act is:

> Unless the act of insolvency has occurred within three months before the presentation of the petition.

The relevant phrase in s 12 of the Hindu Marriage Act is:

> Unless the court is satisfied that proceedings have been instituted within one year from the date of marriage.

A sane reading of the two phrases renders hardly any difference in substance or meaning. Both have prescribed a period within which proceedings can be instituted and both have set out a condition precedent, in one case the act of insolvency and in the other, the event of marriage.

It is true that the Full Bench case of the Allahabad High Court in *Raja Pande's* case,[37] has been dissented from in a Full Bench case of the Madras High Court in *Kaku Chenchuramana Reddy v Arunachalam*,[38] holding that:

35 The quotes are used in order to spot out the point of distinction (RG Chaturvedi J).

36 *Nanakram v Draupadiben* AIR 1974 Guj 111, 14 Guj LR 620.

37 AIR 1942 All 429.

38 AIR 1935 Mad 857; followed in *Chintaman Laxman v Ram Gopal Raghunathdas* AIR 1948 Nag 385; the latter also dissenting from the Allahabad case in *Raja Pande v Sheopujan Pande* AIR 1942 All 429.

Section 9(1)(c) is a condition precedent to the filing of the petition, that is to say, the petitioning creditor must, on the day when he presents his petition, have in view some act of insolvency which the debtor has committed within the preceding three months.

However, keeping in mind some act of insolvency by the creditor, which the debtor has committed, is, so far as the accrual of the right to take out relevant proceedings is concerned, nothing different from the husband having the view that his wife was at the time of marriage made pregnant by someone other than her husband.

A Division Bench of the Calcutta High Court in *Muradan Sardar v Secretary of State,*[39] has followed the Full Bench in Madras decision in *Kaku Chenchuramana Reddy v Arunachalam,*[40] and the High Court of Bombay in *Moksha Madanlal v Hari Prasad Vishnu Prasad,*[41] has also adhered to the view that s 9(1)(c) of the Provincial Insolvency Act does not prescribe a period of limitation but sets out a condition precedent. All these cases had been decided prior to the decision of the Supreme Court in *Harinder Singh v Karnail Singh,*[42] and the Gujarat case in *Nanakram v Draupadiben,*[43] although decided later than the above Supreme Court case in *Harinder Singh v Karnail Singh,*[44] had not taken notice of the above Supreme Court decision. The Bombay case in *Savla Ram v Yashodabai,*[45] followed in the Gujarat case had also not noticed the above Supreme Court decision.

The Supreme Court in *Harinder Singh v Karnail Singh,*[46] had to deal with the contention that the expression, under r 119(a) of the Election Rules framed under the Representation of the People Act 1951, that an election petition had to be filed not later than fourteen days is not a period prescribed and hence, is not amenable to the applicability of s 10 of the General Clauses Act. The contention was rejected on the ground that the object of the section is to enable a person to do, what he could have done within the prescribed period or on the day when the court or office is closed, on the next day on which the court or office is open.

Under the provisions of s 12(2)(b)(ii) of the Hindu Marriages Act, the expression that the application shall not be entertained unless instituted within one year from the date of marriage, as well as the expression under

39 AIR 1939 Cal 313.
40 AIR 1935 Mad 857; overruling *PS Narayana Aiyyar v Official Receiver, South Malabar* AIR 1934 Mad 294; *Kumarappa Chettiar v Chidambaram Chettiar* AIR 1938 Mad 898–99, (1938) 2 Mad LJ 385 (DB).
41 AIR 1956 Bom 650.
42 [1957] SCR 208, AIR 1957 SC 271.
43 AIR 1974 Guj 111, 14 Guj LR 620.
44 AIR 1957 SC 271.
45 AIR 1962 Bom 190.
46 AIR 1957 SC 271.

s 9(c) of the Insolvency Act that the creditor shall not be entitled to present an insolvency petition unless the act of insolvency has occurred within three months before the presentation of the petition, mean that the application or petition, in either case, has to be presented not later than one year, or three months, as the case may be, from the day on which the right to action has accrued; and the expression not later than has been held to be something as a period prescribed in the above Supreme Court decision in *Harinder Singh v Karnail Singh*.[47]

Since no provision of law is in existence by which a sanction to prosecute can be extended on the ground of the period expiring during court holidays, the criminal proceedings started after the expiry of the period during which such sanction remained in force, will be without jurisdiction.[48]

5. SECTION 4 OF LIMITATION ACT AND THIS SECTION

Section 4 of the Limitation Act (1963), applies in terms to suits, appeals and applications. That section does not apply to other acts, for example, a deposit of costs[49] allowed to be made by law on a certain date or within a prescribed period. Such cases are governed by s 10 of the General Clauses Act, but the latter is also restricted in its scope, to acts or proceedings allowed by any Act or regulation to be done on a certain day or within a prescribed period. However, the general principles underlying s 4 of the Limitation Act or s 10 of the General Clauses Act apply to cases where the act is to be done under an order of the court by a particular date or within a particular time fixed by it, and such date falls or such period expires on a day when the court is closed. The principles underlying are: *lex non cogit ad impossibilia* and *actus curiae neminem gravabit* (the law does not compel a man to do the impossible, and, the act of the court shall prejudice no man). Thus, a party, ordered to pay adjournment costs by a certain date which date incidentally fell on a Sunday, would have also the right to do it on the day the court reopened.[50] Similarly, an application against an act of a receiver, can be made on the next re-opening day when the day for such application to be made expires on a holiday.[51]

47 [1957] SCR 208, AIR 1957 SC 271.

48 *Raj Chunder Mazumdar v Gour Chunder Mazumdar* (1895) ILR 22 Cal 176, 178 (DB).

49 *Shooshee Bhusan Rudro v Gobind Chunder Roy* (1891) ILR 18 Cal 231, 233–34 (DB).

50 *Budhulal v Chhotelal* AIR 1977 MP 1 (FB), 1976 MPLJ 734, (1977) ILR MP 191; dissenting from *Bajranglal Jhunjhunwala v Solaki Marwarini* AIR 1950 Cal 564; overruling *Buta Singh Shankar Singh v State of Madhya Pradesh* AIR 1962 MP 205.

51 *Ma Than May v Bailiff of Township of Court of Kyaunggon* AIR 1931 Rang 209, ILR 9 Rang 150 (DB).

Section 10 applies not only to courts but also to election tribunals.[52] The contention in *Harinder Singh v Karnail Singh*,[53] was that s 10 of the General Clauses Act can apply on its own terms only when the act in question is to be done within a prescribed period, and, since, under r 119(c) of the election rules framed under the Representation of the People Act 1951, the petition had to be filed not later than 15 days, the two expressions do not mean the same thing, the words of the rule being more peremptory, and that, accordingly, s 10 of the General Clauses Act cannot be invoked in aid of a petition presented under r 119 later than fourteen days. In that case, the day on which the petition could be filed was a Sunday, the same was filed on the next day. The contention was rejected and it was observed that the object of the section is to enable a person to do what he could have done on a holiday. All that is required under the section is that there should be a period prescribed and that period should expire on a holiday. It was hence held that even if s 4 of the Limitation Act does not apply, s 10 of the General Clauses Act will certainly apply to election petitions.

But, the question that arose in *Hukumdev v Lalit Narain*,[54] was whether the court is closed on a Saturday when the judges do not sit, though the office of the High Court is open. The question is significant in the context of s 10(1) of the General Clauses Act which does not speak of a holiday, but refers to the court or office being closed on the last day of the prescribed period to enable a party to do an act or take any proceeding on a certain day or within a prescribed period.

In answering this question, a long course of such decision had to be reviewed which had held that a court is not closed on Saturday notwithstanding the fact that judges do not sit on that day but otherwise the court is open on that day. In *Lachmeshwar Prasad Shukul v Girdhari Lal Chaudhari*,[55] Harries CJ observed that Saturday is a court day although the judges are not sitting on that day. The observations made in that case went to the extent of holding that even in the vacations the court is not closed and money can be deposited. In *Nachiyappa Mudali v Ayyasami Ayyar*,[56] Turner CJ had observed:

> The judicial sittings of the court may be adjourned; but the offices of the court may still remain open for the presentation of pleadings. The court may be open for this purpose although the judge is not engaged in judicial

52 *Gurmej Singh Hira Singh v Election Tribunal, Gurdaspur* AIR 1964 Punj 337, 66 Punj LR 589; *Harinder Singh v Karnail Singh* AIR 1957 SC 271, [1957] SCR 208; *Suraj Bhan v Randhir Singh* AIR 1958 Punj 483, 60 Punj LR 457; *Manohar Joshi v Nitin Bhaurav* AIR 1990 SC 796; *Rama Kant v Celine D'Silva* AIR 1996 SC 826.

53 [1957] SCR 208, AIR 1957 SC 271.

54 AIR 1974 SC 480, (1974) 2 SCC 133.

55 ILR 19 Pat 123, AIR 1939 Pat 667.

56 (1882) ILR 5 Mad 189, 192 (FB).

functions or is not present in the courthouse or in the place where the court is held.

Re Thokkudubiyyanu Immaniyelu[57] was a case which had to deal with a similar practice is followed by all High Courts which remain closed for the summer vacations. The notifications in respect of the High Court of Madras specify a period between Monday to Friday both days inclusive as the vacation. The court re-opens on a Saturday, but judicial work starts only on the following Monday. It was held in a Bench decision of the Madras High Court, in *Re Thokkudubiyyanu*'s case, as referred to above, that the first day of the court was a Saturday which was the day for receiving papers though the judges actually sat for judicial work on Monday, and, as such, an application, for which the prescribed period of limitation expired on Saturday when the court was open and was not filed on that day but on Monday that followed, was held to be barred by the law of limitation.

In *Devarka Prasad v Union of India*,[58] and *Sajjan Singh v Bhogilal Pandya*,[59] the same view was taken. The latter case had involved the matter of a recriminatory petition under the proviso to s 97 of the Representation of the People Act 1951. The petition was obviously not filed within the period prescribed by the said proviso but the Election Tribunal had taken the view that the petition was within time on the ground that the Tribunal had not been sitting at Udaipur, which was the place fixed for trial of the petition, from 5 August 1957 till 11 August 1957, nor had any official been appointed by the tribunal to accept such petitions till 11 August 1957, and the petition had, therefore, been filed on 12 August 1957. The tribunal had based its conclusion on an interpretation of s 10 of the General Clauses Act. The High Court of Rajasthan,[60] turned down the view taken by the tribunal after a scrutiny of further facts existing on record. In this case, the district and sessions judge, Udaipur, was vested with the powers of the Election Tribunal, and though the district and sessions judge himself, had been out on official business, but the *munsarim* of his office had throughout been available so much so that the parties in that case had filed their *Vakalatnamas* to the *Munsarim* as early as 23 July 1957 and an application for adjournment was also moved on behalf of both the parties to the original petition. The High Court held that: (a) the recriminatory petition was barred by time because what the parties could do on 23 July 1957 in relation to the petition, could also have been done on the same day by one desiring to file the recriminatory petition; (b) that s 10 of the General Clauses Act was not applicable to that case; and (c) that until any other official was appointed

57 (1948) 1 Mad LJ 49, AIR 1948 Mad 521.
58 AIR 1964 Pat 384.
59 AIR 1958 Raj 307.
60 *Sajjan Singh v Bhogilal Pandya* AIR 1958 Raj 307.

by the tribunal to receive any such petition, the same could have been competently filed with the *Munsarim* of the court empowered to function as a tribunal.

In *Hukumdev v Lalit Narain*,[61] the contention had taken another turn: having regard to rr 6 and 7 of the Election Rules made by the Patna High Court, the election petition has to be presented to a judge or a Bench sitting in open court, and since judges do not sit on Saturdays, there would be no court on that day to which the petition could be presented. Rule 6 provided that subject to the orders of the judge, before a formal presentation of the election petition is made to the judge in open court, it shall be presented to the stamp officer of the court who shall certify thereon if it is in time and in conformity with the requirements of the Act and the rules in this behalf or is defective, and shall thereafter return the petition to the petitioner for making the formal presentation after removal of the defects, if any. A proviso to this rule had stated that in case of non-availability of the judge empowered to deal with election petitions, the same may be presented to the Bench hearing civil applications and motions, and such presentation, under r 7, was deemed to be the date of filing of the petition. Side by side, r 26 also provided that on any day on which no Bench is sitting, any memorandum of appeal or application, which might be barred by time and which is entertainable only by a Bench, may be presented to the Registrar, or in his absence, to the deputy registrar, or in their absence to the Assistant Registrar who shall certify that the same was presented on that day to him provided, however, that no such presentation to the registrar, deputy registrar, or assistant registrar, shall be of any avail, unless the same is presented to a Bench on the next subsequent day on which a Bench is sitting.

Reading the rr 6, 7 and 26 together, Jaganmohan Reddy J held that there could be no manner of doubt that an election petition can be presented to the Registrar on the last day of limitation, even when the Judges are not sitting to receive or entertain an election petition, or, in his absence, to the other officers specified in r 26. The petition was, therefore, held to be time-barred.

6. SUMMER VACATION IN COURTS

It has been the practice of the courts in this country inclusive of the High Courts, excepting the original side of the Bombay High Court,[62] to treat the summer vacation as a period during which the courts remain closed except with regard to the functioning of a vacation judge nominated by the Chief Justice. So, when for purposes of s 10 of the General Clauses Act, the High Court was closed and since the Chief Justice had already assigned one judge

61 AIR 1974 SC 480, (1974) 2 SCC 133.

62 *Dharamsi Morarji Chemcial Co Ltd v Occhavlal Hargovinddas Shah* AIR 1927 Bom 480–81, 29 Bom LR 981.

of the High Court to try the election petitions, it is not possible to hold that since the period of 45 days for filing of an election petition had expired during the currency of the vacation, the petitioner had time till the re-opening date to file his petition.[63] Similarly, a notification appointing certain days on which plaints or petitions could be received even during vacations would mean the court was not closed on those particular days.[64]

In *Lachhman Das Arora v Ganesh Lal & Ors*,[65] the main question for decision was whether the election petition was filed within the period of limitation. The next question that arose was whether s 10 of the General Clauses Act can apply in a case where the prescribed period of limitation expires during the vacations of the High Court. In the facts and circumstances of the case, a three-member Bench of the Supreme Court held, inter alia, as follows:

(i) No period for filing an election petition is prescribed under the Indian Limitation Act. If an election petition is not filed within the prescribed period of 45 days, s 86(1) of the Representation of the People Act 1951, empowers a High Court to dismiss an election petition when the provisions of s 81 or 82 or 117 of the said Act are not complied with.

(ii) Proviso to s 10 of the General Clauses Act makes it clear that the provisions of s 10 of that Act are inapplicable to cases to which the Indian Limitation Act applies. The Indian Limitation Act does not apply to an election petition filed under the Representation of the People Act 1951. Therefore, s 10 of The General Clauses Act would apply to the filing of an election petition also. However its applicability would depend upon the facts and circumstances of each case and the manner in which the High Court transacts its business during the period of vacation.

In *Mohd Ali v Azad Mohd*,[66] the order of the High Court dismissing the election petition filed by the appellant on the preliminary issue of limitation without trial was in challenge. The brief facts were that the period of 45 days prescribed for filing of an election petition expired during the period of summer vacation of the High Court of Punjab and Haryana. The petition was filed on the reopening day of the High Court on 1 July 1996. In the facts and circumstances of the case, and while holding that the decision of the Supreme Court in *Lacchman Das Arora v Ganesh Lal*[67] applies to the case at hand, a three-Member Bench of the Supreme Court held, inter alia, that the notification

63 *Dr KK Mohammad Koya v PM Sayeed* AIR 1977 Ker 160; *T Narayappa v A Shanker Alva* AIR 1973 Mys 78, 80, (1972) 2 Mys LJ 234.

64 *British India Steam Navigation Co v HM Sharapally* AIR 1923 Mad 435, 44 Mad LJ 107.

65 AIR 1999 SC 3101, 3103 (1999) 8 SCC 532 (three-judge Bench).

66 AIR 1999 SC 3429–30, (1999) 8 SCC 538 (three-judge Bench).

67 1999 AIR SC 3101.

in question dated 27 May 1996 has to be read as supplementary to the Notification dated 27 November 1995 because in the latter notification, the court timings and office timings during the summer vacation had been prescribed. The transaction of the court business during the vacations is not controlled by the provisions of the High Court Judges (Conditions of Service) Act 1954, but by the notification issued by the High Court on that behalf.

In *Chandra Kishore Jha v Mahavir Prasad & Ors*,[68] a three-member Bench of the Supreme Court held that since the Limitation Act does not apply to an election petition, s 10 of the General Clauses Act would apply. In the instant case, the Patna High Court was closed after 3.15 P.M on 16 May 1995 for all practical purposes. Therefore, the appellant could not present the election petition on that date which was the last day of the prescribed period of limitation. Thus the presentation of the petition on the very next date ie, on 17 May 1995, in the open court, was considered as presentation within the period of limitation, by virtue of s 10 of the General Clauses Act.

Section 10 of the General Clauses Act applies in the computation of the limitation period prescribed by sub-s (1) of s 81 of the Representation of the People Act 1951 for presentation of an election petition.[69]

From the notification issued by the High Court of Punjab and Haryana, it was clear that the court was closed during the said period for civil business except for hearing of election petitions or any other matters arising out of the Representation of the People Act 1951 and certain other matters mentioned in the notification. In terms of this notification, the registry of the High Court was open for filing of the election petitions during the period 1 June 1996 to 30 June 1996. As held by the Supreme Court in *Simhadri Satyanarayana Rao's* case,[70] in order to find out whether the registry is open for presenting an election petition, what is to be referred was the vacation notification. Since, in terms of the said notification, in the instant case, the registry was open for filing the election petition, no substance was found in the contention of counsel for the petitioner that the election petition could be filed on or before 1 July 1996. From the facts of the case, it was evident that the election petition was filed beyond the period of limitation. Therefore, the delay in filing the same held could not be condoned, if the registry was open for presenting it.[71]

In *Ajit Singh & Anor v Nusrat Ali Khan*,[72] in view of the objective and purpose of the notice dated 18 March 1997 issued by the Registrar of the High Court of Punjab and Haryana, it cannot be inferred that 29 March 1997 was declared as a holiday. The said notice, read as a whole, gives no impression that the calendar of holidays was altered. It was also notified

68 AIR 1999 SC 3558, 3562–63, (1999) 8 SCC 266 (three-judge Bench).

69 *Manohar Joshi v Nitin Bhaurao Patil & Anor* AIR 1996 SC 796, 802, (1996) 1 SCC 169.

70 1994 Supp (1) SCC 449.

71 *Mange Ram v District Development and Panchayat Officer-cum-Returning Officer & Anor* AIR 1998 P&H 78–80.

72 AIR 1998 P&H 91.

that habeas corpus petitions shall be received by the registry and placed before the Judges up to 1.00 PM only. In these circumstances, the plea of the petitioners that the election petition filed on 31 March 1997 was within the limitation, was held not acceptable.

Where, admittedly, the last date for filing the election petition according to the prescribed period of 45 days was 14 April 1990 but the High Court and its office were closed for holidays on 14 and 15 of April 1990 and reopened only on 16 April 1990, the election petition filed on 16 April 1990 was held to be within time by virtue of s 10 of the General Clauses Act.[73]

In *K Soosaiathnam v Divisional Engineer, National Highway Circle, Tirunelveli & Anor*[74] it was held that, though s 10 of the General Clauses Act could not apply to the present case, the last date for obtaining the schedules should get extended to the next working day, if the last date originally fixed becomes a holiday subsequently, in view of the general principles underlying s 10.

When there was no arrangement made for receipt of the compulsory deposit to accompany an election petition during vacation, the election petition filed on the day the court reopened, was held to have been filed within time.[75]

In *S Gurmej Singh Hira Singh v Election Tribunal, Gurdaspur*,[76] a Full Bench of the High Court of Punjab was concerned with the presentation of a recriminatory petition within 14 days in accordance with the provisions of s 97 of the Representation of the People Act 1951, and the concerned election tribunal was the court of the district judge which had been on vacation from 15 June 1962 till 14 July 1962. The majority decision of the Full Bench was:

> The question however, arises: can the election tribunal be considered to be closed between 15 June 1962 and 15 July 1962. The tribunal was undoubtedly functioning up to 22 June 1962 up to which date, therefore, it can by no means be considered to be closed. From 23 June 1962 to 15 July 1962, the presiding officer was admittedly on leave. There is nothing clear and cogent on the present record to show the practice of the tribunal and whether the presiding officer had authorised his office staff to receive petitions like the recriminatory petition in question during his absence on leave. The approach and reasoning of the learned tribunal in excluding the applicability of section 10, General Clauses Act, is clearly erroneous. But can the tribunal be considered closed during the presiding officer's period of vacation so as to attract section 10? The notice of recrimination being in the nature of a counter election petition, it would appear to me to

73 *Ramakant Mayekar v Celine D'Silva* AIR 1996 SC 826, 860, (1996) 1 SCC 399 (three-judge Bench).

74 AIR 1995 Mad 90; CF Angadi v YS Hirannayya AIR 1972 SC 239.

75 *D Siddiah v S Rudrappa* AIR 1954 Mys 49, 33 Mys LJ 153.

76 AIR 1964 Punj 337, 66 Punj LR 589 (FB); *Dr KK Mohammad Koya v PM Sayeed* AIR 1977 Ker 160, 162–63 (when period of 45 days expired during currency of vacation, election petition filed on reopening date held not barred by limitation).

> partake of the character of a pleading. If there are no formal rules like those governing the courts on this point, then the practice of the tribunal would seem to me to constitute the law of the tribunal. It may also be relevant to consider whether or not the tribunal had authorised his office staff to accept such pleadings during his absence on leave. These points have not so far been adverted to either before the tribunal or before the learned single judge.

Justice B Venkataswami in *P Naranappa v A Shanker Alva*[77] has drawn, from the above Punjab case, an implication that if the office of the election tribunal had been authorised to receive the election petitions during the vacation, s 10 of the General Clauses Act could not be availed of for presenting an election petition. Nor could this section be availed of when, although the judges are not sitting to receive or entertain an election petition, the registrar of the court could receive such petition on the last day of limitation.[78]

The distinction between the above Mysore case[79] and that of Kerala High Court in *Dr KK Mohammad Koya v PM Sayeed*[80] is obvious. In the former, s 10 is held inapplicable in cases where the office of the Election Tribunal has been authorised to receive petitions during vacations, whereas in the latter case, s 10 was held applicable because the chief justice of that High Court had, by his specific order, authorised one particular judge of that court to deal with the election petitions with the result that no other judge of that court could receive or entertain an Election Petition even if one or the other judge had been sitting during vacations.

Where a petition for adjudication under the Provincial Insolvency Act 1920 was filed on 3 July 1934, more than three months after the alleged act of insolvency, on the ground that the court was closed for summer vacation, so that it was not possible to have it filed before 3 July 1934, it was held that the fact that the court was closed did not make any difference.[81]

The spirit of the section really inherent in the phrase if the court or office is closed, that is to say, in any case where even the office of a court is open on the relevant day or on the last day of the prescribed period, then the act or proceeding can and ought to be done or taken in the office, but in case when, on the relevant day, the court and the office both are closed or when the office being open, yet not authorised to

77 AIR 1973 Mys 78, (1972) 2 Mys LJ 284.

78 *Shri Lakshmi Niwas v Commr of Police, Hyderabad* AIR 1974 SC 480, 483, 486, 1975 Pat LJR 525.

79 *P Naranappa v A Shanker Alva* AIR 1973 Mys 78.

80 AIR 1977 Ker 160.

81 *VKKM Kumarappa Chettiar v KMVR Chidambaram Chettiar* AIR 1938 Mad 898, (1938) 2 Mad LJ 385; following *Kaku Chenchuramana Reddi v Palapu Arunachalam* AIR 1935 Mad 857, 1935 Mad WN 685.

receive any particular paper or petition, then the act or proceeding may be done or taken on the next day afterwards on which the court or office, as the case may be, is open. In the former case, s 10 of the General Clauses Act has no application; in the latter case, that section shall apply irrespective of the fact that the provisions of the Indian Limitation Act do not apply.

This leads to the distinction which has to be necessarily made between the opening of the court and the opening of the office. Even during the period when a court is closed, the office may remain open and ministerial or administrative work may be carried on. But there is a difference again between judicial or legal work and administrative or ministerial work. It has to be ascertained in each case for what business the office was open.

In *Hari Shankar Tripathi v Shiva Harsh*,[82] the above distinction between judicial and administrative functions was applied and it was held by PK Goswami and Murtaza Fazl Ali JJ that if the registrar of the court was empowered to receive election petitions, he would be exercising judicial power which cannot be done while the court was observing a closed holiday. When the relevant rules of the High Court required the placing of the petition immediately before the chief justice for reference to the Bench or the assignment of a judge, this function could not certainly be performed when the court was observing a closed holiday, because the presentation before the registrar cannot be taken to be mere physical presentation, but has to be construed as a legal presentation. The provisions of s 10 of the General Clauses Act in terms applied to the case and the appellant was justified in filing the petition when the court reopened after the summer vacation.

7. AUTHORITY WHICH IS NEITHER COURT NOR OFFICE

The section does not apply to the authority which is neither court nor office, such as the committee of management of college, which could have completed its inquiry even on a holiday and it cannot claim benefit of s 10 of General Clauses Act.[83]

Section 11. Measurement of Distances—In the measurement of any distance, for the purposes of any [Central Act] or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

82 (1976) 1 SCC 897.

83 *Committee of Management, JSI College v DIOS, Etawah* 1986 All WC 422.

SYNOPSIS

1. Meaning of Section 428
2. After the Commencement of this Act 429
3. Unless a Different Intention Appears 429

1. MEANING OF SECTION

This section has simply reproduced the provisions of s 34 of the Interpretation Act 1889 of England, with the only modification that for the words 'any Act' occurring in the English Act, the words 'any central Act or regulation' have been substituted. The section has enunciated only the commonsense view that should be adopted in measuring a distance between two given points.

For the application of this section, two conditions have to be fulfilled:

(i) The central Act or regulation, for the purpose of which a measurement of distance has to be calculated, must have been enacted after the commencement of the General Clauses Act of 1897;

(ii) The central Act or regulation for the purpose of which any measurement of distance would be relevant, must not have any different intendment in or under its own provisions.

Failing either of the above two conditions, the provisions of this section shall not be attracted.

For the purpose of any Central Act or regulation to which this section may apply, the measurement of distance shall be taken on the formulae of a straight line on a horizontal plane. The section has no application in the case of any measurements other than that of distance. The measurements of weight or quantity, whether of solids or liquids are outside the ambit of this section.

Section 11 of the General Clauses Act 1897 provides for measurement of distance which shall, unless a different intention appears, be in a straight line on a horizontal plane for the purposes of any Act or regulation after the commencement of the Act of 1897. In the absence of any such provisions in the Andhra Pradesh General Clauses Act 1981, the said provision was held to apply. Topo-sheet is a sheet of topography. It is thus always possible to draw a straight line from the boundary of the forest to the place where the saw mill is said to be established for which an application for licence has been filed. Since a forest may not be in the shape of a circle, it may always be necessary to find out the distance by taking the aerial distance on the basis of topo sheet, the learned court held.[84]

84 *Shaik Hussain & Ors v Divisional Forest Officer, Proddatur, Cuddapah District & Ors* (2001) 5 Andh LT 187, 196 (FB).

2. AFTER THE COMMENCEMENT OF THIS ACT

In *Rex v Jokhu*,[85] it was held that s 11 of the General Clauses Act did not apply to the Northern India Ferries Act 1878, for the simple reason that the latter was made prior to the enactment of the General Clauses Act. Section 11 of the General Clauses Act, was sought to be applied, in that case, for the interpretation of the following expression occurring in s 13 of the Northern India Ferries Act 1878, namely, 'within a distance of two miles from the limits of a public ferry'.

The High Court observed that the language used in the above expression was plain. An interpretation becomes necessary in case of measurements between two points on the bank of a river, because the riverine distance between any two points taken on the bank of a river is liable to vary according to seasonal changes. The High Court, however, pointed out that since any different method for taking measurements had not been contemplated by s 13 of the Northern India Ferries Act 1878, there could be no reason why a method different from the one contemplated in s 11 of the General Clauses Act be at all adopted in measuring the distances contemplated by s 13 of the Northern India Ferries Act. All that s 11 enacts is a commonsense view which could be applied even in the case falling under s 13 of the Northern India Ferries Act, to which s 11 of the General Clauses Act was not strictly applicable because of the enactment of the former being earlier in time than that of the latter.

3. UNLESS A DIFFERENT INTENTION APPEARS

When a special provision in an enactment, for example, in the Travancore Cinematograph Act, has been made that the distance between two cinema installations had to be reckoned by the shortest route along the public road connecting the installations, the principle of s 11 corresponding to s 10 of the Travancore Cochin Interpretation and General Clauses Act will not apply.[86]

Section 12. Duty to be Taken 'Pro Rata' in Enactments—Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or lesser quantity.

The expression 'pro rata' means in proportion or proportionate to. The section enacts a pure principle of mathematics stating in terms that when any duty

85 AIR 1948 All 299.

86 *Hariharan Iyer Neelacanta Iyer v Alwaye Municipality* AIR 1953 Tr & Coch 298, 1953 KLT 419.

in the nature of customs or excise or of any similar nature is leviable on any given quantity, whether the quantity be measured either in weight or mass or value of any goods or merchandise, then the same duty would be leviable in accordance with the same rate on any greater or lesser quantity, that is to say, the rate of duty is to be so applied as to maintain the proportion of the whole amount of duty to be levied with the whole quantity of any goods or merchandise that is leviable.

Section 13. Gender and Number—In all [Central Acts] and Regulations, unless there is anything repugnant in the subject or context:

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.

SYNOPSIS

1. Applicability of Section 430
2. Inclusiveness of Masculine and Feminine 431
3. Inclusiveness of Singular and Plural 431

1. APPLICABILITY OF SECTION

Section 13, General Clauses Act, is an inclusive definition and, therefore, extends the meaning of the singular word so as to include the plural and is not a restrictive definition.[87] The definition applies only if there is nothing repugnant in the subject or context.[88] For instance, the words 'previous year' in the Income Tax Act cannot be construed as 'previous years' because that would be repugnant to the subject or context in which the words 'previous year' are used in that Act. Such a construction, if permitted, would nullify the very definition of 'previous year' in s 2(11) of the Income Tax Act.[89] Similarly, the word 'building' in r 65 of the rules under Displaced Persons (Compensation and Rehabilitation) Act 1954 cannot include plural. Reading r 65 in the background in which it came to be prescribed, there can be no doubt that when it speaks of any rural building, the assessed value of which is Rs 10,000 or Rs 20,000, as the case may be, it speaks of each individual building worth that much, it does not provide for totalling up the value

87 *Mafzalar Rahman v Sreejuka Karimannessa Begum* AIR 1947 Cal 241, 51 CWN 934 (section widens scope and extends meaning to other gender or number).

88 *KL Naidu v Special Officer* AIR 1960 AP 560.

89 *Dhanchania Kedia & Co v CIT* AIR 1959 SC 219.

where a displaced person may have left more than one building in Pakistan. In the circumstances, s 13 would not apply because the subject or context in which the word 'building' is used shows that it would not include the plural.[90]

2. INCLUSIVENESS OF MASCULINE AND FEMININE

Though s 23 of the Hindu Succession Act 1956, speaks of male heirs, it applies, in view of s 13(1) of the General Clauses Act, even if a Hindu intestate had left surviving him a male heir and a female heir.[91] Thus, in s 41(2)(a) of the Special Marriage Act 1954, the word 'adulterer' refers to adulterers, both male and female.[92]

The words used in s 125 of the Code of Criminal Procedure 1973 regarding orders for maintenance of wives, children and parents, being 'any person', 'his' and 'such person', the daughter would also be bound to maintain her father.[93] The pronoun 'his' as used in cl (d) of s 125(1) of Criminal Procedure Code includes both a male and a female in view of provision of s 2(y) of Code and s 13(1) of General Clauses Act. In other words, the parents will be entitled to claim maintenance against their daughter if the other conditions in the section are fulfilled.[94]

In *Wilson Reade v CS Booth*,[95] it was held that in view of the particular context, the word 'parents' should mean male parent and not the mother.

The male heirs alone of a Hindu leaving behind both son and daughter, can ask for partition, and in this respect the female heirs cannot be equated with the males.[96]

3. INCLUSIVENESS OF SINGULAR AND PLURAL

In *Bhupendra Kumar v YS Dharmadhikari*,[97] the petitioners had challenged the validity of the process of election of the members of the bar council and there was no challenge to the validity of any particular candidate. It was contended that r 31(1) of the Madhya Pradesh State Bar Council Election Rules (1968), had contemplated the election of a single candidate and, hence, no petition

90 *Regional Settlement Commr, Jaipur v Sunderdas Bhasin* AIR 1963 SC 181.

91 *Surjya Kumar Das v Maya Dutta* AIR 1982 Cal 222, (1982) 86 CWN 359, (1982) 1 Cal LJ 179, (1982) 1 Cal HCN 155.

92 *Sikha Singh v Dina Chakrabarty* AIR 1982 Cal 370, 86 CWN 901, (1982) 2 Cal HCN 250, (1982) 2 DMC 241.

93 *M Areefa Beevi v Dr KM Sahib* 1983 Cr LJ 412 (Ker), 1982 Ker LT 242.

94 *Dr Vijay Manohar Arbat v Kashi Rao Raja Ram* AIR 1987 SC 1100, 1986 Cr LJ 1399.

95 AIR 1958 Assam 128, (1958-59) 14 ELR 480.

96 *Arun Kumar Sanyal v Jnanendra Nath Sanyal* AIR 1975 Cal 232; *Surjya Kumar Das v Maya Dutta* AIR 1982 Cal 222.

97 AIR 1976 MP 110, 1976 Jab LJ 115, 1976 MPLJ 223.

can be filed challenging the election of a number of candidates. The contention was based mainly on the use of the expression 'the election of a candidate' in sub-r (1) of r 31. The contention was repelled on the reasoning that in s 13 of the General Clauses Act, the words in the singular include the plural. It was said by SMN Raina J, that although s 13 of the General Clauses Act is applicable to central Acts and regulations only, unless the context otherwise requires, the same rule of construction should be applied to the rules framed under the Advocates Act 1961, which is a central Act.

The plural expression 'financial commissioners' in r 3 of the Punjab Tahsildari Rules 1932 cannot be construed in the singular.[98]

A notification has to be interpreted to give the true import and meaning and not to make it purposeless and nugatory. It has been held:

> It is well-settled, and is also provided in s 13 of the General Clauses Act 1897, on the Central Acts, that unless there is anything repugnant to the subject or context, the word singular shall include plural and vice versa. The tribunal interpreted the word 'machine' to be 'machines' and, in our opinion, rightly so.[99]

Obviously, s 23 of the Hindu Succession Act, 1956 is an exception to the general rule of succession and has been engrafted for that purpose. 'Singular includes plural under s 13(2) of the General Clauses Act and it may be applied to s 23 as it is not inconsistent with the context or subject. Even without resorting to it or having its aid for interpretation, by applying commonsense, equity, justice and good conscience, injustice could be mitigated. The purpose of law is to prevent a brooding sense of injustice. It is not the words of law but the spirit and internal sense of it that makes the law meaningful. The letter of the law is the body, but the sense and reason of the law is the soul. Therefore, pragmatic approach would further the ends of justice and relieve the male or female heir from hardship and prevent unfair advantage to each other. It would, therefore, be just and proper for the court to adopt a commonsense approach keeping at the back of its mind, justice, equity and good conscience and consider the facts and circumstances of the case on hand.[1]

The scheme contained in para 5 of the Presidential order issued under art 371D of the Constitution of India is to reserve 85 per cent of the available seats for local candidates and 15 per cent as unreserved. No minimum number of available seats is prescribed for application of sub-para (1) of para 5 of the order. Where the available seat is only one, by parity of reasons, sub-para (2) of para 5 and the proviso thereto, will not be attracted and the lone available

98 *S Mohan Singh v Financial Commr, Punjab* (1967) 69 Punj LR 377, 388–389.

99 *Collector of Customs, Bombay v United Electrical Industries Ltd* AIR 1999 SC 3796, (2000) 10 SCC 166.

1 *Narashimaha Murthy v Susheelabai & Ors* AIR 1996 SC 1826, (1996) 3 SCC 644 (three-judge Bench).

seat will have to be reserved for candidates of the local area and the proviso will not have the effect of converting it as an unreserved seat.

It is a well-settled principle that the greater includes the smaller. This has been given statutory recognition under s 13(2) of the General Clauses Act which is made applicable for interpretation of the Presidential order by virtue of sub-para (3) of para 2 of the said order. Paragraph 9 of the Presidential order also gives overriding effect to the provisions of the said order over any statute, ordinance, rule, regulation or other order in respect of admissions to any university or, to any educational institution subject to the control of the state government.[2]

All that s 13 means is that the word need not be construed as 'singular' under all circumstances but merely indicates the intention of the legislature that the word may be interpreted in the plural wherever the circumstances require that it should be so construed, determinable with reference to the context in which it may be used.[3]

In joint election petitions, by two petitioners, presentation and attestation by one is sufficient.[4]

Section 13(2) of the General Clauses Act, which mentions that words in the singular shall include the plural and vice versa, cannot be made applicable for construing the words 'male heirs' occurring in the section as to include 'a single male heir'. Section 13 opens with the expression 'unless there is anything repugnant in the subject or context'. The expression 'respective' appearing in s 23 of the Hindu Succession Act cannot be given any effect, to construe 'male heirs' as to include 'male heir' with the aid of s 13 of the General Clauses Act. Thus, in the context in which the words 'male heirs' is used in s 23, it would not include a singular. Again, the general rule of interpretation of statutes is that one must not vary the words of a statute: *verbis legis non est recedendum*.[5]

The function of an interpretation clause is not, as is very often supposed, to substitute one set of words for another or to apply the meaning of the term 'under all circumstances', but merely to declare what may be included in the term 'when the circumstances require' that it should be so interpreted. All that s 13 means is that the word need not be construed as 'singular' under 'all' circumstances but it merely indicates the intention of the legislature that the word may be interpreted in the plural wherever the circumstances required that it should be so construed.[6] Determinable with reference to the context in which it may be used, the word 'any' may, thus,

2 *Mahabaleshwarappa & Sons, Bellary v Commr of Land Revenue, Andhra Pradesh* AIR 1995 AP 86 (FB).

3 *Nirmal Singhji M Jadeja v District Magistrate, Valsad* (1995) 2 Guj CD 666.

4 *Mool Chand v Jai Singh* AIR 1963 Raj 219, 222–23, 1963 Raj LW 444 (DB).

5 *Anant v Jankibai* AIR 1984 Bom 319, 321–22, (1983) 86 Bom LR 123, (1984) 1 Civ LJ 232, 1984 Hindu LR 273.

6 *Sambata v Narayana* AIR 1951 Mad 907, 920.

imply 'all'.[7] Again, there is nothing in s 200 of the Criminal Procedure Code 1973 to imply that a complaint should be filed only by a single person and not by two or more persons jointly. The word 'complainant' used in the singular may be construed in the plural also and as such a joint complaint by two persons is a valid complaint.[8] In order to get its true import, it is necessary to view the enactment in retrospect, the reasons for enacting it, the evils it was to end, and the objects it was to subserve. The Act has, therefore, to be viewed as a whole and its intention determined by construing all the constituent parts of the Act together and not by taking detached sections or to take one word here and another there. The exposition *ex visceribus actus* is applicable.

The term 'individual', in cl (2) of this section, can be read in plural and, as such, would include a body or group of individuals, like a *Mapilla Tarwad*,[9] but since the sub-cll (1) and (2) of s 13 are made subject to the expression 'unless there is anything repugnant in the subject or context', the words 'honourable judges' used in High Court rules or notifications, cannot be construed as 'honourable chief justice' or any 'single judge' of the High Court.[10]

The expression '*Gaon Panchayat*', in s 111 of the Uttar Pradesh Panchayat Raj Act 1947 would include Gaon Panchayats.[11]

The rule that the singular includes the plural has no application with reference to r 8 of the Punjab Service of Engineers, Class I, PWD (Irrigation Branch) Service Rules 1966. The object of constituting the screening committee as per r 8 is that all the chief engineers under whom the officer, whose work is under review, had worked should be present in order to give their opinion about the suitability of such an officer. The absence of any of the chief engineers can cause prejudice to the officers whose cases are being reviewed by the screening committee.[12] But, the rule did apply, under s 24B(2) of the Income-tax Act 1922, in respect of the term 'legal representative' of a deceased, to all the legal representatives of deceased on whom notices have been issued under that section.[13]

7 *Chandi Prasad v Rameshwar Prasad* AIR 1967 Pat 41.

8 *Sital Chandra v Babu Ram Jodaun* 1966 All Cr R 197, 1966 All WR 333 (HC), 1966 All LJ 808, 1967 Cr LJ 307, AIR 1967 All 150.

9 *Wealth-tax Officer, Calicut v CK Mammad Kayi* AIR 1981 SC 1269, 1273, 1981 Tax LR 668, (1981) 21 CTR 345 (SC), [1981] 129 ITR 307, (1981) 10 Tax Law Rev 489 (SC), (1981) 6 Taxman 30 (SC), 1981 UJ 327 (SC), (1981) 3 SCC 23, (1981) 61 Taxation 146, 1981 KLT 451, 1981 UPTC 962, (1981) SCC (Tax) 179; *Commr of Income-tax, Madhya Pradesh v Sodra Devi* AIR 1957 SC 832, *V Venugopal Ravi Verma Rajah v Union of India* AIR 1969 SC 1094 relied on, *Khan Bahadur CK Mammed Keyi v Wealth-tax Officer* AIR 1966 Ker 77 reversed (FB).

10 *HK Agnihotri v Delhi High Court* (1974) ILR 2 Del 450, 476 (DB).

11 *Lakshmi Narain v District Board* AIR 1956 All 433.

12 *Prithvi Raj Mehra v State of Punjab* 1969 Cur LJ 30, 1968 Serv LR 887, 1969 Lab IC 795 (Punj).

13 *E Alfred v First Addl Income-tax Officer* AIR 1958 Mad 11, 13, (1957) 2 Mad LJ 200 (DB).

The word 'trustee' used in singular, in s 101 of the Madras Hindu Religious and Charitable Endowments Act 1959, would include 'trustees' in the plural, so that, the application for certificate by one out of five trustees would be incompetent.[14]

Section 13 will apply to art 62 of the Stamp Act in the case of transfer of several 'bonds' for one lumpsum.[15]

While construing the expression 'an arbitrator or arbitrators' in s 8(2) of the Arbitration Act 1940, the court, in the context of s 13 of the General Clauses Act, appoints such number of arbitrators as would have refused to arbitrate.[16] The word 'arbitrators', thus, includes also the singular in the context of s 14(2) of the Arbitration Act, in the matter of filing of the award.[17]

In s 111 of the UP Panchayat Raj Act 1947, the word 'panchayat' would include 'panchayats'.[18]

The expression 'history sheet' in r 153D of the Madras Motor Vehicles Rules 1940, as amended in 1960, would include not merely a single history sheet but all the history sheets of the accused person.[19]

The context of s 2(bb), of the Succession Act 1925, while defining the word 'judge', would not exclude additional judges.[20] Similarly, the word 'collector' in item 11, List II, of the Second Schedule of the UP Tenancy Act 1939, would be construed to include all 'assistant collectors'.[21]

The expression 'term of imprisonment' would, by virtue of s 13 of the General Clauses Act, include two or more terms of imprisonment.[22]

In the context of expression 'a member of the board' as used in s 9 of the Travancore Cochin Hindu Religious Institutions Act 1950, an application for removal is competent with regard to any number of members of the board.[23]

The singular expression 'complainant', in s 200 of the Code of Criminal Procedure, can be construed as complainants and there can be more than one person as complainants in a single complaint.[24]

While construing the expression 'outgoing member' in the context of s 13(3) of the Punjab Municipal Act 1911, there is no reason to exclude more than one such member.[25]

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14 *M Angappan v Deputy Commr, Hindu Religious and Charitable Endowments, Madras* (1968) 77 Mad LW 604.

15 *Ram Swarup v Joti* AIR 1933 All 321, 1933 All LJ 427 (FB).

16 *Kashi Prasad Singh v Gupteshwar Singh* AIR 1956 All 431, 1956 All WR 58 (HC) (DB).

17 *Anandi Lal v Keshav Deo* AIR 1970 Raj 22; *Shah Hansraj v Shah Maganlal* AIR 1980 Bom 237, 1979 Mah LJ 530; dissenting from *Hoora v Abdul Karim* AIR 1970 Raj 22.

18 *Laxmi Narain v District Board, Ghazipur* AIR 1956 All 433, 1956 All LJ 357 (DB).

19 *JC Nagireddy v P Nagamma* AIR 1968 AP 298, (1968) 2 Andh WR 234.

20 *Iftikharuddin v Aisha Bi* AIR 1956 Bho 69.

21 *Ram Lal v Ram Narain* AIR 1953 All 467, 1953 All WR 143.

22 *Md Safi v State of West Bengal* AIR 1954 Cal 301, 1954 Cr LJ 797, 58 CWN 189.

23 *Narayana Lal v Man Kuzhi Madhavan* 1955 Ker LJ 1042.

24 *Shital Chandra Dutta v Balu Ram Jodaun* AIR 1967 All 150, 1967 Cr LJ 307, 1966 All LJ 808.

25 *Bishambhar Nath v Municipal Committee, Delhi* AIR 1932 Lah 26, 33 Punj LR 83 (DB).

In s 3 of the Wealth Tax Act 1957, the word 'individual' may be construed to include a body of individuals.[26]

In s 102 of the Kerala Civil Courts Act 1957, the expression 'subordinate judge' means such judge, when there is only one judge attached to a subordinate judges court, but it would mean the principal subordinate judge when there are more than one judge attached to such court.[27]

According to the Allahabad High Court,[28] the words 'assistant collector' should be interpreted to mean and include 'all assistant collectors'.

Applying the provisions of s 13 to art 62 of the Stamp Act 1899, it was held that a stamp duty of rupees five would suffice for a sale-deed containing more than one bond.[29]

Section 13 of the General Clauses Act 1897 always refers to the context.[30] Thus, the amount of rupees five hundred, with regard to gifts made by the deceased in consideration of marriage, excluded under provisions of s 9(2) of Estate Duty Act 1953 (prior to 1 July 1960) in respect of each 'marriage', does not refer to 'all marriages' taking place during two years prior to the death of the deceased.[31] On a reading of the entire provisions of the Religious Endowments Act 1963 there is no warrant for the proposition that the words 'remaining members' occurring in s 10 would also include 'a single member'.[32]

Thus, the word 'persons' in explanation to r 3 of the Displaced Persons (Compensation & Rehabilitation) Rules 1955 includes 'person'.[33]

In the context in which the expression 'financial commissioners' is used in r 3 of the Punjab Tahsildari Rules 1932, it would be inconsistent with that rule to read that expression in the singular.[34]

The mere fact that in r 1 of O 30 of the Civil Procedure Code, the phrase 'two or more persons' is used is no ground to hold that the phrase 'any person' must be confined to a single person.[35] This is in consonance with the common practice of numerous joint Hindu families in India carrying on business in an assumed firm name.[36]

Though under s 13(2), General Clauses Act, the use of the word 'workmen' in the plural in the definition of 'industrial dispute' in the

26 *Wealth-tax Officer, Calicut v CK Mammed Kayi* AIR 1981 SC 1269, 1981 Tax LR 608, 1981 UJ 327 (SC); reversing *Keloth Mammad Keyi v Wealth-tax Officer* AIR 1966 Ker 77 (FB).

27 *CS Balaram Iyer v Krishnan Kunchandi* AIR 1968 Ker 240, 1968 KLT 8.

28 *Ram Lal v Ram Narain* AIR 1953 All 467, 1953 All LJ 213.

29 *Ram Swarup v Joti* AIR 1933 All 321, 1933 All LJ 427.

30 *Syed Hamid Hossain v Janab Mohammad Karim Khaleeli* (1971) 75 CWN 256.

31 *Shiv Charan Das v Controller of Estate Duty, Patiala* (1971) 73 Punj LR 299, 300 (DB).

32 *Syed Hamid Hussain v Janab Md Karim Khaleeli* (1971) 75 CWN 256.

33 *Atma Singh v Chief Settlement Commr, Rehabilitation, New Delhi* AIR 1964 Punj 87, 65 Punj LR 746.

34 *Mohan Singh v Financial Commr, Punjab* (1967) 67 Punj LR 377.

35 *Rameshwar Prasad Golwara v Keshali Prasad Bhagat* AIR 1962 Pat 360, 362–63.

36 *Munshi Lal & Sons v Modi Bros* 51 CWN 563.

Uttar Pradesh Industrial Disputes Act does not by itself exclude the applicability of the Act to an individual dispute. The provisions of the Act, thus viewed, lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general characteristics of an industrial dispute. namely, the workmen as a class,[37] body, or a considerable section of them, make common cause with the individual workman and thus create conditions contemplated by s 3 of the Act which is the foundation of state government's action under that Act.[38]

The Calcutta High Court,[39] has excluded the singular from the expression 'workmen' in s 2(k) of the Industrial Disputes Act 1947. But this view has to be taken as subject to the Supreme Court view[40] that individual dispute with the support of the union can become an industrial dispute. The Supreme Court,[41] holds that the term 'individual dispute' in CP & Berar Industrial Disputes Settlement Act 1947, is wider than in the Industrial Disputes Act 1947, so as to cover not only the disputes of workmen as a class but also such as are raised by the individual workers.

In *Nathu v State*,[42] it was held that 'a person' in s 27, Evidence Act, can well apply to simultaneous 'information' by several persons. The word 'person' in the singular will include the plural. However, a contrary view is taken in *Puttu v Emperor*.[43] Where by a general resolution the municipal council delegated the power to the law superintendent or the municipal prosecuting inspector to institute prosecution under the provisions of the Prevention of Food Adulteration Act, it was held that it was not violative of s 20 on the ground that the resolution empowered two persons to institute prosecution.[44] In r 876 of the Bombay High Court Rules, the word 'appeal' not only includes appeals but also any question arising in any appeal.[45]

37 *Indian Cable Co Ltd, Calcutta v Workmen* 1962 Supp (3) SCR 589, (1962) 1 LLJ 409.

38 *Newspapers Ltd v State Industrial Tribunal* [1957] SCR 754, AIR 1957 SC 532, 536; *Atma Singh v Chief Settlement Commr, Rehabilitation, New Delhi* AIR 1964 Punj 87, whether the word 'persons' (plural) was held to include a 'person' also; *Central Provinces Transport Service Ltd, Nagpur v Raghunath Gopal Patwardhan* AIR 1957 SC 104, 109–10, (1957) SCJ 58 (CP & Berar Industrial Disputes Act 1947—Industrial dispute includes claim of individual employee for reinstatement and compensation).

39 *Bengal Club Ltd v Shanti Ranjan Somaddar* AIR 1950 Cal 545, 548, 60 CWN 856; overruled on another point in *Secretary, Madras Gymkhana Club Employees' Union v Management of the Gymkhana Club* AIR 1968 SC 554.

40 *Management of Indian Cable Co Ltd v Workmen* 1962 Supp (3) SCR 589, 601–02.

41 *CP Transport Service Ltd, Nagpur v Raghunath Gopal Patwardhan* AIR 1957 SC 104, (1957) SCJ 58.

42 AIR 1958 All 467; *Moti Lal v State* AIR 1959 Pat 54.

43 AIR 1945 Oudh 235, 240, 46 Cr LJ 629, 1945 OWN 44 (DB).

44 *Municipal Council, Ajmer v Sadulla* (1968) ILR 18 Punj 1105, 1969 Cr LJ 308, AIR 1969 Raj 39.

45 *State of Maharashtra v Kusum* (1981) 83 Bom LR 75, 1981 Mah LJ 93, 113 (FB).

The word 'include' is important. It is not correct to say that for all words in the singular appearing in any central Act, the plural shall be substituted. A word in the singular may be interpreted in the singular number as well as in the plural number.[46] The true meaning and correct interpretation of the words 'parcel or package' in s 75(1) of the Railways Act, is that the word 'package' or 'parcel' means the singular and not the plural. But in order to form a 'parcel' or 'package' there should not only be one article, but two articles, one playing the role of container to the other. In order for s 75(1) to apply, there should be a declaration regarding the contents and their value, both, of each parcel or package separately, and not in respect of the entire consignment consisting of the different parcels or packages, booked under the luggage receipt under s 74, collectively or in one lump.[47]

The expression 'minor son', in s 13(3A) of Haryana Urban (Control of Rent and Eviction) Act 1973, will include 'minor sons'.[48]

In *E Alfred v First Addl Income-tax Officer*,[49] the assessee was dead before the issue of the notice under s 34, Income-tax Act. So the assessment could be completed only under s 24B(2) of that Act. The liability imposed by that section on the legal representative of a deceased attaches itself to all the legal representatives, who are liable to be served with notices. The question was whether, where there is plurality of legal representatives and that fact is known to the income-tax officer, s 24B(2) enables him to choose one of those legal representatives. It was held:

> In our opinion the assessment under s 34 was vitiated by the failure of the income-tax officer to issue notice to the other legal representatives.

Under s 13 of the General Clauses Act, a word used in plural has the same meaning as when used in the singular form and the context in cl (1) of art 13 of the Constitution makes it necessary to interpret the 'laws in force' so as to include customs and usages.[50] Similarly, the word 'arbitrators' in s 14(2) of the Arbitration Act 1940, includes the word 'arbitrator' so that an award made by more than one arbitrator can be filed or caused to be filed by any one of them.[51] Similarly the word 'debts' mentioned in s 10 of the Insolvency Act could be considered as a 'debt' also.[52]

46 *Re Phool Din* AIR 1952 All 401; *Budhai Sheik v Emperor* ILR 33 Cal 292, 294; *Abdul Karim v Nangod* AIR 1942 Oudh 407; *Moti Lal v State* AIR 1959 Pat 54; *Nathu v State* AIR 1958 All 460, 470.

47 *Radha Kishan v Union of India* AIR 1957 Pat 231.

48 *Himmat Ram v Jamna Bai* AIR 1983 P&H 152, (1982) 2 RCJ 57, (1982) 2 RCR 92, 1982 Cur LJ (Civ & Cr) 543, (1982) 84 Punj LJ 527, (1982) 2 RLR 243.

49 AIR 1958 Mad 11.

50 *Panch Gujar v Amersingh* AIR 1954 Raj 100.

51 *Shah Hansraj Velji v Shah Magan Lal Velji* AIR 1980 Bom 237, 1979 Mah LJ 530; but see *Mst Hiora v Abdul Karim* AIR 1970 Raj 22.

52 *S Damodaran Pillai v K Nathedu Bava* AIR 1992 Ker 212–13.

Not all the mortgagors are meant when the Transfer of Property Act 1882 refers to a mortgagor.[53] The word 'the subordinate judge' in s 102 of the Kerala Land Reforms Act cannot be read in the plural as 'the subordinate judges'. It means the subordinate judge when there is only one judge and the principal subordinate judge when there are more than one attached to the court.[54] So also, in s 144(1) of the Maharashtra Co-operative Societies Act 1961, the term 'petitioner' includes 'petitioners',[55] and, likewise, the word 'property' in the Wealth Tax Act 1957, could be read as 'properties'.[56]

The word 'intermediary', used in ss 6 (1) and 2(k) of Bihar Land Reforms Act 1950, includes 'intermediaries.'[57]

The words 'the list', in s 86(3)(a) and (b), Representation of the People Act, in singular, mean all lists maintained under s 86(2)(a) and (b).[58] Similarly, where an election petition has been filed by more than one petitioner, each petitioner need not deposit security amount separately.[59]

The Uttar Pradesh Consolidation of Holdings Amendment Act came into force on 8 March 1963. A second appeal to the deputy director of consolidation was filed prior to the said date under s 11(2) of the unamended Act. It was held that if the second appeal was decided after the amendment Act came into force, a revision against the order of the deputy director is maintainable by virtue of s 47(1) of the amendment Act and will be governed by s 48 as it stood before the amendment. But where the second appeal has been decided before the amendment, the proviso to s 47(1) of the amendment Act of 1963 is applicable and the provision in such a case is governed by the amended s 48.[60] Likewise, the presentation of a joint election petition by one of the two persons alone has been held to be valid. So also attestation of copies of the petition by one of them alone is sufficient.[61]

The term 'judge' in s 5 of the Court Fees Act implies 'judges'.[62]

The expression 'parties to a transaction' in the proviso to s 23 of Punjab Agricultural Produce Markets Act, would mean also a party to the transaction.[63]

53 *Chullikana Shambatta v Cherakoodhi Narayan* AIR 1951 Mad 917, 922, 1 Mad LJ 596 (DB).
54 *CS Balarama Iyer v Krishnan Kunjandi* (1968) ILR 1 Ker 1, 1968 KLT 8, 1968 Ker LJ 54, 1968 Ker LR 76, AIR 1968 Ker 240 (FB).
55 *Krishnarao Anandrao Dhayagude v Khandala Taluka Shatkari Sahkari Kheradi Vikri Sangh Ltd* AIR 1982 Bom 410.
56 *Wealth-tax Commr, Tamil Nadu v Satish* [1982] 133 ITR 834, 1982 Tax LR 1568 (Mad).
57 *Ramrudhar Singh v Dileshwar Singh* AIR 1965 Pat 117.
58 *Madan Mohan v Bankatlal* AIR 1954 Raj 145; *Coleman v Shang* [1961] 2 All ER 406 ('wife' means 'wives' if lawfully married); *NVL Narsimha Rao v Tellakula Jalaya* AIR 1957 AP 1007, 1010, 1956 Andh WR 431 (DB).
59 *Net Ram v Election Commission* (1964) ILR 1 Punj 418.
60 *Prem Chandra v Dy Director of Consolidation, Bara Banki* 1966 All WR 290 (HC), 1966 All LJ 81, AIR 1967 All 180 (FB).
61 *Moolchand v Maharaj Kumar Jaisingh* AIR 1963 Raj 219, (1963) ILR 13 Raj 533; *Sital Chandra v Babu Ram* AIR 1967 All 150.
62 *Maharaj Dharmendra Pd Singh v State* AIR 1969 All 484.
63 *Surja Ram v State of Punjab* (1969) 71 Punj LR 976.

Section 2(m)(ii) of the Wealth Tax Act 1957, using the word 'property' in singular, cannot be construed to mean 'properties' when in case of a secured debt, the security consists of several items of properties but one of which alone is exempted from wealth-tax.[64]

In the expression 'common High Court for the state' occurring in s 2 of the Contempt of Courts Act, the word 'state' can be read as 'states'. The common High Court of Punjab and Haryana is a High Court of Punjab, a High Court for Haryana and a High Court for the Union Territory of Chandigarh.[65] However, in s 234 of the Code of Criminal Procedure 1898 (corresponding to s 219 of the Code of 1973), the word 'person' does not include persons.[66]

The term 'certificate' referred to in Bengal Public Demands Recovery Act 1913 includes certificates.[67]

In the expression 'person carrying on business', the word 'person' includes more than one person. Accordingly, where the members of a joint Hindu family carry on business in the name of the firm, a suit can be brought against such firm.[68] Similarly, it has been held that though s 2D of the Insurance Act 1938, speaks of any 'class of insurance business' in the singular, it includes the plural also and would refer to all classes of insurance business.[69] So also, the expression 'historysheet' used in r 153D framed under the Motor Vehicles Act includes the plural so as to empower the licensing authority to examine all the historysheets of the person applying for licence to drive.[70]

Quite apart from the provisions of ss 411, 362(3) and 35(3), CrPC 1898, a term might well be held to mean two or more terms under s 13 of the General Clauses Act, so that, unless the aggregate of imprisonment inflicted exceeded six months, no appeal would lie under s 411. Similarly, unless the aggregate of fine imposed under the two sections exceeds Rs 200, no appeal would lie.[71] Word in the plural applies also to singular.[72]

In interpreting the word 'acts' in r 16.2(1) in Ch XVI, vol II of the Punjab Police Rules (1934), it does not exclude a single act of misconduct. In order to give effect to the legislative intent, the words in plural number may be construed to include the singular and the words importing the singular only may be applied to plurality of acts, things or persons.[73] In view of s 13(2) as

64 *Commr of Wealth-tax, Tamilnadu v Satish* 1982 Tax LR 1568—70 (Mad).
65 *Sher Singh v Raghu Pati* 1968 Cr LJ 775, (1967) ILR 2 Punj 217 (FB).
66 *Ram Prasad v King Emperor* AIR 1921 All 246 (2), 22 Cr LJ 657, 19 All LT 79 (DB).
67 *Mafzalar Rahmart Choudhary v Sreejukta Karimunnessa Bygum* 51 CWN 934, AIR 1947 Cal 241.
68 *Rameshwar Prasad Golwara v Keshab Prasad Bhagat* AIR 1962 Pat 360, 1962 BLJR 473.
69 *Vanguard Fire and General Insurance Co Ltd, Madras v Fraser and Ross* AIR 1960 SC 971, (1960) 30 Com Cas 13 (ins).
70 *JC Nagireddy v P Nagamma* (1968) 2 Andh WR 234, AIR 1968 AP 298.
71 *Mohd Safi v State* AIR 1954 Cal 301.
72 *Newspapers Ltd v State Industrial Tribunal* [1957] SCR 754, AIR 1957 SC 532, 536; *B Sudhakar v Union of India* AIR 1995 AP 86.
73 *Bhagwat Prashad v Inspector General of Police, Punjab* (1968) ILR 1 Punj 368, AIR 1970 Punj 81.

the word 'act' includes 'acts', similarly 'acts' would include 'act' for the purposes of explaining a misconduct in the Punjab Police Manual.[74]

To read 'previous year' in s 2(11) of the Income-tax Act 1922 as 'previous years' was held to be repugnant to the context.[75]

The expressions '*sarpanch*' and '*panch*' in s 13B of the Punjab Gram Panchayat Act, includes their respective plurals.[76] All that s 13 means is that the word need not be construed as 'singular' under all circumstances but merely indicates the intention of the legislature that the word may be interpreted in the plural wherever the circumstances required that it should be so construed, determinable with reference to the context in which it may be used.[77]

'Dwelling-house' does not include tenanted house. A house to be dwelling-house must be wholly occupied by members of the family of the deceased intestate.[78]

Section 13-A. References to the Sovereign—*[Repealed by the AO 1950].*

74 *State of Punjab v Ram Singh* AIR 1992 SC 2188, 2191.
75 *Dhandhania Kedia & Co v Commr of Income-tax* AIR 1959 SC 219, 222, (1959) SCJ 245.
76 *Zile Singh v State of Haryana* AIR 1975 P&H 115.
77 *Nirmal Singhji M Jadeja v District Magistrate, Valsad* (1995) 2 Guj CD 666.
78 *Narshimha Murthy v Sushilabai* (1996) 3 SCC 644, AIR 1996 SC 1826.