



The Jammu and Kashmir Irrigation Act, 1978

Act 10 of 1978

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THE JAMMU AND KASHMIR IRRIGATION ACT, 1978

Act No. X of 1978

CONTENTS

Preamble

Section

1. Short title, extent and commencement.

2. Definitions.

CHAPTER II

Construction and Maintenance of Irrigation Works

3. The application of water for public purposes of irrigation works.

4. Powers of entry on land etc.

5. Power to enter and survey etc.

6. Power to enter upon land, building etc. for inspection.

7. Power to enter for repairs and to prevent accidents.

8. Power to regulate floods.
9. Notice to an occupier of building, court etc.
10. Canal crossings.
11. Acquisition of land.
12. Assessment of amount of compensation.

CHAPTER III

Water Courses and Field

Channels

Section

13. Preparation of draft scheme.
14. Publication of the scheme.
15. Acquisition of land.
16. Implementation of scheme.
17. Maintenance of water courses.
18. Persons using water course to construct works.

19. Protection of water courses against demolition etc.
20. Adjustment of claims between persons jointly using water course.
21. Supply of water through intervening water course.
22. Application for transfer of existing water course.
23. Objections to transfer applied for.
24. Transfer of field channel to the applicant.
25. Procedure when objection is held valid.
26. Procedure when Tehsildar disagrees with Canal Officer.
27. Expenses to be paid by the applicant before transfer of field channel.
28. Conditions binding an applicant.
29. Construction and maintenance of field channel.
30. Maintenance of field channels.
31. Acquisition of land for construction of field channels.
32. Use of land acquired under this Act.
33. Preparation of draft scheme in cultural commanded area.

34. Bar of civil courts jurisdiction.

CHAPTER IV

Regulation of Irrigation

Supplies

35. Application of the provisions of Chapter IV.

36. Supply of water from irrigation work.

37. Regulation of water supply from irrigation works.

38. Application for permission to use water from an irrigation work.

39. Non-supply of water in certain circumstances.

40. Sale or subletting of right to use water of irrigation work.

41. Supply of water for irrigation of one or more crops.

42. Power to prescribe the kind of crop to be grown under irrigation area.

43. Preparation of draft schemes for supply of water from irrigation work.

44. Enforcement variation and cancellation of the scheme.

45. Constitution, functions and supersession of water committee.

CHAPTER V

Levy and Recovery of Water

Rate

46. Levy of water rates.

47. Procedure for assessment.

48. Appeal.

49. Notice of demand.

50. Payment of water rates.

51. Liability when the person using water unauthorized cannot be found or when water runs wasted.

Section

52. Water rate by whom payable when charged *on* land held by several owners.

CHAPTER VI

Betterment Charges

53. Levy of betterment charges.

54. Determination of betterment charges.

55. Recovery of betterment charges.

CHAPTER VII

Levy of **Project Participation**

Section

Appeal.

56. Levy of project participation charges.

57. Enforcement of the provisions of this Chapter.

CHAPTER VIII

Obtaining Labour and Materials for Irrigation Works in Emergency

58. Procedure for obtaining labour for works urgently required.

59. Preparation of list of persons liable to carry out duties.

60. Requisition of materials.

CHAPTER IX

61. Drainage and Prevention of Water Lodging

62. Power to prohibit obstructions.

63. Power to remove obstructions after prohibition.

64. Preparation of schemes for drainage works.

65. Scheme for field *drams*.

CHAPTER X

Award of Compensation

66. Compensation for damage caused *consequent on the* exercise powers conferred in this Act.

67. Limitation *of claims*.

68. Compensation for damage caused by entry on land.

69. Claims to be preferred to the Divisional Canal Officer.

70. Appeal.

71. Compensation when due and interest payable.

Section

CHAPTER XI

Settlement of Disputes

72. Power of canal officer to order use of distribution of water.

CHAPTER XII

Safety of Irrigation Work

73. Limitation in respect of irrigation works.

74. Power to remove encroachment.

75. Obligation of owners in respect of works effecting safety of canals.

76. Prohibition to conduct operations near irrigation work.

77. Fishing and plying of boats, etc.

78. Letting out of water from canal prohibited.

79. Prohibition to abstract water from irrigation works.

80. Depositing produce of mines in or near channels prohibited.

81. Discharge of sewage or trade effluent in the water of irrigation work prohibited.

CHAPTER XIII

Offence and Penalties

82. Offence under the Act.

83. Person convicted under section 84 liable to repair of damage etc.

84. Abetment.

85. Punishment under other laws not barred.

86. Offence under this Act the be cognizable.

87. Power to remove obstruction or damage to work.

88. Payment of fine as reward to informant.

89. Offence by a Company.

90. Power to impose fine

CHAPTER XIV

Miscellaneous

91. Recovery of cost of repairing damage when the offender is unascertainable.

92. Recovery of sums.

93. Appointment of officers and inspection of irrigation work.

94. Power to summon and examine witnesses.

- 95. Bar of certain proceedings etc.
- 96. Village Panchayats.
- 97. Formation of farmers cooperative societies.
- 98. Power to make rules.
- 99. Repeal and saving.

THE JAMMU AND KASHMIR IRRIGATION ACT, 1978

Act No. X of 1978

Received the assent of the Governor on 9th May, 1978 and is hereby published for general information:—

An Act to provide for regulation of irrigation and drainage and for levy and assessment of water rates and matters connected therewith.

Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-ninth Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Jammu and Kashmir Irrigation Act, 1978.

(2) It extends to the whole of the State.

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

2. Definitions.—In this Act, unless the context otherwise requires,. —

(a) "beneficiary" means a person or persons who derive benefit from an irrigation work whether directly or indirectly;

(b) "betterment levy" means tax levied under Chapter VII of this Act;

(c) "Canal Officer" means an officer exercising control over a sub-division of an irrigation work or portion of an irrigation work;

(d) "Canal revenue" includes water rate, betterment levy, project participation charges water cases, crop cases, license fee for fishing, navigation, sale of grass, trees and other produce from the land belonging to irrigation work proceeds from lease of land belonging to irrigation work, water mills and from sale of water for purposes other than irrigation;

(e) "Collector" means the head revenue officer of a district and includes a Deputy Commissioner or other officers appointed under this Act to exercise all or any of the powers of a Collector;

(f) "Irrigation works" includes—

(i) all reservoirs, tanks, dams, weirs, canals, barrages, channels, domestic water supply works, pipes, ponds, spring ponds, spring channels, aqueducts sluices, pumping installations constructed, maintained or controlled by the Government for the supply or storage of water;

(ii) all works, embankments, structures, control structures including outlets, supply and escape channels connected with such reservoirs, tanks, dams, weirs, canals, barrages, channels, domestic water supply works, pipes, ponds, spring ponds, spring channels, aqueducts, sluices, pumping installations, and all roads constructed for facilitating the construction or maintenance of such reservoirs, tanks, dams, weirs, canals, barrages, channels, domestic water supply works, pipes ponds, spring ponds, spring channels, aqueducts, sluices and pumping installation:

(iii) all drainage works, flood embankments, wells, water courses and field channel;

(iv) any part of a river, stream, lake or natural collection of water or natural drainage channel and ground waters to which the Government ;as applied the provisions of Chapter II of this Act;

(v) all lands held by the Government for the purpose of such reservoirs, tanks, dams, weirs, canals, barrages, channels, domestic water supply works, pipes, ponds spring ponds, spring channels, aqueducts, sluices, pumping installations and all buildings, machinery, fences, gates and other erections upon such lands;

(vi) Zamindari Khuls;

(vii) all lands, roads, cross drainage, catch water drains, R. D. pillars, boundary pillars, reference pillars, buildings, machinery, fences, gates, other erections, trees, crops, plantations, or other produce, occupied by or belonging to Government for the purposes of irrigation works;

(m) "lands under irrigable commands" means such lands as are irrigated or capable of being irrigated by flow or lift from an irrigation work being under its command and shall include also such cultivated land which received in the opinion of the Divisional Canal Officer, by percolation or otherwise from an irrigation work or by indirect flow,

percolation or drainage from or through adjoining land, an advantage beneficial to the crop; (n) "notification" means a notification published in the Government Gazette;

(o) "occupier" includes an occupier of land or property who cultivates or possesses the same for the time being;

(p) "on-farm development" includes any of the following works—

(i) land-levelling and land-shaping, including realignment of field boundaries and terracing;

(ii) providing of falls, culverts and farm roads in the fields;

(iii) land reclamation by use of engineering, biological and chemical measures, including leaching;

(iv) contour bunding and nala bunding;

(v) such other work as may be necessary or incidental to development of land or ground or flow water potential and for optimising the utilisation of land and water resources;

(q) "outlets" includes an opening, constructed, by the Government in an irrigation work through which water is delivered into a water course or field channel or directly on to any land;

(r) "owner" includes ' every person having interest in the ownership of land or property, and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership;

- (s) "prescribed" means prescribed by rules made under this Act;
- (t) "Project participation charges" means charges leviable under Chapter VIII of the Act;
- (u) "Sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;
- (v) "Superintending Canal Officer" means an officer exercising general control over an irrigation work or portion of an irrigation work;
- (w) "Tchsildar" means a Revenue Officer designated as such having jurisdiction in an area in which the irrigation work is situated;
- (x) "Trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any trade or industry, other than domestic sewage;
- (y) "vessel" includes boats, rafts, timber, and other floating bodies;
- (z) "water course" means the length of a channel between an outlet and a field channel, built at the cost of the Government and maintained by the owners or occupiers to carry water from an outlet to any block of land or as may be prescribed:
- (aa) "water rate" means water rate levied under Chapter V of this Act;
- (bb) "well" means a well sunk for search or extraction of ground water and includes an open well, dug well, bored well, dugout- bored well, tube-well and filter point;
- (cc) "Zamindari Khuls" means an irrigation channel which was maintained by the beneficiaries themselves but taken over by the Government for the purpose of

remodeling, repair maintenance, whether before or at the time of commencement of this Act and includes such of the Khuls which may be taken over by the Government in future for remodeling, repair or maintenance;

(dd) "Zilladar" means an officer exercising control over a canal in respect of proper distribution and regulation of water and is responsible for the assessment of canal revenue.

CHAPTER II

Construction and maintenance of irrigation works

3. The application of water for public purposes of irrigation works—(1) Whenever it appears expedient to the Government that water of any river (including its tributaries) or stream or Zamindari Khuls flowing in a natural channel or of any lake or any other natural collection of still water or ground water or flowing in a channel where such water or part thereof, is received from any irrigation work constructed by the Government whether by percolation, regeneration, release, or otherwise should be applied or used for the purpose of any existing or projected irrigation work, or for the regulation, supply or storage of water, the Government may, by notification, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

(2) As soon as practicable after the issue of a notification under sub-section (1), the Divisional Canal Officer or any officer duly empowered under this Act shall cause public notice to be given at convenient places, stating that the Government intends to apply or use the water referred to in that sub-section.

(3) The application or use of the said water or the application or use of water of any irrigation work under the management or control of the Government shall be regulated according to the provisions of this Act.

(4) Where the Government is of the opinion that in the interest of proper irrigation from any irrigation work constructed or proposed to be constructed within a period of five years it is necessary to control the construction of wells for any purpose other than exclusively domestic use, either on personal or community basis, in any area or areas, the Government may, by notification specify such area or areas, and thereupon no person shall within such area or areas construct any such well except with the previous sanction of the Government or any officer authorized by the Government in this behalf and subject to such conditions as the Government or such officer may impose. The application for grant of such sanction shall be disposed of by the Government or the authorized officer within three months from making thereof.

(5) When the Government is of the opinion that in the interest of proper irrigation, a block of land under any existing or proposed irrigation work is to be transferred to another proposed or existing work or completely excluded from any existing work the Government may, by notification, specify such areas and such works to take effect from a date specified in the notification not being earlier than one month from the date thereof.

4. Powers of entry on land etc.—At any time after the day named in the notification under sub-section (1) of section 3, any Canal Officer duly empowered in this behalf may enter on any land, remove any obstruction, close any channel and do any other thing necessary for such application or use of the said water and for such purpose may take with him, or depute or employ such subordinates and other persons as he thinks fit.

5. Power to enter and survey etc.—Whenever it shall be necessary to make an enquiry or examination in connection with a projected irrigation work or its construction or with the maintenance of an existing irrigation work or with the application or use of the water

of any irrigation work for the purpose of regulation, supply or storage of water, any Canal Officer duly empowered in this behalf may—

(a) enter upon such land and structure or anything attached to land as he may think necessary for the purpose;

(b) undertake surveys or take levels thereon;

(c) dig and bore into the sub-soil;

(d) where otherwise such inquiry cannot be completed cut down and clear away any part of any standing crop, fence or jungle;

(e) exercise all powers and do all things in respect of such land as he might exercise and do if the Government had issued a notification under section 4 of the State Land Acquisition Act, Sam vat 1990 to the effect that land in that locality is likely to be needed for a public purpose; and

(f) set up and maintain gauge discharge of silt measurement stations and do all other things necessary for purposes of such inquiry and examination.

6. Power to enter upon land, building etc. for inspection—Any Canal Officer duly empowered in this behalf may enter upon any land, building, other than residential accommodation, water course or field channel on account of which any water rate is chargeable for the purpose of inspecting or regulating use of the water supplied, or of measuring the land irrigated thereby or chargeable with a canal revenue and of doing all things necessary for the proper regulation and management of the irrigation work from which such water is supplied.

7. Power to enter for repairs and to prevent accidents.—(1) In case of any accident being apprehended or happening, to an irrigation work, any Canal Officer empowered in this behalf may enter upon or into any immovable property in the neighbourhood of such irrigation work or such other immovable property as may be necessary for the purpose and remove, carry or utilise trees and other materials, and takes such other steps as may be necessary, and execute all work which may be necessary for the purpose of preventing such accident or repairing any damage vione.

(2) In determining compensation for removing, carrying or utilising trees and other materials the principles laid down in section 61 shall be followed.

8. Power to regulate floods.—Where any irrigation work is being damaged or damage to any irrigation work is apprehended due to floods or other natural calamities, any Canal Officer duly empowered in this behalf may, in the interest of the safety of the irrigation work regulate the floods by operating gates or gated waste weir on the irrigation work or regulate the Canal as the case may be.

9. Notice to an occupier of building, court etc.—Where a Canal Officer proposes under the provisions of sections 5, 6 or 7 to enter into any building or enclosed court or garden attached to a dwelling house, not supplied with water from an irrigation work, and not adjacent to a flood embankment, he shall give to the occupier of such building, court or garden such reasonable prior notice as the urgency of the case will allow.

10. Canal crossings.—(1) There shall be provided at the cost of the Government suitable means of crossing canals constructed or maintained at the cost of the Government at such places as the Government thinks necessary for the reasonable convenience of the inhabitants of the adjacent land.

(2) No suit shall lie in a civil court against the Government to enforce the construction of a crossing of a Canal, or to enforce the alternating of a crossing or for compensation for

damage arising from the absence of inadequacy of any crossing, or to modify or set aside any scheme framed or order passed under this section.

Explanation.—Suitable means of crossing canals include means for the passage of traffic and of water.

11. Acquisition of land.—If the Government is satisfied that any land for the construction of an irrigation work, excluding water course, field channels and field drains or for the maintenance, improvement or extension of an existing irrigation work excluding water courses, field channels and field drains, is needed, the Government may acquire the land by following the provisions of the State Land Acquisition Act, Samvat 1990 except to the extent specifically stated to the contrary in this Chapter.

12. Assessment of amount of compensation.—(1) Notwithstanding anything to the contrary in the State Land Acquisition Act, Samvat, 1990 the Collector may, after holding such enquiry as he deems necessary, make an estimate of the amount of compensation payable in respect of the land, needed for purposes specified in section 11 of this Act, for which declaration under section 6 of the aforesaid Act has been made, including compensation for the standing crops, trees and structures, if any, on such land and for any physical damage caused to them, within three months of the declaration.

(2) The Collector may take possession of the land after tendering the estimated amount of compensation, as stated in sub-section (1), to the person having an interest in the land and the land shall thereupon vest absolutely in the Government free from all encumbrances.

(3) If any person having an interest in the land acquired by the Government does not agree with the estimated amount of compensation, he may require that the matter be referred by the Collector for determination by the court in accordance with section 18 of the State Land Acquisition Act, Samvat 1990.

(4) In all other matters relating to compensation including principles for determining compensation the provisions of the State Land Acquisition Act, Samvat 1990 shall be applicable.

CHAPTER III

Water courses and field channels

13. Preparation of draft scheme.—(1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the Government in this behalf, the Canal Officer, may, on his own motion or on the application of an owner or occupier, prepare a draft scheme to provide for all or any of the matters, namely:—

(a) the construction, alteration, extension and realignment of any water course, or existing water course constructed or maintained by the owners or occupiers;

(b) re-allotment of areas served by one water course to another;

(c) the lining of any water course;

(d) the occupation of land for the deposit of soil from water course -clearances;

(e) any other matter which is necessary for the proper maintenance and distribution of supply of water from a water course.

(2) Every scheme prepared under sub-section (1), shall amongst other matters, set out the estimated cost thereof, the realignment of any water course or existing water course, as the case may be, the site of the outlet, the particulars of the owners or occupiers or beneficiaries to be benefited and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.

14. Publication of the scheme—(1) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed inviting objections and suggestions with respect thereof within thirty days from the date of notification.

(2) After consideration of such objections and suggestions if any, the Canal Officer shall approve the scheme either as it was originally published or in such modified form as he may consider fit and publish the same.

(3) The Divisional Canal Officer may, on his own motion at any time or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme under sub-section (2). revise the scheme approved by the Canal Officer.

Provided that such revision shall not be made without affording the person affected an opportunity of being heard.

(4) An owner or occupier aggrieved by the order of the Divisional Canal Officer in respect of a scheme which has not been approved, may prefer an appeal, within thirty days of the passing of the order, to the Superintending Canal Officer whose decision thereof shall be final.

15. Acquisition of land.—(1) After a scheme has been approved by Canal Officer, or, where an appeal is pending before the Divisional Canal Officer, after it has been disposed of by him, the Canal Officer shall acquire the land by agreement with the owner thereof, or the Canal Officer shall notify in the manner prescribed a notice of his intention to acquire the land required for implementation of the scheme.

(2) Any person interested in the land notified under sub-section

(1) may, within fifteen days from the publication thereof, apply to the Divisional Canal Officer by petition stating his objections to the proposed acquisition.

(3) After considering the objections, the Canal Officer may make an order for acquisition of the land.

(4) The Canal Officer may after holding such enquiry as he deems necessary make an assessment of amount of compensation payable in respect of land, standing crops, trees and structures, if anyone such land, or for any physical damages caused to them within fifteen days of the order, made under sub-section (3).

(5) *In* determining an amount of compensation, the Canal Officer shall give a reasonable opportunity of being heard to the person having an interest in the land.

(6) The Canal Officer may take possession of the land after tendering the estimated amount of compensation as stated in subsection

(4) to the person having an interest in the land and the land shall thereupon vest absolutely in the Government free from any encumbrance.

(7) If any person having an interest in the land acquired by the Government does not agree with the estimated amount of compensation he may prefer an appeal to the Superintending Canal Officer within 30 days of the passing of the order.

(8) That Superintending Canal Officer, when the appeal has been preferred, must dispose of the appeal within 6 months of the filing thereof and the amount of compensation, if enhanced, will be deposited within one month thereof. It will carry interest at the rate of 9% per annum from the expiry of one month of the order given by the Superintending Canal Officer.

(9) The principal to be followed in awarding compensation shall be the market value of land acquired at the time of the publication of the notice under sub-section (1).

16. Implementation of scheme.—(1) The Canal Officer shall, after getting the occupation of the land under sub-section (6) of section 15, take steps to implement the scheme at the cost of the Government.

(2) Any water course constructed under sub-section (1) shall be the property of the Government.

(3) Unless ordered by the Government to the contrary any extension, alteration or realignment of water courses at the instance of the owners or occupiers shall be done at the cost of the owners, or occupiers.

17. Maintenance of water courses.—On execution of the scheme, the Canal Officer shall, by requisition in writing, direct the owners or occupiers to take over and maintain the water course and on failure of any owners or occupiers or beneficiaries to comply with this direction, he shall make arrangements for maintenance of the water course at the cost of such owners or occupiers or beneficiaries in proportion to the culturable commanded area under the scheme held by them.

18. Persons using water course to construct works.—(1) The Canal Officer may issue an order to the persons using any field channel to construct suitable bridges, culverts or other works as approved by the Canal Officer for the passage of the water of such field channel across any public road, canal or drainage channel in use before the said field channel was made or to repair any such works.

(2) Such order shall specify a reasonable period within which such construction or repairs shall be completed.

(3) If, after the receipt of such order, the persons to whom it is addressed do not within the said period construct or repair such works to the satisfaction of the said Canal Officer, he may with the previous approval of the Divisional Canal Officer, himself construct or repair the same, and demand the cost of such construction or repairs.

19. Protection of water courses against demolition etc.—(1) If a person demolishes, alters, enlarges, obstructs or encroaches upon a water course or field channel or cause any damage thereto, any person affected thereby may apply to the Canal Officer for directing the restoration of the water course or field channel to its original condition.

(2) The Canal Officer may, on his own motion or on the information given by village Patwari, Zilladar or any other officer or on receiving an application under sub-section (1), after making such enquiry as he may deem fit, require, by a notice, in writing served on the persons found to be responsible for so demolishing, altering, enlarging, obstructing, encroaching or causing damage to restore, at his own cost, the water course or field channel to its original condition within such period as may be specified in the notice.

(3) If such person fails, to the satisfaction of the Canal Officer, to restore the water course or field channel to its original condition within the period specified in the notice served on him under subsection (2), the Canal Officer may cause the water course or field channel to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person.

(4) Any person aggrieved by the order of the Canal Officer may prefer an appeal, within thirty days of the passing of such order, to the Divisional Canal Officer, whose decision on such appeal shall be final.

20. Adjustment of claims between persons jointly using water course.—(1) If any person, jointly responsible with others for the maintenance of a water course or field channel, or jointly making use of a water course with others neglects or refuses to pay his

share of the maintenance or to execute his share of any work necessary for such maintenance, the Zilladar, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that on the expiration of seven days from the service, he shall investigate the case, and shall, on the expiration of that period investigate the case accordingly, and make such order thereon as he deems fit.

(2) Such order shall be appealable to the Divisional Canal Officer, whose decision thereon shall be final.

(3) Any sum directed by such order shall be paid within a specified period.

21. Supply of water through intervening water course.—(1) Whenever application is made to a Canal Officer for supply of water from an irrigation work, and it appears to him expedient that such supply should be given and that it should be conveyed through some field channel, he shall give notice to the persons responsible for the

maintenance of such field channel to show cause on a day not less than seven days from the date of such notice, why the said supply should not be so conveyed, and, after making enquiry on such day, the Canal Officer shall determine whether and on what conditions the said supply shall be conveyed through such field channel: Provided that such application is made for lands already included in the irrigation works.

(2) Any person, aggrieved by the determination of the Canal Officer, may prefer an appeal to the Divisional Canal Officer within thirty days of such determination.

(3) When the Canal Officer determines that supply of water of an irrigation work may be conveyed through any field channel as aforesaid his decision shall, when confirmed or modified by the

Divisional Canal Officer on appeal, be binding on the applicant and also on the persons responsible for the maintenance of the said field channel.

(4) Such applicant shall not be entitled to use such field channel until he has paid the expenses of alteration of such field channel necessary in order to his being supplied through it, and also such share of the first cost of such field channel as the Canal Officer or, as the case may be, Divisional Canal Officer may determine.

(5) Such applicant shall also be liable for his share of the cost of maintenance of such field channel so long as he uses it.

22. Application for transfer of existing water course.—(1) Any person desiring that a field channel should be transferred from its present owner to himself may apply in writing to the Canal Officer, stating —

(a) that he has endeavoured unsuccessfully to procure such transfer from the owner of such field channel;

(b) that he desires the said Canal Officer, in his behalf and at his cost, to do all things necessary for procuring such transfer;

(c) that he is able to defray the cost of such transfer.

(2) If the Canal Officer considers—

(a) that the said transfer is necessary for the better management of the irrigation from such field channel; and

(b) that the statements in the application are true, he shall call upon the applicant to make such deposit as he considers necessary to defray the cost of the preliminary proceedings,

and the amount of any compensation that may become due under the provisions of section 27 in respect of such transfer, and upon such deposit being made, he shall affix a notice of the application at a conspicuous place in every village and shall send a copy of the notice to the Tehsildar of every tehsil through which such field channel passes.

23. Objections to transfer applied for.—(1) Within fourteen days of the affixation of notice under section 22, any person interested in the field channel to which the notice refers, may apply to the Canal Officer by petition stating his objections to the transfer for which application has been made.

(2) The Canal Officer may either reject the petition or may proceed to enquire into the validity of the objections giving previous notice to persons concerned stating the place and time at which such enquiry will be held:

Provided that such notice shall also be given to the Tehsildar of the area through which field channel passes.

(3) The Canal Officer shall record in writing all orders passed by him under this section and the grounds thereof.

24. Transfer of field channel to the applicant.—If no such objection is made, or where such objection is made and the Canal Officer over-rules it, he shall intimate the Tehsildar to that effect, and shall transfer the field channel from the present owner to the applicant.

25. Procedure when objection is held valid.—If the Canal Officer considers any objection made as aforesaid to be valid he shall inform the Tehsildar accordingly.

26. Procedure when Tehsildar disagrees with Canal Officer.—(1) If the Tehsildar disagrees with the Canal Officer, the matter shall be referred for decision to the Divisional Canal Officer.

(2) The decision of the Divisional Canal Officer shall be final, and the Canal Officer, if he is so directed by such decision, shall subject to the provisions of section 27 cause to transfer the field channel from the present owner to the applicant.

27. Expenses to be paid by the applicant before transfer of field channel.—(1) No such decision shall be made until the applicant has paid to the person named by the Canal Officer such amount as the Canal Officer determines to be paid as compensation for field channel so transferred together with all expenses incidental to such transfer.

(2) The Canal Officer shall make recommendation for the payment of compensation under this section to Division Canal Officer who, in determining the compensation to be paid under this section, shall follow the provisions of the State Land Acquisition Act, Samvat 1990 but he may, if the person to be compensated so desires, award such compensation in the form of a rent charge payable in respect of the field channel transferred.

(3) Any person aggrieved by the order of the Divisional Canal Officer regarding compensation may prefer an appeal, to the Superintending Canal Officer within thirty days of the order. The order of the Superintending Canal Officer on such appeal shall be final.

28. Conditions binding on applicant.—(1) When a field channel is transferred to the applicant the following rules and conditions shall be binding on him and his representative in interest, namely:—

(a) All works necessary for the passage across such field channel, existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Canal Officer.

(b) In case in which a field channel is transferred on the terms of a rent charge, the applicant or his representative in interest shall, so long as he occupies such field channel, pay rent for the same at such rate and on such days as are determined by the Canal Officer when the applicant is placed in occupation,

(c) The Canal Officer may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation-

(2) If any field channel transferred under this Act is discussed for three years continuously, the right of the applicant or of his representative in interest, to occupy such field channel shall cease absolutely,

29. Construction and maintenance of field channel.—(1) Whenever it appears expedient to the Canal Officer either on his own motion or on the application of an owner or occupier or beneficiary that with a view to utilising irrigation potential created by an irrigation work, field channels should be constructed in any area, he may cause to be served on the owner or occupier or beneficiary concerned a notice in the prescribed form containing the exact location of sluices or outlets on the irrigation works and specifying the area of irrigable land to be served by the same and direct them to construct such field channels at their own cost within a specified time which shall not be more than three months from the date of issue of the notice.

(2) If the owner or occupier or beneficiary fails to construct the field channels in his land as directed by the Canal Officer within the time prescribed under sub-section (1); the Canal Officer may, after giving the owner or occupier a reasonable opportunity of being heard, construct the field channels at the cost of the Government and recover the cost plus 15% of the actual cost pro rata from the owners or occupiers or beneficiaries.

30. Maintenance of field channels (1) It shall be the duty of owners of occupiers or beneficiaries to maintain the field channels in a proper state of repairs at their own cost.

(2) If the Canal Officer is satisfied that any field channel is not being properly maintained, he shall, after providing an opportunity to the owner or occupier or beneficiary concerned to take such action as may be directed by him proceed to have such repairs made as he may consider to be suitable at the cost of the owners or occupiers or beneficiaries plus 15% of the actual cost.

31. Acquisition of land for construction of field channels.—(1) When there is any dispute between the owners or occupiers or beneficiaries for the construction of a field channel, the Canal Officer shall, acquire the land required for such construction.

(2) The provisions relating to acquisition of land for the construction of water courses mentioned in section 15 shall apply for acquisition of land for the construction of field channels with the modification that the compensation payable shall be paid by the owner or occupiers or beneficiaries.

32. Use of land acquired under this Act.—Land acquired under,—

(a) section 31 and not required for the purpose for which it was acquired, shall revert back to the original owner thereof after recovering its cost from him. The cost so recovered shall be paid back to the beneficiaries from whom compensation for such land was originally recovered under sub-section (2) of section 31; and

(b) any other provision of this Act for any purpose other than that mentioned in section 31, shall be used only for irrigation works.

33. Preparation of draft scheme in culturable commanded area.—(1) Notwithstanding anything contained to the contrary in this Act and subject to the rules,

that may be made by the Government in this behalf, an officer designated by the Government in this behalf may, on his own motion or on the application of not less than fifty per cent of the owners or occupiers of lands in the culturable commanded area, prepare a draft scheme to provide for on-farm development on a group or block of fields.

(2) Every scheme prepared under sub-section (1) shall among other matters, set out the cost of the on-farm development works, a sketch plan of the area proposed to be covered by the said scheme, and particulars of the owners or occupiers to be benefited by the said scheme.

(3) Every scheme shall, as soon as may be after its preparation be published in such form and manner as may be prescribed inviting objections and suggestions with respect thereof within thirty days of the publication.

(4) After consideration of such objections, and suggestions, if any, the said officer shall approve the scheme either as it was originally published or in such modified form as he may consider fit and publish the same.

(5) The officer designated by the Government in this behalf may, at any time, or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme under sub-section

(4) revise the scheme approved by the said officer Provided that such revision shall not be made without affording the person affected an opportunity of being heard.

(6) An owner or occupier or beneficiary aggrieved by the order of the said officer in respect of a scheme, which has not been approved, may prefer an appeal, within thirty days of the passing of the order to such officer designated by the Government in this behalf whose decision shall be final.

(7) After a scheme has been approved by the said officer under sub-section (4) or where an appeal is pending before an officer under sub-section (6) after it has been disposed of by him the scheme shall be published in such manner as may be prescribed and upon such publication, it shall be executed or got executed by the owners or occupiers or beneficiaries in the group or block of fields at their cost, within such period of time as may be specified by the said officer.

(8) In the event of the failure of any or all of the said owners or occupiers or beneficiaries to execute the works with the said period of time specified by the said officer or in the event of any or all of the owners or occupiers or beneficiaries informing in writing the said office prior to the expiry of the said period of time that they are unable to execute or got executed the works as required, the works may be carried out by the Government, or by any agency determined by the Government in that behalf, and the cost of the works so executed by the Government or by the said agency, as the case may be, shall be recoverable by the Government or the said agency, as the case may be from the owners or occupiers or beneficiaries who fail, or indicate their inability, to execute or got executed the works as required.

(9) The share of the individual owners or occupiers or beneficiaries of the cost of the works executed in the said group or block of fields by the Government or by the said agency, as the case may be, shall be as determined by the Government or by the said agency, as the case may be.

34. Bar of Civil Courts jurisdiction.—Notwithstanding anything contained in this Act or any other law for the time being in force, no civil court shall have jurisdiction to entertain or decide any question relating to matters falling within this Chapter.

CHAPTER IV

Regulation of irrigation supplies

35. Application of the provisions of Chapter IV.—The provisions of this Chapter shall apply in respect of water from an irrigation works supplied under sections 37, 38 and 43.

36. Supply of water from irrigation work.—Water from an irrigation work may be supplied—

(a) as provided in section 37;

(b) on an application for irrigation or non-irrigation purposes as provided in section 38; or

(c) under a scheme in accordance with the provisions of section 43.

37. Regulation of water supply from irrigation works.—A Zilladar duly empowered by the Government by a notification in respect of any irrigation work or class of irrigation works may, after such inquiry as he deems fit, regulate in respect of any irrigation work for each year or part thereof or for a specified term of years at a time, as circumstances may require—

(i) the time for letting out water for irrigation;

(ii) the period of supply;

(iii) the quantity of supply; and

(iv) the areas to be supplied at different times.

Explanation.—A land shall be deemed to have been supplied with water notwithstanding that the water is not utilized for irrigation provided that such non-utilisation is due solely to the action or inaction on the part of the owners or occupiers interested in such land.

38. Application for permission to use water from an irrigation work.—(1) Any person desiring to have supply of water from an irrigation work for irrigating land not included in any area to which supply of water is regulated under section 37, shall make a written application to that effect to the Zilladar subject to any general or special order made by the Government determining the extent of lands for which water can be made available from such irrigation works such officer may, if in his opinion such supply can be made without detriment to the supply of water to lands included in any areas to which supply of water is regulated under section 37, order the supply of water and for such period not exceeding six years subject to such conditions as may be specified in such order.

(2) If after a period of six successive years of supply of water made to any land referred to in sub-section (1), the occupier, owner or beneficiary of such land applies for the supply of water being made permanent, such application, with the opinion of the Zilladar, shall be forwarded to the Canal Officer concerned who shall take steps to include the land in the area to which supply of water is regulated by section 37.

(3) The water rate leviable for the use of water for temporary cultivation under sub-section (1) shall be the normal water rate.

(4) With the sanction of and subject to such conditions, payments and restrictions, as may be imposed by the Government or such officer as may be authorized by the Government in this behalf, the Superintending Canal Officer may, without detriment to the supply of water to lands included in any area to which supply of water is regulated under section 37 give permission for water to be taken from an irrigation work, for use for domestic purposes, gharats, fish/ cattle ponds and cottage industries.

(5) If any person uses from an irrigation work without obtaining the permission required under this section, he shall in addition to any penalty he incurs under this Act, for such unauthorised use of water, be liable to pay water rate at such rate as may be determined by the prescribed officer not being less than ten times and not exceeding thirty times the

normal rate he would otherwise have been required to pay, had he applied for and obtained the permission.

39. Non-supply of water in certain circumstances.—(1) The supply of water to any water course or field channel or to any person who is entitled to such supply shall not be stopped, except,—

(a) whenever and so long as it is necessary to stop such supply for the purpose of maintenance of an irrigation work or execution of any work ordered by the competent authority;

(b) whenever and so long as any field channel by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water thereof;

(c) whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water.

(d) whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water;

(e) within the periods fixed from time to time by the Divisional Canal Officer of which due notice shall be given;

(f) whenever there is diminution in the supply of water in the irrigation work due to any natural or seasonal causes and so long as it is necessary to do so;

(g) for any reasons beyond the control of the Department.

40. Sale or subletting of right to use water of irrigation work.—

(1) No person entitled to use the water of any irrigation work shall sell or sublet or otherwise transfer his right to such use or use it for purposes other than irrigation.

(2) Every right to the supply of water for agricultural purposes to any land or other immovable property shall be attached thereto and shall be presumed to have been so transferred whenever a transfer of such land or immovable property takes place.

41. Supply of water for irrigation of one or more crops.— When water from an irrigation work is supplied for the irrigation of one or more crops only the right to use such water shall be deemed to continue only until such crop or crops shall come into maturity' and to apply only to such crop or crops.

42. Power to prescribe the kind of crop to be grown under the irrigation area.—

(1) Where the Government is satisfied that, for the better cultivation of lands, and production of crops and due preservation and for proper utilisation of water resources of any irrigation work, or in the public interest it is expedient to regulate the kind of crops that should be sown, planted or grown on lands under the irrigable command of an irrigation work or any part thereof, and the period during which such crops should be sown, planted or grown on such lands, the Government may having regard to the soil characteristics climate, rainfall and water available, by order in writing, make a declaration to that effect. Such a declaration shall be given vide publicity in such manner by the Zilladar authorized by the Government as he may think fit.

(2) On such a declaration, the Zilladar, with the approval of the superior officer authorized by the Government, may specify by notice published in such manner as may be determined by him the kind of crops that shall be sown planted or grown on the lands under the irrigable command of the irrigation work or any part thereof, the area of crops, and the period during which such crops shall be sown, planted or grown. The Zilladar shall subject to the provisions of sections 39 (1) and 40 (2) thereupon by order regulate

the supply of water from the irrigation work for sowing, in planting and growing such crops during the periods specified in the order.

(3) The Government may, by notification, determine the crops, and the periods during which such crops may be sown, planted or grown and regulate supply of water for the purpose and lay down the extent of irrigation for sowing, planting or growing different crops on the lands under the irrigable command of an irrigation work.

(4) On the publication of the notice under sub-section (2), no person shall sow, plant or grow or allow any crop other than the crop or crops specified in such notice, to be sown, planted or grown on any land under the irrigable command of the irrigation work or any part thereof, specified in such notices and during the periods specified therein.

(5) Any person aggrieved by any notice given under sub-section (2) may, within thirty days from the date of publication of such notice, file an appeal before such officer not below the rank of Divisional Canal Officer as the Government may appoint. The Appellate Officer may on hearing the parties pass such order as he thinks fit; and thereupon, the notice shall stand modified to such extent as may be specified in the order.

(6) The person, who has sown, planted or grown any unauthorised crop, or allowed any land to be sown, planted or grown with such unauthorised crop shall— and

(a) be liable for contravening the provisions of this section

(b) also be liable to pay such water rate as may be prescribed by the Government, not being less than five times and not exceeding ten times the water rates which he would otherwise have been required to pay in addition to any penalty he may incur under the Act for such unauthorised crops:

Provided that if no water is utilized either directly or indirectly from the irrigation work for growing any crop the provisions of subsections (4) and (5) shall not be applicable:

Provided further that it shall be incumbent upon the Zilladar to report the contraventions made by the owners or occupiers or beneficiaries in this behalf to the superior authority.

43. Preparation of draft schemes for supply of water from irrigation work.—(1)

Where in the opinion of the Government an irrigation work is likely to irrigate lands not exceeding 100 hectares in an area or as may be prescribed the Government may, in the public interest, by notification prepare a draft scheme for supply of water from such irrigation work to such lands. The draft scheme shall provide for handing over the management of the irrigation work and distribution of water therefrom to the Water Committee appointed under section 45.

(2) The draft scheme shall contain the following particulars, that is to say:—

(a) the area to which the scheme applied;

(b) the survey numbers of lands included in such area and the names of owners and occupiers thereof;

(c) the period or periods during which water will be supplied to such lands;

(d) the crop or crops which will be permitted to be grown thereon;

(e) the water rate at which water may be supplied to such land included in the scheme;

(f) the amount to be paid by the Government for the management of the irrigation work to the Water Committee; and

(g) fixing a period of not less than three months from the date of publication of such notification, submission of objections or suggestions to such scheme.

(3) After the publication of such notification, it shall also be published by the Canal Officer duly empowered in this behalf as soon as practicable in the language of the residents of the area through which the irrigation work passes in such place or places and in such manner as he thinks fit for the information of the owners and occupiers who are likely to be affected by such notifications.

(4) After considering such objections and suggestions, if any, as may have been received within the period fixed as aforesaid, the Government may, after making due inquiries sanction the draft scheme with or without any modification or may reject it.

(5) The scheme as sanctioned under sub-section (4) shall be published in the village, the Panchayat concerned and at the headquarters of the tehsil and of the district in which the lands included in the scheme are situated, in such manner as the Government deems fit and shall on such publication be final.

44. Enforcement variation and cancellation of the scheme.—(1) The scheme shall come into force on such date as the Government may, by notification, appoint.

(2) The scheme may at any time be varied by a subsequent scheme made, published and sanctioned in accordance with the provisions of section 43.

(3) The scheme may at any time be cancelled by the Government by a notification.

45. Constitution, functions and supersession of Water Committee —(1) After a scheme has come into force under sub-section

(1) of section 44, the Government shall constitute a Water Committee to execute the scheme subject to the superintendence, direction and control of the Canal Officer appointed by the Government for the purpose.

(2) The Water Committee shall consist of five persons elected by beneficiaries of lands included in the scheme from amongst themselves in the manner as may be prescribed.

(3) The members of the Committee shall ordinarily hold office for a period of three years from the date of their election.

(4) The Water Committee may meet from time to time, and may follow such procedure as it deems fit for the transaction of its business.

(5) The Water Committee shall,—

(a) manage the irrigation work and ensure proper distribution of water to the lands included in the scheme;

(b) decide the crops to be grown during any period or periods according to the provision of the scheme;

(c) carry out day to day maintenance and repairs of the irrigation work;

(d) maintain the irrigation system of the irrigation work beyond the outlet in a fit state of supply of water.

(e) assist the Canal Officer —

(i) in detecting and preventing encroachment on the irrigation work and on the lands appertaining thereto;

(ii) for preventing damage to the irrigation work;

(iii) for repairing any damage caused to the irrigation work;

(f) have power to impose a penalty for unauthorised use of water, of use of water out of turn or for growing crops contrary to the provisions of the scheme;

(g) maintain accounts of the amount paid to it in such manner as may be prescribed.

(6) The penalty may consist of a fine not exceeding two hundred rupees.

(7) Any person aggrieved by the decision of the Water Committee may within thirty days from the date of receipt of the decision of the Wafer Committee make an appeal to the Canal Officer or any officer duly empowered by the Government for the purpose.

(8) The Government may not later than two years from the date of the order, call for and examine the record of any inquiry or proceeding underlying such order of the Water Committee, or of the officer appointed by it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed or as to the regularity of the proceeding, and it may pass any order upholding, annulling, modifying or reversing the order of the Water Committee or of any such officer:

Provided that no order affecting any person shall be made unless such person is given a reasonable opportunity of being heard.

(9) If at any time the Government is of opinion—

(a) that the Water Committee has persistently made default in the performance of the functions imposed on it by or under this Act, or

(b) that the circumstances exist which render it necessary in the public interest so to do, the Government may by notification, supersede the Water Committee for such period, not exceeding two years as may be specified in the notification. Provided that before issuing a notification, under this sub-section for the reasons mentioned in clause (a), the Government shall give a reasonable opportunity to the Water Committee to show cause why it should not be superseded and shall consider the explanation and objections, if any of the Water Committee.

(10) Upon the publication of a notification under sub-section (9) superseding the Water Committee—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act be exercised, performed or discharged by the Water Committee shall until the Water Committee is reconstituted under sub-section (11), be exercised, performed or discharged by the Canal Officer as the Government may direct;

(c) all property owned or controlled by the Water Committee shall until the Water Committee is reconstituted under sub-section (13) vest in the Government.

(11) On the expiration of the period of supersession specified in the notification issued under sub-section (9), the Government may—

(a) extend the period of supersession for such further term not exceeding six months, as it may consider necessary; or

(b) reconstitute the Water Committee by fresh election, and in such case any person who vacated his office under clause (a) of subsection

(9) shall not be deemed to be disqualified for election: 4

32. Use of land acquired under this Act.—Land acquired under,—

(a) section 31 and not required for the purpose for which it was acquired, shall revert back to the original owner thereof after recovering its cost from him. The cost so recovered shall be paid back to the beneficiaries from whom compensation for such land was originally recovered under sub-section (2) of section 31; and

(b) any other provision of this Act for any purpose other than that mentioned in section 31, shall be used only for irrigation works.

33. Preparation of draft scheme in culturable commanded area.—(1) Notwithstanding anything contained to the contrary in this Act and subject to the rules, that may be made by the Government in this behalf, an officer designated by the Government in this behalf may, on his own motion or on the application of not less than fifty per cent of the owners or occupiers of lands in the culturable commanded area, prepare a draft scheme to provide for on-farm development on a group or block of fields.

(2) Every scheme prepared under sub-section (1) shall among other matters, set out the cost of the on-farm development works, a sketch plan of the area proposed to be covered by the said scheme, and particulars of the owners or occupiers to be benefited by the said scheme.

(3) Every scheme shall, as soon as may be after its preparation be published in such form and manner as may be prescribed inviting objections and suggestions with respect thereof within thirty days of the publication.

(4) After consideration of such objections, and suggestions, if any, the said officer shall approve the scheme either as it was originally published or in such modified form as he may consider fit and publish the same.

(5) The officer designated by the Government in this behalf may, at any time, or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme under sub-section (4), revise the scheme approved by the said officer:

Provided that such revision shall not be made without affording the person affected an opportunity of being heard.

Provided that the Government may at any time before the expiration

of the period of supersession, whether originally specified under sub-section (9) or as extended under this sub-section, take action under clause (b) of this sub-section.

CHAPTER V

Levy and recovery of water rate

46. Levy of water rates.—Whenever—

(a) water is supplied, made available or used for purposes of irrigation or for purposes other than irrigation from any irrigation work belonging to the Government or constructed or maintained by or on behalf of the Government or through moisture retained for the irrigation of the preceding crop; and

(b) water from any such work, by direct flow or percolation or by indirect flow, percolation drainage from or through adjoining land, irrigates any land under cultivation

or flows into a reservoir and thereafter by direct flow or percolation or by indirect flow-percolation or drainage from or through or adjoining land irrigates any land under cultivation and, in the opinion of the Canal Officer or Zilladar such irrigation is beneficial to crops on such land; the Government shall be entitled to levy a separate charge for such water hereinafter referred to as water rate and the Government may prescribe the rates at which such water rates shall, be levied, which may be—

- (i) different in respect of water supplied, made available or used having regard to the costs of operation and maintenance of irrigation or drainage-work;
- (ii) different in respect of water supplied, made available or used for different purposes;
- (iii) different in respect of water supplied, made available or used for irrigation of any land with reference to the crops grown or which may be grown on such lands;
- (iv) different in respect of the quantity and timeliness of supply of water or the number of watering.

47. Procedure for assessment.—The Zilladar shall prepare an assessment of the water charges for the lands in respect of which water was supplied, made available or used from an irrigation work, and serve the same on the owner or occupier or beneficiary through the village Lamberdar.

48. Appeal.—An appeal against the assessment order of the Zilladar shall lie to the Canal Officer in the prescribed manner within twenty-one days of the passing of the order.

49. Notice of demand.—As soon as an assessment is made under section 47 or where an appeal has been preferred and disposed of under section 48, the Canal Officer shall serve a notice of demand in the prescribed manner for the amount of water charges assessed.

50. Payment of water rates—Any person on whom a notice of demand has been served under section 49 shall be liable to pay the same within the period fixed by the Government in this behalf.

51. Liability when the person using water unauthorisedly cannot be found or when water runs waste.—(1) If water supplied through any irrigation work is used in an unauthorised manner and if the person by whose act or neglect such use has occurred cannot be found after such enquiry as the Zilladar may deem sufficient the Zilladar after giving not less than 15 days notice to the owners, occupiers and beneficiaries of all lands benefited thereby and after hearing their representations, if any, make an order for the recovery of such charges as may be specified by the Government not exceeding thirty times the water rates for such use from such owners and occupiers in such proportion as he may find just, in addition to any penalty he may incur under the Act for such unauthorised use.

(2) If water supplied through a water course and field channel be suffered to run to waste, and if, after enquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, the person or all the persons chargeable in respect of the water supplied through such water course or field channel shall in addition to any penalty he incurs under the Act for such waste of water, be liable or jointly liable as the case may be for the charges, not exceeding ten times the water rates as may be specified by the Government.

(3) All questions arising under this section shall be decided by the Zilladar and any person aggrieved by the decision of Zilladar may prefer an appeal to the Canal Officer within twenty days of the decision.

(4) The decision made by the Zilladar under this section subject to any order passed by Canal Officer on appeal from such decision, if any, shall be final.

(5) All charges for the unauthorised use or waste of water may be recovered, as water rates, in addition to any penalties incurred on account of such use or waste.

52. Water rate by whom payable when charged on land held by several owners—

Where a water rate is charged on and held by several joint owners, occupiers or beneficiaries it shall be payable by such owners, occupiers or beneficiaries in proportion to the benefits which each individual owner, occupier or beneficiary derived from irrigation the common land to be determined by Zilladar at the time of making assessment whose assessment in this behalf shall be final.

CHAPTER VI

Betterment Charges

53. Levy of betterment charges.—(1) There shall be levied a tax called betterment charges in accordance with the provisions of this Chapter from the owner, occupier or beneficiary who is benefited by the construction, expansion, improvement or alteration of any irrigation work by the Government.

Explanation 1.—A land shall be deemed to be benefited notwithstanding that the benefit is not enjoyed, provided such non-enjoyment is due solely to the action or inaction on the part of the persons interested in such land.

Explanation 2.—A land shall not be deemed to be benefited merely by reason of the execution of repairs of an irrigation work wholly or partly at the expense of the Government.

(2) For the purpose of levy of betterment charge the Divisional Canal Officer shall by notification, specify the dates of commencement and completion of the construction, expansion, improvement or alteration of any irrigation work, and different dates of

commencement and completion of any irrigation work depending upon the date on which water is made available to such lands:

Provided that the provisions of sub-section (2) shall be deemed to have been satisfied in respect of Zamindari Khuls including their branches, sub-branches, outlets, water courses and supply channels taken over by the Government Whether before or after the commencement of this Act.

54. Determination of betterment charges.—The amount of betterment charges payable in respect of any land referred to in section 53 shall be such as the Government may, from time to time, determine.

55. Recovery of betterment charges.—The provisions of section 52 shall apply mutatis mutandis to the recovery of betterment charges.

CHAPTER VII

Levy of project participation charges

56. Levy of project participation charges.—The Government may at any time by notification levy a tax to be known as project participation charges on the owner, occupier or beneficiary of lands benefited by irrigation from irrigation projects constructed at the cost of the Government, in the manner and the proportion as may be prescribed.

Explanation I.—A land shall be deemed to be benefited notwithstanding that the benefit is not enjoyed, provided such non-enjoyment is due solely to the action or inaction, on the part of the persons interested in such land.

Explanation II.—A land shall not be deemed to be benefited merely by reason of the execution of repairs of an irrigation work wholly or partly at the expense of the Government.

57. Enforcement of the provisions of this Chapter.—The Government may by rules provide for the manner in which, and the agency by whom, the provisions of the Chapter shall be enforced.

CHAPTER VIII

Obtaining labour and materials for irrigation works in emergency

58. Procedure for obtaining labour for works urgently required.—(1) Whenever it appears to the Divisional Canal Officer or any Officer acting under his general or special orders in this behalf, that, unless some work or repair is immediately executed, such serious

CHAPTER IX

Drainage and prevention of water lodging

62. Power to prohibit obstructions.—Whenever it appears to the Government that injury to any land for public health or public convenience has arisen or may arise from the encroachment upon any irrigation work the Government may, by notification, prohibit, within limits to be defined in such notification, the formation of any encroachment, or may within such limits, order the removal or other modification of such encroachment.

63. Power to remove obstructions after prohibition.—(1) The Divisional Canal Officer or other person authorized by the Government in that behalf may, after the notification

under section 62, issue an order to the person causing or having control over any such encroachment to remove or modify the same within a time to be fixed in the order.

(2) If within the time so fixed such person does not comply with the order, the Divisional Canal Officer may remove or modify the encroachment with the assistance of police force and recover the expenses involved in such removal or modification from the person concerned:

Provided that the Divisional Canal Officer may, in cases of emergency, remove the encroachment before the publication of notification and the expenses incurred shall be recoverable from the person concerned.

64. Preparation of schemes for drainage works.—(1) Whenever it appears to the Government that any drainage work excluding field drain is necessary in the interest of public health or for improvement of any lands, or for the proper cultivation or irrigation thereof or that protection from floods or other accumulation of water or injurious salts or from erosion by a river, is required for any lands the Government may by notification declare that the drainage work shall be constructed after a day to be named in the said notification, not being earlier than three months from the date thereof.

(2) As soon as practicable after the issue of a notification under sub-section (1), Divisional Canal Officer or any officer duly empowered under this Act shall cause public notice to be given at convenient places, stating that the Government intends to construct the drainage work excluding field drain referred to in sub-section (1).

CHAPTER IX

Drainage and prevention of water lodging

62. Power to prohibit obstructions.—Whenever it appears to the Government that injury to any land for public health or public convenience has arisen or may arise from the encroachment upon any irrigation work the Government may, by notification, prohibit, within limits to be defined in such notification, the formation of any encroachment, or may within such limits, order the removal or other modification of such encroachment.

63. Power to remove obstructions after prohibition.—(1) The Divisional Canal Officer or other person authorized by the Government in that behalf may, after the notification under section 62, issue an order to the person causing or having control over any such encroachment to remove or modify the same within a time to be fixed in the order.

(2) If within the time so fixed such person does not comply with the order, the Divisional Canal Officer may remove or modify the encroachment with the assistance of police force and recover the expenses involved in such removal or modification from the person concerned:

Provided that the Divisional Canal Officer may, in cases of emergency, remove the encroachment before the publication of notification and the expenses incurred shall be recoverable from the person concerned.

64. Preparation of schemes for drainage works.—(1) Whenever it appears to the Government that any drainage work excluding field drain is necessary in the interest of public health or for improvement of any lands, or for the proper cultivation or irrigation thereof or that protection from floods or other accumulation of water or injurious salts or from erosion by a river, is required for any lands the Government may by notification declare that the drainage work shall be constructed after a day to be named in the said notification, not being earlier than three months from the date thereof.

(2) As soon as practicable after the issue of a notification under sub-section (1), Divisional Canal Officer or any officer duly empowered under this Act shall cause public notice to be given at convenient places, stating that the Government intends to construct the drainage work excluding field drain referred to in sub-section (1).

(3) The provisions contained in sections 11 and 12 regarding the acquisition of land for the construction of work shall apply, mutatis mutandis, to the construction of drainage work referred to in subsection (1).

65. Scheme for field drains.—(1) Notwithstanding anything contained to the contrary in sub-section (1) of section 64, the Divisional Canal Officer may cause a scheme for field drains to be drawn up.

(2) Every scheme drawn up under sub-section (1) amongst other matters shall set out the estimated cost thereof, the alignment of the proposed field drain or realignment of the existing field drain, as the case may be, particulars of the owners or occupiers to be benefited and other persons who may be affected thereby and sketch plan of the area proposed to be covered by the scheme.

(3) The provisions contained in sections 14, 15 and 17 to 20 shall apply mutatis mutandis to the scheme drawn up for field drains.

(4) The Divisional Canal Officer may construct the field drains on behalf of the owners or occupiers and recover the cost prorata from the owners or occupiers.

CHAPTER X

Award of compensation

66. Compensation for damage caused consequent on the exercise of powers couriered in this Act—Compensation may be awarded in the event of only substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained:

Provided that no compensation shall be so awarded in respect of any damage arising from—

- (a) deterioration of climate or soil; or
- (b) stoppage of navigation or of the means of floating timber or watering cattle; or
- (c) stoppage or diminution of the supply of water in consequence of the exercise of the power conferred by section 3, if no use has been made of such supply within five years immediately before the date of issue of the notification under section 3; or
- (d) failure or stoppage to any water in an irrigation work where such failure or stoppage is due to—
 - (i) any cause beyond the control of the Department;
 - (ii) the execution of any repairs, alterations or additions to the irrigation work;
 - (iii) any measures considered necessary by the Divisional Canal Officer, for regulating the proper flow of water in the irrigation work or for maintaining the established course of irrigation; or
 - (iv) circumstances mentioned under clauses (a) to (g) of section 39:

Provided further that any person who suffers loss from any stoppage or diminution of water supply to his lands due to any of the causes named in clause (d) of the preceding provision shall be entitled to such remission of the water rate payable by him as may be authorized by the Government.

67. Limitation of claims.—No claim for compensation under this Act for any damage shall be entertained after the expiration of two years from the time when the damage complained or commenced; provided that the Divisional Canal Officer on sufficient cause shown to his satisfaction by the claimant for not making the claim within such period may condone the delay, and entertain the claim.

68. Compensation for damage caused by entry on land.—(1) In every case of entry upon any land or building or the utilization of materials under sections 4, 5, 6, 7 and 60 the Canal Officer or the person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building or other property and the value of the material taken or utilised and, within one month from the date of such entry compensation shall be tendered by the Canal Officer to the owner or occupier of the property, as the case may be.

(2) If such a tender is not accepted within a week of the tender, the Canal Officer shall forthwith refer the matter for the purpose of determining the amount of compensation to the Divisional Canal Officer who shall decide the matter with the previous approval of the Superintending Canal Officer.

(3) The Superintending Canal Officer either suo moto or on the application of the person concerned, when the matter has not been referred to the Divisional Canal Officer, may revise the order of the Canal Officer within a period of two years from the date of the order.

69. Claims to be preferred to the Divisional Canal Officer.—

(1) Unless otherwise provided all claims for compensation under this Act other than claims of the nature provided for in section 68 shall be made to the Divisional Canal Officer concerned.

(2) The Divisional Canal Officer shall enquire into all such claims and determine the amount of compensation, if any, which should be awarded. In determining such amount, the Divisional Canal Officer shall be guided by the provisions of sections 23 and 24 of the State Land Acquisition Act, Samvat 1990:

Provided that regard shall be had to the diminution in the market value, at the time of awarding compensation, of the property in respect of which compensation is claimed; and where such market value is not ascertainable, the amount of the diminution of the annual net profits of such property caused by the exercise of the powers conferred by this Act:

Provided further that no order determining the amount of compensation shall be made by the Divisional Canal Officer under this section without the previous approval of the Superintending Canal Officer.

70. Appeal.—Any person aggrieved by the order of the Superintending Canal Officer or the Divisional Canal Officer under section 68 or of the Divisional Canal Officer under section 69 may, within six months from the date of the communication of the order, prefer an appeal to the prescribed authority.

71. Compensation when due and interest payable.—All sums of money payable for compensation awarded under this Chapter shall become due three months after the final award is made, and simple interest at the rate of nine percentum per annum shall be allowed on any such sum remaining unpaid after the said three months except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

CHAPTER XI

Settlement of disputes

72. Power of Canal Officer to order use of distribution of water,—(1) The Zilladar may, if he considers necessary, pass an order as to the use or distribution of water from a dam, storage tank or water course or field channel amongst persons in any land or a group of lands or in any holding or group of holdings in such land or lands:

Provided that no such order shall be passed by the Zilladar without making any inquiry into the matter and without giving notice to all the persons interested that on a day to be named in such notice, he shall proceed to inquire into the said matter.

(2) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use or maintenance of a dam, storage tank or water course or field channel or field drain any such person may apply in writing to the Zilladar stating the matter in dispute.

(3) On receipt of an application under sub-section (2), the Zilladar shall give notice to the other persons interested, and on a day to be named in such notice, he shall proceed to enquire into such matter and after the enquiry, he shall try to bring about a compromise between the parties.

(4) On the failure of the Zilladar to bring about a compromise, he shall pass an interim order as regards the use or maintenance, of a storage tank or water course of field channel or field drain pending the disposal of the dispute and he shall forward the dispute to the Canal Officer along with his findings and the Canal Officer shall pass an order thereon after giving a hearing to the parties.

(5) The Divisional Canal Officer, within whose jurisdiction the dam, storage tank or water course or field channel or field drain is situated, may, on his own motion or on an application made in this behalf by an aggrieved person, revise an order passed by a Canal Officer under sub-section (4):

Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

(6) No order passed under this section shall be liable to be called in question in any civil court.

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Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

(6) No order passed under this section shall be liable to be called in question in any civil court.

CHAPTER XII

Safety of irrigation work

73. Limitation in respect of irrigation works.—Except as may be prescribed, no person other than the Canal Officer shall—

(a) interfere with or encroach upon an irrigation work;

(b) construct any earthen or masonry bund or weir on any channel or stream, flowing above or below any irrigation work;

(c) excavate within the vicinity of an irrigation work.

74. Power to remove encroachment.—The Canal Officer may issue an order to the person concerned interfering or encroaching upon any irrigation work to remove the same within a time to be fixed in the order; and if the person concerned does not comply with the order, the Canal Officer may remove the encroachment and take such other action as may be necessary and recover the expenses thereof from the person concerned:

Provided that the Canal Officer may, in case of an emergency remove the encroachment with the assistance of police force or take the necessary action before issuing the order, and recover the expenses thereof from the person concerned.

75. Obligation of owners in respect of works effecting safety of canals.—(1) Every owner whose tank, well, pond, spring pond or other reservoir is situated, above any irrigation work shall maintain the bunds and surplusings arrangements of such tank, well, pond, spring pond, spring channels or reservoir in a safe and efficient condition.

(2) If, in the opinion of the Canal Officer, such bunds or surplusings arrangements of the works referred to in sub-section (1) are not in a fit condition and are likely to endanger the irrigation works below, then the owner concerned shall be served with a notice to bring such bunds or surplusings arrangement to a reasonably fit condition, in such manner and within such time as may be specified in the notice.

(3) If the said owner fails to comply with the notice within the time specified or does repairs which in the opinion of the Canal Office are unsatisfactory, the Canal Officer may carry out the necessary repairs with the assistance of police force, and recover the cost from the said owner.

(4) From any order of the Canal Officer under this section an appeal shall lie within thirty days from the date of communication of the order, to the Divisional Canal Officer, whose decision thereon shall be final.

76. Prohibition to conduct operations near irrigation work.—

No person shall, without permission of the Canal Officer, conduct any operation requiring the use of any explosives, within such distance, as may be prescribed, from the boundaries of an irrigation work.

77. Fishing and plying of boats, etc.—No person shall have the right to fish or ply any vessel in a reservoir, pond or tank or across or along a canal or channel maintained or controlled by the Government without the permission in writing of the Government or of such officers as may be empowered in this behalf by the Government, and except under such terms and conditions and subject to payment of such fees as may be prescribed.

78. Letting out of water from canal prohibited.—No person other than the Canal Officer or any officer duly empowered in this behalf shall let out water from a canal or channel by cutting the bund, constructing a sluice or outlet or any other similar contrivance.

79. Prohibition to abstract water from irrigation works—(1)

Save as provided in this Act no person shall abstract water for any purpose by the installation of pump sets or other electrical or mechanical devices for pumping water from an irrigation work except with the permission of the Divisional Canal Officer within whose jurisdiction such pump sets or other devices for abstraction of water are installed and subject to such terms and conditions and subject to the payment of such fees as may be prescribed:

Provided that no such permission shall be issued unless the Divisional Canal Officer is satisfied that the surplus water available is required for irrigation work.

(2) If any person abstracts water from an irrigation work in violation of sub-section (1) the Divisional Canal Officer or any person authorized by him in that behalf shall have the power to enter any property, place or premises in which any construction is made or any pump set or other electrical or mechanical device is installed for the abstraction of the water and remove or cause to be removed such construction or pump set or other device.

(3) The Divisional Canal Officer or the person authorized under sub-section (2) may also confiscate any pump set or other electrical or mechanical device if he is satisfied that such confiscation is necessary for the prevention of the abstraction of water.

80. Depositing produce of mines in or near channels prohibited.

—No person shall deposit any produce of mines or earth or any other material in or near any channel or field drain or other work, whether natural or artificial, through which rain or other water flows into any irrigation work.

81. Discharge of sewage or trade effluent in the water of irrigation work prohibited—No person shall pollute, or discharge sewage effluent or trade effluent in the water of any irrigation work which may cause injury to the irrigation work or may deteriorate the quality of water of the irrigation work or may give rise to the growth of any weeds in the irrigation work.

CHAPTER XIII

Offence and penalties

82. Offence under the Act.—Whoever voluntarily or without proper authority—

- (i) damages, alters, enlarges, obstructs or encroaches upon any irrigation work;

- (ii) interferes with increase or decreases the level and supply of water in or the flow of water from through, over or under, any irrigation work;

- (iii) interferes with or alters the flow of water in any river or stream so as to endanger, damage or render less useful any irrigation work;

- (iv) being responsible for the maintenance of a water course or field channel, or using a water course or field channel, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of water therefrom, or uses such water in an unauthorised manner;

- (v) causes any vessel to enter or navigate on any irrigation work contrary to the rules for the time being prescribed by the Government;

- (vi) while navigating on any irrigation work, neglects to take proper precautions for the safety of the irrigation work and of vessels thereon;

- (vii) neglects, without reasonable cause, to carry out or to continue to carry out duties in connection with the execution of any repair or work, when lawfully bound to do under section 58;

- (viii) destroys or moves any level-mark or water-gauge fixed by the authority of a public servant; (ix) opens, shuts, or obstructs or attempts to open, shut or obstruct, any sluice or outlet or any other similar contrivance in any irrigation work;

- (x) allows cattle to graze or to be tethered on the irrigation work or pass any animal or vehicles on any irrigation work;

(xi) grows or allow to grow any crop in contravention of a notification under sub-section (2) of section 42;

(xii) uses water from an irrigation work without obtaining the permission required under sub-section (5) of section 38:

(xiii) contravenes any of the provisions of the Act or of any rules made thereunder; shall be liable on conviction before a Judicial Magistrate for offences mentioned in clauses (i) to (viii) and (xii) to a fine not exceeding one thousand rupees or to imprisonment not exceeding one year or with both and for offences mentioned in clauses (vii), (ix) to (xi) and (xiii) to a fine not exceeding five hundred rupees but not less than fifty rupees or with imprisonment not exceeding two months, or with both:

Provided that in case of a continuing offence a daily fine of not less than fifty rupees during the period of continuance of the offence shall also be imposed.

83. Person convicted under section 84 liable to repair of damage etc.—(1) When any person is convicted of an offence under section 82, the Magistrate may order that the said person shall remove the obstruction or repair the damage or replace or repair the land mark, level mark, water gauge or apparatus in respect of which the conviction has taken place within a period to be fixed in such order.

(2) Without prejudice to the powers of the Canal Officer under section 74, if such person neglects or refuses to obey such order with the period so fixed, the Canal Officer may carry out the work in accordance with such order and the cost thereof shall be recoverable from such person.

84. Abetment.—Whoever abets any 'offence punishable under this Act, or attempts to commit any such offence shall be punished with the punishment provided in this Act for such offence.

85. Punishment under other laws not barred.—Nothing contained in this Act shall prevent any person from being prosecuted under any other law for the time being in force for any act or omission made punishable by this Act.

86. Offence under this Act to be cognizable—Notwithstanding anything contained in the Code of Criminal Procedure, Svt. 1989, all offences punishable under this Act shall be cognizable and bailable.

87. Power to remove obstruction or damage to work.—Any person incharge of, or employed upon any irrigation work, may remove from the land or buildings belonging thereto or may take into custody without a warrant, and without unnecessary delay take to a Judicial Magistrate or in his absence take to the nearest police station, any person who within his view -

(a) willfully damages, alters, enlarges or obstructs any irrigation work;

(b) without proper authority interferes with the supply or flow of water, in or from any irrigation work so as to endanger, damage or rendered less useful such irrigation work.

88. Payment of fine as reward to informant.—(1) Whenever any person is fined for an offence under this Act, the court which imposes such fine or which confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of reward to any person who gave information leading to the detection of such offence or to the conviction of the offender.

(2) If the fine is ordered to be paid as a reward by a court whose decision is subject to appeal or revision, the amount ordered to be so paid, shall not be paid until the period specified for presentation of the appeal has elapsed, or if an appeal is preferred till after the decision of the appeal-

89. Offence by a Company.—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any Director, Manager, Secretary, or other officer of the company, such Director, Manager, Secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For purposes of this section—

(a) "Company" means anybody corporate and includes a firm *or* other association of individuals; and

(b) "Director" in relation to a firm means a partner in the firm.

90. Power to impose fine.—Notwithstanding anything contained in this Act, the Divisional Canal Officer or Canal Officer or Zilladar shall also be competent to impose fine not exceeding fifty rupees on a person who is found guilty of any offence specified in section 82;

Provided that no such fine shall be imposed unless—

(a) an inquiry, in the manner as may be prescribed is made; and

(b) the offender is given a reasonable opportunity of being heard.

CHAPTER XIV

Miscellaneous

91. Recovery of cost of repairing damage when the offender is unascertainable.—

When the person causing any damage, alterations, enlargement or obstruction to any irrigation work without proper authority cannot, after such enquiry as the Canal Officer may deem sufficient, be ascertained or identified, the Canal Officer may, on a

requisition from the Zilladar after giving not less than one month's notice to the owners, occupiers and beneficiaries of all lands benefited thereby, and after hearing their representations, if any, recover from them, in such proportion as he thinks fit, the cost of repairing such damage, or of removing such alteration, or obstruction.

92. Recovery of sums.—(1) Whenever any sum is to be paid by any person under this Act and the sum has not been paid within the time prescribed for such payment, it shall be recoverable with interest at the rate of nine per cent per annum as arrears of land revenue by a Canal Officer who shall have the powers of Assistant Collector under the Land Revenue Act.

(2) When any sum is recovered as above under sub-section (1) of section 27 and sub-section (1) of section 38, it shall be paid to the person who is entitled to receive the same.

93. Appointment of officers and inspection of irrigation works.—(1) The Government or, subject to such rules as may be made under this Act, any officer so empowered in this behalf, may:—

(a) appoint such officers with such designations, define the local limits of jurisdiction of such officers and assign to them respectively such powers and duties under this Act, as the Government or such officer, may deem fit;

(b) invest any government officer in any department either personally or in right of his office, or any other person with such powers and impose upon him such duties, under this Act, as the Government or such officer, may deem fit:

Provided that any assignment of, or investment with powers or duties made under this section may at any time be cancelled or varied by the Government or such officer.

(2) The Government shall have the powers to direct in the manner prescribed the annual inspection of and submission of report on all irrigation works in respect of their proper maintenance and repair.

94. Power to summon and examine witnesses.—Any officer empowered under this Act to conduct any enquiry may exercise all such powers connected with summoning and examining the witnesses and the production of documents as or conferred on a civil court by the Code of Civil Procedure, Samvat 1977, and every such enquiry shall be deemed to be a judicial proceeding.

95. Bar of certain proceedings etc.—(1) No suit, prosecution or proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties or the discharge of the functions imposed by or under this Act.

(3) Save as otherwise provided in this Act, no suit shall be instituted against the Government in respect of any act done unless the suit is instituted within one year from the date of the act complained of.

96. Village Panchayats.—(1) The Government may, from time to time, empower the village panchayats to discharge any of the functions entrusted to the Government under this Act.

(2) Without prejudice to the generality of the foregoing provisions, the Government may entrust the village panchayats with the responsibility of constructing and maintaining small irrigation works such as tanks, tube-wells, water course and field channel and regulate supply of water therefrom.

97- Formation of farmers co-operative societies.—If the Government is of the opinion that it is in the public interest to entrust distribution of water supply when given in bulk at the head regulator or outlet to farmers co-operative societies, the Government may by rules provide for the formation of such societies on such conditions as may be prescribed.

98. Power to make rules.—The Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

99. Repeal and saving.—The Jammu and Kashmir State Canal and Drainage Act, Samvat 1963, is hereby repealed:

Provided that the repeal shall not effect-

(a) the previous operation of the Act, so repealed or anything duly done or suffered thereunder;

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.