ARTICLE 367(1) AND THE GENERAL CLAUSES ACT*

BY REASON OF ARTICLE 367(1) of the Constitution of India,[1] the General Clauses Act, 1897, applies for the interpretation of the Constitution in the same manner as it applies for the interpretation of a central Act. This is, however, subject to two conditions. Firstly, where the context otherwise requires or the Constitution itself defines a legal expression. Secondly, the provisions of the General Clauses Act apply subject to adaptations and modifications that may be made under article 372 (2) of the Constitution.[2] No adaptations or modifications, however, can be made in any law under article 372(2) after the expiry of three years from the commencement of the Constitution in view of the provisions of clause (3) of article 372.[3] That being so, the Parliament had to step in and insert article 372A by the Constitution[4]

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*The views expressed herein are the personal views of the author and in no way reflected his official position.

1. *Ind. Const.* art. 367(1):

Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

2. *Ind. Const.* art. 372(2):

For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

3. *Ind. Const.* art. 372(3):

Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or

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4. *Ind. Const.* art. 372A:

(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

(Seventh Amendment) Act, 1956, to bring any law in force in India immediately before the commencement of that Act in accord with the provisions of the Constitution as amended by that Act. It is needless to say that certain important changes were brought about in the Constitution by the Amendment Act aforesaid. In order to make the laws in force conform to those changes, the President of India, in exercise of the powers conferred upon him by article 372A, made the Adaptation of Laws (No. 1) Order, 1956, which widened the definition of the expression "State" in section 3(58)(b) of the General Clauses Act, so as to include a Union territory therein. The amended definition reads as under :

> (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
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> (b) as respects any period after such commencement, shall mean a State as specified in the First Schedule to the Constitution and shall include a Union territory.

It would appear from the foregoing that the widened definition of the expression "State" in clause (b) has no application for the interpretation of the Constitution for the simple reason that by virtue of article 367(1) the provisions of the General Clauses Act, as adapted or modified under article 372 apply, but any adaptations or modifications made under article 372A are not attracted for the interpretation of the Constitution.

This question has assumed importance because of the decision of the Supreme Court in *Ram Kishore Sen* v. *Union of India*.[5] But before going into details of this case it is necessary to refer to an earlier decision of the same Court.

In *In re : Berubari Union and Exchange of Enclaves*,[6] the Supreme Court answered in negative as to whether Union territory is covered by the expression "State" used in clause (*c*) of article 3 of the Constitution.[7] The Court observed :

> It is significant that Art. 3 in terms does not refer to the Union territories and so, whether or not they are included in the last clause of Art. 3(a) there is no doubt that they are outside the purview of article 3(b), (c), (d) and (e).[8]

This point arose again a few years later before the Calcutta High Court in *Ram Kishore* case.[9] It was urged on behalf of the petitioner that the above decision was wrong, and was not binding on the Court as being given in advisory jurisdiction, as the learned Judges of the

5. *Ram Kishore Sen* v. *Union of India*, A.I.R. 1966 S.C. 644.
6. [1960] 3 S.C.R. 250.
7. *Ind. Const.* art. 3(*c*) :
Parliament may by law——
(*c*) diminish the area of any State.
8. *Supra* note 6 at 290.
9. *Ram Kishore Sen* v. *Union of India*, A.I.R. 1965 Cal. 282.

Supreme Court overlooked the definition of the word "State" in the General Clauses Act, 1897, as adapted and modified by the Adaptations Laws (No. 1) Order, 1956. It was further contended that the word "State" having not been defined in the Constitution itself the definition aforesaid applied and on that premise the expression "State" includes a Union territory. This position was accepted as correct by the High Court.

In appeal this view of the Calcutta High Court was upheld by the Supreme Court. Mr. Chief Justice Gajendragadkar, speaking for the Court, observed :

> [I]t is necessary to advert to the opinion expressed by this Court in 1960-3 SCR 250. [*In re, Berubari Union and Exchange of Enclaves*, A.I.R. 1960 S.C. 845 at 862] with a view to correct an error which has crept into the opinion through inadvertence....While discussing the significance of the several clauses of Art. 3 in that behalf, it seems to have been assumed that the Union territories were outside the purview of the said provisions. In other words, the opinion proceeded on the basis that the word "State" used in all the said clauses of Art. 3 did not include the Union territories specified in the First Schedule. Apparently, this assumption was based on the distinction made between the two categories of territories by Art. 1(3). In doing so, however, the relevant provisions of the General Clauses Act (Act X of 1897) were inadvertently not taken into account. Under S. 3(58)(b) of the said Act, "State" as respects any period after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a State as specified in the First Schedule to the Constitution and shall include a Union territory. This provision of the General Clauses Act has to be taken into account in interpreting the word "State" in the respective clauses of Art. 3, because Art. 367(1) specifically provides that unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Art. 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Therefore, the assumption made in the opinion that Art. 3 in its several clauses does not include the Union territory is misconceived and to that extent, the incidental reason given in support of the main conclusion is not justified.[10]

The Court lamented the fact that the provisions of the General Clauses Act were inadvertently not taken into account in its earlier opinion in *In re*: *Berubari Union and Exchange of Enclaves*. The irony, however, is that it was again not brought to the notice of the Court that the definition of word "State" in section 3(58)(b) of the General Clauses Act, 1897, on which it founded its instant decision was not applicable for the interpretation of the Constitution inasmuch as this definition was modified under the Adaptation of Laws Order (No. 1) of 1956 issued by the President under article 372A, which is not attracted by article 367(1) for the interpretation of this Constitution.

It may be that the error crept in while inserting article 372A in the Constitution by the Constitution (Seventh Amendment) Act, 1956,

10. *Supra* note 5 at 648

due to an omission in making the consequential amendment in article 367(1), so as to include the adaptations and modifications that may be made under article 372A as well. However, as the law now stands, it is evident that the definition of the word "State" in section 3(58)(b) of the General Clauses Act, 1897, as widened by the Adaptation of Laws Order (No. 1) of 1956, has no application for the interpretation of the Constitution. In that view of the matter The *Ram Kishore* case requires reconsideration on this point.

It seems, however, that perhaps it was not the intention of the Parliament to exclude the application of the provisions of the General Clauses Act, 1897, as modified by the Adaptation Laws Order (No. 1), 1956, for the interpretation of the Constitution. In the circumstances a consequential amendment in article 367(1) on the lines suggested above would perhaps meet the situation and bring out clearly the intention of the Parliament.

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