

## Chapter-IV

## OFFENCES AND PENALTIES

33. (1) Whoever, without any lawful authority does any of the following acts within the delineated area of operation of an irrigation system, that is to say;

Offences and penalties

- (i) damages, alters, enlarges or obstructs any canal work or field drain;
- (ii) interferes with, increases or diminishes the supply of water in or the flow of water from, through, over or under, any canal or field drain;
- (iii) uses without authorization of competent authority, water outside the area of operation of a water users' association;
- (iv) neglects to take the proper precautions for the prevention of waste of water or interferes with the authorized distribution of water or uses such water in an unauthorized manner;
- (v) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;
- (vi) destroys or moves any level mark made, water-gauge or any apparatus fixed by the authority of a public servant or water users' association;
- (vii) passes, or causes any animals or vehicles to pass on or across any of the works, banks or channel of a canal or field drain contrary to rules except for cattle ghat wherever provided and roads designated for such use;
- (viii) obstructs the implementation of scheduled irrigation;
- (ix) encroaches upon the canal or field drain or damages the canal assets or Government property;
- (x) contravenes the provisions of this Act and rules made thereunder;

shall be punishable with imprisonment which may extend to six months or fine which shall not be less than one thousand rupees but which may extend to the cost of damage or both :

Provided that an additional fine not less than one thousand rupees may be imposed for a subsequent conviction of the same person for a like offence.

(2) Whenever the offence under sub section (1) is committed by a company or a society every person who, at the time the offence is committed was in-charge of, and was responsible to the company/society for performing its functions and having powers to perform such functions, as well as the company/society, shall be liable to be proceeded against and punished for such offence.

(3) Whenever any person is fined for an offence committed under this Act, the appropriate court may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

34. (1) The alpika samiti or the other upper level water users' association shall acts as the competent investigating agency for investigating the offences under sub-section (1) of section 33. The immediate upper Level water users' association or the competent canal officer as the case may be shall investigate the offences committed in the jurisdiction of a Lower Level water users' association.

Investigation of the offences

(2) The Chair-person of a water users' association, in whose jurisdiction the offence is committed, shall be bound to inform promptly to the competent investigating agency regarding the offence as soon as he has the knowledge of such offence and upon request made by the competent investigating agency, he shall assist it in the investigations.

(3) It shall be the duty of police officers, employees of the State Government and members of water users' association, in whose knowledge any offence, punishable under this Act is committed or attempted to be committed, to give immediate information to the competent investigating agency of such commission or, attempt and to assist the competent investigating agency in the exercise of its authority under this Act.

(4) A competent investigating agency shall start to investigate as soon as possible an offence punishable under section 33 committed within the area of the jurisdiction thereof.

(5) The competent investigating agency may exercise the same powers in respect of such investigation as an officer-in-charge of a police station may exercise in a cognizable offence under the provisions of the Code of Criminal Procedure 1973 as amended from time to time.

(6) If the Chairperson of a water users' association is not performing in accordance with the provisions laid down in the sub section (2) he may be treated as one of the accomplice in the offence by the competent investigating agency and be punished accordingly.

Institution of proceedings

35. No court shall take cognizance of an offence under section 34 except on complaint in writing made by the competent investigating agency as the case may be.

Compounding of offences

36. (1) On the application of a person, company or society accused of an offence under this Act, the immediate upper level water users' association or the competent canal officer as the case may be, may at any stage compound such offence by levying a composition fee not exceeding the fine which could be imposed for such offence :

Provided that no compounding of offences shall be done in case of such a person, company or society, who had committed an offence under this Act twice before or whose land had been benefited twice before by such wrongful acts.

(2) If the amount of the composition fee levied under sub section (1) remains unpaid, the immediate upper level water users' association or the competent canal officer, as the case may be, shall cause it to be recovered as arrears of land revenue.

Appeal

37. Any person aggrieved by the judgment or order under section 33 may prefer an appeal in the competent court in accordance with the provisions of the Code of Criminal Procedure 1973 as amended from time to time.

Liability when person using water unauthorized cannot be identified

38. If water supplied through a canal or a water course is used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified, the person on whose land such water has flowed if such land has derived benefit therefrom, or if such person cannot be identified or if such land has not derived benefit therefrom and the owner of such land has not informed timely about such unauthorized flow of water to the competent authority, all the persons chargeable in respect of the water supplied, shall be liable, or jointly liable, as the case may be, to the charges made for such use.

Liability when water runs to waste

39. If water supplied through a canal or a water course be suffered to run to waste, and if, after inquiry by water users' association, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the users chargeable in respect of the water supplied through such canal or water course shall be jointly liable for the charges made in respect of the water so wasted.

Charges recoverable in addition to penalties and decision of questions under sections 38 and 39

40. (1) All charges for the unauthorized use or waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

(2) All decisions under sections 38 and 39 shall be made by the water users' association subject to an appeal to the appellate officer.

41. Nothing in this Act shall prevent any person from being prosecuted and punished under any other law for the time being in force for any act of omission or commission punishable by or under this Act:

Punishment under any other law not barred

42. Unauthorized irrigation should be charged not less than 10 times the normal authorized use rate. If such unauthorized use is repeated by such users, the charge shall be at the rate equal to the amount of 20 times of the normal authorised rate for such repeat offences.

Penal charges

#### Chapter V

#### RESOLUTION OF CONFLICT

43. (1) The dispute or difference relating to constitution, management, powers and functions of a water users' association shall be resolved as follows:

Settlement of disputes

(i) Any dispute or difference arising between its members shall be resolved by the managing committee of the water users' association.

(ii) Any dispute or difference arising between a member of water users' association and a members of its managing committee shall be resolved by the immediate upper level water users' association or the competent canal officer, as the case may be.

(iii) Any dispute or difference arising between water users' associations shall be resolved by the immediate upper level water users' association or the competent canal officer, as the case may be.

(2) Every dispute or difference under sub-section (1) shall be disposed off within thirty days from the date of reference of the dispute in such manner as may be prescribed.

44. (1) Any party aggrieved by the decision made or orders passed by a water users' association may prefer an appeal to the immediate upper level water users' association or the corresponding competent canal officer, if such upper level water users' association does not exist.

Appeals

(2) Appeal under sub section (1) shall be made within thirty days from the date of the decision or the orders.

(3) Every appeal under sub section (1) shall be disposed off within thirty days from the date of filing there of .

(4) Any party aggrieved by the decision or order of the competent canal officer may appeal to appellate officer within 30 days from the date of such decision or order. The decision taken by the appellate authority shall be final and binding.

#### Chapter VI

#### MISCELLANEOUS PROVISIONS

45. No suit, prosecution or other legal proceedings shall be maintained against any employee, office bearer and member of managing committee of a water users' association at any level and Government employees in respect of anything done in good faith or purporting to be done under the provisions of this Act and the rules made thereunder.

Protection of things done in good faith:

Power of the State Government to issue directions	46. The State Government may issue such orders and directions of general nature not inconsistent with the provisions of this Act and as it considered to be necessary in furtherance of the objects of setting up water users' associations.	
Inquiry	47. The State Government if satisfied that any action of the water users' association involves violation of any provision of this Act or any irregularity it may, by order, direct the competent canal officer or any other officer to make inquiry or to hold like appropriate proceedings under this Act, and the competent canal officer or any other officer shall report to the State Government, the result of the inquiry or the proceedings within such period as may be specified in the order.	
Power to summon and examine witnesses	48. Any officer conducting any inquiry under this Act shall have power to exercise all such powers connected with the summoning and examining of witnesses as are conferred on a civil court under the provision of the Code of Civil Procedure 1908, and every such inquiry shall be deemed to be a judicial proceeding.	
Jurisdiction of civil courts	49. Except the claim for supply of water or specifically provided under this Act all claims against the State Government or the water users' associations in respect of anything done or any action taken under this Act may be tried by the civil court.	
Training	50. The State Government shall initially make arrangements for the capacity building of water users' associations for discharging their functions under this Act and may also facilitate subsequent training on the basis of full or partial payment.	
Power to make rules	51. The State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.	
Power to remove difficulties	52. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, for removing such difficulty, by order published in the Gazette direct that the provision of this Act shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary and expedient. (2) No order under sub section (1) shall be made after the expiration of a period of two years from the date of commencement of this Act.	
Overriding effect of this Act	53. The provisions of this Act shall apply notwithstanding anything to the contrary contained in the Northern India Canal and Drainage Act, 1873, The Uttar Pradesh Area Development Act, 1976 and the Uttar Pradesh Panchayat Raj (Jal Prabandh Samiti) Rules, 1989 or in any other law for the time being in force.	
Repeal and saving	54. (1) The Uttar Pradesh Participatory Irrigation Management Ordinance, 2008 is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under this Act as if the provisions of this Act were in force at all material times.	U.P. Ordinance No. 8 of 2008

## STATEMENT OF OBJECTS AND REASONS

In Uttar Pradesh Canal System of 74,000 K.M. length and 29,000 tube well are under the administrative control of the Irrigation Department of the State Government. The gross command area of Uttar Pradesh is 2.579 crore hectare of which irrigation facility is available to 66 percent. Of the total 1.697 crore hectare of irrigated area 26.3 percent is irrigated by canals. In spite of the said irrigation facilities the agricultural productivity of command area was inadequate as compared to other States of the Country. The canal irrigation could not work with its full skill the reason of which was inadequate maintenance including short realization of revenue and increasing expenditure on management and the total management by the State Government. The other aspects to be worried were large number of agricultural holdings in the command area due to which the farmers were not economically capable themselves to adopt modern means. As a result thereof the distribution of irrigation water, maintenance of record of irrigated area, recovery of revenue and management etc. had become very difficult for the government institutions. It was felt that the productivity of agricultural holdings of command area may continue to decrease unless the farmer of the command area form their associations and adopt modern agricultural process, irrigation and input management. Therefore for the proportional and desired utilization of canal water, and long term stability of irrigated agriculture with the co-operation of the community, it was necessary to secure community co-operation by forming water users' associations. It was, therefore decided to make a law to provide for constitution of the water users' association and empowering them to play their role as effective instruments of participatory irrigation management.

Since the State Legislature was not in session and immediate legislative action was necessary to implement the aforesaid decision, the Uttar Pradesh Participatory Irrigation Management Ordinance, 2008 (U.P. Ordinance No. 8 of 2008) was promulgated by the Governor on December 26, 2008.

This Bill is introduced to replace the aforesaid Ordinance.

By order,  
P.V. KUSHWAHA,  
Sachiv.

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