



Government of India Act 1935

1935 CHAPTER 2

PART V

LEGISLATIVE POWERS.

CHAPTER I

DISTRIBUTION OF POWERS.

99 **Extent of Federal and Provincial laws.**

- (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.
- (2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—
 - (a) to British subjects and servants of the Crown in any part of India; or
 - (b) to British subjects who are domiciled in any part of India wherever they may be ; or
 - (c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or
 - (d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or
 - (e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

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100 Subject matter of Federal and Provincial laws.

- (1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the " Federal Legislative List ").
- (2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the " Concurrent Legislative List ").
- (3) Subject to the two preceding subsections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the " Provincial Legislative List ").
- (4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

101 Extent of power to legislate for States.

Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

102 Power of Federal Legislature to legislate if an emergency is proclaimed.

- (1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a " Proclamation of Emergency ") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

- (2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.
- (3) A Proclamation of Emergency—
 - (a) may be revoked by a subsequent Proclamation;
 - (b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

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- (c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.
- (4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

103 Power of Federal Legislature to legislate for two or more Provinces by consent.

If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

104 Residual powers of legislation.

- (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.
- (2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

105 Application of Naval Discipline Act to Indian naval forces.

- (1) Without prejudice to the provisions of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an existing Indian law, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however—
 - (a) in the application of the said Act to the forces and ships of the Indian navy and to the trial by court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by the Act of the Federal or Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or may have been, so made for the purpose of authorising or requiring anything which under the said Act is to be done by or to the Admiralty, or the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorised to act on his behalf; and
 - (b) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations

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as may be made, or may have been made under section sixty-six of the Government of India Act, by His Majesty in Council for the purpose of regulating the relations of those forces and ships to the forces and the ships of the Indian navy.

- (2) Notwithstanding anything in this Act or in any Act of any Legislature in India, where any forces and ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval Discipline Act shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid.

106 Provisions as to legislation for giving effect to international agreements.

- (1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.
- (2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.
- (3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

107 Inconsistency between Federal laws and Provincial, or State, laws.

- (1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions- of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.
- (2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

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- (3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void.