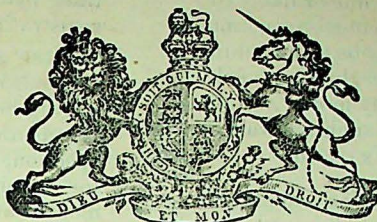


THE



# Bombay Government Gazette.

Published by Authority.

FRIDAY, 19TH NOVEMBER 1886.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

## PART V.

### PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Bill, together with the Statement of Objects and Reasons accompanying it, is published in accordance with Rule 15 of the Rules for the conduct of Business at Meetings of the Council of His Excellency the Governor of Bombay for making Laws and Regulations :—

#### Bill No. 7 of 1886.

*A Bill to declare and amend the Law relating to Toda Girás Allowances.*

WHEREAS it is expedient to declare and amend the law relating to toda girás allowances; It is enacted as follows :

1. This Act may be called "The Toda Girás Allowances' Act, 1886."

Short title.

2. In this Act, "toda girás allowance"

"Toda girás allowance" defined.

means a cash payment made periodically to any person on the part of Government, or by, or on the part of a holder of alienated land, under the name of *girás, wol, tora girás* or *toda girás*.

3. Every toda girás allowance is con-

tinuable hereditarily to the lineal male heirs in male descent thereof under British rule :

thereof under British rule :

Provided that, on failure of such heirs, the Governor in Council may, if he thinks fit, direct that the allowance, or some portion thereof, shall be continuable hereditarily to the lineal male heirs in male descent of a brother of the first recipient of such allowance under British rule.

4. No mortgage, charge or alienation of a toda girás allowance, Act XXI. of 1881, s. 23.

or of any part thereof, or of any interest therein, by any recipient of the same, shall be valid as to any time beyond such recipient's natural life.

Exemption of toda girás allowances from attachment and sale in execution of decrees.

5. No toda girás allowance shall be liable to attachment or sale in execution of a decree :

Provided that any money due or likely to become due to a judgment-debtor on account of a toda girás allowance may be attached in execution of the decree against him, but such attachment shall not affect any money which becomes due on account of such allowance after such judgment-debtor's death.

Saving of toda girás allowances alienated before the 19th November 1886.

previous to the 19th day of November 1886 :

(a) If the instrument purporting or operating to effect such alienation has been registered under any law for the

6. Nothing in this Act applies to a toda girás allowance which was alienated

time being in force relating to the registration of documents ; or

(b) If the said instrument, not being compulsorily registrable and not having been registered under any such law as aforesaid, is presented for inspection, together with a copy thereof for record, at any time within six months after the date when this Act comes into force, to the Collector of the district in which such allowance is payable ; or

(c) If, when such alienation has not been effected by an instrument, proof thereof is produced within the period and to the Collector aforesaid.

#### STATEMENT OF OBJECTS AND REASONS.

"Girás," as it was understood before the advent of the British rule, was a kind of black-mail paid by certain villages in Gujarát to certain lawless rájputs and kolis as the price of their protection against outrage or of their forbearance from plunder and violence.

2. The levy of these contributions by the "girássias" from the villages direct was attended with many abuses, and our Government, in or about the year A. D. 1815, interposed to prevent this levy and undertook, instead, to pay the girás from the Government treasury. Arrangements were made for ascertaining the sums payable and the persons entitled to receive them, and from that time down to the present these "toda girás allowances", as they have since come to be called, have been regularly disbursed by Government.

3. Soon after the establishment of civil courts, the creditors of girássias found these allowances a convenient property for attachment in execution of decrees which they obtained against their debtors and some sales of toda girás took place. But the question was soon raised by the local executive authorities whether the alienability of these allowances should be recognized by Government, and objections were raised which led to litigation. There were several suits, but the principal were those brought by Sambhulál (8 Moore's Indian Appeals, 1) and by Pestanji Ratanji (2 Mor. S. D. A. Cases, 291). The view which Government entertained at this time may be gathered from the instructions which they gave to the Collector of Surat in 1844 for the defence of Sambhulál's case. They said :

"It would be difficult, if not impossible, to define the origin of the girássia and of his rights and dues. But this is certain, that on our coming into possession of any district where we have found girássias, we have respected their rights, and have taken great pains to ascertain their dues on villages, and, in order to prevent disputes and violence, have paid these dues direct from our treasuries. These dues have always been considered hereditary, but it may be doubted whether there is any real authority for considering these girássias as hereditary officers, or their dues as emoluments of office. Their position varied according to the girássia's power. In some cases he was a chief, holding lands and rights in various villages ; in others he was little better than a recognized freebooter, but with established dues on his particular village. In all cases where the dues were unpaid, we know that under the native rule, the girássia resorted to violence against the recusant village. These dues may, in our language, be considered blackmail or the price of forbearance. But, however considered, they were a property recognized by us without considering their origin, but merely the person or property to whom the dues belong, and are to be paid. It is believed that girássia dues paid from the treasury have been frequently paid to their creditors, and that there have been instances of their sale and mortgage, chiefly in the Surat district. Our policy, however, should be to prevent these transfers, and to make this girássia property inalienable, as the holding of a particular class, which we have recogniz-

ed as an exclusive property for the maintenance of these persons, for the great end of preserving the peace of the country. The defence, therefore, should be, that the girássia dues paid from the treasury are fixed in the person of the girássias; that they were so in their origin, and have since continued so; and that the whole nature of the tenure and the circumstances of the country require that the Government should maintain them to be inalienable."

At the same time Government informed the Collectors that "should the suit terminate unfavourably, it would take into consideration the expediency of obtaining an Act to render property in toda girás, what its nature and circumstances required it to be, fixed and inalienable in the possession of the girássia."

4. The decisions of the Courts in India varied. But eventually the Sadar Diwáni Adálat decreed against the alienability of toda girás, and Government thereupon issued orders (this was in 1856) that no more payments of toda girás should be made through the civil courts to the judgment-debtors of girássias or to the purchasers of toda girás at courts' sales. Sambhulál's case was, however, carried to the Privy Council and their Lordships of that Council passed a judgment, of which the effect, as described by their Lordships in a subsequent case (10 Bo. H. C. R., 283), was to hold that toda girás allowances "constitute a recognized species of property capable of alienation and seizure and sale under an execution."

5. On receipt of this adverse decision, the Government did not deem it necessary to resort to legislation, as they had proposed in 1844, but they determined to adopt a course which, it was thought, would effect the same purpose as legislation. The orders issued (Government Resolution No. 4309 of 27th November 1862) were as follows:—

"17. Government did not initiate these payments, but found them, on obtaining possession of the country, generated by the disorder of the previous rule. The holders were treated with unexampled indulgence, but the peace of the country called for the policy then adopted, and faith should now be kept with their descendants, although they are no longer dangerous to the State. This the Governor in Council is prepared

in the strictest sense to do, but he cannot allow that a tax at first so irregularly imposed on the community should now be extorted by the aid of legal proceedings from the public purse by others than those in whose favor the original arrangements were made, or that Government should be compelled to continue its good offices between the girássias and the village communities in a manner to which it never pledged itself. It should therefore be publicly declared in every táluka, as the Revenue Survey settlement is introduced, that the new rates of assessment do not include any such collection, and that Government will in future not aid or take part in the collection of girás.

"18. In thus placing the girássias in the same position with respect to the village communities which they originally held, the Governor in Council cannot allow them to resort to other than legal means to enforce their claims, and if any village communities decline to accede to the girássias' demands, the latter must resort to the civil courts. At the same time the Governor in Council is not unwilling to make some sacrifice of revenue in order to relieve the girássias from the necessity of resorting to law, and he is prepared, whenever the girássia may be willing to receive from Government his present income, instead of collecting it direct from the villagers, to continue that income to him under such reasonable rules and restrictions as it may seem fit to Government to impose.

"19. The conditions on which this arrangement will be entered into are that a girássia shall consent to abandon for the future his claims against the village communities, and, in return, the allowances he has hitherto enjoyed shall be continued by the State hereditarily (during good behaviour) to the male issue of the first person who received the girás from the British treasury. The girás, or any portion of it, may further be continued to the lineal male issue of a brother of the first British recipient in any case in which, on inquiry, the Revenue Commissioner may find that hardship would be felt by the discontinuance of the girás. If in any case, however, the allowance has been enjoyed on condition of service, that condition will not be abandoned, although it is not expected that such service can now be taken with advantage to the public."

The agreements which were taken from the girássias under these orders contained the following clauses, amongst others:—

“That we will not alienate our girás out of our families by sale, mortgage, gift, &c.

“That we will, whenever called for, perform police or any other service which it may have been or may be customary to exact from girássias, in return for the payment of girás.”

And the sanads issued to those who signed the agreements purported to make the toda girás allowances “continuable to the lineal male heirs in male descent” of the first recipient under British rule, or, failing that line, to the lineal male heirs in male descent of a brother of the said first recipient.

6. During the next few years after the issue of these orders there was a cessation of litigation concerning toda girás allowances, but when, in 1871-74, suits again began to be brought, Government were advised by their law officers that the introduction of the revenue survey and a change in the Government system of collecting revenue afforded no valid ground of defence to those suits. The agreements of the girássias had also, it appeared, been taken in a very informal manner and doubts were entertained whether they would be held to be binding legal documents.

7. In the meantime Government anticipated that the provisions of the Pensions Act would protect toda girás allowances from the process of civil courts, and further measures were postponed until this question should be judicially determined. The Privy Council finally decided in 1881 (5 I. L. R., Bom. 408) that the Act bars suits against Government relating to toda

girás allowances, but the High Court of Bombay held in 1880 (4 I. L. R., Bom. 432) that the attachment of such allowances in execution of decrees is not barred by the Act, and Government, under legal advice, resolved not to appeal to the Privy Council against that ruling.

8. On a review of the whole question, the Governor in Council has arrived at the conclusion that legislation is now necessary in order (1) to declare the extent to which toda girás allowances are heritable and (2) to prevent future alienation of these allowances out of the original girássias' families whether by voluntary transfer or through the action of civil courts. Government are prepared to waive the enforcement of their claim to service from the recipients of these allowances, but having regard to the purposes for which they were originally recognized, and to the possible dangers which might arise from turbulent classes like the girássias being in course of time dispossessed of them, it seems politically expedient to take measures towards the two ends above mentioned.

9. Some of the allowances are paid on account of alienated villages. Of these a portion is paid by Government, but in a few instances the inámdárs still pay the girássias direct. There is no real difference between the case of those girássias who are paid from the Government treasury and the case of those who recover their dues from inámdárs, and it is, therefore, proposed to subject all to one and the same law.

10. In order to obviate any interference with vested rights, toda girás allowances which have been alienated previous to the introduction of this Bill are expressly exempted from its provisions. Their number is believed to be small.

(Signed) J. B. RICHEY.

Bombay, 18th November 1886.

*By order of His Excellency the Right Honourable the Governor in Council,*

A. SHEWAN,

Acting Secretary to the Council of the Governor of Bombay for making Laws and Regulations.

Bombay Castle, 18th November 1886.

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WHEREAS it is expedient to declare and amend the law relating to toda girás allowances; It is enacted as follows :

1. This Act may be called "The Toda Girás Allowances' Act, 1886."  
Short title.
2. In this Act, "toda girás allowance" means a cash payment made periodically to any person on the part of Government, or by, or on the part of a holder of alienated land, under the name of *girás, wol, tora girás* or *toda girás*.  
"Toda girás allowance" defined.
3. Every toda girás allowance is continuable hereditarily to the lineal male heirs in male descent of the first recipient thereof under British rule :  
Toda girás allowances to be held hereditarily in male descent.

Provided that, on failure of such heirs, the Governor in Council may, if he thinks fit, direct that the allowance, or some portion thereof, shall be continuable hereditarily to the lineal male heirs in male descent of a brother of the first recipient of such allowance under British rule.

4. No mortgage, charge or alienation of a toda girás allowance, or of any part thereof, or of any interest therein, by any recipient of the same, shall be valid as to any time beyond such recipient's natural life.  
Mortgage, &c., of toda girás allowance by any recipient thereof valid only for his life.

Exemption of toda girás allowances from attachment and sale in execution of decrees.

5. No toda girás allowance shall be liable to attachment or sale in execution of a decree;

Provided that any money due or likely to become due to a judgment-debtor on account of a toda girás allowance may be attached in execution of the decree against him, but such attachment shall not affect any money which becomes due on account of such allowance after such judgment-debtor's death.

6. Nothing in this Act applies to a toda girás allowance which was alienated before the 188 day of 188 :

Saving of toda girás allowances alienated before the 188 previous to the

(a) If the instrument purporting or operating to effect such alienation has been registered under any law for the

time being in force relating to the registration of documents; or

(b) If the said instrument, not being compulsorily registrable and not having been registered under any such law as aforesaid, is presented for inspection, together with a copy thereof for record, at any time within six months after the date when this Act comes into force, to the Collector of the district in which such allowance is payable; or

(c) If, when such alienation has not been effected by an instrument, proof thereof is produced within the period and to the Collector aforesaid.

#### STATEMENT OF OBJECTS AND REASONS.

"Girás," as it was understood before the advent of the British rule, was a kind of black-mail paid by certain villages in Gujara't to certain lawless rájputs and kolis as the price of their protection against outrage or of their forbearance from plunder and violence.

2. The levy of these contributions by the "girásias" from the villages direct was attended with many abuses, and our Government, in or about the year A. D. 1815, interposed to prevent this levy and undertook, instead, to pay the girás from the Government treasury. Arrangements were made for ascertaining the sums payable and the persons entitled to receive them, and from that time down to the present these "toda girás allowances", as they have since come to be called, have been regularly disbursed by Government.

3. Soon after the establishment of civil courts, the creditors of girásias found these allowances a convenient property for attachment in execution of decrees which they obtained against their debtors and some sales of toda girás took place. But the question was soon raised by the local executive authorities whether the alienability of these allowances should be recognized by Government, and objections were raised which led to litigation. There were several suits, but the principal were those brought by Sambhulál (8 Moore's Indian Appeals, 1) and by Pestanji Ratanji (2 Mor. S. D. A. Cases, 291). The view which Government entertained at this time may be gathered from the instructions which they gave to the Collector of Surat in 1844 for the defence of Sambhulál's case. They said :

"It would be difficult, if not impossible, to define the origin of the girásia and of his rights and dues. But this is certain, that on our coming into possession of any district where we have found girásias, we have respected their rights, and have taken great pains to ascertain their dues on villages, and, in order to prevent disputes and violence, have paid these dues direct from our treasuries. These dues have always been considered hereditary, but it may be doubted whether there is any real authority for considering these girásias as hereditary officers, or their dues as emoluments of office. Their position varied according to the girásia's power. In some cases he was a chief, holding lands and rights in various villages; in others he was little better than a recognized freebooter, but with established dues on his particular village. In all cases where the dues were unpaid, we know that under the native rule, the girásia resorted to violence against the recusant village. These dues may, in our language, be considered blackmail or the price of forbearance. But, however considered, they were a property recognized by us without considering their origin, but merely the person or property to whom the dues belong, and are to be paid. It is believed that girásia dues paid from the treasury have been frequently paid to their creditors, and that there have been instances of their sale and mortgage, chiefly in the Surat district. Our policy, however, should be to prevent these transfers, and to make this girásia property inalienable, as the holding of a particular class, which we have recogniz-

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4. The decisions of the Courts in India varied. But eventually the Sadar Diwáni Adálat decreed against the alienability of toda girás, and Government thereupon issued orders (this was in 1856) that no more payments of toda girás should be made through the civil courts to the judgment-debtors of girássias or to the purchasers of toda girás at courts' sales. Sambhulál's case was, however, carried to the Privy Council and their Lordships of that Council passed a judgment, of which the effect, as described by their Lordships in a subsequent case (10 Bo. H. C. R., 283), was to hold that toda girás allowances "constitute a recognized species of property capable of alienation and seizure and sale under an execution."

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"17. Government did not initiate these payments, but found them, on obtaining possession of the country, generated by the disorder of the previous rule. The holders were treated with unexampled indulgence, but the peace of the country called for the policy then adopted, and faith should now be kept with their descendants, although they are no longer dangerous to the State. This the Governor in Council is prepared

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"19. The conditions on which this arrangement will be entered into are that a girássia shall consent to abandon for the future his claims against the village communities, and, in return, the allowances he has hitherto enjoyed shall be continued by the State hereditarily (during good behaviour) to the male issue of the first person who received the girás from the British treasury. The girás, or any portion of it, may further be continued to the lineal male issue of a brother of the first British recipient in any case in which, on inquiry, the Revenue Commissioner may find that hardship would be felt by the discontinuance of the girás. If in any case, however, the allowance has been enjoyed on condition of service, that condition will not be abandoned, although it is not expected that such service can now be taken with advantage to the public."

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8. On a review of the whole question, the Governor in Council has arrived at the conclusion that legislation is now necessary in order (1) to declare the extent to which toda girás allowances are heritable and (2) to prevent future alienation of these allowances out of the original girásias' families whether by voluntary transfer or through the action of civil courts. Government are prepared to waive the enforcement of their claim to service from the recipients of these allowances, but having regard to the purposes for which they were originally recognized, and to the possible dangers which might arise from turbulent classes like the girásias being in course of time dispossessed of them, it seems politically expedient to take measures towards the two ends above mentioned.

9. Some of the allowances are paid on account of alienated villages. Of these a portion is paid by Government, but in a few instances the inámdárs still pay the girásias direct. There is no real difference between the case of those girásias who are paid from the Government treasury and the case of those who recover their dues from inámdárs, and it is, therefore, proposed to subject all to one and the same law.

10. In order to obviate any interference with vested rights, toda girás allowances which have been alienated previous to the introduction of this Bill are expressly exempted from its provisions. Their number is believed to be small.

(Signed) J. B. RICHEY.

Bombay, 18th November 1886.

*By order of His Excellency the Right Honourable the Governor in Council*

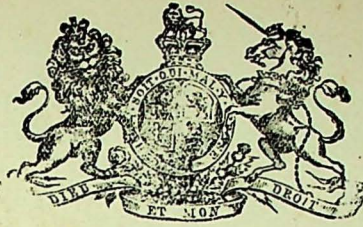
A. SHEWAN,

Acting Secretary to the Council of the Governor of  
Bombay for making Laws and Regulations.

Bombay Castle, 18th November 1886.



THE



Bombay Government Gazette.

1887.

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PART V.

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PROCEEDINGS

OF THE

LEGISLATIVE DEPARTMENT, BOMBAY.

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