



**LEGISLATIVE ASSEMBLY
OF
GOA, DAMAN AND DIU**

**The Goa, Daman and Diu
Irrigation Bill, 1973**

(Bill No. 13 of 1973)

**(To be introduced in the Legislative Assembly
of Goa, Daman and Diu)**

**GOA, DAMAN AND DIU LEGISLATURE DEPARTMENT
ASSEMBLY HALL, PANAJI
SEPTEMBER, 1973**

The Goa, Daman and Diu Irrigation Bill, 1973

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(6) "flood-embankment" means any embankment constructed or maintained by the Government in connection with any system of irrigation or reclamation works for the protection of land from inundation or which may be declared by the Government to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments;

(7) "Government" means the Administrator of the Union territory of Goa, Daman and Diu appointed by the President under article 239 of the Constitution;

(8) "Inspector" means such officer as the Government may declare to be an Inspector for the purpose of this Act;

(9) "land holder" or "holder" means the person in whom a right to hold the land is vested, whether solely on his own account or wholly or partly in trust for another person or for a class of persons or for the public and includes a mortgagee vested with right of possession;

(10) "land under irrigable command of a canal" means such lands as are irrigated or capable of being irrigated from a 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 37;

(11) "Mamlatdar" includes any officer appointed by the Government to exercise all or any of the powers of a Mamlatdar under this Act;

(12) "notification" means a notification published in the Official Gazette;

(13) "occupier" means in respect of any land, any person who has an interest in the land and cultivates the land himself or by his servants or by hired labour and includes a tenant;

(14) "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 this Act shall attach jointly and severally to every person having such joint interest in the ownership;

(15) "prescribed" means prescribed by rules made under this Act;

(16) "water-course" means any water-channel or pipe having a capacity not exceeding thirty litres per second, which is supplied with water from a canal and includes all subsidiary works belonging to such channel or pipe except the sluice or outlet through which water is supplied to such channel or pipe.

3. Appointment of officers.—The Government may—

(a) appoint such officers with such designations, and assign to them respectively such powers and duties under this Act, as it may deem fit;

(b) invest any Government Officer, in any Department, either personally or in right of his office by name or by virtue of office or any other person, with such powers, and impose upon him such duties, under this Act, as it may deem fit.

PART II

Construction, Control and Maintenance of Canals

4. Notification when water supply to be applied for purposes of canals.—Whenever it appears expedient to the 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 Government for the purpose of any existing or proposed canal, the Government may, by notification declare that the said water will be so applied or used after a day to be specified in the said notification, not being earlier than three months from the date thereof.

5. Powers of Canal Officer for purpose of so applying water supply.—At any time after the day specified under section 4, the Canal-Officer 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.

6. Entry for inquiry. — Whenever it shall be necessary to make any inquiry or examination in connection with a proposed canal or with the maintenance of an existing canal, the Canal Officer 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;

(b) exercise all powers and do all things in respect of such land as he might exercise and do, if the Government had issued a notification under the provisions of section 4 of the Land Acquisition Act, 1894 (Central Act I of 1894), to the effect that the 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.

7. Power to inspect and regulate water supply. — The Canal-Officer and any person acting under the general or special order of any such Canal-Officer may enter upon any land, building or water course with respect to which any water rate is chargeable under this Act, for the purpose of inspecting or regulating the use of water supplied or for measuring the land irrigated thereby chargeable with a water rate and for doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

8. Power to enter for repairs and to prevent accidents. — In case of any accidents being apprehended or happening to a canal, the Canal-Officer and any person acting under the general or special order of any such Canal-Officer, may enter upon land adjacent to such canal and may take all materials required to execute all works which may be necessary to such lands for the purpose of preventing such accident or repairing any damage done.

9. Notice to occupier of building etc. — When a Canal-Officer or any other person acting under his general or special orders in this behalf proposes

acting under the provisions of section 6, section 7 or section 8 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 flood-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.

10. Means of crossing canals to be provided and obstructions to drainage to be avoided. — Suitable means of crossing canals shall be provided at such places as the Government 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.

11. Government may prohibit formation of obstructions of rivers etc., within certain limits. — Whenever it appears to the 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 obstructions of any river, stream or natural drainage course, the Government may, by notification, 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 modifications of such obstruction and thereupon so much of the said river, stream, or natural drainage course, as is comprised within such limits, shall be held to be a drainage work as defined in section 2.

12. Canal-Officer may issue order to person causing obstruction. — The Canal-Officer, may after the publication of the notification under section 11, issue an order to any person causing or having control over any such obstruction; to remove or modify the same within such period as may be specified in such order.

13. Canal-Officer may cause obstruction to be removed. — If within the period specified in the order under section 12, any person does not comply with such order, the Canal-Officer, may cause the

obstruction to be removed or modified and such person shall be liable to pay the expenses of removal or modification, and if the person does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable as an arrear of land-revenue.

14. Construction of drainage works. — Whenever it appears to the 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 flood or other accumulations of water, or from erosion by a river is required for any land, the Government may cause a scheme for such work to be drawn up and carried into execution, and the person authorised by the Government to draw up and execute such scheme may exercise in connection therewith the powers conferred on Canal-Officer by sections 6, 7 and 8 and shall be liable to the obligations imposed upon Canal-Officer by sections 9 and 28.

PART III

Water Courses

15. Determination of the need for water-course and their alignment in any area. — (1) The Canal-Officer on being satisfied that the construction of water-courses in any area is necessary in the public interest for supply of water from a canal to lands requiring such supply for the purpose of cultivation, shall declare by notification, that such water-courses may be constructed after a date to be specified in the notification, not being earlier than thirty days from the date of publication thereof. A copy of such notification shall be sent to the Mamlatdar of the area for publication in the village concerned.

(2) After the date specified in the notification under sub-section (1) the Canal-Officer shall determine the suitable alignment for the water-courses and shall mark out the land, which in his opinion, is necessary to occupy for the construction thereof. He shall forthwith publish a notification by affixture on the notice board in his office that so much of such land as is situated within such village or

villages has been so marked out and shall send a copy of such notification to the Mamlatdar for publication in every village through which the water-course is taken on such lands. He shall also send a copy of such notification to the Collector of every District in which such land is situated.

16. Collector to acquire land. — (1) On receipt of a copy of a notification under section 15, the Collector shall issue notices to the owner of such land and other persons interested in it to show cause why such land should not be acquired and after giving them a reasonable opportunity of being heard, if satisfied that such land is required for a water-course, proceed to acquire and take possession of such land under the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) as if a declaration had been issued by the Government for the acquisition thereof under section 6 of that Act and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section 7 of the said Act and as if the Government had issued orders for the immediate possession being taken under section 17 of the said Act.

(2) Notwithstanding anything contained in the Land Acquisition Act, 1894 (Central Act 1 of 1894), the acquisition of any land under sub-section (1) shall be deemed to be for a public purpose.

(3) Save as aforesaid, the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894), shall apply to acquisitions to be made under this Act.

17. Such acquired land to remain as property of Government. — On possession of the land being taken, the Canal-Officer shall fix the boundary marks in the prescribed manner and thereupon the ownership of such land shall vest in Government.

18. Obligations of user of water-course. — (1) Every user of the water-course shall be bound to maintain such water-course in a fit state of repair for the conveyance of water.

(2) Every user of water-course shall subject to the provisions of Part IV be entitled to have a sup-

ply of water by such water-course on such terms as may be prescribed.

19. Failure to execute work or to repair water-course. — If any user of a water-course fails to fulfil any obligation imposed upon him by sub-section (1) of section 18, the Canal-Officer may require him, by notice to execute the necessary repairs within a period of not less than seven days to be specified in such notice, and, in the event of a failure, may execute the same and, except as hereinafter provided in this section, all expenses incurred in the execution of such repairs shall be a sum due by such user to the Government and shall be recoverable as an arrear of land revenue.

20. Canal-Officer to construct water courses. — After any land has been acquired under section 16 and has vested in the Government under section 17, the Canal-Officer shall construct the water-courses necessary in the area.

PART IV

Supply of Water

21. Regulation of water supply from canal. — The Canal-Officer by a notification in respect of any canal or class of canals may, after such inquiry as he deems fit, regulate in respect of any canal for each year or for a specified term of years at a time, as circumstances may require —

- (1) the time for letting out water for irrigation;
- (2) the period of supply;
- (3) the quantity of supply; and
- (4) the areas to be supplied at different times.

Explanation: — A land shall be deemed to have been supplied with water if water is made available for irrigation of such land.

22. Power to stop water supply. — The supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except —

- (a) whenever and so long as it is necessary to stop such supply for the purpose of executing any

work ordered by the competent authority competent to accord administrative approval under the C.P.W.D. Manual.

(b) whenever and so long as any water-course 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 the periods fixed from time to time by a Canal-Officer duly empowered by the Government in this behalf, of which due notice shall be given;

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

23. Agreement for supply of water transferable with the property in respect of which supply is given. — Every agreement for the supply of canal water to any land, building or other immovable property shall be transferable therewith and shall be presumed to have been so transferred whenever a transfer of such land, building or other immovable property takes place.

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 the Canal-Officer.

24. Regulation of cultivation on lands. — (1) Subject to the provisions of section 25, and subject to such directions as may be issued from time to time, the Canal-Officer may in any year, having regard to the quantity of water available in any canal under his control determine, by order published in the pres-

cribed manner and within the time prescribed the area of lands in the irrigable area of such canal, to be cultivated with paddy, sugarcane, or any perennial crop or intermittent irrigated dry crops or with dry or semi-dry crops and regulate the supply of water for irrigation accordingly.

(2) If, in accordance with a decision of the Canal-Officer under sub-section (1), any land entitled to supply of water under the canal is not supplied with water, the holder of such land shall be liable to pay only the dry assessment of such lands.

(3) From the order of the Canal-Officer under this section an appeal shall lie within fifteen days from the date of the publication of the said order, to the Collector of the district.

25. Power to prescribe the kind of crop to be grown under the irrigation area and the period of sowing such crop. — (1) Whenever the Government is satisfied that for the better cultivation of the lands and the due preservation of the water-resources of a canal, it is expedient and desirable in the public interest to regulate the kind of crop that should be grown on lands irrigated by such canal and the period of sowing such kind of crop, it may, by notification, make a declaration to that effect.

(2) On making of a declaration under sub-section (1), the Canal-Officer, with the approval of the Collector, may specify by notification in such manner as may be prescribed the kinds of crop that shall be grown on any land under such canal and the period of sowing and planting such crops.

(3) On the publication of a notification under sub-section (2) no person shall grow or allow any crop other than the crops specified in such notification to be grown on any land under such canal and no person shall sow or plant or allow the sowing or planting of crop at any time other than during the period specified in such notification.

(4) In all cases in which the person who has sown or grown any unauthorised crop or allowed any land to be grown or sown with such unauthorised

crop cannot be found, the holder of the land in addition to such other person concerned, shall —

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

(b) also be liable to pay such water rate as may be determined by the Canal-Officer not being less than five times and not exceeding ten times the water rate which he would otherwise have been required to pay:

Provided that if no water is utilised either directly or indirectly from the canal for growing any crop, the provisions of sub-sections (3) and (4) shall not be applicable.

PART V

Award of Compensation

26. Compensation for damage caused consequent of the exercise of the powers conferred by this Act.— 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:

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

(a) deterioration of climate or soil; or

(b) stoppage of navigation or of the means of floating timber or of watering cattle; or

(c) stoppage or diminution of the supply of water in consequence of the exercise of the power conferred by section 5 if no use has been made of such supply within the five years immediately preceding the date of the issue of the notification under section 4; or

(d) failure or stoppage of any water in a channel where such failure or stoppage is due to:—

(i) any cause beyond the control of the authority in charge of the canal;

(ii) the execution of any repairs, alterations, or additions to the canal;

(iii) any measures considered necessary by the Canal-Officer, for regulating the proper

flow of water in the channel or for maintaining established course of irrigation; or

(iv) circumstances mentioned under clauses (a) to (f) of section 22:

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

27. 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 is prevented by sufficient cause from making the claim within such period.

28. Compensation for damage caused by entry on land, etc. — (1) In every case of entry upon any land or building under section 5, section 6, section 7 or section 8, the Canal-Officer or the person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry or in the execution of any work, to any crop, tree, building or other property and the value of the materials taken or utilised and within one month from the date of such entry, compensation shall be tendered by the Canal-Officer to the land holder or owner of the property damaged, as the case may be.

(2) If such tender is not accepted, within a week of such tender, the Canal-Officer shall forthwith refer the matter to the Collector for the purpose of determining the amount of compensation.

29. Claims to be preferred to the Collector. — (1) All claims for compensation under this Act other than claims of the nature provided for in section 28 shall be made to the Collector of the District in which such claim or part of it arises.

(2) The Collector shall enquire into all such claims and determine the amount of

compensation, if any, which should be awarded. In determining such amount, the Collector shall, as far as possible be guided by the provisions of sections 23 and 24 of Land Acquisition Act, 1894: 1 of 1894.

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

Provided further that no order determining the amount of compensation shall be made by the Collector under this section without the previous approval of the Government or such officer as the Government may appoint in this behalf.

30. Appeal. — Any person aggrieved by the order of the Collector under section 28 or section 29 may, within ninety days from the date of communication of the order, prefer an appeal to the Administrative Tribunal established under the Goa, Daman and Diu Administrative Tribunal Act, 1965, (6 of 1965).

31. Compensation when due and interest payable. — All sums of money payable for compensation awarded under this Part shall become due three months after the final award is made, under section 29 and simple interest at the rate of twelve per cent per annum shall be allowed on any sum remaining unpaid after the said three months, except when the non-payment of such is caused by the neglect or refusal of the claimant to apply for or receive the same.

32. Abatement of revenue demand on interruption of water supply. — If compensation is awarded under section 29 on account of a stoppage or diminution of supply of water to any land paying land revenue to the Government and the amount of the land 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 land revenue payable to such extent as shall be determined by the Collector of the District.

PART VI

Water rates, Betterment charges and Irrigation cess

33. Determination of rates for supply of canal water. — (1) Such rates shall be leviable for canal-water supplied for purposes of irrigation or for any other purpose, as shall, from time to time, be determined by the Government.

(2) If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the quantity or duration of any water supply, in respect of which either no revenue or a fixed amount of revenue has hitherto been paid to the Government, is increased, rate shall be revised in respect of the increased water supply as may be determined by the Government.

(3) The rates mentioned in sub-section (2) shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied.

34. Liability when person using water unauthorisedly cannot be identified. — If water supplied through a water-course 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 had flowed, if such land has derived benefit therefrom, or, if no land has derived benefit therefrom, the person or all persons chargeable in respect of the water supplied through such water-course, shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules made under this Act.

35. Liability when water runs to waste. — (1) If water supplied through a water-course be suffered to run to waste, and if, after inquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, the per-

son or all the persons chargeable in respect of the water supplied through such water course 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 rules made under this Act.

(2) All questions arising under this section and section 34 shall, subject to the provisions of section 91, be decided by a Canal-Officer duly empowered by the Government in this behalf.

36. 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 penalties incurred on account of such use or waste.

37. Land deriving benefit from percolation liable to water rates. — If it appears to a Canal-Officer duly empowered by the Government in this behalf to enforce the provisions of this section, that any cultivated land within two hundred metres of any canal receives, by percolation or leakage from such canal, and advantage equivalent to that which would be given by a direct supply of canal water for irrigation, or that any cultivated land, wherever situated, derives by a surface flow, or by means of a well sunk within two hundred metres 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.

Explanation. — For the purpose of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

38. Levy of water rate for use of percolation water for non-irrigation purposes. — (1) If it appears to the Canal-Officer that any natural stream, artificial drain or well sunk within two hundred metres 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 irriga-

tion, he may charge for the 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.

39. Scheme of irrigable land 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 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.

40. Publication of scheme and notice to owners and persons interested. — (1) The scheme prepared under section 39 shall be published in the Official Gazette in such manner as may be prescribed.

(2) The Canal-Officer empowered under section 39 shall also give notice to persons known or believed to be the owners of or interested in the land under irrigable command of the canal requiring them to appear before him either personally or by agent at time and 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, and

(b) to the imposition and recovery of the betterment charges on such lands.

41. Inquiry and award. — On the date fixed under section 40 or on such other date to which inquiry may be adjourned, the officer concerned shall, after holding a formal inquiry in the manner provided by the Goa, Daman and Diu Land Revenue Code, 1968 (9 of 1969) and after hearing the objections, if any, stated by the persons as required by the

notice under section 40 make an award, which 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 betterment charges leviable on each of the said land,

(d) the date from which the betterment charges shall be leviable:

Provided that no betterment charges shall be leviable in respect of any land which is unarable (kharaba).

42. 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 Government shall, by notification specify —

(a) the date of the commencement of construction of any work in connection with the construction or improvement or extension of canal, as the construction date;

(b) the date of completion of the construction, improvement or extension of a canal as the completion date.

43. Appeal to the Collector. — (1) Any person aggrieved by award made under section 41, may within sixty days from the date of the award, appeal to the Collector.

(2) The provisions of Goa, Daman and Diu Land Revenue Code, 1968 (9 of 1969) shall apply to such appeals, as if the officer empowered under section 39, was a Revenue Officer and the Collector was his immediate superior.

44. Revision by Government. — The Government may call for and examine the record of any inquiry under section 41 or of the proceedings in appeal under 43 for the purpose of satisfying itself of the legality or regularity of such inquiry or proceedings and may modify or reverse the award or the decision of the Collector.

45. Finality of orders of Government, Collector decision and award. — Any order passed by the Government in revision under section 44 and subject to such order, the decision of the Collector on an appeal under section 43 and subject to the order of the Government and the decision of the Collector on appeal, the award made under section 41, shall be final.

46. Betterment charges to be first charge 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 43 or by the Government in revision under section 44 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 Government thereon, be a first charge on the land in respect of which such betterment charges are leviable.

47. Payment of betterment charges. — The betterment charges shall be payable on the date fixed under the rules made under this Act:

Provided that the owner of the land on which such charges are imposed may execute an agreement in favour of the Government agreeing to pay the amount of such charges by annual instalments together with interest at such rate and within such period as may be prescribed by rules.

48. Relinquishment or exchange of land in lieu of the payment of betterment charges. — Notwithstanding anything contained in section 47, the Government may allow the owner of the land on which the better-

ment charges may be payable to relinquish the whole or any part of the land or to deliver it in exchange in favour of the Government on such conditions as may be prescribed:

Provided that no such relinquishment or exchange shall be permitted unless the land is free from encumbrances.

49. Levy of irrigation cess.— In addition to the water-rates or other charges leviable under the provisions of this Act, there shall be levied in respect of land under irrigable command of a canal a cess called 'the irrigation cess'.

50. Liability for Irrigation cess.— (1) In the case of unalienated land the occupant, and in the case of alienated land, the superior holder, shall be primarily liable to the Government for the payment of the irrigation cess, inclusive of all arrears of such cess:

Provided that in the case of any land in the possession of a tenant, if such tenant is liable to pay the irrigation cess in respect of such land under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (7 of 1964) such tenant shall be primarily liable to pay the irrigation cess, in respect of such land.

(2) In the case of default by any person who is primarily liable under this section, the irrigation cess including all arrears as aforesaid, shall be recoverable —

(a) from the occupant or superior holder, as the case may be, where the tenant was primarily liable, and

(b) in any other case, from any other person in possession of the land:

Provided that where the irrigation cess is recovered under this section from a person who is not primarily liable for the same, such person shall be allowed credit for any payment which he may have duly made to the person who is primarily liable, and shall be entitled to credit, or the amount recovered from him, in account with the person who is primarily liable.

51. Rate and period of irrigation cess. — (1) The irrigation cess payable in respect of any land under the irrigable command of a canal shall be at such rates for such period as may be fixed by the Government by notification in the Official Gazette.

(2) The determination of such rates and period shall be final and shall not be questioned in any court:

Provided that no increase shall be made during such period in the rates so fixed.

52. Date for payment of irrigation cess. — The irrigation cess recoverable in respect of any land shall be leviable on the date on which the land-revenue is leviable in respect thereof.

53. Payment and recovery of water rates and other dues. — (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 Government.

(2) Any such rate or instalment thereof which is not paid on the date when it becomes due shall be deemed to be an arrear of land revenue due on account of the land for the use of which canal water was supplied or which was benefitted by percolation or leakage from any canal and shall be recoverable as such arrear by any of the methods specified in section 124 of the Goa, Daman and Diu Land Revenue Code, 1968 (9 of 1969) 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 dates specified in section 47 and the amount of irrigation cess, if not paid on the dates specified in section 52, shall be deemed to be an arrear of land revenue due on account of the land in respect of which it is payable and also be recoverable as such arrear by any of the methods specified in section 124 of the Goa, Daman and Diu Land Revenue Code, 1968 (9 of 1969) including the forfeiture of the said land.

(3) Any other sum due to the Government or to the Canal-Officer under the provisions of this Act whether on behalf of Government or any other person under Part III of this Act which is not paid when demanded shall, be recoverable as an arrear of land revenue in accordance with the provisions of sections 123 and 124 of the Goa, Daman and Diu Land Revenue Code, 1968 (9 of 1969).

PART VII

Of obtaining labour in emergencies

54. Procedure for obtaining labour for works or repairs urgently required.—(1) Whenever it appears to the Canal-Officer, 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 work, repair or clearance 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, direct that the provisions of this section shall be put into operation for the execution of such work, repair or clearance and thereupon every able-bodied person who resides or holds land in or near the locality where such work, repair or clearance 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 authorised by him in this behalf, be bound to assist in the execution of such work, repair or clearance as such officer or any person authorised by him in this behalf may direct.

(2) 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.

55. List of labourers.— Subject to such rules as may be prescribed the Collector shall prepare a list

of the persons liable to be required to assist as aforesaid and may add to or alter such list or any part thereof.

56. Reports to be made by Canal-Officer. — All orders made under section 54 shall be immediately reported to the Collector and to the Principal Engineer.

57. Appeals against order under section 54. — Any person who does not accept the amount payable under section 54 may appeal to the Collector within thirty days from the date of any tender of payment and the decision of the Collector thereon shall be final.

PART VIII

Maintenance of Canals

58. Power to take over canal for maintenance by Government. — If the Government considers that in the interest of the proper irrigation of lands under any canal maintained by any person or body of persons, the work of maintenance of such canals be taken over by the Government and the cost of such maintenance or any part thereof recovered from the holders of land benefitted by such canal, the Government may, by notification make a declaration to that effect and after expiry of a period of not less than three months from the date of publication of such notification to be specified therein, the Government shall take over and maintain in a fit state of repairs such canal:

Provided that no artificial reservoir owned by any land holder which is actually used for the purpose of irrigation by such land holder shall be declared under this section except —

- (i) on the request of the land holder, or
- (ii) in the opinion of the Government, such notification is necessary in the public interest:

Provided further that where a notification is issued in accordance with clause (ii) of the preceding proviso, the land holder concerned shall be paid such compensation for the deprivation of his rights

as may be awarded by the Collector of the District after such inquiry as may be prescribed.

On such taking over of canal it shall be deemed to be a canal within the meaning of clause (2) of section 2 and the provisions of this Act shall *mutatis mutandis* apply to it.

PART IX

Second class Canals

59. Notification of Second-class Canal. — (1) The Government may by notification —

(a) declare that it is proposed to constitute any canal, channel, stream, river, well, tubewell, artesian well, pipe or reservoir, natural or artificial or bandhara or any part thereof, whether constructed or maintained or controlled by the Government or not, which is actually used or required for the purposes of irrigation a Second-class Canal.

(b) fix a period of not less than three months from the date of publication of such notification for the submission of objections to such proposals:

Provided that no artificial reservoir or water-course supplied from such reservoir which is actually used for the purposes of irrigation by a single land holder shall be included in such notification except either with the consent of such land holder or, if in the opinion of the Government such inclusion is necessary in the public interest, then without such consent but subject to the payment after the issue of the declaration mentioned in sub-section (3), to such land holder of such compensation for his rights as may be settled in accordance with the provisions of section 64.

(2) After the publication of such notification, it shall also be published by the Collector as soon as practicable in the language of the district at Mamlatdar's Office of the Taluka in which the work is situated and in every town and village 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 Government may, by notification, declare such canal, channel, stream, river, well, tubewell, artesian well, pipe, reservoir or bandhara or any part thereof to be a Second-class Canal.

60. Proclamation by the Collector. — Where a notification has been issued in the sub-section (3) of section 59, 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 Second-class Canal notified under sub-section (3) of section 59.

(b) stating that the provisions of this Part apply to the canal so notified from the date of the notification published under sub-section (3) of section 59; and

(c) fixing a period of not less than three months from the date of such proclamation within which every person claiming any right in the canal so notified, either to present to the Collector, a written notice specifying, or to appear before him and prove, the nature of such right.

61. Framing of Record of rights. — (1) As soon as possible after the expiry of the period fixed by the Collector under clause (c) of section 60, a Canal-Officer duly empowered by the Government in this behalf who shall be a revenue officer not below the rank of a Mamlatdar shall inquire into and settle claims to any rights in the Second-class Canal and shall record the extent of such right and draw up in such form as may be prescribed an Irrigation Record of rights so far as the same may be as ascertainable from the records of the 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 rights shall contain the following matters namely: —

(a) the nature of Second-class Canal and any 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 matter as the Government may, by rules, prescribe in this behalf.

62. Powers of Canal-Officer.— (1) For the purpose of the inquiries under section 61, such Canal-Officer may enter, or authorise any officer to enter upon any land adjacent to any canal to which this Part applies, and may survey, demarcate and make a map of the same.

(2) Notwithstanding anything contained in section 61 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.

63. Revision of Record of rights.— The Record of rights prepared under section 61 may be revised from time to time by a Canal-Officer duly empowered by the Government in this behalf, who shall be a revenue officer not below the rank of a Mamlatdar.

64. 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 Canal, 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 Government may 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.

65. Power of Government where works are undertaken increasing supply.— In the event of Government undertaking at their own cost any work whereby the supply of water in any Second-class

Canal is increased beyond the amount of such supply at the time of preparing or revising the Record of rights under this Part the Government, may, without prejudice to any right so recorded direct that the right to such surplus water shall vest in the Government and shall be applied as the Government may deem fit and the Record of rights shall be revised in accordance with such directions.

66. 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 canal is situated and every town and village which in the opinion of the Collector is affected by such Record of rights.

67. 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 therefrom:

Provided that no such entry shall be construed as to limit any of the powers conferred on the Government by this Part.

68. 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 the issues, give the notice of the suit or proceedings to the Collector, and, if moved to do so by the Collector, shall make the Government a party to the suit or proceeding.

(2) Save as provided in sub-section (1), no suit shall lie against the Government in respect of anything done by the Collector, Canal-Officer or any other person acting under the orders of the Government in the exercise of any power conferred by this Part.

(3) Any suit or proceeding in which the 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 publication under section 66 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 Records of rights from the date of any order passed by the final appellate authority under this Part.

69. Obligation to carry out petty repairs. — In every Second-class Canal, the following repairs shall be performed by the persons on whom the obligation to perform them is imposed by section 70, namely: —

(1) the filling up gullies, ruts, and holes, especially at the back of revetment and all petty repairs of a like nature essential for the safety of bunds, tanks, channel-banks, or other portions of the said Second-class Canal,

(2) the prevention of the growth on such canal of prickly pear, young trees and other vegetation endangering the safety or concealing the conditions of such canal,

(3) the preservation of such bushes and grasses as have been planted for the protection of the interior water slopes of such canal,

(4) the clearance of silt from sluices, supply and distributing channels.

(5) the clearance of waste weirs and waste channels.

70. Incidence of obligation. — The obligation to perform the repairs, specified in section 69 shall, with reference to any land irrigated from the canal, be deemed to impose 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 of Goa, Daman and Diu Land Revenue Code, 1968, (9 of 1969).

71. Power to enforce rights and obligations. — If any person, on whom any obligation is imposed with

reference to any Second-class Canal by any of the provisions of this Part, fails to fulfil the obligations 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 notification, to fulfil such obligation or to desist from infringing such right within a period of not less than fifteen days to be specified in the notice 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 Government and shall be recoverable as an arrear of land revenue.

72. Duty of Inspector to report failure to effect repairs. — It shall be the duty of the Inspector of any village within the limits of which any Second-class Canal or portion of such canal is situated to report to the Mamlatdar without unnecessary delay any failure or neglect to carry out any of the repairs specified in section 69.

73. Public servant and some other persons protected from legal proceedings. — No suit, prosecution, or other legal proceedings shall be maintained against public servant or persons appointed under this Part in respect of anything in good faith done or purporting to be done under the provisions thereof or the rules made thereunder.

74. Power to make rules. — The Government may by notification and after previous publication make rules as to all or any of the following matters, namely: —

(1) the manner of framing and revising the Record of rights;

(2) the proceedings of any Officer who, under the provisions of this Part, is required to take action in any matter; and

(3) generally to carry out the provisions of this Part.

PART X

Safeguard for Canals

75. Limitation in respect of canals. — Except as may be prescribed, no person other than the Canal-Officer shall —

(a) interfere with or divert the course of a natural stream; or

(b) construct any earthen or masonry bund or weir on any channel or stream, flowing above or below any water course.

76. Interference with the functioning of cross drainage works. — No person, except with the written permission of the Canal-Officer shall obstruct the proper functioning of the various cross drainage works, such as culverts, aqueducts, super-passages, syphons, weirs and allied works constructed for the safety of the canals or channels.

77. Obligations of owners in respect of works affecting safety of canals. — (1) Every owner whose tank, well, pond, spring pond, talaparige or other reservoir is situated above any canal shall maintain the bunds and surplussing arrangements of such tank, well, pond, spring pond and talaparige or reservoir in a safe and efficient condition.

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

(3) If the said owner fails to comply within the time specified or does repairs which, in the opinion of the Canal-Officer, are unsatisfactory, the Canal-Officer may carry out the necessary repairs and the cost thereof shall be recovered from the said owner as an arrear of land revenue.

(4) From any order of the Canal-Officer under this section, an appeal shall lie within one month from the date of communication of the order, to the Collector of the district, whose decision thereon shall be final.

78. Mining or quarrying near canals. — No person shall conduct mining or quarrying operations requiring the use of explosives within a distance of one kilometre from the boundaries of a canal without the written permission of the Canal-Officer.

79. Excavation of wells near canals. — No new well shall be excavated within such distance as may be specified by the Government, from time to time, from the boundaries of canal without the written permission of a Canal-Officer.

80. Operation of sluice gates, etc. — No person, other than Canal-Officer or other person duly empowered by the Canal-Officer in this behalf shall have the right to operate a sluice-gate, regulator or flood gate of a reservoir, canal or channel.

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

Provided that no permission for fishing in any tank with an achkat of not more than two hundred hectares shall be granted by any officer empowered under this section except with the concurrence of the Canal-Officer.

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

83. Depositing produce of mines in or near canal prohibited. — No person shall deposit any produce of mines in or near any canal or other work, whether natural or artificial, through which rain or other water flows into any canal.

PART XI

Penalties

84. Offences under the Act. — Whoever voluntarily and without proper authority. —

(i) damages, alters, enlarges or obstruct any canal;

(ii) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under any canal, or by means raises or lowers the level of the water in any canal;

(iii) opens, shuts or obstructs or attempts to open, shut or obstruct any sluice or outlet or any other similar contrivance in any canal;

(iv) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(v) destroys, defaces or moves any land mark or level mark or water gauge fixed under the authority of a public servant;

(vi) destroys, tampers with or removes any apparatus, or part of any apparatus for controlling, regulating or measuring the flow of water in any canal;

(vii) causes any animal or vehicle to pass on or across any of the works, banks or canals or channels of a canal contrary to the rules made under this Act after he has been required to desist therefrom;

(viii) causes or knowingly or wilfully permits cattle to graze upon any canal or flood-embankment, or causes, or knowingly and wilfully permits cattle to be teathered 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, cuts or otherwise injures any tree,

bush, grass or hedge intended for protection of such canal or embankment;

(ix) puts up a dam across or otherwise obstructs the free course of water the right to which vests in the Government;

(x) being responsible for the maintenance of any water-course, or using the water-course, neglects to take proper precautions necessary for the prevention of waste of the water thereof, or interferes with the authorised distribution of the water therefrom or uses such water in an unauthorised manner;

(xi) contravenes any provision of this Act;

(xii) contravenes any rule made under this Act, the contravention whereof is declared in the rules to be an offence punishable under this section;

shall, on conviction, be punished for the offences under clauses (vi), (ix) and (x) with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, and for offences under any other clause, with imprisonment for a term which may extend to two months or with fine which may extend to five hundred rupees or with both:

Provided that for a second or subsequent offence under clause (vii) or clause (viii), such fine shall not be less than fifty rupees, and under other clause, such fine shall not be less than two hundred and fifty rupees:

Provided further that in the case of a continuing offence, a daily fine not exceeding fifty rupees for every day during the period of the continuance of the offence shall also be imposed.

85. Obstruction to be removed and damage repaired.— Where any person is convicted under section 84, the court sentencing him may order that he shall remove the obstruction or repair the damage in respect of which the conviction has been made within a period to be specified in such order. If such person neglects or refuses to obey such orders within the period specified, any Canal-Officer duly empowered by the Government 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 recoverable from such person as an arrear of land revenue.

86. Abatement. — Whoever abate any offence punishable under this Act or attempts to commit such offences shall be punished with the punishment provided in this Act for such offence.

87. Person employed on canal may take offenders into custody. — Any person in charge of, or employed in connection with 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, any person who within his view. —

(1) wilfully damages, obstructs or fouls such canal, or

(2) without proper authority interferes with the supply or flow of water, in or from the canal, or in any river or stream so as to endanger, damage, make dangerous, or render less useful, such canal.

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

89. Offences under this Act to be cognizable. — All offences under this Act except offences under clauses (vii) and (viii) of section 84 shall be cognizable.

90. Payment of fine as reward 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 a part, may direct that the whole or any part of such fine may be paid by way of reward to any person who gave information leading to the detection of such offence or to the conviction of the offender.

PART XII

Miscellaneous

91. Appeals against orders under Act. — Any person aggrieved by order of the Canal-Officer under sections 12, 19, 24, 34, 35, 37 and 38 may within thirty days from the date of communication of the order prefer an appeal to the Collector of the district.

92. 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 and examining of witnesses and the production of documents as are conferred on a civil court, by the Code of Civil Procedure, 1908, (Central Act 5 of 1908) and every such inquiry shall be deemed to be a judicial proceeding for the purposes of sections 193 and 224 of the Indian Penal Code (Central Act 45 of 1860).

93. 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. Wherever it is 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 affixing a copy of the notice on the outer door of the house in which the person therein named ordinarily dwells or carries on business and if such person has not, residence or place of business within the District, service of any notice may be made by sending a copy of such notice by post in registered cover addressed to such person at his residence or place of business.

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

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith

in the course of the execution of duties or the discharge of the functions imposed by, or under, this Act.

(3) No suit shall be instituted against the Government in respect of any act done unless the suit is instituted within six months from the date of the act complained of.

(4) In the case of an intended suit against any officer or servant of the Government under sub-section (1), or the Government under sub-section (3) the person intending to sue shall be bound to give the officer or servant or Government as the case may be, at least one month's notice of the intended suit with sufficient description of the cause of action, failing which such suit shall be dismissed.

(5) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit instituted in respect of any matter to which this Act applies.

95. Offences by companies.— (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

Explanation. — For the purpose of this section, —

(a) 'Company' means any body corporate and includes a firm or other association of individuals, and

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

96. Saving of certain canals. — Nothing in this Act shall apply to any Canal, channel, reservoir, lake or other collection of water vesting in any municipality.

97. Power to make rules. — (1) The Government may, after previous publication by notification, make rules for the purpose of carrying out the provisions of this Act, and such rules may be general for all canals or may be special for one or more canal, as may be specified in such rules.

(2) Without prejudice to the generality of the foregoing power, such rules may be made in respect of the following matters, namely: —

(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 amount of and charges to be made under this Act;

(c) the economic use of water supplied from any canal;

(d) the manner in which and the officer by whom complaints as to the inadequacy of means of crossing shall be investigated under section 10;

(e) regulating the period of opening and closing the channels distributaries and sub-distributaries of canal;

(f) the other manner in which the scheme shall be published under section 40;

(g) the date or payment of the rate of interest on and the period which the instalments of betterment charges shall be paid under section 47;

(h) the suspension or remission of betterment charges, the instalments thereof and the interest thereon;

(i) the conditions subject to which the relinquishment or exchange of lands shall be permitted under section 48;

(j) the division into zones of lands under the irrigable command of a canal for the purpose of the betterment charges leviable on such lands;

(k) and generally to carry out the provisions of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly of Goa, Daman and Diu while it is in session for a total period of 30 days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly agrees in making any modification in any such rule or the Assembly agrees that the rule should not be made, the rule shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Making

98. **Repeal.** — The Diploma Legislative No. 1562 of 11th November, 1964 is hereby repealed.

Statement of Objects and Reasons

Government has been trying since long to increase the irrigation facilities in this Union territory. A number of irrigation works have been completed so far and many more are being taken up. In addition three major irrigation projects are also taken up. They are: —

- (1) Salauli Project in Sanguem Taluka (Estimated cost: Rs. 9.61 crores) work on which has already commenced.
- (2) Tillari Project in Sawantwadi Taluka (Estimated cost: Rs. 30 crores) on which the project report is under finalisation.
- (3) Dudhsagar Multipurpose Project (Estimated cost: Rs. 11 crores) the report on which is under scrutiny.

At present there is no suitable legislation on irrigation in this territory. The existing law regulating the matter is the Legislative Diploma No. 1562 which covers only the two canals viz. the Paroda Canal and the Khandepar Canal. This Diploma is not comprehensive, not only from the point of view of its coverage of area and works but also for the provisions for construction, maintenance and regulations of irrigation works including the levy of water rates.

Government has felt therefore urgent need for drafting legislation on the matter in order to regulate the constructions maintenance and full utilisation of irrigation works and so the Bill for the Irrigation Act has been prepared on the basis of the following legislations in force in the neighbouring States: —

- (1) The Mysore Irrigation Act, 1965.
- (2) The Bombay Irrigation Act, 1869.

The Bill among other things empowers the Government to take up drainage and flood control schemes for any land, to regulate the water supply for irrigation so that the expected area gets the irrigation facilities, construction of small water

courses, to implement a suitable cropping pattern for optimum benefits from irrigation works, to charge water rates, to take up works during emergency in order to protect the irrigation works, to impose penalties on defaulters and to safeguard the irrigation works. The need for early legislation in this matter is required particularly because of the three major irrigation projects above referred which are expected to come up shortly.

PART I

Clause 1 — This clause deals with short title extent and commencement of the Act. The Government has been empowered to bring the Act into force on different dates in different areas if it so desires.

Clause 2 — This clause deals with definitions of various terms used in the Act.

Clause 3 — This clause authorizes the Government to appoint officers to exercise the powers and discharge the functions under the Act.

PART II

Clause 4 — Government is empowered by this clause to notify any river or stream, lake or any natural collection of water for the use of water of any of these sources for any existing or proposed canal after a date to be specified not earlier than three months from the date of such notification.

Clause 5 — This clause enables a Canal-officer to do things like entering on land, removing any obstruction, close any channel, etc., for the application of water notified under clause 4. It also empowers him to take with him or depute other person as he deems fit.

Clause 6 — This clause deals with making enquiries or examination and empowers a canal-officer to enter upon land, set up gauges, etc, etc., and to exercise all powers for carrying out survey, etc., as if a notification under section 4 of the Land Acquisition Act, had been issued.

Clause 7 — This clause enables a canal officer or any person authorised by him to enter upon a land or building or water course to inspect or regulate use of water or management of canals. It also empowers him to measure the irrigated lands chargeable with the water rate.

Clause 8 — This clause deals with powers to enter upon land adjacent to a canal and take trees or other materials and carry out works required to prevent any accident apprehended or repair damage taking place to a canal.

Clause 9 — This clause deals with issue of a reasonable notice of urgency as brought out by clauses 6, 7 and 8 to the occupier of a building, court or garden, not receiving water from a canal and not adjacent to flood embankment, by the canal officer or a person authorised by him.

Clause 10 — This deals with providing means of crossing canals at suitable places for the convenience of the inhabitants of the adjacent land and with construction of suitable cross drainage works such that the natural drainage of the adjacent land is not obstructed by the canal.

Clause 11 — In case it appears any injury has taken place or is likely to take place to public health or public convenience or to any canal, or any land receiving irrigation from a canal because of obstruction of any river stream or natural drainage course, notification can be issued under this clause to prohibit formations of such obstruction or its removal, as the case may be. The section of the drainage course to be defined containing the obstruction will be treated as a drainage work as defined in section 2, under this clause.

Clause 12 — This clause empowers the canal officer to issue orders for removal of obstructions within a specified period.

Clause 13 — This clause empowers the canal officer for getting the obstruction removed or its modification done by a canal officer if the person

ordered under clause 12 fails and recovers the expenses from the person by calling upon him or failing which as arrears of land revenue.

Clause 14 — This clause deals with preparation and execution of such schemes of drainage works by Government which are necessary for public health, improvement of proper cultivation or irrigation and also of flood protection and anti-river erosion works.

PART III

Clause 15 — This clause deals with determination of the need of construction of water courses and their alignment in any area. Sub-clause (i) deals with notification of intention of construction of water courses and sub-clause (ii) deals with determining a suitable alignment for the water courses and notifying on the marked out portions of lands indicating the village or villages in which the alignment lies.

Clauses 16 and 17 — Deal with acquisition of land for the purpose of construction of water courses. The provisions of the Land Acquisition Act, 1894 is applicable to all acquisitions made under this clause.

Clauses 18 and 19 — These clauses stipulate the obligations of users of water courses. Every user of water course has to maintain it in a fit state.

Clause 20 — This clause deals with construction of water courses in the area acquired under section 16.

PART IV

Clause 21 — This clause deals with regulation of water supply from a canal. The time of letting out water for irrigation, the period of supply, the quantity of supply and the areas to be supplied at different times can be notified for a specific term of years or for each year.

Clause 22 — This clause deals with stoppage of water supply from a canal to a consumer. The grounds on which such stoppage can be effected are listed thereunder.

Clause 23 — This clause deals with transferability of the agreement for the supply of water with the property for which the supply is given. This clause prohibits transfer of right to use the water by any user without the permission of canal officer.

Clause 24 — This clause deals with the regulation of cultivation. Under sub-clause (1) a canal officer can determine the areas of lands to be cultivated with different crops, subject to availability of water in the canal. An appeal lies to the Collector against an order passed under this clause.

Clause 25 — Under this clause the Government can prescribe the kind of crop to be grown in any particular irrigated area taking into account the water resources. When once the Government issues a notification prescribing a particular kind of crop growing of any other crop in the areas is punishable. Exception is made in respect of crops grown in the area independent of canal water.

PART V

Clauses 26 to 28 — Deal with payment of compensation for damage caused while exercising powers under the Act by authorities.

Clause 29 — Prescribes the Collector as the authority to whom an application for compensation under clause 28 should be preferred. Sub-clauses (1) and (2) describe the procedure for preferring claims and for determining compensation, if any, by the Collector. Sub-clause (2) also requires that compensation for all claims determined by the Collector should be approved by the Government.

Clause 30 — This clause enables persons aggrieved by the orders of the Collector under section 29 to prefer an appeal to the Administrative Tribunal, within ninety days.

Clause 31 — This clause makes all the compensations payable three months after the final award is made. Interest is also fixed for sums remaining unpaid after three months except if the non-payment

is because of the negligence or refusal of the claimant to apply for or receive the amounts.

Clause 32 — This clause prescribes the Collector as the authority to determine abatement of revenue or interruptions of water supply under section 30.

PART VI

Clause 33 — This clause deals with the determination of rates for supply of canal water. Sub-clause (2) empowers revision of rates for any land receiving increased water supply. Sub-clause (3) deals with the fixation of liability for payment of water rates.

Clause 34 — This clause deals with unauthorized use of water by a person to whom water is supplied from a canal.

Clause 35 — This clause fixes liability when water runs to waste but the miscreants cannot be apprehended. Canal-officer is empowered to decide all such matters.

Clause 36 — This clause makes water charges for the unauthorised use recoverable in addition to penalties for such use or waste.

Clause 37 — This clause makes land deriving benefit by percolation or leakage of water from canal liable for charging water rates as if it is directly irrigated from the canal.

Clause 38 — This clause empowers levying of water rates for use of water percolating from the canal for non-irrigation purposes. Exception is made for exclusive use made for domestic purposes.

Clause 39 — This clause deals with preparation of a scheme showing the lands under the irrigable command of a newly constructed or improved or extended canal and also showing the betterment charges leviable on such lands.

Clause 40 — This deals with, under its sub-clause (1), publication of scheme prepared under section

39 and under sub-clause (2) with giving notice to the persons concerned and hearing their objections, if any, for inclusion of their land in the scheme and imposition of the betterment charges.

Clause 41 — This clause deals with procedure for holding inquiry when any person files an objection under section 40.

Clause 42 — Increase in value is determined by this clause and the betterment charges fixed at half this increase. Government is also required to notify the dates of construction and completion.

Clause 43 — This clause makes awards made under section 41 appealable to the Collector within sixty days. Sub-clause (2) makes provisions of the Land Revenue Code applicable to such appeals.

Clause 44 — This clause empowers the Government to examine and modify or reverse the decisions of the Collector.

Clause 45 — This clause deals with the finality of the orders passed under section 41.

Clause 46 — This clause stipulates, that betterment charges leviable shall be the first charge on the land subject only to payment of Land Revenue.

Clause 47 — This clause enables the Government to prescribe the dates and mode of payment of betterment charges.

Clause 48 — This clause allows the owner to relinquish or exchange land in lieu of the payment of the betterment charges in favour of Government on such conditions as may be prescribed, if the land is free from encumbrances.

Clause 49 — This clause empowers levying of irrigation cess.

Clause 50 — This clause fixes the liability to pay irrigation cess and arrears for alienated or unalienated lands. Tenants are also liable subject to provi-

sions of the Agricultural Tenancy Act, 1964. Sub-clause (2) provides for making cess recoverable from the occupant or superior holder, as the case may be, where the tenant was primarily liable and any other person in possession of the land in other cases. It also provides for facility of credit if the payer is not primarily liable.

Clause 51 — This clause deals with fixing rates at and periods for which irrigation cess is liable. Sub-clause (2) makes this fixation immune to questioning in court and prohibits increase in rates during the period so fixed.

Clause 52 — This clause makes irrigation cess leviable on the date on which the land revenue is leviable.

Clause 53 — Sub-clause (1) enables the Government to determine the mode and dates of payment of water rates. Sub-clause (2) stipulates that the water rates as also the unpaid betterment charges and irrigation cess can be recovered as arrears of land revenue. Other sums due to Government under the Act are also made recoverable as arrears of land revenue.

PART VII

Clause 54 — This clause describes the procedure for obtaining labour for works or repairs to canal when urgently required. It casts a duty on every able bodied person residing in the locality to assist in such work or repair, if so required, on payment of wages.

Clause 55 — This clause makes it obligatory for Collector to prepare a list of all persons liable to be required for assistance and empowers him to add to or alter it.

Clause 56 — This clause casts a duty on the Canal Officer to report to Collector every order passed under section 54.

Clause 57 — Under this clause, appeals to Collector can be made by a person who does not accept amount under section 54. Decision of the Collector is final.

PART VIII

Clause 58 — This clause empowers Government to take over any private canal for maintenance in the interest of irrigation and recover all or part of the cost of maintenance from the persons benefited by water of such canal. Limitations are that an artificial reservoir owned by any land holder can be taken over only at his request or in public interest. In the latter case such compensation as may be awarded by the Collector will have to be paid.

PART IX

Clause 59 — This clause deals with declaration of any canal as a Second-class Canal whether it is constructed or maintained or controlled by Government or not and the procedure that has to be followed for issuing such declarations.

Three months period is to be given for submission of objections. Any artificial reservoir or water course supplied from such reservoir can also be declared. If the declaration is against the wishes of the owner, compensation will have to be paid.

Clause 60 — This clause requires a proclamation to be issued after issuing notification under sub-section (3) of section 59 specifying the source of supply, situation and limits of the canal, stating that the canal will come under the Irrigation Act. At least a period of three months should be allowed for letting claimants of rights in it state their nature of rights.

Clause 61 — This clause deals with framing of Record of rights by an officer of the rank of Mamlatdar indicating therein the nature of the canal, land applicable therefrom, customs or rule of irrigation, rights to water and conditions on which rights are enjoyed etc.

Clause 62 — This clause empowers a canal officer to enter any adjacent land and survey, demarcate and map the land. Sub-clause (2) empowers the canal officer to settle the record as he deems fit, if no sufficient evidence is forthcoming.

Clause 63 — This clause deals with power to revise the Record of rights.

Clause 64 — This clause deals with commutation of rights which cannot be exercised to the extent recorded, by payment to the holder of such right, a sum of money or by the grant of land and revise the Record of rights accordingly.

Clause 65 — This clause empowers Government to have right in surplus water available as a result of executing a work at its cost and apply the water as Government deems fit and revise the Record of rights accordingly.

Clause 66 — This clause requires publication of any Record of rights prepared or revised and describes the method of publication.

Clause 67 — By this clause entries in the record of rights are made relevant as evidence in any dispute as to the matters recorded and presumed to be true until contrary is proved or a new entry is substituted.

Clause 68 — This clause deals with giving notice to the Collector by a court for a suit or proceeding involving an entry made in the Record of rights. Court has to make Government a party to suit if moved to do so by the Collector. Sub-clause (2) exempts Government from being a party to suit for anything done by Collector or canal-officer in the exercise of powers conferred. Sub-clause (3) limits time to one year for filing on any entry.

Clause 69 — This clause states the nature of repairs to be carried out by the person on whom the obligation to perform them is imposed by section 70.

Clause 70 — This clause deals with the incidence of obligation to perform the repairs as specified in section 69.

Clause 71 — This clause empowers to enforce rights and obligations by issuing notice in case of defaults. In the event of failure, the canal offi-

cer can discharge the obligation or restore the right and take other necessary steps. The expenses incurred on this account are recoverable as arrears of land revenue.

Clause 72 — This clause devolves it on village inspector to report failure to effect repairs specified in section 69.

Clause 73 — This clause protects public servant and other persons acting in good faith under the Act from legal proceedings in respect of anything done.

Clause 74 — This clause empowers the Government to make rules.

PART X

Clause 75 — This clause prohibits any person other than canal officer to interfere or divert any natural stream or to construct bund, weir or dam on any channel or stream above or below any water course.

Clause 76 — This clause prohibits any person to obstruct the proper functioning of cross drainage works, without written permission of the canal officer.

Clause 77 — Under this clause, it is made obligatory for owners to maintain irrigation work above any canal in a safe condition. The canal officer can ask the owner to bring the work to fit conditions, if danger is apprehended. If the owner fails to comply it within the specified time, the canal officer can carry out the repairs and the cost incurred is recoverable as arrears of land revenue. Sub-clause (4) makes orders of canal officer appealable to Collector for final decision.

Clause 78 — Under this clause, use of explosives is prohibited within one kilometer radius.

Clause 79 — This clause prohibits construction of walls within such distance from the canals as is spe-

cified, without the written permission of the canal officer:

Clause 80 — This clause prohibits any person other than canal officer or other authorised person from operating a sluice gate, regulator or flood gate of a reservoir or canal.

Clause 81 — Under this clause, plying of vessels or fishing in a reservoir or along a canal maintained or controlled by Government is allowed only with permission from Government or from an officer empowered in this behalf. It is subject to conditions and such fees as may be prescribed. For fishing in tank with achkat over two hundred hectares, permission can be granted by an officer only with the concurrence of the canal officer.

Clause 82 — This clause prohibits any person, other than the canal officer or any officer empowered from letting out water by cutting bund of a canal, constructing a sluice or outlet or any other similar contrivance.

Clause 83 — Under this clause, deposition of mining produce in or near any canal is prohibited so that it may not flow into the canal.

PART XI

Clause 84 — This clause deals with acts and omissions which are offences under the Act.

Clause 85 — Under this clause, if a person convicted under section 84 fails to remove the obstruction or repair the damage in respect of which conviction is made, the canal officer can get it removed or do repairs and the expenses on this account will be recoverable as arrears of land revenue from the person.

Clause 86 — This deals with punishment for abating an offence or for attempting to commit such offence. Punishment is as provided in this Act for such offence.

Clause 87 — This clause empowers a person employed on a canal to take into custody without a warrant and take to a Magistrate or to a police station, any person who wilfully damages, obstructs or fouls canal or interferes with water, without proper authority.

Clause 88 — Prosecution under other laws is also made permissible for offences committed under this Act and punishable under this Act.

Clause 89 — This clause declares all offences under this Act except those under clause (VII) and (VIII) of Section 84, as cognizable.

Clause 90 — By this clause, a person who gives information leading to detection of an offence or to the conviction of an offender can be rewarded from the fine recovered consequent to such information.

PART XII

Clause 91 — This clause declares the Collector as the appellate authority to whom an appeal against the orders of a canal officer can be preferred.

Clause 92 — This clause empowers an officer conducting any enquiry under the Act, to summon and examine witnesses, as if he is a Civil Court. The proceedings are also deemed to be judicial proceedings

Clause 93 — This clause deals with the procedure of serving notices.

Clause 94 — Under this clause officer and servants of Governments are barred from certain proceedings for any act done or purporting to be done under this Act without the previous sanction of the Government or for acts done in good faith in the course of the execution of duties under this Act. The jurisdiction of Civil courts are barred in respect of any matter which has to be decided by any authority under this Act.

Clause 95 — This clause deals with procedure for taking action against companies for offences committed by them.

Clause 96 — Canal, reservoir or other collection of water vesting in Municipality is kept outside the application of this Act by this clause.

Clause 97 — This clause empowers Government to make rules for carrying out the provisions of this Act in respect of one canal or for canals in general.

Clause 98 — This clause repeals Diploma No. 1562 which is at present applicable only to the canals of Khandepar and of Paroda.

Financial Memorandum

The irrigation schemes are revenue earning schemes. No special establishment is required to enforce the legislation apart from what is required according to the yardstick of expenditure whether for construction or maintenance, which expenditure depends on the number of schemes found economically feasible and number of schemes actually taken up.

Government will receive revenue by way of water rates, irrigation cess and betterment levy and also by way of penalties imposed on the defaulters.

Memorandum of Delegated Legislation

Section 3 empowers the Government to delegate by Notification the Powers under the Irrigation Act to any subordinate authority subject to such orders as may from time to time be passed by the Government.

Further Sections 74 and 97 empowers the Government to frame rules to carry out the purposes of the Act.

All these delegations are of normal character.

Panaji,
20th September, 1973.

A. K. S. USGAONKAR
Minister for Irrigation

Assembly Hall,
Panaji,
21st September, 1973.

B. M. MASURKAR
Secretary to the Legislative
Assembly of Goa, Daman
and Diu.

Administrator's recommendation under Section 23 of the Government of Union territories Act, 1963.

In pursuance of sub-section (1) of Section 23 of the Government of Union territories Act, 1963, the Administrator of Goa, Daman and Diu has recommended to the Legislative Assembly of Goa, Daman and Diu the consideration of the Goa, Daman and Diu Irrigation Bill, 1973.