

Chapter 12

General Clause Act



Introduction:

- The General Clauses Act, 1897 (*GCA*) contains 'definitions' of certain terms and general principles of interpretation.
- The *GCA* also comes for a rescue in the absence of clear definition in the specific enactments
- **Objects** of the Act are:
 - to shorten the language of Central Acts;
 - to provide for uniformity of expression by giving definitions for common terms;
 - to state explicitly certain convenient rules for construction and interpretation of central acts;
 - to guard against slips and oversights by importing certain common clauses.



Application Of the General Clauses Act

Act does not define any "territorial extent" clause. It applies to the Central Acts.

The Central Acts to which this Act apply are:

- (a) Acts of Indian Parliament (Central Act) along with rules and regulations made thereunder;
- (b) Acts of Dominion Legislature passed between 15th August 1947 and the 26th of January 1950;
- (c) Acts passed before commencement of the Constitution by the Governor-General in Council or the Governor-General acting in a legislative capacity.

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



Some Basic Understand of Legislature:

"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.

Note - 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.

Definitions - 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.

**Section 1:** Preliminary - Short Title - General Clause Act, 1897**Section 2:** Repealed.**Section 3: Definitions:**

Word	
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;
Affidavit	'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. <u>Note:</u> The terms "Affidavit", "Oath" & "Swear" have same definitions in the Act.
Central Govt	➤ In relation to anything done before the commencement of the Constitution, mean the Governor General in Council ➤ In relation to anything done or to be done after the commencement of the Constitution, mean the President
Commencement	The day on which the Act or Regulation comes into force; Coming into force or entry into force refers to the process by which legislation; regulations, etc. comes to have legal force and effect. <u>State of Orissa Vs. Chandrasekhar Singh Bhoi</u> 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.
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. However, it does not include Indian currency notes.
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.
Financial year	FY shall mean the year commencing on the first day of April.
Year	Means - A year reckoned according to the British calendar (Jan to Dec)

6 7	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; ➤ The question of good faith under GCA is one of fact. It is to be determined w.r.t. the facts and circumstances of each case. ➤ 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. ➤ Definition may be applied only if there is nothing repugnant in context. <u>In Maung Aung Pu Vs. Maung Si Maung</u>, it was pointed out that: ➤ the expression "good faith" is not defined in the Indian Contract Act, 1872 and definition given here in GCA, 1897 does not expressly apply the term on ICA. ➤ 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 ICA ➤ The definition 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.
8 3	Government	shall include both the Central Government and State Government.
	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. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in GCA will apply. <u>Example:</u> 1. In Shantabai v. State of Bombay, the Supreme Court pointed out that trees must be regarded as immovable property (IP) because they are attached to or rooted in the earth. 2. An agreement to convey forest produce like tendu leaves, 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 IP. 3. Tree is an IP. But timber is not an IP. 4. Right of way to access from one place to another, may be considered as IP 5. Right to drain of water is NOT IP.

	6. Any machinery fixed to the soil, standing crops can be held as IP 7. Insurance Policies covering immovable property - Not covered under IP Example: <u>Ananda Behera v. State of Orissa</u>. "Right to catch or carry fish" as an IP.
Imprisonment	shall mean imprisonment of either description as defined in the Indian Penal Code; i.e., Rigorous or Simple imprisonment
Movable Prop	mean property of every description, except immovable property .



Section 4 is transition provision and hence intentionally not covered here

Section 5: Coming into operation of enactment.

- Where, if any **specific date** of enforcement is **prescribed** in the Official Gazette, Act shall into enforcement from such date.
- 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:
 - **Governor General** (for Acts made before commencement of Indian Constitution)
 - the **President** in case of an **Act of Parliament**.

Example:

SEBI (ICDR) (5th Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August 2015 w.e.f. 1 January 2016. Here, this regulation shall come into force on 1st January 2016 rather than the date of its notification in the gazette.

Notes:

1. 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.
2. 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.
3. Effective date of Rules:
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.
4. Law takes no cognizance of fraction of day. It comes into force from midnight.
Example - Law which comes into force on 1st Jan shall apply from midnight of 31st December.
5. All laws are **applicable prospectively** unless otherwise mentioned specifically.

Section 6: Effect of Repeal:

Where any Central legislation or regulation repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not: [Revive Right Penalty Litigation]

- Revive anything not enforced or prevailed during the period at which repeal is effected 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 w.r.t. such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Important Case Laws:

Kolhapur Canesugar Works Ltd. V, Union of India	Supreme Court held that Sec 6 only applies to repeal and not to omissions and applies when repeal is of a Central Act or Regulation and not of a Rule .
Navrangpura Gam Dharmada Milkat Trust v. Ramtaji 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. • 'Deletion' ordinarily takes effect from date of legislature effecting the said deletion, never to effect total wiping out of the provision as if it never existed.

Example:

The 3 farm laws were repealed after 1 year of protest by the farmers.



Section 6A: Repeal of Act making textual amendment in Act or Regulation

- Where any Central Act or Regulation **repeal any** enactment
- then such repeal shall **not affect continuance** of any **amendment** or insertion made by the enactment so repealed.



Section 7: Revival of repealed enactments:

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



Section 8: Construction of references to repealed enactments

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- 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**.

Example:

1. Companies Act 1956 was repealed and re-enacted as Companies Act, 2013. In such case, every other Act which had reference to Companies Act 1956 will be construed as reference to 2013 unless different intention appears.
2. In **section 115 JB** of the Income Tax Act, 1961, for calculation of **book profits**, the Co. Act, 1956 are required to be referred. With the advent of Co. Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. On referring of Sec. 8 of the GCA, book profits to be calculated u/s 115 JB of the Income Tax Act will be as per the Co. Act, 2013.



Section 9: Commencement and termination of Time: 14

- In any legislation or regulation, it shall be **sufficient**,
- for purpose of **excluding the first** in a series of days to use the word "from" &
- for the purpose of **including the last** in a series of days to use the word "to".
- In simple words - Where the word "from" is used, exclude that particular date and where the word "to" is written, "include" that date.

Example:

A company declares **dividend** for its shareholder in its AGM 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**.



Section 10: Computation of time: 18 30

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

Note - Even if the offices or Court are closed because of some random holiday or Sunday or Saturday or any reason, this provision will still apply.



Section 11: Measurement of Distances 17

Unless a different intention appears - Measure in a **straight line on a horizontal plane**.

Example: Distance between two cities by roadways is 100 kms and by water ways 80 kms. For purpose of any Central Act under GCA, distance shall be measured in a straight line on a horizontal plane.



Section 12: Duty to be taken pro rata in enactments

- Whereby any enactment, 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.



Section 13: Gender and number 13 32

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

- Words importing the **masculine gender** shall be taken to **include females**, (i.e., he includes she) and
- Words in **singular** shall **include** the **plural** and vice versa.

Exception: Where word used **conveys a specific gender**, there is a **presumption** that provisions of GCA **do not** apply. For example:

1. the word '**bullocks**' could not be interpreted to include 'cows'.
2. The word '**male descendants**' cannot be interpreted to include females

**Section 14: Power and Functionaries:**

Powers conferred by Central Acts may be **exercised from time to time** as occasion requires.

**Section 15:**

- Whereby any legislation or regulation,
- a **power to appoint** any person to fill any office is conferred, then unless otherwise provided,
- any **such appointment**, may be made **either by name or by virtue of office**.

**Section 16: Power to appoint to include power to suspend or dismiss:**

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- The authority having for the time being **power to make the appointment**
- **shall also** have power to suspend or dismiss any person so appointed

Example - 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

**Section 17: Substitution of Functionaries:**

- For **indicating the application of a law** to every person executing the functions of an office,
- it shall be **sufficient, 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.

**Section 18: Successor**

- For indicating the **relation** of a law to **successors of any functionaries**,
- it shall be **sufficient to express** its relation to the functionaries.

**Section 19: Official Chiefs and subordinates**

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**.

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

- Whereby any legislation or regulation,
- a power to issue any **notification, order, scheme, rule**, form, or by-law is conferred,
- then expression used in such notification, etc., shall, unless otherwise specified, have the **same respective meaning as in the Act** or regulation conferring power.

**Section 21:**

- Where any legislation or regular confers the power to issue notifications, etc.,
- it shall be deemed to include power to add, to amend, vary or rescind such notifications, etc.

**Section 22:**

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- Where, by any Central Act or Regulation (which is not in force), on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders thereunder,
- then that **power may be exercised** at any time **after** passing of Act /Regulation (even before commencement thereof);
- but such rules, bye-laws or orders shall **not take effect till commencement of Act** or Regulation.

For example: If Companies Act, 2013 was passed on 29th Aug 2013. It authorised CG to make rules related to NCLT. CG made rules related to NCLT in 2014. However, NCLT provisions were not implemented till 2016. In such cases, the NCLT Rules will also apply only from 2016.



Section 23: Publication for public comments:

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Where power to make Rules, etc. is subject to the condition of rules or bye-laws being made after previous publication, then:



- Publish a draft of the proposed rules or bye-laws for the information of **persons** likely to be **affected** thereby (in manner prescribed)
- It shall be published with the draft notice specifying a **date** on or after which the draft will be taken into consideration.
- Consider any objection or **suggestion** which may be received from any person w.r.t. draft before the date so specified;
- Publication in the Official Gazette** of such rule or bye-law after previous publication shall be **conclusive proof** that the rule or bye-laws has been duly made

Conclusive presumption - After the **publication** of the rules in the **Official Gazette**, it is to be **inferred** that the **procedure** for making the rules **has been followed**. Any irregularities in the publication of the draft cannot therefore be questioned.

Note - It is also **open** to the authority to **make suitable changes** in the **draft before finally publishing** them. It is **not necessary** for that authority to **re-publish** 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.



Section 24: Continuation of orders etc., issued under enactments repealed and re-enacted

- 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 provisions** of repealed Act which are changed by and are repugnant to the repealing Act.

Example - 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.



Section 25: Recovery of fines (to be done as per IPC and CrP):

- Sec 63 to 70 of the Indian Penal Code (IPC) **and**
- provisions of Code of Criminal Procedure w.r.t **issue** and execution of warrants for levy of **fines**
- shall **apply to all fines** imposed under **any Act**, Regulation, etc.,
- **unless** otherwise specified.



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

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- Where an **act** or **omission** constitutes an offence under 2 or more enactments,
- then offender shall be **liable** to be **prosecuted** & punished **under either or any** of those enactments,
- **but shall not be punished twice** for the same offence.

Note - As per Supreme Court, a plain reading of sec 26 shows that there is no bar to trial or conviction of an offender **under 2 enactments**, but there is **only** a **bar** to **punishment** twice for the same offence.

Additional Points:

1. When there are **2 alternative charges** in same trial, e.g., sec 409 of IPC and sec 5(2) of Prevention of Corruption Act, the fact that accused is acquitted of one of the charges will **not bar** his conviction on the other. [M.P. v. V.R. Agnihotri]
2. This provision apply only when **2 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.



Section 27: Meaning of service by post:

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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**.

Important case laws:

United Commercial Bank v. Bhim Sain Makhija	A notice when required by law 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.
Jagdish Singh.v Natthu Singh	Held that - where notice is sent to landlord by registered post, and it is returned by tenant with an endorsement of refusal - presumed notice has been served.
Smt. Vandana Gulati v. Gurmeet Singh	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 thereof .



Section 28, 29 and 30 - Intentionally not covered.

→... The End ...←