

## **Village Chaukidari Act, 1870**

### **6 of 1870**

**[19 October 1870]**

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## **Village Chaukidari Act, 1870**

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An Act to provide for the Appointment, Dismissal and Maintenance of Village-Chaukidars. Whereas it is expedient to make provision for the appointment, dismissal and maintenance of village-chaukidars in the provinces subject to the Lieutenant-Governor of [Bengal]<sup>2</sup>: It is enacted as follows:- 1. Legislative Papers.- For Statement of Objects and Reasons see Calcutta Gazette, 1870, 305, 303, 329, 365 and 380. Local Extent.-This Act applies to districts and sub-divisions in Bengal to which it is extended by Order under S. 68-see that Section, post p. 80 The Act, has been declared, by notification under the Scheduled District Act, 1874 (XIV of 1874), S. 3, to be in force in the Manbhum District, and Parganas Dhalbhum in the Singbhum District, in the Chota Nagpur Division but its application is barred in the Santhal Parganas, by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), S. 3(2), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), S. 3. The whole of this Act, except the preamble and Section 1, 48 to 81 (part II) (66, 67) and 69 and Schedules C and D is repealed by the Bihar and Orissa Village Administration Act, 1922 (A & O, Act, 3 of 1922), S. 2(2) and Sch. II, in respect of a Union in which part III, of the latter Act, is in force. For a list of Unions to which Part III has been extended, see the B.O. R.O. Vol. I pt. "VI". Amending Acts.-Bengal Act I of 1871 is to be read with, and taken as part of, this Act-see Ben, Act I of 1871, S. 7 post, p. 85. 2. This includes the present State of Bihar.

### **PART 1 PART I**

#### **1. Definitions :-**

The following words and expressions shall, in the construction of this Act, have the several meanings hereby assigned to them respectively, except where a different intention shall appear from

the context (that is to say):-

"District, Magistrate";-The words 1["District magistrate"] shall mean the Chief Officer charged with the executive administration of district in criminal matters, whatsoever designation such officer is called:

[The definition of "Magistrate" was repealed by Section 2(1) of the same Act, and is omitted.]

"Chaukidari chakaran lands".-The words "chaukidari chakaran lands" shall mean lands which may have been assigned, otherwise than under a temporary settlement for the maintenance of the officer who may have been bound to keep watch in any village and report crime to the police, and in respect to which such officer may be at the time of the passing of this Act, liable to render service to a zamindar.

"Zamindar"-The word "zamindar" shall mean the person whose name is registered in the general register of estates paying revenue directly to Government as the proprietor of an estate so paying revenue, or the person whose name is registered in the general register of rent free tenures as proprietor of rent-free tenure.

1. Words "District Magnstrate" Substituted for the words "Magistrate of the District" by the Bengal Act I, Sees. 2(2) of 1892.

## **2. Repeal Of Portion Of Regulation Xx Of 1817 :-**

Section 21, Regulation XX of [1817]1, [is hereby repealed]2, as to all villages to which this Act may apply.

1. The Bengal Police Regulation, 1817.
2. This repeal does not take effect in any village or Union untill a chaukidar has been appointed therein under the provisions of this Act-see the Bengal Village Chaukidari Act, 1871(Ben. Act 1 of 1871), Section 1.

## **3. Appointment Of Panchayats :-**

1[The District Magistrate may-

(1) by an order in writing, appoint not less than three nor more than five residents in any village within the district of which he has charge to be the panchayat thereof; or

(2) he may, with the previous sanction of the 2[State] Government, direct that the adult male rate-paying residents of any village shall select, according to any Rules that may be prescribed by the 2[State] Government and published in the

[Official Gazette]3, not less than three or more than five residents of the village to be the panchayat thereof, and the District Magistrate shall if he approves of the person so selected, appoint such persons to be the panchayat; but if, in his opinion any person so selected is, for reasons to be recorded by him in writing, unfit to be a member of the panchayat, the District Magistrate shall appoint a fit and proper resident to be a member of the panchayat:

Provided that no panchayat shall be appointed in any place to which the [Bengal Municipal Act, 1884]4 has been, or may hereafter be, extended:

Provided also that the 2[State] Government shall be entitled to prescribe that in certain specified local areas, to be notified in the 5[Official Gazette] the number of persons to be appointed to discharge the duties of a panchayat may be reduced to one.]

1. Substituted by Bengal Act I of 1892.
2. Substituted by A.L.O. for "Provincial".
3. Substituted by A.L.O. for "Calcutta Gazette".
4. Now see Bihar & Orissa Municipal Act, 7 of 1922.
5. Substituted by A.O. for "Calcutta Gazette".

### **3A.** Delegation Of Powers By The District Magistrate :-

1[The District Magistrate may from time to time by an order in writing, 2[\*\*\*] delegate his powers under this Act, either wholly or in part, to any Magistrate of the first class subordinate to him, or to any Magistrate in charge of a sub-division or to the District Superintendent of Police; and by a like order, [Omitted by Act 18 of 1952], may withdraw such delegated powers.

1. Inserted by Ben. Act 1 of 1892.
2. Omitted by Act 18 of 1952

### **4.** Power To Define A Village :-

1[The District Magistrate may, from time to time, by an order in writing under his hand, declare any local area or group of dwellings, within the district of which he has charge, to be a village for the purpose of this Act.

1. Substituted by Section 5 Bengal Act, 1 of 1892.

### **5.** Power To Appoint Panchayat On Application Of Villagers

:-

Whenever the majority in number of the adult male residents in any village [Repealed by Act 1 of 1892] shall by writing signed by them, apply to the 1 [District Magistrate, Substituted by Act, 1 of 1892] for the appointment of a panchayat in such village [Omitted by Ben. Act 1 of 1892.], it shall be lawful for him to appoint a panchayat under this Act in such village [Omitted by Ben. Act 1 of 1892.] without regard to the number of houses therein contained, and all the provisions of this Act shall apply to such panchayat and to such village [Omitted by Ben. Act 1 of 1892.].

1. Substituted by Section 5 Bengal Act, 1 of 1892.

#### **6. Succession Member Of Panchayat :-**

1[Whenever any member of a panchayat shall die or cease to be a member of such panchayat, the 2[District Magistrate] shall, by writing under his hand, call on the remaining members of the panchayat to nominate within thirty days a fit and proper person to be appointed as member of the panchayat in the room of such member so dying or ceasing to be a member, and the 2[District Magistrate] shall, unless he considers such nomination improper, appoint the person so nominated to be a member of the panchayat: Provided that if no person shall have been so nominated, or if in the opinion of the 2[District Magistrate] the person nominated is, for reasons to be recorded by him in writing, unfit to be appointed a member of the panchayat, the 2[District Magistrate] shall appoint a fit and proper person to be a member of the panchayat.]

1. Substituted by Ben. Act 1 of 1886.

2. Substituted by Ben. Act 1 of 1892.

#### **7. Qualification Of Members Of Panchayat :-**

No person shall be appointed to be a member of a panchayat under this Act, unless he be a resident in such village of the proprietor or holder of land therein or his local agent:

Provided that such proprietor or local agent shall not be so appointed unless he be resident within one mile from some part of such village.

#### **8. Penalty On Refusing To Act As Member Of Panchayat :-**

If any person, appointed to be a member of a panchayat, shall refuse to undertake the office, or wilfully omit to perform the duties

thereof, and shall not within 1[thirty days] from the date of his appointment, or from such omission, show grounds to the satisfaction of the 2[District Magistrate] for such refusal or omission, he shall be liable to a fine which may extend to fifty rupees:

Provided that every person who shall have paid any fine under the provisions of this Section shall thereupon cease to be a member of the panchayat and shall not be liable to be re-appointed a member of panchayat for the space of 1[three years] from the day of the payment of such fine.

1. Substituted by Ben. Act 1 of 1886.
2. Substituted by Ben. Act 1 of 1892.

### **9. Period For Which Panchayat To Be Appointed :-**

1[Every member of a panchayat appointed under Section 3 shall be appointed for the term of three years.

Every member of a panchayat appointed under Section 6 shall be appointed only for a term equal to the unexpired portion of the term for which the member whom he succeeds was appointed.]

1. Substituted by Ben. Act 1 of 1886.

### **9A. Exemption From Serving On Panchayat :-**

1[No member of a panchayat, after the expiry of his term of office, shall be again appointed a member of a panchayat, without his consent till after the lapse of three years.]

1. Inserted by Ben. Act 1 of 1886.

### **9B. Appointment Of Fresh Panchayat :-**

1[On the expiry of the term for which the members of a panchayat were appointed, the 3[District Magistrate] shall appoint a new panchayat in the manner prescribed in Section 3, the outgoing panchayat continuing to exercise all the functions of a panchayat until such new panchayat has been appointed.]

1. Inserted by Ben. Act 1 of 1886.

### **10. Power To Remove Members :-**

It shall be lawful for the 1[District Magistrate] by an order in writing signed by him, to remove or discharge any member of a panchayat.

1. Substituted by Ben. Act 1 of 1892.

**11. Number Of Chaukidars To Be Determined By The District Magistrate :-**

1[The District Magistrate shall determine the number of chaukidarsto be employed in a village:

Provided that, 2[\* \* \*], there shall not be more than one chaukidar for over sixty houses.]

1. Substituted by Ben. Act 1 of 1892.

2. Omitted by Section 3 of Bihar Act 18 of 1952.

**12. The District Magistrate To Determine Salaries Of Chaukidars :-**

1[The salaries of chaukidars appointed shall be determined by the District magistrate:

Provided that such salaries shall not be less than two, nor more than six rupees per mensem.]

1. Substituted by Ben. Act 1 of 1892.

**13. Salaries To Be Provided By Assessment :-**

1[The panchayat shall impose an assessment yearly in each village equal to the amount required for the pay and equipment of the chaukidars, together with fifteen percent, above such amount, in order to provide for payment of the expenses of collection and losses from the non-realization of the rate from defaulters.]

1. Substituted by Ben. Act 1 of 1886.

**14. Persons Liable To Assessment :-**

1[All owners or occupiers of houses in any village, and any person who has within such village a catchery for collecting rents, shall be liable to assessment for the purpose of this Act.

1. Substituted by Ben. Act 1 of 1892.

**15. Nature And Amount Of Assessment :-**

The rate to be levied in any village for the purposes of this Act, shall be an assessment according to the circumstances and the property to be protected of the persons liable to the same:

Provided that the amount to be assessed on any one person shall not be more than one rupee per mensem, and that all persons who,

in the opinion of the panchayat, are too poor to pay half an anna a month shall be altogether exempted from assessment under this Act.

#### **16. Time And Form Of Assessment :-**

The panchayat shall, two clear [months]<sup>1</sup> before the first day of the year current in the village, make such assessment upon the several persons liable thereto, and shall enter the same in a list, which shall specify the name of each person liable to be assessed, the trade, business or other description of such person and the amount payable monthly by such person, and such list shall be by them published in some conspicuous part of the village at least fifteen days before the expiry of the said two months.

1. As to the making of an assessment within one month after the appointment of a Panchayat, See Bengal Act, 1 of 1871, Section 2 to 4.

#### **17. Power To Continue Former Assessment :-**

The panchayat may, instead of making a new assessment, revise or continue the assessment of the current year, and the assessment so revised or continued shall be in like manner published.

#### **18. Duration Of Assessment :-**

Every assessment so made, revised or continued shall commence and take effect upon the first day of the year current in the village next ensuing the date of publication thereof and shall remain in force for one year, until some other assessment properly made or revised under the provisions of this Act, shall commence and take effect.

#### **19. Power To Review Assessment :-**

Any person dissatisfied with the amount at which he has been assessed may, within one month after any publication of any assessment, apply to the panchayat, either orally or in writing, for a revision of the assessment, and the panchayat may confirm the assessment or amend the same.

#### **20. District Magistrate May Revise Assessment :-**

No appeal, as of right, shall lie from any order passed by a

panchayat as regards the revision of any assessment; but the 1[District Magistrate] may call for the general list of assessment in any village, and shall so call for such list on the application of ten rate payers in such villages, and may pass such orders on any list so called for as he may think proper.

1. Substituted by Ben. Act 1 of 1892.

### **21. Rate Payable Quarterly In Advance :-**

Every rate to be payable under this Act shall be payable by equal 1[quarterly] instalments; the instalment of rate on account of each 1[quarter shall be due on the first day of such] 1[quarter].

1. Substituted by Ben. Act 1 of 1871.

### **22. Allowance For Collecting Rate :-**

Every panchayat shall appoint one of their members to receive and collect the rate, and to grant receipts for the same and to keep the accounts thereof, and it shall be lawful for the panchayat to permit the person so appointed to retain any sum not exceeding 1[ten percent] of the amount collected by him to repay the costs of such collection.

1. Substituted by. Ben. Act 1 of 1886.

### **23. Constitution Of Chaukidari Fund :-**

The proceeds of every assessment to be levied under this Act in any village, together with any sum which may become applicable to the purposes of this Act, shall constitute a fund, which shall be called the Chaukidari Fund of such village.

### **24. Application Of Surplus :-**

If at the end of any year any surplus of the fund may remain unexpended, such surplus shall be carried to the credit of the chaukidari fund for the ensuing year, and the amount to be realised by assessment in such ensuing year may in such case be reduced by the amount of such surplus.

### **25. Payment Of Instalment To Be Made Within Seven Days :-**

Every person liable to pay any sum assessed, upon him under this Act, shall, within seven days after the day upon which any

instalment of rate may be payable by him, pay or tender such instalment to the person appointed by the panchayat to receive the same.

## **26. List Of Defaulters To Be Made Out :-**

Immediately after the tenth day of each 1[quarter] the panchayat of every village, to which the provisions of this Act extend, shall prepare a list of the persons who may have failed to pay their respective instalments of the rate for such1 [quarter], showing the amount due from each of such defaulters, and shall publish such list in some conspicuous part of the village.

1. Substituted by Ben. Act 1 of 1871.

## **27. Power To Distrain For Rates :-**

The collecting member of the panchayat shall thereupon issue a writing in the form in Schedule A, signed by him authorizing the chaukidar or such other person as may be therein named, to levy, by the distraint and sale of a sufficient portion of the moveable property of such defaulters, the amount of their respective arrears, together with sums equal to such arrears respectively by way of penalty.

## **28. Manner Of Executing Distress :-**

The person so authorized shall seize such moveable property of such respective defaulters as he shall deem sufficient, and shall make an inventory of all moveable property so seized, and shall at the same time give notice by beat of drum of the time and place where such moveable property shall be sold.

Such time of sale shall be not less than two days, nor more than five days from the time of the proclamation thereof.

## **29. Sale In Execution Of Warrant :-**

In case any defaulter shall not, within the time "specified by such notice, pay the amount of such arrears payable by him together with an equal amount by way of penalty, the moveable property distrained or such portion of it as may be necessary, shall be sold by public outcry at the place and time specified and the proceeds shall be applied in discharge of such amount and penalty, and the surplus, if any shall be returned to the person in possession of the moveable property at the time of the seizure.

### **30. Objection To Levy How To Be Made :-**

Whenever any person whose name may have been included in any list of defaulters may dispute his liability to pay the amount mentioned in such list or any portion thereof, he may apply to the 1[District Magistrate] either orally or in writing, stating the grounds of his objection, and the 1[District-Magistrate] shall examine his objection and pass such order thereon as to him shall seem proper.

1. Substituted by Ben. Act 1 of 1892.

### **31. Custody Of Property Distrained :-**

Any property distrained under the provisions of Section 28 shall remain in the custody of the chaukidar, or of some other person whom the panchayat may appoint in that behalf.

### **32. What Property May Be Distrained For Rates :-**

All goods and chattels, except plough-cattle and tools and implements of trade or agriculture found in or upon any house or land occupied by any defaulter, shall be deemed to be his property, and shall be liable to be distrained and sold for the recovery of the arrear.

If the goods and chattels distrained belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner of such goods and chattels for any damage he may sustain by reason of such distress or by reason of any payment he may make to avoid such distress or any sale under the same.

### **33. Distress Not To Be Levied After A Year :-**

No arrear of any rate payable under this Act, shall be recovered by distress after the expiration of one year from the day on which the same shall have become due.

### **34. Irregularities Not To Avoid Distraint :-**

No distress levied by virtue of this Act, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in any list, assessment, notice, summons, power, writing inventory or other proceeding relating thereto, nor shall such party be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity

may recover full satisfaction for any special damage sustained by them, in any Court of competent jurisdiction subject to the provisions of Section 63 of this Act.

### **35. Appointment And Dismissal Of Chaukidars :-**

1[(1) The panchayat shall, when a vacancy exists nominate a person to be a chaukidar under this Act, and the 1 [State] Government shall, if satisfied with such nomination appoint such nominee to be chaukidar:

Provided that if the panchayat fail to nominate within a reasonable time a person to be a chaukidar, or the 1 [State] Government is not satisfied with such nomination, the 1 [State] Government shall appoint any person [it]2 thinks fit to be a chaukidar.

(2) The District Magistrate, or the panchayat with the sanction of the District Magistrate, may, from time to time, dismiss any chaukidar so appointed.

Comments & Case law

Bihar Chaukidari Manual-Rules 35 to 39-Appointment of village Chaukidar-Act of 1870 is Statutory in nature-Appointment of Chaukidar is a Statutory Appointment and has to be primarily made on the basis of nomination by Panchayat-There cannot be any Rule or executive instructions contrary to the same-There being valid nomination of Panchayat in favour of petitioner and there being no disapproval from officer-in-charge and SDO, Respondent No. 9 could not have been appointed in place of petitioner-Petitioners case to be considered by DM. Mahendra Yadav vs. State of Bihar, 2007(3) BLJ 30 (PHC).

Appoinment of Chaukidar/Dafadar-State Government declared the posts as that of Class-IV employee and issued direction on 23.1.1991 not to make any further appointment till the process of selection and appointment get finalised- Appointments made even after the ban-Direction of Stay order by District Magistrate-Appointment of petitioner has not been cancelled even after the lapse of 15 years-Accordingly, direction issued to the District Magistrate to take final decision regarding the petitioner in the light of Governments circular dated 6.11.91. Arun Prakash Tiwary vs. State of Bihar, 2007(2) PLJR 512.

Petitioner worked for some period as Awazi Chaukidar and thereafter nominated another person to work as chaukidar--Later filed Chaukidari case before SDO claiming to continue to work as chaukidar- Suppression of material facts before the High Court-

Petition dismissed. Nand Prasad Dusadh vs. State of Bihar, 2005(3) PLJR 701.

Pension Claim by Chaukidar like other Government Servants-Prior to 1-1-90 the post was not substantive and if a Government servant is not governed by Bihar Service Code, Bihar pension Rules would not apply- Held, past service prior to the above date cannot be counted-Petitioner having not completed qualified service for minimum period of 10 years not entitled to pensional benefit. Charitra Paswan vs. State of Bihar, 2004(2) PLJR 454.

Pension Claim by Chaukidar-Having retired on 21-6-1998 could not complete mandatory 10 years-The post of Chaukidar was absorbed in the State service on 1-1-1990-Plea that in other departments before absorption by the State Government the previous services rendered are being counted for the purpose of pensional benefits but in Chaukidars case the same has not been extended-Petitioner was asked to raise the issue before the authorities- Government was asked to take policy decision in the matter within a period of three weeks. Dularchand Paswan vs. State of Bihar, 2002(1) PLJR 540.

1. Substituted by Ben. Act 1 of 1892.
2. Substituted by A.L.O.

### **36. Appointment Of Chaukidars To Be Registered By Police**

:-

[Omitted by Ben. (Arndt.) Act 1 of 1892.]

### **37. Power Of Magistrate To Dismiss Chaukidars :-**

[Omitted by Ben. (Arndt.) Act, 1 of 1892.]

### **38. Power To Fine Chaukidars :-**

Every chaukidar who may be guilty of any wilful misconduct in his office, or neglect of his duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code (XLV of 1860) and not being of so grave a character as in the opinion of the1 [District Magistrate] to require his dismissal from his office, shall be liable to a fine which shall not exceed the amount of one months salary.

1. Substituted Ben. Act 1 of 1892.

### **39. Duties Of Chaukidars :-**

1[Every chaukidar appointed under the provisions of this Act, shall perform the following duties:-

1st.- He shall give immediate information to the Officer In-charge of the Police-Station within the limits of which the village is situate of every unnatural, suspicious or sudden death which may occur, and of any offence specified in Schedule B, which may be committed within his village, and he shall further keep the police informed of all disputes which are likely to lead to any riot or serious affray;

2nd.- He shall arrest all proclaimed offenders and any person who in his presence commits any offence specified in Schedule B, and any person against whom a hue-and-cry has been raised of his having been concerned in any such offence, whether such offence has been or is being committed within his village or outside of it, and shall without delay, convey any person so arrested to the said police station;

3rd.- He shall, to the best of his ability, prevent, and may interpose for the purpose of preventing, the commission of any offence specified in the said Schedule;

4th.- He shall assist private persons in making such arrests as they may lawfully make, and shall report such arrest without delay to the Officer In-charge of the said Police-Station.

5th.- He shall observe and, from time to time, report to the officer aforesaid the movements of all bad characters within his village;

6th.- He shall report to the Officer In-charge of such Police-Station the arrival of suspicious characters in the neighbourhood;

7th.- He shall report to the Officer aforesaid, in a form signed by one member of the panchayat the births and deaths, if any which have occurred within his village at such intervals as the District Magistrate may determine;

8th.- He shall report to the Officer aforesaid the death or absence for more than two consecutive months of any member of the panchayat;

9th.- He shall supply any local information which the District Magistrate or any Officer of police may require;

10th.- He shall obey the orders of the panchayat in regard to keeping watch within his village and other matters connected with his duties as chaukidar;

11th.- He shall assist the person collecting the rate in making such collection.]

Comments & Case law

Read with Chapter XII, Sections 159 and 173 of Cr.P.C,1973 and

Section 25 of Indian Evidence Act, 1872 along with Bihar Police Manual, 1978-Question of-Chaukidar whether a Police Officer and as such confession alleged to have been made before him is inadmissible-Held, neither any of the three Acts mentioned above inclusive the Rules framed thereunder, nor Cr.P.C gives Chaukidar the power of investigation and the power to submit report under Chapter XII Cr.P.C-Even the Manual does not confer any such power on them-Therefore, in view of the law laid down by the Apex Court, a Chaukidar cannot be a Police Officer within the meaning of Section 25 of the Evidence Act. *Paro Chamar vs. State of Bihar*, 2000(3) PLJR 827 [Full Bench].

Temporary appointment of Dafadar-Dispute regarding appointment between parties-Dismissal of respondent from the post-Commissioner entertained the case of dismissal of Respondent after lapse of 4 years-Order not indicating any explanation given by Respondent for delay of approaching the court of Commissioner-Held. Commissioner not justified in interfering with the said order-Act does not provide temporary appointment-Direction issued to competent authority to make fresh appointment. *Bishwanath Mishra vs. State of Bihar*, 1995(1) BLJ 233.

1. Substituted Ben. Act 1 of 1892.

#### **40. Procedure On Arrest By Chaukidars :-**

Whenever the chaukidar may arrest any person, such chaukidar shall forthwith take the person so arrested to the Police-Station within the limits of which such village is situate:

Provided that, if the arrest is made at night such person shall be so taken as soon as convenient on the following morning.

#### **41. Control Of Chaukidars By Panchayat :-**

The panchayat shall exercise a general control over the chaukidars, and every member of such panchayat who may know or be informed of the commission within the village of any offence specified in Schedule B of this Act, shall forthwith cause the same to be reported by the chaukidar to the Officer In-charge of the police-station within the limits of which the village may be situate, and, on failure of the chaukidar, such member shall himself report the same 1[or cause the same to be reported] to such officer.

1. Inserted by Ben. Act 1 of 1886.

#### **42. Fines And Penalties To Be Credited To District**

## **Chaukidari Reward Fund :-**

1[All fines and penalties levied under this Act, shall be credited to a District Chaukidari Reward Fund, the control over which shall rest with the District Magistrate.]

1. Substituted by Ben. Act 1 of 1892.

## **43. Mode Of Paying Chaukidars :-**

1[Every chaukidar shall receive, quarter by quarter, the full amount of his salary from such officer 2[as the 3[State] Government may, by Rules made under this Act, prescribe or direct.]

1. Inserted by Ben. Act 1 of 1886.

2. Substituted by Ben. Act 1 of 1892.

3. Substituted by A.L.O. for Provincial.

## **44. Panchayat To Pay Or Remit Quarterly Amount For Payment Of Chaukidars, Etc :-**

1[Within thirty days after the end of each quarter, every panchayat shall pay or remit to such officer or person 2[as the 3[State] Government may prescribe or direct] under the last foregoing Section a sum equal to the pay of the chaukidar for the quarter, or any smaller amount which may stand to the credit of the chaukidari fund of the village.]

1. Inserted by Ben. Act 1 of 1886.

2. Substituted by Ben. Act 1 of 1892.

3. Substituted by A.L.O. for Provincial.

## **45. Mode Of Realising Chaukidars Salary :-**

If it shall appear to the 1[District Magistrate] that there is no money to the credit of the village chaukidari fund, and that the panchayat shall not have taken sufficient steps to realize from defaulters the arrears due from them, the 1[District Magistrate] 2[may issue his warrant] for the realization of the chaukidars pay from the members of the panchayat by distress and sale of their moveable property, and shall therein charge some person, therein named, with the execution thereof, and upon such warrant such proceedings shall be had as hereinbefore directed to be had on any writing issued for the recovery of any arrears of the tax by this Act, directed to be levied; and the amount due to such chaukidar shall be paid to him out of the amount so levied, and the residue

thereof, after payment thereof of all costs and expenses incurred in or about the execution of such warrant, shall be paid to the persons from whom such distress shall have been so levied.

3[An application for the appointment of a Tahsildar under Section 46A shall not of itself be deemed a sufficient step to realize from defaulters the arrears due from them.]

1. Substituted by Ben. Act 1 of 1892.
2. Substituted by Ben. Act 1 of 1886.
3. Inserted by Ben. Act 1 of 1886.

#### **46. Reimbursement Of Amount Of Member Of Panchayat By Whom Salary Is Paid :-**

Any member of a panchayat, from or by whom any sum shall have been levied or paid under the provisions of the Section last preceding, shall be reimbursed the amount so levied from or paid by him from any surplus of the village chaukidari fund which may remain at the end of the year in which such sum shall have been so levied or paid.

#### **46A. Appointment Of Tahsildar :-**

1[The District Magistrate may at any time on the application of the panchayat of any village, or of his own motion if, in his opinion, the collection of the rate is badly carried out, or if the chaukidar is not regularly paid, appoint a Tahsildar to assist the person collecting the rate; and such Tahsildar shall exercise all the powers vested in the panchayat for the collection of the said rate; and the District Magistrate shall, on a like application, and he may of his own motion, revoke such appointment.]

1. Substituted by Ben. Act 1 of 1892.

#### **46B. Remuneration Of Tahsildar :-**

1[Every tahsildar appointed under the last foregoing Section shall be remunerated at such rate and in such manner as the 2[District Magistrate] may, from time to time with the sanction of the Commissioner of the Division, prescribe; and such remuneration shall be levied from those who have failed to pay their chaukidari assessments in the same manner and in the same proportion as the chaukidari assessment:

Provided that one Tahsildar may, in the discretion of the 1[District Magistrate], be appointed for more than one village.]

1. Substituted by Ben. Act 1 of 1892.

2. Substituted by Act 1 of 1886.

**47. Power To Revise Assessment :-**

If it shall appear to the 1[District Magistrate] that the deficiency of the funds to the credit of the Village Chaukidari Fund has been caused by an erroneous assessment, the 1[District Magistrate shall call for the assessment and revise the same as he shall think proper, and shall remit the same to the panchayat, and such panchayat shall forthwith proceed to levy the sums respectively appearing to be due by such revised assessment.

1. Substituted by Ben. Act 1 of 1892.

**PART 2 CHAUKIDARI CHAKARAN LANDS**

**48. Chaukidari Chakaran Lands To Be Transferred To Zamindars :-**

All chaukidari chakaran lands before the passing of this Act, assigned for the benefit of any village in which a panchayat shall be appointed shall be transferred in manner and subject as hereinafter mentioned to the zamindar of the estate or tenure within which may be situate such lands.

**49. Assessment To Be Fixed At-One-Half Of Value :-**

All lands so transferred shall be subject to an assessment which shall be fixed at one-half of the annual value of such land according to the average rates of letting land similar in quality in the neighbourhood of such land, and such assessment shall be made by the panchayat of the village.

**50. Collector To Make Transfer :-**

Such assessment when made by the panchayat shall be submitted to the Collector of the district, and he or any other officer exercising the powers of a Collector by him thereunto appointed may approve, or revise, and approve, the same (provided that it shall be lawful for the zamindar to contest the assessment before it is so approved), and after such approval the Collector of the district shall, by an order under his hand in the form in Schedule C, transfer to such zamindar such land subject to the assessment so approved.

### **51. Effect Of Transfer :-**

Such order shall operate to transfer to such zamindar the land therein mentioned subject to the amount of assessment therein mentioned, and subject to all contracts theretofore made, in respect of, under, or by virtue of which any person other than the zamindar may have any right to any land, portion of his estate, or tenure, in the place in which such land may be situate.

### **52. Assessment To Be A Permanent Charge On Lands :-**

The amount of the assessment mentioned in such order shall be permanent yearly charge on such land, and shall be payable to the collecting member of the panchayat yearly in advance on the first day of the year current in the village by the person for the time being entitled to recover the rents of such land from the occupier thereof.

### **53. Mode Of Realization :-**

Every such assessment shall be deemed to be a demand to be realised in the manner hereinafter, provided.

### **54. Notice Of Arrear :-**

Whenever such assessment shall be in arrear for the space of fifteen days after it shall have become payable, the collecting member of the panchayat shall forward to the Collector of the district in which the land so assessed is situate notice of the amount of such arrear and the name of the person liable to pay such assessment, in the form in Schedule D annexed to this Act.

### **55. Mode And Effect Of The Sale :-**

Immediately after the receipt of the said notice the Collector or other officer authorized to hold sales under the law for the time being in force for regulating sales of land for arrears of revenue shall proceed, without any preliminary notice for payment to issue a notification for sale under Section 6 of [Act XI of 1859]<sup>1</sup>, passed by the Legislative Council of India;

and, unless the arrears be paid within the time mentioned in such notification, shall sell such land according to the provision of such law as if such land were all estate within the meaning of [Act VII of 1868]<sup>2</sup> passed by the Lieutenant-Governor of Bengal in Council;

and all provisions of the law for the time being in force with respect to the sale of such estates shall apply to the sale of such land, and every such sale shall have such and the same force and effect as if the same were a sale of an estate for arrears of its own revenue, and such land shall be held by the purchaser thereof subject to such assessment, but freed from all other charges and incumbrances save those to which he would have been liable if the said land had been an estate sold for arrears of its own revenue.

1. The Bengal Land Revenue Sales Act 1859.
2. The Bengal Land Revenue Sales Act, 1868.

#### **56. Application Of Proceeds Of Sale :-**

Such Collector shall, out of the proceeds of such sale, after defraying the costs of and attending such sale, pay to the collecting member of the panchayat, within one week after such sale shall have become final, the amount due for arrears of such assessment and pay the balance of such proceeds to the person named in the notice from the collecting member of the panchayat as the person liable to pay the assessment of such land.

#### **57. Right To Service From Occupier Of Transferred Land To Cease :-**

When any lands shall have been transferred to any zamindar under the provisions hereinbefore contained, the right to the performance of any services to any person by the occupier of such lands in respect of his occupation thereof shall wholly cease and determine.

#### **58. Appointment Of Commission :-**

In any district or part of a district in which may situate lands before the passing of this Act, assigned for the maintenance of an officer to keep watch in any village and to report crime to the police, it shall be lawful for the 1 [State] Government of Bengal, by an order]2 to be published in the 3[Official Gazette], to appoint a commission consisting of one or more persons, to ascertain and determine the chaukidari chakaran lands and other lands before the passing of this Act, assigned for the maintenance of an officer to keep watch in any village and to report crime to the police, in such district.

1. Substituted by A.L.O. for Provincial"
2. For a list of orders made under S. 58 see the B.O.R.O. Vol. I, Pt.

VI.

3. Substituted by A.O. for "Calcutta Gazette"

**59. Power To Refer To Commission Question Relating To Chakaran Land :-**

Whenever in any district in which such commission shall have been appointed, any question shall arise whether any or what lands or chaukidari chakaran lands or other lands before the passing of this Act, assigned for the maintenance of an officer to keep watch in any village and to report crime to the police, it shall be lawful for such commission to inquire into such question.

**60. Powers Of Commission :-**

In inquiring into such question the commission shall, as far as may be necessary for the purposes of this Act, exercise all such and the same powers as are conferred by [Regulation VII of 1822]<sup>1</sup> and the Regulations and Act, amending the same upon a collector making a settlement of land-revenue.

1. The Bengal land-revenue Settlement-Regulation, 1822.

**61. Section 61 :-**

**PART 3 MISCELLANEOUS PROVISIONS**

**62. Powers Of The Panchayat May Be Exercised By The District Magistrate :-**

<sup>1</sup>[All powers vested in the panchayat for the nomination and dismissal of chaukidars and for making the assessments hereinbefore directed to be made may, in case the panchayat, after a notice in writing from the District Magistrate to exercise such powers, or any of them, refuse or, after the lapse of a reasonable time in that behalf, neglect forthwith to exercise the same, be exercised by the District Magistrate.]

1. Substituted by Ben. Act 1 of 1892.

**63. Indemnity-Clause :-**

No action shall be brought against the <sup>1</sup>[District Magistrate] nor against any panchayat, nor against any member thereof, nor against any of his or their officers, nor against any person acting under his or their direction, for anything done or professing or purporting to be done under this Act, until the expiration of one

month next after notice in writing shall have been delivered or left at the office of the 1 [District Magistrate] and at the place of abode of such person, explicitly stating the cause of action, and the name and place of abode of the intended plaintiff; and, unless such notice be proved, the Court shall find for the defendant; and every such action shall be commenced within three months next after the accrual of the cause of action and not afterwards; and, if any person to whom any such notice of action is given shall before action brought tender sufficient amends to the plaintiff such plaintiff shall not recover.

1. Substituted by Ben. Act 1 of 1892.

#### **64. Control Vested In Commissioner Of Circuit :-**

The Commissioner of Circuit shall have a general controlling powers over all proceedings of panchayats 2[\*\* \*] and 1 [District Magistrates] under this Act.

1. Substituted by Ben. Act 1 of 1892.

2. Omitted by *ibid*.

#### **65. Rules For Guidance Of Panchayat :-**

The 1[State], Government may from time to time frame Rules]2 for the guidance of the panchayat, for regulating the practice and procedure of any commission in trying or determining any question referred to them, and for any other purposes connected with this Act, and may, from time to time, alter, vary, or revoke the same, and shall publish every such Rule or alteration, variation or revocation of a Rule in the 3[Official Gazette] and the Rules for the time being in force shall, from their publication, have such and the same force and effect as if they were herein enacted.

Comments & Case law

Ehar Chaukidah Manual-Rules 35 to 39-Appointment of village Chaukidar-Act of 1870 is Statutory in nature-Appointment of Chaukidar is a Statutory Appointment and has to be primarily made on the basis of nomination by Panchayat-There cannot be any Rule or executive instructions contrary to the same-There being valid nomination of Panchayat in favour of petitioner and there being no disapproval from officer-in-charge and SDO, Respondent No. 9 could not have been appointed in place of petitioner-Petitioners case to be considered by DM. Mahendra Yadav vs. State of Bihar, 2007(3) BLJ 30 (PHC).

Appoinment of Chaukidar/Dafadar-State Government declared the

posts as that of Class-IV employee and issued direction on 23.1.1991 not to make any further appointment till the process of selection and appointment get finalised- Appointments made even after the ban-Direction of Stay order by District Magistrate- Appointment of petitioner has not been cancelled even after the lapse of 15 years-Accordingly, direction issued to the District Magistrate to take final decision regarding the petitioner in the light of Governments circular dated 6.11.91. Arun Prakash Tiwary vs. State of Bihar, 2007(2) PLJR 512.

1. Substituted by A.L.O. for Provincial".
2. For lists of rules made under S. 65 see the B.O.R.O. Vol. I. Pt. VI.
3. Substituted by A.O. for "Calcutta Gazette".

#### **66. Duty Of Zamindars To Report Crimes Not Affected :-**

Nothing in this Act, contained shall diminish or in any way affect any liability, duty or obligation of any zamindar, under any law in force at the time of the passing of this Act to report crimes or offences occurring within his estate or tenure.

#### **67. Village Watch Where Panchayat Not Appointed, Not Affected :-**

Nothing in this Act, contained, save the provisions of Sections 58, 59, 60 and 61 shall affect any lands before the passing of this Act, assigned for the maintenance in any village in which a panchayat may not be appointed, of an officer to keep watch in such village and to report crime to the police and every such officer in such village shall be bound to perform the same duties and shall have the same right unto such lands, and may be removed and a successor to him appointed, as if this Act, had not been passed.

#### **68. Commencement :-**

This Act shall commence and take effect in those districts or sub-divisions of district [\*\*\*]1 to which the 2[State] Government concerned shall extend it by an order published in the Calcutta Gazette, and thereupon this Act, shall commence and take effect in the district and sub-division of districts named in such order, on the date which shall be in such order provided for the commencement thereof.

1. "In the provinces subject to the Provincial Government of

Bengal" repealed by the Indian Independence (Adaptation of Bengal & Punjab Act) Order, 1948.

2. Substituted by A.O. for "said provincial Government".

### **69. Short Title :-**

This Act may be called Village Chaukidari Act, 1870.

#### **SCHEDULE 1**

##### **SCHEDULE A**

(Referred to in Section 27.)

Form of Distraining Warrant.

Act VI of 1870.

##### **VILLAGE CHAUKIDARI FUND.**

On behalf of the panchayat of ( ..... ) whereas, the several persons named in the list at foot thereof have made default in payment to the said panchayat of the sums in the said list set opposite to their respected names. You are hereby authoised and required to levy by distress and sale of a sufficient portion of the moveable property of the said defaulters the said several sums set opposite to their respective names, together with additional sums by way of peanlty respectively, equal to the sums set forth.

		day of	19
			(Sd.) R.B.
			Collecting Member.
Name and description.	Amount.	When due.	Penalty
	Rs. p.		Rs.p.
BG.	5-00	1 Bysack	5-00
K.B.	2-20	1 Bysack	2-50

#### **SCHEDULE 2**

##### **SCHEDULE B**

(Referred to in Sections 39 and 41.)

Offences to be reported and for which a chaukidar may arrest.

Murder, culpable homicide, rape (when the offender is not the husband of the woman raped), dacoity, robbery, theft, mischief by fire, house-breaking, counterfeiting coins, causing grievous hurt, riot, administering stupefying drugs, kidnapping, and all attempts and preparations to commit, and abetments of the said offence.

1. Substituted by Ben. Act 1 of 1892.

#### **SCHEDULE 3**

##### **SCHEDULE C**

(Referred to in Section 50)

Form of Transferring Order

District of.

I.....Collector of.....

do by this order under my hand made in pursuance of Act VI of 1870, passed by

the Lieutenant-Governor of Bengal in Council, transfer to.....zamindar of.....the chaukidari chakaran lands of the village of..... in the said ..... bounded ..... and containing .....bighas.....cottahs; to hold unto the said..... his heirs and assings subject to the annual assessment of.....rupees payable under the provisions of the said Act, to the Chaukidari Fund of the said village and also subject to all contracts binding the said.....in respect of any lands, portion of the said.....situated within the said village.  
The ..... day of .....19  
(Sd.) J.S.  
Collector of.

**SCHEDULE 4**

SCHEDULE D

(Referred to in Section 54.)

Form of Notice of Arrears of Assessment on Land.

Panchayat of.....

To A.B. Esq. Collector of

Sir,

I hereby notify to you that the sum of Rs.....being for one years assessment payable in respect of the chaukidari chakaran lands of this village transferred to the zamindar of.....became due on the..... day of .....and that the same is still unpaid, and that.....of..... is the person liable to pay such assessment.

The ..... day of.

(Sd.) E.F.

Collecting Member of Panchayat.