

NOTARIES ACT, 1952

53 of 1952

[9th August, 1952]

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STATEMENT OF OBJECTS AND REASONS "Under S.136 of the Negotiable Instruments Act, 1881, the Government of India have the power to appoint notaries public, but only for the limited purpose of performing functions under that Act. By virtue of an ancient English Statute, the Master of Faculties in England used to appoint notaries public in India for performing all recognised notarial functions, but it is no longer appropriate that persons in this country who wish to function as notaries should derive their

authority from an institution in the United Kingdom. The object of the present Bill is to empower the Central and State Governments to appoint notaries, not only for the limited purposes of the Negotiable Instruments Act, but generally for all recognised notarial purposes, and to regulate the profession of such notaries. A Bill on the subject was accordingly introduced in the provisional Parliament on the 19th April, 1951 and referred to a Select Committee on the 18th August, 1951. The report of the Select Committee was presented on the 4th October, 1951, but the bill could not be proceeded with in the last session of Parliament for want of time and, therefore, lapsed. Apart from one or two minor drafting changes, the present Bill follows closely the Notaries Bill, 1951, as amended by the Select Committee."-Gaz., of Ind., 1952, Pt. II, section 2, page 166.

1. Short title, extent and commencement :-

(1) This Act may be called The Notaries Act, 1952.

(2) It extends to the whole of India [* * * *]¹

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

1. Words "except the State of Jammu and Kashmir" omitted by Act 25 of 1968, section 2 and Schedule (15-8-1968).

2. The Act came into force on 14-2-1956, see S.R.O.317 published in Gaz. of Ind., 1956, Extra., Pt. II, section3, p. 179.

2. Definitions :-

In this Act, unless the context otherwise requires.-

(a) ¹[* * *]

(b) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded;

"In order to make the definition of 'instrument' more comprehensive, the Committee think that it will be better to insert the words 'modified' and 'suspended' and have amended clause (2) (b) accordingly."-S.C.R.

²(c) "legal practitioner" means an advocate entered in any roll under the provisions of the Advocates Act, 1961 (25 of 1961).

"In the definition of 'legal practitioner' in clause 2(c), the Committee think that agents of the Supreme Court should be specifically

included and have also slightly redrafted the clause to make the intention clear."-S.C.R.

(d) "notary" means a person appointed as such under this Act :

Provided that for a period of two years from the commencement³ of this Act it shall include also a person who, before such commencement, was appointed a notary public⁴ [under] Negotiable Instruments Act, 1881 ,⁵ [I* * *] and is, immediately before such commencement, in practice in⁶ [any part of India : Provided further that in relation to the State of Jammu and Kashmir the said period of two years shall be computed from the⁷ [date on which this Act comes into force in that State.]

(e) "prescribed" means prescribed by rules made under this Act;

(f) "Register" means a Register of Notaries maintained by the Government under section 4 '

(g) ⁸ ["State Government", in relation to a Union Territory, means the administrator thereof.]

1. Omitted by Act 25 of 1968, section 2 and Schedule (15-8-1968).
2. Substituted for " (c) "legal practitioner" means any advocate or agent of the Supreme Court or any advocate, vakil or attorney of any High Court or any pleader authorized under any law for the time being in force to practise in any Court of law; ", vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1, No. 49, dated December 20, 1999
3. That is, 14-2-1956.
4. Substituted for -either under' by Act 25 of 1968 (15-8-1968).
5. Words 'or by Master of Faculties in England' omitted, Act 25 of 1968.
6. Substituted for 'any part of India', Act 25 of 1968.
7. That is, 15-8-1968.
8. Substituted for the original clause (g) by 3 A.L.O., 1956 (1-11-1956).

3. Power to appoint notaries :-

The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications¹ as may be prescribed. "The Committee are of opinion that it is not desirable to discriminate among notaries and to appoint some notaries to perform only a limited class of functions mentioned in Cl. 8 [now section 8]. The words on such

conditions, if any, as it thinks fit' [which occurred in the Bill after the word 'may'] have been omitted accordingly."-S.C.R.

1. For the qualifications for appointment as a notary, see Rule 3 of the Notaries Rules, 1956.

4. Registers :-

(1) The Central Government and every State Government shall maintain, in such form as may be prescribed, a Register of the notaries appointed by that Government and entitled to practise as such under this Act.

(2) Every such Register shall include the following particulars about the notary whose name is entered therein, namely :-

(a) his full name, date of birth, residential and professional address;

(b) the date on which his name is entered in the Register;

(c) his qualifications; and

(d) any other particulars which may be prescribed.

4A. Special provision regarding registered Notaries of Gujarat :-

". .-

(1) Notwithstanding anything contained in this Act, the State Government of Gujarat shall prepare in the form prescribed for a Register required to be maintained under section 4 , a Register of Notaries for the State of Gujarat as hereinafter provided.

(2) The State Government of Gujarat shall, by an order published in the Official Gazette, enter in the Register the names of notaries and all particulars relating thereto appearing in the Register maintained immediately before the 1st May, 1960 by the State Government of Bombay (hereinafter referred to as 'the Bombay Register') after excluding from such names, the name of any notary whose professional address as recorded in the Bombay Register falls outside the State of Gujarat.

(3) Before making any Order under sub-section (2), the State Government of Gujarat shall make such inquiry as it deems necessary, and give an opportunity to the person whose name is proposed to be excluded from the Register, to make his representation, if any.

(4) On preparation of the Register as aforesaid,-

(a) the Register as so prepared shall, for all purposes of this Act, be deemed to be the Register maintained for the State of Gujarat;

(b) all persons whose names have been entered in the Register shall, for the residue of the period for which they were appointed by the State Government of Bombay, be deemed to have been appointed by the State Government of Gujarat, and accordingly, the certificate of practice issued to them under section 5 shall be deemed to have been amended so as to restrict their area of practice to the State of Gujarat."-Notaries Act (Gujarat Adaptation) Order, 1961, published in Guj. Govt. Gaz., 27-4-1961, Pt. IV-A, p. 43.

5. Entry of names in the Register and issue or renewal of certificates of practice :-

(1) Every notary who intends to practise as such ¹["may"], on payment to the Government appointing him of the prescribed fee, if any, be entitled-

(a) to have his name entered in the Register maintained by that Government under section 4 , and

(b) to a certificate authorizing him to practice for a period of ²["five years"]from the date on which the certificate is issued to him.

³ (2) The Government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time.

1. Substituted for "shall", vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1, No. 49, dated December 20, 1999

2. Substituted for "three years ", vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1, No. 49, dated December 20, 1999

3. Substituted for " (2) Every such notary who wishes to continue to practise after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, be entitled to have his certificate of practice renewed for three years at a time. ", vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the

Gazette of India, (Extra.), Part II Sec. 1, No. 49, dated December 20, 1999

5A. Special provision regarding Register of Notaries for the State of Maharashtra :-

". .-

(1) Notwithstanding anything contained in this Act, the State Government of Maharashtra may, by order published in the Official Gazette, amend the Register, maintained before the 1st day of May 1960 by the State Government of Bombay, by deleting therefrom the name of any notary whose professional address as recorded in the Register, falls outside the State of Maharashtra :

Provided that, before passing any order as aforesaid, the State Government of Maharashtra shall make such inquiry as it deems necessary, and give an opportunity to the person concerned to make his representation, if any.

(2) After the amendment of the Register as aforesaid,-

(a) the Register as so amended shall, for all purposes of this Act, be deemed to be the Register for the State of Maharashtra: and

(b) all persons whose names remain thereon shall (for the residue of the period for which they were appointed by the State Government of Bombay) be deemed to have been appointed by the State Government of Maharashtra and accordingly, the certificates of practice issued to them under section 5 shall be amended so as to restrict their area of practice to the State of Maharashtra."-The Central Acts on State and Concurrent Subjects (Maharashtra Adaptation) Order, 1960 (with retrospective effect from 1-5-1960).

6. Annual publication of lists of notaries :-

The Central Government and every State Government shall, during the month of January each year, publish in the Official Gazette a list of notaries appointed by that Government and in practice at the beginning of that year together with such details pertaining to them as may be prescribed.

7. Seal of notaries :-

Every notary shall have and use, as occasion may arise, a seal of such form and design as may be prescribed.

8. Functions of notaries :-

(1) A notary may do all or any of the following acts by virtue of his

office, namely :-

(a) verify, authenticate, certify or attest the execution of any instrument;

(b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;

(c) note or protest¹ the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under Negotiable instruments Act, 1881 , or serve notice of such note or protest;

(d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;

(e) administer oath to, or take affidavit from, any person;

(f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;

(g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;

(h) translate, and verify the translation of, any document from one language into another;

² (ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority,

(hb) act as an arbitrator, mediator or conciliator, if so required;

(i) any other act which may be prescribed.

(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

1. For the meaning of 'protest', see Negotiable Instruments Act, 1881 (26 of 1881), section 100.

2. Inserted vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1, No. 49, dated December 20, 1999

9. Bar of practice without certificate :-

(1) Subject to the provisions of this section, no person shall practice as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him under section 5 :

Provided that nothing in this sub-section shall apply to the presentation of any promissory note, hundi or bill of exchange for acceptance or payment by the clerk of a notary acting on behalf of such notary.

(2) Nothing contained in sub-section (1) shall, until the expiry of two years from the commencement¹ of this Act, apply to any such person as is referred to in the proviso to clause (d) of section 2 .

²[Provided that in relation to Jammu and Kashmir the said period of two years shall be computed from the ³ date on which this Act comes into force in that State.]

1. That is, 14-2-1956.

2. Inserted by Act 25 of 1968, section 2 and Schedule (15-8-1968).

3. That is, 15-8-1968.

10. Removal of names from Register :-

The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 the name of the notary if he-

(a) makes a request to that effect; or

(b) has not paid any prescribed fee required to be paid by him; or

(c) is an undischarged insolvent; or

(d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as notary .¹["or"]

² (e) is convicted by any court for an offence involving moral turpitude; or

(f) does not get his certificate of practice renewed.

1. (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec.1, No. 49, dated December 20, 1999

2. Inserted vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1,

No. 49, dated December 20, 1999

11. Construction of references to notaries public in other laws :-

Any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practice under this Act.

12. Penalty for falsely representing to be a notary, etc :-

Any person who-

(a) falsely represents that he is a notary without being appointed as such, or

(b) practises as a notary or does any notarial act in contravention of section 9 , shall be punishable with imprisonment for a term which may extend to ¹ ["one year"], or with fine, or with both.

1. Substituted for "three months", vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1, No. 49, dated December 20, 1999

13. Cognizance of offence :-

(1) No Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

(2) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

"The Committee consider that protection should be given to notaries in respect of cognizance of offences. They think that protection should be given only to notaries who commit an offence acting or purporting to act in the discharge of their functions under this Act. This clause has been inserted to achieve this object."- S.C.R.

14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries :-

If the Central Government is satisfied that by the law or practice of any country or place outside- India, the notarial acts done by notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by

notification' in the Official Gazette¹ , declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

1. For such notification regarding : (1) Belgium, see G.S.R. 103, published in Gaz. of Ind., 25-1 -1964. Pt. II. section 3(i), p. 124; (2) New Zealand, see G.S.R. 1230, published in Gaz. of Ind., 25-1 -1964, p. 1392; and (3) Ireland, see G.S.R. 296, published in Gaz. of Ind., 17-2-1968, Pt. II, section 3(i), p. 302.

15. Power to make rules :-

(1) The Central Government may, by notification in the Official Gazette, make rules¹ to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the qualifications of a notary, the form and manner in which applications for appointment as a notary may be made and the disposal of such applications;

(b) the certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;

²(c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, area of practice or enlargement of area of practice and exemption whether wholly or in part, from such fees in specified classes of cases.

(d) the fees payable to a notary for doing any notarial act;

(e) the form of Registers and the particulars to be entered therein;

(f) the form and design of the seal of a notary;

(g) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;

(h) the acts which a notary may do in addition to those specified in section 8 and the manner in which a notary may perform his functions;

(i) any other matter which has to be, or may be prescribed.

³ [(3) Every rule made by the Central Government under this Act

shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. For the Notaries Rules. 1956, see Gaz. of Ind., 1956, Extra, Pt. II, section 3, p. 191. For the extension and enforcement of these rules in Sikkim on 16-5-1976-See S.O. 213(E) dt.16-5-1973 published in Gaz. of India, 16-5-1975, Pt. II, section 3(ii), Ext., p. 1229.

2. Substituted for " (c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, and exemption, whether wholly or in part, from such fees in specified classes of cases; ", vide (36 Of 1999), Dt. December 20, 1999 Published in Received the assent of the President on the 17th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1, No. 49, dated December 20, 1999

3. Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983), section 2 and Sch. Sr. No. 29 (15-3-1984).

16. Amendment of Act 26 of 1881 :-

Repealed by the Repealing and Amending Act, 1957 (36 of 1957), section 2 and Schedule I.]