

# OTHER LAWS

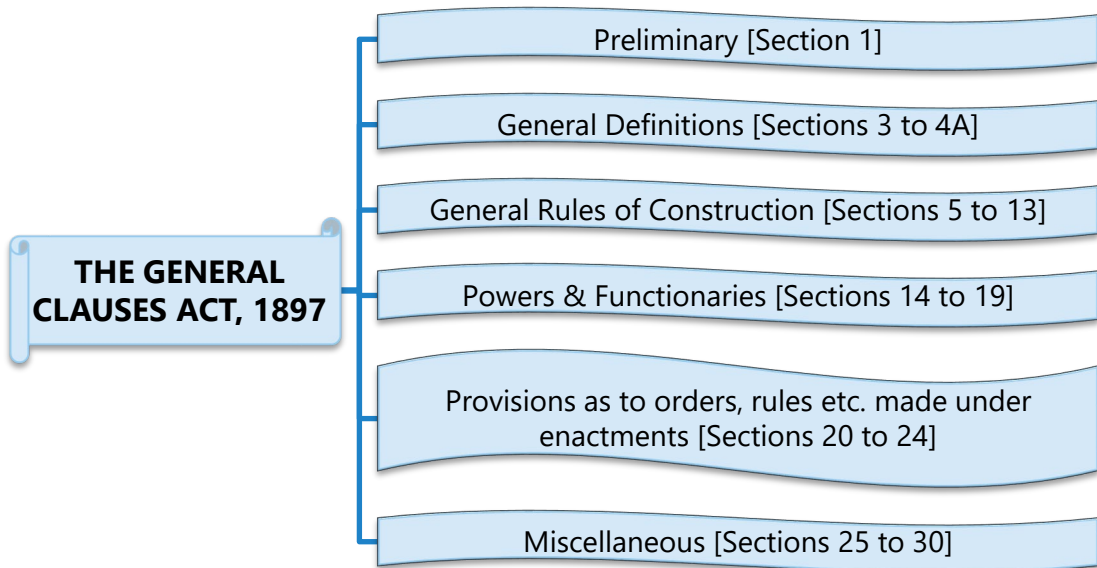
# THE GENERAL CLAUSES ACT, 1897



## LEARNING OUTCOMES

**At the end of this Chapter, you will be able to:**

- ◆ Explain the purpose of the General Clauses Act.
- ◆ Acquire some basic understanding of the legislation.
- ◆ Know the general definitions under the Act.
- ◆ Identify general rules of construction.
- ◆ Explain powers as to orders, rules etc. made under enactments.
- ◆ Gain knowledge of other miscellaneous provisions.

**CHAPTER OVERVIEW**  **1. INTRODUCTION****Why we study General Clauses Act?**

The General Clauses Act, 1897 (Act) was enacted on 11<sup>th</sup> March, 1897 to consolidate and extend the General Clauses Act, 1868 and 1887.

The General Clauses Act, 1897 contains 'definitions' of certain terms and general principles of interpretation. The general definitions provided are applicable to all Central Acts and Regulations in the absence of definition of a particular word in any Central Act or Regulation, unless there is anything repugnant in the subject or context.

The General Clauses Act, 1897 also comes for a rescue in the absence of clear definition in the specific enactments and where there is a conflict between the pre-constitutional laws and post-constitutional laws. The Act gives a clear suggestion for the conflicting provisions and differentiates the legislation according to the commencement and enforcement to avoid uncertainty.

**Example 1:** Wherever the law provides that court will have the power to appoint, suspend or remove a receiver, the legislature simply enacted that wherever convenient the court may appoint receiver and it was implied within that language that it may also remove or suspend him. (*Rayarappan V. Madhavi Amma*, A.I.R. 1950 F.C. 140)

## 2. OBJECT, PURPOSE AND IMPORTANCE OF THE GENERAL CLAUSES ACT

The objects of the Act are several, namely:

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

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

**The purpose of the Act has been stated by the Supreme Court in the case of *The Chief Inspector of Mines v. Karam Chand Thapar*.** It stated that the purpose

of this Act is to place in one single Statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and regulations. The purpose of the Act is to avoid superfluity of language in statutes wherever it is possible to do so.

**Purpose-** to place in one single statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations.

So, whatever General Clauses Act says whether as regards to the meaning of words or as regards legal principles, has to be read in every statute to which it applies.

**Example 2:** A claim of the right to catch fish came under the consideration of court in *Ananda Behera v. State of Orissa*. The court tended to decide whether the right to catch or carry fish is a movable or immovable property.

Section 3(26) of the General Clauses Act, 1897 reads as under: - "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;" The Section 3 of Transfer of Property Act does not define the term except to say that immovable property does not include standing timber, growing crops or grass. As fish do not come under that category the definition in the General Clauses Act applies and as a *profit a prendre*<sup>1</sup> is regarded as a benefit arising out of land it follows that it is immovable property within the meaning of the Transfer of Property Act."

Thus, the court construed "right to catch or carry fish" as an immovable property.

### 3. APPLICATION OF THE GENERAL CLAUSES ACT

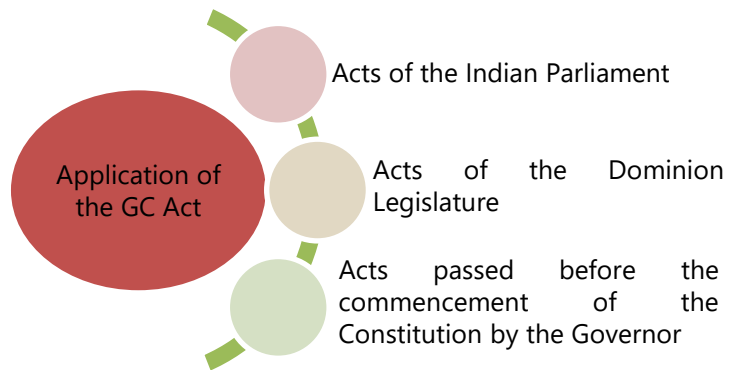
The Act does not define any "territorial extent" clause. Its application is primarily with reference to all Central legislation and also to rules and regulations made under a Central Act. It is in a sense a part of every Central Acts or Regulations. If a Central Act is extended to any territory, the General Clauses Act would also deem to be applicable in that territory and would apply in the construction of that Central Act. The Central Acts to which this Act apply are: —

- (a) Acts of the Indian Parliament (Central Act) along with the rules and regulations made under the Central Act;
- (b) Acts of the Dominion Legislature passed between the 15<sup>th</sup> August, 1947 and the 26th January, 1950;

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<sup>1</sup> French- Right of taking. The right of persons to share in the land owned by another. A profit a prendre enables a person to take part of the soil or produce of land that someone else owns.

- (c) Acts passed before the commencement of the Constitution by the Governor-General in Council or the Governor-General acting in a legislative capacity. The Act does not define any "territorial extent" clause.



Article 367 of the Constitution of India authorises use of the General Clauses Act for the interpretation of constitution. Article 367 states that:

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

The provisions of the General Clauses Act, 1897 are mere rules of interpretation and it applies automatically in each and every case. It all depends on the facts and circumstances of each case.

In many countries, Legislatures similar to the General Clauses Act are called Interpretation Acts. But, as the provisions of the General Clauses Act (whether relating to definitions and meanings of words and terms or dealing with construction and interpretation) are, so far as may be necessary, common to every Central Act, the title "General Clauses Act" is not less appropriate than the title "Interpretation Act". **The Supreme Court had observed in the case of Chief Inspector of Mines v. K. C. Thapar** "Whatever the General Clauses Act says, whether as regards the meanings of words or as regards legal principles, has to be read into every Act to which it applies."

The scope and effect of each section depends upon the text of the particular section.

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

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

So, there is a difference in the applicability of each section as regards the statutes to which it applies.

The language of each section of the General Clauses Act has to be referred to ascertain to which class of instruments or enactment it applies. In certain cases, even if no section of the General Clauses Act applies to particular case, the court applies the general principles of the General Clauses Act.

It may also be noted that the Act also serves as a model for State General Clauses Act. It is evident that the State General Clauses Acts should conform to the General Clauses Act of 1897, for, otherwise, divergent rules of construction and interpretation would apply and as a result, great confusion might ensue.

Before delving into the saddle of the provisions under General Clauses Act, 1897 let's have some basic understanding of law.

## 4. SOME BASIC UNDERSTANDING OF LEGISLATION

### Preamble

**“Preamble”:** Every Act has a preamble which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act.

Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act.

The Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provisions of the Act but if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the

Preamble can and ought to be referred to in order to arrive at the proper construction.

*In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.*

**Example 4:** Preamble of the Negotiable Instruments Act, 1881 states - "An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheque."

**Example 5:** Preamble of the Companies Act, 2013 states – "An Act to consolidate and amend the law relating to companies."

In order to understand Preamble of the Act, it is important to know the 'Act'. Act is a bill passed by both the houses of Parliament and assented to by the President. Whereas 'Bill' is a draft of a legislative proposal put in the proper form which, when passed by both houses of Parliament and assented to by the President becomes an Act. On getting assent from President, an Act is notified on the Official Gazettes of India.

## Definitions

**"Definitions":** Every Act contains definition part for the purpose of that particular Act and that definition part are usually mentioned in the Section 2 of that Act but in some other Acts, it is also mentioned in Section 3 or in other initial sections. Hence, definitions are defined in the Act itself. The object of the definition clause is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply.

However, if there may be words which are not defined in the definitions of the Act, the meaning of such words may be taken from General Clauses Act, 1897.

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

**Example 6:** The word 'Company' used in the Companies Act, 2013, is defined in section 2(20) of the respective Act.

**Example 7:** Word 'Security' used in the Companies Act, 2013, is not defined in the respective Act. It has been defined under section 2(h) of the Securities Contracts (Regulations) Act, 1956. This word is equivalently applicable on the Companies



Act, 2013. Similarly, the word 'Digital signature' used in the Companies Act, shall be construed as per the section 2(1) (p) of the Information Technology Act, 2000.

Clause 95 of Section 2 of the Companies Act, 2013 clearly says that -

Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

**Example 8:** The word 'Affidavit' used in section 7 during the incorporation of company, in the Companies Act, 2013, shall derive its meaning from the word 'Affidavit' as defined in the General Clauses Act, 1897.

## Means/ include

**"Means" and/or "include":** Some definitions use the word "means". Such definitions are exhaustive definitions and exactly define the term.

**Example 9:** Definition of 'Company' as given in section 2(20) of the Companies Act, 2013. It states, "Company" means a company incorporated under this Act or under any previous company law.

**Example 10:** Section 2(34) of the Companies Act, 2013 defines the term director as "director" means a director appointed to the Board of a company.

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

**Example 11:** Word 'debenture' defined in section 2(30) of the Companies Act, 2013, states that "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not". This is a definition of inclusive nature.

**Example 12:** "Body Corporate" or "Corporation" includes a company incorporated outside India. [Section 2(11) of the Companies Act, 2013]

The above definition of Body Corporate does not define the term Body Corporate, but just states that companies incorporated outside India will also cover under

the definition of Body Corporate, apart from other entities which are called as Body Corporate.

We may also find a word being defined as 'means and includes' such and such, here again the definition would be exhaustive.

**Example 13:** Share defined under section 2(84) of the Companies Act, 2013, states that "Share" means a share in the share capital of a company and includes stock.

On the other hand, if the word is defined 'to apply to and include', the definition is understood as extensive.

### Shall/ May

**"Shall" and "May":** The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.

**Example 14:** Section 3 of the Companies Act, 2013 states that "A company may be formed for any lawful purpose by....."

Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

**Example 15:** Section 21 of the Companies Act, 2013, provides that documents/proceeding requiring authentication or the contracts made by or on behalf of the company, may be signed by any Key Managerial Personnel or an officer of the company duly authorised by the Board in this behalf.

Usage of the 'may' shall be read as 'may'.

The use of word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of a statute, will normally lead to the conclusion that the word 'shall' imposes an obligation, whereas word 'may' confers a discretionary power (*Labour Commr., M.P.V. v. Burhanpur Tapti Mill, AIR, 1964 SC1687*).

In *Sainik Motors v. State of Rajasthan J. Hidayatullah* observed "the word Shall is ordinarily mandatory but it is sometimes not so interpreted if the context or the intention otherwise demands.

Our approach in this text is to provide basic understanding of law while studying any legislation. These are few concepts which every student should keep in mind while studying law. You will read the following concepts in detail in the chapter of 'Interpretation of Statutes'.

## 5. PRELIMINARY [SECTION 1]

**"Short title" [Section 1(1)]:** This Act may be called the General Clauses Act, 1897.

Preliminary is the introductory part of any law which generally contains Short Title, extent, commencement, application etc. The title although the part of the Act is in itself not an enacting provision. Every Act is given a title to carve out its own identity just like people are given their names to identify them.

The General Clauses Act, 1897 contains only short title in the Preliminary part of the Act.

**Note:** Section 2 of the General Clauses Act, 1897 has been repealed.

## 6. DEFINITIONS [SECTION 3]

Three sections of the General Clauses Act, i.e., section 3 (Definitions), 4 (application of foregoing definitions to previous enactment) and 4A (Application of certain definitions to Indian laws), contain general definitions.

Here in this chapter, we shall be discussing some of the relevant definitions or terms which are by and large seen in the Acts.

**Section 3**, which is the principal section containing definitions, applies to the General Clauses Act itself and to post-1897 Central Acts and Regulations unless those laws contain separate definitions of their own or there is something repugnant in the subject or context. Section 3 seeks to define 67 phrases and terms commonly used in enactments and are intended to serve as a dictionary for the phrases.

Bartley in his commentary on the General Clauses Act, 1897 has pointed out that a definition may be explanatory, restrictive or extensive.

Section 3 reads as – *“In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-*

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

**Act**

An act required to be done cannot necessarily mean a positive act only and may also include acts which one is precluded from doing from decree. This definition is based on sections 32 and 33 of the Indian Penal Code and applies to civil wrongs as well as crimes. ‘Act’ includes illegal omissions as well but it does not include an omission which is not illegal.

In the illustration to section 36 of the Indian Penal Code, the act by which A causes Z's death consists of a series of acts, namely, the blows given in beating him, plus a series of illegal omissions, namely, wrongfully neglecting or refusing to supply him with food at proper times.

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

**Affidavit**

There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

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

**Central Act**

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

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

\*The date of the commencement of the Constitution is 26<sup>th</sup> January, 1950.

4. **“Central Government” [Section 3(8)]:**

‘Central Government’ shall-

Central  
Government

- (a) In relation to anything done before the commencement of the Constitution, mean the Governor General in Council, as the case may be; and shall include,-
- (i) In relation to functions entrusted under sub-section (1) of the section 124 of the Government of India Act, 1935, to the Government of a Province, the Principal Government acting within the scope of the authority given to it under that sub-section; and
  - (ii) In relation to the administration of a Chief Commissioner’s Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and
- (b) In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include;-
- (i) In relation to function entrusted under clause (1) of the article of the Constitution, to the Government of a state, the State Government acting within the scope of the authority given to it under that clause;
  - (ii) In relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956\*, the Chief Commissioner or the Lieutenant Governor or the Government of a neighboring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and
  - (iii) In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;

\*The date of commencement of the Constitution (Seventh Amendment) Act, 1956 is 01<sup>st</sup> January, 1956.

The new Constitution of India, which came into force on 26 January 1950, made India a sovereign democratic republic. The new republic was also declared to be a "Union of States". Between 1947 and 1950 the territories of the princely states were politically integrated into the Indian Union. The constitution of 1950 distinguished between three main types of states and a class of territories:

**Part A states**, which were the former governors' provinces of British India, were ruled by a Governor appointed by the President and an elected state legislature. The nine Part A states were Assam, Bihar, Bombay, Madhya Pradesh (formerly Central Provinces and Berar), Madras, Orissa, Punjab (formerly East Punjab), Uttar Pradesh (formerly the United Provinces), and West Bengal.

**Part B states**, which were former princely states or groups of princely states, governed by a Rajpramukh, who was usually the ruler of a constituent state, and an elected legislature. The Rajpramukh was appointed by the President of India. The eight Part B states were Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra, and Travancore-Cochin.

**Part C states** included both the former chief commissioners' provinces and some princely states, and each was governed by a chief commissioner appointed by the President of India. The ten Part C states were Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Cutch, Manipur, Tripura, and Vindhya Pradesh.

The sole **Part D** territory was the Andaman and Nicobar Islands, which were administered by a Lieutenant Governor appointed by the Central Government.

5.

## Commencement

**"Commencement" [Section 3(13)]:**

'Commencement' used with reference to an Act or Regulation, shall mean the day on

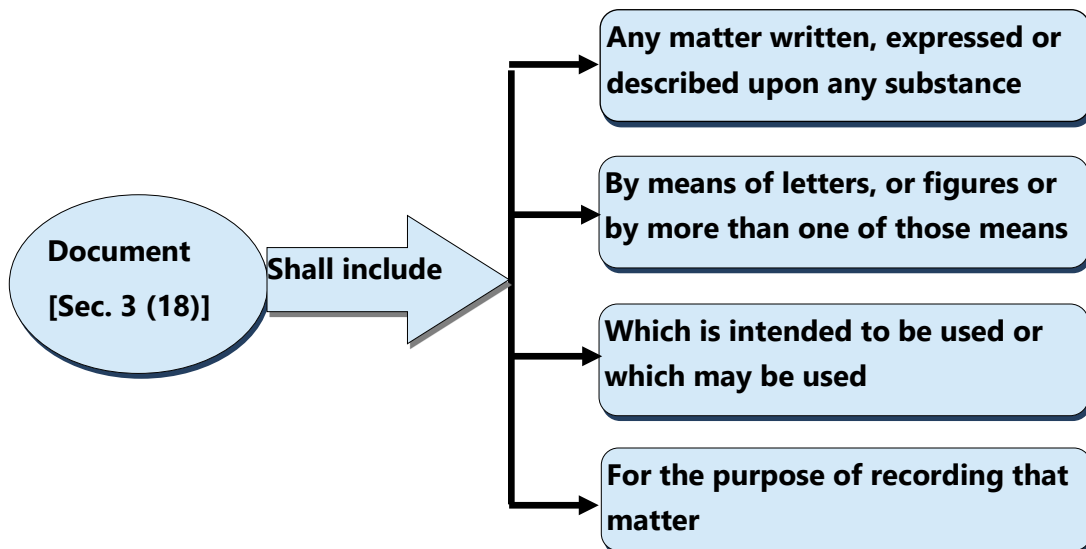
which the Act or Regulation comes into force;

Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have legal force and effect.

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

6. **"Document" [Section 3(18)]:** 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter.

# Document



Thus, the term "Document" includes any substance upon which any matter is written or expressed by means of letters or figures for recording that matter.

For example, book, file, painting, inscription and even computer files are all documents. However, it does not include Indian currency notes.

7.

## Enactment

**“Enactment” [Section 2(19)]:** ‘Enactment’ shall include a Regulation (as hereinafter defined) and any Regulation of Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

It has been held that an “enactment” would include any Act (or a provision contained therein) made by the Union Parliament or the State Legislature. Again, since “enactment” is defined to include also any provision of an Act, section 6 (Effect of repeal) would apply to a case where not only the entire Act is repealed, but also where any provision of an Act is repealed. [*State of Punjab Sukh Deo Sarup Gupta A.L.R. 1970 SC 1661, 1942, para 3, affirming A.I.R. 1965 Punj. 399 and Godhra Electricity Co. v. Somalal, A.I.R. 1967 Guj. 772, 776, para 6.*]

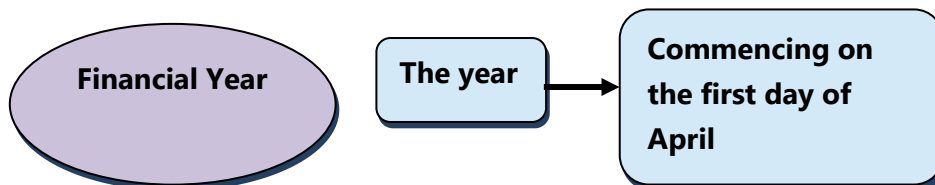
Rules and regulation are nothing but a species of legislation. The legislature instead of enacting the same itself delegates the power to other person. Whatever is enacted by the delegate of legislature is also enactment.

8. **“Financial Year” [Section 3(21)]:** Financial year shall mean the year commencing on the first day of April.

## Financial Year

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.

**Difference between Financial Year and Calendar Year:** Financial year starts from first day of April but Calendar Year starts from first day of January.





9.

## Good Faith

**“Good Faith” [Section 3(22)]:** A thing shall be deemed to be done in “good faith” where it is in fact done honestly,

whether it is done negligently or not;

The question of good faith under the General Clauses Act, 1897 is one of fact. It is to determine with reference to the facts and circumstances of each case. Thus, anything done with due care and attention, which is not *malafide* is presumed to have been done in good faith. For eg: An authority is not acting honestly where it had a suspicion that there was something wrong and did not make further enquiries

The term “good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context.

In *Maung Aung Pu Vs. Maung Si Maung*, it was pointed out that the expression “good faith” is not defined in the Indian Contract Act, 1872 and the definition given here in the General Clauses Act, 1897 does not expressly apply the term on the Indian Contract Act. The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the contract Act is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

10. **“Government” [Section 3(23)]:**

‘Government’ or ‘the Government’ shall include both the Central Government and State Government.

## Government

Hence, wherever, the word ‘Government’ is used, it will include Central Government and State Government both.

The object of this definition is to make it clear that the word ‘Government’, frequently used as a convenient abbreviation, may be construed according to the context in either of the two senses indicated. Government generally

connotes three wings, the Legislature, the Executive and the Judiciary; but in a narrow sense it is used to connote the Executive only. Meaning to be assigned to that expression, therefore, depends on the context in which it is used.

11.

## Government Securities

**“Government Securities” [Section 3(24)]:**

‘Government securities’ shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the

commencement of the Constitution shall not include securities of the Government of any Part B state.

By virtue of section 4A, this definition applies to all Indian laws.

12. **“Immovable Property” [Section 3(26)]:**

‘Immovable Property’ shall include:

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

## Immovable Property

It is an inclusive definition. It contains four elements:

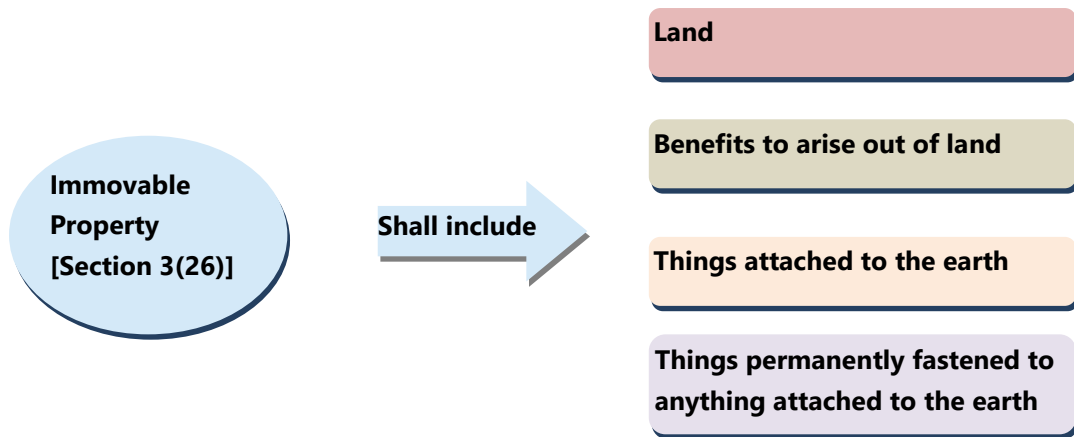
- a. land,
- b. benefits to arise out of land,
- c. things attached to the earth and
- d. things permanently fastened to anything attached to the earth.

Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

**Example 16:** In *Shantabai v. State of Bombay*, the Supreme Court pointed out that **trees must be regarded as immovable property** because they are attached to or rooted in the earth.

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

**Example 17:** Right of way to access from one place to another, may come within the definition of Immovable property whereas to right to drain of water is not immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897.



13.

## Imprisonment

**“Imprisonment” [Section 3(27)]:**

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

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

14. **“Indian law” [Section 3(29)] :** ‘Indian

law’ shall mean any Act, Ordinance, Regulation, rule, order, bye law or other

## Indian Law

instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof or thereafter has the

force of law in any Part A or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;

15. **Month** **“Month” [Section 3(35)]:** ‘Month’ shall mean a month reckoned according to the British calendar;

16. **“Movable Property” [Section 3(36)]:** ‘Movable Property’ shall mean property of every description, except immovable property.

**Movable Property**

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

17. **Oath** **“Oath” [Section 3(37)]:** ‘Oath’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

18. **“Offence” [Section 3(38)]:** ‘Offence’ shall mean any act or omission made punishable by any law for the time being in force.

**Offence**

Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.

19. **“Official Gazette” [Section 3(39)]:** ‘Official Gazette’ or ‘Gazette’ shall mean:

**Official Gazette**

- (i) The Gazette of India, or
- (ii) The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

20. **“Person” [Section 3(42)]:** “Person” shall include:
- (i) any company, or
  - (ii) association, or
  - (iii) body of individuals, whether incorporated or not
21. **“Registered” [Section 3(49)]:** ‘Registered’ used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.
22. **“Rule” [Section 3(51)]:** ‘Rule’ shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;
23. **“Schedule” [Section 3(52)]:** ‘Schedule’ shall mean a schedule to the Act or Regulation in which the word occurs;
24. **“Section” [Section 3(54)]:** ‘Section’ shall mean a section of the Act or Regulation in which the word occurs;
25. **“Sub-section” [Section 3(61)]:** ‘Sub-section’ shall mean a sub-section of the section in which the word occurs;
26. **“Swear” [Section 3(62)]:** “Swear”, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.

**Note:** The terms “Affidavit”, “Oath” and “Swear” have the same definitions in the Act.

27. **“Writing” [Section 3(65)]:** Expressions referring to ‘writing’ shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a <sup>2</sup>visible forms.
28. **“Year” [Section 3(66)]:** ‘Year’ shall mean a year reckoned according to the British calendar.

Writing

Year

### **Application to foregoing definitions to previous enactments [Section 4]-**

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

- (1) **Application of terms/expressions to all [Central Acts] made after 3<sup>rd</sup> January, 1868, and to all Regulations made on or after the 14<sup>th</sup> January, 1887-**

Here the given relevant definitions in section 3 of the following words and expressions, that is to say, ‘affidavit’, ‘immovable property’, ‘imprisonment’, ‘month’, ‘movable property’, ‘oath’, ‘person’, ‘section’, ‘and ‘year’ apply also, unless there is anything repugnant in the subject or context, to all Central Acts made after the 3<sup>rd</sup> January, 1868, and to all Regulations made on or after the 14<sup>th</sup> January, 1887.

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

### **<sup>3</sup>Application of certain definitions to Indian Laws [Section 4A]-**

- (1) The definitions in section 3 of the expressions ‘Central Act’, ‘Central Government’, ‘Gazette’, ‘Government’, ‘Government Securities’, ‘Indian Law’, and ‘Official Gazette’, shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

<sup>2</sup> Reference of relevant definitions of section 3 is given in section 4.

<sup>3</sup>Reference of relevant definitions of section 3 is given in section 4A.

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

## 7. GENERAL RULES OF CONSTRUCTION: [SECTION 5 TO SECTION 13]

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

**Example 18:** The Companies Act, 2013 received assent of President of India on 29<sup>th</sup> August, 2013 and was notified in Official Gazette on 30<sup>th</sup> August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.

Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.

**Example 19:** SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14<sup>th</sup> August, 2015 with effect from 1 January, 2016. Here, this regulation shall come into force on 1<sup>st</sup> January, 2016 rather than the date of its notification in the gazette.

The Supreme Court in *A.K. Roy v. UOI, AIR 1982 SC 710*, observed that where an Act empowers the government to bring any of the provisions into operation on any day which it deems fit, no Court can issue a mandamus with a view to compel the Government to bring the same into operation on particular day.

However, in *Altemeis Rein v. UOI AIR 1988 SC 1768*, it was held that if a sufficient time has elapsed since an Act or any of its provisions has been passed and it has not been brought into force (operation) by the Government, the Court through a writ can direct the Government to consider the question as to when the same should begin to operate.

In the case of *State of Uttar Pradesh v. Mahesh Narain*, AIR 2013 SC 1778, Supreme Court held that effective date of Rules would be when the Rules are published vide Gazette notification and not from date when the Rules were under preparation.

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

## PRESUMPTION AGAINST RETROSPECTIVITY

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

**“Effect of Repeal” [Section 6]:** Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- **Revive anything not enforced** or prevailed during the period at which repeal is effected or;
- **Affect the 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 inquiry, litigation or remedy** with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

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



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

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

**“Repeal of Act making textual amendment in Act or Regulation” [Section 6A]**- Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

**“Revival of repealed enactments” [Section 7]**- (1) In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressed to state that purpose.

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

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

**“Construction of references to repealed enactments” [Section 8]**- (1) Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

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

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

**Example 20:** In section 115 JB of the Income Tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.

**“Commencement and termination of time” [Section 9]:** In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

**Example 21:** A company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2022. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2022 to 30/10/2022. In this series of 30 days, 30/09/2022 will be excluded and last 30<sup>th</sup> day i.e. 30/10/2022 will be included.

**“Computation of time” [Section 10]:** Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In *K. Soosalrathnam v. Div. Engineer, N.H.C. Tirunelveli*, it was held by Madras High Court that since the last date of the prescribed period was subsequent to the date

of notification, declared to be a holiday on the basis of the principles laid down in this section the last date of prescribed period for obtaining the tender schedules was extended to the next working day.

**“Measurement of Distances” [Section 11]:** In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

**“Duty to be taken pro rata in enactments” [Section 12]:** Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

**Example 22:** Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

**Example 23:** When a company pays dividends to its shareholders, each investor is paid according to their holdings. If a company has 100 shares outstanding, for example, and issues a dividend of ₹ 2 per share, the total amount of dividends paid will be ₹ 200. No matter how many shareholders there are, the total dividend payments cannot exceed this limit. In this case, ₹ 200 is the whole, and the pro rata calculation must be used to determine the appropriate portion of that whole due to each shareholder.

Assume there are only four shareholders who hold 50, 25, 15, and 10 shares, respectively. The amount due to each shareholder is their pro rata share. This is calculated by dividing the ownership of each person by the total number of shares and then multiplying the resulting fraction by the total amount of the dividend payment.

The majority shareholder's portion, therefore, is  $(50/100) \times ₹ 200 = ₹ 100$ . This makes sense because the shareholder owns half of the shares and receives half of the total dividends. The remaining shareholders get ₹ 50, ₹ 30, and ₹ 20, respectively.

**“Gender and number” [Section 13]:** In all legislations and regulations, unless there is anything repugnant in the subject or context-

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

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

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

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

## 8. POWER AND FUNCTIONARIES [SECTION 14 TO SECTION 19]

**"Power conferred to be exercisable from time to time" [Section 14]:** (1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.

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

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

**"Power to appoint to include power to appoint ex-officio" [Section 15]:** Where by any legislation or regulation, a power to appoint any person to fill any

office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, may be made either by name or by virtue of office.

*Ex-officio* is a Latin word which means by virtue of one's position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing *ex-officio* as well.

**“Power to appoint to include power to suspend or dismiss” [Section 16]:** The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

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

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

**“Substitution of functionaries” [Section 17]:** (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

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

**“Successors” [Section 18]:** (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

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

**“Official Chiefs and subordinates” [Section 19]:** A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the

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

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

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

## 9. PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS [SECTION 20 TO SECTION 24]

**“Construction of orders, etc., issued under enactments” [Section 20]:** Where by any legislation or regulation, a power to issue any notification, order, scheme, rule, form, or by-law is conferred, then expression used in the notification, order, scheme, rule, form or bye-law, shall, unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or regulation conferring power.

**Example 24:** The term ‘collector’ used in Rule 4 of the Land Acquisition (Companies) Rule, 1963, will have the same meaning as in Section 3(c) of the Land Acquisition Act, 1894.

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

**“Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws” [Section 21]:** Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws

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

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

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

**“Making of rules or bye-laws and issuing of orders between passing and commencement of enactment” [Section 22]:** Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

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

**“Provisions applicable to making of rules or bye-laws after previous publications” [Section 23]:** Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- (1) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- (3) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (5) The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws has been duly made.

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

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

**“Continuation of orders etc., issued under enactments repealed and re-enacted” [Section 24]:** Where any Central Act or Regulation, is, after, the commencement of this Act, repealed and re-enacted with or without modification, then unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, continue in force, and be deemed to have been made or issued



under the notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled District Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

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

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

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

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

## 10. MISCELLANEOUS [SECTION 25 TO SECTION 30]

**“Recovery of fines” [Section 25]:** Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply

to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

**“Provision as to offence punishable under two or more enactments” [Section 26]:** Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

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

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

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

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

**“Meaning of Service by post” [Section 27]:** Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:



- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

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

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

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

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

**“Citation of enactments” [Section 3(28)]:** (1) In any Central Act or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

**“Saving for previous enactments, rules and bye laws” [Section 29]:** The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

**“Application of Act to Ordinances” [Section 30]:** In this Act the expression Central Act, wherever it occurs, except in Section 5 and the word ‘Act’ in clauses (9), (13), (25), (40), (43), (53) and (54) of section 3 and in section 25 shall be deemed to include Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861 or section 72 of the Government of India Act, 1915, or section 42 of the Government of India Act, 1935 and an Ordinance promulgated by the President under Article 123 of the Constitution.

## SUMMARY

- ◆ The General Clauses Act, 1897 intends to provide general definitions which shall be applicable to all Central Acts and Regulations where there is no definition in those Acts.
- ◆ Every Act has a preamble which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act.
- ◆ Financial year shall mean the year commencing on the first day of April.
- ◆ Where legislation has not specifically mentioned the date to come into force, it shall be implemented on the day it receives the assent of the President of India.
- ◆ Whenever an Act is repealed, it must be considered as if it had never existed.
- ◆ Where by any legislation, 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, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.
- ◆ In any legislation, words importing the masculine gender shall be taken to include females, and words in singular shall include the plural and vice versa.
- ◆ Power to appoint includes power to appoint ex-officio.
- ◆ Power to appoint includes power to suspend or dismiss.

- ◆ A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior.
- ◆ Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying, and posting by registered post.

## TEST YOUR KNOWLEDGE

### MCQ based Questions

1. Which of the following is not an Immovable Property?
  - (a) Land
  - (b) Building
  - (c) Timber
  - (d) Machinery permanently attached to the land
2. Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which:
  - (a) It receives the assent of the President
  - (b) It receives the assent of the Governor General
  - (c) It receives assent of both the houses of Parliament
  - (d) It receives assent of the Prime Minister
3. An act or omission constitutes an offence under two enactments. Referring to the provisions of the General Clauses Act, 1897, state which among the following is correct in such a situation:
  - (a) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted last and not under the other enactment.
  - (b) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted first and not under the other enactment.

- (c) *The offender shall be liable to be prosecuted and punished under both the enactments.*
  - (d) *The offender shall be liable to be prosecuted and punished under that either or any of those enactments, but shall not be punished twice for the same offence.*
4. *Every Act has a ..... which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act.*
- (a) *Definition*
  - (b) *Preamble*
  - (c) *Affidavit*
  - (d) *Document*

### **Descriptive Questions**

1. *What is "Financial Year" under the General Clauses Act, 1897?*
2. *What is "Immovable Property" under the General Clauses Act, 1897?*
3. *As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?*
4. *A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.*
5. *X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897.*
6. *What is the meaning of service by post as per provisions of the General Clauses Act, 1897?*

7. Komal Ltd. declares a dividend for its shareholders in its AGM held on 27<sup>th</sup> September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice:
- The dates during which Komal Ltd. is required to pay the dividend?
  - The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?
8. 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897.
9. The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2022, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?
10. Referring to the provisions of the General Clauses Act, 1897, find out the day/date on which the following Act/Regulation comes into force. Give reasons also,
- An Act of Parliament which has not specifically mentioned a particular date.
  - The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14<sup>th</sup> August, 2015 with effect from 1<sup>st</sup> January, 2016.

## ANSWERS

### Answer to MCQ based Questions

1.	(c)	Timber
2.	(a)	It receives the assent of the President
3.	(d)	The offender shall be liable to be prosecuted and punished

	under that either or any of those enactments, but shall not be punished twice for the same offence
<b>4.</b>	<b>(b)</b> Preamble

## Answer to Descriptive Questions

1. According to Section 3(21) of the General Clauses Act, 1897, 'Financial Year' shall mean the year commencing on the first day of April.

The term year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, Year means calendar year which starts from January to December.

Hence, in view of both the above definitions, it can be concluded that Financial Year is a year which starts from first day of April to the end of March.

2. According to Section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

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

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

3. Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything



repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

4. As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
- (i) Properly addressing,
  - (ii) Pre-paying, and
  - (iii) Posting by registered post.

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

Therefore, in view of the above provision, since the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181*, a notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act is neither tenable nor based upon sound exposition of law.

5. **"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]:** 'Immovable Property' shall include:
- (i) Land,
  - (ii) Benefits to arise out of land, and
  - (iii) Things attached to the earth, or
  - (iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

6. **“Meaning of Service by post”** [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
- (i) properly addressing
  - (ii) pre-paying, and
  - (iii) posting by registered post.

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

7. As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.
- (i) **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30<sup>th</sup> day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).

- (ii) **Transfer of unpaid or unclaimed dividend:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28<sup>th</sup> October, 2022 to 3<sup>rd</sup> November, 2022 (both days inclusive).
8. In *Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji*, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.
9. Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
- As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30<sup>th</sup> October, 2022 will be excluded and 6<sup>th</sup> November 2022 shall be included, i.e. 31<sup>st</sup> October, 2022 to 6<sup>th</sup> November, 2022 (both days inclusive).
10. (1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.

- (2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1<sup>st</sup> January, 2016 rather than the date of its notification in the Gazette.