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Repeal of Obsolete Laws

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There are numerous laws present in a nation, but all may not be in use. With changing society and culture, the laws need to be revised and maintained to remove potential problems like obsolete laws. These obsolete laws have some serious repercussions on the entire legal system. There is a dire need to repeal these laws and adopt certain reforms to tackle them at present and prevent them from springing up in the future. Certain challenges are present in enacting these reforms and repealing Obsolete laws. Certain Acts and Initiatives have been undertaken for dealing with this problem. Many Obsolete laws are very offensive and affect a wide range of individuals especially certain laws about criminal offences. This article sheds light on the needs and hurdles regarding repealing obsolete laws. The procedure aspect is also briefly discussed alongside much-needed reforms while mentioning certain important laws.

Keywords: *obsolete, repeal, laws*

INTRODUCTION

"Old is Gold" is a proverb everyone learns in the English language very early on and starts using in various circumstances. But it will be correct in every instance that is not necessary and one of the prime cases where it fails is in the case of Obsolete Laws. To go further into the situation, we need to define certain terms that are relevant and form the base of the discussion. 'Obsolete

means no longer used or out of date. Obsolete laws can therefore be defined as laws that are out of date and are not in use anymore. This term is applied to laws that have lost their efficacy; without being repealed.

Another term used is 'repeal' which means to revoke or annul. In more definitive terms Repeal means to revoke, abrogate or cancel particularly a statute. Any statute may repeal any Act in whole or in part, either expressly or impliedly by enacting matters contrary to and inconsistent with the prior legislation. Under General Clauses Act, 1897, Section 6 "Repeal" connotes abrogation or obliteration of one statute by another, from the statute book as completely "as if it had never been passed." When an Act is repealed "it must be considered (except as to transactions past and closed) as if it had never existed."[1] Thus, Repeal of Obsolete laws means revoking or annulling laws that have lost their efficacy with time. Now the wide range of spectrum associated with obsolete laws, the hurdles present, and the reforms needed can be discussed. First, the reasons and motives that propel toward a quick resolution of these laws will be stated.

WHY DO WE NEED TO REPEAL OBSOLETE LAWS?

In every nation in this world, every society and organization even in one's family there exists certain rules and regulations. When they pertain to a country, they are laws. Now over time, new laws are made which are to be followed by individuals for the "collective good" of the country. These are the restrictions imposed on individuals which curb their freedom. When new laws are made, these restrictions increase inversely individual freedoms decreases. So, it can be inferred that the greater the number of laws the larger the curb on an individual's freedom. In such a situation reducing the number of laws is of paramount importance. This reduction can be done by removing the old obsolete laws which act as a burden on an individual to provide greater freedom and lesser restrictions.

India is having a large number of laws. First, there are Union Government legislations that are still countable to an extent. The State Government Legislation is not possibly countable. And lastly, administrative laws are used by the executive. There is also uncodified law which

[1] General Clauses Act 1897, s 6

increases the number to an even greater extent. These many laws decrease the efficiency of the country and increase the curb on individual's freedom as mentioned above.

Old laws can occupy space and be of very little usage similar to old antiques occupying spacing while not having any function other than decoration. The only downside needed to become obsolete laws warranting repeal is that they can't even perform decorative functions too. For example, the famous East Punjab Agricultural Pests, Diseases, and Noxious Weeds Act which applied in Delhi involved the announcement by beating drums to collectively defend against the attack of locusts on fields2 , and The Sarais Act of 1867 entailing Sarai-keepers to give free water to drink to passers-by and can be made applicable to hotels.3 These laws are shameful and cannot be even talked about in today's context. They have been repealed but the fact that they existed for such a long time after independence is in itself a matter of serious concern.

The country is under-governed and over-legislated. Over-legislation is a serious problem and the fact that our country does not have enough governing measures also; aggravates the situation further. The problem of over-legislation can be rectified by reducing the legislation and the best choice to act is upon the Obsolete laws. This would reduce the laws and increase the efficiency of Governing bodies. If the legal system of the country has fewer legislations, then they will be having lesser number of cases and the efficiency of legal procedures will be increased.

Certain offences with the changing society have become part of normalcy and cannot be treated in the spectrum of criminal offences. Decriminalization of such offences is a requirement in the current society. A prime example associated with this is homosexuality which has been decriminalized. This portrays the need to take further such actions. All the above-stated reasons push towards taking important measures regarding Obsolete laws by repealing them as efficiently and quickly as possible. Now, the focus moves toward the repeal aspect of Obsolete and redundant laws.

[2] East Punjab Agricultural Pests, Diseases and Noxious Weeds Act 1949
[3] Sarais Act 1867

HOW CAN THE LAWS BE REPEALED?

Legislature has the power to enact laws, similarly, it has the power to repeal laws. The efficacy of the Legislature depends upon the possession of the power to repeal the existing law, for without this attribute the power to enact would be a nullity, and the body of the law a series of contradictory enactments. Consequently, the legislative power to repeal prior laws is not inhibited by any constitutional prohibitions but exists as a necessary part and increment of the legislative power and function. There are two ways to repeal a law- first, the government can bring a Bill to repeal the law or promulgate an ordinance which shall be replaced with a Bill within a period of six months. Article 245 gives the legislature the power to repeal laws via Repealing and Amending Act. For example, to repeal an act assuming the Liquor Act, of 2012 then the government needs to bring an act titled "Liquor Act (Repeal),2022" with the aim stated to repeal the Liquor Act of 2012. It needs to be passed by both houses and get the assent of the President, then the previous act will be repealed. The amount of support needed will be the same as what was required earlier when it was passed.

ROADBLOCKS

In a speech in April 2022, Prime Minister Narendra Modi pointed out that the laws abolished by the centre have not been abolished by the state. He said, "In 2015, we identified about 1,800 laws which had become irrelevant. Out of these, 1,450 such laws were abolished. But only 75 such laws have been abolished by the states".[4] This can portray the number of hurdles present in the path of repealing obsolete laws. One of the greatest hurdles is that it is not as simple as passing a bill to repeal a law. When a statute needs to be repealed caution is taken because a statute may contain parts that are not to be repealed and certain clauses that are affected due to the repeal of other parts. This makes the process of repealing tedious and time-consuming. Another point is that difference in the time of enactments leads to different definitions in the same contexts which later prove to be very difficult to separate. Uniformity is thus not maintained. Later different case laws evolved with different interpretations thus complicating the already complex

[4] 'PM Modi asks states to junk obsolete laws' (*The Print*, 30 April 2022) <https://theprint.in/india/pm-modi-asks-states-to-junk-obsolete-laws/937230/> accessed 01 October 2022

situation. In such a scenario repealing a certain statute becomes many times difficult and time-consuming.

Another roadblock is no cooperation and coordination between the authorities. The statement given by Prime Minister Narendra Modi illustrates the tussle between the State Governments and Central Governments. Without having proper discussion no legislation can be passed even the most mundane objectives derive a great amount of discussion by law-making bodies. The problem regarding Obsolete laws can only be dealt with through quick decisive actions having support from all genres of the legislature. For dealing with these hurdles and removing the problem regarding Obsolete laws certain reforms can be adopted. These reforms are discussed extensively in the next section.

REFORMS

One of the reforms that can be adapted is the simplification of legal language. The plain English movement is relevant in many countries, and it can also be adapted in India. Laws written in simple language are more accessible to common people and increase their reach. Criminal Procedure Act in simple language is a very important example. The doctrine of desuetude- The jurisprudential meaning of "desuetude" is that long and continued non-use of law renders it invalid, at least, in the sense that courts will no longer tolerate punishing its violators or transgressors.[5] Under the doctrine of "desuetude", the law that has not been enforced for a long time is nullified. Of course, it does not constitute an integral segment of the legal order.[6] The doctrine of "desuetude" formally recognises this nullification through extended non-enforcement of an otherwise valid provision or a rule.[7] The doctrine of desuetude can be adopted. In India, the doctrine of "desuetude" does not seem to have been used so far to hold any statute repealed. There is no logical and reasonable objection in principle to apply this doctrine to our statutes as well.[8]

[5] *State of U.P. & Anr v Johri Mal* [2004] 4 SCC (Jour) 21
[6] *Ibid*
[7] *Ibid*
[8] *Ibid*

A sunset clause is a provision of a law that will automatically be terminated after a fixed period unless it is extended by law. Another important aspect is to incorporate Appropriation acts with repealing provisions. A saving clause is also an appropriate remedy. It is a clause in a statute that exempts something from the statute's operation or provides that the rest of it will stand valid if the part is held invalid. This clause can reduce the complications that arise later in repealing a specific part and reduce the time needed for scrutinizing the statute. Decriminalizing certain crimes can also speed up dispute resolution. Many criminal offences have become inapplicable and somewhat ridiculous over time. Removing them from the criminal offence list would invalidate many cases and clear a significant outstanding issue in Indian courts.

ACTS AND INITIATIVES

The establishment of the Ramanujam committee by the Prime Minister's Office on 1st September 2014 to identify the Central Acts which have become irrelevant or no longer needed or require repeal/re-enactment in the present socio-economic scenario.[9] The committee identified 1741 Central Acts for repeal out of 2781 Central Acts existing in the statute book as on October 15, 2014.[10] Twentieth Law Commission of India has undertaken a study titled "The Legal Enactments: Simplification and Streamlining" and submitted reports. The report was titled "Obsolete Laws: Warranting Immediate Repeal". In this report, the Commission recommended the repeal of archaic laws.[11] The Repealing and Amending Act passed in 2019 is one of the recent steps taken toward the repeal of obsolete and redundant laws. Under this act 58 laws have been repealed some of which are The Terminal Tax on Railway Passengers Act, 1956[12] , and The Delhi and Ajmer Rent Control (Nasirabad Cantonment Repeal) Act, 1968[13].[14][15] All these steps are an indication that steps are taken in the right direction.

[9] Ramanujam Committee, *Report of the committee to identify the central acts which are not relevant or no longer needed or require repeal / reenactment in the present socio-economic context* (2014)
[10] *Ibid*
[11] Law Commission of India, *Obsolete Laws: Warranting Immediate Repeal* (Law Com. No. 250, 2014)
[12] Terminal Tax on Railway Passengers Act 1956
[13] Delhi and Ajmer Rent Control (Nasirabad Cantonment Repeal) Act 1968
[14] Repealing and Amending Act 2019
[15] Terminal Tax on Railway Passengers Act 1956

CERTAIN IMPORTANT LAWS REPEALED OR TO BE REPEALED

In consideration of the changing society, a lot of offences should be decriminalized. Many such offences have already been decriminalized and many more such are pending. When the talk about such issues starts the most frequent case that comes into mind are Joseph Shine v Union of India and Navtej Singh Johar v Union of India. In Joseph Shine v Union of India, Section 497 was ruled to be unconstitutional and in violation of Articles 14 and 15 of the Indian Constitution. Additionally, it was determined that Section 198(2) of the Code of Criminal Procedure, which dealt with adultery, was unconstitutional and in violation of Article 14.[16] Invalidation of Section 377 of the Indian Penal Code, 1860, which made unnatural sex a crime, since it was arbitrary was done in Navtej Singh Johar v Union of India.[17] The ruling declared all adult consensual sex to be legal. Lesbian, Gay, Transgender, and Bisexual group has rights just like every other community, and majoritarian views cannot restrict other people's constitutional rights according to the former Chief Justice of India Dipak Misra.[18]

Sedition is an offence that has been the latest development in this spectrum. Under Section 124A --whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government estab-lished by law in India, shall be punished with im-prisonment for life, to which fine may be added, or with impris-onment which may extend to three years, to which fine may be added, or with fine.[19] This law was created by the British in India for use against Revolutionary personalities but it being still in use is a serious concern that is needed to be dealt with.

CONCLUSION

Individual freedom is an important factor in deciding the development of a country in today`s world and a large number of laws curbing it is not an ideal situation. Having a smaller number of legislations is important to decrease the invisible burden on individuals, courts, and the whole

[16] *Joseph Shine v Union of India* [2018] WP (Cri) 194
[17] *Navtej Singh Johar v Union of India* [2018] AIR 4321 (SC)
[18] *Ibid*
[19] Indian Penal Code 1860, s 124A

legal system. The Backlog of cases is a serious problem, and every little effort is appreciated; hence repealing old laws will certainly be crucial. While we discuss Decriminalization it is important to note that the laws which are decriminalized appeal to a large section of people. Referring to the above context repeal of older laws has become a necessity rather than a choice. Repealing obsolete and redundant laws efficiently and establishing better processes for the due procedure could transform our legal system and thus help in establishing the "Rule of Law" in our country.