

General Clauses Act 1897 s 21 - Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws

Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is 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 notifications, orders, rules or bye-laws so issued.

SYNOPSIS

Power to add, amend and rescind

- Second representation
- Postponing poll
- Canceling or postponing of meeting
- Substitution for a longer period
- Prospective
- Not retrospective
- Same manner
- Same limitation
- Applicable to Constitution
- Rule of construction
- Effect and stage
- Enforcement notification
- Quasi-judicial order

Power to add, amend, vary and rescind

It is implicit, because of section 21 of the General Clauses Act 1897, that where a power to issue notifications, orders, rule, or bye-laws is 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 notification, orders, rules, or bye-laws so issued.¹

¹ Singh 2021 p 785

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**Second representation:** Construing section 14 of the Maintenance of Internal Security Act, 1971, with the aid of section 21 of the General Clauses Act, it has been held that the Government can accept a second representation of the detenu and send it for opinion of the Advisory Board and act on that opinion.<sup>2</sup>

**Postponing poll:** Recourse to section 21 of the General Clauses Act was taken to support the order of the Election Commission in postponing the polling in certain Assembly constituencies in case of a parliamentary election because of riot from a date originally notified under section 30 of the Representation of the People Act, 1951 to a different date.<sup>3</sup>

**Canceling or postponing of meeting:** Section 21 of the Bombay General Clauses Act, 1904 which is in *pari materia* with section 21 of the Central Act, was used to support the conclusion that the Mayor can cancel or postpone a meeting called by him in virtue of the power conferred by rules made under the Bombay Provincial Municipal Corporation Act, 1949, before the meeting has commenced and can convene the same on a subsequent occasion.<sup>4</sup>

**Substitution for a longer period:** A notified order issued under section 18A of the Industries (Development and Regulation) Act, 1951, and authorizing the Controller to take over management of an industrial undertaking for a certain period can be amended before the expiry of that period by substitution of a different and longer period in place of the period originally fixed.<sup>5</sup>

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<sup>2</sup> Ram Bali Rajbhar v State of West Bengal, (1975) 4 SCC 47 cited in Singh 2021 p 786

<sup>3</sup> Mohd Yunus Saleem v Shiv Kumar Shastri, (1974) 4 SCC 854 cited in Singh 2021 p 786

<sup>4</sup> Jayantbhai Manubhai Patel v Arun Subodhbhai Mehta, (1989) 2 SCC 484 cited in Singh 2021 p 786

<sup>5</sup> Kamla Prasad Khetan v UOI, AIR 1957 SC 676 cited in Singh 2021 p 785

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Prospective: But power of amendment or modification, in the absence of any clear authorisation to that effect, can only be exercised prospectively during the period the original notification, order, etc., continues to be effective, for it cannot be brought to life ex post facto after it has once ceased to exist.⁶

Not retrospective: Section 21 does not confer a power to issue an order having retrospective operation, so it was held that an order giving the State Government's consent for investigation by the CBI under section 6 of the Delhi Special Police Establishment Act, 1946 could not be revoked to affect investigation already commenced and the CBI was competent to complete these investigations.⁷

Same manner: To bring about an effective amendment or cancellation of a statutory order or rule, the order or rule effecting amendment or cancellation must be made in the manner the original order or rule is required to be made, eg, an order or rule which is required to be published in Government Gazette and has been published, can only be amended or cancelled by a subsequent order or rule which is also published in like manner.⁸

Same limitation: The implied power of amendment or cancellation is subject to the same limitations which are applicable to the original exercise of the power. Thus, if a power is conferred to declare whole or part of a State as a "dangerously disturbed area", which does not include a power to declare any area as dangerously disturbed for certain purposes and for other purposes, a notification declaring certain area as dangerously

⁶ Strawboard Mfg Co v G Mill Workers' Union, AIR 1953 SC 95 cited in Singh 2021 p 785

⁷ Kazi Lhendee Dorji v Central Bureau of Investigations, 1994 Supp (2) SCC 116 cited in Singh 2021 p 786

⁸ Mahendralal v State of Uttar Pradesh, AIR 1963 SC 1019 cited in Singh 2021 p 786

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 disturbed area cannot be so cancelled as to keep the notification alive “as respects things done or omitted to be done” before the cancellation, for that would amount to continue the declaration for some purposes but not for other purposes, a result not contemplated by the enabling provision.<sup>9</sup>

**Applicable to Constitution:** In view of Article 367 of the Constitution, section 21 of the General Clauses Act 1897 applies for construing the Constitution. Therefore, the rules made under Articles 77(3), 166(3) and 309 and orders issued under Article 370 can be amended from time to time by recourse to section 21.<sup>10</sup>

**Rule of construction:** The rule enacted in section 21, General Clauses Act, is merely a rule of construction and may be displaced to the extent the provisions, the scheme and the object of any particular statute indicate a contrary intention, eg, it has been held that the Government has no power to cancel or supersede a reference made under section 10(1) of the Industrial Disputes Act, 1947.<sup>11</sup>

On the same principle the application of section 21 was negated to amend or vary a notification issued under section 3 of the Commissions of Inquiry Act, 1952 for reconstituting the Commission by replacement or substitution of its sole member although section 21 was found applicable for extending the time for completing the enquiry. The scheme of the Commissions of Enquiry Act showed that the Government should have no control over the Commission after its constitution except for filling any vacancy in the office of member or for its winding up when its

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<sup>9</sup> Gopichand v Delhi Administration, AIR 1959 SC 609 cited in Singh 2021 p 786

<sup>10</sup> Sampat Prakash v State of Jammu & Kashmir, (1969) 1 SCC 562 cited in Singh 2021 p 787

<sup>11</sup> State of Bihar v DN Ganguly, AIR 1958 SC 1018 cited in Singh 2021 p 787

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 existence becomes unnecessary and thus the context and the scheme of the Act made section 21 inapplicable for reconstituting the Commission. ^{^12}

Similarly, a certificate of registration of citizenship issued under section 5(1) C of the Citizenship Act, 1955 cannot be cancelled by the authority granting the registration by recourse to section 21. ^{^13}

Effect and stage: It is also relevant to examine the effect of the notification or order sought to be annulled and the stage at which it is being done. Thus, although a notification for compulsory acquisition of land under the Land Acquisition Act, 1894 can be cancelled by recourse to section 21 of the General Clauses Act, 1897, ^{^14} it cannot be cancelled after the possession is taken and the land has vested in the Government. ^{^15}

Further the scheme of the Land Acquisition Act shows that withdrawal from acquisition after notifications under sections 4 and 6 are issued cannot be made by just rescinding those notifications but only by a notification issued under section 48. ^{^16}

Enforcement notification: A notification bringing an Act into force cannot be annulled by recourse to section 21. ^{^17}

The general power under this section of rescinding a notification or order has to be understood in the light of the subject-matter, context and the effect of the relevant provisions of the statute

¹² State of Madhya Pradesh v Ajay Singh, (1993) 1 SCC 302 cited in Singh 2021 p 787

¹³ Ghauri Hasan V State of Rajasthan, AIR 1967 SC 107 cited in Singh 2021 p 787

¹⁴ State of Madhya Pradesh v VP Sharma, AIR 1966 SC 1593 cited in Singh 2021 p 787

¹⁵ Lt Governor v Avinash Sharma, (1970) 2 SCC 149 cited in Singh 2021 p 787

¹⁶ Larsen and Toubro Ltd v State of Gujarat (1998) 4 SCC 387 cited in Singh 2021 p 787

¹⁷ Lachmi Narain v UOI (1976) 2 SCC 953 cited in Singh 2021 p 787

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under which the notification or order is issued and the power is not available after an enforceable right has accrued the notification or order.<sup>18</sup>

**Quasi-judicial order:** Moreover, section 21 has no application to vary or amend or review a quasi-judicial order. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such a power is conferred by the Act or rules under which it is made. On this basis it was held that the Election Commission cannot by recourse to section 21 deregister or cancel registration of a political party under section 29A of the Representation of the People Act, 1951 for the decision of the Commission to register a political party under section 29A(7) of the Act is quasi-judicial in nature.<sup>19</sup>

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<sup>18</sup> State of Kerala v KG Madhavan Pillai (1988) 4 SCC 669 cited in Singh 2021 p 787

<sup>19</sup> Indian National Congress v Institute of Social Welfare (2002) 5 SCC 685 cited in Singh 2021 p 788