

### **3.4 Legal Framework for Irrigation Management in the Punjab and Sindh Provinces: A Review<sup>11</sup>**

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#### **3.4.1. Introduction**

This paper intends to present the status of the existing legal framework of the irrigation system in the provinces of Sindh and Punjab with a view to determine the scope of the Water Users Association Scheme to promote participatory irrigation management.

A number of laws related to the irrigation system of Pakistan were reviewed. Of these, the laws directly related to irrigation and water users' associations are reviewed in detail.

The Canal and Drainage Act (1873) and the Sindh Irrigation Act (1879), the main irrigation laws applicable to the Punjab and Sindh Provinces, respectively, have been studied in detail. A brief summary of these laws is given, in a non-technical narrative, for the benefit of general readers. The Water Users' Associations Ordinances and Irrigation & Drainage Authority Ordinances/Acts of the Punjab and Sindh Provinces have also been analyzed within the framework of suitability and compatibility with Participatory Irrigation Management in Pakistan.

#### **3.4.2 Existing Irrigation Laws in the Punjab Province**

##### **3.4.2.1 Canal and Drainage Act (1873)**

The Canal and Drainage Act (1873) is the main legislation relating to irrigation management in the Punjab Province. The Punjab Minor Canals Act (1905) deals with minor canals sprouting mainly from hill torrents. The farmers own these privately. At present, this Act applies to some minor canals of Muzaffar Garh and Dera Ghazi Khan. The Soil Reclamation Act (1952) also excludes, to some extent, the operation of the Canal and Drainage Act (1873) in the notified areas. Under S.17 of the Soil Reclamation Act, the Soil Reclamation Board may make overriding provisions regarding irrigation, particularly at the watercourse level.

Under the Canal and Drainage Act (1872), almost the entire irrigation network has been entrusted to the Provincial Government through the officers of the Irrigation and Revenue Departments, and Judicial Officers (see pp 11-14).

1. Important policy aspects of irrigation, like the acquisition of water for public use, fixing water rates, appointing canal officers/committees and framing rules have been entrusted to the Provincial Government.
2. Operational functions are entrusted to the canal officers. The pivotal role is played by the Divisional Canal Officer (DCO), with some control exercised by the Superintending Canal Officer (SCO). Important matters under the DCO's control include:

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- sanctioning new watercourses;
  - providing water from an existing watercourse;
  - transferring watercourses from one person to another;
  - adjusting claims between persons jointly using a watercourse;
  - stopping the supply of water;
  - levying charges for unauthorized use of water, or wastage of water;
  - certifying the dues recoverable; and
  - deciding appeals against some orders of the Sub-divisional Canal Officer.
3. The Sub-divisional Canal Officer has also been given an important role in irrigation administration. Important matters such as *warabandi* and dispute resolution fall within his domain. He also exercises concurrent jurisdiction with the DCO to sanction new watercourses and to adjust claims from joint users.
  4. The *Zilledar* and canal *Patwari* conducts the actual fieldwork. The canal *Patwari*, the lowest position in the irrigation hierarchy, measures irrigated land, deals with crop cultivation and assesses water rates for individual owners. The *Zilledar* supervises the work of the canal *Patwari*.
  5. The Revenue Administration helps the Irrigation Department to acquire land, determine compensation, collect water dues, appeal against (or revise) Canal Officers' orders regarding levying charges for wasting water/unauthorized use of water. The Collector (Deputy Commissioner) plays the main role, with the Commissioner and the Board of Revenue exercising some appellate/revisional authority.
  6. Magistrates can tie offences under the Canal and Drainage Act.
  7. Disputes between water users, which are initially determined by the Sub-divisional Canal Officers and Divisional Canal Officers, may be taken to civil courts that have the jurisdiction to set aside, or modify, the decisions of canal officers.
  8. Water users are responsible for maintenance, repair, cleaning and improvement of the watercourse, as well as for providing crossings.
  9. Irrigation Committees, consisting of three or more local cultivators, can also be constituted by the Government to assist the canal officers in dealing with offences under the Canal and Drainage Act.

Thus, we find that the entire irrigation administration is entrusted to the bureaucracy. Water users are not assigned any irrigation management roles. Consequently, there is no scope under this law for the effective role of water users' organizations.

#### **3.4.2.2 The Punjab Water Users' Association Ordinance (1981)**

The On-Farm Water Management and Water Users' Associations Ordinance (1981) provides some involvement for irrigators in water management at watercourse level through the water users' associations. The salient features of this legislation are:

1. The Ordinance is an extremely effective law, even though it was enacted by the Martial Law regime. In fact, it overrides all other laws in such matters under its cover.
2. The formation of water users' associations at the watercourse level is provided for.
3. The Field Officer (Director, OFWM) has substantial control over these associations. He has the final authority to register, or refuse, registration to a water users' association.
4. More than 50 percent of the water users of a watercourse may form an association and apply to the Field Officer for registration.
5. The Watercourse Association does not have any management power relating to canal water under this Ordinance.
6. The Field Officer may entrust the maintenance of a watercourse to the Association, but this must be carried out to the satisfaction of the Field Officer.

Thus, ineffective water users' associations at the watercourse level have been anticipated under this Ordinance. This Ordinance does not serve much purpose for a self-governing, self-regulating and self-supporting active role of the WUA in irrigation management. Substantial amendments would be needed to accommodate the said scheme.

### **Defects and Deficiencies**

The following deficiencies have been identified. The Ordinance is ineffective for the purpose of introducing and developing effective water users' associations in the Punjab Province.

1. The **Field Officer** (Director, OFWM) has been given a dominant role *vis-a-vis* the water users and water users' associations. The Field Officer has been placed in an autocratic position over the irrigators and Water Users' Associations. Accordingly, the Ordinance has not made any improvement with regards to the domination of bureaucracy over the irrigators.
2. The Ordinance has not provided for the **constitution of the Water Users' Associations**. The qualifications of Association members have not even been given yet. The majority of irrigators along a watercourse can form an association, which, when registered by the Field Officer, shall become operative under the Ordinance. Similarly, the Ordinance does not provide for Association managing bodies. The definition of an irrigator is also not comprehensive, e.g., it does not include the representative of joint owners, etc.. The concept of 'member in good standing' has not been incorporated in the Ordinance. These aspects appear to have been left for determination by the rules framed by the Government under S.14 of the Ordinance. Necessary amendments should be made in the Ordinance to provide for the constitution of the water users associations and its managing bodies.
3. The Ordinance envisages ineffective and weak Water Users' Associations. These Associations have been given a very limited role in the affairs of a watercourse. The Association has no power over the operation of a watercourse, its water delivery schedule, dispute resolution, punishment/fine for unlawful activity, etc.. Thus, such an association does not fit into the scheme of participatory irrigation management.

4. Similarly, the purpose of forming Water Users' Associations must clearly be given in the statute. Adopting a multi-functional approach is advisable so that these Associations are also able to perform other related functions. The primary purpose of forming a Water Users' Association should be related to irrigation, while the secondary purpose may encompass other cooperative activities in the field of agriculture.
5. The process of registration provided under the Ordinance is defective. Section 6(2) of the Ordinance provides that a Water Users' Association shall not be registered unless the office bearers have been duly elected, the bylaws of the Association have been framed and an account in a scheduled bank has been opened. Thus, the cart has been put before the horse. All these activities can only be carried out after the Association has been duly registered. The NWFP Ordinance, for example, provides that an association shall, within thirty days of the approval of the list of members, elect the office bearers, approve bylaws and open an account [S. 6(9)].

Therefore, substantial amendments are needed in the law relating to the Water Users' Associations in the Punjab Province; otherwise, useful and effective Water Users' Associations cannot be formed in the province.

#### **3.4.2.3 The Punjab Irrigation and Drainage Authority Act (1997)**

The recently promulgated Punjab Irrigation and Drainage Authority Act (1997) has substantially changed the organizational set-up of the Irrigation Department. The Act provides for the establishment of the Punjab Irrigation and Drainage Authority (PIDA), a body corporate having the power to acquire, hold and dispose of property, and sue, or be sued, in its own name. However, the constitution of the Authority has not been provided by the Act, which the Government has left to be yet determined.

1. The management of the Authority's affairs has been vested in the Board of Management, appointed by the Authority with the approval of the Provincial Government.
2. The Authority has been vested with all powers relating to drainage and irrigation in the province. All the powers available under the Canal and Drainage Act (1873), the Soil Reclamation Act (1952) and other laws relating to these subjects have been entrusted to it. Control over all the water resources in the province, subject to the Indus Water Treaty (1960) and the Water Apportionment Accord (1991) has been given to the Authority.
3. The Authority is required to formulate, adopt and implement policies for the promotion, formation and growth of Area Water Boards at the canal level and Farmer Organizations at the distributary and minor levels.
4. All the employees of the Irrigation Department, except those specified by the Provincial Government, have been placed under the employment of the Authority on existing, or better, terms and conditions of service.

#### **Defects and Deficiencies**

The Act is not a comprehensive piece of legislation. A number of serious defects and deficiencies in this Act have been identified.

### *1. Composition of the Authority*

Section 3 of the Act provides that the Authority (PIDA) shall consist of such members, one of whom shall be its Chairman, as may be notified by the Government. This provision gives exclusive power to the Government in all matters relating to the members, (i.e., their numbers, qualifications, appointments, terms of office and vacation allocations), the meetings of the Authority and rules of business, etc.. This section though, provides that at least six members of the Authority shall be farmers and that the number of non-farmer members shall not exceed the number of farmer members. The Government will still be able to make appointments at its own will. That the existing provisions will render the Authority completely subservient to the Government is felt. The Act must provide for an independent Authority that can function without unnecessary official influence.

### *2. Control over Provincial Water Resources*

A technical error in Section 8 refers to the Water Apportionment Accord (1991). This Accord is not a permanent arrangement. The Council of Common Interests, established under the Constitution of Pakistan, can alter it in the future. "Water Apportionment Accord for the time being in force", is how it should read.

### *3. The Budget, Audit and Accounts*

Section 13 of the Act provides that the budget of the Authority shall be approved and its accounts be maintained and audited in such a manner as may be prescribed. Who may prescribe it is unclear. Perhaps this will be clarified when the government frames rules. Here, again the Act has not addressed this important matter properly, which has been left undecided and dependent on the free will of the Government.

### *4. Constitution of the Area Water Boards*

Section 14 empowers the Government to establish Area Water Boards (AWBs) and to assign functions accordingly. Thus, the constitution of the AWBs, their membership, territorial jurisdiction, meetings, powers and functions, etc., are entirely in the hands of the Government. Concerns were also expressed that the Government may establish weak AWBs and may assign ineffective roles in the irrigation system to them. Therefore, it is suggested that the Act be amended to incorporate features for AWB to ensure autonomy.

### *5. Function of the Area Water Boards*

The functions and powers of AWBs have not been spelled out in the Act. This aspect has been left to the Government's discretion. The AWBs will not be able to play effective roles in the new irrigation system unless these are entrusted with meaningful responsibilities and given commensurate powers for that purpose. The functions entrusted to AWBs under the SIDA Act (1997) may also be entrusted to AWBs under this Act.

Section 16 empowers the Government to frame the Rules for purposes of carrying out the Act. Similarly, Section 17 empowers the Authority to make Regulations for the administration and management of the Authority. However, the division of responsibility between the Government and the Authority is not clearly given. The Regulations have been made subservient to the Rules framed by the Government and, therefore, the Authority will be able to frame Regulations on such subjects that are not covered by the Rules framed by the Government. The Government occupies substantial area by the Rules, and the Authority will become subservient to the Government.

The need to provide a three-tier delegated legislation is felt, i.e.:

- a) Rules by the Government.
- b) Regulations by the Authority.
- c) Bylaws by the Farmers Organizations (with the approval of the AWB/Authority).

Similarly, the subjects to be covered by Rules, Regulations and Bylaws should also be specified by the Act. The following divisions are suggested:

1. The Government may frame Rules to carry out the functions vested in them by the Act.
2. The Authority may frame Regulations to carry out the functions vested in it by the Act.
3. The Farmers Organizations shall frame Bylaws to carry out the functions suggested in the preceding section.

### **3.4.3. Existing Irrigation Laws: Sindh Province**

#### **3.4.3.1 The Sindh Irrigation Act (1879)**

The Sindh Irrigation Act (1879) is the main enactment relating to irrigation in the Province of Sindh. Under this Act, the entire task of irrigation has been entrusted to the Provincial Government, Canal Officers, the Revenue Department and judicial officers (see pp 22-23).

1. Important policy aspects of irrigation, like the appointment of Canal Officers, acquisition of water for public use, payment of compensation, water rates, drainage schemes, canal crossings and framing the rules, have been entrusted to the Provincial Government.
2. Operational functions are entrusted to the Canal Officers, but the Act does not specify which Canal Officers are empowered to act under any of its provisions. Therefore, a Canal Officer must be duly authorized by the Provincial Government to act under any provision of the Act.
3. The Revenue Administration helps the Irrigation Department to acquire land, determine compensation and collect water dues. Moreover, the Commissioner and Collector have substantial powers to settle disputes among irrigators and can decide appeals against the decisions of the Canal Officers. Thus, the Canal Officers are substantially subservient to the Revenue Department.
4. The offences under the Act can be tried before the Magistrate.

Thus, we find that the irrigation administration is entrusted to the bureaucracy and there is no role for the water users.

### **3.4.3.2 Sindh Water Users Association Ordinance (1982)**

The Sindh Water Users' Associations Ordinance (1982) provides for a three-tier structure comprising the following water users' associations:

- (a) Watercourse Associations
- (b) Distributary Associations
- (c) Canal Associations

The water users of any area may form these associations on a voluntary basis. These associations are not fully independent. The Director (OFWM), a government appointee, has supervisory and controlling authority over these associations. He has substantial powers relating to the following matters:

- a) Registration of the Associations.
- b) Supervision of the maintenance of the watercourse done by the Associations.
- c) Inquiries into the affairs of the Associations.
- d) Preparation of model bylaws of the Associations.
- e) Approval of the bylaws framed by the Associations.

The Water Users' Associations have the status of corporate bodies with the power to hold, purchase and dispose of property, and to sue, or be sued, in their own names. They also have the power to collect and manage funds, recover dues through the Collector and acquire land for watercourses/tube wells.

#### **3.4.3.2.1 Watercourse Association (S4)**

At least 51 percent of water users along a watercourse may apply to the Director (OFWM) for registration. The Director (OFWM) is required to call a meeting of all the water users of the said watercourse within 60 days. Section 4(2) refers to resolution passed by 66 percent of the water users of the watercourse; the significance of such a resolution is not clear, whether it is a precondition for registration, or otherwise, entails some meaningful consequences. The provision appears to have been adopted from the NWFP Water Users Association Ordinance (1981), where it clearly specifies the effect of such a resolution.

In the case of any objection to the registration of any person as a member, an appeal may be filed with the Collector (Deputy Commissioner). The Director (OFWM) is enjoined to issue a certificate of registration, which proves the legal existence of the association.

The Watercourse Association has been granted substantial powers relating to maintenance and the improvement of a watercourse, fixing water schedules, employing of labor and general, or special, assessments, etc.. Section 7 of the Ordinance enumerates the powers of the Watercourse Association. (See Sindh WUA Ordinance, 1982)

However, these powers given in the Ordinance are subject to the Rules framed by the Provincial Government under this Ordinance. Therefore, the Provincial Government can curtail these powers through the Rules.

#### 3.4.3.2.2 *Distributary and Canal Associations (S9 & 10)*

More than half of the Watercourse Associations in a distributary command area can form a Distributary Association. Similarly, more than half of the Distributary Associations can form a Canal Association. All the chairmen of the Watercourse Associations of a Distributary form the general body of the Distributary Association, and in the same manner, the chairmen of the Distributary Associations form the general body of the respective Canal Association. The general bodies of Distributary Associations and Canal Associations are required to elect their chairmen, secretaries and treasurers for a term of one year.

The Distributary and Canal Associations do not have any executive powers. These Associations have only two roles; firstly, to make recommendations to the Irrigation Department relating to the distribution of water and construction of minor channels, bridges, etc., and secondly, to serve as a link between the irrigators and the Irrigation Department.

#### 3.4.3.2.3 *Deficiencies and Amendments*

##### *Purpose of Associations*

The purpose of forming the Water Users' Associations must be given in the Ordinance. In this context, a multi-functional approach shall be adopted.

##### *Conflict Resolution*

The Water Users' Associations do not have many powers in dispute resolution. Section 15(1) of the Ordinance provides that a dispute between members of the Association arising under this Ordinance shall be referred to the General Body of the Association, which may settle the disputes, or require the Board of the Watercourse Association to do so. But, it has further been provided that if the dispute relates to a matter that is covered by any law relating to irrigation, it shall be referred to Irrigation Department. Thus, disputes relating to the operational aspect of irrigation would not fall under the jurisdiction of the Water Users' Associations; only such disputes would come before the Associations which relate to the formation of association, election of office bearers, framing of bylaws, etc..

Therefore, it is suggested that Section 15(1), proviso, and 15(4) are deleted, and words "arising under this Ordinance" are deleted from Section 15(1).

##### *Appeals*

S. 4(5) of the Ordinance allows appeals to the Collector (Deputy Commissioner) against the decision of the Field Officer, only in matters pertaining to the registration of a member; other decisions cannot be appealed. That other decisions, particularly those relating to the registration of a Water Users' Association, can be challenged before some higher authority is desirable.



Accordingly, it is suggested that an appeal to the Collector shall be provided against all the decisions of the Field Officer.

#### *Members in Good Standing*

The Ordinance does not distinguish between responsible and irresponsible members belonging to the Association. The concept of 'member in good standing' must be incorporated in the law. The Ordinance, therefore, needs amendments to cater for this purpose.

The definition of 'a member in good standing' should be included in the definition clause (S.2); the following new clause may be added in S.2 of the Ordinance.

"member in good standing," means any member whose payment of assessment is not in arrears for more than one year, or who is not under conviction for a criminal offence, or who is not a minor."

Section 5 of the Ordinance should be amended so that only 'members in good standing' are eligible to be elected to the Board.

#### *Audit*

The Ordinance has made no provision to audit the accounts of the Association, which is very essential for any public functionary with authority over finances. A new section should, therefore, be added in the Ordinance to provide for auditing the accounts.

#### *Powers of Watercourse Association*

The Association must be vested with powers to impose fines and resolve disputes relating to irrigation management.

### **3.4. 3.3      The Sindh Irrigation and Drainage Authority Act (1997)**

1. The Sindh Irrigation and Drainage Authority Act (SIDA) (1997), enacted by the Sindh Assembly, is a fairly good piece of legislation. The Act has evolved fundamental changes in the organization, and the working structure of the Irrigation Department in the province.
2. The Act, in its preamble, clearly spells out the purposes of the law, which include the participation of beneficiaries in the operation and management of the irrigation and drainage network.
3. The Act provides for the establishment of the Sindh Irrigation and Drainage Authority, a body corporate with power to acquire, hold and dispose of property, etc., and to sue or be sued in its own name. Unlike the law in the Punjab Province, this law clearly spells out the constitution of the Authority and addresses the important procedural and other related aspects.

4. The Authority has been vested with almost all the possible powers in the field of irrigation, drainage and related matters. All the powers of the Government under the Sindh Irrigation Act (1879), as well as control over the water resources in the Province have been provided.
5. The management of the Authority has been vested in a Board of Management, comprising a Managing Director and four General Managers, to be appointed by the Authority with the approval of the government.
6. The Act makes detailed provisions for the establishment of Area Water Boards on a canal command basis. The constitution and functions of these Boards are also provided. The Farmer Organizations have been given representation on these Boards.
7. The Act provides for the formation of Farmers Organizations at the distributary and minor levels with functions as may be prescribed by the Regulations framed by the Authority.
8. The Authority is required to promote the formation, growth and development of Area Water Boards and Farmers Organizations as self-supporting entities.
9. The Act makes detailed provisions for personnel management, including the appointment of the Authority's officers and staff, their liability, disciplinary matters, removal, delegation of powers and transfer of the employees of the Irrigation Department (Wing) to the Authority, etc..
10. There are detailed provisions relating to finances, audit, annual financial statements, reports/statements and procedures to fix the water rates, etc..

### **Defects and Deficiencies**

The Act has substantially changed the legal framework of irrigation management in the province. The Act appears to be a fair attempt to provide a new organizational structure for irrigation in the province. However, a critical analysis of the Act reveals some defects/deficiencies that need to be given serious consideration.

#### *Constitution of the Authority*

Seven out of eight members of the Authority are official members. There is only one non-official member, i.e., a representative from the Farmers' Organizations. Even the method to appoint this member is not provided for in the Act. The Government will also subsequently prescribe this. The water users will not have any effective role in the affairs of the Authority. That the Authority should be independent of official influence is described. In order to achieve this objective, the following changes are needed:

- 1) The Minister of Irrigation should not be the ex-officio Chairman of the Authority. The Chairman shall be a technocrat with a good background of irrigation management.
- 2) The representation of Farmers Organizations shall be increased.
- 3) In order to enhance the credibility and independence of the Authority, a judge of the High Court should be included in the Authority.

#### *Removal of the Chairman & Members*

Section 6 of the Act provides for grounds to remove the Chairman, or a member. Six grounds are enumerated in the said section. Another ground, i.e., misuse of powers, may be included therein.

#### *Board of Management*

Section 7 of the Act provides for a Board of Directors to carry out the day-to-day affairs of the Authority under the overall control and guidance of the Authority. The Board will consist of a Managing Director and up to four General Managers.

The Board should be composed of members of different disciplines so that multifarious functions of the Authority can be properly performed.

#### *Powers of the Authority*

Section 8 of the Act has invested extensive powers over irrigation and drainage management in the province in the Authority. However, one technical error must be removed from clause (a) (1). The clause provides that subject to the Indus Water Treaty (1960) and the Water Apportionment Accord (1991), the Authority shall have the power to receive irrigation water from the barrages within the province, and/or from the inter-provincial/link canals, delivering the same to the various AWBs, bodies or persons etc..

Pertinent to point out is that unlike the Indus Water Treaty, the Water Apportionment Accord (1991) is not a permanent agreement. Therefore, it is suggested that the Water Apportionment Accord for the time being enforced be incorporated there.

#### *Arrangements with Local Bodies, etc.*

Section 11(2) adversely affects the autonomy of the Authority by empowering the Government to direct the Authority to hand over any completed scheme to a local council, or to a Government agency, or to take over from any agency a scheme completed by the agency on such terms and conditions as may be determined by the Government. Therefore, it is suggested that this provision be deleted from the Act.

#### *Control over Provincial Water Resources*

Section 12 contains the same technical error that has been pointed out in Section 8(a)(1), and for the same reason, a similar amendment should be made in Section 12 as well.

### *Procedure for Fixation of Water Rates for Supply of Water*

Section 21(2) lays down the steps to be taken before enhancing the water rates. The consultant feels that consultation with the Farmers Organizations shall also be mandatory before any enhancement can be effected.

### *Constitution of the Area Water Boards*

Section 23(2), which lays down the composition of the Area Water Board, is quite ambiguous. The Farmers Organizations are under-represented in Area Water Boards, with only two representatives out of ten members of the Board. This representation should be increased to give a majority to FO representatives.

### *Farmers Organizations*

The Act does not make any provision for Farmer Organizations at the watercourse level, therefore, such organizations/associations will continue to be governed by the Sindh Water Users' Associations Ordinance (1982).

### *Rules/Regulations/Bylaws*

Similar provisions as mentioned in the PIDA in earlier section should be incorporated in Sindh as well.

### **3.4.4 Strategies to Initiate Participatory Irrigation Management**

We may start the water users' associations under the existing legal framework and thereafter seek the intervention of the Provincial Governments to make the necessary amendments in the existing laws so as to have the best possible system of participatory irrigation management based on sound legal foundations. This approach may have the following advantages:

1. Incorporating the lessons learned from the working of the water users' associations in these amendments will be easy; otherwise another Government intervention would be needed at a later stage.
2. The participatory irrigation management program can be started without losing valuable time in making the amendments in the existing legal framework.
3. The enthusiasm of the water users will be a positive contribution towards the success of the pilot projects.
4. The successful working of the water users' associations will make it easier to introduce amendments in the legislation.

There are, however, some disadvantages associated with this approach, i.e.:

1. The new system will start from a weak base and lead to problems, which may frustrate the scheme.
2. That concerned quarters are only making half-hearted efforts is likely to be the message conveyed.

An alternate strategy could be to persuade concerned quarters to provide a strong legal framework through delegated legislation (Rules, Regulations and Bylaws) under the PIDA/SIDA Act, and thereafter, to start the new system according to the new framework, instead of under the existing legal framework.

1. The new system will be built on a strong legal basis, which is likely to have a positive effect on the new scheme.
2. The seriousness of purpose will be indicated and impose a negative effect on the quarters opposing the new system.

#### **3.4.5 Suggested Subordinate Legislation under the PIDA Act**

The following subordinate legislation is suggested in the main study:

##### **Notifications Relating to PIDA**

- a) To establish PIDA (Section 2).
- b) To nominate the members of the PIDA (Section 3).

##### **Notifications Relating to Area Water Boards**

- a) To establish AWBs in pilot project areas (Section 14).
- b) To nominate the members of the said AWBs.
- c) To assign functions to AWBs (Section 14).

The following functions may be assigned to the AWB:

- To formulate and implement policies with a view to achieve and continuously improve effective, economic and efficient utilization of irrigation water at its disposal, and to ensure that within a period not exceeding 7 to 10 years from the date of its constitution, it becomes fully operative as a self-supporting and financially self-sustaining entity;
- To operate and maintain the irrigation, drainage and flood control infrastructure located within its territorial jurisdiction;
- To adopt and implement policies aimed at promoting formation, growth and development of FOs, including pilot projects for FOs and faithful monitoring of the results thereof;
- To decide appeals against the decisions of the FOs relating to the irrigation disputes; and
- To perform any other functions assigned by the Authority.

The powers of the Superintending Canal Engineer under the Canal and Drainage Act may be vested in the AWB, or as its chairman.

### **Notifications Relating to Farmers Organizations**

1. To establish FOs under Section 29.
2. To assign functions to the FOs under Section 30.

The following functions may be assigned to the Farmers Organizations:

- (a) Operate, manage and improve the irrigation and drainage infrastructure, comprising minors, distributaries and drains, together with any structures thereon located within the area relevant to the FO concerned, other than civil canals;
- (b) Assess *abiana*, drainage cess/fees/fines/other charges etc., in consultation with the WUAs at the watercourse level;
- (c) Obtain irrigation water from the Authority, or AWB concerned, at the head of the minor, or the distributary, and to supply the same to their members and other water users, if any;
- (d) Receive the drainage effluent from their water users and to convey the same through field/collector drains to the designated nodal points of the drainage system;
- (e) Collect the agreed water charges/other dues, if any, from its water users and to pay the agreed consideration for supply of irrigation water and conveyance and/or disposal of drainage effluent to the Authority or AWB concerned;
- (f) Engage, hire or employ any consultants, advisors and employees as may be deemed necessary, or be otherwise reasonably required, for the due and effective performance of various powers and functions on such terms and conditions as may be prescribed, including terms and conditions relevant to the conclusion, or premature determination of such engagement, etc., of any consultant, advisor or employee, as the case may be;
- (g) Resolve disputes referred by the Water Users' Association at the watercourse level;
- (h) Revise water turn schedules (*warabandi*) in consultation with the WUAs so as to ensure adequate, reliable and equitable water supply to the water users;
- (i) Exercise the powers of the Collector under the Land Revenue Act for the collection of arrears of water charges/*abiana*/drainage cess/fees/other charges to recover it as arrears of land revenue;
- (j) Provide sanctions, including fines against the misconduct, relevant to irrigation of the FOs and other persons according to the bylaws of the Organization;

- (k) Exercise magisterial powers available under the Canal and Drainage Act (1873);
- (l) Frame its bylaws for the efficient working of the Organization;
- (m) Promote agricultural productivity and higher incomes to the farming community through procurement and distribution of agricultural inputs, credit facilities and efficient and profitable marketing of crop produce;
- (n) Carry out afforestation/plantation of trees at the distributary/minor banks for the purpose of increasing the income of the Farmers Organization, in view of the requirements of irrigation and the environment; and
- (o) Levy any charges/rates/other charges, etc., for non-irrigation use of distributary and minor structures, such as the service road, navigation, aqua-culture, etc..

### 3.4.6 Discussion: Questions and Answers

**Question:** Who registers WUAs?

**Answer:** Dr. Dil Muhammad. The Director, OFWM, registers WUAs at the watercourse level in the Punjab Province, while there is a provision of formation and registration of a Federation of watercourses at the distributary level in WUAs Act (1982).

**Question:** Dr. Munawar Shah. How do you go along with Punjab Irrigation Act (1873) and PIDA Act (1997)?

**Answer:** Dr. Dil Muhammad. The Punjab Irrigation and Drainage Act (1873) has been practiced in Pakistan for a long time and things do not change overnight. There are two ways: 1) to evolve improvement in both Acts, and 2) to delete these two Acts altogether and develop a new one, which is acceptable to all the concerned persons/departments. There should be flexibility in framing the rules so that these could be accommodated according to the situation. There is a difference between the Ordinance and the Act. When assembly is not in session, an Ordinance that has to be passed by the assembly to make it an Act has to be promulgated. There is also a difference among Terms, Regulation, Rule and Act.