

- (a) the provisions of Articles 216, 217, 218, 220, 221, 222, 223, 224^a [230 and 231] shall not apply;
- (b) references in Article 219, in the proviso to clause (3) of Article 227 and in Article 229 to the Governor shall be construed as references to ^b[the administrator of the Union territory] in relation to which that Court exercises jurisdiction.

[a] Substituted for "230, 231 and 232" by 2 A.L.O., 1956.

[b] Substituted for "the Chief Commissioner of the State", *ibid.*

[THE] JUDICIAL OFFICERS' PROTECTION ACT, 1850
(ACT 18 OF 1850)

[The text of the Act printed here is as on 31-3-1996]

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended in Andhra Pradesh by Act 23 of 1958.
- Amended in Karnataka by Act 33 of 1978.
- Extended—
- by Acts 59 of 1949; 30 of 1950; 25 of 1968; Regn. 8 of 1965;
- in Andhra Pradesh by Andhra Pradesh Act 23 of 1958;
- in Bombay by Bom. Acts 4 of 1950; 78 of 1958; (Bombay is now divided into two States of Maharashtra and Gujarat by Act 11 of 1960);
- in Madhya Pradesh by M. P. Act 12 of 1950;
- in Punjab by Punj. Acts 5 of 1950; 23 of 1960; (Punjab is divided into Punjab and Haryana States and Chandigarh Union territory);
- in Tamil Nadu by T. N. Act 22 of 1957.
- Extended to Sikkim by S.O. 206(E), Gaz. of India, 16-5-1975 Pt. II, S. 3(ii), Ext., p. 1213 Act enforced in Sikkim on 26-6-1975 — See Gaz. of India, 20-6-1975, Pt. II, S. 3(ii), Ext., p. 1355.
- Repealed in part—
- in Kerala by Ker. Act 4 of 1963; in Mysore by Mys. Act 14 of 1955.
- Supplemented in Goa, Daman and Diu by Goa Act 14 of 1965.

[THE] JUDICIAL OFFICERS' PROTECTION ACT, 1850^a
(ACT 18 OF 1850)^b

[4th April, 1850]

An Act for the protection of Judicial Officers.

Preamble.— For the greater protection of Magistrates and others acting judicially; It is enacted as follows:—

[a] Short title was given by the Indian Short Titles Act, 1897 (XIV 1897).

Section 6 (contd.)

which S. 6 has been subjected which means that so far as the issue of the high prerogative writs or directions or orders mentioned in the Act is concerned a Judicial Commissioner has been treated on the same level as other High Courts. AIR 1952 Bhopal 1(4, 5): 1952 Cri LJ 660.

(4) The Judicial Commissioner's Court Himachal Pradesh though it consists of one Judge has the powers of High Court including the power of confirming a death sentence under S. 377 of the Criminal Procedure Code. AIR 1952 Him Pra 5(6): 1952 Cri LJ 114.

[b] The Act has been declared to be in force in all the Provinces of India, except the Scheduled Districts by the Laws Local Extent Act, 1874 (XV of 1874), S. 3.

It has been declared in force in the Santhal Parganas (now in Bihar by the Santhal Parganas Settlement Regulation (III of 1872), section 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (IV of 1936), section 3 and Schedule; in the Angul District by the Angul Laws Regulation, 1936 (V of 1936), S. 3 and Schedule; (this Regulation has now been repealed by Orissa Act 19 of 1967; Angul is now a sub-division of Dhenkanal District in Orissa) and in Panth Piploda, by the Panth Piploda Laws Regulation, 1929 (I of 1929), section 2.

It has also been declared by notification under section 3(a) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the following Scheduled District, namely:—

The Taluqs of Bhandrachalam, Rakapillai and the Ramapa country	See Gaz. of Ind., 1879, Pt. I, p. 630.
The Scheduled Districts in Ganjam and Vizagapatnam (Ganjam is in Orissa now and Vizagapatnam in A.P.)	Ditto 1898 Pt. I, p. 870. and Fort St. Geo. Gaz., 1898, Pt. I, p. 666.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dhalbhum and Kolhan in the District of Singhbhum (now all in Bihar)	See Gaz. of Ind., 1881, Pt. I, p. 504.
West Jalpaiguri in W. B. and the Western Hills of Darjiling, the Darjiling Tarai and the Damson Sub-Division of the Darjiling District (in U. P.)	Ditto 1881, Pt. I, p. 74.
Kumaon and Garhwal (in U. P.)	Ditto 1876, Pt. I, p. 605.
The Scheduled portion of the Mirzapur District (in U. P. now)	Ditto 1879, Pt. I, p. 383.
Jaunsar Bawar (in U. P. now)	Ditto 1879, Pt. I, p. 382.
The District of Lahaul (Part of H. P. now)	Ditto 1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	See Gaz. of Ind., 1879, Pt. I, p. 630.
Coorg (in Mysore)	Ditto 1879, Pt. I, p. 747.
The Districts of Kamrup, Nowgong, Darrang, Sib-sagar, Lakhimpur, Goalpara (excluding the Eastern Duars) and Cachar (excluding the North Cachar Hills) (in Assam now)	Ditto 1878, Pt. I, p. 633.
The Garo Hills, the Khasi and Jaintia Hills (now form the autonomous State of Meghalaya), the Naga Hills, (Part of the State of Nagaland now the North Cachar Hills in the Cachar District and the Eastern Duars in the Goalpara District (Part of Assam now)	Ditto 1897, Pt. I, p. 299.
The Porahat Estate in the Singhbhum District (in Bihar now)	Ditto 1897, Pt. I, p. 1059.

It has been extended by notification under section 5 of the last mentioned Act, to the following Schedule Districts, namely:—

The Tarai of the Province of Agra (now in U. P.)	See Gaz. of Ind., 1876, Pt. I, p. 505.
Ajmer and Merwara (now in Rajasthan)	Ditto 1879, Pt. I, p. 380.

It has also been extended to the new provinces and Merged States by the Merged States (Laws) Act, 1949 (59 of 1949), section 3 (1-1-1950) and to the states of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws)

Act, 1950 (30 of 1950), section 3 (16-4-1950). Manipur and Tripura are Union territories now, Vindhya Pradesh is a part and parcel of the State of Madhya Pradesh.

It has also been extended to the states merged in the State of—

Bombay : see Bom. Act 4 of 1950, section 3 (30-3-1950);

Madhya Pradesh : see M. P. Act 12 of 1950, section 3 (3-4-1950);

Punjab : see Punj. Act V of 1950, section 3 (15-4-1950) and Punj. Act 23 of 1960.

It has been extended to

(i) the territories transferred to the State of Madras by Madras Act 22 of 1957, section 3 and schedule (18-12-1957), Madras has now been renamed as Tamil Nadu;

(ii) the Hyderabad and Saurashtra areas of the Bombay State, by Bom. Act 78 of 1958; and

(iii) the whole of the State of Andhra Pradesh, by Andh. Pra. Act 23 of 1958, section 3 and Schedule (1-2-1960).

The Act has now been extended to the Union territory of—

(1) Pondicherry by Act 26 of 1968 (1-8-1968);

(2) Laccadive, Minicoy and Amindivi Islands by Regn. 8 of 1965.

The Act has been made applicable to Nyaya Panchayats and Conciliation Panchas in Gujarat by Guj. Act 6 of 1962; and to Nyaya Panchayat in M. P. by M. P. Act 7 of 1962, section 337.

1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.— No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction : Provided that he at the time in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

SECTION 1 — SYNOPSIS

1. Scope and applicability.
2. Protection afforded to judicial officers under the Act.
3. Good faith.
4. Practice and procedure.

1. Scope and applicability

(1) The Act protects only judicial officers acting judicially and officers acting under their orders. (1883) 9 Cal 341 (345); 9 Ind App 152 (PC) ** (1884) 7 Mad 466 (477) (FB). (Governor removing Municipal Commissioner under Madras Act (III of 1871) ** AIR 1945 Cal 202 (207) (DB). (Board of Revenue annulling sale under Bengal Land Revenue Sales Act (II of 1859) not acting judicially.) ** (1870) 13 Suth WR 340 (341) (FB). (Municipal Commr. invested with powers of a Magistrate by S. 6 of Act III of 1964 protected by that Act for act done judicially as Magistrate.) ** AIR 1965 SC 1651 (1654). (Officer holding executive office as

Sub-Divisional Officer and judicial officer as Sub-Divisional Magistrate ordering arrest of plaintiff for offence under Section 436, I.P.C. — Officer's admission that he acted in executive capacity and not as Magistrate — Protection not available.) ** 1986 All LJ 1258 : 1986 All WC 493 (While keeping record in his custody or sending same to the Court of a sarpanch would be performing his duties in administrative capacity, therefore he would not be entitled to claim protection under the Act) ** AIR 1962 All 137 (139) : (1962) 1 Cri LJ 234. (Proceedings under S. 107, Criminal P. C. — Failure of person proceeded against to furnish sureties — Person detained in custody — Suit for damages against Magistrate — Magistrate is protected under Act.) ** AIR 1961 Madh Pra 316 (317) (DB). (Proceeding under S. 9 of C. P. Land Revenue Act, 1917 are of a judicial nature — Judicial action is protected if the officer acts in good faith.) ** AIR 1971 All 162 (163, 164). (Committal Magistrate in complying with order certified under S. 425, Criminal P. C. wrongly arresting acquitted persons — Not protected

Section 1 — Note 1 (contd.)

by S. 1 of the Act.) ** AIR 1961 Mad 211 (212). (President of panchayat Court launching prosecution under S. 174, Penal Code acts in judicial capacity.)

(2) If the act done or ordered to be done in the discharge of judicial duties is within jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was erroneously, irregularly or even illegally, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. AIR 1965 SC 1651 (1654) : (1965) 2 Cri LJ 686.

(3) The immunity is exceedingly wide because judicial officers, may act fearlessly, impartially and with a sense of security. If there is an abuse of such judicial power by any one, the remedy lies in the executive preventing him from exercising such powers any more. English case-laws Disc. (1958) 60 Bom LR 279.

(4) The Act has no application or bearing whatsoever on contracts into which a Judge may enter as per law of the land. AIR 1931 Oudh 99 (102) (SB).

[See however AIR 1931 All 189 (192) (FB).

(Judge while entering into contract on behalf of the Secretary of State does not act in his judicial capacity.)]

(5) Section 1 does not apply to a subordinate who is not executing an order of the Court but quite outside the order and in defiance of it. AIR 1937 Sind 281 (285) (DB).

(6) The Act cannot be used as a shield in proceedings under the Contempt of Courts Act. AIR 1958 Punj 471 (478) : 1958 Cri LJ 1529 ** 1994 Cri LJ 2836 (2858) (Bom).

(7) Act does not give protection to officer concerned from disciplinary control by superior authorities. 1962 Mys LJ (Supp) 480 (DB) ** (1990) 13 ATC 192 (207) (CAT) (Delhi).

(8) A judicial officer can be adversely commented upon by his superiors if knowledge of law or procedure shown by that officer in judgement or order is not found up to the mark therefore such officer cannot claim protection under the Act. (1988) 5 Serv LR 75 (78) : (1988) 94 Pun LR 441 (DB).

(9) Words "other persons" in S. 1 must be construed ejusdem generis — The words do not include officers of Legislature. (1958) 60 Bom LR 279.

(10) Section affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of judicial officer, but are, nevertheless, done or ordered to be

[The] Judicial Officers' Protection Act, 1850

done by him, believing in good faith that he had jurisdiction to them or order them to be done — In order to exclude the judicial officer from the protection of this section the complainant has to establish that the acts done or ordered to be done by the judicial officer do not fall within the said two categories. AIR 1981 SC 755 (757, 758) : 1981 Cri LJ 315.

(11) A Judicial officer who has been found guilty of using unfair means in LL.M. examinations, is undoubtedly not a fit person to be retained in judicial service. AIR 1987 SC 1469 (1471) : 1987 Lab IC 1025.

2. Protection afforded to judicial officers under the Act.

(1) The act of 1850 extends protection to Magistrates for acts done without jurisdiction. (1865) 2 Mad HCR 396 (397) ** (1890) 12 All 115 (123) (DB) ** AIR 1953 Punj 188 (190) ** AIR 1966 Madh Pra 223 (225) ** ILR 1960 Cut 342.

(2) The Act protects not only person who acts judicially but also persons who execute his orders. (1809) 36 Cal 433 (452) (SB).

(3) Protection that is available to a judge is not unlimited but is the same as protection given to Judges in England. (1841) 2 Moo Ind App 293 (298) (PC) ** AIR 1969 Pat 194 (195). (Where a Magistrate acts illegally, mala fide and without jurisdiction in the matter of arrest he would be liable in tort to pay damages.) ** 1966 Madh Pra 223 (225). (Protection under the Act is absolute, but does not extend to non-judicial acts or for acts alien to judicial duty.)

(4) The word "jurisdiction" used in the section means authority or power to act in a matter and is not restricted to the narrower sense of authority and power to do an act in a particular form or manner. (1950) 54 Cal WN (2 DR) 71 (74) (DB) ** AIR 1965 SC 1651, 1654 ** AIR 1966 Andh Pra 167 (171) : 1966 Cri LJ 642 (DB).

(5) The word "jurisdiction" does not connote form or manner in which the act is to be done, but relates to the power, the scope and ambit of the authority. AIR 1959 Assam 28 (50) (DB).

(6) To secure protection under the Act the defendant must show that he (1) acted in the discharge of official duty, (2) he believed in good faith that he was within his jurisdiction to do or order the acts complained of. (1906) 30 Bom 241 (244) ** AIR 1944 Cal 4(10) (DB) ** AIR 1937 Sind 281 (285) (DB) ** AIR 1966 Andh Pra 167 (171) : 1966 Cri LJ 642 (DB) ** AIR 1966 Madh Pra 223 (225) ** ILR (1960) Cut 342.

(7) If the defendant is found to have been acting in the discharge of his judicial duty then for the plaintiff to succeed in excluding his protection under the Act, it

Section 1 — Note 2 (contd.)

will be necessary to show both of two things (i) that defendant was acting without jurisdiction and (ii) that he was acting without good faith in believing himself to have jurisdiction. (1950) 54 Cal WN (2DR) 71 (74) (DB).

(8) Suit does not lie for anything done or said by a Judge in his jurisdiction or in a bona fide belief that he had jurisdiction. AIR 1941 Bom 228 (232) : 42 Cri LJ 723 (DB). AIR 1921 Bom 158 (158) (DB) ** AIR 1944 Cal 4 (8) (DB).

(9) It is not necessary to allow the suit to proceed and to record evidence on the merits in cases where the allegations in the plaint do not reveal that the Magistrate sued has acted in any way beyond his jurisdiction. AIR 1953 Punj 188 (190).

(10) The protection afforded to judicial officers rests on public policy. But a malicious Judge will not be allowed to exercise his malice with impunity. (1906) 30 Bom 241 (245) ** AIR 1966 Madh Pra 223 (225) ** ILR (1960) Cut 342.

(11) When a Magistrate directs a general search of house in an enquiry under the Criminal Procedure Code in the discharge of his judicial functions he may appeal for protection under this Act. (1912) 13 Cri LJ 693 (701) : 39 Ind App 163 (PC). (36 Cal 433, Overruled.)

(12) The words "in the discharge of his judicial duty" have been used in the Act in contradistinction to the exercise of the administrative or executive duty. AIR 1959 Assam 28 (50) (DB) ** AIR 1966 Madh Pra 223 (225).

(13) Proceedings taken by judicial officer warranted by law — Slight irregularity cannot exclude the judge from the protection. (1911) 9 Ind Cas 535 (536) (SB) (All) ** AIR 1938 Cal 177 (178) (DB) ** (1890) 12 All 115 (127) (DB).

(14) Where the judicial officer acts without jurisdiction his liability would depend not on whether the act was malicious and without reasonable and probable cause but whether it was within the protection of this Act. AIR 1933 All 749 (750) ** AIR 1953 Punj 188 (190).

(15) Where a judicial officer acts or orders an act to be done he should do so in good faith believing himself to have jurisdiction to do so. (1890) 12 All 115 (123) (DB) ** (1870) 13 Suth WR 13 (15) (DB).

(16) The judge must take evidence and see whether the case comes within this Act before dismissing a suit. AIR 1917 All 355 (356) (DB) ** AIR 1966 Madh Pra 223 (225).

(17) Where the act is contrary to law protection cannot be claimed. (1883) 9 Cal 341 (353) : 9 Ind App

152 (PC) ** (1869) 11 Suth WR (Cr) 19 (20) (DB).

(18) The protection afforded by the Act ought not to be cut down on the ground of hardship to the party injured because of the denial of redress by suit for the grossly irregular and oppressive act of the official officer. (1890) 12 All 115 (128) (DB).

(19) Sub-inspector ordered by sub-divisional officer to search without search warrant — Sub-divisional officer entitled under S. 96, Criminal P. C. to pass order for search and seizure — Though order without search warrant is illegal or irregular exercise of power by the Magistrate the police officer is protected as the officer by itself is not one without jurisdiction. AIR 1938 Cal 177 (178, 179) (DB) ** AIR 1965 Mys LJ 214 (220) : (1965) 2 Cri LJ 225 (DB).

(20) Report of contravention of order made under R. 81, Defence of India Rules — District Supply Officer who was also a first class Magistrate Ordering arrest of offender — He was not acting as a Court and was not entitled to the protection of the Judicial Officer's Act. AIR 1958 All 758 (764) : 1958 Cri LJ 1278 (DB).

(21) Proceedings under S. 107, Cr. P. C. started by Magistrate on insufficient grounds — Does not amount to absence or excess of jurisdiction vested in him — Magistrate fully protected under the Act. 1973 Assam LR 59 (71) (Gauhati).

(22) Where the Amin of the executing Court misused his office, in collusion with others to cause loss to a person who was not liable under the decree he was not entitled to the protection of the Act. AIR 1974 Mys 24 (38).

3. Good faith.

(1) The bona fide belief referred to in this Act is not a belief based on no probable or plausible ground and arrived at inconsiderately and without due inquiry. It means care and attention in the performance of official duty on the part of the person who does or orders the act complained of. (1890) 12 All 115 (125).

(2) The immunity granted under the Act refers to acts done in good faith by judicial officers and is confined to suits in Civil Courts. AIR 1958 Punj 471 (478) : 1958 Cri LJ 1529.

(3) Error whether it be one of law or fact must, be shown to rest on some foundation of reason. (1890) 12 All 115 (126) (DB).

(4) Where only function which the Judicial Officer was to perform that of signing warrants for arrest of convicted persons but warrants were signed and issued even against acquitted persons through negligence the judicial officer could not be protected under the Act. 1970 All Cri R 429.

(5) Protection under — Not available for wrongful imprisonment and the Magistrate is liable for damages. AIR 1971 All 162 (163, 164, 166).

STATE AMENDMENTS

Andhra Pradesh :

Renumber section 1 as section 1A and before the section so renumbered, insert the following section :—

1. Short title and extent.—(1) This Act may be called The Judicial Officers' Protection Act, 1950.

(2) It extends to the whole of the State of Andhra Pradesh".— Andh. Pra. Act 23 of 1958, section 3 and Schedule (1-2-1960).

Karnataka :

Same as in Andhra Pradesh except that for the words 'Andhra Pradesh' in sub-section (2), read Karnataka—Karna. Act 33 of 1978, S. 1 (at once).

Tamil Nadu :

Same as in Andhra Pradesh except that for the words 'Andhra Pradesh' in sub-section (2), read 'Madras'—T.N. (Added Territories) A.L.O., 1961 (with effect from 1-4-1960).