



Government of Bombay  
Legal Department

First Supplement  
to  
**The Bombay Code**

containing

The Acts passed by the Bombay Legislature during  
the year 1938, Chronological Tables of Enactments  
reproduced in this Supplement and an Index

*FIFTH EDITION, 1938*

BOMBAY

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## P R E F A C E

Preface to the First Supplement of 1938 to the Bombay Code, 5th Edition, 1938.

The fifth edition of the Bombay Code contains local Acts applicable to the Province of Bombay as modified up to the 31st December 1937.

This supplement contains all the Acts passed by the Bombay Legislature during the year 1938. In editing it the system adopted in the original Code has been adhered to. In order to facilitate ready reference a chronological table has been inserted at the commencement of this volume giving references where necessary to Acts that have been amended. A table of contents has been inserted before each Act except in the case of those which merely amend local Acts. Another feature of this supplement is that in the case of Acts amending local Acts footnotes have been given indicating references to the amended Acts published in volumes of the Code. For Statement of Objects and Reasons and Reports of the Select Committee, references to the *Bombay Government Gazette* and to the Bombay Legislative Assembly and Council Debates have also been given in these footnotes.

LEGAL DEPARTMENT, BOMBAY :  
April 1939.

J. R. D.

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## BOMBAY ACT No. I OF 1938.<sup>1</sup>

[THE BOMBAY LOCAL BOARDS (AMENDMENT) ACT, 1938.]

[28th January, 1938]

### An Act to amend the Bombay Local Boards Act, 1923.<sup>2</sup>

WHEREAS it is expedient to amend the Bombay Local Boards Act, 1923, for the purposes hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called the Bombay Local Boards (Amendment) Act, 1938.

2. In section 3 of the Bombay Local Boards Act, 1923, hereinafter called "the said Act", after clause (c), the following shall be inserted, namely :—

Amendment  
of section 3  
of Bom. VI  
of 1923.

"(cc) 'Backward tribe' means a tribe specified in Part II of the Thirteenth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936.

(dd) 'Harijan' means a person belonging to any of the Scheduled Castes as defined in the Government of India (Scheduled Castes) Order, 1936."

3. In section 5 of the said Act,

(1) for sub-section (1), the following shall be substituted, namely :—

"(1) Every district and taluka local board shall, subject to the provisions of sub-section (5), consist of elective members."

Amendment  
of section 5  
of Bom. VI  
of 1923.

(2) sub-sections (2), (3) and (4) shall be deleted.

4. For section 6 of the said Act, the following section shall be substituted, namely :—

Amendment  
of section 6  
of Bom. VI  
of 1923.

"6. (1) The elective members of local boards shall be elected by general and Muhammadan constituencies. The number and extent of such constituencies, the number of members to be elected by each constituency, and the number of seats to be reserved in general constituencies for the representation of women or of any caste, by whom to be elected, local boards

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Pt. V, pp. 4 and 5 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, p. 1140. For Proceedings in the Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 322-36, 346-90, 397-411 and 499-547 and for Proceedings in the Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 184-86 and 209-257.

<sup>2</sup>See *Bombay Code*, Vol. V, p. 23.

community or tribe shall be as prescribed by orders made by the Provincial Government under clause (a) of section 133 :

Provided that no seat shall be reserved for the representatives of any caste, community or tribe,

(a) other than—

(i) Harijans,

(ii) a backward tribe, or

(iii) any community the members of which are, under the Fifth Schedule to the Government of India Act, 1935, entitled to separate constituencies for electing representatives to the Bombay Legislative Assembly, and

(b) unless the Provincial Government is of opinion that the reservation of such seats is necessary having regard to the population of such caste, community or tribe in the local board area.

(2) Notwithstanding anything contained in sub-section (1), the Muhammadans in the area constituting a Muhammadan constituency who are qualified voters may either unanimously or by majority declare in the manner prescribed under clause (a) of section 133 that the said Muhammadan constituency be abolished.

(3) On such declaration, the Provincial Government shall direct that the said Muhammadan constituency be abolished from such date as may be specified in the notification in the *Official Gazette* and may make orders under clause (a<sup>2</sup>) of section 133 for the purpose of securing representation in general constituencies of the Muhammadans in the area constituting the said Muhammadan constituency.”

Insertion of new section 15A in Bom. VI of 1923.

5. After section 15 of the said Act, the following section shall be inserted, namely:—

Provisions of section 15 (3), clauses (a) and (b) to cease to be in force.

“15A. From the date specified in the notification under sub-section (3) of section 6 the provisions of clauses (a) and (b) of sub-section (3) of section 15 shall cease to be in force and for the purpose of any election of persons to fill the places of persons whose term of office has expired under section 28 and for all subsequent elections, lists for constituencies shall be prepared and finally published as if the said provisions have not been in force.”

Amendment of section 130 of Bom. VI of 1923.

6. In section 130 of the said Act, the words “by such nominations and elections as may be necessary” shall be deleted.

Amendment of section 133 of Bom. VI of 1923.

7. In section 133 of the said Act,—

(1) in clause (a) for the words beginning with the words “the proportion” and ending with the words “each constituency” the

words and figure "the number of members to be elected by each constituency and the reservation of seats in general constituencies for women or for any caste, community or tribe specified in section 6" shall be substituted;

(2) after clause (a) the following clauses shall be inserted, namely:—

"(a<sup>1</sup>) prescribing the manner in which the Muhammadan voters in any area for which a Muhammadan constituency is constituted may declare that the said constituency be abolished;

(a<sup>2</sup>) determining the mode in which the representation of the Muhammadans in the area for which a Muhammadan constituency is abolished under section 6 shall be secured."

8. (1) Notwithstanding anything contained in this Act or the rules or orders thereunder, in the case of a local board—

(a) of a district which includes a partially excluded area, or in respect of which the Provincial Government is of opinion that the population of the members of backward tribes residing therein is sufficiently large to justify reservation of seats being made for the purpose of giving them representation, and

Provision  
for increase  
of reserved  
seats for  
backward  
tribes in  
certain dis-  
tricts.

(b) which is constituted on a date next following the commencement of this Act, the Provincial Government may, at any time during the term of office of such board, direct by notification in the *Official Gazette*, that the total number of members of such board prescribed by rules or orders under section 133 of the said Act shall be increased to such number as it deems necessary for the purpose of providing seats for the members of backward tribes or adding to the number of seats already reserved for such members under the said rules or orders:

(2) On the publication of such notification elections shall, for the purpose of filling the number of seats so increased, be held in the manner specified in the said Act or the rules or orders thereunder subject to such modification as the Provincial Government may direct.

(3) The period for which the members elected to fill the said seats shall hold office shall be coterminous with the term of office of such board under section 28 of the said Act.

(4) Nothing herein contained shall affect the constitution of any committee which may have been constituted or the election or appointment of any officers who may have been elected or appointed, before the election of the additional members under sub-section (2).

*Explanation.*—For the purpose of this section, a partially excluded area shall be any of the areas in the Province of Bombay specified in the Schedule to the Government of India (Excluded and Partially Excluded Areas) Order, 1936.

4 *The Bombay Local Boards (Amendment) Act, 1938* [BOM. I OF 1938]

Saving.

9. (1) Nothing in this Act shall affect the local boards constituted immediately before the commencement of this Act and no appointment, notification, notice, tax, order, scheme, licence, permission, rule, by-law or form made, issued or imposed by or in respect of such local board shall be deemed to be invalid by reason only of the fact that this Act has come into force.

(2) Notwithstanding anything contained in this Act, any casual vacancy in a local board constituted immediately before the commencement of this Act shall, subject to the provisions of section 33, be filled in the manner provided by the said Act, as if this Act had not been passed.



**BOMBAY ACT No. II OF 1938.<sup>1</sup>**

[THE CITY OF BOMBAY MUNICIPAL (AMENDMENT) ACT, 1938.]

[2nd February, 1938]

**An Act to amend the City of Bombay Municipal Act, 1888.<sup>2</sup>**

WHEREAS it is expedient to amend the City of Bombay Municipal Act, 1888, for the purpose hereinafter appearing; It is hereby enacted as follows :—

- |                         |   |  |
|-------------------------|---|--|
| Bom.<br>III of<br>1888. | 1. (1) This Act may be called the City of Bombay Municipal (Amendment) Act, 1938.   | Short title and commencement,  |
|                         | (2) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette appoint.             |  |
| Bom.<br>III of<br>1888. | 2. Sub-section (8A) of section 39 of the City of Bombay Municipal Act, 1888, hereinafter referred to as the said Act shall be repealed. | Amendment of section 39 of Bom. III of 1888.                               |
|                         | 3. After section 78 of the said Act, the following heading and sections shall be inserted, namely :—                                    | Insertion of new heading and new sections 78A and 78B in Bom. III of 1888. |

*“Municipal Chief Auditor.*

- |   |   |
|---|---|
| 78A. (1) The Corporation shall from time to time appoint a person to be Municipal Chief Auditor, who shall  | Appointment of municipal chief auditor, |
| (a) perform such duties as he is directed by this Act to perform and such other duties with regard to the audit of the accounts of the Corporation as shall be required of him by the Corporation or by the standing committee; |   |
| (b) devote his whole time and attention to the duties of his office;  |   |
| (c) receive such monthly salary not exceeding rupees one thousand as the Corporation shall from time to time determine;   |   |
| (d) be removeable at any time from office for misconduct or for neglect of, or incapacity for the duties of his office on the votes of not less than two-thirds of the members present at a meeting of the Corporation.         |   |

<sup>1</sup> For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1937, Pt. V, p. 118 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, p. 1130. For Proceedings in the Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 27-45 and 340; and for Proceedings in the Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 28 and 29.

<sup>2</sup> See *Bombay Code*, Vol. III, p. 1.

(2) The municipal chief auditor shall not be eligible for further office under the Corporation after he has ceased to hold his office.

Appointment, salaries, fees, allowances and duties of assistant auditors, clerks and servants subordinate to the municipal chief auditor.

78B. (1) The standing committee may from time to time—

(a) appoint such assistant auditors, clerks and servants to be immediately subordinate to the municipal chief auditor as they think fit ;

(b) determine the nature and amount of the salaries, fees and allowances to be paid to the said assistant auditors, clerks and servants respectively ;

(c) prescribe or delegate to the municipal chief auditor the power of prescribing the duties of the said assistant auditors, clerks and servants.

Control, etc., of the said assistant auditors, clerks and servants.

(2) Subject to the orders of the standing committee, the municipal chief auditor shall exercise supervision and control over the acts and proceedings of the said assistant auditors, clerks and servants, and the standing committee, subject to the regulations at the time being in force under section 81, shall dispose of all questions relating to the service of the said assistant auditors, clerks and servants and their pay, privileges and allowances.”

Amendment of section 80 of Bom. III of 1888.

4. In section 80 of the said Act, for the word and figures “ or 78 ” the figures, letters and word “ 78, 78A or 78B ” shall be substituted.

Amendment of section 83 of Bom. III of 1888.

5. In sub-section (2) of section 83 of the said Act in clause (b) for the word and figures “ or 77 ” the figures, word and letter “ 77 or 78A ” and in clause (c) for the word and figures “ or 77 ” the figures, word and letter “ 77 or 78A ” shall be substituted.

Amendment of section 84 of Bom. III of 1888.

6. In section 84 of the said Act,—

(1) in sub-section (1) after the words “ municipal secretary ” the words “ or the municipal chief auditor ” shall be inserted ; and

(2) in clause (a) of sub-section (2) after the figures “ 78 ” the words, figures and letter “ or to any assistant auditor, clerk or servant appointed under section 78B ” shall be inserted.

Amendment of sections 135, 136 and 137 of Bom. III of 1888.

7. For sections 135, 136 and 137 of the said Act, the following sections shall be substituted, namely:—

Weekly scrutiny of accounts by municipal chief auditor and scrutiny of accounts by the standing committee.

“ 135. (1) The municipal chief auditor shall conduct a weekly examination and audit of the municipal accounts and shall report thereon to the standing committee who shall publish weekly an abstract of the receipts and expenditure of the week last preceding, signed by not less than two members of the said committee and by the municipal chief auditor. The standing committee may also from time to time and for such period as they think fit conduct independently an examination and audit of the municipal accounts.

(2) For these purposes the standing committee and the municipal chief auditor shall have access to all the municipal accounts and to all records and correspondence relating thereto, and the Commissioner shall forthwith furnish to the standing committee or the municipal chief auditor any explanation concerning receipts and disbursements which they may call for.

136. The municipal chief auditor in addition to any other duties and powers imposed or conferred upon him under this Act shall perform the duties and may exercise the powers specified in Schedule EE. Duties and powers of the municipal chief auditor.

137. (1) The municipal chief auditor shall

Report by the municipal chief auditor.

(a) report to the standing committee any material impropriety or irregularity which he may at any time observe in the expenditure or in the recovery of moneys due to the Corporation or in the municipal accounts ;

(b) furnish to the standing committee such information as the said committee shall from time to time require concerning the progress of the audit.

(2) The standing committee shall cause to be laid before the Corporation every report made by the municipal chief auditor to the standing committee and every statement of the views of the municipal chief auditor on any matter affecting the pursuance and exercise of the duties and powers assigned to him under this Act which the municipal chief auditor may require the standing committee to place before the Corporation, together with a report stating what orders have been passed by the standing committee upon such report or statement, and the Corporation may take such action in regard to the matters aforesaid as the Corporation may deem necessary.

(3) As soon as may be after the commencement of each official year the municipal chief auditor shall deliver to the standing committee a report upon the whole of the municipal accounts for the previous official year.

(4) The Commissioner shall cause the said report to be printed and forward a printed copy thereof along with the printed copy of the Administration Report and Statement of Accounts which he is required by sub-section (3) of section 124 to forward to each councillor."

8. In sub-section (2) of section 138 of the said Act for the words "an auditor appointed by the Corporation" the words "the municipal chief auditor" shall be substituted. Amendment of section 138 of Bom. III of 1888.

Insertion of  
new sche-  
dule EE in  
Bom. III  
of 1888.

9. In the schedules to the said Act, after schedule DD, the following schedule EE shall be inserted, namely :—

“SCHEDULE EE.

(See section 136.)

*Duties and Powers of the Municipal Chief Auditor.*

1. (1) The municipal chief auditor shall audit the accounts of the Corporation, as hereinafter provided, with the assistance of the assistant auditors, clerks and servants appointed under section 78B of this Act.

(2) In the discharge of his functions under this article the municipal chief auditor shall—

(i) audit the accounts of all expenditure from the revenue of the Corporation, all expenditure on account of loan works and all expenditure incurred out of special funds and shall ascertain whether moneys shown therein as having been disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged, and whether the expenditure conforms to the authority which governs it ;

(ii) audit the accounts of all debt, deposit, sinking funds, advances, suspense and remittance transactions of the Corporation and report upon those accounts and upon the results of verification of the balances relating thereto.

(3) The municipal chief auditor shall examine and audit the statements of accounts relating to the commercial services conducted in any department of the Corporation, including the trading, manufacturing and profit and loss accounts, and the balance sheets where such accounts are maintained under the orders of the Corporation or the standing committee ; and shall certify and report upon these accounts.

(4) The municipal chief auditor shall, in consultation with the standing committee, and subject to any directions given by the Corporation, determine the form and manner in which his reports on the accounts of the Corporation shall be prepared and shall have authority to call upon any officer of the Corporation to provide any information necessary for the preparation of these reports.

2. (1) The municipal chief auditor may make such queries and observations in relation to any of the accounts of the Corporation which he is required to audit and call for such vouchers, statements, returns and explanations in relation to such accounts as he may think fit.

(2) Every such query or observation as aforesaid shall be promptly taken into consideration by the officer or authority to whom it may be addressed and returned without delay with the necessary vouchers, documents or explanation to the chief auditor.

(3) The powers of the municipal chief auditor with regard to disapproval of, and the procedure with regard to settlement of objections to expenditure from the revenues of the Corporation shall be such as may be prescribed by rules or orders made by the standing committee in consultation with the chief auditor and sanctioned by the Corporation.

3. If the municipal chief auditor considers it desirable that the whole or any part of the audit applied to any accounts which he is required to audit shall be conducted in the offices in which these accounts originate, he may require that these accounts, together with all books and documents having relation thereto, shall at all convenient times be made available in the said offices for inspection.

4. The municipal chief auditor shall have power to require that any books or other documents relating to the accounts he is required to audit shall be sent for inspection by him :

Provided that if the documents are confidential he shall be responsible for preventing disclosure of their contents.

5. The municipal chief auditor shall have authority to frame rules and to give directions on all matters relating to audit, particularly in respect of the method and the extent of audit to be applied and the raising and pursuing of objections.

6. Sanctions to expenditure accorded by the municipal chief auditor shall be audited by an officer to be nominated by the Corporation."

**THE CITY OF BOMBAY MUNICIPAL CORPORATION  
(EXTENSION OF TERM) ACT, 1938.**

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PREAMBLE.

Sections.

1. Short title and duration.
2. Extension of term of office of councillors and retirement of members of certain Committees.

**BOMBAY ACT No. III OF 1938.<sup>1</sup>**

[THE CITY OF BOMBAY MUNICIPAL CORPORATION (EXTENSION  
OF TERM) ACT, 1938.]

[2nd February, 1938]

**An Act to provide for the extension of the term of office of the  
members of the Bombay Municipal Corporation.**

WHEREAS it is expedient to provide for the extension of the term of office of the members of the Municipal Corporation of the City of Bombay; It is hereby enacted as follows:—

1. (1) This Act may be called the City of Bombay Municipal Corporation (Extension of Term) Act, 1938. Short title  
and duration.

(2) It shall remain in force up to and inclusive of the first day of April 1939.

2. (1) Notwithstanding anything contained in section 7 or 9 of the City of Bombay Municipal Act, 1888, hereinafter called "the Act", the term of office of councillors which by reason of the provisions of either of the said section would have expired at noon on the first day of April 1938 is hereby extended to noon on the first day of April 1939 which day for the purposes of the said Act shall be deemed to be "the day for retirement", and no general elections shall be held or made and no appointments shall be made to fill the vacancies of the said councillors on the expiry of the triennium in 1938, notwithstanding anything in the said Act contained. Extension  
of term of  
office of  
councillors  
and  
retirement  
of members  
of certain  
Committees.

(2) Notwithstanding anything contained in sections 39, 45 and 49E of the said Act, those members of the following Committees, who came into office on 1st April 1936, namely:—

- (1) the Schools Committee,
- (2) the Standing Committee, and
- (3) the Improvements Committee,

shall retire from office at noon on the first day of April 1938 and their seats shall be filled by election or by appointment, as the case may be, in accordance with the provisions of the said Act.

<sup>1</sup> For Statement of Objects and Reasons see *Bombay Government Gazette*, 1937, Pt. V., pp. 120 and 121 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, p. 1125. For Proceedings in the Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 26, 27 and 340; and for Proceedings in the Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 27 and 28.

*Explanation 1.*—Save as otherwise provided in this section, the words and expressions used therein shall have the meanings assigned to them in the said Act.

*Explanation 2.*—For the purposes of this section, any person elected or appointed to fill a casual vacancy shall be deemed to have been in office for the period for which the member in whose place he was elected or appointed would have held office if the vacancy had not occurred.



**THE BOMBAY PROVISIONAL COLLECTION OF TAXES  
ACT, 1938.**

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**PREAMBLE.**

**Sections.**

1. Short title.
2. Definitions.
3. Power to make declarations under this Act.
4. Effect of declarations under this Act, and duration thereof.
5. Certain refunds to be made when declarations cease to have effect.

## BOMBAY ACT No. IV OF 1938.<sup>1</sup>

[THE BOMBAY PROVISIONAL COLLECTION OF TAXES ACT, 1938.]

[3rd February, 1938]

**An Act to provide for immediate effect being given for a limited period to provisions in Bills relating to the imposition or increase of taxes.**

WHEREAS it is expedient to provide for immediate effect being given for a limited period to provisions in Bills relating to the imposition or increase of taxes; It is hereby enacted as follows:—

1. This Act may be called the Bombay Provisional Collection of Taxes Act, 1938. Short title.

2. In this Act—

Definitions.

(1) a “declared provision” means a provision in a Bill in respect of which a declaration has been made under section 3;

(2) “tax” includes any rate, cess, duty, fee, toll or other impost, whether general or local or special.

3. Where a Bill to be introduced in the Bombay Legislative Assembly on behalf of the Provincial Government provides for the imposition or increase of a tax, the Provincial Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect under this Act. Power to make declarations under this Act.

4. (1) A declared provision shall have the force of law from 5 p.m. (Standard Time) on the day on which the Bill containing it is introduced or published whichever day is earlier. Effect of declarations under this Act, and duration thereof.

(2) A declared provision shall cease to have the force of law under the provisions of this Act—

(a) when it comes into operation as an enactment, with or without amendment, or

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<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1937, Pt. V, p. 110, or *Bombay Legislative Assembly Debates*, 1933, Vol. 2, p. 1132. For Proceedings in the Assembly, see *Bombay Legislative Assembly Debates*, 1933, Vol. 2, pp. 46-53 and 319-322; and for Proceedings in the Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 15-27 and 174.

(b) when the Provincial Government, in pursuance of a motion passed by the Bombay Legislative Assembly, directs, by notification in the Official Gazette, that it shall cease to have the force of law, or

(c) if it has not already ceased to have the force of law under clause (a) or clause (b), then on the expiry of the sixtieth day after the day on which the declared provision has the force of law under sub-section (1).

Certain re-  
funds to be  
made when  
declarations  
cease to have  
effect.

5. (1) Where a declared provision comes into operation as an enactment in an amended form before the expiry of the sixtieth day after the day on which such provision has the force of law under sub-section (1) of section 4, refunds shall be made of all taxes collected which would not have been collected if the provision adopted in the enactment had been the declared provision :

Provided that the rate at which refunds of any tax may be made under this sub-section shall not exceed the difference between the rate of such tax proposed in the declared provision and the rate in force immediately prior to the day on which the declared provision has the force of law under sub-section (1) of section 4.

(2) Where a declared provision ceases to have the force of law under clause (b) or clause (c) of sub-section (2) of section 4, refunds shall be made of all taxes collected which would not have been collected if the declaration in respect of it had not been made.

BOMBAY ACT No. V OF 1938.<sup>1</sup>

[THE CITY OF BOMBAY MUNICIPAL (SECOND AMENDMENT)  
ACT, 1938.]

[16th February, 1938]

An Act to amend the City of Bombay Municipal Act, 1888.<sup>2</sup>

WHEREAS it is expedient to amend the City of Bombay Municipal Act, 1888, for the purposes hereinafter appearing; It is hereby enacted as follows :—

1. (1) This Act may be called the City of Bombay Municipal Act, 1938. Short title.  
([Second<sup>3</sup>] Amendment) Act, 1938.

(2) Save as provided for in sub-section (3), this Act shall come into force at once.

(3) Sections 18, 19 and 20 shall come into force on the first day of April 1939.

2. After clause (kk) in section 3 of the City of Bombay Municipal Act, 1888, hereinafter called "the said Act", the following new clause shall be added, namely :—

"(ll) 'Market' includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, meat, fish, fruit, vegetables, animals intended for human food or any other articles of human food whatsoever, with or without the consent of the owner of such place, notwithstanding that there may be no common regulation of the concourse of buyers and sellers and whether or not any control is exercised over the business of or the persons frequenting the market by the owner of the place or any other person."

3. In section 15 of the said Act, hereinafter called the said Act, for the words "he resides in the city", the following shall be substituted, namely :—

"he has resided in the city for six months immediately preceding the date of the election."

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 41-47 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 1163-1168. For Proceedings in the Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 443-493, 580-592 and 911-912; and for Proceedings in the Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 259-299 and 307.

<sup>2</sup>2. See *Bombay Code*, Vol. III, p. 1.

<sup>3</sup>This word was inserted by Bom. 17 of 1938, s. 3, Second Schedule.

Amendment  
of section 17  
of Bom. III  
of 1888.

4. In section 17 of the said Act, after clause (c), the word "or" and the following new clauses shall be inserted, namely :—

"(d) absents himself from or is unable to attend the meetings of the Corporation during twelve successive months from any cause whatever, whether approved by the Corporation or not, or

(e) being elected by a chamber or association mentioned in sub-section (1) of section 5, ceases to be a member of such chamber or association or to be a person entitled to exercise the rights and privileges of membership on behalf and in the name of any firm, company or corporation registered as a member of such chamber or association as the case may be."

Amendment  
of section 30  
of Bom. III  
of 1888.

5. For sub-section (1) of section 30 of the said Act, the following shall be substituted, namely :—

"(1) An election of a councillor by fellows shall be made, subject to the provisions of section 15, in accordance with the statutes made by the Senate of the University of Bombay in this behalf :

Provided that no fellow who has not resided in the city for six months immediately preceding the date of the election shall be entitled to vote at such election."

Amendment  
of section 31  
of Bom. III  
of 1888.

6. For sub-section (1) of section 31 of the said Act, the following shall be substituted, namely :—

"(1) An election of a councillor by a chamber or association mentioned in sub-section (1) of section 5 shall be made by the members for the time being of the said chamber or association, as the case may be, subject to the provisions of section 15, in accordance with the rules made by the said chamber or association in this behalf."

Amendment  
of section 39  
of Bom. III  
of 1888.

7. In section 39 of the said Act :—

(a) in sub-section (1-C) for the word "he" the following shall be substituted, namely :—

"or absents himself during three successive months from the meetings of the committee, except on account of temporary illness or other cause to be approved by the committee, or absents himself from or is unable to attend the meetings of the committee during eight successive months from any cause whatever, whether approved by the committee or not, such person"

(b) in sub-section (I-D) after the word "office" where it occurs for the second time, the words, brackets, figure and letter "or of his seat becoming vacant under sub-section (I-C)," shall be inserted.

8. After section 46 of the said Act the following new section shall be inserted, namely :—

Insertion of a new section 46A in Bom. III of 1888.

"46A. Any member of the standing committee who absents himself during three successive months from the meetings of the committee, except on account of temporary illness or other cause to be approved by the committee, or absents himself from or is unable to attend the meetings of the committee during eight successive months, from any cause whatever, whether approved by the committee or not, shall cease to be a member of the standing committee and his seat shall thereupon be vacant."

Member of Standing Committee absents himself for three months from meetings to vacate seat.

9. In section 47 of the said Act, after the word "office" where it occurs for the second time, the words, figures and letter "or of his seat becoming vacant under section 46A" shall be inserted.

Amendment of Bom. III of 1888.

10. In section 49G of the said Act, after the word "office" where it occurs for the second time, the words, figures, letters and brackets "or of his office becoming vacant under clause (j) of section 49I", shall be inserted.

Amendment of section 49G of Bom. III of 1888.

11. In clause (j) of section 49I of the said Act after the word "committee" where it occurs for the third time, the following shall be inserted, namely :—

Amendment of section 49I of Bom. III of 1888.

"or absents himself from or is unable to attend the meetings of the committee during eight successive months, from any cause whatever, whether approved by the committee or not."

12. In section 110A of the said Act,

Amendment of section 110A of Bom. III of 1888.

(a) in sub-section (I)—

(i) for the words "wholly or partly lost or destroyed", the words "lost, stolen or destroyed either wholly or in part" shall be substituted ;

(ii) after the word "loss" where it occurs at both the places, the word "theft" shall be inserted ; and

(iii) for clauses (a) and (b) the following clauses shall be substituted, namely :—

“(a) if the debenture alleged to have been lost, stolen or destroyed is payable more than six years after the date of publication of the notification referred to in sub-section (2),

(i) for the payment of interest in respect of the debenture pending the issue of a duplicate debenture, and

(ii) for the issue of a duplicate debenture payable to the applicant, or

(b) if the debenture alleged to have been lost, stolen or destroyed is payable not more than six years after the date of publication of the notification referred to in sub-section (2),

(i) for the payment of interest in respect of the debenture without the issue of a duplicate debenture, and

(ii) for the payment to the applicant of the principal sum due in respect of the debenture on or after the date on which the payment becomes due.”

(b) in sub-section (2)—

(i) after the word “loss” the word “theft” shall be inserted, and

(ii) after the word “lost” the word “stolen” shall be inserted; and

(c) for sub-section (3) the following shall be substituted, namely :—

“(3) A list of the debentures in respect of which an order is passed under sub-section (1) shall be published in the Official Gazette.”

(d) the following new sub-section shall be added, namely :—

“(4) If at any time before the Corporation becomes discharged under the provisions of section 110AD from liability in respect of any debenture the whole of which is alleged to have been lost, stolen or destroyed, such debenture is found, any order passed in respect thereof under this section shall be cancelled.”

Insertion of new sections 110AA, 110AB, 110AC, 110AD and 110AE in Bom. III of 1938. 13. After section 110A of the said Act, the following new sections shall be inserted, namely :—

110AA.

110AB.

110AC.

110AD and

110AE in

Bom. III of

1938.

Renewal of debentures.

“110AA. Subject to the provisions of section 110AB, a person claiming to be entitled to a debenture issued under this Act or any

Bom.  
IV of  
1898.

Bom.  
XVI of  
1925.

previous Act relating to the municipal government of the city or under the City of Bombay Improvement Act, 1898, or the City of Bombay Improvement Trust Transfer Act, 1925, may on applying to the Commissioner and on satisfying him of the justice of his claim and delivering the debenture received in such manner and paying such fee as may be prescribed by the Commissioner obtain a renewed debenture payable to the person applying.

Bom.  
IV of  
1898.

Bom.  
XVI of  
1925.

110AB. (1) Where there is a dispute as to the title to a debenture issued under this Act or any previous Act relating to the municipal government of the city or under the City of Bombay Improvement Act, 1898, or the City of Bombay Improvement Trust Transfer Act, 1925, in respect of which an application for renewal has been made, the Commissioner may—

Renewal of  
debentures  
in case of  
dispute as to  
title.

(a) where any party to the dispute has obtained a final decision from a Court of competent jurisdiction declaring him to be entitled to such debenture, issue a renewed debenture in favour of such party, or

(b) refuse to renew the debenture until such a decision has been obtained, or

(c) after such inquiry as is hereinafter provided and on consideration of the result thereof, declare by order in writing which of the parties is in his opinion entitled to such debenture and may, after the expiration of three months from the date of such declaration, issue a renewed debenture in favour of such party in accordance with the provisions of section 110AA, unless within that period he has received notice that proceedings have been instituted by any person in a Court of competent jurisdiction for the purpose of establishing a title to such debenture.

*Explanation.*—For the purposes of this sub-section the expression “final decision” means a decision which is not appealable or a decision which is appealable but against which no appeal has been filed within the period of limitation allowed by law.

(2) For the purposes of the inquiry referred to in sub-section (1) the Commissioner may himself record, or may request the District Magistrate to record or to have recorded, the whole or any part of such evidence as the parties may produce. The District Magistrate to whom such request has been made may himself record the evidence or may direct any Magistrate subordinate to him to record the evidence and shall forward the record of such evidence to the Commissioner.

(3) The Commissioner or any Magistrate acting under this section may, if he thinks fit, record evidence on oath.



Liability in respect of debenture renewed.

110AC. (1) When a renewed debenture has been issued under section 110AA in favour of any person, the debenture so issued shall be deemed to constitute a new contract between the Corporation and such person and all persons deriving title thereafter through him.

(2) No such renewal shall affect the rights as against the Corporation of any other person to the debenture so renewed.

Discharge in certain cases.

110AD. When a duplicate debenture has been issued under section 110A, or when a renewed debenture has been issued under section 110AA or section 110AB, or when the principal sum due on a debenture in respect of which an order has been made under section 110A for the payment of the principal sum without the issue of a duplicate debenture has been paid on or after the date on which such payment became due, the Corporation shall be discharged from all liability in respect of the debenture in place of which a duplicate or renewed debenture has been so issued, or in respect of which such payment has been made, as the case may be—

(a) in the case of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section (3) of section 110A or from the date of the last payment of interest on the original debenture, whichever date is later,

(b) in the case of a renewed debenture, after the lapse of six years from the date of the issue thereof, and

(c) in the case of payment of the principal sum without the issue of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section (3) of section 110A.

Indemnity.

110AE. Notwithstanding anything in section 110AA or 110AB, the Commissioner may in any case arising under either of those sections—

(1) issue a renewed debenture upon receiving such indemnity in favour of the Corporation and the Commissioner as he shall think fit against the claims of all persons claiming under the original debenture, or

(2) refuse to issue a renewed debenture unless such indemnity is given."

Amendment of section 110DD of Bom. III of 1888.

14. To section 110DD of the said Act the following new sub-sections shall be added, namely :—

"(3) The Corporation may from time to time make, alter or rescind rules prescribing—

(a) the amounts for which stock certificates may be issued ;

(b) the fees to be levied in respect of the issue of stock certificates ;

- (c) the form of keeping a register of the holders of stock ;
- (d) the mode in which payment of interest to holders of stock is to be made, recorded and acknowledged ;
- (e) the form of transfer to be used, the formalities to be observed and the fees to be levied on a transfer of stock ;
- (f) the circumstances and manner in which duplicate stock certificates may be issued and the fees to be levied or the indemnity to be required on any such issue ;
- (g) generally the measures to be adopted for carrying out the objects of this section.

(4) No rule, or alteration or rescission of a rule, shall have effect until the same shall have been approved by Government, and such approval shall have been published in the *Official Gazette* ; and no rule, or alteration or rescission of a rule, shall be approved by Government until the same shall have been published for three weeks, successively in the said *Gazette*."

15. In sub-section (3) of section 115 of the said Act, for the word, letter and brackets " clause (b) ", the word, figure and brackets " sub-section (1) " shall be substituted. Amendment of section 115 of Bom. III of 1888.

16. In section 117 of the said Act,—

(1) after the word " of " where it occurs for the first time, the words, figure and brackets " sub-section (2) of " shall be inserted Amendment of section 117 of Bom. III of 1888.

(2) after the word " under ", where it occurs for the second time the words, figure and brackets " sub-section (2) of " shall be inserted and

(3) after the word and figures " section 131 ", the words, figures and brackets " or under sub-section (1) of section 133 ", shall be inserted.

17. In sub-section (3) of section 123A of the said Act, the word " half " shall be omitted. Amendment of section 123A of Bom. III of 1888.

18. After section 125 of the said Act, the following new section shall be inserted, namely :— Insertion of a new section after section 125 of Bom. III of 1888.

" 125A. The expenditure side of a budget estimate shall be classified under major heads, minor heads, subordinate heads and primary units. Classification of budget heads.

(a) ' Major head ' means the principal head of accounts corresponding to the different services under which expenditure is classified in the budget estimate, and may be divided into two or more minor heads.

(b) 'Minor head' means the head of accounts immediately subordinate to a major head under which each major head is classified, and may be further sub-divided into two or more subordinate heads.

(c) 'Subordinate head' means the head of accounts immediately subordinate to a minor head under which each minor head is classified and may be further sub-divided into two or more primary units.

(d) 'Primary unit' means the ultimate group or groups into which individual items of expenditure in the budget estimates are arranged."

Substitution  
of new sec-  
tion 130 in  
Bom. III of  
1888.

19. For section 130 of the said Act, the following shall be substituted, namely :—

Budget grant  
defined.

"130. The total sum entered under a major head on the expenditure side, which has been adopted by the Corporation shall be termed a 'budget grant'."

Substitution  
of new sec-  
tion 133 in  
Bom. III of  
1888.

20. For section 133 of the said Act, the following shall be substituted, namely :—

Reductions  
or transfers.

"133. (1) Subject to the provisions of sub-section (1) of section 131, the Corporation may on the recommendation of the Standing Committee from time to time during an official years sanction the transfer of any amount from one budget grant to another.

(2) The Standing Committee may at any time during an official year—

(a) reduce the amount of a budget grant ;

(b) sanction the transfer of any amount within a budget grant from one minor head to another or from a subordinate head under one minor head to a subordinate head under another minor head ; or

(c) sanction the transfer of any amount exceeding rupees five thousand within a minor head from one subordinate head to another or from one primary unit to another.

(3) The Commissioner may, at any time during an official year sanction the transfer of any amount not exceeding rupees five thousand within a minor head from one subordinate head to another or from one primary unit to another, if such transfer does not involve a recurring liability :

Provided that every transfer of an amount exceeding rupees five hundred made under sub-section (3) shall be reported forthwith by the Commissioner to the Standing Committee and that the said Committee may pass with regard thereto such order as they may think fit; and it shall be incumbent on the Commissioner to give effect to such order.

(4) When making any transfer under sub-sections (1), (2) and (3), due regard shall be had to all the requirements of this Act.

(5) If any such reduction as is referred to in clause (a) of sub-section (2) is of an amount exceeding five hundred rupees the Corporation may pass with regard thereto such order as they may think fit, and it shall be incumbent on the Standing Committee and the Commissioner to give effect to such order."

21. In Chapter X of the said Act, the following new section shall be inserted at the commencement, namely:—

Insertion of  
new section  
260A in  
Chapter X  
of Bom. III  
of 1888.

"260A. In this chapter, unless there is anything repugnant in Definitions.  
the subject or context,—

(a) 'Communication pipe' means a pipe extending from a municipal water main up to and including the municipal stop-cock.

(b) 'Consumer' means any person who uses or is supplied with water from a municipal water work or on whose application such water is supplied and includes any person liable to the Corporation under the provisions of this Act for the payment of water tax or any sum for the water supplied from a municipal water work.

(c) 'Consumer's pipe' means a pipe used in connection with the supply of water from any municipal water work and which is not the property of the Corporation.

(d) 'Distributing pipe' means any pipe not subject to water pressure from a municipal water main.

(e) 'Fitting' includes a pipe, coupling, flange, branch, bend, stop, ferrule, stop tap, bib tap, spring tap, pillar tap, globe tap, ball cock, boiler, pump, meter, hydrant and any other apparatus or article used for the purpose of conveying or storing water supplied by the Corporation.

(f) 'Municipal stop cock' means the stop cock which controls the supply of water from a municipal water main.

(g) 'Supply pipe' means the pipe extending from a municipal stop cock up to the ball cock of the storage tank, if any, and any pipe subject to pressure from a municipal water main."

Amendment of section 269 of Bom. III of 1888. 22. In sub-section (3) of section 269 of the said Act, for the words "private use and not for sale" the words "personal or domestic use and not for the purpose of business or sale" shall be substituted.

Amendment of section 271 of Bom. III of 1888.

23. In section 271 of the said Act—

(a) in sub-section (1)—

(i) for the words "Communication pipes" the words "Supply pipes" shall be substituted, and

(ii) for the words, "a water main or other municipal water work" the words "a municipal water work" shall be substituted, and

(iii) for the words "ordinarily be connected with the main or other water-work" the words "be connected with such water work" shall be substituted;

(b) for sub-section (2) the following shall be substituted, namely:—

Commissioner may in certain cases require owners to obtain private.

"(2) But if it shall appear to the Commissioner that any premises situate within any portion of the city in which a public notice has been given by the Commissioner under clause (b) of section 141, are without a supply of pure water, adequate to the requirements of the persons usually occupying or employed upon the said premises, the Commissioner shall, by written notice, require the owner of the said premises or the person primarily liable for the payment of property-taxes thereon, to obtain a supply adequate as aforesaid from a municipal water work and to provide supply and distributing pipes, cisterns and fittings and do all such works as may in the opinion of the Commissioner be necessary for that purpose."

Amendment of section 272 of Bom. III of 1888.

24. In section 272 of the said Act—

(a) In sub-section (2) for the words "from and including the ferrule on the supply main up to and including the stop-cock nearest the supply main," the word "thereon" shall be substituted.

(b) In sub-section (3) for the words "Every such new connection or renewed connection with its communication-pipes and fittings up to and including its stop-cock as aforesaid shall thereafter vest" the words "Every such communication pipe and fittings thereon shall vest" shall be substituted.

(c) For sub-section (4) the following shall be substituted, namely :—

“(4) All supply and distributing pipes and cisterns and fittings not being the property of the Corporation shall be laid and applied under the supervision and to the satisfaction of a municipal officer appointed by the Commissioner in that behalf, who shall give and sign a certificate, free of charge, when such supply and distributing pipes, cisterns and all necessary fittings have been laid, applied and executed in a satisfactory manner and when proper and sufficient arrangements have been made for draining off waste water.”

(d) For sub-section (5) the following shall be substituted, namely :—

“(5) Where any supply or distributing pipe, cistern or such fitting is laid, applied, added to or altered, or any connection is made in contravention of this section the Commissioner may, with the previous approval of the Standing Committee, remove such supply or distributing pipe, cistern, fitting or connection, or additions or alterations thereto, and make good such pipe, cistern, fitting or connection ; and the owner and occupier of the premises in which or for supply to which such supply or distributing pipe, cistern or fitting has been laid, applied, added to or altered or such connection has been made, shall be jointly and severally liable to pay the expenses incurred by the Commissioner in so doing.”

25. For section 273 of the said Act, the following shall be substituted, namely :—

Amendment of section 273 of Bom. III of 1888.

“273. The Commissioner may, by agreement with a consumer, take charge on behalf of the corporation of all or any of the consumer's pipes and fittings :

Commissioner may take charge of private connections.

Provided that if any of such pipes or fittings are communication-pipes or fittings only not vesting in the Corporation, the Commissioner may, if he thinks fit, take charge of the same without such agreement.

Any consumer's pipes and fittings, of which the Commissioner takes charge under this section, shall thereafter vest in, and be maintained at the expense of, the Corporation as a municipal water-work.”

26. For section 273A of the said Act, the following shall be substituted, namely :—

Amendment of section 273A of Bom. III of 1888.

“273A. The Commissioner may, if at any time he deems it expedient to alter the position of an existing connection with any municipal water-work, or of any consumer's pipe or fitting thereof, and after giving to the owner of such connection, pipe or fitting not less than four days previous notice of his intention so to do, cause the

Power of Commissioner to alter position of connections.

said connection, pipe or fitting to be moved to such other position as he thinks fit and relaid and applied, or others to be laid and applied in lieu thereof, in such position as he may direct; and in every such case all such work shall be carried out at the expense of the municipal fund and such new connection, pipe and fitting shall thereafter vest in the Corporation and be maintained at the charge of the municipal fund as a municipal water-work."

Amendment  
of section 274  
of Bom. III  
of 1888.

27. In section 274 of the said Act—

(a) For sub-section (1) the following shall be substituted, namely:—

Provisions as  
to cisterns  
and other  
fittings, etc.,  
to be used for  
connections  
with water  
works.

"(1) The Commissioner may, whenever it shall appear to him to be necessary, by written notice require the owner of any premises furnished with a private water supply from any municipal water-work to provide such premises within a reasonable period which shall be prescribed in the said notice, with cisterns and fittings of such size, material, quality and description and placed in such position and with such safe and easy means of access as he thinks fit."

(b) After sub-section (1), the following new sub-section shall be added:—

"(1A) The Commissioner may also in the like manner require the owner of any premises to provide such safe and easy means of access as he thinks fit to any existing cistern which on an examination under section 278 is found to be not easily accessible."

(c) In sub-section (2)—

(i) for the words "pipes, taps, cocks and other fittings," the words "pipes and fittings" shall be substituted;

(ii) for the word "purposes" the word "purpose" shall be substituted.

(d) In sub-section (3) for the words "pipes, taps, cocks and other fittings", wherever they occur, the words "pipes, cisterns and fittings" shall be substituted.

Insertion of  
new section  
274A in Bom.  
III of 1888.

28. After section 274 of the said Act, the following new section shall be inserted, namely:—

Provision for  
keeping  
cisterns  
locked.

"274A. (1) The Commissioner may, by written notice, require the owner of any premises furnished with a cistern or in respect of which the Commissioner has required a cistern to be furnished, to provide such cistern with a lock and key of such pattern, material

and quality as the Commissioner shall in such notice prescribe, and may in like manner require any lock or key found to be defective on an inspection under section 278 to be replaced.

(2) Every cistern so provided with a lock shall be kept permanently locked and the key shall then be delivered to the Commissioner."

29. In section 275 of the said Act—

Amendment  
of section 275  
of Bom. III  
of 1888.

(a) in sub-section (1)—

(i) for the words "to keep in efficient repair every pipe" the words "to keep in a thoroughly clean condition and to maintain and keep in efficient repair every supply and distributing pipe" shall be substituted; and

(ii) for the words "every tap, cock or other fitting and every storage cistern" the words "every cistern and fitting" shall be substituted.

(b) in sub-section (2)—

(i) for the word "five" the word "three" shall be substituted; and

(ii) after the word "due" the words "or to become due" shall be inserted.

30. In section 278 of the said Act—

Amendment  
of section 278  
of Bom. III  
of 1888.

(a) in sub-section (1) for clause (b) the following shall be substituted, namely:—

"(b) to examine any supply or distributing pipe, cistern, lock or fitting; or"

(b) for sub-section (2) the following shall be substituted, namely:—

"(2) The Commissioner may, by written notice, require the owner or occupier of the premises, to remedy any defect which shall be found to exist in or to clean, any such meter, not being a municipal meter let to him for hire, or any such supply or distributing pipe, cistern, lock or fitting."

31. In section 279 of the said Act—

Amendment  
of section 279  
of Bom. III  
of 1888.

(1) in sub-section (1)—

(a) in clause (a) after the words "sum due for water" the words "or hire of meter" shall be inserted;



(b) for clauses (b) and (c) the following shall be substituted, namely :—

“(b) if the owner of the premises neglects, within the period prescribed in this behalf in any notice given under sub-section (1) or (1A) of section 274 or under section 274A, to comply with any requisition made to him by the Commissioner regarding the provision of any cistern, fitting, lock or key or any means of access to such cistern ;

(c) if the owner or occupier of the premises fails, within the period prescribed in this behalf in any notice given under sub-section (2) of section 278, to comply with the terms of such notice or fails to use articles of the kind prescribed under sub-section (3) of section 274 ;”

(c) for clause (e) the following clause shall be substituted, namely :—

“(e) if the owner or occupier of the premises wilfully or negligently injures or damages any meter, pipe, cistern or fitting or lock thereof in such premises ;”

(d) in the proviso the following paragraph shall be added :—

“(iv) In any case falling under sub-clause (b), the Commissioner shall not take action unless not less than fifteen days previously a copy of the notice under sub-section (1) or sub-section (1A) of section 274 or under section 274A, as the case may be, has been affixed to a conspicuous part of the premises.”

Amendment  
of section 284  
of Bom. III  
of 1888.

32. In section 284 of the said Act—

(a) In clause (b) for the words “or engine” the words “, engine, cistern or fitting” shall be substituted.

(b) After clause (e) the following new clause shall be inserted, namely :—

“(f) except with the permission of the Commissioner, open, break injure or tamper with any lock furnished under section 274A.”

Amendment  
of section 286  
of Bom. III  
of 1888.

33. For section 286 of the said Act, the following shall be substituted, namely :—

What persons  
to be liable  
for offences  
under cer-  
tain provi-  
sions of this  
Chapter.

“286. If it shall be shown that an offence against some provision of this Chapter or against some bye-law made under this Act at the time in force relating to water supply has occurred on any premises to which a private supply of water is furnished by the Corporation, the owner, the person primarily liable for the payment of water tax and the occupier of the said premises shall be jointly and severally liable for the same.”

**34.** For section 287 of the said Act, the following shall be substituted, Amendment of section 287 of Bom. III of 1888.  
namely :—

“ 287. On the written request of any person who is required under When any of the provisions of this Chapter to supply any materials, fittings, materials and cistern or lock and key or to do any work, the Commissioner may, works may be on such person's behalf, supply the necessary materials, fittings, cistern or supplied and lock and key, as the case may be, or cause the necessary work to be done under done ; but he shall not do so in any case to which the provisions of this Chapter section 493 or 495 will not apply, unless a deposit is first of all made by for any per- the said person of a sum which will, in the opinion of the Commissioner, son by the suffice to cover the cost of the said material, fitting, cistern, lock and Commis- key or work.”

**35.** In section 287A of the said Act—

Amendment of section 287A of Bom. III of 1888.

(a) in sub-section (1)—

(i) after the word “ executed ” where it occurs for the first time, the words “ or any cistern to be supplied with a lock and key ” shall be inserted, and

(ii) after the word “ executed ” where it occurs for the second time, the words “ or supplied ” shall be inserted ;

(iii) after the word “ doing ” the words “ or supplying ” shall be inserted.

(b) in sub-section (2)—

(i) after the word “ done ” the words “ or of supplying such lock and key ” shall be inserted ;

(ii) after the words “ such work ” the words “ or the supply of such lock and key ” shall be inserted.

**36.** In section 287B of the said Act—

Amendment of section 287B of Bom. III of 1888.

(1) in sub-section (1) after the word “ chapter ” the words and brackets “ (other than the provision of a lock and key) ” shall be inserted ;

(2) for sub-section (3) the following shall be substituted, namely :—

“ (3) Where any person causes or permits any pipe, cistern or fitting or other work necessary for conveying a private supply of water from a municipal water-work into any premises to be laid, applied or executed in contravention of sub-section (1), he shall, in addition to being liable to the penalty prescribed for such contravention, not be entitled to an independent or branch connection until the defects, if any, in such pipe, cistern, fitting or work are removed to the satisfaction of the Commissioner ”

Insertion of new section 313B in Bom. III of 1888.

37. After section 313A of the said Act, the following new section shall be inserted, namely :—

Licences for use of skill in handicraft or rendering services for purposes of gain in public place or street.

“ 313B. Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall, for purposes of gain, use his skill in any handicraft or in rendering services to and for the convenience of the public in any public place or public street.”

Amendment of section 314 of Bom. III of 1888.

38. Clause (c) of section 314 of the said Act shall be deleted.

Amendment of section 402 of Bom. III of 1888.

39. To sub-section (2) of section 402 of the said Act, the following shall be added, namely :—

“ The owner or occupier of a place in which a private market is established shall, for the purposes of this sub-section, be deemed to have established such market.”

Amendment of section 403 of Bom. III of 1888.

40. In sub-section (1) of section 403 of the said Act—

(i) in clause (a) after the word “ open ” the words “ or permit to be kept open ” shall be inserted ; and

(ii) in clauses (b) and (c) after the word “ use ” the words “ or permit to be used ” shall be inserted.

Amendment of section 471 of Bom. III of 1888.

41. In the table appended to section 471 of the said Act—

(a) after the entry relating to section 270, sub-section (2), the following entry shall be inserted, namely :—

“ Section, sub-section or clause. 1	Subject. 2	Fine which may be imposed. 3
Section 271, sub-section (2).	Requisition to obtain private water supply and to provide supply and distributing pipes, etc.	Two hundred rupees.”

(b) in column 2 of the entry relating to section 274 for the words “ storage cisterns and other fittings to be used for connection with water works ” the words “ cistern and fittings or means of access to any cistern ” shall be substituted ;

(c) in column 2 of the entry relating to section 275 for the words "Communication pipes" the words "Supply or distributing pipes" shall be substituted;

(d) in column 2 of the entry relating to section 278, sub-section (2), for the words "communication-pipe" the words "supply or distributing pipe" shall be substituted;

(e) in column 3 of the entry relating to section 280 for the word "Twenty" the words "One hundred" shall be substituted;

(f) after the entry relating to section 313A the following entry shall be inserted, namely:—

"Section 313B ..	Prohibition in a public place [or street, of use of skill in handicraft or in rendering services without licence.	Fifty rupees."
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42. In the table appended to section 472 of the said Act, after the entry relating to section 313A the following entry shall be inserted, namely:—

Amendment of section 472 of Bom. III of 1888.

"Section 313B ..	Prohibition in a public place or street, of use of skill in handicraft or in rendering services without licence.	Five rupees."
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43. In sub-section (2) of section 489 of the said Act, after the entry "Section 271, sub-section (2)" the following entries shall be inserted, namely:—

Amendment of Bom. III of 1888.

- "Section 272, sub-section (5).
- Section 274, sub-sections (1) and (1A).
- Section 274A, sub-sections (1) and (2)".

44. In section 492 of the said Act—

Amendment of section 492 of Bom. III of 1888.

(1) in sub-section (1)—

(a) after the words "building or land" where they occur for the second time, the words, figures, letter and brackets "or in respect of some work executed or thing done or measure taken for giving effect to any requisition or order made under sub-section (1A) of section 377" shall be inserted:

(b) after the words "building or land" where they occur for the third time, the words, figures, letter and brackets "or of the

premises referred to in sub-section (1A) of section 377, as the case may be," shall be inserted;

(c) for the words "building or land" where they occur for the fourth time, the words "building, land or premises" shall be substituted.

(2) in sub-section (2) for the words "land or building" wherever they occur in clause (a) and for the words "building or land" where they occur in clause (c), the words "building, land or premises" shall be substituted.

Amendment  
of section 514  
of Bom. III  
of 1888.

45. In clause (b) of section 514 of the said Act—

(a) after the figures and brackets "272 (1)" the figures and brackets "272 (5), 274 (1), 274 (1A)" shall be inserted;

(b) after the figures "284" the figures, letters and brackets "287B (1), 287B (2)" shall be inserted;

(c) after the figures "390" the words, figures, brackets and letter "or any bye-laws framed under section 461 (b)" shall be inserted.

Amendment  
of section 518  
of Bom. III  
of 1888.

46. In sub-section (1) of section 518 of the said Act after the figures "225" the figures and letter "381, 381A" shall be inserted.

**BOMBAY ACT No. VI OF 1938.<sup>1</sup>**

[THE BOMBAY TOBACCO (AMENDMENT) ACT, 1938.]

[24th March, 1938]

**An Act to amend the Tobacco Duty (Town of Bombay) Act, 1857,<sup>2</sup>  
and the Bombay (District) Tobacco Act, 1933.<sup>3</sup>**

Bom. IV of 1857. Bom. II of 1933. WHEREAS it is expedient to amend the Tobacco Duty (Town of Bombay) Act, 1857, and the Bombay (District) Tobacco Act, 1933, for certain purposes; It is hereby enacted as follows:—

1. This Act may be called the Bombay Tobacco (Amendment) Act, Short title. 1938.

2. In section 11 of the Tobacco Duty (Town of Bombay) Act, 1857 (hereinafter called the "Town Act")—

Amendment of section 11 of Bom. IV of 1857.

(1) after the words "provisions of this Act", the words "such license shall be subject to such terms and conditions as may be prescribed by rules made by the Provincial Government in this behalf" shall be inserted; and

(2) for the words "A fee of one rupee shall be paid for every such license" the following shall be substituted, namely:—

"Such fee as may be fixed by rules made by the Provincial Government in this behalf shall be levied for every such license, subject to the following maxima:—

				Rs.
(a) Superior tobacco	..	..	..	50
(b) Inferior tobacco	..	..	..	25

For the purposes of this section the Provincial Government may also by rules made in this behalf specify the varieties of tobacco which shall be classed as Superior and Inferior."

3. The provisions of the Bombay (District) Tobacco Act, 1933 (hereinafter called "the District Act"), continued in force up to and inclusive of the 31st day of March 1938 by Government Notification

Amendment of section 1 of Bom. II of 1933.

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 257 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, p. 3081. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 3, part II, pp. 329-370, 393-403, 431-475 and 515; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 32-467.

<sup>2</sup>See *Bombay Code*, Vol. I, p. 85.

<sup>3</sup>See *Bombay Code*, Vol. VI, p. 81.

(Revenue Department) No. 480/28, dated the 31st March 1937, issued under paragraphs 6 and 14 (1) of the Government of India (Commencement and Transitory Provisions) Order, 1936, are hereby further continued in force by the deletion of the words "and shall remain in force for a period of four years" occurring in sub-section (3) of section 1 of that Act, subject to the modifications hereinafter provided.

Insertion of  
new section  
7A in Bom.  
II of 1933.

4. After section 7 of the District Act, the following section shall be inserted, namely :—

Levy of sale's  
tax.

"7A. Notwithstanding anything contained in section 7, the Provincial Government may in addition to the license fee leviable under the said section, levy also a tax at such rates, subject to such conditions and in such areas as may be prescribed, on any sale of tobacco on *ad valorem* basis not exceeding 50 per cent. of the price of such sale."

Amendment  
of section 27  
of Bom. II  
of 1933.

5. In sub-section (2) of section 27 of the District Act, after clause (c) the following clauses shall be added, namely :—

"(d) under section 7A prescribing the rates at which, the conditions subject to which and the areas in which a tax on sales of tobacco shall be levied.

(e) for the purposes of the Schedule hereto annexed, prescribing the varieties of tobacco which shall be classed as Superior and Inferior tobacco."

Amendment  
of Schedule  
to Bom. II  
of 1933.

6. For the Schedule to the District Act, the following shall be substituted, namely :—

" SCHEDULE.

(SECTION 7.)

*License Fees.*

	Rs.
Wholesale—	
Maximum rate	50
Retail or Hawker—	
(1) Maximum rate in any urban area which the Provincial Government may, by notification published in the official gazette, specify—	
Superior tobacco	50
Inferior tobacco	25
(2) Fixed rate in any other area	2
Broker—fixed rate	2 "

7. Nothing in this Act shall affect the validity, or the conditions or restrictions of a license granted under the Town Act or District Act before the commencement of this Act or any rights or liabilities accrued or incurred thereunder.

BOMBAY ACT No. VII OF 1938.<sup>1</sup>

[THE BOMBAY FINANCE (AMENDMENT) ACT, 1938.]

[26th March, 1938]

An Act to amend the Bombay Finance Act, 1932.<sup>2</sup>

WHEREAS it is expedient to amend the Bombay Finance Act, 1932, for the purposes hereinafter appearing; It is hereby enacted as follows :—

1. (1) This Act may be called the Bombay Finance (Amendment) Act, 1938. Short title and commencement.

(2) It shall come into force on the 31st March 1938.

Bom. II of 1932. 2. In sub-section (3) of section 2 of the Bombay Finance Act, 1932 (hereinafter called "the said Act"), for the word "six" the word "seven" shall be substituted. Amendment of section 2 of Bom. Act II of 1932.

3. In the First Schedule to Part II of the said Act— Amendment of the Schedule to Part II of Bom. Act II of 1932.  
for the words—  
"Six pies for each unit of energy consumed", the following shall be substituted, namely :—

"(1) In the City of Bombay, and in such areas as the Provincial Government may, by notification in the Official Gazette, specify in this behalf—nine pies for each unit of energy consumed, and

(2) In other areas—six pies for each unit of energy consumed."

4. In sub-section (5) of section 15 of the said Act,— Amendment of section 15 of Bom. Act II of 1932.  
(1) in clause (b), the figures "14" shall be deleted;

(2) in clause (c) under Article 5 relating to "agreement or memorandum of an agreement"—

(a) in entry (aa) for the words "if relating to the sale", the words "if relating to the purchase or sale" shall be substituted and

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 251-253 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, part II, pp. 3071-72. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 3, part II, pp. 228-260 and 268; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 120-136.

<sup>2</sup>See *Bombay Code*, Vol. VI, p. 7.



after the words "the value of the security", the words "at the time of its purchase or sale, as the case may be" shall be added;

(b) for entry (b), the following shall be substituted, namely:—

"(b) if relating to the purchase or sale of shares, scrips, stocks, bonds, debentures, debenture stocks or any other marketable security of a like nature in or of any incorporate company or other body corporate. Two annas for every Rs. 2,500 or part thereof of the value of the security at the time of its purchase or sale as the case may be."

(c) in entry (a) under "Exemptions" for the words "relating to the sale", the words "relating to the purchase or sale" shall be substituted;

(d) after entry (c) under "Exemptions", the following entry shall be added, namely:—

"(d) made in respect of the purchase or sale of a Government security or of a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of any incorporate company or other body corporate, an entry relating to which is made in a clearance list which is duly stamped under Article 20A."

(3) in clause (c) under Article 43 relating to "Note or memorandum sent by a Broker or Agent to his principal"—

(i) for entry (b), the following shall be substituted, namely:—

"(b) of any share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature exceeding in value twenty rupees, not being a Government security. Two annas for every Rs. 2,500 or part thereof of the value of the security at the time of its purchase or sale, as the case may be."

(ii) in entry (bb) after the words "the value of the security", the words "at the time of its purchase or sale, as the case may be" shall be added;

(iii) after entry (bb), the following shall be added, namely:—

*"Exemption.*

Note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of a Government security or a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporate company or other body corporate, an entry relating to which is made in a clearance list which is duly stamped under Article 20A."

(d) after clause (d), the following clause shall be inserted, namely :—

“(dd) after Article 20, the following Article shall be inserted, namely :—

‘20A. Clearance list relating to the transactions for the purchase or sale by a member of a recognised stock exchange on his own account or on account of any other person, of a Government security or a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporate company or other body corporate submitted by such member to the clearing house of a stock exchange recognised under the Bombay Securities Contracts Control Act, 1925.

The sum of duties payable at the rates specified under Articles 5 and 43, as the case may be, in respect of each of the entries in such list on the value of the securities calculated at the making up price fixed in accordance with the rules made under the Bombay Securities Contracts Control Act, 1925.

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VIII  
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1925.

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VIII  
of  
1925.

*Explanation.*—For the purposes of this Article a clearance list shall mean a list of transactions required to be submitted to the clearing house by the members of a recognised stock exchange in accordance with the rules under the Bombay Securities Contracts Control Act, 1925.’”

5. In the Schedule to Part IV of the said Act—

(i) the entries relating to Article 14 shall be deleted ; and

(ii) in the entry in column I relating to Article 62 (c) (i) for the word “ five ” the word “ ten ” shall be substituted.

Amendment  
of Schedule  
to Part IV of  
Bom. Act II  
of 1932.

**THE BOMBAY SMALL HOLDERS RELIEF ACT, 1938.**

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5. Serving of decrees for maintenance.
6. Stay of attachment and sale of dwelling houses, milch cattle and standing crop.
7. Restriction on private transfer by small holder.
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12. Delegation of powers of Collector.
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## BOMBAY ACT No. VIII OF 1938.<sup>1</sup>

[THE BOMBAY SMALL HOLDERS RELIEF ACT, 1938.]

[31st March, 1938]

### An Act to provide for the temporary relief of small holders in the Province of Bombay.

WHEREAS it is expedient to provide for the temporary relief of small holders in the Province of Bombay and for certain other purposes specified herein ; It is hereby enacted as follows :—

1. (1) This Act may be called the Bombay Small Holders Relief Act, 1938. Short title, extent and duration.

(2) It shall extend\* to the whole of the Province of Bombay.

(3) It shall remain in force up to and inclusive of the 31st March 1939.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) " Person " includes an undivided Hindu family.

(2) " Small holder " means—

(a) an individual—

(i) who holds land not exceeding six acres of irrigated land or eighteen acres of other land, or who holds land of whatever description, the total annual agricultural assessment of which does not exceed Rs. 30, and

(ii) who cultivates land himself or is an inferior village servant ;

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 104 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, p. 1174. For Report of the Select Committee, see *Bombay Government Gazette*, 1938, Part V, pp. 203-206, 215-216 and 246-247 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 1203-1205. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 614-623, 627-658, 935-946, 950-998, 1007-1110 and 1114 ; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 307-356 and Vol. 3, p. 8.

\* It is extended to the partially excluded areas in the Province of Bombay, vide G.N., H.D., No. 210/4, dated 14th April 1938.

(b) an undivided Hindu family—

(i) which holds land not exceeding the limits specified in clause (a) (i), and

(ii) at least one adult member, if any, of which personally cultivates land.

*Explanation.*—For the purposes of this clause, in the case of a person who holds irrigated as well as other land, one acre of irrigated land shall be deemed to be equal to three acres of other land and *vice versa*.

(3) The words and expressions used in this Act, but not defined, shall have the meanings assigned to them in the Code of Civil Procedure, 1908, or the Bombay Land Revenue Code, 1879, as the case may be.

V of  
1908.  
Bom.  
V of  
1879.

Stay of  
decrees trans-  
ferred to  
the Collec-  
tor.

3. (1) Notwithstanding any law for the time being in force, all proceedings pending at the date of the commencement of this Act or which may be instituted during the period for which this Act remains in force, for the sale of land belonging to a small holder for the recovery of any money under a decree, the execution of which has been or may hereafter be transferred to the Collector under section 68 of the Code of Civil Procedure, 1908, shall, on the application of the small holder and on the amount of the interest, as specified under sub-section (2), subject to the provisions of section 10, being paid to the decree-holder or deposited with the Collector, be stayed:

V of  
1908.

Provided that such proceedings shall not be stayed, if the Collector for reasons to be recorded in writing is of opinion on the application by the decree-holder that such stay will cause substantial loss to such decree-holder.

(2) The interest under sub-section (1) shall be the amount of interest, if any, due under the decree on the sum for the recovery of which the land is sought to be sold for one year from the date on which the said sum became payable, or if the period from the said date up to the date of the application by the small holder for the stay of execution under sub-section (1) is less than one year, the amount of interest due on the said sum for the said period.

(3) If the Collector, on the application of the decree-holder, is of opinion that any rights of such decree-holder to the land referred to in sub-section (1) or to the proceeds of the sale of such land are likely to be prejudiced by reason of any other proceedings taken under any law for the time being in force, relating to any land belonging to the small holder, the Collector may direct that the proceedings in execution stayed under sub-section (1) shall continue.

XVII of 1879. 4. (1) Notwithstanding anything in section 22 of the Dekkhan Agriculturists' Relief Act, 1879, every order under the said section directing the Collector to take possession of land belonging to a small holder passed before or after the commencement of this Act shall not take effect before 1st day of April 1939.

Possession of property under section 22 of the Dekkhan Agriculturists' Relief Act, 1879.

(2) Nothing in this section shall affect the power of the Collector to deal under the said section with any land, the possession of which has been taken before the commencement of this Act.

5. Nothing in section 3 or 4 shall apply to any proceedings in execution of a decree for maintenance.

Serving of decrees for maintenance.

6. Notwithstanding anything in any law for the time being in force, all proceedings in execution of decrees pending at the date of the commencement of this Act or which may be instituted during the period for which this Act remains in force, shall, on an application of a small holder, be stayed in so far as they relate to the attachment or sale of the following property belonging to such holder, namely :—

Stay of attachment and sale of dwelling houses, milch cattle and standing crop.

(1) milch cattle, not exceeding two in number,

(2) one dwelling house (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for its enjoyment) occupied by him,

(3) standing crop,

(4) household utensils necessary for the daily use of the small holder and his family, and

(5) agricultural produce necessary for the support of the small holder and his family.

7. Notwithstanding anything contained in any law for the time being in force, no private transfer of any land or dwelling house belonging to a small holder, the proceedings for the sale of which have been stayed under this Act or of any interest therein made by him after this Act comes into force, shall be valid except with the previous sanction of the Collector of the district in which such land is situate :

Restriction on private transfer by small holder.

Provided that no such sanction shall be given unless the Collector is of opinion—

(a) that such transfer will enable the small holder to effect a composition in satisfaction of the debts due to all his creditors ; or

(b) (i) that substantial loss will be caused to such small holder if such transfer of such land or interest therein is not sanctioned, and

(ii) that such transfer does not adversely affect the interests of any creditor of the small holder.

Collector's or Court's decision to be final.

8. If in any proceedings under this Act a question arises whether a person is a small holder such question shall be decided by the Collector in a proceeding under section 3 or 4 and by the Court in a proceeding under section 6 and the decision of the Collector or the Court, as the case may be, shall, notwithstanding anything contained in any law for the time being in force, be final.

Bar against eviction of tenant.

9. (1) Notwithstanding any law for the time being in force or any contract between the parties, no tenant who has been in possession of land used for the purpose of agriculture uninterruptedly from the first day of January 1932 shall, in pursuance of any decree or order of any Court, be evicted from such land, if such tenant tenders subject to the provisions of section 10, to the landlord or any person acting on his behalf before the 15th day of May 1938 rent due in respect of the land for the year ending with the 30th day of June 1938, and is willing to hold the land thereafter as a tenant on the same terms and conditions on which he was holding the same at the date when the cause of action arose to the landlord for the purpose of evicting him.

(2) If any such land is alienated land or land held on Khoti or talukdari tenure, the tenant who is in occupation of a dwelling house as a tenant of such landlord shall not be evicted from such dwelling house (including the site thereof and the land immediately appurtenant thereto and necessary for its enjoyment), if the requirements of sub-section (1) are complied with by such tenant.

Interest or rent not to be paid or reduced in cases in which land revenue is suspended wholly or partially.

10. (1) In the case of any land in respect of which, on account of famine, drought, scarcity or other causes, the collection of land revenue for the current year is wholly suspended at any time during the period for which this Act remains in force under the general or special orders of the Provincial Government, a small holder to whom such land belongs shall not under section 3, or a tenant who is in possession of such land shall not under section 9, be liable to pay any interest or rent, as the case may be.

(2) If in the case of such land the collection of such land revenue is partially suspended, the amount of interest or rent payable by him under section 3 or section 9 shall be reduced in the same proportion.

Revival of rights, liabilities and obligations after the expiry of the Act.

11. Any right, privilege, obligation or liability acquired, accrued or incurred under any enactment, decree or order of any Court, or any contract between the parties immediately before the commencement of this Act or which may be acquired, accrued or incurred, during the period for which this Act remains in force, but the enforcement of which has been stayed by the provisions of this Act, shall immediately on the expiration of this Act, revive and be enforceable as if this Act has not been passed.

In computing the period of limitation for the enforcement of any such right, privilege, obligation or liability, the period during which the

proceedings in respect thereof are stayed under this Act shall be excluded, notwithstanding anything contained in any law for the time being in force.

12. All powers exercisable by the Collector under this Act may be exercised by the Assistant or Deputy Collector or by such officer as may be empowered by the Provincial Government by general or special order in this behalf. <sup>Delegation of powers of Collector.</sup>

13. The Provincial Government may, by notification in the Official Gazette, make rules to carry out the purposes and objects of this Act.



## BOMBAY ACT No. IX OF 1938.<sup>1</sup>

[THE BOMBAY DISTRICT MUNICIPAL AND MUNICIPAL BOROUGHS  
(AMENDMENT) ACT, 1938.]

[12th May, 1938]

**An Act to amend the Bombay District Municipal Act, 1901,<sup>2</sup> and the  
Bombay Municipal Boroughs Act, 1925,<sup>3</sup> for certain purposes.**

WHEREAS it is expedient to amend the Bombay District Municipal Act, 1901, and the Bombay Municipal Boroughs Act, 1925, for certain purposes; It is hereby enacted as follows :—

1. (1) This Act may be called the Bombay District Municipal and Municipal Boroughs (Amendment) Act, 1938. Short title and commencement.

(2) It shall come into force\* on such date as the Provincial Government may by notification in the *Official Gazette* appoint.

Bom. 2. In the Bombay District Municipal Act, 1901, hereinafter called the Amendment of section 10 of Bom. III of 1901.  
III of 1901. District Act, clause (b) of sub-section (1) of section 10 and the proviso to the said sub-section shall be deleted.

3. In section 11 of the District Act, clause (b) in sub-section (1) shall be deleted. Amendment of section 11 of Bom. III of 1901.

4. In sub-section (1) of section 27A of the District Act for the words, Amendment of section 27A of Bom. III of 1901.  
figures, letter and brackets beginning with the words "of three  
councillors" and ending with the words "of the Crown", the words,  
figures, letter and brackets "of four councillors of whom one shall be the  
President of the Municipality and the other three shall be elected in  
accordance with rules made under clause (a) of section 46 and of two  
persons appointed by the Provincial Government, both of whom may be  
salaried servants of the Crown" shall be substituted.

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 281, or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, p. 3151. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, pp. 1552-1573, 1583-1633, 1637-1669, 1804-1805, 1969 and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 219-253.

<sup>2</sup>See *Bombay Code*, Vol. IV, p. 7.

<sup>3</sup>See *Bombay Code*, Vol. V, p. 221.

\*Declared to come into force from 1st June 1938 and extended to the partially excluded areas in the Province of Bombay, vide *Government Notifications* Nos. S. 112 and S. 112 (a), dated 1st June 1938, respectively.

Amendment of section 33 of Bom. III of 1901. 5. In section 33 of the District Act, the proviso to sub-section (1) shall be omitted.

Amendment of section 9 of Bom. XVIII of 1925. 6. In sub-section (1) of section 9 of the Bombay Municipal Boroughs Act, 1925, hereinafter called the Boroughs Act, clause (b) and provisos to the sub-section shall be deleted. Bom. XVIII of 1925.

Amendment of section 10 of Bom. XVIII of 1925.

7. In section 10 of the Boroughs Act,—

(1) clause (b) of sub-section (1) shall be deleted ;

(2) in clause (c) of the sub-section—

(a) for the words “ Non-Muhammadans and depressed classes ” the words “ and Non-Muhammadans ” shall be substituted ;

(b) after the words “ by each ward ” the words “ and the number of seats to be reserved in each ward for women or for any tribe, caste or community and prescribing the manner in which the Muhammadans in any municipal borough may declare that all the wards constituted for their community be abolished ” shall be inserted ;

(c) after the words “ regulating generally such elections ”, the following proviso shall be added, namely :—

“ Provided that rules so made shall not provide for the reservation of seats in any ward for the representatives of any tribe, caste or community—

(a) other than—

(i) a backward tribe,

(ii) Harijans, or

(iii) any community, the members of which are under the Fifth Schedule to the Government of India Act, 1935, entitled to separate constituencies for electing representatives to the Bombay Legislative Assembly, and

(b) unless the Provincial Government is of opinion that the reservation of such seats is necessary having regard to the population of such tribe, caste or community in the municipal borough ;”

(3) for the explanation to the sub-section, the following explanations shall be substituted :—

“ Explanation.—For the purpose of this section—

(1) A Harijan shall mean a member of a scheduled caste as defined in the Government of India (Scheduled Castes) Order, 1936 ;

(2) A backward tribe shall mean a tribe specified in Part II of the Thirteenth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936."

(4) After sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) If at any time the Muhammadans in any municipal borough who are qualified voters declare either unanimously or by majority in the manner prescribed by rules made under sub-section (1) that all the wards constituted for their community in such municipal borough be abolished, the Provincial Government shall abolish all such wards and may also make rules prescribing the manner in which the representation of the said community shall be secured in such municipal borough:

Provided that notwithstanding anything contained in the proviso to sub-section (1) the rules so made shall provide for reservation for the representatives of the Muhammadan community of such number of seats in such wards in the municipal borough as is, in the opinion of the Provincial Government, necessary having regard to their population in such municipal borough."

8. In sub-section (1) of section 37A of the Boroughs Act for the words, figures, letter and brackets beginning with the words "of three councillors" and ending with the word "Crown", the words, figures, letter and brackets "of four councillors of whom one shall be the President of the municipality and the other three shall be elected in accordance with rules made under clause (a) of section 58 and of two persons appointed by the Provincial Government, both of whom may be salaried servants of the Crown" shall be substituted. Amendment of section 37A of Bom. XVIII of 1925.

9. (1) Nothing in this Act shall affect any municipality constituted under the District Act or the Boroughs Act or any committee of such municipality constituted immediately before the commencement of this Act, and no appointment, notification, notice, tax, order, scheme, licence, permission, rule, by-law or form made, issued or imposed by or in respect of such municipality or committee shall be deemed to be invalid by reason only of the fact that this Act has come into force. Saving.

(2) Notwithstanding anything contained in this Act, any casual vacancy in such municipality or any committee thereof shall, in the case of a municipality constituted under the District Act subject to section 17 of the said Act and in the case of a municipality constituted under the Boroughs Act subject to section 25 of the said Act, be filled in the manner provided by either of the said Acts, as the case may be, as if this Act had not come into force.

BOMBAY ACT No. X OF 1938.<sup>1</sup>

[THE BOMBAY RACE-COURSES LICENSING (AMENDMENT) ACT, 1938.]

[16th May, 1938]

An Act to amend the Bombay Race-courses Licensing Act, 1912.<sup>2</sup>

WHEREAS it is expedient to amend the Bombay Race-courses Licensing Act, 1912, for the purposes hereinafter specified ; It is hereby enacted as follows :—

Bom. Act, 1912, III of follows :—

1. This Act may be called the Bombay Race-courses Licensing (Amendment) Act, 1938. Short title.

2. In the preamble of the Bombay Race-courses Licensing Act, 1912, hereinafter called "the said Act", for the words "regulation of horse racing" the words "regulation, control and management of horse racing and all matters directly or indirectly connected therewith" shall be substituted. Amendment of preamble of Bom. III of 1912.

3. In sub-section (2) of section 4 of the said Act, after the words "may think fit" the following shall be inserted, namely :— Amendment of section 4 of Bom. III of 1912.

"Such conditions may provide for—

- (a) the payment of a licence fee ;
- (b) the amount of stakes which may be allotted for different kinds of horses ;
- (c) the measures to be taken for the training of persons to become jockeys ; and
- (d) such other matters, whether directly or indirectly connected with horse racing, for which, in the opinion of the Provincial Government, it is necessary or expedient to make provision in the licence."

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 431 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, p. 3231. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 3, pp. 2734-2753 and 2997; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 473-482.

<sup>2</sup>See *Bombay Code*, Vol. IV, p. 301.

**THE BOMBAY HARIJAN TEMPLE WORSHIP (REMOVAL OF  
DISABILITIES) ACT, 1938.**

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BOMBAY ACT No. XI OF 1938.<sup>1</sup>

[THE BOMBAY HARIJAN TEMPLE WORSHIP (REMOVAL OF DISABILITIES)  
ACT, 1938.]

[27th May, 1938]

**An Act to remove disabilities of Harijans in regard to worship  
in temples.**

WHEREAS it is expedient to provide for the removal of disabilities of Harijans in regard to worship in temples; It is hereby enacted as follows :—

1. (1) This Act may be called the Bombay Harijan Temple Worship (Removal of Disabilities) Act, 1938. Short title,  
extent and  
commence-  
ment.

(2) This Act extends to the whole of the Province of Bombay and shall come into force on the 1st day of April 1938.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) "Court" means the Court of the District Judge and includes the High Court in the exercise of its ordinary original civil jurisdiction;

XIV  
of  
1869.

(2) "District" means a district constituted under section 3 of the Bombay Civil Courts Act, 1869, and includes the City of Bombay;

(3) "Harijan" means a member of a caste, race or tribe deemed to be a Scheduled Caste under the Government of India (Scheduled Castes) Order, 1936;

(4) "Hindu Community" includes Jains;

(5) "Person having interest" means a person who is entitled to enter or attend for the purpose of the performance of worship in a temple or who is in the habit of entering or attending for such purpose or of receiving any share in the gifts thereto;

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 52 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, p. 1171; for Report of Select Committee, see *Bombay Government Gazette*, 1938, Part V, pp. 191-195 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 1195-1198. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 593-614, 648-682, 912-935 and 1122, 1123; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 2, pp. 357-367, 370-379 and Vol. 3, p. 7.

(6) "Prescribed" means prescribed by rules made under section 9 ;

(7) "Temple" means a place by whatever designation known used as a place of public religious worship and dedicated to or for the benefit of or used as of right by, the Hindu Community or any section thereof, as a place of religious worship ;

(8) "Trustee" means a person by whatever description known in whom the administration of a temple is vested by any law for the time being in force or the terms of the instrument of the trust, or the terms of a decree or order of a competent Court, relating to such temple, or if there is no such person, any person who has administered the temple for a period of one year immediately prior to the date of the declaration made under section 3 and who is liable as if he were a trustee ;

(9) "Worship" includes attendance at a temple for the purpose of darshan of a deity or deities installed in or within the precincts thereof.

Declaration  
by trustees  
opening the  
temple to  
Harijans.

3. (1) A trustee, or if there are more than one trustee, the majority of the trustees, of a temple which, by anything contained in the terms of instrument of trust, the terms of dedication or a decree or order of a competent Court relating to such temple or by any custom, usage or law for the time being in force, is not open for the performance of worship to any Harijan may, of his or their own motion or on the requisition of any person having interest in such temple, notwithstanding anything contained in the terms of such instrument, the terms of the dedication, the decree or order, custom, usage or law, declare in writing that such temple shall be open to the Harijans to whom such temple was not open, for the performance of worship, subject to such conditions and the observance of such ceremonies as may be specified in the declaration :

Provided that the conditions imposed as aforesaid shall not be made applicable to Harijans only.

(2) The declaration shall be in such form and shall contain such particulars as may be prescribed.

(3) The declaration shall be forwarded to the Court within the local limits of whose jurisdiction the temple is situate.

(4) The declaration forwarded to the Court shall be accompanied by an affidavit made by the trustee or the majority of the trustees, as the case may be, that he is the trustee or they are the majority of the trustees of the temple in respect of which the declaration is made and also in the case of a temple which is a public trust to which the provisions of the Bombay Public Trusts Registration Act, 1935, apply, by a certified copy of an entry in the Register of Public Trusts maintained under section 7 of the said Act relating to the names and addresses of the trustees of such public trust.

4. (1) On receipt of such declaration, the Court shall, if it is satisfied that the conditions specified in the declaration do not contravene the requirements of the proviso to sub-section (1) of section 3, cause public notice to be given at convenient places on or near the temple in respect of which the declaration has been made and shall cause the declaration to be published in the *Official Gazette* and in a newspaper published in the principal vernacular of and circulating in the district. The declaration so published shall subject to the provisions of section 6 be irrevocable and the publication of the declaration in the *Official Gazette* shall be conclusive evidence that the temple is open to the performance of worship to the Harijans to whom it was not so open and the instrument of the trust, the terms of dedication, the decree or order, custom, usage or law relating to the temple shall be deemed to have been amended accordingly.

The publica-  
tion of decla-  
ration.

(2) Any of the conditions specified in the declaration published under section 4 may, on the application of the trustee or if there are more than one trustee of the majority of the trustees of the temple be altered, added to or omitted with the previous sanction of the Court.

Alteration  
of conditions  
in declara-  
tion.

5. (1) Any person interested in the temple in respect of which a declaration has been published under section 4 may, within three months from the date of such publication, make an application to the Court which has caused the declaration to be published for the following reliefs only :—

Application  
to Court to  
set aside  
declaration.

(a) that the person or any of the persons purporting to act as trustee was not entitled to act as such at the time the declaration was made, or

(b) that the trustees making the declaration did not form a majority of trustees of the said temple at the time the declaration was made.

(2) On receipt of such application, the Court shall cause notice to be served on the person or persons who made the declaration and upon any other person to whom in its opinion notice of the application should be given, specifying the date on which the application is to be heard.

(3) On the date so specified, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the applicant and the persons making the declaration, if any of them appears and any other person who, it considers, ought to be heard, and shall hold an inquiry.

(4) Such inquiry shall be held in the manner provided by rules made, if any, by the High Court in this behalf with the previous sanction of the Provincial Government.

Save as provided by such rules, the provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to such inquiry.



(5) If the Court is satisfied—

(a) that the applicant is a person interested in the temple, and

(b) that person or persons purporting to act as the sole trustee or the majority of trustees was or were not entitled to act as such at the time the declaration was made, or the trustees who made the declaration did not form the majority of trustees entitled to act as such at such time,

it shall set aside the declaration. If the Court is not so satisfied, it shall dismiss the application.

(6) In deciding such application the Court may make such order as to costs as it thinks reasonable. The provisions of the Code of Civil Procedure, 1908, relating to the execution of decrees shall, so far as they are applicable, apply to the execution and order as to costs.

(7) The decision of the Court under sub-section (5) shall be final and conclusive for the purposes of this Act.

Exclusion of  
Jurisdiction  
of other  
Courts.

6. Save as provided in this Act, no civil Court shall entertain any suit or proceeding or shall pass an order or decree or execute wholly or partially any order or decree, if the claim involved in such suit or proceeding or if the passing of such order or decree or if such execution would in any way affect or be inconsistent with the declaration published under section 4 unless it is set aside by the Court under section 5.

Date on  
which  
declaration  
to take effect.

7. The declaration published under section 4 shall take effect on the expiry of 3 months from the date of its publication, provided that, if an application to set aside the declaration is made under section 5, the declaration shall, if not set aside, take effect from the date of the decision of the Court on such application.

Penalty.

8. Whoever obstructs or causes or tends to cause obstruction to any Harijan from the performance of worship in a temple in contravention of the declaration made under section 4, shall, on conviction, be punishable with fine which may extend to Rs. 200 and in the case of a continuing offence, with an additional fine which may extend to Rs. 20 for every day after the first during which he has persisted in the offence.

Power of the  
Provincial  
Government  
to make  
rules.

9. (1) Save in regard to matters for which the High Court is empowered to make rules under section 5, the Provincial Government may make rules for the purpose of carrying out the provisions of this Act.

(2) Rules made under this section shall be subject to the condition of previous publication.

**BOMBAY ACT No. XII OF 1938.<sup>1</sup>**

[THE BOMBAY PRIMARY EDUCATION (AMENDMENT) ACT, 1938.]

[27th May, 1938]

**An Act to amend the Bombay Primary Education Act, 1923.<sup>2</sup>**

**Bom. Act, 1923, for the purposes hereinafter appearing ; It is hereby enacted as follows :—**

1. (1) This Act may be called the Bombay Primary Education Short title. (Amendment) Act, 1938.

(2) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* appoint.

**Bom. Act, 1923.** 2. In the Bombay Primary Education Act, 1923, hereinafter called the said Act for the preamble the following shall be substituted :— **Amendment of preamble to Bom. IV of 1923.**

“Whereas it is the duty of Government to secure the development and expansion of primary education : and whereas it is the declared policy of the Government that universal, free and compulsory primary education should be reached by a definite programme of progressive expansion and whereas it is expedient to make better provision for the development, expansion, management and control of primary education in the Province of Bombay ; It is hereby enacted as follows :—”

3. For section 2 of the said Act the following shall be substituted, **Amendment of section 2 of Bom. IV of 1923.** namely :—

“2. In this Act, unless there is anything repugnant in the subject **Definitions.** or context,—

(1) ‘Administrative Officer’ means the officer appointed under section 9 ;

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<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 325-329 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, pp. 3182-3185 ; for Report of the Select Committee, see *Bombay Government Gazette*, 1938, Part V, pp. 388-399 and 428-429 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, pp. 3197-3208. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, pp. 1837-1917 ; 1971-1980 ; 1986-2044 ; 2072-2115, 2121-2178, 2202-2255 ; 2258-2293 ; 2313-2357 ; 2362-2407 ; 2647-2691 ; 2694-2733, 2997 and 2998 ; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 483-562 and 635.

<sup>2</sup>See *Bombay Code*, Vol. V, p. 11.

(2) 'Approved school' means a school or part of a school which is for the time being approved for the purposes of this Act by the school board or by the Provincial Government on appeal from a decision of the school board refusing approval;

(3) 'Area of compulsion' means the area in which elementary or primary education as the case may be, is compulsory;

(4) 'To attend an approved school' means to be present for instruction at such school on such days and at such time and for such periods on each day as may be required by the school board with the approval of the Provincial Government;

(5) 'Provincial Board of Primary Education' means the Board constituted under section 2A;

(6) 'Child' means a child whose age at the beginning of the school year is not less than six and whose age is, with reference to 'Elementary education' not more than eleven and with reference to 'Primary education' not more than fourteen years;

(7) 'Director' means the Director of Public Instruction for the Province of Bombay;

(8) 'Elementary education' means the education from time to time imparted in infant classes and vernacular standards I to IV inclusive as prescribed or sanctioned under section 17;

(9) 'Local authority' means (1) a district local board, or (2) a municipality which is authorised by the Provincial Government to manage its own schools;

(10) 'Parent' includes a guardian or any person who has the custody of a child;

(11) 'Prescribed' means prescribed by rules made by the Provincial Government for the purposes of this Act;

(12) 'Primary education' means the education from time to time imparted in infant classes and vernacular standards I to VII inclusive as prescribed or sanctioned under section 17;

(13) 'Primary Education Fund' means the fund maintained under section 8A; and

(14) 'School Board' means a board constituted under section 3."

Insertion of  
a new sec-  
tion 2A in  
Bom. IV of  
1923.

4. After section 2 of the said Act the following new section shall be inserted, namely:—

Provincial  
Board of  
Primary  
Education.

2A. (1) There shall be a Provincial Board of Primary Education, consisting of twelve members, of whom six shall be elected by the school boards in the manner prescribed. The remaining six, out of whom not

more than three shall be Government officers, shall be appointed by the Provincial Government. The members of the said Board shall hold office for a period of three years.

(2) The elected members of the said Board shall be persons having any of the following qualifications :—

(a) a graduate of seven years' standing of any recognised University,

(b) a professor who has served for a period of five years in a recognised college in the Province of Bombay,

(c) a head master who has served as such for 10 years in any recognised secondary school in the Province of Bombay.

*Explanation.*—For the purpose of this sub-section, the expression 'recognised' shall mean recognised by the Provincial Government in this behalf.

(3) The said Board shall elect its president from amongst its own members and his term of office shall be co-extensive with that of the Board. Out of the members appointed by the Provincial Government one member selected by the Provincial Government and belonging to the Educational Department shall act as Secretary to the Board.

(4) The powers and duties of the said Board shall be as follows, namely :—

(a) to examine and recommend schemes for the organization, co-ordination and expansion of primary education and for the correlation of primary education with the system of education as a whole in the Province ;

(b) to make recommendations and to advise the Provincial Government with regard to matters specified in sub-section (3) of section 27 ;

(c) to advise the Provincial Government generally on all matters connected with primary education ;

(d) to exercise such other powers as may be conferred on it and to perform such other duties as may be prescribed by rules or by any other law for the time being in force."

(5) Casual vacancies during the term of a Provincial Board shall be filled for the remaining period by election or appointment as the case may be.

5. For section 3 of the said Act, the following shall be substituted, namely :—

Amendment  
of section 3  
of Bom. IV  
of 1923.

" 3. (1) For every local authority there shall be a school board.

(2) The school board shall be constituted as prescribed and shall consist of members not less than twelve and not more than sixteen

Constitution  
of School  
Boards.

elected by the local authority. Such members shall not necessarily be members of the local authority :

Provided that if any primary schools have been transferred by municipalities which are not local authorities to the local authority concerned, not more than two of such members shall be elected by the said municipalities in the manner prescribed.

(3) Out of the members elected by the local authority—

(a) two at least shall be members experienced in education ;

(b) one at least shall be a woman ; and

(c) such number not exceeding three as may be prescribed shall be representatives of minorities and backward communities.

(4) The remaining members shall be persons who shall possess the requisite educational qualification.

*Explanation.*—For the purposes of this section—

(a) minorities and backward communities shall mean such classes and communities as may be prescribed ;

(b) a person shall be deemed to possess the requisite educational qualification, if such person—

(i) has passed the vernacular school final examination held by the Provincial Government ;

(ii) has passed the anglo-vernacular third standard ; or

(iii) possesses any other equivalent or higher educational qualification which the Provincial Government may prescribe in this behalf.

(5) Except as otherwise provided in this Act, the term of office of the members of a school board shall cease on the expiry of the term of the local authority for which it was constituted :

Provided that the term of office of such members shall not be deemed to expire by reason only of the fact that the local authority is dissolved or superseded ;

Provided further that notwithstanding the expiry of the term of office of such members, the said members shall continue in office, until the members of a new school board are elected or appointed, as the case may be.

(6) If the term of office of the members of a school board expires during the period of supersession of a local authority for which it was constituted, a new school board shall from time to time be constituted as provided in sub-section (2), until the local authority is re-established,

provided that the members of such school board shall, instead of being elected, be appointed by the Provincial Government. The term of office of the members of a school board so appointed shall be for such period not exceeding three years as the Provincial Government may decide :

Provided that if during such period the local authority is re-established, the term of office of the members of the school board shall expire on the date on which a new school board is elected by the local authority concerned.

(7) Casual vacancies during the term of a school board shall be filled for the remaining period by election or appointment, as the case may be."

6. After section 3 of the said Act, the following shall be inserted namely :—

Insertion of  
new sec-  
tions 3A to  
3C in Bom.  
IV of 1923.  
Disqualifica-  
tions of  
members.

"3A. No person shall be elected or appointed a member of a school board who—

(a) is less than 25 years of age, or

(b) is a judge of a civil court, or a magistrate or

(c) (i) has been sentenced by a criminal court to fine, imprisonment or whipping for an offence involving moral turpitude and punishable with imprisonment for a term exceeding six months or to transportation, such sentence not having been subsequently reversed or quashed, or

(ii) is a person against whom an order has been passed under section 118 of the Code of Criminal Procedure, 1898, in proceedings instituted under section 110 of that Code, such order not having been subsequently reversed or quashed, if and so long as such order is in force, or,

(iii) has been removed from office under this Act and five years have not elapsed from the date of such removal.

unless he has, by an order of the Provincial Government notified in the *Official Gazette* been relieved from the disqualification arising on account of such sentence, order or removal from office, or

(d) is a stipendiary officer or servant of a school board or of a local authority or of a municipality which is not a local authority, or

(e) is an uncertified bankrupt or an undischarged insolvent, or

(f) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the school board or of the

local authority for which it has been constituted or in any contract or employment with, under, or by, and on behalf of the school board or such local authority, or

(g) has not resided for a period of not less than six months next preceding the date fixed for recording of votes for elections to the school board

(i) within the district, if the local authority for which the school board has been constituted is a District Local Board, or

(ii) within the municipal district or municipal borough, as the case may be, or within seven miles of the limits thereof, if such local authority is a municipality, or

(h) has been adjudged by a competent court to be of unsound mind.

*Explanation :—*

A person shall not be deemed to have incurred disqualification under clause (f) by reason of his—

(a) having any share or interest in any lease, sale or purchase of any immoveable property or in any agreement for the same if before taking his seat as a member of the school board, he has obtained the sanction of the Provincial Government to have such share or interest, or

(b) having a share or interest in any joint stock company or in any society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, which shall contract with or be employed by or on behalf of the school board or of the local authority for which it has been constituted, or <sup>Bom. VII of 1925.</sup>

(c) having a share or interest in any newspaper in which any advertisement relating to the affairs of the school board or the local authority for which it has been constituted may be inserted, or

(d) holding a debenture or being otherwise interested in any loan raised by or on behalf of the school board or the local authority for which it has been constituted, or

(e) being professionally engaged on behalf of the school board or the local authority for which it has been constituted, as a legal practitioner, or

(f) having a share or interest in the occasional sale to the school board or the local authority for which it has been constituted of any article in which he regularly trades, or in the purchase from the school board or such local authority of any article, to a value in either case not exceeding in any official year five hundred rupees or such higher amount not exceeding two thousand rupees as the school board or such local

authority with the sanction of the Provincial Government may fix in this behalf, or

(g) having a share or interest in the occasional letting out on hire to the school board or the local authority for which it has been constituted, or in the hiring from the school board or such local authority of any article for an amount not exceeding in any official year fifty rupees, or such higher amount not exceeding two hundred rupees as the school board or such local authority with the sanction of the Provincial Government may fix in this behalf, or

(h) being a police patel, who is an *ex-officio* keeper of village cattle pounds under the control of the local authority for which the school board has been constituted.

3B. (1) If the validity of the election of a member of a school board is brought in question by an unsuccessful candidate or by any person qualified to vote at the election such person may, at any time within fifteen days after the date of the declaration of the result of the election apply to the District Judge of the district within which the election has been or should have been held for the determination of such question. Determination of validity of elections; enquiry by Judge; procedure.

(2) Enquiry shall thereupon be held by a Judge, not below the grade of an Assistant Judge and such Judge may, after such enquiry as he deems necessary, pass an order confirming or amending the declared result of the election or setting the election aside. For the purposes of the said enquiry the said Judge may exercise any of the powers of a civil court, and his decision shall be conclusive. If he sets aside an election, a date shall forthwith be fixed, and the necessary steps taken, for holding a fresh election.

(3) All applications received under sub-section (1)—

(a) in which the validity of the election of members is in question shall as far as possible be heard by the same Judge; and

(b) in which the validity of the election of the same member is in question shall be heard together.

V of 1908. (4) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not allow (a) any application to be compromised or withdrawn or (b) any pleadings in the proceedings to be altered or amended unless he is satisfied that such application, alteration or amendment is *bona fide* and not collusive.

(5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of sub-section (6), he shall declare the candidate disqualified both for the purpose of that election and of such fresh election as may be



held under sub-section (2), and shall set aside the election of such candidate if he has been elected.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall, after a scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected :

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

(6) A person shall be deemed to have committed a corrupt practice—

(a) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit or holds out any threat of injury to any person ; or

(b) who gives, procures or abets the giving of a vote in the name of a voter who is not the person giving such vote ;

and a corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

*Explanation.*—The expression “ a promise of individual profit ”

(i) does not include a promise to vote for or against any particular measure which may come before a school board for consideration, but

(ii) subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested.

(7) If the validity of the election is brought in question only on the ground of an irregularity or informality which has not materially affected the result of the election or which has not been corruptly caused, the Judge shall not set aside the election.

(8) If the Judge sets aside an election under clause (a) of sub-section (5) he may, if he thinks fit, declare any person by whom any corrupt practice has been committed within the meaning of sub-section (6) to be disqualified from being a member of any school board for a term of years not exceeding five and the decision of the Judge shall be conclusive :

Provided that no such declaration shall be made in respect of any person without such person being given an opportunity to show cause why such declaration should not be made :

Provided further that such person may, by an order of the Provincial Government in that behalf, be at any time relieved from such disqualification.

3C. (1) If any member of a school board, during the term for which he has been elected or appointed—

Disqualification after becoming a member.

(a) absents himself during three successive months from the meetings of the school board without the previous permission of the board, or

(b) becomes subject to any of the disqualifications mentioned in section 3A,

he shall be disabled from continuing to be a member of such board, and his seat shall be deemed to be vacant :

Provided that he shall not be deemed to have incurred any disqualification under clause (f) of sub-section (1) of section 3A by reason of his having any share or interest in any lease, sale or purchase of any immoveable property or in any agreement for the same, if he has obtained the previous sanction of the Provincial Government to have such share or interest.

(2) If any question, dispute or doubt arises whether a vacancy has occurred under this section, the orders of the Provincial Government shall be final for the purpose of deciding such question, dispute or doubt.

3D. A member shall not vote or take part in a discussion on any matter before a meeting of a school board in which he is directly or indirectly, by himself or by his partner, any share or interest such as is described in clause (f) of sub-section (1) of section 3A or in which he is professionally interested on behalf of a client, principal or other person. The vote so given shall not be counted.

Disabilities on account of interest in the subject matter.

3E. The Provincial Government may on its own motion or on the recommendation of the school board or the local authority for which it has been constituted, supported by a resolution passed by at least two-thirds of the whole number of members of either body, remove any member elected to the school board, if such member has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct or has become incapable of performing his duties as a member by reason of any physical or mental infirmity :

Removal of members of School Board for misconduct.

Provided that no person shall be so removed nor shall any resolution recommending the removal of any member be passed unless the member to whom it relates has been given a reasonable opportunity of showing cause why he should not be so removed or why such recommendation should not be made."

Amendment  
of section 4 of  
Bom. IV of  
1923.

7. In section 4 of the said Act—

(a) in sub-section (1) omit the words "and subject to the general control of the local authority";

(b) for sub-section (2) the following shall be substituted:—

"(2) The school board shall exercise the powers and perform the duties of the local authority in respect of primary education as may be prescribed in this behalf and if the local authority is a district local board, it shall also exercise the like powers and perform the like duties of the municipalities in the district which are not local authorities and the primary schools in the municipal limits of which are not transferred to any other local authority. The school board shall also enforce the provisions of this Act";

and

(c) sub-section (5) shall be deleted.

Insertion of  
a new section  
4A in Bom.  
IV of 1923.

8. After section 4 of the said Act the following new section shall be inserted, namely:—

Election of  
chairman  
and vice-  
chairman.

"4A. (1) Every school board shall elect a chairman and a vice-chairman from amongst the members of the board.

Removal of  
chairman  
and vice-  
chairman.

(2) A chairman or a vice-chairman shall be removable from his office as such chairman or vice-chairman by the school board by a resolution passed to that effect, provided that at least two-thirds of the total number of members of the school board vote in favour of such resolution or where the number of such members voting in favour of such resolution is less than two-thirds but more than one-half of the total number of members of the school board sanction is accorded by the Provincial Government for such removal and provided, further, that before such resolution is passed the chairman or vice-chairman is given a reasonable opportunity of showing cause why such resolution should not be passed and the notice of such resolution appears on the agenda of the meeting of the board at which such resolution is taken into consideration.

Absence of  
chairman or  
vice-chair-  
man without  
leave.

(3) Every chairman or vice-chairman who, for a continuous period exceeding three months, absents himself without leave of the school board from the local limits of the area for which the school board is constituted, shall cease to be chairman or vice-chairman.

(4) No leave shall be granted by the school board under sub-section (3) for a total period exceeding six months during the term of the school board.

(5) Whenever leave is granted to a vice-chairman under sub-section (3), a member shall be elected to be vice-chairman during the period of such leave."

9. After section 5 of the said Act the following new section shall be inserted, namely :—

Insertion of section 5A in Bom. IV of 1923.

"5A. The members of a school board may be paid allowance for expenses incurred by them in travelling for the purpose of the business of the school board at such rates and subject to such conditions as may be prescribed."

Payment of travelling allowances to members of school board.

10. In section 6 of the said Act—

Amendment of section 6 of Bom. IV of 1923.

(1) for sub-section (1) the following shall be substituted, namely :—

"(1) Every municipality which is not a local authority shall, on a date to be notified by the Provincial Government in this behalf, transfer to the District Local Board of the district in which it is situate, or to any municipality which is a local authority in the same district as the Provincial Government may decide with the consent of that local authority, all primary schools with their lands, buildings, records and equipment which vest in it and shall pay over annually to the said local authority for educational purposes such amount as may from time to time be fixed by the Provincial Government on the basis of the average number of pupils on the rolls of the schools in the municipal limits receiving primary education, and the income accruing from any funds (including trust funds) held, and all money received by it for purposes of primary education."

(2) In sub-section (2) for the words "the district local board of the district" the words "the local authority to which schools had been transferred" shall be substituted.

(3) The following shall be inserted as sub-section (3), namely :—

"(3) (a) The Provincial Government may at any time by an order published in the *Official Gazette* together with reasons thereto, direct that any municipality which is a local authority shall with effect from a date specified in this behalf cease to be a local authority ;

(b) On such order being made, the provisions of sub-section (1) shall apply to such municipality from the date specified in such order."

Insertion of new sections 8A and 8B in Bom. IV of 1923.

Primary Education Fund.

11. After section 8 of the said Act, the following sections shall be inserted, namely :—

“ 8A. (1) A fund hereinafter called the Primary Education Fund shall be maintained by each local authority.

(2) The following shall form part of, or be paid into the Primary Education Fund :—

(a) the balance of the Primary Education Fund constituted under the Bombay Primary Education Rules at the date on which the Bombay Primary Education (Amendment) Act, 1938, comes into force,

(b) the grant payable on account of primary education including, in the case of a local authority which is a district local board, the portion of the revenue which is to be devoted to primary education under section 80 of the Bombay Local Boards Act, 1923,

Bom. VI of 1923.

(c) the grants paid or payable by the Provincial Government on account of primary education,

(d) the contributions of such municipalities in the district as are not local authorities,

(e) fees and fines received from primary schools,

(f) such other sums as may from time to time be received on account of primary education.

*Explanation.*—For the purposes of clause (b) the grant payable by a local authority which is a municipality shall be the amount of recurring expenditure on primary education in any year less the grant paid by the Provincial Government in that year, and fees and sums of money from other sources of income belonging to the Fund.

Application of the Primary Education Fund.

8B. The Primary Education Fund shall stand in the name of the school board and be applied subject to the provisions and for the purposes of this Act.

Deposit and withdrawal of Primary Education Fund.

8C. (1) The Primary Education Fund shall be kept in the Government treasury or in the bank to which the Government treasury business has been made over or to such other bank or co-operative society registered or deemed to have been registered under the Bombay Co-operative Societies Act, 1925, as may be approved by the Provincial Government.

Bom. VII of 1925.

(2) It shall be lawful for the school board to invest such portion of the Primary Education Fund as is not likely to be required immediately in Post Office Cash Certificates or in securities of the Central Government or of any Provincial Government.

(3) Every investment in Government securities shall be made through the Reserve Bank of India or any other bank approved by the Provincial Government in this behalf.”

12. For section 9 of the said Act, the following shall be substituted, namely:—

Amendment of section 9 of Bom. IV of 1923.

"9. (1) For every school board there shall be an Administrative Officer. He shall be the chief executive officer of the school board.

Administrative Officer.

(2) The Administrative Officer shall be appointed by and shall be a servant of the Provincial Government. His pay, powers and duties shall be as prescribed."

13. After section 9 of the said Act, so substituted the following new section shall be inserted, namely:—

Insertion of new section 9A in Bom. IV of 1923.

"9A. (1) The Provincial Government may appoint such officers as may in its opinion be necessary to inspect approved schools.

Inspecting staff and accountants.

(2) The Provincial Government may also appoint such number of accountants as may be necessary.

(3) The officers appointed under sub-sections (1) and (2) shall be the servants of the Provincial Government, and their pay, powers and duties shall be such as may be prescribed."

14. In sub-section (1) of section 10 of the said Act, the words "and, if the local authority is a district local board, in any area subject to the jurisdiction of a municipality situate in the district which is not a local authority" shall be deleted.

Amendment of section 10 of Bom. IV of 1923.

15. (1) In sections 10 (1), 10 (2) and 11 (e) of the said Act, after the word "elementary" wherever it occurs the words "or primary" shall be inserted.

Amendment of sections 10 and 11 of Bom. IV of 1923.

(2) In section 10 (3) after the words "compulsory education" the words "elementary or primary as the case may be" shall be inserted.

16. In section 14 of the said Act—

Amendment of section 14 of Bom. IV of 1923.

(a) for the words "elementary education" where they occur for the first time, the words "elementary or primary education as the case may be" shall be substituted;

(b) for the words "elementary education" where they occur in the penultimate line, the words "such education" shall be substituted.

17. In sub-section (1) of section 16 of the said Act, the words "and of the local authority" shall be deleted.

Amendment of section 16 of Bom. IV of 1923.

18. In clause (b) of section 19 of the said Act, for the words "elementary education" the words "elementary or primary education as the case may be" shall be substituted.

Amendment of section 19 of Bom. IV of 1923.

Amendment of section 22 of Bom. IV of 1923.      19. In sub-section (2) of section 22 of the said Act the words "School Boards" wherever they occur, before the words "Administrative Officer" shall be deleted.

Amendment of section 26 of Bom. IV of 1923.      20. In sub-section (1) of section 26 of the said Act, for the words "elementary education", the words "elementary or primary education, as the case may be" shall be substituted.

Insertion of new sections 16A, 16B and 16C in Bom. IV of 1923.      21. After section 16 of the said Act, the following new sections shall be inserted, namely :—

Inspecting Officer of Educational Department to be present at school board meetings.      "16A. (1) An inspecting officer of the Educational Department of the Provincial Government nominated by the Director in this behalf shall have the right of being present at any meeting of the school board and with the consent of the Chairman of taking part in the discussions thereat, but he shall not be entitled to vote upon, or move any resolution at such meeting.

Powers of supervision.      (2) The Director or Educational Inspector or any other officer authorised by a general or special order of the Provincial Government may—

(a) (i) enter on and inspect any immoveable property occupied for any purpose connected with primary education by any local authority or school board, or any educational institution under its control or management; or

(ii) cause such property or institution to be entered upon and inspected by any other person authorised by him in this behalf;

(b) call for any extract from the proceedings of any local authority or school board or of any committee appointed by either of them relating to any matter connected with primary education; or

(c) call for and inspect any book or document relating to any matter connected with primary education in the possession or under the control of a local authority or school board.

Power to call for return or require an explanation, etc.

16B. The Director may—

(a) call for from any local authority or school board any return, statement, account, or report relating to any matter connected with primary education which he may think it fit to require such local authority or school board to furnish; and

(b) require a local authority or school board to take into consideration any objection which appears to him to exist to the doing of anything connected with primary education which is about to be done by such local authority or school board or any information furnished by him which appears to him to necessitate the doing of a certain thing by such local authority or school board and to make a written reply to him within a reasonable time, stating its reasons for not desisting from doing or for not doing such a thing.

16C. (1) If, in the opinion of the Director, the execution of any order or resolution of a school board or the doing of anything which is about to be done or is being done by or on behalf of a school board is in excess of the powers conferred by or contrary to this Act or the rules or regulations made thereunder, or if otherwise unlawful, he may, by order in writing under his signature, suspend the execution or prohibit the doing thereof.

Power of suspending execution of orders, etc. of a school board or local authority.

(2) When the Director makes an order under sub-section (1), he shall forthwith forward to the school board affected by it a copy of such order with a statement of the reasons for making it.

(3) The Director shall forthwith submit to the Provincial Government a report of every case occurring under this section, and the Provincial Government may confirm, revise or modify any order made therein and make in respect thereof, any other order which the Director could have made :

Provided that no order of the Director passed under this section shall be confirmed, revised or modified by the Provincial Government without giving the school board reasonable opportunity of showing cause against the said order."

22. After section 26 of the said Act the following new sections shall be inserted, namely :—

Insertion of new sections 26A, 26B, 26C, 26D and 26E in Bom. IV of 1923.

"26A. (1) When the Provincial Government is informed that a school board has made default in performing any duty imposed on it by or under this Act or by or under any enactment for the time being in force, the Provincial Government may if it is satisfied after such enquiry as it may think fit that the school board has been guilty of such default, by an order in writing direct the school board to perform the duty within a period fixed for the performance of that duty :

Power of Provincial Government to provide for performance of duties on default by school board.

Provided that no such order shall be made unless the school board has been given an opportunity to show cause why such order shall not be made.

(2) If such duty is not performed within the period so fixed the Provincial Government may appoint some person to perform it and may direct that the expenses of performing it, with a reasonable remuneration to the person appointed to perform it, shall be paid, within such time as it may fix, to such person by the school board or by the local authority as the Provincial Government may direct.

(3) If the expense and remuneration are not so paid, the Provincial Government may make an order directing the officer in charge of the treasury or bank or society in which the Primary Education Fund is



kept, or the whole or portion thereof is deposited, or lent at interest, to pay such expense and remuneration from such moneys as may be standing to the credit of the school board in such treasury or bank or society or as may, from time to time be received from or on behalf of the school board by way of deposit by such treasury or bank or society; and such officer or bank or society shall be bound to obey such order. Every payment made in pursuance to such order shall be a sufficient discharge to such officer, bank or society from all liability to the school board in respect of any sum or sums so paid by him or it out of the moneys so received or standing to the credit of the school board in such treasury, bank or society.

Inquiry into  
affairs of  
school  
board.

26B. (1) The Provincial Government may, from time to time, cause inquiry to be made by any of its officers in regard to any local authority or school board on matters connected with primary education concerning them or any matters with respect to which the sanction, approval, consent or order of the Provincial Government is required by or under this Act.

(2) The officer holding such inquiry shall have the powers of a court under the Code of Civil Procedure, 1908, to take evidence and to compel the attendance of witnesses and the production of documents for the purposes of the inquiry. <sup>V of 1908.</sup>

(3) The Provincial Government may make orders as to the costs of any inquiries made under sub-section (1) and as to the parties by whom and the funds out of which they shall be paid, and such order may, on the application of the Provincial Government or of any person named therein, be executed as if it were a decree of a civil court.

Power of  
Provincial  
Government  
to dissolve or  
supersede  
school board  
in certain  
circum-  
stances.

26C. (1) If in the opinion of the Provincial Government, a school board is not competent to perform or is not properly performing the duties imposed on it by or under this Act or any other law for the time being in force, or exceeds or abuses its powers, or is acting or has acted contrary to the provisions of this Act or the rules or regulations made thereunder, it may, by an order published with the reasons for making it, in the *Official Gazette*, either—

(a) dissolve the school board, or

(b) supersede it for a period to be specified in the order.

(2) When a school board is dissolved or superseded the following consequences shall ensue :—

(a) all members of the school board shall, in the case of supersession as from the date of the order of supersession, and in the case of dissolution as from the date specified in the order of dissolution, vacate their offices as such members;

(b) all powers and duties of the school board, shall, during the period of dissolution or supersession, be exercised and performed by such persons as the Provincial Government may from time to time appoint in this behalf;

(c) the persons appointed under clause (b) may delegate their powers and duties to any individual or committee or sub-committee.

(3) On the issue of an order of dissolution under sub-section (1) election of members shall be held under the provisions of this Act or of the rules made thereunder on or before the date to be specified by the Provincial Government and the school board shall be re-established by the election of members under the aforesaid provisions on such date as may be specified by the Provincial Government.

(4) If, after enquiry made, the Provincial Government so directs, the period of supersession with all the consequences aforesaid shall, from time to time, be continued by an order published as aforesaid until such date as may be fixed by the Provincial Government for the re-establishment of the school board.

(5) After the school board is superseded it shall be re-established by the election of members under the provisions of this Act or the rules made thereunder applicable thereto—

(a) if no direction has been made under sub-section (4) on the expiration of the period specified in the order of supersession under sub-section (1) (b); and

(b) if a direction has been made under sub-section (4) on such date as is fixed under that sub-section for the re-establishment of the school board.

26D (1) When, during the term of office of the members of a school board of a local authority which is a district local board, the limits of the district are on account of the constitution of a new district under the Bombay Land Revenue Code, 1879, or for any other reason altered, the Provincial Government may, by order published in the *Official Gazette*, dissolve such board from a date specified in the order and direct a school board—

Dissolution of school board and its reconstitution on the alteration of the limits of a district.

(i) to be reconstituted for the district of which the school board has been dissolved, or

(ii) to be established for a new district which has been constituted.

The members of the school board which has been dissolved shall vacate their offices from the date specified in the order.

(2) The school board reconstituted or established under the provisions of sub-section (1) shall consist of such number of members, elected in such manner as the Provincial Government may, by order in writing, direct. The Chairman and Vice-Chairman of the school board so reconstituted or established shall be elected in the manner provided in this Act and in the rules made thereunder.

(3) The members of a school board reconstituted or established under the provisions of sub-section (2) shall hold office for such period, not exceeding one year, as the Provincial Government shall, by order in writing, specify.

(4) On the expiry of the period of office of the member of a school board under the provisions of sub-section (3), the school board for the district local board, local authority shall be constituted in the manner provided in section 3.

Limitation  
of suits.

26E. (1) No suit, prosecution or other legal proceeding shall be commenced against any school board or local authority or servant of a school board or of a local authority or any person acting under the orders of a school board or local authority for anything done, or purporting to have been done in pursuance of this Act, or any other law for the time being in force which entitles or requires a school board, local authority, member, officer, servant as such, or other person so acting to exercise any powers or perform duties, without giving to such school board, local authority, member, officer, servant, or person one month's previous notice in writing of the intended action and of the cause thereof, or after six months from the date of the act complained of.

(2) In the case of any such suit for damages, if tender of sufficient amount shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender."

Amendment  
of section 27  
of Bom. IV  
of 1923.

23. In section 27 of the said Act—

(1) In sub-section (1)—

(a) at the beginning of clause (a)—

(i) the words "the constitution of the school board," shall be inserted;

(ii) after the words "school boards," the words "chairman and vice-chairman of school boards" shall be inserted;

(iii) the words "School Board" shall be deleted;

(b) in clause (b) after the words "for the" the word "administrative" shall be inserted.

(c) after clause (b) the following clauses shall be inserted, namely:—

"(c) the manner of election of the chairman, vice-chairman and members of the school board;

(d) the rates and manner of payment of travelling allowances to members of the school board under section 5A;

(e) the qualifications, pay, conditions of service, powers and duties of Administrative and inspecting officers;

(f) the administration, maintenance and use of primary education fund;

(g) the delegation of any power to any subordinate authority."

(d) Clause (c) shall be re-lettered (h).

(2) In clause (d) of sub-section (3) for the words "inspecting and supervising" the words "supervising clerical and inferior" shall be substituted.

24. After section 27 of the said Act, the following new section shall be inserted, namely :—

Delegation of power to certain local authorities to appoint Administrative Officers.

“27A. (1) Notwithstanding anything contained in this Act, the Provincial Government may, by notification in the *Official Gazette*, delegate to a local authority which is a municipality constituted under the Bombay Municipal Boroughs Act, 1925, and the annual expenditure of which on primary education is not less than Rs. 1,00,000, power to appoint an Administrative Officer. The officer so appointed shall be the servant of the local authority concerned.

(2) The appointment of such Administrative Officer shall be made, after inviting and considering the suggestions, if any, of the school board and with the previous approval of the Provincial Government. No such officer shall, save with the previous sanction of the Provincial Government, be removable from office, reduced or suspended except by votes of at least two-thirds of the whole number of councillors of the local authority.

(3) The qualifications, pay and conditions of service of such Administrative Officer shall be regulated by regulations made by the local authority with the previous sanction of the Provincial Government.

(4) Such Administrative Officers shall, subject to the general or special orders of the Provincial Government, exercise all the powers and perform all the duties which may be exercised and performed by the Administrative Officers appointed under section 9.”

25. Notwithstanding any law or terms of any contract, all school board Administrative Officers employed by local authorities to which the power of appointing Administrative Officers is not delegated under section 27A of the said Act and all supervisors who may be in office on the day on which this Act comes into force shall, from such date, be deemed to be appointed as Administrative Officers and officers of the Inspecting Staff under section 9 or section 9A of the said Act, as the case may be, on such terms and conditions as may be determined by the Provincial Government :

Transitory provision.

Provided that such Administrative Officers and officers of the Inspecting Staff shall hold their respective offices until such date as the Provincial Government may, by general or special order, specify in this behalf.

**BOMBAY ACT No. XIII OF 1938.<sup>1</sup>**

[THE CITY OF BOMBAY MUNICIPAL (THIRD AMENDMENT) ACT, 1938.]

[30th May, 1938]

**An Act to amend the City of Bombay Municipal Act, 1888.<sup>2</sup>**

Bom. 1888, for the purposes hereinafter appearing; It is hereby enacted as  
III of 1888. fo lows :—

1. This Act may be called the City of Bombay Municipal (Third Amendment) Act, 1938. Short title.

Bom. 1888, after called "the said Act") in clause (c) for the words "duly elected or appointed" the words "who is duly elected or who is a member *ex-officio*" shall be substituted. Amendment of section 3 of Bom. III of 1888.

3. For sub-section (I) of section 5 of the said Act, the following shall be substituted, namely :— Amendment of section 5 of Bom. III of 1888.

"5. (I) The Corporation shall consist of one hundred and seventeen councillors as follows :— Constitution of Corporation.

(i) Elected councillors—

- (a) one hundred and six councillors elected at ward elections;  
(b) four councillors elected as follows :—

One by the Bombay Chamber of Commerce; one by the Indian Merchants' Chamber and Bureau; one by the Bombay Millowners' Association; one by Fellows;

(c) four councillors elected by delegates.

(ii) Three *ex-officio* councillors, namely :—

- The Police Commissioner ;  
The Executive Engineer, Presidency Division, Public Works Department, Bombay ;  
The Chairman of the Board of Trustees of the Port of Bombay."

<sup>1</sup>For Statement of Objects and Reasons, See *Bombay Government Gazette*, 1938, Part V, pp. 371-372 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, part II, pp. 3251-3253. For Proceedings in Assembly, See *Bombay Legislative Assembly Debates*, 1938, Vol. 3, part II, pp. 2772-2824, 2860-2912, 2937-2994 and 3064-3068; and for Proceedings in Council, See *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 568-634 and 662.

<sup>2</sup>See *Bombay Code*, Vol. III, p. 1.

- Amendment of section 6 of Bom. III of 1888. 4. In sub-section (2) of section 6 of the said Act, for the words "selected or appointed" the word "elected" shall be substituted.
- Amendment of section 7 of Bom. III of 1888. 5. (1) Section 7 of the said Act shall be renumbered as sub-section (1) of that section and in the sub-section so renumbered:—  
 (a) for the words "All members of the Corporation constituted as aforesaid", the words "All elected councillors" shall be substituted; and  
 (b) with effect from the first day of April 1942, for the words "three years", the words "four years" shall be substituted.  
 (2) After sub-section (1) of section 7 of the said Act, the following sub-section shall be added, namely:—  
 "(2) The term of office of an *ex-officio* councillor shall continue so long as he holds the office by virtue of which he is such councillor."
- Amendment of section 9 of Bom. III of 1888. 6. In section 9 of the said Act, the words "or appointed" wherever they occur and the words "or appointment, as the case may be", shall be deleted.
- Amendment of section 10 of Bom. III of 1888. 7. In section 10 of the said Act, the words "or appointed" shall be deleted.
- Amendment of section 11 of Bom. III of 1888. 8. (1) For sub-section (2) of section 11 of the said Act, the following shall be substituted, namely:—  
 "(2) A person shall not be entitled to be enrolled in the municipal election roll as a voter of any ward, unless such person—  
 (a) has, on the 30th day of September in the year preceding that for which the roll is being prepared, attained the age of 21 years, and  
 (b) has the requisite residence, business premises or taxation qualification.  
 (3) A person shall be deemed to have the requisite residence qualification or the requisite business premises qualification if he has ordinarily used a dwelling in the City as a sleeping place or occupied business premises in the City, as the case may be, for the qualifying period.  
 (4) A person shall be deemed to have the requisite taxation qualification if he owns immoveable property in the City which is assessed, on the first day of April next preceding the date of the publication of the roll, to any of the property taxes referred to in section 140.  
 (5) A person who is an inmate or a patient in any prison, lunatic asylum, hospital, or any other similar institution, shall not, by reason thereof, be deemed to have used such institution as a dwelling for the purposes of sub-section (3).

(6) For the purpose of this section—

(a) 'Business premises' shall mean premises occupied for the purpose of the business, profession or trade of the person to be enrolled and the annual rateable value of which, determined in accordance with the provisions of this Act, is not less than Rs. 60.

(b) 'The qualifying period' shall mean a period of one year before the first day of April next preceding the date of the publication of the roll."

(2) provisions of sub-section (1) shall come into force for the purposes of the general elections to be held after the first day of January 1942 and for all subsequent elections.

9. (1) Sub-section (2) of section 14 of the said Act shall be deleted. Amendment  
of section 14  
of Bom. III  
of 1888.

(2) The provisions of sub-section (1) shall come into force for the purposes of the general elections to be held after the first day of January 1942 and for all subsequent elections.

10. In section 16 of the said Act in sub-section (1) the words "or appointed" shall be deleted. Amendment  
of section 16  
of Bom. III  
of 1888.

11. (1) In section 19 of the said Act— Amendment  
of section 19  
of Bom. III  
of 1888.

(a) In sub-section (4), for the words beginning with the words "whether such persons" and ending with the words "or land", the following shall be substituted, namely:—

"Provided that where such person is—

(i) a company, the name of any individual member of such company authorised in that behalf,

(ii) a firm, the names of all the partners of such firm, registered under the Indian Partnership Act, 1932,

(iii) any other association or body of individuals, the name of the individual member of such association or body of individuals authorised by such association or body of individuals, or

(iv) an undivided Hindu family possessing the requisite business premises or taxation qualification, the names of all adult coparceners of such family,

shall be entered in such lists against the names of such company, firm, association, body of individuals or family, as the case may be."

(b) For sub-section (5), the following shall be inserted, namely:—

"(5) The Commissioner shall, before preparing the list, by notice in writing, call upon every owner of a building to furnish him with a list of all tenants who resided in or occupied such building during the qualifying period referred to in section 11.

(5A) The Commissioner may also call upon by notice in writing any occupier of any building or other person to furnish such information as may be prescribed by rules made under this section.

(5B) Every person to whom a notice has been issued under sub-section (5) or (5A) shall furnish full and true information within fifteen days from the date of receipt of notice.

(5C) The Commissioner shall then verify and scrutinise the particulars furnished under sub-sections (5) and (5A) by a house to house enquiry and by taking such other steps as may be prescribed by rules made under this section."

(c) In sub-section (15), after the word "dead" the words "or not qualified to be enrolled" shall be inserted.

(d) In sub-section (19) the words, figure and brackets beginning with the words "But this shall" and ending with the words "so retained" shall be deleted.

(e) For sub-section (21) the following shall be substituted, namely:—

"(21) The Commissioner shall not enter the name of any individual more than once in any ward list notwithstanding the fact that such individual is entitled to have his name entered in such list in more than one capacity or possesses more than one of the requisite qualifications referred to in section 11."

(f) After sub-section (22) the following shall be inserted, namely:—

"(23) Subject to the provisions of the foregoing sub-sections, the Corporation, with the sanction of the Provincial Government shall make rules for the preparation and revision of the lists of persons qualified to vote."

(2) The provisions of this section shall apply to the first general election to be held after the first day of January 1942 and for all subsequent elections.

Amendment  
of section 22  
of Bom. III  
of 1888.

12. With effect from 1st April 1942, in section 22 of the said Act, for the word "triennially", the words "every four years" shall be substituted.

Amendment  
of section 28  
of Bom. III  
of 1888.

13. (1) In section 28 of the said Act, for clauses (d) and (e) the following shall be substituted, namely:—

"(d) when the name in a ward roll is that of a company, firm, association, body of individuals or an undivided Hindu family, all the persons whose names are entered against such company, firm, association, body of individuals or undivided Hindu family in the ward roll shall be entitled to vote."

(2) The provisions of sub-section (1) shall come into force for the purposes of the general elections to be held after the first day of January 1942 and for all subsequent elections.



14. Section 35 of the said Act shall be deleted.

Deletion of section 35 of Bom. III of 1888.

15. In section 39 of the said Act,—

Amendment of section 39 of Bom. III of 1888.

(1) in clause (a) of sub-section (1) the words beginning with "twelve shall" and ending with the words "and the remaining" shall be deleted and for the words "not being councillors resident in the City of Bombay" the words "whose names are entered in the election roll, but who are not councillors" shall be substituted.

(2) clause (b) of sub-section (1) and the explanation thereto shall be deleted.

(3) in sub-section (4), for sub-clauses (a) and (b) the following shall be substituted, namely:—

"(a) One-half of the members of the Schools Committee shall retire at noon on the first day of April every year.

(b) The members who shall retire one year after the Schools Committee is constituted under sub-section (1) (a) shall be selected by lot at such time previous to the first day of March immediately preceding and in such manner as the Chairman may determine.

(bb) During the succeeding years the members who shall retire under clause (a) shall be the members who were longest in office:

Provided that in the case of a member who has been re-elected the term of his office for the purposes of this clause shall be computed from the date of his re-election".

(4) in sub-sections (1-D) and (4) (c) the words "relating to the representation of communities" shall be deleted.

16. In section 42 of the said Act, the words "twelve appointed by the corporation and four by Government" shall be deleted.

Amendment of section 42 of Bom. III of 1888.

17. In section 43 of the said Act—

(1) in sub-section (1) for the word "twelve" the word "sixteen" shall be substituted; and

Amendment of section 43 of Bom. III of 1888.

(2) sub-section (2) shall be deleted.

18. For section 45 of the said Act, the following shall be substituted, namely:—

Substitution of section 45 of Bom. III of 1888.

"45. (a) One half of the members of the Standing Committee shall retire at noon on the first day of April every year.

Members of Standing Committee to retire by rotation.

(b) The members who shall retire one year after the Standing Committee is constituted under section 43 shall be selected by lot at such time previous to the first day of March immediately preceding and in such manner as the Chairman may determine."

(c) During the succeeding years, the members who shall retire under this section shall be the members who were longest in office :

Provided that in the case of a member who has been re-elected the term of his office for the purposes of this clause shall be computed from the date of his re-election".

**Amendment of section 46 of Bom. III of 1888.** 19. In sub-section (I) of section 46 of the said Act, the words beginning with the words "and, within one week" and ending with the words "as aforesaid" shall be deleted.

**Amendment of section 47 of Bom. III of 1888.** 20. In section 47 of the said Act, the words "by the corporation or by Government, as the case may be", shall be deleted.

**Amendment of section 49B of Bom. III of 1888.** 21. In section 49B of the said Act, the words "twelve appointed by the corporation and four by Government" shall be deleted.

**Substitution of section 49C of Bom. III of 1888.** 22. For section 49C of the said Act, the following shall be substituted, namely:—

"49C. The Corporation shall, at their first meeting in the month of April after each general election appoint sixteen persons out of their own body to be members of the Improvements Committee".

Members of Improvements Committee when to be appointed.

**Substitution of section 49E of Bom. III of 1888.** 23. For section 49E of the said Act, the following shall be substituted, namely:—

"49E. (a) One half of the members of the Improvements Committee shall retire at noon on the first day of April every year.

(b) The members who shall retire one year after the Improvements Committee is constituted under section 49C shall be selected by lot at such time previous to the first day of March immediately preceding and in such manner as the Chairman may determine.

(c) During the succeeding years, the members who shall retire under this section shall be the members who were longest in office :

Provided that in the case of a member who has been re-elected the term of his office for the purposes of this clause shall be computed from the date of his re-election".

**Amendment of section 49F of Bom. III of 1888.** 24. In sub-section (I) of section 49F of the said Act, the words beginning with the words "and, within one week" and ending with the words "as aforesaid" shall be deleted.

25. In section 49G of the said Act, the words "by the corporation or by Government, as the case may be", shall be deleted.

Amendment of section 49G of Bom. III of 1888.

26. In section 57 of the said Act—

Amendment of section 57 of Bom. III of 1888.

(1) in sub-section (1) for the words "a monthly salary of three thousand rupees", the words "such monthly salary not exceeding three thousand rupees and not less than two thousand rupees as the Provincial Government may determine" shall be substituted;

(2) sub-section (3) shall be deleted.

27. In sub-section (2) section 68 of the said Act, after the word "namely"—the following shall be inserted, namely:—

Amendment of section 68 of Bom. III of 1888.

"Section 19".

28. In section 74 of the said Act, in sub-section (2), for clause (c) the following shall be substituted, namely:—

Amendment of section 74 of Bom. III of 1888.

"(c) receive such monthly salary as the Corporation shall, subject to the following limitations, from time to time determine, that is to say, the monthly salary of the Municipal City Engineer shall not exceed Rs. 2,000 and shall not be less than Rs. 1,200, the monthly salary of the Municipal Executive Health Officer shall not exceed Rs. 1,500 and shall not be less than Rs. 1,200, and the monthly salary of the Municipal Hydraulic Engineer shall not exceed Rs. 1,500 and shall not be less than Rs. 1,200."

29. After section 80A of the said Act the following shall be inserted, namely:—

Insertion of new section 80B in Bom. III of 1888.

"80B. (1) Save in the case of acting appointments made under section 85, no person shall be appointed to any of the posts the power of appointment to which vests in the Corporation unless he possesses the qualifications specified in the rules made in this behalf under sub-section (3).

Manner of making appointments.

(2) Before making an appointment to any post referred to in sub-section (1), the vacancy shall be advertised in at least one local newspaper, calling for applications for such post; the applications received shall be scrutinised by the Commissioner, who shall then, out of the persons who may have applied, submit to the Corporation through a committee if so required by the Corporation a list of persons who in his opinion are qualified for the post:

Provided that if the Corporation is of the opinion that any officer in its service, who possesses the qualifications specified in the rules made under sub-section (3) for the post, is a fit person to be appointed to the post, it may direct that the vacancy shall not be advertised and may appoint such officer to the post.

(3) Subject to the provisions of this Act, the Corporation shall, with the previous sanction of the Provincial Government, make rules for the purposes of this section. The Provincial Government may, when sanctioning such rules, make such modifications or additions as it deems fit”.

Amendment of sections 471 and 473 of and insertion of new section 473A in Bom. III of 1888.

30. (1) In the table in section 471 of the said Act, before the entry relating to section 136, sub-section (2) in column 1, the words, figures and brackets “Section 19, sub-sections (5A) and (5B)”, in column 2 “Requisition by Commissioner” and in column 3 “One hundred rupees” shall be inserted.

(2) In the table in section 473 of the said Act, before the entry relating to section 28, clause (j), the figures, brackets and letter “19 (5) and (5A)” in column 1 and the figures and words “176 or 177, as the case may be” in column 2 shall be inserted.

(3) After section 473 of the said Act, the following new section shall be inserted, namely :—

Punishment for offences of preparing false election rolls or making false entries in ward lists.

“473A. Any officer or servant of the Corporation who knowingly prepares or makes an entry in the list of persons qualified to be enrolled which is incorrect or false shall, on conviction, be punishable with imprisonment of either description which may extend to six months or with fine which may extend to Rs. 500.”

(4) The provisions of sub-sections (1), (2) and (3) shall come into force for the purposes of the general elections to be held after the first day of January 1942 and for all subsequent elections.

Substitution of Schedule B to Bom. III of 1888.

31. For Schedule B to the said Act, the Schedule as appended to this Act shall be substituted.

Saving in case of present incumbents.

32. Nothing contained in section 26, 28 or 29 of this Act shall apply to persons appointed to hold posts referred to in the said sections during the period for which they may have been appointed before the commencement of this Act.

Savings.

33. (1) Nothing in this Act shall affect the constitution of the Corporation, the Standing Committee, the Schools Committee, or the Improvements Committee as constituted immediately before the first day of April 1939 and no appointment, notification, notice, tax, order, scheme, licence, provision, rule, bye-law or form, made, issued or imposed in respect of or by the Corporation or Committee so constituted shall be deemed to be invalid by reason only of the fact that the provisions of this Act have come into force.

(2) Notwithstanding anything contained in this Act, any casual vacancy in the office of a councillor, or a member of any of the said Committees occurring before the 1st day of April 1939 shall, subject to the provisions of the said Act, be filled as if this Act had not come into force.

## SCHEDULE B.

(See Section 24.)

*Division of the City into Wards.*

Con- secu- tive No.	Name of Ward.	Description of boundaries.	Number of members of the Corpora- tion to be elected for each ward.
1	Upper Colaba.. Middle and Lower Colaba. Fort Southern.	A line starting from Colaba point extending along the harbour up to its junction with the extension of Ballard Road, thence along the South side of, Ballard Road, Sir Pherozesha Mehta Road and Napier Road, thence cutting across Esplanade Road to Mayo Road, thence along the East side of Mayo Road up to its junction with Church Gate Street, thence along the South side of, Church Gate Street, Sir Dinshaw Wachha Road to meet Backbay, thence along Backbay Sea-wall West of Blocks 6, 7 and 8 to Colaba point.	6 "
2	Fort Northern. Esplanade.	A line starting from Backbay near Sir Dinshaw Wachha Road, extending along the North side of Sir Dinshaw Wachha Road, Church Gate Street up to its junction with Mayo Road, thence along the West side of Mayo Road cutting Esplanade Road to Napier Road, thence along the North side of Napier Road, Sir Pherozesha Mehta Road, and Ballard Road, thence in a straight line to meet the harbour, thence along the Sea, up to the North wharf of Carnac Basin, thence along the aforesaid wharf along the South side of Carnac Road, 1st Marine Street, continuing thence in a straight line to Backbay Sea-wall, thence along the sea to the starting point, viz., junction of Sir Dinshaw Wachha Road and Backbay Sea-wall.	6
3	Mandvi Chakla.	A line starting from the junction of Abdul Rehman Street and Carnac Road, extending Eastward along the North side of Carnac Road, thence in a straight line along the North Wharf of Carnac Basin to the Harbour, thence along the Harbour up to the North Wharf of Victoria Docks, thence extending along the Bombay Port Trust Railway siding running South of A and B Sheds of Princess Dock, thence along the South side of Masjid Siding Road and 1st Chinchbunder Road up to its junction with Dongri Street, thence Southward along the East side of Dongri Street up to its junction with Pydhoni Road, thence	5

## SCHEDULE B—contd.

Con- secu- tive No.	Name of Ward.	Description of boundaries.	Number of members of the Corpora- tion to be elected for each ward.
4	Umakhadi Dongri.	<p>along the South side of Pydhoni Road to its junction with Sir Ibrahim Rahimtoola Road thence along the East side of Abdul Rehman Street to the starting point, viz., the junction of Carnac Road and Abdul Rehman Street.</p> <p>A line starting from the junction of Sir Ibrahim Rahimtoola Road and Pydhoni Road extending along the North side of Pydhoni Road then Northward along the West side of Dongri Street up to its junction with 1st Chinchbunder Road, thence along the North side of 1st Chinchbunder Road, Musjid Siding Road, thence along the Bombay Port Railway siding running south of A and B sheds of Princess Dock to Sea, thence along the Harbour Northward up to the South Wharf of Clerk Basin, thence Westward to Wari Bunder Road thence along the South side of Wari Bunder Road and East side of Mazgaon Road and South side of Babula Tank Road, thence along the East side of Sir Ibrahim Rahimtoola Road to its starting point, viz., Junction of Sir Ibrahim Rahimtoola Road and Pydhoni Road.</p>	5
5	Khara Talao .. Kumbharwada.	<p>A line starting from the junction of Sir Ibrahim Rahimtoola Road and Grant Road extending along the South side of Grant Road up to its junction with Trimbak Parsharam Street, thence along the East side of Trimbak Parsharam Street and Ardeshir Dady Street, thence along the North side of Vithalbhai Patel Road to its junction with Cawasji Patel Tank Road, thence along the North side of Cawasji Patel Tank Road and Erskine Road up to its junction with Bapu Khote Street, thence along the East side of Bapu Khote Street to its junction with Sir Ibrahim Rahimtoola Road, and thence along the West side of Sir Ibrahim Rahimtoola Road to the starting point, viz., junction of Sir Ibrahim Rahimtoola Road and Grant Road.</p>	5
6	Bhuleshwar .. Market.	<p>A line starting from the junction of Erskine Road and Bapu Khote Street, extending along the West side of Bapu Khote Street and Abdul Rehman Street and thence along the North side of Carnac Road to its junction with Kalbadevi Road, thence along the East side of Kalbadevi Road and North side of Dady Sheth Agyari Street to its junction with Cathedral Street,</p>	7

SCHEDULE B—*contd.*

Con- sec- tive No.	Name of Ward	Description of boundaries	Number of members of the Corpora- tion to be elected for each ward.
		<p>thence along the North side of Cathedral Street, thence Westward along the North side of Bhuleshwar Road and East side of Vithalbhai Patel Road to its junction with C. P. Tank Road, thence along the South side of C. P. Tank Road and Erskine Road up to the starting point, viz., the junction of Bapu Khote Street and Erskine Road.</p>	
7	Dhobi Talao .. Fanaswadi.	<p>A line starting from the junction of Thakurdwar Road and Bhuleshwar Road extending along the South side of Thakurdwar Road, thence in a straight line running South of Government Printing Press to meet Backbay Sea-wall, thence Southward along Backbay up to its junction with the Road in continuation of 1st Marine Street, South of Marine Line Station, thence along the North side of the aforesaid Road, 1st Marine Street and Carnac Road to its junction with Kalbadevi Road, thence along the West side of Kalbadevi Road to its junction with Dady Sheth Agyari Street, thence along the South side of Dady Sheth Agyari Street to its junction with Cathedral Street, thence along the West side of Cathedral Street and Bhuleshwar Road to the starting point, viz., junction of Thakurdwar and Bhuleshwar Roads.</p>	7
8	Khetwadi .. Tardeo.	<p>A line starting from the junction of Bellasis Bridge and B. B. &amp; C. I. Railway lines extending along the South side of Bellasis Bridge, Bellasis Road up to its junction with Suklaji Street, thence along the West side of Suklaji Street and South side of Grant Road up to its junction with Trimbak Parsharam Street, thence along West side of Trimbak Parsharam Street, Ardeshir Dady Street and North side of Vithalbhai Patel Road, Girgaum Road to its junction with Frere Bridge, thence along the South side of Frere Bridge up to its junction with B. B. &amp; C. I. Railway lines, thence along the East side of B. B. &amp; C. I. Railway lines to the starting point, viz., to its junction with Bellasis Bridge.</p>	7
9	Girgaum .. Chaupati.	<p>A line starting from the junction of Harvey and Girgaum Roads extending along the South side of Girgaum Road up to its junction with Vithalbhai Patel Road, thence along the South side of Vithalbhai Patel Road and West side of Thakurdwar Road, thence in a straight line to Sea, thence</p>	6

## SCHEDULE B—contd.

Con- secu- tive No.	Name of Ward.	Description of boundaries.	Number of members of the Corpora- tion to be elected for each ward.
10	Walkeshwar .. Mahalaxmi.	along the Canady Seaface up to its junction with Harvey Road, thence along East side of Harvey Road to the starting point, viz., to its junction with Girgaum Road.	6
11	Mazgaon .. Tarwadi.	A line starting from the junction of Harvey Road and Sea extending along the West side of Harvey Road, North of Frere Bridge to its junction with B. B. & C. I. Railway lines, thence along the West side of B. B. & C. I. Railway lines up to its junction with Clerk Road, thence along the South side of Clerk Road to meet the Sea at Hornby Vellard, thence along the Sea up to the Malbar point, thence Northward along the Sea to the starting point, viz., to its junction with Harvey Road.	6
11	Mazgaon .. Tarwadi.	A line starting from the junction of Kalachowky and Parel Road extending along the East side of Parel Road, Victoria Gardens Road to its junction with Shephard Road, thence Nesbit Bridge and along North side of Nesbit Road up to its junction with Mazgaon Road, thence along the East side of Mazgaon Road up to its junction with Wari Bunder Road, thence along the North side of Wari Bunder Road thence Southward along the East side of Frere Road up to a distance of about 500 feet, thence Eastward to the North Wharf of Frere Basin, thence Northward along the Harbour up to the South Wharf of Brick Bunder, thence along the aforesaid Wharf up to Signal Hill Avenue, thence along the South side of the New 80 feet Road and South of N to B Sheds in the Cotton Green up to Cotton Avenue, then along the North side of Cotton Avenue up to the 1st Avenue and then along the South side of 1st Avenue to Reay Road, thence Northward along the West side of Reay Road to Kalachowky Road, thence along the South side of Kalachowky Road to the starting point, viz., junction of Kalachowky and Parel Road.	6
12	1st Nagpada .. 2nd Nagpada. Kamathipura.	A line starting from the junction of Suklaji Street and Grant Road extending Eastward along the North side of Grant Road and Babula Tank Road and the West side of Mazgaon Road to its junction with Nesbit Road, thence along the South side of Nesbit Road cutting across Victoria	6



SCHEDULE B—*contd.*

Con- secu- tive No.	Name of Ward.	Description of boundaries.	Number of members of the Corpora- tion to be elected for each ward.
13	Byculla ..	<p>Gardens Road to Shephard Road, thence along the South side of Shephard Road, thence Southward along the East side of Clare Road to its junction with Bellasis Road, thence along the South side of Bellasis Road to its junction with Suklaji Street, thence along the East side of Suklaji Street to the starting point, viz., the junction of Grant Road and Suklaji Street.</p> <p>A line starting from the junction of Victoria Gardens Road and Shephard Road extending along the North side of Shephard Road, thence Southward along the West side of Clare Road up to Bellasis Road, thence along the North side of Bellasis Road up to the B. B. &amp; C. I. Railway lines, thence along the East side of the B. B. &amp; C. I. Railway lines up to its junction with Clerk Road, thence Eastward along the South side of Clerk Road, Jacob Circle, and Arthur Road to Chinchpokli Station, thence cutting across Chinchpokli Station to Kalachowky Road, thence along the South side of Kalachowky Road up to its junction with Parel Road, thence Southward along the West side of Parel Road, and Victoria Gardens Road to the starting point, viz., the junction of Victoria Gardens Road and Shephard Road.</p>	7
14	Parel ..	<p>A line starting from the G. I. P. Railway Parel Station extending Eastward along the South side of Elphinstone Road and Jerbai Wadia Road to its junction with Parel Tank Road, thence along the West side of Parel Tank Road and North side of Kalachowky Road to G. I. P. Railway Chinchpokli Station, thence Northward along the East side of G. I. P. Railway, lines to Parel Station.</p>	5
15	Sewri-Naigaum.	<p>A line starting from the junction of 1st Avenue and Reay Road extending Northward along the South side of Reay Road and Parel Tank Road, thence Westward along the North side of Jerbai Wadia Road and Elphinstone Road to its junction with G. I. P. Railway lines, thence Northward along the East side of G. I. P. Railway lines up to its junction with the Naigaum Cross Road, thence along the South side of Naigaum Cross Road, thence Northward along the East side of Katrak Road to its junction with Sewri Cross Road, thence along the West side of Sewri Cross Road to its junction with the</p>	5

SCHEDULE B—*contd.*

Con- secu- tive No.	Name of Ward.	Description of boundaries.	Number of members of the Corpora- tion to be elected for each ward.
		extension of Jerbai Wadia Road, thence Eastward in a line with the Jerbai Wadia Road extension to Khadkal Creek, thence Southwards along the Harbour to the South side of Brick Bunder, thence Westward up to its junction with Signal Hill Avenue and thence along the North side of the New 80-foot Road North of N to B Sheds in the Cotton Green up to its junction with Cotton Avenue, thence Northward along Cotton Avenue up to its junction with 1st Avenue and thence Westward along 1st Avenue up to the starting point, viz., the junction of Reay Road and 1st Avenue.	
16	Matunga-Sion..	A line starting from G. I. P. Railway Dadar Station extending along the North side of Naigaum Cross Road and West side of Katrak Road to its junction with Sewri Cross Road and thence along the East side of Sewri Cross Road up to its junction with the extension of Jerbai Wadia Road, thence Eastwards in a straight line with the Jerbai Wadia Road extension to Khadkal Creek, thence along the Sea Northwards to the Northern limit of Bombay, thence Southwards along the East side of G. I. P. Railway Lines to Dadar Station.	4
17	Dadar-Mahim..	A line starting from the middle of Mahim Causeway (from Bombay Limit), thence Southward, West of Mahim Causeway along the sea up to Kashintah Dhuru Road, thence along the North side of the aforesaid Road to its junction with Portuguese Church Street, thence along the Northside of Portuguese Church Street and Dadar Road to its junction with the G. I. P. Railway Dadar Station, thence Northward along the West side of the G. I. P. Railway lines to the Northern Boundary of the City, thence across the creek to the North of Rewah Fort to the starting point, viz., middle point of Mahim Causeway.	4
18	Parbhadevi- Worli.	A line starting from the G. I. P. Railway Dadar Station extending along the West side of the G. I. P. Railway lines, Southward up to the G. I. P. Railway Store Yard, thence Westward cutting the yard up to the foot of DeLisle Road overbridge, and thence along the West of West Low Level Road up to Ferguson Road, thence along the North side of Ferguson Road and Worli	5

SCHEDULE B—*concl'd.*

Con- secu- tive No.	Name of Ward	Description of boundaries.	Number of members of the Corpora- tion to be elected for each ward.
19	Chinchpokli Love Grove.	<p>Road up to its junction with Pochkhanawala Road, thence along the North side of Pochkhanawala Road to Sea, thence Northward along the Sea to Worli point, thence along the Sea (Mahim Bay) up to its junction with Kashinath Dhuru Road, thence along the South side of the aforesaid Road to Portuguese Church Street, thence along the South side of Portuguese Church Street and Dadar Road to G. I. P. Railway Dadar Station.</p> <p>A line starting from the junction of Pochkhanawala Road and Worli Sea face extending along the South side of Pochkhanawala Road, Worli Road and Ferguson Road, thence Northward along the East side of Low Level Road up to the foot of DeLisle Road overbridge, thence cutting across G. I. P. Railway Store Yard to G. I. P. Railway Lines, thence Southward along the West side of G. I. P. Railway lines up to Chinchpokli Station, thence Westward along the North side of Arthur Road, Jacob Circle and Clerk Road to Sea, thence Northward along the Sea to the starting point, viz., junction of Pochkhanawala Road and Worli Sea face.</p>	4
Total ..			106

**BOMBAY ACT No. XIV OF 1938.<sup>1</sup>**

[THE CITY OF BOMBAY POLICE (AMENDMENT) ACT, 1938.]

[10th June, 1938]

**An Act to amend the City of Bombay Police Act, 1902.<sup>2</sup>**

Bom. IV of 1902. WHEREAS it is expedient to amend the City of Bombay Police Act, 1902, for the purposes of dealing with persons who are a danger to the City of Bombay and for preventing disturbance of public peace or tranquillity by reason of conflict between communities or sections thereof of gangs or factions and for other purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the City of Bombay Police (Amendment) Act, 1938. Short title.

Bom. IV of 1902.

2. In section 27 of the City of Bombay Police Act, 1902,—

Amendment of section 27 of Bom. IV of 1902.

(1) in sub-section (1)—

(i) for the words beginning with the words “that the movements or encampment” and ending with the words “pauper immigrants” the following shall be substituted, namely:—

“(a) that the movements or acts of any person in the City of Bombay are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of the Commissioner witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property; or

(b) that an outbreak of epidemic disease is likely to result from the continued residence in the city of an immigrant.”;

<sup>1</sup> For Statement of Objects and Reasons, See *Bombay Government Gazette*, 1938, Part V, pp. 434-435 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3 part II, p. 3231. For Proceedings in Assembly, See *Bombay Legislative Assembly Debates*, 1938, Vol. 3 part II, pp. 2308-2313, 2361, 2422-2434, 2490-2558, 2566-2634, 2638-2647 and 2928-2936; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 395-472 and 502.

<sup>2</sup> See *Bombay Code*, Vol. IV, p. 163.

(ii) for the words " the members of such gang or body or such immigrants " the words " such person or immigrant " shall be substituted ;

(iii) for the word " themselves " wherever it occurs, the word " himself " shall be substituted ;

(iv) between the words " by " and " beat of drum or otherwise " the words " an order in writing duly served on him or " shall be inserted ;

(v) the words " disperse and " shall be deleted.

(2) After sub-section (2B) the following shall be inserted, namely :—

Proclama-  
tion of  
Emergency.

" (2C). (i) The Provincial Government may, if satisfied that the public peace or tranquillity in the City of Bombay or in any part thereof is disturbed or is likely to be disturbed in consequence of a conflict between different communities or sections thereof or gangs or factions, declare, by a proclamation (hereinafter referred to as ' the proclamation of emergency ' ) in the Official Gazette that an emergency exists.

(ii) A proclamation of emergency—

(a) may at any time be revoked by a subsequent proclamation and

(b) shall cease to operate at the expiration of one month, unless before the expiration of that period it has been renewed.

(iii) After the Provincial Government has issued under clause (i) a proclamation of emergency, the Commissioner of Police, whenever it appears to him that the presence, movements or acts of any person in the City of Bombay is or are causing or calculated to cause danger or alarm, or that a reasonable suspicion exists that designs, calculated to disturb public peace or tranquillity are entertained by such person, may by an order in writing duly served on him or beat of drum or otherwise, as he thinks fit, direct such person so to conduct himself as he shall deem necessary in order to prevent the disturbance of the peace or remove himself to such place or places, by such route or routes, and within such time, as the Commissioner of Police shall prescribe.

(iv) Any person aggrieved by an order made by the Commissioner of Police under clause (iii) may appeal to the Provincial Government within ten days from the date of such order.

(v) Subject to the appeal under clause (iv), an order made by the Commissioner of Police under clause (iii) shall be final.

(vi) Nothing hereinbefore contained in this section shall require any police officer to disclose to the person against whom an order is made under clause (iii) or to the Court the sources of his information or any fact the communication of which, might, in the opinion of the Commissioner of Police, lead to the disclosure of the identity or name of any informant.

(vii) Any order passed by the Commissioner of Police under clause (iii) or by the Provincial Government under clause (iv) shall not have any effect after the proclamation of emergency has ceased to operate."

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(3) In sub-section (3) for the words, brackets, figure and letter "or (2A)", the following shall be substituted, namely:—

"(2A) or (2C)."

(4) After sub-section (3), the following new sub-sections shall be inserted, namely:—

"(4) Before an order under sub-section (1), (2) or (2A) is passed against any person, the Commissioner of Police or any officer authorised by him not below the rank of a Superintendent shall inform such person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of explaining those allegations. If such person makes an application for the examination of any witness produced by him, the Commissioner of Police or such officer shall grant such application and examine such witness, unless for reasons to be recorded in writing, he is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with the record. Such person shall be entitled to appear before the Commissioner of Police or the said officer by an advocate or attorney for the purpose of explaining the allegations against him and for the purpose of examination of witnesses produced by him.

(5) The Commissioner of Police or the officer authorised under sub-section (4) may, for the purpose of securing the attendance of any person against whom an order is proposed to be made under sub-section (1), (2) or (2A), exercise all or any of the powers of a Court under sections 75 to 77 of the Code of Criminal Procedure, 1898. After such person is brought before the Commissioner of Police, the Commissioner may release him on bail with or without sureties or may from time to time authorise his detention in such custody as he thinks fit for a period not exceeding 15 days at a time.

(6) Any person aggrieved by an order made by the Commissioner of Police under sub-section (1), (2) or (2A) may appeal to the Provincial Government within thirty days from the date of such order.

(7) An order passed by the Commissioner of Police under sub-section (1), (2) or (2A) or by the Provincial Government under sub-section (6) shall not be called in question in any Court except on the ground that the Commissioner of Police or the officer authorized by him under sub-section (4) had not followed the procedure laid down in the said sub-section or that there was no material before the Commissioner of Police upon which he could have based his order or on the ground that the Commissioner of Police was not of opinion that witnesses were unwilling to come forward to give evidence in the public against the person in respect of whom an order was made under sub-section (1).

(8) Nothing hereinbefore contained in this section shall require any Police officer to disclose to the person against whom an order is made under sub-section (1), (2) or (2A) or to the Court the sources of his information or any fact the communication of which might, in the opinion of the Commissioner of Police, lead to the disclosure of the identity of any person or property."

Amendment  
of section  
128 of Bom.  
IV of 1902.

3. In section 128 of the said Act for the full stop at the end, colon shall be substituted and thereafter the following proviso shall be added, namely :—

“ Provided that a person against whom an order is passed under sub-section (2C) of section 27 shall not be liable under this section if he returns to the city after the proclamation of emergency has ceased to operate.”

**THE INDIAN LUNACY (BOMBAY AMENDMENT) ACT, 1933.**

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**CONTENTS.**

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**PREAMBLE.**

**Sections.**

1. Short title.
2. Insertion of new section 33A in Act IV of 1912.  
33A. Temporary release of lunatics.



BOMBAY ACT No. XV OF 1938.<sup>1</sup>

[THE INDIAN LUNACY (BOMBAY AMENDMENT) ACT, 1938.]

[24th June, 1938]

**An Act to amend the Indian Lunacy Act, 1912,<sup>2</sup> in its application to the Province of Bombay.**

IV of 1912. WHEREAS it is expedient to amend the Indian Lunacy Act, 1912, in its application to the Province of Bombay for the purpose hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Indian Lunacy (Bombay Amendment) Short title. Act, 1938.

IV of 1912. 2. In the Indian Lunacy Act, 1912, after section 33, the following new section shall be inserted, namely:—

Insertion of  
new section  
33A in Act  
IV of 1912.

“33A. (1) When any relative or friend of a lunatic detained in any asylum under the provisions of section 7, 10, 14, 15 or 17 is desirous that such lunatic shall be temporarily released and delivered over to his care and custody, he may make an application to the person in charge of the asylum, who shall make an order for the temporary release of such lunatic for a period not exceeding sixty days, unless for any reason he considers that such release is undesirable and such lunatic shall, thereupon, be so released.

Temporary  
release of  
lunatics.

(2) No order under sub-section (1) for the temporary release of a lunatic detained under section 7 or 10 shall be passed except on an application of the petitioner on whose petition such lunatic was detained or without the consent in writing of such petitioner:

Provided that, if in any such case, it appears to the person in charge of the asylum that such petitioner refuses, without sufficient reasons, to accord such consent, he shall refer the application made to him under sub-section (1), to the magistrate who would have jurisdiction to detain such lunatic under section 7 or 10 and such magistrate may, after making such enquiry as he thinks fit, order the temporary release of such lunatic for the period specified in sub-section (1).

<sup>1</sup> For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 301 and 302 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, p. 3153. For Proceedings in Assembly see *Bombay Legislative Assembly Debates*, 1938, pp. 1814-1828, 1918, 1954-1961 and 2565; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, pp. 319-321.

<sup>2</sup> See *Unrepealed Central Acts*, Vol. VI, p. 118.

(3) Any order made for the release of a lunatic under sub-section (1) may, on the application of any relative or friend, at any time during the period of his release, be set aside or varied by the magistrate who would have jurisdiction to detain such lunatic in an asylum under section 7, 10, 14, 15 or 17 on any ground other than that the lunatic was not in a state of mind fit to be released at the time the order for his release was made under sub-section (1). If the order of release is so set aside, the lunatic shall be re-admitted and detained in the asylum.

(4) If a lunatic released under sub-section (1) or (2) is, at any time during the period of his release, found to be unmanageable or dangerous and unfit to be at large, the person who applied for his release may take the lunatic to the asylum, and such lunatic shall thereupon be readmitted and detained in the asylum.

(5) If a lunatic released under sub-section (1) or (2) does not return to the asylum at the expiration of the period for which he was released and if no order for his discharge has been passed under section 31 or section 33 or if he is, at any time during the period of his release, found to be unmanageable or dangerous or unfit to be at large and the person who applied for his release states by a written application to the person in charge of the asylum that he is unable to bring him to the asylum such lunatic shall be deemed to have escaped from the asylum and may at any time within one month after the expiration of the said period be re-taken to and detained in the asylum in the manner provided in section 36 :

Provided that such a person shall be deemed to be discharged if on or before the expiry of the period for which he was released, the Board of Visitors is satisfied either (a) as a result of investigations conducted by the person in charge of the asylum concerned or (b) on receipt of a certificate signed by a medical practitioner that the person may with safety be discharged."

**BOMBAY ACT No. XVI OF 1938.<sup>1</sup>**

[THE BOMBAY SPECIAL (EMERGENCY) POWERS (REPEAL) ACT,  
1938.]

[10th October, 1938]

**An Act to repeal the Bombay Special (Emergency) Powers Act, 1932.<sup>2</sup>**

WHEREAS it is expedient to repeal the Bombay Special (Emergency) Powers Act, 1932; It is hereby enacted as follows :—

Bom. 1. This Act may be called the Bombay Special (Emergency) Powers Short title.  
XVI of (Repeal) Act, 1938.  
1932.

2. The Bombay Special (Emergency) Powers Act, 1932, is hereby Repeal of  
repealed. Bom. XVI  
of 1932.

<sup>1</sup> For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 283, or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, p. 3152. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 3, Part II, pp. 1805-1814 and 1969; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 253 and 254.

<sup>2</sup> See *Bombay Code*, Vol. VI, p. 69.

**BOMBAY ACT No. XVII OF 1938.<sup>1</sup>**

[THE BOMBAY REPEALING AND AMENDING ACT, 1938.]

[27th October, 1938]

**An Act to repeal certain enactments and to amend certain other enactments.**

WHEREAS it is expedient that certain enactments specified in the First Schedule which are spent or have otherwise become unnecessary or have ceased to be in force otherwise than by express specific repeal, should be expressly and specifically repealed; and whereas it is also expedient that certain amendments should be made in certain other enactments specified in the Second Schedule; It is hereby enacted as follows:—

1. This Act may be called the Bombay Repealing and Amending Act, 1938. Short title.
2. The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof. Repeal of certain enactments.
3. The enactments specified in the Second Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof. Amendment of certain enactments.

<sup>1</sup> For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 496, or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, p. 4552. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 1111-1113; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 4, pp. 121 and 122.

## THE FIRST SCHEDULE.

## REPEAL.

(See section 2.)

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1888	.. III	<sup>1</sup> City of Bombay Municipal Act, 1888.	In the table appended to section 471 the entry relating to sub-section (2) of section 136 shall be deleted.
1932	.. IV	<sup>2</sup> Bombay Cotton Contracts Act, 1932.	(i) Sub-section (3) of section 2; (ii) clause (b) of section 3; (iii) the words and figure, "Subject to the provisions of section 9," in section 5; (iv) sections 9 and 10; and (v) the words, "or Board of Control" in section 11, shall be deleted.
1938	.. XIV	<sup>3</sup> City of Bombay Police (Amendment) Act, 1938.	The brackets, figures and words "(3) After sub-clause (2), the following sub-clause shall be added, namely:—" occurring after sub-section (2) of section 2 shall be deleted.

## THE SECOND SCHEDULE.

## AMENDMENTS.

(See section 3.)

Year.	No.	Short title.	Extent of amendments.
1	2	3	4
1923	.. IV	<sup>4</sup> Bombay Primary Education Act, 1923.	In clause (10) of section 2 for the word "an" the word "any" shall be substituted.
1938	.. V	<sup>5</sup> City of Bombay Municipal (Amendment) Act, 1938.	In sub-section (1) of section 1, within the brackets, before the word "Amendment" the word "Second" shall be inserted.

<sup>1</sup> See Bombay Code, Vol. III, p. 1.<sup>2</sup> See Bombay Code, Vol. VI, p. 35.<sup>3</sup> See p. 99 *supra*.<sup>4</sup> See Bombay Code, Vol. V, p. 11.<sup>5</sup> See p. 5 *supra*.

**THE LAND ACQUISITION (BOMBAY AMENDMENT) ACT**

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**CONTENTS.**

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**PREAMBLE.**

**Sections.**

1. Short title and extent.
2. Amendment of sections 28 and 34 of Act I of 1894.

**BOMBAY ACT No. XVIII OF 1938.<sup>1</sup>**

[THE LAND ACQUISITION (BOMBAY AMENDMENT) ACT, 1938.]

[27th October, 1938]

**An Act to amend the Land Acquisition Act, 1894,<sup>2</sup> in its application to the Province of Bombay.**

I of 1894. WHEREAS it is expedient to amend the Land Acquisition Act, 1894, in its application to the Province of Bombay for the purpose hereinafter appearing; It is hereby enacted as follows:—

1. (1) This Act may be called the Land Acquisition (Bombay Amendment) Act, 1938. Short title and extent.

(2) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette appoint.

I of 1894. 2. In sections 28 and 34 of the Land Acquisition Act, 1894, for the word "six" the word "four" shall be substituted. Amendment of sections 28 and 34 of Act I of 1894.

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<sup>1</sup> For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 493, or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, p. 4485. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 4, p. 370; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 4, pp. 120 and 121.

<sup>2</sup> See Unrepealed Central Acts, Vol. III, p. 481.

**THE BOMBAY PROBATION OF OFFENDERS ACT, 1938.**

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**CONTENTS.**  
 —————

**PREAMBLE.**

**Sections.**

1. Short title, extent and commencement.
2. Definitions.
3. Courts empowered to pass orders under the Act.
4. Power of Court to release certain convicted offenders after admonition.
5. Power of Court to release certain convicted offenders on probation of good conduct.
6. Power of Court to require released offender to pay damages and costs and recovery of such damages and costs.
7. Appeal and power of court in appeal and revision.
8. Provision in case of offender failing to observe condition of release.
9. Provisions as to bonds.
10. Appointment of probation officers.
11. Duties of probation officers.
12. Variation of conditions of probation on application by probation officer.
13. Power to make rules.
14. Barring of operation of Section 562 of Act V of 1898.
15. Saving of the Bombay Children Act and the Bombay Borstal Schools Act.



BOMBAY ACT No. XIX OF 1938.<sup>1</sup>

[THE BOMBAY PROBATION OF OFFENDERS ACT, 1938.]

[28th October, 1938]

## An Act to provide for the release on probation of offenders.

WHEREAS it is expedient to provide for the release on probation of offenders in certain cases and for other matters incidental thereto; It is hereby enacted as follows:—

1. (1) This Act may be called the Bombay Probation of Offenders Act, 1938. Short title, extent and commencement.

(2) It extends to the whole of the Province of Bombay.

(3) This Act shall come into force in such area and on such date as the Provincial Government may, by notification in the Official Gazette, direct.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

V of  
1898.

(a) the "Code" means the Code of Criminal Procedure, 1898;

(b) "Court" means a Court empowered to exercise powers under this Act;

(c) "Probation order" means an order made under sub-section (1) of section 5;

(d) "recognised society" means a society recognised by the Provincial Government for the purposes of section 10;

(e) "supervision order" means an order made under sub-section (2) of section 5; and

(f) words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

3. (1) The following courts are hereby empowered to exercise powers under this Act, namely:— Courts empowered to pass orders under the Act.

(a) the High Court,

(b) a Court of Session,

(c) a District Magistrate,

(d) a Sub-Divisional Magistrate,

(e) a salaried Presidency Magistrate,

(f) a Magistrate of the first class,

(g) any other Magistrate specially empowered in this behalf.

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 18 and 19 or *Bombay Legislative Assembly Debates*, 1938, Vol. 2, p. 1146. For Report of the Select Committee, see *Bombay Government Gazette*, 1938, Part V, pp. 178-181. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 2, pp. 411-439, 833-848, and also Vol. 3, pp. 2771-2772; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 3, pp. 350-526.

(2) The powers conferred under sub-section (1) may be exercised by such Courts, whether the case comes before them originally or on an appeal or in revision.

(3) Where any offender is convicted by a magistrate not empowered to exercise powers under this Act, and such magistrate is of opinion that the powers conferred by section 4 or 5 should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the first class or Sub-Divisional Magistrate forwarding the offender to, or taking bail for this appearance before, such Magistrate, who shall dispose of the case in the manner provided by section 380 of the Code.

Power of Court to release certain convicted offenders after admonition.

4. Notwithstanding anything contained in any enactments for the time being in force in any case in which a person is convicted of any offence punishable with not more than two years' imprisonment or fine or both and no previous conviction is proved against him, the Court by which he is so convicted, may, if it thinks fit having regard—

(a) to the age, character, antecedents or physical or mental condition of the offender, and

(b) to the nature of the offence or any extenuating circumstances under which the offence was committed

for reasons to be recorded in writing instead of sentencing him to any punishment, release him after due admonition.

Power of Court to release certain convicted offenders on probation of good conduct.

5. (1) Notwithstanding anything contained in any enactment for the time being in force, when—

(a) any male person is convicted of an offence not punishable with death or transportation for life, or

(b) any woman is convicted of an offence of any kind,

if it appears to the Court by which the offender is convicted, that regard being had to the age, character, antecedents or physical or mental condition of the offender, or to the circumstances in which the offence was committed, it is expedient that the offender should be released on probation of good conduct, the Court may, for reasons to be recorded in writing instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not being less than one year and not exceeding three years as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that the Court shall not pass a probation order under this section unless it is satisfied that the offender or one of his sureties (if any) has a fixed place of abode or regular occupation and is likely to continue to have such place of abode or such occupation, within the local limits of its jurisdiction during the period of the bond.

(2) Where the offender appears to the Court to be under the age of twenty-five years, the Court may for reasons to be recorded in writing

make an order, hereinafter called a supervision order, directing that the bond to be entered into under sub-section (1) shall contain a condition that the offender shall be under the supervision of a probation officer named in the order during the period specified therein and such other conditions as in the opinion of the Court may be necessary for securing such supervision :

Provided that the period so specified shall not extend beyond the the date on which, in the opinion of the Court, the offender shall attain the age of twenty-six years.

(3) While making a supervision order the Court may also direct that the bond shall contain such additional conditions with respect to residence, abstention from intoxicants and any other matters which the Court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or a commission of other offences by the offender.

(4) A Court making a supervision order shall furnish the offender with a written statement of the conditions which he is required to observe.

6. (1) A Court directing the release of an offender under section 4 or section 5 may order the offender to pay such compensation for loss or injury caused to any person by the offence and such costs of the proceedings as the Court thinks reasonable :

4 Power of Court to require released offender to pay damages and costs and recovery of such damages and costs.

Provided that the amount of compensation and costs so awarded shall in no case exceed the amount of fine which the Court could have imposed in respect of the offence.

(2) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under sub-section (1).

(3) The amount ordered to be paid under this section may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

7. (1) Notwithstanding anything contained in the Code except in cases in which the offender has pleaded guilty, or where the order is passed by the High Court, an appeal shall lie from an order of conviction in every case in which an order is passed under section 4 or 5 to the Court to which appeals ordinarily lie under the Code.

Appeal and powers of court in appeal and revision.

(2) The Appellate Court or the High Court in the exercise of its powers of revision may pass any such order as it could have passed under the Code, or may set aside an order under section 4 or 5 and in lieu thereof pass sentence on such offender according to law :

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

Provision in case of offender failing to observe condition of release.

8. (1) If the Court before which an offender is bound by his bond under section 5 to appear and receive sentence when called upon, or any Court which could have dealt with the offender in respect of his original offence, has reason to believe that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to the offender and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The Court before which an offender is brought or appears under sub-section (1) may either remand him to custody until the case is heard or admit him to bail, with or without sureties, to appear on the date of hearing.

(3) If the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of his bond, including any conditions which may have been imposed under sub-section (2) or sub-section (3) of section 5, it may forthwith—

(a) sentence him for the original offence, or

(b) without prejudice to the continuance in force of the bond, impose upon him a fine not exceeding one hundred rupees.

Provided that the Court passing a sentence of fine under clause (a) or (b) shall take into account the amount of compensation ordered to be paid under section 6.

(4) If a fine imposed under clause (b) of sub-section (3) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

Provisions as to bonds.

9. The provisions of sections 122, 126A, 406A, 514, 514A, 514B and 515 of the Code, shall, so far as may be, apply in the case of sureties given under this Act. V of 1898.

Appointment of probation officers.

10. (1) A probation officer named in a supervision order may be—

(a) any person appointed to be a probation officer by the Provincial Government, or

(b) any person nominated for this purpose with the previous approval of the Provincial Government by a recognised society, or

(c) any other person who, in the opinion of the Court, is a fit person to act as a probation officer in the special circumstances of the case.

(2) A probation officer named under sub-section (1) shall be a person who shall possess such qualifications as may be prescribed by rules made in this behalf.

(3) A probation officer, in the exercise of his duties under any supervision order, shall be subject to the control of the District Magistrate of the district in which the offender for the time being resides.

(4) The Court before which an offender is bound by his bond under section 5 to appear and receive sentence when called upon, may at any

time appoint another probation officer in place of the person named in the supervision order.

*Explanation.*—In this section, in a presidency town “District Magistrate” means the Chief Presidency Magistrate, and “district” means the presidency town.

11. A probation officer shall, subject to the provisions of section 10 and rules made under this Act—

Duties of probation officers.

(a) visit or receive visits from the offender at such reasonable intervals as may be specified in the supervision order or, subject thereto, as the probation officer may think fit;

(b) see that the offender observes the conditions of the bond;

(c) report to the Court as to the behaviour of the offender;

(d) advise, assist and befriend the offender, and, when necessary, endeavour to find him suitable employment; and

(e) perform any other duty which may be prescribed by rules made under this Act.

12. (1) The Court before which any person is bound by a bond under section 5 to appear and receive sentence may at any time upon the application of the probation officer or of its own motion, if it thinks that it is expedient that the terms or conditions of the bond should be varied, summon the offender to appear before it, and, if he fails to show cause why such variation should not be made, vary the terms of the bond by extending or diminishing the duration thereof or by altering any of the conditions thereof or by inserting additional conditions therein:

Variation of conditions of probation on application by probation officer.

Provided that, in no case, shall the duration of the bond be less than one year or more than three years from the date of the original order and where a supervision order has been made under sub-section (2) of section 5, the duration of the period of supervision extend beyond the date on which, in the opinion of the Court, the offender shall attain the age of 26 years:

Provided further that in the case of a bond with a surety or sureties, no such variations shall be made without the consent thereto of such surety or sureties and that in the absence of such consent the Court shall in all such cases require the offender to enter into a new bond with or without sureties.

(2) Such Court may also, on the application made by the probation officer or of its own motion, on being satisfied that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond.

13. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(a) regulating the appointment, resignation and removal of probation officers and prescribing the qualifications of such officers;

(b) prescribing and regulating the duties of probation officers ;

(c) regulating the remunerations and expenses payable to probation officers ; and

(d) specifying conditions on which societies may be recognised for the purposes of clause (b) of sub-section (1) of section 10.

(3) All rules made under the section shall be subject to the condition of previous publication.

Barring of  
operation of  
section 562  
of Act V  
of 1898.

14. In any area in which this Act is in force, no Court shall make an order under section 562 of the Code in respect of any first offender.

Saving of the  
Bombay  
Children Act  
and the  
Bombay  
Borstal  
Schools Act.

15. Nothing in this Act shall affect the provisions of the Bombay Children Act, 1924, or the Bombay Borstal Schools Act, 1929.

Bom.  
XIII  
of  
1924.

Bom.  
XVIII  
of  
1929.

**THE COTTON GINNING AND PRESSING FACTORIES (BOMBAY  
AMENDMENT) ACT, 1938.**

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CONTENTS.

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PREAMBLE.

Sections.

1. Short title.
2. Amendment of section 3A of Act XII of 1925.
3. Insertion of new section 3AA in Act XII of 1925.  
3AA. Penalty for making any cotton wet.
4. Amendment of section 3B of Act XII of 1925.

**BOMBAY ACT No. XX OF 1938.<sup>1</sup>**

[THE COTTON GINNING AND PRESSING FACTORIES (BOMBAY  
AMENDMENT) ACT, 1938.]

[21st November, 1938]

**An Act to amend the Cotton Ginning and Pressing Factories Act,  
1925,<sup>2</sup> in its application to the Province of Bombay.**

XII WHEREAS it is expedient to amend the Cotton Ginning and Pressing  
“of Factories Act, 1925, in its application to the Province of Bombay, for  
1925. the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Cotton Ginning and Pressing Factories Short title.  
(Bombay Amendment) Act, 1938.
2. In section 3A of the Cotton Ginning and Pressing Factories Act, Amendment  
of section 3A  
of Act XII  
of 1925.  
1925, hereinafter called the said Act—
  - (1) in clause (a) of sub-section (2) after the words “ foreign sub-  
stance ”, the words “ or cotton waste ” shall be inserted ;
  - (2) sub-section (3) shall be deleted.
3. After section 3A of the said Act, the following new section shall Insertion of  
new section  
3AA in Act  
XII of 1925.  
be inserted :—
 

“ 3AA. Any owner of cotton who knowingly makes or causes  
to be made any cotton which is ginned and which is being or is intended  
to be pressed in a cotton pressing factory, wet, or mixes or causes  
to be mixed seed, foreign substance or cotton waste with such cotton,  
or in any area specified in sub-section (1) of section 3A makes any  
admixture of cotton, or abets or knowingly allows or connives at  
any such act shall, on conviction, be punishable with fine which may  
extend to five thousand rupees.”
4. In section 3B of the said Act, after the word, figure and letter Amendment  
of section 3B  
of Act XII  
of 1925.  
“ section 3A ”, the words, figure and letters “ or section 3AA ” shall  
be inserted.

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 444 and 445, or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, p. 4484. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 348-370, and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 4, pp. 115-120.

<sup>2</sup>See *Unrepealed Central Acts*, Vol. VIII, p. 155.



BOMBAY ACT No. XXI OF 1938.<sup>1</sup>

[THE BOMBAY TOWN PLANNING (AMENDMENT) ACT, 1938.]

[29th November, 1938]

An Act to amend the Bombay Town Planning Act, 1915.<sup>2</sup>

WHEREAS it is expedient to amend the Bombay Town Planning Act, 1915, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Bombay Town Planning (Amendment) Act, 1938. Short title.

2. For sub-section (2) of section 1 of the Bombay Town Planning Act, 1915, hereinafter called the said Act, the following shall be substituted, namely:— Amendment of section 1 of Bom. I of 1915.

“(2) It shall extend to the whole of the Province of Bombay except the City of Bombay.

(3) The Provincial Government may, on a written application of the Municipal Corporation of the City of Bombay, extend by notification in the *Official Gazette*, this Act to the City of Bombay or any part thereof, from such date as may be appointed in this behalf:

Provided that such application has been made after it has been assented to by more than half the total number of the councillors of the Corporation.”

3. In section 2 of the said Act—

(a) in clause (d), the following words shall be deleted, namely:—

“other than land used, allotted or reserved for any public or municipal purpose.”

(b) in clause (e), the following words shall be deleted, namely:—

“otherwise than by the severance of land used, allotted or reserved for any public or municipal purpose.”

Amendment of section 2 of Bom. I of 1915.

<sup>1</sup> For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 293-299 or Bombay Legislative Assembly Debates, 1938, Vol. 3, Part II, pp. 3161-3165. For Report of the Select Committee, see *Bombay Government Gazette*, 1938, Part V, pp. 373-376 or Bombay Legislative Assembly Debates, 1938, Vol. 3, Part II, pp. 3186-3188. For Proceedings in Assembly, see Bombay Legislative Assembly Debates, 1938, Vol. 4, pp. 371-382 and 3713-3715; and for Proceedings in Council, see Bombay Legislative Council Debates, 1938, Vol. 4, pp. 115 and 156-191.

<sup>2</sup> See Bombay Code, Vol. IV, p. 335.

Amendment  
of section 4  
of Bom. I of  
1915.

4. In sub-section (1) of section 4 of the said Act—

(1) for the words “any of the provisions of this Act are to be applied” the words and figures “the local authority has declared, under section 9, its intention to make a town planning scheme” shall be substituted, and

(2) after the words “an enquiry may be held” the words and figures “on an application being made by the local authority or the Arbitrator at any time prior to the date on which the Arbitrator draws up the final scheme under clause 10 of section 30” shall be added.

Amendment  
of section 11  
of Bom. I of  
1915.

5. To clause (b) of section 11 of the said Act, the following shall be added, namely:—

“and the terms and conditions subject to which such land is to be put to such uses;”

Amendment  
of section 14  
of Bom. I of  
1925.

6. In section 14 of the said Act—

(a) in sub-section (1), for the word “then” the words “within the period prescribed” shall be substituted; and

(b) in sub-section (2)—

(i) after the word “may” where it occurs for the second time, the words “within the period prescribed” shall be inserted; and

(ii) the words “he may by a similar notification” shall be omitted.

Amendment  
of section 15  
of Bom. I of  
1915.

7. In section 15 of the said Act—

(i) in sub-section (1)—

(a) in clause (b), for the words “scheme; but if” the words and figures “scheme, provided that if an Arbitrator has been appointed under section 29 the local authority shall not grant such certificate without obtaining the previous concurrence of such Arbitrator, unless such Arbitrator fails to communicate his decision in the matter to the local authority within two months from the date of the despatch of the application to him by the local authority. If” shall be substituted.

(b) for clause (c) the following shall be substituted, namely:—

“(c) if any person contravenes the provisions contained in clause (a) or clause (b),

(i) the local authority may direct such person by notice in writing to stop any work in progress, and after making enquiry in the prescribed manner, remove, pull down or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, and

(ii) such person shall, on being convicted for such contravention, be liable to fine which may extend to Rs. 1,000, and in

the case of a continuing contravention of the aforesaid provisions, he shall be liable to an additional fine which may extend to Rs. 10 for each day during which such contravention continues after conviction for the first such contravention ;” and

(ii) to sub-section (3) the following shall be added, namely :—

“or the final scheme, or in the event of the withdrawal of the scheme under section 40A.”

8. After section 15 of the said Act, the following new section shall be inserted, namely :—

Insertion of  
new section 15A in Bom. I of 1915.

“15A. (1) Whenever a local authority proposes to undertake the reclamation of a locality which is unhealthy or the laying out of a street or the construction of a park or of pleasure or recreation ground in virtue of the powers conferred upon it by any law for the time being in force in any area within its limits which is already built upon and the Provincial Government is of opinion that such reclamation, laying out or construction will specially benefit the owners of buildings and lands within such area, the Provincial Government may, by notification in the *Official Gazette*, apply to such area the provisions of Chapters III and IV with such modifications and adaptations as the Provincial Government may deem fit :  
Town planning schemes in built up areas.

Provided that in calculating the amount of the increment under section 17 or in estimating the market value of a plot under section 19, the amount of such increment or such market value shall be calculated or estimated as at the date of the resolution of the local authority proposing the scheme under this section.

(2) The Provincial Government shall, before issuing a notification under sub-section (1), give the owners or occupiers of buildings and lands in the area affected, an opportunity of showing cause why such notification should not be issued.”

9. In sub-section (1) of section 16 of the said Act after clause (b) the following new clauses shall be inserted, namely :—

Amendment of section 16 of Bom. I of 1915.

“(bb) all sums payable as compensation for land allotted or reserved for any public or municipal purpose which is solely beneficial to the owners or residents within the area of the scheme ;

(bc) such portion of the sums, payable as compensation for land allotted or reserved for any public or municipal purpose which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, as is attributable to the benefit accruing to the owners or residents within the area of the scheme from such allotment or reservation.”

Amendment  
of section 18  
of Bom. I  
of 1915.

10. In sub-section (I) of section 18 of the said Act—

- (i) the word “and” at the end of proviso (i) shall be omitted; and  
(ii) after proviso (ii) the following provisos shall be inserted,  
namely:—

“(iii) no such contribution shall be levied on a plot used, allotted or reserved for a public or municipal purpose which is solely for the benefit of owners or residents within the area of the scheme; and

(iv) the contribution levied on a plot used, allotted or reserved for a public or municipal purpose which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public shall be calculated in proportion to the benefit estimated to accrue to the general public from such use, allotment or reservation.”

Amendment  
of section 30  
of Bom. I of  
1915.

11. In section 30 of the said Act—

(a) in clause (I)—

(i) the words “where it is in his opinion necessary”, shall be omitted; and

(ii) for the words “the local authority” the words “public or municipal purposes” shall be substituted; and

(b) after clause (3) the following new clauses shall be inserted,  
namely:—

“(3A) determine whether the areas used, allotted or reserved for public or municipal purposes are beneficial wholly or partly to the owners or residents within the area of the scheme;

(3B) estimate the portion of the sums, payable as compensation for each plot used, allotted or reserved for a public or municipal purpose which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, which shall be included in the costs of the scheme;

(3C) calculate the contribution to be levied on each plot used, allotted or reserved for a public or municipal purpose which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public in accordance with the provisions contained in proviso (iv) to section 18;

(3D) determine the amount of exemption, if any, from the payment of contribution that may be granted in respect of plots exclusively occupied for religious or charitable purposes;”

12. In section 31 of the said Act, after the word “clauses” the figures, letters and brackets “(3A), (3B), (3C)” shall be inserted.

13. In section 32 of the said Act—

(i) after the word “clauses” where it occurs for the first time the figures, letters and brackets “(3A), (3B), (3C)” shall be inserted; and

Amendment  
of section 31  
of Bom. I of  
1915.

Amendment  
of section 32  
of Bom. I of  
1915.

(ii) after the word "shall" where it occurs for the first time, the word "determine" shall be inserted and after the word "be" the word "determined" shall be inserted.

14. In section 33 of the said Act—

(a) for sub-section (3), the following shall be substituted, namely:—

Amendment of section 33 of Bom. I of 1915.

"(3) The Assessors shall be appointed by the President and shall be such persons as in his opinion are impartial."

(b) sub-section (4) shall be deleted;

(c) in sub-section (5) after the word "clauses" the figures, letters and brackets "(3A), (3B), (3C)" shall be inserted; and

(d) in sub-section (6)—

(i) for the words "the Assessor" the words "an Assessor" shall be substituted; and

(ii) the words "or the Arbitrator" shall be omitted.

15. After section 33 of the said Act, the following new section shall be inserted, namely:—

Insertion of new section 33A after section 33 in Bom. I of 1915.

"33A. (1) The Arbitrator shall be present at the proceedings before the Tribunal of Arbitration. He shall not be required to give evidence in such proceedings, but the President may require him to assist the Tribunal in an advisory capacity.

Arbitrator to assist Tribunal in advisory capacity and his remuneration.

(2) When the Arbitrator is required under sub-section (1) to assist the Tribunal he shall, save where he is a salaried officer of Government, be entitled to such fees as Government may from time to time determine."

16. In sub-section (1) of section 37 of the said Act, after the word "clauses" the figures, letters and brackets "(3A), (3B), (3C)" shall be inserted.

Amendment of section 37 of Bom. I of 1915.

17. In section 39 of the said Act—

(i) in sub-section (1)—

(a) the words "The arbitrator" shall be omitted; and

(b) for the word "Assessor" the word "Assessors" shall be substituted; and

(ii) in sub-section (2)—

(a) the words "an arbitrator" shall be omitted; and

(b) after the brackets and figure "(1)", the words, brackets, figures and letter "and fees payable to an Arbitrator under sub-section (2) of section 33A" shall be inserted.

Amendment of section 39 of Bom. I of 1915.

Amendment  
of section 40  
of Bom. I  
of 1915.

18. In section 40 of the said Act—

(i) in sub-section (1)—

(a) after the word “clauses” the figures, letters and brackets “(3A), (3B), (3C)” shall be inserted; and

(b) for the words beginning with the word “who” and ending with the word “prescribed” the following shall be substituted, namely:—

“On receipt of the final scheme, the Provincial Government may, by notification in the *Official Gazette*, sanction the scheme or refuse to give such sanction, provided that in sanctioning the scheme the Provincial Government may make such modifications as may in its opinion be necessary for the purposes of correcting an error, irregularity or informality”.

(ii) in sub-section (2)—

(a) for the words “In such notification it shall be stated”, the words “If Government sanctions such scheme, it shall be stated in such notification” shall be substituted, and

(b) after the words “come into force” the following proviso shall be inserted, namely:—

“Provided that the Provincial Government may from time to time postpone such date by such period not exceeding three months at a time as it thinks fit.”

Insertion of  
new section  
40A in Bom.  
I of 1915.

19. After section 40 of the said Act, the following new section shall be inserted, namely:—

Withdrawal  
of a scheme.

“40A. If at any time a representation is made to the Arbitrator by the local authority and a majority of the owners or the residents in the area that the scheme should be withdrawn, the Arbitrator shall, after inviting from all persons interested in the scheme objections to such representation, forward such representation, together with the objections, if any, to the Provincial Government. After making such enquiry as it may think fit, the Provincial Government may, if the scheme has not already come into force, by notification in the *Official Gazette*, direct that the scheme shall be withdrawn and upon such withdrawal no further proceedings shall be taken in regard to such scheme.”

Insertion of  
new section  
45B in Bom.  
I of 1915.

20. After section 45A of the said Act the following new section shall be inserted, namely:—

Power to  
vary a  
scheme on the  
ground of  
error, irre-  
gularity or  
informality.

“45B. (1) If after the final scheme has come into force, the local authority considers that the scheme is defective on account of an error, irregularity or informality, the local authority may apply in writing to the Provincial Government for the variation of the scheme;

(2) If on receiving such application or otherwise, the Provincial Government is satisfied that the variation required is not substantial, the Provincial Government shall publish a draft of such variation in the prescribed manner.

(3) The draft variation published under sub-section (2) shall state every amendment proposed to be made in the scheme, and if any such amendment relates to a matter specified in any of the clauses (a) to (g) of section 3, the draft variation shall also contain such other particulars as may be prescribed.

(4) The draft variation shall be open to the inspection of the public at the office of the local authority during office hours.

(5) Within one month of the date of publication of the draft variation, any person affected thereby may communicate in writing any objection to such variation to the Provincial Government through the Collector and Commissioner.

(6) After receiving the objections under sub-section (5), the Provincial Government may after consulting the local authority and after making such enquiry as it may think fit, by notification in the *Official Gazette*—

(a) appoint an Arbitrator and thereupon the provisions contained in Chapter IV shall, so far as may be, apply to such draft variation, as if it were a draft scheme sanctioned by the Provincial Government, or

(b) make the variation with or without modifications, or

(c) refuse to make the variation.

(7) From the date of the notification making the variation, the variation shall take effect as if it were incorporated in the scheme."

21. In sub-section (1) of section 46 of the said Act, after the brackets and figure "(1)", the words, figures and letter "Notwithstanding anything contained in section 45B", shall be inserted.

Amendment  
of section 46  
of Bom. I  
of 1915.

22. After section 47 of the said Act the following new section shall be inserted, namely:—

Insertion  
of a new  
section 47A  
in Bom. I  
of 1915.

"47A. In the event of a town planning scheme being withdrawn or sanction to a draft scheme or a final scheme being refused by the Provincial Government or a final scheme being revoked, the Provincial Government may direct that the costs of the scheme shall be borne by the local authority or be paid to the local authority by the owners concerned, in such proportion as the Provincial Government may in each case determine."

Apportion-  
ment of  
costs of  
scheme with-  
drawn, not  
sanctioned or  
revoked.

23. In section 52 of the said Act,—

(a) in sub-section (2),—

(i) after clause (e) the following new clause shall be inserted, namely:—

"(ee) the period within which a local authority shall submit a draft scheme under sub-section (1), and the period within

Amendment  
of section 52  
of Bom. I  
of 1915.

which Government may sanction it or refuse to give sanction to it under sub-section (2), of section 14 ;”

(ii) after clause (p) the following new clause shall be inserted, namely :—

“(pp) the manner of publication of a draft variation under sub-sections (2) and (3), and the particulars a draft variation shall contain under sub-section (4) of section 45B ;”

(b) after sub-section (2), the following new sub-section shall be inserted, namely :—

“(2A) A rule made under this section may provide that a contravention of any of the provisions of this Act or of the final scheme published under section 40 or of the rules which are specified in such rule shall be punishable with fine which may extend to Rs. 1,000 and, in the case of a continuing contravention with an additional fine which may extend to Rs. 10 for every day during which such contravention continues after conviction for the first such contravention.”



**THE BOMBAY FORFEITED LANDS RESTORATION ACT, 1933.**

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BOMBAY ACT No. XXII OF 1938.<sup>1</sup>

[THE BOMBAY FORFEITED LANDS RESTORATION ACT, 1938.]

[29th November, 1938]

**An Act to provide for the restoration of lands forfeited during the Civil Disobedience Movement for the non-payment of land revenue and other sums due to Government.**

WHEREAS certain lands were forfeited as a result of the Civil Disobedience Movement for the non-payment of land revenue and other sums due to Government; And whereas the said lands were disposed of to certain persons for inadequate consideration; And whereas it is just and expedient to acquire them with a view to restore them to the original holders thereof; It is hereby enacted as follows:—

1. (1) This Act may be called the Bombay Forfeited Lands Restoration Act, 1938. Short title, commencement and extent.

(2) It extends to the whole of the Province of Bombay.

(3) It shall come into force on such date as the Provincial Government may, by notification in the Official Gazette, direct.

2. In this Act, unless there is anything repugnant in the subject or context—

(1) "Forfeited land" means any of the lands forfeited to the Crown during the Civil Disobedience Movement in any of the years 1930 to 1934 for non-payment of land revenue or other sums due to Government and specified in the notification published in the Official Gazette by the Provincial Government within six months from the date on which this Act comes into force. The expression "Forfeiture of lands" shall be construed accordingly.

(2) "Original holder" in relation to any forfeited land means a person who owned the land at the time of its forfeiture and includes his heirs.

(3) "Prescribed" means prescribed by rules.

(4) "Tribunal" means the Tribunal constituted under section 3.

(5) "Rules" means rules made under section 14.

(6) Words and expressions not defined in this Act but defined in the Land Acquisition Act, 1894, shall have the meanings assigned to them in that Act.

1 of  
1894.

<sup>1</sup>For Statement of Objects and Reasons. see *Bombay Government Gazette*, 1938, Part V, pp. 551 and 552 or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 4616-4617. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 2827-2898, 2902-2984 and 2988-3065; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 4, pp. 304-363.

Constitution  
of Tribunal.

3. For the purposes of this Act, the Provincial Government shall constitute a Tribunal consisting of such member or members as the Provincial Government may appoint. If the Tribunal consists of one member, such member, and if it consists of more than one member, the President, shall be a person who is or has been a Judge of a High Court.

Declaration  
that land is  
needed for  
restoration.

4. (1) The Provincial Government, if it is satisfied that any of the forfeited lands is needed for a public purpose and should, therefore, in public interest be acquired and restored to the original holder, may make a declaration that the said land is needed for such purpose.

(2) The declaration shall be published in the Official Gazette and shall state all the material particulars in regard to the said land.

(3) Such declaration shall be conclusive evidence that the said land is needed for such purpose.

Notice to  
persons  
interested.

5. (1) On the publication of the declaration under section 4, the Tribunal shall cause public notice to be given at convenient places at or near the land to be acquired stating that the Provincial Government intends to acquire the said land.

(2) Such notice shall also state the particulars of the said land and shall require all persons interested in the said land to appear personally or by agent before the Tribunal at the time and place therein mentioned (such time not being earlier than one month after the date of publication of the notice) and to state the nature of their respective interests in the said land and the amount and particulars of their claims to compensation for such interest.

(3) The Tribunal shall also serve notice by registered post to the same effect on the occupier, if any, of such land and on all persons known or believed to be interested therein.

(4) The original holder of the land and the Collector shall also be served with a notice by registered post intimating to them the time and place of the enquiry by the Tribunal and shall be entitled to appear in such enquiry either personally or by agent.

Power to  
require and  
enforce the  
making of  
statements,  
etc.

6. (1) The Tribunal may also by notice in writing require any person interested in the land to make or deliver to it at the time and place mentioned (such time not being earlier than one month from the date of such notice) a statement containing, so far as may be practicable, the name of any other person interested in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and particulars regarding the nature of such interest and the rents and profits, if any, received or receivable on account thereof.

(2) Every person required to make or deliver a statement under this section or under section 5 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code. XLV  
of  
1860.

7. (1) On the day fixed in the notice given by the Tribunal under section 5 or any other day to which the inquiry may be adjourned, the Tribunal shall proceed to enquire regarding—

- (i) the amount of compensation to be awarded for the land ; and
- (ii) the respective interests of the persons claiming compensation.

(2) The Tribunal shall then make an award stating the amount of compensation which in its opinion should be awarded for the land. Such award shall be in writing and where there are several persons interested in the land, the award shall also state the amount of compensation to be awarded to each.

8. Save as otherwise provided by or under this Act, the provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to any enquiry before the Tribunal under this Act.

9. (1) Subject to the provisions of sub-sections (3), (4) and (5), the amount of compensation to be awarded for the land shall, after making deductions in respect of matters specified in sub-section (2), be—

(a) the amount paid to the Provincial Government as occupancy price for the land,

(b) the amount of expenditure incurred in making improvements on the land after its disposal by the Provincial Government until the date of the declaration under section 4,

(c) the amount of land revenue paid in respect of the land after its disposal by the Provincial Government until the date of the award, and

(d) interest at the rate of 4 per cent. per annum on the amounts mentioned in (a), (b) and (c) until the date of the award.

(2) In determining the amount of the compensation to be awarded, the Tribunal shall make deductions in respect of the following matters, namely:—

(a) the profits, if any, received by the holder for the time being from the land during the period mentioned in clause (c) of sub-section (1), and

(b) any damage resulting from any act, permanently injurious or destructive to the land, committed by the holder for the time being or any person acting on his behalf during the period mentioned in clause (c) of sub-section (1):

Provided that the amount of compensation to be awarded under sub-section (1) shall not in any case be less than the total of the amount mentioned in clauses (a) and (b) of the said sub-section.

(3) If the holder for the time being, within 15 days from the date of the publication of the notice under section 5, intimates in writing to the Collector that he is willing to receive as compensation a sum equal to the amounts mentioned in clauses (a) and (b) of sub-section (1) together with the interest thereon at the rate and for the period mentioned in clause (d) of the said sub-section; the amount of compensation to be

awarded for the land shall be the said sum without making any deductions therefrom in respect of any of the matters mentioned in sub-section (2).

(4) In cases where the holder for the time being is not the person to whom the land was disposed of by the Provincial Government but has purchased the land in good faith and for consideration before the first day of April 1938, the amount of compensation to be awarded shall be—

(a) the amount paid by such holder as price for the land, and

(b) the amount of expenditure incurred by such holder in making improvements on the land until the date of the declaration under section 4.

(5) In cases where the land is subject to any mortgage or charge which has been made or created in favour of a person who has advanced money in good faith, the amount of compensation to be awarded to such person shall be—

(a) the unpaid balance of the principal advanced, and

(b) if such person is not in possession of the land, the unpaid amount of interest payable on the principal at such rate as may have been specified in the instrument of mortgage or charge but not exceeding  $7\frac{1}{2}$  per cent. per annum.

Nothing in this sub-section shall bar the right of such person to enforce his rights against the mortgagor or the person who created the charge in respect of the balance due to him.

(6) In addition to the amount of compensation awarded under sub-sections (1), (3), (4) or (5), as the case may be, the Tribunal shall in every case award a sum of 15 per cent. on the said amount.

*Explanation.*—For the purposes of this section “holder for the time being” means the person who is the owner of the land on the date of the declaration under section 4.

Payment of  
amount  
awarded.

10. (1) After the award is made, the Collector shall tender payment of the amount awarded to the persons entitled thereto according to the award and shall pay it to them unless prevented by any of the contingencies mentioned in sub-section (2).

(2) If such persons do not consent to receive it or if any of them is under any legal disability and there is no person competent to receive it on his behalf, the amount awarded or part thereof, as the case may be, shall remain in deposit with the Collector for a period of three years from the date of the deposit or from the date when the person entitled to receive it ceases to be under a legal disability, as the case may be. After the expiry of the said period, such amount, if not paid, shall lapse and shall be credited to the revenues of the Province.

Arrangement  
instead of  
money com-  
pensation.

11. Notwithstanding anything contained in this Act, the Tribunal may, with the sanction of the Provincial Government, instead of awarding money compensation in respect of any land, make any arrangement with the person having interest in such land either by grant of another land in exchange or in such other way as may be equitable.

12. The award made by the Tribunal under section 7 or any arrangement arrived at under section 11 shall be final and binding on all persons interested in the land.

Award or arrangement to be final and conclusive.

13. (1) After the expiration of fifteen days from the publication of the notice under section 5, the Provincial Government may, at any time, direct the Collector to take possession of the land mentioned in the declaration under section 4. On such direction being given the Collector shall take possession of the land.

Possession of land to be taken after declaration and land to vest absolutely in Provincial Government.

(2) If at the time of taking possession of the land under sub-section (1), there are any standing crops on the land, the Collector shall offer to the persons interested such compensation as is in his opinion reasonable for the said crops. The decision of the Collector regarding the amount of such compensation shall be subject to the provisions of sub-section (3) be final. In case, such offer is not accepted, the Collector shall keep the amount of such compensation in deposit and the provisions of sub-section (2) of section 10 shall, so far as may be, apply to such deposit.

(3) Any person aggrieved by the decision of the Collector regarding the amount of compensation under sub-section (2) may within fifteen days from the date of the said decision appeal to the Tribunal. The decision of the Tribunal in such appeal shall be final.

(4) Such land shall, on its possession being taken by the Collector under sub-section (1), vest absolutely in the Provincial Government free from all encumbrances and the Provincial Government may restore it to the original holder thereof on such terms and conditions as it thinks fit.

14. The Provincial Government may make rules for the purpose of carrying out the objects of this Act.

Rules.

**BOMBAY ACT No. XXIII OF 1938.<sup>1</sup>**

[THE BOMBAY LOCAL BOARDS (AMENDMENT) ACT, 1938.]<sup>2</sup>

[22nd December, 1938]

**An Act to amend the Bombay Local Boards Act, 1923.**

Bom. WHEREAS it is expedient to amend the Bombay Local Boards Act, VI of 1923, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Bombay Local Boards (Amendment) Act, 1938. Short title.

Bom. 2. In section 99 of the Bombay Local Boards Act, 1923, hereinafter VI of 1923. called the said Act, after the word "toll" where it occurs for the second time the words "or octroi" shall be inserted. Amendment of section 99 of Bom. VI of 1923.

3. After section 102-A of the said Act, the following new section shall be inserted, namely:— Insertion of new section 102B in Bom. VI of 1923.

"102-B. A district local board when submitting to the Commissioner for sanction a proposal for the imposition of octroi shall, after observing the requirements of sub-sections (2) and (3) of section 100, include in such rules provisions for fixing octroi limits and stations; providing for the exhibition of tables of octroi; regulating, subject to any general or special orders which the Provincial Government may make in this behalf, the system, under which refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody or storage of animals or goods declared not to be intended for use or consumption within the area of the board; and prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the minimum amount for which any claim to refund may be made." Octroi Rules.

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, p. 563 or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, p. 4631. For Report of the Select Committee, see *Bombay Government Gazette*, 1938, Part V, pp. 581-585 or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 4658-4659. For Proceedings in Assembly, see *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 3718-3739, 3985, 4314-4325 and 4380; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 5, pp. 324-330.

<sup>2</sup>See *Bombay Code*, Vol. V, p. 23.

Amendment of section 104 of Bom. VI of 1923.

4. In clause (b) of sub-section (1) of section 104 of the said Act, after the words "on account of" the words "an octroi or" shall be inserted.

Insertion of new sections 115A to 115C in Bom. VI of 1923.

5. After section 115 of the said Act, the following new sections shall be inserted, namely :—

Power to examine articles liable to octroi.

"115-A. (1) A person bringing into or receiving from beyond the octroi limits of a district local board any animal or goods on which octroi is payable shall, when required by an officer authorised in this behalf by the district local board and so far as may be necessary for ascertaining the amount of tax chargeable—

(a) permit that officer to inspect, examine, weigh, and otherwise deal with such animal or goods ;

(b) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature, which he may possess relating to such animal or goods ; and

(c) make a declaration in writing to that officer regarding the correctness and accuracy of the document shown to him.

Power to search where octroi is leviable.

(2) If any person bringing into or receiving from beyond the octroi limits of a district local board in which octroi is leviable, any conveyance or package, shall refuse on the demand of an officer authorised by the board in this behalf, to permit the officer to inspect the contents of the conveyance or package for the purpose of ascertaining whether it contains anything in respect of which octroi is payable, the officer may cause the conveyance or package to be taken without unnecessary delay before a Magistrate or such officer of the board as the Provincial Government appoints in this behalf by name or office, who shall cause the inspection to be made in his presence.

Presentation of bills for octroi.

115-B. An officer demanding octroi by the authority of the district local board shall tender to every person introducing or receiving anything on which the tax is claimed, a bill specifying the animal or goods taxable, the amount claimed, and the rate at which the tax is calculated.

Penalty for evasion of octroi.

115-C. Where any animal or goods passing into the octroi limits of a district local board are liable to the payment of octroi, any person who, with the intention of defrauding the board, causes or abets the introduction of or himself introduces or attempts to introduce within the octroi limits of the said board any such animal or goods upon which payment of the octroi due on such introduction has neither been made nor tendered, shall be punishable with fine which may extend to ten times the amount of such octroi or to fifty rupees whichever may be greater."



## 6. In section 116 of the said Act—

Amendment  
of section  
116 of Bom.  
VI of 1923.

## (1) in sub-section (1)—

(a) after the words “of any” the words “octroi or” shall be inserted;

(b) for the words “such toll may seize any” the words “such octroi or toll may seize any animal or goods on which octroi is leviable or” shall be substituted;

(2) in sub-sections (2), (3) and (4) before the word “toll” wherever it occurs the words “octroi or” shall be inserted;

(3) in sub-section (5) for the words “six months” the words “three years” shall be substituted.

7. After section 116 of the said Act the following new section shall be inserted, *namely* :—Insertion of  
new section  
116-A in  
Bom. VI  
of 1923.

“ 116-A: The district local board, if it thinks fit, instead of requiring payment of octroi due from any person, mercantile firm or public body to be made at the time when the animals or goods in respect of which the octroi is leviable are introduced within the octroi limits of the board, may at any time direct that an account current shall be kept on behalf of the board of the octroi so due from such person, firm or body. Such account shall be settled at intervals not exceeding one month, and such person, firm or public body shall give such information or details and make such deposit or furnish such security as the board or any officer authorised by it in this behalf shall consider sufficient to cover the amount which may at any time be due from such person, firm or body in respect of such dues. Any amount so due at the expiry of any such interval shall, for the purposes of Chapter VIII, be deemed to be, and shall be recoverable in the same manner as, an amount claimed on account of any tax recoverable under the said chapter.”

Power to  
keep account  
current with  
person, firm  
or public  
body in lieu  
of levying  
octroi on  
introduction  
of goods.

**THE INDIAN REGISTRATION (BOMBAY AMENDMENT)  
ACT, 1938.**

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**BOMBAY ACT No. XXIV OF 1938<sup>1</sup>.**

[THE INDIAN REGISTRATION (BOMBAY AMENDMENT) ACT, 1938.]

[8th February, 1939]

**An Act to amend the Indian Registration Act, 1908,<sup>2</sup> in its application to the Province of Bombay.**

XVI of 1908. WHEREAS it is expedient to amend the Indian Registration Act, 1908, in its application to the Province of Bombay for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Indian Registration (Bombay Amendment) Act, 1938. Short title.

XVI of 1908. 2. After section 22 of the Indian Registration Act, 1908, hereinafter called the said Act, the following section shall be inserted, namely:— Insertion of new section 22A in Act XVI of 1908.

“22A. (1) The Provincial Government may, by notification in the Official Gazette, declare that the registration of any document or class of documents is opposed to public policy. Documents registration of which is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable.”

3. To section 51 of the said Act, the following new sub-section shall be added, namely:— Amendment of section 51 of Act XVI of 1908.

“ (5) If, in the opinion of the Registrar, any of the books mentioned in sub-section (1) is in danger of being destroyed or becoming illegible wholly or partially, the Registrar may by a written order direct such book or such portion thereof as he thinks fit to be recopied and authenticated in such manner as may be prescribed under section 69, and the copy prepared and authenticated under such direction shall for the purposes of this Act be deemed to have taken the place of and to be the original book or portion, and all references in this Act to the original book or portion shall be deemed to be references to the book or portion so recopied and authenticated.”

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<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 557 and 558, or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 4627-4629. For Proceedings in Assembly, see *Bombay Legislative Debates*, 1938, Vol. 4, pp. 3715-3718; and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1938, Vol. 5, pp. 250-252.

<sup>2</sup>See *Unrepealed Central Acts*, Vol. V, p. 433.

Amendment  
of section 69  
of Act XVI  
of 1908.

4. In sub-section (1) of section 69 of the said Act,—

(i) to clause (g) the following shall be added, namely:—

“and the manner of recopying such books or portions thereof”;

(ii) in clause (gg)—

(a) for the word “and” after the word “negatives” a comma shall be substituted; and

(b) the following shall be added at the end, namely:—

“and the procedure generally in the Government Photo Registry”.

Substitution  
of new section  
70B for  
section 70B  
in Act XVI  
of 1908.

5. For section 70B of the said Act the following shall be substituted, namely:—

Definitions.

“70B. In this part—

(1) ‘Government Photo Registry’ means the office where documents are photographed under the provisions of this Part.

(2) ‘Manager, Government Photo Registry’ means the person in charge of the Government Photo Registry.

(3) ‘Photo Registrar’ means any person appointed by the Provincial Government to perform the duties of Photo Registrar under this Part.”

Amendment  
of section  
70D of Act  
XVI of 1908.

6. In section 70D of the said Act—

(1) In sub-section (1)—

(i) in clause (b)—

(a) for the word “Photo Registrar” wherever it occurs the words “Manager, Government Photo Registry” shall be substituted;

(b) the word “exactly” shall be omitted; and

(ii) after the proviso to clause (c) the following further proviso shall be inserted, namely:—

“Provided further, that in case of documents containing plans or maps, the negatives of such plans and maps may be prepared on paper instead of on films and where the negatives are so prepared, the Photo Registrar shall fix his signature and seal separately to each such negative and print of such plan or map

in token of the exact correspondence of the copy to the original map or plan contained in the document as admitted for registration.”;

and

(iii) to clause (d) the following proviso shall be added, namely :—

“ Provided that prints of plans or maps contained in documents may either be bound with the prints of such documents or filed separately in such manner as the Inspector General may direct.”; and

(2) After clause (a) of sub-section (3) the following shall be inserted, namely :—

“(aa) sub-section (2) of section 20 shall be omitted;”

7. After section 70D of the said Act, the following new section shall be inserted, namely :—

Insertion of  
new section  
70E in Act<sup>1</sup>  
XVI of 1908.

“ 70E. (1) Nothing in this Part shall apply to any document which is prepared on a printed or lithographed form or which in the opinion of the registering officer is not in a fit condition to be photographed. Savings.

(2) Notwithstanding anything contained in this Part, in the case of any document containing a map, plan, or trademark label, if the party presenting the document so desires, the registering officer may accept true copies of such map, plan or trademark label and where such true copies are accepted, the map, plan or trademark label shall not be photographed and such copies thereof shall be filed in the appropriate book.”

8. Notwithstanding anything contained in the said Act, copies of any of the books mentioned in sub-section (1) of section 51 of the said Act or any portion of such book, prepared before the enactment of this Act and authenticated in pursuance of the order of the Registrar or Inspector General shall for the purposes of the said Act be deemed to have taken the place of and to be the original book or portion; and all references in the said Act to the original book or portion shall be deemed to be references to the book or portion so prepared and authenticated.

Validity of  
copies made  
prior to  
enactment  
of this Act.

THE BOMBAY INDUSTRIAL DISPUTES ACT, 1938.

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SCHEDULE I.

SCHEDULE II

BOMBAY ACT No. XXV OF 1938.<sup>1</sup>

[THE BOMBAY INDUSTRIAL DISPUTES ACT, 1938.]

[24th February, 1939]

**An Act to make provision for the promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration and for certain other purposes.**

WHEREAS it is expedient to make provision for the promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration and for certain other purposes hereinafter provided: It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called the Bombay Industrial Disputes Act, Short title, 1938.

2. (1) Section 1 and this section extend to the whole of the Province of Bombay. The Provincial Government may, by notification in the *Official Gazette*, extend all or any of the remaining provisions of the Act to such area as may be specified in the notification. Extent, commencement and application.

(2) Section 1 and this section shall come into force at once. The Provincial Government may, by notification in the *Official Gazette*, direct that all or any of the remaining provisions of this Act shall come into force in any area to which the said provisions extend or may have been extended under sub-section (1) on such date as may be specified in the notification.

(3) The Provincial Government may, by notification in the *Official Gazette*, direct that all or any of the provisions of this Act shall apply to such industry as may be specified in the notification.

<sup>1</sup>For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1938, Part V, pp. 481-491 or Bombay Legislative Assembly Debates, 1938, Vol. 4, pp. 4542-4550. For Proceedings in Assembly, see Bombay Legislative Assembly Debates, 1938, Vol. 4, pp. 816-851, 889-912, 928-977, 1014-1057, 1095-1101, 1113-1155, 1202-1228, 1282-1323, 1330-1383, 1501-1448, 1470-1495, 1525-1587, 1593-1666, 1669-1744, 1761-1829, 1861-1899, 1835-1865, 2072-2064, 2067-2129, 2132-2177, 2232-2293, 2362-2337, 2340-2417, 2420-2435, 2505-2581, 2584-2616, 2729-2792, 3053-3094, 3126-3175, 3182-3221, 3227-3303, 3397, 3411, 3419-3520, 3523-3606, 3609-3675, 4347-4354, 4380-4432 and for Proceedings in Council, see Bombay Legislative Council Debates, 1938, Vol. 5, pp. 22-62, 75-197, 203-249.

Definitions. 3. In this Act unless there is anything repugnant in the subject or context—

(1) "Arbitration proceeding" means any proceeding under this Act before an arbitrator or where a dispute has been referred to the Industrial Court for arbitration the proceedings before such Court in respect of such dispute.

(2) "Arbitrator" means an arbitrator to whom a dispute is referred for arbitration under the provisions of this Act and includes an umpire.

(3) Association of "employers" means any combination of employers, whether incorporated or not, which has for one of its objects the regulation of conditions of employment in the industry conducted or carried on by its members, and which is recognized by the Provincial Government under section 74.

(4) "Award" means any interim or final determination in an arbitration proceeding of any industrial dispute or of any question relating thereto and includes any award made by the Industrial Court under clause (5) or (6) of section 53.

(5) "Board" means the Board of Conciliation appointed under section 23.

(6) "Change" means a change in any industrial matter.

(7) "Commissioner of Labour" means an officer appointed by the Provincial Government for the time being to be the Commissioner of Labour.

(8) "Conciliation proceeding" means any proceeding held by a Conciliator or the Board under this Act.

(9) "Conciliator" means any Conciliator appointed under this Act and includes the Chief Conciliator or a Special Conciliator.

(10) "Employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry and includes an employee discharged on account of any dispute relating to a change in respect of which a notice is given under section 23 whether before or after the discharge.

(11) "Employer" includes—

(a) an association or a group of employers ;

(b) any agent of an employer ;

(c) where an industry is conducted or carried on by a department of the Provincial Government, the authority prescribed in that behalf, and where no such authority has been prescribed, the head of such department ;

(d) where an industry is conducted or carried on by or on behalf of a local authority, the Chief Executive Officer of such authority ;  
or

(e) where the owner of any industry in the course of or for the purpose of conducting such industry contracts with any other person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the said industry, the owner of such industry.

(12) "Industrial Court" means the Court of Industrial Arbitration appointed under section 24.

(13) "Industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter.

(14) "Industrial matter" means any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or non-employment and includes—

(a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person ;

(b) all matters as to the demarcation of functions of any employees or classes of employees ;

(c) all matters pertaining to any right or claim under or in respect of or concerning an agreement, submission or award made under this Act ; and

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole.

(15) "Industrial union" means a union the members of which belong to any industry generally and which is not an occupational union.

(16) "Industry" includes—

(a) any business, trade, manufacture or undertaking or calling of employers ;

(b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees ; and

(c) any branch or section of industry recognised by the Registrar for the purposes of this Act or a group of industries.

(17) "Labour Officer" means an officer appointed to perform the duties of a Labour Officer under this Act.

(18) "Local area" means any area notified as such by the Provincial Government.

(19) "Lock-out" means the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for the purpose of compelling those persons or of aiding another employer in compelling persons employed by him to accept any term or condition of or affecting employment.

(20) "Member" means a person who is an ordinary member of a union and who has been paying a subscription of not less than one anna per month and the term "membership" shall be construed accordingly.

(21) "Occupation" means any section of an industry recognised to be an occupation under section 5.

(22) "Occupational union" means a union the membership of which is confined to employees employed in a particular occupation or group of occupations in any industry.

(23) "Prescribed" means prescribed by rules made under this Act.

(24) "Qualified union" means any union declared to be a qualified union under section 11.

(25) "Recognised union" means a union which has been recognised in the prescribed manner by an employer or by an association of the employers in any industry.

(26) "Registered agreement" means an agreement registered under section 30 or 33.

(27) "Registered union" means a union registered under this Act.

(28) "Registrar" means the Registrar of Unions appointed under this Act.

(29) "Representative of employees" means—

(i) where the majority of employees directly affected by a change are members of a registered union, such registered union; or

(ii) where some of the employees directly affected by the change belong to a representative union, that representative union; or

(iii) in other cases such representatives not being more than five as may be elected in the manner prescribed by employees directly affected by the change from among themselves ; or

(iv) in cases where representatives are not elected under clause (iii), and in all other cases not falling under any of these clauses the Labour Officer.

(30) "Representative union" means a registered union declared to be a representative union under section 12.

(31) "Schedule" means schedule appended to this Act.

(32) "Settlement" means a settlement arrived at during the course of a conciliation proceeding.

(33) "Strike" means a total or partial cessation of work by employees employed in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work where such cessation or refusal is in consequence of an industrial dispute in any industry.

(34) "Union" means a Trade Union (other than a union formed for the purpose of regulating the relations between employers and employers) registered under the Indian Trade Unions Act, 1926.

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## CHAPTER II.

### REGISTRATION OF UNIONS.

4. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the Registrar of Unions for the Province.

Appointment  
powers and  
duties of  
Registrars  
and Assistant  
Registrars.

(2) The Provincial Government may, by a similar notification, appoint a person to be the Assistant Registrar of Unions for any local area and may, by a general or special order, confer on such person all or any of the powers of the Registrar of Unions under this Act.

5. The Registrar may after making such enquiry as he deems fit recognise any section of an industry to be an occupation for the purposes of this Act.

Recognition  
of section of  
industry as  
occupation.

6. It shall be the duty of the Registrar to maintain a register of registered and representative unions in such forms as may be prescribed.

Maintenance  
of registers  
of registered  
and represen-  
tative unions.

Application  
for registra-  
tion.

7. Any recognised union, which has for the whole of the period of six months next preceding the date of the application under this section a membership of not less than five per cent., or any other union which has for the said period a membership of twenty-five per cent. of the total number of employees employed in any industry or occupation, as the case may be, in the local area may apply in the prescribed form to the Registrar for registration under this Act.

Registration  
of a union.

8. On receipt of an application from a union for registration under section 7 and on payment of the fee prescribed, the Registrar shall hold such enquiry as he thinks fit and if he is satisfied that such union fulfils the conditions necessary for registration specified in section 7 and is not disqualified from registration under this Act, he shall enter the name of such union in the register maintained under section 6 and shall issue a certificate of registration in such form as may be prescribed :

Provided that—

(a) in any local area the Registrar shall not register more than one industrial union in respect of any industry and one occupational union in respect of each occupation in such industry ;

(b) where two or more industrial or two or more occupational unions fulfilling the conditions necessary for registration specified in section 7 apply for registration, the union which has the largest membership of the employees employed in the industry or occupation, as the case may be, shall alone be registered ;

(c) if an industrial union has been registered in any local area no occupational union in respect of the same industry in such local area shall be registered unless such union has more than twenty-five per cent. of the total number of employees employed in that occupation in such local area ;

(d) the Registrar shall not register a union as an industrial or an occupational union, as the case may be, if there is a qualified union in existence in respect of the same industry or occupation and if the union applying for registration has not for the whole of the period of six months next preceding the date of application, a membership exceeding that of such qualified union ; and

(e) the Registrar shall not register any union, if he is satisfied that the application for registration is not made *bona fide* in the interests of employees but is made in the interests of the employer.

Cancellation  
of registra-  
tion of a  
union.

9. The Registrar shall cancel the registration of a union—

(i) if, on an application made to him by any employer or any union concerned with the industry or occupation in which the members of the union, the registration of which is sought to be cancelled, are

employed and after holding such enquiry as he deems fit, he is satisfied —

(a) that such union had not fulfilled the necessary conditions for registration under section 7 at the time of its registration or that it was registered under a mistake, misrepresentation or fraud ;

(b) that at the date of the application made under this section the union failed to satisfy the condition regarding the minimum membership necessary for registration specified in section 7 ;

(c) that its recognition by the employer had been withdrawn :

Provided that the registration of such union shall not be cancelled on this ground if its membership is more than twenty-five per cent. of the total number of employees employed in the industry or occupation, as the case may be ;

(d) that in the case of an occupational union in any industry in any local area, an industrial union in respect of such industry is registered in such local area :

Provided that the registration of such occupational union shall not be cancelled if its membership is more than twenty-five per cent. of the total number of employees employed in the occupation in such local area ; or

(e) that the union is not being conducted *bona fide* in the interests of employees but is being conducted in the interests of the employer ;  
or

(vi) if the Industrial Court directs that the registration of such union shall be cancelled.

10. (1) If at any time any union (hereinafter referred to in this section as "applicant union") applies to the Registrar stating that it has a larger membership of employees employed in any industry or occupation in any local area than the one already registered (hereinafter referred to in this section as a "registered union") for such industry or occupation, as the case may be, for that local area, and that the registration of the registered union should be cancelled or that it should be registered in place of the registered union, the Registrar shall call upon the registered union by a notice in writing to show cause within one month of the receipt of such notice why its registration should not be cancelled or why the applicant union should not be registered in its place. An application made under this sub-section shall be accompanied by such fee as may be prescribed.

Registration of another union in place of existing registered union.

(2) The Registrar shall forward to the Labour Officer a copy of the said application and notice.



(3) If, on the expiry of the period of notice under sub-section (1) and after holding such enquiry as he deems fit, the Registrar is satisfied that the membership of the applicant union was during the whole of the period of six months immediately preceding the date of the application under this section larger than the membership of the registered union, he shall cancel the registration of such union and if the applicant union satisfies the conditions necessary for registration specified in section 7, he shall register the applicant union.

Qualified unions.

11. (1) The Registrar shall maintain a list of qualified unions in such form as may be prescribed.

(2) If in any local area there is no registered union in respect of any industry or occupation, a union which has for a period of six months next preceding the application a membership of not less than five per cent. of the total number of employees employed in the industry or occupation, as the case may be, may on application and on payment of the fee prescribed be declared by the Registrar as a qualified union.

(3) The Registrar shall cancel the declaration of any such union as a qualified union as soon as any union in respect of the industry or occupation, as the case may be, is registered under section 8.

(4) The Registrar shall also cancel the declaration of a union as a qualified union—

(i) if, on an application made to him by an employer or any union concerned with the industry or occupation in which the members of the union, the declaration of which as a qualified union is sought to be cancelled, are employed and after making such enquiry as he thinks fit, he is satisfied—

(a) that such union had not at the time when it was declared a qualified union fulfilled the necessary conditions for its being so declared or that such declaration was made under a mistake, misrepresentation or fraud,

(b) that at the date of the application made under this sub-section the membership of such union fell below five per cent. of the employees employed in the industry or occupation, as the case may be, in the local area ;

(ii) if the Industrial Court directs that the declaration of such union as a qualified union shall be cancelled.

Representative unions.

12. (1) Any registered union in a local area, which has for the whole of the period of six months next preceding the date of application under this section a membership of not less than twenty-five per cent. of the total number of employees employed in the industry or occupation, as the case may be, in such local area, may apply to the Registrar for being declared a representative union.

(2) If the Registrar is satisfied, on making such enquiry as he thinks fit, that the union fulfils the conditions specified in sub-section (1) he

shall declare such union to be a representative union, and shall issue a certificate in such form as may be prescribed.

(3) The Registrar shall cancel the declaration of a union as a representative union—

(i) if, on application made to him by an employer or any union concerned with the industry or occupation in which the members of the union, the declaration of which as a representative union is sought to be cancelled, are employed and after making such enquiry as he thinks fit, he is satisfied—

(a) that such union had not at the time when it was declared a representative union fulfilled the necessary conditions for its being so declared or that such declaration was made under a mistake, misrepresentation or fraud ;

(b) that at the date of the application made under this sub-section the membership of such union fell below twenty-five per cent. of the employees employed in the industry or occupation as case may be, in the local area ;

(c) that the registration of such union has been cancelled ;

(ii) if the Industrial Court directs that the declaration of such union as a representative union shall be cancelled.

13. (1) Any union the registration of which has been cancelled by the Registrar or by the Industrial Court on the ground that it was registered under a mistake, or on any of the grounds specified in clause (b) or (c) of sub-section (i) of section 9 or any union the declaration of which as a qualified union or as a representative union has been cancelled on the ground that such declaration was made under a mistake, or under clause (i) (b) of sub-section (4) of section 11 or under clause (i) (b) of sub-section (3) of section 12, as the case may be, may at any time, after six months from the date of such cancellation, apply again for registration or declaration, as the case may be. Such application shall be disposed of in the manner laid down in section 8, 11 or 12, as the case may be.

(2) A union the registration of which or a union the declaration of which as a qualified union or as a representative union has been cancelled on any other ground shall not be entitled to apply again for registration or declaration.

14. Notwithstanding anything contained in any law, the cancellation of registration of a registered union or the cancellation of the declaration of a union as a qualified union or as a representative union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

**Periodical returns to be submitted to the Registrar.** 15. Every registered union and every qualified union shall submit to the Registrar periodical returns of its membership at such times, on such dates and in such manner as may be prescribed.

**Powers of Registrar to summon witnesses, etc.** 16. For the purpose of holding an enquiry under this Chapter,—

(i) the Registrar shall have the same powers as are vested in Courts <sup>V of</sup> in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit, namely :—

(a) proof of facts by affidavits ;

(b) summoning and enforcing the attendance of any person and examining him on oath ; and

(c) compelling the production of documents ;

(ii) the Registrar shall have also such other powers as may be prescribed.

**Appearance before Registrar.** 17. Every employer in the industry concerned and every representative of employees whose interests may be affected shall be entitled to appear at any enquiry made by the Registrar under this Chapter.

**Appeal to Industrial Court from orders of the Registrar cancelling registration of unions.** 18. (1) Any person entitled to appear before the Registrar may appeal to the Industrial Court against any order passed by the Registrar under this Chapter within 30 days from the date of such order.

(2) The Industrial Court in appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Court shall be sent to the Registrar.

**Reference to Industrial Court and any order of Registrar to be in accordance with such decision.** 19. The Registrar may refer any matter arising before him in any proceedings under this Act to the Industrial Court for its decision and any order passed by the Registrar in such proceeding shall be in accordance with such decision.

**Publication of application and orders of cancellation in Official Gazette.** 20. (1) Every application made under section 10 shall be published in the *Official Gazette* not less than a fortnight before the application is heard.

(2) Every order passed under section 8, 9, 10, 11 or 12 and every order passed in appeal against such order shall be published in the *Official Gazette*.

## CHAPTER III.

AUTHORITIES TO BE CONSTITUTED OR APPOINTED UNDER  
THIS ACT.

21. (1) The Commissioner of Labour shall be *ex-officio* Chief Conciliator. Conciliators. His jurisdiction shall extend throughout the Province.

(2) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Conciliator, for such local area as may be specified in the notification.

(3) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Special Conciliator for such local area or such industry in any local area or for such industrial dispute or class of disputes as may be specified in the notification.

22. The Provincial Government may, by notification in the *Official Labour Gazette*, appoint any person to be a Labour Officer for such local area or such industry as may be specified in the notification.

23. (1) When an industrial dispute arises the Provincial Government Board of may, by notification in the *Official Gazette*, constitute a Board of Concilia- Conciliation. tion for promoting a settlement of such dispute.

(2) The Board shall consist of a Chairman and an equal number of members selected by the Provincial Government from panels representing the interests of the employers and employees respectively. Such panels shall be constituted in the manner prescribed. The Chairman and members of the Board shall be independent persons.

*Explanation.*—For the purposes of this section a person shall be deemed to be independent if he is unconnected with the dispute with reference to which the Board is constituted and the industry directly affected by the dispute.

(3) If any vacancy in the membership of the Board arises before the Board has completed its work, such vacancy shall be filled up in the manner prescribed and the proceedings shall be continued before the Board so reconstituted from the stage at which they were when the vacancy occurred.

24. (1) The Provincial Government may constitute a Court of Court of Industrial Arbitration for determining industrial disputes and for dealing Industrial Arbitration. with other matters under the provisions of this Act and the rules made thereunder.

(2) The Industrial Court shall consist of two or more members, one of whom shall be its President. Every member of the Industrial Court shall be a person—

(a) who is not connected with any industry, and,

(b) who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court.

(3) The Industrial Court may make rules providing for the formation of Benches consisting of one or more of its members and for the exercise by each such Bench of the jurisdiction and powers vested in the Industrial Court.

(4) The Industrial Court may hold its sittings at such place or places as the President may direct.

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## CHAPTER IV.

### POWERS AND DUTIES OF THE LABOUR OFFICER.

Powers and  
duties of  
Labour  
Officer.

25. (1) A Labour Officer shall exercise the powers conferred and perform the duties imposed on him by or under this Act.

(2) For the purpose of exercising such powers and performing such duties a Labour Officer may, after giving reasonable notice, enter any place used for the purpose of any industry or as the office of any union and shall be entitled to call for and inspect all relevant documents which are necessary for the due discharge of his duties and powers under this Act. A Labour Officer may for the same purpose enter, after giving reasonable notice, any premises provided by an employer for the purpose of residence of his employees.

(3) All particulars contained in or information obtained from any document inspected or called for under sub-section (2) shall, if the person in whose possession the document was so required, be treated as confidential.

(4) A Labour Officer shall be entitled to appear in any proceeding under this Act.

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## CHAPTER V.

### CHANGES.

Standing  
orders  
regarding  
industrial  
matters and  
change in  
such standing  
orders

26. (1) Every employer in respect of any industry or occupation to which this section has been made applicable shall within two months from the date of such application submit to the Commissioner of Labour for approval in such manner as may be prescribed standing orders regulating the relations between him and his employees with regard to all industrial matters mentioned in Schedule I.

(2) On receipt of such standing orders the Commissioner of Labour shall, after making such enquiry as he deems fit and after consulting all interests concerned in the industry, settle the said standing orders.

(3) The Commissioner of Labour shall forward a copy of the standing orders so settled to the Registrar who shall record them in the register to be kept for the purpose. The standing orders so settled and recorded in the register shall come into operation from the date of their record in the register or after 10 days from the decision of the Commissioner of Labour whichever is later.

(4) Any person aggrieved by any of the standing orders so settled and recorded by the Commissioner of Labour may within 15 days from the date on which such standing orders come into operation under sub-section (3) appeal to the Industrial Court.

(5) On an appeal being filed, the Industrial Court may on the application of any party to such appeal stay the operation of the standing orders objected to until the appeal is decided on such conditions as it may think fit.

(6) The Industrial Court in appeal may confirm, modify or rescind any standing order settled by the Commissioner of Labour under sub-section (2) and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Court shall be sent to the Registrar who shall record them in the register referred to in sub-section (3).

(7) The Industrial Court may also fix the date on which the standing orders as revised or confirmed by it shall come into operation.

(8) The standing orders settled by the Commissioner of Labour under sub-section (2) or by the Industrial Court under sub-section (6) shall be determinative of the relations between the employer and his employees in the industry or occupation concerned in regard to all industrial matters mentioned in Schedule I and shall not be liable to be altered for a period of six months from the date on which they come into operation except on a review by the Industrial Court under section 27.

27. (1) Any person aggrieved by the decision of the Industrial Court *Review.* under section 26 may apply to the Industrial Court for a review of the said decision.

(2) The Industrial Court shall not grant such application unless it is satisfied that there has been a discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the party making the application or could not be produced by him at the time when its decision was made, or that there has been some mistake or error apparent on the face of the record or that there is any other sufficient reason for granting such application.

(3) The provisions of sub-sections (6), (7) and (8) of section 26 shall apply to the proceedings under this section.

Employers  
or employees  
desiring  
change in  
standing  
orders and  
other indus-  
trial matters  
to give  
notice.

23. (1) Any employer intending to effect any change in any standing order settled under section 26 or 27 or in respect of an industrial matter mentioned in Schedule II shall give notice of such intention in the prescribed form to the representative of the employees. He shall send a copy of such notice to the Commissioner of Labour, the Chief Conciliator, the Registrar, the Labour Officer and to such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place in the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any case.

(2) An employee desiring a change in any such standing order or in respect of any other industrial matter shall give notice in the form prescribed to the employer through the representative of the employees who shall also forward a copy of the notice to the Commissioner of Labour, the Chief Conciliator, the Registrar, the Labour Officer and to such other person as may be prescribed.

(3) After conciliation proceedings in regard to any industrial dispute arising out of a notice relating to any change given under sub-section (1) or (2) have been completed, no notice with regard to the same change shall be given before the expiry of two months from the date of such completion. If, at any time after the expiry of the said period of two months, any employer or employee again desires the same change, he shall give fresh notice in the manner provided in sub-section (1) or (2), as the case may be.

Notice of  
change when  
to be deemed  
general  
notice.

29. (1) Where an employer gives notice of a proposed change under sub-section (1) of section 28 and such change affects only some of the employees engaged in an industry or occupation, the registered or qualified union in respect of such industry or occupation in that local area, as the case may be, may, within seven days from the date of service of such notice, intimate in writing to other employers or an association of employers engaged in such industry or occupation that the employees employed in such industry or occupation by such employers and mentioned in such intimation are affected by such change.

(2) Where an employee gives notice of a proposed change under sub-section (2) of section 28 and such change affects only one employer or some of the employers engaged in an industry or occupation, the other employers or an association of employers engaged in such industry or occupation in that local area, as the case may be, may within seven days from the date of service of such notice, intimate in writing to the representative of the employees, engaged in such industry or occupation, that the other employers engaged in such industry or occupation and mentioned in such intimation are affected by such change.

(3) A copy of an intimation under sub-sections (1) and (2) shall be sent to the Commissioner of Labour, the Chief Conciliator, the Registrar, the Labour Officer and such other person as may be prescribed and shall also be affixed at a conspicuous place in the premises where the employees

concerned are employed for work and at such other places as may be prescribed.

(4) On an intimation being given under sub-section (1) or (2), the other employees or employers, as the case may be, mentioned in such intimation, shall also, for the purposes of this Act, be deemed to be affected by such change.

30. (1) If during fifteen days from the date of service of the notice under section 28 or within 7 days from the date of intimation given under section 29 to the representative of employees or the employer or the employers, as the case may be, an agreement is arrived at in regard to the proposed change between the employer or the employers and the representative of the employees, a memorandum of such agreement signed by the employer or the employers as well as by the representative of the employees shall be forwarded by them to the Commissioner of Labour, the Registrar and the Labour Officer. Agreement regarding change.

(2) On receipt of such memorandum of agreement the Registrar shall enter the same in a register maintained for the purpose unless on enquiry he is satisfied that the agreement was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat.

(3) The agreement so recorded by the Registrar shall be called a registered agreement.

31. In any case where the Labour Officer is a representative of the employees, the Labour Officer shall, before entering into any agreement with the employer, place the terms of such agreement before a meeting of the employees concerned. Such meeting shall be convened by the Labour Officer in the manner prescribed and the terms of the agreement so placed before such meeting shall be deemed to have been accepted if the majority of the employees present at such meeting accept them. If the majority of the employees present at the meeting do not accept the terms of the agreement placed before them, the Labour Officer shall not enter into such agreement with the employer. Labour Officer to put the change to the meeting of employees.

32. If an agreement is arrived at and registered under section 30 the changes referred to in the agreement shall come into operation from the date stated in the agreement or if no date is stated therein from the date on which it is recorded by the Registrar. Agreement when to come into force.

33. The Registrar may, on an application made within 6 months from the date of the coming into force of this section by an employer or a registered union, and with the consent of the other party, register any agreement relating to any industrial matter arrived at before the coming into force of this section, unless on enquiries he is satisfied that such agreement was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat. Agreement arrived at before coming into force of this Act.



## CHAPTER VI.

## CONCILIATION PROCEEDINGS.

Report of industrial dispute to be sent to Registrar, Chief Conciliator and the Conciliator.

34. If any change in respect of which notice is given under section 28, or an intimation is given under section 29 is objected to by the employer or the employee, as the case may be, the party who gave such notice or intimation shall, if he still desires that the change should be effected, forward to the Registrar, the Chief Conciliator and the Conciliator of the local area a full statement of the case in the prescribed form within twenty-one days from the date of service of such notice or intimation to the other party.

*Explanation.*—For the purpose of this section the change shall be deemed to be objected to by the employer or employee, as the case may be, if within fifteen days from the date of service of such notice or intimation a memorandum of agreement has not been forwarded to the Registrar under sub-section (1) of section 30.

Commencement of conciliation proceeding.

35. On receipt of the statement of the case under section 34 the Conciliator shall enter the industrial dispute in the prescribed register and the conciliation proceedings shall be deemed to have commenced from the date of such receipt.

Conciliation proceedings.

36. (1) The Conciliator shall then hold the conciliation proceedings in the prescribed manner.

(2) It shall be the duty of the Conciliator to endeavour to bring about a settlement of the industrial dispute and for this purpose the Conciliator shall enquire into the dispute and all matters affecting the merits thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute and may adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to arrive at a settlement.

Power of Chief Conciliator to intervene.

37. It shall be lawful for the Chief Conciliator to intervene or to direct a Special Conciliator to intervene at any stage in any conciliation proceedings held by another Conciliator, and thereafter the Chief Conciliator or the Special Conciliator so directed shall hold the conciliation proceedings with or without the assistance of the Conciliator who was previously holding the same.

Settlement and Report.

38. (1) If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed form by the Conciliator and signed by the employer and the representative of employees. The Conciliator shall send a report of the proceedings along with a copy of the memorandum of settlement to the Registrar and the Chief Conciliator. The Registrar shall record such settlement in the register of agreements and shall then

publish it in such manner as may be prescribed. The change, if any, agreed to by such settlement shall come into operation from the date agreed upon in such settlement and where no such date is agreed upon from the date on which it is recorded in the register.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible, after the close of the proceedings before him, send a full report to the Chief Conciliator or if the conciliation proceedings are held by the Chief Conciliator, the Chief Conciliator shall send such report to the Provincial Government. Such report shall set forth the steps taken by the Conciliator or the Chief Conciliator, as the case may be, for the purpose of ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(3) The Chief Conciliator shall forward the reports submitted to him under sub-sections (1) and (2) to the Provincial Government with such remarks as he deems fit.

(4) The Provincial Government shall publish the report of the Conciliator submitted to it under sub-section (2) or forwarded to it under sub-section (3) except in cases in which the dispute is referred to the Board of Conciliation.

(5) In any case where the Labour Officer is a representative of the employees and where a settlement of an industrial dispute is arrived at in any conciliation proceeding, the Labour Officer shall convene a meeting of the employees concerned as laid down in section 31 and place the terms of the settlement before such meeting. The Labour Officer shall not sign the memorandum of such settlement under sub-section (1) unless a majority of the employees present at such meeting accept the terms of such settlement.

39. (1) During the pendency of any proceedings before the Conciliator under the foregoing provisions the Provincial Government may, and if both the parties agree either prior to the commencement of such proceedings or after the failure of the Conciliator to bring about a settlement shall refer the dispute to a Board of Conciliation. Reference to Board.

(2) On such reference being made, the Board shall give notice in the prescribed manner to the parties to the dispute to appear before it at such time and place as may be specified in the notice. A copy of such notice shall be sent to the Labour Officer.

(3) On the date specified in the notice or on such other date as may be fixed by the Board, the Board shall hold the conciliation proceedings. It shall be the duty of the Board to endeavour to bring about a settlement of the industrial dispute and the provisions of sections 35 and 36 shall, so far as may be, apply to the proceedings before the Board.

(4) On the conclusion of the proceedings before the Board, the Board shall, whether a settlement is arrived at or not, send a report of the proceedings to the Provincial Government. The Provincial Government shall then publish such report.

Procedure  
and powers  
of Conci-  
liator and  
the Board.

40. (1) A Conciliator or the Board, as the case may be, shall, subject to the provisions of this Act, follow in a conciliation proceeding such procedure as may be prescribed.

(2) For the purpose of holding a conciliation proceeding,—

(i) a Conciliator or the Board shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1908, in respect of the following matters when trying a suit :— V of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) compelling the production of documents ;

(c) issuing commissions for the examination of witnesses ;

(d) proof of facts by affidavits ;

(ii) the Conciliator or the Board shall have such further powers as may be prescribed.

(3) The proceedings before a Conciliator shall be held *in camera* and the proceedings before the Board in public :

Provided that the Board may at any stage direct that any particular witness be examined or its proceeding be held *in camera*.

(4) If a party to an industrial dispute giving any information or producing any document in a conciliation proceeding makes a request in writing to the Conciliator or the Board, as the case may be, that such information or the contents of such document may be treated as confidential, the Conciliator or the Board shall direct that such information or document be treated as confidential :

Provided that the Conciliator or the Board may permit the information or contents of the document in respect of which a request has been made under this sub-section to be disclosed to the other party.

(5) Save as provided in sub-section (4), the Conciliator or any member of the Board or any person present at or concerned in the conciliation proceeding shall not disclose any information or the contents of any document in respect of which a request has been made under sub-section (4) without the consent in writing of the party making the request under the said sub-section.

(6) Nothing in this section shall apply to disclosure of any information or the contents of any document for the purpose of a prosecution under this Act or under any other law for the time being in force.

41. (1) The Provincial Government shall by a general or special order fix a time limit for each stage of the conciliation proceedings provided for under this Chapter :

The limit for stages in conciliation proceedings.

Provided that the total period of time limit fixed for all stages of the conciliation proceedings shall not exceed two months from the date on which the dispute is entered by the Conciliator in the register under section 35 :

Provided further that the Provincial Government may extend the said period of two months by a further period of a fortnight at a time not exceeding, in any case, two months in the aggregate.

(2) Notwithstanding anything contained in sub-section (1), the parties to any industrial dispute may, in any case by mutual agreement, agree to extend the period of time limit fixed for any stage of a conciliation proceeding by any further period and such further period shall be excluded in computing the period of time limit referred to in the said sub-section.

42. The conciliation proceedings shall be deemed to have been completed when a settlement arrived at in such proceedings is registered or if no settlement is arrived at, when the report of the Conciliator or the Board of Conciliation is published by the Provincial Government or when the time limit fixed for the completion of such proceedings under section 41 has expired.

Completion of conciliation proceedings.

## CHAPTER VII.

### ARBITRATION.

43. (1) Any employer and a registered union may, by a written agreement, agree to submit any present or future industrial dispute or any classes of such disputes to arbitration of any person whether such arbitrator is named in such agreement or not. Such agreement shall be called a submission.

Submission.

(2) Any such agreement arrived at before the coming into force of this Chapter between an employer and a union shall also be deemed to be a submission.

(3) Such submission may provide that the dispute shall be referred to arbitration of the Industrial Court.

(4) A copy of every such submission shall be sent to the Registrar who shall register it in the register to be maintained for the purpose and shall publish it in the *Official Gazette*.

Submission when to be revocable.

44. In the absence of an agreement to the contrary, every submission shall be irrevocable :

Provided that the submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party six months' notice in writing :

Provided further that before the expiry of the said period of six months the parties may agree to continue the submission for such further period as may be agreed upon between them.

Proceedings in arbitration.

45. The proceedings in arbitration under this Chapter shall be in accordance with the provisions of Schedule II in the Code of Civil Procedure, 1908, in so far as they are applicable and the powers which are exercisable by a civil court under the said provisions shall be exercisable by the Industrial Court. <sup>V of 1908.</sup>

No conciliation where arbitration is provided.

46. No conciliation proceedings shall be commenced in respect of any dispute if—

(a) the majority of the employees directly affected by such dispute are members of a registered union which is a party to a submission relating to such dispute, or

(b) some of the employees directly affected by such dispute are members of a representative union which is a party to such submission.

Special case to be stated to Industrial Court.

47. The arbitrator may refer any matter in which a decision on any question of law is required to the Industrial Court for its decision. Any award made by the arbitrator shall be in accordance with such decision.

Award by the Arbitrator.

48. The Arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

Dispute to be referred to Industrial Court, if no Arbitrator is appointed, etc.

49. Notwithstanding anything contained in this Chapter if no provision has been made in any submission for the appointment of an Arbitrator or where by reason of the act of parties or any circumstances, the appointment of an Arbitrator or an umpire is not possible, such dispute shall be referred to the arbitration of the Industrial Court.

Notice of award to parties.

50. (1) The arbitrator or the Industrial Court shall give notice of the award made by him or it to the parties and forward a copy of the award to the Registrar and the Labour Officer.

(2) On receipt of such award, the Registrar shall enter it in a register kept for the purpose and shall publish it in the *Official Gazette*.

Date on which the award shall come into operation.

51. The award shall come into operation on the date stated in the award or where no such date is stated therein on the date on which it is registered under section 50.

Completion of arbitration proceedings.

52. The arbitration proceedings shall be deemed to have been completed when the award is published under section 50.

## CHAPTER VIII.

## COURT OF INDUSTRIAL ARBITRATION.

53. It shall be the duty of the Industrial Court—

Duties of  
Industrial  
Court.

(1) to decide appeals from the orders passed by the Registrar under this Act ;

(2) to decide all matters which may be referred to it by the Registrar under section 19 or by an arbitrator under section 47 ;

(3) to decide appeals from the decision of the Commissioner of Labour under section 26 regarding standing orders ;

(4) to decide all applications for review made to it under section 27 ;

(5) to decide industrial disputes referred to it in accordance with submissions registered under section 43 and which provide for such reference to the Industrial Court ;

(6) to decide industrial disputes referred to it under section 49 ;

(7) to decide matters referred to it under section 56 ;

(8) to decide whether a strike or lock-out or a change is illegal under the provisions of this Act ; and

(9) to decide such other matters as may be referred to it under this Act or the rules.

54. If in any proceeding, the Industrial Court finds that the registration of any union or the declaration of any union as a qualified union or as a representative union was obtained under a mistake, misrepresentation or fraud or that such union has contravened any of the provisions of this Act the Industrial Court may direct that the registration of such union or the declaration of such union as a qualified union or as a representative union shall be cancelled.

Cancellation  
of registra-  
tion or  
declaration  
of any  
union as a  
qualified  
or as a  
representa-  
tive union.

55. The Industrial Court may, on the application of any employer or employee concerned or a representative of the employees concerned or the Labour Officer, decide whether any strike or lock-out or any change made is illegal.

Industrial  
Court to  
decide  
whether  
any strike  
or lock-out  
or change  
is illegal.

56. A Civil Court may refer any matter or any issue in any suit or proceeding before it relating to an industrial dispute to the Industrial Court for its decision. Any order passed by the Civil Court in such suit or proceeding shall be in accordance with such decision.

Civil Court  
may refer  
any matter  
relating to an  
industrial  
dispute to  
Industrial  
Court.

Procedure  
before an  
Industrial  
Court.

57. (1) The Industrial Court shall, subject to the provisions of this Act, follow such procedure as may be prescribed.

(2) (i) The Industrial Court shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1908, in respect of the following matters when trying a suit :—

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) compelling the production of documents ;

(c) issuing commissions for the examination of witnesses ;

(d) proof of facts by affidavits.

(ii) The Industrial Court shall have such further powers as may be prescribed.

(3) Every proceeding before the Industrial Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.

(4) The Industrial Court shall have power to direct by whom the whole or any part of costs of any proceeding before it shall be paid :

Provided that no such costs shall be directed to be paid for the services of any legal adviser engaged by any party.

Execution  
of order as  
to costs.

58. An order made by the Industrial Court regarding the costs of a proceeding may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within the local limits of the ordinary civil jurisdiction of the High Court before the Court of Small Causes of Bombay and such court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

The parties  
on whom  
order of  
Industrial  
Court will  
be binding.

59. The order of the Industrial Court shall be binding on—

(a) all parties to the industrial dispute who appeared or were represented before such Court ;

(b) all parties who were summoned to appear as parties to the dispute whether they appeared or not, unless the Industrial Court is of opinion that they were improperly made parties ;

(c) in the case of an employer who is a party to the proceedings before such Court in respect of the undertaking to which the dispute relates, his successors, heirs or assigns in respect of the undertaking to which the dispute relates ; and

(d) in the case of a union which is a party to the proceedings before such Court, all persons who were members of such union on the date of the dispute or who become members of the union thereafter.

V of  
1908.

XLV  
of  
1860.

60. No order passed by the Industrial Court shall be called in question in any civil or criminal court.

The order of Industrial Court not liable to appeal or review.

61. The Provincial Government may direct the Advocate General or any other officer to appear in any proceeding before the Industrial Court by giving notice to such Court and on such notice being given the Advocate General or such officer shall be entitled to appear in such proceeding.

Provincial Government may direct Advocate General or any other Officer to appear in any proceeding before Industrial Court.

## CHAPTER IX.

### ILLEGAL STRIKES AND LOCK-OUTS.

62. (1) A strike shall be illegal if it is commenced or continued— Illegal strikes.

(a) in cases where it relates to any industrial matter mentioned in Schedule I, before the standing orders relating to such matter and submitted to the Commissioner of Labour under section 26 are settled by him or by the Industrial Court, as the case may be, or before the expiry of six months from the date on which such standing orders come into operation under section 26;

(b) without giving notice in accordance with the provisions of section 28;

(c) only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change;

(d) in cases where notice of the change is given in accordance with the provisions of section 28 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 34 is received by the Registrar;

(e) in cases where conciliation proceedings in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings;

(f) in cases where a submission relating to such dispute or such kinds of dispute is registered under section 43, until such submission is lawfully revoked; or

(g) in contravention of the terms of a registered agreement, settlement or award.

(2) In cases where conciliation proceedings in regard to any industrial dispute have been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceedings.



Illegal  
lock-outs.

63. (1) A lock-out shall be illegal if it is declared, commenced or continued—

(a) in cases where it relates to any industrial matter mentioned in Schedule I, before the standing orders relating to such matter and submitted to the Commissioner of Labour under section 26 are settled by him or by the Industrial Court, as the case may be, or before the expiry of one year from the date on which such standing orders come into operation under section 26 ;

(b) without giving notice in accordance with the provisions of section 28 ;

(c) in cases where notice of the change is given in accordance with the provisions of section 28 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 34 is received by the Registrar ;

(d) in cases where conciliation proceedings in regard to the industrial dispute to which the lock-out relates have commenced, before the completion of such proceedings ;

(e) in cases where a submission relating to such dispute or such kinds of dispute is registered under section 43, until such submission is lawfully revoked ; or

(f) in contravention of the terms of a registered agreement, settlement or award.

(2) In cases where conciliation proceedings in regard to any industrial dispute have been completed, a lock-out relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceedings.

## CHAPTER X.

### PENALTIES.

Employer  
not to  
dismiss,  
reduce or  
punish an  
employee.

64. (1) No employer shall dismiss or reduce any employee or punish him in any other manner by reason of the circumstances that the employee—

(a) is an officer or member of a registered union or of a qualified union or of a union which has applied for being registered or declared as a qualified union under this Act ; or

(b) is entitled to the benefit of a registered agreement, submission or award ; or

(c) has appeared or intends to appear as a witness or has given any evidence or intends to give evidence in a proceeding under this Act ; or

(d) is an officer or member of an organisation the object of which is to secure better industrial conditions; or

(e) is an officer or member of an organisation which is not declared unlawful; or

(f) is a representative of employees; or

(g) has gone on or joined a strike which is not illegal under the provisions of this Act.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

(3) The Court trying any offence under this section may direct that out of the fine recovered, such amount as it deems fit shall be paid to the employee concerned as compensation.

65. Any employer who has declared a lock-out which has been held by the Industrial Court to be illegal shall, on conviction, be punishable with fine which may extend to Rs. 2,500 and, in the case of the lock-out being continued after such conviction, with an additional fine which may extend to Rs. 200 for every day during which such lock-out continues after such conviction. Penalty for declaring or commencing an illegal lock-out.

66. Any employee who has gone on strike or who joins a strike which has been held by the Industrial Court to be illegal shall, on conviction, be punishable with fine which may extend to Rs. 25 and in the case of a continuing offence with an additional fine which may extend to Re. 1 per day for every day during which the offence continues after his last conviction for such offence, subject to a maximum of Rs. 50. Penalty for declaring or commencing an illegal strike.

67. If any person instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which has been held to be illegal by the Industrial Court, whether such strike or lock-out has commenced or not, he shall, on conviction, be punishable with imprisonment of either description for a term which may extend to three months, or with fine or with both. Penalty for instigating, etc., illegal strikes and lock-outs.

*Explanation.*—For the purposes of this section, a person who contributes, collects or solicits funds for the purposes of any such strike or lock-out shall be deemed to act in furtherance thereof.

68. If a Conciliator or a member of the Board or any person present at or concerned in any conciliation proceeding wilfully discloses any information or the contents of any document in contravention of this Act he shall, on a complaint made by the party who gave the information or produced the document in such proceeding and on conviction, be punishable with fine which may extend to Rs. 1,000. Penalty for disclosing confidential information.

69. (1) Any employer who makes any illegal change shall, on conviction, be punishable with fine which may extend to Rs. 5,000 and in the case of a continuing offence with an additional fine which may extend to Rs. 200 per day for every day during which the offence continues after his last conviction for such offence. Penalty for illegal changes.

(2) An employer who acts in contravention of a standing order settled under section 26 shall, on conviction, be punishable with fine which may extend to Rs. 100 and in the case of a continuing contravention of such standing order, with an additional fine which may extend to Rs. 25 per day for every day during which such contravention continues after his last conviction for such contravention.

Penalty for obstructing any person from carrying out duties imposed under this Act.

70. Any person who wilfully refuses entry to a Labour Officer to any place which he is entitled to enter under section 25 or who fails to produce any document which he is required to produce, or who fails to comply with any requisition or order issued to him by or under the provisions of this Act shall, on conviction, be punishable with fine which may extend to Rs. 500.

Penalties for offences not provided for elsewhere.

71. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to Rs. 100 and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs. 200.

## CHAPTER XI.

### MISCELLANEOUS.

Modifications in Schedules.

72. The Provincial Government may, by notification in the *Official Gazette*, at any time, make any additions to or alterations in the industrial matters specified in Schedule I or II or may delete therefrom any such matter :

Provided that before making any such addition, alteration or deletion a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby and the Provincial Government shall consider any objection or suggestion that may be received by it from any person with respect thereto.

Illegal changes.

73. (1) No employer shall make any change in any industrial matter in regard to which a standing order has been settled under section 26 or which is mentioned in Schedule II before the agreement referred to in sub-section (1) of section 30 is arrived at or where no such agreement is arrived at before the conciliation proceedings are completed or in cases where there is a registered submission before the arbitration proceedings are completed or in cases where any dispute relating to such industrial matter has been referred to the Industrial Court for its decision before such decision is given.

(2) No employer shall make any such change in contravention of the terms of a registered agreement, a settlement or an award.

(3) Any change made in contravention of the provisions of sub-section (1) or (2) shall be illegal.

74. (1) The Provincial Government may from time to time by notification in the *Official Gazette* recognise any combination of employers as an association of employers for the purposes of this Act or may revoke any such recognition.

Association of  
Employers  
may  
represent  
any of its  
members.

(2) In any proceeding under this Act, an association of employers shall be entitled to represent any employer who is a member of the association.

75. (1) Save with the permission of the authority holding any proceedings under this Act, no employee shall be allowed to appear in such proceedings except through the representative of employees.

Representa-  
tion of  
employees.

(2) Notwithstanding anything contained in sub-section (1), if in any conciliation or arbitration proceedings or in any proceedings before the Industrial Court the majority of employees directly concerned in or affected by such proceedings are members of a qualified union, such qualified union shall also be entitled to appear in such proceedings.

76. (1) A registered agreement, a settlement, a submission or an award shall be binding upon all persons who are parties thereto :

Agreement,  
etc., on whom  
binding.

Provided that—

(a) in the case of an employer, who is a party to such agreement, settlement, submission or award, his successors, heirs or assigns in respect of the undertaking as regards which the agreement, settlement, submission or award is made;

(b) in the case of a union which is a party to such agreement, settlement, submission or award, all persons who were members of such union at the date of such agreement, settlement, submission or award or who become members of the union thereafter,

shall be bound by such agreement, settlement, submission or award.

(2) In cases in which a representative union is a party to any agreement, settlement, submission or award, the Provincial Government may, after giving the parties affected an opportunity of being heard by notification in the *Official Gazette*, direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification :

Provided that before giving a direction under this section the Provincial Government may in such cases as it deems fit, make in the prescribed manner a reference to the Industrial Court for its opinion.

Period for which agreement, etc., to remain in force.

77. (1) A registered agreement, settlement or award shall cease to have effect on the date specified therein or if no such date is specified therein, on the expiry of the period of six months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given by any of the parties thereto to the other party.

(2) Nothing in this section shall prevent the terms of a registered agreement being changed or modified by mutual consent of the parties affected thereby.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a registered agreement provides that it shall remain in force for a period exceeding two years, such agreement may after the expiry of eighteen months from the date of commencement of such agreement be terminated by either party thereto by giving six months' notice.

(4) The party giving notice under sub-section (1) or (3) shall send a copy of it to the Registrar and the Labour Officer of the local area concerned.

Liability of the executive of a union.

78. Where anything is required to be done by any union by or under any provision of this Act, the person authorised in this behalf by the executive of the union or if no person is so authorised every member of the executive of the union shall be bound to do the same and shall be personally liable if default is made in the doing of any such thing.

*Explanation.*—For the purposes of this section, executive of a union means the body by whatever name called to which the management of the affairs of the union is entrusted.

Jurisdiction of Courts.

79. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try an offence under this Act.

Conciliator and Labour Officer to be public servants.

80. A Registrar, an Assistant Registrar, a Conciliator, a Labour Officer, an Arbitrator, a member of the Board, a member of the Industrial Court and its staff shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Persons acting in good faith not to be sued.

81. No suit or proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Provisions of Act VII of 1929 not to be affected.

82. Nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and no conciliation or arbitration proceeding shall be held under this Act relating to any matter or trade dispute which has been referred to and is pending before a Court of Enquiry or Board of Conciliation under the said Act. VII of 1929.

Bom. IX of 1934. 83. The Bombay Trade Disputes Conciliation Act, 1934, shall cease to apply to any area in which the provisions of Chapters II, III, IV, V and VI of this Act have been brought into force. Repeal of Bom. IX 1934.

84. (1) The Provincial Government may make rules to carry out the purposes of this Act. Rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may be made for all or any of the following matters, namely:—

(a) the manner in which an employer or an association of employers may recognise any union under clause (25) of section 3;

(b) the manner in which the representatives of employees are to be elected under sub-clause (iii) of clause (29) of section 3;

(c) the forms of register of registered and representative unions to be maintained under section 6;

(d) the form in which an application may be made under section 7;

(e) the form in which a certificate of registration may be issued under section 8;

(f) the form in which a list of qualified unions is to be maintained under section 11;

(g) the fee to be paid on applications made under section 8, 10 or 11;

(h) the form in which a certificate may be granted to a representative union under section 12;

(i) the time, date and manner of submitting periodical returns under section 15;

(j) the manner in which the total number of employees is to be computed for the purposes of this Act;

(k) the other powers of the Registrar under section 16;

(l) the manner in which the panels representing the interests of employers and employees shall be constituted under section 23;

(m) the manner in which vacancies in the Board of Conciliation shall be filled up under section 23;

(n) the manner in which standing orders may be submitted under section 26;

(o) the form in which notice of change is to be given and the persons to whom copies of such notice are to be sent under section 28;

(p) the other places at which the copy of the intimation shall be affixed under sub-section (3) of section 29 ;

(q) the manner of convening meetings under section 31 ;

(r) the form in which a statement of the case is to be forwarded under section 34 ;

(s) the register in which industrial disputes are to be entered under section 35 ;

(t) the manner of holding conciliation proceedings under section 36 ;

(u) the form in which the memorandum of settlement shall be drawn up and the manner in which it shall be published by the Registrar under section 38 ;

(v) the manner of giving notice under section 39 ;

(w) the procedure to be followed by a Conciliator or the Board and the further powers of the Conciliator or the Board under section 40 ;

(x) the procedure to be followed by the Industrial Court and the further powers of such Industrial Court under section 57.

(3) The Provincial Government may also prescribe a fine not exceeding five hundred rupees for a breach of any such rule.

(4) The rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

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#### SCHEDULE I.

(Section 26.)

1. Classification of employees, e.g., permanent, temporary, apprentices, probationers, badlis, etc.

2. Manner of notification to employees of periods and hours of work, holidays, pay days and wage rates.

3. Shift working.

4. Attendance and late coming.

5. Leave and holidays : Conditions, procedure and authority to grant.

6. Liability to search and entry into premises by certain gates.
7. Temporary stoppages of work and rights and liabilities of employers and employees arising therefrom.
8. Termination of employment. Notice to be given by employer and employee.
9. Suspension or dismissal for misconduct and the acts or omissions which constitute misconduct.
10. Means of redress for employees against unfair treatment or wrongful exaction on the part of the employer or his agent or servant.

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SCHEDULE II.

(Section 28.)

1. Reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed not due to *force majeure*.
2. Demands for permanent or semi-permanent increase in the number of persons employed or to be employed in any department or departments.
3. Dismissal of any employee except in accordance with law or as provided for in the standing orders framed under section 26 of this Act.
4. Introduction of rationalisation or other efficiency systems of work.
5. Starting, alteration or discontinuance of shift working otherwise than in accordance with the standing orders.
6. Withdrawal or granting of recognition to unions of employees.
7. Withdrawal of any customary concession or privilege or change in usage.
8. Introduction of new rules of discipline or alteration of existing rules and their interpretation.
9. Wages and total weekly hours of work.



**THE BOMBAY MEDICAL PRACTITIONERS' ACT 1938.**

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BOMBAY ACT No. XXVI OF 1938.<sup>1</sup>

[THE BOMBAY MEDICAL PRACTITIONERS' ACT, 1938.]

[1st March, 1938]

An Act to regulate the qualifications and to provide for the registration of practitioners of Indian systems of medicine with a view to encourage the study and spread of such systems and to amend the law relating to medical practitioners generally in the Province of Bombay.

WHEREAS it is expedient to regulate the qualifications and to provide for the registration of practitioners of the Indian systems of medicine with a view to encourage the study and spread of such systems and to amend the law relating to medical practitioners generally; It is hereby enacted as follows :—

## PART I.

## PRELIMINARY.

1. (1) This Act shall be called the Bombay Medical Practitioners' Act, 1938. Short title, extent and commencement.

(2) It extends to the whole of the Province of Bombay.

(3) Parts I and II of this Act shall come into force on such date as the Provincial Government may be notification in the Official Gazette appoint. Part III shall come into force in all municipal, cantonment and notified areas in the province on the expiry of two years and in all other areas on the expiry of five years from the date on which Parts I and II come into force in the respective areas.

## PART II.

## INDIAN SYSTEMS OF MEDICINE.

2. In this Part of the Act, unless there is anything inconsistent in Definitions. the subject or context,—

(1) "Board" means the Board of Indian systems of medicine, Bombay, established and constituted under section 3.

<sup>1</sup> For Statement of objects and Reasons, See *Bombay Government Gazette*, 1938, Part V, pp. 273-277 or *Bombay Legislative Assembly Debates*, 1938, Vol. 3, part II, pp. 3145-3148. For Report of the Select Committee, See *Bombay Government Gazette*, 1938, Part V, pp. 512-523 or *Bombay Legislative Assembly Debates*, 1938, Vol. 4, pp. 4552-4561; For Proceedings in Assembly, See *Bombay Legislative Assembly Debates*, 1938, Vol. 3, part II, pp. 1455-1500, 1523-1552, 1577-1583, Vol. 4, *ibid* pp. 32-36, 1450, 3843-3899 and for Proceedings in Council, See *Bombay Legislative Council Debates*, 1938, Vol. 4, pp. 192-195, Vol. 5, *ibid* pp. 252-273 and 275-324 and 344.

(2) "Indian systems of medicine" means the Ayurvedic (including the Siddha) and the Unani Tibbi systems of medicine, whether supplemented or not by such modern advances as the Board may from time to time have determined.

(3) "Inspector" means an Inspector appointed by the Board under section 22.

(4) "Part" means a Part of this Act.

(5) "Practitioner" means a practitioner of the Indian system of medicine.

(6) "President" means the President of the Board.

(7) "Qualifying Examination" means the examination held for the purpose of granting a diploma conferring the right of registration under this Act.

(8) "Register" means the Register of practitioners maintained under section 15.

(9) "Registered practitioner" means a practitioner whose name is for the time being entered in the Register.

(10) "Registrar" means the Registrar appointed under section 14.

(11) "Regulations" means regulations made under section 30.

(12) "Rules" means rules made under section 29.

Establishment, constitution and incorporation of the Board.

3. (1) Subject to the provisions of section 31, the Provincial Government shall be notification in the Official Gazette establish a Board to be called "the Board of Indian Systems of Medicine, Bombay", for the purpose of carrying out the provisions of this Part. Such Board shall be a body corporate and have perpetual succession and a common seal and may by the said name sue and be sued.

(2) The Board shall consist of thirteen members, who shall be appointed in the following manner, namely :—

(i) A President elected by the members of the Board from amongst themselves.

(ii) Six members nominated by the Provincial Government, out of whom —

(a) one shall be a person residing in this Province and connected with an institution established for the purpose of giving instruction in the Ayurvedic (including Siddha) system of medicine; and

(b) one shall be a person residing in this Province and connected with an institution established for the purpose of giving instruction in the Unani Tibbi System.

(iii) Seven members elected by the registered practitioners from amongst themselves :

Provided that for the first and second terms of the Board the President shall be a person nominated by the Provincial Government and the number of members elected by the registered practitioners shall be six.

(3) The seats of members elected under clause (iii) of sub-section (2) shall be so divided amongst the Ayurvedic and Unani registered practitioners as to be in the proportion of their numbers on the Register on the date of the election :

Provided that in determining the said proportion a fraction of one-half and less shall be neglected and a fraction of more than one-half shall be counted as one :

Provided further that the number of members representing registered practitioners of either system shall not at any time be less than two.

(4) Notwithstanding anything contained in sub-section (3), in the case of the first constitution of the Board, the Provincial Government shall nominate the Ayurvedic and Unani practitioners in such proportion as they may deem fit from among the practitioners who may be eligible to be entered in the Register and such members shall be deemed to have been duly elected under clause (iii) of sub-section (2).

*Explanation.*—The term of a Board shall mean the period for which the members are entitled to hold office under section 6.

4. If any of the members is not elected under clause (iii) of sub-section (2) of section 3, the Provincial Government may, notwithstanding anything contained in sub-section (2) of the said section, nominate such registered practitioners as they deem fit and the practitioners so nominated shall for the purposes of this Part be deemed to have been duly elected under clause (iii) of sub-section (2) of section 3. Nominat on of members in default of election.

5. The election of practitioners entitled to be the members of the Board under clause (iii) of sub-section (2) of section 3, shall be held at such time and place and in such manner as may be prescribed by rules. Election of members.

6. (1) Save as otherwise provided by this Part, the term of office of elected and nominated members shall be for a period of five years commencing from the date on which the first meeting of the Board is held after the members are elected under sub-section (2) of section 3 : Term of office.

Provided that the term of office of members appointed to the Board constituted immediately after this Part comes into force shall be for a period of three years from the date on which the first meeting of such Board is held.

(2) An outgoing member shall continue in office until the election or nomination of his successor as the case may be.

(3) The outgoing member shall be eligible for renomination or re-election.

**Vacancies.**

7. If a vacancy occurs in the office of a member of the Board through death, resignation, removal or disability of such member or otherwise, previous to the expiry of the period of his office, the vacancy shall be filled in the manner prescribed by rules. Any person nominated or elected to fill the vacancy shall, notwithstanding anything contained in section 6, hold office only so long as the member in whose place he is nominated or elected would have held office if the vacancy had not occurred.

**Resignation of a member.**

8. Any member may at any time resign his office by letter addressed to the President. Such resignation shall take effect from the date on which it is received by the President.

**Disabilities for continuing as member.**

9. If any member, during the period for which he has been nominated or elected,—

(a) absents himself without such reasons as may in the opinion of the Board, be sufficient, from three consecutive ordinary meetings of the Board, or

(b) becomes subject to any of the disqualifications mentioned in section 10,

the Board shall declare his office to be vacant.

**Disqualifications.**

10. No person shall stand as a candidate for election as a member of the Board or shall be a member of the Board—

(a) who is an undischarged insolvent,

(b) who has been adjudicated by a competent Court to be of unsound mind, or

(c) whose name has been removed from the Register.

**Validity of proceedings.**

11. No disqualification of or defect in the election or nomination of any person acting as a member of the Board or as the President or presiding authority of a meeting shall be deemed to vitiate any act or proceeding of the Board, in which such person has taken part.

**Time and place of meeting of Board.**

12. The Board shall meet at such time and place and every meeting of the Board shall be summoned in such manner as may be prescribed by regulations :

Provided that until such regulations are made, it shall be lawful for the President to summon a meeting of the Board at such time and place as he may deem expedient by letter addressed to each member.

**Procedure at meetings of Board.**

13. (1) The President shall preside at every meeting of the Board. In the absence of the President the members present shall elect one of them to preside.

(2) All questions at a meeting of the Board shall be decided by the votes of the majority of the members present at the meeting. Eight members shall form a quorum. No quorum shall be necessary for a meeting adjourned for want of a quorum.

(3) At every meeting of the Board, the President for the time being shall, in addition to his vote as a member of the Board, have a second or casting vote in case of an equality of votes.

14. (1) The Board shall, with the previous approval of Government, Registrar. appoint a Registrar. The Registrar shall receive such salary and allowances as may be prescribed by rules. The Board may from time to time grant him leave and may appoint a person to act in his place. Any person duly appointed to act as Registrar shall be deemed to be the Registrar for all the purposes of this Act.

(2) Any order of the Board appointing, punishing or removing a Registrar from office shall not be passed without the previous approval of the Provincial Government.

(3) The Board may appoint such other officers and servants as may be necessary for the purposes of this Act :

Provided that the number and designations of such officers and servants, their salaries and allowances shall be subject to the previous approval of the Provincial Government.

(4) The Registrar and any other officer or servant appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

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15. (1) Subject to the provisions of this Part and subject to any general or special orders of the Board, it shall be the duty of the Registrar <sup>Duties of Registrar.</sup> to keep the Register.

(2) The Register shall be in such form as may be prescribed by rules. The Register shall be divided into two parts :—

(i) that containing the names of practitioners qualified to practice The Ayurvedic system ; and

(ii) that containing the names of practitioners qualified to practise the Unani system.

The Register shall contain the names, residence and qualifications of every practitioner registered together with the date on which such qualification was acquired.

(3) The Registrar shall keep the Register correct as far as possible and may from time to time enter therein any material alteration in the address or qualifications of the practitioners. The names of registered practitioners who die or whose names are directed to be removed from the Register under sub-section (3) of section 16 shall be removed from the Register.

(4) The Provincial Government may direct that any alteration in the entries as respects additional qualification shall not be made unless on payment of such fee as may be prescribed by rules.

(5) For the purpose of this section the Registrar may write by registered post to any registered practitioner at the address which is entered in the Register to inquire whether he has ceased to practise or has changed his residence and if no answer is received to the said letter within six months, the Registrar may remove the name of the said practitioner from the Register :

Provided that the Board may, if it is satisfied that the said practitioner has not ceased to practise, on the application of the said practitioner, direct that his name be re-entered in the Register.

Registration. **16.** (1) Every person who passes a qualifying examination shall on payment of a fee of Rs. 10 be entitled to have his name entered in the Register.

(2) Notwithstanding anything contained in sub-section (1), every person who, within the period of two years from the date on which this Part comes into force, proves to the satisfaction of the Registrar that he has been in regular practice as a practitioner for a period of not less than ten years preceding the date on which he makes the application for being registered as a practitioner under this Part shall be entitled to have his name entered in the Register on payment of a fee of Rs. 10 :

Provided that every person who has not been in practice as a practitioner for a period of ten years preceding the aforesaid date but has worked as an apprentice under a practitioner or has received training in an institution or has passed an examination shall, if such apprenticeship or training or examination is, in the opinion of the Board, sufficient to qualify him to practise as a practitioner, be entitled to have his name entered in the Register on payment of a fee of Rs. 10.

(3) The Board may direct that the name of any practitioner who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1898, which discloses such defect of moral character as is, in the opinion of the Board, sufficient to make him unfit to practise his profession or who, after due inquiry, has been found guilty of conduct, which is in the opinion of the Board infamous in any professional respect, shall be removed from the Register. The Board may, on sufficient cause being shown, also direct that the name of the practitioner so removed shall be re-entered in the Register. V of 1898.

Appeal to Board from the decision of Registrar. **17.** (1) Any person aggrieved by the decision of the Registrar regarding the registration of any person or any entry in the Register may appeal to the Board.

(2) Such appeal shall be filed and shall be heard and decided by the Board in the manner prescribed by the rules.

(3) The Board may on its own motion or on the application of any person, after due and proper enquiries and after giving an opportunity to the person concerned of being heard, cancel or alter any entry in the Register, if, in the opinion of the Board, such entry was fraudulently or incorrectly made.



18. (a) The Registrar shall also prepare and keep a list called "a list of persons in practice on the 10th March 1938".

Maintenance of list of persons in practice on 10th March 1938.

Bom. VI of 1912. (b) Every person not being a person qualified for registration under this Act or under the Bombay Medical Act, 1912, who, within a period of two years from the date from which this Part comes into force, proves to the satisfaction of the Registrar that he has been in regular practice in this province, on the 10th March 1938, of any system of medicine or surgery or midwifery or any of their branches shall be entitled to have his name entered in the aforesaid list on payment of Rs. 10 :

Bom. VI of 1912. Provided, however, that any person whose name has been removed from the Register kept under the Bombay Medical Act, 1912, or the Register kept under an Act of a Provincial Legislature in British India or from the register of any country where he was formerly practising, for infamous conduct in a professional respect, shall not be entitled to have his name entered in the list.

(c) The provisions of sub-sections (3) and (5) of section 15, sub-section (3) of section 16, and section 17 shall *mutatis mutandis* apply to this list.

19. Notwithstanding anything in any law for the time being in force—

Qualified practitioners' certificates.

(1) The expression "legally qualified medical practitioner" or "duly qualified medical practitioner" or any word importing a person recognised by law as a medical practitioner or member of medical profession shall in all Acts of Legislature in the Province of Bombay and in all Acts of the Central Legislature (in their application to the Province of Bombay) in so far as such Acts relate to any of the matters specified in List II or List III in the Seventh Schedule to the Government of India Act, 1935, include a registered practitioner.

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(2) A certificate required by any Act from any medical practitioner or medical officer shall be valid, if such certificate has been signed by a registered practitioner.

(3) A registered practitioner shall be eligible to hold any appointment as a Physician, Surgeon or other medical officer in any Ayurvedic or Unani dispensary, hospital, infirmary or lying-in-hospital supported by or receiving a grant from the Provincial Government and treating patients according to the Indian systems of medicine or in any public establishment, body or institution dealing with such systems of medicine.

20. Every Registrar of Deaths on receiving notice of the death of a registered practitioner shall forthwith transmit by post to the Registrar a certificate under his own hand of such death with the particulars of time and place of death and may charge the cost of such certificates and transmission as an expense of his office.

Notice of death.

Examination  
before regis-  
tration.

21. Notwithstanding anything contained in section 16 on and after the expiry of two years from the date from which this Act comes into force a person shall not be entered in the Register as a registered practitioner, unless he has passed a qualifying examination.

Qualifying  
examination.

22. (1) The Board shall by regulations prescribe the course of training and qualifying examinations including the course of training and examinations prior to qualifying examinations. Such regulations shall provide that instruction and examinations shall, as far as possible, be given or held in any of the Indian languages spoken in the Province.

(2) A qualifying examination shall be an examination in the Indian systems of medicine including the subjects of medicine, surgery and midwifery held for the purpose of granting a diploma conferring the right of registration under this Part, by any of the institutions which on the recommendation of the Board may be specified by the Provincial Government by a notification in the *Official Gazette* as being authorised to hold a qualifying examination.

(3) It shall be the duty of the Board to secure the maintenance of an adequate standard of proficiency for the practice of the Indian systems of medicine including the subjects of medicine, surgery and midwifery. For the purpose of securing such standard, the Board shall have authority to call on the governing body or authorities of any institution giving instruction in the Indian systems of medicine and on any examining body authorised by or desirous of being authorised under sub-section (2)—

(a) to furnish such particulars as the Board shall require of any course of study prescribed by regulations or examination held by such body or authority or in such school or college with reference to the grant of any qualification; and

(b) to permit Inspectors appointed by the Board from among the Registered practitioners in this behalf to attend and be present at all or any of the qualifying or prior examinations.

(4) The Inspectors shall not interfere with the conduct of any examination, but it shall be their duty to report to the Board their opinion as to the sufficiency or insufficiency of every examination which they attend and any other matters in relation to such examinations on which the Board may require them to report.

(5) Every qualifying examination and every prior examination leading up to it held by the bodies or institutions authorised under this section shall be inspected by the Inspectors at least once in three years and more frequently if the Board so directs.

(6) The Board shall forward a copy of every such report to the body which held the examination in respect of which the said report was made and shall also forward a copy of such report, together with any observations thereon made by the said body, to the Provincial Government.

(7) An Inspector shall receive such remuneration to be paid as part of the expenses of the Board, as the Board, with the previous sanction of the Provincial Government, may determine.

23. If it shall appear to the Provincial Government on the report of the Board that the course of study and examinations prescribed by any of the institutions specified in the notification under section 22 are not such as to secure the maintenance of an adequate standard of proficiency for the practice of the Indian systems of medicine including the subject of medicine, surgery or midwifery, as the case may be, it shall be lawful for the Provincial Government from time to time by notification in the *Official Gazette* to direct that the said institution shall be removed from the said notification and shall not be authorised to hold a qualifying examination:

Removal of institutions authorised to hold qualifying examinations.

Provided that before any direction for the removal of an institution from the said notification is made under this section, the Board shall require the institution to take steps within such time as it thinks fit to provide that the course of study and examinations prescribed by the institution are of an adequate standard.

24. Notwithstanding anything in any other law for the time being in force, every registered practitioner shall be exempt, if he so desires, from serving on any inquest or as a juror or assessor under the Code of Criminal Procedure, 1898.

Exemption from serving on inquests.

V of 1898.

25. There shall be paid to the members of the Board such fees and allowances for attendance and such reasonable travelling allowances as shall from time to time be prescribed by rules.

Fees payable to members of Board.

26. All moneys received by the Board as fees under this Part shall be applied for the purposes of this Part in accordance with the rules.

Fees received by Board.

27. (1) The Registrar shall in every year, on or before a date to be fixed by the Board, cause to be printed and published a correct list of the names and qualifications of all practitioners for the time being entered in the Register and the dates when such qualifications were acquired.

Annual List of practitioners.

(2) In any proceeding it shall be presumed that every person entered in such list is a registered practitioner and that any person not so entered is not a registered practitioner.

28. Whosoever voluntarily and falsely assumes or uses any title or description or any addition to his name implying that he holds a degree, diploma, licence, or certificate, conferred, granted or issued by any of the institutions specified in the notification under section 22 or that he is qualified to practise the Indian systems of medicine or that he is a registered practitioner shall, on conviction, be punishable with fine which may extend to Rs. 250 for the first offence under this section and to fine which may extend to Rs. 500 for every subsequent offence.

False assumption of degree or diploma to be an offence.

## Rules.

29. (1) The Provincial Government may, after previous publication, make rules to carry out all or any of the purposes of this Part.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules for any of the following matters :—

(a) The time at which and the place and manner in which election shall be held under section 5.

(b) The manner in which vacancies shall be filled under section 7.

(c) The manner in which the meetings of the Board shall be convened and held.

(d) The salary, allowances and other conditions of service of the Registrar under section 14.

(e) The form of the Register and the particulars to be entered therein under section 15.

(f) Fees chargeable for the alteration of entries in the Register.

(g) The manner in which appeals against the decision of the Registrar shall be heard by the Board under section 17.

(h) The application of fees.

(i) Fees and other allowances payable to members of the Board under section 25.

(j) The furtherance of any of the objects of the Board.

## Regulations.

30. (1) The Board may, with the previous sanction of the Provincial Government make regulations not inconsistent with this Part or the rules for any of the following matters, namely :—

(a) The time and place at which the Board shall hold its meetings under section 12.

(b) The salary, allowances and other conditions of service of officers and servants of the Board other than the Registrar, under section 14.

(c) The course of study for training and qualifying examinations.

(d) The language, in which the examinations shall be conducted and instruction shall be given.

(e) The admission of students to the bodies or institutions authorised under section 22.

(f) The conditions under which students shall be admitted to the degrees, diploma, licence or certificate course and to the qualifying and prior examinations.

(g) The conditions of appointment of examiners and the conduct of examinations.

(h) All other matters which may be necessary for the purposes of carrying out the objects of this Part.

(2) All regulations shall be published in the *Official Gazette*.

(3) The Provincial Government may by notification in the *Official Gazette* cancel any regulation :

Provided that in submitting regulations under clauses (c) to (g) for sanction of the Provincial Government under this section, the Board shall send a copy of its proceedings relating to the passing of such regulations and shall state the number of its members representing either system of Indian medicine who have voted for or against such regulations or not voted in respect of such regulations :

Provided further that in sanctioning the said regulations due consideration shall be given to the opinion of the members of either system of Indian medicine as expressed in the said proceedings.

31. If at any time it shall appear to the Provincial Government that the Board has failed to exercise or has exceeded or abused any of the powers conferred upon it by or under this Part or has failed to perform any of the duties conferred upon it by or under this Part, the Provincial Government may, if it considers such failure, excess or abuse to be of a serious character, notify the particulars thereof to the Board, and if the Board fails to remedy such default, excess or abuse, within such time as the Provincial Government may fix on this behalf, the Provincial Government may dissolve the Board and cause all or any of the powers and duties of the Board to be exercised and performed by such person and for such period not exceeding two years as it may think fit.

Control of  
Provincial  
Government.

### PART III.

#### MEDICAL PRACTITIONERS GENERALLY.

32. No person other than (i) a practitioner registered under Part II of this Act or (ii) a medical practitioner registered under the Bombay Medical Act, 1912, or (iii) a person whose name is entered in the list mentioned in section 18 shall practise or hold himself out, whether directly or by implication, as practising for personal gain any system of medicine, surgery or midwifery :

Medical  
practitioners  
not registered  
under this  
Act or under  
Bom. VI of  
1912 not to  
practise, etc.

Provided that the Provincial Government may, by notification in the *Official Gazette*, direct that the provisions of this section shall not apply to any class of persons or in any specified area.

33. Notwithstanding anything in any law for the time being in force, no person other than a practitioner registered under Part II of this Act or a medical practitioner registered under the Bombay Medical Act, 1912,—

Medical  
practitioner  
not registered  
under this  
Act or under  
Bom. VI of  
1912 not to  
sign birth or  
death  
certificate,  
etc.

(a) shall sign or authenticate a birth or death certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner ; -

(b) shall sign or authenticate a medical or physical fitness certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner; or

(c) shall be qualified to give evidence at any inquest or in any Court of law as an expert under section 45 of the Indian Evidence Act, 1872, I of 1872. on any matter relating to medicine, surgery or midwifery.

Penalty.

34. Any person who acts in contravention of the provisions of section 32 shall, on conviction, be punishable with fine which may extend to Rs. 100 for the first offence and to Rs. 500 for every subsequent offence after his conviction for such first offence.

Conferring, granting or issuing colourable imitations of degrees, diplomas or licences to be an offence.

35. (1) No person other than a body or institution authorised under section 22 of this Act or under the Indian Medical Degrees Act, 1916, or under the Bombay Medical Act, 1912, shall confer, grant or issue or hold himself out as entitled to confer, grant or issue any degree, diploma or licence which is identical with or is a colourable imitation of any degree, diploma or licence granted by a body or institution authorised under this Act or under the Indian Medical Degrees Act, 1916, or under the Bombay Medical Act, 1912, as the case may be. VII of 1916. Bom. VI of 1912. VII of 1916. Bom. VI of 1912.

(2) Whoever contravenes the provisions of this section shall, on conviction, be punishable with fine which may extend to Rs. 1,000 and if the person so contravening is an association every member of such association who knowingly or wilfully authorises or permits the contravention shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

Saving.

36. Nothing in sections 32 and 34 shall apply to any person—

(a) who limits his practice to the art of dentistry, or

(b) who being a nurse, midwife or health visitor registered under the Bombay Nurses, Midwives and Health Visitors Registration Act, 1935, or a Dai attends on a case of labour, or Bom. VII of 1935.

(c) who is entitled to registration under section 16 (1) of this Act or section 7 of the Bombay Medical Act, 1912, or Bom. VI of 1912.

(d) who is a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, or a British subject domiciled in Burma who, by virtue of a medical diploma granted to him in Burma or the United Kingdom is, or is entitled to be registered in the United Kingdom as a qualified medical practitioner; or

(e) who practises homœopathy, provided that such person—

(i) has undergone a course of training in homœopathy for such period and in such institutions as may be prescribed by the Provincial Government and has passed an examination as may be prescribed by the Provincial Government; and

(ii) does not hold a degree, diploma or licence which is a colourable imitation of a degree, diploma or licence entitling any person to practise Western medical science under the Indian Medical Degrees Act, 1916, or any Indian system of medicine under this Act. VII of 1916.

37. Notwithstanding anything contained in this Part, a person may practise medicine in any rural area—

Liberty to practise in rural areas.

Bom.  
VI of  
1912.

(i) if he has commenced practice in any village in the said area prior to a date on which a practitioner registered under Part II of this Act or under the Bombay Medical Act, 1912, has commenced and is in regular practice of medicine in the said village, and

(ii) so long as he continues to practise in the said village as his principal place of practice.

*Explanation.*—For the purposes of this section, “rural area” means an area which is not within the limit of a municipality, cantonment or notified area committee.

38. (1) No Court other than the Court of a Presidency Magistrate or of a Magistrate of the First Class shall take cognizance of or try an offence under this Act.

Court competent to try offences under this Act and cognizance of offences.

(2) No Court shall take cognizance of any offence under this Act except on a complaint in writing of an officer empowered by the Provincial Government in this behalf.

39. No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act, rules or regulations.

Indemnity to persons acting under the Act.