

THE BENGAL CIVIL COURTS ACT, 1871.

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ACT No. VI OF 1871.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 10th
February 1871.)*

An Act to consolidate and amend the law relating
to the District and Subordinate Civil Courts in
Bengal.

WHEREAS it is expedient to consolidate and amend Preamble.
the law relating to the District and Subordinate
Civil Courts in the territories respectively under the
governments of the Lieutenant-Governors of the
Lower and North-Western Provinces, of the Presi-
dency of Fort William in Bengal; It is hereby enacted
as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called 'The Bengal Civil Short title.
Courts Act, 1871.'

It extends to the territories for the time being re- Local extent.
spectively under the governments of the said Lieu-
tenant-Governors, except such portions thereof as for
the time being are not subject to the ordinary juris-
diction of the High Courts and except the Jhānsī
Division.

Except this section and sections seventeen, twenty- Partial exclu-
sion of Mo-
fussil Small
Cause Courts.
nine and thirty, nothing herein contained applies to
Courts of Small Causes established under Act No. XI
of 1865.

This Act shall come into force on the passing Commence-
ment of Act.
thereof.

2. The Regulations and Acts mentioned in the Repeal of en-
actments.
schedule hereto annexed are repealed to the extent
specified in the third column of such schedule.

CHAPTER II.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

Number of
District
Judges.

3. The number of District Judges to be appointed under this Act shall be fixed, and may from time to time be altered, by the Local Government.

Number of
Subordinate
Judges and
Munsifs.

4. The number of Subordinate Judges and Munsifs to be appointed under this Act in each District, shall be fixed, and may from time to time be altered, by the Local Government.

Vacancies in
District
Judgeships.

5. Whenever the office of District Judge or Subordinate Judge under this Act is vacant, or whenever the Governor General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government shall supply such vacancy or appoint such additional District Judges or Subordinate Judges, as the case may be.

Vacancies in
Munsifships.

6. Whenever the office of a Munsif is vacant, or when the Governor General in Council has sanctioned an increase of the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly :

Provided that the Local Government may, with the sanction of the Governor General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif under this Act ; and on such rules being made, no person shall be nominated to such office unless he possesses the qualifications required by the said rules.

Additional
Judges.

7. When the business pending before any District Judge requires the aid of Additional Judges for their speedy disposal, the Local Government may, upon the recommendation of the High Court, and subject to the sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

Such Additional Judges shall perform any of the duties of a District Judge under Chapter III of this Act that the District Judge may, with the sanction of the High Court, assign to them, and, in the performance of such duties, they shall exercise the same powers as the District Judge.

8. In

8. In the event of the death of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the senior Subordinate Judge of the District shall, without relinquishing his ordinary duties, assume charge of the Judge's office,

Temporary charge of District Judgeship.

and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions,

and shall continue in charge of the office until it is resumed by the District Judge or assumed by an officer duly appointed thereto.

9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave when no person is appointed to act for him,

Transfer of proceedings on death, &c., of Subordinate Judge.

the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

A District Judge, on the occurrence within his District of any vacancy in the office of Munsif, may, pending the action of the High Court under section six, appoint such person as he thinks fit to act in such office.

Temporary charge of Munsifship.

And he shall forthwith report to the High Court the occurrence of every such vacancy and such appointment.

10. The Local Government may invest with the powers of any Court under this Act any officer in the District of Káchár and the Divisions of Assam, Chota Nágpúr and Kuch Bihár.

Power to confer judicial powers on officers in Káchár, Assam, Chota Nágpúr and Kuch Bihár.

Nothing •

Nothing in sections three to nine (inclusive), thirty-two, thirty-three and thirty-four, applies to any such officer. But all the other provisions of this Act apply, *mutatis mutandis*, to officers so invested.

Control of
Civil Courts
in a District.

11. The general control over all the Civil Courts in any District is vested in the District Judge, but subject to the superintendence of the High Court.

First District
Judges, Ad-
ditional
Judges, Sub-
ordinate
Judges and
Munsifs.

12. The present Judges of the Zila Courts, Additional Judges, Subordinate Judges and Munsifs shall be deemed to have been duly appointed to the offices the duties of which they have respectively discharged, and shall be the first District Judges, Additional Judges, Subordinate Judges and Munsifs under this Act.

Declaration
of office.

13. Every District Judge, Additional Judge, Subordinate Judge or Munsif appointed after the passing of this Act shall, previously to entering on the duties of his office, make and subscribe a solemn declaration according to the following form:—

“I, A B, appointed to the office of

do solemnly declare that, in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment without partiality, favour, or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive on my behalf, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute.

I will strictly adhere to all the rules prescribed for my guidance, and I will, in all respects, truly and faithfully execute the trust reposed in me.

(Signed) A B,

District [*or* Additional *or* Subordinate] Judge of
[*or* Munsif of]”

Such declaration shall be made—

by a District Judge, either before his predecessor in such office, or before the Magistrate of the District,

by

by an Additional Judge, a Subordinate Judge or Munsif, before the District Judge or the Magistrate of the District.

14. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Seals of Courts.

15. Every District Judge, Additional Judge, Subordinate Judge and Munsif under this Act shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure and of this Act.

District Judges, Subordinate Judges and Munsifs to be deemed Civil Courts.

16. The Local Government may fix, and from time to time alter, the place or places at which any Court under this Act is to be held.

Power to fix sites of Courts.

17. Subject to such orders as may from time to time be issued by the Governor General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate thereto.

Vacation.

Such list shall be published in the local official Gazette, and the said days shall be observed accordingly.

CHAPTER III.

ORDINARY JURISDICTION.

18. The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any Civil Court under this Act:

Power to fix local limits of jurisdiction.

Provided that, where more than one Subordinate Judge is appointed to any District, and where more than one Munsif is appointed to any Munsifi, the Judge of the District Court may assign to each such Subordinate Judge or Munsif the local limits of his particular jurisdiction within such District or Munsifi, as the case may be.

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to be fixed under this Act.

19. The jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions in the

Extent of original jurisdiction of

the

District
Judge or
Subordinate
Judge.

the Code of Civil Procedure, section six, to all original suits cognizable by the Civil Courts.

Extent of
Munsif's
jurisdiction.

20. The jurisdiction of a Munsif extends to all like suits in which the amount or value of the subject-matter in dispute does not exceed one thousand rupees.

Appeals from
District
Judges and
Additional
Judges.

21. Appeals from the decrees and orders of District Judges and Additional Judges shall, when such appeals are allowed by law, lie to the High Court.

Appeals from
Subordinate
Judges and
Munsifs.

22. Appeals from the decrees and orders of Subordinate Judges and Munsifs shall, when such appeals are allowed by law, lie to the District Judge, except where the amount or value of the subject-matter in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court :

Provided that the High Court may from time to time, with the previous sanction of the Local Government, order that all appeals from the decrees and orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the order, and such appeals shall thereupon be preferred accordingly.

Power to re-
quire witness-
es or parties
to be sworn.

23. Every Court under this Act may require a witness or party to any suit or proceeding pending in such Court, to take such oath as is prescribed by the law for the time being in force.

Certain de-
cisions to be
according to
Native law.

24. Where in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindú law in cases where the parties are Hindús, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

In cases not provided for by the former part of this section, or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

25. No

25. No Munsif, Subordinate Judge, Additional Judge or District Judge shall try any suit in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

Judges not to try suits in which they are interested.

No Subordinate Judge, Additional Judge or District Judge shall try any appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding or appeal comes before any such Munsif, Subordinate Judge, Additional Judge or District Judge, he shall forthwith transmit the whole record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section six.

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

CHAPTER IV.

SPECIAL JURISDICTION.

26. Every District Judge may from time to time, subject to the orders of the High Court, refer to any Subordinate Judge under his control any appeals pending before him from the decisions of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.

Power to refer to Subordinate Judges appeals from Munsifs.

The District Judge may withdraw any appeals so referred and hear and dispose of appeals so withdrawn.

27. The High Court may from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge under his control appeals from orders of Munsifs preferred under the Code of Civil Procedure, sections thirty-six, seventy-six, eighty-five, ninety-four, one hundred and nineteen, two hundred and thirty-one and two hundred and fifty-seven, or under Act No. XXIII of 1861, section eleven. ..

Power to transfer to Subordinate Judge or Munsif certain proceedings pending before District Judge.

The .

The High Court may also from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge or Munsif under the control of such District Judge any of the proceedings next hereinafter mentioned, or any class of such proceedings specified in such order, and then pending, or thereafter instituted, before such District Judge.

The proceedings referred to in the second clause of this section are the following (that is to say),—

(1). Proceedings under Bengal Regulation V, 1799 (*to limit the Interference of the Zillah and City Courts of Dewanny Adawlut in the Execution of Wills and Administration to the Estates of Persons dying intestate*).

(2). Proceedings under Act No. XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*), or Act No. IX of 1861 (*to amend the law relating to Minors*).

(3). Claims to attached property under the Code of Civil Procedure, section two hundred and forty-six.

(4). Applications by judgment-debtors under section two-hundred-and-seventy-three or section two-hundred-and-eighty of the same Code.

(5). Applications to file awards under section three-hundred-and-twenty-seven of the same Code.

(6). Applications for permission to sue or appeal as a pauper.

(7). Applications for certificates under Act No. XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The District Judge may withdraw any proceedings so transferred and may either himself dispose of them, or, with the sanction of the High Court, transfer them to any other Subordinate Judge or Munsif under his control.

Disposal of proceedings so transferred.

28. Subject to the provisions of the last clause of section twenty-seven, all proceedings transferred under the second clause of the same section shall be disposed

disposed of by the Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases :

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the High Court if an appeal from the decision of the Judge in such proceedings is allowed by the law in force for the time being.

29. The Local Government may invest, within such local limits as it from time to time appoints, any Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts, up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw such jurisdiction from the Subordinate Judge or Munsif so invested.

Power to invest Subordinate Judges with Small Cause jurisdiction.

30. Section fifty-one of Act No. XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the Ordinary Original Civil jurisdiction of the High Courts of Judicature) shall be read as if, for the words "Principal Sadf Amin," the words "Subordinate Judge" were substituted.

Amendment of Act No. XI of 1865.

CHAPTER V.

MISFEAZANCE.

31. Any District Judge, Additional Judge, Subordinate Judge, or Munsif may, for any misconduct, be suspended or removed by the Local Government.

Suspension or removal of District Judge or Additional Judge.

32. The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.

Suspension of Subordinate Judge.

Whenever the High Court exercises this power, it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

33. The

Suspension of
Munsifs by
High Court.

33. The High Court may appoint a Commission for enquiring into the alleged misconduct of any Munsif.

On receiving the report of the result of any such enquiry, the High Court may, if it thinks fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

The provisions of Act No. XXXVII of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

The High Court may also, previous to the appointment of such Commission, suspend any Munsif pending the result of the enquiry.

The High Court may, without appointing any such Commission, remove or suspend any Munsif, or reduce him to a lower grade.

Suspension of
Munsifs by
District
Judges.

34. Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Munsif under his control.

Whenever a District Judge suspends from office any such Munsif, he shall forthwith send to the High Court a full report of the circumstances of the suspension, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS.

Appointment
and removal
of Ministerial
Officers of
District
Courts.

35. The Judges of the District Courts shall appoint the Ministerial Officers of such Courts, and, subject only to the general control of the Local Government, the said Judges may remove or suspend such Officers or fine them in an amount not exceeding one month's salary.

Appointment
and removal
of Ministerial
Officers of
Subordinate
Judges and
Munsifs.

36. The Ministerial Officers of the Courts of Subordinate Judges and Munsifs shall be nominated and appointed by those Courts respectively, subject to the approval of the District Judge within whose jurisdiction such Courts are situate

Every

Every such Court may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any of its Ministerial Officers who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Local Government, may on appeal or otherwise reverse or modify every such order.

Power to
punish such
Officers.

Nothing in this section, or in section thirty-five shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

37. The Local Government may, at the instance of the District Judge, transfer from any Court in the territories subject to such Government, to any other Court in the same territories, all or any of the Ministerial Officers of such Judge or of any Subordinate Judge or Munsif under his control.

Transfer of
Ministerial
Officers.

The District Judge may transfer all or any of the Ministerial Officers of any Court under his control to any other such Court.

38. Any fine imposed under this Chapter shall, if the order imposing it so directs, be recovered by deduction from the offender's salary.

Recovery of
fines.

SCHEDULE.

SCHEDULE.

PART I.—BENGAL REGULATIONS.

Number and year.	Title.	Extent of Repeal.
III, 1793.	A Regulation for extending and defining the Jurisdiction of the Courts of Dewanny Adawlut, or Courts of Judicature for the Trial of Civil Suits in the first Instance, established in the several Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad.	So much as has not been repealed.
IV, 1793.	A Regulation for receiving, trying, and deciding Suits or Complaints declared cognizable in the Courts of Dewanny Adawlut established in the several Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad.	Section fifteen.
VII, 1795.	A Regulation for establishing a Court of Dewanny Adawlut, or Court of Judicature for trying civil Suits, in the first Instance, at the City of Benares, and at Mirzapore, Ghazeepore, and Juanpore, in the Province of Benares, and for defining the Jurisdiction and Powers of those Courts.	So much as has not been repealed.
VIII, 1795.	A Regulation for extending to the Province of Benares, with Alterations and Modifications, Regulation IV, 1793, entitled "A Regulation for receiving, trying, and deciding Suits or Complaints declared cognizable in the Courts of Dewanny Adawlut established in the several Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad;" and for exempting the Rajah of Benares and the Baboos of his Family, and certain Bankers, when Defendants, from giving the Security required from other Defendants.	Section three.
II, 1803.	A Regulation for establishing and defining the Jurisdiction of the Courts of Adawlut, or Courts of Judicature, for the Trial of Civil Suits in the first Instance, in the Provinces ceded by the Nawab Vizier to the Honourable the English East India Company.	So much as has not been repealed.

Number and year.	Title.	Extent of Repeal.
III, 1803.	A Regulation for receiving, trying, and deciding Suits or Complaints, declared cognizable in the Courts of Adawlut established in the several Zillahs in the Provinces ceded by the Nawab Vizier to the Honourable the English East India Company.	Section sixteen, clause one.
VIII, 1805.	A Regulation for extending to the conquered Provinces situated within the Dooab and on the right Bank of the River Jumna, and to the Territory ceded to the Honourable the English East India Company in Bundelcund by the Peishwa, such of the Laws and Regulations established for the internal Government of the Provinces ceded by the Nawab Vizier to the Honourable the English East India Company, as have not been already extended to those Territories, and for revising and amending certain Parts of the said Laws and Regulations.	Section six and so much of section seven as extends to Regulation III, 1803; section sixteen, clause one.
VII, 1832.	A Regulation for modifying certain of the Provisions of Regulation V, 1831, and for providing Supplementary Rules to that Enactment.	So much as has not been repealed.
VIII, 1833.	A Regulation for the Occasional Appointment of Additional Judges of the Zillah and City Courts.	The whole.

PART II.—ACTS.

Number and year.	Title.	Extent of Repeal.
IX of 1844 ...	An Act for authorizing the institution of Suits in the Courts of Principal Sudder Ameens and Sudder Ameens.	Section three so far as it applies to the Bengal Presidency.
L of 1860 ...	An Act to amend the Law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal.	The whole.
XVI of 1868 ...	An Act to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns, and Munsifs in Bengal, and for other purposes.	The whole.
II of 1870 ...	An Act to provide for the appointment of additional Subordinate Judges and Munsifs in the Presidency of Fort William.	The whole.