

The Bihar and Orissa General Clauses Act, 1917

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Act 1 of 1917

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The Bihar and Orissa General Clauses Act, 1917Bihar and Orissa Act 1 of 1917[Dated 25th April, 1917]An Act for shortening the language used in certain Acts in force in Bihar (and Orissa) and for other purposes.Whereas it is expedient to provide for the interpretation of certain Acts in force in Bihar [and Orissa], for shortening the language used therein and for making certain other provisions relating to such Acts;And Whereas the previous sanction of the Governor General has been obtained, under section 79 of the Government of India Act, 1915, (5 and 6 Ge 05 Cl. 61) to the passing of this Act;It is hereby enacted as follows:-Preliminary.

1. Short title.

- This Act may be called the Bihar and Orissa General Clauses Act, 1917.

2. Repeal of Bengal Act 1 of 1899.

- The Bengal General Clauses Act, 1899, so far as it applies to Bihar [and Orissa], is hereby repealed.

3. Application of Act to other enactments.

- The provisions of Sections 4 and 6 to 32 shall apply to this Act, and shall apply, and shall be deemed always to have applied, to all Bihar and Orissa Acts made whether before or after the commencement of this Act.Definitions

4. Definitions.

- In all Bihar and Orissa Acts [and Bihar Acts] [Substituted by A.O.1937], 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;(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;(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)"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 Acts, 1861 and 1892, or the For [Indian Councils Act, 1861 to 1909] [Statement of Objects and Reasons see B. and O. Gazette, 1917, Pt.V, p. 12;and for proceedings in Council, see ibid. 1917, Pt. VI, pp. 13 and 44.];(5a)["Bihar Act", shall mean an Act made by the [Provincial] [Added by A.O. 1937 read with A.O.1950.] Legislature or] the Governor of Bihar under the Government of India Act, 1935; [or by the Legislature of the State of Bihar under the Constitution] [Inserted 'Provincial' shall stand unmodified, See A.L.O.];(6)[* * *] [Clause (6) Omitted by A.O.1937.](7)"Bihar and Orissa, Act," shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909, or the Government of India Act, 1915 [or by the Local Legislature or the Governor of Bihar and Orissa or of Bihar under the Government of India Act] [Inserted by A.O.1937.], and include-(i)a Bengal Act made after the eighteenth day of January, 1899, which is still in force in Bihar and Orissa;(ii)with respect to clauses (3), (32), (34),(37) and (54) of this Section and in Sections 6, 15, 19, 24, 25, 26, 29 and 32(1), of Bengal Act made after the first day of June, 1867, which is still in force in Bihar and Orissa;(8)[* * *] [Clause 8 Omitted by A.O.1937.](9)"British Possession" shall mean any part of His 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)"Collector" shall mean the Chief Officer in charge of the revenue administration of a district and shall include a Deputy Commissioner;(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;(14)"Consular Officer" shall include Consul-General, Consul, Vice-Consul, Consular Agent, pro-consul and any person for the time being authorized to perform the duties of Consul-General, Consul, Vice-Consul or Consular Agent;(15)"District Court" shall mean the principal Civil Court of original jurisdiction of a district, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;(16)"District Judge" shall mean the Judge of a District Court;(17)"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;(18)"Enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;(19)"father," in the case of anyone whose personal law permits adoption, shall include an adoptive father;(20)"financial year" shall mean the year commencing on the first day of April;(21)[* * * *] [Clause 21 Omitted by A.O.1937.](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;(23)["Government" or "the Government" shall include both the Central Government and the State Government] [Inserted by A.O.1950.](24)[* * * *] [Clause 24 Omitted by A.O. 1937.](25)"High Court" used with reference of Civil proceedings, shall mean the highest Civil Court of Appeal in the part of Bihar [and Orissa], in which the Act containing the expression operates;(26)[* * * *] [Clause 26 Omitted by A.O. 1950.](27)"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;(28)"imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;(29)[* * * *] [Clause 29 Omitted by A.O. 1937.](30)"Local authority" shall mean a Municipal Committee, District Board, or any other authority entrusted by [any Government] [Substituted by A.O. 1937 for 'the Government] with, or legally entitled to, the control or management of a municipal or local fund;(31)[* * * *] [Clause 31 Omitted by A.O. 1937.](32)"Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;(33)"master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship;(34)"month" shall mean a month reckoned according to the British calendar;(35)"movable property" shall mean property of every description except immovable property;(36)"notification" shall mean a notification in the [Official Gazette] [Substituted by A.O. for 'Gazette'.];(37)"Oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;(38)"Offence" shall mean any act of omission made punishable by any law for the time being in force;(39)"Part" shall mean a part of the Act or Regulation in which the word occurs;(40)"person" shall include any company or association or body of individuals, whether incorporated or not;(41)['political agent' shall mean,- [Substituted by A.O. 1950.](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;](42)[*****] [Clause 42 Omitted by A.O. 1937.](43)"public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;(44)"registered," used with reference to a document, shall mean registered in [India] [Substituted by Bihar A.L.O.1957 for '(a Part A State or a Part C State).'] under the law for the time being in force for the registration of documents;(45)["Regulation" shall mean a Regulation made by the Governor under sub-paragraph (2) of paragraph (5) of the Fifth Schedule to the Constitution and shall include 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 or by the Governor under the Government of India Act, 1935, or by the President under Article 243 of the Constitution;] [Substituted by A.O. for the original clause, 1950.](46)"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;(47)"Schedule" shall mean a Schedule to the Act or Regulation in which the word occurs;(48)"Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874;(49)"Section" shall mean a Section of the Act or Regulation in which the word occurs;(50)"Ship" shall include every description of vessel used in navigation not exclusively propelled by oars;(51)"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;(52)"son," in the case of any one whose personal law permits adoption, shall include an adopted son;(53)"sub-section" shall mean a sub-section of the Section in which the word occurs;(54)"swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;(55)"vessel" shall include any ship or boat or any other description of vessel used in navigation;(56)"Will" shall include a Codicil and every writing making a voluntary posthumous disposition of property;(57)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 (58) "year" shall mean a year reckoned according to the British calendar.

5. Continuance of certain definitions for purposes of certain Acts.

- In any [Bengal Act] [Bengal Acts which are still in force in Bihar.] made between the first day of June, 1867, and the eighteenth day of January, 1899, which is still in force in Bihar (and Orissa), unless there is anything repugnant in the subject or context-(1) "Land" includes houses and buildings and corporeal hereditaments and tenements of any tenure unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure; and (2) "person" includes any incorporated company or incorporated association of persons.

5A. [Construction of references to revenues of the State of Bihar for purposes of certain laws. [Inserted by Section 2 of Bihar Act 18 of 1954.]

- In any Bengal Act or Bihar and Orissa Act or Bihar Act, references, by whatever form of words to revenues of the State Government shall be constructed as references to the Consolidated Fund of the State of Bihar].General Rules of Construction.

6. Coming into operation of Acts.

(1) Where any Bihar and Orissa Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which the assent thereto of the Governor-General is first published in the [Official Gazette] [Substituted by A.O. 1950 for 'Gazette'.] in pursuance of Section 81 of the Government of India Act, 1915.(1a) [Where any Bihar Act is not expressed to come into operation on a particular day, -(i) in the case of a Bihar 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 of Bihar, on the day on which it is first published as an Act in the Official Gazette; (ii) in the case of a Bihar 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, a Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

7. Printing of date on which Act is published.

- In every Bihar and Orissa Act 1[or Bihar Act] the date of such publication as is mentioned in Section 6, subsection (1), shall be printed either above or below the title of the Act and shall form part of the Act.

8. Effect of repeal.

- Where any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not-(a)revive anything not in force or existing at the time at which the repeal takes effect; or(b)affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder; or(c)affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or(d)affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or(e)affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing "Act" had not been passed.

8A. [Repeal of Act making textual amendment in Bihar Act, or Bihar and Orissa Act or Bengal Act. [Inserted by Bihar Act I of 1939, Section 2.]

- Where any Bihar Act made after the commencement of this Act repeals any enactment by which the text of any Bihar Act or any Bihar and Orissa Act or any Bengal Act was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.] [Added by A.O. for clause (1a). 1950.]

9. Revival of repealed enactments.

- in any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

10. Construction of references to Repealed Enactments.

- Where any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] repeals and re-enacts, with or without modification, any provision of a former enactment, 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 provision so re-enacted.

11. Commencement and Termination of Time.

- In any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] 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".

12. Computation of Time.

- Where, by any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], 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.

13. Measurement of distances.

- In the measurement of any distance, for the purposes of any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

14. Duty to be taken 'pro rata' in Enactments.

- Where by any enactment now in force or hereafter to be in force, 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.

15. Gender and number.

- In all Bihar and Orissa Acts [and Bihar Acts] [Inserted by A.O. 1937.], 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. Powers and Functionaries

16. When powers and duties to be exercised and performed.

- Where a Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] 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.

17. Exercise of power and performance of duty by temporary holder of office.

- Where a Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] confers a power or imposes a duty on the holder of an office, as such duty, then the power may be exercised and the duty shall be performed by the holder for the time being of the office.

18. Power to appoint to include power to appoint ex-officio.

- Where, by a Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], 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.

19. Power to appoint to include power to suspend or dismiss.

- Where, by any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], 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.

20. Substitution of functionaries.

- In any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] it shall be sufficient, for the purpose of indicating the application of a law to every person or a number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

21. Successors.

- In any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] 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.

22. Official Chiefs and subordinates.

- In any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], it shall be sufficient, for the purpose of expressing that a law relative to the 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. Provisions as to Orders, Rules, etc. made under Enactments.

23. Construction of orders, etc., issued under enactments.

- Where, by any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], a power to make or issue any notification, order, scheme, rule, bye-law or form is conferred, the expressions used in the notification, order, scheme, rule, bye-law or form, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

24. Power to make to include power to add, to amend vary or rescind, orders, rules or bye-laws.

- Where, by any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], a power to make or issue notifications, orders, schemes, rules, bye-laws or forms, is conferred, then that power includes a power exercisable in the like manner and subject to the like sanctions and conditions (if any) to add to, amend, vary or rescind any notifications, order, schemes, rules, bye-laws or forms so made or issued

25. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.

- Where, by any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], which is not to come into operation on [the passing thereof] [Substituted for 'the day on which the assent thereto of the Governor-General is first published in the Gazette' by A.O. 1937.], 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] [Substituted for 'the assent of the Governor-General has been published as aforesaid' by A.O. 1937.], but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act.

26. Provisions applicable to making of rules or bye-laws after previous publication.

- Where, by any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], 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 shall 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] [Substituted by A.L.O. for 'the Central Government or, as the case may be, the Provincial Government.] 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 sanction, approval or concurrence of another authority, that authority also, shall consider any objections 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] [Substituted by A.O. for '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.

27. Continuation of orders, etc. issued under enactments repealed and re-enacted.

- Where any enactment is repealed and re-enacted by a Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, bye-law or form, 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, bye-law or form made or issued under the provisions so re-enacted.

28. Publication of orders and notifications in the Official Gazette.

-Where in any Bihar and Orissa Act. [or Bihar Act] [Inserted by A.O. 1937.] or in any rule made under any such Act, it is directed that any order, notification or other matter shall be notified, or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the [Official Gazette] [Substituted by A.O. for 'Gazette'].].Miscellaneous

29. 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 Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], or any rule or bye-law made under any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], unless the Act, rule or bye-law contains an express provision to the contrary.

30. 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.

31. Meaning of service by post.

- Where any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "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.

32. Citation of enactments.

(1)in any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] and in any rule bye-law, instrument or document, made under, or with reference to, any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.], 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, any provision in an enactment may be cited by reference to the Section or sub-section of the enactment in which the provision is contained.(2)In any Bihar and Orissa Act [or Bihar Act] [Inserted by A.O. 1937.] a description of citation or 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.

33. 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 Acts, rules or bye-laws made 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 Acts, rules or bye-laws.

34. [Application of Act to Ordinances and Regulations. [Substituted by A.L.O. for Section 34.]

- The provisions of this Act shall apply-(a)In relation to any Ordinance promulgated by the Governor under Section 88 or Section 89 of the Government of India Act, 1935, as they apply in relation to Bihar Acts made under the said Act by the Governor, and in relation to any Regulation made by the Governor under Section 92 of the said Act as they apply in relation to Bihar Acts made by the Provincial Legislature; and(b)In relation to any ordinance promulgated by the Governor under Article 213 of the Constitution or any Regulation made by the Governor under paragraph 5 of the fifth Schedule to the Constitution, as they apply in relation to Bihar Acts made by the State Legislature:Provided that clause (ii) of sub-section (1 a) of Section 6 of this Act shall apply to any Ordinance referred to in clause (b) as if for the reference in the said clause (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 the Gazette.]