

GOVERNMENT OF INDIA, 1915.

(5 and 6 Geo. 5, CH. 61.)

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

101. (1) The high courts referred to in this Act are the high courts of courts of judicature for the time being established in British India by letters patent.

(2) Each high court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint: Provided as follows:—

(i) the Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act.

(ii) the maximum number of judges of a high court, including the chief justice and additional judges, shall be twenty.

(3) A judge of a high court must be—

(a) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or

(c) a person having held judicial office, not inferior to that of a subordinate judge or a judge of a small cause court, for a period of not less than five years; or

[(d) a person who has been a pleader of one of the High Courts referred to in this Act, or of any Court which is a High Court within the meaning of clause (24) of section 3 of the Act of the Indian Legislature known as the General Clauses Act, 1897, for an aggregate period of not less than ten years.]

(4) Provided that not less than one-third of the judges of a high court, including the chief justice but excluding additional judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.

(5) The high court for the North-Western Provinces may be styled the court of judicature at Allahabad, and the high court at Fort William in Bengal is in this Act referred to as the high court at Calcutta.

* This clause was substituted by the Indian High Courts Act, 1922 (12 and 13 Geo. 5, c 20).

102. (1) Every judge of a high court shall hold his office during His Majesty's pleasure.

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in other cases to the local Government.

103. (1) The chief justice of a high court shall have rank and precedence before the other judges of the same court.

(2) All the other judges of a high court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their patents.

104. (1) The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions and (where necessary) expenses for equipment and voyage, of the chief justices and other judges of the several high courts, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(2) The remuneration fixed for a judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

(3) If a judge of a high court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

(4) If a judge of a high court dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

105. (1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

Provision for vacancy in the office of chief justice or other judge.

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or the local Government, as the case may be, sees cause to cancel the appointment of the acting judge.

Jurisdiction.

106. (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.→

¹[(1-A) The letters patent establishing or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further letters patent.]

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

107. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

¹[This sub-section was inserted by Sch. I of the Government of India (Amendment) Act, 1916 (6 and 7 Geo. 5, c. 37).]

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any ¹[law] for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

108. (1) Each high court may by its own rules provide as it thinks for the exercise, by one or more judges, or by division courts constituted by two or more judges of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

109. (1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of ²[any British subject for the time being within] any part of India outside British India.

(2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annul the order as from the day on which the Governor-General notifies that he has received intimation of the disallowance but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

110. (1) The Governor-General, each governor, ³[lieutenant-governor and chief commissioner,] and each of the members of ⁴[the executive council of the Governor-General, or of a governor or lieutenant-governor,] ⁵[and a minister appointed under this Act,] shall not—

(a) be subject to the original jurisdiction of any high court by reason of anything counselled, ordered or done by any of them in his public capacity only; nor

¹ [] This word was substituted for the word "Act" by Sch. I of the Government of India (Amendment) Act, 1916 (6 and 7 Geo. 5, c. 37).

² [] These words were substituted for the words "Christian subjects of His Majesty resident in" by Sch. I of the Government of India (Amendment) Act, 1916 (6 and 7 Geo. 5, c. 37).

³ [] These words were inserted by Sch. I of the Government of India (Amendment) Act, 1916 (6 and 7 Geo. 5, c. 37).

⁴ [] These words were substituted for the words "their respective executive councils" by Sch. I of the Government of India (Amendment) Act, 1916 (6 and 7 Geo. 5, c. 37).

⁵ [] These words were inserted by Part II of Sch. II of the Government of India Act, 1919 (9 and 10 Geo. 5, c. 101).

(b) be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction ; nor

(c) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the chief justices and other judges of the several high courts.

111. The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject ; but nothing in this section shall exempt the Governor-General, or any member of his executive council, or any person acting under their orders from any proceedings in respect of any such act before any competent Court in England.

Written order by Governor-General justification for act in any court in India.

Law to be administered.

112. The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

Law to be administered in cases of inheritance and succession.

Additional High Courts.

113. His Majesty may, if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any high court existing at the commencement of this Act ; and, where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

Power to establish additional high courts.

Advocate-General.

114. (1) His Majesty may, by warrant under His Royal Sign Appointment and powers of Advocate-General. Manual, appoint an Advocate-General for each of the presidencies of Bengal, Madras and Bombay.

(2) The Advocate-General for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England.

¹[(3) On the occurrence of a vacancy in the office of Advocate-General or during any absence or deputation of an Advocate-General the Governor-General in Council in the case of Bengal, and the local Government in other cases, may appoint a person to act as Advocate-General: And the person so appointed may exercise powers of an Advocate-General until some person has been appointed by His Majesty to the office and has entered on the discharge of his duties, or until the Advocate-General has returned from his absence or deputation as the case may be, or until the Governor-General in Council or the local Government, as the case may be, cancels the acting appointment.]

PART XII
Supplemental

130. ²[This repeal shall not affect—

- (a) the validity of any law, charter, letters patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table settled, under any enactment hereby repealed and in force at the commencement of this Act, or
- (b) the validity of any appointment, or any grant or appropriation or right to pension of any other officer appointed before the repeal, or
- (c) the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act.]

³[Any reference in any enactment, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment, or in any letters patent or other document, to any enactment repealed by this Act, shall for all purposes be construed as references to this Act, or to the corresponding provision thereof.]

³[Any reference in any enactment in force in India, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations, or orders made under any such enactment, or in any letters patent or other document, to any Indian legislative authority, shall for all purposes be construed as references to the corresponding authority constituted by this Act.]

¹ [This sub-section was added by Sch. I of the Government of India (Amendment) Act, 1916 (6 and 7 Geo. 5, c. 37).

² [The words "The Acts specified in the fourth schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule: provided that" and "the fourth schedule" were repealed by Statute Law Revision Act, 1927, 17 and 18 Geo. 5, c. 42, Section 1 and schedule.

³ [These paragraphs were inserted by Part I of Sch. II of the Government of India Act, 1919 (9 and 10 Geo. 5, c. 101).

131. (1) & (2) * * * *

(3) Nothing in this Act shall affect the power of the ¹[Indian legislature] to repeal or alter any of the provisions mentioned in the Fifth Schedule to this Act, or the validity of any previous exercise of this power.

Section 131 (3)

⁽²⁾ FIFTH SCHEDULE

Provisions of this Act which may be repealed or altered by the
³[Indian Legislature].

Section.	Subject.
106	Jurisdiction, powers and authority of High Courts.
108(1)	Exercise of jurisdiction of High Court by single judges or Division Courts.
109	Power for Governor-General-in-Council to alter local limits of jurisdiction of High Courts, etc.
110	Exemption from jurisdiction of High Courts.
111	Written order by Governor-General-in-Council a justification for act in High Court.
112	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114(2)	Powers of Advocate-General.

¹[These words were substituted for the words "Governor-General in Legislative Council" by Part II of Sch. II, of the Government of India Act, 1919 (9 and 10 Geo. 5, c. 101).

⁽²⁾ This Schedule was substituted by Sch. I of the Government of India (Amendment Act, 1916 (6 and 7 Geo. 5, c. 37).

³[These words were substituted for the words "Governor-General in Legislative Council" by Part II of Sch. II of the Government of India Act, 1919 (9 and 10 Geo. 5, c. 101).