

Bengal Act XIII of 1936

[THE BENGAL WATER HYACINTH ACT, 1936.]¹

AMENDED

Ben. Act IV of 1941.

The Government of India
(Adaptation of Indian Laws)
Order, 1937.

ADAPTED

The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.

The Adaptation of Laws
Order, 1950.

[28th May, 1936.]

An Act to provide for the destruction of water hyacinth in Bengal.

WHEREAS it is expedient to make better provision for preventing the spread of water hyacinth in Bengal and for its destruction;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Water Hyacinth Act, 1936.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the ⁴[State Government] may, by notification, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Authorised Officer" includes the Collector and any person authorised by the Collector to exercise the functions of an Authorised Officer under sections 7, 8, ⁵[9 and 13A];

Short title,
extent and
commence-
ment.

Definitions.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 9th December, 1935, Part IV, page 96; and for report of the Select Committee, see the *Calcutta Gazette* of 1936, Pt. IV, page 52; and for Proceedings of the Bengal Legislative Council, see the Proceedings of the Bengal Legislative Council, Vol. XLVII, No. 2, page 286, and *ibid.*, Vol. XLVIII, No. 1, pages 76 and 353.

²The words within square brackets were substituted for the word "Bengal" by para. (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This Act came into force on the 1st August, 1936, vide notification No. 4376 Agr., dated the 9th July, 1936, published in the *Calcutta Gazette*, dated the 16th July, 1936, Pt. I, page 1733.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁵The word, figures and letter within square brackets were substituted for the word and figure "and 9" by s. 2 of the Bengal Water Hyacinth (Amendment) Act, 1941 (Ben.

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(Sections 3-5.)

- (2) "Collector" includes any person appointed by the '[State Government] to exercise all or any of the functions of a Collector under this Act;
- (3) "Court" means a principal Civil Court of original jurisdiction unless the '[State Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;
- (4) "notification" means a notification published in the ²[*Official Gazette*];
- (5) "notified area" means an area specified in a notification issued under section 7;
- (6) "occupier" means the person in actual occupation of any land, premises or water or, if there is no one in actual occupation, the person having the right of occupation of the land, premises or water or his authorised agent; and includes a local authority, a railway administration and a company in actual occupation or having such right of occupation;
- (7) "prescribed" means prescribed by rules made under this Act; and
- (8) "water hyacinth" means the plant botanically known as *Eichhornia crassipes*—Solms and includes the seed and any part of the plant.

Prohibition
of bringing
water
hyacinth
into West
Bengal.

3. No person shall, himself or by any other person on his behalf, bring water hyacinth into ¹[West Bengal].

Prohibition
of sale, etc.,
of water
hyacinth.

4. No person shall, directly or indirectly himself or by any other person on his behalf, sell, expose for sale or keep for sale water hyacinth.

Prohibition
of growing
or cultivation
of
water
hyacinth.

5. No person shall grow or cultivate water hyacinth in any garden or in any ornamental water or receptacle.

¹See foot-note 4 on page 1, ante.

²The words within square brackets were substituted for the words "*Calcutta Gazette*" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 2 on page 1, ante.

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(Sections 6-8.)

6. No person shall, himself or by any other person on his behalf, remove any water hyacinth—

- (a) to any land, premises or water in his occupation except with a view to its being destroyed, or
- (b) to any land, premises or water in the occupation of another person except for the purpose aforesaid and with the consent of such other person, or
- (c) to any land, premises or water in the occupation of ¹[any Government] except for the purpose aforesaid and with the consent of the Collector.

Prohibition of removing water hyacinth from one place to another.

Explanation.—The expression “remove water hyacinth” includes the causing of it to float by water from one place to another.

7. (1) The ²[State Government] may, by a notification, direct that within such local area and after such period as may be specified in the notification, no occupier shall allow water hyacinth to exist on any land, premises or water in his occupation.

Power to State Government to prohibit occupiers from allowing water hyacinth to exist within certain local area.

(2) The substance of such notification shall be published in the notified area in such manner as may be prescribed.

(3) After the issue of a notification under sub-section (1) every occupier in the notified area shall cause any water hyacinth that may, from time to time, be present on any land, premises or water in his occupation to be removed or destroyed.

(4) If any occupier in a notified area fails to comply with the provisions of this section in respect of any land, premises or water in his occupation, any Authorised Officer may, together with such persons as he may consider necessary for the purpose, enter on such land, premises or water and take such measures as are in his opinion necessary for removing or destroying the water hyacinth.

8. (1) With a view to facilitating the discovery or destruction of water hyacinth, an Authorised Officer may, subject to any rules made under this Act, by a notice served in the prescribed manner, direct an occupier of any land, premises or water within a notified area to cause—

- (a) any branches of trees or shrubs on any such land or premises which overhang the edge of any river, stream, waterway, ditch, marsh, *bil*, lake, tank, pond, pool or pit to be cut back and any undergrowth or jungle thereon to be removed from such edge, within a distance specified in the notice, or

Cutting of branches of trees or shrubs to facilitate discovery or destruction of water hyacinth.

¹The words within square brackets were substituted for the word “Government” by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 4 on page 457. *ante*.

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(Sections 9-12.)

- (b) any vegetation appearing above the surface of any such water to be removed from the water,

within such period as may be specified in the notice.

(2) If such occupier fails to comply with a notice under sub-section (1), any Authorised Officer may, together with such persons as he may consider necessary for the purpose, enter on such land, premises or water and cause the branches of such trees or shrubs to be so cut back and such undergrowth or jungle or such vegetation to be removed.

Power to
Authorised
Officer to
enter on
land, etc.,
in certain
circum-
stances.

9. An Authorised Officer may at any time, together with such persons as he may consider necessary for the purpose, enter on any land, premises or water in a notified area and take such action as may be necessary in order to ascertain—

- (a) whether any water hyacinth is present, and
(b) whether the measures prescribed for the removal or destruction of water hyacinth or any directions issued on the occupier under sub-section (1) of section 8 have been carried out.

Restriction
on entry by
Authorised
Officer.

10. An Authorised Officer shall not enter under sub-section (4) of section 7 or sub-section (2) of section 8 or under section 9 into any dwelling house or any enclosed courtyard or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier twenty-four hours' notice in writing of his intention to do so.

Recovery
of costs
for works
done by
Authorised
Officer.

11. Any costs incurred by the Authorised Officer for carrying out any measures under sub-section (4) of section 7 or sub-section (2) of section 8 shall be recoverable from the occupier as a public demand payable to the Collector.

Power to
Collector
to take
possession
of land or
water for
recovery
of costs.

12. If the Collector fails to recover, or considers it inadvisable to recover, any costs under section 11 he may, subject to any rules made under this Act, in his discretion, enter on and take possession of any land or water in respect of which the costs are due after giving notice to the occupier and retain possession thereof and turn the same to profitable account until the said costs together with interest thereon at such rate, not exceeding six and a quarter *per cent. per annum* as the '[State Government] may prescribe, have been realized from the profits or paid by the occupier.

¹ See foot-note 4 on page 1 *infra*.

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(Sections 13, 13A.)

13. (1) Subject to any rules made under this Act, the Collector may permit or cause fences, barriers or storage pounds to be constructed in or along the edge of any river, stream, waterway, lake, tank, marsh or *bil* whether public or private within a notified area, and booms or floating barriers to be placed or maintained therein, for the purpose of checking or diverting the movement of water hyacinth.

Construction
of fences,
barriers, etc.

(2) No person shall remove or damage any fences, barriers, storage pounds, booms and floating barriers constructed, placed or maintained under sub-section (1).

13A. (1) An Authorised Officer may cause a scheme and estimate to be prepared for the construction and maintenance of any work referred to in sub-section (1) of section 13.

Cost of
work under
section 13.

(2) As soon as possible after the preparation of the scheme and estimate the Authorised Officer shall prepare a preliminary list of apportionment, showing the names of persons likely to be benefited by the work and the portion of the cost thereof approximately payable by each such person, and shall, in the prescribed manner, publish a general notice inviting objections to the scheme, estimate, or list of apportionment by any person interested in, or likely to be benefited by, the scheme within such period as may be specified in the notice.

(3) The Collector shall, as soon as possible after the expiry of the period specified in the notice published under sub-section (2), proceed in the prescribed manner to consider any objections received in regard to the scheme, estimate or preliminary list of apportionment.

(4) Subject to such rules as may be prescribed in this behalf, the Collector may accept the scheme, estimate and list of apportionment with such modifications as he may deem necessary, and the decision of the Collector thereon shall be final.

(5) On the completion of the work referred to in sub-section (1) of section 13, the cost of the work shall be entered by the Authorised Officer in a final list of apportionment in accordance with the decision of the Collector under sub-section (4), and that portion of the cost which is so entered against the name of each person in the said list shall be the amount recoverable from that person.

(6) The amount referred to in sub-section (5) shall be recovered in the manner provided in sections 11 and 12.

Explanation.—For the purposes of this section 'cost' includes—

- (a) the total expenditure incurred for surveys, plans, estimates, valuations and incidental expenses connected with any scheme, whether antecedent or subsequent to the adoption of the scheme, and all expenses incurred in its execution;

¹This new section was inserted by s. 3 of the Bengal Water Hyacinth (Amendment)

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(Sections 14-16.)

2. (b) the estimated capitalized cost of the maintenance of the work;
- (c) the total expenditure incurred by the Authorised Officer in connection with the scheme, inclusive of any preliminary inquiry and the apportionment of cost and its recovery;
- (d) interest on all recoverable deposits or advances made by the '[State] Government, or by a local authority, or any person, at such rates and from and to such dates as may be fixed by the '[State] Government.

Repair
of *ails*.

14. Subject to any rules made under this Act, the Collector may by a general notice published in the prescribed manner direct that within the whole or a specified part of a notified area all occupiers of fields within one hundred feet of any river, stream, waterway, ditch, marsh, *bil*, lake, tank, pond, pool or pit shall by a date specified in the notice repair the small embankments commonly known as *ails* surrounding such fields.

Growing of
hedges of
dhaincha
or other
plants
against
the ingress
of water
hyacinth.

15. If, in the opinion of the Collector, it is necessary for the protection of any area against the ingress of water hyacinth that hedges of *dhaincha* (*Sesbania aculeata*—Pers) or of any other plant that may be prescribed should be grown on any land in a notified area, he shall prepare a scheme giving particulars of the proposed alignment of such hedges and the boundaries of the area to be protected, and after publishing the scheme in such manner as may be prescribed and considering any objections submitted thereto may by a written notice served in such manner as may be prescribed direct any occupier of such land to grow thereon a hedge of such description by such date and for such period as may be specified in the notice.

Power to
Collector
to use
land for
destruction
of water
hyacinth.

16. (1) If, in the opinion of the Collector, it is necessary to use any waste or arable land in a notified area for the destruction thereon of water hyacinth removed from any water in the same or another notified area he may, subject to any rules made under this Act and after service of a notice in the prescribed manner on the occupier of such land specifying in the notice the purpose, and the term not exceeding six months, for which the land is needed, enter upon and take possession of the land and use it or permit it to be used for the said purpose.

(2) If any material damage or injury is caused thereby to the occupier of such land, the Collector shall pay to him such compensation as shall be agreed upon in writing between the Collector and such occupier:

Provided that in assessing such compensation the manorial value of the water hyacinth destroyed thereon shall be taken into account.

¹This word was substituted for the word "Provincial" by para. 4(1) of the Adaptation

The Bengal Water Hyacinth Act, 1936.

of 1936.]

(Sections 17-22.)

(3) If the Collector and the occupier differ as to the sufficiency of the compensation or if the Collector and two or more claimants for compensation differ as to the apportionment thereof, the Collector shall refer the matter to the decision of the Court.

(4) On the expiry of the term referred to in sub-section (1) the Collector shall restore such land to the occupier after causing to be destroyed all water hyacinth that may have been removed thereto.

17. Notwithstanding anything contained elsewhere in this Act, any occupier in a notified area may keep on any land or in any water in his occupation water hyacinth for destruction.

Keeping
of water
hyacinth
for the
purpose of
destruction.

18. Notwithstanding anything contained elsewhere in this Act, any person or class of persons authorised by the '[State Government] in this behalf may, subject to rules made under this Act, sell, remove or keep water hyacinth for a prescribed purpose.

Sale, etc.,
of water
hyacinth
in certain
circumstances.

19. When water hyacinth is to be removed or destroyed under the provisions of this Act, such removal or destruction shall be in the prescribed manner.

Method of
removal or
destruction
of water
hyacinth.

20. No prosecution under this Act shall be commenced without the previous sanction of the Collector or after three months from the date of the alleged offence.

Prosecutions.

21. An Authorised Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Authorised
Officers to
be deemed
public
servants

Act XLV of
1860.

22. No suit, prosecution or other legal proceedings shall lie against the Collector or any Authorised Officer or persons accompanying an Authorised Officer for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Indemnity.

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(Sections 23, 24.)

Power of
State
Government
to make
rules.

23. (1) The ¹[State Government] may make ²rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the ¹[State Government] may make rules to provide for all or any of the following matters, namely:—

- (a) the manner of publication of the substance of a notification under sub-section (2) of section 7, of a general notice ³[under sub-section (2) of section 13A or] under section 14 and of a scheme under section 15;
- (b) the exercise of power by an Authorised Officer under sub-section (1) of section 8;
- (c) the manner of service of a notice under sub-section (1) of section 8, section 15 or sub-section (1) of section 16;
- (d) the exercise of powers by the Collector under sections 12, 13, ⁴[13A], 14 or 16;
- (e) the rate of interest payable under section 12;
- (f) the plans for growing hedges to prevent ingress of water hyacinth under section 15;
- (g) the purposes for which, and the conditions subject to which, water hyacinth may be sold, removed or kept under section 18; and
- (h) the manner of removal and destruction of water hyacinth under section 19.

(3) In making any rule under this section the ¹[State Government] may provide that a breach of it shall be punishable with fine which may extend to fifty rupees, and, where the breach is a continuing one, with a further fine which may extend to five rupees for every day after the first during which the breach continues.

Penalties.

24. Whoever contravenes any of the provisions of this Act mentioned in the first column of the following table shall, on conviction, be liable to a fine not exceeding one hundred rupees or in default to imprisonment not exceeding one month, and upon a second or subsequent conviction to a fine not exceeding two hundred rupees or in default to imprisonment not exceeding two months.

¹See foot-note 4 on page 1 ante.

²For rules made under this section, see notification No. 4848 Agri., dated 25.7.36, published in the *Calcutta Gazette* of 1936, Part I, page 1888, as subsequently amended from time to time.

³The words, figures, letter and brackets within square brackets were inserted by s. 4(a) of the Bengal Water Hyacinth (Amendment) Act, 1941 (Ben. Act IV of 1941).

⁴For s. 13A, see Act No. 19 of 1941, which was inserted by s. 4(b) of the

The Bengal Water Hyacinth Act, 1936.

of 1936.]

(Section 24.)

Explanation.—The entries in the second column of the following table headed "Subject" are not intended as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions, but are inserted merely as references to the subject thereof:—

1	2
Provisions of the Act.	Subject.
Section 3	Bringing of water hyacinth into '[West Bengal].
Section 4	Sale, etc. of water hyacinth.
Section 5	Growing or cultivation of water hyacinth.
Section 6	Removal of water hyacinth to any land, premises or water.
Section 7, sub-section (3)	Failure to remove or destroy water hyacinth.
Section 8, sub-section (1)	Failure to cut branches of trees or shrubs, and to remove undergrowth, jungle or vegetation.
Section 13, sub-section (2)	Removal of or damage to any fences, barriers, storage pounds, booms and floating barriers.
Section 14	Failure to repair <i>aills</i> .
Section 15	Failure to grow hedges of <i>dhaingha</i> or other plants for protection against the ingress of water hyacinth.

¹See foot-note 2 on page *ante*.