



EAST INDIA.

INDIAN HIGH COURTS BILL. [H.L.]

Explanatory Memorandum.

*Presented by the Secretary of State for India
to Parliament by Command of His Majesty,
July 1928.*

LONDON:

PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE.

To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:
Adastral House, Kingway, London, W.C.2; 120, George Street, Edinburgh;
York Street, Manchester; 1, St. Andrew's Crescent, Cardiff;
15, Donegall Square West, Belfast;
or through any Bookseller.

1928.

Cmd. 3146

Price 1d. Net.

Indian High Courts Bill. [H.L.]

EXPLANATORY MEMORANDUM.

Since the consolidation of the statutes relating to India by the Government of India Act, 1915, it has been customary, and necessary, to make all subsequent amendments in the law relating to the government of India by means of textual amendments of the consolidated Act. In consequence the provisions of amending Bills can rarely by themselves be made intelligible.

The provisions of this Bill can be very shortly explained. Subsections (3) and (4) of section 101 of the Government of India Act are as follows:—

“(3) A judge of a high court must be—

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

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

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

(d) a person who has been a pleader of one of the high courts referred to in this Act, or of any court which is a high court within the meaning of clause (24) of section three of the Act of the Indian Legislature known as the General Clauses Act, 1897, for an aggregate period of not less than ten years:

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

It has been held that the effect of the words in subsection (4), "including the chief justice," is to debar any person who has not the qualifications of a barrister from eligibility for the post of chief justice. Many of the ablest members of the Indian courts have not this qualification, and it has long been felt that there is no justification for any provision which prevents selection for the office of chief justice of any person who is best fitted to hold it. The effect of omitting the words "including the chief justice but" will, therefore, be to remove this restriction, and to enable any person qualified to be a puisne judge to be appointed chief justice.

The existing provision in the same subsection requiring at least one-third of the judges of a high court to be barristers has often tended to result in the necessity for selecting a barrister for a vacancy in preference to a vakil whose qualifications may be markedly superior. The addition of the words "or pleaders" after "advocates" will remove this inconvenience.

Incidentally it is proposed, by the amendment to be made by paragraph (a) of clause 1 of the Bill, to place barristers on the same footing as pleaders in respect of the standing in their profession which they must have attained to be eligible for appointment to the bench of an Indian High Court.