

Bengal Act V of 1864

(THE CANALS ACT, 1864.¹)

REPEALED IN PART	..	Act XII of 1873. Act I of 1903.
AMENDED	..	West Ben. Act XLVIII of 1981.
ADAPTED	..	(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.

[8th June, 1864.]

An Act to amend and consolidate the law relating to the collection of tolls on canals and other lines of navigation, and for the construction and improvement of lines of navigation, within the provinces under the control of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate the law relating to the collection of tolls on ²* * canals and lines of navigation ³* * *, and to authorize the collection of tolls on such other lines of navigation as may hereafter be rendered subject to the provisions of this Act, and to provide for the construction and improvement of lines of navigation;

Preamble.

It is enacted as follows:—

1. The following words shall have the several meanings hereby assigned to them, unless where a contrary intention shall appear from the context, that is to say:—

Interpretation.

the word "vessel" shall include any ship, barge, boat, raft, timber, bamboos or floating materials, propelled in any manner:

Vessel.

the words "line of navigation" shall mean any navigable channel subject to the provisions of this Act:

Line of navigation.

¹LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal (see the title), and applies to navigable channels notified under section 2 or authorized under section 3.

²The word "the" was repealed by s. 3 and the Third Schedule of the Amending Act, 1903 (1 of 1903).

³The words "specified in the Regulations and Acts in the Schedule to this Act annexed"

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(Sections 2, 3.)

- Channel. ¹the word "channel" shall mean any river, canal, *khal*, *nala*, or waterway, whether natural or artificial, running or derelict, open or closed, navigable or otherwise, and shall include any part of its bed, slopes, berms, banks and any adjoining land owned by, or vested in, the State, and any construction or structure thereon;
- Engineer. ²the word "Engineer" shall mean the Engineer in charge of any canal or channel or any other Engineer specially appointed by the State Government to perform the functions of an Engineer under this Act;
- Person. the word "person" shall include any company, association or body of persons, whether incorporated or not.

[Number and gender.]—Rep. by sec. 3 and the Third Schedule of the Amending Act, 1903 (I of 1903).

What navigable channels may be rendered subject to provisions of Act.

2. It shall be lawful for the ³[State Government] from time to time, by notification to that effect published in the ⁴[*Official Gazette*], to declare that the provisions of this Act shall apply to any navigable channel in such notification;

and from and after such publication the provisions of this Act shall apply to, and be in force as regards, such navigable channel ⁵* * *

By whom navigable channels may be made.

3. It shall be lawful for the ¹[State Government] from time to time, to authorize any person to make and open any navigable channel, or to clear and deepen any navigable channel, and to stop any watercourse, or make any tracking path, or do any other act necessary for the making or improvement of any such channel; and any navigable channel made under this section shall be rendered subject to the provisions of this Act in the manner prescribed in the last preceding section.

¹The expression "channel" was substituted for the original by s. 3(i) of the Canals (West Bengal Amendment) Act, 1981 (West Ben. Act XLVIII of 1981).

²This expression was added by s. 3(ii), *ibid*.

³In the expression "Lieutenant-Governor of Bengal" the 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 words "Provincial Government" were substituted for the words "Provincial Government of Bengal" by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

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

⁵The rest of section 2 was repealed by s. 3 and the Third Schedule of the Amending Act, 1903 (I of 1903).

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The ¹[State Government] may take possession, as for a public purpose, of any land that may be necessary for the execution of any of the above mentioned works, under the provisions of ²* * any ³* * Act ⁴* * in force for the taking possession of land for public purposes.

Made of obtaining land for the purpose.

4. No action or suit shall be brought against the ⁵[Government] in respect of any injury or damage caused by, or resulting from, any act done under the last preceding section.

Bar of suit against Government.

5. Tolls, at such rates as shall be fixed in manner hereinafter mentioned, shall be paid in respect of all vessels entering upon, or passing along, any of the lines of navigation subject to the provisions of this Act:

Tolls to be paid on lines of navigation subject to Act.

Provided that such tolls shall be payable only so long as such line of navigation shall be open.

Proviso.

6. The ⁶[State Government] may fix, and from time to time alter, the rates at which such tolls shall be levied:

Provided that no toll shall be levied, and no alteration of any rate of toll shall have effect, until notice shall have been published in the ⁷[*Official Gazette.*], for such period as the said ⁸[State Government] may fix, of the intention to levy or alter such toll, and of the rate or place at which such toll is to be levied.

State Government may fix and alter rates of tolls.

7. Notification of the rates of toll and of the places of collection shall be at all times exhibited to public view at every toll-house where toll is levied under this Act, in the English, Urdu and Bengali languages.

Publication of rates of toll at every toll-house.

8. The ⁹[State Government] shall appoint such persons as ¹⁰[it] may think fit to collect tolls under this Act, and it shall be lawful for any person, so appointed to farm the collection of tolls to any other person, with the sanction of the ¹¹[State Government] or to employ any other person in such collection.

State Government to appoint persons to collect tolls, who may farm collection.

¹The words "Provincial Government" were first substituted for the words "Government of Bengal" by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The words and figures "Act 6 of 1857 (for the acquisition of land for public purposes) or of," in section 3, were repealed by s. 3 and the Third Schedule of the Amending Act, 1903 (I of 1903).

³The word "other" was repealed, *ibid.*

⁴The words "that may now or hereafter be," were repealed, *ibid.*

⁵The word "Crown" was first substituted for the words "Secretary of State for India in Council, or the Government" by para. 3 and Schedule 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.

⁶See foot-note 3 on page 2 *ante.*

⁷See foot-note 4 on page 2 *ante.*

⁸The 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.

⁹This word was substituted for the word "he" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

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The person to whom the collection of tolls may be farmed out, or who may be employed in the collection of them, shall have power to collect and be authorized to receive them, in the like manner as any person appointed as aforesaid.

Payment of
tolls how
enforced.

9. If any toll due under the provisions of this Act in respect of any vessel shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such vessel, and any furniture thereof, and to detain the same;

and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector or Deputy Collector of the district in which the seizure has been made, or other public officer duly authorized by Government in that behalf;

and on receipt of this report the Collector, Deputy Collector or other officer as aforesaid shall publish a notice appointing a day for the sale of the said vessel and any furniture thereof.

The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale; and if the toll and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown at or before the time of sale to the Collector, Deputy Collector or other officer as aforesaid, such officer shall sell the vessel and furniture seized, or so much thereof as may be necessary to pay the toll and also any expenses occasioned by non-payment.

So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll and for defraying the expenses occasioned by non-payment, shall be returned to the person in charge of the vessel.

Penalty for
evasion of
toll.

10. Any person who shall refuse or evade, or attempt to evade, any toll due under this Act shall be punished, on conviction before a Magistrate, with a fine which may extend to fifty rupees, or with simple imprisonment in lieu of fine which may extend to one month.

Rules
relating to
lines of
navigation.

11. It shall be lawful for the ¹[State Government] from time to time to make rules not repugnant to any law in force, and to repeal, alter and amend the same, for the management of any line of navigation subject to this Act, and for regulating the conduct of persons employed for any of the purposes of this Act; and the ²[State Government] may affix fines as penalties for the infringement of such rules not exceeding fifty rupees for any one infringement, or five rupees a day for any continuing infringement.

¹See foot-note 3 on page 2, ante.

²See foot-note 8 on page 2, ante.

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Such rules may contain directions for any of the following amongst other matters:—

- for determining the tonnage of vessels and their measurement;
- for fixing the number and the width of vessels to be allowed to pass into, or out of, or through, any line of navigation at one time or abreast;
- for determining the length of time during which vessels may remain stationary on any line of navigation and the amount of demurrage to be paid by vessels remaining stationary beyond such time;
- for regulating the mode in which and the places at which tolls are to be levied under this Act;
- for the removal of sunken vessels and obstructions; and
- for the storing and disposal of the cargo of vessels seized under this Act.

12. Rules shall not be passed until the same shall have been published in the '*Official Gazette*' for a period of six weeks, and after that time the rules shall be published as passed, with such alterations (if any) as to the ²[State Government] shall seem fit.

Publication of such rules.

The rules so published as passed shall not have effect until the expiration of two weeks after such last publication; and all rules so published shall, until the same be repealed or altered, be of like effect as if they were inserted in this Act.

Copies of all rules, in the English, Urdu and Bengali languages, shall be exhibited to public view at every place where toll is collected.

13. It shall be lawful for the ³[State Government] to appoint any person to be the supervisor of any line of navigation subject to the provisions of this Act; and such person shall be empowered to cut down and remove any tree which may have fallen or may be likely to fall into such line of navigation, and to remove any sunken vessel, and to prevent or remove any other nuisance or obstruction to navigation, of whatever description, whenever he may think it necessary.

Appointment of supervisor with power to remove obstruction.

14. Whenever such supervisor shall consider that the cutting down and removal of any tree or the removal of any other obstruction is necessary he may in cases of emergency at once remove the same, and may for that purpose enter on any private property.

Mode of exercising such power.

In cases not of an emergent nature, he shall serve a notice in writing on the owner or occupier of such private property, directing him to remove the same within a reasonable time.

¹See foot-note 4 on page 2, *ante*.

²See foot-note 3 on page 2, *ante*.

³See foot-note 1 on page 3, *ante*.

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If the owner or occupier cannot be found, notice may be served by notification to be affixed in some conspicuous place in the nearest village.

If the owner or occupier shall not remove the obstruction within the time given in the notice, the supervisor may proceed to remove it himself and may for that purpose enter on any private property.

Payment of all expenses of such removal may be enforced by the sale of the thing removed in the manner provided for the recovery of tolls in section 9 of this Act.

Supervisor may forbid construction of bandels, etc.

15. Whenever in the opinion of such supervisor the construction of any bandel or other contrivance for fishing, or for any other purpose, in any line of navigation is likely to cause obstruction to the free and safe transit of such line of navigation, he may, by a notice in writing to be served on the owner or person in charge of such bandel or other contrivance, or (if such owner or other person cannot be found) to be affixed at some conspicuous place in the nearest village, forbid the construction of such bandel or other contrivance.

Removal of encroachments.

¹15A. Notwithstanding anything contained in this Act, the Engineer or the supervisor or any other person duly authorised by the Engineer or the supervisor, as the case may be, in this behalf may remove, dismantle or demolish any embankment, fishery, fishing contrivance, huts, buildings, sluices, obstructions, encroachments or any other construction which, in the opinion of the Engineer or the supervisor, as the case may be, is likely to interfere with, counteract or impede any canal, channel or line of navigation in any manner.

Protection of action taken under this Act.

¹15B. No suit, prosecution or other legal proceeding shall lie against the Engineer or the supervisor or any other person authorised in that behalf by the Engineer or the supervisor, as the case may be, for anything which is in good faith done or intended to be done under this Act.

Penalty for causing encroachments in channels and obstructions to line of navigation.

²16. Any person who shall wilfully cause or shall aid in causing any encroachment or obstruction in any channel or line of navigation or who shall wilfully omit to remove such encroachment or obstruction after being lawfully required to do so shall, on conviction before a Magistrate, be punished with imprisonment of either description for a term not exceeding three years or with fine not exceeding one thousand rupees, or with both.

¹Sections 15A and 15B were inserted by s. 4 of the Canals (West Bengal Amendment) Act, 1981 (West Ben. Act XLVIII of 1981).

²Section 16 was substituted for the original by s. 5, *ibid.*

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(Sections 17-20.)

17. *[Recovery of fines.]—Rep. by s. 3 and the Third Schedule of the Amending Act, 1903 (1 of 1903).*

18. If any person shall be guilty of an offence against the provisions of this Act on any ¹[canal, channel or line of navigation] subject to this Act, such offence shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such ¹[canal, channel or line of navigation], or adjoining either side of that part of the ¹[canal, channel or line of navigation] in which such offence shall be committed;

Offences by whom punishable.

and, such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner, and to the same extent, as if such offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits;

and, in case any such Magistrate shall exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

²18A. Notwithstanding anything contained in any other law for the time being in force, an offence punishable under section 16 shall be cognizable and non-bailable.

Offences to be cognizable and non-bailable.

19. *[Indemnity for certain acts done heretofore in the collection of tolls, etc.]—Rep. by the Repealing Act, 1873 (XII of 1873).*

20. The Act may be cited as the Canals Act, 1864.

Short title.

Schedule of Regulations and Acts—Repealed.—*[Rep. by s. 3 and the Third Schedule of the Amending Act, 1903 (1 of 1903).]*

¹The words within the square brackets were substituted for the words "line of navigation" by s. 6, of the Canals (West Bengal Amendment) Act, 1981 (West Ben. Act XLVIII of 1981).

²Section 18A was inserted by s. 7, *ibid.*