

Bengal Act II of 1882

[THE BENGAL EMBANKMENT ACT, 1882.]¹

EXTENDED	..	Ben. Act IV of 1915.
REPEALED IN PART	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;"> Act IX of 1890. Act I of 1903. Ben. Act IV of 1915. </div>
AMENDED	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;"> Ben. Act I of 1931. Ben. Act VIII of 1933. Ben. Act VI of 1945. West Ben. Act XI of 1948. West Ben. Act XXXIII of 1980. West Ben. Act XLVI of 1981. </div>
REPEALED IN PART AND AMENDED	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;"> Ben. Act V of 1915. Ben. Act I of 1939. </div>
ADAPTED	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;"> (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950. </div>

[21st June, 1882.]

An Act to amend the law relating to Embankments and Water-courses.

WHEREAS it is expedient to make better provision for the construction, maintenance and management of embankments and water-courses in the territories subject to the Lieutenant-Governor of Bengal²;

Preamble.

It is enacted as follows:—

PART I

Preliminary.

1. This Act may be called the Bengal Embankment Act, 1882.

Short title.

³[It extends to the States⁴ of West Bengal and Bihar, and also to that part of the State⁵ of Orissa which on the twenty-first day of June, 1882, was subject to the Lieutenant-Governor of Bengal, but only as provided in Part IX.]

Local extent.

(Commencement.)—Rep. by s. 4 and the Third Sch. of the Amending Act, 1903 (1 of 1903).

¹LOCAL EXTENT.—This Act originally extended to the whole of the Presidency of Fort William in Bengal except the Sundarbans, but it has since been extended to the Sundarbans by the Embankment (Sundarbans) Act, 1915 (Ben. Act IV of 1915).

²This includes the present State of West Bengal and other territory.

³Substituted for the original second para. of s. 1 by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The word "States" was substituted for the word "Provinces" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁵The word "State" was substituted for the word "Province" *ibid*

The Bengal Embankment Act, 1882.

[Ben. Act II

(Part I.—Preliminary.—Sections 2, 3.)

Repeal of
former Acts.

2. * * * * *¹[the Bengal Embankment Act, 1873], with the exception of the sections set out and schedules specified in Schedule I to this Act annexed, shall be repealed.

Ben. Act VI
of 1873.

The references in the said sections, which are mentioned in Schedule II to this Act annexed, shall be read as if the references were made to the portions of this Act mentioned against such references respectively in the third column of such schedule.

Sections 80 and 81 of this Act shall be applicable respectively to the proclamation and notice mentioned in sections 26 and 28, Bengal Act VI of 1873.

Interpreta-
tion.

3. The following words shall, for the purposes of this Act, have the meanings hereby declared, save where, from the context, a contrary intention appears:—

"Collector".

"Collector" means any Revenue-officer in independent charge of a district or portion of a district, or specially appointed by the²[State] Government of⁴[West Bengal] to perform the functions of a Collector under this Act:

"district".

"district" means the local area throughout which a Collector is authorised to exercise his ordinary functions:

"embankment".

"embankment" includes—

every bank, dam, wall and dyke made or used for excluding water from, or for retaining water upon, any land;

every sluice, spur, groyne, training-wall, ⁵[berm] or other work annexed to, or portion of, any such embankment;

every bank, dam, dyke, wall, groyne or spur made or erected for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or waters;

and also all buildings intended for purposes of inspection and supervision:

"estate".

"estate" means any land or share in land included under one entry on the general register of revenue-paying lands and of revenue-

¹The words "From such day" were repealed by s. 4 and the Third Sch. of the Amending Act, 1903 (I of 1903).

²These words and figure were substituted for the words, figures and brackets "Bengal Act VI of 1873 (to amend the law relating to embankments and water-courses" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁵This word was inserted by s. 2 of the Bengal Embankment (Amendment) Act, 1931 (Ben. Act I of 1931).

The Bengal Embankment Act, 1882.

of 1882.]

(Part II.—Preliminary.—Section 3.)

Ben. Act :
VII of 1876.

free land prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force:

"land" includes interests in land and benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:

"land".

"public embankment" means an embankment maintained by the ¹[servants of the Government]:

"public embankment".

"public water-course" means a water-course under the charge of the ¹[servants of the Government]:

"public water-course".

"section" means a section of this Act:

"section".

"tenure" includes all interest in land which are held permanently at a fixed rental, or which are held rent-free, other than estates as above defined:

"tenure".

"the Engineer" means the Engineer in charge of the public embankments of the district or any part thereof, or any Engineer specially appointed by the ²[State Government] to perform the function of an Engineer under this Act in respect of any tract of country or any works:

"the Engineer".

"water-course" includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water:

"water-course".

"*zamindar*" means all or any of the holders of an estate: and, where two or more *zamindars* are jointly holders thereof, they shall be jointly and severally liable under this Act.

"*zamindar*".

Explanation.—For the purposes of Part VI ³[the State Government] shall be deemed to be *zamindar*—

- (a) of every estate of which the *zamindari* title is not vested elsewhere than in the ⁴[Government];
- (b) of every estate which is let in farm or held *khas* under the provisions of section 43 of Regulation VIII of 1793⁵ in consequence of the proprietor refusing or omitting to engage for the settlement thereof.

¹The words "servants of the Crown" were first substituted for the words "officers of Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The words "Provincial Government" were first substituted for the word "Lieutenant-Governor" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

³The words "Provincial Government" were first substituted for the word "Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴The word "Crown" was first substituted for the word "Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁵The Bengal Decennial Settlement Regulation, 1793.

The Bengal Embankment Act, 1882.

[Ben. Act II

(Part I.—Preliminary.—Sections 4-6.)

Public
embank-
ments, etc.,
to vest in
Government.

4. Every public embankment and every public water-course, and all land, earth, pathways, gates, berms and hedges belonging to, or forming part of, or standing on, any such embankment, or water-course and every embanked tow-path maintained ¹[by the State Government], shall vest in ²[the State Government].

The embankments mentioned in Schedule D annexed to Bengal Act VI of 1873³ and every embankment and water-course which may be included in such schedule under section 43 of this Act, and every embanked tow-path as aforesaid, shall be held on behalf ⁴[of the State Government]; and all other public embankments and water-courses shall be held ⁴[by the State Government] on behalf of the persons interested in the lands to be protected or benefited by such embankments or water-courses, subject to the provisions of section 87; and all moneys received on account of such lands shall be credited to the cost of the construction and maintenance of such embankments and water-courses respectively.

Survey of
lands
hitherto used
for obtaining
earth for
repairs.

5. All plots or parcels of land which, before the commencement of this Act, have been used for the purpose of obtaining earth or other materials for the repair of any public embankment, water-course or embanked tow-path as aforesaid, or which by agreement have been substituted for such lands, shall be deemed to be at the disposal of ⁵[the State Government] for such purpose, without payment of compensation for the use or removal of such earth or other materials.

The Collector may cause all such plots or parcels to be ascertained, surveyed and demarcated.

Notification.

6. The ⁶[State Government] may, from time to time, by notification in the ⁷[*Official Gazette*] declare the limits of any tract within which the provisions of clause (b), section 76, shall take effect;

and the said provisions shall take effect one month after the publication of such notification.

As soon as possible after the said publication, the Collector shall cause a translation of the notification in the vernacular to be published in the manner prescribed in section 80.

¹The words "by the Provincial Government" were first substituted for the words "by Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The words "in the Crown for the purposes of the Province" were originally substituted for the words "in the Government", by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the words "the State Government" were substituted for the said words by para. 3 and the Eleventh Sch. of the Adaptation of Laws Order, 1950.

³The Bengal Embankment Act, 1873.

⁴The words "of the Provincial Government" were first substituted for the words "of the Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁵See foot-note 3 on page -3, ante.

⁶See foot-note 2 on page -3, ante.

⁷These words were substituted for the words "*Calcutta Gazette*" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

The Bengal Embankment Act, 1882.

of 1882.] 7

(Part II.—Powers of Collector and Procedure thereon;
Embankment Committees.—Section 7.)

PART II.

**Powers of Collector and Procedure thereon;
Embankment Committees.**

7. Subject to the provisions of part III, whenever it shall appear to the Collector that any of the following acts should be done, ¹[or works (including any work of repair) executed], that is to say:—

- (1) that any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or that any embankment or water-course which is necessary for the protection or drainage of the neighbouring country, should be taken charge of and maintained by the officers of Government;
- ²(1a) that any embankment which connects public embankments or forms by junction with them part of a line of embankments or is necessary for the protection of the neighbouring country should be repaired;
- (2) that any embankment, or any obstruction of any kind, which endangers the stability of a public embankment or the safety of any town or village, or which is likely to cause loss of property by interfering with the general drainage or the flood drainage of any tract of land, should be removed or altered;
- (3) that the line of any public embankment should be changed or lengthened, or that any public embankment should be renewed, or that a new embankment should be constructed instead of any public embankment, or that any embankment should be constructed for the protection of any lands or for the improvement of any water-course, or that a sluice in any public embankment should be made;
- (4) that any sluice or water-course should be made, or that any public water-course should be altered for the improvement of the public health, or for the protection of any village or cultivable land;
- (5) that any road which interferes with the drainage of any tract of land should be altered, or that any water-course under or through such road should be constructed;

Powers of
Collector.

Taking
charge of
embankment
by Govern-
ment.

Repair of
embank-
ments.

Removal of
embankment
or obstruc-
tion.

Changing
line of
embank-
ment.

Improve-
ment of
drainage.

Alteration
of roads and
construction
of water-
courses.

he shall cause to be prepared estimates of the cost of such works, including such proportion of the establishment charges as may be chargeable to the works in accordance with the rules for the time

¹Substituted by s. 2 of the Bengal Embankment (West Bengal Amendment) Act, 1948 (West Ben. Act XI of 1948), for the words "or works executed".

²Inserted, *ibid.*

