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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th October 1893 :

Bill No. 14 of 1893.

A Bill to provide for certain matters relating to Fisheries in British India.

WHEREAS it is expedient to provide for certain matters relating to fisheries in British India; It is hereby enacted as follows :

1. (1) This Act may
Title, extent and com- be called the Indian
mencement. Fisheries Act, 1893.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

2. Subject to the provisions of sections 8 and 10 of the General Clauses Act, 1887, this Act shall be read as supplemental to any other enactment for the time being in force relating to fisheries in any part of British India.

3. In this Act, unless there is something repugnant in the subject or context—
Definitions.

(1) "fish" includes shell-fish and turtles :

(2) "fixed engine" means any net, cage, trap or other contrivance for taking fish fixed in the soil or made stationary in any other way : and

(3) "private water" means water which is the exclusive property of any person, or in which any person has an exclusive right of fishery.

4. (1) If any person uses any dynamite or other explosive substance in any water frequented by fish with intent thereby to catch or destroy any of the fish that may be therein, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(2) In sub-section (1) the word "water" includes the sea within a distance of one marine league of the sea-coast : and an offence committed under that sub-section in such sea shall be deemed to have been committed on the land abutting on such coast and may be tried and punished accordingly.

5. (1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(2) The words specified in the third column of the schedule to this Act against the several enactments respectively mentioned in the first and second columns of that schedule, and any rules which may be in force immediately before the passing of this Act with respect to the regulation of the poisoning of water for the purpose of catching or destroying fish, are hereby repealed and cancelled respectively.

6. Any person who fishes, or erects, places, maintains or uses any fixed engine, in any private water without the permission of the owner of the water or fishery shall be punished for a first
Offences.

offence with fine which may extend to fifty rupees, and for a subsequent offence with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both :

Provided that nothing in this section shall apply to any act done by any person in the exercise of a *bonâ fide* claim of right or shall prevent any person from angling with a rod and line or with a line only in any portion of a navigable river.

7. (1) Any fixed engine erected, placed, maintained or used in contravention of the last foregoing section, and any fish taken by means of any such engine or otherwise in contravention of this Act, shall be forfeited ; and

(2) Any such fixed engine as aforesaid may be removed or taken possession of by the District Magistrate or by any person empowered by him in this behalf.

8. Whoever enters upon land in the possession of another or upon any

Entry upon land of another or upon private waters with intent to commit an offence under section 6.

private water with intent to commit any of the offences specified in section 6 shall be punished with fine which may extend to fifty rupees.

9. (1) The Local Government may, with the previous sanction of the Governor General in Council, make rules for the purposes hereinafter in this section mentioned, and may by a notification in the official Gazette apply all or any of such rules to such waters, being the property of the State, as such Government may specify in the said notification.

(2) The Local Government may also, by a like notification, apply such rules or any of them to other waters with the consent of the owner thereof and all other persons, if any, interested therein.

(3) Such rules may prohibit or regulate all or any of the following matters, that is to say :

(a) the erection, placing, maintenance and use of fixed engines ;

(b) the construction of weirs ;

(c) the use in all or any waters notified under sub-section (1) or sub-section (2) during all or any seasons of the year of nets with a mesh smaller than a specified size measured from knot to knot when the mesh is wet ;

(d) the capture or sale of all or any kinds of fish during any season appointed as a close season ; and

(e) the diversion or baling of any water for the purpose of catching fish.

(4) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years.

(5) In making any rule under this section the Local Government may —

(a) direct that a breach of it shall be punishable with fine which may extend to one hundred

rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues ; and

(b) provide for—

(i) the seizure, forfeiture and removal of fixed engines erected, placed, maintained or used, or nets used, in contravention of the rule ;

(ii) the forfeiture of any fish taken by means of any such fixed engine or net ; and

(iii) the recovery from the person erecting, placing, maintaining or using any such fixed engine of the cost of removing it,

and may provide that such cost shall be recoverable as if it were an arrear of land-revenue.

(6) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

10. Any person specially empowered by the

Local Government in this behalf, by name or by office, may, without an order from a Magistrate and without warrant, arrest any person who has been concerned in any offence punishable under section 4, 5, 6 or 8 or under any rule under section 9, or against whom a reasonable complaint has been made, or credible information has been received, of his having been so concerned.

THE SCHEDULE.

REPEAL OF PORTIONS OF ENACTMENTS.

(See section 5, sub-section (2).)

Enactment.	Portion of enactment in which words repealed occur.	Words repealed in such portion.
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Acts of the Governor General in Council.

VII of 1878 ...	Section 25, clause (i) ...	"poisons water".
	Section 31, clause (j) ...	"poisoning water".
XIX of 1881 ...	Section 25, clause (d) ...	"poisons water".
	Section 37, clause (f) ...	"poisoning water".

Act of the Governor of Madras in Council.

V of 1882 ...	Section 21, clause (h) ...	"poisons water".
	Section 26, clause (f) ...	"poisoning water".

Regulation under the Statute 33 Vict., c. 3, S. 1,

V of 1890 ...	Section 7, clause (d) ...	"poisons water".
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STATEMENT OF OBJECTS AND REASONS.

The subject of legislating for the protection of fresh-water fishes was opened with an enquiry made so long ago as 1869 by Dr. F. Day, of the Madras Medical Service, who had been placed on special duty for that purpose. This was followed by a resolution issued in October 1871 on Dr. Day's report for the North-Western Provinces, in which he recommended a Fisheries Act. Dr. Day's recommendations, as well as the action taken or proposals made up to 1888 by the various Local Governments, were summarised in a note prepared for the Agricultural Conference held at Delhi in that year.

2. Briefly, the action taken by the several provinces was as follows: In 1875 a Fisheries Act was passed for British (now Lower) Burma. In 1880 the Punjab Government submitted a draft Act and Rules. In 1881 the Bombay Government submitted a Bill for the preservation of game and fish. In 1883 the Government of Madras submitted a draft Fishery Bill. In 1889 the North-Western Provinces Government submitted recommendations made by the Commissioner of Kumaon for preserving fish in the hills.

3. The Conference at Delhi was unanimous in making the following five recommendations:—
- (1) the prevention of dynamite and other explosives being used for the destruction of fish;
 - (2) the prevention of poisoning waters;
 - (3) the enforcement of fish ladders on weirs and other works in rivers of any size: ten yards width being suggested as a minimum;
 - (4) the regulation of fixed obstructions and engines in such rivers;
 - (5) the protection of stock-pools.

The members of the Conference differed as to the expediency of—

- (a) regulating the size of the mesh of nets;
- (b) prohibiting or regulating the baling out rivers and streams for the purpose of catching fish; and
- (c) conferring on the Government power to assume control of the right to fish in the waters or rivers of a province.

The proceedings of the Conference were circulated and the opinions of Local Governments obtained. The disposal of the case was still, however, deferred pending a reply from Madras.

4. In the meantime the Bengal Government had passed an Act, II of 1889, for the prevention of poaching in private waters.

5. In the opinion of the Government of India the importance of maintaining to the fullest extent compatible with private interests one of the most considerable food-supplies of the country is so great as to justify legislation. Although this has been long recognised, and although the question has now been under consideration for upwards of twenty years, but little advance has yet been made owing to the natural and proper hesitation of Local Governments to take any measures which are at all likely to interfere with private rights. It may be that this reluctance to take positive action for the protection of fish in waters in which private interests are concerned is due not so much to an assurance that legislative restriction will entail injurious consequences to individuals as to doubts regarding the character of the consequences; but it is not now proposed to interfere in any way with private rights. What is proposed in the way of immediate action is to forbid certain practices which are undoubtedly injurious, and to empower Local Governments to take under management some selected streams or head-waters belonging to the State and other selected streams and waters with the consent of the owners thereof or persons interested therein. It is thought that this will afford practical experience as to the measures most essential to ensure the desired results.

At present it is not proposed to do more in regard to private waters than to extend the provisions of Bengal Act II of 1889 (*an Act for the protection of the right of fishing in private waters*) so as to cover all private fisheries throughout the country.

6. There are two points on which definite conclusions can be at once formed: the first is that the use of dynamite and poisoning, which are overt acts more or less easily repressible, should, in view of the wanton and useless destruction of food caused thereby, be universally forbidden. The second point is that other restrictions are either not needed or are impossible on the larger rivers, which are, on the one hand, as Dr. Day indicated, naturally protected by the heavy floods in the rainy season, when most of the important fish spawn, and, on the other hand, are beyond the control of river police. These considerations generally confine the issues involved to the question of enforcing further restrictions for the preservation of fish in the smaller rivers.

7. The objects of the legislation now proposed are—

- (1) to prohibit the use of dynamite and poison in all waters within British jurisdiction, the prohibition with respect to dynamite extending to territorial waters;
- (2) to make the provisions of the Bengal Private Fisheries Protection Act, 1889, of general application;

- (3) to empower each Local Government, with the previous sanction of the Government of India, to make rules for the undermentioned purposes, and to apply them to any selected streams or other waters which are the property of the State, or to any other streams or waters with the consent of the persons owning them or interested therein :—
- (a) the prohibition or regulation of (i) the use of fixed engines for the capture of fish, and (ii) the construction of weirs ;
 - (b) the prohibition or regulation of the use of nets with a mesh below a minimum size ;
 - (c) the prohibition or regulation of the capture or sale of all or any kinds of fish during any close season ; and
 - (d) the total closure of any waters for a period not exceeding two years ;
- (4) to provide suitable penalties for breaches of the proposed law and of the rules thereunder ; and
- (5) to confer on persons specially empowered in this behalf by the Local Government power to arrest without warrant for offences against such law or rules.

The 28th September 1893.

(Signed) PHIL. P. HUTCHINS.

S. HARVEY JAMES,
Secretary to the Government of India.