

**CHAPTER VIII**  
**PROTECTION OF IRRIGATION WORKS AND**  
**UNAUTHORISED IRRIGATION**

**(i) Protection of Irrigation Works**

Irrigation works constructed at considerable financial cost require protection against damage and other acts prejudicial to their maintenance. Acts such as interference with the supply of water, polluting the water, obstructing the free course of water in any irrigation work etc. constitute offences under the Indian Penal Code and the state irrigation statutes.

The pollution of water of any public spring or reservoir is an offence under the Indian Penal Code punishable with imprisonment up to three months or fine extending up to five hundred rupees or with both.<sup>1</sup> Similarly, committing mischief by doing acts injurious to irrigation works is punishable under the same Act with imprisonment extending up to five years or with fine or both.<sup>2</sup> Besides the offences under the Indian Penal Code, all the state irrigation statutes have made acts and omissions damaging the irrigation works offences and have variously prescribed punishment in terms of fine or imprisonment or both.

In creating offences and prescribing punishments, some statutes have classified the offences on the basis of gravity of the offence concerned and have laid down different quantum of punishment. For instance, under the Mysore Irrigation Act, offences such as interfering with the flow of water either by putting up a dam or by destroying or removing the apparatus for controlling the flow of water, neglect to prevent waste of the waters of the field channels and water courses, interference with the lawful use of field channel by the joint users are punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs. 1000/- or with both. Other offences which presumably are less grave are punishable with imprisonment extending up to two months or with fine extending up to Rs. 500/- or both<sup>3</sup>. Similarly the Orissa Irrigation Act<sup>4</sup>, the Bengal Irrigation Act<sup>5</sup> and the Bombay Irrigation Act<sup>6</sup> have laid down different penalties for different irrigation offences. On the other

1. The Indian Penal Code 1860, s. 277.
2. S. 430.
3. The Mysore Irrigation Act 1965, s. 55
4. The Orissa Irrigation Act 1959, ss. 39-45.
5. The Bengal Irrigation Act 1876, ss. 93-98.
6. The Bombay Irrigation Act 1879, ss. 61-66.

hand the Madhya Pradesh Irrigation Act<sup>7</sup>, the Rajasthan Irrigation and Drainage Act<sup>8</sup>, the Travancore-Cochin Irrigation Act<sup>9</sup>, and the Northern India Canal and Drainage Act<sup>10</sup>, have prescribed the same quantum of punishment for all the offences. Thus we find that for irrigation offences the punishment varies from one month to one year of imprisonment and in terms of fine from Rs. 50/- to Rs. 1000/-

Under section 70 of the Northern India Canal and Drainage Act, a large number of acts have been listed which, if committed without proper authority and voluntarily, have been made punishable with fine not exceeding fifty rupees or with imprisonment not exceeding one month or with both. These acts include damage, alteration, enlargement or obstruction to any canal or drainage work ; interference by increasing or decreasing supply of water from a canal ; interference or alteration of the flow of water in any river ; neglect in maintaining any water course for which one is responsible ; corrupting water of a canal ; not furnishing required labour in emergency ; removing or destroying level mark or water-gauge, passing vehicles or cattle against rules and violation of any rule made under the Act<sup>11</sup>. The administration of these penal provisions of the Act has given rise to case-law. For instance, in a case the question was whether preventing of the digging of a water course for taking water from a canal is punishable under section 70 of the Act. The court held that no offence had been committed. But wilful dismantling of a water course and cutting off the entire water supply would be punishable as an offence.<sup>12</sup> In another case, a question arose whether travelling over the canal inspection road without a permit was an offence under section 70 of the Act. The view of the court was that the mere fact of travelling without a licence was not an offence. But it would amount to an offence if a person continued to travel after he had been asked to desist therefrom.<sup>13</sup> Further, the court has laid down that in order to constitute an offence under section 70, it must be established (a) that there was a recognised water course which had been demolished or damaged by the accused<sup>14</sup>; (b) that he did so voluntarily ; and (c) that he did so without proper authority. In this connection, it has further been held by the court that the owner of some land, over which a water course runs, has by the mere fact of the said ownership, the 'proper authority' to deal with it including the right to damage it, unless the complainant

7. The Madhya Pradesh Irrigation Act 1931, ss. 92-100.

8. The Rajasthan Irrigation and Drainage Act 1954, ss. 55-59.

9. The Travancore-Cochin Irrigation Act 1956, ss. 31-35.

10. The Northern India Canal and Drainage Act 1873, ss. 70-74.

11. S. 70.

12. *Arura v. Emperor*, A.I.R. 1915 Lah. 392.

13. *Emperor v. Ch. Mohd. Hassan*, A.I.R. 1943 Lah. 298.

14. *Beni v. State*, A.I.R. 1966 All. 11.

was able to show that he had acquired a right to the user of the said water course either under the Act or under any other provision of law. In the latter case, the court has cast a heavy burden on the prosecution to prove the existence of such a provision or private agreement and unless this burden is discharged, the owner of the land cannot be said to have committed the act in question without 'proper authority'.<sup>15</sup> A right to obtain the passage of water over another man's property could be secured legally by the canal department acting on its own authority or it could be obtained on the application of a private person to the Divisional Canal Officer (D.C.O.) under section 21 of the Act. Such a right could also be obtained by a private agreement. But where one person merely permitted another to take water on a water course existing on the former's land and then discontinued the permission and stopped the water course, he was not guilty of an offence under section 70.<sup>16</sup>

Section 75 of the Act empowers the state government to make, cancel or alter rules from time to time to regulate various matters under the Act. Section 70(12) imposes a penalty for the violation of these rules. Question had arisen whether an act, though not specifically authorised nor expressly prohibited under the rules, committed by a person was punishable under this provision. In *Harnam Singh v. Emperor*,<sup>17</sup> the accused had used the water from a tank, which was filled with canal water, for building of a *pucca* house. It was held by the court that such an act was not punishable under section 70(12) as no rule had been framed to that effect. It had further been held that where allegation had been made for violation of rules generally without specifying the particular rule, and where violation of rule regarding taking turns of water was alleged and no authorised *warabandi* was produced, it was held by the court that a mere general accusation of breach of rules under section 70 was wholly inadequate to prove the offence.<sup>18</sup>

At times, confusion has arisen regarding the conviction of offenders because of duplication of penal provisions of irrigation statutes on the one hand and the Indian Penal Code on the other. The case on this point is *Mewa Ram v. Emperor*<sup>19</sup>. In this case, the accused persons were convicted under section 430 of the Indian Penal Code for committing the offence of mischief. What was proved in this case was that the accused persons forcibly opened the canal distributary and diverted the flow of

15. *Moola Singh v. Surendra Singh*, A.I.R. 1960 All. 656.

16. *Hukman v. Emperor*, A.I.R. 1921 Lah. 327. This case was followed in *Ramji Lal v. Emperor*, A.I.R. 1947 All. 102.

17. A.I.R. 1921 Lah. 187.

18. *Sandhi v. Emperor*, A.I.R. 1930 Lah. 54.

19. A.I.R. 1934 All. 687.

the water. But there was nothing to show that they permanently diminished the supply of the water. In these circumstances, the question was : under which provision of law accused persons should be penalised ; under section 430 of the Indian Penal Code or under section 70 of the Northern India Canal and Drainage Act. The question was material in view of the fact that if conviction were to be under the former, the punishment upto five years could be given whereas if conviction were to be under the latter, the maximum punishment could be only rupees fifty or one month imprisonment in default. Both the provisions relate to offence regarding diminution of supply of water. The court held that in order to bring the offence under section 430 of the Indian Penal Code, it was essential that the accused had committed mischief as defined under section 425 of the Code and also that the act committed was likely to cause a diminution of the supply of water for various purposes enumerated under section 430. In the instant case the court concluded that accused could be convicted only under section 70 of the Northern India Canal and Drainage Act. The reason advanced was that the action of the accused did not permanently diminish the utility of the distributary or affected it injuriously or that it practically diminished the supply of water. The court accepted its decision in an earlier case, *Tajuddin v. Emperor*<sup>20</sup>. It may be pointed out that the decision was mainly based on the ground that the offence was not of a very grave nature and there was no bad intention of diminishing the water supply permanently.

Of all the irrigation Acts, the Madhya Pradesh Irrigation Act,<sup>21</sup> and the Orissa Irrigation Act,<sup>22</sup> empower the irrigation officers to compound irrigation offences by accepting a sum of money not exceeding Rs. 50/- and Rs. 200/- respectively. In Madhya Pradesh, the irrigation *panchayats* are also empowered to compound offences where the damage does not exceed Rs. 30/-<sup>23</sup>. In compounding the offence, the irrigation officer is required to follow the procedure prescribed under the rules.<sup>24</sup> When a person is reasonably suspected of having committed an irrigation offence and the irrigation officer on enquiry considers that it may be compounded, he shall issue a notice in writing under his signature to such offender, requiring him to attend at the time and place stipulated in the notice.

20. 7 Cr. L.J. 296.

21. The Madhya Pradesh Irrigation Act 1931, s. 99.

22. The Orissa Irrigation Act 1959, s. 45.

23. The Madhya Pradesh Irrigation Act 1931, s. 62(3). The Rules framed under section 62 of the Act list a number of offences which might be compounded by these *panchayats* : See Notification No. 9-F-A-I, dt. 24th. Feb. 1932 published in Part I of of the *Central Province Gazette*, dated 27th Feb. 1932.

24. See the above *Gazette* for rules framed under section 99 (3) of the Madhya Pradesh Irrigation Act.

The notice is to be served on the offender by a person deputed by the irrigation officer. The person to whom the notice is tendered is required to sign it or put his thumb mark by way of acknowledgement and return it to the server. If he refuses to accept or evades the service of notice, the server is required to report the fact to the irrigation officer. When the offender attends and is willing to compound, the irrigation officer shall fix the amount within the maximum limit laid down by the law. The amount fixed is to be paid immediately or within the time prescribed by the irrigation officer.

Generally the offences are divided into cognizable<sup>25</sup> and non-cognizable<sup>26</sup> offences. The irrigation offences under both the Indian Penal Code as well as the irrigation Acts are cognizable offences which means that the police, on receipt of a complaint about the commission of the offence can arrest the offender without warrant and can proceed to investigate without requiring the sanction of the court. If the police arrests the offender, the latter has to be produced before the nearest magistrate having jurisdiction to try the offence within twenty four hours of such arrest.<sup>27</sup> But when the Criminal Procedure Code deals with procedure relating to trials, it speaks of summons case<sup>28</sup> and warrant case.<sup>29</sup> This division is based on the nature and measure of punishment attached to the offence. It may be pointed out that except for the offence under section 430 of the Indian Penal Code, the procedure in respect of all the other irrigation offences is summons-case one. The summons case procedure is less formal and elaborate than the warrant case procedure. For instance, there need be no formal charge and even a formal plea by the accused is not necessary. On the appearance of the accused the particulars of the offence are stated to him and he is asked to show cause why he should not be convicted.

25. The Code of Criminal Procedure 1898, section 4(f) defines "cognizable offence" and "cognizable case" as follows:  
"Cognizable offence" means an offence for, and "cognizable case" means a case in which a police officer, within or without the presidency towns may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant.
26. The Code of Criminal Procedure, section 4 (n) defines "non-cognizable offence" as follows :  
"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant.
27. This is a requirement of the fundamental right of personal liberty of every individual. See Constitution of India, article 22(2).
28. The Code of Criminal Procedure 1898, section 4(v) defines "summons-case" as "a case relating to an offence, and not being a warrant case".
29. The Code of Criminal Procedure, section 4 (w) defines "warrant-case" as "a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding one year".

If he admits the commission of offence and does not show cause why he should not be convicted, he can be convicted at once. If the magistrate, however, does not on such admission convict him or if the accused does not make such admission, the magistrate proceeds to hear the complainant and take evidence in support of the prosecution and then to hear the accused and take such evidence as he produces in defence. On the basis of the whole evidence thus taken, it is for the magistrate either to acquit or convict the accused. The evidence in summons cases is not required to be taken down verbatim ; a memorandum of the evidence is enough. Thus we find that the method of preparing the record in a summons case is less formal. The purpose of the whole scheme is that procedure should be less formal for expediting the decision of cases.

In practice, however, even the less formal and expeditious summons-case procedure has been found to be cumbersome in respect of irrigation offences. The enforcement of the penal provisions of the irrigation Acts is the responsibility of the irrigation officials and revenue officials. When an irrigation offence is committed, the irrigation officer has to lodge a complaint with the police and then the revenue official who is empowered to try such offences conducts the trial. Ordinarily revenue official has manifold duties and responsibilities in a revenue sub-division and thus delay occurs in the trial. Consequently the procedure for inflicting punishment on such offenders becomes long-drawn as a result of which the effectiveness of punishment is adversely affected. Quick disposal of irrigation offences is a necessity to improve the efficacy of irrigation administration. The provision for corporal punishment as well as imposition of fines under the irrigation Acts may hardly prove to be of deterrent force if the procedure for the award of such punishments is cumbersome and tardy. The dual departmental control for the enforcement of penal provisions of the Acts must cease. The vesting of magisterial powers in canal officers will not be proper as that will amount to combining the functions of prosecutor and judge in the same person. Therefore, it may be suggested that among the serving magistrates of the district, one or more may be specifically assigned the work of trying irrigation offences. This measure will considerably expedite the disposal of irrigation offences and engender fear and respect for law and authority.

The lacuna in most of the irrigation Acts, namely, the absence of power to compound offences should be remedied.

#### **(ii) Unauthorised Irrigation**

Almost all the irrigation Acts provide for the recovery of penal rates for the unauthorised use of water. Generally, unauthorised use is done by cutting a canal or water course embankment. It is not always possible

to identify the person whose act or omission has resulted in the unauthorised use of water. The law provides that, in such cases, a penal water rate can be levied on the occupier of land benefited by the unauthorised flow. The assessing authority can proceed to impose a rate on unauthorised use of water only when it is not possible to identify the person whose act or neglect had made the unauthorised use possible. If the persons could be identified, the assessment under these provisions would be *ultra vires*. Thus, where an assessment was made under section 79 of the Bengal Irrigation Act (which deals with the assessment of water rates for unauthorised use of water from a village channel), on the ground that the canal water was used without any authority by the appellants by making cuts and holes in the adjoining *ail bundhs*, it was held in *Kishori Ranjan v. Province of Bengal*,<sup>30</sup> that no assessment could be made under the provision, as the person who had used water unauthorisedly could be identified. It was further held that the validity or otherwise of the assessment was to be judged by what the assessing authorities thought and the basis on which they acted at the time of imposing the assessment. If the assessing authorities proceeded on the basis that the persons who were responsible could be identified, an assessment under this section would be *ultra vires* whether the identity of those persons could be established or not.

But where an unauthorised use has occurred, the persons not guilty of any injury to the canal or of any act on account of which the unauthorised use has occurred, would be liable for the charge for unauthorised use of water. The fact that such persons did not cause the breach in the canal and were ignorant of the breach was quite immaterial. This was so held in *Balbir Singh v. Executive Engineer*<sup>31</sup>. The reason is that the basis of assessment for unauthorised use of water is not the actual action or omission of any person or his knowledge about the act, omission or use, but the fact of getting benefit by the water used in unauthorised manner.

The penal rates range from just the ordinary rate in some states to as much as ten to thirty times the ordinary rates in others. An appeal against the assessment of penal rate by canal officers lies to the collector. It may be suggested that the existing provisions for the assessment and recovery of penal rates for unauthorised use or wastage of water should be retained. Where penal rates are low, they should be raised and made really penal. Further, the canal officers should be more vigilant in stopping canal supplies to any person responsible for the unauthorised use of canal water. The Second Irrigation Commission has recommended for adoption

30. 61 C.W.N. 458. Similar is the position under the Northern India Canal and Drainage Act 1873. See *Punjab Province v. Municipal Committee*, A.I.R. 1947 Lah. 236.

31. A.I.R. 1957 All. 204.

by other states the method prevalent in Haryana of extensive patrolling and inspection of canals and channels by flying-squads of officers adequately armed. These flying-squads carry out surprise night inspections and whenever offenders are caught, heavy penalties are imposed on them. The essence of the system is surprise. Since unauthorised irrigation is a growing menace similar system of patrolling should be adopted in other states<sup>32</sup>.

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32. *Report of the Irrigation Commission 300 (1972).*



**TABLE**  
*Provisions relating to Protection of Irrigation Works and  
Unauthorised Irrigation*

<i>S. No.</i>	<i>Statutes</i>	<i>Reference</i>	<i>Application</i>
1.	Andhra Pradesh (Telangana Area) Irrigation Act 1957 F.	Parts V, VII, VIII, ss. 37-57	Telangana area of the State of Andhra Pradesh
2.	Bengal Irrigation Act 1876	Part. VII, ss. 79-81, Part IX, ss. 93-98	States of West Bengal and Bihar
3.	Bihar Lift Irrigation Act 1956	Part VII, ss. 25-27, Part IX, ss. 35-39	State of Bihar
4.	Bombay Irrigation Act 1879	Part VI, ss. 45-57, Part VIII, ss. 61-66	States of Gujarat and Maharashtra.
5.	Jammu and Kashmir Canal and Drainage Act 1963	Part V, ss. 31-32A, Part X ss, 66-69.	State of Jammu and Kashmir.
6.	Madhya Pradesh Irrigation Act 1931	Chapter V, ss. 43-44, Chapter X, ss. 91-100	State of Madhya Pradesh
7.	Mysore Irrigation Act 1965	Chapter VIII, ss. 46-54, Chapter IX, ss. 55-62, Chapter X, ss. 64	State of Mysore
8.	Northern India Canal and Drainage Act 1873	Part V, ss. 33-35, Part X, ss. 70-74	States of Uttar Pradesh Punjab and Haryana and Union Territory of Delhi
9.	Orissa Irrigation Act 1959	Chapter V, ss. 31-32 Chapter VI, ss. 39-45	State of Orissa
10.	Rajasthan Irrigation and Drainage Act 1954	Part V, ss. 33-35, Part X, ss. 55-59	State of Rajasthan
11.	Travancore-Cochin Irrigation Act 1956	Part VII, ss. 31-35	State of Kerala