

General Clauses Act 1897 s 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;

(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;

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**(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 means 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 subsection; 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**

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**(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 a 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 the Lieutenant Governor or the 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 the Act or Regulation in which the word occurs;**

**(10) “Chief Controlling Revenue Authority” or “Chief Revenue Authority” shall mean—**

**(a) in a State where there is a Board of Revenue, that Board;**

**(b) in a State where there is a Revenue Commissioner, that Commissioner;**

**(c) in Punjab, the Financial Commissioner; and**

**(d) elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the**

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Constitution, the Central Government, and in relation to other matters, the State Government, may by notification in the Official Gazette, appoint;

Collector

(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;

SYNOPSIS

- Distinction between collector & commissioner

Distinction between collector & commissioner

The term ‘collector’ shall mean chief officer-in-charge of the revenue-administration of a district [Section 3(11) of the General Clauses Act 1897]; whereas the term ‘commissioner’ shall mean the chief officer-in-charge of the revenue administration of a division [Section 3(14) of the General Clauses Act 1897].

Clause 12: Colony

(12) “Colony”—

(a) in any Central 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 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

(b) in any Central Act passed before the commencement of Part III of the said Act, mean any part of His Majesty’s

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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.

Commencement

(13) “Commencement” used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force;

Commissioner

(14) “Commissioner” shall mean the chief officer-in-charge of the revenue administration of a division;

Constitution

(15) “Constitution” shall mean the Constitution of India;

Consular officer

(16) “Consular officer” shall include consul-general, consul, vice-consul, consular agent, proconsul and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent;

District Judge

(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;

SYNOPSIS

- Distinction between district judge and session judge

Distinction between district judge and session judge

Section 3(17) defines district judge 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.

Document

(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;

SYNOPSIS

- Document, sign and registration

Document, sign and registration

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 [Section 3(18)]. 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 [Section 3(56)]. 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 [Section 3(49)].

Enactment

(19) “enactment” shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or

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**Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;**

## **Father**

**(20)** “father”, in the case of any one whose personal law permits adoption, shall include an adoptive father;

## **Financial year**

**(21)** “financial year” shall mean the year commencing on the first day of April;

## **Clause 22: Good faith**

**(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;

## SYNOPSIS

Careless v dishonest

## **Careless v dishonest**

IPC Sec 52 and Limitation Act 1963 Sec 2(h) also define “good faith”. Within the definition under these statutes, absence of “due care and attention” is destructive of good faith; whereas, as defined in the General Clauses Act “good faith” may exist in spite of negligence.<sup>1</sup> The latter definition is thus equitable and more reasonable and recognizes as good law, what is after all good sense, that “a careless man is not dishonest man and no amount of argument will prove that he is one”<sup>2</sup>. But when a

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<sup>1</sup> N Subramania Iyar v Official Receiver, AIR 1958 SC 1 cited in Singh 2021 p 802

<sup>2</sup> Winfield, Text Book of Law of Tort, 7th Edn, p 559 proposition deduced from Derry v Peek, (1889) 14 AC 337 cited in Singh 2021 p 803

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person is aware of possible harm and acts in spite of it, his action is reckless and in the eye of law mala fide.^{^3}

Government

(23) “Government” or “the Government” shall include both the Central Government and any State Government;

NOTES

Distinction between central government and state government

As per section 3(23) government includes both the Central Government and any State Government. The Central Government means the President and include inter alia the administrator of a union territory [Section 3(8)]; whereas the State Government means the governor [Section 3(60)].

Government securities

(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;

High Court

(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;

³ Municipality of Bhiwandi and Nizampur v Kailash sizing Works SCC 1974 (2) 596 cited in Singh 2021 p 803


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## Immovable property

**(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;**

### SYNOPSIS

Meaning of immovable property

Standing timber and right to fell

Right to pick and carry away tendu leave

Right to catch and carry away fish

Right to extract minerals

Right to hold bazaar

Right to future rents of land

Plant and machinery fixed to earth

Fixture

Office of *shebait*

Examples of movable property

Lottery ticket

REP license and Duty entitlement

## Meaning of immovable property

The term immovable property has been defined in several statutes. As per Transfer of Property Act 1882 s 3:

“Immovable property does not include standing timber, growing crops or grass”.

Again, as per Registration Act 1908 s 2(6):

“Immovable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any benefit to arise of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass.”

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Contrasting immovable property with goods, one may observe the definition of goods in Sale of Goods Act 1930 s 2(7):

“Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale.

In the foregoing definition of “goods” one may observe that, **marketability** is essential for an article to become goods.⁴

Attached to earth has also been defined in Transfer of Property Act 1882 s 3:

“Attached to the earth means—(a) rooted in earth as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls and buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.”

The above definitions actually do not define as to what is immovable property but only state what is included or not included therein.⁵ Analyzing these definitions it was said by the apex court:

“One thing is clear, 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’, ‘growing crop’ and ‘grass’ though rooted in the earth are not included. Of these ‘growing crop’ and ‘grass’ form the subject-matter of 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

⁴ RD Saxena v Balaram Prasad (2000) 7 SCC 264 cited in Singh 2021 p 804

⁵ Moolla Sons v Official Assignee, Rangoon, AIR 1936 PC 230 cited in Singh 2021 p 804

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 condition about severing mentioned there in the definition of  
 ‘goods’ exists.”<sup>6</sup>

### **Standing timber and right to fell**

Standing timber is tree in a state fit for building purposes, which 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. In case of “standing timber” as it is to be felled at a reasonably early date, the amount of nourishment that it takes is so negligible that it can be ignored. Said as follows:

“Standing timber are trees fit for use for buildings or repairing houses. This is an exception to the general rule that growing trees are immovable property.

Trees and shrubs may be sold apart from the land, to be cut and removed as wood and in that case they are moveable property. But if the transfer includes the right to fell the trees for a term of years so that the transferee derives a benefit from further growth, the transfer is treated as one of immovable property. <sup>7</sup>

So, a right to enter on land and to fell and remove trees for a term of years was immovable property.

### **Right to pick and carry away tendu leave**

A short-term contract giving the grantees a right to pick and carry away tendu leaves and appropriate them as their own property was held by the Privy Council as not conveying any interest in land or trees.<sup>8</sup> Such a contract will amount to a licence.<sup>9</sup>

Where the agreements conveyed more than the tendu leaves to the grantees such as forest produce like timber, bambur, etc. the

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<sup>6</sup> Mahadeo v State of Bombay, AIR 1959 SC 735 cited in Singh 2021 p 804

<sup>7</sup> Shantabai v State of Bombay, AIR 1958 SC 532 cited in Singh 2021 p 804

<sup>8</sup> Mohanlal Hargovind v CIT, AIR 1949 PC 311 cited in Singh 2021 p 805

<sup>9</sup> Board of Revenue v AM Ansari, (1976) 3 SCC 512 cited in Singh 2021 p 805

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soil for making bricks, the right to prune, coppice and burn tendu trees and the right to build on and occupy land for the purpose of the business of the grantees and the rights were spread over for a number of years, it was held that the agreements were not contracts for sale of “goods” but were grants of proprietary rights. ^{^10}

Right to catch and carry away fish

A *profit a prendre* (profit to be taken, right to take something from another person's land) is regarded in India as a benefit that arises out of land and is, therefore, classed as immovable property. A right to catch and carry away fish in specific portions of a lake over a specified future period was thus held to be immovable property. ^{^11}

Right to extract minerals

A right to carry on mineral operations and to extract a specified mineral is immovable property. ^{^12}

Right to hold bazaar

Right to hold bazaar is integral to immovable property. ^{^13}

Right to future rents of land

A right in respect of future rents payable in respect of land is a benefit to arise out of land and is immovable property and so is a right in respect of future market dues. ^{^14} Interest of a beneficiary in future rents and profits of land vested in trustees is also

¹⁰ Mahadeo v State of Bombay, AIR 1959 SC 735 cited in Singh 2021 p 804

¹¹ Anand Behera v State of Orissa, AIR 1956 SC 17 cited in Singh 2021 p 805

¹² Tarkeshwar Sio Thakur ju v Bar Dass Dey & Co, (1979) 3 SCC 106 cited in Singh 2021 p 805

¹³ Ms. Bibi Sayeeda v State of Bihar, (1996) 9 SCC 516 cited in Singh 2021 p 805

¹⁴ Manglaswami v Subba Pillai, (1910) ILR 34 Mad 64 cited in Singh 2021 p 805

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 immovable property.<sup>15</sup> But arrears or rent or arrears of market dues are benefits that have already arisen out of land, and are, therefore, outside the definition of immovable property.

### **Plant and machinery fixed to earth**

Just because a plant and machinery are fixed in the earth for better functioning, they do not automatically become immovable property.<sup>16</sup> The question, however, whether a machinery embedded in the earth is movable or immovable property will depend on the facts of each case and intention of the parties.<sup>17</sup> Thus, it has been held that installation or erection of turbo alternator on platform constructed on land would be immovable property and cannot be “excisable goods” for it has neither mobility nor marketability as understood in the excise law.<sup>18</sup> Similarly, erection and installation of mud guns and tap hole-drilling machines on a specially made concrete platform, brought into existence not excisable goods but an immovable property which could not be shifted without first dismantling and then recreating it at another site.<sup>19</sup>

### **Fixture**

In deciding as to when a chattel because of being imbedded in earth or being attached to a thing which is so imbedded becomes immovable property, the courts in India have generally applied the same principles as those which determine what constitutes a

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<sup>15</sup> Moolla Sons v Official Assignee, Rangoon, AIR 1936 PC 230 cited in Singh 2021 p 805

<sup>16</sup> Sirpur Paper Mills Ltd v Collector of Central Excise, (1998) 1 SCC 400 cited in Singh 2021 p 805

<sup>17</sup> Duncans Industries Ltd v State of Uttar Pradesh, (2000) 1 SCC 633 cited in Singh 2021 p 805

<sup>18</sup> Triveni Engineering and Industries Ltd v Commissioner of Central Excise, (2000) 7 SCC 29 cited in Singh 2021 p 805

<sup>19</sup> TTG Industries Ltd Madras v Collector of Central Excise Raipur, (2004) 4 SCC 751 cited in Singh 2021 p 806

“fixture” under the English Law; the mode of annexation and the object of annexation are the factors to be taken into account, but the latter is regarded more controlling than the former.<sup>20</sup>

### Office of *shebait*

Office of *shebait*<sup>21</sup> being a combination of office and property is immovable property.<sup>22</sup>

### Examples of movable property

The **interest of a partner in partnership assets** consisting also of lands and buildings is not immovable but movable property.<sup>23</sup>

**Insurance policy** is movable property.<sup>24</sup>

**Electricity** is ‘goods’ as defined in Article 366 (12) of the Constitution and is moveable property, although it cannot be stored.<sup>25</sup>

**Telephone connection** and all accessories which give access to telephone exchange are “goods”.<sup>26</sup>

**Canned software**<sup>27</sup> has been held to be “goods” and its sale liable to sales tax under the Andhra Pradesh Sales Tax Act.<sup>28</sup>

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<sup>20</sup> Singh 2021 p 806

<sup>21</sup> A shebait is a person who manages a deity's property, also known as debuttar property, and ensures the property fulfills its purpose. The term comes from the word sewa, which means "service", and a shebait literally serves the deity or idol.

<sup>22</sup> Ram Rattan v Bajranglal, AIR 1978 SC 1393 cited in Singh 2021 p 806

<sup>23</sup> Addanki Narayanappa v Bhaskara Krishnappa, AIR 1966 SC 1300 cited in Singh 2021 p 806

<sup>24</sup> Bulchand Chandiram v Bank of India Ltd, AIR 1968 SC 1475 cited in Singh 2021 p 806

<sup>25</sup> State of Andhra Pradesh v National Thermal Corp Ltd, (2002) 5 SCC 203 cited in Singh 2021 p 806

<sup>26</sup> State of Uttar Pradesh v National Thermal Corp Ltd, (2002) 5 SCC 203 cited in Singh 2021 p 806

<sup>27</sup> Canned software is pre-written computer software that is designed for a large number of people and distributed "as is". It is also known as commercial off-the-shelf (COTS) software, boxed software, or packaged software. Canned software is often specialized for a specific industry vertical and can be used for general or repeated use or sale.

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Shares in a company before allotment are not goods.²⁹

Shares in a co-operative society giving a right to occupy specific premises in a building are immovable property and their transfer amount to sale of immovable property.³⁰

Lottery tickets

Lottery tickets are movable property and sale of lottery tickets is sale of goods attracting sales-tax.³¹

In *H Anraj v Government of Tamil Naidu*, the reason what the sale of lottery ticket confers of the purchaser two rights (a) the right to participate in the draw and (b) the right to claim a prize contingent on the purchaser being successful in the draw. Both were hold to be beneficial interest in the moveable property, the first in presenti and the letter in future and therefore the sale of lottery ticket so far as the right was concerned was held to be sale of goods where as to the extent it was the sale of second right it was the sale of actionable claim and not of goods.

In *Sunrise Associates v Government of NCT Delhi*, [*Sunrise Associate v Government of NCT Delhi*, (1996) 5 SCC 603] where *Anraj* was overruled it was held that the right to participate in the draw in the part of the composite right of the change to win and its inseparable part and the two cannot be separated as was done in *Anraj*. There is no value in the mere right to participate and the consideration is paid for right to win and the two rights are inseparable. The sale of lottery ticket is, therefore, a sale of actionable claim and not sale of goods.

²⁸ *Tata Consultancy Services v State of Andhra Pradesh*, (2005) 1 SCC 308 cited in *Singh* 2021 p 806

²⁹ *RD Goyal v Reliance Industri Ltd*, (2003) 1 SCC 81 cited in *Singh* 2021 p 806

³⁰ *Hanuman Vitamin Foods (Pvt) Ltd v State of Maharashtra* (2000) 6 SCC 345 cited in *Singh* 2021 p 806

REP license and Duty entitlement

A REP import licence [Vikas Sales Corp v Commissioner of Commercial Taxes, (1996) 4 SCC 433] were held to constitute moveable property and “goods” and so their sales could be subjected to sales tax.

It has been held that the constitution bench decision in Sunrise Corp’s case has in no way affecting the decision in Vikas Corp’s case that Replenishment licences [REP licences] granted under Import Export Policy are goods and their sale can be subjected to the sales tax. [Yasha Overseas v Commissioner of sales tax, (2008) 8 SCC 681]. Duty Entitlement passbook contemplated in Exim Policy formulated under Foreign Trade (Development and Regulation) Act, 1992 is not materially different from REP licence. It has an intrinsic value that makes it a marketable commodity and it qualifies as goods and its sale is exigible to sales tax.

Imprisonment

(27) “imprisonment” shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860);

India

(28) “India” shall mean,—

(a) 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;

³¹ Dipak Dhar v State of West Bengal, (1986) 1 SCC 415 cited in Singh 2021 p 806


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(b) 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

(c) as respects any period after the commencement of the Constitution , all territories for the time being comprised in the territory of India;

### SYNOPSIS

India, State and Union Territory

Territory of India and annexation

Cession of territory

Finality of reply about territory by central government

Foreign territory

Change of sovereignty

Territories of State and reorganization

Municipalities

## **India, State and Union Territory**

India means all territories for the time being comprised in the territory of India<sup>32</sup>, whereas State means a State specified in the First Schedule to the Constitution and shall **include a Union territory**<sup>33</sup>. 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<sup>34</sup>.

## **Territory of India and annexation**

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<sup>32</sup> GC 3(28)

<sup>33</sup> GC 3(58)

<sup>34</sup> GC 3(62A)

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By Article 1(3) of the Constitution the territory of India comprises of (a) the territories of the State, (b) the Union territories specified in the First Schedule, and (c) such other territories as may be acquired.³⁵

When a new territory becomes a territory of India under Article 1(3)(c), the Constitution will automatically extend to such a territory, the inhabitants of which will then get the rights conferred by the Constitution. Further, the Constitution will have effect of abrogating all laws till then in force which are inconsistent with its provisions. Besides the extension of the Constitution, laws of the Republic which are expressed to extend to the whole of “India” may also automatically extend to a new territory which becomes part of the territory of India, for as defined in the General Clauses Act “‘India’ shall mean all territories for the time being comprised in the territory of India”.³⁶

Cession of territory

The national territory cannot be ceded in favour of a foreign State by executive action and that legislative action is required for that purpose.³⁷ Cession of a territory by a Constitution Amendment Act which is to come into force on the appointed date does not become effective unless the Act is brought into force by appointing a date.³⁸

Finality of reply about territory by central government

³⁵ Singh 2021 p 806

³⁶ CF Post Office v Estuary Radio Ltd, (1967) 3 All ER 663 cited in Singh 2021 p 807

³⁷ Reference by President of India under Article 143(1), Constitution, AIR 1960 SC 845 cited in Singh 2021 p 807

³⁸ UOI v Sukumar Sen Gupta, 1990 Supp SCC 545 cited in Singh 2021 p 806

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In the absence of any public declaration by the Central Government, the question whether a particular territory is a part of Indian territory under Article 1(3)(c) of the Constitution, will have to be answered by courts by seeking information from the Central Government.<sup>39</sup>

### **Foreign territory**

A territory which is not Indian territory under Article 1(3) may yet be administered by the Central Government under the Foreign Jurisdiction Act 1947.<sup>40</sup>

### **Change of sovereignty**

On a change of sovereignty over any particular territory the laws in force therein are not automatically abrogated and they remain operative until modified or repealed by the new sovereign.<sup>41</sup> This is subject to the qualification that inhabitants of such a territory cannot enforce any rights against the new sovereign except those which are expressly or impliedly recognised by the new sovereign - a contrary provision in any treaty notwithstanding.<sup>42</sup> This qualification has no application when a new State is formed by legislation by adjustment of territories within the framework of the Constitution.<sup>43</sup>

### **Territories of State and reorganization**

Territories of States did not get frozen on 26 January 1950, when the Constitution came into force, for Article 3 confers power on

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<sup>39</sup> N Masthan Sahib v Chief Commissioner, Pondicherry, AIR 1962 SC 797 (answer of the Central Government on the question is final and binding on courts) cited in Singh 2021 p 806

<sup>40</sup> N Masthan Sahib v Chief Commissioner, Pondicherry, AIR 1962 SC 797 cited in Singh 2021 p 806

<sup>41</sup> Mayor of Lyons v East India Co, 1 Moo Ind App 175 cited in Singh 2021 p 806

<sup>42</sup> Vajesinghji v Secretary of State, AIR 1924 PC 216 cited in Singh 2021 p 806

<sup>43</sup> State of Punjab v Balbir Singh (1976) 3 SCC 242 cited in Singh 2021 p 806

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Parliament to make changes in the territories of the State. When there is reorganization of states or change of territories between two states, a provision is generally made to continue the existing laws in the affected territories until altered by the competent legislature. ^{^44}

Municipalities

A law or notification applying to all municipalities will also apply to a municipality which is subsequently constituted. ^{^45}

Indian law

(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;

SYNOPSIS

Existing law, law in force and Indian law

Executive orders having force of law

Existing law, law in force and Indian law

There is no material difference between the expressions “existing law”^{^46} “law in force”^{^47} and “Indian law”.^{^48}

⁴⁴ Ram Badan Rai v UOI (1999) 1 SCC 705 cited in Singh 2021 p 807

⁴⁵ Nandlal v Motilal (1977) 3 SCC 500 cited in Singh 2021 p 807

⁴⁶ COI a 366(10)

⁴⁷ COI a 372

⁴⁸ Edward Mills Co v State of Ajmer, AIR 1955 SC 25 cited in Singh 2021 p 808

Executive orders having force of law

Order and notifications to have the force of law must be legislative in nature. Administrative rules not being “law in force” are not continued by Article 372 of the Constitution.⁴⁹

A notification issued by the State Government **imposing tax** in exercise of the statutory power is law.⁵⁰

Notifications issued under Statutory powers **exempting** certain matter from the general provisions of the statute are legislative in nature and have an effect of law.⁵¹

A notification or order **fixing price** of commodities in exercise of a statutory power is also legislative in nature.⁵²

A notification declaring that certain place shall be principle **market yard** under the relevant Agriculture Produce Market Act is legislative in nature.⁵³

A notification **constituting a Gram Panchayat** or a Gram Sabha under a Panchayat Raj Act is legislative in nature.⁵⁴

An order made by Governor-General under sections 94(3) of the Government of India Act, 1935, **investing the chief Commissioner with the authority** to administer a Province was held to be law.⁵⁵

⁴⁹ UOI v Majji Jangammayya (1977) 1 SCC 606 cited in Singh 2021 p 808

⁵⁰ Kalyani Stores v State of Orissa, AIR 1966 SC 1686 cited in Singh 2021 p 808

⁵¹ State of Bombay v FN Balsara, AIR 1951 SC 318 cited in Singh 2021 p 808

⁵² H.S.S.K. Niyami v UOI (1990) 4 SCC 516 cited in Singh 2021 p 809

⁵³ Rameshchandra v State of Maharashtra (1981) 2 SCC 722 cited in Singh 2021 p 809

⁵⁴ State of Punjab v Tehal Singh (2002) 2 SCC 7 cited in Singh 2021 p 809

⁵⁵ Edward Mills Co v State of Ajmer, AIR 1955 SC 25 cited in Singh 2021 p 809

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 A notification issued by the President **delegating certain executive functions** under Article 285(1) of the Constitution amounts to law.<sup>56</sup>

**Orders made by the Delimitation Commission** under section 8 and 9 of the Delimitation Commissions Act, 1962, have the force of law as section 10 of the Act so declares.<sup>57</sup>

Article 372 of the Constitution continues only such **orders of the Rulers of erstwhile Indian States** which were legislative in nature.<sup>58</sup>

“Law in force” continued by Articles 372 of the Constitution include not only statutory laws but also **usage and custom** having a force of law and rules of common law in force in India.<sup>59</sup>

A **rule of construction** is however, not a “law in force” within the meaning of Article 372 of the constitution.<sup>60</sup>

Further, Article 372 does not make **pre-constitution statutory provision** constitutional which may be declared void under Article 13 of the Constitution.<sup>61</sup>

## Indian State

**(30) “Indian State” shall mean any territory which the Central Government recognised as such a State before the**

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<sup>56</sup> Jayantilal Amritlal v F N Rana AIR 1964 SC 648 cited in Singh 2021 p 809

<sup>57</sup> Meghraj Kothari v Delimitation Commission, AIR 1967 SC 669 cited in Singh 2021 p 809

<sup>58</sup> Umaid Mills v UOI, AIR 1963 SC 953 cited in Singh 2021 p 809

<sup>59</sup> Builders Supply Corp v UOI, AIR 1965 SC 1061 cited in Singh 2021 p 809

<sup>60</sup> Superintendent and Rememberancer of Legal Affairs, West Bengal v Corp of Calcutta, AIR 1967 SC 997 cited in Singh 2021 p 809

<sup>61</sup> John Vallamattam v UOI, (2003) 6 SCC 611 cited in Singh 2021 p 809

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commencement of the Constitution, whether described as a State, an Estate, a Jagir or otherwise;

Local authority

(31) “local authority” shall mean a 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;

SYNOPSIS

Local area

Industrial area

Municipality

Local authority defined in other statutes

Local area

The phrase “local area” has also a technical meaning. It means an area administered by a local body like a municipality, a district board, a union board, a panchayat or the like.⁶²

Industrial area

A “local area” does not cease to be local area simply because it is declared to be “Industrial Area” under Industrial Area Development Act.⁶³

Municipality

The word “Municipality” has also been widely construed to include a Municipal Corporation.⁶⁴

⁶² Dimond Sugar Mills v State of Uttar Pradesh, AIR 1961 SC 652 cited in Singh 2021 p 810

⁶³ Widia (India) Ltd v State of Karnataka (2003) 8 SCC 22 cited in Singh 2021 p 810

Local authority defined in other statutes

The definition of “Local Authority” in section 3(31) cannot be used for construing another Act which has its own definition of “Local Authority” which though similar is not identical. Section 10(20) of Income Tax Act, 1961 before its amendment by the Finance Act, 2002 did not contain any definition of “Local Authority” and the definition in section 3(31) of the General Clauses Act was used for holding that Agriculture Marketing Committee is a local authority. But after amendment in 2002 an explanation was added to section 10(20) of the Income Tax Act, 1961 defining the expression “Local Authority” which is similar to section 3(31) but not identical as it omits the words “or other authority” as they find place in section 3 (31). Because of this change after the amendment Agriculture Market Committee was not held to be a local authority for purpose of section 10(20) of the IT Act, 1961.⁶⁵

State Transport Corporation is not a local authority within the definition of that expression in the General Clauses Act, 1897.⁶⁶

Magistrate

(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;

NOTES

Distinction between judicial magistrate and administrative magistrate

⁶⁴ Cantonment Board, Secunderabad v G Venketram Reddy, (1995) 4 SCC 561 cited in Singh 2021 p 810

⁶⁵ Agriculture Produce Market Committee v CIT (2008) 9 SCC 434 cited in Singh 2021 p 810

⁶⁶ Valjibhai v State of Bombay, AIR 1963 SC 1890


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Section 3(32) defines magistrate to 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.

## Master

**(33)** “master”, used with reference to a ship, shall mean, any person (except a pilot or harbourmaster) having for the time being control or charge of the ship;

## Merged territories

**(34)** “merged territories” shall mean the territories which by virtue of an order made under section 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;

## Movable property

**(36)** “movable property” shall mean property of every description, except immovable property;

See notes under GC 2(26) defining immovable property.

## Oath

**(37)** “oath” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

## Offence

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**(38) “offence” shall mean any act or omission made punishable by any law for the time being in force;**

### **Official gazette**

**(39) “official Gazette” or “Gazette” shall mean the Gazette of India or the Official Gazette of a State;**

### **Part**

**(40) “Part” shall mean a part of the Act or Regulation in which the word occurs;**

### **Part A/B/C State**

**(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;**

### **COMMENT**

#### **Constitution (7<sup>th</sup> Amendment) Act 1956**

Section 3(41) identified three types of a state before the Constitution (Seventh Amendment) Act 1956 namely – Part A State as a State in Part A of the First Schedule to the Constitution, as in force before the Constitution (Seventh Amendment) Act, 1956; Part B State as a State specified in Part B of that Schedule; and Part C State shall mean a State specified in Part C of that Schedule or a territory for the time being

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administered by the President under the provisions of article 243 of the Constitution. Now this scheme is not extant.

Person

(42) “person” shall include any company or association or body of individuals, whether incorporated or not;

SYNOPSIS

Juristic person

Construction of the term

Juristic person

Person will include a juristic person eg an **idol or gurugranth sahib**⁶⁷ installed in a public temple or a **company**⁶⁸.

“Person” will also include a local authority and contrary intention cannot be inferred simply from the fact that the draftsman after using the word “person” uses the pronoun “**him**”.⁶⁹

Construction of the term

The word “person” has been defined in a very wide sense. But in any particular statute the meaning of the word may get controlled by the context.⁷⁰

Section 42 (b) of the Rajasthan Tenancy Act, 1955, provides that the sale, gift or bequest by a *khatedar* tenant in the whole or part of his holding shall be void, if such sale, gift or bequest is by a member of a Scheduled Caste or Scheduled Tribe in favour of a “person” who is not a member of the Scheduled Caste or

⁶⁷ Shromani Gurudwara Prabandhak Committee Amritsar v Shi Som Nath Das (2004) 4 SCC 146 cited in Singh 2021 p 812

⁶⁸ Union Bank of India v Khader International Construction, (2001) 5 SCC 22 cited in Singh 2021 p 812

⁶⁹ Applin v Race Relations Board, (1947) 2 All ER 73 cited in Singh 2021 p 812

⁷⁰ Dulichand v CIT, AIR 1956 SC 354 cited in Singh 2021 p 812

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Scheduled Tribe respectively. The Supreme Court, refused to apply the definition of “person” under section 3(42) of the General Clauses Act while interpreting section 42(b) of the Rajasthan Act, and instead read it along with the constitutional provisions to mean a person other than those who have been included in the public notification as per Articles 341 and 342 of the constitution. Accordingly, it was held that the expression “person” used in section 42(b) can only mean a natural person, as otherwise the entire purpose of that section would be defeated.<sup>71</sup>

### **Political agent**

**(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;**

### **Presidency town**

**(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;**

### **Province**

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<sup>71</sup> State of Rajasthan v Aanjaney Organic Herbal Pvt Ltd,(2012) 10 SCC 283 cited in Singh 2021 p 812

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(45) “Province” shall mean a Presidency, a Governor’s Province, a Lieutenant Governor’s Province or a Chief Commissioner’s Province;

Provincial act

(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;

Provincial government

(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;

Public nuisance

(48) “public nuisance” shall mean a public nuisance as defined in the Indian Penal Code (45 of 1860);

Registered

(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;

Regulation

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**(50) “Regulation” shall mean a Regulation made by the President 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, 1935;**

### **Rule**

**(51) “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;**

### **Schedule**

**(52) “schedule” shall mean a schedule to the Act or Regulation in which the word occurs;**

### **Scheduled district**

**(53) “Scheduled District” shall mean a “Scheduled District” as defined in the Scheduled Districts Act, 1874;**

### **Section**

**(54) “section” shall mean a section of the Act or Regulation in which the word occurs;**

### **Ship**

**(55) “ship” shall include every description of vessel used in navigation not exclusively propelled by oars;**

### **Clause 56: Sign**

**(56) “sign”, with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to**

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**write his name, include “mark”, with its grammatical variations and cognate expressions;**

### SYNOPSIS

Essentials of signing

### **Essentials of signing**

The essential requirement of signing is the affixing, either by writing with a pen or pencil or by otherwise impressing upon the document one's name or signature so as personally to authenticate the document.<sup>72</sup> Unless the statute concerned indicates otherwise, a signature duly authorized by a person affixed to a document by another person is the signature of the person giving the authority.<sup>73</sup> The received fax of a duly signed document transmitted by fax may itself amount to a duly signed document.<sup>74</sup> But when the statute requires that the person concerned must sign himself as in the case of attestation under section 63 of the Indian Succession Acts, 1925 delegation of that function is not permissible.<sup>75</sup>

### **Son**

**(57) “son”, in the case of any one whose personal law permits adoption, shall include an adopted son;**

### **State**

**(58) “State”—**

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<sup>72</sup> Goodman v J Eban Ltd, (1954) 1 All ER 763 cited in Singh 2021 p 813

<sup>73</sup> Marrow v Nadeem, (1987) 1 All ER 237 cited in Singh 2021 p 813

<sup>74</sup> Inland Revenue Commissioners v The debtor (1996) 2 ALL ER 345 cited in Singh 2021 p 813

<sup>75</sup> Nagulapati Lakshmamma v Mupparaju Subbaiah (1998) 5 SCC 285 cited in Singh 2021 p 813

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(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 a Union territory;

State act

(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 to the Government of India, include the Central


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**Government acting within the scope of the authority given to it under that 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 a visible form; and**

**(66) “year” shall mean a year reckoned according to the British calendar.**

**SYNOPSIS**

GC 3(2): Act

- Illegal omission

GC 3(3): Affidavit

- Oath, Swear and Affidavit

GC 3(35): Month

## GC 3

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- Period of months running 'from' or 'after' date
- Period of months 'beginning' or 'starting' with a date

GC 3(60): State government

- Executive power of a State

GC 3(2): Act

Illegal omission: Omission to come within the definition of “act” should be illegal omission.⁷⁶ Before an omission can be considered as illegal on the part of an official, it must be shown that the official concerned had omitted to discharge some official duty imposed on him in public interest. The omission in question must have a positive content in it. In other words, the non-discharge of that must amount to an illegality.⁷⁷

GC 3(3): Affidavit

Oath, Swear and Affidavit: Oath shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing [Section 3(37)]. 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 [Section 3(62)]. Affidavit shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing [Section 3(3)].

GC 3(35): Month

Period of months running 'from' or 'after' date: Where a period of months is expressed to run 'from' or 'after' a particular date the '**corresponding date rule**' will generally apply. The rule was explained by Lord Diplock in *Dodds v Walker*:

⁷⁶ *Revti Mohan Das v Yatindra Mohan Ghosh*, AIR 1934 PC 100 cited in *Sigh* 2021 p 798

⁷⁷ *Amalgamated Electricity Co (Belgaum) Ltd v Municipal Committee, Ajmer*, AIR 1969 SC 227 cited in *Singh* 2021 p 798

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‘Where “the relevant period” is a month or specified number of months after the giving of a notice, the general rule is that the period ends upon the corresponding date in the appropriate subsequent month, i.e. the day of that month that bears the same number as the day of the earlier month on which the notice was given.’

The House of Lords in that case held that where an application had to be made ‘not more than 4 months after’ the giving of a notice on 30 September 1978, the last date for making the application was 30 January 1979.

One consequence of the corresponding date rule is that the length of a period expressed in months will vary according to when the period begins. This is inevitable since the length of each month varies.

Particular difficulties arise where a period starts on a day of a month that does not have a corresponding day in the month in which the period expires. Here *Dodds v Walker* confirmed that applying the corresponding date rule means that (for example) a period of one month after 30 January would end at the end of 28 February or, in a leap year, 29 February.

Period of months ‘beginning’ or ‘starting’ with a date: The ‘corresponding date rule’, discussed above, applies only where the first day of a period expressed in months is excluded. Where, as is often the case, legislation refers to a period beginning with (or starting with) a particular day, that day is included in the calculation of the period, and accordingly the ‘corresponding date rule’ does not apply.

Here the time limit will, as a general rule, expire on the eve of the corresponding date.

As with the corresponding date rule, the length of a period expressed in months ‘beginning with’ a day will according to when the period begins, since the length of each month varies.

Where the words are ‘beginning with’ so that the period runs to the day before that with the same number in the corresponding month, the question again arises as to what happens if there is no such number. As it happens, this can only occur where the period expires in February. The answer to this question seems to be that the period runs until the end of the last day in February. So, for example, a period of one month beginning with 30 January would end at the end of 28 February, or in a leap year 29 February.

GC 3(60): State government

Executive power of a State: The executive power of a State under the Constitution is vested in the Governor⁷⁸ who is aided and advised in the exercise of his function by a Council of Ministers⁷⁹.

There are the certain matters enumerated in the constitution where the Governor has to Act in his discretion. These are Articles 293(2), 356, 371-A(2)(b), 371-A(2)(f), and paras 9(2) and 18(3) of the sixth Schedule. In addition, the Governor Acts in his direction in the choice of Chief Minister and the dismissal of Government which has lost majority but refuses to quit.⁸⁰

Further, he may act independently in the matter of grant of sanction of prosecution against the Chief Minister or any minister as in these matters there would be real danger of bias in the

⁷⁸ COI 154

⁷⁹ COI 163

⁸⁰ Samsher singh v State of Punjab SCC 1974 (2) 831 cited in Singh 2021 p 815

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 opinion rendered by the council of ministers<sup>81</sup> and even in the case of grant of sanction to prosecute an ex-minister when the decision of the council of ministers is shown to be irrational and based on non- consideration of relevant factors<sup>82</sup>.

Executive action of the Government of the State is transacted with accordance with the rules of business made by the Governor which allocate among Minister the business of the Government. But all executive action is expressed to be taken in the name of the Governor and orders and instrument made and executed in the name of the Governor are authenticated in accordance with the rules made by the Governor.<sup>83</sup>

The executive power of a State extends to matters with respect to which the State Legislature has power to make laws.<sup>84</sup>

But the executive power cannot be used to amend or to supersede or to whittle down the effect of a statute and statutory rules; the executive power can be used only to supplement a statute or rules and cover areas to which the statute or rules do not extend.<sup>85</sup>

Even a statutory power of the government to issue directions on matters of policy cannot be used to amend statutory rules and regulations.<sup>86</sup>

A code of conduct issued by the State Government for observance by ministers, not issued under any statute and statutory rule, is not enforceable as law and a minister acting in

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<sup>81</sup> State of Maharashtra v Ramdas Shriniwas Nayak (1982) 2 SCC 463 cited in Singh 2021 p 815

<sup>82</sup> Madhya Pradesh Special Police Establishment v State of Madhya Pradesh, SSC 2004 (8) 788 cited in Singh 2021 p 815

<sup>83</sup> COI 166

<sup>84</sup> COI 162

<sup>85</sup> Sant Ram Sharma v State of Rajasthan, AIR 1967 SC 1910 cited in Singh 2021 p 815

<sup>86</sup> A Manoharan v UOI (2008) 3 SCC 641 cited in Singh 2021 p 815

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breach of such a code cannot be said to have acted unlawfully
under section 169 of the IPC.⁸⁷

A statute may, however, confer upon the Governor functions in a capacity other than as a Head of State, in which case the Governor will exercise such statutory authority according to his own judgment and not on the aid and advice of his councils of ministers.⁸⁸

⁸⁷ R Sai Bharathi v J Jayalalitha (2004) 2 SCC 9 cited in Singh 2021 p 815

⁸⁸ Bhuri Nath v State of Jammu and Kashmir (1997) 2 SCC 745 cited in Singh 2021 p 815