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## **Punjab Minor Canals Act, 1905**

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**Case Note:** An act to make better provision for the control and management of minor canals in Punjab.

## **Punjab Minor Canals Act, 1905**

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## **Punjab Minor Canals Act, 1905**

--Extended to the territories which immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union by Act 18 of 1962.

--Amended by Punjab Act 25 of 1964.

Received the assent of His Honour the Lieutenant Governor of the 7<sup>th</sup> April, 1905, and that of His Excellency of Viceroy and Governor-General in Council on the 12<sup>th</sup> May, 1905. The Governor-General's assent was first published in the "Punjab Government Gazette" of 1st 1905.

### **An Act to make better provision for the control and management of minor canals in Punjab.**

Whereas it is desirable to make better provision for the exercise of control over and for the regulation of the management of certain minor canals in Punjab;

It is hereby enacted as follows:-

#### **NOTE**

**Statement of objects and reasons.**—"The object of the present Bill is to legislate for those minor canals in the Province to which the provisions of the Northern India Canals and Drainage Act 1873 either were never intended to have any application or are, if applicable under the definition of "canal" in sub-section (1) of section 3 of that Act to a large extent inappropriate. The elaborate provisions of Act VIII of 1873 are in their entirety not suitable and when suitable are insufficient, in the case of many minor irrigation works which are controlled by, and under the management of, Government officers, while they were never intended to apply at all to those canals which are under private management, but are controlled by Government in the interests of the owners of persons deriving benefits thereon, and on which State expenditure is confined to the maintenance of a small supervising establishment and all realizations for water advantages are appropriated to the benefit of the owners of the canal and to its maintenance and are credited to the State. The present Bill, which is to be self-contained and, therefore, embodies such of the provisions of Act VIII of 1873 as are considered necessary or suitable to some of the canals which will be governed by its provisions, is intended to make better provision for the exercise of control over, and for the regulation of the management of both these classes of canals, the degree of such control and management varying as the canal is one under Schedule I or one under Schedule II of the Bill. Power is given to the Local Government by notification to include any 'canal' as defined in clause 3(ii) of the Bill, under either Schedule I or Schedule II or to transfer a canal from one Schedule to the other Schedule. Whereupon the provisions of the Bill applicable to canals included under such Schedule or such of those provisions as the Local Government may direct shall apply to such canal. Ordinarily and as a general rule, a canal controlled by Government and managed by Government officers or District

Boards will, in practice, be included under the first, and a canal under private management but subject to Government control will be included under the second Schedule, but this will not be so necessarily, and the decision in every instance is left to the discretion of the Local Government. The Local Government may also, by notification, exclude from the operation of the Bill any canal which has been included under either Schedule I or Schedule II, but so long as a canal is included under one or other of these Schedules noting in the Northern India Canals and Drainage Act of 1873 was mainly designated are –

Cher Labour arrangements.

Zar-i-nagha funds.

Record-of-rights.

Settlement of disputes between right-holders.

Hitherto such matters have been provided for in settlement engagements, and by agreement between Government and those interested in the maintenance of efficient irrigation arrangements, and generally speaking, the good sense and co-operative spirit of the people have enabled the Government officers charged with the control of the works to conduct operations successfully. But with increased sophistication and the extension of the reign of statutory law it has become necessary in the interest both of Government, of right-holders, and of irrigators to secure a legal basis for which has hereto rested merely on executive authority, and thus to maintain established and successful systems against the invasion of recalcitrant individuals or minorities.

The right of Government to exercise control over private canals is based in part on the fact of the Government title to the water flowing in rivers and streams, which is asserted in the preamble of the Canal Act of 1873, and in part on the same fundamental principles which in India as in other countries has necessitated legislation for the control of railways, shipping, gas and water companies and all corporations which are in the position of monopolists towards the public or a section of the public. The owner of a private canal is, likewise owner of an irrigation well, independent of relations with all persons outside the finger-fence of his own country. Even when the canal is constructed solely to irrigate the owner's land the interests of the State are involved in the detraction of water from the river or natural stream, and it is rarely the case that a supply channel can be constructed with its bed passing through land belonging to other persons. When, as is more commonly the case, irrigation is supplied not only to the canal owners' lands, but also to whatever area, however owned, may be commanded by the available supply, relations arise which in the interest of owners and irrigators and of peace and good Government generally, require to be controlled and regulated. Even with such powers as the Bill confers, cases may arise and they have arisen in the past – in which mismanagement on the part of the private canal- owners causes such public inconvenience as to justify Government stepping in and either managing the canal temporarily, accounting for surplus profits or acquiring it permanently under provisions analogous to those of the Land Acquisition Act.

It is also desirable to make provision in this Bill in respect of canals, rivers, creeks, water –courses and subsidiary works which are situate partly in this province and partly in Sind or in Native State such as Bahawalpur. For the proper maintenance of such canals, etc. and their protective works in a state of efficiency and to ensure the due supply of water thereto from the sources in British territory it is often found necessary to do such acts and to exercise such powers as are provided for in this Bill in respect of canals and subsidiary works situate in the Punjab and it is intended by clause 63 to empower the Local Government to give such assistance to the authorities concerned as will suffice for the maintenance of those canals which are supplied with water from canals situated in this Province”. (Punjab Gazette, 1903, Part V, pages 100-101).

## **CHAPTER I**

### **Preliminary**

1. **Short title and extent.** –(1) This Act may be called the Punjab Minor Canals Act of 1905.

(2) It shall extend to the whole of Punjab.

2. **Operation of Act.**—(1) The provisions of this Act shall apply to the extent and in the manner hereinafter provided to every canal specified in either Schedule I or Schedule II as the case may be.

(2) At any time after the commencement of this Act, the State Government may, from time to time, by notification—

(a) (a) include any canal under either Schedule I or Schedule II, as the case may be, or transfer a canal from one schedule to the other schedule, and thereupon the provisions of this Act applicable to canals included under this schedule, or such of the said provisions as the State Government may direct, shall apply to such canal; or

(b) (b) exclude from the operation of this Act any canal which now is or hereafter may be, included under either Schedule I or Schedule II:

Provided that no canal shall be included under Schedule I, unless—

(a) (a) it is owned in whole in any part by the State Government, or

(b) (b) is, at the commencement of this Act, managed by Servants of the Government or by any local authority, or

(c) (c) is situated partly within and partly without the territories to which this Act extends, or

(d) (d) has been included under Schedule II and is transferred to Schedule I by direction of the State Government.

(3) The Northern India Canal and Drainage Act, 1873 (VIII of 1873), shall not apply to any canal which is for the time being included under either Schedule I or Schedule II.

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

(i) “Record-of rights” and Revenue Officer” have the meaning assigned to them respectively in the Punjab Land Revenue Act, 1887 (XVII of 1887);

(ii) “Canal” means any canal, natural or artificial channel or line of natural drainage or any reservoir, dam or embankment constructed, maintained or controlled for the supply or storage of water or the protection of land from flood or sand, and includes any water course or subsidiary works as defined in this section;

(iii) “Collector” means the head revenue officer of a district and includes any officer appointed under this Act to exercise all or any of the powers of a Collector;

(iv) “Commissioner” means a Commissioner of a division and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner;

(v) “Construction” and “Construct” include any alteration which would materially extend the area irrigable by a canal or any other alteration or material importance or the renewal of a canal after disuse for six years, but do not include the re-excavation of a canal-head which has been temporarily abandoned owing to change in the river, the excavation of a new head necessitated by a change in the river or a change of water courses to render existing irrigation more efficient;

(vi) “Cleek” means any channel of a river other than the main channel through which the water of the river would, unless obstructed by deposit of silt, naturally flow at some period of the year;

(vii) “District” means a district as fixed for revenue purposes;

**(viii) “Irrigator” means in respect of any and which is irrigated from a canal any person for the time being directly deriving benefit by such irrigation and includes a landowner or occupancy tenant of such land;**

(ix) “Labour” includes labourers, cattle and appliances necessary for the execution of the work for which labour is to be supplied;

(x) “Mill means any contrivance whereby the water power of any canal is used for grinding; sawing or pressing, or for driving or working machinery, or for any other similar purpose, and includes all subsidiary works and structures connected with any contrivance except the canal itself;

(xi) “Subsidiary works” mean all works required for the control or maintenance of the supply to a canal or for the maintenance of a canal in proper condition or for the regulation of the irrigation therefrom or for the prevention of floods or for the provisions of proper drainage, in connection with such irrigation, and includes also the land required for such works;

(xii) “Water course” means any channel which is supplied with water from a canal and which is maintained at the cost of the irrigators, and includes all subsidiary works connected with such channel except the sluice or outlet through which water is supplied to such channel;

(xiii) “Water due” means whatever is payable to Government in cash or kind by the owner of a canal for the diversion by such owner for the purposes of such canal of the water of any river, creek or stream flowing in a natural channel or of any lake or other natural collection of water;

(xiv) “Water-rate” means the charge made for canal water, other than a water-due or canal advantage land revenue rate.

(xv) “Beneficiary” means, in respect of any canal, any person for the time being deriving, or who is to derive, benefit, directly, or indirectly, from such canal.

## **CHAPTER II**

### **Construction of Canals and Water-dues**

4. **Prohibition against construction of canals without permission**—when the State Government has notified in this behalf any natural channel, lake or other collection of water, no person shall, without permission previously obtained in the manner prescribed in the section next following, construct a canal intended to be fed from any such channel, lake or other collection of water;

Provided that nothing in this section shall apply to the construction of a water-course from an existing canal.

5. **Application for permission and procedure thereon**—Any person desiring to construct a canal intended to be fed from any source of supply which has been notified by the State Government under section 4, may apply, in writing to the Collector, for the permission prescribed in that section.

(2) Every application under sub-section (1) shall be in such form and shall contain such particulars as the State Government may prescribe in that behalf.

6. **Power of Collector to construct canal from notified source of supply**—(1)-When a source of supply has been notified in the notice under sub-section (1), or if any such objection has been preferred within the said period, but has been finally over ruled, the collector may proceed to construct such canal.

(2) If no objection to the construction of such canal shall have been preferred within a period to be specified in the notice under sub-section(1), or if any such objection has been preferred within the said period, but has been finally over ruled, the collector may proceed to construct such canal.

(3) The provisions of section 50 and 63 shall apply to all proceeding of the Collector under sub-section(1) of this section and under the preceding sections, and powers conferred upon the Collector by this and the preceding section shall be exercised subject to such sanction as the State Government may prescribe and in accordance with the rules made by such Government.



**7. Power to prohibit the unauthorised canal**—(1) If any person, without the permission necessary under section 4 and 5 of this Act, or contrary to any of the conditions of such permission, commences to construct or proceed with the construction of any canal, the Collector may, at any time, by order in writing prohibit such person, and, by general proclamation, all other persons, from continuing the construction thereof.

Provided that unless in the case of a construction which would materially extend that area irrigable by a canal, no such order or proclamation, as the case may be, shall be made or issued in respect of any canal which at the time when it is proposed to make or issue such order or proclamation, has been used for irrigation for a period of three years without interruption, other than such as was due to natural causes beyond the control of the person aforesaid.

(2) If any person shall, at any time after the commencement of this Act, construct a canal without the permission, necessary under sections 4 and 5 of this Act, Collector may, with the previous sanction of the State Government, close it and shut off the supply of water thereto and may further, by order in writing, prohibit such person and, by general proclamation all other persons, from maintaining, repairing or renewing such canal or continuing to use the water thereof.

**8. Water-dues** - (1) Subject to the conditions, if any, imposed or agreed to by the State Government such Government may assess and levy water-dues in respect of-

- (i) (i) canals made after the commencement of this Act;
  - (ii) (ii) canals made before the commencement of this Act—
    - (a) when the right to, or question of, water-dues has been expressly reserved by such Government; or
    - (b) when the conditions upon which the owner of the canal has been allowed to use the water have been agreed on for a term and that term has expired; or
    - (c) when such water-dues were already levied at the commencement of this Act.
- (2) The demand on account of water-dues shall be assessed for a term of years, and shall be limited to an amount not exceeding one-quarter of the net profits which are likely to accrue to the owner of the canal during that term.

### **CHAPTER III**

#### **Provision applicable to canals under Schedule I**

**9. This chapter applicable only to canals under Schedule I.** – Except as the State Government may otherwise direct under section 69 the provisions of this chapter shall apply only to canals for the time being included under Schedule I.

**10. General powers of Collector**—(1) Notwithstanding the existence of any rights in or over a canal or water- course, the Collector may-

- (a) (a) exercise all powers of control, management and direction for the efficient maintenance and working of such canal or for the due distribution of the water thereof; and
- (b) (b) whenever and so long as any water-course, sluice or outlet is not maintained in proper customary repair, or any water – course, sluice or outlet through which water is supplied to any person, or, in the case of a sluice or outlet to any water course or any person, is subject to willful damage or wrongful enlargement, stop the supply of water to such water-course, sluice or outlet or to any person.

(2) No claim shall be enforceable against the State Government for compensation in respect of loss caused by any order passed under sub-section (1), but any person suffering loss by reason of any order passed under sub-section(1)(a) may claim such remission of the ordinary charges payable for the use of the water as is authorised by the State Government:

Provided that if any right to water entered in a record of rights prepared or revised under section 28(1) or deemed under section 28(3) to have been made under this Act or admitted in any agreement between the State Government and any person is substantially diminished in consequence of action taken under sub-section (1)(a) the Collector shall award compensation under section 55 to such person in respect of the diminution of this right.

(3) No right to the use of the water of a canal shall be, or be deemed to have been, acquired under the Indian Limitation Act, (XV of 1877) 1877, nor shall the State Government be bound to supply any person with water.

**11. Power of Government to suspend or extinguish rights in or over any scheduled canal on payment of compensation—**The State Government may at any time suspend or extinguish any right to which any person is entitled in or over any canal if the exercise of such right is prejudicial to the interests of other irrigators or to the good management, improvement or extension of the canal.

(2) In every such case, the State Government shall cause to be paid to the person whose right is suspended or extinguished, compensation to be assessed by the Collector under section 5. In assessing compensation for the purposes of this section, the Collector shall also have regard to the character of the right, the period during which it has been enjoyed and the damage likely to be occasioned by its suspension or extinction.

**12. Power to enter ad survey etc.—**The Collector or the person acting under general or special orders of the Collector may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon: and dig and bore into the sub-soil; and make and set up suitable land-marks, level-marks and water-gauges; and do all other acts necessary for the proper prosecution of any inquiry relating to any existing or projected canal under the charge of the said power to clear land.—and, where

otherwise such inquiry cannot be completed, the Collector or such other person may cut down and clear away any part of any standing crop, fence or jungle;

Power to inspect and regulate water-supply.—and may also enter upon any land, building or water course account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water rate and of doing all things necessary for the proper regulation and management of such canal;

**Notice of intended entry into houses**—Provided that, if such Collector or person proposes to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court or garden at least seven days' notice in writing of his intention to do so.

**Compensation for damage caused by entry**—In every case of entry under this section, the Collector shall upon application made to him in this behalf, assess and pay compensation for any damage which may be occasioned by any proceeding under this section.

13. **Power to enter for repairs and prevent accidents**—In case of any accident happening or being apprehended to a canal, the Collector or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

**Compensation for damage to land**—In every such case, the Collector shall, upon application made to him in this behalf, assess and pay compensation under section 55, for any damage, which may be occasioned by any proceeding under this section.

14. **Power to occupy land adjacent to canal for deposition soil from canal and to excavate earth for repairs to the banks and compensation for damage** - (1) The Collector or any person acting under his general or special orders in this behalf may within such distance from the canal as the State Government may by rule determine, occupy land adjacent to any canal for the purpose of--

The Collector shall, upon application made to him in this behalf, assess and pay compensation for any damage, which may be occasioned by any proceeding under this section.

(2) The owner of any land which has been occupied after the commencement of this Act for any purpose under sub-section (1) and has remained in such occupation for a period exceeding three years may require that such land shall be permanently acquired in accordance with provisions of section 44.

**15. Supply of water through intervening water-course**—Whenever application is made to a Collector for supply of water from a canal, and it appears to him expedient that such supply should be given, and that it should be conveyed through some existing water-course, he shall give notice to persons responsible for the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed; and after making inquiry on such day, the Collector shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

The applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the cost of such water-course as the Collector may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it.

**16. Application for construction of new water course** – Any person desiring the construction of a new water-course may apply in writing to the Collector, stating –

- i) i) That he has endeavoured unsuccessfully to acquire, from the owner of occupy so much of the land as will be needed for such water-course;
- ii) ii) That he desires the Collector, in his behalf and at his cost to do all things necessary for acquiring such right;
- iii) iii) That he is able to defray all costs involved in acquiring such right and construction such water-course.

**17. Procedure of Collector thereupon**—If the Collector considers:-

- (i) (i) that the construction of such water-course is expedient;  
and
- (ii) (ii) that the statement in the application are true;

he shall call upon the applicant to make such deposit as the Collector considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 20;

and, upon such deposit being made, he shall cause inquiry to be made into the most suitable alignment for the said water course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so-much of such land as belongs to such village has been so marked out.

**18. Application for transfer of existing water-course.**—Any person desiring that an existing course should be transferred from its present owner to himself, may apply in writing to the Collector stating:-

- (i) (i) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water course;
- (ii) (ii) that he desires the Collector, in his behalf, and at his cost to do all things necessary for procuring such transfer;
- (iii) (iii) that he is able to defray the cost of such transfer.

If the Collector considers:-

- (a) (a) Procedure thereupon.—that the said transfer is necessary for the better management of the irrigation from such water-course and

- (b) (b) That the statement in the application are true;

he shall call upon the applicant to make such deposit as the Collector considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 20 in respect of such transfer; and, upon the such deposit being made, he shall publish a notice of the application in every village affected.

**19. Inquiry into and determination of objections to construction or transfer of water-courses—**(1) When within thirty days from the publication of a notice under section 17 or section 18, as the case may be, any person interested in the land or water-course to which the notice refers, applies to the Collector as aforesaid, stating his objection to the construction or transfer for which application has been made, the Collector shall give notice to the other person interested that, on a day to be named in such notice or any subsequent day to which proceedings may be adjourned, he will proceed to inquire into the matter in dispute or into the validity of such objections as the case may be.

- (2) (2) Upon the day so named or any such subsequent day as aforesaid, the Collector shall proceed to hear and determine the dispute or the objection, as the case may be.

**20. Expenses to be paid by applicant for construction or transfer of water course before receiving occupation.** – No applicant under section 16 or section 18, as the case may be, shall be placed in occupation of such land or water course until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

**21. Procedure for fixing compensation—**Compensation to be made under this section shall be assessed as provided in section 55, but the Collector may, if the person to be compensated so desires, award such compensation in the form of a rent charge payable in respect of the land or water-course occupied or transferred.

**22. Recovery of compensation and expenses**—If such compensation and expenses are to paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collect