

1. Introduction – Why we study General Clauses Act?

- General Definitions
- Applicable to all Central Acts & Regulations, unless repugnant in the subject / Context
- Effective – In case of
 - Absence of Clear definition
 - A conflict bet Post & Pre - Constitutional Laws
- To avoid uncertainty
- Shorten | Avoid Repetition and Superfluity
- Enactment – 11th March, 1897: To Consolidate & extend 1868 & 1887 Act

Example- 1: Case Law

“The court may appoint receiver”

→

“The Court will have the power to appoint, Suspend or remove a receiver”

“Rayarappan V. Madhavi Amma, A.I.R. 1950 F.C. 140”

2. Object, Purpose and Importance of the General Clauses Act

Object of the Act

- To shorten the language
- Uniformity of expressions
- Rules – Construction & Interpretation
- To guard against slips and oversights – Import of common form clauses

Purpose - “Read in every Statue”

Case Law: “The chief Inspector of Mines V. Karam Chand Thapar”

- Single statue – different provisions
- Apply in different acts & Regulations
- To avoid superfluity of language

Importance – All-India Application

- “Law of all Laws”
- Desideratum - Importance is its purpose itself

Example- 2: “Ananda Behera v. State of Orissa”

A right to catch / carry fish – Movable / Immovable Property

Definitions:

Sec 3(26) – The General Clauses Act, 1897	Sect 3 – Transfer of Property Act
...shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth does not include standing timber, growing Crops or grass.

Fish – (Benefits arising from land) - Immovable Property

3. Application of the General Clauses Act

- No “Territorial Extent” Clause
- Applicability– All central Acts | Rules | Regulations
- Deemed Territorial Application
- Applies to Acts of:
 - Indian Parliament (Central Act)
 - Dominion Legislature (15th Aug, 1947 – 26th Jan, 1950)
 - b/f commencement of the Constitution by Gov-General in Council / in a legislative capacity

General Clauses Act and CoI

- Constitutional Validity
- Article 367, CoI – Authorises for interpretation

“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”.

Provisions - mere Rules of interpretation

- In each and every case – on the facts & the circumstances

Other countries

- “Interpretation Acts”
- “General Clauses Act” is not less appropriate than “Interpretation Acts”

Case Law: “Chief Inspector of Mines V K C Thapar”

Supreme Court’s Observation: “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”

Scope

- Scope and Effect – depends upon the particular section

Example – 3: Difference in the applicability

Sec 3 – [Definitional Clause]	Sec 4 – [Foregoing Definitions to previous enactment]
Applicable – Act itself Central Acts Rules Regulations made b/f the Act, 1897	Applicable – Central Acts (a/f 3 rd Jan, 1868) Regulation (a/f 14 Jan, 1887)

- Language's referral to ascertain the class of instruments / enactment
- If none applies, the court applies the general principles of the Act

A Model for State General Clauses Act

- Confirms to the Act
- Divergent Rules of Construction & Interpretation would apply
- Ensues the great confusion

4. Some Basic Understanding of Legislation

- Preamble (& Act)
- Definitions
- "means" | "includes" | "means and /or include"
- Shall and may

"Preamble" of "The General Clauses Act, 1897"

"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.**

- A part of the Enactment
- Used for legitimate construction
- Does not override the plain – provisions
- For Proper Construction – doubts for the usage of words / phrases with more than a meaning
- Discloses the primary intention of the legislature, An aid (only) if the language is not clear

Example – 4 & 5: Preamble (Other Acts)

- The Negotiable Instrument Act, 1881
“An Act to define & amend the law relating to Promissory Notes, Bills of Exchanges and Cheques”
- The Companies Act, 2013
“An Act to consolidate and amend the law relating to Companies”

“Act”

- A bill
- passed by both the houses of Parliament
and
- assented to by the President
- Notifies on the Official Gazettes of India
[“Bill” – A draft of a legislative proposal]

Example – “The Companies Act, 2013”

Concept Paper	-	Placed on MCA Website: 04.08.2004
Expert Committee	-	Constitution: 02.12.2004 Report Submission – 31.05.2005
Companies Bill, 2008	-	Introudced: 23.10.2008
New Companies Bill 2009	-	Introduced (Lok Sabha): 03.08.2009 Referred to standing Committee (Finance) Report Submission: 31.08.2010
Companies Bill, 2011	-	After recommended Changes
Companies Bill, 2012	-	Lok Sabha: 18.12.2012 Rajya Sabha: 08.08.2013 President’s Assent: 29.08.2013 Notified in Gazette: 30.08.2013

“Definitions”

- Mention of Definition: Sec 2 | Sec 3 | Other Initial Sections
- Defined in the Act itself
- Necessity: To Avoid the necessity of frequent repetitions in description
- THE Act follows, if not defined in their respective acts

Example – 6, 7 & 8: Definitions

[Respective act]

- Company – Sec 2(20), The Companies Act, 2013

[Not in respective act]

- Security
 - Sec 2(h), The Securities Contract (Regulations), Act, 1956
 - Applicable – The Companies Act, 2013
- Digital Signature – Sec 2(1)(p), The Information Technology Act, 2000
(used in the Companies Act)
- Sec 2(95), Companies Act, 2013 – Definitions taken reference from - The Securities Contracts (Regulations) Act, 1956 (42 of 1956)
 - The SEBI Act, 1992 (15 of 1992)
 - The Depositories Act, 1996 (22 of 1996)
- Affidavit - Defined here used in Sec 7, The Companies Act, 2013 for Incorporation

“means” - Exhaustive Definitions | Exactly defines the term

Example – 9 and 10:

1. Company, Sec 2(20), Companies Act, 2013

– “Company” means a company incorporated under this act or under any previous company law

2. Director, Sec 2(34), Companies Act, 2013

- “Director” means a director appointed to the board of a company

“includes” – Listing Definition

- Do not define the words but are inclusive in nature
- Prima facie extensive
- Not restrictive | Extensive meaning

Example – 11 and 12:

1. Debenture (definition of inclusive nature) – Sec 2(30), The Companies Act, 2013

- “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”

2. Body Corporate / Corporation – Sec 2(11), The Companies Act, 2013

- “... includes a company incorporated outside India” [Does not define, but states apart from other entities]

“means” and/or “include”

Exhaustive in nature

Example - 13:

Share – Sec 2(84), The Companies Act, 2013

- "Share "means" a share in the share capital of a company and "includes" stock.

["to apply to and include" – Extensive definition]

"shall" and "may"

"shall": A presumption – mandatory | Imperative

"may": Not mandatory | optional / directive under law

Example – 14 and 15:

1. "may" as "shall": Sec 3, The Companies Act, 2013 states that

"A Company May be formed for any lawful purpose by....."

2. Sec 21, The Companies Act, 2013, provides that

"documents / proceedings 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"

Case Laws

1. Labour Comm., M.P.V. Burhanpur Tapti Mill, AIR, 1964 SC1687

"shall" – Obligations | "may" – Confers a dictionary power

2. Sainik Motors v State of Rajasthan J. Hidayatullah

"the word shall is ordinarily mandatory but it is sometimes not so interpreted if the context or the intention otherwise demands"

5. Preliminary [Section 1]

"Short title"

- Section 1(1)

- This Act may be called the General Clauses Act, 1897

Preliminary

- An introductory part of any law

- Short title | Extent | Commencement | Application

The ACT contains only the short title

"Title" – Carves out its own identity just like men are given their names to identify them

6. Definitions: (Follow from Chapter Material)

7. General Rules of Construction: Section 5 to 13

Sec 5: "coming into operation of enactment"

- Applicability: If no specific mention of particular date
- Effective Date: Assent of

Governor General - Central Acts, b/f commencement of the CoI

President – Act of parliament

Example -18 &19

The Companies Act, 2013

- President's Assent – 29th August, 2013
- Official Gazette – 30th August, 2013 (Enforcement of Sec1)

SEBI (ICDR) (5th Amendment) Regulations, 2015 [mention of specific date]

- Notification dated 14th August, 2015 - w.e.f. from 1st January, 2016

Case Laws

- A. K. Roy v UOI, AIR 1982 SC710
 - Empowerment of Govt - No court to issue mandamus
- Altemeis Rein v UOI AIR 1988 SC1768
 - Elapse of sufficient time – Court to direct and question the Govt thro writ
- “State of UP v. Mahesh Narain, AIR 2013 SC 1778”
Supreme Court –
“Effective date of rules would be when the Rules are published vide Gazette notification and not from the date when the Rules were under preparation”

Fraction of day

- No cognizance

First day of January – midnight of 31st Dec

Presumption against Retrospectivity

- General – Prospective

Restrospective

- Express words / Necessary Implied - ness
- Depends on the language couched

Sec 6: “Effect of Repeal”

Where any central legislation / Regulation

- made a/f the commencement of the Act
- repeals any act made or yet to be made,
- unless another purpose exists

The repeal shall not ...

- Revive: Not enforced / prevailed
- Affect the previous operation
- Affect: right / privilege / obligation / liability
 - acquired / accrued / incurred
- Affect: penalty / forfeiture / punishment incurred w.r.t. any offence
- Affect: any inquiry / litigation / remedy
 - claim / privilege / debt / responsibility
 - initiated / continued / insisted

Case Laws

- State of UP v. Hirendra Pal Singh, (2011),5 SCC 305, SC
Considered as “never existed”
Object – obliterate from Statutory Books [obliterate – wipe out]
- Kolhapur Canesugar Works Ltd.V UoI, AIR2000, SC 811
Applicable to
 - repeals, not to Omissions
 - Central Acts / Regulations, not Rules
- Navrangpura Gam Dharmada Milkat Trust VRmtuji Ramaji, AIR 1994 Guj 75
Distinction between “repeal” and “deletion”
Repeal – Complete obliteration: as if never existed
Deletion – takes effect from the date, never affecting of the provision

Sec 6A – “Repeal of Act textual amendment in Act / Regulation”

Repeal by express omission / insertion / substitution

Does not affect the continuance – repealed / operation in time

Sec 7 – “Revival of repealed enactments”

- wholly / partially
- State the purpose
- Applicable – Central Acts a/f 3rd Jan, 1968
 - Regulations on or a/f 14th Jan, 1887

Sec 8 - “Construction of references to repealed enactments”

Applicability:

– Act | Central Acts | Regulation

- b/f 15th Aug 1947, any Act of Parliament of UK

Repeals & Re - enacts | with or without modification

Construed as references to the provision so re-enacted

Case Law: "Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169"

- Every Act has its own distinction

Example – 20:

Sec 115 JB, The IT Act, 1961 – Calculation of book profits

- reference to The Companies Act, 2013

No changes has not been made in The IT Act, 1961.

Sec 9: "Commencement & Termination of time"

- "from" - excluding the first in a series of days
- "to" - including the last in a series of days

Example - 21:

AGM @ 30.09.2016

Pay declared dividend within 30 days from the date of AGM

i.e. 30.09.2016 – Excluded

31.10.2016 - Included

Sec 10: "Computation of time"

- Any act / proceeding – In any Court / Office
- is closed on that day / last day (prescribed)

Consider the next day afterwards on which the Court / Office is open

Case Law: K. Soosalrathnam v. Div. Engineer, N.H.C. Tirunelveli

Madras High Court

- last date of the prescribed period – declared to be a holiday
- day for tender Schedules extended to the next working day

Sec 11: "Measurement of Distances" - Straight Line on a horizontal plane

Sec 12: "Duty to be taken pro rata in enactments" - Customs / Excise / others – Same rate on any greater / less quantity

Example – 22: Whole Debt and Several Debtors – Each to his own share in proportionate

Example – 23: Dividend to SHs according to their holdings

100 shares and Rs 2/ share dividend = Rs 200 (Total Amount of Dividend)

4 SHs – 50 | 25 | 15 | 10 Shares & Dividends = Rs 100 | Rs 50 | Rs 30 | Rs 20 respectively

Sec 13: "Gender & Number"

13(1): Masculine gender includes females

"Men" includes Women | "he" – male & female

Sec 125(1), CrPC, 1973

- "his father & mother" to include "her father & mother"

- a daughter's liability to maintain her father unable to maintain himself"

*Dealing with matters of succession

- Sec 7 & 8, The Chota Nagpur Tenancy Act, 1908 – Not to include female descendants

*Dealing with Specific gender – Presumption, The Act do not apply

"Bullocks" – not to include "Cows"

13(2): Singular and Plural

Sec 2(11), The IT Act – PY to include PYs

8. Power and Functionaries: Section 14 to 19

Sec 14: "Power conferred to be exercisable from time to time"

- As occasion appears
- Applicability – Central Acts | Regulations | on or a/f 14th Jan 1887
- Sec 51(3), The States Re-organisation Act, 1956
 - Power can be exercised by the Chief Justice

Sec 15: "Power to appoint to include power to appoint ex-officio"

Power to appoint any person to fill any office / execute any function

Includes

Such appointment may be made either by name or by virtue of office

[Ex-officio – by virtue of one's position / office]

Sec 16: "Power to appoint to include power to suspend or dismiss"

Power includes to suspend and dismiss also

Order. 40, Rule 1(a), CPC, 1908:

Court to appoint a receiver – power to remove also

Art 229(1), COI:

Chief Justice to appoint officers / servants of a High Court

- power to suspend and dismiss

Sec 17: “Substitution of functionaries”

Sec 17(1): Sufficient to mention the official title of the officer at present executing the functions / commonly executed

Sec 17(2): Applicability - Central Acts a/f 3rd Jan, 1868 | Regulations on or a/f 14th Jan, 1887

Sec 18: “Successors”

Sec 18(1):

- Purpose – to indicate the relation of a law
- of any functionaries / corporations having perpetual succession

Sec 18(2): Applicability - Central Acts a/f 3rd Jan, 1868 | Regulations on or a/f 14th Jan, 1887

Sec 19: “Official Chiefs and subordinates”

- Law relative to chief / superior of an office
- Applies to deputies / subordinates – lawful performance of duties
- Applicability - 12 Central Acts a/f 3rd Jan, 1868 | Regulations on or a/f 14th Jan, 1881

Case Law

- *K.G.Krishnayya v. State, AIR 1959:*
Road Transport Corporation Act, 1950 - It is open to the successor authority to implement or continue the scheme initiated by the earlier authority
- Preventive Detention Act – The new advisory Board can consider the case pending before the earlier board, when there is a change after service of the detention order.

9. Provision as To Orders, Rules Etc. Made Under Enactments: Section 20 to 24

Sec 20: “Construction of orders, etc., issued under enactments”

Has same respective meaning as in the Act or regulation conferring power

Example - 24: Collector – Rule 4, Land Acquisition (Companies) Rule, 1963

- same meaning as in Sec 3(c), land Acquisition Act, 1894

Case Law: Subhash Ram Kumar v. State of Maharashtra, AIR 2003 SC 269

“Notification” (Common English)– Formal Announcement of a legally relevant fact

“notification publish in Official Gazette”

– Notification published by authority of law

- A formal declaration | in accordance with the declared policies / Statute

- Cannot be substituted by administrative instructions

Sec 21: “Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws”

Subject to the like sanctions and conditions (if any)

Case Laws:

1. *Rasid Javed v. State of UP*, AIR 2010 SC 2275,

SC- “undoubted power to rescind or modify the notification in the like manner”

2. *Shree sidhballi Steels Ltd. V. State of UP*, AIR 2011 SC 1175,

SC – “..... not limited as to be exercised only once can be exercised from time to time having regard to exigency of time”

Sec 22: “Making of rules or bye – laws and issuing of orders between passing and commencement of enactment”

..... (takes effect after the commencement of the Act / Regulation)

To make Rules | bye-laws

To issue orders w.r.t. application of the act or Regulation

..... (immediately)

To establish any court / appointment of judge / officer

w.r.t.

the person by whom, the time by when,

the place by where, the manner in which,

the fees for which, or anything

“An enabling provision” - Content / Purpose

- To facilitate
- Preparatory to the enactment coming into force

Sec 23 - “Provisions applicable to making of rules or bye-laws after previous publications”

1. Publish a draft – for the information of persons likely to be affected

2. Authority deemed to be sufficient

3. Notice (date) – on or after which the draft will be taken into consideration

4. Objection / Suggestion of authority

and Sanction / approval / concurrence of another authority

5. Conclusive Proof – Any irregularities in the publication cannot be questioned

*Not a foreign - Make suitable changes in the draft b/f finally publishing

Sec 24 - “Continuation of orders etc., issued under enactments repealed and re-enacted”

- Continues in force | deemed
- Sec5, 5A, The Scheduled District Act, 1874 or any law

Deemed repealed / re-enactment: subsequent withdrawal from the extension to any area

- Statutory recognition
- neutralizes the previous appeal, if not in different terms

Case Laws

- *State of Punjab v. Harnek Singh*, AIR 2002 SC 1074: Prevention of Corr Act, 1947

Inspection ((Inspector of Police) conducted under authorised notification – Proper and not squashed, unless superseded / withdrawn / modified under new notification

- The Mines Act, 1952 repealed and re-enacted 1923

Rules deemed to continue in force until superseded

10. Miscellaneous: Section 25 to 30

Sec 25: Recovery of fines

- Issue and execution of warrants for the levy of fines
- Application of Sec 63 to 70 of IPC and CrPC
- For any Act, Regulation, rule or bye - Laws, unless the contrary

Sec 26: “Provision as to offence punishable under two or more enactments”

- Prosecuted / punished - either / any / both
- shall not be punished twice for the same offence
- Reference with Art 20(2), CoI
- SC - No bar for Trial / convictions, but a bar to the punishment
- Applicable: Subject of Prosecution is same

Case Law

State of MP v. V.R. Agnihotri, AIR 1957 SC 592

- Two alternative charges: Sec 409, IPC | Sec 5(2), Prevention of Corruption Act
Acquittance in one of the charges will not bar the conviction on the other

Sec 27: Meaning of service by post

- Proper address | Pre - paid | Registered post
- Effective Time: Delivery by Ordinary Course of Post

Case Laws

- *United Commercial Bank v. Bhim Sain Makhija*, AIR 1994 Del 181

‘registered post acknowledgement due’ sent by ‘registered post’ only

- neither tenable nor based upon sound exposition of law

- *Jagdish Singh v Natthu Singh*, AIR 1992 SC 1604

Presumed - Notice served to landlord | Endorsed with refusal by tenant

- *Smt.Vandana Gulati v. Gurmeet Singh alias Mangal Singh*, AIR 2013 All 69

Deemed Service - Proper person | Address

Endorsement 'not claimed / not met' is sufficient to prove deemed service of notice

Citation of enactments Sec 3(28)

1. Citation of title / short title – number / years / section / sub – section
2. Forms Beginning and End of the portion described

Sec 29: “saving for previous enactments, rules and bye laws” - Shall not affect

Sec 30: “Application of Act to Ordinances

Central Act [Exception: Sec 5]

Act – Sec 3 | Clauses 9, 13, 25, 40, 43, 53 and 54 | Sec 25

*The Governor General

- Sec 23, The Indian Councils Act, 1861
- Sec 72 of the Government of India Act, 1915
- Sec 42 of the Government of India Act, 1935

*The President under Article 123 of the Constitution