



Government of India Act 1935

1935 CHAPTER 2

PART X

THE SERVICES OF THE CROWN IN INDIA.

CHAPTER V

GENERAL.

270 Indemnity for past acts.

- (1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.
- (2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.
- (3) For the purposes of this section—
the expression " the relevant date " means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of

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Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation;

references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner's Province;

a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred.

271 Protection of public servants against prosecutions and suits.

- (1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure, 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 powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the court before which, the person by whom and the manner in which, a public servant is to be tried, shall be exercisable only—
 - (a) in the case of a person employed in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment; and
 - (b) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment:

Provided that nothing in this subsection shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in subsection (1) of this section.

- (3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province, as the case may be.

272 Provisions as to payment of certain pensions and exemption of those pensions from taxation in India.

Any pension payable to or in respect of a person who—

- (a) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or
- (b) after the commencement of Part III of this Act—

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- (i) serves in India as an officer of His Majesty's forces; or
- (ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or
- (iii) holds a reserved post,

shall, if the person to whom the pension is payable is residing permanently outside India, be paid on behalf of the Federation or the Province, as the case may be, by, or in accordance with arrangements made with, the Secretary of State, and be exempt from all taxation imposed by or under any existing Indian law, or any law of the Federal or of a Provincial Legislature.

273 Provisions as to family pension funds.

- (1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the Order of—
- (a) the Indian Military Widows and Orphans Fund;
 - (b) the Superior Services (India) Family Pension Fund;
 - (c) a fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations;
 - (d) a fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those rules,

for the investment of the said funds by the Commissioners, in such manner as, subject to the provisions of the Order, they think fit, for the administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said regulations and rules, shall, subject to the provisions of subsection (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise.

Before recommending His Majesty to make any Order in Council under this subsection, the Secretary of State shall consider any representations made to him by any of the existing subscribers and beneficiaries or by any persons appearing to him to represent any body of those subscribers or beneficiaries.

- (2) Any such Order as aforesaid shall provide that the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act in respect of the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of this section, be transferred to the Commissioners before the expiration of three years from the said date either all at one time or by instalments, together with such interest as may be prescribed by or under the Order:

Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of three years.

- (3) Any such Order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as

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aforesaid in the Commissioners and, if any objection is so made in the manner and within the time limited by the Order—

- (a) so much of any money in the hands of the Governor-General as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation; and
 - (b) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State.
- (4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the regulations or rules relating to the fund in question, provide for the making of such alterations in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order.
- (5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income tax in the United Kingdom, and estate duty shall not be payable in Great Britain, nor, if the Parliament of Northern Ireland so provides, in Northern Ireland, in respect of any pension payable under the regulations or rules relating to any such fund.

(6) In this section—

references to the Indian Military Service Family Pension Regulations or the Indian Civil Service Family Pension Rules shall be construed as including references to any regulations or rules which may be substituted therefor;

the expression "existing subscribers and beneficiaries" means, in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, persons who have subscribed to, or are or have been in receipt of pensions from, those funds, and, in relation to the funds to be formed out of the moneys contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the regulations or rules, not being persons who have surrendered or forfeited their interest in the fund or, as the case may be, their interest under the regulations or rules;

references to pensions payable under the said regulations or the said rules do not include references to any pension or portion of a pension payable otherwise than out of the moneys contributed and to be contributed under those regulations or rules;

references to moneys so contributed, or to be so contributed, include references to interest upon such moneys.

(7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in relation to other persons who are serving or have served His Majesty in India, and accordingly the regulations and rules relating to any such fund may apply in relation to any such persons as aforesaid.

If any Order in Council is made under this section, and if provision in that behalf is made by the Acts or rules relating to conditions of service of persons serving His

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Majesty in Burma, the said regulations and rules may also extend to persons appointed to the service of the Crown in Burma after the commencement of Part III of this Act.

274 Saving for certain Funds Acts.

Notwithstanding anything in this Act, the India Military Funds Act, 1866, the East India Annuity Funds Act, 1874, and the Bombay Civil Fund Act, 1882, shall continue to have effect but subject to the following adaptations, that is to say, that anything to be done under the said Acts by or to the Secretary of State in Council shall, after the commencement of Part III of this Act, be done by or to the Secretary of State, and for any reference in the said Acts to the revenues of India there shall be substituted a reference to the revenues of the Federation.

275 Persons not to be disqualified by sex for holding certain offices.

A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

- (a) by the Governor-General in the case of services and posts in connection with the affairs of the Federation;
- (b) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province;
- (c) by the Secretary of State in relation to appointments made by him:

Provided that any such agreement with respect to joint services and posts as is mentioned in chapter II of this Part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor.

276 Transitional provisions.

Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.

277 Interpretation, &c.

(1) In this Part of this Act—

the expressions " all-India Service, " " Central Service Class I, " " Central Service Class II, " " Railway Service Class I, " " Railway Service Class II " and " Provincial Service " mean respectively the services which were immediately before the commencement of Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act; and

references to dismissal from His Majesty's service include references to removal from His Majesty's service.

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- (2) References in this Part of this Act to persons appointed to a civil, service of, or a civil post under, the Crown in India—
- (a) include references to persons who, after service in India, Burma, or Aden, retired from the service of His Majesty before the commencement of Part III of this Act;
 - (b) do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden.
- (3) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.