

THE
FEDERAL COURT OF INDIA
(A CONSTITUTIONAL STUDY)

BY

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HALL OF LAW RESEARCH,
'KALYAN LLELA', MADURA;
S. INDIA.

PUBLISHED IN 1936

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Printers.
HARISAMAYA DIVAKAFAM PRESS.
MADURA.

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TO
THE MEMORY OF
JOHN MARSHALL,
WORLD'S GREATEST FEDERAL JUDGE.

" SOCIETY, IF I MAY SO PHRASE IT, IS FEDERAL IN ITS NATURE. AND
THE AUTHORITY, ACCORDINGLY, THAT IS TO COORDINATE
ITS ACTIVITIES MUST CORRESPOND IN STRUCTURE
TO THAT FEDERAL NATURE."

-H. J. LASKI.

AUTHOR'S NOTE

Constitutions when written do not breathe. They get life only when human elements gather and work them. A new shape they assume, a new garb clothes them. Imperceptible they move, invisible they influence, and unseen they control. Their force is seen all over yet none *feels* it, their majesty enforces submission but none looks at the figure which makes the demand. With a form still formless, seen yet unseen, felt yet not feeling, it is a creation of the human hand, and the ingenuity of the human intellect made and fostered to control both. Every evasion of a constitutional principle gives birth to a new constitutional guarantee, and every attempt at loosening the ties of the machinery leads to additional provisions of constitutional safeguards. It is the brain that makes, that undoes and again provides against any further undoing.

Human emotions develop attachments to place, policy and principles. A feeling of one's own is the first impulse of a child. To appreciate 'one's own' is the next step and to estimate it as the best, completes the picture of human pride. From 'individual pride' to 'national pride' it is not a long march; it is only putting the idea in a group-term, it is the expression of the collective mentality of the citizens of a place or a country.

National pride implies national consciousness, born of a sentiment among people who are bound by circumstances similar, customs uniform and outlook resembling closely and not divergent. To be controlled or ruled by such similar individuals, rather than by others differing in everything is the anxious instinct of all creations, more so among human beings. This little anxiety develops into a sentiment, a conviction and when sedulously fostered, into a hatred of anything, not national.

To live in unity among diversity, to form a Nation without sacrificing nationalities and to have a central force maintaining inde-

pendence at the circumference is a later evolution in constitutional outlook. It was a wonder and it is a wonder still, to many.

Difficulties in conceptions are but the index of problems in actual exercise of the ideas. Demarcation of powers, enforcing them, finding solutions in cases of hitch have to be faced in an attempt to coalesce the State and National ideals. An arrangement to get on together with the least friction is a Federal Constitution. But, still in the working of it, wrong understanding of powers, an over-statement of the case, difficulties of minorities or weaklings may crop up and these shall have to be decided impartially.

This impetus to be equitable and judicial, this ideal to do justice to the component parts of a Federal Constitution impartially and rigorously, is responsible for the political expedient of a Federal Court.

The New Reforms have incorporated this as a natural auxiliary to its Federal Political Structure and have given it a statutory basis in the Constitution. The Indian Federal Court is a great improvement, on other models, with greater possibilities of stability, fearlessness and stern impartiality, and is likely to remain unaffected by the ebb and flow of party politics and besetting prejudices.

Attempt has been made in this book to study more the constitutional position of the Court, though the necessary aspects of case-law as relating to the former have not been forgotten. Federation in its modern (Western) form is an experiment and the Federal Court in India is distinctly of an alien origin, an experiment within an experiment called upon to determine the difficulties in running the latter. 'Federal India' will present new and unprecedented problems, as 'Federal India' itself is a deliberate challenge to the accepted notions of political constitutions, so far.

In writing this book, I have had the invaluable help of eminent constitutional thinkers and writers and I have gratefully

acknowledged my debt to them in appropriate places. They have been of great guidance to me and my debt to them will have to remain for ever undischarged. Classic constitutionalists make the world richer and their credit-side enhances as every subsequent writer draws on their intelligence or their productions. It is a consolation that this humble attempt goes to immortalise further the world's debt to a few of its greatest men.

College friendship and colleague's solicitude have been the cause for several suggestions from Mr. S. Padmanaba Chariar B. A, B. L., Advocate and Additional Public Prosecutor of Ramnad, Madura. Mr. K. Somasundaram (Cert. Libr.), Librarian, the Madura College, Madura bore with me the brunt of the work, pleasantly and cheerfully. Mr. A. G. Solomon M. A., (Cert. Libr.,) Librarian, American College, and the whole Library Staff of the Victoria Edward Hall, Madura have assisted me considerably. I cannot forget the services rendered by the staff of the Madura Co-operative Urban Bank Ltd., Madura and my own devoted clerks.

The pressmen have been punctual and kind to me. The manager of the H. S. D. Press, Mr. Ramanuja Alwar spared no pains in this enterprise of mine.

I tender my heartfelt thanks to all.

G. S. Sundar.

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APPENDIX A

SECTIONS RELATING TO FEDERAL COURTS

- Section 6.
Accession
of Indian
States.**
- (1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—
- (a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and
 - (b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession:

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act:

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

(1) The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation.

Section 16. Advocate-General for Federation.

(2) It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

The following expenditure shall be expenditure charged on the revenues of the Federation—

Section 33(3). Salaries, etc. of the Advocate-General and the Federal Judges.

(c) the salaries and allowances ...of the advocate-general, etc.

- (d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

(1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the

Section 40. Restrictions on discussion in the legislature.

discharge of his duties.

In this subsection the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

Provisions In Case Of Failure Of Constitutional Machinery

(1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

Section 45. Power of Governor-General to issue Proclamations.

(b) assume to himself, all or any of the powers vested in or exercisable by any Federal body or authority, and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation,

including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority:

Provided that nothing in this subsection shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months;

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation

shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal Laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

(1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties.

Section 86. Restrictions on Discussion in Provincial legislature.

In this subsection the reference to a High Court shall be construed as including a reference to a court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

Distribution of Powers

(1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

Section 99.
Extent of Federal
and Provincial laws.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of India; or

(b) to British subjects who are domiciled in any part of India wherever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(d) in case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and the persons attached to, employed with or following, that force, wherever they may be.

(1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List").

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

(3) Subject to the two preceding subsections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

(1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous

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

consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

(1) If any provision of a Provincial law is in repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

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

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved

for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with the respect to the same matter:

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

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

(1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

Section 124. Power of Federation to confer powers, etc. on Provinces and States in certain cases.

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer

powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

(1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercis-

Section 127. Acquisition of land for Federal purposes.

Section 128. Duty of Ruler of a State as respects Federal subjects.

able in the State by virtue of a law of the Federal Legislature which applies therein.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding subsection, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit :

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for the determination by that Court in the exercise of its original jurisdiction under this Act.

Decision of Complaints Re: Water Supplies

(1) If the Governor-General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

Section 131. Federal Courts to assist Commissions appointed. Orders to be executed as if they were only of Courts.

(2) A commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the Court.

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper :

Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected, to any order made under this section by His Majesty

in Council or the Governor-General, and any Act of Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as hereinafter provided the Governor-General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to and report from, a Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section :

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs, to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Notwithstanding anything in this Act, neither the Federal Court nor any other Court shall have jurisdiction to entertain any action or suit in

Sec. 133. Jurisdiction by Court excluded.

respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of Province, the Ruler of a State, or the Governor-General.

(1) It shall be the duty of the Authority and every

Sec. 193. Objections of Railway Authority and Federated States to afford mutual traffic facilities and to avoid unfair discrimination etc.

Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including the receiving, forwarding, and delivering of through traffic at through rates, and as to secure that there shall be between one railway system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition.

(2) Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding subsection have not been complied with shall be made to and determined by the Railway Tribunal.

If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic or maximum or minimum rates and fares or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

(1) The Governor-General acting in his discretion shall make rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe of any proposal for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

(2) The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal railway or a State railway as the case may be and, if an objection so lodged is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal.

(3) This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.

(1) There shall be a Tribunal (in this Act referred to as "the Railway Tribunal") consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

Section 196.
Railway Tribunal.

(2) The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period:

Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of

compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of Law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

(6) The President of the Railway Tribunal may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it.

(7) Subject to the provisions of this section relating to appeals to the Federal Court, no Court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction,

(8) There shall be paid out of the revenues of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the Tribunal shall form part of those revenues.

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

If and in so far as His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federated State, the Authority shall undertake the performance of those functions.

Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian Railway Companies shall be exercised by the Governor-General in his discretion after consultation with the Authority.

The Federal Court

(1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase

**Section 200. Estab-
lishment and consti-
tution of Federal
Court.**

in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years:

Provided that—

- (a) a judge may by resignation under his hand addressed to the Governor-General resign his office:
- (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought, on any such ground, to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

- (a) has been for at least five years a judge of a High Court in British India or in a Federated State; or
- (b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or
- (c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession.

Provided that—

- (i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a Barrister, a member of the Faculty of Advocates or a pleader; and
- (ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this subsection to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Section 201. Salaries etc., of Judges.

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question whether of law or fact on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to:-

- (a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the Legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British

Section 205. Appellate jurisdiction of Federal Court in appeals from High Courts in British India.

India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly,

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

(1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

Section 206. Power of Federal Legislature to enlarge appellate jurisdiction.

(a) the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

Section 207. Appellate jurisdiction of Federal Court in appeals from High Courts in Federated States.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

An appeal may be brought to His Majesty in Council from a decision of the

Section 208. Appeals to His Majesty in Council. Federal Court—

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

(1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to

Section 209. Form of Judgment on appeal. the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court.

(2) Where the Federal Court upon any appeal makes any order as to the cost of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of

execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

(1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court,

Section 210. Enforcement of decrees and orders of Federal Court and orders as to discovery &c.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or in the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section:—

(a) shall apply to any such order with respect to costs as is mentioned in subsection (2) of the last preceding section; or

(b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

Section 211. Letters of request to Federated States.

The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by all courts in British India, and so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

Section 212. Law declared by Federal Court and Privy Council to be binding on all Courts.

(1) If at any time it appears to the Governor General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that Court for consideration, and the court may, after such hearing as they think fit, report to the Governor General thereon.

Section 213. Power of Governor General to consult Federal Court.

(2) No report shall be made under this section save in accordance with an opinion delivered in open Court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

(1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make rules of Court for regulating generally the practice and procedure of the Court, including rules as to the persons practising before the Court, as to the time within which appeals to the Court are to be entered, as to the costs of and incidental to any proceedings in the Court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges:

Provided that, if the Federal Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of this Court, the rules shall provide for the constitution of a special division of the Court for the purpose of deciding all cases which would have been within the jurisdiction of the Court even if its jurisdiction had not been so enlarged,

(3) Subject to the provisions of any rules of Court, the Chief Justice of India shall determine what judges are to

constitute any division of the Court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Federal Court save in open Court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English Language.

Section 215. Ancillary powers of Federal Court.

The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Act,

Section 216. Expenses of Federal Court.

(1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the revenues of the Federation, any fees or other moneys taken by the Court shall form part of those revenues.

(2) The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

References in any provision of this part of this Act to a High Court in a Federated State shall be construed as references to any Court which His Majesty may, after communication with the Ruler of the State declare to be a High Court for the purposes of that provision.

Section 217. Construction of references to High Courts in States.

Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave,

Section 218. Savings.

(1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this subsection should apply, and references in this Act to a Federated State shall not be construed as including references to any such area:

Section 294. Foreign Jurisdiction.

Provided that—

(a) a declaration shall not be made under this subsection with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice

has been given to him of His Majesty's intention to make that declaration;

(b) if His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State.

Nothing in this subsection applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with the railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the State, exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a Court or an authority exercising the power or jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted;

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of five years from the date when the accession of the State becomes effective.

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction Act, 1890, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order:

Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power of jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of Courts or adminis-

trative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction of functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on Courts or administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890, the expression "a British Court in a foreign country" shall, in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what Courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

(8) Nothing in this section affects the provisions of this Act with respect to Berar.



(1) Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by

Section 318. Provisions as to Federal Court and certain other Federal Authorities.

those names, and shall perform in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established.

(2) Nothing in this section affects any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act for the coming into operation, either generally or for particular purposes, of any of the provisions of this Act relating to the Federal Court, the Federal Public Service Commission or the Federal Railway Authority.

Seventh Schedule of the Act.

LEGISLATIVE LISTS.

List I.

Federal Legislative List.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-Government in cantonment areas (not being cantonment

areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal Meteorological Organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British Subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways: the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The Law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdictions of members of a police force belonging to any part of British

India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purpose of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II

Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all Courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before committees of the Provincial Legislature.

13. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolutions of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.
27. Trade and commerce within the Province, market and fairs; money lending and money lenders.
28. Inns and innkeepers.
29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.
30. Adulteration of foodstuffs and other goods; weights and measures.
31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.
32. Relief of the poor; unemployment.
33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
34. Charities and charitable institutions; charitable and religious endowments.
35. Theatres, dramatic performances and cinemas; but not including the sanction of cinematograph films for exhibition.
36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collections of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

- (c) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol or any substance included in subparagraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation Taxes.

46. Taxes on professions, trades, callings and employments.
47. Taxes on animals and boats.
48. Taxes on the sale of goods and on advertisements.
49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
52. Dues on passengers and goods carried on inland water-ways.
53. Tolls.
54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III

Concurrent Legislative List

PART I

1. Criminal Law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrator-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any court.

PART II

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards—mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

APPENDIX B

Draft Instrument of Accession

(This form will require adaptation to certain States with limited powers).

Whereas proposals for the establishment of an Indian Federation, comprising such Indian States as may accede thereto and the Provinces of India constituted an autonomous Province, have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Provinces and Rulers of the Indian States.

And whereas a constitution for a Federation of India has been approved by Parliament and embodied in the Government of India Act 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by proclamation declare:

And whereas the Act cannot apply to any of the territories of A. B. save with his consent and concurrence:

And whereas A. B. in the exercise of the sovereignty in and over X, in him vested, is desirous of acceding to the said Federation:

I. Now, therefore, A. B. hereby declares that, subject to his Majesty's assent, he accedes to the Federation, and subject always to the terms of this Instrument declares his acceptance of the provisions of the said Act as applicable to his State and to his subjects with the intent that His Majesty the King, the Governor-General of India, the Federal

Legislature, the Federal Court and any other Federal Authority established for the purposes of the Federation may exercise in relation to his State and to his subjects such functions as may be vested in them by or under the said Act, in so far as the exercise thereof is not inconsistent with any of the provisions of this Instrument.

2. And A. B. hereby declares that he accepts the matters specified in the First Schedule to this Instrument as the matters with respect to which the Federal Legislature shall have power to make laws in relation to his State and to his subjects, but subject in each case to the conditions and limitations, if any, set out in the said Schedule.

3. And A. B. hereby declares that he assumes the obligation of ensuring that due effect is given to the provisions of the said Act within the territories of his State, so far as they are applicable therein by virtue of this Instrument.

4. And A. B. hereby declares that the privileges and immunities, as defined in Part VII of the said Act (see Section 147), which are enjoyed by his State, are those specified in the Third Schedule to this Instrument, that the annual values thereof, so far as they are not fluctuating or uncertain are those specified in the said Schedule, and that he agrees that the values to be attributed to such of them as are fluctuating or uncertain in value shall be determined from time to time in accordance with the provisions of that Schedule.

5. And A. B. agrees that this Instrument shall be binding on him as from the date on which His Majesty signifies his acceptance thereof provided that if the said Federation is not established before the day of

.....nineteen hundred and thirty....., this Instrument shall, on that day become null and void for all purposes whatsoever.

6. And A. B. hereby declares that save as otherwise expressly provided in this Instrument he reserves the sovereignty in and over X, in him vested.

7. And A. B. hereby declares that he makes these declarations for himself, his heirs and successors, and that accordingly any reference in this Instrument to A. B. is to be construed as including a reference to his heirs and successors.

Schedules

Note:—The following Article is intended for inclusion in the Instrument only in the case of a State in respect of which provision is made in the Instrument for an agreement as contemplated in Section 125 of the Act.

And whereas A. B. is desirous that functions in relation to the administration in his State of laws of the Federal Legislature applying therein shall be exercised by himself and by his officers, and the terms of an agreement in that behalf have been mutually agreed between A. B. and the Governor-General and are set out in the second Schedule to this Instrument:

Now, therefore, A. B. hereby declares that he accedes to the Federation on the assurance that the said Agreement will be executed and the Agreement, when executed, shall be deemed to form part of the Instrument and shall be construed therewith.

N. B.—The Second Schedule to the Act sets out the provisions which may be amended without affecting the Accession of a State. Section 6 (5) provides as follows:—

It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto, may, without affecting the accession of the State, be amended by or by authority of the Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

APPENDIX C

Forms of Oath of A Federal Judge or The Chief Justice

(FOURTH SCHEDULE. FORMS 4 & 5)

Form of judicial oath or affirmation to be taken or made by a British subject:—

“ I. A. B., having been appointed Chief Justice (or a judge) of the.....Court, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.”

Form of judicial oath or affirmation to be taken or made by a subject of the Ruler of an Indian State:—

“I. A. B., having been appointed Chief Justice (or a judge) of the Court, do solemnly swear (or affirm) that saving the faith and allegiance which I owe to C. D., his heirs and successors, I will be faithful and bear true allegiance in my judicial capacity to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.”

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3	30	for 'later'	read latter
4	30	„ sovereignty	„ sovereignty
5	10	„ „	„ „
6	11	„ „	„ „
10	19	„ ederating	„ federating
16	6	„ outhority	„ authority
16	20	„ independant	„ independent
22	1	„ a chief	„ the chief
23	12	„ for	„ from
24	17	„ informity	„ infirmity
24	29	„ Governer	„ Governor
26	20	„ tranquility	„ tranquillity
27	11	„ Judicial	„ Judicial
29	10	„ on	„ an
49	23	omit 'in'	
50	7	for al	„ all
59	27	„ prohibits	„ prohibit
60	27	omit 'and'	
62	12	for an whether	„ whether an
73	21	„ soverignties	„ sovereignties
82	23	„ Soverign	„ Sovereign
84	5	„ jn	„ in
87	17	„ In the	„ In the

102	1	omit 'V'	
103	16	add 153	after 1914 A. C.
103	19	for Hudson	read Hudson
106	15	„ Fillis	„ Fillis
109	14	„ Consitution	„ Constitution
110	1	„ Soverign	„ Sovereign
131	11	Insert 'a'	after form
135	21	for 'is'	read are
136	22	„ 'are'	„ is
146	32	„ exculsive	„ exclusive
148	4	„ statues	„ statutes
149	10	„ as	„ at
149	18, 21, 23	„ Proprietary	„ Proprietary
154	5	„ graudually	„ gradually
157	15	„ extemely	„ extremely
158	1	„ practioner	„ practitioner