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PART I

Orders and Notifications by the Governor of Bengal, the High Court,
Government Treasury, etc.

GOVERNMENT OF BENGAL

HOME DEPARTMENT.

Political.

NOTIFICATION.

No. 6095P.—9th November 1939.—The following from the *Gazette of India*, dated Saturday, the 30th September 1939, is published for general information.

H. J. TWYNAM,

Chief Secy. to the Govt. of Bengal.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 29th September, 1939, and is hereby promulgated for general information:—

ACT No. XXXV OF 1939.

An Act to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences.

WHEREAS an emergency has arisen which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences;

AND WHEREAS the Governor General in his discretion has declared by Proclamation under sub-section (1) of section 102 of the Government of India Act, 1935, that a grave emergency exists whereby the security of India is threatened by war; 26, Geo. 5,
c. 2.

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title,
extent,
commencement
and duration.

1. (1) This Act may be called the Defence of India Act, 1939.

(2) It extends to the whole of British India, and it applies also—

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

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

(c) in respect of the regulation and discipline of any naval, military or air force raised in British India, to members of, and persons attached to, employed with, or following, that force, wherever they may be; and

(d) to, and to persons on, ships and aircraft registered in British India wherever they may be.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such date or dates as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

CHAPTER II.

EMERGENCY POWERS.

Powers to make
rules.

2. (1) The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:—

- (i) ensuring the safety and welfare of His Majesty's forces, ships and aircraft, and preventing the prosecution of any purpose likely to prejudice the operations of His Majesty's forces or the forces of His Majesty's allies;
- (ii) prohibiting anything likely to prejudice the training, discipline or health of His Majesty's forces;
- (iii) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering, the service of His Majesty;
- (iv) preventing anything likely to assist the enemy or to prejudice the successful conduct of war, including—
 - (a) communications with the enemy or agents of the enemy,
 - (b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy,
 - (c) contribution to, participation in, or assistance in, the floating of loans raised by or on behalf of the enemy, and
 - (d) advance of money to, or contracts or commercial dealings with, the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory;
- (v) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice His Majesty's relations with foreign powers, or to promote feelings of enmity and hatred between different classes of His Majesty's subjects;

Explanation.—To point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of His Majesty's subjects does not amount to promoting such feelings within the meaning of this clause.

- (vi) requiring the publication of news and information;
- (vii) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas;
- (viii) requiring any person or class of persons to comply with a scheme of defence;
- (ix) ensuring the safety of ports, dockyards, lighthouses, lightships, aerodromes, railways, telegraphs, post offices, signalling apparatus and all other means of communication, sources of water-supply, works for the supply of water, gas or electricity and any other place or thing the protection of which is necessary for the defence of British India;

- (x) the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to act, in a manner prejudicial to the public safety or interest or to the defence of British India, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do, or abstain from doing, anything;
- (xi) the control of persons entering, departing from, or travelling in, British India, and of foreigners residing or being in British India;
- (xii) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial tidal and inland waters;
- (xiii) restricting the charter of foreign vessels;
- (xiv) regulating the structure and equipment of vessels used or likely to be used by the Central Government, for the purpose of ensuring the safety thereof and of persons therein;
- (xv) regulating work in dockyards and shipyards in respect of the construction and repairs of vessels;
- (xvi) prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads, and reserving, and requiring to be adapted, for the use of the Central Government, all or any accommodation in vessels, aircraft, railways, tramways or road vehicles for the carriage of persons, animals or goods;
- (xvii) impressment of vessels, aircraft, vehicles and animals for transport;
- (xviii) prohibiting or regulating the use of postal, telegraph or telephonic services, including the taking possession of such services and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;
- (xix) regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams;
- (xx) the control of any trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to, articles or things of any description whatsoever which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community;
- (xxi) ensuring the ownership and control of mines by British subjects;
- (xxii) controlling the use or disposal of, or dealings in, coin, bullion, securities or foreign exchange;
- (xxiii) the control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water-supply;
- (xxiv) the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof;

- (xxv) prohibiting or regulating the possession, use or disposal of—
- (a) explosives, inflammable substances, arms and ammunitions of war,
 - (b) vessels,
 - (c) wireless telegraphic apparatus,
 - (d) aircraft, and
 - (e) photographic and signalling apparatus and any means of recording information;
- (xxvi) applying the provisions of the Sea Customs Act, 1878, and in particular section 19 thereof, to the prohibition or restriction of the import or export of goods to a particular person or a particular class of persons; VIII of 1878.
- (xxvii) prohibiting or regulating the bringing into, or taking out of, British India and the possession, use or transmission of ciphers and other secret means of communicating information;
- (xxviii) prohibiting or regulating the publication of inventions and designs;
- (xxix) preventing the disclosure of official secrets;
- (xxx) prohibiting or regulating meetings, assemblies, fairs and processions;
- (xxxi) preventing or controlling any use, calculated to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of war, of uniforms, flags and insignia and of anything similar thereto;
- (xxxii) ensuring the accuracy of any report or declaration legally required of any person;
- (xxxiii) preventing the unauthorised change of names;
- (xxxiv) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be, or resembling, an official person, official document or official property;
- (xxxv) entry, into, and search of, any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest, to the defence of British India or to the efficient prosecution of war, and for the seizure and disposal of anything found there and reasonably suspected of being used for such purpose.
- (3) The rules made under sub-section (1) may further—
- (i) provide for the arrest and trial of persons contravening any of the rules;
 - (ii) provide that any contravention of, or any attempt to contravene, and any abetment of, or attempt to abet, the contravention of any of the provisions of the rules, or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both;
 - (iii) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in the preceding clause has been committed;

(iv) confer power and impose duties—

(a) upon the Central Government or officers and authorities of the Central Government as respects any matter, notwithstanding that that matter is one in respect of which the Provincial Legislature also has power to make laws, and

(b) upon any Provincial Government or officers and authorities of any Provincial Government as respects any matter notwithstanding that that matter is one in respect of which the Provincial Legislature has no power to make laws;

(v) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules;

(vi) provide for preventing obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules;

(vii) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules;

(viii) empower or direct any authority to take such action as may be specified in the rules or as may seem necessary to such authority for the purpose of ensuring the public safety or interest or the defence of British India;

(ix) provide for charging fees in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the rules.

(4) The Central Government may by order direct that any power or duty which by rule under sub-section (1) is conferred or imposed upon the Central Government shall in such circumstances and under such conditions, if any, as may be specified in the direction be exercised or discharged—

(a) by any officer or authority subordinate to the Central Government, or

(b) whether or not the power or duty relates to a matter with respect to which a Provincial Legislature has power to make laws, by any Provincial Government or by any officer or authority subordinate to such Government, or

(c) by any other authority.

(5) A Provincial Government may by order direct that any power or duty which by rule made under sub-section (1) is confirmed or imposed on the Provincial Government, or which, being by such rule conferred or imposed on the Central Government, has been directed under sub-section (4) to be exercised or discharged by the Provincial Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority, not being an officer or authority subordinate to the Central Government.

Effect of rules,
etc., inconsistent
with other
enactments.

3. Any rule made under section 2, and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Special powers to control civilian personnel employed in connexion with His Majesty's forces.

4. The Central Government may, by notification in the official Gazette, direct by general or special order that any persons who, not being members of His Majesty's forces, are attached to, or employed with, or following, those forces, shall be subject to naval, military or air force law, and thereupon such persons shall be subject to discipline, and liable to punishment for offences, under the Indian Navy (Discipline) Act, 1934, the Indian Army Act, 1911, or the Indian Air Force Act, 1932, as the case may require, as if they were included in such class of persons subject to any of those Acts as may be specified in the notification.

XXXIV of 1934.
VIII of 1911.
XIV of 1932.

Enhanced penalties.

5. (1) If any person, with intent to wage war against His Majesty or to assist any State at war with His Majesty, contravenes any provision of the rules made under section 2 or any order issued under any such rule, he shall be punishable with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall also be liable to fine.

(2) If any person—

(a) contravenes any such provision of, or any such rule or order made under, the Indian Aircraft Act, 1934, as may be notified in this behalf by the Central Government, or

XXII of 1934.

(b) in any area notified in this behalf by a Provincial Government, contravenes any such provision of, or any such rule made under, the Indian Arms Act, 1878, the Indian Explosives Act, 1884, or the Explosive Substances Act, 1908, as may be notified in this behalf by the Provincial Government,

XI of 1878.
IV of 1884.
VI of 1908.

he shall, notwithstanding anything contained in any of the aforesaid Acts or rules made thereunder, be punishable with imprisonment for a term which may extend to five years, or, if his intention is to assist any State at war with His Majesty or to wage war against His Majesty, with death, transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine.

(3) For the purposes of this section, any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, a provision of any law, rule or order, shall be deemed to have contravened that provision.

Temporary amendments of Acts.

6. During the continuance of this Act—

(1) section 1 of the Geneva Convention Act, 1911, shall have effect in British India as if, in sub-section (1) thereof, for the words "shall be liable on summary conviction to a fine not exceeding ten pounds", the words "shall be punishable with imprisonment for a term which may extend to six months and shall also be liable to a fine" had been substituted;

1 & 2 Geo. 5, c. 20.

(2) section 5 of the Indian Official Secrets Act, 1923, shall have effect as if—

XIX of 1923.

(a) in sub-section (1) thereof, after the words "in his possession or control" the words "any information likely to assist the enemy, as defined in the rules made under the Defence of India Act, 1939, or" had been inserted, and after the words "in such a place" the words "or which relates to, or is used in, a protected area, as defined in the rules made under the Defence of India Act, 1939, or relates to anything in such an area," had been inserted; and

(b) for sub-section (4) thereof, the following sub-section had been substituted, namely:—

“(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or, if such offence is committed with intent to assist any State at war with His Majesty, or to wage war against His Majesty, with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine.”;

(3) the Indian Press (Emergency Powers) Act, 1931, shall have effect as if in sub-section (1) of section 4 thereof, after clause (b), the following word and clause had been inserted, namely:—

“or

(bb) directly or indirectly convey any confidential information, any information likely to assist the enemy or any prejudicial report, as defined in the rules made under the Defence of India Act, 1939, or are calculated to instigate the contravention of any of those rules,”;

(4) the Indian Aircraft Act, 1934, shall have effect as if— XXXII of 1934.

(a) at the end of clause (r) of sub-section (2) of section 5 the following words had been inserted, namely:—

“including the taking of steps necessary to secure compliance with, or to prevent contravention of, the rules regulating such matters, or, where any such rule has been contravened, to rectify, or to enable proceedings to be taken in respect of, such contravention”;

(b) in clause (b) of sub-section (1) of section 8, for the words, brackets, letters and figures “clause (h) or clause (i) of sub-section (2) of section 5”, the words, brackets, letters and figures “clauses (d), (e), (h), (i), (k) or (l) of sub-section (2) of section 5, or the commission of an offence punishable under section 11,” had been substituted;

(c) in section 11, after the words “in the air” the words “or in such a manner as to interfere with any of His Majesty’s forces, ships or aircraft” had been inserted;

(d) in section 13, for the words, brackets, figures and letters “clause (i) or clause (l) of sub-section (2) of section 5” the words, brackets, figures and letters “clauses (c), (d), (e), (h), (i), (j), (k) or (l) of sub-section (2) of section 5, or punishable under section 11” had been substituted; and

(e) section 14 had been omitted; and

(5) the Indian Navy (Discipline) Act, 1934, shall have effect as if for section 90 of the Naval Discipline Act as set forth in the First Schedule to the first named Act the following section had been substituted, namely:— XXXIV of 1934.

“90. (1) If any person who would not otherwise be subject to this Act enters into an engagement with the Central Government to serve His Majesty—

(a) in a particular ship, or

(b) in such particular ship or in such ships as the Officer Commanding the Indian Navy, or any officer empowered in this behalf by the Officer Commanding the Indian Navy, may from time to time determine,

and agrees to become subject to this Act upon entering into the engagement, that person shall so long as the engagement remains in force, and notwithstanding that

for the time being he may not be serving in any ship, be subject to this Act, and the provisions of this Act shall apply in relation to that person, as if, while subject to this Act, he belonged to His Majesty's navy and were borne on the books of one of His Majesty's ships in commission.

(2) The Central Government may by order direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Officer Commanding the Indian Navy, persons of any such class as may be specified in the order shall, while subject to this Act by virtue of this section, be deemed to be officers or petty officers, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified; and any such order may be varied or revoked by a subsequent order."

Saving and temporary amendment of Act VIII of 1938.

7. (1) Notwithstanding anything contained in the Indian Tea Control Act, 1938, the Central Government may appoint any person to be an additional member of, and to act as Chairman of, the Indian Tea Licensing Committee during the continuance of this Act, and on such appointment being made and until this Act ceases to be in force, the Chairman of the said Committee elected under section 5 of that Act shall cease to exercise the functions of Chairman. VIII of 1938.

(2) If in pursuance of any scheme for the control of import of Indian tea into the United Kingdom, the Central Government considers it necessary or expedient so to do, it may by order direct the Indian Tea Licensing Committee to apportion the requirement of the United Kingdom among the tea estates in accordance with such principles as may be laid down in the order, and the said Committee shall comply with such order.

(3) If at any time during the continuance of this Act, the agreement referred to in the preamble to the Indian Tea Control Act, 1938, is determined or otherwise ceases to be valid as between the parties thereto, the provisions of that Act shall, notwithstanding the said determination or invalidity of the agreement, continue in force: VIII of 1938.

Provided that nothing in this sub-section shall be construed as continuing the Indian Tea Control Act, 1938, in force after the 31st day of March, 1943.

CHAPTER III.

SPECIAL TRIBUNALS.

Constitution of Special Tribunals.

8. (1) The Provincial Government may for the whole or any part of the Province constitute Special Tribunals which shall consist of three members appointed by the Provincial Government.

(2) No person shall be appointed as a member of a Special Tribunal unless he—

(a) is qualified under sub-section (3) of section 220 of the Government of India Act, 1935, for appointment as a Judge of a High Court; or 26 Geo. 5, c. 2.

(b) has for a total period of not less than three years exercised, whether continuously or not, the powers under the Code of Criminal Procedure, 1898 (hereafter in this Chapter referred to as the Code) of any one or more of the following, namely:— V of 1898.

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate,

(ii) District Magistrate, Additional District Magistrate.

(3) At least one member of a Special Tribunal shall be qualified for appointment thereto under clause (a) of sub-section (2), and where only one member is so qualified under that clause, at least one other member shall be qualified for appointment under clause (b) of that sub-section by virtue of having exercised powers exclusive of those specified in sub-clause (ii) of the said clause (b).

Jurisdiction of
Special
Tribunals.

9. The Provincial Government may, by general or special order, direct that Special Tribunal shall try any offence—

- (a) under any rule made under section 2, or
- (b) punishable with death, transportation or imprisonment for a term which may extend to seven years,—

triable by any Court having jurisdiction within the local limits of the jurisdiction of the Special Tribunal, and may in any such order direct the transfer to the Special Tribunal of any particular case from any other Special Tribunal or any other Criminal Court not being a High Court.

Procedure of
Special
Tribunals.

10. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial.

(2) Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing, but the Special Tribunal shall cause a memorandum of the substance of what each witness deposes to be taken down in the English language, and such memorandum shall be signed by a member of the Special Tribunal and shall form part of the record.

(3) A Special Tribunal shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in Court has been such as, in the opinion of the Special Tribunal to impede the course of justice.

(6) In the event of any difference of opinion among the members of a Special Tribunal, the opinion of the majority shall prevail.

(7) The Provincial Government may, by notification in the official Gazette, make rules providing for—

- (i) the times and places at which Special Tribunals may sit; and
- (ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person.

(8) A Special Tribunal shall, in all matters in respect to which no procedure has been prescribed by this Act or by rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Exclusion of public from proceedings of Special Tribunals.

11. In addition, and without prejudice, to any powers which a Special Tribunal may possess by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of a trial of any person before a Special Tribunal application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Special Tribunal may make an order to that effect, but the passing of sentence shall in any case take place in public.

Powers of Special Tribunals.

12. A Special Tribunal shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Sentences of Special Tribunals.

13. (1) A Special Tribunal may pass any sentence authorised by law.

(2) A person sentenced by a Special Tribunal—

(a) to death or transportation for life, or

(b) to imprisonment for a term extending to ten years under section 5 of this Act or under subsection (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act—

XIX of 1923.

shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no Court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

(3) The powers conferred upon the Provincial Government and the Governor General by Chapter XXIX of the Code shall apply in respect of a person sentenced by a Special Tribunal.

CHAPTER IV.

SUPPLEMENTAL.

Jurisdiction of ordinary Courts.

14. Save as otherwise expressly provided by or under this Act, the ordinary criminal and civil Courts shall continue to exercise jurisdiction.

Ordinary avocations of life to be interfered with as little as possible.

15. Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India.

Savings as to orders.

16. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority. I of 1872.

Protection of action taken under the Act.

17. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Protection from prosecution, etc., of members of military and police forces of Indian States while serving His Majesty.

18. Every provision of law for the time being in force which gives protection, whether specifically or otherwise, to members of His Majesty's military forces or of the police forces in British India from any prosecution or other legal proceedings or from any other liability shall apply also to members of the military or police forces respectively of any Indian State, while attached to, operating with or assisting any of His Majesty's military forces or any police force in British India.

Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property, etc.

19. (1) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say:—

26 Geo. 5,
c. 2.

- (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.
- (b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the abovementioned Act for appointment as a Judge of a High Court.
- (c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.
- (d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.
- (e) The arbitrator in making his award shall have regard to—
 - (i) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable; and
 - (ii) whether the acquisition is of a permanent or temporary character.
- (f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.
- (g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

I of 1894.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the procedure to be followed in arbitrations under this section;
- (b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal;
- (c) the maximum amount of an award against which no appeal shall lie.

Definition.

20. In this Act, unless there is anything repugnant in the subject or context, the expression "Provincial Government" means, in relation to a Chief Commissioner's Province, the Chief Commissioner.

Repeal and saving.

21. The Defence of India Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 3rd day of September, 1939. Ord. V of 1939.

G. H. SPENCE,
Secy. to the Govt. of India.