

# **Operation, Expiry, Repeal of Statutes and General Clauses Act Interpretation**

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# Operation of Statutes

## ▶ Introduction

- ❑ Statutes are either prospective or both prospective and retrospective from the point of its applicability i.e. the period of legal effect of statutes.
- ❑ All statutes in general have only prospective effect. It means applicability to future transactions.
- ❑ But certain statutes have to be sometimes both prospective and retrospective. “Retrospective” means the statute would apply and affect past transaction also.

- **General Statutes**

- ❑ Every statute is prima facie prospective, unless it is expressed or implied
- ❑ If the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations, then there must be words in the statute sufficient to show the intention of the legislature
- ❑ A statute can be given retrospective effect, only if the statute so directs either expressly or by necessary implications.
- ❑ It is a fundamental rule of the law that no statute shall be construed to have retrospective operation unless such construction appears very clearly in terms of the Act, or arises by necessary or distinct implication.

- **“Prospective Vs. Retrospective” Statutes**

- ❑ Ordinarily, a legislature has power to make prospective laws, as Article 20 of the Indian Constitution, 1950 provides certain safeguards to the persons accused of crime and so Article 20(1) of the Indian constitution imposes a limitation on the law making power of the constitution.
- ❑ Clause (1) of the Article 20 of the Indian Constitution guarantees rights against ex-post facto laws.
- ❑ It prohibits the legislature to make retrospective criminal laws however it does not prohibit a civil liability retrospectively i.e. with effect from a past date.

# Prospective Statutes

Effect the laws in future

Applies from the date of commencement of the statute.

# Retrospective Statutes

Effecting an existing contract

Reopening of the past , closed and completed transactions

Affecting accrued rights and remedies

Affecting procedure.

- Union and State have ample power to legislate retrospectively, subject only to –
  - Constitutional Restrictions
  - Judicially recognized Restrictions
  
  - ▶ The power can be–
    - Used to cure defects, because of which the law was struck down
    - Exercised by a separate law as well

## ▶ Effect of Retrospective Statutes on Pending Proceedings

A **statute** which affects **substantive rights** is presumed to be **prospective** in operation unless made **retrospective**, either expressly or by necessary intendment, whereas a **statute** which merely affects procedure, unless such a construction is textually impossible, is presumed to be **retrospective** in its application

### ❖ Pending Proceedings – Substantive Rights

- Retrospective statute which affects rights in existence is not readily construed to affect adjudication of pending proceedings
- Courts lean strongly against applying a new Act against pending proceedings
- To apply an amendment to a proceeding initiated before the date of the amendment (e.g. appeal pending before Reference Court) there must be clear intendment in law.

## ❖ Pending proceedings – Procedural rights

Presumption against retrospective operation is not applicable to:

- Burden of proof
- Rule of evidence
- Procedural Statute
- Limitation

***Croxford's (Romsgate) LTd 1954 3 All ER 17***

Omission of the section is procedural and hence will have retrospective operation

***Babulal Amthlal Mehta AIR 1957 SC 877***

Section 178–A of the Sea Customs Act which places the burden of proving that any of the goods mentioned in the section and reasonably believed to be smuggled are not really so on the person from whose possession they are seized, is procedural and hence will have retrospective operation.

***CWT v. Sharvan Kumar Swarup 1994 210 ITR 886 SC***

Rule 1BB of Wealth Tax Rules which merely provides a choice amongst well–known and well–settled modes of valuation will partake the character of Rule of Evidence, and will have retrospective operation.

- ❖ Statute relating to Succession
- ❖ Statute relating to Contracts
- ❖ Limitation
- ❖ Fiscal Statutes
- ❖ Penal Statutes
- ❖ Declaratory Statutes
- ❖ Appeal
- ❖ Finality of orders

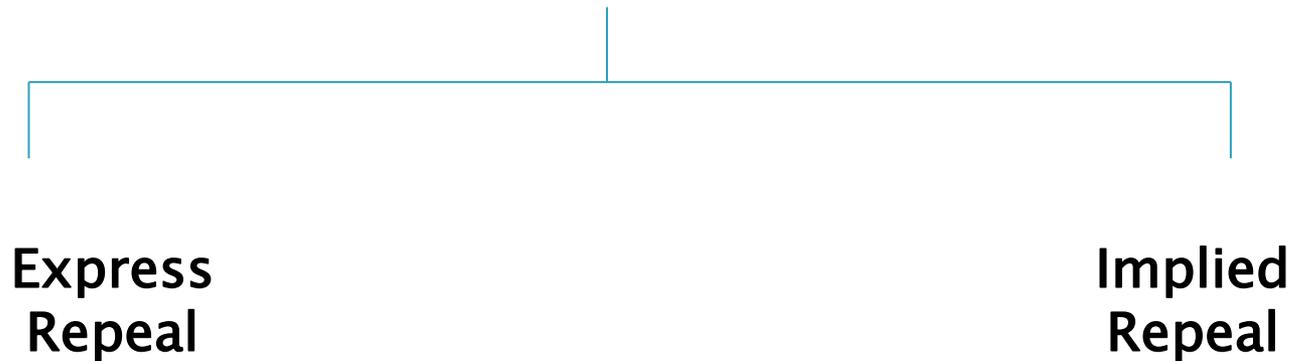
▶ **Statue affecting finality of order**

An order, which on the date it was made is final, gives rise to vested rights, and a subsequent change in law giving rise to new right or appeal or revision is presumed not to affect the finality of orders

Finality of order does not vest or accrue until the making of order, and therefore, if a right of appeal is conferred before making of the order, although after institution of proceedings, the right of appeal is available against all orders subsequently made.

# Repeal of Statutes

## Legislative Power to Repeal Statutes



## ▶ Express Repeal

- Power to enact carries with it power to repeal
- Substitution of a provision combines repeal of earlier provision and Insertion of new provision
- Indian Express Newspapers (SC)
  - Declaration of new provision as invalid on the ground of competence, will also invalidate the repeal, hence the old provision would become operational
  - But where the new provision is declared as invalid for other reasons, the omission would generally not be invalidated

## ▶ Implied Repeal

- There is a presumption against repeal by implication
- When a new law expressly provides the old laws it repeals, the
  - other laws cannot be presumed to be repealed
- The presumption is further strengthened in the case of contemporaneous Acts
- The presumption is however rebutted and the repeal is inferred
  - where
    - The provisions of the latter Act are inconsistent with or repugnant to the earlier Act
    - Where the two Acts cannot stand together

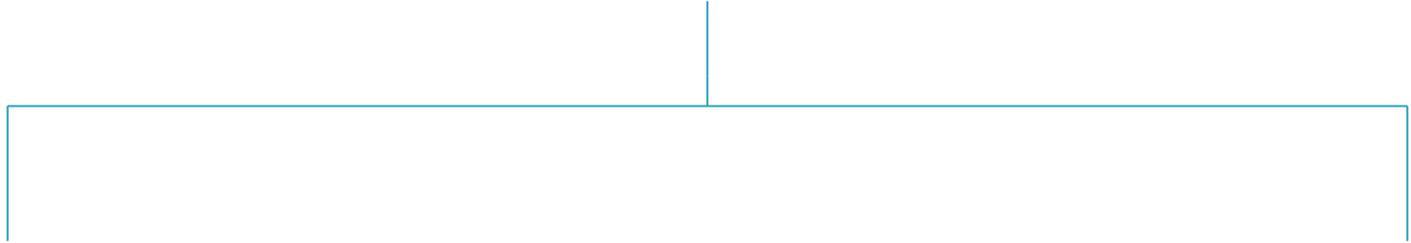
## ▶ Consequences of Repeal

- Section 6 of General Clauses Act – After the introduction of GCA, unless a different intention appears, the repeal shall not –
  - a) revive anything not in force or existing at the time at which the repeal takes effect;
  - b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
  - c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
  - d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
  - e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed

- ▶ **6A. Repeal of Act making textual amendment in Act or Regulation**
  - Where any Central Act or Regulation made after the commencement of GC 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.

# Expiry of Statutes

## Statute



### Perpetual Statute

A perpetual statute is one for the duration of which no time is fixed

### Temporary Statute

Temporary statutes expire or come to an end on expiry of specified time

- **Temporary statute**

- Temporary statute remain in force until its repeal, which may be express or implied.
- A statute is temporary if its duration is only for a specified time not merely if the purpose is temporary.
- When a temporary statute expires, section 6 of General Clauses Act has no application. Its interpretation would depend on construction of the statute.
- Finance Acts are not temporary statute though they might generally provide for the rates that would be applicable for one year.

## ▶ Effect of expiry of Temporary Statute

### ➤ Legal proceedings after expiry of Act :

If prosecution under repealed statute not concluded before expiry of Act, it will automatically terminate as a result of termination of the Act.

### ➤ Statute not dead for all purposes :

Expiry of Temporary Statute does not make it dead for all purposes.

### ➤ Notification, appointments, rules, orders, etc :

On expiry of temporary statutes normally schemes, byes-laws, notifications, appointments, rules, orders, etc. made or issued come to an end.

### ➤ Vested Rights

Offences which are punishable under the ordinary laws but tried by special courts being connected with the offences under the expiry Act, could still be tried by ordinary courts without the necessity of a de novo trial.

# Thank You!

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