

OFFICE MEMORANDUM

Subject: The Repealing and Amending Act – Clarification regarding.

Undersigned is directed to refer to the Repealing and Amending (Second) Act 2015 (19 of 2015) dated 14.5.2016 and Repealing and Amending Act, 2016 (23 of 2016) dated 9.5.2016 by virtue of which following 11 numbers of Scheduled Castes and Scheduled Tribes orders (Amendment) Acts have been repealed.

2. Clause 4 of the above stated Repealing and Amending Acts read as follows:

“The repeal by the Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to.....”

3. In this connection, attention is also drawn to para 3 of enclosed clarificatory note of Legislative Department of Ministry Law and Justice dated 16.5.2016 (Annexed for ready reference), wherein Section 6A of the General Clause Act, 1897 has been cited as below :

“6 A. Repeal of Act making textual amendment in Act or Regulation – Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not effect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.”

4. In view of above stated clause at para 2 and clarification at para 3, revision of Scheduled Tribes Lists made by virtue of following 11 Acts will not be affected by repealing of these Acts :-

| Sl.No. | Year | No. | Short Title |
|--------|------|-----|--|
| 1 | 2003 | 10 | Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 |
| 2 | 1956 | 63 | Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 |
| 3 | 1987 | 43 | Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1987 |

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|----|------|----|---|
| 4 | 2002 | 32 | Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Act, 2002 |
| 5 | 2003 | 47 | Constitution (Scheduled Tribes) Order (Amendment) Act, 2003 |
| 6 | 2006 | 48 | Constitution (Scheduled Tribes) Order (Amendment) Act, 2006 |
| 7 | 2008 | 14 | Constitution (Scheduled Tribes) Order (Amendment) Act, 2008 |
| 8 | 2009 | 2 | Constitution (Scheduled Tribes) (UT) Order (Amendment) Act, 2008 |
| 9 | 2012 | 24 | Constitution (Scheduled Tribes) Order (Amendment) Act, 2011 |
| 10 | 2012 | 24 | Constitution (Scheduled Tribes) Order (Amendment) Act, 2012 |
| 11 | 2013 | 24 | Constitution (Scheduled Tribes) Order (Amendment) Act, 2013 |

4. This issues with the approval of the Secretary.

Encl: as Stated above


(Biswaranjan Sasmal)
Director
Tel. No. 23070508

To

1. Chief Secretaries of all States and UTs as per list.
2. Principal Secretaries/Secretaries, Tribal Welfare/Social Welfare Department of all States and UTs as per list.
3. Web Manager – NIC, Ministry of Tribal Affairs

F. No. 11(1)/2016-L.I
Government of India
Ministry of Law Justice
Legislative Department
Legislative I Section

Shastri Bhawan, New Delhi
Dated the 16th May, 2016

NOTE

Subject:-The Repealing and Amending Act - Clarification regarding.

The undersigned is directed to say that several representations and letters are received by this Department from various petitioners/Ministries/Departments seeking clarification regarding the Repealing and Amending Acts.

2. The Repealing and Amending Act is one of the periodical measures by which enactments which have ceased to be in force or have become obsolete, are repealed or as the case may be, amended to remove any formal defects in any such enactment which comes to notice during its administration.

3. In this connection attention is drawn to section 6A of the Genral Clause Act, 1897, which reads as:-

"6A. Repeal of Act making textual amendment in Act or Regulation- Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not effect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

4. The repeal of an Amending Act does not affect such portions of the statute which have been already incorporated into the principle/parent Act. The Act directing incorporation may be repealed, but the incorporated section or sections still operate in the former Act [AIR 1951 Cal.97 (99)]. Thus, the repeal of any Amending Act does not have the effect of destroying the amendment incorporated in the parent Act. The amendments made in the parent Act by the Amending Act would continue to remain in the parent Act. The repeal of the Amending Act will not affect the continuance in force of the amendments carried out by the Amending Act which have become part of the parent Act. The Supreme Court while interpreting section 6 A of the General Clauses Act, observed that the functions of the incorporating legislature is taken almost wholly as the function of effecting the incorporation and when that function is accomplished, the legislation dies as it were, a natural death which is formally effected by its repeal [AIR 1962 SC 316 (334)].

5. This issues with the approval of the Secretary.


(K.V. Kumar)

Deputy Legislative Counsel