

# General Clauses Act, 1897

## Act No. X of 1897

An Act consolidate and extend the General Clauses Acts, 1868 and 1887.

WHEREAS it is expedient to consolidate and extend the General Clauses acts, 1868 and 1887; It is hereby enacted as follows :

### PRELIMINARY

1. **Short title.**— (1) This Act may be called the General Clauses Act, 1897; 2\*

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2. [~~Repealed~~] Rep. by the Repealing and Amending Act, 1903 (1 of 1903), s. 4 and Schedule III.

1. [~~Repealed.~~] Rep. by the Repealing and Amending Act, 1903 (1 of 1903), s. 4 and schedule III.

For Statement of objects and Reasons, see Gazette of India, 1897, pt. V.p. 38; for Report of the Select Committee, see *ibid.* p. 77; and for Proceedings in Council see *ibid.* Pt. VI, pp. 35, 40, 56 and 76.

The Act was extended to the whole of Pakistan and deemed to have been to extended on the 14th day of October, 1935. See the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s. 3 and Second Schedule.

This Act has been declared to be in force in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900).

2. The word 'and' in sub-section (1) and the whole of sub-section (2) were repealed by the Repealing and amending Act, 1914 (X of 1914), s. 3 and Sch. II.

### Scope and applications

**History of the Act.**— In the provisions of the English Interpretation Act of 1850 were, with a few additions, enacted as the General Clauses Act 1868 (1 of 1868). A supplementary General Clauses Act was later enacted as the General Clauses Act 1887 (1 of 1887). The present General Clauses Act largely modeled on the English Act of 1889, consolidates the two earlier Acts of 1868 and 1887, and adds a few provisions.

**The objects of the Act.**— The objects of the Act are several, namely, (1) to shorten the language of Central Acts ; (2) to provide as far as possible, for uniformity of expression in Central Acts by giving definitions of series of terms in common use ; (3) to state explicitly certain convenient rules for the construction and interpretation of Central Acts ; and (4) to guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted expressly in every Central Act. Central Acts also include Regulations and Ordinances and statutory instruments made under Central Acts, Regulations and Ordinances.

**Act applicable of its own force to central laws.**— The object of the General Clauses Act is to place in one single statute various provisions as regards interpretation of words and legal

principles which would otherwise have to be specified separately in many different Acts and Regulations. A 1961 SC 838 (843) : 1961 (2) Cri LJ 1.

The Act has thus been enacted to avoid superfluity of language wherever it has been possible to do so. A 1950 FC 140 (141) : 1949 RCR 967 FCR 967 : 1968 BLJR 396 (399).

The Act, whether as regards the meanings of words or as regards legal principles, has to be read into every statute to which it applies. A 1961 SC 868 SC 838 (848): 1961 (2) Cri LJ 1.

**Application of the Act not territorial.**— The Act is, in a sense, a part of every Central Act or Regulation. It has application to a Central Act, not by virtue of its territorial extent, but proprio vigore, so that if a Central Act is extended to any territory, the General Clauses Act would also be deemed to have come to force in that territory and would apply for the construction of the Central Act so extended. A 1955 MB 36 (39) : 1955 Cri LJ 476.

**Application of the Act to cases not expressly covered.**— In case where a provision of the Act, by its terms, does not apply, courts have applied its principle because of the inconvenience that would otherwise result. A 1948 Mad 427 (428, 429) : (1948) 49 Cri LJ 570.

The rule of interpretation is Section 38 of the Interpretation Act, 1889 is a principle which exists independently of the Interpretation Act and therefore applies as effectually to the Letters Patent as to a statute. It is true that the Letters Patent is not an Act, but it is granted by the Sovereign by virtue of an Act passed by the Parliament and should be construed in the same way as an Act. Further, even if Section 38, Interpretation Act, does not apply in terms to the Letters Patent, the principle underlying Section 38 should be applied in construing clause 44, Letters Patent. A 1943 Cal 285 (296, 309) : 44 Cri LJ 673 (SB).

Canon of construction as enunciated in S. 38 of Interpretation Act and reiterated with some modifications in S. 8 of General Clauses Act should be applied in construing the different charters of the High Courts A. 1953 SC 357 (360) : 1953 SCJ 509.

**Act does not codify all the rules of interpretation.**— It is not, of course, implied that the General Clauses Act, or, for that matter, the Interpretation Act of any other country, codifies all the "rules" of statutory interpretation. The so-called rules of interpretation are really in the nature of guidelines, and are not to be treated as mathematical formula. In fact, even the definitions contained in the General Clauses Act (and many of the general rules of construction which are incorporated in it) apply only where the context does not otherwise require. This shows that the Act itself does not purport to treat rules of construction as categorical inoperative.

**Different context.**— No provisions of the General Clauses Act is conclusive; the meaning attributed by the Act to a

particular expression may have to be departed from, if the context of the enactment to be construed so requires. The object of the Act is to indicate the meaning of an expression in a generic and not in a rigid or exclusive sense, and with a view to avoiding superfluity of language where it is possible to do so. 1968 BLJR 396 (399).

**State Acts.**— Though the General Clauses Act does not in terms apply to State laws, it is evident that the State General Clauses Acts should conform to the General Clauses Act 1897, for otherwise, divergent rules of construction and interpretation would apply and, as a result, great confusion might ensue. Thus, excepting a few provisions in the Central Act, such as those contained in Section 5, nearly all its remaining provisions are as appropriate for State Acts and ordinances as for the Central Act and Ordinances, and have, in fact been adopted in all the State General Clauses Acts. The result has been that a certain amount of uniformity has been achieved in the language of the entire body of Statute Law of the country.

**American law.**— Since it is competent for the Legislature to provide rules for the construction of statutes, a statute governing the construction of statutes will be given effect. These provisions may be for the construction of statutes already in existence, or for those which may be enacted in the future; and after the passage of such provisions succeeding legislatures should frame enactments with reference thereto, but these provisions are not, and cannot be an attempt to hinder future Legislatures in enacting new laws. These statutory rules of construction may be declaratory of the common law, or they may be intended to furnish additional rules for the guidance of the Court when necessary. *Corpus Juris Secundum*, Volume 82 Pages 534, 535.

The terms of a general construction Act should be read into every statute subsequently enacted, but it is not intended to dispense with the usual rule of interpretation. It is the duty of the Courts to give construing Acts their practical application as far as possible, unless inconsistent with the obvious intent of the Legislature, or repugnant to the context of the statute. These statutes will not be construed so as to revive laws that have been repealed. A common legislative provision is that all statutes shall be liberally construed, and this has been generally held to apply to all except penal statutes, and in some cases to include even penal statutes, to the extent of a liberal construction to determine the legislative intent. Such a provision does not, however, compel a liberal construction of a State statute in derogation of the State's sovereignty. *Juris Saeundum* Volume 82 page 835.

**English Law.**— The meaning which some dozens of expressions in common use bear when used in an Act, unless a contrary intention appears, was defined by the Interpretation Act, 1889 (52 & 53 Vict. C. 63). In that Act, the expression "Act" included a local and personal Act and a private Act. *Halsbury's Law of England*, Third Edn. Vol. 36 page 386.

**Needs for the change of the Act.**— No large-scale revision of the General Clauses Act has so far been undertaken. Certain minor amendments were made by the amending Acts of 1903 and 1936. In addition, by various Adaptation Orders, the Act was, from time to time, amended to bring it in conformity with Act 1935 and with the Constitution. But the scope of such amendments was necessarily limited. Time has come when the Act should be completely reviewed, so as to bring it in line with the fundamental constitutional changes and the new trends in legislative practice.

**Title of the Act.**— The Act is entitled "General Clauses Act", because its provisions are applicable to enactments in general, and also because it does not lay down any substantive rule of law but is concerned with the meanings of expressions and rules of construction of general law.

**Application of the General Clauses Act to Laws.**— The application of each section of the Act is to be ascertained from the exact provisions of that section. By their terms, most of the sections are confined in their application to "Central Acts", "Central Acts and Regulations", "Acts", "Enactments" and the like. Some of them apply to statutory instruments.

General Clauses Act is only an interpretative and it does not alter laws substantively. 1979 BBCJ 517 (519) (Pat).

**Statutory instrument.**— The General Clauses Act (except certain specific sections thereof) does not by its terms, apply to notifications issued under an Act. A. 1953 MB 245 (246) : 1953 Cri LJ 1975 (FB).

Unless the context otherwise requires, the same rule of construction should be applied to statutory rules made under a Central Act as would apply to the parent Act. A 1973 MP 110 (113); 1976 MPLJ 223.

**Non-statutory instrument and judicial decision.**— By its terms, the Act does not apply to private transactions recorded in documents, nor to judicial decisions. Except for Section 8 which applies also to "instruments" the other provisions of the Act are so framed as to apply to laws or (in certain cases) to statutory instruments. This would eavey out non-statutory instruments and judicial decisions. Hence, S. 5 (3) has no application to cases raising under O. 21, R. 54, Civil Procedure Code. A 1939 All 154 (1155, 156) : 1939 All LJ 7.

**Constitution and applicability of General Clauses Act.**— Article of the Constitution makes the General Clauses Act applicable for the interpretation of the Constitution. A 1951 All 703 (708); ILR (1953) 1 All 458.

**Expressions not defined in the Act.**— For ascertaining the meaning of expressions not defined in the reference must be had to the definition of that expression given in the enactment with reference to which the question arises, or in the absence of a definition in that enactment, to judicial decisions, if any, on the subject. Thus, a question arose whether "Secretary" includes an Under Secretary to Government with reference to a,

notification issued under Section 6 of the Land Acquisition Act 1894. Neither that Act nor the General Clauses Act defines the word "Secretary". It was held that an Under Secretary to Government was competent to sign the notification as an officer duly authorized by virtue of Rule of the Rules of Business of Government. A 1968 SC 870 (874) : (19467) 2 SCJ 741.

**Act if applicable to void Act.**— In a case of preventive detention, when the law under which the detention has been ordered, is or has become void. Section 6 of the General Clauses Act cannot be applied to such a void Act so as to legalise the detention because that provisions refers only to the effect of repeal of an Act. A 1950 Hyd 20 \*\* A 1951 Bom. 188 (198 190) : 52 Bom. LR 440 (FB).

For some purposes, the words "repeal" and "being void" may be the same, but for purposes of the General Clauses Act, the word "repeal" has its own special significance. It connotes the existence of a repealing Act or the abrogation of one Act by another. A 1950 Hyd 26 (28) (FB).

**Object and applicability of the Act.**— Whatever the General Clauses Act says, whether as regards the meanings of words or as regards legal principles, has to be read into every statute to which it applies. Chief Inspector of Mines v. Karam Chand Thapar, AIR 1961 SC 838 : (1961) 2 Cr LJ 1: 1961 BLJR 573 : (1961-62) 20 FJR 282 : (1961) 2 SCA 86 : (1961) 2 LLJ 146.]

**Section 2 read with section 10(1) (e) of the Industrial Disputes Act (XIV of 1947).**— Government has the power to withdraw, cancel or alter a reference. Adamjee Jute Mills Ltd. Vs. Province of East Pakistan. 12 DLR 184.

Rent already accrued would not be immovable property for it was not a benefit 'to arise out of land'.

Future rent payable by a lessee to whom the property has already been leased has two aspects and it is only in one of its aspects that is to be regarded as immovable property. In one aspect it is a benefit which arises out of the use of land. In the other it is merely a consideration for the transfer of the rights in land. 14 DLR 1962 (119).

### GENERAL DEFINITIONS

**3. Definitions.**— In this Act, and in all <sup>1</sup>[other Acts of Parliament] and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

(1) 'abet', with its grammatical variations and cognate expressions, shall have the same meaning as in the <sup>2</sup>\*\*\* Penal Code;

<sup>3</sup>[(1a) "Act of Parliament" shall mean an Act passed by Parliament and shall include any Act passed on made by any legislature or any person leaving authority to legislate under any Constitutional instrument and in force in Bangladesh or any portion thereof]

(2) "act", used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

4[(2a) "Advocate" means a person enrolled as such under the Bangladesh Legal Practitioners and Bar Council Order, 1972 (P.O. No. 46 of 1972):]

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing :

5[(3a) "Appellate Division" means -

(a) as respects the period before the 16th day of December, 1972, the Appellate Division of the High court of Bangladesh; and

(b) as respects any period thereafter the Appellate Division of the Supreme Court of Bangladesh constituted under the Constitution:]

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8[(8aa) "Bangladesh law" shall mean any Act, Ordinance, Regulation, rule, Order or bye-law in force in Bangladesh:]

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(9) "Chapter" shall mean a Chapter of the Act or regulation in which the word occurs :

11[(9a) "Chief Revenue Authority" shall mean the National Board of revenue constituted under the National Board of revenue Order, 1972 (P.O. No. 76 of 1972):]

12[(9aa) "Chittagong Metropolitan Area" means the Chittagong Metropolitan area as defined in the Chittagong Metropolitan Police Ordinance, 1978 (Ord. XLVIII of 1978):]

13(10) "Collector" shall mean the chief officer in charge of the revenue administration of a District 14[and shall include a Deputy Commissioner, of such District:]

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(12) "commencement", used with reference to an act of Regulation, shall mean the day on which the Act or Regulation comes into force:

(13) "Commissioner" shall mean the chief officer in charge of the revenue-administration of a division 16[and shall include an Additional Commissioner of such division:]

17[(13a) "Constitution" means the constitution of the People' Republic of Bangladesh :]

18(14) "Consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent :

19[(14a) "Dacca Metropolitan area" means the Dacca Metropolitan area as defined in the Dacca Metropolitan Police Ordinance, 1976 (Ord. III of 1976):]

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~~15~~ (15) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include <sup>21</sup>[the High court Division] in the exercise of its ordinary or extraordinary original civil jurisdiction:

~~16~~ (16) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter :

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~~17~~ (17) "enactment" shall include a Regulation (as hereinafter defined)

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and shall also include any provision contained in any Act or in any such Regulation as aforesaid :

~~18~~ (18) "father", in the case of any one whose personal law permits adoption, shall include an adoptive father :

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25[(19) "financial year" shall mean the year commencing on the first day of July and ending on the 30th day of June :]

26[(20) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not :

~~27~~ [(21) "Government" or "the Government" shall mean -

(a) in relation to anything done before the 26th day of March, 1971, any Government which functioned within the territories now comprised in Bangladesh; and

(b) in relation to anything done or to be done after the 25th day of March, 1971, the Government of the People's Republic of Bangladesh :

(21a) "Government contracts" and equivalent expressions shall include contracts made in the exercise of the executive authority of the Government of the People's Republic of Bangladesh;

(21b) "Government debts" and equivalent expressions shall include debts due to the Government of the People's Republic of Bangladesh and any debt due to any Government that functioned within the territories comprised now in Bangladesh;

(21c) "Government grants" shall include a grant (including a transfer of land or of any interest therein or a payment of any money) made by or on behalf of the Government of the People's Republic of Bangladesh and before the 26th day of March, 1971, by or on behalf of any Government that functioned within the territories now comprised in Bangladesh;

(21d) "Government liabilities" and equivalent expressions shall include the liabilities of the Government of the People's Republic of Bangladesh and only such liabilities incurred by any other Government that at any time functioned in the territories now comprised in Bangladesh, as have been expressly accepted by the People's Republic of Bangladesh;

(21e) "Government Property" and equivalent expressions shall include any property vested in, or otherwise held for the purposes of the Government of the People's Republic of Bangladesh and property which, before the 26th day of March, 1971, vested in any Government that functioned within the territories now comprised in Bangladesh;

(22) "Government securities" shall mean securities of the Government of the People's Republic of Bangladesh :]

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29 [(24) "High Court" shall, as respect any period before the 16th day of December, 1972, mean the High court of Bangladesh and as respect any period before the 26th day of March, 1971, the High Court that functioned within the territories now comprised in Bangladesh:]

30 [(24a) "High court Division" shall mean the High court Division of the Supreme Court of Bangladesh constituted under the constitution:]

(25) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth :

(26) "imprisonment" shall mean imprisonment of either description as defined in the 27 \*\* Penal Code.

31 [(26A) "Khulna Metropolitan Area" means the Khulna Metropolitan area as defined in the Khulna Metropolitan Police Ordinance, 1985 (LII of 1985);

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35[(28) "local authority" shall mean and include a Panchayat, Zilla Board, Union Panchayet, Board of Trustees of a port or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, or any corporation or other body or authority constituted or established by the Government under any law :]

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(31) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force.

(32) "master", used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship :

37[(32a) "Metropolitan area" means the Chittagong Metropolitan Area or the 38[Dhaka Metropolitan area or the Khulna Metropolitan area 39[or Rajshahi Metropolitan Area.

(33) "month" shall mean a month reckoned according to the British calendar :

(34) "moveable property" shall mean property of every description, except immovable property;

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36["oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(37) "offence" shall mean any act or omission made punishable by any law for the time being in force;

42[(37a) "Official Gazette" or "Gazette" shall mean the Bangladesh gazette;

43[(37b) "Parliament" shall mean the Parliament for Bangladesh, known as the House of the Nation:]

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(38) "Part" shall mean a part of the Act or Regulation in which the word occurs :

(39) "person" shall include any company or association or body of individuals, whether incorporated or not;

44[(39a) "Police Commissioner" means the Police Commissioner appointed under the Dacca metropolitan Police Ordinance, 1976 (Ord. III of 1976), or the Chittagong Metropolitan Police Ordinance, 1978 (Ord.

XLVIII of 1978) and includes an Additional Police Commissioner, a deputy Police Commissioner and an assistant Police Commissioner appointed under any of those Ordinances;

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(44) "Public nuisance" shall mean a public nuisance as defined in the 47\*\*\*\* Penal Code.

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49[(44b) "the President" means the Prèsidant of Bangladesh elected under the Constitution or any person of the time being acting in that office;]

(45) "registered", used with reference to a document, shall mean registered in 50\*\*\*\* under the law for the time being in force for the registration of documents;

51[(46) "Regulation" shall mean a Regulation made by any person or authority empowered under any constitutional instrument and in force in Bangladesh;]

52[(46a) "the Republic" means the People's Republic of Bangladesh;]

(47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment :

(48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs :

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(50) "section" shall mean a section of the act or Regulation in which the word occurs;

54[(50a) "the service of the Republic" means any service, post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic;]

(51) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars;

(52) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions :

(53) "son", in the case of any one whose personal law permits adoption, shall include an adopted son :

(54) "sub-section" shall mean a sub-section of the section in which the word occurs;

[(54a) "suits by or against the Government" and equivalent expressions shall include suits by or against Bangladesh;]

(55) "swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing :55(56) "vessel" shall include any ship or boat or any other description of vessel used in navigation :

(57) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

(58) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

(59) "year" shall mean a year reckoned according to the British calendar.

1. The words "other acts of Parliament" were substituted for the words "Central Acts" by P.O. No. 147 of 1972, Art. 4.
2. The word "Pakistan" was omitted, *ibid*.
3. Clause (1a) was substituted for the original clause (1a), *ibid*.
4. Clause (2a) was inserted, *ibid*.
5. Clause (3a) was substituted for the former clause 3a), *ibid*.
6. Clauses (3b), (3c), (3d), (4) (5), (6), (7) and (8) were omitted by P.O. No. 147 of 1972 art. 4..
7. Clause (8a) relating to "Burmans Act" which was inserted by the Amending Act, 1903 (1 of 1903) s. 3 and Sch. II rep. by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951) s. 3 and Sch. II.
8. Clause (8aa) was substituted by P.O. No. 147 of 1972, Art. 4.
9. Clause (8ab) and (8ac) were omitted, *ibid*.
10. Clause (8b) relating to "central Provinces Act" which was inserted by the Second Repealing and Amending Act, 1914 9XVII of 1914) s. 2 and Sch. 1 rep. by the Federal Laws (Revision and Declaration) Act, 1951 9XXXVI of 1951), s. 3 and II Sch.
11. Cl. (8c) relating to "Central Provinces and Barer Act" which was inserted by A.O. 1937, rep. by Act XXVI of 1951, s. 3 and II Sch.
12. Clause (9a) was substituted by P.O. 147 of 1972, Art. 4.
13. This new clause was ins. by Ord. No. XLVIII of 1978, Sch.
14. Subs. by G.G.O. 20 of 1947, Sch. for the original clause (10).
15. Added by the General Clauses (Amdt.) Ordinance, 1961 (XXIX of 1961), s. 2.
16. Added by the General Clauses (Amdt.) Ordinance, 1961 (XXIX of 1961).
17. clause (13a) was substituted by P.O. 147 of 1972, Art. 4.
18. Cl. the Consular Salaries and Fees act, 1891 (54 & 55 Vict. C. 36), s. 3.
19. Clause (14a) was inserted after clause (14) by Ordinance No. LXIX of 1976, Sch.
20. Clauses (14a), (14b), (14c), (14d), (14e), (14f) and (14g), which were first inserted by A.O. 1937 and then amended by the Pakistan (Adaptation of existing Pakistan Laws) Order, 1947 (G.G.O. 20 of 1947), Sch., omitted by A.O. 1961, art. 2 and Sch.
21. The words "the High court Division" were substituted for the word "a High Court" by P.O. 147 of 1972, Art. 4.
22. Clauses (16a), (16b) and (16c) were omitted, *ibid*.
23. The words "and any Regulation of the Bengal, or Bombay Code" were omitted, *ibid*.
24. Clauses (18a) and (18b) relating to "Federal Government" and "Federal Railway authority" respectively, omitted by G.G.O. 20 of 1947, sch.
25. Clause (19) was substituted for the former clause (19) by P.O. 147 of 1972, Art. 4.
26. Cl. the Pakistan Penal Code (Act XLV of 1860), s. 52, the Bills of Exchange Act, 1882 (45 and 46 Vict., c. 61), s. 90, and the Sale of goods Act 1893 (56 and 57 Vict. c. 71 s. 62). For discussion in council regarding this clause, see Gazette of India, 1897, Part VI, pp. 56 to 62 and 76 to 79.
27. Clauses (21), (21a), (21b), (21c), (21d), (21e) and (22) were substituted for the former clauses by P.O. No. 147 of 1972 Art. 4.

28. Clause (23) rep. by the Repealing and Amending Act, 1919 XVIII of 1919), s. 3 and Sch. II.
29. Clause (24) was substituted for the former clause (24) by P.O. 147 of 1972, Art. 30. Clause (24a) was inserted by P.O. No. 147 of 1972, art. 4.
30. Clause (24a) was inserted by P.O. No. 147 of 1972, Art. 4.
31. The word "Pakistan" was omitted, *ibid.*
32. Clause (27) was omitted, *ibid.*
33. Clause (27a) relating to "Indian Law" which was inserted by A.O. 1937, omitted by the Pakistan (Adaptation of Existing Pakistan Laws) Order, 1947 (G.G.O. 20 of 1947).
34. Clauses (27b) and (27c) were omitted by P.O. No. 147 of 1972, art. 4.
35. Clause (28) was substituted for the former clause (28) by P.O. No. 147 of 1972, art. 4.
36. Clause (29) defining "L.G.", rep. by A.O. 1937 and clause (30) defining "Madras act" rep. by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), s. 3 and 11 Sch.
37. This new clause was ins. by Ord. No. XLVIII of 1978.
38. Ins. by Ord. No. LII of 1985, Sch. III.
39. Subs. *ibid.*
40. Clauses (34a1) and (34a) were omitted by P.O. No. 147 of 1972, art. 4.
41. Clause (35) defining "North-Western Provinces and Oudh act" rep. by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), s. 3 and II Sch.
42. Clauses (37a) and (37b) were substituted by P.O. No. 147 of 1972 Art. 4.
43. Clause (37b) relating to "Orisa Act" omitted by the General Clauses (Amtd.) act, 1951.
44. This new clause was subs. by Ord. No. XLVIII of 1978, Sch. for the former clause (39a).
46. Clauses (40), (42), (43), (43a1) and (43a) were omitted by P.O. No. 147 of 1972, Art. 4.
46. Clause (41) defining "Presidency-town" omitted by G.G.O. 20 of 1947, Sch.
47. The word "Pakistan" was omitted by P.O. No. 147 of 1972, Art. 4.
48. Clauses (44a1) and (44a) were omitted by P.O. No. 147 of 1972, art. 4.
50. Clause (44b) inserted by act VIII of 1973, s. 3 and sch.
50. The words "a Province" were omitted by P.O. No. 147 of 1972, art. 4.
51. Clause (46) was substituted, *ibid.*, for the original clause (46).
52. Clause (46a) was inserted after cl. (46) by Act VIII of 1973, s. 3 and 2nd Sch.
53. Clauses (49), (52a1) and (52a) were omitted by P.O. No. 147 of 1972, art. 4.
54. Clause (50a) was inserted after clause (50) by Act VIII of 1973, s. 3 and 2nd Sch.

### Scope and applications

**District Judge - its meaning :** The District Judge is not only a court but under section 3(17) of the General Clauses act, 1897, the said expression means Judge of a principal civil court of original civil jurisdiction. It is a civil court within the meaning of section 3 of the civil courts Act, 1887. *Muktad Hossain Vs. Abul Bashar*. 38 DLR (1986) 41.

**District Judge - What it means.**— In the General Clauses Act District Judge is defined to mean 'the Judge of a principal civil court of original jurisdiction but shall not include the High court Division in the exercise of its ordinary or extraordinary civil jurisdiction. *Ruhul Amin Vs. District Judge*. 38 DLR (AD) 1986 page 18.

**District Judge.**— Additional District Judge can also exercise power of revision and is District Judge for the purposes of Small Cause Courts Act. The definition of "District Judge" in the General Clauses Act is not applicable to the Small Cause Courts Act as there is something repugnant to the subject. 1964 Al LJ 998 : ILR (1965) 1 All 229.

District Judge includes Additional District Judge. AIR 1954 Assam 161 (DB).

"District Judge"-Meaning-Does not include Additional District Judge- The term District Judge is not defined in the Industrial Tribunals Act and therefore General Clauses Act is a safe guide. The definition of "District Judge" in S. 3 (17) General Clauses Act is an exhaustive definition. It is not any Judge of a principal Civil Court of original jurisdiction that can be termed as a District Judge but that only the sole presiding Judge of a principal Civil Court of original jurisdiction can be called a "District Judge". AIR 1965 Madh Bha 183 (Db).

In view of S. 3 (17) of the General Clauses Act the High Court when it does not exercise its ordinary or extraordinary civil jurisdiction under Letters Patent is "District Court" for purposes of appeal under Drug Rules (1940). AIR 1953 Mad 974.

**Interpretation of Statute** - The word 'District Court' as used in section 44A(1) is primarily to be interpreted with reference to the definition of the District Court as given in section 2(4) of the Code - Golden rule of literal construction - Plain meaning of the word "Principal" given in Oxford Dictionary read with section 24 of the C.P. Code and section 3(15) of the General Clauses act, 1897. District Court referred to in section 44A(1) of the code means the court of the District Judge under section 3(1) of the Civil Courts act and no other court - The certified copy of the decree in question is to be filed only in the court of the District Judge and in no other court. Sonali Bank Vs. Abidur Rahman. 42 DLR (1990) 311.

Under section 18 of the Act the jurisdiction of a District Judge or Subordinate Judge extends (subject to the provision of section 15 of the Code) to all original suits cognizable by civil courts. 42 DLR 1990 311.

Document occurring in section 3(16) of the General Clauses Act and in section 3 of the Evidence Act - Meaning of - Whether kabalas are documents as referred to in those acts. Abdus Satter Bhuiya Vs. Deputy Commissioner Dhaka, 42 DLR 1990 (151).

**Local authority - meaning of** - It includes a Pourashava, Zilla Board, Union Panchayet, Board of Trustees of a port or other authority, etc. DLR 33 (Dha).

**Local Authority.**— It is defined in section 3(28) of the General clauses act, 1897 as follows - Local Authority shall mean and include a Paurashava, Zilla Board, Union Panchayet, Board of Trustees of a port or other authority legally entitled to, or entrusted by the government with the control or management of a municipal or local fund or any corporation or other body or authority constituted or established by government under any law. Conforce Limited Vs. Titas Gas Transmission. 42 DLR 1990 page 33.

**Local authority what it means.**— A per General Clauses Act as amended by P.O. 147 of 1972 local authority means a Purashava, Zilla Board, Union Panchayet, Board of Trustees of a port or other authorities, legally entitled to or entrusted by the

government with the control or management of a Municipal or local fund or any corporation or other body or authority constituted or established by the government under any law. A.Z. Rafique Ahemd Vs. Bangladesh C.S.I.R. 32 DLR (AD) 1980.

A company is also a person under section 3(39) of the General Clauses Act read with Article 152(2) of the Constitution. The word person occurring in article 102 includes, by operation of section 3(39) of the General Clauses Act, a company as well.

So, under section 3(39) of the General Clauses Act read with article 152(2) of the Constitution a company is also a person. Moreover, it appears to us that the word, 'person', has been used in unqualified term thereby including a juristic person. If it was intended to limit its meaning to its narrower sense to mean an 'individual' to the exclusion of any juristic person it would have been done in explicit language. In absence of any explicit language to exclude a juristic person from the word 'person' we are inclined to hold that the word 'person' occurring in article 02 includes, by operation of section 3(39) of the General Clauses Act, a company as well. 42 DLR 33.

**Collector - Meaning of** - Collector is chief Officer in charge of Revenue. Administration - Previous system in which the collector was in charge of administration of excise under the Bengal Excise act (V of 1909) had discontinued after partition in 1947 - "Collector" was later substituted by "Deputy Controller or Narcotics and Liquor" who was responsible for administration of Narcotics and Liquor with power to issue, suspend and cancel license. Gopal Chandra Shah Vs. Deputy Commissioner, 41 DLR (AD) 1989.

Person - a corporate body like Chittagong Port Trust is a person and an application under article 98 would lie by such a corporate body. 27 DLR 481

Copyright not being immovable property as defined in section 3 of the General Clauses Act falls under the category of movable property; it is really a beneficial interest in the movable property, and as such copy right is also 'goods' as defined in section 2(7) of the sale of goods act 1930. 14 DLR 308B.

**Enactment includes individual legal provision :** The word enactment as defined to section 3(19) of the Act includes also an individual legal provision. 14 DLR 48.

Schedule-part of statute. A schedule is as much a part of the statute and is as much an enactment as any other part. 14 DLR 48.

**Singular includes plural.**— Terms proprietor or person in section 22 of the B.T. Act also mean proprietors or persons. 8 DLR 683.

Mutwalli in death bed may appoint his successor where wakfnama does not prescribe mode of succession, which can be said to have been indicated only when by following that mode one may arrive at a specific person who should succeed the last mutwalhi vague directions in the wakf not a provision relating to mode of succession. 6 DLR 135.

Section 3 serves as an interpretation clause for the laws to which it applies. The scope of the section must first be borne in mind. The section is, in its application, confined to post 1897 enactments. It cannot therefore be applied to a Central Act passed in 1887, unless such a result follows by reason of Section 4 or Section 4-A which extend the section to certain earlier Act, (1966) 32 Cut LT 383 (387). A 1979 Andh Pra 229 (241, 242, 246, 251, 252) : (1979) 1 APLJ (HC) 264 (DB), A 1969 Bom. 127 (131) : 70 Bom. LR 544 (DB) \*\* A 1928 All 41 (42 : 25 All LJ 926 (DB).

At the same time, the definition in S. 3 are intended for a proper interpretation of all post 1897, Central Acts and would, unless the context otherwise requires in a particular enactment, prima facie apply. A 1964 Mad 527 (530) : (1964) 2 Mad LJ 256 (DB).

The Act, is not meant to give a hide bound meaning to terms and phrases generally occurring in the section. Its object is to shorten the expression used in Parliamentary legislation and to avoid repetition. A 1958 SE 1 (10) : 1958 SCJ 172.

A definition contained in Section 3 applies only if there is nothing repugnant in the subject or context. A 1935 All 642 (1) (642) : 1935 All LJ 548 :

Definitions contained in the Act apply towards used in statutes, and not to words used in documents relating to private contracts and correspondence. 1968 All LJ 787 (88).

**Formula used in statutes for defining words.**— When a thing is "deemed to be" something, the only meaning possible is that whereas it is not, in reality, that something, the Act directs that it should be treated as if it was that thing. The expression "includes" or "shall be deemed to be included", generally used to indicate the meanings of words or phrases occurring in the body of the statute, may not, however, be exhaustive. A 1957 All 541 (546) : 1957 All LJ 559 (FB).

**Object of the Act.**— The General Clauses Act is enacted in order to shorten language used in parliamentary legislation and to avoid repetition of the same words in the course of the same piece of legislation. Such an Act is not meant to give a hide-bound meaning to terms and phrases generally occurring in legislation. That is the reason why the definition section contains words like "Unless there is anything repugnant in the subject or context". Subramania 1 years v. Official Receiver. 1958 SCJ 172 : 1958 SCR 257.

**Definition clause—Use of words "means" "includes" "denotes" and "is deemed to be"—Meaning.**— When "means" is employed it shows that the definition is a hard and fast definition and that no other meaning can be assigned to the word or to the expression defined to the word or to the expression defined there is put down in the definition. The use of the word "denotes" shows that the legislature did not intend to put down a cast iron definition of the words but only sought to describe what the word might mean. When a thing is "deemed to be" something the only meaning possible is that

whereas it is not in reality that something, the Act directs that it should be treated as if it were that thing. The expression "Include" or shall be deemed to include is very generally used in the interpretation clause in order to enlarge the meaning of words or phrases occurring in the body of the statute. Where these words are used then the term defined must be considered as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. It is well settled principle that the inclusive meaning of a term is not to be necessarily and indiscriminately applied to the word. *Darbari Lal v. Dharam Wati*. 1957 Al LJ 559 : 1957 All WR (HC) 499.

**Definitions-Object of.**— Definitions contained in the General Clauses Act are intended for a proper interpretation of all Acts made after the commencement of that statute. Prima facie the terms defined by that enactment will have the same meaning in all subsequent enactment's which employ that term unless there be something inconsistent or repugnant to the context in the latter Act. 1964 mad WN 4411 : LIR (1964) 1 Mad 611.

**Abate.**— Abetment of contravention of Order-Mens rea not required. AIR 1962 Bom 243 (DB).

Act.— "Act done" Meaning-Omission to do an act is not always included in "act done". AIR 1965 All 590 (FB).

Refusal by Municipality to perform contract is an act or illegal omission under Section 3 (2), General Clauses Act (1897). The obligation to perform the contract rests not upon Municipal Law but upon the relevant general law of the land i.e. Contract Act, The Transfer of Property Act, The Specific Performance Act etc. and the failure or omission to perform it would be an "illegal omission" or "act" under the said general law and not an act under or purporting to be done under the Municipal Law. AIR 1955 Nuc (Cal) 915.

Act includes illegal omissions. 1957 MPLJ 191.

"Anything done under this Act" includes "anything omitted to be done under Act" meaning "anything wrongfully done" or "wrongfully omitted to be done". AIR 1955 Pat 432 (DB).

Section 6 does not apply to repeal of any enactment by the Constitution. 52 Cri LJ 1094.

An order made by the President under the Constitution is to be deemed an Act of Parliament. 1949 51 Cri LJ 1189 : AIR 1950 Orissa 157 (FB).

Order though not passed in the name of President but in name of Government is still an order of authority under the section. 1965 (2) Cr LJ 119 : AIR 1965 Punj 270 (DB).

Bengal Public Demands Recovers Act (30 of 1913) Ss. 3 (3a) and 3 (3)—Person appointed Additional District Magistrate, becomes Certificate Officer—Definition of "Collector" in Bengal General Clauses Act, not applicable to case under Public Demands Recovery Act—Definitions in Bengal General Clauses Act, to be resorted to when there is nothing repugnant to the subject-matter constrain the Act to which the definition is sought to be applied. AIR 1957 Cal 667 Cal 667 (DB).

Collector not a Court. 1954 Cri LJ 1775 : AIR 1954 Mad 1091 (DB).



The word "Commencement" in Section 3 (13) of the General Clauses Act has a reference to an act and not to author of the Act. (1950). AIR 1950 Hyd 20 (FB).

**"Document"-Meaning of-Paper.**— Any decipherable information which is set down in a lasting form would be a document under section 3 (18) of the General Clauses Act. 1960 Cr L J 452 : AIR 1960 Andhra Pra 176.

**"Other document"-Interpretation.**— Document includes foreign currency. 1962 (2) Cr L J 794 : AIR 1962 Tripura 50.

**Good faith.**— Limitation Act (1908), S. 14—"In good faith"—Since the Limitation Act itself contains its own definition of good faith the question should be examined in the light of that definition. It is wrong to apply the definition of good faith contained in the General Clauses Act. To act with due care and caution is necessary for proving good faith under Limitation Act (1908). AIR 1958 SC 767.

Good faith—Applicant's negligence in prosecuting previous application. S. 14 (2), Limitation Act, has no application. AIR 1955 Bom. 93 (DB).

Good faith—Negligent does not by itself show want of good faith where General Clauses Act applies. This definition in the General Clause Act applies to the Limitation Act S. 14. Due care and attention is not a requirement in the General Clauses Act. AIR 1955 Cal 353.

**"Due diligence" and "good faith-Erroneous conduct of counsel.**— Scrutiny of standard of good faith the standard of "good faith" laid down in the definition under S. 2 (7) Limitation Act is much higher than that of the definition under S. 3 of the General Clauses Act.

The interpretation of the counsel's erroneous conduct based on the mere ground of its being reasonable without taking into consideration whether it was negligent or not is compatible with the application to that conduct of the definition of "good faith" as given in the General Clauses Act rather than as contained in the Limitation Act AIR 1953 Him. Pra 15 (17) (Pt C) (Prs 6,7).

Good faith—The definition of good faith in Section 3 (22) of the General Clauses Act includes only honesty and not acting negligently. 1958 MPC 262.

**Penal Code (1806), S. 52—No reference to moral element of honesty.**— While an honest blunderer acts in good faith within the meaning of the General Clauses Act, an honest blunderer can never act in good faith within the meaning of the Penal Code. 1953 Cr L J 1730 : AIR 1953 Mad 936.

**"Done or intended to be done" Meaning of-Good faith in sub-section.**— Definition of good faith given in S. 3 (22), General Clauses Act would apply. 31 Cut LT 314 : ILR (1965) Cut 255.

**Definition-Applicability-Not applicable in considering order passed-Order of Commissioner under-Characterised as not bona fides—"Good faith"-Meaning of in such context.**— Definition of "Good faith" in General clauses Act 1897, not applicable. (1963) 5 Orisa JD 97.

**Case under S. 14, Limitation Act.**— It is governed by definition of Good faith in S. 2 (7), Limitation Act—The definition of "good faith" in S. 2 (7), Limitation Act is identical with that given in the Penal Code S. 52 and is at variance with the definition given in the General Clauses Act 1897 which is "A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not". Cases of the nature when the plaintiff seeks protection under S. 14 Limitation Act are governed by the definition in the Limitation Act. AIR 11956 Orissa 124 (DB).

Good faith meaning of—The expression "good faith" used in S. 17 (1) Defence of India Act should be construed in the light of the definition given in Section 3 (22) of the General Clauses Act. Hence if from the facts of a case it can be inferred that the public officials acted honestly even though they might have acted negligently it must be held that they acted in good faith within the meaning of Section 17 (1) of Defence of India Act. 1954 Cri LJ 1625 : AIR 1954 Orissa 225 (DB).

**Good faith-Definition in Penal Code-Distinction.**— Common feature to the definition of good faith in P. C. and General clauses Act is honesty. It must be summed up as an honest determination from "ascertained facts" "Good faith" precludes pretence or deceit and also negligence and recklessness. AIR 1961 Punj 215.

**Bona fide.**— Nothing is bona fide which was not done with due care and attention. AIR 1961 Raj 32 (33) (Pt A) (Pr 5).

**Government - "State"- "Government"-Meaning of.**— It means the President acting with the advice of the Council of Ministers and the Governors acting with the advice of their Council of Ministers. It is the system of Government or the institutions and not the persons holding the Offices of the President and Governors and Ministers advising them. 1959 Cr L J 128 : AIR 1959 All 101 (FB).

**"Government" and "the Government" occurring in State Legislation-Meaning of.**— S. 4-A, General Clauses Act, only refers to the expression "Government" and not to the expression "the Government". If a State legislation refers to "the Government", ordinarily that expression would mean the Government of that particular State; it is only when the State legislation would refer to "Government" and not the government, that government in that indefinite sense would mean both the Central Government and the State Government and, therefore; there was good reason why by S. 4-A both the expressions "Government" and "the Government" were not made applicable to all laws. Therefore, as far as the General Clauses Act stands, there is no definition of the expression "The Government" which applies to State Laws. 54 Bom. L R 927 : ILR (1953) Bom. 200.

**High Court.**— "High Court" under General Clauses Act includes "High Court in its" appellate jurisdiction as well as original jurisdiction. AIR 1961 Cal 165 (DB).

Expression "Civil Court" includes High Court. AIR 1955 NUC (Raj) 5020 (DB).

**Immovable property.**— Things rooted in the earth as in the case of trees and shrubs are immovable property both within the General. AIR 1959 SC 735.

**Trees-If immovable property-Tree and standing timber-Distinction.**— Per Bose, J.— "Trees" are regarded as immovable property because they are attached to or rooted in the earth. S. 2 (6) of the Registration Act expressly says so. Trees Attached to earth (except standing timber) are immovable property, even under the Transfer of Property Act, because of S. 3 (26) of General Clauses Act. In the absence of a special definition, the general definition must prevail. Before a tree can be regarded "as standing timber" it must be in such a state that, if cut, it could be used as timber; and when in that state it must, be cut reasonable early. The legal basis for the rule is that trees that are not cut continue to draw nourishment from the soil and that the benefit of this goes to the grantee. *Shantabai v. State* is *Bombav. 1959 SCR 265 : 1958 SCA 727.*

**Right to catch and carry away fish form specific portion of lake-Profit a prendre-Immovable property.**— The sale of a right to catch and carry away fish in specific portions of the lake over a specified future period amounts to a licence to enter on the land coupled with a grant to catch and carry away the fish, that is to say, it is a profit a prendre, which is regarded in as a benefit that arises out of the land and as such is immovable property. AIR 1953 AC 108.

Transfer of Property Act (1882), Ss. 3 and 58 (a)-Mortgagee's interest ins immovable and not movable property. AIR 1952 Bom. 454 (DB).

"Immovable property" Transfer of rights under a lease of immovable property is a transfer of immovable property under S. 105 T.P. Act. The definition of immovable property both under T. P. Act Section 3 and General Clauses Act Section 3 (26) is subject to the "usual reservation clause" unless there is anything repugnant in the subject or contract. AIR 1960 Cal 609 (DB).

**Sludge from sedimentation tank-If immovable property.**— Sludge in the sedimentation tank and just when drawn out of the sedimentation tank cannot conceivably be characterised as immovable property.

If a large quantity of sludge is stored on a land, it does not lose its character as sludge and become land, unless it is allowed to remain there for so long a time that it becomes a part of the land. Even where the sludge is stored in a lagoon and is intended to remain long enough in the lagoon it retains its character as a sludge and cannot be treated in law as immovable property. ILR (1960) 2 Cal 754 : AIR 1960 Cal 123 (130, 131) (Pt D) (Prs 21, 24).

Immovable property-Mining leases of coal land was held to come within the definition of immovable property under the T. P. Act. In T. P. Act Section 3 or in the General Clauses Act Section 3 (26) which must be read as supplemental to it for this purpose there is no exhaustive definition of "immovable property". AIR 1957 Cal 128 (DB).

Immovable Property-Bomboos are immovable property under General Clauses Act and all things "Attached to earth" under T. P. Act. AIR 1955 NUC (Cal) 5612 (DB).

Machinery installed by a tenant on premises of landlord would not be immovable property-The word "immovable property" has been defined in the general Clauses Act and the Registration Act. Immovable property is negatively defined in the Transfer of Property Act. A thing is attached to the earth and fastened to it, it would be regarded as immobile property-The test as to whether a thing would be regarded as being embedded in the earth in order to constitute immovable property is whether it rests by its own weight on earth and whether it can change places and can change hand and can be removed from place to place. AIR 1953 Hyd 14 (DB).

**Interest in land.**— Right in land-Lease construed-The definition of immovable property in the General Clauses Act cannot be made applicable in construing the expression "land".

Right to enjoy usufruct does not create interest in land. AIR 1954 Mad 949 (DB).

In order to determine what is and what is not immovable property as a result of attachment or annexation to land two tests have been laid down, viz., (1) the decree or mode of annexation, and (2) the object of annexation. Of the two tests the latter is the more important, particular circumstances of each case. 1953 Nag LJ 104 : ILR (1953) Nag 488.

**Partition-Hereditary Priesthood.**— Under the Hindu Law a hereditary priesthood is regarded as immovable property capable of partition. AIR 1952 Nag 307 (DB).

T. P. Act (1882), S. 54, Cl (2)-Interest of partner in partnership is not immovable property-Sale of such interest does not come within Cl. (2) of section. AIR 1950 Nag. 89.

An exclusive right of fishery in alien solo has always been recognised as a profit a prendre or benefit arising out of land and as such "immovable property" as defined in S. 3 (26) of the General Clauses Act. ILR 19 Cal 544 : ILR 24 Cal 449; AIR 1931 Bom. 93 ; AIR 1956 SC 17. ILR (1957) Cut 621: 24 Cut LT 17.

Immovable property under General Clauses Act includes "benefits" to arise out of land-Lease of right to collect rent ins a right to the benefits arising out of those lands-It is lease of immovable property within S. 107-The definition in General Clauses Act governs the provisions of T.P.Act. AIR 1952 Orissa 116 (DB).

**Benefit arising out of land-Right** to tap trees for extracting toddy therefrom is a benefit arising out of land within the meaning of Section 3 (26) of the General Clauses Act and a lease of such right is a lease of immovable property within Section 105 of the T.P. Act. AIR 1962 Pat 440 (DB).

Kabuliat granting right to pluck mango fruit and mahua flower for three years is a grant of rights to the benefits arising out of land and is a lease of immovable property within the definition of that term in General Clauses Act-Absence of registration-Deed not admissible in suit for rent-Oral evidence not admissible. AIR 1961 Pat 308 (DB).

Auction of has mahal hats do not create an interest in land. 1958 ILR 37 Pat 302.

Right to rear and appropriate lac from lace bearing trees is not immovable property but an interest in immovable property. It is an incorporeal right. AIR 1952 Pat 201 (302 (PT B) (Pr 14) (DB).

By virtue of S. 3 (27) of the General Clauses Act the expression imprisonment must be construed to mean both rigorous and simple imprisonment. AIR 1960 Orissa 139 (DB).

**Law"-Meaning of.**—The Ward order in Section 3 (29) General Clauses Act includes a "notification" because a notification is nothing but an order. AIR 1955 All 269 (FB).

**Order does not include notification.**—The word "order" in S. 3 (29) has to be construed in the context in which it is used. The difference between law, Ordinance, order; bye law; rule or regulation is based on the difference between the authorities passing or making them. In the strict sense of the word a law is made by the legislature; an ordinance is issued by the President, the Governor as the case may be; an order is made by a competent authority; a bye-law is passed by statutory authority competent in that behalf. Hence a notification containing an executive order does not fall within this definition. 1953 Cri LJ 603. ILR (1953) Madh Bha 67.

**Government notification is not "law".** 1954 Nag LJ 434 : 1954 Cr L J 1179.

**Local authority.**— "Local Authority"-Meaning of-Definition given in S. 3 (31) General Clauses Act, 1897 applies. AIR 1963 SC 1890.

Local authority-Meaning of It includes officer of Government-Actually wording in locality-Definition in S. 3 (31) of the General Clauses Act 1897 does not apply. AIR 1962 Mys 31 (DB).

Preferential payment-"Rates due from company to State Government or local authority"-Debt due from a company on account of trading activity of Government department-Is not "rates" due to Government-State Electricity Board and State housing Board-Not "Local authority"-Claim for preferential payments not tenable. ILR (1961) May 434.

A Gram Panchayat clearly falls within the meaning of local authority given in Cl. 31 of S. 3 of the General Clauses Act as the Gram Panchayat Act makes provision for local funds which are managed by the village panchayat. AIR 1961 Punj 1 (FB).

**Magistrate.**— Under the definition of the word Magistrate in S. 3 (32) of the General Clauses Act, a Magistrate or a Court of Magistrate is regarded as an office and not an official. AIR 1915 Mad 1159.

The definition of "Magistrate" in S. 3 (32), General Clauses Act is an inclusive definition. The expression "include" or "shall be deemed to include" is every generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute, or where it is intended that while the term defined should retain its ordinary meaning its

scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative and not exhaustive; and when it is so used these words or phrases must be considered as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

The term "Magistrate" in the definition given in the General Clauses Act is not limited to Magistrates appointed under the Code, it is permissible to find out its meaning in the ordinary sense. (1914) 1 KB 641, Rel on.

An additional Sessions Judge administering and enforcing law as a Civil Officer of the State and empowered to administer oath or affirmation to person under the Oaths Act is a Magistrate within the meaning given in the dictionary. When an Additional Sessions Judge or a Sessions Judge hears an appeal from the decision of a Magistrate of the First Class, his powers of administering punishments are circumscribed by that of the trial Magistrate. He is then exercising the powers of a Magistrate in respect of punishments. 11 Cr L J 330 (Lah). Dist. 1956 Nag LJ 512 ; 1956 MPLJ 20.

**Month.**— Notice calling upon tenant to vacate on expiry of "ekmah" is a valid notice determining tenancy-Reference in notice to date of commencement of tenancy is immaterial because it does not necessarily indicate that the word "Mah" was used in the sense of a calendar moth-"Mah" can be interpreted to mean a period of 30 days also-As notice is to be interpreted so as to make it valid and effectual whenever possible tenant is bound to understand the word only in that sense-Interpretation of "month" found in S. 3 (35), General Clauses Act is to be adopted when the word is used in a statute. The word is used in a statute it may be interpreted to mean a period of 30 days. IR 29 Mad 75. ILR (1962) 1 All 761.

**Transfer of Property act (1882), Ss 105, 106 and 107.**— unilateral kabuliati is not lease-Implied tenancy from payment and receipt of rent-Presumption under S. 106, T. P. Act-If the purpose of tenancy is residential it will be from month to month : "unless there is anything repugnant to the subject or context" the month of the tenancy would be a "month reckoned according to the British calendar" under the definition of S. 2 (4) of the General Clauses Act. AIR 1955 NUC (Cal) 5584.

Transfer of property Act (1882), S. 106-Period of notice under-Month means calendar month-Period of month's notice beginning on 28th or later day of January-Termination on 28th February in ordinary years is valid. AIR 1962 Orissa 149 (DB).

**Applicability-Order of Court "Month"-Meaning of order directing deposit to be made within one month-Interpretation.**— The definition of "month" in S. 3 (35) of the General Clauses Act applies only to statutes; but it has been the practice of all Indian Civil Courts governed by the C. P. Code, to adopt the same interpretation, when the word "month" is used in any decree or order of Court. Hence is where an order of Court uses

the word "month", it must be taken as a month according to the British Calendar, i. e., space of time reckoned from any moment and extending to the corresponding day of the next calendar "month"; in other words it denotes a period terminating with the day of the succeeding month, the numerically corresponding day of the succeeding month and it terminates with the last day thereof. 18 Cut LT 11 : AIR 1952 Orissa 279 (279, 280) (Prs 7, 9, 10) (DB).

**"Month".**— Month in decree should be read as a calendar month. It should not be given the meaning to it in commercial documents. AIR 1956 Pun 112.

**Month, calculation of.**— The definition of the word "month" as laid down cannot apply to the case where the word 'month' is used in a decree of a Court. AIR 1955 NUC (Raj) 1061 (DB).

Month means month reckoned according to British Calendar. AIR 1961 Tripura 16 (17) (Pt C) (Pr 8).

**Movable Properly-Immovable property-Machinery attached to earth, when immovable property-Tests.**— Machinery installed by tenant on the premises of landlord would be moveable property and did not require registration. AIR 1953 Hyd 14 (DB).

Suit for recovery of money—"Movable property" does not include money within the meaning of Art. 145 of the Limitation Act. AIR 1950 Madh Pra 101 (DB).

**Suit for possession of power house-Article 144 of Limitation Act applicable.**— Power house not movable property until the machinery fixed to the earth are not uprooted and until the buildings are demolished the materials with which they are constructed cannot be called movable property. It is skin to immovable property. AIR 1955 Pat 37 (DB).

**Oath.**— Warrant in complaint made on affirmation is valid under the General Clauses Act, S. 3 (37)-Oath includes affirmation. AIR 1955 NUC (Sau) 1484 (DB).

**offence.**— Offence not defined in the Constitution-The definition in General Clauses Act will apply. 1958 Cr LJ 1469 : AIR 1958 Cal 682 (DB).

**Person—"Person" includes juridical person.**— C. P. C. (1908), O. 33, R. 1 and 3-Word person in O. 33, R. 1 means natural as well as juridical person-Company is entitled to sue in forma pauperis as it is a pauper within O. 33, R. 1 in view of the General Clauses Act S. 3 (42). There is no definition of the term person in C. P. C. AIR 1961 Ker 180 (DB).

Executors seeking for issue of probate are "persons" and are entitled to make application for leave to sue in forma pauperis-Person includes a juridical person under S. 3 (42) of the General Clauses Act. This definition is applicable for interpretation of explanation-1 to O. 33, R. 1. Trustees or executors of a will are persons within the term person. AIR 1955 Mys 128.

The word person in O. 33 of the C. P. C. has the same meaning as given to it in cl. 42 of S. 3 of General Clauses Act and therefore the provisions of Order are available to juristic persons also-Suit brought in representative capacity-Plaintiff

whether pauper-Assets of person on whose behalf suit is brought are to be taken into consideration. AIR 1951. Punj 447. Overruled. AIR 1960 Punj 73 (DB).

**"Person"-Meaning-To hold it as a general rule that the word "person" used in any statute means only a living person and not a juristic person, such as a corporation would be contrary to what is laid down in S. 3 (42) of the General Clauses Act. AIR 1958 Punj 57 (DB).**

"Person" meaning of-The word person in O. 33, R. 1 has the same meaning as in Cl. 42 of S. 3 of the General Clauses Act. It includes a juristic person such as an official receiver in insolvency. AIR 1955 NUC (Raj) 4030 (DB).

**Firm-Whether person.**— Income-tax Act (1922), Sections 34, 22, 23, 3 and 2 (2)-Notice on individual partners of firm not necessary-Effect on validity of assessment-Person includes firm in S. 2 (2) of the Income-tax Act 1922 and General Clauses Act S. 3 (42). AIR 1959 Sc 213.

Firm is not "person"-Definition of "Person" in S. 3 (42), General Clauses Act, cannot be imported in S. 4, Partnership Act. AIR 1956 SC 354.

Person-Includes partnership firm in view of definition in Excess Profits Tax Act (1940), S 2 (17) read with General Clause Act, S 3 (42) which includes an association of persons in that term. AIR 1954 mad 1049 (DB).

**"Firm" and "association of person"-Meaning-Semi** wholesalers of cloth under scheme of Government held did not constitute either a "firm" or "association of persons" as there was no scheme of common management for the purposes of earning profits, gain or income and hence the group could not be called a person within the definition of that term in General clause Act. AIR 1956 Nag. 103 (DB).

**"Person carrying on business".**— Person included more than on person-Hindu joint family firm-Joint family carrying on business in name of firm-Family consisting of adults and minors. Such firm is a person for the purposes of R. 10 of Order 30 of the C.P.C. by virtue of S. 3 (42) of the General Clauses Act-Suit can be brought against such firm. AIR 1962 Pat 360.

**Association of persons or body of individuals.**— The definition of "person" in General Clauses Act applies in the interpretation of the High Denomination Bank Notes (Demonetisation) Ordinance (1946), Government treasury or a bank is a person for the purposes of the Ordinance. AIR 1954 All 421 (FB).

**"Person"-Offence committed by servant of company-Criminal trial-Means rea-Offence by Corporation.**— The definition of a person in Section 11 of the Penal Code is more or less on Par with the definition of that ward in section 3 (42) General Clauses Act. The definition in P. C. also must be read as having a clause unless there is anything repugnant in the subject or contest. A corporate body cannot be included in the term person for offences which can be committed only by a human individual. 1964 (2) Cr LJ 276 : AIR 1964 Bom. 195.

The limited company is a person under the definition of General Clauses Act S. 3 (42). 1956 Cri LJ 529 : AIR 1956 Cal 137.



Corporation is a person by virtue of the General Clauses Act and there is nothing repugnant in Section 2 (17) (h) of the C. P. C. to make the General clauses Act definition inapplicable. AIR 1955 NUC (Cal) 1058.

Association or incorporated body or holder of an office cannot be appointed guardian. The definition in General Clauses Act not applied for the purposes of Guardians and Wards Act 1899. AIR 1955 NUC (Cal) 813.

Limited company—Has separate legal personality as per General Clauses Act, S. 3 (42)—Directors cannot be made liable for legal liability incurred by Company. 1963 BLJR 127.

Registered Trade Union is a person for the purposes of O. 33 Rule 1 in view of the definition of that term in General Clauses Act which is applicable. AIR 1961 Pat 15 (DB).

Company is a person under the definition of person in General Clauses Act. 1958 Raj L W 304 : ILR (1958) 8 Raj 195.

**Local Authority—Whether person.**— Person includes local authorities under General Clauses Act 91897—There is no complete definition of the term person in the General Clauses Act. AIR 1953 All 43 (DB).

**"Municipal Corporation"—If person.**— The word person in S. 24 (1) Electricity Act 1910 should be construed in the sense as defined in Section 3 (42) of the General Clauses Act and would include a local authority such as a Municipality. AIR 1958 Bom. 498 (DB).

**Government—Whether Person.**— "Person" includes State Government, as a body of individuals within the definition of general Clauses Act. The term would have the same meaning in Contract Act. AIR 1956 All 383 (DB).

Suit against Government servant with reference to his office not maintainable. AIR 1957 Andh Pra 714 (DB).

Carrier—Governor-General in Council—There is no particular significance in either the General Clauses Act or in the Common Carriers Act for not bringing the Government within the meaning of the term person Governor General in Council is a person in General Clauses Act. AIR 1955 NUC (Mad) 3938.

"A person—Meaning—Includes Government. AIR 1961 Raj 64 (DB).

The word "person" has not been defined in the Constitution and the definition in General Clauses Act 1897 would apply. Thus a company would come within the definition of "person. AIR 1961 Cal 258.

**Proper parties.**— The definition of the term person is to be applied for the interpretation of the Constitution. State Medical Faculty though an incorporated body of individuals is a person. AIR 1953 Cal 289.

Corporation can claim fundamental rights as it is a person within the meaning of the Constitution by virtue of Section 3 (42) of the General Clauses Act. AIR 1961 Ker 268.

An ad hoc Committee which supersedes the managing Committee of the school is covered by the definition of the term person in General Clauses Act, Section 3 (42). AIR 1959 Tripura 27.

**Political Accent.**— Ambassador. Extraordinary and Plenipotentiary is the principal officer representing the Government and is therefore a political agent in view of the definition in Section 3 (43) General Clauses Act is a person AIR 1956 Pat 46.

**Regulations.**— Bengal Food grains Control Order-Order is executive act of Governor and cannot be said to be Central Act or regulation under General Clauses Act 1897. AIR 1955 Cal 478 (DB).

No definition of Rules and Regulations in the Police Act—The word therefore should be interpreted in terms of the provisions of the General Clauses Act. ILR (1960) 10 Raj 1407.

**Legislation-Drafting Rules must state provision of law under which they are made.**— Per Desai, C. J.— If a rule purports to have been made under one provision it cannot be sustained under another provision even though it could have been made under it. It is essential that an authority making a regulation in the exercise of power conferred by a statute states it in the regulation itself so that the public may know at once whether it is ultra vires or intravires and may act accordingly. A regulation is made for the public and the public have a right to know the authority under which it is made, as soon as it is made, so that they know whether they are bound by it or not : AIR 1958 SC 232. All LJ 287 : 1961 All WR (HC) 387.

Words "Rule or regulation used in S. 29 of the Police Act should be interpreted in terms of the General Clauses Act as there is no definition of those words in the Police Act. ILR (1960) 10 Raj 1407.

**Signature, meaning of-(Words ad Phrases).**— It is quite true that when signature by an agent is permissible the writing of the name of the principal by the agent is regarded as the signature of the principal himself. But this result only follows when it is permissible for the agent to sign the name of the principal. If it is found not permissible the writing of the name of the principal by the agent cannot be regarded as a signature of the principal for the purposes of that particular statute. If a statute requires personal signature of a person which includes mark the signature or mark must be of the person himself. There must be physical contact between that person and the signature or the mark put on the document. 1950 SCJ 364 : 1950 SCR 435.

**Attestation of will by illiterate witness by its mark-Validity-Sign, meaning of.**— The word "sign" in Section 63 (c) of Succession Act would include a mark in view of the definition of the term in General Clauses Act. It is therefore, not absolutely necessary that the attesting witnesses should sign. AIR 1952 Assam 93 (DB).

**"Sign"-Scope.**— The provision in the General Clauses Act that definition "sign" includes "mark" does not limit the possible way of signing the document. AIR 1955 NUC (Mad) 3159.

**Proper attestation- What is.**— In the absence of the definition of "sing" in the Succession Act the definition of the

term in the general Clauses Act has to be applied. It is open to a witness to attest a will by making a mark in token of the execution of the will by the testator. AIR 1953 Nag 266.

Presiding officer can compare thumb impressions for determining their identity—"Sign", includes thumb impression. 1960 Raj L W 521.

Definition of "sign" is neither exhaustive nor complete. 1957 Raj L W 267 : ILR (1957) 7 Raj 629.

**Scribing word "sahi" and affixing seal.**— Where a Mahant of a temple, instead of scribing his own name in a reqqa, which was written on his instructions, scribed the word "sahi" on the top of the document and also affixed his seal and it was not uncommon in that part of the country to which the Mahant belonged for people of high rank to refuse to scribe their own names, but instead to write the word "sahi".

Held, that though the Mahant was literate in the circumstances, the scribing of the word "sahi" coupled with the affixation of the seal amounted to an authentication of the document as one executed by the Mahant himself. 1957 Raj LW 267 : ILR 91957) 7 Raj 629.

**Simple money bond—Document running into several pages—Signature of the executant on first page only—Proof that the executant meant to be bound by the contract.**— The document is properly executed though the signature of the executant was not at the end of the bond but only on the first page. AIR 1955 Raj 91 (DB).

**"State".**— No defined in Constitution—The definition of the term given in General Clauses Act, S. 3 (58) must be followed. AIR 1965 Cal 282.

**"State Government".**— Means the authority or person authorized at the relevant date to exercise executive Government in the State ; and after the commencement of the Constitution, it means the Governor of the State. AIR 1964 SC 703.

**State Government—Different capacities of Governor—Governor exercising executive powers in State Government, not while exercising other powers.**— Government, not while exercising other powers—Governor exercising power of Chancellor of University—He is not State Government. AIR 1962 All 128 (DB).

Suit against Government of Bhopal—Notice under S. 80 given to Secretary. Revenue and Local Self-Government Dept. Notice not proper and valid because under General Clauses Act, S. 3 (60) the State Government after the commencement of the Constitution in Part C States means Central Government—Court allowing time to give fresh notices acts illegally—Plaint must be received. AIR 1953 Bhopal 37.

Appropriate Government and State Government. In the light of the definition of the State Government given in S. 3 (60) of General Clauses Act the "Appropriate Government" or "State Government" cannot be considered as identical institutions at all time. AIR 1958 Ker 169 (DB).

**Order of the Government -What is.**— Order issued by and under his authority is an order of the State Government. This is in line with the definition of State Government in General Clauses Act S. 3 (60) (b). AIR 1957 Mad 48 (DB)

Order of the Chief Minister to whom the Governor has allotted the business of State Government is an order of State Government when the Chief Minister issues it in exercise of the powers given to him by the Governor. ILR (1961) Mys 786.

"State Government"-Order of Minister is an order of the State Government since the Minister is appointed by the Governor and is allotted a portfolio under the Rules of business, the Minister constitutes "State Government" as far as the affairs of his department. AIR 1964 Punj 198.

**Executive power.**— Exercise through Minister. Order issued by a Minister in respect of the matter that is allotted to him by the Governor is an order of the State Government. AIR 1958 Punj 302.

**Will-Registration Act (1908), S. 17 (3)-Authority to adopt given by will.**— The devise in words "my adopted son take my properties and enjoy them"-The words "take and enjoy" were clear words of devise and the testamentary character of the document was established.

A document is a will if it contains specific words of bequest to come into effect after the death of the testator. AIR 1963 Mad 740 (DB).

**"Writing".**— Statement recorded on tape by tape-recorder is not writing within the definition of that word in General Clauses Act-It is inadmissible in evidence under S. 145. AIR 1956 Punj 173.

**Year Rent note mentioning both Hindi Miti and English date for commencement of tenancy.**— Tenancy held was governed by English calendar in the absence of anything specific in the rent note to show that it was to be governed by Hindi calendar. AIR 1955 NUC (Madh Bha) 69 (DB).

Word "year", meaning of. The definition given in the General Clauses Act should be applied in interpreting Money Lenders Act. AIR 1955 NUC (Pat) 4908.

Where in a definition section of a Statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what is stated in the definition unless the context otherwise requires. A 1979 SC 734 (743) : 1979 Tax LR 2053.

Where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning. A 1979 SC 734 (743) : 1979 Tax LR 2053. A 1978 Bom. 196 (198, 199) (DB) ; 1978 Lab IC 1074 (1079) ; 1978 CLNR 270 (DB) (Cal); A 1932 Bom. 370 (374) : 34 Bom. LR 789.

Expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect. 1979 SC 734 (743) : 1979 Tax LR 2053.

Where the definition of an expression in a definition clause is preceded by the words "unless the context otherwise requires", normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed from if there be something in the context to show that the definition should not be applied. A 1979 SC 734 (743) : 1979 Tax LR 2053.

Ordinarily one has to adhere to the definition and if it is an expansive definition the same should be adhered to. The frame of any definition more often than not is capable of being made flexible but the precision and certainty in law requires that it should not be made loose and kept tight as far as possible. A 1979 SC 734 (743) : 1979 Tax LR 2053.

If the principal offence created by a law does not postulate a particular ingredient, its abatement would not, in general, require that ingredient, because abatement is an offence ancillary and secondary to the principal offence. A 1962 Bom 243 (248); 64 Bom LJ 16 FB.

A contract for specific performance being valid in law, a Municipality is under a legal obligation to perform it and its failure or refusal to perform the contract would be an illegal omission amounting to an "act". ILR 1956 2 Cal 164 (165) : A 1955 NUC (Cal 915).

With reference to S. 80 of the Civil P. C. which relates to notice of suits instituted against a public officer in respect of "any act purporting to be done in his official capacity". It has been held that these words would, in view of the second part of s. 3 (2), cover an illegal commission. A 1931 Cal 61 (63) : 57 Cal WN 1127.

The definition under consideration requires that the omission must be illegal and the non-discharge of the duty in question must amount to illegality. 1974 MPLJ 533 (535) : 1974 Jab LJ 446.

Where a police officer was found absent from duty from the police line at the time of roll call and the prosecution was initiated for non-compliance with the requirements to be on duty as required under the Police Act (1861), this was held to be a prosecution for something done under the provisions of the Act A 1973 SC 1354 (1356) : 1971 SCD 529.

Where a police officer made false entries in the General Diary of a Police Station with the intention to save or knowing it likely that he would thereby save the offenders from legal punishment, it was held that if the police officer did not discharge his duty in keeping a regular diary, he committed an offence under S. 29 of the Police Act (1861) (1964) 2 Cri LJ 71 (73) : 1963 All LJ 555 (SC).

In view of the definition of the word "act" non-compliance with the provisions of the statute by omitting to do what the Act enjoins will be anything done or ordered to be done under the Act. A. 1973 SC 1354 (1356) : 1973 Cri LJ 1152; (1964) 2 Cri LJ 71 (73).

**Affidavit.**— An affidavit is basically a statement. The oath or solemn affirmation which supports the written statement is, of course, an essential ingredient. An affidavit not sworn before a Judicial Magistrate but simply attested by him is not in law, an affidavit of the signatory. ILR 1967 2 Punj 11 (15).

With reference to Section 145 of the Criminal P. C. 1898 (disputes relating to immovable property), affidavits form a very important piece of evidence which have to be considered for arriving at a finding of the true position because (in such a proceeding) affidavits take the place of oral evidence given by witnesses. (1967) 1 Andh WR 437 (439).

It is well recognised practice commonly adopted in courts that where an application is required to be supported by an affidavit, the application is drawn up and at the foot of the affidavit is sworn. A 1981 SC 113 (1117).

The expression "Civil Court" has not been defined in the General Clauses Act. It has been held to include the High Court. 1954 Raj LW 743 (746) : A 1955 NUC (Raj) 5028.

The definition of "Collector" in the Act is specific as regards the Presidency towns and generic as regards other areas. In a Presidency town, it means the Collector of Calcutta, Madras or Bombay. Elsewhere, it means the Chief Officer in charge of the Revenue Administration of a district. The use of this general formula in the definition became necessary by reason of certain aspects of the development of the administrative.

The Collector as defined in the General Clauses Act is only the chief officer in charge of the revenue administration of a district, and not a court. A 1954 Mad 1091 (1101) : 1954 Cri LJ 1775.

**Commencement.**— A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity. A 1970 SC 398 (401) : (1971) 1 SCJ 375. ILR (1967) Cut 333.

**Commissioner.**— As a matter of history of administrative developments, Commissioners during the British rule came somewhat later than the Collectors.

The Commissioner had at first also to control the police and criminal assizes, but it was soon found that he was overworked and in 1831 his assize work was transferred to the district judge who, in due course, came to be known as the district and sessions judge. Police functions came to be vested in appropriate police officers and the Commissioner thereafter survived mainly only for revenue and general administrative powers.

"Constitution" has been defined as meaning the Constitution. The definition serves no other purpose than that of shortening the language of enactments, including the General Clauses Act itself.

**Consular office.**— With reference to the definition of "Consular officer", it should be pointed out that in 1963, there came into existence the International Convention on Consular Relations (1) The trust of the Convention now is to stress the exercise of consular functions irrespective of designation. The Convention, incidentally, also deals with diplomatic officers.

**District Court.**— High Court is a "District Court" when it does not exercise its ordinary or extraordinary civil jurisdiction conferred by Clauses 11 to 18, Letters Patent. A 1930 Mad 779 (781, 782) : 53 Mad 237 (DB).

The powers of a District Court must be sought in the particular enactment with reference to which that question arises. Therefore, the District Court cannot entertain application under Section 10 of the Mussalman Wakf Act 1923 and impose fine thereunder. A 1949 Nag 137 (138, 139).

**District Judge.**— The Constitution, gives a wider definition of "District Judge", but that is in the context of the recruitment and control of the subordinate judiciary and obviously would not apply for the construction of enactments. A 1969 Madh Pra 190 (193) : 1969 MPLJ 237 (DB).

**Additional District Judge.**— The definition uses the definite article "the", thus implying that only the sole presiding Judge of a principal Civil Court of original jurisdiction is to be regarded as a District Judge. A 1956 Madh Bha 183 (187, 188) : ILR (1956) Mad Bha 307 (DB).

In section 7 (3) (b) of the Industrial Disputes Act, "District Judge" includes an Additional District Judge. A 1954 Assam 161 (164) : ILR (1954) 6 Assam 161 (DB)

For finding the meaning of the expression "District Judge" in Section 62 (1) Copyright Act, one cannot resort to the definition of "District Judge" in the General Clauses Act. A 1967 Mad 381 (384) : ILR (1964) 2 Mad 666 (DB).

**District Judge and High Court.**— The High Court, in the exercise of its ordinary original civil Jurisdiction, is not included in the expression "District Judge". A 1915 Mad 608 (609) : 27 Mad LJ 645 (DB) (10). By virtue of the definition High Courts are not "District Judges", and although High Courts, in election petitions, exercise original civil jurisdiction, they are not "the principal civil courts of original civil jurisdiction". A 1980 Gauhati 31 (34) (DB).

✓ **Document.**— Stephen, in his Digest of Evidence, defines "document" as any substance having any matter expressed or described upon it by marks capable of being read. Stephen's Disget of Evidence Article 1.

With reference to S. 3 Press and Registration of Books Act, 1867 a printed leaflet containing an ideological appeal (with subscription request providing space for the name of the subscriber) is "paper", 1973 All WR (HC) 681.

"Document" in S. 2 (b) of Foreign Exchange Act, 1947 includes foreign currency. A 1962 Tripura 50 (54) : 1962 (2) Cri LJ 794.

"Document" does not include currency. A 1968 Ker 208 Ker 208 (211) : 1968 Cri LJ 936.

**Enactment.**— The definition does not specifically include an "Act"—Obviously because there can be no doubt that "enactment" would include an Act. The very word "enactment" is grammatically derived from "Act". "Enactment" means an Act made by the Legislature or a part thereof. A 1968 SC 102 (104).

An Ordinance is an "enactment" within the meaning of Section 8 A 1967 Guj 229 (245) : 7 Guj LR 597 (DB).

An "enactment" would include any Act or a provisions contained therein, passed by the Parliament or the State legislature.

The result of the combined operation of Ss. 3 (19) and 6 (c) is that repeal of an enactment includes repeal of any provision contained therein. 1978 tax LR 1003 (1006 (Ker)).

**Rules as enactment.**— Where rules are made under a provision in an Act conferring a rule making power on the Government, and that provision, after its amendment, confers the power to make rules on the Government, the rules already made by the Government shall be deemed to have been made under the amended provision until the rules are repealed (superseded) by rules framed by the Government under the amended section. A 1959 Bom. 554 (555) : 1959 Cri LJ 1429 (DB).

**Mother.**— The term "mother" as referred to in Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) does not include step mother. 1976 Mad LJ 565 : ILR (1978) Bom. 2310 (2324).

**Financial year.**— The expression "year" is defined in the Act as a year reckoned according to the British Calendar S. 3 (66) and Notes 66, infra.

**Good faith.**— The definition in the General Clauses Act differs from the Penal Code, and expressly rules out and consideration of care or want of care. The real essence of "good faith" is honesty, which is common to both the definitions. A 1969 Bom. 127 (131) : 70 Bom. LR 554 (DB).

The Penal Code, in addition, requires due care and caution, while, under the General clauses Act, negligence does not it self show want of good faith. A 1955 Cal 353 (135) : 58 Cal WN 1047 (DB).

Negligence in itself does not necessarily imply mala fides. A 1975 SC 529 (531) : 1975 Madh LJ 19.

It has been held that "good faith" as defined in the General Clauses Act is equivalent to honesty of dealing, and does not entail upon the auction purchaser the necessity of searching the registry before he bids at an auction. A 1931 All 277 (294) : ILR 53 All 334 (FB).

As the definition includes only honesty, and does not require that the person concerned must not act without negligence, the good faith of a Government cannot be lightly challenged by a party where all that the Government has done is to impose a control so as to avoid profiteering and black-marketing. 1958 MPC 262 (266) (DB).



In the definition in the Penal Code, the element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced. A 1966 SC 97 (103).

In the Penal Code, bad faith implies want of due care and attention, and not necessarily dishonesty as in civil law. 1948 Jaipur LR 230 (236) (DB).

While an honest blunderer acts in "good faith" within the meaning of the General Clauses Act, he can never act in "good faith" within the meaning of the Penal Code if he is negligent. A 1953 Mad 936 (937) : 1953 Cri LJ 7930.

**Good faith under the limitation Act.**— The definition of "good faith" in the Limitation Act, 1908 is identical with that given in the Penal Code and is at variance with the definition given in the General Clauses Act. A 1956 Orissa 124 (125) : ILR (1956) Cut 135 (DB).

The discretion conferred on the Court by Section 149, Civil P. C. (to allow the person to make up the deficiency in Court-fee) is normally expected to be exercised in favor of the litigant except in case of contumacy or positive mala fides or reasons of a similar kind. The question of bona fides in this connection should be construed in the sense that the word is used in the General Clauses Act and not as used in the Limitation Act. The same view is followed in the undermentioned cases. A 1938 Lah 161 (365) : 40 Pun LR 413 (FB).

The expression "good faith" as contemplated by S. 14, Limitation Act, 1908 emphasises that a party should have acted diligently, as contrasted with the definition in the General Clauses Act which emphasises honesty (of purpose). A 1973 Bom. 313 (321) : 75 Bom. LR 186.

Section 14 (2), Limitation Act, 1908 required the prosecution of the earlier proceeding in "good faith". "Good faith" as contemplated by this sub-section was not the same good faith as contemplated by the General Clauses Act. The General Clauses Act emphasises "honesty" and ignore the factor of negligence. Section 2 (7), Limitation Act, 1908 emphasises not only "honesty" but also the fact that due care and attention has been given to the prosecution of the earlier application. A 1955 Bom. 93 (97) : 56 Bom. LR 597.

In a suit involving a question of limitation, the Court has to adopt the definition of "good faith" as given in the Limitation Act, rather than the definition of "good faith" given in S. 3 (22) of the General Clauses Act. According to the definition of the expression in the Limitation Act nothing shall be deemed to be done in good faith which is not done with due care and attention. (1972) 74 Pun LR 33 (37).

Under the definition in S. 2 (7) of the Limitation Act (9 of 1908), "nothing shall be deemed to be done in good faith which is not done with due care and attention". This is a stricter definition than the one adopted in Section 3 (22) of General Clauses Act, 1897, under which "a thing shall be deemed to be done in good faith" where it is in fact done "honestly" whether it is done negligently or "not". For, if a thing is done "negligently",

it cannot be said to have been done "with due care and attention" even though it may be done "honestly". (1912) 13 IC 260 (260) : 5 Sind LR 181.

There is no hard and fast rule as to what amounts to the good faith required by section 14 of the Limitation Act (9 of 1908). It is a matter to be decided on the facts of each case. (1916) 32 IC 616 (617) : 9 Sind LR 167.

In considering the question whether, in instituting the previous suit and carrying on the proceedings in the wrong Court, the plaintiff had acted in "good faith" it is wrong to apply the definition of good faith contained in the General Clauses Act. Since the Limitation Act itself contains its own definition, the question should be examined in the light of that definition, that is a to say, whether the plaintiff acted with due care and attention. A 1958 SC 767 (769) : 1958 SCJ 963.

The test of "Good faith" as laid down in the General Clauses Act is generally applicable to statutes. Accordingly, the test has been held to be more appropriate to proceedings under the Insolvency law than the test laid down in the General Clauses Act. A 1958 SC 1 (10) : 1958 SCJ 172.

The definition is applicable to S. 56 (1), Electricity Act, 1910, 1975 WLN (UC) 514 (Raj).

The definition is applicable to Factories Act. (Payment made in good faith for overtime work done by a worker). A 1963 Andh Pra 106 (108) : (1962) 2 Andh WR 109 (DB).

Where there is erroneous conduct by counsel, an interpretation which holds that it was in good faith based on the mere ground of its being reasonable without taking into consideration whether it was negligent or not, is compatible with the definition of "good faith" given in the Act. A 1953 Him Pra 15 17).

The definition of "good faith" in the General Clauses Act would naturally not apply to Acts passed prior to the passing of the General Clauses Act, such as the Contract Act, 1972 or the Transfer of Property Act. A 1928 All 41 (42) : 25 All LJ 926 (DB).

The care and attention expected of a man of ordinary prudence may, however, be instituted upon, if the context of the enactment so justifies. A 1969 Bom. 127 (131) : 70 Bom. LR 544 (DB).

With reference to S. 49 of the Trust Act, 1882, it has been held that "good faith" means "due care and attention" of a reasonable and prudent man, since the object of that section is to protect the interests of beneficiaries, and the definition in the General Clauses Act is not attracted, the Trusts Act having been passed before 1897. A 1979 Andh Pra 229 (241, 242, 246, 251, 252) : (1979) 1 APLJ (HC) 264 (DB).

In relation to a negotiable instrument payment in "due course" will be considered valid if made in good faith and without negligence. Besides honesty in making the payment, there must be absence of negligence to constitute such payment. (1979) 49 Com. Cas 615 (630) (DB) (Bom.).

The expression "good faith" is not defined in the Contract Act, 1872, nor does the definition in the General Clauses Act, 1897 expressly apply to the term when used in the Contract Act. The definition of good faith as generally understood in civil laws, with may, therefore, be taken as a practical guide in constructing the expression in the Central Act is that nothing is said to be done in "good faith" which is done without due care and caution; that is the care and caution expected, of a man of ordinary prudence. An honest purchase made carelessly, without making proper inquiries, cannot be said to have been made in "good faith" so as to convey a good title. 91911) 12 IC 809 (809) : 4 Bur LT 128.

The words "good faith" in S. 178, Contract Act, 1872, before its amendment, bore the same meaning as is given in Section 3 (20) of the General Clauses Act, though, in terms, that sub-section may not apply to any Act earlier in date than the General Clauses Act. The general rule of English law is also to the same effect, viz., that a thing should be deemed to be done in good faith if it is in fact done honestly, whether it is done negligently or not. A 1938 Mad 545 (547) (DB).

The expression "good faith" is not defined in the Specific Relief Act. Though the original Specific Relief Act was passed earlier in point of time to the General Clauses Act which would not expressly be applicable to the terms used in the Specific Relief Act, the definitions in the General Clauses Act have been applied to the Specific Relief Act on the ground of equity and good conscience. The question of good faith is necessarily a question of fact. The test to be applied to find out whether there is good faith or not is to see whether the person concerned has acted honestly or not. In short the essence of good faith is the honesty of intention. (1977) 2 Mad LJ 431 (438) (DB).

What constitutes good faith within the meaning of S. 51 of the T. P. Act is a question of fact and a person may act in good faith, though he acts under a mistake of law. A 1925 Mad 963 (964) : 48 Mad LJ 682 : (1907) ILR 30 Mad 197 (199) : 17 Mad LJ 9 (DB).

A person may act in good faith, though he is negligent in investigating title. A 1920 Sing 31 (32) : 14 Sing LR 12 (DB).

A 1952 Mys 117 (118, 119) : IIR (1952) Mad 384. A belief by transferee that he was absolutely entitled to the property, even if negligent would entitle him to compensation provided it is not dishonest.

The "good faith" required by S. 51 of the T. P. Act to entitle a person to get compensation for improvements effected by him does not go beyond an honest belief in the validity of his title, and even a negligent belief will amount to an honest belief for the purposes of the section. (1914) 24 IC 940 (940).

If there is no honest belief there is no good faith. 1977 Raj Law 301.

**Facts to be considered in determining good faith.**— Reverting to the General Clauses Act, the question of good faith under the Act is one of fact, to be determined with reference to

the circumstances of each case. A 1963 Andh Pra 106 (109) ; (1963 (1) Cri LR 283. A 1961 Raj 32 (33) ; IIR (1961) 10 Raj 266. Nothing is bona fide which was not done with due care and attention.

Though "good faith" has been defined liberally, still payments made in contravention of the Provident Funds Act and without proper enquiry cannot be said to have been done in good faith. A 1937 Cal 314 (318) ; 41 Cal W 524 (DB).

When an order of the Commissioner is characterised as not bona fide, the definition of "good faith" in the General Clauses Act is not applicable. (1963) 5 Orissa JD 97 (110, 111) (DB).

An authority is not acting honestly where it has a suspicion that there is something wrong and does not make further enquiries. Being aware of possible harm to others, and acting in spite thereof, is acting with a reckless disregard of consequences. It is worse than negligence, for negligent action is that, the consequence of which, the law presumes to be present in the mind of the negligent person, whether actually it was there or not. This legal presumption is drawn through the well known hypothetical, reasonable man. Reckless disregard of consequences and mala fides stand equal, where the actual state of mind of the actor is relevant. This is so in the eye of law, even if there might be variations in the degree of moral approach deserved by recklessness and mala fides. A 1975 SC 529 (531) ; 1975 Mah LJ 19.

**Government meaning of.**— "Government" has been defined as including both the Central Government and the State Government. It does not include the British Government. A 1934 Sind 96 (97) ; 36 Cri LJ 240.

**Position of local authorities.**— Local authorities do not fall within the meaning of the expression "Government", and the word "Government" or the Government" cannot be interpreted to include a District Board or any such local authority. A 1940 Mad 916 (916) ; (1940) 2 Mad LJ 422.

**Government securities.**— The definition is applicable for interpreting the words "any security of the Government" occurring in S. 8 of the Income-tax Act, 1922. Because of the second half of the definition. (1964) 2 ITJ 767 (770) (DB) (All).

**Government servant and government service.**— The expression "Government Servant" is not defined in the General Clauses Act A 1958 All 660 (662) ; 1958 All LJ 349.

**Civil Proceeding.**— The expression "civil Proceedings" in the definition is used in contradistinction to criminal proceedings, and includes testamentary proceedings. A 1942 Cal 283 (288) ; 45 Cal WN 739 (DB).

**High Court.**— In Section 11 (1) of the Trade Unions Act, 1926, "High Court" means and includes the High Court in its appellate jurisdiction as well as in its original jurisdiction. A 1961 Cal 165 (166) ; 64 Cal WN 1065 (DB).

**Immovable property.**— The expression "immovable property" (as defined) comprehends all that would be "real property" according to English law, and possibly more. (1974) 1 Ind. App 34 (52) (PC).

Every interest in immovable property or a benefit arising out of land, will be "immovable property" for the purpose of S. 105. Transfer of Property Act, 1882. A. 1979 SC 1669. (1974).

What is not "immovable property" is movable property. The definition would not, of course, apply where an enactment gives a different definition of an Expression. Thus, under the Sale of Goods Act (1930), "goods" includes growing crops, Grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale notwithstanding the definition of "immovable property" in the General Clauses Act. A 1953 SC 108 (110) : 1953 SCJ 96.

The definition of "immovable property" in the Registration Act, 1908 lends assistance to treating the Shebait's office as immovable property, because the definition includes hereditary allowances. The office of Shebait is hereditary, unless provision to the contrary is made in the deed creating the endowment. In the conception of Shebait, both the elements of "office" and "property" are mixed up and blended together and one of the elements cannot be detached from the other. A 1978 SC 1393 (1397) : 1978 UJ (SC) 509.

Where a mortgage deed draws an explicit distinction between the land and the trees thereon and implies that the trees are held under a different title from the land held under occupancy right and (unlike the land), are capable of being validly mortgaged, then the mortgage deed does not come within the prohibition laid down in a special Act as to transfer of immovable property. A. 1928 Nag 41 (43 : 10 Nag LJ 162).

Section 54 of the T. P. Act, has no application to the sale of movable properties. The words "intangible thing" in that section have reference only to immovable property. Copyright is movable property and not immovable property. Hence S. 54 of T. P. Act has no application to the sale of copyright; copy right can be validly assigned by a n unregistered instrument. A 1939 All 305 (307) : 1939 All LJ 7 (DB).

A hereditary priesthood is regarded as "immovable property". A 1978 SC 1939 (1397).

The definition of "immovable property" given in S. 2 (6) of Registration Act, 1908, is not exhaustive. It refers only to some of the things which are "included" in that expression and therefore reference to "hereditary allowances does not exclude hereditary offices, classed as "nibandhas", from falling within the purview of this comprehensive definition of immovable property, provided they are so treated by Hindu law. A 1932 Sind 60 (61) : 25 Sing LR 451 (DB).

**Land.**—The category "land" expressly mentioned in the definition of "immovable property" has been construed widely. A 1957 Cal 128 (133) (DB).

Transfer of rights under a lease of immovable property is a transfer of "immovable property" under Section 105, T. P. Act A 1960 A 1960 Cal 609 (1917) (DB).

The right to collect rent from the tenants, who pay it for the use and occupation of land, is a right to the benefits arising out of those lands. A 1952 Orissa 116 (116, 117) : 21 Cut LT 501 (DB).

Rent derived from a lease of watan property cannot be regarded as anything but a benefit arising out of land. A 1947 Bom. 75 (76) : ILR (946) Bom. 896 (DB).

Future rent in also a benefit to arise out of land. A 1942 Pat 120 (120) (125) (DB).

An agreement made at the time of partition between brothers to the effect that for the lifetime of their sisters and their descendants, certain land should be kept and treated as a joint family property and that only in the absence of the descendants of the sisters surviving should the land be divided among them, does not create a charge over the property in question in favour of the sisters and a suit for the arrears of rent from such land is not a suit for "immovable property" in the sense of being a suit for a benefit arising out of lands. A 1978 Guj 33 (35, 36).

The interest of the mortgage in mortgaged property is "benefit to arise out of land". A 1934 Rang 250 (225, 257, 258) : 12 Rang 370 (FB); A 1952 Bom. 454 (455) : 54 Bom. LR 519 (DB); A 1952 Trav-Co 368 (370)\*\* A 1929 All 161 (163, 164) : 1929 All LJ 279.

A mortgage with possession is an interest in land, because the mortgagee has a right to possession and enjoys the benefits arising out of the land until it is redeemed. A 1927 Lah 373 (375) (DB).

Money charged on "immovable" property includes money charged on the rents and profits of land. A. 1916 Oudh 176 (177).

A simple mortgage debt is to be attached as a "debt" (O. 21, R. 46, Civil P. C. ) and not as "immovable property" (O. 21, R. 54, Civil P. C. ) A 1919 oudh 132 , 133).

Where a debt is secured on immovable property or merchandise, partly or wholly, and the security may have been given when the debt is created or later, the debt exists as "movable property", and can be transferred without the security. A 1931 PC 245 (248).

Under the Limitation Act (14 of 1859), Mailman was "immobile property" the right to which was lost by 12 years non enjoyment. A. 1915 Cal 552 (553) : 19 Cal WN 410 (DB).

A "hat" is a benefit arising out of land and may be transferred by way of mortgage. (1909) 36 Cal 665 (669) (DB).

"Hat" is within the definition of "immovable property" as given in S. 2 (5), General Clauses Act, 1868 and a lease of hat could be effected only by a registered instrument. (1958) ILR 37 Pat 302 (302 (305) (DB)\*\* (1895) ILR 22 Cal 752 (756) (DB).

Bazar dues constitute a benefit arising out of the land. A 1940 Oudh 409 (410) (DB)

A right to collect market dues is immovable property which can be the subject of transfer by lease or otherwise. A. 1974 All 473 (475) : 1974 All LJ 521 (DB).

It is doubtful whether the interest of partner in partnership assets consisting, among other thing, of land can be rightly described as a "benefit arising out of land" within the definition of immovable property in S. 3 of the General Clauses Act. A 1938 Lah 65 (67) : 177 IC 176 (DB).

When the interest in a partnership of a person who is a partner is dealt with under O. 21, R 49, Civil P. C., that interest is to be regarded as "movable property", notwithstanding that at the time when it is changed or sold, partnership assets include immoveable property. The Partnership Act contemplates complete liquidation of the assets of the partnership as a preliminary to the settlement of accounts between the partners upon dissolution of the firm and it will, therefore, be correct to say that, for the purposes of the Partnership Act and irrespective of any mutual agreement between the partners, the share of each partner is "his proportion of the partnership assets after they have been all realised and converted into money and all the partnership debts and liabilities have been paid and discharged". It may, of course, happen that the agreement with other partners, the separating partner may be given separate possession of his share and that this may include immoveable property, but the legal conception of a share is not determined by reference to such a possibility but solely in relation to the rights of the separating partner as enforceable at law. A 1947 Lah 13 (21, 22) (FB).

Interest under a deed of settlement, income in rents and profits of immoveable property and in sale proceeds thereof is immoveable property. It cannot be transferred without registered instrument. The interest cannot also be transferred without registered instrument. The interest can not also be transferred without registered deed according to Ss. 5 and 8 of the Trusts Act 1882. A. 1936 PC 230 (233) : 1936 All LJ 832.

The right to collect market dues upon a given piece of land is a "benefit" to "arise out of land" within the purview of Section 3 of the Registration Act, 1877. Therefore, a lease of such right for a period of more than one year must be made by a registered instrument. (1950 2 All LJ 208 : ILR 27 All 462 (463).

A lease is a transfer of immoveable property within the meaning of S. 53-A T. P. Act, 1882. The benefit to arise out of land is an interest in immoveable property and therefore "immoveable property". Merely because Section 103 of the T. P. Act, defines a lease as a transfer of a right to enjoy "immoveable property", it does not follow that a transfer of the benefit to arise out of land viz., the right to enjoy immoveable property, is not a transfer of an interest in immoveable property. A 1951 Bom. 127 (129, 130) : 53 Bom. LR 363.

**Rights of way and water.**— Rights of way are immoveable property. (1909) 9 Cal LJ 336 (340) (DB).

Where under a deed a right is conferred on a company to take water from a river, and the company is not given any interest in land, the right conferred is not a "profits a prendre", water not being a product of the soil A. 1979 All 335 (359) : 1979 All LJ 990 (SB).

A passage benefit provided to a member of Civil Service is not even property. A 1957 Pat 6=515 (528).

A right to drain off water is not immoveable property, 1948 Bur LR 192 (194).

A right of way may fall within the definition of "immovable property" in the General Clauses Act, 1897 but in any case, it is not excluded by S. 3 of the T. P. Act, 1882. A 1917 Cal 681 (685).

The sale of a right to catch or carry away fish in specific portions of a lake over the specified future period is regarded as a benefit arising out of the land; it amounts to a licence to enter on the land coupled with the grant of profits a pretender. A 1956 SC 17 (19) : 1956 SCJ 96.

A transaction of sale of the right to catch and carry away fish, if not effected by means of a registered instrument, would pass to title or interest, having regard to the terms of SS 3 and 54 of the T. P. Act (1882). A. 1977 SC 2149 (2153).

An exclusive right of fishery has always been recognised as a benefit arising out of land. (1958) 24 Cut LT 17 (19) (DB).

A right to fishery was held to be inserted in immovable property within S. 2 (8) of the General Clause Act, 1868. A 1917 Nag 37 (38) : 14 Nag LR 35.

A "Several" fishery is an incorporeal hereditament and would normally be considered real or immovable property. A 1921 Bom. 93 (100, 101) : 23 Bom. LR 93.

A Kabuliat granting a right to pluck mango fruit or Mahua flower for three years is a grant of right to the benefit arising out of land and is a lease of "Immovable Property." A 1961 Pat 308 (310) : 1960 Pat LJR 75 (DB).

A right to tap palm trees for extracting toddy is also benefit arising out of land. A 1962 Pat 440 (442) (DB).

A right to tap coconut trees and obtain toddy is in the nature of immovable property, being a benefit arising out of land. A 1949 Mad 148 (150) : (1948) 2 Mad LJ 155 (DB).

Where the right is only to pluck beedi leaves or to cut and take away the leaves, bamboo or timber, the process to commence immediately and to be completed within a short period, it is not a right in immovable property or a benefit to arise out of land. A 1969 Andh Pra 399 (406, 407) : (19309) 2 Andh WR 171 (DB).

A temporary right to reap produce as tenant is not immovable property. A 1920 Lah 310 (311) (DB).

A right to rear and appropriate lac from lac bearing trees is not immovable property, but is an interest in immovable property. A 1952 Pa 210 (203) (DB).

A right to take out, by digging, manure and rubbish accumulated in trenches and drains within the municipal area and to sell it, being a benefit arising out of land, is immovable property and an agreement granting such a right for three years is chargeable to duty under Art. 35 (a) (ii) of S. 7 to the Stamp Act (2 of 1899). A 1979 All 310 (312).

A right of fishery in waters which cover land which belongs to another is within the definition of immobile property in Section 2 (5) of the General Clauses Act (1 of 1868) and would therefore be included within S. 9 of the Specific Relief Act, 1877. (1892) ILR 19 Cal 544 (547) (FB).



A fishery comes within the definition of "immovable property" in S. 2 (5), General Clauses act (1 of 1868). But it does not come within "immobile property" as used in S. 9, Specific Relief Act. 1963). ILR (1892) 19 Cal 544 (572) (FB).

A jalkar or right of fishery as being "a benefit arising out of land" covered by water, comes within the definition of "immovable property" set out in the General Clauses Act (4 of 1882). (1893) ILR 20 Cal 446 (448) (Db).

A suit for rent of a fishery is a suit for immovable property within the meaning of S. 16A of the of Civil P. C. (14 of 1882). A fishery comes within the definition of "immovable property" in the General Clause act (1 of 1868), S. 2, Clause 5, which says—"immovable property shall include land, benefits to arise out of land and etc." and a right to fishery comes within the description "benefits arising out of land covered with water". There is nothing in the subject or context of S. 16A of the said Code to make the definition of "immovable property" in the General Clauses Act in applicable to the term as used in that section. (1898) 2 Cal WN 169 : ILR 24 Cal 449 (453) (DB).

Where there was a grant of the "exclusive right of fishing", with a proviso that "the right to fishing granted shall only extend to fair road and live "angling and to netting for the sole purpose of procuring fish-baits", the grant did not give a mere licence to fish, but a right to fish and to carry away the fish caught and that this was a profits a pretender and was an incorporeal hereditament. (1897) 2 Ch 96 (102T).

**Thing attached to the earth, including trees.**— Trees are included in the definition of "land" and that is the definition to be applied to the word "land" as used in the Code of Civil Procedure and in all rules made thereunder, unless the context indicates to the contrary. (1911) 7 Nag LR 63 (64) : 10 IC 473.

Trees on land are immovable property because they are attached to or rooted in the earth under S. 2 (6) of the Registration Act. 1908 and even under the T. P. Act, 1882. A 1958 SC 532 (536, 537) : 1958 SCJ 1078.

The term "tree" is included in the term "immovable property". A 1927 All 254 (255) (DB).

A mortgage of fruit-bearing trees, with the stipulation that the mortgage is to remain in possession and to enjoy the fruits but not to cut the trees, is a mortgage of immovable property or of an interest in such property. A 1933 All 50 (52).

Bamboos are immovable property under the General Clauses Act. A 1955 NUC (Cal) 5612 (DB).

Standing crops are immovable property. A 1935 Mad 134 (135) : 1934 Mad LW 1375.

In a suit for compensation for damages incurred by the plaintiff by reason of his crops having been wrongfully attached and spoiled when they were under attachment through the negligence of the defendant, it was held that standing crops would be immovable property. (1912) 23 Mad LJ 620 (621) (DB).

Sale of agricultural land in execution of mortgage decree—Incidence of right, title and interests in land sold passes to the buyer—Crops raised on the land subsequent to the date of sale—Auction-purchaser is entitled to the value of crop raised after the date of sale at the time of delivery of possession. A 1973 Andh Pra 94 (95, 96) : (1972) 2 APLJ 350.

Standing trees are included in the definition of immovable property and therefore are exempt from attachment and sale in execution of a money decree obtained against a deceased proprietor (even though planted by him, unless they are charged with the decretal amount. A 1927 Lah 146 (146).

The answer to the question whether a tree is a standing timber depends on the intention of parties. If the intention is that the plaintiff should enjoy the fruit of the tree and not cut it down as timber, then it is immovable and could be conveyed only by registered instrument. A 1926 Pat 125 (126).

Whether a tree is a timber tree or not depends upon its nature and the use to which it is generally put and upon whether there is a present intention in the mind of its owner of cutting it sooner or later. The determining factor in such cases is the intention of the parties as determined by the circumstances of each case and the nature of the transaction; if the facts went to indicate that the parties intended to deal with the tree as timber, then it would be called standing timber. A 1981 Him Pra 9 (11) : 1980 Simm LC 341 (DB).

A deed of simple mortgage is a debt not secured by a negotiable instrument and although it affects, to a certain extent, the property mortgaged and may, for some purposes, be treated as "immovable property" within the meaning of the General Clauses Act, it cannot for the purposes of O. 21, R. 54 of the Civil P. C. be treated as immovable property. Therefore, an attachment of a simple mortgage debt can be made in the manner provided by O. 21, R. 46 of the Code. (1919) 50 IC 157 (159) (Oudh).

Where a document stated that the lessee had taken the lease for two years, for enjoyment for toddy, palmyra etc. fruits in a certain garden, that he had paid the amount of the lease for two years and that he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut, it was held that the document in question was neither a lease of immovable property, nor did it create an interest in immovable property. A lease for drawing toddy does not create an interest in "immovable property" within the meaning of S. 17 (b), Registration Act 1908 and does not require registration. A 1914 Mad 362 (363, 354) : 1914 Mad WN 327 (DB).

**Building, structure and machinery.**— A building is immovable property. A 1927 Lah 373 (375) (DB).

Doors of a house are not movable property. A 1915 Mad 501 (501) : 15 Cri LJ 637.

A house, though a "Kham" one, would be immovable property as its walls though "Kham", would be permanently fixed in the earth. 1948 Jaipur LR 25 (30) (DB).

"Factory" which constitute a sort of structure resting on stone pieces which are usually dug into the ground and usually support the slabs which make the roofing do not fall within the definition of the phrase "attached to the earth". 1947 Jaipur LR 136 (141) (Db).

A structure which is permanently fixed to the land is immovable property for the purposes of the pre-emption Act 1933). A 1959 J & K 32 (34) (DB).

Machinery, if it is affixed to the soil, can be immovable property. A 1938 All 574 (577) : ILR (1938) All 896.

A "paggmill" erected and affixed to the earth is immovable property. A. 1918 Law Bur 76 (76) : 11 Bur LT 199.

An engine installed in a factory may be immovable property, or it may be chattel. In deciding whether or not a transaction relating to an engine is a transaction relating to immovable property, regard must be had not merely to the nature of the attachment of the engine fixed on the ground, but also to the circumstances in which it came to be fixed, the title of the person fixing it in immovable property and the object of the transaction by which the engine is transferred or bound. Hence machinery installed by a tenant for cinema in the premises leased for his own profit and not as permanent improvement to premises was held to be movable property within the meaning of Section 3 of the General Clauses Act, 1897. A. 1940 Mad 527 (527, 529, 530) : 1940 Mad WN 38.

A lease of properties relating to a touring cinema is not chargeable to stamp duty under Article 30 (a) (i) of the Stamp Act 1899, because the equipment of the touring cinema being collapsible and capable of being removed does not fall within the category of immovable property. A. 1955 Mad 620 (621) : 1955 Cri LJ 1369 (FB).

A "Kolhu" (sugarcane press made of iron fastened to the earth) is an immovable property. A. 1914 All 176 (176) : 12 All LJ 460.

The fact that a pumping installation is capable of being removed does not render it any the less immovable property where it is fastened to the earth. (1968) 2 Mad LJ 596 (601) (DB).

In the case of a power house, until the power is dismantled and the machinery affixed to the earth is uprooted and until the building are demolished, the material with which they were constructed cannot be called movable property. The undertaking is akin rather to immovable property than to movable property. A. 1955 Pat 375 (379) (DB).

Corrugated iron sheets, as soon as they were pulled from the "madness" (pandal) and taken away, cease to be immovable property and could not be attached under S. 145 of the Criminal P. C. 1989. A. 1968 Manipur 24 (25) : 1968 Cri LJ 188. A 1968 Manipur 24 (25) : 1968 Cri LJ 188.

Where the land on which the machinery belonging to A was erected belonged to B, it must be assumed that the machinery

was erected by A either as a licensee or as a temporary tenant and that he did not intend the machinery to form part and parcel of the immovable property to which it was attached for the time being. A. 1953 Nag. 224 (226) : 1953 Nag LJ 104 (DB).

Where a tenant of a building who has erected an ice factory with all the movable parts, the machinery is not an immovable property and the sale deed does not require registration. A. 1960 Cal 123 (130, 131) : ILR (1960) 2 Cal 754.

Sludge in the sedimentation tank when drawn out of the tank cannot conceivably be characterised as immovable property. A. 1953 Hyd 14 (17) : ILR 1952) Hyd 495 (DB).

**Intangible property.**— Intangible property must have some connection with immovable property if it is itself to be regarded as immovable property. Whatever is not immobile property would be movable property. A 1968 SC 1475 (1480).

The interest of a partner in a partnership is an intangible thing, but not an immovable property. A 1950 Nag 89 (90) : 1950 Nag LJ 157.

Electricity cannot be called an "immovable property" and so a contract for the sale or purchase of electricity is outside the purview Municipalities Act (2 of 1922). A 1964 Madh Pra 101 (106, 107).

An agreement to sell immovable property is not a contingent contract. A. 1980 All 36 (38, 39) : 1979 All LJ 1324 (FB).

**Imprisonment.**— Under Section 488, Criminal P. C. 1898 imprisonment may be either simple or rigorous. (1887) 9 All 240 (241) (SB).

The word "Order" in the General Clauses Act, 1897 refers to what may be called a species of delegated legislation. It does not refer to an executive order. 49 Cri LJ 352.

A notification issued by the Government is an order and can be included within the term "law". Accordingly, it can be included within the term "law". A 1957 Madh Pra 145 (147) : 1957 Cri LJ 1134. (DB).

Orders issued by Government or by any authority or person duly authorized by Government and duly notified are orders made by a "competent authority or person" within the definition of law". A 1949 Mad 459 (460) : 50 Cri LJ 641.

**Law.**— The expression "law" does not include only legislative enactments but it also includes rules, orders, notifications etc. made or issued by the Government or any subordinate authority in the exercise of delegated legislative power. A. 1977 Madh Par 68 (71, 72) : 1977 Cri LJ 597.

The definition of "Law" can be relied on while construing the scope of the expression "law". 1975 Lab IC 466 (472 to 477) : (1975) 1 Lab LJ 501 (Delhi).

An "Order" is a legislative order promulgated by a competent authority in this behalf and a mere executive order is not included in the definition. A 1948 Bom. 20 (34) : 49 Bom. LR 468.

The expression "land" is not defined in the Act. The phrase "any persons interested in the land" has been held to include personal interest in sub-soil. A 1968 Cal 545 (547) : 72 Cal WN 679.

**Land.**— The most important test, for determining whether or not an authority is a "local authority" within Section 3 (31) of this Act is whether apart from possession of many or some of the attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, the authority must be legally entitled to or entrusted by the Government with the control and management of a municipal or local fund. What is essential is that control or management of the fund must vest in the authority. A 1981 SC 951 (952, 953).

A Cantonment Board constituted under the Cantonments Act, 1924 is a "local authority". 1972 Tax LR 2051 (2055) : (1972) Sim LJ (HP) 53.

A group of villages is not a local authority. A. 1968 Manipur 45 (50).

A market committee performs a few governmental functions which are usually performed by a local authority like a municipality or a district board and is therefore a local authority. 1967) 8 Guj LR 359 (366) (DB).

A co-operative marketing society is not a local authority and its salaried manager is not disqualified from contesting an election for the office of a gram panchayat. (1972) 74 Pun LR 444 : 1972 Punj LJ 20 (25).

The words "local or other authority" cover the University A. 1968 All 188 (193).

The expression "local authority" includes the Municipal Commissioner A 1.970 Madh LJ 618 (622).

**Magistrate.**— The definition in the General Clauses Act is not confined to Magistrates exercising jurisdiction under the Code of Criminal Procedure; it merely includes them. A 1929 Mad 487 (487, 488) : 56 Mad LJ 628.

An additional Sessions Judge administering law as a civil Officer of the State and empowered to administer oath or affirmation to persons under the Oaths Act, 1869 is a "Magistrate" within the meaning given in the dictionary. A. 1956 Nag 67 (70) : 1956 Cri LJ 256 (DB).

Having regard to the definition of the word "Magistrate" in the General Clauses Act, 1897 and the connotation of that word in Chap. II of the Criminal P. C., 1898 in which manifestly a Magistrate of a Court of Magistrate is regarded as an office and not an official. A 1953 Assam 23 (39).

Read along with the definition of "Magistrate" in the General Clauses Act, the Special judge can be held to be a Magistrate for the purposes of a particular statutory provision. Thus, although the words "Special judge" are not mentioned in the Criminal P. C. that would not exclude the Special Judge from being a Magistrate having jurisdiction to remand the accused thereunder. A. 1979 SC 255 (1258) : (1979 Cri LJ 1069.

**Month.**— The expression "month" in statutes does not necessarily mean "30 days", but goes according to the Gregorian calendar, unless the context otherwise requires. A 1970 Andh Pra 234 (239) : 1970 Cri LJ 797 (DB).

The definition applies to all Acts passed after the commencement of the General Clauses Act; hence the period of three months" referred to in S. 106 of the Factories Act, 1948 means three calendar months and not 90 days calculated at the rate of 30 days per month. A 1970 Andh Pra 234 (235) : 1970 Cri LJ 797 (DB).

Where the question to be determined is one of the absence of a member from meetings for a period of three consecutive "months", the period commences from the first meeting from which the member absented himself. Accordingly, if the first meeting was held on 30-10-1965, the calendar month commences from 30-10-1965, on which the meeting of October 1965 was held and not from 1-10-1965. A 1968 All 44 (46, 47) : 1967 All LJ 431 (DB).

By its terms the definition applies only to statutes, but it has been the practice of all Civil Courts in governed by the Civil P. C. to adopt the same interpretation when the word "month" is used in a decree or order of a Court. A 1952 Orissa 279 (280) : 18 Cut LT 111 (DB). A 1956 Panj 112 (112) : 58 Pun LR 123 : The month in the decree should be read as a calendar month.

When the decree stipulates that deposit should be made two months prior to 15-7-1960, a deposit made on 16-5-1960 is within time. A 1973 Delhi 58 (61) : (1973) 75 Pun LR (D) 18.

Where an order directs the deposit of costs "within one month from this date" passed on 25-10-1948 (failing which the petition was to stand dismissed) the applicant can deposit the sum before 26-11-1948. Hence the Court should have waited till expiry of Court hours on 25-11-1948 and the case cannot stand automatically dismissed on 25-11-1948 before the expiry of Court hours. A 1952 Orissa 279 (280) : 18 Cut LT 111 (DB).

Where notice of appeal was served on respondent on January 13, 1981 and cross-objection was filed on February 13, 1981 it was held that the date on which notice of appeal was served was to be excluded for the purpose of calculating period of one month as prescribed under O. 41, R. 22, C. P. C. and the period of one month had to be computed according to Section 3 (35) of the General Clauses Act. Thus the application for cross objection was not time barred. 1981 WLN 231 (232) (Raj).

According to the General Clauses Act, the word "month" in Section 106 of the T. P. Act, 1882 must mean a month reckoned according to the British calendar. A 1944 Cal 84 (86) : 48 Cal WN 76 (DB).

The word "month" in its ordinary acceptance, means a "calendar month" and not a lunar month, except where, in a particular place or business or trade the word "month" has acquired a secondary meaning. In such case, the accepted interpretation is the particular place, business or trade must

govern the rights of the parties. The word "month" used in a judicial pronouncement means a "calendar month" and not a "lunar month" A 1951 Cal 316 (318) : 54 Cal WN 926 (DB).

When the period prescribed is a calendar month running from any arbitrary date, the period expires with the day in the succeeding month immediately pending the date corresponding to the date upon which the period starts save that if the period start at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of the latter month, the period expires at the end of the latter month. A. 1973 Delhi 58 (61) : (1973) 75 Pun LR 18 (D) (DB).

In reckoning the period of Limitation the word 'months' in section 32 of the Bengal Rent Act 10 of 1859 should be computed according to the English calendar. In the corresponding section, Section 29 of the Bengal Act, i. e. the Landlord and Tenant Procedure Act 8 of 1869 also, English calendar months are meant. The construction of that Act, however, is governed by the Bengal General Clauses Act, Bengal Act 5 of 1867. The Bengal Rent Act 10 of 1859 is unaffected either by that Act or by the similar Act of the Governor General in Council, i. e., the General Clauses Act 1 of 1868. The rule that is to be construed is of limitation and in Limitation Act, the period of limitation is reckoned according to the English calendar, unless a different intention is expressed. (1884) ILR 10 Cal 913 (914) (DB).

The word "month" means an English calendar month and not a lunar month which is reckoned in England for contracts. A 1944 Cal 84 (86) : 48 Cal WN 76 (DB).

Where the period of one month's notice begins on the 28th (or a later day) of January, termination, on the 28th, February (in years other than leap years) is valid. (909) ILR 36 Cal 516 (516 (541) (SB) A 1962 Orissa 149 (150) : 27 Cut LT 210 (DB).

The definition does not necessarily apply to non-statutory instruments. Nor does it apply to a statue where the context indicates to the contrary. Hence, in a case under Section 106 T. P. Act, 1882, a notice calling upon the tenant to vacate on the expiry of "ek mah" is a valid notice determining the tenancy; reference to the date of commencement of tenancy is immaterial; "mah" does not necessarily mean calendar month. It can mean 30 days also. A notice must be interpreted to make it valid and effectual. ILR (1962) 1 Al 761 (762) (DB).

**Movable property.**— A benefit of arise out of land is by definition in Section 3 (26), "immovable property". Hence an agreement conferring a right to take forest produce (including tendu leaves), or to take soil for making bricks, a right to prune coppice and burn tendu trees and a right to build for the purposes of business, cannot be said to be contracts for the sale of "goods" simpliciter. A 1959 SC 735 (740, 741) : 1959 SCJ 1021.

Whether property attached to the earth is to be regarded as immovable or movable will often depend on whether the attachment is permanent (or at least intended to continue

indefinitely), or whether it is temporary. Thus, standing timber which has to be cut down and removed is movable property. A 1931 All 392 (393) : 1931 All LJ 608 (FB).

Movable property imbedded in the earth does not necessarily become immovable property. The question when a chattel attached to the earth or a building is immovable property is a mixed question of law and fact, to be decided in the light of particular facts in each case. A 1969 Mad 346 (348).

In the case of power-house, until it is dismantled and the machinery's etc. which are fixed to the earth are uprooted and the buildings are demolished, the material with which they were constructed cannot be called "movable property". A 1955 Pat 275 (379) (DB).

Where collieries are sold as a going concern and the intention is that the fixtures should pass along with the land, there is no valid sale of fixtures as movables. A 1959 SC 254 (257) : (1958) 34 ITR 802.

Under Section 28 of the Small Cause Courts Act 1882, a super-structure on land is deemed to be movable property by virtue of a legal fiction created by that section. A 1970 Mad 325 (325 (326, 327) : (1970) 1 Mad LJ 460.

The following are "movable property" :-

- (a) simple mortgage bond-in regard to the procedure for attachment to the "debt"; A 1924 All 796 (798) (DB).
- (b) debt; A 1917 Mad 784 (748) : 18 Cri LJ 1 (DB).
- (c) shares in a company-though they are a peculiar kind of movable property which cannot pass freely from hand to hand. A 1923 Bom. 375 (378) : 25 Bom.LR 414 (DB).
- (d) copyright; A 1969 Mad 284 (288) : (1969) 1 Mad LJ 480 (DB).
- (e) electric energy. A 1970 Cal 75 (78) : 73 Cal WN 701; (1968) 22 STC 325 (329) : ILR (1969) 1 Punj 578 : A 1964 Mad 477 (476).

The term "movable property" when considered with reference to "goods" as defined for the purposes of sales tax cannot be taken in a narrow sense and merely because electric energy is not tangible or cannot be moved or touched like for instance, a piece of wood or a book it cannot cease to be movable property when it has all the attributes of such property. It can be transmitted, transferred, delivered, stored, possessed etc. in the same way as any other movable property. A 1970 SC 732 (735) : (1970) 1 SCJ 750. (A 1968 Madh Pra 163. Reversed.)

**Oath.**— The facility of affirmation in place of oath is afforded by the oaths Act. In view of this definition of "oath" it has been held that in Prevention of Gambling Act, 1887, which provides for the issue of a warrant on a complaint made on "oath" the issue of warrant on a complaint made on affirmation is included. (1955) 6 Sau LR 440 (441) : A 1955 NUC (Sau) 1484 (DB).

The expression "any law for the time being in force" occurring in Section 3 (38) of the General Clauses Act, 1897



must be construed as any law for the time being in force it has no reference to any law in force in other countries of the world. and hence, where there was a conviction by a Swiss Court for an offence under Swiss law, the order of suspension passed in India based on that conviction could not be sustained.

For an offence, there must be an act or omission "made punishable" by law. Significance must also be attached to the word "made", which carries with it the implication that some authority empowered to do so has laid down the law. A 1954 All 319 (334) : 1954 Cri LJ 691 (DB).

There is nothing in the Mussalman Wakfs Act, 1923 repugnant to the definition of "offence", and offences under Sec. 10 of that Act can be tried by any Magistrate. A 1928 Sing 43 (44) : 28 Cri LJ 954 (DB).

A person against whom only an inquiry is held under Section 171-A of the Sea Customs Act (1878) is not a person "accused of any offence" A 1970 Sc 940 (945, 946).

A Sales Tax Authority imposing a penalty on an assessee neither prosecutes him nor imposes punishment for the commission of an "offence". 1979 STI 49 (52) : 45 STC 4890 (DB) (Punj).

**Part.**— "Part" means a Part of the Act or Regulation in which the word intended only to shorten the language of enactments.

**Person.**— The definition covers the following categories : (i) company. (ii) association which is incorporated ; (iii) association which is not incorporated; (iv) body of individuals which is incorporate; (v) body of individuals which is not incorporated.

In the Civil P. C. O. 33, R. 1, the word "person" has the same meaning as in the General Clauses Act. A 1918 Ma 362 (363) : 34 Mad LJ 421 (DB).

A firm is manifestly a body of individuals and would therefore fall within the definition of "person" contained in S. 3 (42) of the General Clauses Act and may be exposed to an order for payment of penalty in the circumstances set out in cls. (a), (b) and (c) of S. 28 of the Income-tax Act, 1922. A 1962 SC 970 (972).

The word "person" in O. 33, Rr. 1 and 3 of the Civil P. c. means a natural person, that is, a human being, and does not include a juridical person such as a receiver. Therefore a receiver appointed under the Provincial Insolvency Act 1920 cannot be allowed to sue as a pauper, where the receiver himself is possessed of sufficient funds to carry on the suit, though the estate of which he is the receiver may not be sufficient for that purpose. A 1930 Rang 259 (263) : 126 IC 650 (DB).

The definition of "employee" in the standing orders as framed by an electric supply company under the Industrial Disputes Act should be construed in the same way as the word "person" in Explain. to O. 33, R. 1, C.P. C. has been construed to apply to the companies. A 1958 SC 658 (663) : 1958 SCJ 1087.

Firm can be considered to be a "person" under O. 33, R. 1 of the Code. Where a firm brings a suit for the recovery of certain amount by way of damages for certain wrongful acts, but afterwards becomes insolvent and the suit is dismissed as the Official Assignee refused to prosecute it, the firm can be granted leave to appeal as a pauper even though there is a possibility that some of the assets will come back to the firm later. Under the General Clauses Act (10 of 1897), the word "person" includes any company or Association or Body of individuals, whether incorporated or not. A 1930 Rang 272 (272) : 127 IC 175 (DB).

There is no justification for the view that legislature intended to benefit natural persons alone as distinguished from those others who are obviously, by virtue of the General Clauses Act included in the term "person". Reference to wearing apparel or the presentation of petition in forma pauperis in person or the examination of the applicant by a Court under O. 33, R. 4 does not present any hindrance in the way of interpreting the word "person" in the sense of a legal person. A 1944 Oudh 248 (249).

Order 33, R. 1 would not exclude juridical person having regard to the scheme of the Code and the context and object of the enactment. A 1961 ker 180 (182) : 1961 Ker LT 45 (DB).

The provisions are applicable not only to natural persons but also to all other persons (juristic or otherwise) who are capable of bringing a suit. A 1960 Punj 73 (75) : LR (1950) Punj 2224.

In Section 250 of the Criminal P. C. 1898, "person" includes a corporation. A 1923 Lah 31 (1) (31) : 24 Cri L 463.

A corporation can, as a "person" claim fundamental rights under A. 1961 Ker 268 (280) : 1961 Ker LT 54.

There is a clear distinction between fundamental rights available to "any person" and those guaranteed to all citizens. In other words, all citizens are persons but all persons are not citizens, under the Constitution. Accordingly, the State Trading Corporation, a company registered under the Companies Act, is not a citizen within the Art. of the Constitution and cannot ask for enforcement of fundamental rights. A 1963 SC 1811 (1817, 1821 to 1823, 1835) : (1963) 2 SC 605. (Per Majority (Shah and Das Gupta, JJ., contra). Words "Citizen" used in the Constitution was not used in a different sense from that used in Part II of the Constitution. Observations of Mukherjee, J. in A 1951 SC 41, held to be obiter. A. 1953 Raj 188, A 1961 Cal 258, A 1959 Cal 45.

The definition of "person" is not exhaustive, but is an inclusive one. Therefore, the concept of personality can be interpreted in the light of the legal system. Accordingly, a Hindu deity can figure as a legal person, though, in general, neither God nor any supernatural being can be a person in law. A 1969 SC 1089 (1098) L (1969) 2 SCA 494.

The definition must, of course, be applied only where the context does not otherwise require. Thus to import the

definition into Section 4, Partnership Act, 1932 would be totally repugnant to the subject of partnership law. A 1956 SC 354 (358) : 1956 SCJ 317.

In Section 4 clause (2), Guardians and Wards Act, 1890, "person" is not to be read in the light of the meaning given by the General Clauses Act. A 1930 Ca 397 (402) : 51 Cal LJ 272 (DB).

It is not competent for the Court to appoint either an association or an incorporated body or even the holder of an office for the time being (such as the Nazir of the Court) as the guardian of the property of a minor. IIR (1952) 1 Cal 46 (51) : A 1955 NUC (Cal) 813.

Suits under the Civil P. C. can be instituted not only by natural human beings, but also by artificial persons, such as a corporation or an idol, and also by persons like executors, administrators, trustees and Official Receivers who represent the estate of another. Prima facie, therefore, having regard to the scheme of the Code, the context and object of the enactment would not exclude an Official Receiver from the category of persons within the meaning of O. 33, R. 1, Civil P. C. If the principle of law is that a natural person in his own right is a different person when he is representing the estate of another, the test is whether in that representative character and as owner of that estate he is a pauper within the meaning of the explanation to O. 33, R. 1 A 1937 Mad. 549 (550, 551) : (1937) 1 Mad LJ 727 (FB).

Section 16 (3) of the Income-tax Act, 1922 only talks of an "individual" capable of having a wife or minor child or both. It therefore, necessarily excludes from its purview a group of persons forming a unit or corporation created by a statute and is confined only to human beings who in the context, would be comprised within that category. A 1957 SC 832 (835) : 1958 SCJ 1.

Under Section 4 of the Companies Act, 1913 what is to be seen is whether, where an association or partnership is formed for purpose of carrying on a business is of the members will be liable individually upon contracts made and whether each would have rights accruing to him upon such contracts. To hold that persons forming unregistered companies should be taken as units for the purpose of Section 4, Companies Act, 1913 would be to defeat the intention of the Act and to allow a number of persons to enter into business for the purpose of defeating Section 4 of that Act. A. 1930 PC 300 (307).

In order to decide whether, in a particular instance, the word "person" includes an artificial person or a corporation or a company, regard must be had to the setting in which the word "person" is placed, to the circumstances in which it is used and, above all, to the context in which it stands. If there is any presumption that the word "person" includes a corporation, the presumption is no more than to a slight nature, and therefore easily displaced. One has to consider the subject matter of the

particular enactment in which the word "person" appears and especially the immediate context in which it is used in order to decide whether that presumption will apply or whether it will not. A 1938 Cal 745 (747, 748) : 42 Cal WN 1164 (DB).

It is only partnerships constituted under the provisions of the Partnership Act, 1932 that can be considered as partnerships under the Income-tax Act, 1922. The definition of "person" in Section 2 (9) of the Income-tax Act, 1922 is intended for the purpose of levying income-tax and for other cognate matters. The same cannot be imported into the Partnership Act, 1932. An association of persons, is not a "person" within the meaning of that expression in the Partnership Act 1932. A 1932 SC 1343 (1346) : (1971) 1 SCJ 599.

The provision of O. 33, R. 1 of the Civil P. C. applies to companies. It would be wrong to construe the provision to mean that only person who possess wearing apparel can sue as paupers. The same rule of construction should apply to companies also. A 1958 SC 658 (663) : 1958 SCJ 1087.

The Explanation of "person" in O. 33, R. 1 of the Civil P. C. is merely illustrative, without being exhaustive. The word "person" includes not only a natural person but also a juristic person and there is nothing in the Code to prevent a juristic person but also a juristic person and there in the Code to prevent a juristic person from filing a suit; if, therefore, a juristic person has no sufficient means to pay the Court-fees, O. 33 will apply. Thus, a Joint Stock Company which has gone into liquidation is entitled to sue as a pauper. A 1951 Hy 124 (127) : ILR (1951) Hyd 575 (DB).

A company registered under the Companies Act is a "person". A 1956 Cal 137 (137) : 1956 Cri LJ 529.

"Person" includes a banking company and a Government treasury. A 1954 All 421 (422) : 1954 Cri LJ 856 (FB); 1982 All LJ 857 (861) (DB). (A company since is a juristic person, can be a tenant as well as a landlord).

A company is a "person" and can be taxed by the Municipal Committee. 1958 Raj LW 304 (306) (DB).

With reference to O. 33, R. 1, C. P. C. (suits by indigent persons), the word "person" includes not only a natural person, but also a juristic person and a juristic person can therefore sue as an "indigent person" (previously, as a "pauper"), there being nothing in the Code to prevent a person from so suing. "Person" in that Rule has the same meaning as is given to it by the General Clauses Act. A 1961 Pat 15 (16) : 1960 Pat LR 237; 1954 Raj LW 509.

A corporation can sue, and be sued, like any subject. A 1984 Sing 100 (103, 104).

In Or. 30, R. 10, C. P. C. "person" does not includes a company, having regard to the fact that such a construction would be alien to the context and to the subject-matter of O. 30 and the scheme of the Code. A. 1969 Cal 469 Cal 496 (515) (DB).

There is nothing in the context of O. 30, R. 10 to exclude a company. A 1969 All 1 (11).

Whether the word "person" in a statute can be treated as including a corporation depends on a consideration of the object of the statute and of the enactments passed with a view to carry that object into effect. A 1953 SC 320 (322) : 1953 SCJ 451.

**Criminal liability of Corporations.**— The definition of "person" in Section 11 of the Penal Code, 1860 is more or less on par with the definition in the General Clauses Act, 1897 and the definition in the Code must also be read as having the clause "unless there is anything repugnant in the subject or context". A corporate body cannot therefore be included in the term "person" in regard to offences which can be committed only by a human individual. A 1964 Bom. 195 (197) : 1964 (2) Cri LJ 276.

A limited company has a separate legal personality according to Section 3 (42) of the General Clauses Act and its directors cannot (in the absence of a specific statutory provision) be made liable for legal liability incurred by a company. 1968 BLJR 127 (128).

For the purpose of filing complaint in Criminal Court, a committee which is an association or body of individuals is a "person" and it is immaterial whether it is a registered body or an unregistered body. 1978 Cri LJ 1360 (1362) (Andh Pra).

**Firms and Associations.**— Under Income-tax Act, 1922 the word "person" included a firm as provided by the Act and when the return was made on behalf of the firm by a partner, it was the firm which was the "person" who made the return. A 1925 Mad 1048 (1949) : 49 Mad LJ 124 (DB).

Under the Income-tax Act, 1922 the word "person" used in Section 2 (2) of the Act in defining "assessee" would include a firm. A 1959 SC 213 (216).

Under the Income-tax Act, 1922 a partnership firm owning immovable property was liable to tax and Section 9 (3) of the Act would not apply. 1974 Tax LR 106 (108) : 90 LTR 267 (DB) (Cal).

As a matter of general law a partnership firm is not a "person", but it is mere a collective name of the individuals who are members of the partnership, and as such one firm cannot become partner in another firm. A 1936 Lah 514 (518) (DB).

Under the income-tax law, a "joint Hindu family" is to be treated as a person but under Hindu law the joint Hindu family cannot be treated as a corporation for all purposes. In particular, where a Karta or manager of a joint Hindu family enter with strangers into a partnership in his representative capacity, the family as a unit cannot be deemed to have become a partner. The Karta counts as one person and is liable to the extent of his coparcenary property himself. A 1960 Punj 192 (195, 196) : 61 Pun LR 881 (FB).

In Section (2) (9) of the Income-tax Act, 1922, the expression "person" was defined as including "a Hindu undivided family and a local authority". The definition being inclusive (and not exhaustive), resort could be appropriately had

to the General clauses Act also to ascertain the meaning of the expression "person" in so far as the particular definition did not provide for the matter. Accordingly, a firm or an individual or a group of individuals may form an association of persons within the meaning of Section 3 of the Income-tax Act, 1922. A 1968 SC 317 (323, 324) : (1968) 1 SCJ 106.

Once it is found that there has been a contravention of a provisions of the Foreign Exchange Regulation Act, 1947 read with the Sea Customs Act, 1878 by a firm, its partners who are in charge of its business or responsible for the conduct of its business are criminally liable by virtue of such a provisions, unless they can prove that the contravention took place without their knowledge or that they exercised all the due diligence to prevent such contravention. A 1972 SC 648 (654) : 1973 Cri LJ 474.

A firm is a person within the meaning of Municipal Act and it can be charged with an offence under that Act, in which mens rea is not an ingredient. A 1963 J & K 39 (41) : 1968 (2) Cri LJ 152.

Section 2 (17), Excess Profits Tax Act, 1940, defined the word "person" as including a Hindu undivided family, but in the absence of any further definition in the Act, one has necessarily to fall back upon the definition of "person" in the General Clauses Act which includes an association of persons also. A 1954 Mad 1049 (1050) : (1954) 25 ITR 99 (DB).

Joint Hindu families, which were expressly mentioned in Section 2 (17), Excess Profits Tax Act, 1940 are very often not so mentioned in other laws. Nevertheless, it has been held that members of a joint Hindu family are a body of individuals who come under the definition of "person". A 1936 All 855 (856) : 1936 All LJ 1151.

A Hindu joint family firm carrying on business in the name of the firm and consisting of adults and minors is a "person" for the purposes of O. 30, R. 10, C.P. C. by virtue of the definition in the General Clauses act and a suit can be brought against such a firm. A 1962 Pat 360 (363) : 1962 BLJR 473.

When two Kartas of two Hindu undivided families enter into a partnership agreement, the partnership is popularly described as one between the two kartas and the other members of the families do not ipso facto become partners. There is, however, nothing to prevent the individual members of one Hindu undivided family from entering into a partnership with the individual members of another Hindu undivided family and in such cases it is a partnership between the individual members and it is wholly inappropriate to describe such a partnership as one between two Hindu undivided families. A 1953 SC 516 (518) : 1953 SCJ 673.

The word "person" can be used to include a number of persons such as a joint Hindu family or a varying number of beneficiaries who may from time to time become interested in the trust property. Thus, a person figuring in a different capacity in the constitution of a company is to be treated as one member. A 1924 All 414 (414) : 22 All LJ 487 (413)

Where an agent is appointed by a Karta of the joint family to manage the family properties and the agent continues to do so even on the death of the Karta, the agent is the agent of the joint family and not of the Karta personally. The agency does not cease on the death of the Karta and no new contract of agency is formed by the agent continuing to manage the properties. A 1934 All 553 (556) : 1934 All LJ 453 (DB).

There is thus no legal obstacle of the members of a firm entering into partnership with other individuals or members of other firms and the mere fact that in such contract or in such business, they describe themselves as a firm does not make the association unlawful, and a suit by them is maintainable. A 1932 Cal 768 (769).

A firm as such cannot be a member of a partnership. A partnership under Section 239 of the Contract Act, 1872 is a relationship which subsists between persons, but a firm is not a person; it is not an entity, it is merely a collective name for the individuals who are members of the partnership. It is neither a legal entity, nor, is it a 'person'. A firm name is, in the truth, merely a description of the individuals who compose the firm. It is that and it is nothing more. A 1933 All 77 (79) : 1932 All LJ 999 (DB); A 1924 Cal 74 (77) : 75 IC 81.

A firm is not a "person", it is not an entity. It is merely a collective name for the individuals who are members of the partnership. But assuming that no suit is maintainable by any person other than the holder of promissory note. A suit by a firm on a pronote in favour of one of the partners, cannot be thrown in the ground that the holder of the promissory note is not plaintiff. When partner concerned has signed and verified the plaint. A 1928 Cal 148 (150) : 105 IC 549 (DB).

A partnership firm is a "person" within meaning of definition as given in General Clauses Act and as such can institute suit in forma pauperis under O. 33, R. 1 of Civil P. C. (1977) 2 APLJ 144 (147, 148).

It is not competent for the Court to appoint either an association or an incorporated body or even the holder of an office, as such, as the guardian of an infant. The consent of the parties would not vest the Court with jurisdiction to make an appointment which the Court was not otherwise competent to do so. Appointing the Nazir of a Court, meaning thereby the holder of that office for the time being, as the guardian of the property of the minor cannot be supported in law. ILR (1952) 1 Cal 46 : A 1955 NUC 313.

A "family unit" is a person. A 1975 Andh Pra 315 (344, 345).

Even if coparcenary itself has no personality of its own, there could be no bar to treating the entire body of its members as a person capable of acquiring holding and disposing of property subject to limitations laid down by law. (1982) 86 Cal WN 202 (208, 209) (DB).

Trade Unions are associations of persons. The term "person" in S. 11 (1) of the Trade Unions Act (1926) includes also a judicial person like trade union. 1972 Lab IC 799 (800).

The definition of "person" includes an association of individuals; an association must be one in which two or more persons join in a common purpose or common action. There is no formula of universal application and the decision must depend upon the particular facts and circumstances of each case. (1970) 1 Mad LJ 510 (512).

In view of Section 3 (42), an association may itself be a member of an association of persons within the meaning of Section 3, Income-tax Act, 1922, A 1956 Nag 103 (105).

The principle of the law of defamation is the same in its application whether the person defamed be an individual, a corporation, a society or a collection of individuals. 1969 Cri LJ 701 (702) : (1967) 2 Mys LJ 149.

A firm which carries on the business of selling goods, would be a "dealer" within Section 2 (c) of the Bengal Finance (Sales Tax) Act, 1941 as the word "person" would include a firm being a body of individuals by force of S. 3 (42) of the General Clauses Act. A 1882 NOC 110 : 1982 Tax LR 3100 (3103, 3104) (Delhi) (DB).

The expression "Dealer" in Bengal Finance (Sales Tax) Act not only talks of "person" but covers case of partnership firm. 1976 Tax LR 1224 (1226) (Delhi).

There is no sufficient reason for excluding from the ambit of the definition of "person", the body of individuals, namely, the Government responsible for the governance of a State. A 1956 All 383 (384) : (1956) 7 STC 579 (DB).

With reference to "common carriers" as defined in the Carriers Act, 1865, it has been held that there is no particular significance in not bringing the Government within the term "person". (1955) 1 Md L 406 (409) : A 1955 NUC 3988 (Mad)..

The Delhi Administration is a "State" and not a "person". A 1066 Punj 229 (230) : ILR 1065 2 Punj 491.

A Government department or office is not included in the definition of "person", because it is neither a natural person nor an artificial person nor a legal person. A 1957 Andh Pra 714 (722) : (1957) 2 Andh WR 91 (DB).

In Section 24, (1), Electricity Act (1910), the word "person" includes a local authority. Such as a municipality. A 1958 Bom. 498 (501) : 60 Bom. LR 1446 (DB).

In Section 2 (1), Excess Profits Tax Act, (1940), "Person" includes local authorities. A 1953 All 43 (44) : 1953 Cri LJ 205.

A municipality is a body of persons incorporated, and must consequential be included in the term "person". A 1937 Bom 417 (419) : 39 Bom. LR 835 (DB).

A sanitation panchayat is included within the definition of "person". A 1935 nag 242 (243) : 31 Nag LR (Sup) 108.

The managing committee of a school is a "person" and can file and application claiming the fundamental right to property. A 1969 Orissa 30 (31) : 34 Cut LT 1121.

The "Board" as constituted under Section 4 of the Bombay Port Trust Act, 1879 is a body corporate with a perpetual succession and a common seal. It is called "The trustees of the Port of Bombay" and can sue and be sued by that name. So, the



Board is a "person" within Section 87 of the Bombay Port Trust Act, 1879 and, as such, is entitled to notice and benefit of that section. A 1981 SC 1982 (1983, 1987).

A class of persons is included in the word "person" in Section 133, Civil P. C. by virtue of the definition in the General Clauses Act. A 1953 Raj 57 (59) : ILR (1952) 2 Raj 798.

In Section 120, Railways Act, 1890, "person" has been held to include a railway servant. 1968 Al LJ 835 (838) : 1968 All WR (HC) 719 (DB).

A corporation may be a public officer ; public officer is a person and by virtue of the General Clauses Act, the word "person" must include a corporation. A 1955 NUC (al) 1058 : ILR (1951) 1 Cal 443 (450).

A Gurudawara is a juristic person and can sue in its name to protect its property. (1969) 71 Pun LR 844 (847).

Since "person" includes a juridical person, executors or trustees who seek probate are "person" and can make an application for permission to sue as pauper or continue proceedings already instituted by them as pauper. A 1955 Mys 128 (129) : ILR (155) Mys 455.

The word "person" in O. 33, R. 1. of the C. P. C. includes juristic as well as natural person. A deity as a juristic person is capable of suing as a pauper. A 1981 Cal 259 (261) : (1981) 85 Cal WN 849. (A 1938 Cal 745. Held impliedly Overruled in view of A 1958 SC 658).

The natural and obvious meaning of the expression "person" is a living human being, a man, woman or child, an individual of the human race. As used in law, the word includes natural persons and artificial person like corporation, and Joint Stock Companies, but it does not include a State or Government, for, although a State is, in the language of Vattel, "a moral person having an understanding and a will capable of preserving and acquiring rights and of directing and fulfilling obligations", a State in its political organisation is entirely different and distinct from the inhabitants who may happen to reside there. A 1958 Cal 257 (259) : 62 Cal WN 561.

Under Section 2 (17) (h) of the C. P. C. a public officer is a "person" and by virtue of the General Clauses Act, the word "person" must include a corporation, unless such inclusion would be repugnant to the context in which the word is used. There is nothing in Section 2 (17) (h) to show that the contemplation of a corporation as an officer mentioned in it would result in any repugnancy. Therefore, it is possible for a corporation to be a public officer. A 1955 NUC (Cal) 1058 : ILR (1951) 1 Cal 443 (450).

**Political agent.**— As to clause (a) of the definition the Principal Officer representing the Government is the Ambassador extraordinary and Minister. A 1956 Pat 46 (47) : 1956 Cri LJ 99.

Under Section 7, Extradition Act, 1903 a political agent had power to issue a warrant in respect of an extraditable

offence. Such a warrant cannot be issued by a subordinate of a political agent who is not an officer appointed within the meaning of the General Clauses Act 1897. A 1948 All 129 (130) : 49 Cri LJ 98 (DB).

In clause (b) of the definition, the word "appointed" means a person appointed by the proper authority and only that person can make such an appointment who can appoint a political agent. A 1948 All 129 (130) : 49 Cri LJ 98.

Where a former political agent is described as an arbitrator in a lease, the civil Court can decide who is the present official who exercises the functions of the former political agent. ILR (1962) cut 348 (353) (DB).

**Property.**— The expression "property" is not defined in the Act. A passage benefit provided to a member of Civil Service is not property. A 1957 Pat 515 (528) : 1957 BLJR 299 (2) (DB).

The expression "Governor" used as equivalent to Provincial Government, does not refer to the Governor in his personal or individual capacity, but to the constitutional Governor who is the head of the provincial executive and in whose name all the executive authority of the Province is exercised. A 1949 Bom. 277 (291) : 51 Bom. LR 342 (DB).

**Public nuisance.**— By virtue of Section 3 (48), the definition of "public nuisance" given in the Penal Code, applies to the Code of Civil Procedure. A 1936 Oudh 154 (155).

As regards the expression "public" which is used in the definition in the Penal Code, it has been held that the Muslim community or the Muslims of the neighbourhood are included in the word "public". A 1936 Oudh 154 (155) : 1935 Oud WN 399 (db).

**Regulation.**— The Bengal Foodgrains Control Order, 1945 is an executive Act of the Government and not a Central Act or Regulation. A 1955 Cal 478 (480) : 1955 Cri LJ 1249.

Although, literally, Section 3 of the General Clauses Act does not apply to central Acts passed before its commencement, it has been held that in section 29, Police Act, 1861, the words "rule or regulation" should be interpreted in terms of the General Clauses Act, there being no definition of those words in the Police Act 1960 Raj LW 598 (599).

If a rule purports to have been made under one provision of an enactment, it cannot be sustained under another provision, even though it could have been made under it. A 1961 All 477 (480) : 1961 All LJ 728 (FB).

Though a "Rule" may include a "Regulation" a "Regulation" does not include a "Rule" 1979 Lab IC 1276 (1277, 1278) (Cal).

A regulation under Section 49 of the Life Insurance Corporation Act, is a "law" whether made by the Government or by the Corporation. 1975 Lab IC 466 (473).

A regulation is made for the public, who have a right to know the authority under which it is made as soon as it is made so that they may know whether they are bound by it or not. A 1961 All 477 (480) : 1961 All WR (HC) 387 (FB).

The only object of this definition is to shorten the language of Acts and Regulations.

**Secretary.**— The expression "Secretary" is not defined in the General Clauses Act. A 1968 SC 870 (874) : (19689) 3 SCJ 247.

A flat-boat or dune-boat without mask which is towed by ship or steamer is not a ship or vessel within this definition and also that a "serong" is not a "master" within the definition of that expression in Section 3 (33). ILR (1972) 2 Cal 380 (391).

**Sign.**— The definition does not define the word "sign", but extends its meaning with reference to a person unable to write his name—Thus indicating that "signing" means written one's name on some document or paper. A1967 SCD 767.

A signature is writing or otherwise affixing a person's name (or a mark to represent his name) by himself or by his authority with the intention of authenticating a document as being a document of, or as binding on, the person whose name or mark is so written or affixed. The insertion of the name to authenticate the instrument is sufficient. A 1923 Cal 35 (37, 38) : 36 Cal LJ 109 (DB).

Where the debtor being a marksman, the endorsement on a promissory note was written by a scribe, at the instance of the debtor and the scribe, having written the endorsement, signed it with the name of debtor, it was held that the scribe had signed only on behalf of the debtor and the document could be treated as evidence as to the fact of payment as well as acknowledgment of payment which could legitimately be construed to be a writing "signed" by the debtor within the meaning of Section 20, Limitation Act, 1908. A 1955 NUC (Mad) 3159.

Once it is established that it is the ordinary practice among illiterate persons to sign documents by touching the pen and authorising another person to sign by writing their names for them in their presence, that would be a sufficient signing. A 1932 Cal 440 (441) : 36 Cal WN 188.

The expression "signing" includes mark with reference to a person who is unable to write his name. A 1935 Oudh 289 (291) : 1935 Oudh WN 387 (DB)\*\* 1981 UPLT (NOC) 27.

The mark is something done by a person who cannot write. A 1939 Oudh 96 (98) : 1939 Oudh WN 1.

Where a person is able to write his name, his thumb mark is not his signature LIR 32 Cal 550 (DB).

Where the borrower actually made his signature on the promote and the receipt which signified that he could actually write, but the endorsement of acknowledgment of liability to repay bore only his thumb impression below it in such a case the definition of the word "sign" in S. 3 (56) would not be applicable. A 1982 All 41 (43, 44) : 1981 Al LJ 510.

Where a simple money bond is signed by the executant on the first sheet of the deed but it was proved that the document was executed at his instance and attested at his direction, the

fact that he did not affix his thumb impression on the other pages was immaterial. A 1955 Raj 91 (92, 93) : 1956 Raj LW 72 (DB).

Seal cannot be regarded as a signature under the definition. Sometimes even though the executant is literate, for reasons of dignity he does not sign. A 1935 Oudh 289 (2910 : 1935 Oudh WN 387 (DB).

Though a Mahant was literate, yet in the circumstances the scribing of the word "Sahi" coupled with a fixation of the seal was an authentication of the document as executed by the Mahant himself. A 1957 Raj 264 (266) : 1957 Raj LW 267.

**Personal signature.**— If a statute requires personal signature of a person (which includes a mark), no doubt, the signature or mark must be of that person himself and there must be physical contact between that person and the signature or mark put on that document. A 1950 SC 265 (271) : 1950 SCJ 364.

A signature by an agent would not be permissible even though he may have been clearly authorized by the principal to write the name of the principal. Such a statutory provision displaces the general rule that where a signature by an agent is permissible, the agent's writing of the name of the principal is regarded as the signature by principal himself. A 1950 SC 265 (271) : 1950 SCJ 364.

The word "sign" as defined in the General Clauses Act, includes a thumb impression and Section 73 of the Evidence Act, 1872 must also receive a liberal interpretation so as to cover comparison of thumb impressions. 1960 Raj LW 521 (521).

In Section 67 of the Evidence Act, 1872, the term "sign" is not governed by the definition in the General Clauses Act A 1934 All 390 (391) : 154 IC 405.

Generally, where a person authorises another to sign for him the signature of the person so signing is the signature of the person authorising him and it has been held that there is nothing in the Motor Vehicles Act, 1939 prescribing that the signature must be the personal signature of the executant. A 1976 Pat 234 (236, 237) : 1976 BLJR 266 (DB).

With reference to the Transfer of Property Act, 1882, where the word "sign" is used in the definition of the word "attested", the word must be read in the light of the meaning given to it by the General clauses act, and therefore as including a mark with reference to a person unable to write his name. A 1935 Mad 178 (2) (181) : 68 Mad LJ 191 (DB).

In Section 63, (c), Succession Act 1925, the word "sign" should be interpreted in the light of the definition in the General clauses Act A 1953 Nag 266 (267) : 1953 Nag LJ 241\*\* A 1952 Assam 93 (94).

A person can sign his name by using pen and ink, but the use of pen and ink is not essential; accordingly, under Section 7-A, Public Demands Recovery Act, 1913 a notice bearing a stamped facsimile signature of an officer is valid. (1963) 67 Cal WN 759 (762) (DB).

In the absence of any definition of the word "signing" in the Limitation Act, 1908, the definition of that expression given in the General Clauses Act, 1897 should be followed. A 1921 Pat 476 (477) : 2 Pat LT 355.

An agent under the orders of his principal wrote a letter to creditor containing an acknowledgment in respect of a debt. The concluding portion of the letter was written by the principal in his own handwriting. It was held that there was sufficient evidence that the heading of the letter was written by a duly authorized agent and it was also "signed" by the principal within the meaning of Section 20 of the Limitation Act (Act 9 of 1871). (1875-1877) IIR 1 All 683 (685, 686).

A testator was, for a number of years, unable to write and was in the habit of using a name stamp, which used to be attached by a servant to any document or paper he wanted to sign. The testator executed a will and, under his direction a servant affixed the impression of his name stamp on the document. It was held that the execution of the will in this case was proper and came strictly within the meaning of the words used in Section 50 of the Succession Act of 1865. (1898) 2 Cal WN 642 : ILR 25 C 1 911 (916, 917) (DB).

The thumb-mark affixed to a confession by an accused able to write his name is not a "signature" within the meaning of the General Clauses Act or Section 164 of the Criminal P. C. 1898. (1905) 2 Cri LJ 405 (405, 406) : ILR 32 Cal 550 (DB).

Where a person (though able to write) belongs to an ignorant caste, and puts up his mark and touches the pen of the writer, it is a valid "signature" and the technical defect should be excused as there was no doubt about the person's intention to execute the document. A 1924 Nag 159 (160) : 78 IC 79.

Where the presumption of execution of the document is in favour of a party, that presumption extends to this also that the mark put on the same indicated that the document was signed by the executant, by a sort of symbolic writing, which is to be taken to be the signature, in the absence of proof to the contrary. A mark "Shree Sahi" in the place of signature of the executant of a document was taken to be "signature". A 1931 Cal 598 (598) : 133 IC 696 (DB).

The direction contained in Section 50, (3) of the Succession Act (Act 10 of 1865) as to the signature of witnesses attesting an unprivileged will, is not satisfied by the witnesses affixing their marks. It is necessary for the validity of a will that the actual signature, as distinguished from a mere mark, of at least two witnesses should appear on the face of the will. (1978-1879) ILR 3 Bom, 382 (384) (DB).

The word "sign" in Section 63 of the Succession Act, 1935 should be interpreted in the light of its definition in the General Clauses Act there being nothing repugnant in the context. The main purpose of attestation was that the attestor should be present and should be assured of what he sees or what the executant acknowledges before him about his

execution of the document and that can be recorded by an illiterate attester making his mark or thumb impression on it. A 1937 Bom. 389 (391, 392) : 39 Bom. LR 606 (DB).

**Personal Law.**— The expression "personal law", though not defined in the Act, is well understood. The concept has its origin in the Hastings Plan (1772) which provided that in all matters regarding inheritance, marriage and other religious usages and institutions the Hindu law shall be applied to Hindus and the Muslim law to Muslims. An Act of 1781 added to this list cases of succession, contract and dealings between party and party.

Ludwik Sternbach, "Law" in W. Norman Bron India Pakistan, Ceylon (Cornell University Press 1951), Pages 119, 120.

A minor adopted son also falls within the definition of "dependant" in Section 2 (1) (d), Workmen's Compensation Act, A 1923. 1931 lah (661) : 32 Pu LR-213.

Since Section 3 of the General Clauses Act refers only to specific words, the meanings attributed by Section 3 (20) and Section 3 (57) defining "father" and "son" cannot be attached to different words of some what similar meaning used in Section 488 of the Criminal P. C. 1898. A 1937 Rang 370 (372) 39 Cri LJ 14.

**State.**— There is no definition of "State" for the period before the commencement of the Constitution, because the word was not used in the sense of a component political unit in regard to British India. With reference to the period before 1st November, 1956 (i. e. before the reorganisation of States), State must be taken as including a Part B State also. (1961) 2 Andh WR 293 (300) (DB).

With reference to Section 79 of the Civil P. C., which deals with a suit by or against the Government and the person to be named as the plaintiff or defendant, it has been held that in the case of a contract by the government to Vindhya Pradesh (a Part C State) the proper defendant was the State to Vindhya Pradesh and not the Government of India, and that the definition of "State" in Section 3 (58) includes a part C State as well and Part C States were given a separate entity under the constitution. A 1962 SC 145 (147) : (1961) 2 SCJ 549.

It is obvious from the very wording of the definition of the "State Act" that it contemplates an Act passed by a State legislature after the commencement of the Constitution. It does not mean an Act passed by a Provincial legislature before the Constitution and hence a Provincial Act, namely, the Bombay Forward Contracts Control Act (64 of 1947) cannot be held to be "law made by a legislature of State" A 1960 Bom. 532 : 62 Bom. LR 277 (DB).

As far as the General Clauses act stands in view of Section 4-A thereof, there is no definition of the expression "the Government" which applies to State law. A 1953 Bom. 170 (171) : ILR (1953) Bom. 200 (DB).

From the definition, it is obvious that "State Government" means the authority or person authorized at the relevant date to exercise executive Government in the State A 1964 SC 703 (706) : (1964) 1 Cri LJ 549.

When a function is vested by statute in the State Government, the statutory provision has to be interpreted with the aid of the definition of "State Government" in the General Clauses act. A 1971 Punj 246 \*249, 250) : 1971 Cri LJ 966.

According to the definition, if an act is done by a State Government, then it means that the Governor of the State has done, or has to do it. A 1958 Punj 302 (303) : 59 Punj LR 199.

In the absence of any definition of the words "State" and "State Government" in the Representation of the People Act, the definitions in the General Clauses Act apply. A 1958 Ker 169 (172) : 1958 Ker LT 51 (Db).

Section 68-D of the Motor Vehicles Act, 1939 constitutes the State Government to be the approving authority of the scheme framed under Section 68-C thereof and for construing the meaning of the expression "State Government", one must have regard not to the rules framed under Section 68-I of the Act, but to the provision of the Constitution and the general Clauses Act; hence "State Government" here means the Governor. (1962) 40 Mys LJ 251.

The Governor exercising the powers of Chancellor of the University is not, however, "State Government". A 1962 All 128 (131, 132) : 1961 All LJ 999 (DB).

**Action taken by minister.**— The advice that is tendered by the Minister and the decision taken by him is not the order of the "Government". It acquires this quality only when it is embodied in a formal order issued on the authority of the Governor. A 1957 Mad 48 (57) : 1958 Mad LJ 430 (DB).

The order of a Minister is the order of a State Government, since the Minister is appointed by the Government and is allotted a portfolio under the Rules of Business. The Minister therefore constitutes "State Government" as far as the affairs of his department are concerned. A 1964 Punj 198 (204) : 1064 (1) Cri LJ 535.

Where an officer decides an appeal and signs the decision not for the Government but in his official capacity, the decision cannot be regarded as a decision of the Government. A 1970 Cal 346 (348).

The object of this definition is only to shorten the language of enactments.

The word "ship" itself is defined in Section 3 (55) as including every description of "vessel" used in navigation not exclusively propelled by oars, while "vessel" is defined in S. 3 (63) as including, inter alia any ship. The definition therefore is not very illuminating. Moreover, it repeats the expression, which is defined. 1982 ELT 322 (324, 328) (Goa).

**Will.**— The essence of a Will is the posthumous disposition of property. There must, therefore, in the first place, be a disposition of property and in the second place, it must be

posthumous. A mere direction for the management of the property by a manager during minority is not a "disposition" by Will. A 1919 Mad 447 (448) : 9 Mad LW 385 (DB).

A document is a will if it contains specified words of bequest to come into effect after the death of the testator. A 1953 Mad 740 (742) : IIR (1953) Mad 1035 (DH).

Where a donor makes a gift in obedience to the last wish expressed by the person under whose will the donor acquired the property gifted, the gift is by the donor and not by the testator it cannot be contended that the testator is the person liable under the Gift-tax. 1958 A 1969 Ker 252 (252).

An authority to adopt conferred by a Will does not require registration to render it valid, although the executant was a minor and although the dispositions of property made by the will may not be valid. A 1920 Mad 237 (237) : 12 Mad LW 596 (DB).

In Proof of the execution of the will it is essential that trustworthy and effective evidence should be given to establish compliance with necessary forms of law. Proof of the testator's signature is all that is indeed, but in case of doubt or dispute, justice requires that the best evidence procurable of the signature should be furnished and an attempt to support the signature by anything that falls short of this standard is a matter which, though not fatal, is a serious defect. A 1922 PC 366 (368) : 49 IA 413.

Where a Hindu executed in favour of his wife an unregistered document calling it "Will"; where under consented to his wife's adopting a son at her pleasure and conducting the management of the estate in the best manner it was held that the document was not a Will, but only a power to adopt and, as such, ought to have been registered. It was an authority to adopt a son, not conferred by a Will, within the meaning of S. 17 of the Registration Act, 1877. A 1922 PC 162 (2) (163) : 64 IC 458\*\* A 1919 Mad 447 (448) : 9 Mad LW 285 (DB).

The record of a conversation appearing on a tape recorder does not fall within this definition. A 1956 Punj 173 : 58 Punj LR 441. A 1963 Punj 298).

The definition will not apply to the Transfer of Property Act, 1882 1979 MPLJ 746 : 1979 ab LJ 735 (737) (DB).

The expressions "year to year" "month to month" and "six months" notice" in the T. P. Act, must be understood and interpreted according to the British calendar, unless the context indicates to the contrary. 1958 Madh BLJ (HCR) 70 (73) : A 1955 NUC (Madh B) 69 (DB).

Where both the Indian and the English date of tenancy were mentioned in the document (i. e. the Rent Note), in such a case the tenancy was governed by the English Calendar. 1954 Madh BLJ (HCR) 70 (73) : A 1955 NUC (Madh B) 69 (DB).

Although, in terms the definition would not apply to decrees, it can be so applied as a matter of convenience. Thus, where, a decree of pre-emption specified a period to be



counted from a particular date, and that date was one according to the Gregorian calendar, it was held that the period should be calculated according to the Gregorian calendar. 1954 Ra LW 80 (82) : A 1955 NUC (raj) 1061 (DB).

Where the probabilities are that there was a different intention and the evidence also does not show that the parties usually went by the Gregorian calendar the definition of "years" does not apply. A 1922 nag 265 (266) : 71 IC 45.

It cannot be said that since the word "year" is not defined in the Constitution it should be ascribed the meaning given to the term "year" in S. 3 (36) of General Clauses Act and that the same meaning must be ascribed to the expression "year" when used in the Rules enacted. 1982 Lab IC 106 (110, 111) (Gui).

An year calculated according to the Samvat calendar amongst Hindi speaking parties should not be construed to mean an year according to the British calendar. A 1924 Nag 216 (1) (216) : 76 IC 44.

When payment and receipt of rent are according to the Bengali calendar, the natural presumption is that the tenancy is according to the Bengali calendar and in the absence of any contrary intention this presumption will prevail. (1955) 59 Cal WN 1150.

The expression "the year next before the date of presenting the plaint" occurring in S. 7 (v) (c) of the Court-fees Act, 1870 denotes a period of 365 days reckoning back wards from the date of presentation of the plaint. Where a court had based its decision as to the valuation of a suit upon a construction of the expression "the year next before the date of presenting the plaint", an appeal was not precluded by Section 12 of the Court-fees Act, 1870. ILR 28 All 411 (413, 414) : 1906 All WN 66.

**Commencement of the Act-Definition of "Commencement"- Act can only commence in any particular area on date on which it comes into force in that area.**— An Act can only commence in a particular area on the date on which that Act comes into force in that area. The mere fact that it was in operation in other areas will not result in the Act having commenced in the area where it had not yet been applied (1969) 2 SCWR 318 : AIR 1969 SC 751 : (1969) 1 SCC 206 : (1969) 2 SCJ 147.

**Immovable property-Right to catch and carry away fish in specific sections of lake is immovable property.**— Section 3 (26), General Clauses Act, defines "immovable property" as including benefits that arise out of the land. The Transfer of Property Act does not define the term except to say that immovable property does not include standing timber, growing crops or grass. fish do not come under that category and so the definition in the General Clauses Act applies and as a profit a *prendre* is regarded as a benefit arising out of land, it follows that it is immovable property within the meaning of the Transfer of Property Act. [Ananda Behera V. State of Orissa, (1955) 2 SCR 919 : 22 Cut LT 101 : 1955 SCJ 96: (1956) 1 MLJ (SC) 41 : 69 : ILR 1956 Cut 425 : 1956 SCC 70 : 69 MLW 872.]

**"Person" includes a firm.** -Section 3(42) says that a "person" includes "any company or association or body of individuals whether incorporated or not". A firm is manifestly a body of individuals and would therefore fall within the definition of "person", and may be exposed to an order for payment of penalty in the circumstances set out in Clauses (a), (b) and (c) of section 28 of the Income-tax Act. [Commissioner of Income-tax, Madras v. S. V. Angidi Chettiar, 1962 (Sup) 2 SCR 640 : (1962) 44 ITR 739 : (1936) 2 SCJ 81 : (1936) 2 Andh WR (SC) 41: (1963) 2 MLJ (SC) 41: AIR 1962 SC 970.]

**Meaning of "State Government" with reference to section 561-A of Criminal Procedure Code, 1959.**— The expression "State Government" has a meaning assigned to it under the General Clauses Act, 1897 (X of 1897). Briefly stated, it means the authority or person authorized at the relevant date to exercise Executive Government in the state and after the commencement of Constitution, it means the Governor of the State. If the State Government considers that the observations made by a court in respect of a department or officers through whom the state Government exercises its executive powers are such as require invoking the inherent power of the High court under section 561-A, Criminal Procedure code, it is difficult to see why the state Government cannot be considered to be the party aggrieved by such observations. Furthermore, the state being a juristic person, can make an application under section 561-A. [State of Uttar Pradesh v. Mohammad Naim, (1964) 2 SCR 363 : 1963 ALJ 924: 1963 All Cr R 412 :1963 AWR (HC) 717 : (1963) 2 SCWR 203 : (1964) 1 Cr LJ 549 : (1964) 1 SCA 471 : ILR (1963) 2 All 849 : AIR 1964 SC 703.]

**Applicability.**— The section provides that the definitions given therein shall apply to general clauses Act and all Central Acts and regulations made after the commencement of the Present Act. (1966) 32 Cul LT 383. When a function is vested by a statute in the state government, the statutory provision, like a Notification issued by the President, has to be interpreted with the aid of the General Clauses Act. AIR 1971 Punj 4 Har 246; 1971 CrLJ 96C.

**Interpretation clause.**— It is by no means the effect of an interpretation clause that the thing defined shall have annexed to it every incident which may seem to be attached to it by any other Act of Legislature. Umachum Beg v. Ajadannissa Bibee, ILR 12 Cal 430. "An interpretation clause," observed Lord Denman in R. v. Cambridge shire, (1838) 7 A and E 480 at p. 491. "is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances. F. Dwariss, in Treatise on Statutes, quoted in Uda Begum v. Imam-ud-din, ILR 2 All 74.

**"Unless there is anything repugnant in the subject or context".**— An Act, such as the General Clauses Act, is not meant to give a hide-bound meaning to terms and phrases generally occurring in legislation. That is the reason why the definition section contains words like "unless there is anything repugnant

in the subject or context", or "unless the context otherwise requires. *State of Kerala v. Akil Kerala Vala Sanndaya Saamiti*, AIR 1979 Ker 113 at p. 114. 1979 Ker LT 1 (FB). On the other hand, the expression "contrary to any provision of law" is of wide import and the meaning to be given to it depends upon the context in which it occurs. *Lilly Stella Rodrigues v. Girijabia*, AIR 1969 Mys 100 at p. 102 : (1968) 1 Mys LJ 216.

**"Means", "includes", denotes" and "is deemed to be".**— Words and expressions are defined in statutes by employing the words "means", "includes", "denotes" and "is deemed to be". When the word "means" is employed it shows that the definition is a hard and fast definition and that no other meaning can be assigned to the word or the expression defined than is put down in the definition. The use of the word "denotes", shows that the Legislature did not intend to put down a cast-iron definition of the word but only sought to describe what the word might mean. When a thing "is deemed to be" something, the only meaning possible is that whereas it is not in reality that something, the Act directs that it should be treated as if it were that thing. The words "include" or "shall be deemed to include" are used when it is intended to enlarge the meaning of the words or phrases defined. *Fateh Chand Mahesariv. Akim-ud-din Chaudhari*, AIR 1943 Cal 108 : 47 CWN 52.

**"May" and "shall".**— Ordinarily the word "may" is used in the sense of being permissible or directory, whereas the word "shall" is generally taken in a mandatory sense. But these two words do not necessarily have that meaning in every case. The true construction depends upon provisions of a particular statute, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations. *Khub Chand v. State of Rajasthan*, AIR 1967 SC 1074 : (1967) 1 SCR 120. The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker. *State of Mysore v. V.K. Kangan*, (1976) 2 SCC 895 : *Govind Lal Chhagan Lal Patel v. Agriculture Produce Market Committee*, (1976) 2 SCC 895.

When a statute has required a thing to be done in a prescribed manner but has not set out the consequences of not doing that in the prescribed manner, the relevant provision will be construed as directory even if the word "shall" has been used. *Martand Balvant Risaldar v. Chhagan Lal Ambalal Gandhi*, 1978 Cr L J 1032 : 19 GLR 487.

Where in a statute the word "may" has been used, it would not necessarily follow that non-compliance with the provisions of that statute will not render the proceedings invalid. *State of U.P. v. Mandbodhan Lal*, AIR 1957 SC 912. There may be cases, the particular circumstances of which may have the effect of converting an option into a duty and in those cases the word "may" would mean "shall. *Bengal and North Western Railway Co. Ltd. v. Special Manager, Court of Wards, Blurmpur*, AIR 1925 Oudh 49". The word "may" connoting discretion has to be

construed as shall when the discretion conferred upon a public authority is coupled with an obligation. *Sri Rangaswami Textile Commr. v. Sagar Textiles Mills (P). Ltd.*, AIR 1977 SC 1516 at p. 1517 ; *Sudhira Bala Roy (Smt) v. State of West Bengal*, AIR 1981 Cal 130 at p. 135. The governing factor is the meaning and intent of the Legislature which has to be gathered not merely from the words employed by the Legislature, but also from other circumstances and considerations. *Govind Lal Chhagan Lal Patelv. Agriculture Produce Market Committee*, AIR 1976 SC 263 ; *D. M. Rudriah v. Registrar, University of Mysore*, AIR 1981 Kant 103.

**"Act".**— Act done under a statute means act expressly or specifically required or permitted to be done by the statute. *Luck now Nagar Mahapalika v. Karamjeet Singh*, AIR 1962 All 174 : 1962 ALJ 165.

Non-compliance with provisions of statute by omitting to do what such provisions enjoin is same thing as act done or ordered to be done AIR 1962 SC 1146 : (1962) 2 Cri LJ 258 ; 1963 All LJ 555 (SC) : (1963) 2 Cri LJ 71 at p. 73 ; AIR 1973 SC 1354 at p. 1356 : 1953 Cri LJ 1152 ; *Public Prosecutor, Madras v. R. Raju*, AIR 1972 SC 2504 at p. 2509 ; 1972 Cri LJ 1699. The definitions given in the General Clauses Act apply to the interpretation of words used in the statutes and laws and not to the words in documents relating to Private Contracts and correspondence. 1968 All LJ 787.

The Expression "anything done under this Act" by virtue of section 3 of the General Clauses Act, would include "anything omitted to be done under the Act. *District Board of Manbhium v. Shyamapada Sarkar*, AIR 1955 Pat 432".

As per Section 3 (2) the term "act" with reference to an offence or civil wrong includes a series of wrongs and extends also to illegal omissions. *Commissioners of Hoogly, Chinsura Municipality v. Ekkari Ghose*, ILR (1956) 2 Cal 164 at p. 164 : AIR 1955 NUC (Cal) 915. "possession" when made penal is intended to cover an unlawful and not an innocent possession.

**"Affidavit".**— Affidavits taking place of oral evidence in certain cases, form an important piece of evidence. *Sheik Saheb v. Mucheli Narsimha Reddy*, (1967) 1 Andh WR 437-439 : 1967 Mad LJ (Cr) 456.

It is well-recognised practice commonly adopted that where application is drawn up and at the foot of it an affidavit is sworn, the same is sufficient compliance with the requirements of an application under Order XLI, Rule 27 of the Civil Procedure Code. *M.M. Qasim v. Manohar Lal Sharma*, AIR 1981 SC 1113 : (1981) 3 SCC 36 : 1981 UJ (SC) 396 : 1981 BBCJ (SC) 165 : (1981) 2 Ren CR 74 : (1981) BLJ 535 : 1981 MPRC 165.

**Order made by President.**— An order made by the President under Article of the Constitution is, in substance, a law of the Parliament during the transitional period as contemplated by Article of the Constitution. AIR 1950 Orissa 157, 158.

Again an order though not passed in the name of the President, but issued in the name of the Central Government and validly authenticated by the Joint Secretary for and on behalf of the President would be an order made or executed by the President. *Prakash Chandra v. Union of India*, AIR 1965 Punj 270.

**Executive Acts not covered.**—The executive Acts passed by the Governors of the States are not covered by the definition given in the sub-section. AIR 1955 Cal 478.

**"Collector".**—A Sub-Divisional Officer holding for the time being the charge of a Collector is "Collector". *Girja Shankar v. S.D.O.*, AIR 1973 MP 104 (FB).

The Collector, as defined in the General Clauses Act, only the Chief Officer of the revenue administration of a district and in no sense could he be considered to be a court. AIR 1954 Mad 109.

**"Commencement".**—It will be observed that in section 36 of the Interpretation Act, 1889 (English), the expression "commencement" used with reference to an Act, shall mean the time at which the Act comes into operation.

"The commencement of an Act is properly the time at which and not the day on which it comes into operation, for by virtue of Section 5 (3) corresponding to Section 36 (2) of the Interpretation Act, 1889, it is a point of time at the expiration of the day preceding the day on which the Act is expressed to come into operation".

A law cannot be said to have commenced merely in the Constitutional sense when it has not been brought into force either by legislative enactment or by exercise of authority conferred on a delegate to bring the same into force. *Orissa State v. Chandra Sekhara*, AIR 1970 SC 398 at p. 401 : (1970) 1 SCJ 375.

The District Judge would be the principal Civil Court of original jurisdiction. AIR 1986 AWC 396.

The expression "ordinary jurisdiction" embraces all such as is exercised in the ordinary course of law, and without any special step being necessary to assume it; and that it is opposed to extraordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders. *Navivahu v. Turner*, 16 IA 156 at p. 162, referring to Bombay High Court.

The expression principal Civil Court of original jurisdiction, therefore, refers to a District Judge. *Nuratmal Jain v. Smt. Tarinibala Borā*, AIR 1908 Gau 30 at p 34.

**"Enactment".**—"Enactment" means an Act of Legislature or part thereof. *Vishnu Pratap Sugar Works (P) Ltd. v. Chief Inspector of Stomps*, AIR 1968 SC 102 at p. 104 : (1968) 1 SCWR 69; *Shanti Lal Ambalal Mehta v. M.A. Rangaswamy*, (1977) 79 Bom. LR 633 at P. 647 : 1977 Mah LJ 587. In England the word "enactment" does not mean the same thing as "Act". "Act" means the whole Act, whereas a section or part of a section in an Act may be an enactment. *Wakefield and District Light Rys. Col. v. Wakefield Corporation*, (1906) 2 KB 140, 145, 146.

Rules are nothing but a specie of legislation instead of enacting the same itself, the Legislature delegates that power and authority to another person or authority. Whatever is enacted by the delegate of Legislature is also the enactment of Legislature. *Challa Ram Konda Reddy v. State of A.P.*, AIR 1989 AP 235 (241).

**"Father".**— Clause (20) of Section 3 only lays down that the word "father" shall include an adoptive father in cases where adoption is permissible. The word "child", therefore, will not include an adopted child on the analogy of the provision of this clause according to which the word "father" includes an adoptive father. *Ma E Mys v. U Ko Ko Gui*, AIR 1937 Rang 370 at p. 372; 1976 Mah LJ 565.

**Section 3 (22) : "Good-faith".**— Good-faith which is bona fide is a mental state negating dishonesty having no relation to negligence or want of care. *Hirji Madha v. Nagji Kurji*, 1964 Guj LR 289 at p. 293. In civil law, the emphasis in the expression "good-faith" falls on "due care and attention" but not on honesty. *G.S. Pathak v. S. S. Nisal*, AIR 1955 Bom. 93 ; *Paramkirti v. Dewan Singh*, AIR 1961 All 564 ; *Fatima Fauzia v. Syed-ul-Mulk*, AIR 1979 AP 229 at p. 242. Negligence does not necessarily mean mala fides. Something more than negligence is necessary. An authority is not acting honestly where an authority has a suspicion that there is something wrong and does not make further enquiries. Being aware of possible harm to others and acting in spite thereof, is acting with reckless disregard of consequences. It is worse than negligence, for negligent action is that, the consequences of which the law presumes to be present in the mind of the negligent person whether actually it was there or not. AIR 1975 SC 529-531.

In the absence even of honesty of purpose, the definition of good faith cannot be availed of. *Bisweshwar Misra v. Swet Kumar Panigrahi*, 1966 Cr LJ 494 : 31 Cut LT 314.

It can be inferred that the public officials acted honestly even though they might have acted negligently, it must be held that they acted in good faith. AIR 1964 Ori 225.

Order characterized as not bona fide is not amenable to the definition of good faith. *Biswanath Modi v. Revenue Divisional Commissioner, Central Division, Cuttack*, (1963) 5 Orissa JD 97, 110, 111 (DB).

The test to be applied to find out whether there is good faith or not is to see whether the person concerned has acted honestly or not. The essence of good faith is, therefore, the honesty of intention. *T. Ramprasad Rao and S. Ratnavel Pndian JJ. in Arunachala Thevar v. Govindrajan Chettiar*, (1977) 2 MLJ 431. Or honesty of dealing. *Narannu Lal v. Ram Chander*, AIR 1931 Al 277 at p. 294 : ILR 53 Al 334 (FB).

The definition of "good faith" in the General Clauses Act does not expressly apply to the term when used in the Contract Act, 1872, or transfer of property Act 1882, or the Trust Act 1882, being Acts passed before 1897 (1977) 2 MLJ 431. There are

several judicial authorities which have applied the definition of the term "good faith" as given in the General Clauses Act to the Specific Relief Act on the ground of equity and good conscience, though the Original Specific Relief Act (X of 1897) was passed earlier in point of time to the General Clauses Act. In relation to a Negotiable Instrument, "payment in due course" means payment made in good faith and without negligence which means absence of negligence, besides honesty. *Union Bank of India v. Sales Tax Officer, Enforcement Branch, Greater Bombay*, (1979) 49 Com Cas 615- 630 (DB) (Bom).

The definition of "good faith" as generally understood in civil law and which may, therefore, be taken as a practical guide in construing the expression in the Contract Act, is that nothing is said to be done in "good faith" which is done without due care and attention, that is, the care and attention expected of a man of ordinary prudence. *Maung Aung Pu v. Maung Si Mung*, 12 IC 809. Good faith is honesty of fact, done without negligence; and, as such, when Government seeks to impose control with a view to prevent profiteering or black-marketing, good faith on its part cannot be lightly challenged. *State of Madhya Pradesh v. Auditor and Liquidator, Jabalpur*, 1958 MPc 262 at p. 266 (DB).

"Good faith" as contemplated the Limitation Act, is not the same as "good faith" under the General Clauses Act. *Amar Kaur, (Smt.) v. Iqbal Singh*, 1972 Punj LJ 457 : 1972 Rev LR 468, *Marman Lal v. (Mst.) Chhotka Bibi*, AIR 1971 SC 1374 and *Jagat Ram v. Kharati Ram*, AIR 1938 Lah 361 (FB). Limitation Act provides that nothing shall be deemed to be done in good faith which is not done with care and attention. Under the General Clauses Act, a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not. 1972 Punj LJ 457.

The definition of "good faith" in the General Clauses Act is more liberal than that in the Penal Code or the Limitation Act. *Chiranjilal Agarwal v. Chief Secretary to Government*, 1948 Jaipur LR 230- 236 (DB) (In Penal Code, bad faith implies want of due care and attention but not necessarily dishonestly as civil law. AIR 1953 Mad 936 at . 937 : 1963 Cr L J 1730. Honest blunder admits of good faith in General Clauses Act, but, in the Penal Code, it would work out negligence. Good faith in Sec. 14 of the Limitation Act, 1908 to be decided on facts of particular case.

"Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

Negligence does not by itself show want of "good faith", where General Clauses Act applies. AIR 1958 SC 1.

**"Government".**— "Government" denotes an established authority entitled and able to administer the public affairs of the country. (*Mrs*) *Annie Besant v. Government of Madras*, AIR 1918 Mad 1210 : ILR 39 Mad 1085. The word "Government" would obviously mean the executive machinery, *Ram Nadan v. State*, AIR 1959 All 101 : 1958 ALJ 793, *Annie Besant v. Government of Madras*, AIR 1918 Mad 1210 : 21 MLT 124, *Brns v. Ransley*,

(1944) 79 CLR 101 and *Emperor v. Bhasker Balwant Bhopatkar*, (1906) ILR 30 Bom. 421 : 8 Bom. LR 421. The President acting with the advice of the Council of Ministers and the Governors acting with the advice of the Council of Ministers. *Chhatar Singh v. Union of India*, AIR 1967 Raj 194 at p. 198 : 1967 Raj LW 164 (DB). It does not mean the actual persons holding the offices of the President or the Governors or the Ministers Advising them. Therefore, a change in the person holding any such office would not mean a change in the Government established by law. *Rammandan v. State*, AIR 1959 All 101 (FB) : 1959 Cr LJ 128 : 1958 All LJ 793.

The word "Government" in the expression "an officer of Government" it should be interpreted liberally so as to include within its scope the Legislature, the Executive and the Judiciary. *Pashupati Nath Sukul v. Nem Chandra Jain*, AIR 1984 SC 399 : 1948 All LJ 215.

Section 3 (23) of this Act has defined the Government, without any prefix as meaning both the central and the state government. *Assistant Director, Central Intelligence v. Th. Hamam. Chand*, AIR 1979.

The expression "Government" does not include a District Board or any local authority. *M.L.N. Mahalingam Chettiar v. Raja Srimathu Muthu Vijja Raghunath Doraisingham*, AIR 1940 Mad 916 : (1940) 2 MLJ 422. *Jeramdas Vishendas v. Emperor*, AIR 1934 Sind 96 : *Samalkot Municipal Shops R.P. Association v. Samalkot Municipality*, AIR 1991 NOC 7 (AP).

**High Court**.— This sub-section defines "High Court" with reference to civil proceedings, as the highest Civil Court of appeal. This refers to the Court invested with the highest appellate jurisdiction, though it may not itself be a Civil Court. *Phul Kumari v. State*, AIR 1957 All 495- 504.

The expression "High Court" occurring in Section 11 (1) (a) of the Trade Unions Act has been held to mean and include the High Court in its Original Jurisdiction as well as Appellate Jurisdiction and the appeals under the aforesaid section are to be heard by a Judge of the High Court sitting on the Original Side and not be a Judge or Judges on the Appellate Side. *Mihir Kumar Goocha v. Registrar of Trade Unions, West Bengal*, AIR 1961 Cal 165 : 64 CWN 1065.

**Immovable property**.— The expression "immovable property" comprehends all that would be real property according to English law and possibly more. *Tarkeshwar Sio Thakur Jiu Sri Sri v. Bar Dass Dey & Co.*, (1979) 3 SCC 106 : AIR 1979 SC 1669. Where in any enactment, the definition of "immovable property" is in the negative, and not exhaustive, the definition as given in Section 3 (26) of the General Clauses Act will apply to the expression given in that enactment. *Tarkeshwar Sio Thakur Jiu, Sri Sri v. Bar Dass Dey & Co.*, AIR 1979 SC 1669 at p 1674 : (1979) 3 SCC 106.

The structure which is permanently fixed to land for example, a house, is immovable property.

Immovable property is defined as including land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. Land



itself has not been defined in the Act, but it has been held to include interest in sub-soil. *London Colliery Co. v. N.B. Ray*, AIR 1968 Cal. 545-547 : 72 Cal WN 679. A suit for arrears of rent cannot, thus, be said to be one for immovable property in the sense of being a suit for benefit arising out of land. *tarkeshwar Sio Thakur Jiu, Sri Sri v. Bar Dass Dey & Co.*, AIR 1978 Guj 33, 35. 1669 at p. 1679 (1979) 3 See 106.

Building is immovable property, and door of a building cannot be said to be movable property. AIR 1927 LAH 373.

"Immovable property" is defined in three Enactments, the General Clauses Act, the Registration Act and the Transfer of Property Act. The first two are not of much assistance, for they merely say that immovable property includes things attached to the earth, or permanently fastened to anything attached to earth. They give no guidance as to what is meant by "attached" or "permanently fastened". On the other hand, they exclude standing timber from the category of immovable property. *State of Himachal Pradesh v. (M/s) Moti Lal Partap Singh & Co.*, AIR 1981 HP 8 : ILR (1980) HP 125 : 1980 Sim LC 341. The third enactment, by Section 3, describes what is meant by "attached to the earth": to wit, (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

A right of way may be done within definition of immovable property, and the same cannot be said to have been excluded by section 3 of the transfer of Property Act, 1882. *Sital Chandra v. Mrs Allen, J. Dillanney*, AIR 1917 Cal 681.

A temporary right of a tenant at will to reap the produce, to which he, as tenant, is entitled, is not immovable property. *Mohd, Ismail v. Shamsuddin*, AIR 1920 Lah 310 : 2 Lab L J 684.

Right to drain off water has not been held to be immovable property. *Maung Moe Thi v. Mabri Tauk*, 1938 Bur LR 192 at P. 194.

The attachment of an oil engine to earth, though it is undoubtedly a fixture, is for the beneficial enjoyment of the engine itself and in order to use the engine, it has to be attached to the earth and the attachment lasts only so long as the engine is used. When it is not used, it can be detached as shifted to some other place. The attachment, in such a case, does not make the engine part of the land and as immovable property. *Perumal v. Ramaswami*, AIR 1969 Mad 346 : (1968) 2 Mad LJ 493 : ILR (1969) 2 Mad 379.

The machinery of a mill stands on a footing different from an oil engine. In that case, the machinery of a mill was fixed to a cement platform and attached to iron pillars fixed in the ground. It was held that the movable property so attached should be regarded as immovable property. AIR 1944 Mad 492.

If in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to imbed it or fix it on earth, though permanently, that is when it is in use, it should not be regarded as immovable property for

that reason. Board of Revenue, Chepauk, Madras, v. Venkataswami. (1955) 2 Mad LJ 215 : 1955 Cr LJ 1369 : AIR 1955 Mad 620 (FB) ; Subramaniam Firm v. Chidambaram Servai, AIR 1940 Mad 527 : (1944) 2 Mad LJ 60 : Perumal v. Ramaswami, AIR 1969 Mad 346 : (1968) 2 Mad LJ 493 : ILR (1969) 2 Mad 379.

The share of a partner in partnership is not immovable property. Sabeel Ram Surajmal, Firm v. Purushottam Lal Gopi Kishan, AIR 1950 Nag 89 : 1950 NLJ 159.

The term "immovable property" has been defined in the General Clauses Act, Sale of Goods Act, the Transfer of Property Act and the Registration Act. These definitions do not tell us what "immovable property" is. They only tell us what is either included or not included therein. Both under the General Clauses Act and the Transfer of Property Act, things rooted in the earth, as in the case of trees and shrubs, are immovable property, but in the latter, "standing timber", "growing crop" and "grass" though rooted in earth are not included.

**Machinery.**— A thing embedded in the earth or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached, is "immovable property". J Kappunna Chetty v. Collector, AIR 1965 AP 457. Boiler and decorticator fixed and embedded in factory building for beneficial use thereof, are immovable property. AIR 1965 AP 457. The power-house undertaking, unless its building be demolished and the machinery affixed to the earth is uprooted, is immobile property. Hemendra Lal Roy v. Indo Swiss Trading Co. Ltd., AIR 1955 Pat 375 at p. 379 (DB).

Fixtures when so annexed to the soil that they could not be severed and removed without substantial disturbance of the soil and a substantial change in the character of articles themselves, are immovable property. Miller v. Brindaban, ILR 4 Cal 946.

In Subramaniam Chettiar v. M. Chidambaram Servai, AIR 1940 Mad 527.

It was decided that "If a thing is embedded in the earth or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached, then it is a part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself, then it remains a chattel, even though fixed for the time being so that it may be enjoyed. The question must in each case be decided according to the circumstances".

Until the power-house is dismantled and the machineries, etc., which are fixed to the earth, are uprooted and until the buildings are demolished the material with which they were constructed cannot be called "movable property". Hemendra Lal Roy v. Indo-Swiss Trading Co. Ltd., AIR 1955 Pat 375.

Machinery affixed to the soil can be held as immovable property. Maheshwari Brothers, M/s v. Official Liquidators. AIR 1938 All 574-577 : ILR (1938) All 896.

The right to cut and remove coconuts from the trees standing on immovable property is not a benefit to arise out of land. *R. Sawanana v. Sri Vedaranya Swaraswami Devasthanam*, AIR 1982 Mad 396 : (1982) 95 Mad LW 322 : ILR (1982) 2 Mad 367 : (1982) 2 Mad LJ 290.

Money chargeable on immovable property will include money charged on rents and profits of land so as to become benefits arising out of land. *Ram Jiwan v. Jadunath*, AIR 1916 Oudh 176 at P. 177 : 18 Oudh Cas 380.

The right under a contract to cut bamboo trees, is not a lease-hold, and hence, not an interest in the land or any right to possession of the land. *M. Ramakrishniahv. State of AP*. AIR 1957 AP 28 : 1956 An WR 717.

**Mortgagee's interest.**— A mortgagee's interest may come within the meaning of the expression benefits to arise out of land in the General Clauses Act. The Indian Legislature appears to have intended that all rights to immovable property should fall within the category of immovable property. *Bank of Upper India v. Fanny Skinner*, AIR 1929 Al 161 at p 163 : ILR 51 All 494. The case is, however, different with respect to auction sales of mortgagee's interest ; see *La Umrao Singh v. Lal Singh*, AIR 1924 All 796 ; *Shah Mohd. v. Lachmi Narain*, 50 IC 157.

Shares in a limited company are not immovable property. *Vadilal v. Manekji*, AIR 1923 Bom. 372.

**Right to collect market dues.**— The Chief Court of Oudh in *Ram Jiwan v. Hanuman Prasad*, AIR 1940 Oudh 409, had held that bazaar constitutes a benefit arising out of land and is immovable property within the meaning of Section 3 (26) of this Act.

**Standing crops.**— Standing crops are immovable property. *Devarasethi Narsimham v. Devarasetti Venkiah*, AIR 1916 Mad 1142 at p 1143; See also *simon Larker v. Mst. Sujan Bakhla*, AIR 1932 Pat 344 at p 345 ; *Gobu Peda Appanna v. Krishnamma*, AIR 1935 134 at p 135.

**Right to worship by turn.**— The right to worship, in a temple, by turn is immovable property. *Ram Rattan v. Bajrang Lal*, AIR 1978 SC 1393 : (1978) 4 All LR 516 : (1978) 3 SCC 236 : 1978 BLJR 343. So is hereditary priesthood: *Ram Rattan v. Bajrang Lal*, AIR 1978 SC 1393 at p 1397 ; *Bhurthu v Bhushan Prasad*, AIR 1952 Nag 307 : ILR 1953 Nag 400 : 1952 Nag LJ 588.

**Water.**— Water is not a produce of soil Chief Controlling Revenue Authority v. Antibiotic Project, Virbhadra, AIR 1979 All 355 : 1979 All LJ 990. and , therefore, it is neither land nor a tenement. Agreement to allow company to draw water from river is not instrument creating right over immovable property. *Ibid* ; following *Jibanand Chakrabarti v. Kalidas Mullick*, AIR 1915 Cal 199 and *Thakurji Shri Judgal Sarkar v. Rajmangal Prasad*, AIR 1926 Pat 187.

**Manure and rubbish.**— an agreement for three years granting right to take out manure and rubbish by digging from

that accumulated in trenches and drains amounts to benefit arising out of land, and the agreement is one relating to immovable property. *Haji Sukhan Beg v. Board of Revenue*, AIR 1979 All 310 : 1979 All LJ 887.

Right to catch or carry fish.— Right of fishing as rent *Maharaja of Kashmir v. Fattah Din*, 164, PR 1888 or right to catch or carry away fish from any lake to the extent of its specified portion, till specified future period, *Anand Behera v. State of Orissa*, AIR 1956 SC 17 at p 19 : 1956 SCJ 96 ; *Bihar Eastern Gangetic Fishermen Co-operative Society v. Sipahi Singh*, AIR 1977 SC 2149 : 1977 UJ (SC) 586 : (1977) 4 SCC 145 : 1977 BBCJ (SC) 239 is benefit to arise out of land, involving a licence coupled with grant of profit *a prendre*.

Right of way.— A passage benefit is not even property. *N. Bakshi v. Accountant-General, Bihar*, AIR 1957 Pat 515 at p. 528 : ILR 36 Pat 557 : 1957 BLJR 299. But, as held in *Sital Chandra v. dotaum*, 34 IC 450, the right of way is immovable property *Bejoy Chandra Nag v. Banka Behari Mojumdar*, (1909) 9 Cal L J 340 (DB).

The definition given in this clause is applicable to all the Central Acts and Regulations made after the commencement of the General Clauses Act. It was held to apply also to notified orders issued by Provincial Government or by any person authorized by such Government.

"Law" must include not only an Act and Ordinance but also Regulations, rule, order, bye-law or other instrument which has the force of law. The term "law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of Law. *State v. Ram Charan*, AIR 1977 MP 68 at pp 71, 72 : 1977 Cr LJ 597 : 1977 MPLJ 176 (FB), overruling *Mathura Das v. State*, AIR 1954 Nag 296.

The word "order" in this clause, includes a notification. *Pramesh Chandra Gupta v. Registrar, Allahabad High Court*, AIR 1955 All 269 at 272 : 1955 All LJ 105 (FB) overruling *Kumari Saroj Rawat v. Secretary, Bar Council Allahabad*, AIR 1954 All 728, and following *Ram Krishna Bharadwaj. (Dr.) v. State of Delhi*, AIR 1953 SC 318 but does not refer to an executive order. *Molchand v. Emperor*, AIR 1948 All 281 at p. 284 : 42 Cr L J 352 : ILR (148) All 288 [with reference to order of Provincial Government, under section 11 of U.P. Maintenance of Public Order (Temp) Act, 1946]. The word "order" is used to indicate a legislative order. "Law, Ordinance, order, bye-law rule or Regulation" are of the nature of legislative provisions. The law in the strict sense of the term is promulgated by the Legislature, the ordinance by the Governor or the President as the case may be, the orders by a competent authority.

The difference between law, Ordinance, order, bye-law, rule or Regulation is based on the difference between the authorities passing or making them. In the strict sense of the word a law is made by the Legislature ; and Ordinance is issued by the President, or the Governor as the case may be ; an order is

made by a competent authority ; a bye-law is passed by a statutory authority competent in that behalf. Rules and Regulations have been defined in clauses 950) and (51) respectively of section 3 of the General Clauses Act. it was said that the word "order" is used in Section 3 (29), General Clauses Act, in the sense of a legislative order and not an executive order. *panna Lal v. State*, AIR 1953 MB 84 (Gwalior Bench).

Service Rules being made pursuant to statutory power or power given under the constitution, are law. *Kamta Charan Srivastava v. Post Master General, Bihar*. AIR 1955 pat 381 ; *Baishnab Charan Das v. State of Orissa*, AIR 1957 Orissa 70.

**Notification.**— A notification issued by the Government in exercise of the powers delegated to it under law is an "order" within the term.

**"Local Authority".**— Local bodies are subordinate branches of Government activity. They are political sub-divisions and agencies which exercise a part of State functions. Power of taxation is, therefore, a necessary adjunct of their powers. *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi* (1968) 3 SCR 251 at p 258 : AIR 1968 SC 1232, *Hidayatullah, J.* (as he then was). The characteristic features and the distinctive attributes of "local authorities" are that they, like Municipal Committees, District Boards or Boides of Port Commissioners, must have a separate legal existence as corporate bodies and must not be made governmental agencies. They must be legally independent entities functioning in a defined area, enjoying a certain degree of autonomy with freedom to decide for themselves question of policy affecting the area administered by them. Next, they must be entrusted by statue with such governmental functions and duties as are usually entrusted to municipal bodies, such as health, education, planning, development, welfare, etc. Broadly, they may be entrusted with the performance of civic duties and functions which would otherwise be governmental duties and functions. Finally, they must have the power to raise funds for furtherance of their activities and fulfillment of their projects by levying taxes, rates, charges or fees. *Union of India v. R.C. Jain*, AIR 1981 SC 951 at p. 953 : 1981 Lab IC 498 : 1981 UJ (SC) 197 : 1981 SC (Lab) 323 : (1981) 58 FJR 285 : (1981) 19 DLT 305 : (1981) 2 SCC 308 : (1981) 1 Lab LN 569 : (1981) 1 Lab LJ 402 : (1981) 1 SCWR 376 : 42 FAC LR 348 : (1981) 13 Lawyer 43 : (1981) 2 SCJ 58.

A Market Committee, by virtue of its being an organization for purpose of regulating trade is local authority. *Shanmugha Oil Mill v. Market Committees*, AIR 1960 Mad 160 at p 164.

However, a villages cannot be held to be local authority. *Heisnam Chorijon Singh v. Union Territory of Manipur*, AIR 1968 Manipur 45 at p 50.

A society registered under the Co-operative Societies Act, but not entrusted to manage municipal or local fund is not local authority. *Sobhnath v. Raj Kishore*, AIR 1967 All 121 : *Raj Kishore v. Sobh Nath*, 1966 ALJ 636.

**"Magistrate".**— A Magistrate *Surya Kant Roy v. Imamul Hak Khan*, (1975) 1 SCC 531 : AIR 1975 SC 1053 or a police officer, *Balaji Raghunath Phadke v. Bal Bin Baghoji*, 1898 ILR 22 Bom. 235 at p 238 (DB) ; *Emperor v. Anandrao Gangaram*, AIR 1925 Bom. 529 at p 530 : 27 Bom. LR 1034, in a Native State as also a village Munsif, *Empress v. Ramarjiyya*, ILR 2 Mad 5 : 2 Ind Juri 782. is an officer who would come within the definition of "Magistrate" *Queen Empress v. Nagla Kale*, (1898) ILR 22 Bom. 235 : *Queen Empress v. Sunder Singh*, ILR 12 All 595 (Magistrate at Bhind in Gwalior State) ; For Contrary view, see *Emperor v. Dhanka Rama*, (1914) 16 Bom. L R 261 : 24 Ic 169 : 15 Cri LJ 433 in the General Clauses Act, though such Magistrates are not Magistrate for purposes of Section 164 of the Code of Criminal Procedure. *Mohd. Buxy. Emperor*, AIR 1934 sind 103 : 35 Cri LJ 1328. The definition of "Magistrate" in the General Clauses Act is not confined to Magistrates exercising jurisdiction under the Criminal Procedure Code;

The word "Magistrate" denoting more an office, *Palaniappa Chetti v. Annamalai Chetti*, 1904 ILR 27 Mad 223 at p 227 (DB) (Village Magistrate, held to be a "Magistrate") than an officer.

"Magistrate" given in this clause is an inclusive definition and also includes an Additional Sessions Judge. *Sujaniram v. Lal shyam Shah*, AIR 1956 Nag 67. The definition is not limited to Magistrates appointed under the Code-(1914) 1 KB 641 relied on.

The Special Judge contemplated in the Criminal Laws (Amendment) Act, 1952, can be held to be a Magistrate for purposes of Section 167 of the Code of Criminal Procedure. *State of Tamil Nadu v. V. Krishnaswami Naidu*, (1979) 4 SCC 5.

**"Month".**— The expression "Month" unless it does not fit in the context of the Statute in question, *Commissioner of Income tax, West Bemngal, II, Calcutta v. Brij Lal Lohia*, 1908 Tax LR 1383 : (1980) 124 ITR 485. (with reference to section 271 (1) (a) (i) of Income Tax Act 1961, which is a penal prevision and where the "month" refers to the whole of the month of default and not to month during only a part of which the alleged default is committed; see *commissioner of Income-tax v. Laxmi Rattan Cotton Mills Co Ltd*, 1973 Tax LR 1079 at p. 1080 : 1974 ITR 285 means a month reckoned according to English calendar, *Krishan Bilah Chakraborty v. Sonadhan Nama Sundra*, AIR 1961 Tripura 16 and not a lunar month. *Calcutta Landing and Shipping Co. Ltd. v. Victor Oil Co. Ltd.*, AIR 1944 cal 84 at p 86 : 48 Cal WN 76 (DB).

When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts.

**"Movable property".**— Debt-The comprehensive definition of movable property would comprehend animals as well as inanimate kinds of movable property. *K. Srinivasulu v. Deputy Commercial Tax Officer*, 1975 Tax LR 1791. The definition of

"movable property" would certainly include a "debt Secretary of State for India in Council v. Sengammal, 18 Cr LJ 1 : 36 IC 833 : Lat Umrao Singh v. Lal Singh, AIR 1924 All 796 at p 798 : ILR 46 All 917 (DB).

Copyright is beneficial interest in movable property. Savitri Devi v. Dwarka Prasad, AIR 1939 All 305 ; A.V. Meiyappon v. Commissioner of Commercial Taxes, Madras, 20 STC 115 : ILR (1968) 2 Mad 489 : (1968) 1 Mad LJ 480 : AIR 1969 Mad 284 (DB). Shares in a limited company, are not immovable property but constitute movable property. Vadilal v. Manekji, AIR 1923 Bom. 372 ; Ahmed Mohiuddin Kadri v. Shah Yeliya alum Kadir, AIR 1950 Hyd 202 (DB) (Pawn is indicative of movable property as distinguished from money).

An agreement to sell an immovable property is property. But since it does not create any interest in the property, it is movable property. Bhairon Prasad Chaurasiya v. (Smt) Tara Devi, AIR 1980 All 36 ; 1976 All LJ 1324.

Water, as long as it is flowing in the bed of a stream or river, is attached to the earth, and is, therefore, immovable property, though it can be made into movable property by severance or removal from earth. Alam Sher v. Ram Chand, 11 PR 1898. Gas has been held to be goods. Eric County Natural Gas and Fuel Company Ltdv. Samuel S. Carroll, 1911 Ac 105 at p 117-119. Standing timber which has to be cut down and removed is movable property. I re Mahant Raj Balamgir, AIR 1931 All 392 (FB).

Electricity is also "movable property" within the definition in this clause. Commissioner, Sales Tax, M.P., Indore v. M.P. Electricity Board, Jabapur, (1969) 1 SCC 200 : AIR 1970 SC 732. Section 3 (36) of the General Clauses Act defines movable property to mean "property of every description except immovable property. Again policies of insurance are also movable property. Bulchand Chandiram v. Bank of India, AIR 1968 SC 1475.

Under the Transfer of Property Act and the General Clauses Act the superstructure would be immovable property as a thing attached to the earth.

**"Oath".**— "Oath" includes affirmation. Nond Lal Maganlal v. State, AIR 1955 NUC (Sau) : (1955) 6 Sau LR 440 (441) (With reference to complaint under Bombay Prevention of Gambling Act, 1887).

**"Offence".**— The word offence means as would appear from its definition in the Code of Criminal Procedure or the Penal Code or the General Clauses Act. "any Act or omission made punishable by any law for the time being in force". An offence is not continuous merely because the effect thereof continues. Luxmi Printing v. Asstt. Registrar of Companies, 1989-90 (94) CWN 412. The words "any law for the time being in force", in Section 3 (38) refer to the law in force in India and not to law in force in any other country. Sushanta Mukherjee v. Union of India, 1975 Lab IC 1385 at p 1387 : (1975) 79 Cal WN 797.

**"Person.**— The expression "person" includes not only a natural person but also a juristic person, such as deity. *Jogesh Chandra Bera v. Sir Iswar Braja Raj Jew Thakur*, AIR 1981 Cal 259 : (19181) 85 Cal W N 849 : (1981) 2 Cal NH 13, case-law discussed; *Bharat Abhudoj Cotton Mills v. Kameshwar Singh*, AIR 1938 SC 658, see also *Gattiah v. Commissioner of Labour*, 1981 Lab IC 942 (AP) (Person includes incorporated body). A juristic person, like Trust" can, therefore, ask through its trustees, for ejectment of tenant from residential building. *Sri Kishan v. Genesham Dass*, (2962) Punj LR 1144.

A company is a person and can sue in forma pauperis. *Perumal v. Thirumala*, ILR 41 Mad 624. A "firm" is a person within the meaning of Jammu and Kashmir Municipalities Act; *Jammu Municipality v. Barkat Ram*, AIR 1963 J & K 39. Similarly a limited company is also a "person"; *Agarwala v. Union of India*, 1963 BLJR 127.

Neither God nor any supernatural being could be a person in law. *Jogendra Noth v. Commissioner of Income-tax, Calcutta*, AIR 1969 SC 1089 (Concept of Hindu Deity and Go explained).

The term "person" would include a set of persons acting together. *Kumaramuthu Pillai v. Emperor*, AIR 1919 Mad 487 at p 493.

The expression "person includes a company. *B.N. Mehrotra v. State*, AIR 1956 Cal. 137 : 1956 Cr LJ 529 : 60 Cal WN 305 or association or body of individuals, *In re, Parsam Ramiah*, ILR (1970) Andhra Pra. 322 at p 327 (DB) (Section 30 (1) of the Andhra Pradesh General Sales Tax Act, 1957), or a class of persons, *Maharaj Amar Singhji v. Utsav Lal*, AIR 1953 Raj 57 : 1953 RLW 136 : see also *Anath Bandhu v. corporation of Calcutta*, AIR 1952 Cal 759 (Applicability of section 3 (32) of Bengal General Clauses Act, 1899, to section 407 of Calcutta Municipal Act) : See also *Anil Kumar Samanta v. State*, AIR 1953 Cal 476 : 57 CWN 375. (Two Persons in joint possession held liable, each separately for contravention of order); *Budhram Balak Ram v. Dhuru Co-operative Society, Dhuru*, AIR 1972 P & H 185 At p 188, whether incorporated or not.

A limited company has, of course, a separate legal personality, and therefore, its directors cannot be made liable for any legal liability incurred by the company. *Agarwala, H.P.v. Union of India*, 1963 BLJ R 127 ; *Rajendra Prasad Oil Mills, Kanpur v. Chunni Devi*, AIR 1969 All 1 (FB). The expression "person" covers a limited company even though such company is carrying on business in a name other than its own without any attempt to conceal its own corporate name and this fact was known to the party suing. *Rajendra Prasad Oil Mills, Kanpur v. Smt. Chunni Devi*, 1968 All WR (HC) 377 : 1968 All LJ 558 : (1968) 2 Com LJ 137 : ILR (1968) 2 All 56 : 39 Com Cas 193 : AIR 1969 All 1 (FB); *M.K.H. Moosabhai Aminkota v. Rajasthan Textile Mills, Bhawani Mandi*, AIR 1974 Raj 194 (196) : 1974 Raj LW 77 with reference to application of Order XXX, Rule 10, Civil Procedure



Code, following *Rajendra Pd. Oil Mills, Kanpur v. Smt. Chunni Devi*. AIR 1969 All 1 : 1968 All LJ 558 (FB) but dissenting form *Modi Vanaspati Mg. Co. v. Katiar Jute Mills (Pt), Ltd.*, AIR 1969 Cal 496 (DB), or body of individuals, whether incorporated or not.

A Corporation, in *Reserve Bank of India v. Palat Central Bank*, AIR 1961 Ker 268 (280) : 1961 ker LT 54. has been held entitled to claim fundamental rights as "person".

Order XXXIII, Rule 1 of the Civil Procedure Code has been held to be applicable to companies, who though do not use wearing apparel like live individuals, can yet, sue as pauper. *Nagpur Electric Light and Power Co., Ltd. v. Union of India* AIR 1992 P & H 248 at 251. However, unless there be some special provision of law obviating the need of a company being present in person, any provision requiring one to be "present in person" would not apply to company entitled otherwise to avail of the definition of a person. *Arjun Prasad v. Shanti Lal Shankar Lal Shah*, AIR 1962 SC 1192 ; (1963) 2 SCJ 25.

A registered Co-operative Housing Society has been held to be a person. *Godrej P. Joshi . M. V. Bhatia*, 1975 RcJ 399 : (1947) 76 Bom. LR 399.

The High Court of Calcutta, in *Modi Vanaspati Manufacturing Co. v. Katiar Jute Mills, Ltd.*, AIR 1969 Cal 496 (Dissenting from in AIR 1974 Raj 194 : 1974 Raj LW 77), has held that the word "person" used in Order XXX, Rule 10 of the Civil Procedure Code refers to individuals and not to Corporations carrying on trade in the assumed name, and, therefore, a company cannot be sued in the name other than its own which it assumes for business purposes and that it can only be sued in its corporate name.

The above Calcutta view has been dissented from, by the High Court of Rajasthan in *M/s. M.K.M. Moosa Bhai Amin, Kota v. Rajasthan Textile Mills, Bhawanimandi*. AIR 1974 Raj 194 : 1974 Raj LW 77. Citing the definition from Section 3 (42) of the General Clauses Act, it was held by S. N. Modi, J. :

"Keeping in view the above definition of the word "person", it is obvious that a limited company falls within the purview of the expression "person:" used in Rule 10 of Order XXX, C.P. C., unless of course, the Code of Civil Procedure contains anything in the subject or context which is repugnant to the notion of the limited company falling within the purview of the expression "person" used in Rule 10 of Order XXX, C.P. C.

A limited company falls within the meaning of the expression "person" as used in Rule 10, Order XXX, of the Code of Civil Procedure. This would e so even though the limited company may have been carrying on business in a name or style other than its own without any attempt to conceal its own corporate name....."

The test whether a company would be person or not is to see whether the association for purpose of carrying on a business would or would not make each of its members

individually liable. In the latter case, it would not be held as person and with this test, it would be improper to hold an unregistered company as one unit and, therefore, a person. *Phagumal v. Tejmal*, AIR 1930 PC 300 at p 307 : 126 IC 429.

In *Agarwalla, H.P. v. Union of India*, 1963 BLJR 127, it has been held that a limited company has a separate legal personality and its Directors cannot be made liable for legal liability incurred by the company.

A corporation can sue and be sued like any other subject. *Mohomed Mehdi v. Governor-General-in Council*, AIR 1948 Sind 100 (DB).

In matters of defamation, the principle is the same whether the person defamed is an individual person or a corporation or society or a collection of individuals. *Agricultural Produce Co-operative Marketing Society Ltd. v. M.K. Mohad Ali*, 1969 Cri LJ 701 : (1967) 2 Mys LJ 149. However, the question whether the word consideration of the object of the statute. *Molipur Zamindari Co., Ltd. v. State of Bihar*, AIR 1953 SC 320 : 1953 SCJ 451.

**Municipality.**— In *kanak Chand Premchand Sanghvi v. State of Maharashtra*, 1975 Mah LJ 177, the Municipal Council, though a body corporate, has been included in the definition of person; and it cannot be said that it is not a "person" within the meaning of Section 250 of the Criminal Procedure Code and is not exempt from the operation of that section. *Municipal Committee of Lahore v. Rattan Chand*, AIR 1923 Lah 31 (1) ; *Pallanjee Eduljee Sons v. Lonavala City Municipality*, ILR 1937 Bom. 782 ; AIR 1937 Bom. 417 ; see also *Prabhudas Mulji Doshi v. Governor-General of India-in-Council*, ILR (1951) 1 Cal 443, a corporation may be a public officer.

**Registered Trade Union.**— The word "person" occurring in the Explanation to Order XXIII, Rule 1, Civil Procedure Code, includes both natural and legal persons. There is nothing in the said rule which necessarily excludes the application of its provisions to an incorporated body like a registered trade union, and there is no reason why the definition given in this clause should not be applied. *Mysore Iron and Steel Works Labourers Association v. Commissioner of Labour and Registrar of Trade Union, Bangalore*, 1972 Lab IC 799 : (1926) 1 Mys LJ 31 with reference to word "person" in section 11 (1) of the Trade Unions Act, 1926. A registered trade union which is a body corporate therefore, can institute a suit in forma Pauperis. *East Indian Coal Co., Ltd. v. East Indian C., Ltd, Workers' Unions Act, 1926.*

**Government.**— There is otherwise no reason to exclude, from definition of "person" the body of person responsible for governance of the State. *State of U. P. v. Kanhaya Lal Makund*, AIR 1956 All 383 at p. 384 : (1956) 7 StC 579 (DB). A Government Department or office is not a person. *Sarket-E-Aali Zaria Nazim v. Athar*, AIR 1957 AP 714 at p 722 : (1957) 2 Andh Wr 91 (DB).

The word "person" has been held clearly to include a firm.

When a partnership is liable to tax for partnership business, it cannot be that its members should also be made liable to pay was owners of that business. Municipal Committee, Chheharta District, Amritsar v. Munshi Ram, AIR 1965 Punj 168 at pp 169-70.

Hindu joint family firm.— It is well known that a joint Hindu family firm acting through its karta is also a "person", though as regards his coparcenary property, the "karta" counts as "person". *Khairati Ram v. Firm Balak Ram Mehar Chand*, AIR 1960 Pun 192 at pp 195, 196 : 61 Pubj LR 881 (FB). A joint Hindu family has always been treated as a juristic person. *Shankar Lal v. Toshan Pal Singh*, AIR 1934 All 553, 556; *Krishnanand v. Rajaram Singh*, ILR 44 All 393 ; *Sirikant Lal v. Sideshwari Prasad narain Singh*, ILR 16 Pat 441 : AIR 1937 Pat 455 , 456; *APaji Narhar Kulkarni v. Ram Chandra Ravji Kulkarni*, ILR 16 Bom. 29 at p 39 (FB) ; *Sir Ram v. Collector, Lahore*, LIR 1942 Lah 717 : AIR 1942 Lah 173 (FB) ; *Mahabir Ram v. Ram Krishen Ram*, AIR 1936 All 855 ; *A.G. Pandu Rao v. Collector of Madras*, AIR 1954 Mad 1949 (word "person" in Section 2 (17), Excess Profits Tax Act.). Where a joint family consisting of adults and minors carries on business in the name of a firm, a suit can be brought against the firm. *Rameshwar Prasad v. Keshab Prasad*, AIR 1962 Pat 360 ; see also *R. J. Mohammad Yokub Saheb v. M/s. Dipa sahu Deoki Prasaid*, AIR 1959 Pat 200 ; *Tulsidas mulji v. Ebrabimjee*, AIR 1960 Ker 75. However, where the manager of Joint Hindu Family become s a member of a trading partnership, the other members of the family do not ipso facto become partners in the business. *Lilabai Rane v. Lalit Mohan Dey*, AIR 1952 Cal 499 : ILR (1952) 1 Cal 257 ; and *P.K.P. S. Pichappa Chettiar v. Chokalingam. Pillai*, AIR 1934 pC 192 : 38 CWN 1185.

When the manager of a joint Hindu family, consisting of himself and his sons, becomes a partner of a firm, his death does not mean dissolution of the partnership and his family continues to be partners in the firm. *Narain Das v. Ralli Bros.*, AIR 1915 Lah 186 : 31 IC 45.

Managing Committee.— The definition of "person" as given in Section 3 (42) of the General Clauses Act will apply and maintainability of the writ petition filed by the Managing Committee of a school cannot be challenged on the ground that it not being a "person" cannot claim a fundamental right under the Constitution. *Sribatsha v. Secondary Education Board*, AIR 1969 Orissa 30 : 34 Cut LT 1162 : ILR 1968 Cut 888.

Groups of individuals known and recognised by law as in entity, for all purposes of the General Clauses Act would be "the person" and nothing else. Criminal Prosecution by unregistered body.— The word "person" is not defined in the Code of Criminal Procedure, though Section 11 of the Penal Code defines a "person" as including any company or association or body of persons whether incorporated or not. Therefore, a criminal complaint filed by a Chairman of an unregistered body is

competent, and the provisions of the Civil Procedure Code, with regard to suits, by or against companies, Corporations, and firms have no relevance to prosecutions, under the criminal law. P. T. S. Saibabud v. P. Mangatyaru, 1978 Cri L J 1362 (AP) (1978) 1 Andh LT 355 : 1978 LS (AP) 130.

**"Public nuisance".**— In the Penal Code, "Public nuisance" has been defined thus :

"Section 268 : Public nuisance.— A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage."

It is settled rule that a private action is not maintainable in respect of a public nuisance, except by one who has suffered particular damage beyond that suffered by him in common with all other persons in view of the nuisance. *Bhagwan Singh v. Narottam Singh*, ILR 31 All 444 : 6 ALJ 499 ; *Gehanaji Binkes Patil v. Ganapati Bin Lukshuman*, ILR 2 Bom. 469 ; *Khaji Syad Hussain Saheb v. Ediga Narsinhappa*, 16 IC 962 : 23 MLJ 539. The act of stopping a highway and rendering thereby a detour necessary for a person would constitute special damage to entitle that person to institute suit. *Ramchandra v. Joti Prasad*, 8 IC 808 ILR 33 All 287, approving *Bhagwan Singh v. Narottam Singh*, ILR 31 All 444 and *Gehangji Binkes Patil v. Ganapathi Bin Lukshuman*, ILR 2 Bom. 469.

**"Rule".**— A rule means a rule made in exercise of the power conferred by an enactment. Similarly a regulation made under enactment is also rule and has the same force of law. However if the regulation are not framed by virtue of power given by an enactment but by a body by virtue of its power of management the same will not be treated as a rule. *Delhi Electric supply Undertaking v. G.P. Satsagi*, 1984 (1) Lab IC 54.

The Rules must always be consistent, *Secretary of State v. Firm Sheo Bhagwan*, AIR 1936 All 69 : 1936 ALJ 487. With the Act in pursuance of which they are framed. *Sohanpal Murna Lal, Firm v. East Indian Railway Co.*, AIR 1922 All 9 : 20 ALJ 31. Any rule inconsistent with the parent Act is ultra vires. *Chhoga Lal v. Secretary of State*, AIR 1933 Nag 261 : 29 Nag LR 333 (with reference to Rules framed under Section 47 of the Indian Railways Act) ; *Secretary of State v. Firm sheo Bhagwan*, AIR 1936 All 69 : 1936 ALJ 487 ; *Jalim Singh Katary v. Secretary of State for India*, ILR 31 Cal 951 : 8 CWN 725. No rule overriding the provisions of the Act can stay as valid. *District School Board of North Kanara v. Rameshwoar Gattu Naik*, AIR 1943 Bom. 268 ; 65 Bom. LR 480 ; see also *Har Dayal Dass Ray v. B. \* N. Rly Co.*, AIR 1929 Pat 296 : ILR 8 Pat 808.

A regulation is meant for public who must know the authority under which the regulation is made, and this should be made known to the public as soon as any regulation has been made so that they may decide whether they are bound by it or not. *State of U. P. v. Murtaza Ali*, AIR 1961 All 477.

**"Ship".**— Ship shall include every description of vessel used in navigation not exclusively propelled by oars. A "barge" is a large flat bottomed boat used for transporting heavy burdens on canals and rivers but is not generally an ocean-going vessel. It may or may not be fitted with an engine depending on its calibration and may be propelled by oars, sails or engines. These barges, however, belong to the family of boats, and not ships. However definition of vessel under section 3 (63) includes both ships and boats also. *Pandu Ronga T. Industries v. Union of India*, AIR 1992 SC 1194 (1992) : (1992) 2 SCC 635.

**"Sign".**— Signing means the writing of the name of a person on a document or paper. *Hindustan Construction Co., Ltd v. Union of India*, AIR 1967 SC 526 at p 527 : 1967 SCD 767. The insertion of the name of the person signing is sufficient to authenticate the instrument. *J. & D. Eziekeil Co. v. Annoda Charon Sen*, AIR 1923 Cal 35; 37 at p. 38 : 36 Cal LJ 109 (DB).

Whenever the maker of an instrument or his agent acting with authority introduces the name of the maker with a view to authenticate the instrument as the instrument of the maker, such an interdiction of the name is a sufficient signature. *Mathw a Das v. Babu Lal*. ILR 1 all 683, 685 at p 686 ; see also *Gangadharrao v. Shidramappa*, ILR 18 Bom. 586 ; see *Thangrajan Murthiyar v. Sadan andan Ambalakarar*, AIR 1955 NUC (Mad) 3159 (Such document held as evidence of fact of payment as well as acknowledgment of payment.).

Since the word "sign" includes a mark, an attesting witness can validly attest a will by placing his mark. *Kabiram v. Anandiram* AIR 1952 Assam 93 ; ILR 4 Assam 141.

Touching the pen by an illiterate person and authorising the other person to sign by writing his name in his presence may constitute signing. *Rajani Mandal v. Digindra Mohan*. AIR 1932 Cal 440.

The "Thumb mark" would not fall within the definition of sign in Section 3 (56) of the General Clauses Act. *Maqsood Khan v. Lala Balwant Prasad*. AIR 1982 All 41 : 1981 All CJ 510 : 1981 All WC 871 : (1981) 7 All Lr 568 : 1982 UPLT (NOC) 24 : (1982) 1 Civ LJ 560.

In the case of *Jenkyns v. Gaisford*, (1863) 11 WR (Eng) 854. the Judges indicate that the use of the pen and ink was not necessary for signing. A person may sign or put his name down by means of types, or, if he uses a facsimile for signing his name, may use it for his signature. *Gopal Das v. Ghisalal*, AIR 1957 Raj 264.

The definition given in the Clauses is neither exhaustive nor complete. Therefore, the definition does not apply to the term "Sign" in section 67 of the Evidence Act, 1872. *Panna Lal v. State*, 1960 Raj LW 521.

In its ordinary acceptation it means signing the name at the foot. *Gangadharrao Venkatesh v. Shidramappa Balappa Desai*, 1894 ILR 18 Bom. 586, 590 ; see also *Sada Sook Aggarwala v. Baikanta Nath Basunia* ILR 31 Cal 1943 (Intention). The insertion of the name, in any part of the writing, in a manner to authenticate the instrument is sufficient. Although the signature be in the beginning or middle of the instrument, it is as binding as if at the foot of it. *J. D. Exiekel Co. v. ammodo Charan Se*, ILR 50 Cal 180 ; AIR 1923 Cal 35 at p 38 ; *Uma Shanker v. Gobind Narain*, ILR 46 All 892 ; AIR 1924 All 855 (name of the firm put in the heading of the letter by the munim); such signature was held good also in cases of *Mathura Das*, ILR 1 All 683 and *Mohesh Lal*, ILR 6 Cal 340 ; 7 CLR 121.

If a statute requires personal signature of a person which includes a mark, the signature or the mark must be that of the man himself. There must be physical contact between that person and the signature or the mark put on the document. If, on a construction of a statute, signature by an agent is not found permissible then the writing of the name of the principal, by the agent, however, clearly he may have been authorised by the principal, cannot possibly be regarded as he signature of the principal for the purposes of that statute. *Commissioner of Agricultural Income-tax v. Kesab Chandra Mandal*, 1950 SCR 377.

A will is validly attested if an illiterate attesting witness makes his mark or thumb -impression on it. *Annu Bhujanga v. Rama Bhujanage*, AIR 937 Bom. 380 ; *Sangita Bapuji v. Ambabal Sangia*, AIR 1953 Nag. 266 ; *Kabiram v. Anandiram*, AIR 1952 Assam 93 at p 94 ; ILR (152) 4 Assam 141 (DB) ; *Maikoo Lal v. Santoo*, AIR 1936 All 576 at p 578 ; 1936 All LJ 786 (FB) ; In *Gulam Mohiuddin v. Shanker*, AIR 1924 Nag 159 . *Baker, JC* admitted the making and touching the pen of the writer by a person belonging to illiterate cases although that person was in fact literate. But in *Sada Nanda v. Emperor*, ILR 32 Cal 550. their Lordships of the Calcutta High Court refused to take into consideration a confession made by the accused under section 164, Cr. P. C. when though literate, he had merely thumb-marked it.

**"son".**— Minor adopted son has been held to be included in the definition of "dependent" provided the adoption is permitted under the personal law applicable to be deceased. *Ibid.*

**"State Government" : Scope.**— The expression "State Government" as defined in this clause means the authority or the person authorized at the relevant date to exercise executive Government in the State and after the commencement of the Constitution. *Man Sigh Suraj Singh Padvi v. State of Maharashtra*, (1968) 70 Bom. Lr 654 ; ILR (1968) Bom. 584 at p 631.

In *Gullapalli Nageshwar Rao v. Andhra Pradesh State Road Transport Corporation*, AIR 1959 SC 308 ; (1959 Supp (1) SCR 319 the Supreme Court had observed :

A State Government means the Governor, the executive power of the State vests in the Governor; it is exercised by provisions of the Constitution.

The advice tendered by a Minister to the Governor and the mere decision taken thereon would not amount to an order of the Government unless the same is embodied in a formal order proceedings on the authority of the Governor. *Pioneer Motors Ltd. v. (M/s.) O.M.A. Majeed*, AIR 1957 Mad 48 at p 57 : 1956 mad LJ 430 (DB).

The "Government", spoken of in Section 196-A, Criminal Procedure Code, Reference is to section 195-A of the Old Code of 1898, means the Governor acting on the advice of the Council of Ministers, or on the advice of the individual Minister to whom the Department concerned has been allocated under the Rules of Business framed by the Governor. In the ultimate analysis it may also mean a Secretary to the Government to whom the transaction of that business has been delegated by the Minister concerned or by a standing order or otherwise in accordance with the Rules of Business framed by the Government.

If the Order is passed by the Secretary to Government who was authorized by a standing order in accordance with the rules of business as required and is further authenticated in accordance with the rules of business, then this order would be considered to be the order of the State Government.

A Government, according to the definition in section 3 (60) of the General Clauses Act, means, in a State, the Governor, and in a Union Territory, the Central Government, as regards anything done or to be done.

**Governor when distinct from executive.**— Where a communication addressed to detenu was issued not in the name of the Governor but had referred only to the decision taken by the State Government to continue the detention, it was held that detention was not valid. *Tara Singh v. Director, Consolidation of Holdings*, AIR 1958 Punj 302 ; see also *Harikrishan Singh v. State of Punjab*, AIR 1964 punj 198.. An order passed by the Home Minister, will be deemed to be an order by the State Government.

A Vice-Chancellor is appointed by the Governor in his capacity as the Chancellor of the University distinct from his office as the head of the executive, and the appointment cannot be deemed to have been made, by, nor can the office of the Vice-Chancellor be said to be under the State Government by virtue of the appointment having been made by the Governor in another capacity. *Joti Prasad v. Kalka Prasad*, AIR 1962 All 128 ; *Province of Bombay v. Khushal Das S. Advani*, AIR 1950 SC 222 at p 236 : 1950 SCJ 451.. Immunity against suits enjoyed by Governor not enjoyable by Chancellor.

**"State Government" and "appropriate Government".**— In the light of the definition of "State Government" given in this clauses, the "appropriate Government" or "State Government" cannot be considered as an identical institution at all times. Different Governments at different times will constitute the "appropriate Government".

**"Vessel".**— Vessel shall include any ship or boat or any other description of vessel used in navigation. The definition of vessel is wide enough to include a ship which is mechanically propelled. Boats whether propelled exclusively by oars or fitted with engines, come within the definition of vessel. *Pandurongo T. Industries v. Union of India*, AIR 1992 SC 1194 (1199) : (1992) SCC 635.

**"Will".**— A "will" is one of the most solemn documents known to the law. By it a dead man entrusts to the living the carrying out of his wishes. *Ram Gopal Lal v. Aipna Kunwar*, ILR 44 All 495 : AIR 1922 PC 366 a mere authority to adopt, though revocable and taking effect only on the death of the person conferring the authority, cannot be considered a "will". 491 IC 929, 931.

The chief characteristics of a will are-

- (i) it takes effect after the death of the testator ;
- (ii) it is of an ambulatory nature which can be modified or altered at any time by the testator ;
- (iii) it must be revocable during the lifetime of the testator.

Where there are clear words or desire, it is not permissible for a court to ignore them and hold that it is not a will on the ground that the will was invalid or for the reason that even if the will had not been executed, the same legal consequences would follow. For the purpose of the constitution of a will, the validity of the will or its clauses must be ignored. *ILR 44 All, 495, 1953 MWN 242.*

Though attestation on a document is otherwise a matter only of procedure. Yet, the attestation on will by witnesses is essential, since a will can be proved only by examining its attesting witness or witnesses. *AIR 1930 All 561, 567.*

**"Year".**— If there is nothing else to guide the Court in the particular case, regarding the year, then the year has to be taken as a calendar year. *Rukmiti Devi Kabra v. Narendra Kumar Sukh Chand Sha*, 1979 MPLR 746 : 1979 Jab LJ 735 at p 737 (DB). It is well known that regarding land the annual income is understood usually to be the income from the revenue year or cultivation year, unless the parties have contracted otherwise, or unless there is something in the context to show that anything different was meant. So too, there are the financial year, the income-tax year and several other years, apart from the calendar year recognised for various purposes, in spite of the General Clauses Act. *Subrahmanyam v. Lakshmi Narayanamma*, AIR 1949 Mad 415 : *Ghasiram v. Hargobind*, ILR 28 All 411.



**4. Application of foregoing definitions to previous enactments.**— (1) The definitions in section 3 of the following words and expressions, that is to say, "affidavit", 1 [advocate], 2\*\* "District Judge", "father", \*3\*\*\*\*\* "Immovable property", "imprisonment", "Magistrate", "month", "moveable property", "oath", "person", "section", "son", "swear", "will" and "year" apply also, unless there is anything repugnant to the subject or context, to all 4 [Acts of Parliament] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet", "chapter", "commencement", "financial year", "local authority", "master", "offence", "part", "public nuisance", "registered", "schedule", "ship", "sign", "sub-section" and "writing" apply also, unless there is anything repugnant in the subject or context, to all acts of Parliament and Regulations made on or after the fourteenth day of January, 1887.

1. The word "advocate" was substituted for "barrister" by P.O. No. 147 of 1972, art 5.
2. The words "British India", "G. of I", "High Court" and "L.G." rep. by A.O. 1937.
3. The words "Her Majesty" or "the Queen" rep. by the Repealing and Amending Act, 1919 (XVIII of 1919), s. 3 and Sch. II.
4. Subs. by P.O. No. 147 of 1972, art. 5.

### Scope and applications

Notice to quit must terminate with the end of the month of tenancy-Rent note mentioning both Hindi Miti and English date for commencement of tenancy-Tenancy held was governed by English calendar in the absence of anything specific in the rent note to show that it was to be governed by Hindi calendar. AIR 1955 NUC (Madh Bha) 69 (DB).

**Opium Act (1878), S. 9 (a).**— Sentence of imprisonment awarded under S. 9 (a) may be rigorous or simple in view of Section 3 (26) read with S 4 (1), General Clauses Act. 1960 Cr LJ 1126 : AIR 1960 Orissa 139 (DB).

One of the Important definitions made applicable to earlier Acts by S. 4 is that of "month" an equally important is the definition of "year". Both the definitions are made applicable, inter alia, to the T. P. Act, 1882 by virtue of S. 3 (1). 1954 Madh LBJ (HCR) 70 (73) : A 1955 NUC (Madh B) 69 (DB).

With reference to Section 9 (a), Opium Act. 1878, it has been held that the sentence of imprisonment awarded thereunder may be rigorous or simple. This follows from S. 3 (27) applied by S. 4 (1) to earlier Central Act. A 1960 Orissa 139 (140) : 1960 Cri LJ 1126.

Where the question was whether imprisonment as provided for in section 9 of the Opium Act, 1878, should be simple or rigorous, it was held that since that Opium Act was

passed in 1878, that is after the 3rd day of January, 1868, section 4 (1) of the General Clauses Act did apply to it and in accordance with the definition given in section 3.

(27) of the General clauses Act, the sentence of imprisonment under section 9 of the Opium Act, could be rigorous or simple. *State v. Chauthmal*, AIR 1960 Orissa 139.

The expression "Minister of State", as used in S. 133 (1) (ix) of the Civil P. C. 1908 is not defined any where in the General Clauses Act, 1897. However, the expression "State" has been defined in S. 3 (58) of the General Clauses Act, 1897. Accordingly by virtue of S. 4 thereof, the expression "Ministers of States" in Cl. (ix) of Section 133 (1) of the Civil P. C. 1908 would include the chief Minister so as to entitle him to claim exemption from personal appearance in Court, (1974) 2 Mad LJ 46 : (1974) 87 Mad LW 417 (422).

**1[45. Application of certain definitions to all Bangladesh laws.—** (1) The definitions in section 3 of the expressions 2\*\*\*\*\* 3[Act of Parliament] 3\*\*\*\*\* 3\*\*\*\*\* "Chief Revenue Authority", 4["Gazette", "Government", "Government contracts", "Government debts", "Government grants", "Government liabilities", "Government property", "Government securities", "High Court", 5[High court Division] 8\*\*\*\*\*6\*\*\*\*\* 7\*\*\*\*\*"official gazette", 8[Bangladesh laws] 8\*\*\*\*\* and "9[suits by or against Government]" apply also, unless there is anything repugnant in the subject or context, to all 10[Bangladesh Laws].

11(2) In any 12[Bangladesh law], references to the 13[Government] in any provision conferring power to make appointments to the civil service of, or civil posts under, the 14[government] include references to such person as the 15[government] may direct, and in any provision conferring power to make rules prescribing the conditions of service of persons serving 16[the government in a civil capacity] include references to any person authorized by the government to make rules for the purpose.

(3) The references in any Bangladesh law to servants of or under, or to service of or under, 17[the Government], to property of, or belonging to, or vested in, the 18[Government], and to forfeitures to the Government shall be construed as references respectively to persons in the service of the government, to the service of the government, to property vested in the 19[government] and to forfeitures to the government.

1. Ins. by A.O. 1937.
2. The words "British India", "Central Government", "Central Legislature" were omitted by P.O. No. 147 of 1972, Art. 6.
3. The words "Act of Parliament" were substituted for "Central act", *ibid*.
4. The words "Chief Controlling Revenue authority" have been omitted and shall be deemed to have been so omitted on the fourteenth day of October 1955, by the Repealing and Amending Ordinance, 1965.
5. The original words "Crown contracts", "Crown debts", "Crown grants", "Crown liabilities", "Crown property", "Crown Representative", "Crown revenues", "Federal Government", "Federal Railway Authority", "Gazette", "Government", were first amended by the Pakistan (Adaptation of Existing Pakistan Laws) Order, 1947.
6. The words "High Court Division" were inserted after the words "High Court" by P.O. No. 147 of 1972 art. 6.
7. The words "India", "Indian State", and "Provincial Government" were omitted, *ibid*.
8. The words "Indian Laws" were omitted by the Pakistan (Adaptation of existing Pakistan Laws) Order, 1947.
9. "Pakistan Laws", "Bangladesh Laws" were substituted for the words "Pakistan Laws" by P.O. No. 147 of 1972, art. 6.
10. The original words "suits by or against the Crown" were first substituted by A.O. 1961, art. 2 and Sch..
11. Cl. s. 241 of the G. of 1 Act. 1935 (26 Geo. 5. c. 2).
12. The words "Bangladesh law" were substituted for the words "Pakistan law" by P.O. No. 147 of 1972, art. 6.
13. The word "Government" was substituted for the words "Provincial Government or Central Government", *ibid*.
14. The word "Government" was substituted for "State" *ibid*.
15. The word "Government" was substituted for the words and commas "Provincial Government or the central Government, as the case may be," by P.O. No. 147 of 1972.
16. Subs. by A.O. 1961 for "His Majesty in a Civil Capacity in Pakistan". The word in crotchets was substituted by G.G.O. 20 of 1947 Sch. for "India".
17. The words "the Government" were substituted for "A government or a Province" by P.O. No. 147 of 1972.
18. The word "Government" was substituted for "Secretary of State in Council or a Government or a Province", *ibid*.
19. Subs. by A.O. 1961 Art. 2 and Sch. for "Crown".

### Scope and applications

**Government" and "the Government" occurring in State legislation—Meaning of.**—As far as the General Clauses Act stands, there is no definition of the expression "the Government" which applies to State laws. Section 4-A of the General Clauses Act only refers to the expression "Government" and not to the expression "the Government". If a State legislation refers to "the Government", ordinarily that expression would mean the Government of that particular State; it is only when the State Legislation would refer to "Government" and not, "the Government" that Government in that indefinite sense would mean both the Central Government and the State Government and, therefore, there was good reason why by S. 4-A both the expressions "Government" and "the Government" were not made applicable. AIR 1953 Bom. 170 (DB).

As far as the General clauses Act stands, there is no definition of the expression "the Government" which applies to State laws as such. A 1953 Bom. 170 (171) : 54 Bom. LR 927.

By the adapted Section 4-A of General Clauses Act, it was provided that the definition of the expression "State

Government" shall apply (unless there is anything repugnant in the subject or context) to all repugnant in the subject or context) to all laws. A 1954 Kutch 42 (46) : 1954 Cri LJ 1699.

A bill becomes effective on the day of its passage or enactment into law, unless there is a constitutional or general statutory provision to the contrary or unless the legislative authority has given a contrary indication. 73 Am. Jur 2d. page 491, 492 Paragraphs 360, 361.

Section 3 of this Act states that the definitions given thereunder should apply, unless there be anything repugnant in the subject or context, to all Central Acts, and Regulations, meaning thereby that the definitions given under Section 3 of the General Clauses Act, have no application to the State Acts. Section 4-A has merely grafted an exception to the above general statement, and provides that although the entire set of definitions contained in section 3 may not be applicable to the laws other than the Central Acts and Regulations, yet such of them as are enumerated in section 4-A, Shall have application to all laws provided, of course, there is nothing repugnant in the subject or context.

Section 4-A only refers to the expression "Government" and not to the expression "The Government". If a State legislation refers to the "Government, ordinarily that expression would mean the Government of that particular State ; it is only when the State legislation would refer to "Government" and not "the Government" that "Government" in that indefinite sense would mean both the Central Government and the State Government. Therefore, as far as the General Clauses Act stands, there is no definition of the expression "the Government" which applies to State Laws. Rampratap Jaidayal v. Dominion o India, AIR 1953 Bom. 170 at p 171.

In U. S. A. Acts of the Congress take effect from the date of passing. When no other time has been fixed therein. In such a case the law needs no "promulgation" for its operation. 73 Am. Jur 2d, Page 494, Paragraph 361 citing-

In England there arose legal fiction before 1973 that an Act of Parliament took effect from the first day of the session in which it was passed. This fiction was itself based on the fiction that the whole session constituted one day. To eliminate this fiction which caused serious hardship Parliament, by state, enacted that when no other time is provided for the commencement of an Act, the date of passing of the Act and the receipt of royal assent as endorsed by the clerk of Parliament should be the date of its commencement.

Sub-section (1) is concerned with the date of commencement, while sub-section (3) is concerned with the time of commencement. Sub-section (3) is, however, wider in its application than sub-section (1). In the first place, it covers a Central Act as well as a Regulation, while sub-section (1) is confined to Central Acts. Secondly, sub-section (3) is applicable not only where the case falls within sub-section (1) i. e., a statute coming into force on the date of assent-but also where

the Central Act or Regulation comes into force otherwise than on the date of assent, that is to say, even where the Act or Regulation is expressed to come into operation on a particular date and is thus outside sub-section (1). This rule, of course, is subject to the opening words "unless the contrary is expressed", occurring in sub-section (3).

In order that sub-section (1) may apply, the following conditions must be satisfied : (i) The law must be a Central Act. (ii) It may be a Central Act made before the commencement of the Constitution, or it may be an Act of Parliament. The section is not specific as to whether "Act of Parliament" would include a constitutional amendment.

**Possible dates of commencement of legislation.**— Where the Legislature has provided neither the date of commencement of an Act nor the machinery for determining it, then section 5 (1) of the General Clauses Act takes over and by virtue of its operation the Central Act in question comes into force on the date of assent. By providing a uniform rule the section avoids the necessity of the Legislature providing in each Act that the Act shall come into force on the date on which it receives the assent of the President.

**Date of assent.**— The rule in S. 5 (1) applies to all "Central Acts" A 1933 All 152 (152) : 1932 All LJ 384 (DB).

The rule in S. 5 (1) covers an Act of the Legislature, e. g. the Limitation Act. 1908. (1913) 9 Nag LR 49 (53) : 19 IC 518.

The rule applies to an amending Act also, which is silent as to the date of its coming into operation. A 1956 Hyd 56 (57) : ILR (1955) Hyd 818 (DB).

A different rule may apply if the General Clauses Act is not made applicable to the law in question. 1954 Raj LW 550 (551) : A 1955 NUC (Raj) 4073 (DB).

Where the General Clauses Act applies—e.g., where the Act is a Central Act—it is not necessary that the Central Act must be re-published in the State Gazette for the purpose of the legal application of the Act of the State. A 1956 Manjpur 25 (26) : 1956 Cri LJ 1008.

A State Act comes into force on date of assent where the State law applied the provisions of the General Clauses Act, 1897 for the interpretation of State Acts. A 1953 Raj 123 (125) : 1953 Raj LW 181 (DB).

Where the date of commencement is not mentioned, the statute commences on the date of assent. (1974) 78 Cal WN 706 (709, 710).

**Date of publication and constitutional position as to publication of laws.**— Section 5 itself does not provide for the publication of a Central Act, and, so far as its text goes, the assumption made that a Central Act comes into force on its publication in the Gazette A 1956 Manipur 25 (26) : 1956 Cri LJ 1008.

In many state constitutions of U.S.A the operation of a statute from the time of its passage (which is the general presumptive rule) may be prevented by constitutional requirements of publication. 73 AM jur 2d page 497.

In the absence of any special law or custom, it would be against the principles of natural justice to permit the subjects of a state to be punished or penalised by laws of which they had no knowledge and of which they could not, even with the exercise of reasonable diligence, have acquired that knowledge natural justice requires that before a law can become operative, it must be promulgated or published or promulgation or publication of some reasonable sort is essential. A1951 SC 467(468) 1952 Cri Lj 54 1951 SCJ 735.

Apart from the date of assent or date of publication, a subsequent date for the coming into force of an enactment may, in theory, be fixed or left to be fixed by the authority enacting a law. A law so depending on a contingency is a "floating enactment". 73 Am Jur 2d Page 497, paragraph 365 and page 274 paragraph 8.

A law may contemplate different dates for its commencement in different areas. An Act can commence in a particular area only on the date on which it comes into force in that area. The mere fact that the Act was in operation in some other area will not result in its having commenced in the area, where it has not yet been applied to that area in conformity with the provisions contained in the Act. A 1969 SC 751 (761) : (1969) 2 SCJ 147.

An Act may contemplate only one notification for bringing the Act into force throughout the area in which it is intended to be in force. Once that notification is issued and the Act is brought into force in that area, the power of the Central Government to issue any notification in that behalf is exhausted. Any Act by which the aforesaid Act is extended to the new area has itself to provide the manner in which it can be brought into force in the new area. Even otherwise, the power to issue a notification to bring an Act into force is a delegated power and the legislature is competent to subsequently enact when extending the Act to a new area, that, it shall come into force immediately and so take away the delegated power by necessary implication. A 1961 Madh Pra 353 (353) : 1061 MPLJ 1244 (DB).

Section 5 clearly provides that a Central Act comes into operation on the date on which it receives the assent of the President only if the date of coming into operation of the Act is not expressed therein. A 1964 All 339; 1963 All LJ 1108.

An enactment be taken to have come into force on the date on which it was published in the Gazette, by virtue of S. 2 of the Travancor-Conchin Interpretation and General Clauses Act 1960 Ker LT 1070 : 10959 Kehr LJ 1155 (1157).

The expression "at once" used in a State Ordinance has been construed to mean the date of its promulgation and not the date of publication in the State Gazette. A 1955 Raj 151 (153) : 1955 Raj LW 381 (FB).

A law, whether it is civil, criminal or, for the matter of the, revenue, before it becomes effective, must be published. A 1954 Madh Bha 196 (205) : 1954 Madh Bha LJ (HCR) 1413 (DB).

In France, it is declared that laws are executory throughout all French territory by virtue of their promulgation being made by the President of the Republic. See Article 10. of the French constitution of 4th October, 1958.

In the absence of an express provision or necessary implication, courts lean against giving retrospective operation to a statute. The provisions of an Act are to be applicable from the date on which it comes into force and are not retrospective unless it is so specifically provided by that Act. A 1954 Pat 70 (71) : 1953 BLJR 501 (DB).

In France, the Civil Code lays down specifically that "legislation only provides for the future; it has no retroactive effect". Article 2, French Civil Code.

In India, courts lean against retrospective operation. However, circumstances may indicate that the law is retrospective. A 1963 Mad 175 (178) : (1963) 1 Mad LJ 46 (FB).

**Commencement - Operation and application.**— In fact, S. 22 of the General Clauses Act expressly confers powers to make rules etc. on certain matters with reference to a Central Act or Regulation, "which is not to come into force immediately on the passing thereof" and the marginal note thereto uses the expression "commencement of enactment". Thus "coming into force" would be a better expression than "coming into operation". A 1969 SC 880 (882, 883) : (1969) 2 SCJ 270.

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has not validity. A 1970 SC 398 (401) : (1970) 1 SCJ 375.

The word "commencement" used in a State Act, with reference to a particular area to which the Act was extended by notification, must be interpreted to mean the date on which the Act becomes applicable to that area. A 1953 All 686 (689) : 1953 All LJ 288 (DB).

An act may commence but may not have been applied. A 1957 SC 517.

There is no valid ground for making any distinction between "the date of the commencement of the Act" and "the date when the Act is applied to a particular area". With reference to a particular area to which the Act is applied "the date of commencement of the Act" is the date on which it is applied". A 1952 All 500 (501, 503) : 1952 All LJ 157 (DB).

Some of the State General Clauses Acts maintain a distinction between the words "Comes into force" and "comes into operation". 1950 All LJ 817.

Sub-s. (1) of S. 5 is confined to Central Acts as defined in S. 3 (7) of the Act and is not by its terms, applicable to other laws. This is for the reason that in the case of Union laws (such as Ordinances) other than "Central Acts" as defined in the Act the question of "assent" of the Governor General or of the President

to them does not arise. The President himself is the law making authority when he promulgates an Ordinance or makes a Regulation. He is not merely an assenting authority.

Where by an Act of Legislature power is conferred upon the Government to application a day from which the Act would come into force, the Act becomes an existing law and at least the provision regarding the commencement of Act comes in force on its passing. A 1957 Madh Pra 60 (66) : 1957 Jab LJ 170.

If the Act does not specify any date of commencement but requires a notification to be issued for imposition of tax, the effect of the omission of the date in the notification would be to bring into operation from the date of the publication of the notification. A 1959 Madh Pra 82 (83) : 1958 MPLJ 529 (FB).

Enactment of statute is not the same as its taking effect as law. Statutes do not always take effect as soon as enacted; the effective date may be postponed either by virtue of their own provision or by terms of the general law or a constitutional requirement upon the subject. A 1952 Madh Bha 143 (144) : 1952 Cri LJ 1216.

**Ordinances and regulations.**— The date of commencement of Ordinances and Regulations if not otherwise laid down therein, would be the date of promulgation of making, as the case may be.

A State Ordinance not expressed to come into force on any particular day comes into force on the date when it was first published in the State Gazette. A 1957 All 457 (483) : 1957 All LJ 654 (FB).

**Statutory rules and orders of a legislative character.**— The Reserved Posts (I. C. S.) Rules, 1938 which were framed on the 27th October, 1938 and published in the Official Gazette on the 17th December, 1938 came into force in the date on which they were framed, there being no good reason why they should not come into force as soon as they were framed. A 1959 All 393 (398) (DB).

Rule 1 (3) framed under the Prevention of Food Adulteration Act, 1954 having been amended by notification S. R. O. 1202 of 10th May, 1956 published in the Calcutta Gazette of 19th July, 1956, the amended Rule must be deemed to have been in existence from the original making and publication of the rule. 1958 Cri LJ 169 (2) (171) (Cal).

A notification comes into force on the date of its own publication, unless specifically stated otherwise. A 1966 Punj 4 (9) : 1965 Pun LR (Supp) 183 (FB).

An order giving rise to offences must be strictly construed and failure on the part of the authority issuing the order to lay down any date as the date of its commencement must lead to the result that the order cannot be deemed to have come into operation. 1966 All LJ 796 : 1966 All Cri R 173 (176) (DB).

Section 5 is not applicable to executive orders. A 1969 All 184 (186) : 1969 Cri LJ 456 (2) : 1968 All 184 (186).



An administrative decision, if it does not affect the right of any one, need not be published. 1974 Serv LJ 117 (121) (Delhi).

**Fractions of time.**— The income-tax (Amendment) Act (7 of 1939) which came into force on 1st April, 1939 must be deemed to have come into operation at the point of time immediately on the expiration of 31st March, 1939 A 1966 SC 1433 (1435) : (1966) 1 SCJ 607.

**Sub-ordinate legislation.**— The question as to the time when the notification under an Act can be said to have come into force has to be decided on the general principles. A 1953 Madh Bha 245 (246) : 1953 Cri LJ 1975 (FB).

**Judicial orders.**— Section 5 (3) of the Act has no application to a judicial order. The word "date" in O. 21, R. 54 (3), of the Civil P. C. must be interpreted to mean "time". Where a person makes a transferee of property long before the proclamation of order of attachment under O. 21, R. 45 (2), and, as such, long before he has come to have any knowledge of such an Order, he would not be bound by the prohibition contained in the order, although the order may have been passed on the date. A 1939 Al 154 (155) : 1939 All LJ 7.

### GENERAL RULES OF CONSTRUCTION

**1[5. Coming into operation of enactments.**— (1) Where any act of Parliament is not expressed to come into operation on any particular day, then it shall come into operation,

(a) in the case of an act of parliament to which this Act was applicable before the 26th day of March, 1971, on the date on which it receives the assent; and

(b) in the case of any other Act of Parliament, the day on which the assent is first published in the official gazette;]

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(3) Unless the contrary is expressed, <sup>3</sup>[an Act of Parliament] or Regulation shall be construed as coming into operation immediately on the expiration of the day proceeding its commencement.

<sup>4</sup>[5A. [Coming into operation of Governor-General's Act.]

Omitted by the Pakistan (Adaptation of Existing Pakistan Laws)

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1. Subs. by P.O. No. 147 of 1972 Art. 7.
  2. Sub-section (2), which was first substituted by the repealing and Amending act, 1917 (XXIV of 1917), s. 2 and sch. 1 and then amended by A.O. 1937 and the Pakistan (Adaptation of Existing Pakistan Laws) Order, 1947 Sch. omitted by A.O. 1961 art. 2 and Sch.
  3. Subs. by P.O. No. 147 of 1972 Art. 7. for "a Central Act".
  4. Section 5A was inserted by A.O. 1937.
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### Scope and applications

**Promulgation and publication of law-Necessity of-Difference between Acts and Orders in respect of publication.**— In the absence of any special law or custom, it would be against the principles of natural justice to permit the subject of a State to be punished or penalized by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognizable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. In the absence therefore, of any law, rule regulation or custom, a law cannot come into being by merely passing a by merely passing a regulation without promulgation or publication in the Gazette or other means. Promulgation or publication of some reasonable sort is essential.

In this respect the difference between an order and an Act is obvious. Acts of the Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Proclamations and Orders of appropriate authorities. There must, therefore, be promulgation and publication in their cases. The mode of publication can vary. But reasonable publication of some sort there must be : (1918) 1 KB 101 ; AIR 1944 Nag 40 ; AIR 1944 Sind 142 and AIR 1945 Nag 218 Ret. Harla v State of Rajasthan. 1952 Cr LJ 54 : 65 Mad L W 2.

Rules came into force as soon as they are framed and not when they were published in Gazette. AIR 1959 All 393 (DB).

An ordinance promulgated by the Government will come into operation from its first publication in the Gazette, unless it be definitely mentioned in the ordinance that it will come into force from any subsequent date. Adarsh Bhandar v. Ssles Tax Officer. 1957 All LJ 654 : (1957) 8 STC 666.

The amended rule must be deemed to have been in existence from the original making and publication of the rule. 1958 Cr L J 169 (2) (Cal).

(Amendment) Act, is silent as to the date of its coming into operation, it came into force on the date when the President gave his assent. AIR 1956 Hyd 56 (DB):

**Application to set aside execution sale pending at commencement of Act-When can application be said to be so pending.**— The expression "pending at the commencement of the Act" connotes the idea, that the petition should have been filed earlier in point of time than the time of the commencement of the Act and that the petition should not have been disposed of before the commencement of the Act. 1959 Ker LJ 1155.

**Law-Publication-Necessity of.**— Law whether it is civil, Criminal or for the matter of that revenue, before it becomes effective, must be published. Madh BLR (1955) Civil 7 : Madh BLJ 1954 HCR 1413 : ILR (1955) Madh Bha 75.

Per-existing disputes to be governed by appropriate law in force at the time unless indicated to the contrary in the Code. 1960 Jab LJ 998.

**Appeal.**— Right of appeal vested at start of proceeding is taken away by change-Commencement of Act-Date of commencement postponed-This may indicate that operation of amendment is retrospective. AIR 1963 Mad 175 (FB).

The provisions of an act are to be applicable from the date it comes into force and not retrospectively unless it is so specifically provided by that Act. AIR 1954 Pat 70 (DB).

**Notification-When comes into force.**— Comes into force on date of its own publication, unless specifically stated otherwise. AIR (1965) 1 Punj 775 : 1965 Pun L R (Supp) 183.

**Amendment comes into force from commencement of Ordinance.**— Effect of amendment is that notification extending operation of ordinance, issued subsequent to commencement of Ordinance, became useless. Promulgation and publication-Distinction pointed out-Ordinance came into force from date of its promulgation and not on date of publication. AIR 1955 Raj 151 (FB).

Public Safety-Preventive Detention (Extension of Duration). The order is ultra vires of the Constitution and cannot be invoked to validate an invalid detention. Showkat-un-nissa Begum. V State of Hyderabad, ILR (1951) Hyd 237 : AIR 1950 Hyd 20 (24 (Pt C) (Pr 19) (FB).

**Applicability to notifications.**— Section 5 (3) only applies to the construction of Acts and Regulations and is not made applicable to any notification that may be issued under an Act. Mallojirao Shitole v. C. G. Matkar, 1953 Cr L J 1675 : AIR 1953 Madh Bha 245 (246) (Pt B) (Pr 4) (FB).

As regards words "come into operation", occurring in section 5 (1), it has been observed which reference to State of Rajasthan v. Mewar Sugar Mills Ltd., AIR 1969 SC 880 at pp 882, 883 : (1969) 2 SCJ 270 that the expression "come into force" is better than "come into operation". The law, however, is that enactment's do not always come into operation as soon as they are enacted ; nor can a law be said to be in force, unless brought into force, either by legislative enactment or by exercise of authority by a delegate empowered to bring it into force. State of Orissa v. Chandrasekhar Singh, AIR 1970 SC 398 at p 401 : (1970) 1 SCJ 375, ILR 1967 Cut 333 : (1937) 33 Cut L 263. In case of central enactment's which do not specify any date for their coming into force but require a Notification to be issued for the purpose, the date of coming into force may be set in the Notification, and in case the Notification has also omitted to specify such date, the enactment will come into force from date of publication of the Notification. Ramji Lal v. Municipal Committee, Piparia, AIR 1959 Madh Pra 82 : 1958 MPLR 529 (FB) AIR 1951 Vindh Pra 39 : (1951) 2 STC 147.

All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not. (*M/s. Punjab Tin Sply co. V Central Govt.*, AIR 1984 SC 87 (93, 94) : (1984) 1 SCC 206 : (1984) 1 Rent CR 168 : (1984) 1 All Rent Case 80 : (1983) 2 Rent LR 681 : (1983) 2 Rent C 658 (SC).

An Act may commence, without having been applied. *Kedar Nath v. Kishan Lal*, AIR 1952 All 500 at p 501.

**Publication.**— In England, the rule is that Acts of Parliament become law from the first moment of the day on which they receive the Royal Assent, but Royal Proclamations only when actually published in the official Gazette. The mere enacting or signing of a Royal Proclamation is not enough. There must be publication before it can become law.

In the absence of any special law or custom, it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even, with the exercise of reasonable diligence, have acquired any knowledge. Natural justice requires that before a law can become operative, it must be promulgated or published. *Harla v. State of Rajasthan*, 1952 SCR 110. *Gwalior Sugar Co v. State of M.B.* AIR 1954. MB 196 : "Law, whether it is civil, criminal or for the matter of revenue, before it becomes effective, must be published".

An Act will come into force on the date that is fixed by the notification as provided in the Act and not at any time prior to it. *State of Bombay v. Narottam Jithoban*, AIR 1951 SC 69. If the statute does not specify any date from which it is to commence, the omission to mention the date does not invalidate the notification and the effect of the omission would be to bring into operation the provisions thereof from the date of the publication of the notification. If however, it requires any authority to specify a date for its commencement, the law will not come into effect until that date is fixed. *Ramjilal v. Municipal Committee, Piparia*, AIR 1959 Madh Pra 82 (FB0 : *State of U. P. v. Mahavir Prasad*, 1966 All LJ 796 1966 All Cr R 173 : *State of U. P. v. ratan Chand*, AIR 1966 All 526.

The rule as to assent, in clause (1) (a) applies to Central Acts, and even to an Amending Act, but it has no application to State Acts. 19 IC 518.

**Laws come into operation on date of publication.**— The provisions of an Act apply from date on which it comes into force, and unless so provided expressly by the Act, they are not retrospective. *Kishori Lal v. Debi Prasad*, AIR 1954 Pat 70(71) : 1953 BLJR 501. When no provision is made as to when an enactment is to come into operation, the law, whether Civil, Criminal or Revenue. Comes into operation on the date it is published in the official Gazette and not from the date of its publication, but when an Ordinance itself speaks that it shall come into force "at once" the same shall come into force on date of its promulgation, rather than on date of its publication in Gazette. *Girja Shankar v. Lalu*, Alr 1955 Raj 151 at p 153 : 1955 Raj LW 381 (FB) : AIR 1950 Mad 243 at p 246 : 51 Cri LJ 615 : (1949) 2 Mad LJ 663 (DB). AIR 1954 MB 196 (205), AIR 1950 MB 119. No date fixed for commencement-Act comes into force not at once but on date when assent is published.

If there is no specific statement in it from which date it is to come into force. Apparently it comes into force, if nothing else is said, on the date of its own publication.

**Orders of President come into force only after subscribing to the oath.**— An Act which comes into force on a particular day, it is deemed that it comes into force on the first moment of the day. That is to say, the day beings directly after midnight of the preceding day. *Commissioner of Income-tax, J & K. and H. P. v. Jadhva Mal Kuthiala*, AIR 1966 SC 1433, AIR 1948 Mad 288.

An order made a subordinate authority cannot be placed on the same footing as a law passed by the Central Legislature. *State v. Banshidhar*, 1968 All WR (HC) 204 : 1968 All Cr R 134 : 1968 All LJ 476 : 1969 Cr L J 456 (2) : AIR 1959 All 184.

Retrospective operation is not to be given to the provisions of an Act unless it is so specifically provided by that Act. *Kishori Lal v. Debi Prasad*, AIR 1954 Pat 70.

**In applicability as to the time of passing of order of court.**— The Section 5 (3) of the General Clauses Act deals with Acts of Parliament or Governor-General-in-Council and lays down that unless the contrary is expressed such Acts shall be construed as coming into operation immediately on the expiration of the day preceding their commencement but this section can not be applied to interpret the date and time of passing of order by court. A transferee taking transfer before the order of attachment passed on the same day is entitled for the priority. *Rameshwar Prasad v. Gaua Prasad*, AIR 1939 All 154 : 1939 ALJ 7.

**Power to extend Act.**— When an Act has contemplated only one Notification for its being brought into force in the area in which it is intended to be brought into force, the power of the Government to issue any Notification in that respect is exhausted by the issue of that Notification, and when the same Act is intended by another Act to be brought into force in a new area, that another Act has itself to provide for that mode. Explaining this position it has been observed in *Akhtar Abbas v.*

Assistant Collector, central Excise Bhopal. AIR 1961 MP 353 at p 355 : 961 MPLJ 1244 (DB). that the power to bring into force an Act is only delegated power, and in case the Act is intended to be brought into force in a new area immediately, the subsequent enactment for that purpose, in saying so, takes away by necessary implication, the delegated power.

Pre-existing disputes are to be governed by appropriate law in force at that time unless indicated to the contrary in the Code. Raghunah Singh v. Gangabai, 1960 Jab LJ 998 ; Bharat Singh Goverdhan Singh v. Additional Commissioner, Nagpur, 1961 Nag LJ 46 at p 48.

**Postponement of the Commencement of Act.**— Mere existence in a statute of a postponement clause affecting vested rights is not at all indicative of the intention of the Legislature for its retrospective operation; since there must be express words in the statute to the effect. Av. P. L. Ct. Ramanathan Chettiar v. N. L.P. Lakshman Chettiar, AIR 1963 Mad 175 : (1963) 1 MLJ 46.

**6. Where this act, or any <sup>1</sup>[Act of Parliament] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -**

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing act or Regulation had not been passed. ✓

1. Subs. by P.O. No. 147 of 1972, Art. 7 for "Central Act".

### Scope and applications

Only cases pending trials before a tribunal which had taken cognizance of the offence shall be tried by such tribunal when the amending law come into force changing the forum of trial. Sakya Pada Barua Vs. State. 38 DLR 1986(86).

Service when effected in the manner stated - Presumption of due services unless contrary is shown. Nurul Islam Vs. Abdul Malek. 38 DLR (AD) 1986(115).