

The Bombay Irrigation Act, 1879

GUJARAT

India

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Act 7 of 1879

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The Bombay Irrigation Act, 1879 Bombay Act No. 7 of 1879 [Dated 2nd October, 1879] For Statement of Objects and Reasons, see Bombay Government Gazette, 1878. Part V, p. 126; for Report of the Select Committee, see Bombay Government Gazette, 1879, Part V, p. 83 and for Proceeding in Council see Bombay Government Gazette, 1879, 1879, part V, pp. 3, 115 and 151. An Act to provide for Irrigation in the Bombay Presidency. Whereas, it is necessary to make provision for the construction, maintenance and regulation of canals, for the supply of water therefrom and for the levy of rates for water so supplied, in the Bombay Presidency; It is enacted as follows:-

Part I – Preliminary

1. Short title.

(1) This Act may be called the Bombay Irrigation Act, 1879. (2) Local extent. - It extends to the [Bombay area of the State of Gujarat] [These words were substituted for the words 'Pre-Reorganisation State of Bombay excluding the transferred territories and the City of Bombay' by Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960.]: [Provided that on and from the commencement of the Bombay Irrigation (Gujarat Extension and Amendment) Act, 1961 (Gujarat 1 of 1962), this Act shall extend to the whole of the State of Gujarat.] [This proviso was added by Gujarat 1 of 1962, section 2 (w.e.f. 10-12-1962).]

2.

[The amendments made by section 2 of the Act have been incorporated in the Bombay Land Revenue Code, 1879.]

3. Interpretation clause.

- In this Act, unless there be something repugnant in the subject or context,-(1)"canal" includes-(a)all canals, channels, [water, courses, pipes and reservoirs] [These words were substituted for the words 'pipes and reservoirs' by Gujarat 6 of 1984, section 2(1)(a).] constructed, maintained or controlled by [any Government] [These words were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] for the supply or storage of water;(b)all works, embankments, structures and supply and escape-channels connected with such canals, channels, pipes or reservoirs, and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs;(c)all [field channels] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 2(1)(b).], drainage-works and flood embankments as hereinafter respectively defined;(d)any part of a river, stream, lake, natural collection of water or natural drainage-channels, to which the [[State] [These words were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may apply the provisions of section 5, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;(e)all land belonging to [the [Government] [These words 'the Crown' were substituted for the words 'the Government' by the Adaptation of Indian Laws Order in Council.] which is situated on a bank of any canal as hereinbefore defined, and which has been appropriated under the orders of [any Government] [These words were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] for the purposes of such canal;(2)['water-course' means a channel constructed and maintained at the cost of the Government to supply water from an outlet;] [This clause was substituted by Gujarat 6 of 1984, section 2(2).](2A)["Field-channel" means any channel or pipe, constructed and maintained by the holder of land either by himself or jointly with other holders of lands or constructed by the Government at the cost of, and maintained by such holder or holders beyond a water-course and includes all subsidiary works connected with any such channel or pipe; [These clauses were inserted, by Gujarat 6 of 1984, section 2(3).](2B)"outlet" means an opening which is constructed by the [State] Government in a canal through which water is delivered into a water course, field-channel or directly to any lands;](3)"drainage-work" means any work in connection with a system of irrigation or reclamation made or improved by [any Government] [These words were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] for the purpose of the drainage of the country, whether under the provisions of section 15 or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works-connected therewith, but does not include works for the removal of sewage from towns;(4)"flood-embankment" means any embankment constructed or maintained by [any Government] [These words were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] in connection with any system or irrigation or reclamation works for the protection of lands from inundation or which may be declared by the [[State] [These words were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments;(4A)["bandhara" means any structure permanent or otherwise constructed or maintained for the purposes of impounding or diverting water of any river, stream, lake or any natural collection of water and includes any weirs, sluices, head walls, groins or any other works connected with such bandhara;] [This clause was

inserted by Bombay 29 of 1951, section 2.](5)"Collector" [* * *] [The words 'means the head revenue officer of a district and' were repealed by the Bombay General clauses Act, (Bombay 3 of 1886), Schedule B, This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bombay I of 1904)] (includes any officer appointed by the [[State] [These words were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] to exercise all or any of the powers of a Collector under this Act;(6)"Canal-officer" means any officer lawfully appointed or invested with powers under section 4;(6A)["Lands under irrigable command of a canal" means such lands as are irrigated or capable of being irrigated from the canal, being under its command and shall include also such lands as are or shall be deemed to be irrigated within the meaning of section 48;] [Clause (6a) was inserted by Bombay 59 of 1950, section 2.](7)"owner" includes every person having a joint interest in the ownership of the thing specified; 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;(8)["prescribed" means prescribed by rules made under this Act; [Clause (8), (9) and (10) were substituted for clauses (8) and (9) by Gujarat 27 of 1973, section 2.](9)"the Land Acquisition Act" means the Land Acquisition Act, 1894 (I of 1894);](10)"the Land Revenue Code" means the Bombay Land Revenue Code, 1879. (Bombay V of 1879)1

4. Appointment of Canal-officers.

- [The [State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government] or, subject to such orders as may from time to time be passed by [the [State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government], any [servant of the [Government] [These words were substituted for the words 'Officer of Government', by the Adaptation of Indian Laws Order in Council.] whom [the [State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government] empowers in this behalf, may-(a)appoint such officers with such designations, and assign to them respectively such powers and duties, under this Act, as [[State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order in Council.] Government] or such officer may deem fit:(b)invest [any] [For notification issued under this/section, see Bombay Rules and Orders.] [Government Officer] [These words were substituted for the words 'Servant of the Crown' by the Adaptation of Indian Laws Order, 1950.], in any department, either personally, or in right, of this office, or any other person with such powers, and impose upon him such duties, under this Act, as [[State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government or such officer may deem fit:Provided that any assignment of, or investments with powers or duties made under this section may at any time be cancelled or varied by the Authority who made it.

Part II – Of the Construction and Maintenance of Canals Application of Water or Purposes of Canals

5. Notification when water supply to be applied for purposes of canal.

- Whenever it appears expedient to the [the [State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government] that the water of any river or stream flowing in a natural channel, or of any lake or any other natural collection of still water, should be applied or used by the [the [State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government] for the purpose of any existing or projected canal, [the [State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government] may, by notification in the [Official Gazette] [These words were substituted for the words 'Bombay Government Gazette' by the Adaptation of Indian Laws Order in Council.], 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. Powers of Entry on Land, Etc.

6. Powers of Canal Officers for purpose of so applying water-supply.

- At any time after the day so named 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 deems fit.

7. Entry for inquiry.

- Whenever it shall be necessary to make any inquiry or examination in connection with a projected canal, or with the maintenance of an existing canal, any Canal-officer duly empowered, in this behalf, and any person acting under the general or special order of any such Canal-officer may-(a)enter upon such land as he may think necessary for the purpose, and(b)exercise all powers and do all things in respect of such land as he might exercise and do if [the [State] [These word 'the Provincial Government' were substituted for the words 'the Government', by the Adaptation of Indian Laws Order in Council.] Government] had issued a notification under the provisions of section 4 of the [band Acquisition Act] [These words were substituted for the words and figures 'Land Acquisition Act, 1870' by Gujarat 1 of 1962, section 4.] to the effect that land in that locality is likely to be needed for a public purpose, and(c)set up and maintain water-gauges and do all other things necessary for the prosecution of such inquiry and examination.

8. Power to inspect and regulate water-supply.

- Any Canal-Officer duly empowered in this behalf, and any person acting under the general or special order of any such Canal-officer, may enter upon any land, building or water course, on 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 land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

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

- In case of any accident being apprehended or happening to a canal, any canal-officer duly empowered in this behalf, and person acting under the general or special order of any such Canal-officer, may enter upon any land adjacent to such canal, and may take trees and other materials, and execute all works, which may be necessary for the purpose of preventing such accident or repairing any damage done.

10. Notice to occupier of building etc.

- When a Canal-officer or other person proposes, under the provisions of any of the three last preceding sections, to enter into any building or enclosed court or garden attached to a dwelling-house, not supplied with water from a canal, and not adjacent to a food-embankment, he shall previously give to the occupier of such building, court or garden, such reasonable notice as the urgency of the case may allow.

11. Means of crossing canals to be provided and obstruction to drainage to be avoided.

- Suitable means of crossing canals shall be provided at such places as the [State Government] [These words were substituted for the words 'Commissioner' by Gujarat 15 of 1965, Section 4, schedule] [*****] [The words 'or any Commissioner if empowered by the Provincial Government in this behalf' were deleted by Bombay 28 of 1950, Schedule.] thinks necessary for the reasonable convenience of the inhabitants of the adjacent land, and suitable bridges, culverts or other works shall be constructed to prevent the drainage of the adjacent land being obstructed by any canal.

12. [State] [These word was substituted for the words 'Provincial' by the Adaptation of Laws Order, 1950.] Government may prohibit formation of obstructions of rivers, etc. within certain limits.

- Whenever it appears to the [[State] [These words were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] that injury to the public health, or public convenience, or to any canal or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream, or natural drainage-course, [the [State] [These word 'the Provincial Government' were substituted for the words 'the Government', by the Adaptation of Indian Laws Order in Council.] Government] may, by notification published in the [Official Gazette] [The words were substituted for the words 'Bombay Government Gazette' by the Adaptation of Indian Laws Order in Council.], prohibit, within limits to be defined in such notification, the formation of any such obstruction, or may, within such limits, order the removal or other modification of such obstruction. Thereupon so much of the said river, stream or natural drainage channel, as is comprised within such limits, shall be held to be a drainage work as defined in section 3.

13. Canal-officer may issue order to person causing obstruction.

- Any Canal-officer duly empowered in this behalf may, after such publication, issue an order to any person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in such order.

14. Canal-officer may cause obstruction to be removed.

- If within the time fixed such person does not comply with the order, the canal-officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recovered by the Collector as an arrear of land-revenue. Construction of Drainage-Works

15. When drainage-works are necessary, [State] [This word was substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government may order scheme to be carried out.

- Whenever it appears to the [[State] [These words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of India Laws Order in Council.] Government] that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river is required for any land, the [[State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government] may cause a scheme for such work to be drawn up and carried into execution, and the person authorised by the [[State] [These words were substituted for the words 'Government in Council' by the Adaptation of Indian Laws Order.] Government] to draw up and execute such scheme may exercise in connection therewith the powers conferred on Canal-officers by sections 7, 8 and 9, and shall be liable to the obligations imposed upon Canal-officers by sections 10 and 34.

Part III – Of [Field Channels] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.]

[Obligation Regarding Construction of [Field-Channel [***] [The heading and section 15A were inserted by Gujarat 6 of 1963, section 2.]]

15A. Obligation of holder of land to obstruct [field-channel] [These words were substituted for the words 'water-course' Gujarat 6 of 1984, section 3].

- It shall be the duty of every holder of land which is capable of being irrigated from a canal to construct either by himself or jointly with other holders of lands capable of being irrigated from the canal, a [field-channel in the prescribed manner for the carriage of water from the canal to his land.] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section

3.]Construction of New [Field-Channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.]

16. Construction of new [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] by private arrangement.

- Any person may, with the permission of a Canal-officer duly empowered to grant such permission, construct a new [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] if he has obtained the consent of the holder of the land required therefor.

17. Application for construction by Canal-officer of the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].

- Any person desiring to construct a new [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], but being unable or unwilling to construct it under a private arrangement with the holder of the land required for the same, may apply, in writing to any Canal-officer duly empowered to receive such applications, stating-(1)that he is ready to defray all the expenses necessary for acquiring the land and constructing such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].(2)that he desires the said Canal-officer in his behalf and at his cost to do all things necessary for constructing such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].

18. Procedure when Canal-officer considers construction of [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] expedient.

- If the Canal-officer considers the construction of such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] expedient he may call upon the applicant to deposit any part of the expense such officer may consider necessary.and upon such deposit being made, shall cause inquiry to be made into the most suitable alignment for the said [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].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 notification in every village through which the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] is proposed to be taken, that so much of such land as is situated within such village has been so marked out.Application by person wishing to be joint owner. - And shall send a copy of such notification to the Collector of every district in which such land is situated for publication on such land.The said notification shall also call upon any person who wishes to share in the ownership of

such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] to make his application in that respect to the canal-officer within thirty days of the publication of such notification. If application admitted applicant liable for share of cost. - If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], and in the cost of acquiring the land for the same, and shall be an owner of such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] when constructed.

19. Collector to acquire land.

- On receipt of copy of such notification, the Collector shall proceed to acquire such land under the provisions of the [Land Acquisition Act] [These words were substituted for the words and figures 'Land Acquisition Act, 1870', by Gujarat Of 1982, section 5.], as if a declaration had been issued by [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of India Laws Order in Council.] Government] for the acquisition thereof under section 6 of that Act, and as if [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of India Laws Order in Council.] Government] had thereupon directed the collector to take order for the acquisition of such land under section 7 of the said Act, and (if necessary) as if [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of India Laws Order in Council.] Government] had issued orders for summary possession being taken under section 17 of the said Act.

20. Procedure after construction of [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].

- On being put in possession of the land, the Canal-officer shall construct the required [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.]; and on its completion shall give to the owner notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.]. On such notice being given, such sum shall be due from the owner to the Canal-Officer. On receipt of payment in full of all expenses incurred, the Canal-officer shall make over possession of such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] to such owner. [Scheme for Construction of [Field-Channels] [The heading and sections 20A to 20F were inserted by Gujarat 6 of 1963, section 3.]

20A. [Scheme for construction of [field-channels] [The heading and sections 20A to 20F were inserted by Gujarat 6 of 1963, section 3.].

(1) If in respect of any area in which lands are capable of being irrigated from a canal, the Canal-officer specially empowered in this behalf by the State Government (hereinafter referred to as

"the authorised Canal-officer") is of the opinion that in the absence of [field-channels] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], the irrigation of such lands has not been possible or suffered or is likely to suffer and that in the public interest it is necessary to frame a scheme providing for the construction of [field-channels] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] in such area, he shall prepare a draft scheme for such area.(2)Such draft scheme shall contain the following particulars, namely:-(i)the object of the scheme;(ii)the area to which the scheme is applicable;(iii)the proposed [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] and the most suitable alignment thereof;(iv)the [***] [The word 'Approximate' was deleted by Gujarat 27 of 1973, section 3(l)(i)] area which is likely to be needed for construction of the proposed [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] and the plan indicating such area;(v)survey numbers and acreage of each of the lands to be benefited by the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] and the names of the holders thereof;(vi)period within which each holder of the land mentioned in item (v) should construct either by himself or jointly with other holders [the [field-channel] [These words were substituted for the words 'a water course', by Gujarat 6 of 1984, section 3 (l)(ii).] for the carriage of the water from the canal to his land;(vii)approximate cost of the acquisition of land, if any, to be occupied by the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.];(viii)approximate cost of the construction of the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], (including the cost of the acquisition of the land, if any,) in case the holders of land fail to come forward to construct the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.];(ix)the extent of the liability of each holder of land to construct the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], and in the event of the holder not intimating under clause (d) of sub-section (5) that he is willing to construct the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] himself for jointly with others or intimating that he is not willing to do so, the extent of the liability of such holder of land to pay the cost of the construction of the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.];(x)such other particulars as may be prescribed by rules.(3)The authorised Canal-officer shall also mark out the land which it will be necessary to occupy for the construction of the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].(4)The authorised Canal-officer shall publish the draft scheme [*] **[The words 'in the Official Gazette and shall also simultaneously publish it' were deleted, by Gujarat 6 of 1984, section 3(2)(i).] in the prescribed manner in every village, through which the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] is proposed to be taken alongwith a notice calling upon all holders of land and other persons affected by the scheme to submit to him in writing their suggestions or objections, if any, within a period of thirty days from the date of the publication of the draft scheme [] [The words 'in the Official Gazette' were deleted, by Gujarat 6 of 1984, sections 3(2) (ii).].(5)As soon as may be after the expiry of the period of notice under sub-section (4), the authorised Canal-officer shall, after considering the suggestions and objections, if any, received under sub-section (4).(a)sanction the draft scheme with or without modifications,(b)publish the**

sanctioned scheme [in such manner] [These words were substituted for the words 'by notification in the Official Gazette and in such other manner' and the word 'and' was deleted, by Gujarat 6 of 1984, section 3(3)(i).] as may be prescribed by rules [***] [The word 'spproximate' was deleted by Gujarat 27 of 1973, section 3(1)(i)].(c)send [a copy of the sanctioned scheme so published to the Collector, and] [These words were substituted for the words 'a copy of the notification so published to the Collector', Gujarat 27 of 1973, section 3(3)(ii).](d)[issue notice in the prescribed form and manner to each holder of the land mentioned in the sanctioned scheme, requiring the holder to intimate the Canal-officer in writing, within one week from the receipt of the notice his willingness to construct by himself for jointly with other holders the [field-channel] [This clause was inserted, Gujarat 27 of 1973, section 3 (3)(iii).] for the carriage of water from the canal to his land.](6)The scheme sanctioned under sub-section (5) shall be called the final scheme and shall be binding on all holders of land mentioned therein and all other persons affected thereby.(7)Land needed for the purpose of a scheme so sanctioned shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act.

20B. Collector to acquire land needed for field-channel.

(1)On receipt of [a copy of the sanctioned scheme] [These words were substituted for the words 'a copy of the notification', by Gujarat 6 of 1984, section 4(i).] published under sub-section (5) of section 20A, the Collector shall proceed to acquire the lands specified in [that scheme] [These words were substituted for the words 'the final scheme', by Gujarat 6 of 1984, section 4(ii).] as Land needed for the construction of a [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], under the provisions of the Land Acquisition Act, [and to take possession of such lands] [These words were inserted, by Gujarat 6 of 1984, section 4(iii).] as if a declaration had been issued by the State Government for the acquisition thereof under section 6 of that Act and as if the State Government had thereupon directed the Collector to take order for the acquisition of such land under section 7 of the said act, and [*] [The brackets and words '(if necessary)' were deleted, by Gujarat 6 of 1984, section 4(iv).] as if the State Government had issued order for summary possession being taken under section 17 of the said Act.(2)When possession of the land is taken in accordance with sub-section (1), the authorised Canal-officer shall be put in possession thereof by the Collector.(3)The amount of the cost of acquisition of the land shall be apportioned by the Collector among the holders of land specified in the final scheme, and in accordance with the extent of their liability determined under the final scheme.

20C. [Authorised Canal-officer to construct [field-channel] [This section was substituted by Gujarat 27 of 1973, section 5].

- On being put in possession of the land under sub-section (2) of section 20B, the authorised Canal-officer shall-(a)give notice to each holder of land who has expressed, under clause (d) of sub-section (5) of section 20A, his willingness to construct the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] within the period specified in the final scheme and in the prescribed manner calling upon him to construct the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] in his land to the extent to which he may be liable to do so under the final scheme;(b)proceed to construct

the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] in the land to which clause (a) does not apply in accordance with the final scheme at the cost of the holder of such land; and(c)require the holder of the land concerned to pay to the State Government, in a case where the land to be occupied by the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] or any part thereof has been acquired by Government under section 20B, such sum as may be payable by him in accordance with the appointment of the cost of acquisition of the land made under the final scheme.

20D. Canal-officer to construct [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].

- If any holder of land to whom a notice is given under section 20C fails to construct the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] within the period specified in the final scheme, the authorised Canal-officer shall construct the same at the cost of such holder.

20E. Consequences of completion of construction of [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].

(1)When the construction of the whole of the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] mentioned in the final scheme is completed the authorised Canal-officer shall-(i)[**] [The words 'the authorised Canal-Officer shall' were deleted, by Gujarat 6 of 1984, section 6(2).] issue a certificate to that effect in the prescribed form, and(ii)[**] [The words 'the State Government or the authorised Canal-officer, if so empowered by the State Government shall' were deleted, by Gujarat 6 of 1984, section 6(3)(a).] by order in writing, transfer the land acquired under section 20B and occupied by the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] to all holders of land benefited by the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] and thereupon the land so transferred shall, along with the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] constructed thereon, jointly vest] in all such holders and the provisions of sections 21 to 25 (both inclusive) shall apply to such holders as they apply to the owner of a [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].(2)Nothing in sub-section (1) shall affect the right of the State Government to recover the cost of the acquisition of land under section 20B and the cost of the construction of the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] by any holder of land under the final scheme.

20F. Mode of payment of cost of construction of [field-channels] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], etc.

(1)The cost of the acquisition of any land and the cost of the construction of the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] payable by any holder of land under the final scheme [shall, on a notice issued by the authorised Canal-officer in that behalf, be paid] [These words were substituted for the words 'shall be paid', by Gujarat 6 of 1984, section 7(1).] by such holder, -(i) either in lump sum within the prescribed period, or (ii) in such instalments not exceeding [five] [This word was substituted for the word 'three', by Gujarat 6 of 1984, section 7(2).] with simple interest at 4 ½ percent per annum on or before such dates as may be fixed by the authorised Canal-officer. (2) Where the holder of land has carried out some work for the construction of the [field-channel] [These words were substituted for the words 'water courses' by Gujarat 6 of 1984, section 3.] or donated land for being occupied by the [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], the authorised Canal-officer shall determine the value of the work so carried out or, as the case may be, the value of the land so donated and the value so determined shall be deducted from the cost payable by the holder under sub-section (1).] Rights and Obligations of Owners of [Field-Channels] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.]

21. Obligations of owner of [field-channels] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.].

- Every owner of a [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] shall be bound - (a) to construct and maintain all works necessary for the passage across such [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.], or canals, [field-channels] [These word was substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.], drainage-channels and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands; (b) to maintain such [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] in a fit state of repair for the conveyance of water; (c) to allow the use of it to other or to admit other persons as joint owners thereof on such terms as may be prescribed under the provisions of section 23; Rights of owners and users of [field channels] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.]. - and every owner of a [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] and every person duly authorised under the provisions hereinafter contained to use a [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] shall be entitled - (d) to have a supply of water by such [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.], at such rates and on such terms, as may from time to time be prescribed under section 44 and by the rules made by [the [State] [These words 'the Provincial Government' were substituted for the words 'Governor in council' by the Adaptation of Indian Laws Order in Council.] Government] under section 70: Provided always that any owner of a [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.], and, subject to the terms of any agreement between the parties, or to any condition imposed under section 23, any such person as aforesaid may at any time, by giving three months' previous notice in writing in this behalf to a Canal-officer

duly empowered to receive such notices, resign his interest in such [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.].

22. Arrangement with owner by other person.

- Any person desiring to have a supply of water through a [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] of which he is not an owner may make a private arrangement with the owner for permitting the conveyance of water thereby, or may apply to a Canal-officer duly empowered to receive such applications for authority to use such [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] or to be declared a joint owner thereof.

23. Canal-officer after inquiry may authorise supply or declare applicant to be joint owner.

- On receipt of any such application, the Canal-officer shall serve notice on the owner to show cause why such authority should not be granted, or such declaration should not be made, and, if no objection be raised, or if any objection be raised and be found insufficient or invalid, shall subject to the approval of the Collector, either authorize the applicant to use the [field-channels] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.], or declare him to be a joint owner thereof on such conditions as to the payment of compensation or rent or otherwise as may appear to him equitable.

24.

[Use of land acquired for water-course for other purpose.[Deleted Gujarat 6 of 1984. section 4.

25. If owner fails to execute work or to repair [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] Canal-Officer may execute same.

- [If any owner of a field channel fails to fulfil any obligation imposed upon him by section 21, then where such Canal-Officer is satisfied that for maintaining an uninterrupted flow of water through the field channel or for maintaining the rotation of water in the field channel or for allowing use of water by others it is necessary to take immediate action, to execute the necessary work or repair or to remove obstruction he may without giving such notice to the owner, execute such work or repair or remove obstruction on behalf of the owner, and except as hereinafter provided in this section, all expenses incurred in the execution of such work or repair or removal of obstructions shall be a sum due by such owner to the State Government.] [This paragraph was substituted paragraph by Gujarat 6 of 1984, section 5.]Persons using [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] to pay share of expenses of repair. - Every person other than an owner who uses any [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] in respect of which any repairs have been executed

by a Canal-officer under this section shall, in the absence of any agreement between the parties or of any condition imposed under section 23 at the time such person was authorised to use such [field-channel] [These words were substituted for the words 'Water-courses' by Gujarat 6 of 1984, section 3.] to the contrary be liable to pay to the [the [State] [These words' the Provincial Government' were substituted for the word 'Government' by the adaptation of Indian Laws Order in Council.] Government] such proportion of the expenses incurred in the execution of such repairs as shall be determined by the said Canal-officer.[Bandharas] [This heading and sections 25A and 25B were inserted by Bombay 29 of 1951, section 3.]

25A. Obligation to repair bandharas situated in alienated lands and villages and talukdari villages.

(1)Save as otherwise provided in sections 84 and 85, every holder of alienated land or village and every holder of the wanta portion in a takukdari village (hereinafter called "the holder" shall be bound to carry out all necessary repairs to any bandharas situated in his land or village or wanta, as the case may be, and to maintain them in a fit state of repairs to the satisfaction of the Collector.(2)The expenses for any repairs to a bandhara made under the provisions of subsection (1) shall be borne by the holder and the State Government as follows:-(i)In the case of a bandhara which irrigates only land situated in a village or villages of which the revenue is shared between the holder and the State Government, the apportionment of expenses for repairs between the holder and the State Government shall be in the same proportion in which the revenue is shared by them.(ii)In the case of a bandhara which irrigates land situated in any village or villages of which the revenue is shared between the holder and the State Government and also land situated in any unalienated village or villages or which irrigates land situated in the wanta portion of a talukdari village and also other land in the said village the cost of repairs shall first be calculated in the prescribed manner having regard to the total area of land irrigated by the bandhara. The proportionate share of cost in respect of a village or villages of which the revenue is shared between the holder and the State Government shall then be worked out on the basis of the proportion which the area of land situated in such village or villages bears to the total area of land irrigated by the bandhara. The proportionate expenses in respect of land in such village or villages so arrived at shall be borne by the holder and the State Government as provided in clause (i) above.(3)If any dispute arises as to the share or amount of expenses to be borne by the holder under this section or under section 25B, the matter shall be referred to the Collector whose decision shall be final.

25B. Execution of repairs to bandhara if holder fails to carry out the same.

- If the holder fails to fulfil the obligation imposed upon him by section 25A, the Collector may require him by notice to execute the necessary repairs within a period to be prescribed in such notice, of not less than fifteen days, and, in the event of failure may execute the same on his behalf. The holder shall be liable to pay the expenses incurred in the execution of repairs to such extent as the Collector having regard to the provisions of subsection (2) of section 25A may determine. In the event of any default made by the holder in payment of any sum due from him, on account of such expense, it shall be recovered from him as an arrear of land revenue.]Settlement of Disputes Concerning [Field-Channels] [These words were substituted for the words 'water-courses' by

Gujarat 6 of 1984, section 3.]

26. Settlement of disputes as to mutual rights and liabilities of persons interested in [field-channels] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.].

- Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] or among joint owners of a [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.], as to their respective shares of the expense of constructing or maintaining such [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] or as to the amounts severally contributed by them towards such expense, or as to failure on the part of any owner to contribute his share, any person interested in the matter of such dispute may apply, in writing, to any Canal-officer duly empowered to receive such applications, stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that on a day to be named in such notice, he will proceed to inquire into the said matter; and if all the persons interested consent, in writing to his being arbitrator, he may pass his order thereon: failing such consent, he shall transfer the matter to the Collector, who shall inquire into and pass his order thereon. Any order passed by the Collector under this section shall remain in force until set aside by a decree of a Civil Court.

Part IV – Of the Supply of Water Applications for Supply

27. Water to be supplied on written application.

- Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a Canal-officer duly empowered to receive such applications, in such form as shall from time to time be prescribed by [the [State] [These words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.], Government] in this behalf. And water may be supplied for purposes other than those of irrigation. - [Or submission of a written application to him, the Canal-officer may give permission for water to be taken under such special conditions and restrictions, as to the limitation, control and measurement of the supply as he shall be empowered by the State Government to impose in relation to the use of water for any particular purpose.] [This paragraph was substituted for the portion beginning with the words 'If the application' and ending with the words 'in each case' by Gujarat 27 of 1973, section 9.] Provisions as to Supply

28. Power to stop Water-Supply.

- The supply of water to any [field-channel] [These words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] to or 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 executing any work ordered by competent authority;(b)whenever and so long as may [field-channel] [This words were substituted for the words 'water-courses' by Gujarat 6 of 1984, section 3.] by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water therefrom;(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 periods fixed from time to time by a Canal-officer duly empowered in this behalf, of which due notice shall be given;(f)[whenever and so long as it is necessary to stop such supply pending a change in the source thereof by a Canal-officer [* * *] [This clause was inserted by Bombay 14 of 1931, section 3.];(g)[in accordance with the condition, if any, providing for stoppage of water supply, subject to which permission for water to be taken may have been given] [This clause was inserted by Gujarat 27 of 1973, section 10.].

29. Duration of supply.

- When Canal-water is supplied for the irrigation of one or more crops only, the permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops.

30. Agreements for supply of water transferable with property in respect of which supply given.

- Every agreement for the supply of canal-water to any land, building or other immoveable property shall be transferable therewith, and shall be presumed to have been transferred whenever a transfer of such land, building or other immovable property takes place. Right to use of water not transferable in other case without permission of Canal-officer. - No person entitled to the use of any work or land appertaining to any canal, and, except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell or sub-let or otherwise transfer, his right to such use without the permission of a Canal-officer duly empowered to grant such permission.

Part V – Of the Award of Compensation Compensation when Claimable

31. Compensation in cases of ascertainable substantial damage.

- Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation: Exceptions. - Provided that no compensation shall be so awarded in respect of any damage arising from-(a)deterioration of climate, or(b)stoppage of navigation, or the means of rafting timber or of watering cattle, or(c)stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section 5, if no use have been made of such supply, within the five years next before the date of issue of the notification under section 37,

or(d)failure or stoppage of the water in a canal, when such failure or stoppage is due to-(1)any cause beyond the control of [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government],(2)the execution of any repairs, alterations or additions to the canal, or(3)any measures considered necessary by any Canal-officer duly empowered in this behalf for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation;Remission of water-rates when allowable. - but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes named in clause (d) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government].

32. Limitation of claims.

- No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained of commenced, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

33.

(Compensation not claimable in respect of works executed prior to Act.) Rep. Act-XVI of 1895.Summary Decisions

34. Compensation for damage caused by entry on land, etc.

- In every case of entry upon any land or building under section 6, section 7, section 8, or section 9, the Canal-officer or 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 within one month from the date of such entry compensation shall be tendered by a Canal-officer duly empowered in this behalf to the landholder or owner of the property damaged.If such tender is not accepted, the Canal-officer shall forthwith refer the matter to the Collector for the purpose of making inquiry as to the amount of compensation and deciding the same.

35. Compensation on account of interruption of water supply.

- If the supply of water to any land irrigated from a canal is interrupted otherwise, than in the manner described in clause (d) of section 31, the holder of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector, after consulting the Canal officer shall award to the petitioner reasonable compensation for such loss.

36. Decision as to amount of compensation under either of last two sections conclusive.

- The decision of the Collector under either of the last two preceding sections as to the amount of compensation to be awarded, or, if any rule framed under section 70, such decision shall be declared to be appealable, then the decision of the authority to whom the appeal lies, shall be conclusive. Formal Adjudications

37. Notice as to claim for compensation in certain cases.

- As soon as practicable after the issue of a notification under section 5, the Collector shall cause public notice to be given at convenient places, stating that [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government] intended to apply or use the water as aforesaid, and that claims for compensation may be made before him. A copy of sections 31 and 32 shall be annexed to every such notice,

38. Claims to be referred to Collector.

- All claims for compensation under this Act, other than claims of the nature provided for in sections 34 and 35, must be made before the Collector of the district in which such claim arises.

39. [Collector to be guided by the provisions of the Land Acquisition Act. [Section 39 was substituted for the original by Gujarat 1 of 1962, s.6 (w.e.f. 10-12-1962).]

(1) The Collector shall inquire into every such claim and determine the amount of compensation, if any, which should, in his opinion be given to the claimant and shall make an award. (2) Every award made under sub-section (1) shall be in the form prescribed in section 26 of the Land Acquisition Act and the provisions of the said Act shall so far as may be, apply to the inquiry and the making of an award under sub-section (1).

40. Diminution in market value to be considered in fixing compensation.

- In determining the amount of compensation under the last preceding section 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 shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

41. Compensation when due.

- All sums of money payable for compensation awarded under section 39 shall become due three months after the claim for such compensation was made, Interest. - And simple interest at the rate of six per centum 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. Abatement of Land Revenue and Rent.

42. Abatement of revenue demand on interruption of water-supply.

- If compensation is awarded under section 39 on account of a stoppage or diminution of supply of water to any Paying revenue to [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government], and the amount of the revenue payable on account of such land has been fixed with reference to the water-advantages appertaining thereto the holder of the said land shall be entitled to an abatement of the amount of revenue payable to such extent as shall be determined by the Collector.

43. Abatement of inferior holder's rent on interruption of water-supply.

- Every inferior holder of any land in respect of which such compensation has been paid shall, if he receives no part of the said compensation, be entitled to an abatement of the rent previously payable by him to the superior holder thereof in proportion to the reduced value of the holding; Enhancement of inferior holder's rent on restoration of water supply. - Cut, if a water supply which increases the value of the holding is afterwards restored to the said land otherwise than at the cost of the inferior holder, the superior holder shall be entitled to enhance the rent in proportion to such increased value: Provided that the enhanced rent shall not in any case exceed the rent payable by the inferior holder before the abatement, unless the superior holder shall, independently of the provisions of this section, be entitled so as to enhance the previous rent. [Part VI [This heading was substituted for the original heading 'Part-VI of Water Rates' by Bombay 59 of 1950, section 3.] Water Rates, Betterment Charges and Irrigation Cess] Supply Rates

44. Determination of rates for supply of canal-water.

- Such rates shall be leviable for canal-water supplied for purposes of irrigation, or for other purpose, as shall from time to time be determined by [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government], Provision for cases in which existing water supply is improved. - If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water-supply, in respect of which either no revenue or a fixed amount of revenue has thereto been paid to [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government], is increased, rates shall be leviable under this section in respect of the increased

water-supply only. The said rates shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied. Occasional Rates

45. Liability when person using water unauthorizedly cannot be identified.

- If water supplied through a [field-channel] [These words were substituted for the words 'water-course' by Gujarat 6 of 1984, section 3.] be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified the person or all the persons on whose land such water has flowed, if such land derived benefit therefrom, or, if no land has derived benefit therefrom, the person or all the persons chargeable in respect of the water supplied through such [field-channel] [These words were substituted for the words 'water-course' by Gujarat 6 of 1984, section 3.], shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules prescribed by [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government] under section 70.

46. Liability when water runs to waste.

- If water supplied through a [field-channel] [These words were substituted for the words 'water-course' by Gujarat 6 of 1984, section 3.] be suffered to run to waste, and if, after inquiry, the person through whose act or neglect such water was suffered to run waste cannot be discovered, the person or all the persons chargeable in respect of the water supplied through such [field-channel] [These words were substituted for the words 'water-course' by Gujarat 6 of 1984, section 3.] shall be liable, or jointly liable as the case may be, for the charges which shall be made in respect of the water so wasted, under the rule prescribed by [the [State] [These words 'the Provincial Government' were substituted for the words 'Government' by the Adaptation of Indian Laws Order in Council.] Government] under section 70. All questions arising under this and the last preceding section shall, subject to the provisions of section 67, be decided by a Canal-officer duly empowered in this behalf.

47. Charges recoverable in addition to penalties.

- All charges for the unauthorised use or for waste of water may be recovered, as water-rates, in addition to any penalties incurred on account of such use or waste. Percolation and Leakage-Rates

48. Land deriving benefit from percolation liable to water rate.

- If it shall appear to a Canal-officer duly empowered to enforce the provisions of this section, that any cultivated land within two hundred yards of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal water for irrigation, or, that any cultivated land, wherever situate, derives by a surface-flow, or by means of a well-sunk within two hundred yards of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal, he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply

to land similarly cultivated. For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

48A. [Levy of water rate for use of percolation water for non-irrigation purposes. [This section was inserted by Bombay 29 of 1951, section 4.]

(1) If it shall appear to a Canal-officer duly empowered to enforce the provisions of this section, that any natural stream, artificial drain or well sunk within two hundred yards of any canal is deriving percolation water from such canal, and the water from such stream, drain or well is used for purposes other than those of irrigation, he may charge for use of such water a water rate not exceeding that as would ordinarily have been charged if the supply had been made from the canal for such purposes. (2) The provisions of sub-section (1) shall not apply to water from such stream, drain or well used exclusively for domestic purposes by the residents of any village. [Betterment Charges] [This heading and sections 49 to 56F were inserted by Bombay 59 of 1950, section 4.]

49. Scheme of Irrigable lands under command and betterment charges on construction or improvement, etc. of a canal.

- When the construction of a new canal or the improvement or extension of an existing canal is undertaken, the State Government shall direct an officer empowered in this behalf to prepare a scheme showing the lands under the irrigable command of the canal and the betterment charges leviable on such lands.

50. Publication of scheme and notice to owners and persons interested.

(1) The scheme so prepared shall be published in the Official Gazette and in such other manner as may be prescribed by rules. (2) The Officer empowered under section 49 shall also give notice to the persons known or believed to be the owners of or interested in the lands under irrigable command of the canal requiring them to appear before him either personally or by agent at a time and the place therein mentioned (such time not being earlier than one month from the date of the notice) to state their objections, if any, - (a) to the inclusion of the lands in the scheme as the lands under irrigable command of the canal, the (b) to the imposition and recovery of the betterment charges on such lands.

51. Inquiry and award.

- On the date fixed under section 50 or on such other date to which the inquiry may be adjourned the officer concerned shall, after holding a formal inquiry in the manner provided by [the Land Revenue Code] [These words were substituted for the words and figures 'The Bombay Land Revenue Code, 1879' by Gujarat 1 of 1962, section 7 (w.e.f. 10-12-1962).] and after hearing the objections, if any, stated by the persons as required by notice under section 50, makes an award. The award shall specify - (a) the lands under irrigable command of the canal. (b) the increase in value of such lands by the completion of the construction of a new canal or the improvement or extension of an existing

canal.(c)the amount of the betterment charges leviable on each of the said lands.(d)the date from which such betterment charges shall be leviable:Provided that no betterment charges shall be leviable in respect of any land which is unarable (Kharaba).

52. Increase in value and betterment charges.

- The increase in value on account of the completion of a new canal or the improvement or extension of an existing canal shall be the amount by which the value of the land on the completion date is likely to exceed the value of the land on the construction date and the betterment charges shall be one-half of such increase in value.Explanation. - For the purposes of this section the State Government shall, by notification in the Official Gazette, specify-(a)the date of the commencement of construction of any work in connection with the construction or improvement or extension of a canal, as the construction date;(b)the date of completion of the construction, improvement or extension of a canal as the completion date.

53. Appeals to the Collector.

(1)Any person aggrieved by the award may, within sixty days from the date of the award, appeal to the Collector.(2)The provisions of Chapter XIII of [the Land Revenue Code] [These words were substituted for the words and figures 'The Bombay Land Revenue Code, 1879' by Gujarat 1 of 1962, section 7 (w.e.f. 10-12-1962).] shall apply to such appeals, as if the officer empowered under section 49 was a Revenue Officer and the Collector was his immediate superior.

54. Revision by state Government.

- The State Government may call for and examine the record of any inquiry under section 51 or of the proceedings in appeal under section 53 for the purpose of satisfying itself of legality or regularity of such inquiry or proceedings and may modify or reverse the award of the decision of the Collector.

55. Finality of orders of State Government, Collector's decision and award.

- Any order passed by the State Government in revision under section 54 and subject to such order, the decision of the Collector on appeal under section 53, and subject to the order of the State Government and the decision of the Collector on appeal, the award made under section 51 shall be final.

56. Betterment charges to be first charged on land next to land revenue.

- From the date specified in the award as the date from which the betterment charges shall be leviable, or from such date as may be otherwise specified by the Collector in appeal under section 53 or by the State Government in revision under section 54 as the date from which such charges shall be leviable, the betterment charges recoverable in respect of any land shall, subject to the prior payment of the land revenue, if any, due to the State Government thereon, be a first charge on the

land in respect of which such betterment charges are leviable.

56A. Payment of betterment charges.

- The betterment charges shall be payable on the date fixed under the rules made by the State Government under section 70. Provided that the owner of the land on which such charges are imposed may execute an agreement in favour of the State Government, agreeing to pay the amount of such charges by annual instalment together with interest at such rate and within such period as may be prescribed by rules.

56B. Relinquishment or exchange of land in lieu of the payment of betterment charges.

- Notwithstanding anything contained in section 56A, the State Government may allow the owner of the land on which the betterment charges may be payable to relinquish the whole or any part of the land or to deliver it in exchange in favour of the State Government on such conditions as may be prescribed by rules: Provided that no such relinquishment or exchange shall be permitted unless the land is free from encumbrances Irrigation Cess

56C. Levy of irrigation cess.

56D. Liability for irrigation cess.

56E. Rate and period of irrigation cess.

56F. Date for payment of irrigation cess.]

Deleted by Gujarat 24 of 1982, section 2. Recovery of Water-Rates and other Rates in Arrears

57. [Payment and recovery of water rates and other dues. [Section 57 was substituted by Bombay 64 of 1948, section 2.]

(1) Every water-rate leviable or charged under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the [State Government], [and if the person who is liable to pay such instalment makes default in such payment on the date when it becomes due, he shall be liable to pay interest at such rate and within such period as the State Government may by order determine] [These words were inserted by Gujarat 6 of 1984, section 7(1).] [****] [The words 'or of any sCommissioner empowered by the Provincial Government in this behalf' were deleted by Bombay 28 of 1950, Schedule] (2) Any such rate of the instalment thereof [or interest] [These words were inserted by Gujarat 6 of 1984, section 7(2).] which is not paid on the date when it becomes due shall be deemed an arrear of land revenue due on account of the land for the use of which canal water was supplied or which was benefited by

percolation or leakage from any canal and shall be recoverable as such arrear by any of the methods specified in section 150 of [the Land Revenue Code] [These words were substituted for the words and figures 'the Bombay Land Revenue Code, 1879' by Guj 1 of 1962, section 7 (w.e.f. 10-12-1962).], including the forfeiture of the said land.[The amount of the betterment charges or any of its instalments together with interest thereon, if not paid on the date specified in section 56a [* * *] [This paragraph was added by Bombay 59 of 1950, section 5.] shall be deemed to be arrear of land revenue due on account of the land in respect of which it is payable and shall also be recoverable as such arrear by any of the methods specified in section 150 of [the Land Revenue Code] [These words were substituted for the words and figures 'the Bombay Land Revenue Code, 1879' by Gujarat 1 of 1962, section 7 (w.e.f. 10-12-1962).], including the forfeiture of the said land.](3)Any rent payable to the owner of a [field-channel] [These words were substituted for the words 'water-Course' by Gujarat 6 of 1984, section 3.] by a person authorized to use such [field-channel] [These words were substituted for the words 'water-Course' by Gujarat 6 of 1984, section 3.] may be paid in such instalments and on such dates as the Canal-officer duly empowered to act under section 23 shall direct and no more of such rent shall at any time be payable to the owner thereof than is actually recovered from the person liable to pay.(4)(a)Any other sum due to the [State] [This word was substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government or to a Canal-officer under the provisions of this Act whether on behalf of the [State] [This word was substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government or any other person under Part III of this Act which is not paid when demanded shall, and(b)any rent or instalment thereof payable to the owner of a [field-channel] [These words were substituted for the words 'water-Course' by Gujarat 6 of 1984, section 3.], which is not paid when it becomes due may, on behalf of the owner, be recoverable as arrears of land revenue in accordance with the provisions of [the Land Revenue Code] [These words were substituted for the words and figures 'the Bombay Land Revenue Code, 1879' by Gujarat 1 of 1962, section 7 (w.e.f. 10-12-1962).].

Part VII – Of Obtaining Labour for Canals on Emergencies

58. Procedure for obtaining labour for works repairs urgently required.

- Whenever it appears to a Canal-officer duly empowered to act under this section, that unless some work or repair is immediately executed such serious damage will happen to any canal as to cause sudden and extensive public injury, or, that unless some clearance of a canal or other work which is necessary in order to maintain the established course of irrigation is immediately executed serious public loss will occur, and that the labourers necessary for the proper execution of such repair, clearance or work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss, the said officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such repair, clearance or work; and thereupon every able-bodied person who resides or holds land in the vicinity of the locality where such repair, clearance or work has to be executed, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such repair, clearance or work by labouring thereat as such officer or any person authorized by him in this behalf may direct. All persons so labouring shall be entitled to payment at rates which shall not be less than the

highest rates for the time being paid in the neighbourhood for similar labour.

59. List of labourers.

- Subject to such rules as may from time to time be prescribed under section 70 in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

60. Reports to be made by Canal-officer.

- All orders made under section 58 shall be immediately reported to the [Collector and likewise to] [These words were substituted for the words 'Collector for the information of the Commissioner of the division and likewise to' by Gujarat 15 of 1964, section 4, Schedule] the Chief Engineer for Irrigation, for the information of [the [State] [These words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government].

Part VIII – Of Penalties

61. For damaging canal, etc.

- Whoever voluntarily and without proper authority-(1)damages, alters, enlarges or obstructs any canal;(2)interferes with, or increases or diminishes the supply of water in, or the flow of water from, through, over or under any canal, or by any means raises or lowers the level of the water in any canal;(3)corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;(4)destroys, defaces or moves any land or level mark or watergauge fixed by the authority of a public servant;(5)destroys, tampers with, or removes, any apparatus, or part of any apparatus, for controlling, regulating or measuring the flow of water in any canal;(6)passes or causes animals or vehicles' to pass, in or across any of the works, banks or channels of a canal contrary to rules made under section 70, after he has been desired to desist therefrom;(7)causes or knowingly and wilfully permits cattle to graze upon any canal or flood-embankment, or tethers or causes or knowingly and willfully permits cattle to be tethered, upon any such canal or embankment, or roots up any grass or other vegetation growing on any such canal or embankment, or removes, cuts or in any way injures, or causes to be removed, cut or otherwise injures any tree, bush, grass or hedge intended for the protection of such canal or embankment;(8)neglects, without reasonable cause to assist or to continue to assist in the execution of any repair, clearance or work, when lawfully bound so to do under section 58;(9)violates any rule made under section 70 for breach whereof the [[State] [These words were 'the Provincial Government' substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] and whoever [Government] shall, in such rules, direct that a penalty may be incurred;(10)being responsible for the maintenance of a [field-channel] [These words were substituted for the words 'water-course' by Gujarat 6 of 1984, section 3.], or using a [field-channel] [These words were substituted for the words 'swater-course' by Gujarat 6 of 1984, section 3.], neglects to take proper precautions for the

prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner or prevents or interferes with the lawful use of such [field-channel] [These words were substituted for the words 'water-course' by Gujarat 6 of 1984, section 3.] by any person authorized to use the same or declared to be a joint-owner thereof under section 23; shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, (XLV of 1860), on conviction before a Magistrate be punished for each such offence with fine which may extend to fifty rupees, or with imprisonment [*****] [The words 'of either description within the meaning of the said Code' were repealed by the Bombay General Clauses Act, 1886 (Bombay 3 of 1986), Schedule, B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bombay I of 1904).] for a term which may extend to one month, or with both.

62. For endangering stability of canal, etc.

- Whoever without proper authority-(1)pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy or endanger the stability of any canal;(2)opens, shuts or obstructs, or attempts to open, shut or obstruct any sluice in any canal;(3)makes any dam or obstruction for the purpose of diverting or opposing the current of a river or canal on the bank whereof there is a flood embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required to do so; shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code (XLV of 1860), on conviction before a Magistrate of the first or second class, be punished for each such offence with fine which may extend to two hundred rupees, or with imprisonment [*****] [The words 'of either description within the meaning of the said Code' were repealed by the Bombay General Clauses Act, 1886 (Bombay 3 of 1986), Schedule, B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bombay I of 1904).] for a term which may extend to six months, or with both.

63. Obstruction to be removed and damage repaired.

- Whenever any person is convicted under either of the last two preceding sections, the convicting Magistrate may order that he shall remove the obstruction or repair the damage in respect of which the conviction is held, within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any Canal-officer duly empowered in this behalf may remove such obstruction or repair such damage, and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector as an arrears of land revenue.

64. Person employed on canal may take offenders into custody.

- Any person in charge of, or employed upon, any canal may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a magistrate or to the nearest police-station, to be dealt with according to law, any person who within his view.(1)wilfully damages, obstructs or fouls any canal, or(2)without proper authority interferes with the supply or flow of water, in or from any canal, or in any river, or stream so as to endanger, damage, make dangerous or render less useful any canal.

65. Saving of prosecution under other laws.

- Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act: Provided that no person shall be punished twice in respect of one and the same act or omission.

66. Payment of fine as award to informant.

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

Part IX – Miscellaneous

67. Appeals against order under Act.

- Every order passed by a Canal-Officer under sections 13, 18, [20A, 20F,] [These figures and letters were inserted by Gujarat 6 of 1963, section 4.] 25, 30, 45, 46, [48 and 48A] [These figures, word and letter were substituted for the word and figures 'and 48' by Bombay 29 of 1951, section 5.] shall be appealable to the Collector: Provided that the appeal be presented within thirty days of the date on which the order appealed against was communicated to the appellant. All orders and proceedings of a Collector under this Act shall be subject to the supervision and control of the [State Government] [These words were substituted for the word 'Commissioner' by Gujarat 15 of 1965, section 4, Schedule] [****] [These words 'of the division' were repealed by the Bombay General Clause Act, 1886 (Bombay III of 1886). Schedule B. This schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bombay I of 1904).].

68. Power to summon and examine witnesses.

- Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning examining of witnesses and the production of documents as are conferred on Civil Courts by the Code of Civil Procedure, and every such inquiry shall be deemed to be a judicial proceeding.

69. Service of notices.

- Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable, the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on

any adult male member of his family residing with him; and if no such adult male member can be found the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business; and, if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

69A. [Protection of action taken in good faith. [Sections 69A to 69B were inserted by Gujarat 6 of 1984, section 8.]

- No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or servant of that Government in respect of anything in good faith done or intended to be done in pursuance of the Act or any rules or orders made thereunder.

69B. Use of land acquired for field channel for other purpose.

- No land acquired under this Act for a field-channel shall be used for any other purpose without the previous consent of a Canal-Officer duly empowered to grant such permission.].

70. Power to make, alter and cancel rules.

- [(1)] [Section 70 was re-numbered as sub-section (1) of that section by Gujarat 1 of 1962, section 3 (w.e.f. 10-12-1962).] [the [State] [These words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may from time to time make rules not inconsistent with this Act to regulate the following matters:-(a)the proceedings of any officer who under any provision of this Act, is required or empowered to take action in any matter;(b)the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;(c)the person by whom, the time, place or manner at or in which anything, for the doing of which provision is made in this Act, shall be done;(ca)[the manner of constructing a [field-channel] [Clause (ca) to (cf) were inserted by Gujarat 6 of 1963, section 5.] under section 15A;](cb)[the other particulars to be specified in, and the manner of publishing, a draft scheme under section 20A;] [Clause (b) was substituted by Gujarat 27 of 1973, section 11(i).](cc)[the manner of publishing a final scheme and the manner and form of notice to be issued to each holder of land under section 20A;] [Clause (cc) was substituted, by Gujarat 27 of 1973, section 11 (ii).](cd)the form of a notice under section 20C and the manner of giving such notice;(ce)the form of a certificate under section 20E;(cf)the period for lump sum payment under section 20F;](d)the amount of any charge to be made under this Act;(dd)[the manner in which the cost of repairs shall be calculated under sub-section (2) of section 25A;] [Clause (dd) was inserted by Bombay 29 of 1951, section 6.](dl)[the other manner in which a scheme shall be published under section 50; [Clause (dl) to (d5) were inserted by Bombay 59 of 1950, section 6.](d2)the date for payment of, the rate of interest on the period within which the instalments of betterment charges shall be paid under section 56A;(d3)the suspension or remission of betterment changes, the instalments thereof and the interest thereon;(d4)the conditions subject to which the relinquishment

or exchange of lands shall be permitted under section 56B;(d5)the division into zones of lands under the irrigable command of a canal for the purpose of the betterment changes leviable on such lands;](e)and generally to carry out the provisions of this Act.Publication of rules. - The [[State] [These words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may, from time to time, alter or cancel any rules so made.Such rules, alterations and cancelments shall be published in the [Official Gazette] [These words were substituted for the words 'Bombay Government Gazette' by the Adaptation of Indian Laws Order in Council.], and shall thereupon have the force of law.(2)[All rules made under this section shall be laid for not less than thirty days before the House of the State Legislature as soon as may be after they are made and shall be subject to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.(3)Any modifications made by the State Legislature shall be notified in the Official Gazette and shall thereupon take effect.] [Sub-sections (2) and (3) were inserted by Gujarat 1 of 1962, section 9 (w.e.f. 10-12-1962).]

71. Saving of municipal water-works.

- Nothing in this Act shall be deemed to apply to any canal, channel reservoir, lake or other collection of water vesting in any municipality.[Part X] [Part X was inserted by Bombay 2 of 1914, section 2.] Of Second-Class Irrigation Works

72. Application of this Part.

- This part shall apply to Second-class Irrigation Work only.

73. Notification of Second-class Irrigation works.

(1)The [the [State] [These words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may publish a notification in the [Official Gazette] [These words were substituted for the words 'Bombay Government Gazette' by the Adaptation of Indian Laws Order in Council.]- (a)declaring that it is proposed to constitute any canal, [channel, watercourse] [These words were substituted for the word 'channel' by Gujarat 6 of 1984, section 9(i).] stream, river, [well, tubewell, artesian well] [These words were inserted by Bombay 29 of 1950, section 7.], pipe, or reservoir, natural or artificial [or bandhara] [These words were inserted by Bombay 29 of 1951, section 7(1).] or any part thereof, whether constructed, maintained or controlled by [the [State] [These words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government] or not, which is actually used or required for the purposes of irrigation, a Second-class Irrigation Works;(b)fixing a period of not less than four months from the date of publication of such notification in the [Official Gazette] [These words were substituted for the words 'Bombay Government Gazette' by the Adaptation of Indian Laws Order in Council.] for the submission of objections to such proposal]; Provided that no artificial reservoir or [field-channel] [These words were substituted for the words 'water-course' by Gujarat 6 of 1984, section 8.] supplied from such reservoir which is actually used for the purposes of irrigation by a single

irrigation shall be included in such notification except either with the consent of such irrigator of, if in the opinion of [the [State] [These words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] such inclusion is necessary in the public interests, then without such consent but subject to the payment, after the issue of the declaration mentioned in sub-section (3), to such irrigator of such compensation for his rights as may be settled in accordance with the provisions of section 79.(2)After the publication of such notification in the [Official Gazette] [These words were substituted for the words 'Bombay Government Gazette' by the Adaptation of Indian Laws Order in Council.] it shall also be published by the Collector as soon as practicable in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is likely to be affected by such notification.(3)After considering such objections as may have been received within the period fixed as aforesaid the [the [State] [These words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may, by notification in the [Official Gazette] [[These words were substituted for the words 'Bombay Government Gazette' by the Adaptation of Indian Laws Order in Council.]], declare such canal, [channel, water-course] [These words were substituted for the words 'channel' by Gujarat 6 of 1984, section 9(2).] stream, river, [well, tubewell, artesian well,] [These words were inserted by Bombay 59 of 1950, section 7.] pipe [reservoir or bandhara] [These words were substituted for the words 'or reservoir' by Bombay 29 of 1951, section 7(2).] or any part thereof to be a Second-class Irrigation Work.

74. Proclamation by the Collector.

- When a notification has been issued under subsection (3) of section 73 the Collector shall publish in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated, and in every town and village which in his opinion is likely to be affected by such declaration, a proclamation-(a)specifying, as nearly as possible, the source of supply, situation and limits of the Second-class Irrigation Work notified under sub-section (3) of section 73;(b)stating that this Part applies to the work so notified from the date of the notification published under sub-section (3) of section 73; and(c)fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right in the work so notified either to present to the Collector within such period a written notice specifying, or to appear before him and state, the nature of such right.

75. Application of certain sections of the main Act.

(1)A Second-class Irrigation Work shall be deemed to be a canal within the meaning of sub-section (1) of section 3 and to such work the following sections and parts only shall, so far as may be, apply, namely:-Sections 3, 4, [5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, [25A, 25B] [This figure was inserted, by Bombay 29 of 1951, section 8(1).] 28, 30, Part V, [[sections 49 to 56B] [This portion was inserted by Bombay 59 of 1950, section 8.] both inclusive], section 57,] Part VIII, except sub-section (8) of section 61, and Part IX.(2)The aforesaid sections and Parts shall, for the purposes of this Part, be subject to the following modifications, namely:-(i)In section 16 before the word "any" prefix the words-"Subject to any rights recorded in the Record-of-rights prepared or revised as

hereinafter provided."(ii)In section 17 before the word "any" prefix the words "Subject as aforesaid".(iii)in section 21 for clause (d), the following shall be substituted, namely:-(d) To have a supply of water on such terms as may be prescribed in the Record-of-rights prepared or revised as hereinafter provided."(iv)To section 22 the following proviso shall be added, namely:-"Provided that no such private arrangement shall affect any rights to water recorded in the Record of rights prepared or revised as hereinafter provided."(v)In section 30 for the words "every agreement for" the words "all rights to" shall be substituted, and in the same section after the words "property" the word "which have been recorded in the Record-of-rights prepared or revised as hereinafter provided" shall all be inserted.Paragraph 2 of the same section shall be omitted.(vi)In Part V, section 31, proviso clause (c) and the last paragraph shall be omitted.(vii)In Part V, section 34, the words and figures "section 6, section 7", shall be omitted.(viii)In Part IX, section 67, after the figures "48" the words "and Part X" shall be inserted.

76. Framing of Record-of-rights.

(1)As soon as possible after the expiry of the period fixed by the Collector under section 74, clause (c), a Canal-officer duly empowered in this behalf, who shall be a Revenue officer not below the rank of a [Mahalkari] [This word was substituted for the word 'Mamlatdar' by Bombay 13 of 1947, section 2.], shall inquire into and settle claims to any right the Second-class Irrigation Work, and shall record the extent of such right and draw up in the form from time to time prescribed by the [[State] [The words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] an Irrigation Record-of-rights so as the same may be ascertainable from the records of Government and the evidence of any person likely to be acquainted with the same and any other documentary or oral evidence which the parties concerned or their witnesses may produce.(2)Such Record-of-right shall contained the following matters;(a)the nature of the Second-class Irrigation Work and work subsidiary thereto,(b)the land irrigable therefrom,(c)the custom or rule of irrigation,(d)the rights to water and the conditions on which such rights are enjoyed, and,(e)such other matters as the [[State] [The words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may by rules prescribe in this behalf.

77. Powers of Canal-officer.

(1)For the purposes of the inquiries under section 76 such Canal-officer may enter, by himself or any officer authorized by him for the purpose, upon any land adjacent to any such work, and may survey, demarcate and make a map of the same.(2)Notwithstanding anything contained in section 76 where no sufficient evidence is forthcoming as to all or any of the matters specified in that section such Canal-officer shall, so far as may be, settle and record the aforesaid matters in such manner as he may deem fit.

78. Revision of Record-of-rights.

- The Record of rights prepared under section 76 may be revised from time to time by a Canal-officer duly empowered in that behalf, who shall be a Revenue officer not below the rank of a [Mahalkari]

[This word was substituted for the word 'Mamlatdar' by Bombay 13 of 1947, section 2.].

79. Commutation of rights.

- Where the Canal-officer who has prepared or revised any Record-of-rights under this Part finds that having due regard to the maintenance or management of the Second-class Irrigation Work, any right contained in the Record-of-rights cannot continue to be exercised to the extent recorded, he shall (subject to such rules as the [[State] [The words 'Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may from time to time prescribe in this behalf) commute such right wholly or in part, either by the payment to the holder of such right of a sum of money in lieu thereof, or by the grant of land or in such other manner as he may think fit; and he shall revise the Record-of-rights accordingly.

80. Power of [State] [This word was substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government] where works are undertaken increasing supply.

- In the event of [the [State] [The words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government] undertaking at their own cost any work whereby the supply of water in any Second-class-Irrigation Work is increased beyond the amount of such supply at the time of preparing or revising the Record-of-right under this Part the [[State] [These words 'the Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws Order in Council.] Government] may, without prejudice to any rights so recorded, direct that the right to such surplus water shall vest in [the [State] [These words were substituted for the words 'the Crown for the purposes of Province' by the Adaptation of Laws Order, 1950.] Government] and shall be applied as [the [State] [These words were substituted for the words 'the Crown for the purposes of Province' by the Adaptation of Laws Order, 1950.] Government] may deem fit and the Record of rights shall be revised in accordance with such direction.

81. Publication of Record-of-rights.

- When any Record-of-rights has been prepared or revised under this Part it shall be published in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is affected by such Record-of-rights.

82. Entries in the Record-of-rights to be relevant as evidence.

- An entry in any Record-of rights prepared or revised under this Part shall be relevant as evidence in any dispute as to the matters recorded, and shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor: Provided that no such entry shall be so construed as to limit any of the powers conferred on the [[State] [These words 'the Provincial Government' were substituted for the words 'Governor in Council' by the Adaptation of Indian Laws

Order in Council.] Government] by this Part.

83. Notice of suit to be given to the Collector.

(1) In any suit or proceeding in which an entry made in any Record-of-rights prepared or revised under this Part is directly or indirectly called in question, the Court shall, before the final settlement of issues, give notice of the suit or proceeding to the Collector, and, if moved to do so by the Collector, shall make the [[State] [The words 'Provincial Government' were substituted for the word 'Secretary of State for India in Council' by the Adaptation of Indian Laws Order in Council.] Government] a party to the same. Suits against State Government. - (2) Save as provided in sub-section (1) no suit shall lie against [the [State] [The words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government] in respect of anything done by the Collector, Canal-officer or any other person acting under the orders of [the [State] [The words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government] in the exercise of any power by this Part conferred on such Collector, Canal-officer or other person or on [the [State] [The words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government]]. (3) Period of Limitation. - Any suit or proceeding in which an entry made in any Record-of-rights prepared or revised under this Part is directly or indirectly called in question shall be dismissed (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the publication under section 81 of the Record of rights containing the said entry, or if one or more appeals have been made against any order of a Canal-officer with reference to any entry in such Record of rights, then from the date of any order passed by the final appellate authority, as determined according to this Part.

84. Obligation to carry out petty repairs.

- In every Second-class Irrigation Work the following repairs shall be performed by the persons on whom the obligation to perform them is imposed by the next following section, that is to say:- (1) The filling up of gullies, ruts and holes, especially at the back of revetments, and all petty repairs of a like nature essential for the safety of bunds, of tanks, channel-banks or other portions of the said Second-class Irrigation Work. (2) The prevention of the growth on such work of prickly pear, young trees and other vegetation endangering the safety or concealing the condition of such work. (3) The preservation of such bushes and grasses as have been planted for the protection of the interior water slopes of such work. (4) The clearance of silt from sluices, supply and distributing channels. (5) The clearance of waste weirs and waste channels.

85. Incidence of obligation.

- The obligation to perform the repair prescribed by the last preceding section shall, with reference to any land irrigated from such work, be deemed to be imposed jointly and severally, in the case of unalienated land, on the occupants of the land, and, in the case of all other land, on the holders of the land, as defined in either case in [the Land Revenue Code] [These words were substituted for the

words and figures 'the Bombay Land Revenue Code, 1879' by Gujarat 1 of 1962, section 10 (w.e.f. 10-12-1962).].

86. Power to enforce rights and obligations.

- If any person, on whom any obligation is imposed with reference to any Second-class Irrigation Work by any of the provisions of this Part, fails to fulfil the obligation so imposed, or if any person infringes any right recorded in the Record-of-rights prepared or revised as hereinbefore provided, the Canal-Officer may require him by notice to fulfil such obligation or to desist from infringing such right within a period to be prescribed in the notice of not less than fifteen days, and in the event of failure may take such steps as may be necessary for the discharge of the said obligation, or the enforcement of the said right, and the amount of any expense so incurred shall be a sum due to [the [State] [The words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government] and recoverable as an arrear of land revenue.

87. Duty of Patel to report failure to effect repairs.

- It shall be the duty of the Patel of any village within the limits of which any Second-class Irrigation Work or portion of such work is situated to report to the mamlatdar without unnecessary delay any failure or neglect to carry out any of the repairs specified in section 84.

88.

[Public servant and some other persons protected from legal proceedings.] Deleted by Gujarat 6 of 1984. section 10.

89. Power to make rules.

- [(1)] [Section 89 was renumbered as sub-section (1) of that section by Gujarat 1 of 1962, section 11 (w.e.f. 10-12-1962).] The [[State] [The words 'the Provincial Government' were substituted for the word 'Government' by the Adaptation of Indian Laws Order in Council.] Government] may, from time to time by notification in the [Official Gazette] [These words were substituted for the words 'Bombay Government Gazette', by the Adaptation of Indian Laws Order in Council.] and after previous publication make rules as to all or any of the following matters:-(i)the manner of framing and revising the Record of rights,(ii)the proceedings of any officer who under the provisions of this Part is required to take action in any matter,(iii)and generally to carry out the provisions of this Part.(2)[All rules made under this section shall be laid for not less than thirty days before the House of the State Legislature as soon as may be after they are made and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.(3)Any modifications made by the State Legislature shall be notified in the Official Gazette and shall thereupon take effect.] [Sub-sections (2) and (3) were inserted by Gujarat 1 of 1962, section 11 (w.e.f. 10-12-1962).]

90. [Repeal and savings. [Section 90 was inserted by Gujarat 1 of 1962, section 12 (w.e.f. 10-12-1962).]

- On the date of the commencement of the Bombay Irrigation (Gujarat Extension and Amendment) Act, 1961 (Gujarat 1 of 1962), the Saurashtra Irrigation Act, 1951 (Saurashtra Act, 1951) shall stand repealed.(2)Nothing in sub-section (1) shall affect-(a)the previous operation of the enactment so repealed or anything duly done or suffered thereunder, or(b)any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed; or(c)any penalty, forfeiture or punishment incurred in respect of any offence under the enactment so repealed; or(d)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 the Bombay Irrigation (Gujarat Extension and Amendment) Act, 1961 (Gujarat VI of 1962) had not been passed:Provided that, anything done or any action taken under the enactment so repealed shall be deemed to have been done or taken, the corresponding provisions of this Act and shall continue to be in force accordingly unless and until it is superseded by anything done or any action taken under this Act.][Part XI] [This part was inserted by Gujarat 27 of 1973, section 12 (w.e.f. 10-12-1962).] Panchayat Irrigation Works

91. Application of certain provisions of the Act to Panchayat Irrigation Works.

- Where any canal, [channel, water-course, stream, river, well, tube-well, artesian well, pipe or reservoir, natural or artificial, or bandhara or any part thereof is constructed, maintained or controlled by a taluka panchayat in the exercise of its functions in the sphere of agriculture and irrigation as described in Schedule II to the Gujarat Panchayat Act, 1961 (Gujarat VI of 1962), or by a district panchayat in the exercise of its functions in the sphere of minor irrigation projects as described in Schedule III to the said Act, the same shall be treated as a Panchayat Irrigation Work and such a Panchayat Irrigation Work shall be deemed to be a canal within the meaning of sub-section (1) of section 3 and to such work all the provisions of this Act shall, so far as may be, apply, subject to the following modifications, namely:-(1)References to State Government in sections 11, 15, 25, sub-section (2) of section 25A and clause (a) of sub-section (4) of section 57 shall be construed as references to district panchayat;(2)References to Collector except in sub-section (5) of section 3, sections 18, and 19, clause (c) of sub-section (5) of section 20A, and section 20B shall be construed as references to District Development Officer;(3)References to the Canal-officer, shall be construed as references to the Officer authorized for the purpose by the controlling panchayat;(4)In sub-section (1) of section 73, for the words "Mamlatdar's Office" the words "Office of the Taluka Development Officer" shall be substituted;(5)In section 87, for the words "Patel" and "Mamlatdar" the words "gram panchayat" and "district panchayat" shall respectively be substituted.Explanation. - For the purposes of this section "controlling panchayat" in relation to a Panchayat Irrigation Work constructed, maintained or controlled by a taluka panchayat shall mean, the taluka panchayat and in relation to a Panchayat Irrigation Work constructed, maintained or controlled by a district panchayat shall mean, the district panchayat.] [These words were substituted for the word 'channel' by Gujarat 6 of 1984, section 11.][Part XII] [This Part and Schedule were inserted by Presi. Act No. 45 of 1976, section 2.] Special Provisions Regulating the Construction and Maintenance of

Tubewells, Artesian Wells and Borewells

92. Definitions.

- In this part, unless the context otherwise requires, -(a)"artesian well" means a well which taps artesian or piezometric water having piezometric level above the ground;(b)"Borewell" means a well drilled in hard rock areas where the bore can stand on its own and where lining by pipes is not necessary, and includes a dug-cum-bore well;(c)"Ground water" means water under the surface of the earth regardless of the geological structure in which it is stationary or moving and includes all ground water reservoirs;(d)"prescribed" means prescribed by rules made under section 101;(e)"Regional Canal Officer" means a Canal Officer authorized by the State Government by notification in the Official Gazette to perform the functions of the Regional Canal Officer under this Part in such area, as may be specified in the notification;(f)"Tubewell" means a deep bore drilled into the ground for the purpose of drawing water through one or series of permeable layers of water bearing strata.

93. Areas to which this Part applies.

(1)The provisions of this Part shall apply in the first instance to the areas specified in the Schedule.(2)The State Government may, by notification in the Official Gazette, apply the provisions of this Part to such other areas as may be specified in the notifications.(3)The State Government may, by a like notification, direct that the provisions of this Part shall cease to apply to such area on and from such date as may be specified in the notification; and with effect on and from that date, the said provisions shall cease to apply to such area, except as respects things done or omitted to be done before such cesser.

94. Regulation of construction and maintenance of tubewells, etc.

- Notwithstanding anything contained in the Bombay Land Revenue Code or in any other law for the time being in force, no holder of any land assessed or held for the purpose of agriculture within the meaning of the said Code (hereafter in this part referred to as agricultural land) shall after the commencement of the Bombay Irrigation (Gujarat Amendment) Act, 1976 construct, or cause or permit to be constructed, any tubewell, artesian well or borewell, exceeding forty-five metres in depth for extracting ground water except under and in accordance with the terms and conditions (including conditions relating to the maintenance of such well) of a licence issued under section 95 and the rules made under section 101.

95. Grant of licence.

(1)Where a holder of any agricultural land desires to construct therein any tubewell, artesian well or borewell, exceeding forty-five metres in depth for extracting ground water, he shall make an application to the Regional Canal Officer having jurisdiction for the grant of a licence.(2)Every application made under sub-section (1) shall be in such form, shall contain such particulars and

shall be accompanied with such fees as may be prescribed.(3)On the receipt of an application under sub-section (1) the Regional Canal Officer may, after making such inquiry as he thinks fit and having regard to the availability and quality of ground water and the density of wells in the area in which the tubewell, artesian well or borewell, as the case may be, is proposed to be constructed and such other relevant factors as the circumstances of the case may require, by order, grant or refuse to grant the licence applied for:Provided that before refusing to grant the licence, the applicant shall be given a reasonable opportunity of being heard in the matter:Provided further that where the Regional Canal Officer to whom an application has been made under sub-section (1) fails to inform the applicant of his decision on the application within & period of three months from the date of receipt of the application, the licence shall be deemed to have been granted to the applicant.(4)Every licence granted or deemed to have been granted under sub-section (3) shall be in such form as may be prescribed and shall be subject to such terms and conditions as may be specified therein, including conditions relating to the maintenance of the well.

96. Regulation of existing tubewells, etc.

- Where any tubewell, artesian well or borewell is in existence in an agricultural land at the commencement of the Bombay Irrigation (Gujarat Amendment) Act, 1976 and the depth of such well is in excess of forty-five metres, then the holder of the agricultural land shall, within three months from such commencement, furnish information in respect of the well to the Regional Canal Officer having jurisdiction, in such form as may be prescribed and on receipt of the information, the Regional Canal Officer shall if he is satisfied that the well was in existence at such commencement grant to the holder of land a certificate in the prescribed form to the effect that the said well was in existence at such commencement.

97. Cancellation of licence.

- If the Regional Canal Officer is satisfied either on a reference made to him in this behalf or otherwise that-(a)any licence granted under section 95 has been obtained by fraud or misrepresentation as to an essential fact, or(b)the holder of a licence has, without reasonable cause, failed to comply with the terms and conditions subject to which the licence has been granted, or has contravened any of the provisions of this Part or the rules made under section 101, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Part, the Regional Canal Officer may after giving the holder of the licence an opportunity of showing cause, by order, cancel the licence.

98. Appeals.

(1)Any person aggrieved by an order of the Regional Canal Officer made under section 95 or section 97 or section 99 may prefer an appeal to the prescribed authority against such order within the prescribed period and the decision of the prescribed authority on such appeal shall be final.(2)Every appeal preferred under sub-section (1) shall bear court-fee stamps of such value as may be prescribed.

99. Regulation of use of water.

(1) No holder of agricultural land in which there is a tubewell, artesian well or borewell, exceeding forty-five metres in depth shall allow any water from such well to be used for a purpose other than for the purpose of agricultural or of drinking or to be wasted either through leaky casing, pipe fittings, valves or pumps either above or below the surface or on account of any other reason whatsoever: Provided that such holder may allow water from such well to be used for any purpose other than for the purpose of agriculture or of drinking if the Regional Canal Officer, subject to any general or special order made by the State Government, by order permits the use of water for such purpose. (2) If in the opinion of the Regional Canal Officer water from any tubewell, artesian well or borewell exceeding forty-five metres in depth, is used for a purpose other than for the purpose of agricultural or of drinking, without the order of the Regional Canal Officer, or is wasted, he may, after giving the holder of the agricultural land in which such well is situated, a notice of not less than thirty days, by order require him to close or seal off the well at his expense and in such manner as the Regional Canal Officer may specify in such order and the holder of agricultural land shall comply with such order. (3) Where any holder of agricultural land fails to comply with any order made under sub-section (2), the Regional Canal Officer may after giving the holder of the agricultural land due notice in that behalf, enter upon the land and close or seal off the well and the cost incurred therefore shall be recoverable from the holder as an arrear of land revenue.

100. Penalty.

- If any person contravenes the provisions of section 94 or section 96, or any rules made under section 101 in respect of the construction or maintenance of tubewells or any of the terms or conditions specified in a licence granted under section 95 he shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

101. Power to make rules.

(1) The State Government may, by Notification in the Official Gazette and after previous publication, make rules to carry out the provisions of this Part. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-(a) the form of application for the grant of a licence under section 95, the particulars to be contained in such application and the fees to be accompanied with such application; (b) the form of licence to be granted under section 95; (c) the form in which information may be furnished by the holder of an agricultural land under section 96 and the form of certificate to be granted under that section; (d) the authority to which an appeal may be preferred under section 98, the period within which such appeal shall be preferred and the value of court-fee stamps which such appeal shall bear; (e) the manner of construction of tubewells, artesian wells or borewells exceeding forty-five metres in depth; (f) any other matter which is required to be, or may be, prescribed. (3) 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 such modification as the State Legislature may make during the session in which they are so laid or the

session immediately following.(4)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.The Schedule[See Section 93(1)AREAS

- 1. Ahmedabad District.**
- 2. Banaskantha District.**
- 3. Baroda District.**
- 4. Broach District..**
- 5. Gandhinagar District.**
- 6. Kaira District.**
- 7. Kutch District.**
- 8. Mehsana District..**
- 9. Sabarkantha District.]**