

The Legislative Abrogation of Penal Provisions: Concept, Mechanisms, and Jurisdictional Specificity

الإلغاء التشريعي للنصوص العقابية: المفهوم، الآليات، والاختصاص التشريعي

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Abstract :

This paper explores the legislative repeal of penal provisions, highlighting its legal nature, forms, and the competent authority. Penal norms are created to protect specific social interests, and when those interests no longer exist, repeal becomes necessary. Repeal may be express, through clear legislative text, or implied, inferred from conflict with newer laws. The study differentiates repeal—a prospective legislative act—from annulment, which retroactively nullifies invalid provisions, often by judicial ruling. Only legislative bodies can repeal such norms; custom or long-term non-enforcement is insufficient. The paper stresses that criminal provisions require formal, clear repeal to preserve legal certainty and uphold the principle of legality.

Keywords: Penal norm, repeal, annulment, legal effect, criminal law

الملخص:

تناول هذه الورقة البحثية الإلغاء التشريعي للنصوص العقابية، مبرزة طبيعتها القانونية، وصورها، والسلطة المختصة بإجرائها. تُسنّ القواعد العقابية بغرض حماية مصالح اجتماعية محددة، وعندما تزول تلك المصالح، يصبح الإلغاء ضرورة قانونية. وقد يكون الإلغاء صريحاً، من خلال نص تشريعي واضح، أو ضمنياً، يُستنبط من تعارض النصوص القديمة مع القوانين اللاحقة. وتُميز الدراسة بين الإلغاء، بوصفه عملاً تشريعياً ذا أثر مستقبلي، وبين الإبطال، الذي يُعدم النص بأثر رجعي، وغالباً ما يتم عن طريق القضاء. ولا يملك سلطة الإلغاء سوى الجهات التشريعية، إذ لا يُعد العرف أو الامتناع الطويل عن التطبيق سبباً كافياً للإلغاء. وتؤكد الدراسة أن النصوص الجنائية تتطلب إلغاءً رسمياً وصريحاً لضمان اليقين القانوني وتكريس مبدأ الشرعية.

الكلمات المفتاحية: النص العقابي، الإلغاء، الإبطال، الأثر القانوني، القانون الجنائي.

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Introduction:

Legislators endeavor, through the enactment of penal provisions, to achieve fundamental objectives, foremost among them the criminal protection of legally recognized social interests, the safeguarding of public order, and the reinforcement of communal security and individual tranquility. Equally, these norms serve to satisfy the collective societal conscience regarding justice, notably by imposing punitive measures upon perpetrators of criminal conduct.

One of the primary functions of criminal legislation is to regulate the behavior of those subject to its authority, once such provisions acquire legal efficacy. Nonetheless, sociological and technological evolutions may render certain penal norms obsolete or misaligned with contemporary realities, necessitating their amendment or, in certain cases, their outright abrogation—either through substitution by more suitable provisions or via annulment without replacement, should the underlying rationale cease to exist.

In a general sense, the abrogation of a penal provision entails stripping it of its binding legal force, irrespective of its source or the interest it was designed to protect. This renders abrogation a legally consequential act, as it terminates the operative force of the norm, thereby rendering it legally inapplicable to individuals and public authorities alike.

The central problematic explored in this study concerns the conditions under which penal norms lose legal effect, particularly given that issues of criminalization and penal sanctioning are inextricably linked to personal liberty and bodily integrity—interests which are enshrined within the principle of legality, itself elevated to a constitutional standard in many jurisdictions. This raises a fundamental research question:

Under what circumstances does a penal norm lose its legal effect and become legislatively abrogated, particularly in the absence of an express repeal? Does such abrogation possess a distinct legal nature, or is it governed by the same principles applicable to the abrogation of other legal provisions?

To answer this question, the study is structured into two main chapters. The first addresses the conceptual framework of legislative abrogation, including its definition and typologies. The second examines the distinctive features characterizing the abrogation of penal provisions, with a focus on the competent authorities entrusted with such legal power.

Methodologically, this research adopts a descriptive-analytical approach. It aims to elucidate the legislative phenomenon of penal norm abrogation by examining its conceptual foundations, as discussed in legal scholarship, and by analyzing its manifest and implied forms—particularly the latter, which require deeper jurisprudential interpretation, especially in cases of normative conflict. Furthermore, this approach enables a comprehensive understanding of the doctrinal uniqueness of penal abrogation and the institutional entities authorized to enact it.

Chapter One: The Nature of Legislative Abrogation of Penal Norms

In order to delineate the legal nature of legislative abrogation as it pertains to penal provisions, it is necessary to address two fundamental axes: the first concerns the conceptual definition of legislative abrogation in criminal law, while the second explores its typological manifestations.

Section One: The Concept of Legislative Abrogation in Criminal Law

The legislative abrogation of a penal norm denotes the annulment of a legal rule previously enacted, through the promulgation of a subsequent norm bearing equivalent or superior legal authority. This operation results in the cessation of the former norm's

enforceability and the extinction of its binding legal force—an effect that is prospective in nature.

Subsection I: The Concept of Abrogation in Legal Doctrine

The doctrinal landscape reveals a plurality of views concerning the precise contours of legal abrogation. Some jurists posit that abrogation entails the suspension of a norm's applicability by stripping it of its coercive power¹, thereby terminating its normative operation from the date of repeal onward. Others define abrogation as the extinguishment of a legal norm's binding authority vis-à-vis its addressees, thereby rendering it legally inert.

A further doctrinal current conceptualizes abrogation as the extinguishment of the legal obligation embedded within the norm, achieved through the deactivation of its punitive dimension. In this perspective, a provision ceases to exist either through replacement by a new norm regulating the same subject matter, or by being entirely discarded without substitution—thus depriving it of enforceability and excluding it from judicial application.

An additional perspective regards abrogation as the legal nullification of a rule of law by a norm of equal hierarchical status within the legal system. In this context, abrogation is construed as the formal revocation of the norm's binding effect, regardless of the form or source of the repealed legal provision.

Subsection II: The Substantive Meaning of Penal Norm Abrogation

At its core, penal norm abrogation signifies the revocation of legal recognition granted to a criminal provision, effectively precluding its application to future conduct and stripping it of enforceability. Consequently, criminal courts are barred from invoking the repealed norm with respect to acts committed after its annulment, in strict adherence to the principle of *nullum crimen, nulla poena sine lege* (no crime nor punishment without a preexisting law). Thus, individuals formerly bound by such a provision are relieved from any legal obligation to comply with its terms, and no punitive consequences may ensue from contraventions occurring post-abrogation.

However, with respect to acts committed during the period in which the repealed norm was in force, the general principle is that such acts remain subject to its provisions. Nonetheless, legislative departures from this rule may occur when a new penal law is enacted that is more favorable to the accused². In such cases, the new law may retroactively apply to the benefit of the defendant—an exception that is tightly circumscribed and must be explicitly delineated within the new statutory framework.

The rationale underpinning the repeal of penal norms lies in the legislative recognition that the interests once protected by a given norm are no longer compelling or socially relevant. Criminal statutes are inherently instrumental, crafted to serve and protect particular societal interests. When these interests cease to justify penal protection, the legislator is

¹ Mostafa Mohamed El-Gamal, *Renewing the General Theory of Law: Toward Employing Islamic Jurisprudence in Constructing the Foundations of Legal Theory – Definition of Law and Legal Rules*, Vol. 1, Al-Fath for Printing and Publishing, Alexandria, Egypt, 1998, p. 244.

² Adel Youssef Al-Shukri, *General Provisions on the Legislative Abrogation of Penal Norms: An Analytical, Practical, and Comparative Study*, Zein Legal Publications, Beirut, Lebanon, 2017, p. 190.

impelled to abrogate the norm, either to eliminate redundancy or to accommodate more appropriate and responsive legal mechanisms¹.

A significant strand of legal scholarship attributes penal norm abrogation to the legislature's recognition that certain provisions no longer align with the contemporary ethos, the accelerated pace of socio-technological evolution, or the novel manifestations of criminal behavior engendered by digital and systemic innovation. The emergence of new societal interests and the proliferation of unprecedented criminal modalities necessitate adaptive legislative responses—often in the form of repealing outdated norms and replacing them with provisions commensurate with emerging realities².

In essence, a penal norm derives its validity and relevance from the societal reality it regulates. The norm is formulated in response to prevailing needs and conditions; thus, it cannot be divorced from its socio-legal context. When such context evolves, the legislative framework must adapt accordingly. Sometimes this evolution merely warrants amendment; at other times, outright repeal is necessitated—underscoring the dynamic interplay between legislative norms and social transformations. Both must evolve in tandem to preserve legal coherence and normative legitimacy³.

From a jurisprudential standpoint, every legal norm is promulgated to serve a defined interest. These interests are not static; they fluctuate in response to societal crises, structural transformations, or contextual exigencies. Accordingly, a legal provision loses its *raison d'être* when the underlying conditions that prompted its enactment no longer exist. For example, a penal provision prescribing corporal punishment for theft may be justified under extraordinary national crises—such as acute economic breakdown—but it becomes indefensible and thus subject to repeal once such conditions abate .

Section Two: Forms of Legislative Abrogation of Penal Provisions

The forms of legislative abrogation applicable to penal norms are classified into two main types: express abrogation and implied abrogation.

Subsection I: Express Abrogation

Express abrogation refers to the type of repeal that becomes apparent upon the mere reading of the legislative text, wherein the intention to abrogate is unequivocally stated in clear and unambiguous terms. This occurs when a subsequent legislative instrument includes a provision that explicitly declares the abrogation of earlier provisions. For instance, a new criminal code may include a final provision expressly repealing the provisions of a previous code. In such a case, the new provisions apply exclusively to acts committed after the law's entry into force, while acts committed prior remain governed by the repealed law, in accordance with the principle of non-retroactivity of criminal legislation—unless the new law explicitly stipulates otherwise.

Express abrogation is effectuated solely through legislative means, as it is only through statutory enactment that such a repeal may be clearly articulated. Typically, this occurs

¹ Ahmed Salama & Hamdi Abdel Rahman, *The Concise Introduction to the Study of Law*, Dar Al-Nahda Al-Arabia, Beirut, Lebanon, 1970, p. 58.

² Said Ahmed Bayoumi, *The Language of the Text in Light of Text Linguistics: A Study in Textual Cohesion*, 1st ed., Dar Al-Kutub Al-Qanouniyya, Cairo, Egypt, 2010, p. 365.

³ Ramadan Abu Al-Saud, *The Concise Explanation of the Introduction to Civil Law: The Legal Rule*, Book One, Al-Halabi Legal Publications, Beirut, Lebanon, 2003, pp. 239–240.

through a law that either specifically repeals identified provisions of a prior law or invalidates all provisions that conflict with its own.

Express repeal is considered the most straightforward, transparent, and commonly used method of abrogation, as most legislative instruments contain provisions that explicitly repeal the laws they are intended to replace. Importantly, express abrogation does not require the new statute to provide a substitute for the repealed rule; it may simply annul the previous provision, thereby reverting the legal status to its prior state—namely, to the original position of permissibility in the absence of prohibition¹.

The cases in which express abrogation is realized include the following:

- When a new statute explicitly provides for the termination of a previous law enacted in the same legal domain and repeals all legal provisions that conflict with it.
- When a subsequent legislative instrument expressly repeals a previous law without replacing it with another.
- When a statute explicitly limits its own duration, either by specifying a fixed time frame or by conditioning its validity on the occurrence or cessation of certain circumstances, whereby the statute ceases to have effect upon the expiration of the stated period or the realization or cessation of the specified conditions².

Subsection II: Implied Abrogation

Implied abrogation occurs in the absence of an explicit provision of repeal, where the legislator does not expressly state an intention to abrogate existing legislation. Rather, the repeal is inferred from the enactment of a new law that includes provisions incompatible with those of a previous one. In such cases, both laws govern the same subject matter—one earlier, the other later—and their provisions cannot be applied simultaneously³. The later provision, being irreconcilable with the former, is deemed to have implicitly repealed it. This also applies when a subsequent statute reorganizes a subject matter previously governed by earlier legislation, even if it does not explicitly declare the repeal of the former provisions⁴.

The prevailing rule is that a provision in a subsequent statute repeals a provision in an earlier one to the extent of their conflict. The legislator's intent is inferred from the enactment of a new provision that contradicts a previously established one in such a way that their concurrent application is impossible. In order for implied abrogation to be acknowledged, both the earlier and later statutes must concern the same subject area and be mutually exclusive in effect. If they regulate distinct matters⁵, each law remains applicable within its own field regardless of any differences.

Implied abrogation may manifest in two distinct forms:

First: Conflict Between a New Provision and an Earlier One

If a new statute does not expressly repeal an earlier law but contains a clause repealing all provisions incompatible with its own—whether entirely or partially—the new law is deemed to have implicitly repealed the earlier one, either in full if the conflict is total, or in part to the extent of the inconsistency. However, for this form of abrogation to be valid, the conflicting provisions must be of the same nature—either both general or both specific. If the earlier

¹Ramadan Abu Al-Saud, op. cit., p. 305.

²Adel Youssef Al-Shukri, op. cit., p. 196.

³Ibid., p. 194.

⁴Egyptian Court of Cassation Collection, pp. 1016–1019.

⁵Mohamed Hassan Mansour, Introduction to the Study of Law: The Legal Rule, 1st ed., Al-Halabi Legal Publications, Beirut, Lebanon, 2010, p. 165.

provision is general, the later one must also be general for it to repeal the former, and vice versa. If this condition is met, the result may be full or partial abrogation, depending on the extent of the conflict¹.

Accordingly, if two penal provisions of the same nature and function are enacted successively and their substantive content is contradictory, the earlier provision is deemed implicitly repealed by the later one in cases of total inconsistency. If the inconsistency is only partial—affecting only some of the rules—then the effect of the implied repeal is also partial and limited to the conflicting elements alone².

However, a particular challenge arises when the conflict is between a general earlier provision and a later specific one, or vice versa. In this context, two scenarios must be distinguished:

First Hypothesis: If the earlier provision contains a general rule, and the subsequent law introduces a specific rule that contradicts part of the former, the specific rule does not repeal the entire general rule. Rather, it repeals only the part specifically addressed by the new provision. The remaining parts of the general rule remain valid and enforceable. In this case, the specific provision is treated as an exception to the general one, limiting its scope without negating it. This aligns with the well-established legal principle that a specific rule overrides a general one only to the extent of the conflict³.

Second Hypothesis: If the earlier rule is specific and the subsequent rule is general, the conflict does not result in the repeal of the specific rule. Both rules are to be applied concurrently, with the general rule functioning as a default and the specific rule as an exception. In such cases, the general provision does not repeal the specific one unless the new legislation explicitly and unequivocally states that its provisions apply to all cases. Only then may the general provision be deemed to have repealed the specific one⁴.

Second: Reorganization of a Previously Regulated Subject

When a subject matter previously governed by an earlier statute is comprehensively reorganized by new legislation, this new legislative framework is interpreted as having repealed all earlier provisions related to the same subject—even if the new provisions do not explicitly conflict with the earlier ones or explicitly mention their repeal⁵. The rationale is that a subject cannot be simultaneously governed by two operative legislative frameworks. The comprehensive reorganization is understood as the legislator's intent to substitute the new legal structure for the previous one⁶.

This form of repeal is particularly important, as it entails the complete repeal of the earlier statute regardless of whether all of its provisions directly conflict with the new legislation. Even provisions addressing matters not regulated by the new law are deemed repealed. The mere act of comprehensive re-legislation presumes a shift in the underlying principles of governance, requiring the abrogation of the older statute as a matter of legal necessity.

¹Ramsis Behnam, *General Theory of Criminal Law*, 3rd ed., Al-Ma'arif Establishment, Alexandria, Egypt, 1997, pp. 197–198.

²Abdel Fattah Mostafa El-Sayfi, *The Criminal Norm: An Analytical Study in Light of Contemporary Criminal Jurisprudence*, Eastern Publishing Company, Beirut, Lebanon, 1967, pp. 411–412.

³Adel Youssef Al-Shukri, op. cit., p. 202.

⁴Ibid., p. 203.

⁵Mohamed Hassan Mansour, op. cit., pp. 166–167.

⁶Ramadan Mohamed Abu Al-Saud, *ibid.*, pp. 315–316.

Legal doctrine identifies an additional form of repeal known as repeal by reference or retroactive repeal. This occurs when a law governing a particular matter refers to provisions in an earlier law to define its conditions, procedures, or effects. If the referenced law is later repealed, the question arises whether the repeal invalidates the referring law.

To address this, legal scholars distinguish between two scenarios:

– In the first, the repealed law is replaced by a new one covering the same matter. In this case, the referring law remains valid and now references the new provisions.

– In the second, the referenced law is repealed without replacement. Here, the referring law remains effective only insofar as the repealed provisions are still operable by implication. If the repeal renders their application impossible, the referring law is also deemed repealed by necessity—this is the essence of repeal by retroaction or reflection.

Legislative repeal may be total or partial. Total repeal occurs when the legislator abolishes a previously enacted provision in its entirety with respect to all persons subject to the legal rule. Partial repeal occurs when the legislator enacts a general rule applicable to all individuals, then subsequently repeals the rule in part, such that it no longer applies to certain persons or situations while remaining effective for others¹.

Chapter Two: The Specificity of Legislative Abrogation of Penal Provisions

The examination of this issue necessitates addressing two core aspects. The first pertains to distinguishing legislative abrogation from other analogous legal phenomena, while the second concerns the identification of the competent authority vested with the power to effectuate such abrogation.

Subsection I: The Distinction Between Legislative Abrogation and Annulment of Penal Provisions

To properly differentiate between abrogation and annulment, it is essential to analyze the respective legal effects that each of these concepts produces upon the penal provision in question. Abrogation applies to a legally valid provision that has fulfilled all conditions of formal and substantive validity. In such cases, abrogation does not contest the legality or validity of the norm itself, but rather terminates its applicability—whether due to obsolescence, redundancy, or the need for substitution with a more appropriate rule. Importantly, abrogation has no retroactive effect; it does not affect acts or legal consequences that occurred under the repealed norm while it was in force. Instead, it prospectively deprives the norm of its binding force and ceases its future application, without infringing upon previously established legal positions acquired under the earlier law².

By contrast, annulment pertains to a provision that is legally defective—either due to the absence of a required condition of validity or the failure to meet a fundamental structural requirement. In such cases, annulment aims to nullify and expunge the legal rule, erasing both its future applicability and all legal effects previously generated under it. In effect, the provision is treated as void *ab initio*, as though it had never been enacted³.

While abrogation, in all its forms, must be carried out by the same legislative authority that enacted the provision—or by a higher legislative authority—annulment may be effected

¹Adel Youssef Al-Shukri, op. cit., p. 210.

² Samir Abd El-Sayed Tanagho, General Theory of Law, Al-Ma'arif Establishment, Alexandria, Egypt, 1985, p. 412.

³Suleiman Marqus, Explanation of Civil Law: Introduction to Legal Sciences, Part 1, 5th ed., publisher and year not available, p. 168.

either through the enactment of a new legislative instrument that declares the invalidity of the previous norm, or by judicial pronouncement through competent courts.

Examples of annulment include legislative acts issued by a *de facto* authority that arises during a military coup, civil insurrection, or foreign occupation. If this authority subsequently fails to establish a stable constitutional regime or is overthrown, the legislative acts issued under its rule may be declared null and void¹, with the prior constitutional order reinstated. Another example involves emergency legislation enacted by the executive branch in the absence of a functioning legislature. Such measures must be submitted to the legislature for approval upon its reconvening; if the executive neglects to do so within the constitutionally prescribed timeframe—or if the legislature refuses to ratify them—the legislation is deemed void retroactively.

The question of annulment has also been the subject of considerable jurisprudential debate, particularly within Egyptian legal scholarship, in relation to the nature of judgments issued by the Supreme Constitutional Court declaring the unconstitutionality of a particular legal provision. The central issue is whether such a judgment constitutes a form of legislative abrogation or an act of annulment.

One school of thought maintains that a judgment of unconstitutionality amounts to annulment rather than abrogation, since it reflects the court's finding that the legal provision lacked the necessary constitutional foundations for its validity at the time of enactment. This position views such a ruling as retroactively nullifying the provision and its effects². This interpretation has been adopted in several legal systems, including Germany, where Article 78 of the Federal Constitutional Court Act of 1951 provides that when the Court declares a federal or regional law unconstitutional, the decision entails retroactive nullification. The same approach is found in Spain, where the Constitutional Court's decisions annul unconstitutional laws retroactively, pursuant to Article 161 of the Constitution. Italy follows a similar model, with the Constitutional Court declaring penal provisions unconstitutional with retroactive effect. Egypt, too, has adopted this position, as reflected in Article 49 of the Law on the Supreme Constitutional Court, which states: *"If the ruling of unconstitutionality pertains to a criminal provision, all convictions issued pursuant to that provision shall be deemed void. The President of the Commission of Commissioners shall notify the Public Prosecutor of the ruling immediately after its issuance to ensure its implementation"*³

An opposing view, however, rejects the notion that the Supreme Constitutional Court possesses the authority to repeal legislation. According to this perspective, the Court's role is limited to declaring a provision unconstitutional, thereby leaving the formal act of repeal to the legislative authority that enacted it. Proponents of this view argue that Article 49 of the Law on the Supreme Constitutional Court—and its explanatory memorandum—cannot be interpreted as granting the Court the power to repeal legal provisions. Instead, the effect of a ruling of unconstitutionality is limited to prohibiting the application of the impugned provision to the relevant legal situations⁴. The Court, they argue, does not have the capacity to abolish a law, but merely identifies the constitutional defect, and leaves the formal abrogation to the legislature.

¹Tawfiq Hassan Farag & Mohamed Yehia Mattar, *General Principles of Law*, Al-Dar Al-Jamia'iyya, Alexandria, Egypt, year not available, p. 136.

²Ramadan Mohamed Abu Al-Saud, *ibid.*, pp. 303–304.

³Samir Abd El-Sayed Tanagho, *ibid.*, p. 413

⁴Adel Youssef Al-Shukri, *op. cit.*, p. 214

Moreover, this school of thought holds that while a judgment of unconstitutionality is binding on courts of first instance and appellate courts—which are thereby obliged to refrain from applying the unconstitutional law—the law itself remains technically in force until formally repealed. However, the provision becomes practically inapplicable, as no court will enforce it once its unconstitutionality has been established, given the absolute binding authority of such rulings.

A third, more nuanced opinion suggests that a ruling of unconstitutionality does not, in itself, repeal the offending provision, but it does terminate its enforceability. In practice, this renders the provision legally inert, tantamount to repeal, since the judgment possesses general and absolute legal authority. Functionally, then, the annulment and abrogation converge in their effect: the legal provision is deprived of its binding force and normative value as of the date of judgment, with all state authorities obliged to abstain from its application. Thus, the practical consequence is the same in both cases.

This understanding is reinforced by the language used by the Egyptian Supreme Constitutional Court, which often refers to "termination of enforceability" and "nullity of the provision" as interchangeable expressions to describe the legal consequences of unconstitutionality—whether the ruling explicitly declares annulment or not. If legislative intervention is required to formally abrogate a penal provision deemed unconstitutional, this falls squarely within the exclusive competence of the legislature, consistent with the absolute authority of constitutional court judgments¹.

Second Section: The Authority Competent to Repeal Penal Legislation

The authority vested with legislative power is, by its very nature, the entity entitled to repeal the legislation it has enacted. This is because legislative repeal is, in and of itself, a legislative act—one that must emanate either from the same authority that enacted the repealed norm or from a superior authority within the hierarchy of legal norms. In essence, a legislative text may only be repealed by another text of equal or superior legal standing. This principle rests on the maxim that he who possesses the greater power necessarily possesses the lesser².

Accordingly, where it becomes necessary to repeal constitutional provisions, such repeal can only be effected by a foundational legislative act possessing the same normative force as the Constitution, and enacted by the body authorized to establish such fundamental norms in accordance with constitutional procedures. Similarly, an ordinary statute—meaning legislation enacted by the legislative branch—may only be repealed by an equivalent ordinary statute, either issued by the same legislative authority or by a successor body empowered under emergency provisions or delegated authority. A superior legislative instrument, such as a constitutional law, may also repeal ordinary legislation. As for subordinate legislation, such as regulations or decrees, these may be repealed either by the issuing authority itself or by a higher legislative source, such as an ordinary or constitutional law.

It is equally established that subordinate legislation cannot repeal either ordinary or constitutional legislation. Nor may ordinary legislation repeal constitutional provisions. Thus, the hierarchical relationship among sources of law must be rigorously respected. As statutory legislation constitutes the primary formal source of law, it may only be repealed by a new legislative act possessing equivalent or superior legal authority.

¹Ibid., pp. 223–224

²Abdel Fattah El-Sayfi, *ibid.*, p. 410

Consequently, customary law—being hierarchically inferior to statutory legislation—cannot serve as a source of repeal, even when it arises subsequent to the statute in question. This limitation stems from the fact that custom is not considered a valid source for establishing rules of criminalization and punishment. Under the principle of legality in criminal law, only formal legislative texts may establish criminal norms. Since custom lacks the capacity to create penal rules, it likewise lacks the capacity to repeal them.

This does not, however, exclude the possible role of custom in shaping the rules that justify criminal conduct, especially where such justification reflects evolving social circumstances under which the penalized act was committed. In such cases, the criminalization of a particular act may come into conflict with a social interest that the community has come to prioritize. Where this shift in values is sufficiently pronounced, the custom may gain formal or tacit recognition by the legislator, constituting an exceptional acknowledgment of the role of custom in shaping criminal justification. This phenomenon is often referred to as “customary repeal by addition.”

Some jurists have posited that penal provisions may be repealed through long-term disuse—i.e., by the prolonged failure to apply or enforce them. However, this view has been met with significant opposition. The argument against it holds that the mere non-application of a penal provision over time does not constitute a valid ground for repeal. This would amount to a form of negative custom—repeal by non-use—but even this, whether positive or negative, cannot override statutory legislation¹.

As previously noted, legislative provisions may only be repealed by a subsequent legislative act, either explicitly or implicitly. They remain in force regardless of whether they are applied or enforced in practice. Non-enforcement, no matter how prolonged, does not suffice to negate their legal force².

This position was firmly upheld by the Egyptian judiciary, as evidenced in a ruling which stated:

“The argument that the Press Law has lapsed due to the government’s deliberate failure to enforce it for an extended period, despite the existence of numerous circumstances that warranted its enforcement, is untenable. A law may only be repealed—whether explicitly or implicitly—by another law of equal force. It cannot be repealed merely due to non-enforcement, regardless of the duration, nor by the enactment of contrary practice. The executive branch is tasked with the implementation of laws, and it cannot unilaterally nullify legislation that it did not enact. Only the legislative authority that issued the law possesses the power to repeal it. To accept otherwise would amount to permitting the executive to participate in the legislative process, which contravenes the principle of separation of powers³.

¹Adel Youssef Al-Shukri, *ibid.*, p. 227

²Ragab Karim Abdallah, *Introduction to Legal Sciences: Theory of Law*, Vol. 1, Dar Al-Nahda Al-Arabia, Cairo, Egypt, 2007, p. 298.

³Ramadan Mohamed Abu Al-Saud and Mohamed Hassan Mansour, *ibid.*, p. 143.

Conclusion:

In light of the foregoing analysis, it becomes evident that the abrogation of penal norms occupies a uniquely distinct position within the broader framework of legal repeal. Unlike other legal provisions, penal norms are characterized by their intrinsic connection to the protection of fundamental social interests, public order, and individual rights. Their enactment is always conditioned by specific historical, social, or political circumstances that compel the legislator to intervene and establish punitive measures deemed necessary for preserving societal equilibrium. However, when those underlying conditions cease to exist or lose their threat to the public interest, the rationale for maintaining such penal provisions is extinguished, and the legislator must intervene once more—this time to abrogate or mitigate their content.

The study has demonstrated that the legislative repeal of penal provisions manifests in two principal forms: express abrogation, and implied abrogation. The former, characterized by its clarity and certainty, presents minimal interpretive challenges, as it results from the explicit language of a subsequent statute that directly repeals prior penal provisions. Notably, such express repeal does not require the new statute to provide substitute penalties; in many cases, the legal effect is to return to a baseline of permissibility in the absence of prohibition.

The latter—implied abrogation—is significantly more complex and nuanced. It arises in the absence of explicit repeal, often through contradictions between newer and older provisions or the comprehensive reorganization of a previously regulated legal field. This form of repeal demands rigorous hermeneutic and doctrinal analysis to determine whether the later provision indeed renders the earlier one legally obsolete.

Moreover, the specificity of penal norm abrogation is further underscored by the essential distinction between abrogation and annulment. Whereas abrogation affects valid laws, terminating their application prospectively without retroactive effect, annulment nullifies laws deemed invalid from the outset, thereby erasing both their future applicability and any legal consequences derived therefrom. The latter may be judicial in nature, as exemplified by rulings of constitutional courts that declare penal provisions unconstitutional, leading to their practical inoperability.

Crucially, the authority competent to effectuate the repeal of penal norms remains a matter of fundamental importance. Legislative repeal can only be executed by the legislative body that originally enacted the provision or by a superior legislative entity, in strict accordance with the hierarchy of legal norms. A penal statute may only be repealed by another statute of equal or higher normative rank; neither custom nor administrative practice, regardless of duration or prevalence, suffices to abrogate penal provisions. This legal truth is firmly grounded in the principle of legality in criminal law, which mandates that both criminalization and decriminalization derive solely from formal legislative enactment.

The jurisprudence of various legal systems—most notably the Egyptian judiciary—has affirmed that penal statutes do not lose their binding force through non-enforcement or administrative disregard. Repeal must occur through formal legal channels, either by express statutory declaration or by implication through legally cognizable conflict or redundancy.

In sum, penal norm abrogation reflects a highly sensitive and technically complex area of legal reform, one that must reconcile evolving social conditions with the imperatives of legal certainty, normative coherence, and constitutional legitimacy. The abrogation of penal provisions is not merely a legislative technicality but a process imbued with profound legal,

ethical, and societal implications. It demands a meticulous balance between the preservation of legal order and the dynamic responsiveness of the legal system to shifting socio-political realities.

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