



25 LAWS FOR REPEAL IN MAHARASHTRA

Centre for Civil Society



CENTRE FOR CIVIL SOCIETY
Social Change Through Public Policy



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Introduction

Rule of law is the defining principle of a well-functioning modern democratic polity. Laws are the DNA of government– they define the foundations of public administration and they shape the incentives and behavior of private agents. The essence of good governance is good laws; for rule of law to operate, laws must be well-written and well-coded. Laws must be precise, principles-based, and should stand the test of time.

Our enthusiasm for legislation has left us with statues, several of which are obsolete, redundant or repetitive. Not just this, the final language of laws is often inconsistent – several versions of Acts are available, and for an ordinary citizen without significant legal wherewithal it is almost impossible to know for sure what language of what law he may have violated.

The results are an environment fraught with substantial legal risk and uncertainty, an overburdened judicial system, and pernicious rent seeking. Individuals and firms find themselves in a maze of laws, and find that many ordinary activities infringe on some law or another. Citizen and private agents then are left with two methods of navigating this minefield: the corrupt methods of buying off enforcement agencies, or the approach of engaging less with society and the economy. Big firms are more likely to be able to pay the fixed cost of compliance and of corrupt methods. Competitive dynamics are adversely affected when fewer people choose to start firms, and when the firms that spring up are likely to have a weak compliance culture. Alongside, social fabric is weakened when bad-laws incentivise illegality and discourage law abidance in everyday life; fairness, honesty and values then become secondary to envy, corruption and cheating.

The most important aspect of the Indian development project today is writing sound laws, and then constructing state capacity to enforce those laws. This requires large-scale changes in the laws. In some areas, there is a need for ground-up rewriting of laws and repealing all existing laws. In many other areas, patient and thorough cleaning can yield substantial impact.

The last serious concerted effort in cleaning up the statute books was in 2001, during the administration of the BJP-led NDA. The then government acted swiftly on some of the recommendations of previous Law Commissions and the Report of the Commission on Review of Administrative Laws, 1998 (PC Jain Commission)¹, two sources that have argued vociferously for statutory legal reform. Since then however, there has been no systematic effort at weeding out dated and principally flawed laws.

During the campaigns for the 2014 General Election, BJP candidate Shri Narendra Modi promised the electorate that his administration, should they be elected, would make a sincere attempt at statutory legal clean up. He made a commitment to the electorate that every new law passed, the government would repeal 10 redundant ones, and that in his first 100 days in office he would undertake to repeal 100 old, burdensome laws. In keeping with that promise, the Bhartiya Janata Party led National Democratic Alliance Government tabled the Repealing and Amending Bill (2014) in the Lok Sabha, recommending revision of 36 obsolete laws. In explaining the exercise, the present Minister for Law & Justice, Shri Ravi Shankar Prasad, committed that the exercise of weeding out antiquated laws would be a continuous process – one that would help de-clog India’s legal system. Alongside, the Prime Minister has set up a special committee under his office to oversee this exercise.

Centre of Civil Society, as public interest initiative of iJustice, NIPFP Macro/Finance Group and Vidhi Legal Policy Centre began what was called the *Repeal of 100 laws Project*. This was an independent research and advocacy initiative to identify central laws that are redundant or materially impede the lives of citizens, entrepreneurs and the Government. This culminated in a report on the 100 Laws Repeal Project (www.ccs.in/100laws). This project was acknowledged by the Law Commission of India's report on ‘Obsolete Laws: Warranting Immediate Repeal, released in September 2014.

23 of the Central Laws suggested by the abovementioned report, were included in the Repealing and Amending (Third) Bill, 2015.

¹Commission on Review of Administrative Laws, Report of the Commission on Review of Administrative Laws, Government of India, 1998-09, http://darp.gov.in/darpgwebsite_cms/Document/file/Review_Administrative_laws

Accordingly, Centre for Civil Society, commenced operations on *Phase-II 100 Laws Project*. This project essentially covers 25 state laws that require repeal. The instant report is prepared through iJustice, in collaboration with AZB & Partners, Mumbai and Hindustan Times, Mumbai – for the State of Maharashtra.

The laws in this compendium need to be repealed on account of any one of three reasons – they are either redundant (having outlived their purpose), they have been superseded or subsumed by newer, more current laws, or they pose a material impediment to growth, development, good governance and individual freedom. Most of the laws in this compendium would not invite substantial debate since they do not serve any meaningful purpose. In the case of other more controversial laws, few as they are in this compendium, our arguments for repeal have taken cognisance of the political realities surrounding legislation in India. Yet, we have included these to invite a discussion on the appropriate manner, scope and method of achieving the goals and intents of the laws in question.

While statutory reform is only the beginning of a wider process of legal overhaul, it is perhaps the most important. Without sound laws, India will not provide an enabling environment, neither for citizens, nor for entrepreneurs. Repealing pointless legislation is the first step in this direction.

Name: Bhagelas Contracts Act of 1353F

Subject: Outmoded Labour Relations

Reason: The Act is subsumed Contract Labour (Regulation and Abolition) Act, 1972

What is the law?

This Act was passed to provide for the operation of ‘Bhagelas’ contracts; a form of contract labour.

Reasons for repeal

‘Bhagelas’ contracts no longer exist today and the Contract Labour (Regulation and Abolition) Act, 1972 is presently in force to govern contract labour relations. The Bhagelas Contracts Act of 1353F is therefore irrelevant in the present labour law regime.

Issues

There are no legal issues that would impede repeal.

Name: City of Bombay Municipal Investments Act 1898

Subject: Outmoded Municipal Measures

Reason: The Act is outdated

What is the law?

The Act was passed to supplement the City of Bombay Municipal Act of 1898, and pertains to the investment of certain sinking funds and surplus moneys which had been made in public securities of the Municipal Corporation of the city of Bombay.

Reasons for repeal

The Act is no longer relevant today as it pertains to the specific debentures which were issued, transferred, assigned or endorsed as specified in its Schedule A. These debentures are loans which were granted to various municipal bodies in specified Rupee amounts and interest rates that are not reflective of any present municipal investments.

Issues

There are no legal issues that would impede repeal.

Name: Edulabad and Warangaon Parganas Laws Act, 1866

Subject: Erstwhile administrative units

Reason: The Act is outdated

What is the law?

This Act was passed to bring the ‘parganas’ of Edulabad and Warangaon under the general Regulations and Acts of the Presidency of Bombay. Parganas were administrative revenue units during the time of the British Raj. The Act references former territories such as the Southern Maratha Country, and territories in the Dekkhan and Khandesh.

Reasons for repeal

The ‘parganas’ which form the subject matter of the Act are no longer in existence. The Act also refers to former territories as well as the erstwhile East India Company.

Issues

There are no legal issues that would impede repeal.

Name: Epidemic Disease Act 1897
Subject: Plague epidemic
Reason: Not adaptable to the modern context

What is the law?

The Act was passed to deal with the plague epidemic in Bombay, predominant during the time of its enactment.

Reasons for repeal

The Act does not provide any mechanism for dealing with modern public health issues. Further, the territorial application of the legislation, which was pertinent at the time of its enactment, is no longer relevant. The Act does not define a ‘plague epidemic.’ Further, the Act is silent on distribution of vaccines and drugs

Issues

There are no legal issues that would impede repeal.

Name: Bombay Forfeited Lands Restoration Act 1938

Subject: Archaic British Era Laws

Reason: The Act is outdated

What is the Law?

This Act was passed to provide for the compensation in respect of lands that were forfeited due to the non-payment of land revenue or other sums that were due to the Government during the Civil Disobedience Movement of 1930. These are provided for in the manner of monetary compensation, or other arrangements as sanctioned by a Tribunal and the Provincial Government.

Reasons for repeal

The Act refers to land forfeited prior to 1938 and is no longer relevant.

Issues

There are no legal issues that would impede repeal.

Name: The Bombay Beggars Act, 1946

Subject: Archaic British Era Laws

Reason: The Act is extreme and violates the rights under part III of the Constitution of India

What is the Law?

This Act was passed to provide for prevention of begging, for the detention, training and employment of beggars and their dependants in Certified Institutions, and for the custody, trial and punishment of beggar offenders in the Province of Bombay.

Reasons for repeal

- The Act criminalizes begging;
- It imposes impediments to freedom of life and personal liberty guaranteed under the Constitution of India not just of the beggars, but also their dependents;
- It provides the law enforcement with undeterred powers of arrest/detention; and
- There are no reported convictions under the Act

Issues

There are no legal issues that would impede repeal.

Name: The Maharashtra Dog Race-Courses Licensing Act, 1976

Subject: Archaic British Era Laws

Reason: The Act is redundant

What is the Law?

This Act was passed to provide for the regulation, control and management of dog-racing in the State of Maharashtra and for matters connected therewith.

Reasons for repeal

The legislation is redundant.

Issues

There are no legal issues that would impede repeal.

Name: The Maharashtra Casinos (Control And Tax) Act, 1976

Subject: Archaic British Era Laws

Reason: The Act is redundant

What is the Law?

This Act was passed to provide for the control and regulation of casinos, and to impose tax on betting in casinos in the State of Maharashtra.

Reasons for repeal

The legislation is redundant. There are no casinos in Maharashtra

Issues

There are no legal issues that would impede repeal.

Name: City Of Bombay Municipal (Supplementary) Act, 1888 (12 Of 1888)

Subject: Archaic British Era Laws

Reason: The Act is redundant

What is the Law?

This Act was passed to supplement certain provisions of the City of Bombay Municipal Act, 1888.

Reasons for repeal

The Act has provisions for appeal to the Bombay High Court from the decisions of the Court of Small Causes and Presidency Magistrates rendered under the provisions of chief Act. The chief Act has now been rechristened to Mumbai Municipal Corporation Act, 1888. The provisions of the supplementary act have also been incorporated into the chief act. Therefore, the law has now become redundant.

Issues

There are no legal issues that would impede repeal.

Name: The Bombay Borstal Schools Act, 1929

Subject: Archaic British Era Laws

Reason: The Act is redundant

What is the Law?

The Act was passed to provide for the establishment of Borstal Schools in the State of Maharashtra, and to secure uniformity in the law relating to Borstal institutions throughout the State of Maharashtra. It provides that if an offender is found guilty of an offence for which he is liable to be sentenced to transportation or imprisonment and is between the age of 16 to 21, the Court can detain him in a Borstal School for 3 to 5 years.

Reasons for repeal

- Superseded by the Juvenile Justice (Care and Protection of Children) Act, 2000;
- Is contrary to the principles of criminal jurisprudence and the determined age of maturity;
- In contravention of the Juvenile Justice (Care and Protection of Children) Bill, 2014 – which seeks to reduce the age of maturity.

A child is defined as a person below 18 years of age, globally. This can be read from:

- The United Nations Child Rights Convention (“**CRC**”);
- Worst Forms of Child Labour Convention, 1999;
- The 87th Annual International Labour Conference;
- The UNICEF;
- The Indian Contract Act, 1872;
- Indian Majority Act, 1875;
- The Indian Penal Code etc.

Issues

There are no legal issues that would impede repeal.

Name: Government Demands Act, 1308F

Subject: Erstwhile geographical units

Reason: Subject matter falls under a number of specific legislations presently in force

What is the law?

This Act was passed to for the recovery of any debt or sum under any agreement made with the government or security money, due by any person to the government. Under the Act, in case of any such sum recoverable from any person to the government, the relevant district collector would prepare a memorandum in the form set out in the Act specifying the reasons for such recovery and the same would be considered to be a decree by a Court against such person in favour of the government.

Reasons for repeal

The legislation was enacted in respect of the Hyderabad region of Maharashtra, which is no longer in existence today. Further, there is no necessity for a specific legislation relating to such government dues or demands today as these would fall under subject specific statutes, which are currently in force.

Issues

There are no legal issues that would impede repeal. The subject matter on the legislation is not relevant today.

Name: Government Securities Act, 1330F

Subject: Erstwhile geographical units

Reason: Act is irrelevant in light of the Government Securities Act, 2006

What is the law?

This Act was passed to provide for payment by the Government to holders, joint holders and successors of deceased holders of Government securities in the Hyderabad region of Maharashtra. The Act deals with various aspects of Government securities such as signatures affixed to such securities, dispute as to title of such securities, renewal of promissory notes, conversion of securities and Government liabilities in respect of securities issued.

Reasons for repeal

The Act was enacted in respect of the Hyderabad region of Maharashtra, which is no longer in existence today. Further, the Government Securities Act, 2006 applies to all states and therefore renders the Government Securities Act, 1330F irrelevant.

Issues

There are no legal issues that would impede repeal. The subject matter on the legislation is not relevant today.

Name: Hyderabad City Coroner's Act, 1330

Subject: Erstwhile geographical units

Reason: Act is irrelevant in light of the enactment and repeal of the Coroner's Act, 1871 and the proposal for a Coroner's Act applicable to the whole of India

What is the law?

This Act was passed to provide for the appointment of a Coroner for the purpose of an inquest into the cause of any death in the Hyderabad region of Maharashtra. The Act provides for general inquests into causes of death, inquests in cases of deaths in prison, the procedure for recording the findings of the Coroner and Panchs who are summoned pursuant to the Act, permission for conducting funerals and the power of the Government to make rules under the Act.

Reasons for repeal

The legislation was enacted in respect of the Hyderabad region of Maharashtra, which is no longer in existence today and specific reference to the erstwhile dominions of the Nizamare made reference to under the provisions of the Act. Further, the Coroner's Act 1871 was enacted with respect to the city of Mumbai. This Act was subsequently repealed in 1999 and the 206th Law Commission Report of June 2008 proposed a Coroner's Act, which is applicable to the whole of India. Although such legislation has still not been enacted, it is evident that the Hyderabad City Coroner's Act, 1330 is no longer relevant today and is therefore eligible to be repealed.

Issues

There are no legal issues that would impede repeal. The subject matter on the legislation is not relevant today.



Name: The Hyderabad Cotton Cultivation and Transport Act, 1337

Subject: Erstwhile geographical units

Reason: Act came into force to meet specific circumstances in a context, which is not relevant today

What is the law?

This Act was passed to provide for maintenance of the quality and reputation of the cotton grown in certain parts of the Nizam's Dominions and to impose restrictions regarding the cultivation and transport of cotton and to control of import thereof. The Act provides that the Government by notification may prohibit the import of cotton or of any special kind of cotton into a specified area, unless such import is being made under a licence and in accordance with stipulated conditions.

Reasons for repeal

The legislation was enacted in respect of the Hyderabad region of Maharashtra, which is no longer in existence today and specific reference to the erstwhile Nizam's dominions are made reference to under the provisions of the Act. Further, the Act came into force in a specific historical context, which is not relevant today.

Issues

There are no legal issues that would impede repeal. The subject matter on the legislation is not relevant today.

Name: The Peint Laws Act, 1894

Subject: Erstwhile geographical units

Reason: Act deals with territories, which are governed by Municipal laws in force today

What is the law?

This Act was passed in order to repeal all existing laws in the Peint district of the Bombay Presidency and to apply all laws prevalent at the time in the district of Nasik to the district of Peint. The Act further provides that all proceedings commenced before any authority in the said territory before the coming into force of the Act are to be disposed of by such authority as the provincial Government may direct.

Reasons for repeal

The Act deals with a specific territory of the erstwhile Bombay Presidency and is therefore not relevant or applicable today. The Peint region is presently a sub-region within Nasik and is governed by relevant and applicable Municipal laws. The Act is therefore eligible for repeal.

Issues

There are no legal issues that would impede repeal. The subject matter on the legislation is not relevant today.

Name: The Religious Endowments (Extension to Kanara) Act, 1865

Subject: Erstwhile geographical units

Reason: Act deals with application of a specific legislation to an area no longer in the state of Maharashtra

What is the law?

This Act was passed in order to extend the provisions of the Religious Endowments Act, 1863 to the district of Kanara in the Bombay Presidency. The Religious Endowments Act, 1863 was passed in order to enable the Government to divest itself of the management of Religious Endowments. This Act enabled the Government to make special provision in respect of mosques, temples or other religious establishments to which the provisions of the Religious Endowments Act, 1863 applied.

Reasons for repeal

The Act deals with a specific territory of the erstwhile Bombay Presidency and is therefore not relevant or applicable today. The Kanara region is presently in the state of Karnataka. The Act is therefore eligible for repeal.

Issues

There are no legal issues that would impede repeal. The subject matter of the legislation is not relevant today.

Name: The Satara, Sholapur and Southern Maratha Country Law Act, 1863

Subject: Erstwhile geographical units

Reason: Act deals with extension and application of the Acts and Regulations of the erstwhile Bombay Presidency

What is the law?

This Act was passed in order to extend the provisions of Regulations and Acts of the Presidency of Bombay to the territories of Satara, certain villages and lapsed States in the Collectorate of Sholapur and in the Southern Maratha Country, and to exclude the village of Muchandi, Pargana Jath, from the operation of the said Regulations and Acts for the better administration of justice in such territories.

Reasons for repeal

The Act deals with specific territories of the erstwhile Bombay Presidency and the erstwhile Acts and Regulations of the Presidency of Bombay and is therefore not relevant or applicable today.

Issues

There are no legal issues that would impede repeal. The subject matter on the legislation is not relevant today.

Name: Bombay Hindu Heirs' Relief Act, 1866

Subject: Liability of Hindu Heirs for Debts of their Ancestors

Reason: Subsumed by the Hindu Succession (Amendment) Act, 2005

What is the law?

This Act was passed to limit the liability of a son, grandson or heir of a deceased Hindu for the debts of his ancestor, and the liability of the second husband of a Hindu widow for the debts of her deceased husband, and otherwise to amend the law of debtor and creditor.

Reasons for repeal

The Act is subsumed by the Hindu Succession (Amendment) Act, 2005 which provides that no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great grandfather solely on the ground of the pious obligation under the Hindu law. Further, the Act was last cited in the 1940s and has not found any recent application.

Issues

There are no legal issues that would impede repeal.

Name: Bombay Displaced Persons Premises Control and Regulation Act, 1952

Subject: Regulation of Consequences of Partition

Reason: The Act does not find application in today's context

What is the law?

This Act was passed to provide for the control and regulation of occupation of premises provided for the use and occupation of displaced persons. It defines displaced persons as any person who on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan, have been displaced from or has left his place of residence in such area after the first day of March 1947 and who has been subsequently residing in India.

Reasons for repeal

- The Act was enacted to provide relief to persons displaced from their place of residence (in areas now comprising of Pakistan) on account of the partition, and subsequently residing in India. The law was specifically enacted to deal with the situation immediately post partition;
- The Act has outlived its utility;
- The Act was cited only once in 1954²; and
- The Resettlement of Displaced Persons (Land Acquisition) Act 1948, a central legislation is included in the Repealing and Amending (Third) Bill 2015.

Issues

There are no legal issues that would impede repeal.

²Available at AIR 1955 Bom 192



Name: Bombay Rationing (Preparatory and Continuous Measures) Act 1947

Subject: Rations

Reason: Irrelevant in today's context

What is the law?

This Act was passed to provide for the numbering of premises and the collection of information in respect of persons and establishments, as measures preparatory to and for the continuance of the rationing of articles or things essential to the life of the community.

Reasons for repeal

- The Act has been repealed in Gujarat as there have been no cases pertaining to the Act, immediately post Partition, and the law was enacted for the purpose of rationing around the time of independence; and
- The Act lacks relevance in the present era.

Issues

There are no legal issues that would impede repeal.

Name: Probation of Offenders Act, 1938

Subject: Release of Offenders on Probation

Reason: Subsumed by the subsequent legislation

What is the law?

This Act was passed to provide for the release of offenders on probation or after due admonition and for matters connected therewith.

Reasons for repeal

- The Act is subsumed by The Probation of Offenders Act, 1958; and
- The Bombay Probation of Offenders Act, 1938 (Bombay Act No. XIX of 1938), though not specifically repealed by the Probation of Offenders Act, 1958 (Act No. 20 of 1958) is deemed to have been impliedly repealed under Article 251 of the Constitution of India³.

Issues

There are no legal issues that would impede repeal.

³ Available at <<http://court.mah.nic.in/courtweb/criminal/pdf/chapter11.pdf>>

Name: Bombay Hindu Divorce (Decrees Validation) Act, 1958

Subject: Validation of specific decrees of divorce passed under the Bombay Hindu Divorce Act, 1947

Reason: Irrelevant in today's context

What is the law?

This Act was passed to validate certain decrees of divorce passed under the Bombay Hindu Divorce Act, 1947 and the Saurashtra Hindu Divorce Act, 1952, as repealed by the Hindu Marriage Act, 1955.

The Act validated and legitimised those divorce decrees which were beyond the scope of the Hindu Marriage Act, 1955, and therefore illegal at the time.

Reasons for Repeal

The Act has served its purpose and is no longer relevant.

Issues

There are no legal issues that would impede repeal.

Name: Bombay Smoke Nuisances Act, 1912

Subject: Air Pollution

Reason: Subsumed by the subsequent legislation

What is the law?

The Act was passed to provide for the abatement of nuisances arising from the smoke of furnaces in Greater Bombay and to provide the extension thereof, to other areas in the State of Maharashtra.

Reasons for Repeal

The Act was subsumed by the Air (Prevention and Control of Pollution) Act, 1981 etc.

Issues

There are no legal issues that would impede repeal.

Name: The Bombay Prevention of Ex-Communication Act, 1949

Subject: Prohibition of ex-communication

Reason: Subsumed by the Constitution of India

What is the law?

The Act was passed to prohibit ex-communication in the State of Bombay. It came to the notice of Government that the practice prevailing in certain communities of ex-communicating its members was often followed in a manner which resulted in the deprivation of legitimate rights and privileges of its members. In the spirit of public interest, it was considered expedient to stop such practice.

The subject matter of this Act falls under entries 3 and 23 of List III. The Act is in force in the Belgaum area of the State and prohibits the practice prevailing in certain communities of ex-communication of its members for some reason or other. It has often been reported in newspapers that powerful members of society in villages boycott individuals of lower status and prevent them from using resources such as the village well or prevent them from purchasing their daily requirements from the shops etc., when disputes arise between such groups. One-Man Committee has suggested that it is desirable to make it applicable to such cases and to extend it to the whole State to prevent such practices in a village.

Reasons for Repeal

The Constitution of India ensures the protection of legitimate rights and privileges and therefore the instant law is irrelevant in the present era.

Issues

There are no legal issues that would impede repeal.

Name: The Bombay Judicial Proceedings (Regulation of Reports) Act 1955. (Bombay Act XVIII of 1955).

Subject: Regulation of Reports of Judicial Proceedings

Reason: The Act impedes certain fundamental rights

What is the law?

The Act was passed to regulate the publication of reports of judicial proceedings, so as to prevent the publication of obscene or indecent matter and other related matters - not in public interest.

The Act restricts the publication of judicial proceedings relating to offences under Sections 354, 366, 366A, 366B, 376, 377, 497 and 498 of Indian Penal Code.

Reasons for Repeal

- The Act does not define or lay down the scope for the terms “indecent” “obscene” or “public morals”;
- The Act poses impediments to the fundamental rights of freedom of press and freedom of speech and expression; and
- The Act poses a threat to the accountability and transparency of the judicial proceedings.

Issues

There are no legal issues that would impede repeal.