

**JOINT/SELECT
COMMITTEE REPORT
LEGISLATIVE
ASSEMBLY**

1929

**The Reservation of the Coastal Traffic of India
Bill by Mr. S.N. Haji**

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1929.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks
1.	The Public Safety Bill.	20.2.29.	
2.	The Workmen's Compensation (Amendment) Bill.	26.2.29.	
3.	The Indian Income-tax (Amendment) Bill (Sec. 2, 23, etc.)	26.2.29.	
4.	The Trade Disputes Bill.	16.3.29.	
5.	The Reservation of the Coastal Traffic of India Bill by Mr. S. N. Haji.	2.4.29.	
6.	The Transfer of Property (Amendment) Bill.	2.9.29.	
7.	The Transfer of Property (Amendment) Supplementary Bill.	2.9.29.	
8.	The Indian Income-tax (Provident Fund Relief) Bill.	16.9.29.	
9.	The Indian Patents and Designs (Amendment) Bill.	25.9.29.	

LEGISLATIVE ASSEMBLY.

We, the undersigned, Members of the Select Committee to which the Bill to reserve the coastal traffic of India to Indian vessels was

referred, have considered Papers Nos. I—IV. the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Clause 1.—An amendment has been made in sub-clause (2) consequential on the definition of "coastal traffic" in clause 2.

A proviso containing a suspending clause is necessitated by the provisions of section 736(a) of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

Clause 2.—The definition of "coastal traffic" excludes Aden and Perim and ports in Indian States. It further exempts from the provisions of the Act the carriage of passengers with through tickets and of cargo on a through bill of lading to or from ports outside British India; also of mails and pilots in certain cases. These provisions are similar to those of section 7 of the Australian Navigation Act, 1912—1920. It was also decided to exempt the carriage of oil in bulk by oil-tankers as a class of ships entitled to special consideration.

We have considered it desirable to place Rulers and subjects of Indian States in the same position as Indian British subjects for all purposes.

Definitions (2) and (3) in the Bill as introduced have been consolidated in the definition of "Indian-controlled ship". We consider it desirable in the case of a corporation, partnership or association to prescribe a percentage of the right to profits as well as to capital and to provide that companies must be both incorporated and registered in British India in order to render control effective. We have also required that the Managing Director and Managing Agent, if any, should be Indians. We further decided to include ships chartered by Government in the category of Indian-controlled ships.

We were impressed with the desirability of precluding evasions of the Act by *benamidars* but decided that the imposition of penalties or disabilities on persons holding ships *benami* for non-Indians or on the non-Indian beneficiaries would involve very great complications. We have, therefore, decided to make no provision on these lines, but desire to record our recommendation that if, when the Act is in operation, devices of this kind are employed with success on a large scale, counteracting measures should be taken.

Sub-clauses (4), (5) and (6) introduce purely formal amendments.

Clause 3.—The retention of the expression "common carrier", which appeared in the Bill as introduced, might have defeated the object of the Bill. This expression is limited to persons

who are bound to carry for the public; and shipping companies might have taken the opportunity to protect themselves against the operation of the Act by a declaration that they would not carry in certain circumstances. We have avoided this difficulty by the use of the word "ship".

Clause 4.—We have thought it desirable to obviate the difficulty which might arise if the total Indian-controlled tonnage applying for licences is inadequate to the needs of the coastal traffic by providing that the Governor General in Council shall in each year after consulting the public fix the total tonnage which ought to be licensed and retain a power [given by the proviso to clause 7 (3)] in such cases to make up the desired total by licensing ships other than Indian-controlled ships.

Clause 5.—In view of the provision which we have made in clause 9 for penalties, it is essential to require a definite form of application for licences containing a signed declaration as to whether a ship is or is not Indian-controlled, together with relevant particulars.

Clause 6.—In this clause we have combined clauses 4, 5, 6, 7 and 8 of the Bill as introduced. The yearly variations of tonnage provided by clause 7 necessitate the alteration of the period of validity of a licence from three years to one year. We think that it is unnecessary to provide for renewal of licences.

Clause 7.—This clause reproduces substantially the provisions of clause 9 of the Bill as introduced with the following modifications:—

- (i) We consider it essential that all *bona fide* Indian-controlled vessels applying for licences in the first year should obtain them, especially in view of the fact that the number of such ships would not be excessive.
- (ii) In order to prevent any rush to obtain qualification by exchange of shares, etc., at the last moment before application we have provided that, for the first year, only ships which were Indian-controlled on a fixed date to be inserted in the Bill should participate in the privileges conferred. This date should be as nearly as possible the date on which the Bill finally passes through both Chambers of the Indian Legislature.
- (iii) As explained with reference to clause 4, provision has been made for the licensing in each year of the total tonnage considered necessary for the needs of the coastal traffic by licensing ships other than Indian-controlled ships if the latter do not apply in adequate numbers.

Clause 8.—We were of opinion that a clause of this nature, based on clause 286 of the Australian

Act, is necessary to meet temporarily the emergency of a sudden rush of traffic or failure of shipping between ports.

Clause 9.—We considered it desirable to particularise the offences and classes of offenders generally envisaged by clause 10 of the Bill as introduced. The penalty provided in (a) for the master of a ship is designed to provide an indirect means of control over persons not otherwise amenable to the municipal law of British India. Sub-clause (2) was added to meet the case of an offending company or firm.

Clause 10.—To the provisions of clauses 11 and 12 of the Bill as introduced we have added a power to cancel licences in respect of which a false statement or declaration has been made in an application and have made provision for forfeiture of security.

Clause 11.—We have inserted a general rule-making power subject to the rules being laid in draft before both Chambers of the Indian Legislature, and to any Resolution passed by either Chamber with regard to the draft within a fixed period being taken into consideration by the Governor General in Council before the rules are finally made.

We have inserted a special reference to rules prescribing the conditions under which licensed ships may be chartered. We desire to place upon record our recommendation that these conditions should prohibit a charter of the "bare boat" or any other form which transfers the control, management or running of a ship from an owner who satisfies the conditions contained in sub-clause (a) or (b) of clause (3) of section 2 to a charterer who does not satisfy the conditions contained in one or the other of those sub-clauses.

Clause 12.—This clause which follows section 4 of the Indian Merchant Shipping Act, 1923, exempts public ships from the operation of the Act.

Clause 13.—It was considered desirable to make it clear that the holder of a licence is in no wise exempted thereby from the requirements of the Indian Merchant Shipping Act, 1923, relating to certificates, etc.

2. The Bill was published as follows :—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	9th February, 1928.
Fort Saint George Gazette	21st February, 1928.
Bombay Government Gazette	24th May, 1928.
Calcutta Gazette	15th March, 1928.
United Provinces Gazette	5th May, 1928.
Punjab Government Gazette	1st June, 1928.
Burma Gazette	21st April, 1928.
Central Provinces Gazette	23rd June, 1928.
Assam Gazette	22nd February, 1928.
Bihar and Orissa Gazette	25th April, 1928.
Coorg District Gazette	1st May, 1928.
Sind Official Gazette	24th May, 1928.
North-West Frontier Gazette	11th May, 1928.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	8th May, 1928.
	Telugu	29th May, 1928.
	Hindustani	15th May, 1928.
	Kanarese	29th May, 1928.
Bombay	Malayalam	15th May, 1928.
	Marathi	28th June, 1928.
Burma	Gujarathi	5th July, 1928.
	Burmese	2nd May, 1928.
Sind	Sindhi	31st May, 1928.

3. In view of the extensive alterations which we have made in the Bill, we are of opinion that it should be republished.

G. RAINY.*

MOTILAL NEHRU.

JAMNADAS M. MEHTA.

SATYENDRA CHANDRA MITRA.

MOHAMMED SHAFEE DAOODI.

TOK KYI.

MADAN MOHAN MALAVIYA.

GHANSHYAM DAS BIRLA.

K. C. NEOGY.

M. S. ANEY.

PURSHOTAMDAS THAKURDAS.

ABDUL MATIN CHAUDHURY.

ZULFIQAR ALI KHAN.

JAS. F. SIMPSON.*

T. B. ROY.

W. STENHOUSE LAMB.*

H. ABDULLAH H. KASIM.

JEHANGIR K. MUNSHI.

SARABHAI NEMCHAND HAJI.

The 2nd April, 1929.

* Subject to minute of dissent.

MINUTES OF DISSENT.

We have signed the report with the other members of the Select Committee purely as in duty bound.

We entirely dissent from the discriminatory principle underlying the Bill which is such as renders it impossible for us to put forward any alternative proposals.

We refrain from comment upon any clause with the exception of No. 4 which, we are convinced, is thoroughly unpractical. To our mind, in operation it will undoubtedly cause serious difficulties to arise. Apart from the onus placed upon the Governor General in Council or upon any Government Department, the clash of opinions as to the estimate of tonnage essential to the needs of the coastal traffic in any year, is bound to lead to conflicting views causing delays and a general state of muddle, resulting, probably, in dislocation of the traffic and serious loss to those who are dependent upon coastal shipping.

The clause is objectionable to us also because it connotes Government control, rules, regulations and interference. Experience all over the world of late years has eloquently shown that the less Governments interfere with trade and commerce, the better for all concerned.

Concerning the Bill as a whole, as Burma is interested in 75 per cent. both of coastal cargo and passenger trade, the danger threatening the province, if the Bill becomes law, is too great to be contemplated without misgiving.

JAS. F. SIMPSON.

W. STENHOUSE LAMB.

The 20th March, 1929.

I consider that many of the amendments made in the Bill by the Select Committee are improvements, and that the Bill is now a much more workable and practical measure than it was at the time of its introduction. But, in my view, the Bill is open to the gravest objections in principle, and these objections have not been in any way removed, or even diminished, by the amendments made in Select Committee. I object altogether to discrimination between the citizens of the various parts of the British Empire in respect of the coastal traffic of India, and I object to the expropriation involved in that provision in the Bill which seeks to reserve completely the coastal traffic for Indian-controlled vessels at the end of five years from the date when the Bill becomes law. In these two respects the Bill has not been materially altered and I am unable to support it.

2. In the following points of detail the provisions of the Bill, as amended by the Select Committee, seem to me to be open to criticism :—

- (1) Sub-clause 2 (3) (b) (i) provides that 75 per cent. of the shares or stock of a Company must be vested in Indians, if the ships owned by the Company are to be Indian-controlled ships. There would, I apprehend, be great difficulty in practice in establishing the fact that a breach of this condition had occurred.
- (2) Clause 4 imposes on the Governor General in Council the duty of determining annually the total tonnage which is essential for the needs of the coastal traffic. I am not satisfied that this could be done with sufficient accuracy to prevent grave inconvenience to trade if the quantity required was under-estimated, or the partial frustration of the objects of the Bill if it was over-estimated.

G. RAINY.

The 22nd March, 1929.

(Words printed in italics indicate the amendments suggested by the Committee.)

A
BILL

TO

Reserve the coastal traffic of India to Indian vessels.

WHEREAS it is expedient to provide for the rapid development of an Indian Merchant Marine;

AND WHEREAS for this purpose it is expedient to reserve the coastal traffic of India to Indian-controlled vessels; It is hereby enacted as follows:—

1. (1) This Act may be called the *Indian Short title, extent Coastal Traffic (Reservation) and commencement. Act, 19 .*

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Governor General in Council may, by notification, appoint:

Provided that no such date shall be appointed until His Majesty's pleasure on this Act has been publicly signified in British India by notification.

2. For the purposes of this Act, unless there is anything repugnant in the Definitions. subject or context,—

(1) *a ship shall be deemed to be engaged in "coastal traffic" if it takes on board cargo or passengers at any port in British India, other than Aden or Perim, to be carried to, and delivered or landed at, any other port in British India, other than Aden or Perim:*

Provided that a ship shall not be deemed to be engaged in coastal traffic by reason only of the fact that it takes on board or carries—

(a) *passengers holding through tickets to or from a port outside British India;*

(b) *cargo consigned on a through bill of lading to or from a port outside British India and not transhipped to or from any ship engaged in coastal traffic and not licensed under this Act;*

(c) *mails, in the course of a continuous voyage to or from a port outside British India;*

(d) *pilots, as passengers who are proceeding from their home station for the purpose of meeting vessels requiring their services, or who are returning to their home station after piloting vessels; or*

(e) *in the case of an oil-tanker, oil in bulk;*

(2) *"Indian" means an Indian British subject or the Ruler or a subject of a State in India;*

(3) *"Indian-controlled ship" means a ship chartered by the Government, or a ship owned by or, if the ship is chartered, owned and chartered by—*

(a) *an Indian, or*

(b) a company incorporated and registered in British India, or a corporation, partnership or association—

(i) in which, in the case of a company, not less than 75 per cent. of the shares or stock, other than debenture stock, or in the case of a corporation, partnership or association, not less than 75 per cent. of the capital and the right to not less than 75 per cent. of the profits, is vested in Indians in their own right and for their own benefit free from any trust or fiduciary obligation in favour of any person other than an Indian;

(ii) of which the Chairman of the Board of Directors and the Managing Director, if any, and not less than 75 per cent. of the members of the Board of Directors are Indians;

(iii) in which not less than 75 per cent. of the voting power is vested in Indians:

Provided that voting power vested in an Indian shall be deemed not to be so vested if, by any contract or understanding or otherwise, it is arranged that such power is to be exercised directly or indirectly on behalf of any person other than an Indian; and

(iv) of which the Managing Agent, if any, is an Indian or the Managing Firm, if any, fulfils the conditions specified in clauses (i), (ii) and (iii);

(4) "licence" means a licence for coastal traffic issued under this Act;

(5) "notification" means a notification in the Gazette of India; and

(6) "prescribed" means prescribed by rules made under this Act.

3. No ship shall engage in coastal traffic, unless it is licensed for the purpose under this Act.

4. (1) The Governor General in Council shall, in each year, not less than two months before the date on which it is intended to issue licences, by notification, publish an estimate of the total tonnage which is, in his opinion, essential for the needs of the coastal traffic in that year, and invite opinions as to such estimate and fix the date on which such opinions will be taken into consideration and the period within which applications for licences may be made.

(2) The Governor General in Council, after considering any opinions which he may receive before the date so fixed, shall determine and publish by notification the total tonnage essential for the needs of the coastal traffic.

5. (1) Applications for licences may be made within the period fixed under sub-section (1) of section 4.

(2) Every such application shall be in the prescribed form, and shall contain a declaration signed by the applicant stating whether the ship in respect of which the application is made is an Indian-controlled ship and such particulars as may be prescribed to enable the Governor General in Council to satisfy himself as to the accuracy of such declaration.

6. (1) The Governor General in Council may, subject to the conditions hereinafter contained in section 7, after considering the applications, issue licences in the prescribed form and on the prescribed conditions to ships of an aggregate tonnage not exceeding the tonnage determined under sub-section (2) of section 4.

(2) A licence shall be valid only for the year in respect of which it is issued.

(3) Before issuing a licence, the Governor General in Council may require from the person applying therefor such security, not exceeding fifty thousand rupees, as the Governor General in Council may think fit, for compliance with the conditions thereof.

7. (1) In respect of the first year after the commencement of this Act, Issue of licences to Indian-controlled ships. licences shall be issued to all Indian-controlled ships in respect of which applications for licences have been received which were Indian-controlled ships on the day of .

(2) In respect of the second, third and fourth years, licences shall be reserved for Indian-controlled ships up to an aggregate tonnage of two-fifths, three-fifths, and four-fifths, respectively, of the tonnage determined for the year under sub-section (2) of section 4.

(3) In respect of every year after the fourth year, licences shall be issued to Indian-controlled ships only :

Provided that if, after every application for a licence in respect of an Indian-controlled ship has been considered, the aggregate tonnage of the Indian-controlled ships which have been licensed is less, in the second, third or fourth year, than the tonnage up to which licences have been reserved for Indian-controlled ships under sub-section (2), or, in any year after the fourth year, than the tonnage determined under sub-section (2) of section 4, the deficiency may be made good by the issue of licences to ships other than Indian-controlled ships.

8. If the Governor General in Council is satisfied that—
Power to issue permits to unlicensed ships.

(a) no licensed ship is available for, or that the service rendered by licensed ships is inadequate to the needs of, the coastal traffic to or from any port or between any ports in British India, and

(b) it is desirable in the public interest to take action in this behalf,

the Governor General in Council may issue permits in the prescribed form to unlicensed ships to engage for a period not exceeding three months in coastal traffic, subject to such conditions as may be specified in the permits, and nothing in section 3 shall apply to a ship to which such a permit has been issued during the continuance of the permit.

9. (1) Any person who—

Penalties.

(a) is the owner, charterer or agent or has command or charge of a ship which contravenes the provisions of section 3, or

(b) contravenes the conditions of a licence, or

(c) signs a false statement or false declaration in an application for a licence, knowing the same to be false,

shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(2) Where a person punishable under sub-section (1) is a company, corporation, partnership, or association, any secretary, director or other officer or person concerned with the management thereof shall be punishable as provided in that sub-section, unless he proves that the offence was committed without his knowledge or without his consent.

10. (1) If the Governor General in Council is satisfied that there has been a breach of the conditions of a licence, or that any licence has been issued upon an application which contains a false statement or false declaration, the Governor General in Council may cancel the licence:

Provided that no licence shall be so cancelled unless the holder thereof has been given an opportunity to show cause against the cancellation or has been convicted of an offence under clause (b) or clause (c) of sub-section (1) of section 9 in respect thereof.

(2) Where any licence is cancelled under this section in consequence of a breach of the conditions thereof, the Governor General in Council may direct that any security taken under sub-section (3) of section 6 for compliance with such conditions shall be forfeited either in whole or in part.

11. (1) The Governor General in Council may, by notification, make rules for carrying 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 form of licences;
- (b) the conditions of licences, including the conditions under which a licensed ship may be chartered;
- (c) the manner and form in which application for licences shall be made;
- (d) the particulars to be contained in applications for licences; and
- (e) the form of permits.

(3) No notification shall be made under sub-section (1), until it has been laid in draft before both Chambers of the Indian Legislature and the Governor General in Council has taken into consideration any Resolution relating to the draft which either Chamber may have passed within the next thirty days on which that Chamber has sat after the draft has been so laid.

12. This Act shall not apply to ships belonging to His Majesty or the Government, or to ships belonging to any foreign Prince or State and employed otherwise than for profit in the public service of that Prince or State.

13. Nothing contained in this Act shall be deemed to derogate from any of the provisions of the Indian Merchant Shipping Act, 1923.

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GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY
DEPARTMENT.

Report of the Select Committee on the
Bill to reserve the coastal traffic of
India to Indian vessels, with the Bill,
as amended.