

The Punjab Land Preservation Act, 1900

Punjab Act 2 of 1900

h314

LEGISLATIVE HISTORY 6

- Amended Punjab Act 4 of 1905 and 7 and 8 of 1926
- Amended by Government of India (Adaptation of Indian Laws) Order, 1937
- Amended by Punjab Act 11 of 1941
- Amended by Punjab Act 4 of 1944
- Amended by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948 (G.G.O. 40)
- Amended by Punjab Act 7 of 1950
- Amended by the Adaptation of Laws Order, 1950
- Amended by the Adaptation of Laws (Third Amendment) Order, 1951
- Amended by Punjab Act 1 of 1951
- Extended to the territories which immediately before the 1st November, 1956 were comprised in the State of Patiala and East Punjab States Union, by Punjab Act No. 18 of 1958

An Act to provide for the better preservation and protection of certain portions of the territories of [Haryana].

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[-]

It is hereby enacted as follows :-

Preliminary

1. Short title and commencement. - (1) This Act may be called the Punjab Land Preservation [-] Act, 1900, and

[(2) It shall extend to the whole of the State of [Haryana].

[(3) It shall come into force at once.]

Object & Reasons6

Statement of Objects and Reasons. - "In consequence of the destruction of the undergrowth and forests on the Siwalik mountain range the surface soil has been largely washed away from the high-lands by rains, and the injurious action of mountain torrents and streams on the low lands has been greatly increased. The fertile plains below the water-shed of the Siwalik range are being damaged and deteriorated by erosion, deposits of sand and boulder, and sand drift. The injury done to the rich region of the Jullundur Doab by what are known as *chos* (torrent beds) has caused much anxiety to the Government for many years.

It is now for the first time that any attempt has been made to appraise by figures and statistics of the damage caused to Government and to the people by these destructive torrents. The following summary may be quoted from the Financial Commissioner's letters -

'During the last period of 10 to 12 years, on account of the chos in Hoshiarpur and Jullundur, 16650 acres of land have been converted into *cho* beds or have totally lost their productive powers while 23,260 acres in addition have been damaged. Government has remitted Rs. 11,825 land revenue, and has in addition suffered, or is about to suffer, by reductions in the rent-rolls of the two districts an annual loss of Rs. 34,729 land revenue, while the people have lost at a low estimate over 20 lakhs of rupees in the market value of their land. As things are, there is no hope of reclamation of any recovery of these losses. The destructive influence of the chos is extending and becoming stronger. To leave out of account the great damage that would follow the blocking up of the East Beyn, the direct damage by *chos* in the next 20 or 50 years is likely to be proportionately much more serious and extensive than that which has occurred in the past 10 or 12 years. The capitalised value of the annual land revenue which Government must lose in the near future, if nothing is done, amounts to many lakhs of rupees. A stronger case for action can hardly be required, -

Upto the present the difficulty of cost has defeated proposals aimed at the reboisement of the hills from which the *chos* originate, and this was because the proposals have been directed to the out-and-out acquisition on behalf of the Government of the areas to be treated. It will be seen that the measures now recommended involve no acquisition of land, outside the actual beds of streams and torrents, on behalf of the Government, but are designed to secure the application of forest conservancy to areas belonging to zamindars. Doubtless, this was the very object with which Chapter IV of the Forest Act was framed, but that Chapter fails in its object in the circumstances of the present case. The procedure of section 35 must be put aside because, if resorted to for over three years, as would be necessary in the present case, Government may be compelled to acquire and pay for the areas subjected to Forest conservancy. The procedure of section 38 also fails, because it makes no provision for cases such as we have in Hoshiarpur, in which the zamindars' ownership of the forests is subject to rights of tenants and others which cannot be assigned away or interfered with without the consent of the latter. Moreover, even if the owners were competent to assign to Government full control over the forests to the extent of allowing them to be reserved, it would be necessary, in the process of reservation, to make adequate provision elsewhere for pasture rights and such provision Government cannot make in this locality.

What is required, therefore, is an Act which will enable Government, on payment of reasonable compensation, to extinguish pasture and wood-cutting rights and rights to break up new land for cultivation in forest areas which are not property of Government and to prevent the further growth of such rights, and with this object the present Bill has been framed. The operative clauses, it will be seen, are clauses 4, 5 and 9. Clauses 4 and 5 provide for (1) general prohibitions and restrictions contemplated as applicable to special limited areas. Clause 7 is designed to prevent the growth of new rights within areas to which clause 4 or clause 5 is applied. All the remaining clauses of the Bill may be described as procedure clauses. As regards clauses 9 - 11, it is to be noted that they are intended to apply to the *cho* beds in the plains, where the destruction of land, crops and property occurs, and not to be *cho* sources in the hills where the restrictions contemplated by clauses 4 and 5 will be applied. When the proposals which have led to the present Bill were being initiated, the Financial Commissioner was requested to consider whether the land-holders in the plains who would be benefited, or at any rate protected from further loss by the measures proposed to be undertaken, should not be called

upon to contribute towards the cost of these measures incurred by Government. The benefit in this case is not accompanied by any of the restrictions usually entailed by forest conservancy as it is the residents of the hills and not the zamindars in the plains who will, as above explained, be affected by these restrictions. The Financial Commissioner arrived at the conclusion, in which the Lieutenant-Governor concurred, that no scheme for levying a contribution would be feasible or could be worked with justice and without great inconvenience. A suggestion was, however, made and has been embodied in clauses 9 - 11 of the Bill, that the land holders of the plains might be required to surrender to Government their proprietor rights in the sandy *cho* beds. The *cho* beds are worthless at present and if nothing is done will always remain worthless. It is believed that in many cases the measures to prevent erosion and promote tree growth in the hills might with advantage be supplemented by experiments in the *cho* beds themselves of the nature of grass planting operations, protection from grazing and possibly training not only a free field of action but also the inducement that the land reclaimed in the *cho* beds shall become the property of the State. In this way only will it be possible to exact any contribution benefited by the Bill. The original proposal as above described has been modified in the present draft of the Bill by providing for the land holders being first given an opportunity of carrying out measures of reclamation themselves, and in any case the operation of the clauses under consideration will be confined to such areas within the *cho* beds as are neither cultivated nor culturable.
Published vide Punjab Gazette, 1899, Part V-A, pages 12 - 13.

2. Definitions. - In this Act unless a different intention appears from the subject or context, -

- (a) the expression "land" means land within any [-] area preserved and protected or otherwise dealt with in manner in this Act provided, and includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;
- (b) the expression "*cho*" means a stream or torrent flowing through or from the Siwalik mountain range within [Punjab];
- (c) the expressions "tree", "timber", "forest-produce" and "cattle" respectively shall have the meanings severally assigned thereto in section 2 of the Indian Forest Act, [1927];
- (d) the expression "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act, [-];
- (e) the expression "Deputy Commissioner" includes any officer or officers at any time specially appointed by the [State] Government to perform the functions of a Deputy Commissioner under this Act;
- [(f) the expression "rightholder" includes -
 - (i) persons not being tenants or mortgagees having rights to or in land; and

- (ii) persons having rights of collection of forest produce or of grazing or pasture; and
- (g) the expression "erosion" includes the removal or displacement of earth, soil, stones or other materials by the action of wind or water.]

Notification and Regulation of Areas

[3. Notification of areas. - Whenever it appears to the [State] Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly.]

4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters. - In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government may by general or special order temporarily [-] regulate, restrict or prohibit -

- (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing-process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for *bona fide* domestic or agricultural purposes [of right-holder in such area];
- (d) the setting on fire of trees, timber or forest produce;
- (e) the admission, herding, pasturing or retention of sheep, [goats or camels];
- (f) the examination of forest-produce passing out of any such area; and
- (g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom or to pasture sheep, [goats or camels] or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. Power in certain cases, to regulate, restrict or prohibit, by special order, within notified areas, certain further matters. - In respect of any specified village or villages, or part or parts thereof comprised within the

limits of any area notified under section 3, the [State] Government may, by special order, temporarily [-] regulate, restrict or prohibit -

- (a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section, of any forest-produce [for any purposes]; and
- (d) the admission, herding, pasturing or retention of cattle generally other than [goats and camels], or of any class or description of such cattle.

[5A. Power to require execution of works and taking of measures. - In respect of areas notified under section 3 generally or the whole or any part of any such area, the [State] Government may, by general or special order direct -

- (a) the levelling, terracing, drainage and embanking of fields;
- (b) the construction of earthworks in fields and ravines;
- (c) the provision of drains for storm water;
- (d) the protection of land against the action of wind or water;
- (e) the training of streams; and
- (f) the execution of such other works and the carrying out of such other measures as may, in the opinion of the State Government, be necessary for carrying out the purposes of this Act.

6. Necessity for regulation, restriction or prohibition to be recited in the order under sections 4, 5 or 5A. Publication of order. - Every order made under [Sections 4, 5 or 5-A] shall be published in the [Official Gazette] and shall set forth that the State Government is satisfied, after due inquiry, that regulations, restrictions, [prohibitions or directions] contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

7. Proclamation of regulations, restrictions, and prohibitions and admission of claims for compensation for rights which are prohibited. - (1) When, in respect of any [-] area, a notification has been published under section 3, and -

- (a) upon such publication any general order, made under section 4 [or section 5-A] becomes applicable to such area, or
- (b) any special order under [sections 4, 5 or 5-A], is made in respect of such area, the Deputy Commissioner shall cause public notice of the provisions of such general or special order to be given, and if the provisions of any such order restrict or [prohibit the exercise of] any existing rights, shall also publish in the language of the country and in every town and village the boundaries of which include any portion of the area within or over which the [exercise of any such rights is so restricted or prohibited] a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof, fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1), shall be rejected :

Provided that, with the previous sanction of the Commissioner, the Deputy Commissioner may admit any such claim as if it had been made within such period.

[7A. Power to fix time within which work to be executed, etc. - (1) When an order has issued under section 5-A, the Deputy Commissioner may by notice require the owner or occupier of the land to execute such works or take such measures as may be specified in the notice.

(2) Every such notice shall state the time within which the works are to be executed or measures are to be taken.

(3) A person aggrieved by an order contained in such a notice as aforesaid may, within thirty days from the service of such a notice or within such longer period as the Deputy Commissioner may allow in this behalf, serve a notice of his objections on the Deputy Commissioner in such manner as may be provided by the rules made under this Act.

(4) If and in so far as an objection under this section is based on the ground of some infirmity, defect or error in or in connection with the notice, the Deputy Commissioner shall dismiss the objection, if he is satisfied that the infirmity, defect or error was not a material one.

(5) If the objection is brought on all or any of the following grounds, that is to say:-

- (a) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served;
- (b) that some other person, being the owner, occupancy tenant, mortgagee with possession, or lessee, or farm holder, or possessing some other right in or over the land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;
- (c) where the work or measure is for the common benefit of the land in question and other land, that some other person being the owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;

the objector shall serve a copy of his notice of objection on each other person referred to, and on the hearing of the objection the Deputy Commissioner may make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other person towards the cost of the work or measure, or as to the proportions in which any expenses which may become recoverable by the Deputy Commissioner under sub-section (6) are to be borne by the objector and such other person :

Provided that no such order shall be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard. In exercising his power under this sub-section Deputy Commissioner shall have regard -

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works and measures required; and
- (b) in any other case, to the degree of benefit to be derived by the different persons concerned.

(6) Notwithstanding anything to the contrary in any law for the time being in force, no person required by a notice or an order under this section to execute any work or to take any measure shall be required to obtain the consent of any other person before complying with such notice or order.

(7) Subject to such right of objection as aforesaid and the right of appeal under section 18, if the person required by the notice to execute works or to take measures fails to execute the works or to take the measures indicated within the time thereby limited, the Deputy Commissioner may himself or by

an agent execute the works or take the measures and recover from that person the expenses reasonably incurred by him in so doing :

Provided that it shall not be necessary for the Deputy Commissioner to wait for the decision of any objection other than an objection under clause (a) of sub-section (5), or an appeal against any decision on such objection, before taking action under this sub-section;

(8) If the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a notice issued in this behalf by the Deputy Commissioner or such other date as is fixed by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by the Deputy Commissioner in this behalf shall be final and conclusive evidence of the sum so recoverable and the person liable for the same.

(9) Every order issued under this section shall be published in such manner as may be prescribed in the rules made under this Act, and upon such publication every person affected thereby shall, unless the contrary be proved, be deemed to have had due notice thereof.

(10) Thy Deputy Commissioner may by general or special order authorise any revenue officer subordinate to him to enquire into any objection that may be brought under this section :

Provided that no final order on any such objection shall be passed except by the Deputy Commissioner himself.

(11) In taking an order on objection brought under this section, the Deputy Commissioner shall be guided by such rules, if any, as the [State] Government may make in this behalf,

(12) For the purposes of this section, the expression "estate" shall have the meaning assigned thereto in the Punjab Land Revenue Act, 1887.]

Control over the Beds of Chos

8. Action when State Government considers it desirable to take measures to regulate the beds of *chos*. Vesting of such beds in State Government. - (1) Whenever it appears to the [State] Government that it is desirable that measures should be taken in the bed of any *cho* for the purpose of -

(a) regulating the flow of water within, and preventing the widening or extension of, such bed, or of

(b) reclaiming or protecting any land situate within the limits of such bed;

such Government, may, either proceed at once in manner in sub-section (2) provided, or, in the first instance, by notification specifying the nature and extent of the measures to be taken and the locality in and the time within which such measures are to be so taken, require all persons possessing proprietary or occupancy rights in land situate in

such locality to themselves carry out the measures specified in such notification accordingly.

(2) If the whole or any part of the bed of any *cho* be unclaimed, or, if, in the opinion of the [State] Government the measures deemed necessary under sub-section (1) are of such a character, in regard to extent and cost, that the interference of the State Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any *cho* failing to comply with the requirements of any notification issued under sub-section (1), such Government may, by notification, declare that the whole or any part of the area comprised within the limits of the bed of any *cho* shall [vest in the State Government] [-] for such period and subject to such conditions (if any) as may be specified in the notification :

Provided that no such declaration shall be made in respect of, or shall affect, any land included within the limits of the bed of any such *cho*, which, at the date of the publication of the notification making such declaration, is cultivated or culturable, or yields any produce of substantial value.

(3) When the owners or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures, the decision of those paying the larger amount of land-revenue shall be held to be binding on all.

(4) The [State] Government may, from time to time, by like notification, extend the period during which any such area shall remain vested in [the State Government].

9. Effect of notification to suspend or extinguish private rights in the area notified under section 8. - Upon the making of any declaration under sub-section (2) of section 8, all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing such declaration at the time of the publication thereof, shall [be suspended for the period specified in the declaration and for such further period (if any) to which such period may at any time be extended] :

Provided that, as far as circumstances admit, such rights of way and water shall be reserved, in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the persons (if any) who, at the time of the making such declaration, possessed any such rights over such area.

10. Power of Deputy Commissioner to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the State Government. - (1) The Deputy Commissioner shall, for the purposes of every notification issued under sub-section (2) of section 8, fix the limits of the area comprised within the bed of the *cho* to which such notification is to apply.

(2) Upon the publication of a notification containing any declaration under sub-section (2) of section 8, it shall be lawful for the Deputy Commissioner to -

- (a) take possession of the area specified in such declaration;
- (b) eject all persons therefrom; and to
- (c) deal with such area, while it remains vested in [State Government], as if it were the absolute property of [the State Government].

11. Bar of compensation for acts done under section 8, 9 or 10. - No person shall be entitled to any compensation for anything at any time done, in good faith, in exercise of any power conferred by section 8, section 9 or section 10.

12. Condition as to sale of land acquired under the Act and obligations of Local Government to keep account of moneys expended on such land. - Repealed by Act VIII of 1926, Section 4.

Power to enter upon and Delimit Notified Areas and Beds

13. Power to enter upon, survey and demarcate local areas notified under section 3 or section 8. - It shall be lawful for the Deputy Commissioner and for his subordinate officers, servants, care-takers and workmen, from time to time, as occasion may require, -

- (a) to enter upon and survey any land comprised within any [-] area in regard to which any notification has been issued under section 3 or section 8 [or in regard to which a notification is proposed to be issued under section 5-A];
- (b) to erect bench-marks on and to delimit and demarcate the boundaries of any such [-] area; and
- (c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to give effect to all or any of the provisions of this Act :

Provided that reasonable compensation, to be assessed and determined in the manner in this Act provided, shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section, but no such compensation shall be payable in respect of anything done under the said provisions within the limits of any [-] area notified under section 8.

Inquiry into Claims and Award of Compensation

14. Inquiries into claims and awards thereupon. - (1) The Deputy Commissioner shall -

- (a) fix a date for inquiring into all claims made under section 7 [-] and may in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him;
- (b) record in writing all statements made under section 7;
- (c) inquire into all claims duly preferred under section 7 [-]; and
- (d) make an award upon each such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent (if any) to which, and the person, or persons in whose favour, the right claimed is established, the extent to which it is to be restricted or [prohibited] and the nature and amount of the compensation (if any awarded).

(2) For the purposes of every such inquiry the Deputy Commissioner may exercise all or any of the powers of a Civil Court in the trial of suits under the [Code of Civil Procedure (XIV of 1882)].

(3) The Deputy Commissioner shall announce his award to such persons interested, or their representatives, as are present, and shall record the acceptance of those who accept it. To such as are not present, the Deputy Commissioner shall cause immediate notice of his award to be given.

15. Method of awarding compensation and effect of such award. - (1) In determining the amount of compensation the Deputy Commissioner shall be guided, so far as may be, by the provisions of sections 23 and 24 of the Land Acquisition Act, 1894, and, as to matters which cannot be dealt with under those provisions, by what is just and reasonable in the circumstances of each case.

(2) The Deputy Commissioner may, with the sanction of the [State] Government and the consent of the person entitled, instead of money award compensation in land or by reduction in revenue or in any other form.

(3) If, in any case, the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

(4) Repealed by Punjab Act 8 of 1926, section 6.

Procedure, Records and Appeal

16. Record of rights in respect of notified area. - (1) For every area, notified under section 3 or section 8, the Deputy Commissioner shall prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in section 4 and section 5 -

- (a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8;

(b) regulated, restricted, [-] or [prohibited] by any order under section 4 or section 5.

(2) When any award is made under section 14, its effect upon any right shall also be recorded therein.

17. Mode of proclaiming notifications and observing notices, orders and processes, issued under the Act. - (1) Upon the publication of a notification issued under any of the provisions of this Act, the Deputy Commissioner shall cause public notice of the substance thereof to be given at convenient places in the locality to which such notification relates.

(2) The procedure prescribed in sections 20, 21 and 22 of the Punjab Land Revenue Act, 1887 (XVII of 1887), shall be followed, as far as may be, in proceedings under this Act.

18. Appeal, review and revision. - Every order passed and award made by a Deputy Commissioner under this Act, shall, for the purposes of appeal, review and revision, respectively, be deemed to be the order of a Collector within the meaning of sections 13, 14, 15, and 16 of the Punjab Land Revenue Act, 1887 :

Provided that nothing in this Act contained shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.

Penalties, Bar of Suits and Rules

19. Penalty for offences. - Any person who, within the limits of any [-] area notified under section 3, commits any breach of any regulation made, [restriction or prohibition imposed, order passed or requisition made under sections 4, 5, 5A or 7-A] [or obstructs or resists in any way whatever the execution of acts or things done under section 13], shall be punished with imprisonment for a term which may extend to one month, or with a fine which may extend to one hundred rupees, or with both.

20. Application of provisions of the Indian Forest Act, 1927. - [The provisions of sections 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64 (excluding the last sentence), 66, 67, 68 and 73 of the Indian Forest Act, 1927] shall, so far as applicable, be read as part of this Act, and for the purposes of those provisions, every offence punishable under section 19 shall be deemed to be a "forest offence" and every officer employed in the management of any area notified under section 3 or section 8, as care-taker or otherwise, shall be deemed to be a Forest Officer.

21. Bar of suits. - No suit shall lie against the [Government] for anything done under this Act, and no suit shall lie against any public servant for anything done. or purporting to have been done, by him, in good faith, under this Act.

22. Power to make rules. - (1) The [State] Government may make rules, consistent with this Act, -

(a) regulating the procedure to be observed in any inquiry or proceeding under this Act: and

(b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the [Official Gazette.]