



GOVERNMENT OF INDIA BILL  
(Vol. I : Clauses)

Memorandum  
in explanation of the Amendments  
to be moved on behalf of the Government  
on Report Stage

*Presented by the Secretary of State for India to Parliament  
by Command of His Majesty  
May 1935*

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## GOVERNMENT OF INDIA BILL AS AMENDED IN COMMITTEE.

The following memorandum is intended to explain briefly the origin and purpose of the amendments to be moved by the Secretary of State for India on the Report Stage of the Government of India Bill. The amendments dealt with are those which appeared on the Order Paper of 16th May.

The explanations which follow under Head A are given in some detail, in response to the request made in the House of Commons for a detailed explanation of the amendments affecting the Indian States. It has, however, been thought convenient to include as well a brief indication of the purpose and origin of the other amendments.

It should be explained at the outset that the amendments on clause 304 and the following clauses (which occupy rather more than five pages of the Order Paper), being amendments to Part XIV of the Bill relating to Burma, are without exception either verbal repetitions of amendments proposed on the corresponding clauses in earlier parts of the Bill, or adaptations of Indian provisions with no change of substance. No further reference will, therefore, be made to the amendments on clauses 304-462 inclusive.

### A.—AMENDMENTS AFFECTING THE INDIAN STATES.

(Note.—In this section references to “White Paper” are references to Cmd. 4843, presented in March last, entitled “The Government of India Bill—Views of Indian States.”)

*Clause 2.* The intention to omit the words “by treaty, grant, usage, sufferance or otherwise” was indicated in the White Paper, page 31, under clause 2 (i). Their omission does not affect the legal effect of the clause.

The proviso to be added to this clause gives effect to the undertaking indicated at the end of paragraph (ii) *ibid.*

*Clause 6.* The amendments to this clause form a connected whole. Their effect, if accepted, will be to alter the clause to the following form :—

6.—(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 20 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 thereof shall be laid before Parliament, and all Courts shall take judicial notice of every such Instrument.

The changes brought about by this redraft of the clause do not affect the principles of the Joint Select Committee's Report or the intentions of the clause in the Bill as it stands. The differences of form may be summarised as follows:—

- (a) A Ruler is required by his Instrument of Accession to declare that he "accedes to the Federation established under this Act" instead of declaring that he "accepts this Act as applicable to his State and his subjects."
- (b) The revised clause makes plain on the face of the Bill—what was always the intention—that a Ruler, in accepting a subject in any of the Lists as a Federal Subject may attach limitations to the power to be exercised in respect of that subject by the Federal Legislature in relation to his State and also to the executive power of the Federation which itself arises from the entries in the Lists. This does not, however, involve power to qualify the provisions of the Act itself apart from the Lists.
- (c) On the other hand, the clause also makes it clear on the face of the Bill—what was always intended—that the Crown has full discretion to reject any proposals for an Instrument of Accession by an individual State and, in particular, if it appears that "the terms thereof are inconsistent with the scheme of Federation embodied in this Act"; it is at the same time, however, made clear that an Instrument of Accession once accepted is to be conclusive as to the extent of Federal authority, both legislative and executive, in relation to the State.
- (d) The redraft of subsection (5) is intended chiefly to remove difficulties raised in Committee as to the effect of the words "shall not be construed as extending to a Federated State without the concurrence of the Ruler."

The redraft of the clause maintains the principles indicated in the White Paper (pp. 31-5) under the heading "clause 6."

*Clause 8.*—The second, third and fourth amendments to this clause affect the States. The substitution of the words "save as

expressly provided in this Act" for "by virtue of this section" follows on paragraph (iv) under clause 8, on page 36 of the White Paper.

The third amendment on page 6, line 25, is consequential on the revised form of clause 6 (2).

The fourth amendment gives effect to the undertaking given at the end of paragraph (ii) under clause 8, on pages 35-6 of the White Paper.

*Clause 12 (and clause 52).*—The substitution in these clauses of "the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof" for "the protection of the rights of any Indian State" as the definition of the Governor-General's and Governors' special responsibility in relation to the States is intended to provide the means of securing for the Rulers recognition of the personal status which has always been accorded to them in British India.

*Clause 16.*—The Bill as it stands secures for the Federal Advocate-General a statutory right of audience "in all Courts in British India and in any Federated State." The second amendment confines this right, so far as State Courts are concerned, to cases which involve Federal interests.

*Clause 38 (and clause 84).*—The power of the Governor to make rules prohibiting the discussion of, or the asking of questions on any matter connected with an Indian State subject to certain exceptions stated in the clause (84), was amended in Committee to include any matter connected not merely with the State, but with the Ruler thereof. It was, in any case, of course, intended to make on Report Stage a similar amendment to clause 38. The amendments now proposed, however, extend the scope of this to members of the ruling family in the State.

*Clause 40 (and clause 86).*—The prohibition of discussion in the Legislature of the conduct of Judges of the Federal Court and High Courts is extended by the amendments on these clauses to cover Judges of a Court recognised as a High Court in a Federated State.

*Clause 45.*—The proviso and new subsection to be added to this clause have two purposes:—

- (a) The proviso meets the point raised in Committee that the carrying on of the government by a Proclamation under this clause in the case of a constitutional breakdown should not be permissible, as it was under the Bill as it stands, for an indefinite period. The proviso now secures that the approval of Parliament to the continuation of a Proclamation under this clause for more than six months shall be required at six-monthly intervals and not merely once and for all; and further, that in no case shall a Proclamation under this clause continue in operation for more than three years.

(b) The new sub-clause secures that, on the expiry of three years, if the government of the Federation cannot be carried on under the Act as it stands and amendment of the Act is, therefore, required, any such amendments shall, so far as the States are concerned, be subject to the provisions of sub-clause (5) of clause 6 as amended and Schedule II. In this respect the new sub-clause (4) gives effect to the intentions of the Government as expressed in answer to the States' objections to this clause under "clause 45" (page 47 of the White Paper).

*Clause 101.*—The first two amendments to this clause are merely drafting: the third is consequential on the revised form of clause 6.

*Clause 106.*—Here again the amendments are merely drafting in the sense that they make explicit in relation to the States what was always the intention of the clause.

*Clause 116.*—The first amendment to this clause is consequential on an amendment made in Committee, whereby the words "payable out of the revenues of the Federation or of a Province" were substituted for the phrase "payable out of public moneys" in sub-clause (1), lines 32–3, in order to make it clear that this clause does not apply directly to the States. The amendment removes the same phrase from the proviso.

As regards the second, third and fourth amendments, sub-clause (2) of this clause as drafted enables an Indian Legislature to attach certain specified conditions to eligibility for a subsidy in the circumstances stated in the sub-clause. These conditions—as to the place of incorporation of a company and as to the race of the directors or of the persons for whom training facilities will be given—are at present confined to British India and British Indians. The amendments will enable these conditions to be applied to Federated States and their subjects.

*Clause 122.*—These amendments are designed, without making any change in the clause, to meet the States' point that it is beyond the scope of this Bill to require them to secure respect for their own laws. Sub-clause (1) as amended would read:—

"The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State."

*Clause 124.*—Sub-clause (3) of this clause enables the Federal Legislature in passing a Federal Act to "confer powers and impose duties upon the State or officers and authorities thereof," the provisions in this respect being parallel to that relating to the Provinces in sub-clause (1). The amendment requires that the officers and authorities empowered in a State are "to be persons

designated by the Ruler." This is the more necessary in that the nomenclature of State officials is not uniform throughout India, as it is for the most part in the case of the Provinces. The point was dealt with in the White Paper, page 38, under "clause 123."

*Clause 125.*—The amendment imports the same provision as is included in clause 6 (9) as amended, dispensing with formal proof of an agreement under this section when produced before a Court, owing to the close connection which will be established between agreements under clause 125 and the Rulers' Instruments of Accession.

*Clause 128.*—The first amendment is consequential on the new sub-clause (2) to be inserted in clause 8. The words "so far as it is exercisable in the State" were inserted in Committee at the end of sub-clause (1), and this further addition is therefore in further amplification of the undertaking given in the White Paper; clause 127, page 38.

The second amendment provides that the Ruler may make representations to the Governor-General before any directions under the clause are received. The third amendment is intended to enable a State to obtain a ruling from the Federal Court if any question arises under this clause as to whether the Federal Government can, in fact, legally claim executive authority in the matter in relation to which the Governor-General proposes to issue directions to the State under the clause.

These two amendments may therefore be regarded as being in further amplification of the observations made in the second paragraph under clause 127 on page 39 of the White Paper.

*Clause 138 (second and third amendments).*—These two amendments are related to the point dealt with in the White Paper on page 39 under "clause 136" (now clause 138). For the reasons given in the White Paper it is not proposed to fix in the Bill the percentage of taxes on income to be permanently assigned to the Federation as the States suggested. This percentage would of course have been fixed before the States accede to the Federation. The first of these two proposed amendments would, however, have the effect of preventing any subsequent Order in Council from diminishing the percentage originally assigned to the Federation by Order in Council and thereby perhaps increasing the chances of an imposition of a Federal surcharge on taxes on income, to which the States would have to contribute.

The second of these two amendments is connected with a similar, though somewhat less important, point, and prevents the two periods to be fixed by Order in Council which govern the handing over of the Provincial share of taxes on income from being reduced once these periods have been prescribed by Order in Council.

*Clause 138 (fourth amendment).*—This provides that if the Governor-General is considering the postponement of the process

of handing over the Provincial share of taxes on income he should be required to consult not merely Federal and Provincial interests but also State interests before he reaches his decision. Any decision on this point might have reactions on the States.

*Clause 139.*—This amendment completes the machinery required for the assessment of a contribution by a State which elects to pay the equivalent of Corporation Tax direct to the Federation.

*Clause 141.*—This amendment concerns a point dealt with in the White Paper on page 40, paragraph (ii). On further examination there has proved to be no objection to transferring to the Act (as is proposed by this amendment) the conditions which were to be inserted in the Governor-General's Instrument of Instructions (paragraph XXIII of the draft) which the Governor-General has to satisfy himself have been fulfilled before a Bill imposing a Federal surcharge is introduced.

*Clause 148 (third, fourth, fifth, sixth and seventh amendments).*—These are drafting amendments which do not alter the general effect of the clause, but more correctly describe some of the items mentioned in (a) to (e) of subsection (6).

*Clause 148 (eighth amendment).*—This is in effect a drafting amendment the object of which is to make it possible for the Instrument of Accession to contain a complete credit and debit account of the contributions, immunities, &c., which will be relevant in the case of any given State for the purpose of its accession.

*Clause 150 (first and second amendments).*—The first two amendments are inserted to prevent any possibility of the clause being interpreted in such a way as to allow the Federation when making a distribution of taxes to which clause 150 applies to take into account arrears of immunities, &c. It was, of course, only intended that the immunities should be taken into account as from the date from which a distribution takes place.

*Clause 150 (third amendment).*—This amendment limits the possible set-off against a distribution of a tax to immunities, &c., enjoyed in relation to the subject-matter of that tax and prevents a set-off against immunities of a different kind.

*Clause 186.*—The amendments on this clause all operate on sub-clause (2) and are intended to secure that the provisions of that sub-clause relating to reimbursement by the Federation of the cost of a particular branch of the Railway Police, shall be applicable in appropriate circumstances to Federated States as well as to the Provinces.

*Clause 192.*—This is a drafting amendment intended to make clearer the intended scope of the words in the Bill "discriminates unfairly against the State."



*Clause 202.*—The two amendments to this clause are designed to express more accurately the scope of the original jurisdiction of the Federal Court, as regards all units in relation to the first amendment, and as regards disputes to which a State is a party in relation to the second amendment. The form of the second amendment is to some extent consequential on the revised form of clause 6.

*Clause 205.*—This amendment, amplifying the description of the scope of the appellate jurisdiction of the Federal Court, is consequential on the second amendment to clause 202.

*Clause 208.*—Paragraph (a) of the new sub-clause is consequential on the proposed amendment to clause 207. Paragraph (b) is intended to limit, in relation to the States, the powers of the Federal Court under this clause in matters arising out of its Federal jurisdiction proper, that is to say, to exclude from the scope of this clause, so far as the States are concerned, the enforcement of any orders in relation to the "Supreme Court" appellate powers which may be conferred on the Court by Indian legislation under clause 204. This extended jurisdiction, if and when it is conferred, will of course have no application to the States.

*Clause 282.*—The amendment to this clause, which was inserted in the Bill in Committee, merely amplifies and makes clear what was the intention of the clause when it was introduced.

*Clause 288.*—It was never intended that any action under this section should make an existing Indian law apply to a Federated State; that will be the function of the Federal Legislature. The amendment makes this clear on the face of the Bill.

*Clause 289.*—The two subsections to be added to this clause are intended to preserve the existing position in relation to the trial of British subjects and the subjects of foreign Powers for offences committed in a State.

#### B.—AMENDMENTS INTENDED TO GIVE EFFECT TO UNDERTAKINGS GIVEN IN COMMITTEE.

*Clause 16 (and clause 55),* requiring the Advocate-General (federal and provincial) to possess the qualifications of a High Court Judge.

*Clause 17 (and clause 59).*—Drafting amendments to clarify the intention of the final words of sub-clause (2) of these clauses.

*Clause 26, first amendment (and clause 69, first amendment).*—To extend the sentence for criminal conviction which disqualifies for candidature for a Legislature from one year to two years.

*Clause 28 (and clause 71).*—To lessen the restriction imposed by this clause on the powers of the Legislatures in connection with

privilege, by enabling them to make refusal to attend or give evidence before a Committee of the Legislature a criminal offence punishable in the ordinary course by the Courts, subject to a safeguard in relation to evidence by officials, the disclosure of which would be contrary to the public interest.

*Clause 44 (and clause 90).*—To provide an alternative procedure for the enactment of Governor-General's and Governors' Acts, namely, with or without reference to the Legislature, as circumstances may dictate.

*Clause 60.*—In order to make provision for an Upper Chamber in Assam.

*Clause 89.*—To absolve the Governor from the necessity of obtaining the Governor-General's concurrence in the promulgation of an Ordinance by the Governor if circumstances make this impracticable.

*Clause 91.*—To make provision for the prescription by Order in Council of Excluded and Partially Excluded Areas in consequence of the omission of Schedule VI.

*Clause 93.*—To require the approval of Parliament at six-monthly intervals to the continuance of a Proclamation under this clause, and to place a time-limit of three years in all on the operation of such a Proclamation.

*Clause 107.*—A drafting amendment.

*Clause 108.*—To require the previous sanction of the Governor-General to any proposal for differential taxation on non-residents.

*Clause 110.*—Drafting amendments.

*Clause 113, page 69, line 28.*—To add "the currency in which capital or loan capital is expressed" to the matters in respect of which discriminatory requirements or conditions in relation to companies incorporated in the United Kingdom are debarred.

*Clause 118.*—The amendments are intended to meet two points raised in Committee:—

- (1) That the clause as drafted would apparently prevent the Legislatures, in regulating or prescribing qualifications for a profession, from preventing unqualified persons already practising that profession from continuing so to practise, even where this is clearly in the public interest.
- (2) To require that rules or regulations prescribing professional qualifications shall be subject to annulment by the Governor-General or Governor, if he considers that they would operate unfairly as against any class of persons affected thereby.

*Clause 180, page 107, line 35.*—To express more clearly the nature of the functions to be exercised by the Federal Government in relation to securing safety on railways.

*Clause 182.*—To provide a means of determining disputes on the question as to what is and what is not a question of policy in the relations between the Federal Government and the Federal Railway Authority.

*Clause 198.*—To require that the Chief Justice of the Federal Court must always be a barrister or pleader of 15 years' standing.

*Clause 206.*—To secure that there shall be an appeal as of right from the Federal Court to the Privy Council in "constitutional" cases, an appeal in other cases being by leave of the Federal Court or of the Privy Council.

*Clause 212.*—To ensure that if and when the Federal Court is given "Supreme Court" appellate jurisdiction by the Indian Legislature there shall be a separate Division constituted for the hearing of those cases.

*Clause 218.*—To secure that the Chief Justice of any High Court constituted by Letters Patent must be either a barrister or a pleader or have served at least three years as a puisne judge.

*Clause 220.*—To make the Governor-General, instead of the Governor, the appointing authority in respect of additional judges of High Courts.

*Clause 241.*—The proposed new subsection is proposed in consequence of the omission of clause 251 from the Bill as introduced.

*Clause 242.*—To give the Secretary of State wider powers in connection with the appointment of irrigation officers wherever this may be necessary.

*Clause 244.*—To expand the matters in relation to which rules are required to be made by the Secretary of State himself for persons whom he appoints to cover general rights in regard to medical attendance.

*Clause 250.*—The amendment brings pensions specifically within the scope of this clause.

*Clause 251, page 143, line 3.*—Expands the clause to cover Chief Judges of Small Cause Courts and Chief Presidency Magistrates.

*Clause 263.*—The first amendment adds to the duties of Public Service Commissions that of assisting in the framing and operating of schemes of general recruitment for Forest and other technical services; the second excludes specifically from the purview of Public Service Commissions all matters relating to methods of recruitment, appointment and disciplinary matters connected with the subordinate police.

*Clause 293.*—The amendments bring the wording of this clause into line in certain respects with the wording of clause 111 (1) (b).

*Clause 294.*—To expand the scope of this clause relating to expropriation so as to cover commercial and industrial undertakings, as well as land, by whomsoever possessed, and to require that any Act to which the section applies shall either fix the amount of compensation to be granted or specify the principles on which, and the manner in which, compensation is to be determined.

*Clause 299.*—To enable the Governor-General, or Governor, as the case may be, to forward his opinion on any aspect of a proposal made under this clause, and not merely his opinion as to its effect on minorities.

*Clause 301.*—To limit the time within which the provisions of this clause may be utilised.

C.—AMENDMENTS WHICH MAY BE DESCRIBED FOR THIS PURPOSE AS DRAFTING OR TECHNICAL AMENDMENTS IN THE SENSE THAT THEY ARE EITHER DRAFTING AMENDMENTS PROPER OR AMENDMENTS SUPPLYING TECHNICAL OMISSIONS OR AMPLIFYING OR CORRECTING TECHNICAL DETAILS OF WHICH EXAMINATION HAS SHOWN THE NECESSITY.

Clause 8 (first amendment). 22, 37, 82, 111, 113 (except the amendment to page 69, line 28, which is included under Head B), 114, 124 (page 77, line 35), 127, 130, 132, 138 (first, fifth and sixth amendments), 144, 145, 146, 147, 148 (first and second amendments), 155, 166, 167, 172, 175, 177, 178, 179, 180 (in so far as it is not included under Head B), 184, 185, 186 (first amendment), 188, 193, 195, 196, 203, 207, 209, 221, 222, 232, 245, 246, 247, 250 (first amendment), 251, 256, 259, 270, 271, 283, 295, 300, 302 and 464.

#### D.—NEW CLAUSES.

The two clauses (one for India and the other for Burma) removing the sex disqualification are in pursuance of an undertaking given in Committee.

The second clause (exempting Provincial Governments and Rulers of Federated States, subject to exceptions, from Federal taxation) carries out the undertaking given in the White Paper at page 42 under clause 151.

The third clause fills a technical gap in the Bill.

The fourth and fifth clauses will take the place of clause 173, which it is proposed to omit. These two clauses are redrafts of the provisions now contained in clause 173, and make the necessary provision in regard to the complicated and technical subject-matter with which they deal in a manner which legal opinion regards as more satisfactory and more complete than that provided by the existing clause 173.