



Government of India Act 1935

1935 CHAPTER 2

PART V

LEGISLATIVE POWERS.

CHAPTER III

PROVISIONS WITH RESPECT TO DISCRIMINATION, &C.

111 British subjects domiciled in the United Kingdom.

- (1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as—
- (a) imposes any restriction on the right of entry into British India; or
 - (b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession :

Provided that no person shall by virtue of this subsection be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition, liability, or disability imposed in regard to the same subject matter by reference to the same principle of distinction.

- (2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

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- (3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this subsection shall be exercised by him in his discretion.

112 Taxation.

- (1) No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.
- (2) Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.
- (3) For the purposes of this section a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma shall be deemed to be a company incorporated by or under the laws of Burma.

113 Companies incorporated in the United Kingdom.

- (1) Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds, and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with—
- (a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed; or
 - (b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or' under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.

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- (2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in subsection (1) of this section, any company incorporated by or under the laws of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

114 Companies incorporated in India.

- (1) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India.

- (2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, and servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in British India, depend on compliance with conditions as to any of the matters aforesaid.
- (3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India.

115 Ships and aircraft.

- (1) No ship registered in the United Kingdom shall be subjected by or under any Federal or Provincial law to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India, except in so far as ships registered in British India are for the time being

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subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

- (2) This section shall apply in relation to aircraft as it applies in relation to ships.
- (3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

116 Subsidies for the encouragement of trade or industry.

- (1) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of British India are eligible therefor :

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

- (2) Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless and until—
 - (a) the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State; and
 - (b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects of a Federated State; and
 - (c) the company "gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.
- (3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.

117 Supplemental.

The foregoing provisions of this chapter shall apply in relation to any ordinance, order, byelaw, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian law, or of any law of the Federal or any Provincial Legislature, the force of law as they apply in relation to Federal and Provincial laws, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian law.

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118 Power to secure reciprocal treatment by convention.

- (1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.
- (2) An Order in Council under, this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

119 Professional and technical qualifications in general.

- (1) No Bill or amendment which prescribes, or empowers any authority to prescribe, the professional or technical qualifications which are to be requisite for any purpose in British India or which imposes, or empowers any authority to impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.
- (2) The Governor-General or a Governor shall not give his sanction for the purposes of the preceding subsection unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practising any profession, carrying on any occupation, trade, or business, or holding any office in British India shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.
- (3) All regulations made under the provisions of any Federal or Provincial law which prescribe the professional or technical qualifications which are to be requisite for any purpose in British India or impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business; or the holding of any office in British India, shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or, as the case may be, the Governor, and, if within two months from the date of the publication complaint is made to the Governor-General or, as the case may be, the Governor that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the

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Governor-General or Governor, if he is of opinion that the complaint is well founded, may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.

In this subsection the expression " regulations " includes rules, byelaws, orders and ordinances.

In the discharge of his functions under this subsection the Governor-General or a Governor shall exercise his individual judgment.

- (4) If the Governor-General exercising his individual judgment by public notification directs that the provisions of the last preceding subsection shall apply in relation to any existing Indian law, those provisions shall apply in relation to that law accordingly, and the functions which under those provisions are to be performed in relation to a Federal law by the Governor-General and in relation to a Provincial law by the Governor shall, in relation to that existing Indian law, be performed, according as may be directed by the notification, by the Governor-General exercising his individual judgment, by the Governor exercising his individual judgment or partly by the one and partly by the other of them.

120 Medical qualifications.

- (1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any existing Indian law or any law of the Federal or any Provincial Legislature, be excluded from practising medicine, surgery or midwifery in British India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless a law of the Federation or of the Province, as the case may be, makes provision for securing—
- (a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor-General and to the University or other body granting that diploma; and
 - (b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.
- (2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in British India, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in British India and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor-General, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

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- (3) The condition referred to in subsection (1) of this section is that British subjects domiciled in India who hold a medical diploma granted after examination in British India shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.
- (4) A medical practitioner entitled to practise or to be registered in British India by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British India, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.
- (5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in Burma who, by virtue of medical diplomas granted to them in Burma or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted in the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners.
- The said modifications are as follows, that is to say,—
- (a) subsection (3) shall not apply and the reference in subsection (1) to the condition set out therein shall be deemed to be omitted;
- (b) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to Burma.
- (6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.
- (7) In this section the expression " diploma " includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

121 Officers of Indian Medical Service, &c.

A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in British India, and be entitled to be registered in British India or any part thereof as so qualified.