SUPPLIED FOR THE PUBLIC SERVICE



CHAPTER 39.

An Act to amend the Government of India Act, 1935, with respect to the qualifications of members of the Governor-General's Executive Council, to extend temporarily the powers of the Indian Legislature to make laws, to amend subsection (4) of section one hundred and two of the said Act as to the effect of laws passed by virtue of a Proclamation of Emergency, and for purposes connected with the matters aforesaid.

[26th March 1946.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Qualifications for membership of Executive Council. 26 Geo. 5. & 1 Edw. 8. c. 2.

1. Subsection (3) of section thirty-six of the Government of India Act, as continued in force by the Ninth Schedule to the Government of India Act, 1935 (being a provision which requires that three members of the Governor-General's Executive Council shall be persons who have been ten years in the service of the Crown in India and that one member thereof shall be a barrister, an advocate or a pleader) is hereby repealed.

Trade and commerce and unemployment.

2.—(1) Notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the period mentioned in section four of this Act have power to make laws with respect to the following matters—

(*a*) trade and commerce (whether or not within a Province) in, and the production, supply and distribution of, cotton and woollen textiles, paper (including newsprint), foodstuffs (including edible oil seeds and oils), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica; and

(*b*) unemployment among persons who have been serving during the present war in the armed forces of His Majesty or of any Indian State, and, so far as relates to the rehabilitation of disabled persons and the setting up and carrying on of labour exchanges, employment information bureaux and retraining establishments for persons whether disabled or not, unemployment among other persons who have been serving or have been employed in connection with the present war (whether their service or employment was by or under the Crown or not); and

(*c*) offences against laws with respect to any of the matters mentioned in the preceding paragraphs of this subsection, enquiries and statistics for the purposes of any of those matters, jurisdiction and powers of all Courts, except the Federal Court, with respect to any of those matters, and fees in respect of any of those matters, but not including fees taken in any Court,

but any law made by the Indian Legislature which that Legislature would not, but for the provisions of this section, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of the said period except as respects things done or omitted to be done before the expiration thereof.

(2) Any power of the Indian Legislature to make laws under this section with respect to any matter shall include power to make laws as respects a Province conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Governor-General in Council or officers and authorities of the Governor-General in Council as respects that matter, notwithstanding that it is one in respect of which the Provincial Legislature also has power to make laws.

(3) No Bill or amendment making any provision which the Indian Legislature would not, but for the provisions of this section, have been competent to make, shall be introduced or moved in either Chamber of the Indian Legislature without the previous sanction of the Governor-General.

(4) Subsection (2) of section one hundred and seven of the Government of India Act, 1935 (which relates to inconsistency between Federal laws and Provincial laws) and subsection (2) of section one hundred and twenty-six of that Act (which relates to the giving of directions to a Province as to the carrying into execution of Federal laws relating to matters specified in Part II of the Concurrent Legislative List) shall apply in relation to a law enacted by virtue of this section with respect to any matter, being a matter with respect to which a Province has power to make laws, as if that matter were a matter specified in Part II of the Concurrent Legislative List.

Requisitioned Land.

3.—(1) Notwithstanding anything in the Government of India Act, 1935, the powers of the Indian Legislature to make laws shall extend to the making of laws—

(*a*) providing, in relation to land in a Province which, when the Act of the Indian Legislature known as the Defence of India Act, 1939, expires, is subject to any requisition effected under the rules made under that Act, for the continuance, until not later than the end of the period mentioned in section four of this Act, of all or any of the powers theretofore exercisable under the said Act of the Indian Legislature or the said rules; and

(*b*) providing, in particular, for the continuance as aforesaid of the power of the Governor-General in Council compulsorily to acquire any such land as aforesaid for any purposes directly and without the interposition of any Province,

and any laws made by virtue of this subsection may contain provisions with respect to offences against the laws, enquiries and statistics for the purposes of the laws, jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters dealt with by the laws, and fees in respect of any of those matters, but not including fees taken in any Court; and subsections (2) to (4) of the last preceding section shall apply in relation to any such laws as they apply in relation to laws made under that section.

(2) Nothing in this section shall—

(*a*) prejudice any power of the Governor-General in Council to acquire land in accordance with section one hundred and twenty-seven of the Government of India Act, 1935 (which enables land to be acquired by the Governor-General in Council through the intermediacy of a Province); or

(*b*) affect the provisions of subsection (2) of section two hundred and ninety-nine of that Act (which requires any law authorising the compulsory acquisition of land to make provision for the payment of compensation).

(3) In this section, the expression "land" includes immovable property of every kind.

Duration of legislative powers under this Act.

4. The period mentioned in the two last preceding sections is the period of one year beginning with the date on which the Proclamation of Emergency in force at the passing of this Act ceases to operate or, if the Governor-General by public notification so directs, the period of two years beginning with that date:

Provided that if and so often as a resolution approving the extension of the said period is passed by both Houses of Parliament, the said period shall be extended for a further period

of twelve months from the date on which it would otherwise expire so, however, that it does not in any case continue for more than five years from the date on which the Proclamation of Emergency ceases to operate.

Duration of laws passed by virtue of a Proclamation of Emergency.

5. A law made by the Indian Legislature whether before or after the passing of this Act, during the continuance in force of the Proclamation of Emergency, being a law which that Legislature would not, but for the issue of such a Proclamation, have been competent to make, shall not cease to have effect as required by subsection (4) of section one hundred and two of the Government of India Act, 1935, except to the extent to which the said Legislature would not, but for the issue of that Proclamation, have been competent to make it, and accordingly, in the said subsection (4) for the words " shall cease to have effect " there shall be substituted the words " shall, to the extent of the incompetency, cease to have effect ".

Supplementary provisions.

6.—(1) The functions of the Governor-General under this Act shall be deemed for the purposes of the Government of India Act, 1935, to be included among the functions which he is, by or under that Act, required to exercise in his discretion, and so much of section eighteen A of the Interpretation Act, 1889, as provides that the expression " Governor-General ", in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India means the Governor-General in Council, shall not apply to this Act.

52 & 53 Vict. c. 63.

(2) A copy of the Government of India Act, 1935, giving effect to—

9 & 10 Geo. 6. c. 23.

(*a*) the amendments mentioned in section three of the India (Proclamations of Emergency) Act, 1946; and

(*b*) the amendments made by sections one and five of this Act,

shall be prepared and certified by the Clerk of the Parliaments and deposited with the Rolls of Parliament, and His Majesty's printer shall print in accordance with the copy so certified all copies of the Government of India Act, 1935, which are printed after the said copy has been so prepared, certified and deposited.

Short title.

7. This Act may be cited as the India (Central Government and Legislature) Act, 1946.

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