

CONFIDENTIAL

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PROVINCIAL ASSEMBLY OF THE PUNJAB REPORT OF THE STANDING COMMITTEE ON IRRIGATION AND POWER REGARDING THE CANAL AND DRAINAGE (AMENDMENT) BILL 2015 (BILL NO. 53 OF 2015)

The Canal and Drainage (Amendment) Bill 2015 (Bill No. 53 of 2015) was referred to the Standing Committee on Irrigation and Power on 12 November 2015. The Committee considered the Bill in its meetings held on 10 and 30 December 2015.

2. The following were present:—

1.	Ch Mahmood ul Hassan Cheema, MPA (PP-294) (attended on 10 December 2015)	Chairman
2.	Mr Shoukat Ali Laleka, MPA (PP-278)	Member
3.	Chaudhry Akhtar Abbas Bosal, MPA (PP-118)	Member
4.	Mrs Parveen Akhtar, MPA (W-305) (attended on 30 December 2015)	Member
5.	Pir Muhammad Ashraf Rasool, MPA (PP-164) (attended on 10 December 2015)	Member

3. Mr Saif Anjum, Secretary to Government of the Punjab, Irrigation Department and Mr Mohsin Abbas Syed, Director, Law and Parliamentary Affairs Department, represented their Departments. Hafiz Muhammad Shafiq Adil, Special Secretary, Provincial Assembly of the Punjab functioned as Secretary to the Committee.

4. Since Ch Mahmood ul Hassan Cheema, MPA (PP-294) Chairman, Standing Committee on Irrigation and Power could not attend the meeting of the Committee due to some other engagements, Mr Shoukat Ali Laleka, MPA (PP-278) in terms of rule 151(2) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1997, was chosen to act as Chairman for the sitting dated 30 December 2015.

5. The Secretary to Government of the Punjab, Irrigation Department apprised the Committee about the aims and objects of the Bill. He said that there was a declining trend in the recovery of water rates and special charges levied under the Canal and Drainage Act, 1873. The primary reason for such decline was insufficient deterrence against non-payment. Additionally, the revenue authorities recovered those user charges. It was proposed that canal officers may be empowered to take cognizance of the incidents of repeated non-payment of water rates and special charges under section 70 of the Act and may disconnect the irrigation supplies temporarily to recover the charges.

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6. He also stated that there was a rising tendency of water theft. Although, the gap between demand and supply was the main reason for that, however, ineffective reinforcement also played a major part. It was proposed to make a provision in the Act to make certain offences cognizable and non-bailable relating to water theft, obstructing water ways and causing damage to canal infrastructure. Similarly, the tendency of the irrigators to approach civil court in matters relating to irrigation supplies such as the need and volume of irrigation supply, size of outlets etc. was also on the rise. It was considered that these matters were essentially technical in nature and interference by civil courts adversely affected equitable distribution of water and canal regulation. Accordingly, it had been proposed to oust the jurisdiction of civil courts in certain aspects of working of canal officers. He requested the Committee that the Bill, as introduced, may be recommended for the passage by the Assembly.

7. The Committee after hearing the Members, having the view point of the Administrative Department & Law and Parliamentary Affairs Department and discussing various points, unanimously decided to recommend that the Bill may be passed by the Assembly subject to the following amendments:-

AMENDMENTS IN THE BILL

(1) **CLAUSE 1**

in sub clause (1), the expression "2015" be substituted by the expression "2016".

(2) **SUBSTITUTION AND RE-NUMBERING OF CLAUSE 8 AS CLAUSE 3**

the proposed clause 8 "74-A. Revision.-" may be substituted and re-numbered as following clause 3 and existing Clauses 3 to 7 be re-numbered as Clauses 4 to 8:

"3. **Insertion of section 20-C in Act VIII of 1873.**- In the said Act, after section 20-B, the following section 20-C shall be inserted:

"20-C. Revision.- (1) The Government shall constitute a Board consisting of two or more Superintending Canal Officers to hear and decide revision under this section.

(2) The Board may, on an application by an aggrieved person or on his own, revise any decision of a Canal Officer under section 20, 20-A or 20-B if:

(a) evidence or material of illegality, negligence or fraud is available on record; or

(b) any error in controlling factors effecting supply of water is noticed.

(3) If there is sufficient evidence or material available on record that the decision of the Canal Officer or the report, on the basis of which the decision is made, is based on bad intention or motive or gross negligence, the Board may refer the matter to the competent authority for disciplinary or other action against the responsible officer."

(3) RE-NUMBERED CLAUSE 4

- (i) in section 32-A of the Principal Act, in sub-section (1), the words and figures "33 or section 34" occurring in line 2, be substituted by the figures and word "31,33, 34, 36 or 45"; and
- (ii) in sub-section (2), the word "day", occurring in line 2, be substituted by the word "days" and the word "with" occurring in line 4, be substituted by the word "within".

(4) RE-NUMBERED CLAUSE 5

in section 67 of the Principal Act, in sub-section (2), the figures and word "32, 33, 34 and 35" occurring in line 3, be substituted by the figures, commas and word "20-C, 31, 32, 32-A, 33, 34, 35, 36 and 45".

(5) RE-NUMBERED CLAUSE 7

in section 70 of the Principal Act –

- (i) the figures "15A" occurring in line 2 and 3, be substituted as "15-A"; and
- (ii) the figures and words "33 or section 34" occurring in line 3, be substituted by the figures, commas and words "31, 33, 34, 36 or 45".

8. A copy of the Bill as introduced in the Assembly is at Annexure-A and a copy of the Bill as recommended by the Committee is at Annexure-B.

Lahore
30 December 2015

(SHOUKAT ALI LALEKA)
Acting Chairman
Standing Committee on Irrigation and Power

Lahore
30 December 2015

Mumtaz Hussain
(RAI MUMTAZ HUSSAIN BABAR)
Secretary

ANNEXURE – A

(BILL AS INTRODUCED IN THE ASSEMBLY)

PROVINCIAL ASSEMBLY OF THE PUNJAB

Bill No. 53 of 2015

THE CANAL AND DRAINAGE (AMENDMENT) BILL 2015

A
BILL

to amend the Canal and Drainage Act, 1873.

It is necessary to encourage participatory development of canals; to have an effective recovery of charges mechanism; to oust the jurisdiction of civil courts in proceedings under the Act; to make certain grave offences cognizable and non-bailable; to confer revisional jurisdiction upon the Superintending Canal Officer; and, to deal with other matters;

Be it enacted by the Provincial Assembly of the Punjab as follows:

1. **Short title and commencement.**— (1) This Act may be cited as the Canal and Drainage (Amendment) Act 2015.
(2) It shall come into force at once.
2. **Insertion of section 14-B in Act VIII of 1873.**— In the Canal and Drainage Act, 1873 (*VIII of 1873*), for brevity cited as the said Act, after section 14-A, the following section 14-B shall be inserted:
“**14-B. Development schemes.**— (1) The Provincial Government may plan and implement a scheme for development, rehabilitation or improvement of a canal.
(2) The Provincial Government may levy special charges on the irrigators and other water users of the canal to meet the whole or part of the expense incurred on a scheme under subsection (1).”
3. **Insertion of section 32-A in Act VIII of 1873.**— In the said Act, after section 32, the following section 32-A shall be inserted:
“**32-A. Non-payment of charges.**— (1) If a person fails to pay charges under section 33 or section 34 within the prescribed period, the Divisional Canal Officer may, after prior notice to the person, exclude the person from warabandi or cancel the agreement of filling of tanks and ponds with that person.
(2) Any person aggrieved of the order of the Divisional Canal Officer under subsection (1) may, within thirty day from the date of the order, file an appeal before the Superintending Canal Officer who shall decide the appeal with thirty days from the date of filing the appeal.”
4. **Amendment in section 67 of Act VIII of 1873.**— In the said Act, for section 67, the following shall be substituted:
“**67. Jurisdiction.**— (1) Subject to subsection (2), all claims against the Provincial Government in respect of anything done under this Act may be tried by the civil court of competent jurisdiction.
(2) A court shall not assume jurisdiction in any matter in respect of anything done, being done or purported to be done under sections 20, 20-A, 20-B, 32, 33, 34 and 35 of this Act and shall not pass any order interrupting any proceedings under this Act.”
5. **Amendment in section 68-A of Act VIII of 1873.**— In the said Act, in section 68-A, after subsection (2), the following subsection (3) shall be inserted:

"(3) The Sub Divisional Canal Officer, shall not entertain an application under this section unless it is accompanied with an application in writing under section 68 of the Act, in case the water course is not sanctioned.

Explanation: For purposes of the section, a sanctioned water course or internal khal shall mean a water course or internal khal sanctioned under section 68."

6. **Amendment in section 70 of Act VIII of 1873.**— In the said Act, in section 70, in subsection (1), after clause (15), the following clause (15A) shall be inserted:

"(15A) fails to pay water rate or charges imposed under section 33 or section 34 within the prescribed period even after a due notice;"

7. **Insertion of section 73-A in Act VIII of 1873.**— In the said Act, after section 73, the following section 73-A shall be inserted:

"73-A. Cognizance.— Notwithstanding anything contained in any other law, the offences under clauses (1) to (4) of section 70 shall be cognizable and non-bailable."

8. **Insertion of section 74-A in Act VIII of 1873.**— In the said Act, after section 74, the following section 74-A shall be inserted:

"74-A. Revision.— The Superintending Canal Officer, on an application by an aggrieved person or on his own, revise any decision of a subordinate officer:

- (a) if evidence or material of illegality, negligence or fraud in the levels of command area is available on record; and
- (b) if any error in controlling factors effecting supply of water is noticed."

STATEMENT OF OBJECTS AND REASONS

There is a declining in the recovery of water rates and special charges levied under the Canal and Drainage Act, 1873. The primary reason for such decline is insufficient deterrence against non-payment. Additionally, the revenue authorities recover these user charges. It is proposed that canal officers may be empowered to take cognizance of the incidents of repeated non-payment of water rates and special charges under section 70 of the Act and may disconnect the irrigation supplies temporarily to recover the charges.

There is a rising tendency of water theft. Although, the gap between demand and supply is the main reason for this, however, ineffective reinforcement also plays a major part. It is proposed to make a provision in the Act to make certain offences relating to water theft, obstructing water ways and causing damage to canal infrastructure cognizable and non-bailable offences.

Similarly, the tendency of the irrigators to approach civil court in matters relating to irrigation supplies such as the need and volume of irrigation supply, size of outlets etc. is also on the rise. It is considered that these matters, much like revenue work, are essentially technical in nature and interference by civil courts adversely affects equitable distribution of water and canal regulation. Accordingly, it has been proposed to oust the jurisdiction of civil courts in certain aspects of working of canal officers.

MINISTER INCHARGE

Lahore:
12 November 2015

RAI MUMTAZ HUSSAIN BABAR
Secretary

**(BILL AS RECOMMENDED BY STANDING COMMITTEE
ON IRRIGATION AND POWER)**

A

BILL

to amend the Canal and Drainage Act, 1873.

It is necessary to encourage participatory development of canals; to have an effective recovery of charges mechanism; to oust the jurisdiction of civil courts in proceedings under the Act; to make certain grave offences cognizable and non-bailable; to confer revisional jurisdiction upon the Superintending Canal Officer; and, to deal with other matters;

Be it enacted by the Provincial Assembly of the Punjab as follows:

1. Short title and commencement.— (1) This Act may be cited as the Canal and Drainage (Amendment) Act 2016.

(2) It shall come into force at once.

2. Insertion of section 14-B in Act VIII of 1873.— In the Canal and Drainage Act, 1873 (*VIII of 1873*), for brevity cited as the said Act, after section 14-A, the following section 14-B shall be inserted:

“14-B. Development schemes.— (1) The Provincial Government may plan and implement a scheme for development, rehabilitation or improvement of a canal.

(2) The Provincial Government may levy special charges on the irrigators and other water users of the canal to meet the whole or part of the expense incurred on a scheme under subsection (1).”

3. Insertion of section 20-C in Act VIII of 1873.— In the said Act, after section 20-B, the following section 20-C shall be inserted:

“20-C. Revision.— (1) The Government shall constitute a Board consisting of two or more Superintending Canal Officers to hear and decide revision under this section.

(2) The Board may, on an application by an aggrieved person or on his own, revise any decision of a Canal Officer under section 20, 20-A or 20-B if:

(a) evidence or material of illegality, negligence or fraud is available on record; or

(b) any error in controlling factors effecting supply of water is noticed.

(3) If there is sufficient evidence or material available on record that the decision of the Canal Officer or the report, on the basis of which the decision is made, is based on bad intention or motive or gross negligence, the Board may refer the matter to the competent authority for disciplinary or other action against the responsible officer.”

4. Insertion of section 32-A in Act VIII of 1873.— In the said Act, after section 32, the following section 32-A shall be inserted:

“32-A. Non-payment of charges.— (1) If a person fails to pay charges under section 31, 33, 34, 36 or 45 within the prescribed period, the Divisional Canal Officer may, after prior notice to the person, exclude the person from warabandi or cancel the agreement of filling of tanks and ponds with that person.

(2) Any person aggrieved of the order of the Divisional Canal Officer under subsection (1) may, within thirty days from the date of the order, file an appeal before the Superintending Canal Officer who shall decide the appeal within thirty days from the date of filing the appeal."

5. Amendment in section 67 of Act VIII of 1873.— In the said Act, for section 67, the following shall be substituted:

“67. Jurisdiction.— (1) Subject to subsection (2), all claims against the Provincial Government in respect of anything done under this Act may be tried by the civil court of competent jurisdiction.

(2) A court shall not assume jurisdiction in any matter in respect of anything done, being done or purported to be done under sections 20, 20-A, 20-B, 20-C, 31, 32, 32-A, 33, 34, 35, 36 and 45 of this Act and shall not pass any order interrupting any proceedings under this Act.”

6. Amendment in section 68-A of Act VIII of 1873.— In the said Act, in section 68-A, after subsection (2), the following subsection (3) shall be inserted:

“(3) The Sub Divisional Canal Officer shall not entertain an application under this section unless it is accompanied with an application in writing under section 68 of the Act, in case the water course is not sanctioned.

Explanation: For purposes of the section, a sanctioned water course or internal khal shall mean a water course or internal khal sanctioned under section 68.”

7. Amendment in section 70 of Act VIII of 1873.— In the said Act, in section 70, in subsection (1), after clause (15), the following clause (15-A) shall be inserted:

“(15-A) fails to pay water rate or charges imposed under section 31, 33, 34, 36 or 45 within the prescribed period even after a due notice;”

8. Insertion of section 73-A in Act VIII of 1873.— In the said Act, after section 73, the following section 73-A shall be inserted:

“73-A. Cognizance.— Notwithstanding anything contained in any other law, the offences under clauses (1) to (4) of section 70 shall be cognizable and non-bailable.”
