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Gujarat Water Users' Participatory Irrigation Management Act, 2007

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The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV

Acts of Gujarat Legislature and Ordinance Promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the Governor on the 16th March, 2007 is hereby published for general information.

H. D. VYAS,

Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

GUJARAT ACT NO. 18 OF 2007.

(First published, after having received the assent of the Governor in the "Gujarat Government Gazette", on the 16th May, 2007).

AN ACT

*to provide for participatory irrigation management by
water users in the State of Gujarat.*

It is hereby enacted in the Fifty-eighth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gujarat Water Users' Participatory Irrigation Management Act, 2007.

Short title, extent
and
commencement.

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

(3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint and different dates may be appointed for different provisions of the Act.

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

(1) “Association” means a Water Users’ Association of a minor canal service area established under section 5;

(2) “Committee” means a Managing Committee;

(3) “Competent Authority in relation to a minor canal service area” means such officer of the State Government as it may, by notification in the *Official Gazette*, appoint for such service area as may be specified therein;

(4) “field channel” means any channel or pipe (not being a water course) beyond an outlet or, as the case may be, a turn out constructed by the State Government to supply water from a water course or an outlet and maintained by the holder of land either by himself or jointly with other holders of lands or constructed and maintained by the holder of land by himself or jointly with other holders of lands to obtain water from a water course or an outlet, and includes all subsidiary works connected with any such channel or pipe;

(5) “holder of land” or “land holder” means a person who is lawfully in possession of such land, whether such possession is actual or not;

(6) “irrigable command area of a minor canal” means such area of land as is irrigated or is capable of being irrigated from the minor canal, being under its command and includes—

- (a) such area of cultivated land which, in the opinion of a Competent Authority, receives by percolation or otherwise from a minor canal an advantage beneficial to crop in such land and
 - (b) hydraulically managed irrigated area or an area capable of being irrigated either by gravitational flow or by lift irrigation;
- (7) “minor canal service area” means the area determined as a minor canal service area by the Competent Authority under sub-section (1) of section 3;
 - (8) “Managing Committee” means a Managing Committee of an Association constituted under section 29;
 - (9) “outlet” means an opening which is constructed by the State Government in a minor canal through which water is delivered into a water course or a field channel;
 - (10) “prescribed” means prescribed by rules made under this Act;
 - (11) “rotational water supply system” means the system of allocation and distribution of water to land in a service area equitably, in such proportion as the area of culturable command of such land bears to the total area of culturable command of a service area, according to the schedule for supply of water specifying among other things the day, turn, time and duration of such supply of water;
 - (12) “service area” means the minor canal service area;
 - (13) “turn out” means an opening which is constructed in a water course through which water is delivered into a field channel;

- (14) "water course" means a channel constructed and maintained by any Government to supply water from an outlet;
- (15) "year" means the financial year commencing on and from the 1st April of one year and ending on the 31st March of the next year;
- (16) other words and expressions used but not defined in this Act shall have the meanings respectively assigned to them in the Bombay Irrigation Act, 1879.

Bom. VII of
1879.

Declaration of
minor canal
service area.

3. (1) For the purposes of this Act, the Competent Authority shall determine the irrigable command area of all outlets of a minor canal and declare the same, by notification in the *Official Gazette*, as a minor canal service area.

(2) Where the Competent Authority is of the opinion that it is necessary so to do in the interest of efficient and equitable management of irrigation in the service area, it may, subject to such rules as may be made in this behalf, by notification in the *Official Gazette*, -

- (a) increase the limits of the service area,
- (b) decrease the limits of the service area, or
- (c) alter the boundaries of the service area.

CHAPTER II**ESTABLISHMENT OF WATER USERS' ASSOCIATION**

4. In this Chapter, unless the context otherwise requires, a "member" means a member of the Association. **Definition.**

5. For the purposes of this Act, there shall be formed by the Competent Authority a Water Users' Association for each service area consisting of – **Establishment of Water Users' Association.**

- (1) holders of land in such area using the water for the purpose of irrigation, and
- (2) persons residing or carrying on business in such area using water made available to them from the minor canal through sub-minor, field channel, water courses or pipe lines for irrigation or other purposes,

if the Association represents fifty one per cent of the holders of land in the service area and the aggregate area of land held by such holders of land is not less than fifty one per cent of the service area.

6. (1) The first members of the Water Users' Association and all persons, who may hereafter become members thereof so long as they continue so to be, are hereby constituted a body corporate by the name of _____ Water Users' Association". **Incorporation of Water Users' Association.**

(2) The said body shall have perpetual succession and a common seal and may sue or be sued in its corporate name and shall, subject to the provisions of this Act, be competent to acquire, hold or dispose of property, movable or immovable, to raise loans on the security of its fund in such manner and subject to such limits and other requirements including

guarantee as may be prescribed and to contract and do all things necessary for the purposes of this Act.

Election of
President at
first meeting of
Association.

7. (1) (a) On the formation of the Association, there shall be called the first meeting thereof for election of its President from amongst the member.

(b) The meeting shall be held on such date within four weeks from the date of the formation of the Association as may be fixed by the Competent Authority and shall be presided over by the Competent Authority who shall have such powers and follow such procedure as he deems fit but shall not have right to vote.

(2) The term of the office of the President shall be six years from the date of his election.

Meetings of
Association.

8. (1) The Association shall meet at such time and place and shall, subject to sub-section (2), observe such rules of procedure with regard to the transaction of business at its meeting as may be prescribed by regulations.

(2) (a) All the questions at a meeting of the Association shall be decided by a majority of votes of the members present and voting on the question and when there is an equality of votes, the President shall have the second or casting vote;

(b) The quorum of the meetings of the Association shall not be less than one-third of its members :

Provided that the members of the Association falling under clause (2) of section 5 shall have the right to speak or otherwise take part in the proceedings of a meeting of the Association held under clause (a) of sub-section (1) of section 7 or under sub-section (1) but shall not be entitled to vote.

9. (1) The Association, in order to enable it to perform its functions, may appoint, — **Officers and employees of Association.**

- (i) a secretary,
- (ii) a minor canal operator, and
- (iii) such other officers and employees as may be determined by it.

(2) The salary and allowances payable to, and other conditions of service of the secretary, minor canal operator and other officers and employees shall be such as may be determined and borne by the Association.

CHAPTER III

PARTICIPATOROY IRRIGATION MANAGEMENT AND OTHER FUNCTIONS OF ASSOCIATION.

10. In this Chapter, unless the context otherwise requires—

Definitions.

- (a) “designated person” means the Chairman of the Committee,
- (b) “entrusted minor canal” means the minor canal the irrigation management of which is entrusted to an Association under sub-section (1) of section 16.

11. For the purpose of enabling an Association to undertake participatory irrigation management, the Competent Authority shall, so far as possible, provide an assured supply of water from a minor canal on volumetric basis, or such other basis as may be prescribed, to the service area by ensuring that, —

Competent Authority to provide assured supply of water.

- (a) there is a measuring device at the minor canal and
- (b) the minor canal is operated in accordance with a programme for supply of water for each season prepared by the Competent Authority in consultation with the designated person.

Ascertainment of willingness of Association to undertake irrigation management.

12. The Competent Authority shall ascertain from the designated person the willingness or otherwise of the Association to participate in the irrigation management of the minor canal from which water is to be supplied to the service area for irrigation.

Willing Association to enter into an agreement.

13. Where an Association expresses its willingness to participate in irrigation management under section 12, it shall be required to enter into an agreement with the State Government, in such form as may be prescribed, providing for such participation.

Joint inspection of minor canal.

14. (1) As soon as an agreement is entered into by the Association with the State Government under section 13, there shall be carried out inspection of the minor canal, which is to be managed by the Association under the agreement, jointly by the Competent Authority and the designated person.

(2) The inspection under sub-section (1) shall also be carried out of water courses, if any, existing in the service area, which are to be managed by the Association along with the minor canal.

Repairs to canal.

15. (1) Where, on account of the joint inspection of the minor canal and water courses under section 14, it appears, both to the Competent Authority and the designated person, that it is necessary to carry out repairs to the minor canal and any of the water courses, as mutually agreed upon, before entrustment of the irrigation management of the minor canal along with the water courses, the Association shall carry out the repairs to the minor canal and water course.

(2) The cost of the repairs to the minor canal and water course carried out under sub-clause (1) shall be borne both by the State Government and the Association for such proportion as may be prescribed.

(3) Where Association fails to carry out repairs under sub-section (2) within such time as may be stipulated by the Competent Authority, the same shall be carried out by the Competent Authority, the cost of such shall be borne as provided in sub-section (2).

16. (1) Where repairs to the minor canal and water courses are carried out under section 15, the Competent Authority shall, by an order in writing, entrust the irrigation management of the minor canal and water courses to the Association.

Entrustment of
irrigation
management to
Association.

(2) Where an order under clause (1) is issued, the Association shall take over the irrigation management of the minor canal and water courses and upon the Association taking over the irrigation management of the minor canal and water courses, the designated person shall make an endorsement to that effect on the order so issued.

17. (1) Where there do not exist water courses in the service area at the time when irrigation management of the minor canal is entrusted to the Association, the Association shall construct the water courses in the service area.

Construction of
water courses by
Association.

(2) For the purpose of construction of water courses by the Association, the Competent Authority shall prepare a draft scheme for construction of water courses in the service area and for that purpose, the provisions of sub-section (2) of section 20A and sections 20B to 23 of the Bombay Irrigation Act, 1879 shall, so far as may be, apply as if—

Bom. VII of
1879.

- (a) for the words "field channel" wherever they occur, the words "water course" had been substituted;
- (b) in clause (vi) of sub-section (2) of section 20A, for the words "the canal to this land" appearing at the end, the words "from the outlet of the entrusted minor canal" had been substituted,
- (c) for the words "the authorised canal officer" or "canal officer", wherever they occur, the words "Competent Authority" had been substituted.

Construction of field channels by Association. 18. Where there does not exist field channels in the service area at the time when irrigation management of minor canal is entrusted to the

Bom. VII of
1879.

Association, the Association shall construct field channels in accordance with the provisions of Part III of the Bombay Irrigation Act, 1879, in so far as they are applicable, as if—

- (a) for the words “the authorised canal officer” or “canal officer”, wherever they occur, the words “Competent Authority” had been substituted,
- (b) in clause (vi) of sub-section (2) of section 20A, for the words “the canal to this land” appearing at the end, the words “from the entrusted minor canal to this land” had been substituted.

Functions of Association.

19. The Association, which enters into an agreement with the State Government under section 13 and to which irrigation management of a minor canal and water courses are entrusted under sub-section (1) of section 16, shall generally undertake irrigation management of the entrusted minor canal and water courses and particularly perform the following functions, namely:—

- (a) to ascertain the demand of water of each holder of land in the service area;
- (b) to measure and receive the quantity of water at the measuring device and to ensure proper apportionment and distribution of the water so received to all holders of land in the service area and for that purpose, to prepare rotational water supply system and implement it;
- (c) to inquire into complaints regarding distribution of water and to take immediate action to remedy them;
- (d) to take steps to prevent unauthorised use of water or waste of water or damage to the entrusted minor canal;

Bom. VII of
1879.

- (e) to carry out normal maintenance and repairs of the entrusted minor canal in accordance with the terms and conditions of the agreement entered into under section 13,
- (f) to pay the water rates levied under section 44 of the Bombay Irrigation Act, 1879 or the occasional water charges levied under section 45 of the said Act to the State Government on or before the due dates for their payment,
- (g) for the purpose of payment of water rates under clause (f), to determine the water rates or, as the case may be, the occasional water rates payable by the land holders and collect the water rates or, as the case may be, the occasional water charges, so determined from the land holders;
- (h) to maintain proper accounts of water received and distributed, and of money and materials received and used;
- (i) to carry out other duties and functions imposed upon the Association by or under this Act and to act according to the terms and conditions of the agreement entered into under section 13;
- (j) to refrain from doing anything which is contrary to the Act or the rules made thereunder and the terms and conditions of the agreement entered into under section 13.

20. (1) The Competent Authority may, from time to time, inspect, —
- (a) the water distribution by the Association in the service area of the entrusted minor canal, and
 - (b) the records maintained by the Association in relation to such water distribution.

Power of
Competent
Authority to
inspect and give
directions.

(2) The Competent Authority may issue to the Association such directions as it deems necessary, —

(a) where, on inspection under sub-section (1), the Competent Authority is of the opinion that—

(i) the water distribution is faulty or

(ii) the records are not maintained or are maintained but not properly, or

(b) to ensure compliance by the Association of the provisions of this Act and the rules made thereunder or of the terms and conditions of the agreement entered into by the Association with the State Government.

(3) The Association shall carry out the directions issued to it by the Competent Authority under sub-section (2).

(4) Where the Association makes persistent default in carrying out the directions issued to it under sub-section (2), the Competent Authority may, notwithstanding anything contained in the agreement, recommend to the State Government to terminate the agreement.

Determination and collection of water charges by Association. 21. An Association may determine the water charges due from its members for the water supplied from the minor canal to their land for irrigation and collect the same.

Other functions of Association.

22. The Association shall perform the following functions, namely:—

(1) to receive applications for use of water for irrigation from its members accompanied by such fees as may be determined by the Association,

(2) to register its members,

- (3) to collect such fees, as are determined by it, from its members,
- (4) to permit supply of water for irrigation to its members,
- (5) to regulate use of water,
- (6) to promote economy in the use of water,
- (7) to encourage members to adopt water saving devices or techniques such as drip, sprinklers and to recommend to the State Government remission of water rates, payable by members who adopt water saving devices and the State Government may, after verification, grant remission subject to such principles as may be prescribed;
- (8) to collect water rates levied under section 44 or 45 of the Bombay Irrigation Act, 1879 from its members,
- (9) to collect such water charges from members for use of water for purposes other than irrigation as may be determined by the Competent Authority with the previous approval of the State Government,
- (10) to make payment to the State Government of water rates collected from its members after deducting thereupon such percentage of cost of collection as may be prescribed,
- (11) to prepare plan for maintenance of the entrusted minor canal and for construction and maintenance of water courses and field channels and all other works related to the entrusted minor canal, water courses and field channels,
- (12) to collect from its members expenses incurred by it in carrying out normal maintenance and repairs of the entrusted minor canal,
- (13) to maintain such records as may be prescribed,
- (14) to perform such other functions as are laid down by or under this Act.

CHAPTER IV**FINANCE, ACCOUNTS, AUDIT AND REPORTS OF
ASSOCIATION.**

Fund of Association. 23. (1) The Association shall have its own fund and all receipts of the Association shall be credited thereto and all payments by the Association shall be made therefrom.

(2) The Association may accept grants, subventions, donations and gifts from the Central Government or the State Government or a local authority or any individual or body, whether incorporated or not, for the purposes of this Act.

(3) The Association may spend such sums as it thinks fit for the performance of its functions under this Act and such sums shall be treated as expenditure payable out of the fund of the Association.

(4) All moneys belonging to the fund or Sinking Fund of the Association shall be kept in any corresponding new Bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and approved by the State Government for the purpose or invested in securities authorised by the Trusts Act, 1882 at the discretion of the Association.

24. (1) Whenever the Association raises a loan for the purposes of this Act, it shall establish a fund to be called a Sinking Fund and shall pay into it on such dates as may be approved by the Competent Authority such sum as will, with accumulations of compound interest, be sufficient after payment of all expenses to pay up the loan within the stipulated period:

**Sinking
Fund.**

Provided that if, at any time, the sum standing to the credit of the Sinking Fund is of such amount that if allowed to accumulate at compound interest, it is sufficient to repay the loan within the stipulated period, then,

with the permission of the Competent Authority, further payments into such fund may be discontinued.

(2) The Association may apply a Sinking Fund or any part thereof in or towards the discharge of the loan for which the fund is established and, until such loan or part is wholly discharged, shall not apply the same for any other purpose.

25. (1) (a) The Association shall prepare annually on or before such date and in such form and manner, as may be prescribed, a budget for the next financial year, showing the estimated receipts and expenditure. **Budget.**

(b) The Association shall, as soon as may be after the said date, consider the budget estimate so prepared and approve the same subject to such modification as it may make.

(2) Except in the case of emergency, no sum shall be expended by or on behalf of the Association unless the expenditure is covered by provision in the budget as approved.

26. (1) The accounts of the Association shall be prepared and maintained in such form and manner as may be prescribed. **Accounts and Audit.**

(2) The Association shall cause to be prepared for each financial year an annual statement of accounts in such form as may be prescribed.

(3) The accounts of the Association shall be audited by an auditor who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949.

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1949.

(4) The said auditor shall be appointed by the Association.

(5) Every auditor appointed to audit the accounts of the Association under this Act shall have a right to demand the production of books of

accounts, connected vouchers and other documents and papers, to inspect the offices of the Association and to require such information from the Association as he may think necessary for performance of his duty as an auditor.

(6) The auditor shall send a copy of his report together with a copy of audited accounts to the Association which shall, as soon as may be after the receipt of the audit report, forward the same to the Competent Authority.

Annual report. 27. The Association shall, during each financial year, prepare, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous financial year and an account of activities likely to be undertaken by it in the current financial year and copies of such report shall be forwarded to the Competent Authority.

CHAPTER V

CONSTITUTION OF MANAGING COMMITTEE

Definition. 28. In this Chapter, unless the context otherwise requires, "member" means a member of the Committee.

29. (1) A Managing Committee of an Association shall consist of, -
- (a) a Chairperson and such number of other members not exceeding eleven as may be determined by the Competent Authority having regard to the number of members of the Association falling under clause (1) of section 5, and
 - (b) an officer not below the rank of Additional Assistant Engineer of a division in which the minor canal exists, as may be nominated by an Executive Engineer of such division, *ex-officio*,

**Constitution
Managing
Committee.**

(c) the member referred to in clause (b) shall have the right to speak or otherwise take part in the proceedings of a meeting of the Committee, but shall not be entitled to vote.

(2) The members of the Managing Committee shall be elected by members of the Association falling under clause (1) of section 5, from amongst themselves in such manner as to give equal representation to all the parts of the service area referred to in sub-section (3).

(3) For the purpose of sub-section (2), the Competent Authority shall divide the service area in three parts, namely, head reach, middle reach and tail reach.

(4) The election of members shall be held in accordance with such rules as may be prescribed generally relating to election and in particular in respect of matters such as electoral roll, nomination of candidates, manner of voting, counting of votes, declaration of results of voting, resolution of disputes.

30. On constitution of the Committee, the Committee shall co-opt not more than four members from the persons referred to in clause (2) of section 5 and the members so co-opted shall have the right to speak or otherwise take part in the proceedings of a meeting of the Committee but shall not be entitled to vote.

Co-option of members.

Election of Chairperson.

31. (a) On the constitution of the Committee, there shall be called the first meeting thereof for the election of its Chairperson from amongst the members.

(b) The meeting shall be held on such date within four weeks from the date on which the Managing Committee is constituted, as may be fixed by the Competent Authority, and shall be presided over by the Competent Authority who shall have such powers and

follow such procedure as he deems fit but shall not have the right to vote.

Term of office of members. 32. Term of office of a member shall be six years from the date of his election.

Filling of vacancy. 33. On occurrence of any vacancy in the office of a member due to death, resignation or any other reason, the same shall be filled in by the Association by election.

Disqualifications. 34. A member of the Association shall be disqualified for being elected or being a member of the Committee, if such member of the Association —

- (a) is an officer or employee of the Government or of a local authority or of any institution receiving grant in aid from the Government;
- (b) is, or at any time, adjudged an insolvent or has suspended payment of his debts or has compounded with his creditors;
- (c) is of unsound mind and stands so declared by a competent court;
- (d) is or has been convicted of any offence which, in the opinion of the Competent Authority, involves moral turpitude;
- (e) fails to pay any arrears of land revenue or water rates payable to the State Government or charges payable to the Association within the period provided for such payment;
- (f) has, directly or indirectly, interest in any contract by or on behalf of the Association, a gram panchayat, a taluka panchayat or district panchayat or State or Central Government;
- (g) ceases to be a holder of land in the service area;

35. (1) Notwithstanding anything contained in section 32, the Competent Authority may, at any time, remove any member from office if, in its opinion, such a member—

Removal or
resignation of a
member.

- (a) is or has become subject of any of the disqualifications mentioned in section 34
- (b) has been guilty of misconduct in discharge of his duties,
- (c) has become physically or mentally incapable of discharging his duties as a member,
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest, or
- (e) has, without reasonable cause, refused or failed to attend three consecutive meetings of the Committee:

Provided that no member shall be removed from his office unless an opportunity of being heard is given to the member.

(2) Any member may, by writing under his hand addressed to the Association, resign his office.

36. (1) The Committee shall meet at such times and places and shall, subject to sub-sections (2) and (3), observe such rules of procedure with regard to transaction of business at its meetings as may be prescribed by the Committee.

Meetings of
Committee.

(2) The Chairperson or if, for any reason, he is unable to attend any meeting, any other member, authorised by the Chairperson and present at the meeting, shall preside over the meeting of the Committee.

(3) (a) All the questions at a meeting of the Committee shall be decided by a majority of votes of the members present and voting on that

regard to transaction of business at its meetings as may be prescribed by the Committee.

(2) The Chairperson or if, for any reason, he is unable to attend any meeting, any other member, authorised by the Chairperson and present at the meeting, shall preside over the meeting of the Committee.

(3) (a) All the questions at a meeting of the Committee shall be decided by a majority of votes of the members present and voting on that question and the presiding member shall have the second or casting vote when there is an equality of votes.

(b) The quorum of the meetings of the Committee shall not be less than three members.

Officers and
employees of
Committee.

37. The officers and employees appointed by the Association under section 9 shall assist the Committee to enable to perform its functions under this Act.

Acts and
proceedings
presumed to be
valid.

38. (1) No act or proceeding of the Committee shall be questioned or be invalid on the ground merely of the existence of any vacancy in or any defect in the constitution of the Committee.

(2) No act done by any person acting in good faith as a member shall be deemed to be invalid merely on the ground that he was disqualified to be a member or that there was any other defect in his selection or nomination.

CHAPTER VI

FUNCTIONS OF COMMITTEE

39. The Committee shall perform such of the functions of the Association as are from time to time assigned to it by the Association.

Performance
of functions.

CHAPTER VII

OFFENCES AND PENALTIES

- (c) pollutes or fouls the water of entrusted minor canal so as to render it less fit for the purposes for which it is ordinarily used;
- (d) destroys, defaces or removes any land or level mark or water gauge fixed by the authority of a public servant;
- (e) destroys, tampers with, or removes any apparatus or part of any apparatus for controlling, regulating or measuring the flow of water in an entrusted minor canal;
- (f) passes or causes animals or vehicles to pass, in or across any of the works, banks or channels of an entrusted minor canal contrary to regulations made under section 59;
- (g) causes or knowingly and wilfully permits cattle to graze upon any entrusted minor canal or flood embankment, or tethers or causes or knowingly and wilfully permits cattle to be tethered, upon any such entrusted minor canal or embankment, or roots up any grass or other vegetation growing on any such entrusted minor canal or embankment, or removes, cuts or in any way injures, or causes to be removed, cut or otherwise injured, any tree, bush, grass or hedge intended for the protection of such entrusted minor canal or embankment;
- (h) violates any rule made under section 58 for breach whereof, the State Government may, in such rules, direct that a penalty shall be incurred;

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

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction, be punished in the case of a first offence with fine 45 of 1860. which may extend to two thousand rupees, and in the case of a second and subsequent offence, with fine which may extend to five thousand rupees:

For
endangering
stability of
minor canal,
etc.

41. Whoever, without proper authority,—

- (a) pierces or cuts through or attempts to pierce or cut through or otherwise to damage, destroy or endanger the stability of any entrusted minor canal;
- (b) opens, shuts or obstructs, or attempts to open, shut or obstruct any sluice in any entrusted minor canal;
- (c) makes any dam or obstruction for the purpose of diverting or opposing the current of a river or an entrusted minor canal on the bank whereby there is a flood embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required so to do;

45 of 1860.

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction, be punished in the case of a first offence with fine which may extend to two thousand rupees, and, in the case of a second and subsequent offence with fine which may extend to five thousand rupees.

42. Whenever any person is convicted under either section 40 or 41, the convicting Magistrate may order that he shall remove the obstruction or repair the damage in respect of which he is convicted within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, the Competent Authority may remove such

Obstruction
to be
removed and
damage
repaired.

obstruction or repair such damage and the cost of such removal or repair, as certified by the said Competent Authority, shall be leviable from such person by the Collector as an arrear of land revenue.

43. (1) Where an offence under this Act has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all 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 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 prosecuted against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means a body corporate and includes a firm or other association of individuals and

(b) “director in relation to firm” means a partner in the firm.

Persons employed on entrusted nor canal may take offenders in custody. 44. Any person in charge of, or employed upon, any entrusted minor canal, may remove from the lands or buildings belonging thereto, and take forthwith to the nearest police station, to be dealt with according to law, any person who within his view—

- (a) wilfully damages, obstructs or fouls any entrusted minor canal;
or
- (b) without proper authority interferes with the supply or flow of water, in or from any entrusted minor canal, or in any river, or stream so as to endanger, damage or render less useful any entrusted minor canal.

Saving of
prosecution
under other
laws.

45. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act.

Payment of
fine as award
to informant.

46. (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 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 award to any person who gave information leading to the detection of such offence or to the conviction of the offender.

(2) Where the fine be awarded by a court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed or, if an appeal be presented till after the decision of the appeal.

47. No court shall take cognizance of an offence punishable under this Act except on a complaint made by the Competent Authority or the President of the Association or the Chairperson of the Committee.

Cognizance
offences.

48. (1) The Association may, either before or after the institution of proceedings for any offence punishable under this Chapter, accept from any person charged with such offence, by way of composition of offence such sum not less than five hundred rupees and not more than five thousand rupees as may be determined by it.

Compounding
offences.

(2) On payment of such sum as may be determined by the Association under sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall stand abated.

Explanation.—For the purposes of this Chapter, the expression “entrusted minor canal” shall have the meaning assigned to it by clause (b) of section 10 and shall include a water course and a field channel into which the water of the entrusted minor canal flows.

CHAPTER VIII MISCELLANEOUS

49. Where, by notification under sub-section (2) of section 3, the limits of any service area has been,—

Consequences of
alteration of
limits of service
area.

- (i) increased or
- (ii) decreased,

the Competent Authority may, notwithstanding anything contained in this Act, by order published in the *Official Gazette*, provide for following matters, namely:—

- (a) in the case falling under clause (i), require the Association to include holders of land in the service area so increased as its members and to elect a holder of land in that area as a member of the Committee,
- (b) in the case falling under clause (ii), -
 - (i) require the Association to exclude its member who are holders of land in the service area so decreased and
 - (ii) removal of members of the Committee representing the area so decreased.

Power to reduce water rates. 50. Where an Association pays water rates before a date stipulated for its payment, the State Government may, by notification in the *Official Gazette*, reduce the water rates payable by such Association to such extent as it deems fit.

Bom. VII of 1879.

Settlement of disputes. 51. Any dispute or difference arising between members of the Association shall be presented to the Chairperson of the Committee within a period of thirty days from the date it has arisen and the Chairperson may pass such order as he may deem just and proper.

Appeal. 52. (1) An appeal shall lie to such officer of the State Government as it may, by notification, specify, against any order or decision of the Association or the Managing Committee affecting a member of the Association or any other individual.

(2) Such appeal shall be made within a period of thirty days from the date of order or decision.

(3) The specified officer may pass such order on the appeal as he may deem just and proper and the order so passed shall be final.

53. (1) An officer of the State Government authorised by notification published in the *Official Gazette*, may on of his own motion within two years or, on an application made to him, within one year from the date of any order or decision of the Competent Authority or the Association or the Committee, call for and examine the record of any such order or decision for the purpose of satisfying himself as to the legality, regularity or propriety of such order or decision, and pass such order thereon as he thinks just and proper, within twelve months from the date of service of notice for revision.

Revision.

(2) Where an appeal lies under section 52 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon application.

(3) No order shall be passed under this section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.

54. (1) Where any amount is due from a member of the Association, the Association shall, with the least practicable delay, cause to be presented to the member liable for the payment thereof a bill for the amount due from him specifying the date on or before which the amount shall be paid. Recovery of dues.

(2) If the Association is unable to recover the amount due to it from a member, it shall be recovered as an arrear of land revenue.

55. (1) In the performance of its functions under this Act, the Association shall be bound by such directions on questions of policy as the State Government may give in writing to it from time to time.

(2) The decision of the State Government whether a question is one of policy or not shall be final.

56. (1) In the performance of its functions under this Act, the Committee shall be bound by such directions on questions of policy as the Association may give in writing to it from time to time:

Provided that the Committee shall be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Association whether a question is one of policy or not shall be final.

57. No suit, prosecution or other legal proceedings shall lie against the Competent Authority, the Association or, as the case may be, the Committee or any member, officer or servant of the Association or, as the case may be, the Committee for anything which is, in good faith, done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

Power of the State Government to make rules. 58. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made to provide for all or any of the matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette* and shall thereupon take effect.

59. The Association may, with the previous approval of the State Government, make regulations not inconsistent with this Act or the rules made thereunder for enabling it to perform its functions under this Act.

Power of Association to make regulations.

60. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulty.

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

61. The provisions of this Act shall be in addition to and not in Savings. derogation of the Bombay Irrigation Act, 1879.

CHAPTER IX PANCHAYAT MINOR CANAL

62. In this Chapter, unless context otherwise requires, “panchayat minor canal” means a minor canal constructed and maintained or controlled by—

- (a) a taluka panchayat in the exercise of its functions in the sphere of agriculture and irrigation as described in Schedule II to the Gujarat Panchayats Act, 1993,
- (b) a district panchayat in the exercise of its functions in the sphere of a minor irrigation project as described in Schedule III to the said Act.

Application of
Act to
panchayat
minor canal.

63. The provisions of this Act shall apply to a panchayat minor canal as if in the Act,—

- (1) for the words “minor canal” wherever they occur, the words “panchayat minor canal” had been substituted;
- (2) in clause (3) of section 2 for the words “such officer of the State Government”, the words “such officer of the Taluka Panchayat or, as the case may be, the District Panchayat” had been substituted;
- (3) in Chapter III, for the words “the State Government” wherever they occur, the words “taluka panchayat in relation to the taluka panchayat minor canal or, as the case may be, the district panchayat in relation to the district panchayat minor canal” had been substituted.

IV-Ex.-19-8