
PROJECT MANUAL

REPEAL OF LAWS

This is a research and advocacy initiative to identify laws that are redundant, or materially impede the lives of citizens, entrepreneurs and the government. Each organisation involved has lent staff to analyse laws passed over different time periods, review the recommendations of various expert committees. Since this was an experiment to explore how collaborative working may help achieve a common goal, we kept the contours of the project simple: laws that could be repealed wholesale, were not too controversial, were material enough to help initiate reforms, and would help sell the idea of a clean and effective legislative and legal system. This Project is an experiment to demonstrate how external experts may be able to help the government on different issues, and how a thinking machine might further common ideals and help build state capacity. The Project does not aim to reinvent the wheel. It simply revisits the work and recommendations of several experts before, and provides a clean compendium of low-hanging fruit that can easily be executed with minimal discomfort or encumbrances.

EXECUTIVE SUMMARY

Understanding the importance and relevance of repealing statutes that are obsolete and irrelevant or adversely affect the present needs and keeping in mind the practice and procedures followed by other developed countries wherein statutes books receive an annual/biannual overhaul, and in line with the promises made by the present government at the time of elections, we at Centre for Civil Society, along with a few others, commenced work on a project titled “Laws for Repeal” wherein we identified 100 laws in Phase I and 56 laws in Phase II. These were laws that we suggested for repeal to the Central and State Governments, respectively.

With the instant report/manual, we are attempting to document the entire process involved in repealing statutes in a sequential yet detailed manner whereby the same process can be adopted by anyone – government, non-profits, university or otherwise - who intends to initiate a similar process.

We have also attempted to capture the limitations, apprehensions along with our personal learning from the project to the reader in a holistic manner such as to provide all the relevant information relating to the project. This also includes details on partnerships required, and the requirements and training of the volunteers and team members.

INTRODUCTION

Good governance is inconceivable without good laws. Rule of law warrants the laws to be reasonable, fair and just. These laws must be precise, directly addressing the issue or fulfilling the purpose for which it is enacted. Statutes that are obsolete, redundant, repetitive and/or inconsistent only create difficulties in access to justice to the masses and result in unfettered powers in the hands of implementing agencies thus weakening the social fabric and promoting corruption. Various countries have taken the lead in repealing old, outdated laws that create hurdles in the effective governance and decision making.

Statute books free of clutter is a responsibility that requires a number of partners – in Government, in Parliament and beyond – to challenge their current approach to making and promoting legislation. A more collaborative approach, combined with simplified internal procedures, could facilitate the work of all those involved in the preparation of legislation, ultimately mitigating the manifestations (and causes) of complex laws.

The principles of collaboration and openness can be applied to the preparation of legislation and also to their repeal, as could the Government's emphasis on simplification and transparency. Laws are not abstract sets of instructions and during their preparation the practicalities of how they will be promulgated, used and implemented should be carefully considered.

There may well be process changes which would help improve legislation – and a number of changes already under way have been mentioned in this report. But reaching a consensus around the principles of good law and a sense of shared responsibility to promote it, could be more effective in improving the quality of statute law than stricter procedures and more prescriptive templates.

Some of the Laws enacted had adverse effects on people and some of the laws were misunderstood and that's why their repeal was the only aspect left so that good laws should prevail there.

DEFINING THE PROBLEM

Laws must be simple, accessible, easy to comply with and not unnecessarily burdensome. However, at present those do not form features of modern legislation.

Some of the reasons for legislation falling short of what users hope for are inescapable. But there are other factors which ought to be within reach of the government, parliament, publishers and others – either acting in their own sphere of influence or in partnership. For that to happen, there needs to be a shared ownership of and pride in our legislation. And pieces of legislation need to be regarded not just as documents in their own right, but as parts of a larger mosaic of legal framework. It is the aggregate to which the user will have access to.

There also needs to be a stronger incentive on all involved in the process to avoid generating excessively complex law or to act positively to promote accessibility, ease of navigation, and simplification.

APPROACH TOWARDS REPEALING STATUES

The author has examined all the relevant factors and limitations in detail for the purpose of the instant paper which attempts to provide a comprehensive step wise approach towards repealing of laws.

SCOPE OF THE PROJECT – BENCHMARK APPLIED

The bench-mark applied for identification of the laws to be repealed were:

- 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 that we dealt with, were laws that were to be repealed in totality and accordingly laws that did 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 cognizance of the political realities surrounding legislation in India, particularly in the areas of business regulations and labour relations. 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.

SPECIFIC INTERVENTIONS - MAHARASHTRA

For the State of Maharashtra, CCS along with AZB, Mumbai identified 25 state laws that warranted immediate repeal on the grounds of them being either redundant (having outlived their purpose) or having

been superseded or subsumed by newer, more current laws; or posing a material impediment to growth, development, good governance and individual freedom.

Maharashtra has more legislations than any other state of comparison. Even so, we required a local partner (AZB, Delhi) because while the list of these laws may still be available in public domain, the texts of a lot of these laws (archaic and obsolete) were not readily available and the process of identifying laws to be repealed is an extremely methodological task involving various factors. We ensured that the efforts spent on this step yielded maximum output. While the material reviewed for research included online journals, legal databases and search engines, commentaries, news reports, research papers, reports of the law commission, research on the objective of framing the law and its relevance in the present era/scenario, its impact and most importantly its present usage. We attempted to ensure the same by having weekly discussions on the gathered research, followed by fortnightly peer reviews.

IDENTIFICATION OF THE POTENTIAL STAKEHOLDERS

We realized the importance of engaging the relevant stakeholders in the process of repeal. For the effectiveness of the project relevant influencers, be it the state, academicians, lawyers, citizens at large, media etc., have to be identified as the first step of the project. These are the list of active participants of the project, in terms of content and actual intended repeal. The media for instance can continue printing stories on the identified legislations and in the process educating the targeted public that is in most cases unaware of the laws that hold force on them. Similarly, it is imperative to have the state/central legal departments or the home ministry in case of central laws and overlapping laws on board. Due importance must be on creating enough education and awareness on the subject. The mind-set appears to be that if a legislation is obsolete or archaic, why it must even require actual effective, explicit repeal. Barriers like these have to be broken. The importance of creating annual repeal day has to be felt and recognized. The media plays a crucial role in providing the relevant pressures needed for the states to act upon the findings, at times. This becomes a lot simpler if the states departments are approached in time and taken on board whereby they too can provide inputs etc. that may be required and thereafter, take up the process themselves.

Different states may have different limitations/barriers that may require attention and accordingly, the relevant stakeholders may also vary from state to state. While the above-mentioned are the standard affected/relevant parties, there may be other factors adding to this list. These accordingly, require identification and documentation in terms of their relevance and requirement.

PARTNERSHIPS WITH RELEVANT STAKEHOLDERS

While preparing reports for Delhi and Maharashtra, we found issues getting the desired results in Delhi, the Law Ministry, from the reference of the Chief Minister's office provided us with the relevant audience. The report and project along with its objective and scheme were discussed in detail pursuant to which there was assurance from the State to repeal 19 of the 25 laws that were suggested for repeal in Maharashtra. This we found was a better tool of advocacy, i.e., to form such partnerships in the beginning itself. We found that making partnerships with the relevant stakeholders prior to the commencement of the project, especially those in the government- is the preferable manner of making partnerships. This also allows the Law Ministries or other relevant departments to makes suggestions/have the required sense of ownership of the project, which is beneficial towards actual repeal of the identified legislations.

UNDERSTANDING PARTNERSHIPS – ACADEMIC, PROFESSIONAL, MEDIA

There are various kinds of partnerships that can benefit the project. Academic partnerships are most relevant and significant in forming content of the project report, in identifying the legislations and laying the relevant benchmarks for such identification. While we have already established certain benchmarks used by us in the process, there is no obvious hard and fast rule to following the same. The same can be added to depending on a particular requirement for instance. Academic partnerships can accordingly include researchers, laws school students and faculty members, lawyers, authors, etc. These provide either actual primary research required or can assist in the brainstorming and peer review discussions on the identified legislations.

Accordingly, professional partnerships include law firms, independent lawyers, bureaucrats, other industry specific professionals etc., who can lend a functional approach in the process of the preparation of the report. These are very relevant in terms of the actual experience they bring to the project of the reading of the law, their expected apprehensions, impact etc.

Media forms another important partnership. Creating awareness about the law in the people and creating that impact/pressure over the governments is also a requirement you cannot do without in the process of this project. The media can either provide information on the entire project or break it down to cover

portions of it. Either ways, there can be multiple ways of such dissemination to create the desired awareness and pressure needed for repealing the identified legislations.

We realized that forming partnerships with the government bodies may not always be a viable first step, while if doable the same can be extremely beneficial. Yet the three above-mentioned partnerships are imperative in as much as the depth and over-all value they bring to the project.

TRAINING VOLUNTEERS, RESEARCHERS AND TEAM MEMBERS

The team working on the project requires the essential – which is to be able to read laws. So law students can be the best volunteers. We engaged law school students of the fourth and fifth years for the research of the content of the project. Students of this type can also bring analytical discussions to the table at the time of research and drafting. It also helps for the such volunteers to have a knowledge of other governing laws (such as that of the Indian Penal Code, 1860 and of the Indian Constitution is imperative), and some basic legal principles along-with a certain degree of general knowledge on the machinery of a state.

The volunteers require a basic knowledge of the above-mentioned and training is usually on the job. An orientation is generally required to align their thought-process and give them the intended direction for their research.

While we were very selective in the process of engaging volunteers, on engagement we provided them with an orientation of a few hours that included taking them through the objective of the project, the requirement for the same, the intended outcome and the intended impact of the same. This also included taking them through our existing reports of a similar or exact nature, if any and then explaining the expectations, the timelines and the chain of command. We monitored our research very closely due to the strict time frames that we worked with. We have weekly meetings with the researchers to ensure we met deadlines and to also ensure they remained motivated to the intended outcome and final goal/agenda.

Fortnightly meetings included peer review from other supervisory team members and external personnel that we engaged from time to time. These meetings discussed the information gathered so far in detail. The meetings were to ensure that the legislations identified were meeting the benchmarks established, and were (in our case), as less controversial as possible while still meeting the decided agenda and norms.

There is no express training required for the volunteers/team members. However, the roles have to be aligned in a clear cut manner wherein they do not overlap over one another. Researchers with knowledge

of the law, namely law students/lawyers should be preferred. The quality of researchers is directly proportionate to the quality of the report.

Emphasis must be laid on the induction of the researchers to ensure that they understand and comply with the pre-established benchmarks for the project. The induction process may vary from team to team and there may not be a rigid process for the same.

During the induction process we conducted, after interviewing the researchers strictly and engaging them after approvals of written samples and results from mock research topics, we engaged them in a details discussion/reading of similar reports. For the Phase II of the project, the researchers were made to study the existing reports in detail, along with a session on writing and methodology keeping the final audience of the report in mind.

ONGOING MENTORSHIP AND SUPPORT FOR VOLUNTEERS, RESEARCHERS AND MEMBERS

The project will shape up essentially while in progress, so ongoing mentorship/support is extremely relevant. While the researchers are in the process of pulling out laws that may be of relevance it is most important to provide ongoing mentorship to be able to steer the project in the desired direction. Researchers tend to follow a genre. So there is a possibility that laws selected, may either be extremely low hanging fruits (which may not be the desired goal for that team), or the laws chosen are too controversial and as such may pose material difficulty/opposition at the time of repeal. There may be certain laws that may warrant repeal but cannot be repealed for various reasons such as lack of another statute to govern the subject matter etc.

Arranging for regular meeting with peer groups and other members of the team keeps the project in check and on track. It provides new insight and helps gain fresh perspective for the researchers who often lead to roadblocks due to the restrictive nature of their research and thinking – keeping in mind the process and requirements for repeal.

PREPARATION OF THE REPORT

Preparation of the report can either happen simultaneously, as the research progresses, or can be done after gathering all the relevant information and sources. We prepared the report by making a rough draft that included everything relevant, including resources etc., at the end of every weekly

meet/discussion. While we had a separate team member who was responsible for organizing this weekly data to ensure that the same was not just bulk tranches but relevant information that was being kept to be used for the purpose of the report.

So while the researchers gathered the information/data for the report, updates and discussions with peer groups and team members were simultaneously carried on and all this was documented in a rough document. This included the discussions as to potential concerns, extent to which the said statue conformed to the yardstick used for repealing the same, formats followed (in any), key points to bear in mind – either as red flags or pertinent points that must be brought out in the report.

PROCESSES TO BE FOLLOWED

While the abovementioned was followed, there are instances wherein it is difficult to arrange for meetings to be attended by the peer groups and other team member. Internal dissemination can also be done via email among the relevant members and groups and their feedback/comments, if any can be incorporated in the rough draft as comments for discussions.

Panel discussions can also be arranged after the completion of the rough draft with comments and feed backs. These panel discussions should ideally involve relevant people from the government. The Law Ministry, the ruling party, opposition and academicians can make the panel for the discussion. This is to provide further depth to the project and include any details that may be left out. Comments and discussions from such discussions form an integral part of the final report. These are intended to also provide facts, numbers, report etc. along with other related discussions.

The final report should also ensure that it includes details such as *last cited*, i.e., when the said statue was last cited in court, along with the stance of developed countries on the subject matter, if any.

Law Commission reports and their recommendations, if any, must be included too.

DISSEMINATION OF THE REPORT

Potential influencers and other relevant stake holders, as mentioned above, should preferably be identified prior to the commencement of the report. This makes the dissemination easier and more organized. Over and above all, it allows you to engage these relevant parties at the time of drafting the report etc. They can be as involved as they agree to be and this only assists the process of the eventual repealing of the statues

included in the report. Government officials even of ancillary departments, can guide and assist in manner too many at this crucial stage.

Media dissemination is vital too. This not only creates the required awareness, but also creates the required pressure on the government bodies that need to repeal these laws. While partnerships can be made with media houses at the commencement of the project, these deter you from approaching/sharing the content of the report with other media houses/bodies. Therefore one can also approach multiple media bodies and shares portions of the report as opposed to sharing the entire report with one media partner. This eventually can also provide more coverage. Yet one media partner can be made if there is a concrete agreement on the details of publishing agreed between the two parties. This can be a problem for organizations that do not have funds required to have such stories published. We for instance got coverage from Indian Express and a few other hindi newspapers as a pro-bono initiative of theirs.

INSIGHTS FROM THE PROJECT AND ITS LIMITATIONS

The project is an ambitious one with the final objective being to have intended/identified legislations be repealed by the respective governmental bodies. While we have attempted to document the entire process herein, we have identified that the most effective manner of keeping the law books updates is to follow a process of annual repeal, i.e., the annual repeal day which we suggested was to be 26 November, i.e., also the constitution day. We suggest that governments, state and central must *suo moto* repeal laws that warrant repeal on the 26 November every year.

While the above is are most promising suggestion, as is also a successful model in other developed countries, our biggest learning is in relation to the content of the report, i.e., the importance of identifying why a law must be repealed and adhering to such pre-requisite benchmarks, and also on the importance of partnerships, professional, academic or otherwise, which essentially form a part of the team.

Limitations associated with the project are – identifying the laws, discovering the laws (specially state laws), attaining the script (*text*) of the laws, research on the history/objective of the laws (to understand why they were adopted in the first place/their rationale), commentaries/literature on such laws, citations of such laws (depending on the legal software and how updated they are in the first place), etc. Other limitations include the general reluctance of the governments in this regard, or their low motivation on such efforts. Alternatively, we have also faced active disregard on laws that are not enacted for, but extended to a particular state, wherein the jurisdiction of the centre and state tend to overlap.

CONCLUSION

Cleaning of statutes appears to be the need of the hour worldwide. The main objective is to bring reform in the legal system of a state in order to make them more accessible to the common man and to imbibe the principles of rule of law, which shall *inter-alia*, begin only with the review of enactments which are obsolete and redundant or retention whereof as separate acts are unnecessary.

The concerns pertaining to what qualifies as legitimate standards/benchmarks of such mass repeal, it is important to learn from other developed states following this practice along with keeping in view the instant demographic in mind. The key points that should be kept in mind by the state should be to ensure that the intended repeal does not *inter alia*:

- (a) revive anything that is not in force or existing; or
- (b) affect the previous operation of any enactment; or
- (c) affect any existing right, privilege, obligation or liability; or
- (d) affect any penalty, forfeiture or punishment incurred; or
- (e) affect any investigation, Legal proceedings or remedy.

That being said, the issue however is not just of what the benchmark of such repeal is to be (which can be safely agreed upon by examples of other developed states and demographics in question), but more so that of a periodic repeal. Acknowledgement of change or amends/repeal is not remotely enough. What is required of the governments, is the need for adopting a mechanism of periodical repeal of statutes that warrant so. In other words, the mechanism of repealing legislations that have lost their significance needs to be institutionalized.