

CHAPTER 3

THE GENERAL CLAUSES ACT, 1897

- **BACKGROUND AND AIM OF THE ACT**
 - The General Clauses Act, 1897 was enacted on **11th March, 1897**
 - **Application of the General Clauses Act**
 1. The Act does not define any “territorial extent” clause.
 2. It shall apply to every territory where a Central Act is applicable and would apply in the construction of that Central Act.
 - **Object, purpose and importance of the General Clauses Act:**
 1. The object of the act are several, namely:
 - a. To shorten the language of Central Acts.
 - b. To provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use.
 2. The General Clauses Act thus makes provisions as to the construction of General Acts and other laws applicable to whole of India. The Act has also been called as the "**Law of all Laws**". Thus, we can see that the purpose of this Act itself enshrines the importance of the Act.
- **SOME BASIC UNDERSTANDINGS OF LEGISLATION**
 - **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. 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.
 - **“Means” and/or “include” :**
 - a. Some definitions use the word "means". Such definitions are exhaustive definitions and exactly define the term:

Example: 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.
 - b. Some definitions use the word "include". Such definitions do not define the word but are inclusive in nature. 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: 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.

➤ **"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

Example: 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.

• **PRELIMINARY [SECTION 1]**

This Act may be called the TheGeneral Clauses Act, 1897.

Preliminary is the introductory part of any law which generally contains Short Title, extent, commencement, application etc. The General Clauses Act contains only short title in the Preliminary part of the Act.

• **DEFINITIONS [SECTION 3]**

Sec 3(2)	<p>Act '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</p>
Sec 3(3)	<p>Affidavit 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. 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.</p>
Sec 3(7)	<p>Central Act 'Central Act' shall mean an Act of Parliament, and shall include-</p> <ul style="list-style-type: none"> (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;
Sec 3(8)	<p>Central Government 'Central Government' shall-</p> <ul style="list-style-type: none"> (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,- <ul style="list-style-type: none"> (i) In relation to functions entrusted to the Government of a Province, (ii) In relation to the administration of a Chief Commissioner's Province, 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 :- <ul style="list-style-type: none"> (i) In relation to function entrusted under 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 before the commencement of the Constitution, the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him and In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him.

Sec 3(13)	Commencement 'Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.
Sec 3(18)	Document '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. For example, book, file, painting, inscription and even computer files are all documents.
Sec 3(19)	Enactment 'Enactment' shall include a Regulation or any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.
Sec 3(21)	Financial year Financial year shall mean the year commencing on the first day of April. Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.
Sec 3(22)	Good Faith 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. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed.
Sec 3(23)	Government 'Government' or 'the Government' shall include both the Central Government and State Government.
Sec 3(24)	Government securities '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.
Sec 3(26)	Immovable Property 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.
Sec 3(27)	Imprisonment Imprisonment shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860)
Sec 3(29)	Indian law 'Indian law' shall mean any Act, Ordinance, Regulation, rule, order, bye law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof.
Sec 3(35)	Month 'Month' shall mean a month reckoned according to the British calendar;
Sec 3(36)	Movable Property 'Movable Property' shall mean property of every description, except immovable property.
Sec	Oath

3(37)	'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
Sec 3(38)	Offence 'Offence' shall mean any act or omission made punishable by any law for the time being in force. Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.
Sec 3(39)	Official Gazette 'Official Gazette' or 'Gazette' shall mean: (i) The Gazette of India, or (ii) The Official Gazette of a state.
Sec 3(42)	Person 'Person' shall include: (i) any company, or (ii) association, or (iii) body of individuals, whether incorporated or not
Sec 3(49)	Registered '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.
Sec 3(51)	Rule '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.
Sec 3(52)	Schedule 'Schedule' shall mean a schedule to the Act or Regulation in which the word occurs.
Sec 3(54)	Section 'Section' shall mean a section of the Act or Regulation in which the word occurs.
Sec 3(61)	Sub-section 'Sub-section' shall mean a sub-section of the section in which the word occurs;
Sec 3(62)	Swear '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.
Sec 3(65)	Writing Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms;
Sec 3(66)	Year 'Year' shall mean a year reckoned according to the British calendar.

➤ **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 the third day of January, 1868, and to all Regulations made on or after the 14th January, 1887-**

Here the given relevant definitions in section 3 of the following words and expressions,

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

- (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.

➤ **Application of certain definitions to Indian Laws [Section 4A]~**

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.

• **GENERAL RULES OF CONSTRUCTION**

1. **Section 5 – Coming into operation of enactment.**

If no date of commencement is specified for any Central Act, then it shall be implemented from date on which it received assent from:

- a. Governor General – for Central Acts and /or
- b. President – for Act of Parliament

2. **Section 6 – Effect of Repeal.**

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

- a. Revive anything not enforced or prevailed during the period at which repeal is effected or;
- b. Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- c. Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- d. Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- e. 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.

State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 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.

Navrangpura Gam Dharmada Milkat Trust v. Ramtuji Ramaji, '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.

3. Section 6 (A) – Repeal of Act making textual amendment in Act or Regulation

Where any Act or 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, 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.

4. Section 7 – Revival of repealed enactments

If any enactment has been repealed either wholly or partially then it is necessary to expressly state the purpose for which the enactment has to be revived

5. Section 8 – Construction of references to repealed enactments

(a) 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.

Gauri Shankar Gaur v. State of U.P. 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.

6. Section 9 – Commencement and termination of time

In any legislation or regulation the word “from” shall be used to exclude the first day and use the word “to” to include the last day.

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

7. Section 10 – Computation of time

If any proceeding is to take place on a particular day or within a prescribed period and if the court or office is closed on that day or last day of the prescribed period then the proceeding shall be conducted on the next day afterwards when the court or office is open.

8. Section 11 – Measurement of Distances

For the purposes of any Central Act or Regulation made after the commencement of this Act, any distance shall be measured in a straight line on a horizontal plane unless otherwise mentioned.

9. 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 less quantity.

10. Section 13 – Gender and number

In all legislations and Regulations, all words having masculine gender shall include feminine gender and all singular words shall include plural and vice versa.

- **POWERS AND FUNCTIONARIES**

1. **Section 14 – Power conferred to be exercisable from time to time**

- a. Any power is conferred (given) by the Central Act or Regulation after commencement of this Act then the power shall be exercised from time to time as the occasion requires unless there is a different intention.

2. **Section 15 – Power to appoint to include power to appoint ex-officio**

- a. If Legislation or Regulation gives any power to appoint a person to fill any office or execute any function then any such appointment may be made either by name or by virtue of (as a result of) office.
- b. 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.

3. **Section 16 – Power to appoint to include power to suspend or dismiss**

If the Legislation or Regulation gives any power to make appointments then it implies that Authority shall also have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

4. **Section 17 – Substitution of functionaries**

The act requires mentioning the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

5. **Section 18 – Successors**

In any functionaries or of corporations having perpetual succession, the law of successors should be specified.

3. **Section 19 – Official Chiefs and subordinates**

Any law that shall be applicable to the chief or superior shall apply to the deputies and subordinates who are performing the duties of that office in place of the superior.

- **PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS**

1. **Section 20 – Construction of orders, etc., issued under enactments**

Any expression used in the notification, order, scheme, rule, form, or by-law shall have the same meaning as in the Act or regulation unless otherwise mentioned.

2. **Section 21– Power to issue, to include power to add, to amend, vary or rescind notifications, orders, rules or bye-laws**

Any power given by the legislation or regulation to issue any notification, order, scheme, rule, form, or by-law shall include the power to add, to amend, vary or rescind notifications, orders, rules or bye-laws so issued.

3. **Section 22– Making of rules or bye-laws and issuing of orders between passing and commencement of enactment**

Anything is to be done under the Act or Regulation is given as soon as the act is passed, though not immediately into force but shall not take effect till the commencement of the Act or Regulation.

4. Section 23 – Provisions applicable to making of rules or bye-laws after previous publications

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:-

- a. The authority having power to make the rules or bye-laws shall publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby.
- b. 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.
- c. A notice shall be published with the draft specifying a date on or after which the draft will be taken into consideration.
- d. The authority having power to make the rules or bye-laws shall consider the objections and suggestions of the authority whose sanction, approval or concurrence is required with respect to the draft before the date so specified.
- e. The publication in the Official Gazette of a rule or bye-law shall be conclusive proof that the rule or bye-laws has been duly made.

5. Section 24 – Continuation of orders etc, issued under enactments repealed and re-enacted**MISCELLANEOUS****1. Section 25 – Recovery of Fines**

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.

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

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.

3. Section 27 – Meaning of Service by post

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:

- a. Properly addressing
- b. Pre paying
- c. 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.

4. Section 3 (28) – Citation of enactments

- a. 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.

5. Section 29– Saving for previous enactments, rules and bye laws

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.

6. Section 30 – Application of Act to Ordinances

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