

GENERAL DEFINITIONS

Section 3. Definitions—In this Act, and in all Central Acts 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 Indian Penal Code (45 of 1860);
- ✓(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;²
- ✓(3) 'affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;
- (4) 'barrister' shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;
- (5) 'British India' shall mean, as respects the period before the commencement of Part III of the Government of India Act 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India or through any governor or officer subordinate to the Governor-General of India, and as respects any period after that date and before the date of the establishment of the Dominion of India means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act 1935, shall not include a reference to Berar;

2 An 'act' includes any event which is subject to human will: Salmond, *Jurisprudence*, 11th edn, p 399.

- (6) 'British possession' shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a Central and a local legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one British possession;
- (7) 'Central Act' shall mean an Act of Parliament, and shall include—
- (a) an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution; and
 - (b) an Act made before such commencement by the Governor-General in Council or the Governor-General, acting in a legislative capacity;
- (8) 'Central Government' shall—
- (a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General in Council, as the case may be; and shall include—
 - (i) in relation to functions entrusted under sub-section (1) of section 124 of the Government of India Act 1935, to the government of a province, the provincial government acting within the scope of the authority given to it under that sub-section; and
 - (ii) in relation to the administration of a chief commissioner's province, the chief commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and
 - (b) in relation to anything done or to be done after the commencement of the Constitution, mean the President, and shall include—
 - (i) in relation to functions entrusted under clause (1) of article 258 of the Constitution, to the government of state, the state government acting within the scope of the authority given to it under that clause;
 - (ii) in relation to the administration of a part C state, before the commencement of the Constitution (Seventh Amendment) Act 1956, the Chief

- Commissioner or Lieutenant-Governor or government of a neighbouring state or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and
- (iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;
- (9) 'Chapter' shall mean a chapter of Act or Regulation in which the word occurs;
- (10) 'Chief Controlling Revenue Authority' or 'Chief Revenue Authority' shall mean—
- in a state where there is a board of revenue, that board;
 - in a state where there is a revenue commissioner, that commissioner;
 - in Punjab, the financial commissioner; and
 - elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Constitution, the Central Government, and in relation to other matters, the state government, may, by notification in the *Official Gazette*, appoint;
- (11) 'Collector' shall mean, in a Presidency town, the collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer-in-charge of the revenue administration of a district;
- (12) 'Colony'—
- in any Central Act passed after commencement of Part III of the Government of India Act 1935, shall mean any part of His Majesty's dominions exclusive of the British Islands, the Dominions of India and Pakistan (and before the establishment of those dominions, British India), any dominions as defined in the Statute of Westminster 1931, any province or state forming part of any of the said dominions and British Burma; and
 - in any Central Act passed before the commencement of Part III of the said Act, mean any part of His Majesty's dominions exclusive of the British Islands and of British India,

and in either case where parts of those dominions are under both a central and local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

- (13) 'Commencement', used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force;
- (14) 'Commissioner' shall mean the chief officer in charge of the revenue administration of a division;
- (15) 'Constitution' shall mean the Constitution of India;
- (16) 'Consular officer' shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent;
- (17) 'District Judge' shall mean the judge of a principal civil court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;
- (18) '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;
- (19) 'Enactment' shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;
- (20) 'Father', in the case of anyone whose personal law permits adoption, shall include an adoptive father;
- (21) 'Financial year' shall mean the year commencing on the first day of April;
- (22) 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;³
- (23) 'Government' or 'the Government' shall include both the Central Government and any state government;

³ Cf the definitions in s 52 of the Penal Code and s 2(h) of the Limitation Act 1963, which declare that absence of due care and attention is destruction of 'good faith'. But the definition in this section gives effect to the view that a careless man is not a dishonest man: Winfield, *Torts*, seventh edn, p 559.

- (24) 'Government securities' shall mean securities of the Central Government or of any state government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the government of any part B state;
- (25) 'High Court' used with reference to civil proceedings, shall mean the highest civil court of appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates;
- (26) '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;
- (27) 'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860);
- (28) 'India' shall mean—
- as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian ruler, and the tribal areas;
 - as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and
 - as respects any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India;
- (29) 'Indian law' shall mean any Act, ordinance, regulation, rule, order, bye-law or other instrument, which before the commencement of the Constitution, had the force of law in any province of India or part thereof, or thereafter has the force of law in any part A state or part C state or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;
- (30) 'Indian State' shall mean any territory which the Central Government recognised as such a state before the commencement of the Constitution, whether described as a state, an estate, a jagir or otherwise;

- (31) 'Local authority' shall mean municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the government with, the control or management of a municipal or local fund;
- ✓(32) '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;
- (33) '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;
- (34) 'Merged territories' shall mean the territories which, by virtue of an order made under s 290A of the Government of India Act 1935, were immediately before the commencement of the Constitution being administered as if they formed part of a governor's province or as if they were a chief commissioner's province;
- ✓(35) 'Month' shall mean a month reckoned according to the British calendar;
- ✓(36) 'Movable property' shall mean property of every description, except immovable property;
- (37) 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;
- ✓(38) 'Offence' shall mean any act or omission made punishable by any law for the time being in force;
- (39) '*Official Gazette*' or '*Gazette*' shall mean the Gazette of India or the *Official Gazette* of a state;
- (40) 'Part' shall mean a part of the Act or Regulation in which the word occurs;
- (41) 'Part A State' shall mean a state for the time being specified in part A of the First Schedule to the Constitution (as in force before the Constitution (Seventh Amendment) Act 1956); 'Part B State' shall mean a state for the time being specified in part B of that Schedule and 'Part C State' shall mean a state for the time being specified in Part C of that Schedule or a territory for the time being administered by the President under the provisions of article 243 of the Constitution;
- ✓(42) 'Person' shall include any company or association or body of individuals, whether incorporated or not;

- (43) 'Political agent' shall mean—
- (a) in relation to any territory outside India, the principal officer, by whatever name called, representing the Central Government in such territory; and
 - (b) in relation to any territory within India to which the Act or Regulation containing the expression does not extend, any officer appointed by the Central Government to exercise all or any of the powers of a political agent under that Act or Regulation;
- (44) 'Presidency town' shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be;
- (45) 'Province' shall mean a Presidency, a governor's province, a lieutenant-governor's province or a chief commissioner's province;
- (46) 'Provincial Act' shall mean an Act made by the Governor-in-Council, Lieutenant-Governor-in-Council or Chief Commissioner-in-Council of a province under any of the Indian Councils Acts or the Government of India Act 1915, or an Act made by the local legislature or the governor of a province under the Government of India Act, or an Act made by the provincial legislature or governor of a province or the Coorg Legislative Council under the Government of India Act 1935;
- (47) 'Provincial Government' shall mean, as respects anything done before the commencement of the Constitution, the authority or person authorised at the relevant date to administer executive government in the province in question;
- (48) 'Public nuisance' shall mean a public nuisance as defined in the Indian Penal Code;
- (49) 'Registered', used with reference to a document, shall mean registered in India under the law for the time being in force for the registration of documents;
- (50) 'Regulation' shall mean a Regulation made by the President⁴ (under article 240 of the Constitution and shall include a Regulation made by the President under Article 243 thereof and) a Regulation made by the Central Government under

the Government of India Act 1870, or the Government of India Act 1915, or the Government of India Act 1919, or the Government of India Act 1935;

(51) 'Rule' shall mean rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;

(52) 'Schedule' shall mean a schedule to the Act or Regulation in which the word occurs;

(53) 'Scheduled District' shall mean a 'Scheduled District' as defined in the Scheduled Districts Act 1874;

(54) 'Section' shall mean a section of the Act or Regulation in which the word occurs;

(55) 'Ship' shall include every description of vessel used in navigation not exclusively propelled by oars;

(56) '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;

(57) 'Son' in the case of anyone whose personal law permits adoption, shall include an adopted son;

(58) 'State'—

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act 1956, shall mean a Part A state, a Part B state or a Part C state; and

(b) as respects any period after such commencement, shall mean a state specified in the First Schedule to the Constitution and shall include union territory;

(59) 'State Act' shall mean an Act passed by the legislature of a state established or continued by the Constitution;

(60) 'State government'—

(a) as respects anything done before the commencement of the Constitution, shall mean, in a Part A state the provincial government of the corresponding province, in a Part B state, the authority or person authorised at the relevant date to exercise executive government in the corresponding acceding state and in a Part C state, the Central Government;

(b) as respects anything done after the commencement of the Constitution and before the commencement of the

Constitution (Seventh Amendment) Act 1956, shall mean, in a part A state, the governor, in a part B state, the *rajpramukh*, and in a Part C state, the Central Government;

- (c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act 1956, shall mean, in a state, the governor, and in a union territory, the Central Government;

and shall, in relation to functions entrusted under article 258A of the Constitution of the Government of India, include the Central Government acting within the scope of the authority given to it under the article;

- (61) 'Sub-section' shall mean a sub-section of the section in which the word occurs;
- (62) '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;
- (62A) 'Union Territory' shall mean any union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule;
- (63) 'Vessel' shall include any ship or boat or any other description of vessel used in navigation;
- (64) 'Will' shall include a codicil and every writing making a voluntary posthumous disposition of property;
- (65) Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in visible form; and
- (66) 'Year' shall mean a year reckoned according to the British calendar.

STATE AMENDMENTS

Andhra Pradesh

In cl (19) after the words 'any Regulations of Bengal, Madras or Bombay Code', insert 'and any Regulation of the Madras Code in force in the state of Andhra as it existed immediately before the 1st November 1956'.⁵

Assam

In s 3(13) [now s 3(14)], after the words 'a division', the following shall be inserted:

and shall include the Assam Revenue Tribunal while exercising jurisdiction heretofore exercised by a Commissioner in appeals and revisions in Revenue cases.⁶

Tamil Nadu (Added Territory)

In cl (19), for the words 'State of Andhra Pradesh as it existed immediately before 1 November 1956', substitute the words 'territories specified in the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act 1959 (CA 56 of 1956)'.⁷

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6 Vide Assam Act 1 of 1939, s 5, Sch B as amended by Assam Act 4 of 1940.

7 Vide Tamilnadu (Added Territories) ALO 1961.

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1. APPLICABILITY AND SCOPE OF SECTION

The section provides that the definitions given therein shall apply to the General Clauses Act, and all Central Acts and Regulations made after the commencement of the present Act.⁸ These definitions are intended for a proper interpretation of all Central Acts made after the commencement of this statute. When a function is vested by a statute in the state government, the statutory provision, like a notification issued by the President of India, has to be interpreted with the aid of the General Clauses Act.⁹

Prima facie the terms defined herein will have the same meaning in all subsequent enactments which employ the same terms unless there is anything inconsistent with or repugnant to the context of the later Act.¹⁰ It does not apply to provincial or state legislation. Thus, for example, the Act is not applicable to the Bombay Abkari Act, it being passed by the Governor of Bombay in Council.¹¹ Similarly, the definitions of this section do not apply to the Government of India Act which was passed by the British Parliament and is not a Central Act or Regulation within the meaning of this section.¹²

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 used in documents relating to private contracts and correspondence.¹³

The definitions in s 3 of the General Clauses Act were held not to apply to Government of India Act 1935, which was neither a Central Act, nor a Central Regulation.¹⁴

8 *State of Orissa v Gangadhar Subudhi* (1966) 32 Cut LT 383, 387 (Act not to apply to Central Act passed in 1887, eg Provincial Small Cause Courts Act).

9 *Shinghara Singh v State of Punjab* AIR 1971 P&H 246, 1971 Cr LJ 966.

10 *Ramanathan Chettiar v Somasundaram Chettiar* AIR 1964 Mad 527.

11 *Queen-Empress v Pherojshah Hormusjee* 1 Bom LR 164 (not also applicable to the Small Cause Courts Act); *State of Orissa v Gangadhar* (1966) ILR Cut 102, 1966 Cut LT 383.

12 *Province of Bengal v SL Puri* 51 CWN 753.

13 *Gyan Chand Jain v Bishambar Sahai* 1968 All LJ 787, 1968 All WR 310 (HC) (definition of 'month' not to apply to month used in notice under s 106 of the Transfer of Property Act 1882).

2. APPLICABILITY TO CONSTITUTION

Clause (1) of art 367 of the Constitution of India applies to the General Clauses Act also for interpretation of the Constitution.¹⁵ Clause (1) of art 367 of the Constitution reads as follows:

367(1) Unless the context otherwise requires, the General Clauses Act 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India.

In interpreting the provisions of the Constitution, the court must always bear in mind that the relevant provision has to be read not *in vacuo* but as occurring in a single complex instrument in which one part may throw light on another.¹⁶

In *Ram Kishore v Union of India*,¹⁷ it was observed by the Supreme Court that when the court had expressed its opinion in the case of *Re Berubari Union and Exchange of Enclaves*,¹⁸ an error had crept into the opinion expressed by the court through inadvertence. While expressing its opinion in the above *Berubari Reference* (Special Reference No 1 of 1959), the court had proceeded on the basis that the word 'state' used in art 3 of the Constitution did not include the union territories specified in the First Schedule to the Constitution. In doing so, however, the relevant provisions of the General Clauses Act were inadvertently not taken into account. In the above *Ram Kishore's* case, Gajendragadkar CJ had observed thus:

Under section 3(58)(b) of the said Act, 'state' as respects any period after the commencement of the Constitution (Seventh Amendment) Act 1956, shall mean a state as specified in the First Schedule to the Constitution and shall include a union territory. This provision of the General Clauses Act has to be taken into account in interpreting the word 'state' in the respective clauses of article 3, because article 367(1) specifically provides that unless the context otherwise requires, the General Clauses Act 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India.

The inclusive definition of 'state' as given in s 3(58) of the General Clauses Act, applies for the interpretation of the Constitution only when there is

15 *Ahidhar Ghose v Jagabandhu Roy* AIR 1952 Cal 846, 56 CWN 643 (DB); *Ayub Ali v Harinarayan* AIR 1957 Assam 155, (1955) ILR 7 Assam 147 (DB).

16 *Atiabari Tea Co Ltd v State of Assam* AIR 1961 SC 232, (1961) 1 SCA 108, [1961] 1 SCR 809.

17 AIR 1966 SC 644, [1966] 1 SCR 430.

18 AIR 1960 SC 845, [1960] 3 SCR 250.

nothing repugnant to the subject or context. Taking into account such repugnancy to the subject or context of art 246 of the Constitution, the Supreme Court had observed in the case of *TM Kannivan v Income-tax Officer, Pondicherry*¹⁹ that the inclusive definition of 'state' as given in s 3(58) of the General Clauses Act does not apply for interpretation of the word 'state' in art 246. Explaining this repugnancy RS Bachawat J, stated:

There is a distribution of legislative power between Parliament and the legislatures of the states. Exclusive power to legislate with respect to the matters enumerated in the State List is assigned to the legislatures of the states established by Part VI. There is no distribution of legislative power with respect to union territories. That is why Parliament is given power by article 246(4) to legislate even with respect to matters enumerated in the State List. If the inclusive definition of 'state' in section 3(58) of the General Clauses Act were to apply to article 246(4), Parliament would have no power to legislate for the union territories with respect to matters enumerated in the State List and until a legislature empowered to legislate on those matters is created under article 239A for the union territories, there would be no legislature competent to legislate on those matters; moreover, for certain territories such as the Andaman and Nicobar Islands, no legislature can be created under article 239A, and for such territories there can be no authority competent to legislate with respect to matters enumerated in the State List. Such a construction is repugnant to the subject and context of article 246. It follows that in view of article 246(4), Parliament has plenary power to make laws for union territories on all matters. Parliament can by law extend the Income Tax Act 1961 to a union territory with such modifications as it thinks fit.

While deciding the above case, a significant constitutional change could not, however, be brought to the notice of the Supreme Court. The change was that the Constitution (Seventh Amendment) Act 1956 had swept off the pt B and pt C states and divided the territories of India only into two classes, ie: (a) territories of the states; and (b) the union territories. Consequently, the Adaptation of Laws Order 1956 had to be issued under art 372A of the Constitution. This Adaptation of Laws (No 1) Order 1956, issued by the President, had substituted a new cl (58) in s 3 of the General Clauses Act providing inter alia, that the expression 'state' shall, as respects any period after the commencement of the Constitution (Seventh Amendment) Act 1956, mean 'a state specified in the First Schedule to the Constitution and shall include a Union Territory.' It is to be noted that the adaptations made in the General Clauses Act under art 372A were not to apply to the interpretation of the Constitution, inasmuch as art 367(1) of the Constitution permits the use of the General Clauses Act as adapted

¹⁹ AIR 1966 SC 207. (1968) 1 SCMR 185. 68 ITR 211. (1968) 1 SCA 437. (1968) 1 ITI

under art 372 only for such purposes. It follows, therefore, that the definition of 'state' as introduced in General Clauses Act for the first time by the Adaptation of Laws Order 1956, is not to be used to interpret the word 'state' as used in the Constitution. The existing definition of 'state' in 3(58)(4) of the General Clauses Act, is not, therefore, to be applied to the interpretation of the Constitution at all for the purposes of cases falling under the Rules made under art 309 of the Constitution for the union territory of Delhi. It was, therefore, observed in *HL Rodhey v Delhi Administration*²⁰ that, if the above legal position had been brought to the notice of the Supreme Court in *TM Kanniyar v ITO, Pondicherry*,²¹ their Lordships would have felt even stronger in arriving at the decision they did.

Thus, the effects of the Adaptation of Laws (No 1) Order 1956, substituting the new cl (58), particularly cl (58)(b), in the General Clauses Act, providing inter alia, that the expression 'state' shall, with respect to any period after the commencement of the Constitution (Seventh Amendment) Act 1956, mean 'a State specified in the First Schedule to the Constitution and shall include a union territory', are:

- Firstly, that s 3(58) of the General Clauses Act, shall not apply for interpretation of the word 'state' as used in art 246 of the Constitution.²²
- Secondly, that s 3(58) of the General Clauses Act shall not apply for the interpretation of the Constitution for the purposes of cases coming under the rules framed by the President under art 309 of the Constitution for regulating the recruitment and conditions of service of persons appointed to public services in the union territories.²³
- Thirdly, that union territories are 'states' for the purposes of art 312(1) of the Constitution, and s 3(58) of the General Clauses Act applies for interpretation of art 312 of the Constitution.

It cannot, therefore, be said with any justification that there was anything repugnant in the subject or context to make the definition of 'state' as given in s 3(58)(b) of the General Clauses Act inapplicable to art 312(1) of the Constitution. By virtue of art 372A of the Constitution, it was that definition of the expression 'state' which had come into effect from 1 November 1956, and the Constitution expressly provided that it could 'not be questioned in any court of law'. Consequently, union territories are 'states' for the purposes of art 312(1) of the Constitution as also of the All India Services Act 1951.²⁴

20 AIR 1969 Del 246, 1969 LIC 974.

21 AIR 1968 SC 637.

22 Ibid.

23 *HL Rodhey's case* AIR 1969 Del 246.

24 *Union of India v Prem Kumar* AIR 1976 SC 1856, 1976 SCWR 417, (1976) UJ 593 (SC), 1976 Serv LJ 418, 1976 LIC 1194, 1976 Serv LJ 547, (1976) SCC (Lab) 499, (1976) 3 SCC 743, (1976) 2 Serv LR 243, (1976) 2 Lab LN 290; contrary view in *HL Rodhey v Delhi Administration* AIR 1969 Del 246, 1969 LIC 974 (DB), to be now read in the light of the above decision of the Supreme Court.

In the case of *Advance Insurance Co v Gurudasmol*,²⁵ the appellants had raised an argument that the powers of adaptation of the President in relation to the General Clauses Act had come to an end in 1953 and the adaptation of the General Clauses Act was ineffective to give the new meaning of the word 'state' in entry 80 in List 1 of the Seventh Schedule to the Constitution. The Supreme Court held that this argument had overlooked the provision of a fresh power of adaptation conferred on the President of India by art 372A which was introduced by the Constitution (Seventh Amendment) Act 1956. That article reads as follows:

372A. Power of the President to adapt laws—(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order, made before the 1 November 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

The court held that this was a fresh power equal and analogous to art 372(2). Therefore, when the President adapted the General Clauses Act by giving a new definition of 'state', that new definition, appropriate to the purpose, applied to the interpretation of the Constitution.

In view of the clear provisions of art 367(1) of the Constitution, the definition of 'person' as given in s 3(42) of the General Clauses Act will apply and the maintainability of a writ petition filed by the managing committee of a school cannot be challenged on the ground that such managing committee, not being a person, cannot claim a fundamental right under the Constitution. Therefore, a managing committee as a person can apply under art 226 of the Constitution.²⁶

The University of Agra, constituted under an Act passed by the UP Legislature and deriving all its powers from the provisions of that Act, becomes a statutory body vested with the power to frame statutes and pass ordinances regulating the conduct of persons who come within its purview and is an authority contemplated by art 12 of the Constitution. The University performs functions which may be called governmental functions, as it legislates and

²⁵ AIR 1970 SC 1126, (1970) 2 SCJ 480, 1970 Mad LJ (Cr) 727.

²⁶ *Sribatscha v Secondary Education Board* AIR 1969 Ori 30, 34 Cut LT 1162, (1968) ILR Cut 888.

binds the conduct of persons and bodies falling within the purview of the Act. The phraseology of art 12 of the Constitution itself clearly indicates that the Constitution makers were considering authorities other than local authorities also to be included within the definition of 'state'. The General Clauses Act, which defines 'local authority' in s 3(31), applies for defining the words used in the Constitution.²⁷

The ecology of any statute is that part of the common law which has been accepted in India as rules of justice, equity, and good conscience, as suited to the genius of this country and is in force in India by virtue of art 372(1) of the Constitution of India.²⁸

B. 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.²⁹ Lord Denman observed in *R v Cambridgeshire*:³⁰

An interpretation clause, 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.³¹

Interpretation clauses are by no means to be strictly construed. It should not be understood that the thing defined in the interpretation clause has annexed to it every incident which may seem to be attached to it by any other Act of the legislature. A definition clause does not necessarily apply to all possible contexts in which the word may be found in a particular statute. A strict adherence to the definition may lead to an anomaly or repugnance.

Where the interpretation clause has not given the definition of a word, the same must be construed in its proper sense, which means the sense which people conversant with the subject matter would attribute to it.³²

27 *Gandhi Faiz-e-am Degree College v University of Agra* AIR 1968 All 188; dissenting from *University of Madras v Shanta Bai* AIR 1954 Mad 67, (1954) ILR Mad 426.

28 *Superintendent and Legal Remembrancer, State of West Bengal v Corpn Calcutta* [1967] 2 SCR 170, AIR 1967 SC 997; this proposition does not differ from the previous ones in *Director of Rationing and Distribution v Corpn of Calcutta* AIR 1960 SC 1355, [1961] 1 SCR 158; *VS Rice and Oil Mills v State of Madhya Pradesh* AIR 1964 SC 1781, [1964] 7 SCR 466.

29 *Umachurn Beg v Ajadannissa Bibee* ILR 12 Cal 430.

30 (1838) 7 A&E 480, 491.

31 F Dwariss, *Treatise on Statutes*, quoted in *Uda Begum v Imam-ud-din* ILR 2 All 74.

32 *Commr of Income-tax, Andhra Pradesh v M/s Taj Mahal Hotel, Secunderabad* AIR 1972 SC 168; *Manghu Sahu v Sales-tax Officer* AIR 1974 SC 390.

Where a definition clause has contained both valid and invalid clauses, the exclusion of the invalid clause may make the statute enforceable.³³

4. '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',³⁴ or 'unless the context otherwise requires'.³⁵ 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.³⁶ The central as well as all the state General Clauses Acts define certain expressions, but all such definitions are governed by the introductory words 'unless there is anything repugnant in the subject or context'. In *Chandra Shekhar v Sri Thakurji Maharaj*,³⁷ the plaintiff brought a suit for possession of a part of a village which was revenue-free. In order to determine the court-fee payable under s 7(v)(c) of the Court Fees Act 1870, the plaintiff's counsel pleaded that the 'year' to be taken was the year 1932, relying on the General Clauses Act definition of 'year' as a calendar year. But it is stated in s 3 of the General Clauses Act, that these definitions will apply 'unless there is anything repugnant in the subject or context'. Justice Bennet observed:

In the context of this sub-section (v) there are sub-sections (a) and (b) relating to land paying revenue to government. For government revenue the period taken is the *Fasli* year. The court, therefore, naturally took the *Fasli* year 1339 for sub-section (c) where the land was revenue-free. I consider that from the context the court was correct and it cannot be said that in not applying the General Clauses Act, there was any error on the face of the record. Moreover, from the subject also the court was correct because the profits in the *patwari*'s registers are made up for the *Fasli* year and not for the calendar year.

33 *Nand Ram Chootey Lal v Kishore Raman Singh* AIR 1962 All 521, 539.

34 *N Subramania Iyer v Official Receiver* AIR 1958 SC 1.

35 *State of Kerala v Akhil Kerala Vala Sanndaya Samiti* AIR 1979 Ker 113-14, 1979 KLT 1 (FB) (definition of 'person' in s 2(45) of the Kerala Land Reforms Act 1964); *Indira Nehru Gandhi v Raj Narain* AIR 1975 SC 2299, 2357 (meaning of word 'candidate' in Representation of the People Act 1951, to take colour from the context); *Kelya Singh v Genda Lal* AIR 1975 SC 1634, 1638, (1976) 2 SCJ 144 (definition not to be kept loose, but to be kept tight as far as possible).

36 *Lilly Stella Rodrigues v Girijabai* AIR 1969 Mys 100, 102, (1968) 1 Mys LJ 216.

37 AIR 1935 All 642 (1).

Even where the definition clause does not contain the qualifying words, 'unless there is anything repugnant in the subject or context', which are usually inserted in modern drafting, such words are always to be understood.³⁸

In *Knightsbridge Estates Trust Ltd v Byrne*,³⁹ the Lord Chancellor observed:

It is perhaps worth pointing out that the words, 'unless the context otherwise requires', which we find in the Consolidating Act of 1929, are not to be found in the Amending Act of 1928. I attribute little weight to this fact, for in my opinion some such words are to be implied in all statutes where the expressions, which are interpreted by a definition clause, are used in a number of sections with meanings sometimes of a wide and sometimes of an obviously limited character.

5. '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 hard and fast and no other meaning can be assigned to the word or expression 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 to merely describe what the word might mean. When a thing 'is deemed to be' something, it means that whereas in reality it is not that something, the Act directs that it should be treated as if it were so. 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,⁴⁰ 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 that its ordinary meaning may or may not comprise so as to make the definition enumerative and not exhaustive.⁴¹

38 *Chandra Shekhar v Sri Thakurji Maharaj* AIR 1935 All 642 (1); *Ramanathan Chettiar v Somasundaram Chettiar* AIR 1964 Mad 527.

39 [1940] AC 613, 621; quoted in *Kartick Chandra v Mukhi Dasi* AIR 1943 Cal 345, 354-355 (FB); *Chowdhary Mohd Manjural Haque v Bissessar Banerjee* AIR 1943 Cal 361, 368-69, 47 CWN 408.

40 *Fateh Chand Mahesari v Akim-ud-din Chaudhari* AIR 1943 Cal 108, 47 CWN 52.
41 *Darbari Lal v Dharmwati* AIR 1957 All 541, 545; *AC Patel v Vishwanath* AIR 1954 Bom 204; *SK Gupta v KP Jain* AIR 1979 SC 734, 743, 1979 Tax LR 2558; *Hyderabad Asbestos Cement Products v Employees Insurance Court, Ranikot* 1976 LIC 868, 875, (1976) 1 Andh WR 344 (FB); *Gwalior Rayon Silk Mfg (Wvg) Co Ltd v Textiles Committee, Bombay* AIR 1980 MP 69, 1980 MPLJ 272; *Dilverth v Commr of Stamps* [1899] AC 99, 105; *Digambar Prahlad Jot v Satyanarayan* AIR 1978 Bom 190, 198 (DB); *Employees'*

continued on the next page

In *Bapu Vithal v Secretary of State*,⁴² it was accepted as a well-settled principle of judicial interpretation that the inclusive meaning of a term is not to be necessarily and indiscriminately applied to the word. The court said:

Where a term is interpreted in a statute as 'including', etc, the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should.⁴³

When a particular definition 'includes' certain things, the legislature should be taken to have intended to settle a difference of opinion on some point or wanted to bring in other matters that would not have properly come within the ordinary connotation of the word or phrase in question.⁴⁴

In *Shankar Ojha v Jotia*,⁴⁵ where the appellant, who was not a female or a minor, relied upon the definition of the word 'suit' given in s 2(iv) of the Court Fees Act (as amended by the Uttar Pradesh legislature), according to which 'suit' includes a 'first' or 'second' appeal from a decree in suit, and claimed the benefit of the proviso to s 7(ii)(a) which contains the words 'provided that in suits for personal maintenance by females and minors, such value...' Wali Ullah J, observed:

From the definition of the word 'suit' it follows that we may, if occasion arises, read for the word 'suit' in the proviso, the words 'first appeal', or 'second appeal', or even 'Letters Patent Appeal'. Such appeal must necessarily be an appeal arising out of a suit for personal maintenance by a female or a minor. When the proviso is sought to be applied to an appeal, it seems to us clear that the appeal must also be filed by a female or a minor. Since the word 'suit' includes appeal, the expression 'by females and minors' must also refer to appeals instituted by them.

State Insurance Corpn v M/s Brooke Bond India Ltd 1978 LIC 1047, 1978 CL NR 270; However, see also *South Gujarat Roofing Tiles Manufacturers' Assn v State of Gujarat* AIR 1977 SC 90, 1976 LIC 1778 (in Entry 22 of Pt I of the Schedule of the Minimum Wages Act, the word 'includes' held used as carrying the sense of 'means'); *State of Tamil Nadu v Pyare Lal Mahapatra* AIR 1976 SC 800, 803, 1976 Tax LR 1519 (word 'includes' denotes things that the definition specifies, but in that sense the definition cannot be said to be complete); *Som Dutt v State of Uttar Pradesh* (1977) All LJ 202, (1976) 2 All LR 529, 532, AIR 1977 NOC 10 (word 'includes' not to be interpreted as exhaustive); *Province of Bengal v Hingul Kumari* AIR 1946 Cal 217; *Taj Mahal Hotel, Secunderabad v Commr of Income-tax, Hyderabad* AIR 1969 AP 87, 70 ITR 366.

42 AIR 1932 Bom 370.

43 *Darbari Lal v Dharamvati* AIR 1957 All 541, 545; *Emperor v D'Souza* ILR 35 Bom 412, 12 Cr LJ 426.

44 *Madras Central Urban Bank Ltd v Corpn of Madras* AIR 1932 Mad 474.

45 AIR 1952 All 605.

The expression 'mean and include' is not favoured by modern draftsmen, though the view still is that the expression is not expansive but exhaustive.⁴⁶

6. '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 the 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.⁴⁷ Referring to Crawford,⁴⁸ the Supreme Court held in *Lachmi Narayan v Union of India*,⁴⁹ that the primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the lawmaker,⁵⁰ as expressed in the law itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the legislative intent is expressed clearly and strongly in imperative words, such as the use of 'must' instead of 'shall', that will itself be sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory; the use of peremptory language in the negative form is per se indicative of the intent that the provision is to be mandatory.

In matters where power or authority has been conferred with the direction that certain regulations or formalities shall have to be complied with, it would not be unjust or incorrect to insist on rigorous observance of that which would be essential for acquisition of that right or authority.⁵¹ However, when a statute has required a thing to be done in a prescribed manner but has not set out the consequences of not doing it in that manner, the relevant provision will be construed as directory even if the word 'shall' has been used.⁵² There may be something in the nature of the things empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with

46 *Satughna Sahu v State of Orissa* AIR 1958 Ori 187, (1958) ILR Cut 269.

47 *Khush Chand v State of Rajasthan* AIR 1967 SC 1074, [1967] 1 SCR 120.

48 *The Construction of Statutes*, pp 523-24.

49 AIR 1976 SC 714, (1975) 6 STA 47, 1976 Tax LR 1467, 37 STC 267, (1976) 2 SCC 953, (1976) SCC (Tax) 213, 1976 Rajdhani LR 342, [1976] 2 SCR 785.

50 *State of Mysore v VK Kangan* (1976) 2 SCC 895; *Govind Lal Chhagan Lal Patel v Agriculture Produce Market Committee* (1975) 2 SCC 482.

51 *Haridwar Singh v Begum Sambrui* (1973) 3 SCC 889, AIR 1972 SC 1242.

52 *Martand Balvant Risaldar v Chhagan Lal Ambalal Gandhi* 1978 Cr LJ 1032, 19 Guj LR 487.

a duty, and make it the duty of the person in whom the power is reposed for its exercise when called upon to do so.⁵³ Such statute prescribing a particular act to be done in a particular manner and laying down special consequences on failure to comply with that manner, must be taken to be mandatory.⁵⁴

Thus, 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.⁵⁵ 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'.⁵⁶ The word 'may' connoting discretion has to be construed as 'shall' when the discretion conferred upon a public authority is coupled with an obligation.⁵⁷ 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 from other circumstances and considerations as well.⁵⁸ It is the duty of the court to try to get at the real intention of the legislature by fully attending to the whole scope of the statute.

In a full bench case of the Rangoon High Court, the learned Ag CJ held that in enactments which confer powers, and partly in enactments which confer powers on public authorities, language which confers permission may not preclude the existence of duty. In the same case, the learned J went a step further and held that where a statute directs the doing of a thing for the sake of justice or public good, the word 'may' is the same as the word 'shall'; in such circumstances, the word 'may' has a compulsive force.⁶⁰

- 53 Lord Phillimore in *Alocok Ashdown & Co v Chief Revenue Authority*, Bombay AIR 1923 PC 138, ILR 47 Bom 742, 27 Bom LR 920; in view of *Julius v Lord Bishop of Oxford* 5 AC 214.
- 54 *Sharif-ud-din v Abdul Gani Lone* AIR 1980 SC 303, 305-06.
- 55 *State of Uttar Pradesh v Manbodhan Lal* AIR 1957 SC 912; *Bindra's Interpretation of Statutes*, seventh edn, p 1088; *Manindra Chandra Bhowmick v Jogesh Chandra Day* AIR 1959 Trj 35 ('may' in r 69 of the rules framed under the Motor Vehicles Act 1939, construed as 'must'); *Biswanath Khemka v King Emperor* AIR 1945 FC 67; *Montreal Street Rly Co v Normandin* [1917] AC 170.
- 56 *Bengal and North Western Rly Co Ltd v Special Manager, Court of Wards, Balrampur* AIR 1925 Oudh 49.
- 57 *Sri Rangaswami Textile Commr v Sagar Textiles Mills Pvt Ltd* AIR 1977 SC 1516-17; *Sudhira Bala Roy v State of West Bengal* AIR 1981 Cal 130, 135.
- 58 *Govind Lal Chhagan Lal Patel v Agriculture Produce Market Committee* AIR 1976 SC 263; *DM Rudriah v Registrar, University of Mysore* AIR 1981 Kant 103.
- 59 *Government of Burma v Municipal Corpn, Rangoon* AIR 1930 Rang 297, 300, 306; *Rex v Barlow* 2 Salk 609; *Macdougall v Paterson* 11 CB 755, 15 Jur 1108, 21 LJCP 27; 2 LM & P 681; *Chief Controlling Revenue Authority v Maharashtra Sugar Mills* AIR 1950 SC 218, 220; *Gunjalal v Bhagwat Prasad* AIR 1963 SC 120, 127; *State of Uttar Pradesh v Jogendra Singh* AIR 1963 SC 16, 18; *Sardar Govind Rao v State of Madhya Pradesh* AIR 1965 SC 1222, 1965 MPLJ 566, (1965) 1 SCWR 1043; *Zila Parishad v Shanti Devi* AIR 1965 All 590 (FB); *Amalgamated Electricity Co v Municipal Committee* AIR 1969 SC 227, (1969) 1 SCJ 335, (1969) 1 SCA 272, (1969) 1 Um NP 1.
- 60 *District Board, Khulna v Jogesh Chandra* AIR 1943 Cal 447.

When power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.⁶¹ Unless non-compliance with a provision has been made penal, the same cannot be held to be mandatory.⁶²

7. SECTION 3(1): 'ABET'

Section 107 of the Indian Penal Code enacts thus:

... A person abets the doing of a thing, who—

First—Instigates any person to do that thing; or

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a court of justice to apprehend *Z*. *B*, knowing that fact and also that *C* is not *Z*, wilfully represents to *A* that *C* is *Z*, and thereby intentionally causes *A* to apprehend *C*. Here *B* abets by instigation the apprehension of *C*.

Explanation 2—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

It is to be remembered that in crimes, as in other things, 'they also serve who only stand and wait' in the commission thereof.⁶³

When no mens rea is essential in the substantive offence, the same is also not necessary in the abetment thereof.⁶⁴

8. SECTION 3(2): 'ACT'

The word 'act' has nowhere been defined, as in this sub-section. Section 33 of the Indian Penal Code also provides that the word 'act' covers a series of acts as well as a single act.

61 *Nazir Ahmed v King Emperor* 63 IA 312; *Chiranjit Pal v West Bengal Khadi and Village Industries Board* AIR 1969 Cal 152, 154; *State of Gujarat v Shanti Lal Mangal Das* AIR 1969 SC 634; *Ram Chandra Keshav Adke v Govind Joti Chavari* AIR 1975 SC 915.

62 *Jagannath v Jaswant Singh* AIR 1954 SC 210, 214.

63 *Barendra Kumar Ghosh v Emperor* 52 IA 40, AIR 1925 PC 1, 29 CWN 181, per Lord Sumner, abetment is a crime apart from the main crime.

64 *State v Abdul Aziz* AIR 1962 Bom 243, 248, (1962) 2 Cr LJ 472 (with reference to s 5 of the Imports and Exports (Control) Act 1947).

Act done under a statute means act expressly or specifically required or permitted to be done by the statute.⁶⁵ In s 270 of the Government of India Act 1935, the words 'in respect of act done or purporting to be done in the execution of his duty done as a servant of the crown' would have the same meaning as 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' in s 197 of the Code of Criminal Procedure.⁶⁶

The 'act' under s 80, CPC, of the official may arise out of tort or may arise ex contractu.⁶⁷ The 'act' includes illegal omission,⁶⁸ as well as 'any thing omitted to be done' under an Act,⁶⁹ for example, omission by police officer to keep regular diary.⁷⁰ Thus, an illegal omission, if bona fide, would amount to an act done for the purposes of protection available under s 2 of the Industrial Disputes Act 1947.⁷¹ If a suit does not relate to any act or illegal omission purporting to be done by a public officer in his official capacity, s 80, CPC, will have no application. So also in case of s 233 of the Ajmere-Merwara Municipalities Regulation. Where an electricity company filed a suit against the Ajmere Municipal Committee claiming some amount as surcharge due under the notification issued by the chief commissioner of Ajmere under s 3(2) of the Bombay Electricity (Surcharge) Act, no notice, under s 233 of the Ajmere-Merwara Municipalities Regulation was necessary before instituting the suit,⁷² but it does not include an omission which is not illegal.⁷³ Referring to s 80, CPC, Rankin CJ observed in *Prasaddas Sen v Bannerjee*:⁷⁴

In strictness there is no doubt a difficulty in seeing how an omission can be said to purport to be done in an official capacity. There is an equal difficulty, however, in seeing how an ordinary neglect or default or

- 65 *Lucknow Nagar Mahapalika v Karamjeet Singh* AIR 1962 All 174, 1962 All LJ 165.
- 66 *HHB Gill v King* AIR 1948 PC 128, 52 CWN 576; approving *HHB Gill v King* AIR 1947 FC 9, (1947) 1 Mad LJ 129.
- 67 *Cecil Gray v Cantonment Committee of Poona* ILR 34 Bom 588.
- 68 *Jagannath Bhagwan v Municipal Board of Allahabad* AIR 1928 All 130 (s 4(21), UP General Clauses Act); *District Board, Allahabad v Behari Lal* AIR 1936 All 18 (FB); *DG Athalye v State* 1958 All LJ 17.
- 69 *Ram Chandra v Emperor* AIR 1955 Pat 432, 434, 1955 BLJR 492 (DB); relying on *Allen Matheswon v District Board, Manbhium* AIR 1920 Pat 324.
- 70 *Moulud Ahmad v State of Uttar Pradesh* (1964) 2 Cr LJ 71, 73, 1963 All LJ 555 (SC).
- 71 *DG Athalye v State of Uttar Pradesh* 1958 All LJ 17.
- 72 *Amalgamated Electricity Co (Belgaum) Ltd v Municipal Committee, Ajmer* (1969) 1 SCJ 335, (1969) 1 SCA 272, (1969) 1 Um NP 1, AIR 1969 SC 227.
- 73 *Revati Mohan Das v Jatendra Mohan Ghosh* AIR 1934 PC 96; *State of Madhya Pradesh v Ganga Charan* 1974 MPLJ 533, 535, 1974 Jab LJ 446.
- 74 AIR 1931 Cal 61, 63, ILR 75 Cal 1127; referring to *Sharlington v Fulnem Guardians* (1904) 2 Ch 449; *Wilson v Mayor & Corp of Halifax* (1868) 3 Exch 114; *Queen v Williams* [1884] 9 AC 418; *Palmer v GJ Rly Co* (1839) 4 MRW 749; *Joliffe v Wallasey Local Board* (1873) 9 CP 62.

omission to discharge completely a public duty can be said to be 'intended to be done' under the authority of a statute. The English cases I have referred to show that the English courts have never regarded the latter difficulty as formidable and having regard to the language of the General Clauses Act, namely, 'words which refer to acts done extend also to illegal omissions', I am not of opinion that this case can be held to be outside the scope [of] Section 80, CPC, upon the ground that the cause of action is neglect or non-feasance. The plaintiffs are complaining of a failure to use reasonable diligence in doing the very thing which the official receiver had a public duty to do, namely, to realize the rents, issues and profits or property over which he was appointed a receiver.

Under the expression 'act done' occurring in s 4(2) of the Uttar Pradesh General Clauses Act (1 of 1904), omission to do an act is not always included.⁷⁵

Omission on the part of a receiver to pay up the rent was not considered to be one in his official capacity and, hence, no notice under s 80, Civil Procedure Code, would be necessary in a suit, based on such omission.⁷⁶

Non-compliance with the provisions of the statute by omitting to do what such provisions enjoin is the same as doing an act ordered to be done thereunder.⁷⁷

The expression 'anything done under this Act' as used in s 146 of the Bihar and Orissa Local Self Government Act, by virtue of s 3 of the General Clauses Act, would include 'anything omitted to be done under the Act'.⁷⁸

The expression 'anything done or intended to be done' under the Act in s 26(2) of the CP and Berar Sales Tax Act (21 of 1947) covers the dealer's omission to get himself registered under the Act. Prosecution beyond three months is barred under s 2(2) of the General Clauses Act. Words which refer to an act done also refer to an illegal omission.⁷⁹

As per s 3(2) the term 'act' with reference to an offence or civil wrong includes a series of wrongs and extends also to illegal omissions.⁸⁰

75 *Zilla Parishad v Shanta Devi* (1965) All LJ 221, 1965 All WR 146 (HC), (1965) ILR 1 All 783, AIR 1965 All 590 (FB).

76 *Debendra Nath Ray Choudhary v Official Receiver* AIR 1938 Cal 191, 174 IC 576.

77 *Sita Ram v State of Madhya Pradesh* AIR 1962 SC 1146, (1962) 2 Cr LJ 258; *Maulud Ahmad v State of Uttar Pradesh* (1963) All LJ 555 (SC), (1963) 2 Cr LJ 71, 73; *Pritam Singh v State of Haryana* AIR 1973 SC 1354, 1356, 1973 Cr LJ 1152; *Public Prosecutor, Madras v R Raju* AIR 1972 SC 2504, 2509, 1972 Cr LJ 1699.

78 *District Board of Manbhum v Shyamapada Sarkar* AIR 1955 Pat 432.

79 *State of Madhya Pradesh v Sant Singh* 1966 MPLJ 680, 1966 Jab LJ 562.

80 *Comms of Hoogly, Chinsura Municipality v Ekkari Ghose* (1956) ILR 2 Cal 164, AIR 1955 NUC (Cal) 915 (failure to perform legal obligation on the part of Municipality); *Mallappa v Government of Mysore* 24 Mys LJ 59 ('possession' when made penal is intended to cover an unlawful and not an innocent possession).

Failure by a municipality to pay contribution as provided under the Employees' State Insurance Act 1948 would not amount to an 'act' within the meaning of the Rajasthan Municipalities Act.⁸¹ When the judgment-debtor commits gross violation of a decree of prohibitory injunction so as to nullify the very decree, the decree can be executed in term of sub-r (5) of r 32 of O 21, and the decree-holder cannot be compelled to file a fresh suit.⁸²

9. SECTION 3(3): 'AFFIDAVIT'

Affidavits taking the place of oral evidence in certain cases form an important piece of evidence.⁸³ Rule 3 of O 19 of the Code of Civil Procedure deals with affidavits and provides:

- (i) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated...

According to s 295 of the Code of Criminal Procedure, when any application is made to any court in the course of any inquiry, trial or other proceeding under the Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by an affidavit, and the court may, if it thinks fit, order that evidence relating to such facts be so given. Section 297 further provides that the court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended. An affidavit, in order to be valid, must be sworn before but not simply attested by a judicial officer. If it is not so sworn it ceases to be an affidavit of the signatory.⁸⁴

It is a well recognised and commonly adopted practice that where an 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 O 41, r 27, Civil Procedure Code.⁸⁵ An application under O 41, r 27,

81 *Employees' State Insurance Corpn v Municipal Corpn Water Works, Ganga Nagar* (1972) 2 FJR 534.

82 *Harihar Pandey v Mangala Prasad Singh* AIR 1986 All 9.

83 *Sheik Saheb v Mucheli Narsimha Reddy* (1967) 1 Andh WR 437, 439, 1967 Mad LJ 456 (Cr); following *Arjun Singh v Singheshwar Choudhary* AIR 1960 Pat 513; *Shah Jamilur-rahman v Abdul Aziz* AIR 1960 Pat 240; *Rudra Singh v Bimla Debi* AIR 1960 Pat 205.

84 *Chunnial v State of Punjab* (1967) ILR 2 Punj 11.

85 *MM Qasim v Manohar Lal Sharma* AIR 1981 SC 1113, (1981) 3 SCC 36, 1981 UJ 396 (SC), 1981 BBCJ (SC) 165, (1981) 2 RCR 74, 1981 BLJR 535, 1981 MPRCI 165

of the Civil Procedure Code, founded on an affidavit is a proper application.⁸⁶

10. SECTION 3(5): 'BRITISH INDIA'

Bangalore,⁸⁷ Berar and Quetta do not fall within the definition of British India given in this sub-section.⁸⁸

The British India courts had no jurisdiction to pass decree with regard to property in Berar which was a foreign territory.⁸⁹

In *Seth & Co v Ramiza Bi*⁹⁰ the learned counsel for the respondents contended that Bangalore should not be regarded as being outside British India inasmuch as the Maharaja of Mysore had ceded the civil and military station of Bangalore for certain purposes to the British Government and had renounced the exercise of civil and criminal jurisdiction within that area. Abdur Rahman J repelled that contention and observed:

Bangalore does not fall within the definition of British India as given in the General Clauses Act and cannot, therefore, be held to be a part of British India.

Similarly, in *Karustnga Kushansing v Narsimha Rangrao Patil*⁹¹ Berar was held to be a foreign territory, not falling within the definition of British India. Likewise, Quetta, which had been permanently leased to the British Crown, was known as 'administered area', not covered by the definition in s 3(4) of the General Clauses Act although every function of administration was exercised by the Viceroy by virtue of the authority transferred to the British Crown under the lease.⁹²

11. SECTION 3(7): 'CENTRAL ACT'

The Constitution of India is not a central act within the meaning of this sub-section. Accordingly s 6 of the present Act would not apply to the repeal of any enactment by the Constitution. Article 367 of the Constitution does not require one to read 'Constitution' for 'any Central Act or

86 Ibid.

87 *MJ Sheth & Co v Ramiza Bi* AIR 1938 Mad 646-47, (1938) 1 Mad LJ 769.

88 *Devsamaj Council, Lahore v Amrit Lal Motilal* AIR 1934 Sind 123, 125, 28 Sind LR 54 (DB); *Imperial Gazetteer Volume*, p 227.

89 *Bajirao Vithoba v Sardarmal* AIR 1935 Nag 192, 158 IC 597, 31 NLR 357.

90 AIR 1938 Mad 646.

91 AIR 1939 Bom 121.

92 *Deo Samaj Council, Lahore v Amrit Lal Moti Lal* AIR 1934 Sind 123.

regulation' wherever these words occur in the General Clauses Act. In *Seth Jugmendar Das v State*⁹³ where the accused were prosecuted under rr 81(4) and 121, Defence of India Rules, for infringing the non-ferrous Metal Control Order 1942 on 16 January 1950 before the Constitution came into force and while the Government of India Act was in force, it was held that where no prosecution was launched prior to 5 January 1948, nothing in the saving clause in s 3 of the Repealing and Amending Act 1947(2 of 1948), which repealed the Defence of India Act, allowed it to be launched after that date.

This clause draws a distinction between an Act of Parliament and a central Act. Pre-Constitution enactments like Land Customs Act 1924 (29 of 1924) being central Acts but not Acts of Parliament within the meaning of Sch 5, cl 5(1) will not be effective after the Constitution has come into force, as per s 3(7) of the General Clauses Act.⁹⁴ The Essential Articles (Price Control) Order 1963 is not a central Act and hence, the provision in s 5 of the General Clauses Act cannot be invoked.⁹⁵ The Assam Land and Revenue Regulation (1 of 1886) is a central Act by virtue of the definition under the General Clauses Act. The rules made under r 190, s 155(f) and r 190 are constitutional.⁹⁶

12. ORDER MADE BY PRESIDENT

An order made by the President under art 373 of the Constitution is, in substance, a law of the Parliament during the transitional period as contemplated by cl (f) of art 22 of the Constitution. This is made absolutely clear by the language used in art 373 wherein it is expressly stated that during the transitional period for reference to any law made by Parliament in cll (4) and (7) of art 22, there shall be substituted a reference to an order made by the President. Various other articles of the Constitution confer on the President powers to make orders in respect of various matters such as arts 372, 391 and 392, etc. However, an order under art 37 stands on a different footing inasmuch as it is expressly stated to be a substitution for 'the law of Parliament'. Consequently, the general rules for the construction of any law of Parliament would apply while construing an order of the President made under other articles of the Constitution. The General Clauses Act 1897 was adapted by the President in exercise of his powers under art 372(2) and

93 AIR 1951 All 703; similarly in *State of Uttar Pradesh v Mahavir Prasad* 1966 All LJ 796, 1966 All Cr R 173, 1966 All WR 316 (HC). [Essential Articles (Price Control) Order 1963, cll 3 and 4 and General Clauses Act.]

94 *Jhaman Mian v State* 1966 Cr LJ 1183, AIR 1966 Pat 375.

95 *State of Uttar Pradesh v Mahavir Prasad* 1966 All Cr R 173, 1966 All WR 316 (HC), 1966 All LJ 796.

96 *Banshidhar v Bhujan* AIR 1966 Assam 107.

published in the Gazette of India on 26 January 1950. After that adaptation, the expression 'central Act' has been defined in s 3(7); General Clauses Act, as meaning an Act of Parliament. I do not think there is any material difference between an Act of Parliament and the 'law made by the Parliament' because the only method provided in the Constitution for Parliament to make laws is by introducing and passing Bills as provided in arts 107-11. Therefore, an order of the President under art 373 for the purposes of construction with reference to the General Clauses Act, should be deemed to be an 'Act of Parliament' and as such a 'Central Act'.⁹⁷

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.⁹⁸ An executive order passed under s 9(2) of the Citizenship Act 1955 and r 30 of the Citizenship Rules 1956, in the name of the Central Government and not the President is valid.⁹⁹ According to sub-cl (b) of cl (8) of s 3 of the General Clauses Act, the Central Government in relation to anything done after the commencement of the Constitution means the President. The appointment of controllers under the Delhi Rent Control Act by gazette notification signed by the under-secretary to the Central Government but not in the name of the President is 'authenticated' within the meaning of art 77(2) of the Constitution.¹ The term 'government' in this clause means the President in relation to Union affairs.²

13. 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. Thus, it has been held that the Bengal Foodgrains Control Order 1945 is an executive Act of governor and cannot be said to be a central Act or regulation within the meaning of the term as defined in cl (7) of s 3 of the Act.³

14. SECTION 3(8): 'CENTRAL GOVERNMENT'

Section 3(8) merely recognises that Pt C states are centrally administered through the President under art 239 of the Constitution and enacts that the

97 *Prahlad Jena v State* AIR 1950 Ori 157-58 (FB).

98 *Prakash Chandra v Union of India* AIR 1965 Punj 270.

99 *Rahmat Ullah v State* 1969 Cr LJ 450, AIR 1969 All 165.

1 *Zalam Singh v Union of India* (1969) 71 Punj LR (D) 149, AIR 1969 Del 285 (FB).

2 *Chhatar Singh v Union of India* AIR 1967 Raj 194.

3 *Nimai Chand v State* AIR 1955 Cal 478; *Kiron Chandra Bose v Kalidas Chatterji* AIR 1943 Cal 247, 249, 47 CWN 460 (DB) (with reference to Bengal House Rent Control Order 1942).

expression 'Central Government' should include the chief commissioner administering a Pt C state under the authority given to him under art 239. Section 3(8) does not affect the status of Pt C states as distinct entities having their own legislature and judiciary as provided in arts 239 and 240. Its true scope will be clear if, adapting it for the words 'Central Government' in s 9 of the Representation of the People Act, the words 'the chief commissioner acting within the scope of the authority given to him under art 239' are substituted. A contract with the chief commissioner of a Pt C state would, therefore, under s 9 of the Act read with s 3(8) of the General Clauses Act, be a contract with the Central Government and would operate as a disqualification for election to either House of Parliament.⁴ As 'Central Government' in relation to anything done before the Constitution means the Governor-General or Governor-General in Council, a notification issued in 1942 by the chief commissioner of Delhi under the earlier Cinematograph Act 1912, is not inconsistent with s 17 of the present Cinematograph Act 1952, which vests such power in the Central Government.⁵

'Central Government' means the President and a representation addressed to him must be deemed to be a representation properly addressed to Central Government.⁶

The Central Government in relation to the administration of a Union Territory, includes the administrator thereof, acting within scope of art 239 of the Constitution of India.⁷

A notification for acquisition of land issued by the government of Goa and approved by the Central Government has, thus, been regarded as one issued by the Central Government.⁸

Section 55 of the Union Territories Act 1963 provides that the suits and proceedings in connection with the administration of a union territory shall be instituted by or against the Government of India and not by or against the union territory itself. The expression 'Government of India' is

4 *Satya Dev v Padam Dev* AIR 1955 SC 5; *RC Roy v Union of India* AIR 1971 Del 186, 1971 LIC 842 (DB); relying on *State of Uttar Pradesh v Baburam Upadhyaya* AIR 1961 SC 751; *AS Sharma v Union of India* AIR 1970 Del 250, (meaning of 'Central Government', under art 77 of the Constitution, holding that termination of temporary government servant amenable to Central Reserve Police Force Act, and the rules thereunder, is valid even if not made or signed by the President personally); *Salig Ram v Union of India* (1975) 2 Serv LR 379 (DB)(HP) (President empowered to make rules under art 309 of the Constitution, for public services in a Union Territory).

5 *State v NB Hankins* AIR 1957 Punj 243.

6 *Ragavendra Singh v Suptd, Dist Jail, Kanpur* 1986 All LJ 397-98; *Gurmit Singh Cheema v Union of India* 1995 Cr LJ 2705 (Del).

7 *India Tourism Development Corpn, New Delhi v Delhi Administration* AIR 1982 NOC 256 (Del), 1982 LIC 1309 (Del).

8 *JJS Rodrigues v Union of India* AIR 1967 Goa 169, 176.

not defined in any of the statutes, nor is the expression 'Union of India'. The only expressions defined in the General Clauses Act are 'Government' or 'the Government', 'Central Government' and the 'State Government'. Even if it be assumed that there is no difference between the two expressions 'Central Government' and 'Government of India', then too it is not possible to agree that s 80 of the Civil Procedure Code would apply to a suit filed against the Government of India. It is because s 80 applies to suits against the Central Government or against the Government of the State of Jammu & Kashmir or any other state government. None of the clauses of s 80 talks of suits against the Government of India. It follows that a suit filed against the Government of India under s 55 of the Union Territories Act 1963, does not fall within the reach of s 80 of the Civil Procedure Code.⁹

Section 3(8)(b)(i) defines 'Central Government' as the President in relation to anything done or to be done after the commencement of the Constitution. The Central Government is not an individual but an organisation. Whether a function is exercised by the President as the head of the Union of India or whether a power is vested by the Constitution with the President as a *persona designata*, the procedure for the exercise of the power would be the same, namely, either the one prescribed by the rules of business framed under art 77(3) of the Constitution or under the law and the rules made under the proviso to art 309 of the Constitution. When an authorised officer is acting in the name of the Central Government or the President, he is not acting as a delegate. He is merely authenticating the order of the President or the Central Government according to the prescribed procedure. The order is that of the President or of the Central Government and not of the officer who authenticates it.¹⁰

The Chief Controller of Imports and Exports is vested with the power to authenticate orders passed in the name of the President under the Authentication (Orders and Other Instruments Amendment) Rules.¹¹

Section 3(8)(b), so far as the matter of acquisition of land is concerned, would include state government in the definition of Central Government.¹²

In *JK Gas Plant Mfg Co Ltd v Emperor*,¹³ it was held that the expression 'Central Government' in the Iron and Steel (Control of Production and

9 *Kanahaiya Lal v Government of India* AIR 1975 Gau 37.

10 *RC Roy v Union of India* AIR 1971 Del 186, 1971 LIC 842; *DS Sharma v Union of India* AIR 1970 Del 250.

11 *Asst Collector of Customs for Exports v Hoare Miller & Co Ltd* AIR 1987 Cal 181.

12 *Tinsukia Development Corpn Ltd v State of Assam* AIR 1961 Assam 133 (FB).

13 AIR 1947 FC 38; *Zalam Singh v Union of India* AIR 1969 Del 285 (FB) (notification under Delhi Rent Control Act issued by the under-secretary to the Union Government

Distribution) Order 1941, has to be construed as the equivalent of the Governor-General in Council and the order, though purporting to be made by the Central Government, must be construed as made by the Governor-General in Council within the meaning of Sch 9, s 40(1), Government of India Act.

The chief commissioner of the State of Delhi is the Central Government officer. Thus, where an order of reference under the Industrial Disputes Act 1947 was issued by him, it was held to have been made by a proper authority who acts also in the capacity of the authority termed as a state government within the scope of s 2 of the Act.¹⁴ In another case under the Industrial Disputes Act, where the chief commissioner of Tripura had been invested with the powers of a state government under the Act, it was held that the chief commissioner would mean the state government as regards the matters for which the President had authorised him.¹⁵

The lieutenant governor of Delhi is empowered to acquire land for the planned development of Delhi and such powers under s 4 of the Land Acquisition Act can be read as additional powers of the Central Government under the Delhi Development Act.¹⁶

A suit by or against a Pt C state has to be brought in the name of the state and cannot be brought in the name of the Central Government.¹⁷ Where a suit was brought against the Government in respect of a contract entered into by the government of Vindhya Pradesh, the Supreme Court held that the state of Vindhya Pradesh and not the Union of India was the proper defendant.¹⁸

The appropriate government in relation to the state or Central Government in respect of Goa is the administrator.¹⁹ Section 8 of the Goa, Daman and Diu (Laws) Regulation (12 of 1962) enables the Central Government to remove difficulties. The lieutenant governor, as administrator of the territory, could exercise the power of the government under the section in view of the General Clauses Act 1897, though the lieutenant governor purported to pass an order

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- 14 *Birla Cotton Spg & Wvg Mills Ltd v Adl Industrial Tribunal* AIR 1960 Punj 76; but see *Management of Patiala Iron Works v Union of India* 1975 LIC 1265, 1269, 1975 SLWR 337 (FB) (Lt Governor of Delhi held as 'state' for the purpose of reference under Industrial Disputes Act 1947, s 2(a)(ii)).
- 15 *Malabati Tea Estate v Bhakta Munda* AIR 1959 Tri 8.
- 16 *Om Prakash v Union of India* 1987 (4) JT 330 (SC).
- 17 *Madho Prasad Salig Ram v Vindhya Pradesh State* AIR 1955 VP 1; contra *Union of India v Gajadhar* AIR 1953 Bho 37 (where it was held that a notice under s 80, CPC, given to the secretary, local self-government department and not to the Union of India, was not valid and proper).
- 18 *State of Vindhya Pradesh v Maula Bux* AIR 1962 SC 145; *Subhash Chandra v Municipal Corpn, Delhi* AIR 1965 SC 1275; affirming *Maula Bux Rahim Bux v State of Vindhya Pradesh* AIR 1956 VP 1.
- 19 *Goa Dock Labour Union v Union Territory of Goa* 1969 LIC 151, (1968) 2 Lab LJ 536, AIR 1969 Goa 16, 36 Fac LR 395.

under the wrong provision of law.²⁰ However, the Central Government is not the appropriate government with regard to a dispute between Burmah Shell Company and its discharged employee because the dispute is not a dispute relating to a major port merely because the company had its office in Kandla Port.²¹

The expression 'government business' in art 77 of the Constitution means the exercise of the authority of the Union which includes the discharge of the executive functions of the President under art 311.²² Similarly, the expression 'purposes of the Central Government', in s 138(1) of the Government of India Act 1935 must be construed to connote the federal purposes.²³

Thus a power given to the President of India to give directions to a corporation means the power of the Central Government.²⁴

It must become clear that the words 'Government' or 'Government of Goa, Daman and Diu' mean, in respect of this territory, the administrator with the designation of lieutenant governor who represents the President of India and therefore, the Central Government. The council of ministers is there to aid and assist him in the discharge of some of his functions. Their advice may be accepted or rejected in appropriate cases. The lieutenant governor may, if the occasion arises, dissolve the assembly and the council of ministers, but even when this is done and the council of ministers is not in existence, the government or the so-called Government of Goa, Daman and Diu continues to run.²⁵

The expression 'Central Government' when used in the context of any other particular country would mean the Central Government of that country.²⁶

15. SECTION 3(10): 'CHIEF CONTROLLING REVENUE AUTHORITY' OR 'CHIEF REVENUE AUTHORITY'

The chief controlling revenue authority in the states having a Board of Revenue is the Board, and in a state where there is a revenue commissioner, that commissioner.²⁷ Hence, a reference of the matter by the assistant registrar of joint stock companies under s 56(2) of the Stamp Act to the inspector-general

- 20 *Uttam Bala v Asst Collector of Customs and Central Excise, Goa* 1970 Cr LJ 1369, AIR 1970 SC 1765.
- 21 *PK Pillai v Burmah Shell Oil Storage and Distributing Co of India Ltd* AIR 1956 Kutch 9.
- 22 *Chhatar Singh v Union of India* 1967 Raj LW 164, AIR 1967 Raj 194.
- 23 *Abdullahbhai M Bhagat v Income-tax Officer, Special Circle, Madras* AIR 1961 SC 1389, 1391, (1962) 1 SCJ 49.
- 24 *Munshi Lal v Delhi Administration* (1971) ILR 2 Del 129, 144 (DB).
- 25 *Village Panchayat of Curchorem v Lt Governor of Goa* AIR 1972 Goa 1.
- 26 *Central Exchange Bank Ltd v Commr of Income-tax* AIR 1955 NUC 1386.
- 27 *Chandrasahji Maharaj v Chief Controlling Revenue Authority* 1986 (1) CCC 488.

of stamps and registration and action on such reference is without jurisdiction. There is no power in the Stamp Act under which power of the chief controlling revenue authority could be delegated to the inspector-general or to any other person.²⁸

16. SECTION 3(11): 'COLLECTOR'²⁹

This sub-section defines 'collector' outside Presidency towns, as the chief officer in charge of the revenue administration of a district. A sub-divisional officer holding for the time being the charge of a collector is collector.³⁰

17. SCOPE AND APPLICABILITY OF THE TERM 'COLLECTOR'

When the word 'collector' has not been defined in any particular statute, the definition as given in s 3(11) of the General Clauses Act would apply.³¹ The revenue administration of a district under Mysore Land Revenue Code is entrusted to the deputy commissioner. He, being the chief officer in charge of the revenue administration, is the collector under the General Clauses Act.³²

In *Devanagere Cotton Mills Ltd v Deputy Commr, Chitradurga*,³³ the question that arose for decision was whether the definition of the expression 'collector' in the General Clauses Act applied to the interpretation of the same expression given in s 2(a) Cotton Cess Act (14 of 1923), and whether the deputy commissioner in the State of Mysore could exercise the powers conferred on the collector under s 7 of the Act. In the Cotton Cess Act, the expression 'collector' has been defined in s 2(a) but the expression 'collector of the district' is not defined. Their lordships of the Supreme Court held that though the General Clauses Act has not been extended to the State of Mysore by Pt B States (Laws) Act 1951 yet by its own force, it would apply to every central Act or regulation made after 11 March 1897. Their lordships observed that the existence of a definition of the expression 'collector' in s 2(a) of the Cotton Cess Act is not necessarily indicative of an intention

28 *Chemicals Ltd, Nidadavole v Registrar of Companies* AIR 1959 AP 664.

29 See also s 4(9), Uttar Pradesh General Clauses Act, and s 3(6), Madras General Clauses Act.

30 *Girja Shankar v SDO* AIR 1973 MP 104 (FB).

31 *Ladhu Ram Taparia v DK Ghose* AIR 1957 Cal 667, 672, 61 Cal WN 926 (DB); overruled on another point in *Income-tax Officer, Kolar v Seghu Buchian Setty* AIR 1964 SC 1473.

32 *Devanagere Cotton Mills Ltd v Deputy Commr* AIR 1961 SC 1141, (1961) 2 SCJ 578.

33 AIR 1961 SC 1441.

that the General Clauses Act is not to apply to the interpretation of that expression used in the Act. It was accordingly held that the deputy commissioner can exercise the powers conferred on the collector under s 7 of the Cotton Cess Act, he being the chief officer in charge of the revenue administration of a district under the Mysore Land Revenue Code and consequently within the purview of the definition of the expression in cl (11) of s 3 of the General Clauses Act.

Earlier, the same view was taken in *Devanagere Cotton Mills Ltd v Deputy Commr*³⁴ by the Mysore High Court and it was held that as the deputy commissioner in Mysore is the chief officer in charge of the revenue administration of a district, he must be regarded as a 'collector' and hence no objection can be taken to a notice issued by him in exercise of the powers conferred by s 6 of the Cotton Cess Act 1923 on the ground that he is not a collector.

However, the definition of 'collector' in Bengal Public Demands Recovery Act 1913 excludes this definition of the term as given in the General Clauses Act.³⁵

The mere circumstance that the collector, acting under s 48 of the Madras Revenue Recovery Act 1864, has to take a decision before issuing a warrant will not make him a court, as he is not under the section empowered to exercise the other powers of the court of hearing the assessee before coming to a decision as to his conduct and issuing the warrant after such an opportunity was given. The collector, as defined in the General Clauses Act, is only the chief officer of the revenue administration of a district, and in no sense could he be considered to be a court. Apart from it, the conferring on the collector the powers of a civil court under the proviso to s 46(2) of the Income-tax Act, is conclusive to show that the collector is empowered to act as the chief officer of the revenue administration of the district while proceeding under s 48, and as a civil court only while acting under the proviso to s 46(2).³⁶

There was a conflict of opinion as regards the applicability of the definition of 'collector' in s 3(6), Madras General Clauses Act 1891, to Reg 7 of 1828 or to the Madras Revenue Recovery Act of 1864. In *Gnana Sambanda Pandara Sannadhi v David Nadar*,³⁷ the view taken was that s 3(6), Madras General Clauses Act, applied to the 1828 Regulations and the Act of 1864, while in *Gandham Chinna Brahmayya v Pappu Setty Gangulu*,³⁸ a contrary view was taken by the same High Court. This conflict was set at rest by a Full Bench decision in *Chintada Chittayya v Secretary of*

34 AIR 1957 Mys 73; affirmed in *DC Mills Ltd v Commr* AIR 1961 SC 1441-42, 1961 SCD 677; *Hubba Lal v State of Mysore* AIR 1955 MB 36.

35 *Ladhu Ram Taparia v DK Ghose* AIR 1957 Cal 667, 61 CWN 926.

36 *Erimmal Ebrahim v Collector of Malabar* AIR 1954 Mad 1091.

37 14 Mad LJ 433.

38 ILR 51 Mad 695.

*State*³⁹ in which it was held that the latter case had proceeded on the misconception that the definition in s 3(6), Madras General Clauses Act 1891, applied to Reg 7 of 1828, or to Act of 1864, and was wrongly decided.

The Andhra Pradesh Amendment Act 22 of 1976, amending the central act speaks of district collector and not collector so that when a notification has to be approved by the district collector, the notification signed by district revenue officer is not valid.⁴⁰

18. SECTION 3(13): 'COMMENCEMENT'

It will be observed that in s 36 of the Interpretation Act 1889 (English), the expression 'commencement' used with reference to an Act, shall mean the time the Act comes into operation, while in the present Act it means the day on which the Act or regulation comes into force. Section 3(13) is to be read in conjunction with s 5(3) of the Act in case of a Central Act or regulation and corresponding section of the local Act as under:

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.⁴¹

There is, however, no distinction between the date of commencement of an Act and the date on which it is applied to a particular area.⁴²

In *Ghulam Mohsin Jafri v State of Bihar & Ors*,⁴³ by a notification issued by the Central Government in the *Official Gazette* the Central Government appointed 1 January 1996 as the date on which the Wakf Act 1995 (43 of 1995) shall come into force. While rejecting the argument that there should be different notifications for each state as an utter misconception, the learned

39 AIR 1932 Mad 377 (FB); overruling *Gandham Chinna Brahmayya v Pappu Setty Gangulu* AIR 1928 Mad 499; approving *Sambanda Pandara v David Nadar* 14 Mad LJ 433.

40 *VV Rama Chandra Rao v State of Andhra Pradesh* AIR 1980 AP 68-69.

41 *Orissa State v Chandra Sekhara* AIR 1970 SC 398, 401, (1970) 1 SCJ 375.

42 *L Kedar Nath v Kishan Lal* AIR 1952 All 500, 1952 All LJ 157.

43 Dated 22 November 1995 vide SO 1007(e).

single judge of the Patna High Court held, inter alia, that different provisions of the Wakf Act can be brought into different areas of different states on different dates if the Central Government so chooses. The expression 'a state' becomes relevant in that context. But where, by the said notification, the 1995 Act has been brought into operation to all the states to which it extends, the word 'a state' would mean all the states in which the 1995 Act has come into force save and except the state of Jammu & Kashmir as has been provided under sub-s (2) of s 1 of the 1995 Act. Since the Act as a whole has been brought into operation by the said notification with effect from 1 January 1996, no other notification is required to bring into operation the 1995 Act.⁴⁴

The Constitution of India came into force on the expiration of the midnight of 25 January 1950, while the President of India took the oath of office at 10.15 am on 26 January 1950, and all laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they were inconsistent with the provisions of Pt 3 of the Constitution, became, to the extent of such inconsistency, void. Accordingly their lordships of the Patna High Court (Meredith CJ and Sarjoo Prasad J) held in *Brahmeshwar Prasad v State of Bihar*,⁴⁵ that Bihar Act 3 of 1950 was ultra vires the Constitution of India. But Narsimham J (with whom Ray CJ, Jagannadha Das J and Panigrahi J agreed) opined in *Prahlad Jena v State*,⁴⁶ after quoting s 5(3) and s 3(12) of the General Clauses Act 1947:

Therefore, if a central Act came into force, say at 11 AM on 26 January, then by virtue of section 5(3) read with section 3(12), General Clauses Act that Act, should be deemed to have come into force from the midnight of 25–26 January. The order of the President under Article 373 should, therefore, be deemed to have come into force from the midnight of 25–26 January even though it might have been actually signed by the President only after 10.15 AM on the 26th. The Constitution also came into force from the midnight of 25–26 January because the provisions of the General Clauses Act, section 5(3) were made applicable to the interpretation of the Constitution by article 367(1). The result, therefore, is that both the Constitution and the order came into force for legal purpose from the midnight of 25–26 January, and in considering the validity or otherwise of the relevant provisions of the Orissa Act, the short interval of time between the midnight of the 25–26 January and the exact time of the signing of the order by the President becomes immaterial.

44 AIR 1999 Pat 115.

45 AIR 1950 Pat 265.

46 AIR 1950 Ori 157, 159 (FB).

This case was considered by Naik CJ, of Hyderabad High Court in *Showkat-un-nisa v State of Hyderabad*.⁴⁷ His lordship observed therein:

I have gone through the Orissa judgment and say with great respect to learned Judges that though by virtue of section 5, sub-section (3), read with section 3, sub-section (12), General Clauses Act, the President's order should be deemed to have come into force from the midnight of 25-26 January 1950, it cannot be said that under the General Clauses Act the author of the Act also is considered to have the power to make the law. The fiction applies to the law or the signature but not to the author. The exact time of signing of the order by the President may be immaterial but the exact time of the President having the power to make an enforceable law becomes material. The oath taking ceremony may be a mere ceremony for ceremonial and administrative purposes, but for promulgating a law the oath has an importance of its own and without oath the President has no power to make an order which will be recognised by a court of law. A High Court judge cannot do any judicial work merely on the strength of the order of his appointment. He has to take oath of his office before he can discharge any of his judicial functions. By a legal fiction, one can consider the law as having been passed at the earliest moment of the day but it cannot be held by the same fiction that the President had the capacity to make the law when the President was not the President at that time. The cases cited by the Advocate-General in *Chenchiah v Commr of Police*,⁴⁸ and *Re Court-fees*,⁴⁹ cannot help him because in those cases it is the law that was considered and not the author of the law.

In *Saty Dev Cheema v Assistant Deputy Custodian, Evacuee Property, Bharatpur*,⁵⁰ it was held that the Administration of Evacuee Property (Amendment) Act 42 of 1954 came into force on the date it received the assent of the President. Under all circumstances, it could commence only on that date. The Administration of Evacuee Property (Amendment) Act 42 of 1954 received the assent of the President on 8 October 1954. The date of commencement of the said Act will be no other than the said date.⁵¹ Where on 1 April 1937 the Usurious Loans Act 1948 came into force in Bangalore Civil and Military Station, the Act has no application to a mortgage deed executed in 1933. In these circumstances, though the Act was passed in

47 AIR 1950 Hyd 20, 25 (FB); *Sunil Kumar Bose v Chief Secretary to Government of West Bengal* AIR 1950 Cal 279, 54 CWN 394 (SB).

48 AIR 1948 Mad 288.

49 ILR 46 Mad 685, AIR 1924 Mad 257 (SB).

50 AIR 1956 Raj 193.

51 *Managing Office for Evacuee Property, Gaya v Mst Nasiban* 1969 BLJR 637, AIR 1969 Pat 272; *State v Rama* AIR 1956 Raj 193, 195, (1956) ILR 6 Raj 742 (DB).

1918, operation in the area commenced in 1937 and it can have no application with retrospective effect. The commencement must be the date on which the Act was made applicable to a particular area. The fact that the Act was in operation in other areas will not result in it having commenced in the area where it had not been applied. Sub-section (3) of s 5 clearly indicates that there is a distinction between an Act coming into operation and the commencement of an Act. The date of coming into operation is not necessarily the date of commencement of an Act.⁵²

A notification to the effect of increase in the court-fees, even when it reached the High Court at 5 PM on the date of its commencement, was held to apply even to cases filed before 5 PM. The principle is that if the named date is beginning of a defined limited period, where there is a terminus ad quem as well as terminus ad quo, then prima facie, the first day is excluded, whereas if the named date is the beginning of an indefinite period, then prima facie, the first day is included.⁵³

19. SECTION 3(17): 'DISTRICT JUDGE'

The expression 'district judge' has been defined in the Uttar Pradesh General Clauses Act as well as the General Clauses Act 1897 to mean 'the judge of a principal civil court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.'⁵⁴

The words used in s 2(1)(e) of the Arbitration and Conciliation Act 1996, namely, 'principal civil court of original jurisdiction in a district', are referable to the district as defined in the Code of Civil Procedure and to the district judge as defined in General Clauses Act, respectively. The 'court' referred in s 9 of the Arbitration and Conciliation Act is the court having principal original jurisdiction in the district ie the principal district court.⁵⁵

The district judge would be the principal civil court of original jurisdiction within s 3(b) of the Hindu Marriage Act.⁵⁶ The expression 'principal civil court of original jurisdiction' in s 122 of the Representation of the People Act 1951, in the same way, would mean a district judge.⁵⁷

52 *Manick Chand v Saleh Mohd* (1969) 1 SCC 206, (1969) 2 SCWR 318, (1969) 2 SCJ 47, AIR 1969 SC 751. For a detailed discussion on the distinction between commencement of Act, and 'date of operation': see s 5.

53 *Re Court Fees* AIR 1924 Mad 257, 45 MLJ 557.

54 *Hindustan Assurance and Mutual Benefit Society Ltd v Mulraj* AIR 1915 Mad 608-09, 27 Mad LJ 645 (DB).

55 *Managing Director, Sundaram Finance Ltd, Madras & Anor v GS Nandakumar* (2001) 4 Andh LT 383.

56 *Som Prakash v Dalwati Rani Rathaur* 1986 All WC 396.

57 *Golak Chandra Barua v Dev Kant Barua* AIR 1980 Gau 31 (execution of order of costs made by Supreme Court, in election petition).

Under the Manipur (Courts) Act 1955, the additional district judge comes within the meaning of district judge, both being judges of principal civil courts of original jurisdiction.⁵⁸

The expression 'district judge' includes additional district judge⁵⁹ though the definition of the term 'district court'⁶⁰ as given in the Copyright Act 1957 has nothing to do with the definition given in the General Clauses Act.⁶¹ But, there being something repugnant in the Provincial Small Causes Courts Act 1887, the definition of 'district judge' in the General Clauses Act, would not apply to 'additional district judge' exercising the power of revision under that Act⁶² and, hence, an order passed by a district court under s 25 of that Act is amenable to the revisional jurisdiction of the High Court under section 115 of the Civil Procedure Code.⁶³ The expression 'district judge', as used in s 18 of the Uttar Pradesh Buildings (Regulation of Eviction) Act 1972, includes additional district judge.⁶⁴ The expression has been defined in this Act, Civil Procedure Code and Bengal, Agra and Assam Civil Courts Acts. In none of these enactments does the definition restrict the meaning of 'district judge'. It has been likewise held that for the purposes of the Industrial Disputes Act, the expression 'additional district judge' comes within the definition of 'district judge'.⁶⁵ Similarly, for purposes of election petition, under ss 16, 17 and 18 of the Assam Municipal Act 1957, as extended to the State of Manipur, 'additional district judge' had been taken within the definition of 'district judge'.⁶⁶

58 *Thockchom Annubi Singh v Laisram Thanil Singh* AIR 1964 Mani 35.

59 *GS Bezbarua v State of Assam* AIR 1954 Assam 161, 164; but see *JB Mangharam & Co, Gwalior v KB Kher* AIR 1956 MB 183, (1956) ILR MB 307 (DB), holding that the article 'the' prefixed to the expression excludes additional district judge from its scope.

60 *Abdul Rauf v Hafiz Mohammad* AIR 1949 Nag 137; dissenting from *Nasarulla v S Wajid Ali* AIR 1932 All 362; *Kale Khan Mahamad Khan v Karim Rehman Malik* AIR 1935 Bom 207; *Nasarullah v Wajid Ali* AIR 1930 All 81; overruling *Syed Abdul Hadi v Abdul Latif* AIR 1937 Nag 135; relying on *Syed Ismail Sahib v Ethikasha Sarguru* AIR 1941 Mad 897; *Shia Youngmens Association v Syed Fateh Ali Shahi* AIR 1941 Lah 145 (FB); *Re Sirdar Sayedna T Saifudin* AIR 1934 Bom 169 (held that the district court is not competent to entertain application under s 10 of the Mussalman Wakf Act 1923).

61 *Daily Calendar Supply Bureau, Sivakasi v United Concern* AIR 1967 Mad 381, (1964) ILR 2 Mad 666.

62 *Maya Ram v Sant Ram* 1964 All LJ 998-99.

63 *Vishesh Kumar v Shanti Prasad* AIR 1980 SC 892, 1980 All LJ 411; overruling *Bimla Rani v Bandu Motor Finance Pvt Ltd* AIR 1972 All 242; but see *Balkrishna Udayar v Vasudev Ayyar* 44 IA 261, AIR 1917 PC 71; *Hem Sankar v Rao Girdhari Lal Chowdhari* AIR 1963 SC 698, contributing to the view that decision by additional district judge, will be decision by the district court.

64 *Sushma Giri v Ninth Addl District Judge, Allahabad* AIR 1977 All 463.

65 *GS Bezbarua v State of Assam* AIR 1954 Assam 161.

66 *Anubi Singh v Thanil Singh* AIR 1964 Mani 35, 38.

The expression 'ordinary jurisdiction' embraces all jurisdiction exercised in the ordinary course of law, and without any special step being necessary to assume it; and it is opposed to extraordinary jurisdiction which the court may assume at its discretion upon special occasions and by special orders.⁶⁷ *Re Kuppaswami Nayagar*,⁶⁸ the question was whether a succession certificate could be granted by the Madras High Court under the provision of the Succession Act, which did not define the term 'district judge'. In the order referring the case to the Division Bench, Kumaraswami Sastri J, referred to the definition of 'district judge' in the General Clauses Act and observed:

Ordinary and extraordinary original civil jurisdiction of the High Court is dealt with in clauses 11 and 21, Letters Patent. The heading is 'civil Jurisdiction of the High Court', and clauses 11 to 21 deal with the ordinary original civil jurisdiction, extraordinary original civil jurisdiction and insolvency jurisdiction;⁶⁹ clauses 22 to 30 deal with criminal jurisdiction; clause 31 deals with exercise of jurisdiction outside the ordinary place where the High Court sits, clauses 32 and 33 deal with admiralty and vice-admiralty jurisdiction. Section 34 deals with testamentary and intestate jurisdiction. It is argued by Mr Tirunarayanachariar that under the Letters Patent, the High Court in the exercise of ordinary original civil jurisdiction only means the High Court exercising jurisdiction conferred by clauses 11 to 21, Letters Patent and cannot refer to any other civil jurisdiction (for example, granting probate) and that, except when the High Court is exercising ordinary original jurisdiction conferred by clauses 11 to 21, when the words 'district judge' is used, it must be taken to include the High Court when it exercises original civil jurisdiction in matters such as granting probate etc. I think there is a distinction between the original jurisdiction of the High Court and the ordinary original civil jurisdiction of the High Court. All applications to the High Court are either civil or criminal. They are original civil when matters come for the first time to the High Court, and they are appellate civil when they come in the form of appeals. The granting of probates or succession certificates will come within the original civil jurisdiction, but it would not come

67 *Navivahu v Turner* 16 IA 156, 162, referring to Bombay High Court.

68 AIR 1930 Mad 779; followed *Re SR No 8238 of 1953* AIR 1953 Mad 974 holding that the High Court is a district court within the meaning of the Drugs Rules and a civil miscellaneous appeal lies to the High Court at the instance of the aggrieved party against the order of the Drugs Controller of India cancelling the import licence granted to him. Similarly, the High Court can be deemed to be a district court within the meaning of s 2(4), CPC and has jurisdiction to try a suit under the Copyright Act; *Daily Calendar Supplying Bureau, Sivakasi v United Concern* (1964) ILR 2 Mad 666, AIR 1967 Mad 381.

69 *Navivahu v Turner* (1889) ILR 13 Bom 520, 16 IA 156 (PC).

under ordinary original civil jurisdiction which by the Letters Patent seems to be confined to suits and matters under clauses 12 to 21, which refer to the exercise by the High Court of its ordinary original civil jurisdiction.

His lordship referred to the abovementioned Privy Council case and proceeded to observe:

Sections 11 and 12 describe the local limits of the ordinary original civil jurisdiction which is said to extend to all kinds of suits within those limits except small suits. Section 13 gives to the High Court power to remove, and to try as a court of extraordinary original jurisdiction any suits falling within the jurisdiction of any court subject to its superintendence, when it shall think proper, either on agreement of the parties or for the purposes of justice. Sections 15 and 16 confer appellate jurisdiction. Section 17 confers authority over infants, idiots and lunatics. Section 18 ordains that the court for relief of insolvent debtors shall be held before one of the judges of the High Court, and that the High Court and any such judge shall have such powers as are constituted by the laws relating to insolvent debtors in India. I think this case supports the view that for the purpose of determining the meaning of the words 'ordinary or extraordinary original civil jurisdiction' in section 3, clause 15, General Clauses Act, all that is excluded is the High Court acting under clauses 11 and 18, Letters Patent and that the High Court exercising any other original jurisdiction would fall within the definition of district judge.

The word 'district judge' is defined in art 236 of the Constitution of India as under:

The expression 'District Judge' includes judge of a city civil court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of Small Causes Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge.

It is to be observed that the definition of 'district judge', as stated in art 236 of the Constitution, has no relevance in interpreting the expression as used in the old Motor Vehicles Act 1939, s 110(3) (now s 165 of Motor Vehicles Act 1988).⁷⁰

The High Court has been construed as the district court for purposes of the Drugs Rules.⁷¹

70 *New India Assurance Co, Bombay v Molta Devi* AIR 1969 MP 190.

71 *Re Intoor John (Accused Appellant)* AIR 1953 Mad 774.

The High Courts are not principal civil courts of original jurisdiction within the meaning of s 122 of the Representation of the People Act 1951. The expression principal civil court of original jurisdiction, therefore, refers to a district judge.⁷²

20. SECTION 3(13): 'DOCUMENT'

The expression 'document' has been defined both in the Indian Penal Code and the Evidence Act. Section 29 of the Penal Code reads thus:

The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a court of justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document;

A cheque upon a banker is a document;

A power of attorney is a document;

A map or plan which is intended to be used or which may be used as evidence, is a document;

A writing containing directions or instructions is a document.

Explanation 2—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustrations

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words 'pay to the holder' or words to that effect had been written over the signature.

The expression 'document' has been defined in s 3 of the Evidence Act, thus:

'Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

72 *Nuratmal Jain v Tarinibala Bora* AIR 1980 Gau 30, 34.

Illustrations

A writing is a document;
 Words printed, lithographed or photographed are documents;
 A map or plan is a document;
 An inscription on a metal plate or stone is a document;
 A caricature is a document.

In *R v Daye*,⁷³ Darling J, has defined the word 'document' thus:

Any written thing capable of being evidence is properly described as a document, and it is immaterial on what the writing may be inscribed.

As laid down by the Andhra Pradesh High Court in *Public Prosecutor, Andhra Pradesh v T Amrath Rao*⁷⁴ 'any decipherable information which is set down in a lasting form'⁷⁵ would be a document within the meaning of the term in cl 18 of s 3. A printed leaflet containing an ideological appeal has been held to be paper within meaning of s 3 of Press and Registration of Books Act 1867, as amended in 1955.⁷⁶

Interpreting the expression 'other document' in s 19(3), Foreign Exchange Regulations Act (7 of 1947), it has been held that the word 'document' in s 19(3) is used in the sense in which it has been defined in s 3(18) of the General Clauses Act and the use of the word 'other' carries no special significance.⁷⁷

An 'instrument' is a document within the meaning of s 3(18) of the Act and includes a 'conveyance' within the meaning of s 2(1) thereof.⁷⁸

According to s 3(18) of the General Clauses Act, the word 'document' does not include currency notes. Though, under s 19A(7) of the Foreign Exchange Regulations (Amendment) Act 1964, a document includes currency notes, but under s 19(2), a person cannot be ordered to furnish currency notes.⁷⁹ The instrument is a document within the meaning of s 3(18) of the General Clauses Act and is a conveyance within the meaning of s 2(10) of the said Act.⁸⁰

73 [1908] 2 KB 333, 340 ('summons' included in the word 'document' under Public Health Acts); *R v Braithwaite* [1918] 2 KB 319, 326; *Hayes v Brown* [1920] 1 KB 250, 252.

74 AIR 1960 AP 176.

75 *Agra Electric Supply Co v State of Uttar Pradesh* AIR 1960 AP 176, 1960 Cr LJ 452, (1960) 1 Andh WR 400.

76 *State of Uttar Pradesh v Sureshar* 1973 All WR 681 (HC).

77 *Shama Charan Saha v Sub-Divisional Magistrate of Belonia* AIR 1962 Tri 50 ('currency' included in the expression 'other document' under s 19(3), Foreign Exchange Regulations Act 1947). The word 'document' does not include Indian Currency; *Krishnan Sukumaran Enforcement Officer* AIR 1968 Ker 208.

78 *Krai Oil Chemical Pvt Ltd v State of Uttar Pradesh* AIR 1997 All 92.

79 *Krishnan Sukumaran v Enforcement Officer, Cochin* 1968 Ker LJ 257, (1968) ILR 1 Ker 606, 1968 Cr LJ 936, AIR 1968 Ker 208.

80 *M/s Orai Oil Chemicals Pvt Ltd v State of Uttar Pradesh* AIR 1997 All 92.

21. SECTION 3(19): 'ENACTMENT'

'Enactment' means an Act of legislature or part thereof.⁸¹ 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.⁸²

Where rules have been framed by the state government under authority of a central Act, the same would be deemed to have been made by the Central Government when, later on, the authority to make such rules has been reserved only to the Central Government.⁸³

'Ordinance' is an enactment within the meaning of s 8 of the General Clauses Act 1897, Defence of India Ordinance 1962, Defence of India (Amendment) Ordinance 1962, and Defence of India Act 1962, s 48(2).⁸⁴

Rules are nothing but a specie of legislation; instead of enacting the same, the legislature delegates that power and authority to another person or authority. Whatever is enacted by the delegatee of the legislature is also the enactment of the legislature.⁸⁵

The words 'former enactment' in s 8 of the General Clauses Act would include any Act or provision therein passed by the Union Parliament or state legislature. It could not have been intended that when an Act passed by the Union Parliament repeals a state Act, the principle underlying s 8 of the General Clauses Act should never become applicable.⁸⁶

Explaining the result of a combined reading of s 3(19) and s 6(c) of the General Clauses Act, it has been held in *K Sankaran v Commr of Income-tax, Kerala*,⁸⁷ that repeal of an enactment includes repeal of any provision therein contained, and when such repeal has taken place, the consequences under s 6(c) are bound to follow so as to keep alive the rights and liabilities acquired or accrued under the repealed enactment.

22. SECTION 3(20): 'FATHER'

Clause (20) of s 3 only lays down that the word 'father' shall include an adoptive father in cases where adoption is permissible. The meaning given

81 *'Vishnu' Pratap Sugar Works Pvt Ltd v Chief Inspector of Stamps* AIR 1968 SC 102, 104, (1968) 1 SCWR 69; *Shanti Lal Ambalal Mehta v MA Rangaswamy* (1977) 79 Bom LR 633, 647, 1977 Mah LJ 587.

82 *Wakefield and District Light Rys Col v Wakefield Corpn* [1906] 2 KB 140, 145-46, per Rideley J; *Postmaster General v Birmingham Corpn* [1936] 1 KB 66, 82 (an ordinance is an 'enactment' within the meaning of s 8 of the Act); *Bharat Nidhi Ltd v Megh Raj Mahajan* AIR 1967 Del 22.

83 *Sampat Ragho Taydo v Surajmal Kaluram* AIR 1959 Bom 554-55, 1959 Cr LJ 1429, (1959) ILR Bom 1336 (DB).

84 *Harobhai M Mehta v State of Gujarat* 7 Guj LR 597, (1966) ILR Guj 701, AIR 1967 Guj 229.

85 *Challa Ram Konda Reddy v State of Andhra Pradesh* AIR 1989 AP 235, 241.

86 *State of Punjab v Suk Dev Sarup Gupta* (1971) 1 SCJ 543.

87 (1980) 122 ITR 754.

in this clause cannot be attached to the word 'child' appealing in s 125 of the Criminal Procedure Code, 1973. Section 3 of this Act refers only to specific words and the meaning given to them cannot be attached to different words of somewhat similar meaning. The word 'child', therefore, will not include an adopted child on the analogy of the provision of this clause according to which 'father' includes an adoptive father,⁸⁸ so also, a mother for that purpose, does not include a stepmother.⁸⁹

23. SECTION 3(22): 'GOOD FAITH'

Good faith, which is bona fide, is a mental state negating dishonesty and having no relation to negligence or want of care.⁹⁰ In civil law, the emphasis in the expression 'good-faith' falls on 'due care and attention' but not on honesty.⁹¹ Section 3(22) of this Act as well as s 3(20) of the Bombay General Clauses Act (1 of 1904) lay down that negligence does not necessarily mean mala fide. Something more than negligence is necessary. But these Acts use the term 'honestly'. So far the interpretation of that word is concerned, the Supreme Court has explained the legal meaning of the word in the case of *Bhiwandi and Nizampur Municipality v Kailash Sizing Works*,⁹² by relying on the version of Lord Blackburn in *Jessee Jones v Gordon*⁹³ and has distinguished between the case of a person who is honestly blundering and careless and the case of a person who has not acted honestly. It was stated that an authority is not acting honestly where such authority has a suspicion that there is something wrong but 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 present or not. This legal presumption is drawn on the basis of the well-known and hypothetical 'reasonable man'. Reckless disregard of consequences and mala fide stand in equal stead,⁹⁴ where the actual state of mind of the actor is relevant. This is so in the eyes of law, even if there might be variations in the degree of moral reproach deserved by recklessness and mala fides.

88 *Ma E Mys v U Ko Ko Gyi* AIR 1937 Rang 370, 372.

89 *Ramabai v Dinesh* 1976 Mah LJ 565.

90 *Hirji Madha v Nagji Kurji* 1964 Guj LR 289, 293.

91 *GS Pathak v SS Nisal* AIR 1955 Bom 93; *Paramkirti v Dewan Singh* AIR 1961 All 564; *Fatima Fauzia v Syed-ul-Mulk* AIR 1979 AP 229, 242.

92 AIR 1975 SC 529, (1974) 2 SCC 596, 1975 Mah LJ 19, 1975 MPLJ 120, [1975] 2 SCR 123; applying *Jessee Jones v John Gordon* [1877] 2 AC 616.

93 [1877] 2 AC 616.

94 *Municipality of Bhiwani and Nizampur v Kailash Sizing Works* AIR 1975 SC 529, 531, 1975 Mah LJ 19, (1974) 2 SCC 596, 1975 MPLJ 120, [1975] 2 SCR 123.

The Supreme Court applied this meaning in the above case on the fact that the respondent had a structure abutting on the road, on the other side of which was an open *nallah* running parallel to the road and providing for passage of dirty as well as rain water. The Government of Maharashtra had demolished a portion of a dam in consequence of which the water stored in the dam was bound to pass through the *nallah*. The appellant had narrowed the *nallah* in front of the respondent's shop without making any provision for the passage of additional water and allowed the cement slab across the *nallah* to constitute a grave obstruction against the passage of rain water through the *nallah*, and, in addition, neglected and failed to see that the passage of the *nallah* was kept free and unobstructed by the debris of construction work for providing a safe passage of water. It was held by AN Ray CJ, that the appellant-defendant was aware of the possible harm and yet cared to do nothing about it. The action was, therefore, reckless, and therefore in the eyes of law mala fide.

The question of good faith in the context of s 51 of the Transfer of Property Act 1882, is a question of fact and a person acting under a mistake of law may yet be said to have acted in good faith,⁹⁵ and for that purpose, even a negligent belief,⁹⁶ provided it is not dishonest,⁹⁷ can be held to be honest belief.⁹⁸

In the absence of honesty of purpose, the benefit of the definition of good faith cannot be availed,⁹⁹ and the same has been appropriately applied to s 56(1) of the Electricity Act 1910,¹ the law of insolvency,² and s 117 of the Factories Act 1948.³ In the matter of erroneous conduct of a person, the test would exclude the question of negligence if such conduct is based on the

95 *Chennapragada Narayanamurthy v Secretary of State* AIR 1925 Mad 963-64, 48 Mad LJ 682 (question of improvement and compensation thereof); *Durgoji Row v Fakeer Sahib* (1907) ILR 30 Mad 197, 199 (DB), 17 Mad LJ 9; *Harilal Ranchhod v Gordhan Keshar* AIR 1927 Bom 611, ILR 51 Bom 1040 (DB); *Public Prosecutor v Vattem Venkataramayya* AIR 1963 AP 106, 109, (1963) 1 Cr LJ 283, (1962) 2 Andh WR 109 (DB); overruling *Re P Lakshmaiah Naikdu* AIR 1959 AP 536; *Mudragada Satyanarayana v Jammi Veeraju* AIR 1959 AP 79.

96 *Shahabuddin v Mohid Bux* AIR 1920 Sind 31-32, 14 Sind LR 12 (DB); *Harbhagawandas Purshothamdas v Dr C Narayana Iyengar* AIR 1952 Mad 117-19, (1952) ILR Mad 384 following *Secretary of State v Durgappa Bhandary* AIR 1926 Mad 921; *Maithheensa Rowthan v Appa Bibi* (1913) 36 Mad 194, 197-98, 202, 21 Mad LJ 969 (s 51 inapplicable to court sales).

97 *Harbhagawandas Purshottamdas v Dr C Narayana Iyengar* AIR 1952 Mad 117; *Kala Devi v Radha Kishan* AIR 1977 Raj 203, 211-12, 1977 Raj LW 301 (undue haste not good faith); *Surat Singh v Municipal Corpn of Delhi* AIR 1989 Del 51.

98 *Sohan Lal v Poonam Chand* AIR 1961 Raj 32-33, (1961) ILR 10 Raj 266 (things not done with due care and attention held not bona fide).

99 *Bisweshwar Misra v Swet Kumar Panigrahi* 1966 Cr LJ 494, 31 Cut LT 314 (s 111(2) of the Orissa Gram Panchayat Act 1948).

1 *Anand Singh v State of Rajasthan* 1975 WLN 514 (UC) (Raj).

2 *N Subramania Iyer v Official Receiver, Quilon* AIR 1958 SC 1, (1958) SCJ 172 (test not applicable to Travancore General Clauses Act).

3 *Public Prosecutor v Vattem Venkataramayya* AIR 1963 AP 106, (1962) 2 Andh WR 109 (DB) (question of good faith in payment to worker for his overtime work).

ground of its being reasonable.⁴ When an authority thinks that 'seizure' includes 'freezing of stocks' as a step preliminary thereto, such authority would be protected by this Act.⁵ The word 'good faith' in s 117 of the Factories Act 1948, means 'honesty', even if there was some mistake or negligence.⁶

The expression 'good faith' used in s 17(1), Defence of India Act, should be construed in the light of the definition in the General Clauses Act. Hence, if from the proven 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 s 17(1).⁷

Order characterised as not bona fide is not amenable to the definition of good faith.⁸

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,⁹ or honesty of dealing.¹⁰

The definition of 'good faith' in the General Clauses Act does not expressly apply to the term when used in the Contract Act 1872,¹¹ the Transfer of Property Act 1882,¹² or the Trusts Act 1882,¹³ being Acts passed before 1897. It was, however, stated in a Bench decision in *Arunachala Thevar v Govindarajan Chettiar*,¹⁴ that 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 (10 of 1897—now, 47 of 1963) 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.¹⁵

- 4 *Munshi Ram v Raghubir Chand* AIR 1953 HP 15 (test applied to conduct of a counsel).
- 5 *SD Sharma v Thakorlal Chhagan Lal* (1978) 19 Guj LR 332 (DB) (s 15 of the Essential Commodities Act 1955).
- 6 *Public Prosecutor v Vattem Venkataramayya* AIR 1963 AP 106, (1962) 2 Lab LJ 21.
- 7 *Babulal Agarwal v Province of Orissa* AIR 1964 Ori 225.
- 8 *Biswanath Modi v Revenue Divisional Commr, Central Division, Cuttack* (1963) 5 Ori JD 97, 110-11 (DB).
- 9 T Ramprasad Rao and S Ratnavel Pandian JJ, in *Arunachala Thevar v Govindarajan Chettiar* (1977) 2 Mad LJ 431.
- 10 *Nannu Lal v Ram Chander* AIR 1931 All 277, 294, ILR 53 All 334 (FB).
- 11 *Maung Aung Pu v Maung Si Maung* 12 IC 809; *Madras Automobiles v Modern Bank Ltd* AIR 1938 Mad 457, 545.
- 12 *Lachmi Prasad v Lachmi Narain* AIR 1928 All 41, 43, per Ashworth J, (this definition was, however, applied in cases arising under the Transfer of Property Act, eg, *Mathunsa v Apsna Bin* ILR 36 Mad 194; *Narayana Aiyar v Shankaranarayana Aiyar* 24 IC 940; *Sahabuddin v Vohid Bux* AIR 1920 Sind 31-32; *Rama Aiyar v Narayanasami Aiyar* AIR 1926 Mad 609, 613; but see *Kailash Sizing Works v Municipality of Bhiwandi* (1969) ILR Bom 564, 70 Bom LR 554, 1969 Mah LJ 916, AIR 1969 Bom 127.
- 13 *Fatima Fauzia v Syed-ul-Mulk* 1979 (1) APLJ (HC) 264, AIR 1979 AP 229 (DB).
- 14 (1977) 2 Mad LJ 431.
- 15 *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.¹⁶ Good faith is honesty of fact, done without negligence; and, as such, when the government seeks to impose control with a view to prevent profiteering or black-marketing, good faith on its part cannot be lightly challenged.¹⁷

'Good faith' as contemplated by sub-ss (1) and (2) of s 14 of the Limitation Act 1963 is not the same as 'good faith' under the General Clauses Act.¹⁸ Section 2(7) of the 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 when it is, in fact, done honestly, whether it is done negligently or not. The General Clauses Act emphasises 'honesty' but ignores the factor of negligence, but the Limitation Act, on the other hand, emphasises not 'honesty' but that a party has acted with due care and attention.¹⁹ The definition of 'good faith' in the Penal Code and in the Limitation Act are identical but both are at variance with the General Clauses Act.²⁰

The definition of 'good faith' in the General Clauses Act is more liberal than that in the Indian Penal Code²¹ or Limitation Act.²² In a suit involving a question of limitation, the definition of 'good faith' as given in s 2(h) of the Limitation Act²³ has to be adopted and not the definition in s 3(22) of the

16 *Maung Aung Pu v Maung Si Maung* 12 IC 809.

17 *State of Madhya Pradesh v Auditor and Liquidator, Jabalpur* 1958 MPC 262, 266 (DB).

18 *Amar Kaur v Iqbal Singh* 1972 Punj LJ 457, 1972 Rev LR 468; following *Mannan Lal v Mst Chhotka Bibi* AIR 1971 SC 1374; *Jagat Ram v Kharati Ram* AIR 1938 Lah 361 (FB); reversing *Amar Kaur v Iqbal Singh* AIR 1971 Punj 461, (1971) 73 Punj LR 82, 1971 Punj LJ 49, 1971 Cur LJ 182, 1971 Rev LR 211; *Jagat Ram v Kharati Ram* AIR 1938 Lah 361; *Custodian, Evacuee Property v Rameshwar Dayal* AIR 1968 Del 183, (1968) 70 Punj LR (D) 7; *State of Punjab v Nand Kishore* AIR 1966 Punj 332, 1965 Cur LJ 578; *Heman Das Thakur Das v Devi Shah Din Dayal* (1911) 5 Sind LR 181-82 (definition in Limitation Act held more strict).

19 *Surajmal v Shrikisan* AIR 1973 Bom 313, 321.

20 *Triumala Bhaskara Rao Naidu v Panasa Narayanamma* AIR 1956 Ori 124-25, (1956) ILR Cut 135 (DB).

21 *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 dishonesty as civil law); *Re Ganapathia Pillai* AIR 1953 Mad 936-37, 1963 Cr LJ 1730 (honest blunder admits of good faith in General Clauses Act, but in the Penal Code, it would work out negligence).

22 *Manghanmal v Fernandez* 13 IC 260; *Gehimal v Manager, Incumbered Estates in Sind* (1916) 32 IC 616-17, 9 Sind LR 167 (good faith in s 14 of the Limitation Act 1908 to be decided on facts of particular case).

23 *GS Pathak v SS Nisal* AIR 1955 Bom 93, 97, 56 Bom LR 597 (s 2(7), Limitation Act 1908, emphasised honesty as well as due care and attention).

General Clauses Act.²⁴ The definition given in the Penal Code is a negative one and according to it if a thing has been done negligently, though honestly, it would not be deemed to have been done in good faith. The General Clauses Act regards a thing being done in good faith even though it is done negligently but the Penal Code excludes the element of negligence from the purview of 'good faith'. In other words, under the Penal Code, a thing would not be deemed to have been done in 'good faith' when a thing has been done negligently. A lack of diligence, which an honest man of ordinary prudence is expected to exercise, and which the context of any enactment justifies,²⁵ will, in law amount to want of good faith.²⁶

The definition of the term 'good faith' in the General Clauses Act lays stress on one aspect of honesty only, irrespective of negligence, but in the Indian Penal Code it lays stress on two aspects, honesty of intention along with due care and attention. Each aspect is complementary and not in exclusion to the other.²⁷ Both the definitions retain the real essence of good faith, which is honesty.²⁸ Under s 2(17) of the Orissa General Clauses Act 1937, even negligence on the part of the doer may indicate his good faith.²⁹ But if it is found that the plaintiff was careless in choosing the wrong forum, the time taken before a wrong court shall not be excluded.³⁰

Where the *sarpanch* does not appear to have acted in good faith in entertaining defamatory applications and directing inquiries thereof by procuring evidence, the definition of 'good faith' in s 3(22) of the General Clauses Act will apply. The standard prescribed in the definition of 'good faith' in the General Clauses Act does not assist him. 'Good faith' under the Indian Penal Code prescribes a more rigid standard.³¹

Section 14(2) of the Limitation Act requires the prosecution of the earlier proceeding in good faith. 'Good faith' as contemplated by this sub-section is not the same 'good faith' as contemplated under the Bombay General Clauses Act. While the Bombay General Clauses Act emphasises honesty and ignores

24 *Madhav Rao Narayan Rao Patwardhan v Ram Krishna Govind Bhanu* AIR 1958 SC 767, 769, (1958) SCJ 963; *Bhim v Harish Chander* (1972) 74 PLR 33; 1972 Cur LJ 13; referring to *Jai Bhagwan v Om Prakash* AIR 1969 P&H 308; *Madhav Rao Narayan Rao Patwardhan v Ram Krishna Govind Bhanu* AIR 1958 SC 767.

25 *Kailash Sizing Works v Municipality of Bhiwandi* AIR 1969 Bom 127, 131, 70 Bom LR 554 (DB); *Harbhajan Singh v State of Punjab* AIR 1961 Punj 215, 233, (1961) 1 Cr LJ 710, 63 Punj LR 794; reversed on another point in *Harbhajan Singh v State of Punjab* AIR 1966 SC 97.

26 *Harbhajan Singh v State of Punjab* AIR 1960 Punj 215.

27 *Bole Naidu v M Kotha Nandarama Pillai* (1987) 100 Mad LW 750, 762.

28 *Kailash Sizing Works v Municipality of Bhiwandi* (1969) ILR Bom 564, 70 Bom LR 554, 1968 Mah LJ 916, AIR 1969 Bom-127.

29 *Radha Mohan v Govinda* AIR 1951 Ori 230.

30 *M/s Mookan Devassy Ouseph & Sons v Rajappan Pillai* AIR 1984 Ker 91, 1983 KLT 922, 1983 Ker LJ 606, 1983 (2) Civ LJ 538.

31 *Bisweswar Misra v Swetakumar Panigrahi* (1965) 31 Cut LT 314, ILR Cut 255, 1966 Cr LJ 494, (1965) 7 OJD 294.

the factor of negligence, the Limitation Act emphasises not honesty but the fact that due care and attention has been given to the prosecution of the earlier application.³² But in spite of that somewhat liberal definition it does not entitle a trustee or holder of a fund to pay anybody and everybody without proper inquiry.³³

The Travancore General Clauses Act defines the term 'good faith' thus:

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

It cannot, however, be said that the definition of 'good faith' as contained in Travancore General Clauses Act must apply in the same sense to every piece of legislation to which it may apply irrespective of the subject or the context. The Travancore Insolvency Regulation is on the same lines as the Provincial Insolvency Act, and must, therefore, be understood in the same sense. The test of 'good faith' as laid down in the law generally is more appropriate to proceedings under the insolvency law, and not the test of 'good faith' as laid down in the Travancore General Clauses Act. Thus a secured creditor, who has advanced money to a debtor honestly, must be held to have acted 'in good faith' even though he had not taken all due precautions.³⁴

The fact that the definition in s 3(22) has included negligent acts in the category of acts done in good faith, will not make any material difference while adducing proof of matters relevant to proceedings under s 16 of the National Security Act 1980.³⁵

Negligence does not by itself show want of 'good faith', where General Clauses Act applies. This definition applies to s 14, Limitation Act. It is only in the Penal Code that good faith requires due care and attention. Such requirement is not mentioned in the General Clauses Act.³⁶ The Rajasthan High Court has held in *State of Rajasthan v Rikhabchand Dharwal*³⁷ that nothing is bona fide if not done with due care and attention. But a negligent man is not necessarily a dishonest man. Each aspect is a complement of the other.³⁸

32 *Govind Sadashiv Pathak v Sadashiv Shivrao Nisal* ILR 56 Bom 597; *Ramlakhan v Mst Tula* AIR 1954 All 199.

33 *Assam Bengal Rly Co Ltd v Atul Chandra Sen* AIR 1937 Cal 314, 318; *Ram Lakhan v Mst Tula* AIR 1954 All 199; *Alexander Miller v BB & CI Rly* (1930) 5 Bom LR 454.

34 *N Subramania Iyer v Official Receiver* AIR 1958 SC 1.

35 *AK Roy v Union of India* (1982) 1 SCC 271.

36 *Gopal Chandra v Bepin Behari* AIR 1955 Cal 353 (suit on pronote executed on 5 March 1950, filed in civil court on 3 March 1953, as an ordinary money suit and not as small cause court suit and when plaint was returned on 10 June 1953, the very next day, ie on 11 June 1953, the plaint was filed in the small causes court, held the suit was not barred by limitation).

37 AIR 1961 Raj 64.

38 *Bole Naidu v M Kotha Nandarma Pillai* (1987) 100 LW 752.

24. SECTION 3(23): 'GOVERNMENT'

'Government' denotes an established authority entitled and able to administer the public affairs of the country.³⁹

The word 'government' is not defined anywhere in the Constitution. However, the term 'government' is not identical with particular individuals who administer the government.⁴⁰ According to art 12 the expression 'the state' includes the government and Parliament of India and the government and the legislature of each of the states and all local and other authorities within the territory of India or under the control of the Government of India. The word 'government' appearing in arts 77 and 163 would obviously mean the executive machinery,⁴¹ viz, the President acting on the advice of the council of ministers and the governors acting on the advice of their council of ministers.⁴² 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.⁴³ The term 'government' means the President in relation to Union affairs and cannot be divorced from the expression 'Government of India' occurring in art 77.⁴⁴ As regards the Union Territory of Goa, Daman and Diu, the word 'government' means the lieutenant governor, who represents the President of India or, which is the same thing, the Central Government.⁴⁵

The word 'government' in art 102(1)(a) and in art 191(1)(a) of the Constitution and the word 'government' in the expression 'an officer of government' in s 21 of the Representation of the People Act 1951 should be interpreted liberally so as to include within its scope the legislature, the executive and the judiciary.⁴⁶

Under s 3(23) of the General Clauses Act, 'government' shall include both the Central Government and any state government. This is undoubtedly an inclusive definition. However, by no stretch of reasoning, can this definition be extended to any local authority such as the petitioner—a market Committee. Therefore, the contention that the property belonging to the

39 *Annie Besant v Government of Madras* AIR 1918 Mad 1210, ILR 39 Mad 1085, 21 MLT 124.

40 *Ibid.*

41 *Ram Nandan v State* AIR 1959 All 101, 1958 All LJ 793; approving *Annie Besant v Government of Madras* AIR 1918 Mad 1210, 21 MLT 124; referring to *Burns v Ransley* (1944) 79 CLR 101; *Emperor v Bhaskar Balwant Bhopatkar* (1906) ILR 30 Bom 421, 8 Bom LR 421.

42 *Chhatar Singh v Union of India* AIR 1967 Raj 194, 198, 1967 Raj LW 164 (DB) (President cannot be divorced from the expression 'Government of India'); *Ramnandan v State* AIR 1959 All 101, 109–10, 1959 Cr LJ 128, 1958 All LJ 793 (FB); reversed on another point in *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955.

43 *Ramnandan v State* AIR 1959 All 101 (FB), 1959 Cr LJ 128, 1958 All LJ 793.

44 *Chhatar Singh v Union of India* 1967 Raj LW 164, AIR 1967 Raj 194.

45 *Curchorem Village Panchayat v Lt Governor* AIR 1972 Goa 1.

46 *Pashupati Nath Sukul v Nem Chandra Jain* AIR 1984 SC 399, 1984 All LJ 215.

market committee should be exempted from the property tax was held not acceptable.⁴⁷

Section 3(23) of this Act has defined 'the government' without any prefix⁴⁸ as meaning both the Central Government and the state government.⁴⁹ Double government is a universal feature of all nations governed by a federal constitution. India, having adopted a federal constitution, has a government at the centre in addition to a government in each federating state. This is so because, as a matter of fact, the affairs of the state are run by both such governments.⁵⁰ The Indian statutes are, therefore, designed in a fashion that, whenever the word 'government' is used without any distinction or adjective prefixed to it, the word must include the central as well as the state governments because whenever any statute means to distinguish the central from the state governments, it has used the distinguishing adjective by prefixing either, the word 'central' or the word 'state'; and where the context conveys the meaning of either central or state government, it has usually prefixed the word 'appropriate'.

The terms 'appropriate government' or 'state government' cannot be considered as identical at all times, because different governments, at different times, will constitute the appropriate government.⁵¹

In the matter of agreement entered into by the Lahore Electric Supply Company with the provincial government, the term 'government' will denote both, the central as well as the provincial governments.⁵²

For illustration, the word 'government' as used in s 6 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, as to mean both, central as well as state governments, because the other provisions of the said Act clearly indicate that wherever the legislature wanted to distinguish the Central Government from the state governments, it has used the words 'Central Government' and 'state government', and this is clear from the definition of 'appropriate government' in s 2(a) as well as in s 3 of that Act referring separately to the Central Government as well as the state government.⁵³

Although s 3(23) of the General Clauses Act applies the definition given thereunder of the expression 'government' only to the central Acts and

- 47 *Agricultural Produce Market Committee v Gondal Municipality, Gondal & Anor* AIR 1995 Guj 143, 146-47, (1995) 1 GCD 291 (Guj).
- 48 *Asst Director, Central Intelligence v Harnam Chand* AIR 1979 J&K 33 (FB).
- 49 *Abdul Cader, KTMS v Union of India* AIR 1977 Mad 386, 1977 Cr LJ 1708 (with reference to ss 3 and 6 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974).
- 50 *Asst Director, Central Intelligence v Th Harnam Chand* AIR 1979 J&K 33 (FB).
- 51 *GC Janardhanan v Joseph* AIR 1958 Ker 169, 1958 KLT 148 (Travancore and Cochin states—appropriate government will be the separate governments of those states till the covenant of integration).
- 52 *Lahore Electric Supply Co Ltd v Kundan Lal* 42 PLR 798.
- 53 *KTMS Abdul Cader v Union of India* AIR 1977 Mad 386, 1977 Cr LJ 1708; relying on *Prahlad Keshav Atre v Commr of Police, Bombay* (1956) ILR Bom 715.

regulations, the fact remains that even when a central Act has been amended by an Act of the legislature of a state, the expression which requires interpretation is one which finds place in a central enactment. So, when the Stamp Act 1899, was amended in Uttar Pradesh in relation to s 3 thereof, it was held in *Basti Sugar Mills Co Ltd v Union of India*,⁵⁴ that the expression 'government' as used in the Indian Stamp Act would include both the central and the state governments, because there is nothing in the context in which the expression 'government' finds place in the relevant provision of s 3, as amended in the State of Uttar Pradesh, which may indicate that it was intended to be used in a sense different from that defined in the General Clauses Act.

The definition of government, in s 2(23), does not apply to state laws.⁵⁵

The expression 'state government' has been held to include government of Pt B states,⁵⁶ as then existed, and as regards erstwhile Pt C states (now union territories), merely because they are centrally administered, they do not cease to be states so as to be taken as merged with the Central Government.⁵⁷ A notice to the deputy commissioner of such state was sufficient notice of suit against the Union of India.⁵⁸

The expression 'government' in s 3(23) of the General Clauses Act did not include the British Government,⁵⁹ a district board⁶⁰ or any local authority.⁶¹

The term 'government servant' is not defined in the General Clauses Act.⁶² Rule 56(j) of the fundamental rules refers to two expressions 'government servant' and 'government service' in the context of the Central Government.⁶³

54 AIR 1974 All 125, 1973 All Cr R 447, 1973 All WR 654 (HC).

55 *Ram Pratap Jai Dayal v Dominion of India* AIR 1953 Bom 170-71, 54 Bom LR 927 (DB); *Union of India v Rani Foledar* 1975 J&K LR 61, 65-66 ('government' in J&K Houses and Shops Rent Control Act 1966, means Government of Jammu & Kashmir); affirmed in *Prakash Chand Gupta v Kamla Gupta* AIR 1979 J&K 33 (FB); overruling *L Bhagwan Das Mengi v Union of India* AIR 1961 J&K 39; affirming *Union of India v Narain Singh* AIR 1976 J&K 5; relying on *State of Punjab v Sodhi Sukhdev Singh* AIR 1961 SC 493; *Bhuri Nath v State of Jammu & Kashmir* (1997) 2 SCC 745.

56 *Mir Osman Ali Khan Bahadur, Nizam of Hyderabad v Commr of Income-tax, Andhra Pradesh* (1961) 2 Andh WR 293; *Bhanwari Bai v S Ram Kishore* AIR 1954 Ajm 5, 1953 AMLJ 63 (no distinction between 'Government of Rajasthan' and 'Rajpramukh of Rajasthan').

57 *Satya Dev Bhusari v Padam Dev* AIR 1954 SC 587, 591, (1954) SCJ 764.

58 *Matadin Babadin v State of Vindhya Pradesh* AIR 1956 VP 16; but see *Union of India v Gajadhar* AIR 1953 Bho 37.

59 *Jeramdas Vishendas v Emperor* AIR 1934 Sind 96.

60 *MLN Mahalingam Chettiar v Raja Srimathu Muthu Vija Raghunath Doraisingham* AIR 1940 Mad 916, (1940) 2 Mad LJ 422.

61 *Jeramdas Vishendas v Emperor* AIR 1934 Sind 96; *Samalkot Municipal Shops RP Assn v Samalkot Municipality* AIR 1991 NOC 7 (AP).

62 *Swami Nath v SDO Machhlishahar, Jaunpur* AIR 1958 All 660, 662, 1958 All LJ 349.

63 *Coal Controller v SS Garga* (1975) 1 Cal LJ 285, 291-92 (DB).

In the context of the definition of 'government' a *mukhiya* is not a government servant⁶⁴ since his post does not conform to the criteria of a servant as given in *Goolbai Motabhai v Pestonji Cawasji*.⁶⁵

The expression 'appropriate government' in s 39 of the Industrial Disputes Act 1947, has to be successively replaced by the words 'state government', 'Central Government', and 'President', and the power of delegation can be exercised in any of those names.⁶⁶

25. SECTION 3(24): 'GOVERNMENT SECURITIES'

Securities issued by the erstwhile State of Travancore and Cochin are not securities issued by a state government.⁶⁷

26. SECTION 3(25): 'HIGH COURT'

This sub-section defines 'High Court', with reference to civil proceedings, as the highest civil court of appeal (not including the Supreme Court) in that part of India in which the Act or regulation containing the expression operates. This refers to the court invested with the highest appellate jurisdiction, though it may not itself be a civil court.⁶⁸ A suit pending in the High Court is covered by s 6(3) of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act 1951.⁶⁹ The expression 'civil proceedings' had been used in contradistinction to criminal proceedings, and includes testamentary proceedings.⁷⁰

In certain cases under the Succession Act 1925, and the Trade Unions Act (1926), the question arose whether the definition of the expression 'High Court' given in the General Clauses Act, as the highest court of appeal, meant only the High Court in its appellate jurisdiction or the High Court as a whole. In *Jnan Kumar Das v Ram Kumar Das*,⁷¹ where the dispute related to a matter of testamentary succession and the original nature of removal of executor under s 301 of the Succession Act, it was held that the expression 'High Court' as used in ss 300 and 301 means the High Court as a whole, and the litigant has to approach the particular department of the court which

64 *Swami Nath v SDO, Machhlishahar, Jaunpur* AIR 1958 All 660, 1951 All LJ 319.

65 AIR 1935 Bom 333, 37 Bom LR 410.

66 *Re Leela Separator's case* 1981 Lab IC 1173; as agreed to in *India Tourism Development Corp'n N Delhi v Delhi Administration* 1982 Lab IC 1309; *Patiala Iron Works v Union of India* 1975 LIC 1265.

67 *Benaras State Bank v Commr of Income-tax* (1964) 2 ITJ 767.

68 *Phul Kumari v State* AIR 1957 All 495, 504, 1958 All WR 300 (HC); overruled on another point in *Ram Saran Tewari v Raj Bahadur Verma* AIR 1962 All 315; *Bal Gopal Das v Mohan Singh* AIR 1964 All 504 (FB).

69 *Bhura Lal v Thikana Bari Sadri* AIR 1955 NUC 5028 (Raj), 1954 Raj LW 743 (DB).

70 *Forbes v Peterson* AIR 1942 Cal 283, 288.

71 AIR 1940 Cal 264.

deals with the matter in dispute, and the application under s 301 for the removal of executor should be presented to that department which exercises original testamentary jurisdiction. In an earlier decision of the Calcutta High Court, it was held by Sale J, that the 'High Court' in s 87, Probate and Administration Act (which corresponds to the present s 300 of the Succession Act) was not intended merely to be limited to the High Court in its appellate jurisdiction but also included the High Court exercising its original jurisdiction. The learned judge observed that if the definition of the expression given in the General Clauses Act, as the highest court of appeal, meant only the High Court in its appellate jurisdiction, serious consequences might ensue and it would be difficult also to see how a court of appeal could exercise concurrent jurisdiction with a district judge in issuing probates and letters of administration.⁷² This decision was followed by Fletcher J, in a later case.⁷³

Similarly, the expression 'High Court' occurring in s 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 by a judge or judges on the appellate side.⁷⁴

27. SECTION 3(26): 'IMMOVABLE PROPERTY'

(a) General Note

The expression 'immovable property' comprehends all that would be real property according to the English law and possibly more.⁷⁵ Where in any enactment,⁷⁶ the definition of 'immovable property' is in the negative, and not exhaustive, the definition as given in s 3(26) of the General Clauses Act will apply to the expression given in that enactment.⁷⁷ A hereditary right to *toda giras* payable by *inamdar*, out of rents of a village, was held to be an interest in immovable property.

The structure which is permanently fixed to the land, for example, a house, though *khan*⁷⁸ is immovable property. In a case under the Jammu & Kashmir

72 *Re goods of Mahendra Narain Rao* (1901) 5 CWN 377.

73 *Nagendra Bala Devi v Kashipati* ILR 37 Cal 244, 5 IC 1003; *Bhaiya Mohammad Azim Khan v Raja Mumtaz Ali Khan* AIR 1932 Oudh 163-64.

74 *Mihir Kumar Gooha v Registrar of Trade Unions, West Bengal* AIR 1961 Cal 165, 64 CWN 1065.

75 *Tarkeshwar Sio Thakur Jiu Sri Sri v Bar Dass Dey & Co* (1979) 3 SCC 106, AIR 1979 SC 1669.

76 Mines & Mineral (Regulation & Development) Act 1957, s 3(c).

77 *Tarkeshwar Sio Thakur Jiu, Sri Sri v Bar Dass Dey & Co* AIR 1979 SC 1669, 1674, (1979) 3 SCC 106; following *Commr of Income-tax, Bihar and Orissa v Kamakhya Narain Singh* ILR 20 Pat 13, AIR 1940 Pat 633; affirmed in *Raja Bahadur Kamakhya Narain Singh v Commr of Income-tax, Bihar and Orissa* AIR 1943 PC 153; *Maharana Fattesangji Jaswant Sangji v Dessai Kallianraji Hekoomuti Rajji* (1873-74) 1 IA 34, 52 (PC).

78 *Nathulal v Mangilal* 1948 Jai LR 25, 30 (DB).

Right of Prior Purchase Act, it was held that the owner of a structure which is permanently fixed to the land, has a right of prior purchase regardless of the fact that the land under it is not held in full ownership by him.⁷⁹

A Sind case⁸⁰ has included within the definition of immovable property as given in s 2(6) of the Registration Act 1908, the hereditary offices classed as *nibandhas*, provided this view is not opposed to the Hindu law.

Except in the field of its special application, the Sale of Goods Act 1930, cannot be said to have excluded the definitions both, of immovable and movable property as given in the General Clauses Act.⁸¹

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 an interest in the subsoil.⁸² Benefits to arise out of land would include all incorporeal hereditaments, compensation and allowances charged upon the land. In short, it comprehends all that would be real property according to the English law, and possibly more.⁸³ However, it should be noted that the rent that has already accrued due or for that matter the income which has already accrued is not an immovable property since it is a benefit which has already arisen out of the land and it cannot be equated with the rent or income which may accrue in future. 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.⁸⁴

It is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to the earth like a building or a tree. For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and security. That will not make the water pump an item of immovable property. Some of the components of the water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper-making machine can be sold in the market.⁸⁵

If the duration of the grant is one year or more and the value is more than Rs 100, the instrument would be compulsorily registrable.⁸⁶

79 *Jalla Beghum v Ghulam Zohra* AIR 1959 J&K 32; *Mohammad Umar v Fayazuddin* AIR 1924 Lah 172; *Allah Din v Shaukat Shah* AIR 1924 Lah 335.

80 *Kodu Lal v Beharilal* AIR 1932 Sind 60, 61, 25 Sind LR 451.

81 *A Swami Iyah Nadar v Commr for Port of Rangoon* AIR 1931 Rang 109-10, ILR 9 Rang 13.

82 *London Colliery Co v NB Ray* AIR 1968 Cal 545, 547, 72 CWN 679.

83 *Tarkeshwar Sio Thakur Jiu, Sri Sri v Bar Dass Dey & Co* AIR 1979 SC 1669, 1674, (1979) 3 SCC 106.

84 *Godavari Ben Himmatlal v Parikh Somalal* AIR 1978 Guj 33, 35.

85 *Sirpur Paper Mills Ltd v Collector of Central Excise, Hyderabad* AIR 1998 SC 1489-90; (1998) 1 SCC 400.

86 *Santosh Jaiswal v State of Madhya Pradesh* (1995) 6 SCC 520.

A building is an immovable property,⁸⁷ but the door of the building cannot be said to be an immovable property.⁸⁸

'Immovable property' is defined in at least three Indian 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 the 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.⁸⁹ The third enactment, in s 3, describes what is meant by 'attached to the earth':

- (i) rooted in the earth, as in the case of trees and shrubs;
- (ii) embedded in the earth, as in the case of walls or buildings; or
- (iii) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

The hereditary office of a *Shebaitis* immovable property.⁹⁰

A right of way may fall within the definition of immovable property, and the same cannot be said to have been excluded by s 3 of the Transfer of Property Act 1882.⁹¹

A temporary right of a tenant at will to reap the produce to which he, as tenant, is entitled is not immovable property.⁹²

Broadly speaking, the degree, manner, extent, and strength of attachment of the chattel to the earth or building are the main features to be regarded. All these three features in the description, as is observed by Veeraswami J, in *Perumal Naicker v Ramaswami Kone*,⁹³ show that the attachment should be such as to partake of the character of the attachment of the trees or shrubs rooted to the earth, or walls or buildings embedded in that sense. The further test is whether such an attachment is for the permanent beneficial enjoyment of the immovable property to which it is attached. Even here, although there may be an attachment to the earth, as contemplated by the first two aspects in the description of 'attached', if the attachment is a necessary requisite and that is the manner by which the movable property is or can be enjoyed or worked, it may still be open to question whether, because of its fixtures, though permanent, in the qualified sense, it can *ipso facto* or *ipso jure* be regarded as immovable property.

87 *Muni Lal v Kishore Chand Kanshi Ram* AIR 1927 Lah 373, 375 (DB) (mortgagee's right held immovable property).

88 *EC Chinnaswami Pillai v Chairman of Arkonam Union* AIR 1915 Mad 501, 15 Cr LJ 637.

89 *State of Himachal Pradesh v M/s Moti Lal Partap Singh & Co* AIR 1981 HP 8, (1980) ILR HP 125, 1980 Sim LC 341

90 *Ram Rattan v Bajrang Lal* (1978) 3 SCC 236, AIR 1978 SC 1393.

91 *Sital Chandra v Allen Dillanney* AIR 1917 Cal 681.

92 *Md Ismail v Shamsuddin* AIR 1920 Lah 310, 2 LLJ 684.

93 AIR 1969 Mad 346, (1968) 2 Mad LJ 493, (1969) ILR 2 Mad 379.

The *mahabrahman vritti*, partaking of the nature of an incorporated right, is an immovable property subject to its free transference.⁹⁴

A 'several' fishery as an incorporeal hereditament has been considered to be an immovable property.⁹⁵

A 'coal land' possesses all the attributes of immovable property.⁹⁶

Both under the Transfer of Property Act and the General Clauses Act, any superstructure, as a thing 'attached to earth', would be immovable property. But the Presidency Small Cause Courts Act 1882, makes a departure and statutorily requires the superstructures to be regarded as movable property. Section 28 of that Act, which provides for that, runs as follows:

When the judgment-debtor under any decree of the small causes court is a tenant of immovable property, anything attached to such property and which might before the termination of his tenancy be lawfully removed without the permission of his landlord, shall, for the purpose of the execution of such decree and for the purpose of deciding all questions arising in the execution of such decree, be deemed to be movable property and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Justice Natesan in *Thangammal v Murugammal*⁹⁷ has held that the section provides clearly that, for the purpose of execution under any decree of the small causes court, the superstructure of an immovable property shall be deemed to be movable property. It has to be attached and sold as movable property and all questions arising in the execution of the decree of the small causes court have to be disposed of as if it were movable property. Certain restrictions are, no doubt, imposed with reference to severance of the property on purchase in such execution.

The right to enjoy an immovable property denotes the right to enjoy the property in a way in which any property can be enjoyed; and in case of lease of mineral land, the subject matter of the property can be enjoyed only by working the mine.⁹⁸ In *Board of Revenue, Chempauk, Madras v Venkataswami*,⁹⁹ a lease of properties relating to a touring cinema (tent and machines), though collapsible and capable of being removed, but permanently fastened to the earth when in use, was held not to be immovable property. The court observed that the poles of the tent and machinery were as embedded in the earth only temporarily and not permanently, and even in the case of a touring cinema, which continues to function at one place for a fairly long period, the permanence of the fixture is only of a relative character.

94 *Gur Prasad v Gur Prasad* AIR 1944 Oudh 321, 324, 1944 OWN 336.

95 *Lakshman Gouroji v Ramji Antone* AIR 1921 Bom 98, 100, 23 Bom LR 93.

96 *Kumar Pashupati Nath Malia v Sankari Prasad Singh Deo* AIR 1957 Cal 128, 133 (DB).

97 AIR 1970 Mad 325, 83 Mad LW 195, (1970) 1 Mad LJ 460.

98 *Bar Das Dey & Co v Sri Ishwar Tarkeshwar Thakur Jiu* AIR 1969 Cal 565, 73 CWN 920.

99 (1955) 2 Mad LJ 215, AIR 1955 Mad 620 (FB).

The right to drain off water has not been held to be immovable property.¹ A transfer by the mortgagor of anything which, in the eyes of the law, would be immovable property, retains the same character even when it reaches the hands of the mortgagee.²

The attachment of an oil engine to the earth, though 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 and shifted to some other place. The attachment, in such a case does not make the engine a part of the land and hence an immovable property.³

It seems, on the authority in the case of *Mohammad Ibrahim v NCF Trading Co.*,⁴ that 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.

The High Court of Madras has held in several cases that for a chattel to become part of an immovable property and to be regarded as such, it must become attached to the immovable property as permanently as a building or a tree is attached to the earth. If, in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to embed or fix it to the earth, though permanently so long as it is in use, it should not be regarded as immovable property for that reason.⁵

Reference may be made to two English cases:

- In *Leigh v Taylor*⁶ the speech of Lord Halsbury shows that questions like this cannot always be answered, in the nature of things, with arithmetical accuracy, but certain discerning tests as aids in deciding the question, are well-established, as for instance, if something is made part of the house, it must necessarily go to the heir, because the house goes to the heir and it is a part of the house. So, where something is attached in some form to the walls of a house, nevertheless, having regard to the nature of the thing itself, and the purpose of its being placed there, it is not intended to form part of the reality, but is only a mode of enjoyment of the thing while the person is temporarily there, and is there for the purpose of his or her enjoyment.

1 *Maung Moe Thi v Mabri Tauk* 1948 Bur LR 192, 194.

2 *Fateh Singh v Raghbir Sahai* AIR 1938 All 577, 1938 All LJ 881.

3 *Perumal Naicker v Ramaswami Kone* AIR 1969 Mad 346, (1968) 2 Mad LJ 493, (1969) ILR 2 Mad 379.

4 AIR 1944 Mad 492, (1944) 2 Mad LJ 60.

5 *Board of Revenue, Chempauk, 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, (1969) ILR 2 Mad 379.

6 [1902] AC 157, 71 LJ Ch 272.

■ In *Reynolds v Ashby & Sons*⁷ the House of Lords had to consider whether a machinery attached to freehold property was a fixture. There, the machines, affixed to concrete beds in the floor of the factory by bolts and nuts, could have been removed without injury to the building or the beds. In this case, too, Lord Halsbury had decided that the machines were part of a factory, which was the subject matter of a lease and the attachment of the machines to the earth in that manner should be regarded as a fixture. Though the English law relating to fixtures cannot be bodily applied to conditions in India, the above observations are of weight, and point to the correct approach to the question of this kind. Taking these observations as mere guiding principles, it was held by the High Court of Madras, in *Perumal Naicker v Ramaswami Kone*,⁸ that it cannot be said that the intention as disclosed by the fixture, is to make a Peter Oil Engine a permanent part of the earth and, therefore, an immovable property, because the engine cannot be used except by fixing it to the earth, and the purpose of its fixture would show that it cannot be regarded as immovable property.

The question, what is meant by 'benefits arising out of land', fell to be considered in *AM Ansari v Board of Revenue*.⁹ PC Reddy CJ, in that case, held that where the produce of trees or shrubs growing on land is sold, or where the right to cut and take away standing timber is conferred, they are not benefits arising out of land, but it would only be a sale of the produce, timber, or bamboo simpliciter. But, where a right to the several classes of produce referred to above is conferred for a long period, then the produce is from trees or plants attached to the earth from which sustenance is being drawn, and therefore, the right to such produce is said to be a benefit arising out of land.

In *Mohan Lal Hargovind v IT Commr*,¹⁰ the question for consideration was whether a contract giving right to pick up *tendu* leaves would constitute an interest in land or the trees. Emphasis in this case was laid on two things: first that the agreement was for sale of *tendu* leaves, and second, that it was for a short term and the work was to commence immediately and to proceed continuously. In the circumstances, it was held to be a contract for picking up *tendu* leaves alone which did not deal with any interest in land or trees.

In *M/s JC Patel & Co v State of Madhya Pradesh*,¹¹ the question which arose for determination was whether the rights to pluck, collect and carry away *tendu* leaves, to cultivate, culture and acquire lac, and to cut and carry away teak and timber and miscellaneous species of trees, amount to any interest in the proprietary right. The question was answered in the negative, though the

7 [1904] AC 466, 73 LJKB 946.

8 AIR 1969 Mad 346, (1968) 2 Mad LJ 493, (1969) ILR 2 Mad 379.

9 AIR 1969 AP 399, (1969) ILR AP 642, (1969) 2 Andh WR 171; held on another point to be no longer good law in view of *State of Gujarat v Raipur Mfg Co* AIR 1967 SC 1066; as understood in *Vaghala Venkataraman v State of Andhra Pradesh* 1973 Tax LR 2322 (AP).

10 AIR 1949 PC 311, 76 Ind App 235.

11 AIR 1953 SC 108, [1953] SCR 476.

question whether they are rights pertaining to land and hence immovable property, did not, in that sense, fall for consideration.

In *Shantabai v State of Bombay*¹² the right which was examined was to enter, cut and appropriate all kinds of wood from a *zamindari* forest. Justice Bose concluded that standing timber must be a tree that is in a state fit for those purposes and, further, a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing. If not, it is still a tree, because unlike timber, it will continue to draw sustenance from the soil. The emphasis in this case, too, had been upon the length of the period during which the right to cut the standing trees had to be exercised and the amount of sustenance it would draw in order to determine whether it is a standing timber or standing tree. If it is to be done in a short period as a timber, it is not a benefit arising out of the land and is therefore not an immovable property.

In *Mahadeo Singh v State of Bombay*,¹³ Hidayatullah J, as he then was, was considering the right to take forest produce, mainly *tendu* leaves, from the forests. It was stated in that case that:

One thing is clear, however, that things rooted in the earth as in the case of trees and shrubs, are immovable property both within the General Clauses Act and the Transfer of Property Act, but in the latter, 'standing timber', a growing crop, and 'grass' though rooted in earth, are not included. These, 'growing crop', and 'grass' form the subject matter of the sale of goods, and 'standing timber' comes within the last part of the definition of 'goods' in the Indian Sale of Goods Act, to be subject thereto if the condition about severing, mentioned in the definition of 'goods', exists.

A similar view is taken in the two-Bench decisions of the High Court of Andhra Pradesh, namely, *Ramkrishnaiah v State of Andhra Pradesh*,¹⁴ and *R Deshpande v Muttam Reddy*.¹⁵

The proposition which can, thus, be enunciated from the ratio of the above decisions is that as long as the right is only to pluck the leaves or to cut and take away the leaves, bamboo or timber, the process to commence immediately and completely within a short period, it cannot be said that the right is a right in the immovable property or a benefit arising out of land, but in order to create such a right, it should be in respect of the trees or the shrubs or in respect of anything pertaining to the land.¹⁶

12 AIR 1958 SC 532, [1959] SCR 265.

13 AIR 1959 SC 735, 1959 Supp (2) SCR 339.

14 AIR 1957 AP 28, 1956 Andh WR 717.

15 AIR 1961 AP 180, 20 Ele LR 314.

16 *AM Ansari v Board of Revenue, Andhra Pradesh* AIR 1969 AP 399, (1969) ILR AP 642, (1969) 2 Andh WR 171; held to be no longer good law on another point in *Vaghela Venkataraman v State of Andhra Pradesh* 1973 Tax LR 2322 (AP).

An action for the right to remove building and material from one land and vesting it in another is a dispute related to the title of an immovable property.¹⁷

Once the corrugated iron sheets are removed from a disbanded *mandir* they cease to be immovable property and do not remain attachable under s 145 of the Code of Criminal Procedure.¹⁸

The share of a partner in partnership is not immovable property.¹⁹

The structure permanently fixed to land is immovable property for the purposes of the pre-emption Act so as to confer the right of prior purchase on the person regardless of the fact that the land under it is not shared by him in full ownership.²⁰ If the duration of the grant is one year or more and the value is more than Rs 100, the instrument would be compulsorily registrable.²¹

(b) Particular Things Considered to be or not to be Immovable Property

(i) Agreement as to right to take forest produce

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. 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 so included. Of these, 'growing crop' and 'grass' form the subject matter of the sale of goods. In *Mahadeo v State of Bombay*²² the Supreme Court held that an agreement to convey forest produce like *tendu* leaves, timber, bamboo, etc, the soil for making bricks, the right to prune, coppice and burn *tendu* trees, the right to build on and occupy the land for business purposes, and the right to grow new trees and to get leaves from trees that grow in future, cannot be said to be a contract of sale of goods simpliciter.

(ii) 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'.²³ Boiler and decorticator fixed and embedded in a factory building

- 17 *A Swami Iyah Nadar v Commr for Port of Rangoon* AIR 1931 Rang 109, 134 IC 511.
- 18 *P Annunmacha Sarma v Maninnacha Sarma* AIR 1968 Mani 24, 1968 Cr LJ 188.
- 19 *Saheb Ram Surajmal, Firm v Purushottam Lal Gopi Kishan* AIR 1950 Nag 89, 1950 Nag LJ 159.
- 20 *Jalla Begum v Ghulam Zohra* AIR 1959 J&K 32, 34; *Md Umar v Fayazuddin* AIR 1924 Lah 172; *Allah Din v Shaukat Shah* AIR 1924 Lah 335.
- 21 *Satonsh Jaiswal v State of Madhya Pradesh* (1995) 6 SCC 520.
- 22 AIR 1959 SC 735; a right to collect and take away minor forest produce is a benefit to arise out of land within the meaning of s 3(26); not following *Chhotabhai Jethabhai Patel & Co v State of Maharashtra* AIR 1953 SC 108; *AM Ansari v Board of Revenue* AIR 1969 AP 399.
- 23 *J Kappunna Chetty v Collector* AIR 1965 AP 457.

for beneficial use thereof, are immovable property.²⁴ The powerhouse undertaking, unless its building is demolished and the machinery affixed to the earth is uprooted, is immovable property.²⁵ In *Mohammad Ibrahim v Northern Circars Fibre Trading Co*²⁶ a bone crushing mill was located in the premises of a factory. The machinery of the mill was installed on a small cement platform to which it was fixed by means of bolts at the four corners. It was also held in position by being attached to iron pillars fixed in the ground at a depth of nearly six to seven feet. Before the purchase of the factory and the mill located in it by the owner of the site on which the factory stood, the machinery of the mill belonged to two different persons. The question was whether the machinery of the mill was immovable property. Justice Krishnaswami Ayyangar referred to *Holland v Hodgson*²⁷ where looms attached to the floor and beams of a worsted mill were deemed to be fixtures Blackburn J, in that case, had observed:

Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered part of the land, unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they were so intended, lying on those who assert they have ceased to be chattels, and that on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel.

In *Reynolds v Ashby & Sons*,²⁸ Lord Lindley, dealing with a case where machinery had been obtained on a hire-purchase agreement from the owner and attached to factory for the purpose of working it, observed:

The purpose for which the machines were obtained and fixed seems to be unmistakable; it was to complete and use the buildings as a factory. It is true that the machines could be removed, if necessary, but the concrete beds and bolts prepared for them negative any idea of treating the machine when fixed as movable chattels.

After observing that the English cases were not all reconcilable, his lordship pointed out:

In dealing with them (fixtures) attention must be paid not only to the nature of the thing and to the mode of the attachment, but to the circumstances under which it was attached, the purpose to be served, and last but not least

24 Ibid.

25 *Henendra Lal koy v Indo Swiss Trading Co Ltd* AIR 1955 Pat 375, 379 (DB).

26 AIR 1944 Mad 492.

27 (1872) 7 C&P 328.

28 [1904] AC 466.

to the position of the rival claimants to the things in dispute. The more important consideration is the object of the annexation which is a question of fact to be determined by the circumstances in each case. For instance, if a tenant for years or a tenant for life buys and fixes machinery of great value to the tenement occupied by him, it is unlikely that he would have intended to so attach the machinery as to make it part of the immovable property.

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.²⁹

In *Subramaniam Chettiar v MChidambaram Servai*,³⁰ decided by Wadsworth J, the question was whether an oil engine, which was installed by making a concrete base fitted with bolts and attaching it to the bolts by means of nuts, was movable or immovable property. The engine was installed by a tenant of a building holding a lease for a period of three years for the generation of electricity for lighting and running a cinema. While recognising the difference between the English and the Indian laws in regard to fixtures, the learned judge expressed the opinion that there is nothing in the English cases which made them inapplicable in the determination of the test to be applied for ascertaining whether and in what circumstances movables annexed or attached to an immovable property became themselves immovable property. The learned judge observed quite correctly 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.

He has pointed out that when the owner of a building installs a machinery therein, he may well have intended to make a permanent improvement to the premises which he owned in order to facilitate the use of those premises, but that a tenant in temporary occupation of leased premises is not likely to have had any such intention in making the improvement. He accordingly held

²⁹ *Miller v Brindaban* ILR 4 Cal 946.

³⁰ AIR 1940 Mad 527; followed in *Perumal Naicker v Ramaswami Kone* AIR 1969 Mad 346; *Kaju Mal v Sahig Ram* 91 PR 1919 (of the two tests viz: (a) degree or mode of annexation; and (b) object of annexation, more importance is attached to the object of annexation which depends upon the particular circumstances of each case. Where A erects machinery on land of B it must be assumed that the machinery was erected by A either as 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); *JH Subbiah v Govindrao Bhiwaji* 1953 Nag LJ 104, AIR 1953 Nag 224 (DB).

that the oil engine did not therefore become an immovable property. As we have already indicated, the more important test is to ascertain the intention of the person concerned when he attaches and installs his own machinery to the land or building. The intention may be express or implied from the circumstances in which he attaches the machinery. It was observed:

Defendant 2 was at the date of *Dubashee* agreement the owner of the factory and the owner of the bone-crushing mill located in it. It is true that before his purchase, the site and the land on which the factory stood belonged to one of the four partners of the firm which owned the machinery in common having installed it for the purpose of manufacturing bonemeal. It was said that until the purchase by the defendant, the machinery and the land belonged to different owners and that it would never have been the intention of the partnership to treat the machinery as part of the land. While we agree that there is considerable force in this argument, we cannot assent to the proposition that when defendant 2 purchased the land and the machinery, he continued to have the same intention which his vendors had before him. There was no reason, whatever, for thinking that he intended to keep the two things apart. It is obvious that his object was to become the owner of both for the purpose of carrying on the business and for his own and individual benefit. If the argument is correct, namely, that the same intention which the vendors had must be attributed to the purchaser, the only way of establishing a different intention would be by the purchaser removing the machinery from the ground to which it was annexed and again attaching it with the express intention of making it part of the land. We cannot imagine that the law requires any such procedure to be adopted for inferring an intention on the part of the purchaser to make the machinery part of the land. Taking all the circumstances of the case before us, we are of opinion that the plant and the machinery of the bone mill are immovable property annexed to the floor of the factory as to become part of it.³¹

A pugmill³² or *kolhu* ie, an iron sugarcane press fastened to the ground and presumably meant to be permanently fastened³³ is immovable property. In *Hobson v Corringe*,³⁴ it was decided that a gas engine affixed to the freehold

31 *Mohammad Ibrahim v Northern Circars Fibre Trading Co, Cocanada* AIR 1944 Mad 492; distinguished in *Perumal Naickar v Ramaswami Kone* AIR 1969 Mad 346; *JH Subbiah v Govindrao Bhiwaji* AIR 1953 Nag 224, 226, 1953 Nag LJ 104 (DB) (machinery of A on land of B cannot be taken to form part and parcel of immovable property in the land); *SPKN Subramanian Chettiar, Firm v M Chidambaram Servai* AIR 1940 Mad 527, 1940 Mad WN 38 (improvement of machinery of theatre by tenant is deemed to be immovable property).

32 *U Thet v Tola Ram* AIR 1918 LB 76, 11 Bur LT 199.

33 *Musia Kurmi v Subkaran Kurmi* 23 IC 250; *Mulchand v Juggi Lal* AIR 1914 All 176, 12 All LJ 460.

34 [1897] 1 Ch 182, 66 LJ Ch 114.

by bolts and screws to prevent it from rocking was sufficiently annexed to the earth to become a fixture. Where a *pugmill* is erected and affixed to the earth for the purpose of making a quantity of bricks, it is immovable property.³⁵ Building is also an immovable property.³⁶

Two tests have been laid down for a decision as to the character of the property when fixtures are annexed to land, namely:

- (i) the degree or mode of annexation; and
- (ii) the object of annexation.

The second, which is the more important of the two, involves the consideration of the particular circumstances of each case. Where machinery belonging to *A* was erected on *B*'s land, 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.³⁷ A pumping installation can be acquired as immovable property under the Madras Requisitioning and Acquisition of Immovable Property Act. Both under the Transfer of Property Act and the General Clauses Act immovable property would include anything embedded in the earth.³⁸ However, the owner of the land, on which another person constructed a building, was not entitled to the building.³⁹

Until the powerhouse is dismantled, the machinery, etc fixed to the earth uprooted and the buildings demolished, the material with which they were constructed cannot be called 'movable property'.⁴⁰ Under s 3(26) of the General Clauses Act and s 3 of the Transfer of Property Act, corrugated iron sheets removed and stored ceased to be immovable property and hence could not be attached.⁴¹

Machinery affixed to the soil can be held as immovable property.⁴²

(iii) Benefits arising from land

An interest in immovable property can be acquired by a person not only if he has the totality of the rights in and over such property but also if certain rights in or over the immovable property have been transferred to him which would come within the definition of 'benefit to arise out of land'.⁴³

35 *U Thet v Tola Ram* 43 IC 625; *Miller v Brindaban* ILR 4 Cal 946.

36 *Munilal v Kishore Chand* AIR 1927 Lah 373.

37 *JH Subbiah v Govindrao Bhiwaji* 1953 Nag LJ 104, AIR 1953 Nag 224 (DB).

38 *State of Madras v WVA Govindaraja Chettiar* (1968) 2 Mad LJ 596, (1968) 81 Mad LW 570.

39 *Secretary of State for Foreign Affairs v Charlesworth Pilling & Co* ILR 26 Bom 1, 28 IA 121.

40 *Hemendra Lal Roy v Indo-Swiss Trading Co Ltd* AIR 1955 Pat 375.

41 *Amumacha P Sarma v P Manimacha Sarma* 1968 Cr LJ 188, AIR 1968 Mani 24.

42 *M/s Maheshwari Bros v Official Liquidators* AIR 1938 All 574, 577, (1938) ILR All 896.

43 *Ram Chandra Annappa v Subraya Timmaya* AIR 1951 Bom 127, 53 Bom LR 363.

A *haat*⁴⁴ and the right to collect rent from tenants liable to pay for use and occupation of the land⁴⁵ is a benefit arising out of land.⁴⁶ The same principle would apply to the right to pluck mango fruit or *mahua* flower for certain years, being a grant of right to the benefit arising out of land and hence amounting to lease⁴⁷ of immovable property. The right to collect market dues is a benefit to arise out of land.⁴⁸ *Toda Giras Hak* was also regarded as such.⁴⁹ A rent derived from lease of *watan* property,⁵⁰ and, again, the right to receive a cash *nankar* out of the profits of a particular village is a benefit arising out of land.⁵¹ Similarly, *bazaar* dues also constitute such a benefit.⁵² A transfer of benefit to arise out of land amounts to transfer of interest in immovable property.⁵³ Future rent is also a benefit to arise out of land.⁵⁴ Interest of mortgagee in the property mortgaged is benefit to arise out of land.⁵⁵ *Malikana* is immovable property.⁵⁶ Right to tap palm trees for extracting toddy has been held to be a benefit arising out of land within the meaning of this sub-section and therefore a lease of such a right is a lease of immovable property.⁵⁷ Similarly, the transfer of rights under a lease of immovable property amounts to transfer of immovable property within the purview of s 105 of the Transfer of Property Act 1882.⁵⁸ The phrase 'any person interested in the land' appearing in s 10(3) of the Petroleum Pipelines (Acquisition of Right of User in Land) Act 1962 includes personal interest in the subsoil and hence compensation is payable for the subsoil rights.⁵⁹ The right to cut and remove coconuts from the trees standing on immovable property is not a benefit to arise out of land.⁶⁰

- 44 *Golam Mohiuddin Hossein v Parbati* (1909) ILR 36 Cal 665, 669 (DB); *SA Mannan v State of Bihar* (1958) ILR 37 Pat 302 (DB) (lease of *haat*).
- 45 *Udaynarayan Ananga Bhima Deo v Badia Dasu* AIR 1952 Ori 116, 21 Cut LT 501.
- 46 *Fateh Singh Jaswant Singh v Dessai Kullianl Rajji* 1 IA 34.
- 47 *Brikh Koeri v Awadh Behari Lal* AIR 1961 Pat 308, 310, 1960 Pat LJR 75 (DB).
- 48 *Sikandar v Bahadur* (1905) 2 All LJ 208, ILR 27 All 462.
- 49 *Surrendra Narain Singh v Bhai Lal Thakur* ILR 22 Cal 752.
- 50 *Purshottam Damodar v Anant Madhev* AIR 1947 Bom 75-76, (1946) ILR Bom 896.
- 51 *Deputy Commr, Faizabad v Jagjiwan Baksh Singh* 33 IC 461 (Oudh); *Ram Jiwan v Jadunath* 23 IC 555 (Oudh) (a right to *nankar* allowance of 10 per cent on gross rental of a village is not mere personal liability, but an interest in immovable property).
- 52 *Ram Jiwan v Hanuman Prasad* AIR 1940 Oudh 109, ILR 16 Luck 191.
- 53 *Rama Chandra Annappa v Subraya Thimmayya* AIR 1951 Bom 127, 53 Bom LR 363.
- 54 *Bhudeb Chandra v Bhikshkar Pattanaik* AIR 1942 Pat 120; following *ME Moola & Sons v Official Assignee, Rangoon* AIR 1936 PC 230.
- 55 *Nagappa v Arunachalam* AIR 1934 Rang 250, ILR 12 Rang 370 (FB); *Prahlad Dalsukhrui v Maganlal Muljibhai Tewar* AIR 1952 Bom 454-55, 54 Bom LR 519 (DB); *Mariam v Sreedevi Antharajanan* AIR 1925 Tr & Coch 368.
- 56 *Mohesari Prasad v Bajj Nath Hazari* AIR 1915 Cal 552-53, 19 CWN 410 (DB).
- 57 *Sheikh Jan Mohomed v Umanath Mishra* AIR 1962 Pat 440.
- 58 *Indraloke Studio Ltd v Santi Debi* AIR 1960 Cal 609, 617 (DB).
- 59 *Lodna Colliery Co Ltd v NB Roy* 72 CWN 679, AIR 1968 Cal 545.
- 60 *R Sawanan v Sri Vedaranya Swaraswami Devasthanam* AIR 1982 Mad 396, 1982 (95) Mad LW 322, (1982) ILR 2 Mad 367, (1982) 2 Mad LJ 290; following *Renga Iyengar*

continued on the next page

Money chargeable on immovable property will include money charged on rent and profits of land so as to become benefits arising out of land.⁶¹

A right to carry away *tendu* leaves, to cultivate, culture and acquire lac, and to cut and carry away teak and timber and miscellaneous species called hardwood and bamboo, though does not make the persons proprietors, the same was a fundamental right to property.⁶²

(iv) *Trees*⁶³

When the intention is that plaintiff would take fruits of the trees without cutting them down as timber,⁶⁴ or *parsa* trees have been assigned for taking the crop of lac for five years,⁶⁵ or bamboo,⁶⁶ are all included in the definition of land or immovable property. Standing crop is also treated as immovable property.⁶⁷ The right to tap the coconut trees to obtain toddy is in the nature of immovable property because it is a benefit which arises out of land.⁶⁸ It is useful here to refer to the leading case of *Marshall v Greer*⁶⁹ for the statement of the law with regard to this subject, which is contained in the judgment of Lord Coleridge CJ. He cites the following passage from the notes of Sir Edward Vaughan Williams in the case of *Duppa v Mayo*:⁷⁰

The principle of these decisions appears to be this, that wherever at the time of the contract, it is contemplated that the purchaser should derive a

v Sivaswami Pandaram (1977) 2 Mad LJ 265, AIR 1977 Mad 366; *Venugopala Pillai v Thirunavukkarasu* AIR 1949 Mad 148, 1948 Mad LJ 155; but not following *Venkata Chalpathi Odayar v Rajalakshmi Ammal* (1981) 1 Mad LJ 11.

61 *Ram Jiwan v Jadunath* AIR 1916 Oudh 176-77, 18 Oudh Cas 380.

62 *Chhotabhai Jethabhai Patel & Co v State of Maharashtra* AIR 1953 SC 108.

63 *Sukhnandan v Manak Chand* 10 IC 473, 7 NLR 63; *Balbhaddar Singh v Parwan Singh* 5 OC 228; *Narain Singh v Kali Ram* AIR 1927 Lah 146; *Narayan v Mahadeo* AIR 1928 Nag 41; *Kishanlal v Paiku* AIR 1933 Nag 53; *Ramji v Muktai* (1911) 7 NLR 63-64, 10 IC 473; *Sarju Singh v Bijai Bahadur Singh* AIR 1927 All 254-55, ILR 49 All 330 (DB); *Kishan Lal Mahassu v Paiku Kunbi* AIR 1933 Nag 53-54.

64 *Ashloke Singh v Bodha Ganderi* AIR 1926 Pat 125; following *S Chettiar v Santhanathan Chettiar* ILR 20 Mad 58; *State of Himachal Pradesh v Moti Lal Pratap Singh* 1980 Sim LC 341; relying on *Shantabai v State of Bombay* AIR 1958 SC 532; *Baij Nath v Ramadhar* AIR 1963 All 214 (standing timber excluded from definition of immovable property vide s 3 of the Transfer of Property Act 1882 and s 2(6) of the Registration Act 1908).

65 *Parmanand v Birkhu* (1909) 5 Nag LR 21, 1 IC 903; but see *Natesa Gramani v Tangavelu Gramani* AIR 1914 Mad 36, 1914 Mad WN 327 (lease for drawing toddy not an interest in immovable property).

66 *Bharat Sebaigrass Ltd v State of Madhya Pradesh* AIR 1955 NUC 5612 (Cal) (DB).

67 *Appanna v Krishnamma* AIR 1935 Mad 134.

68 *Venugopala v Thirunavukkarasu* AIR 1949 Mad 148; *Seikh Jan Mohammad v Umanath Misra* AIR 1962 Pat 440.

69 (1875) 1 CPC 35.

70 (1669) 1 Wms Saund 275, Wms Saunders, 1871 edn, p 394 (standing timber which has to be cut down and removed is movable property); *Re Mahant Raj Balamgir* AIR 1931 All 392 (DB).

benefit from the further growth of the thing sold, from further vegetation and from the nutriment to be afforded by the land, the contract is to be considered as for interest in land; but where the process of vegetation is over, or the parties agree that the thing sold shall be immediately withdrawn from the land, the land is to be considered as a mere warehouse of the thing sold, and the contract is for goods.

Trees, except standing timber, are immovable property. So long as the timber remains upon the soil, it derives its sustenance and nutrition from it.⁷¹ 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, in that state, it must be cut reasonably early.⁷² Where in a case, in execution of decree passed in a money suit, the trees and bamboo clumps were auctioned treating them as movable property and thereafter no intention was shown to cut the trees and bamboo clumps for ten years, it was held to be immovable property.⁷³ Where the produce of trees or shrubs growing on land is sold or where the right to cut and take away standing timber is conferred, they are not benefits arising out of land but it would be a sale of the timber or bamboo simpliciter. But where a right to the several classes of produce is conferred for a long period then the produce is from trees or plants attached to the earth from which sustenance is drawn. Therefore, the right to such produce is said to be a benefit arising out of land.⁷⁴

Whether or not a mortgage of fruit-bearing trees is a mortgage of immovable property is a question dependent in each case upon the intention of the contracting parties and cannot be settled by an inflexible rule. Where there is a mortgage with possession of fruit-bearing trees with the intention that the mortgagee is to remain in possession during the years of the mortgage and enjoy the fruits and should not cut down the trees so as to convert them to either timber or firewood, it must be held that the trees so mortgaged were either immovable property or at least an interest in immovable property.⁷⁵ A temporary right to reap the produce as tenant is not immovable property.⁷⁶ The right to appropriate lac from lac giving trees is mere interest in immovable property.⁷⁷

The right under a contract to cut bamboo trees is not lease hold, and hence it is not an interest in the land or any right to the possession of land.⁷⁸

71 *Kauri Timber Co Ltd v Commr of Taxes* [1913] AC 771.

72 *Shantabai v State of Bombay* AIR 1958 SC 532.

73 *Jagdish v Mangal Pandey* AIR 1986 All 182.

74 *AM Ansari v Board of Revenue, Andhra Pradesh* (1969) 2 Andh WR 171, (1969) ILR 2 AP 642, AIR 1969 AP 399.

75 *Shiv Dayal v Putto Lal* ILR 54 All 437, AIR 1933 All 50, 52; *Renga Iyengar v Siwaswami Panduram* (1977) 2 Mad LJ 265, 269, AIR 1977 Mad 364, 367; *R Sawanan v Sri Vedaranyasaraswami Devasthanam Vellialler Koil* AIR 1982 Mad 396, 398-99.

76 *Mohomed Ismail v Shams-ud-din* AIR 1920 Lah 310-11, ILR 1 Lah 567.

77 *Ram Lal Canibee v Lodha Munda* AIR 1952 Pat 201, 203 (DB).

A contract for removal of standing trees for a period or six years was held to have not created a mortgage or charge on immovable property.⁷⁹

(v) 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 in immovable property should fall within the category of immovable property.⁸⁰ Rankin CJ rejected the idea in *Imperial Bank v Bengal National Bank*⁸¹ that a mortgage is a benefit to arise out of land.

(vi) Lessee's interest

What s 2 of the Madras General Sales Tax Act requires is 'interest in land' and not 'interest in immovable property'. The definition of immovable property in the General Clauses Act, therefore, cannot be made applicable in construing the expression 'land' in s 2(1) of the General Sales Tax Act.⁸²

A mining lease, being a right to enjoy immovable property,⁸³ will not be outside the normal concept of lease⁸⁴ and will come well within the first part of s 116, Transfer of Property Act, with the lessees being 'tenants'. Even assuming that they are not tenants, strictly so called under the first part, there is no reason why, if they have been put into possession by the lessors, they should not become tenants under the second part.⁸⁵

Sludge in the sedimentation tank cannot be characterised as immovable property, unless it is allowed to remain there for so long a period that it becomes a part of the land.⁸⁶

(vii) Interest in partnership

It is doubtful whether the interest of a partner in partnership assets consisting, among other things, of land can be rightly described as a benefit

79 *Mammikutty v Puzhakkal Edom* ILR 29 Mad 353.

80 *Bank of Upper India v Fanny Skinner* AIR 1929 All 161, 163, ILR 51 All 494 (the case is, however, different with respect to auction sales of mortgagee's interest); *Lal Umrao Singh v Lal Singh* AIR 1924 All 796; *Shah Mohd v Lachmi Narain* 50 IC 157.

81 ILR 58 Cal 136, AIR 1931 Cal 223, 227 (a claim for maintenance is not a charge on immovable property); *Beer Chander v Raj Coomar* ILR 9 Cal 535.

82 *Sultan Ahmad v State of Madras* AIR 1954 Mad 949, 953.

83 *Sri Thakur Tarakeshwar Sio Thakur Jiu v Bar Dass Dey & Co* AIR 1979 SC 1669, 1674, 1980 UJ 102 (SC); following *Nageshwar Bux Roy v Bengal Coal Co* 58 Ind App 29, AIR 1931 PC 186; *Commr of Income-tax v Kumar Kamakshya Narain Singh* AIR 1940 Pat 633; as affirmed in *Kamakshya Narain Singh v Commr of Income-tax* AIR 1943 PC 153, 70 IA 180.

84 *Kumar Pashupati Nath Malia v Sankari Prasad Singh Deo* AIR 1957 Cal 128, 134.

85 *Ibid.*

86 *Bengal Agricultural and Industrial Corpn Ltd v Corpn of Calcutta* AIR 1960 Cal 123, *Addu Achair v Custodian Evacuee Property, Hyderabad* AIR 1953 Hyd 14, (1952) ILR

arising out of land.⁸⁷ Shares in a limited company are not immovable property.⁸⁸

Passage benefit is at best a right which a person in a superior civil service may be entitled to so long as he is in service and on terms as stated in the statutory rules. It cannot be 'property', movable or immovable.⁸⁹

(viii) Right to collect market dues

The chief court of Oudh in *Ram Jiwan v Hanuman Prasad*,⁹⁰ had held that *bazaar* constitutes a benefit arising out of land and is immovable property within the meaning of s 3(26) of this Act. Relying on the above decision, the High Court of Allahabad holds in *Dropadi Devi v Ram Das*,⁹¹ that even the right to collect market dues in respect of a market held on that piece of land is also an immovable property.

(ix) Standing crops

Standing crops are immovable property.⁹²

A question arises in cases of execution sale of agricultural land whether the crops raised on the land subsequent to the date of sale would pass to the auction purchaser at the time of delivery of possession. In order to answer this question reference has to be made to s 65 of the Civil Procedure Code and ss 8 and 55(4) of the Transfer of Property Act.

Section 65 of the Civil Procedure Code provides that where immovable property is sold in execution of a decree and such a sale has become absolute, the property shall be deemed to have vested in the purchaser from the time the property is sold and not from the time the sale becomes absolute.⁹³ The result would be that the value of the crops raised on the land subsequent to the date of sale will vest in the auction purchaser.⁹⁴

In the scheme of ss 3(14) and 3(19) of the Madras General Clauses Act 1891, standing crops are movable property.⁹⁵

Section 8 of the Transfer of Property Act lays down that unless a different intention is expressed or necessarily implied, a transfer of property passes

87 *Barkat Ram v Bhagwan Singh* AIR 1938 Lah 65, 67; *Ajudhiya Prasad Ram Perishad v Sham Sunder* AIR 1947 Lah 13, 22, (1947) ILR Lah 417 (FB); *Siheb Ram Surajmal, Firm v Purushottam Lal Gopi Kishan* AIR 1950 Nag 89.

88 *Vadilal v Manekji* AIR 1923 Bom 372.

89 *N Baksi v Accountant-General, Bihar* AIR 1957 Pat 515, 528 (Per Ahmad J).

90 AIR 1940 Oudh 409.

91 AIR 1974 All 473, 1974 All LJ 521.

92 *Devarasetti Narsimham v Devarasetti Venkiah* AIR 1916 Mad 1142-43; *Simon Larker v Mst Sujan Bakhla* AIR 1932 Pat 344-45; *Gobu Peda Appanna v Kuligu Krishnamma* AIR 1935 Mad 134-35.

93 *Bhagwan Das Krishna Das v IS Sama Iyer* AIR 1969 Ker 263.

94 *Phansu v Baret* AIR 1973 AP 94-96, 1972 (2) APLJ 350.

95 *State of Kerala v Otham Keran Panicker* AIR 1958 Ker 168-69.

forthwith to the transferee all the interest which the transferor is then capable of passing in the property and such incidents include, where the property is land, the easements annexed thereto, the rent and profits thereof accruing after the transfer, and all things attached to the earth. Thus, it can be contended that, although land which is immovable property does not include crops growing thereon,⁹⁶ when there is a transfer of property by virtue of a sale, all the interests of the transferor stand transferred to the purchaser, together with the legal incidents thereof. Such legal incidents as laid down in s 8 of that Act include 'rents and profits' thereof occurring after transfer and also include all things attached to the earth. Further, sub-s (4)(a) of s 55 of the Transfer of Property Act lays down that the seller is entitled to the rents and profits of the property till the ownership thereof passes to the buyer.

Correspondingly, sub-s (6) of s 55 of the Act declares that the buyer is entitled, where the ownership of the property is passed to him, to the rents and profits thereof.

Standing crops were held as immovable property in *Koligiri Venkataramhyanter v Palibanda Basayya*⁹⁷ in a suit for damages on wrongful and negligent attachment and spoiling of crops.

Trees cut and severed a few hours or days before a preliminary order was passed under s 145 of the Code of Criminal Procedure and still lying under the land could be attached along with the land, since they would fall within the expression 'crop' or 'produce of land'.⁹⁸

In *Atul Hazara v Uma Charan*⁹⁹ it was held that the decree-holder is entitled to the crops standing on the land on the date of delivery of possession. In *Maung Kan v Mauag Po Tok*¹ it was held that where the decree-holder is put in possession of land such possession includes standing crops, and that the judgment-debtor cannot re-enter in order to reap and dispose of the crops which he had cultivated upon the land.

In *Beni Prasad v Manok Lal*² it was contended, on the basis of a local amendment to O20, r 14, CPC, that if there are crops standing on the property, possession of the property shall not be delivered until such crops have been reaped. The contention was rejected on the ground that there was no amendment relating to a decree on immovable property and delivery of possession in execution thereof. Again, in *Bhagwandas v Sama Iyer*³ it was held that the purchaser is entitled to the profits of the property from the date of sale.

96 Ibid.

97 (1912) 23 Mad LJ 620-21, 1912 Mad WN 1222 (DB).

98 *A Rampus v A Subba Reddi* AIR 1950 Mad 655.

99 20 CWN 796, AIR 1916 Cal 339; *Kolagiri Venkataramarayanan v Patibanda Basawayya* 17 IC 185, 23 MLJ 620 (lands with crops attached—crops held immovable property).

1 AIR 1939 Rang 388.

2 AIR 1953 Nag 9, 1952 Nag LJ 153.

The Supreme Court in *SM Jaketi v SM Borkar*⁴ has, however, laid stress on the intention prevailing at the time of sale. It was held:

The question which assumes importance in an auction sale of this kind, therefore, is what did the court intend to sell and did sell and what did the auction-purchaser purport to buy and did buy and what did he pay for... The query in decided cases has been as to what was put up for sale and was sold and what the purchaser had reason to think he was buying in execution of the decree.

Distinguishing the above Supreme Court cases in *Kota Narayan v Pathivada Suryanarayan*,⁵ it was held that if, by virtue of the execution, the appellant became entitled to the land on the date of sale, the ownership stood transferred to him on that date and as a result the legal incidence of such transfer clothed him with a right to realise the rent and profits, and he would be entitled to the crops raised on the land subsequent to the date of such sale. Hence, the above decision of the Supreme Court does not stand in the way of allowing the appellant to realise the value of such crop standing on the land purchased by him on the date of delivery of possession.

(x) *Right to worship by turn*

The right to worship in a temple by turn is immovable property.⁶ So is hereditary priesthood.⁷

(xi) *Water*

Water is not a produce of soil⁸ and, therefore, it is neither land nor a tenement. Agreement to allow company to draw water from a river is not an instrument creating any right over immovable property.⁹

(xii) *Manure and rubbish*

An agreement for three years granting right to take out manure and rubbish by digging the trenches and drains where they have been accumulating amounts to benefit arising out of land, and the agreement is one relating to immovable property.¹⁰

4 AIR 1959 SC 282, [1959] SCR 1384.

5 AIR 1973 AP 94, (1972) 2 APLJ 350.

6 *Ram Rattan v Bajrang Lal* AIR 1978 SC 1393, (1978) 4 All LR 516, (1978) 3 SCC 236, 1978 BLJR 343.

7 *Ibid* p 1397; *Bhurthu v Bhushan Prasad* AIR 1952 Nag 307, (1953) ILR Nag 400, 1952 Nag LJ 588.

8 *Chief Controlling Revenue Authority v Antibiotic Project, Virbhadra* AIR 1979 All 355, 1979 All LJ 990.

9 *Ibid*; following *Jibanand Chakrabarti v Kalidas Mullick* AIR 1915 Cal 199; *Jugal Sarkar v Rajmangal Prasad* AIR 1926 Pat 187.

10 *Haji Sukhan Beg v Board of Revenue* AIR 1979 All 310, 1979 All LJ 887.

(xiii) Right to catch or carry fish

Right of fishing as rent¹¹ or right to catch or carry away fish from any lake to the extent of its specified portion till a specified future period¹² is benefit to arise out of land, involving a licence coupled with grant of *profit a prendre*.

(xiv) Right of way

A passage benefit is not even property.¹³ However, as held in *Sital Chandra v Dotaum*,¹⁴ the right of way is an immovable property.¹⁵

(xv) Ferry

Right of ferry is immovable property.¹⁶

**28. SECTION 3(27): 'IMPRISONMENT'**

The word 'imprisonment' means imprisonment of either description as defined in the Penal Code.¹⁷ In a case under s 9 of the Opium Act, a plea was taken that rigorous imprisonment could not be awarded for an offence under s 9 of the said Act. The Gwalior Bench of the Madhya Bharat High Court overruled the contention and held that in view of the definition of the word 'imprisonment' given in the General Clauses Act it cannot be maintained that the punishment of imprisonment prescribed for an offence under s 9 is only simple imprisonment.¹⁸

29. SECTION 3(28): 'INDIA'

Nepal is outside India.¹⁹ In *Chanan v Ram Kahan Singh*,²⁰ the question of the applicability of this clause arose on the following facts. The validity of a promissory note on which revenue stamps with the words 'Nabha State' were affixed was questioned after the Constitution on the ground that they were not Indian stamps. The contention was negatived and it was held that

11 *Maharaja of Kashmir v Fatteh Din* 164 PR 1888.

12 *Anand Behera v State of Orissa* AIR 1956 SC 17, 19, (1956) SCJ 96; *Bihar Eastern Gangetic Fishermen Co-op Society v Sipahi Singh* AIR 1977 SC 2149, 1977 UJ 586 (SC), (1977) 4 SCC 145, 1977 BBCJ 239 (SC).

13 *N Bakshi v Accountant General, Bihar* AIR 1957 Pat 515, 528, ILR 36 Pat 557, 1957 BLJR 299.

14 34 IC 450.

15 *Bejoy Chandra Nag v Banka Behari Mojumdar* (1909) 9 Cal LJ 340 (DB).

16 *Krishna v Akilanda* ILR 13 Mad 54.

17 *Narvir Chand v State* AIR 1952 MB 17, 1952 Cr LJ 246; *Empress v Narain* ILR 9 All 240-41 (SB).

18 *N Bakshi v Accountant-General, Bihar* AIR 1957 Pat 515; *Singbir Lama v Emperor* (1903) 7 Cal WN 635-36 (DB).

19 *Kumar Chand v Emperor* ILR 24 Pat 685, AIR 1946 Pat 158.

20 AIR 1958 Pat 81.

after the Constitution came into force, PEPSU State including the erstwhile Nabha State became part of India, and that, therefore, the stamps bearing the word 'Nabha State' are Indian stamps.

Oil Rig, carrying on operation in the designated area, is not a foreign going vessel as per the provisions of the Customs Act 1962, extended by the provisions of the Maritime Zones Act 1976, to the designated areas, as it would be deemed to be a part of the Indian territory. A coastal state has sovereignty over the territorial sea. It can exercise jurisdiction over that part of the sea. A contiguous zone is that part of the sea which is beyond and adjacent to the territorial waters of the coastal states. Coastal states, though do not exercise sovereignty over that part of the sea, are entitled to exercise sovereign rights and can take appropriate action to protect their revenue and like matters. In other words, police and revenue jurisdiction of the coastal states extend to the contiguous zone. Therefore, in the instant case, the petitioner was held not entitled to the benefit of s 53 read with 54 and/or s 86 read with s 87 of the Customs Act.²¹

A suit for the recovery of money was filed in Pakistan in 1949 and an ex parte decree was passed against the defendant with an observation in the decree that the summons was duly served upon the defendant. The defendant was resident of Sialkot in Pakistan only till September 1947 and obtained a permanent domicile in India afterwards, and the evidence clearly showed that he was never served the summons while he was in Pakistan. It was held that as the defendant was both on the date of institution of the suit and on the date of the decree domiciled in and a resident of India, under art 5 of the Constitution read with s 3(28) of the General Clauses Act, he was a citizen of India. Since he did not submit to the jurisdiction of the Sialkot court in a personal action against him, the decree passed ex parte will be a nullity and unenforceable against him under s 13 of the Code of Civil Procedure.²²

In view of the Constitution (Twelfth Amendment) Act 1952, Goa became a part of India since 27 March 1962.²³

30. SECTION 3(29): 'INDIAN LAW'

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 duly notified orders issued by a provincial government or by any person authorised by such government under the Essential Supplies (Temporary Powers) Act 1946.²⁴

- 21 *Pride Foramer v Union of India & Ors* AIR 2001 Bom 332, 346-48 (DB).
 22 *Bharat Nidhi Ltd v Megh Raj Mahajan* (1967) 69 Punj LR (D) 88, AIR 1967 Del 22.
 23 *HL Mehta v State of Maharashtra* AIR 1971 SC 1130-31, 1971 Cr LJ 842, 1971 (2) SC Cr R 449; reversing *Hari Vansh Lal v State of Maharashtra* (1969) ILR Bom 488, 69 Bom LR 704.
 24 *Public Prosecutor v Ilur Thippayya* AIR 1949 Mad 459-60, 50 Cr LJ 641, (1949) ILR Mad 371.

In view of the definition of 'Indian law' under s 3(29) of the General Clauses Act, the expression 'special Indian law' given in s 4(e) of Andhra Pradesh Agriculturist Relief Act 1938, includes the special law enacted by the Indian legislature and it cannot be limited to the law passed specially for India by the British Parliament.²⁵

The Contract Act came into force in 1872 before the commencement of the General Clauses Act 1897. Therefore, this definition is not directly applicable to the Contract Act. But there appears to be no reason why the principles contained in the above definition cannot be made applicable to even the earlier enactments. 'Law' must, therefore, include not only an Act and an ordinance but also regulation, rule, order, bylaw or other instrument which has the force of law. Similar inference can be drawn from the provisions of the Constitution also. For the purposes of art 13 of the Constitution, the term 'law' includes any ordinance, order, bylaw, rule, regulation, notification, custom or usage having in the territory of India the force of law.²⁶ In art 366(10), the expression 'existing law'²⁷ has been defined for the purpose of the Constitution, to mean any law, ordinance, order, bylaw, rule or regulation passed or made before the commencement of the Constitution by any legislature, authority or person having power to make such a law, ordinance, order, bylaw, rule or regulation. By virtue of art 367(1) of the Constitution, the General Clauses Act, subject to such adaptations and modifications that may be made therein under art 372, applies for the interpretation of the Constitution.

India is now a sovereign republic, but that by itself does not render the Fugitive Offenders Act 1881, inapplicable to India.²⁸

The term 'law' includes an order by a competent authority having the force of law. Consequently, where any agreement is forbidden by an order of the competent authority having the force of law, it shall be an agreement forbidden by law as contemplated by s 23 of the Indian Contract Act 1872.²⁹

The chief presidency magistrate of Calcutta is not competent to send a non-bailable warrant to Hong Kong for the arrest of a person guilty of criminal

25 *Bank of India v Vijay Transport* AIR 1988 SC 151-54, (1988) 1 Bank CLR 61, (1988) 1 UJ 91 (SC).

26 *State v Ram Charan* AIR 1977 MP 68, 71-72, 1977 Cr LJ 597, 1977 MPLJ 176 (FB); overruling *Mathura Das v State* AIR 1954 Nag 296.

27 *Abdul Hameed v Mohd Ishaq* AIR 1975 All 166, 1974 All LJ 676, 1975 Ren CR 404, (1974) ILR 2 All 334.

28 *State of West Bengal v Jugal Kishore More* AIR 1969 SC 1171, 1182, (1969) 1 SCC 440, (1969) 2 SCWR 56, 1969 Cr LJ 1559, (1969) 2 SCA 276, (1970) 1 SCJ 39; reversing *Jugal Kishore More v State of West Bengal* AIR 1968 Cal 220; *State of Madras v GC Menon* AIR 1954 SC 517, [1955] 1 SCR 280, 1954 Cr LJ 1337 (not referred to larger Bench, since the question was no longer a live question in view of repeal of the 1881 Act by the Extradition Act 1962).

29 *Abdul Hameed v Mohd Ishaq* AIR 1975 All 166, 1974 All LJ 676, 1975 Ren CR 404, (1974) ILR 2 All 334.

conspiracy at Calcutta, since the Code of Criminal Procedure extends to whole of India but not outside India.³⁰

The word 'order' in this clause, includes a notification³¹ but does not refer to an executive order.³² It refers to what may be called in *Mool Chand v Emperor*³³ as:

A species of delegated legislation, such as, for instance that were passed by the provincial government of the district magistrate, under r 81, Defence of India Rules, for say, movement of sugar, gur and various other commodities from the province or from the districts.

That power is given only to the district magistrate and not to the additional district magistrate.³⁴ The word 'order' is used to indicate a legislative order. Law, ordinance, order, bylaw, rule or regulation are of the nature of legislative provisions as are described in those various terms, the difference in terminology being the result of the difference between the authorities promulgating the same. 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, and the orders by a competent authority in India.³⁵ A notification issued by a competent authority under such an order is clearly an executive order and cannot be said to be included in the definition given in the General Clauses Act of the words 'Indian law'. The word 'order' which occurs in cl (29) of s 3 of the General Clauses Act has to be construed in the context in which it is used. The phrase 'Indian Law' as mentioned in para 17 (c) of the Uttar Pradesh High Courts (Amalgamation) Order 1948, includes not only an Act of the legislature, but as per s 3(29), General Clauses Act, all rules, bylaws and orders or notifications made thereunder.³⁶

30 *Jugal Kishore More v Chief Presidency Magistrate, Calcutta* AIR 1968 Cal 220, 71 CWN 508.

31 *Pramesh Chandra Gupta v Registrar, Allahabad High Court* AIR 1955 All 269, 272, 1955 All LJ 105 (FB); overruling *Kumari Saroj Rawat v Secretary Bar Council, Allahabad* AIR 1954 All 735; *Durgeshwar Dayal Seth v Secretary, Bar Council, Allahabad* AIR 1954 All 728; following *Dr Ram Krishna Bharadwaj v State of Delhi* AIR 1953 SC 318.

32 *Mool Chand v Emperor* AIR 1948 All 281, 284, 42 Cr LJ 352, (1948) ILR All 288 (with reference to order of provincial government, under s 11 of Uttar Pradesh Maintenance of Public Order (Temp) Act 1946).

33 *Ibid*; *Md Yasin Nurie v Dange* AIR 1949 Bom 19; *Venkataramnam v Secretary of State for India* ILR 53 Mad 979, AIR 1930 Mad 896 (Order-in-Council held to be Indian law).

34 *Prabhu Lal Ram Lal Kehra v Emperor* AIR 1944 Nag 84, 45 Cr LJ 296.

35 *Shripad v Divatia* AIR 1948 Bom 20, 34.

36 *Pramesh Chandra Gupta v Registrar, High Court, Allahabad* AIR 1955 All 269; following *Dr Ram Krishan v State of Delhi* AIR 1953 SC 318, 1953 Cr LJ 1241; overruling *Saroj Rawat v Secretary of Bar Council, High Court, Allahabad* AIR 1954 All 735, 1954 All LJ 400, 1954 Cr LJ 1498; *Durgeshwar Dayal Seth v Secretary, Bar Council, Allahabad* AIR 1954 All 728, 1954 All LJ 477, 1954 Cri LJ 1485; *RD Aggarwala v Union of India* (1974) ILR 2 Del 520 (cl 7 of Cement Control Order 1967, issued under s 183 of the Industrial Development and Regulation Act 1951, held not *ultra vires* ss 18G(1) and 25 of the Act, nor illegal prior to fixation of ex-factory price for certain units).

'Law, ordinance, order, bylaw, rule or regulation passed or made at any time by any competent legislature, authority, or person in India,' means legislative provisions. The difference between law, ordinance, order, bylaw, 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 or the *rajpramukh*, as the case may be; an order is made by a competent authority; a bylaw is passed by a competent statutory authority. Rules and regulations have been defined in cl (50) and (51) respectively of s 3 of the General Clauses Act. It was said that the word 'order' is used in s 3(29), General Clauses Act, in the sense of a legislative order and not an executive order,³⁷ but this view is not good law.

Service rules being made pursuant to statutory power or power given under the Constitution, are law.³⁸

A gazette notification in respect of things enumerated in the definition of Indian law is presumed to be genuine under s 81 of the Evidence Act.³⁹

31. NOTIFICATION

A question arises whether a notification published in exercise of the powers vested in the government by a provision in an Act of the legislature is included within the term 'Indian Law'. Conflicting views were expressed in *Mathuradas alias Mathuraprasad v State*,⁴⁰ and *State v Gopal Singh*.⁴¹ The conflict, however, had been set to rest by the decision of the Supreme Court in *Edward Mills Co Ltd v State of Ajmer*⁴² which held that a notification is included in 'Indian Law' as defined in s 3(29) of the General Clauses Act. In the latest case on the point, *State v Gokulchand*,⁴³ all the prior rulings aforementioned were reviewed and it was held that a notification issued by the government in exercise of the powers delegated to it under s 4, Essential Supplies (Temporary Powers)

37 *Panna Lal v State* AIR 1953 MB 84 (Gwalior Bench).

38 *Kamta Charan Srivastava v Post Master General, Bihar* AIR 1955 Pat 381; *Baishnab Charan Das v State of Orissa* AIR 1957 Ori 70.

39 *Nanak Chand v Emperor* AIR 1931 Lah 273, 32 Cr LJ 1227; relying on *Bawa Sarup Singh v Crown* AIR 1925 Lah 299, 26 Punj LR 566.

40 AIR 1954 Nag 296; dissented from in *State v Gopal Singh* AIR 1956 MB 138; overruled in *State v Ram Charan* AIR 1977 MP 68.

41 AIR 1956 MB 138 (FB); overruling *Panna Lal v State* AIR 1953 MB 84; *State v Bachehu Lal* MBLJ 1952 HCR 119; *State v Nandlal* 1952 MBLJ 271; *Mathura Das v State* AIR 1954 Nag 296; *Nanak Chand v Emperor* AIR 1931 Lah 273; *Purushottam Das v State* 1952 MBLJ 322; *Bawa Sarup Singh v Crown* AIR 1925 Lah 299, dissented from.

42 AIR 1955 SC 25; *State of Bombay v FN Balsara* AIR 1951 SC 318, (1951) SCJ 478 (notification owes its efficacy to section in the Act and has, therefore, force of law as if made by the legislature itself).

43 AIR 1957 MP 145.

Act 1946, is an 'order' within the term 'Indian law' as used in s 3(29) of the General Clauses Act, which should be taken judicial notice of by the court.

Section 2(28) of the Orissa General Clauses Act 1937, defines a notification as notification in the gazette and would apply to notification under the Orissa Municipal Act 1950.⁴⁴

32. SECTION 3(31): 'LOCAL AUTHORITY'

Local bodies are subordinate branches of government activity. They are political subdivisions and agencies which exercise some of the state functions. Power of taxation is, therefore, a necessary adjunct to their powers.⁴⁵ The characteristic features and the distinctive attributes of local authorities are that they, like municipal committees, district boards or bodies of port commissioners, must have a separate legal existence as corporate bodies and must not be mere 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 questions of policy affecting the area administered by them. Next, they must by statute be entrusted 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 fulfilment of their projects by levying taxes, rates, charges or fees.⁴⁶ It is well-settled that local bodies are subordinate branches of government activity. They are political subdivisions and agencies which exercise a part of the state functions. Power of taxation is, therefore, a necessary adjunct of their powers. A nationalised bank does not satisfy these attributes and cannot therefore, be treated to be a local authority within the meaning of s 3(31).⁴⁷ Thus, the *Jal Sansathan* created under s 18 of the Uttar Pradesh Water Supply and Sewerage Act 1975 is to be treated at par with a municipal corporation.⁴⁸

44 *Prannath v Bhagirathi* AIR 1965 Ori 195, 197.

45 *Municipal Corpn of Delhi v Birla Cotton Spg and Weaving Mills, Delhi* [1968] 3 SCR 251, 258, AIR 1968 SC 1232, per Hidayatullah J (as he then was).

46 *Union of India v RC Jain* AIR 1981 SC 951, 953, 1981 LIC 498, 1981 UJ 197 (SC), 1981 SC (Lab) 323, (1981) 58 FJR 285, (1981) 19 DLT 305, (1981) 2 SCC 308, (1981) 1 Lab LN 569, (1981) 1 LLJ 402, (1981) 1 SCWR 376, 42 Fac LR 348, (1981) 13 Lawyers 43, (1981) 2 SCJ 58; *Housing Board of Haryana v Haryana Housing Board Employees Union* AIR 1996 SC 434; *Calcutta State Transport Corpn v Commr of Income-tax* AIR 1996 SC 1316.

47 *AB Vorkady v United Bank of India & Anor* AIR 1996 Kant 79.

48 *Kendriya Nagarik Samiti, Kanpur v Jal Sansthan, Kanpur* AIR 1982 All 406, 1982 UPLBEC 484.

When 'local authority' was widely defined under the General Clauses Act to include 'any authority', a university must be construed to be 'any other authority' within the meaning of s 3(31) of the General Clauses Act as applicable to the State of Uttar Pradesh. The establishment of a university being by an authority established under the Universities Act, the amount spent from the university fund is a local fund within the meaning of s 3(31) of the General Clauses Act. Therefore, there is no need for the state government again to contribute from its exchequer towards the costs of acquisition of the property. Consequently the procedure prescribed under Ch VII of the Land Acquisition Act 1894 need not be followed.⁴⁹

The Administrative Tribunals Act 1986, does not define the term 'local authority'. Therefore one has to resort to the definition of it in General Clauses Act 1897. The services rendered by the Hyderabad Metropolitan Water Supply and Sewerage Board related to water and sewerage. As such, that Board was held to come within the definition of 'local authority'. The service disputes have to be settled at the first instance by the Andhra Pradesh Administrative Tribunal.⁵⁰

The expression 'local authority' is not defined in the Income-tax Act. Its definition is contained in the General Clauses Act in cl (31) of s 3. A road transport corporation has no element of popular representation in its constitution. Its powers and functions bear no relation to the powers and functions of a municipal committee, district board or body of port commissioners. It is more in the nature of a trading organisation. Merely because it has a fund or it is constituted to provide a public service and to employ persons in that connection, it cannot be said that its functions are similar to those of a municipal council, district board or body of port commissioners. The Calcutta Road Transport Corporation stands no comparison with the DDA. It is like any other non-statutory corporation. It is not a 'local authority' and therefore not entitled to claim exemption of its income by virtue of cl (2) of s 10 of the Income-tax Act.⁵¹

Article 12 of the Constitution of India does not define 'local authority', but defines 'state'. For the application of the *ejusdem generis* rule, it is essential that enumerated things before the general words must constitute a category or genus. While interpreting the definition of 'local authority' as contained in the General Clauses Act and also in the Haryana Housing Board Act 1971, the rule of *ejusdem generis* can be invoked. But that rule cannot be applied to art 12, as the definition of 'state' under that Article includes several bodies which are heterogeneous in character, and there is no genus in the

49 *Kashi Vidyapith v Motilal & Ors* AIR 1996 SC 2705, 2707, (1996) 10 SCC 456.
 50 *R Bhaskara Rao & Anor v Hyderabad Metropolitan Water Supply and Sewerage Board & Ors* (2001) 3 Andh LT 88, 93, 95 (DB).
 51 *Calcutta State Transport Corpn v Commr of Income-tax, West Bengal* AIR 1996 SC 1316-18 (1996), 8 SCC 758.

definition. Haryana Housing Board is not a 'local authority' under s 32(iv) of the Payment of Bonus Act 1965.⁵²

In *AB Vorkady v United Bank of India & Anor*⁵³ the learned single judge of the Karnataka High Court held, inter alia, as follows:

1. The very fact, that the respondent bank is owned and controlled by the Government of India does not make the petitioner a government employee, nor is it possible to treat the respondent bank as a local authority.
2. Now it is fairly well-settled that local bodies are subordinate branches of government activity. They are political subdivisions and agencies which exercise a part of state functions. Power of taxation is, therefore, a necessary adjunct of their powers. The characteristic features and the distinctive attributes of 'local authorities' are that they, like municipal committees, district boards or bodies of port commissioners, must have a separate legal existence as corporate bodies and must not be mere government agencies. They must be legally independent entities functioning in a defined area, enjoying a certain degree of autonomy with freedom to decide for themselves questions of policy affecting the area administered by them. Next, they must be entrusted by statute with which 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 fee etc. The respondent bank does not satisfy these attributes and cannot therefore be treated to be a local authority within the meaning of s 3(31) of the General Clauses Act or s 60(i)(e) of the CPC.

The expression 'local authority', though not defined in the Constitution or the Administrative Tribunal Act, is defined under the General Clauses Act 1897, which is made applicable for the interpretation of the Constitution by virtue of the express declaration of art 367.⁵⁴

A market committee, being an autonomous body and having an elected body to lay out its own policies, was held to be a local authority.⁵⁵

State Bank of India is not a 'Local authority'.⁵⁶

52 *Housing Board of Haryana v Haryana Housing Board Employees' Union & Ors* AIR 1996 SC 434, 437, (1996) 1 SCC 95.

53 AIR 1996 Kant 79-81.

54 *Sridhar Reddy & Ors v Hyderabad Metropolitan Water Supply and Sewerage Board, Hyderabad & Ors* (2000) 4 ALD 481 (AP).

55 *Agr Mkt Co Alwar v Prescribed Authority* 1994 (1) WLC 97, 102 (Raj).

56 *State Bank of India Staff Assn v Election Commission* 1994 BBCJ 155 (Pat).

The *Gram Panchayat*⁵⁷ for a particular locality has been vested with executive power, judicial power, power of taxation, power of controlling sanitation, erection of buildings etc, and there is nothing more which is required to invest the gram panchayat with the character of a local authority as defined in cl (31) of s 3 of the General Clauses Act, corresponding to cl (30) of s 4 of the Bihar and Orissa General Clauses Act 1917.⁵⁸ The Calcutta Metropolitan Development Authority has been held to be a local authority, since it is a statutory body created under Calcutta Metropolitan Development Authority Act 1972, and is entitled to control and manage its funds and effect development in the areas under its control, a power analogous to that vested in municipalities.⁵⁹

A market committee, by virtue of its being an organisation for purpose of regulating trade, is local authority.⁶⁰

However, a group of villages cannot be held to be a local authority.⁶¹ Similarly Haryana Housing Board is not a local authority for the purposes of Payment of Bonus Act.⁶²

The Delhi Development Authority constituted under the Delhi Development Act 1957,⁶³ and the Calcutta Dock Labour Board,⁶⁴ would fall within the definition of local authority. Port Trust⁶⁵ is a local authority.⁶⁶ Being an autonomous body, the market committee having an elected body to lay out its own policies is a local authority.⁶⁷ However, State Bank of India is not a 'local authority'.⁶⁸ The words 'legally entitled

57 *Nagar Panchayat, Jhajha v State of Punjab* (1967) 69 Punj LR (D) 375, 379-80 (panchayat as local authority capable to sue); *Kishan Singh v State of Punjab* AIR 1961 Punj 1, 62 Punj LR 840; *Atma Singh v Addl Director, Consolidation of Holdings, Ferozpur* (1969) 71 Punj LR 1004-05; *Ishan Singh v State of Punjab* AIR 1961 Punj 1; *Mathew v Director of Municipalities* 1966 Ker LJ 1080.

58 *Dharampal Singh v AK Banerji* AIR 1971 Pat 209, 1970 Pat LJR 416; *Kishan Singh v State of Punjab* AIR 1961 Punj 1, 31, 62 Punj LR 840 (FB) (with reference to Punjab Gram Panchayats Act 1953).

59 *12 and 16 IC Bose Road Tenants' Association v Collector of Howrah* (1977) 81 Cal WN 803, (1977) 1 Cal LJ 634; *Bose Road Tenants' Assn v Collector of Howrah* AIR 1977 Cal 437, 82 Cal WN 33 (DB).

60 *Shanmugha Oil Mills v Market Committee* AIR 1960 Mad 160, 164.

61 *Heisnam Chorijon Singh v Union Territory of Manipur* AIR 1968 Mani 45, 50.

62 *Haryana Housing Board v Haryana Board Employees' Union* (1987) 1 Punj LR 613 (P&H).

63 *Union of India v RC Jain* AIR 1981 SC 951, 956, 1981 LIC 498, 1981 UJ 197 (SC): reversing *RC Jain v Union of India* (1980) ILR 1 Del 29, 1979 LIC NOC 165; *Asha Ram v Munshilal* 1997 AIHC 1611 (MP).

64 *S Kumaran v Competent Authority* AIR 1970 Cal 176, 178, 73 Cal WN 943.

65 *R Sarangpani v Port Trust of Madras* AIR 1961 Mad 234, (1961) 1 Mad LJ 57.

66 *Durrugh Small & Co v Corpn of Cochin* 1974 Tax LR 1929, 1931, 1934, 1974 Ker LT 200 (DB).

67 *Agr Mkt Com, Alwar v Prescribed Authority* (1994) 1 Western Law Cases 97, 102 (Raj).

68 *State Bank of India Staff Assn v Election Commission* 1994 BBCJ 155 (Pat).

to, or entrusted by the government with the control or management of a municipal or local fund' qualify the words immediately preceding them, namely, 'or other authority' and do not relate to a municipal committee, district board or body of port commissioners. It is obvious that a municipal committee is a 'local authority'. The definition of 'local authority', in s 3(31) of the General Clauses Act 1897, includes a municipal committee. Section 18 of the Act provides for successors of any functionary or corporation having perpetual succession. Reading ss 3(31) and 18, the administrator can be a successor to the superseded corporation,⁶⁹ and so also, to a district board, and the body of port commissioners. It does not seem to be intended or reasonable that they can be a local authority only when they control or are entrusted by the government with the control and management of a municipal or local fund. But it is otherwise in the case of other authorities not definitely specified, who can only bring themselves within that definition if the later part of the sub-section can be applied to them. Moreover, the word 'or' and not 'and' other authority is used.⁷⁰ The case of a market committee, which performs a few governmental functions is not different.⁷¹ The electricity boards and the housing boards are, however, not local authorities.⁷² A school board is a local authority and not a company.⁷³ The district school board under the Bombay Primary Education Act is a body which comes under the control of the government by law and the fund, administered by the Board, comes within the expression 'local fund' as defined in r 2(17) of the Mysore Financial Code. Hence it comes under the definition of 'local authority' under s 3(31) of the General Clauses Act. The Calcutta Dock Labour Board answers the definition of local authority under s 3(31) of the General Clauses Act.⁷⁴ In the same way, Calcutta Metropolitan Development Authority is local authority.⁷⁵

69 *Rehman v Nagpur Corpn* 73 Bom LR 344.

70 *Official Assignee v Trustees of Port Trust* AIR 1936 Mad 789, 791, (1937) ILR Mad 178.

71 *Ochhovlal v State of Gujarat* (1967) 8 Guj LR 359, 366 (DB); *Patel Premji v State of Gujarat* 1979 UJ (SC) 813; but see *Ude Singh v State of Haryana* (1972) 74 Punj LR 444, 1972 Punj LJ 20, 25 (co-operative marketing society not local authority.)

72 *Official Liquidator of Mysore Spun Silk Mills v Mysore State Electricity Board* (1961) ILR Mys 434, 443.

73 *Chanaverappa Shivappa v State of Mysore* (1968) 13 Law Rep 703, (1968) 1 Mys LJ 300.

74 *Bhikari Behara v Dhanapatie Bentia* 73 CWN 943, AIR 1970 Cal 176; *Member Secretary, Bihar State Khadi and Village Industries Board, Patna v Damodar Prasad* 1966 BLJR 381, 383 (Khadi and Village Industries Board, a local authority).

75 *12 IC Bose Road Tenants' Assn v Collector, Howrah* AIR 1977 Cal 437, (1977) 2 Cal LJ 338, (1977) 4 Cal HCN 965.

The local bodies referred to in the expression 'local authority' as used in s 47 of the Motor Vehicles Act 1939 (s 71 of Motor Vehicles Act 1988) are not only included in the definition as given in the General Clauses Act, but do not also exclude from it the officers of the government working in the relevant localities.⁷⁶

In *R Sarangapani v Port Trust, Madras*⁷⁷ where the vires of a resolution of the port trust board was challenged, it was held that the word 'state' in art 12 of the Constitution includes, apart from the government and Parliament of India and the government under the legislature of each of the states, all local and other authorities within the territory of India or under the control of the Government of India, and the port trust will fall within the meaning of the term 'state' by virtue of cl (31) of the General Clauses Act. Port trust is a corporation certainly controlled by the state. The University of Agra comes within the definition of 'state', in art 12 of the Constitution.⁷⁸ So also, state trading corporations are local authorities within the meaning of this sub-section.⁷⁹ The Mysore High Court has held that the term 'local authority' also includes an officer of the government who is actually working in the locality.⁸⁰ A cantonment board constituted under the Cantonments Act 1924 is a local authority within the meaning of art 276 of the Constitution of India.⁸¹

As a panchayat clearly falls within the meaning of 'local authority' given in s 3(31) of the General Clauses Act, art 31A of the Constitution permits acquisition by the state of an estate or portion of an estate without payment of compensation.⁸² A group of villagers is not a local authority within the meaning of this clause. Where, upon a declaration under s 6(1) of the Land Acquisition Act, compensation has to be paid out of the public revenues or fund controlled or managed by a local authority, the fund raised by the villagers does not attract the provision. Therefore the declaration was held to be invalid.⁸³

- 76 *Abdul P Azeez Bellary v Mysore Revenue Appellate Tribunal* AIR 1962 Mys 31, 36, 39 Mys LJ 552 (DB).
- 77 AIR 1961 Mad 234, (1961) 1 Mad LJ 57, 74 Mad LW 33; *Workmen, Mangalore Port Trust v Management of Mangalore Port Trust* 1973 LIC 1536, (1973) 1 Mys LJ 386 (Board of Trustees of Mangalore Port Trust held, local authority).
- 78 *GF Degree College v University of Agra* AIR 1968 All 188; dissenting from *University of Madras v Shanta Bai* AIR 1954 Mad 67, (1954) ILR Mad 426.
- 79 *Andhra Pradesh SRT Corp'n v Income-tax Officer* AIR 1962 AP 323, 328; *Valjibhai Muljibhai Sonaji v State of Bombay* AIR 1963 SC 1890 (where it was held that a state transport corporation is not a local authority within the meaning of this clause); *Sukhdev Singh v Bhagat Ram* AIR 1975 SC 1331 (CMDA is other authority within the meaning of art 12 of the Constitution).
- 80 *P Abdul Azeez, Bellary v Mysore Revenue Appellate Tribunal* AIR 1962 Mys 31.
- 81 *Hira Lal v Union of India* 1972 Tax LR 2051, 2055, (1972) Sim LJ 53 (HP).
- 82 *Atma Singh v Addl Director, Consolidation of Holding, Ferozpur* 1969 Purj LR 523.
- 83 *Heisnam Chonju Singh v Union Territory of Manipur* AIR 1968 Mani 45.

A *mandi samiti*, under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam 1964, is a local authority, and since that Act received the assent of the President, the definition of 'local authority' as contained in that Act, shall prevail over that in s 3(31) of the General Clauses Act.⁸⁴ The state road transport corporation shall, for all purposes, be deemed to be a local authority.⁸⁵

The market committee functioning under the Andhra Pradesh (Agricultural Produce and Livestock Markets) Act 1966, is a local authority for purposes of the Land Acquisition Act.⁸⁶

A society registered under the Co-operative Societies Act, but not entrusted to manage municipal or local fund is not local authority.⁸⁷

A market committee, constituted under s 4A of the Madras Commercial Crops Market Act 1933, has been held to be a local authority.⁸⁸

The Jharia Mines Board of Health is a local authority.⁸⁹

'Government' includes both, the Central Government or any state government. This is undoubtedly an inclusive definition. However, by no stretch of reasoning, the definition can be extended to any local authority.⁹⁰

33. SECTION 3(32): 'MAGISTRATE'

A magistrate⁹¹ or a police officer⁹² in a native state as well as a village munsif,⁹³ are officers who come within the definition of 'magistrate'⁹⁴ in the General Clauses Act, though such magistrates are not magistrate for purposes of s 164 of the Code of Criminal Procedure.⁹⁵ A *juge d' instruction* in French India was a sort of a committing magistrate with the power to

- 84 *Mahavir v State of Uttar Pradesh* AIR 1979 All 3, 1978 All LJ 1313, (1978) 4 All LR 932.
 85 *Valjibhai Muljibhai Sonaji v State of Bombay* AIR 1963 SC 1890, 1964 All LJ 639 (no repugnancy in the Bombay State Road Transport Act 1950 and the General Clauses Act).
 86 *Budha Veeri Naidu v State of Andhra Pradesh* (1978) 2 Andh LT 175.
 87 *Sobhnath v Raj Kishore* AIR 1967 All 121; *Raj Kishore v Sobh Nath* 1966 All LJ 636.
 88 *Shanmugha Oil Mills v Market Committee* AIR 1960 Mad 160.
 89 *Mahomed Bux v Emperor* AIR 1934 Sind 103, 105.
 90 *Agricultural Produce Market Committee v Municipality of Gondal* 1995 (1) GCD 291 (Guj).
 91 *Surya Kant Roy v Imamul Hak Khan* (1975) 1 SCC 531, AIR 1975 SC 1053.
 92 *Balaji Raghunath Phadke v Bal Bin Raghoji* (1898) ILR 22 Bom 235, 238 (DB); *Emperor v Anandrao Gangaram* AIR 1925 Bom 529-30, 27 Bom LR 1034.
 93 *Empress v Ramanjijya* ILR 2 Mad 5, 2 Ind Jur 782.
 94 *Queen Empress v Nagla Kale* (1898) ILR 22 Bom 235; *Queen Empress v Sunder Singh* ILR 12 All 595 (magistrate at Bhind in State of Gwalior); but see *Emperor v Dhanka Rama* (1914) 16 Bom LR 261, 24 IC 169, 15 Cr LJ 433.
 95 *Mohd Bux v Emperor* AIR 1934 Sind 103, 35 Cr LJ 1328.

commit for trial or discharge a prisoner, but not to commit for trial. He was a magistrate within the meaning of this clause. The definition of 'magistrate' in the General Clauses Act is not confined to magistrates exercising jurisdiction under the Criminal Procedure Code; it merely includes them,⁹⁶ as well as those who are special judges having jurisdiction to remand the accused.⁹⁷ A *sarpanch* of a *nyaya panchayat* under the *Kshetra Samitis and Zila Parishads Adhiniyam* (33 of 1961) performing the duties of a magistrate does not come under s 3(32) of the Uttar Pradesh General Clauses Act because he is not a person exercising all or any of the powers of a magistrate under the Code of Criminal Procedure.⁹⁸

The word 'magistrate' denotes an office⁹⁹ more than an officer. The person functioning as such satisfies the requirements of the notification under Assam Opium Prohibition Act 1947 read with s 39 of the Criminal Procedure Code 1898 (now corresponding s 32 in Cr PC 1973).¹

The expression 'include' or 'shall be deemed to include' is very 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 so as to make the definition enumerative and not exhaustive. In *Sujaniram v Lal Shyam Shah*², it has been held that the definition of 'magistrate' given in this clause is an inclusive definition and also includes an additional sessions judge.

The special judge contemplated in the Criminal Laws (Amendment) Act 1952 can be held to be a magistrate for purposes of s 167 of the Code of Criminal Procedure.³

34. SECTION 3(33): 'MASTER'

The definition of 'master' given in s 3(33), does not include a 'serong'.⁴

96 *Panchanatham Pillai v Emperor* ILR 52 Mad 529, AIR 1929 Mad 487; (quaere—whether a village magistrate in Madras Presidency is a magistrate within this section); *Palaniappa v Annamalai Chetty* ILR 27 Mad 223; *Emperor v Ramanjijya* ILR 2 Mad 5.

97 *State of Tamil Nadu v V Krishnaswami Naidu* AIR 1979 SC 1255, 1258, 1979 Cr LJ 1069, (1979) 2 SCJ 399.

98 *Ram Murti v Subedar* AIR 1969 All 65.

99 *Palaniappa Chetti v Annamalai Chetti* (1904) ILR 27 Mad 223, 227 (DB) (village magistrate, held to be a 'magistrate').

1 *State v Judhabir Chetri* AIR 1953 Assam 35, 39, 1953 Cr LJ 395 (DB); dissenting from: *Mohammad Kasim v Emperor* AIR 1915 Mad 1159.

2 AIR 1956 Nag 67 (the definition is not limited to magistrates appointed under the Code, [1914] 1 KB 641 relied upon).

3 *State of Tamil Nadu v V Krishnaswami Naidu* (1979) 4 SCC 5.

4 *Bansi Lal Madan Lal v East Bengal River Steam Service* (1972) ILR 2 Cal 380, 391.

35. SECTION 3(35): 'MONTH'

The expression 'month', unless it does not fit in with the context of the statute in question,⁵ means a month reckoned according to the English calendar,⁶ and not a lunar month.⁷ But for this statutory meaning it would mean a lunar month,⁸ as denoted by the word *mah*,⁹ and in case both the calendar as well as the lunar months are referred to in any document the former shall alone prevail.¹⁰

As to how a calendar month which is not necessarily of 30 days,¹¹ is to be counted from a date which is not the first of the month has been described in *Halsbury's Laws of England*¹² in the following words:

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 save that if the period starts 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.

Thus, one month counted from 15 July 1960, would be on June 16 and the second month counted from June 16 would be on 17 May 1960. Evidently, therefore, the deposit made on 16 May 1960 was two months prior to 15 July 1960.¹³

The period of one month's notice beginning on 28 January would validly terminate on 28 February in years excepting leap years.¹⁴ The direction to the tenant to pay up arrears of rent within one month from 30 September would give him time till the last day of October.¹⁵ When notice has been given in the month of February, the month can mean less than 30 days.¹⁶

- 5 *Commr of Income-tax, West Bengal, II, Calcutta v Brij Lal Lohia* 1980 Tax LR 1383, [1980] 124 ITR 485 (with reference to s 271(1)(a)(i) of Income-tax Act 1961, which is a penal provision and where the 'month' refers to the whole of the month of default and not to a month during only a part of which the alleged default is committed); *Commr of Income-tax v Laxmi Rattan Cotton Mills Co Ltd* 1973 Tax LR 1079, 1080, [1974] ITR 285.
- 6 *Krishan Bilash Chakraborty v Sonadhan Nama Sundra* AIR 1961 Tri 16.
- 7 *Calcutta Landing and Shipping Co Ltd v Victor Oil Co Ltd* AIR 1944 Cal 84, 86, 48 Cal WN 76 (DB).
- 8 *South British Fire and Marine Insurance Co v Brojo Nath Shaha* (1909) ILR 36 Cal 516, 540-41.
- 9 *Misri Lal v Jwala Prasad* (1962) ILR 1 All 761-62 (DB).
- 10 *Ganga Prasad Chhoteram v Birjibai* AIR 1955 NUC 69 (MB).
- 11 *Re Mehta* AIR 1970 AP 234, 235, 1970 Cri LJ 797, (1969) 2 Andh WR 2 (DB).
- 12 Vol 37, third edn, para 143.
- 13 *Daryodh Singh v Union of India* AIR 1973 Del 58, (1973) 75 Punj LR 18 (D).
- 14 *South British Fire and Marine Insurance Co v Brojo Nath Shaha* (1909) ILR 36 Cal 516, 541 (SB); *Provas Chandra Poddar v Visyaraji Kashi Vishwanathan Raju* AIR 1962 Ori 149-50, 27 Cut LT 210 (DB).
- 15 *Lakshmayya v Hari Chandra* (1974) 2 Ker LJ 369.
- 16 *Ram Kali v Ram Sia Ram* AIR 1978 All 546.

According to the complaint, the cheque was issued on 26 August 1996. It was presented on 12 December 1996. Notice of dishonour was issued on 30 December 1996, and the same was acknowledged on 31 December 1996. Complaint was filed on 14 February 1997. Even according to the petitioners the period of 15 days for notice ended on 4 January 1997. Hence, the period of limitation of one month would start from 15 January 1997 and would end on 14 February 1997. The complaint was filed on 14 February 1997. However, the notice period was felt to have come to an end on 15 January 1997 by considering that the period of one month would start from 16 January 1997, and therefore, the complaint would be within time even on 15 February 1997.

Under s 4(28) of the Uttar Pradesh General Clauses Act as regards the period of absence from meetings of members of the municipal board the period of three consecutive months commences from the first meeting from which the member absented himself.¹⁷

Unless a different intention is expressed, the period of limitation under the Limitation Act is reckoned according to the English calendar.¹⁸

The period of six months referred to in s 57(b) of the Orissa Tenancy Act has to be calculated as per the Gregorian calendar.¹⁹

In calculating the period of default in filing the return the word 'month', occurring in s 271(a)(i) of the Income-tax Act, must be taken to mean a period of thirty days. If the meaning ascribed to this word in s 3(35) of the General Clauses Act as an English calendar month is adopted, it may, in some cases, lead to defaulting assessee escaping penalty altogether. This interpretation does not, therefore, fit in with the scheme and context of the section and results in some cases in setting at naught the purpose of the enactment. The penalty payable has to be calculated after deducting the amount of tax already paid and not with reference to the gross tax assessed.²⁰

The courts, while construing the word 'month' under the Code of Civil Procedure, have adopted the same meaning as given in s 3(35) of the General Clauses Act.²¹

The expression 'six months' in s 533 of the Bengal Municipal Act, means six calendar months and not 180 days.²²

Where a second notification was published in the state gazette on 17 July 1976 it was held that compliance made within a month, reckoned according to British calendar, from the date of its publication was appropriate and in accordance with law.²³

17 *Abdul Latiff v Commr, Gorakhpur* 1967 All LJ 431, (1967) ILR 1 All 568, AIR 1967 All 44.

18 *Sarda Prasad Ganguli v Pahali Mahanti* (1884) ILR 10 Cal 913-14 (DB).

19 *Kapil Charan v Mahani Charan* AIR 1955 NUC 5380.

20 *Commr of Income-tax, Kanpur v Laxmi Rattan Cotton Mills Co Ltd* (1973) 2 ITJ 35.

21 *Markande Sahu v Lal Sadananda Singh* AIR 1952 Ori 279-80, 18 Cut LT 111 (DB); *Manohar Lal Kanhaya Lal v L Ram Nath* AIR 1956 Punj 112, 58 Punj LR 123.

22 *Tamal Lahiri v Kumar PN Tagore* 1979 Cr LJ 1, 3 (SC).

23 *Vijayaraju Badrinarayan Moorthy Raju v State of Orissa* AIR 1981 Ori 180, 182.

36. SECTION 3(36): 'MOVABLE PROPERTY'

The comprehensive definition of movable property includes animate as well as inanimate kinds of movable property.²⁴ The expression 'movable property' includes both, tangible and intangible movable property, such as debts, choses in action and consequently, a right to receive the salary and wages from an employer.²⁵ The definition of 'movable property' also includes a 'debt',²⁶ an agreement to sell immovable property,²⁷ and a contract whereunder rights are assignable unless the contract is of a personal nature.²⁸ Where a debt is secured on an immovable property or merchandise, the debt exists as a movable property.²⁹ Notwithstanding the definition of immovable property in s 3(26) of the General Clauses Act, the expression 'goods' under the Sale of Goods Act 1930 includes growing crops forming part of land agreed to be severed before sale.³⁰

Where the definition of the expression 'movable property' under s 22 of the IPC cannot be of any use to interpret certain provisions of the Code of Criminal Procedure, the definition under the General Clauses Act, which includes therein not only the tangible corporeal movable property but also the intangible movable assets such as debts, choses-in-action and consequently, a right to receive the salary and wages from an employer, will have to be resorted to, for determining the connotation of the expression for the purposes of various provisions contained in the Code of Criminal Procedure, viz, Ch IX and s 421(1)(a).³¹

Copyright is a beneficial interest in the movable property.³² Shares in a limited company, as already stated, are not immovable but movable property.³³

24 *K Srinivasulu v Deputy Commercial-tax Officer* 1975 Tax LR 1791.

25 *Bhagwat Babu Rao Gaikwad v Baburao Bhaiyya Gaikwad* 1994 Cr LJ 2393 (Bom), (1994) 2 Crimes 941.

26 *Secretary of State for India in Council v Sengammal* 18 Cr LJ 1, 36 IC 833; *Lal Umrao Singh v Lal Singh* AIR 1924 All 796, 798, ILR 46 All 917 (DB).

27 *Prem Narain Kapoor v SN Anand* 1970 All LJ 721.

28 *Khardah Co Ltd v Raymon & Co (India) Pvt Ltd* AIR 1962 SC 1810.

29 *Imperial Bank of India v Bengal National Bank Ltd* AIR 1931 PC 2-5.

30 *Firm Chhotabhai Jethabhai Patel & Co v State of Madhya Pradesh* AIR 1953 SC 108, 110; (1953) SCJ 96; overruled on another point in *Shantabai v State of Bombay* AIR 1950 SC 532.

31 *Bhagwat Babu Rao Gaikwad v Baburao Bhaiyya Gaikwad* 1994 (3) Crimes 941, 1994 Cr LJ 2393 (Bom).

32 *Savitri Devi v Dwarka Prasad* AIR 1939 All 305; *AV Meiyappan v Commr of Commercial-taxes, Madras* 20 STC 115, (1968) ILR 2 Mad 489, (1968) 1 Mad LJ 480, AIR 1969 Mad 284 (DB).

33 *Vadilal v Manekji* AIR 1923 Bom 372; *Shaw Ahmad Mohiuddin Kadri v Shah Yeliya Alum Kadri* 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.³⁴ An agreement to get a property reconveyed is also assignable.³⁵ Water, as long as it is flowing in 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.³⁶ Gas has been held to be goods.³⁷ Standing timber which has to be cut down and removed is movable property.³⁸ Similarly, sludge in the sedimentation tank after being drawn out therefrom is not immovable property. It is essentially movable property and remains so even when stored on land or in a lagoon.³⁹ Electricity is also a 'movable property' within the definition in this clause.⁴⁰ Section 3(36) of the General Clauses Act defines a movable property to mean 'property of every description except immovable property'. Possessed with the characteristics of transmission, transference, delivery, storage and possession, the electric energy is movable property.⁴¹ When the jurisdiction of a court relates to such general expressions as 'transactions of merchants and traders' buying and selling of goods, as in cl 4(iv) of the First Schedule to the Calcutta City Civil Courts Act, it is essential that no artificially technical and narrow interpretation should be adopted to cut down the broad connotation of such expressions.⁴² Again, policies of insurance are also movable property.⁴³ Though both under the Transfer of Property Act and the General Clauses Act the superstructure would be immovable property as a thing attached to the earth, the Presidency Small Cause Courts Act (15 of 1882) makes a departure and statutorily requires the superstructure to be regarded

34 *Bhairon Prasad Chaurasiya v Tara Devi* AIR 1980 All 36, 1979 All LJ 1324.

35 *Prem Narain Kapoor v SN Anand* 1971 All LJ 721; *Vishweshwar Narsabhata Goddasa v Durgappa Irappa Batkar* AIR 1940 Bom 339; *Sakalaguna Naydu v Chinna Munnuswami Nayakar* AIR 1928 PC 174; *Sinnakaruppa Gounder v M Karuppuswami Gounder* AIR 1965 Mad 506.

36 *Alam Sher v Ram Chand* 11 PR 1898.

37 *Eric County Natural Gas and Fuel Co Ltd v Samuel S Carroll* [1911] AC 105, 117-19.

38 *Re Mahant Raj Balamgir* AIR 1931 All 392 (FB).

39 *Bengal Agricultural and Industrial Corp'n v Corp'n of Calcutta* AIR 1960 Cal 123.

40 *Commr, Sales-tax, Madhya Pradesh, Indore v Madhya Pradesh Electricity Board, Jabalpur* (1969) 1 SCC 200, (1970) 1 SCJ 750, AIR 1970 SC 732.

41 *Ibid.* AIR 1970 SC 732, 735; reversing *Madhya Pradesh Electricity Board v Commr of Sales-tax* AIR 1968 MP 163; *Municipal Committee, Harda v Harda Electric Supply Co* AIR 1964 MP 101, 107, 1964 Jab LJ 57, 1964 MPLJ 579.

42 *Associated Power Co Ltd v Ram Taran Roy* 73 Cal WN 701, AIR 1970 Cal 75; *Harda Municipality v Harda Electric Supply Co* AIR 1964 MP 101; *Malerkotla Power Supply Co v Excise and Taxation Officer* 22 STC 325 (Punj), (1969) ILR 1 Punj 575; *Kumbha Konam Electric Supply Corp'n Ltd v Joint Commissioner-tax Officer, Esplanade Dn, Madras* AIR 1964 Mad 477, 479, (1963) 2 Mad LJ 225; *Naini Tal Hotel v Municipal Board* AIR 1946 All 502, 505, 1946 All LJ 195 (DB).

43 *Bulchand Chandiram v Bank of India* AIR 1968 SC 1475.

as movable property. Section 28 of the Act provides that the property sold in execution may be severed by the purchaser but that it shall not be removed from the immovable property until he has done to the property whatever the judgment-debtor would have been bound to do if he had removed such a thing. The section contemplates not only attachment and sale but also severance of the property by the purchaser. It follows that the superstructure sold under s 28 of the Act is movable property.⁴⁴ There can be no valid sale of fixtures when collieries as going concerns are sold with the intention that fixtures shall pass along with land.⁴⁵

Machinery for bailing cotton was held to be movable property in *Meghraj v Krishna Chandra*.⁴⁶

Crops, cut and kept in a storing place, and not a subject matter of dispute under s 145 of the Code of Criminal Procedure, are movable property.⁴⁷

Where the definition of the expression 'movable property' as contained in s 22 of the Indian Penal Code cannot be of any use to interpret certain provisions of the Code of Criminal Procedure, the definition of General Clauses Act 1897, which defines the expression 'movable property' so as to include therein not only the tangible corporeal movable property but also the intangible movable assets such as debts, choses-in-action, and consequently, a right to receive the salary and wages from an employer will have to be resorted to for determining the connotation of the expression for the purposes of various provisions contained in the Code of Criminal Procedure, viz, Ch 9, Cr PC and s 421(1)(a) of the same.⁴⁸

37. SECTION 3(37): 'OATH'

'Oath' includes affirmation.⁴⁹

An oath affecting a third party is not permissible under s 8 of the Indian Oaths Act 1873.⁵⁰

It was submitted that since the respondent has solemnised a second marriage during the subsistence of the first with the appellant, the second

44 *Thangammal v Murugammal* (1970) 1 Mad LJ 460, 83 LW 195, AIR 1970 Mad 325; *EC Chinnaswami Pillai v Arkonam Union* AIR 1915 Mad 501, 15 Cr LJ 637; referring to *Purushottama v Municipal Council of Bellary* ILR 14 Mad 467 (doors are not movable property); *Sadayammal v Angammal* (1939) 1 Mad LJ 776, AIR 1939 Mad 610.

45 *Commr of Income-tax v Bhurangya Coal Co* AIR 1959 SC 254, 257, [1958] 34 ITR 802.

46 AIR 1924 All 365.

47 *Deo Nandan Singh v Thakur Singh* AIR 1949 Pat 58; *J Kamaraju v Suryanarayan* AIR 1953 Ori 99.

48 *Bhagwat Babu Rao Gaikwad v Baburao Bhaiyya Gaikwad* (1994) 3 Crimes 941, 1994 Cr LJ 2393 (Bom).

49 *Nand Lal Maganlal v State* AIR 1955 NUC (Sau), (1955) 6 Sau LR 440-41 (with reference to a complaint under Bombay Prevention of Gambling, Act 1887).

50 *Tulsi Ram v Daya Ram* AIR 1925 All 604, 83 IC 448.

marriage was void, and the respondent was held liable to prosecution for the offence punishable under s 494 IPC.⁵¹

38. SECTION 3(38): '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.⁵² The words 'any law for the time being in force', in s 3(38) refer to the law in force in India and not to a law in force in any other country.⁵³

The word 'offence' in the Criminal Procedure Code has been defined thus:

'Offence' means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act 1971.

An Act prohibited under cl 3 of s 85(1) of the Bombay Prohibition Act 1949 is not an 'offence'.⁵⁴

There does not appear to be anything in the Mussalman Waqf Act 4 of 1923, which is repugnant to the definition of an offence contained in the General Clauses Act and in the Criminal Procedure Code.⁵⁵ As the Mussalman Waqf Act contains no provision regarding the court by which offences under the Act are to be tried, such offences could be tried by any magistrate.⁵⁶

The term 'offence' has not been defined in the Constitution.⁵⁷ However, taking art 20 as a whole the context indicates that the term as used in the article contemplated a criminal offence⁵⁸ and not all types of offences.⁵⁹ In any case, for an 'offence' there has to be an act or

- 51 *Dr Surajmani Stella Kujur v Durga Charan Hansdah* AIR 2001 SC 938-39, (2001) 3 SCC 13.
 52 *Luxmi Printing v Asst Registrar of Companies* (1989-90) 94 CWN 412.
 53 *Sushanta Mukherjee v Union of India* 1975 Lab IC 1385, 1387, (1975) 79 Cal WN 797.
 54 *State of Saurashtra v Koli Chhagan Sukha* AIR 1955 NUC 3458 (Sau).
 55 *Ali Mohamed v Emperor* AIR 1928 Sind 243-44, 28 Cr LJ 954, 22 Sind LR 141 (DB).
 56 *Abdul Rauf v Mohammad Umar* AIR 1949 Nag 137 (FB).
 57 *Jawala Ram v State of Pepsu* AIR 1962 SC 1246, 1248, (1962) 2 Cr LJ 303, (1963) 1 SCJ 301 (as per art 367, the word 'offence' in art 20 would have same meaning as in s 3(38) of the General Clauses Act).
 58 *Raj Narain Singh v Atmaram Govind* AIR 1954 All 319, 324, 1954 Cr LJ 691, (1955) ILR 1 All 25 (DB); *Banwari Lal Parshotamdas v Union of India* 1979 STI 49, 52, 45 STC 480 (DB) (Punjab) (penalty on assessee by sales-tax authority is not for commission of offence); *Re Central Calcutta Bank Ltd* AIR 1957 Cal 520, 61 CWN 709.
 59 *Ramesh Chandra Mehta v State of Madhya Pradesh* AIR 1970 SC 940, 1970 Cr LJ 863, (1971) 2 SCJ 123; approving *Ashok Leyland, Ennore, Madras v State of Madras* AIR 1957 Mad 263; *Laxman Padma Bhagat* AIR 1965 Bom 195; overruling *Calcutta Motor and Cycle Co v Collector of Customs* AIR 1950 Cal 253; *Naile Transport Pvt Ltd v SN Mukherji* AIR 1958 Cal 682 (person facing inquiry under s 171A of the Sea Customs Act 1878, not a person accused of any offence).

omission made punishable by any law for the time being in force.⁶⁰ Significance has, therefore, to be attached to the word 'made' which carries with it the implication that some authority empowered to do so has laid down the law. The law contemplated by the article would appear to be an enacted law by a legislature or by a body of persons authorised by the legislature to make it. While the punishment for parliamentary offences has been prescribed by r 63 of the Rules of Procedure of the Assembly framed under art 286 of the Constitution, the offences have not been so defined by those rules. So long as this essential element of the word 'offence' as used in art 20(2) has not been made out, a case of double punishment for a parliamentary offence cannot be held to be covered by art 20(2).⁶¹

The essence of the term 'offence' being punishability, the acts enumerated in col one in the table covered by s 167 of the Sea Customs Act 1878, would fall within the definition of 'offence'.⁶²

Section 45G, Banking Companies Act 1949 states that before applying the General Clauses Act, it is good to bear in mind art 367(1) of the Constitution of India, which begins with the word of caution 'unless the context otherwise requires, the General Clauses Act 1897, shall apply for the interpretation of this Constitution'. Now, the context of art 20 leaves no room for doubt that the offence contemplated in that article is a criminal offence although it does not use the word 'criminal' in the manner that is done in a comparable provision contained in art 5 of the American Constitution.

The words of the proviso to sub-s (7) of s 45G, Banking Companies Act, by using the expression 'exculpated from any charges made or suggested' do not convert the proceedings under s 45G of the Act into a criminal prosecution, a criminal charge, or a criminal trial and are only used for the purposes of awarding costs to the director and do not alter or modify the substantial or essential nature of the proceedings described in the substantive provisions of s 45G of the statute.⁶³ Such proceedings are not offences.⁶⁴

60 *Jawala Ram v State of Pepsu* AIR 1962 SC 1246, (1963) 1 SCJ 301 (unauthorised use of canal water not held 'offence', since the words 'unauthorised use' do not import the idea of prohibition).

61 *Rajnarayan Singh v Atmaram Govind* AIR 1954 All 319; *Collector of Customs v Calcutta Motor and Cycle Co* AIR 1958 Cal 682; *Ramesh Chandra Mehta v State of West Bengal* AIR 1970 SC 940, 945-46, 1970 Cr LJ 863, (1971) 2 SCJ 123 (person standing inquiry under s 171A of the Sea Customs Act 1878, is not person accused of an 'offence'); approving *Laxman Padma Bhagat v State* AIR 1965 Bom 195; *Collector of Customs, Madras v Kotumal Bhirumal Pihlajani* AIR 1967 Mad 263, 1967 Cr LJ 1007; but overruling *Calcutta Motor and Cycle Co v Collector of Customs* AIR 1956 Cal 253, 60 CWN 67; *Collector of Customs v Calcutta Motor and Cycle Co* AIR 1958 Cal 682, 1958 Cr LJ 1469.

62 *Thomas Dana v State of Punjab* AIR 1959 SC 375, 386-87, 1959 Cr LJ 392, (1959) SCJ 699.

63 *Re Central Calcutta Bank Ltd* AIR 1957 Cal 520, 523.

64 *Subedar v State* AIR 1957 All 396-97, 1957 Cr LJ 698.

The offence under s 138 of the Negotiable Instruments Act 1881 is committed only if the drawer of the cheque fails to make the payment within fifteen days of receipt of the notice. Dishonour of a cheque by itself does not give rise to such cause of action because payment can be made on receipt of notice of demand contemplated in cl (b) of s 138 of said Act.⁶⁵

39. SECTION 3(39): 'OFFICIAL GAZETTE OR 'GAZETTE'

When the contents of a notification pertain to union territories, a publication thereof in the *Gazette of India* would be valid.⁶⁶

The '*District Gazette*' published by the collectors of the districts for the purpose of publication of notification under s 4(1) of the Land Acquisition Act can be treated as an '*Official Gazette*' within the meaning of s 3(39) of General Clauses Act.⁶⁷

In *Amir Khan v State*⁶⁸ it was urged that even though the Central Government may be empowered under s 124, Government of India Act, to entrust its powers to the provincial government, the mode of the exercise of those powers, as laid down in s 27 of the Arms Act, should have been followed by the provincial government. Justice Agarwala observed as under:

Under section 27, the Central Government is directed to exercise the powers conferred upon it thereunder 'by notification published in the Official Gazette'. The Official Gazette in connection with the Central Government means the Gazette of India. With reference to the provincial government, it means, under section 3(37)(a), General Clauses Act, the provincial gazette. If the Central Government is empowered to delegate its power, we can very well substitute under section 27, the provincial government in place of the Central Government and by such substitution the words 'Official Gazette' would then refer to the provincial gazette. The publication of the notification by the provincial government in the provincial gazette was, therefore, perfectly justified.

The thing noteworthy is that the expression 'publish' does not imply a publication in the *Gazette*. Publication as referred to in s 4 of the Andhra Pradesh Entertainment Tax Act, is sufficient so as to make it known to the public and it may not necessarily be in the *Gazette*.⁶⁹

65 *S Prithvi Raj Kukkilaya v Mathew Koshy* 1991 Cr LJ 1771.

66 *Leela Separators Pvt Ltd v Secretary (Labour), Delhi Administration* 1981 Lab IC 1173, 1179, 43 Fac LR 170 (Del).

67 *TS Griha Nirman Samiti v State of Bihar* (1992) 1 Pat LJR 264 (per majority view) (FB).

68 AIR 1950 All 423, 427, para 22.

69 *Jayalakshmi Talkies v Asst Commercial-tax Officer, Chirala* AIR 1982 AP 174-76.

40. SECTION 3(41): PART 'A', 'B', 'C' STATES

Section 3(41) defines 'Pt A State', 'Pt B State' and 'Pt C State' as specified, respectively in Pts A, B and C of the First Schedule to the Constitution. 'Pt C State' shall, however, mean a state for the time being specified in Pt C of the said schedule or a territory for the time being administered by the President under the provisions of art 243 of the Constitution.

So far as Delhi Administration is concerned, it was held by DK Mahajan J, in *Jaswant Sugar Mills Ltd v Union of India*⁷⁰ that it is a state as defined in s 3(41) of this Act. Reference in this connection may also be made to a decision of the Calcutta High Court in *Ranrichpal Agarwalla v State of West Bengal*⁷¹ wherein it was held that the word 'person', as defined in s 3(42) of this Act, would not include a 'state' or the government carrying on its ordinary governmental functions. Since government is not a person, it cannot also be held to fall within the phrase "organisation" since any organisation as such would imply a congregation of persons.⁷² What follows, therefore, is that the state, whether defined under s 3(41) or s 3(58) of this Act, is neither a person nor an organisation.⁷³

One need not, however, forget that the Constitution (Seventh Amendment) Act 1956, has done away with the Pt B and Pt C states and has divided the territories of India only into two classes, ie: (a) territories of the states; and (b) the union territories. Consequently, the Adaptation of Laws Order 1956 had to be issued under art 372A of the Constitution. It is to be noted that the adaptations made in the General Clauses Act under art 372A were not to apply to the interpretation of the Constitution, inasmuch as art 367(1) of the Constitution permits the use of the General Clauses Act as adapted under art 372 only for such purposes. It follows, therefore, that the definition of 'state' as introduced in the General Clauses Act for the first time by the Adaptation of Laws Order 1956, is not to be used to interpret the word 'state' as used in the Constitution.⁷⁴ Part C states were not identical with union territories. Hence, the decision in *State of Madhya Pradesh v Moula Bux*,⁷⁵ which related to a Pt C state, could not be applied to union territories.

70 AIR 1966 Punj 229, (1966) ILR 2 Punj 491.

71 AIR 1958 Cal 257, 62 Cal WN 561.

72 *Jaswant Sugar Mills v Union of India* AIR 1966 Punj 229, (1966) ILR 2 Punj 491.

73 *Raj Narain Singh v Atmaram Govind* AIR 1954 All 319, 324, 1954 Cr LJ 691, (1955) ILR 1 All 25 (DB); *Banwari Lal Parshotamdas v Union of India* 1979 STI 49, 52, 45 STC 480 (DB) (Punj) (penalty on assessee by sales-tax authority is not for commission of offence); *Re Central Calcutta Bank Ltd* AIR 1957 Cal 520, 61 CWN 709.

74 *HL Rodhey v Delhi Administration* AIR 1969 Del 246, 1969 Lab IC 974.

75 AIR 1962 SC 145, (1961) 2 SCJ 549.

41. SECTION 3(42): 'PERSON'—GENERAL NOTE

Defining 'person' in the Act and creating an artificial unit on the part of the legislature is permissible in view of the definition of 'person' in the General Clauses Act.⁷⁶

The expression 'person' includes not only a natural person but also a juristic person, such as a deity⁷⁷ or a Gurudwara.⁷⁸ A juristic person like a trust can, therefore, ask through its trustees for ejection of a tenant from a residential building.⁷⁹ The word 'person'⁸⁰ appears in r 1 of O 33 of the Code of Civil Procedure, which relates to suits in forma pauperis, and has been the subject matter of judicial interpretation in a large number of cases. It has been held that the right to sue as a pauper is not confined to natural persons. Juristic persons,⁸¹ such as an official receiver in insolvency,⁸² only

- 76 *Maddukari Venkatarao v State of Andhra Pradesh* AIR 1975 AP 315, 344 (FB).
- 77 *Jogesh Chandra Bera v Iswar Braja Raj Jew Thakur* AIR 1981 Cal 259, (1981) 85 CWN 849, (1981) 2 Cal HN 13, case law discussed; *Bharat Abhudooy Cotton Mills v Kameshwar Singh* AIR 1938 Cal 745; held impliedly overruled in *NEL & P Co v K Shreepatti Rao* AIR 1958 SC 658; *Gattaiah v Commr of Labour* 1981 Lab IC 942 (AP) (person includes incorporated body).
- 78 *Guru Grantha Sahib Khoje Majra v Nagar Panchayat Khoje Majra* (1969) 77 Punj LR 844, 847.
- 79 *Sri Kishan v Ganesham Dass* (1962) 64 Punj LR 1144.
- 80 *Perumal Koundan v Tiruvalvayapuram Janamukoola Dhanasekhare* AIR 1918 Mad 362-63, 34 Mad LJ 421 (DB) (person in O 33, r 1, Civil Procedure Code, has same meaning as in s 3(42) of the General Clauses Act); *DK Cassam v Abdul Rahman*, AIR 1930 Rang 272, 127 IC 175 (DB) (person in s 3(42) includes company, association, or body of individuals).
- 81 *Sripal v Uttar Pradesh Cinetone Ltd* AIR 1944 Oudh 248; *Mathew v Kerala United Corpn Ltd* AIR 1961 Ker 180; *Mohd Zaki v Municipal Board of Manipur* 47 IC 577, 16 All LJ 440 (person suing in forma pauperis declared insolvent, receiver in his place can continue suit); *Syed Ali v Deccan Commercial Bank Ltd* AIR 1951 Hyd 124.
- 82 *Prabhu Lal v Inamuddin* 1956 Raj LW 512, AIR 1955 NUC 4030 (Raj) (DB); *Gurudwara Sahib Kothi Begowal v Hanuman Singh* AIR 1960 Punj 73, (1959) ILR Punj 2224; overruling *Associated Pictures Ltd v National Studios Ltd* AIR 1951 Punj 447; *Kundan Sugar Mills, Amroha v Indian Sugar Syndicate Ltd* AIR 1959 All 540, 1959 All LJ 398 (FB); *Swaminathan v Official Receiver* AIR 1937 Mad 549, (1937) 1 Mad LJ 727; *Moorti Shree Behari v Prem Das* AIR 1972 All 287, 1972 All WR 38 (HC) (deity competent to sue as pauper); *T Krishna Kamat v T Upendra Kamat* (1970) 1 Mys LJ 146 (company, trustee, shebait, etc); *Dera Musawala v Sewa Das* AIR 1964 Punj 426, 1964 Cur LJ 222 (*Dera* can file suit); *Genda Lal Cotton Mills Ltd v Basant Kumari Bai* AIR 1961 Ker 180, 182, 1960 Ker LT 45 (corporation can sue as pauper); *MC Chikkananjadappa v DK Pillanna* AIR 1955 Mys 128, (1955) ILR Mys 455; *Syed Ali v Deccan Commercial Bank* AIR 1951 Hyd 124, 1951 BLR 109 (Hyd) (DB) (joint stock company into liquidation); *Sivagami Ammal v TS Gopalaswami Odayar* AIR 1925 Mad 765, 48 Mad LJ 390; *Perumal Goundan v Tirumalaraya Kumar Janukoola Dhansekhara* AIR 1918 Mad 362, 34 Mad LJ 421 (DB); for a contrary view, which in view of the above decisions, need not be taken as good law); *KC Ibrahim Kutty Mathar v Josephine* AIR 1965 Ker 98, 1964 Ker LT 962; *Radhakrishna Devata v Nathumal Mohta* AIR 1963 Mani 40; *Bharat Abhudooy Cotton Mills Ltd v Kameshwar Singh* AIR 1938 Cal 745, ILR 42 Cal 745, 42 Cal WN 1164.

if he is himself not possessed of sufficient funds,⁸³ are not deprived of the benefit of the rule. Thus a firm⁸⁴ or an idol⁸⁵ is a 'person' under the rule. However, there is no authority for holding that the representative of a pauper testator or testatrix, when himself not a pauper, can continue the suit of his testator or testatrix, in forma pauperis.⁸⁶ A railway servant is a person within meaning of s 120 of the old Railways Act 1890 (new s 145 of Railways Act 1989).⁸⁷ A company is also a person and can sue *in forma pauperis*.⁸⁸ An ex-ruler of an erstwhile Indian state is also a 'person'.⁸⁹

The definition of 'person' in s 3(42) of the General Clauses Act is an inclusive definition as in s 2(m) of the Consumer Protection Act 1986. The said definition under the former Act can be resorted to inasmuch as the definition under the latter Act is also inclusive and not exhaustive, in the light of s 3 of the former Act. Following the precedent laid down by the Supreme Court in *MM Ipoh v Commr of Income-tax, Madras*⁹⁰ it was held that the term 'person' in s 2(m) of the Consumer Protection Act can be construed as including a 'company' by resorting to s 3(42) of the General Clauses Act, even though the definition provided under s 2(m) of the Consumer Protection Act does not include a 'company' within the meaning of the term 'person'.⁹¹

The definition of a 'person' in s 3(42) of the General Clauses Act is wide enough to include a 'sanitation panchayat',⁹² but not an indeterminate and fluctuating body like the *Sonthals* and *Ghatwals* of Chhota Nagpur in Bihar State.⁹³ A school is a public institution and its managing committee or ad hoc committee is a public or quasi-public body, and there is nothing in art 226 which debars the courts from issuing a writ of certiorari to such bodies or person in suitable cases.⁹⁴ In view of the clear provisions of art 367(1) of the Constitution, the definition of 'person' as given in s 3(42) of the

83 *SM Mitra v Corpn of Royal Exchange Assurance* AIR 1930 Rang 259, 263, 126 IC 650 (DB).

84 *Cassim & Sons v Abdul Rehman* AIR 1930 Rang 2.

85 *Shankarji v Godavaribai* AIR 1935 Nag 209; *Kunj v Mohit* AIR 1934 Pat 531.

86 *Rao Sahab Manaji Rajuji Kalewar v Khandoo Baloo* ILR 36 Bom 279, 13 Bom LR 577.

87 *Ram Prakash v State* 1968 All LJ 835, 838, 1968 All WR 719 (HC) (DB).

88 *Perumal v Thirumala* ILR 41 Mad 624. A 'firm' is a person within the meaning of Jammu & 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.

89 *Sudhansu Sekhar v State of Orissa* AIR 1961 SC 196, 198-99.

90 AIR 1968 SC 317.

91 *Ravi Kant & Ors v National Consumer Disputes Redressal Commission & Ors* AIR 1997 Del 182.

92 *Nathmal v Sanitation Panchayat Committee, Bramhapuri* AIR 1935 Nag 242.

93 *Maharaj Bahadur Singh v Gandauri Singh* 39 IC 868, 872.

94 *Mihir Kumar Datta v Ad hoc Committee, Prachya Bharati (High School), Agartala* AIR 1959 Tri 27.

General Clauses Act will apply to the managing committee of a school. Therefore, it can apply under art 226 of the Constitution on the ground that it had a fundamental right to property under old art 31(1).⁹⁵

Neither god nor any supernatural being could be a person in law.⁹⁶ A Hindu deity falls within the meaning of the word 'individual' under s 3 of the Income-tax Act and can be treated as a unit of assessment under that section.⁹⁷

The term 'person' would include a set of persons acting together.⁹⁸ The word 'person', in art 226 of the Constitution of India, has to be interpreted in the sense as defined in s 3(42) of the General Clauses Act,⁹⁹ though this sense cannot be imported into the Partnership Act 1932; nor is an association of persons a 'person' within the meaning of that expression in that Act.¹

A board created under the Madras Port Trust Act 1905, is a 'person'.²

42. 'PERSON' EXPLAINED IN RELATION TO OTHER BODIES

(a) Company

The expression 'person' includes a company,³ association or body of individuals,⁴ or a class of persons,⁵ whether incorporated or not. The expression would, therefore, include a 'board' constituted under s 4 of the Bombay Port

- 95 *Sribatsha v Secondary Education Board* 34 Cut LT 1162, ILR 1968 Cut 888, AIR 1969 Ori 30.
- 96 *Jogendra Nath v Commr of Income-tax, Calcutta* AIR 1969 SC 1089, (1969) 1 SCC 555, 74 ITR 33, (1969) 2 ITJ 478, (1969) 2 SCJ 560, (1969) 2 SCA 494; (concept of Hindu deity and God explained).
- 97 *Ibid*; *Rabindra Nath Dutta v State of Bihar* 1971 BLJR 1005, 1007 (DB) (meaning of 'person' in the Sugarcane Control Order).
- 98 *Kumaramuthu Pillai v Emperor* AIR 1919 Mad 487, 493.
- 99 *Bijoy Rajan v BC Das Gupta* AIR 1953 Cal 289.
- 1 *Agrawal & Co v Commr of Income-tax, Uttar Pradesh* AIR 1970 SC 1343, (1971) 1 SCJ 599.
- 2 *Madras Port Trust v AM Safiullah* AIR 1965 Mad 133; *Trustees of Port Trust v Home Insurance Co* AIR 1970 Mad 48.
- 3 *BN Mehrotra v State* AIR 1956 Cal 137, 1956 Cr LJ 529, 60 Cal WN 305.
- 4 *Re Parsam Ramiah* (1970) ILR AP 322, 327 (DB) (s 30(1) of the Andhra Pradesh General Sales-tax Act 1957).
- 5 *Maharaj Amar Singhji v Utsav Lal* AIR 1953 Raj 57, 1953 Raj LW 136; *Anath Bandhu v Calcutta Corpn* AIR 1952 Cal 759 (applicability of s 3(32) of Bengal General Clauses Act 1899 to s 407 of Calcutta Municipal Act); *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-op Society, Dhuru* AIR 1972 P&H 185, 188.

Trust Act 1879.⁶ But it was held that the expression 'person' in art 226 of the Constitution⁷ cannot be detached from the context and viewed apart from the nature of the writs enumerated in the article, and, therefore, a writ of certiorari cannot be directed against a public limited company registered under the Companies Act.⁸ In any particular statute, therefore, the meaning of the word 'person' may be controlled by the context.⁹ The decision in *Solomon v Solomon & Co Ltd*¹⁰ explains the independent corporate existence of a company. In *Steel and General Mills Co Ltd v General Accident, Fire and Life Assurance Corpn Ltd*,¹¹ Soni J, held that a company can be a displaced person. The word 'person' in s 4 of the High Denomination Notes Demonetisation Ordinance 1946, is used in its widest sense. This s 4 was intended to include all cases which did not come under the exceptions given in ss 5 and 6. The word, therefore, includes a banking company and a government treasury.¹² The High Court of Rajasthan¹³ has included a class of persons within the scope of word 'person', in s 133 of the Civil Procedure Code. 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.¹⁴ 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 petitioner.¹⁵ As per the

- 6 *Trustees of Port Trust of Bombay v Premier Automobiles Ltd* AIR 1981 SC 1982, 1981 JSCTL 1, (1981) 1 SCC 228, (1981) 83 Bom LR 28, 1981 TAC 82 (SC), [1981] 1 SCR 532.
- 7 *State Trading Corpn of India v Commercial-tax Officer* AIR 1963 SC 1811, (1963) 2 SCJ 605 (all citizens are persons but all persons are not citizens; State Trading Corporation, a registered company, not citizen; 'citizen' in art 19 of the Constitution has same meaning as in Pt II of the Constitution); *Assam Co Ltd v State of Assam* AIR 1937 Cal 314 (DB) impliedly overruled; *Charanji Lal Chowdhary v Union of India* AIR 1951 SC 41, held obiter; *Maharaja Kishangarh Mills Ltd v State of Rajasthan* AIR 1953 Raj 188, ILR (1953) 3 Raj 363; *TD Kumar & Bros v Iron and Steel Controller* AIR 1961 Cal 258, 65 Cal WN 1142; *Liberty Cinema v Commr, Corpn of Calcutta* AIR 1959 Cal 45 and *Assam Co Ltd v State of Assam* AIR 1953 Assam 177, also impliedly overruled.
- 8 *Re Hariharan* AIR 1960 AP 518, *Moxli Vanaspati Mfg Co Ltd v Katiar Jute Mills Pvt Ltd* AIR 1969 Cal 496, 515 (DB) (company not a 'person' within O 33 of the Civil Procedure Code).
- 9 *Dilichand v Income-tax Commissioner* AIR 1956 SC 354.
- 10 [1897] AC 22.
- 11 54 PLR 139.
- 12 *Gir Raj Kishore v State* AIR 1934 All 421 (FB).
- 13 *Maharaj Amar Singh Ji v Utsav Lal* AIR 1953 Raj 57, 59, (1952) ILR 2 Raj 798.
- 14 *HIP Agarwala v Union of India* 1963 BLJR 127; *Rajendra Prasad Oil Mills, Kanpur v Chunni Devi* AIR 1969 All 1 (FB).
- 15 *Rajendra Prasad Oil Mills Kanpur v Chunni Devi* 1968 All WR (HC) 377, 1968 All LJ 558, (1968) 2 Comp LJ 137, (1968) ILR 2 All 56, 39 Comp Cas 193, AIR 1969 All 1 (FB); *MKH Moosabhai Aminkota v Rajasthan Textile Mills, Bhawani Mandi* AIR 1974 Raj 194, 196, 1974 Raj LW 77 (with reference to application of O 30, r 10, Civil Procedure Code; following *Rajendra Prasad Oil Mills, Kanpur v Chunni Devi* AIR 1969 All 1, 1968 All LJ 558 (FB), but dissenting from *Modi Vanaspati Mfg Co v Katiar Jute Mills Pvt Ltd* AIR 1969 Cal 496 (DB).

meaning ascribed to the definition in s 3(42) of the General Clauses Act, the expression 'person' is inclusive of any company,¹⁶ association¹⁷ or body of individuals, whether incorporated or not. The definition applies to the word 'person' in s 2(9) of the Income-tax Act 1922 also, which defines a person as including a Hindu undivided family and a local authority. A firm is a person within the meaning of s 3 of the Income-tax Act.¹⁸

Section 3(42) would apply even to an association of associations, that is an association whose membership is open only to associations.¹⁹

A corporation, in *Reserve Bank of India v Palai Central Bank*,²⁰ has been held entitled to claim fundamental rights as 'person'. The definition of the word 'person' given in the s 3(42) of this Act applies to the Public Premises (Eviction of Unauthorised Occupants) Act 1971 as the same is not defined therein.²¹

Order 33, r 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 sue as paupers.²² However, unless there is 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 a company otherwise entitled to the definition of a 'person'.²³

A registered co-operative housing society has been held to be a person.²⁴

The word 'person' in s 24(1) of the Electricity Act 1910, includes a local authority.²⁵

The High Court of Calcutta, in *Modi Vanaspati Mfg Co v Katihar Jute Mills Ltd*²⁶ has held that the word 'person' used in O 30, r 10 of the Civil Procedure Code refers to individuals and not to corporations carrying on trade in an assumed name. Therefore, a company cannot be sued in a name other than its corporate name that it assumes for business purposes.

The above Calcutta High Court view has been dissented from, by the High Court of Rajasthan in *MKM Moosa Bhai Amin, Kota v Rajasthan*

16 *Province of Bengal v Board of Calcutta Improvement Trust* AIR 1946 Cal 416, 420, 50 Cal WN 825 (DB).

17 *N Bashyam v State of Madras* (1970) 1 Mad LJ 510, 512.

18 *MM Ipoh v Commr of Income-tax, Madras* (1967) 2 ITJ 885, (1968) 1 SCA 488, 15 Law Rep 569, [1968] 1 SCR 65, 67 ITR 106, (1968) 1 Mad LJ (SC) 32, (1968) 1 Andh WR (SC) 32, (1968) 1 SCJ 106, AIR 1968 SC 317.

19 *Commr of Income-tax, Madhya Pradesh and Bhopal v Cloth Semi Wholesellers, Akola* AIR 1956 Nag 103, 105, 1956 Nag LJ 228 (with reference to s 3 of Income-tax Act, 1922).

20 AIR 1961 Ker 268, 280, 1961 Ker LT 54.

21 *Bharat Petroleum Corpn Ltd M/s v Union of India* AIR 1992 P&H 248, 251.

22 *Nagpur Electric Light and Power Co Ltd v Shripati Rao* AIR 1958 SC 658, 663, 1958 SCJ 1987.

23 *Arjun Prasad v Shanti Lal Shankar Lal Shah* AIR 1962 SC 1192, (1963) 2 SCJ 25.

24 *Godrej P Joshi v MV Bhatia* 1975 Ren CJ 399, (1974) 76 Bom LR 399.

25 *Nagpur Corpn v Nagpur Electric Light and Power Co Ltd, Nagpur* AIR 1958 Bom 498, 60 Bom LR 1446.

26 AIR 1969 Cal 496; dissented from in *MKM Moosa Bhai Amin, Kota v Rajasthan Textile Mills, Bhawanimandi* AIR 1974 Raj 194, 1974 Raj LW 77.

Textile Mills, Bhawanimandi.²⁷ Citing the definition from s 3(42) of the General Clauses Act, it was held by SN 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 30, CPC, 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 30, CPC. I do not find anything repugnant in the subject or context to justify that the meaning given in the General Clauses Act to the word 'person' should not be assigned to the expression 'person' used in rule 10 of Order 30, CPC. I am supported in my view by a full bench decision of the Allahabad High Court in *Rajendra Prasad Oil Mills, Kanpur v Chunni Devi*.²⁸ In that case, the following question was referred to the full bench for being answered:

Whether a limited company falls within the meaning of the expression 'person' as used in rule 10 of Order 30 of the Code of Civil Procedure? The full bench after a review of a large number of decisions, answered the question as follows:

A limited company falls within the meaning of the expression 'person' as used in rule 10, Order 30, of the Code of Civil Procedure. This would be 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 reasoning given by the full bench of the Allahabad High Court in the above *Rajendra Prasad Oil Mills* case²⁹ that the legislature did not intend to stultify the powers of a court to grant relief against a party by refusing to treat a claim as maintainable on the ground merely that the suit had been brought against an assumed name, even though the party had been carrying on business in that assumed name, appears to be convincing. The Supreme Court, in *Arjun Prasad v Shantilal Shankarlal Shah*,³⁰ has made it amply clear that whenever the word 'person' is used in any statute, a company would be included thereunder. Section 3(42) of the General Clauses Act has itself stated that the word 'person' shall include any company or association or body of individuals whether incorporated or not. When s 3(42) has itself extended the definition of 'person' even to a body of individuals whether incorporated or not, the view taken by the Calcutta High Court, in *Modi Vanaspati's Mfg Co* case³¹ that a company can only be sued in its corporate name cannot, it is submitted, be held as sound.

27 AIR 1974 Raj 194, 1974 Raj LW 77.

28 AIR 1969 All 1, 1968 All LJ 558 (FB).

29 AIR 1969 All 1.

30 AIR 1962 SC 1192, 1962 Supp (2) SCR 402.

31 AIR 1969 Cal 496.

However, for purposes of s 93(4) of Andhra Pradesh District Municipalities Act 1920, the word 'person' as therein used, does not include a company.³²

A company incorporated in India would come within the definition of 'person' and as such within the provisions of art 5(c) of the Constitution. Accordingly, it was held in *ID Kumar & Bros Pvt Ltd v Iron and Steel Controller*³³ that a company which has been ordinarily resident in India for five years preceding the commencement of the Constitution would be a citizen and would be entitled to all the fundamental rights granted under art 19, or at least those which can be reasonably applied to a corporation or a company. The test whether a company is a 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 a person. With this test, it would be improper to hold an unregistered company as one unit and, therefore, a person.³⁴

In *HP Agarwalla v Union of India*,³⁵ 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.³⁶

In matters of defamation, the principle is the same whether the person defamed is an individual, a corporation, a society, or a collection of individuals.³⁷ However, the question whether the word 'person' in a statute can be treated as including a corporation, depends on consideration of the object of the statute.³⁸

A village sanitation panchayat committee is neither an officer, nor a person who holds any office.³⁹

(b) Municipality

In *Kanak Chand Prem Chand Sanghvi v State of Maharashtra*⁴⁰ 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 s 250 of the Criminal Procedure Code and is not exempt from the operation of that section.⁴¹ Thus, in the Excess Profits Tax Act 1940, the word

32 *Shri Ram Das Motor Transport Pvt Ltd v Vijayawada Municipality* AIR 1968 AP 160, 165, (1967) 2 Andh WR 174 (FB).

33 AIR 1961 Cal 258.

34 *Phagumal v Tejugal* AIR 1930 PC 300, 307, 126 IC 429.

35 1963 BLJR 127.

36 *Mohomed Mehdi v Governor-General in Council* AIR 1948 Sind 100 (FB).

37 *Agricultural Produce Co-op Mktg Society Ltd v MK Mohd Ali* 1969 Cr LJ 701, (1967) 2 Mys LJ 149.

38 *Motipur Zamindari Co Ltd v State of Bihar* AIR 1953 SC 320, 1953 SCJ 451.

39 *Village Sanitation Panchayat Committee v SR Deshmukh* AIR 1929 Nag 70, 114 IC 288.

40 1975 Mah LJ 177.

41 *Municipal Committee of Lahore v Rattan Chand* AIR 1923 Lah 31(1); *Pallonjee Eduljee & Sons v Lonavala City Municipality* ILR 1937 Bom 782, AIR 1937 Bom 417; *Prabhudas Mulji Doshi v Governor-General of India in Council* (1951) ILR 1 Cal 443 (a corporation may be a public officer).

'person' includes a local authority.⁴² In the expression 'cultivating tenant's ceiling area' occurring in ss 60, 3(10) and (34) of the Madras Land Reforms (Fixation of Ceiling on Land) Act (58 of 1961), 'cultivating tenant' includes an association of individuals. The term 'association of individuals' means persons who have joined in a common purpose or action. Hence, two or more persons joining together for taking land on lease and cultivating it will be cultivating tenants and the ceiling area for them will be only five standard acres. The fact that they are brothers will not exclude them from the scope of the definition.⁴³

Several features in the Andhra Pradesh District Municipalities Act and the very scheme of the Act are repugnant to the view that the word 'person' in s 93(4) of the Act should be treated as including a company. Hence, the said section applies only to individuals and not to companies. Section 3(22) of the Andhra Pradesh General Clauses Act is of no avail in holding a different view.⁴⁴

Interpreting the word 'person' in s 24(1) of the Electricity Act 1910, it has been held that the term would include a local authority such as a municipality, and the mere fact that in certain provisions of the Electricity Act reference has been made to local authorities as such cannot be understood to mean that the legislature intended to give a restricted meaning to the word 'person' as used in s 24(1).⁴⁵

The municipal commissioner is a person within the meaning of s 504 of Bombay Municipal Corporation Act 1888.⁴⁶

(c) Registered Trade Union

As already stated, the word 'person' occurring in the explanation to O 33, r 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.⁴⁷ It was held, therefore, that a registered trade union, which

42 *City Board of Mussori v Commr of Income-tax, Uttar Pradesh* AIR 1953 All 43-44, 1953 Cr LJ 205, (1953) ILR 1 All 988 (DB).

43 *N Bhashyam v State of Madras* (1970) 1 Mad LJ 510, (1970) 83 Mad LW 132; *Shankar Lal v Tosham Pal Singh* AIR 1934 All 553, 556, 1934 All LJ 453 (agent appointed by *karta* continues to be agent even after death of *karta*); *Ramaiah v State* ILR 1970 AP 322.

44 *Ramdas Motor Transport Pvt Ltd v Municipal Commr, Vijayawada* (1967) 2 Andh WR 174, (1967) 2 Andh LT 167, AIR 1968 AP 160 (FB).

45 *Corpn of City of Nagpur v Nagpur Electric Light Power Co Ltd, Nagpur* AIR 1958 Bom 408.

46 *Municipal Corpn v Durga Das* 1975 Mah LJ 177.

47 *Mysore Iron and Steel Works Labourers' Association v Commr of Labour and Registrar of Trade Union, Bangalore* 1972 LIC 799, (1972) 1 Mys LJ 31 (with reference to word 'person' in s 11(1) of the Trade Unions Act 1926).

is a body corporate within the meaning of s 13 of the Trade Unions Act, can, therefore, institute a suit *in forma pauperis*.⁴⁸

(d) Government

In s 13 of the Displaced Persons (Debts Adjustment) Act 1951, the words 'any person' includes the State of Punjab.⁴⁹ There is otherwise no reason to exclude from the definition of 'person' the body of persons responsible for governance of the state.⁵⁰ In a case under s 44 of the Public Safety Ordinance where the question was whether the government is entitled to claim protection under that section, it has been held that the term 'person' in s 44 includes the government. Where, therefore, a suit is brought against Government of Rajasthan for compensation for wrongful detention under the Public Safety Ordinance by an order passed by the commissioner, the government is entitled to claim protection under s 44 of the ordinance, provided the other conditions laid down in the section are satisfied.⁵¹ With reference to the Carriers Act 1865 the government, as common carrier, is included within the term 'person'.⁵² But a government department or office is not a person⁵³ though the officer, through whom the food department is represented, has been held to be a person.⁵⁴

The government and the assistant commissioner, under s 78 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1966, would fall within the purview of the expression 'person aggrieved'.⁵⁵

(e) Firm

A firm name is nothing more than a description of the individuals who compose the firm⁵⁶ so as to exclude a partnership of one firm with another.⁵⁷ However, in *Commr of Income-tax v PAMTK Thilai*

48 *East Indian Coal Co Ltd v East Indian Co Ltd Workers' Union* AIR 1961 Pat 15.

49 *State of Punjab v Mangal Singh* AIR 1956 Pat 91-92.

50 *State of Uttar Pradesh v Kanhaya Lal Makund* AIR 1956 All 383-84, (1956) 7 STC 579 (DB).

51 *State of Rajasthan v Rikhabchand Dhariwal* AIR 1961 Raj 64; but see *Jaswant Sugar Mills Ltd v Union of India* AIR 1966 Punj 229 (where it was held that the word 'person' would not include the government).

52 *PA Rahim Saheb v Governor-General of India* (1955) 1 Mad LJ 406, 409, AIR 1955 NUC 3938 (Mad); overruled on another point in *Union of India v BLN Sitaramiah* AIR 1962 Mad 349.

53 *Sarket-E-Aali Zaria Nazim v Athar* AIR 1957 AP 714, 722, (1957) 2 Andh WR 91 (DB).

54 *Corpn of Calcutta v Director of Rationing* AIR 1955 Cal 282.

55 *Kanya Kuparameswari Varthaka Sangham v Commr of Endowments, Andhra Pradesh* AIR 1979 AP 173.

56 *Re Jai Dayal Madan Gopal of Benaras* AIR 1933 All 77, 79, 1932 All LJ 999; *Sheo Dayal Khemka v Joharmull, Manmull* AIR 1924 Cal 74, 77, 75 IC 81.

57 *Kanhaya Lal v Din Dayal Brij Lal* AIR 1936 Lah 514, 518 (DB).

Chidambaram Nadan,⁵⁸ the word 'person' has been held clearly to include a firm. The Madras High Court held that the word 'person' clearly includes a firm⁵⁹ as provided by the General Clauses Act. A firm of partners, in *Chief Commr, Sales-tax v Raj Kishen Goyal*⁶⁰ has been held to be a dealer. Where, therefore, a return is made under the Indian Income-tax Act by a partner of the firm on behalf of the firm, it is the firm that makes the return, that is, the return made by the partner shall be deemed to have been made by the firm.⁶¹

When a partnership is liable to tax on the partnership business, it cannot be that its members should also be made liable to pay as owners of that business.⁶² Though, where the income-tax officer is unable to exercise the power to assess the firm or association, he can assess the members individually including a minor who is deemed to be a 'person' within the meaning of this clause.⁶³ In a case under the Defence of India Rules, it was held that the Defence of Indian Rules should be interpreted in accordance with the principles laid down in the General Clauses Act. According to the definition given in the General Clauses Act, 'person' includes a partnership. In r 5, Defence of India Rules, if a partnership fails to secure compliance with the orders made there under, such partnership should be deemed to have contravened the provisions of the said rules;⁶⁴ and the individual partners, in the same way as in case of contravention by a firm of the provisions of the Foreign Exchange Regulation Act 1947, read with the Sea Customs Act 1878, would be criminally liable, unless they could prove that the contravention took place without their knowledge and despite their due diligence to prevent such contravention.⁶⁵

- 58 AIR 1925 Mad 1048, 49 Mad LJ 124; *Kader Bux v Bukt Behari* AIR 1932 Cal 768; *Commr of Income-tax, Madras v SV Angidit Chettiar* AIR 1962 SC 970, 972; (1963) 2 SCJ 81 (firm held 'person' for purposes of penalty under s 28(a), (b), and (c) of Income-tax Act 1922; but see *Senaji Kapurchand v Pannanji Devichand* AIR 1930 PC 300); however *Sarvamangala Properties v Commr of Income-tax* 1974 Tax LR 106, 108, 90 ITR 267 (DB) (Cal) (immovable property of partnership firm held liable to tax).
- 59 *Narayan Chetty v Income-tax Officer, Nellore* AIR 1959 SC 213, 216, (1959) 1 Mad LJ 109 (SC); *Municipal Council, Jammu v L Barkat Ram Asanand* AIR 1963 J&K 39, 41, (1963) 2 Cr LJ 152; but see *Kanhaya Lal v Din Dayal Brij Lal* AIR 1936 Lah 514 (firm name merely a collective name of its partners, and not a 'person').
- 60 (1982) Tax LR 3100 (Del) (DB).
- 61 *Commr of Income-tax v PAPMTK Thilai Chidambaram Nandan* AIR 1925 Mad 1048; *Kader Bux v Bukt Behari* AIR 1932 Cal 768; but see *Senaji Kapurchand v Pannanji Devichand* AIR 1930 PC 300; *MM Ipoh v Commr of Income-tax, Madras* AIR 1968 SC 317, 323 (a firm, an individual, or group of individuals may form an association within meaning of s 3 of Indian Income-tax Act); *Ravi Kant & Ors v National Consumer Disputes Redressal Commission & Ors* AIR 1997 Del 182.
- 62 *Municipal Committee, Chhcharta District, Amritsar v Munshi Ram* AIR 1965 Punj 168-70.
- 63 *MM Ipoh v Commr of Income-tax, Madras* AIR 1968 SC 317.
- 64 *Re Swaranath Bhatia* AIR 1948 Mad 427.
- 65 *Agarwal Trading Corpn v Assistant Collector of Customs* AIR 1972 SC 648, 1973 Cr LJ 474, (1972) 1 SCJ 534; affirming *Agarwal Trading Corpn v Assistant Collector of*

In any case, a firm cannot, as such, be a member of any partnership.⁶⁶

The prohibitions contained under the Cotton Control Order 1955 to the effect that business covered by the licensee shall not be carried on by any other person except the licensee, are held applicable to a partnership firm.⁶⁷

Section 2(40) of the Punjab General Clauses Act 1898, defining a person does not include a partnership firm.⁶⁸

The provisions of ss 2(e), 4, 5(1), 7(3), 11, 11A, and rr 39(1) and 39(1A) of the Bengal Finance (Sales-tax) Act 1941, are not repugnant to the firm being included in the definition of a dealer.⁶⁹

(f) 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 a 'person'.⁷⁰ A joint Hindu family has always been treated as a juristic person,⁷¹ though a person figuring in a different position in such constitutions has to be treated as a member thereof.⁷² Thus, 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.⁷³ However, where the manager of a joint Hindu family becomes a member of a trading partnership, the other members of the family do not ipso facto become partners in the business,⁷⁴ unless there is any other agreement.⁷⁵ The word 'person', used in s 2(2) of the Income-tax Act in defining an assessee, would include a firm.⁷⁶

- 66 *See Dayal Khemka v Joharmal Manmull* AIR 1924 Cal 74, ILR 50 Cal 349; followed in *Brojo Lal Saha Bamkya v Budh Nath Pyari Lal Das* AIR 1928 Cal 148, 105 IC 549.
- 67 *Budh Ram v Dhuru Co-op Society* AIR 1972 P&H 185.
- 68 *Municipal Committee, Amritsar v Munshi Ram* AIR 1965 Punj 168.
- 69 *Chief Commr, Sales-tax, New Delhi v Raj Kishan Goyal* 1982 Tax LR 3100, 3103-04 (Del).
- 70 *Khairati Ram v Balak Ram Mehar Chand Firm* AIR 1960 Punj 192, 95-196, 61 Punj LR 881 (FB).
- 71 *Shankar Lal v Toshan Pal Singh* AIR 1934 All 553, 556; *Krishnanand v Rajaram Singh* ILR 44 All 393, AIR 1922 All 116; *Sagarmal v Bhikusa Tuljaram* AIR 1935 Nag 252-53; *Sirikant Lal v Sideshwari Prasad Narain Singh* ILR 16 Pat 441, AIR 1937 Pat 455-56; *Apaji Narhar Kulkarni v Ram Chandra Ravji Kulkarni* ILR 16 Bom 29, 39 (FB); *Sri Ram v Collector, Lahore* ILR 1942 Lah 717, AIR 1942 Lah 173 (FB); *Mahabir Ram v Ram Krishen Ram* AIR 1936 All 855; *AG Pandu Rao v Collector of Madras* AIR 1954 Mad 1949 (word 'person' in s 2 (17), Excess Profits Tax Act).
- 72 *Moti Ram v Kunwar Md Abdul Jalil Khan* AIR 1924 All 414, 22 All LJ 487 (DB).
- 73 *Rameshwar Prasad v Keshab Prasad* AIR 1962 Pat 360; *RJ Mohamad Yakub Saheb v M/s Difa Sahu Deoki Prasad* AIR 1959 Pat 200; *Tulsidas Mulji v Ebrahimjee* AIR 1960 Ker 75.
- 74 *Lilabai Rane v Lalit Mohan Dey* AIR 1952 Cal 499, (1952) ILR 1 Cal 257; and *PKPS Pichappa Chettiar v Chokalingam Pillai* AIR 1934 PC 192, 38 CWN 1185.
- 75 *Sokkanadha v Vannimundar* ILR 28 Mad 344.
- 76 *Y Narayan Chetty v Income-tax Officer* AIR 1959 SC 213.

However, when members of a joint Hindu family constitute a partnership with the members of another joint Hindu family, it is a partnership among all such persons and not a partnership between two families.⁷⁷ Where *M*, *P* and *H* were partners and *M* and *P* were uncle and nephew respectively, the partnership, on the death of *M*, devolved on *P* and *H*, without dissolving the partnership.⁷⁸ Where a person lends his name to a partnership agreement, he alone is the person with whom the other partners are concerned, despite the fact that he has behind his back a joint Hindu family or even a firm consisting of several other members.⁷⁹ 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.⁸⁰

Section 4A of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holding) Act 1975, when introduced in 1977 by the Amendment to the said Act giving retrospective effect from 1 January 1975, has been applicable only to cases of major sons as on 1 January 1975 and not to the major daughters, if any, as on that date. The effect of s 4A was that if the father-declarant had major sons on 1 January 1975 who were outside the family unit, the father's entitlement got enlarged by as many family units as he had major sons on that date, provided they were not holding any property. Where any major son had a right in some property of his own or had a share in the joint family property as on that date, and if his holding was less than one standard holding, then the balance of the deficiency would get added to the permissible holding of the father.

In the instant case, the fact remained that as on 1 January 1975 the petitioner was a minor daughter and even assuming that the principle under the General Clauses Act that a 'male' includes a 'female' could apply to s 4A, that was held not to be of any help to the father and that the father's family unit would not get any extra entitlement.⁸¹

The word 'individual', in s 3, Wealth-tax Act 1954, includes a *Mappila Marumakkatayam Tarward* of Malabar, which is a Muslim undivided family.⁸²

(g) 'Displaced Person'

Section 2(10), Displaced Persons (Debts Adjustment) Act 1951, defines the term 'displaced person'. It is not correct to say that the definition given in s 2(1) refers only to natural persons and not to artificial persons like a corporation

77 *Kshetra Mohan Sannyasi v Commr of Excess Profits Tax, West Bengal* AIR 1953 SC 516, 518; 1953 SCJ 678.

78 *Maharaj Kishen v Har Govind* AIR 1914 Lah 517, 27 IC 69.

79 *Mewa Ram v Ram Gopal* AIR 1926 All 337, 24 All LJ 413.

80 *Narain Das v Kalli Bros* AIR 1915 Lah 186, 31 IC 45.

81 *Mahinani Vastu vs. Synthetics and Records Tribunal & Associates*

and there is no reason why a firm should not be taken to have been intended by the legislature to fall within the definition of 'displaced person'.⁸³

The provisions of the General Clauses Act have been held applicable to the Ajmer-Merwara Municipalities Regulations and, accordingly, the municipal board is authorised under s 76(b) of the regulations to impose tax upon companies.⁸⁴ But the definition of 'person' is not to be applied to the 'guardian' as used in s 4(2) of the Guardians and Wards Act.⁸⁵

It is, however, to be observed that the clause 'unless there is anything repugnant to the context' in this section must always be understood to exist in the context of the definition of the word 'person'. In construing the word 'person' with reference to the commission of an offence as defined in the Indian Penal Code, it must be held that despite the generality of the definition of 'persons' given in s 11, Indian Penal Code, a corporate body or company shall not be indictable for offences which can be committed only by a human individual, or for offences which must be punished with imprisonment.⁸⁶ In a case of defamation, whether the person defamed is an individual or a corporation or a society or a collection of individuals, the principle of law applicable is the same, the only difference being that a corporation or society has no reputation or human feeling apart from the properties attached to it.⁸⁷

An 'idol' becomes a juristic person only when it is consecrated and installed at a public place for public at large. Every 'idol' is not a juristic person. So every Guru Granth Sahib cannot be a juristic person unless it takes juristic role through its installation in a gurudwara or at such other recognised public place.

The *Guru Granth Sahib* is revered in a gurudwara, like a *Guru* projecting a different perception. It is true that the Sikh religion does not accept idolatry but at the same time, when the tenth *Guru* declared that after him, the *Guru Granth* will be the *Guru*, it does not amount to idolatry. The *Granth* replaces the *Guru*, after the tenth *Guru*. For all these reasons, no strength was found in the reasoning of the High Court in recording a finding that the *Guru Granth Sahib* is not a 'juristic person'. Such finding was held not sustainable both on fact and law.⁸⁸

83 *Punjab National Bank v Punjab Property Development Co* AIR 1958 Punj 57; overruling *Pacca Arhdis Wheat Association Chubarkhane v Punjab National Bank, Delhi* (1955) 57 Punj LR 246.

84 *Mahalaxmi Mills Co Ltd v Chief Commr, State of Ajmer* AIR 1958 8 Raj 195.

85 *Asalata Roy v Society for the Protection of Children in India* AIR 1930 Cal 397; *Patubala Dassi v Kundalini Dassi* (1952) ILR 1 Cal 46, 51, AIR 1955 NUC 816 (Cal) (association or incorporated body or officers of the court 'not person' so as to be appointed guardian of minor).

86 *State of Maharashtra v Syndicate Transport Co* AIR 1964 Bom 195.

87 *President and Directors of the Agricultural Produce Co-op Mktg Society Ltd v VK Mohamed Ali* 1967 Mad LJ 768 (Cr), (1967) 2 Mys LJ 149, 11 Law Rep 216, 1969 Cr LJ 701.

88 *Shiromani Gurudwara Parbandhak Committee, Amritsar v Som Nath Dass & Ors* AIR 2000 SC 1421, 1432, (2000) 4 SCC 146.

A gurudwara is a juristic person which can own property as per s 3(42) of the General Clauses Act. It can always bring a suit in its name through its manager to protect its property. A gurudwara implies an idea or a purpose like a *mutt* or a temple and thus, will amount to an institution having the same character as a *mutt* or a temple.⁸⁹ However, in a suit brought by a person in a representative capacity, the presumption depends on the assets of the person, juristic or otherwise, on whose behalf the suit has been instituted but not the property of the person so suing in a representative capacity.⁹⁰

The definition of the word 'person' in s 3(42) of the General Clauses Act 1897, is applicable in interpreting 'person' in s 30(1) of the Andhra Pradesh General Sales-tax Act of 1957.⁹¹

(h) Managing Committee

In view of the clear provisions of art 367(1) of the Constitution, the definition of 'person' as given in s 3(42) of the General Clauses Act will apply and the maintainability of the writ petition filed by the managing committee of a school cannot be challenged on the ground that, not being a 'person', it cannot claim a fundamental right under the Constitution.⁹²

(i) Family Unit

The definition of 'person' given in s 3(42) of the General Clauses Act is illustrative and not exhaustive. The rule of interpretation regarding such inclusive definitions has always been to treat the other entities, who would not otherwise have come strictly within the definition, to be a part thereof, because of illustrative enactment of such definitions. The inclusive part of the definition indicates that it can take in any incorporated or unincorporated body of individuals or other associations. As far as considerations closer to social and religious groups of persons are concerned, it appears that it is well recognised that a joint Hindu family has been treated as a juristic person.⁹³

Where there is a partnership of individual members of one or more joint families, each individual is a person, but when a partnership of the members of a joint Hindu family comes into existence, not by contract but by principles of personal law, the joint family can be reckoned as one person.⁹⁴

89 *See* *Guru Granth Sahib Khoje v Nag Panchayat Khoje* (1969) 71 Punj LR 844.

90 *Sri Gurdwara Sahib Koshi Begowal v Harnam Singh* AIR 1960 Punj 73, (1959) ILR Punj 2224.

91 *Ramesh v State* (1970) ILR AP 322.

92 *Sribatsha v Secondary Education Board* AIR 1969 Ori 30, 34 Cut LT 1162, (1968) ILR Cut 888.

93 *Ganga Ram v Dharmsi* AIR 1935 Nag 250, 18 Nag LJ 295 (FB); *AG Pandurao v Collector of Madras* AIR 1954 Mad 1049, [1954] 26 ITR 99 (DB); *Apaji Kulkarni v Ram Chandra* (1892) ILR 16 Bom 29 (FB); *Vithalrao Udhaoraoo Uttarwar v State of Maharashtra* AIR 1977 Bom 99.

94 *But see* *Chandrasekhar v State of Andhra Pradesh* AIR 1961 Andh 17, 18.

The definition, however, clearly permits the group of individuals to be brought or placed in the bracket of 'person' for the purposes of a given law.⁹⁵ Incorporation, which results in juridical creation of personality, is not essential. Groups of individuals, known and recognised by law as an entity for all purposes of the General Clauses Act, would be 'the person' and nothing else. It is possible for the law to constitute persons or treat specified and related group of individuals to be 'person'. It has been noted in *Baburao v State*⁹⁶ that such a 'person' must be recognised by the state as a person capable of rights and liable to duties. These two elements, ie, capacity to possess rights and being subject to obligations and duties are matters of legislative results. Tested from this basic juristic approach, a group of persons, primarily bound by certain relations, can be classified for the purposes of law as a 'person'. There is in fact no prohibition in that regard on the legislative power and there is no reason why 'a family unit', which comprises the husband, wife or wives, and their minor children either being sons or being unmarried daughters, for the purposes of the law, cannot be treated as a group of individuals and subjected to rights and obligations under the provisions of a given statute. There can be no doubt that what explanation to s 4(1) does is to create a body of individuals obviously known to be related to each other, once the body of individuals is treated by law as one entity, that would always meet the requirement of 'person' for the purposes of s 3(42) of the General Clauses Act.⁹⁷

It is competent for the legislature to define a person in any Act and create an artificial unit, for example, for the purpose of fixing a ceiling on land. The definition of a 'person' in the General Clauses Act would not restrict the powers of the state legislature to define 'a person' and adopt a meaning different from or in excess of the ordinary acceptance of the word or as defined in the General Clauses Act.⁹⁸

The word 'person' in s 3(34) of the Madras Land Reforms Act 1961, includes an association of individuals. For example, two joint lessees would be one person for determining the ceiling area applicable, under the Act.⁹⁹

95 *AG Pandurao v Collector of Madras* AIR 1954 Mad 1049-50, [1954] 26 ITR 99 (DB); s 2(17), Excess Profits Tax Act 1940, including Hindu undivided family within term 'person'.

96 1974 Mah LJ 385.

97 *Vithalrao Udhaoraio Uttarwar v State of Maharashtra* AIR 1977 Bom 99; dissenting from *Mool Chand v Ishwar Lal* AIR 1974 Punj 162, 175, (1974) 76 Punj LR 273 (FB).

98 *Maddukuri Venkatarao v State of Andhra Pradesh* AIR 1975 AP 315, (1975) ILR AP 310, (1975) 2 Andh WR 70, ('family unit' held as 'person'), *Madan Lal Roop Chand Telhalia v State of Maharashtra* (1979) ILR Bom 1401, 1429; dissenting from the Punjab High Court's view in *Mool Chand v Ishwar Lal* AIR 1974 Punj 162, 175-76, (1974) 76 Punj LR 273 (FB).

99 *N' Bhashyam v State of Madras* (1970) 1 Mad LJ 510, 83 Mad LW 132.

(j) Criminal Prosecution by Unregistered Body

The word 'person' is not defined in the Code of Criminal Procedure, though s 11 of the Indian Penal Code defines '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 prosecution under the criminal law.¹

(k) When Company is not a Person

Article 367 of the Constitution of India, making the provisions of General Clauses Act 1897 applicable for interpretation of the Constitution and the definition of the word 'person' in s 3(42), makes it clear that the company or other body corporate is to be ordinarily treated as a person provided that there is nothing in the subject or context to rule out the same. Article 20(3) on its very terms, can apply only to an accused who, if he chooses, can become a witness. Since a company or other corporate body, being incapable of taking an oath or making an affirmation, cannot become a witness, art 20(3) contemplates only natural persons and not juristic persons. Hence an employee of a company has been held to be a competent witness against the company in a criminal prosecution.²

43. SECTION 3(43): 'POLITICAL AGENT'

Clause (a) of the definition would cover the principal officer representing the Central Government in Nepal as ambassador extraordinary and minister plenipotentiary.³

By the Government of India (Adaptation of Indian Laws) Order 1937, the word 'crown' was substituted for the word 'government' in cl (a) and the words 'of the Government of India or of any local government' and 'by the Government of India or the local government' were omitted from cl (b). In that state of the law it was urged in *Ram Pargas v Emperor*,⁴ that omission no longer made it necessary that the officer should be appointed by the

1 *PTS Saibaba v P Mangatyaru* 1978 Cr LJ 1362 (AP), (1978) 1 Andh LT 355, 1978 LS 130 (AP).

2 *Godrej Soaps Ltd v State* 1991 Cr LJ 828.

3 *State v Motab Dewan* AIR 1956 Pat 46-47, 1956 Cr LJ 99; but see *Shaikh Babujan v State* AIR 1954 Pat 475, 478, 55 Cr LJ 1464; relying on *Jeramdas Vishendas v Emperor* AIR 1934 Sind 96; *Sashadhar Acharjya v Charles Tagart* AIR 1939 Cal 229 (D); *Mohammad Qasim Khan v Emperor* AIR 1934 Lah 827; though in a later case, the same High Court: *Shah Mohammed Habib Sajjada Nosin v Maulvi Manzoor Ali* AIR 1956 Pat 46, 1956 Cr LJ 99, 1955 BJR 420 has taken a preferable view.

4 AIR 1948 An 129-30; *Jeramdas Vishendas v Emperor* AIR 1934 Sind 96.

Government of India or the local government and that the appointment could be made by the political agent himself. This contention was not accepted. Justice Malik observed:

The words were omitted because the position of the Indian states vis-a-vis the Government of India was changed and the Indian states had dealings with the Crown represented by the Political Department (see Government of India Act, 1935). The word 'appointed', therefore, in clause (b) of sub-section (40) would necessarily mean 'appointed by the proper authority', and it appears to us that the only person who can appoint an officer to exercise all or any of the powers of a political agent, would be the person who can appoint a political agent. In the absence of any power of delegation given to the political agent, we do not think he can be considered to have the right to delegate his functions to any of his subordinates.⁵

Formerly, the assistant political agent was included in the expression 'political agent'.⁶ But His Britannic Majesty's minister at Kabul was not regarded as political agent within the said expression.⁷

Quoting the decisions in *Jerandas Vishendas v Emperor*,⁸ *Mohd Qasim Khan v Emperor*,⁹ and *Sashadhar Acharjya v Charles Tegart*,¹⁰ it was held in *Shaikh Babujan v State*¹¹ that the certificate granted by the ambassador in Nepal did not confer any jurisdiction on the courts in India to hold inquiry or pass an order of commitment.

44. SECTION 3(45): 'PROVINCE'

The word 'province' must be construed to mean a province as defined in this sub-section read with the Constitution Act (as amended after

5 In the General Clauses Act, as amended by the Government of India (Adaptation of Indian Laws) Order 1937, the sub-clause ran as under :

(4) 'Political Agent' shall include—

- (a) the principal officer representing the Crown in any territory or place beyond the limits of British India;
- (b) any officer appointed to exercise all or any of the powers of a political agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction.

By virtue of the provisions of art 11 read with Sch 10 of the Government of India (Adaptation of Existing Indian Laws) Order 1947 (GGO 16, dtd 14 August 1947), sub-cl (40) aforementioned was omitted. The new sub-s (43) of s 3 of the General Clauses Act has been enacted by Constitution, O 4 (Adaptation of Laws Order 1950), made by the President and published in the *Gazette of India, Extraordinary*, dtd the 26 January 1950.

6 *Selha v Keshab Charan Mahanty* AIR 1946 Pat 188; *L Jagga Rao v Emperor* AIR 1946 Pat 196-97, 48 Cr LJ 40, 24 Pat 699 (DB).

7 *Mohd Qasim Khan v Emperor* AIR 1934 Lah 827.

8 AIR 1934 Sind 96.

9 AIR 1934 Lah 827.

10 AIR 1932 Cal 229, 35 CWN 1082.

11 AIR 1954 Pat 475, 55 Cr LJ 1464.

partition of India) now in force in the provinces within the Dominion of India.¹²

45. SECTION 3(46): 'PROVINCIAL ACT'

Governor' taken as the equivalent of 'provincial government' does not refer to his personal or individual capacity but to one in whose name the authority of the executive is exercised.¹³

46. SECTION 3(47): 'PROVINCIAL GOVERNMENT'

Prior to the partition of the country on 15 August 1947, the expression 'provincial government' was defined as respects anything done or to be done after the commencement of Pt III of the Government of India Act 1935, to mean:

- (a) in a governor's province, the governor acting or not acting in his discretion and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act; and
- (b) in a chief commissioner's province, the Central Government and, as respects anything done before the commencement of Pt III of the said Act, it shall mean the authority or person authorised at the relevant date to administer the executive government in the province in question.

The definition was inserted by the Government of India (Adaptation of Indian Laws) Order 1937.

Thus, the expression 'provincial government' in cl 8(2A) of the Madras House Rent Control Order 1945, meant the 'governor'.¹⁴

The expression 'provincial government' in relation to a chief commissioner's province means the Central Government. When the Central Government issues a notification extending an Act to the chief commissioner's province, it must be held that with effect from the date of the notification the aforesaid Act was properly extended to the said province and is in force there.¹⁵

By art 11 read with the schedule to the Government of India (Adaptation of Existing Indian Laws) Order 1947, the expression 'provincial government' was defined as follows:

12 *State Bank Ltd v Provincial Government, Central Provinces and Berar* AIR 1949 Nag 290.

13 *PV Rao v Khushaldas S Advani* AIR 1949 Bom 277, 51 Bom LR 342 (DB).

14 *Kandaswami Mudaliar v Madras Province* AIR 1947 Mad 443.

15 *Re Hardial Singh* AIR 1949 EP 130, 133.

- (a) as respects anything done or to be done after the establishment of the Dominion of India, to mean in a governor's province, the governor, and in a chief commissioner's province, the Central Government;
- (b) as respects anything done before the establishment of the Dominion of India, but after the commencement of Pt III of the Government of India Act 1935, to mean in a governor's province, the governor acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act, and in a chief commissioner's province, the Central Government; and
- (c) as respects anything done before the commencement of Pt III of the said Act, to mean the authority or person authorised at the relevant date to administer executive government in the province in question.

It is true that the General Clauses Act, when applied to a Central Act, applies also to the rules framed under that Act, but that must mean that the Act applies whenever it can legitimately be applied.¹⁶ Similarly, it applies to notifications and orders in Council.¹⁷

There is not much distinction between the words 'Government of Rajasthan' and '*Rajpramukh* of Rajasthan'.¹⁸

The expression 'governor' used in the General Clauses Act 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.¹⁹

47. SECTION 3(48): 'PUBLIC NUISANCE'

In the Indian Penal Code, 'public nuisance' has been defined thus:

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.

16 *Harkishan Das v Emperor* AIR 1944 Lah 33, 44 (FB). (The provisions of General Clauses Act cannot be applied to override the express provisions in rules themselves).

17 *Nurie v Dange* AIR 1949 Bom 19, 22.

18 *Ram Ballabh v United States of Rajasthan* AIR 1954 Ajm 5.

19 *PV Rao v Kaushaldas* AIR 1949 Bom 277.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

It is a 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.²⁰ The act of stopping a highway and thereby forcing a detour on a person would constitute special damage to entitle that person to institute a suit.²¹ Where some members of the Muslim community objected to a construction which prevented the *tazias* to be carried through as heretofore, the defendant pleaded, in *Raghubar v Madari*,²² that the suit was not maintainable under s 91 of the Civil Procedure Code without the previous consent of the advocate-general, as it related to a public nuisance. Their lordships followed *Khaji Syiad Hussain Sahib v Ediga Narasimhappa*,²³ where it was held that the English rule, that an action for the obstruction of a public highway is not maintainable unless special damage is alleged and proved, is applicable to India and has been enacted as s 91, Civil Procedure Code. It was argued that the respondents (plaintiffs) did not claim the right of passing along the road as a public right common to all members of the public, but they claimed the right as members of a specified section of the public and only on specified occasions. Their lordships repelled this contention observing:

The Muhammadans of the neighbouring villages are no doubt a section of the public, but the word 'public' has been defined in the Indian Penal Code in s 12 as including any class of public or any community. The Muslim community or the Muslims of the neighbourhood would, therefore, be included in the word 'public' which is used in the expression 'public nuisance' in s 268, Penal Code.

48. SECTION 3(49): 'REGISTERED'

After separation of Burma from India, mortgages registered in Burma cannot be deemed to have been registered in accordance with the law in force in India.²⁴

20 *Bhagwan Singh v Narottam Singh* ILR 31 All 444, 6 All LJ 499; *Gehanaji Binkes Patil v Ganapati Bin Lukshuman* ILR 2 Bom 469; *Khaji Syiad Hussain Saheb v Ediga Narsimhappa* 16 IC 962, 23 Mad LJ 539.

21 *Ramchandra v Joti Prasad* 8 IC 808, ILR 33 All 287; approving *Bhagwan Singh v Narottam Singh* ILR 31 All 444 and *Gehanaji Binkes Patil v Ganapathi Bin Lukshuman* ILR 2 Bom 469.

22 AIR 1936 Oudh 154.

23 16 IC 962.

24 *Ramanathan v Soma Sundaram Chettiar* AIR 1964 Mad 527, 530, (1964) 2 Mad LJ 256.

49. SECTION 3(51): 'RULE'

There being no definition of 'rule' in the Police Act 1861, 'rule' or 'regulation', in that Act has to be interpreted in terms of the General Clauses Act.²⁵ The word 'rule' includes 'regulation'.²⁶

A rule means a rule made in exercise of the power conferred by an enactment. Similarly a regulation made under an enactment is also a rule and has the same force of law. However if the regulations are not framed by virtue of a 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.²⁷

Regulations made under s 49 of the Life Insurance Corporation Act 1956, have been held to be law.²⁸

The rules must always be consistent²⁹ with the Act in pursuance of which they are framed.³⁰ Any rule inconsistent with the parent Act is ultra vires.³¹ No rule overriding the provisions of the Act can stay as valid.³²

The liability defined by an Act cannot be modified by a rule, and it is of no consequence even if such rule has received the sanction of the governor-general.³³

A regulation is meant for the public who must know the authority under which the regulation is made, and this should be made known to the public as soon as the regulation has been made so that they may decide whether they are bound by it or not.³⁴

Regulations under the Maharashtra Secondary Education Boards Act 1965 are not statutory rules but are in the nature of bye-laws.³⁵

An exemption granted under a notification has the same force as under the parent Act.³⁶

Varying according to the necessities of the cases and nature of the legislation, the doctrine of conditional legislation or subsidiary legislation, or ancillary legislation, has been equally upheld under all Constitutions.³⁷

25 *Mehboob Khan v State* 1960 Raj LW 598-99.

26 *State v Ram Bharosey* 1966 All LJ 290.

27 *Delhi Electric Supply Undertaking v GP Satsagi* (1984) 1 Lab IC 54.

28 *Ratnakar Vishwanath Joshi v Life Insurance Corpn* 1975 LIC 466, 473, (1975) 1 LLJ 501 (DB).

29 *Secretary of State v Sheo Bhagwan Firm* AIR 1936 All 69, 1936 All LJ 487.

30 *Sohanpal Munna Lal, Firm v East Indian Railway Co* AIR 1922 All 9, 20 All LJ 31.

31 *Chhoga Lal v Secretary of State* AIR 1933 Nag 261, 29 Nag LR 333 (with reference to rules framed under s 47 of the Indian Railways Act); *Secretary of State v Sheo Bhagwan Firm* AIR 1936 All 69, 1936 All LJ 487; *Jalim Singh Katary v Secretary of State for India* ILR 31 Cal 951, 8 CWN 725.

32 *District School Board of North Kanara v Rameshwar Gattu Naik* AIR 1943 Bom 268; 65 Bom LR 480; *Har Dayal Dass Ray v B&N Rly Co* AIR 1929 Pat 296, 11LR 8 Pat 808.

33 *Ram Chandra Nath v Great Indian Peninsula Rly Co* 29 IC 545, ILR 39 Bom 485.

34 *State of Uttar Pradesh v Murtaza Ali* AIR 1961 All 477.

35 *Sophy Kelly v State* AIR 1968 Bom 156.

36 *Kailash Nath v State of Uttar Pradesh* AIR 1957 SC 790, (1957) 8 STC 358.

37 *Re art 143, Constitution of India and Delhi Laws Act* 1912 AIR 1951 SC 332, 1951 SCJ 527.

The Bombay Sales-tax Act 1952 and the rules made thereunder were brought into operation simultaneously. The rules are, therefore, to be deemed as part of the Act. The position might be different if the rules had been brought into operation sometime later than the charging sections of the enactment.³⁸

50. SECTION 3(54): 'SECTION'

By reason of the provisions of s 30 of the General Clauses Act 1897, read with cl (54) and (61) of the s 3 thereof, it would not be a wrong phraseology, though it may sound inelegant, to refer to a provision of an ordinance, promulgated by the President under art 123 of the Constitution or prior to the coming into force of the Constitution of India, by the Governor-General under the Indian Councils Act 1861, or the Government of India Act 1915, or the Government of India Act 1935, as a 'section' and to a subdivision of a section numbered in round brackets, as 'sub-section'.³⁹

51. SECTION 3(55): '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 the definition of 'vessel' under s 3(63) includes both ships and boats.⁴⁰

52. SECTION 3(56): 'SIGN'

'Signing' means the writing of the name of a person on a document or paper⁴¹ so that it may convey a distinct idea to somebody else that the writing indicates a particular individual whose signature or sign it purports to be,⁴² and the insertion of the name of the person signing is sufficient to authenticate the instrument.⁴³ The expression 'sign' shall, with reference to a person who is unable to write his name, include 'mark'.⁴⁴ Speaking generally, a signature

38 *State of Bombay v United Motors (India) Ltd* AIR 1953 SC 252, 1953 SCJ 373.

39 *Prabodh Verma v State of Uttar Pradesh* 1984 All LJ 931, 954.

40 *Panduranga Timblo Industries v Union of India* AIR 1992 SC 1194, 1198, (1992) 2 SCC 635.

41 *Hindustan Construction Co Ltd v Union of India* AIR 1967 SC 526-27, 1967 SCD 767.

42 *Nirmal Chander Bandopadhyaya v Saratmoni Debbya* ILR 25 Cal 911, 915-16; *Hindustan Construction Co Ltd v Union of India* AIR 1967 SC 526.

43 *J&D Eziekeil Co v Annoda Charan Sen* AIR 1923 Cal 35, 37-38, 36 Cal LJ 109 (DB).

44 *Vikram Singh v Ramballabhi Karat* 1994 JIJ 762 (MP).

is the writing or otherwise affixing a person's name or mark, for example, mere '*shree sahī*',⁴⁵ or a stamped facsimile signature,⁴⁶ to represent his name, by himself or by his authority, with the intention of authenticating it as being that of or binding on the person whose name or mark is so written or affixed.⁴⁷ 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 introduction of the name is a sufficient signature,⁴⁸ if by custom the illiterate person merely touches the pen and authorises another in his presence to introduce his name.⁴⁹ The insertion of the name in any part of the writing, in such a manner as authenticates the instrument, is sufficient and if only the third sheet of the agreement of sale does not bear the signature it does not invalidate the document.⁵⁰

It was never the intention of the Parliament to read 'literacy' in the words 'makes and subscribes' in arts 84(a) and 173(a) of the Constitution. The definition of the word 'sign' in the General Clauses Act, includes the making of a mark. In s 2(1)(i) of Representation of the People Act 1951 the word 'sign' in relation to a person who is unable to write his name means authenticated in such a manner as may be prescribed in cases where thumb marks attestation is necessary. The word 'subscribe' in the modern sense means to sign one's name; to signify assent or adhesion to by signing one's name; to attest by signing. The meaning of the word 'sign' is also similar to attest or confirm by adding one's signature, to affix one's name to a document.⁵¹ The word 'subscribe' has not been defined in the Constitution, but it has been used in s 33 of the Representation of the People Act 1951.⁵²

Since the word 'sign' includes a mark, an attesting witness can validly attest a will by placing his mark.⁵³ The authorities holding otherwise, for example, in *Nitya Gopal Sircar v Nagendra Nath Mitter*,⁵⁴ cannot be held to be good law.

45 *Sailendranath Mitra v Girjabhushan Mukherji* AIR 1931 Cal 596, 598, 133 IC 696.

46 *Sethani Chhoti Debi v Union of India* (1963) 67 Cal WN 759, 762 (DB).

47 *J&D Eziekeil Co v Annoda Charan Sen* ILR 50 Cal 180, AIR 1923 Cal 35, 37-38, *Jamna v Jagabhai* ILR 28 Bom 262, 5 Bom LR 1031 (part payment in person's own handwriting—mark of person affixed beneath indorsement written by him, held sufficient); *Bhimagowda v Eraqah* 7 Mad HCR 358 (making mark by illiterate debtor at foot of acknowledgement held valid); *Hira Lal v Dy Comar, Bareilly* AIR 1951 All 483; *Rajani Mandal v Digindra Mohan Biswas* AIR 1952 Cal 440.

48 *Mathura Das v Babu Lal* ILR 1 All 683, 685-86; *Gangadharao Venkatesh v Shidramappa Ballappa Desai* ILR 18 Bom 586; *Thangrajan Murthiyar v Subhmandan Ambalakkar* AIR 1955 NUC 3159 (Mad) (such document held as evidence of fact of payment as well as acknowledgement of payment).

49 *Rajani Mandal v Digindra Mohan Biswas* AIR 1952 Cal 440-41, 36 Cal WN 188.

50 *Har Kaur v Gura Singh* AIR 1988 P&H 41.

51 *Rattan Anmol Singh v Atma Ram* 10 ELR 14 (SC), AIR 1954 SC 510.

52 *Baljeet Singh v Election Commission of India & Ors* AIR 2001 Del 1, 8 (FB).

53 *Kabiram v Anandiram* AIR 1952 Assam 93, ILR 4 Assam 141.

54 ILR 11 Cal 429.

The meaning of the word 'signed' in the copy of an award is that so long as there is the signature of an 'umpire' or 'arbitrator' on the copy of the award filed in the court, and it shows that the person signing it has authenticated the accuracy or correctness of the copy, it is immaterial whether the words 'verified to be true copy' are put above his signature or otherwise.⁵⁵

Touching the pen by an illiterate person and authorising the other person to sign by writing his name in his presence may constitute signing.⁵⁶ *Re Whitley Partners Ltd*⁵⁷ is the leading case on this point. In that case one Mr Callan verbally authorised Mr Oakley to sign on his behalf the memorandum of association of the company. Mr Oakley, on the basis of the authority given to him, signed the name of Mr Callan to the memorandum without his name appearing on it. The company was going through the process of winding up. Mr Callan was put on the list and applied to have his name removed on the ground that he had never signed the memorandum nor agreed to take the share. On these facts, it was held by Cotton LJ that:

There being nothing in the Companies Act 1862, to show that the legislature intended anything special as to the mode of signature of the memorandum, the ordinary rule applied that signature by an agent is sufficient.

In *Deo Narayan Rai v Kukur Bind*⁵⁸ Stanley CJ had come to the conclusion that:

It was not imperatively required by section 59 of the Transfer of Property Act 1882, that a mortgage, where the principal money secured is Rs 100 or upwards, shall be signed by the mortgagor with his own hand, or by an agent specially appointed in that behalf. If the mortgagor is illiterate, it is a good signature if, in the presence and at the request of the mortgagor, some other person signs the mortgagor's name on his behalf as the executant of the document.

In *Ramjan Ali v Khawaja Meer Ahmed Sethi*⁵⁹ the High Court of Patna had the occasion to consider what constitutes a signature within the meaning of s 19 of the Limitation Act (new s 73 of Limitation Act 1963). Justice Fazal Ali had concluded that it was not necessary that the name should be written by the debtor himself and that it was sufficient if it were written by a person acting with authority to write his name and to acknowledge the debt in question.

55 *Hindustan Construction Co Ltd v Union of India* (1967) 69 Punj LR 49 (D), (1967) 2 SCJ 219, 1967 SCD 767, [1967] 1 SCR 843, AIR 1967 SC 526; approving *Mahesh Lal v Busunt Kumarjee* ILR 6 Cal 340, 7 CLR 121.

56 *Rajani Mandal v Digindra Mohan* AIR 1932 Cal 440.

57 (1886) 32 Ch D 337, 55 LJ Ch 540.

58 (1902) ILR 24 All 319, 1962 All WN 127 (FB).

59 AIR 1940 Pat 6, 20 PLT 927.

In *Sandhya Devi v State Transport Appellate Authority*⁶⁰ in an application for a stage-carriage permit under the Motor Vehicles Act 1939, read with Bihar Motor Vehicles Rules 1940, one Sandhya Devi, the applicant, had not herself signed or put her left hand thumb impression on the application for the grant of permit, but her son had signed as Sandhya Devi on her behalf. There was nothing in the Motor Vehicles Act 1939, or in the relevant rules prescribing that this signature or thumb impression of the applicant should be his own and that it cannot be put by his authorised agent. SA Ahmed J, had held that this application was valid. He observed:

It can be safely said as a proposition of law that where a person authorises another to sign for him, the signature of the person so signing is the signature of the person authorising him. This rule, however, is subject to the condition that where the statute requires personal signature then the signature by the agent will not fulfil the requirements.

A 'mark' is a mere symbol and does not convey any idea to a person who notices it, often even to the person who makes it.⁶¹ A case from Bombay⁶² holds that attestation of an unprivileged will by affixing marks on any part of the writing by attesting witnesses is not valid. A mark is a sort of symbolic writing.⁶³ Therefore, the 'thumb mark' would not fall within the definition of sign under s 3(56) of the General Clauses Act.⁶⁴ It is in the same sense that it was suggested in *Balirani Koer v Sobha*⁶⁵ that in the absence of the word 'mark' in the proviso to s 20 of the Limitation Act 1908 (new s 81 of Limitation Act 1963), the clear words of the section requiring payment and the handwriting to be made by one and the same person were not to be complied with. Similarly, the extended definition of the word 'sign' is not applicable to a case where a person is able to write his name.⁶⁶

In the case of *Jenkyns v Gaisford*,⁶⁷ the judges indicated that the use of the pen and ink was not necessary for signing. A person may sign or put his

60 AIR 1976 Pat 234, 1976 BBCJ 84 (HC).

61 *Nirmal Chander Bandopadhyaya v Saratmoni Debya* ILR 25 Cal 911, 916 (stamp was considered sufficient in the circumstances of this case); *Gur Sahai Ram v Sadik Muhammad* 185 PR 1883; but see *Spl Manager, Court of Wards, Balrampur v Tribeni Prasad* AIR 1935 Oudh 289 (seal not included).

62 *D Fernandez v R Alves* (1978-79) ILR 3 Bom 382, 384, 4 Ind Jur 137 (DB).

63 *Pran Krishna Tiwari v Jadu Nath Trivedi* 2 CWN 603; *Shailendra Nath v Girijabhasan* ILR 58 Cal 686, AIR 1931 Cal 596 (a mark *Shree Sibi* in the place of signature of the executant of a document was taken to be a signature); but see, *Raghubir Singh v Sukhraj Kunwar* AIR 1939 Oudh 96.

64 *Maqsoon Khan v Lala Balwant Prasad* AIR 1982 All 41, 1981 All CJ 510, 1981 All WC 871, (1981) 7 All LR 568, 1982 UPLT 24 (NOC), 1982 (1) Civ LJ 560.

65 (1919) 44 IC 516.

66 *Maqsoon Khan v Lala Balwant Prasad* AIR 1982 All 41.

67 (1863) 11 WR 854 (Eng).

name down by means of types, or, if he uses a facsimile for signing his name, may use it for his signature.⁶⁸

The definition given in the clause is neither exhaustive nor complete. Therefore, the definition does not apply to the term 'sign' in s 67 of the Evidence Act 1872.⁶⁹ Where the *mahant* of a temple, instead of scribing his own name on a *rugqa* which was written on his instructions, scribed the word *sahi* on the top of the document and also affixed his seal as was usual in that part of the country, it was held that though the *mahant* was literate, in the circumstances, the scribing of the word *sahi* coupled with affixation of the seal amounted to an authentication of the document as one executed by the *mahant* himself.⁷⁰ Initials were accepted as signature in a warrant issued by a magistrate.⁷¹

In its ordinary sense it means signing the name at the foot.⁷² As was ruled by Lord Abinger CB in *Johnson v Dodson*⁷³ and by Lord Chelmsford LC and Lord Westbury in *Caton v Caton*,⁷⁴ the insertion of the name in any part of the writing in a manner to authenticate the instrument is sufficient. Although the signature is in the beginning or middle of the instrument, it is as binding as if at the foot thereof.⁷⁵ The question always is, whether the party not having signed it regularly at the foot,⁷⁶ had intended to be bound by it as it stood, or whether it was left so unsigned because he refused to complete it.⁷⁷

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 a 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,

68 *Gopal Das v Ghisalal* AIR 1957 Raj 264.

69 *Panna Lal v State* 1960 Raj LW 521.

70 *Gopal Das v Ghisalal* AIR 1957 Raj 264.

71 *Queen-Empress v Janki Prasad* ILR 8 All 293; but see *Abdul Ghafur v Queen Empress* ILR 23 Cal 808; *Subramania Ayyar v Queen* ILR 6 Mad 696.

72 *Gangadharrao Venkatesh v Shidramappa Ballappa Desai* (1894) ILR 18 Bom 586, 590; *Sada Sook Aggarwala v Baikanta Nath Basunia* ILR 31 Cal 1043 (intention).

73 (1837) 46 RR 738.

74 (1867) LR 2 HL 127.

75 *J&D Eziekeil Co v Annodo Charan Sen* ILR 50 Cal 180, AIR 1923 Cal 35, 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 *Re Mathura Das* ILR 1 All 683; and *Re Mohesh Lal* ILR 6 Cal 340, 7 CLR 121.

76 *Gangadharrao Venkatesh v Shidramappa Balappa Desai* (1894) ILR 18 Bom 586, 590 (DB) (signature in the beginning or middle of instrument as binding as when made at foot thereof); *Gangaram v Lachiram* AIR 1916 Cal 61, 63, 19 Cal WN 611; *Mahalakshmbibai v Firm of Nageshwar Purshotam* (1886) ILR 10 Bom 71, 73 (DB).

77 *Birbal v Thamansingh* AIR 1955 Raj 91; *Mohesh Lal v Busant Kumaree* ILR 6 Cal 340 (signing in any part of contract as to acknowledge that person signing is party to contract, held sufficient signature).

cannot possibly be regarded as the signature of the principal for the purposes of that statute.⁷⁸

The contract in question was not even a statutory contract but was one entered into in exercise of the power conferred under arts 298 and 299 of the Constitution. As such, the provisions of General Clauses Act may not be attracted. As per s 3 of the said Act, the term 'sign' is subject to anything repugnant in the subject or context. That definition is not exhaustive as the term used in its definition is 'include' and not 'mean'. In the instant case, cl (21) of the notice inviting tender (NIT) clearly indicated and required that the tenderer should sign in full on every page of the rate schedule. It only means that the petitioner had to sign giving his full signature as 'Rayat Narayan Ghosh' and not just 'RN Ghosh'. Even if the tender submitted by the petitioner though not properly made as per the said clause was accepted on earlier occasions, it was held not to be a ground for allowing the petitioner to submit the tender in violation of the said clause. The petition was dismissed accordingly.⁷⁹

The definition of the word 'sign' in s 3 of the General Clauses Act does apply to the word 'sign' in s 63(c) of the Succession Act. A will is therefore validly attested if an illiterate attesting witness makes his mark or thumb impression on it.⁸⁰ It also applies to s 3 of the Transfer of Property Act.⁸¹ The definition was held applicable also to the Limitation Act which did not have its own definition of that word.⁸² Justice Bennet did not apply this definition in construing s 67 of the Evidence Act in *Mst Shahzadi v Beni Prasad*.⁸³

53. SECTION 3(57): 'SON'

A minor adopted son has been held to be included in the definition of 'dependent' in s 2(1)(d) of the Workmen's Compensation Act 1923,⁸⁴ provided the adoption is permitted under the personal law applicable to the deceased.⁸⁵

78 *Commr of Agricultural Income-tax v Kesab Chandra Mandal* [1950] SCR 377.

79 *RN Ghosh v State of Tripura & Ors* AIR 2000 Gau 114, 116-17.

80 *Annu Bhujanga v Rama Bhujanga* AIR 1937 Bom 380; *Sangita Bapuji v Ambabai Sangita* AIR 1953 Nag 266; *Kabiram v Anandiram* AIR 1952 Assam 93-94, (1952) ILR 4 Assam 141 (DB); *Maikoo Lal v Santoo* AIR 1936 All 576, 578, 1936 All LJ 782 (FB); in *Gulam Mohiuddin v Shanker* AIR 1924 Nag 159, Baker JC, admitted the making of the mark by touching the pen of the writer by a person belonging to illiterate class 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 s 164, Cr PC when, though literate, he had merely thumb-marked it.

81 *Nagamma v Venktramayya* AIR 1935 Mad 178 (2), ILR 58 Mad 220.

82 *Ram Singh v Kashi Mollah* AIR 1921 Pat 476-77, 2 PLF 355.

83 AIR 1934 All 390.

84 *Re Divi Ditta* AIR 1931 Lah 661, 32 Punj LR 213.

85 *Ibid.*

54. SECTION 3(58): 'STATE'

The definitions given in the General Clauses Act are subject to any context being repugnant. So long as there is no legislature in a union territory, there is no fetter on the power of President to make regulations for any union territory in accordance with the proviso to art 240(1) of the Constitution of India.⁸⁶

There was a doubt whether a union territory is or is not a 'state' in the eyes of the law.⁸⁷ But there is now no doubt that by virtue of the provisions of the General Clauses Act, aforementioned, the union territory is a 'state'.⁸⁸ Their lordships of the Supreme Court in *Satya Deo Bushari's case*⁸⁹ after referring to the aforesaid provision of the General Clauses Act, had clearly held that the union territory of Himachal Pradesh was a legal entity distinct from the union government, and that, merely from the fact that its administration had to be carried on in the name of the President, it could not be considered as a part of the Central Government. The President was its chief head not because he is the chief head of the Union Government but because the Constitution recognised the President under art 239 of the Constitution as the executive head of the union territory as well. But any finding that the Union Territory of Chandigarh is a 'state' does not help solve the vexing question regarding the application of the central Act.⁹⁰

Section 3(58) of the General Clauses Act, as it stood before the coming into force of the Seventh (Constitutional) Amendment Act 1956, defined a 'state' to mean 'a Pt A state, a Pt B state or a Pt C state'.⁹¹ That definition had itself been substituted by the Adaptation of Laws Order 1950, to make it workable, and it served the purpose, for the country had those three types of states at that time. But an important change was made by the Constitution (Seventh Amendment) Act 1956, which abolished the distinction of Pt A, Pt B and Pt C states and provided, inter alia, that the territory of the country shall comprise the territories of the states and the union and the union territories specified in the First Schedule. The definition of the expression 'state', as it stood before 1 November 1956, became unsuitable and misleading on the coming into force of the Constitution (Seventh Amendment) Act 1956, from 1 November 1956. So it will, for obvious reasons, be futile to contend that it should have

86 *TM Kanniyam v Income-tax Officer, Pondicherry* AIR 1968 SC 637, 641, (1968) 1 SCJ 727.

87 *Ram Kishore Sen v Union of India* AIR 1965 Cal 282.

88 *Jarnail Singh v Union Territory of Chandigarh* AIR 1971 P&H 181, (1971) 73 Punj LR 69.

89 AIR 1954 SC 587, [1955] SCR 549; *Kanahaiya Lal Oswal v Government of India* AIR 1955 Gau 37, 40 (Union Territory of Tripura held 'state').

90 *Tilak Raj v Chandigarh Administration* AIR 1976 P&H 238, (1976) ILR 2 Punj 840; *Krimens Oil Mills Pvt Ltd v Registrar of Companies* AIR 1958 Mad 450-51, 1950 Mad WN 400 (definition shall include Union Territories after the States Reorganisation Act 1956, came into force on 1 November 1956).

91 *Mir Osman Ali Khan Bahadur, HEH v Commr of Income-tax* (1961) 2 Andh WR 293, 300 (DB).

continued to be applicable for all times to come and remained the final definition of 'state' merely because the period of three years provided by cl (3)(a) of art 372 of the Constitution had expired and was not extended by an amendment of that clause, or because art 367(1) was not amended by the Seventh Amendment Act to say that adaptations made in the General Clauses Act otherwise than those made under art 372(2) would be applicable to the interpretation of the Constitution. On the other hand, it is quite clear from the fact that Parliament inserted art 372A by the Constitution (Seventh Amendment) Act 1956, that it was aware that the power of adaptation under art 372(2) had come to an end, and was alive to the necessity of giving a similar power of adapting the laws once again to the President for the purposes of bringing the provisions of any law in force in the country immediately before the commencement of that Act in accordance with the provisions of the Constitution. This view is, therefore, incorrect that the definition of the expression 'state', which was applicable up to 1 November 1956, remained the final definition for all times to come. The above incorrect view, taken by the High Court of Delhi in *Prem Kumar Jain v Union of India*,⁹² has overlooked the anxiety of the Parliament to remove any such misapprehension by inserting art 372A, which was a special provision meant to serve the purpose of making the Seventh Constitutional Amendment workable.⁹³ As has been held by the Supreme Court in *Management of Advance Insurance Co Ltd v Gurudasmal*,⁹⁴ art 372A of the Constitution had given a fresh power to the President, which was equal and analogous to the power under art 372(2).

After the enactment of the States Reorganisation Act and the amendments consequently made in the Constitution, the definition of 'state' would have to be read as including states and territories of the Indian Union.⁹⁵

The territories, which, immediately before the 16 August 1962, were comprised in the French Establishments in India known as Pondicherry, Kartkal, Mahe and Yanam, have been included in the list of union territories given in List II of the First Schedule to the Constitution.⁹⁶

The definition of the word 'state' in s 3(58), after its adaptation by the Adaptation Order 1 of 1956 applies to the definition of 'state' in entry 80 of the union list, with the result that the definition includes union territories also. Hence members of the police force belonging to the union territory like

92 (1969) ILR Del 1214.

93 *Union of India v Prem Kumar Jain* AIR 1976 SC 1856, 1976 SCWR 417, 1976 UJ 593 (SC), 1976 Serv LJ 418, 1976 Lab IC 1194, 1976 Serv LJ 547, (1976) SCC (L&S) 499, (1979) 2 Serv LR 243, (1976) 2 Lab LN 290; *Prem Kumar v Union of India* (1976) ILR Del 1214 reversed.

94 [1970] 3 SCR 881, AIR 1970 SC 1126, (1970) 2 SCJ 480, 1970 Mad LJ 727 (Cr).

95 *Krimens Oil Mills Pvt Ltd v Registrar of Companies* AIR 1958 Mad 450.

96 Vide Constitution (Fourteenth Amendment) Act 1962, ss 3 and 7, wef 16 August 1962.

Delhi Special Police Establishment can have powers and jurisdiction extended to another state provided the government of the state consents.⁹⁷

Following the above observation, it has been held in *Jarnail Singh v State of Punjab*,⁹⁸ that although the word 'state' has not been defined anywhere in the Essential Services Act (East Punjab Act 13 of 1947), yet in accordance with the definition given in s 3(58)(b) of the General Clauses Act, the word 'state', as respects any period after the commencement of the Constitution, shall include a union territory. The Union Territory of Chandigarh is, therefore, a state, and a complaint made under s 7(3) of the above East Punjab Act, by a person authorised by the union territory administration can be taken cognisance of by a court.

As per s 3(41) of the General Clauses Act, the Delhi Administration is a 'state'. As it is not a person, therefore, it cannot be held to fall within the phrase 'organisation' and hence the Central Government cannot constitute the Delhi Administration as its nominee for the distribution of sugar under cl (8) of the Sugar Control Order made under r 125(2) of the Defence of India Rules 1962.⁹⁹

The definition of the term 'state' as provided in s 3(58) of the General Clauses Act declaring that the word 'state' would include a 'union territory', is inapplicable to art 246(4) of the Constitution. Property-tax levied by the municipalities within the union territories are property within the ambit of the exemption provided in art 289(1) and the states can avail of the exemption.¹

The proviso to art 240(1) of the Constitution does not fetter the powers of the President to make regulations for the union territories so long as no legislature is created for the territory under art 293A. The inclusive definition of 'state' in s 3(58) being repugnant to the subject or context of art 246 of the Constitution, does not apply by virtue of art 367.²

The word 'state' has not been defined in the Representation of the Peoples Act 1951, and, accordingly, the definition of the term given in this sub-section will apply.³

The distinction between a state and its government is well-known and so has to be kept in view in sending a statutory notice under s 80 of the Civil

97 *Management of Advance Insurance Co Ltd v Gurudasmal* (1970) 1 SCC 633, AIR 1970 SC 1126.

98 AIR 1971 P&H 181, (1971) 73 Punj LR 69, 1971 Cr LJ 781.

99 *Jaswant Sugar Mills Ltd v Union of India* (1965) ILR 2 Punj 491, AIR 1966 Punj 229.

1 *New Delhi Municipal Committee v State of Punjab* AIR 1997 SC 2847, (1997) 7 SCC 339 (nine-member Bench).

2 *TM Kanniyar v Income-tax Officer, Pondicherry* (1968) 1 ITJ 466, (1968) 1 SCWR 435, (1968) 1 SCA 437, [1968] 1 SCR 103, [1968] 68 ITR 244, (1968) 1 SCJ 727, AIR 1968 SC 637.

3 *Janardhanan v Joseph* AIR 1958 Ker 169 ('state' in art 3 of Constitution will include 'union territories' by reason of s 3(58) of this Act which applies to interpretation of the Constitution); *Ram Kishore Sen v Union of India* AIR 1966 SC 644; (held *Re Berubari Union and Exchange of Enclaves* AIR 1960 SC 845, erred in holding that 'state' did not include union territories).

Procedure Code.⁴ Since according to s 3(58) of the General Clauses Act, 'state' includes a 'union territory', a notice of the intended suit, served upon the chief secretary as well as against the collector of Tripura for a suit to be filed against the Union Territory of Tripura, was held to be a valid notice in compliance with s 80 of the Civil Procedure Code.⁵

The definition of 'state' in s 3(58)(b) of the General Clauses Act adopted under art 372 by the Adaptation of Laws Order 1950, cannot be used in interpreting the word 'state' in the Constitution because it can be used in the Constitution only when a state is under Pt A, B, or C. But the union territories do not figure there. Moreover, Delhi has been excluded from the definition of union territories in s 2(1)(h) of the Government of Union Territories Act 1973.⁶ The provision under art 329(b) applies to the union territories also. It is not correct to say that a union territory is not a state under the said provision. Under s 3(58)(b) of the General Clauses Act, the word 'state' as substituted by the Adaptation of Laws Order 1 of 1956, includes union territory in the First Schedule to the Constitution after the commencement of the Seventh Amendment.⁷ The substitution of the words 'union territories' for the words 'Part C States' in the Delhi Special Establishment Act (1946) by the Adaptation of Laws Order 3 of 1956 does not bring the Act into conflict with entry 80 of list I of the Seventh Schedule to the Constitution. It cannot, therefore, be said that the Special Police Establishment cannot continue to function under the Act after the change in the Act. In view of s 3(58)(b) of the General Clauses Act, the adaptation made in 1956 is not contrary to entry 80 of list I.⁸

55. SECTION 3(59): 'STATE ACT'

'Enactment in force in a 'state' cannot bear the same meaning as 'an enactment passed by a state assembly' or a 'state Act' as defined under s 3(59) of the General Clauses Act. Irrespective of the fact that art 239A provides for an enactment for creation of a body to function as a legislature for the union territory, a union territory is not equated with a state and is administered by the President through his administrator. This being the position, it is clear that the Central Government is fully empowered to extend a central enactment which is in force in other states to the Union Territory of Goa, Daman and Diu, under s 6 of the Goa, Daman and Diu (Administration) Act 1962.⁹

4 *MAH Farook v Kalikrishna Dass* (1974) 2 Mad LJ 46, 52, held Chief Minister of Pondicherry as 'Ministers of State' exempted from personal appearance in court.

5 *Kanahaiya Lal v Government of India* AIR 1975 Gau 37.

6 *HL Rodhey v Delhi Administration* 1969 Lab IC 974, AIR 1969 Del 246.

7 *Okram Kullo Singh v Election Commr* AIR 1968 Mani 84.

8 *Management of Advance Insurance Co Ltd v Gurudasmal, Suptd of Police* AIR 1969 Del 330.

9 *Shrirang Padmanabha Prabhu v VV Joshi* AIR 1975 Goa, Daman & Diu 19; applying *Raj Narain Singh v Chairman, Patna Administration Committee* AIR 1954 SC 569.

Vindhya Pradesh, for purposes of s 3(59) is a state and not merely an administrative unit.¹⁰

56. SECTION 3(60): 'STATE GOVERNMENT'—SCOPE

The expression 'state government' as defined in this clause means the authority or the person authorised at the relevant date to exercise executive powers of the government in the state, and, after the commencement of the Constitution,¹¹ it means the governor of the state¹² and a minister insofar as the affairs of his department are concerned.¹³ So, when an act is done by a state government, it is as if the government has done or has to do it.¹⁴ As a combined reading of definitions in ss 3(8), (58)(b) and (60)(c) of the General Clauses Act shows the Central Government in relation to the administration of a union territory shall mean the administrator acting within the scope of the authority given to him by art 239 of the Constitution, and the 'state government' in a union territory shall mean the Central Government.¹⁵

It is noticed that in relation to the administration of a union territory, the administrator thereof, acting within the scope of the authority given to him under art 239 of the Constitution, is the Central Government. One must, therefore, accept the position that this administrator is the state government insofar as the union territory is concerned. This is as provided in the definition of 'state government' in s 3(60) of the General Clauses Act.¹⁶

In *Gullapalli Nageshwar Rao v Andhra Pradesh State Road Tpt Corpn*¹⁷ the Supreme Court had observed as follows:

A State Government means the Governor. The executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the ministers headed by the Chief Minister advise him in the exercise of his functions.

10 *Maula Bux Rahim Bux v State of Uttar Pradesh* AIR 1956 VP 1.

11 *Man Singh Suraj Singh Padvi v State of Maharashtra* (1968) 70 Bom LR 654, (1968) ILR Bom 584, 631 ('government of state' in art 12 of the Constitution to include Governor); overruled on another point in *State of Maharashtra v Man Singh Suraj Singh Padvi* AIR 1978 SC 916.

12 *State of Uttar Pradesh v Mohammad Naim* AIR 1964 SC 703; *Pancharathnamma v State of Mysore* (1962) 40 Mys LJ 251, (1961) ILR Mys 786 (DB) (state government for purposes of rules framed under s 689 of the Motor Vehicles Act 1939 to mean governor); *G Nageshwar Rao v Andhra Pradesh State Road Transport Corpn* AIR 1959 SC 308, 325.

13 *Hari Kishan Singh Surjeet v State of Punjab* AIR 1964 Punj 198, 204, (1964) 1 Cr LJ 535, (1964) 66 Punj LR 429.

14 *Tara Singh v Director, Consolidation of Holdings* AIR 1958 Punj 302, 59 Bom LR 199.

15 *Chowgule Real Estate and Construction Co Pvt Ltd v Government of Goa* AIR 1970 Goa 80.

16 *GS Co of India Ltd v Gen Secretary, Goa Dock Labour Union* 1984 Lab IC 1626, 1633, (1984) 1 LLJ 56, (1984) 86 Bom LR 30, (1983) 2 Lab LN 748.

17 AIR 1959 SC 308, 1959 Supp (1) SCR 319.

In the above case, the governor had made rules enabling the minister in charge of particular department to dispose of cases before him and also authorising him by means of standing orders to give such directions as he thinks fit for the disposal of the cases in the department. Pursuant to that rule, the chief minister, who was in charge of transport, had made an order directing the secretary to government, home department, to hear the objections filed against the scheme proposed by the state transport authority, under s 68 of the Motor Vehicles Act 1939.

Thus, a revenue minister can make an order on behalf of the state government.¹⁸

The home minister, being subordinate to the governor, could act under the Defence of India Rules 1939, in accordance with the rules of business framed by the governor, and personal consideration of the case by the governor was not necessary.¹⁹

However, 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, proceeding on the authority of the governor.²⁰

The meaning of the expression 'state government' was also considered by the Punjab and Haryana High Court, in *Manmohun Singh v State*,²¹ wherein Sarkaria J, observed as under:

The 'government' spoken of in section 196A, Criminal Procedure Code²² 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 under clauses (1) and (3) of article 166 of the Constitution. If an order according the consent for the purposes of sub-section (2) of section 196A, Criminal Procedure Code 1898 is passed by the council of ministers, authorised minister, or the authorised secretary, and is thereafter expressed in the name of the governor as required by clause (1) of article 166 and authenticated in accordance with the rules of business, then in view of the provisions of clause (2) of article 166, this order cannot be challenged on the ground that it was not passed or made by the governor.

Considering that the state government is an impersonal body and is performing purely administrative functions, the question, in *Shinghara Singh*

18 *Bachittar Singh v State of Punjab* AIR 1963 SC 395.

19 *Empenor v Banerji* AIR 1954 PC 156.

20 *Pioneer Motors Ltd v M/s OMA Majeed* AIR 1957 Mad 48, 57, 1956 Mad LJ 430 (DB).
 (1969) ILR 2 P&H 173, AIR 1969 Punj 225.

22 Reference is to s 195A of the old code of 1898, now corresponding to s 196 of the new code of 1973.

*v State of Punjab*²³ was whether the deputy secretary while granting sanction under s 5 of the Explosive Substances Act 1908 could be considered to be acting as the state government within the meaning of the notification issued by the President under art 258(1) of the Constitution. It was held that if the order is passed by the secretary to government who was authorised by a standing order in accordance with the rules of business framed by the governor under cll (2) and (3) of art 166 and is expressed in the name of the governor as required by cl (1) of art 166, 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.

The definition of 'state' does not apply to the Union Territory of Delhi.²⁴ Neither does it apply to the former provincial states of India.²⁵ Under the Constitution, India is a union of states, and the executive power of the Union vests in the President, while of the state vests in its governor. Under this clause, if an act is done or is to be done by a state government, it means that the governor of the state has done or has to do it. A state government, according to the definition in s 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. Where an appeal was decided by the secretary, panchayat department, and signed in his official capacity, and not on behalf of the state government, it was held that under arts 154 and 166 of the Constitution the executive power of the state could be exercised by the governor either directly or through officers as designated and notified on this behalf. Hence, the order of the secretary, panchayat department, on the appeal, cannot be held to be an order passed by the state government under s 31(2) of the West Bengal Zilla Parishad Act and must be quashed.²⁶ So, under s 42 of the East Punjab (Holdings Consolidation and Prevention of Fragmentation) Act 1948, the governor has to call for the records, examine it and pass any orders he considers fit and proper. He may this do either directly or through officers subordinate to him.²⁷ A minister, whom he has power to appoint and dismiss and who holds office at his pleasure, is his subordinate. An order, therefore, made by the development minister under s 42 aforesaid, accepted and adopted by the governor, is an order of the governor.²⁸

23 AIR 1971 P&H 246, 1971 Cr LJ 966.

24 *HL Rodhey v Delhi Administration* AIR 1969 Del 246, 1969 LIC 974 (note that in the list II to the First Schedule to the Constitution, Delhi figures on top of the list of Union Territories).

25 *Jagan Nath Sharma v Union of India* 1969 Serv LR 551 (Del).

26 *Administrator, 24 Parganas, Zilla Parishad v State of West Bengal* AIR 1970 Cal 346.

27 Vide art 154(1) of the Constitution.

28 *Tara Singh v Director, Consolidation of Holdings* AIR 1958 Punj 302; *Harikrishan Singh v State of Punjab* AIR 1964 Punj 198: it was held that an order passed by the home minister, will be deemed to be an order by the state government under r 3A of the Defence of India Rules.

But, in spite of the definition in this sub-section, the governor cannot in each and every case be equated with the state government. Under the Constitution, the governor exercises distinct powers with regard to the executive and legislative functions of the state. While he exercises the executive powers, he may be equated with the state government but he cannot be so equated when he is exercising the legislative powers. While the legislature is in session he is merely a component thereof and cannot, acting alone, make a law. But while the legislature is not in session, he can exercise the legislative power by promulgating such ordinances as the circumstances may require. In the latter case, he shall have to be equated with the legislature of the state and not with the state government.²⁹

A contract entered into by the government of Vindhya Pradesh, in respect of the property of the state, could not be considered as a contract with the Central Government. Having regard to the definition of 'state' and 'Central Government', read with the definition of 'state government' and the provisions of s 38 of Pt C States Act 1951, the state was the proper authority to be sued, even though 'state government' was defined as the Central Government, because the definition of 'Central Government' in cl 8(b)(ii) takes on to the lieutenant-governor and from the lieutenant-governor to the state.³⁰

57. SECTION 3(62): 'SWEAR'

The word 'swear' includes affirmation. Where the defendant agreed that if the plaintiff's witness could take food from the plaintiff's mother as served by the plaintiff, alleged to be the illegitimate son of the said mother, the suit would stand decreed, and, when both the things had accordingly been done, the defendant applied to resile from his promise. It was held that the legitimacy of the plaintiff could well be determined on the basis of the defendants having sworn in such terms.³¹

No oath or affirmation in the technical sense of the words, nor even an invocation of the deity, if the evidence in particular case is to be given before a deity, is essential in the context of swearing, in accordance with and within the meaning of ss 8, 9 and 10 of the Indian Oaths Act.³²

58. GOVERNOR WHEN DISTINCT FROM EXECUTIVE

Where a communication addressed to the detenu was not issued in the name of the governor but had merely referred to the decision taken by the state

29 *Joti Prasad v Kalka Prasad* AIR 1962 All 128, 132.

30 *State of Vindhya Pradesh v Maula Bux* AIR 1962 SC 145, (1961) 2 SCJ 540.

31 *Bhawani Prasad Misir v Ram Shankar* AIR 1924 All 911, 92 All LJ 30.

32 *Inder Prasad v Jagmohan Das* AIR 1927 PC 165, 54 IA 301, 29 Bom LR 1154.

government to continue the detention, it was held that detention was not valid.³³

When the same person can exercise powers otherwise than as the head of the executive, there is no reason why the same rule be not applied to the exercise of power by the same person as the chancellor of a university. It is only when the governor exercises the executive power that he can be equated with the state government. Consequently when he discharges the functions and duties of the chancellor, he cannot be deemed to be acting as the head of the executive and hence as 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.³⁴

59. 'STATE GOVERNMENT' AND 'APPROPRIATE GOVERNMENT'

In the light of the definition of 'state government' given in this clause, 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'. As far as the States of Travancore and Cochin are concerned the 'appropriate government' will be the separate governments of these states till the covenant of integration. The common government of Travancore-Cochin—for a time known as the Government of the United States of Travancore and Cochin, till 1 November 1956, became the Government of Kerala on and from that date.³⁵ The notification for acquisition of land under ss 4 and 6 of the Land Acquisition Act for the purposes of the Indian Navy issued by the Government of Goa and approved by the Central Government can be regarded as issued by the Central Government itself and hence by the appropriate government.³⁶

The definition of 'state government' in s 3(60) in respect of things done before the Constitution did not include the former princely states in India.³⁷

The definition of state government in the General Clauses Act 1897 will apply to the Representation of the People Act 1951, only in the absence of

33 *Har Kishan Singh Surjeet v State of Punjab* AIR 1964 Punj 198, (1964) 66 Punj LR 429.

34 *Joti Prasad v Kalka Prasad* AIR 1962 All 128; *Province of Bombay v Khushal Das S Advani* AIR 1950 SC 222, 236, (1950) SCJ 451 (immunity against suits enjoyed by governor not enjoyable by Chancellor).

35 *Janardhanan v Joseph* AIR 1958 Ker 169; *Goa Dock Labour Union v Union Territory of Goa* AIR 1969 Goa 16.

36 *Jose Joaquim Sebastino Rodrigues v Union of India* AIR 1967 Goa 169.

37 *Jagannath Sharma v Union of India* 1969 Serv LR 55 (Del).

anything repugnant in the subject or context which precludes such an application.³⁸

The term 'state government' also occurs in the third proviso to s 8 of the Income-tax Act 1922. In a case under that section it has been held that the term 'state government' includes Pt B states, such as erstwhile State of Hyderabad.³⁹

60. SECTION 3(63): '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'.⁴⁰

'Vessel' includes sailing vessels and vessels of other description used in navigation. For a 'vessel' it is not necessary that it should be fitted with mechanical means of propulsion.⁴¹

61. SECTION 3(64): '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.⁴²

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 of 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 construction of a will, the validity of the will or its clauses must be ignored.⁴³

38 *Janardhanan v Joseph* AIR 1958 Ker 169.

39 *Mir Osman Ali Khan Bahadur, Nizam of Hyderabad v Commr of Income-tax, Andhra Pradesh* (1961) 2 Andh WR 293.

40 *Panduranga Timblo Industries v Union of India* AIR 1992 SC 1194, 1199, (1992) 2 SCC 635.

41 *Amarship Management Pvt Ltd v Union of India* (1996) 3 Bom CR 223.

42 *Gopal Lal v Alpna 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'); *Jagannatha Gajapati v Kunja Bihari Dev* 49 IC 929, 931; *R Valsala Amma v Commr of Gift-tax, Kerala* AIR 1969 Ker 252, 1968 Ker LJ 806 (donor making gift in pursuance of last wish expressed by person under whose Will he had taken, cannot be made liable under the Gift-tax Act 1958).

43 *Dana Lakshmi Ammal v Pichayya Naidu* 1953 Mad WN 242.

The rules of construction of wills are given in Ch VI of the Indian Succession Act. The will and the codicil are to be construed together in ascertaining the intention of the testator. In other words, the codicil may be read while construing the will.⁴⁴

It is well-settled in England that, by virtue of s 34 of the English Wills Act, the effect of confirming a will by the codicil is to bring the will down to the date of the codicil and to effect the same disposition of the testator's property as would have been effected if the testator had at the date of the codicil made a new will containing the same dispositions as in the original will but with the alterations introduced by the codicil.⁴⁵

A codicil is intended to be supplementary to the will.⁴⁶

An authority to adopt is not a will,⁴⁷ though it was held in *Kodapalli Viziarathnam v Mandapaka Sudarsana Rao*⁴⁸ that an authority to adopt, conferred by an unregistered will, indicating the fact or intention of adoption is effective, provided such recitation is independent of other recitations.⁴⁹

Though attestation of a document is otherwise a matter only of procedure,⁵⁰ the attestation on a will by witnesses is essential, since a Will can be proved only by examining its attesting witness or witnesses.

62. SECTION 3(65): 'WRITING'

A tape-recorded conversation is not 'writing'.⁵¹ The expression 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in visible form.⁵²

A paper which is typed or typewritten is a writing according to the definition given under s 3(65) of the Act.⁵³

Undoubtedly a paper typewritten or handwritten is 'writing' according to the definition of the term 'writing' appearing under s 3(65) of the General Clauses Act. The phrase 'by writing' cannot, by any stretch of imagination,

44 *Chukun Lal Roy v Lalit Mohan Roy* ILR 20 Cal 906, 933.

45 *Margaret Goonewardena v Eva Moonemale Goonewardena* AIR 1931 PC 307-08: in the words of North J, in his judgment in *Re Champion* [1893] 1 Ch 101, the effect is to make a device in the Will 'operate in the same way in which it would have operated if the words of the Will had been contained in the codicil of a later date'.

46 *Ramdulari v Bishweshwar Dayal* AIR 1923 Nag 105, 69 IC 876.

47 *Jagannatha Bheema Deo v Kunja Behari Deo* AIR 1922 PC 162-63, 64 IC 458; *Mst Bhoobun Moyee Debia v Ram Kishore Acharj* 10 MIA 279.

48 AIR 1920 Mad 237, 12 Mad LW 396.

49 *Bireswar Mukerji v Ardha Chander Roy* 19 IA 101, ILR 19 Cal 432.

50 *Paras Ram v Mst Mewa Kunwar* AIR 1930 All 561, 567.

51 *Viranvati v Gulab Singh* AIR 1956 Punj 173, (1956) 58 Punj LR 441; overruled on another point in *Dr Pratap Singh v State of Punjab* AIR 1963 Punj 298; *Rup Chand v Mahabir Prasad* AIR 1956 Punj 173, (1956) 58 Punj LR 441.

52 *Vikram Singh v Rambalabhji Karat* 1994 JIJ 762 (MP), AIR 1995 MP 140.

53 Ibid.

be considered as requiring the person resigning to write the resignation in his own hand. Such an interpretation will assume that the founding fathers of the Constitution were unaware that the majority of electors and a few of those elected would be illiterate and some of them may not be in a position to hold a pen in their hands and write anything or even put their signature.

'Sign', as indicated in s 3(56) of the General Clauses Act 1897, shall, with reference to a person who is unable to write his name, include 'mark'. An illiterate can sign by putting any mark. The phrase 'by writing under his hand' is used to indicate that the resignation (in question) cannot be oral and must be in writing and must be under his hand, i.e., it must be in his signature.⁵⁴

63. SECTION 3(66): 'YEAR'

A year calculated according to the *Samvat* calendar amongst Hindi-speaking parties should not be considered to mean a year according to the British calendar.⁵⁵ The applicability of the *Samvat* or the English calendar year depends upon the contract between the relevant parties.⁵⁶ The provisions of the General Clauses Act do not apply to cases where the probabilities are that the parties usually did not go by the Gregorian calendar,⁵⁷ for example, where the tenancy is according to the Bengali calendar.⁵⁸ The General Clauses Act is, as its name implies, subject to the particular context. 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.⁵⁹ 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 assessment year, and several other years, apart from the calendar year recognised for various purposes, in spite of the General Clauses Act.⁶⁰

The definition of 'year' was applied by the High Court of Patna⁶¹ with a view to entitle money lenders to exemption for the year 1950, envisaged under a notification issued under the Bihar Money Lenders Act 1938, and by

54 *Vikram Singh v Shri Ram Ballabhjikasat & Ors* AIR 1995 MP 140 (DB).

55 *Motiram v Lakhmichand* AIR 1924 Nag 216 (1).

56 *Rukmini Devi Kabra v Narendra Kumar Sukh Chand Sha* 1979 MPLJ 746, 1979 Jab LJ 735 (DB).

57 *Bhojraj v Shankaranath* AIR 1922 Nag 265; *Maruthi Subramanyam v Nivarthi Lakshmi* AIR 1949 Mad 415, (1948) 2 Mad LJ 523 (in matters relating to land in Madras Presidency, 'year' means revenue or agricultural year, unless otherwise contracted or otherwise intended in context).

58 *Indromoni Dasi v Snehalata Dutt* (1955) 59 Cal WN 1150, AIR 1955 NUC 5584 (Cal).

59 *Rukmini Devi Kabra v Narendra Kumar Sukh Chand Sha* 1979 MPLJ 746, 1979 Jab LJ 735, 737 (DB).

60 *Subrahmanyam v Lakshmi Narayanamma* AIR 1949 Mad 415; *Ghasiram v Hargobind* ILR 28 All 411.

61 *Chinnayya v Habibullah Khan* AIR 1955 NUC 4908 (Pat).

High Court of Rajasthan,⁶² under a decree of pre-emption, just as a convenience.

According to the complaint, the cheque was issued on 26 August 1996. It was presented on 12 December 1996. Notice of dishonour was issued on 30 December 1996, and the same was acknowledged on 31 December 1996. Complaint was filed on 14 February 1997. Even according to the petitioners the period of 15 days for notice ended on 4 January 1997, as such the period of limitation of one month would start from 15 January 1997 and would end on 14 February 1997. The complaint was filed on 14 February 1997. However, the notice period was felt to have come to an end on 15 January 1997 by considering that the period of one month would start from 16 January 1997, and therefore, the complaint would be within time even on 15 February 1997.

It was further held to be a well-settled principle that the 30-day period is different from a month. Section 3(66) and s 3(35) of the General Clauses Act defines 'year' and 'month' respectively and lays down that these two terms respectively mean a year and month reckoned according to the British calendar. Courts in India have taken the definition of 'month' as given in the *Halsbury's Laws of England*,⁶³ which would mean that if the period of limitation starts on, say 15th of a month, and the period of limitation is one month, then the period of limitation would end on 14th of the succeeding month.⁶⁴

Whether the *samvat* year or the English calendar year will apply to a particular case depends on the contract between the parties.⁶⁵

It has been held in *KM Patel v State of Gujarat*⁶⁶ that the word 'year', in the proviso to r 3 of the Gujarat (Services of Engineers Class II Recruitment) Rules, cannot be construed as a calendar year.

Section 4. Application of foregoing definitions to previous enactments—

(1) The definitions in s 3 of the following words and expressions, that is to say, 'affidavit', 'barrister', 'district judge', 'father', 'immovable property', 'imprisonment', 'magistrate', 'month', 'movable property', 'oath', 'person', 'section', 'son', 'swear', 'will', and 'year' apply also, unless there is anything repugnant in the subject or context, to all Central Acts made after the 3 January 1868, and to all Regulations made on or after the 14 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

62 *Kishanlal v Ibrahim* 1954 Raj LW 80, 82, AIR 1955 NUC 1061 (Raj) (DB).

63 Vol 37, third edn, para 143.

64 *PGM Spg Ltd & Ors v Andhra Pradesh State Financial Corpn and State* (1999) 3 Andh LT 600-02.

65 *Rukmani Devi Kabra v Narendra Kumar Sukh Chand Sha* 1979 MPLJ 746 (DB).

66 1982 Lab IC 106, 110 (Guj).

nuisance', 'registered', 'schedule', 'ship', 'sign', 'sub-section', and 'writing' apply also, unless there is anything repugnant in the subject or context, to all [Central Acts] and Regulations made on or after the fourteenth day of January 1887.

This section provides:

First, that the definitions given in s 3 of the following terms, namely—'affidavit' (s 3(3)); 'barrister' (s 3(4)); 'district judge' (s 3(17)); 'father' (s 3(20)); 'immovable property' (s 3(26)); 'imprisonment' (s 3(27)); 'magistrate' (s 3(32)); 'month' (s 3(35)); 'movable property' (s 3(36)); 'oath' (s 3(37)); 'person' (s 3(42)); 'section' (s 3(54)); 'son' (s 3(57)); 'swear' (s 3(62)); 'will' (s 3(64)); and 'year' (s 3(66)), shall, unless there is anything repugnant in the subject or context, apply to—

- (a) all Central Acts made after 3 January 1868; and
- (b) all regulations made on or after 14 January 1887;

Secondly, that the definitions given in s 3 of the following terms, namely—'abet' (section 3(1)); 'chapter' (s 3(9)); 'commencement' (s 3(13)); 'financial year' (s 3(21)); 'local authority' (s 3(31)); 'master' (s 3(33)); 'offence' (s 3(38)); 'part' (s 3(40)); 'public nuisance' (s 3(48)); 'registered' (s 3(49)); 'schedule' (s 3(52)); 'ship' (s 3(55)); 'sign' (s 3(56)); 'sub-section' (s 3(61)); and 'writing' (s 3(65)), shall apply, unless there is anything repugnant in the subject or context, to all central Acts and regulations made on or after 14 January 1887.

In *Ganga Prasad Chhoteram v Bijibai*,⁶⁷ the expressions 'year to year', 'month to month' and 'six months notice' in the Transfer of Property Act 1882, were construed according to the British calendar.

Where the question was whether imprisonment, as provided for in s 9 of the Opium Act 1878, should be simple or rigorous, it was held that since the Opium Act was passed in 1878, that is, after the 3 January 1868, s 4(1) of the General Clauses Act did apply to it and, in accordance with the definition given in s 3(27) of the General Clauses Act, the sentence of imprisonment under s 9 of the Opium Act could be rigorous or simple.⁶⁸

Section 4 has no application to expressions not defined therein. For example, it would not apply to the expression 'minister of state', but since the expression 'state' has been defined in s 3(58), the expression 'minister of state', with reference to the definition of 'state', in s 3(58), would include Chief Minister of Pondicherry for the purposes of s 133(1) of the Code of Civil Procedure.⁶⁹

67 1954 MBLJ (HCR) 70, 73, AIR 1955 NUC 69 (MB) (DB).

68 *State v Chauthmal* AIR 1960 Ori 139.

69 *Ramayammal v Muthammal* (1974) 2 Mad LJ 40, (1974) 87 Mad LW 407.

Section 4A. Application of Certain Definitions to Indian Laws—

(1) The definitions in section 3 of the expressions 'British India', 'central Act', 'Central Government', 'chief Controlling revenue authority', 'chief revenue authority', 'constitution', 'gazette', 'government', 'government securities', 'High Court', 'India', 'Indian law', 'Indian State', 'merged territories', 'Official Gazette', 'Part A state', 'Part B state', 'Part C state', 'provincial government', 'state' and 'state government' shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

(2) In any Indian law, references, by whatever form of words, to revenues of the Central Government or of any state government shall, on and from the first day of April 1950, be construed as references to the Consolidated Fund of India or the consolidated fund of the state, as the case may be.

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1. APPLICATION TO ALL INDIAN LAWS

Section 3 of this Act states that the definitions given thereunder shall apply, unless there is anything repugnant in the subject or context, to all central Acts, and regulations, meaning thereby that the definitions given under s 3 of the General Clauses Act have no application to the state Acts. Section 4A has merely grafted an exception to the above general statement, and provides that although the entire set of definitions contained in s 3 may not be applicable to the laws other than the central Acts and regulations, yet such of them as are enumerated in s 4A, shall have application to all Indian laws, provided, of course, there is nothing repugnant in the subject or context.

'Indian law', as defined in s 3(29) of the General Clauses Act, shall mean any Act, ordinance, regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any province of India or part thereof, and thereafter has the force of law in any Pt A state or Pt C state, or part thereof, but does not include any Act of Parliament of the United Kingdom or any order in council, rule or other instrument made under such Act.

Therefore, s 4A, says that the following definitions, shall, in the absence of anything in the subject or context, apply to all Indian laws, that is to say:

'British India' (s 3(5)); 'Central Act' (s 3(7)); 'Central Government' (s 3(8)); 'chief controlling revenue authority' (s 3(10)); 'chief revenue authority' (s 3(10)); 'Constitution' (s 3(15)); 'Official Gazette' (s 3(39)); 'government' (s 3(23)); 'government securities' (s 3(24)); 'High Court' (s 3(25)); 'India' (s 3(28)); 'Indian law' (s 3(29)); 'Indian state' (s 3(30)); 'merged territories' (s 3(34)); 'Official Gazette' (s 3(39)); 'Part A state', 'Part B state' and 'Part C state' (s 3(41)); 'provincial government' (s 3(47)); 'state' (s 3(58)); 'state government' (s 3(60)). The Madras House Rent Control Order 1945, was held to be an Indian law, so that the term 'government' as used in that order, meant the governor.⁷⁰ Although the notification of the Indian Laws Order 1937 should have been issued in the name of the Governor of Bombay instead of Government of Bombay, yet, if, in fact, the order was made by the governor, it cannot be said to have been vitiated merely because it appeared to have been made by the Government of Bombay.⁷¹

Section 4A 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.⁷²

The expression 'Central Government', in the context of s 40(1), Sch 9 of the Government of India Act 1935, meant Governor-General in Council.⁷³

Where para 5 of the Adaptation of Laws Order 1950,⁷⁴ provided that in any existing central or provincial laws, certain words shall be substituted for certain other words or that certain words shall be omitted, and the substitution or the omission, as the case might be, had been made wherever the words referred to had occurred in the concerned law or in any of its sections or portions, it was held that in making the substitution as enjoined, the expression 'provincial government' in the Bombay Act mentioned in the Kutch (Application of Laws) Order, is to be read as 'state government'; but

70 *Kandaswami Mudaliar v Province of Madras* AIR 1947 Mad 443; *Mahomed Yasin Nurie v SA Dange* AIR 1949 Bom 19, 22, 50 Bom LR 471.

71 *Mahomed Yasin Nurie v Shripat Amrit Dange* AIR 1949 Bom 19.

72 *Rampratap Jaideyal v Dominion of India* AIR 1953 Bom 170-71.

73 *Emperor v JK Gas Plant & Co Ltd* 49 Bom LR 352, AIR 1947 Bom 361, 48 Cr LJ 902.

74 *Gazette of India, Extraordinary*, dtd 26 January 1950, p 449.

even after the substitution of 'state government' for 'provincial government', it shall follow that the expression 'state government' be itself construed to mean only the Central Government, because, as the position had prevailed on 26 January 1950, the territory of Kutch was administered by the President of India through an administrator appointed under art 239 of the Constitution.⁷⁵

2. CONSOLIDATED FUNDS

Consolidated funds and public accounts of India and of the states have been provided for in art 266(1) of the Constitution of India, which states:

(1) Subject to the provisions of article 267 and to the provisions of this chapter⁷⁶ with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to states, all revenues received by the Government of India, all loans raised by that government by the issue of treasury bills, loans or ways and means advances and all moneys received by that government in repayment of loans shall form one consolidated fund to be entitled the 'Consolidated Fund of India', and all revenues received by the government of a state, all loans raised by that government by the issue of treasury bills, loans or ways and means advances and all moneys received by that government in repayment of loans shall form one consolidated fund to be entitled 'the Consolidated Fund of the State'.

As is obvious the above article is subject to art 267, which authorises the Parliament and the legislature of a state to establish, by law, for the Union or for the respective state, as the case may be, a contingency fund into which shall be paid from time to time such sums as may be determined by law, and the said fund shall be placed at the disposal of the President or the governor, as the case may be, to enable advances to be made by him out of such fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by law made by the Parliament or the state legislature as the case may be, under arts 115 and 116 in case of the Union and arts 205 and 206 in case of the states.

What sub-s (2) of s 4A provides is that, as from 1 April 1950, any reference expressed in an Indian law, in whatever form of words, to the revenues of the Central Government or of any state government, shall be construed as references to the consolidated fund of India or the consolidated fund of the state, as the case may be. This simply means that the government revenues shall be known and recognised by the nomenclature of the Consolidated Fund of India or the state, as the case may be.

⁷⁵ *Pragji Karamshi Salah of Bhuj v State of Kutch* AIR 1954 Kutch 42.

⁷⁶ Chapter 1 of Pt XII, consisting of arts 264-90A of the Constitution of India.