

The Orissa General Clauses Act, 1937

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Act 1 of 1937

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The Orissa General Clauses Act, 1937Orissa Act No. 1 of 1937An Act for facilitating the interpretation of Orissa Acts and for shortening the language used therein.Whereas it is expedient to facilitate the interpretation of Orissa Acts and to shorten the language used therein.It is hereby enacted as follow :Preliminary

1. Short title and commencement.

(1)[This Act may be called the Orissa General Clauses Act, 1937.] [For Statement of Objects and Reasons-see Orissa Gazette 1973, part XI., and for Proceedings in the Assembly-see Proceedings of the Orissa Legislative Assembly, 1937, Volume 1.](2)It shall [come into force at once.] [The Act extended to all the partially excluded areas with effect from the date the Act came into force vide Notification No. 2709-L., dated the 19th April, 1938-published in the Orissa Gazette, 1938-Part III.]

2. Definition.

- In this Act and in all Orissa Acts unless there is anything repugnant in the subject or context-(1)'Abet'. "abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (XLV of 1860);(2)'Act'. "act", used with reference to an offence or a civil wrong, shall include a series of acts ; and words which refer to acts done and shall extend also to illegal omissions;(3)'Affidavit'. "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;(4)'Barrister'. "barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland;(5)'British possession'. "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;(6)'Chapter'. "Chapter" shall mean a Chapter of the Act in which the word occurs;(7)'Collector'. "Collector" shall mean the chief officer in charge of the revenue administration of a district and shall include a Deputy

Commissioner;(8)'Commencement'. "commencement", used with reference to an Act, shall mean the day on which the Act comes into force;(9)'Consular Officer'. "Consular Officer" shall include consul-general, consul, vice-consular agent, pro-consul, and any person for the time being authorised to perform the duties of consul-general, vice-consul or consular agent ;(10)'District Court'. "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;(11)'District Judge'. "District Judge" shall mean the Judge of a District Court ;(12)'Document'. "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 ;(13)'Enactment'. "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;(14)'Father'. "father" in the case of anyone whose personal law permits adoption, shall include an adoptive father;(15)'Financial year'. "financial year" shall mean the year commencing on the first day of April;(16)'Gazette'. "Gazette" shall mean the Official Gazette of the State;(17)'Good faith'. 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;(18)'Government'. "Government" or "the Government" shall include the State Government as well as the Central Government;(19)'High Court'. "High Court" used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of Orissa in which the Act containing the expression operates;(20)[* * *(21)'Immovable property'. "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;(22)'Imprisonment'. "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code (XLV of 1860);(23)'Local authority'. "Local authority" shall mean a Municipal Committee, District Board, or any other authority entrusted by any Government with, or legally entitled to, the control of management of a municipal or local fund;(24)'Magistrate'. 'Magistrates shall include every person exercising all or arty of the powers of a Magistrate under the Code of Criminal Procedure (V of 1893) for the time being in force,;(25)'Master' (of a ship). "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;(26)'Month'. "month", shall mean a month reckoned according to the British Calendar;(27)'Movable property'. "movable property" shall mean property of every description except immovable property ;(28)'Notification'. "notification" shall mean a notification in the Gazette;(29)'Oath'. "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;(30)'Offence'. "offence" shelf mean any act or omission made punishable by any law for the time being in force ;(31)'Orissa Act'. "Orissa Act" shah mean an Act made by the Provincial Legislature or the Governor of Orissa under the Government of India Act, 1935 or by the Legislature of the State of Orissa under the Constitution;(32)'Part'. "Part" shall mean a part of the Act or Regulation in which the word occurs;(33)'Person'. "person" shall include any company or association or body of individuals, whether incorporated or not;(34)'Political Agent'. "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 Political Agent under that Act or Regulation

;(35)'Public nuisance'. "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code XLV of 1860);(36)'Registered'. "registered", used with reference to a document, shall mean registered in a Part A State or a Part C State under the law for the time being in force for the registration of documents;(37)'Regulation'. "Regulation" shall mean a Regulation made by the Governor under paragraph 5 of the Fifth Schedule to the Constitution and shall include a Regulation made under the Government of India Act, 1935, or a Regulation made by the President under Article 243 of the Constitution;(38)'Revenue Commissioner'. "Revenue Commissioner" shall mean the Revenue Commissioner for Orissa;(39)'Rule'. "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;(40)'Schedule'. "schedule" shall mean a schedule to the Act or Regulation in which the word occurs;(41)'Section'. "section" shall mean a section of the Act or Regulation in which the word occurs;(42)'Ship'. "ship" shall include every description of vessel used in navigation not exclusively propelled by oars;(43)'Sign'. "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', "son", in the case of anyone whose personal law permits adoption, shall include an adopted son;[(44-a) "Sub-Collector" shall mean the Chief Officer-in-charge of the Revenue Administration of a Sub-division; [Substituted vide Orissa Gazette Extraordinary No. 1563/2.11.1988-Notification No. 15006. Legislative/1.11.1988-O.A. No. 16 of 1988.](44-b) "Sub-divisional Officer" shall mean the Sub-Collector;](45)'Sub-section'. "sub-section" shall mean a sub-section of the section in which the word occurs;(46)'Swear'. "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;(46-a) "Tahsildar". shall mean the Chief Officer-in-charge of the revenue administration of a tahasil;(47)'Value'. "value" used with reference to a suit, shall mean the amount or value of the subject-matter of the suit, computed according to the law for the time being in force regulating the valuation of suits for purposes of jurisdiction;(48)'Vessel'. "vessel" shall include any ship or boat or any other description of vessel used in navigation;(49)'Will'. "will" shall include a codicil and every writing making a voluntary posthumous disposition of property;(50)'Writing'. 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(51)'Year'. "year" shall mean a year reckoned according to the British calendar.General rules of construction

3. Coming into operation of Act.

(1)Where any Orissa Act is not expressed to come into operation on a particular day, then -(i)in the case of an Orissa Act made before the commencement of the Constitution, it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor General or His Majesty, as the case may require, is first published in the Official Gazette and, if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette;(ii)in the case of an Orissa Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the Official Gazette.(2)Unless the contrary is expressed, an Orissa Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

4. Printing of date on which Act is published.

- In every Orissa Act the date of such publication as is mentioned in Sub-section (1) of Section 3 shall be printed either above or below the title of the Act and shall form part of the Act.

5. Effect of repeal.

- Where any Orissa Act repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not-(a)revive anything not in force or existing at the time at which the repeal takes effect; or(b)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.

6. Revival of repealed enactment.

- In any Orissa 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. Repeal of Act making textual amendment in Act or Regulation.

- Where any Orissa Act repeals any enactment by which the text of any enactment 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.

8. Constructions of references to repealed enactments.

- Where any Orissa Act 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.

9. Commencement and termination of time.

- In any Orissa 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".

10. Computation of time.

- Where, by any Orissa Act, any act or proceedings 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 on the last day of the prescribed period, the act or proceeding shall be considered as done or taken till 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 (IX of 1908) applies.

11. Measurement of distances.

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

12. Duty to be taken pro rata in 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.

13. Gender and number.

- In all Orissa 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

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

- Where an Orissa Act confers a power or imposes a duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires.

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

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

16. Power to appoint to include power to appoint ex officio.

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

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

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

18. Substitution of functionaries.

- In any Orissa Act 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.

19. Successors.

- In any Orissa 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.

20. Official chiefs and subordinates.

- In any Orissa Act it shall be sufficient, for the purpose of expressing that a law relating 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

21. Construction orders etc., issued under enactments.

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

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

- Where, by an Orissa Act, a power to make or issue notifications, orders, schemes, rules, by-laws or forms, 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, schemes, rules, by-laws or forms so made or issued.

23. Making of rules or by-laws and issuing of orders between passing and commencement of enactment.

- Where, by any Orissa Act, which is not to come into operation on the passing thereof, a power is conferred to make rules or by-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 power may be exercised at any time after the passing thereof, but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

24. Provisions applicable to making of rules or by-laws after previous publication.

- Where, by any Orissa Act, a power to make rules or by-laws is expressed to be given, subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely : (1) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-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 Central Government or as the case may be, the State 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 by-laws, and, where the rules or by-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 by-laws from any person with respect to the draft before the date so specified; (5) the publication in the Gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

24A. [Provision for laying of rules before the State Legislature. [Inserted vide Orissa Act No. 12 of 1976.]

(1) All rules made by the State Government under an Orissa Act shall, as soon as may be after they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions and it during the said period the State Legislature makes modifications, if any, therein the rules shall thereafter have effect only in such modified form, so, however, that such modification shall be without Prejudice to the validity of anything previously done under the rules. (2) Where any Central Act, in force in or applicable to the State of Orissa and relating to matters with respect to which the State Legislature has power to make laws for the State, confers power on the State Government to make rules thereunder, then subject to any express provision to the contrary in such Act, the provisions of Sub-section (1) shall, so far as may be, apply to the rules made by the State Government in exercise of that power.]

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

- Where any enactment is repealed and re-enacted by an Orissa Act with or without modification, then, unless it is otherwise expressly provided any appointment, notification, order, scheme, rule, by-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 provision is so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form, made or issued under the provision so re-enacted.

26. Publication of orders and notifications in the Gazette.

- Where in any Orissa Act 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 Gazette.

27. Recovery of fines.

- Sections 63 to 70 of the Indian Penal Code (XLV of 1860) and the provisions of the Code of Criminal Procedure (V of 898) 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 Orissa Act, or any rule or by-law made under any Orissa Act, unless the Act, rule or by-law contains an express provision to the contrary.

28. 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.

29. Meaning of service by post.

- Where any Orissa Act 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 documents 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.

30. Citation of enactments.

(1) In any Orissa Act and in any rule, bylaw, instrument or document made under, or with reference to, any Orissa Act, any enactment may be cited by reference to the title or short title (if any) conferred thereon, or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or subsection of the enactment in which the provision is contained. (2) In any Orissa Act a description or citation 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.

31. Saving of previous enactments rules and by-laws.

- Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-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 by-laws.

32. Application of Act to Ordinances and regulations.

- The provisions of this Act shall apply-(a) in relation to any Ordinance promulgated by the Governor of Orissa under Section 38 or Section 89 of the Government of India Act, 1935, as they apply in relation to Orissa 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 Orissa 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 Orissa Acts made by the State Legislature: Provided that Clause (ii) of Sub-section (1) of Section 3 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 that Gazette.