

THE ASSAM GENERAL CLAUSES ACT, 1915*

(Assam Act No. II of 1915)

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An Act for shortening the language used in Assam Acts, and for other purposes

Whereas it is expedient to provide for the interpretation of Assam Acts, for shortening the language used therein and for making certain other provisions relating to such Acts ;

It is hereby enacted as follows :

Preliminary

1. **Short title and commencement.** This Act may be called the Assam General Clauses Act, 1915.

NOTES

Section 1. The General Clauses Act of 1897 (the Central Act) was enacted with the object to place in one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. Whatever the General Clauses Act says, whether as regards the meaning of words or as regards legal principles, has to be read into every statute to which it applies. [*Chief Inspector of Mines v. Karam Chand Thapar*, AIR 1961 SC 838]. This Central Act is a consolidating and amending Act [*Nibarion Chandra v. Mahendranath*, AIR 1963 SC 1890]. This Act was enacted with the purpose to avoid superfluity and repetition of languages, and shorten language used in parliamentary legislation. This Act is not meant to give a hide-bound meaning to terms and phrases generally occurring in legislation. [*N. Subramania v. Official Receiver*, AIR 1958 SC 1]. This Act can apply for the interpretation of the Constitution as it applies for the interpretation of an Act. [*Ram Kishore v. Union of India*, AIR 1966 SC 644].

2. **Meaning of the word "Act".** In this Act, the word "Act" shall mean an Assam Act.

3. **Application of Act to other enactments.** The provisions of Ss. 4 to 31 shall apply to the Act, and shall apply, and shall be deemed always to have applied to all Acts made whether before or after the commencement of this Act.

4. **Definitions.** In all Act, unless there is anything repugnant in the subject or context—

NOTES

Section 4. The definitions in this section will apply only if there is nothing repugnant in the subject or context. [*Dulichand v. C. I. T.*, AIR 1956 SC 354 ; *Dandhanika Kedia and Co. v. C. I. T.*, AIR 1959 SC 219 ; *State of Punjab v. Mohar Singh*, AIR 1955 SC 84 ; *Indra Sohanlal v. Custodian*, AIR 1956 SC 77].

- (1) "abet" with its grammatical variations and cognate expressions shall have the same meaning as in the Indian Penal Code ;

NOTES

Clause (1). Section 103 of the Indian Penal Code deals with the definition of "abet". [For similar provisions see Cl. (1) of S. 3 of the Central Act].

- (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 shall extend also to illegal omissions ;

NOTES

Clause (2). For the definition of the word "illegal" see S. 43 of the Indian Penal Code.

In view of the provisions of this Act, the expression 'act' also includes illegal omissions [*Analgamated Electricity Company v. Ajmer Municipality*, AIR 1969 SC 227 ; see also *Public Prosecutor v. R. Raju*, AIR 1972 SC 2504].

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

NOTES

Clause 3. Affidavit attested by a judicial officer does not amount to an affidavit of the signatory. This definition is inclusive and not exhaustive and in such case the provision of Oaths Act will come into play [(1977) 1 SCC 102.]

- (4) [Deleted.]

- (5) "Assam Act" shall mean an Act made by the Chief Commissioner of Assam in Council under the Indian Councils Act, 1861 to 1909 or any of those Acts or under the Government of India Act, 1915, or by the Local Legislature of Assam under the Government of India Act, 1915, or by the Provincial Legislature or the Governor of Assam under the Government of India Act, 1935 or by the Legislature of the State of Assam under the Constitution ;

- (6) "Barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland ;

- (7) "Bengal Act" shall mean an Act made by the Lieutenant Governor of Bengal in Council under the Indian Councils Act, 1861, or the Indian Councils' Act, 1861 and 1892, or the Indian Council's Act, 1861, 1892 and 1909, or made by the Governor in Council of Fort William in Bengal under the Indian Council's Acts, 1861, 1892 and 1909, or by the local legislature of Bengal under the Government of India Act ;

- (8) [Deleted.]

- (9) "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 ;

- (10) "Chapter" shall mean a Chapter of the Act in which the word occurs ;

- (11) "Colony"—

- (a) in any Assam Act passed after the 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 Dominion as defined in the Statute of Westminster, 1931, any Province or State forming part of any of the said Dominions, and British Burma ; and
- (b) in any Assam 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 ;
- (12) "commencement", used with reference to an Act, shall mean the day on which the Act comes into force ;
- (13) "Commissioner", shall mean the Chief Officer in charge of the revenue administration of a division and shall include the Assam Revenue Tribunal while exercising jurisdiction heretofore exercised by a Commissioner in appeals and revision in Revenue cases ;
- (14) "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, or vice-consul or consul agent ;
- (15) "Deputy Commissioner" shall mean the chief officer-in-charge of the general administration of district.
- (16) "District Court" shall mean principal Civil Court of original jurisdiction ; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction ;
- (17) "District Judge" shall mean the Judge of a District Court ;

NOTES

In Manipur, Additional District Judge would come within the meaning of this clause. [AIR 1964 Manipur 35]. The question whether an Additional District Judge or an Additional Judge is a Judge of the District Court and extent of his powers of a District Judge shall depend upon Civil Courts Rules etc. in force in different States. [Kuldip Singh v. The State of Punjab, AIR 1956 SC 391].

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- (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 ;

NOTES

Clause 18. The word "document" does not include Indian Currency. A plain reading of the clause shall refute such a contention. [Kri shnan

Sukumaram v. Enforcement Officer, AIR 1968 Kerala 208]. But in another case [AIR 1962 Tripura 50] it was held that the definition of document includes foreign currency.

- (19) "Eastern Bengal and Assam" shall mean the territories which were under the Administration of the Lieutenant-Governor of Eastern Bengal and Assam immediately prior to the Constitution of the Chief Commissionership of Assam in 1912 ;
- (20) "Eastern Bengal and Assam Act" shall mean an Act made by the Lieutenant-Governor of Eastern Bengal and Assam in Council under the Indian Councils Acts, 1861 to 1909 ;
- (21) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal Code, and shall also include any provision contained in any enactment or in any such Regulation as aforesaid ;

NOTES

Clause 21. The definition of enactment in this clause is inclusive and not exhaustive, therefore, the matter is not concluded merely by that fact that an "Ordinance" is not included in this definition. [*Haroobhai v. State*, AIR 1967 Guj 229].

- (22) "father" in the case of any one whose personal law permits adoptions shall include an adoptive father ;
- (23) "financial year" shall mean the year commencing on first day of April ;
- (24) [*Deleted*].
- (25) 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 ;

NOTES

Clause 25. Section 25 of the Indian Penal Code and S. 2(h) of the Limitation Act, also define "good faith", but both these definitions are at variance with the definition given under this clause. Under the definition in this clause stress is given on one aspect of honesty only irrespective of negligence, but in the Indian Penal Code both the aspects—honesty and negligence have been taken into consideration. The definition given in the Limitation Act is identical with the one given in the Penal Code. [See AIR 1956 Orissa 124 and AIR 1969 Bom 127]. It was held in the case of *N. Subramania v. Official Receiver*, [AIR 1958 SC 1], that the definition of "good faith" in the Indian General Clauses Act would have been applicable to the Indian Limitation Act also but the legislature in its wisdom has given a special definition of "good faith" different from the one in the Indian General Clauses Act—so is the case of the Indian Penal Code. It cannot be said that the definition of "good faith" as given in the 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. [See also *Harbhajan Singh v. State of Punjab*, AIR 1966 SC 97 ; also AIR 1966 SC 1260] But the definition of "good faith" given in the Factories Act (S. 117) is similar to the one given in the General Clauses Act.

[See also S. 22 of the Industrial Disputes Act]. For an action to amount *mala fide* something more than negligence is necessary, so as to impose liability on the actor, [AIR 1975 SC 529].

- (26) "Government" or "the Government" shall include the State Government as well as the Central Government ;

NOTES

Clause 26. The term "President" cannot be divorced from the expression "Government of India" occurring in Art. 77 of the Constitution. [Chattar Singh v. The Union of India, AIR 1967 Raj 194].

- (27) [Deleted].

- (28) "High Court" shall mean the High Court of Judicature at Fort William in Bengal ;

- (29) [Deleted].

- (30) "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 ;

NOTES

Clause 30. The word "immovable" as used in this Act would connote all that would be "real" property according to the English law and possibly more. "Standing crops" are immovable property [AIR 1935 Mad 134] and "trees" would also be included in the definition [AIR 1927 All 254]. The Supreme Court in the case of *Smt. Shantabai v. State of Bombay*, [AIR 1958 SC 532] held that "Trees" are regarded as immovable property because they are attached to or rooted in the earth. Section 2 (6) of the Registration Act expressly says so and though the Transfer of Property Act does not specifically define "immovable property, because of this clause of the General Clauses Act, trees would be treated as "immovable property". The Supreme Court in another case [*Mahadeo v. State of Bombay*, AIR 1959 SC 735] held that the 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. The Supreme Court in the case of *Anand Behara v. State of Orissa*, [AIR 1956 SC 171] held that the sale of a right to catch and carry away fish in specific portion of the lake, is regarded as a benefit that arises out of the land. [See also AIR 1971 SC 2097]. The right to receive rent for the occupation of the land is the right of benefits arising out of the land. [AIR 1952 Orissa 116 ; See also AIR 1936 PC 230]. Machinery if it is affixed to the soil can be immovable property. [AIR 1938 All 574].

The structure which is permanently fixed to the land is immovable property for the purpose of Pre-emption Act [AIR 1959 J and K 32]. Structure of a building, building, doors of a house, bamboos are all immovable property.

Insurance Policy is a moveable property. [*Bulchand Candiram v. Bank of India*, AIR 1968 SC 1475].

Interest of a partner in partnership assets even consisting of lands is a moveable property. [*Addanki Narayanappa v. Bhaskara*, AIR 1966 SC 1300].

- (31) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code ;

NOTES

Clause 31. Under this clause the word 'imprisonment' means imprisonment of either description as defined in the Penal Code.

- (32) [Deleted].

- (33) "Judicial proceedings" shall mean any proceeding in the course of which evidence is, or may be, legally taken ;

- (34) "local authority" shall mean a body of Municipal or Station Commissioners, Local Board, or any other authority entrusted by the Government with, or legally entitled to, the control or management of a municipal or local fund ;

NOTES

Clause 34. The State Transport Corporation is not a local authority. [*Valjibhai v. The State of Bombay*, AIR 1963 SC 1890]. State Electricity Board, group of villagers and State Housing Board are also not "local authority".

- (35) "Local Administration" shall mean the Provincial Government ;

- (36) [Deleted].

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

NOTES

Clause 37. The definition of "Magistrate" in this Act is not confined to Magistrates exercising jurisdiction under the Code of Criminal Procedure ; it merely includes them.

- (38) "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 ;

- (39) "month" shall mean a month reckoned according to the British calendar.

NOTES

Clause 39. Month means English Calendar month. [AIR 1961 Tripura 16 and also see AIR 1962 Orissa 149].

- (40) "movable property" shall mean property of every description except immovable property ;

- (41) "notification" shall mean a notification in the official Gazette ;

- (42) "oath" shall include affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing ;

NOTES

Clause 42. "Oath" includes affirmation and as such under S. 145 of the Code of Criminal Procedure affidavits from a very important piece of evidence for arriving at a finding of possession.

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

NOTES

Clause 43. The word "made" used in this clause is very significant because it carries the implication that some authority empowered to do so has laid down the law. [AIR 1954 All 319].

- (44) "part" shall mean a part of the Act in which the word occurs ;
(45) "person" shall include any company or association or body of individuals, whether incorporated or not ;

NOTES

Clause 45. An association of persons is normally one in which two or more persons join in a common purpose or common action. There is no formula of universal application but must depend upon particular facts and circumstances. A Municipality [AIR 1937 Bom 417 ; AIR 1969 All 1] ; Hindu diety [AIR 1969 SC 1089] ; a limited company, Managing Committee of a school [AIR 1969 Orissa 30] ; Company registered under the Companies Act [AIR 1956 Cal 137] all come within the definition of "person", but to import this definition into S. 4 of the Partnership Act, will be totally repugnant to the subject of partnership law because the meaning of the word "person" in the Partnership Act is controlled by the context. [AIR 1956 SC 35].

- (46) "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) any officer appointed to exercise all or any of the powers of a Political Agent for any place not forming part of India under the law for the time being in force relating to foreign jurisdiction ;

- (47) [Deleted].

- (48) [Deleted].

- (49) "public" includes any class of the public or any community ;

- (50) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code ;

- (51) "registered" used with reference to a document, shall mean registered in [a Part A State or a Part C State] under the law for the time being in force for the registration of document ;

- (52) "Regulation" shall mean a regulation made by the Governor under the Sixth Schedule to the Constitution or under the Government of India Act, 1935, and shall include a regulation as defined in S 3 (50) of the General Clauses Act, 1897 ;
- (53) "rule" shall mean a rule made in exercise of a power conferred by any enactment and shall include a regulation made as a rule under any enactment ;
- (54) "Schedule" shall mean a Schedule to the Act, in which the word occurs ;
- (55) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 ;
- (56) "section" shall mean a section of the Act in which the word occurs ;
- (57) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars ;
- (58) "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 ;

NOTES

Clause 58. Where a person authorises another to sign for him, the signature of the person so signing is the signature of the person authorising him. [AIR 1976 Pat 234]

In this section Cls. 4, 29 and 47 were omitted by Adaptation of Laws Order, 1950 ; Cls 8, 24, 27, 32, 36 and 48 were omitted by A. O. Order 1937.

Clauses 11, 46 and 52 were substituted and Cl. 47 amended *vide* Adaptation of Laws (Third Amendment) Order, 1951.

- (59) "son" in the case of any one whose personal law permits adoption, shall include an adopted son ;
- (60) "sub-section" shall mean a sub-section of the section in which the word occurs ;
- (61) "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 ;
- (62) "vessel" shall include any ship or boat or any other description of vessel used in navigation ;
- (63) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property ;
- (64) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form ; and
- (65) "year" shall mean a year reckoned according to the British calendar.

General Rules of Construction—Sections 5 and 6

5. General rules of construction. (1) Where any Assam Act is not expressed to come into operation on a particular day, then—

- (i) in the case of an Assam Act made before the commencement of the Constitution, it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor-General or His Majesty, as the case may require, is first published in the official Gazette, and if it is an Act of the Governor on the day on which it is first published as an Act in the official Gazette ; and
- (ii) in the case of an Assam Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the official Gazette.

(2) Unless the contrary is expressed, an Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

NOTES

Section 5. Sub-section (1) of this section was substituted by the Adaptation of Laws (Third Amendment) Order, 1951.

6. Effect of repeal. Where any Act repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect ; or
- (b) alter the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed ; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act had not been passed.

NOTES

Section 6. Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law. A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether

pending at the time of enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right. To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. Later on, to dispense with the necessity of having to insert a saving clause on each occasion, S. 38 (2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act has not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as S. 38 (2) of the Interpretation Act of England. [*State of Punjab v. Mohar Singh*, AIR 1955 SC 84; *The Commissioner of Income-tax v. Godavari*, AIR 1967 SC 556. See also *Qudrat Ullah v. Municipal Board*, AIR 1974 SC 396] This section applies even to partial repeal. [*Elmabaruppa v. C. P. T. Officer*, AIR 1965 SC 1540]. The law does not favour repeal by implication [AIR 1964 SC 1284; AIR 1966 SC 1780; AIR 1963 SC 1561]; nor any such inference can be made [AIR 1970 SC 403]. This section has no application when a statute which is of a temporary nature automatically expires by efflux of time [AIR 1955 SC 84; AIR 1959 SC 609; AIR 1962 SC 945]. A repeal effected by a temporary legislation is only a temporary repeal [AIR 1962 SC 1281]. A pending action will not be *prima facie* affected, which is to be decided as if the repealed enactment was still in force [AIR 1970 SC 1636; see also AIR 1976 SC 958]. This section will have no application if the law has a retrospective operation [AIR 1961 SC 1026]. Under this section the repeal of any Act will not affect any right or liability acquired or incurred under the repealed enactment. [AIR 1967 SC 1541]. A vested right under the old Code is saved by this section if replaced by the new Code. [AIR 1969 SC 1225]. This section is similar to S. 6 of the Central Act.

7. Revival of repealed enactments In any Act it shall be necessary for the purpose of reviving either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

NOTES

Section 7. Under the English Common Law when a repealing enactment was repealed by another statute the repeal of the second Act revived the former Act '*ab initio*', but under this section if an Act repealing a former Act is itself repealed, the last repeal does not revive the Act before repealed unless words are added reviving it. [*Ameer-un-Nessa v. Mahboob Begum*, AIR 1955 SC 352].

Where the repealing Act was struck down as void and constitution from its inception, it could not have the effect as if it had repealed the previous Acts [AIR 1974 SC 1480].

(This section is similar to S. 7 of the Central Act.)

8. Construction of references to repealed enactments. Where any Act repeals and re-enacts with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall unless a different intention appears, be construed as references to the provisions so re-enacted.

NOTES

Where there is no repeal or re-enactment this section will not apply. [AIR 1976 HP 6].

Under sub-S (1) of this section where any Act repeals and re-enacts with or without modification, any provision of a former enactment then references in any such enactment or in any instrument to the provisions so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted. [*N. C. J. Mills & Co. v. The Asstt. Collector of Central Excise*, AIR 1971 SC 454. See also AIR 1966 SC 1995]. The word "instrument" as used in this section includes any order of President as envisaged under Act 359 (1) of the Constitution. [AIR 1964 SC 173].

The Supreme Court in the case of *State of U. P. v. M. P. Singh*, [AIR 1960 SC 569] observed that the reference in the definition by which clerical and other establishments of factories are included is to the Factories Act of 1934, but, by virtue of this section, it must be construed as a reference to the provisions of the Factories Act of 1948, which repealed the Factories Act of 1934 and re-enacted it. (This section is similar to S. 8 of the Central Act).

9. Commencement and termination of time. In any Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

NOTES

Section 9. Where an act is to be done within a specified time *i. e.*, a certain date, the day of that date is to be excluded. [AIR 1972 SC 1293]. (This section is similar to S. 9 of the Central Act).

10. Computation of time. Where, by any Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1908, applies.

NOTES

The object of this section is to enable a person to do what he could have done on a holiday, on the next working day. [AIR 1957 SC 271]. Even if S. 4 of the Limitation Act does not apply, S. 10 of General Clauses Act will certainly apply to election petitions to be filed under the Representation of Peoples Act. [AIR 1974 SC 480].

11. Measurement of distance. In the measurement of any distance, for the purpose of any Act, that distance shall unless a different intention appears, be measured in a straight line on a horizontal plane.

12. **Duty to be taken pro rata in enactment** Where, by any act, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

13. **Gender and number.** In all Acts, unless there is anything repugnant in the subject or context—

- (1) words importing the masculine gender shall be taken to include females ; and
- (2) words in the singular shall include the plural, and *vice-versa*.

NOTES

Section 13. This section only enacts a rule of construction which will apply "unless there is anything repugnant in the subject or context". [AIR 1959 SC 219]. The word "insurer" as provided under the provisions of the Insurance Act, includes person who has closed his business [AIR 1960 SC 971].

14. **Application of Acts.** Unless and until extended under the Scheduled Districts Act, 1874 or otherwise, no Act in the absence of special provisions to the contrary, shall come into force in the districts of the Garo Hills, the Khasi and Jaintia Hills, the Naga Hills and the Lushai Hills, the North Cachar Sub-division of the Cachar District, the Mikir Hills Tracts in the Nowgong and Sibsagar Districts, the Lakhipur Frontier Tract and the Central Eastern and Western sections of the North-East Frontier.

NOTES

Section 14. This section was omitted by Adaptation of Laws (Third Amendment) Order, 1951.

General rules of construction—Powers and functionaries—Sections 15-21

Powers and functionaries

15. **When powers and duties to be exercised and performed.** Where an Act confers a power or imposes a duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires.

NOTES

Section 15. By virtue of this section the competent authority will have power to fix sites for Khuti from time to time according to the need of the situation. [AIR 1953 Assam 168] This section deals with the exercise of powers successively and has no relevance to the question as to whether the power claimed can be conferred at all. [AIR 1963 SC 1198]. (This section is similar to S. 14 of the Central Act).

16. **Exercise of power and performance of duty by temporary holder of office.** Where an Act confers a power or imposes a duty on the holder of an office, as such, then the power may be exercised and the duty shall be performed by the holder for the time being of the office.

17 Power to appoint to include power to appoint ex-officio. Where by an Act, a power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided any such appointment may be made either by name or by virtue of office.

NOTES

Section 17. Appointment can be made by virtue of office. [AIR 1968 SC 432. See also AIR 1964 Tripura 9].

(This section is similar to S. 15 of the Central Act).

18. Power to appoint to include power to suspend or dismiss. Where, by any act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

NOTES

Section 18. Resulting from this section which by virtue of Art. 367 (1) of the Constitution applied to the Construction of the word, "appointment" in Art. 229 (1) thereof which vests the power of appointment in the Chief Justice and is equally effective to vest in him the power of dismissal. [AIR 1956 SC 285]. This section confers a general power upon an appointing authority to order suspension. [AIR 1964 SC 72; AIR 1959 Cal 294; AIR 1966 SC 334]. In a case where the Assistant Secretary has to appoint teachers on advice of Board, he is still appointing authority and can therefore dismiss those appointed by him [AIR 1965 Assam 101 reversed in AIR 1967 SC 459]. It is now well settled rule of interpretation that a power to appoint ordinarily implies a power to determine the employment. [AIR 1975 SC 641].

(This section is similar to S. 16 of the Central Act).

19. Substitution of functionaries. In any Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official rule of the officer at present executing the functions or that of the officer by whom the functions are commonly executed.

20. Successors. In any Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Provisions as to orders, rules, etc made under enactments—Sections 21-24

21. Official Chiefs and Subordinate. In any Act, it shall be sufficient, for the purpose of expressing that a law relating to chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

22. Construction of orders, etc issued under enactments. Where by any Act, a power to make or issue any notification, order, scheme, rule, forms or bye-laws is conferred, then expressions used in the notification, order, scheme,

rule, form, or bye-law, shall unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act, conferring the power.

23. Power to make to include power add to, to amend, vary or rescind orders, rules or bye-laws. Where, by any Act, a power to make or issue notifications, orders, schemes, rules, forms, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notification, orders, schemes, rules, forms or bye-laws so made.

NOTES

Section 23. This section is similar to S. 21 of the Central Act. There is nothing in Art. 370 of the Constitution which would exclude the applicability of this section when interpreting the power granted by that Article. [AIR 1970 SC 1118]. The orders mentioned in this section are not orders of the kind contemplated in S. 5 of the Citizenship Act. [AIR 1967 SC 107]. The power to alter the date of poll in exercise of the powers under this section is valid. [AIR 1974 SC 1218. See also AIR 1976 SC 714 ; also AIR 1976 Delhi 168].

24. Making of rules or bye-laws and issuing of orders, between passing and commencement of enactments. Where, by any Act, which is not to come into operation on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where or the manner in which, or the fees for which, anything is to be done under the Act, then that power may be exercised at any time after the passing thereof but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act.

Provisions as to orders, rules, etc. made under enactments—Sections 25-28

25. Provisions applicable to making of rules or bye-laws after previous publication. Where, by any Act, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions apply, namely :

- (1) the authority having power to make the rules or bye-laws shall, before making them publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby ;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes ;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration ;
- (4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified ;

- (5) the publication in the official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

26. Continuation of orders etc., issued under enactments repealed and re-enacted. Where any enactment is repealed and re-enacted with or without modification, then unless it is otherwise expressly provided, any appointment notification, order, scheme, rule, form, or bye-law, made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form, bye-law made or issued under the provisions so re-enacted.

NOTES

Section 26. This section deals with the continuance of orders, schemes, rules, forms or bye-laws made or issued under the repealed Act. (AIR 1959 SC 648 ; AIR 1960 SC 794).

(This section is similar to S. 24 of the Central Act).

Provisions as to Orders, Rules, etc made under enactments—Miscellaneous Sections 27—31

27. Publication of orders and notifications in the official Gazette. Where in any enactment or in any rule made under any enactment, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the enactment otherwise provides, be deemed to be duly made if it is published in the Official Gazette.

Miscellaneous

28. Recovery of fines. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, or any rule or bye-laws made under any Act, unless the Act, rule or bye-law contains an express provision to the contrary.

29. Provision as to offences punishable under two or more enactments. Where an act or omission constitutes an offence under two or more enactments, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

NOTES

Section 29. This section is no bar to trial or conviction but bar to duplicate punishment. (AIR 1969 SC 701). If applied only when both complaints relate to same offence. (AIR 1961 SC 578).

(This section is similar to S. 26 of the Central Act).

30. Meaning of "service by post". Where any Act authorises or requires any document to be served by post, whether the expression "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document,

and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

NOTES

Section 30. Where a notice sent by registered post was received back with an endorsement "refused" presumption of such a notice can also be made under this section. (AIR 1976 All. 515; AIR 1970 All. 446 relied upon). Notice under certificate of posting also sufficient. (AIR 1976 Cal. 478).

(This section is similar to S. 27 of the Central Act).

31. Citation of enactments. (1) In any Act and in any rule, bye-law, instrument or document, made under, or with reference to, any such Act, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in any enactment may be cited by reference to the section or subsection of the enactment in which the provision is contained.

(2) In any Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

32. Saving of previous enactments, rules and bye-laws. Where any Act, rule or bye-law made after the commencement of this Act continues or amends any Bengal Act which is in force in Assam or any rule or bye-law made thereunder before the commencement of this Act, the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such Bengal Act.

33. Application of Act to ordinances and Regulations. The provisions of this Act shall apply :

- (a) in relation to any Ordinance promulgated by the Governor under S. 88 or S. 89 of the Government of India Act, 1935, as they apply in relation to Assam Acts made under the said Act, by the Governor, and in relation to any regulation made by the Governor under S. 92 of the said Act as they apply in relation to Assam Acts made by the Provincial Legislature ; and
- (b) in relation to any Ordinance promulgated by the Governor under Art. 213 of the Constitution or any Regulation made by the Governor under the Sixth Schedule to the Constitution, as they apply in relation to Assam Acts made by the State Legislature :

Provided that Cl. (ii) of sub-S. (1) of S. 5 of this Act shall apply to any Ordinance referred to in Cl. (b) as if for the reference in the said Cl. (ii) to the day of the first publication of the assent to an Act in the Official Gazette there were substituted a reference to the day of the first publication of the Ordinance in that Gazette.

NOTES

Section 33. This section was substituted by the Adaptation of Laws (Third Amendment) Order, 1951.

(This section is similar to S. 30 of the Central Act).