

# The Easements Act, 1882

( ACT NO. V OF 1882 )

## An Act to define and amend the Law relating to Easements and Licenses.

### Preamble

WHEREAS it is expedient to define and amend the law relating to easements and licenses;  
It is hereby enacted as follows:-

### PRELIMINARY

**Short title** 1. This Act may be called the Easements Act, 1882.

**Extent** <sup>1</sup>[1A. This Act shall extend to the whole of Bangladesh.]

**Commencement** It shall come into force on the first day of July, 1882.

**Savings** 2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from-

- (a) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;
- (b) any customary or other right (not being a license) in or over immoveable property which the Government, the public or any person may possess irrespective of other immoveable property; or
- (c) any right acquired, or arising out of a relation created, before this Act comes into force.

**Construction of certain references** 3. All references in any Act or Regulation to sections 26 and 27 of the <sup>2</sup>[Limitation Act, 1908, shall] be read as made to sections 15 and 16 of this

## CHAPTER I

### OF EASEMENTS GENERALLY

#### **“Easement” defined**

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

#### **Dominant and servient heritages and owners**

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.-In the first and second clauses of this section, the expression “land” includes also things permanently attached to the earth: the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

#### **Illustrations**

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of

being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) A is bound to cleanse a water course running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

**Continuous and discontinuous, apparent and non-apparent, easements**

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

**Illustrations**

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

**Easement  
for limited  
time or on  
condition**

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

**Easements  
restrictive  
of certain  
rights**

7. Easements are restrictions of one or other of the following rights (namely):-

**(a) Exclusive  
right to  
enjoy**

(a) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

**(b) Rights to  
advantages  
arising from  
situation**

(b) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the rights above referred to

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibrations caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation.-Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil"

mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limit without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling, of such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land and for the purposes of any manufactory situate thereon: Provided that he does not thereby cause material injury to other like owners.

Explanation.-A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

## **CHAPTER II**

### **THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS**