

Himachal Pradesh General Clauses Act, 1968

HIMACHAL PRADESH

India

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Act 16 of 1969

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Himachal Pradesh General Clauses Act, 1968(Act No. 16 of 1969)Last Updated 18th January, 2020(Received the assent of the Vice-President acting as President on the 21st May, 1969, and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 25th July, 1969, pp. 709-717).For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh, (Extra-ordinary), dated the 30th November, 1968, p. 1174.An Act to shorten the language used in Himachal Pradesh Acts and to make certain provisions for the construction of, and other matters relating to, such Acts.BE it enacted by the Legislative Assembly of Himachal Pradesh in the Nineteenth Year of the Republic of India as follows:-

1. Preliminary.

(1)This Act may be called the Himachal Pradesh General Clauses Act, 1968.(2)It shall come into force at once.

2. General Definitions.

- In this Act and in all Himachal Pradesh Acts, 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 omission;(3)[* * *] [The definition of 'Administrator' omitted by Section 2 of H.P. Act No. 18 of 1971.](4)"affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;(5)"barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland;(6)"chapter" shall mean a chapter of the Himachal Pradesh Act, in which the word occurs;(7)"Collector" shall mean the chief officer-in-charge of the revenue-administration of a district and shall include a Deputy Commissioner;(8)"commencement" used with reference to a Himachal Pradesh Act shall mean the day on which the Act comes into force;(9)["Commissioner" shall mean the Divisional Commissioner, Himachal Pradesh;] [Clause (9)

substituted vide H.P. Act No. 18 of 1971.](10)"Constitution" shall mean the Constitution of India ;(11)"Consular Officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul, and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent;(12)"Deputy Commissioner" shall mean the chief officer-in- charge of the general administration of a District;(13)"District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;(14)"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;(15)"enactment" shall include any provision contained in any Himachal Pradesh Act;(16)"father" in the case of any one whose personal law admits adoption shall include an adoptive father;(17)"Financial Commissioner" shall mean the Financial Commissioner of Himachal Pradesh : [* * *] [The words 'for the time being' omitted vide H.P. Act No. 18 of 1971.];(18)"financial year" shall mean the year commencing on the first day of April;(19)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;(20)"Government" or "the Government" shall include the State Government as well as the Central Government;(21)"Himachal Pradesh Act" shall mean an Act made by the Legislative Assembly of Himachal Pradesh, [and shall include an Act passed by the Legislative Assembly of the Part C State of Himachal Pradesh or by the Legislative Assembly of Union Territory of Himachal Pradesh constituted under the Government of Union Territories Act, 1963] [Inserted vide H.P. Act No. 18 of 1971.] or an Act of any other State extended to Himachal Pradesh as it existed immediately before 1st November, 1966 by the Government of India, or an Act of an erstwhile Ruler and in force in any part of Himachal Pradesh, or a Punjab Act in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966), by virtue of section 88 of the said Act;(22)"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;(23)"imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860);(24)[* * *] [Clause (24) omitted vide H.P. Act No. 18 of 1971.];(25)"local authority"shall mean a municipal committee, district board, zila parishad, panchayat samiti, notified area committee, gram panchayat, 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;(26)"Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure (5 of 1898) for the time being in force;(27)"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;(28)"month" shall mean a month reckoned according to the British calendar;(29)"movable property" shall mean property of every description except immovable property;(30)"notification" shall mean a notification published under proper authority in the Official Gazette;(31)"oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;(32)"offence" shall mean any act or omission made punishable by any law for the time being in force;(33)"Official Gazette" shall mean the Rajpatra of Himachal Pradesh;(34)"part" shall mean a part of the Himachal Pradesh Act in which the word occurs;(35)"person" shall include any company or association or body of individuals whether incorporated or not;(36)"public nuisance" shall mean a public nuisance as defined in the Indian Penal Code (45 of 1860);(37)"registered" used with reference to a document, shall mean registered

in a State or a Union territory [specified in the first Schedule to the Constitution] [Inserted vide H.P. Act No. 18 of 1971.] under the law for the time being in force for the registration of documents;(38)"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;(39)"schedule" shall mean a schedule to [the] [Inserted by vide H.P. Act No. 18 of 1971.] Himachal Pradesh Act in which the word occurs;(40)"scheduled district" shall mean a scheduled district as defined in the Scheduled Districts Act, 1874 (14 of 1874)) [Substituted vide H.P. Act No. 18 of 1971.];(41)"section" shall mean a section of [the] [Inserted vide H.P. Act No. 18 of 1971.] Himachal Pradesh Act in which the word occurs;(42)"ship" shall include every description of vessel used in navigation not exclusively propelled by oars;(43)"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;(44)"son" , in the case of any one whose personal law permits adoption, shall include an adopted son;(45)[***] [Clause (45) omitted vide H.P. Act No. 18 of 1971.](46)[***] [Clause (46) omitted vide H.P. Act No. 18 of 1971.](47)"sub-section" , shall mean a sub-section of the section in which the word occurs;(48)"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;(49)"vessel" shall include any ship or boat or any other description of vessel used in navigation;(50)"will" shall include a codicil and every writing making a voluntary posthumous disposition of property;(51)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(52)"year" shall mean a year reckoned according to the British calendar.

3. [Coming into operation of enactments. [Substituted vide H.P. Act No. 18 of 1971.]

- Where any Himachal Pradesh 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 or the President of India, as the case may require, is first published in the Official Gazette.]

4. Effect of repeal.

- Where this Act or any Himachal Pradesh Act repeals any enactment 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.

5. Repeal of Act making textual amendment in Act.

- Where any Himachal Pradesh Act made after the commencement of this Act repeals any amendment by which the text of any Himachal Pradesh Act was amended by the expression 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.

6. Revival of repealed enactments.

- In any Himachal Pradesh 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.

7. Construction of references to repealed enactments.

- Where this Act or any other Himachal Pradesh Act repeals and re-enacts, with or without modification, any provision of former a 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 provision so re-enacted.

8. Commencement and termination of time.

- In any Himachal Pradesh 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".

9. Computation of time.

- Where, by any Himachal Pradesh 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 the 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 Limitation Act, 1963 (36 of 1963), applies.

10. Measurement of distances.

- In the measurement of any distance, for the purposes of any Himachal Pradesh Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

11. Duty to be taken pro rata in enactments.

- Where, by any enactment now in force or hereafter put 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] [Substituted for the words 'any goods of merchandise' vide. H.P. Act No. 18 of 1971.], then a like duty is leviable according to the same rate on any greater or less quality.

12. Gender and number.

- In all Himachal Pradesh 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. Powers And Functionaries

13. Powers conferred on the State Government to be exercisable from time to time.

- Where, by any Himachal Pradesh Act, any power is conferred [on the State Government] [Inserted vide H.P. Act No. 18 of 1971.], then that power may be exercised from time to time as occasion requires.

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

- Where, by any Himachal Pradesh Act, any 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.

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

- Where, by any Himachal Pradesh Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority [***] [The words 'by it' omitted vide H.P. Act No. 18 of 1971.] in exercise of that power.

16. Substitution of functionaries.

- In any Himachal Pradesh 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 title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

17. Successors.

- In any Himachal Pradesh 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.

18. Official chiefs and subordinates.

- In any Himachal Pradesh Act, it shall be sufficient, for the purpose of expressing that 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

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

- Where, by any Himachal Pradesh Act, a power to issue any notification, order, scheme, rule, form, or bye-law 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.

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

- Where, by any Himachal Pradesh Act, a power to issue notifications or make orders, rules, 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 notifications, orders, rules, or bye-laws so issued or made.

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

- Where, by any Himachal Pradesh Act, which is not to come into force immediately 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 of the Act, but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act.

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

- Where, by any Himachal Pradesh 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, unless such Act otherwise provides, 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 conditions with respect to previous publication so requires, in such manner as the Government [***] [The word 'concerned' omitted vide H.P. Act No.18 of 1971.] 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 the 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.

22A. [Rules to be laid before the State Legislative Assembly. [Section 22-A added vide H.P. Act No. 5 of 1985.]

(1)Every rule made under any Himachal Pradesh Act by the Government of Himachal Pradesh on or after the commencement of the Himachal Pradesh General Clauses (Third Amendment) Act, 1985(5 of 1985), shall be laid, as soon as may be after it is made, before the State Legislative Assembly, while it is in session, for a total period of ten days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification in the rule or agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however , that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.(2)Where any Central Act, in force in or applicable to the State of Himachal Pradesh and relating to the matters with respect to which the State Legislature has power to make laws for the State of Himachal Pradesh, confers power on the State Government to make rules thereunder, then subject to any express provisions to the contrary in such Act, the provisions of sub-section(1) shall mutatis mutandis apply to the rules made by the State Government in exercise of that power.]

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

- Where any Himachal Pradesh Act 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 Act, 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 or bye-law made or issued under the provisions so re-enacted. Miscellaneous

24. Recovery of fines.

- Sections 63 to 70 of the Indian Penal Code (45 of 1860) and the provisions of the Code of [****] [The word 'the' omitted vide H.P. Act No. 18 of 1971.] 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, rule or bye-law, unless the Act, rule or bye-law contains an express provision to the contrary.

25. Provision as to offences punishable under two or more enactments.

- Where an act or omission constitutes an offence under two or more enactments, then 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.

26. Meaning of service by post.

- Where any Himachal Pradesh Act authorises 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 affected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been affected at the time at which the letter would be delivered in the ordinary course of post.

27. Citation of enactments.

(1)[In this Act and in any other Himachal Pradesh Act] [Substituted for the words 'In any Himachal Pradesh Act' vide H.P. Act No. 18 of 1971.], and in any rule, bye-law, instrument or document, made under, or with reference to, any such Act, any enactment may be cited by a 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 a reference to the section or sub-section of the enactment in which the provision is contained. (2) In any Himachal Pradesh 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.

27A. [Application of Act to Ordinances and Regulations. [Section 27-A added vide H.P. Act No. 18 of 1971.]

(1) The provisions of this Act shall apply in relation to any Ordinance promulgated by the Governor of Himachal Pradesh 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 Himachal

Pradesh Acts made by the State Legislature.(2)The provisions of sections 4 and 5 of this Act shall apply on the expiry, withdrawal or repeal of any Ordinance promulgated by the Governor of Himachal Pradesh under article 213 of the Constitution, as if such Ordinance had been an enactment repealed by a Himachal Pradesh Act].

28. Repeal and savings.

- The Punjab General Clauses Act, 1898, as inforce in Himachal Pradesh is hereby repealed [.] [Substituted for ':' vide H.P. Act No. 18 of 1971.].[* * *] [Proviso omitted vide H.P. Act No. 18 of 1971.]