



REPEAL OF STATUE (CURRENT SCENERIO) WITH LANDMARK JUDGEMENTS

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INTRODUCTION:

A statute is a formal written enactment of legislative authority that governs a country, state, city or county. in simple words, it is the law, enactment act. there are several types of statutes, such as temporary statute, perpetual statute, consolidating statute, codifying status, fiscal statute, remedial statute, penal statute, declaratory statute. generally, statute can be classified with reference to its duration, method, object, and extent of application. But repeal is the one which is the necessary part of our legislation it's a kind of power which is given to our legislation to implement certain changes in law if the law is against the citizen of this country, then the legislation can exercise the power of repealing the particular statues or the law is not enforced yet in the country then also legislation can repeal that statues. Repeal is just not power given to our legislation but it is an exercise for government to make and create certain changes in laws going on of course we cannot change constitutional law because it is the basis were all laws have been enacted. we have very famous case of keshavnandabharti v state of kerala the legislation can change certain part of law but it doesnot have the power to change the

whole constitution. but for repeal we have to take the basis of constitutional law for repealing any law.¹

STATEMENT OF PROBLEM:

There is plethora of law but repeal is one of the provisions which is not obsolete law and here I want to focus that it is an essential practice by legislation which is necessary for our society.

HISTORY OF REPEAL:

In United Kingdom the rule is that rule is the language of a state clearly statues that the statues is to come into force on a particular date ,it will come into force at that particular instance this is to say immediately after zero hour on that particular date .consequently British statues which has come into force in that country immediately after the clerks of parliament endorse it . after its title the date of passing and reviving the royal assent. this endorsement is a part of statues. Where an act is to expire shortly and a bill has been passed to continue the act but it receives the royal assent after the act is expired , the continued act will be deemed to have come into force on the date of expiration even though no person can be published under the act so continued for violating the provision of the act so continued for violating the provision of the act which is expired during such time when the earlier act has expired but royal assent to the bill passed was not received.

REPEAL IN INDIA

In India section 3(13)of the general clause act 1897 says that commencement used with

¹ https://blog.ipleaders.in/effects-of-repealing-statutes/?__cf_chl_captcha_tk__=c425b6bef70f3a9fc4dff14f2312a9201a1323e4-1603968939-0-AR94Vujf9ROW0QIpz0ucb-VDq80VMCtNrpfXBPclbrSf945eqjbITU90-

0F5nwQIs-Lq4-MvR1FvciYPoqRHb3JBkuR43dhmF1Nmel_oIGSIV6kHoCNTxzh0S2fpF19VaIMU3q0b-_tsRqwItqQCa3MxiC_u2udputj5Cq-



reference to an act or regulation comes into force .since the act does not insist or promulgation or regulation comes into force, it comes into force immediately after the zero hour on the particular date on which it is expressed to come into force. Where no particular date of commencement is expressed a statue comes into force at first moment of the day the assent of the president of India is received this is to say at zero hour on the date of assent. section 5 somewhere defines how can we repeal an statues if there is certain ambiguity or there is an infringement of right by the law. Whereas section 6 defines the effects of repeal.²

WHAT IS REPEAL:

repeal means to revoke, abrogate or cancel particular statues of law. Any statues may repeal any act in whole or partially. Under general clause act 1867, section 6 defines (repeal)it connotes abrogation or obliteration of one statues by another as if it never been passed. Repeal and amending acts in the legislation has a power to do either one of it if it finds something wrong in the act it can modify or rectify or either repeal if we can say that repeal is an act which sizes the part of law in its forms accordingly.it does not make any law ineffectively but it makes the work of law very effective. Halsburry laws of England explains repeal(once something is repealed will not having any effect thereafter). black law defines repeal as abrogation of existing law by the legislation. Repeal of statutes is not a mere form but its just a substance. once it is repealed it is repealed for forever. we cannot revive it again.

² GENERAL CLAUSE ACT
3. ACTS OF PARLIAMENT 1793.

There exist two types of statues which is temporary and perceptual. Temporary statues is for the specific period of time enforcement. They have no effect after the expiration of the specific time.

The permanent (perceptual) which remains effective until new legislation replaces it example: companies act 2013 repealed by companies act 1956, criminal procedure code 1973 repealed by the previous criminal procedure code. Such power is given to legislation to amend certain changes in law. However they are restricted in delegation of repealing if the court finds the law is still abrogating after changes any law or right than the court can repeal it permanently.³

EXPRESS REPEAL:

Express repeal, it expressly mentioned that earlier law will no longer applicable and thus it becomes in cooperative in existing law. In this the legislature does not need to use particular word or phrase like “*shall cease to have effect*” or “*all provisions that are inconsistent with this act are hereby repealed*” they are use in statues which are existing law. statues may have different provision of repealing an act that may be in conflicting nature or are dealing with the same subject matter. When the subsequent act has a repealing provision than certain section or act amounts under *express repeal*.

This is based on latin maxim term

“*expressio unius persone vel rei est exclusio alterius*”, which means express mention of a thing or person is the exclusion of another.

³

https://www.academia.edu/30809905/REPEAL_OF_STATUTES.



For example: section 4 of the hindu marriage act, 1955 [2] states:

overriding effect of act – save as otherwise expressly provided in this act:

(a) any test, rule or interpretation of hindu law or any custom or usage as part of that law in force immediately before the commencement of this act shall cease to have effect with respect to any matter for which provision is made in this act.

(b) any other law in force immediately before the commencement of this act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this act.

there may also be instances of partial repeal where only specific provisions or part of the legislation may be abrogated by a subsequent statute.⁴

IMPLIED REPEAL:

The doctrine of implied repeal is a concept of constitutional theory which states the act of parliament or act of congress conflicts with an earlier one. the conflicting part of the earlier act is repealed. this doctrine is expressed in a latin term 'leges posteriores priores contrarias abrogant'. implied repeal; is to be contrasted with express repeal.⁵

IMPORTANT CASES:

Supreme court in ak ray v uoi that the rule that were an act empowers the government to bring or any of the provision into operation on any day which deems to fit, no court can

issue mandamus with a view to compel the government to bring the same into operation on a particular day.

However Supreme Court in altmesh rein v union of india that in case sufficient time has elapsed since an act or any of its provision has been passed and if it has not been brought in the operation by the government consider the question as when to operate. but the supreme court held in panchugopal barua v umesh chandra goswamy that were an act does not apply to state or to particular area, the court cannot compel to apply the act to state the particular area.⁶

REPEAL OF LEGISLATION:

In common law, the effect of an act which has expired or was repealed was for all common purpose it would be presumed that the act was never existed unless the contrary intention appeared and all matter already decided under the act were closed, if therefore during the pendency of a case a statute expired or repealed, all transactions under it were closed even though the transaction under it had begun when the repealed statute was in force. maxwell says that the effect of repealing act passed after august 30 1889 it dealt by sec 38(2) of the interpretation act 1889, which says that such repealing act unless contrary intention appear, not to (a) or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so replaced or, (c) affect any right, liability acquired or incurred under any enactment so repealed (d) affect any penalty, forfeiture aforesaid (e) above which

⁴ HINDU MARRIAGE ACT 1955.

⁵ <https://lawcorner.in/effects-of-repealing-of-statutes/>.

⁵ <https://www.definitions.net/definition/implied+repeal>

⁶ <https://indiankanoon.org/doc/127880/>.

⁷ <https://lexlife.in/2020/07/27/constitutional-law-ak-roy-case/>.

⁸ <https://www.lawyerservices.in/Panchugopal-Barua-Versus-Umesh-Chandra-Goswami-1997-02-12>.



preserves a proceeding in respect of penalty means the prosecution under the repealed enactment is now permissible.

In India section 6 of the general clauses act saves, inter alia, rights, privileges, obligations or liabilities acquired, accrued or incurred under any enactment so repealed¹³ and even the penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed¹⁴. the said provision makes enough fortification for not only exiting rights, liabilities, punishment, etc., rather, protects even pending investigation, legal proceeding, etc. as per the said section, unless a different intention appears¹⁵, there is no embargo under law for initiation and/ or continuation¹⁶ of proceedings (civil or criminal) under the repealed enactment.

In case of Punjab v Monar singh 1955 Supreme Court held that whenever there is a repeal of an enactment the consequence laid down in section 6 of the general clause act will follow unless as the section says itself says different intention appear. in case of simple repeal. There is scarcely any room for expression of contrary opinion. When there is a repeal followed by fresh legislation. On the same subject which is undoubtly have to look on the act but only for the purpose of different intentions⁷

Objectives:

The objective of my research is to do in depth study of repeal provision India.

Conclusion/References:

⁷ <https://www.mondaq.com/india/crime/854050/law-abrogated-enduring-criminal->

Repeal is the obsolete law but accordingly it is not an obsolete law but it is a weapon for legislation to safeguard our law and make new laws for betterment of society and its people in the country.

Research methodology:

Doctrinal Research.

REFERENCES:

<https://dictionary.cambridge.org/dictionary/english/repeal>.

<https://www.amu.ac.in/emp/studym/100012967.pdf>.

<https://indiankanoon.org/docfragment/656658/?big=3&formInput=effect%20of%20repeal>.

<https://www.mondaq.com/india/crime/854050/law-abrogated-enduring-criminal-liability#:~:text=Section%20of%20the%20General,any%20enactment%20so%20repealed14..>

<https://www.lawyerservices.in/Panchugopal-Barua-Versus-Umesh-Chandra-Goswami-1997-02-12>.

GENERAL CLAUSE ACT

liability#:~:text=Section%20of%20the%20General.

<https://indiankanoon.org/doc/1470235/>.