powers takes with it the duties. Hazra Syed Shah v. Commissioner of Wakfs, West Bengal, AIR 1961 SC 1095 at p 1096 : Murgoi v. Attorney-General, Northern Rhodesia 1960 AC 336.

It may be noted that where a statute confers and express power, a power inconsistent with that expressly given cannot be implied. M. Pentiah v. Muddla Verma, AIR 1961 SC 1107 at p 1117.

Correspondence of terms in Acts and Rules.— The section would contemplate correspondence in the matter of operation of any Act though a notification whether in part or in whole of any particular area. When a notification issued under an Act does not specify any particular area to be covered by the notification, the construction by implication would mean that the notification operates throughout the area to which the Act extends. Ram. Deo Onkarmal (Firm) v. State of U. P., AIR 1981 SC 1582 at p 1584 : 1981 Cr Lj 1309 : (1981 All LJ 850.

Terms used in section to be construed "ejusdem generis".— The point is that legislation is the general and the notification, order, scheme, rule, form or bye-laws is the species of the same general, and since the power to make any of such things is derived under the relevant Act, they are all in the nature of subordinate or delegated legislation.

A rule cannot in any case, be assumed to be a bye-law merely for purpose of declaring it invalid on the ground of unreasonableness merely because the Court thinks that it goes further and has no limitations or exceptions. Trustees of Port of Madras v. Amin Chand Pyare Lal, AIR 1975 SC 1935 at pp 1941, (1942.

Construction by implication.— Ordinarily, whether a particular notification extends over part only of the territory or throughout the territory, would be specified in the notification. If the notification is intended to operate over a part only of the territory to which the relevant Act extends, the notification must necessarily define that limited area. When it contains of express signification of the area, it may be implied that it is intended to operate thought the territory covered by the Act. This is a construction by implication. Ram Deo Onkarmal (Fim) v. State of U. P., AIR 1981 SC 1582 at pa 1584 : 1981 All LJ 850.

[1]21. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.— *Where, by any Act of Parliament or Regulation, a power to [2][issue notifications], orders, rules, or bye-laws in conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any [3][notification], orders, rules or by laws so [4][issued].*

1. Cf. s 32 (3) of the Interpretation act, 1889 (52 & 53 Vict., c. 63).
2. Subs. by Amending act, 1903 (1 of 1903), s. 3 and Sch. II, for "make".
3. Ins., ibid.
4. Subs. ibid., for "made".

Scope and applications

Principle of locus poenitentiae - Availability of.— Section 21 of the General Clauses Act is available on the principle of Locus poenitentiae (the power of receding till a decisive step is taken). Such power is available under section 21 of the General Clauses Act. Amirul Islam Vs. The Secretary Ministry of Land. 40 DLR (AD) 52.

Section 21 is a rule of construction - Question of existence of implied power of cancellation to be determined with reference to the statute. 41 DLR (1989) 486.

Power to add to, amend or very does not include the authority to take away a validly acquired right.— While the power to add, to amend, very or rescind is available under section 21 of the General Clauses Act such power does not include the authority to take away a validly acquired right. 18 DLR (1966) 92.

Govt's right to review its own orders - Limitations placed on such rights.— The main contention of learned Additional Attorney is that the Government has authority to review the order of cancellation and pass a fresh order authorizing itself to keep the undertaking in question in its possession. The contention of the learned Additional Attorney General is twofold: firstly, apart from any statutory provisions, the Government has a general power of review of its own orders, which is inherent in its right to perform governmental functions and secondly, he has contended that section 21 of the General Clauses Act empowers the Government to review any administrative order which it may have passed.

Held : In the matter of government function any order can be revoked or altered if the order which is sought to be altered or varied has not created any right in favour of any person. 27 DLR (1975) 316.

Govt. taking over the property and its management under acting President's Order of 1972 - Govt's subsequent notification canceling the said taking order has pout an end to the government's right in respect of the same property and revived the right of the owner thereof. This is the effect of section 21 of the General Clauses Act.— In the present case the order purporting to cancel the notification which was deemed to have been made under acting President's Order No. 1 of 1972 has brought an end to the right of management by the government in respect of the industrial concern, exerciseable under said Order No. 1 of 1972, and has also revised the right of all the original owners in respect of the said concern. So in such a case, the Government cannot pass an order which may affect the existing right of the said persons.

Further held : Under section 21 of the General Clauses act, when a particular order or notification has been made under a certain statutory enactment the authority concerned may, under the aforesaid provision amend, add to, vary or rescind the said order, subject to, of course, the conditions which are provided for in the said statutory enactment. 27 DLR (1975) 317.

Section 21 does not permit amendment etc. of an order passed earlier under this very section.— Section 21 of the General Clauses Act however does not authorise the amendment or varying or recession of an order which may have been passed under this very section 21. The power which is conferred by section 21 of General Clauses Act has already been exercised in this present case and it cannot be exercised for the purpose of further revision of the order which has already been made. 27 DLR (1975) 317.

Principle of locus poenitentiae can not be invoked when legal rights have arisen in favour of a person.— It was contended on behalf of the State that under the general principle of locus poenitentiae which is the power of retracing one's steps before a decisive step has been taken, the power of review is still available to the government as no decisive step has yet been taken in this case.

According to the learned Government's lawyer, until the order has been implemented and the physical possession of the undertaking itself has been delivered to the owners, the order remains inchoate and as such cannot be taken to be a decisive step on the principle of locus poenitentiae.

Held : Locus Poenitentiae i.e. the power of receding before a decisive step has been taken can be exercised so long as there has not been any change in respect the legal rights of the person concerned. When some legal rights have arisen in favour of a certain person as a result of a particular order, those rights cannot be undone by a purported exercise of locus poenitentiae, in respect of the said order. The power of passing an order rescinding or canceling an earlier one which has given rise to certain rights shall have to be founded on some statutory. In the context of the facts of this case, we are clearly of the opinion that as a result of cancellation of the notification under Acting President's Order, certain rights have accrued in favour of the owners of the industrial concern in question and such rights can not be taken away by the exercise of locus poenitentiae. 27 DLR (1975) 317.

Apart from accrual of legal rights, decisive steps for delivery of the factory to the petitioners were taken by the Govt. and only due to hostility of the workers, the actual handing over was not possible but the factory was sealed up - Apart from accrual of legal rights, decisive steps had been taken in the instant case towards physical implementation of the order in question although physical possession of the concern could not be delivered. On 7.11.73, a Magistrate went to the factory of the Firm with the requisite police force for handing over possession, and although actual possession could not be delivered on account of the opposition of the hostile workers the factory was sealed up after making an inventory of the articles in partial implementation of the order directing delivery of possession. So far as the government functionaries were concerned, they took all measures to give effect to the said order, but it could not be fully implemented because of

fortuitous circumstances, namely, obstruction by outside elements. Even on a narrow view of locus penitential, which, of course, according to us is not correct, it cannot therefore be said that no decisive steps had been taken in the present case. 27 DLR (1975) 318.

The contention that the government has a power, inherent or statutory, to review an earlier order passed by it and vacate the same ignores the basic question involved in the case that such plea has no legal validity if it has the effect of interfering with a present right of a person exerciseable under the law of the country and guaranteed under the Constitution.— The pertinent question is whether the government has got any authority to retain the property of any person residing in Bangladesh when there is no law sanctioning such retention.

To act according to law is the constitutional obligation of the administrative functionaries of the State as much as any of body else. 27 DLR (1975) 318.

Under the relevant law by virtue of notification, management and control of the present concern vested in the government. But when later on the earlier notification was canceled the result is that the government lost right of management and control in respect of that concern and thereafter occupation of that concern by the government is without the authority of law and illegal - Government has power to review its earlier order whereby it can set aside that, earlier order - but authority of such review must be within the limits of law and not otherwise.

Under the notification dated 31.12.71 issued under acting President's Order dated 26.12.71 read with acting President's Order No I of 1972 all powers and rights of the owners of the concern namely M/s. Standard Manufacturing Company in respect of its management and control vested in the Government and the government had the right of control and management in respect of the said property so long as the said notification was in force. But with the cancellation of the said notification on the 19th February, 1972 all the rights of the previous owners revived and the government's continued occupation of the property without any sanction of law resulting in deprivation of the owners of the benefits of their property is wholly unauthorized and after the constitution has come into force it has amounted to a clear violation of the fundamental rights. 27 DLR (1975) 319.

Government may review its order and issue fresh order, if such review is permissible (i.e. on the principle of locus poenitential) under the law.— The Government may review its earlier order of cancellation and issue a fresh notification for taking over the said concern again, if the government so desires and if such a step has been taken according to law, but until such a step has been taken according to law, the government cannot lawfully hold on to such a property on the ground of an anticipatory action. In the circumstances of the case the government has no right to retain this property and must make over the same to the rightful owners, since no lawful order has

yet been passed authorizing the retention of the said property. 27 DLR (1975) 319.

Order by Provincial Government a subject to recall only when the order was not given effect to.

No conflict between section 401(6) of the Cr. P.C. and section 21 of the General Clauses act. 7 DLR 91.

It is true that the power to amend, which is included in the power to make the order is exercisable in the like manner and subject to the like sanction and conditions (if any) as govern the making of the original order. But the section embodies a rule of a construction and the rule must have reference to the context and subject matter of the statutes to which it is applied in the case of an amendment made in an order under S. 18-A.

When S. 21 of the General Clauses Act makes the power to amend exercisable subject to the like conditions as in the main Act, it does not contemplate those conditions upon the fulfillment of which the right to issue the order arises under the main Act. An order once made under S. 18-A is sought to be amended with the aid derived from S. 21, General Clauses Act, the amendment must observe the condition laid down in sub-section (2) of S. 18-A and such amendment cannot, therefore, extend the operation of the order beyond the period. (1957)-58) 12 FJR 284 : 35 Mys LJ 362.

Repeal of Act-Exemption from operation does not amount to repeal. AIR 1960 Bom. 299 (DB).

Section 21, General Clauses Act, only embodies a rule of construction which should be applied if the construction cannot be arrived at or determined with reference to the context or subject-matter of the particular statute. (1958) 2 Lab LJ 198 : (1958) 14 FJR 145.

Where rules are to be framed for "carrying out the purpose of the Act" such rules cannot travel beyond four corners of the Act itself. AIR 1956 Hyd 35 (38) (Pt F) (Pt 16) (DB).

Subsequent notification adding another dispute between different parties to be original reference-Notification must be struck down. AIR 1966 Punj 214 DB).

Order under-Retrospective operation.— An order of amendment under S. 21, General Clauses Act, cannot operate retrospectively, though it may operate prospectively. ILR (1955) 5 Raj 214.

The word "Order" occurring in Section 21 obviously refers to subordinate legislation and not to the judicial orders which by their own nature are incapable of revision, amendment or alteration by the same Court unless so permitted by some express provisions of the Code of Criminal Procedure. 1956 Cr LJ 1149.

The principle of S. 21, General Clauses act, is of general application and there is no reason way an executive officer should not withdraw an order passed by him earlier-The District Magistrate who acts as an executive officer has power to cancel or withdraw an earlier Order passed by him. AIR 1950 Ajmer 57.

Review of wrong order.— Under the law the Collector was not bound to give a notice and was authorized to impose the penalty without calling upon the party to show cause. But if the Collector thought after hearing the petition that his order was not justified he could amend his previous order and reduce the amount of the penalty that he has imposed. AIR 1955 NUC (All) 2715.

"Order'-Meaning of.— The words "notifications orders, rules or bye-laws" have no reference to judicial orders the passing and cancellation whereof is subject to and regulated by the procedural law of the land Obviously the words, "notifications, orders, rules and bye-laws" with which the expression "orders" is associated must be deemed to limit the scope of the word "orders" to non-judicial orders. 52 Cr LJ 1505.

Order of Government specifying the Court which had to determine the amount of benefit under Section 33-C (2) of the Industrial Disputes Act-It is not an order within meaning of S. 21 General Clauses Act. AIR 1959 Assam (DB).

Order does not mean cancellation of notification under S. 4 . AIR 1963 Pat 139 (DB).

Order sanctioning opening of market-Government is empowered to cancel it. AIR 1957 Tray-Co 200 (Sb).

Notification, dated 25-5-61 altering age of superannuation form 55 years to 58 years- Governor was competent to issue notification. AIR 1962 All 328 (FB).

Notification by Government referring certain dispute for adjudication.— Government can amend notification by adding a party or a new issue. AIR 1960 Assam 39 (DB).

State Government has power to amend by amplification or addition to issues already referred to industrial Tribunal. AIR 1960 Assam 11 (DB).

Dispute referred to tribunal-Order of reference-Correction or amendment of-State has power under S. 21, General Clauses Act (1897) (1961) 3 Fac LR 186 (Cal).

Effect of order of transfer is to cancel previous order of reference. (1958) 62 Cal W N 303.

Increase of seals-Power of Government.— When the date of an election is notified, nothing is said in the notice as to the number of candidates that are going to be put up for election. People undoubtedly presume that the existing number of seats will be retained, but it is also known that the Government has the power to increase or decrease the number of commissioners and therefore, if it chooses to exercise that power, then the election will be held for the seats as altered. If the number of seats are altered, then it is not necessarily a different election to that which has been notified. If the seats are increased and all necessary steps taken, the election will not be a different election. ILR (1955) 2 Cal 477.

Ex parte order passed on revision petition-High Court has inherent power to et aside such order. 1955 Jab LJ 997.

Notification regarding opening of route not be virtue of statutory power to issue notifications-Extension of that route cannot be justified under S. 21. ILR (1964) 2 Mad 662.

State Government has power to fix and extend period of tribunal. AIR 1962 Mys 117 (DB).

Government cannot change its mind and nominate certain other persons instead without following procedure. IR 91957) Raj 134 (DB).

Powers of Vice Chancellor.— Do not enable Vice-Chancellor to act as a substitute for various statutory authority of University in academic matter-Vic-Chancellor has however, power to adopt Regulation. AIR 1964 Raj 161 (FB).

This section is of general application. It only embodies a rule of construction which should be applied if the construction cannot be arrived at or determined with reference to the context or subject-matter of the particular statute. Maharajkumari Meenakshi Devi Avaru v. Union of India, (2979) 12 Cur Tax Rep 185 (DB) (Kant).

The section insists on the word "power".— If follows that power conferred on any rule-making authority is not a plenary power so as to give retrospective effect to a delegated legislation unless such power be traced to have been expressly conferred by the parent statute, or by Rules validly made thereunder. Narayan Row v. Ishwar Lat, AIR 1955 SC 1818 at p 1825 : (1965) 2 SCJ 359 Bhagwan Das Keval Das v. N. D. Mehrotra, (1959) 36 ITR 538 (Bom), M.K Venkatachalam, Income-tax Officer v. Bombay Dyeing & Mfg. Co., Ltd, AIR 1958 SC 875, AIR 1956 Hyd 58 (DB). Power under section 21 has to be exercised within the limits prescribed by the provision conferring that power. Bhagwan Das Gopal Prasad (M/s.) v. State of Bihar, 1980 Pat LJR 130 (DB).

The principle underlying this section is that a statutory body cannot act beyond its frame work and must confine its activities within the four corners of the statute within which it is functioning. Prabhakar Kesho Tare v. Emperor, AIR 1943 Nag 26. A draft proposal once published in the Gazette becomes notification and is covered by the provisions of Sec. 21 of the General Clauses Act. Chavali Shivaji v. Govt. of A.P., 1987 (1) An LT 565.

It was reiterated by the Supreme Court in Lachchmi Narayan v. Union of India in AIR 1976 SC 714 : (1975) 6 STA 47. that the question whether provisions of this section apply to a power conferred under any enactment has to be considered having regard to the scheme and object of the enacment as well as the context in which the power is conferred.

Section 21 would empower the Collector to reduce, after due hearing, the amount of penalty, with regard to a document insufficiently stamped, imposed by him under section 40 of the Stamp Act, 1899, but it would not apply to empower the State Government to withdraw sanction to prosecute once accorded under section 197 of the Code of Criminal Procedure. Mukan Chand v. State of Rajasthan, 1971 WLN 616 at p 619;1954 All LJ 520 : AIR 1855 NUC (all) 2715.

The Commissioner can modify or annul the orders passed by him earlier. Partalepeve Co., Ltd. v. Cane Commissioner, 1960 BLJ R 46 : ILR 47 Pt 477. This means that when power is confined under an enacted provision to passing orders in keeping with coddle provisions, the scope of such power is not enlarged by section 21. Sampu Gowda v. State of Mysore, AIR 1953 Mys 156.

The power exercisable under the section looks towards future and cannot be exercised retrospectively. Dosasbhai Keravala v. State of Gujarat, (1970) 11 Cuj LR 361 At pp 373, 274 (DB); AIR 1944 mad 355 at pp 357, 358 (1944) 1 Mad LJ 76 (DB) ; Straw Board Manufacturing Co Ltd. v. Gutta Mills Workers Union, AIR 1953 SC 95 at pp 96-98 : 1953 All LJ 144.

However, when the power exercised by some authority has been approved or gone for approval by another higher authority, the former authority would not be competent to exercise the powers under this section. Dulal Chandra Ghosh v. District Magistrate, Birbhum, 1974 Cri LJ 24 at p 28 : 77 Cal WN 727 (DB), relying on Kamala Prasad Khaitan v. Union of India, AIR 1957 SC 676.

Every Government servant is bound by any subsequent alterations, amendments, or additions made in the rules in existence when he was recruited to the service. Raj Kishore v. State of U. P., AIR 1964 All 343 ; Kanta Devi v. State of Rajasthan, AIR 1957 Raj 134. But there cannot be amendment or modification of a notification with retrospective effect nor does such an amending notification infuse life into the earlier notification which had already expired by efflux of time. Jagajit Cotton Textile Mills v. Industrial Tribunal, AIR 1959 Punj 389.

The section includes power to add any new item to the scope of a certificate previously issued. Where an application was made for permission to conduct business in commodity not specified in certificate already granted, it was held that the application if granted would stand on the same footing as granting new certificate. Bullion & Agriculture Produce Exchange (Pvt) Ltd., Agra v. Forward Markets Commissioner, Bombay, AIR 1979 All 332.

The words "notification, orders, rules, or bye-laws" have no reference to judicial order the making or rescinding whereof is regulated by provisions of law governing practice of courts. Kalee Majdoor Binkar Panchayat v. State, 1975 ALJ 560.

A revocation or modification of an order of the State Government, is possible even without complying with the restrictions laid down in Section 21 of the General clauses Act.

It is left to the State Government in the exercise of its discretion, either to exercise the power read with provisions of section 21 of the General Clauses Act or without the aid of section 21 of the General Clauses Act. Ram Bali Rajbhar v. Union of India, 1988 Lab IC 1601.

The authority which has power to issue a licence or quota would have power also to cancel it, but the power to cancel or

modify must inevitable be exercised within the limits. The power under section 21 to rescind notifications, orders, rules or bye-law is not subject to such limitations or conditions, as to be exercised only once ; yet it is limited in other respects, for example, though the power of the Town Improvement Trust, under the Punjab Town Improvement Act, 1922, to frame a development Scheme includes the power to abandon that scheme, yet, it cannot, either in law or in equity, revive the abandoned scheme. Kartr Kaur v. State of Punjab, AIR 1981 Punj & Har, 146 : 1981 Punj LJ 150; (1966) 68 Punj LR 1956, AIR 1966 Guj 248 FB. A power to grant a licence under a statute, like the Essential Commodities Act, carries with it the power to cancel the licence. This power of revocation is inherent. Girdhari Lal v. State of Punjab (1966) 68 Punj LR 390 ; see also Narayan Das v. Karam Chand, AIR 1968 Delhi 226 ; see also C. D. Hans v. Munnu Lal, AIR 1952 All 432 : 1951 All LJ 479.

When under a Notification, certain publications had been seized but later on the Notification was rescinded, the right for return of copies of such publication accrues to the person, from whom they were seized, after the Notification is rescinded. There is power in the State Government to declare certain publications forfeited and the State Government has also the power to rescind such Notification and pass fresh orders within the purview of section 21 of the General Clauses Act. Gopal Vinayak Godse v. Union of India, AIR 1971 Bom. 56 : 72 Bom. LR 871.

Section 21 will be attracted to substitution of Rules and Regulations under Articles of the Constitution. M.K.Krishna Nair v. State of Kerala, 1974 Lab IC 1170 at p 1177 : 1974 Ker LT 373.

Where rules are to be framed for carrying out the purpose of an Act, such rules cannot travel beyond four-corners of the Act itself. Huzrat Syed v. Commissioner of Wakfs, AIR 1954 Cal 436 at p 440.

The provisions of the General Clauses Act, though applicable under the Constitution, for interpretation of the Constitution also, cannot be read to restrict the meaning of the words used, or to control the power conferred upon Legislatures, by the Constitution. Iqbal Narayan v. State of U. P., AIR 1971 All 178 : 1971 All LJ 169.

The word "amend" has been held to include "connection, a subsequent Notification). even by change of place. I.I. Iyappan Mills Ltd, V. State, AIR 1958 Ker 139 at p 140 : 1957 Ker LT 1169 (DB). The power to amend rules is comprehended within the power to make rules.

The principles underlying the section is that when the original order can be validly made only by publication, an amendment, therein can also be effected by similar publication, and there can be nor departure in formality in case of subsequent order or notification. Sohan Lal v. State of Rajasthan, AIR 1975 Raj 215 at p 217 : 1975 Raj LW 199 ; State of Kerals v. P. J. Joseph, AIR 1958 SC 296 at p 299. In order to attract

application of section 21, there has to be first an order. When section 64 of the Motor Vehiclels Act, 1939, does not have the word "order", there is no question of varying, amending or rescinding any order alleged to be made thereunder. Ramnath Prashad v. S. T. A. A., Bihar, AIR 1957 Pat 117 : 1956 BLJR 711.

The principles of Section 21 apply not only to Acts of the Legislature but also to statutory orders passed in exercise of the powers conferred by subordinate legislation. The power to make, no doubt, includes the power to amend, but the section says that the power to amend must be exercised in the same manner and subject to the same conditions as would apply to the power to make but no departure in subsequent modification can be made where the original order was validly made only for certain purposes. Mohendra Lal v. State of U. P., AIR 1963 SC 1019 : (1963) 2 SCA 163; AIR 1956 Bom 300 at p 304.

Under the terms of the section, the power to amend which is included in the power to make an order is exercisable in like manner and subject to conditions, if any, as govern the making of the original order. It is neither possible nor proper to lay down definitely the circumstances in which it is open to the State Government to amend or not to amend any clerical or other errors in the original notification.

The power to fix a date for election must be taken to include the power to postpone any date so fixed. AIR 1974 All 211, 214. Provisions of Section 21 were made applicable for construing rules. AIR 1965 Orissa 94. The provisions of section 21 confer ample jurisdiction on an administrative authority to amend, vary or rescind its orders. The assistant Returning Officer in conduct of elections has jurisdiction to correct a mistake in the conduct, counting and declaration of results. It was held that in refusing to correct an error committed by him, he failed to exercise jurisdiction vested in him. Bhagwan Singh v. Smt, Surjit Kaur. 1971 ALJ 1348 : 1971 AWR 811. The State Government has power to fix and extend the period of a Tribunal. Sriniwasa Silk Mills v. State of Mysore, AIR 1962 Mys 117.

On the analogy of section 21 of the General Clauses Act whereby a power to issue an order is conferred by a statute, that power includes a power to vary or rescind that order. Order XXVI, Rule 2, Civil Procedure Code which empowers the Court to issue an order suo motu for the issue of a commission also empowers the Court to cancel that order suo motu notwithstanding the absence of an express provision in this regard. Narain Dass v. Karam Chand, AIR 1968 Delhi 226. So also the Government is competent to issue notification. Ram Autar Panday v. State of Uttar Pradesh, AIR 1962 All 320 : 1962 AlJ 31. But a notification published in the State Gazette can be cancelled only by notification similarly published as provided under this section. Harihar Mandar v. State of Bihar, AIR 1963 Pat 130.

A notification made by State Government with prior concurrence of the Central Government can be amended by

addition therein of a new clause only with concurrence of the Central Government. Sohan Lal Loonkaran (/s.) v. State of Rajastan, AIR 1975 Raj 215 at p 217 : 1975 Raj LW 199.

Order.— The authority given the power to make an order would have the right to recall it, and if that authority can only act in a certain solemn way when making the order, it is at least incumbent upon it to be equally solemn when canceling it. Venkatesh Yesawant v. Emperor, AIR 1938 nag 513 at p 521 (FB).

Section 21 must be taken to have limited its scope only to orders of a non-judicial character, because judicial order particularly of criminal courts, do not admit of variation by the same Court, Bherumal v. Moti Lal, AIR 1956 Ajmer 67 : 1956 Cri LJ 1140;AIR Cri LJ 1505. In civil cases, the relevant law may itself empower a court to review or vary its order.

The Government has power to cancel the notifications vested in it by section 21 of the General Clauses Act. State of Madhya Pradesh v. Vishnu Prasad Sharma, (1966) 2 SCJ 231 : 1966 MPLJ 995.

Section 21 of the General Clauses Act cannot be said to apply to a case where the acquisition proceeding went beyond the stage of the publication of notification.

An order of amendment under section 21 of the General Clauses Act, cannot operate retrospectively though it may operate prospectively. Umaid Mills, Ltd. v. Industrial Tribunal, Jaipur, AIR 1954 Raj 274.

Power to rescind.— (a) General Limitations on power to rescind.— Where an Act does not lay down either that notification may be amended or rescinded or that it will not be amended or varied once it has been issued, the State Government can exercise the powers available to it under section 21 of the General Clause Act. Aminuddin v. State, 1993 AlJ 135 at 143. The rule enacted in section 21 is presumptive and can be displaced by the context and object of a particular statutory provision conferring the power. State of Bihar v. D. N. Ganguli, AIR 1958 SC 1018. Once a section of some amending Act is brought into force by issue of a Notification under same section of that Act, the power under that section and to that extent, is exhausted, and the Government has then, no power, under the same provision of the Act, as has been brought into force. Then, again, the power of repeal of a law, which is a legislative power, cannot be delegated. Thakur Vishweshwar Sharan Singh v. State Transport Appellate Tribunal, AIR 1981 Mp 121 : 1981 Ja LJ 440.

A notification to rescind earlier notification for acquisition of land will be valid only when published in the like manner as that of acquisition. Sadar Anjuman Bhuradiya v. State of Andhra, AIR 1980 AP 246 ; (1980) 2 Andh LT 32 (DB) following Kamla Prasad Khetan v. State of Karnataka, AIR 1991 SC 1117 (1122).

Power to rescind not to operate retrospectively.— The power to issue a notification includes the power to rescind it.

Basanta Chand Gholh v. Emperor, AIR 1845 Pat 44 at p 52 : 46 Cri LJ 460. Section 21 of the General Clause Act provides it in explicit terms. But this power does not include a power to rescind the notification with retrospective effect.

The cancellation became effective when it had come to the knowledge to the petitioners, that is to say, when it was published in the Gazette and not before that.

Cases on exercise of power to rescind.— The scope of section 4 of the Land Acquisition Act read in the context of other provisions, negatives any implied power vested in the Collector to rescind or withdraw a notification issued under said section 4. Aya Samaj Khalepar Society, v. Collector of Saharanpur, 1967 All LJ 796 at p 798. Under section 17 (1) of the same Act, the land, after possession being taken under that section, becomes vested in the Government and thereafter the power under section 21 of the General Clauses Act, for cancellation of notification, cannot be exercised. Lt. Governor of H. P. v. Avinash Sharma, AIR 1970 SC 1576 : (197)) 2 SCJ 735.

A notification under section 4 of the Forest Act is required to be published in the Gazette and unless so published, it is ineffective. Mahendra Lal Jaini v. State of U. P., AIR 1963 SC 1019.

Power not meant to enlarge the statute.— A Notification can only explain the Section but it can not go so far as to enlarge the provisions of the statute. A notification issued in exercise of power conferred under an Act can not alter statutory definition given under the Act. (Mrs.) Jacqueline Chandani v. DY Director, Enforcement Directorate, AIAR 1991 Karm. 194. : 1991 Cr LJ 1408.

Power to change notified name.— The Government which had once notified a name has power, under this section, to issue a subsequent corrigendum notification changing the name provided that the nature and character is not thereby changed. Birendra Nath Jana v. State of West Bengal, (1977) 2 Cal LJ 383 : AIR 1978 MOC 129 (Cal) ; (1978) 82 Cal WN 276 : AIR 1978 (NOC) 129.

Section 21 is an important section of daily use and great practical significance. The scope is considered with reference to the laws to which the section applies, the limits of the action authorized by the section and the relationship of the section to specific provision in the Act under construction authorizing similar action. The persons who can exercise the power are next considered, followed by a consideration of the time and conditions for exercise of the power contemplated by the section.

The power to create includes the power to destroy, and also the power to alter what is created. The power to rescind a notification is inherent in the power to issue the notification without any limitations or conditions. (1979) 12 Cur Tax Rep 185 (188, 189) (DB) (Kant).

Section 21 embodies a rule of construction which should be applied only if the constriction cannot be arrived at or

determined with reference to the context or subject matter of the particular statute. A 1958 Cal 208 (212) : 62 Cal WN 248.

Section 21 of the General Clauses Act embodies a rule of construction, and that rule must have reference to the context and subject-matter of the particular state to which it is being applied. A 1957 SC 576 (685) : 1957 SCJ 811.

Section 21 embodies only a rule of construction, and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the Notification etc. A 1976 SC 714 (729) : 1976 Tax IR 1467.

Section 21 which embodies a rule of construction is by no means one of universal application. It depends upon the intent, purpose and scope of a particular legislation in relation to which an action taken is sought to be modified or amended by application of S. 21. 1976 Lab IC 1317 (1322) (Pat).

The exercise of a power to make subordinate legislation includes the power to rescind the same. This is made clear by S. 21. On that analogy an administrative decision is revocable while a Judicial deception is not revocable except in special circumstances. 1979 lab IC 1294 (1301) : 1980 Serv LJ 77 (FB) (Delhi).

Exercise of power of subordinate delegation will be perspective and cannot be retrospective unless the statute authorizes such an exercise expressly or by necessary implication. 1980 Tax LR 1943 (1648) : (1980) 45 ST 170 (DB) (Orissa).

Section 21 cannot be read to restrict the meaning of words in Constitution or to control the power of the legislature. A 1971 All 178 (183) : 1971 All LJ 169.

Section 21 applies to rules made under the proviso to Article of Constitution . A 1961 Mys 37 (41, 42) : 38 Mys LJ 828 (DB).

The specific provisions so contained may, in its scope, be (i) wider than Section 21, (ii) co-extensive with Section 21, or (iii) narrower than Section 21. Where the specific provision is wider than S. 21, the specific provision would, of course, prevail and there is no need to invoke Section 21. Where it is co-extensive with Section 21, both can be resorted to. Even where its scope is narrower than s. 21, S. 21 can be pressed into service if the context necessitates such an approach. However, procedural formalities proscribed by the specific provision cannot be circumvented. A 1976 SC 714 (729) : 1976 Tax DLR 1467.

Exercise of subordinates authority.— A Magistrate can rescind or modify a detention order only before it is approved by the State Government. After approval by the Government, the order can be modified or revoked only by the Government. 1974 RI MLJ 24 (28) : 77 Cal NW 727 (DB).

Any mistake found in an administrative order can always be corrected by the authority that has passed the order and no express power is necessary for the same. (1979) 1 Kant LJ 244 (246).

With reference to the corresponding provisions of the General Clauses Act as in force it has been held that the power to rescind is without limitation or conditions. It is not a power so limited as to be exercised only once, A 1966 Guj 248 (251, 252) : (1966) 7 Guj LR 341. (1662) 3 Guj LR 66.

While a statutory power can be exercised from time to time the power, each time it is exercised, must look to the future only. Its exercise cannot be given retrospective effect, in the absence of an express provision or necessary implication authorizing retrospective effect. Section 21 does not provide, either expressly or by necessary implication, that the power to make an order shall include an order to rescind it with retrospective effect. (170) 11 Gu LR 361 (373, 374) (DB).

A fortiori the power to modify cannot be exercised ex post facto, after the original order has ceased to operate. A 1953 SC 95 (96, 97, 98) : 1953 All LJ 144.

The power given by the section to the Government to issue or to rescind the notification can have effect only from the date of its publication in the Gazette, and does not include a power to rescind the notification with retrospective effect. A 1977 Delhi 184 (186) : 1977 Rajdhani LR 415.

The rule-making authority does not possess a plenary power to give retrospective effect to delegated legislation, unless and until that power is expressly conferred by the parent enactment. A 1956 Hyd 35 (38) : ILR (1956) Hyd 58 (DB).

An order of amendment made by virtue of S. 21 cannot operate retrospectively though it may operate prospectively. A 1954 Ra 274 (279(: 5 Raj LW 224 (DB).

An Industrial Tribunal was constituted for a period of six months and certain disputes were life in the Tribunal retrospectively. There could be no amendment or modification of the previous notification within the meaning of S. 21, of the General Clauses Act, with retrospective effect, and the notification coulreferred to it. The period of six months expired (pending such disputes) on 12-2-1956. On 29-2-1956, a notification was issued by which the life of the Tribunal was extended for a period of six months with effect from the date of the expiry of the previous period, namely, 13-2-1956. if was held tat the life of the Tribunal having come to an end on 12-2-1956, the notification of 29-2-1956 could not infuse freshd operate only prospectively. A 1959 Punj 2389 (392) : 61 Punj LR 597 (DB).

Of course, legislation, or rules if validly made thereunder, may expressly confer a power exercisable with retrospective effect. A 1965 S. C. 1818 (1825).

Conditions for exercise of the power.— Section 21 embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context and effect of the relevant statutory provisions. A 1976 SC 714 (729) : 1976 Tax LR 1467.

It would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether, by the application of the construction enunciated by Section 21, it can be said that the power conferred by that section is by necessary implication, vested in the authority. A 1958 SC 1018 (1021) : 1959 SC 533.

When Section 21 makes the power to amend execrable subject to the like conditions as in the main Act it does not contemplate those conditions upon the fulfillment of which the right to issue the order arises under the main Act. A 1957 SC 676 (688).

Section 21 of the General Clauses Act is at per with S. 32 (3) of the Interpretation Act, 1889 in England. (1979) 12 Cur Tax Rep 185. D. B.

If the State Govt. proposes to cancel or very notification issued under S. 43 (1) of Motor Vehicles Act, 1939 it can do so only subject to the conditions laid down in S. 43 (2) and (3). S 21 of the General Clauses Act cannot apply to the exercise of the power to issue directions to the State Transport Authority. Where there was no compliance with Section 43 (2) and (3), the State Government had no power to cancel or vary the earlier notification issued under S. 43 (1). A 1978 Gauhati 233 (43, 55) (DB).

When Section 21 empowers Government to rescind any notification made by it also provides that power to rescind must be exercised in a like manner and subject to the like sanction and condition as in the case of issuing the notification. When a notification to acquire land can be issued under Sections 4 and 6, Land Acquisition Act, 1894 by publishing in Gazette, a notification rescinding it has also to be published in the Gazette. If it is not published, there is no valid rescission. A 1980 Andh Pra 246 (249 to 252) : (1980) 2 Andh LT 32 (DB).

The formalities required for the original order must be observed while issuing an amendment. Where the original order can be made only by publication, the amendment would also require publication. A 1958 SC 296 (199, 300) : 1958 SCJ 614.

Where the original order could have been validly made-and was, in fact, made-only for certain purposes, the subsequent modification cannot depart from those purpose. A 1963 SC 1019 (1063) 2 SCA 163.

Even the general provision contained in Section 21 of the General clauses Act may be sufficient to so interpret the term is of a given statute as to exclude applicability of the rule of natural justice. A 1981 SC 818 9850, 851) : 51 Com. Cas 210.

Legislative orders, as stated above, present no problem. An order defining or declaring a Government servant, as ministerial servant issued under the power of Government is classify ministerial servants, is of a legislative nature and Section 21 applies to it. 1971 Lab IC 1276 (1283) (Delhi).

Section 21 does not cover notifications nominating members to a Municipal Board and the Government cannot,

having nominated certain persons as members of a Municipal Board, change its mind and nominate certain other persons without following the procedure prescribed by the relevant Act. Such a notification really falls under Section 16, because the nomination of certain persons as members of a Board amounts to their "appointment". A 1957 Raj 134 (135) : 1957 Raj LW 69 (DB).

Section 21 does not apply to a decision as to the rights of parties made by particular judicial or quasi-judicial or administrative authority. Accordingly, the Coll actor has no power to modify or alter an order once passed by him under Section 135 (2) of the Railways Act, 1890. A 1944 Mad 355 (357, 358) : (1944) 1 Mad LJ 76 (DB).

An authority discharging administrative functions can review its orders; no specific power is required to be conferred for the purpose. Section 21 confers an ample jurisdiction in this regard. The assistant Returning Officer in conducting the counting and declaring the result of a municipal election performs an administrative function. The principle of S. 21 is of general application. 1971 All LJ 1349 (1355).

Instrument covered by the section.— Section 64 of the Motor Vehicles Act, 1939 does no speck of any "order". What it provides is that any person aggrieved by the refusal of the Regional Transport Authority to "grant" a permit can appeal under Section 64 (a0 of the Act. No-where, in Section 64 does the word "order" occur, and as such, there is no question of varying, rescinding or amending any "order", Section 21 of the General clauses Act cannot therefore be applied to such a case. There must, first, be an "order" before it can be varied or amended by virtue of Section 21. A 1957 Pat 117 (121) : 1956 BLJR 711 (DB).

The word "order" in Section 15, Madras General Clauses Act (1 of 1891), Corresponding to S. 21 of the General Clause Act is comprehensive enough to include the power to issue a notification. The Government, therefore, has power under S. 6 (1) of the Madras General Sales Tax Act, 1939 to modify or amend the earlier notification issued by it under S. 6 (1). (1957) 2 Mad LJ 300 (302) (DB).

Section 21 can have no application to a Government notification nominating certain persons to a Municipal Board. The section applies to those cases of notifications which are in the nature of orders, rules or bye-laws or are of a general nature. A 1957 Raj 134 (135) : 1957 Raj LW 69 (DB).

"Order" in Section 21 includes an order appointing a Judge under Section 6, Criminal Law Amendment Act (1952). A 1965 Andh Pra 372 (382).

An order of the Government specifying the Court which has to determine the amount of benefit under Section 33-C (2) of the of the Industrial Disputes Act, 1947, is not an order falling under S. 21. A 1959 Assam 1 (6) (DB).

A notification under S. 4, Land Acquisition Act, 1894, was published in the Gazette after due inquiry. On an objection made

by another party, Government ordered a fresh inquiry as to the existence of a "public purpose" for the acquisition. This order did not mean "cancellation" of the notification issued under Section 4 of that Act. A 1963 Pat 139 (141) (DB).

Government, while according sanction to Octroi Rules and Bye-laws , raised the rates on certain times. Date of imposition of the proposed levy was also published. After such publication but prior to the proposed date of imposition, the Government issued a corrigendum modifying those rules and bye-law. The corrigendum was held not the be ultra vires the powers of the Government. Additional support from the provisions of S. 21, General Clauses Act was regarded as not necessary. A 1970 Guj 53 (56, 57) : 11 Guj LR 351.

The word "amend" in S. 21 is wide enough to include an amendment by way of correction. Where a notification making a reference of an industrial dispute under Section 10 of the Industrial Disputes Act 1947 is issued by the Government, the Government has, by subsequent notification, power to add words to, or even to correct the original notification. (1961) 3 Fac LR 186 (188) (Cal).

Section 21 has even been held appropriate for an order transferring a reference from one Industrial Tribunal to another. The Industrial Disputes Act, 1947 (as it applied to Bengal) did not contain any provision enabling the State Government to transfer a reference from one Tribunal to another; but the power can be exercised by the State Government under S. 21, General Clauses Act. (1958) 62 Cal WN 303)305) (DB).

Even if the instrument is of a nature falling under Section 21 and assuming that the order sought to be made is essentially one of "amendment", it is still necessary to bear in mind that the nature of the substantive (original) order may rule out the applicability of Section 21. This aspect becomes of importance in statuary orders granting exemption. Power of exemption created under S. 89 (4), Companies Act, 1956 cannot be exercised to withdraw it. It can be exercised once and finally only, and there is no right of revocation of an exemption, once granted. A 1966 Bom. 218 (225, 226) : 67 Bom. LR 362 (DB).

Withdrawal of an exemption granted by notification under S. 26 (2) of the Minimum Wages Act, 1948 cannot amount to "repeal" of the Act. In fact it postulates the existence of the Act. A 1960 Bom. 299 (300) : 61 Bom. L/R 764 (DB).

The State Government can fix and extend the period of a tribunal constituted under S. 7A of the Industrial Disputes Act. 1947. A 1962 Mys 117 (121, 122, 123) : 39 Mys LJ 1006 (DB).

The time for making an award cannot be extended ex post facto after expiry of the time limit originally fixed. A 1953 SC 95 (96, 97, 98) : 1953 All LJ 144.

in is elementary that if a person or a boy of persons can do an act, for their benefit but contemporaneously burdened with obligations, they would be in order at any theme thereafter to seek for a release from such obligations created by their own

voluntary act by once again expressing in unequivocal terms their desire not to be burdened any more with such liabilities or obligations. This is reflected in Section 21 of the General Clauses Act, 1974 lab IC 602 (603) : 91974) 1 Mad LJ 153.

The word "notifications, order, rules or bye-lays" have no reference to judicial orders, the passing and cancellation whereof is subjection, and regulated by the procedural law to the land. Obviously, these words, within which the expression "orders" is associated in S. 21, must be deemed to limit the scope of the word "orders" to non-judicial order. A 1951 All 836 (838) : 52 Cri LJ 1505 (DB).

The word "Orders" occurring in Section 21 obviously refers to subordinate legislation and not to the judicial orders (of Criminal Courts) which, by their own nature, and incapable of revision, amendment or attrition y the same Court unless so permitted by some express provisions of the Criminal P. C. 1898. A 1956 Ajmer 67 (67) : 1956 Cri LJ 1140.

Under the Income-tax Act, 1922, S. 66 (1), there was reference made to instance such a reference had been made was asked by notice of the High Court to file the paper books within three months, but the notice was misplaced by the party's clerk with the result that neither the paper book was filed, nor the party appeared at the hearing of the reference and so the High Court declined to answer the reference on the ground, it was held that the High Court was not functus officio in entertaining the application for rehearing the reference and disposing it on merits. A 1977 SC 1348 (1350) : 1977 Tax LR 685.

A judicial order can be arrived either under an express statutory provisions authorizing variation or where the nature of the order so justifies. Monthly maintenance granted under S. 24 of the Hindu Marriage Act, 1955 can be discontinued by the Court with the change of circumstances. 1972 Rev LR 236 (23) (Punj).

Since O. 26, R. 12, Civil P. C., 1908 empowers the Court to make an order suomotu for the issue of a commission, the Court can also suomotu on the principle laid down in S. 21, cancel that order. A 1968 Delhi 226 (227, 228).

Where there was a decree passed by the appellate court in ignorance of death of one of the parties pending appeal, the Court can reopen the appeal. This action of the Court can be justified on the principle that an act of the Court ought to harm no one, particularly if the act is done in ignorance, or even on the wider and more fundamental principle that an other passed against a dead man is a nullity. 1975 Rajdhani LR 199 (202) (Delhi).

Section 21 confers no power of review on authorities exercising judicial or quasi-judicial powers. Proceedings before the Forward Market Commission are judicial in nature and the Commission cannot derive a power of review from S. 21. A 1979 All 332 (333, 334) (DB).

With reference to citizenship, it has been held that orders under S. 5 of the Citizenship Act, 1955 do no fall within S. 21. A 1967 SC 107 (109) : (1962) 1 SCJ 668.

The powers of the District magistrate, in the matter of delegating his powers to the subordinate Magistrate under R. 1-A of the Election Rules made under the Bengal Local Self-Government Act (3 of 1885), are the same as those contained in S. 21. A 1937 Cal 718 (719) ; 42 Cal WN 177 (DB).

When the Election Commission issues a notification fixing certain date of poll under S. 30 (d) of the Representation of the People Act in view of S. 21 of the General Clauses Act this power includes the power to alter the date of poll to a future date. For this purpose a fresh notification of the date in Form No. 1 under R. 3 of the Conduct of Election Rules (1961) read with S. 31 of the Representation of the People Act, 1951 is not necessary because the alteration of the date of poll gets engraved in the original from in pursuance of the subsequent notification. A 1974 SC 1218 (1221, 1222) : 54 ELR 274.

Extension of time for completion of election -Election Commission can alter date of poll by virtue of Section 21.

Power to fix a date for municipal election also includes power to postpone it. A 1955 NUC (Cal) 2935** A 1927 Cal 704 (706) : 81 Cal WN 926 (DB).

Power to pass an order of for feature under S. 99-A, Criminal P. C. 1898 (Forfeiture of certain objectionable publications) includes a power to rescind the order. The State Government can rescind the order the pas a fresh order. A 1971 Bom. 56 (72) : 1971 Cri LJ 324.

Section 21 embodies a rule of construction, which rule must have reference to the context and subject-matter of the particular statute to which it is being applied. A 1957 SC 676 (685) : 1957 SCJ 811.

That a post-decisional hearing may also be had be the terms of S. 21 of General Clauses act may not necessarily help in the interpretation of the provisions of the statute concerned. On the other hand even the general provisions contained in S. 21 of the General Clauses Act may be sufficient of so inter pert the terms of a given statute as to exclude natural justice. A 1981 SC 818 (850, 851) : 52 Com Cas 210.

The rule of construction enunciated by S. 21, in so far as it refers to the power of rescinding or canceling the original order, cannot be invoked in respect of the provisions of S. 10 (1) of the Industrial Disputes Act, 1947 and Government cannot cancel or supersede a reference made thereunder. A 1958 SC 1018 (1024) : 1959 SCJ 533.

Section 21, General Clauses act, contains only a rule of construction and it is neither possible nor proper to lay down definitely the circumstances in which it is open to the State Government to amend, or not to amend, any clerical or other errors in the original notification issued under S. 10 (1) of the Industrial Disputes Act, 1947. The power of amendment given

by S. 21, General Clauses Act cannot be so used as to nullify or render ineffective other provisions of the Industrial Disputes Act, 1947. A 1966 Punj 214 (217, 220) ; 67 Pun LR 775 (DB).

A reference under S. 10, Industrial Disputes Act, 1947 was followed by a subsequent notification adding to the original reference a dispute between different parties. The notification, it was held, must be struck down. A 1966 Punj 214 (217, 220) : 67 Pun LR 775 (DB).

A reference made under S. 10 (1) of the Industrial Disputes Act can be amended by way of addition or modification, so long as the amendment has not the effect of withdrawing or superseding the reference already made. A second reference having the effect of superseding the first reference is beyond the competence of Government. (1964) 1 Mys LJ 569 (576, 580) (DB).

In a case a reference was made under Section 10 (1), Industrial Disputes Act, 1947 to a tribunal constituted under Section 7 of that Act.. Government, by notification, ordered abolition of the tribunal and transferred the reference to another tribunal. The order was held to be illegal and without jurisdiction. Its validity cannot be sustained by deriving help from Section 21, General Clauses Act, 1897. A 1966 Cal 371 (378) : (1967) 1 Lab LJ 492.

Where , in the opinion of the Government it is expedient to refer an industrial dispute for adjudication by the Industrial Tribunal at one place instead of the Industrial Tribunal at another, the Government could do so under Section 10 (1) (c) of the Industrial Disputes Act, 1947, read with Section 21 of the General Clauses Act. A 1958 ker 139 (140).

Section 21 cannot be invoked for superseding a reference made under S. 10 (1) (d), Industrial Disputes Act, 1947. A 1964 Assam 51 (51, 52) : ILR 91960) 12 Assam 153.

Government can amplify and add to the issues already referred to an Industrial Tribunal. A 1960 Assam 11 (14) (DB).

If in a give case the notification under Section 10, Industrial Disputes Act, 1947 by mistake or oversight, omits to make as party one whose presence necessary for a proper adjudication of the dispute, a subsequent notification can made him a party under Section 10 of the Act read with Section 21 of the General Clauses Act. A 1960 Assam 39 (42) : ILR (1957) 9 Assam 353 (DB).

The Government can always cancel the notification issued under Sections 4 and 6 of the Land Acquisition Act 1894 by virtue of its power under Section 21 General Clauses Act and this power can be exercised before the Government directs the Collector to take action under Section 7 of the land Acquisition Act, 1894. A 1963 SC 1593 (1602) : 91966) 2 SCJ 231.

The power under Section 21 cannot, however, be exercised after the land statutory vests in the state Government. After possession is taken under Section 17 (1) of the Land Acquisition Act, 1894, the land becomes vested in the Government and the notification cannot be canceled .A 1970 SC 1576 (1577, 1578) : (1970) 2 SCJ 735.

By virtue of Section 21, the Government an amend vary rescind the previous declaration made by its under S. 6 of the land Acquisition Act, 1894 and can issue a fresh declaration under S. 6 thereof. A 1976 Delhi 166 (168).

Section 4 of the Land Acquisition Act, 1894 as amended confers power on the Collector to issue a notification under Section 4. The context and other provisions of the Land Acquisition Act 1894 negative any implied power in the Collector to cancel or withdraw that notification under Section 21, General Clauses Act, 1897. 1967 All LJ 769 (798).

An order of suppression under Section 57 (2), C. P. and Bearer Municipalities Act, 1922, for a specified period, once passed, cannot be subsequently amended by the Government. A 1951 Nag 181 (183) : 1950 Nag LJ 509.

Where a Municipal Corporation passed a resolution by which it desired to absorb in Corporation employment all such persons k who were serving while being on deputation and such resolution received the sanction of the Government, the Government was competent to withdraw such an order before the absorption had taken place. Section 21 was applicable to such a case. 91976) 1 Kant LJ 548 (558).

After a Panchavat was named by a notification, it was changed by a subsequent corrigendum notification. It was held that the Government which had notified the name of an Anchal Panchayat had power and authority to issue the necessary corrections when, by such a Shane, the nature and character of the Anchal Panchayat was not changed. (1978) 82 Cal WN 276 : A 1978 NOC 129.

The power to make an order under Section 37 (3), Bombay Police Act, 1904, must include a power to add to or amend, vary or rescind such an order. But when the power to amend is exercised, the power must be subject to the same contains and to the like sanction as the power to make the original order. A 1956 Bom. 300, (304) : 1956 Cri LJ 598 (DB).

Sanction to prosecute a public servant, accorded by the State Government under S. 187, Criminal P. C. 1898 cannot be withdrawn. 1971 WLN 616 (619) (Raj).

Under section 40 of the Stamp Act, 1899, the Collector can impose a penalty in respect of a document insufficiently stamped. If the Collector, after hearing the petitioners, is of the view that the order imposing the penalty was not justified, he can amend his previous order and reduce the amount of the penalty imposed. 1954 All LJ 520 : A 1955 NUC (All) 2715.

Where a detenu was detained under an order made by the Government under Rule 26 of the Defence of India Rules (1939), the Government can cancel that order and make a fresh order under Section 3 (1) (b) of the Restriction and Detention Ordinance 3 of 1944. This is on the principle that under S. 21, the power to make an order includes power to rescind. A 1945 Pat 44 (52) : 46 Cri LJ 460.

A case under the preventive Detention Act, 1950 was pending before a Board constituted by a notification of the State Government. Later, another Board was constituted by the Government by a subsequent by the Government by a subsequent notification. The latter Board considered the case pending before the earlier Board. The procedure was held to be valid. A 1969 Assam 14 (19) : 1969 Cri LJ 291 (DB).

With reference to the East Punjab Public Safety Act, 1949, it has been held that the competent authority can cancel or modify an earlier order, but the power must inevitably be excised within the limits prescribed by the provisions conferring the power. A 1959 SC 609 (617) : 1959 Cri LJ 782.

The power of State Government and Central Government under S. 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 to revoke orders of detention is in addition to the power under S. 21 of the General Clauses act to revoke their now orders. A 1981 SC 1641 (1943) : 1981 Cri LJ 1262.

On the principle that the word "order" used in Section 21 is confined to a legislative order, it has been held that an order for remission of punishment under Section 401, Criminal P. C. 1898 cannot be amended by the Government. A 1938 Nag 513 (515, 516) : 1938 Nag LJ 423 (FB).

In a case relating to the removal of the Chairman of a statutory Board the statute in question made on provision specially authorizing his removal. It was held that the principles of common law applied to by virtue of the provisions of Article of the Constitution. As there was no provision of the statute barring the removal of the Chairman of the Board by a vote of non-confidence, the members who had the power to elect the Chairman had also the power to elect the Chairman had also the power to remove the Chairman by a majority of votes. This principle is also enshrined in the provisions of Section 21 of the General Clauses act. It is an accepted principle of the common law relating to the removal of the holder of an officer that the body which has the in hereunto and implied power to remove the Chairman. A 1980 Punj 306 (310, 311) (Db).

The Government has not power to rescind and order of requisitioning of premises made under the West Bengal Premises Re-question Control (Temporary Provisions) Act, 1947. Provisions of the Act which deal with requisitioning and release of property repeal the application of the Bengal General Clauses Act, because the Act of 1947 is self-contained and the application of Section 22 of the Bengal General Clauses Act is inconsistent with the provision and structure of the West Bengal Act of 194. ILR (1966) 2 Cal 50 (66).

Though Rule 75-A, Defence of India Rules, 1939 does not expressly provide for the release of property from requisitioning there is no prohibition also in that rule to that effect. But having regard to the provisions of S. 21, General Clauses Act, the authority which has power to requisition property may be

presumed to have, by implication, the power to cancel the re-questioning and release the property. A 1952 All 959 (961) : 1952 All LJ 489 (DB).

The authority which can make a rule, namely, Rule of the Civil Service Regulations dealing with compulsory retirement, has also the power to alter or modify it from time to time. It follows, therefore, that every Government servant is bound by an subsequent alterations, amendments or additions made in the rules in existence when he was recruited to the service. A 1954 All 343 (347) : 1954 AllLJ 40 DB).

As no immutable right was granted to the members of the family of the founder to nominate or elect their successors or representatives and as there was a rule making power under the memorandum of the Society, the amendment taking away the right to elect or nominate the successor could not be said to be mala fide. ILR (1970) 2 Cal 370 (285).

Where the trust had framed a development scheming under Ss. 24 and 25 of the Punjab Town Improvement Act it is competent to abandon the scheme as there is nothing in law which prevents the trust from doing so but it cannot revive the abandoned scheme, neither in law nor in equity. A 1981 Punj 146 (149, 150) : 1981 Punj LJ 150.

Section 12 (5) of the Jodhpur University Act, 1962 does not empower the Vice Chancellor of the University to act as a substitute for various statutory authorities of the University in academic matters. However, he has power to adopt Regain. 38 of the Rajasthan University or (by virtue of the Order of 1963 read with S. 39 of the Jodhput University Act and by S. 31. General ral Clauses act) to amend it. A 1964 Raj 161 (167) : 1964 Raj LW 328 (FB).

Scope of.— The power to amend , which is includes in the power to make the order , is exercisable in the lied manner and subject to the liked sanction and conditions (if any) as govern the making of the original order; this is stated by the section itself.

It is to be remembered that section 21 of the General Clauses Act embodies a rule of construction, and that rule must have reference to the contest and subject matter of the particular statute to which it is being applied.[Kamla Prasad Khetan v. Union of India, AIR 1957 SC 679 : (1957 -58) 12 FJR 284 : 1957 SCA 998 : 1957 SCJ 811 : (1958) 2 LLJ 461.].

Applicability and scope of.— Section 21 of the General Clauses Act embodies only a rule of construction and the nature and extent of its application must be governed by the relevant statute which confers the power . [Lachmi Narain v. Union of India and others , AIR 1976 SC 714]

Does not offer power on collector to cancel registration certificate granted under section 5 of the Citizenship Act.— [Ghaural Hassan v. State of Rajasthan, (1962) 1 SCR 772 : 1962 AWR (HC) 418 : (1962) 1 SCJ 668 : AIR 1967 SC 107 : 1962 All Cr R 243 : 1961 SCD 796]

Land statutory vesting in State Government - Power under section 21 cannot be exercised .— [It. -Governor of Himachal Pradesh and another v. Sri AvinashSharma, (1970) 1 SCWR 897 : AIR 1970 SC 1576 : (1970) 2 SCC 149 : (1970) 2 SCJ 735 : 1970 Ker LJ 656.]

Citizenship Act, sections 10(2) and 5- Scope of section 21 of General Clauses Act.— The contention was that the Collector having the power to grant the registration certificate under the Citizenship Act had, by virtue of section 21 of the General Clauses Act, and apart from section 10(2) of the Citizenship Act, the power to cancel it.

It is not possible to agree that section 21 covered on the Collector any such power. The orders mentioned in that section are not orders of the kind contemplated in section 5 of the Citizenship Act. [Ghaural Hassan and others v. State of hajasthan and another, (1962) 1 SCJ 668 : (1962) 1 SCR 772.]

Government, while according sanction to Octroi Rules and Bye-laws , raised the rates on certain times. Date of imposition of the proposed levy was also published. After such publication but prior to the proposed date of imposition, the Government issued a corrigendum modifying those rules and bye-laws. The corrigendum was held not be ultra vires the powers of the Government. Additional support from the provisions of S. 21. General Clauses Act was regarded as not necessary. A 1970 Guj 53 (56, 57) : 11 Guj LR 351.

The word "amend" in S. 21 is wide enough to include an amendment by way of correction. Where a notification making a reference of an industrial dispute under Section 10 of the Industrial Disputes Act 1947 is issued by the Government, the Government has, by subsequent notification, power to add words to, or even to correct the original notification. (1961) 3 Fac LR 186 (188) (Cal).

Section 21 has even been held appropriate for an order transferring a reference from one Industrial Tribunal to another. The Industrial Disputes Act, 1947 (as it applied to Bengal) did not contain any provision enabling the State Government to transfer a reference from one Tribunal to another; but the power can be exercised by the State Government under S. 21, of the General Clauses Act. (1958) 62 Cal WN 303)305) (DB).

Exemptions from statute.— Even if the instrument is of a nature falling under Section 21 and assuming that the order sought to be made is essentially one of "amendment", it is still necessary to bear in mind that the nature of the substantive (original) order may rule out the applicability of Section 21. This aspect becomes of importance in statuary orders granting exemption. Power of exemption created under S. 89 (4), of the Companies Act, 1956 cannot be exercised to withdraw it. It can be exercised once and finally only, and there is no right of revocation of an exemption, once granted. A 1966 Bom. 218 (225, 226) : 67 Bom. LR 362 (DB).

Withdrawal of an exemption granted by notification under S. 26 (2) of the Minimum Wages Act, cannot amount to "repeal" of the Act. In fact it postulates the existence of the Act. A 1960 Bom. 299 (300) : 61 Bom. L/R 764 (DB).

Extension of period.— The State Government can fix and extend the period of a tribunal constituted under S. 7A of the Industrial Disputes Act. 1947. A 1962 Mys 117 (121, 122, 123) : 39 Mys LJ 1006 (DB).

The time for making an award cannot be extended ex post facto after expiry of the time limit originally fixed. A 1953 SC 95 (96, 97, 98) : 1953 All LJ 144.

Release from statutory liability.— In is elementary that if a person or a boy of persons can do an act, for their benefit but contemporaneously burdened with obligations, they would be in order at any time thereafter to seek for a release from such obligations created by their own voluntary act by once again expressing in unequivocal terms their desire not to be burdened any more with such liabilities or obligations. This is reflected in Section 21 of the General Clauses Act, 1974 lab IC 602 (603) : 91974) 1 Mad LJ 153.

The words "notifications, orders, rules or bye-laws" have no reference to judicial orders, the passing and cancellation whereof is subjection, and regulated by the procedural law to the land. Obviously, these words, with which the expression "orders" is associated in S. 21, must be deemed to limit the scope of the word "orders" to non-judicial order. A 1951 All 836 (838) : 52 Cri LJ 1505 (DB).

The word "Orders" occurring in Section 21 obviously refers to subordinate legislation and not to the judicial orders (of Criminal Courts) which, by their own nature, are incapable of revision, amendment or attrition by the same Court unless so permitted by some express provisions of the Criminal P. C. 1898. A 1956 Ajmer 67 (67) : 1956 Cri LJ 1140.

Under the Income-tax Act, 1922, S. 66 (1), there was reference made to instance such a reference had been made was asked by notice of the High Court to file the paper books within three months, but the notice was misplaced by the party's clerk with the result that neither the paper book was filed, nor the party appeared at the hearing of the reference and so the High Court declined to answer the reference on the ground, it was held that the High Court was not functus officio in entertaining the application for rehearing the reference and disposing it on merits. A 1977 SC 1348 (1350) : 1977 Tax LR 685.

A judicial order can be arrived either under an express statutory provisions authorizing variation or where the nature of the order so justifies. Monthly maintenance granted under S. 24 of the Hindu Marriage Act, can be discontinued by the Court with the change of circumstances. 1972 Rev LR 236 (23) (Punj).

Since O. 26, R. 12, Civil P. C., 1908 empowers the Court to make an order suo motu for the issue of a commission, the Court can also suo motu on the principle laid down in S. 21, cancel that order. A 1968 Delhi 226 (227, 228).

Where there was a decree passed by the appellate court in ignorance of death of one of the parties pending appeal, the Court can reopen the appeal. This action of the Court can be justified on the principle that an act of the Court ought to harm no one, particularly if the act is done in ignorance, or even on the wider and more fundamental principle that an other passed against a dead man is a nullity. 1975 Rajdhani LR 199 (202) (Delhi).

Section 21 confers no power of review on authorities exercising judicial or quasi-judicial powers. Proceedings before the Forward Market Commission are judicial in nature and the Commission cannot derive a power of review from S. 21. A 1979 All 332 (333, 334) (DB).

Citizenship.— With reference to citizenship, it has been held that orders under the Citizenship Act, do no fall within S. 21. A 1967 SC 107 (109) : (1962) 1 SCJ 668.

Elections.— The powers of the District magistrate, in the matter of delegating his powers to the subordinate Magistrate under R. 1-A of the Election Rules made under the Bengal Local Self-Government Act (3 of 1885), are the same as those contained in S. 21. A 1937 Cal 718 (719) : 42 Cal WN 177 (DB).

When the Election Commission issues a notification fixing certain date of poll under S. 30 (d) of the Representation of the People Act in view of S. 21 of the General Clauses Act this power includes the power to alter the date of poll to a future date. A 1974 SC 1218 (1221, 1222) : 54 ELR 274.

Extension of time for completion of election -Election Commission can alter date of poll by virtue of Section 21. (1971) 46 Eh L. R. 575.

Power to fix a date for municipal election also includes power to postpone it. A 1955 NUC (Cal) 2935 : A 1927 Cal 704 (706) : 81 Cal WN 926 (DB).

Forfeiture Publication.— Power to pass an order of forfeiture under S. 99-A, Criminal P. C. 1898 (Forfeiture of certain objectionable publications) includes a power to rescind the order. The State Government can rescind the order and pass a fresh order. A 1971 Bom. 56 (72) : 1971 Cri LJ 324.

Section 21 embodies a rule of construction, which rule must have reference to the context and subject-matter of the particular statute to which it is being applied. A 1957 SC 676 (685) : 1957 SCJ 811.

That a post-decisional hearing may also be had be the terms of S. 21 of the General Clauses Act may not necessarily help in the interpretation of the provisions of the statute concerned. On the other hand even the general provisions contained in S. 21 of the General Clauses Act may be sufficient

to so inter pert the terms of a given statute as to exclude natural justice. A 1981 SC 818 (850, 851) : 52 Com Cas 210.

The rule of construction enunciated by S. 21, in so far as it refers to the power of rescinding or canceling the original order, cannot be invoked in respect of the provisions of S. 10 (1) of the Industrial Disputes Act, and Government cannot cancel or supersede a reference made thereunder. A 1958 SC 1018 (1024) : 1959 SCJ 533.

Section 21, General Clauses Act, contains only a rule of construction and it is neither possible nor proper to lay down definitely the circumstances in which it is open to the State Government to amend, or not to amend, any clerical or other errors in the original notification issued under S. 10 (1) of the Industrial Disputes Act. The power of amendment given by S. 21, General Clauses Act cannot be so used as to nullify or render ineffective other provisions of the Industrial Disputes Act, 1947. A 1966 Punj 214 (217, 220) ; 67 Pun LR 775 (DB).

A reference under S. 10, Industrial Disputes Act, was followed by a subsequent notification adding to the original reference a dispute between different parties. The notification, it was held, must be struck down. A 1966 Punj 214 (217, 220) : 67 Pun LR 775 (DB).

A reference made under S. 10 (1) of the Industrial Disputes Act can be amended by way of addition or modification, so long as the amendment has not the effect of withdrawing or superseding the reference already made. A second reference having the effect of superseding the first reference is beyond the competence of Government. (1964) 1 Mys LJ 569 (576, 580) (DB).

In a case a reference was made under Section 10 (1), Industrial Disputes Act, to a tribunal constituted under Section 7 of that Act.. Government, by notification, ordered abolition of the tribunal and transferred the reference to another tribunal. The order was held to be illegal and without jurisdiction. Its validity cannot be sustained by deriving help from Section 21, General Clauses Act, 1897. A 1966 Cal 371 (378) : (1967) 1 Lab LJ 492.

Where , in the opinion of the Government it is expedient to refer an industrial dispute for adjudication by the Industrial Tribunal at one place instead of the Industrial Tribunal at another, the Government could do so under Section 10 (1) (c) of the Industrial Disputes Act, read with Section 21 of the General Clauses Act. A 1958 ker 139 (140).

Section 21 cannot be invoked for superseding a reference made under S. 10 (1) (d), Industrial Disputes Act. A 1964 Assam 51 (51, 52) : ILR 91960) 12 Assam 153.

Government can amplify and add to the issues already referred to an Industrial Tribunal. A 1960 Assam 11 (14) (DB).

If in a given case the notification under Section 10, Industrial Disputes Act by mistake or oversight, omits to make

as party one whose presence is necessary for a proper adjudication of the dispute, a subsequent notification can make him a party under Section 10 of the Act read with Section 21 of the General Clauses Act. A 1960 Assam 39 (42) : ILR (1957) 9 Assam 353 (DB).

The Government can always cancel the notification issued under Sections 4 and 6 of the Land Acquisition Act 1894 by virtue of its power under Section 21 of the General Clauses Act and this power can be exercised before the Government directs the Collector to take action under Section 7 of the land Acquisition Act, 1894. A 1963 SC 1593 (1602) : (1966) 2 SCJ 231.

The power under Section 21 cannot, however, be exercised after the land statutory vests in the state Government. After possession is taken under Section 17 (1) of the Land Acquisition Act, 1894, the land becomes vested in the Government and the notification cannot be canceled .A 1970 SC 1576 (1577, 1578) : (1970) 2 SCJ 735.

By virtue of Section 21, the Government can amend, vary or rescind the previous declaration made by it under S. 6 of the land Acquisition Act, 1894 and can issue a fresh declaration under S. 6 thereof. A 1976 Delhi 166 (168).

Section 4 of the Land Acquisition Act, 1894 as amended confers power on the Collector to issue a notification under Section 4. The context and other provisions of the Land Acquisition Act 1894 negative any implied power in the Collector to cancel or withdraw that notification under Section 21, General Clauses Act, 1897. 1967 All LJ 769 (798).

Local authorities.— Where a Municipal Corporation passed a resolution by which it desired to absorb in Corporation employment all such persons who were serving while being on deputation and such resolution received the sanction of the Government, the Government was competent to withdraw such an order before the absorption had taken place. Section 21 was applicable to such a case. 91976) 1 Kant LJ 548 (558).

Panchayats.—After a Panchavat was named by a notification, it was changed by a subsequent corrigendum notification. It was held that the Government which had notified the name of an Anchal Panchayat had power and authority to issue the necessary corrections when, by such a Shane, the nature and character of the Anchal Panchayat was not changed. (1978) 82 Cal WN 276 : A 1978 NOC 129.

The power to make an order under Section 37 (3). Police Act. 1904, must include a power to add to or amend, vary or rescind such an order. But when the power to amend is exercised, the power must be subject to the same contains and to the like sanction as the power to make the original order. A 1956 Bom. 300, (304) : 1956 Cri LJ 598 (DB).

Sanction to prosecute a public servant, accorded by the State Government under the Criminal P. C. 1898 cannot be withdrawn. 1971 WLN 616 (619) (Raj).

Under section 40 of the Stamp Act, 1899, the Collector can impose a penalty in respect of a document insufficiently stamped. If the Collector, after hearing the petitioners, is of the view that the order imposing the penalty was not justified, he can amend his previous order and reduce the amount of the penalty imposed. 1954 All LJ 520 : A 1955 NUC (All) 2715.

Where a detenu was detained under an order made by the Government under Rule 26 of the Defence of India Rules (1939), the Government can cancel that order and make a fresh order under Section 3 (1) (b) of the Restriction and Detention Ordinance 3 of 1944. This is on the principle that under S. 21, the power to make an order includes power to rescind. A 1945 Pat 44 (52) : 46 Cri LJ 460.

A case under the preventive Detention Act, was pending before a Board constituted by a notification of the State Government. Later, another Board was constituted by the Government by a subsequent by notification. The latter Board considered the case pending before the earlier Board. The procedure was held to be valid. A 1969 Assam 14 (19) : 1969 Cri LJ 291 (DB).

The competent authority can cancel or modify an earlier order, but the power must inevitably be excised within the limits prescribed by the provisions conferring the power. A 1959 SC 609 (617) : 1959 Cri LJ 782.

The power of State Government and Central Government under S. 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. to revoke orders of detention is in addition to the power under S. 21 of the General Clauses act to revoke their own orders. A 1981 SC 1641 (1943) : 1981 Cri LJ 1262.

Punishment Remission of.— On the principle that the word "order" used in Section 21 is confined to a legislative order, it has been held that an order for remission of punishment under Criminal P. C. 1898 cannot be amended by the Government. A 1938 Nag 513 (515, 516) : 1938 Nag LJ 423 (FB).

Removal from office.— In a case relating to the removal of the Chairman of a statutory Board the statute in question made on provision specially authorizing his removal. It was held that the principles of common law applied to by virtue of the provisions of Article of the Constitution. As there was no provision of the statute barring the removal of the Chairman of the Board by a vote of no-confidence, the members who had the power to elect the Chairman had also the power to remove the Chairman by a majority of votes. This principle is also enshrined in the provisions of Section 21 of the General Clauses act. It is

an accepted principle of the common law relating to the removal of the holder of an office that the body which has the authority to elect its chairmen has the inherent and implied power to remove the Chairman. A 1980 Punj 306 (310, 311) (Db).

Requisitioning of property.— The Government has no power to rescind an order of requisitioning of premises made under the Premises Re-question Control (Temporary Provisions) Act. ILR (1966) 2 Cal 50 (66).

Though Rule 75-A, Defence of India Rules, 1939 does not expressly provide for the release of property from requisitioning there is no prohibition also in that rule to that effect. But having regard to the provisions of S. 21, General Clauses Act, the authority which has power to requisition property may be presumed to have, by implication, the power to cancel the requisitioning and release the property. A 1952 All 959 (961) : 1952 All LJ 489 (DB).

Service.— The authority which can make a rule, namely, Rule of the Civil Service Regulations dealing with compulsory retirement, has also the power to alter or modify it from time to time. It follows, therefore, that every Government servant is bound by any subsequent alterations, amendments or additions made in the rules in existence when he was recruited to the service. A 1954 All 343 (347) : 1954 AllLJ 40 DB).

Trust.— As no immutable right was granted to the members of the family of the founder to nominate or elect their successors or representatives and as there was a rule making power under the memorandum of the Society, the amendment taking away the right to elect or nominate the successor could not be said to be mala fide. ILR (1970) 2 Cal 370 (285).

Where the trust had framed a development scheme under Ss. 24 and 25 of the Punjab Town Improvement Act it is competent to abandon the scheme as there is nothing in law which prevents the trust from doing so but it cannot revive the abandoned scheme, neither in law nor in equity. A 1981 Punj 146 (149, 150) : 1981 Punj LJ 150.

The University to act as a substitute for various statutory authorities of the University in academic matters. However, he has power to adopt regulations of the University or A 1964 Raj 161 (167) : 1964 Raj LW 328 (FB).

Scope of.— The power to amend , which is included in the power to make the order, is exercisable in the lied manner and subject to the liked sanction and conditions (if any) as govern the making of the original order; this is stated by the section itself.

It is to be remembered that section 21 of the General Clauses Act embodies a rule of construction, and that rule must

have reference to the context and subject matter of the particular statute to which it is being applied.[Kamla Prasad Khetan v. Union of India, AIR 1957 SC 679 : (1957 -58) 12 FJR 284 : 1957 SCA 998 : 1957 SCJ 811 : (1958) 2 LLJ 461.].

The Collector having the power to grant the registration certificate under the Citizenship Act had, by virtue of section 21 of the General Clauses Act, and apart from section 10(2) of the Citizenship Act, the power to cancel it.

It is not possible to agree that section 21 covered on the Collector any such power. The orders mentioned in that section are not orders of the kind contemplated in section 5 of the Citizenship Act. [Ghaural Hassan and others v. State of hajasthan and another, (1962) 1 SCJ 668 : (1962) 1 SCR 772.]

[1]22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.— *Where, by any Act of Parliament or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.*

1. *Cf. s. 37 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).*

Scope and applications

There is a distinction between the "passing" of an Act and its "commencement". Various orders and rules may be needed to bring a particular law into operation and may require to be made before the Act as a whole comes into force in order tat the Act can be successfully implemented. Such orders and rules, (as the section provides) can be issued before the entire Act comes into force and take effect from the commencement of the Act. A 1953 Raj 37 (40) : 1953 RajLW 21 (DB).

Under Section 22, power is expressly conferred on the rule-making authority to make rule even before the date of the commencement of the Act but the rules so made shall not take effect till the actual enforcement of the Act. AIR 1969 SC 880 (882, 883) : (1969) 2 SCJ 270.

The intent and purpose of the section is the facilitate such orders and rules etc., under an Act, "in anticipation of its coming into force". A 1953 SC 49 (50) : 1953 Cri LJ 501.

The effect of amendment is to enable any power to issue notifications conferred by an Act (to which Section 22 applies) to be exercised prior to the Act coming into force, although the notification will not of course have effect until that event occurs. AIR. 1957 All 475. (FB).

Order of transfer of case pending before Industrial tribunal, prior to coming into operation of S. 33-B, Industrial Disputes Act 1947-Order not saved by S. 22 of the General Clauses Act-AIR 1953 SC 505.

For the application of this section, there must be an interval between the passing of an Act and its commencement. It will not apply where the Act comes into force immediately. 1956 Madh BLJ 883.

Notification under Act when Act had not commenced-Validity.— There is a distinction between the commencement of the Act and the passing of it. Various Orders which are required to bring a particular law into operation, may be made in view of S. 22 after the passing of the Act though the commencement of the Act may be at a later date such orders take effect from the commencement of the Act. AIR 1953 Raj 37 (40) (Pt B) (Pt 10) (DB).

Rules and Notifications.— Nothing on record to show that the rules and notification were not placed before Parliament-Court can presume that official acts were performed in regular course -After publication in Gazette they must be regarded as incorporated in the Act itself. AIR 1961 Cal 217.

Purpose of section.— This section is a filling in of the gap between the passing and the coming into operation of an enactment. An Act may be passed any day but its commencement may be postponed and various orders or rules may be needed to bring it into operation. Kishore Singh v. Revenue Board, Rajasthan, AIR 1953 Raj 37 at P. 40 : 1953 Raj LW 21 (DB). Section 22 expressly confers on a rule-making authority, where there is an interregnum between the date of the commencement of the Act and the date of its enactment, the authority to make rules even during that interregnum. H. K. Swamevar Nasha v. State of Mysore, AIR 1963 Mys 49 at p 61.

When the amendment as well as the Rules have been given retrospective effect, an order made without notifying the law as in force, would all the more be defective. S.A. L. Narauan Lal. V. Ishwar Lal, AIR 1965 SC 1818 ((1924) : (1965) 2 SCJ 359, M. K. Venkatachalam v. Bombay Dyeing & Mfg. Co., AIR 1858 SC 875; (1959) 36 ITR 538.

Rules not to go beyond statue.— Rules and Regulations made by a subordinate agency under the statutory power delegated by the Legislature have the same force as law made by the Legislature, but it is established law that a rule can never contrivance a provision of the Act and it can neither curtail nor ad anything to the statutory power under the Act. Gondharb Sain v. Additional District Development Officer, Sriganganagar, AIR 1980 Raj 229 at p 232 ; Shanta Prasad v. Collector, Nainital, 1978 All LJ 126 at p 128 (DB); Baleswar Prasad Srivastawa v. Smt. Sita Devi, AIR 1976 All 328 atp pp 336.

Interpretation is the meaning of a fact. As applied in the law, interpretation is ascertainment always of a complex fact such as the meaning of a custom, of a judicial decision of a statute, of a regulation, of a contract or of a will. The method by which interpretation is reached is construction. Construction therefore, is the means of interpretation and interpretation is the end. These definitions are not settled in usage. Thus, it may be found that what here is called "interpretation" is also called "construction and vice versa". An Introduction to the Science of Law-Kocouredk, S. 41, P. 191.

If is not correct to say that S. 22 is not a section dealing with interpretation. It deals not merely with construction but also with interpretation. A 1969 SC 880 (883) : (1969) 2 SCJ 270.

The words "with respect to" as used in S. 22 prescribe the limit and the scope of the power given by the Section. Orders can only be issued with respect to the time when or the manner in which any thing is to be done under the Act. When amendment to an Act is not having retrospective operation, S. 22 cannot validate an order under the Act before it came into force. A 1953 SC 49 (50) : 1953 Cri LJ 501.

When the amendment and the rules framed under the Act are specifically given retrospective operation, the order of the authority without noticing the law deemed to be in force must be regarded as defective. A 1965 SC 1818 (1824) : (1965) 2 SCJ 359 (1959) 36 ITR 538 (Bom).

Section 22 confers validity on rules, bye-laws and orders made before the enactment comes into force, provided they are made after the passing of the Act or are preparatory to the Act coming into force. 1957 Cri LJ 251 (254).

The fact that the rules require to be placed before the Legislature for approval does not rule out the applicability of the Section. A 1957 Mad 301 (306) : (1957) 1 Mad MLJ 281 (DB).

Notwithstanding the Subordinate Legislation being laid before the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule-making power provided in the statute. A 1976 SC 1031 (1046).

A statuary rule cannot go beyond the statute and enlarge its scope. A subordinate legislation will be invalid, if it is in excess of the power conferred by the enabling Act. A 1977 Madh Pra 243 (247) : 1977 Lab IC 1266 (FB). Rules and Regulations made by a subordinate agency under the statutory power delegated by the legislature have the same force as laws made by the legislature) ** A 1980 Raj 229 (232). A rule can never contravene a provision of the Act and it can neither curtail nor add anything to the statutory power under the Act. ** 1978 All LJ 126 (128) (DB). Rule cannot override statutory provisions. ** A 1976 All 328 (335, 336). (Held nor longer good law on another point in view of A. 1977 SC 902 and A 1977 SC 1559.

In England the law is contained in S. 13 of the Interpretation Act. 1978.

Where a particular part of an Act comes into force at once and authorizes the making of rules, the rules can come into force, though the other parts of the Act do not yet come into force. A 1919 Mad 24 (25) : 35 Mad LJ 736.

For the application of S. 22 there must be an interval between the passing of an Act and is commencement. The section will not apply where the Act comes into force immediately. 1957 Cri LJ 251 (254) : 1956 Mad B LJ 883 (DB).

Recourse can be had to S. 22 General clauses Act, 1 of 1904 (corresponding to S. 22 of this act) only if a notification is issued under an Act or Ordinance which has been published, but has not then come into force. A 1957 All 475 (478) : 1957 All LJ 654 (FB).

Under S. 23, General Clauses Act. 1 of 1899 (corresponding to S. 22), the power of appointment could be exercised after the passing of the Act. A 1957 cal 534 (546) : 61 Cal WN 630.

Rule made under an Act before it come into force are vale, if they are to come into force on the date of commencement of the Act. Section 22 expressly confers on a rule-making authority, where there is an interregnum between the enactment of an Act and its commencement, power to make rules even during such interregnum. A 1963 Mys 49 (61) : 1963 Mys LJ (Supp) 31 (DB).

An order of transfer of case pending before the Industrial Tribunal, prior to the coming into operation of S. 33-B, Industrial Disputes Act. 1947, does not come under S. 22, General Clauses Act. A 1961 Cal 227 (228) : 65 Cal WN 478.

An order extending the detention of the detenu till 31-12-1952 passed on 22-9-1952 in exercise of the powers conferred by the Preventive Detention (Section Amendment) Act, 1952 which was passed on 22-8-1952 but came into force on 30-9-1952, is illegal, and cannot be justified by the provisions of S. 22. The Act having no retrospective effect, S. 22. The Act having no retrospective effect, S. 22 cannot validate an order made before the Act came into force. A 1953 SC 49 (50) : 1953 Cri LJ 501.

The effect of the amendment is to enable any power to issue notifications conferred by an Act to be exercised prior to the Act coming into force, although the notification will not, of course, have effect until that event occurs. A 1957 All 475 (482) : 1957 All LJ 654 (FB).

Ambit and scope of.— Section 22 of the General Clauses Act expressly confers on the rule making authority, where there is an interregnum between the date of the commencement of the Act and the date of its enforcement , the power to make rules even during such interregnum. But the section provides that the rule so made or issued shall not take effect till the actual encroachment of the Act. [State of Rajasthan v. Mewar Sugar Mills, Ltd., Bhopalsagar, (1969) 2 SCJ 270 : (1969) 24 STC 174 : Air 1969 SC 880 : (1969) 1 Um NP 524 .]

Scope of.— The section validates rules, by laws and orders made before the enactment comes into force, provides they are made after passing of the Act and as preparatory to the Act coming into force . it does not authorise or empower the state Government to pass substantive order against any person in exercise of the authority conferred by any particular section of the new Act. The words of the section " with respect to " prescribe the limit and the scope of the power given by the section . [Venkateswaraloo v. Central jail. Hyderabad state, 1953 SCR 905 : 1953 SCJ 1 : 1953 Cr LJ 501 : (1953) 1 MLJ 185 : 1953 SCA 268 : AIR 1953 SC 49]

And Rajasthan sales Tax Act, Section 29- Section 29 deals not merely with construction but with interpretation.— It is not possible to accept the argument that section 22 of the General Clauses Act is not a section dealing with interpretation or that it is not attracted by the language of section 29 of the Act. It is also not possible to agree with the contention that section 22 of the General Clauses Act may be a section dealing with a rule of construction but it was not a section dealing with a rule of interpretation as contemplated by section 29 of the Act. The word "interpretation " in its context of section 29 of the Act also includes within its scope " Construction". [State of Rajasthan v. Mewar sugar Mills. Ltd. , Bhopalsagar, (1969) 2 SCJ 270 : (1969) 24 STC 174 : AIR 1969 SC 880 : (1969) 1 Um NP 524.]

Interpretation is the meaning of a fact. As applied in the law, interpretation is ascertainment always of a complex fact such as the meaning of a custom, of a judicial decision of a statute, of a regulation, of a contract or of a will. The method by which interpretation is reached is construction. Construction therefore, is the means of interpretation and interpretation is the end. These definitions are not settled in usage. Thus, it may be found that what here is called "interpretation" is also called "construction and vice versa". An Introduction to the Science of Law-Kocouredk, S: 41, P. 191.

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The words "with respect to" as used in S. 22 prescribe the limit and the scope of the power given by the Section. Orders can only be issued with respect to the time when or the manner in which any thing is to be done under the Act. When amendment to an Act is not having retrospective operation, of S. 22 cannot validate an order under the Act before it came into force. A 1953 SC 49 (50) : 1953 Cri LJ 501.

When the amendment and the rules framed under the Act are specifically given retrospective operation, the order of the

authority without noticing the law deemed to be in force must be regarded as defective. A 1965 SC 1818 (1824) : (1965) 2 SCJ 359 (1959) 36 ITR 538 (Bom).

Section 22 confers validity on rules, bye-laws and orders made before the enactment comes into force, provided they are made after the passing of the Act or are preparatory to the Act coming into force. 1957 Cri LJ 251 (254).

The fact that the rules require to be placed before the Legislature for approval does not rule out the applicability of the Section. A 1957 Mad 301 (306) : (1957) 1 Mad MLJ 281 (DB).

Notwithstanding the Subordinate Legislation being laid before the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule-making power provided in the statute. A 1976 SC 1031 (1046).

A statuary rule cannot go beyond the statute and enlarge its scope. A subordinate legislation will be invalid, if it is in excess of the power conferred by the enabling Act. A 1977 Madh Pra 243 (247) : 1977 Lab IC 1266 (FB). Rules and Regulations made by a subordinate agency under the statutory power delegated by the legislature have the same force as laws made by the legislature) ** A 1980 Raj 229 (232). A rule can never contravene a provision of the Act and it can neither curtail nor add anything to the statutory power under the Act. ** 1978 All LJ 126 (128) (DB). Rules cannot override statutory provisions. ** A 1976 All 328 (335, 336). (Held nor longer good law on another point in view of A. 1977 SC 902 and A 1977 SC 1559.

Where a particular part of an Act comes into force at once and authorizes the making of rules, the rules can come into force, though the other parts of the Act do not yet come into force. A 1919 Mad 24 (25) : 35 Mad LJ 736.

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Recourse can be had to S. 22, only if a notification is issued under an Act or Ordinance which has been published, but has not then come into force. A 1957 All 475 (478) : 1957 All LJ 654 (FB).

Rule made under an Act before it come into force are valid, if they are to come into force on the date of commencement of the Act. Section 22 expressly confers on a rule-making

authority, where there is an interregnum between the enactment of an Act and its commencement, power to make rules even during such interregnum. A 1963 Mys 49 (61) : 1963 Mys LJ (Supp) 31 (DB).

An order of transfer of case pending before the Industrial Tribunal, prior to the coming into operation of S. 33-B, Industrial Disputes Act. 1947, does not come under S. 22, General Clauses Act. A 1961 Cal 227 (228): 65 Cal WN 478.

An order extending the detention of the detenu till 31-12-1952 passed on 22-9-1952 in exercise of the powers conferred by the Preventive Detention which was passed on 22-8-1952 but came into force on 30-9-1952, is illegal, and cannot be justified by the provisions of S. 22. The Act having no retrospective effect S. 22 cannot validate an order made before the Act came into force. A 1953 SC 49 (50) : 1953 Cri LJ 501.

Ambit and scope of.— Section 22 of the General Clauses Act expressly confers on the rule making authority, where there is an interregnum between the date of the commencement of the Act and the date of its enforcement , the power to make rules even during such interregnum. But the section provides that the rules so made or issued shall not take effect till the actual encroachment of the Act. [State of Rajasthan v. Mewar Sugar Mills, Ltd., Bhopalsagar, (1969) 2 SCJ 270 : (1969) 24 STC 174 : Air 1969 SC 880 : (1969) 1 Um NP 524 .]

The section validates rules, by laws and orders made before the enactment comes into force, provided they are made after passing of the Act and as preparatory to the Act coming into force . it does not authorise or empower the state Government to pass substantive orders against any person in exercise of the authority conferred by any particular section of the new Act. The words of the section " with respect to " prescribe the limit and the scope of the power given by the section . [Venkateswaraloo v. Central jail. Hyderabad state, 1953 SCR 905 : 1953 SCJ 1 : 1953 Cr LJ 501 : (1953) 1 MLJ 185 : 1953 SCA 268 : AIR 1953 SC 49]

It is not possible to accept the argument that section 22 of the General Clauses Act is not a section dealing with interpretation or that it is not attracted by the language of section 29 of the Act. It is also not possible to agree with the contention that section 22 of the General Clauses Act may be a section dealing with a rule of construction but it was not a section dealing with a rule of interpretation as contemplated by section 29 of the Act. The word "interpretation " includes within its scope " Construction". [State of Rajasthan v. Mewar sugar Mills, Ltd. , Bhopalsagar, (1969) 2 SCJ 270 : (1969) 24 STC 174 : AIR 1969 SC 880 : (1969) 1 Um NP 524.]

23. Provisions applicable to making of rules or bye-laws after previous publication.— *Where, by any Act of Parliament 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 :-*

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) 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 [1][Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [2][official Gazette] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

1. The word "Government" was substituted for "Central Government or the Provincial Government" by P.O. No. 147 of 1972, art. 11.
2. Subs. by A.O. 1937, for "Gazette".

Scope and applications

Motor Vehicles Act (1989), Section 76, 133-Compliance-No averment in petition that the Proviso to S. 23, of the General Clauses Act was not complied with-Petitioner cannot urge that amendment of rules under the Act is not according to law. AIR 1959 J and K 141 (DB).

Statutory orders-Come into operation when they are made know to public and not when they are made. AIR 1955 NUC (Punj) 2517.

Previous publication-Meaning-Steps it involve.— After all the requirements are fulfilled the rules or the bye-laws as finalised, must be published in official Gazette. Then the presumption arises under S. 23 that the rules or by-laws have been duly made. AIR 1962 Raj 24 (DB).

Presumption under-Scope and effect-"Duly made"-Meaning-High Court can examine and pronounce upon validity of rules under the Constitution.— The phrase "duly made" in S. 23 (5) properly means that the publication of the rules, in the official gazette, which are purported to have been made in exercise of the power to make rules after previous publication, is conclusive proof that the rules have been duly republished as required by law, and that once the factum of pre-publication in official gazette is brought to the notice of the Court, such pre-publication can no longer be questioned. The phrase has not been used in comprehensive sense to mean and imply that the factum of publication in the official gazette invests the rules with an absolutely unassailable character as to their validity also.

Notwithstanding that the legislature may invest the final publication of certain statutory rules in the official gazette with the quality of conclusiveness of proof that the rules have been duly made, the jurisdiction of the High Court as a Court of judicial review and as possessed of extensive writ jurisdiction under the Constitution cannot be taken away. ILR (1960) 10 Faj 1332.

It would be open to the Legislature to make a separate group of Rules which are to be made subject to previous publication and to lay down a special procedure with respect tothis group of such rules. It is true that a further rule of conclusrveness is then enacted in case of all such rules consequent upon their publication in the official gazette. The object cannot be said to be entirely unreasonable having regard to the circumstance that the Rules, may have been made several decades before they may actually come to be challenged. The various steps under S. 23 (1) to (4) would be found to contain sufficient guidance for the authority concerned in the matter of the final act of publishing the Rules, and it is then that the presumption of conclusiveness is intended to arise. Further, where the publication of the rules is made without the requisite care, or may be with mala fides in a particular case, what should thus fall to be struck down is not the provision in question but the misapplication thereof in a particular case. ILR (1960) 10 Raj 1332.

Draft amendment of Rule published-Incidental Changes in amendment as finally made.— No objection can be taken. AIR 1962 Raj 19 (DB).

Sub-section (5) of S. 23 of the General Clauses Act raises a conclusive presumption that after the publication of the rule in the Official Gazette, it is to be inferred that the procedure for making such rule had been followed. AIR 1962 Raj 19 (22) (DB).

The object underlying the section in twofold : (i) to spell out the procedure to be followed when a particular Central Act prescribes the formality of pervious publication for the meaning of rules under that Act and (ii) to lay down certain consequences which should, in law, follow if the formalities laid down as above are complied with.

The conditions subject to which the section become operative and the sphere of challenge in regard to which it confers protection musket, of course, be ascertained from the precise text of the section.

A rule not complying with the requirements set out in the section would be void. A 1972 SC 892 (892) : (1972 2 SCJ 775.

What sub-s. (1) of S. 23 requires is that publication of the draft rules should be made by the authority which had, at the date of such publication, the power to make rules. It does to further require that the pervious publication must be made by the authority which finally made the rules. It does not further require that the previous publication must be made by the authority which finally made there rules. A 1968 Guj 80 (83, 84) : 1968 Cr LJ 485 (DB).

The expression "after previous publication" in Section 23 (5) goes with the expression purporting to have been made". and not with the expression "power to make rules". The rule-making authority must make rules after previous publication and if it purports to do so, then it shall be conclusive proof that the rule or bye-law has been duly made. 1968 Cri LJ 253 (254) (Guj).

Since Section 23 prescribes the lengthy procedure of previous publication, l sub-section (5) dispenses with proof that such procedure has been followed-but only in cases where the rules purport to have been made "after previous publication". 1968 RI LJ 253 (254) (Guj).

Where the amendment of Rule as finally made (when compared with the previously published draft) showed a departure from the draft, but the change was ancillary to the draft, it was held that the change could not be regarded as absolutely foreign to it and n objection could therefore be taken to it. It was further held that since the amended Rule irregularities in publishing the draft amendment could not be questioned by reason of the provisions of Section 23 (5) General Clauses Act. A 1962 Raj 19 (22) : 1960 Raj LW 703.

In a case a person manufactured corn flakes after the final rule prescribing maximum moisture content was published and came into force. It was held that he could not complain that there was no such indication in the draft rule. 1971 Cri LJ 1905 (1907) : 1971 Rajdhani LR 17 (DB) (Delhi).

The Central Committee for Food Standards was consulted before making the draft rules relating to Prevention of Food Adulteration Rules, 1955. It was held that it was not necessary to consult it again before publication of the final rules. 1971 Cri LJ 1605 (1909) : 1971 Rajdhani LR 17 (DB) (Delhi).

Irregularities in publication cannot, of course, be questioned. To that extent, the "conclusive proof" provisions applies. But though the final publication of certain statutory rules in the official Gazette may be invested with the quality of "conclusive proof" that he rules have been "duly made" the jurisdiction of the High Court, as a Court of judicial review, and as possessed of extensive writ jurisdiction under Article of the Constitution under taken away. A 1962 Raj 24 (28, 29), 32, 33, 34) : ILR (1960) 10 Raj 1332 (DB).

Where there was no averment in the petition that the amendment of the rules (appointing the Transport Controller instead of the Inspector-General of Police as the Registering Authority) was made without complying with the provisions contained in Section 133 of the Motor Vehicles Act, 1939 read with Section 23 of the General Clauses Act, it was not open to the petitioners to lure that the amendment was not according to law. A 1959 J & K 141 (142, 143) (DB).

Following statutory instruments are not valuing statutory instruments are not validated by the provisions as to "conclusive proof" as contained in certain State Acts :-

A statutory Instrument purporting to dealt with a matter not authorized by the parent Act. A 1963 SC 976 (979)k : 1962 SCD 1016.

A statutory instrument imposing a tax not authorized by the parent Act. A 1966 SC 693 (697 to 699) : 1966 All LJ 205.

A statutory instrument issued without complying with the formalities prescribed by the parent Act A 1966 SC 693 (697 to 699) : 1966 All LJ 205.

A statutory instrument if the manner of publication required by the parent Act is not complied with. A 1965 SC 895 (900 to 905) : (1965) 2 SCJ 431.

Section 23 has no application to a case where the publication to a case where the publication of a Draft Regulation has been dispensed with by proper authority and the Regulations are brought into force at once. Baldev Band v. Union of India, 1983 Cr LJ 787 (Delhi).

The principle of presumption that official acts are performed in regular course, a Rule once it has been published in the Gazette, must be regarded as incorporated in the Act itself, particularly, when there is nothing to contradict the fact that Rules and notifications were placed before Parliament.

A rule having failed to comply with the requirements set out in this section is liable to be held as void. Municipal Corporation, Bhopal Vv. Misbahul Hassan, AIR 1972 SC 892 at p 896 : (1972) 2 SCJ 775.

The rules or the bye-laws, as the case may be, as finalized, must be published in the official Gazette; and a certain presumption then arises under section 23 (5) that the rules or bye-laws have been duly made. Automobile Transport, Rajasthan (Pvt) Ltd, v. State of Rajasthan, AIR 1962 Raj 24 : ILR (1960) 10 Raj 1332 ; Muna Lal Tewari v. H. R. Scott, AIR 1955 Cal 451 : 59 CWN 260 Brojendra Kumar Shah v. Unin of India, AIR 1961 Cal 217. The word "publication" means that the rule or bye-law must actually be released from the press. Mere printing of the rule or bye-law or notice in the official Gazette which was not out of the press is not publication. Jagjit Singh v. State of Rajasthan, 1967 Raj LW 116 : LR (1966) 16 Raj 1196.

An executive direction or instruction need not at all be published. A. Murlidhar v. State of A. P., AIR 1959 AP 437. Non-publication of Rules in newspapers does not invalidate the Rules. Rajendra Singh V. State, AIR 1979 AP 1.

Since section 23 has prescribed a cumbersome procedure of previous publication, sub-section (5) thereof has dispensed with proof that such procedure has been complied with. C. J. Shah v. Chhabalal Ganpatlat, 1968 Cr LJ 253 (Guj HC). The expression "after previous publication" goes with the expression "purportion to have been made" and not with "power to make rules".

The authority having power to make rules or bye-law mentioned in section 23 (1) can only exercise the power on the date when the rules and bye-laws are made. Shan, C.J.v. Chhabala, 1968 Cr LJ 253 (Guj).

Section 23 has to be read along with the provisions of each such enactment which does not provide the mode of publication of an order. Ramdayal v. State, 1965 madh LJ (Notes) 25.

It is true that once the rules and notifications are published in the official Gazette these must be regarded as being incorporated in the Act itself. But if there is a conflict between one of these instruments and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with. The Court can go into the question of the rules being ultra vires on the ground that the impugned rule or notification was not "under the Act". Brojendra Kumar Saha v. Union of India, AIR 1961 Cal 217.

The doctrine of conclusive proof available for validity of statutes after their due publication in gazette cannot, however, validate a statutory instrument if the matter of publication required by the parent Act has not been complied with. Raza Buland Sugar Co. V. Municipla Board, Rampur, (1965) 2 SCJ 431 ; Maunath Bhanjan Municipality v. Swadeshi Cotton Mils Co., Ltd., AIR 19877 SC 1055 at p 1958 : 1977 UJ (1C) 180, Swadeshi Cotton Mills Co. Ltd. V. Municipal Board, Azamgarh, AIR 1976 All 484 ; Swadeshi Vanaspati v. Municipal commissioner, Shegaon, AIR 1962 SC 420 At pp 421 , 422 ; (1936) 2 SCJ 613.

Section 23 is not directly concerned with the commencement of rules. A statutory order, according to certain decisions, comes into operation not on the date on which it is made, but on the date on which it becomes known to the public. (1954) 56 Punj LR 437 : A 1955 NUC (Punj) 2517.

In a case relating to Section 88 proviso, Central Excises and Salt Act, 1944 and Rules and Notifications thereunder, there was nothing on record to show that the rules and notifications were not placed before Parliament. It was held that the Court could presume that official acts were performed in regular course. After publication in the Gazette, they must be regarded as incorporated in the Act itself. A 1961 Cal 217 (221, 223) : 65 Cal WN 670.

In a case under Section 32 of the Motor Vehicles Act, 1939, a notice appointing the Home Secretary as the authority to hear, on 15-12-1961, objection under Section 43 was

published in the Raasthan Gazette on 4-12-1961. The Gazette was not despatched to the subscribers up to 15-12-1961 though its copy was sent to the Sectorial on 12-12-1961. It was held that the printing of the noticing the official Gazette could not be deemed to be a good notice to the public at large. Under Section 133 of the Motor Vehicles Act, 1939, a draft of the Rajasthan State Road Transport Services (Development) Rules, 1959 was published. Sufficient time for filling objections was not, however, given. The Rules were held to be invalid on that score. A 1968 Raj 24 (27) : 1967 Raj LW 116 (DB).

No presumption of conclusiveness under Section 23 (5), General Clauses Act, 1897 that the rules were duly made, that is made in accordance with the procedure prescribed in the matter of previous publication, can arise in a case where sufficient time for filing objection was not furnished. A 1962 Raj 24 (28, 29, 32, 33, 34) : ILR (1960) 10 Raj 1332.

In the absence of the specific law to the contrary, a mere evolution of Council of Ministers without further publication or promulgation will not be sufficient to make a law operative. A 1951 SC 467 (468, 469) : 1952 Cri LJ 54.

Rule 52 of the Regulations framed under section 267 (3), Government of India Act, 1935 exempting the Government from consulting the Public Service Commission with respect to matters specified in Section 266 (3) (c) thereof, is not consistent with the constitution which requires by the proviso to Article 320 (3) and (5) that it would not be sufficient for the relevant authorities to frame regulations, but they must also submit the regulations to the judgment of the Legislature. A 1955 Casl 451 (454, 455): 59 Cal WN 260 (DB).

The object underlying the section is twofold : (i) to spell out the procedure to be followed when a particular Central Act prescribes the formality of pervious publication for the making of rules under that Act and (ii) to lay down certain consequences which should, in law, follow if the formalities laid down as above are complied with.

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A rule not complying with the requirements set out in the section would be void. A 1972 SC 892 (892) : (1972 2 SCJ 775.

Previous publication.— What sub-s. (1) of S. 23 requires is that publication of the draft rules should be made by the authority which had, at the date of such publication, the power to make rules. It does to further require that the pervious publication must be made by the authority which finally made the rules. A 1968 Guj 80 (83, 84) : 1968 Cr LJ 485 (DB).

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Consultation after draft rules.— The Central Committee for Food Standards was consulted before making the draft rules relating to Prevention of Food Adulteration Rules, 1955. It was held that it was not necessary to consult it again before publication of the final rules. 1971 Cri LJ 1605 (1909) : 1971 Rajdhani LR 17 (DB) (Delhi).

Conclusive proof.— Irregularities in publication cannot, of course, be questioned. To that extent, the "conclusive proof" provision applies. But though the final publication of certain statutory rules in the official Gazette may be invested with the quality of "conclusive proof" that the rules have been "duly made" the jurisdiction of the High Court, as a Court of judicial review, and as possessed of extensive writ jurisdiction under Article of the Constitution can not be taken away. A 1962 Raj 24 (28, 29), 32, 33, 34) : ILR (1960) 10 Raj 1332 (DB).

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A statutory instrument issued without complying with the formalities prescribed by the parent Act A 1966 SC 693 (697 to 699) : 1966 All LJ 205.

Commencement of rules and orders.— Section 23 is not directly concerned with the commencement of rules. A statutory order, according to certain decisions, comes into operation not on the date on which it is made, but on the date on which it becomes known to the public. (1954) 56 Punj LR 437 : A 1955 NUC (Punj) 2517.

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In the absence of the specific law to the contrary, a mere resolution of Council of Ministers without further publication or promulgation will not be sufficient to make a law operative. A 1951 SC 467 (468, 469) : 1952 Cri LJ 54.

Rule 52 of the Regulations framed under section 267 (3), Government of India Act, 1935 exempting the Government from consulting the Public Service Commission with respect to matters specified in Section 266 (3) (c) thereof, is not consistent with the constitution which requires by the proviso to Article that it would not be sufficient for the relevant authorities to frame regulations, but they must also submit the regulations to the judgment of the Legislature. A 1955 Cas1 451 (454, 455): 59 Cal WN 260 (DB).

24. Continuation of orders, etc., issued under enactments repealed and re-enacted.— *Where any* [1][*Act of Parliament*] *or Regulation is, after the commencement of this act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly, provided, any* [2][*appointment, notification*], *order, scheme, rules, form or bye-law made or issued under the repealed act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted* 3*****.

1. Subs. by P.O. No. 147 of 1972, Art. 7 for "Central Act".
2. Ins. by the Amending Act, 1903, s. 3 and Sch. II.
3. The words, commas, letters and figures "and when any central act or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section" were omitted by P.O. No. 147 of 1972, art. 12.

Scope and applications

The subject-matter of S. 24 is the effect of repel and re-enactment of an Act on statutory instruments issued under the repealed Act. The main object the section is the preserve the continuity of such instruments, unless a different intention appears.

The principle under S. 24 operates subject the condition that the statutory instrument issued under the repealed Act could have been issued under the re-enacted Act. Or, to put it in different words, continuity of the statutory instrument is preserved if harmony between the statutory instrument and the new law is not affected thereby. This condition necessarily involves an examination of the relative scope of the two Acts as regards the statutory instruments authorized thereby.

Section 24 enacts a rule different from the common law. It is settled law that a bye-law made under a statute which is repealed is abrogated, unless it preserved by the repealing statute by a saving clauses or otherwise. A 1958 Madhk Pra 162 164) : 1958 Cri LJ 767 : 1958 MPLJ 225 (DB).

Principle of the section and scheme of discussion.— The subject-matter of S. 24 is the effect of repel and re-enactment of an Act on statutory instruments issued under the repealed Act. The main object of the section is the preserve the continuity of such instruments, unless a different intention appears.

The principle under S. 24 operates subject the condition that the statutory instrument issued under the repealed Act could have been issued under the re-enacted Act. Or, to put it in different words, continuity of the statutory instrument is preserved if harmony between the statutory instrument and the new law is not affected thereby. This condition necessarily involves an examination of the relative scope of the two Acts as regards the statutory instruments authorized thereby.

Effect of repeal on statutory instruments position at common law.— Section 24 enacts a rule different from the common law. It is settled law that a bye-law made under a statute which is repealed is abrogated, unless it is preserved by the repealing statute by a saving clauses or otherwise. A 1958 Madhk Pra 162 (164) : 1958 Cri LJ 767 : 1958 MPLJ 225 (DB).

According to the common law rule, subordinate legislation made under a statute (except as to transactions past and closed) ceases to have effect after its repeal. A 1965 SC 932 (938) : (1965 (2) Cri LJ 24.

Section 24 applies not only to express repeal and re-enactment, but also to repeal by implication by reason of repugnance or conflict. further, the section applies even where the subordinate legislation made under the repealed Act is to have effect "as if enacted in this Act". A 1961 SC 838 (846) : 1961 (2) Cri LJ 1.

Section 24 is not confined to express repeals. The repeal may be by express words or by necessary implication. A 1968 Manipur 74 (79, 80).

Where the later act has, in substance and in effect repealed the earlier Act, Section 24 will be attracted. A 1952 Trav-Co 371 (374) : (1952) 2 Lab LJ 9.

Successive repeals.— By its literal terms, the section is aimed at one repeal, and does not take in successive repeals. Where Act X is repealed and re-enacted by Act Y and Act Y in its turn, is repealed and re-enacted by Act Z, the section may not, strictly speaking, apply. However, there is no doubt that Courts would for reasons of convenience, apply the same principle and attribute to the Legislature an intention to continue the statutory instruments issued under A, even for the purposes of Act .The English provision on the subject i. e., Section 17 (2) (b). Interpretation Act, 1978 (c. 30) is much more comprehensive.

Repeal with modification.— Section 24 is wide enough to cover re-enactment with modification. Where a reading of the old and new Acts shows that they deal with the same subject-matter, except that the new Act has made certain additional provisions the new Act is substantially the same as the old one and the word "modification" in the section is comprehensive enough to include the additions made in the new Act. A 1958 Madh pra 162 (164) : 1958 criLJ 767 : 1958 MPLJ 225 (DB).

Where an Act merely repeals a former Act of limited operation and re-enacts its provisions in an amended form, an intention to extend the operation of those provisions to classes of persons not previously subject to them is not to be presumed ; the existence of such an intention must be determined on a fair construction of the whole Act, considered with reference to the surrounding circumstances. (1872) 17 ER 559 (562) : 42 LJPC 18.

The Foreign Exchange Regulation Act, was amended. A notification was issued before the amendment, empowering certain officers to lodge complaints under the Act. No notification was issued under the amended section. An officer empowered under the old notification can still file a complaint. A 1961 Mys 7 (9, 10) : 1961 (1) Cri LJ 106.

An order was issued by the Government under the Electricity (Supply) Act prior to its amendment fixing charges for electricity. The order continues in force after the amendment, by virtue of S. 6 of the General Clauses Act. As new Section has no provisions corresponding to old Section and it is prospective, Section 24 cannot be applied. A 1967 Guj 172 (179 to 182) : 8 Guj LW 686.

Section 33 (1) of the Electricity Act, 1910 was amended in 1959. A notification prescribing time and form and authority to whom the notice is to be given was issued prior to the amendment of the section. The notification continues to be in force after the amendment. A 1967 Bom. 27 (31) : 1967 Cri LJ 155.

The Bombay Drugs Rules, 1946, framed under the unamended Section 33 (1) of the Drugs Act, 1940 must, in view of Section 24 read with Section 3 (19) of the General Clauses Act , be deemed to have been made under the amended section and remained in force till they were repealed by the rules framed under the amended S. 33 (1). A 1959 Bom. 554 (555).

Section 6 and 24 apply only to valid Acts subsequently repealed. An Act declared unconstitutional has no existence and these sections cannot apply to its repeal by subsequent enactment. A 1962 Al 350 (352).

By reason of S. 24, a notification issued under an Ordinance continues to be in force even when the Ordinance is repealed

and re-enacted into an Act. Thus, a notification extending the application of the Ordinance to a particular area, issued under the Special Establishment Ordinance, 1946, continues to be in fore under the Delhi Special Establishment Act, 1946, which has repealed and re-enacted the Ordinance. A 1954 Madh Bha 101 (105).

An Ordinance which has expired is not an enactment which has been "repealed" within the meaning of this section. A 1941 Rang 1 (3, 4) : 42 Cri LJ 335.

Application of the section continuation.— If the power to make laws become extinct, the laws already made would not become extinct unless they are inconsistent with the provisions of the Constitution. Rules made under a statute to carry out the purposes of the parent Act are so inextricably tied up with the parent Act that, on the repeal of that Act, if there is no "purpose of the Act" to be fulfilled, the rules and bye-laws do not survive. But the same thing could not be predicated in respect of laws made under a constitution, as there is no such indissoluble connection between the two (i. e. between the laws and the constitutional set up) A 1958 J and K 29 (35) : 1958 Cri LJ 885 (FB).

Section 24 deals with the constitution of orders, schemes rules forms of bye-laws made or issued under the repealed Act. A 1959 SC 648 (669) : 1959 SCJ 1069.

Section 24 is intended to apply to all rules and regulations whether they are rules and regulations simpliciter or whether they are rules and regulations which shall have effect "as if enacted" under an Act. A 1958 Pat 378 (382) : 1958 BLJR 424 (DB).

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Things other than statutory instrument done under a repealed Act, are outside the scope of S. 24. For understanding the position as to the effect of repeal on such action recourse must be made to other relevant provisions of the General Clauses Act-particularly, S. 6.

Where the scope of the re-enacting Act (as regards the statutory instruments authorized by it) is narrower than the earlier Act, S. 24 cannot apply. A 1964 SC 1172 (1178) : (1964) 2 SCJ 234.

The Inspector, Central Excise, was empowered by a notification issued by the Central Excise Collector, to exercise certain powers under Rule 200 of the Central Excise Rules, 1944. On the creation of a new Collectorate, the Concerned

Inspector came under another Collectorate. The notification no longer applied to him. Section 24 of the General Clauses Act, did not apply to the case. ILR (1959 11 Assam 397 (402, 403) (DB).

If the statute is repealed and reenacted in somewhat different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by, and are repugnant to, the repealing Act. The inconsistency which the law contemplates should be such a positive repugnance between the provisions of the old and the new statutes that they cannot be reconciled and made to stand together. A 1957 Punj 243 (248) : 1957 Cri LJ 1172.

An express saving in the re-enacting statute framed widely can, of course, even continue statutory instruments issued under the repealed Act even though inconsistent with the new Act. A 1965 SC 502 (505) : (1965) 1 SC 697.

Where an enactment is repealed and re-enacted, it is S. 24 that applies, and not S. 6 of the General Clauses Act : Accordingly, an order of attachment passed by a Magistrate under a provision which was later amended, providing that the arrears of municipal dues were to be realised as dues on account of land revenue, would not continue, being inconsistent with the provision of the amended Act, consequently, the order of sale of the property attached Inspector, Central Excise, was empowered by a notification. 1954 Madh B LJ (HCR) 706 (708) : A 1955 NUC (Madh B) 3014.

Section 24 does not cancel the notification empowering the District Judge to exercise jurisdiction under he Companies Act, 1913, since under S. 6 of the General Clauses Act the proceeding in respect of the application under S. 153-C of the Come pains Act of 1913 is continued even after the repeal of that Act, it follows that the District Judge continues to have jurisdiction to entertain it. A 1960 SC 794 (796).

A case of suppression is outside the section. Section 24 is not applicable to Electricity Rules, 1922, which have been superseded by Electricity Rules, 1937. A 1941 Bom. 100 (102) : 42 Cri LJ 588 : 43 Bom LR 99.

Effect of the where it applies.— Section 24 does not purport to put an end to any notification. All it does is to continue a notification in force in the stated circumstances, even after the Act under which it was issued is repealed. A 1960 SC 794 (796) : 1960 SCJ 760.

Once the statutory fiction contained in S. 24 is made operative, the rules, regulations and by-laws made under the old Act become as effectively the rules, regulations and bye-laws under the new Act as if they had been made under the new Act. A 1958 Madh Pra 162 (167) : 1958 Cri LJ 767 : 1958 MPLJ 225 (DB).

According to the common law rule, subordinate legislation made under a statute (except as to transactions past and closed) ceases to have effect after its repeal. A 1965 SC 932 (938) : (1965 (2) Cri LJ 24.

Section 24 applies only to the repeal of a Central Act but not a State Act. Deep Chand v. State of U. P., ILR (1958) 1 All 292.

Act declared unconstitutional.— Has no existence-Sections cannot apply to its repeal by subsequent enactment. AIR 1962 All 350.

Later enactment-Effect on earlier Act.— One special and other general-Repugnance-Prior should be treated as repealed. AIR 1957 Mad Bha 155.

Repeal of old by new Act-Object of enacting S. 24.— Once the statutory fiction contained in Section 24 is made operative, the rules, regulations and bye-laws made under the old Act become as effectively as the rules, regulations and bye-laws under the new Act as if they had been made under the new Act 1958 MPC 221 : 1958 MPLJ 225.

"Modification"-Meaning of.— Where the reading of the old and new Acts shows that they deal with the same subject matter except that the new Act has made certain additional provisions the new Act is substantially the same as the old one and the word "modification" in S. 24 is comprehensive enough to include such additions as have been made in the new Act. 1958 MPC 221 : 1958 MPLJ 225.

Old rules or bye-laws continue by virtue of S. 24, General Clauses Act. AIR 1958 Madh Pra 162 (DB).

"An express provision to the contrary".— The functions of a deeming provision are performed by Section 24. The absence of a deeming clause cannot be taken to mean "an express provision to the contrary" within the meaning of Section 24. In order to bar the application of S. 24 it is not necessary to have in terms provided the fictional rules regulations and bye-laws would not be included within the meaning of the rules, regulation and by-laws 1958 MPC 221 : 1958 MPLJ 225.

Section 24 accords statutory recognition to the general principle that if a statute is repealed and re-enacted in the same of substantially the same terms, the re-enactment neutralizes the previous repeal and the provisions of the repealed Act which are so 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 the provisions of the repealed Act which are changed by and are repugnant to the repealing Act The inconsistency which the law contemplates should be such a positive repugnancy between the provisions of the old and the new statutes that they cannot be reconciled and made to stand together. ILR (1957) Punj 1379.

Repeal may be express or by necessary implication.— Section 24 as it stands is not confined to cases of express

repeals. All that is contemplated by the section is that there must be a repeal of an existing Act by a subsequent Act. Such repeal may be by express words or it may be by necessary implication. Where the later Act has in substance and in effect repealed the earlier Act, the section will be attracted.

Where the appointment of an Industrial Tribunal under the State Act was not superseded by any order passed under the Central Act, it must be deemed to continue as the Industrial tribunal even after the Central Act was made applicable to the State and it must be deemed to have appointed under the relevant provisions of the Central Act. (1952) 2 Lab LJ 9.

Applicability to repeal by implication.— Section 24, General Clauses act (1897) can be made applicable not only to a case of express repeal and re enactment but also to a case of repeal by implication by reason of repugnance or conflict. AIR 1951 Bom. 188. 1951 Ker LT 121.

A regulation is indisputably a rule within the meaning of the provisions of s. 24, General Clauses Act.

Order of attachment by Magistrate before amendment.— Sale after amendment-Order of attachment being inconsistent with the provisions of amended Act could not continue in force-Order of sale invalid. AIR 1955 NUC (Madh Bha) 3014.

Regulations are "laws in force" within Art. of the Constitution-Infringement of Regulations can be punished even after repeal of. 1960 Cr L J 1227.

Rules framed under old Act.— Continue to be in force by virtue of S. 24 of the General Clauses Act till they are superseded by rules framed under new Act. 1954 Cr L J 1181.

Regulations are kept alive by S. 24 and continue to be law in force within meaning of Art. of the Constitution. 1959 Cr LJ 232 : AIR 1959 Pun 69.

"Law in force"-Meaning of-Law deemed to be in force is law in force. 1961 (2) Cr L J 286.

Regulations continue to be in force by virtue of S 24 though Act under which they were framed is repealed by new Act. AIR 1958 Ra 59 (DB).

Section 24 applies not only to express repeal and re-enactment, but also to repeal by implication by reason of repugnance or conflict. further, the section applies even where the subordinate legislation made under the repealed Act is to have effect "as if enacted in this Act". A 1961 SC 838 (846) : 1961 (2) Cri LJ 1.

Section 24 is not confined to express repeals. The repeal may be by express words or by necessary implication. A 1968 Manipur 74 (79, 80).

Where the later act has, in substance and in effect repealed the earlier Act, Section 24 will be attracted. A 1952 Trav-Co 371 (374) : (1952) 2 Lab LJ 9.

By its literal terms, the section is aimed at one repeal, and does not take in successive repeals. Where Act X is repealed and

re-enacted by Act Y and Act Y in its turn, in repealed and re-enacted Y Act Z, the section may not, strictly speeking, apply, However, there is no doubt that Courts would for reasons of convenience, apply the same principle and attribute to the Legislature an inanition to continue the statutory instruments issued under A, even for the purposes of Act .The English provision on the subject i. e., Section 17 (2) (b). Interpretation Act, 1978 (c. 30) is much more comprehensive.

Applicability .— The consequences which follow from the repeal and re-enactment, or the argument of supersession or inconsistency which would have perhaps been applicable in a case of repeal have no application to Acts or Orders which have lapsed by efflux of time, section 24, therefore, does not apply to such cases. Hot Chandra Chamdas v. Lala Shri Ram, AIR 1963 All 234 at pp 236, 237. This section does not apply to an enactment which simply lapses. Trust Mai Lachhmi, Sialkot Bradari v. Chairman, Amitsar Improvement Trust, AIR 1963 SC 976 at p 979 : 1962 SCD 1016 . It applies only to valid Acts which are subsequently repealed. Jairam Singh v. Sate of Uttar Pradesh, AIR 1952 all 350 .

This section would apply only when there is no inconsistency between notification issued earlier and the subsequent declaration by legislation. Shri Shaailappa v. C. P. O. (1975) 2 Kar J 190. This section does not provide for delegation of power which has no existence at the time of delegation and in fact which was no delegated. N. A. Committee v. Additional Commissioner, 1973 ALJ 105. The section provides that where any central Act is repealed and re-enacted with or without modification, the modifications issued under the repealed central Acts are to continue in force and be deemed to have been made or issued under the provisions re-enacted. K.N.N. Ayyangor v. State, AIR 1954 MB 101 : 55 Cr LJ 966.

It is not section 6 but section 24 which applies if a statute is repealed and re-enacted. Gajadhar Singh v. Municipality, Bhind, 1954 Madh BLJ (HCR) 706 at p 798 : AIR 1955 NUC (MB) 3014. The re-enactment neutralizes the previous repeal and the provisions of the repealed Act, which are so 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 the provisions of the repealed Act which are changed by and are repugnant to the repealing Act. The inconsistency which the law contemplates should be such a positive repugnancy, between the provisions of the old and the new statutes that they cannot be reconciled and made to stand together. State v. N.B. Hankins. AIR 1957 Punj 243; AIR 1957 Punj 243 at p 248 : 1957 Cr L J 1172.

Section 24 will not apply in cases where the provision which keeps alive an earlier provision is itself repealed and no saving clause is reserved for that. Devaguptapu Sestiagiri Rqo v. Salt Factory Officer, Guruzanapalli. (1964) 2 AndhWR 416 at p 42.

Section 24 is wide enough to cover re-enactment with modification. Where a reading of the old and new Acts shows that they deal with the same subject-matter, except that the new Act has made certain additional provisions the new Act is substantially the same as the old one and the word "modification" in the section is comprehensive enough to include the additions made in the new Act. A 1958 Madh pra 162 (164) : 1958 criLJ 767 : 1958 MPLJ 225 (DB).

Where an Act merely repeals a former Act of limited operation and re-enacts its provisions in an amended from, an intention to extend the operation of those provisions to classes to persons not provisions to classes of persons not previously subject to them is not to be presumed ; the existence of such an intention must be determined on a fair construction of the whole Act, considered with reference to the surrounding circumstances. (1872) 17 ER 559 (562) : 42 LJPC 18.

The Foreign Exchange Regulation Act, 1947 Section 23 (2) and (3) where amended by Act 39 of 1957. A notification was issued before the amendment, empowering certain officers to lodge complaints under the Act. No notification was issued under the amended section. An officer empowered under the old notification can still file a complaint. A 1961 Mys 7 (9, 10) : 1961 (1) Cri LJ 106.

An order was issued by the Government under Section 57 (2) (c) of the Electricity (Supply) Act. 148, prior to its amendment in 1956, fixing charges for electricity. The order continues in force after the amendment, by virtue of S. 6 of the General Clauses Act. As new Section 57A has no provisions corresponding to old Section 57 (2) (c) and it is prospective, Section 24 cannot be applied. A 1967 Guj 172 (179 to 182) : 8 Guj LW.686.

Section 33 (1) of the Electricity Act, 1910 was amended in 1959. A notification prescribing time and form and authority to whom the notice is to be given was issued prior t the amendment of the section. The notification continues to be in force after the amendment. A 1967 Bom. 27 (31) : 1967 Cri LJ 155. When life of a temporary statute is extended, the life of authority delegated there under gets also extended. Gauri Nandan v. Rex, AIR 1948 All 414 : 49 Cr LJ 726.

A repealing statute, in the absence of saving clauses, operates from its commencement, whether the alteration of the law affected by it has to do with procedure or with matter of substance, and a repealed Act in the absence of saving clauses, and except as to transactions passed and closed, must be considered as if it had never existed, and that a bye-law made under a statute which is repealed is abrogated unless it is preserved by the repealing statute by a saving clause or otherwise. State v. A. K. Jain, AIR 1958 MP 162.

Section 24 does not afford any assistance in making legal an illegal levy imposed under an Act which has been repealed. G. Rajagoplachari v. Corporation of Madras, AIR 1964 SC 1172 at pp 1177, 1178 : (1964) 2 SCJ 324.

The word "Orders" is not capable of being interpreted as including judicial or quasi-judicial orders. Jagdish Prasad v. District Board AIR 1966 All 26. By virtue of this section, the rules regulations and bye-laws made under the repealed Act are continued in force under the new Act and are deemed to have been made or issued under the provisions of the new Act and same would be the position in case of notifications particularly, when the relevant provisions in the repealed enactment is taken word for word in the repealing enactment. Chatturbhuj Mahesari v. Har Lall Agrwalls, AIR 1925 Cal 335 (DB); AIR 1961 Mys 7, AIR 1977 Punj and Har 68. Section 24 of the General Clauses Act cannot be invoked unless the Legislature had created such fiction. Godhara Electricity Co. Ltd., v. Eomalal Nathji, 8 Guj LJ 686 : AIR 1967 Guj 172.

Modification.— The word "modification" as used in the section is comprehensive and includes the addition made in the new enactment. State of Madhya Pradesh v. A.K. Join, AIR 1958 MP 162 at p 164 : 1958 MPLJ 225 (DB) : 1958 Cri LJ 767.

Notification and Instruments under repealed enactment.— A notification which comes into effect from date it is issued which is usually some time before it can be actually printed in the Gazette is only a method adopted for communicating orders, rules, etc., to the general public. What Section 24 means is that notifications under a repealed enactment remains intact and attaches to the new Act as having been made under the corresponding provision of the new Act having come about as re-enactment of the old one untill or unless it is supersided. The fact that the re-enacted provision has been given retrospective effect, does not mkae section 24 inapplicable. Monohar Sing v. Saltex Oil Refining (India) Ltd., Bombay, AIR 1981 MP 123 : 1981 MPLJ 202;AIR 1973 & H 450 ; ILR (1973) 2 Ker 163.

Section 24 of the General Clauses Act protects the notification issued before the amendment. Poona Electricity Supply Co. Ltd v. State 67 Bom. LR 534 : ILR 1966 Bom. 154 : 1967 Cr LJ 155.

Where rules framed under a previous enactment continue to be in force under the new enactment replacing the old one, no question of retrospective legislation can arise until new negations are made under the new Act. Ram Rattan Seth v. State, AIR 1959 Punj 69 at p 70 ; G. D. Bhattar v. State, AIR 1957 Cal 483 ; State v. Kun Bihari Chandra, AIR 1954 Pat 371.

Where any Central Act or Regulation is replaced or re-enacted, with or without modification then unless it is expressly provided any notification inter alia under the replaced Act will continue to remain in force provided it is not inconsistent with provisions of re-enacted Act until it is superseded. Section 24 have no application to a case where a new tariff entry is introduced by amendment. Mahindra Ugkne Steel Co Ltd. v. Union of India, 1988 (34) ELT 20.

Implied repeal.— (a) Background and philosophy of the doctrine.— If the general law has virtually repealed a State Act, it gives rise to the same consequences as an express repeal and re-enactment. Nagalinga Nadar v. Ambalapuzha Taluk Head Load Conveyance Workers Union, Alleppy, AIR 1951 TC 203 : 1951 KLT 121.

A statute can be abrogated only by express or implied repeal, but it cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. State of Maharashtrav. Narayan Shamrao Puranki, AIR 1983 SC 46. The provisions of section 24 are not confined to cases of express repeals. All that is contemplated by the section is that there must be a repeal of an existing Act by a subsequent Act. Such repeal may be by express words or it may be by necessary implication. Where the latter Act has in substance and in effect repealed the earlier Act, the provisions of the section will be attracted. Ayyaswami v. Joseph, AIR 1952 TC 371 at p 374. When an existing Act is repealed by a subsequent enactment whether by express words or by necessary implication, the courts will have to declare the prior general enactment repealed by the subsequent general enactment if the Acts are repugnant to and inconsistent with each other.

Where a statute under which bye-laws are made is repealed, those bye-laws also stand repealed and cease to have ny validity, unless the repealing statute contains some provisions preserving the validity of the bye-laws notwithstanding the repeal. Harish Chandra v. State of Madhya Pradesh, AIR 1965 SC 932.

A case of implied repeal arises where the later of the two general enactments is worded in negative terms. If two statutes are destructive to each other, than the general rule that the later statute will abrogate the earlier because the implied repeal can only be of an order by a later provisions. Fedders Lloyed Corporation (P) Ltd. v. Governor of Delhi, AIR 1970 Del 60 : 37 FJR 69; AIR 1954 Trip 17 at p 20. Where there is conflict between two enactments, the rule is that the later one will be taken to have repealed the earlier. Haridassee v. Manufacturers, L.I. Co. Ltd., ILR 1 Cal 67. The rule of implied repeal is subject to the identity of the subject-matter of two enactments, but the repeal or amendment of an enactment by necessary implication need not extend to the whole of it and certain provisions of the earlier enactment may survive the repeal or amendment. S. Baldev Singh v. Government of Patiala, AIR 1954 Pepsu 98 at p 107 : ILR (1954) Patiala 105;AIR 1969 Mad 145 : (1968) 2 Mad LJ 451; 1968 Ker LT 171; 1968 Ker LJ 57 (DB) ; 1961 Jab LJ 1280;

The question of implied repeal is a question of law. Gajanan Raghunath Neugni vs. Jao Santano Gomes, AIR 1967 Goa 151 at p 152. The general rule that when the prior enactment is special and the subsequent is general, there can be no implied repeal, has no application when a special enactment and a general subsequent enactment are absolutely repugnant with

each other, in which case the rule that prior Special Act shall be deemed to be repealed by implication will not apply. Ramji Rup Chand v. District Superintendent, Western Railway, Ratlam, AIR 1957 MB 155 : 12 EJR 262.

Section 24 does not apply to an Act which lapse. Thus, the Punjab Damaged Areas Act, 1947 enacted by the Governor of the Punjab under Section 93 of the Government of India Act, 1935 lapsed on 15th August, 1947 when the Governor's rule under S.93 ended. A 1963 SC 976 (979) : 1962 SCD 1016.

By reason of S. 24, a notification issued under an Ordinance continues to be in force even when the Ordinance is repealed and re-enacted into n Act. Thus, a notification extending the application of the Ordinance to a particular area, issued under the Delhi Special Establishment Ordinance, 1946, continues to be in fore under the Delhi Special Establishment Act, 1946, which has repealed and re-enacted the Ordinance. A 1954 Madh Bha 101 (105).

An Ordinance which has expired is not an enactment which has been "repealed" within the meaning of this section. A 1941 Rang 1 (3, 4) : 42 Cri LJ 335.

If the power to make laws become extinct, the laws already made would not become extinct unless they are inconsistent with the provisions of the Constitution. Rules made under a statute to carry out the purposes of the parent act are so inextricably tied up with the parent Act that, on the repeal of that Act, if there is no "purpose of the Act" to be fulfilled, the rules and bye-laws do not survive. But the same thing could not be predicated in respect of laws made under a constitution, as there is no such indissoluble connection between the two (i. e. between the laws and the constitutional set up) A 1958 J and K 29 (35) : 1958 Cri LJ 885 (FB).

Section 24 does not, in terms deal wit a statutory instrument issued under a statutory instrument-what may be called "three tier" delegation, Notification No. 1956 D. C. S. D/-3-30-1947 as issued under the Bengal Food Grains Control Order, 1945 does not, therefore, survive the repeal of the order either under the provision of Proviso to sub-para (4) of para 1 of the W. B. Food Grains control Order of 1951 or Section 24 . A 1955 Cal 478 (481) : 1955 Cri LJ 1249.

Section 24 deals with the constitution of orders, schemes rules forms of bye-laws made or issued under the repealed Act. A 1959 SC 648 (669) : 1959 SCJ 1069.

Section 24 is intended to apply to all rules and regulations whether they are rules and regulations simpliciter or whether they are rules and regulations which shall have effect "as if enacted" under an At. A 1958 Pat 378 (382) : 1958 BLJR 424 (DB).

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Things other than statutory instrument done under a repealed Act, are outside the scope of S. 24. For understanding the position as to the effect of repeal on such action recourse must be made to other relevant provisions of the General Clauses Act-particularly, S. 6.

In the Mines Act, 1952 (repealing and re-enacting the Mines Act, 1923), the power of making rule for the maintenance of a create in mines was considerably widened in comparison with the repealed Act (the Indian Mines Act, 1923). As the powers were widened, the rules framed under the narrower powers under the Act of 1923 could well be said to have been framed under the wider powers and could not be said to have lapsed with the repeal of the earlier Act. 1937 Cri LJ 122 (123) (Cal).

Where the scope of the re-enacting Act (as regards the statutory instruments authorized by it) is narrower than the earlier Act, S. 24 cannot apply. A 1964 SC 1172 (1178) : (1964) 2 SCJ 234.

The Inspector, Central Excise, was empowered by a notification issued by the Central Excise Collector, Calcutta, to exercise certain powers under Rule 200 of the Central Excise Rules, 1944. On the creation of a new Cllectorate, the Concerned Inspection came under another Collectorate. The notification no longer applied to him. Section 24 of the Assam General Clauses Act, 2 of 1915 did not apply to the case. ILR (1959 11 Assam 397 (402, 403) (DB).

If the statute is repealed and reenacted in some what different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by, and are repugnant to, the repealing Act. The inconsistency which the law contemplates should be such a positive repugnance between the provisions of the old and the new statutes that they cannot be reconciled and made to stand together. A 1957 Punj 243 (248) : 1957 Cri LJ 1172.

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proceeding in respect of the application under S. 153-C of the Come pains Act of 1913 is continued even after the repeal of that Act, it follows that the District Judge continues to have jurisdiction to entertain it. A 1960 SC 794 (796).

A case of suppression is outside the section. Section 24 is not applicable to Electricity Rules, 1922 which have been superseded by Electricity Rules, 1937. A 1941 Bom. 100 (102) : 42 Cri LJ 588 : 43 Bom LR 99.

Section 24 does not purport to put an end to any notification. All it does is to continue a notification in force in the stated circumstances, even after the Act under which it was issued is repealed. A 1960 SC 794 (796) : 1960 SCJ 760.

Once the statutory fiction contained in S. 24 is made operative, the rules, regulations and by-laws made under the old Act become as effectively the rules, regulations and bye-laws under the new Act as if they had been made under the new Act. A 1958 Madh Pra 162 (167) : 1958 Cri LJ 767 : 1958 MPLJ 225 (DB).

Not applicable to state Acts.— [Deep Chand v. State of Uttar Pradesh , 1959 (Sup) 2 SCR 8 : 1959 SCA 377 : 1959 SCJ 1089 : ILR (1959) 1 All 293 : AIR 1959 SC 648.]

MISCELLANEOUS

25. *Recovery of fines.*— *Sections 63 to 70 of the* [1]********* *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-law unless the act, Regulation, rule or bye-law contains an express provision to the contrary.*

1. The word "Pakistan" was omitted, ibid. Art. 13.

Scope and applications

Order for payment of fine and in default imprisonment is legal-By virtue of S 25 of the general clauses Act. AIR 1958 Andb Pra 707.

"Subject to the provisions of any law for the time being in force".— Application for the custody of minor under S. 9 or 25. Guardians and Wards Act can be made to the District Court if the minor resides within the jurisdiction of that Court. (1890) AIR 1958 Raj 221 (DB).

This section affords itself, an example of legislation by referential incorporation. It deals with the (i) issue, and (ii) execution, of warrants for the levy of fines. It is contemplated that the particular Act, Regulation, rule or bye-law under which any sentence or penalty of fine may be imposed might it self provide for the mode in which and the procedure by which the fine so imposed or levied should be recovered and might itself contain adequate provisions for the issue and execution of warrants for the levy of fines and might even provide for